DIGEST

OF

DECISIONS OF THE
UNITED STATES CIRCUIT AND DISTRICT COURTS,
FROM 1789 TO 1880,
AS CONTAINED IN THE THIRTY VOLUMES

OF

THE FEDERAL CASES

ALSO CONTAINING A TABLE OF CITATIONS
AND AN ALPHABETICAL TABLE OF CASES

EDITED BY MEMBERS OF THE EDITORIAL STAFF OF
THE NATIONAL REPORTER SYSTEM

BOOK 31
PART 2

WILLIAM S. HEIN & CO., INC.
BUFFALO, NEW YORK
1995

Library of Congress Catalog Number 95-75068
ISBN 0-89941-924-0

Printed in the United States of America.

The quality of this reprint is equivalent to the quality of the original work

This volume is printed on acid-free paper by William S. Hein & Co., Inc.

OBSTRUCTING JUSTICE.

§ 1, Obstructing or resisting in general. § 2, Resisting unauthorized acts of officer. § 3, Persons liable. § 4, Indictment or information.

§ 1. Obstructing or resisting in general. Resistance to a special custodian of attached property, employed by the marshal, though not appointed a sworn deputy, is resistance to the marshal.—United States v. McDonald, Case No. 15,667.

A deputy marshal is an officer of the United States authorized to serve process.—United States v. Tinklepaugh, Case No. 16,526.

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.—Charge to Grand Jury, Case No. 18,250.

Obstructing process (in the case of habere facias) consists in refusing to give up possession, or in opposing or obstructing the execution of the writ by threats of violence, which it is in the power of the person to enforce.—United States v. Lowry, Case No. 15,636.

On an indictment for conspiring to resist an officer, actual violence need not be shown, but threats, and acts intended to terrify, or of a character to terrify, a prudent officer, are sufficient, even though he be not prevented thereby from executing his process.—United States v. Smith, Case No. 16,333.

A mere threat of resistance is not an offense. It must be accompanied by the exercise of force, or the capacity to employ it, whereby the officer is prevented from executing the writ; but it is not necessary that the officer should risk his person or proceed to personal conflict.—United States v. Lowry, Case No. 15,636.

The offense of resisting an officer in executing a warrant of arrest is complete when the person arrested refuses to come, and says he will not come, though no assault be committed.—United States v. Lukins, Case No. 15,639.

A state court judge who, in pursuance of a conspiracy, and in bad faith, releases on habeas corpus, without any ground therefor, a prisoner held on examination before a United States commissioner to await the action of the grand jury, together with the other conspirators, is guilty of obstructing process.—United States v. Doss, Case No. 14,985.

The issuing of a subpœna for a person, or indorsing his name on a complaint, makes him a witness, within Rev. St. § 5399, punishing the influencing or intimidation of witnesses by threats, force, or corrupt means.—United States v. Bittinger, Case No. 14,598.

A case is pending, within the contemplation of the statute, when a complaint is lodged with a commissioner charging a violation of the laws of the United States.—United States v. Bittinger, Case No. 14,598.

It is an offense under the statute to corruptly influence a witness to secrete or so dispose of himself as to prevent service of process upon him. —United States v. Bittinger, Case No. 14,598.

The provisions of Act 1790, § 22, apply equally to the execution of process under the fugitive slave law.—Charge to Grand Jury, Fugitive Slave Law, Case No. 18,262.

A warrant of distress is not a legal process, within Act 1790, § 22, in relation to resisting officers.—United States v. Myers, Case No. 15,847.

Act April 30, 1790, § 22, for the punishment of persons obstructing the execution of process, includes every species of process, legal and judicial, whether issued by the court in session, or by a judge or magistrate acting in his official capacity out of court.—United States v. Lukins, Case No. 15,639; Charge to Grand Jury, Id. 18,250.

Under Rev. St. § 5398, it is an offense to resist an officer in the execution of process, as well as in serving process. Holding attached property after seizure is executing process, and one resisting or obstructing the officer therein commits the offense.—United States v. McDonald, Case No. 15,667.

The taking away of a vessel by her owner after she has been attached by a marshal, but while not in his actual custody, or that of a keeper, is not an offense under Act March 2, 1831, § 2.—United States v. Seeley, Case No. 16,248a.

The expressions "obstruct" and "impede," as used in the act, refer only to direct acts of violence or menace, disturbing the ordinary functions of the court.—United States v. Seeley, Case No. 16,248a.

Ignorance is no excuse where the offender might readily have known the truth upon inquiry. —United States v. Buck, Case No. 14,680.

As to what facts amount to resisting process. —United States v. Buck, Case No. 14,680.

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.—Cross v. United States, Case No. 18,286.

§ 2. Resisting unauthorized acts of officer. An officer who is acting without or in excess of authority may be lawfully resisted or obstructed.—United States v. Fears, Case No. 15,080.

Willful resistance of a warrant of attachment against a vessel, valid on its face, is indictable under Act April 30, 1790, § 22, though the libel for forfeiture of the vessel, on which it is founded, is not sufficient to authorize its issue.—United States v. Tinklepaugh, Case No. 16,526.

If an officer holding a writ of attachment, in good faith, and on reasonable grounds, seize the property of the wrong person, resistance by the latter is unlawful; contra if the officer act in bad faith.—United States v. McDonald, Case No. 15,667.

It is an indictable offense to combine to oppose the execution of a justice's warrant, without knowing its nature, and assaulting one of the parties attempting to execute it.—United States v. O'Neale, Case No. 15,920.

It is not an indictable offense to threaten to kill a constable if he should attempt to arrest a person whom he is searching for, with intent to arrest without a warrant.—United States v. Goure, Case No. 15,240.

It is not necessary that a constable should have a warrant to suppress an affray, in order to make opposition to him unlawful.—United States v. Pignel, Case No. 16,049.

The hab. fac. poss. cannot be executed after the return day, and, if it be attempted, resistance to it is no offense against the act of congress.—United States v. Slaymaker, Case No. 16,313.

If the first writ be returned executed, plaintiff cannot issue out an alias. If the writ, though executed, has not been returned, and an alias issues on the suggestion of the plaintiff, resistance to such writ is an offense. Aliter, if the first writ had been returned.—United States v. Slaymaker, Case No. 16,313.

Where the warrant is regular on its face, and shows a case within the jurisdiction of the

magistrate, resistance thereto is unlawful, though the offense was not within the local jurisdiction of the magistrate.—United States v. Thompson, Case No. 16,484.

§ 3. Persons liable.
An attorney and client conspiring to resist an officer are equally guilty.—United States v. Smith, Case No. 16,333.

§ 4. Indictment or information.
An averment that defendant "did knowingly, willfully, and unlawfully obstruct, resist, and oppose" an officer, sufficiently states the manner and method of resistance.—United States v. Hudson, Case No. 15,412.

An averment that a warrant was duly issued is insufficient. The facts constituting the due issue must be set forth.—United States v. Stowell, Case No. 16,409.

An indictment under Act April 30, 1790, § 22, must show by proper averments that the process was legal.—United States v. Stowell, Case No. 16,409.

In an indictment for resisting an officer serving an execution, it is unnecessary to set out the process in hæc verba, or to aver that it is in full force, when that fact appears from the description of it.—United States v. Hudson, Case No. 15,412.

Sufficiency of indictment for willfully resisting the execution of process under Act April 30, 1790, § 22.—United States v. Tinklepaugh, Case No. 16,526.

An indictment for using contemptuous language to a magistrate in the exercise of his office should set forth the words spoken, and the day and month, and that the magistrate was in the discharge of his judicial functions.—United States v. Beale, Case No. 14,549.

The want of an averment of the facts showing that the commissioner was authorized to issue the warrant cannot be aided by referring to the records of the court.—United States v. Stowell, Case No. 16,409.

A commissioner empowered to issue a warrant under Act Sept. 18, 1850, must be a commissioner particularly described therein; and an averment, in an indictment for resisting such a warrant, that it was issued by a commissioner of the circuit court of the United States, is not sufficient.—United States v. Stowell, Case No. 16,409.

In an indictment for resisting a public officer it is not necessary to set forth the particular exercise of office in which he was engaged, or the particular act and circumstance of obstruction.—United States v. Bachelder, Case No. 14,490.

OBSTRUCTIONS.

Of highways, see "Highways," §§ 4, 5.
Of mail, see "Post Office," § 18.
Of navigable waters, see "Navigable Waters," §§ 2, 9, 12–16.
Of process, see "Obstructing Justice."
Of water course, see "Waters and Water Courses," § 3.

OCCUPATION.

Of real property, see "Use and Occupation."

OFFER.

Of guaranty, see "Guaranty," § 2.
Of proof, see "Trial," § 8.
Proposal for contract, see "Contracts," § 3.
To sell, see "Sales," § 1.

OFFICERS.

§ 1, Compensation. § 2, De facto officers. § 3, Deputies and assistants. § 4, Exercise of power and liabilities. § 5, Action against officer—Pleading. § 6, —— Evidence. § 7, Liabilities on official bond—Requisites and validity of bond. § 8, —— Construction and operation of bond. § 9, —— Rights and liabilities of sureties.

Administration of oath, see "Oath," § 3.
Bribery, see "Bribery."
Embezzlement, see "Embezzlement."
Extortion, see "Extortion."
Habeas corpus to discharge from arrest, see "Courts," § 115.
Injunctions affecting, see "Injunction," § 8.
Intervention, see "Courts," § 54.
Judicial notice, see "Evidence," § 2.
Jurisdiction of suits against state officers, see "Courts," § 17.
Mandamus, see "Mandamus," §§ 3, 4.
Quo warranto, see "Quo Warranto."
Resisting officer, see "Obstructing Justice."
Right to inventions, see "Patents," § 62.

Particular classes of officers.

See "Ambassadors and Consuls"; "Attorney General"; "Clerks of Courts"; "Coroners"; "Detectives"; "District and Prosecuting Attorneys"; "Justices of the Peace"; "Notaries"; "Receivers"; "Sheriffs and Constables"; "United States Commissioners"; "United States Marshals."
Army and navy, see "Army and Navy," §§ 2, 3, 8–11.
Church officers, see "Religious Societies," § 3.
College officers, see "Colleges and Universities," § 2.
Corporate officers, see "Banks and Banking," §§ 6, 17; "Corporations," §§ 34–37, 39; "Insurance," § 3; "Railroads."
County officers, see "Counties," § 3.
Court officers, see "Courts," § 4.
Customs officers, see "Customs Duties," §§ 17–27.
Election officers, see "Elections," § 2.
Highway officers, see "Highways," § 3.
Indian agents, see "Indians," § 3.
Interior department, see "Public Lands," §§ 46–49.
Internal revenue, see "Internal Revenue," §§ 1–6.
Land officers, see "Public Lands," § 12.
Militia officers, see "Militia," § 3.
Municipal officers, see "Municipal Corporations," §§ 8, 24.
Pension officers, see "Pensions."
Postmasters and postmaster general, see "Post Office," §§ 1, 2.
State officers, see "States," § 8.
Territories, see "Territories," § 2.
Town officers, see "Towns," § 1.
United States officers, see "United States," §§ 6–13.

§ 1. Compensation.
Construction of Act Aug. 23, 1842, § 2, and Act March 3, 1849, in relation to extra compensation to officers.—United States v. Converse, Case No. 14,848.

Where the words of a statute prescribing compensation admit of two interpretations, they will be construed most favorably for the officer.—United States v. Morse, Case No. 15,820.

An officer cannot be allowed extra compensation for services performed properly pertaining by law to his office.—United States v. Smith, Case No. 16,321.

Public officers are not entitled to extra compensation for services in sudden and unforeseen emergencies, but only where the services are rendered upon a matter of permanent character.—United States v. Brodhead, Case No. 14,654.

No officer whose salary or emoluments are fixed by law and regulation is entitled to extra compensation for disbursements or other services.—United States v. Jarvis, Case No. 15,468; Same v. White, Id. 16,684.

Where an officer refuses to pay over the balance found due upon the adjustment of his account he forfeits the commissions due on such unsettled account only. Act March 3, 1797.—United States v. Wendell, Case No. 16,666.

Public officer is required to perform duties imposed by law passed after coming into office though his compensation is inadequate.—Andrews v. United States, Case No. 381.

§ 2. De facto officers.
The rule in regard to the binding force of acts of a de facto public officer is restricted to those who hold office under some degree of notoriety, or are in the exercise of continuous official acts, or are in possession of a place which has the character of a public office.—Vaccari v. Maxwell, Case No. 16,810.

§ 3. Deputies and assistants.
Public officers are not responsible for the fraudulent transactions of their clerks, where they are free from negligence.—United States v. Brodhead, Case No. 14,654.

An assistant employed by a public officer is ordinarily only responsible to him.—Trafton v. United States, Case No. 14,135.

§ 4. Exercise of power and liabilities.
Where a particular authority is confided in a public officer to be exercised in his discretion upon an examination of facts of which he is the appropriate judge, his decision upon those facts, in the absence of any controlling provision, is absolutely conclusive.—Allen v. Blunt, Case No. 216.

A public officer cannot, by subsequent declarations, invalidate his own official act.—United States v. Collins, Case No. 14,837.

A public officer, who buys a bill of exchange for public use, is not personally responsible.—Stone v. Mason, Case No. 13,485.

An officer is personally liable where he did not act in good faith, and with intention to perform duly the duties of his office, and where he acted with malice.—Stokes v. Kendall, Case No. 13,479.

An unconstitutional law will not protect from personal liability an officer acting thereunder.—Louisiana State Lottery Co. v. Fitzpatrick, Case No. 8,541.

The fact that an officer is irregularly appointed does not absolve him from the legal obligation to account for public money placed in his hands, in consequence of such appointment.—United States v. Maurice, Case No. 15,747.

An officer acting in good faith under a warrant purporting to come from his superior, whom he is bound to obey, is acting under "color of authority," though the superior has transgressed his power, and the warrant be irregular.—Hodgson v. Millward, Case No. 6,568.

§ 5. Actions against officer—Pleading.
Where the officer is charged with money received from third persons, the evidence on which the charge is made must be stated.—United States v. Hilliard, Case No. 15,368.

§ 6. —— Evidence.
Proof that an individual has acted notoriously as a public officer is prima facie evidence of his character, without producing his commission or appointment.—Jacob v. United States, Case No. 7,157.

The presumption of law in favor of the innocence of a public officer charged with fraud may be overcome by proof of previous delinquencies of a similar nature.—Bottomley v. United States, Case No. 1,688.

If a public disbursing officer has lost his vouchers without fault, and has produced the best secondary evidence in his power, it is for the jury to find whether he has faithfully disbursed the moneys.—United States v. Laub, Case No. 15,568.

The rule that public acts of public officers, purporting to have been done in an official capacity, will be presumed to have been done by authority, applied in the case of Spanish officials in Mexico.—Den v. Hill, Case No. 3,784.

Public officers, when acting under the scope of their duty, must be presumed to have fulfilled every requisite which the discharge of their duty demands.—Russell v. Beebe, Case No. 12,153.

§ 7. Liabilities on official bond—Requisites and validity of bond.
A bond that the officer has faithfully and truly discharged his duties is not authorized under a statute requiring a bond for the true and faithful discharge of duties.—United States v. Brown, Case No. 14,663.

The bond of an agent irregularly appointed, but whose office is established by law, though void as a statutory obligation, is valid as a contract to perform the duties appertaining to such office.—United States v. Maurice, Case No. 15,747.

Where an officer is required by his superior to give a bond with provisions and conditions not required by statute, the bond is void in toto.—United States v. Humason, Case No. 15,421.

§ 8. —— Construction and operation of bond.
The condition of a bond of a public officer to discharge the duties according to law refers to existing laws and those passed during his term of office.—United States v. Gaussen, Case No. 15,192.

An official bond conditioned in the language of certain statutes cannot be held to include the liability of the officer under other statutes existing at the time the bond was given, and not referred to therein.—United States v. Cheeseman, Case No. 14,790.

§ 9. —— Rights and liabilities of sureties.
The liabilities of sureties on official bonds cannot be extended beyond the reasonable necessary import of the language of the bond.—United States v. Cheeseman, Case No. 14,790.

Under the condition of a bond, given as additional security, that the officer "has faithfully discharged, and shall continue faithfully to discharge," etc., *held* that the surety became absolutely bound for any default of the officer.—United States v. Anderson, Case No. 14,446; Same v. Brown, Id. 14,663.

The condition in a bond to well and faithfully behave and execute the office, does not render the surety liable for want of skill.—Alexandria v. Corse, Case No. 183; Bank of United States v. Brent, Id. 910.

The sureties on an official bond are liable for noncompliance with subsequent as well as past laws, or orders justified by law.—Boody v. United States, Case No. 1,636.

Rev. St. § 1766, authorizing the salary of an officer in arrears to be withheld, and Id. §§ 300, 307, 308, in relation to the payment of warrants after three years from issuance, form no part of the contract with the officer's sureties.—United States v. Potter, Case No. 16,076.

The sureties on the old bond are not responsible for moneys received by the officer after he has given the new bond required by Act 1817, c. 197.—United States v. Wardwell, Case No. 16,640.

The parties to an official bond for the safekeeping or accounting for public money are not liable for a loss caused by the act of God or the public enemy.—United States v. Humason, Case No. 15,421.

A civil officer has the right at any time to resign his office without the consent of the president, and his surety will not be bound beyond the time if the resignation is received at the proper department, and is to take effect.—United States v. Wright, Case No. 16,775.

The settlement and closing of an account of a public officer does not discharge his liability as surety of another officer, though the default of the latter was previously known.—United States v. Beattie, Case No. 14,554.

The moneys of the second term of an officer, in which his new sureties are interested, cannot be taken to pay off an old debt or defalcation with which they had no concern.—United States v. Able, Case No. 14,417.

Where a balance is left in the hands of a public officer at the expiration of his first term, its illegal appropriation by him will not be presumed in favor of a surety on his second bond.—United States v. Earhart, Case No. 15,018.

On the acceptance of a new bond, sureties on old bond are released unless it affirmatively appear that the default was committed prior thereto.—Alvord v. United States, Case No. 269.

In a suit against a surety on an official bond, where the principal is dead, a plea of general performance, craving oyer of the bond and conditions, is good.—Jackson v. Rundlet, Case No. 7,145.

Where the breach of an official bond alleged is the failure to pay over or account for a certain sum, a dereliction of duty in not collecting such sum cannot be shown.—United States v. Glenn, Case No. 15,217.

In a suit against the sureties on an official bond the admission of evidence of the good character and conduct of the officer, since deceased, is erroneous.—United States v. Wood, Case No. 16,752.

Sureties are not answerable for interest beyond the penalty of the bond, except such as accrued after notice of default of the principal.—United States v. Hills, Case No. 15,369.

OPEN ACCOUNTS.

See "Account, Action on," § 1.

OPENING.

Administrator's account, see "Executors and Administrators," § 66.
Case before master in chancery, see "Equity," § 114.
Decree in equity, see "Equity," § 124.
Default, see "Judgment," §§ 12–14.
Judgment, see "Judgment," §§ 35–42.

OPINION EVIDENCE.

In civil actions, see "Evidence," §§ 75–79; "Patents," §§ 200, 231.
In criminal prosecutions, see "Criminal Law," § 65.

OPINIONS.

Of courts, see "Courts"; "Reports."
Of experts, see "Patents," §§ 200, 231.

OPTIONS.

On purchase or sale of goods, see "Sales," § 6.

ORDERS.

Of court, see "Motions."
Review of appealable orders, see "Appeal and Error."

ORDINANCES.

Municipal ordinances, see "Municipal Corporations," §§ 19–21.

OREGON DONATION ACTS.

See "Public Lands," §§ 28–34.

ORPHANS' COURTS.

Of District of Columbia, see "Courts," §§ 12, 108; "Judges," § 1.

OYER.

In pleading in general, see "Pleading," §§ 60–62.
—— in suits for infringement of patent, see "Patents," § 197.

P

PALACE CARS.

See "Carriers," § 52.

PARDON.

§ 1, Power to pardon in general. § 2, Conditional pardon. § 3, Partial or general pardons. § 4, Delivery of pardon. § 5, Revocation. § 6, Operation and effect. § 7, Pleading pardon.

§ 1. Power to pardon in general.

As to the power of the president to pardon political offenders by the amnesty proclamation of 1868.—United States v. Crozier, Case No. 14,896.

The power to discharge or to remit the sentence in the case of a person committed to prison until payment of a fine, imposed as a punishment for contempt in violating an injunction, falls within the pardoning power vested in the president.—In re Mullee, Case No. 9,911.

The court cannot discharge such person, on the ground that he is unable to pay the fine, until the president has disclaimed the power to relieve by pardon.—In re Mullee, Case No. 9,911.

The fact that the amount of the fine, in the order imposing it, was directed to be paid to plaintiff in the injunction suit, towards the reimbursement of his expenses in the attachment proceedings for the contempt, does not take the case out of the pardoning power of the president.—In re Mullee, Case No. 9,911.

Pledges of protection given to criminals by the executive department cannot be redeemed by

the courts.—United States v. Blaisdell, Case No. 14,608.

The president has the right to commute punishment for a capital offense by directing imprisonment in the United States penitentiary, though there is no law directing imprisonment therein for such offenses.—In re Wells, Case No. 17,387a.

§ 2. **Conditional pardon.**
A pardon may contain any lawful conditions. —United States v. Six Lots of Ground, Case No. 16,299.

The president of the United States has the power to grant a conditional pardon for a capital offense.—In re Wells, Case No. 17,387a.

A pardon on condition of paying a fine and costs imposed with a sentence of imprisonment is wholly inoperative until such fine and costs are paid; and an application for discharge as a poor convict under Rev. St. § 1042, cannot be based thereon.—In re Ruhl, Case No. 12,124.

A prisoner confined under a legal sentence can voluntarily accept a conditional pardon.—In re Greathouse, Case No. 5,741.

§ 3. **Partial or general pardons.**
A pardon may be partial.—United States v. Six Lots of Ground, Case No. 16,299.

A grant of "a full and unconditional pardon," where the offense has been recited in the preamble, is not a general pardon, and is valid.—Stetler's Case, Case No. 13,380.

§ 4. **Delivery of pardon.**
A delivery of a pardon to a marshal is not sufficient to give it validity.—In re De Puy, Case No. 3,814.

§ 5. **Revocation.**
A pardon by an outgoing president may be revoked by the incoming president before its delivery to the prisoner.—In re De Puy, Case No. 3,814.

A pardon has no validity until its delivery, and consequently may be revoked at any time before delivery.—In re De Puy, Case No. 3,814.

§ 6. **Operation and effect.**
The recital of a specific, distinct offense in a pardon by the president limits its operation to that offense, and such pardon does not embrace any other offense for which separate penalties and punishments are prescribed.—Ex parte Weimer, Case No. 17,362.

A pardon from sentence for conspiracy to defraud the revenue does not entitle the defendant to demand cancellation of a judgment of forfeiture for fraud upon the revenue.—Ex parte Weimer, Case No. 17,362.

A pardon for offenses against the revenue laws cannot relieve the offenders of payment of taxes.—United States v. Roelle, Case No. 16,186.

An unconditional pardon of one convicted of conspiracy to defraud the United States by the unlawful removal of distilled spirits, without paying the taxes, bars a subsequent civil suit to recover the penalty of double the amount of such tax.—United States v. McKee, Case No. 15,688.

Where a prisoner was sentenced to both fine and imprisonment, and the president, by a pardon, remitted the fine only, *held*, that he had no authority to thereupon order the prisoner's discharge.—United States v. Lukins, Case No. 15,638.

A pardon by the president, after condemnation, as to all the interest of the United States in the penalty incurred by a violation of the embargo laws, and directing discontinuance of all further proceedings on behalf of the United States, does not remit the interest of the customhouse officers in a moiety.—United States v. Lancaster, Case No. 15,557.

Quære, whether the president can pardon in such a case, so as to affect the interests of third parties.—United States v. Lancaster, Case No. 15,557.

A pardon is effectual so long as any of the legal consequences of a conviction remain, though the term of imprisonment has expired.—Stetler's Case, Case No. 13,380.

A pardon reciting a conviction at the June term, 1850, of the offense of counterfeiting, and a sentence to imprisonment for the term of one year, is inapplicable to a conviction at the May term, 1850, for both counterfeiting and uttering counterfeit coin, where the sentence was both fine and imprisonment.—Stetler's Case, Case No. 13,380.

The crime of being accessory to the murder of the president was not embraced in the amnesty proclamation of 1868.—Ex parte Mudd, Case No. 9,899.

A duly-licensed attorney, who has accepted a full pardon from the president and taken the oath of amnesty, may resume his practice in the federal courts without taking the oath prescribed by Act Jan. 24, 1865.—Ex parte Law, Case No. 8,126.

A proclamation by the president ordering people in insurrection to disperse to their homes does not operate, even when it is obeyed, as a pardon of offenses already committed.—Case of Fries, Case No. 5,126.

The proclamation of the president of December 8, 1863, extends to persons who, at its date, had been convicted and sentenced for the offenses described in it.—In re Greathouse, Case No. 5,741.

The amnesty proclamation of July 4, 1868, did not have the effect to restore property condemned in confiscation proceedings.—Bragg v. Lorio, Case No. 1,800; United States v. Six Lots of Ground, Id. 16,299.

The proclamation of December 8, 1863, extending amnesty to all who directly or indirectly participated in the Rebellion, included a citizen of Ohio under indictment for treason.—United States v. Hughes, Case No. 15,418.

A citizen who has complied with such proclamation is not excluded from its protection by a subsequent explanatory proclamation debarring persons in civil custody from its operation.—United States v. Hughes, Case No. 15,418.

An unqualified pardon, granted to the owner prior to the seizure or condemnation proceedings, is a bar to a judgment of condemnation.—United States v. Athens Armory, Case No. 14,473.

§ 7. **Pleading pardon.**
An alleged pardon for treason in raising an insurrection by the operation of the president's proclamation ordering the people to disperse, to be available, must be pleaded.—Case of Fries, Case No. 5,126.

A party accepting and pleading a pardon in a judicial proceeding admits that he is bound by the conditions mentioned therein.—Brown v. United States, Case No. 2,032.

PARENT AND CHILD.

§ 1, Custody and control of child. § 2, Services and earnings of child. § 3, Actions for loss of services of child. § 4, Conveyances and contracts. § 5, Possession and control of property of child.

See, also, "Adoption"; "Bastards"; "Guardian and Ward"; "Infants."
Domicile of child, see "Domicile," § 4.
Employment of minors, see "Seamen," § 17.
Seduction of child, see "Seduction."
Status of child, see "Indians," § 1.

§ 1. Custody and control of child.
The nature and extent of the parental power at common law discussed by Story, J.—United States v. Bainbridge, Case No. 14,497.

A father is not, of course, entitled to the custody of his infant child, if brought into court; but the court will exercise its discretion on the subject, and place the infant where it will be most for its benefit.—United States v. Green, Case No. 15,256.

See, also, "Divorce," § 3; "Habeas Corpus," § 3.

§ 2. Services and earnings of child.
The father forfeits his right to the earnings of his child where he neglects the obligation to protect, nurture, and educate the child, and abandons him.—The Etna, Case No. 4,542.

A father assigned a portion of his infant son's wages in consideration of the assignee's engaging to teach the boy a certain trade. *Held*, that the son could not recover money thus received by such assignee in an action for money had and received.—Roby v. Lyndall, Case No. 11,972.

§ 3. Actions for loss of services of child.
In a suit for the wrongful abduction of a minor child, where the damage is loss of service, the court may take into consideration the advances for clothing and other necessaries.—The Platina, Case No. 11,210.

It seems that knowledge by respondent of the minority of a person is essential to maintain an action for loss of services for a wrongful abduction.—The Platina, Case No. 11,210; Somboy v. Loring, Id. 13,168.

A parent may maintain a libel in admiralty for the wrongful abduction of his minor child, and carrying him beyond the sea, where there had not been an abandonment of all care of the child.—Steele v. Thacher, Case No. 13,348.

§ 4. Conveyances and contracts.
A conveyance to a parent by a child recently of age is prima facie valid, and its validity does not depend on adequacy of price.—Sullivan v. Sullivan, Case No. 13,598.

An infant, after the death of his father, cannot recover his wages for services performed in the lifetime of the father under a contract made with the father.—Roby v. Lyndall, Case No. 11,972.

Fraudulent conveyances, see "Fraudulent Conveyances," § 16.

§ 5. Possession and control of property of child.
The mother of minor heirs has no power to authorize an agent to act for them in matters relating to their real estate.—Harmer v. Morris, Case No. 6,076.

PAROL EVIDENCE.

In civil actions, see "Evidence," §§ 63–74.
In criminal prosecutions, see "Criminal Law," § 64.
Of gift, see "Gifts," § 1.
To explain contract of shipment of seamen, see "Seamen," § 34.
To show fraud, see "Fraud," § 8.
Weight of evidence, see "Evidence," § 86.

PARTICULARS, BILL OF.

See "Pleading," §§ 63, 64.

PARTIES.

§ 1, Plaintiffs. § 2, Defendants. § 3, Designation and description of parties. § 4, New parties and change of parties. § 5, Effect of misjoinder or nonjoinder. § 6, Who may make objection. § 7, Time of making objection. § 8, Mode of raising objection.

Admissions by, see "Evidence," § 31.
Character, as ground of jurisdiction, see "Courts," §§ 41–63.
Competency as witness, see "Witnesses," §§ 28–50.
Death, ground of abatement, see "Abatement and Revival," §§ 5, 6.
Defects, ground of abatement, see "Abatement and Revival," § 3.
Interpleading, see "Interpleader."
Intervention of parties, see "Admiralty," § 64; "Bankruptcy," §§ 36. 103–105, 325, 567; "Equity," § 27; "Execution," § 13; "Executors and Administrators," § 47; "Maritime Liens," § 58; "Salvage." § 63.
Joinder of parties in civil actions or proceedings, see "Admiralty," § 53; "Bankruptcy," §§ 94–100; "Collision," §§ 122, 124; "Equity," § 24; "Salvage," §§ 63, 64.
—— in criminal prosecutions, see "Criminal Law," §§ 6–8; "Indictment and Information," § 17; "Internal Revenue," § 103; "Larceny," § 4; "Receiving Stolen Goods," § 2.
Misconduct, ground for new trial, see "New Trial," § 3.
Persons concluded by judgment, see "Judgment," § 50.
Privilege from arrest, see "Arrest," § 3.
Rights and liabilities as to costs, see "Admiralty," §§ 127–135a; "Costs."
—— to maintain action, see "Action," § 1.
Transfer of interest ground of abatement, see "Abatement and Revival," § 4.

In actions by or against particular classes of parties.

See "Corporations," §§ 31, 51; "Executors and Administrators," § 46; "Husband and Wife," §§ 9, 10; "Judges"; "Partnership," § 34; "Seamen," § 137; "United States," §§ 28, 32, 35.
Alien enemies, see "War," § 3.
Assignees in bankruptcy, see "Bankruptcy," § 359.
Trustees, see "Trusts," § 31.

In particular actions or proceedings.

See "Admiralty," §§ 50–55, 64; "Attachments," § 1; "Bankruptcy," §§ 36, 53, 91–105; "Cancellation of Instruments," § 7; "Creditors' Suit," § 7; "Ejectment," §§ 8, 9; "Equity," §§ 22–29; "Judgment," § 15; "Reformation of Instruments," § 6; "Replevin," § 5; "Trespass," § 6.
Appeal in admiralty, see "Admiralty," § 116.
—— or writ of error, see "Appeal and Error," § 10a.
Condemnation proceedings, see "Eminent Domain," § 9.
Criminal prosecutions, see "Criminal Law," §§ 6–8; "Indictment and Information," § 17; "Internal Revenue," § 103; "Larceny," § 4; "Receiving Stolen Goods," § 2.
For collision, see "Collision," §§ 121–124.
For damage to tow, see "Towage," § 27.
For dissolution and accounting, see "Partnership," § 53.
For foreclosure, see "Mortgages," § 34.
Forfeitures, see "Forfeitures," § 7.
For infringement of copyright, see "Copyrights," § 42.
—— of patents, see "Patents," §§ 193, 220.
For injunction, see "Injunction," § 10.
For removal of cause, see "Removal of Causes," § 36.
For salvage, see "Salvage," §§ 59, 60, 63.
On bills or notes, see "Bills and Notes," §§ 94, 95.
On bonds, see "Bonds," § 19.
On contract, see "Contracts," § 38.
On covenant, see "Covenants," § 9.
On insurance policy, see "Insurance," § 171.
Prize proceedings, see "War," § 58.
To enforce liability of stockholder, see "Corporations," § 33.
—— lien, see "Maritime Liens," § 58.
—— trust, see "Trusts," § 47.

To foreclose mortgage, see "Railroads," § 47.
To recover share in estate, see "Descent and Distribution," § 3.

To particular classes of conveyances, contracts, or transactions.

See "Bills and Notes," §§ 15, 36a, 46; "Bonds," § 2; "Contracts," §§ 2, 20; "Fraudulent Conveyances," § 25; "Insurance," § 24.
Joint interests, see "Joint Adventures."

§ 1. Plaintiffs.
Suit brought in name of plaintiff who is neither a natural nor an artificial person is a nullity.—Alexander v. Knox, Case No. 170.

Under an act appropriating moneys to a certain person as assignee of C., "or to whomsoever shall appear to the comptroller to be entitled to his share," *held*, that C. was not entitled to the moneys in his own right, and a suit could be maintained in the name of any one legally entitled thereto.—Sands v. Delafield, Case No. 12,-304.

Under a state law directing or authorizing all suits to be brought in the name of the real party in interest, such party has the right to sue in actions at law in the federal courts sitting in such state.—Weed Sewing Mach. Co. v. Wicks, Case No. 17,348.

Where the parties are so numerous as not to be inserted conveniently in the record, suit may be maintained in the name of a part for the whole.—Piatt v. Oliver, Case No. 11,115.

A person for whose benefit an action is brought, but who does not appear to be a party upon the record, nor to be interested in the event, cannot appear and plead in his own name.—Welch v. Mandeville, Case No. 17,371.

§ 2. Defendants.
Persons against whom no relief is prayed, and whose interests cannot be injuriously affected by the suit, need not be joined as parties.—Van Bokkelen v. Cook, Case No. 16,831; Van Reimsdyk v. Kane, Id. 16,871.

But, all persons whose interests will be affected should be made parties unless without the jurisdiction of the court, when such fact should be stated.—Bowman v. Wathen, Case No. 1,740.

And where no final decree can be made without prejudice to parties not before the court, the court will not proceed, even though the parties are beyond reach of its process.—Carson v. Robertson, Case No. 2,466.

The collector is not a proper party to a suit between rival claimants to the ownership of imported goods in his custody in a bonded warehouse, where it is not alleged that he is acting wrongfully or without authority of law.—Rateau v. Bernard, Case No. 11,579.

Assignees of British bankrupt allowed to be made parties to defend a suit against the bankrupt, on certificate of foreign notary public certified by American consul.—Wilson v. Stewart, Case No. 17,837.

Several defendants who claim separate tracts of land from distinct sources of title may be joined in the same suit under Act Ky. 1796.—Lewis v. Marshall, Case No. 8,327.

On a return of non est inventus as to one defendant and service on the other, plaintiff may proceed against the latter on a joint contract.—Craig v. Cummings, Case No. 3,331.

One who purchases pendente lite the interest of a defendant in the subject-matter of a suit does not thereby become a necessary party to the suit, and if the court has no jurisdiction of him he cannot be compelled to come in as a party.—Myers v. Dorr, Case No. 9,988.

A person who has no interest, in a legal sense, in the subject-matter of a suit in personam, and who is not a party to it, cannot compel the plaintiff to make him a party.—Coleman v. Martin, Case No. 2,985.

Several defendants, who have no connection with each other in interest, in estate, or in contract, and against whom jointly plaintiffs have no cause of action, cannot be joined.—United States v. Alexander, Case No. 14,428.

The alleged fraudulent indorsee of a note is a necessary party to a bill by the payee to avoid an assignment for fraud and compel the maker to pay a second time.—Alexander v. Horner, Case No. 169.

§ 3. Designation and description of parties.

Designation in equity, see "Equity," § 42.

An action brought in the name of "Rawlings & Son" *held* too uncertain as a description of plaintiffs.—Rhea v. Rawlings, Case No. 11,737.

The words "I. & C. Central R. R." cannot, without an allegation of misnomer, or offer to prove the identity, be taken to mean the Columbus & Indianapolis Railway Company.—Dixon v. Columbus, etc., R. Co., Case No. 3,929.

§ 4. New parties and change of parties.
An assignee of complainant's interest in the subject-matter, pending the litigation, must file an original bill in the nature of a supplemental bill to be substituted to complainant's right.—Tappan v. Smith, Case No. 13,748; Winter v. Ludlow, Id. 17,891.

Where the proper parties are not made, the court will suspend decree to bring them in.—Bowman v. Wathen, Case No. 1,740.

Plaintiff must enter a nolle prosequi as to one of the joint defendants, against whom there is a stay of proceedings pending action upon his discharge in bankruptcy, before he can proceed against the others.—Hinman v. Cutler, Case No. 6,524.

Substitution of parties in bankruptcy proceedings, see "Bankruptcy," §§ 102, 567.

§ 5. Effect of misjoinder or nonjoinder.
That persons are unnecessarily made defendants does not oust the jurisdiction as to those who are properly before the court.—Bowman v. Wathen, Case No. 1,740.

The court has no jurisdiction where a person within its jurisdiction, deemed an indispensable party, is not joined.—Tobin v. Walkinshaw, Case No. 14,068.

An outstanding interest in a person without the jurisdiction of the court will not prevent a decree upon the merits, where the case may be completely decided between the litigant parties or without them. — Society for Propagation of the Gospel v. Hartland, Case No. 13,155.

§ 6. Who may make objection.
Only those defendants who are improperly joined can take advantage of an objection for misjoinder of parties.—Spaulding v. McGovern, Case No. 13.217.

§ 7. Time of making objection.
Want of parties may be objected to at any time, even in the appellate court.—Carson v. Robertson, Case No. 2,466.

After the evidence is closed on the trial, defendant cannot object, for the first time, to a recovery on the ground that plaintiff was not the real party in interest, and had no capacity to sue. Civ. Code Kan. §§ 10, 28, 89, 91.—Perkins v. Ingersoll, Case No. 10,988.

An objection for want of proper parties defendant, not made by demurrer, plea, or answer, will be *held* too late, where a decree can be made granting the relief sought without affecting the rights of absent parties; otherwise not, though they are beyond the jurisdiction of the court.—Florence Sewing Mach. Co. v. Singer Mfg. Co., Case No. 4,884.

§ 8. Mode of raising objection.
Objection of nonjoinder need not be raised by pleadings.—Alexander v. Horner, Case No. 169.

An objection of want of parties can be taken only by plea or answer, and the name or description of the parties who should be brought in must be specified.—Segee v. Thomas, Case No. 12,633.

If process is prayed against all necessary parties, a demurrer for want of proper parties will not lie on the ground that some have not been served.—Kilgour v. New Orleans Gas Light Co., Case No. 7,764.

PARTITION.

§ 1, By act of parties. § 2, Actions for partition—Right of action and defenses. § 3, —— Proceedings and relief.

Conclusiveness of state court decision, see "Courts," § 117.

§ 1. By act of parties.
A parol partition executed by taking actual exclusive possession of the portions respectively assigned is valid, and the parties cease to be tenants in common.—Four Hundred and Twenty Min. Co. v. Bullion Min. Co., Case No. 4,989.

A partition between a tenant in tail of an undivided half of land, and a tenant in fee of the other half, is binding only during the life of the former.—Buxton v. Bowen, Case No. 2,260.

§ 2. Actions for partition—Right of action and defenses.
A bill for partition will not be entertained unless claimant's title be clear to the portion to be received.—Barney v. Baltimore, Case No. 1,029.

The possession of a tenant in common, being the possession of his cotenant, will enable the latter to maintain a partition suit even where possession is necessary.—Lamb v. Starr, Case No. 8,021.

If complainant's title is not doubtful or suspicious, equity will decree partition whether he is in actual possession or not; but if he claim legal title, and that title is doubtful, it is usual to remit him to an action at law to try title, and retain the suit awaiting the result. If he claim equitable title, and that is doubtful, the court will first ascertain the title before making partition.—Lamb v. Starr, Case No. 8,021.

The right to demand partition is ex debito justitiæ if complainant can show a plain legal title. —Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

§ 3. —— Proceedings and relief.
The court of common pleas in Ohio may take jurisdiction of a bill for partition in two counties, but the decree, to bind purchasers, must be recorded where the land lies.—Nelson v. Moon, Case No. 10,111.

On a bill for partition a court of equity may examine questions of alleged fraud.—Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

Proceedings for partition or sale of real estate of an intestate under Act Md. 1786, c. 45, § 8.—Tolmie v. Thompson, Case No. 14,080.

The effect of a decree in a partition suit considered and declared.—Lamb v. Wakefield, Case No. 8,024.

A decree of partition does not pass anything from one coparcener to another.—Contee v. Godfrey, Case No. 3,140.

A partition by which allotments were made to some of the parties as heirs *held* to estop them from claiming by purchase, and not as heirs.—Lamb v. Carter, Case No. 8,013.

PARTNERSHIP.

I. THE RELATION.

§ 1, Creation and requisites. § 2, As to third persons—What constitutes in general. § 3, —— Holding out as partner. § 4, —— Dormant or secret partners. § 5, —— Defective associations or corporations. § 6, Evidence. § 7, Duration.

II. THE FIRM, ITS POWERS AND PROPERTY.

§ 8, Powers of firm as a body. § 9, What is firm property in general. § 10, Partnership real estate. § 11, Change of joint property into separate property.

III. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

§ 12, Firm property and business—Construction of partnership articles in general. § 13, —— Capital of firm. § 14, —— Misappropriation of firm property. § 15, —— Books of account. § 16, —— Liability for losses. § 17, Individual transactions—Purchase of co-partner's interest. § 18, Actions between partners.

IV. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

§ 19, Representation of firm by partner—Scope of firm business. § 20, —— Restrictions on partner's authority. § 21, —— Use of seal. § 22, —— Disposition of firm property in general. § 23, —— Contracts. § 24, —— Sales. § 25, —— Negotiable instruments. § 26, —— Mortgage. § 27, —— Payment of firm debts. § 28, —— Acknowledgment of debt. § 29, —— Wrongful acts. § 30, —— Estoppel to deny partner's authority. § 31, —— Ratification. § 32, Application of assets to liabilities—Assets of firm. § 33, —— Assets of individual partners. § 34, Actions by or against firm or partners—Parties. § 35, —— Attachment against firm property. § 36, —— Pleading. § 37, —— Issues and proof. § 38, —— Evidence. § 39, —— Judgment and enforcement.

V. RETIREMENT AND ADMISSION OF PARTNERS.

§ 40, Assent to admission of new partner. § 41, Authority of continuing partner. § 42, Obligations of old firm. § 43, Assumption of obligations of old firm. § 44, Actions after change of membership.

VI. DEATH OF PARTNER AND SURVIVING PARTNERS.

§ 45, Effect of death of partner. § 46, Real property of firm. § 47, Obligations incurred in winding up business. § 48, Rights of survivor in estate of deceased. § 49, Actions by or against surviving partners or representatives of deceased partner.

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING.

§ 50, Causes of dissolution. § 51, Rights, powers, and liabilities after dissolution. § 52, Distribution and settlement. § 53, Actions for dissolution and accounting.

VIII. LIMITED PARTNERSHIP.

§ 54, Certificate of formation. § 55, Contribution of special capital. § 56, Firm name and sign. § 57, Withdrawal of capital or profits. § 58, Relations between special and general partners. § 59, Dissolution.

See, also, "Associations"; "Joint Adventures"; "Joint Stock Companies."

Bankruptcy, see "Bankruptcy," §§ 16, 33, 46–55, 447–456, 493, 633.
Disclosure of communications between, see "Witnesses," § 55.
Effect of assignment in bankruptcy, see "Bankruptcy," § 196.
—— of change in or dissolution of partnership, see "Trade-Marks and Trade-Names," § 14.
Exemptions, see "Bankruptcy," § 536.
Part owners of vessel, see "Shipping," §§ 21–27.

I. THE RELATION.

§ 1. Creation and requisites.

The actual intention of the parties will alone constitute a partnership, as between themselves. —Hazard v. Hazard, Case No. 6,279.

A partnership does not exist from an agreement to form one in the future.—In re Goold, Case No. 5,604.

An advance of money by one to another in contemplation of their becoming copartners at a future time does not work a copartnership.—In re Goold, Case No. 5,604.

To constitute a partnership, there must be a community of interest continuing to the time of the disposal of the property in which the parties are interested.—Felichy v. Hamilton, Case No. 4,719.

An agreement to furnish $3,000 and personal services to the business of another for a year, at a stipulated price, and not to be chargeable with losses, does not constitute a partnership as between the parties.—Mattocks v. Rogers, Case No. 9,300.

Persons owning merchandise in common, who ship it on joint account and risk for sale, are copartners in the adventure.—Two Hundred and Sixty Hogsheads of Molasses, Case No. 14.296.

An agreement between equal owners of a vessel, whereby they assumed various duties as master and supercargo, and agents and factors, *held* not to constitute a partnership.—De Wolf v. Howland, Case No. 3,852.

Tenants in common of a ship who purchased a cargo for a voyage *held* tenants in common of the cargo, and not partners.—Jackson v. Robinson, Case No. 7,144.

A mere participation in the profits will not make the parties partners inter sese.—Hazard v. Hazard, Case No. 6,279.

An agreement which does not provide for sharing in the profits does not constitute a partnership.—In re Blumenthal, Case No. 1,575.

Agreement between owners of tug and barge to operate them jointly in the freighting business, profits to be shared in proportion to the stipulated values of the vessels, constitutes a partnership.—Bowas v. Pioneer Tow Line, Case No. 1,713.

The fact that two firms share in a certain venture, keeping their bank account in the name of one firm, adding the word "Co.," in which form they draw checks, does not make them partners.—In re Warner, Case No. 17,178.

A joint purchase with a view to a joint sale and a communion of profit and loss, though for a single transaction, will constitute a partnership.—In re Warren, Case No. 17,191.

An agreement for a salary, to be measured by the net profits received, does not create a partnership.—In re Pierson, Case No. 11,153.

A contract to work a farm on shares *held* to constitute a partnership, and to be abandoned by the failure of the party who went into possession to carry out its terms.—Tibbatts v. Tibbatts, Case No. 14,020.

An association of pilots who placed their earnings in a common fund, out of which expenses are paid and profits declared, is a partnership, liable for the misfeasance or negligence of one of such pilots while employed in piloting a vessel.—Santiago v. Morgan, Case No. 12,331.

Persons who advance money for an enterprise run in another's name, with an option to share in the profits, or to receive back their money with interest, are not partners in the business.—Moore v. Walton, Case No. 9,779.

§ 2. As to third persons—What constitutes in general.

A partnership, as to third persons, can only arise either by contract between the partners themselves, by implication of law arising from a contract which does make them partners as to third persons, or by some act or declaration of the partners by which third persons are reasonably led to suppose that the partnership exists.—Einstein v. Gourdin, Case No. 4,320.

An agreement to contribute capital or labor to carry on a business with equal participation in the profits will constitute a partnership as to third persons, although the agreement expressly stipulates to the contrary, and although such third persons had no knowledge of the actual relation.—Bigelow v. Elliot, Case No. 1,399.

Participation in profits is prima facie proof of partnership, rebuttable by showing that they were received as wages or interest for money loaned.—In re Francis, Case No. 5,031.

A partnership *held* to exist where the transaction was intentionally, and for collateral reasons, disguised under the cloak of a pretended loan and employment as bookkeeper. — In re Francis, Case No. 5,031.

A loan to a person engaged in trade on condition of a rate of interest in proportion to profits or a share of the profits does not constitute the lender a partner.—In re Ward, Case No. 17,144.

The receipt of a stated portion of the profits of an enterprise as compensation for services will not alone constitute the recipient a partner. —Bigelow v. Elliot, Case No. 1,399; In re Ward, Id. 17,144; Einstein v. Gourdin, Id. 4,320.

A person loaning money to another carrying on business in his own name with the suffix "& Co." cannot be held liable as a partner, where he neither held himself out as such, nor allowed others to do so.—Swann v. Sanborn, Case No. 13,675.

§ 3. —— Holding out as partner.

One representing himself as a partner, or permitting others to do so, is responsible as such, although he may have no interest in the firm.—Buckingham v. Burgess, Cases Nos. 2,087, 2,089.

A person who permits himself to be held out as a partner is liable as such to one from whom credit is secured upon the strength of the supposed relation.—In re Jewett, Case No. 7,306.

Where a party furnishes a certain sum and personal services to the business of another for a year, not to be chargeable with losses, and holds himself out as a partner, he is liable as such to creditors, and, in case of insolvency, the sum contributed is partnership assets.—Mattocks v. Rogers, Case No. 9,300.

Holding one's self out to the world as a partner will make him liable as such to one who may be inferred to have knowledge thereof, though he in fact has no interest in the concern.—Benedict v. Davis, Case No. 1,293.

Conduct to estop one from denying liability as a partner must have been so open and notorious that all the creditors believed him to be a partner in the firm, and were thereby induced to become its creditors.—In re Goold, Case No. 5,604.

One advancing money for the purchase of materials to be manufactured, retaining a lien thereon as security, *held* not liable as a partner

because held out as such by the debtor.—In re De Metz, Case No. 3,781.

Permitting the use of one's name in a firm after retiring therefrom makes one liable on a note of the new firm in the hands of a purchaser without notice.—In re Krueger, Case No. 7,941.

Where a man and wife hold themselves out as partners in trade, it will be presumed, in the absence of proof, that she contributed her share of the capital, and that her time, skill, and earnings went into the business.—In re Kinkead, Case No. 7,824.

§ 4. —— Dormant or secret partners.

A dormant partner is not liable on a note given in the individual name of the other for goods put into the business, conducted in the latter's name, where the payee did not know the relation.—Palmer v. Elliot, Case No. 10,690.

Where the purchaser of a note made by a firm did not know of any secret partners, and the note was made for the individual benefit of those whose names appeared thereon, *held*, that the secret partners were not liable.—In re Munn, Case No. 9,925.

To charge a secret partner with debts of the firm, it must be shown that the debts were contracted in the name and business of the firm, or that he had an interest in the contract or profits.—In re Munn, Case No. 9,925.

Where one partner publicly avows all the partners, so that they become and are known as such, and credit is obtained thereby, it is no longer a secret partnership, whether the firm be carried on in the name of one partner only or otherwise.—United States Bank v. Binney, Case No. 16,791.

Debt may be maintained upon a firm note against a secret partner, who has not signed it, but he is not liable if the money obtained on its discount was not used for the firm.—Bank of Alexandria v. Mandeville, Case No. 851.

It is the joint interest in the whole which constitutes the joint liability of all for the contracts of one, and not the credit which is given to all, as in the instance of a dormant partner.—Felichy v. Hamilton, Case No. 4,719.

§ 5. —— Defective associations or corporations.

Persons assuming to act as a corporation, under a corporate name, without authority of law, are liable, as copartners, for the debts of the association.—In re Mendenhall, Case No. 9,425.

§ 6. Evidence.

A partnership cannot be proved by evidence of general reputation.—Wilson v. Colman, Case No. 17,798.

The conduct of parties alleged to be partners is competent evidence to show the copartnership. —In re Goold, Case No. 5,604.

On an issue of partnership, an offer to pay the partnership note if the holder would take property is evidence in connection with defendant's confession that the note was signed by his partner.—Thomas v. Wolcott, Case No. 13,915.

In an action against two persons as partners, an account book containing entries made by both defendants is admissible as evidence of partnership.—Champlin v. Tilley, Case No. 2,586.

Parol evidence cannot be given of the contents of printed cards bearing the joint names of defendants to prove partnership.—Wilson v. Colman, Case No. 17,798.

To rebut declarations, as conducing to establish a partnership in fact, a parol contract between the parties may be proved.—Benedict v. Davis, Case No. 1,293.

Evidence tending to show some sort of joint interest in certain purchases of lumber lands *held* not sufficiently definite and satisfactory to establish a general copartnership in land and lumber speculations.—Smith v. Burnham, Case No. 13,019.

A partnership in buying and selling lands, as to third persons, may be proved by the same evidence as a partnership in buying and selling merchandise.—In re Warren, Case No. 17,191.

§ 7. Duration.

The partnership articles will be considered as binding after the expiration of the stipulated term where the business is carried on without any change in the circumstances.—Robertson v. Miller, Case No. 11,926.

II. THE FIRM, ITS POWERS AND PROPERTY.

§ 8. Powers of firm as a body.

A firm may negotiate its own paper to one of its partners, or take his paper and use it for the firm's purposes.—Baring v. Lyman, Case No. 983.

§ 9. What is firm property in general.

Where property is necessary for the ordinary operation of the partnership, and be actually so employed, it will be *held* partnership property, when purchased with partnership funds.—Hoxie v. Carr, Case No. 6,802.

In the absence of fraud and breach of trust, property purchased with partnership funds does not, of necessity, become partnership property, if that is not the intention of the parties.—Hoxie v. Carr, Case No. 6,802.

A legacy to the wife of one of the partners *held* to have become partnership property, as, when received, it became the husband's property.—Lyman v. Lyman, Case No. 8,628.

One of the partners having received a large legacy and applied it to the partnership business, without the knowledge of the other, and the money having been used for many years therein, *held* that it became partnership property.—Lyman v. Lyman, Case No. 8,628.

When a partnership is formed to make an article to which a given trade-mark is properly applied, such trade-mark, if belonging to one partner, becomes, in the absence of special regulations, part of the partnership property.—Filkins v. Blackman, Case No. 4,786.

§ 10. Partnership real estate.

A partnership in purchasing and selling lands is governed by the same principles as ordinary partnerships.—Olcott v. Wing, Case No. 10,481.

The proceeds of a lot owned by one of the partners prior to the partnership, afterwards built upon with joint funds, and then sold and the proceeds used in the partnership business, must be considered as belonging to the partnership.—Lyman v. Lyman, Case No. 8,628.

Lands bought by a commercial partnership, for partnership purposes, in equity stand on the same footing as personal property, whether title is taken in one or both partners.—Lyman v. Lyman, Case No. 8,628.

Real estate held for partnership purposes or purchased with partnership means is personal assets for paying debts or balances due the partners.—Kleine v. Shanks, Case No. 7,870; Hiscock v. Jaycox, Id. 6,531.

Real estate purchased with partnership funds, and on partnership account, will, in equity, be treated as personal estate, irrespective of the condition of the title.—Hoxie v. Carr, Case No. 6,802.

Dower rights in partnership realty, see "Dower," § 1.

§ 11. Change of joint property into separate property.

The exchange of a note of a firm dissolved by the death of one partner, for a similar note

signed by the survivor, does not convert the firm debt into the separate debt of the survivor.—In re Clap, Case No. 2,784.

III. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

See, also, post, §§ 40-44, 51, 58.

§ 12. Firm property and business—Construction of partnership articles in general.

The understanding that no charge was to be made for family expenses *held* to extend to the expenses of minor children, but not to advances made them after they became of age.—Lyman v. Lyman, Case No. 8,628.

Salaries paid to the children as clerks, after they became of age, *held* a charge against the partnership.—Lyman v. Lyman, Case No. 8,628.

Where a partnership between two brothers, made by parol in 1784, with an agreement that all their property should be in common, lasted until 1820, and was extended to numerous kinds of business, including the purchase of lands in various states, to which title was taken in the name of one or both, as the purchasing partner pleased, *held*, that the partnership was unlimited; that all property acquired by either was partnership property; and that each was bound by the acts of the other, however disastrous, if done in good faith.—Lyman v. Lyman, Case No. 8,628.

§ 13. —— Capital of firm.

A partner, by failing to contribute his share of the partnership fund, does not forfeit the interest which he already has in the firm.—Piatt v. Oliver, Case No. 11,116.

§ 14. —— Misappropriation of firm property.

An agreement to sell a member certain articles expressly for his individual use, to be paid for out of the partnership goods, is void as to the other partners.—Taylor v. Rasch, Case No. 13,801.

§ 15. —— Books of account.

The presumption that all the partners in a firm have access to the partnership books, and know the entries therein, may be repelled by any circumstances which lead to a contrary presumption.—United States Bank v. Binney, Case No. 16,791.

§ 16. —— Liability for losses.

Where a joint adventure was in the management of one partner, and the other advised him to sell the cargo for cash or produce only, but he took bills on the French government, which were not paid, *held* that, his conduct being in good faith, he was not liable to the other partner.—Lyles v. Styles, Case No. 8,625.

§ 17. Individual transactions—Purchase of copartner's interest.

A bona fide transfer of partnership effects by one member of the partnership to another vests the title in the transferee as his separate estate.—In re Byrne, Case No. 2,270.

A bona fide transfer of an interest in a partnership may be made without writings or vouchers.—In re Great Western Tel. Co., Case No. 5,740.

§ 18. Actions between partners.

A partner in a steamboat company, who acted as master and engineer, cannot maintain an action at law against his copartners for compensation as engineer.—Taylor v. Smith, Case No. 13,806.

A settlement of partnership accounts, and a balance acknowledged, will not support an action at law between the partners without an express promise to pay.—Pote v. Philips, Case No. 11,316.

If there has been no settlement of the partnership accounts, one partner cannot maintain an action at law against the other for any matter relating to their partnership affairs.—Pote v. Philips, Case No. 11,316; Lamalere v. Caze, Id. 8,003; Halderman v. Halderman, Id. 5,909; Goldsborough v. McWilliams, Id. 5,518; Barry v. Barry, Id. 1,060.

One partner who pays a judgment against all the partners for a partnership debt cannot at law recover from the others their respective proportions.—Riggs v. Stewart, Case No. 11,830.

Quære, whether the debt of one partner in a joint concern with others, not yet closed, can be set off in an action between partners.—Hurst v. Hurst, Case No. 6,930.

In an action at law by one partner against the other, a partnership book kept by defendant is not evidence against plaintiff, although it has been in his possession.—Sutton v. Mandeville, Case No. 13,648.

In an action at law between partners, accounts rendered are admissible to show that the items are not of partnership accounts.—Barry v. Barry, Case No. 1,060.

On a bill against a partner who has fraudulently suppressed books and falsified accounts, complainant will not be held to strict proof. Sufficiency of proof.—Askew v. Odenheimer, Case No. 587.

See, also, ante, § 6; post, § 53.

IV. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

Assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 1, 2.

§ 19. Representation of firm by partner—Scope of firm business.

A partner can bind the firm only for objects within the scope of its business.—United States Bank v. Binney, Case No. 16,791.

A usurious loan and conveyance is not within the proper scope and business of the partnership, so as to make the ignorant partner liable, in an action of tort, for the violation of law by his copartner.—Graham v. Meyer, Case No. 5,673.

A partner is bound by the act of his co-partner, within the scope of his business, though the act be fraudulent as between the partners.—Capelle v. Hall, Case No. 2,391.

§ 20. —— Restrictions on partner's authority.

Secret restrictions upon the rights of partners do not affect those persons who deal with the firm in ignorance of them.—United States Bank v. Binney, Case No. 16,791.

§ 21. —— Use of seal.

A partner, with the assent of his copartners, may bind the firm by a joint and several bond made by him in the firm name, and under a single seal affixed to its signature.—United States v. Brod, Case No. 14,653.

A release under seal of one of copartners is a sufficient release as to the rights of both.—Beltzhoover v. Stockton, Case No. 1,283.

§ 22. —— Disposition of firm property in general.

The active partner cannot transfer partnership realty the same as personalty.—Piatt v. Oliver, Case No. 11,116.

An assignment by one partner of partnership realty in payment of firm debt passes only his interest.—Anderson v. Tompkins, Case No. 365.

A deed executed by one partner becomes the deed of all, where the others expressly consented at the time, or agreed to it, or recognized it afterwards.—Darst v. Roth, Case No. 3,582.

§ 23. —— **Contracts.**
A contract in writing by one partner in his own name does not bind the other, though the money obtained by it comes into the joint concern.—Smith v. Hoffman, Case No. 13,061.

A member of a firm cannot engage the firm in another partnership, so as to bind a member, not privy thereto. But his consent or ratification may be presumed by his silence without objection after he has knowledge of the fact.—Tabb v. Gist, Case No. 13,719.

Assumpsit will not lie against partners on a bond given by one partner for a debt due from both where not executed in the presence or by the consent of the copartner.—United States v. Astley, Case No. 14,472.

§ 24. —— **Sales.**
A joint owner may advise as to the manner of sale of the cargo, but he has no authority to order; and he is bound by the acts of the managing partner done in good faith, though his advice is not followed.—Lyles v. Styles, Case No. 8,625.

The firm is not liable for goods sold to one of the partners with knowledge that they were for his separate use, although he ordered them to be charged to the firm.—Gullat v. Tucker, Case No. 5,866.

§ 25. —— **Negotiable instruments.**
Notes made jointly by partners, if understood to be partnership transactions, and in fact so used, will be binding on the firm.—In re Warren, Case No. 17,191.

Where bills drawn in the name of one partner, and accepted by the other, are in fact partnership transactions, and so understood, the firm will be liable thereon.—In re Warren, Case No. 17,191.

A bill signed by one partner alone, where he has authority to sign for all, will, in equity, be enforced against all the partners in favor of the payee of the bill, who has trusted the money on the faith of the joint credit.—Van Reimsdyk v. Kane, Case No. 16,872.

Where a partnership is carried on in the name of one partner, notes indorsed by him are not binding on the firm unless the indorsements were made for the benefit of the firm.—United States Bank v. Binney, Case No. 16,791.

The firm is liable on a note signed by the members with their individual names, where the consideration is treated as copartnership funds.—In re Thomas, Case No. 13,886.

Where the proceeds of a firm note indorsed by a partner were credited on the firm books and were received by the firm, it is liable thereon, though they were subsequently used by the partner individually.—In re Norris, Case No. 10,-302.

A partnership is not liable on an indorsement in the firm name by one member without the knowledge of the other, of an accommodation note, for the benefit of the third person.—In re Irving, Case No. 7,074.

The acceptance of the note of one partner on a loan of money for the use of the firm will prevent an action against the firm.—In re Herrick, Case No. 6,420.

Though the lender was ignorant that the loan was for the firm, he cannot sue the firm after recovering judgment on the note.—In re Herrick, Case No. 6,420.

Any partner may be agent of third person in drawing bills in favor of the firm for advances made under express authority.—Baring v. Lyman, Case No. 983.

A check upon a bank drawn in the name of one partner cannot be charged to the firm if not drawn by its authority, although used in the business of the firm.—Patriotic Bank v. Coote, Case No. 10,807.

A promissory note given by the active partner, in whose name the business was carried on, to the silent partner, for the amount of capital contributed by him, is the separate note of the active partner.—In re Waite, Case No. 17,044.

§ 26. —— **Mortgage.**
A chattel mortgage executed by one partner under seal, in the firm name, for money advanced to it, where the other partner subsequently assents thereto, will bind the firm.—Hawkins v. Hastings Bank, Case No. 6,244.

An assignment of partnership debts by one partner only, though void in law, sustained in equity if bona fide to secure creditors.—Anderson v. Tompkins, Case No. 365.

§ 27. —— **Payment of firm debts.**
One partner without prior consent of others may convey partnership personalty in payment of firm creditors.—Anderson v. Tompkins, Case No. 365.

One partner may give a preference to a particular creditor without consent of others if they are abroad.—Anderson v. Tompkins, Case No. 365.

§ 28. —— **Acknowledgment of debt.**
The acknowledgment of a debt by one partner will bind his copartner. — Corps v. Robinson, Case No. 3,252.

§ 29. —— **Wrongful acts.**
Partners are liable for the tort of one of their number committed by him as a partner in the course of the partnership business.—Stockwell v. United States, Case No. 13,466.

A tort of one partner will not bind the firm if not authorized or adopted by the firm, or within its proper scope and business.—Graham v. Meyer, Case No. 5,673.

§ 30. —— **Estoppel to deny partner's authority.**
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.—Williar v. Irwin, Case No. 17,761.

The indorsement of a firm, made by a partner to raise money for his benefit, binds the other partners, when the firm books disclose the entire transaction and they make no objection to it.—In re Norris, Case No. 10,302.

The representations of a member of a firm to the purchaser of its negotiable paper that it is business paper will estop the firm or their assignee from setting up that it is accommodation paper, and void for usury.—In re Many, Case No. 9,054.

§ 31. —— **Ratification.**
A ratification for a firm may be made by one member.—United States v. Turner, Case No. 16,547.

An agreement between a member of a firm and his individual creditor that the claim should be set off against such creditor's liability to the firm is not available to the firm where it was not assented to by the other partners until after such creditor had made an assignment for the benefit of creditors, though before bankruptcy.—Clark v. Sparhawk, Case No. 2,836.

§ 32. **Application of assets to liabilities —Assets of firm.**
A simple contract creditor cannot sue to follow partnership property used to pay individual debts.—Case v. Beauregard, Case No. 2,487.

The debts of the partnership must be first paid before the partnership property can be applied in payment of the individual debt. of either

partner.—United States v. Williams, Case No. 16,719.

One partner is not entitled to payment out of the firm assets of a debt due to him in the course of the business until all other firm debts are paid.—Cory v. Clark, Case No. 3,260.

A partnership is not entitled to retain towards the payment of its debt the surplus arising from the securities held by one partner for his debt.—Sparhawk v. Drexel, Case No. 13,204.

The crediting to each member of his interest in the firm on taking in a new partner will not affect the right of the firm creditors.—In re Shanahan, Case No. 12,701.

A transfer by one partner of his interest in the firm to his copartner, if made in good faith, is binding on the firm creditors.—Shimer v. Huber, Case No. 12,787; Russell v. McCord, Id. 12,157.

A mortgage given by partners upon partnership property to secure an individual debt of one of the partners is valid as against partnership creditors.—In re Kahley, Case No. 7,593.

The application by a partner of funds of the firm to the payment of taxes on his individual estate does not give the firm creditors a lien on the land.—United States v. Duncan, Case No. 15,003.

Partnership creditors have no lien on the firm property before obtaining judgment and execution.—Case v. Beauregard, Case No. 2,487; Tracy v. Walker, Id. 14,129.

See, also, post, § 52.

§ 33. —— Assets of individual partners.

Where the surviving partner notified creditors that his brother's capital remained in the business, a joint creditor of the firm, who did not receive the notice, could require the joint property to be applied to his debts to the exclusion of separate creditors.—In re Clap, Case No. 2,783.

If there is no joint estate, the firm creditors may share pari passu in the separate estate.—In re Collier, Case No. 3,002.

A promise by one partner to pay all the firm debts may be enforced by the firm creditors, though not parties thereto.—In re Collier, Case No. 3,002.

In the absence of fraud, joint debts may be converted into individual debts by one partner's undertaking, for a good consideration, to pay them.—In re Collier, Case No. 3,002.

Where all the property of a partnership belongs to one member, and the others have no interest in the gains and profits, such property will be liable in the first instance to the individual debts of the person owning it.—Swann v. Sanborn, Case No. 13,675.

Under the Michigan statute authorizing separate compromises of partnership debts with individual partners, a partner who does not compromise is not liable to the creditor for more than the balance due him.—Lowell Nat. Bank v. Train, Case No. 8,571.

§ 34. Actions by or against firm or partners—Parties.

See, also, ante, § 18.

The bill of an unincorporated company should be prosecuted in the names of the original partners, and not in the name of the company.—Metal Stamping Co. v. Crandall, Case No. 9,493c.

Action for goods sold belonging to a partnership, of which defendant was ignorant, must be brought in the name of all the partners.—Bennett v. Scott, Case No. 1,323.

In a suit in equity for a demand due to a partnership, all the partners must be joined, either as complainants or defendants.—Parsons v. Howard, Case No. 10,777.

On a bill to recover a debt against the estate of a deceased partner, the other partners are proper and necessary parties, and cannot be dispensed with, when out of the jurisdiction, where the case involves their important rights.—Vose v. Philbrook, Case No. 17,010.

When one of two partners sues on a partnership demand, defendant may take advantage of it at the trial.—Coffee v. Eastland, Case No. 2,945.

§ 35. —— Attachment against firm property.

An injunction against attachment of partnership property in a suit against a partnership will not be granted unless it appear that the property is needed to satisfy partnership claims, or that the partner has no interest in the surplus after payment of partnership debts.—Peck v. Schultze, Case No. 10,895.

§ 36. —— Pleading.

A declaration on a note signed by A. & L. without their Christian names need not aver a partnership, where their names are stated in full in the declaration.—Davis v. Abbott, Case No. 3,622.

A declaration on a bill of exchange, payable to a firm, must aver that plaintiffs were joint partners or traders under the firm name.—Lapeyre v. Gales, Case No. 8,081.

If one of two partners be sued on a partnership demand, he must plead the matter in abatement, and set out the names of the partners.—Coffee v. Eastland, Case No. 2,945.

An objection that the contract sued on was with defendant and another as partners can only be raised by plea in abatement.—Clementson v. Beatty, Case No. 2,884.

A separate debt of one partner cannot be set off against a partnership claim.—Lynn v. Hall, Case No. 8,641; Howe v. Sheppard, Id. 6,773.

§ 37. —— Issues and proofs.

In an action for goods sold by a firm, plaintiffs must prove themselves to be the firm.—Tibbs v. Parrott, Case No. 14,023.

It is not incumbent upon joint plaintiffs to prove that they are joint partners.—Woodward v. Sutton, Case No. 18,009.

The fact that plaintiff is suing on a partnership debt in his own name is available to defendant at the trial under the general issue.—Jordan v. Wilkins, Case No. 7,527.

Defendant may show, under the general issue, that the plaintiff is one of a firm which is indebted to him, in the same transaction, in a larger sum than that demanded.—Buckingham v. Burgess, Case No. 2,087.

Plea of general issue *held* to admit plaintiffs' right to sue in their firm name without proving the partnership.—Maret v. Wood, Case No. 9,067.

Under an allegation of a deed by persons as partners, a deed in the firm name, executed by one partner, is admissible with proof that the others agreed thereto.—Darst v. Roth, Case No. 3,582.

§ 38. —— Evidence.

After competent evidence has been given to prove a partnership, the declarations of one are admissible to prove that the debt is a partnership debt.—Garrett v. Woodward, Case No. 5,253.

The confession of a silent partner, not known in the proceedings, may be given in evidence.—Weed v. Kellogg, Case No. 17,345.

See, also, ante, § 6.

§ 39. —— Judgment and enforcement.
A judgment against a partner individually is a lien upon real estate held by the firm, subject, however, to the payment of the firm debts, and the equities of his copartners.—Johnson v. Rogers, Case No. 7,408.

The officer, where necessary, may take possession of the entire property, and sell the individual interest of the partner, and the purchaser will become a substituted partner.—United States v. Williams, Case No. 16,719.

A judgment against one of the partners will authorize the sheriff or marshal to levy on the right of the judgment debtor in the goods of the firm.—United States v. Williams, Case No. 16,719.

Corporeal property of a partnership cannot be taken in execution to satisfy the several debt of one partner, except to the extent of any interest he would have after full settlement of accounts.—Lyndon v. Gorham, Case No. 8,640.

A purchaser under an execution against one partner becomes a tenant in common with the other partners in an undivided share of the land purchased, subject to all the rights of the other partners and the partnership creditors.—Gilmore v. North American Land Co., Case No. 5,448.

V. RETIREMENT AND ADMISSION OF PARTNERS.

§ 40. Assent to admission of new partner.
A partner cannot compel his copartner to accept a purchaser of the former's interest as a member of the firm.—McNamara v. Gaylord, Case No. 8,910.

§ 41. Authority of continuing partner.
Authority given the continuing partner "to settle all demands in favor of or against" the firm does not authorize him to give a note in the name of the firm.—Lockwood v. Comstock, Case No. 8,449.

§ 42. Obligations of old firm.
The retiring partner will be *held* discharged where the creditors, with full knowledge of the continuing partner's agreement to assume the debts, enter into a totally new contract with him, entirely changing the nature of the debt.—Harris v. Lindsay, Case No. 6,123.

A firm formed by the taking in of a new partner *held* not liable for the proceeds of sale of goods consigned to the old firm, unless they came to the use of the new firm, who promised to pay the same.—Edmondson v. Barrell, Case No. 4,284.

§ 43. Assumption of obligations of old firm.
The continuing partner, who agrees to appropriate the goods on hand to the payment of the debts of the firm, becomes a trustee for the retiring partner and the creditors. Sedam v. Williams, Case No. 12,609.

A bond and security given by the continuing partner to the retiring partner, to relieve him from payment of the firm debts and to assume their payment, is not merely an indemnity, but is an obligation to pay, and may be enforced by the creditors.—Hood v. Spencer, Case No. 6,665.

A partnership creditor who knows that one partner has retired under an agreement that the other shall take the firm effects and pay its debts cannot, in equity, take a lien on the joint effects for new advances to the remaining partner, and thereby exhaust them, and hold the retiring partner for the joint debt.—McClean v. Miller, Case No. 8,692.

A continuing partner who agrees, on dissolution of the firm, to pay the firm creditors, is a trustee for them, and a subsequent assignment by him, with preferences, of the partnership effects, is fraudulent and void.—Marsh v. Bennett, Case No. 9,110.

§ 44. Actions after change of membership.
One who sells to a firm cannot maintain an action for the purchase price against a partner subsequently taken in.—Atwood v. Lockhart, Case No. 642.

VI. DEATH OF PARTNER, AND SURVIVING PARTNERS.

Right of survivor, see "Executors and Administrators," § 14.

§ 45. Effect of death of partner.
Under articles of copartnership stipulating that in case of the death of a partner, in order to prevent altercation with the heirs, etc., the shares of the profits and capital of the deceased shall be paid by the survivors, agreeably to the yearly statements of the company's affairs prior to his death, the entire interest in the partnership property passes to the survivor.—Robertson v. Miller, Case No. 11,926.

§ 46. Real property of firm.
On the death of a partner his interest in partnership realty descends to his heirs at law, subject to partnership debts.—Piatt v. Oliver, Case No. 11,116.

Real estate of a partnership, vested in the partners as tenants in common, is subject to a trust in favor of creditors and the partners. Upon the death of one partner, this title descends to his heirs or devisees, subject to the same trust.—Kleine v. Shanks, Case No. 7,870.

§ 47. Obligations incurred in winding up business.
The surviving partner cannot charge the estate of the firm by drawing bills, after the dissolution, for advances on shipments made to its regular factor.—Dick v. Laird, Case No. 3,892.

§ 48. Rights of survivor in estate of deceased.
Surviving partner is entitled to license granted to the firm.—Belding v. Turner, Case No. 1,243.

The administrator of a deceased partner may submit to arbitration the question as to the value of his interest in the partnership.—Hoyt v. Sprague, Case No. 6,810.

§ 49. Actions by or against surviving partners or representatives of deceased partners.
A bill to charge the executors of a deceased partner with a partnership debt must expressly allege the insolvency of the surviving partner.—Van Reimsdyk v. Kane, Case No. 16,871.

The creditors of a firm may enforce in equity the application of the joint estate to the payment of the joint debts against the survivor.—In re Clap, Case No. 2,783.

On a bill in equity to obtain satisfaction of a joint debt out of the estate of a deceased partner on account of the insolvency of the survivors, no decree need be had against the survivors.—Van Reimsdyk v. Kane, Case No. 16,871.

Equity will enforce against the executors of a deceased partner or joint contractor payment of a bill of exchange, where the survivors are insolvent.—Van Reimsdyk v. Kane, Case No. 16,872.

The representatives of a deceased partner are not necessary parties to a bill by the survivor or to set aside, for fraud, an assignment of a mortgage given in payment of a debt due the firm, and to recover such debt.—Pagan v. Sparks, Case No. 10,659.

A suit cannot be sustained against the representatives of a deceased copartner to charge his estate for the copartnership debts if the surviving partners are solvent, and the assets of the firm are sufficient.—Troy Iron & Nail Factory v. Winslow, Case No. 14,199.

A claim against the estate of a deceased partner, accruing, in consequence of the insolvency of the surviving partner, after the statute of limitations had run upon the claims against such estate generally, is not barred, though not exhibited within the period limited by the statute.—Pendleton v. Phelps, Case No. 10,923.

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING.

§ 50. Causes of dissolution.

An assignment of all interest in a firm to a copartner, stating that the firm is dissolved except so far as is necessary to continue the same for the final settlement of the business, does not dissolve the firm.—In re Shepard, Case No. 12,754.

Mere insolvency, in the absence of fraud, will not deprive the partners of their legal control over the firm property, or their right to dispose of it as they see fit.—Tracy v. Walker, Case No. 14,129.

One of the partners, having desired at one time to dissolve the partnership, agreed to continue it if the other would make a will in his favor, but no time was fixed for making the will. One was made, however, but was afterwards revoked and destroyed. *Held*, that the revocation did not justify the other partner in dissolving the partnership, as a will pursuant to the agreement might still be made.—Lyman v. Lyman, Case No. 8,628.

§ 51. Rights, powers, and liabilities after dissolution.

Upon a dissolution, each partner has a lien upon the partnership property, both for an indemnity against joint debts, and for his proportion of the surplus; but the creditors have no lien thereon for their debts.—Hoxie v. Carr, Case No. 6,802.

A debt put at the disposal of one partner after dissolution of the firm may be dealt with in equity as his individual property.—McLanahan v. Ellery, Case No. 8,869.

The partnership is bound by a settlement made by one partner who is authorized by an advertisement giving notice of dissolution to settle the firm accounts, but not by a new note given in payment.—Draper v. Bissel, Case No. 4,068.

After dissolution, neither party, by any note in writing, can bind the partnership, even for a debt contracted by it.—Lockwood v. Comstock, Case No. 8,449.

Admissions of a partner after dissolution are inadmissible to charge the firm.—Bispham v. Patterson, Case No. 1,441.

A bill drawn upon a partnership, but not accepted until after its dissolution has been publicly announced, does not bind partners who did not consent thereto.—Tombeckbee Bank v. Dumell, Case No. 14,081.

A note signed with a firm name after dissolution will not support assumpsit against the partners.—Fraser v. Wolcott, Case No. 5,065.

Notice of dissolution, which will discharge a retiring partner, may be by express notice (by circular or otherwise), or by publication in a newspaper of general circulation.—Shurlds v. Tilson, Case No. 12,827.

Notice of dissolution by newspaper publication is evidence for the jury, under all the circumstances, on the question of notice to persons previously dealing with the firm, and is conclusive of notice to all others.—Shurlds v. Tilson, Case No. 12,827.

Dormant partners need not give notice of the dissolution of the firm. — Bigelow v. Elliot, Case No. 1,399.

A promise by partners to pay notes given by one after dissolution, in settlement of firm debts, is a ratification, and will render them liable thereon.—Draper v. Bissel, Case No. 4,068.

§ 52. Distribution and settlement.

No agreement between the partners on their dissolution can affect the rights of their creditors, unless there is an express or implied agreement by the creditors to accept the continuing partner as the debtor, and to discharge the other.—Harris v. Lindsay, Case No. 6,124.

Under a partnership to deal in lands, the profits to be equally divided after reimbursement of advances by one partner, *held*, that at the close of the business where the speculation resulted in a loss, the land would be sold and the loss equally divided.—Olcott v. Wing, Case No. 10,481.

Upon a dissolution, one partner is always entitled to have partnership real estate sold, and the other cannot insist that it shall be simply divided between them.—Lyman v. Lyman, Case No. 8,628.

A partner is not entitled to compensation for his services except by special agreement; nor can he exact compensation for services rendered after dissolution in respect to property in his hands, for he is then only a voluntary trustee entitled to actual charges and expenses.—Lyman v. Lyman, Case No. 8,628.

The dissolution of a firm by agreement between its members will not affect the rights of its creditors.—Hudgins v. Lane, Case No. 6,827.

To constitute a settlement of accounts among partners, all must consent to and be bound by it or none are.—Lamalere v. Caze, Case No. 8,003.

The dissolution of a partnership by mutual consent does not affect the rights of existing creditors, nor of those who subsequently become creditors, if the members continue to treat each other as partners.—In re McFarland, Case No. 8,788.

A partnership settlement will not be disturbed at the suit of an executor of a partner, in the absence of error clearly shown, or fraud.—Brydie v. Miller, Case No. 2,071.

Equity will not sustain suit to compel settlement of partnership accounts under a government contract participated in by government agent.—Bartle v. Coleman, Case No. 1,072.

§ 53. Actions for dissolution and accounting.

An action of account will not lie by partners against a copartner who had no hand in the management for a settlement of the partnership concerns, and to compel defendant to contribute his proportion.—Spear v. Newell, Case No. 13,224.

Creditors are not necessary or proper parties generally in a bill between partners to wind up the partnership affairs.—Hoxie v. Carr, Case No. 6,802.

In a suit for the settlement of partnership accounts, where one partner died insolvent, his next of kin or other personal representatives are necessary parties.—Bartle v. Coleman, Case No. 1,072.

All the partners, or their representatives, are indispensable parties to a bill filed to procure a dissolution of the copartnership and an account.—Gray v. Larrimore, Case No. 5,721.

Invalidity of a decree in such case against a partner not properly brought into court.—Gray v. Larrimore, Case No. 5,721.

Upon a dissolution, the court has jurisdiction to order a sale of partnership land outside the jurisdiction, for the order operates only on the parties, and the court can compel them to make conveyances.—Lyman v. Lyman, Case No. 8,628.

VIII. LIMITED PARTNERSHIP.

§ 54. Certificate of formation.
The recorder of the city of New York is a judge of the county court, within the contemplation of the New York statute, respecting special partnerships, and the certificate is properly acknowledged before him.—Hubbard v. Morgan, Case No. 6,817.

Persons dealing with a limited partnership are chargeable with notice as to the scope of its business as set forth in its duly-recorded articles.—Taylor v. Rasch, Case No. 13,800.

§ 55. Contribution of special capital.
In an attempt to form a limited partnership under the New York statute, the contribution by the special partner of a stock of goods, together with cash, instead of cash alone, results in a general partnership.—In re Merrill, Case No. 9,467.

In Massachusetts all the partners are held as general partners, if the transaction, while showing an apparent contribution in cash by a special partner, resulted in fact in putting in goods and debts equivalent to cash.—In re Thayer, Case No. 13,867.

§ 56. Firm name and sign.
Where the names of all the partners are correctly given in a certificate of special partnership, the use of the words "and Company" in the firm name, as a collective appellation to designate the persons specifically named, does not render a special partner liable as a general partner.—Hubbard v. Morgan, Case No. 6,817.

The use of the word "Company" in the title of a firm formed as a special partnership under the New York statute renders all the partners liable as general partners.—Hampden Bank v. Morgan, Case No. 6,008.

§ 57. Withdrawal of capital or profits.
A special partner, who has withdrawn any part of his capital from the firm, is liable, at suit of creditors, to pay it back.—Hampden Bank v. Morgan, Case No. 6,008.

§ 58. Relations between special and general partners.
A common or long-continued departure by general partners, not consented to or acquiesced in by the special partners, cannot change the scope of the business as specified in the copartnership articles.—Taylor v. Rasch, Case No. 13,800.

§ 59. Dissolution.
In Illinois, if the certificate of dissolution of a limited partnership does not fulfill the requirements of the statute, the partnership still continues as to creditors.—In re Terry, Case No. 13,836.

Notice of the dissolution of a limited partnership must be published on the same day in each week, under a statute requiring publication "once in each week for four weeks." 1 Rev. St. N. Y. p. 67, § 24.—In re King, Case No. 7,779.

PART PAYMENT.

Within statute of limitations, see "Limitation of Actions," § 25.

PARTY WALLS.

§ 1, Municipal regulations. § 2, Rebuilding and change of location. § 3, Actions.

§ 1. Municipal regulations.
Under the building regulations, there is no right to build a party wall for a brick house when there is already a frame building on the adjoining lot.—Kraft v. Stott, Case No. 7,929.

It is a condition annexed to the title of lots in the city of Washington, D. C., that the proprietor shall reimburse the adjoining owner a moiety of the charge of such part as he shall use of a partition wall built by him.—Miller v. Elliot, Case No. 9,568.

The city surveyor must attend, when requested, and adjust the line of the front of the building, and his certificate is binding on the parties.—Miller v. Elliot, Case No. 9,568.

§ 2. Rebuilding and change of location.
Where a 9-inch party wall is torn down, it cannot be rebuilt by a 14-inch party wall.—Wilson v. Leiberman, Case No. 17,816a.

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.—Wilson v. Leiberman, Case No. 17,816a.

§ 3. Actions.
Under the condition annexed to the title of lots in the city of Washington, D. C., that the proprietor shall reimburse the adjoining owner a moiety of the charge of such party wall as he shall use, the value of such half used may be recovered in an action upon the case in assumpsit.—Miller v. Elliot, Case No. 9,568.

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.—Dermott v. Fowler, Case No. 18,289.

PASSENGERS.

See "Carriers," §§ 38-52; "Shipping," §§ 194-207.

Right to salvage compensation, see "Salvage," § 22.

PATENTS.

I. SUBJECTS OF PATENTS.

§ 1, Nature of patent rights. § 2, Power to grant patents. § 3, Constitutional and statutory provisions. § 4, Arts—In general. § 5, —— Principles or laws of nature. § 6, Processes or methods. § 7, —— Products or results. § 8, Machines. § 9, Manufactures.

II. PATENTABILITY.

(A) Invention.

§ 10, Nature of patentable invention. § 11, Nature and degree of skill involved. § 12, Simplicity or obviousness of device. § 13, Enlargement or change in degree. § 14, Change of form. § 15, Substitution of materials. § 16, Substitution of mechanical equivalents and duplication of parts. § 17, Omission of parts. § 18, Aggregation. § 19, Combination. § 20, Application to new use. § 21, Designs. § 22, Reduction to practical use or operation. § 23, Evidence of invention.

(B) Novelty.

§ 24, In general. § 25, Use of new means or new mode of construction or operation. § 26,

Use of material or device for new purpose or function. § 27, New combination. § 28, Production of new or improved result. § 29, Designs. § 30, Evidence of novelty.

(C) Utility.

§ 31, Nature of patentable utility. § 32, Capacity to produce result. § 33, Nature of product or result. § 34, Evidence of utility.

(D) Anticipation.

§ 35, Prior knowledge or use—Nature and extent in general. § 36, —— Accidental or unintentional production. § 37, —— Experiments and incomplete productions. § 38, —— Unsuccessful devices. § 39, —— Concealed inventions. § 40, —— Different use or purpose. § 41, Evidence of prior knowledge or use—Presumptions and burden of proof. § 42, —— Admissibility. § 43, —— Weight and sufficiency. § 44, Prior patents. § 45, Prior description in printed publication—Requisites of publication. § 46, —— Sufficiency of description. § 47, —— Operation and effect. § 48, Priority of anticipation to date of invention.

(E) Prior Public Use or Sale.

§ 49. What constitutes public use. § 50, What constitutes public sale. § 51, Time, priority, and continuance of use or sale. § 52, Use or sale in foreign country. § 53, Evidence of use or sale.

(F) Abandonment.

§ 54, Time of abandonment. § 55, What constitutes. § 56, Operation and effect. § 57, Evidence of abandonment.

III. PERSONS ENTITLED TO PATENTS.

§ 58, Original inventors and priority between inventors. § 59, Evidence as to originality and priority. § 60, Joint inventors. § 61, Employers and workmen. § 62, Public officers and employés. § 63, Assignees of inventors. § 64, Personal representatives of deceased inventors. § 65, Aliens.

IV. APPLICATION AND PROCEEDINGS THEREON.

§ 66, Description and specifications—Sufficiency in general. § 67, —— Improvements. § 68, Drawings, specimens, and models. § 69, Claims. § 70, Attestation and oath. § 71, Fees. § 72, Examination and proceedings in patent office in general. § 73, Caveats. § 74, Interferences—What constitutes and declaration thereof. § 75, —— Proof. § 76, —— Hearing and determination. § 77, Withdrawal or abandonment of application. § 78, Rejection of application. § 79, Amendment of application. § 80, Renewal of application. § 81, Appeals in patent office. § 82, Conclusiveness and effect of decisions of patent office. § 83, Appeals from decisions of commissioner of patents—Time of appeal and preliminary proceedings. § 84, —— Grounds of appeal and matters reviewable. § 85, —— Reasons of appeal. § 86, —— Hearing and determination. § 87, Remedy in equity for refusal of patent.

V. REQUISITES AND VALIDITY OF LETTERS PATENT.

§ 88, Nature of the instrument. § 89, Form and contents in general. § 90, Execution and issuance. § 91, Validity in general. § 92, Excessive claims by patentee. § 93, Inventions included in same patent. § 94, Patents for same invention. § 95, Correction or amendment. § 96, Annulment or repeal.

VI. TERM.

(A) Date and Duration in General.

§ 97, Date. § 98, Terms of patent.

(B) Extensions.

§ 99, Extensions by special act of congress. § 100, Application to patent office for extension and proceedings thereon. § 101, Construction and operation of extension.

VII. REISSUES.

§ 102, Power to reissue. § 103, Grounds of reissue. § 104, Persons entitled to reissue. § 105, Time of making application. § 106, Surrender of original patent. § 107, Application for reissue and proceedings thereon. § 108, Identity of invention—In general. § 109, —— Evidence of identity. § 110, Reissues for parts of original invention. § 111, Conclusiveness and effect of decisions of patent office. § 112, Reissues of reissued patents. § 113, Validity of reissued patents. § 114, Construction and operation of reissued patents.

VIII. DISCLAIMERS.

§ 115, Right to disclaim part of claims. § 116, Patents and claims subject to disclaimer. § 117, Persons entitled to disclaim. § 118, Sufficiency of disclaimer. § 119, Time of making disclaimer. § 120, Effect of disclaimer.

IX. CONSTRUCTION AND OPERATION OF LETTERS PATENT.

(A) In General.

§ 121, General rules of construction. § 122, What law governs. § 123, Accompanying documents and proceedings in patent office. § 124, Effect of patent as estoppel. § 125, Suits for construction.

(B) Limitation of Claims.

§ 126, Operation and effect of claims in general. § 127, Title of patent. § 128, Specifications, drawings, and models and construction of claim in connection therewith. § 129, State of art. § 130, Agreements of patentee with commissioner and proceedings in patent office. § 131, Scope and character of inventions. § 132, Claims for processes. § 133, Claims for machines or manufactures in general. § 134, Claims for combinations. § 135, Including mechanical equivalents. § 136, Claims for compositions of matter. § 137, Claims for designs.

X. TITLE, CONVEYANCES, AND CONTRACTS.

(A) Rights of Patentees in General.

§ 138, Title of inventor before issue of patent. § 139, Assignment of invention or right to patent. § 140, Exclusive nature of right—Articles made or purchased by others before application for patent. § 141, —— Against government. § 141a, Rights and powers of patentee as to making, use, or sale of invention.

(B) Assignments and Other Transfers.

§ 142, Contracts to assign. § 143, Assignability of patents. § 144, Who may assign. § 145, Requisites and validity of assignments and grants. § 146, Construction and operation of assignments and grants—Property or interest conveyed. § 147, —— Rights and liabilities of assignees and grantees. § 148, —— Bona fide purchasers. § 149, Transfer on insolvency or bankruptcy.

(C) Licenses and Contracts.

§ 150, What constitutes a license. § 151, Who may make license. § 152, Requisites

and validity of licenses. § 153, Construction and operation of licenses — General rules. § 154, —— Scope and extent. § 155, —— Rights and liabilities of licensees. § 156, —— Particular licenses. § 157, Assignments and sub-licenses. § 158, Revocation, forfeiture, and abandonment of license. § 159, Royalties and license fees.

XI. REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES.

§ 160, Power to control and regulate. § 161, Marking patented articles. § 162, Effect of failure to mark. § 163, Penalties for violation of regulations.

XII. INFRINGEMENT.

(A) What Constitutes Infringement.

§ 164, In general. § 165, Knowledge or intent. § 166, Patents for processes. § 167, Patents for machines or manufactures in general—Identity in general. § 168, —— Identity of principle or mode of operation. § 169, —— Identity of form or arrangement. § 170, —— Substitution of equivalents. § 171, —— Omission of parts. § 172, —— Addition of parts. § 173, —— Identity of result. § 174, Patents for combinations—Identity in general. § 175, —— Transposition of elements. § 176, —— Substitution of equivalents. § 177, —— Omission of elements. § 178, —— Addition of elements and improvements. § 179, Patents for compositions of matter. § 180, Patents for designs. § 181, Utility of infringing device. § 182, Experiments. § 183, Making or repair of patented articles. § 184, Violation of restrictions on manufacture, use, or sale of patented article. § 185, Contributory infringement. § 186, Knowledge or consent of patentee. § 187, Injuries from infringement.

(B) Actions at Law.

§ 188, Grounds of action. § 189, Defenses. § 190, Persons entitled to sue. § 191, Persons liable. § 192, Limitations and laches. § 193, Parties and process. § 194, Pleading—Declaration. § 195, —— Plea, answer, and replication. § 196, —— Notice of special matter. § 197, —— Profert and oyer. § 198, Issues, proof, and variance. § 199, Evidence—In general. § 200, —— Opinions of experts. § 201, Damages—In general. § 202, —— Actual damages. § 203, —— Nominal damages. § 204, —— Measure of damages in general. § 205, —— Estimating damages and elements of compensation. § 206, —— Increase of actual damages. § 207, —— Exemplary damages. § 208, Trial. § 209, Verdict and judgment. § 210, Review. § 211, Costs.

(C) Suits in Equity.

§ 212, Nature and grounds of suit. § 213, Statutory provisions. § 214, Defenses. § 215, Persons entitled to sue. § 216, Persons liable. § 217, Joinder of causes of action. § 218, Jurisdiction. § 219, Limitations and laches. § 220, Parties and process. § 221, Pleading—Original bill. § 222, —— Cross bill. § 223, —— Plea and answer. § 224, —— Replication. § 225, —— Amended and supplemental pleadings. § 226, —— Notice of special matter. § 227, Issues and proof. § 228, Evidence—Presumptions and burden of proof. § 229, —— Admissibility in general. § 230, —— Weight and sufficiency. § 231, —— Opinions of experts. § 232, Preliminary injunctions, when granted—In general. § 233, —— Establishing right of patentee by trial at law or exclusive use. § 234, —— Irreparable or comparative injury to parties. § 235, —— Defendant acting under claim and color of right. § 236, —— Threatened infringement. § 237, —— Effectiveness of relief. § 238, —— Discontinuance of infringement. § 239, —— Acquiescence and misleading conduct of patentees. § 240, —— Laches. § 241, —— Discretion of court. § 242, Security instead of injunction. § 243, Against whom preliminary injunction will issue. § 244, Application for preliminary injunction and proceedings thereon—Pleadings and affidavits. § 245, —— Jurisdiction. § 246, —— Effect of prior decisions. § 247, —— Time of granting. § 248, —— Hearing, evidence, and decree. § 249, Dissolving, vacating, and modifying preliminary injunctions. § 250, Permanent injunction. § 251, Violation of injunction — What constitutes. § 252, —— Procedure and punishment. § 253, Damages. § 254, Profits—Nature of profits and right in general. § 255, —— Amount and estimation of profits. § 256, —— Interest. 257, —— Particular instances. § 258, —— Burden of proof. § 259, Reference to master. § 260, Hearing. § 261, Effect of prior decisions in general. § 262, Submission of issues to jury. § 263, Rehearing. § 264, Decree and review. § 265, Costs.

XIII. DECISIONS ON THE VALIDITY, CONSTRUCTION, AND INFRINGEMENT OF PARTICULAR PATENTS.

§ 266, Original patents. § 267, Reissue patents. § 268, Design patents.

Competency of witnesses in patent cases, see "Witnesses," § 46.
For public lands, see "Mines and Minerals," § 9; "Public Lands," §§ 50–54, 72, 94.
Jurisdiction of actions respecting, see "Courts," § 35.
Parol evidence, see "Evidence," § 65.
Right of master to inventions of employé, see "Master and Servant," § 1.
Survival of action for infringement, see "Abatement and Revival," § 5.

I. SUBJECTS OF PATENTS.

§ 1. Nature of patent rights.

Patents are not monopolies, because a monopoly gives to one person or class what was common before, whereas a patent brings out from the realm of mind something that did not exist before, and gives it to the country.—Singer v. Walmsley, Case No. 12,900.

The patent is not for a principle or a result but for the means described for accomplishing the result.—Wing v. Richardson, Case No. 17,-869.

A patent is a contract with the public in the terms of the law, which must be complied with in the same good faith as other contracts, but, as it gives a right of property, it ought to be protected by a liberal construction of the law and the acts of the patentee.—Whitney v. Emmett, Case No. 17,585.

The exclusive grant in a patent is the construction and use of the thing patented.—Boyd v. Brown, Case No. 1,747.

§ 2. Power to grant patents.

Congress has the exclusive power to grant patents, and to renew or prolong the time for the continuance of the same.—Evans v. Robinson, Case No. 4,571.

A retrospective act giving a patent for an invention already in public use is within the power of congress.—Blanchard v. Sprague, Case No. 1,518.

§ 3. Constitutional and statutory provisions.

The statute, by defining the conditions under which the power conferred to issue patents shall

be exercised, necessarily excluded all others.—Morton v. New York Eye Infirmary, Case No. 9,865.

An act giving a patent will not be construed to operate retrospectively unless such construction is unavoidable.—Blanchard v. Sprague, Case No. 1,518.

§ 4. Arts—In general.
The word "art," in the patent acts, means a useful art or manufacture, which is beneficial, and which is described with exactness in its mode of operation.—Smith v. Downing, Case No. 13,036.

An art is entitled to protection, as well as the machinery or processes which the art teaches, employs, and makes useful.—French v. Rogers, Case No. 5,103.

The inventor or discoverer of a new and useful art may have a valid patent, though ignorant of the philosophical or abstract principle involved in the practice of the art.—Piper v. Brown, Case No. 11,180.

§ 5. —— Principles or laws of nature.
A discovery of a new principle, force, or law, operating, or which can be made to operate, on matter, will not entitle the discoverer to a patent.—Morton v. New York Eye Infirmary, Case No. 9,865.

The discovery of a law of nature or a geological truth, as that the seams or rifts in oil-bearing rock would, if opened by a blast, yield oil, is not patentable.—Roberts v. Dickey, Case No. 11,899.

The principle that cotton spun directly from the gin produces a better and stronger yarn than cotton after it is baled, is not patentable.—In re Henry, Case No. 6,371.

A patent is not grantable for a principle merely, but only for an application of a principle, whether previously known or not, to some new and useful purpose.—Whitney v. Carter, Case No. 17,583.

The application of a principle to some practical and useful purpose, and not the principle itself, is patentable.—Bell v. Daniels, Case No. 1,247.

The discoverer can only secure exclusive control of his discovery through the means by which he has brought it into practical action, or their equivalent.—Morton v. New York Eye Infirmary, Case No. 9,865; Sickels v. Borden, Id. 12,832; Smith v. Downing, Id. 13,036.

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.—Wintermute v. Redington, Case No. 17,896.

An exclusive right to a motive power by electricity or steam can only be secured by patenting the instrumentality or mechanism producing the result.—Smith v. Ely, Case No. 13,043.

The propulsive effect of the vertical motion of water, in a reaction wheel, operating by its centrifugal force, and so directed by mechanism as to operate in the appropriate direction, is patentable.—Parker v. Hulme, Case No. 10,740.

Where a party has discovered a new application of some property in nature, never before known or in use, by which he has produced a new and useful result, the discovery is the subject of a patent, independently of any peculiar or new arrangement of machinery for the purpose of applying the new property.—Foote v. Silsby, Case No. 4,919.

§ 6. —— Processes or methods.
A novel process or mode of operation which amounts to a successful application of known things to a practical use is patentable as an art.—Roberts v. Dickey, Case No. 11,899.

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.—Wyeth v. Stone, Case No. 18,107.

A patent for a method of preserving fish or other articles in a close chamber by means of a freezing mixture having no contact with the atmosphere of the preserving chamber, is a patent for an art.—Piper v. Brown, Case No. 11,180.

Copper-plate printing on the back of bank notes is a patentable art.—Kneass v. Schuylkill Bank, Case No. 7,875.

A patent of one making an improvement on an existing machine, or a new machine, should not be for a method, but for his machine, or improved machine.—Barrett v. Hall, Case No. 1,047.

§ 7. —— Products or results.
A result or an effect produced cannot be patented.—Case v. Brown, Case No. 2,488; Burr v. Cowperthwait, Id. 2,188.

The discovery of a new effect of that which existed before is not the subject of a patent.—In re Kemper, Case No. 7,687.

§ 8. Machines.
Neither the natural functions of an animal upon which, or through which, a new force or principle may be designed to operate, nor any of the useful purposes to which it may be applied, can form any essential part of a patentable combination with it.—Morton v. New York Eye Infirmary, Case No. 9,865.

The embodiment of the principle into a machine as described, and not the abstract principle, is the patentable thing.—Bean v. Smallwood, Case No. 1,173.

A discoverer of the application of a law of nature to produce a particular result is entitled to a patent where he devises machinery to make it operative.—Parker v. Hulme, Case No. 10,740.

Mechanical and design patents distinguished.—Cone v. Morgan Envelope Co., Case No. 3,096.

An improvement, to be patentable, must be in the principles of the machine, art, or manufacture, and not merely in the form or proportions.—Evans v. Eaton, Case No. 4,559.

A new and improved method of producing a useful result or effect is as much the subject of a patent as an entire new machine.—Wintermute v. Redington, Case No. 17,896

§ 9. Manufactures.
New articles of manufacture are not patentable, unless their production involved the exercise of invention or discovery beyond what was necessary to construct the apparatus for their manufacture or production.—Milligan & Higgins Glue Co. v. Upton, Case No. 9,607.

A ruffle made by machinery at one operation, which theretofore required two or more, is not for that reason patentable.—Wooster v. Calhoun, Case No. 18,035.

II. PATENTABILITY.

(A) INVENTION.

§ 10. Nature of patentable invention.
An invention in mechanics consists not in the discovery of new principles, but in new combinations of old principles.—Tyler v. Deval, Case No. 14,307.

Invention is any new arrangement or combination of old or new materials producing a new and useful result.—McCormick v. Seymour, Case No. 8,725.

While the result or effect of a process is not patentable, it may become the test of invention,

which may be inferred from the existence of the results.—Treadwell v. Fox, Case No. 14,156.

Invention is the conception, not the final development.—Adams v. Edwards, Case No. 53.

Where a new or improved manufacture is produced by new contrivances, the usual test of invention is whether the production of the article is as good in quality at a cheaper rate, or better in quality at the same rate, or with both these results combined.—In re Smith, Case No. 12,982.

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, it may be the subject of a patent.—Wilton v. Railroad Co., Case No. 17,856.

If a change in the mode of operation involves such ingenuity as to show the exercise of inventive faculties, the discoverer is entitled to a patent, though it be the result of accident.—In re Everson, Case No. 4,580.

The various classes of inventions defined.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

§ 11. Nature and degree of skill involved. To authorize a patent, some inventive skill must be exercised, but the degree of that skill is not material.—Clark Patent Steam & Fire Regulator Co. v. Copeland, Case No. 2,866.

A new and useful device, though involving but little invention, is patentable.—Potter v. Holland, Case No. 11,330.

If a device is new, and accomplishes beneficial results, the court will not gauge by any nice standard the degree of inventive genius required.—Middletown Tool Co. v. Judd, Case No. 9,536.

Features which a skilled mechanic would devise or apply in operating a machine are not patentable.—Barry v. Gugenheim, Case No. 1,061.

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.—Woodman v. Stimpson, Case No. 17,979.

Perfecting machinery by superior skill in the mechanical arrangement and construction of the parts is not invention.—Parkhurst v. Kinsman, Case No. 10,757.

A person who furnishes the ideas to produce the result is entitled to avail himself of the mechanical skill of others to carry out his contrivance in practice.—Sparkman v. Higgins, Case No. 13,208.

§ 12. Simplicity or obviousness of device. That a combination appears simple, and the invention not very great, is not a sufficient objection to its patentability, if it be not frivolous and foolish.—In re Smith, Case No. 12,982.

An elastic erasive pencil head, consisting simply of a piece of India rubber, with a hole in it to slip over the end of the pencil, is not patentable.—Rubber Tip Pencil Co. v. Howard, Case No. 12,102.

It is not invention to make the legs of a stove long enough to allow a lamp to be placed under it without touching it.—Couse v. Johnson, Case No. 3,288.

There is no invention in placing a box over a sewing machine when not in use, to protect it from dust.—Ross v. Wolfinger, Case No. 12,081.

A pavement made of blocks of wood cut from the trunks or branches of trees in their natural form, laid vertically upon a bed of gravel or sand, is not patentable.—Phillips v. Detroit, Case No. 11,100.

The application to the moving and holding of a rudder of an endless screw working in the cogs on the periphery of a quadrant does not involve invention.—Cochrane v. Waterman, Case No. 2,929.

§ 13. Enlargement or change in degree. A new effect, produced by a change or proportion, may involve patentable invention.—In re Fultz, Case No. 5,156.

Where a change from previous devices and its consequences, taken together and viewed as a whole, are considerable, there is patentable invention.—In re Walsh, Case No. 17,112.

Difference in size and proportion of devices or machines, so long as the construction, principles, and mode of operation are the same, is entirely immaterial.—Cahoon v. Ring, Case No. 2,292.

Enlarging the chimney of a lamp so as to form a globe and a deflector *held* not an invention.—Dane v. Chicago Mfg. Co., Case No. 3,557.

Changing the location of lantern devices so that the globe may be taken out from the top, instead of the bottom, *held* not an invention.—Dane v. Illinois Mfg. Co., Case No. 3,558.

Increasing the curve of a wagon reach, and diminishing the diameter of the wheel, so as to allow it to pass completely underneath, where before it only passed partly under, *held* not a patentable invention.—Flood v. Hicks, Case No. 4,877.

The mere change of spaces of ogee lines so that they may be used for writing paper does not constitute invention.—Cone v. Morgan Envelope Co., Case No. 3,096.

A mere change in the angle in which reciprocating cutters work in a machine for splitting wood *held* not to involve invention.—Conover v. Dohrman, Case No. 3,120.

§ 14. Change of form. A patent will not be granted for a device differing only in form from one in prior use.—Ex parte Chatfield, Case No. 2,631a.

A change in form, though slight, if it works a successful result not before accomplished in a similar way, is patentable.—Isaacs v. Abrams, Case No. 7,095.

There is no invention in shifting the raker's seat on a harvesting machine so that the raker sits facing the falling grain.—Kirby v. Beardsley, Case No. 7,837.

Combining a curved metal receiver with an elevated instead of a horizontal delivery involves no invention, and is not patentable.—Mann v. Bayliss, Case No. 9,034.

The change of lateral motion from one part of a machine to another *held* no invention.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521.

The substitution of a coiled or lengthened indicator pipe for a straight pipe in a boiler to regulate and control the supply of water *held* not patentable.—In re Nutting, Case No. 10,385.

The patent law protects simplicity and economy of construction as against prior, complex, and expensive combinations.—King v. Hammond, Case No. 7,797.

§ 15. Substitution of materials. A mere change of material, without the exercise of mechanical skill, is not patentable.—Putnam v. Yerrington, Case No. 11,486.

The making of an article, of a new material, by an old method, is not patentable.—Hotchkiss v. Greenwood, Case No. 6,718.

The making in iron of a frame which had before been made in wood *held* not patentable. —Holbrook v. Small, Case No. 6,595.

There is no invention in placing on a soft metal gun cartridge a bottom of hard metal, to give capacity for repeated discharges.—In re Maynard, Case No. 9,352.

The double independent leather covering for base balls, where such covering had been previously applied to soft balls, *held* not a patentable invention.—Mahn v. Harwood, Case No. 8,966.

§ 16. Substitution of mechanical equivalents and duplication of parts.

The substitution of one kind of power for another in operating a patented machine is not invention.—Crehore v. Norton, Case No. 3,381.

The substitution of a wheel and axle for a screw *held* not to constitute invention.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521.

A rubber roller covered with cloth is not an equivalent of a roller with an outer covering of rubber.—Bailey Washing & Wringing Mach. Co. v. Lincoln, Case No. 750.

The substitution of vulcanized rubber for a surface in a steam-gauge cock, in place of a combination of metal faced with cork, leather, or soft metal, *held* an invention.—Dalton v. Nelson, Case No. 3,549.

A wire gauze dipper, substituted for a perforated dipper, for stirring oil, and raising enough for a single operation, *held* a mere equivalent.—Harwood v. Mill River Woolen Mfg. Co., Case No. 6,187.

A claim to the use of two deflecting plates, one on each side of a saw, sustained, as not being a mere duplication, although a single deflecting plate had before been used.—Myers v. Frame, Case No. 9,991.

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. —Woodward v. Dinsmore, Case No. 18,003.

See, also, post, § 170.

§ 17. Omission of parts.

The omission of an element from a device so that the less number of parts will perform all the functions of the greater may be an invention.—Stow v. Chicago, Case No. 13,512.

§ 18. Aggregation.

A mere aggregation of old devices, in which the parts have no new operation and produce no result which is due to the combination itself, is not patentable.—Sarven v. Hall, Case No. 12,369.

The distinction between patentable combinations and aggregations considered.—Williams v. Rome, W. & O. R. Co., Case No. 17,735.

§ 19. Combination.

Combining elements so as to produce a new and practical result, not reached by their separate action, involves invention. — Kerosene Lamp Heater Co. v. Littell, Case No. 7,724.

Old instruments placed in a new and different organization do not prevent the new mechanism from being patented. — Clark Patent Steam & Fire Regulator Co. v. Copeland, Case No. 2,866.

A combination of old elements is patentable if involving inventive faculties.—Crosby v. Lapouraille, Case No. 3,424; Buck v. Hermance, Id. 2,082.

A new combination, to be valid, must be different from the old one, not only in its mechanical contrivance and construction, but in its practical operation and effect in producing the useful result.—Buck v. Hermance, Case No. 2,082.

A combination of old devices, which produces merely the aggregate of the several results of the devices when used separately, is not patentable.—Hailes v. Van Wormer, Case No. 5,904.

A combination which, by the addition of a new part, produces a new result with greater rapidity and economy than before produced, is patentable.—Gallahue v. Butterfield, Case No. 5,198.

The combination of a movable reservoir with a jet bath, in substantially the same manner as a fixed reservoir was previously combined therewith, constitutes no invention, although the patentee had no knowledge of the previous combination; otherwise if the manner of connection was substantially different.—Larabee v. Cortlan, Case No. 8,084.

A combination of a known tool with a known machine, requiring only ordinary mechanical skill, is not patentable.—Bailey Washing & Wringing Mach. Co. v. Lincoln, Case No. 750.

A combination of old devices, involving only mechanical, and not inventive, skill, is not patentable.—Blake v. Stafford, Case No. 1,504.

To make a valid claim for a combination, it is not necessary that the several elementary parts of the combination should act simultaneously.—Forbush v. Cook, Case No. 4,931; Birdsall v. McDonald, Id. 1,434.

Nor need all parts of the machine which are necessary to its action be included in the claim, save as they may be understood as entering into the mode of combining and arranging the elements of the combination.—Forbush v. Cook, Case No. 4,931.

A combination of machinery for cooling meal in the process of converting grain into flour, with machinery for preventing the waste of meal, *held* patentable.—Herring v. Nelson, Case No. 6,424.

§ 20. Application to new use.

The adaptation of old devices or forms to new purposes, however convenient, useful, or beautiful they may be in their new role, is not invention.—Northrup v. Adams, Case No. 10,328; Hovey v. Henry, Id. 6,742; Couse v. Johnson, Id. 3,288.

The application of an old process to produce a new result is not a patentable invention.—Howe v. Abbott, Case No. 6,766.

There is no invention in applying an old fabric to a new use.—Smith v. Elliott, Case No. 13,041.

The rule that the application of an old machine or combination to a new purpose does not involve invention does not hold good in the case of the application of a new combination to an old purpose.—In re Hebbard, Case No. 6,314.

A change of a machine, not involving invention, so as to adapt it to different uses, is not patentable.—Swift v. Whisen, Case No. 13,700.

A new application of a principle not producing a new result is not an invention.—In re Blandy, Case No. 1,528.

§ 21. Designs.

A design for a billiard table having no other novelty than a greater bevel than usual in the sides and ends is not patentable.—Collender v. Griffith, Case No. 3,000.

A design must possess originality and beauty to be patentable. Mere mechanical skill is insufficient.—Northrup v. Adams, Case No. 10,328.

A patent for a design must be for the means of producing a certain result or appearance, and not for the result or appearance itself.—Gorham Mfg. Co. v. White, Case No. 5,627.

§ 22. Reduction to practical use or operation.

Speculation must be reduced to practice, and not rest in uncertain experiments, to entitle an inventor to a patent.—Draper v. Potomska Mills Corp., Case No. 4,072; Ellithorp v. Robertson, Id. 4,408; McCormick v. Seymour, Id. 8,725; Ransom v. New York, Id. 11,573; Roberts v. Reed Torpedo Co., Id. 11,910; White v. Allen, Id. 17,535. CONTRA, see Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

The use of a working model for two or three hours by way of experiment is not a reduction of an invention to practical use.—Stainthorp v. Humiston, Case No. 13,281.

§ 23. Evidence of invention.

The prima facie proof that the person who made the first machine was the inventor is rebutted by proof that he allowed his employer to obtain a patent, and did not, until six months thereafter, himself make application or claim the invention.—Warner v. Goodyear, Case No. 17,183.

Superior utility, where not derived from the use of better material or greater skill or care in the manufacture, is evidence of invention.—Many v. Sizer, Case No. 9,056.

The desirability of an improvement, the difficulties to be encountered, and the unsuccessful experiments of others, tend to show inventive skill in the successful inventor.—Terry Clock Co. v. New Haven Clock Co., Case No. 13,840.

But slight evidence of invention is required when it is shown in what the invention consists, and where proof is given of practical utility.—In re Fultz, Case No. 5,156.

The unopposed oath of the inventor, though not itself sufficient, is some evidence of invention.—In re Fultz, Case No. 5,156.

(B) NOVELTY.

§ 24. In general.

A discovery which is patentable must be new.—Batten v. Clayton, Case No. 1,105; Bean v. Smallwood, Id. 1,173; Evans v. Eaton, Id. 4,559; In re Kemper, Id. 7,687; McCormick v. Seymour, Id. 8,726, 8,727; Sloat v. Spring, Id. 12,948a; Thompson v. Haight, Id. 13,957.

The novelty required by the patent law is wanting where the superiority is obtained by the application of known means, in a known way, to produce a known result.—Smith v. Nichols, Case No. 13,084.

The question of novelty does not depend upon comparative value.—Blandy v. Griffith, Case No. 1,529.

The amount of labor, study, or thought which the invention cost is of no consequence, if it be really a new and useful invention.—Many v. Sizer, Case No. 9,056.

The question of novelty is to be settled by a comparison of prior machines with the machine patented, rather than the machine in use.—Blake v. Rawson, Case No. 1,499.

§ 25. Use of new means or new mode of construction or operation.

New contrivances applied to old purposes are patentable, but not old contrivances applied to new uses, unless there is a change, consisting of a new and useful combination, a material alteration or modification, or an addition of a new device, in which case the new device must be distinguished in the claim.—Bray v. Hartshorn, Case No. 1,820; Brown v. Hall, Id. 2,008.

The production of an old result by a new process is patentable.—Howe v. Abbott, Case No. 6,766. CONTRA, see Draper v. Hudson, Case No. 4,069.

A pavement composed of stone blocks, of which the ends lying in the line of travel are smooth, and fit closely together, while the sides lying across the street are rough, so that spaces are left between them, in which the horses' feet may take hold, is patentable.—Guidet v. Barber, Case No. 5,857.

A device consisting of perforated tubes set vertically in a grain bin, so as to allow a free circulation of air through the grain, thus preventing overheating, is anticipated by a prior invention of hollow perforated side walls for the same purpose.—Ex parte Marsh, Case No. 9,107.

§ 26. Use of material or device for new purpose or function.

The application of an old machine to a new purpose is not patentable, as there is a want of novelty.—Bean v. Smallwood, Case No. 1,173.

The application of a known thing to a new purpose, as the use of rivets to fasten parts of a shoe instead of sewing, is not patentable.—Hazard v. Green, Case No. 6,277.

The application of the principle of the expansion and contraction of a metallic rod by different degrees of heat, to the regulation of the heat of a stove, is the subject of a patent.—Foote v. Silsby, Case No. 4,916.

A patent for an apparatus in which the alkaline solutions for forming carbonic acid gas were kept separate until required to extinguish a fire, when they could be readily mingled, *held* void, on it appearing that similar apparatus had been employed in soda fountains for the supply of beverages.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

In the manufacture of hoop skirts the use of strands of twisted cord to sustain the hoops *held* a patentable invention, where the result was a better and cheaper article though a similar use of such cords was known in rope ladders and other constructions.—Ex parte Newman, Case No. 10,173; Ex parte Mann, Id. 9,032.

A hand mirror with a handle extension of wire covered with cement forming the handle and back is patentable, as distinguished from a brush, though the handles and backs of the two are made in the same way.—Clark v. Scott, Case No. 2,833.

The application of an old device for the construction of the exterior of iron safes to the construction of the interior of iron jail walls is patentable.—Ex parte Jacobs, Case No. 7,158.

The application to railway carriages of an improvement in axles or bearings which was well known as applied to other carriages, *held* not patentable.—Winans v. Boston & P. R. Co., Case No. 17,858.

The application and use of plaster of Paris to the filling of fireproof safes is patentable.—Rich v. Lippincott, Case No. 11,758.

The substitution of wood for paper in the construction of a box of peculiar pattern does not amount to novelty.—Mannie v. Everett, Case No. 9,039.

The application of a process for preserving perishable foods, to the preserving of green corn cut from the cob, is not patentable.—Jones v. Hodges, Case No. 7,469.

A mere difference in the manner and form of applying an invention, which is the same in principle with one previously used, will not justify a patent.—Delano v. Scott, Case No. 3,753.

A mode of bookkeeping whereby a balance sheet and statement of assets and liabilities are constantly shown on a single sheet, thus obviating reference to the ledger, is not patentable, there being a want of novelty.—Ex parte Dixon, Case No. 3,927.

The previous application of the principle to the regulation of heat, and a suggestion of its

use in stoves, will not invalidate the patent to one who first practically applied it.—Foote v. Silsby, Case No. 4,916.

The inventor has a right to use any means, old or new, in the application of the new property to produce the new and useful result, to the exclusion of all other means.—Foote v. Silsby, Case No. 4,919.

§ 27. New combination.

A combination producing a new and useful result, though of old devices, is patentable.—Booth v. Parks, Case No 1,648; In re Boughton, Id. 1,696; Child v. Boston & F. Iron Works, Id. 2,675; Earle v. Sawyer, Id. 4,247; Evans v. Eaton, Id. 4,559; Francis v. Mellor, Id. 5,039; Hotchkiss v. Greenwood, Id. 6,718; Latta v. Shawk, Id. 8,116; Pennock v. Dialogue, Id. 10,941; Ryan v. Goodwin, Id. 12,186; Sands v. Wardwell, Id. 12,306; Tatham v. Le Roy, Id. 13,761; In re Wagner, Id. 17,038; Watson v. Cunningham, Id. 17,280; Carr v. Rice, Id. 2,440.

A combination, to be patentable, must disclose something new, either in the combination itself or in the result achieved.—Ex parte Woodruff, Case No. 17,985.

The mere location of an old apparatus on a machine is not patentable unless it results in a new combination, producing new and useful results.—Marsh v. Dodge & Stevenson Mfg. Co.. Case No. 9,115.

A metallic paint produced by well-known methods from the refuse left in the manufacture of bichromate of potash is not patentable as a new composition of matter.—In re Maule, Case No. 9,308.

A new combination of movable staples at the corners of a traveling bag frame, with a lock in the middle, is patentable as a fastening device, though each had been in use separately theretofore. — Roemer v. Logowitz. Case No. 11,996.

Where the result of a new organization is considerable and useful, and the new article has superseded the old ones in the market, and can be manufactured with less expense, *held* sufficiently new to support a patent.—Stanley Works v. Sargent, Case No. 13,289.

A new and useful combination of known elements is patentable, though two out of three of them have been combined in a prior machine.—Forbush v. Cook, Case No. 4,931.

The covering of a whip with a tubular knit fabric is patentable, though such fabric and the whip, and the idea of covering the whip, taken separately, were all old.—Strong v. Noble, Case No. 13,543.

A combination of old devices which produces a result different from any of its specific parts, and accomplishes the desired result with a saving of material and force, is patentable.—In re Cole, Case No. 2,974.

§ 28. Production of new or improved result.

A new and useful improvement on an old principle, applied to a new and useful purpose, is patentable.—Evans v. Robinson, Case No. 4,571.

A change by reversing the motion of the beater bars for regulating the feed in a cornsheller, producing a result not before attained, *held* not void for want of novelty.—Adams v. Joliet Mfg. Co., Case No. 56.

On the question of novelty in a reaping machine, the inquiry is whether the prior machine was identical with plaintiff's, or whether the latter involves a new operation, and produces a new effect on the standing or tangled grain. —McCormick v. Seymour, Case No. 8,726.

Duplication of parts producing a new and useful result may be patentable.—Parker v. Hulme, Case No. 10,740.

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.—Wilson Packing Co. v. Clapp, Case No. 17,851.

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.—Wilson Packing Co. v. Clapp, Case No. 17,851.

A claim for caustic alkali incased or enveloped in a tight metallic integument or metallic casing, is good as being a proper subject of letters patent.—Pennsylvania Salt Mfg. Co. v. Gugenheim, Case No. 10,954.

The placing of two or more letters upon spelling blocks arranged systematically *held* not a patentable improvement. — Hill v. Houghton, Case No. 6,493.

§ 29. Designs.

A similarity in parts to parts of other patented designs will not prevent a design being patentable, where the general result is different from anything known or used before.—Perry v. Starrett, Case No. 11,012.

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.—Wooster v. Crane, Case No. 18,036.

§ 30. Evidence of novelty.

Grounds upon which presumptions of novelty of a patented invention may arise.—Hussey v. Whitely, Case No. 6,950.

The patent is prima facie evidence of novelty.—Batten v. Clayton, Case No. 1,105; Parker v. Stiles, Id. 10,749; Pitts v. Hall, Id. 11,192; Poppenhusen v. New York Gutta Percha Comb Co., Id. 11,283; Potter v. Holland, Id. 11,330; Putnam v. Yerrington, Case No. 11,486; Rice v. Heald, Id. 11,752; Rollhaus v. McPherson, Id. 12,026; Sloat v. Spring, Id. 12,948a; Smith v. Woodruff, Id. 13,128a; Sands v. Wardwell, Id. 12,306; Serrell v. Collins, Id. 12,672; Teese v. Phelps, Id. 13,819; Wayne v. Holmes, Id. 17,303.

The presumption of novelty arising from the patent itself may be overcome by showing that the thing was previously known.—Coleman v. Liesor, Case No. 2,984.

The prima facie case of novelty arising from the patent, even if uncorroborated, will prevail over inconsistent and contradictory testimony of defendant.—Crouch v. Speer, Case No. 3,438.

The presumption of originality arising from the grant of a patent only extends back to the time when the application was filed in the patent office.—White v. Allen, Case No. 17,535.

The testimony upon the issue of novelty must be confined to a comparison of the prior machines with that of the patentee.—Judson v. Cope, Case No. 7,565.

The fact that a later device is better than an earlier one, and has driven it out of the market, is prima facie evidence that it is patentable.—Smith v. Woodruff, Case No. 13,128a.

Where a patent is assailed upon the ground of want of novelty, the patentee may show, by sketches and drawings, the date of his inceptive invention; and, where he has exercised reasonable diligence, the protection of the patent will be carried back to that date.—Reeves v. Keystone Bridge Co., Case No. 11,660.

Testimony of eminent chemists and books of reputation in science and art are competent evidence that a coloring matter patented was not previously known.—Stevens v. Felt, Case No. 13,397.

Claim of utility not made by specification is of but little weight on question of novelty.—In re Bishop, Case No. 1,439.

Superiority over prior invention is proof tending to show novelty.—Birdsall v. McDonald, Case No. 1,434.

Patent for combination cannot be supported by evidence of novelty of one of its parts.—Batten v. Clayton, Case No. 1,105.

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.—Yearsley v. Brookfield, Case No. 18,131.

The presumption of novelty arising from the issue of a patent may be rebutted by affidavits on an application for an injunction if the patent is not ancient.—Wickersham v. Singer, Case No. 17,610.

The unopposed oath of the inventor, though not of itself sufficient, is some evidence of the novelty.—In re Fultz, Case No. 5,156.

Decisive evidence that a new mode of operation has been introduced is shown where the practical effect of a new combination is either a new effect, or a materially better effect, or as good an effect, more economically attained.—Forbush v. Cook, Case No. 4,931.

In such case, the amount of thought, time, expense, or experiment required to make the change is not material.—Forbush v. Cook, Case No. 4,931.

The issue, reissue, and extension of a patent, and the fact that it has been sustained in previous suits, create a strong presumption against a defense of want of novelty.—Jordan v. Dobson, Case No. 7,519.

A prior patent of which no notice has been given cannot be considered on the question of novelty.—Odiorne v. Denney, Case No. 10,431.

Mere applications for patents cannot be considered on the question of novelty.—Barker v. Stowe, Case No. 994.

The defense of want of novelty must be made out by satisfactory and preponderating evidence. —Tompkins v. Gage, Case No. 14,088.

A patent can only be overthrown, on the question of novelty, by clear and satisfactory proof. —Herring v. Nelson, Case No. 6,424.

The proof of prior use or previous knowledge, to defeat a patent for want of novelty, must be such as to establish the fact clearly, and beyond a reasonable doubt. Mere preponderance is not sufficient.—Hawes v. Antisdel, Case No. 6,234; Wood v. Cleveland Rolling-Mill Co., Id. 17,941.

Weight and sufficiency of evidence as to the novelty.—Hayden v. Suffolk Mfg. Co., Case No. 6,261.

(C) UTILITY.

§ 31. Nature of patentable utility.

A new device, though inferior to prior devices for the same purpose, is useful and patentable if it be not frivolous nor injurious to public morals or to the well-being of society.—Roemer v. Logowitz, Case No. 11,996; Whitney v. Emmett, Id. 17,585.

The condition as to utility does not require that the thing invented should be the very best article for the use to which it is applied. Practicability is all that is required.—Many v. Jagger, Case No. 9,055.

A discovery which is patentable must be useful.—Thompson v. Haight, Case No. 13,957; Sloat v. Spring, Id. 12,948a; McCormick v. Seymour, Id. 8,726, 8,727; Evans v. Eaton, Id. 4,559; Langdon v. De Groot, Id. 8,059.

"Useful invention" means an invention which may be applied to a beneficial use in society, in contradistinction to one injurious to the moral health or good order of society.—Bedford v. Hunt, Case No. 1,217; Cox v. Griggs, Id. 3,302; Crompton v. Belknap Mills, Id. 3,406, 18,285; Kneass v. Schuylkill Bank, Id. 7,875; Lowell v. Lewis, Id. 8,568; Page v. Ferry, Id. 10,662; Wintermute v. Redington, Id. 17,896.

A machine cannot be pronounced useless or impracticable because it is susceptible of improvement, which will obviate or prevent embarrassments to its most perfect operation.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

The utility of an invention need not be great in order to render it patentable. The degree of utility is not material.—Bedford v. Hunt, Case No. 1,217; Chandler v. Ladd, Id. 2,593; Conover v. Roach, Id. 3,125; Doherty v. Haynes, Id. 3,963; Hoffheins v. Brandt, Id. 6,575; Miller & Peters Mfg. Co. v. Du Brul, Id. 9,597; Tilghman v. Werk, Id. 14,046; Vance v. Campbell, Id. 16,837; Wilbur v. Beecher, Id. 17,634.

There is sufficient utility to support a patent where the invention possesses peculiar advantages, not found in prior devices of a generally similar character. — Simmons v. Blackinton, Case No. 12,866.

That there is a difference in construction which allows the use of an invention claimed in a different way from an invention patented, though seldom required to be so used, does not deprive the claim of the qualities of a useful invention.—Chandler v. Ladd, Case No. 2,593.

§ 32. Capacity to produce result.

A machine possesses patentable merit where, taken as a whole in its construction and operation, it is an advance upon the state of the art to which it appertains, furnishing a better method of performing a useful function than was before available.—Seymour v. Marsh, Case No. 12,687.

A patent of an improvement to prevent loss of life by the explosion of powder mills is properly refused where it appears that it would not have the effect designed.—Ex parte Sanders, Case No. 12,292.

It is not necessary to the patentability of a device that it should have, in itself, apart from any connection with, or application to, other known devices or instrumentalities, capacity to produce practically useful results.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

An invention is patentable if it appears to be capable of reduction to actual practical use, though it has not been so reduced.—Chandler v. Ladd, Case No. 2,593.

The test of usefulness depends upon whether the thing is capable of use for a purpose from which some advantage can be derived; not whether it is not mischievous, or hurtful, or insignificant.—Crouch v. Speer, Case No. 3,438.

A new and useful invention will not be impeached because it does not accomplish all the inventor claimed for it.—Eames v. Cook, Case No. 4,239.

§ 33. Nature of product or result.

The result produced by a process patent must be an improvement in the trade in the commercial sense.—Jones v. Wetherill, Case No. 7,508.

An invention may be good which remedies a theoretical defect, although no injurious effects have been observed in practice.—Aiken v. Dolan, Case No. 110.

Protecting the treadle and pitman of a sewing machine from dust does not involve sufficient utility to sustain a patent.—Ross v. Wolfinger, Case No. 12,081.

It is not material that the original machine was so inferior to other machines used for the same purpose as to have no intrinsic value.—Gray v. James, Case No. 5,719.

A device to form a galvanic battery with the buried portion of a lightning rod, so as to facilitate its discharge of electricity, *held* not sufficiently useful to warrant a patent.—In re Cushman, Case No. 3,513.

The invention of an ornamental mode of putting up thread, which gave it no additional value, but merely made it sell more readily and for a larger price at retail, *held* not useful.—Langdon v. De Groot, Case No. 8,059.

An artificial honey, being a good imitation, a new composition, and not deleterious, must be regarded as "useful and novel," and a patent will not be denied on the ground that it will operate to aid in deceiving the public.—In re Corbin, Case No. 3,224.

Ingredients composing artificial honey *held* not to be considered as mere equivalents of the elements contained in the genuine honey.—In re Corbin, Case No. 3,224.

§ 34. Evidence of utility.

The patent is prima facie evidence of utility.—Batten v. Clayton, Case No. 1,105; Bell v. Daniels, Id. 1,247; Coleman v. Liesor, Id. 2,984; Geier v. Goetinger, Id. 5,299; Parker v. Stiles, Id. 10,749; Pitts v. Hall, Id. 11,192; Poppenhusen v. New York Gutta Percha Comb Co., Id. 11,283; Potter v. Holland, Id. 11,330; Putnam v. Yerrington, Id. 11,486; Rice v. Heald, Id. 11,752; Sands v. Wardwell, Id. 12,306; Serrell v. Collins, Id. 12,672; Sloat v. Spring, Id. 12,948a; Smith v. Woodruff, Id. 13,128a.

Every doubt upon the question of utility should be resolved against an infringer who uses the patented process.—Whitney v. Mowry, Case No. 17,594.

Actual tests are admissible on question of practicability where evidence is conflicting.—Bell v. Hill, Case No. 1,252.

The use by defendants of the patented invention is evidence of its utility.—Adams v. Edwards, Case No. 53; Simpson v. Mad River R. Co., Id. 12,885; Turrill v. Illinois Cent. R. Co., Id. 14,270.

A former license from plaintiff to defendant to use the patented machine is evidence of utility.—Lee v. Blandy, Case No. 8,182.

The fact that subsequent inventions have driven complainant's invention out of use does not tend to prove that it lacks utility.—Cook v. Ernest, Case No. 3,155.

That defendant prefers to use the patented mechanism instead of other mechanism which would accomplish his purpose without infringing is sufficient evidence of utility.—Smith v. Glendale Elastic Fabrics Co., Case No. 13,050.

Acts of the inventor to determine the value, utility, or success of his invention are to be liberally construed if not inconsistent with the clear intention to hold exclusive privilege.—Jennings v. Pierce, Case No. 7,283.

The unopposed oath of the inventor, though not itself sufficient, is some evidence of utility.—In re Fultz, Case No. 5,156.

The presumption of usefulness arising from the use of a patent may be rebutted by affidavits on an application for an injunction if the patent is not ancient.—Wickersham v. Singer, Case No. 17,610.

(D) ANTICIPATION.

§ 35. Prior knowledge or use—Nature and extent in general.

See, also, post, § 58.

The invention should not be known or used as the invention of any other person than the patentee before the application for a patent. Act 1793, § 1.—Morris v. Huntington, Case No. 9,831.

A patent is valid although the invention may have been in use for years anterior to the patent, if the patentee was the original inventor. Act 1793.—Goodyear v. Mathews, Case No. 5,576.

To justify finding of anticipation the jury must find that the alleged anticipation embodied substantially the same organized mechanism operating in the same manner as that described in patents.—Clark Patent Steam & Fire Regulator Co. v. Copeland, Case No. 2,866.

A structure which might have suggested ideas or led to experiments resulting in discovery is not an anticipation.—Parker v. Stiles, Case No. 10,749.

One who exhibits his invention of an improved lock to three lock makers, though he does not put it to any practical use, gives such a knowledge of it to the public as a complete invention as will deprive another person of his right as first patentor.—Coffin v. Ogden, Case No. 2,950.

A combination of a cabinet and sewing machine is not patentable where crude combinations of the shipping box and the machine have been made by manufacturers.—Ross v. Wolfinger, Case No. 12,081.

The construction of a complete machine embodying the idea is not necessary if the discovery has been so manifested before the world that one skilled in the particular art would be able to reproduce it.—Farley v. National Steam-Gauge Co., Case No. 4,648.

Discovery and actual use prior to the discovery by the patentee, however limited the use or knowledge of the discovery, will invalidate the patent.—Rich v. Lippincott, Case No. 11,758.

§ 36. —— Accidental or unintentional production.

A chance operation of a principle unrecognized at the time will not defeat patent to one who discovers principle, and puts it to intelligent use.—Andrews v. Carman, Case No. 371.

The accidental making of an improved article in a single instance, without knowledge on the part of the producer of how it was accomplished, or how to make another like it, is not invention.—Pelton v. Waters, Case No. 10,913.

Prior contrivances which might by a little change have been made into the patented contrivance, though not so intended by the maker, will not defeat the originality of the invention.—Livingston v. Jones, Case No. 8,413.

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.—Woodbury Patent Planing Mach. Co. v. Keith, Case No. 17,970.

§ 37. —— Experiments and incomplete productions.

A prior invention, to anticipate, must have been reduced to practical use; the mere conception of the invention and experiments alone are insufficient.—Albright v. Celluloid Harness-Trimming Co., Case No. 147; Allen v. Blunt, Id. 217; Same v. Hunter, Id. 225; Aultman v. Holley, Id. 656; Bell v. Daniels, Id. 1,247; Cahoon v. Ring, Id. 2,292; Gottfried v. Phillip

Best Brewing Co., Id. 5,633; Hitchcock v. Shoninger Melodeon Co., Id. 6.537; Same v. Tremaine, Id. 6,538, 6,540; Howe v. Underwood, Id. 6,775; Judson v. Bradford, Id. 7,564; La Baw v. Hawkins, Id. 7,960; Latta v. Shawk, Id. 8,116; Many v. Jagger, Id. 9,055; Same v. Sizer, Id. 9,056; Matthews v. Skates, Id. 9,291; Parkhurst v. Kinsman, Id. 10,757; Singer v. Walmsley, Id. 12,900; Union Sugar Refinery v. Matthiesson, Id. 14,399; Webb v. Quintard, Id. 17,324; Winans v. New York & H. R. Co., Id. 17,864; Woodman v. Stimpson, Id. 17,979.

"Reduced to practice" does not import bringing the invention into use, but rather reducing it to such form as to remove it from the condition of mere theory.—Heath v. Hildreth, Case No. 6,309.

The making of a model and drawings from which one skilled in the art would be enabled to carry the invention into actual use is a reducing to practice.—Heath v. Hildreth, Case No. 6,309.

Abandoned experiments, however suggested, producing no practical and useful results, do not affect the validity of a subsequent patent to an original inventor.—United Nickel Co. v. Anthes, Case No. 14,406; Union Paper-Bag Mach. Co. v. Pultz & Walkley Co., Id. 14,392, 14,393; Sloat v. Spring, Id. 12,948a.

Prior use of substantially the patented combination, sufficiently to illustrate and test its complete efficiency, is an anticipation, and not an abandoned experiment, though such use was quickly discontinued.—Shoup v. Henrici, Case No. 12,814.

Prior invention will defeat a subsequent patent, though the invention was abandoned.—Colt v. Massachusetts Arms Co., Case No. 3,030.

Machines which never proved satisfactory on trial, and have been laid aside for years, are properly held to be unsuccessful and abandoned experiments.—Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Case No. 10,713.

A single experimental use of an apparatus in such way as to involve the practice of the patented process, where afterwards destroyed, does not affect the patent of a subsequent original inventor.—Piper v. Brown, Case No. 11,180.

The construction of articles as experiments, never made public, and ultimately abandoned and lost, does not affect the right of a subsequent original inventor of substantially the same article to take out a patent therefor.—Murphy v. Eastham, Case No. 9,949.

A rude machine, constructed for the purpose of experiment, and subsequently broken up, deserted, and abandoned, will not defeat a patent.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633.

A machine never brought into effective operation, and taken apart without intention to reconstruct it, *held* an abandoned experiment.—Gallahue v. Butterfield, Case No. 5,198.

A long course of fruitless experiments to reduce a principle to practice is not an anticipation; but where a prior inventor has been using reasonable diligence to reduce his idea to practical use his right will be preserved, though he may not have attained perfect success.—McCormick v. Howard, Case No. 8,719.

It is immaterial by whom experiments were made where the specimen was made by the patentee.—Pennock v. Dialogue, Case No. 10,941.

It is sufficient anticipation if the prior inventor performed the operation substantially upon the method which the patentee claims, and with the degree of success which demonstrated its usefulness, though not with the degree attained by the patentee.—Waterman v. Thomson, Case No. 17,260.

Recollection of a prior imperfect machine and its product, and preservation of the same, renders patent void for want of novelty.—Aiken v. Dolan, Case No. 110.

Uncertainty as to the principle of a machine, as well as imperfect organization and imperfect power, *held* to prevent it from being an anticipation.—Smith v. Fay, Case No. 13,045.

Proof of an article which might have been made by a machine similar to that for which plaintiff afterwards obtained a patent is not sufficient to invalidate the patent.—Treadwell v. Bladen, Case No. 14,154.

An invention *held* not anticipated by a prior machine, substantially abandoned, and passing out of the memory of those who used it, until recalled by the patented invention.—Hall v. Bird, Case No. 5,926.

The mere fact that a prior inventor ceased to use his invention because he had no occasion to do so will not prevent its being an anticipation.—Waterman v. Thomson, Case No. 17,260.

A trial of a machine in public, which proves the capacity of the machine to effect what its inventor proposed, entitles him to the merit of having produced a complete invention, and cannot be regarded as a mere experiment, entitling a subsequent inventor to a patent for the same invention.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

Two prior patents, which, taken together, would have made up the invention of the patentee, will not anticipate his invention, where neither of them alone shows the complete invention.—Munson v. Gilbert & B. Mfg. Co., Case No. 9,934.

§ 38. —— Unsuccessful devices.
A machine so imperfect as to be altogether unfit to perform the functions of a later machine will not defeat a claim of novelty in the latter.—Knight v. Gavit, Case No. 7,884; Turrill v. Illinois Cent. R. Co., Id. 14,270.

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.—Winans v. Danforth, Case No. 17,859.

§ 39. —— Concealed inventions.
A prior discovery and use of a patented thing by a stranger will destroy the validity of the patent, however limited such use may be, provided it be not intentionally secret and concealed.—Packard v. Gilbert, Case No. 10,651; Passaic Zinc Co. v. Spear, Id. 10,789.

An invention made and used in a private way and abandoned, and not given to the public, to which a subsequent inventor had no access, will not invalidate the patent to him.—Haselden v. Ogden, Case No. 6,190; Hayden v. Suffolk Mfg. Co., Id. 6,261; Hedden v. Eaton, Id. 6,318; Cahoon v. Ring, Id. 2,292; Hartshorn v. Tripp, Id. 6,168.

A written description of a machine, with drawings, not made public, does not anticipate.—Lyman Ventilating & Refrigerator Co. v. Lalor, Case No. 8,632.

A prior discovery and practical use, however limited, will defeat a patent unless such use was secret, and confined to the knowledge of the discoverer alone.—Stephens v. Felt, Case No. 13,368a.

§ 40. —— Different use or purpose.
No machine can be an anticipation which cannot be made to produce, without substantial alteration of its construction, the same results as those of the patented machine.—Rice v. Heald, Case No. 11,752; Zane v. Peck, Id. 18,200.

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.—Willimantic Linen Co. v. Clarke Thread Co., Case No. 17,763; Gottfried v. Phillip Best Brewing Co., Id. 5,633.

A patent which introduces into an existing machine a new element not used before, which produces a new and useful result, is not anticipated by such prior machine.—Rice v. Heald, Case No. 11,752.

A device for raising the cutter bar of a mowing machine, to pass over obstacles, is not anticipated by a devise which holds the cutter bar permanently above the ground.—Ex parte Emery, Case No. 4,444.

A prior machine for discharging seed in horizontal planes will not anticipate a machine for sowing seed in vertical planes, if it required invention to make modifications in the former to adapt it to the latter form.—Cahoon v. Ring, Case No. 2,292.

An hotel register with side margin occupied with printed advertisements and the middle left vacant for names of guests, *held* patentable, and not anticipated by city directories containing marginal advertisements.—Hawes v. Antisdel, Case No. 6,234; Same v. Cook, Id. 6,236; Same v. Washburne, Id. 6,242.

The application of paper embossed in imitation of linen to the making of collars and cuffs is not patentable where paper collars and cuffs and paper embossed in imitation of textile fabrics were previously known.—Union Paper-Collar Co. v. Leland, Case No. 14,394.

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.—Woodward v. Morrison, Case No. 18,008.

A patent for the separation of a pavement into sections, while it is being formed in the place where it is to be used, is not anticipated by a pavement made of blocks of cement made elsewhere, and laid like bricks or flags.—Schillinger v. Gunther, Case No. 12,458.

A carriage step with a corrugated rubber surface is not anticipated by the use of rubber on shoe soles or stirrups, or corrugated iron for carriage steps.—Rubber Step Mfg. Co. v. Metropolitan R. Co., Case No. 12,101.

A device to raise and suspend a finger bar to an angle of 45 degrees is anticipated by one which raises and suspends the bar in a perpendicular position.—Ex parte Allen, Case No. 207b.

Machine for rolling puddler's balls *held* not anticipated by machine for making bullets and milling buttons and coins.—Burden v. Corning, Case No. 2,144.

A simple, economical invention is not anticipated by a complex and expensive one.—Gottfried v. Bartholomae, Case No. 5,632.

The fact that the prior use was not that contemplated by the patentee is immaterial.—Stephens v. Felt, Case No. 13,368a.

The prior machine need not have been actually used for the purpose intended, if capable of such use, to anticipate the invention.—Pitts v. Wemple, Case No. 11,194.

Making steam self-packing by introducing it into small grooves in one of two contiguous surfaces *held* not anticipated by a like device used in air engines.—Poillon v. Schmidt, Case No. 11,241.

A mixture of pulverized argillaceous rock and coal tar, hardening on exposure into a solid slate roof, *held* not anticipated by a prior use of thin mixtures of the same material for paints for sides and roofs of buildings.—Plastic Slate-Roofing Joint-Stock Co. v. Moore, Case No. 11,209.

A device for mending rents in firemen's hose by clamping the torn edges together between metal plates is not anticipated by a similar device for making preserving cans air-tight.—Ex parte Mackay, Case No. 8,836.

§ 41. Evidence of prior knowledge or use —Presumptions and burden of proof.

The patentee has the burden of sustaining by competent and sufficient evidence his claim that his invention antedated his original application.—Johnson v. Root, Case No. 7,409.

§ 42. —— Admissibility.

A foreign patent is not admissible as evidence to anticipate an American patent of a date anterior to the enrollment of the foreign patent.—Willimantic Linen Co. v. Clarke Thread Co., Case No. 17,763.

It may be shown that the devices set forth in the foreign patent offered to show anticipation are inoperative, impracticable, and worthless.—Harwood v. Mill River Woolen Mfg. Co., Case No. 6,187.

An exemplification of a patent afterwards surrendered and canceled may be given in evidence to show that an improvement, subsequently patented, is not original.—Delano v. Scott, Case No. 3,753.

§ 43. —— Weight and sufficiency.

The evidence on the subject of anticipation must be clear and convincing.—Magic Ruffle Co. v. Douglas, Case No. 8,948; Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Id. 10,713.

The court ought to be fully convinced, by a clear preponderance of evidence, before declaring a patent void on the ground of prior knowledge and use.—Gear v. Grosvenor, Case No. 5,291.

Priority will not be adjudged on vague testimony, wanting in precision in respect to essential features.—Cornell v. Hyatt, Case No. 3,237.

An anticipation remote in date must be established by more than a mere preponderance of evidence.—Smith v. Fay, Case No. 13,045.

Testimony of the actual construction, by the assistance of witness, of a perfect device identical with the patented device, and prior thereto, *held* sufficient proof of anticipation, though it did not appear that such device was ever used.—Parker v. Ferguson, Case No. 10,733.

A patent for abdominal supporters for well-formed persons *held* not anticipated on oral testimony of the construction of several supporters "of the same general character" for deformed patients.—Moody v. Taber, Case No. 9,747.

Reliance will not be placed upon the recollection of a witness who describes a machine from memory only, after the lapse of 21 years.—Ely v. Monson & B. Mfg. Co., Case No. 4,431.

On an issue as to anticipation it is a pertinent question why the mechanism described in the prior patent, and known to the whole world, was not applied to the same uses as plaintiff's.—Clark Patent Steam & Fire Regulator Co. v. Copeland, Case No. 2,866.

In determining anticipation and infringement, the machines or their several devices

must be examined in the light of what they do, or what office or function they perform, and how they perform it.—Johnson v. Root, Case No. 7,410.

Testimony that a machine of great merit was anticipated by an old machine, made years ago, will be examined with great care.—Hayden v. Suffolk Mfg. Co., Case No. 6,261.

Positive testimony of witnesses as to the existence of prior mechanism will outweigh merely negative proof.—Sayles v. Chicago & N. W. R. Co., Case No. 12,415.

§ 44. Prior patents.

A patent is not anticipated by prior patents, whose specifications contain nothing to aid a mechanic to construct the patented article.—Cahill v. Brown, Case No. 2,291.

The specification of a prior patent, to anticipate an invention of a compound, must state the relative proportions of the ingredients in terms sufficient to enable one skilled in the art to make and use the compound without experiment of his own.—Jenkins v. Walker, Case No. 7,275.

To establish a diversity between a patented device and another, long known to the trade, it is not sufficient to rely upon a description of the result obtained.—Burrall v. Rumsey, Case No. 2,197; Graham v. Gammon, Id. 5,668.

A British provisional specification of prior date will not invalidate a patent unless sufficiently full to enable a person skilled in the art to construct or practice the invention.—Goff v. Stafford, Case No. 5,504.

A rejected application for a patent is not evidence that the thing described was ever used, nor is such description a patent or a publication, within the statute.—Herring v. Nelson, Case No. 6,424.

A new and patentable use suggested in the specification does not prevent the invention being anticipated by a prior machine of substantially the same construction.—Boston Elastic Fabrics Co. v. East Hampton Rubber-Thread Co., Case No. 1,676.

§ 45. Prior description in printed publication—Requisites of publication.

The publication must have been prior to the time when the invention was actually made.—Judson v. Cope, Case No. 7,565; Bartholomew v. Sawyer, Id. 1,070.

The description of an invention contained in a rejected application has not the effect of a publication.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

A report made to a hose company, describing a hose subsequently patented, is not a public work, within section 6 of the patent law.—Pennock v. Dialogue, Case No. 10,941.

To anticipate an invention by a prior publication, there must be a description of the alleged invention contained in a work of a public character, and intended for the public, which is made accessible to the public by publication before the discovery of the invention by the patentee.—Reeves v. Keystone Bridge Co., Case No. 11,660.

§ 46. —— Sufficiency of description.

A patent is rendered invalid by a prior published description only where that description was sufficient to give to the public a practical knowledge of the invention claimed.—Roberts v. Dickey, Case No. 11,899.

Prior publications which do not so describe the invention that the public may construct and put it in practice without further invention do not destroy the patent.—McMillin v. Barclay, Case No. 8,902.

The patent is not invalidated by statements in an earlier publication, unless such statements are full and definite enough to inform those skilled in the art how to practice the patented invention.—Hays v. Sulsor, Case No. 6,271; Judson v. Cope, Id. 7,565; Parker v. Stiles, Id. 10,749; Stephens v. Salisbury, Id. 13,369; United Nickel Co. v. Manhattan Brass Co., Id. 14,410; Woodman v. Stimpson, Id. 17,979.

A prior description, to invalidate a patent, must be such as to show that the article described in the patent can be certainly arrived at.—Atlantic Giant Powder Co. v. Parker, Case No. 625; Same v. Rand, Id. 626; Cohn v. United States Corset Co., Id. 2,969; Coleman v. Liesor, Id. 2,984; Colgate v. Gold & Stock Tel. Co., Id. 2,991.

An illustration by drawing, unaccompanied with verbal description, is not such a prior description as will defeat a patent.—Reeves v. Keystone Bridge Co., Case No. 11,660.

The invention in a foreign country, or description in a public work, to defeat a patent, must be in principle the same.—Brooks v. Bicknell, Case No. 1,944.

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.—Woven Wire Mattress Co. v. Whittlesey, Case No. 18,058.

A prior description of a part cannot invalidate a patent for the whole.—Westinghouse v. Gardner, etc., Air-Brake Co., Case No. 17,450.

§ 47. —— Operation and effect.

Prior construction or a description in a public work will invalidate a patent.—Brooks v. Jenkins, Case No. 1,953; Judson v. Cope, Id. 7,565.

If the invention has been previously described, it is not material, as against a subsequent inventor, that it was not patented.—Whipple v. Baldwin Mfg. Co., Case No. 17,514.

The description of an invention in a public work will bar the right to a patent, though it has not been put in use.—Ex parte Seeley, Case No. 12,627; Smith v. Higgins, Id. 13,058.

The fact of publication of a manufacturer's catalogue must be proved by evidence independent of the imprint.—Reeves v. Keystone Bridge Co., Case No. 11,660.

§ 48. Priority of anticipation to date of invention.

The patent relates back to the date of the application.—Johnsen v. Fassman, Case No. 7,365; Dane v. Chicago Mfg. Co., Id. 3,557.

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. —Woodman v. Stimpson, Case No. 17,979.

The date of an invention *held* to be when the same was embodied in a complete machine in actual, though private, use.—Knox v. Loweree, Case No. 7,910.

The date of the invention is the date of the discovery of the principle involved, and the attempt to embody that in some machine; not the date of perfecting the instrument.—Colt v. Massachusetts Arms Co., Case No. 3,030.

The protection of the patent will be carried back to the time when the invention was conceived, if the patentee has exercised reasonable diligence in perfecting and adapting it, and applying for a patent.—Draper v. Potomska Mills Corp., Case No. 4,072.

Patent *held*, on the evidence, to date back for 12 years before the application.—MacDonald v. Blackmer, Case No. 8,757.

The date of an invention may be fixed by reference to another circumstance, the date of which latter is sworn to by another witness.—Sherwood v. Sherman, Case No. 12,780.

Verbal declarations and explanations of the inventor are competent evidence to give date to an invention.—Stephens v. Salisbury, Case No. 13,369.

To defeat a patent, the construction by another must have preceded the actual invention of the patentee; not merely the issuance of the patent.—Brodie v. Ophir Silver Min. Co., Case No. 1,919.

The foreign patent, to invalidate a domestic patent, must have been granted before the invention here, not merely before the application for a patent.—Howe v. Morton, Case No. 6,769. But see Forbush v. Cook, Case No. 4,931.

(E) PRIOR PUBLIC USE OR SALE.

§ 49. What constitutes public use.

The inventor must sue out his patent while the invention is yet recent, and before it has come into general use.—Thompson v. Haight, Case No. 13,957; Carr v. Rice, Id. 2,440.

Public use if in good faith for experimental purposes will not avoid the patent.—Birdsall v. McDonald, Case No. 1,434; Bedford v. Hunt, Id. 1,217; Boston Elastic Fabrics Co. v. East Hampton Rubber-Thread Co., Id. 1,675; Henry v. Francestown Soap-Stone Stove Co., Id. 6,-382; Morris v. Huntington, Id. 9,831; Pitts v. Hall, Id. 11,192; Winans v. New York & H. R. Co., Id. 17,864; Same v. Schenectady & T. R. Co., Id. 17,865.

Using a machine with a view to an experiment to test its value is a using, within section 6 of the patent act. 1 Stat. 318.—Watson v. Bladen, Case No. 17,277.

Manufacture and sale by the inventor through several years, and the use of the machine by his allowance over six years more before the application, *held* not an experimental use.—Sisson v. Gilbert, Case No. 12,912.

The use of an invention for mere competitive examination experiment, and test is not a public use.—United States Rifle, etc., Co. v. Whitney Arms Co., Case No. 16,793.

Public use which renders the patent void may be a public use by the inventor himself of a single machine.—McMillin v. Barclay, Case No. 8,902. But see Cleveland v. Towle, Case No. 2,888.

A public exhibition of the invention by a person to whom a half interest has been sold is a public use with the consent of the inventor, within the rule.—Hunt v. Howe, Case No. 6,891.

So is a public use for years by others of machines constructed upon substantially the same principle as that of the applicant, of which he might have had knowledge.—Hunt v. Howe, Case No. 6,891.

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.—Wyeth v. Stone, Case No. 18,107.

A prior public use which will destroy the inventor's right to a patent must appear to have been with his knowledge and consent.—Bartholomew v. Sawyer, Case No. 1,070; Draper v. Wattles, Id. 4,073; Egbert v. Lippmann, Id. 4,306; Russell & Erwin Mfg. Co. v. Mallory, Id. 12,166; Whitney v. Emmett, Id. 17,-585; Wyeth v. Stone, Id. 18,107. CONTRA, see Kelleher v. Darling, Case No. 7,653.

It is the use, and not the intention of an inventor to use an improvement to be found in plaintiff's machine, that invalidates plaintiff's patent under section 6 of the patent act.—Treadwell v. Bladen, Case No. 14,154.

A "public use" means a use in public, as distinguished from a secret use.—Hunt v. Howe, Case No. 6,891; Blackinton v. Douglass, Id. 1,470.

"Public use" means use in a public manner, and not use by the public generally.—Henry v. Providence Tool Co., Case No. 6,384.

The "public and common use" for more than two years prior to application which will invalidate a patent is a common and general use by the community.—American Hide & Leather Splitting & Dressing. Mach. Co. v. American Tool & Mach. Co., Case No. 302.

The use of an article made by the inventor for himself at his place of business is private and not public.—Adams v. Edwards, Case No. 53.

The use of the invention in the inventor's factories, when not for the purpose of experiment, is a public use.—Manning v. Cape Ann Isinglass & Glue Co., Case No. 9,041.

The use of a machine for profit while perfecting the same, where it was concealed from all persons save the workmen in the business, *held* not sufficient to invalidate a patent therefor.—Jennings v. Pierce, Case No. 7,283.

The use of corset springs made for a person who subsequently became the wife of the inventor *held* to be a public use, invalidating the patent.—Egbert v. Lippmann, Case No. 4,306.

A prior use is not necessary to destroy a patent to a subsequent inventor, where the construction of the thing itself shows that it was within the principle of the patented invention.—Sayles v. Chicago & N. W. R. Co., Case No. 12,415.

Mere public use by others before issuance of the patent is not decisive against the inventor here, as in England.—Mellus v. Silsbee, Case No. 9,404.

Section 7 of the act of 1836 does not apply to a public use by or under another independent inventor of the same thing.—Ellithorp v. Robertson, Case No. 4,409.

A machine which, if used after the patent issued, would not be considered an infringement, cannot be invoked to destroy the patent if used before such time.—Stainthorp v. Elkinton, Case No. 13,278.

A mere abstract knowledge by others of the preparation of a compound, or of the properties of its ingredients and their effect upon each other, will not defeat the patent, unless there was an actual prior use.—Stephens v. Felt, Case No. 13,368a.

§ 50. What constitutes public sale.

The sale of a single device, embodying the invention, eight years before applying for a patent, will invalidate the same.—Schneider v. Thill, Case No. 12,470a.

A sale of a perfected machine on trial, with the right to return or keep it, where made more than two years before the application, will bar the right to a patent.—Seeley v. Bean, Case No. 12,629.

Act 1839, § 7, providing that a patent shall be invalid where sales were made more than two years before application therefor, does not refer to sales made by persons claiming prior inventions.—Carroll v. Gambrill, Case No. 2,-454.

The public sale of an invention, without the knowledge or consent of the inventor, after the application for a patent, and before the grant, will not deprive him of the right to a patent.—R.an v. Goodwin, Case No. 12,186.

Quære, whether a patent is defeated by the prior sale of an article which is not the whole

of the patented invention.—Draper v. Wattles, Case No. 4,073.

An agreement for the transfer of the invention, for the joint benefit of the inventors and those who will advance money for the manufacture or use of the machines invented, not carried into execution, and unaccompanied by any public use of the machine, will not affect the validity of the patent.—Elm City Co. v. Wooster, Case No. 4,415.

Where the application is returned for informality, but is followed up with reasonable diligence, the right of the patentee will not be defeated by a sale of machine, after the application, and before the patent is granted.—Sparkman v. Higgins, Case No. 13,208.

§ 51. Time, priority, and continuance of use or sale.

One prior use before plaintiff's invention will defeat his patent.—Sayles v. Chicago & N. W. R. Co., Case No. 12,415.

Neglect to apply for a patent within two years after a sale or public use is fatal.—Blandy v. Griffith, Case No. 1,529; Lovering v. Dutcher, Id. 8,553; Pitts v. Hall, Id. 11,192; Toppan v. National Bank-Note Co., Id. 14,100; Rugg v. Haines, Id. 12,114.

The use in public for more than two years of a machine substantially the same as that afterwards patented cannot be alleged to be experimental.—Sanders v. Logan, Case No. 12,295; Sicles v. Pacific Mail S. S. Co., Id. 12,842.

Under the act of March 3, 1839, a patentee may make, vend, and use his invention within two entire years before applying for a patent without forfeiting his right.—McCormick v. Seymour, Case No. 8,726.

A use or sale which has not exceeded two years before the application for a patent will not invalidate it.—Root v. Ball, Case No. 12,035.

Public use and sale, with the inventor's consent, for more than two years before application, make the patent invalid, whatever hindrances or misfortunes delayed the application.—Sisson v. Gilbert, Case No. 12,912.

A willful omission to apply for a patent for more than two years after knowledge that another is publicly using and claiming the invention as his own bars the right to a patent.—Justice v. Jones, Case No. 7,588.

Where the applications were not for the same invention, and the invention was in public use for more than two years before the second application, the patent is void.—Rich v. Lippincott, Case No. 11,758.

The continuity of an application is not necessarily destroyed by the withdrawal of the first application and the filing of a second one so as to render the patent void because of a public use or sale more than two years before the filing of the second application.—Howe v. Newton, Case No. 6,771.

Use of an invention by public for 11 months will not bar right to patent.—Babcock v. Degener, Case No. 698.

A new, original patent cannot be issued eight years after the invention has been in public use.—Child v. Adams, Case No. 2,673.

In the case of successive applications, public use or sale must antedate the first application by two years to defeat inventor's right.—Adams v. Edwards, Case No. 53.

The date from which the time of prior use or sale is to be reckoned is the date of the earliest application, where the same was rejected improperly.—Henry v. Francestown Soap-Stone Stove Co., Case No. 6,382.

The two-years public use must be dated back from original application, and not from amended specification, 26 months later, where there is no evidence of abandonment.—Bell v. Daniels, Case No. 1,247.

The invention may be fairly held to date back to the time when the inventor made models, and entered into a contract for its manufacture.—Comstock v. Sandusky Seat Co., Case No. 3,082.

§ 52. Use or sale in foreign country.

A prior use alone, in a foreign country, will not avoid the patent.—Bartholomew v. Sawyer, Case No. 1,070.

Evidence of mere use in a foreign country prior to plaintiff's application is not alone sufficient to justify refusal of a patent. Act 1836, § 15.—Ex parte Fry, Case No. 5,143.

Prior use in a foreign land does not invalidate the patent, where the patentee supposed himself to be the first inventor, unless the prior invention has been patented or described in some printed public work.—Hays v. Sulsor, Case No. 6,271; Coleman v. Liesor, Id. 2,984; Roemer v. Logowitz, Id. 11,996.

The independent invention and introduction into public use in this country of a machine previously patented in a foreign country will defeat an application by a second inventor of the same thing, under the act of 1836, as modified by the act of 1839.—Lovering v. Dutcher, Case No. 8,553.

§ 53. Evidence of use or sale.

The burden of proof is on defendant alleging prior public use.—Allen v. Blunt, Case No. 217.

After four years from the grant of a patent, the invention will be presumed to have been carried into public use as against the first inventor then applying for a patent.—Ellithorp v. Robertson, Case No. 4,409.

The presumption is in favor of the patent, where it is doubtful whether there was public use for more than two years prior to the application.—Brown v. Whittemore, Case No. 2,033.

A doubt raised by the evidence as to prior public use or sale for more than two years should be resolved against the defendant.—Comstock v. Sandusky Seat Co., Case No. 3,082.

To invalidate a patent it is not sufficient to show use prior to plaintiff's application, but it should be shown to have been prior to his discovery.—Treadwell v. Bladen, Case No. 14,154.

Proof that at a particular time the inventor made drawings of his invention is sufficient evidence of reduction to practice.—Stephenson v. Hoyt, Case No. 13,373.

The fact that a patent has been issued by the United States for an invention does not, of itself, prove the introduction of the invention into public and common use in the United States.—Weston v. White, Case No. 17,458.

Defendant should clearly show that the use relied on to invalidate the patent was not merely experimental.—Pitts v. Hall, Case No. 11,192.

The defense under the statute is only made out by proof that the invention was on sale or in public use, with the consent and allowance of the inventor, for a period exceeding two years before his application.—Jones v. Sewall, Case No. 7,495.

(F) ABANDONMENT.

§ 54. Time of abandonment.

The inventor may abandon his invention, or dedicate it to the public, at any time before procuring a patent.—Pitts v. Hall, Case No. 11,192.

Abandonment may take place within the two years prior to the application for a patent.—Sanders v. Logan, Case No. 12,295.

An invention may be abandoned after the patent has issued; and an abandonment may be

inferred from the neglect to utilize the same, or to assert claims against others who are using it. —Ransom v. New York, Case No. 11,573.

§ 55. What constitutes.

A public disclosure of the invention, and permission of free use by others without objection or assertion of claim to the invention, is an abandonment.—Pennock v. Dialogue, Case No. 10,941.

It is not necessary that the disclosure of the invention be such as to enable the public to use it after the patent has expired.—Whitney v. Emmett, Case No. 17,585.

Mere use or sale within two years of applying for a patent will not work an abandonment without an act showing an intention to abandon the invention to the public.—Pitts v. Hall, Case No. 11,192.

The fact of abandonment must result from the intention of the patentee, expressly declared or clearly indicated by his acts.—Johnsen v. Fassman, Case No. 7,365; Sayles v. Chicago & N. W. R. Co., Id. 12,414; Pitts v. Hall, Id. 11,192.

But the inventor and those holding under him are estopped by his declarations of intention from asserting any right against one acting on the faith thereof.—Pitts v. Hall, Case No. 11,-192.

The publication of an invention on discovery by a defective specification is not an abandonment.—Goodyear v. Day, Case No. 5,566.

The sale of a peculiar manufacture, which does not disclose the process, is not an abandonment of the discovery.—Goodyear v. Day, Case No. 5,566.

Putting a number of cooking stoves out for trial in several families, for experiment and improvement, *held* not an abandonment.—Stanley v. Hewitt, Case No. 13,285.

An abandonment may be found from the fact that an inventor laid the parts of his machine aside, and did nothing more for four years to perfect his invention.—Johnson v. Root, Cases Nos. 7,409, 7,410.

An inventor who knowingly suffers his invention to be in public use for years without objection dedicates the same to the public.—Mellus v. Silsbee, Case No. 9,404.

Merely withholding an invention from the public does not amount to an abandonment.—Babcock v. Degener, Case No. 698; Russell & Erwin Mfg. Co. v. Mallory, Id. 12,166; Wood v. Cleveland Rolling Mill Co., Case No. 17,941; Same v. Union Iron-Works Co., Id.

Unless another in the meantime make the invention and secure a patent therefor.—Kelleher v. Darling, Case No. 7,653; Berg v. Thistle, Id. 1,337; Spear v. Belson, Id. 13,223.

Concealment of invention, because of information that another had anticipated it, will not forfeit right to patent.—Ayling v. Hull, Case No. 686.

A delay of over four years in filing an application, during which time another has invented the same thing and applied for a patent, will bar the first inventor's right.—Savary v. Lauth, Case No. 12,389.

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.—Wilton v. Railroad Co., Case No. 17,856.

Delay of four years after filing caveat will not defeat right where constant effort was made to perfect invention.—Appleton v. Chambers, Case No. 497a.

An abandonment cannot be predicated upon two years' delay in filing the application, due wholly to the neglect of the patentee's solicitors, of which he was ignorant.—Birdsall v. McDonald, Case No. 1,434.

A patent will be *held* invalid where there was unreasonable delay in making application, after another inventor had made public the invention. —Ransom v. New York, Case No. 11,573.

A delay of over five years in applying for a patent without any excuse except financial inability will bar the right, where a patent has in the meantime issued to another independent inventor, with the applicant's knowledge.—Spear v. Belson, Case No. 13,223.

The inventor who first perfected the invention did not apply for a patent until 14 months later, and nearly a year after another had applied for a patent, and after a patent had been issued to him. *Held*, that he was not entitled to a patent where no excuse was given for his delay.—Walker v. Forbes, Case No. 17,069.

A delay of four years before applying for a patent *held* not an abandonment, where the inventor was in straitened circumstances, and there was no acquiescence in the acts of intervening inventors.—Sprague v. Adriance, Case No. 13,248.

Loss of means by one of two joints 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.—Yearsley v. Brookfield, Case No. 18,131.

Poverty is not to be accepted as an excuse for delay when it appears that during the period of the delay the inventor was able to find money and friends to prosecute other applications for patents both in this country and England, and even to go to England himself to urge his claims.—Wickersham v. Singer, Case No. 17,-610.

A delay for three years after an invention was perfected *held* not an abandonment where the inventor, during such delay, was in the employ of a person who held a prior and controlling patent, which prevented the use of his improvement.—White v. Allen, Case No. 17,535.

An inventor is not prejudiced by a delay in applying for a patent, where he is diligently experimenting as to other forms of the same invention, and machinery to perfect it.—Mix v. Perkins, Case No. 9,677; Hill v. Dunklee, Id. 6,489; Jones v. Sewall, Id. 7,495.

Delay by an inventor residing in the Confederate States *held* not an abandonment, where the invention was so guarded that no knowledge of it came to the public.—Knox v. Loweree, Case No. 7,910.

Eleven years' delay after making complete drawings before filing an application, where the invention had gone into use in the meantime under patent to a later discoverer, *held* an abandonment, where the only excuse was a mistaken belief that the drawings had been burned.—Ellithorp v. Robertson, Cases Nos. 4,409, 4,410.

A delay of three years after showing forth a complete invention on paper *held* not to bar a patent, where no patent had been previously granted, and the case involved only conflicting applications.—Perry v. Cornell, Case No. 11,002.

A delay of not quite two years from the date of perfecting a design before applying for a patent is not such laches as will defeat the inventor's right, when he has not used or sold the invention for profit, or secreted it.—Gibbs v. Ellithorp, Case No. 5,383.

The first inventor's delay to apply for a patent for eight years after the second inventor has secured one bars him from thereafter mak-

ing application.—Marcy v. Trotter, Case No. 9,063.

A disuse after the patent is granted is not an abandonment of the rights of the patentee.—Gray v. James, Case No. 5,718.

Involuntary delays in prosecuting application will not work a forfeiture.—Adams v. Jones, Case No. 57; Dental Vulcanite Co. v. Wetherbee, Id. 3,810.

An alien patentee need not take active measures for putting his invention in the market within 18 months after the grant. It is sufficient if he is ready at all times to sell at a fair price when a reasonable offer is made. Act 1836, § 15.—Tatham v. Le Roy, Case No. 13,-761; Same v. Lowber, Id. 13,764.

An applicant cannot be prejudiced by failure of the officers of the patent office to give information of his application to a person who makes inquiry there in regard to it.—Sparkman v. Higgins, Case No. 13,208.

See, also, post, § 80.

§ 56. Operation and effect.

An abandonment or dedication once made cannot be recalled.—Ransom v. New York, Case No. 11,573; Batten v. Taggert, Id. 1,107.

The abandonment of a perfected invention after its merit has been demonstrated by trial will inure to the benefit of the public, and not to that of a subsequent inventor.—Pickering v. McCullough, Case No. 11,121; Sayles v. Chicago & N. W. R. Co., Id. 12,414; Shoup v. Henrici, Id. 12,814.

If an inventor make a gift of his invention to the public, and suffer it to go into general use, he cannot afterwards resume the invention, and hold a patent.—Whittemore v. Cutter, Case No. 17,601.

The abandonment of the right to a patent by the original inventor does not entitle another to a patent therefor.—Evans v. Eaton, Case No. 4,559; Same v. Hettick, Id. 4,562.

§ 57. Evidence of abandonment.

The issue of letters patent is prima facie evidence that there has been no abandonment.—Johnsen v. Fassman, Case No. 7,365.

A reissue is prima facie evidence that there has been no abandonment.—Hoffheins v. Brandt, Case No. 6,575.

A presumption of abandonment will not obtain from the lapse of six years after putting down a pavement before applying for a patent, in the face of a manifest contrary intent.—American Nicholson Pavement Co. v. Elizabeth, Case No. 311.

Experimental use of an invention made in public from necessity is not a public use, and is no evidence of abandonment.—Locomotive Engine Safety Truck Co. v. Pennsylvania R. Co., Case No. 8,453.

The imparting to others by the inventor of imperfect and crude descriptions, at a time when he did not have a complete conception of the invention, is no evidence of an intention to abandon.—Locomotive Engine Safety Truck Co. v. Pennsylvania R. Co., Case No. 8,453.

Use of the invention without the inventor's consent during delays in the patent office is no evidence of abandonment.—Jones v. Sewall, Case No. 7,495.

An admission as to time of discovery, made deliberately to intending purchaser, is admissible against inventor to prove laches.—Berg v. Thistle, Case No. 1,337.

On the question of abandonment the patentee is entitled to give evidence of the filing of his drawings, or of any other act done by him in assertion of his right.—Emerson v. Hogg, Case No. 4,440.

Proof of knowledge of and acquiescence in the use by others, to show an abandonment, must be beyond all reasonable doubt.—Jones v. Sewall, Case No. 7,495.

Undisputed acts of abandonment are entitled to more weight than testimony of an intent not to abandon.—Bevin v. East Hampton Bell Co., Case No. 1,379.

Facts *held* not to constitute a dedication of a patented product to a patented use.—Goodyear v. Blake, Case No. 5,560.

Application is conclusive evidence of intent not to abandon invention.—Adams v. Jones, Case No. 57.

Under the act of 1839 abandonment is proved only by public use for the required time.—Andrews v. Carman, Case No. 371; Same v. Wright, Id. 382.

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.—Wyeth v. Stone, Case No. 18,107.

During two years before application made, the inventor may publicly use and sell his invention without any presumption of abandonment.—McMillin v. Barclay, Case No. 8,902.

The mere fact of making, selling, or putting in public use, within two years prior to application, does not show an abandonment. There must be something more, indicating an intention to devote the invention to the public.—McCormick v. Seymour, Case No. 8,726.

III. PERSONS ENTITLED TO PATENTS.

§ 58. Original inventors and priority between inventors.

The patentee must not only be an original inventor, but the first inventor.—Hayden v. Suffolk Mfg. Co., Case No. 6,261; Lowell v. Lewis, Id. 8,568; Reed v. Cutter, Id. 11,645; Roemer v. Simon, Id. 11,997; Spain v. Gamble, Id. 13,199.

First inventor is the original discoverer first perfecting and adapting invention to actual use.—Albright v. Celluloid Harness-Trimming Co., Case No. 147; Cox v. Griggs, Id. 3,302.

Suggestions made to a person who has conceived the idea of his invention, while he is in the process of developing it, will not affect his right to a patent.—Spaulding v. Tucker, Case No. 13,220.

Communications to the patentee by one who has a distinct conception of the invention, so as to enable the patentee to construct the thing itself, destroys its originality.—Alden v. Dewey, Case No. 153; Judson v. Moore, Id. 7,569; Pitts v. Hall, Id. 11,192; Thomas v. Weeks, Id. 13,914.

Suggestions made by a mechanic who constructed the first machine, as to its forms or proportions, though incorporated in the specification of the patent, will not invalidate it.—Pennock v. Dialogue, Case No. 10,941; Watson v. Bladen, Id. 17,277.

Where there was no product of the machine invented until after the maker had seen similar machines of another for the same purpose, he is not the prior inventor.—Carter v. Carter, Case No. 2,475.

The first discoverer of a mode of combining elements and means previously known into one organized machine, to accomplish the end desired, is the original inventor of such machine.—Sloat v. Spring, Case No. 12,948a.

The person who first makes known the principle of the invention, so that another would be able, from his description, to put it in use, is the first inventor, though he did not put it into practical operation.—Hill v. Dunklee, Case No. 6,489.

An inventor who described his invention to a workman, so as to enable the latter to construct it, will be entitled to a patent, if due diligence is used, as against a subsequent inventor, who first perfected his machine and obtained a patent.—Dietz v. Wade, Case No. 3,903.

The first inventor need not have constructed a practical machine, though a subsequent inventor has done so; nor must he have reduced the invention to practice, otherwise than by filing specifications and drawings and furnishing a model.—New England Screw Co. v. Sloan, Case No. 10,158; Perry v. Cornell, Id. 11,002.

Where an invention is voluntarily broken up and laid aside, a subsequent independent inventor who reduces the same to practice, and applies for and takes out his patent, introduces the invention into public use, and must be regarded as the original and first inventor.—White v. Allen, Case No. 17,535; Union Paper-Bag Mach. Co. v. Pultz & Walkley Co., Id. 14,392; Packard v. Gilbert, Id. 10,651. But see Rich v. Lippincott, Case No. 11,758.

Priority of conception, followed by a prior patent, gives priority of right.—Sayles v. Hapgood, Case No. 12,420.

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.—Woodcock v. Parker, Case No. 17,971; Nichols v. Pearce, Id. 10,246.

One first conceiving an invention, and using reasonable diligence to perfect it, and doing so in fact, is entitled to a patent over a subsequent original inventor who first reduces it to actual use.—Bartholomew v. Sawyer, Case No. 1,070; Chandler v. Ladd, Id. 2,593; Davidson v. Lewis, Id. 3,606; Heath v. Hildreth, Id. 6,309; Hicks v. Shaver, Id. 6,462; Marshall v. Mee, Id. 9,129; Mix v. Perkins, Id. 9,677; Phelps v. Brown, Id. 11,072; Reed v. Cutter, Id. 11,645; Reeves v. Keystone Bridge Co., Id. 11,660; White v. Allen, Id. 17,535; Stearns v. Davis, Id. 13,338. But see Goodyear v. Day, Case No. 5,569; Ransom v. New York, Id. 11,573; Reed v. Cutter, Id. 11,645; Reeves v. Keystone Bridge Co., Id. 11,660; Smith v. Prior, Id. 13,095; Washburn v. Gould, Id. 17,214; Winans v. New York & H. R. Co., Id. 17,864.

The person who has made a model of the invention before another inventor has made a model or drawing, though he has previously described it to others, first perfects the invention. —Walker v. Forbes, Case No. 17,069.

But the mere making of a model by a person does not constitute invention, as against a patent granted another for the same thing.—Stilwell & Bierce Mfg. Co. v. Cincinnati Gaslight & Coke Co., Case No. 13,453.

The want of knowledge of the utility of an invention by the first discoverer will not prevent his being entitled to a patent as against a subsequent inventor.—Farley v. National Steam-Gauge Co., Case No. 4,648.

The fact that a subsequent equivalent invention makes a more durable product will not affect the question of priority.—Mix v. Perkins, Case No. 9,677.

One who made an invention in 1846 and filed his application in 1851, and was attempting to perfect the machine in the meantime, *held* entitled to a patent, as against another who invented the same thing in 1849 and applied for a patent in 1852.—New England Screw Co. v. Sloan, Case No. 10,158.

The fact that the patentee takes into partnership the assignees of another, who also claims to be the original inventor, instead of litigating the question of priority, is not an admission of priority, if the arrangement is induced by fraud.—Sloat v. Spring, Case No. 12,948a.

As between an inventor, unsuccessfully experimenting with the invention, and one who, with knowledge thereof, perfects the process and operation, the former is the prior inventor. —Burrows v. Wetherill, Case No. 2,208.

If two persons are jointly experimenting and equally meritorious, a doubt should be solved in favor of him who first obtains a patent.—Cox v. Griggs, Case No. 3,302.

The patentee cannot carry back his invention to a period before the attempted restoration of a machine which four years before he had taken apart as incomplete, where in the meantime another has perfected and patented the same machine, and placed it on the market.—Johnson v. Root, Case No. 7,409.

Priority of invention between two patents, upon both of which the suit is brought, is not material, unless defendant shows that a third person claims to have made the invention between the date of the two patents.—Richardson v. Noyes, Case No. 11,792.

See, also, ante, §§ 35–48.

§ 59. Evidence as to originality and priority.

The patent is prima facie evidence that the patentee was the first inventor.—Brodie v. Ophir Silver Min. Co., Case No. 1,919; Brooks v. Jenkins, Id. 1,953; Doherty v. Haynes, Id. 3,963; Fisk v. Church, Id. 4,826; Goodyear Dental Vulcanite Co. v. Gardiner, Id. 5,591; Haskell v. Shoe Machinery Mfg. Co., Id. 6,194; Johnson v. Root, Id. 7,409, 7,410; Knight v. Baltimore & O. R. Co., Id. 7,882; McMillin v. Barclay, Id. 8,902; Parker v. Remhoff, Id. 10,747; Pitts v. Hall, Id. 11,192; Poppenhusen v. New York Gutta Percha Comb Co., Id. 11,283; Potter v. Holland, Id. 11,330; Putnam v. Yerrington, Id. 11,486; Rice v. Heald, Id. 11,752; Sands v. Wardwell, Id. 12,306; Serrell v. Collins, Id. 12,672; Sloat v. Spring, Id. 12,948a; Smith v. Woodruff, Id. 13,128a; Washburn v. Gould, Id. 17,214.

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.—Wing v. Richardson, Case No. 17,869; Union Sugar Refinery v. Matthiesson, Id. 14,399.

The testimony of a witness that he made and peddled the patented article six months before the date of plaintiff's application *held* sufficient to overcome the prima facie evidence of the patent that plaintiff was the first inventor.—Riley v. Daniels, Case No. 11,837.

When a defendant has shown prior knowledge and use, the burden of showing prior invention is on the plaintiff.—Webster Loom Co. v. Higgins, Case No. 17,342.

Where a foreign patent, granted before the application of the American patentee, is relied upon to destroy the novelty of the American patent, the patentee may prove that his invention was made prior to the granting of the foreign patent.—White v. Allen, Case No. 17,535.

The prima facie force of a patent as to priority of invention is absolutely destroyed by evidence of priority of invention by another.—Barstow v. Swan, Case No. 1,065.

The extension of a patent resisted on the ground of want of novelty strengthens the pre-

sumption that the patentee was the original inventor.—Cook v. Ernest, Case No. 3,155.

Complainant is not required, in addition to his patent, to present, in the first instance, full evidence that he is the first inventor. Very slight evidence thereof is sufficient to put defendant on his justification.—Stevens v. Felt, Case No. 13,397.

The applicant's oath, at the time of the application, that he believed that he was the first inventor, is sufficient evidence of that fact, where uncontradicted.—Bartholomew v. Sawyer, Case No. 1,070.

Sufficiency of evidence to show priority of invention.—Beach v. Tucker, Case No. 1,153.

The declarations and conversations of a person made at the time of exhibiting and explaining his invention are a part of the res gestæ, and admissible to prove priority of invention.—Gibbs v. Johnson, Case No. 5,384.

§ 60. Joint inventors.
One who reduces to practice theory of another by his help is not the sole inventor.—Arnold v. Bishop, Case No. 552.

To overthrow the presumption of joint invention raised by the filing of a joint application upon a joint oath, the evidence must be clear and unequivocal.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633.

Joint invention is the result of mutual contributions of the parties.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633.

A person employed to make experiments under a contract by which the employer is to be treated as inventor, although conducting such experiments to a successful issue, *held* neither a sole nor a joint inventor.—Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.

Where the inventor of a machine and the inventor of an improvement agree to mutually use the same, the patent must issue in the name of both; and, where issued in the name of one only, there can be no recovery for infringement.—Reutgen v. Kanowrs, Case No. 11,-710.

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 the legal effect thereof is to vest in each of them a joint interest in both improvements.—Wilson v. Singer, Case No. 17,835.

A patent issued to two for a thing which is the sole invention of one is invalid.—Ransom v. New York, Case No. 11,573.

A joint patent cannot be obtained for a sole invention of one.—Barrett v. Hall, Case No. 1,047.

§ 61. Employers and workmen.
Improvements introduced by workmen without patentee's knowledge cannot be appropriated by him.—Berdan Fire-Arms Mfg. Co. v. Remington, Case No. 1,336.

The employer is the inventor where he conceives the result, and employs others to carry the conception out, even though the latter use inventive skill in the details.—Wellman v. Blood, Case No. 17,385; Same v. Woodman, Id.

An employer who conceives the general idea of a machine, but uses the manual dexterity or even the inventive skill of his servant in carrying out the mechanical details, is entitled to a patent, as against the servant.—King v. Gedney, Case No. 7,795.

§ 62. Public officers and employés.
The commissioner of patents is not disqualified from obtaining a patent after expiration of his term of office, for an invention made during such term.—Foote v. Frost, Case No. 4,910.

§ 63. Assignees of inventors.
A patent taken out by assignees of an alien and nonresident inventor is invalid.—Tatham v. Loring, Case No. 13,763.

§ 64. Personal representatives of deceased inventors.
On the death of the inventor, the patent may be issued to his executor as such, though it is not stated to be in trust for the devisees in the will. Act July 4, 1836, § 10.—Stimpson v. Rogers, Case No. 13,457.

§ 65. Aliens.
A naturalized subject of Great Britain, who subsequently takes up his residence in Canada, is entitled to take out letters patent there.—Stainthorp v. Humiston, Case No. 13,281.

The oath of citizenship and other duties required by Act July 4, 1836, § 6, are conditions precedent to the authority to issue a patent.—Child v. Adams, Case No. 2,673.

A foreign patentee may at any time during the life of the foreign patent obtain a patent in this country, provided the invention shall not have been introduced into public use in this country for more than two years prior to the application. Act 1870.—Henry v. Providence Tool Co., Case No. 6,384.

IV. APPLICATION AND PROCEEDINGS THEREON.

§ 66. Description and specifications—Sufficiency in general.

See, also, post, § 92.

The thing invented must be so described as to be distinguished and known.—Brooks v. Jenkins, Case No. 1,953.

The patent is invalid where the invention is not described with reasonable certainty and precision.—Parker v. Stiles, Case No. 10,749.

Technical defect in description will not defeat patent.—Adams v. Joliet Mfg. Co., Case No. 56.

The title or description given to the invention in the patent is not expected to be specific, but only to indicate the nature and design of the invention.—Sickles v. Gloucester Mfg. Co., Case No. 12,841.

A mere error of judgment in describing the invention is not sufficient to invalidate the patent. Whitney v. Carter, Case No. 17,583.

Mistake in expression shown to be such by other parts of the specification will not vitiate a patent.—Kneass v. Schuylkill Bank, Case No. 7,875.

A specification, alleged to be defective in not pointing out the means of operation, must be read in view of the preceding state of the art immediately connected with the particular subject-matter.—Tompkins v. Gage, Case No. 14,-088.

Failure of a patentee to mention in his specification an indispensable addition renders his title bad.—Carr v. Rice, Case No. 2,440.

Incompleteness of prior application is no evidence of a change in patentable features, where it appears that the machines are identical.—Ex parte Hayden, Case No. 6,256.

The concluding part of the application where the applicant sums up what he claims as new will control. The court looks at the other parts only in case of doubt. — Whipple v. Baldwin Mfg. Co., Case No. 17,514.

If the description clearly indicates the method of the use of the thing claimed, and its relations to the other mechanical elements operating with it, a claim for a combination of part of them is good, although it may not embrace some that are essential to the operative efficiency of the combination.—Parham v. Amer-

ican Buttonhole, Overseaming & Sewing Mach. Co., Case No. 10,713.

A patent is not invalidated by the fact that the invention claimed in it is described, but not claimed, in another patent granted pending the application.—Singer v. Braunsdorf, Case No. 12,-897.

Where the specification of a patent for a product fully describes the machine, and the process by which the product is produced, such patent may be good, even though the same specification, annexed to a patent for the machine, may not fully secure the patentee against the use of his actual invention because of a defect in the claim of the latter patent.—Waterbury Brass Co. v. Miller, Case No. 17,254.

The invention should be so clearly described as to enable the public to put it in use.—Sullivan v. Redfield, Case No. 13,597.

Certainty and definiteness in the description is required that the public may know precisely what the invention is, and, after the expiration of the patent, may have an unerring guide to the construction of the patented invention.—Wayne v. Holmes, Case No. 17,303.

The specifications will be held sufficiently definite if, when taken in connection with the model and drawings filed, the invention has been communicated to the public, so that a skillful workman would be able to carry it into execution.—Allen v. Hunter, Case No. 225; American Hide & Leather Splitting & Dressing Mach. Co. v. American Tool & Machine Co., Id. 302; Brooks v. Bicknell, Id. 1,944; Calkins v. Bertrand, Id. 2,317; Dorsey Harvester Revolving-Rake Co. v. Marsh, Id. 4,014; Forbes v. Barstow Stove Co., Id. 4,923; Judson v. Moore, Id. 7,569; St. Louis Stamping Co. v. Quinby, Id. 12,240; Teese v. Phelps, Id. 13,819; Stephens v. Salisbury, Id. 13,369; Vogler v. Semple, Id. 16,987; In re Walsh, Id. 17,112.

If competent mechanics, skilled in the business, testify there would be no difficulty in constructing the machine from the specifications and drawing, the assumption of vagueness and uncertainty in the description is repelled unless it clearly arises from the language used by the patentee.—Wayne v. Holmes, Case No. 17,303.

A description so clear and full as to enable one skilled in the art to construct the machine is required—First, that the public may avail themselves of it at the expiration of the patent; and, second, that they may not ignorantly infringe it.—Mabie v. Haskell, Case No. 8,653.

It is not enough that some very skillful artisan is able, from the specifications and drawings, to make and use the machine; they must be such as to enable persons of ordinary skill in the art to make and use the machine.—Lippincott v. Kelly, Case No. 8,381; Stanley v. Whipple, Id. 13,286.

If the patented machine can be made from the specifications and drawings without the model, the patent is not defective.—Grant & Townsend v. ———, Case No. 5,701.

Mistake in describing the action of some part will not invalidate the patent if, from the whole specifications and drawings, one skilled in the art could still construct the machine.—Singer v. Walmsley, Case No. 12,900.

A claim is properly rejected when it does not set forth particularly and specifically the points of novelty relied on to distinguish the machine from prior ones.—In re Davis, Case No. 3,617.

The applicant need not point out all possible contrivances by which the principle of his invention can be applied.—Blanchard v. Eldridge, Case No. 1,509.

The specification must fully disclose the secret, and give the best method known to the inventor.—Page v. Ferry, Case No. 10,662.

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.—Winans v. New York & E. R. Co., Case No. 17,863.

A claim for an effect or function, in the abstract, cannot be sustained. The means by which the effect is produced, or the function performed, must be specified.—Wheeler v. Simpson, Case No. 17,500; Hoe v. Same, Id.

It need not be stated whether certain parts of the machine should be made of wood or metal.—Brooks v. Bicknell, Case No. 1,944.

The essential features of the invention must be shown in the specification; their appearance in the patent office model is not sufficient.—Barry v. Gugenheim, Case No. 1,061.

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.—Wyeth v. Stone, Case No. 18,-107.

The specifications need not describe what is in common use and well known.—Kneass v. Schuylkill Bank, Case No. 7,875; Gibbs v. Ellithorp, Id. 5,383.

Sufficiency of specification. Act 1836, c. 357, § 2.—Burrows v. Wetherill, Case No. 2,208.

It is discretionary with patent office to determine whether specimens of the ingredients or of the compound in a patent product are necessary.—Badische Anilin & Soda Fabrik v. Cochrane, Case No. 719.

Ambiguity and uncertainty, requiring conjecture to make out the true meaning of a claim, will invalidate the patent, regardless of the question of good faith, and irrespective of individual merit.—Blake v. Stafford, Case No. 1,504.

Defects in the specifications, in order to render the patent void, must be the result of fraudulent or intentional concealment by the patentee.—Grant & Townsend v. ———, Case No. 5,701; Gray v. James, Id. 5,718; Lowell v. Lewis, Id. 8,568; Whitney v. Carter, Id. 17,583; Whittemore v. Cutter, Id. 17,600; Park v. Little, Id. 10,715.

§ 67. —— Improvements.

The specification, on a patent for an improvement, must state in what the improvement consists.—Barrett v. Hall, Case No. 1,047; Dixon v. Moyer, Id. 3,931; Evans v. Eaton, Id. 4,560; Evans v. Hettick, Id. 4,562; Peterson v. Wooden, Id. 11,038.

Such specification must distinguish the new from the old.—Blake v. Sperry, Case No. 1,503; Brooks v. Jenkins, Id. 1,953; Brown v. Selby, Id. 2,030; Hovey v. Stevens, Id. 6,746; Lowell v. Lewis, Id. 8,568.

A patent for an improvement without specifying the original invention, or referring to anything for information, is fatally defective.—Isaacs v. Cooper, Case No. 7,096.

The specifications need not give a particular description of the machine improved.—Brooks v. Bicknell, Case No. 1,944; Davis v. Palmer, Id. 3,645; Valentine v. Marshal, Id. 16,812a. CONTRA, see Sullivan v. Redfield, Case No. 13,597.

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.—Wintermute v. Redington, Case No. 17,896.

The old machinery with which an invention is to be connected need not be described or delineated in either the specification or the

drawing, where the patent describes how the invention is to be applied.—Emerson v. Hogg, Case No. 4,440.

Where the specification in a patent for "a new and useful improvement in the steam towboat" did not mention the invention as an improvement, but simply described a towboat, *held*, that the patent was void.—Sullivan v. Redfield, Case No. 13,597.

In the case of an improvement, the proofs or instrumentality by which the result is attained need not be given in the summary.—Valentine v. Marshal, Case No. 16,812a.

The inventor may show the successful operation of his invention by another, though the improvement described in the specification will not produce the result.—Burrows v. Wetherill, Case No. 2,208.

§ 68. Drawings, specimens, and models.

The patentee may put on file, with his specifications, drawings and written references, without their being mentioned in the specifications; and, if the references are written on the drawings, the statute is complied with. Act Feb. 21, 1793.—Emerson v. Hogg, Case No. 4,440.

The mere deposit of a model in the patent office, will not warrant an inference that the model was accompanied by an application for a patent.—Draper v. Wattles, Case No. 4,073.

The duplicate drawings, required by Act 1837, § 6, are unnecessary until the patent issues, and need not accompany the application.—French v. Rogers, Case No. 5,103.

The court cannot consider loose drawings sent up with the papers, which are not signed by the inventor, and attested by two witnesses.—In re Henry, Case No. 6,371.

Illustrative drawings of conceived ideas, not followed up by a seasonable observance of the requirements of the patent laws, can have no effect upon a subsequently granted patent to another.—Reeves v. Keystone Bridge Co., Case No. 11,660.

A failure to deposit in the patent office a sample of one of the ingredients of a composition of matter does not invalidate a patent for such composition, when the specification describes all the ingredients.—Tarr v. Folsom, Case No. 13,756.

§ 69. Claims.

A claim cannot be made in the alternative.—Brown v. Whittemore, Case No. 2,033; Burr v. Smith, Id. 2,196.

See, also, post, §§ 126–137.

§ 70. Attestation and oath.

The jurat to an application for a patent need not be dated.—French v. Rogers, Case No. 5,103.

The oath of the patentee is not confined to the specific claim, but applies to the whole specification.—King v. Gedney, Case No. 7,795.

If the oath required by the patent act, previous to the issuing of a patent, be not taken, still the patent is valid.—Whittemore v. Cutter, Case No. 17,600; Crompton v. Belknap Mills, Id. 18,285.

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.—Crompton v. Belknap Mills, Case No. 18,285.

§ 71. Fees.

The failure to pay the fee will not render the patent void.—Crompton v. Belknap Mills, Case No. 18,285.

§ 72. Examination and proceedings in patent office in general.

Application will be refused where applicant is one of three joint inventors.—Arnold v. Bishop, Case No. 553.

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.—Woodworth v. Hall, Case No. 18,017; Same v. Stone, Id.

The commissioner obtains jurisdiction by the filing of the petition, and it is his duty to cause a proper notice to be published.—Gear v. Grosvenor, Case No. 5,291.

The commissioner cannot delegate duty of examining new invention. Act July 4, 1836, § 7.—In re Aiken, Case No. 107.

The commissioner, on the application, may consider the degree of usefulness. Act 1836, § 7.—In re Cushman, Case No. 3,513.

The question of usefulness of electrical appliances, in the absence of experiments, *held* should be determined by the application of received and approved scientific principles.—In re Cushman, Case No. 3,513.

Upon the application for a patent, the testimony of practical men as to the utility of the invention is entitled to consideration.—Hayden v. James, Case No. 6,260.

The extent of the examination under oath of the commissioner and examiners in explanation of the principles of a machine or other thing for which a patent is prayed for, under Act March 3, 1839, § 11.—Richardson v. Hicks, Case No. 11,783.

A commissioner has full authority to examine and adjudicate on the question of abandonment, and to compel the attendance of witnesses for that purpose. Act March 3, 1839.—Hunt v. Howe, Case No. 6,891; Wickersham v. Singer, Id. 17,610.

The determination of the patent office as to whether two things are equivalents cannot be limited or restrained by the admissions or denials of the parties.—Hutchinson v. Meyer, Case No. 6,957.

Affidavits included among the papers sent up from the office, but which were not taken by authority of the commissioner or acted upon by him in forming his decision, cannot be considered.—In re Jackson, Case No. 7,126.

The burden of proof is on the applicant to show that a change in form produces a better result. The question cannot be decided by a mere a priori argument.—In re Jackson, Case No. 7,126.

Letters and memoranda of a witness experimenting for the inventor, describing appliances and results, are only admissible for the purpose of refreshing his recollection.—Jones v. Wetherill, Case No. 7,508.

The commissioner must decide whether the invention is the proper subject of a patent, and refuse the patent when he holds against such contention.—In re Kemper, Case No. 7,687.

The commissioner cannot require evidence that the combination will produce the result claimed, where the application conforms to the requirements of the office, and the invention does not fall within any of the conditions mentioned in the law as a sufficient ground for rejection.—In re Seely, Case No. 12,632.

The granting or refusal of an extension of time for the hearing upon an affidavit of one of the parties stating the grounds therefor is a matter within the discretion of the commissioner, and from which no appeal lies, unless in cases of gross abuse, which is not to be presumed.—Wellman v. Blood, Case No. 17,-

385; Same v. Woodman, Id.; O'Reilly v. Smith, Id. 10,566.

An agreement that all testimony taken before certain commissioners before a given date "shall be heard and considered by the commissioner of patents, whether the same be filed" before a certain date or not, operates as a waiver of objections to the competency of witnesses.—Warner v. Goodyear, Case No. 17,183.

Upon the application, the commissioner should decide, not only questions of law, but also of fact, including abandonment or neglect.—Marcy v. Trotter, Case No. 9,063.

When all the conditions exist as prescribed by Act 1836, § 6, the commissioner is bound prima facie to issue a patent. But it is his duty to decide whether the invention is new, and the proper subject of a patent.—In re Wagner, Case No. 17,038.

The commissioner has authority to examine and decide the question of prior public use or sale. Act 1836, § 6.—Mowry v. Barber, Case No. 9,892.

The rule requiring a commissioner of patents to set forth the grounds of his decision fully in writing must be strictly followed.—Chandler v. Ladd, Case No. 2,593.

The rule that, where the question is at all doubtful, the patent should be granted, is superseded by Act 1839, giving a right of appeal.—In re Kemper, Case No. 7,687.

On the withdrawal of the application and receiving back the $20, the commissioner's decision becomes final.—Ex parte O'Hara, Case No. 10,464.

See, also, ante, § 55; post, § 74.

§ 73. Caveats.

A caveat is intended to give notice of an invention and prevent a patent to another.—Allen v. Hunter, Case No. 225.

Inadvertence in granting a patent while a caveat is pending does not authorize the granting of a patent to the other party unless he shows priority of invention.—Cochrane v. Waterman, Case No. 2,929.

A caveat will not protect inventor who allows his invention to go into public use before application filed.—Bell v. Daniels, Case No. 1,247.

The omission to file a caveat while maturing an invention does not impair the rights of the inventor.—Heath v. Hildreth, Case No. 6,309.

An inventor cannot, by virtue of a caveat, carry back his invention beyond the date of his application, where he did nothing within the year after the caveat was filed to mature and perfect what he described therein.—Johnson v. Root, Case No. 7,410.

A caveat is not conclusive evidence that the invention is part perfected.—Johnson v. Root, Case No. 7,411.

A caveat will not protect an unperfected invention which the inventor did not use due diligence to perfect.—Johnson v. Root, Case No. 7,411.

A person who has filed a caveat cannot be prejudiced by the omission of the commissioner to give him notice of the application for a patent by a person who had filed a prior caveat.—Phelps v. Brown, Case No. 11,072.

Where a caveat is precise and definite in every detail, and the application does not vary therefrom, the patentee cannot claim that the caveat protected anything more.—Ex parte Woodruff and Cobb, Case No. 17,989.

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.—Ex parte Woodruff and Cobb, Case No. 17,989.

A paper adjudged by a commission appointed by the commissioner of patents to be fraudulent, and to have been surreptitiously introduced into the file of a caveat, *held* to form no part thereof.—Robertson v. Secombe Mfg. Co., Case No. 11,928.

§ 74. Interferences — What constitutes, and declaration thereof.

On interference, the application should be dismissed where it appears that the claim has no patentable novelty, irrespective of the question of priority of invention.—Collins v. White, Case No. 3,019.

An interference is properly declared where the object of both parties is to guard against danger from the use of camphene in common glass lamps by placing a metallic lining in the bowl.—Nichols v. Harris, Case No. 10,244.

Two patents interfere, within the meaning of Act 1836, § 16, only when they claim, in whole or in part, the same invention.—Gold & Silver Ore Separating Co. v. United States Disintegrating Ore Co., Case No. 5,508.

In the case of two inventions consisting in placing flanges on the periphery of propeller blades to prevent the formation of lateral waves, one to be used on canals and the other for general navigation, *held*, that there was no interference.—Tyson v. Rankin, Case No. 14,320.

The power of the commissioner is not limited to a single interference, and a second may be declared after the court on appeal has decided in favor of an applicant, and ordered that a patent issue to him.—Potter v. Dixon, Case No. 11,325.

The commissioner, after deciding an interference, may, for cause shown, allow one party to withdraw and refile his application, and may then declare an interference anew.—Matthews v. Wade, Case No. 9,292.

The failure of the patent office to declare an interference when a patentee is seeking a reissue, pending an application by another, is not a decision that the claims are for different inventions.—Hicks v. Shaver, Case No. 6,462.

§ 75. —— Proof.

Rules of the patent office made in pursuance of Act March 3, 1839, § 12, in relation to taking testimony in contested cases, are binding upon both the parties and the commissioner.—O'Hara v. Hawes, Case No. 10,466.

Failure of officer to certify to sealing of deposition in an interference case is ground of exclusion.—Arnold v. Bishop, Case No. 552.

Depositions taken without notice to one of the parties, who has not waived his right thereto, cannot be used against him. A notice to produce the depositions for inspection and examination is not a waiver of such right.—Perry v. Cornell, Case No. 11,001.

Failure to give notice of taking of depositions in interference proceedings is waived by appearance.—Gibbs v. Ellithorp, Case No. 5,383.

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.—Yearsley v. Brookfield, Case No. 18,131.

One who was present at the examination of witnesses by consent cannot complain that he was not notified of such examination.—Walker v. Forbes, Case No. 17,069.

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.—Yearsley v. Brookfield, Case No. 18,131.

Neither the inventor nor a person interested in a patent if issued are competent in an interference case.—Appleton v. Chambers, Case No. 497a.

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.—Yearsley v. Brookfield, Case No. 18,131.

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.—Yearsley v. Brookfield, Case No. 18,131.

The assignor of the patent is not competent to prove priority upon an interference declared.—Barstow v. Swan, Case No. 1,065.

The issuance of the patent establishes prima facie in an interference case the patentee's title as an original inventor.—Spear v. Belson, Case No. 13,223.

In the case of interfering patents the patentee under the earlier patent is entitled to the presumption of priority and novelty. — Pelton v. Waters, Case No. 10,913.

Prior invention defeats the application for a patent, and may be shown on interference, though the prior inventor failed to avail himself of his invention in a patent subsequently procured by him.—Burlew v. O'Neil, Case No. 2,167.

Where an interference has been declared between an invention claimed and a patent granted, and the patentee fails to appear, it is error to refuse to grant the patent applied for because of failure to furnish unequivocal proof of the priority of the invention, where the applicant furnishes the best proof under the circumstances, his principal witness having died pending the hearing.—Chandler v. Ladd, Case No. 2,593.

On an interference the fact of priority is alone important; the length of time of such priority, whether a day, month, or year, is immaterial.—Eames v. Richards, Case No. 4,240.

In an interference proceeding, a caveat filed by one of the parties is admissible in evidence, as part of the res gestæ, so far as it described the machinery then constructed.—Jones v. Wetherill, Case No. 7,508.

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 res gestæ, for the purpose of showing what he had invented at the date of such declarations.—Yearsley v. Brookfield, Case No. 18,131.

On deciding an interference between an application and a patent, the nature and extent of the patentee's invention is not necessarily to be ascertained from his specification and claim alone, but parol evidence is admissible.—Stephenson v. Hoyt, Case No. 13,373.

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.—Yearsley v. Brookfield, Case No. 18,131.

Where evidence as to priority of issuance is conflicting, its weight must govern.—Clarke v. Cramer, Case No. 2,848.

On a second interference, granted for cause shown, testimony taken on the former interference is admissible, although a new party has been introduced, by way of assignment.—Eames v. Richards, Case No. 4,240.

Conversations and declarations of a party in the statement of an invention will be deemed an assertion of his right at that time, as an inventor, to the extent only of the facts and details which he then makes known.—Garratt v. Davidson, Case No. 5,247.

Failure to produce, as witnesses, workmen in the inventor's shop, at a time (previous to his application) when, it is claimed, a machine embodying the invention was put in actual use, raises no unfavorable presumption, as publicity might take away his right.—New England Screw Co. v. Sloan, Case No. 10,158.

Competent testimony as to priority, not contradicted or assailed for bias or prejudice, must be accepted as true.—Collins v. White, Case No. 3,019.

§ 76. —— Hearing and determination.

Where both parties to an interference are mere applicants, lapse of time is immaterial, except on the question of abandonment of the invention.—Stephens v. Salisbury, Case No. 13,369.

The question of fraud arising on interference must be tried by a jury.—Burlew v. O'Neil, Case No. 2,167.

The respective merits of the machines will not be considered on a claim of the first invention on a hearing of an interference between two parties.—Spain v. Gamble, Case No. 13,199.

The rule requiring a party to examine all his witnesses in chief before closing his opening examination does not apply in an interference case.—Spear v. Abbott, Case No. 13,222.

The rule providing that in contested cases no evidence shall be considered at the hearing which was not taken and filed in compliance with the rules does not prevent the commissioner from examining an informal deposition, to ascertain the character of the evidence; and, if he deems that the ends of justice require it, he can postpone the hearing until the informalities are corrected.—Smith v. Flickenger, Case No. 13,047.

An affidavit in support of a motion for an extension of time for the hearing, on the ground of inability to procure the attendance of witnesses, is entirely insufficient when it does not state the names, competency, or materiality of the witnesses.—O'Reilly v. Smith, Case No. 10,566.

Where a new party comes in on rehearing, he comes in subject to the testimony as to priority of invention previously taken.—Carter v. Carter, Case No. 2,475.

In a suit under Rev. St. § 4918, concerning interfering patents, the court may declare either one or both of the patents void on any ground which, in a suit for infringement, would invalidate it.—Foster v. Lindsay, Cases Nos. 4,975, 4,976.

§ 77. Withdrawal or abandonment of application.

The receipt of the amount paid as a fee after the rejection of the application *held* not to operate as a withdrawal of the application.—Colgate v. Western Union Tel. Co., Case No. 2,995.

The withdrawal of an application and the return of the fee is not of itself an abandonment of the invention to the public.—Wickersham v. Singer, Case No. 17,610.

A withdrawal of the application under a mistake caused by an error of the patent office is no abandonment, though the applicant suffer his invention to go into public use.—Hayden v. James, Case No. 6,260.

§ 78. Rejection of application.

The action of the office in twice returning the specifications and drawings to the applicant because they did not conform to the regulations of the office is not to be construed as a rejection of the claims, and does not relieve the inventor of the duty of prosecuting his application with due diligence.—Wickersham v. Singer, Case No. 17,610.

§ 79. Amendment of application.

A delay of three years in making an amendment is no ground of rejection of the amended specification, where the patent office had acted upon the merits of the case.—Ex parte Hayden, Case No. 6,256.

Where a combination is claimed, the patentee cannot abandon part of said combination and maintain a claim to the residue, nor prove any part thereof immaterial or useless without destroying the whole.—Westlake v. Cartter, Case No. 17,451.

The description and claims of an application are open to amendment, and the addition of new matter shown in the drawings and model, until the case is finally disposed of by the patent office.—Singer v. Braunsdorf, Case No. 12,897.

The inventor delayed 12 years after the final rejection of his application on appeal to the commissioner before amending his specification. *Held* no abandonment.—McMillin v. Barclay, Case No. 8,902.

Delay of 10 years to amend an application or reverse the decision of the patent office is not excused by the fact that the rejection of the application was wrongful.—Bevin v. East Hampton Bell Co., Case No. 1,379.

Where the claim becomes too broad through a rejection of part it should be amended before appeal.—Arnold v. Pettee, Case No. 561b.

A claim for an invention too broadly specified may be amended to conform to the opinions of the patent office, and the court on appeal, as to what is patentable.—Collins v. White, Case No. 3,019.

A patent with corrected specifications relates back to the issue of the first patent.—Stanley v. Whipple, Case No. 13,286.

§ 80. Renewal of application.

One who has withdrawn a rejected application may renew it in a reasonable time on returning the fee.—Ex parte Simpson, Case No. 12,878.

An application withdrawn and instantly refiled in the same words is a continuing application, and not affected by the issuance of a foreign patent within six months before such refiling.—Matthews v. Wade, Case No. 9,292.

The reasonable time within which a rejected application may be renewed is to be computed from the date of the withdrawal of the application, and not from the date of perfecting the invention. Under Act March 3, 1839, § 7, the renewal must not be delayed more than two years.—Ex parte Simpson, Case No. 12,878.

The proviso in Act 1870, § 35, providing for renewal of rejected applications, does not restore a right once lost by laches.—Marsh v. Sayles, Case No. 9,119.

The withdrawal of an application, and receiving back the $20 fee, is an abandonment of the claim; and a new application will not relate back, so as to avoid the effect of a prior public use.—Mowry v. Barber, Case No. 9,892.

Delay of 18 years in renewing a rejected application is an abandonment where another has in the meantime secured a patent for the same thing.—Marsh v. Sayles, Case No. 9,119.

Invention *held* not abandoned by eight years' delay in making a new application after an improper rejection, where the patentee pressed his claim in the meantime as his means afforded.—Goodyear Dental Vulcanite Co. v. Root, Case No. 5,597; Same v. Smith, Id. 5,598; Same v. Willis, Id. 5,603.

A delay of 12 years after withdrawal of application, in the absence of good excuse, *held* an abandonment.—Ex parte Dedericks, Case No. 3,734.

Eight years' delay to file a new application after the original application was withdrawn, and the balance of the fee refunded, *held* an abandonment.—United States Rifle, etc., Co. v. Whitney Arms Co., Case No. 16,793.

Failure to prosecute an application for two years and eight months after it had been rejected is not an abandonment of the application.—Clark v. Scott, Case No. 2,833.

Twenty years between the date of the original application and the final grant of the patent, where the application was rejected and repeatedly renewed, will not invalidate the patent.—Howard v. Christy, Case No. 6,754.

A patentee experimented for 11 years after discovering the process, and then applied for and was refused a patent, and did nothing further for nine years, when he made a second application. *Held* no abandonment.—Jones v. Sewall, Case No. 7,495.

A delay of less than a year in filing a new application after final rejection upon appeal *held* not unreasonable.—Blandy v. Griffith, Case No. 1,529.

Two years' delay to file a new application, after the rejection and withdrawal of the first one, caused by the delay of the patent agent, *held* not an abandonment.—Howes v. McNeal, Case No. 6,789.

A new application, made about two years after the first application, which was rejected, amended specifications being filed, and finally rejected upon appeal, *held* to relate back to the prior application.—Blandy v. Griffith, Case No. 1,529.

A delay of eight years to make a new application after the first application was rejected, during which time the invention had gone into public use with the consent of the inventor, who had made assignments of interest therein, *held* not to show actual abandonment.—Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.

Seven years' delay after withdrawal of application before its renewal, where the invention has in the meantime been put into public use by another inventor, *held* an abandonment.—Wickersham v. Singer, Case No. 17,610.

After two interferences, decided in favor of the patentee, in which the applicant's attorneys acted also as attorneys for the patentee, the application was withdrawn, and shortly afterwards a new one was filed. *Held*, that it was a continuation, and there had been no abandonment.—Weston v. White, Case No. 17,459.

A delay of five years after the application is rejected before a renewal is made, where no excuse is given, is an abandonment.—Ex parte Raymond, Case No. 11,592a.

An abandonment cannot be predicated upon a delay caused by the commissioner in refusing a patent, where the application is renewed for the same invention.—Rich v. Lippincott, Case No. 11,758.

A technical withdrawal of the first application is not necessary to interrupt the continuity between it and a succeeding one.—Bevin v. East Hampton Bell Co., Case No. 1,379.

An intention, manifested intermediate the first and second applications, to abandon the first, will sever the connection between the two; and a patent granted upon the second application will not relate back to the time of filing the first application.—Pelton v. Waters, Case No. 10,913.

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

the placing of the invention on sale pending the first application a prior use.—Singer v. Braunsdorf, Case No. 12,897.

Various applications for a period of 20 years *held* to be one continuous application, and the invention not abandoned.—Colgate v. Western Union Tel. Co., Case No. 2,995.

Renewal of application not permitted after 10 years, on affidavit that the applicant had no knowledge of its withdrawal by his attorney.—Ex parte O'Hara, Case No. 10,464.

A renewed patent must be for the same invention as that described in the original.—Sloat v. Spring, Case No. 12,948a.

Where a second perfected application is made within a reasonable time after the rejection of the first application, the two applications will be considered as a continuous proceeding.—Smith v. Prior, Case No. 13,095.

The granting of a patent on a second application of narrower claim on rejection of the first application will be considered an abandonment of the first application, and the patent granted will not relate back.—Pelton v. Waters, Case No. 10,913.

§ 81. Appeals in patent office.

The commissioner on an appeal cannot rely upon references not previously given to the applicant, as required by Act 1836, § 7.—In re Jewett, Case No. 7,308.

§ 82. Conclusiveness and effect of decisions of patent office.

If the decision of the commissioner is correct, the fact that his opinion is erroneous is immaterial.—In re Crooker, Case No. 3,414.

The action of the patent office in allowing a separation of claims for the purpose of filing divisional applications is conclusive, and not reviewable in the courts.—Doughty v. West, Case No. 4,028.

The decision of the commissioner upon a question of fact upon which he is authorized to pass is unimpeachable, except upon the ground that it is ultra vires.—McMillin v. Barclay, Case No. 8,902.

Decision of commissioner is conclusive as to law and facts arising under application, in the absence of fraud or excess of authority manifest on the face of the papers.—Allen v. Blunt, Case No. 216; Dorsey Harvester Revolving-Rake Co. v. Marsh, Id. 4,014.

The commissioner cannot confirm a patent obtained by fraud.—Child v. Adams, Case No. 2,673.

A patent cannot, in a collateral proceeding, be impeached for fraud in procuring it.—Gear v. Grosvenor, Case No. 5,291; Crompton v. Belknap Mills, Id. 3,406.

The commissioner is bound by the decision of his predecessor granting a patent while it is unreversed by a competent court.—Ex parte Larowe, Case No. 8,093; Ex parte Simpson, Id. 12,878.

The grant of a patent is an adjudication that every fact necessary to the patentee's right has been established by sufficient proof.—Konold v. Klein, Case No. 7,925; Gear v. Grosvenor, Id. 5,291.

It must be assumed from the granting of the patent that there was evidence before the commissioner to show that there was unavoidable delay in preparing the application for examination. Act 1861.—McMillin v. Barclay, Case No. 8,902.

The decision of the patent office, in granting a patent, that the inventor had made the necessary preliminary statutory oath, is final.—De Florez v. Raynolds, Case No. 3,742.

The decision of the commissioner as to patentability is not conclusive.—Burrows v. Wetherill, Case No. 2,208.

The decision of the commissioner as to the proper date in antedating a patent cannot be disturbed by a subsequent commissioner, or by the court on appeal from the latter's ruling.—In re Cushman, Case No. 3,514.

A decision of the patent office in an interference case is not conclusive upon the question of priority of invention in a subsequent suit to have the interfering patent declared void.—Union Paper-Bag Mach. Co. v. Crane, Case No. 14,388.

A decision of the commissioner on the question of abandonment is not final, but may be reviewed in a suit brought on a patent subsequently granted. Act July 8, 1870, § 35.—United States Rifle, etc., Co. v. Whitney Arms Co., Case No. 16,793.

The decision of the commissioner of patents is not res judicata on the question of novelty, but is entitled to the highest respect.—Cook v. Ernest, Case No. 3,155.

The commissioner's decision is not conclusive as to his own jurisdiction.—Cahart v. Austin, Case No. 2,288.

After a patent is granted for a composition it cannot be impeached on the ground that the deposit of the ingredients in the patent office has not been made.—Tarr v. Folsom, Case No. 13,756.

A bill in equity for relief will not lie on the ground that defendant has surreptitiously procured a patent for complainant's invention, for which an application for a patent was pending. —Hoeltge v. Hoeller, Case No. 6,574.

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.—Wilson v. Singer, Case No. 17,835.

See, also, post, § 111.

§ 83. Appeals from decisions of commissioner of patents—Time of appeal and preliminary proceedings.

Six years' delay to appeal from the action of the commissioner in rejecting an application, during four of which years the applicant resided in a state in rebellion, *held* not an abandonment.—Johnsen v. Fassman, Case No. 7,365.

The court may assume that the time for appeal was enlarged by the commissioner.—Blackinton v. Douglass, Case No. 1,470.

The entertaining by the commissioner of a motion to reconsider in an interference case, filed after the expiration of the limit of appeal, does not suspend the operation of the order limiting the time to appeal.—Ex parte Linton, Case No. 8,378.

Where an appeal in an interference case is dismissed after consideration of a protest duly filed by the office against entertaining it, because taken after expiration of the time limited, the appeal fee must be refunded.—Ex parte Linton, Case No. 8,378.

An appeal will not lie from a decision of the commissioner refusing to declare a new interference, and grant a rehearing, after the unsuccessful party has allowed the time for appeal to expire.—In re Rouse, Case No. 12,086.

An extension of the time to appeal made by the commissioner on the direction of the secretary of the interior gives the court jurisdiction of the appeal.—Justice v. Jones, Case No. 7,588.

Under Act March 2, 1861, in a pending cause, it was not necessary to appeal first to the examiner in chief, and then to the commissioner, before appealing to the circuit court.—Snowden v. Pierce, Case No. 13,151.

The new oath required by Act 1836, § 7, is not a prerequisite of an appeal from the commissioner's decision.—In re Crooker, Case No. 3,414.

The right of appeal is lost where the reasons are not filed within the time fixed by the commissioner, notwithstanding the pendency of a motion for rehearing.—Greenough v. Clark, Case No. 5,784.

§ 84. —— Grounds of appeal and matters reviewable.

Appellant may assign, as a reason of appeal, the refusal to hear certain evidence offered, and the court may order such evidence to be taken to determine its relevancy and materiality.—In re Fultz, Case No. 5,156.

The commissioner is the sole judge of the circumstances under which he shall furnish information and suitable references to the applicant, to enable him to correct his application. No cause of appeal is furnished by a supposed omission of his duty in this particular.—Ex parte Munson, Case No. 9,933.

No appeal lies where the issues tried were the same, in effect, as those tried on a former interference.—Bowen v. Herriet, Case No. 1,722.

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.—Yearsley v. Brookfield, Case No. 18,131.

Irrelevant reasons by commissioner no ground of reversal.—In re Aiken, Case No. 107.

An applicant who has obtained the antedating of his patent is estopped to claim error in such antedating.—In re Cushman, Case No. 3,514.

The decision of the commissioner that he will not review or revise the action of his predecessor in rejecting an application is no ground of appeal.—In re Janney, Case No. 7,209.

An objection to the sufficiency of notice of taking depositions cannot be insisted upon, on appeal to the judge, if not made before the commissioner.—Smith v. Flickenger, Case No. 13,047.

No reply to the commissioner's grounds of refusing patent will be allowed to be filed on appeal.—In re Aiken, Case No. 108.

Where the applicant is put upon inquiry by the ruling of the board of appeal that his claim is not properly limited, the court, upon appeal, will not relieve him from the effect of a failure to amend his specifications.—Ex parte Thomas, Case No. 13,885.

The review of the commissioner's decision must be confined to points involved in reasons of appeal.—In re Aiken, Case No. 107; Arnold v. Bishop, Id. 553; Burlew v. O'Neil, Id. 2,167.

On appeal from the decision of the commissioner of patents the court will not review his action in intimating that a patent was an apposite reference, without stating grounds to support his possession.—In re Chambers, Case No. 2,581.

The questions of practicability and usefulness are not subject to appeal in cases of interference.—Matthews v. Wade, Case No. 9,292.

The granting of an extension of time for the taking of testimony in an interference case is within the discretion of the commissioner, and no appeal lies from his refusal, except in the case of a plain abuse of discretion.—Hopkins v. Lewis, Case No. 6,688.

The court can only review the conclusions of the commissioner, and not the processes by which such conclusions may have been attained.—Ex parte Spence, Case No. 13,228.

Objection to incompetency of witness in interference case cannot first be made on appeal.—Allen v. Alter, Case No. 212.

Appellant in an interference case cannot rely upon the weakness of his adversary's case.—Appleton v. Chambers, Case No. 497a.

The interference coming up for review is only such as respects patentable matters.—Bain v. Morse, Case No. 754.

The power to make regulations for the taking of testimony in contested cases is expressly conferred on the commissioner (Act March 3, 1839, § 12), and is not subject to control or revision on appeal.—Spear v. Abbott, Case No. 13,222.

The action of the commissioner under the statutory requirement that he shall give the applicant such reasons and suggestions as will enable him to judge of the expediency of abandoning or modifying his application is not subject to review on appeal.—Ex parte Spence, Case No. 13,228.

Failure to renew a rejected and withdrawn application within the reasonable time allowed will not be relieved against by the court because the applicant was misled by contradictory decisions and practice of the patent office.—Ex parte Simpson, Case No. 12,878.

Under the act of 1836, the court, on appeal in interference, decides not merely the question of priority, but which or whether either applicant is entitled to a patent.—Lovering v. Dutcher, Case No. 8,553; Jones v. Wetherill, Id. 7,508; Yearsley v. Brookfield, Id. 18,131.

A patentee cannot appeal from the decision of the commissioner in an interference proceeding, awarding priority of invention to a subsequent applicant, and granting him a patent.—Drake v. Cunningham, Case No. 4,060; Hopkins v. Barnum, Id. 6,685; Pomeroy v. Connison, Id. 11,259; Whipple v. Renton, Id. 17,521. But see Babcock v. Degener, Id. 698; Beach v. Tucker, Id. 1,153.

A decision of the commissioner denying a patent to either party on interference is appealable.—Carter v. Carter, Case No. 2,475.

The commissioner's decision in interference, awarding a patent to each applicant, but limiting the claim of one to a part only of what he describes and shows in his specifications, is reviewable by the judge.—King v. Gedney, Case No. 7,795.

§ 85. —— Reasons of appeal.

An assignment of a reason of appeal must point out the precise matter of alleged error with such reasonable certainty as to satisfy an intelligent mind.—Blackinton v. Douglass, Case No. 1,470.

That a decision rejecting an application is against evidence is too vague and indefinite as a reason of appeal.—Blackinton v. Douglass, Case No. 1,470.

The commissioner *held* to have properly refused to disturb the decision of his predecessor, upon vague and loose affidavits filed long after the rejection of the claim.—In re Littlefield, Case No. 8,399.

The judge cannot order reasons of appeal to be stricken out, but may overrule them.—Matthews v. Wade, Case No. 9,292.

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 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.—In re Winslow, Case No. 17,879.

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.—In re Winslow, Case No. 17,879.

Where the reasons of appeal in an interference case take no exception to the claim of the appellee, upon the ground of forfeiture by laches, the court cannot consider such question.—Sturtevant v. Greenough, Case No. 13,579.

The commissioner is bound to answer the reasons of appeal in cases of single applications as well as in cases of interference. Act March 3, 1839, § 11.—In re Henry, Case No. 6,371.

§ 86. —— Hearing and determination.
The patent office may have present at the hearing of the appeal one of its officers for the purpose of explaining the commissioner's decision.—Perry v. Cornell, Case No. 11,001.

The court on appeal has ample power to allow an examiner to be interrogated on the subject of the invention for which a patent is claimed.—In re Seely, Case No. 12,632.

The court will consider the correspondence between the commissioner and applicant, wherein facts are stated, acted upon, and not denied.—In re Boughton, Case No. 1,696.

On appeal in an interference case the burden is on appellant to prove that he is the prior inventor.—Garratt v. Davidson, Case No. 5,247.

The commissioner is not required to submit to an exhibition of experiments at the discretion of the applicant.—Ex parte Spence, Case No. 13,228.

The court is limited to the papers and evidence which were before the commissioner, and has no power either to receive proof of experts or to send the case back to take such proofs.—Ex parte Sanders, Case No. 12,292.

When in doubt the commissioner's decision in an interference case will be affirmed.—Ex parte Allen, Case No. 207b.

On an application for a reissue and division of a patent, under Act March 3, 1837, the divisions for the purposes of an appeal are to be considered as a whole, and not as separate cases.—Ex parte Selden, Case No. 12,638.

A reversal because some of the depositions considered were taken before a disqualified magistrate does not require the commissioner to issue a patent, but he may grant a rehearing and order the depositions taken anew.—Nichols v. Harris, Case No. 10,244.

§ 87. Remedy in equity for refusal of patent.
The federal circuit courts have no jurisdiction of a bill to compel the commissioner to issue a patent. The circuit court of the District of Columbia is the only court having jurisdiction to administer the remedy provided by Acts July 4, 1836, § 16, and March 3, 1839, § 10.—Prentiss v. Elsworth, Case No. 11,386.

A bill filed under Rev. St. § 4915, is an original, and not an appellate, proceeding; and it is proper to take the testimony before an examiner.—In re Squire, Case No. 13,269.

In such proceeding the petitioner cannot be confined to matters existing of record in the patent office, or in the supreme court of the District of Columbia.—In re Squire, Case No. 13,269.

The practice in such proceeding is governed by the equity rules, and the court will receive all legal proceedings theretofore had, as well as new testimony.—In re Squire, Case No. 13,269.

The denial of an application for a patent on the ground of laches is not an adjudication that the applicant was the first inventor, which the court will consider on a motion for preliminary injunction.—Potter v. Stevens, Case No. 11,338.

Form of bill and proceedings in a suit in equity for the grant of a patent under Act July 8, 1870, § 52.—Ex parte Greeley, Case No. 5,745.

V. REQUISITES AND VALIDITY OF LETTERS PATENT.

§ 88. Nature of the instrument.
Patent rights rest exclusively upon statute, and statutory provisions must be complied with in all essentials.—Latta v. Shawk, Case No. 8,116.

A patent wanting in any substantial statutory requisite is a nullity, and confers no right to the patentee.—Moffitt v. Gaar, Case No. 9,690.

§ 89. Form and contents in general.
The allegations and suggestions in the application for a patent must at least be substantially recited in the patent as granted.—Evans v. Chambers, Case No. 4,555.

The schedule annexed to letters patent is part of the patent so far as it is a description of the machine, but no further.—Evans v. Eaton, Case No. 4,559.

The title of the patent ought not to be repugnant to the specification.—Goodyear v. Central R. Co., Case No. 5,563.

A patent will not be void because of an error in the Christian name of one of the patentees, provided it contains a description of him by which he can be identified.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

The description of one patentee, whose Christian name was wrongly given, as a joint inventor with another, *held* sufficient to identify him.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

§ 90. Execution and issuance.
A patent signed by the secretary of state and countersigned under the seal of the patent office, by the chief clerk of that office, as "acting commissioner," during the absence of the commissioner, is valid.—Smith v. Mercer, Case No. 13,078.

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.—Woodworth v. Hall, Case No. 18,016.

§ 91. Validity in general.
Where an alien falsely represents himself as a citizen, the patent issued to him is invalid.—Child v. Adams, Case No. 2,673.

The patent is invalidated by a false suggestion in any of the several material facts set forth in the specification.—Delano v. Scott, Case No. 3,753.

The presumption in favor of the validity of a patent does not obtain where the records and papers of the patent office show conclusively that essential statutory provisions have been disregarded.—Whitely v. Swayne, Case No. 17,568.

See, also, ante, § 66.

§ 92. Excessive claims by patentee.
The patent is void where the inventor claims more than he has actually invented.—Tyler v. Deval, Case No. 14,307.

Such patent is void in toto.—Odiorne v. Winkley, Case No. 10,432.

A patent may be valid in part and void in part where the patentee has not fraudulently claimed more than he was entitled to.—Goodyear v. Providence Rubber Co., Case No. 5,583; Peterson v. Wooden, Id. 11,038.

Where a patent is for several improvements in a machine, and each is summed up in the patent as the invention of the patentee, he is bound by his summary, and if any one of the improvements is found not to be new his patent is void.—Moody v. Fiske, Case No. 9,745.

A patent for an "improvement in trucks for locomotives" is not rendered invalid by the fact that the truck used was old and the invention was really an improvement in locomotives.—Locomotive Engine Safety Truck Co. v. Erie Ry. Co., Case No. 8,452.

A patent for a new article so described that it can be made without invention is not invalidated by an ineffective attempt made to describe the best machine for making it.—Magic Ruffle Co. v. Douglas, Case No. 8,948.

The inclusion by accident or mistake of something not new does not invalidate the patent as to that actually invented by the patentee.—Singer v. Walmsley, Case No. 12,900; Stephens v. Felt, Id. 13,368a.

The claim of an old device as new and original, as a part of a combination, is fatal to the patent.—Parker v. Stiles, Case No. 10,749; Winans v. New York & E. R. Co., Id. 17,863.

Where the invention is of a combination of old elements, but the patent claims the invention of the constituent elements, it is void.—Stanley v. Hewitt, Case No. 13,285; Same v. Whipple, Id. 13,286.

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.—Woodward v. Dinsmore, Case No. 18,003.

A patentee making an improvement in a combination of machines should include in his patent only the improvement.—Barrett v. Hall, Case No. 1,047.

A patent for a machine granted to the inventor of an improvement only is void.—Evans v. Eaton, Case No. 4,559; Turner v. Johnson, Id. 14,261. CONTRA, see Goodyear v. Mathews, Case No. 5,576.

A patent which covers the discovery of another that had been in use is too broad, and therefore void.—Watson v. Bladen, Case No. 17,277.

A claim for the use of a pattern chain, or any other device for determining the design to be woven, is not invalid as being too broad.—Crompton v. Belknap Mills, Case No. 3,406.

A patent is not invalid because of a double claim, where there is no evidence that it was made with an intention to mislead.—Tompkins v. Gage, Case No. 14,088.

Merely describing, in the specification, parts of the machine not included in the claim does not invalidate the patent.—Kneass v. Schuylkill Bank, Case No. 7,875.

Claims too broad upon their face may be restricted by the words "substantially as described," so as to render the patent valid.—Seymour v. Osborne, Case No. 12,688.

The words, "by means substantially as described and for the purposes set forth," construed.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633.

The failure of a machine, which it is claimed will turn any irregular surface or form like the model, to turn a square shoulder, is too remote a defect to destroy the patent.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521.

A claim for the devices described, which are alleged to produce a specified result, is not rendered invalid by proof that, under special circumstances, and on exceptional occasions, such result is not produced. The claim will be construed as describing the general rule of the operation of the device.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

§ 93. Inventions included in same patent.

A patent may cover two or more inventions relating to the same machine.—Lee v. Blandy, Case No. 8,182; McComb v. Brodie, Id. 8,708.

An inventor may claim in one patent a combination covering the entire machine, and also a combination of a less number of elements, when he is the inventor of both.—Stevens v. Pritchard, Case No. 13,407.

Several inventions, contrived to be used conjointly to a common end, may be covered by a single patent, though they are capable of being used separately.—Emerson v. Hogg, Case No. 4,440.

Two forms of invention related to the same subject, where the necessary elements of one are substantially used in the other, may be included in one patent.—American Nicholson Pavement Co. v. Elizabeth, Case No. 311.

Two combinations, separate in their nature, and capable, if desired, of separate use, may be claimed in one patent.—Densmore v. Schofield, Case No. 3,809.

Independent, separable, and separate things, provided they relate to the same subject, may be separately claimed in the same patent.—Densmore v. Schofield, Case No. 3,809.

The patentee may embrace two improvements of the same machine in one patent.—Morris v. Barrett, Case No. 9,827.

A patentee may claim a combination of mechanical elements which of themselves will not produce a new and useful result, when his specification shows how the patented combination, used with or supplemented by other devices and instrumentalities therein described, will produce such result.—Wells v. Jacques, Case No. 17,398.

The patentee cannot embrace both the process and the product in the same claim.—Merrill v. Yeomans, Case No. 9,472.

A patent may contain a claim for a combination, and the invention or improvement of one or more parts of which the combination consists.—Root v. Ball, Case No. 12,035.

Patents may be united if two or more, included in one set of letters, relate to a like subject, or are in their nature or operation connected together.—Barrett v. Hall, Case No. 1,047.

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.—Wyeth v. Stone, Case No. 18,107.

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.—Wyeth v. Stone, Case No. 18,107.

§ 94. Patents for same invention.

A new product or article of manufacture, and the process by which the same is produced, may be the proper subjects of separate patents.—Goodyear v. Providence Rubber Co., Case No. 5,583.

The inventor may make each improvement the subject of a separate patent, or combine them, if he chooses.—Hayden v. James, Case No. 6,260.

One cannot have two patents for the same process because for different purposes.—McComb v. Brodie, Case No. 8,708.

There must be several patents for several improvements of distinct machines.—Barrett v. Hall, Case No. 1,047.

A patent cannot claim both the combination of machines and the machines themselves.—Barrett v. Hall, Case No. 1,047; Tompkins v. Gage, Id. 14,088.

§ 95. Correction or amendment.

The correction of a clerical mistake operates back to the date of the original patent.—Woodworth v. Hall, Case No. 18,017; Same v. Stone, Id.

The sanction of the secretary of state to the correction of a clerical mistake in letters patent may be given by a separate writing.—Woodworth v. Hall, Case No. 18,017; Same v. Stone, Id.

A transcript from the patent office may be corrected by another duly certified.—Brooks v. Jenkins, Case No. 1,953.

Under Act 1836, § 13, the commissioner can grant an amended patent only where the error in the original arose through inadvertency, accident, or mistake, and without any fraudulent or deceptive intent. On this question his judgment is generally regarded as conclusive.—Sloat v. Spring, Case No. 12,948a.

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.—Woodworth v. Hall, Case No. 18,016.

§ 96. Annulment or repeal.

Method for repeal of patents provided for by Act 1793, § 10.—McGaw v. Bryan, Case No. 8,793.

Sections 6 and 10 of Act Feb. 21, 1793, relating to the repeal of patents, construed.—Delano v. Scott, Case No. 3,753.

The assignee may file a bill to annul the patent issued to another, and to have one granted to himself. Act July 4, 1836, § 16; Act March 3, 1839, § 10.—Gay v. Cornell, Case No. 5,280.

A bill to set aside a patent to another, on the ground that plaintiff was the original inventor, is not sufficient where it fails to allege that the invention was reduced to practice before the granting of the patent.—Ellithorp v. Robertson, Case No. 4,408.

The federal circuit court may entertain a bill for the repeal of an interfering patent.—Ayling v. Hull, Case No. 686.

A suit to limit a patent or to declare that it does not extend to certain cases, and pro tanto to have it adjudged void, can be maintained only by the attorney general on behalf of the United States.—Celluloid Mfg. Co. v. Goodyear Dental Vulcanite Co., Case No. 2,543.

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.—Wood v. Williams, Case No. 17,968.

A suit to repeal a patent, except in cases stated in Act 1836, § 16, and Act 1839, § 10, cannot be brought either in a state court or the federal circuit court.—Merserole v. Union Paper Collar Co., Case No. 9,488.

A bill in equity for the surrender of letters patent brought in the name of the United States, but not appearing to have been brought by a district attorney, is bad on demurrer.—United States v. Doughty, Case No. 14,986.

The patent may be repealed where the patentee was not the original inventor, though he believed himself to be such.—Delano v. Scott, Case No. 3,753.

Upon a trial under the general issue in a suit to repeal a patent, plaintiff has the burden of showing that the patent was obtained surreptitiously, or upon false suggestion.—Stearns v. Barrett, Case No. 13,337.

Parties in suit to invalidate patent granted by the commissioner after an interference are not confined to evidence before commissioner, nor is such evidence in the case.—Atkinson v. Boardman, Case No. 607.

Error committed in granting a rule to show cause why a patent should not be vacated as surreptitiously obtained cannot be corrected upon a motion to make absolute such rule.—Thompson v. Haight, Case No. 13,956.

An affidavit to the effect that a patent has been obtained "surreptitiously and upon false suggestions" is sufficient to warrant a judge in his discretion to grant a rule to show cause why the patent should not be vacated. He may also receive other affidavits and evidence in corroboration.—Thompson v. Haight, Case No. 13,956.

The entitling of an affidavit intended to be used as the foundation for a rule to show cause why a patent should not be vacated as in a proceeding already pending in court, when in fact no proceeding has yet been instituted, is good ground for vacating the rule to show cause.—Thompson v. Haight, Case No. 13,956.

Form of decree declaring a patent void and ordering the same canceled, under Act July 8, 1870, § 58.—Sturges v. Van Hagen, Case No. 13,570.

A circuit court can give a judgment declaring a patent void only in the cases provided for in section 6, Act 1793. If the patent is defective for any other cause, the court can only render a general judgment for the defendant.—Whitney v. Emmett, Case No. 17,585.

An order, on a rule to show cause why a sci. fa. should not issue to repeal a patent, is merely a preliminary proceeding, and does not determine the question of its validity.—Delano v. Scott, Case No. 3,753.

A judgment in favor of a patentee on a scire facias issued to obtain a repeal of a patent is not conclusive of his right in a subsequent suit for infringement.—Delano v. Scott, Case No. 3,753.

The proceedings under Act Feb. 21, 1793, c. 11, § 10, are in the nature of a scire facias at common law to repeal a patent; and, upon a judgment rendered on such a suit, error lies to the circuit court.—Stearns v. Barrett, Case No. 13,337.

A decision by the supreme court on the validity of a patent will be *held* binding on the circuit court, though the parties are not the same.—Richardson v. Lockwood, Case No. 11,786.

Where the court holds that either one of the patents is void, a decree should be entered annulling it.—Foster v. Lindsay, Case No. 4,976.

VI. TERM.

(A) DATE AND DURATION IN GENERAL.

§ 97. Date.

Date of filing of specifications in foreign country, taken as date of patenting there.—American Diamond Rock Boring Co. v. Sheldon, Case No. 297.

Where the application here is made before the issue of a foreign patent, it does not bear the date of the foreign patent, though the latter is first issued.—French v. Rogers, Case No. 5,103.

An English patent takes effect only from the date of its enrollment, and not from the date of the filing of the provisional specification.—Howe v. Morton, Case No. 6,769.

An English patent dates from the time of its publication.—Weston v. White, Case No. 17,458.

§ 98. Terms of patent.

Letters patent granted prior to Act July 8, 1870, limiting domestic patents to the term of a foreign patent, are not affected thereby.—Goff v. Stafford, Case No. 5,504; Badische Anilin & Soda Fabrik v. Hamilton Mfg. Co., Id. 721.

The words "patented abroad" (Act 1836, §§ 7, 15) do not apply to the French private patents.—Brooks v. Norcross, Case No. 1,957.

A domestic patent expires at the same time as the original term of a foreign patent for the same invention. Rev. St. § 4887.—Henry v. Providence Tool Co., Case No. 6,384.

Under the act of 1839, an inventor could take out a patent for the full term, although he had obtained and published a foreign patent within six months.—Kendrick v. Emmons, Case No. 7,695.

Under the act of 1836, a domestic patent obtained for an invention which the patentee has already patented abroad must be limited to 14 years from the date of the foreign patent; and, if issued for 14 years from its date, it is void.—Smith v. Ely, Case No. 13,043.

The effect of Act March 2, 1861, §§ 16, 17, was to give to an American patent a duration of 17 years from the date of a foreign patent previously granted to the patentee for the same invention.—Weston v. White, Case No. 17,458.

An English patent does not exist (Rev. St. §§ 4886, 4920, 4923) until the enrollment or sealing of the complete specification.—Brooks v. Norcross, Case No. 1,957.

(B) EXTENSIONS.

§ 99. Extensions by special act of congress.

Congress may authorize extension of a patent after the original term has expired.—Jordan v. Dobson, Case No. 7,519.

Congress may, by special act, grant an extension of a patent which has been once renewed.—Bloomer v. Stolley, Case No. 1,559.

A law extending a patent is binding on the courts until repealed, though alleged to have been procured by fraud and misrepresentation.—Gibson v. Gifford, Case No. 5,395.

The patentee will be *held* to representations made by him to congress upon the faith of which a patent was extended by special act.—Union Mfg. Co. v. Lounsbury, Case No. 14,368.

The grant of extension to Blanchard by Act Feb. 6, 1839, of a patent for machine for turning irregular forms, *held* valid, and such act construed.—Blanchard v. Sprague, Case No. 1,518; Blanchard's Gun-Stock Turning Factory v. Warner, Id. 1,521.

Act June 30, 1834, granting extension of patent to Blanchard, *held* without force because of variance in describing the date of the patent.—Blanchard v. Sprague, Case No. 1,517.

A legislative grant of an exclusive privilege in an invention for a limited time does not imply an irrevocable contract with the people that, at the expiration of the period, the invention shall become their property.—Evans v. Eaton, Case No. 4,559.

§ 100. Application to patent office for extension and proceedings thereon.

An extension of a patent made to the patentee on a copy of the original, where a reissue had been granted to an assignee, *held* valid.—Potter v. Braunsdorf, Case No. 11,321.

A notice of an application to extend the original patent is a sufficient notice of an application for the extension of a reissue.—Crompton v. Belknap Mills, Cases Nos. 3,406, 18,285; Clum v. Brewer, Id. 2,909.

An order extending a patent signed by the chief clerk acting as commissioner during a vacancy, after the approval of the Act of 1868, providing that the senior examiner in chief shall act as commissioner, is a nullity.—American Wood-Paper Co. v. Glen's Falls Paper Co., Case No. 321a.

An application filed February 15th for extension of a patent expiring May 15th, *held* within 90 days, as required by law.—Johnson v. Onion, Case No. 7,401.

An equitable interest in the applicant is sufficient to sustain an extension.—Gear v. Grosvenor, Case No. 5,291.

A stipulation that the applicant should be interested to the extent of one-half the proceeds from sales or uses of the patented invention is sufficient.—Gear v. Grosvenor, Case No. 5,291.

The commissioner of patents has jurisdiction of an application for an extension pending at the time of the passage of the act (May 27, 1848) conferring authority upon him to extend patents.—Colt v. Young, Case No. 3,032.

An extension of the term may be granted to the administrator of the patentee.—Woodworth v. Hall, Case No. 18,016; Same v. Sherman, Id. 18,019; Same v. Cheever, Id.

An inventor holding patents in trust for a corporation of which he is an officer, for the purpose of procuring extensions for the benefit of the corporation, will be required to make a full surrender of the patents and extensions to the corporations.—Consolidated Fruit-Jar Co. v. Whitney, Case No. 3,134.

An averment that the patent was duly extended by the commissioner of patents is supported by proof that the extension was granted by an acting commissioner, without proof that he is such de jure.—Dorsey Harvester Revolving-Rake Co. v. Marsh, Case No. 4,014.

The decision of the officer granting an extension is not subject to appeal or revision.—Dorsey Harvester Revolving-Rake Co. v. Marsh, Case No. 4,014.

The extension of a patent by the commissioner cannot be collaterally impeached.—American Wood-Paper Co. v. Glen's Falls Paper Co., Case No. 321.

The proceedings of a board granting the renewal of a patent need not be stated at length.—Brooks v. Jenkins, Case No. 1,953.

The functions of the board are in their nature judicial.—Brooks v. Jenkins, Case No. 1,953.

The decision of the commissioner is conclusive as to the regularity of proceedings on extension, in the absence of fraud.—Colt v. Young, Case No. 3,032; Jordan v. Dobson, Id. 7,519; Crompton v. Belknap Mills, Id. 18,285.

The judgment of the board granting a renewal to an administrator is not conclusive as to his right, as such, to a renewal.—Brooks v. Bicknell, Case No. 1,944.

On a surrender and extension, the new letters may be issued with an amended specification.—Woodworth v. Edwards, Case No. 18,014.

§ 101. Construction and operation of extension.

A person building a patented machine between the expiration of the term and the granting of an extension *held* not entitled to use the machine after a second extension, though the act granting the first extension contained a proviso allowing the use of machines so constructed.—Blanchard v. Haynes, Case No. 1,512.

Under the grant of extension to Blanchard by Act Feb. 6, 1839, assignees of the old patent were given equally exclusive privilege in the

extended term.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521.

After an extension of a patent under Act July 4, 1836, § 18, the original patent becomes virtually a patent for the term of 21 years.—Gibson v. Harris, Case No. 5,396.

An extension of a prior foreign patent will not keep alive a subsequent domestic patent, but it will expire at the same time with the original term of the foreign patent.—Reissner v. Sharp, Case No. 11,689.

A patent surrendered and renewed operates as from the commencement of the original patent, except as to causes of action arising before the renewal.—Woodworth v. Hall, Case No. 18,016.

The expiration of a prior English patent will not affect the validity of the subsequent extension of the patent for the United States.—Tilghman v. Mitchell, Case No. 14,042.

The presumption that a renewal was legally made may be rebutted.—Allen v. Blunt, Case No. 217.

Proof of fraud in obtaining extension—when sufficient to defeat the patent.—Brooks v. Jenkins, Case No. 1,953.

See, also, post, §§ 146, 154.

VII. REISSUES.

§ 102. Power to reissue.
The act (July 4, 1836, § 13) authorizing reissues is to be construed liberally, and not literally, as restraining and limiting the right.—Ex parte Ball, Case No. 810.

§ 103. Grounds of reissue.
A reissue is not authorized unless the original patent is inoperative or invalid from a defective or insufficient specification, or the claim of the patentee exceeds his right. Act 1870, § 53.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

A reissue may be obtained in order to claim a subcombination omitted from the original by inadvertence or mistake.—Stevens v. Pritchard, Case No. 13,407.

A reissue will be granted where the specifications are defective.—Smith v. Pearce, Case No. 13,089.

Claiming for a new article of manufacture, if by inadvertence and mistake, may be cured by a reissue for a combination and arrangement of parts.—Middletown Tool Co. v. Judd, Case No. 9,536.

§ 104. Persons entitled to reissue.
The administrator of a deceased patentee may apply for and obtain a renewal in his own name.—Brooks v. Bicknell, Case No. 1,944; Same v. Jenkins, Id. 1,953; Carew v. Boston Elastic Fabric Co., Id. 2,397.

The administrator of a deceased patentee is the only party having a right to obtain a reissue, and such right is not affected by the fact that he has previously granted exclusive rights under the patent for certain territory.—Smith v. Mercer, Case No. 13,078.

Where a patent has, by the death of the patentee, devolved on his executor, and has been assigned by him, the assignee may take out the reissue in his own name.—Carew v. Boston Elastic Fabric Co., Case No. 2,398.

A patentee, whose devices are new, is at liberty to claim each, by way of reissue, although he may have represented and claimed them originally as acting conjointly.—Gallahue v. Butterfield, Case No. 5,198.

A reissue may be granted to an assignee of letters patent upon his application without the consent, approbation, or knowledge of the original patentee.—Swift v. Whisen, Case No. 13,700.

A reissue granted to an inventor after he has assigned his entire interest, by writing duly recorded, is not void where the surrender was made with consent of the assignee, in the absence of fraud or concealment.—Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.

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.—Wing v. Warren, Case No. 17,871.

The prior use of an invention under a defective patent cannot take away the right to a reissue, or authorize its use after the reissue.—Hussey v. Bradley, Case No. 6,946.

§ 105. Time of making application.
Seven years' delay to obtain a reissue *held* fatal.—Cammeyer v. Newton, Case No. 2,344.

§ 106. Surrender of original patent.
A patentee cannot take out a new patent for the same invention until his first patent is surrendered, repealed, or declared void.—Morris v. Huntington, Case No. 9,831.

The act of congress does not, in terms, require that a surrender shall be in writing.—Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.

The assignee of an undivided part of the patent must join with the patentee or his legal representatives in a surrender.—Potter v. Holland, Case No. 11,329.

The purpose of a surrender and reissue is to render effectual the actual invention for which the original patent should have been granted, as shown, suggested, or substantially indicated in the original specification, drawings, or model.—Abbe v. Clark, Case No. 5.

The patentee cannot, by a surrender, affect the rights of third persons to whom he has previously passed his interest in the whole or a part of the patent, without their consent.—Potter v. Holland, Case No. 11,329; Woodworth v. Stone, Id. 18,021.

The surrender of a patent for a reissue is a conclusive admission that the original patent has no validity to support an action for an infringement.—Moffitt v. Gaar, Case No. 9,690.

A surrender and an application for a reissue may be withdrawn, by leave of the commissioner, for good cause shown, at any time before the proceedings are fully completed and duly recorded.—Forbes v. Barstow Stove Co., Case No. 4,923.

All rights under the original patent cease upon its surrender, except as they are secured by a reissue.—Brown v. Hinkley, Case No. 2,012.

If a reissue is invalid for want of authority to make it, the surrender is ineffective.—French v. Rogers, Case No. 5,103.

§ 107. Application for reissue and proceedings thereon.
On application for a reissue the commissioner cannot hear evidence to determine the invention and enlarge the original claim.—Cahart v. Austin, Case No. 2,288.

The applicant for a reissue on interference declared must show that the improvement was invented before the date of the original patent.—Dyson v. Gambrill, Case No. 4,230.

An oath that the original patent "is not fully valid and available" is not such an oath as is required by law, and a reissue founded thereon is not valid.—Whitely v. Swayne, Case No. 17,568.

The reissue of patents, inoperative or invalid because of defective descriptions or specifications, is of course, the commissioner having no discretion. Act 1836, c. 357, § 13.—Ex parte Dyson, Case No. 4,228.

The commissioner, on the application for a reissue, cannot look beyond the patents as originally granted, with the specifications, diagrams, models, etc., filed or deposited to ascertain the invention. Act 1836.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

The commissioner, in deciding upon the question whether the invention claimed in the reissue is the same as that intended to be patented under the original application, should receive all legal proof offered.—Hussey v. Bradley, Case No. 6,946.

A pending application for a reissue does not supersede the original letters.—Forbes v. Barstow Stove Co., Case No. 4,923.

§ 108. Identity of invention—In general. The reissue must be for the same invention.—Cahart v. Austin, Case No. 2,288; Ex parte Dyson, Id. 4,228; Sickles v. Evans, Id. 12,839; Stevens v. Pritchard, Id. 13,407; Tucker v. Tucker Mfg. Co., Id. 14,227.

New features or devices neither described nor indicated in the original specification should not be embodied in the new description.—Albright v. Celluloid Harness Trimming Co., Case No. 147; Calkins v. Bertrand, Id. 2,317; Carew v. Boston Elastic Fabric Co., Id. 2,397; Doughty v. West, Id. 4 028; Swain Turbine & Mfg. Co. v. Ladd, Id. 13,662; Thomas v. Shoe Machinery Mfg. Co., Id. 13,911; Vogler v. Semple, Id. 16,987; Wells v. Gill, Id. 17,395.

A reissue cannot be sustained by extrinsic proof that the patentee was the inventor of all that is claimed in it, if such claim was not shown or suggested in the original specification, drawings, or model.—Sarven v. Hall, Case No. 12,369.

Devices shown in the original drawings, but not specified, may be claimed in the reissue.—Bantz v. Elsas, Case No. 967; Hoffheins v. Brandt, Id. 6,575; Lorillard v. McDowell, Id. 8,510; Morris v. Royer, Id. 9,835.

In the reissue, under Act July 8, 1870, § 53, of a chemical patent, it is necessary to its validity that the subject-matter should be found described in the original patent.—Tarr v. Webb, Case No. 13,757.

Differences in the claims are consistent with the identity of the thing designed to be patented in both patents; it being one object of the surrender to correct by changing the description or claim, or both.—Cahart v. Austin, Case No. 2,-288; Crompton v. Belknap Mills, Id. 3,406; Hussey v. McCormick, Id. 6,948; Pearl v. Ocean Mills, Id. 10,876; Stevens v. Pritchard, Id. 13,407.

No more can be embraced in a reissue than was invented before or at the time of the original patent, and omitted therefrom by accident or mistake, and without fraud or deceptive intention.—Brown v. Selby, Case No. 2,030; Draper v. Wattles, Id. 4,073; Dyson v. Gambrill, Id. 4,230; French v. Rogers, Id. 5,103; Hoffheins v. Brandt, Id. 6,575; Kirby v. Dodge & Stevenson Mfg. Co., Id. 7,838; Knight v. Baltimore & O. R. Co., Id. 7,882; Swift v. Whisen, Id. 13,700; Carew v. Boston Elastic Fabric Co., Id. 2,397.

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.—Wilson v. Singer, Case No. 17,835.

If the patent does not relate to a machine, the only modification that can be made is to make the claim and specification correspond.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

The patentee need not describe and claim, in the specification of a reissue, either in words or idea, just what he described and claimed in his original.—French v. Rogers, Case No. 5,103.

Reissue need not claim everything embraced in original.—Albright v. Celluloid Harness-Trimming Co., Case No. 147; Carver v. Braintree Mfg. Co., Id. 2,485; Chicago Fruit-House Co. v. Busch, Id. 2,669; Dorsey Harvester Revolving-Rake Co. v. Marsh, Id. 4,014; Gould v. Ballard, Id. 5,635; Knight v. Baltimore & O. R. Co., Id. 7,882; Crompton v. Belknap Mills, Id. 18,285.

It is lawful to reissue a patent with claims to combinations of fewer elements than were contained in the combination of the claim of the original patent.—Christman v. Rumsey, Case No. 2,704; Herring v. Nelson, Id. 6,424; Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Id. 10,713.

The claims of a reissue may be restricted or enlarged to cover the real invention.—Dorsey Harvester Revolving-Rake Co. v. Marsh, Case No. 4,014; Ex parte Ball, Id. 810.

The claims in the reissue may be broader than those in the original.—Morse & Bain Tel. Case, Case No. 9,861.

Tests to be applied in considering whether a reissue is for the same invention as the original.—Aultman v. Holley, Case No. 656.

Drawings and models filed with the original specification are proper subjects for consideration in determining an alleged discrepancy.—Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Case No. 10,713.

Differences in the description and claims of the old and new specifications are not the tests of substantial diversity. It is only necessary that the identity of the subject-matter of the original patent be preserved.—Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Case No. 10,713.

In determining whether reissue is for different invention, the two patents must be compared.—American Diamond Rock Boring Co. v. Sheldon, Case No. 296.

New matter cannot be introduced in a reissue, nor can there be an enlargement growing out of the subsequent advance of the art.—United States & Foreign Salamander Felting Co. v. Haven, Case No. 16,788.

A reissue may include mere matters of mechanical adaptation or mechanical equivalents.—Decker v. Grote, Case No. 3,726; Ex parte Dietz, Id. 3,902; Sloat v. Spring, Id. 12,948a.

Where the patent is for a process, reissues for a compound are invalid.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

Where the original describes merely a new and useful manufacture, the reissue cannot include a claim for the process.—Kelleher v. Darling, Case No. 7,653.

A new function developed by combination of different elements is beyond the scope of a reissue.—Ex parte Ball, Case No. 810.

A reissue of a patent for an improvement in the manufacture of hard rubber *held* void as including other vulcanizable gums than India-rubber.—Goodyear v. Providence Rubber Co., Case No. 5,583.

A reissue is not invalid because laying the greater stress on one of two forms of invention included in the original patent.—American Nicholson Pavement Co. v. Elizabeth, Case No. 311.

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

abandoned is void.—Wicks v. Stevens, Case No. 17,616.

Where the original specification described a combination of a number of ingredients performing certain functions less than those claimed, the reissue may claim such combination.—Pearl v. Ocean Mills, Case No. 10,876.

Reissue may include features disclaimed in original patent by mistake of patent office.—American Shoe-Tip Co. v. National Shoe-Toe Protector Co., Case No. 317; Hayden v. James, Id. 6,260; Hussey v. Bradley, Id. 6,946.

Reissue held for the same invention.—Boomer v. United Power Press Co., Case No. 1,638.

§ 109. —— Evidence of identity.

A reissue is prima facie evidence that the invention claimed in the original and the reissued patent are the same.—Andrews v. Wright, Case No. 382; Bantz v. Elsas, Id. 967; Forbes v. Barstow Stove Co., Id. 4,923; Hussey v. McCormick, Id. 6,948; Jordan v. Dobson, Id. 7,519; Poppenhusen v. Falke, Id. 11,279; Sloat v. Spring, Id. 12,948a; Stevens v. Pritchard, Id. 13,407.

The action of the commissioner in granting a reissue has more than prima facie influence in finally deciding the question of identity of invention.—French v. Rogers, Case No. 5,103.

A reissue is not conclusive upon the question whether it is for the same invention as the original.—Bridge v. Brown, Case No. 1,857; Cahart v. Austin, Id. 2,288.

No presumption arises, from the fact that claims made in a reissued patent are not found in the original, that such claims were not intended to be made in the original.—Eickemeyer Hat-Blocking Mach. Co. v. Pearce, Case No. 4,312.

In determining whether the reissued patent is broader than the original, the court is confined to the records in the patent office.—Johnson v. Beard, Case No. 7,371.

The office records as to whether or not there was an honest mistake are not conclusive, but the applicant may introduce any competent testimony in support of his contention.—Ex parte Dyson, Case No. 4,228.

The patent office has no power to make rules restricting the evidence in such cases to that furnished by its records.—Ex parte Dyson, Case No. 4,228.

In the absence of fraud, the only mode of impeaching a reissue, on the ground that it is for a different invention, is by showing such difference on the face of the instrument.—Middletown Tool Co. v. Judd, Case No. 9,536.

Rule 26 of the patent office, limiting evidence on amendment of specification to the records of the office, refers to rejected applications for original patents, and not to cases of reissue under section 13, Act 1836.—Ex parte Dyson, Case No. 4,228.

To sustain the defense that a reissue patent is broader than the original, the latter must be introduced in evidence.—Doherty v. Haynes, Case No. 3,963.

Whether a reissue was improperly granted is a matter of construction to be determined by the court from inspection and comparison of the original and reissued patents.—La Baw v. Hawkins, Case No. 7,960.

§ 110. Reissues for parts of original invention.

A patent may be reissued in several parts. Act March 3, 1837, § 5.—Goodyear v. Providence Rubber Co., Case No. 5,583.

Where the claim of the renewed patent was not for distinct improvements, but for additional parts of the same improvement, the same thing was patented in both patents.—Carver v. Braintree Mfg. Co., Case No. 2,485.

The right to reissue in two divisions, one for the process and the other for the product illustrated.—Badische Anilin & Soda Fabrik v. Hamilton Mfg. Co., Case No. 721.

An original patent for a process *held* properly reissued in two patents, one for a process and the other for the product.—Goodyear v. Wait, Case No. 5,587; Tucker v. Burditt, Id. 14,216.

On a surrender and reissue, the patentee has a right to a patent for a division or separation of each essential part in combination with the other parts of the same invention in which it was connected.—Ex parte Selden, Case No. 12,638; Wheeler v. Clipper Mower, etc., Co., Id. 17,493; Same v. McCormick, Id. 17,499.

The patentee, in obtaining separate reissues for the several devices contained in a patent for a combination, may give the same identical description in the specification of each reissue of each and all of the devices included in the original.—Wheeler v. McCormick, Case No. 17,499.

If a patent is reissued in divisional parts, each division must be for some distinct and separate part of that invention.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

Where an original patent is reissued in divisions, such divisions are to be treated as but one patent with several claims.—Pennsylvania Salt Mfg. Co. v. Thomas, Case No. 10,956.

In the case of separate reissues for the several devices of a combination for which the original was issued, where part only are extended, the monopoly is not ended as to all the devices.—Wheeler v. McCormick, Case No. 17,499.

§ 111. Conclusiveness and effect of decisions of patent office.

The decision of the commissioner of patents must be regarded as conclusive in all collateral proceedings.—Goodyear v. Providence Rubber Co., Case No. 5,583.

The reissue furnishes prima facie evidence that everything necessary to justify the commissioner in granting the reissue had been produced before the grant was made.—Hoffheins v. Brandt, Case No. 6,575; Jordan v. Dobson, Id. 7,519; Christman v. Rumsey, Id. 2,704; Judson v. Bradford, Id. 7,564.

The effect of the commissioner's decision, considered.—Milligan & Higgins Glue Co. v. Upton, Case No. 9,607.

The decision of the commissioner in granting a reissue is final and conclusive, except where he has apparently exceeded his authority.—Parham v. American Buttonhole, Overseaming & Sewing Mach. Co., Case No. 10,713; Potter v. Holland, Id. 11,330; Thomas v. Shoe Machinery Mfg. Co., Id. 13,911; Wells v. Gill, Id. 17,394; Same v. Jacques, Id. 17,398; Woodworth v. Stone, Id. 18,021.

And his decision may be impeached for fraud.—Birdsall v. McDonald, Case No. 1,434; Blake v. Stafford, Id. 1,504; Day v. Goodyear, Id. 3,678; Hussey v. Bradley, Id. 6,946; Miller & Peters Mfg. Co. v. Du Brul, Id. 9,597; Potter v. Holland, Id. 11,330.

The commissioner's action in granting a reissue conclusively determines that the original patent was not invalid by reason of insufficient specification, or by reason of claiming too much, and that the error arose by inadvertence or mistake, without fraudulent intent.—Kerosene Lamp Heater Co. v. Littell, Case No. 7,724.

Matters of fact connected with the surrender and reissue are closed by the granting of the reissue.—Metropolitan Washing-Mach. Co. v. Providence Tool Co., Case No. 9,507.

A reissue can be impeached for fraud only by bill in equity in the name and by the authority of the United States.—Birdsall v. McDonald, Case No. 1,434.

A renewal to a person as administrator is conclusive on the courts, in the trial of the validity of such renewal, that such person was administrator.—Goodyear v. Blake, Case No. 5,560.

§ 112. Reissues of reissued patents.
There may be more than one reissue of the same patent. Reissues are favored where the patentee is more specific or more modest in his claims.—French v. Rogers, Case No. 5,103.

A second reissue may be granted under Act 1836.—Morse & Bain Tel. Case, Case No. 9,861.

A second reissue on surrender of the first must be limited to the invention embraced in the first reissue.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

§ 113. Validity of reissued patents.
Knowledge by an applicant for a reissue that he was not the first inventor of an invention covered by any of his claims invalidates his patent.—Singer v. Walmsley, Case No. 12,900.

An obvious mistake in description made in copying the specifications of a reissue, and which can easily be corrected, does not impair the patentee's rights.—Kendrick v. Emmons, Case No. 7,695.

The reissue is void where it was fraudulently extended beyond the claims of the original for a deceptive purpose.—Swift v. Whisen, Case No. 13,700.

Where new claims in reissue are so interwoven with the elements specified in the original that they cannot be separated the patent is entirely void.—Cahart v. Austin, Case No. 2,288.

Patents reissued after the originals have been declared void for want of novelty cannot be sustained.—Jones v. McMurray, Case No. 7,479.

The concurrence of a transferee of an interest for a given territory is not necessary to the validity of a reissue.—Meyer v. Bailey, Case No. 9,516.

It is no objection to the validity of a reissue that its object was to extend the monopoly secured by the patent beyond the limits assigned to it by a judicial decision upon it in its original form.—Poppenhusen v. Falke, Case No. 11,280.

The presumption of law is always in favor of the validity of the reissue.—Reissner v. Anness, Case No. 11,688; American Nicholson Pavement Co. v. Elizabeth, Id. 311.

The introduction of a comma into the specification of a reissue in a sentence found in the original specifications, and alleged to be an interpolation and to introduce a new idea, *held* to be accidental and a clerical error.—Robertson v. Secombe Mfg. Co., Case No. 11,928.

§ 114. Construction and operation of reissued patents.
Where the reissued patent is of doubtful construction, reference may be made to the original.—Ely v. Monson & B. Mfg. Co., Case No. 4,431.

Although the broad claim of plaintiff's reissue covers defendant's device, the court will look into the body of the specification of both the original and reissued patents, to ascertain whether there is any invention to support the claim.—Forsyth v. Clapp, Case No. 4,949.

The reissue of an extended patent will be for the full term of the extension, regardless of the grant.—Gibson v. Harris, Case No. 5,396.

Inadvertence and error in the disclaimer may be cured by reissue.—Poppenhusen v. Falke, Case No. 11,279.

The validity of the reissue is to be determined by comparing the terms and import of the original and reissued letters, and a consideration of the patent office drawings and model.—Seymour v. Marsh, Case No. 12,687.

A surrender and correction of a patent give effect to it in all cases of infringement subsequently accruing, though the patent was originally invalid, and will be considered as having been made at the time it was originally issued.—Bliss v. Brooklyn, Case No. 1,544; Bloomer v. Stolley, Id. 1,559.

On the question of the validity of a reissue, the patent-office model, filed with the original application, is admissible to aid in determining what was described therein.—Reissner v. Anness, Case No. 11,688.

The recital in a reissue of a prior assignment, and the granting of the reissue to the assignee, make a prima facie case of title.—Middletown Tool Co. v. Judd, Case No. 9,536.

A reissue to defendant of later date than plaintiff's patent, but of an original of earlier date, will control in a suit for infringement.—House v. Young, Case No. 6,738.

Title of patent presumed to be in one to whom reissue is granted as assignee.—American Diamond Rock Boring Co. v. Sheldon, Case No. 296.

Where one paragraph in a reissue leads to a construction which would make the reissue void, explanation of its meaning may be sought in a succeeding one.—Carew v. Boston Elastic Fabric Co., Case No. 2,397.

A reissue granted to an assignee may be extended to the patentee.—Crompton v. Belknap Mills, Case No. 3,406.

See, also, post, §§ 146, 154.

VIII. DISCLAIMERS.

§ 115. Right to disclaim part of claims.
The patentee may eliminate or withdraw in the same writing with the disclaimer the parts of the body of the specification on which the disclaimed claim, or part of a claim, is founded. —Schillinger v. Gunther, Case No. 12,458.

§ 116. Patents and claims subject to disclaimer.
There may be a disclaimer of something which was introduced into the reissued patent, which did not exist in the original patent.—Schillinger v. Gunther, Case No. 12,458.

Act 1839, §§ 7, 9, authorizing a disclaimer, do not apply where the patent is for combination of parts.—Batten v. Clayton, Case No. 1,105.

Defect of broad claim covering primitive device and improvement cured by disclaimer, in case of limited knowledge of primitive device.—Aiken v. Dolan, Case No. 110.

§ 117. Persons entitled to disclaim.
The owner of a territorial interest may make a disclaimer for his interest which is to be taken as a part of the original specification for the territory owned by him.—Potter v. Holland, Case No. 11,329.

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.—Wyeth v. Stone, Case No. 18,107.

A disclaimer made by an attorney in the prosecution of an application does not necessarily estop the patentee from maintaining that his claim embraces the matter referred to.—Mann v. Bayliss, Case No. 9,034.

§ 118. Sufficiency of disclaimer.
Sufficiency of disclaimer limiting the claim of a patent.—Taylor v. Archer, Case No. 13,778.

In making a disclaimer of a part of an invention claimed, through the mistake of the person making it, he must state his interest in the patent.—Brooks v. Jenkins, Case No. 1,953.

The sufficiency of a disclaimer, as to whether or not the patentee stated in it "the extent of his interest" in the patent, as required by Act March 3, 1837, § 7, considered.—Foote v. Silsby, Case No. 4,916.

§ 119. Time of making disclaimer.
The patentee must, within a reasonable time, disclaim all parts not properly claimed.—Brooks v. Jenkins, Case No. 1,953; McCormick v. Seymour, Id. 8,727; Parker v. Stiles, Id. 10,749.

A patentee who claims both old and new things must disclaim what is old before he is entitled to recover.—Hovey v. Stevens, Case No. 6,745.

The owner of the entire right in the territory where the infringements had taken place allowed to make a disclaimer after final hearing.—Myers v. Frame, Case No. 9,991.

A disclaimer at the trial, of a thing actually claimed in the patent, is not effectual to sustain it.—Parker v. Sears, Case No. 10,748.

Where a proper disclaimer is entered during pendency of a suit, plaintiff may recover in respect of what is not disclaimed, where there has been no unreasonable neglect or delay to enter the disclaimer.—Burdett v. Estey, Case No. 2,145; Hall v. Wiles, Id. 5,954; Schillinger v. Gunther, Id. 12,458; Tuck v. Bramhill, Id. 14,213.

The question whether there has been unreasonable negligence or delay in entering such disclaimer is a question which goes to his right of action. Act March 3, 1837, § 9.—Hall v. Wiles, Case No. 5,954.

A disclaimer after suit brought is not sufficient to entitle plaintiff to a perpetual injunction.—Wyeth v. Stone, Case No. 18,107.

The failure to file a disclaimer until after suit brought will not prevent the court increasing the amount of the verdict.—Guyon v. Serrell, Case No. 5,881.

§ 120. Effect of disclaimer.
A disclaimer limited to the application in which it is made does not prevent the inventor from claiming the same matter in a subsequent application.—Hill v. Dunklee, Case No. 6,489.

A patentee is not entitled to costs where he fails to file a disclaimer until after suit brought.—Aiken v. Dolan, Case No. 110; Burdett v. Estey, Id. 2,145; Guyon v. Serrell, Id. 5,881; Myers v. Frame, Id. 9,991; Reed v. Cutter, Id. 11,645; Schillinger v. Gunther, Id. 12,458; Singer v. Walmsley, Id. 12,900; Taylor v. Archer, Id. 13,778; Tuck v. Bramhill, Id. 14,213.

A disclaimer by plaintiff, subsequent to a verdict for him in a suit for infringement of a patent, does not deprive him of costs.—Peek v. Frame, Case No. 10,904.

A patent is not rendered void as to certain valid claims because of unreasonable neglect or delay to enter a disclaimer as to invalid claims.—Burdett v. Estey, Case No. 2,145.

The want of a disclaimer is no ground for invalidating the patent, where the invalid claim is not an essential part, and was introduced without intent to defraud or mislead.—Hall v. Wiles, Case No. 5,954.

IX. CONSTRUCTION AND OPERATION OF LETTERS PATENT.

(A) IN GENERAL.

§ 121. General rules of construction.
Rules for construing patents.—Francis v. Mellor, Case No. 5,039.

Patents will be liberally construed.—Ames v. Howard, Case No. 326; Blanchard v. Sprague, Id. 1,518; Davoll v. Brown, Id. 3,662; Imlay v. Norwich & W. R. Co., Id. 7,012; Parker v. Stiles, Id. 10,749; Ryan v. Goodwin, Id. 12,186.

Courts will not resort to conjecture in order to sustain the patent.—Ames v. Howard, Case No. 326.

All constructions must be unfavorable to defendant who denies access to his machine, and does not produce any model or drawing, nor the produce which it manufactures.—Union Paper-Bag Mach. Co. v. Binney, Case No. 14,387.

The claim made by the patentee must govern in the construction of the patent, although he might have claimed something different.—Kidd v. Spence, Case No. 7,755.

§ 122. What law governs.
Rules governing the proper reading of a disputed translation of a foreign patent.—White v. Allen, Case No. 17,535.

§ 123. Accompanying documents and proceedings in patent office.
A patent is to be construed without reference to previous correspondence with the patent office in relation thereto, or rejected applications therefor.—Piper v. Brown, Case No. 11,180.

An ambiguity in a patent may be explained by the affidavit annexed to the specification.—Pettibone v. Derringer, Case No. 11,043.

In the construction of a patent the whole instrument embracing the specification and drawing is to be taken together.—Parker v. Stiles, Case No. 10,749; Davoll v. Brown, Id. 3,662.

§ 124. Effect of patent as estoppel.
The obtaining of a joint patent estops the patentees to claim under prior several patents for the same invention.—Barrett v. Hall, Case No. 1,047.

A patent, while it remains in full force and unrepealed, estops the patentee from taking a patent for the same invention, and the time of its exclusive right begins to run from that period.—Odiorne v. Amesbury Nail Factory, Case No. 10,430.

A patentee is not estopped by words omitted from an amended specification.—Allen v. Blunt, Case No. 217.

§ 125. Suits for construction.
An action will not lie by a junior patentee against a senior patentee to determine the scope of the latter's patent, and to enjoin him from bringing suits for infringement against plaintiff and his customers.—Celluloid Mfg. Co. v. Goodyear Dental Vulcanite Co., Case No. 2,543.

(B) LIMITATION OF CLAIMS.

§ 126. Operation and effect of claims in general.
Claims should be liberally construed to cover the actual invention.—Goodyear v. Berry, Case No. 5,556; Same v. Central R. Co., Id. 5,563; Hamilton v. Ives, Id. 5,982.

That interpretation will be adopted which will give the fullest effect to the nature and extent of the claim made by the inventor.—Ryan v. Goodwin, Case No. 12,186.

The proper rule is to construe the claims of the patent in connection with the descriptive parts of the article, and with reference to what is seen to be the real invention.—Coffin v. Ogden, Case No. 2,950.

The common knowledge in the business of life must be kept in view in construing the general terms of a description.—Tilghman v. Mitchell, Case No. 14,043.

Words will be so construed as to enlarge or contract the scope of the claim, so as to uphold the invention made and described, only when

not absolutely inconsistent with the language of the claim.—Estabrook v. Dunbar, Case No. 4,535.

§ 127. Title of patent.

The patentee is not controlled by the title of the patent, but only by the patent, specifications, and drawings.—Bell v. Daniels, Case No. 1,247.

§ 128. Specifications, drawings, and models, and construction of claim in connection therewith.

The whole specification and the drawings may be referred to, to ascertain the extent of the claim.—Earle v. Sawyer, Case No. 4,247; Foss v. Herbert, Id. 4,957; Hamilton v. Ives, Id. 5,982; Hayden v. Suffolk Mfg. Co., Id. 6,261; Johnson v. Root, Id. 7,411; King v. Gedney, Id. 7,795; Kittle v. Merriam, Id. 7,857; Morris v. Barrett, Id. 9,827; Ransom v. New York, Id. 11,573; Sloat v. Spring, Id. 12,948a.

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.—Wilton v. Railroad Co., Case No. 17,856.

Drawings not referred to in the specification of a patent may be treated as part of the specification, and used to explain and enlarge it.—Washburn v. Gould, Case No. 17,214.

The original deposited model may be examined to resolve doubts raised by inspection of drawings.—Aiken v. Dolan, Case No. 110.

A claim which makes proper reference to the specification will not be construed as covering a result, but as covering the means by which it is attained.—Sickles v. Evans, Case No. 12,839; Rogers v. Sargent, Id. 12,020.

The words "as specified" do not limit the claims to the particular mode of practicing the invention described in the patent.—Lorillard v. McDowell, Case No. 8,510.

The words "substantially as described and shown," in the claim of the patent, *held* to relate only to material features of the combination specified, to be ascertained by considering the purpose of the machine, and what are the elements of the combination which constitute its distinctive character, and are effective in producing the peculiar result for which the contrivance is made.—Waterbury Brass Co. v. Miller, Case No. 17,254.

"Substantially as described," used in a claim, limits general words to the particular description found in the specifications.—Knox v. Murtha, Case No. 7,911.

The claim will be construed to be co-extensive with the invention as shown by the specification if it can be done without doing violence to its language.—Whipple v. Middlesex Co., Case No. 17,520.

The patentee will be concluded by the statement in his claim, uncontrolled by the specifications, where it is clear and explicit, leaving no room for construction.—Rich v. Close, Case No. 11,757.

The words "substantially as described" must necessarily be implied, and, being so implied, they involve a reference to the specification.—Westinghouse v. Gardner, etc., Air-Brake Co., Case No. 17,450.

A claim for the "arrangement of," etc., "as herein described," requires a reference to the description and drawings to ascertain its true construction.—Knight v. Gavit, Case No. 7,884.

Claims containing words referring back to the specification must be construed in the light of the explanations contained in the specification.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633; Roberts v. Dickey, Id. 11,899.

In a claim, the words "the described," etc., are construed not solely with reference to the words in the specification, but with reference also to the limitations in the context of the claim.—Pearl v. Ocean Mills, Case No. 10,876.

Specifications should be liberally construed.—Goodyear v. Berry, Case No. 5,556; Same v. Central R. Co., Id. 5,563; Ames v. Howard, Id. 326; Hamilton v. Ives, Id. 5,982; Ex parte Tillman, Id. 14,050.

It is immaterial what the claim in the summary is, if its foundation has not been made in the descriptive part of the specification.—Huggins v. Hubby, Case No. 6,839.

The word "about," in a specification, rejected for uncertainty, where to give it effect would invalidate the patent.—Davis v. Palmer, Case No. 3,645.

The import of the summary of a specification is to be determined by reference to the specification as a whole.—Bryan v. Stevens, Case No. 2,066a.

§ 129. State of art.

The claims are to be construed with reference to the state of the art at the time of the invention.—Burden v. Corning, Case No. 2,143; Estabrook v. Dunbar, Id. 4,535; Mann v. Bayliss, Id. 9,034; Pitts v. Wemple, Id. 11,194; Smith v. Prior, Id. 13,095.

§ 130. Agreements of patentee with commissioner and proceedings in patent office.

An agreement by the patentee, made with the commissioner, that the patent should not extend to certain articles, will limit his claim.—Pike v. Potter, Case No. 11,162.

Neither the correspondence between the commissioner of patents and the applicant, nor the proceedings in the patent office pending an application, are admissible to enlarge, diminish, or vary the language of the claim.—Goodyear Dental Vulcanite Co. v. Gardiner, Case No. 5,591.

To determine the patentee's own construction of his claim, the patent-office files may be resorted to, to ascertain what changes were made in the original specifications and claims, and the significance of such charges.—Trader v. Messmore, Case No. 14,132.

Declarations of the patentee, undertaking to restrict the invention within a narrower compass than that stated in his specifications, will not affect the construction of the patent in the hands of a prior assignee.—Union Paper-Bag Mach. Co. v. Pultz & Walkley Co., Case No. 14,392.

A proposition to limit the claim made by the patentee to the commissioner, but not accepted by him, is not binding.—Pike v. Potter, Case No. 11,162.

§ 131. Scope and character of inventions.

The patent is not limited in its scope to the patentee's theory of his invention.—Foss v. Herbert, Case No. 4,957; Stow v. Chicago, Id. 13,512; Wells v. Jacques, Id. 17,398. But see Couse v. Johnson, Case No. 3,288.

A claim for a result produced substantially in the manner and for the purpose described will be construed to be for the mechanism described, and not for the result itself.—Henderson v. Cleveland Co-operative Stove Co., Case No. 6,351.

The patentee must be limited within the claims of the patent, and the description of the particular mechanism, and the application he has made, by which the result is produced.—Fuller v. Yentzer, Case No. 5,151.

The scope of the patent is fixed by what was known at the date of the completed invention, and not by what was known at the time when the application was made.—Sprague v. Adriance, Case No. 13,248.

A patentee is not bound by the qualities imparted to the article in his description, but by the qualities of the article as derived from the product of the process or compound patented.—Goodyear v. New York Gutta Percha, etc., Co., Case No. 5,580.

A description of one mode of practicing the invention does not exclude a method, different from it only in a single detail, which produces the same result and is distinctly within its object.—Lorillard v. McDowell, Case No. 8,510.

Construction of Claim: "The above-described method of increasing the productiveness of oil wells by causing an explosion of gunpowder, or its equivalent, substantially as above described."—Roberts v. Dickey, Case No. 11,899.

Where the discoverer discloses only one or more of the derivatives or secondary truths of the principle discovered, his patent will be limited accordingly.—Detmold v. Reeves, Case No. 3,831.

The patent to the discoverer will be as broad as his mental conception which he embodies in some mechanical device or some process of art. —Detmold v. Reeves, Case No. 3,831.

The patentee will not be confined to the form of a device, where he states in his application that he does not wish to confine himself to the form shown.—Cornell v. Downer & Bemis Brewing Co., Case No. 3,236.

A patent will not cover a substance not known at the date thereof to possess properties rendering it suitable for the same purposes as the material used therein.—Colgate v. Law Tel. Co., Case No. 2,993a.

A patent for a particular structure intended to accomplish a particular end does not import an exclusive right to every possible mode of accomplishing the same end.—Blanchard v. Puttman, Case No. 1,514.

An inventor is entitled to protection in all the functions his invention will perform.—Ingels v. Mast, Case No. 7,033.

A patentee who describes particular modes as essential to his invention will not be confined to them where the device is complete in itself. —Union Paper-Bag Mach. Co. v. Nixon, Case No. 14,391.

The inventor of an improvement cannot entitle himself to a patent more broad than his invention.—Woodcock v. Parker, Case No. 17,-971; Whittemore v. Cutter, Id. 17,601.

§ 132. Claims for processes.

A claim for "said manufacture of printing type, made substantially as described," *held* a claim for the process, and not for the product. —Hudson v. Draper, Case No. 6,834.

The claim to an invention of a mechanical process must fall with the claim to an unsuccessful machine which the inventor constructed to work out such process.—Union Mfg. Co. v. Lounsbury, Case No. 14,368.

A claim for "the above-described new manufacture of * * * by treating them substantially as hereinafter described," *held* to be a claim for the process, and not the product.—Merrill v. Yeomans, Case No. 9,472.

A patent for a new and useful process, describing it and the apparatus by which it can be carried out, covers all apparatus which will accomplish the same purpose in substantially the same way.—Bridge v. Brown, Case No. 1,857.

The patent for a new and improved process for the cheaper and better construction of a product or manufacture before known in commerce grants nothing but the exclusive right to use the particular process. Otherwise where the product itself is new.—Goodyear v. Central R. Co., Case No. 5,563.

A claim of a process of manufacture of hats from braid, "in sewing the edges together with horsehair," *held* not necessarily limited to the use of horsehair.—Noe v. Prentice, Case No. 10,284a.

Both a process and the product may be covered by one patent.—Welling v. Rubber-Coated Harness Trimming Co., Case No. 17,383.

§ 133. Claims for machines or manufactures in general.

A claim for an entire machine does not deprive the patentee of his right to claim the parts also.—Foss v. Herbert, Case No. 4,957.

The patentee is entitled to the exclusive use of his mechanical organization for all uses to which it can be applied, whether he originally contemplated those uses or not.—McComb v. Brodie, Case No. 8,708; Conover v. Roach, Id. 3,125.

The words "in such machine" *held* to refer to the machines improved upon, and not the improved machines.—Weston v. Nash, Case No. 17,454.

Patents for improvements in gold pens *held* could not be extended beyond the particular shape, form, or mode of construction claimed. —Rapp v. Bard, Case No. 11,577.

A patent "for an improvement in the art of making nails, by means of a machine which cuts and heads the nail at one operation," is for a machine as described.—Gray v. James, Case No. 5,718.

A claim for a result merely, or for every means by which certain advantages in a harvester can be secured, is invalid.—Marsh v. Dodge & Stevenson Mfg. Co., Case No. 9,115.

In the case of a patent for an ornamental chain as a new article of manufacture, the patentee is not limited to the advantage derived from the use of the peculiar features of the patented chain over what would have been derived from those open to the public.—Mulford v. Pearce, Case No. 9,908.

A patent for a wire fence cannot be construed to include window guards.—New York Wire-Railing Co. v. Walker, Case No. 10,218.

A patent for a horizontally revolving retort does not cover an oscillating retort.—Allen v. Alter, Case No. 212.

Cam movements, producing simultaneous operations in long use, cover the principle of raising an oven shelf by means of closing the oven door.—Bridge v. Excelsior Mfg. Co., Case No. 1,859.

A patentee who has described devices in uniform motion only cannot claim them when working in a differential motion, by which only they were made successful; nor can he incorporate such principle in a reissue.—Dyson v. Danforth, Case No. 4,229.

A claim to "the communication of motion * * * produced as follows" *held* limited to the specific machinery described in the specifications.—Stone v. Sprague, Case No. 13,487.

§ 134. Claims for combinations.

The words "as herein described" and "as herein set forth" refer to the specifications, and may, in their proper construction, embrace elements of a combination not specifically named in the claim.—Vance v. Campbell, Case No. 16,-837.

An inventor of one element cannot claim it in combination with every form of another element with which he unites it, but only in the particular combination described in his specification.—Larabee v. Cortlan, Case No. 8,084.

A claim for "a new and useful improvement," consisting of a combination of several improvements distinctly set forth in the specification, *held* good for each distinct improvement.—Pitts v. Whitman, Case No. 11,196.

Use of phrase "any suitable material," in patent for combination, shows claim to combination, limited to known materials, though not named.—Bailey Washing & Wringing Mach. Co. v. Lincoln, Case No. 750.

The absence of the word "combination," or of a statement of its elements in a particular claim, while combinations are claimed in apt and appropriate language in other claims, is strong evidence that, in the former, the patentee did not intend to claim a combination.—Burden v. Corning, Case No. 2,143.

A limit of the claim to a combination of parts concedes the parts to be old.—Conover v. Roach, Case No. 3,125.

The description of each separate element must be read and construed with reference to the entire combination and its results.—Hamilton v. Ives, Case No. 5,982.

Construction of a claim of "the combination of a lock and latch," where the only invention consisted in making the latch bolt reversible.—Russell & Erwin Mfg. Co. v. Mallory, Case No. 12,166.

By claiming particular things in a combination as new, the patentee does not relinquish his right to the entire combination.—Valentine v. Marshal, Case No. 16,812a.

The claim of an arrangement of a combination, when such as to produce a given mechanical result of the combination, is a claim to the means alone, and not to a function or a result, irrespective of such means.—Renwick v. Pond, Case No. 11,702.

§ 135. Including mechanical equivalents.

A patent for a composition of several ingredients covers known equivalents of each ingredient.—Matthews v. Skates, Case No. 9,291.

A claim for a particular means and mode of operation described extends to all equivalents.—Burden v. Corning, Case No. 2,143; Pitts v. Edmonds, Id. 11,191.

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.—Yuengling v. Johnson, Case No. 18,195.

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.—Woodward v. Morrison, Case No. 18,008.

§ 136. Claims for compositions of matter.

The inventor of a new compound, wholly unknown before, is not limited to the use always of the same precise ingredients in making that compound.—Ryan v. Goodwin, Case No. 12,186.

Where only approximate proportions are named in the specification for the several elements of a given composition of matter, the right to vary these proportions is not unlimited.—Francis v. Mellor, Case No. 5,039.

§ 137. Claims for designs.

A patent for ornamental designs for figured silk buttons *held* not to cover the process for winding the silk upon the molds.—Booth v. Garelly, Case No. 1,646.

X. TITLE, CONVEYANCES, AND CONTRACTS.

(A) RIGHTS OF PATENTEES IN GENERAL.

§ 138. Title of inventor before issue of patent.

The invention is the property of the inventor until he abandons it to the public, or suffers it to be in public use or on sale with his consent for more than two years.—Jones v. Sewall, Case No. 7,495.

§ 139. Assignment of invention or right to patent.

An assignment made before the patent is granted is valid.—Herbert v. Adams, Case No. 6,394; Rathbone v. Orr, Id. 11,585.

A contract may be made to convey a future invention, as well as a past one, and for any improvement or maturing of a past one.—Nesmith v. Calvert, Case No. 10,123.

An assignment of an invention before the issuing of a patent is valid under Act March 3, 1837, § 6, though made after an appeal from the commissioner's decision rejecting the application.—Gay v. Cornell, Case No. 5,280.

It is not necessary that the assignment should be recorded in the patent office before the filing of the bill. It is enough if it be recorded at any time before the issuing of the patent.—Gay v. Cornell, Case No. 5,280.

The inchoate right of an inventor to the issue of original letters patent, and all foreign letters, renewals, and extensions, may be conveyed by an instrument containing apt terms to show an intention to convey all the rights springing from the invention.—Emmons v. Sladdin, Case No. 4,470.

Semble, a sale of an "invention" does not necessarily carry inchoate right of inventor to exclusive privileges under extension of patent.—Clum v. Brewer, Case No. 2,909.

An assignment of all inventions "for the manufacture of composition brush backs and handles" does not include an invention for hand mirrors, the handles and backs of which are made in the same manner as the brush, though applications for patents on both articles were pending at time of assignment.—Clark v. Scott, Case No. 2,833.

Assignees of an invention can take only such rights as the inventors could have taken.—Tatham v. Loring, Case No. 13,763. CONTRA, see Tatham v. Lowber, Case No. 13,764.

§ 140. Exclusive nature of right—Articles made or purchased by others before application for patent.

Persons purchasing a newly-invented machine from another than the inventor, before application for a patent, are protected by 9 Laws (Bior. & D.) pp. 1019, 1020, § 7 (5 Stat. 354).—Noe v. Prentice, Case No. 10,284.

The benefit of section 7, c. 88, Act 1839, cannot be claimed by a purchaser under a mere wrongdoer, but only by a person who is a purchaser, or who has used the patented invention before the patent was issued, by a license or grant, or by the consent of the inventor.—Pierson v. Eagle Screw Co., Case No. 11,156.

There is no right of action for an infringement occurring under the original and void patent, and before the reissue of a new patent.—Moffitt v. Gaar, Case No. 9,690.

There can be no infringement of a patent before the date of the application or of the patent.—Dixon v. Moyer, Case No. 3,931.

The use after the granting of an extension by special act of January 21, 1808, of a machine erected after the expiration of the original term, and before the passage of the act, *held* an infringement.—Evans v. Jordan, Case No. 4,564; Same v. Weiss, Id. 4,572.

§ 141. —— Against government.

Whether the grant of a patent excludes the United States from the right to make and use the invention for themselves, quære.—Heaton v. Quintard, Case No. 6,311.

An invention secured by patent cannot be taken by the government without compensation.—Brady v. Atlantic Works, Case No. 1,794.

§ 141a. Rights and powers of patentee as to making, use, or sale of invention.

The inventor has the exclusive right under the patent to use the machine for all purposes for which it is applicable.—Woodman v. Stimpson, Case No. 17,979.

The product and the process being both new and patentable, the patentee may prohibit the sale or use of the composition, unless when purchased from persons licensed by him to use the process and vend the product.—Goodyear v. Central R. Co., Case No. 5,563.

(B) ASSIGNMENTS AND OTHER TRANSFERS.

§ 142. Contracts to assign.

The equitable rights of defendants, arising out of an agreement, for valuable consideration, to convey an extended patent, made before the extension, will be protected as against the owner of the legal title.—Day v. Candee, Case No. 3,676; Aiken v. Dolan, Id. 110.

Where a patent is declared void for defective specifications, and a patent with corrected specifications is issued, a contract to sell the right is enforceable.—Stanley v. Whipple, Case No. 13,286.

An agreement to give an interest in the extension of a patent when granted on payment of a certain proportion of the expenses of procuring it, *held* not to give a vested right in the extension without payment, though the owner refused to tell the amount when payment was offered.—Pitts v. Hall, Case No. 11,193.

The consideration for a contract to convey an extended patent, when granted, being an agreement to pay therefor, a failure to pay will not authorize a revocation of the contract.—Day v. Candee, Case No. 3,676.

The word "invention," in the contract for the assignment of a patent, *held* not to cover other improvements in the same art, although the patent to be assigned would be worthless without them.—United Nickel Co. v. American Nickel-Plating Works, Case No. 14,405.

§ 143. Assignability of patents.

A patent may be assigned in whole or in part. —Parker v. Haworth, Case No. 10,738.

The subject-matter of a patent is not separable except territorially.—Suydam v. Day, Case No. 13,654; Goodyear v. Central R. Co., Id. 5,563.

A patentee cannot divide his right into parts, so as to give one person the right to use it for one purpose, and another the right to use it for another purpose, and restrict the right of the purchasers from either.—Washing Mach. Co. v. Earle, Case No. 17,219.

A paper purporting to be an assignment of an expired patent is void as an assignment, though it may be enforced as a power of attorney.—Bell v. McCullough, Case No. 1,256.

Inchoate right of inventor to exclusive privilege under extension of patent is subject of sale.—Clum v. Brewer, Case No. 2,909. CONTRA, see Gibson v. Cook, Case No. 5,393.

And will become operative upon as soon as the extension has been granted.—Gear v. Grosvenor, Case No. 5,291.

See, also, ante, § 139.

§ 144. Who may assign.

An administrator of a patentee may assign a patent renewed in his own name.—Brooks v. Jenkins, Case No. 1,953.

An assignment of a patent by one of two or more administrators is valid.—Wintermute v. Redington, Case No. 17,896.

An assignment of an extension of a patent by the patentee's sole executrix, who signed herself as "administratrix," pursuant to a contract of the patentee, but without the sanction of the probate court or the assent of a legatee, *held* good in equity as against one who, after the assignment was recorded, purchased the patent from an administrator c. t. a.—Newell v. West, Case No. 10,150.

§ 145. Requisites and validity of assignments and grants.

The assignment of an exclusive territorial right must be in writing.—Gibson v. Cook, Case No. 5.393.

A conveyance of an interest in a patent must be in writing, and a mere memorandum, in the hands of the patentee, is not sufficient.—Baldwin v. Sibley, Case No. 805.

An assignment of an interest in a patent, made by a receiver, appointed by a state court, of the property of the owner of the patent, conveys no title to the assignee, because the assignment is not a written instrument signed by the owner of the patent.—Gordon v. Anthony, Case No. 5,605.

An assignment is rendered invalid by the omission to record it within three months as against subsequent bona fide purchasers for valuable consideration.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521; Boyd v. McAlpin, Id. 1,748; Brooks v. Byam, Id. 1,948; Gibson v. Cook, Id. 5,393.

An assignment of a right under a patent is valid as between the parties without being recorded.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521; Boyd v. McAlpin, Id. 1,748; Case v. Redfield, Id. 2,494; Continental Windmill Co. v. Empire Windmill Co., Id. 3,142; Hall v. Speer, Id. 5,947; Perry v. Corning, Id. 11,004; Pitts v. Whitman, Id. 11,196; Turnbull v. Weir Plow Co., Id. 14,244.

Assignment need not be recorded in the patent office as against strangers.—Case v. Redfield, Case No. 2,494; Hall v. Speer, Id. 5,947.

An agreement which operates as a transfer of a patent is good as against those who purchase with notice, though not recorded.—Ashcroft v. Walworth, Case No. 580; Boyd v. McAlpin, Id. 1,748; Continental Windmill Co. v. Empire Windmill Co., Id. 3,142.

An assignment of a patent, though not recorded, vests title in the assignee until due entry or claim by the party entitled to take advantage of the breach of condition as to recording.—Van Hook v. Wood, Case No. 16,854.

Within the three months an unrecorded prior assignment in writing will prevail.—Gibson v. Cook, Case No. 5,393.

One of three instruments executed contemporaneously as part of the same transaction was recorded, though none were required to be recorded by law. *Held*, that they were all valid, as against a bona fide purchaser under the recorded instrument.—Hamilton v. Kingsbury, Case No. 5,985.

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.—Wyeth v. Stone, Case No. 18,107.

Record in patent office of assignment is notice to purchasers.—Case v. Redfield, Case No. 2,494.

See, also, post, § 150.

§ 146. Construction and operation of assignments and grants—Property or interest conveyed.

An assignment of a patent to an assignee in trust gives him the legal title.—Campbell v. James, Case No. 2,361.

A grant of an exclusive right to construct, use, and vend a certain number of patented machines within a certain territory, with exclusive use of the patent within the territory limited to said machines, conveys the entire interest in the patent for such territory.—Ritter v. Serrell, Case No. 11,866.

An assignment of an interest in a patent, reserving to the grantor the whole and sole power of disposal, conveys no legal title, but the assignee is only a cestui que trust, to the extent of his interest, in the profits.—Goodyear v. Day, Case No. 5,566.

An assignment of all the grantor's right, title, and interest in and to a certain patent carries only the grantor's existing interest.—Ashcroft v. Walworth, Case No. 580.

An assignment, construed with a contemporaneous agreement, *held* to vest in a person, as trustee for corporations, the patentee's interest in the patent, and to the same person, as trustee for the patentee, all interest in claims for past infringements.—Dibble v. Augur, Case No. 3,879.

A sale of the right to use and sell "Singer's patent sewing machines, as mentioned in the patent granted to S., Aug. 12, 1851," *held* an assignment of all the rights which the vendor had in the Singer machine under any patent.—Burdell v. Denig, Case No. 2,142.

An assignment of all "right, title, interest, claim, or demand whatsoever, in, to, or under" a certain patent, *held* not to convey claims for past infringements.—Dibble v. Augur, Case No. 3,879.

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.—Wood v. Michigan S. & N. I. R. Co., Case No. 17,957.

Assignees and grantees of rights during the original term have a right to use the patented invention during an extension under Act July 4, 1836, § 18, whether such right arose from the purchase of a machine or from the grant of a limited or unlimited right to use.—Day v. Union India-Rubber Co., Case No. 3,691.

The same rules apply in the case of patented processes.—Day v. Union India-Rubber Co., Case No. 3,691.

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.—Wilson v. Turner, Case No. 17,-845.

The right to use a patented process during the original term of the patent, under Act 1836, § 18, re-enacted in Act 1870, does not authorize the use of it after the patent is extended.—Wetherill v. Passaic Zinc Co., Case No. 17,465.

A grant of the right to use a patented machine or any number of said machines in a certain place *held* to convey the right to make machines, or procure them to be made for such use.—Steam Stone Cutter Co. v. Shortsleeves, Case No. 13,334.

A sale, by the owner of two patents, of the right to manufacture generally, will be *held* to be a conveyance of the right under both patents, notwithstanding a previous conveyance to another of the right under one specifically.—Day v. Stellman, Case No. 3,690.

Deed construed as a conveyance of a single machine, without right to construct others.—Baldwin v. Sibley, Case No. 805.

A conveyance of all right, title, and interest in a patent in a particular territory, as to a portion of which the patentee has previously parted with some interest, will be *held* to operate only upon the residuary interest of the patentee, though the second assignment is first recorded.—Turnbull v. Weir Plow Co., Case No. 14,244.

Separate transfers of all right, title, and interest in a patent were made at different times to different parties, and the first transferee subsequently retransferred to the grantor. *Held*, that such retransfer did not inure to the benefit of the second transferee, so as to perfect his title.—Perry v. Corning, Case No. 11,004.

An assignment of a patent for a knitting needle, "to be applied exclusively to the knitting or construction of harnesses for looms, and for other purposes," limits its use to harnesses.—Aiken v. Dolan, Case No. 110.

The assignee of territorial rights not restricted as to sales within the territory, may, as to subsequent assignees of other territory, sell within his own territory without restriction or condition.—McKay v. Wooster, Case No. 8,847.

A person to whom the patentee has passed his interest in a part of the old patent, upon the surrender of the same by the patentee, and obtaining a reissued patent, is entitled to the same right under the reissued patent that he had to the old one.—Potter v. Holland, Case No. 11,-329.

He may, however, elect to hold under the old patent, and it is not a valid objection that in such event there would be different claims of right in the same invention secured to different sectional owners.—Potter v. Holland, Case No. 11,329.

A reissue does not inure to the benefit of a prior assignee. He takes by ratification, not by inurement.—Burdell v. Denig, Case No. 2,142.

A transferee of the patentee's interest for a state is entitled to the benefit of a reissue, if he ratifies the same, though he did not join in the surrender.—Meyer v. Bailey, Case No. 9,516.

The amendments in a reissue inure to the benefit of grantees under the original of exclusive rights for particular localities.—Smith v. Mercer, Case No. 13,078.

The assignees of a patent have no interest in an extension by act of congress unless so expressly agreed.—Gibson v. Cook, Case No. 5,393.

Where the act contains no reservations in their favor, they cannot continue to use their patented machines.—Gibson v. Gifford, Case No. 5,395.

An assignee of a patent or a machine constructed thereunder has no right or interest in the renewal of a patent, unless given by the statute or by express contract.—Bloomer v. Stolley, Case No. 1,559; Brooks v. Bicknell, Id. 1,944, 1,945; Case v. Redfield, Id. 2,494; Hammond v. Mason & Hamlin Organ Co., Id. 6,004; Phelps v. Comstock, Id. 11,075; Woodworth v. Sherman, Id. 18,019; Same v. Cheever, Id.

The fact that a person was an assignee under the original term of letters patent furnishes no presumption that he is interested in the extended term.—Goodyear v. Hullihen, Case No. 5,573.

The extent to which assignees of a patent may enjoy a renewed patent is to be determined solely by the stipulations of the assignment.—Van Hook v. Wood, Case No. 16,855.

The assignment of a patent, or the right to a patent pending, *held* not to include the right to an extended term.—Mowry v. Grand St. & N. R. Co., Case No. 9,893.

The assignment of all right, title, and interest in letters patent, and "the invention thereby secured," does not import a conveyance of the right to an extended term, and the assignee cannot convey such right.—Waterman v. Wallace, Case No. 17,261.

An assignment of an interest in an invention and of letters patent "to the full end of the

term for which they are or may be granted" will pass a subsequent reissue, but not an interest in a subsequently extended term.—Chase v. Walker, Case No. 2,630; Goodyear v. Cary, Id. 5,562; Jenkins v. Nicolson Pavement Co., Id. 7,273; Ruggles v. Eddy, Id. 12,117; Thayer v. Wales, Id. 13,872.

Words "to be held to the full end of the term for which said letters patent are or may be granted," when used in the habendum of the deed, considered.—Gear v. Grosvenor, Case No. 5,291; Same v. Holmes, Id. 5,292.

A conveyance by a patentee *held* to cover the right to foreign letters patent and all renewals and extensions.—Emmons v. Sladdin, Case No. 4,470.

A conveyance of an original patent, and "any further patent which he shall or may at any time hereafter procure for any improvements," conveys an interest in so much of a future extension as may be necessary for the use of the improvements.—Chase v. Walker, Case No. 2,-630.

§ 147. —— Rights and liabilities of assignees and grantees.

A contract between a patentee and one granted an exclusive right that no suit for infringement should be instituted without the consent of both parties, does not prevent the latter making a bona fide settlement with an infringer, binding upon the former.—Burdell v. Denig, Case No. 2,142.

Where an inventor assigns his invention under a verbal agreement that the assignee shall pay the expense of obtaining a patent for a half interest therein, and the patent is issued to him, the manufacture of the patented article by a person to whom the inventor assigned his equitable interest is not an infringement.—Whiting v. Graves, Case No. 17,577.

An American assignee of an alien inventor, who obtained letters patent in his own name under Act March 3, 1837, § 6, is not required to put and continue the invention on sale, under Act July 4, 1836, § 15.—Tatham v. Lowber, Case No. 13,764.

The court will not enjoin the sale of a similar article under the same patent, in a particular district assigned to an individual, though manufactured in a different district.—Boyd v. Brown, Case No. 1,747.

The terms "assignee" and "grantee" are not used in the patent law of 1836 as synonymous terms.—Potter v. Holland, Case No. 11,329.

A grantee is one who has transferred to him, in writing, the exclusive right to make and use, and to grant to others to make and use, the thing patented within and throughout some specified part or portion of the United States.—Potter v. Holland, Case No. 11,329.

An assignee is one who has transferred to him, in writing, the whole interest of the patent, or any undivided part of the whole interest, in every portion of the United States.—Potter v. Holland, Case No. 11,329.

The remedy in equity given to inventors by Act 1836, § 17, extends to their assignees.—Jenkins v. Greenwald, Case No. 7,270.

Rights of parties determined in the case of conflicting assignments of rights in an extended patent where one party failed to fulfill his agreement.—Gibson v. Barnard, Case No. 5,389.

Declarations of the patentee, made after he had assigned all his interest, impeaching the validity of the patent, are inadmissible against the assignee.—Many v. Jagger, Case No. 9,-055.

Nor is evidence of such declarations admissible to contradict the patentee, who has testified as a witness for the assignee, where he has not been interrogated as to such declarations.—Many v. Jagger, Case No. 9,055.

§ 148. —— Bona fide purchasers.

The possession of a third person, where an assignment refers to use of the patented device by him, is constructive notice to the assignee of his claim.—Prime v. Brandon Mfg. Co., Case No. 11,421.

A bona fide purchaser for valuable consideration without notice takes a good title as against a person holding a contract for an interest made before the grant.—Gibson v. Cook, Case No. 5,393.

§ 149. Transfer on insolvency or bankruptcy.

The assignment of a patent to the assignee in bankruptcy, though not recorded, is good as against a subsequent assignment by the bankrupt, duly recorded.—Prime v. Brandon Mfg. Co., Case No. 11,421.

An assignment made by the judge of probate under the Massachusetts insolvency law does not pass the insolvent's interest in letters patent.—Ashcroft v. Walworth, Case No. 580.

(C) LICENSES AND CONTRACTS.

§ 150. What constitutes a license.

A license defined, and the instrument in question *held* to be merely a license.—Nelson v. McMann, Case No. 10,109.

An assignment which does not convey the entire or unqualified monopoly which the patentee holds in the territory specified, or an undivided interest in the entire monopoly, is a mere license.—Sanford v. Messer, Case No. 12,314; Potter v. Holland, Id. 11,329.

An instrument vesting the grantee with an exclusive territorial right of making and using the thing patented, and of granting that right to others, is an assignment. Any conveyance short of this is a license.—Farrington v. Gregory, Case No. 4,688.

A transfer of "the sole and exclusive right and monopoly of manufacturing" under a patent, for a certain royalty, is a transfer of the entire interest, and not the establishment of a license fee.—La Baw v. Hawkins, Case No. 7,961.

The purchaser of the right to make, use, and vend the invention in a particular place buys a portion of the franchise which the patent confers.—Goodyear v. Beverly Rubber Co., Case No. 5,557.

A contract granting the right of manufacturing and selling a patented article *held* a license. —Brooks v. Byam, Case No. 1,948.

An employment to invent and perfect machinery for a particular purpose will operate as a license to the employer to use machines invented by the employé, and put in use under such employment.—Whiting v. Graves, Case No. 17,577; Chabot v. American Button-Hole & Overseaming Co., Id. 2,567.

The infringing articles were put into defendant's factory at its expense, under the direction of the inventor, and were used under his direction up to the time of the application for a patent. *Held*, that defendant had a special license to use such articles.—Magoun v. New England Glass Co., Case No. 8,960.

An assignment of all right and interest under a patent in certain territory, where the patentee reserved the right to sell machines of his own manufacture in such territory, *held* a mere license.—Hussey v. Whitely, Case No. 6,950.

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

premises.—Wetherill v. Passaic Zinz Co., Case No. 17,465.

An agreement between owners of conflicting patents defining their rights, and providing for the purchase of outside patents for mutual protection, *held* to give only a license to use such purchased patents, and an action thereon is properly brought in the name of the purchaser alone.—Aultman v. Holley, Case No. 656.

An agreement, made on the settlement of a dispute as to conflicting claims to the right to make a certain patented spike, that hereafter each party may make and vend spikes of such character as he sees fit, *held* a license to make the patented spike.—Troy Iron & Nail Factory v. Erastus Corning, Case No. 14,195.

License to use *held* to be inferred from the receipt of compensation for a use acquiesced in for a long time, though the patentee at the time reserved the right to claim an additional compensation.—Blanchard v. Sprague, Case No. 1,516.

§ 151. Who may make license.

One of three patentees owning an unequal share may make a valid license to use the thing patented, patentees being tenants in common.—Dunham v. Indianapolis & St. L. R. Co., Case No. 4,151; Clum v. Brewer, Id. 2,909.

The holder of the legal interest in a patent, who is the agent of and principal stockholder in a corporation owning the equitable interest, has the right to make a contract of license in settlement of conflicting claims with an alleged infringer.—Troy Iron & Nail Factory v. Erastus Corning, Case No. 14,195.

§ 152. Requisites and validity of licenses.

A license to make and use a patented machine need not be in writing.—Baldwin v. Sibley, Case No. 805.

The condition attached to the sale of patented cotton ties, "licensed to use once only," is void.—American Cotton-Tie Co. v. Simmons, Case No. 293.

A patentee, while granting to another a right to make and sell, may retain to himself the exclusive right to make and sell for export or use in other countries.—Dorsey Revolving Harvester Rake Co. v. Bradley Mfg. Co., Case No. 4,015.

Where a patented machine, not practically useful, is perfected by the inventor while in the employ of another, and at the latter's expense, he is entitled to a license for its use.—Wilkens v. Spafford, Case No. 17,659.

A license under a patent need not be recorded.—Chambers v. Smith, Case No. 2,582; Farrington v. Gregory, Id. 4,688.

The question of what amounts to a delivery of a license considered.—Hammond v. Hunt, Case No. 6,003.

A license until conditions performed is inoperative.—Brooks v. Stolley, Case No. 1,962.

§ 153. Construction and operation of licenses—General rules.

The contracts of a patentee to share his invention with third persons are interpreted and enforced in the same manner as other legal engagements.—Morse v. O'Reilly, Case No. 9,858.

A parol agreement as to the use of an invention *held*, as against the licensee, to have been merged in the written license prepared by him.—Evory v. Candee, Case No. 4,583.

§ 154. —— Scope and extent.

The right to construct a patented machine is distinct from a right to use it.—Bicknell v. Todd, Case No. 1,389.

A license to a person to run "either of his two machines, provided he does not run more than one of them at a time," *held* not limited to the machines then in use.—Brooks v. Stolley, Case No. 1,963.

A sale of the machines licensed, and the purchase of another, is not a matter within the license.—Brooks v. Stolley, Case No. 1,963.

A license to a railroad company gives no right to use the patent on lines afterwards built or leased.—Emigh v. Chicago, B. & Q. R. Co., Case No. 4,448.

A railroad company running its cars over the road of another under a permission to that effect cannot be considered as operating the latter, within the meaning of a license granting the right to use a patented invention.—Hodge v. Hudson River R. Co., Case No. 6,559.

Defendant, having the right under a license to use a patented improvement to the capacity of his tannery, *held* to have the right to use the improvement in a subsequent addition to the tannery without payment of additional fees, where the entire use did not exceed the original capacity.—England v. Thompson, Case No. 4,487.

If a patented machine is torn down, and afterwards rebuilt, and in the rebuilding changed so as to lose its identity and become substantially a new construction, its owner will not be authorized to use it under a license limited to the original machine.—Gottfried v. Phillip Best Brewing Co., Case No. 5,633.

A patentee who has sold the right to make and sell the patented machine within a certain territory cannot limit to such territory the use of the machines so made and sold.—Dorsey Revolving Harvester Rake Co. v. Bradley Mfg. Co., Case No. 4,015.

The right to use, resulting from the purchase of a machine, expires with the existence of the machine.—Day v. Union India-Rubber Co., Case No. 3,691.

The licensee, under Act July 4, 1836, § 18, may use such patented articles as it has in use when the original term expires, until they are worn out.—Hodge v. Hudson River R. Co., Case No. 6,559.

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.—Wilson v. Sherman, Case No. 17,833.

A license to use a patented brake "on any and all cars belonging to" the licensed company covers the use of brakes on trucks and running gear belonging to the company, although the superstructure belongs to another.—Hodge v. Hudson River R. Co., Case No. 6,559.

The words, "all patents and processes which he has or has in contemplation to obtain," merely serve to individuate the patents, and do not convey the extended term.—Wetherill v. Passaic Zinc Co., Case No. 17,465.

The right to use a machine embodying the patented invention granted during the original term is protected during an extension.—Blanchard v. Whitney, Case No. 1,519; Day v. Union India-Rubber Co., Id. 3,691; Farrington v. Gregory, Id. 4,688; Wetherill v. Passaic Zinc Co., Id. 17,465; Woodworth v. Curtis, Id. 18,013; Wooster v. Sidenberg, Id. 18,039. But see Potter v. Empire Sewing Mach. Co., Case No. 11,326.

A license to use an invention "for the whole term of the patent which may be granted," given before the patent was issued, does not authorize the use of it under the extended term.—Wetherill v. Passaic Zinc Co., Case No. 17,465; Hodge v. Hudson River R. Co., Id. 6,559, 6,560.

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.—Woodworth v. Curtis, Case No. 18,013.

The words restricting the grant to such patents as the grantor "holds in his own right" apply to such as he was the apparent, but not the real, owner of, and a patent of which he holds only a part interest will nevertheless pass under the conveyance.—Wetherill v. Passaic Zinc Co., Case No. 17,465.

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.—Woodworth v. Cook, Case No. 18,011.

The mere fact that the agent of the patentee, after the transfer of the machine to the unlicensed territory, demanded of the purchasers the back royalties due upon it for use in the licensed territory, conferred no right to use it outside the territory named in the license.—Wicke v. Kleinknecht, Case No. 17,608.

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.—Wooster v. Taylor, Case No. 18,040.

§ 155. —— Rights and liabilities of licensees.

A compromise agreement by two patentees for the mutual use of their respective patents will not estop either his assignees or licensees from denying the validity of the other's patent.—Van Hook v. Wood, Case No. 16,855.

Where the licensees repudiate the license, the owner of the patent may elect either to sue upon the license or treat the licensees as infringers.—Cohn v. National Rubber Co., Case No. 2,968.

A license to two corporations to use a patented device passes, on their consolidation, to the new corporation, which is vested with all the powers, rights, franchises, etc., of the old corporations.—Lightner v. Boston & A. R. Co., Case No. 8,343.

One having an exclusive license to sell patented machines, together with a contract by the corporation owning the patents to furnish him such machines at a specified price, may enjoin such corporation from undertaking a voluntary dissolution, and from assigning the patents in trust for another association.—Singer Sewing-Mach. Co. v. Union Button-Hole & Embroidery Co., Case No. 12,904.

Apprehension of a denial of the rights of a licensee to use a licensed invention, or a revocation of the license, will not justify application to a court of equity for an injunction.—Florence Sewing Mach. Co. v. Singer Mfg. Co., Case No. 4,884.

The patentee is estopped to deny the validity of a transfer by a licensee where he has made settlement with and received royalties from such transferee.—Bloomer v. Gilpin, Case No. 1,558.

Defendants, in consideration of a license to manufacture under plaintiff's patents, expressly recognized their validity, and agreed not to manufacture certain articles covered thereby. *Held*, that plaintiff could sue in equity either for breach of the agreement or for infringement.—Magic Ruffle Co. v. Elm City Co., Case No. 8,949.

See, also, post, § 184.

§ 156. —— Particular licenses.

Construction of license of right to use Morse's patents on telegraph lines.—Smith v. Selden, Case No. 13,104.

§ 157. Assignments and sublicenses.

Quære, if a license is not such a personal privilege that the entirety cannot be assigned, notwithstanding it was given to one and his assigns.—Brooks v. Byam, Case No. 1,948.

A purchaser of a patented machine from the assignee of a patent, after he has conveyed his entire interest to a second assignee, obtains no right to use the machine during the original or extended term.—Union Paper-Bag Mach. Co. v. Nixon, Case No. 14,391; Hawley v. Mitchell, Id. 6,250.

A mere license is not apportionable, so as to permit the licensee to grant separate rights.—Consolidated Fruit-Jar Co. v. Whitney, Case No. 3,132.

A license merely of use, being property, may be conveyed.—Brooks v. Stolley, Case No. 1,963.

A license to a person, with privilege to employ a certain number of persons, and no more, in the manufacture of a patented article, cannot be assigned in part.—Brooks v. Byam, Case No. 1,948.

A sale of a machine by a person who has a license merely of use does not give an implied right to use it.—Brooks v. Stolley, Case No. 1,963.

A license of the "exclusive right to use and sell" in a certain territory, reserving the "right to manufacture," construed, and *held* assignable.—Hamilton v. Kingsbury, Case No. 5,984.

A license to run a patented machine may be assigned, and the assignee must perform the conditions of the license.—Wilson v. Stolley, Case No. 17,840.

A grant of the exclusive right to "manufacture and sell" in a specified city carries to a purchaser from the licensee a right to use the machine anywhere.—May v. Chaffee, Case No. 9,-332.

A license to make and use a machine gives no power to authorize a third person to construct it.—Baldwin v. Sibley, Case No. 805.

Where a machine is licensed for use in a particular territory, the use of it by subsequent purchasers in other territory is unlawful.—Wicke v. Kleinknecht, Case No. 17,608.

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.—Wood v. Wells, Case No. 17,967.

There is no principle of equity which requires the owner of a patent to give notice to a purchaser of a licensee's right, in order to enable him to restrict such purchaser to terms of the license.—Chambers v. Smith, Case No. 2,582.

The sale of a machine, by virtue of a license to use and sell, carries with it the right to use, by implication, and such machine may be again conveyed without words of assignment.—Farrington v. Gregory, Case No. 4,688.

A licensee from an assignee has no greater rights than his licensor.—Abbett v. Zusi, Case No. 7.

§ 158. Revocation, forfeiture, and abandonment of license.

Neglect to pay price for license and its abandonment is a forfeiture.—Bell v. McCullough, Case No. 1,256.

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.—Woodworth v. Weed, Case No. 18,022.

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—Wood v. Wells, Case No. 17,967.

The forfeiture of a license may be enforced according to its terms, by reason of the abandonment or neglect of the licensee.—Wilson v. Stolley, Case No. 17,840.

Under a license to use a patented machine in a certain place, and not elsewhere, and to have the privilege of using additional machines in such place, *held*, that the licensee was entitled, as against an assignee of the patent, to use the single machine, and to repair and rebuild it, but had forfeited his right to the additional machines by using infringing machines.—Steam Cutter Co. v. Sheldon, Case No. 13,331.

The licensee does not forfeit his right to the single machine by permitting it to be used by another person, but is liable for the profits arising therefrom, and the damages thereby sustained by the assignee.—Steam Cutter Co. v. Sheldon, Case No. 13,331.

The failure of a licensee to pay license fees weekly, as provided in the license, *held* not an abandonment.—Brooks v. Stolley, Case No. 1,962.

A confession of judgment for arrears of weekly payments for a license is an admission of the arrears, giving the option to revoke the license.—Armstrong v. Hanlenbeck, Case No. 544.

Failure of licensee to comply with condition to advance money for procuring patent, and the presentation by him to the inventor of a bill for money already advanced, with a view to a settlement, *held* to be an abandonment by the licensee of all rights under the contract.—Kittle v. Frost, Case No. 7,856.

Failure to make returns and pay certain royalties, under contract granting an exclusive right, *held* not to justify revocation at will, though sufficient to justify court of equity in rescinding it.—Burdell v. Denig, Case No. 2,142.

§ 159. Royalties and license fees.
The patentee may license the use of his machine for a royalty or annuity.—Burr v. Duryee, Case No. 2,190.

An agreement in a license not to make any further claim of license fees under other patents owned or controlled by the licensee *held* not to apply to past infringement of a patent, the control of which, including the right to recover for infringements subsequently passed to the licensor.—Dibble v. Augur, Case No. 3,879.

A licensee will be compelled to pay the fee as a condition of using the patent.—Day v. Hartshorn, Case No. 3,683.

A principal is not liable for the claim of a patentee under work done by a contractor who held a license, even though he has not paid his license fees or royalty.—Stow v. Chicago, Case No. 13,512.

In a suit to obtain a reduction of a license fee, an injunction was granted restraining defendant from terminating the license upon condition of plaintiff's depositing in court the amount of the fees in dispute. The bill was dismissed for want of equity and proper parties. *Held*, that the fund would be retained until the final determination of the controversy by a proper tribunal.—Florence Sewing Mach. Co. v. Singer Mfg. Co., Case No. 4,885.

Defendant, who uses a patented improvement under a license which stipulates for a right to continue the use after expiration of the term agreed, cannot continue the use after such time without payment of the fee stipulated therefor.—England v. Thompson, Case No. 4,487.

A license to use looms, corresponding to certain models, for a specified period, "and for the additional term of any extension which may be hereafter granted of any patent now owned" by the licensors "relative to such looms," *held* to mean that the right to continuation of royalty was conditioned upon the extension of one or more of the patents.—Lowell Mfg. Co. v. Hartford Carpet Co., Case No. 8,569.

The grantee from a licensee must pay the license fees stipulated in the license from the patentee.—Goodyear v. Congress Rubber Co., Case No. 5,565.

But he will not be enjoined from acting under the license because of failure of his grantor to pay license fees accrued before the conveyance, nor is he liable therefor.—Goodyear v. Congress Rubber Co., Case No. 5,565.

The impairment of profits of a licensee by the use of the invention by others, though unlawful, is a good defense to a suit for license fees, where it was stipulated that the fees should cease if the licensee's profits were impaired by use by others.—Goodyear v. Day, Case No. 5,567.

Infringement of exclusive right granted by patentee to defendant is no defense by way of special plea in bar to a suit by him for license fees.—Birdsall v. Perego, Case No. 1,435.

In a suit to obtain the reduction of a license fee, *held*, that all of the joint owners of the patent and grantors of the license were necessary parties defendant, and no decree can be made without bringing them in.—Florence Sewing Mach. Co. v. Singer Mfg. Co., Case No. 4,884.

It is no defense by way of plea in bar to a suit for license fees that plaintiff was not the first and original inventor.—Birdsall v. Perego, Case No. 1,435.

In a suit for license fees after revocation of the license, *held*, that the licensee was estopped by the admission in the license from setting up the invalidity of the patent as a defense.—Evory v. Candee, Case No. 4,583.

XI. REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES.

§ 160. Power to control and regulate.
A state has no right to interfere with the enjoyment of a patent right, or to annex conditions to the grant.—Ex parte Robinson, Case No. 11,932.

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.—Woollen v. Banker, Case No. 18,030.

A state law requiring the filing of a copy of letters patent and a certain affidavit by the owner with the county clerk, as a condition of the right to sell the patent right in the county, is unconstitutional and void.—Ex parte Robinson, Case No. 11,932.

§ 161. Marking patented articles.
Each article should be stamped with the day of the month, as well as the year. The word "Patented" may be abbreviated.—Hawley v. Bagley, Case No. 6,248.

It is no excuse for failure to mark the patented articles "Patented" that such marking would have been so expensive as to make the

articles unprofitable.—Putnam v. Sudhoff, Case No. 11,483.

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.—Wilson v. Singer Mfg. Co., Case No. 17,836.

The word "Patent" affixed to an article imports to all who see it that the article is then patented.—Nichols v. Newell, Case No. 10,245.

Stamping manufactured articles with the name and date of a patent is conclusive on the manufacturers that they were made thereunder, and, where the patent is held to be an infringement, they will be *held* liable.—Jones v. Vankirk, Case No. 7,500.

§ 162. Effect of failure to mark.

The failure to mark patented articles does not affect the right to an injunction. It only takes away the right to damages.—Goodyear v. Allyn, Case No. 5,555.

To prevent the recovery of damages it must appear, either from the bill or in the proofs, that the patentee has made or vended the articles under the patent.—Goodyear v. Allyn, Case No. 5,555.

Failure to stamp the patented article, or to give the infringer notice, as required by the act of July 8, 1870, § 38, prevents recovery of more than nominal damages.—McComb v. Brodie, Case No. 8,708.

§ 163. Penalties for violation of regulations.

Flour may be a patentable article, and an action will lie to recover the penalty for marking it "Patented" when it is unpatented. Rev. St. § 4901.—Oliphant v. Salem Flouring Mills Co., Case No. 10,486.

The penalty does not attach for placing the word "Patent" on an article merely frivolous in itself, and which imports no novelty, or the exercise of any inventive talent, so that no one could be deceived.—United States v. Morris, Case No. 15,814.

To justify a judgment for the penalty, the declaration must allege, and the proofs show, that the article so marked was legally the subject of a patent.—United States v. Morris, Case No. 15,814.

The penalty of not less than $100 (Act Aug. 29, 1842, § 5) for the offense of marking the word "Patent" on unpatented articles, is a penalty of $100, and no more.—Stimpson v. Pond, Case No. 13,455.

The making of application for a patent will not prevent the penalty for attaching for affixing the word "Patent" to an unpatented article, at least as to articles made and stamped before the application.—Stephens v. Caldwell, Case No. 13,367.

An article upon which the patent has expired does not come within the meaning of the statute which prohibits the affixing of the word "Patented" upon any "unpatented article."—Wilson v. Singer Mfg. Co., Case No. 17,836.

A person who marks as patented an unpatented article is not liable to the penalty prescribed by Act Aug. 29, 1842, § 5, unless he does so knowing that he has no right to do so, and with the intention of deceiving the public.—Walker v. Hawxhurst, Case No. 17,071; Nichols v. Newell, Id. 10,245; Stephens v. Caldwell, Id. 13,367.

If an unpatented article is marked as patented, with intent to deceive, the offense is complete, without showing that the article was sold. If the marking was with innocent purpose, there is no offense, though the article is sold.—Nichols v. Newell, Case No. 10,245.

If the word "Patent" is affixed to articles with the intention of procuring a patent, and withholding them from observation and sale until the same is granted, the act is innocent.—Nichols v. Newell, Case No. 10,245.

Although one who marks an unpatented article as patented may expect to receive a patent, the offense is complete if he intended to make the public believe that the article was then patented.—Nichols v. Newell, Case No. 10,245.

Marking an unpatented article "Newell's Patent, 1852," is affixing the word "Patent" within the meaning of the act.—Nichols v. Newell, Case No. 10,245.

Suits for the penalty for affixing the word "Patented" to unpatented articles must be brought in the name of the informer, and not in the name of the United States. Act Aug. 29, 1842, § 5.—United States v. Morris, Case No. 15,814.

In an action by the informer for a penalty for marking an unpatented article as patented, the United States need not be joined as plaintiff.—Oliphant v. Salem Flouring Mills Co., Case No. 10,486.

In a qui tam action under Act 1842, § 6, the proof as to the patent must correspond with the allegations as to the sale of the article.—Hawley v. Bagley, Case No. 6,248.

A count charging defendants with putting the word "Patent" on a lamp is sustained by proof that they put it on the cap of the lamp.—Nichols v. Newell, Case No. 10,245.

In an action for the penalty for marking an unpatented article as patented, the question of the intention of deceiving the public is for the jury.—Walker v. Hawxhurst, Case No. 17,071.

XII. INFRINGEMENT.

(A) WHAT CONSTITUTES INFRINGEMENT.

§ 164. In general.

The law of infringement explained and illustrated.—Colt v. Massachusetts Arms Co., Case No. 3,030.

It is not necessary that the thing patented should be adopted in every particular to constitute an infringement; a substantial adoption is sufficient.—Root v. Ball, Case No. 12,035.

Where the right consists in certain instruments by which a thing of a particular structure is made, the structure or use of these instruments is prohibited.—Boyd v. Brown, Case No. 1,747.

There is no infringement in using what the public had free opportunity to use before the patent, whether the character or capacities thereof were generally understood or not.—Smith v. Higgins, Case No. 13,058; McCormick v. Manny, Id. 8,724.

§ 165. Knowledge or intent.

One may be an infringer without knowing of the existence of the patent.—Matthews v. Skates, Case No. 9,291.

A person who constructs a machine with knowledge that another is the first inventor acts at his peril, and a subsequent patent will prevent its use by him.—Evans v. Weiss, Case No. 4,572.

The manufacture of certain articles capable of being used in making up certain parts of a patented combination, and with the intention that they should be so used, is not an infringement, where they are separately useful for numerous purposes.—Millner v. Schofield, Case No. 9,609a.

§ 166. Patents for processes.

Where the gist of an invention is the discovery of a principle in science made practically useful by the process described, he who adopts the principle to a practical extent is guilty of infringement.—Tilghman v. Werk, Case No. 14,046.

There is an infringement of a patent for a process if the two products and the general mode of construction are the same as would appear by comparison of the two manufactures, though mechanical differences exist.—Collender v. Came, Case No. 2,999.

The inventor of a new means of carrying into effect a patented process is entitled to a patent therefor, but he has no right to use the process. —Tilghman v. Mitchell, Case No. 14,043.

Placing red-hot car wheels in a pit with alternate layers of charcoal, which is ignited thereby for the purpose of annealing, *held* equivalent to placing them in a previously heated furnace, within the meaning of the patent.—Whitney v. Mowry, Case No. 17,592.

§ 167. Patents for machines or manufactures in general—Identity in general.

Tests for determining the identity or diversity of machines on questions of infringement.—Blanchard v. Beers, Case No. 1,506; Tatham v. Le Roy, Id. 13,760; Whittemore v. Cutter, Id. 17,601.

On the point of infringement, the inquiry is whether defendant's machine in its construction involves some new idea not found in plaintiff's, or whether it is in substance the same, and differs merely in things immaterial or unimportant.—McCormick v. Seymour, Case No. 8,726.

There is an infringement if use of the machine will produce a result in it which would have been an infringement if originally introduced.—American Diamond Rock Boring Co. v. Sullivan Mach. Co., Case No. 298.

Where a party avails himself of the former invention without such variation as constitutes discovery, there is an infringement.—Carter v. Baker, Case No. 2,472.

To determine infringement the two machines must be compared, in the light of their devices, and their process and product, inquiry being directed to the essential parts.—Cahoon v. Ring, Case No. 2,292.

If two machines, having substantially the same mode of operation, do the same work in substantially the same way, and accomplish substantially the same result, they are the same, though differing in form, shape, or name.—Blanchard v. Puttman, Case No. 1,514; Same v. Reeves, Id. 1,515; Brooks v. Jenkins, Id. 1,953; Cahoon v. Ring, Id. 2,292; Conover v. Rapp, Id. 3,124; Same v. Roach, Id. 3,125; May v. Johnson County, Id. 9,334; Sickels v. Borden, Id. 12,832; Sloat v. Spring, Id. 12,-948a; Smith v. Fay, Id. 13,045; Union Sugar Refinery v. Matthiesson, Id. 14,399.

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.—Crompton v. Belknap Mills, Case No. 18,285; Odiorne v. Winkley, Id. 10,432.

Where two machines produce substantially a similar result by substantially similar means, no proof of difference between them lies in the fact that one is less effectual in operation, or more imperfect in its structure, than the other. —Roberts v. Harnden, Case No. 11,903.

There is no infringement where the two contrivances do not perform the same function, by the same means, and one cannot be used in place of the other.—Brown v. Rubber-Step Mfg. Co., Case No. 2,028.

A device is not less equivalent of another because, superadded to all the functions of such other, it may perform a further office, or because, besides all the functions of such other, it performs some one of the offices more effectively or better, so long as it performs them in substantially the same way, and uses substantially the same means.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

If the patented means were new, and the defendants have used them, they have infringed, although they may have used another device, not patented by the plaintiffs, by which the result is accomplished in a more perfect and satisfactory manner.—Waterbury Brass Co. v. New York & B. Brass Co., Case No. 17,256.

Subsequent discovery of peculiar value of material used by inventor does not give discoverer right to use it in the patented manner.—Bailey Washing & Wringing Mach. Co. v. Lincoln, Case No. 750.

§ 168. —— Identity of principle or mode of operation.

What constitutes substantial identity in principle.—Parker v. Stiles, Case No. 10,749.

Changing the position of a machine does not alter its principle.—Brooks v. Jenkins, Case No. 1,953.

"Principle," as applied to machines, refers to mode of operation; and identity of principle may exist in structures widely different in appearance and dimensions.—Latta v. Shawk, Case No. 8,-116.

The principle of a machine or improvement is the peculiar mode, manner, or device by which the proposed result or effect is produced.—Pitts v. Wemple, Case No. 11,194; Parker v. Stiles, Id. 10,749.

The principle in a machine is that which applies, modifies, or combines mechanical powers to produce a certain result.—Smith v. Pearce, Case No. 13,089.

That is a substantial identity which comprehends the application of the principle of the invention.—Coleman v. Liesor, Case No. 2,984; Latta v. Shawk, Id. 8,116; McComb v. Brodie, Id. 8,708; Page v. Ferry, Id. 10,662; Parker v. Haworth, Id. 10,738; Smith v. Downing, Id. 13,036.

A machine which is not the same in principle is not an infringement.—Brooks v. Jenkins, Case No. 1,953.

Where two machines are substantially the same, and operate in the same manner to produce the same kind of result, they must be, in principle, the same.—Gray v. James, Case No. 5,718.

A machine which operates, or may operate, if the owner is disposed to use it so, in the manner pointed out by the patent, is an infringement.—Holbrook v. Small, Case No. 6,595.

A machine is not the same if either the devices, or the mode of applying them, be substantially different from that of the patented machine.—Eames v. Cook, Case No. 4,239.

A difference in the result of the action of two devices is evidence of difference in mode of operation.—Sloat v. Patton, Case No. 12,947.

A difference in mode of operation or result obtained is evidence that the mechanism is different.—Eames v. Cook, Case No. 4,239.

Blanchard's patent for a machine for turning and cutting irregular forms is infringed by a machine using the same combination, but which will make only wagon spokes.—Blanchard v. Beers, Case No. 1,506.

Mechanism for marking dial paper by forcing points upward from below *held* equivalent to de-

vice for marking it by pressing points downward on surface.—Buerk v. Imhaeuser, Case No. 2,106; Same v. Valentine, Id. 2,109.

A claim in a fluting machine for an arched guide in combination with fluting rollers is infringed by a combination in which the position of the arched guide is changed, but without varying its mode of operation or the results produced.—King v. Maudelbaum, Case No. 7,799.

A box-cover fastening formed by making a hole in the rim of the cover to fit over a protuberance on the surface of the box infringes a patent for a fastening formed by a protuberance on both cover and box.—Parker v. Remhoff, Case No. 10,747.

A patent for a "shoe-last" is infringed by using the machine, without alteration, in the making of boots.—Mabie v. Haskell, Case No. 8,653.

A hat-body machine, in which it is claimed that the fur is projected by a rotary picker downward against a surface, by which it is guided upon a former, is an infringement of a patent for a like machine, in which the fur is blown by such a picker upwards against the upper side of a tunnel, through which it is carried on the former.—Wells v. Jacques, Case No. 17,398.

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.—Winans v. Danforth, Case No. 17,859.

A change in the mode of construction without changing the principle, involving a loss of power, but gaining a quicker motion, will not prevent the machine being an infringement.—Blake v. Eagle Works Mfg. Co., Case No. 1,494.

§ 169. —— Identity of form or arrangement.

All modes, however changed in form, which act on the same principle and effect the same end are within the patent.—Brooks v. Bicknell, Case No. 1,944; Evans v. Eaton, Id. 4,560; McComb v. Brodie, Id. 8,708; Sargent v. Larned, Id. 12,364; Sickels v. Borden, Id. 12,832.

Where the change of form involves only the exercise of mechanical ingenuity, there is an infringement.—Potter v. Schenck, Case No. 11,337.

If defendant's machinery embody the patentee's ideas, and operate by such adoption, it infringes, in spite of an apparent or real difference of arrangement.—Smith v. Higgins, Cases Nos. 13,-057, 13,059.

Infringement is not avoided by change of form or proportion, substitution of one motive power for another, different position of gearing, or superior finish, etc.—Smith v. Higgins, Case No. 13,058.

Though the machine is not in its arrangement substantially different from that of the patent, yet there is no infringement if its action upon the material operated upon is essentially different, and the result is new.—Tatham v. Le Roy, Case No. 13,762.

A patent confined to mold boards for plows, whose faces are worked upon transverse circular lines whose radii are in the exact proportion of three to one, is infringed by a mold board which contains a slight variation only for the purpose of evading the patent.—Davis v. Palmer, Case No. 3,645.

Structures are "substantially" the same if of the same material, thickness, or form, where such condition is important.—Adams v. Edwards, Case No. 53.

A saw having its fleam teeth of the usual triangular form, with intervals between them, does not infringe a patent for a saw having its fleam teeth arranged in pairs, with only a perpendicular slit between them.—Wheeler v. Simpson, Case No. 17,500; Hoe v. Same, Id.

A change of form or proportion, producing a new effect, is not within the inhibition of the statute as a simple change of form or proportion.—Davis v. Palmer, Case No. 3,645.

A patent for a saw, claiming in combination clearing teeth hollowed out in front, so as to plane out the wood between the scores cut by the fleam teeth, is not infringed by a saw in which the wood is rasped out by clearing teeth, which are straight and perpendicular in front.—Wheeler v. Simpson, Case No. 17,500; Hoe v. Same, Id.

§ 170. —— Substitution of equivalents.

One device is not a well-known substitute for another which cannot be used for it.—Crompton v. Belknap Mills, Case No. 3,406.

A mechanical equivalent is limited to the principle of the patent, including merely colorable or formal alterations.—McCormick v. Manny, Case No. 8,724.

If defendant has taken the same general plan and applied it for the same purpose, though varying the mode of construction, he has used merely mechanical equivalents.—McCormick v. Seymour, Case No. 8,726.

The doctrine of mechanical equivalents discussed.—Storrs v. Howe, Case No. 13,495.

A mechanical equivalent is one that may be adopted in place of that named, by a person skilled in the art, from his knowledge of the art. —Burden v. Corning, Case No. 2,143; Johnson v. Root, Id. 7,411; May v. Johnson County, Id. 9,334; Smith v. Downing, Id. 13,036.

The true criterion of mechanical equivalence is identity of purpose, and not of form or name. —In re Boughton, Case No. 1,696.

The mere substitution of one known device for another, though complex, is an infringement.—Foster v. Moore, Case No. 4,978.

A change which constitutes a mechanical equivalent, though accomplishing something useful beyond the effect accomplished by the patentee, is nevertheless an infringement, as respects what is covered by the patent.—Foss v. Herbert, Case No. 4,957.

Where the chief efficacy of a machine arises from the use of equivalents to the patented machine, it is an infringement, though it be simpler, cheaper, and better.—Odiorne v. Denney, Case No. 10,431.

Infringement is not avoided by mere formal alterations, or the substitution for one ingredient of a well-known equivalent.—Bailey Wringing Mach. Co. v. Adams, Case No. 752; Barrett v. Hall, Id. 1,047; King v. Louisville Cement Co., Id. 7,798; Wintermute v. Redington, Id. 17,896.

A change which is the substitution of an equivalent and something more is an infringement of what is covered by the patent, though the additional matter be a patentable improvement.—Sloat v. Spring, Case No. 12,948a.

The use of an equivalent is not an infringement if such equivalent is expressly disclaimed. —Byam v. Farr, Case No. 2,264.

One who has discovered a result and machinery that produces it may invoke the doctrine of equivalents, but a mere improver cannot.—Singer v. Walmsley, Case No. 12,900.

Where all the elements of a machine are old, the doctrine of equivalents cannot be invoked to suppress all other improvements on the old machine.—Union Sugar Refinery v. Matthiesson, Case No, 14,399.

But such patent is infringed by the substitution for one of its elements of an equivalent

well known at the time of the invention.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

A claim for a paint can having a thin rim of soft metal, to be cut through in opening, is infringed by making one end wholly of thin tin. —Masury v. Anderson, Case No. 9,270.

A screw and a lever are mechanical equivalents. So, also, a spring, a weight, and a pulley are mechanical equivalents.—Tatham v. Le Roy, Case No. 13,760.

A patent calling for smooth or plain surfaces is infringed by surfaces having slight inequalities, but which are sufficiently smooth for all practical purposes and operate substantially as the patented surfaces.—Whipple v. Middlesex Co., Case No. 17,520.

A rod is a known equivalent of an endless chain in machinery where it can be used for the same purpose and effect.—Spain v. Gamble, Case No. 13,199.

Hydraulic pressure, operating through a piston rod for moving a jaw in a stone crusher *held* a mechanical equivalent for toggle levers operated by a lever and crank rod.—Blake v. Robertson, Cases Nos. 1,500, 1,501.

A knuckle metallic joint in a hydraulic mining apparatus *held* to be a known mechanical substitute for one made of India rubber, or other flexible material.—Fisher v. Craig, Case No. 4,817.

A device for making extract from tan bark by the use of exhaust steam *held* not infringed by a device for using steam direct from a boiler. —Bridge v. Brown, Case No. 1,858.

Making the lower roll of a fluting machine adjustable, instead of the upper, and the use of a rack and pinion to make it adjustable, instead of a screw, does not avoid infringement.—Knox v. Loweree, Case No. 7,910.

A screw rotated in a stationary nut by means of a spur wheel gearing with another screw, producing longitudinal movement, is the equivalent of one to which like movement is imparted by means of a nut rotated by a pulley.—King v. Louisville Cement Co., Case No. 7,798.

A claim in which the lower chords in truss bridges were described as of bars "wide and thin" *held* not infringed by a bridge having chords of bars round in section.—Keystone Bridge Co. v. Phœnix Iron Co., Case No. 7,751.

Sheets of tin used to preserve the form of the material in the process of vulcanizing India rubber *held* not equivalent to tin foil.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,282.

An hotel register with advertisements at the top and bottom of the pages *held* an infringement of a patent for a register with side margins for printed advertisements.—Hawes v. Washburne, Case No. 6,242.

A patent claiming invention of an hotel register with alternate leaves of bibulous paper, for advertisements, *held* infringed by the use of yellow medium paper for such advertisements.—Hawes v. Gage, Case No. 6,237.

Mere formal differences, such as substituting two additional dies, in a method of forming the eyes of picks, which perform the same function as the side walls of the dies of the patent, do not avoid infringement.—Klein v. Park, Case No. 7,868.

§ **171. —— Omission of parts.**

A patent for two machines, each of which is a new invention, is infringed by the use of one of such machines.—Wyeth v. Stone, Case No. 18,107.

It is an infringement to use a part of the invention embraced within the patent.—Blake v. Smith, Case No. 1,502.

A patent of a machine as an aggregate is infringed by a machine which omits immaterial parts, or uses fewer of the original old elements, or substitutes equivalents.—Rich v. Close, Case No. 11,757.

The nominal elimination of a part whose office is performed by something else, under a different name, will not prevent the machine from being an infringement.—Brooks v. Norcross, Case No. 1,957.

A patent for a machine composed of new parts is infringed by the use of any one of such new parts.—Foss v. Herbert, Case No. 4,957.

A patent for an invention embracing an element of a machine is infringed by the making or use of such element.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

A patent for a device cannot be avoided by dividing the device into two parts, which, when combined, produce the same result, in substantially the same way.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493.

§ **172. —— Addition of parts.**

The inventor of improvements or additions to a patented machine or manufacture has no right to use the patented machine or manufacture in connection therewith, nor has the original patentee the right to use the improvements or additions where they are duly patented.—Carr v. Rice, Case No. 2,440; Chicago Fruit-House Co. v. Busch, Id. 2,669; Coleman v. Liesor, Id. 2,984; Colt v. Massachusetts Arms Co., Id. 3,030; Conover v. Rapp, Id. 3,124; Cook v. Howard, Id. 3,160; Crehore v. Norton, Id. 3,381; Decker v. Griffith, Id. 3,724; De Florez v. Raynolds, Id. 3,742; Gray v. James, Id. 5,718, 5,719; Westinghouse v. Gardner, etc., Air-Brake Co., Id. 17,450; Whipple v. Baldwin Mfg. Co., Id. 17,514; Woodworth v. Rogers, Id. 18,018.

Use of patented invention as one of the elements of another combination is an infringement.—Cleveland v. Towle, Case No. 2,888.

If a machine produce several different effects by a particular combination of machinery, and these effects are produced in the same way in another machine, and a new effect added, the inventor of the latter cannot entitle himself to a patent for the whole machine.—Whittemore v. Cutter, Case No. 17,601.

Although a patented device, without the improvement of another added to it, is of little practical value, the latter cannot use it without the consent of the patentee.—Turrell v. Spaeth, Case No. 14,269.

Where a second invention is an improvement on the first, which it includes, neither owner can lawfully use the invention of the other without his consent.—Star Salt Caster Co. v. Crossman, Case No. 13,321.

The inventor of an improvement on an old machine which he had a right to use is entitled to the benefit of the operation of the machine, with the improvement, to the same degree as the original patentee was entitled to the old machine.—McCormick v. Seymour, Case No. 8,726.

§ **173. —— Identity of result.**

A patent for a machine secures only the means employed, and not the effect produced.—American Pin Co. v. Oakville Co., Case No. 313.

Accomplishing the same result by a mechanism or combination of a mechanism substantially different from that of the patent involves no infringement.—Burden v. Corning, Case No. 2,143; Clark v. Kennedy Mfg. Co., Id. 2,826; Eames v. Cook, Id. 4,239; Morris v. Barrett, Id. 9,827; Singer v. Walmsley, Id. 12,900.

Use of substantially the same devices to produce the same results and certain additional results is an infringement.—New York Rubber Co. v. Chaskel, Case No. 10,215.

The fact that the results of defendant's mechanism are greatly superior to those described and claimed by the patentee may be considered as tending to prove that defendant's mechanism is substantially different from plaintiff's.—Singer v. Walmsley, Case No. 12,900.

A patent for a new product is infringed by its manufacture by any process whatever.—Badische Anilin & Soda Fabrik v. Hamilton Mfg. Co., Case No. 721.

§ 174. Patents for combinations—Identity in general.

In determining whether a patent for a combination is anticipated or infringed, the distinguishing characteristic is to be considered.—Conover v. Roach, Case No. 3,125.

A patent for a combination is not infringed unless defendant uses, constructs, and operates it in substantially the same way as under the patent. To change the form and obtain a new manner of operating, or to obtain a new and useful result, is subject to a patent.—Gorham v. Mixter, Case No. 5,626.

A patent for a combination is not infringed by any and every combination of the same element which may produce the same result, but only by the particular combination, or one substantially the same.—Crompton v. Belknap Mills, Case No. 3,406.

A patent for a combination containing new parts may be infringed by the use of such new parts.—Lee v. Blandy, Case No. 8,182.

A subordinate device is not an "element," within the rule relating to combination claims.—Smith v. Fay, Case No. 13,045.

§ 175. —— Transposition of elements.

A change in location of a part, in combination, where no new function is performed, will not evade a patent.—Adams v. Joliet Mfg. Co., Case No. 56; Knox v. Great Western Quick-Silver Min. Co., Id. 7,907.

§ 176. —— Substitution of equivalents.

A patent for a combination of old devices is infringed by a combination which merely substitutes a single device, which at the date of the patent was a well-known equivalent.—Sands v. Wardwell, Case No. 12,306; Webster v. New Brunswick Carpet Co., Id. 17,337; Welling v. Rubber-Coated Harness Trimming Co., Id. 17,382.

If the mechanical combinations of the members of the two machines be such that the action and mode of operation differ, they are not mechanical equivalents.—Blake v. Rawson, Case No. 1,499.

The doctrine of mechanical equivalents does not apply where the patent is for a particular combination of old elements.—Crompton v. Belknap Mills, Case No. 3,406.

A patent for a combination is not infringed by a combination which substitutes for one of the elements another element substantially different in construction and operation, but serving the same purpose.—Crompton v. Belknap Mills, Case No. 3,406.

A substitute for an ingredient in a patented combination does not cease to be an equivalent because it does something more and better.—Atlantic Giant Powder Co. v. Goodyear, Case No. 623; Same v. Mowbray, Id. 624; Kendrick v. Emmons, Id. 7,695; Sarven v. Hall, Id. 12,-369.

A combination of a sheath with a fixed knife in the same cylinder, and one of a springing knife with a sheath in the same or opposite cylinder, *held* not equivalents.—Bullock Printing Press Co. v. Jones, Case No. 2,132.

In a combination of a machine for making kettles, a tool carriage moved by a rod connected with a cam acted on by a gear wheel actuated through a crank by the hand of a workman is an equivalent of a tool carriage moved by a screw connected by a gear wheel with the power moving the lathe.—Waterbury Brass Co. v. Miller, Case No. 17,254.

§ 177. —— Omission of elements.

There is no infringement of a patent for a combination unless all the essential parts of the combination are substantially imitated, and it is not an infringement to use a part of such elements.—Bell v. Daniels, Case No. 1,247; Bliss v. Haight, Id. 1,548; Brooks v. Bicknell, Id. 1,946; Same v. Jenkins, Id. 1,953; Carter v. Baker, Id. 2,472; Coolidge v. McCone, Id. 3,-186; Densmore v. Schofield, Id. 3,809; Dodge v. Card, Id. 3,951; Fisher v. Craig, Id. 4,817; Howe v. Abbott, Id. 6,766; Huggins v. Hubby, Id. 6,839; King v. Louisville Cement Co., Id. 7,798; Latta v. Shawk, Id. 8,116; McCormick v. Manny, Id. 8,724; Pitts v. Wemple, Id. 11,-195; Roberts v. Harnden, Id. 11,903; Singer v. Walmsley, Id. 12,900; Smith v. Higgins, Id. 13,058; Same v. Clark, Id. 13,027; Same v. Marshall, Id. 13,077.

Where the patentee did not devise the various parts, but the whole combination, it is not infringement to use a part of the combination.—Case v. Brown, Case No. 2,488.

A combination of old devices does not prevent others from using them separately, or in a new combination.—Hailes v. Van Wormer, Case No. 5,904; Hale v. Stimpson, Id. 5,915; Byam v. Eddy, Id. 2,263; Crompton v. Belknap Mills, Id. 18,285.

It is no infringement of a patent for a combination of machines to use either of the machines separately.—Barrett v. Hall, Case No. 1,047.

Where a patent is for improvements on known machinery and a combination of mechanical powers, it is an infringement to adopt any of the improvements or any of the parts of the combination.—Parker v. Haworth, Case No. 10,-738.

The manufacture of one of the elements of a patented combination, not proved to be made for use in connection with the other elements, is not an infringement of the patent.—Saxe v. Hammond, Case No. 12,411.

A patent for an invention, embracing a new element and a combination of old elements, is infringed by the use of the new element or new combination.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

Where a structure consisting of several parts is patented as a combination, one who manufactures and sells some of the parts, they being useless without the residue, with the understanding and intent that such residue shall be supplied by another, and the whole go into use in its complete form, is liable as an infringer of the patent.—Wallace v. Holmes, Case No. 17,-100.

Where the patent is for a specific device and not for a combination, infringement is not avoided by making the device in three parts instead of two.—Mabie v. Haskell, Case No. 8,653.

§ 178. —— Addition of elements and improvements.

A patent for a combination is infringed by its use with added features.—Pitts v. Wemple, Case No. 11,195; Williams v. Boston & A. R. Co., Id. 17,716.

Where a patented combination turns out to be useless, a person who adds another element, and thereby makes the whole practically useful, is entitled to use the whole combination.—Robertson v. Hill, Case No. 11,925.

A patent for a combination of old devices is infringed by its use to accomplish something more or better, which could not be effected

without its aid.—Sayles v. Chicago & N. W. R. Co., Case No. 12,415.

The addition of a well-known device will not give defendant the right to use the patented combination where some addition is necessary to fit it for use.—Robertson v. Hill, Case No. 11,925.

What is technically a combination, and how it may be infringed, though improved.—Foster v. Moore, Case No. 4,978.

Improvement upon one of the independent devices used in a patented combination of old devices is no defense to infringement.—Converse v. Cannon, Case No. 3,144.

§ 179. Patents for compositions of matter.

An equivalent of a substance is another substance having similar properties and producing substantially the same effect.—Matthews v. Skates, Case No. 9,291.

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.—Woodward v. Morrison, Case No. 18,008.

The sale of a substance containing caustic alkali, with oil or rosin mechanically distributed through, but not in chemical union with, it, inclosed in a metallic integument, infringes a patent for caustic alkali inclosed in a metallic integument.—Thompson v. Jewett, Case No. 13,-961.

A paint for preventing the fouling of ships' bottoms, similar to the patented paint, but substituting arsenite of copper for oxide of copper, *held* not an infringement.—Wonson v. Gilman, Case No. 17,933.

A patent for a concrete pavement laid in sections, claiming the interposition between the blocks of permanent material, *held* infringed by the temporary interposition of material while the pavement was in the process of formation.—Schillinger v. Gunther, Case No. 12,456.

A composition of which plaster of Paris is an ingredient, used for the filling of fire-proof safes, *held* not an infringement of a patent for the use of plaster of Paris.—Rich v. Lippincott, Case No. 11,758.

A patent for vulcanized rubber is not infringed by the use of a substance which is rendered plastic and not hardened by heat.—Goodyear Dental Vulcanite Co. v. Flagg, Case No. 5,590.

§ 180. Patents for designs.

Proper tests for determining infringement of a patent for a design.—Gorham Mfg. Co. v. White, Case No. 5,627.

To constitute infringement of a design patent, the designs must be so similar as to appear to ordinary observers, but not necessarily to experts, to be the same.—Perry v. Starrett, Case No. 11,012.

Where two designs are substantially similar, the fact that different names or trade-marks are or may be used in connection with them will not sufficiently distinguish them.—Perry v. Starrett, Case No. 11,012.

§ 181. Utility of infringing device.

Superiority of defendant's invention no defense to infringement.—Alden v. Dewey, Case No. 153.

The superior utility of defendant's device is not of itself a certain test upon the question of identity.—Pitts v. Wemple, Case No. 11,194.

The fact that a machine is an improvement on a patented machine will not prevent its being an infringement if it is substantially the same.—Forbes v. Barstow Stove Co., Case No. 4,923.

The degree of superiority of result obtained, or efficiency or economy, by the substituted material, may be such as to amount to a difference in kind.—Goodyear Dental Vulcanite Co. v. Willis, Case No. 5,603.

§ 182. Experiments.

An experiment with a patented article for the sole purpose of gratifying a philosophical taste or curiosity, or for mere amusement, is not an infringement.—Poppenhusen v. Falke, Case No. 11,279.

But such experiment is an infringement where the product is put on the market.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,283.

Experimental making and user of patented article is technical infringement.—Albright v. Celluloid Harness-Trimming Co., Case No. 147.

§ 183. Making or repair of patented article.

The mere unauthorized making of a patented machine, although it is neither used nor sold, is an infringement.—Bloomer v. Gilpin, Case No. 1,558; Carter v. Baker, Id. 2,472.

The making of a patented machine fit for use, and with design to use it for profit, in violation of the patent right, is of itself a breach of the patent right, for which an action lies.—Whittemore v. Cutter, Case No. 17,600.

The manufacture and sale of a part of a patented invention, designed to be used by the purchasers for the express use to which it is put by the patentee, is an infringement.—Richardson v. Noyes, Case No. 11,792.

A patent for an invention embracing an entire machine is infringed by the making, without license, of any part of it.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

The making and selling of the separate materials for a patented combination is not an infringement.—Byam v. Farr, Case No. 2,264.

The sale by defendant of the constituents of complainant's patent, with the intent and further purpose of enabling the buyer to turn them into the patented compound, is an infringement. —Rumford Chemical Works v. Hecker, Case No. 12,133.

The right to use necessarily implies the right to repair, or, when destroyed or worn out, the right to purchase another.—Bicknell v. Todd, Case No. 1,389.

The purchaser of a patented machine with separately patented parts has no right to manufacture new parts to replace those worn out.—Aiken v. Manchester Print Works, Case No. 113.

But the purchaser may repair and improve the patented parts.—Aiken v. Manchester Print Works, Case No. 113.

A purchaser from a patentee may repair and perfect the machines purchased, but he has no right to use machines embracing the patented inventions, which are not the identical machines purchased.—Union Metallic Cartridge Co. v. United States Cartridge Co., Case No. 14,369.

The sale of a patented machine, the valuable or novel part of which must be replaced at intervals of a month or so, carries with it the right to replace such part.—Farrington v. Board of Water Com'rs of Detroit, Case No. 4,687.

The right to replace such parts as are temporary depends upon the right to use the machine, and is not affected by an extension of the patent.—Farrington v. Board of Water Com'rs of Detroit, Case No. 4,687.

A patent for a dental plate *held* infringed by replacing parts by new parts made of the materials and in the mode described in the patent.—Goodyear Dental Vulcanite Co. v. Preterre, Case No. 5,596.

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.—Wortendyke v. White, Case No. 18,050.

§ 184. Violation of restrictions on manufacture, use, or sale of patented article.

A patent for a combination buckle and band, for cotton bales, where the buckles are stamped, "Licensed to use once only," is infringed by the sale of the buckles with new hoops, for use a second time.—American Cotton Tie Supply Co. v. Bullard, Case No. 294.

Where a patentee assigned to plaintiff all his interest in a patented machine except the right to manufacture said machine in a certain city, and plaintiff afterwards granted a license to one C. to use one of the machines within a certain portion of such city, and C. sold the machine to defendant, who removed it to a portion of the city outside the district described in the license, there is an infringement of the patent.—Chambers v. Smith, Case No. 2,582.

On the sale and unconditional delivery of a patented article it passes outside of the monopoly of the patent.—Goodyear v. Beverly Rubber Co., Case No. 5,557.

On the sale, by the patentee of a process and product, of the patented article, the purchaser may use the materials of which it is composed for the manufacture of any articles not themselves protected by a patent.—Goodyear v. Beverly Rubber Co., Case No. 5,557.

And this is the case although the patented article was bought of the patentee's licensee, who was restricted by the license to a use of the patented product different from that to which it was devoted by the purchaser.—Goodyear v. Beverly Rubber Co., Case No. 5,557.

A patented product purchased without condition or restriction loses the protection of the patent laws, and the purchaser may sell the same in the territory of one having exclusive rights.—Adams v. Burks, Case No. 50; Aiken v. Manchester Print Works, Id. 113.

When a patented article has been lawfully made and sold without restriction or condition, it is no longer within the monopoly, and the purchaser may use it without restriction as to time and place.—McKay v. Wooster, Case No. 8,847.

An assignment of the revenues of a railroad, and of the use of the rolling stock, to a preferred creditor, is not a transfer of corporate entity or property, and the assignee is not guilty of infringement in using on the cars patented appliances licensed to the company.—Emigh v. Chamberlain, Case No. 4,447.

A grant of an exclusive right to make, use, and vend the patented machine within certain territory is infringed by the manufacture by others of machines within the territory for use without it.—Jenkins v. Greenwald, Case No. 7,270.

The use of a patented machine under a license, whose conditions are not performed, is an infringement, and its use will be enjoined.—Brooks v. Stolley, Case No. 1,962.

The construction of two machines under authority to use one only is an infringement, though both were never in operation at the same time.—Bloomer v. Gilpin, Case No. 1,558.

A sale of the materials of a patented machine on an execution against the owner will not subject the sheriff to an action for infringement.—Sawin v. Guild, Case No. 12,391.

The sale or use of the product of a patented machine is no violation of the exclusive right to use, construct, or sell the machine itself.—Goodyear v. Central R. Co., Case No. 5,563.

§ 185. Contributory infringement.

One making a machine which may be easily adjusted so as to infringe, with intent that it shall be so adjusted by a third person, is an infringer.—Knight v. Gavit, Case No. 7,884.

The sale of an article for use in a patented combination to persons who intend so to use it is an infringement, although the manufacture and sale would not per se be an infringement.—Bowker v. Dows, Case No. 1,734.

The sale of dials, to be used with an infringing time detector, for which defendant has accounted, is not an infringement.—Buerk v. Imhaeuser, Case No. 2,108.

§ 186. Knowledge or consent of patentee.

The patentee has no right, either during the original term or the extended term of his patent, to a patented machine constructed by another with his consent, or to prevent its use.—Black v. Hubbard, Case No. 1,460.

Where the patentee gave his consent to the manufacture of some of the alleged infringements by defendants, he can recover no damages for these; for those afterwards manufactured he is entitled to manufacturer's profits.—Westlake v. Cartter, Case No. 17,451.

Whether acquiescence can be inferred from failure to bring suit against defendant during the pendency of other suits against other parties, considered.—Green v. French, Case No. 5,757.

The mere discontinuance of a suit and forbearance to sue any of the parties thereto for over a year thereafter *held* not an acquiescence in the infringement.—Thompson v. Jewett, Case No. 13,961.

A license permitting the invention to be manufactured and used upon certain terms and conditions will not be deemed evidence of an acquiescence in infringements of the licensor's rights.—Jordan v. Dobson, Case No. 7,519.

§ 187. Injuries from infringement.

A sale of the infringing article to one employed by the patentee to make the purchase for the purpose of securing evidence of infringement will not support an action for damages.—Byam v. Bullard, Case No. 2,262.

(B) ACTIONS AT LAW.

§ 188. Grounds of action.

A person may sue for an infringement of any one of the separate and distinct inventions that may be covered by his patent.—Cook v. Ernest, Case No. 3,155; Moody v. Fiske, Id. 9,745.

The patentee cannot recover for an infringement if he was not in fact the original inventor as to every part of the world.—Dawson v. Follen, Case No. 3,670.

An action at law may be maintained after the patent has expired, where the infringement took place during the term of the patent.—Howes v. Nute, Case No. 6,790.

A patentee who claims several distinct improvements must show himself entitled to each, to sustain the action.—Heinrich v. Luther. Case No. 6,327.

See, also, post, § 212.

§ 189. Defenses.

It is no answer to a claim of damages that defendant made no profits by his infringement.—Goodyear Dental Vulcanite Co. v. Van Antwerp, Case No. 5,600.

The fact that the invention has become useless by the discovery of another method will

not invalidate the patent.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,283.

It is no justification that respondent constructed and used his machine before complainant took out his patent, where he copied it from complainant's invention.—Hovey v. Stevens, Case No. 6,745.

Licensees who repudiate the license, and stand upon the ground that the patent is invalid, cannot set up the license as a defense to infringement.—Cohn v. National Rubber Co., Case No. 2,968; Moody v. Taber, Id. 9,747.

Licensee *held* entitled to offer in evidence letters patent of his licensor as a defense to an action against him for infringing a prior patent.—Blanchard v. Puttman, Case No. 1,514.

In an action by the assignee, defendant cannot set up the fact that the assignment was not recorded, if he had actual or constructive notice of it when the infringement was committed.—Valentine v. Marshal, Case No. 16,812a.

The use by defendant of an infringing device estops him from denying the utility of plaintiff's invention.—Vance v. Campbell, Case No. 16,836; Hays v. Sulsor, Id. 6,271.

Defendant cannot set up in defense that the patent was issued unintentionally, through a blunder of a subordinate in the patent office.—Doughty v. West, Case No. 4,028.

Where complainant proved a royalty for the use of similar machines to those of defendant, *held*, that defendant was not entitled to prove that some of his machines infringed several of the claims, and others only one of the claims.—Kendrick v. Emmons, Case No. 7,696.

The decision of the patent office in favor of an applicant and against a patentee on an interference declared will not conclude the patentee so as to prevent him from bringing a suit for infringement.—Perry v. Starrett, Case No. 11,012.

There is no infringement by the use of processes which the patentee has withheld from the public.—Page v. Ferry, Case No. 10,662.

See, also, post, § 214.

§ 190. Persons entitled to sue.

A suit for an infringement after the making of an assignment must be brought by the assignee.—Herbert v. Adams, Case No. 6,394.

An assignee of a patent has an exclusive right of action for an infringement only where his assignment gives him a whole interest in the patent with or without territorial limitations.—Suydam v. Day, Case No. 13,654.

An action for infringement may be maintained by one to whom the entire property in the invention was assigned before the issuing of letters patent.—Rathbone v. Orr, Case No. 11,585.

The executor to whom the patent was issued, though not the sole executor named in the inventor's will, may maintain suit thereon.—Goodyear v. Providence Rubber Co., Case No. 5,583.

Where the contract is for the purchase of a portion of a patent right, the legal right in the monopoly remains in the patentee, and he alone can sue for an infringement.—Sanford v. Messer, Case No. 12,314.

A patentee, in the absence of a legal assignment and tranfer of his interest in the invention, may maintain a suit for infringement, irrespective of his private agreements with third persons.—Park v. Little, Case No. 10,715.

A joint action lies by the patentee and an assignee of a moiety of the patent right for infringement. Act Feb. 21, 1793, c. 11.—Whittemore v. Cutter, Case No. 17,600.

A patentee may assign his right to recover for past infringements.—Hamilton v. Rollins, Case No. 5,988.

An assignment of a right of action under a patent need not be recorded.—Gear v. Fitch, Case No. 5,290.

See, also, post, § 215.

§ 191. Persons liable.

The manufacturer, the seller, and the user of an infringing article are liable for the infringement.—Haselden v. Ogden, Case No. 6,190.

The purchaser of patented articles from an infringer is not liable as an infringer.—Blanchard's Gun-Stock Turning Factory v. Jacobs, Case No. 1,520; Anonymous, Id. 477.

A joint owner, who uses or sells the patented device without the authority of his co-owner, as respects the latter's rights, is liable for infringement.—Pitts v. Hall, Case No. 11,193.

The sale of the product of a patented machine is not an infringement, but, if made by the manufacturer, he is liable for damages, and may be enjoined.—Boyd v. McAlpin, Case No. 1,748.

One who manufactures the patented thing without right or license, though employed by another, is an infringer.—Bryce v. Dorr, Case No. 2,070.

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.—Wooster v. Marks, Case No. 18,038.

A mere workman employed, by a person who is not the patentee, to make parts of a patented machine, is not liable to damages. Act Feb. 21, 1793.—Delano v. Scott, Case No. 3,753.

Use of an invention as an officer of the government, in the performance of his duties, for its benefit, will not prevent the user being liable as an infringer.—Campbell v. James, Case No. 2,361.

A patent for the application or employment of armor on a vessel is not infringed by one who puts the same on a vessel under contract with the government.—Heaton v. Quintard, Case No. 6,311.

Principals are responsible for infringements by their agent, acting within the scope of his authority, and the legal implication of their concurrence therein will dispense with proof of it.—Stevens v. Felt, Case No. 13,397.

An act of an employé of a corporation, adopted by it, will be deemed to have been authorized.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,283.

A corporation is liable where the infringing machines are procured by it, and are used by persons employed or paid by it.—Ransom v. New York, Case No. 11,573.

The unlawful use of a patented device by city officials for city purposes is not an act of nonfeasance or misfeasance, within a statute relieving the city from liability.—Bliss v. Brooklyn, Case No. 1,544.

The board of education and not the city is liable for the use of a patented seat in the city's public schools, where the seats are purchased and owned by the board.—Allen v. Brooklyn, Case No. 218; Same v. New York, Id. 232.

A contractor who does work for a county is liable for infringement of a patent in such work, though he was ignorant of the patent.—Jacobs v. Hamilton County, Case No. 7,161.

Authority to contractor for street pavement to use a patented process will relieve the city from liability for infringement, notwithstanding a reservation to the contrary.—Bigelow v. Louisville, Case No. 1,400.

The general agent of a transportation company, which had contracted with connecting lines for

through transportation, *held* not liable for infringement by use of an infringing device on the cars of the railroad companies set apart for carriage of the transportation company's freight.—Lightner v. Kimball, Case No. 8,345.

Under a contract between a railroad company and a manufacturer to build certain cars with a patented device, the chairman of the railroad company, who signed the contract for the company, is not liable to the patentee, where the device was used without license.—Lightner v. Brooks, Case No. 8,344.

A patentee who grants territorially exclusive monopolies may himself be treated as a trespasser if he interferes.—Burr v. Duryee, Case No. 2,190.

Carrier of articles made in infringement of patents where he refuses to disclose shippers is liable for infringement.—American Cotton-Tie Supply Co. v. McCready, Case No. 295.

The keeper of an hotel, who keeps an infringing hotel register, is liable as the user of the invention.—Hawes v. Cook, Case No. 6,236; Same v. Gage, Id. 6,237; Same v. Washburne, Id. 6,242.

Damages may be recovered for the use, without license, of plaintiff's patented improvement, by an American citizen on an American vessel on the high seas.—Gardiner v. Howe, Case No. 5,219.

The use by a foreign vessel, in its structure or equipment, of an improvement for which a patent has been obtained in the United States, while temporarily within its jurisdiction for purposes of commerce, is not an infringement.—Brown v. Duchesne, Case No. 2,004.

A person manufacturing a patented article under a license from the inventor, who held the patent in trust for a corporation, proceeds at his peril after actual notice of the claim of the corporation.—Consolidated Fruit-Jar Co. v. Whitney, Case No. 3,134.

See, also, post, § 216.

§ 192. Limitations and laches.

Prior to Act July 8, 1870, there was no statute limiting the time within which an action at law must be prosecuted for the infringement of a patent.—Wood v. Cleveland Rolling-Mill Co., Case No. 17,941; Same v. Union Iron-Works Co., Id.; Collins v. Peebles, Id. 3,017.

The limitation of actions for infringement of patents under Act 1870, § 55, commences to run from the expiration of the original term, though the patent has been renewed.—Sayles v. Dubuque & S. C. R. Co., Case No. 12,417.

State statutes cannot be pleaded in bar of suit for infringement of a patent.—Anthony v. Carroll, Case No. 487; Collins v. Peebles, Id. 3,017; Parker v. Hawk, Id. 10,737; Read v. Miller, Id. 11,610; Sayles v. Dubuque & S. C. R. Co., Id. 12,417. CONTRA, see Rich v. Ricketts, Case No. 11,762; Parker v. Hallock, Id. 10,735.

In the case of an extension of a patent, the statute of limitations applies to the entire period made by the original and extension as one integral term. Rev. St. § 4927.—Sayles v. Richmond, F. & P. R. Co., Case No. 12,424.

An action for infringement of a patent before June 22, 1874, comes within the limitation of Act July 8, 1870, § 55, under Rev. St. § 5599, and is not within the operation of the state statute of limitations.—Sayles v. Oregon Cent. Ry. Co., Case No. 12,423; Same v. Richmond, F. & P. R. Co., Id. 12,424.

See, also, post, § 219.

§ 193. Parties and process.

A person having only an exclusive right to manufacture a certain class of articles under a patent cannot sue in his own name for an infringement of such right.—Suydam v. Day, Case No. 13,654.

The assignee of an exclusive right to use, but not to make, the thing patented within a specified territory, may sue an infringer in his own name.—Chambers v. Smith, Case No. 2,582.

The assignees of several undivided parts of a patent may all join with the holders of the title in an action for the recovery of damages.—Stein v. Goddard, Case No. 13,353.

A suit at law for the infringement of a patent for turning irregular forms, by the turning of shoe lasts, is properly brought in the name of the patentee, rather than one who has an assignment of the right to use the patent for that purpose.—Blanchard v. Eldridge, Case No. 1,510.

The assignee of a patent right, in part, can, in law, sustain a suit for a violation of the patent, without uniting the patentee.—Brooks v. Bicknell, Case No. 1,944. CONTRA, see Valentine v. Marshal, Case No. 16,812a.

Where the contract is for the purchase of a portion of a patent right, the legal right remains in the patentee; and in such case the licensee need not be joined in the action.—Sanford v. Messer, Case No. 12,314; Goodyear v. McBurney, Id. 5,574.

Mere licensees have no interest capable of affording the foundation of a suit in their names.—Grover & Baker Sewing Mach. Co. v. Sloat, Case No. 5,846.

A trustee of the legal title may sue for infringement in his own name.—Knight v. Gavit, Case No. 7,884.

A junior patentee cannot, by making the elder patentee a defendant, compel him to assert his right as against him.—Celluloid Mfg. Co. v. Goodyear Dental Vulcanite Co., Case No. 2,543.

A patentee may sue any one of several alleged infringers, and omit the others, in his discretion.—Celluloid Mfg. Co. v. Goodyear Dental Vulcanite Co., Case No. 2,543.

See, also, post, § 220.

§ 194. Pleading—Declaration.

See, also, post, §§ 221–226.

Plaintiff must allege all the facts to show title.—Gray v. James, Case No. 5,719.

The declaration need not state that the proceedings preliminary to the issuing of the patent were observed.—Cutting v. Myers, Case No. 3,520; Wilder v. McCormick, Id. 17,650.

The description of the machine as stated in the specification need not be set out where the declaration describes plaintiff's improvement in the words of the patent.—Gray v. James, Case No. 5,719.

A declaration which avers the patent and specification to be "in language of the import and to the effect following," and then sets them forth in hæc verba, is sufficient, and is not open to the objection that the patent is not set forth according to its legal tenor and effect.—Wilder v. McCormick, Case No. 17,650.

A declaration which fails to set forth the attestation of the president, and that the patent was delivered, is bad on general demurrer.—Cutting v. Myers, Case No. 3,520.

It is no cause of demurrer that neither the patent nor the declaration states in what the improvement consists.—Cutting v. Myers, Case No. 3,520.

In the case of a renewed patent, plaintiff cannot recover for a violation under the old patent without a distinct and independent count.—Eastman v. Bodfish, Case No. 4,255.

An averment that the patent was renewed on the application of the administrator of the patentee, and that he assigned his right to the plaintiff, and that the assignment is duly

recorded, is a sufficient averment of title as against a general demurrer. — Van Hook v. Wood, Case No. 16,854.

The omission to allege, in a declaration by an assignee, the due recording of the assignment, *held* cured by the verdict.—Dobson v. Campbell, Case No. 3,945.

An averment in the declaration that a patent under the seal of the United States in due form of law was issued is a sufficient declaration to show the validity of the patent.—Van Hook v. Wood, Case No. 16,854.

Sufficiency of averment of extension of patent as against a general demurrer.—Van Hook v. Wood, Case No. 16,854.

An averment that disclaimers were duly and legally executed in writing, and accepted by the commissioner, is sufficient to enable plaintiff to give evidence of their execution, as required by statute.—Van Hook v. Wood, Case No. 16,854.

The failure of the declaration to lay the act complained of to be "against the form of the statute" is no ground of nonsuit.—Tryon v. White, Case No. 14,208.

It is not necessary in the declaration to aver at what specific time the invention patented was made. It need only be before the application for the patent.—Wilder v. McCormick, Case No. 17,650.

A declaration in a suit for infringement is not demurrable because ambiguous in setting out a claim which may be construed to include one or both of two inventions, if there is nothing in the pleadings to show that the patentee is not entitled to claim both.—Noe v. Prentice, Case No. 10,284a.

A declaration averring that defendant "put on sale and offered for sale, and sold or contracted to sell," the patented articles, is bad on demurrer.—Noe v. Prentice, Case No. 10,284a.

One who holds the original right patented, and also an improvement, must assert his entire right in an action for infringement.—Case v. Redfield, Case No. 2,494.

In an infringement suit, it is sufficient for plaintiff to aver that title is vested in him, without tracing it by the assignments.—Meerse v. Allen, Case No. 9,393a.

An averment that defendant has made the thing "in imitation of the patent" is a sufficient allegation of infringement.—Parker v. Haworth, Case No. 10,738.

A suit in equity for infringement of a patent was stayed until plaintiffs could establish their rights by action at law. In the action at law, the complaint referred to the equity suit and the stay order. *Held*, that this reference was not irrelevant or redundant matter.—Knox v. Great Western Quick-Silver Min. Co., Case No. 7,906.

A declaration for the infringement of a patent, commencing in case, and concluding by demanding actual damages in gross in compensation of the wrong, is good.—Wilder v. McCormick, Case No. 17,650.

A declaration must tender an issue on the novelty and utility of the discovery patented.—Wilder v. McCormick, Case No. 17,650.

To show violation of patent, declaration need only aver that defendant has constructed, used, and sold to others the things patented.—Case v. Redfield, Case No. 2,494.

The declaration is sufficient if the breach assigned is as broad as the right set forth.—Cutting v. Myers, Case No. 3,520.

§ 195. —— Plea, answer, and replication.

The issue of fraud can only be raised by distinct and special allegations in the plea or answer.—Blake v. Stafford, Case No. 1,504.

As to sufficiency of such allegations in general.—Blake v. Stafford, Case No. 1,504.

A plea by a single defendant, alleging that the sales of the infringing articles were made by himself and another, *held* bad in not alleging that such other person was living, and within the jurisdiction of the court.—Goodyear v. Toby, Case No. 5,585.

Special pleas with the general issue, setting up a license from the patentee paramount to plaintiff's right, are proper in an action at law.—Day v. New England Car Co., Case No. 3,687.

A plea merely that the thing claimed to have been invented was in use and for sale before the application for the patent is demurrable.—Root v. Ball, Case No. 12,035.

In an action for infringement, the objection that another is interested with plaintiff must be taken by plea in abatement.—Carlock v. Tappan, Case No. 2,412.

A plea setting forth that the alleged selling, if any such was made by defendant, was made solely as agent, etc., of a person not named, *held* bad.—Morse v. Davis, Case No. 9,855.

The answer at law, and the answer and notice on which, in chancery, an issue is asked to be formed and tried at law, must set out the names of the persons who used the patented article, and the places where so used.—Orr v. Merrill, Case No. 10,591.

The defense of unreasonable delay to file a disclaimer cannot be made unless set up in the answer.—Burdell v. Denig, Case No. 2,142.

The option to file the general issue and give notice does not take away the right to plead specially.—Phillips v. Combstock, Case No. 11,099.

The charge of infringement is admitted where no answer is made thereto.—Parker v. Bamker, Case No. 10,725.

Replication in an action so brought, where defendant sets up a release from the patentee.—Goodyear v. McBurney, Case No. 5,574.

Defendant cannot plead the general issue with notice of special matter of defense, and also, in a special plea, set up the same matter in bar.—Read v. Miller, Case No. 11,610.

§ 196. —— Notice of special matter.

A notice of special matter may be filed or served in term time, but must be filed 30 days before trial.—Brunswick v. Holzalb, Case No. 2,057.

The 30 days' notice of special matter of defense need not specify the particular portion of the patent to which it is designed to apply.—Westlake v. Cartter, Case No. 17,451.

The 30 days' notice of special matter of defense must be given 30 days prior to the beginning of the term of trial.—Westlake v. Cartter, Case No. 17,451; Phillips v. Combstock, Id. 11,099.

The notice of special matter (Act 1836, § 15) must give the name of the person who had knowledge of the prior use and the place of such use. It is not sufficient to name the party using the thing.—Judson v. Cope, Case No. 7,565.

Notice that a prior machine was used at "Cincinnati," "Covington," "Pittsburg," "Wayne County, Ind.," is not sufficiently specific to authorize introduction of proofs.—Latta v. Shawk, Case No. 8,116.

The defense of want of novelty is not available at law without a notice, and in equity it must be set up in the pleadings.—Pitts v. Edmonds, Case No. 11,191.

Where prior use relied on in defense is by the inventor or under his license, notice is not necessary as to the persons or places.—American

Hide & Leather Splitting & Dressing Mach. Co. v. American Tool & Mach. Co., Case No. 302.

Patents may be given in evidence to show the state of the art without notice, but printed publications cannot.—Westlake v. Cartter, Case No. 17,451.

A special plea setting forth matters of which notice might have been given under Act July 4, 1836, § 15, will be stricken out on motion.—Wilder v. Gayler, Case No. 17,649.

Defendant may give evidence of the use of a machine by other persons and in other places than those mentioned in the notice of special matter, where the general issue is pleaded.—Evans v. Eaton, Case No. 4,559; Same v. Kremer, Id. 4,565.

Under the general issue without notice, defendant cannot set up that the specification does not show the whole truth relative to the discovery, or that it contains more than is necessary for the purpose of deceiving the public.—Kneass v. Schuylkill Bank, Case No. 7,875.

Defendant, on the general issue, without notice, may introduce the act of congress, and may set up that the invention is not patentable, that the specification is ambiguous, that the patent is broader than the invention, and a license to use the machine.—Kneass v. Schuylkill Bank, Case No. 7,875.

A reference to a dictionary, without specifying the place, *held* not sufficient notice of special matter.—Foote v. Silsby, Case No. 4,916.

Nor is the book admissible under a notice stating that the patentee's invention was previously known to the author.—Foote v. Silsby, Case No. 4,916.

In such case, it is not competent to prove by experts that they could easily find in such dictionary the parts relating to the subject-matter, without specific reference.—Foote v. Silsby, Case No. 4,916.

Under a notice that the thing patented was known and used by A., B., C., and others prior to plaintiff's discovery, defendant must prove its use by others than those named.—Treadwell v. Bladen, Case No. 14,154.

Under notice confined to a prior use in the United States, evidence of a prior use in England is not admissible.—Dixon v. Moyer, Case No. 3,931.

Evidence of want of novelty, of which no notice was given in the answer, is inadmissible except to show the state of the art.—La Baw v. Hawkins, Case No. 7,960.

Prior knowledge of a person, of which notice is given, cannot be proved by another person, not mentioned in such notice.—Many v. Jagger, Case No. 9,055.

§ 197. —— Profert and oyer.

Oyer of a patent referred to in the declaration is not demandable as of right.—Singer v. Wilson, Case No. 12,901.

An averment that the patent and specification are "ready in court to be produced" is equivalent to a profert in its most formal terms.—Wilder v. McCormick, Case No. 17,650.

The profert of letters patent makes them a part of the declaration, and it is no ground of arrest of judgment that the patent is not described in the declaration.—Pitts v. Whitman, Case No. 11,196.

§ 198. Issues, proof, and variance.

Where the general issue is pleaded, there is no limitation of the period in which defendant may show that the patentee is not the original inventor.—Evans v. Eaton, Case No. 4,559.

Upon the plea of not guilty, plaintiff must prove that the article made, used, or sold by defendant substantially resembled his invention.—Dixon v. Moyer, Case No. 3,931.

The defense that the subject of the invention is not of a patentable character is admissible under the general issue.—Guidet v. Barber, Case No. 5,857.

Plaintiff is restricted to proof of a violation during the time specified in his declaration.—Eastman v. Bodfish, Case No. 4,255.

Where the declaration professes to set forth the specification in a patent as part of the grant, the slightest variance is fatal.—Tryon v. White, Case No. 14,208.

Testimony of what might have been done with prior machines is inadmissible upon the issue of novelty.—Judson v. Cope, Case No. 7,565.

Proof of two-thirds ownership in a patent will not sustain an action for infringement where plaintiff claimed sole ownership.—Knight v. Gavit, Case No. 7,884.

See, also, post, § 227.

§ 199. Evidence—In general.

See, also, ante, §§ 23, 30, 34, 41–43, 53, 57, 59, 109; post, §§ 228–231.

The burden of proof of infringement is upon plaintiff.—Parker v. Stiles, Case No. 10,749.

In an action at law by an assignee for infringement of a patent, in which defendant claimed by assignment from a trustee of the patentee, *held*, that plaintiff might show that the instrument creating the trust was procured by fraud from the patentee, and that the burden was on defendant to show that he was an innocent purchaser.—Day v. New England Car-Spring Co., Case No. 3,688.

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.—Winans v. New York & E. R. Co., Case No. 17,863; Same v. Schenectady & T. R. Co., Id. 17,865.

The file wrapper and contents of the application for the patent are not admissible evidence for the purpose of limiting the construction of the patent.—Westlake v. Cartter, Case No. 17,451.

The validity of plaintiff's patent is admitted by defendant's patent referring to the former, and disclaiming those parts of the invention found therein.—Waterbury Brass Co. v. New York & B. Brass Co., Case No. 17,256.

Copies of assignments of a patent, duly certified, are prima facie evidence of the genuineness of the originals on file.—Parker v. Haworth, Case No. 10,738.

A disclaimer must be properly proved, before it can be admitted in evidence, either as an original paper or by a certified copy.—Foote v. Silsby, Case No. 4,916.

The indorsement on a patent of a disclaimer *held* inadmissible for defendant, without proof that it was made by the patentee.—Foote v. Silsby, Case No. 4,916.

Minutes of a hose company, of which patentees of a hose were members, and at whose instigation and expense the hose was asserted to have been invented, are admissible for defendant to prove that plaintiffs were not the inventors.—Pennock v. Dialogue, Case No. 10,941.

But entries made at other times, acknowledging plaintiffs to be the inventors, are inadmissible against defendant.—Pennock v. Dialogue, Case No. 10,941.

The letters of the applicant on file, certified under the seal of the office, are admissible.—Pettibone v. Derringer, Case No. 11,043.

The prior oath of an inventor as to originality may be opposed to the oath of a witness as to want of originality.—Alden v. Dewey, Case No. 153.

§ 200. —— Opinions of experts.

The opinions of experts are admissible to determine questions of mechanical difference.—Morris v. Barrett, Case No. 9,827.

The testimony of experts is admissible only to show the operation of devices, not the object of a patent, or whether it has been infringed.—Waterbury Brass Co. v. New York & B. Brass Co., Case No. 17,256.

The jury are not bound by the opinions of mechanical experts upon a question of identity of improvement or construction.—Spaulding v. Tucker, Case No. 13,220.

One to be competent as an expert must understand the science involved.—Allen v. Hunter, Case No. 225; Same v. Blunt, Id. 216.

§ 201. Damages—In general.

See, also, ante, § 162; post, § 253.

Damages are given for the use of the infringing article only subsequent to the issuance of the patent.—Brodie v. Ophir Silver Min. Co., Case No. 1,919.

The damages should have reference to the scope of the invention, and the extent to which it enters into the infringing machine.—Hayden v. Suffolk Mfg. Co., Case No. 6,261.

The jury must find that the invention is useful and of some value before they can award damages for infringement.—Knight v. Baltimore & O. R. Co., Case No. 7,882.

In order to find actual damages, the jury must find, in the evidence, the facts or data from which such actual damages are to be deduced. —Goodyear v. Bishop, Case No. 5,559.

§ 202. —— Actual damages.

Plaintiffs are entitled to actual damages.—Buck v. Hermance, Case No. 2,082; Grant & Townsend v. ———, Case No. 5,701; McCormick v. Seymour, Id. 8,727; Ransom v. New York, Id. 11,573; Smith v. Higgins, Id. 13,057; Wilbur v. Beecher, Id. 17,634.

Actual damages sustained, directly resulting from the infringement, can be recovered.—Carter v. Baker, Case No. 2,472.

The damages must be confined to the direct and immediate consequences of the infringement, and should not embrace those which are remote and conjectural.—Smith v. Prior, Case No. 13,095.

§ 203. —— Nominal damages.

If there be a mere making and no user proved, nominal damages are to be given to the plaintiff. —Whittemore v. Cutter, Cases Nos. 17,600, 17,601.

Only nominal damages should be given where the manufacturer employed by another acted without knowledge of the patent.—Bryce v. Dorr, Case No. 2,070.

Where plaintiff does not prove actual damages, nominal damages only are recoverable.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,283; Smith v. Higgins, Id. 13,058; Spaulding v. Tucker, Id. 13,220.

§ 204. —— Measure of damages in general.

There is no distinction in the rule of damages between infringement of an entire machine and infringement of an improvement thereon, and in the latter case damages are not limited in proportion to the value of the improvement.—Burdell v. Denig, Case No. 2,142; Gould's Mfg. Co. v. Cowing, Id. 5,642, 5,643; Graham v. Mason, Id. 5,672; McCormick v. Seymour, Id. 8,726.

If a user of the patented machine be proved, the measure of damages is the value of the use during the time of the user. Neither the price nor the expense of making the machine is a proper measure of damages.—Whittemore v. Cutter, Case No. 17,601.

The rule of damages at law is not defendant's profits, but plaintiff's loss.—McComb v. Brodie, Case No. 8,708; Cowing v. Rumsey, Id. 3,296. CONTRA, see Coleman v. Liesor, Case No. 2,984; Conover v. Rapp, Id. 3,124; Pitts v. Hall, Id. 11,192, 11,193; McCormick v. Seymour, Id. 8,726; Rice v. Heald, Id. 11,752.

Plaintiff is entitled either to the damages sustained by him or the profits made by defendant during the time he used the patented device.—Page v. Ferry, Case No. 10,662.

Damages not estimated solely by the profits which defendant actually realized, for he may have conducted his business unskillfully.—Campbell v. Barclay, Case No. 2,353.

The true question is, what advantage might defendant, by skill, have obtained by using the patented device, instead of the old device.—Campbell v. Barclay, Case No. 2,353; Serrell v. Collins, Id. 12,672.

Method of measuring damages where there is no fixed and uniform license fee.—Goodyear v. Bishop, Case No. 5,559.

Where plaintiff exercises his monopoly by selling licenses, the amount of damages will be controlled by such license fees.—Emerson v. Simm, Case No. 4,443; Goodyear v. Bishop, Id. 5,559; Goodyear Dental Vulcanite Co. v. Van Antwerp, Id. 5,600; Livingston v. Jones, Id. 8,414; McCormick v. Seymour, Id. 8,727; Sickels v. Borden, Id. 12,832.

In a case of infringing articles made and sold, an established royalty is the proper measure of damages.—Star Salt Caster Co. v. Crossman, Case No. 13,320.

A license fee, where there is only a single license, will not fix the measure of compensation.—Judson v. Bradford, Case No. 7,564.

Where the amount of the license fees varies greatly, it cannot be considered in estimating damages.—Black v. Munson, Case No. 1,463.

The fact that defendant acted in good faith, and might have used an unpatented machine with equal advantage, cannot control complainant's damages as fixed by license fees.—Emerson v. Simm, Case No. 4,443.

If the patentee has accepted small patent fees in order to introduce his invention to public notice, this fact should be taken into consideration in fixing a patent fee as a measure of damages.—Sickels v. Borden, Case No. 12,832.

The price for which territorial rights were sold is no criterion by which to determine the damages.—Campbell v. Barclay, Case No. 2,353.

§ 205. —— Estimating damages and elements of compensation.

In arriving at profits as the basis of damages, the jury must take into account the interest on capital, the risk of bad debts, and expenses of selling.—Wilbur v. Beecher, Case No. 17,634; McCormick v. Seymour, Id. 8,726.

In computing damages for infringement of a patent for washboards, the increased facilities in making them, due to inventions since the patent, are to be excluded.—Wayne v. Holmes, Case No. 17,303.

The actual damages sustained include all necessary and proper expenses in protecting the violated rights.—Washburn v. Gould, Case No. 17,214.

Expenses of commencing and closing out the business are not properly chargeable to the patent.—Goodyear v. Bishop, Case No. 5,559.

The amount which plaintiff might have obtained from advertisers in his patented adver-

tising hotel register, as well as the profits he might have made upon selling the book, must be considered in estimating damages.—Hawes v. Gage, Case No. 6,237; Same v. Washburne, Id. 6,242.

Where no rights are sold by the patentee, the measure of damages is the profits he could have made, excluding the mere profits of mechanical construction.—McCormick v. Seymour, Case No. 8,727.

Where no licenses are granted, and the patent is for a mere improvement, the damages are what the patentee would have made by the sale of his improvement, excluding the profits of manufacture and the value of the use of the old machine.—McCormick v. Seymour, Case No. 8,727.

The price of the machine, the nature, actual state, and extent of the use of plaintiff's invention, and the particular losses to which he may have been subjected by the piracy, are all proper to be considered by the jury in estimating damages.—Earle v. Sawyer, Case No. 4,247.

Interest by way of damages may be given by the jury.—Tatham v. Le Roy, Case No. 13,760.

Interest should be allowed on the actual damages from the commencement of suit.—McCormick v. Seymour, Case No. 8,726; Pitts v. Hall, Id. 11,192.

Interest on the amount of the license fee will be given from the time of infringement.—McCormick v. Seymour, Case No. 8,727.

Necessary expenditures for counsel fees and other charges, though not taxable costs, cannot be allowed as part of plaintiff's damages.—Blanchard's Gun-Stock Turning Factory v. Warner, Case No. 1,521; Stimpson v. Railroads, The, Id. 13,456; Whittemore v. Cutter, Id. 17,600. CONTRA, see Allen v. Blunt, Case No. 217; Knight v. Gavit, Id. 7,884; Pierson v. Eagle Screw Co., Id. 11,156; Boston Mfg. Co. v. Fiske, Id. 1,681.

Damages may be given because of publications by defendant while violating the patent, disparaging plaintiff's improvement.—McCormick v. Seymour, Case No. 8,726.

§ 206. —— Increase of actual damages.

The court may allow treble what is found by the jury as damages.—Allen v. Blunt, Case No. 217.

The jury must find the actual damages sustained by the plaintiff, which the court will treble.—Gray v. James, Case No. 5,718; Whittemore v. Cutter, Id. 17,601.

The power to increase actual damages should be exercised only to remunerate parties in cases of wanton and persistent infringement.—Brodie v. Ophir Silver Min. Co., Case No. 1,919; Guyon v. Serrell, Id. 5,881.

The damages cannot be increased by the fact that defendants used on their infringing preparation labels counterfeiting those of the patentee.—Stephens v. Felt, Case No. 13,368a.

The difficulty of furnishing proof of damages, either by showing profits made by defendants or the value of infringing articles sold, does not authorize any presumption whereby the recovery may be enhanced beyond the damages actually shown by the testimony.—Rollhaus v. McPherson, Case No. 12,026.

The damages will be trebled where the sum awarded by the verdict is inadequate to recompense an inventor for a long and expensive litigation, but not in the case of a mere assignee of the patent who has purchased on speculation.—Schwarzel v. Holenshade, Case No. 12,506.

Damages in the sum of $5,000, awarded by a verdict, increased by the court to $7,500, where the conduct of defendant was peculiarly aggravated.—Peek v. Frame, Case No. 10,903.

The provision as to trebling the verdict does not apply to mere collection suits brought upon expired patents.—Bell v. McCullough, Case No. 1,256.

§ 207. —— Exemplary damages.

In an action for a violation of a patent right, the plaintiff can recover for actual damages only, and not for a vindictive recompense.—Whittemore v. Cutter, Case No. 17,601; Hall v. Wiles, Id. 5,954; Pitts v. Hall, Id. 11,192.

Where defendant did not know of plaintiff's right at the time of the infringement, compensatory damages only will be given.—Parker v. Corbin, Case No. 10,731.

Exemplary damages will not be awarded where defendant purchased the infringing machine in the open market, not knowing it was patented, and abandoned all the patented appliances on notice.—Emerson v. Simm, Case No. 4,443.

Where the infringement is characterized by a disposition to affect the interest of the patentee, counsel fees and vindictive damages may be assessed—Parker v. Corbin, Case No. 10,731.

§ 208. Trial.

It is the province of the court to determine what constitutes novelty and utility, and of the jury to determine from the evidence adduced whether the invention is new and useful.—Parker v. Stiles, Case No. 10,749.

It is a question for the jury whether the production of the article involved inventive genius.—Haselden v. Ogden, Case No. 6,190; Poppenhusen v. Falke, Id. 11,280.

It is the province of the court to construe the patent and specification to ascertain the intent, and of the jury to decide whether the description is sufficient.—Batten v Clayton, Case No. 1,105; Carver v. Braintree Mfg. Co., Id. 2,485; Clark Patent Steam & Fire Regulator Co. v. Copeland, Id. 2,866; Conover v. Roach, Id. 3,125; Davis v. Palmer, Id. 3,645; Davoll v. Brown, Id. 3,662; Emerson v. Hogg, Id. 4,440; Page v. Ferry, Id. 10,662; Parker v. Hulme, Id. 10,740; Reutgen v. Kanowrs, Id. 11,710; Teese v. Phelps, Id. 13,819.

When the effect and operation of mechanical contrivances enter into the question of the extent of a patented combination, it is a mixed question of law and fact, and, therefore, a proper one for the jury.—Foote v. Silsby, Case No. 4,916.

The construction of the claims of a patent is for the court, except in the case of technical terms which need explanation by evidence.—Ransom v. New York, Case No. 11,573.

The question of identity is for the jury, under instructions as to what, in law, constitutes substantial identity.—Smith v. Higgins, Case No. 13,058.

Upon the issue of infringement, the jury is limited to the question as to whether the two things involve substantially the same mechanical principles.—Judson v. Cope, Case No. 7,565.

The meaning of technical words of art in commerce and manufactures, used in a patent, as well as the surrounding circumstances, which may materially affect their meaning, are to be interpreted by the jury.—Washburn v. Gould, Case No. 17,214; Brooks v. Jenkins, Id. 1,953.

Whether a patent is old, or whether the original and renewed patent are not for the same invention, are for the jury.—Carver v. Braintree Mfg. Co., Case No. 2,485.

Quære, whether the usefulness of an invention is a question of fact or of law.—Langdon v. De Groot, Case No. 8,059.

The question whether the claim of a reissue is vague and uncertain or too broad is one of law,

to be determined by the state of the art.—Blake v. Stafford, Case No. 1,504.

The question of abandonment, whether in regard to the time prior to two years before the application for the patent or to the time included in such two years, is a question of fact.—Russell & Erwin Mfg. Co. v. Mallory, Case No. 12,166.

The question whether plaintiff was the first inventor of the thing for which he obtained a patent is one for the jury.—Reutgen v. Kanowrs, Case No. 11,710.

Whether an invention is patentable is a mixed question of law and fact, and will not, in ordinary cases, be disposed of on demurrer.—Teese v. Phelps, Case No. 13,818.

The question whether a design patent is abandoned to the use of the public by putting the manufactured article onto the market, two or three months before the application, *held* to be a question of fact.—Booth v. Garelly, Case No. 1,646.

Continuity of successive applications is a question of fact.—Bevin v. East Hampton Bell Co., Case No. 1,379.

The question as to whether the "continuity" of the application is destroyed by the filing of a new application is, in an action at law, one of fact, for the jury.—Howe v. Newton, Case No. 6,771.

It seems that if, by plaintiff's own showing, the invention is useless and an imposition on the public, the court should direct a verdict.—Langdon v. De Groot, Case No. 8,059.

See, also, post, §§ 260, 262.

§ **209. Verdict and judgment.**

Where several prior inventions are offered in evidence to defeat a patent, the jury should agree on each separately, and, in order to find a verdict for the defendants on any one of them, they must agree on that one.—Waterman v. Thomson, Case No. 17,260.

In an action against two defendants, plaintiff may recover damages against one, although the other be acquitted.—Reutgen v. Kanowrs, Case No. 11,710.

A verdict making an allowance for attorney's fees and other charges under the court's direction will not be set aside where the misdirection was not assigned as a reason for new trial, and the same result might have been reached by trebling the damages.—Stimpson v. Railroads, The, Case No. 13,456.

A verdict of $2,000, *held*, should not be set aside because of the absence of specific proof of profits and damages, where there was evidence that defendants' sales were highly profitable, and that they had made and sold large quantities.—Stephens v. Felt, Case No. 13,368.

The verdict of a jury in a patent case is of the same force as a verdict in any other action at law, and a verdict on conflicting evidence will not be set aside.—Blanchard's Gun-Stock Turning Factory v. Jacobs, Case No. 1,520.

Verdicts in suits at law, obtained without contest, without collusion, are entitled to the same weight as verdicts obtained on full trial.—Potter v. Fuller, Case No. 11,327.

A decision that no infringement had been committed *held* necessarily binding in a subsequent suit on a reissue patent for infringement by use of the same device.—Cammeyer v. Newton, Case No. 2,344.

A decree for damages for the amount of the established license fee gives defendant no right to use the invention for the life of the patent.—Emerson v. Simm, Case No. 4,443; Hayden v. Suffolk Mfg. Co., Id. 6,261.

The recovery of profits and damages from the manufacturers of an infringing machine bars a recovery from a user for its use.—Booth v. Seevers, Case No. 1,648a.

See, also, post, § 264.

§ **210. Review.**

A judge of the circuit court, sitting at chambers, has power to allow a writ of error under Act July 4, 1836, § 17.—Foote v. Silsby, Case No. 4,917.

§ **211. Costs.**

The provision in the judiciary act of 1789 that plaintiff shall not have costs if he recover less than $500 applies to actions for infringement of patents.—Kneass v. Schuylkill Bank, Case No. 7,876.

See, also, ante, § 120; post, § 265.

(C) SUITS IN EQUITY.

§ **212. Nature and grounds of suit.**

Where the use of a patented machine is not unlawful, the patentee will be denied relief in equity.—Blanchard v. Sprague, Case No. 1,516.

Where there are no profits, and the limit of the injury is necessarily the value of the license fee, a bill in equity will not lie for an account, as the patentee has an adequate remedy at law.—Vaughan v. Central Pac. R. Co., Case No. 16,897.

Where a patent is for an improvement in the mode of operating brakes for railroad cars, an action of law furnishes a full, complete, and adequate remedy, and a suit for an account cannot be maintained.—Vaughan v. Central Pac. R. Co., Case No. 16,897.

The general rule that a bill in equity will not be maintained where a party has a remedy by an action at law is not applicable to patent cases where the bill prays for a discovery and account of profits.—Vaughan v. East Tennessee V. & G. R. Co., Case No. 16,898; Goodyear v. Hullihen, Id. 5,573.

A bill to recover profits, if it be not a bill for discovery, cannot be entertained as a bill for an account, in order to confer equitable jurisdiction.—Sayles v. Richmond, F. & P. R. Co., Case No. 12,424.

A bill in equity may be maintained by a patentee against an infringer for a discovery and an accounting of profits, irrespective of any right to or demand for an injunction, and although the patent has expired.—Blank v. Manufacturing Co., Case No. 1,532; Bloomer v. Gilpin, Id. 1,558; Gordon v. Anthony, Id. 5,605; Howes v. Nute, Id. 6,790; Imlay v. Norwich & W. R. Co., Id. 7,012; Jordan v. Dobson, Id. 7,519; Nevins v. Johnson, Id. 10,136; Sayles v. Dubuque & S. C. R. Co., Id. 12,417; Sickles v. Gloucester Mfg. Co., Id. 12,841; Stevens v. Kansas Pac. Ry. Co., Id. 13,401; Vaughan v. East Tennessee V. & G. R. Co., Id. 16,898. CONTRA, see Jenkins v. Greenwald, Case No. 7,270; Draper v. Hudson, Id. 4,069.

After the expiration of a patent, a federal court will not entertain jurisdiction of a suit for infringement under its general equity jurisdiction, where the bill is not for an account or a discovery.—Sayles v. Richmond, F. & P. R. Co., Case No. 12,424.

Where, owing to many transfers, it is doubtful whether action at law for infringement can be maintained, equity will afford relief.—Bicknell v. Todd, Case No. 1,389.

Where the patentee sues in equity for an infringement, he need not first establish his legal right in a court at law and by a verdict of a jury.—Sanders v. Logan, Case No. 12,295.

Equity will entertain jurisdiction of a suit for infringement of a patent to prevent a multiplicity of suits.—Motte v. Bennett, Case No. 9,884.

Equity has jurisdiction in case of infringement on the ground of want of adequate remedy at law.—McMillin v. Barclay, Case No. 8,902.

Where there is no question of fiduciary property in a patent, the infringer cannot be treated as a trustee de son tort, and the court cannot upon that ground entertain equitable jurisdiction.—Sayles v. Richmond, F. & P. R. Co., Case No. 12,424.

Jurisdiction being acquired, on the ground of infringement, the court may settle other matters between the parties in the case, which do not afford original ground of jurisdiction.—Brooks v. Stolley, Case No. 1,962.

A complainant having two suits against the same defendant for infringement of the same letters patent will not be compelled to elect which he will prosecute.—Turrell v. Spaeth, Case No. 14,268.

An allegation, in relation to an action at law, should not be set up as any portion of the foundation of a proceeding in equity, unless there was a bona fide trial and complete judgment.—Doughty v. West, Case No. 4,029.

See, also, ante, § 188.

§ 213. Statutory provisions.
The repeal by Act July 8, 1870, § 111, of Act July 4, 1836, did not have the effect to prevent the maintaining of suits on patents previously granted for causes of action subsequently accruing.—Union Paper-Bag Mach. Co. v. Newell, Case No. 14,390.

§ 214. Defenses.
The discontinuance of proceedings for infringement of a patent does not estop complainant from bringing a second suit.—Thompson v. Jewett, Case No. 13,961.

Where the claims are definitely distinguished, the fact that some of them are void for want of novelty will not prevent a suit for infringement upon the valid claims.—Rumford Chemical Works v. Lauer, Case No. 12,135.

Defendants who have used the invention are estopped to deny its utility.—Coleman v. Liesor, Case No. 2,984.

The express recognition by agreement of the validity of a patent, in consideration of a license, will estop the licensee, in a subsequent suit for infringement, to set up its invalidity.—Magic Ruffle Co. v. Elm City Co., Case No. 8,949.

An admission that a third person had a right to grant a license will estop the owners from prosecuting those who relied thereon.—Gear v. Grosvenor, Case No. 5,291.

A person offering to take a license from the patentee is not thereby estopped to deny that the patentee is the original inventor.—Evans v. Eaton, Case No. 4,559.

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.—Crompton v. Belknap Mills, Case No. 18,285.

Proof of fraud in obtaining an extension will not avail respondents, shown to have consented to the acts complained of.—Goodyear v. Providence Rubber Co., Case No. 5,583.

Irregular proceedings in the granting of a reissue are no defense to a wrongdoer unless they were contrary to law, and the patent was granted to the wrong person.—Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.

The defense that an invention is wanting in novelty or originality goes to the validity of the patent.—Coleman v. Liesor, Case No. 2,984.

Where both parties assert rights under different patents with identical claims, defendant cannot set up that the claim in plaintiff's patent does not claim patentable subject-matter.—Russell & Erwin Mfg. Co. v. Mallory, Case No. 12,166.

An infringer cannot defend upon the ground that the extension of the patent was obtained by means of fraud and perjury.—Whitney v. Mowry, Case No. 17,594.

An unreasonable neglect or delay to enter a disclaimer at the patent office, where the disclaimer has been filed, either before or after suit brought, is a good defense to a suit for infringement.—Reed v. Cutter, Case No. 11,645.

A statement of the date of invention, made to the patent office by the patentee after an assignment by him, will not estop the assignees to show that the invention was in fact made at an earlier date.—Union Paper-Bag Mach. Co. v. Crane, Case No. 14,388.

A license to practice the invention is a complete defense to a suit for infringement, though defendant has not fulfilled his contract.—Tilghman v. Hartell, Cases Nos. 14,039, 14,040.

A license under a patent to another is no defense.—Stuart v. Shantz, Case No. 13,556.

Where a license is revoked, and the licensee is sued as an infringer, he is at liberty to avail himself of any defense ordinarily open to any defendant charged with infringement.—Woodworth v. Cook, Case No. 18,011; Wooster v. Singer Mfg. Co., Id. 18,039a.

The fact that defendant has refrained from the use of the thing patented, and has promised not to further infringe, is no ground for a denial of the remedy in equity.—Jenkins v. Greenwald, Case No. 7,270.

It is no justification of the infringement of a reissued patent that the infringer had used the invention with impunity before the patent was amended.—Howe v. Williams, Case No. 6,778.

Where two or more patents are included in one suit, a defense addressed solely to one patent has no application to the others.—Kelleher v. Darling, Case No. 7,653.

It is no defense that the particular form which defendant has infringed is unnecessary to the operation of the apparatus.—Blaisdell v. Puffer, Case No. 1,490.

Defendant cannot avail himself of the defense that he has not marked or labeled the infringing machines as patented.—Herring v. Gage, Case No. 3,422.

Passive conduct with knowledge of an appropriation by defendant, which the inventor is powerless to prevent, does not estop him from subsequently asserting his right on obtaining a patent.—McMillin v. Barclay, Case No. 8,902.

Defendants will be concluded by the statement of their process in their printed labels prepared before the suit was brought.—Jones v. Merrill, Case No. 7,481.

A consent by defendant to a judgment on making a settlement by taking a license under the patent *held* an admission of the validity of the patent.—Goodyear v. Day, Case No. 5,566.

Use of the invention by the infringer before the renewal is no justification of an infringement thereafter.—Goodyear v. Day, Case No. 5,566.

See, also, ante, § 189.

§ 215. Persons entitled to sue.
An assignee of an exclusive territorial right to make, use, and sell the patented article may maintain a suit in equity.—Ogle v. Ege, Case No. 10,462; Bicknell v. Todd, Id. 1,389; Perry v. Corning, Id. 11,004.

An exclusive licensee may maintain a suit for infringement even against the patentee.—Star Salt Caster Co. v. Crossman, Case No. 13,321.

The licensee of a territorial exclusive right to use, rent, and vend a patented article cannot maintain a suit against persons using the article in violation of the license.—Hill v. Whitcomb, Case No. 6,502.

The owner of a patent right may sue on the patent in a federal court in Pennsylvania, though he derived his right from a foreign administrator, who has never taken out letters in Pennsylvania.—Smith v. Mercer, Case No. 13,-078.

The equitable title of an assignee to a subsequent extended term granted to the patentee is sufficient to enable him to maintain a suit for infringement.—Ruggles v. Eddy, Case No. 12,117.

See, also, ante, § 190.

§ 216. Persons liable.

One who purchases patented articles from a licensee, with knowledge of his having repudiated his contract with the patentee, is liable on a sale of such articles.—Moody v. Taber, Case No. 9,747.

The sale of infringing machines by defendants as agents of the maker will be enjoined.—Potter v. Fuller, Case No. 11,327.

A mere licensor under letters patent, who did not derive any profit from an infringing machine constructed thereunder by his licensee, is not liable.—Hussey v. Bradley, Case No. 6,946.

A person who used a driven well for household or other purposes on his property *held* liable to an injunction and accounting. Otherwise as to one who boarded with his mother, and contributed to the expenses of the family.—Green v. Gardner, Case No. 5,758a.

The managing directors of a manufacturing corporation, under whose direction it manufactures and sells infringing articles, and its selling agents, are responsible for such infringement, and will be restrained by injunction.—Goodyear v. Phelps, Case No. 5,581.

A clerk of defendant who purchases his rights pending the motion for an injunction does not stand before the court as an independent infringer.—Parkhurst v. Kinsman, Case No. 10,-760.

After a decision by the commissioner of patents in an interference case the defeated applicant entered into partnership with the patentee for the manufacture of the patented article, and advertised it as secured by patent. *Held*, on dissolution of the partnership, where the defeated applicant continued to manufacture the patented article, preliminary injunction should be granted.—Pentlarge v. Beeston, Case No. 10,963.

See, also, ante, § 191.

§ 217. Joinder of causes of action.

Where an infringing machine contains all the improvements embraced in four patents for improvements in such machine, the bill for infringement may be founded upon all the patents.—Nourse v. Allen, Case No. 10,367.

A bill for the infringement of two patents owned by plaintiff by one article manufactured by defendant is not bad for multifariousness.—Gillespie v. Cummings, Case No. 5,434.

Where there is privity or connection between the different defendants, they are jointly liable on a bill for infringing a patent.—Wells v. Jacques, Case No. 17,398.

The fact that the assignment of one of the patents embraces other territory than that in question does not make the bill bad.—Gillespie v. Cummings, Case No. 5,434.

Bill for infringement of 33 claims, in 4 several patents, *held* demurrable for multifariousness.—Hayes v. Bickelhoupt, Case No. 6,261b.

§ 218. Jurisdiction.

The circuit court, sitting as a court of equity, has a full concurrent jurisdiction with the court sitting as a court of law of all actions for the infringement of a patent.—Perry v. Corning, Case No. 11,004.

Upon the death of the patentee the personal representative at his domicile may sue for infringement in any federal court having jurisdiction, without taking out letters in the state in which the suit is brought.—Hodge v. North Missouri R. R., Case No. 6,561.

The suit may be brought in any district in which defendant is found, regardless of the place where the infringement was committed.—Thompson v. Mendelsohn, Case No. 13,968.

See, also, post, § 245.

§ 219. Limitations and laches.

Prior to Act July 8, 1870, there was no statute limiting the time within which a suit in equity must be prosecuted for the infringement of a patent.—Wood v. Cleveland Rolling-Mill Co., Case No. 17,941; Same v. Union Iron-Works Co., Id.

A suit against the most conspicuous and extensive infringer, brought within a reasonable time, and prosecuted with reasonable diligence, is sufficient to prevent the defense of laches as to other infringers.—Colgate v. Gold & Stock Tel. Co., Case No. 2,991.

State statutes of limitation cannot be pleaded in bar of suit for infringement.—Anthony v. Carroll, Case No. 487.

Quære, whether state statutes of limitation are applicable to suits for infringement.—Stevens v. Kansas Pac. Ry. Co., Case No. 13,401.

See, also, ante, § 192; post, § 241.

§ 220. Parties and process.

The party who is immediately injured by the infringement, and who is equitably entitled to the fruits of the recovery, may be joined with the owner of the legal title.—Goodyear v. Allyn, Case No. 5,555; Same v. Central R. Co., Id. 5,563.

All parties having title to a patent are necessary parties to a suit for infringement. If their title is disputed, they should be made defendants.—Edgarton v. Breck, Case No. 4,-279.

In a suit upon a patent granted to the personal representative of the inventor the heir or equitable owner is a necessary party.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

A grant of a right to construct and use 50 machines within certain localities, reserving to the grantor the right to construct but not use others therein, is of an exclusive right, and suits are to be brought in the name of the assignees.—Washburn v. Gould, Case No. 17,-214.

A mere licensee under a patent cannot sue in equity for the infringement of his rights under the patent, without joining with him, as plaintiff, the owner of the legal title.—Nelson v. McMann, Case No. 10,109; Potter v. Holland, Id. 11,329; Same v. Wilson, Id. 11,342. CONTRA, see Brammer v. Jones, Case No. 1,806.

And he need not be joined in the suit by the owner of the patent.—Potter v. Holland, Case No. 11,329; Same v. Wilson, Id. 11,342; Goodyear v. Day, Id. 5,566; Hussey v. Whitely, Id. 6,950. CONTRA, see Hammond v. Hunt, Case No. 6,003.

The legal owner is a necessary party to a suit for infringement, where his license of the ex-

clusive use to another provided that he was to have half the damages recovered for violations. —North v. Kershaw, Case No. 10,311.

The owner of the legal title is properly joined as plaintiff with one holding an exclusive right to make and vend the patented article for use in foreign countries in a suit to restrain defendant from making the patented article, and selling to persons who buy for export.—Dorsey Revolving Harvester Rake Co. v. Bradley Mfg. Co., Case No. 4,015.

Nonjoinder of parties in a bill for an infringement of a patent constitutes no defense after the cause has been set down for final hearing. —Forbes v. Barstow Stove Co., Case No. 4,923.

In a suit by an assignee to recover damages and profits accruing both before and since the assignment, the assignor need not be made a party.—Henry v. Francestown Soap-Stone Stove Co., Case No. 6,382.

Trustees of a license to use a patent may sue to restrain infringement within their territory without joining the cestuis que trustent.—Bryan v. Stevens, Case No. 2,066a.

The next of kin of a patentee cannot be united as parties plaintiff with the personal representative in a bill to enjoin infringement.—Hodge v. North Missouri R. R., Case No. 6,561.

An officer of a corporation owning an infringing patent who, in its behalf, executes a license to defendant to use, for a fixed rental, the corporation's infringing machines, is a proper party defendant to an injunction suit.—Nichols v. Pearce, Case No. 10,246.

The owner of infringing machines and a lessee from him may be joined as defendants in a suit for infringement.—Wells v. Jacques, Case No. 17,398.

In a suit for infringement of a patent issued to an executor in trust for the devisees of the inventor, both the executor and the devisees should be joined as plaintiffs.—Stimpson v. Rogers, Case No. 13,457.

Suits for infringements *held* properly brought in the name of a trustee of the patentee, joining the patentee as owner of the equitable interest.—Dibble v. Augur, Case No. 3,879.

A person interested in a patent, though not within the particular district in which the suit to restrain infringement is brought, may be made a party to the bill.—Buck v. Cobb, Case No. 2,079.

In suits founded on a patent issued to a partnership, both partners are necessary parties.—Ambler v. Chouteau, Case No. 272.

It is a fatal defect in the bill that all the owners of the patent have not been made parties; but those only are deemed owners to whom the patent was issued, or to whom interests in it have been transferred by assignment in writing, duly authenticated.—Jordan v. Dobson, Case No. 7,519.

The remedy of parties joined as complainants who have no title to the patent is not a dismissal of the bill, but merely of their names as parties.—Edgarton v. Breck, Case No. 4,279.

An amendment in a suit by a patentee by adding an exclusive licensee as plaintiff not allowed. —Goodyear v. Bourn, Case No. 5,561.

See, also, ante, § 193.

§ 221. Pleading—Original bill.

See, also, ante, §§ 194–197; post, § 244.

A bill founded on the infringement of a patent, containing the usual prayer for an answer on oath and a prayer for an account of profits, but not alleging that a discovery was necessary, and having no special interrogatories annexed, *held* sufficient to give the court jurisdiction as a bill for a discovery and account, notwithstanding an admission of counsel that a discovery was not necessary.—Perry v. Corning, Case No. 11,003.

Where a bill for infringement prays for a discovery and an account of profits, and alleges that plaintiff has no adequate remedy except in equity, it is not demurrable on the ground that plaintiff has an adequate remedy at law.—Perry v. Corning, Case No. 11,004.

Where the original patent was reissued in divisions, the bill need not aver that each division was for a distinct invention.—Thompson v. Jewett, Case No. 13,961.

A general allegation of profits accrued will not sustain a bill for an account, and where, from the nature of the invention alleged, it is apparent that there cannot possibly be any profits of a character to justify charging defendant as trustee, a demurrer will be sustained.—Vaughan v. Central Pac. R. Co., Case No. 16,897.

Plaintiff must allege in his bill that he, or the one under whom he claims, is the original and first inventor of what is claimed in the patent.—Tucker v. Tucker Mfg. Co., Case No. 14,227; Sullivan v. Redfield, Id. 13,597.

A simple averment that the title to the patent in suit is vested in plaintiff is sufficient. Plaintiff need not set forth a deduction of title.—Nourse v. Allen, Case No. 10,367.

Plaintiff who relies upon a verdict and judgment at law establishing his title must aver it in his bill for an injunction.—Parker v. Brant, Case No. 10,727.

Statement of locality or place of business of the corporation complainant *held* not necessary. —National Hay-Rake Co. v. Harbert, Case No. 10,044.

Plaintiff, claiming title through a territorial assignment, need not aver in his bill the recording of the instrument in the patent office. The defense that defendant is a bona fide purchaser for value without notice must be made in the answer.—Perry v. Corning, Case No. 11,004.

Sufficiency of averment of the issue of letters patent.—Noe v. Prentice, Case No. 10,284a.

The particulars of the infringement need not be stated in a bill in equity, a general allegation of infringement being sufficient.—Haven v. Brown, Case No. 6,228; Thatcher Heating Co. v. Carbon Stove Co., Id. 13,864; Turrell v. Cammerer, Id. 14,266.

The allegation that respondents are using, etc., is sufficient where it appears that they are acting in concert as stockholders, managers, etc., of a corporation.—Poppenhusen v. Falke, Case No. 11,279.

In a bill in equity, after alleging the infringement of a valid patent, it is surplusage, and not multifariousness, to aver the infringement of a void reissue thereof.—Roemer v. Logowitz, Case No. 11,996.

Where suit is brought for the infringement of several patents for different improvements, not necessarily embodied in the construction and operation of any one machine, the bill must contain an explicit averment that the infringing machines contain all the improvements embraced in the several patents, or it will be bad for multifariousness.—Nellis v. McLanahan, Case No. 10,099.

It is no ground of demurrer to a bill for infringement of two patents by the use of the devices in one apparatus that the bill does not allege that the devices were used conjointly, or connected together.—Horman Patent Mfg. Co. v. Brooklyn City R. Co., Case No. 6,703.

A bill by an inventor, alleging a fraudulent sale of his patent rights, which does not clearly show whether the relief prayed for is that the sale be canceled and the patent restored, or that

the sale be confirmed and the buyer forced to account for the profits, is bad on demurrer.—Ambler v. Chouteau, Case No. 272.

The bill need not aver that the patentee had marked the articles made or vended under the patent as required by Act March 2, 1861, § 13.—Goodyear v. Allyn, Case No. 5,555.

On a bill in equity the right to damages follows the decree under the general prayer for relief. Complainant need not pray for damages eo nomine.—Emerson v. Simm, Case No. 4,443.

The bill must be sworn to.—Sullivan v. Redfield, Case No. 13,597.

The bill may be properly verified by the equitable owner of the patent.—Goodyear v. Allyn, Case No. 5,555.

The affidavit annexed to the bill that the patentee was the original and first inventor of the thing patented can be made by the assignee of the patent, as well as by the patentee himself.—Thompson v. Jewett, Case No. 13,961.

§ 222. —— Cross bill.

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.—Young v. Colt, Case No. 18,155.

§ 223. —— Plea and answer.

Where the defense is that the patentee is not the first inventor, the answer in equity must allege the names and places of residence of those relied on to prove the fact.—Graham v. Mason, Case No. 5,671.

A plea to an answer setting up a license, that defendant has abandoned the license, must state the acts showing the abandonment.—Brooks v. Stolley, Case No. 1,963.

Want of novelty, as a defense, must be specially alleged.—Guidet v. Barber, Case No. 5,857.

The objection that the answer, raising the defense for want of novelty, fails to specify time, place, etc., if not taken when the testimony is introduced, is waived, and defendant will be allowed to amend to conform to his proofs.—Brown v. Hall, Case No. 2,008.

The defense of the insufficiency of the specification to enable the invention to be practiced, to be available, must be set up in the answer.—Jennings v. Pierce, Case No. 7,283; Goodyear v. Providence Rubber Co., Id. 5,583.

The claim that a reissue was obtained under false representations must be distinctly alleged, and as distinctly proved.—Doughty v. West, Case No. 4,029.

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.—Wonson v. Peterson, Case No. 17,934.

A defense in a suit in equity that the patentee has, since he obtained his patent, abandoned or dedicated it to the public use, must be set up in the answer.—Williams v. Boston & A. R. Co., Case No. 17,716; Wyeth v. Stone, Id. 18,107.

A defense that the invention involved simply substitution of one material for another, not set up in the answer, is not available—Comstock v. Sandusky Seat Co., Case No. 3,082.

The failure to deny the use of a machine as alleged and described in the bill is an admission of such use.—Ely v. Monson & B. Mfg. Co., Case No. 4,431.

Defendants will be estopped by averments in their answer from setting up facts to the contrary by affidavits.—Morse Fountain Pen Co. v. Esterbrook Steel Pen Mfg. Co., Case No. 9,862.

The admission of the originality and value of complainant's patent, in the answer, will conclude defendant, though he subsequently amends his answer and denies both.—Livingston v. Jones, Case No. 8,413.

An answer to a bill for infringement which is indistinct and evasive as to the use of the patented invention will be considered as an admission.—Jordan v. Wallace, Case No. 7,523.

Effect of admission in the answer that defendant had made "large profits" by the use of the alleged infringing machinery.—Troy Iron & Nail Factory v. Corning, Case No. 14,196.

§ 224. —— Replication.

As no special replication to an answer is allowed, the question whether the licensee has abandoned his license can only be brought up by amendment to the bill. Equity Rule 45.—Brooks v. Stolley, Case No. 1,963.

A replication to the answer, merely traversing the license, would not lay a foundation for evidence of abandonment.—Brooks v. Stolley, Case No. 1,963.

§ 225. —— Amended and supplemental pleadings.

Leave to amend an answer by denying the novelty and utility of the invention will not be granted where, in a prior suit on the same patent, defendant acknowledged in writing the novelty and utility of the invention, and a final decree was entered against him by consent.—Pentlarge v. Beeston, Case No. 10,964.

Amendment setting up a new defense not allowed after interlocutory decree, and account proceeded with, where reasonable diligence not shown.—India Rubber Comb Co. v. Phelps, Case No. 7,025.

Amendments to an answer sought to be made a year after plaintiff's proofs were closed by setting up two years' prior public use, and anticipation by a prior patent, not allowed, where the excuse was mistake of counsel as to the law governing the case, and no knowledge as to such prior patent.—Webster Loom Co. v. Higgins, Case No. 17,341.

Where defendants admit the infringement, setting forth the number of articles made and sold, and rest their defense on a claim of ownership of the patent, they will not be granted leave to amend to contest the infringement, after a rehearing has been denied and an accounting had.—Ruggles v. Eddy, Case No. 12,118.

Defendants allowed to strike out an admission in their answer of the making of certain articles as to which an injunction was sought.—Morehead v. Jones, Case No. 9,791.

A surrender and reissue puts an end to a suit pending on the original patent, and plaintiff must proceed by a new bill. He cannot file a supplemental bill.—Fry v. Quinlan, Case No. 5,140.

§ 226. —— Notice of special matter.

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.—Wilton v. Railroads, Case No. 17,857.

If the notice of special matter sufficiently indicates the sources of defendant's proofs, so that complainant can identify and resort to them, it is sufficient under the statute.—Smith v. Frazer, Case No. 13,048.

Defendant must give notice of the place where and the parties by whom the thing relied on under the defense of prior use has been used.—Hays v. Sulsor, Case No. 6,271.

A reference to a county in which, it is alleged, the prior use took place, is not sufficient.—Hays v. Sulsor, Case No. 6,271.

Where defendant, in his special notice, gave the names of certain mining establishments in a specified county, as the places of an alleged

prior use, *held*, that this was sufficient.—Smith v. Frazer, Case No. 13,048.

Defendant must give notice of his defense of want of novelty.—Coleman v. Liesor, Case No. 2,984; Collender v. Griffith, Id. 3,000.

The absence of proper notice of the defense of want of novelty in the answer will render evidence thereof inadmissible, though the answer is subsequently amended by setting up such defense in due form.—Roberts v. Buck, Case No. 11,897.

The absence of notice in the answer of evidence of want of novelty is waived where the testimony of witnesses is received without objection.—Roemer v. Simon, Case No. 11,997.

The testimony of a witness to prove prior knowledge stricken out, at the hearing, on motion, on the ground that his place of residence was not given in the answer.—Decker v. Grote, Case No. 3,726.

Copies of drawings of foreign patents are not admissible without a notice in the answer, as required by the statute.—Earl v. Dexter, Case No. 4,242.

A notice in a special plea, stricken out before the trial, is not sufficient to admit a public work in evidence to show want of novelty.—Foote v. Silsby, Case No. 4,916.

Testimony of prior use and printed publications, of which no notice was given in the answer, can be considered only to show the state of the art.—Geier v. Goetinger, Case No. 5,299.

If it should appear that such testimony clearly established the invalidity of the patent, the court might grant the respondent leave to amend.—Geier v. Goetinger, Case No. 5,299.

Complainant cannot acquiesce in the taking of testimony, and afterwards object to it for want of notice.—Lock v. Pennsylvania R. Co., Case No. 8,438.

Want of notice of the names of witnesses to prove want of novelty is waived where their evidence is taken without objection.—Crouch v. Speer, Case No. 3,438.

§ 227. Issues and proof.

The issue tendered by respondent must be clear and unconditional.—Graham v. Mason, Case No. 5,671.

Proof showing the prior state of the art cannot be considered for purposes of anticipation when that issue is not raised by the pleadings. —Middletown Tool Co. v. Judd, Case No. 9,536.

Machines not set up in the answer cannot be introduced in evidence or considered upon final hearing.—Howe v. Williams, Case No. 6,778.

Prior patent not pleaded is admissible to show state of art, but not want of novelty.—American Saddle Co. v. Hogg, Case No. 315.

Testimony as to prior knowledge and use by persons not named in the answer is incompetent.—Coleman v. Liesor, Case No. 2,984; Collender v. Griffith, Id. 3,000.

An allegation of infringement by making and using the patented invention is sustained by proof of using alone.—Locomotive Engine Safety Truck Co. v. Erie Ry. Co., Case No. 8,452.

See, also, ante, § 198.

§ 228. Evidence—Presumptions and burden of proof.

See, also, ante, §§ 23, 30, 34, 41–43, 53, 57, 59, 199, 200; post, § 248.

Both parties, when claiming under patents, are entitled to the benefit of the presumption that the patent is prima facie for a new and useful invention.—Blanchard v. Puttman, Case No. 1,514.

The burden of showing in defense that the patentee was a joint inventor is on defendant. —Ashcroft v. Cutter, Case No. 578.

The party claiming that the patent should be limited in duration has the burden of proof. —American Diamond Rock Boring Co. v. Sheldon, Case No. 297.

No notice will be taken of defenses set up in an answer, where the burden is upon the respondent, unless some proof is introduced in their support.—Cook v. Howard, Case No. 3,160.

After defendant shows failure of the patentee to mark the articles, plaintiff has the burden of showing that defendant continued to make and vend the articles after notice of infringement.—Goodyear v. Allyn, Case No. 5,555.

In the case of a patent for an improvement, the burden is upon the plaintiff to show the profit resulting from such improvement.—Star Salt Caster Co. v. Crossman, Case No. 13,320.

Defendant, shown to have in his possession a number of each of the parts constituting the elements of complainant's patented combination, may be compelled to show his subsequent use of such parts.—Turrell v. Spaeth, Case No. 14,267.

§ 229. —— Admissibility in general.

Complainant may show that his invention was made and reduced to practice at a date much earlier than that of the date of the application.—Kelleher v. Darling, Case No. 7,653.

Rejected specifications and drawings are admissible after the invention is perfected to ascertain the date of the invention, the design of the inventor, and the principle, intended functions, and mode of operation of the mechanism.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

Where a prior adjudication in favor of the patent is relied upon, defendant may show that the title was not fairly in controversy, or that some material fact was then unknown or apposite argument overlooked. — Parker v. Brant, Case No. 10,727.

Copies from the records of the patent office of assignments are evidence.—Brooks v. Jenkins, Case No. 1,953.

The model filed in compliance with the law is admissible as evidence of the scope of the invention and of the defects in the patent.—Ex parte Ball, Case No. 811.

As to the admissibility in evidence of the certified copy of a drawing filed after the original records in the patent office were destroyed by fire, see Emerson v. Hogg, Case No. 4,440.

Evidence of plaintiff's declarations *held* admissible to prove that he asserted a right as the discoverer, and described the invention.—Evans v. Hettick, Case No. 4,562.

Parol evidence is not admissible to show at what time a patent was applied for, as the patent office contains written evidence of such fact.—Wayne v. Winter, Case No. 17,304.

The commissioner's certificate that the annexed "is a true copy," annexed to various assignments of a patent, attached so as to constitute one document, applies to all of such assignments.—Goodyear v. Blake, Case No. 5,560.

§ 230. —— Weight and sufficiency.

A patent will be sustained on testimony of patentee that he was sole inventor, corroborated by the circumstances, as against testimony of another claiming to be joint inventor.—Ashcroft v. Cutter, Case No. 578.

The defense of invention by and patent to a third person may be met by producing the application of and the patent to such third person, with his accompanying or contemporaneous declarations.—Hitchcock v. Shoninger Melodeon Co., Case No. 6,537.

Persons alleging invalidity of patent after it has been repeatedly sustained in other circuits must show indisputable grounds. — Blake v. Robertson, Case No. 1,501.

It is not enough for defendant to make oath that he manufactures under a patent granted to himself; he must support his right by the affidavits of third persons.—Lombard v. Stillwell, Case No. 8,472.

A patent will not be invalidated on the testimony of a single witness of the public use of an alleged prior machine some 20 years before. —Blake v. Eagle Works Mfg. Co., Case No. 1,494; Same v. Rawson, Id. 1,499.

A verbal admission of infringement and a promise to desist is a strong circumstance against defendant.—Morse Fountain Pen Co. v. Esterbrook Steel Pen Mfg. Co., Case No. 9,862.

The purchase by plaintiff from defendant, in the usual course of defendant's business, of the infringing article, will sustain a decree for an injunction and an accounting as to other sales.—De Florez v. Raynolds, Case No. 3,742.

The fact that defendant has obtained a patent for his process, while not controlling, is entitled to weight.—Jones v. Merrill, Case No. 7,481.

Plaintiff cannot strengthen his case on the question of infringement by rebutting affidavits.—Union Paper-Bag Mach. Co. v. Binney, Case No. 14,387.

Where defendants offered no testimony, *held* the infringement was sufficiently proved by testimony of their admissions that they had sold certain articles which were substantially the same as the articles described in plaintiff's patent. — Thatcher Heating Co. v. Drummond, Case No. 13,865.

The affidavit of the manufacturer of an article, stating its composition from his personal knowledge, will prevail over the affidavits of dealers, stating their opinions.—Gutta-Percha & Rubber Mfg. Co. v. Goodyear Rubber Co., Case No. 5,879.

Where the evidence is the same as upon a prior case, the decision there will be followed. —Bailey Wringing Mach. Co. v. Adams, Case No. 752.

Copies of the specifications and drawings are not alone sufficient evidence to prove a patent. —Brooks v. Norcross, Case No. 1,957.

Complainant will be given the benefit of rights adjudicated against a defendant in another suit in which defendant herein contributed to the defense.—Birdsall v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,433.

Original model may be proved by specifications and drawings where certified model is broken, and parts lost.—Aultman v. Holley, Case No. 656.

Proof of mere finding of infringing machines in defendant's possession will support a finding for plaintiff where the answer does not explicitly deny infringement. — Gear v. Fitch, Case No. 5,290.

§ 231. —— Opinions of experts.

The opinions of experts, or persons skilled in the structure of machines, is evidence.—Brooks v. Jenkins, Case No. 1,953.

Testimony of experts are entitled to more weight than opinion of commissioner.—Ex parte Arthur, Case No. 563a.

As bearing on the art, the testimony of persons skilled in the business that no such improvement as that covered by the patent had previously come to their knowledge is inadmissible. — Hitchcock v. Shoninger Melodeon Co., Case No. 6,537.

Proofs furnished by practical operation and experiment are entitled to greater weight than the opinion of an expert.—Hudson v. Draper, Case No. 6,834.

The opinion of an expert that two machines are essentially different in mechanical structure and mode of operation, when the particulars of difference are not pointed out, will not control where the machines appear to be practically identical.—United States Annunciator & Bell Telegraph Mfg. Co. v. Sanderson, Case No. 16,790.

Experts will not be allowed to testify, where the court is convinced, upon an inspection of the machine and the patent, that there is no infringement.—Ely v. Monson & B. Mfg. Co., Case No. 4,431.

§ 232. Preliminary injunctions, when granted—In general.

The same rule obtains in patent cases as in other equitable cases as to the granting of a preliminary writ.—Irwin v. Dane, Case No. 7,081.

The rules laid down under which preliminary injunctions are granted.—Doughty v. West, Case No. 4,029.

The court should grant the preliminary writ without evasion if of opinion that plaintiff is entitled to it by law.—Blanchard v. Reeves, Case No. 1,515.

An injunction will be denied except in clear cases, or where the answer or affidavit is equivocal and evasive.—Parker v. Sears, Case No. 10,748.

Defendant may be enjoined from infringing some of the claims of a patent pending a decision as to the validity of others.—Colt v. Young, Case No. 3,032.

A preliminary injunction will be refused where the court is in doubt as to the validity of the patent or of the infringement.—American Middlings Purifier Co. v. Atlantic Milling Co., Case No. 305; American Nicholson Pavement Co. v. Elizabeth, Id. 312; Beane v. Orr, Id. 1,176; Dodge v. Card, Id. 3,951; Ogle v. Ege, Id. 10,462; Fales v. Wentworth, Id. 4,623; Crowell v. Harlow, Id. 3,444; Goodyear v. Hills, Id. 5,571a; Jones v. Field, Id. 7,461; Same v. Hodges, Id. 7,469; Mowry v. Grand Street & N. R. Co., Id. 9,893; Ogle v. Ege, Id. 10,462; Sickels v. Youngs, Id. 12,838; Winans v. Eaton, Id. 17,861.

Denied where its purpose is to compel a city to award a contract to complainants.—American Nicholson Pavement Co. v. Elizabeth, Case No. 312.

Denied where the patentee, before making his application, had sold a large quantity of the manufactured article in packages marked as imported.—Booth v. Garelly, Case No. 1,646.

Denied to inventor who falsely described his invention as patented before applying for patent.—Anonymous, Case No. 451.

Not granted where there are conflicting statements of fact.—Cooper v. Mattheys, Case No. 3,200.

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. —Wilson v. Barnum, Case No. 17,787.

Preliminary injunction denied where the validity of the patent, six months old, was put in issue, and defendant alleged a license granted

by complainant before the patent issued.—McGuire v. Eames, Case No. 8,814.

Not granted where defendant shows a belief that he has a just defense, and is not a willful pirate of the plaintiff's invention.—Goodyear v. Dunbar, Case No. 5,570.

Infringement enjoined independent of other relief.—American Cotton-Tie Supply Co. v. McCready, Case No. 295.

§ 233. —— Establishing right of patentee by trial at law or exclusive use.

A preliminary injunction will not be granted unless the patentee's right has been established by a suit at law, or his possession and exercise of the right have been exclusive, undisturbed, and long-continued.—Brooks v. Bicknell, Case No. 1,946; Burleigh Rock-Drill Co. v. Lobdell, Id. 2,166; Grover & Baker Sewing Mach. Co. v. Williams, Id. 5,847; Gutta-Percha & Rubber Mfg. Co. v. Goodyear Rubber Co., Id. 5,879; Hockholzer v. Eager, Id. 6,556; Hovey v. Stevens, Id. 6,745; Mitchell v. Barclay, Id. 9,659; Mowry v. Grand Street & N. R. Co., Id. 9,893; Muscan Hair Mfg. Co. v. American Hair Mfg. Co., Id. 9,970; Pentlarge v. Pentlarge, Id. 10,965a; Potter v. Whitney, Id. 11,341; Serrell v. Collins, Id. 12,671; Stevens v. Felt, Id. 13,397; Thomas v. Weeks, Id. 13,914; Toppan v. National Bank-Note Co., Id. 14,100.

Where the patent is of long standing, and the inventor has exclusive possession under it, and the infringement is clear, the writ will be granted without a trial at law.—Brown v. Hinkley, Case No. 2,012; Buck v. Cobb, Id. 2,079; Chase v. Wesson, Id. 2,631; Gibson v. Betts, Id. 5,390; Same v. Van Dresar, Id. 5,402; Green v. French, Id. 5,757; Goodyear v. Central R. Co., Id. 5,563; Howe v. Williams, Id. 6,778; Miller v. Androscoggin Pulp Co., Id. 9,559; Motte v. Bennett, Id. 9,884; Orr v. Badger, Id. 10,587; Same v. Littlefield, Id. 10,590; Potter v. Muller, Id. 11,334; Sickels v. Mitchell, Id. 12,835; Washburn v. Gould, Id. 17,214; Weston v. White, Id. 17,459; Woodworth v. Hall, Id. 18,016.

The injunction will be denied, where the patent has not been judicially established or acquiesced in by the public, unless plaintiff's right is free from doubt, and the violation of right by defendant is equally clear.—North v. Kershaw, Case No. 10,311.

Where the patent is only recently granted, very strong evidence of acquiescence on the part of the community is required to justify a preliminary injunction.—Mannie v. Everett, Case No. 9,039.

The public acquiescence in an inventor's claim of right for two years before his application is entitled to weight in considering his right to a preliminary injunction.—Sargent v. Larned, Case No. 12,364.

The alleged public acquiescence in a patent must be attended with circumstances indicating that such acquiescence would not have occurred if any fair doubt had existed as to the validity of the patent.—Guidet v. Palmer, Case No. 5,859.

Four years' use of a pavement laid by the patentee under a contract with the city *held* insufficient to raise a presumption in favor of the validity of the patent.—Guidet v. Palmer, Case No. 5,859.

Public acquiescence in a patent will not be construed as acquiescence in a reissue, where both patents do not claim the same thing.—Grover & Baker Sewing Mach. Co. v. Williams, Case No. 5,847.

Granted where complainants had enjoyed an uninterrupted use of their invention for 11 years, and established their patent in an action at law, and obtained an extension, notwithstanding vigilant opposition.—Cook v. Ernest, Case No. 3,155.

Granted where complainant's possession had been acquiesced in for a long time by the public, and for some time by defendant.—Morse v. O'Reilly, Case No. 9,859.

The exclusive possession for eight years under a patent for a useful machine, affecting an extensive business, *held* sufficient prima facie evidence to entitle a patentee to an injunction.—Foster v. Moore, Case No. 4,978.

Previous use by plaintiff is not absolutely essential.—American Middlings Purifier Co. v. Christian, Case No. 307. See, also, Mitchell v. Barclay, Case No. 9,659.

What is a sufficient public acquiescence in the exclusive right of a patentee to make a prima facie title without a judgment at law, see Sargent v. Seagrave, Case No. 12,365.

§ 234. —— Irreparable or comparative injury to parties.

The writ will be refused where there does not appear to be danger of irreparable injury to plaintiff.—Dorsey Revolving Harvester Rake Co. v. Bradley Mfg. Co., Case No. 4,015; Earth Closet Co. v. Fenner, Id. 4,249.

An unconditional injunction will be granted, irrespective of the hardship to defendants, and the security to plaintiff, if there be no substantial doubt of plaintiff's right.—Ely v. Monson & B. Mfg. Co., Case No. 4,431; Hodge v. Hudson River R. Co., Id. 6,560; Hussey v. Whitely, Id. 6,950; Morris v. Lowell Mfg. Co., Id. 9,833; Potter v. Fuller, Id. 11,327. But see Potter v. Whitney, Case No. 11,341.

A preliminary injunction will not be granted where there is more probability of incalculable mischief from the granting than from the withholding.—Day v. Candee, Case No. 3,676; Hockholzer v. Eager, Id. 6,556; Irwin v. Dane, Id. 7,081; North v. Kershaw, Id. 10,311; Sargent v. Seagrave, Id. 12,365.

Refused where complainant's right is in doubt, and defendants are amply able to answer in damages, and would suffer great injury by suspension of their work.—Essex Hosiery Mfg. Co. v. Dorr Mfg. Co., Case No. 4,533.

Unless the balance of inconvenience be clearly on the side of the complainant, or if the case be at all doubtful, an injunction will not be granted against a mere user.—Howe v. Newton, Case No. 6,771.

The standing of complainants in the market, and their relation to the trade, may be properly considered on the motion.—Irwin v. Dane, Case No. 7,081.

The state of the litigation, where the plaintiff's title is denied, the nature of the improvement, the character and extent of the infringement, and the comparative inconvenience which will be occasioned to the respective parties, by allowing or denying the injunction, must all be considered.—Forbush v. Bradford, Case No. 4,930.

It seems, will be denied where cessation of alleged infringement would be injurious to the public.—Blake v. Greenwood Cemetery, Case No. 1,497.

The object of the writ is to prevent irreparable mischief, not to give complainant the means of coercing a compromise on his own terms.—Parker v. Sears, Case No. 10,748.

On a motion for preliminary injunction, the court will not look further than to ascertain whether, upon established principles of equity, its interference is required to prevent irreparable injury pending the litigation.—Sickels v. Youngs, Case No. 12,838.

The fact that plaintiff grants licenses at a fixed sum, and that defendant is a mere user,

is not alone sufficient reason to refuse the writ. —Howe v. Newton, Case No. 6,771.

Notwithstanding complainant's right to an injunction is clear, defendant will be allowed to continue the use of the patented invention, where plaintiff exercises his monopoly by selling licenses, and defendant is willing to pay a reasonable license fee.—Hodge v. Hudson River R. Co., Case No. 6,560; Baldwin v. Bernard, Id. 797.

Whether defendant is fully responsible for any profits or damages which may be decreed against him is material.—Morris v. Lowell Mfg. Co., Case No. 9,833.

That defendant does not make or vend the patented machine, but only uses it, is also material.—Morris v. Lowell Mfg. Co., Case No. 9,833.

An injunction will not issue where defendant was manufacturing under the patent on the understanding that the question between him and the plaintiff was one of compensation, and he was willing to pay a reasonable sum for the use of the invention.—Smith v. Sharp's Rifle Mfg. Co., Case No. 13,106.

Denied where the bill charges that defendants have violated their contract of license, and thereby become infringers, especially where there is a substantial controversy as to the equities.—Smith v. Cummings, Case No. 13,034.

Not granted where injury to defendant would be irreparable and profits to patentee are by licensing.—Batten v. Silliman, Case No. 1,106.

Where complainant can be compensated in damages, an injunction will not be granted during the last few weeks of a patent.—Parker v. Sears, Case No. 10,748.

Not granted where defendant licensee failed to pay his royalties, if it appear that complainant sold licenses for less than the agreed price, to defendant's injury.—Crowell v. Parmenter, Case No. 3,446.

The fact that only 20 days remain of the life of the patent is no ground for withholding injunctions, where the patent had only just been finally sustained, and had been much litigated.—Rumford Chemical Works v. Vice, Case No. 12,136.

§ 235. —— Defendant acting under claim and color of right.

The writ will not be granted as against a party who has been in possession of the invention for a long time under color and claim of right.—Hall v. Speer, Case No. 5,947; Cooper v. Mattheys, Id. 3,200.

The grant of a subsequent patent will not prevent the granting of an injunction where the infringement is clear.—Morse Fountain Pen Co. v. Esterbrook Steel Pen Mfg. Co., Case No. 9,862.

Denied where defendant's machine was patented to him after the granting of a preliminary injunction against him in a prior suit—Onderdonk v. Fanning, Case No. 10,510a.

Where, on a motion for a preliminary injunction, both parties claim to act under patents regularly issued, they stand on the same footing, and the court will not decide as to the validity of the patent.—Congress Rubber Co. v. American Elastic Cloth Co., Case No. 3,099a.

The writ will not be granted where defendant is acting under letters patent which cover his process or machine.—Goodyear v. Dunbar, Case No. 5,570; Congress Rubber Co. v. American Elastic Cloth Co., Id. 3,099a; Sargent v. Carter, Id. 12,362.

An injunction will not issue where defendant is manufacturing under letters patent, unless the court can see from an inspection alone that he is infringing.—Sargent Mfg. Co. v. Woodruff, Case No. 12,368.

A decision in favor of the applicant on an interference declared between an application and a patent is sufficient ground for refusing injunction to senior patentee.—Asbestos Felting Co. v. United States & F. S. Felting Co., Case No. 570.

Where the patent was not attacked for want of novelty, and the infringement was clear, but it appeared that defendant had publicly used his apparatus for three years without objection, the application was denied, with leave to renew the motion on defendant's giving security and keeping an account.—Sykes v. Manhattan Elevator & Grain Drying Co., Case No. 13,710.

Where the patent has been sustained in a trial at law, and an injunction has been obtained against the use of a particular apparatus, the use of a like apparatus by a different party will be enjoined, though such apparatus is patented, and has been adopted by defendant in good faith.—Sickels v. Tileston, Case No. 12,837.

The court cannot ignore the rights of defendant claiming under an adverse patent because of irregularity in its issue, and assume it to be a nullity.—Mitchell v. Barclay, Case No. 9,659.

§ 236. —— Threatened infringement.

Where the plaintiff's rights have been clearly established, and an infringement is threatened, or there is good cause to believe that a past infringement will be continued, an injunction will issue.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,281.

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. —Woodworth v. Stone, Case No. 18,021.

§ 237. —— Effectiveness of relief.

It is not a sufficient reason against the awarding of an injunction that it does not furnish plaintiff effectual relief, or that it may be avoided by defendant.—Thompson v. Mendelsohn, Case No. 13,968.

§ 238. —— Discontinuance of infringement.

The discontinuance of infringements or a cessation to use the infringing article is no bar to an injunction.—Goodyear v. Berry, Case No. 5,556; Potter v. Crowell, Id. 11,323; Rumford Chemical Works v. Vice, Id. 12,136; Sickels v. Mitchell, Id. 12,835.

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.—Wilson v. Sherman, Case No. 17,833.

§ 239. —— Acquiescence and misleading conduct of patentees.

Acquiescence by the patentee in the alleged infringement is strong ground for refusing a preliminary injunction. — Sloat v. Plymton, Case No. 12,948.

Preliminary injunction not refused where defendant has not been misled by plaintiff's conduct in allowing his suit to rest until a recovery in other suits by him, and then discontinuing, and bringing a new action. — Atlantic Giant Powder Co. v. Rand, Case No. 626.

Preliminary injunction denied where defendants were misled in continuing the infringement by plaintiffs' answer to their inquiry as to whether plaintiffs regarded their process as an infringement.—Jones v. Merrill, Case No. 7,481.

Preliminary injunction denied, except in a clear case where defendant claims to have acted under a patent, with plaintiff's knowledge, for a long time, and has made large investments.—North v. Kershaw, Case No. 10,311.

§ 240. —— Laches.

Preliminary injunction denied where defendant claimed openly to have manufactured un-

der a patent of prior date, where complainants delayed for many years to enforce their rights, though their inventions antedated the patent under which defendants manufactured.—Whitney v. Rollstone Mach. Works, Case No. 17,596.

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.—Wortendyke v. White, Case No. 18,050.

The loss of a patent required to be recorded (Act 1793) is no excuse for delay in applying for an injunction.—Cooper v. Mattheys, Case No. 3,200.

Preliminary injunction denied where the patentee had knowledge of the alleged infringement for nearly two years before making application.—Sperry v. Ribbans, Case No. 13,238; Spring v. Domestic Sewing Mach. Co., Id. 13,258.

A delay of three months in filing a bill after the infringement was ascertained is no ground of denial.—Union Paper-Bag Mach. Co. v. Binney, Case No. 14,387.

A delay of 18 months after knowledge of infringement is good ground for refusing an injunction.—Hockholzer v. Eager, Case No. 6,556.

Denied where suit had been pending many months and was nearly ready for hearing, and no newly-discovered ground for writ was shown. —Andrews v. Spear, Case No. 380.

The burden of showing complainant's previous knowledge of the infringement, where the motion is resisted on the ground of laches, is upon defendant.—Wortendyke v. White, Case No. 18,050.

Effect of laches in general.—American Middlings Purifier Co. v. Christian, Case No. 307; Anonymous, Id. 451.

§ 241. —— Discretion of court.

The granting of the injunction rests in the sound discretion of the court.—Orr v. Badger, Case No. 10,587; Potter v. Whitney, Id. 11,341; Tucker v. Carpenter, Id. 14,217.

§ 242. Security instead of injunction.

Where defendant's machine, though infringing, contains valuable improvements not covered by plaintiff's patent, an order for an account and security may be substituted for an injunction.—Stainthorp v. Humiston, Case No. 13,280; Howe v. Morton, Id. 6,769.

Denied, on defendant's giving security, where he was constructing a single machine only, and the validity of the patent and public acquiescence were denied.—Morris v. Shelbourne, Case No. 9,836.

In a suit for infringement against a person who had bought his infringing machine from one against whom complainant had obtained a decree for profits and damages, *held* that injunction would not issue on defendant's giving security to pay any decree rendered against him.—Gilbert & Barker Mfg. Co. v. Bussing, Case No. 5,416.

Denied on defendants' giving bond where they were merely selling agents on commission of manufacturers of the alleged infringing articles, against whom a suit was pending in another circuit by complainants. — Irwin v. McRoberts, Case No. 7,085.

Granted where the patent has been declared valid, and an infringement is probable, unless a bond is given to pay the decree, to keep an account, etc.—American Middlings Purifier Co. v. Christian, Case No. 307.

Bond not required of defendant unless injunction should issue if not given.—American Middlings Purifier Co. v. Atlantic Milling Co., Case No. 305.

Denied where defendant, setting up a license, offers to pay into court the amount of complainant's fixed license fees to abide a final decision.—Blake v. Greenwood Cemetery, Case No. 1,497.

Where complainant's right will be fully protected, defendant will only be required to give a bond and file accounts, though patent has been repeatedly sustained.—Blake v. Robertson, Case No. 1,500.

Where complainant has established a right to an injunction, defendant cannot defeat it by tendering security for damages.—Consolidated Fruit-Jar Co. v. Whitney, Case No. 3,132.

Will be withheld on the giving of an ample bond, where defendant is an extensive manufacturer with a large capital invested, and complainant is not a manufacturer.—Dorsey Harvester Revolving-Rake Co. v. Marsh, Case No. 4,014.

A patent having but six months to run, defendants were allowed to give bond to account, in lieu of a preliminary injunction.—Howe v. Morton, Case No. 6,769.

Where an injunction restraining the use of a patent hotel enunciator would compel defendant to close his hotel business, an injunction was denied on defendant giving bonds.—United States Annunciator & Bell Telegraph Mfg. Co. v. Sanderson, Case No. 16,790.

Where defendant gave bond and continued to manufacture the alleged infringing article, *held*, that complainant, though not within the district at the time, should be enjoined from bringing suits against his vendees.—Birdsell v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,437.

§ 243. Against whom preliminary injunction will issue.

Injunction will lie against agent selling infringing article for manufacturer. — Buck v. Cobb, Case No. 2,079.

Not granted where defendant, at the time of filing the bill, had parted with all interest in the infringing machine. — Brammer v. Jones, Case No. 1,806.

An inventor may enjoin the use of his invention by a submarine cable company in operating a cable under an exclusive legislative grant. —Colgate v. International Ocean Tel. Co., Case No. 2,993.

Denied where the infringement was committed by a corporation of another state in which the interested defendant was only one of several directors.—Jones v. Osgood, Case No. 7,487.

Injunction will not lie against equitable owner of patent on application of legal owner.— Clum v. Brewer, Case No. 2,909.

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.—Woodworth v. Hall, Case No. 18,016.

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.—Woodworth v. Edwards, Case No. 18,014.

The obtaining of an interlocutory decree in a suit against infringing manufacturers is not a sufficient reason for withholding an injunction against purchasers from such manufacturers.— Tucker v. Burditt, Case No. 14,216.

Not granted where complainant's assignor had never done anything with the patent in

the state, and defendants bought their machines in good faith.—Gear v. Holmes, Case No. 5,292.

§ 244. Application for preliminary injunction and proceedings thereon—Pleadings and affidavits.

An answer containing a positive denial cannot be treated merely as an affidavit.—Parker v. Sears, Case No. 10,748.

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.—Wooster v. Howe Mach. Co., Case No. 18,037.

An answer to an injunction bill, though filed without a rule, will be treated as an answer, on a motion to grant or continue an injunction. —Brooks v. Bicknell, Case No. 1,944.

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.—Young v. Lippman, Case No. 18,160.

The bill need not contain a special prayer for an interlocutory injunction.—Goodyear v. Mullee, Case No. 5,579.

Not granted on a theory not affirmatively supported by affidavits.—American Diamond Rock Boring Co. v. Sullivan Mach. Co., Case No. 298.

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.—Young v. Lippman, Case No. 18,160.

An inventor himself suing for infringement must make oath that he is the true inventor, and this, together with the patent, is adequate proof on which to claim an injunction.—Stevens v. Felt, Case No. 13,397.

Affidavits may be read on both sides as to facts unconnected with the title.—Brooks v. Bicknell, Case No. 1,944.

An injunction granted on an original bill, before the surrender of a patent, cannot be maintained upon the new patent, unless a supplemetal bill be filed, founded thereon.—Woodworth v. Stone, Case No. 18,021.

§ 245. —— Jurisdiction.

Act Feb. 15, 1819, does not alter the principles on which injunctions are granted, but merely extends the jurisdiction of the court to parties not before falling within it.—Sullivan v. Redfield, Case No. 13,597.

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.—Wilson v. Sherman, Case No. 17,833.

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.—Wilson Packing Co. v. Clapp, Case No. 17,850; Goodyear v. Chaffee, Id. 5,564.

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.—Wilson v. Sherman, Case No. 17,833.

§ 246. —— Effect of prior decisions.

A decree of another federal court sustaining a patent is generally controlling on the application.—American Middlings Purifier Co. v. Christian, Case No. 307; American Nicholson Pavement Co. v. Elizabeth, Id. 312; Goodyear v. Honsinger, Id. 5,572.

A prior decision is controlling in the absence of new evidence.—Blaisdell v. Dows, Case No. 1,489.

A verdict in another circuit as to the validity of the patent will be followed on a motion for preliminary injunction.—Van Hook v. Wood, Case No. 16,855; Poppenhusen v. New York Gutta Percha Comb Co., Id. 11,281.

Adjudication of validity by other courts is ground of granting only where infringement is palpable.—American Shoe-Tip Co. v. National Shoe-Toe Protector Co., Case No. 317.

Facts found by a jury in a suit at law between the parties will be considered as conclusively established on the motion.—Poppenhusen v. New York Gutta Percha Comb Co., Case No. 11,281.

Although, on an issue awarded in the cause, the jury has found infringement, the court will not, on a motion for preliminary injunction, adopt its verdict, but will examine the whole case, and exercise its own judgment thereon.—Sickels v. Youngs, Case No. 12,838; Many v. Sizer, Id. 9,057.

A decision on a preliminary application is not of controlling right in another circuit.—Cornell v. Littlejohn, Case No. 3,238; Sargent Mfg. Co. v. Woodruff, Id. 12,368.

Neither the verdict at law nor finding of the jury in a feigned issue is ever conclusive upon the judge sitting in equity, upon a motion for an injunction.—Day v. Hartshorn, Case No. 3,683.

The case is the same on bill of exceptions and writ of error sued out.—Day v. Hartshorn, Case No. 3,683.

On motion for a provisional injunction, the verdict in another suit in which plaintiff testified may be admitted in evidence in the discretion of the court.—Buck v. Hermance, Case No. 2,081.

The question of priority will not be considered on the application, where priority has been declared in an interference proceeding and acquiesced in for a long time.—American Shoe-Tip Co. v. National Shoe-Toe Protector Co., Case No. 317.

Where a judgment sustaining a patent is acquiesced in or affirmed by the supreme court, questions as to the originality of the invention or validity of the patent will not be considered de novo.—Wells v. Gill, Case No. 17,394.

Facts showing the invalidity of the patent set up in defendant's uncorroborated affidavit are no ground of denying the writ, where defendant had remained silent in regard thereto in a preliminary suit in which he took an active interest.—Robinson v. Randolph, Case No. 11,962.

Where the validity of the patent has been fully sustained in prior cases, the court will not hear evidence except on the question of infringement.—Robertson v. Hill, Case No. 11,925.

A decision between other parties upon the points in issue is entitled to great weight, though not conclusive.—Potter v. Fuller, Case No. 11,327; Same v. Muller, Id. 11,334; Same v. Whitney, Id. 11,341.

The considerations which will induce the court to renew the discussion, must be such as would have induced the court to set aside a verdict.—Parker v. Brant, Case No. 10,727.

An adjudication in favor of a patent at final hearing on full proofs is controlling unless cogent evidence is presented in addition to that found insufficient upon such hearing.—Jones v. Merrill, Case No. 7,481.

The presumption of the validity of the patent is diminished in force where it appears that

the judgment was obtained, without resistance, in an action in which several patents were in issue.—Grover & Baker Sewing Mach. Co. v. Williams, Case No. 5,847.

Abandonment of defense will not detract from the force or effect of a verdict or judgment at law where plaintiff made a plain case. —Goodyear v. Central R. Co., Case No. 5,563.

The considerations stated which apply to a case where, after a patent has been sustained on final hearing, a new defendant, in a new suit, seeks to attack the patent for want of novelty.—Colgate v. Gold & Stock Tel. Co., Case No. 2,991.

A verdict for plaintiff in suits against other parties is a controlling consideration, if the infringing machines are substantially similar.—Burr v. Prentiss, Case No. 2,194.

A decision between the same parties in another circuit is not controlling where the alleged infringing articles are not shown to be the same.—Blake v. Boisselier, Case No. 1,493a.

A patentee who establishes his title under the original letters patent is entitled to a temporary injunction under an extension of such letters patent without a further trial of his right.—Clum v. Brewer, Case No. 2,909.

The writ will be granted, notwithstanding pendency of another suit between the same parties upon the same patent in another state, where the validity of plaintiff's patent has been determined in prior suits.—Pennsylvania Salt Mfg. Co. v. Myers, Case No. 10,955.

For the purposes of a preliminary injunction, defendant's machine will be regarded as identical with that of defendant in a prior case, where identity is not denied.—Conover v. Mers, Case No. 3,123.

Denied, after decision by supreme court in favor of defendant, though after a reissue the same machine was held to be an infringement in another circuit, and plaintiff alleged infringement by a similar machine with slight alterations.—Wells v. Jacques, Case No. 17,399.

Denied, where verdicts at law have been obtained on such inconsistent and contradictory claims as to leave complainant's title so doubtful that the court cannot tell what is an infringement.—Parker v. Sears, Case No. 10,748.

Granted where plaintiff's rights have been established in a prior case against another, though defendant be perfectly responsible and willing to give security.—Conover v. Mers, Case No. 3,123.

A prior decree sustaining a patent, if entered by default, will not warrant a preliminary injunction in a subsequent suit.—Mannie v. Everett, Case No. 9,039.

The recovery of judgment against other parties is ground of granting an injunction, though it was rendered by agreement, and the patent has since been reissued.—Orr v. Littlefield, Case No. 10,590.

Defendants will be restrained from using an article which has been decided to be an infringement of plaintiff's patent in suits against parties supplied with the same by defendants, who assumed and conducted their defense.—United States & Foreign Salamander Felting Co. v. Asbestos Felting Co., Cases Nos. 16,787, 16,787a.

See, also, post, § 261.

§ 247. —— Time of granting.
The irregularity in the service of the subpœna to answer is no ground for withholding an injunction against defendant, who had notice of the motion, and appeared to oppose it.—Thayer v. Wales, Case No. 13,871.

Where a motion for a new trial or an appeal taken by defendant cannot be considered as intended merely for delay, the court will await the final result before awarding an injunction.—Morris v. Lowell Mfg. Co., Case No. 9,833.

An injunction will be refused until after the determination of a motion for new trial on a verdict for plaintiff in a trial at law.—Day v. Hartshorn, Case No. 3,683.

Neither the question of novelty nor that of infringement justifies a preliminary injunction until full hearing has been had.—Burr v. Smith, Case No. 2,196.

The pendency of a suit in another circuit is no ground of postponing the writ where the patent has been declared valid.—Atlantic Giant Powder Co. v. Goodyear, Case No. 623.

§ 248. —— Hearing, evidence, and decree.
Allegations in the affidavits in answer to the motion may be rebutted by proper testimony.—Goodyear v. Mullee, Case No. 5,579.

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.—Woodworth v. Sherman, Case No. 18,019; Same v. Cheever, Id.

On application for a provisional injunction, expert demonstration of the patents may be made.—Barrett v. Hall, Case No. 1,047.

The court, or a judge out of court, may permit plaintiff, on motion for preliminary injunction, where defendant sets up a license, to put in rebuttal evidence.—Day v. New England Car Co., Case No. 3,686.

The order to permit such rebutting proof, when made by the court, is regular, although not made until the proofs are received.—Day v. New England Car Co., Case No. 3,686.

Defendant cannot reply to such rebutting proofs by further proofs on his part.—Day v. New England Car Co., Case No. 3,686.

On preliminary hearing the court may consider matters of ordinary knowledge outside the affidavits.—Adams & W. Mfg. Co. v. St. Louis Wire-Goods Co., Case No. 72.

The application may be granted or refused unconditionally, or terms may be imposed on either of the parties, as conditions.—Forbush v. Bradford, Case No. 4,930.

The court will not decide the question of infringement summarily, where it admits of doubt, or the facts are in dispute. Otherwise where the solution depends only upon the construction of the patent.—Goodyear v. Central R. Co., Case No. 5,563.

In the case of a simple mechanism, a bare inspection is sufficient on the question of infringement.—Morse Fountain Pen Co. v. Esterbrook Steel Pen Mfg. Co., Case No. 9,862.

The case should be such as to leave little, if any, doubt in the minds of the court as to the validity of the patent, especially if it rests upon complainant's own showing.—Sullivan v. Redfield, Case No. 13,597.

The effect of quiet enjoyment, acquiescence, recoveries without collusion, and strong evidence as to novelty, in inducing the granting of an injunction, considered.—Potter v. Holland, Case No. 11,330.

Where the rights of the plaintiff and the violation of them by defendant are clear, considerations of public or private convenience should have little weight.—Sickels v. Tileston, Case No. 12,837.

On denying an application, defendant was required to be ready to try a pending action at law at the next term.—Serrell v. Collins, Case No. 12,671.

Terms imposed and an affidavit required on granting an injunction to restrain defendant from making and vending the patented machine.—Rogers v. Abbot, Case No. 12,004.

Though preliminary injunction denied, defendant required to keep an account.—Allen v. Sprague, Case No. 238; American Middlings Purifier Co. v. Atlantic Milling Co., Id. 305.

Defendants will not be compelled to give bond nor to file periodic accounts until complainant's rights and the validity of the patent are established at law.—Bryan v. Stevens, Case No. 2,066a.

Where a license had been forfeited the licensor applies 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.—Woodworth v. Weed, Case No. 18,022.

The patent never having been the subject of litigation, complainant was ordered to file an injunction bond before the issue of the writ.—Shelly v. Brannan, Case No. 12,751.

Where the question of the right to the injunction depends only on the interpretation of a license, the question will be settled on motion for the injunction.—Hodge v. Hudson River R. Co., Case No. 6,560.

On a motion for an injunction the court is not bound to decide doubtful and difficult questions of law or disputed questions of fact.—Parker v. Sears, Case No. 10,748.

On the withdrawal of opposition to a motion for a preliminary injunction, plaintiff is not entitled to a decision on the merits.—American Middlings Purifier Co. v. Vail, Case No. 308.

Form of an order for a preliminary injunction on a patent, in a case where the plaintiff exercises his rights by granting licenses.—Colgate v. Gold & Stock Tel. Co., Case No. 2,991.

§ 249. Dissolving, vacating, and modifying preliminary injunctions.

The dissolving of an injunction rests in the sound discretion of the court, and on the justice and equity of each particular case.—Tucker v. Carpenter, Case No. 14,217.

The injunction ought not to be suspended until the final decree, unless there be shown some special grounds of peculiar hardship to the defendant.—Potter v. Mack, Case No. 11,331.

Assignment by complainant after preliminary injunction granted is no ground on which to dissolve it.—Thompson v. Barry, Case No. 13,942.

Defenses that cannot be availed of by defendant in the taking of proofs for final hearing cannot be availed of on motion to dissolve the injunction.—Union Paper-Bag Mach. Co. v. Newell, Case No. 14,389.

An injunction will not be dissolved merely on an answer denying the validity of the patent, but, if requested, plaintiff will be required to bring a suit at law to test the title.—Orr v. Merrill, Case No. 10,591.

The sending of circulars to parties engaged in the trade, notifying them of a preliminary injunction, is improper.—Wilson Packing Co. v. Clapp, Case No. 17,850.

An injunction will not be dissolved as a matter of course on the coming in of the answer denying the equity of the bill, if the complainant has adduced auxiliary evidence of his right.—Orr v. Littlefield, Case No. 10,590.

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.—Woodworth v. Rogers, Case No. 18,018; National School Furniture Co. v. Paton, Id. 10,050.

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.—Woodworth v. Rogers, Case No. 18,018.

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.—Woodworth v. Rogers, Case No. 18,018.

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.—Woodworth v. Hall, Case No. 18,017; Same v. Stone, Id.

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.—Woodworth v. Edwards, Case No. 18,014.

On a motion to dissolve an injunction, defendant's proofs must overcome the equity in the bill and the evidence in its support.—Sparkman v. Higgins, Case No. 13,208.

An injunction dissolved upon an answer denying the equity of the bill may be reinstated on application, where testimony subsequently taken shows the right of complainant to relief.—Tucker v. Carpenter, Case No. 14,217.

An application to modify an injunction so as to permit furnishing the alleged infringing article to prior purchasers will be denied where defendant fails to show want of notice of a suit to annul the license under which he operated, before making the contracts in question.—Consolidated Fruit-Jar Co. v. Whitney, Case No. 3,132.

§ 250. Permanent injunction.

A court of equity may in a proper case grant a permanent injunction upon a final hearing, though there has been no trial at law.—Buchanan v. Howland, Case No. 2,074; Sickles v. Gloucester Mfg. Co., Id. 12,841.

The fact that after suit brought defendant stopped using the infringing device, where he did not disclaim the right to it, is not a reason why a decree for an injunction should not be granted.—Bullock Printing Press Co. v. Jones, Case No. 2,132.

Where a patent covers but a small part of a machine which is claimed to infringe, which part is not materially useful, injunction is not the proper remedy.—Lowell Mfg. Co. v. Hartford Carpet Co., Case No. 8,569.

An injunction will not be granted where the patentee exercises his monopoly by renting licenses generally.—Livingston v. Jones, Case No. 8,414; Sanders v. Logan, Id. 12,295.

The fact that defendant, who has sold an infringing article, sold it on behalf of its owner, and had no interest in it, or in its sale, is no ground of refusing an injunction against him.—Maltby v. Bobo, Case No. 8,998.

Injunction will not be granted where the patent is recent, the specification obscure, and proof of infringement meager and unsatisfactory, but the court will retain the bill and require complainant to bring an action at law.—Muscan Hair Mfg. Co. v. American Hair Mfg. Co., Case No. 9,970.

A perpetual injunction is made part of the decree which finds the infringement.—Potter v. Mack, Case No. 11,331.

An injunction will, as a matter of course, follow a decree in favor of complainant on the merits, unless defendant show that it should in equity be withheld until after the account has been taken.—Rumford Chemical Works v. Hecker, Case No. 12,134.

Permitting infringement for several years does not waive or impair the patentee's rights, but it

deeply affects his claim to an injunction.—Stevens v. Felt, Case No. 13,397.

An injunction will not be granted after the expiration of the term for which the patent issued.—Vaughan v. Central Pac. R. Co., Case No. 16,897.

Where reference is made to a master to take an account, an injunction was withheld until the coming in of his report.—Yale & G. Mfg. Co. v. North, Case No. 18,123.

The injunction may issue by the court having jurisdiction of the person, although the machine may be used beyond its jurisdiction.—Boyd v. McAlpin, Case No. 1,748.

Injunction withheld on final hearing where infringing hose couplings were necessary for the daily use of defendant city in the prevention of fires, but accounting decreed.—Bliss v. Brooklyn, Case No. 1,544.

§ 251. Violation of injunction — What constitutes.

A sale of a patent while the suit is pending in relation to it, and before an injunction is issued, is not a contempt of court.—United States v. Day, Case No. 14,934.

Defendant, enjoined from infringing a patent by manufacturing or selling, is guilty of a contempt in selling as agent for another.—Potter v. Muller, Case No. 11,333.

A lease of a machine by defendant to one of the joint complainants or an assignee from him is not a violation of an injunction obtained by complainants prohibiting defendant from using such machine.—Smith v. Patton, Case No. 13,088.

An injunction prohibiting defendant's using the patented article, or conferring the right to use it to others, except as to articles then in use by it, is violated by the furnishing of the article under a prior contract.—Colgate v. Gold & Stock Tel. Co., Case No. 2,992; Same v. Western Union Tel. Co., Id. 2,994.

Injunction against infringement of patents *held* to be violated by fitting up machinery for another, and keeping it in running order, in a factory known to be manufacturing the infringing articles.—Goodyear v. Mullee, Case No. 5,577.

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.—Woodworth v. Rogers, Case No. 18,018.

An injunction against selling a patented "hose pipe provided with internal radial plates" is violated by the sale of new pipes with radial plates taken out of worn-out pipes.—Craig v. Fisher, Case No. 3,332.

An order requiring defendant to file a monthly account of all "iron safes hereafter manufactured or sold by him" is sufficiently complied with by giving the inside dimensions of the safes, without stating the prices or the names of the purchasers.—Wilder v. Gayler, Case No. 17,648.

Defendant must take the judgment of the court as to the portions of the enjoined machine which he is entitled to use. Advice of counsel is no justification.—Hamilton v. Simons, Case No. 5,991.

Where an injunction has issued after the patent has been sustained on an issue out of chancery, defendant cannot excuse himself from a violation by an allegation of paramount right under a purchase of prior patents covering plaintiff's device.—Valentine v. Reynolds, Case No. 16,813.

It is no excuse for the violation of the injunction that the patent is invalid, or the writ improvidently granted.—Phillips v. Detroit, Case No. 11,101.

§ 252. —— Procedure and punishment.

An attachment for contempt for violating an injunction will not be issued unless the violation is plain and clearly proven.—Birdsell v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,436.

It seems that, to attach one for breach of an injunction against the infringement of a patent, he must be a party to the suit, and have had notice of the application for the injunction. —Sickels v. Borden, Case No. 12,833.

Plaintiff, who sets on foot a stratagem to lead defendant to violate an injunction, to entrap him, must pay the costs of a motion for an attachment.—Sparkman v. Higgins, Case No. 13,209.

Where the president of defendant corporation was served with the injunction, and devised and practiced the transgressing process, an attachment will be awarded against him.—Wetherill v. New Jersey Zinc Co., Case No. 17,463.

An issue as to whether an article sold by defendant, not appearing to have existed before the making of the decree, is an infringement of the patent, cannot be disposed of on motion for an attachment on affidavits, but must be determined in a suit brought for the purpose.—Liddle v. Cory, Case No. 8,338.

A bond acknowledging the validity of a patent reciting an infringement *held* no evidence of breach of injunction subsequently granted.—Byam v. Eddy, Case No. 2,263.

Evidence is inadmissible to vary the construction given by the court to a patent on a motion for attachment for contempt for violating the injunction.—Burdett v. Estey, Case No. 2,146.

On a motion for an attachment for the violation of an injunction to restrain the infringement of letters patent, affidavits to show that the patentee was not the first and original inventor of the thing patented are immaterial and irrelevant.—Whipple v. Hutchinson, Case No. 17,517.

It is a matter of discretion whether the court on motion for attachment for contempt in violating an injunction will require expert testimony as to the infringement.—Burdett v. Estey, Case No. 2,146.

The question of identity of the machines on motion for commitment for contempt for violating an injunction is one of fact.—Birdsell v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,436.

In determining such question, in the absence of models, the testimony of experts is controlling.—Birdsell v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,436.

Where the violation is willful, the summary method of correction is imperative, and will not be arrested by the fact that the things used by defendant are in some respect different from those interdicted.—Wetherill v. New Jersey Zinc Co., Case No. 17,463.

The question of violation of an injunction was retained until final hearing on defendant's showing that alleged articles were not within the claim of the patent as construed by the court.—Welling v. Rubber-Coated Harness Trimming Co., Case No. 17,383.

Where the injunction has been violated, and the defendant is protected from the consequences only by a defect in the service of the writ, no costs will be allowed to him on a denial of a motion for an attachment for such violation.—Whipple v. Hutchinson, Case No. 17,517.

Persons acting in an official capacity, and deriving no personal benefit from the infringement, not required to pay the patentee the amount of

his royalty for violating a preliminary injunction.—Phillips v. Detroit, Case No. 11,101.

Fees and disbursements on application for an attachment for contempt in violating the injunction, and on a reference to take testimony, allowed as part of the fine, though the extent of the violation was not shown.—Doubleday v. Sherman, Case No. 4,020.

The punishment limited to a fine of the amount of such fees and disbursements and the taxed costs, and commitment until payment.—Doubleday v. Sherman, Case No. 4,020.

Circumstances stated which govern the amount of the fine to be imposed for a contempt of court in violating an injunction.—Schillinger v. Gunther, Case No. 12,456.

After imprisonment for 50 days, defendant, without means of paying fine, was released on his own recognizance.—Goodyear v. Mullee, Case No. 5,578.

Where the violation was not willful, defendant was directed to pay to plaintiff the profits and damages on account of the violation and the costs of the contempt proceedings.—Ready Roofing Co. v. Taylor, Case No. 11,613.

The decision on motion for attachment was made without prejudice to the raising of the same question of infringement on the accounting under the interlocutory decree.—Burdett v. Estey, Case No. 2,146.

§ 253. Damages.

Under Act July 8, 1870, complainant may recover, in addition to the profits of the respondent, damages sustained.—Carew v. Boston Elastic Fabric Co., Case No. 2,397.

In an equity suit brought before the passage of Act July 8, 1870, §§ 55, 111, both profits and damages cannot be recovered.—Williams v. Leonard, Case No. 17,726.

Profits are the net gains of the infringer from the invention; damages are the losses sustained by the owner.—La Baw v. Hawkins, Case No. 7,961.

Damages for an alleged reduction in prices or loss of sales caused by the infringement must be based upon evidence furnishing a sound and safe basis of calculation.—Ingersoll v. Musgrove, Case No. 7,040.

The owner of a patent is entitled to recover the damages from a reduction of prices caused by the competition of the infringer, although he is accountable to a copartner for a part of them.—Sargent v. Yale Lock Mfg. Co., Case No. 12,366.

Reduction of prices, and consequent loss of profits, caused by the competition of the infringer, is a proper ground for awarding damages.—Sargent v. Yale Lock Mfg. Co., Case No. 12,366.

No part of the expenses of the litigation should be assessed as damages.—Holbrook v. Small, Case No. 6,596; Bancroft v. Acton, Id. 833.

A patentee who has conveyed the exclusive right to the patent within the jurisdiction of the court, with the reservation of his rights in suit, is entitled to damages only to the time of the conveyance, and not to an injunction.—Boomer v. United Power Press Co., Case No. 1,638.

The use of plaintiff's patent restored the salable character of the article defendant made, and saved defendant from loss. *Held*, that the money value of such advantage could be recovered as compensation, though there were no profits.—Sargent v. Yale Lock Mfg. Co., Case No. 12,367.

The amount paid by defendant for a license to use a patented device, which he afterwards substituted for plaintiff's device, *held* to be the proper measure of the value of the invention to defendant.—Sargent v. Yale Lock Mfg. Co., Case No. 12,367.

A royalty paid in consideration for the whole monopoly of a patent is not a safe criterion of damages, unless it is shown that plaintiffs lost the sale of the same number of machines made and sold by defendants.—La Baw v. Hawkins, Case No. 7,961.

Damages cannot be trebled in a suit in equity.—Motte v. Bennett, Case No. 9,884; Holbrook v. Small, Id. 6,596.

A court of equity cannot inflict exemplary or punitive damages where defendant has acted wantonly or vexatiously.—Sanders v. Logan, Case No. 12,295.

Where the patentee exercises his monopoly by granting licenses indiscriminately, the measure of his damages is the price or value of the license; and an account of profits is not required, and the jurisdiction of equity need not be invoked.—Sanders v. Logan, Case No. 12,295.

See, also, ante, §§ 162, 201–207.

§ 254. Profits—Nature of profits and right in general.

The infringer is in equity a trustee of the patentee of the gains derived by him from the infringement.—Wetherill v. New Jersey Zinc Co., Case No. 17,464; Wetherill v. Same, Id.; Jenkins v. Greenwald, Id. 7,270.

The profits recoverable for infringements are not regarded as unliquidated damages, and they are subject to assignment.—Jenkins v. Greenwald, Case No. 7,270.

Plaintiff can recover the profits realized by the wrongdoer from the infringement.—Carter v. Baker, Case No. 2,472.

Defendant must account for the profits on repairs sold upon infringing mechanisms previously made and sold by him.—Graham v. Mason, Case No. 5,672.

The fact that defendant could have made the profits realized by the infringement by doing the work in another way is immaterial.—American Nicholson Pav. Co. v. Elizabeth, Case No. 309.

The rule that gains and profits are the proper measure of damage in equity suits is inapplicable where the injury sustained is greater than such amount.—Brady v. Atlantic Works, Case No. 1,795.

Amount of defendant's profits, he not being a willful infringer, *held* adequate compensation.—Buerk v. Imhaeuser, Case No. 2,107.

A contract by the owner of a territorial right, giving an agent power to sell without limit, will prevent his recovery of damages on the principle of profits, regardless of his declaration of intention to make a close monopoly.—Burdell v. Denig, Case No. 2,142.

The question of profits is not affected by the fact that defendant made the infringing contrivance cheaper than he could make the contrivance in the exact form and shape described in the patent.—Graham v. Mason, Case No. 5,672.

§ 255. —— Amount and estimation of profits.

On accounting for infringement, defendant must account for the entire profits realized.—Child v. Boston & F. Iron Works, Case No. 2,674.

The infringer's entire profit is the measure of damages only where the patentee exercises a complete monopoly and the invention is such as to supersede all other machines or manufactures of the same genus.—Livingston v. Jones, Case No. 8,414.

The profits recoverable from an infringer are those derived from the use of the invention over what would have been derived from the

use of other machines then open to the public. —Knox v. Great Western Quick-Silver Min. Co., Case No. 7,907; Bell v. Daniels, Id. 1,247; Black v. Thorne, Id. 1,466; Turrill v. Illinois Cent. R. Co., Id. 14,272.

The saving to defendant made directly by using the patented device, and not that which he might have made if he had used any or all of various other devices, *held* the proper measure of damages.—Herring v. Gage, Case No. 6,422.

Upon an accounting, complainant may recover the entire profits accruing from the infringement, irrespective of the established royalty.—Knox v. Great Western Quick-Silver Min. Co., Case No. 7,907; Wooster v. Taylor, Id. 18,041; American Nicholson Pav. Co. v. Elizabeth, Id. 309.

Only the actual profits from the making, using, or selling of the invention by defendant are to be considered in estimating damages.—Parker v. Perkins, Case No. 10,745; Piper v. Brown, Id. 11,181.

The actual profits are those which are made by the use of the patented device, and not those made upon the machine as a whole.—Brady v. Atlantic Works, Case No. 1,795; Webster v. New Brunswick Carpet Co., Id. 17,338; Ingels v. Mast, Id. 7,034. But see Livingston v. Jones, Case No. 8,414.

The whole profits may be awarded against defendants, though made while they were using the patented invention in conjunction with a person not a defendant.—Herring v. Gage, Case No. 6,422.

Where the patented articles were not stamped with the word "Patented," *held*, that complainant was entitled to profits only from the date of the decree.—Putnam v. Sudhoff, Case No. 11,483.

Where the infringed patent is for an art, a fair measure of the infringer's actual profits is the saving in cost of production by the use of the appropriated invention over the cost of production by the use of cognate means, used and available.—Wetherill v. New Jersey Zinc Co., Case No. 17,464.

The net profit derived from using infringing machinery in making articles which are sold is determined by deducting from the value of the articles all the elements of cost in their production.—Troy Iron & Nail Factory v. Corning, Case No. 14,196.

Consideration of the expenses and charges proper to be allowed to defendant in ascertaining such net profits.—Troy Iron & Nail Factory v. Corning, Case No. 14,196.

In estimating the profits realized from infringement, compensation is not allowed the infringer for his time and labor.—Piper v. Brown, Case No. 11,181; Williams v. Leonard, Id. 17,726.

Expenses of defendants for advertising the infringing machine are to be deducted in estimating their profits.—La Baw v. Hawkins, Case No. 7,961.

The value of the use of real and personal estate belonging to the infringer, such as shops, fixtures, and machinery, including repairs, employed in making the infringing machines, is to be allowed as part of their cost.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

The amount paid for insurance and for local taxes on such property is not to be allowed as part of the cost.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

Salaries paid in good faith for services actually rendered by stockholders of defendant corporation employed in making the infringing machine are to be allowed as part of the cost.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

Nothing is to be deducted for liabilities on guaranties and warranty of title incurred by the infringer.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

The amount paid by defendant in satisfaction of complainant's rights against purchasers from defendant is not a legitimate charge against the manufacture, and cannot be deducted in accounting for profits.—Graham v. Mason, Case No. 5,672.

The general expenses of conducting defendant's entire business, *held*, should be divided in the proportion that the amount of sales of the infringing device bore to the sales in the entire business.—Hitchcock v. Tremaine, Case No. 6,539.

The gain or saving arising from the use of the infringing machine cannot be applied to make up losses sustained by defendant on other branches of his business.—Conover v. Mers, Case No. 3,122.

The portion of the price of an infringing machine due to a patented improvement of the infringer, as well as the cost of making such improvement, is not to be allowed.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

Royalties paid or due by defendant under an infringing patent, which contains improvements over complainant's patent, should be deducted from the amount of profits.—La Baw v. Hawkins, Case No. 7,961.

Plaintiff is entitled to any profit arising from the making and selling of any of the infringing machines, though other infringing machines were disposed of without profit, or are still on hand, and cannot be disposed of.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Case No. 13,335.

Interest on the cost of a device, and the cost of power, are to be allowed as deductions from profits only when it is shown they have been paid or incurred as debts.—Herring v. Gage, Case No. 6,422.

Where defendants have not all been jointly concerned in the infringement for the whole time covered by the account their several liability must be apportioned in making up the decree.—Tatham v. Lowber, Case No. 13,765.

§ 256. —— Interest.

Interest on profits will not be allowed.—Brady v. Atlantic Works, Case No. 1,795; Holbrook v. Small, Id. 6,596.

Interest on the profits decreed will be allowed from the time of the entry of the interlocutory decree.—Steam Stone Cutter Co. v. Windsor Mfg. Co., Cases Nos. 13,335, 13,336.

Interest will be allowed on the profits to the date of the master's report.—Tatham v. Lowber, Case No. 13,765.

Complainants are entitled to interest upon profits only from date of final decree.—American Nicholson Pavement Co. v. Elizabeth, Case No. 309; Webster v. New Brunswick Carpet Co., Id. 17,338.

§ 257. —— Particular instances.

Computation of profits in the use of an invention in producing fat acids and glycerin from fatty bodies.—Tilghman v. Mitchell, Case No. 14,041.

Price of coal saved by use of improvement for utilizing waste heat *held* proper measure of damages.—Bell v. Phillips, Case No. 1,262.

The entire profits of infringing car wheels were allowed where such wheels could not have been made without infringing the patented process, though other equally valuable wheels

could have been made at less cost by other processes.—Whitney v. Mowry, Case No. 17,594.

The infringer of a patented process of reducing zinc ores for the production of white oxide cannot be charged with the value of an increased residuum, obtained by using the process, available for renewed treatment, which residuum fluctuates with the varying richness of the ore, and results from its inherent natural properties, and is not imparted to it by the direct operation of any contemplated function of the process.—Wetherill v. New Jersey Zinc Co., Case No. 17,464.

Where, in the case of an infringement of a patented process, the infringer used a furnace specially adapted thereto, and there were no data from which its contributory value could be estimated, the court treated the furnace and process as co-equal, and allowed one-half the profit.—Wetherill v. New Jersey Zinc Co., Case No. 17,464.

Profits resulting from an increased price obtained by defendant for unpreserved fish, from their ability to withdraw fresh fish from the market by the use of complainant's patented process of preserving fish, are not recoverable in a suit for infringement.—Piper v. Brown, Case No. 11,181.

§ 258. —— **Burden of proof.**

The plaintiff is entitled only to the profits accruing from the use of his patent, the burden of proving which is upon him.—Black v. Munson, Case No. 1,463.

The infringer is liable for the whole profits unless he show affirmatively the extent to which instrumentalities and improvements not covered by patents contributed.—American Nicholson Pav. Co. v. Elizabeth, Case No. 309.

Plaintiff is entitled only to nominal damages, where he fails to show the proportion contributed to the machine in question by his improvement.—Burdell v. Denig, Case No. 2,142.

In taking an account where profits and damages are estimated upon the extent of use of the patented machine in manufacturing an article, complainant must show affirmatively the amount actually produced. Profits and damages cannot be given upon the estimated capacity of the machine.—Webster v. New Brunswick Carpet Co., Case No. 17,338.

Where no profits are proved to have been made by defendant, complainant cannot recover as damages the profits which it would have made on the articles sold by defendant.—St. Louis Stamping Co. v. Quinby, Case No. 12,240a.

The patentee must give evidence tending to apportion the defendant's profits and the patentee's damages between the patented and unpatented features of the article sold, or show that its entire marketable value was due to the patented feature.—Garretson v. Clark, Cases Nos. 5,248, 5,250; Gould's Mfg. Co. v. Cowing, Id. 5,642, 5,643.

Where plaintiff fails to give such evidence, he will not be allowed, after a finding of nominal damages, to put in other evidence.—Garretson v. Clark, Case No. 5,248.

Where plaintiff fails to show the profits arising from the use or sale of the improvement, nominal damages only can be recovered.—Gould's Mfg. Co. v. Cowing, Cases Nos. 5,642, 5,643.

Nominal damages only can be recovered where plaintiff, not being entitled to damages on the principle of profits, fails to prove a license price.—Burdell v. Denig, Case No. 2,142.

§ 259. **Reference to master.**

On bill for infringement where title not disputed, the circuit court under Act July 4, 1836, § 17, will refer to master to take account of profits.—Allen v. Blunt, Case No. 215.

On a reference to take an account, defendant cannot be examined as a witness in his own favor, if objection be made by plaintiff, though he was first called and examined as a party by plaintiff.—Foote v. Silsby, Case No. 4,920.

The accounting should cover all infringements down to the date on which the accounting is had.—Knox v. Great Western Quick-Silver Min. Co., Case No. 7,907; Tatham v. Lowber, Id. 13,765.

On a reference to ascertain the damages caused by an infringement, the master cannot go into the general question of infringement, nor consider the general scope and extent of the patent.—Turrill v. Illinois Cent. R. Co., Case No. 14,272.

Upon an accounting before a master, the extent of the monopoly and the infringement must first be ascertained to establish the basis of profits or damages.—Ruggles v. Eddy, Case No. 12,116.

On a reference to a master to ascertain damages and profits, where the bill is taken pro confesso, the master can report only nominal damages where complainants fail to make satisfactory proof.—Fisk v. West Bradley & Cary Mfg. Co., Case No. 4,830a.

Where a patent for concrete pavement claimed the separation of the pavement in sections, and, on an account of profits for infringement, there was no proof of a license fee or the value of the patented improvement, *held*, that the master should have reported no profits.—Schillinger v. Gunther, Case No. 12,457.

Where an infringement commenced by one railroad company is continued by another with which it is consolidated, the extent of the infringement by each must be ascertained by the master.—Turrill v. Illinois Cent. R. Co., Case No. 14,272.

Report of master set aside on the ground that what he had reported as an established license fee was not shown to have been such.—Greenleaf v. Yale Lock Mfg. Co., Case No. 5,783.

It is not proper, upon a motion to confirm or reject the master's report, to consider open any question which was foreclosed by the decree by which the case was referred to the master.—Whitney v. Mowry, Case No. 17,594.

In the case of the infringement of a patent for a process of annealing cast-iron car wheels, the case was referred back to the master to report whether the infringing wheels could have had any market value without the infringing process, and, if so, the amount of value derived from the use of the patented process.—Whitney v. Mowry, Case No. 17,593.

Where an interlocutory decree in an equity suit inadvertently provides for the recovery of both profits and damages, it is no ground of exception to the report of a commissioner that damages could not be recovered in such suit, but in such case the court will resettle the interlocutory decree.—Williams v. Leonard, Case No. 17,726.

A finding of the master, based in part upon unreported evidence and his own examination of the infringing device, made by consent and in the presence of the parties, will not be set aside.—Piper v. Brown, Case No. 11,181.

§ 260. **Hearing.**

The provision that "notice of the day set for the hearing of the case shall be published, as now required by law, for at least sixty days," *held* to be satisfied by a publication for three successive weeks commencing sixty days before the hearing.—Gear v. Grosvenor, Case No. 5,291.

It is not the province of the master or the court to suggest the proper line of proof to adopt.—Garretson v. Clark, Case No. 5,250.

The court may inspect a model exhibited in evidence, and from such inspection decide the question of patentability.—Everett v. Thatcher, Case No. 4,578.

Plaintiff was allowed to produce evidence in rebuttal at the hearing on payment of costs to defendant of procuring its evidence. — Stainthorp v. Humiston, Case No. 13,281.

Plaintiff, in a suit for infringement of patent, cannot, at the hearing, for the first time, as a matter of right, introduce evidence to rebut proof that he was not a citizen of the United States.—Stainthorp v. Humiston, Case No. 13,281.

Evidence is inadmissible at the hearing which was not offered before the master.—Potter v. Wilson, Case No. 11,342; Grover & Baker Sewing Mach. Co. v. Sloat, Id. 5,846.

An objection to evidence is waived where not distinctly made when taken.—Barker v. Stowe, Case No. 994.

Defendant may show the condition of the model at the time it was filed in the patent office, and at the date of the original patent.—Johnson v. Beard, Case No. 7,371.

Where no infringement is found, the court will not pass upon the validity of the patent.—Saxe v. Hammond, Case No. 12,411.

Where the question of priority of invention was put in issue, evidence of other alleged anticipations is merely cumulative.—Blandy v. Griffith, Case No. 1,530.

The construction of the patent is for the court.—Cahoon v. Ring, Case No. 2,292.

Whether a disclaimer has been made within a reasonable time is a mixed question of law and fact.—Brooks v. Jenkins, Case No. 1,953.

It is a question of law whether the thing invented is sufficiently described. — Brooks v. Jenkins, Case No. 1,953.

To prevent multiplicity, suit between patentee and user of infringing machine suspended to await result of pending suit between patentee and principal infringer.—Barnum v. Goodrich, Case No. 1,036.

See, also, ante, §§ 208, 248.

§ 261. Effect of prior decisions in general.

The court, upon final hearing, may pass upon a patent without reference to the fact whether or not it has been before a jury.—Doughty v. West, Case No. 4,029.

A decree of a circuit court taken pro confesso will not preclude full inquiry and investigation by another court.—Everett v. Thatcher, Case No. 4,578.

A decision of a court of equity upon final hearing in relation to the validity of letters patent furnishes an authority for the action of courts of co-ordinate jurisdiction. — American Wood-Paper Co. v. Fibre Disintegrating Co., Case No. 320.

The decision of a co-ordinate court on an interlocutory decree will be followed, in the absence of new or additional or contradictory evidence, which impels the court in a second hearing to a different result.—Rumford Chemical Works v. Hecker, Case No. 12,133.

In such case a full decree will be rendered, which will also reveal the distinct ground on which the court refused to look into the question. — Rumford Chemical Works v. Hecker, Case No. 12,133.

The decision of another circuit on the same points and the same state of proofs is entitled to great consideration.—Hitchcock v. Shoninger Melodeon Co., Case No. 6,537.

A clear case of infringement by a patented article is necessary before the court will consider it as covered by a decree in another suit in which its structure had not been under consideration.—Buerk v. Imhaeuser, Case No. 2,108.

A decision that a certain patent does not destroy the novelty of another is not necessarily a decision that the use of an arrangement in the latter is not an infringement of the former. —Bachelder v. Moulton, Case No. 706.

Notwithstanding prior decisions upon the validity of the patent, *held*, that the case should be tried anew upon additional facts proved.—Blake v. Rawson, Case No. 1,499.

Where the aspect of the case is substantially changed by new evidence, a district judge sitting alone in the circuit court may review or set aside the action of the court, when presided over by the circuit justice. — Hussey v. Whitely, Case No. 6,950.

An adjudication upon the original patent will not conclude defendant, where the infringement of a reissue lies between the limits of the original and reissued patents.—Poppenhusen v. Falke, Case No. 11,279.

See, also, ante, § 246.

§ 262. Submission of issues to jury.

An issue at law will be directed where the testimony is conflicting.—Brooks v. Bicknell, Cases Nos. 1,944, 1,946; Parker v. Hatfield, Id. 10,736.

Where, on a bill for infringement, the evidence is uncertain and unsatisfactory, an issue will be awarded on the questions whether the patentee was the first inventor, and whether the invention was known and used by others two years before the application.—Sicles v. Pacific Mail S. S. Co., Case No. 12,842.

A feigned issue will not be awarded unless the court have doubts as to the identity of the two machines.—Van Hook v. Pendleton, Case No. 16,851.

A feigned issue will be awarded in a suit for an injunction founded on a verdict, in an action at law, on newly-discovered evidence tending to show a want of novelty, and defendants will be allowed to amend their answer on payment of costs by inserting the new matter.—Foote v. Silsby, Case No. 4,918.

The court will not send the case to a jury where, after a hearing on full proofs, it is well satisfied of the originality of the invention, the regularity of the patent, and of the fact of infringement.—Goodyear v. Day, Case No. 5,569.

It is discretionary with the court to order issues for a jury.—Ayling v. Hull, Case No. 686; Brooks v. Norcross, Id. 1,957.

Original letters patent are not admissible on trial of feigned issues presenting no issue of fraud or mistake, where the bill of complaint was founded exclusively upon the reissued letters.—Cahoon v. Ring, Case No. 2,292.

Letters patent offered in evidence in the trial of feigned issues to show want of originality in the complainants' invention must be construed by the court; and, if having no tendency to support the issue, should be rejected.—Cahoon v. Ring, Case No. 2,292.

Evidence of new experiments upon the machines in question, on the trial of feigned issues, in a patent suit, cannot be offered by the complainant in rebuttal.—Cahoon v. Ring, Case No. 2,292.

Further time to take testimony given where feigned issues out of equity have been ordered

before the time for taking testimony had expired.—Cahoon v. Ring, Case No. 2,292.

See, also, ante, § 208.

§ 263. Rehearing.
Motion for rehearing in suit for infringement of patent cannot be made after term at which final decree entered.—Barker v. Stowe, Case No. 995.

The reissue, after the first hearing, of a patent prior to plaintiff's, which was in evidence, is no ground for granting a rehearing.—Hitchcock v. Tremaine, Case No. 6,540.

The want of proper expert testimony is no ground for granting a rehearing, where no sufficient excuse is shown for not applying, prior to the first hearing, for opportunity to introduce the same.—Hitchcock v. Tremaine, Case No. 6,540.

A rehearing will be ordered where it appears doubtful whether a decree adverse to the patent could be sustained under the allegations in the answer, with leave to amend such answer.—Schneider v. Thill, Case No. 12,470b.

An attorney was employed by the assignee of a bankrupt patentee when a suit for infringement was on the trial list, and the patent was declared invalid. *Held*, that a rehearing would not be granted because of want of preparation, where the validity of the patent could be tested in other pending suits.—Nutter v. Rodgers, Case No. 10,383.

Rehearing on the ground of newly-discovered anticipating devices will be denied, in the absence of clear proof of anticipation.—Kerosene Lamp Co. v. Littell, Case No. 7,723.

Inexperience and lack of legal knowledge of counsel and ignorance of defendant in not setting up foreign patents, to show want of novelty, *held* not sufficient ground for opening interlocutory decree.—De Florez v. Raynolds, Case No. 3,743.

A prior decision in another court is no ground for opening an interlocutory decree, where the question has since been passed upon at law in this court.—Ingersoll v. Benham, Case No. 7,036.

The case will be opened to permit introduction of newly-discovered evidence to show a change in the model when the reissue was granted.—Johnson v. Beard, Case No. 7,371.

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.—Woodworth v. Edwards, Case No. 18,014.

§ 264. Decree and review.
A decree for an accounting will be granted, though it appear that no profits resulted from the infringement, where it does not appear whether or not complainant suffered damage therefrom.—Bullock Printing Press Co. v. Jones, Case No. 2,132.

Where infringement is admitted, if the patent is valid, an interlocutory decree should be entered for complainant, and the cause sent to a master to ascertain damages.—Carew v. Boston Elastic Fabric Co., Case No. 2,397.

A decree will be entered for complainant where the facts averred, showing the validity and infringement of the patent, are admitted by defendant, who also admits the want of any valid defense.—Franz & Pope Knitting Mach. Co. v. Lamb Knitting Mach. Mfg. Co., Case No. 5,061a.

The title to the infringing machine passes to the purchaser where a decree is given for the profits on the manufacture and sale—Spaulding v. Page, Case No. 13,219; Steam Stone Cutter Co. v. Windsor Mfg. Co., Id. 13,335; Gilbert & Barker Mfg. Co. v. Bussing, Id. 5,416; Perrigo v. Spaulding, Id. 10,994.

A recovery of profits for the use of the infringing machine does not vest the title thereto in the defendant.—Spaulding v. Page, Case No. 13,219.

Where the court awards as damages the license fee which the patentee has fixed for the perpetual use of a machine, which defendant pays, he is entitled to the use of the infringing machine.—Sickels v. Borden, Case No. 12,832; Spaulding v. Page, Id. 13,219.

A decree for a perpetual injunction in a patent case will not be opened to let in a defense after a delay of 11 months from the payment of an execution issued for costs.—Doubleday v. Sherman, Case No. 4,019.

The limitation of two years in section 2057 does not apply to a proceeding to review a decree in equity.—Wilt v. Stickney, Case No. 17,854.

A motion to set aside a decree pro confesso, and for leave to answer, denied on plaintiff's stipulating to limit recovery to a certain amount, being less than expense to defendant of trying issue.—Andrews v. Denslow, Case No. 372.

Where a writ of error is pending, the court in another circuit will consider the errors alleged to have been committed at the trial, and will disregard the judgment where there was radical error.—Wells v. Gill, Case No. 17,394.

A decree in a patent case, making the injunction prayed for perpetual, with a reference to a master for an account of profits, is not a final decree.—Reeves v. Keystone Bridge Co., Case No. 11,661.

And no appeal lies from a decree in a patent case which provides for a reference to a master to state an account until the coming in of the master's report.—Potter v. Mack, Case No. 11,331.

See, also, ante, §§ 209, 210, 248.

§ 265. Costs.
Plaintiff is not entitled to costs in a suit for infringement of a patent, where he recovers a verdict for infringement of valid claims, while other claims are rejected as void for want of novelty.—Peek v. Frame, Case No. 10,904.

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.—Yale & G. Mfg. Co. v. North, Case No. 18,123.

Costs refused defendant in a bill for infringement on its dismissal, as he received benefit from the settlement of the question.—Smith v. Woodruff, Case No. 13,128a.

The plaintiff in a patent suit is entitled to costs (Act 1836, § 14), on a verdict in his favor, whether the recovery is nominal or compensatory, and regardless of the action of the court in respect to increasing damages.—Merchant v. Lewis, Case No. 9,437.

Where the patent is sustained, and infringement found, but only nominal damages are given on a reference, plaintiff is entitled to costs, except of the reference, report, exceptions, and hearing thereon.—Garretson v. Clark, Cases Nos. 5,248, 5,250.

Where a case is referred to a master, to ascertain complainant's damages and defendant's profits; and complainant's exceptions to the master's report are overruled, defendant will be allowed costs subsequent to the interlocutory decree, to be set off against complainant's costs up to such time.—Fisk v. West Bradley & Cary Mfg. Co., Case No. 4,830a.

Where the suit is brought in the name of the holder of the legal title for the benefit of an exclusive licensee, it will not be discontinued with-

out the latter's consent, but the court may compel him to give security for costs.—Goodyear v. Bishop, Case No. 5,558.

Copies of patents, either that of the plaintiff or others, procured by the defendant, cannot be taxed as costs to the plaintiff.—Woodruff v. Barney, Case No. 17,986.

In a suit for infringement of a patent, models cannot be classed as "exemplifications," under Act Feb. 26, 1853.—Parker v. Bigler, Case No. 10,726.

In a suit for the infringement of a patent, copies of plaintiff's models and papers, which he is not obliged to produce, when obtained by defendant, are proper items of costs.—Hathaway v. Roach, Case No. 6,213.

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.—Woodruff v. Barney, Case No. 17,986; Hussey v. Bradley, Id. 6,946a.

The expenses for printing pleadings, testimony, and briefs, and of making drawings used on the final hearing, and of reporting arguments of counsel for the court, are not proper items of taxation, unless so stipulated.—Hussey v. Bradley, Case No. 6,946a.

Where, in taking an account of profits in a patent suit, plaintiff greatly exaggerated his claim, and introduced a large amount of irrelevant testimony, and recovered only a small sum, *held*, that each party should bear his own costs, and the compensation of the master should be paid equally by both.—Troy Iron & Nail Factory v. Erastus Corning, Case No. 14,198.

See, also, ante, §§ 120, 211.

XIII. DECISIONS ON THE VALIDITY, CONSTRUCTION, AND INFRINGEMENT OF PARTICULAR PATENTS.

§ 266. Original patents.

Alizarine: No. 95,465, and reissue No. 4,321, for artificial alizarine, produced from anthracene, *held* valid and infringed by article produced under patent No. 153,536.—Badische Anilin & Soda Fabrik v. Cochrane, Case No. 719; Same v. Cummins, Id. 720; Same v. Hamilton Mfg. Co., Id. 721; Same v. Higgin, Id. 722.

Amalgamating Pan: Patent to Belknap for improvements construed, and *held* not infringed. —Coolidge v. McCone, Case No. 3,186.

Armor: Heaton's patent of April 14, 1863, for improved defensive armor for ships and other batteries *held* void for want of novelty.—Webb v. Quintard, Case No. 17,324.

Bag Tie: No. 135,899, for improvement in ties for grain bags, *held* valid and infringed.—Foote v. Frost, Case No. 4,910.

Baling Press: No. 60,196, for an improvement, *held* valid and infringed.—King v. Louisville Cement Co., Case No. 7,798.

Bark Mill: Montgomery's and Harris' patent for an improvement in a mill for breaking and grinding bark *held* valid and infringed.—Wilbur v. Beecher, Case No. 17,634.

Barrel: No. 136,763, for improvement in head linings, *held* invalid for want of novelty.—Reed v. Reed, Case No. 11,650.

Base Ball: No. 127,098, for double leather covering, *held* invalid for want of invention.—Mahn v. Harwood, Case No. 8,966.

Bed: No. 97,375, for bedsprings, *held* invalid for want of novelty.—Woven Wire Mattress Co. v. Whittlesey, Case No. 18,058.

Bed: No. 191,244, for an improvement in spring-bed bottoms, *held* valid and infringed.—Ladd v. Tucker Mfg. Co., Case No. 7,974.

Beverage: A composition of certain materials in certain proportions for use as a table beverage, called "Birch Beer," *held* patentable. —Rogers v. Ennis, Case No. 12,010.

Beverage: Nos. 193,038 and 198,467, for improvement, consisting in a compound called "Birch Beer," *held* valid.—Rogers v. Ennis, Case No. 12,010.

Beverage: No. 193,476, for an improvement in syrups and mineral waters, *held* valid.—Bowker v. Dows, Case No. 1,734.

Billiard Table Cushion: No. 60,657 (reissued No. 3,323), for improvement, construed, and *held* valid and infringed.—Decker v. Griffith, Cases Nos. 3,724, 3,725; Same v. Grote, Id. 3,726.

Blind Slat: No. 199,948, for improvement in connecting, *held* infringed.—Whitman v. James, Case No. 17,579a.

Blower: Patent to Roots of July 27, 1869, for improvement in a rotary blower case, *held* valid and infringed.—Roots v. Hyndman, Case No. 12,040.

Boiler and Pipe Covering: Letters patent No. 55,598, granted June 19, 1866, to John Ashcroff, for "covering a steam boiler pipe or the heater with felt or other nonconducting material," is valid.—Chalmers Spence Pat. Nonconductor Co. v. Cramp, Case No. 2,573a.

Boiler and Pipe Covering: Nos. 108,055, 114,-711, and reissue No. 4,134, for improvement in compositions for covering, *held* infringed.—United States & Foreign Salamander Felting Co. v. Merrimack Mfg. Co., Case No. 16,789.

Boiler Furnace: No. 20,616, for improvement for burning wet fuel, *held* valid.—Bantz v. Elsas, Case No. 967.

Bolt: No. 48,555, for improvement in door bolt, *held* valid.—Stanley Works v. Sargent, Case No. 13,289.

Bonnet: No. 15,570, for improvement in machine for pressing, *held* not infringed.—Doubleday v. Bracheo, Case No. 4,018.

Such patent construed, and *held* to be infringed.—Doubleday v. Sherman, Case No. 4,-021.

Bonnet: No. 19,932, for an improvement in bonnet frames, construed and limited.—Kidd v. Spence, Case No. 7,755.

Boot and Shoe: Priority in arrangement of vibrating knives awarded to Richards.—Eames v. Richards, Case No. 4,240.

Boot and Shoe: A patent for cutting the soles of shoes by means of a cutting die mounted on a shaft *held* infringed.—Maynadier v. Tenney, Case No. 9,350.

Boot and Shoe: Priority of invention of an improvement in pegging machines awarded to Greenough. — Sturtevant v. Greenough, Case No. 13,579.

Boot and Shoe: Nos. 28,181, 39,546, 42,555, for improvements in machines for burnishing the edges of soles and heels of boots and shoes, *held* not infringed.—Sweetser v. Helms, Case No. 13,689.

Boot and Shoe: No. 49,572, for an improved mode of cutting soles, *held* invalid.—Walker v. Rawson, Case No. 17,083.

Boot and Shoe: No. 122,030 (reissued Nos. 6,098, 6,099), for improvements in the manufacture of moccasin boot and shoe pacs, *held* valid in part and infringed.—Kelleher v. Darling, Case No. 7,653.

Boot and Shoe: No. 127,090, for forming heel stiffeners, construed, and *held* not infringed. —Moffitt v. Rogers, Case No. 9,691.

Boot and Shoe: No. 127,964, for improvement in manufacture of soles and heels, *held* invalid.—Adamson v. Dedrick, Case No. 74.

Boot Tree: No. 14,951, for improvement, *held* valid and infringed.—Eames v. Cook, Case No. 4,239.

Boot Tree: No. 170,462, for improved boot tree, *held* valid and infringed.—Cox v. Ramsdell, Case No. 3,305.

Boring Machine: No. 170,980, for improvement in machine for boring holes in boot trees, *held* valid and infringed.—Cox v. Ramsdell, Case No. 3,305.

Bottle Stopper: No. 23,263 (reissued No. 1,-606), for "improved bottle-stopper fastener," *held* valid, but not infringed.—Putnam v. Hickey, Case No. 11,480.

Bottle Stopper: No. 48,300, for improvement, *held* not infringed.—Hicks v. Moller, Case No. 6,461.

Bottles: A U-shaped movable wire fastener, extending over the top of the stopper, and connected with another wire surrounding the neck of the bottle, *held* not anticipated by a U-shaped movable fastener made of sheet metal, extending over the stopper, and connected with a sheet-metal strap around the neck of the bottle. —Putnam v. Weatherbee, Case No. 11,485.

Brace: No. 35,856 (reissue No. 4,187), and No. 73,279, for improvements in bit stocks and braces, *held* valid and infringed.—Miller's Falls Co. v. Ives, Case No. 9,599.

Brake: No. 8,552, for improvement in railroad car brakes, *held* valid.—Emigh v. Chicago, B. & Q. R. Co., Case No. 4,448.

Brake: No. 9,109, for improvement in railroad car brakes, *held* valid and infringed.—Sayles v. Chicago & N. W. R. Co., Cases Nos. 12,414, 12,415.

Brick Machine: Invention of improvement in, *held* patentable.—In re Wagner, Case No. 17,038.

Brick Press: No. 2,768, for improvement, construed.—Hall v. Wiles, Case No. 5,954.

Bridge: Sprague's invention *held* patentable. —Ex parte Sprague, Case No. 13,247.

Bridge: Linville's patent of 1862, and Linville's and Piper's patent of 1865, relating to the lower chord bars of truss bridges, *held* not infringed.—Keystone Bridge Co. v. Phoenix Iron Co., Case No. 7,751.

Bridge: No. 2,707, for an improvement in bridges, construed and *held* valid. — King v. Hammond, Case No. 7,797.

Bridge: No. 101,529, for an improvement in dies for making chord-bar heads, *held* void for want of novelty.—Smith v. American Bridge Co., Case No. 13,002.

Bronzing Iron: No. 40,964 (reissue No. 2,-355), for coloring iron in imitation of bronze, *held* valid and infringed.—Tucker v. Tucker Mfg. Co., Case No. 14,227.

Brush: No. 98,787, for improvement, *held* valid and infringed.—Murphy v. Eastham, Case No. 9,949; Same v. Kissling, Id. 9,950.

Brush: No. 160,933, for improvement, *held* infringed.—Megraw v. Carroll, Case No. 9,393b.

Buckle: Patent May 26, 1863, is void for want of novelty.—Chase v. Sabin, Case No. 2,-627.

Bung: No. 87,163, for improved method of rendering wooden bungs impervious to liquids and gases, *held* valid.—Geier v. Goetinger, Case No. 5,299.

Burring Machine: No. 4,023 (reissue No. 1,-137), for improvement, *held* valid and infringed. —Parkhurst v. Kinsman, Case No. 10,757.

Bustle: The invention of Matthew Chambers for a framework for a skirt or bustle was not anticipated by the patent of Alexander Douglass, No. 17,082, nor by the English patent of Ozman, No. 20,513 of 1856.—In re Chambers, Case No. 2,581.

Button: No. 56,261, for improvement, *held* valid and infringed.—Platt v. United States Patent Button, Rivet, Needle & Machine Mfg. Co., Case No. 11,222.

Button: No. 110,070, for improvement in attaching shanks, construed, and *held* not infringed.—Potter v. Thayer, Case No. 11,340.

Camera: Southworth's patent of April 10, 1855, reissued September 25, 1860, for plate holders, *held* valid.—Wing v. Richardson, Case No. 17,869. CONTRA, see Wing v. Schoonmaker, Case No. 17,870.

Camera: No. 12,700 (reissue No. 1,049), for plate holder for cameras, *held* valid and infringed.—Ormsbee v. Wood, Case No. 10,579.

Camera: No. 16,700 (reissued No. 2,311), for improvement in solar cameras, *held* valid and infringed.—Woodward v. Dinsmore, Case No. 18,003.

Candle: No. 12,492, for improvement in machines for making, *held* valid.—Stainthorp v. Humiston, Case No. 13,279. But see Thayer v. Wales, Case No. 13,871.

Canned Beef: Nos. 43,516 (reissued No. 6,-451), 149,276 (reissued No. 6,370), 161,848 (reissued No. 7,923), for canned meats, *held* invalid for want of novelty.—Wilson Packing Co. v. Clapp, Case No. 17,851.

Canned Corn: Nos. 34,928, 35,274, 35,346, and 36,326, for improvement in process of preserving green corn, *held* valid and infringed.—Jones v. Merrill, Case No. 7,481; Same v. Sewall, Id. 7,495.

Cannon: No. 13,927, for improvement in manufacture, *held* void for want of novelty.—Treadwell v. Parrott, Case No. 14,158.

Capstan: No. 63,917, for improvement in applying steam power to capstans, *held* valid and infringed.—McMillin v. Barclay, Case No. 8,-902.

Carburetter: No. 93,268, for improved apparatus for carburetting air, *held* valid and infringed.—Gilbert & Barker Mfg. Co. v. Tirrell, Case No. 5,417. CONTRA, see Gilbert & Barker Mfg. Co. v. Walworth Mfg. Co., Case No. 5,418.

Carding Machine: Patent to Goulding, with reissue and extension, for improvement in machinery for the manufacture of fibrous materials, *held* valid.—Jordan v. Dobson, Case No. 7,519.

Carpet Lining: No. 52,835 (reissued No. 4,-296), and No. 60,476 (reissued No. 4,066), for improvement, *held* to be infringed.—Fales v. Wentworth, Case No. 4,623.

Cartridge: No. 1,948, for machine for making cartridge cases, *held* infringed.—Union Metallic Cartridge Co. v. United States Cartridge Co., Case No. 14,369.

Car Wheel: Whitney's patent for an improvement in the process of manufacturing cast-iron railroad wheels *held* valid and infringed.—Whitney v. Mowry, Cases Nos. 17,592, 17,593, 17,594.

Car Wheel: No. 640, for improvement in mode of making cast-iron car wheels, construed.—Many v. Jagger, Case No. 9,055; Same v. Sizer, Id. 9,056, 9,057.

Car Wheel: No. 110,779, for improvement in casting car wheels, construed.—Needham v. Washburn, Case No. 10,082.

Caster: Blake's patent for improvement in, *held* valid.—Blake v. Smith, Case No. 1,502; Same v. Sperry, Id. 1,503.

Chain: No. 43,987, for an improved machine for stretching chains, *held* valid and infringed. —Hall v. Bird, Case No. 5,926.

Chain Link: No. 193,543, for an improvement in ornamental chain links, construed, and *held* valid and infringed.—Simmons v. Blackinton, Case No. 12,866.

Chair Seat: Reissue No. 7,203, for improvements in chair seats, *held* invalid.—Gardner v. Herz, Case No. 5,229.

Chewing Gum: No. 111,798, for improvement, *held* void.—Adams v. Loft, Case No. 61.

Circular Saw: No. 10,965, for clamps for circular saws, *held* valid and infringed.—Myers v. Duker, Case No. 9,989; Same v. Frame, Id. 9,991.

Circular Saw: No. 33,270 (reissued No. 1,456), for improvement, *held* valid and infringed.—Spaulding v. Tucker, Case No. 13,220.

Circular Saw Frame: No. 7,027, for improvement in hanging circular saws, *held* valid and infringed.—Lee v. Blandy, Case No. 8,182.

Clapboard: No. 10,903 (reissued No. 3,268), for an improved clapboard joint, *held* invalid for want of novelty.—Everett v. Thatcher, Case No. 4,578.

Clock: No. 84,517, for improved pallet of clock escapement, *held* invalid for want of novelty.—Terry Clock Co. v. New Haven Clock Co., Case No. 13,841.

Cloth: Nos. 10,986, 106,101, and 124,180, and reissues Nos. 5,004, 5,186, for improvements in cloth-cutting machines construed, and *held* not infringed.—Warth v. Browning, Case No. 17,209a.

Coal Car: Winan's patent *held* invalid.—Winans v. Eaton, Case No. 17,861.

Coffin: Patent to Fish, for a metal air-tight coffin, *held* valid and infringed.—Forbes v. Barstow Stove Co., Case No. 4,923.

Coffin Handle: Patent to Strong of December 14, 1869, for improvement in, *held* void for want of novelty.—Strong Mfg. Co. v. Meridan Britannia Co., Case No. 13,546.

Collar: No. 45,998 (reissued No. 2,034), for improvement in turn-down enameled paper collars, *held* valid and infringed.—Hoffman v. Aronson, Case No. 6,576; Same v. Stiefel, Id. 6,578.

Collar: No. 132,547, for a method of cutting collars from sheets of paper, etc., *held* void for want of novelty.—Snow v. Taylor, Case No. 13,148.

Column: No. 35,582, for an improvement in the construction of columns, shafts, braces, etc., construed, *held* valid, and infringed.—Reeves v. Keystone Bridge Co., Case No. 11,660.

Composition Covered Ring: No. 57,941 for improvement, construed, and *held* valid, and infringed.—Welling v. Rubber-Coated Harness Trimming Co., Case No. 17,382.

Cornsheller: No. 132,128, for improvement, *held* valid.—Adams v. Joliet Mfg. Co., Case No. 56.

Corset: No. 137,893, for an improvement in corsets, *held* void because of prior publication abroad.—Cohn v. United States Corset Co., Case No. 2,969.

Corset: No. 143,356, for corset clasp and cloth attachment, *held* invalid for want of novelty.—Seligman v. Day, Case No. 12,643.

Corset Skirt-Supporter: Nos. 22,532, 39,910, 39,911, 45,296 (reissued No. 4,831), 54,323, and reissue No. 2,654, for improvements, *held* valid and infringed.—Foy v. Hunter, Cases Nos. 5,017, 5,018, 5,019.

Corset Spring: No. 173,124 (reissued No. 7,729), for improvement, *held* valid and infringed.—Judson v. Bradford, Case No. 7,564.

Cotton-Bale Tie: No. 19,490, for improvement in metallic cotton ties, *held* valid.—Cook v. Ernest, Case No. 3,155. See, also, McComb v. Beard, Case No. 8,706; Same v. Brodie, Id. 8,708.

Cotton-Bale Tie: No. 59,144, for improvement, *held* valid and infringed.—Johnson v. Fassman, Case No. 7,365. But see Johnson v. Beard, Case No. 7,371.

Cotton Cleaner: Hayden's improvement *held* patentable.—Ex parte Hayden, Case No. 6,256.

Cotton Cleaner: Nos. 18,742 and 29,971, for improvements, *held* valid and infringed.—Hayden v. Suffolk Mfg. Co., Case No. 6,261.

Cotton Press: Brooks' patent for improvment *held* void for want of novelty.—Wicks v. Stevens, Case No. 17,616.

Coupling Bumper: Bishop's invention of sliding block with V-shaped chamber, for guiding link, *held* not patentable.—In re Bishop, Case No. 1,439.

Cultivator: No. 4,459, for improvement, *held* valid and infringed.—Tracy v. Torrey, Case No. 14,127.

Cultivator: No. 19,412 (reissued No. 1,515), for improvement, *held* valid and infringed.—Dennis v. Eddy, Case No. 3,794.

Cultivator: No. 22,859 (reissued No. 2,380), for improvement in cultivators, *held* void for want of novelty.—Sayles v. Hapgood, Case No. 12,420.

Cultivator: No. 55,630, for improvement, *held* valid and infringed.—Dennis v. Eddy, Case No. 3,795.

Dam: No. 80,492, for improved portable and adjustable still-water dam, construed, and *held* not infringed.—Cammeyer v. Newton, Case No. 2,345.

Dental Plate: A dental plate made of celluloid *held* not an infringement of a patent for a vulcanite plate.—Goodyear Dental Vulcanite Co. v. Davis, Case No. 5,589. CONTRA, see Goodyear Dental Vulcanite Co. v. Preterre, Case No. 5,596.

Dental Plate: No. 43,009 (reissued No. 1,904), for improvement in artificial gums and palates, *held* valid and infringed.—Goodyear Dental Vulcanite Co. v. Gardiner, Case No. 5,591; Same v. Root, Id. 5,597; Same v. Smith, Id. 5,598.

Die: No. 68,446, for an improved die for swaging mattocks, hoes, etc., *held* not anticipated, and valid.—Konold v. Klein, Case No. 7,925.

Distilling Tub: No. 81,115 (reissued No. 3,612), for improvement in tubs for distilling essential oils, construed and limited, and *held* not infringed.—Van Marter v. Miller, Case No. 16,863.

Door: No. 9,765, for an improved door fastening, construed, and verdict returned for defendant on the questions of novelty and infringement.—Kittle v. Merriam, Case No. 7,857.

Door Knob: No. 2,197, for a porcelain knob, *held* invalid.—Hotchkiss v. Greenwood, Case No. 6,718.

Door Mat: No. 19,347, for cellular India-rubber door mat, construed, and *held* not infringed.—Brown v. Rubber-Step Mfg. Co., Case No. 2,028.

Dough: Invention of Treadwell for machine for making rolled dough *held* patentable.—Treadwell v. Fox, Case No. 14,156.

Dry Dock: Application for patent for pumping apparatus refused for want of invention.—In re Everson, Case No. 4,580.

Dust Deflector: No. 13,676, for an improved dust deflector for railroad car windows, construed, and *held* infringed.—Cook v. Howard, Case No. 3,160.

Egg Beater: No. 23,694, for improvement, construed, and *held* not infringed.—Monroe v. Dover Stamping Co., Case No. 9,714.

Ejector: No. 92,718, for improvement, *held* not infringed.—Scaife v. Fulton, Case No. 12,426.

Elastic: No. 9,653 (reissued Nos. 2,843, 2,844, and 3,014), for improvement in corded elastic fabrics, *held* void for want of novelty.—Smith v. Elliott, Case No. 13,041; Same v. Nichols, Id. 13,084. But see Smith v. Glendale Elastic Fabrics Co., Case No. 13,050.

Elastic Packing: Patent No. 3,579, granted August 3, 1869, for "improvement in the manufacture of elastic packing," includes only soft vulcanized rubber, and not hard rubber.—Clarke v. Johnson, Case No. 2,855.

Elastic Packing: No. 54,554 (reissued No. 3,579), for improvement, *held* valid and infringed. —Jenkins v. Johnson, Case No. 7,271.

Elevator: Patent to Tufts, of December 11, 1866, for improvement in elevator guides, *held* invalid for want of novelty.—Tufts v. Boston Mach. Co., Case No. 14,231.

Elevator: No. 25,061, for improvements in hoisting apparatus, construed, strictly, and *held* not infringed.—Tufts v. Boston Mach. Co., Case No. 14,231.

Elevator: No. 32,441, for improvements in the mode of suspending and operating elevators, *held* invalid for want of novelty.—Tufts v. Boston Mach. Co., Case No. 14,231.

Elevator: No. 60,442, for improvements in the mode of adjusting the length and tension of the ropes, *held* invalid for want of novelty.—Tufts v. Boston Mach. Co., Case No. 14,231.

Embroidering Machine: Nos. 83,909, 83,910, for improvement, *held* to be infringed.—Cornely v. Henderickx, Case No. 3,240.

Envelope: Manner of folding and pasting sides, *held* not patentable.—Arnold v. Pettee, Case No. 561b.

Ether: No. 4,848, for an improvement in surgical operations by the use of ether, *held* invalid. —Morton v. New York Eye Infirmary, Case No. 9,865.

Faucet: Jenkins patent of June 27, 1865, for a self-closing faucet, *held* valid.—Zane v. Peck, Case No. 18,200.

Ferrotype and Ferrotype Plate: Reissue No. 6,982, for improvement, *held* valid.—Hedden v. Eaton, Case No. 6,318.

Firearm: Cutting away obstructing portion of hinge of breach piece, quære, whether patentable.—Berdan Fire-Arms Mfg. Co. v. Remington, Case No. 1,336.

Firearm: Improvement in priming tubes, *held* to involve patentable invention.—In re Halsey, Case No. 5,963.

Firearm: No. 12,648, for improvement in repeating firearms, *held* valid and infringed.—White v. Allen, Case No. 17,535.

Firearm: No. 12,649, for improvement in repeating firearms, *held* infringed.—White v. Boker, Case No. 17,537.

Firearm: No. 16,797 (reissued No. 3,798), for improvement in breach-loading firearms, *held* valid and infringed.—Renwick v. Cooper, Case No. 11,701; Same v. Pond, Id. 11,702.

Firearm. No. 22,094 (reissued No. 3,946), for improvement, construed, and *held* valid and infringed.—Roberts v. Schuyler, Case No. 11,915.

Fire Engine: No. 1,980, for improvement, construed in a charge to the jury.—Ransom v. New York, Case No. 11,573.

Fireplace: No. 14,447, for improvement, *held* not infringed.—Dodge v. Card, Case No. 3,951.

Fish: No. 31,736, for improvement in the method of preserving, *held* void for want of novelty.—Piper v. Moon, Case No. 11,182.

Flour: Construction of patent granted to Oliver Evans for an improvement in the art of manufacturing flour.—Evans v. Eaton, Case No. 4,559; Same v. Hettick, Case No. 4,562.

Flouring Machine: The third claim in letters patent of February 27, 1849, for an improvement on a machine for separating flour from bran, is bad for uncertainty, and the fourth claim is bad as one to the legal result.—Carr v. Rice, Case No. 2,439.

Fruit Jar: No. 102,913, to John L. Mason, *held* invalid, the right to a patent having been lost by delay.—Consolidated Fruit Jar Co. v. Wright, Case No. 3,135.

Furnace: No. 12,678, No. 18,874, and reissue No. 446, for improvement in furnaces for burning wet fuel, etc., construed, and *held* valid.—Black v. Thorne, Case No. 1,465.

Furnace: No. 45,803, for improved method of desulphurizing and oxydizing metallic ores, *held* to interfere with No. 41,897, for improvement in stoves.—Gold & Silver Ore Separating Co. v. United States Disintegrating Ore Co., Case No. 5,508.

Furnace: No. 71,244, for improvement in hot-air furnaces, *held* valid.—Thatcher Heating Co. v. Carbon Stove Co., Case No. 13,864.

Furnace: No. 92,822 (reissued No. 7,254), for an improvement in hot-air furnaces, *held* valid, and infringed.—Flint v. Roberts, Case No. 4,875.

Gas-Burner: Walsh's invention of an improvement *held* patentable.—In re Walsh, Case No. 17,112.

Gas-Burner: First claim in patent granted June 14, 1870, for improvement in gas-burners, includes combination in patent granted July 26, 1870, to a prior inventor.—Clough v. Gilbert & B. Mfg. Co., Case No. 2,906.

Gas Meter: No. 12,535, for benzole vapor apparatus, *held* valid and infringed.—Munson v. Gilbert & B. Mfg. Co., Case No. 9,934.

Ginning Machine: Patent to Whipple for improvement *held* valid and infringed.—Whipple v. Middlesex Co., Case No. 17,520.

Glass Cutter: No. 91,150, for improved tool for cutting glass, *held* valid, and infringed.—Monce v. Adams, Case No. 9,705. CONTRA, see Monce v. Woodworth, Case No. 9,706.

Glove-Fastening: No. 155,077, for improvement, construed, and *held* not infringed.—Field v. De Comean, Case No. 4,765.

Glycerine: No. 11,766, for a process for producing fat acids and glycerine, *held* valid and infringed.—Tilghman v. Mitchell, Cases Nos. 14,041, 14,042, 14,043.

Grain Drill: No. 90,268 (reissued No. 3,976), for improvement, *held* valid and infringed.—Ingels v. Mast, Case No. 7,033.

Grain Separator: Patent of December 20, 1859, *held* valid.—Booth v. Parks, Case No. 1,648.

Gutta-Percha: No. 339, known as the "Grease Patent," *held* valid and infringed.—Poppenhusen v. Falke, Case No. 11,280; Same v. New York Gutta-Percha Comb Co., Id. 11,283.

Gutta-Percha: No. 10,741 (reissued No. 797), known as the "Tin-Foil Patent," *held* valid and infringed.—Poppenhusen v. Falke, Case No. 11,280; Same v. New York Gutta-Percha Comb Co., Id. 11,283.

Hair Net: No. 124,340, for improvement in ladies' hair nets, construed, and *held* void for want of novelty.—Dalton v. Jennings, Case No. 3,548.

Hand Stamp: No. 18,249 (reissued No. 4,675) for improvement, *held* valid and infringed.—Robertson v. Garrett, Case No. 11,924; Same v. Secombe Mfg. Co., Case No. 11,928.

Harness-Saddle Pad: No. 86,112, for improvement, *held* valid.—American Saddle Co. v. Hogg, Case No. 315.

Harvester: McCormick patent for the arrangement of the raker's seat construed, and *held* valid.—McCormick v. Seymour, Cases Nos. 8,725, 8,726.

Harvester: No. 15,044 (reissued No. 4,281), for improvement, *held* invalid.—Mann v. Bayliss, Case No. 9,034.

Harvester: No. 74,342, for improvement, *held* valid and infringed.—Graham v. Gammon, Case No. 5,668.

Harvester Rake: No. 14,350 (reissued No. 2,982, and extended March 4, 1870), for improvement, *held* valid and infringed.—Dorsey Harvester Revolving-Rake Co. v. Marsh, Case No. 4,014.

Hat: Patent to Kendall and Trested, for compound for coating textile fabrics, *held* not infringed.—Baldwin v. Schultz, Case No. 804.

Hat: Patent to Noe of July 20, 1843, for sewing edges of braid together with horse-hair, *held* valid.—Noe v. Prentice, Cases Nos. 10,284, 10,284a.

Hat: No. 4,472 to Wells, and reissues to Burr and others, for improvement in making and hardening bats of wool or fur for hat bodies, construed, and *held* valid, but not infringed.—Burr v. Cowperthwait, Case No. 2,188; Same v. Duryee, Id. 2,190.

Such patent *held* infringed.—Burr v. Prentiss, Case No. 2,194.

Hat: No. 30,379, for improvement in curling hat brims, construed, and *held* to be infringed.—Doubleday v. Sherman, Case No. 4,022.

Hat: No. 33,978, for improvement in manufacture, *held* infringed.—Baldwin v. Bernard, Case No. 797. But, see Baldwin v. Schultz, Case No. 804.

Hat: No. 34,043, for improvement in men's hats, *held* valid and infringed.—Mallory v. White, Case No. 8,993.

Hat: No. 46,553 (reissued No. 3,217), for improvement in machines for stretching hat bodies, construed, and *held* valid and infringed.—Eickemeyer Hat-Blocking Mach. Co. v. Pearce, Case No. 4,312.

Hat Body: Application for patent for machine for making, rejected because of prior public use or sale.—Cowperwaithe v. Gill, Case No. 3,298.

Hayrake: No. 21,712, for improvement in, construed and *held* valid and infringed.—Brown v. Whittemore, Case No. 2,033.

Headlight: No. 35,122 (reissued No. 2,133), for improvement in locomotive lamps, *held* valid in part and infringed.—Williams v. Boston & A. R. Co., Case No. 17,716; Same v. Rome, W. & O. R. Co., Id. 17,735.

Hoop Skirt: Nos. 34,026 (reissued No. 1,518) and 37,124, for improvements in machinery for fastening clasps or spangles to the hoops and tapes of hoop skirts, *held* valid and infringed.—Wilcox v. Komp, Case No. 17,641.

Hoop Skirt: No. 74,672, for improvement in springs, construed, *held* valid and infringed.—Young v. Lippman, Case No. 18,160.

Horse Rake: No. 21,712 (reissued No. 2,994), for improvement, *held* to be infringed.—Edgarton v. Breck, Case No. 4,279.

Horseshoe: No. 17,665, for improved machine for making, construed.—Burden v. Corning, Case No. 2,143.

Hotel Register: No. 63,889, for an advertising hotel register, *held* valid and infringed.—Hawes v. Antisdel, Case No. 6,234; Same v. Cook, Id. 6,236.

Hydraulic Mining: No. 110,222 (reissued No. 5,193), for an improvement in hydraulic mining apparatus, *held* valid and infringed.—Fisher v. Craig, Case No. 4,817.

Hydraulic Power: Patent to Parker of October 19, 1829, for improvement, *held* valid and infringed.—Parker v. Hatfield, Case No. 10,736; Same v. Stiles, Id. 10,749.

Hydrometer: Adams' improvement, held patentable.—Ex parte Adams, Case No. 38a.

India Rubber: No. 16, to Chaffee, covers both the process and the machinery used in carrying it on.—Day v. Union India-Rubber Co., Case No. 3,691.

India Rubber: No. 3,633 (reissued No. 156, and No. 1,085), for improvement in manufacture of India rubber fabrics, *held* valid and infringed.—Goodyear v. Beverly Rubber Co., Case No. 5,557; Same v. Providence Rubber Co., Id. 5,583.

India Rubber: No. 8,075 (reissued No. 556 and No. 557), for improvement in manufacture and product, *held* valid and infringed.—Goodyear v. Berry, Case No. 5,556; Same v. Blake, Id. 5,560; Same v. Evans, Id. 5,571; Same v. Mullee, Id. 5,577, 5,579; Same v. New York Gutta Percha, etc., Co., Id. 5,580; Same v. Rust, Id. 5,584; Same v. Wait, Id. 5,587.

Insulator: No. 65,019, for an improvement in insulating submarine cables, construed, and *held* valid.—Colgate v. Western Union Tel. Co., Case No. 2,995.

Iron Molding: No. 142,661, for an improvement for black-washing molds; No. 53,883, for improved molding and casting apparatus; and No. 37,037, for improved flasks for cast-iron pipes,—*held* not infringed.—Smith v. Marshall, Case No. 13,077.

Isinglass: No. 134,690, for improvement in manufacture, *held* invalid, the invention having been in public use for more than two years.—Manning v. Cape Ann Isinglass & Glue Co., Case No. 9,041.

Jail: No. 110,483, for an invention relating to the construction of jails, construed in a charge, and found infringed by the jury.—May v. Johnson County, Case No. 9,334.

Journal: No. 1,252, for improvement in boxes or bearings for journals or axles, construed in a charge to a jury.—Roberts v. Ward, Case No. 11,918.

Kettle: No. 8,589, for machine for making kettles and articles of like character from disks of metal, *held* valid.—Waterbury Brass Co. v. New York & B. Brass Co., Case No. 17,256.

Kindling Wood: No. 93,775, for improvement, *held* void.—Alcott v. Young, Case No. 149.

Knitting Machine: No. 99,426 and reissue No. 7,368, for improvements, *held* valid.—Franz & Pope Knitting Mach. Co. v. Bickford, Case No. 5,061.

Knitting Needle: No. 6,025, for improvement, *held* valid.—Aiken v. Dolan, Case No. 110.

Lamp: No. 13,286, for improvement relating to the attachment for securing the globe, *held* invalid.—Dennis v. Cross, Case No. 3,792.

Lamp: No. 20,159 (reissued No. 648), for improvement in lamps, *held* valid and infringed.—Jones v. Vankirk, Case No. 7,500.

Lamp: No. 30,381 (reissue No. 6,844), for improvement, *held* invalid.—Miller v. Bridgeport Brass Co., Case No. 9,563.

Lamp: No. 49,984, for improvement, construed as a combination of a burner and chim-

ney, and *held* infringed by a sale of the burner alone.—Wallace v. Holmes, Case No. 17,100.

Lamp: No. 50,591, for hinged top, *held* valid. —Adams v. Illinois Mfg. Co., Case No. 54.

Lamp: Nos. 65,230, 73,012, 86,549, 89,770, and 99,443, for improvement in lamps and lanterns, *held* valid and infringed.—Irwin v. Dane, Case No. 7,082.

Last: No. 36,495, for an improvement in shoe-lasts, construed to be for a specific device, not a combination, and *held* infringed.—Mabie v. Haskell, Case No. 8,653.

Lathe: Blanchard's patent for a machine for turning irregular forms construed, and *held* to be infringed.—Blanchard v. Eldridge, Case No. 1,509; Same v. Reeves, Id. 1,515.

Lathe: No. 10,204, for machine for turning and cutting irregular forms, *held* valid and infringed.—Gear v. Grosvenor, Case No. 5,291.

Lathe: No. 23,957, for improvement in lathes for turning irregular forms; *held* invalid for want of novelty.—Spring v. Packard, Case No. 13,260.

Lathe: No. 53,003, for improvement, construed, and *held* valid and infringed.—American Whip Co. v. Lombard, Case No. 319.

Lead Pencil: No. 36,854 (reissued No. 3,863), for combination of the lead and an India-rubber eraser in the same sheath, construed, limited, and *held* not infringed.—Reckendorfer v. Faber, Case No. 11,625.

Leather: Woodman's patent of March 29, 1864, for an improved machine for ornamenting leather, *held* valid and infringed.—Woodman v. Stimpson, Case No. 17,979; Woodman Pebbling Mach. Co. v. Guild, Id. 17,981.

Leather Dressing: No. 83,925, for improved bronze dressing, *held* valid and infringed.—Cahill v. Beckford, Case No. 2,290; Same v. Brown, Id. 2,291.

Level: The invention of Thomas A. Chandler for a level (patent No. 17,023) possesses patentable novelty, and is prior to the invention for which the patent No. 7,263 was granted to William G. Ladd, and to the invention for which Samuel Reed applied for a patent.—Chandler v. Ladd, Case No. 2,593.

Level: No. 39,906, for improvement, *held* void, as containing too broad a claim.—Stanley Rule & Level Co. v. Davis, Case No. 13,288.

Lock: Sherwood's patent for double-faced door locks *held* valid.—Livingston v. Jones, Case No. 8,413.

Lock: No. 16,676, for improved keeper for right and left hand door locks, held valid and infringed by Patterson's patent.—Adams v. Jones, Case No. 57.

Lock: No. 32,331 (reissued No. 4,170), for improvement in locks, *held* valid and infringed. —Yale & G. Mfg. Co. v. North, Case No. 18,123.

Lock: No. 35,030, for improvement, construed, and *held* not infringed.—Miller v. Smith, Case No. 9,589.

Lock and Latch: Claims of reissued patent granted to Charles A. Miller, January 27, 1863, for improvement in locks and latches, so construed as to relieve the objection that they claim results or effects.—Coffin v. Ogden, Case No. 2,950.

Lock and Latch: No. 72,946, for improvements in reversible locks and latches, *held* valid and infringed.—Russell & Erwin Mfg. Co. v. Mallory, Case No. 12,166; Same v. P. & F. Corbin Mfg. Co., Id. 12,167.

Locomotive: No. 34,377, for "improvement in trucks for locomotives," construed, and *held* valid and infringed.—Locomotive Engine Safety Truck Co. v. Erie Ry. Co., Case No. 8,452; Same v. Pennsylvania R. Co., Id. 8,453.

Loom: No. 6,936, for improvement in looms for weaving figured fabrics, *held* not infringed. —Crompton v. Bellknap Mills, Case No. 18,285.

Loom: No. 130,961, for improvement, *held* infringed.—Webster v. New Brunswick Carpet Co., Case No. 17,337. Such patent *held* invalid.—Webster Loom Co. v. Higgins, Case No. 17,342.

Lubricating Machinery: No. 36,603, for improvements in machinery for oiling or lubricating wool or other fibrous materials, *held* valid and infringed.—Harwood v. Mill River Woolen Mfg. Co., Case No. 6,187.

Lubricating Oil Can: Device for opening and closing spout *held* patentable.—Ex parte Arthur, Case No. 563a.

Lubricator: No. 79,279, for improvement, *held* valid.—Pelton v. Waters, Case No. 10,913.

Machine for Splitting Wood: No. 12,857, construed, and *held* infringed.—Conover v. Dohrman, Case No. 3,120; Same v. Rapp, Id. 3,124; Same v. Roach, Id. 3,125. But see Johnson v. Onion, Case No. 7,401.

Matches: Phillips' patent of 1836, for improvement, *held* valid.—Bryan v. Stevens, Case No. 2,066a.

Matches: No. 68, for improvements in the mode of manufacturing friction matches, construed broadly, and *held* infringed.—Ryan v. Goodwin, Case No. 12,186.

Meat: No. 12,530, for improvement in processes for curing, *held* valid.—Pike v. Potter, Case No. 11,162.

Metal: No. 35,842 (reissued No. 1,651), for an apparatus for recovering gold and silver from waste solutions, *held* invalid.—Shaw & Wilcox Co. v. Lovejoy, Case No. 12,727.

Metallic Packing: No. 5,767, for an "improved composition for metallic packing in steam engines," construed in a charge to a jury.—Matthews v. Skates, Case No. 9,291.

Metal Tool: Application for patent for casting tools with iron bodies and steel edges denied.—Collins v. White, Case No. 3,019.

Millstone: Hoyt's invention of improvement by uniting segments by molten metal *held* patentable.—Ex parte Hoyt, Case No. 6,804.

Mirror: Claim of patent granted July 27, 1869, for an "improved hand mirror," covers a mirror having two wires running from the body into the handle and concealed by cement, of which the handle and back are composed. Such patent *held* valid.—Clark v. Scott, Case No. 2,833.

Mirror: No. 92,942, for improvement, *held* not infringed.—Florence Mfg. Co. v. Boston Diatite Co., Case No. 4,882.

Mortising Machine: No. 10,422, for an improvement, construed, and *held* valid and infringed.—Smith v. Fay, Case No. 13,045.

Moulding: No. 74,068, for an improvement in machine for forming sheet metal mouldings, *held* valid and infringed.—Fischer v. Wilson, Case No. 4,812.

Nickel Plating: Nos. 93,157, 102,748, and 113,612, for improvements in the electro-deposition of nickel, *held* valid and infringed.—United Nickel Co. v. Anthes, Case No. 14,406; Same v. Harris, Id. 14,407; Same v. Keith, Id. 14,408; Same v. Manhattan Brass Co., Id. 14,410.

Nonexplosive Lamp: No. 57,245, to Beschke, *held* not infringed by Houchin's patent.—Ashcroft v. Hollings, Case No. 579.

Nut Making Machine: Patent No. 13,118 is entitled to priority over patent No. 8,427.—Carter v. Carter, Case No. 2,475.

Nut: No. 8,427 (reissue No. 666), and No. 13,118 and No. 8,322 (reissued No. 313), for im-

provement in the manufacture of nuts, *held* valid and infringed by machines described in Chisholm's patent of November 17, 1863, and Paton's patent of November 29, 1864.—Wood v. Cleveland Rolling-Mill Co., Case No. 17,941; Same v. Union Iron-Works Co., Id.

Oil: No. 90,284, for improved manufacture of heavy hydrocarbon oils, construed.—Merrill v. Yeomans, Case No. 9,472.

Oil Well: No. 59,936 (reissued No. 6,258), for improvement in method of increasing capacity, *held* valid and infringed.—Roberts v. Dickey, Case No. 11,899; Same v. Roter, Id. 11,912.

Paint Can: No. 24,748, for improvement, construed, and *held* valid and infringed.—Masury v. Anderson, Case No. 9,270; Same v. Tiemann, Id. 9,271.

Paper: Ames' patent construed and *held* infringed.—Ames v. Howard, Case No. 326.

Paper: No. 1,336, for a machine for making paper, found valid, and infringed, by the verdict of a jury.—Knight v. Gavit, Case No. 7,884.

Paper: No. 94,843, for an improved paper-pulp engine, *held* valid and infringed.—Rose v. Sibley Mach. Co., Case No. 12,051.

Paper: No. 134,105, for machine for uniting paper and cloth, *held* void for want of novelty.—Snow v. Tapley, Case No. 13,147.

Paper Bag: Notch in mouth to facilitate opening *held* not patentable.—In re Arkell, Case No. 531.

Paper Bag: No. 24,734, for improvement in machinery for making paper bags, *held* valid and infringed.—Union Paper-Bag Mach. Co. v. Pultz & Walkley Co., Cases Nos. 14,392, 14,393.

Paper Bag: No. 48,036, for improvement, *held* valid and infringed.—Arkell v. J. M. Hurd Paper-Bag Co., Case No. 532.

Paper Bag: No. 49,951, for machine for making, construed, and *held* valid and infringed.—Union Paper-Bag Mach. Co. v. Newell, Case No. 14,390.

Parer: No. 10,078, for improvement in apple-paring machine, construed.—Sargent v. Carter, Case No. 12,362.

Paste: No. 52,779 for improved paste for bookbinders, construed, and *held* infringed.—Woodward v. Morrison, Case No. 18,008.

Patent Roller: Hutchinson's improvement *held* patentable.—Hutchinson v. Meyer, Case No. 6,957.

Pavement: Smith's invention of an improvement in iron pavements *held* patentable.—Ex parte Smith, Case No. 12,966.

Pavement: Tillman's invention *held* no infringement of Kirk's invention.—Ex parte Tillman, Case No. 14,050.

Pavement: No. 11,941 *held* infringed by Brocklebank's and Trainer's patent for improvement.—American Nicholson Pavement Co. v. Elizabeth, Case No. 311.

Pavement: No. 11,941 (reissues Nos. 1,583 and 2,748), for improved wooden pavements, construed, and *held* not infringed.—Nicholson Pavement Co. v. Hatch, Case No. 10,251.

Pavement: No. 121,544, for improvement in wooden pavements, *held* void for want of novelty.—Phillips v. Detroit, Case No. 11,100.

Pegging Machine: Nos. 9,947, 23,361, and 36,292 (reissues Nos. 3,533 and 3,517), for improved machine for pegging boots and shoes, construed, and *held* valid and infringed.—Gallahue v. Butterfield, Case No. 5,198.

Petroleum: No. 49,502, for improved process for purifying, *held* valid and infringed.—National Filtering Oil Co. v. Arctic Oil Co., Case No. 10,042.

Phosphoric Acid: No. 14,722 (reissued No. 2,979), for an improvement in preparing phosphoric acid as a substitute for other solid acids, *held* void as to certain claims, and valid and infringed as to others.—Rumford Chemical Works v. Hecker, Case No. 12,133; Same v. Lauer, Id. 12,135.

Photograph: No. 179,316, for improvement in making colored photographs on glass, *held* valid and infringed.—Irish v. Knapp, Case No. 7,063.

Photographic Shield: No. 21,829 *held* valid.—Gordon v. Anthony, Case No. 5,605.

Pin: Slocum's patent for "a machine for sticking pins into paper" and Howe's improvement defined, and *held* not infringed by Crosby's patented machine.—American Pin Co. v. Oakville Co., Case No. 313.

Pipe: No. 1,980, for machine for making lead pipe by pressure, *held* valid and infringed.—Tatham v. Le Roy, Case No. 13,760. But see Tatham v. Le Roy, Case No. 13,762.

Pitching Barrels: No. 42,580, for improved method of pitching inside of barrels, *held* valid and infringed.—Gottfried v. Bartholomae, Case No. 5,632; Same v. Phillip Best Brewing Co., Id. 5,633.

Planing Machine: Woodworth's patents *held* valid and infringed.—Brooks v. Jenkins, Case No. 1,953; Gibson v. Betts, Id. 5,390; Same v. Gifford, Id 5,395; Same v. Harris, Id. 5,396; Same v. Van Dresar, Id. 5,402; Olcott v. Hawkins, Id. 10,480; Pitts v. Edmonds, Id. 11,191; Sloat v. Patton, Id. 12,947; Smith v. Mercer, Id. 13,078; Van Hook v. Pentleton, Id. 16,851; Same v. Scudder, Id. 16,853; Same v. Wood, Id. 16,855; Wilson v. Curtius, Id. 17,800; Same v. Rousseau, Id. 17,832; Bloomer v. McQuewan, Id. 18,242.

Planing Machine: No. 32,904, for improvement, *held* valid and infringed.—Stover v. Halsted, Case No. 13,509.

Planing Machine: No. 138,462, for improvement, *held* invalid, as having been anticipated.—Woodbury Patent Planing Mach. Co. v. Keith, Case No. 17,970.

Plastering Hair: No. 152,560, for a method of putting up plastering hair in convenient packages for sale and transportation, *held* void for want of invention.—King v. Frostel, Case No. 7,794.

Plow: Patent to Davis for improvement in moldboards construed, and *held* valid.—Davis v. Palmer, Case No. 3,645.

Plow: Prouty's patent for an improvement construed, and *held* not infringed.—Prouty v. Draper, Case No. 11,446.

Power: Parker's patent of October 19, 1843, for an improvement in the application of hydraulic power, construed in a charge to a jury.—Wintermute v. Redington, Case No. 17,896.

Preserving Jar: No. 97,920, for improvement, *held* valid.—Watson v. Cunningham, Case No. 17,280.

Printer's Galley: No. 60,151 (reissued No. 6,326), for improvement, *held* valid and infringed.—Hoe v. Tuthill, Case No. 6,573.

Printing Press: Priority awarded for a device for stopping the impression without stopping the machine.—Ruggles v. Young, Case No. 12,122.

Printing Press: Award of priority to No. 22,611 for improvement.—Babcock v. Degener, Case No. 698.

Printing Press: Patent No. 98,087 is valid.—Child v. Boston & F. Iron Works, Case No. 2,675.

Puddler's Ball: A patent for a machine for rolling puddler's balls *held* to be for a process.—Burden v. Corning, Case No. 2,144.

Puddling Furnace: No. 153,110, for improvement, *held* valid and infringed.—Pennock v. Beale, Case No. 10,940.

Pump: Patent awarded to Boardman for improvements.—Atkinson v. Boardman, Case No. 608.

Pump: No. 73,938, for improved apparatus for cleaning privies, *held* valid and infringed.—Odorless Excavating Apparatus Co. v. McCauley, Case No. 10,436.

Pump: Holly's patent, No. 87,413 (reissue No. 5,132), for a device for supplying city with water, *held* valid and infringed.—Holly v. Union City, Case No. 6,624.

Pump: No. 141,587, for improvement in pump valves, *held* valid and infringed.—Odorless Excavating Apparatus Co. v. McCauley, Case No. 10,436.

Pump: No. 155,670, for improvement in pumps for emptying cesspools, *held* valid and infringed.—Odorless Excavating Apparatus Co. v. McCauley, Case No. 10,436.

Pump Tube: No. 45,647 *held* void for want of novelty.—Shoup v. Henrici, Case No. 12,-814.

Rail: Nos. 9,703, 9,704, for invention of splice plate, *held* valid.—O'Reilly v. Smith, Case No. 10,566.

Rail: No. 15,687, for improvement in anvil or swage block for welding railroad bars, *held* valid and infringed.—Turrill v. Illinois Cent. R. Co., Cases Nos. 14,270, 14,271.

Railroad Car: No. 389 for improvement in mode of supporting bodies of cars, and connecting them with truck, construed, and *held* infringed.—Imlay v. Norwich & W. R. Co., Case No. 7,012.

Railroad Car: Winan's patent of October 1, 1834, construed, *held* valid and infringed.—Winans v. New York & H. R. Co., Case No. 17,-864; Same v. Schenectady & T. R. Co., Id. 17,-865.

Railway-Track Broom: No. 180,717, for improvement, *held* valid.—Isaacs v. Abrams, Case No. 7,095.

Reed Organ: No. 87,241, for improvement, *held* valid and infringed.—Burdett v. Estey, Cases Nos. 2,145, 2,146.

Refrigerator: No. 13,803 (reissued No. 455), for improvement, *held* invalid for want of novelty.—Roberts v. Buck, Case No. 11,897; Same v. Ryer, Id. 11,913. CONTRA, see Roberts v. Harnden, Case No. 11,903.

Register: No. 76,646, for a conductor's register of fares and tickets, construed, and *held* not infringed.—Railway Register Mfg. Co. v. Highland St. Ry. Co., Case No. 11,535.

Revolver: No. 30,990, for an improvement, *held* valid, on proof of priority of invention over No. 28,951 (reissued as No. 1,268).—Smith v. Allen, Case No. 12,999.

Rocking-Chair: No. 1,531, for improvement, *held* invalid.—Bean v. Smallwood, Case No. 1,-173.

Rubber: Ayling's patent for improved treatment of caoutchouc *held* valid.—Ayling v. Hull, Case No. 686.

Rubbing Machine: Nos. 75,217 and 75,218, for an apparatus for exercise, *held* infringed by Wood's patent for an improved apparatus for treating diseases by mechanical movement.—Taylor v. Wood, Case No. 13,808.

Rubbing Machine: No. 77,933, for an oscillating rubbing machine for medical uses, *held* infringed by Wood's patent for an improved apparatus for treating diseases by mechanical movement.—Taylor v. Wood, Case No. 13,808.

Ruffle: No. 28,244, for improvement in manufacture, construed.—Magic Ruffle Co. v. Douglas, Case No. 8,948; Same v. Elm City Co., Id. 8,949.

Ruled Paper: No. 158,249 *held* invalid.—Cone v. Morgan Envelope Co., Case No. 3,096.

Saddle: The Dixon patent for improvement, *held* invalid.—Dixon v. Moyer, Case No. 3,931.

Safe: No. 3,117, for application of plaster of Paris, *held* valid.—Adams v. Edwards, Case No. 53.

Sand Cutting: No. 108,408, for improvement in cutting and engraving stone, metal, glass, etc., *held* valid and infringed.—Tilghman v. Morse, Case No. 14,044.

Sawmill: No. 51,310, for improvement, *held* valid and infringed.—Hamilton v. Ives, Case No. 5,982; Same v. Rollins, Id. 5,988.

Screw Auger: No. 56,869, for improved machine for swaging the heads of screw augers, *held* valid and infringed.—Jennings v. Pierce, Case No. 7,283.

Screw Peg: No. 85,374, for a self-clinching metallic screw peg for fastening soles of shoes, *held* valid, but not infringed.—Estabrook v. Dunbar, Case No. 4,535.

Seat: Nos. 134,486, 163,537, for improvement in show and portable seats and circus seats, *held* not infringed.—Price v. Kelley, Case No. 11,413.

Seed Drill: Nos. 30,685, 31,819, for improvements, construed, and *held* not infringed.—Moore v. Thomas, Case No. 9,776.

Seed Planter; Patent No. 12,231 *held* not infringement.—Case v. Brown, Case No. 2,488.

Seed Planter: No. 26,410, for improvement, construed and limited, and *held* not infringed.—Trader v. Messmore, Case No. 14,132.

Seed Planter: Nos. 88,971, 91,144, for machines for sowing seed, *held* valid and infringed.—Holbrook v. Small, Case No. 6,595.

Sewing Machine: Anti-friction surfaces for thread *held* not patentable.—Ex parte Berry, Case No. 1,353.

Sewing Machine: Gibbs' automatic or self-feeder *held* not equivalent to Johnson's hand-feeder.—Gibbs v. Johnson, Case No. 5,384.

Sewing Machine: Priority awarded to Johnson over Gibbs for chain stitch.—Gibbs v. Johnson, Case No. 5,384.

Sewing Machine: Munson's claim for tucking gauge *held* anticipated by patent No. 11,-615.—Ex parte Munson, Case No. 9,933.

Sewing Machine: Patent to Robertson for improvement construed, and *held* valid and infringed.—Dibble v. Augur, Case No. 3,879.

Sewing Machine: No. 2,135, for improvement, construed, and *held* infringed.—Potter v. Braunsdorf, Case No. 11,321.

Sewing Machine: No. 4,750, to Howe, for improvement, *held* valid and infringed.—Howe v. Morton, Case No. 6,769; Same v. Underwood, Id. 6,775; Same v. Williams, Id. 6,778.

Sewing Machine: No. 7,776 (reissued Nos. 345, 346), for improvement, construed, *held* valid and infringed.—Potter v. Davis Sewing-Mach. Co., Case No. 11,324; Same v. Holland, Id. 11,-330; Same v. Muller, Id. 11,334; Same v. Schenck, Id. 11,337; Same v. Whitney, Id. 11,-341; Same v. Wilson, Id. 11,342.

Sewing Machine: No. 10,597 (reissued No. 355), for improvement, *held* valid and infringed.—Johnson v. Root, Cases Nos. 7,410, 7,411.

Sewing Machine: No. 10,974 *held* not infringed.—Singer v. Wooster, Case No. 12,901a.

Sewing Machine: No. 16,030, for an improvement, construed, and *held* valid and infringed.—Singer v. Braunsdorf, Case No. 12,897.

Sewing Machine: No. 26,205, relating to braiding attachments, construed, and *held* not infringed.—Dibble v. Sibley, Case No. 3,883.

Sewing Machine: Nos. 28,633 and 40,084 (reissued No. 3,218), for improved tucker, construed, and *held* not infringed.—Fuller v. Yentzer, Case No. 5,151.

Sewing Machine: No. 29,785, for improvement, *held* valid and infringed.—Haskell v. Shoe Mach. Mfg. Co., Case No. 6,194.

Sewing Machine: No. 37,033, for improvement in machines for filling and crimping, *held* valid and infringed.—Elm City Co. v. Wooster, Case No. 4,415.

Sewing Machine: No. 53,927, for an improvement for stitching the sweat cloths to hats, construed, and *held* valid.—Sanford v. Merrimack Hat Co., Case No. 12,313.

Sewing Silk: No. 173,125, for an improved method of putting up sewing silk, *held* void because of anticipation.—Knowlton v. Holland, Case No. 7,904.

Shade Roller: No. 11,638, for improvement in spring rollers, *held* valid and infringed.—Bray v. Hartshorn, Case No. 1,820.

Shears: No. 1,092, for improvement in tailors' shears, *held* valid and infringed.—Heinrich v. Luther, Case No. 6,327.

Sheep-Shears: No. 42,572 (reissued No. 5,701), for improvement, *held* valid and infringed.—Earle v. Harlow, Case No. 4,246.

Shingle Machine: No. 11,858, for improvement, construed, and *held* valid, but not infringed.—Evarts v. Ford, Case No. 4,574.

Shingle Mill: Patent to Earle of December 28, 1822, for improvement, *held* valid and infringed.—Earle v. Sawyer, Case No. 4,247.

Shirt Cuffs: No. 56,737, for improvement in paper cuffs, *held* void in part and valid in part and infringed.—Union Paper-Collar Co. v. Van Deusen, Case No. 14,395.

Sieve: No. 106,597, *held* not infringed.—Adams & W. Mfg. Co. v. St. Louis Wire-Goods Co., Case No. 72.

Sizing Machine: No. 41,214, for machine for surface sizing fibrous materials, construed, and *held* not infringed.—Fuzzard Wadding Mfg. Co. v. Dickinson, Case No. 5,165.

Skirt: Doughty & Draper patent for woven skeleton skirts *held* valid.—Draper v. Moran, Kelly & Co., Case No. 4,070.

Skirt: No. 25,701 (reissued No. 870), for improvement in skeleton skirts, construed, and *held* not to be infringed.—Doughty v. West, Case No. 4,029. But see Doughty v. West, Case No. 4,028.

Skirt Hoop: No. 20,681, for improvement, construed, and *held* valid and infringed.—Doughty v. Day, Case No. 4,026.

Skirt Protector: No. 155,534 *held* valid against the defense of anticipation, and infringed.—MacDonald v. Blackmer, Cases Nos. 8,757, 8,758; Same v. Shepard, Id. 8,767; Same v. Sidenberg, Id. 8,768.

Soap: No. 118,440, for improvement, *held* valid and infringed.—Eastman v. Hinckel, Case No. 4,256.

Soda-Water Apparatus: No. 40,811, for improvement, *held* valid.—Blaisdell v. Tufts, Case No. 1,491.

Speaking-Tube Whistle: No. 103,406, for improvement, *held* infringed.—Woolcocks v. Many, Case No. 18,024.

Speeder for Roving Cotton: No. 3,089, for improvement in, *held* valid and infringed.—Davoll v. Brown, Case No. 3,662.

Spelling Block: No. 59,603, for improvement in cubical blocks, *held* not infringed.—Hill v. Houghton, Case No. 6,493.

Spike: Burden's patent for improvements in machinery for making hook or brad-headed spikes, *held* valid.—Troy Iron & Nail Factory v. Erastus Corning, Case No. 14,195.

Stamp: No. 91,108, for an improved government revenue stamp, *held* valid, but not infringed.—Fletcher v. Selden, Case No. 4,866.

Stamper: No. 114,068, for improvement in machines for punching and stamping sheet metal, *held* null and void, and ordered to be canceled.—Sturges v. Van Hagen, Case No. 13,570.

Steamboat Staging: No. 31,147, for improvement, *held* to be infringed.—Converse v. Cannon, Case No. 3,144.

Steam Engine: No. 13,145, for improvements in packing for pistons or stuffing boxes, limited, and *held* infringed.—Tuck v. Bramhill, Case No. 14,213.

Steam Engine: No. 21,059, for a bed plate, construed, *held* valid and infringed.—Blandy v. Griffith, Case No. 1,529. See, also, In re Blandy, Case No. 1,528.

Steam Gauge Cock: No. 13,563, for improvement, *held* valid and infringed.—Dalton v. Nelson, Case No. 3,549.

Steam Joint: No. 17,855, for rendering joints steam-tight, *held* valid and infringed.—Poillon v. Schmidt, Case No. 11,241.

Steam Regulator: Patents and reissue patent to Corliss, for improvements, construed, and *held* valid and infringed.—Corliss v. Wheeler & Wilson Mfg. Co., Case No. 3,233.

Stone Crusher: Blake's patent for an improved machine *held* not infringed by Hamilton's machine.—Blake v. Rawson, Case No. 1,499; Same v. Robertson, Id. 1,501.

But *held* infringed by machine constructed under Smith's patent.—Blake v. Robertson, Case No. 1,500.

Stone Crusher: No. 68,248, for an improved machine for crushing and washing stone and sand, *held* void for want of novelty and invention.—Smith v. Frazer, Case No. 13,048.

Stove: Barston's improvement *held* not anticipated.—Ex parte Barstow, Case No. 1,063.

Stove: Wilson's patent of October 10, 1834, for improvement, *held* invalid.—Wilson v. Janes, Case No. 17,811.

Stove: Patent for raising oven shelf by closing oven door *held* not to cover all methods of raising the shelf by closing the door.—Bridge v. Excelsior Mfg. Co., Case No. 1,859.

Stove: No. 1,157, to Buck for improvement, construed, and *held* valid and infringed.—Buck v. Gill, Case No. 2,080; Same v. Hermance, Id. 2,082.

Stove: No. 2,636, for an improvement in regulating the draft of stoves, construed in a charge to a jury.—Foote v. Silsby, Case No. 4,919.

Stove: No. 80,235, for an improved guard plate, *held* valid and infringed.—Stuart v. Shantz, Case No. 13,556.

Sugar: No. 37,548, for improvement in method of purifying and cleansing, construed in a charge to a jury.—Union Sugar Refinery v. Matthiesson, Case No. 14,399.

Suspender: Patent to Flagg, September 14, 1869, for an improvement in suspender ends, *held* valid and infringed.—Fisk v. Church, Case No. 4,826.

Suspender: Greeley's invention of an improvement, *held* to have been anticipated.—Ex parte Greeley, Case No. 5,745.

Switch: Littlefield's claim for an automatic railroad switch operated by an eccentric *held* to

be entirely destitute of novelty and invention. —In re Littlefield, Case No. 8,399.

Syringe: No. 28,196, for improvement in enema syringes, *held* invalid.—Richardson v. Lockwood, Cases Nos. 11,786, 11,787.

Telegraph: Patents to Morse, Nos. 1,647 (reissues Nos. 79 and 117), and 4,453 (reissue No. 118), and 6,420, *held* to cover both the result and the process, and to be valid and infringed. —Morse v. O'Reilly, Case No. 9,859; Same & Bain Tel. Case, Id. 9,861.

Telegraph: The Morse patents of June 20, 1840, and April 11, 1846, and their reissues, for electro-magnetic telegraphs, construed, and *held* not infringed by the House patent of June 13, 1848.—Smith v. Downing, Case No. 13,036.

Telegraph: No. 42,842 (reissued, No. 3,335), for improvement in electro-magnetic telegraph, *held* void for want of novelty.—Day v. Bankers' & Brokers' Tel. Co., Case No. 3,672.

Telegraphy: Morse's claim (patent No. 6,420) for a new system construed, and *held* not to interfere with Bain's claim (patent No. 6,328).— Bain v. Morse, Case No. 754.

Thistle Digger: Boughton's invention *held* not anticipated by Hilton's invention.—In re Boughton, Case No. 1,696.

Thread: No. 26,415, for improvement in machines for winding thread on spools, *held* valid. —Willimantic Linen Co. v. Clark Thread Co., Case No. 17,763.

Threshing Machine: No. 542, for improvement, *held* valid and infringed.—Pitts v. Wemple, Case No. 11,194; Same v. Whitman, Id. 11,196.

Tin Can: No. 71,680, for improvement in machine for manufacture, *held* void for want of novelty.—Barry v. Gugenheim, Case No. 1,061.

Tobacco: No. 140,020, for improvement in plug and bunch tobacco, *held* valid.—Eppinger v. Richey, Case No. 4,505.

Topsail Yard: No. 11,125, for "extra yards for topsails," *held* valid and infringed.—Howes v. Nute, Case No. 6,790.

Torpedo: No. 47,458, for improvement in explosive torpedoes in artesian wells, *held* valid.— Roberts v. Reed Torpedo Co., Case No. 11,910.

Towboat: Patent to John L. Sullivan for improvement *held* invalid for want of invention.— Sullivan v. Redfield, Case No. 13,597.

Traveling Bag: Nos. 56,801 and 83,212, for improvements, *held* valid and infringed.—Roemer v. Logowitz, Case No. 11,996; Same v. Simon, Id. 11,997.

Trunk: Vogler's patent for a removable hinged tray *held* infringed by Plumer's patent. —Vogler v. Semple, Case No. 16,987.

Truss: Patent to Hull, *held* valid and infringed.—Hull's Truss, Case No. 6,860.

Truss: No. 70,324, for a truss and supporter, *held* invalid for want of novelty.—Elastic Truss Co. v. Page, Case No. 4,325.

Tubing: No. 46,507, for improved flexible tubing for illuminating gas, *held* valid and infringed. —Taylor v. Archer, Case No. 13,778.

Type: No. 55,299, for improvement in the construction and manufacture of printing type, *held* not infringed.—Hudson v. Draper, Case No. 6,834.

Umbrella Case: No. 149,480, for improved machine for fixing metallic rings to umbrella cases, *held* valid.—Odiorne v. Denney, Case No. 10,431.

Umbrella Rib: No. 39,210, for improvement in tempering, defined and *held* valid and infringed.—American Mfg. Co. v. Lane, Case No. 304.

Valve: Patent to Jenkins, for improvement, *held* valid and infringed.—Jenkins v. Johnson, Case No. 7,271.

Valve: No. 2,631 *held* not infringed.—Sickels v. Youngs, Case No. 12,838. But see Sickels v. Gloucester Mfg. Co., Case No. 12,841.

Valve: No. 4,199, for an improvement in cutoff valves, *held* valid and infringed.—Sickels v. Borden, Case No. 12,832; Same v. Falls Co., Id. 12,834; Same v. Rodman, Id. 12,836; Same v. Tileston, Id. 12,837. CONTRA, see Sickels v. Mitchell, Case No. 12,835.

Valve: No. 7,755 (reissued No. 255), for improved valves for governors, *held* valid and infringed.—Judson v. Moore, Case No. 7,569.

Valve: No. 102,187, for an improvement in stop valves for petroleum packages, construed, and *held* not infringed.—Meissner v. Devoe Mfg. Co., Case No. 9,397.

Vulcanizing Rubber: "Tin foil" and "oil" patents, for improved methods, *held* valid.—Coppenhusen v. Folke, Case No. 3,215a.

Vulcanizing Rubber: The description under letters patent No. 11,608 as a process for working over vulcanized rubber is in substance the same as the description in the reissue No. 3,531. —Carew v. Boston Elastic Fabric Co., Case No. 2,397.

Wagon Gearing: No. 16,648 (reissued No. 6,660), for improvement, *held* valid and infringed. —Halsey v. Garlick, Case No. 5,965.

Wagon Reach: No. 69,789, for improvement, *held* invalid for want of novelty.—Flood v. Hicks, Case No. 4,877.

Watch: No. 61,207 (reissued No. 4,334), for improvement in stem-setting watches, *held* valid and infringed.—Jurgensen v. Magnin, Case No. 7,586.

Watchmen's Time Detector: No. 40,048 and reissue No. 3,869, for improvement in, *held* valid and infringed.—Buerk v. Valentine, Case No. 2,109.

Watchmen's Time Detector: No. 48,048, for improvement in, *held* valid and infringed.—Buerk v. Imhaeuser, Case No. 2,106.

Water-Cooling Pitcher: Hebbard's invention, *held* patentable.—In re Hebbard, Case No. 6,314.

Water Wheel: Patent to Parker of October 19, 1829, for a percussion and reaction water wheel, construed, and *held* valid and infringed. —Parker v. Haworth, Case No. 10,738.

Water Wheel: No. 2,708, for improvement, *held* valid, but not infringed.—Rich v. Close, Case No. 11,757.

Weather Strip: Leach's invention of strips with flanged edges, for tacking against door or window frame, *held* to possess patentable novelty.—Ex parte Leach, Case No. 8,155.

Weaver's Temple: Priority of invention of improvement awarded to Jillson.—Jillson v. Winsor, Case No. 7,321.

Well: Tillotson's patent for an improved filter well, *held* invalid for want of novelty.—Tillotson v. Munson, Case No. 14,051.

Well: No. 42,126, for improved method of putting down and operating bored wells, *held* not infringed.—Haselden v. Ogden, Case No. 6,190.

Well: No. 49,129 (reissued No. 6,337) and No. 130,871, for improvement in well tubes or drills, *held* valid and infringed.—Rouse v. Fletcher, Case No. 12,087.

Well: No. 73,425 (reissue No. 4,372), *held* valid.—Andrews v. Carman, Case No. 371; Same v. Wright, Id. 382.

Well Tube: No. 65,648, for improved well tube, *held* invalid. Case No. 3,338 reversed.— Craig v. Smith, Case No. 3,339.

Wheel: No. 17,520 (reissued No. 4,116), and No. 61,900 (reissued No. 5,366), for improved carriage wheels, construed in relation to each other, and validity determined.—Sarven v. Hall, Cases Nos. 12,369, 12,370.

Whip: No. 60,606, for improvement, *held* valid and infringed.—Strong v. Noble, Case No. 13,-543.

White Oxide of Zinc: Burrow's invention, of furnace for producing, *held* to have been anticipated by Wetherill's.—Burrows v. Lehigh Zinc Co., Case No. 2,207.

White Oxide of Zinc: No. 8,756, for improvement in manufacture, *held* invalid.—Jones v. Osgood, Case No. 7,487.

White Oxide of Zinc: No. 13,806, for process for making, *held* infringed.—Wetherill v. New Jersey Zinc Co., Case No. 17,463.

Wire Fence: No. 6,106, for an improvement, *held* not infringed.—New York Wire-Railing Co. v. Walker, Case No. 10,218.

Wood-Bending Machine: Blanchard's patent of December 18, 1849, reissued November 15, 1859; and Morris' patent of March 11, 1856, reissued May 27, 1862,—construed, and *held* to be for different machines.—Blanchard v. Puttman, Case No. 1,514.

Wood-Bending Machine: No. 14,405 (reissue No. 1,312), for improvement, construed, and *held* valid.—Morris v. Barrett, Case No. 9,827; Same v. Royer, Id. 9,835.

Wood Pulp: No. 17,387 defined, and *held* valid and infringed.—American Wood-Paper Co. v. Fibre Disintegrating Co., Case No. 320; Same v. Glen's Falls Paper Co., Id. 321; Buchanan v. Howland, Id. 2,074.

Wood Pulp: No. 21,161, for improvement in reducing wood to paper pulp, *held* valid and infringed.—Miller v. Androscoggin Pulp Co., Case No. 9,559.

Wood Pulp: Nos. 25,418 and 38,901 defined and construed.—American Wood-Paper Co. v. Fibre Disintegrating Co., Case No. 320.

Wringer Roll: No. 101,994 (reissued No. 5,-081), for an improvement in rubber rolls for wringers, *held* valid, but not infringed.—Forsyth v. Clapp, Case No. 4,949.

Yarn Coloring: No. 7,446 (reissue No. 217), for an improvement in apparatus for parti-coloring yarn, *held* not infringed.—Smith v. Higgins, Case No. 13,060.

§ 267. Reissue patents.

Adjustible Fastener: Reissue No. 4,870, for fish-plate fastening, *held* invalid, as being for a different invention than that described in the original patent.—Johnson v. Flushing & N. S. R. Co., Case No. 7,384.

Auger: Reissue No. 5,624, for an improvement in machinery for manufacturing curved or gauge-lip augers, construed, and *held* valid.—Bruff v. Ives, Case No. 2,050.

Billiard Table Cushion: Reissue No. 2,511, for improvement in, *held* to be for the process of making the cushion, and not for the cushion.—Collender v. Bailey, Case No. 2,998.

Such patent *held* to be infringed.—Collender v. Came, Case No. 2,999.

Boiler: Reissue No. 3,618 (original No. 93,-244), for feed-water heater and filter, *held* valid and infringed.—Stilwell & Bierce Mfg. Co. v. Cincinnati Gaslight & Coke Co., Case No. 13,-453.

Boiler: Reissue No. 4,467, for improvement in boilers for ranges, stoves, etc., *held* invalid.—Scaife v. Magens, Case No. 12,426a.

Bottle Machine: Reissue No. 5,903 *held* invalid for want of novelty.—Boston Elastic Fabrics Co. v. East Hampton Rubber-Thread Co., Case No. 1,675.

Brace: Reissue No. 6,350 (original No. 62,-232), for improvement in stocks or braces for bits and other tools, *held* valid and infringed.—Miller's Falls Co. v. Backus, Case No. 9,598.

Bracelet: Reissue No. 4,192, for improvement in plated metal bracelets, *held* valid.—Barclay v. Thayer, Case No. 978.

Buckle: Reissue No. 7,129 (original No. 61,-628), for improvement, *held* valid and infringed.—Schuessler v. Davis, Case No. 12,485.

Bung Bushing: Reissues Nos. 5,026, 5,027, *held* to be infringed.—Cornell v. Littlejohn, Case No. 3,238.

Bung: Reissue No. 5,937 (original No. 148,-747), *held* not infringed.—Pentlarge v. Pentlarge, Case No. 10,965a.

Carriage Body and Seat: Reissue No. 4,780, for improvement, *held* valid.—Comstock v. Sandusky Seat Co., Case No. 3,082.

Caustic Alkali: Reissues Nos. 2,569, 2,570, 2,571, for improvements in the manufacture and improved process of putting up, *held* valid.—Pennsylvania Salt Mfg. Co. v. Gugenheim, Case No. 10,954; Same v. Thomas, Id. 10,956.

Centrifugal Machine. Reissue No. 2,845 (original No. 63,770), for improvement in centrifugal machines for draining sugar and other substances, *held* valid and infringed.—Weston v. Nash, Case No. 17,454.

Chain: Reissue No. 5,774 (original No. 147,-045), for improvement in chains and chain links for necklaces, etc., *held* valid and infringed.—Mulford v. Pearce, Case No. 9,907.

Cheese Press: Reissue No. 5,256, for improvement in, *held* valid.—Boomer v. United Power Press Co., Case No. 1,638.

Chime Toy: Reissue No. 150,933, *held* valid.—Abbe v. Clark, Case No. 5.

Cigar Mold: Reissue No. 6,662 (original No. 155,806), for improvement, *held* valid and infringed.—Miller & Peters Mfg. Co. v. Du Brul, Case No. 9,597.

Circular Saw: Reissue No. 8,070, for improvement, *held* void as being for an invention different from the original patent.—Curtis v. Branch, Case No. 3,499.

Clothes Wringer: Reissue No. 2,829 (original No. 21,029), for improvement, construed as limited by prior patents, and *held* not infringed.—Metropolitan Washing-Mach. Co. v. Providence Tool Co., Case No. 9,507.

Clothes Wringer: Reissue No. 5,223 (original No. 61,680), for improvement, construed, limited, and *held* not infringed.—Metropolitan Wringing-Mach. Co. v. Young, Case No. 9,508.

Coal Scuttle: Reissue No. 3,438, for improvement in manufacture, *held* not infringed.—Habeman v. Whitman, Case No. 5,885a.

Collar: Reissue No. 1,646 (original No. 38,-961), *held* void for want of novelty.—Union Paper-Collar Co. v. Van Deusen, Case No. 14,-395.

Collar: Reissue No. 1,828 (original No. 11,376), for improvement, *held* valid and infringed.—Union Paper-Collar Co. v. Van Deusen, Case No. 14,395.

Collar: Reissues Nos. 1,980, 1,981 (original No. 23,771), *held* invalid for want of novelty.—Union Paper-Collar Co. v. Van Deusen, Case No. 14,395.

Collar: Reissue No. 2,309 (original No. 38,-664), for improvement in paper shirt collars, *held* void for want of novelty.—Union Paper-Collar Co. v. Van Deusen, Case No. 14,395.

Collar: Reissue No. 5,109 (original No. 11,-376), for improved shirt collar, *held* valid and infringed.—Union Paper-Collar Co. v. White, Case No. 14,396.

Collar and Cuff: Reissue No. 5,259 (original No. 23,771), for paper collars and cuffs, *held* void for want of novelty.—Union Paper-Collar Co. v. Leland, Case No. 14,394.

Corset: Reissue No. 6,100 (original No. 97,418), for improvement, *held* valid and infringed.—Thomson v. Jacobs, Case No. 13,982.

Corset Spring: Reissue to Barnes, for improvement, construed, and *held* valid and infringed.—Barnes v. Straus, Case No. 1,022.

Crucible: Reissue No. 6,166 (original No. 49,140), for improvement in the manufacture of plumbago crucibles, *held* void for want of novelty.—Pickering v. McCullough, Case No. 11,121.

Cultivator: Reissue No. 3,932, for improvement in, *held* valid and infringed.—Calkins v. Bertrand, Case No. 2,317.

Enameled Ware: Reissue No. 7,779 (original No. 177,953), for improvement in the manufacture of enameled iron ware, *held* valid and infringed.—St. Louis Stamping Co. v. Quinby, Case No. 12,240.

Explosive Compound: Reissues Nos. 4,818, 4,819, *held* to be invalid as for compounds where the original patent was for a process.—Giant Powder Co. v. California Powder Works, Case No. 5,379.

Explosive Compound: Reissue No. 5,799, for combination of nitroglycerin with an absorbent substance, *held* valid and infringed.—Atlantic Giant Powder Co. v. Goodyear, Case No. 623; Same v. Mowbray, Id. 624; Same v. Parker, Id. 625; Same v. Rand, Id. 626.

Firearm: Reissue No. 60 for improvement in locks, *held* valid.—Allen v. Sprague, Case No. 238.

Fire Extinguisher: Reissue No. 4,994 (original No. 88,844), for improvement, *held* void for want of novelty.—Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., Case No. 10,337.

Fire Gong: Reissue No. 6,831, for combination with fire-alarm gong, of attachment automatically releasing horses from stalls, *held* infringed.—Bragg v. San Jose, Case No. 1,803.

Flour: Reissue No. 4,712, for improvement in cooling and drying meal, *held* valid.—Herring v. Nelson, Case No. 6,424.

Flour: Reissue No. 5,841 for manufacture of new process by purification of "middlings" invalid as broader than original.—American Middlings Purifier Co. v. Atlantic Milling Co., Case No. 306.

Fluting: Reissue No. 3,000, for an improvement in fluting machines, construed, and *held* valid and infringed. — King v. Maudelbaum, Case No. 7,799; Same v. Werner, Id. 7,809; Kursheedt v. Same, Id. 7,947.

Fluting: Reissue No. 3,001, for an improvement in fluted puffing, *held* void for want of novelty. — King v. Werner, Case No. 7,809. CONTRA, see King v. Maudelbaum, Case No. 7,799.

Fly Trap: Reissue No. 6,493, for improvement, *held* valid and infringed. — Harper v. Cooke, Case No. 6,086.

Gate: Reissue No. 2,667, for improvement in farm gates, *held* invalid.—Wright v. McMillan, Case No. 18,083.

Glue: Reissue No. 4,072, for improvement in manufacture, *held* invalid for lack of invention.—Milligan & Higgins Glue Co. v. Upton, Case No. 9,607.

Grain Separator: Reissue No. 4,793, for improvement, *held* valid and infringed.—Howes v. McNeal, Case No. 6,789.

Gutter: Reissue No. 6,675, for machine for making, *held* not infringed.—Buffum v. Oakland Mfg. Co., Case No. 2,113.

Hand Car: Reissue No. 5,274, for improvement, construed to cover combinations only, and not infringed by machine omitting an essential part.—Brown v. Hinkley, Case No. 2,012.

Harness: Reissue No. 5,155, for dies for finishing rubber coated mountings, *held* valid.—Albright v. Celluloid Harness-Trimming Co., Case No. 147.

Harvester: Reissues Nos. 72, 1,682, and 1,683, for improvements, *held* valid and infringed.—Seymour v. Marsh, Case No. 12,687. CONTRA, see Seymour v. Osborne, Case No. 12,688.

Harvester: Reissue No. 239, for improvements in reaping machines construed, and *held* not infringed.—McCormick v. Manny, Case No. 8,724; Same v. Seymour, Id. 8,727.

Harvester: Reissues Nos. 875, 877, 878, 879, 2,610, and 2,632, for improvement, *held* valid.—Wheeler v. Clipper Mower, etc., Co., Case No. 17,493; Same v. McCormick, Id. 17,499.

Harvester: Reissue No. 1,211, for improvements in combined harvesting machines, construed, and *held* void for want of invention.—Kirby v. Beardsley, Case No. 7,837.

Harvester: Reissue No. 1,262, for improvements in grain harvesters, as restricted to valid claims, *held* not infringed.—Kirby v. Dodge & Stevenson Mfg. Co., Case No. 7,838.

Harvester: Reissue No. 2,254 (original No. 37,630), for an improvement in harvesters, consisting in a raking and reeling apparatus, construed, and *held* not infringed.—Marsh v. Dodge & Stevenson Mfg. Co., Case No. 9,115.

Harvester: Reissues Nos. 2,608, 723, 724, 726, for improvements, *held* valid.—Aultman v. Holley, Case No. 656.

Harvester: Reissue No. 3,372 (original No. 19,377), for improvement, *held* valid.—Sprague v. Adriance, Case No. 13,248.

Harvester: Reissues Nos. 4,484, 4,672, and 4,673, for improvements in grass cutting and harvesting machines, *held* valid and infringed.—Ketchum Harvesting Mach. Co. v. Johnston Harvester Co., Case No. 7,741.

Hat: Reissue to Modena Hat Company for an improved fabric for hats, bonnets, etc., *held* not infringed.—Baldwin v. Schultz, Case No. 804.

Hat: Reissue No. 2,942, for machine for making hat bodies, *held* valid.—Wells v. Gill, Case No. 17,395; Same v. Jacques, Id. 17,399.

Such patent, *held* infringed.—Wells v. Gill, Case No. 17,393.

Such patent *held* not infringed.—Wells v. Hagaman, Case No. 17,396.

Hinge: Reissue No. 4,006 (original No. 53,251), for improvement in the mode of hinging covers to stoves and open-topped vessels, construed.—Perry v. Littlefield, Case No. 11,008.

Hook: Reissue No. 2,166 (original No. 21,879), for an improvement in self-mousing or snap hooks, *held* valid and infringed.—Middletown Tool Co. v. Judd, Case No. 9,536.

Horse Power: Reissue No. 1,322, for improvement, *held* not infringed.—Gray v. Hulshizer, Case No. 5,717.

Horse Rake: Reissues Nos. 1,912–1,915, for improvement, *held* valid and infringed.—Hoffheins v. Brandt, Case No. 6,575.

Hose Coupling: Reissue No. 3,768, for improvement in, *held* void as for worthless invention.—Bliss v. Brooklyn, Case No. 1,546. CONTRA, see Bliss v. Gaylord Patent Coupling & Manufacturing Co., Case No. 1,547; Same v. Haight, Id. 1,548.

Such patent *held* infringed.—Bliss v. Gaylord Patent Coupling & Manufacturing Co., Case No. 1,547.

Hub: Reissue No. 5,366, for improvement in hubs of wagon wheels, *held* valid and infringed. —Hall v. Jones, Case No. 5,937.

India Rubber Shoe: Reissue No. 4,977 (original No. 111,962), for an improvement, construed, and *held* void for want of novelty.—Meyer v. Pritchard, Case No. 9,517.

Inking Roller: Reissues Nos. 1,771, 1,772, for composition for printer's inking rollers, *held* valid, but not infringed.—Francis v. Mellor, Case No. 5,039.

Kettle: Reissues Nos. 3,995, 3,996, for improvement in machine for making kettles, and improvement in kettles, *held* valid and infringed. —Waterbury Brass Co. v. Miller, Case No. 17,-254.

Knob Latch: Reissue No. 3,909, for improvement in reversible knob latches, *held* valid.—Norwalk Lock Co. v. Berger, Case No. 10,355.

Lamp: Reissue No. 325 (original No. 8,154), for improvement, *held* invalid for want of invention.—Sangster v. Miller, Case No. 12,320.

Lamp: Reissue No. 3,747, for devices for removing the globe, *held* invalid.—Dane v. Illinois Mfg. Co., Case No. 3,558.

Lamp: Reissue No. 7,417, for improvement in, *held* invalid.—Blackman v. Hibbler, Case No. 1,471.

Lamp: Reissue No. 7,511 (original No. 182,-973), for a combination of a transparent shade holder and shade to perform the functions of a chimney, *held* valid.—Schneider v. Jackson, Case No. 12,469. CONTRA, see Schneider v. Thill, Case No. 12,470a.

Lamp Chimney: Reissue No. 7,069, for an improved attachment, *held* valid and infringed. —Kerosene Lamp Heater Co. v. Littell, Case No. 7,724.

Lantern Deflector: Reissue No. 2,765 *held* void, as involving no invention.—Dane v. Chicago Mfg. Co., Case No. 3,557.

Lathe: Reissue No. 1,400, for machine for shaping irregular surfaces in wood, *held* not infringed by the machine patented to Oakes for cutting irregular forms.—Hale v. Stimpson, Case No. 5,915.

Locomotive: Reissues Nos. 5,050, 5,051 (original No. 120,637), for improvement in spark-arresters and consumers for locomotive engines, construed, and *held* valid and infringed.—Pike v. Providence & W. R. Co., Case No. 11,163.

Loom: Reissue No. 947, for an improvement in looms for weaving figured fabrics, construed, and *held* valid, but not infringed.—Crompton v. Belknap Mills, Case No. 3,406.

Loom: The second claim of reissue No. 5,150, *held* not void for want of novelty.—Carstaedt v. United States Corset Co., Case No. 2,467. But see Carstaedt v. United States Corset Co., Case No. 2,468.

Lubricator: Reissue No. 5,328, for an improvement, *held* anticipated by No. 111,881.—Siebert v. Garratt, Case No. 12,845.

Mattress: Reissue No. 2,092, for a spring mattress, *held* valid and infringed.—Kittle v. Frost, Case No. 7,856.

Mill: Reissue No. 3,794, for an improved smut mill and separator, construed, limited, and *held* not infringed.—Knox v. Murtha, Case No. 7,911.

Mitre: Reissue No. 3,445, for improvement in mitre machines, *held* valid, and infringed by a machine made according to the Hall patent of August 17, 1858.—La Baw v. Hawkins, Case No. 7,960.

Molding: Reissue No. 243 (original No. 5,575), for improvement in machinery for making, construed.—Serrell v. Collins, Case No. 12,672.

Mop-Head: Reissue No. 3,682 (original No. 22,990), for improved mop-head, construed, and *held* not infringed.—Taylor v. Garretson, Case No. 13,792.

Mowing Machine: Reissue No. 3,460, for improvement, *held* valid and infringed.—Jackson v. Breck, Case No. 7,132.

Musical Instrument: Reissue No. 484, for improvement in reed musical instrument, *held* void, as broader than original.—Cahart v. Austin, Case No. 2,288.

Organ: Reissue No. 3,665, for tremolo attachment, *held* valid and infringed.—Hitchcock v. Shoninger Melodeon Co., Case No. 6,537; Same v. Tremaine, Id. 6,538. But see Saxe v. Hammond, Case No. 12,411.

Oven: Reissue to Ball, for improvements, *held* invalid as broader than original.—Ball v. Withington, Case No. 815.

Paint: Reissue No. 4,598 (original No. 40,515), for a paint to prevent the fouling of ship's bottoms, *held* valid, but not infringed.—Wonson v. Gilman, Case No. 17,933. But see Tarr v. Webb, Case No. 13,757.

Paint: Reissue No. 4,599 (original No. 40,515), for paints for ship's bottoms, *held* valid and infringed.—Tarr v. Folsom, Case No. 13,756; Wonson v. Peterson, Id. 17,934.

Paper Bag: Reissue No. 920 (original No. 17,-184), and No. 38,452, for improvement in machines for making paper bags, construed, and *held* valid and infringed in part.—Union Paper-Bag Co. v. Nixon, Cases Nos. 14,386, 14,391.

Pavement: Reissue No. 4,106, for Belgian pavement, *held* invalid for want of novelty.—Guidet v. Brooklyn, Case No. 5,858. CONTRA, see Guidet v. Barber, Case No. 5,857.

Pavement: Reissue No. 4,364 (original No. 105,599), for improved concrete pavement, *held* valid and infringed. — Schillinger v. Gunther, Case No. 12,456.

Pick: Reissue No. 6,951, for a method of forming the eyes of picks by drawing them down on a mandrel between rolling dies, which completely encompass the walls of the eye, *held* valid and infringed.—Klein v. Park, Case No. 7,868.

Plane: Reissue No. 6,498 (original No. 67,-398), for improvement, *held* valid and infringed. —Stanley Rule & Level Co. v. Bailey, Case No. 13,287.

Plough: Reissue No. 6,824, for improvement in attachments, construed, and *held* infringed.—Gale Mfg. Co. v. Prutzman, Case No. 5,191a.

Plug Tobacco: Reissue No. 7,362, for improvement, *held* invalid for want of patentable invention.—Lorillard v. Ridgway, Case No. 8,-511.

Powder: Reissue No. 2,769 (original No. 41,-097), for improvement in putting up powders, *held* void for want of novelty.—Sawyer v. Bixby, Case No. 12,398.

Pump Filter: Reissue of letters patent No. 5,804 are valid as to the first claim, but void as to the second claim.—Christman v. Rumsey, Case No. 2,704.

Pump: Reissue to Barker, for improvements in buckets for chain pumps, *held* infringed by buckets made under Stowe's patent.—Barker v. Stowe, Case No. 994.

Pump: Reissue No. 6,962, for improved apparatus for cleaning privies, *held* valid.—Odorless Excavating Apparatus Co. v. Clements, Case No. 10,437.

Railway Switch: Reissue No. 7,690, for improvement in safety railroad switches, *held* valid.—Cooke v. New York Cent. & H. R. R. Co., Case No. 3,176.

Reaping Machine: Reissues Nos. 449, 450, 451, 742, 917, for improvements, *held* valid and infringed.—Hussey v. Bradley, Case No. 6,946; Same v. McCormick, Id. 6,948.

Reaping Machine: Ball *held* entitled to reissue of his reissue No. 832.—Ex parte Ball, Case No. 811.

Reflector: Reissues Nos. 3,826 and 3,827, for improved reflectors for gas lights, construed, and *held* valid and infringed.—Frink v. Petry, Case No. 5,128.

Register: Reissue No. 6,929, for improved fare register, *held* valid and infringed.—Railway Register Mfg. Co. v. Highland St. Ry. Co., Case No. 11,535.

Register: Reissue No. 7,120, for an improved fare register, construed, and *held* not infringed. —Railway Register Mfg. Co. v. Highland St. Ry. Co., Case No. 11,535.

Reservoir Cooking Stove: Reissue No. 5,435, for improvements, construed, and *held* infringed. —Bussey v. Wager, Case No. 2,231.

Rock Drill: Reissue No. 3,690, for improvement, construed, and *held* valid.—American Diamond Rock Boring Co. v. Sheldon, Case No. 296; Same v. Sullivan Mach. Co., Id. 298.

Roof: Reissue No. 2,684, for improved composition for roofing, *held* valid.—Plastic Slate-Roofing Joint-Stock Co. v. Moore, Case No. 11,-209.

Sash Lock: Reissue No. 6,693, for improvement, as construed, *held* not infringed.—Hopkins & Dickinson Mfg. Co. v. Corbin, Case No. 6,695.

Seat: Reissue No. 21, for improvement, *held* valid.—Allen v. New York, Case No. 232.

Seed-Hulling Machine: Reissue No. 1,299 *held* valid.—Birdsall v. McDonald, Case No. 1,-434.

But not infringed.—Birdsell v. Hagerstown Agricultural Implement Mfg. Co., Case No. 1,-436.

Seed Planter: Reissues Nos. 1,036–1,040 and 1,091–1,095 *held* invalid for want of novelty of invention.—Brown v. Selby, Case No. 2,030.

Sewing Machine: Reissue and extension of Bachelder, *held* infringed by machines constructed under reissues Nos. 346 and 414.—Bachelder v. Moulton, Case No. 706.

Sewing Machine: Reissue No. 1,562 (original No. 11,971), for improvement in relation to shuttle driver, construed, and *held* valid.—Parham v. American Buttonhole, Overseaming & Sewing-Mach. Co., Case No. 10,713.

Sewing Machine: Reissue No. 6,550, for improvements, *held* valid and infringed.—Thomas v. Shoe Machinery Mfg. Co., Case No. 13,911.

Shade: Reissue No. 2,756, to Hartshorn, for improvement in spring fixtures, construed broadly, and *held* to be infringed.—Hartshorn v. Almy, Case No. 6,166; Same v. Shorey, Id. 6,167; Same v. Tripp, Id. 6,168.

Shawl Strap: Reissue No. 4,289 *held* invalid for want of novelty.—Crouch v. Roemer, Case No. 3,437. CONTRA, see Crouch v. Speer, Case No. 3,438.

Skate: Reissue No. 7,151 (original No. 28,-495), for improvement in mode of fastening to the feet, *held* valid and infringed.—Turrell v. Spaeth, Case No. 14,269.

Skirt and Bustle Stiffening: Reissue No. 501 (original No. 17,602), for improvement, construed, and *held* not infringed.—West v. Silver Wire & Skirt Mfg. Co., Case No. 17,425.

Slide for Extension Table: Claim of reissue letters No. 40,317 examined and limited, and certain claims therein *held* not to show patentable invention.—Carter v. Messinger, Case No. 2,478.

Soda-Water Apparatus: Reissue No. 2,711, for improvement, *held* valid in part, and infringed by apparatus constructed under patent to Matthews, Oct. 3, 1865.—Bigelow v. Matthews, Case No. 1,401.

Spinning Machine: Reissue No. 6,036, for improvement in bobbins and spindles, *held* valid and infringed.—Pearl v. Ocean Mills, Case No. 10,876.

Spoon and Fork: Reissue No. 2,682, for improvement, *held* valid and infringed.—Grosjean v. Peck, Stow & Wilcox Co., Case No. 5,841.

Spring: Reissue No. 4,202 (original No. 10,-280), for an improvement in combined India rubber and steel springs, *held* valid and infringed.—National Spring Co. v. Union Car Spring Mfg. Co., Case No. 10,051.

Square: Reissue No. 5,408, for improvements in machinery for graduating carpenters' squares, *held* valid and infringed.—Hart, B. & M. Mfg. Co. v. Sargeant, Case No. 6,156.

Stamp: Reissue division A, No. 4,143, for an improvement in post-office postmarking and canceling hand stamps, *held* valid.—Campbell v. James, Case No. 2,361.

Steam Gauge: Reissue No. 4,775 (original No. 101,583), for improvement, construed, and *held* not infringed.—United States Steam-Gauge Co. v. American Steam-Gauge Co., Case No. 16,794.

Steam Safety Valve: Reissue No. 58,962, as properly limited, *held* not infringed by patent No. 58,294.—Ashcroft v. Boston & L. R. Co., Case No. 577.

Steam Valve: Reissue No. 1,260 (original No. 4,199), for an improvement in tripping cut-off valves, *held* void, because for a different invention than that of the original patent.—Sickles v. Evans, Case No. 12,839.

Stone Crusher: Reissue to Blake, January 9, 1866, for improved machine, *held* valid and infringed.—Blake v. Eagle Works Mfg. Co., Case No. 1,494; Blake v. Stafford, Id. 1,504.

Stove: Reissue No. 3,523, for improvement in self-feeding coal stoves, *held* valid and infringed.—Henderson v. Cleveland Co-operative Stove Co., Case No. 6,351.

Stove: Reissue No. 6,979, for improvement in base-burning stoves, *held* valid and infringed. —Detroit Stove Works v. Michigan Stove Co., Case No. 3,834.

Tan Bark: Reissue No. 1,922, for improved process of extracting, *held* invalid.—Bridge v. Brown, Case No. 1,857.

Such patent *held* not infringed.—Bridge v. Brown, Case No. 1,858.

Tin Can: Reissue No. 1,804 *held* not invalid as broader than the original claim.—De-Florez v. Raynolds, Case No. 3,742.

Trunk: Reissue No. 7,149, for improvement in corner clamps or protectors for trunks, *held* invalid for want of novelty.—Gould v. Ballard, Case No. 5,635.

Vault: Reissue No. 303, for an improvement in vault covers, construed, and *held* not infringed.—Lake v. Fitzgerald, Case No. 7,993.

Ventilator: Reissue No. 5,786, for a method of cooling and ventilating rooms, construed, and *held* valid and infringed.—Lyman Ventilating & Refrigerator Co. v. Lalor, Case No. 8,632. CONTRA, see Lyman Ventilating & Refrigerator Co. v. Chamberlain, Case No. 8,631.

Vulcanized Rubber: Reissued patent No. 3,-531 did not embrace the invention of Charles Goodyear for the manufacture of vulcanized India rubber.—Carew v. Boston Elastic Fabric Co., Case No. 2,397.

Weaver's Harness: Reissue No. 5,282, for an improvement in machines for making weav-

er's harnesses, *held* infringed.—Kendrick v. Emmons, Case No. 7,694.

Whip Socket: Reissue No. 4,071 (original No. 52,439), for an improvement in whip sockets, construed, and *held* not infringed.—Merriam v. Drake, Case No. 9,461.

Whip Socket: Reissue No. 5,400 (original No. 70,627), for improvement in whip sockets for carriages, *held* valid and infringed.—Searles v. Van Nest, Cases Nos. 12,587, 12,587a.

Whip Socket: Reissue No. 5,713 (original No. 43,858), for attachments for fastening whip sockets to carriages, construed, and *held* not infringed.—Merriam v. Van Nest, Case No. 9,462.

Window Screen, Adjustable: Reissue No. 52,726 *held* invalid as too broad.—Adjustable Window-Screen Co. v. Boughton, Case No. 81.

Winnower: Reissue No. 306 (original No. 6,545), for improvement, construed, and *held* valid only in part.—Sanders v. Logan, Case No. 12,295.

Wire Staple: Reissue No. 2,183 (original No. 19,747), for improvement in wire staples adapted for use in making window blinds or screens, *held* valid and infringed.—Rogers v. Sargent, Case No. 12,020.

Wood Pulp: Reissues Nos. 1,448 and 1,449, for improvement, *held* invalid.—American Wood Paper Co. v. Heft, Case No. 322.

Wringer Roller: Reissue of April 18, 1865, for improvement, *held* valid.—Bailey Washing & Wringing Mach. Co. v. Lincoln, Case No. 750.

§ 268. Design patents.

Cheese Safe: Design patent *held* void for want of invention.—Northrup v. Adams, Case No. 10,328.

Design for Handle of Table Spoon and Fork: Patent to Gorham and others *held* not infringed.—Gorham Mfg. Co. v. White, Case No. 5,627.

Sieve: Design No. 4,637, for flaring rim, *held* invalid.—Adams & W. Mfg. Co. v. St. Louis Wire-Goods Co., Case No. 72.

Stove: Design patent No. 7,456 *held* valid.—Perry v. Starrett, Case No. 11,012.

PAUPERS.

Action or defense in forma pauperis, see "Costs," § 10.

PAYMENT.

I. REQUISITES AND SUFFICIENCY.

§ 1, What constitutes payment. § 2, Medium of payment—In general. § 3, —— Notes or coin. § 4, —— Confederate bonds and notes. § 5, Acceptances, notes, and checks—Of debtor. § 6, —— Of third person.

II. APPLICATION.

§ 7, General rules. § 8, By debtor. § 9, By creditor. § 10, In absence of application by parties. § 11, Secured and unsecured debts. § 12, Principal and interest. § 13, Rights of sureties. § 14, Presumptions.

III. OPERATION AND EFFECT.

§ 15, Discharge of debt. § 16, Discharge of interest.

IV. PLEADING AND EVIDENCE.

§ 17, Pleading. § 18, Issues and proof. § 19, Presumptions—In general. § 20, —— Lapse of time. § 21, Admissibility and sufficiency of evidence—In general. § 22, —— Receipts. § 23, Province of court and jury.

V. RECOVERY OF PAYMENTS.

§ 24, Right to recover in general. § 25, Fraud. § 26, Mistake of fact. § 27, Duress. § 28, Taxes, license fees, and assessments.

See, also, "Accord and Satisfaction"; "Compromise and Settlement"; "Tender."
Amount, see "Sales," § 8.
By one partner, see "Partnership," § 27.
Part payment within statute of limitations, see "Limitation of Actions," § 25.
Payment into court in admiralty, see "Admiralty," § 66.
Rights of assignee in bankruptcy, see "Bankruptcy," § 197.
Subrogation on payment, see "Subrogation."
Suspension, as act of bankruptcy, see "Bankruptcy," §§ 79–87.
To trustees, see "Trusts," § 17.

Of particular classes of obligations or liabilities.

See "Bills and Notes," §§ 81–84; "Customs Duties," §§ 55–59; "Execution," § 22; "Insurance," §§ 164–166; "Judgment," §§ 73–78; "Taxation," § 11.
Bottomry bond, see "Shipping," § 126.
Costs, see "Costs," § 27.
—— in admiralty, see "Admiralty," §§ 150–153.
Freight, see "Shipping," § 187.
Lays or shares in earnings of vessel, see "Seamen," § 151.
Legacies, see "Wills," § 46.
Liens, see "Maritime Liens," § 38; "Mechanics' Liens," § 6.
Premiums for insurance, see "Insurance," §§ 17, 31, 85–87.
Price of goods sold, see "Sales," §§ 28, 32.
—— of land sold, see "Vendor and Purchaser," § 13.
Wages of seamen, see "Seamen," §§ 115–120.

I. REQUISITES AND SUFFICIENCY.

§ 1. What constitutes payment.

A simple contract debt is not extinguished by taking new security, unless so agreed, or the security is of higher nature.—The Betsy and Rhoda, Case No. 1,366.

Where a higher security is given by the debtor, the law presumes, prima facie, that it is intended as an extinguishment of the debt; otherwise where the security is the bond of a third person.—United States v. Lyman, Case No. 15,647.

Inclosing money in a letter deposited in a post office, for the purpose of paying a debt, *held* a payment, under the circumstances, though it never reached the creditor.—Selman v. Dun, Case No. 12,648.

A deposit by a debtor of a sum of money with a third person for his creditor, who assented thereto, or gave the depositary a new credit, will discharge the original debtor.—Swift v. Hathaway, Case No. 13,698.

A note against one partner *held* paid by agreement of other partner to credit its amount on a note which he held against the payee, where the proper credits were made in the firm accounts.—Gwathney v. McLane, Case No. 5,882.

A bank held a note for collection, and, before it was due, received a deposit of money from one of the makers to pay it. *Held*, that the note remained unpaid, where the bank failed on the day on which it fell due, where the money was not actually applied to its payment.—Hulburt v. Squires, Case No. 6,855.

§ 2. Medium of payment—In general.

The word "dollars," as used in a note made in the United States, means lawful money of the United States.—Stoughton v. Hill, Case No. 13,501.

"Lawful money" of any state is equivalent to United States money.—Cocke v. Kendall, Case No. 2,929b.

In estimating freight, expressed in dollars, on goods shipped to England, the pound sterling is to be reckoned at its mercantile value in dollars in England.—Jelison v. Lee, Case No. 7,256.

Under a stipulation for payment in New York of an amount expressed in English money, "at the current rate of exchange" for bills on London, the amount payable is not calculated in gold, but in currency, at the current rate of bills on London, with interest at the New York rate.—Hus v. Kempf, Case No. 6,944.

A creditor suing for a balance due on account, payable in a foreign country, is entitled to be paid at the rate of exchange.—Grant v. Healey, Case No. 5,696.

A balance of account, for advances made at Boston, upon goods consigned to the plaintiffs at Trieste, *held* payable at Boston, and to be estimated at the par, and not at the rate of exchange.—Grant v. Healey, Case No. 5,696.

Under an act authorizing the court to settle the rate of exchange, witnesses may be examined to prove such rate.—Bond v. Grace, Case No. 1,622.

A person indebted in a certain sum of British sterling gave a bond for the amount in sterling generally, payable in Ireland. *Held* to be construed British sterling, but to carry Irish interest.—Bushby v. Camac, Case No. 2,226.

New York creditors were given notes payable in Illinois for collection, to apply the proceeds in payment of their debts. *Held*, that Illinois currency received in payment thereof was to be applied only at its value in New York.—Howe v. Wade, Case No. 6,777.

A payment in bank notes issued without authority of the bank is not valid where the party paying knew that fact at the time.—Cassedy v. Williams, Case No. 2,501.

§ 3. —— Notes or coin.

Foreign charter to pay freight "in cash" on delivery in New York *held* to mean in specie.—Gladstone v. Chamberlain, Cases Nos. 5,469, 5,470, 5,471.

A decree for freight payable in sterling money will be for the amount of such money in gold and silver coin of the United States.—Forbes v. Murray, Case No. 4,928.

A contract to pay 1,000 pounds sterling, lawful money of Great Britain, agreed to be worth a certain sum "in the gold coin of the United States." is solvable only in gold coin.—The Edith, Case No. 4,281.

The recovery on such contract must be for so many dollars in gold and silver coin as are equivalent, at the rate agreed upon, to the pounds sterling.—The Edith, Case No. 4,281.

An express contract to pay in gold, made since the passage of the legal tender acts, is valid and enforceable.—The Edith, Case No. 4,281; The Emily B. Souder, Id. 4,454, 4,456.

On a shipment at St. John for a voyage to terminate in the United States for wages at "$25 per month," the seaman is not entitled to an amount in our currency equal to the value of the contract price here, if paid in the currency of St. John.—Trecartin v. The Rochambeau, Case No. 14,163.

Where a debt for advances to a vessel in a foreign port is contracted in gold, the decree against the vessel therefor will be for the amount in gold.—The Emily B. Souder, Case No. 4,454.

An agreement for payment of wages in pounds *held* to mean pounds sterling, and not the currency of the locality, which was greatly depreciated.—Quimby v. The Euphemia, Case No. 11,512.

Reservation in 1779 of an annual rent of £26, current money in Virginia, permits payments in paper money while current, but requires gold and silver afterwards.—Marsteller v. Faw, Case No. 9,137.

While a company may issue promissory notes, in the form of bank notes, in payment, they have no right to issue them for the purpose of putting them in circulation as a current circulating medium.—United States v. Ray, Case No. 16,124.

The principal of a ground rent is not a debt, within the meaning of Act Feb. 25, 1862, in relation to legal tenders of money.—Philadelphia & R. R. Co. v. Morrison, Case No. 11,089.

§ 4. —— Confederate bonds and notes.

Payment in Confederate bonds of a balance of account with the bank of North Carolina, accepted by the depositor, *held* valid.—Holleman v. Dewey, Case No. 6,607.

Where, in the absence of fraud, etc., Confederate money has been received in exchange for property, the federal courts will not interfere.—Bailey v. Milner, Case No. 740.

An executor who receives payment during the Civil War, in Confederate money, of a bond given before the war, if liable at all, is only liable for the value of the Confederate currency, as of that date.—Howland v. Kelly, Case No. 6,796.

Credit for payment in Confederate money for damages to land *held* should be scaled down to the gold value at the time, in computing the liability of the one receiving it.—Bigler v. Waller, Case No. 1,404.

Payment during the Civil War in Confederate money to an agent in the Southern states of a citizen of a Northern state does not discharge the debt.—Anderson v. Bank, Case No. 354.

Where funds in a bank belonging to an enemy are in Confederate notes, the payment under military authority may be made in Confederate notes.—Bank of Tennessee v. Union Bank of Louisiana, Case No. 899.

§ 5. Acceptances, notes, and checks — Of debtor.

The delivery and receipt of a promissory note of the debtor does not constitute payment, unless it appear that the creditor expressly agreed or intended to take the note as payment.—In re Ouimette, Case No. 10,622; Baker v. Draper, Id. 766; Maze v. Miller, Id. 9,362; Weed v. Snow, Id. 17,347; Risher v. The Frolic, Id. 11,856.

An indorsed note taken for an account, where it bears a higher rate of interest and the account is receipted as paid in full by the note, extinguishes the debt.—Risher v. The Frolic, Case No. 11,856.

A note given by an agent for goods sold to enable the seller to raise money at the bank, where no settlement is made, and the account is not receipted, will not be presumed to be in payment.—Hudson v. Bradley, Case No. 6,833.

In Massachusetts a negotiable note or bill of the debtor given for a pre-existing debt is prima facie evidence of payment.—Page v. Hubbard, Case No. 10,663; Palmer v. Elliot, Id. 10,690; Baker v. Draper, Id. 766.

Such presumption may be rebutted by circumstances showing that such was not the intention of the parties.—Page v. Hubbard, Case No. 10,663; Palmer v. Elliot, Id. 10,690.

Where notes are given for money due under a simple contract, the presumption in Massachusetts is that this was accepted as payment, in the absence of circumstances indicating a contrary intent.—Kimball v. The Anna Kimball, Case No. 7,772.

Whether the giving of promissory notes for money due under a charter party operated as payment is to be determined in a suit in admiralty in a federal court by the rule prevailing in the state where the transaction took place.—Kimball v. The Anna Kimball, Case No. 7,772.

If it be shown that a payment, acknowledged in a receipt, was by bill or note, which was not paid, then there is no payment.—Maze v. Miller, Case No. 9,362.

An indorsement on an account of "Rec'd payment," after accepting the negotiable note of one of two debtors, *held* prima facie evidence of payment.—Palmer v. Priest, Case No. 10,694.

An order payable out of a particular fund, and not negotiable, is not payment of a preceding debt.—Virginia v. Turner, Case No. 16,970.

§ 6. —— Of third person.
Taking a draft or note of a third person does not discharge the debt, unless it is received unconditionally as payment.—Slocomb v. Lurty, Case No. 12,949; Allen v. King, Id. 226.

Taking a bill of exchange is only prima facie evidence of a satisfaction and extinguishment of an antecedent debt.—Wallace v. Agry, Case No. 17,096.

A debt is discharged by the taking of a bill of exchange in payment, or in such manner as imports an intention to take the risk of the bill.—Brown v. Jackson, Case No. 2,016.

An accepted draft will not be considered in payment of an indorsed note, unless there was an express contract that it should be so received.—Cooper v. Gibbs, Case No. 3,194.

A bill of exchange is not payment of a preexisting debt unless paid or accepted as such, or the debtor sustain injury by the laches of the creditor receiving it.—Gallagher v. Roberts, Case No. 5,195.

A note taken from an indorser by his creditor operates to discharge the debt if the indorsee fails to demand payment and give notice of dishonor.—Allen v. King, Case No. 226.

A bill of exchange remitted to a creditor in payment of a debt will be considered as payment, where the amount of the bill is lost by the negligence of the creditor.—Roberts v. Gallagher, Case No. 11,902.

Goods consigned by an agent, with notice that they belong to his principal, are not paid for by the acceptance and payment of drafts drawn by the consignor on general account.—In re Baxter, Case No. 1,119.

Where notes of a third person are taken from a debtor upon an agreement that they shall be considered in payment, if collectible, the creditor is bound to use ordinary means and diligence to collect them.—In re Ouimette, Case No. 10,622.

The taking of negotiable notes from the debtor *held* no extinguishment of a mortgage which had been given to one partner to secure a debt due the firm.—Osborne v. Benson, Case No. 10,596.

An assignment of recognizances as security for a debt to be collected as the creditor may think proper is no bar to an action to recover the debt; otherwise when negotiable instruments are assigned.—Kemmil v. Wilson, Case No. 7,685.

II. APPLICATION.

In case of usury, see "Usury," § 13.

§ 7. General rules.
A debtor owing several accounts, who makes a payment, may appropriate the same as he pleases. Where he fails to make the appropriation, the creditor may make it; and, if neither makes it, the law applies it to the oldest item.—United States v. Bradbury, Case No. 14,635; Cremer v. Higginson, Id. 3,383; United States v. Wardwell, Id. 16,640.

Where the debtor omits to make the appropriation, the creditor may make it; if both omit it, the law will apply payments according to its own notions of justice.—Leef v. Goodwin, Case No. 8,207.

The officers of the treasury department have not the right to make application of payments against the will of the debtor or of his administrator.—United States v. Wardwell, Case No. 16,640.

In cases of running accounts, where debits and credits are made at different times, the payments are to be deemed as made towards items antecedently due in the order of time in which they stand in the account.—United States v. Wardwell, Case No. 16,640.

The case of the United States furnishes no exception to such rule.—United States v. Wardwell, Case No. 16,640.

§ 8. By debtor.
A bank must apply the proceeds of a note discounted by it as intended by the person offering it.—Bank of Alexandria v. Saunders, Case No. 852.

§ 9. By creditor.
A creditor holding several notes of his debtor has a right to apply a general payment equally to all the notes to protect them from the bar of the statute.—Jackson v. Burke, Case No. 7,133.

The creditor cannot elect to what debt to apply an indefinite payment, except where it is utterly indifferent to the debtor to which it is applied.—Gass v. Stinson, Case No. 5,262.

Where an appropriation is made by a receipt, it is prima facie made by the creditor.—United States v. Bradbury, Case No. 14,635.

Where the revenues of Spain were pledged to secure a loan, duties payable to the king of Spain, coming legally into the hands of the creditors, are properly applied by them to the liquidation of the loan.—King of Spain v. Oliver, Case No. 7,813.

§ 10. In absence of application by parties.
Where a payment is not applied by either party, the court will make the application according to the equities of the case.—Gordon v. Hobart, Case No. 5,608.

The right of appropriation exists only between the original parties. The assignee of the one making the payment cannot insist on a specific appropriation.—Gordon v. Hobart, Case No. 5,608.

Payments on running accounts, where there is no direction or application by the parties are to be applied to the earliest items.—Gass v. Stinson, Case No. 5,262; The A. R. Dunlap, Id. 513; Leef v. Goodwin, Id. 8,207.

Advances made on account generally will be applied to extinguish the amounts due on contracts completed in preference to those not completed.—McDowell v. Blackstone Canal Co., Case No. 8,777.

Application of payments in case of long-running account between parties of notes, acceptances, etc.—Whetmore v. Murdock, Case No. 17,510.

§ 11. Secured and unsecured debts.
Payments not applied by the parties will be appropriated in law to extinguishment of debt secured by lien rather than unsecured debt.—The Antarctic, Case No. 479. But see One Hundred and Fifty-One Tons of Coal, Id. 10,520.

An application of payments once made will not be varied so as to affect the liability of a

surety.—Bank of North America v. Meredith, Case No. 893.

§ 12. Principal and interest.
Payments will be applied first to the interest of the debt.—Russell v. Lucas, Case No. 12,-156a.

§ 13. Rights of sureties.
A debtor cannot appropriate a payment in such manner as to affect the relative liability or rights of his different sureties, without their assent.—Postmaster General v. Norvell, Case No. 11,310.

Where a public officer has given different bonds with different sureties, his payments must be so appropriated as to give each bond credits for the moneys respectively due, collected, and paid under it.—Postmaster General v. Norvell, Case No. 11,310.

If a debtor of the government fail to make an application of payments, the government may do so. If both fail, the law will make the application, but it cannot do so to the prejudice of the rights of the debtor's sureties.—United States v. Linn, Case No. 15,606.

§ 14. Presumptions.
A payment by a partner to his private creditor, who is also a creditor of the partnership, will be presumed to be on his private account.—Gass v. Stinson, Case No. 5,262.

III. OPERATION AND EFFECT.

Effect to release surety, see "Principal and Surety," § 10.

§ 15. Discharge of debt.
A payment by a bank to military authorities of funds belonging to the enemy, under coercion, discharges the debt.—Bank of Tennessee v. Union Bank of Louisiana, Case No. 899.

Where an indorser paid the amount of the note, but by mistake another note by the same maker was surrendered to him, *held* that it was nevertheless a payment of the first note.—Maury v. Mason, Case No. 9,314.

The acceptance of a deed of land in payment of a debt bars an action for the debt; and, if the title be defective, the creditor must look to his warranty.—Miller v. Young, Case No. 9,596.

Where the payment of the principal is accepted, a separate suit will not lie for the interest, though the right thereto was expressly reserved in the receipt given.—Riley v. Maxwell, Case No. 11,838.

Payment will not be permitted in equity to operate as an extinguishment, as against those equitably entitled to substitution in place of the party receiving payment.—In re Foot, Case No. 4,906.

Payment is no ground of quashing the proceedings in a suit on the debt. — Bingham v. Wilkins, Case No. 1,416.

The acceptance of new security without full knowledge of the facts, or where induced by fraud or deceit, is not a discharge.—Baker v. Draper, Case No. 766.

§ 16. Discharge of interest.
After the plaintiff has received the principal debt, he cannot recover the interest in an action for principal and interest.—Potomac Co. v. Union Bank, Case No. 11,318.

A receipt given for the principal is no bar to a recovery of interest, where the question of interest is expressly reserved at the time.—Burr v. Burch, Case No. 2,187.

IV. PLEADING AND EVIDENCE.

§ 17. Pleading.
A plea of payment referring to the instrument sued on, as a "supposed writing obligatory," is nevertheless good, and those words may be rejected as surplusage.—Murphy v. Byrd, Case No. 9,947b.

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.—Archer v. Morehouse, Case No. 18,225.

§ 18. Issues and proof.
The letters and transactions between officers of the government and a debtor to the United States, relative to his account, may be given in evidence under a plea of payment.—United States v. Beattie, Case No. 14,554.

In an action against one of two sureties in a joint and several bond given to the United States, a discharge of the other surety by the president under Act March 3, 1817, cannot be given in evidence under a plea of payment.—United States v. Beattie, Case No. 14,554.

Upon the plea of payment to debt on a single bill, it is not necessary to produce the bill in evidence.—Turner v. White, Case No. 14,264.

In Pennsylvania, any evidence may be given, under a plea of payment, which proves that ex equo et bono the debt ought not to be paid.—Latapee v. Pecholier, Case No. 8,101.

Under a plea of payment, proof of a discontinuance of the suit is inadmissible; the alleged discontinuance should have been taken advantage of before making defense.—Latapee v. Pecholier, Case No. 8,101.

Bonds whose consideration had failed, previously assigned in payment of a debt, cannot be given in evidence on a plea of payment.—Wilson v. Hurst, Case No. 17,809.

§ 19. Presumptions—In general.
The presumption that negotiable security given for a pre-existing debt is in payment may be controlled by proof to the contrary.—The Betsy and Rhoda, Case No. 1,366.

§ 20. —— Lapse of time.
No presumption of payment from the lapse of time can be raised against the government.—United States v. Williams, Cases Nos. 16,720, 16,721.

A presumption of payment, arising from lapse of time, may be rebutted by accounting for the time, and showing the improbability of payment.—Hopkirk v. Page, Case No. 6,697.

The presumption of payment of a bond arising from lapse of time is not rebutted by the obligee's indorsement of a payment on account by work done, unless this was with the privity of the obligor.—Kirkpatrick v. Langphier, Case No. 7,849.

The presumption of payment of a mortgage debt arising after the lapse of 50 years, the original securities not being produced, and the mortgagor being in possession, is rebutted by proof that the mortgage debt has not been paid. —Burnham v. Hewey, Case No. 2,175.

A presumption of payment of a debt arises at common law after the lapse of 16 years. After the lapse of 20 years, the presumption is conclusive.—Didlake v. Robb, Case No. 3,899.

Payment of a bond is presumed in 20 years if no interest has been paid in that time. If a shorter period is relied upon, the presumption should be fortified by circumstances.—Goldhawk v. Duane, Case No. 5,511.

Payment must be presumed as to installments due on a bond after 20 years, and may be presumed after 19 years and 10 months.—Miller v. Evans, Case No. 9,569.

The equitable rule of limitation applied to bonds, where there has been no demand for 20 years, is a mere presumption of payment, not an absolute limitation.—Postmaster General v. Rice, Case No. 11,312.

The presumption of payment of a bond or note, arising from the lapse of 20 years, may be rebutted by circumstances.—Denniston v. McKeen, Case No. 3,803.

§ 21. Admissibility and sufficiency of evidence—In general.

The fact that a note was given and received in payment of an account may be shown by circumstances.—Riley v. Anderson, Case No. 11,-835.

Payment of an account *held* to be sufficiently shown by authority to another to settle it, followed by the rendition of an account by the creditor showing credit in full.—Bradley v. Richardson, Case No. 1,786.

§ 22. —— Receipts.

A receipt is prima facie evidence that the sum of money expressed in it was paid according to its tenor.—Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

A receipt is only evidence of payment, and may be explained or contradicted by parol.—Weed v. Snow, Case No. 17,347.

Where a bill is receipted, "Received payment by note," the giving of the note must be treated as a payment thereof, in the absence of any evidence to qualify the receipt.—Drew v. Hull of a New Ship, Case No. 4,078.

The receipt of a bond of a third person "in part pay" of a precedent debt is conclusive evidence of payment to that extent, although the obligor was insolvent when the receipt was given.—Muir v. Geiger, Case No. 9,902.

A receipt of payment by a note is not conclusive, but only prima facie evidence of payment. —Moore v. Newbury, Case No. 9,772.

The words, "received in full payment" or "satisfaction," do not necessarily mean absolute satisfaction, when a note or other security is taken.—In re Hurst, Case No. 6,925.

§ 23. Province of court and jury.

The question whether a bill of exchange drawn upon a London firm, and payable in Paris, is to be governed in respect to the medium of payment by the French law, *held* to be a question for the jury.—Searight v. Calbraith, Case No. 12,585.

V. RECOVERY OF PAYMENTS.

See, also, "Money Received."

Recovery of insurance premium paid, see "Insurance," § 34.

§ 24. Right to recover in general.

Money paid on contracts expressly prohibited by law cannot be recovered.—McLean v. Lafayette Bank, Case No. 8,888.

Where, on payment of a debt, a bond was given to secure the obligee against a possible subsequent payment "on compulsion of law," and afterwards two suits were brought to recover the same debt, whereupon the obligee filed a bill of interpleader, and paid the sum into court, *held* a voluntary payment, not recoverable under the bond.—Massey v. Schott, Case No. 9,262.

§ 25. Fraud.

An action will lie at once for money advanced on a forged note.—Gibson v. Stevens, Case No. 5,401.

An action will lie for money fraudulently obtained on a note, before the note becomes due.—Gibson v. Stevens, Case No. 5,401.

§ 26. Mistake of fact.

Money paid by an agent under a mistake of the legal obligation of his principal may be recovered back by the latter.—United States v. Bartlett, Case No. 14,532.

The purchaser of a vessel, who has paid expenses of a previous voyage upon the master's order, under a mistaken expectation that he was to be reimbursed out of the freight, cannot recover them from the master.—Hodgson v. Butts, Case No. 6,564.

A person entitled to recover money paid under a mistake of fact must give prompt notice of the discovery of the mistake to the person to whom the money was paid.—United States v. Union Nat. Bank, Case No. 16,597.

The person to whom the money is paid is discharged from liability where he sustains damage in the loss of his remedy over against another, through the neglect to give notice of the discovery of the mistake.—United States v. Union Nat. Bank, Case No. 16,597.

The United States, suing to recover money so paid, is chargeable with such neglect equally with any other plaintiff.—United States v. Union Nat. Bank, Case No. 16,597.

An action by the United States to recover the amount of a draft paid upon a forged signature will not lie against the banker who innocently collected the same, after the lapse of six years. —United States v. Cooke, Case No. 14,855.

Money paid to purchase freedom by a person held in slavery abroad and remaining with his master after coming to the United States may be recovered back as paid without consideration. —Curranee v. McQueen, Case No. 3,488.

Where plaintiff pays money under a mistake of fact, he will not be allowed interest, both parties having acted in good faith.—Curranee v. McQueen, Case No. 3,488.

§ 27. Duress.

Assumpsit will lie for money extorted by duress of goods.—Tutt v. Ide, Cases Nos. 14,-275a, 14,275b.

A payment by an executor while in commitment upon a ca. sa., issued upon a judgment of a justice of the peace in an action against him, is under duress, and may be recovered back.—Foy v. Talburt, Case No. 5,020.

Real property is not under duress unless there be an illegal demand made against the owner, coupled with a present power or authority in the person making such demand to sell or dispose of the same if payment is not made as demanded.—Mariposa Co. v. Bowman, Case No. 9,-089.

A payment made by a shipper to a carrier at the place of destination of a rate in excess of that previously agreed, to obtain possession of the goods after the carrier's refusal to deliver them, is not voluntary, and the excess may be recovered back.—Tutt v. Ide, Cases Nos. 14,-275a, 14,275b.

Payments, without objection, of illegal exactions by government officials, cannot be recovered back.—Hamilton v. Dillin, Case No. 5,979.

Payments made by a person on the unlawful demand of the government, as a condition of being allowed to have goods deposited in his bonded warehouse (Act 1846), are voluntary, and cannot be recovered back.—Corkle v. Maxwell, Case No. 3,231.

A payment under protest of a half month's storage before the collector would allow goods, which had been entered for warehouse, to be landed for consumption, *held* voluntary, and could not be recovered back.—Irvin v. Schell, Case No. 7,072.

§ 28. Taxes, license fees, and assessments.

Payment to a public officer, if unaccompanied by oral or written remonstrance or protest, is voluntary.—United States v. Clement, Case No. 14,815.

A payment of internal revenue taxes, under protest, is not a voluntary payment, where both

the collector and the party paying understand at the time that payment must be made, or the law will be enforced.—Shaefer v. Ketchum, Case No. 12,693.

Money paid for a license to carry on a business in a city which the city had no right to exact cannot be recovered back.—Washington v. Barber, Case No. 17,224.

See, also, "Internal Revenue," § 20; "Taxation," § 11.

PEACE.

Breach of public peace, see "Breach of Peace."

PEDIGREE.

Declarations as evidence, see "Evidence," § 41.

PENALTIES.

§ 1, Statutory provisions. § 2, Remission of penalties. § 3, Nature and grounds of action. § 4, Informers. § 5, Defenses. § 6, Jurisdiction. § 7, Pleading. § 8, Evidence. § 9, Trial. § 10, Costs. § 11, Decree and enforcement. § 12, New trial and arrest of judgment.

Breach of contract, see "Damages," § 7.
Cutting timber, see "Public Lands," § 8.
Engaging in slave trade, see "Slaves," § 4.
Nonpayment of tax, see "Taxation," § 18.
Relief against, see "Equity," § 7.
Taking usury, see "Banks and Banking," § 20; "Usury," § 19.
Under copyright law, see "Copyrights," §§ 16, 37.
—— mail contracts, see "Post Office," § 10.
Violation of customs laws, see "Customs Duties," §§ 109–122.
—— of election laws, see "Elections," § 12.
—— of embargo and nonintercourse acts, see "War," § 24.
——of gaming laws, see "Gaming," § 2.
—— of internal revenue laws, see "Internal Revenue," §§ 91–95.
—— of regulations as to carriage of passengers, see "Shipping," § 206.
—— of regulations as to patents, see "Patents," § 163.
—— of regulations relating to pilots, see "Pilots," § 13.
—— of regulations relating to seamen, see "Seamen," § 13.
—— of shipping regulations, see "Shipping," §§ 11–15.

§ 1. Statutory provisions.

Penal statutes strictly construed.—Andrews v. United States, Case No. 381.

The legislature cannot create an obligation or impose a penalty for an act which, when done, incurred no such liability.—Falconer v. Campbell, Case No. 4,620.

Construction of penal statutes, see "Statutes," § 32.

Repeal of statutes, see "Limitation of Actions," § 7; "Statutes," § 15.

§ 2. Remission of penalties.

The secretary of the treasury has no power to remit penalties, unless in cases provided for by law.—The Margaretta, Case No. 9,072.

"Prosecution," as used in the act for the remission of penalties, includes all the proceedings in a suit, as well before as after judgment, including the execution.—United States v. Morris, Case No. 15,816.

The certificate of a consul is evidence to remit a penalty due to the United States.—Brown v. The Independence, Case No. 2,014.

§ 3. Nature and grounds of action.

Actions for penalties, being founded upon the implied contract which every person enters into with the state to observe its laws, are civil actions, both in form and substance.—Stearns v. United States, Case No. 13,341.

Although, in the absence of an informer, the government may have judgment for the whole, yet this does not authorize the proceeding by indictment.—United States v. Tilden, Case No. 16,523.

A qui tam action is not the proper remedy where no part of the penalty goes to the party suing for it.—Washington v. Eaton, Case No. 17,228.

Where both a money penalty and imprisonment are prescribed as punishment for an offense, an action of debt will lie for the money penalty.—United States v. Foster, Case No. 15,142.

See, also, "Debt, Action of," § 1.

Abatement and survival of action, see "Abatement and Revival," § 5.

Election of remedies, see "Election of Remedies," § 2.

§ 4. Informers.

An officer who obtains information by the examination of witnesses compelled to testify before the grand jury is not the informer.—United States v. One Hundred Barrels of Distilled Spirits, Case No. 15,946.

An officer who acts on information furnished him by another officer intended to be given the government, and does not discover new facts by his own diligence, or who merely makes certain what was suspected, is not the informer.—United States v. One Hundred Barrels of Distilled Spirits, Case No. 15,946.

An assistant assessor of internal revenue *held* entitled to the informer's share, where he gives information, leading to the indictment and conviction of an offender, which he acquired of his own motion, while in the discharge of his official duties.—United States v. Chassell, Case No. 14,789.

It is only the giving of information which led to the seizure which entitles a person to a part of the penalty as an informer.—Brewster v. Gelston, Case No. 1,853.

It is only when the amount of the penalty has been recovered by judgment of the court that an informer is entitled to a moiety thereof.—United States v. One Hundred Barrels of Distilled Spirits, Case No. 15,946.

The penalty of a recognizance for the appearance in court of a defendant charged with a crime under Act March 2, 1799, is not a penalty recovered by virtue of such act, and the informer is not entitled to a share therein.—United States v. Fanjul, Case No. 15,069.

An agreement between informers to divide the informer's share equally is valid, and will be regarded by the court in distributing it.—United States v. Stockwell, Case No. 16,406.

Where a statute creates an offense, and affixes a specific pecuniary penalty, appropriating one-half thereof to the informer, it adopts by implication those remedies by which alone the informer can sue.—United States v. Tilden, Case No. 16,523.

A pardon remitting a penalty under the revenue law after judgment therefor operates to remit the moiety adjudged to the informer.—United States v. Thomasson, Case No. 16,479.

§ 5. Defenses.

Ignorance of the existence of penal statute forms no legal excuse for its violation.—The Ann, Case No. 397.

§ 6. Jurisdiction.
In suits for penalties incurred under Act Aug. 2, 1813, giving a moiety to the United States, and the other moiety to the collector or informer, the state courts have jurisdiction.—Stearns v. United States, Case No. 13,341.

The judiciary act of 1789, giving exclusive original cognizance to the district courts in cases of penalties incurred under the federal laws, is pro tanto repealed by Act Aug. 2, 1813, giving the state courts jurisdiction in certain cases.—Stearns v. United States, Case No. 13,341.

Jurisdiction of admiralty, see "Admiralty," § 34.
—— of federal district court, see "Courts," § 96.

§ 7. Pleading.
The complaint in an action by a private person must allege plaintiff's right to sue.—Briscoe v. Hinman, Case No. 1,887.

The complaint, in an action for a statutory penalty, must state that the act or omission alleged was contrary to the statute.—Briscoe v. Hinman, Case No. 1,887.

In an action on a statute, the party prosecuting must allege every fact necessary to make out his title and his competency to sue.—Ferrett v. Atwill, Case No. 4,747.

In debt on a penal statute the existence of the statute must be alleged as a matter of fact by a direct allegation.—United States v. Batchelder, Case No. 14,540.

A declaration describing two penal offenses in one count, where one penalty only is sought, is good after verdict.—Smith v. United States, Case No. 13,122.

A declaration in debt for a penalty describing the offense in the words of the statute *held* good after verdict.—Jacob v. United States, Case No. 7,157.

A declaration to recover a statutory penalty must demand a precise sum, although the statute declares that the penalty shall be "not more than" a sum stated.—United States v. Elliot, Case No. 15,043.

Where several acts are mentioned in the declaration, an allegation that "by force of said act," without designating the particular act, is not fatal on error.—Sears v. United States, Case No. 12,592.

Such declaration need not specify the uses to which the forfeiture inures, and an allegation in that respect may be stricken out as surplusage.—Sears v. United States, Case No. 12,592.

Declarations in penal actions are to be strictly construed, and they must negative all exceptions.—Smith v. United States, Case No. 13,122.

In an action for a statutory penalty, the declaration must conclude against the form of the statute.—Cross v. United States, Case No. 3,434; Sears v. Same, Id. 12,592; United States v. Babson, Id. 14,489.

Or with words of equivalent import.—United States v. Babson, Case No. 14,489.

A declaration for a penalty given by a single statute is good on error, although it concludes against the form of the "statutes."—Kenrick v. United States, Case No. 7,713.

A conclusion in a declaration of debt for a penalty under a statute "against the law in such case made and provided" is not a conclusion against the form of a statute, and is bad on error.—Smith v. United States, Case No. 13,122.

§ 8. Evidence.
An answer by one who is charged with a forfeiture under a law of the United States is not admissible against him in an action brought against him for a penalty under the same law.—Clark v. United States, Case No. 2,837.

§ 9. Trial.
On an issue found against defendant on plea of nil debet in an action of debt to recover a penalty given by the embargo act, the amount of the penalty is to be fixed by the jury.—United States v. Allen, Case No. 14,431.

Right to trial by jury, see "Jury," § 2.

§ 10. Costs.
A prosecutor liable for costs upon an indictment for a misdemeanor has no right to withdraw the prosecution without the consent of the attorney of the United States.—Virginia v. Dulany, Case No. 16,959.

§ 11. Decree and enforcement.
The record in a friendly action of debt for penalties after compromise of criminal proceedings for frauds on the revenue and an action for estimated duties is not conclusive of the rights of the parties, and the character of the fund.—In re Webster, Case No. 17,332.

Penalties may be enforced either by an execution against defendant's property or by capias; but where the sentence directs collection by execution a subsequent imprisonment under a capias is illegal.—In re Teuscher, Case No. 13,846.

§ 12. New trial and arrest of judgment.
A verdict in favor of defendant in an action to recover a statutory penalty will be set aside if contrary to the evidence and the law applicable thereto.—United States v. Fox, Case No. 15,155.

In a suit to recover a pecuniary penalty, the court has power to grant a new trial, although the verdict was for defendant.—United States v. Halberstadt, Case No. 15,276.

Where the declaration is defective in this particular, the judgment will be arrested on motion.—United States v. Batchelder, Case No. 14,540.

PENDENCY OF ACTION.

Effect as to property involved, see "Lis Pendens."

PENNSYLVANIA.

Grants of public lands, see "Public Lands," §§ 69-73, 77-80.

PENSIONS.

§ 1, Power to grant. § 2, Persons entitled. § 3, Officers—Bonds. § 4, Fraudulent payments. § 5, Offenses.

§ 1. Power to grant.
Under the constitutional authority to raise and support armies, congress has power to bestow bounties and pensions upon those who may engage in military service.—United States v. Fairchilds, Case No. 15,067.

§ 2. Persons entitled.
An adopted child is not entitled to a pension, but a legitimated child is entitled to a pension under Act March 4, 1814.—United States v. Skam, Case No. 16,308.

§ 3. Officers—Bonds.
Where, under a rule of the department, an accounting is required before a new bond of an officer is accepted, *held*, that the sureties on the old bond were liable where the officer resigned two days after the approval of the new bond, and before an accounting.—United States v. Haynes, Case No. 15,334.

§ 4. Fraudulent payments.
A town having notice of fraud in obtaining a pension which sues the pensioner for support as a pauper, and receives a portion of the pension money in compromise, is liable to the United States in an action for money had and received.

—United States v. Waterborough, Case No. 16,-648.

§ 5. **Offenses.**
Act July 4, 1864, §§ 12, 13, limiting the fees of pension agents and attorneys, and making it a misdemeanor to take any greater compensation, is constitutional.—United States v. Fairchilds, Case No. 15,067; Same v. Marks, Id. 15,721.

One collecting an excessive fee for services in procuring a pension under Act July 4, 1862, is not subject to the penalty prescribed by Act July 4, 1864, § 13.—United States v. Marks, Case No. 15,721.

Under the constitutional authority to raise and support armies, congress may make it an offense to detain from a military pensioner any portion of the sum collected in his behalf as his pension. —United States v. Fairchilds, Case No. 15,067.

Specification of elements necessary to be proved to convict one of withholding pension money. Rev. St. § 5485.—United States v. Howard, Case No. 15,400.

The mere fact that a banker or other person agrees to collect a pension check does not make him an agent for the prosecution of a pension claim, within the meaning of said section.—United States v. Howard, Case No. 15,400.

An agent is indictable under such act who withholds from a pensioner a pension granted under a later act.—United States v. Chaffee, Case No. 14,771.

Effect of repeals and re-enactments of pension acts as to the punishment of the offense of withholding pension claims allowed, stated.—United States v. Bennett, Case No. 14,570.

An indictment for retaining a greater sum than the statutory allowance for collecting a pension cannot be sustained where the amount was paid under a prior contract for services in causing to be removed from the rolls of the war department a charge of desertion.—United States v. Snow, Case No. 16,350.

The two acts of transmitting and presenting forged papers, etc., are not separate offenses, under Act March 3, 1823, to punish frauds against the United States.—United States v. Armstrong, Case No. 14,468.

PERJURY.

I. OFFENSES AND RESPONSIBILITIES THEREFOR.

§ 1, Statutory provisions. § 2, The oath. § 3, Nature of the proceeding. § 4, Jurisdiction of court or officer. § 5, Knowledge and intent.

II. PROSECUTION AND PUNISHMENT.

§ 6, Mode of proceeding. § 7, Indictment or information. § 8, Evidence. § 9, Trial. § 10, Sentence and punishment.

Ground of opposition to discharge in bankruptcy, see "Bankruptcy," §§ 586–588.

I. OFFENSES AND RESPONSIBILITIES THEREFOR.

Offenses against bankrupt laws, see "Bankruptcy," § 672.

§ 1. **Statutory provisions.**
The act of 1825 in relation to perjury, being a general law, applies to all subsequent cases which come within it.—United States v. Nihols, Case No. 15,880.

§ 2. **The oath.**
An oath to do a certain thing in the future cannot be the subject of a prosecution for perjury.—United States v. Glover, Case No. 15,218.

§ 3. **Nature of the proceeding.**
A state statute, punishing false swearing in "judicial proceedings," *held* applicable only to proceedings under the state laws.—Ex parte Bridges, Case No. 1,862.

Whether perjury committed on a hearing on a criminal complaint before a district judge is punishable under Act April 30, 1790, c. 9, § 18, query.—United States v. Clark, Case No. 14,-804.

An indictment for an act which does not constitute an offense under the laws of the United States is still "a suit, controversy, matter or cause pending," in which perjury may be committed. Act 1790.—United States v. Reese, Case No. 16,138.

Although the income tax act makes no provision for compelling a person to make oath to his return, yet, as it permits him to do so, intentional false swearing therein is perjury.—United States v. Smith, Case No. 16,341.

The secretary of war may prescribe the contents of affidavits by drafted soldiers claiming exemption from military service, and false swearing as to such facts is perjury. Act March 3, 1863.—United States v. Sonachall, Case No. 16,-352.

Perjury may be committed in an affidavit to an account for the purpose of getting it passed by the orphans' court.—United States v. Thomas, Case No. 16,475.

An oath administered by a commissioner to a person tendering himself for justification, as bail for a person committed by such commissioner to await the issuing of a warrant for his removal for trial, will support an indictment for perjury, though it does not appear that the deposition was used on the application for bail.—United States v. Volz, Case No. 16,627.

§ 4. **Jurisdiction of court or officer.**
To sustain an indictment for perjury, the oath must be administered by some one authorized. —United States v. Deming, Case No. 14,945.

An oath in a case required by law, taken before a deputy collector, may be the basis of an indictment for perjury.—United States v. Barton, Case No. 14,534.

An oath, not required to be administered by any law or rule of court, is not perjury, though administered under the usage of a ministerial officer.—United States v. Babcock, Case No. 14,-488.

Authority to a county clerk to swear petitioners resident in his county does not give him power to administer an oath to one who resides in another county.—United States v. Deming, Case No. 14,945.

Where an act expressly describes the kind of proof of compliance with its requirements, it is not competent for any officer of the United States to require new oaths, so as to make the false taking of them perjury.—United States v. Nickerson, Case No. 15,878.

§ 5. **Knowledge and intent.**
A false swearing from mistake is not perjury. —Anonymous, Case No. 475.

False swearing is committed by knowingly swearing falsely to any material fact, and not merely by rash or reckless swearing.—United States v. Moore, Case No. 15,803; Same v. Shellmire, Id. 16,271.

An affidavit to the existence of a fact does not import that the affiant has personal knowledge thereof, unless it is so stated, or the fact be of such a character that he must have personal knowledge.—United States v. Moore, Case No. 15,803.

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

not knowledge. An intent to defraud the government is not necessary.—United States v. Atkins, Case No. 14,474.

To constitute the offense of false swearing under the fisheries bounty act of 1813, there must be a willful and corrupt intent to swear falsely. —United States v. Smith, Case No. 16,336.

An indictment for perjury cannot be sustained under Act July 29, 1813, §§ 7, 9, granting bounties to vessels engaged in the fisheries, where the owner signs the certificate, and the agent swears to it.—United States v. Kendrick, Case No. 15,519.

A person cannot be convicted of perjury in swearing falsely to an income tax return, where it was not made with a corrupt intention, but with the honest belief that it was correct.—United States v. Smith, Case No. 16,341.

Where affiant stated the facts truly, and signed an affidavit on the advice of his lawyer, in whom he confided, that they were substantially the same therein, he is not guilty of perjury, though the affidavit be false.—United States v. Stanley, Case No. 16,376.

II. PROSECUTION AND PUNISHMENT.

Jurisdiction, see "Criminal Law," § 13.

§ 6. Mode of proceeding.

If the party purge himself on oath, the court will not hear collateral evidence for the purpose of impeaching his testimony and proceeding against him for the contempt; but, if perjury appear, he will be recognized to answer, etc.—United States v. Dodge, Case No. 14,975.

§ 7. Indictment or information.

An indictment for perjury alleged to have been committed on an examination of a person charged with a crime against a law of the United States should show what the particular crime was.—United States v. Wilcox, Case No. 16,692.

An indictment for perjury alleged to have been committed on an examination before C., "a commissioner of the United States, newly appointed," but not stating how, or by whom, or under what statute, or for what purpose such commissioner was appointed, is bad on demurrer.—United States v. Wilcox, Case No. 16,692.

The indictment should set out the name and official title of the officer before whom the oath was administered.—United States v. Wilcox, Case No. 16,692.

Act April 30, 1790, §§ 19, 20, do not dispense with the necessity of such averment.—United States v. Wilcox, Case No. 16,692.

The judgment will be arrested where the indictment fails to state the day upon which the trial took place, and on which defendant was sworn in the case in which the perjury was alleged to have been committed.—United States v. Bowman, Case No. 14,631.

The indictment should charge that the oath was false, and known to be so by the witness, and that the motive was corrupt.—United States v. Babcock, Case No. 14,488.

The materiality of the facts sworn to must appear in the indictment either by averment or by a statement of facts which show their materiality.—United States v. Cowing, Case No. 14,880; Same v. McHenry, Id. 15,681.

An indictment for subornation of perjury (Act March 3, 1825, § 13), averring that defendant did feloniously, knowingly, and willingly procure B. to swear falsely in the taking of an oath, etc., but not averring that B. knowingly and willingly swore falsely, is bad on demurrer. —United States v. Wilcox, Case No. 16,693.

An indictment for subornation of perjury must aver that defendant knew that the testimony which he instigated the suborned witness to give was false, and that, in giving such testimony, the witness would commit the crime of perjury. —United States v. Dennee, Case No. 14,947.

Where an indictment charges perjury at the circuit court held on the 19th day of May, and the record shows that the court was held on the 20th of May, the variance is fatal.—United States v. McNeal, Case No. 15,700.

§ 8. Evidence.

Papers filed by the prisoner to sustain the allegations contained in the original paper, if they tend to establish the charge made in the indictment as to guilty knowledge, will be admitted in evidence.—United States v. Gardiner, Case No. 15,186a.

The falsity of the oath, taken under the revenue laws, on which perjury is assigned, may be shown by the books and papers of the defendant.—United States v. Mayer, Case No. 15,753.

The affidavit of a third person is admissible to show what the prisoner swore to, where both affidavits were on the same sheet of paper.—United States v. Buete, Case No. 14,680a.

The prosecution must show that the oath was administered to defendant by the person named, that he had authority to administer it, that defendant was sworn in a matter where an oath or affirmation is required under the laws of the United States, and that defendant swore with a wicked and corrupt intent, willfully false in regard to the matters alleged to be untrue. Act March 3, 1825, § 13.—United States v. Coons, Case No. 14,860.

Where a witness testifies that he is well acquainted with the applicant, on an application to a state court for the naturalization of a foreigner, and it appears that he was a total stranger to the applicant, and volunteered as a witness, there is sufficient evidence to warrant a conviction of the witness on an indictment for perjury, under Rev. St. § 5392.—United States v. Jones, Case No. 15,491.

On an indictment for perjury, an affidavit of the defendant directly contradicting the one on which the perjury is assigned, is not sufficient evidence of the falsity of the latter.—United States v. Mayer, Case No. 15,753.

It is only necessary to prove so much of the testimony of the witness as relates to the particular fact on which the perjury is assigned. —United States v. Erskine, Case No. 15,057.

A copy of the record in the cause in which the perjury was committed, where the court is the same, need not be produced.—United States v. Erskine, Case No. 15,057.

The statements of defendant which are made the basis of a charge of perjury must be disproved by two witnesses, or by one witness and corroborating circumstances.—United States v. Coons, Case No. 14,860.

There need not be positive evidence that the paper was sworn to by the prisoner; it may be proved by circumstantial evidence.—United States v. Gardiner, Case No. 15,186a.

§ 9. Trial.

Whether a false oath was taken under mistake as to the law or fact involved therein is a question of fact for the jury.—United States v. Smith, Case No. 16,341.

Alleged errors in instructions on a trial for perjury considered.—United States v. McHenry, Case No. 15,681.

§ 10. Sentence and punishment.

Upon a conviction of perjury the court may inflict the punishment of fine, imprisonment, and the pillory.—United States v. Snow, Case No. 16,349.

PERPETUITIES.

§ 1, Statutory provisions. § 2, Creation of future contingent estates in general. § 3, Remoteness of gifts to charities.

§ 1. Statutory provisions.
A devise of lands to be held until the last born grandchild became of age, then to be divided among all living grandchildren, and the issue of such as were dead, taking per stirpes, is not void as to the child of a grandchild who died before the testator, under a statute prohibiting devises except to persons in being when the will is made, or their immediate issue or immediate descendants. Act Ohio Dec. 17, 1812.—McArthur v. Allen, Case No. 8,659.

§ 2. Creation of future contingent estates in general.
A devise over, if the parties first taking should all die, "without leaving any issue of the body of either of them," at the death of the last survivor, "or if such issue should all die before attaining the age of 21 years," is too remote.—Maxwell v. Call, Case No. 9,323.

§ 3. Remoteness of gifts to charities.
A condition against alienation annexed to property devoted to charity does not render the devise void.—Jones v. Habersham, Case No. 7,465.

An immediate gift to trustees for a general charity, which cannot take effect except on the occurrence of contingent and uncertain events, is valid, and the fund will be held up for a reasonable time to await the happening of the contingencies.—Jones v. Habersham, Case No. 7,465.

A devise to trustees for a charitable purpose, which is to be carried on by them until a building to be erected for the charity shall be completed, which is then to be handed over by the trustees, with the funds to support it, to a corporation to be created, creates no perpetuity.—Jones v. Habersham, Case No. 7,465.

PERSONAL INJURIES.

See, also, "Negligence."
Damages for, see "Damages," §§ 1–3, 9.
From assault, see "Assault and Battery," § 6.
Jurisdiction over action for, see "Admiralty," § 32.
Limitation of liability, see "Shipping," § 246.
Received on Sunday, see "Sunday," § 3.
To employé, see "Master and Servant," §§ 3–8.
To licensees, see "Railroads," § 69.
To passengers, see "Carriers," §§ 40–48; "Shipping," § 203.
To seamen, see "Seamen," §§ 156–174.
To traveler on highways, see "Highways," §§ 4, 5; "Municipal Corporations," § 25.
To trespassers, see "Railroads," § 69.

PERSONAL PROPERTY.

See "Property."

PETITION.

In admiralty, see "Admiralty," § 91.
In bankruptcy, see "Bankruptcy," §§ 37, 54.
In pleading, see "Pleading," §§ 4–15.

PHYSICIANS AND SURGEONS.

§ 1, Authority to admit to practice. § 2, Practicing without authority. § 3, Right to compensation.

§ 1. Authority to admit to practice.
Constitution and legality of the medical board of examiners of the District of Columbia.—United States v. Williams, Case No. 16,713.

§ 2. Practicing without authority.
In a prosecution for practicing medicine without a license, a witness will not be compelled to produce the medicine which he received from defendant.—United States v. Williams, Case No. 16,713.

The application, by an oculist, of a liquid to the eye, is not the practice of medicine, but rather of surgery.—United States v. Williams, Case No. 16,713.

§ 3. Right to compensation.
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.—Woodside v. Baldwin, Case No. 17,995.

PIERS.

See "Wharves."

PILOTS.

§ 1, Statutory regulations. § 2, Pilot commissioners. § 3, Licenses. § 4, Obligation to take pilots. § 5, Tender of services. § 6, Rights and duties. § 7, Compensation—Right in general. § 8, —— Amount. § 9, —— Actions. § 10, —— Lien. § 11, —— Transfer of wages. § 12, Liability for negligence. § 13, Penalties for violations of regulations

§ 1. Statutory regulation.
The territory of Washington has power to pass pilot laws. Such power is recognized as concurrent in the states by Act Aug. 7, 1794.—The Panama, Case No. 10,702.

Act Aug. 30, 1852, providing for the employment of pilots on vessels propelled in whole or in part by steam, engaged in carrying passengers on any of the bays, lakes, or other navigable waters of the United States, so far as it goes, supersedes all state laws regulating the employment of pilots on such vessels.—The Panama, Case No. 10,702.

In case of conflict the presumption is that congress intended to abrogate state laws on the subject.—The Panama, Case No. 10,702.

The Pennsylvania compulsory pilotage law of 1803 applies to foreign as well as American vessels.—Smith v. The Creole, Case No. 13,032.

Validity of state laws, see "Commerce," § 1.

§ 2. Pilot commissioners.
Act providing that pilot commissioners "may" appoint a secretary *held* to be mandatory.—The California, Case No. 2,313.

§ 3. Licenses.
A pilot's license, when prima facie evidence of the facts recited therein.—The California, Case No. 2,313.

A pilot commissioner cannot authorize another member of the board to sign his name to a license.—The California, Case No. 2,313.

A state law requiring that a pilot licensed by the inspectors of steam vessels (Act Feb. 25, 1867) shall also be licensed by the state pilot commissioners when navigating a vessel within the state, *held* valid.—The George S. Wright, Case No. 5,340.

A warrant to act as pilot, appearing on its face to have been regularly issued, cannot be questioned collaterally, and justifies the master of the ship in dealing with the holder as a lawfully constituted pilot.—The Panama, Case No. 10,702.

A pilot for the port of Charleston, S. C., must be thoroughly acquainted with the bar at the mouth of the harbor, and the practicability

of crossing it at a given time.—The Washington v. The Saluda, Case No. 17,232.

§ 4. Obligation to take pilots.
Neither in nor out bound vessels are, by the laws of Massachusetts, positively bound to employ a pilot.—Camp v. The Marcellus, Case No. 2,347.

A vessel that is within pilotage ground, but disabled so that she cannot get into port without steam, is not bound to accept the offer of a pilot, or pay his fee.—Flanders v. Tripp, Case No. 4,854.

Pilots *held* not entitled to fees on tender and refusal of services to vessels passing through Boston harbor, bound to Lynn and Dorchester. Rev. St. Mass. c. 32, §§ 15–22.—Nash v. The Thebes, Case No. 10,022.

A vessel owned by a resident of Maine, and sailing under a fishing license, is not liable for half pilotage as either a "foreign vessel" or "vessel under register," within the New York pilot law.—Weaver v. McLellan, Case No. 17,309.

A law which obliges vessels entering and leaving a harbor to receive a pilot or forfeit half pilotage is not compulsory, but optional; and hence a vessel navigated by such a pilot is liable for a collision caused by his negligence. Case No. 13,032 reversed.—Smith v. The Creole, Case No. 13,033.

§ 5. Tender of services.
Tender of services by a Hell Gate pilot to a vessel bound through Hell Gate at a point 17 miles east of Sand's Point *held* effective.—The Georgia D. Loud, Case No. 5,353.

The exhibition to the master of the vessel of the pilot's warrant is a necessary part of the tender of services, under Act Wash. T. Jan. 26, 1863.—The Eldridge, Case No. 4,332.

Act N. Y. 1865, giving half pilotage on a tender and refusal of services, *held* applicable to a tender made as far east as Sand's Point, to a vessel bound to New York.—Horton v. Smith, Case No. 6,709.

An offer to take on board a pilot tendering services, accompanied with refusal to pay offshore pilotage, is a refusal to take the pilot, within the meaning of the New York statute, though another pilot is subsequently taken and in-shore pilotage paid.—The Nevada, Case No. 10,130.

The tender of services by a Hell Gate pilot as far east as Block Island is not legal, and a refusal and subsequent settlement with him will not prevent a pilot, who tendered his services off Oak Neck, from recovering half pilotage, where they were refused.—The S. & B. Small, Case No. 12,291b.

§ 6. Rights and duties.
Licensed pilot, employed to remain on vessel to take her in and out of port, is subject to master's discipline, but not liable to ship's duty except when in charge as pilot.—Beataugh v. Nicholson, Case No. 1,194.

Use of force to compel obedience of pilot *held* a trespass.—Beataugh v. Nicholson, Case No 1,194.

Master is not justified in ordering regularly employed pilot ashore, for failure to obey order to leave quarter deck.—Beataugh v. Nicholson, Case No. 1,194.

The master may interfere in case of gross ignorance or palpable and dangerous mistake by the licensed pilot in charge.—Camp v. The Marcellus, Case No. 2,347.

§ 7. Compensation—Right in general.
Right to compensation for salvage services, see "Salvage," §§ 5, 20, 23, 44.

State pilot laws have sufficient effect beyond the state boundaries to fix the compensation of pilots.—The Nevada, Case No. 10,130.

It is not the mere clearance for a port, but being actually bound into it, that imposes on a vessel the obligation to pay a pilot.—Nash v. The Thebes, Case No. 10,022.

The seizure of a vessel on process, which interrupts her regular business, is notice to the pilot that his services are no longer required, and terminates his right to wages.—The Joseph Hall, Case No. 7,539.

An abandoned bark, towed into New York, is not liable for the fees of a pilot who does not board her, nor control her navigation.—Chapman v. The Lucerne, Case No. 2,605.

A vessel in the port of New York, which has entered on a voyage which will carry her through Hell Gate, who refuses a pilot's services, is liable for half pilotage, though the voyage through Hell Gate is not completed.—The Traveller, Case No. 14,147.

To charge one, as agent of a vessel, for half pilotage fees under the New York statute, he must be shown to have some connection with her.—Mason v. Ingraham, Case No. 9,238.

§ 8. —— Amount.
A pilot was allowed $100 extra pilotage for navigating into the port of New York a passenger ship discovered 60 miles outside Sandy Hook in a disabled condition.—The Warren, Case No. 17,193.

Pilots taking a vessel partly crippled, but not in immediate peril, nor unnavigable through Sandy Hook channel, *held* entitled to a reasonble extra compensation, but not to double fees, as a legal right under a claim of usage of the port.—Love v. Hinckley, Case No. 8,548.

A pilot who does not take charge of a vessel until she reaches pilot grounds is only entitled to inshore pilotage.—The Alaska, Case No. 129.

To sustain a claim for half pilotage by a Hell Gate pilot, he must show that the vessel was in the prosecution of a voyage which would carry her through Hell Gate.—The Kalmar, Case No. 7,601.

The limits of pilot grounds are not fixed by any rule of law, but depend upon usage or custom; and that usage is not settled and uniform, but varies according to circumstances.—Hope v. The Dido, Case No. 6,679.

A pilot is not bound to take charge of a disabled vessel for the usual pilot's fee.—Flanders v. Tripp, Case No. 4,854.

Pilot who takes charge of, and tows into port, an abandoned ship, at request of vessel which had been towing her, is entitled to greater compensation than the usual pilot fee.—The Champion, Case No. 2,582a.

§ 9. —— Actions.
Admiralty has jurisdiction over action to recover half pilotage under state laws for services tendered and refused.—Banta v. McNeil, Case No. 966. CONTRA, see Arcularias v. Staples, Case No. 509b.

The inference that no pilot was employed on board a vessel which refused libelant's offer of services may be drawn from the fact that the master admitted the correctness of libelant's claim, and no evidence of employment was given.—The Nellie Husted, Case No. 10,098.

Presumptions and proof as to the terms of hiring at monthly wages of a pilot on the Hudson river.—Truesdale v. Young, Case No. 14,204.

A claim to half pilotage for a tender and refusal of services, supported only by the oath of the pilot, and contradicted by two witnesses from the other vessel, cannot be sustained where the pilot might have produced other witnesses,

whose absence he did not account for.—The Thomas Turrall, Case No. 13,932.

Jurisdiction of admiralty, see "Admiralty," § 27.

§ 10. —— Lien.
A claim for half pilotage given by a state law on a tender and refusal of services is a lien on the vessel, and admiralty has jurisdiction to enforce the same.—The California, Case No. 2,312; The America, Id. 289; The Kalmar, Id. 7,601; The George S. Wright, Id. 5,340. CONTRA, see Leitch v. The George Law, Case No. 8,223; Harrison v. The Anna Kimball, Id. 6,132; The Robert J. Mercer, Id. 11,891.

The pilot has a lien for wages, as such, though when the vessel was in port he officiated and was recognized as master.—Logan v. The Æolian, Case No. 8,465.

A pilot has a lien on the ship for services in bringing the vessel into port, rendered under agreement with the passengers in pretended mutiny.—Johnson v. The Anne, Case No. 7,370.

Mere wrongdoers or mutineers have no authority to bind the ship for pilotage.—The Anne, Case No. 412.

§ 11. —— Transfer of wages.
A contract by a pilot purchasing a share in a vessel that his part owners shall retain yearly out of his wages such sum as he is able to spare, until the balance of the purchase money is paid, is not an assignment of unaccrued wages, within Rev. St. § 4536.—Somers v. The Jersey Blue, Case No. 13,169.

§ 12. Liability for negligence.
A licensed pilot, who runs his vessel on a shoal in fair weather and open daylight, is liable for resulting damages, and cannot set up the failure of the vessel to have a hawser, with which she might have been warped off without injury.—Santiago v. Morgan, Case No. 12,331.

See, also, "Collision," § 95.

§ 13. Penalties for violations of regulations.
A master who, without being licensed, performs the duty of pilot to make up the required number, is liable to a penalty of $100 (Act Aug. 30, 1852), besides subjecting the boat and its owners to a penalty of $500. Act July 7, 1838, § 1.—United States v. The Science, Case No. 16,239.

PIRACY.

§ 1, Statutory provisions. § 2, What constitutes. § 3, Persons liable. § 4, Defenses. § 5, Evidence.

Jurisdiction, see "Criminal Law," §§ 10, 11.

§ 1. Statutory provisions.
The provisions of the law relating to piracy were not repealed by Act June 26, 1812, 2 Stat. 759.—United States v. Jones, Case No. 15,494.

Congress may make depredations upon the high seas punishable as piracy, though they do not strictly constitute such crime as known to international law.—Charge to Grand Jury, Treason and Piracy, Case No. 18,277.

§ 2. What constitutes.
A pirate is one who acts solely on his own authority, without any commission or authority from a sovereign state, seizing by force, and appropriating to himself, without discrimination, every vessel he meets with.—Davison v. Seal-Skins, Case No. 3,661.

The United States court will treat as pirates all persons engaged in plundering vessels of the United States citizens under authority of a government set up by insurgents against whom a civil war is being waged.—United States v. Smith, Case No. 16,318.

Act 1790, c. 9, § 8, as well as Act 1820, c. 113, applies to all murders and robberies committed on board of or upon American ships on the high seas.—United States v. Gibert, Case No. 15,204.

Act April 30, 1790, § 9, in regard to piracy or robbery on the high seas, applies only to citizens, and not to foreigners.—United States v. Baker, Case No. 14,501.

Larceny committed on board an American ship in an inclosed dock in a foreign port is not punishable under Act April 30, 1790, c. 9, § 16. —United States v. Hamilton, Case No. 15,290.

To constitute robbery on the high seas within Act May 15, 1820, § 3, the taking need not be such as to amount to piracy according to the law of nations.—United States v. Baker, Case No. 14,501.

Act May 15, 1820, § 3, in regard to robbery on the high seas, applies to all persons, whether citizens or foreigners.—United States v. Baker, Case No. 14,501.

The seizure of a vessel carrying arms and munitions of war to a port of the enemy by an armed ship, whose officers held commissions from the hostile country, is not piracy.—United States v. Smith, Case No. 16,339a.

The crime of piracy, as defined by the law of nations and the acts of congress, consists of robbery or forcible depredation upon the sea.—United States v. Chapels, Case No. 14,782.

Slave trade is not punishable as piracy.—United States v. Corrie, Case No. 14,869.

To constitute the offense of running away with a vessel, it must appear that the command was taken from the master, and that the act was done feloniously, and with intent to convert the vessel and cargo or either of them to the use of the persons concerned in the act.—United States v. Haskell, Case No. 15,321.

Robbery on the high seas is piracy; but to constitute the offense the taking must be felonious, and the quo animo may be inquired into. —Davison v. Seal-Skins, Case No. 3,661.

If the seamen participated in taking property from a Spanish ship, it must be shown that they knew or might have known that robbery, and not capture as prize, was contemplated.—United States v. Jones, Case No. 15,496.

To constitute the offense of piracy (Act April 30, 1790, c. 9) by piratically and feloniously running away with the vessel, personal force and violence is not necessary. There must be a fraudulent and unlawful conversion.—United States v. Tully, Case No. 16,545.

A confederacy by American citizens on land or on board an American vessel, with pirates, under the laws of nations, or the yielding up of a vessel by a citizen to such pirates, is punishable, under section 8, Act April 30, 1790.—United States v. Howard, Case No. 15,404.

So, also, is an endeavor by a mariner to corrupt the master of the vessel and induce him to go over to such pirates.—United States v. Howard, Case No. 15,404.

The language of section 12 implies contract and association with the pirates as well in relation to the past as to the future.—United States v. Howard, Case No. 15,404.

Sections 10 and 11, Act April 30, 1790, as to accessories, refer to the piracy mentioned in section 8, which includes only crimes committed by American citizens, or on board American vessels.—United States v. Howard, Case No. 15,404.

§ 3. Persons liable.
In order to affect all the officers and crew of a piratical vessel with guilt, the original voyage must have been undertaken with a piratical design, and the officers and crew have known and acted upon such design; otherwise, those only are guilty who actively co-operated in the piracy. —United States v. Gibert, Case No. 15,204.

In order to convict a seaman on a privateer for piracy committed in conjunction with the officers, he must be shown to have participated feloniously in the taking, and proof of acts of robbery generally by officers and crew is insufficient. —United States v. Jones, Case No. 15,496.

A subordinate officer, who in good faith enters a formal protest against a seizure by his vessel, is not guilty with the others of an act of piracy. —United States v. Smith, Case No. 16,339a.

The simple fact of presence on board the piratical vessel, where there was no original piratical design, is not sufficient per se to affect a party with a crime.—United States v. Gibert, Case No. 15,204.

The rule that robbery on the high seas is piracy has no exception or qualification in favor of commissioned privateers.—United States v. Jones, Case No. 15,494.

A French citizen transiently within the United States cannot be criminally prosecuted for piracies and robberies committed by the captain of a privateer owned by him, upon neutral vessels.—United States v. Owners of the Unicorn, Case No. 15,979a.

§ 4. Defenses.

A commission by a nation at war to a private armed vessel will afford protection even in the judicial tribunals of the enemy, against a charge of robbery or piracy.—United States v. Baker, Case No. 14,501.

A forged commission under which an officer acts in good faith *held* a good defense to an indictment for piracy.—United States v. Smith, Case No. 16,339a; Same v. Bass, Id. 14,537.

§ 5. Evidence.

Parol evidence is admissible to establish the time of sailing, and the course and termination of a voyage, without proving that the log book was missing or lost.—United States v. Gibert, Case No. 15,204.

A commission from a government whose independence has not been recognized may be given as evidence, merely as a paper found on board, but not to justify acts done under it.—United States v. Hutchings, Case No. 15,429.

Other evidence of ownership of the ship and cargo may be admitted, besides the register and bills of sale, and the invoice, bills of lading, etc.—United States v. Jones, Case No. 15,494.

PLEA.

In civil actions, see "Equity," §§ 43–54; "Pleading," §§ 16–36.
In criminal prosecution, see "Criminal Law," §§ 45–50.

PLEADING.

I. ORDER, FORM, AND ALLEGATIONS IN GENERAL.

§ 1, Form of pleading in general. § 2, Order of pleading. § 3, Matter of law.

II. DECLARATION OR COMPLAINT.

§ 4, Title of court. § 5, Statement of venue. § 6, Joint defendants. § 7, Uncertainty. § 8, Anticipating and negativing defenses. § 9, Inducement. § 10, Surplusage. § 11. Duplicity. § 12, Jurisdictional facts. § 13, Averment of citizenship. § 14, Pleading and setting out documents. § 15, Abandonment of counts.

III. PLEA OR ANSWER.

§ 16, Time of answer or filing plea. § 17, Sufficiency of plea or answer in general. § 18, Statement of partial defense only. § 19, Argumentative plea. § 20, Joint answer. § 21, Inconsistent allegations or defenses. § 22, Plea puis darrien continuance. § 23, Matter occurring after commencement of suit. § 24, Impertinence. § 25, Distinct defenses. § 26, Misnomer. § 27, Duplicity. § 28, Frivolous plea. § 29, Verification. § 30, Dilatory pleas—Plea to the jurisdiction. § 31, —— Plea or answer in abatement. § 32, General issue. § 33, Admissions. § 34, Pleas in confession and avoidance and special pleas. § 35, Set-off and counterclaim. § 36, Pleas amounting to general issue.

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.

§ 37, Replication or reply. § 38, Rejoinder.

V. DEMURRER.

§ 39, Grounds for demurrer. § 40, Special demurrer. § 41, Demurrer to whole or part of pleading. § 42, Demurrer as opening record. § 43, Admissions by demurrer. § 44, Pleading on overruling or sustaining demurrer.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS, REPLEADER, AND WITHDRAWAL OF PLEADINGS.

§ 45, Power and discretion of court. § 46, Notice to adverse party. § 47, Amendment of declaration. § 48, Amendment of demurrer. § 49, Time of amendment. § 50, Imposing conditions on allowing amendment. § 51, Form and sufficiency of amended pleading. § 52, Effect of amendment. § 53, Supplemental pleadings. § 54, Repleader. § 55. Withdrawal of pleadings.

VII. SIGNATURE AND VERIFICATION.

§ 56, Sufficiency of signature. § 57, Time of verification. § 58, Sufficiency of verification. § 59, Effect of failure to verify.

VIII. PROFERT AND OYER.

§ 60, When party entitled. § 61, Time of demanding. § 62, Sufficiency.

IX. BILL OF PARTICULARS.

§ 63, When bill will be ordered. § 64, Sufficiency and effect.

X. MOTIONS.

§ 65, Motions to strike out.

XI. ISSUES, PROOF, AND VARIANCE.

§ 66, Joinder of issues of fact. § 67, Evidence admissible under pleadings. § 68, Variance between allegations and proof.

XII. WAIVER OF OBJECTIONS AND AIDER BY VERDICT.

§ 69, Waiver of objections in general. § 70, Aider by verdict.

After removal of cause, see "Removal of Causes," § 60.
As evidence, see "Admiralty," § 94; "Equity," §§ 92, 93; "Evidence," § 27.
Conformity of judgment to pleading, see "Judgment," § 16.
Defects as ground for new trial, see "New Trial," § 4.
Estoppel by allegations in, see "Estoppel," § 1.
Indictment or criminal information or complaint, see "Indictment and Information."
Waiver of objection to jurisdiction, see "Admiralty," § 36.

Allegations as to particular facts, acts, or transactions.

See "Accord and Satisfaction," § 4; "Adverse Possession," § 9; "Damages," § 12; "Estoppel," § 9; "Fraud," § 7; "Judgment," §§ 81–83; "Pardon," § 7; "Payment," §§ 17, 18; "Statutes," § 36; "Usury," § 16.

Discharge in bankruptcy, see "Bankruptcy," §§ 634, 635.
—— in insolvency, see "Insolvency," § 16.
Jurisdiction, see "Bankruptcy," § 18; "Courts," §§ 60–62.
Laches, see "Equity," § 21.
Statute of frauds, see "Frauds, Statute of," § 6.
—— of limitations, see "Limitation of Actions," §§ 26, 27.

In actions by or against particular classes of parties.

See "Corporations," § 56; "Executors and Administrators," § 48; "Municipal Corporations," § 41; "Officers," § 5; "Partnership," § 36; "Seamen," § 138; "Sheriffs and Constables"; "United States Marshals," § 21.
Assignees in bankruptcy, see "Bankruptcy," § 361.
Insurance companies, see "Insurance," §§ 172, 173.

In particular actions or proceedings.

See "Account," § 1; "Assumpsit, Action of," § 4; "Cancellation of Instruments," § 8; "Creditors' Suit," § 8; "Debt, Action of," § 2; "Detinue," § 3; "Discovery," § 4; "Ejectment," § 10; "False Imprisonment," § 4; "Forcible Entry and Detainer," § 1; "Libel and Slander," §§ 15–18; "Malicious Prosecutions," § 6; "Quieting Title," § 7; "Replevin," § 8; "Specific Performance," § 14; "Trespass," § 7; "Trespass to Try Title"; "Trover and Conversion," § 3.
Criminal prosecutions, see "Criminal Law," §§ 45–50.
For breach of contract, see "Contracts," § 39.
—— of covenants, see "Covenants," § 9.
—— of promise of marriage, see "Breach of Marriage Promise," § 1.
For collision, see "Collision," §§ 125–129.
For foreclosure, see "Mortgages," § 35.
For forfeiture, see "Forfeitures," § 8; "Internal Revenue," § 83.
For infringement of copyright, see "Copyrights," § 43.
—— of patents, see "Patents," §§ 194–198.
—— of trade-mark or trade-name, see "Trade-Marks and Trade-Names," § 29.
For injunction, see "Injunction," § 12.
For penalties, see "Customs Duties," § 120a; "Penalties," § 7.
For rent, see "Landlord and Tenant," § 9.
For violation of customs laws, see "Customs Duties," § 101.
—— of embargo and nonintercourse acts, see "War," § 19.
In admiralty, see "Admiralty," §§ 37–49, 79–91.
In bankruptcy, see "Bankruptcy," §§ 106–122.
In equity, see "Equity," §§ 35–93.
In justices' courts, see "Justices of the Peace," § 9.
On bills or notes, see "Bills and Notes," §§ 96–99.
On bonds, see "Bonds," §§ 20, 21.
—— in replevin, see "Replevin," § 15.
On guaranty, see "Guaranty," § 11.
Prize proceedings, see "War," § 59.
To enforce liens, see "Maritime Liens," §§ 59, 60.
—— trusts, see "Trusts," § 48.
To recover duties or charges paid, see "Customs Duties," § 70.
—— salvage, see "Salvage," § 65.
To set aside fraudulent conveyances, see "Fraudulent Conveyances," § 31.

I. ORDER, FORM, AND ALLEGATIONS IN GENERAL.

§ 1. Form of pleading in general.
Under the system of pleading adopted in New York, judgment at trial, in a suit at law, is to be rendered in accordance with the facts pleaded and proved, without regard to the form of the pleadings or the theory on which they were prepared.—Whalen v. Sheridan, Case No. 17,476.

§ 2. Order of pleading.
The order of pleading is part of the common law, and does not depend upon a mere rule of the court.—Fenwick v. Grimes, Case No. 4,734.

§ 3. Matter of law.
It is not necessary to aver matter of law or public statutes of which the court takes judicial notice.—Young v. Montgomery & E. R. Co., Case No. 18,166; Jones v. Hays, Id. 7,467.

II. DECLARATION OR COMPLAINT.

See, also, post, §§ 47, 70.

§ 4. Title of court.
It is sufficient to state the title of the court in the caption of the declaration.—Gassett v. Palmer, Case No. 5,265.

§ 5. Statement of venue.
The jurisdiction of the court is not affected by the venue laid, or a wrong one, or by the entire omission to lay one.—Cage v. Jeffries, Case No. 2,287.

A declaration in a local action in a federal district court, which does not lay a venue, or avers a wrong one, is bad on demurrer.—United States v. Woolsey, Case No. 16,762.

The venue, if substantially laid, is sufficient.—Gassett v. Palmer, Case No. 5,265.

Venue in the margin of pleading is sufficient where none is laid in the body of the declaration.—Cocke v. Kendall, Case No. 2,929b.

A venue in the body of the declaration is sufficient without being stated in the margin.—Dwight v. Wing, Case No. 4,219.

Where the absence of a venue in one count may be supplied by necessary inference from the venue in others, the count is not bad.—Noe v. Prentice, Case No. 10,284a.

Venue is necessary to every traversable fact, and, where one is laid in the count, all matters following refer to it.—Cocke v. Kendall, Case No. 2,929b.

Where a cause of action is local, a reference to the "district aforesaid," named in any preceding count, is a sufficient designation of the place.—Jones v. Van Zandt, Case No. 7,505.

The words "state aforesaid," in the body of the declaration, *held* to refer to the state or venue in the margin, and not those mentioned in the body.—Cage v. Jeffries, Case No. 2,287.

§ 6. Joint defendants.
A declaration against two of three obligors is defective which does not aver that all three have failed to pay the debt.—Robins v. Pope, Case No. 11,931a.

§ 7. Uncertainty.
An allegation that the defendant failed to furnish transportation to laborers furnished the defendant by plaintiff, to his damage so many dollars, is not uncertain, but only nominal damages can be recovered under it.—Oh Chow v. Hallett, Case No. 10,469.

§ 8. Anticipating and negativing defenses.
Matter in defeasance of an action need not be stated in the declaration.—Hammer v. Kaufman, Case No. 5,997.

The continued use of an improvement, where, under the agreement with plaintiff, nonuser was to release defendant from his obligation to pay, need not be alleged in the declaration.—Hammer v. Kaufman, Case No. 5,997.

§ 9. Inducement.
Inducement should consist of such facts as authorize an inference against the right asserted by the other party.—Egberts v. Dibble, Case No. 4,307.

§ 10. Surplusage.

If a count in a declaration contains sufficient averments, surplusage will not vitiate it.—Wyman v. Fowler, Case No. 18,114.

§ 11. Duplicity.

The union of several facts constituting together but one cause of action, is not duplicity.—Jackson v. Rundlet, Case No. 7,145.

See, also, post, § 27.

§ 12. Jurisdictional facts.

The facts and circumstances upon which jurisdiction depends must be stated in the declaration or pleadings.—Donaldson v. Hazen, Case No. 3,984.

Where a statute declares that a certain suit shall not be brought without certain allegations, such allegations in the declaration are essential to the plaintiff's right to sue.—Walker v. Johnson, Case No. 17,074.

Where, in order to give jurisdiction, it is necessary that defendant should be found within the district, a mere statement in the declaration that defendant "being in custody," etc., is insufficient.—United States v. Woolsey, Case No. 16,762.

§ 13. Averment of citizenship.

A general averment of the citizenship of the plaintiff is sufficient.—Thompson v. Cook, Case No. 13,952.

An averment of citizenship in the first count is sufficient for all the other counts where referred to therein.—Jones v. Heaton, Case No. 7,468.

§ 14. Pleading and setting out documents.

A slight variation in describing a written instrument is fatal.—Clark v. Phillips, Case No. 2,831a.

An exhibit is no part of a pleading in an action at law; a record or instrument should be stated in a pleading either according to its tenor or legal effect.—Fitch v. Cornell, Case No. 4,834; Oh Chow v. Hallett. Id. 10,469.

A writing merely referred to and annexed as an exhibit will be stricken out on motion as impertinent and irrelevant.—Oh Chow v. Hallett, Case No. 10,469.

§ 15. Abandonment of counts.

Plaintiff may enter a nolle prosequi to any account in his declaration.—McLain v. Rutherford, Case No. 8,868a.

In Ohio a count cannot be abandoned after the jury retire to consult on the verdict.—Jones v. Van Zandt, Case No. 7,502.

Counts abandoned are considered as still in the record for matters of references in subsequent counts.—Jones v. Van Zandt, Case No. 7,505.

III. PLEA OR ANSWER.

See, also, post, § 55.

§ 16. Time of answer or filing plea.

Defendant, at the imparlanced term, allowed to plead any issuable plea to the merits, although rule to plea expired.—Darnall v. Talbot, Case No. 3,578.

Where an amended declaration, filed 20 days before the commencement of the term, was removed from the clerk's office by plaintiff's counsel, the court refused to compel defendant to plead during the term.—Walker v. Johnson, Case No. 17,075.

When a substantial amendment is made in a declaration, the defendant should be allowed until the next succeeding term to plead.—Wyatt v. Harden, Case No. 18,106a.

After a cause has been at issue 18 months, leave will not be given to plead non est factum without affidavit denying execution of the bond in suit.—Bullock v. Van Pelt, Case No. 2,131.

Defendant not permitted to plead the statute of limitations after the expiration of rule to plead.—Bank of Columbia v. Hyatt, Case No. 869; Beatty v. Van Ness, Id. 1,198; Reed v. Clark, Id. 11,643. But see Marsteller v. McClean, Case No. 9,139.

The plea of the statute cannot be put in after the rule day, unless it be shown by affidavit to be necessary to the justice of the case.—Thompson v. Affick, Case No. 13,939.

Ignorance of the practice of the court by an attorney recently admitted *held* good cause for allowing the statute of limitations to be pleaded after the rule day.—Union Bank v. Eliason, Case No. 14,350; Wetzell v. Bussard, Id. 17,471.

The statute of limitations may be pleaded on setting aside the office judgment at the first term.—Gregg v. Bontz, Case No. 5,798; Mechanics' Bank of Alexandria v. Lynn, Id. 9,384; Morgan v. Evans, Id. 9,800. CONTRA, Smith v. Stoops, Case No. 13,110.

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.—Wilson v. Turberville, Case No. 17,844.

On reinstatement after nonsuit, defendant not permitted to plead the statute of limitations unless he show it to be necessary for the justice of the case.—McIver v. Moore, Case No. 8,831.

An exception (in Louisiana) that plaintiff, suing as administrator, is not administrator, must be pleaded in limine litis.—Barras v. Bidwell, Case No. 1,039.

Such an exception cannot be embodied in the answer, and it must be verified by affidavit.—Barras v. Bidwell, Case No. 1,039.

The same rules apply to the exception of lis pendens.—Barras v. Bidwell, Case No. 1,039.

If the defendant on the plea day demand oyer, which is not given until the subsequent term, the court will give the defendant time to plead after oyer.—Calvert v. Slater, Case No. 2,326.

§ 17. Sufficiency of plea or answer in general.

A plea in bar is not good if the facts stated do not constitute a bar.—Curtis v. Central Ry., Case No. 3,501; Smith v. Ely, Id. 13,043.

A plea to a declaration on a bond conditioned to pay a certain sum in pounds sterling, that it was not equivalent to, and that defendant did not owe, the sum in United States money, as averred in the declaration, *held* bad on demurrer.—Gurney v. Hoge, Case No. 5,875.

A plea negativing a breach assigned in its very words is good on a general demurrer.—United States v. Hammond, Case No. 15,292.

Where a declaration is special, stating facts and circumstances, a plea setting up the same matter is bad.—Van Avery v. Phœnix Ins. Co., Case No. 16,829.

A plea is demurrable where its structure is that of a plea in bar, but which avers by way of set-off a claim for damages for improper performance by plaintiff of the contract out of which plaintiff's cause of action arose.—Central Ohio R. R. v. Thompson, Case No. 2,550.

A plea in bar is bad, whether involving questions of law or fact, where it goes only to the question of damages.—King v. American Transp. Co., Case No. 7,787.

The extent of the rule that, where there are several pleas, the legal inferences from the averments contained in one plea have no influence

in deciding on the averments of another plea.—Pegram v. United States, Case No. 10,906.

A statement in the answer of the evidence upon which defendant relies to sustain his claim of ownership is irrelevant.—Wythe v. Myers, Case No. 18,119.

§ 18. Statement of partial defense only.

A plea which does not answer the whole charge or count is bad.—Culbertson v. Wabash Nav. Co., Case No. 3,464; Kerr v. Force, Id. 7,730; Parker v. Lewis, Id. 10,741a; Postmaster General v. Reeder, Id. 11,311.

Where a plea professes to answer only part of the actionable matter charged in the count, and the replication or demurrer treats it as a plea to the whole matter, this is a discontinuance; but otherwise if it is treated as a plea to that part only which it purports to answer, provided that plaintiff, at the time of replying or demurring, take judgment by nil dicit for the unanswered part of the count.—Kerr v. Force, Case No. 7,730.

§ 19. Argumentative plea.

A plea is bad which argumentatively denies a fact averred in the declaration.—Mower v. Burdick, Case No. 9,890; Kinney v. Consolidated Va. Min. Co., Id. 7,827.

§ 20. Joint answer.

A joint answer must be good as to all defendants joining therein.—United States v. Halsted, Case No. 15,287.

§ 21. Inconsistent allegations or defenses.

Defendant may plead inconsistent or contradictory defenses to the same action under Civ. Code Or. § 72.—Hall v. Austin, Case No. 5,925.

Where inconsistent allegations in the answer are not excepted to, the one most strongly against claimants will be taken to be the one really made.—The Olbers, Case No. 10,477.

§ 22. Plea puis darrein continuance.

The plea puis darrein continuance admits plaintiff's cause of action.—Wisdom v. Williams, Case No. 17,904.

And waives all prior issues.—Spafford v. Woodruff, Case No. 13,198.

And all previous defenses.—Good v. Davis, Case No. 5,530a; Wisdom v. Williams, Id. 17,904.

§ 23. Matter occurring after commencement of suit.

A plea which states matters which occurred subsequent to the institution of the suit is bad on demurrer.—Lockington v. Smith, Case No. 8,448.

§ 24. Impertinence.

Impertinences are any matters not pertinent to those points which are properly before the court for decision at any particular stage of the case.—Wood v. Mann, Case No. 17,952.

§ 25. Distinct defenses.

Where distinct defenses are pleaded, one cannot be taken to help or destroy the other.—Bachman v. Everding, Case No. 708.

§ 26. Misnomer.

A plea is not bad on special demurrer because misnaming plaintiff in marginal title. Bank of Columbia v. Jones, Case No. 870, overruled.—Bank of Columbia v. Ott, Case No. 878.

But a plea of the statute of limitations, misnaming the plaintiffs in the margin, is bad on special demurrer.—Bank of Columbia v. Jones, Case No. 870.

§ 27. Duplicity.

A plea is bad, if it set up two distinct matters of defense, either of which is sufficient to defeat plaintiff's action.—Halsted v. Lyon, Case No. 5,968.

Several distinct and independent pleas to separate parts of a count are not double, and, if all be held good on demurrer, will make out a complete bar, so that judgment must be given for defendant.—Kerr v. Force, Case No. 7,730.

A plea will not be considered double for setting up matter which is immaterial to the issue of law raised by the demurrer.—Derby v. Jacques, Case No. 3,817.

See, also, ante, § 11.

§ 28. Frivolous plea.

A plea of estoppel which does not show that the defendant was misled by the plaintiff, or those under whom he claims, is frivolous.—Gager v. Harrison, Case No. 5,171.

Denial of citizenship of the plaintiff pleaded with matter to the merits becomes frivolous.—Gager v. Harrison, Case No. 5,171.

A plea in abatement for variance, in that the writ did not state citizenship of the parties, whereas the declaration did, is frivolous, and will be stricken out on motion.—Burrow v. Dickson, Case No. 2,203.

A plea which expressly or in effect admits the cause of action cannot be stricken out as frivolous.—Bachman v. Everding, Case No. 708.

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.—Wythe v. Myers, Case No. 18,119.

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.—Wythe v. Myers, Case No. 18,119.

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.—Witherell v. Wiberg, Case No. 17,917.

Plea not stricken out as frivolous if matter properly pleaded is included.—Bachman v. Everding, Case No. 708.

§ 29. Verification.

A plea, which is not a direct denial of some material fact stated in the declaration, should conclude with a verification.—Tucker v. Lee, Case No. 14,221.

See, also, post, §§ 57–59.

§ 30. Dilatory pleas—Plea to the jurisdiction.

A plea to the jurisdiction of the court, alleging facts which show a want of jurisdiction, is not a submission to the jurisdiction.—Van Antwerp v. Hulburd, Case No. 16,826.

A plea to the jurisdiction must be pleaded by itself, and cannot be set up in the answer.—Vose v. Reed, Case No. 17,011.

A plea to the jurisdiction on the ground that a demand has been colorably assigned in order to evade a discharge in insolvency is not to be treated as dilatory and captious, like some pleas in abatement.—Wallace v. Clark, Case No. 17,098.

After a complaint is amended on demurrer to cure a jurisdictional defect it becomes substantially a new suit, and defendant may interpose another plea to the jurisdiction.—Donaldson v. Hazen, Case No. 3,984.

In an action ex delicto, the objection that the court has no jurisdiction of a certain defendant is personal to such defendant, and cannot be made by one defendant for another.—Hinckley v. Byrne, Case No. 6,510.

An affidavit to a plea to the jurisdiction must be positive, and not on belief.—Adams v. White, Case No. 68.

In a court of limited jurisdiction, a plea that the cause of action did not arise within the jurisdiction is a plea in bar, and good after office judgment.—Smith v. McCleod, Case No. 13,073.

§ 31. —— Plea or answer in abatement.

A plea in abatement of another suit pending in the usual form need not allege that such suit was not discontinued before the plea was filed.—Nelson v. Foster, Case No. 10,105.

A plea in abatement must show jurisdiction of the former suit, if pending in a court not under the same sovereignty.—White v. Whitman, Case No. 17,561.

An allegation in a plea of abatement that all of defendants in the action are not citizens of the state is bad for uncertainty.—Hinckley v. Byrne, Case No. 6,510.

Where proceedings in bankruptcy are pleaded in abatement, all matters required to give jurisdiction must be averred.—Ex parte Balch, Case No. 790.

But such plea must show that the court has jurisdiction.—Ex parte Balch, Case No. 790.

A plea in abatement not upon oath, may be treated as a nullity.—Fenwick v. Grimes, Case No. 4,734; White v. Whitman, Id. 17,561.

A plea of the pendency of a former suit in another court must offer to produce the record of such suit.—Riddle v. Potter, Case No. 11,811.

Certificate of counsel that, in his opinion, the plea is well founded, need not accompany a plea of abatement in the federal court.—Nelson v. Foster, Case No. 10,105.

A plea in bar overrules a plea in abatement.—Fenwick v. Grimes, Case No. 4,734.

Where, on a rule to show their cause of action, the plaintiffs have produced a positive affidavit of debt, the defendant cannot give evidence that a suit for the same cause of action has been instituted in another court.—Post v. Sarmiento, Case No. 11,301.

§ 32. General issue.

The plea of nil debet is improper where the action is founded on a deed; otherwise where the deed is only inducement to the action.—United States v. Cumpton, Case No. 14,902.

When the record set forth in the declaration is not the foundation of the action, but only matter of conveyance or inducement, nul tiel record is not a good plea, for it does not answer the whole count.—United States v. Litle, Case No. 15,608.

When the record is shown forth in the declaration, defendant may deny the operation thereof.—United States v. Litle, Case No. 15,608.

The general plea of non est factum is proper where an obligation under seal is void ab initio.—Bottomley v. United States, Case No. 1,688.

A plea of non assumpsit to a declaration sounding in tort is fatally defective.—Davis v. Garland, Case No. 3,636.

See, also, post, § 36.

§ 33. Admissions.

A plea which does not traverse the facts averred in the declaration, but sets up new matter in defense, admits the case made in the declaration.—Greathouse v. Dunlap, Case No. 5,742.

Where an unsworn plea is put in, denying the instrument on which the action is founded or the indorsement of it, the note and the indorsement as averred in the declaration are admitted.—Thomas v. Clark, Case No. 13,894.

§ 34. Pleas in confession and avoidance and special pleas.

The statement of new matter in the answer must be concise, and must constitute a defense to the action. The ultimate facts, and not the evidence of them, must be stated. Civ. Code Or. § 316.—Moreland v. Marion County, Case No. 9,794.

A plea is bad which sets up matters in defense, and neither denies nor admits, and avoids plaintiff's allegation.—Halsted v. Lyon, Case No. 5,968.

In special pleas in bar, color to the plaintiffs' right must be given.—Dibble v. Duncan, Case No. 3,880.

Defendant, in his answer, cannot introduce new matter in the nature of a cross bill, and require plaintiff and others under whom he claims to answer it.—Morgan v. Tipton, Case No. 9,809.

A special plea is required where the instrument sued on is merely voidable.—Bottomley v. United States, Case No. 1,688.

A special plea which sets up several defenses is bad.—Cook v. Tribune Ass'n, Case No. 3,165.

A special plea of non est factum must conclude with a verification.—Contee v. Garner, Case No. 3,139.

§ 35. Set-off and counterclaim.

A counterclaim is substantially a cross action, and should contain nothing but the facts necessary to constitute it; and if any other defense is inserted therein it may be stricken out.—Neff v. Pennoyer, Case No. 10,085.

A claim in reconvention should be pleaded with the same precision and detail as an original cause of action.—Barras v. Bidwell, Case No. 1,039.

It is a good ground of exception to a claim in reconvention that it has been substantially adjudicated between the same parties in another state, where it was pleaded as a counterclaim.—Barras v. Bidwell, Case No. 1,039.

Unless notice of set-off be given before the suit is called for trial, it will not be permitted to be given in evidence.—Deneale v. Young, Case No. 3,786; Whetcroft v. Burford, Id. 17,505.

An account in bar or set-off must be filed one term before trial, under the rules in the District of Columbia.—Janney v. Baggot, Case No. 7,210.

§ 36. Pleas amounting to general issue.

A plea which amounts to the general issue is bad.—Curtis v. Central Ry., Case No. 3,501; Dibble v. Duncan, Id. 3,880; Halsted v. Lyon, Id. 5,968; Parker v. Lewis, Id. 10,741a.

A plea which admits the execution of an instrument sued on and sets up matter in avoidance is not objectionable, as amounting to the general issue.—Thomas v. Page, Case No. 13,906.

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.

See, also, post, § 69.

§ 37. Replication or reply.

A reply is not necessary when the plea does not state facts necessarily precluding a recovery by plaintiff.—United States v. Atwill, Case No. 14,475.

A judgment in assumpsit will be reversed where the cause was tried without replication to good pleas in bar.—Miles v. Rose, Case No. 9,544a.

Plaintiff will not be allowed to file his replication after the rule day and in term time except

upon condition of a continuance.—Veatch v. Harbaugh, Case No. 16,905.

The state practice having been adopted by the standing rules of the district court of the Southern district of New York, plaintiff may obtain leave to file a double replication to defendant's plea.—Valarino v. Thompson, Case No. 16,810a.

Granting leave to put in several replications not an adjudication of their sufficiency.—Andreæ v. Redfield, Case No. 368.

A replication may set up the title of the equitable plaintiff, and notice thereof to the defendant, and thus show the asserted bar to be in fraud of such rights.—Brown v. Hartford Fire Ins. Co., Case No. 2,009.

A replication which alleges two distinct and independent facts, either of which is a complete answer to the plea, is double, and is bad on special demurrer.—Burnham v. Webster, Case No. 2,178.

A replication to the plea of the statute of limitations, which stated that the debt arose on an account between merchants, and that the plaintiff was beyond sea, is bad for duplicity.—Craig v. Brown, Case No. 3,329.

Replication to plea of statute of limitations setting up agreement not to plead statute and a new promise is double.—Andreæ v. Redfield, Case No. 368.

A replication to a plea of payment in an action on a bond for the payment of money, that the sum paid was not accepted in satisfaction, was not paid on the day appointed, and the damages and interest due for nonpayment were not paid, *held* bad for duplicity.—United States v. Gurney, Case No. 15,271.

A departure takes place when a second plea contains matter not pursuant to the former, and does not fortify the same, except that, if matter be pleaded which could not have been shown in the former plea, such new matter will probably not always be a departure.—United States v. Morris, Case No. 15,816.

§ 38. Rejoinder.

A rejoinder must answer the replication, and tender an issue on a single point, else it is demurrable.—McCue v. Washington, Case No. 8,735; United States v. Cumpton, Id. 14,902.

A rejoinder is bad which puts in issue to the jury matter of law.—McCue v. Washington, Case No. 8,735.

After a plea of general performance, a rejoinder stating an excuse for not performing is bad. —McGowan v. Caldwell, Case No. 8,806.

V. DEMURRER.

See, also, post, §§ 48, 55.

§ 39. Grounds for demurrer.

Defects in declaration in setting forth case may be availed of by demurrer.—Bas v. Steel, Case No. 1,087.

A variance between the writ and the declaration cannot be taken advantage of by a demurrer.—Wilder v. McCormick, Case No. 17,650; Wilkinson v. Pomeroy, Id. 17,675. But see Triplet v. Warfield, Case No. 14,177.

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.—Wythe v. Myers, Case No. 18,119.

Where a plea in abatement is bad, plaintiff need not demur, but may treat it as a nullity.—Anonymous, Case No. 18,224.

Where want of jurisdiction appears upon the face of the pleadings, the objection should be taken by demurrer; otherwise by plea.—Varner v. West, Case No. 16,885.

§ 40. Special demurrer.

A special demurrer may be filed in all actions in the courts of the United States. 1 Stat. 91. —Cage v. Jeffries, Case No. 2,287.

Defects reachable only by special demurrer at common law will be disregarded as special demurrers are abolished.—Chandler v. Byrd, Case No. 2,591b.

Objections to a replication for not alleging time and place can be taken only by special demurrer.—Blossburg & C. R. Co. v. Tioga R. Co., Case No. 1,563.

All defects in form in pleading can be taken advantage of only by special demurrer.—Jackson v. Rundlet, Case No. 7,145.

Objections to pleading for duplicity can be taken advantage of only by special demurrer.—Blossburg & C. R. Co. v. Tioga R. Co., Case No. 1,563.

A demurrer for duplicity must point out the particulars in which the duplicity consists.—Martin v. Bartow Iron Works, Case No. 9,157.

A special demurrer will not be permitted on setting aside an office judgment.—Whetcroft v. Dunlop, Case No. 17,506.

The objection to misjoinder of counts can only be taken by special demurrer.—Dobbin v. Foyles, Case No. 3,942.

Want of venue is reachable only by special demurrer.—Cocke v. Kendall, Case No. 2,929b.

A variance between the writ and declaration may be taken advantage of by special demurrer. —How v. McKinney, Case No. 6,749.

If a plea which purports to answer all the breaches in the declaration is a good answer to some of them only, the objection cannot be taken advantage of on error, but on special demurrer only.—United States v. Willard, Case No. 16,698.

Matters of abatement alleged as special causes for demurring will be disregarded, and the demurrer will be considered independently of them.—Furniss v. Ellis, Case No. 5,162.

A special demurrer operates as a general demurrer as to all the pleadings of the party demurring.—McCue v. Washington, Case No. 8,735.

§ 41. Demurrer to whole or part of pleading.

On a general demurrer, unless for misjoinder of actions, judgment must be given for the plaintiff, if there is one good count in the declaration.—French v. Tunstall, Case No. 5,104a; Parrott v. Barney, Id. 10,773a; Vermont v. Society for the Propagation of the Gospel, Id. 16,920.

A demurrer does not lie to a part of a plea or defense, or immaterial matter therein, but it must deny its sufficiency as a whole.—Lewis v. Oregon Central R. Co., Case No. 8,329.

In covenant, when several breaches are assigned, some of which are sufficient if defendant demur to the whole declaration, judgment must be given against him though part are bad.—Gill v. Stebbins, Case No. 5,431.

A demurrer that "the several pleas" are insufficient will be overruled, if there be one good plea in the record.—Brown v. Duchesne, Case No. 2,003.

Code Civ. Proc. N. Y. does not authorize a demurrer unless it is to the whole complaint or to a separate cause of action alleged therein.—Frericks v. Coster, Case No. 5,108a.

§ 42. Demurrer as opening record.

On demurrer judgment will be given against the one who committed the first fault in plead-

ing.—Blossburg & C. R. Co. v. Tioga R. Co., Case No. 1,563; Bockee v. Crosby, Id. 1,593; Egberts v. Dibble, Id. 4,307; Greathouse v. Dunlap, Id. 5,742; Hart v. Rose, Id. 6,154a; McCue v. Washington, Id. 8,735; Sagory v. Wissman, Id. 12,217; United States v. Beard, Id. 14,551; Same v. Spencer, Id. 16,368.

The rule that on demurrer judgment must be rendered against him who commits the first fault in pleading is only applicable to faults that are bad on general demurrer.—Jackson v. Rundlet, Case No. 7,145.

A demurrer to a special plea cannot be carried back to the declaration where the general issue has been pleaded.—McDonald v. Orvis, Case No. 8,764.

On demurrer to a plea, the court will consider defects in the complaint which otherwise would have been considered waived by the plea.—Bank of Illinois v. Brady, Case No. 888.

§ 43. Admissions by demurrer.
A demurrer in a case proceeded on under the civil law does not prevent the party controverting the facts confessed.—Crawford v. The William Penn, Case No. 3,373.

§ 44. Pleading on overruling or sustaining demurrer.
After demurrer to a plea of set-off has been overruled, plaintiff should have leave to reply.—Rochell v. Phillips, Case No. 11,974a.

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.—Woodrow v. Coleman, Case No. 17,983.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS, REPLEADER, AND WITHDRAWAL OF PLEADINGS.

See, also, ante, § 44, and references under "Amendment."

§ 45. Power and discretion of court.
The powers of the court in cases of amendments are liberally exercised to promote justice. —Tiernan v. Woodruff, Case No. 14,027.

In courts proceeding under the civil law, amendments in case of variance are allowed with more freedom than in courts proceeding under the common law.—Crawford v. The William Penn, Case No. 3,373.

Amendments in England, under their statutes, constitute no rule for the courts in this country. —Brush v. Robbins, Case No. 2,059.

The allowance of amendments of defective pleadings is in the discretion of the court.—United States v. Batchelder, Case No. 14,541.

§ 46. Notice to adverse party.
A copy need not be served under the rule on the making of a slight amendment of the declaration, which in no respect can affect the merits of the case.—Spofford v. Ritten, Case No. 13,244.

§ 47. Amendment of declaration.
A declaration in an action brought in the name of a firm may be amended by inserting the names of the persons who compose the firm. —Tibbs v. Parrott, Case No. 14,022.

An error of the attorney in stating the name of defendant as "James" instead of "William" may be corrected.—Tilley v. Tharp, Case No. 14,047.

Mistake in plaintiff's name in declaration drawn by the clerk must be regarded as the mistake of the attorney, and amendment allowed only on defendant being permitted to plead de novo.—Furniss v. Ellis, Case No. 5,162.

An amendment by changing the form of the action from debt to covenant, and by striking out the name of one of the plaintiffs, will be allowed.—Tyson v. Belmont, Case No. 14,315a.

Plaintiff not allowed to amend to change the form of action from trespass on the case to debt.—Ten Broeck v. Pendelton, Case No. 13,827.

But the court may refuse to allow the declaration to be amended by striking out the name of one of the plaintiffs in the suit.—Moores v. Carter, Case No. 9,782a.

A party will be allowed to amend before trial his writ and declaration by striking out the name of one of the defendants.—Tobey v. Claflin, Case No. 14,066.

An amendment making new parties will not be allowed.—Morris v. Barney, Case No. 9,826.

An amendment by changing the action from case to covenant will not be granted.—Scholfield v. Fitzhugh, Case No. 12,474.

Declaration amended as of course at trial by suggesting proceeding by two non ests against a joint defendant not taken.—Brooklyn White Lead Co. v. Pierce, Case No. 1,940.

Declaration allowed to be amended by increasing the damages laid.—Gregg v. Gier, Case No. 5,799.

The amendment of a libel in the district court will not be allowed where the same introduces a new, substantive cause of action, and a new charge against defendant. Otherwise where the new cause of action corresponds in character, and is kindred in nature, to that presented in the original libel.—United States v. One Hundred and Twenty-Three Casks of Distilled Spirits, Case No. 15,943.

§ 48. Amendment of demurrer.
The court will not give leave to amend a demurrer unless it goes to the merits of the case. —Offutt v. Beatty, Case No. 10,448.

§ 49. Time of amendment.
The district courts may allow amendments of substance on terms, but this must be before final judgment.—Smith v. Jackson, Case No. 13,065.

Amendments may be made at any time before judgment, and in some cases afterwards.—Nelson v. Barker, Case No. 10,101.

The declaration may be amended at any time before the case is actually committed to the jury.—Smith v. Barker, Case No. 13,013.

At common law an amendment might be made while the proceedings were in paper.—Brush v. Robbins, Case No. 2,059.

Amendment not permitted at trial unless defense is just.—Allen v. Magruder, Case No. 230.

Plaintiff will not be permitted to amend after jury is sworn, if the justice of the case be against him.—Clarke v. Mayfield, Case No. 2,858.

An amendment of the declaration, offered after the jury is sworn, and introducing a new cause of action, cannot be allowed.—Postmaster General v. Ridgway, Case No. 11,313.

A misnomer may be amended after plea in abatement, the plea being the basis thereof.—Nelson v. Barker, Case No. 10,101.

An amendment may be allowed of a declaration after a special plea, replication, and demurrer, provided the cause of action remains the same, and costs are paid, arising from the demurrer.—Fiedler v. Carpenter, Case No. 4,759.

A defective averment of citizenship of parties may be amended after verdict.—Maddux v. Usher, Case No. 8,936.

An amendment to a plea, when not affecting the vital question on which the defense is based,

should be allowed after commission issued.—Buchanan v. Trotter, Case No. 2,075.

§ 50. Imposing conditions on allowing amendment.

Leave given defendant to amend, on payment of costs of the term, or a continuance, at plaintiff's option.—Milburne v. Kearnes, Case No. 9,543.

The payment of costs, given on leave to amend, is not a condition precedent.—Butts v. Chapman, Case No. 2,257; Wigfield v. Dyer, Id. 17,622.

Leave to amend a declaration in assumpsit blank as to dates and amounts, allowed on payment of full costs, after plea of the statute of limitations.—Ferris v. Williams, Case No. 4,749.

The writ and declaration may be amended by substituting the corporate name of the plaintiff for "The Corporation of Georgetown," on payment of all costs, and a continuance and leave to plead de novo.—Georgetown v. Beatty, Case No. 5,344.

After a plea of misnomer in abatement, the court will not suffer the record to be amended, but upon payment of costs and a discharge of the bail.—Payen v. Hodgson, Case No. 10,853.

An amendment of the ad damnum clause in a declaration after verdict for a greater amount will only be allowed upon condition of a new trial and payment of costs.—Elting v. Campbell, Case No. 4,422.

§ 51. Form and sufficiency of amended pleading.

The citizenship of parties may be stated in the present tense in an amended declaration.—Birdsall v. Perego, Case No. 1,435.

§ 52. Effect of amendment.

A subsequent amendment of the record does not affect the issue under the plea of nul tiel record.—Barnes v. Lee, Case No. 1,017.

§ 53. Supplemental pleadings.

Matters arising since the complaint, which increase plaintiff's damages, but do not change the cause of action, may be alleged by supplemental complaint.—Frericks v. Coster, Case No. 5,108a.

Leave to file supplemental answer, setting up good technical, though inequitable, defense, refused where there was unreasonable delay.—French v. Edwards, Case No. 5,097.

Supplemental answers are in the nature of pleas puis darrein continuance under the former practice, and, like such pleas, should be interposed at the first opportunity after coming to the knowledge of the parties.—French v. Edwards, Case No. 5,097.

After three terms leave to file a new plea which would oblige plaintiff to suffer nonsuit granted on condition of paying all costs.—Anonymous, Case No. 476.

§ 54. Repleader.

Defendant allowed a repleader where a mistake is made in a plea of puis darrein continuance through inadvertence of his attorney.—Heye v. Lieman, Case No. 6,445a.

A repleader is never awarded in favor of him who commits the first fault in pleading, nor where there is one material issue in the cause.—Hartfield v. Patton, Case No. 6,158a.

§ 55. Withdrawal of pleadings.

Defendant not permitted to withdraw the general issue and file a general demurrer.—Deakins v. Lee, Case No. 3,697.

Plea to merits not allowed to be withdrawn to permit special demurrer.—Alricks v. Slater, Case No. 259.

In case of a plea of limitations and a general demurrer defendant was allowed to withdraw the latter.—Suckley v. Slade, Case No. 13,587.

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.—Wilson v. Mandeville, Case No. 17,821.

A plea in bar cannot be withdrawn, after the case has been prepared for trial, in order to file a plea in abatement.—Yeatman v. Henderson, Case No. 18,132.

Court will not order general issue to be stricken out to give defendant leave to plead in abatement.—Bank of Columbia v. Scott, Case No. 880.

After plea by appearance bail, defendant allowed to withdraw such plea, and plead anew.—Pickett v. Lyle, Case No. 11,125.

VII. SIGNATURE AND VERIFICATION.

See, also, ante, § 29.

§ 56. Sufficiency of signature.

A plea to the jurisdiction must be signed by the defendant in person.—Adams v. White, Case No. 68.

A pleading of a county, not subscribed by the proper district attorney, is not duly subscribed, and may be stricken out of the case. Civ. Code Or. §§ 79, 103.—Moreland v. Marion County, Case No. 9,794.

§ 57. Time of verification.

The verification of a plea should be made when it is filed; it cannot be made at the trial.—Benedict v. Maynard, Case No. 1,296.

§ 58. Sufficiency of verification.

Contents of a notary's certificate to verification of bill by agent of corporation plaintiff.—Blake Crusher Co. v. Ward, Case No. 1,505.

An agreement that an answer may be sworn to in France, before any person authorized to administer oaths by the laws of France, is not complied with where the answer is sworn to before the American consul.—Herman v. Herman, Case No. 6,407.

§ 59. Effect of failure to verify.

A plea denying the execution of an instrument sued on, if not sworn to as required in such case by the Indiana statute, admits the instrument, but is good for other purposes.—McClintick v. Johnston, Case No. 8,700.

An unsworn plea denying the signature to the instrument on which the action is brought admits the signature.—Benedict v. Maynard, Case No. 1,296.

VIII. PROFERT AND OYER.

§ 60. When party entitled.

If a party partially states a deed, which is defective, or contains matter qualifying the part stated, the defendant may crave oyer of the deed, and set forth the whole, and then demur.—Hobson v. McArthur, Case No. 6,554.

Profert of the bond declared on, and a collateral agreement necessary to establish the right to a recovery, being made in the declaration, defendant is entitled to oyer.—Hammer v. Klein, Case No. 5,998.

After oyer, and issue on the plea of payment, the plaintiff is not bound to again produce the bond.—Darlington v. Groverman, Case No. 3,576.

Upon an issue on plea of general performance, plaintiff is not bound to produce the original cov-

enant sued upon.—Beall v. Newton, Case No. 1,164.

After oyer prayed and demurrer by the defendant, the plaintiff is not bound to give over at a subsequent term.—Offutt v. Beatty, Case No. 10,448.

Oyer cannot be demanded where profert not made.—Campbell v. Strong, Case No. 2,367a.

Plaintiff is not bound to give oyer of an instrument not in his possession and equally accessible to defendant.—Rockhill v. Hanna, Case No. 11,979.

§ 61. Time of demanding.
Oyer of plaintiff's letters of administration cannot be demanded after pleading to the merits.—Grahame v. Cooke, Case No. 5,678.

Oyer of the record of a judgment of another state will not be given if not prayed before the expiration of the rule to plead.—Cull v. Allen, Case No. 3,465.

§ 62. Sufficiency.
A copy will be received as oyer when a profert has been made of the original, and, if a copy is offered, the defendant may demur.—Wellford v. Miller, Case No. 17,381.

IX. BILL OF PARTICULARS.

§ 63. When bill will be ordered.
A bill of particulars will not be ordered where the matters of which information is sought are peculiarly within the knowledge of the party asking it, or where, from the nature of the case, plaintiff cannot be reasonably expected to be able to give the items.—United States v. Tilden, Case No. 16,521.

A bill of particulars ordered on information for violation of the revenue laws, where the allegations therein were vague.—United States v. Two Hundred Bushels of Corn, Case No. 16,586.

Sufficient information as to the particular article about which evidence is to be given can be obtained by an order for a bill of particulars, and for the exhibition to defendant of the article itself.—United States v. Foote, Case No. 15,128.

§ 64. Sufficiency and effect.
A bill of particulars appended to a petition to recover money paid as usury, which sets forth the usurious payments as general indebtedness for cash paid by the plaintiff to the defendant, is sufficient.—Whitaker v. Pope, Case No. 17,-528.

Where a plaintiff is called on to furnish a bill of particulars, he is limited in his proof to the items thus made out.—Williams v. Sinclair, Case No. 17,737.

An allegation in a bill of particulars that money unlawfully exacted was paid to a provost marshal raises no inference that the money was received by the commander of the post.—Kimberly v. Butler, Case No. 7,777.

X. MOTIONS.

§ 65. Motions to strike out.
A demurrer to a plea to a chancery attachment waives the right to move to strike out the plea, as having been made without giving special bail.—Irwin v. Henderson, Case No. 7,084.

An unnecessary plea will, on motion, be directed to be withdrawn, as improperly incumbering the record.—Hacker v. Stevens, Case No. 5,888; Varnum v. Campbell, Id. 16,887.

Ambiguity or uncertainty is not a ground of motion to strike out.—Gager v. Harrison, Case No. 5,171.

Objection for duplicity, under the Oregon Code, must be made by motion to strike out.—McKay v. Campbell, Case No. 8,839.

Bad pleas filed by a party given leave to amend may be stricken out on motion.—Parker v. Lewis, Case No. 10,741a.

Plea false on its face may be stricken out.—Bachman v. Everding, Case No. 708.

A plea of the statute of limitations, filed after the plea day, without leave of court, will be stricken out on motion.—Scott v. Lewis, Case No. 12,539.

A complaint containing more than one cause of action will be stricken out for duplicity, unless they are separately stated.—McKay v. Campbell, Case No. 8,839.

The sufficiency, in point of substance, of a plea which is regular in form, cannot be inquired into on motion.—Tyler v. Hyde, Case No. 14,310.

XI. ISSUES, PROOF, AND VARIANCE.

Issues, proof, and variance in particular actions and proceedings.

See "Assumpsit, Action of," § 5; "Covenant, Action of," § 4; "Debt, Action of," § 3; "Ejectment," § 11; "Libel and Slander," § 18; "Malicious Prosecutions," § 7; "Replevin," § 9; "Trespass," § 8.
By and against assignees in bankruptcy, see "Bankruptcy," § 362.
—— executors or administrators, see "Executors and Administrators," § 49.
—— partners, see "Partnership," § 37.
—— seamen, see "Seamen," §§ 139, 173.
For breach of promise of marriage, see "Breach of Marriage Promise," § 2.
For collision, see "Collision," § 129.
For forfeiture, see "Customs Duties," § 101.
For infringement of patent, see "Patents," §§ 198, 227.
For price of goods sold, see "Sales," § 44.
For usury, see "Usury," § 16.
In admiralty, see "Admiralty," § 89.
In bankruptcy, see "Bankruptcy," §§ 117, 571.
In equity, see "Equity," §§ 88, 89.
On bills or notes, see "Bills and Notes," § 99.
On bonds, see "Bonds," § 22.
On contract, see "Contracts," § 40.
On insurance policy, see "Insurance," § 173.
On judgment, see "Judgment," § 83.
To recover payment, see "Payment," § 18.

§ 66. Joinder of issues of fact.
Two affirmative facts in a plea and replication may be so contradictory as to make an issue, as where the plea averred diligence in the prosecution of a suit, and the replication charged negligence.—Walker v. Johnson, Case No. 17,-074.

In debt on bond, entry of pleadings as "covenants performed," "joined," is sufficient joinder of issue.—Alexandria v. Bowne, Case No. 180.

To a plea of want of consideration for the making and for the assignment of a note plaintiff should take issue on one or the other, and not on both.—McClintick v. Johnston, Case No. 8,-700.

§ 67. Evidence admissible under pleadings.
The plaintiff cannot give evidence of a consideration different from that alleged in the declaration.—Watson v. Dunlap, Case No. 17,282.

Under a plea of the general issue evidence may be introduced to show fraud or fraudulent representations on the part of the plaintiff as to the subject-matter of the suit.—Goodyear v. Day, Case No. 5,567.

§ 68. Variance between allegations and proof.
A bond payable on a day certain constitutes a variance from a declaration describing it (in legal effect) as payable on or before that date.—Kikindal v. Mitchell, Case No. 7,763.

Where the declaration was for money received to plaintiff's use, and the evidence showed that the money was received on joint account for plaintiff and his partners, a nonsuit was granted for variance.—Jordan v. Wilkins, Case No. 7,526.

Whenever time is material, whether in matters of contract or of tort, the plaintiff is strictly bound by the time specified in the declaration.—Eastman v. Bodfish, Case No. 4,255.

An averment of the demise from year to year for three years, at a certain sum per year, is not supported by evidence of a demise where the rent for one year was to be less than such sum.—Dorsey v. Chenault, Case No. 4,013.

Variance between proof of by-law of March 27 and averment of March 26.—Alexandria v. Brockett, Case No. 181.

Where the legal effect of an instrument would be the same whether the words constituting the variance be inserted or not, the variance is immaterial.—Cannell v. Milburn, Case No. 2,384.

XII. WAIVER OF OBJECTIONS AND AIDER BY VERDICT.

§ 69. Waiver of objections in general.
A general plea of nonassumpsit to several counts waives the objection that no account was exhibited with the declaration, as alleged therein.—Semmes v. Lee, Case No. 12,652.

After receiving and replying to a pleading the party cannot treat it, upon any ground of defect afterwards discovered, as a nullity, and proceed as if none had been served.—Gaines v. Travis, Case No. 5,179.

§ 70. Aider by verdict.
What defects in pleading title are cured by verdict.—Gray v. James, Case No. 5,719.

Where the declaration omits to state a fact which must necessarily have been proved at the trial to justify the verdict, the defect is cured by the verdict, if the general terms of the declaration are otherwise sufficient to comprehend the proof.—Dobson v. Campbell, Case No. 3,945.

A verdict will not cure a variance between the covenant alleged in the declaration and that produced on oyer.—Ingle v. Collard, Case No. 7,-043.

Omission of the averments of citizenship and of the value of the property in dispute are defects of substance, not cured by verdict, and not amendable after final judgment.—Smith v. Jackson, Case No. 13,065.

PLEDGES.

§ 1, What constitutes. § 2, Delivery. § 3, Indorsement of negotiable instruments. § 4, Consideration. § 5, Substitution. § 6, Duties and liabilities of pledgee. § 7, Lien of pledge. § 8, Redemption.

Attachment of pledged property, see "Attachments," § 3.
By factors, see "Factors," § 6.
Of insolvent debtor's property, see "Bankruptcy," § 255.

§ 1. What constitutes.
A silver cornet was delivered to the landlord, with an absolute bill of sale, as security for rent. The tenant subsequently borrowed it to use, and failed to return it. *Held*, that the transaction was a pledge, and that the lien was gone.—In re Harlow, Case No. 6,070.

§ 2. Delivery.
A delivery of the thing pledged where actual delivery is possible is necessary to render the pledge valid.—In re Wiley, Case No. 17,655.

Delivery to the pledgee may be either actual or constructive.—Ex parte Fitz, Case No. 4,837.

Possession may be kept by an agent, and that agent may be the pledgor.—Ex parte Fitz, Case No. 4,837.

The pledge of a note at the time in the lawful possession of a third person may be valid without actual delivery to the pledgee.—In re Wiley, Case No. 17,655.

§ 3. Indorsement of negotiable instruments.
It is doubtful, in Louisiana, whether indorsement as well as delivery is essential to the pledge of negotiable instruments.—Casey v. La Societe De Credit Mobilier, Case No. 2,496.

§ 4. Consideration.
A pledge or mortgage made to secure a debt previously incurred, but still subsisting, or to indemnify against a present liability arising out of a past contract, is made on a sufficient consideration.—In re Wiley, Case No. 17,655.

§ 5. Substitution.
Where bank notes were pledged to secure a loan, and, as they fell due, substituted others in their place, the pledge of the substituted notes is valid.—Casey v. La Societe De Credit Mobilier, Case No. 2,496.

§ 6. Duties and liabilities of pledgee.
A creditor vested with authority to sell securities deposited with him cannot exercise it otherwise than under a trust for the debtor's benefit.—Sparhawk v. Drexel, Case No. 13,204.

Where the giving of notice of the sale of a pledge has been rendered impossible by the act of the pledgor, neither the pledgee nor its agent in the sale of the collateral was liable for conversion.—City Bank of Racine v. Babcock, Case No. 2,741.

The holder of collateral security is not liable for a loss occurring without his fault, nor for neglecting to enforce the security when the debtor was, by the understanding of the parties, to do this.—Brown v. Hiatt, Case No. 2,011.

§ 7. Lien of pledge.
Corporate stock is bound for the payment of interest, where it is pledged for the redemption of certificates of debt, which in turn bind the debtor for the payment of "the sum therein mentioned and the interest thereon."—Swasey v. North Carolina R. Co., Case No. 13,679.

In the case of houses composed of the same persons, but transacting business under different names at different places, securities deposited with one to cover a special loan are not subject to a general lien in favor of the other.—Sparhawk v. Drexel, Case No. 13,204.

Where a creditor in a privileged relation, which gives him a general lien, receives security to cover a particular accommodation, such security is subject to the general lien.—Sparhawk v. Drexel, Case No. 13,204.

A person advancing money on the pledge of a policy of insurance on goods is entitled to the proceeds as against a surety on a bottomry bond given by the pledgor to the insurance company.—Wiggin v. Dorr, Case No. 17,625.

Railroad coupons held by a creditor as security were converted into land, the unrecorded deeds for which were deposited with the creditor in place of the coupons. *Held*, that such creditor had an equity in the land superior to the lien of a general judgment creditor.—First Nat. Bank v. Caldwell, Case No. 4,798.

§ 8. Redemption.
Pledged bonds sold at public auction, and bought in by the pledgee, may nevertheless be redeemed within a reasonable time; but a delay of 11 years after the sale is unreasonable.—Marsh v. Whitmore, Case No. 9,122.

POLICE POWER.

See "Constitutional Law," § 3.
Of municipality, see "Municipal Corporations," §§ 19-21.

POLICY.

Of insurance, see "Insurance."

POLITICAL POWERS.

See "Courts," § 2.

POLITICAL RIGHTS.

See "Constitutional Law," § 4.
Suffrage, see "Elections."

POSSESSION.

See "Adverse Possession."
Writ of assistance, see "Assistance, Writ of."

POST OFFICE.

I. POST-OFFICE DEPARTMENT, POST OFFICES, POSTMASTERS AND OTHER OFFICERS, AND CARRIAGE OF MAILS.

§ 1, Postmaster general. § 2, Postmasters. § 3, Deputies and assistants. § 4, Bonds of officers—Necessity for bond. § 5, —— Requisites and validity of bond. § 6, —— Liabilities of sureties. § 7, —— Discharge of sureties. § 8, —— Actions on bonds and amount of recovery. § 9, Establishment of post roads. § 10, Contracts for carriage of mails.

II. OFFENSES AGAINST POSTAL LAWS.

§ 11, In general. § 12, Embezzlement or larceny of mail. § 13, Opening or detaining letters. § 14, Sending matter concerning lotteries. § 15, Unlawful franking. § 16, Illegal carrying, and private expresses. § 17, Robbery of mails. § 18, Obstructing the mail. § 19, Inclosures in printed matter. § 20, Receiving stolen mail matter. § 21, Sending obscene and indecent matter. § 22, Indictment or information—In general. § 23, —— Embezzlement or larceny. § 24, —— Illegal carriage. § 25, —— Unlawful franking. § 26, —— Opening letters. § 27, —— Sending obscene matter. § 28, —— Variance. § 29, Evidence.

Condemning land for building, see "Eminent Domain," § 1.
Mailing protest, see "Bills and Notes," § 76.
Removal of causes arising under post office laws, see "Removal of Causes," § 8.

I. POST-OFFICE DEPARTMENT, POST OFFICES, POSTMASTERS AND OTHER OFFICERS, AND CARRIAGE OF MAILS.

See, also, "Collision," § 2.

§ 1. Postmaster general.
The postmaster general, in the discharge of those duties which are prescribed by law, is not lawfully subject to the control of the president. —United States v. Kendall, Case No. 15,517.

Act March 3, 1851, § 3, authorizes the postmaster general to deliver postage stamps to a deputy postmaster without prepayment; the intent being to require prepayment of persons not deputy postmasters.—United States v. Mason, Case No. 15,737.

§ 2. Postmasters.
The discretion of the postmaster general in granting or refusing extra allowance to postmasters for extra labor and expense in certain cases (Act June 22, 1854) is not subject to judicial review.—United States v. Davis, Case No. 14,927.

No postmaster has a legal right to the allowance for the necessary cost of rent, fuel, etc. (Act July 1, 1864, § 5), until it is awarded him by the postmaster general.—United States v. Davis, Case No. 14,927.

As to duties of postmasters in keeping moneys received for postage.—Trafton v. United States, Case No. 14,135.

No surrender of the property of the postoffice department to the government of the Confederate States, under any other than the coercion of armed force, will excuse a postmaster from liability on his bond.—United States v. Morrison, Case No. 15,817.

A postmaster, until the action of the postmaster general, does not vacate his office by remaining out of the neighborhood.—United States v. Pearce, Case No. 16,020.

§ 3. Deputies and assistants.
A deposit of post-office receipts in the joint name of the postmaster and his assistant does not make them jointly liable.—Trafton v. United States, Case No. 14,135.

Act March 3, 1825, substitutes a certified statement of the settled account as evidence in suits against deputy postmasters in lieu of the certified copy of the account current required by Act April 30, 1810.—Postmaster General v. Rice, Case No. 11,312.

The liability of a deputy postmaster and of his clerks for negligence in the forwarding of letters, and the sufficiency of pleadings, and admissibility of evidence in an action for damages, determined.—Dunlop v. Munroe, Case No. 4,167.

See, also, post, §§ 11-29.

§ 4. Bonds of officers—Necessity for bond.
The postmaster general may require a bond from a deputy for the faithful performance of his duties, though such bond is not expressly required by law.—Postmaster General v. Reeder, Case No. 11,311; Same v. Rice, Id. 11,312.

§ 5. —— Requisites and validity of bond.
A bond given by a postmaster, with sureties, for the performance of his official duties, does not constitute a binding contract until approved and accepted by the postmaster general.—Postmaster General v. Norvell, Case No. 11,310.

The reception and detention of an official bond by the postmaster general for a considerable time, without objection, is sufficient evidence of its acceptance.—Postmaster General v. Norvell, Case No. 11,310.

The return of the bond for the purpose of obtaining an additional surety affords no proof that it had not been accepted; nor does it amount either to a surrender or canceling of it. —Postmaster General v. Norvell, Case No. 11,-310.

§ 6. —— Liability of sureties.
The sureties on the bond of a deputy postmaster, which stipulates that the principal shall faithfully account for postage stamps received, are liable as upon a contract at common law.—United States v. Mason, Case No. 15,737.

The sureties on the official bond of a deputy postmaster are liable for his neglect as an agent of the postmaster general.—Boody v. United States, Case No. 1,636.

Balances due from postmasters may be extinguished by subsequent payments, so that, when the account is continued through a series of years, the postmaster's sureties will remain liable for a deficiency in his last quarterly account, until two years thereafter. Act March 3, 1825, §§ 3, 31.—United States v. Kershner, Case No. 15,527.

Under Act March 3, 1851, the sureties on the bond of a deputy postmaster are liable for postage stamps received by him.—United States v. Mason, Case No. 15,737.

§ 7. —— Discharge of sureties.
The sureties on official bonds are not discharged by the delay of the postmaster general to bring suits thereon.—Locke v. Postmaster General, Case No. 8,441; Postmaster General v. Reeder, Id. 11,311.

But under Act March 3, 1825, the sureties on a postmaster's bond are discharged where a suit is not brought within two years after a default. —Postmaster General v. Fennell, Case No. 11,-307; Roddy v. United States, Id. 11,990; United States v. Davis, Id. 14,929; Same v. Sears, Id. 16,246.

Such act does not apply to a default which occurred before the passing of the act.—Postmaster General v. Rice, Case No. 11,312.

Such act does not apply in cases of balances unpaid at the end of a quarter, which are subsequently liquidated by the receipts of a succeeding one.—Postmaster General v. Norvell, Case No. 11,310.

Mere indulgence or forbearance on the part of the government towards a defaulting postmaster for an indefinite time, in the absence of fraud, will not discharge his sureties.—United States v. Wright, Case No. 16,776.

The fact that the government continued a postmaster in office after discovery of a defalcation, and delayed to disclose the same, will not relieve his sureties from liability for subsequent defalcations.—United States v. Wright, Case No. 16,776.

The possession of the office of a postmaster by a special agent of the department for one day, while adjusting his accounts, will not release his sureties from all subsequent liability under Rev. St. § 3836.—United States v. Wright, Case No. 16,776.

The sureties on the official bond of a postmaster are not discharged by the making of an order of the postmaster general directing the postmaster to retain balances due until drawn for.—Locke v. Postmaster General, Case No. 8,441; Postmaster General v. Reeder, Id. 11,-311.

An act of congress increasing rates of postage, and consequently the responsibility of the postmaster's sureties, will not discharge them.—Postmaster General v. Munger, Case No. 11,-309.

The giving of a new bond by a postmaster does not discharge sureties on the old bond for past or subsequent defaults.—Postmaster General v. Munger, Case No. 11,309; Same v. Reeder, Id. 11,311.

In such case all the sureties are responsible for defaults happening after giving the second bond.—Postmaster General v. Munger, Case No. 11,309.

§ 8. —— Actions on bonds and amount of recovery.
A transcript, from the post-office department, of the balances struck by the postmaster is sufficient to charge him.—Lawrence v. United States, Case No. 8,145.

The return of a postmaster for a full quarter is evidence against his surety to show an average liability for a part of the quarter.—Lawrence v. United States, Case No. 8,145.

In an action on a postmaster's bond, defendant may counterclaim items which have been duly presented to the proper department for allowance and rejected.—United States v. Davis, Case No. 14,927.

Where there are items of debit and credit in a running account between the postmaster general and the deputy postmasters, in the absence of any specific appropriation by either party, the credits are to be applied to the discharge of the debits antecedently due, in the order of the account.—Postmaster General v. Furber, Case No. 11,308.

A payment, made by a postmaster, of a greater sum than the receipts of the quarter, should be applied as a credit for a subsequent quarter, as well before as after the date of his official bond.—Lawrence v. United States, Case No. 8,145.

§ 9. Establishment of post roads.
Constitutional provision for establishment of post roads means such roads as are laid out by the authority of the state.—Cleveland, P. & A. R. Co. v. Franklin Canal Co., Case No. 2,890.

"Post routes," which the postmaster general is authorized by Act March 3, 1851, § 10, to establish within cities and towns, are not the same as "post roads," in the act of 1827.—United States v. Kochersperger, Case No. 15,-541.

Act of congress making all railroads post roads means only such as have charters from the state. —Cleveland, P. & A. R. Co. v. Franklin Canal Co., Case No. 2,890.

§ 10. Contracts for carriage of mails.
The master or owner is not liable for the neglect of a clerk in failing to deliver a letter of which the former had no knowledge, unless they fail to exercise reasonable diligence.—United States v. Beaty, Case No. 14,555.

A recommendation by the postmaster general to the secretary of the navy to make a deduction from the pay of a contractor, on the ground that a portion of a service was performed by a steamer not of the class stipulated for in the contract, is not the imposition of a fine within the terms of the act.—United States v. Collins, Case No. 14,834.

The master or owner of a steamboat is not liable to the penalty of $150 (Act 1845, § 13) for failure to deliver a letter, unless it has been brought to him, or intrusted to his care, or is within his power.—United States v. Beaty, Case No. 14,555.

The postmaster general has no power under Act June 27, 1848, to impose a fine on a contractor for carrying the mails for delays, except for the causes specified in the act.—United States v. Collins, Case No. 14,834.

II. OFFENSES AGAINST POSTAL LAWS.

§ 11. In general.
Offenses under the post-office law are not felonies, but misdemeanors.—United States v. Lancaster, Case No. 15,556.

§ 12. Embezzlement or larceny of mail.
The embezzlement of a letter and the stealing of its contents are distinct offenses under Rev. St. § 5467.—United States v. Taylor, Case No. 16,438.

A letter delivered to an authorized agent cannot be charged to have been embezzled.—United States v. Sander, Case No. 16,219.

The stealing or taking a letter, etc., under section 22, means a taking with a criminal intent, and not a taking through mistake, or with an innocent intent.—United States v. Pearce, Case No. 16,020.

Rev. St. § 5467, is not confined to the offense of stealing or taking things out of a letter packet or bag, but includes the taking of the letter itself.—United States v. Pelletreau, Case No. 16,023.

No one can be convicted under Act 1825, § 21, who is not employed in the post-office department.—United States v. Nott, Case No. 15,900.

An employé in a post office, who steals gold dust from a letter in the mail, is liable to indictment, whether the same be mailable or not, under Act July 1, 1864, § 12.—United States v. Randall, Case No. 16,118.

To constitute the offense, it is not necessary that the letters stolen should have been taken out of the post-office building.—United States v. Nott, Case No. 15,900.

To constitute a post office under Act March 3, 1825, § 22, there need not be a building or room set apart. The post office may be a desk, trunk, or box, carried from one house or building to another.—United States v. Marselis, Case No. 15,724.

The place of deposit of the mailable matter would, in such case, constitute the post office, so that taking anything therefrom would be within Act March 3, 1825, § 22.—United States v. Marselis, Case No. 15,724.

A post-office clerk who steals a letter or package from the post office is punishable under Act March 3, 1825, § 22.—United States v. Marselis, Cases Nos. 15,724, 15,725.

An errand boy authorized to receive letters from the mail, who embezzles the contents of a letter so received, is not liable under Act March 3, 1825, § 22, as the taking was lawful.—United States v. Driscoll, Case No. 14,994.

One sworn in as a deputy postmaster, who handled the mail whenever he was about the post office and felt inclined to do so, is an employé within the meaning of the law.—United States v. Brent, Case No. 14,640.

A mail carrier is within Act April 30, 1810, § 13, punishing embezzlement by any person "employed in any of the departments of the general post office."—United States v. Belew, Case No. 14,563.

A person is not guilty of taking and embezzling a letter (Rev. St. § 3792) where he took from the post office and retained a registered letter addressed in his care to a person who was dead, and retained a draft inclosed therein.—United States v. Thoma, Case No. 16,471.

A decoy letter, containing money, mailed for the purpose of entrapping an employé in a post office, who opens it, and takes the money, is within Act March 3, 1825, § 21.—United States v. Cottingham, Case No. 14,872; Same v. Foye, Id. 15,157.

See, also, "Embezzlement."

§ 13. Opening or detaining letters.

After the deposit of a letter in the post office, no one except the writer or the addressee, or some one authorized by them, has the right, while it is there, to open it, for the mere purpose of ascertaining its contents.—United States v. Eddy, Case No. 15,024.

Neither the postmaster nor other officers have any authority to open it under the pretext that there might be something improper or even criminal therein.—United States v. Eddy, Case No. 15,024.

The delivery of a letter to an errand boy is a delivery to his employer, within Act March 3, 1825, § 22, and he cannot be convicted of opening the same "before it shall have been delivered to the person to whom it is directed."—United States v. Driscoll, Case No. 14,994.

It is an offense to open a letter, which has been in the post office, before delivery to the addressee, with intent to obstruct his correspondence, or pry into his business or secrets, though the letter was not sealed, and was written by defendant himself, and the addressee's name was not correctly given. Act March 3, 1825, § 22.—United States v. Pond, Case No. 16,067.

Act March 3, 1825, § 22, in relation to opening letters to obstruct correspondence, etc., applies only where the possession of letters was obtained wrongfully from the post office, or from a mail carrier.—United States v. Parsons, Case No. 16,000.

A person who receives a letter from a letter carrier, addressed to another, without fraud or artifice, is not liable to indictment under Act March 3, 1825, § 22, where he opens the same and embezzles money therefrom.—United States v. Parsons, Case No. 16,000.

A person who, without artifice, receives a letter for another, addressed in his care, and opens and destroys the same, cannot be convicted of opening the same with the design to obstruct the correspondence, etc., of another.—United States v. Mulvaney, Case No. 15,833.

On an indictment for taking a letter from the post office with intent to obstruct correspondence (Rev. St. § 3892), defendant may be convicted without evidence of an unlawful, clandestine, or fraudulent taking.—United States v. Nutt, Case No. 15,904.

Proof of an intentional nondelivery of a letter so taken from a post office may be sufficient.—United States v. Nutt, Case No. 15,904.

A person indicted for such taking of a letter with intent to pry into the business or secrets of another cannot be convicted if he knew the contents of the letter before he received it.—United States v. Nutt, Case No. 15,904.

It is no defense that the letter related in part to defendant's business, or that in good faith he believed that the letter was of no value to the person to whom it was addressed, even if such be the fact, or that the letter was voluntarily delivered to defendant by the postman.—United States v. Nutt, Case No. 15,904.

The writer of a letter which has passed from the office where mailed has no right to intercept it, or authorize its delivery to a person other than the one to whom it is directed.—United States v. Nutt, Case No. 15,904.

A person who takes a letter out of the post office and reads it by authority of the addressee, where it was also intended for him, does not violate the post-office law.—United States v. Tanner, Case No. 16,430.

Act 1825, § 21, which prescribes a punishment for the detention of a letter or packet, refers to a letter or packet detained before it reaches the place of destination.—United States v. Pearce, Case No. 16,020.

A letter dropped in a post office, intended for a person at such place, is not a letter intended to be "conveyed" by post. Act 1825, c. 275, § 21.—United States v. Oliver, Case No. 15,917.

A letter carrier who delivers letters from house to house is a mail carrier, within Act March 3, 1825, § 22.—United States v. Parsons, Case No. 16,000.

§ 14. Sending matter concerning lotteries.

An act prohibiting the carrying in the mail of letters or circulars concerning lotteries, and punishing as a crime the sending of such matter through the mails, is not unconstitutional.—In re Jackson, Case No. 7,124.

§ 15. Unlawful franking.

Though unlawful, it is not penal for a member of congress to frank envelopes to be used in transmitting printed circulars through the

mail. Act March 3, 1825. § 28.—Dewees' Case, Case No. 3,848.

§ 16. Illegal carrying, and private expresses.

Act March 3, 1825, § 21, prohibiting mail carriers carrying letters or packets, does not prohibit their carrying a package containing executions only.—United States v. Chaloner, Case No. 14,777.

The postal law of 1845, prohibiting the establishing of private expresses, *held* constitutional. —United States v. Thompson, Case No. 16,489.

An expressman conveying letters in an express car is punishable, under Act 1825, c. 275. —United States v. Gray, Case No. 15,253.

The carrier of letters by private express, in a package, is not liable to the penalty under the act of 1825, unless he knew that the package contained letters.—United States v. Adams, Case No. 14,421.

Act March 2, 1827, § 3, and Act March 3, 1845, § 9, prohibit the business of private letter carriers on mail routes, but not within the limits of a post town.—United States v. Kochersperger, Case No. 15,541.

An order of the postmaster general declaring the streets of a city to be post roads does not make them so, within the act of 1827, or render the business of private letter carriers therein unlawful.—United States v. Kochersperger, Case No. 15,541.

The setting up of a post by railroad or steamboat service is not setting up a foot post, within Act 1827, § 3.—United States v. Kimball, Case No. 15,531.

The carrying of letters, though without distinct compensation, which are not in the form of receipts, etc., is a violation of the law.—United States v. Thompson, Case No. 16,489.

It is not unlawful for an express company to carry with a money letter or package an unstamped letter of advice concerning such money. Act March 3, 1845, § 9.—United States v. United States Exp. Co., Case No. 16,602.

The proprietor of a post road is not liable for the penalty (Act March 3, 1825, § 19), where letters are carried over his line by a passenger without his knowledge.—United States v. Hall, Case No. 15,281; Same v. Kimball, Id. 15,531; Same v. Pomeroy, Id. 16,065.

The owner of the line is liable where, by public advertisement, he has notice of the fact that certain persons or agents are thus sending letters; and in such case the persons employing the agents are liable, under section 24.—United States v. Hall, Case No. 15,281.

Where the owner of the line is not liable under section 19, no penalty is incurred, under section 24, by the person who sends such letters. —United States v. Hall, Case No. 15,281; Same v. Kimball, Id. 15,531.

§ 17. Robbery of mails.

The word "rob," in Act March 3, 1825, § 22, is used in its common-law sense.—United States v. Wilson, Case No. 16,730.

The offense of robbing the mail is a capital crime if effected by the use of dangerous weapons.—United States v. Hare, Case No. 15,304; Same v. Wood, Id. 16,757.

A sword or pistol in the hand of a robber, by terror of which the robbery is effected, is a dangerous weapon, within the law, though the sword be not drawn, and the pistol be not pointed.—United States v. Wood, Case No. 16,756.

The offer or threat to shoot with a pistol is within the law without proof that the pistol was loaded.—United States v. Wilson, Case No. 16,730; Same v. Wood, Id. 16,756.

Putting the person in custody of the mails in fear and his life in peril is putting his life in jeopardy.—United States v. Wood, Case No. 16,757.

"Jeopardy" means a well-grounded apprehension of danger to life in case of refusal or resistance.—United States v. Wilson, Case No. 16,730.

The possession and exhibition of dangerous weapons in effecting the robbery of the mail is within Act April 30, 1810, § 19, cl. 2.—United States v. Bernard, Case No. 14,584.

Robbers of a mail stage *held* not to intend to effect the robbery by the use of dangerous weapons which would put the guard's life in jeopardy, where, though armed, and dangerously wounded, they took precautions against injuring the guard.—United States v. Aminhisor, Case No. 14,442.

Carrier of the mail need not have taken the oath prescribed by section 2, nor need the whole mail be taken, to authorize a conviction.—United States v. Wilson, Case No. 16,730.

§ 18. Obstructing the mail.

Elements of the offense of obstructing the mails stated in a charge to the jury.—United States v. Lawhead, Case No. 15,570.

An intention to obstruct the mail flows from an unlawful act that so operates, although its primary object was to accomplish another purpose.—United States v. Stevens, Case No. 16,392.

The offense of obstructing the mail, under Rev. St. § 3995, is not committed unless the mail is in transitu, and the horse or vehicle taken is employed in carrying the mail.—United States v. McCracken, Case No. 15,664.

A mail carrier driving through a crowded city at such a rate as to endanger the lives of the inhabitants may be arrested by a constable without a warrant.—United States v. Hart, Case No. 15,316.

A warrant in a civil suit against a mail carrier is no justification to the officer executing it, on an indictment for obstructing the mail.—United States v. Harvey, Case No. 15,320.

The unlawful stopping of a passenger train by persons who are willing to permit the passage of the mail car detached from the passenger car is punishable under Rev. St. § 3995, as a willful obstruction or retarding of the passage of the mail.—United States v. Clark, Case No. 14,805.

A driver and carrier of the United States mail is exempt from arrest on civil process while engaged in the service, which includes waiting for the mail.—United States v. Bean, Case No. 14,550.

The lien of a private citizen against horses for their livery cannot be enforced so as to stop the United States mail in a stage coach drawn by such horses.—United States v. Barney, Case No. 14,525.

§ 19. Inclosures in printed matter.

The mere writing of a name on a newspaper is not within the prohibition of the post-office act.—United States v. Grafton, Case No. 15,245.

§ 20. Receiving stolen mail matter.

It is an offense under Act March 3, 1825, § 45, to receive or buy an article knowing it to have been stolen from the mail.—United States v. Keene, Case No. 15,512.

§ 21. Sending obscene and indecent matter.

Rev. St. § 3893, forbidding the depositing in the mail of any obscene or indecent publication, is not repugnant to any constitutional provision. —United States v. Bennett, Case No. 14,571.

The test of obscenity, within the meaning of the statute, is whether the tendency of the matter is to deprave and corrupt the morals of those whose minds are open to such influences, and into whose hands a publication of the sort may fall.—United States v. Bennett, Case No. 14,571.

A pamphlet of twenty-four pages, consisting of a sheet and a half, secured together by stitching, with a cover of four pages, and a title page, is properly described as a book.—United States v. Bennett, Case No. 14,571.

A notice in the form of a letter inclosed in a sealed envelope, if it give the prohibited information, is within the scope of the statute.—United States v. Foote, Case No. 15,128.

A written slip of paper giving the prohibited information is a "notice," within the meaning of the statute, although not volunteered, but sent in reply to a letter asking for the information.—United States v. Foote, Case No. 15,128.

A sealed letter, written by defendant to a person who had no existence, in answer to a decoy letter of a detective, and which, on its face, gives no information of the prohibited character, is not within Act July 12, 1876.—United States v. Whittier, Case No. 16,688.

Upon a prosecution for depositing in the mail a newspaper containing a quack medicine advertisement of where to obtain an article to obtain abortion, it is not necessary that the advertisement indicate any particular article or thing or its properties.—United States v. Kelly, Case No. 15,514.

A publisher knowingly depositing in the mails a newspaper containing a quack medical advertisement of how and where to obtain article to produce abortion, etc., is guilty of a violation of Rev. St. § 3893.—United States v. Kelly, Case No. 15,514.

Under an indictment for mailing an article "designed or intended for the prevention of conception or procuring of abortion" (Act June 8, 1872, § 148, amended March 3, 1873, § 2), it is no defense that the article would not in fact have such effect, if it was put up in a manner and described so as to insure its use for such purpose by one desiring to accomplish such result.—United States v. Bott, Case No. 14,626.

Under such acts, making it a misdemeanor to mail any advertisement or notice giving information where or of whom such article may be obtained, it is immaterial whether the article was in fact at the place designated.—United States v. Bott, Case No. 14,626.

The mailing of a postal card containing words imputing illicit intercourse to third persons, but no epithet in the form of a substantive or adjective, is an offense under Rev. St. § 3893, punishing the mailing of postal cards containing "indecent or scurrilous epithets."—United States v. Pratt, Case No. 16,082.

§ 22. Indictment or information—In general.

Less nicety in the form of the indictment is required in the prosecution of offenses under the postal laws than is required in cases of felonies in England.—United States v. Lancaster, Case No. 15,556.

An indictment against a carrier of the mail for an offense under the law, punishable generally, will sustain a conviction, the word "carrier" being stricken out as surplusage.—United States v. Burroughs, Case No. 14,695.

§ 23. —— Embezzlement or larceny.

To convict a person of stealing a letter, etc., who is employed in the department, such employment must be distinctly alleged and proved.—United States v. Nott, Case No. 15,900.

When the embezzlement is of a letter containing a banknote, it is not necessary to describe the note.—United States v. Patterson, Case No. 16,011.

In an indictment against a post-office clerk for embezzlement a description of the letter as directed to A. B. is sufficient where it is inclosed in an envelope directed to A. B.—United States v. Laws, Case No. 15,579.

It is unnecessary to particularly describe the letter or the bank notes therein.—United States v. Lancaster, Case No. 15,556.

An indictment against a postmaster for embezzling bank notes from the mail must aver that the note was a thing of value.—United States v. Cummings, Case No. 14,901.

But an indictment charging a mail carrier with stealing a letter out of the mail is sufficient without alleging that it contained an article of value.—United States v. Fisher, Case No. 15,102.

In an indictment against a post-office clerk for embezzling a letter containing a bank note, the letter being described as directed to a person other than defendant, it is unnecessary to allege that the letter or note was the property of any one.—United States v. Laws, Case No. 15,579; Same v. Okie, Id. 15,916.

In an indictment for larceny from a letter under section 21, the property stolen must be laid on some person other than the prisoner.—United States v. Cummings, Case No. 14,901a; Same v. Foye, Id. 15,157.

Notes of a third person, sent by a depositary with notes of his own, and stolen from the mail, may be laid in the indictment as the property of the depositary.—United States v. Burroughs, Case No. 14,695.

An indictment under Rev. St. § 5467, against a letter carrier, for embezzling a letter, is not defective, though it does not aver that the letter was not delivered to the addressee.—United States v. Jenther, Case No. 15,476.

Where a postmaster is indicted for embezzling a letter, it is enough to allege that the letter came into his hands, without showing where it was mailed, and by what route it was conveyed.—United States v. Lancaster, Case No. 15,556; Same v. Laws, Id. 15,579; Same v. Okie, Id. 15,916.

An indictment against a post-office employé for embezzling letters intrusted to him, and stealing bank notes therefrom, need not aver that the letters were intended to be conveyed by post.—United States v. Golding, Case No. 15,224.

In an indictment for embezzling a letter containing money (Act July 1, 1864, § 12), it is not necessary to aver that the letter embezzled was intended to be conveyed to any particular place, but only that it was intended to be conveyed by post.—United States v. Okie, Case No. 15,916.

An indictment against a post-office employé for stealing money from a letter (Rev. St. § 5467), which did not aver that the letter was one intended to be conveyed by mail, or that it had been deposited in any post office, or in charge of defendant, or that it came into his possession in the regular course of his official duty, *held* bad.—United States v. Winter, Case No. 16,744.

An indictment under Act March 3, 1825, § 22, which alleges that defendant did secrete "and" embezzle a certain letter, is not defective.—United States v. Sander, Case No. 16,219.

The indictment need not allege that the clerk obtained the letter by virtue of his employment; it is enough that, being a clerk, he has obtained possession of the letter.—United States v. Laws, Case No. 15,579.

In an indictment for embezzlement, it is sufficiently certain to charge that defendant was "a person employed in one of the departments of the post-office establishment of the United States."—United States v. Patterson, Case No. 16,011.

An indictment for abstracting a letter containing bank notes is good if it alleges that the letter was put into the post office to be conveyed by post, and was being so conveyed, and came into defendant's possession, as driver of the mail stage.—United States v. Martin, Case No. 15,731.

The embezzlement of the letters and stealing bank notes therefrom may be charged in the same count of the indictment.—United States v. Golding, Case No. 15,224.

The embezzlement of several letters from a post office may be charged in separate counts of the same indictment, or separate indictments therefor may be consolidated.—United States v. Brent, Case No. 14,640.

§ 24. —— Illegal carriage.

An information under the act of 1845 for carrying a letter out of the mail need not negative the fact that it was stamped.—United States v. Tilden, Case No. 16,523.

§ 25. —— Unlawful franking.

Sufficiency of indictment against member of congress for unlawfully franking a letter.—Dewees' Case, Case No. 3,848.

§ 26. —— Opening letters.

The indictment need not allege any venue of the lawful intent, nor that the opening was unlawful, nor that the addressee was a real person.—United States v. Pond, Case No. 16,067.

§ 27. —— Sending obscene matter.

An indictment charging defendant with depositing in the mail an obscene pamphlet, and a notice giving information how an article designed for the prevention of conception can be obtained, need not give a definite or detailed description of the pamphlet.—United States v. Foote, Case No. 15,128.

An indictment under such statute need not set forth in hæc verba the book, or the obscene part thereof, where it states that it is so indecent as to make it improper to place it on the records, where the book is otherwise sufficiently identified.—United States v. Bennett, Case No. 14,571.

An indictment is sufficient which alleges that defendant knowingly deposited the obscene book, without alleging that he knew it to be nonmailable matter under the statute.—United States v. Bennett, Case No. 14,571.

The statute refers to the place where such articles can be "obtained or made." *Held*, that an indictment using "obtained and made" was good, and proof of either sufficient.—United States v. Kelly, Case No. 15,514.

§ 28. —— Variance.

Certain variances as to the address upon a letter alleged to have been embezzled by a letter carrier, *held* not material.—United States v. Jenther, Case No. 15,476.

Where in an indictment for embezzlement the letter or bank note is described, it must be proved as laid.—United States v. Lancaster, Case No. 15,556.

The description of the termini between which the letter was intended to be sent by post cannot be rejected as surplusage, but must be proved as laid.—United States v. Foye, Case No. 15,157.

§ 29. Evidence.

On trial of an indictment charging the deposit in the mail of an obscene publication, clauses of alleged similar character cannot be read from other books by way of illustration.—United States v. Bennett, Case No. 14,571.

On trial of an indictment for depositing scurrilous postal cards in the mail, evidence is admissible of other writings of defendant containing identical errors in spelling, to prove authorship.—United States v. Chamberlain, Case No. 14,778.

On a trial for larceny from the mail, the best evidence of mailing is that of the person who mailed the letter, and of its loss of the person to whom it was addressed.—United States v. Crow, Case No. 14,895.

The presumption of theft arising from the disappearance of mail matter may be repelled by evidence of the miscarrying of mails sent through the same office after defendant's removal.—United States v. Sterland, Case No. 16,387.

Upon a prosecution under Act 1825, § 21, for the embezzlement by an employé of the post office, some evidence is necessary of the genuineness and value of bank notes charged to have been stolen out of a letter.—United States v. Nott, Case No. 15,900.

The postmasters through whose offices the embezzled letters were passed or distributed must be called as witnesses on a prosecution for stealing letters out of the mail.—United States v. Emerson, Case No. 15,051; Same v. Whitaker, Id. 16,672.

To show that the article has been stolen, the conviction of the persons who stole it is sufficient if the article be identified.—United States v. Keene, Case No. 15,512.

Evidence that the prisoner uttered, as genuine, what purported on its face to be a bank note, is competent proof that it was a bank note, though it is not otherwise shown that such a bank existed.—United States v. Foye, Case No. 15,157.

Sufficiency of evidence to sustain conviction for robbing the mail.—United States v. Cummings, Case No. 14,900.

POUNDAGE.

See "United States Marshals," § 11.

POWERS.

§ 1, Duration and termination. § 2, Construction and execution.

Assignment in bankruptcy, see "Bankruptcy," § 198.
Created by will, see "Wills," §§ 42, 43.
Of attorney, see "Principal and Agent."
Of sale in mortgage, see "Mortgages," §§ 18–27.
To confess judgment; see "Judgment," § 6.

§ 1. Duration and termination.

A collateral power, although irrevocable, expires with the life or bankruptcy of the appointor.—Lockett v. Hill, Case No. 8,443.

A naked power which expires with the death of the party creating it is such as requires the power to be executed in the name and as the act of the grantor.—Hunt v. Ennis, Case No. 6,889.

Where a naked power is necessarily such as can be exercised only after the death of the grantor, it does not expire with his death.—Hunt v. Ennis, Case No. 6,889.

A power coupled with an interest does not expire with the death of the person creating it.—Hunt v. Ennis, Case No. 6,889; Lockett v. Hill, Id. 8,443.

§ 2. Construction and execution.

Where power is given to a cestui que use to appoint by will, it cannot be exercised in

any other way, and the court cannot interfere. —Markoe v. Maxcy, Case No. 9,093.

While the intention to execute a power of appointment must be clear, it need not appear in express terms.—Blagge v. Miles, Case No. 1,479.

The indorsement at the foot of a deed, "I consent to the above," signed by the person without whose "approbation and consent" a sale under a power of sale was not to be valid, *held* a sufficient compliance with the requirement.—Waldron v. Chasteney, Case No. 17,058.

Where a power has been completely executed, but with the addition of something improper and inconsistent with its purpose, if distinguishable, the execution is good, and the excess is void.—Warner v. Howell, Case No. 17,184.

A power, conferred upon trustees, to appoint a committee to designate the disposition of the estate after the death of testator's children, *held* to be one coupled with an interest, which could be exercised by a surviving trustee.—Loring v. Marsh, Case No. 8,515.

Courts always lean in favor of the execution of the power if it can be supported, even if it should disappoint the person executing it.—Warner v. Howell, Case No. 17,184.

Equity cannot afford relief against the defective execution of a power created by law. —Bright v. Boyd, Case No. 1,875.

A court of equity will interfere in favor of the grantee in a deed to aid the defective execution of a valid power where there is no opposing countervailing equity.—Segee v. Thomas, Case No. 12,633.

Under a power to appoint "among such of the children of A. and B., and in such proportions as B. may appoint," B. may entirely exclude certain children.—Ingraham v. Meade, Case No. 7,045.

A devise of "all the residue of my estate, of every name and kind," in a residuary clause, *held* sufficient as the execution of power of appointment.—Blagge v. Miles, Case No. 1,479.

A power to appoint among "children" may include grandchildren if they are, in a general way, manifest objects of the trust.—Ingraham v. Meade, Case No. 7,045.

An application of the benefits by the beneficiary of a power in trust in a form which the donee could not lawfully direct *held* not to render the appointment void, where there was no prior understanding.—Ingraham v. Meade, Case No. 7,045.

PRACTICE.

See "Prohibition."
Adoption by United States courts of practice of state courts, see "Courts," §§ 67–74.
Procedure of particular courts, see "Courts."

In particular civil actions or proceedings.

See "Account, Action on"; Action on the Case"; "Assumpsit, Action of"; "Covenant, Action of"; "Debt, Action of"; "Detinue"; "Discovery"; "Ejectment"; "Entry, Writ of"; "Habeas Corpus"; "Interpleader"; "Mandamus," § 7; "Quo Warranto"; "Real Actions"; "Replevin"; "Trespass," §§ 6–11; "Trial."
Condemnation proceedings, see "Eminent Domain," §§ 5–11.
Confiscation proceedings, see "War," § 90.
To establish or confirm grants, see "Public Lands," § 88.

Particular proceedings in actions.

See "Abatement and Revival"; "Affidavits"; "Appearance"; "Assistance, Writ of"; "Bail," §§ 1–13; "Continuance"; "Damages," § 12; "Depositions"; "Dismissal and Nonsuit"; "Evidence"; "Execution"; "Judgment"; "Judicial Sales"; "Jury"; "Limitation of Actions"; "Motions"; "Parties"; "Pleading"; "Process"; "Reference"; "Removal of Causes"; "Stipulations"; "Venue."
Nonsuit, see "Dismissal and Nonsuit"; "Trial," § 14.
Revival of judgment, see "Judgment," § 72.
Verdict, see "Trial," §§ 22, 23.

Particular remedies in or incident to actions.

See "Arrest," §§ 1–10; "Attachments"; "Deposits in Court"; "Garnishment"; "Injunction"; "Ne Exeat"; "Receivers"; "Scire Facias"; "Searches and Seizures"; "Tender."

Procedure in criminal prosecutions.

See "Bail," §§ 14–22; "Criminal Law"; "Extradition."
In bastardy, see "Bastards," § 2.

Procedure in exercise of special jurisdictions.

In admiralty, see "Admiralty"; "Collision," §§ 118–160; "Maritime Liens," §§ 54–65; "Salvage," §§ 57–78; "Shipping," §§ 244–255.
In bankruptcy, see "Bankruptcy."
In equity, see "Equity."
In insolvency, see "Insolvency."
In justices' courts, see "Justices of the Peace," §§ 8–11.
In land office, see "Public Lands," §§ 46–49.
In patent office, see "Patents," §§ 66–87.
In prize cases, see "War," §§ 51–69.

Procedure on review.

See "Appeal and Error"; "Audita Querela"; "Exceptions, Bill of"; "Justices of the Peace," §§ 12–17; "New Trial."

PRE-EMPTION.

Public lands, see "Public Lands," § 22.

PREFERENCES.

See "Assignments for Benefit of Creditors," § 4; "Bankruptcy," §§ 62–78, 214–250, 393–396, 594–601; "Fraudulent Conveyances," § 20.

PREJUDICE.

Ground of continuance, see "Continuance," § 5.
—— of removal of cause, see "Removal of Causes," § 23.
—— of reversal in civil actions, see "Appeal and Error," § 35.

PRELIMINARY EXAMINATION.

On criminal charge, see "Criminal Law," §§ 38–41, 72.

PRELIMINARY INJUNCTION.

See "Injunction," §§ 14–34; "Patents," §§ 232–249, 251, 252.

PREMIUMS.

For insurance, see "Insurance," §§ 17, 29–32.

PRESCRIPTION.

Acquisition of rights, see "Adverse Possession"; "Easements," § 1; "Waters and Water Courses," § 7.
Creation of corporation by, see "Corporations," § 7.

PRESENTMENT.

By grand jury, see "Indictment and Information."
Of bill or note, see "Bills and Notes," §§ 59-80.

PRESIDENT.

See "United States," § 4.

PRESUMPTIONS.

See "Evidence," §§ 9-14.

PRINCIPAL AND ACCESSORY.

See "Criminal Law," §§ 6-8; "Homicide," § 1.

PRINCIPAL AND AGENT.

I. THE RELATION.

§ 1, Creation and existence. § 2, Extension. § 3, Termination.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

§ 4, Authority conferred. § 5, Substitution. § 6, Mode of executing authority. § 7, Liability for negligent and improper execution. § 8, Liability for proceeds of property. § 9, Liability for interest. § 10, Individual interest of agent. § 11, Conversion. § 12, Subagents. § 13, Joint agents. § 14, Indemnity to agent from liability to third persons. § 15, Actions for negligent or wrongful acts of agents. § 16, Compensation and lien of agent.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

§ 17, Powers of agent—Representation of principal. § 18, —— Express and implied authority. § 19, —— Necessity of seal to confer power. § 20, —— Evidence of authority. § 21, —— Liabilities incurred. § 22, —— Estoppel by agent's acts. § 23, Undisclosed agency. § 24, Unauthorized and wrongful acts—Duty to disclose authority. § 25, —— Knowledge of extent of authority. § 26, —— Effect of exceeding authority. § 27, —— Acting after termination of authority. § 28, —— Unauthorized dealings with principal's property. § 29, —— Representations and fraud of agent. § 30, —— Negligence or wrongful acts of agent. § 31, —— Repudiation by principal. § 32, Ratification. § 33, Notice to agent. § 34, Actions.

See, also, "Attorney and Client"; "Brokers"; "Factors"; "Mercantile Agencies"; "Powers."
Admissions by agents as evidence, see "Evidence," §§ 33, 34.
Agency of partner for firm, see "Partnership," §§ 19-31.
Appointment of agent by administrator, see "Executors and Administrators," § 15.
Competency as witnesses, see "Witnesses," § 34.
Corporate agents, see "Corporations," §§ 34-37, 81; "Insurance," §§ 91, 92; "Railroads," § 6.
Designation of agent for service of process on foreign corporation, see "Corporations," § 81.
Insurance agents, see "Insurance," §§ 5, 6, 12.
Municipal agents, see "Municipal Corporations," §§ 8, 24.
Notice to agent, see "Vendor and Purchaser," § 26.

I. THE RELATION.

§ 1. Creation and existence.
The duties of receiver of a bank and agent *held* not inconsistent.—Benedict v. Maynard, Case No. 1,295.

A power of attorney, sent by mail to a person, which never came to his possession, is not operative.—Thurston v. The Magnolia, Case No. 14,017.

An arrangement by a broker with a correspondent in another place to execute his orders, where the account was kept only with such correspondent, but the purchaser or seller was known in each transaction, *held* to make such correspondent an agent of the broker.—Scarlett v. Van Inwagen, Case No. 12,437.

The fact that an agent to compromise returns different terms from creditors than those submitted does not make him their agent.—Curran v. Munger, Case No. 3,487.

One having a contract right to purchase lands in a limited time, and selling the right before expiration thereof, is not an agent of the vendor, if there was a bona fide expectation that he might make the purchase; otherwise if the purpose was merely to speculate by selling the right within the time.—Mason v. Crosby, Case No. 9,235.

Letters of credit given to a Confederate agent to enable him to prosecute his mission abroad in aid of the Confederate government are void as in aid of the Rebellion.—The Confiscation Cases, Case No. 3,097.

Instruments executed abroad, as the foundation of sealed instruments in this country, must be under seal.—Harman v. Harman, Case No. 6,071.

An individual may prove his own agency.—Pendall v. Rench, Case No. 10,917.

An agency as against the individual may be proved by his acts and declarations.—Piatt v. Oliver, Case No. 11,115.

The motives or inducements of a contract with an agent may be proved by his letters or declarations admitting facts.—Blight v. Ashley, Case No. 1,541.

§ 2. Extension.
The agency is not continued by the fact that notes for the unpaid purchase price and a mortgage securing the same were left with the agent in escrow to await the delivery of a quitclaim deed from a third person, which the vendor was to furnish.—Walker v. Derby, Case No. 17,068.

§ 3. Termination.
The agency of a real-estate agent and his duty to his principal ceases upon delivery of the title papers and payment for the property, and thereafter he may deal for the property as any other person.—Walker v. Derby, Case No. 17,068.

The presumption is that a sale of a patent annuls an existing power of attorney relating thereto; but, if the power remains outstanding, persons dealing with the attorney on the faith thereof will be protected as against the principal.—Labaree v. Peoria, P. & J. R. Co., Case No. 7,959.

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.—Williamson v. Richardson, Case No. 17,754.

A power of attorney to conduct all one's business at a particular place is not revoked by a lease of most of the property to the attorney, but only modified so as to exclude such property.—Perkins v. Currier, Case No. 10,985.

A power of attorney to conduct all one's business at a particular place is revoked pro tanto by the transfer by the principal of his interest in part of the property.—Perkins v. Currier, Case No. 10,985.

Where an agent has in good faith entered into engagements or incurred liabilities before notice of revocation of his powers, the principal is bound to indemnify him.—United States v. Jarvis, Case No. 15,468.

A power of attorney which gives to the agent a veto upon the acts of his principal is equivalent to a power coupled with an interest.—Day v. Candee, Case No. 3,676.

A revocation of a power is not necessarily implied from a subsequent power to another to do the same thing, where the second is not absolutely inconsistent with the first.—Starr v. Stark, Case No. 13,317.

An agent cannot renounce his agency at pleasure, without notice or good cause, except on condition of indemnifying his principal for any loss sustained thereby.—United States v. Jarvis, Case No. 15,468.

Authority given an agent by the principal to receive notices for him ceases with the principal's death.—Bank of Washington v. Peirson, Case No. 953.

A power of attorney given as collateral security is irrevocable by the grantor, but it dies with him.—Hunt v. Ennis, Case No. 6,889.

A power of attorney is revoked by the death of the principal, except so far as the attorney has an interest coupled with the power.—Boone v. Clarke, Case No. 1,641.

The authority conferred by a power of attorney is suspended by the subsequent insanity of the person who gave the power.—Bunce v. Gallagher, Case No. 2,133.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

§ 4. Authority conferred.

Authority to sell real estate must be clear and distinct.—Bosseau v. O'Brien, Case No. 1,667.

A power which authorizes the attorney to sell and convey lands does not authorize him to make a deed for lands previously sold.—Johnson v. Sukeley, Case No. 7,414.

An agent to sell on credit, taking a mortgage as security, is not thereby authorized to foreclose the mortgage.—Aultman v. Jones, Case No. 657.

An agent for subscriptions or a canvasser for books has no right to cancel subscriptions or to transfer them to another party.—Stoddart v. Warren, Case No. 13,471.

A power of attorney, to indorse notes in the principal's name, confines the authority to notes of the principal, or those in which he is interested.—Butcher v. Tyson, Case No. 2,233.

A power of attorney to collect and compromise debts and sign necessary papers gives authority to sign a paper choosing an assignee in bankruptcy.—In re Knoepfel, Case No. 7,892.

A power of attorney to collect a judgment to arbitrate and compound the same, and to employ counsel, authorizes the attorney to employ counsel to appear in an action to annul a sale under such judgment, and consent to a judgment annulling such sale upon terms advantageous to the client.—Lee v. Rogers, Case No. 8,201.

The answer "I will sell" on terms specified, to a letter from a real estate agent asking for authority to sell, does not confer authority.—Bosseau v. O'Brien, Case No. 1,667.

A letter authorizing an agent to purchase property of a person to whom it was directed, to be paid for at such times as should be agreed upon between the owner and the agent, does not authorize the agent to purchase such property from other persons.—Peckham v. Lyon, Case No. 10,899.

A person acting under a power of attorney from the partner of a deceased consignee of goods *held* to be agent of such partner, and not of the shippers, and liable for the proceeds of the goods turned over to such partner without the approval of the shippers.—Holt v. Dorsey, Case No. 6,647.

Where a bond is executed in the name of the firm by a manager of the business who was so in the habit of using the firm name, authority to sign by a written instrument need not be shown.—United States v. Turner, Case No. 16,547.

Equity cannot aid a defective power.—Piatt v. McCullough, Case No. 11,113.

§ 5. Substitution.

A lease to a brother, who covenants to carry on business with the property leased for half the net profits, does not give him the right to substitute a stranger as manager, or change the proportion of profits.—Perkins v. Currier, Case No. 10,985.

A power of attorney to collect debts, with power of substitution, may authorize the attorney to appoint another to act for the principals in bankruptcy proceedings under an act passed subsequent to the execution of the power.—In re Knoepfel, Case No. 7,892.

§ 6. Mode of executing authority.

An agent whose orders are positive must strictly observe them, and can exercise no discretion except as to the best method of executing them. If ambiguous, they must be taken most strongly against the principal.—Kingston v. Kincaid, Case No. 7,822.

A deed of an attorney, executed in his own name, is not valid as the deed of his principal.—Barger v. Miller, Case No. 979.

A deed of an attorney in fact, manifestly intending to convey the title of the principal, is ineffectual, unless the attorney either signed the name of the principal, with a seal annexed, stating it to be done as attorney, or signed his own name, with a seal annexed, stating it to be done for the principal.—Randall v. Jaques, Case No. 11,553.

A power of attorney authorizing a public sale of property will not authorize a private sale of it.—The G. H. Montague, Case No. 5,377.

A power of attorney, which authorizes a conveyance to be made in as full and ample a manner as the principal could execute, authorizes a deed with covenants of general warranty.—Taggart v. Stanbery, Case No. 13,724.

An agent is governed by the price stated in the invoice accompanying goods where he is directed not to sell for less than the first cost and charges.—Loraine v. Cartwright, Case No. 8,500.

Agents are held to strict account where they act under plain orders.—Loraine v. Cartwright, Case No. 8,500.

Where an agent's orders are to sell "immediately on arrival," and forward returns by the same vessel, he has no discretion, but must sell at once, no matter at what loss.—Courcier v. Ritter, Case No. 3,282.

A power of attorney to convey land in Ohio must be recorded before a record is made of the deed.—Johnson v. Sukeley, Case No. 7,414.

§ 7. Liability for negligent and improper execution.

An agent who does not comply with his instructions is liable for the loss occasioned there-

by, although the services were gratuitously rendered.—Walker v. Smith, Case No. 17,086.

Where a ratification is necessary to bind the principal, agent is not liable to principal for abuse of power.—Ætna Ins. Co. v. Sabine, Case No. 97.

A disobedience of orders is excused where the principal remains silent after full and candid statement of all the facts by the agent.—Courcier v. Ritter, Case No. 3,282.

A collecting agent, receiving Confederate notes in payment, without authority, is liable.—Bank of Tennessee v. Union Bank of Louisiana, Case No. 899; Anderson v. Bank, Case No. 354.

An agent in Virginia who collected a claim for a citizen of Kentucky in Confederate money, and invested it in Confederate bonds, by order of the state court, *held* liable for the value of the Confederate money as of the date when received.—Botts v. Crenshaw, Case No. 1,690.

The neglect of a merchant, who was in the habit of insuring vessels for his correspondent, to make insurance as ordered, will render him liable to the principal.—De Tastett v. Crousillat, Case No. 3,828; Morris v. Summerl, Id. 9,837; Manny v. Dunlap, Id. 9,047.

The neglect of the agent to give his principal notice of his having been unable to execute the order for insurance will make him liable in damages.—De Tastett v. Crousillat, Case No. 3,828.

A direction to procure a policy of insurance is not satisfied by a verbal contract of insurance.—Manny v. Dunlap, Case No. 9,047.

The principal need not maintain a suit on such verbal contract, where its validity is doubtful, before suing the agent for damages.—Manny v. Dunlap, Case No. 9,047.

§ 8. Liability for proceeds of property.

Defendant, who handles property as agent of plaintiff, is liable to him for the proceeds, although other persons may have been jointly interested with the plaintiff.—Gray v. Reardon, Case No. 5,727.

§ 9. Liability for interest.

An agent having a balance in his hands of a fund used to make purchases is not liable for interest until a demand is made therefor.—Williams v. Baxter, Case No. 17,715.

§ 10. Individual interest of agent.

An agent by virtue of a power of attorney cannot acquire title as against his principal.—Cleveland Ins. Co. v. Reed, Case No. 2,889.

An agent authorized to foreclose a mortgage, and bid in the property, who does so in his own name, holds for the benefit of his principal.—Aultman v. Jones, Case No. 657.

An agent to pay taxes on the land of his principal cannot acquire a valid title on tax sale.—Curts v. Cisna, Case No. 3,507.

Private collateral, taken for himself by an agent when contracting for his principal, will be considered as held in trust for the principal.—Garrow v. Davis, Case No. 5,257.

Where an agent employed to sell territorial rights under a patent procured a sale to himself of the entire territory, on false representations of his inability to sell to others, the vendor is entitled to have the sale set aside as to all portions of the territory not previously disposed of by the agent, and to an account of the proceeds of sales by him.—Jeffries v. Wiester, Case No. 7,254.

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.—Yates v. Arden, Case No. 18,126.

Where an agent or factor keeps the proceeds of his principal's goods separate, the principal may claim the same, or the profits thereon, as against the agent or his general creditors.—Hourquebie v. Girard, Case No. 6,732.

§ 11. Conversion.

An agent converting to his own use money which he has been specifically directed to invest in a certain article is accountable for the value of such article after it has greatly increased in value.—Short v. Skipwith, Case No. 12,809.

In case of conversion by an agent the principal may follow his property into the hands of the agent or his legal representatives or assignees in insolvency, if either it or its proceeds can be traced.—Veil v. Mitchel, Case No. 16,908; Yates v. Curtis, Case No. 18,127.

§ 12. Subagents.

A collection agent, who transmits bills to his private agent, under an arrangement whereby the latter credits him personally with the proceeds, is personally liable for a loss caused by the failure of any of the parties.—Taber v. Perrot, Case No. 13,721.

An agency to make contracts for the transportation of freight *held* to be one of special trust and confidence, and bills of lading signed by the confidential clerk of such agent are not valid, but are admissible, when adopted by the agent, to show the contract for transportation.—Pendall v. Rench, Case No. 10,917.

§ 13. Joint agents.

Powers given by a letter of attorney to several persons jointly cannot be exercised by one of the attorneys alone.—In re Phelps, Case No. 11,071.

§ 14. Indemnity to agent from liability to third persons.

An agent purchasing property with money partly raised on his own credit may hold the same until indemnified, if his principal becomes insolvent.—Matthews v. Menedger, Case No. 9,289.

§ 15. Actions for negligent or wrongful acts of agents.

A declaration in an action for abuse of power as agent must aver that defendant acted as agent.—Ætna Ins. Co. v. Sabine, Case No. 97.

The owner of gold-bearing bonds, converted by an agent, may recover, at his election, their value as damages, or the amount received by the agent as such.—Brewer v. Caldwell, Case No. 1,849.

§ 16. Compensation and lien of agent.

Compensation to an agent for the sale and management of estates, the property of absent proprietors, remitting proceeds of sales, and performing all the duties of such an agency.—Committee of West New Jersey Soc. v. Morris, Case No. 3,065.

If the agent of a creditor is authorized to accept compensation from debtors for securing compromises, in which compensation the creditor upon certain conditions was to share, no contract between the agent and the debtor for such compensation will be enforced.—Bullene v. Blain, Case No. 2,124.

An agent collecting money for his principal, and retaining it as a loan to himself, according to a prior contract with the principal, is not entitled to commissions on the amounts collected.—Short v. Skipwith, Case No. 12,809.

An agent receiving back from a maritime average adjuster a part of the sum charged for services must credit his principal therewith.—Mauran v. Warren, Case No. 9,310.

Agent will not be directed to deliver up papers in his possession if he has a lien thereon.—Baring v. Willing, Case No. 985.

An assignment of a claim made to an agent, to enable him to collect it in his own name, *held* an absolute assignment of so much of the claim as the agent was entitled to retain as agreed compensation.—Dowell v. Cardwell, Case No. 4,039.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

§ 17. Powers of agent—Representation of principal.

The possession of property by an agent to sell, under a special agreement for that purpose, is the possession of the owner.—Erdhouse v. Hickenlooper, Case No. 4,509.

A clerk, as such, has no authority to bind his employer by an agreement to receive goods from a carrier at an unusual time; nor has a truckman such authority.—Goddard v. The Tangier, Case No. 5,494.

Where a power to an agent is general, he may do anything to bind his principal which is within the scope of his authority.—Allen v. Ogden, Case No. 233; Barger v. Miller, Id. 979; Hooe v. Alexandria, Id. 6,667.

Where the agency be special, everything is void which may be done unless in strict conformity with the authority.—Allen v. Ogden, Case No. 233.

Persons employed to charter a vessel, according to specific directions, *held* to be special agents, without power to bind their principal to a different contract.—Mercier v. Lachenmeyer, Case No. 9,455.

§ 18. —— Express and implied authority.

A power to sign notes in renewal of existing notes gives authority to sign renewal notes given for renewal notes.—Bank of Washington v. Peirson, Case No. 953.

A letter from a part owner of a steamboat, requesting another to advertise the writer's interest for sale, and in thus advertising to act as his agent, confers no authority to sell.—Thurston v. The Magnolia, Case No. 14,017.

An attorney in fact authorized to collect a debt cannot extinguish the same by commuting it for one due by himself to the debtor.—Kingston v. Kincaid, Case No. 7,822.

An agent may make a pledge of property to secure another for property unlawfully used by the principal, though not authorized in writing.—Jenkins v. Mayer, Case No. 7,272.

§ 19. —— Necessity of seal to confer power.

Authority to indorse notes need not be under seal.—Bank of Washington v. Peirson, Case No. 953.

A power of attorney, not under seal, will not authorize the attorney to execute a deed.—Piatt v. McCullough, Case No. 11,113.

§ 20. —— Evidence of authority.

An agent is a competent witness to prove his own authority if not in writing, and is not incompetent by reason of his liability to either of the parties.—Welch v. Hoover, Case No. 17,368.

The declarations of the agent in support of his authority will not be received in evidence unless contemporaneous with the act, and constituting part of the res gestæ.—Davis v. Robb, Case No. 3,649.

It is sufficient proof of authority that the principal recognized the firm as agent, although only one of its members was originally appointed.—Burritt v. Rench, Case No. 2,201.

§ 21. —— Liabilities incurred.

If a subagent receives from the vendee a part of the purchase money, and pays it over to the principal, taking land instead of it for his compensation, the principal is liable, on a rescission of the purchase for fraud, to repay that part as well as what he received directly.—Doggett v. Emerson, Case No. 3,962.

Money paid on account of suretyship for an agent in a matter where he is acting for the principal, and within the scope of his authority, creates a debt against the principal.—Tiernan v. Andrews, Cases Nos. 14,025, 14,026.

The principal is bound by the acts of a sale agent, though not personally known to him, where authority to employ sale agents is implied from the nature of the duties and powers committed to his general agent.—Gum v. Equitable Trust Co., Case No. 5,867.

An agent is not personally liable on transactions with his principal made through him unless so expressly agreed.—Bradford v. Eastburn, Case No. 1,767; Bank of Newbury v. Baldwin, Id. 892.

An agent to receive a deed for joint purchasers, being one of the number, who procures a deed to be executed directly to a third person for part of his own share, *held* liable, on rescission of the sale, for the whole consideration received.—Doggett v. Emerson, Case No. 3,962.

Agents who pass goods through the customhouse free of duty, by mistake of the revenue officers, are not liable for the sum afterwards found to be due, where their agency was well known.—United States v. Bevan, Case No. 14,588.

§ 22. —— Estoppel by agent's acts.

A principal may be estopped by the intentional, willful misstatement of an agent.—Wyckoff v. Page, Case No. 18,106b.

§ 23. Undisclosed agency.

One contracting with agent personally may refuse performance where responsibility is shifted to principal.—The A. Cheesebrough, Case No. 25.

An agent to whom a vessel is delivered by the builders, without notice of his agency, does not acquire a good title as against his principal.—Scudder v. Calais Steamboat Co., Case No. 12,565.

Agent of undisclosed principal personally liable.—Allen v. Schuchardt, Case No. 236.

An engineer hired to serve on board of a steamboat, by a man who appeared to have full control and did not state that he was an agent, may hold him personally for wages.—Farrell v. Campbell, Case No. 4,681.

§ 24. Unauthorized and wrongful acts—Duty to disclose authority.

The principal must suffer the consequences of the neglect of his agent to disclose the special nature of the contract under which he is acting, to those with whom he deals.—Scarlett v. Van Inwagen, Case No. 12,437.

§ 25. —— Knowledge of extent of authority.

A general agent, acting under special instructions, which are known to the person with whom he is dealing, cannot bind his principal by any act which violates his instructions.—United States v. Williams, Case No. 16,724.

§ 26. —— Effect of exceeding authority.

Under power of attorney from several persons to make a joint note in renewal of a joint and several note, a joint and several note made by the attorney, if beyond his power, is invalid only in part.—Bank of the Metropolis v. Moore, Case No. 901.

§ 27. —— Acting after termination of authority.

A principal is liable for drafts drawn by an agent after the expiration of his authority, to

pay for prior purchases, duly authorized.—Farmers' & Mechanics' Bank v. Stickney, Case No. 4,657.

§ 28. —— **Unauthorized dealings with principal's property.**

Where an agent, employed to procure a vessel to be built in his own name, and to transfer the title to his employer, fraudulently transfers the title to a stranger, with notice, the transaction creates a trust cognizable in equity.—Scudder v. Calais Steamboat Co., Case No. 12,566.

A person with whom money of one person is deposited to the credit of another by the agent of the former cannot apply the same in satisfaction of a claim against the latter, where he has knowledge of the circumstances.—Vanderwick v. Summerl, Case No. 16,845.

§ 29. —— **Representations and fraud of agent.**

The principal is responsible for the misrepresentations of his agent in making a sale, though in excess of his authority, where he subsequently ratifies the sale.—Doggett v. Emerson, Case No. 3,960.

The owners of land, who give to another a bond to convey to him, or to give him all over a certain price, if he should make a sale, are bound by his representations to a purchaser procured by him.—Hough v. Richardson, Case No. 6,722.

A contract made by an agent in excess of his power, by means of false and fraudulent assertions, is void, and may be rescinded, or, where the principal receives the benefit and proceeds, he is liable in damages.—Foster v. Swasey, Case No. 4,984.

§ 30. —— **Negligence or wrongful acts of agent.**

The principal, and not the agent, is liable for the negligence of the latter.—Mandeville v. Cookendorfer, Case No. 9,010.

The owners of a stage coach are liable for the negligence of their agent in suffering the slaves of another to be taken away in the coach.—Lowe v. Stockton, Case No. 8,567.

The remedy for an illegal act of an agent in refusing to deliver goods sent by the principal to him for others is against the principal. —Bradford v. Eastburn, Case No. 1,767.

Irregularities of agent in disposing of proceeds do not affect title of realty sold by him.—Andrews v. Solomon, Case No. 378.

§ 31. —— **Repudiation by principal.**

The repudiation of an agent's act in excess of authority must be within a reasonable time after knowledge.—Abbe v. Rood, Case No. 6.

A person cannot adopt that part of an agreement made on his behalf without authority which is beneficial to himself, and repudiate the part which is beneficial to the other party. —Starr v. Stark, Case No. 13,317.

§ 32. **Ratification.**

An authorized sale by the agent *held* not ratified by the principal's drawing on him for a part of the proceeds. — Loraine. v. Cartwright, Case No. 8,500.

A settlement of accounts made by an agent abroad, and acquiesced in for four years, *held* should not be disturbed.—Wilcocks v. Phillips, Case No. 17,639.

The acceptance of a return cargo, ordered by the same vessel, is no ratification of the agent's disobedience of the order to sell the outward cargo immediately on arrival.—Courcier v. Ritter, Case No. 3,282.

Acts of agent in accepting notes and mortgages in payment are ratified by creditors' refusal to return them and bringing suit thereon.—Benedict v. Maynard, Case No. 1,294.

Failure to answer letters from an agent as to the consummation of a sale does not constitute ratification.—Bosseau v. O'Brien, Case No. 1,667.

A contract by an agent made subject to the principal's ratification will be *held* ratified by the principal's entering it on his books, and corresponding with the other party in regard thereto as a subsisting contract.—Ex parte Carter, Case No. 17,488.

There is no binding obligation where the principal fails to ratify an agreement made by his agent with the understanding that it should be submitted for ratification.—Colt v. Rood, Case No. 3,031; Abbe v. Rood, Case No. 6.

The principal will be bound by an adjustment of a controversy by the agent in which he exceeded his powers, if he does not repudiate it within a reasonable time after knowledge thereof.—Colt v. Rood, Case No. 3,031.

A recognition of the acts of an agent by his principal is equivalent to an original grant of authority.—Conn v. Penn, Case No. 3,104.

An irregular conveyance under a power of attorney, acquiesced in and acted upon by the principal, who has enjoyed the consideration, will vest an equitable title in the grantee.—Starr v. Stark, Case No. 13,317.

§ 33. **Notice to agent.**

The principal is chargeable with notice where his agent has full notice.—Varnum v. Milford, Case No. 16,891; Hough v. Richardson, Id. 6,722; United States v. Two Hundred and Seventy-Eight Barrels of Distilled Spirits, Id. 16,580.

A purchaser from a fraudulent grantee is not bound by knowledge of the fraud by his agent who made the purchase, unless the latter had the same in his mind at the time of the transaction.—Curts v. Cisna, Case No. 3,507.

§ 34. **Actions.**

No action will lie in the name of a principal on a written contract made by his agent in his own name, although defendant knew the agent's character.—United States v. Parmele, Case No. 15,997.

PRINCIPAL AND SURETY.

§ 1, Creation and existence of relation. § 2, Nature and extent of liability of surety—In general. § 3, —— Scope of liability. § 4, Discharge of surety —By agreement. § 4a, —— Death of surety. § 5, —— Change in principal contract. § 6, —— Extension of time of payment. § 7, —— Negligence of creditor. § 8, —— Delay in proceeding against principal. § 9, —— Release of principal. § 10, —— Payment. § 11, Remedies of creditors—Action against surety. § 12, Rights and remedies of surety—As to creditor. § 13, —— As to principal. § 14, —— As to co-surety.

See, also, "Bills and Notes," § 32; "Bonds"; "Guaranty"; "Indemnity."

Admissions of principal as evidence, see "Evidence," § 37.

Application of payment, see "Payment," §§ 11, 13.

Competency of parties as witnesses, see "Witnesses," § 33.

Proof of secured claims in bankruptcy, see "Bankruptcy," §§ 371, 397–402.

Right of assignee of devisee, see "Bankruptcy," § 201.

Subrogation to rights of surety, see "Subrogation," § 4.

Liability of sureties on bonds by particular parties or in particular proceedings.

Distillers, see "Internal Revenue," §§ 46–49.

In admiralty, see "Admiralty," §§ 67–77, 110.

In attachment, see "Attachments," § 17.

On appeal, see "Appeal and Error," §§ 41-46.
On release of person under arrest, see "Bail."
Purchaser on judicial sale, see "Judicial Sales," § 3.

Liability of sureties on bonds for performance of duties of office or trust.

See "Ambassadors and Consuls," § 4; "Army and Navy," § 11; "Banks and Banking," §§ 6, 10; "Corporations," § 39; "Customs Duties," § 26; "Executors and Administrators," §§ 75-78; "Guardian and Ward," § 11; "Officers," §§ 7-9; "Post Office," §§ 4-8; "United States," § 13; "United States Marshals," §§ 24-28.

§ 1. Creation and existence of relation.

The omission to at once return a new bond given on the withdrawal of a surety on the old bond *held* a presumption that it was accepted.—Gass v. Stinson, Case No. 5,260.

A feme covert, by charging her inchoate right of dower for her husband's benefit, does not thereby become a surety for him.—Hiscock v. Jaycox, Case No. 6,531.

An agent's bond is not invalidated by being left blank in regard to the place of agency.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,979.

A bond executed in blank by the surety, and subsequently filled in by the principal, is binding in the hands of an obligee without notice.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,979.

In order for the surety to escape liability on the ground of existing irregularities and defalcations of the agent, it must be shown that these were known to the principal.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,979.

One signing notes as surety, without duress, cannot plead the duress of his principal.—McClintick v. Cummins, Case No. 8,699.

§ 2. Nature and extent of liability of surety—In general.

Equity will not hold a surety liable, when he is discharged at law.—Fielden v. Lahens, Case No. 4,773.

The liability of sureties signing a bond, given pursuant to an order of court copied therein, is unaffected by anything the obligee may tell them as to their liability.—In re Mayo, Case No. 9,353a.

Sureties who bind themselves jointly and severally as principals in a bond are equally liable in equity with the principal debtor.—United States v. Cushman, Case No. 14,908.

§ 3. —— Scope of liability.

New sureties are not responsible for prior defalcations unless the condition of the new obligation embraces them.—Postmaster General v. Norvell, Case No. 11,310; Myers v. United States, Id. 9,996.

When a question arises between liabilities of sureties on different bonds of different dates, the general doctrine of the application of payment does not apply.—Myers v. United States, Case No. 9,996.

The liability of sureties on the official bond of the cashier of a bank is limited to his acts during the term of office to which he was elected when the bond was given.—Harris v. Babbitt, Case No. 6,114.

The surety on an assignee's bond is not liable for a default actually complete before the bond was given, in the absence of language in the bond showing an intent to be bound.—Easton v. Cutter, Case No. 4,257.

If an agent, at the time of signing the bond, had moneys in his hands which he ought to have reported as collected, but had not, they would come within the condition of the bond.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,979.

The sureties on a bond given for the faithful collection of subscriptions are liable for collections made during the second year, although he was to close his collections in one year, unless the time was extended.—Smith v. Addison, Case No. 12,998.

Construction of condition of a teller's bond to faithfully perform his duties and make good to the bank "all damages which the same shall sustain through his unfaithfulness or want of care."—Union Bank of Georgetown v. Forrest, Case No. 14,356.

A teller's bond, executed under the original charter of the bank, *held* would cover defalcations arising under an extended charter after the time when the original charter would have expired by its own limitation.—Union Bank of Georgetown v. Forrest, Case No. 14,356.

The sureties on the bond of a bank teller are not liable for loss caused by his receiving as cash, according to the usage of banks, the check of an individual of good credit upon another bank.—Union Bank of Georgetown v. Mackall, Case No. 14,359.

The fact that the teller subsequently agreed to take the check as his own, and look to the drawer for payment, will not render his sureties liable.—Union Bank of Georgetown v. Mackall, Case No. 14,359.

The surety on a bond given by a partnership to an insurance company, conditioned for the faithful performance of the duties of the firm as agents, and to pay the amounts received by the firm, is not liable for amounts received after the dissolution of the firm by death of one partner.—Connecticut Mut. Life Ins. Co. v. Bowler, Case No. 3,106.

§ 4. Discharge of surety—By agreement.

The surety is entitled to a discharge as to future liability on giving the required notice, notwithstanding unsettled accounts between the principal and the obligee.—Gass v. Stinson, Case No. 5,260.

Sureties on the bond of a collection agent *held* released to the extent of a balance due shown on a fraudulent account rendered by the collector, where the obligee promised to surrender the bond on execution of a deed to secure the balance shown thereon, but are liable for the amount fraudulently concealed.—Hopkirk v. McConico, Case No. 6,696.

§ 4a. —— Death of surety.

On the death of the surety in the case of an obligation joint, and not joint and several, the remedy at law is gone, as against his legal representatives.—Fielden v. Lahens, Case No. 4,773.

No state statute, enacted after the making of such an obligation, can change the contract of the surety to his prejudice.—Fielden v. Lahens, Case No. 4,773.

§ 5. —— Change in principal contract.

Sureties are released by any agreement without their consent between the creditor and principal which varies essentially the terms of the contract, even though such change be to the sureties' advantage.—United States v. Tillotson, Case No. 16,524; Miller v. Stewart, Id. 9,591; Dennis v. Rider, Id. 3,797; United States v. Case, Id. 14,743.

A change of relation from that of agent to sell and collect to purchaser with right to return goods discharges the agent's surety.—Gass v. Stinson, Case No. 5,260.

A change of contract under which C. was to receive a salary, and the expenses of the business were to be borne by D., so that C. was to pay the expenses and sell on commission, will

discharge the sureties of C.—Victor Sewing Machine Co. v. Langham, Case No. 16,935.

Where a bond was given by the treasurer of a society for the faithful collection of subscriptions, *held*, that the sureties were not released by the allowance, without their consent, of an additional percentage to the principal on the collections.—Smith v. Addison, Case No. 12,998.

An agreement substituting tapia for brick, and altering the mode of estimation and price of labor in the construction of a fort, will discharge the sureties, though the change was for their benefit.—United States v. Tillotson, Case No. 16,524.

Sureties on the bond of a contractor to construct a fort are discharged by the refusal of the war department to permit the administrator of the contractor to complete the work.—United States v. Tillotson, Case No. 16,524.

Sureties for the performance of a contract with the government to build a ship canal, and keep it open for a certain number of years, are discharged where the government accepts the work done in a different manner than as contracted.—United States v. Corwine, Case No. 14,871.

§ 6. —— Extension of time of payment.

Giving time by the United States to the principal in a duty bond, before breach, without consent of the surety, discharges the latter.—United States v. Howell, Case No. 15,405.

The surety is discharged where the holder of a note, for a valuable consideration, gives time to the maker.—Varnum v. Milford, Case No. 16,890.

Where there is no consideration for the extension of time, the surety is not released.—Suydam v. Vance, Case No. 13,657.

The surety is discharged where the creditor, without his knowledge, takes from the principal bonds on time to secure payment of the sum due, though the arrangement operated to his benefit.—United States v. Hillegas, Case No. 15,366.

A surety on a bond is released where without his consent the creditor takes a new security, payable at a date beyond the maturity of the bond, with an understanding that he is not to trouble the principal for the money, unless the new security prove worthless.—Smith v. Crease, Case No. 13,031.

The surety is not discharged by a confession of judgment at the first term, with stay of execution until the second, where it appears that in the ordinary course of the business of the court a judgment could not have been obtained before the second term.—Suydam v. Vance, Case No. 13,657.

The surety is not discharged where time is given the principal at his instance, or with his consent.—Suydam v. Vance, Case No. 13,657.

A surety upon a bond is not discharged by a mere delay to demand payment after it becomes due, unaccompanied by fraud or an express agreement with the principal to allow the delay.—Hunt v. United States, Case No. 6,900.

The principle that the creditor loses recourse against security, where his debtor, to whom indulgence is extended, becomes insolvent, does not apply in favor of a mere donee.—Hopkirk v. Randolph, Case No. 6,698.

Sureties of claimant in admiralty proceedings become principal debtors after final judgment against them, and are not discharged by extension of execution against claimant. Act March 3, 1847.—The Col. Howard v. Hayden, Case No. 3,026.

§ 7. —— Negligence of creditor.

The neglect of the cashier of a bank to settle the daily accounts of the teller according to the by-law of the bank will not discharge the sureties on the teller's bond.—Union Bank of Georgetown v. Forrest, Case No. 14,356.

§ 8. —— Delay in proceeding against principal.

The surety is not released at law by the principal's becoming insolvent after he has requested the creditor to bring suit.—Dennis v. Rider, Case No. 3,797.

The limitation of suits for penalties or forfeitures provided by Rev. St. § 1047, does not apply to the penal sum named in a bond.—Raymond v. United States, Case No. 11,596.

To debt on the bond of a paymaster in the navy, a plea of laches on the part of the government in its dealings with the paymaster, and that defendant had revoked the bond, is bad.—Raymond v. United States, Case No. 11,596.

§ 9. —— Release of principal.

An assent by an heir of a deceased surety to the release of the principal debtor, without prejudice to the surety's liability, will not prevent the release from discharging the surety.—United States v. Cushman, Case No. 14,907.

Arrest and discharge of bail on a cap. ad sat. will not prevent resort to security taken in the shape of notes of a third person.—Hartshorne v. McIver, Case No. 6,171.

A discharge from imprisonment by the secretary of the treasury of a debtor to the United States, under the act of 1798, does not discharge his co-obligors and sureties in the bond from their liability.—United States v. Sturges, Case No. 16,414.

§ 10. —— Payment.

If an agent gives a trust deed to secure payment of a defalcation, the cancellation of the deed upon subsequent payment in full of that defalcation would not affect the agent's surety on a subsequent bond.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,979.

§ 11. Remedies of creditors—Action against surety.

The creditor, having separate obligations of the principal and the surety, may pursue separate remedies against them at the same time.—Muscatine v. Mississippi & M. R. Co., Case No. 9,971.

Separate suits may be brought against joint parties to different instruments, given as collateral security for the same debt.—United States v. Hoyt, Case No. 15,409.

In an action against a surety in a bond to perform a decree, it is not necessary that notice of the decree should have been given to the principal.—White v. Swift, Case No. 17,557.

The sureties on the bond of an assignee of a contract to account for "advances under and by virtue of the contract," are entitled to the benefit of all limitations provided in the contract, both as to past and future advances.—United States v. Tillotson, Case No. 16,524.

A demurrer generally to a plea in debt on a postmaster's bond, that plaintiff fraudulently neglected to bring suit on the bond, or give notice of the principal's default, admits the fraud, and defendant is entitled to judgment thereon.—Postmaster General v. Ustick, Case No. 11,315.

The defense that defendant signed as surety on the representation that another would join *held* not sustained where the bond contained no room for another signature.—Garnett v. Mayo, Case No. 5,245a.

Where a firm assumed the individual debts of one member who gave bond with sureties to indemnify the other member, and after dissolution an arbitration was had by agreement between them, *held*, that the award could not be given in evidence against the sureties.—Simonton v. Boucher, Case No. 12,877.

Entries made by the partners in the partnership books after dissolution could not be given in evidence against the sureties, but evidence could be given of the confessions of the principal.—Simonton v. Boucher, Case No. 12,877.

§ 12. Rights and remedies of surety—As to creditor.

A surety who has paid a debt cannot claim an assignment of the instrument evidencing it.—McLean v. Lafayette Bank, Case No. 8,888.

The creditor is not bound to use active diligence to enforce his claim against the principal debtor unless requested by the surety.—Bank of Mount Pleasant v. Sprigg, Case No. 891.

A surety can require the creditor to proceed first against the principal, only when his suretyship appears on the face of the instrument, or when he offers indemnity.—In re Babcock, Case No. 696.

An indorser of a note is entitled to the benefit of a deed of trust given by the maker to indemnify a subsequent indorser, as against the holders of subsequent deeds of trust, who took with knowledge thereof.—Swan v. Bank of United States, Case No. 13,668.

§ 13. —— As to principal.

The surety cannot recover the amount of his responsibility without showing that he has paid it before action brought.—Pigou v. French, Case No. 11,161.

Money not paid for a principal before action brought cannot be recovered by a surety as money paid unless on a special valid promise to pay it previously.—Whetmore v. Murdock, Case No. 17,510.

The rights of the surety against the principal are not extinguished by a joint judgment against the two.—In re Kitzinger, Case No. 7,861.

The surety who has paid the money upon execution may maintain an action against the principal for money had and received, though he holds the execution by assignment.—McDaniel v. Riggs, Case No. 8,745.

Where the principal is insolvent, the sureties, in respect to their liability, are regarded in equity as creditors, and may retain any funds of the principal in their hands, even against an assignee for value, without notice.—In re Reynolds, Case No. 11,724.

One having a mortgage securing his acceptances, which he buys up at a discount, can only charge such amount against the mortgaged property.—Ex parte Ames, Case No. 323.

A debtor has a right, without the assent of his surety, to convey his property, fairly, in payment of his debts.—Findlay's Ex'rs v. Bank of United States, Case No. 4,791.

§ 14. —— As to co-surety.

A surety who has paid more than his proportion is entitled to contribution out of the estate of his co-surety, and his claim ranks according to the dignity of the claim on which the excess was paid.—Lidderdale v. Robinson, Case No. 8,337.

The summary remedy given in Virginia by a motion against a co-surety is confined to the court which rendered the original judgment.—Dade v. Mandeville, Case No. 3,533.

Judgment will not be rendered on motion of one surety against another unless the insolvency of the principal be fully proved.—White v. Perrin, Case No. 17,555.

Property given to indemnify one surety will not be sold for the equal benefit of a co-surety where the former is discharged by payment of the debt.—McLean v. Lafayette Bank, Case No. 8,888.

PRIORITIES.

Attachment lien, see "Attachments," § 10.
Bonds, see "Municipal Corporations," § 35.
Bottomry liens, see "Shipping," § 124.
Claims against decedents' estates, see "Executors and Administrators," § 31.
—— against estate assigned for creditors, see "Assignment for Benefit of Creditors," § 12.
—— in bankruptcy, see "Bankruptcy," §§ 428–446, 455, 456.
Distribution of proceeds in admiralty, see "Maritime Liens," § 63.
Judgments, see "Judgment," § 59.
Jurisdiction, see "Courts," § 110.
Liens, see "Liens," § 2; "Maritime Liens," §§ 49–53; "Mechanics' Liens," § 5; "Railroads," § 40.
—— under execution, see "Execution," § 7.
Mortgages, see "Chattel Mortgages," §§ 11, 14; "Mortgages," § 12.
Taxes, see "Taxation," § 10.
United States, see "United States," §§ 16–20.

PRISONS.

§ 1. Custody of prisoner.

The court will not interfere in the exercise of the discretion vested in a jailer, as to the custody of his prisoner, unless it appear that he has abused such discretion for the purposes of oppression.—Ex parte Taws, Case No. 13,768.

A person arrested by military force for the violation of Act June 30, 1834, § 20, or Id. § 21, may be confined in the military prison, but he cannot be lawfully required to labor or perform any duty other than taking care of his person.—Waters v. Campbell, Case No. 17,265.

PRIVATE NUISANCE.

See "Nuisance," § 1.

PRIVATE ROADS.

Rights of way, see "Easements."
Taking land for, see "Eminent Domain," § 1.

PRIVILEGE.

Effect on limitation, see "Limitation of Actions," § 11.
From service of process, see "Process," § 6.
Of married women, see "Husband and Wife," § 4.
Of witness as to testimony, see "Witnesses," §§ 66–69.

PRIVILEGED COMMUNICATIONS.

Defamatory communications, see "Libel and Slander," § 9.
Disclosure by witness, see "Bankruptcy," § 328; "Witnesses," §§ 54–58.

PRIZE.

See "War," §§ 26–78.
Jurisdiction in prize cases, see "Admiralty," § 35; "Courts," § 98.

PROBABLE CAUSE.

For prosecution, see "Malicious Prosecutions," § 3.

PROBATE.

Of will, see "Wills," §§ 13–22.

PROBATE COURTS.

See "Courts," § 12.

PROCEDENDO.

See "Certiorari," § 3.

PROCESS.

§ 1, Issuance, requisites, and validity. § 2, Service—Personal service in general. § 3, —— Waiver of process. § 4, —— Substituted service. § 5, —— Publication. § 6, —— Privileges and exemptions. § 7, —— Return and proof of service. § 8, Defects, objections, and amendments. § 9, Abuse of process.

Adoption of state practice as to the form and service of process, see "Courts," §§ 67–74.
Conflict between state and federal courts, see "Courts," § 118.
Protection to officer, see "Sheriffs and Constables," § 2.
Resistance or obstruction, see "Obstructing Justice."

In actions against particular classes of parties.
See "Corporations," §§ 52, 81; "Municipal Corporations," § 40.
Assignees in bankruptcy, see "Bankruptcy," § 341.

In particular actions or proceedings.
See "Appeal and Error," § 14.
Criminal prosecutions, see "Criminal Law," §§ 38–43.
Foreclosure, see "Mortgages," § 34.
For infringement of patents, see "Patents," §§ 193, 220.
In admiralty, see "Admiralty," §§ 56, 57, 62.
In justices' courts, see "Justices of the Peace," § 8.

Particular forms of writs or other process.
See "Arrest"; "Assistance, Writ of"; "Attachment," § 7; "Entry, Writ of"; "Execution"; "Garnishment"; "Injunction"; "Mandamus"; "Prohibition"; "Quo Warranto"; "Replevin"; "Scire Facias."
Search warrant, see "Searches and Seizures."
Subpœna, see "Witnesses," § 1.

§ 1. Issuance, requisites, and validity.
The order directing an absent defendant to appear, plead, etc., must be made by the court in term.—Bronson v. Keokuk, Case No. 1,928.

Deputy clerk of district court *held* authorized to sign process in his own name. Act March 3, 1821.—Bragg v. Lorio, Case No. 1,800.

Where necessary to the exercise of its jurisdiction the federal court will issue the proper process to bring the matter before the court.—Murray v. Patrie, Case No. 9,967.

The provision of the constitution of Louisiana requiring the style of process to be "The State of Louisiana" does not apply to citations.—Kimball v. Taylor, Case No. 7,775.

Proper form of process for the commencement of a suit at law in the federal courts in New York.—Johnson v. Healy, Case No. 7,389.

The absence of a seal from a citation in the copy of a record of a Louisiana court is no proof that the original was without a seal, it being the practice of the clerks to omit the seal in copying.—Kimball v. Taylor, Case No. 7,775.

Absence of a seal from a citation is immaterial after personal service thereof.—Kimball v. Taylor, Case No. 7,775.

A writ in debt, "that they answer unto him of a plea of debt of $1,000," *held* good on a demurrer to a plea in abatement that the writ did not run in the debet and detinet.—Guion v. McCullough, Case No. 5,863.

§ 2. Service—Personal service in general.
Fees for service and return, see "United States Marshals," § 10.
On Sunday, see "Sunday," § 4.
When service a contempt, see "Contempt," § 1.

Congress has power to authorize the supreme court to fix by rule the manner of serving process, and a rule providing for service of process upon an attorney is valid.—Levinson v. Oceanic Steam Nav. Co., Case No. 8,292.

The words "party to the action," as used in Rev. St. Minn. § 47, p. 456, relating to service of process, apply only to parties to the record.—Owens v. Gotzian, Case No. 10,634.

Act Mass. 1797, c. 50, prescribing the modes of serving process, does not apply to the case of defendant, a former inhabitant, who has changed his actual domicile before suit brought.—Picquet v. Swan, Case No. 11,134.

If the writ is against two defendants and one only is taken, the cause is discontinued, unless alias capias is issued against the other and continued by pluries, etc., until the trial term.—Nicholls v. Fearson, Case No. 10,226.

If a person declines to receive from an officer a paper presented for service, the officer may deposit it in any convenient place in the presence of the party, and the service will be good.—Norton v. Meader, Case No. 10,351.

Where the process on defendant is not served 20 days before he is bound to appear, all subsequent proceedings are irregular, and will be set aside on motion.—Treadwell v. Cleaveland, Case No. 14,155.

Service by a deputy marshal of a summons, previously in his hands, on the day after a new marshal files his bond and takes the oath, is valid.—Stewart v. Hamilton, Case No. 13,429.

Where a writ is served on a person of a different name from the one against whom it was issued, and there is no appearance, the plaintiff cannot proceed.—Elliott v. Holmes, Case No. 4,392.

Sufficiency of service of declaration in ejectment.—Huidekoper v. Stiles, Case No. 6,853.

If all the defendants in ejectment inhabit the same house, and this appears by the marshal's return, it is sufficient to deliver one copy.—Campbell v. Harper, Case No. 2,360.

Service of federal process cannot be interrupted by the arrest of the officer, or persons aiding him in serving it, or in any other manner, by means of state process or warrants.—United States v. Morris, Case No. 15,811.

§ 3. —— Waiver of process.
Parties may waive process and appear.—Nelson v. Moon, Case No. 10,111.

A power of attorney to confess judgment in a pending suit is a substantial waiver of service of process.—Varnum v. Runion, Case No. 16,892.

A stipulation to answer judgment waives illegal service of process.—The Acadia, Case No. 24.

A plea in abatement does not waive process. It may be abandoned, and a motion made to quash the writ for defective service.—Halsey v. Hurd, Case No. 5,966.
See, also, "Appearance."

§ 4. —— Substituted service.
Where personal service is not made, the requisites of the statutes substituted for it must be strictly complied with.—Halsey v. Hurd, Case No. 5,966.

The federal courts have no power to effect a constructive service of process on nonresidents.—Parsons v. Howard, Case No. 10,777.

Shares of corporate stock *held* by a nonresident of the district, within which the corporation is domiciled, are not "personal property within the district," so as to authorize constructive service on the owner, under Rev. St. 738.—Kilgour v. New Orleans Gas Light Co., Case No. 7,764.

§ 5. —— Publication.

When constructive or substituted service by publication in a personal action is authorized by statute in place of personal citation, the statute must be strictly pursued.—Galpin v. Page, Case No. 5,206.

Service by publication is resorted to only when personal service is not practicable within a reasonable time, and by the exercise of reasonable diligence. Act June 1, 1872.—Bronson v. Keokuk, Case No. 1,928.

A person temporarily residing at Honolulu as United States commissioner to the Hawaiian government is a nonresident, and may be served by publication under Code Or. § 30, subd. 3.—Collinson v. Teal, Case No. 3,020.

An averment in an affidavit for an order of publication that plaintiff has a just cause of action against defendant for a money demand on account is not sufficient to authorize such order. Code Or. §§ 55, 56.—Neff v. Pennoyer, Case No. 10,083.

But a verified complaint on file, if it contain a sufficient statement of facts, will sustain the order.—Neff v. Pennoyer, Case No. 10,083.

The omission of the order to direct that a copy of the summons and complaint be mailed to defendant is fatal, unless it appear that plaintiff had used reasonable diligence to ascertain defendant's place of residence, and that it was unknown to him.—Neff v. Pennoyer, Case No. 10,083.

Sufficiency of affidavit of publication, under Code Or. § 69.—Neff v. Pennoyer, Case No. 10,083.

An averment of due publication of a summons in a judgment entry which appears from the whole record to be untrue or is not affirmatively supported by the facts contained in such record is a nullity, and may be disregarded.—Neff v. Pennoyer, Case No. 10,083.

§ 6. —— Privileges and exemptions.

A judge privileged from arrest is exempt from service of process in a civil suit when about to set out on his circuit.—Lyell v. Goodwin, Case No. 8,616.

A judge privileged from arrest while performing his judicial duties may be served with summons in a civil action when at home and not about setting out on his circuit.—Lyell v. Goodwin, Case No. 8,617.

The immunity of members of congress from arrest under the constitution does not exempt them from service of summons in a civil suit.—Kimberly v. Butler, Case No. 7,777.

A nonresident defendant, coming within a state for the purpose of defending a suit, cannot be legally served with process in another suit.—Juneau Bank v. McSpedan, Case No. 7,582; Parker v. Hotchkiss, Id. 10,739.

A citizen of one state, indicted in the federal court of another, who comes therein to plead under an arrangement with the district attorney that he may appear without arrest, and plead and give bail, is exempt, while so in the state, from liability to civil process. — United States v. Bridgman, Case No. 14,645.

The service of a writ by enticing the person within the jurisdiction of the court by false representations or deceitful contrivances for the purpose of making such service will be set aside.—Union Sugar Refinery v. Mathiesson, Case No. 14,397.

The defendant, while within the jurisdiction of the court, on invitation of an inventor, for the purpose of settling a controversy in relation to infringement of a patent, was served with process in a suit for infringement brought by the assignees of the inventor, who had no knowledge of the purpose of his visit. *Held*, that the service would not be set aside.—Union Sugar Refinery v. Mathiesson, Case No. 14,397.

§ 7. —— Return and proof of service.

Sufficiency of return of marshal of service of declaration in ejectment.—Campbell v. Harper, Case No. 2,360.

A return by the marshal of "Not found" where defendants, residing out of the district, had a well-known place of business within the district, at which they usually attended every day, is a false return.—International Grain Ceiling Co. v. Dill, Case No. 7,053.

An affidavit of service is only necessary, where the service is not made by an officer of the court.—Campbell v. Harper, Case No. 2,360.

The recitals of service in certificates of service of a summons and complaint read: "A true —— of this writ attached to a certified copy of complaint," and "A true —— of the complaint attached to a true copy of the summons." *Held* that the omission in one was supplied by the statement in the other.—Norton v. Meader, Case No. 10,351.

Defendant cannot call upon the marshal to return a writ of hab. fac. poss., although plaintiff may do so.—Penn v. Kline, Case No. 10,934.

The return of an officer touching any fact about which he is bound to make return is conclusive on the parties to the suit and their privies.—Von Roy v. Blackman, Case No. 16,997.

Where, in a suit on a joint and several bond, there is a return as to some defendants of "No inhabitants," plaintiff may proceed to trial and judgment against those who were served with process.—Pegram v. United States, Case No. 10,906.

A court has discretion to permit an officer to amend a return with or without notice, and at any time after the date thereof, so as to bind the parties to the action or those claiming under them as privies, but not third persons who acquire rights in good faith prior to such amendment.—Rickards v. Ladd, Case No. 11,804.

An amended return, as between the parties to the action or their privies, whether made with or without notice, cannot be questioned by them collaterally.—Rickards v. Ladd, Case No. 11,804.

The marshal may amend his return to process after he goes out of office. Act Sept. 24, 1789, §§ 28, 32.—Cushing v. Laird, Case No. 3,508.

Justices of the peace in Pennsylvania may receive proof of the service of process of ejectment, issuing out of the circuit court of the United States.—Huidekoper v. Stiles, Case No. 6,853.

§ 8. Defects, objections, and amendments.

A writ may be amended, by consent of parties.—Elliott v. Holmes, Case No. 4,392.

The court will not grant leave to amend the writ by changing the name of one of the plaintiffs.—Comegyss v. Robb, Case No. 3,049.

Where a writ is not indorsed as required by the state statute, which has been adopted by the federal practice, an amendment to remedy such defect will be permitted.—Miller v. Gages, Case No. 9,571.

Mistake in name of plaintiff in writ made by the clerk may be corrected by the memorandum filed by counsel.—Furniss v. Ellis, Case No. 5,162.

After service on the right party, the writ, return, and bill may be amended by correcting an

error in defendant's corporate name.—Noblet v. Ohio & M. R. Co., Case No. 10,283.

Motion to quash is the proper manner of taking advantage of a neglect to indorse the writ as required by the state statute, adopted by the federal practice.—Miller v. Gages, Case No. 9,571.

It is within the power, and is the duty, of the court to set aside summarily any process obtained by fraud and deception practiced upon itself. —In re Keiler, Case No. 7,647.

§ 9. Abuse of process.
The circuit court, on bill or petition filed, may restrain the use of its process by the marshal in a manner contrary to law.—Gibbs v. Usher, Case, No. 5,387.

Statements by officer, conveying the impression that the criminal proceedings could be averted by settling the prisoner's indebtedness, *held* not sufficient to show intent to abuse process.—In re Burke, Case No. 2,158.

PROFERT.

In pleading in general, see "Pleading," §§ 60–62.
—— in suits for infringement of patent, see "Patents," § 197.

PROHIBITION.

Of traffic in intoxicating liquor, see "Intoxicating Liquors."

§ 1. When writ will lie.
The federal circuit court has power to issue the writ of prohibition only when necessary for the exercise of its jurisdiction.—In re Bininger, Case No. 1,417.

A federal circuit court having jurisdiction of a petition for review in bankruptcy will not prohibit suits by the petitioner in the state court in respect to the property involved.—In re Bininger, Case No. 1,417.

PROMISE OF MARRIAGE.

See "Breach of Marriage Promise."

PROMISSORY NOTES.

See "Bills and Notes."

PROOF.

At trial, see "Trial," § 9.
In admiralty, see "Admiralty," §§ 89, 93, 96.
Of claims against estate assigned for creditors, see "Assignment for Benefit of Creditors," § 11.
Of common law, see "Common Law," § 3.
Of death, see "Death," § 1.
Of loss under insurance policy, see "Insurance," §§ 140–157, 194.
Of marriage, see "Marriage," § 5.
Of service of process, see "Process," § 7.
Taking and filing proofs in equity, see "Equity," §§ 94–96

PROPERTY.

§ 1, Realty or personalty. § 2, Possession.

See, also, "Exchange of Property."
Adverse possession, see "Adverse Possession."
Constitutional guarantees of right of property, see "Constitutional Law," §§ 5, 13.
Conveyance, see "Deeds."
Dedication to public use, see "Dedication."
Escheat, see "Escheat."
Estates, see "Estates."
In custodia legis, see "Courts," § 118.
Intermixture, see "Confusion of Goods."
Licenses in respect to real property, see "Licenses."
Measure of damages, see "Damages," § 10.
Of Indians, see "Indians," §§ 4, 5.
Of municipal corporation, see "Municipal Corporations," § 9.
Of United States, see "United States," § 14.
Protection of rights of property by injunction, see "Injunction," § 6.
Right of alien to acquire and hold, see "Aliens," § 3.
Taking for public use, see "Eminent Domain."

Particular species of property.

See "Animals"; "Copyrights"; "Fish"; "Fixtures"; "Good Will"; "Ground Rents"; "Literary Property"; "Logs and Logging"; "Mines and Minerals"; "Patents"; "Shipping"; "Slaves," § 6; "Trade-Marks and Trade-Names."

§ 1. Realty or personalty.
A lease for 99 years, renewable forever, by the common law is only a chattel.—McLean v. Rockey, Case No. 8,891.

§ 2. Possession.
Where several persons residing together have a joint possession of property, the law casts the actual possession upon the legal owner.—Lenox v. Notrebe, Case No. 8,246b.

PROPRIETARY GRANTS.

See "Public Lands," §§ 77–80.

PROSECUTING ATTORNEYS.

See "District and Prosecuting Attorneys."

PROSTITUTION.

See "Disorderly House."

PROTEST.

Against payment in general, see "Payment," § 28.
—— of duties, see "Customs Duties," §§ 64–68.
—— of taxes, see "Internal Revenue," § 20; "Taxation," § 11.
Of bill or note, see "Bills and Notes," §§ 71–79.

PROVINCE OF COURT AND JURY.

In civil actions, see "Trial," §§ 12–16.
In criminal prosecutions, see "Criminal Law," § 93.

PROXIMATE CAUSE.

Direct or remote consequences of injury, see "Damages," § 1.
Of death, see "Insurance," § 111.
Of injury, see "Negligence," § 2.
Of loss within insurance policy, see "Insurance," § 104.

PUBLIC.

Aid to railroads, see "Municipal Corporations," §§ 27–37; "Railroads," §§ 12–14.
Debt, see "Municipal Corporations," §§ 26–38; "United States," §§ 22, 23.

PUBLICATION.

See "Literary Property," § 4.
Of invention, see "Patents," §§ 45–47.
Service of process, see "Process," § 5.
When contempt of court, see "Contempt," § 1.

PUBLIC IMPROVEMENTS.

See "Municipal Corporations," §§ 14-18.

PUBLIC LANDS.

I. GOVERNMENT OWNERSHIP.

§ 1, What are lands of the United States. § 2, Lands acquired by treaty. § 3, Governmental authority and control. § 4, Trespasses in general. § 5, Cutting and removing timber—Statutory regulation. § 6, —— Right to cut timber. § 7, —— Actions for recovery of timber or for damages. § 8, —— Penalties and forfeitures. § 9, —— Criminal prosecutions. § 10, False claims to bounty lands.

II. SURVEY AND DISPOSAL OF LANDS OF THE UNITED STATES.

(A) Surveys.

§ 11, What constitutes a survey. § 12, Surveyors general and deputy surveyors. § 13, Method and sufficiency. § 14, Effect in general. § 15, Errors and omissions. § 16, Conflicting surveys. § 17, Resurveys and contested surveys.

(B) Entries and Sales.

§ 18, Who may enter. § 19, Lands subject to entry. § 20, Certificate and entry. § 21, Rights acquired by entry in general. § 22, Pre-emption. § 23, Homestead. § 24, Town sites. § 25, Abandonment of claim.

(C) Donations and Bounty Lands.

§ 26, Grants by congress in general. § 27, New Madrid Act. § 28, Oregon Donation Act —Operation and effect in general. § 29, —— Grants made under act. § 30, —— Performance of conditions. § 31, —— Claims and certificates. § 32, —— Married settlers in general. § 33, —— Death of settler or wife of settler. § 34, —— Conveyances by settler. § 35, Military bounty lands.

(D) Reservations to United States.

§ 36, Mode of reservation in general. § 37, Springs.

(E) School Lands.

§ 38, Effect of reservation and grant in general.

(F) Grants in Aid of Railroads.

§ 39, Construction and operation of grants to state. § 40, Construction and operation of grant to railroad company in general. § 41, Vesting title in railroad company. § 42, Sufficiency of adoption of line. § 43, Lands included, reservations and exceptions. § 44, Overlapping grants. § 45, Forfeiture of grant.

(G) Proceedings in Land Office.

§ 46, Authority and duties of officers in general. § 47, Cancellation of entries and reinstatement. § 48, Determination of adverse claims. § 49, Conclusiveness and effect of decisions.

(H) Patents.

§ 50, Issuance. § 51, Delivery and acceptance. § 52, Requisites and validity. § 53, Construction and operation in general. § 54, Conclusiveness.

(I) Remedies in Case of Fraud, Mistake, or Trust.

§ 55, Suits by United States. § 56, Relief to claimant of land.

(J) Conveyances and Contracts.

§ 57, Transfers of right in general. § 58, Bona fide purchasers. § 59, Validity of contracts.

III. DISPOSAL OF LANDS OF THE STATES.

§ 60, California. § 61, Indiana. § 62, Iowa. § 63, Kentucky. § 64, Massachusetts. § 65, Mississippi. § 66, New Hampshire. § 67, North Carolina—Entry and survey. § 68, —— Grant. § 69, Pennsylvania—Warrants. § 70, —— Surveys. § 71, —— Location and settlement. § 72, —— Patents. § 73, —— Confirmation of titles. § 74, Tennessee. § 75, Texas. § 76, Virginia.

IV. COLONIAL AND PROPRIETARY GRANTS.

§ 77, Title and rights of proprietaries. § 78, Surveys. § 79, Construction and operation of grants and conveyances. § 80, Rights of purchasers and settlers.

V. SPANISH, MEXICAN, AND OTHER FOREIGN GRANTS.

§ 81, Right to grant. § 82, Requisites and validity of grants. § 83, Construction and operation of grants. § 84, Conditions. § 85, Location. § 86, Abandonment and forfeiture of grants. § 87, Actions and proceedings to establish or confirm grants—Jurisdiction. § 88, —— Procedure. § 89, —— Evidence. § 90, —— Hearing and determination. § 91, —— Review. § 92, Transfers by claimants. § 93, Preferred purchasers on rejection of grant. § 94, Patents. § 95, Survey—Necessity of survey. § 96, —— Method, sufficiency, and validity. § 97, —— Confirmation of survey. § 98, —— Contest of survey. § 99, —— Correcting and setting aside survey. § 100, —— Conflicting surveys. § 101, Indemnity or lieu lands. § 102, Decisions on particular grants. § 103, Title of lands in San Francisco.

VI. TITLES DERIVED FROM INDIANS.

§ 104, Rights acquired.

See, also, "Boundaries."

Appropriation of water rights, see "Waters and Water Courses," § 1.

Jurisdiction of actions involving title, see "Courts," § 33.

Lands under water, see "Navigable Waters," § 17.

Mineral lands, see "Mines and Minerals," §§ 1-9.

Taxation, see "Taxation," § 6.

I. GOVERNMENT OWNERSHIP.

§ 1. What are lands of the United States. Intermediate the treaty of Guadalupe Hidalgo and the admission of California into the Union, the title to the lands was in the United States, and no military officer of the United States could make any alienation of the public land.—Friedman v. Goodwin, Case No. 5,119.

In the absence of proof that the title to land in California is obtained directly from the government, the legal presumption is that the title is in the United States.—Patterson v. Tatum, Case No. 10,830.

§ 2. Lands acquired by treaty. The stipulation in the Oregon treaty of 1846 that the United States would respect "the possessory right" of British occupants *held* not a grant, but a mere promise, for a violation of which occupants only have a claim against the United States for compensation.—Town v. De Haven, Case No. 14,113.

Land *held* not "mineral land," within the meaning of a treaty in relation to its purchase, because a coal deposit underlies it.—Stroud v. Missouri River, Ft. S. & G. R. Co., Case No. 13,547.

§ 3. Governmental authority and control.
A state has no power over public lands within its limits.—Turner v. American Baptist Missionary Union, Case No. 14,251.

As between individual citizens, rights to the possession of public lands are protected by the courts, and acquiesced in by the government.—Lamb v. Davenport, Case No. 8,015.

The secretary of the treasury cannot execute or approve of a lease of any property belonging to the United States without special authority of law.—United States v. Hare, Case No. 15,303.

§ 4. Trespasses in general.
A settlement upon public land without authority of law *held* a trespass.—Boyreau v. Campbell, Case No. 1,760.

A final receipt by a government officer authorized to act in the premises, for rent, where subsequent to the trespass alleged, is a full discharge, although the officer may never have accounted for the money received.—United States v. Gear, Case No. 15,195.

A permit to enter on land containing lead ore may be shown in an action of trespass by the United States; not as a justification, but to show the nature and object of the entry.—United States v. Gear, Case No. 15,195.

§ 5. Cutting and removing timber—Statutory regulation.
The Cherokee tribe derived the title to their lands by grant from the United States, and such lands cannot be held to be "lands of the United States," within Rev. St. § 5388.—United States v. Reese, Case No. 16,137.

The term "timber" signifies the standing trees and the felled trees prepared for transportation to a vessel or sawmill, such as sawlogs or lumber in bulk, but does not embrace any article manufactured from the tree, such as shingles or boards.—United States v. Schuler, Case No. 16,234.

§ 6. —— Right to cut timber.
The cutting and sale of timber from four acres in advance of the mining operation, where the only reason assigned is that the stumps may rot and be more easily removed, *held* unnecessary, and therefore unlawful.—United States v. Nelson, Case No. 15,864.

Persons occupying under the pre-emption, homestead, and mining acts, before becoming the owners of the land, may cut and use the timber thereon, so far as the same may be necessary to accomplish the purpose for which the land is occupied, but no further.—United States v. Nelson, Case No. 15,864.

A homesteader who has paid the entry fee and made affidavit, as required by law, has no right to cut and sell timber, merely for purpose of traffic and sale alone.—United States v. McEntee, Case No. 15,673.

§ 7. —— Actions for recovery of timber or for damages.
To maintain replevin for logs cut upon state lands and indistinguishably mingled with logs cut upon other lands, it is not necessary that the state identify each log.—Schulenburg v. Harriman, Case No. 12,486.

The government may proceed civilly for cutting timber.—Bly v. United States, Case No. 1,581.

The defense to an action of trespass for cutting timber, that defendant claimed the land under Act Sept. 4, 1841, can only be sustained by showing some steps taken to secure a pre-emptive right.—United States v. Brown, Case No. 14,668.

Parol evidence is inadmissible to show that the locus in quo was swamp land.—Bly v. United States, Case No. 1,581.

Remedies for wrongful cutting of timber, see "Election of Remedies," § 2.

§ 8. —— Penalties and forfeitures.
A libel against a vessel under Act March 2, 1831, § 2, for transporting timber cut from public lands, must allege that the timber was taken from lands reserved for naval purposes, or that it was live oak or red cedar. Case No. 15,341 reversed.—United States v. The Helena, Case No. 15,342.

§ 9. —— Criminal prosecutions.
The government may proceed criminally for cutting timber.—Bly v. United States, Case No. 1,581.

An indictment will lie for cutting or removing timber from any of the public lands, though the same are not reserved for naval purposes.—United States v. Redy, Case No. 16,133; Same v. Schuler, Id. 16,234.

An indictment which describes the land, in general language, as "lands of the United States," is not sufficient.—United States v. Schuler, Case No. 16,234.

An indictment for removing timber from public lands must state the particular section or quarter section from which the timber was taken, as a part of the description of the offense.—United States v. Schuler, Case No. 16,234.

An indictment for removal need not allege that the timber was removed from the land on which it was grown, or from which it was cut.—United States v. Schuler, Case No. 16,234.

In an indictment for cutting timber it is not necessary to state the class of lands from which the trees were cut.—United States v. Thompson, Case No. 16,490.

In such an indictment it is not necessary to describe every kind of timber cut.—United States v. Redy, Case No. 16,133.

The rule of proof on an indictment for cutting and removing timber from public lands is fixed by the statute. Act March 2, 1831.—United States v. Darton, Case No. 14,919.

An indictment for cutting oak on public lands cannot be sustained by evidence that defendant cut pine.—United States v. Darton, Case No. 14,919.

In prosecutions for cutting timber, the official plats and books in the land office are admissible to show title.—Bly v. United States, Case No. 1,581.

A nominal fine, only, imposed for cutting timber, where defendant had made full reparation, and there was no intention to defraud the public.—United States v. Murray, Case No. 15,843.

§ 10. False claims to bounty lands.
It is an offense under Act March 3, 1823, to transmit false papers for the purpose of obtaining from the government a bounty land warrant.—United States v. Bickford, Case No. 14,591.

It is an offense, under such act, to procure false papers with a view of their transmission by another; and the actual transmission by the prisoner need not be shown.—United States v. Bickford, Case No. 14,591.

Declarations and affidavits subscribed and sworn to by the signers are "papers" within said act.—United States v. Bickford, Case No. 14,591.

The offense is committed in Vermont, where the papers are transmitted from there to Washington city.—United States v. Bickford, Case No. 14,591.

Under Act Feb. 26, 1853, an indictment may join several counts for offenses under Act March 3, 1823, for transmitting false papers for the purpose of obtaining bounty land warrants.—United States v. Bickford, Case No. 14,591.

II. SURVEY AND DISPOSAL OF LANDS OF THE UNITED STATES.

(A) SURVEYS.

See, also, post, §§ 67, 70, 74.

§ 11. What constitutes a survey.
The marks on the ground really constitute the survey and determine the rights of the parties, the plot returned to the land office being only evidence of the survey.—Smith v. Houtz, Case No. 13,062.

§ 12. Surveyors general and deputy surveyors.
Whether lands are vacant the officers of survey do not determine; the applicant must judge for himself.—Smith v. Houtz, Case No. 13,062.

Where the boundaries of a surveyor general's district depend on the construction of acts of congress, which have long been construed in a particular way, a surety on his bond cannot set up that the duties as performed were beyond the limits of his district.—United States v. Lytle, Case No. 15,652.

§ 13. Method and sufficiency.
Where lines of a tract have been traced without a warrant, the warrant may be applied to such land without the surveyor going upon it, and the survey will bear date of the day when it was made.—Torrey v. Beardsly, Case No. 14,104.

Sufficiency of notice published by surveyor general.—Le Roy v. Jamison, Case No. 8,271.

"Place of publication," as used in Act June 14, 1860, means the place where the paper is first given to the public for circulation.—Le Roy v. Jamison, Case No. 8,271.

A survey made on instructions by the government without consultation with the claimant or allowance to him of an opportunity to make an election as to the land to be surveyed, will be set aside.—United States v. Covilland, Case No. 14,879.

The survey of a claim, made by the surveyor general after the final confirmation of the claim by the supreme court on which a patent has issued, is not invalid because the mandate issued by such court directing further proceedings to be had in the district court was not filed in the latter.—United States v. Vaca, Case No. 16,604.

A survey made by the board of property merely to mark the boundary of land claimed by the person for whom it is made, and not in execution of a warrant issued for the land, is not such a survey as will give title.—Wells v. Wright, Case No. 17,405.

A survey made without an entry is of no validity, nor is the survey valid, after an authorized or ratified withdrawal of the entry, and the land may be located by another warrant. Act March 2, 1807.—Gault v. McMillan, Case No. 5,274.

Every line of a survey need not be run and marked on the land. It is sufficient if the lines are run and marked on the ground so far as to enable the surveyor to lay down each particular tract by protraction.—Brown v. Arbunkle, Case No. 1,990.

What is a sufficient survey of a number of tracts adjoining each other, belonging to the same person.—Griffith v. Bradshaw, Case No. 5,821.

§ 14. Effect in general.
A survey will perfect the title under a defective warrant, only where the rights of third persons have not intervened.—Phillips v. Wilson, Case No. 11,109.

Title to lands by settlement, survey, etc., under Act Pa. April 3, 1792.—Balfour's Lessee v. Meade, Case No. 808.

Surveys made and returned into the land office in blocks are to be located on the ground in blocks.—Smith v. Houtz, Case No. 13,062.

A survey returned and accepted is prima facie presumed to have been legally made.—Griffith v. Bradshaw, Case No. 5,821; Same v. Tunckhouser, Id. 5,823; Harris v. Burchan, Id. 6,117.

§ 15. Errors and omissions.
Inaccuracies will not vitiate surveys made of wild lands infested with hostile Indians and at great hazard.—Robinson v. Moore, Case No. 11,960.

Mistakes of surveyor, when shown by satisfactory proof, may be corrected in courts of law, as well as in courts of equity.—Conn v. Penn, Case No. 3,104.

A survey referring to a tree as a live oak tree, where the only tree reasonably answering such description is a white oak tree, will not. on that ground, be overthrown.—United States v. Enwright, Case No. 15,054.

§ 16. Conflicting surveys.
Proper boundaries of purchase where surveys were run at different times.—Buel v. Tuley. Case No. 2,101.

The lines actually run by the surveyor, and not those reported, control the area.—Conn v. Penn, Case No. 3,104.

§ 17. Resurveys and contested surveys.
Grantees pendente lite from the original grantee of public lands are entitled to contest a survey, though the majority owners approve it.—Bajorques v. United States, Case No. 761.

In a proceeding to contest or reform a survey, no decree can be deemed final which does not adopt and approve some survey and plat fixing with precision every line of the land.—United States v. Semple, Case No. 16,250.

A case in which an order has been entered rejecting the original survey, and giving directions for a new and reformed survey, is still "pending," within Act June 14, 1860.—United States v. Semple, Case No. 16,250.

A "chamber survey," if returned and accepted, is voidable only; and a new survey may be had on the same warrant, by order of resurvey.—Smith v. Houtz, Case No. 13,062.

Where a survey based on a Mexican grant appears to be incorrect, it will be rejected, and a new one ordered.—United States v. Castro, Case No. 14,749.

(B) ENTRIES AND SALES.

See, also, post, §§ 63, 71.

§ 18. Who may enter.
Sioux half-breed scrip cannot be located by other than the party to whom the scrip issued in person, unless the application be accompanied with a power of attorney from him.—United States v. Chapman, Case No. 14,785.

§ 19. Lands subject to entry.
On the abandonment of a military reserve by giving notice to the secretary of the interior, the same may be considered as a part of the public lands open to entry and sale as other lands.—United States v. Railroad Bridge Co., Case No. 16,114.

Sioux half-breed scrip cannot be located on land occupied by another.—United States v. Chapman, Case No. 14,785.

Act March 2, 1807, which prohibited entries from being made on lands which had been surveyed or patented, does not protect void surveys or patents.—Miller v. Lindsey, Case No. 9,580.

An entry within the Virginia military district of Ohio before extinguishment of the Indiana title is void.—Chinn v. Darnell, Case No. 2,684.

§ 20. Certificate and entry.

A certificate and entry describing the land as "lying on the north side of the Kentucky river, about four miles from the river," *held* too general, and not saved by the special locative description, "on a small branch called Rockhouse."—Liggett v. Marshall, Case No. 8,342.

Notoriety as to the name of a small branch used as a descriptive and locative call in a certificate and entry subsequent to the time of such entry, but prior to the time the rights of others attached, is not sufficient to sustain a claim thereunder.—Liggett v. Marshall, Case No. 8,342.

§ 21. Rights acquired by entry in general.

A settler on public lands in Oregon, prior to September 27, 1850, had a mere possession. His interest ceased with his occupation, and he could not incumber it so as to affect a subsequent occupant. The latter took as if the land had never been occupied before.—Lownsdale v. Portland, Case No. 8,578.

A person who entered and paid for his land before the passage of the homestead act holds the land unaffected by it. His patent, when issued, will relate to the date of his entry.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

Claiming the land, and exercising acts of ownership over it, which has been located by the withdrawn warrant, *held* a ratification of an unauthorized withdrawal.—Gault v. McMillan, Case No. 5,274.

What laches in a settler will postpone him to a warrant and survey.—Griffith v. Bradshaw, Case No. 5,821.

A party cannot set up a title to land by settlement prior to the day stated for the commencement of his settlement in the warrant issued to him for the land, but he may prove the land was never in the possession of the party who claims it from him by the right of settlement.—Wells v. Wright, Case No. 17,405.

§ 22. Pre-emption.

The right of pre-emption is not an interest in land, but only a right to be preferred as purchaser.—Aiken v. Ferry, Case No. 112.

Rights of pre-emption cannot be acquired to lands while the Indian title to occupancy still remains.—Russell v. Beebe, Case No. 12,153.

A reservation of land for a specific purpose withdraws it from general location and from pre-emption rights.—Turner v. American Baptist Missionary Union, Case No. 14,251.

Public land in Indiana, containing a salt spring not entered at the land office, or not coming within the 36 sections conveyed to the state (Act 1816), is subject to pre-emption.—Indiana v. Miller, Case No. 7,022.

Lands included within the limits of an incorporated town are not subject to entry under the pre-emption law of Sept. 4, 1841.—Root v. Shields, Case No. 12,038.

The provision in such act excepting lands pre-empted by the corporate authorities from the operation of the pre-emption act was intended to secure to the government the enhanced value of lands in and adjoining a town.—Root v. Shields, Case No. 12,038.

Act May 30, 1862, does not change the qualifications of pre-emption claimants prescribed by Act Sept. 4, 1841, or the limitations imposed thereby.—Gimmy v. Culverson, Case No. 5,454.

One owning land in trust for another is not a "proprietor" (Rev. St. § 2260) disqualified to acquire right of pre-emption.—Aiken v. Ferry, Case No. 112.

The pre-emptor must actually reside on land until final proof and payment made.—Aiken v. Ferry, Case No. 112.

A person who never has asserted any pre-emption rights to land, but has asserted other rights in contradiction thereof, cannot be deemed to have intended to claim such rights.—Root v. Shields, Case No. 12,038.

The person commencing an improvement has a right to continue, and any one that intervenes may be considered a trespasser.—United States v. Stanley, Case No. 16,376.

An actual settler is only entitled to buy that portion of a quarter section upon which his improvements are made. 14 St. 804.—Armsworthy v. Missouri River, Ft. S. & G. R. Co., Case No. 550.

§ 23. Homestead.

The provision of the homestead act that no lands acquired thereunder shall, in any event, become liable to any debt contracted prior to the issuing of the patent therefor, is valid and binding on the states.—Seymour v. Sanders, Case No. 12,690.

§ 24. Town sites.

Act May 23, 1844, known as the "Town-Site Law," was not enforced in Oregon before the passage of Act July 17, 1854.—Chapman v. School District, Case No. 2,607.

The act organizing Oregon territory did not extend the "town-site law" over that territory. The first act affecting the title or disposition of Oregon lands was the donation act.—Lownsdale v. Portland, Case No. 8,578.

What is an occupation for public uses under Act 1864, which excepts from the grant to the city all sites or other parcels of land in such occupancy by the United States.—United States v. Carr, Case No. 14,731.

§ 25. Abandonment of claim.

A claim to lands *held* to have been abandoned.—De Fitch v. United States, Case No. 3,741.

(C) DONATIONS AND BOUNTY LANDS.

See, also, ante, § 10.

§ 26. Grants by congress in general.

The general gift of 500,000 acres to California by Act Sept. 4, 1841, became a particular gift of specific lands, on the location by the state of lands subject thereto, vesting a title in the state from the date of such location.—Patterson v. Tatum, Case No. 10,830.

The grant to certain settlers in the village of Peoria, Ill., whose buildings had been destroyed by a military company, *held* to be for a consideration, and the heirs of a settler who died before it was made are entitled to the patent.—Forsythe v. Ballance, Case No. 4,951.

Ordinary grants and those for meritorious services are governed by the same principles and regulations.—Teschemacher v. United States, Case No. 13,843.

§ 27. New Madrid act.

Possession for 10 years under patent issued in 1827, pursuant to a New Madrid certificate or warrant, *held* sufficient to defeat ejectment.—Mackay v. Easton, Case No. 8,843.

§ 28. Oregon donation act — Operation and effect in general.

Land once occupied as a town site, but abandoned, may be taken up and held under the donation act as unoccupied public land.—Bear v. Luse, Case No. 1,179.

The donation act of 1850 does not include settlers upon the public lands in Oregon, who died before its passage.—Fields v. Squires, Case No. 4,776; Lamb v. Starr, Id. 8,021.

The Oregon donation act of 1850 is a grant in præsenti from the date of the settlement thereunder, or from the date of the act where the settlement was prior thereto, defeasible until conditions performed. The patent issued is only record evidence of the title.—Adams v. Burke, Case No. 49; Fitzpatrick v. Dubois, Id. 4,842; Lamb v. Davenport, Id. 8,015; Mizner v. Vaughn, Id. 9,678; Wythe v. Haskell, Id. 18,118.

The notice of settlement given to the proper officer under such act relates back to the commencement of the application, unless the same was prior to the passage of the act.—Fitzpatrick v. Dubois, Case No. 4,842.

§ 29. —— **Grants made under act.**
A grant to a settler under such act does not take effect prior to its passage, although made in consideration, or on account, of prior residence and cultivation thereon.—Fields v. Squires, Case No. 4,776.

A grant under section 4 of the Oregon donation act, to the children of L., the wife of a settler, includes her children by a prior husband.—Lamb v. Starr, Case No. 8,021.

Under that act, a grant to the "children or heirs" of a settler or wife takes effect first in favor of the children.—Lamb v. Starr, Case No. 8,021.

§ 30. —— **Performance of conditions.**
Until the complete performance of the conditions subsequent to a settlement in the donation act, the estate granted is liable to revert to the donation by the failure to perform such conditions.—Chapman v. School District, Case No. 2,607.

The patent to the settler under the donation act is conclusive evidence of a performance of such conditions in a court of law, and primary in equity.—Chapman v. School District, Case No. 2,607.

§ 31. —— **Claims and certificates.**
A claim under the donation act need not be described by its boundaries.—Alexander v. Knox, Case No. 170.

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.—Wythe v. Haskell, Case No. 18,118.

§ 32. —— **Married settlers in general.**
Though a married man limits his settlement under the donation act to the quantity of land granted to a single man, one-half thereof inures to the benefit of the wife, and she takes the same in her own right as the direct donee of the United States, and not subject to any of the previous acts or contracts of the husband.—Fields v. Squires, Case No. 4,776.

Under the Oregon donation act, the estate granted to a married person is a determinable fee, with contingent remainder to the survivor and the children of the grantee; and, in case the grantee dies before patent issues, such survivor and children take as donees of the United States, not as heirs of the deceased.—Lamb v. Starr, Case No. 8,022.

A patent to a married settler under the Oregon donation act, and to his wife, by name, cannot be contradicted in an action at law by showing that the true wife of such settler was another person, by a different name.—Sharp v. Stephens, Case No. 12,710.

A wife divorced before notice and proof of a claim is not entitled to share in the settlement, although the land was occupied before the divorce was obtained.—Fitzpatrick v. Dubois, Case No. 4,842.

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.—Wythe v. Haskell, Case No. 18,118.

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 devest him of his estate, although it might exempt it from execution.—Wythe v. Smith, Case No. 18,122.

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.—Wythe v. Smith, Case No. 18,-122.

Where a settler under the donation act fraudulently procures a certificate and patent to his wife's share, equity has jurisdiction to correct the error by requiring him to convey the premises to her.—Stevens v. Sharp, Case No. 13,-410.

§ 33. —— **Death of settler or wife of settler.**
A settler under the Oregon donation act, who dies before the conditions requisite for vesting title in him have been fulfilled, has no devisable interest in the land, and his heirs and widow take as donees of the government.—Hall v. Russell, Case No. 5,943.

On the death of the settler, after complying with the act, and before issue of the patent, the remainder vests in his children, by purchase, as donees of the United States.—Mizner v. Vaughn, Case No. 9,678; Adams v. Burke, Id. 49.

Under that act, a settler might change his location before making final proof; and, in case of death before completion of residence and cultivation, his widow might abandon her interest, and, by marrying another settler, become entitled to one-half of his donation.—Lamb v. Starr, Case No. 8,021.

On the death of the wife of a settler under such act, her interest passes directly to her husband and children in equal parts, as donees of the United States, and not as her heirs.—Fields v. Squires, Case No. 4,776; Lamb v. Wakefield, Id. 8,024.

Settler's wife dying before completion of residence under donation act has separate property which descends to her heirs.—Alexander v. Knox, Case No. 170.

§ 34. —— **Conveyances by settler.**
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.—Wythe v. Palmer, Case No. 18,-120.

The rights of vendees of a married settler under the act, on a partition of the wife's share after her death, determined.—Fields v. Squires, Case No. 4,776.

A donee under the Oregon donation act who, subsequent to the initiation of the four years' possession, and before the passage of the act, has conveyed all his right, will be compelled to convey the legal title vested in him, by the patent subsequently issued.—Starr v. Stark, Case No. 13,317.

The prohibition contained in the proviso to section 4 of the act does not include covenants or contracts made prior to the passage of such act.—Fields v. Squires, Case No. 4,776.

Covenants between jont occupants to convey to their prior vendees *held* not a "future con-

tract for the sale of the land," within the meaning of the Oregon donation act.—Lamb v. Davenport, Case No. 8,015.

A quitclaim deed by the occupants of land in Oregon before the passage of the donation act, containing a covenant of warranty against all claims except that of the United States, and a covenant to convey the title of the United States, if obtained by the covenantors, will transfer only the possession.—Fields v. Squires, Case No. 4,776.

The possession delivered with the deed is a sufficient estate to carry the covenants therein to the assignee thereof.—Fields v. Squires, Case No. 4,776.

A bond given between private parties, in relation to certain lands covered by the Oregon donation act, construed.—Lamb v. Vaughn, Case No. 8,023.

§ 35. Military bounty lands.
The grantee of a patentee of military bounty lands is not within the provision of the statute (Act March 1, 1800, § 7) that the patentee shall hold the same free from any contract of sale.—Smith v. Shane, Case No. 13,105.

The patentee of military bounty lands is a necessary party to a suit by a purchaser from his grantee to compel a conveyance of the land.—Smith v. Shane, Case No. 13,105.

An actual settlement and survey is necessary to constitute an appropriation of land under a military warrant.—Carson v. Gorden, Case No. 2,463.

(D) RESERVATIONS TO UNITED STATES.

§ 36. Mode of reservation in general.
The president of the United States may reserve from sale certain lands within a pueblo, by order to that effect.—Grisar v. McDowell, Case No. 5,832.

§ 37. Springs.
A lease by a squatter on lands within the "Hot Springs" reservation is absolutely void, and the lessee is not estopped to deny his landlord's title in a suit for rent.—Dupas v. Wassell, Case No. 4,182.

(E) SCHOOL LANDS.

See, also, post, § 60.

§ 38. Effect of reservation and grant in general.
The right to any particular tract under the grant to the state of Michigan of section 16 for school lands (Act June 23, 1836) did not exist until a survey was made; and, if such section be found to contain minerals, another section must be selected.—Cooper v. Roberts, Case No. 3,201.

All mineral lands were reserved under the compact with the state (Michigan) to give it section 8 for school lands.—Cooper v. Roberts, Case No. 3,201.

(F) GRANTS IN AID OF RAILROADS.

See, also, post, § 62.

§ 39. Construction and operation of grant to state.
Act March 3, 1863, granting lands to Kansas to aid railroads, did not pass title to lands reserved to the Osage Indians by the treaties of June 2, 1825, and January 21, 1867.—United States v. Leavenworth, L. & G. R. Co., Case No. 15,582; Same v. Missouri, K. & T. Ry. Co., Id. 15,786.

Construction of acts of June 3, 1856, and May 5, 1864, granting land to Wisconsin for railroads from Madison or Columbus to the St. Croix river, and from thence to Lake Superior and to Bayfield, and the effect of acceptance thereunder.—Madison & P. R. Co. v. Wisconsin, Case No. 8,938.

The state has power to protect such lands from trespass, and may maintain replevin or trover for logs cut thereon by trespassers.—Schulenburg v. Harriman, Case No. 12,486.

§ 40. Construction and operation of grant to railroad company in general.
Construction of the grants of lands to the Burlington & Missouri River Railroad Company and the Union Pacific Railroad Company.—United States v. Burlington & M. R. Co., Case No. 14,688; Hunnewell v. Burlington & M. R. Co., Id. 6,879.

The secretary of war, under Act March 3, 1819, and Act April 28, 1828, *held* to have authority to grant to a railroad company the power to construct their railroad over government property at Harper's Ferry.—United States v. Baltimore & O. R. Co., Case No. 14,510.

Under Act March 3, 1875, providing for the use of any cañon by more than one railroad, two railroads granted a right of way through a cañon can construct their lines irrespective of the width of way granted.—Cañon City & S. J. Ry. Co. v. Denver & R. G. Ry. Co., Case No. 2,387.

§ 41. Vesting title in railroad company.
The gift of lands and bonds made by the United States to the Union Pacific Railroad Company were not in the nature of a trust, but were made absolutely without condition precedent.—United States v. Union Pac. R. Co., Case No. 16,598.

Act July 1, 1862, granting land to the Central Pacific Railroad Company, was a present grant, operating immediately on the passage of the act.—Central Pac. R. Co. v. Dyer, Case No. 2,552.

Under Act July 1, 1862, granting lands to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, there was a present grant, which attached to the particular sections upon the definite location of the road.—Sanger v. Sargent, Case No. 12,319.

Lands claimed at the time of such location, under alleged Mexican or Spanish grants, which were in fact fraudulent and void, and were afterwards so judicially declared, passed by such grant.—Sanger v. Sargent, Case No. 12,319.

Where patents under a land grant were to be issued pro tanto on the completion of every 20 consecutive miles of road, and to be subject to the disposal of the company for construction purposes, *held* that the company had a complete title under the patents, and not one in trust.—North Wisconsin Ry. Co. v. Barron County, Case No. 10,347.

The railroad companies to which land was regranted on the failure of original grantees to build the roads do not hold the lands subject to any trust in favor of the creditors of the state or of the former companies.—Chamberlain v. St. Paul & S. C. R. Co., Case No. 2,578.

§ 42. Sufficiency of adoption of line.
The certificate of incorporation filed by the Denver & Rio Grande Railway Company under Rev. St. Colo. c. 18, was not such an appropriation of the right of way through the Grande Cañon as contemplated by Act June 8, 1872.—Cañon City & S. J. Ry. Co. v. Denver & R. G. Ry. Co., Case No. 2,387.

A surveying and staking of a proposed line of road by the Denver & Rio Grande Railway

Company did not amount to an appropriation of the right of way granted to that company by Act June 8, 1872, nor was the building of the road from Pueblo to Cañon City.—Cañon City & S. J. Ry. Co. v. Denver & R. G. Ry. Co., Case No. 2,387.

Where a railroad company exhibits a copy of the profile of its line through the Grande Cañon, approved by the secretary of the interior, it will be considered as made in accordance with Act March 3, 1875.—Cañon City & S. J. Ry. Co. v. Denver & R. G. Ry. Co., Case No. 2,387.

Section 7, Act Cong. July 1, 1862, granting land to the Central Pacific Railroad Company, which required the company, within two years, to designate the route of the road and file a map, did not affect the grant of the right of way, but only furnished the means by which the land taken by the railroad could be withdrawn from private entry.—Central Pac. R. Co. v. Dyer, Case No. 2,552.

§ 43. Lands included, reservations and exceptions.

A grant of alternate sections of land within certain limits to aid in the construction of a railroad (Act July 25, 1866) *held* to attach on the filing of the plat of survey of the line with the secretary of the interior and the withdrawal of the land from sale, etc., but not as to any land lying outside of the limit to make up a deficiency, until such deficiency had been ascertained.—Ryan v. Central Pac. R. Co., Case No. 12,185.

The exception in the grant to the Union Pacific Railroad Company of lands to which homestead claims had attached does not operate in favor of a sham and fraudulent homestead claim.—Union Pac. R. Co. v. Watts, Case No. 14,385.

§ 44. Overlapping grants.

Overlapping grants to the Union Pacific Railroad Company and the Sioux City Branch make the two companies tenants in common.—Sioux City & P. R. Co. v. Union Pac. R. Co., Case No. 12,909.

In the case of overlapping patents, *held*, that the patentees under the elder grant, though it was the last finally located and patented, had the better right.—Bissell v. Henshaw, Case No. 1,447.

§ 45. Forfeiture of grant.

The lands granted to the state of Wisconsin by Act June 3, 1856, to aid in the building of railroads, did not ipso facto revert to the United States by a failure to build the road within the prescribed period.—Schulenburg v. Harriman, Case No. 12,486.

(G) PROCEEDINGS IN LAND OFFICE.

§ 46. Authority and duties of officers in general.

The board of land commissioners was authorized to consider and determine the claim to land made by the Catholic bishop of Monterey by virtue of a Mexican grant to the church for religious purposes.—Mora v. Foster, Case No. 9,784.

A commissioner of the land office has power, with the consent of the party in interest, who refused to accept the patent on the ground that it was erroneously located, and of defects in the proceedings prior to the patent, to recall the patent and order a resurvey.—Le Roy v. Clayton, Case No. 8,268.

The commissioner of the general land office may order a further examination, on the ground that the return of a survey made by the surveyor general of California represented the tract as containing more than the quantity sold and confirmed.—United States ex rel. Castro v. Hendricks, Case No. 15,347a.

§ 47. Cancellation of entries, and reinstatement.

Congress has power to reinstate an entry canceled by the land office, and to provide that this shall relate back to the original entry, so as to inure to the benefit of intermediate grantees.—McCarty v. Mann, Case No. 8,685.

In such case the intermediate grantees receive the benefit whether they took with or without warranty.—McCarty v. Mann, Case No. 8,685.

§ 48. Determination of adverse claims.

Person without showing right in himself cannot question right of others.—Aiken v. Ferry, Case No. 112.

§ 49. Conclusiveness and effect of decisions.

Decisions of land office on questions of fact conclusive, in absence of fraud or mistake.—Aiken v. Ferry, Case No. 112; Bear v. Luse, Id. 1,179.

Whether a settler under the donation act upon unsurveyed lands could commute his residence under Act Feb. 14, 1853, and Act July 17, 1854, is a question of law, and the decision of the land department thereon may be reviewed at the suit of a party having a prior equity.—Bear v. Luse, Case No. 1,179.

The subject of surveys of confirmed claims is under the control of the land department, and its action is not subject to the supervision of the courts, however erroneous.—United States v. Flint, Case No. 15,121.

In acting upon a claim to pre-empt a tract of land, the land officers exercise a judicial discretion, with which the court cannot interfere by injunction.—Litchfield v. Register, Case No. 8,388.

The decision of the board of land commissioners on a claim within their jurisdiction cannot be collaterally impeached.—Mora v. Foster, Case No. 9,784.

The determination of the commissioner upon receiving a survey transmitted to him as published, as to the regularity and sufficiency of the publication, is conclusive, unless reviewed and corrected on appeal by the secretary of the interior.—Le Roy v. Jamison, Case No. 8,271.

(H) PATENTS.

See, also, post, §§ 60, 72.

§ 50. Issuance.

As to the power of the commissioner of the general land office, relative to private claims to land and the issuing of patents therefor, under Acts July 4, 1836, June 14, 1860 and 1864.—Le Roy v. Jamison, Case No. 8,271.

No patent can issue pending a contest before the register and receiver of the United States land office between a purchaser from the state, on a state selection, and a claimant under Sioux half-breed scrip location.—United States v. Chapman, Case No. 14,785.

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.—Willis v. Bucher, Case No. 17,769.

Under Act June 14, 1860, it was the duty of the commissioner of the general land office, before issuing a patent upon a survey, to see that the necessary publication had been made, to render the survey final, when not submitted to the district court.—Le Roy v. Jamison, Case No. 8,271.

§ 51. Delivery and acceptance.

A personal delivery of a patent to a patentee is not necessary to the vesting of the title.—Le Roy v. Clayton, Case No. 8,268.

The acceptance of a grant where no personal obligation is imposed will be presumed in the absence of an express dissent, whenever the conveyance is placed in a condition for acceptance.—Le Roy v. Jamison, Case No. 8,271.

§ 52. Requisites and validity.
A patent for lands paid for by the father, but delivered to his son of the same name, who was described, by his residence, as the grantee, is valid until vacated for the mistake of description.—Babcock v. Pettibone, Case No. 700.

§ 53. Construction and operation in general.
A patent for land covered by a paramount title does not vest the fee in the patentee.—Nelson v. Moon, Case No. 10,111.

A patent to a deceased person inures to the benefit of his successor in interest. 5 Stat. 31.—Lamb v. Starr, Case No. 8,022.

A patent for land is presumptive evidence that the proper steps have been regularly pursued.—Brown v. Galloway, Case No. 2,006.

A patent signed, sealed, and recorded takes effect from such time, and it cannot be recalled while en route to the local officer for delivery to the patentee, without consent of the patentee.—Le Roy v. Clayton, Case No. 8,268; Same v. Jamison, Id. 8,271.

Location of land with scrip, under the act of July 17, 1854, passed the fee out of the United States and was equivalent to a patent.—Larriviere v. Madegan, Case No. 8,096.

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.—Wythe v. Haskell, Case No. 18,118.

§ 54. Conclusiveness.
A patent valid on its face cannot be collaterally impeached in the federal courts in ejectment to recover the land granted by it.—Le Roy v. Clayton, Case No. 8,268.

Equity has no jurisdiction to affect a patent except upon the ground of an antecedent equity in the plaintiff, disregarded in the issuing thereof.—Bear v. Luse, Case No. 1,179.

The patent to a settler under the Oregon donation act is only record evidence of the donee's right.—Adams v. Burke, Case No. 49; Wythe v. Haskell, Id. 18,118.

(I) REMEDIES IN CASE OF FRAUD, MISTAKE, OR TRUST.

§ 55. Suit by United States.
The United States may sue in equity in their own name in the circuit court to set aside a patent issued without authority of law.—United States v. Leavenworth, L. & G. R. Co., Case No. 15,582.

The assignee of a land warrant, fraudulently procured from the government, has no higher legal rights than the warrantee.—Bronson v. Kukuk, Case No. 1,929.

§ 56. Relief to claimant of land.
A patent may be canceled, on the application of the grantee, where the land is lost in whole or in part.—Nelson v. Moon, Case No. 10,111.

Courts will not restrain the issue of patents for land, but will relieve against fraud practiced to procure them.—Leitensdorfer v. Campbell, Case No. 8,225.

Decision of conflicting claims to lands upon the evidence in a suit in equity to prevent the issuing of certain scrip.—Walker v. Smith, Case No. 17,085a.

A patent may be avoided at law for fraud only where it relates to the issuing of the patent.—Cooper v. Roberts, Case No. 3,201.

For the purpose of showing mistake in the calls of a grant, resort may be had to the plat and certificate of survey.—Dallum v. Breckenridge, Case No. 3,547.

Government may waive all regulations and irregularities, except as against vested rights of others.—Bernard v. Ashley, Case No. 1,346.

A junior settler to whom the land office by erroneous construction of law issues a patent will be decreed to hold in trust for senior settler.—Aiken v. Ferry, Case No. 112.

A bill against the register and receiver of the land office to restrain them from permitting settlers on lands treated by the department as public lands from entering them under the preemption laws, when such settlers are not made parties, is fatally defective.—Litchfield v. Register, Case No. 8,388.

(J) CONVEYANCES AND CONTRACTS.

§ 57. Transfers of right in general.
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.—Wright v. Taylor, Case No. 18,096.

A warranty deed executed by an executor before the patent issues from the government conveys no legal title, but it will operate by way of estoppel, where a patent is afterwards issued in the name of the executor, though the will did not authorize him to convey.—Lewis v. Baird, Case No. 8,316.

A conveyance by a pre-emptioner where his entry was set aside, and no patent ever issued to him, is inoperative, either by way of grant or estoppel.—Kellom v. Easley, Case No. 7,668.

§ 58. Bona fide purchasers.
Persons will not be protected as bona fide purchasers (1) who purchased before the patent of the government issued; (2) when the defect in the title arises out of a rule of law, of which they are bound to take notice; (3) where the title acquired is absolutely void.—Root v. Shields, Case No. 12,038.

§ 59. Validity of contracts.
A covenant by bona fide settlers on unsurveyed lands to purchase them as soon as surveyed and then mortgage them to a creditor is not a contract in violation of Act March 31, 1830. §§ 4, 5.—Wright v. Shunway, Case No. 18,093.

III. DISPOSAL OF LANDS OF THE STATES.

§ 60. California.
Where a grant made by government refers in general terms to a certainty, it is the same as if the certainty had been expressed in the grant, though it be not matter of record.—Friedman v. Goodwin, Case No. 5,119.

A grant to an individual, of franchises, is to be strictly construed, but a grant to a purchaser must be interpreted according to the ordinary meaning of its language.—Griffing v. Gibb, Case No. 5,819.

A patent of the state, valid on its face, cannot be collaterally impeached by matter dehors the patent, by a party having no title, in an action at law brought in the national courts to recover the land.—Dodge v. Perez, Case No. 3,953.

Construction of Act Cal. March 17, 1866, relating to lands in the city of San Jose.—Le Roy v. Chabolla, Case No. 8,267.

A legislative grant is equivalent to a patent, and one made to a class of persons is as valid as one made to an individual.—Griffing v. Gibb, Case No. 5,819.

Where a party, in order to bring himself within a class of legislative grantees, must exhibit his muniments of title, it may be shown that they have been dishonestly obtained.—Seabury v. Field, Case No. 12,575.

Where lands are claimed under a Mexican grant, and are excluded from the external limits by a confirmation decree, from the time the decree becomes final such lands become subject to survey and sale as public lands, and are subject to selection by the state of California as school lands.—Dodge v. Perez, Case No. 3,953.

The term "tide lands" (Act May 14, 1861) means lands covered and uncovered by the tide, and does not include lands lying below low-tide mark, and permanently covered by the navigable waters of the bay or ocean.—Walker v. Marks, Case No. 17,078.

Table of land claims in the state of California. —30 Fed. Cas. p. 1217.

A list of governors of California, with notes. —30 Fed. Cas. p. 1259.

See, also, post, § 103.

§ 61. Indiana.
The Indiana swamp law of 1850 *held* to have carried the title of certain lands to the bed of a lake.—State v. Miller, Case No. 13,323a.

§ 62. Iowa.
Where the state of Iowa accepted the grant of certain railroad lands from the United States, and gave them to a particular company, subject to the right to make necessary rules and regulations, it was an express reservation of the power to regulate the tolls.—Chicago, B. & Q. R. Co. v. Attorney General, Case No. 2,666.

§ 63. Kentucky.
The words used in an entry should be construed in reference to their proper signification, rather than to their grammatical arrangement. —Holmes v. Trout, Case No. 6,645.

A variance of 40 poles, on a straight line, in running a two-mile line, *held* not unreasonable. —Holmes v. Trout, Case No. 6,645.

§ 64. Massachusetts.
Construction of the resolve of 1801, in favor of the inhabitants of Bangor, and of the authority of the commissioners appointed to adjust the same.—Dunlap v. Stetson, Case No. 4,164.

One who obtained a grant from the state with full knowledge of another's title is bound in equity to convey the land to the latter.—Dunlap v. Stetson, Case No. 4,164.

§ 65. Mississippi.
Rights of scrip or certificate holders in the New England Mississippi Land Company.—Gilman v. Brown, Case No. 5,441.

§ 66. New Hampshire.
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.—Woods v. Jackson Iron Mfg. Co., Case No. 17,993.

§ 67. North Carolina—Entry and survey.
An entry takes effect from its date, and not from its place on the entry taker's book.—Graham v. Dudley, Case No. 5,665.

A call in an entry may be made good by description, though the object called for is not notorious.—Henderson v. Long, Case No. 6,354.

The calls must be for some notorious object, or for some point with reference thereto, so as to lead a person using reasonable diligence to the place.—Dallum v. Breckenridge, Case No. 3,547.

Notoriety will cure a defective description in an entry, and, in case of conflicting rights, will be sufficient, if such notoriety was established before the date of the conflicting entry.—Simms v. Dickson, Case No. 12,869.

Of two calls in an entry, repugnant to each other, and both equally notorious, the general call must give way and the locative call be adhered to.—Graham v. Dudley, Case No. 5,665.

If the call in an entry be for land to lie on a creek, the survey must be made so as to give an equal quantity of land on each side of it.—Shepherd v. Baily, Case No. 12,755.

Where the calls in an entry are indefinite, the survey should be made either in a square or an oblong.—Henderson v. Long, Case No. 6,354; Shepherd v. Baily, Id. 12,755.

§ 68. —— Grant.
The governor's act (in North Carolina) in signing and affixing the state seal to a land grant makes it operative, without signature by the secretary of state.—Philips v. Erwin, Case No. 11,093.

Under Act N. C. 1779, a grant in the name of a deceased person, founded on a removed warrant, will pass the land to his heirs, if an entry was made in his lifetime.—Dougherty v. Edmiston, Case No. 4,025.

Nothing passes to the heirs under a grant to a deceased person.—Dougherty v. Edmiston, Case No. 4,025.

"Adjacent," as used in a grant, does not mean "adjoining," but signifies "convenient," "near to," or "in the neighborhood."—Henderson v. Long, Case No. 6,354.

Validity of North Carolina land grants made after the cession act.—Polk v. Windel, Case No. 11,251.

A plat annexed to a grant cannot be recurred to for the purpose of destroying its validity.—Polk v. Hill, Case No. 11,249.

Irregularities or fraud in procuring a grant do not render it void, but only voidable, and it is good as between third persons.—Polk v. Hill, Case No. 11,249.

§ 69. Pennsylvania—Warrants.
One person may take out any number of warrants in the names of different persons, who will be considered trustees for him.—Huidekoper v. Burrus, Case No. 6,848.

Uncertainty of description in the warrant is no objection where the land is surveyed before an adverse title accrues to a third person.—Huidekoper v. Burrus, Case No. 6,848.

A warrant issued to resurvey land which was not legally surveyed will stand as an original warrant of survey.—Penn v. Klyne, Case No. 10,935.

A warrant taken out for certain land, which is subsequently found to have been previously taken up, may be laid upon adjoining lands.—Huidekoper v. McClean, Case No. 6,852.

A located warrant may be lifted and relocated on another tract, if no person has acquired the title in the meantime.—Huidekoper v. Burrus, Case No. 6,848.

A later warrantee, without notice, who obtains the first survey, has the better title.—Gordon v. Kerr, Case No. 5,611.

The title is in him who pays the money and obtains the warrant, though it is issued in the name of another.—James v. Gordon, Case No. 7,181.

Plaintiff, claiming under a warrant and survey of Pennsylvania lands, must prove payment of the purchase money to the proprietors, or to

the state, to recover in ejectment.—Milligan v. Dickson, Case No. 9,604.

A warrant and survey returned into the land office and accepted, in Pennsylvania, vests a legal title.—Griffith v. Tunckhouser, Case No. 5,823.

Everything necessary to designate the land covered by the warrant, so as to prove it to be withdrawn from the general mass of property, and appropriated to the use of an individual, must be proved.—Brown v. Arbunkle, Case No. 1,990.

Upon a forfeiture for noncompliance with the terms of the warrant, no third person can enter on the land.—Huidekoper v. McClean, Case No. 6,852.

A warrant holder for lands in "the new purchase" loses his right of possession by failure to comply with the requisites of the law.—Huidekoper v. McClean, Case No. 6,852.

The date of the warrant, and not that of the payment of the purchase money, is the period from which the two years, allowed for the settlement, are to run.—Brown v. Galloway, Case No. 2,006.

The prevalence of the Indian war before the Revolution is no excuse for a neglect by the holder to have a warrant executed beyond the period when the war terminated.—Gordon v. Kerr, Case No. 5,611.

Neither under the Pennsylvania statutes, nor on general principles, is a warrant on settled lands void; and the same will be good if the settlement is not followed up.—Lanning v. London, Case No. 8,074.

A warrant and survey of lands within the "new purchase," without a compliance with the terms thereof enjoining a settlement on the land, is not sufficient to sustain ejectment.—Huidekoper v. Burrus, Case No. 6,848.

The warrant is functus officio after a survey has been once regularly made under it by direction of the warrantee.—Harris v. Burchan, Case No. 6,117.

§ 70. —— Surveys.

Surveys may be valid, though made by order of the commissioners of property.—James v. Stookey, Case No. 7,184.

A survey by a deputy surveyor of another district, though specially authorized by the surveyor general, *held* invalid.—Gordon v. Kerr, Case No. 5,611; Griffith v. Tunckhouser, Id. 5,823.

A survey in the district appropriated to satisfy depreciation certificates, made without going upon the land and running the lines, *held* valid where the boundaries can be ascertained with mathematical certainty by the lines of adjoining surveys.—Griffith v. Tunckhouser, Case No. 5,823.

Under Act Pa. 1785, every survey made, and to be returned upon warrant, must be made by actually going upon the ground and marking the lines.—Smith v. Houtz, Case No. 13,062.

A warrant holder in Pennsylvania must have the lands surveyed in a reasonable time, or lose his priority by the superior vigilance of a subsequent locator.—Dubois v. Newman, Case No. 4,108.

A warrant without a survey, made under a legally authorized surveyor, does not give a right of entry to support an ejectment.—Hurst v. Durnell, Case No. 6,927.

Where the outlines of a tract are legally surveyed, a third person cannot question the survey of one of the inside warrants.—Huidekoper v. Burrus, Case No. 6,848.

Ex parte proceedings by the board of property, ordering a survey to be struck from the records, are not binding on a person claiming thereunder.—Griffith v. Evans, Case No. 5,822.

§ 71. —— Location and settlement.

Sufficiency and validity of settlement of lands in the Pennsylvania new purchase.—Brown v. Arbunkle, Case No. 1,990.

Mere improvement, without occupancy and bona fide intention to reside, does not constitute a settlement.—Balfour's Lessee v. Meade, Case No. 808.

Actual settlement consists in clearing, fencing, and cultivating the land, and erecting a house fit for habitation and actual residence.—Balfour's Lessee v. Meade, Case No. 808.

As to the meaning of "a persistence in his endeavors to make such actual settlement," as used in Act Pa. 1792.—Huidekoper v. Burrus, Case No. 6,848; Same v. Douglass, Id. 6,851.

Custom in Pennsylvania as to location and surveys.—Conn v. Penn, Case No. 3,104.

A warrant for lands in Pennsylvania, if special, amounts to an immediate location.—Dubois v. Newman, Case No. 4,108.

History of the settlement on islands in the rivers of Pennsylvania.—Fisher v. Carter, Case No. 4,815.

The law of Pennsylvania relating to titles to land under application, warrants, surveys, locations, payment of purchase money, and the rules of the land office relative thereto, by which such titles are ascertained and determined.—Lewis v. Meredith, Case No. 8,328.

The Pennsylvania statute of April 3, 1792, from the second to the tenth section, inclusive, is inapplicable to lands in Luzerne county.—Lanning v. London, Case No. 8,074.

§ 72. —— Patents.

A patent for land is only prima facie evidence of title, and proof of the omission to take the preliminary steps for vesting title will defeat it.—Huidekoper v. Burrus, Case No. 6,848.

It is not necessary to produce a conveyance from the warrantee of lands in the Pennsylvania new purchase. The production of the patent is sufficient.—Brown v. Galloway, Case No. 2,006.

The title vests in the grantee upon the return and acceptance of the survey and payment of the purchase money, and the legal possession vests at the same time.—Potts v. Gilbert, Case No. 11,347.

§ 73. —— Confirmation of titles.

Construction of Act Pa. March 28, 1787, confirming the title of certain Connecticut settlers to lands claimed by them in Luzerne county.—Vanhorne v. Dorrance, Case No. 16,857.

§ 74. Tennessee.

To establish a grant, there must be an actual survey, or such a description with reference to natural objects or other lines capable of identification as will lead to the place called for.—Rutledge v. Buchanan, Case No. 12,177.

An occupation entry in Tennessee, made without an occupancy, *held* good except as against persons who entered their claims as soon as the preference in favor of occupants ceased.—Thompson v. Norwood, Case No. 13,970.

The occupant law of Tennessee, so far as it violates the compact with other states by giving preference to its citizens over those of the other states, is void.—Bass v. Dinwiddie, Case No. 1,092.

No person can claim privileges of an occupant (Act Tenn. 1806) unless he was actually settled on land claimed.—Bass v. Dinwiddie, Case No. 1,092.

§ 75. Texas.

Vacant unappropriated lands in Texas are to be applied to the payment of the debts and lia-

bilities of the republic of Texas, under the conditions of the resolution of annexation.—Hancock v. Walsh, Case No. 6,012.

The charter of Brownsville of 1853 gave no title or interest to such city to land owned by the state of Texas which belonged to Matamoras on December 18, 1836.—Brownsville v. Cavazos, Case No. 2,043.

§ 76. Virginia.
Construction of grant for lands from the commonwealth of Virginia made in 1796.—Morrill v. Armstrong, Case No. 9,822.

Subsequently to the cession of the Virginia military district, the state of Virginia had no right to issue a patent for land within it.—Miller v. Lindsey, Case No. 9,580.

An entry and survey do not, in Virginia, convey the legal estate in lands out of the commonwealth.—Jones v. Bache, Case No. 7,454.

Under the laws of Virginia, the certificate of registry of a patent, which is required to be given, is not necessary to the title to lands under it.—Ritchie v. Woods, Case No. 11,865.

Effect of certificate from commissioners of Virginia as to lands subsequently found to be within the limits of Pennsylvania.—Swan v. Hughes, Case No. 13,669.

IV. COLONIAL AND PROPRIETARY GRANTS.

§ 77. Title and rights of proprietaries.
Title and rights of the proprietaries of Pennsylvania.—Penn v. Klyne, Case No. 10,935; Conn v. Penn, Id. 3,104.

The proprietary is neither an agent nor a trustee for the first purchasers.—Hurst v. Durnell, Case No. 6,927.

To show a title out of the proprietaries, a grant, warrant, and survey under the proprietors, or length of possession against them, may be shown.—Gardner v. Sharp, Case No. 5,236.

§ 78. Surveys.
An actual survey was not necessary as to all the lines, where some of them may be obtained from old lines and natural boundaries.—Penn v. Groff, Case No. 10,932.

Persons entitled to liberty lands were bound to have them laid off by surveyors regularly appointed, the same as other lands.—Hurst v. Durnell, Case No. 6,927.

§ 79. Construction and operation of grants and conveyances.
Construction and effect of grants and reservations made by the proprietaries of Pennsylvania previous to the Revolution.—Conn v. Penn, Case No. 3,104.

The contract for liberty land did not constitute the purchasers tenants in common.—Hurst v. Durnell, Case No. 6,927.

The appropriation by proprietaries of Pennsylvania of the manor of Springetsburg under the warrant of 1722, and the warrant of résurvey of 1762, and the rights of subsequent purchasers and settlers.—Conn v. Penn, Case No. 3,105.

The proprietary, by his promise to first purchasers, did not deprive himself of the right to lay off the manor of Springettsbury, north of the city of Philadelphia.—Hurst v. Durnell, Case No. 6,927.

Effect of the adjustment by an agent of the proprietaries of Pennsylvania in 1733 of the claims of settlers on the west side of the Susquehanna within the boundaries of lands afterwards resurveyed as the manor of Springettsbury.—Penn v. Groff, Case No. 10,932.

§ 80. Rights of purchasers and settlers.
The presumption of payment of the purchase money to the original proprietaries of land does not arise from length of time, where no patent is shown to have been issued.—Conn v. Penn, Case No. 3,104.

A warrant and survey, and consideration paid, gives a title sufficient to maintain ejectment against the proprietaries, or those claiming under them; otherwise where the consideration is not paid.—Penn v. Klyne, Case No. 10,935.

A settlement and improvement made under the Connecticut claim will not support the title. —Keene v. Harris, Case No. 7,642.

A right of settlement and improvement is merged in the title acquired under a survey under a warrant by the owner of the settlement and improvement.—Harris v. Burchan, Case No. 6,117.

The rights of settlers and warrant holders in cases of abandonment, improvement, etc., and delay to protect such title, stated.—Holtzapple v. Phillibaum, Case No. 6,648.

V. SPANISH, MEXICAN, AND OTHER FOREIGN GRANTS.

§ 81. Right to grant.
A consent to occupy land under "a provisional license" given on a petition for a grant of land for pasturage will not give petitioners any right to the absolute fee which will be respected by the government.—United States v. De Haro, Case No. 14,939.

Where no grant, either perfect or inchoate, was made, nor any promise given that a grant would be made, mere occupation pending an application for the land does not constitute a valid claim.—Romero v. United States, Case No. 12,-029.

An equity based upon a license to occupy can be enforced only where there is clear proof of an occupancy and settlement of the land upon the faith thereof.—United States v. Brown, Case No. 14,664.

There is no obligation upon the United States to allow the claim to land of one who had obtained its loan from the ayuntamiento, and had settled upon and cultivated it, where the Mexican government for years had failed to act favorably upon an application for a grant.—United States v. Berreyesa, Case No. 14,585.

An inchoate title, followed by juridical possession, presents an equity which the United States is bound to respect.—United States v. Enright, Case No. 15,053.

Where it appears that the governor intended to accede to the petition, and the land has been long occupied and enjoyed under the grant or promise to grant, and by everybody recognized as belonging to the grantee, the latter has an equitable title, which the United States will respect.—United States v. Soto, Case No. 16,357.

A mere permission to search for and take possession of land did not bind the Mexican government to make a title, and the United States are not required under the treaty to recognize such claim.—Garcia v. United States, Case No. 5,215.

Possession of lands in a pueblo under a concession by an officer having authority only to lease for five years, accompanied by efforts on the part of the occupant to obtain a grant, is not "under claim of ownership."—United States v. Berreyesa, Case No. 14,585.

The approval by the governor of an application for title by one in possession does not affect the character of his possession, so as to render it that of a Mexican colonist with the permission of the government.—United States v. Berreyesa, Case No. 14,585.

Construction of Act March 3, 1851, passed in execution of the obligation in the treaty under

which California was ceded, to protect holders of Spanish or Mexican titles.—Montgomery v. Bevans, Case No. 9,735.

Such act operated upon the titles conferred by the Van Ness ordinance as effectually as a patent would have done.—Montgomery v. Bevans, Case No. 9,735.

§ 82. Requisites and validity of grants.

In the grant of land to the city of San Francisco for the uses and purposes specified in the Van Ness ordinance, the exception of such parcels as might be subsequently designated by the president (Act July 1, 1864, § 5) *held* did not defeat the entire grant.—Montgomery v. Bevans, Case No. 9,735.

A grant by a political chief for the time being of Alta California was not invalid, though it did not receive the previous approbation of the territorial deputation.—Cervantes v. United States, Case No. 2,560.

Assisting witnesses *held* not necessary to the validity of final Mexican titles extended by alcaldes and commissioners to make sales.—Sheirburn v. Hunter, Case No. 12,744.

Description of land granted aided by the diseño *held* sufficient.—United States v. Wilson, Case No. 16,735.

A grant described as the "place called 'Sanel,' its boundaries being the 'Serranias Altas' and the river," *held* sufficiently definite in description.—Feliz v. United States, Case No. 4,720.

The fact that a Mexican title document is written on unstamped paper is not fatal to its validity.—Sheirburn v. Hunter, Case No. 12,744.

The ayuntamiento of a pueblo had no power to grant lands within the limits of proprios duly and formally assigned to the pueblo, so as to create a greater estate in them than a leasehold for five years.—United States v. Berreyesa, Case No. 14,585.

Power of departmental assembly of California under the Mexican government to authorize the sale of lands.—Mora v. Foster, Case No. 9,784.

The power of the Mexican government to grant lands in California did not cease until the actual conquest of the country; and rights under grants made during the war will be respected, and are not affected by treaty stipulations.—Palmer v. United States, Case No. 10,697.

A Mexican land grant, made July 7, 1846, the date of the actual conquest of California, *held* entitled to respect, where the title was ordered to issue June 11, 1846.—Pico v. United States, Case No. 11,130.

Whether the issue of a previous grant of 11 leagues to a claimant disqualifies him from receiving a second grant is a question of law, and any error in its decision can be corrected only on appeal.—United States v. Flint, Case No. 15,121.

As to the presumption in favor of the validity of a grant to one supposed to be a French citizen by the governor of California, shortly before the territory passed from his hands.—United States v. Cambuston, Case No. 14,713.

A grant of land in the pueblo of San Francisco by an alcalde in 1846 to a person deceased is void.—Montgomery v. Bevans, Case No. 9,735.

A grant purporting to convey land lying within the limits of a colony will be void if the land, in fact, lies outside such limits, unless the parties acted in good faith.—Sheirburn v. Hunter, Case No. 12,744.

A grant by a political chief of Alta California was not invalid because the lands were not within the limits of a mission, or within 10 leagues of the seacoast, or because the approbation of the supreme executive did not appear, though it had been obtained.—Cervantes v. United States, Case No. 2,560.

Under the laws of Mexico, more than 11 leagues of land could not be granted in colonization to any one person.—United States v. Hartnell, Case No. 15,317.

§ 83. Construction and operation of grants.

The rule at common law, that in the construction of deeds quantity must yield to specific metes and bounds, cannot be applied to Mexican grants.—Tobin v. Walkinshaw, Case No. 14,-069.

The words "a little more or less" will be *held* to pass all the land included within the boundaries named, though in excess of the quantity named, where the description and the circumstances justify the belief that such was the intention.—United States v. Estudillo, Case No. 15,058.

A grant of a certain rancho according to boundaries named, stating the quantity as "one square league, a little more or less," *held* to convey the entire rancho, though it contained much more than one square league.—United States v. Bernal, Cases Nos. 14,578, 14,583.

A Mexican grant of "a little more than three leagues" *held* to carry but three leagues, to be taken from the larger tract named in the grant. —Marsh v. United States, Case No. 9,120.

Under a grant of land "of the extent of two square leagues, a little more or less," the judicial officer has no power to confirm a tract of 3½ leagues.—United States v. Castro, Case No. 14,753.

Under a grant designating the quantity as two leagues, a little more or less, the court will not confirm a claim to a tract of four or five leagues.—United States v. Peralta, Case No. 16,032.

§ 84. Conditions.

Conditions in a grant that the grantee should build and inhabit a house within a certain time, and obtain judicial possession of the land, are conditions subsequent.—Cervantes v. United States, Case No. 2,560.

Requisites to a complete title under a Mexican land grant, and necessity of compliance with conditions.—United States v. Cervantes, Case No. 14,768.

A Mexican land grant will be confirmed where the conditions as to cultivation and habitation annexed to the grant have been performed.—Chabolla v. United States, Case No. 2,566.

The danger from savages is no excuse for not complying with the condition of the grant, requiring settlement on the land to be made within one year.—United States v. Fremont, Case No. 15,164.

A neglect to occupy and settle before the conquest, where the grant was made less than a month before the capture of Monterey, *held* not unreasonable.—United States v. Galbraith, Case No. 15,182.

Where the conditions of a grant have been performed cy pres, though no approval has been given by the departmental assembly, the claim is entitled to confirmation.—United States v. Reading, Case No. 16,127.

The failure to strictly comply, in regard to time, with a condition requiring a house to be built upon the land, will not prevent the confirmation of a grant otherwise valid, and confirmed by the departmental assembly.—United States v. Soto, Case No. 16,355.

§ 85. Location.

The building of a house and the making of improvements within such limits by the grantee may be considered as an election of location in favor of a subsequent purchaser thereof, and will be so treated by the court to protect an earlier grantee, where there are conflicting

claims.—United States v. Sutter, Case No. 16,-424.

An election of location of a grant as shown by the erection of buildings, and by the cultivation of the land, will prevail as against a location shown by deeds of the tract.—United States v. Castro, Case No. 14,750.

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 grant cannot be made by a mere private survey.—Winter v. United States, Case No. 17,895.

Location of grant on conflicting testimony.—United States v. Graham, Case No. 15,246.

A decision of the circuit court as to the proper location of a Mexican grant is entitled to great weight on a similar issue of fact, submitted on identical testimony, in another proceeding.—Dodge v. Perez, Case No. 3,953.

The recital in a grant of pueblo lands by the prefect as "within the demarkation" of the pueblo affords presumptive proof, in the absence of opposing evidence, that the land was so situated, and that the officer acted within the limits of his authority.—United States v. Sherebeck, Case No. 16,275.

In locating a grant, the court cannot be controlled in establishing the lines by the fact that the survey, which it regards as conformable to the grant, will include part of the lands falling within the limits of a subsequent grant, which has not yet been confirmed.—Weber v. United States, Case No. 17,329.

Construction of decree for the location of a lot under a Mexican grant, based upon the language used by a witness.—United States v. De Haro, Case No. 14,937.

After the lapse of many years, where large interests have been acquired on the faith of the finality of a decree, the location will not be disturbed, except in the case of manifest error, and on clear proof of incorrectness.—United States v. Folsom, Case No. 15,126.

The location of a valid grant cannot be affected by the fact that, without notice to the grantee, the grant was treated as forfeited, and part of the lands granted to another.—United States v. Larkin, Case No. 15,562.

Where a decree locating a grant rests on the idea of conforming as near as may be, and in a general way, to the supposed intention of the grantor, the court is not precluded from thereafter modifying in a slight degree the directions of the lines so as to obtain a location by which existing rights acquired in good faith may be protected.—Weber v. United States, Case No. 17,328.

Under Act June 14, 1860, settlers can object to the location of a Mexican grant only through the United States district attorney.—United States v. Carillo, Case No. 14,736; Same v. Folsom, Id. 15,127.

Lands not embraced within the exterior lines designated in a Mexican grant cannot be included in the juridical possession given by a magistrate.—Dodge v. Perez, Case No. 3,953.

A selection of other land by claimant, and a disclaimer made after a location against his protest, *held* would not estop him from setting up title derived under his patent subsequently granted, as against those locating on the same land before the final location of the grant.—Bissell v. Henshaw, Case No. 1,447.

An unapproved Mexican grant, not segregated from the public domain before the treaty of Guadalupe Hidalgo, gives no rights except against a trespasser.—Tobin v. Walkinshaw, Case No. 14,069.

It is a sufficient severance from the public domain when the grant itself designates by unmistakable natural boundaries the limits of the district within which it is to be located, and where the particular land granted is specified by name.—United States v. Fremont, Case No. 15,164.

When a certain quantity has been granted within limits which embrace a much larger tract, the quantity granted is to be located within the exterior limits at the election of the grantee.—United States v. Sutter, Case No. 16,-424.

A clear and definite call for a line as of a given course and direction will not be controlled by an indefinite act of possession.—United States v. Enwright, Case No. 15,054.

§ 86. Abandonment and forfeiture of grants.

Prior and continued occupancy of a tract adjoining that granted will extend to the latter, so as to rebut any presumption of abandonment of the grant.—United States v. Rose, Case No. 16,195.

The nonperformance of a condition of a public grant to pay annually an ear of corn as rent is not a ground of forfeiture, as such rent is merely nominal.—Vermont v. Society for the Propagation of the Gospel, Case No. 16,919.

Forfeiture of a Mexican grant cannot be predicated on failure to occupy and cultivate, occurring after the acquisition of California.—United States v. Juares, Case No. 15,500.

A fraudulent attempt to alter the date of a grant so as to obviate an apprehended objection to its validity cannot take away from the claimant any lands actually granted to him before the acquisition of the country by the United States.—United States v. Galbraith, Case No. 15,182.

§ 87. Actions and proceedings to establish or confirm grants—Jurisdiction.

The district court has no jurisdiction to divide and partition a claim under a Spanish land grant among claimants.—Putnam v. United States, Case No. 11,484.

The district court had jurisdiction under Act June 14, 1860, to revise the location of the Boga grant.—Bissell v. Henshaw, Case No. 1,447.

Petition to confirm a grant lying mostly in another state dismissed, for want of jurisdiction.—Callender v. United States, Case No. 2,321.

§ 88. —— Procedure.

The division of a Spanish claim not allowed in the district court.—Bullitt v. United States, Case No. 2,128.

The neglect to support a petition for land by evidence within two years after it is presented to the board of land commissioners does not bring the claim within the limitation of Act March 3, 1851, § 13.—Swat v. United States, Case No. 13,680.

Construction of the California statute of limitations of 1863 in relation to claims to real property under Spanish or Mexican titles.—Montgomery v. Bevans, Case No. 9,735.

The statute of limitations of California does not begin to run against a confirmed Mexican grant, finally located under Act June 14, 1860, until the patent issues.—Le Roy v. Carroll, Case No. 8,266.

One whose claim under a grant has never been presented, and has been abandoned, has no right, under Act 1851, § 13, to intervene in a proceeding to confirm a different grant until

after the determination of the proceedings by the confirmation of the claim.—United States v. White, Case No. 16,680.

Where a cause is remanded for further proceedings involving additional proofs, the United States are entitled to a reasonable time in which to close their testimony.—United States v. Fossat, Case No. 15,138.

In cases pending under Act March 3, 1851, the court will extend some indulgence to the district attorney to give him reasonable time to prepare for trial.—Palmer v. United States, Case No. 10,695.

The fact that the circuit and district courts are simultaneously in session is not sufficient cause for the continuance of a land case.—Palmer v. United States, Case No. 10,696.

§ 89. —— Evidence.

The oldest grant is evidence of title at law, and can only be defeated by producing an older entry coupled with a grant.—Patton v. Carothers, Case No. 10,833.

The fact that the grantee himself was acting governor, and made out the papers to himself, according to a petition presented to a previous governor, *held* not sufficient to justify rejecting the claim, where the possession had been long continued, and all the papers were regular.—United States v. Pico, Case No. 16,048.

A favorable report by the ayuntamiento on an application on an expediente formed does not show that any grant was actually made.—United States v. Berreyesa, Case No. 14,585.

The expediente is the most satisfactory evidence of the issuance of the grant.—United States v. Galbraith, Case No. 15,182.

The nonproduction of the grant will not affect the validity of the claim, where its loss is proved, and long and notorious occupation of the land has been established.—United States v. Castro, Case No. 14,752; Same v. Vallejo, Id. 16,606; Same v. Chaboya, Id. 14,769.

An expediente not placed among the records until 1855 is not archive testimony, such as is indispensable to the confirmation of an alleged grant.—United States v. Teschemacher, Case No. 16,455.

In the absence of archive evidence of the grant, the fullest and most satisfactory proofs of possession and occupation during the existence of the former government, under a notorious and undisputed claim of title, and clear and indubitable evidence of the genuineness of the grant produced, will be required.—United States v. Polack, Case No. 16,061.

Oral testimony is not admissible to establish the making and contents of a Spanish grant of the issue of which the archives contain no trace. —United States v. Berreyesa, Case No. 14,585.

The record of the act of possession, based on depositions containing statements upon which the alcalde acted, cannot be contradicted by testimony of aged, illiterate, and infirm witnesses as to their recollection of what was done or intended by the alcalde.—United States v. Payson, Case No. 16,015.

An unquestionably genuine Mexican grant will not be invalidated by an accompanying titulo which is forged and fraudulent, if neither the claimants nor the original grantees were parties to the fraud.—United States v. Juares, Case No. 15,500.

Sufficiency of evidence to prove the execution of a Mexican land grant, where the grant is alleged to have been lost.—Morehead v. United States, Case No. 9,792.

Claims to Mexican land grants rejected in the absence of documentary proofs.—Diaz v. United States, Case No. 3,878; United States v. Bernal, Id. 14,579; Same v. Brown, Id. 14,664.

Evidence *held* insufficient to establish a Mexican land grant.—Larkin v. United States, Case No. 8,091.

The Mexican grant to Ramon Mesa *held* sufficiently proven, there being no opposing testimony.—Brackett v. United States, Case No. 1,763.

Objections *held* removed by further testimony taken in the court on appeal from land commissioner.—Dana v. United States, Case No. 3,555.

Objections to confirmation of grant of land in San Joaquin county, Cal., *held* to have been removed by additional testimony as to performance of conditions.—Grimes v. United States, Case No. 5,828.

§ 90. —— Hearing and determination.

The court has no jurisdiction in a proceeding to confirm a grant to inquire into any questions of private right between the heirs or devisees of the grantee and the present claimants.—United States v. Vallejo, Case No. 16,606.

Where it appears that the original petition was for half a league of land, a claim to a larger extent will not be allowed.—United States v. De Haro, Case No. 14,940.

A co-claimant of a Mexican grant, who presents his separate claim for his half, and denies the execution of an alleged deed by him to the other, is entitled to a confirmation, as against the United States.—Thurn v. United States, Case No. 14,015.

A decree of confirmation must be made to the claimant, or to the legal representatives of the deceased grantee, whoever they may be, and without prejudice to the rights of any one who may be lawfully entitled under him.—United States v. Vallejo, Case No. 16,605.

The proceedings of the board of land commissioners for confirmation of Mexican grants are judicial in their character, and their decree is conclusive between the parties and their privies.—Boyle v. Hinds, Case No. 1,759.

A confirmation of a Mexican land grant under Act March 3, 1851, determined nothing as to the equitable relations between the confirmees and third persons.—Hardy v. Harbin, Case No. 6,060.

Advantage will be taken of ambiguity or discrepancies in the language of a decree of confirmation to restrict the claimant to the land actually granted.—United States v. De Haro, Case No. 14,938.

Confirmation of a Mexican land grant by the land commissioners and the district court does not vest legal title so as to bar ejectment by one holding a patent from the United States.—Mezes v. Greer, Case No. 9,520.

If the bill showed that the decree had been procured by fraud of the grossest character, the court would still be without jurisdiction, for it has no authority to pass upon the propriety of the decree.—United States v. Flint, Case No. 15,121.

After a decree confirming a grant according to described boundaries, and the dismissal of an appeal therefrom, the court has no authority, in determining questions relating to the survey, to assume the invalidity of the original grant.—United States v. Vallejo, Case No. 16,605.

Lands excluded from the external limits of a Mexican grant by the express terms of the decree for confirmation cannot properly be embraced within a survey of the grant.—Dodge v. Perez, Case No. 3,953.

§ 91. —— Review.

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

Spanish government.—United States v. Bolton, Case No. 14,623.

The jurisdiction conferred upon the special tribunal created for the settlement of claims to lands in California, of Spanish and Mexican origin, and upon the courts empowered to review its decisions (Act March 3, 1851), was in its nature exclusive, and the decrees of such tribunals are not open to review in any court. —United States v. Flint, Case No. 15,121.

From what decrees appeals to circuit court in Mexican land-grant cases are authorized under Act July 1, 1864.—Mesa v. United States, Case No. 9,492.

Act May 6, 1864, in relation to claimants of San Ramon rancho lands, does not give the district court power to revise a decree of confirmation rendered by it under an agreement between the claimant and the district attorney, in the absence of mistake.—United States v. Carpentier, Case No. 14,728.

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.—Yturbide v. United States, Case No. 18,-191.

Where both the city and the United States appeal from a decree of the land commission confirming the claim of the city, *held*, that the withdrawal and dismissal of the appeal on the part of the United States was an assent by them to the main facts upon which the claim of the city rested.—San Francisco v. United States, Case No. 12,316.

An appeal to the district court from a decree of the board of land commissioners (Act 1851), confirming a claim under a Mexican grant in California, opens the whole issue for consideration, and further evidence may be produced.—Le Roy v. Wright, Case No. 8,273.

§ 92. Transfers by claimants.

The claimants of a grant are estopped to object that parts of the land which they have sold and conveyed as part of their rancho are not within its limits, for the purpose of completing their quantity by embracing in the survey lands not conveyed by them.—United States v. Pacheco, Case No. 15,980.

Purchasers of land under final decrees of confirmation cannot be disturbed upon charges of fraud in the prosecution of the claims confirmed, and vague allegation of notice of such fraud. —United States v. Flint, Case No. 15,121.

§ 93. Preferred purchasers on rejection of grant.

A claimant under a Mexican grant, who has never presented his grant for confirmation, is not within the act authorizing the purchase of lands excluded by final survey. Act July 23, 1866, § 7.—Dodge v. Perez, Case No. 3,953.

§ 94. Patents.

The patent issued upon a confirmed Mexican grant is the final, authentic, and conclusive record of title, as against all persons having no patent.—Mora v. Foster, Case No. 9,784.

One claiming title to a confirmed grant in opposition to the confirmee, but under the same original grantee, is entitled, under Act 1851, § 13, to enjoin the issuance of a patent to the confirmee pending a suit in the state courts to determine the title as between the two.—United States v. Sanchez, Case No. 16,217.

§ 95. Survey—Necessity of survey.

Surveys were necessary under the Spanish government.—De Villemont v. United States, Case No. 3,839; Glenn v. Same, Id. 5,481.

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.—Winter v. United States, Case No. 17,895.

Land will not be excluded from the claimant's survey because included in the diseño of a neighboring rancho, where the latter has not been surveyed, and the owners have not intervened.—United States v. Pacheco, Case No. 15,-980.

Where precise locality is not given to a concession, a survey is necessary to sever the land from the royal domain.—De Villemont v. United States, Case No. 3,839.

A measurement and segregation from the public domain of the specific land granted within the boundaries designated was essential to a complete investiture of the title.—United States v. Castro, Case No. 14,754.

§ 96. —— Method, sufficiency, and validity.

A grant of land, *held* should be surveyed in accordance with the claimant's original survey and election, where large expenditures have been made, in reliance thereon, without objection by adjoining owners.—United States v. Richardson, Case No. 16,156.

Under the ordinances of the former government, all grants of public land were required to be measured in a square or rectangular form, or into a trapezium, where natural objects prevented the other measurement.—United States v. De Haro, Case No. 14,941.

To constitute a survey of land under the Spanish government, there must have been an 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.—Winter v. United States, Case No. 17,-895.

Validity of survey of Santa Teresa rancho determined upon the evidence.—United States v. Bernal, Case No. 14,580.

§ 97. —— Confirmation of survey.

Proceedings by the district court to confirm surveys of Mexican grants are judicial, and its judgments conclusive.—Bissell v. Henshaw, Case No. 1,447.

Such proceedings are in the nature of proceedings in rem, and all parties interested must intervene or be concluded.—Bissell v. Henshaw, Case No. 1,447.

The extension of the line beyond the limits of the grant recognized by the government and adjoining proprietors for a number of years *held* sufficient to warrant confirmation of a survey adopting such boundary.—United States v. Narvaez, Case No. 15,855.

The order of the governor directing the title to issue to the petitioner is not controlling in the determination of boundaries, when it appears that on the following day a decree of concession was made, accurately defining the rights of the petitioner, and the formal title was issued and accepted by him, declaring its boundaries with unmistakable precision.—United States v. Walkinshaw, Case No. 16,633.

A case is "pending," within the act of 1860, where a motion for rehearing remains unargued and undisposed of at the date of the passage of the act.—United States v. Murphy, Case No. 15,837.

Surveys of Mexican land grants confirmed upon the evidence.—United States v. Hignera, Cases Nos. 15,362, 15,363; Same v. Pico, Id. 16,044; Same v. Rodriguez, Id. 16,181a.

Where the district court had ordered a survey of a confirmed claim to land under a Mexican grant into court for examination (Act June 14,

1860), its jurisdiction over the entire subject-matter continued until the survey of the claim was finally disposed of, notwithstanding Act July 1, 1864.—United States v. Castro, Case No. 14,754.

§ 98. —— Contest of survey.
A survey made by the surveyor general on the confirmation of a Mexican grant cannot be contested by a purchaser from the claimant of a tract which is within the location as made by the surveyor-general, and which would be included within any survey that could be made.—United States v. Bidwell, Case No. 14,592.

On objections filed to a survey, any ambiguities and repugnancies in the decree establishing the authenticity of the claim may be removed by interpretation.—United States v. Hoppe, Case No. 15,388.

After affirmance of a decree of the district court, it may, upon objections to the survey, inquire whether the boundaries described therein are in accordance with its own decree, and with the title papers upon which the judgments of both courts, as shown by their opinions, were founded.—United States v. Peralta, Case No. 16,030.

Objections by the patentee to the survey of a confirmed Mexican land claim are waived by his acceptance of the patent.—Le Roy v. Jamison, Case No. 8,271.

Where a survey made under a decree of confirmation is objected to as erroneous, before a patent issues the court must direct its return in order that the questions raised as to the location and boundary may be heard and determined.—United States v. Folsom, Case No. 15.127.

A person alleging that any of the land included in a survey of a rancho is public land of the United States must urge his objection in their name, and through the district attorney.—United States v. Bidwell, Case No. 14,592.

§ 99. —— Correcting and setting aside survey.
In a proceeding to correct a survey under the act of 1860, the district court has no jurisdiction to review and reverse the final decree whereby the genuineness and validity of the claim are established.—United States v. Rico, Case No. 16,160.

Where the lines of a Mexican grant have been run due east and west instead of due north and south by mistake of the draftsman of the diseño, the running of such lines may be altered.—United States v. Alvisu, Case No. 14,435.

Modification of the official survey of the Mexican grant directed on a review of the evidence.—United States v. Sunol, Case No. 16,419.

An error in running a survey so as to include a different tract from that described in the grant and delineated on the diseño will be rectified by the court when the survey is submitted for approval.—United States v. Folsom, Case No. 15,125.

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.—Yount v. United States, Case No. 18,187.

The court has no authority to deflect and modify lines so as to exclude particular parcels, even where they have been settled upon by others in good faith.—United States v. De Haro, Case No. 14,941.

A dividing line between two ranchos fixed in proceedings for the confirmation of one, to which the claimant of the other was a party, *held*, should not be disturbed on exceptions to the official survey of the latter rancho.—United States v. De Rodriguez, Case No. 14,950.

The commissioner of the general land office has jurisdiction to revise or set aside a survey of a Mexican grant made under Act March 3, 1851.—Bissell v. Henshaw, Case No. 1,447.

Before the court will disturb or set aside a survey made by the surveyor general under the law of 1851, it must be satisfied that the decree of confirmation has been plainly departed from, or that some clear and obvious error has been committed.—United States v. Bojorques, Case No. 14,620.

Official survey of Mexican land grant rejected upon the evidence.—United States v. Rodriguez, Case No. 16,182.

§ 100. —— Conflicting surveys.
A junior grantee cannot insist on a survey which will overlap a prior grant for which a patent has been issued, where he will obtain the full quantity without such overlapping.—United States v. Soto, Case No. 16,354.

§ 101. Indemnity or lieu lands.
French grantees of Louisiana lands *held* not entitled to indemnity from the United States for land diverted from them by a grant under the succeeding Spanish government.—Bouligney v. United States, Case No. 1,696a.

A grantee will not be decreed an equivalent for a deficiency within his exterior boundaries out of a sobrante accidentally found to exist within the exterior boundaries of a neighboring grant.—United States v. Rodriguez, Case No. 16,183.

§ 102. Decisions on particular grants.
Claims to Mexican land grants confirmed upon the evidence.—Castro v. United States, Case No. 2,509; Martin v. Same, Id. 9,168; Mesa v. Same, Id. 9,491; Noe v. Same, Id. 10,285; Nunez v. Same, Id. 10,379; Pacheco v. Same, Id. 10,641; Pico v. Same, Id. 11,127, 11,128, 11,129; Semple v. Same, Id. 12,662; United States v. Alvisu, Id. 14,436; Same v. Amador, Id. 14,437; Same v. Armijo, Id. 14,466; Same v. Bale, Id. 14,504; Same v. Bassett, Id. 14,538; Same v. Bernal, Id. 14,581, 14,582; Same v. Berreyesa, Id. 14,586; Same v. Boggs, Id. 14,618; Same v. Briones, Id. 14,649; Same v. Cambuston, Id. 14,712; Same v. Carrillo, Id. 14,737; Same v. Castro, Id. 14,751; Same v. Cazares, Id. 14,761; Same v. Chaboya, Id. 14,770; Same v. Chana, Id. 14,780; Same v. Cooper, Id. 14,862; Same v. Greer, Id. 15,261; Same v. Grimes, Id. 15,265; Same v. Guerrero, Id. 15,269; Same v. Horrell, Id. 15,391; Same v. Larkin, Id. 15,563, 15,564; Same v. Leese, Id. 15,590; Same v. Moraga, Id. 15,806; Same v. Murphy, Id. 15,839, 15,840, 15,841; Same v. Ortega, Id. 15,970; Same v. Osio, Id. 15,972; Same v. Pacheco, Id. 15,981; Same v. Page, Id. 15,987; Same v. Palomares, Id. 15,990; Same v. Payson, Id. 16,017; Same v. Peralta, Id. 16,031; Same v. Pico, Id. 16,046; Same v. Pope, Id. 16,068; Same v. Reid, Id. 16,140; 16,141; Same v. Rico, Id. 16,161; Same v. Rodriguez, Id. 16,181, 16,184, 16,185; Same v. Rose, Id. 16,195; Same v. Sanchez, Id. 16,218; Same v. Sheldon, Id. 16,270; Same v. Soto, Id. 16,356; Same v. Stevenson, Id. 16,397; Same v. Sunol, Id. 16,420; Same v. Thomes, Id. 16,481, 16,482; Same v. Thompson, Id. 16,488; Same v. Weber, Id. 16,657; Same v. Yount, Id. 16,784; Vallejo v. United States, Id. 16,818, 16,819; Valliere v. Same, Id. 16,822; Yount v. Same, Id. 18,188.

The "general title of sutler," derived from Gov. Micheltorena, *held* valid.—Bennitz v. United States, Case No. 1,327.

Spanish claims rejected upon the evidence.—Glenn v. United States, Case No. 5,481; De Villemont v. Same, Id. 3,839.

Mexican grants rejected upon the evidence.—Little v. United States, Case No. 8,396; Luco v. Same, Id. 8,594; McKee v. Same, Id. 8,850; Panaud v. Same, Id. 10,704; Redman v. Same, Id. 11,631; United States v. Galindo, Id. 15,-183; Same v. Limantour, Id. 15,601; Same v. Peralta, Id. 16,029; Same v. Pico, Id. 16,045, 16,047; Same v. Roland, Id. 16,190; Same v. White, Id. 16,673.

History of the claim of a grant to John Law, of lands in the Louisiana purchase.—Law v. United States, Case No. 8,131.

Boundaries of Armijo Mexican land grant.—Armijo v. United States, Case No. 536.

Determination of boundaries of grant to Justo Larios.—United States v. Fossat, Case No. 15,-139; Same v. Fossatt, Id. 15,140.

§ 103. Title of lands in San Francisco.
Validity of San Francisco alcalde titles.—Hall v. Unger, Case No. 5,949.

The title of the city of San Francisco to its municipal lands within its charter limits became perfected on the passage of Act July 1, 1864.—Harris v. McGovern, Case No. 6,125.

As to the control and disposal of lands in the city of San Francisco, whose title was derived under the Mexican law.—United States v. Carr, Case No. 14,731.

The title of the city of San Francisco to certain lands *held* determined by the decree of the circuit court of May 18, 1865, as modified by Act March 8, 1866.—Montgomery v. Bevans, Case No. 9,735.

An alcalde of the pueblo of San Francisco in 1846 had no authority to revoke a grant once made by him and delivered, or to mutilate its record.—Montgomery v. Bevans, Case No. 9,735.

Claim of the city of San Francisco, as successor of the pueblo, to municipal lands, how founded.—Montgomery v. Bevans, Case No. 9,735.

Ordinance No. 822 of the city of San Francisco, of June 20, 1855, confirming certain alcalde grants, held to operate as a full grant to the persons named therein.—Merriman v. Bourne, Case No. 9,480.

Lands within the limits of the pueblo of San Francisco are not subject to levy and sale under judgment and execution against the city.—United States v. Hare, Case No. 15,303.

By the laws of Mexico in force at the date of the conquest, a pueblo or town, when once established and officially recognized, became entitled for its own use and the use of its inhabitants to four square leagues of land.—San Francisco v. United States, Case No. 12,316.

Title to and power of control and disposition of lands of the pueblo of San Francisco.—United States v. Hare, Case No. 15,303.

The interest of a pueblo in lands in California, and the rights acquired by the United States upon the cession, considered.—Grisar v. McDowell, Case No. 5,832.

The Bay of San Francisco is the eastern boundary of the land confirmed to the city of San Francisco, the line being that of ordinary high-water mark as it existed July 7, 1846, crossing the mouth of all creeks running into the bay.—Tripp v. Spring, Case No. 14,180.

Right of derivative claimants of the Vigil and St. Vrain grant, under Acts June 21, 1860, and Feb. 25, 1869.—Leitensdorfer v. Campbell, Case No. 8,225.

VI. TITLES DERIVED FROM INDIANS.

§ 104. Rights acquired.
The seisin of lands belonging to Indian tribes is in the sovereign, and a purchaser from the Indians can only acquire the Indian title.—Jackson v. Porter, Case No. 7,143.

Under the Cherokee treaty of July 19, 1866, an actual settler upon the "neutral lands," whose rights were perfect on the date of ratification, could sell his improvements and rights to another.—Langdon v. Joy, Case No. 8,062.

An actual settler on "Cherokee neutral lands" under the treaty of July 19, 1866, may transfer his right to purchase the land, and the grantee may make the required proof.—Stroud v. Missouri River, Ft. S. & G. R. Co., Case No. 13,547.

PUBLIC NUISANCE.

See "Nuisance," § 2.

PUBLIC POLICY.

Contracts against, see "Contracts," § 9.
Provisions against, see "Seamen," § 30.

PUBLIC USE.

Dedication of property, see "Dedication."
Taking property for public use, see "Eminent Domain."

PUNISHMENT.

See "Forfeitures"; "Pardon"; "Penalties."
For contempt, see "Contempt," §§ 2–8.
For crime, see "Criminal Law," § 107.
For violation of injunction, see "Injunction," §§ 39, 40; "Patents," § 252.
Of seamen, see "Seamen," §§ 160–169, 180, 187.

PUNITIVE DAMAGES.

See "Collision," § 136; "Damages," § 8.

Q

QUANTUM MERUIT.

See "Assumpsit, Action of"; "Work and Labor."

QUESTIONS FOR JURY.

In civil actions, see "Trial," § 12.
In criminal prosecutions, see "Criminal Law," § 93.

QUIETING TITLE.

§ 1, Right of action and defenses—Nature of remedy. § 2, —— Power of equity. § 3, —— What constitutes cloud upon title. § 4, —— Title and possession of plaintiff or complainant. § 5, —— Prior determination of title at law. § 6, Proceedings and relief—Jurisdiction. § 7, —— Pleading. § 8, —— Trial. § 9, —— Judgment or decree.

§ 1. Right of action and defenses—Nature of remedy.

The removal of a cloud from title is an equitable right, and can only be enforced on the equity side of the court.—Loring v. Downer, Case No. 8,513.

A suit brought under the Iowa statute to quiet title is an equity suit.—Balmear v. Otis, Case No. 819.

§ 2. —— Power of equity.

Equity has jurisdiction to remove a cloud upon the title to real estate, where there is no adequate remedy at law.—Morton v. Root, Case No. 9,866.

Relief in equity cannot be had, in Maine, to remove a cloud from the title to land, caused by an invalid levy, inasmuch as a plain, adequate, and complete remedy at law is provided by Rev. St. Me. c. 104, § 6.—Gray v. Call, Case No. 5,712.

Equity has jurisdiction to relieve against a meditated fraud, which throws a cloud over the title of a party.—Briggs v. French, Case No. 1,870.

Equity has jurisdiction to quiet the title at the suit of an owner of real estate in possession alleging a tax title held by defendant, who refuses to prosecute it.—Sharnleigh v. Surdam, Case No. 12,711.

§ 3. —— What constitutes cloud upon title.

Equity will entertain jurisdiction to remove a cloud upon title only where the instrument, etc., complained of, is valid upon its face.—Coulson v. Portland, Case No. 3,275; Hotchkiss v. Glasgow, Id. 6,717.

A void tax deed, which the statute does not make prima facie evidence of the regularity of the assessment and sale, does not cast a cloud upon the title.—Minturn v. Smith, Case No. 9,647.

A tax deed in California is prima facie evidence of the regularity of the tax proceedings, and therefore prima facie evidence of title, and, if executed in pursuance of a void sale, casts a cloud upon the title.—Huntington v. Central Pac. R. Co., Case No. 6,911.

§ 4. —— Title and possession of plaintiff or complainant.

Under Code Or. § 500, a party in possession cannot maintain the suit unless he shows some legal or equitable interest in or claim to the property.—King v. French, Case No. 7,793.

A title acquired under a statute of limitations will be quieted in the adverse holder on bill filed for that purpose, even against the holder of the paper title barred.—Four Hundred and Twenty Min. Co. v. Bullion Min. Co., Case No. 4,989.

Circuit court will entertain bill by one in prior possession, accompanied by title, to remove cloud upon title.—Bayerque v. Cohen, Case No. 1,134.

To maintain a bill of peace by a person having a present right of possession, he must have actual possession, which must be disturbed, and his right must have been previously determined at law.—Shepley v. Rangely, Case No. 12,756.

A bill of peace will not lie unless complainant is or has been in possession, or there is a defect in some deed asked to be given up.—Shapley v. Rangeley, Case No. 12,707.

§ 5. —— Prior determination of title at law.

A bill to quiet title will not lie between parties claiming title through the same person who is in possession, holding adversely to both, until the title is determined by a suit at law.—Shepley v. Rangely, Case No. 12,756.

The statute of Nevada providing that an "action" may be brought by any person in possession against any person who claims an interest or estate therein adverse to him, for the purpose of determining such adverse claim, dispenses with the necessity of establishing a right at law before suing to determine such adverse claims, as the term "action" in that state includes proceedings both at law and in equity.—Central Pac. R. Co. v. Dyer, Case No. 2,552.

§ 6. Proceedings and relief—Jurisdiction.

The federal courts have jurisdiction of a proceeding under a state statute for the confirmation of sales of land by sheriffs and other public officers whose object is to quiet title to lands.—Overman v. Parker, Case No. 10,623.

§ 7. —— Pleading.

A bill by legal owners alleging that defendants have forcibly taken possession under a false and fictitious claim of title, whose nature is not set out, is bad for want of equity on its face.—Speigle v. Meredith, Case No. 13,227.

Bill alleging seisin under state grant, and possession thereunder for seven years, is sufficient.—Bayerque v. Cohen, Case No. 1,134.

§ 8. —— Trial.

The rule is not universal that more than one trial at law is required to authorize a bill of peace.—Harmer v. Gwynne, Case No. 6,075.

On a bill to quiet title, the court cannot direct that on a second trial before a court of law the same evidence shall be received as was used upon the first trial.—Harmer v. Gwynne, Case No. 6,075.

§ 9. —— Judgment or decree.

A suit to ascertain and quiet title under Code Or. § 500, includes all grounds of controversy between the parties as to the title, and all matters affecting such title are determined by the final decree therein.—Starr v. Stark, Case No. 13,316.

Complainant, in a suit to determine an adverse claim to land, can only obtain relief upon the grounds alleged in his bill. Code Civ. Proc. Cal. § 738.—Burton v. Le Roy, Case No. 2,217.

QUI TAM ACTIONS.

See "Penalties," § 3.

QUO WARRANTO.

§ 1. When writ will lie.

When an information in the nature of a writ of quo warranto may be sustained against a person usurping an office under a private corporation.—Gunton v. Ingle, Case No. 5,870.

R

RAFTS.

Jurisdiction over, see "Admiralty," §§ 7, 26.

RAILROADS.

I. CONTROL AND REGULATION IN GENERAL.

§ 1, Status of railroad companies. § 2, Power to control and regulate. § 3, Statutory provisions.

II. RAILROAD COMPANIES.

§ 4, Incorporation and organization. § 5, Stockholders. § 6, Officers and agents. § 7, Franchises and powers. § 8, Amendment or revocation of charter. § 9, Reorganization. § 10, Consolidation. § 11, Abandonment of franchise.

III. PUBLIC AID.

§ 12, Rights under grants of aid in general. § 13, Conditions and performance of agreement. § 14, Negotiation and sale of securities.

IV. LOCATION OF ROAD AND TERMINI.

§ 15, Branches. § 16, Terminus. § 17, Connections with other roads. § 18, Extensions. § 19, Change of location.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.

§ 20, Capacity to acquire and hold land.

VI. CONSTRUCTION, MAINTENANCE, AND EQUIPMENT.

§ 21, Statutory provisions. § 22, Road beds and tracks. § 23, Crossing other railroads. § 24, Contracts for construction or repair.

VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION.

§ 25, Sales. § 26, Leases—Power to make lease. § 27, —— Requisites and validity. § 28, —— Construction and operation. § 29, Traffic arrangements. § 30, Consolidation.

VIII. INDEBTEDNESS, SECURITIES, LIENS, AND MORTGAGES.

(A) Nature and Extent of Liabilities.

§ 31, Bonds and other obligations. § 32, Indorsement or guaranty of bonds. § 33, Liens in general. § 34, Mortgages—Power to mortgage. § 35, —— Requisites and validity. § 36, —— Property and funds included. § 37, —— Debts and obligations secured. § 38, —— Rights and duties of trustees. § 39, Sinking funds. § 40, Priorities of liens and mortgages. § 41, Interest and coupons. § 42, Actions on obligations.

(B) Foreclosure of Liens and Mortgages.

§ 43, Right to foreclose. § 44, Foreclosure without action. § 45, Rights of action and defenses. § 46, Who may sue. § 47, Parties. § 48, Reference. § 49, Judgment. § 50, Sale. § 51, Rights and liabilities of purchasers. § 52, Distribution of proceeds. § 53, Review of proceedings. § 54, Actions to set aside foreclosure.

IX. RECEIVERS.

§ 55, Grounds of appointment—In general. § 56, —— To prevent forfeiture of grant or charter. § 57, —— Mismanagement. § 58, —— Inadequacy of security. § 59, —— Default in payment of debt or interest. § 60, Appointment. § 61, Control and management. § 62, Issue of certificates. § 63, Claims and liens. § 64, Effect of judgment against receiver. § 65, Rights and liabilities after discharge of receiver.

X. OPERATION.

§ 66, Proceedings to compel operation. § 67, Municipal and official regulations. § 68, Unguarded premises. § 69, Injuries to licensees or trespassers in general. § 70, Accidents to trains. § 71, Accidents at crossings. § 72, Injuries to animals on track. § 73, Fires.

See, also, "Street Railroads."

Condemning land for, see "Eminent Domain."

Jurisdiction of action against, see "Courts," § 37.

Liability for injuries to employés, see "Master and Servant."

Taxation, see "Internal Revenue," § 34; "Taxation," §§ 7, 9, 19.

—— upon rolling stock or receipts from transportation, see "Commerce," § 2.

I. CONTROL AND REGULATION IN GENERAL.

See, also, post, § 67.

§ 1. Status of railroad companies.

A railroad corporation, though its shares are owned by private individuals, is a public corporation.—Talcott v. Pine Grove, Case No. 13,735.

§ 2. Power to control and regulate.

The state can regulate the tolls of a railroad company organized under the general law of the state.—Chicago, B. & Q. R. Co. v. Attorney General, Case No. 2,666.

§ 3. Statutory provisions.

Act Wis. March 11, 1874, regulating railroad traffic, *held* not repealed by Acts March 12, 1874.—Bondholders v. Railroad Com'rs, Case No. 1,625.

II. RAILROAD COMPANIES.

§ 4. Incorporation and organization.

The St. Paul & Pacific Railroad Company is not in law the same corporation as the Minnesota & Pacific Railroad Company, and cannot be sued at law on the bonds and coupons made by the latter.—Hopkins v. St. Paul & P. R. Co., Case No. 6,690.

A certificate of an incorporation designating the company's place of business, and setting forth that it would be carried on in certain counties named, is a substantial compliance with Act Colo. 1876.—Cañon City & S. J. Ry. Co. v. Denver & R. G. Ry. Co., Case No. 2,387.

§ 5. Stockholders.

The holder of preferred stock, entitling him to dividends out of the "net earnings, * * * after payment of mortgage interest," is not entitled to dividends before payment of interest on bonds given for money subsequently borrowed, or of rent due on subsequent leases of connecting lines.—St. John v. Erie Ry. Co., Case No. 12,226.

"Net earnings" defined.—St. John v. Erie Ry. Co., Case No. 12,226.

Purchasers for value without notice of shares issued to a contractor for building its road as full-paid shares are not liable to assessment or liability thereon, as unpaid shares.—Steacy v. Little Rock & Ft. S. R. Co., Case No. 13,329.

§ 6. Officers and agents.

The city of Baltimore had no power to appoint new directors in the Baltimore & Ohio Railroad on an increase of stock derived from stock dividends.—Wheeling v. Baltimore, Case No. 17,502.

Neither officers nor directors have authority to bind the company to supervise the construction of a railroad for another company, or to make it responsible for wasteful and extravagant expenditures in connection therewith.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

A company is not bound by the parol promises of its officers to guaranty the bonds of another company, nor by their false representations on the sale of such bonds.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

The mere presence and assent of a member of an executive committee with a subcommittee when an agreement was made, though, taken collectively, they constituted a majority of the executive, *held* not to make the agreement binding.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

The rights of a banking firm, financial agents of a railroad company, one of whose members was its president, to deal with the funds of the road as against other creditors in case of its insolvency, determined.—Duncan v. Mobile & O. R. Co., Case No. 4,138.

The president of a railroad company has the right to indorse and assign notes and mortgages given to it to aid in its construction.—Irwin v. Bailey, Case No. 7,079.

Bondholders of a railroad company which has united with another railroad company cannot join the trustees of the latter company as defendants in a suit for the removal of the trustees of the former for misconduct or negligence. —Stevens v. Eldridge, Case No. 13,396.

§ 7. Franchises and powers.

A railroad company may engage in an express business which requires the use of horse power to collect and deliver parcels.—Camblos v. Philadelphia & R. R. Co., Case No. 2,331.

The charges by a railroad company for such accessorial service with horse power cannot be imposed upon any of the public who decline to use it.—Camblos v. Philadelphia & R. R. Co., Case No. 2,331.

The railroad company cannot monopolize such business, or give any preferential facilities to itself or others, either as to rates, rebates, or facilities for receiving or carrying parcels.—Camblos v. Philadelphia & R. R. Co., Case No. 2,331.

A railroad engaged in the express business cannot extend to itself a privilege as to rates on unpacked parcels not extended to a competing express company.—Camblos v. Philadelphia & R. R. Co., Case No. 2,331.

A railroad charter which requires the assent of city authorities to the construction of the road within the city, and authorizes them to regulate the time and manner of using the same, enables the railroad company to agree that the city authorities shall retain the right to regulate the kind of power used in moving the cars.—New York & N. H. R. Co. v. New York, Case No. 10,199.

See, also, post, §§ 20, 26, 34.

§ 8. Amendment or revocation of charter.

Act Mo. March 24, 1868, amending the charter of the Louisiana & Missouri River Railroad Company so as to permit an extension of its road across and on the south side of the Missouri river, *held*, valid, as within the legislative power.—Pepper v. Saline County, Case No. 10,-972.

Construction of such act in relation to municipal subscriptions for stock.—Foster v. Callaway County, Case No. 4,967.

The constitutional power to alter a charter warrants an alteration reducing traffic rates.—Bondholders v. Railroad Com'rs, Case No. 1,-625.

A constitutional provision that charters may be altered or repealed at any time after their passage is to be read into all subsequent charters.—Bondholders v. Railroad Com'rs, Case No. 1,625; Piek v. Chicago & N. W. Ry. Co., Id. 11,138; In re Northwestern Ry. Co., Id. 10,340.

A consolidation with a company chartered by another state will not affect the operation of such principle.—Bondholders v. Railroad Com'rs, Case No. 1,625.

Under the reservations in the constitution and statutes of the state of New York, *held* that the charter of the New York & Oswego Midland Railroad Company may be amended by repealing a grant of immunity from taxation.—Hewitt v. New York & O. M. R. Co., Case No. 6,443.

§ 9. Reorganization.

Bondholders not subscribing to a reorganization plan were allowed to participate in the purchase or reorganization on an equal footing with the others, providing they should come in by a day named.—Duncan v. Mobile & O. R. Co., Case No. 4,139.

Construction of special provisions of deed of trust and decree as to reorganization of a new railroad company, where the trustee purchased the property of the former company under a foreclosure decree for the benefit of the bondholders.—Farmers' Loan & Trust Co. v. Central R. R. of Iowa, Case No. 4,664.

§ 10. Consolidation.

The fact that the right of a company to consolidate is limited under its charter does not deprive it of the right to consolidate under the general laws of the state.—Warrener v. Kankakee County, Case No. 17,205.

The means of consolidation of railroads under the statute of Illinois were left to be adjusted by contracts between the parties.—Dimpfel v. Ohio & M. Ry. Co., Case No. 3,918.

Unless provision is made therefor in the charter, a railroad cannot be consolidated with another, against the objection of a single stockholder.—Mowrey v. Indianapolis & C. R. Co., Case No. 9,891.

A consolidated company succeeds to all the franchises, rights, privileges, and immunities of the several companies of which it is formed. —Lewis v. Clarendon, Case No. 8,320.

On the consolidation of two companies, a stockholder in one of the old companies becomes a stockholder in the new, and he cannot bring a bill upon the theory that he is a stockholder in the old company.—Ridgway Tp. v. Griswold, Case No. 11,819.

The consolidation of a railroad company, on whose road there is a vendor's lien, with another company, does not discharge the lien.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

Stockholders cannot question contracts of consolidation after the lapse of several years, where mortgage bonds of the consolidated company have been sold to bona fide purchasers on the faith of such contracts.—Dimpfel v. Ohio & M. Ry. Co., Case No. 3,918.

In an action by a shareholder against the officers of the company, alleging an illegal consolidation with other companies in a new corporation, praying injunctions, etc., the officers of the consolidated company are necessary parties.—Tyson v. Virginia & T. R. Co., Case No. 14,321.

See, also, post, § 30.

§ 11. Abandonment of franchise.
An agreement between connecting lines to jointly regulate transportation rates is not an abandonment or transfer of the franchise of either.—Columbus, P. & I. R. Co. v. Indianapolis & B. R. Co., Case No. 3,047.

After the construction and operation of a road under a charter, the same cannot be abandoned, though the charter was permissive, merely, and not mandatory.—Farmers' Loan & Trust Co. v. Henning, Case No. 4,666.

III. PUBLIC AID.

Grants of land in aid, see "Public Lands," §§ 39-45.
Municipal aid, see "Municipal Corporation," § 27.
Railway aid bonds, see "Counties," § 4.

§ 12. Rights under grants of aid in general.
The Central Pacific Railroad Company did not become liable to apply 5 per cent. of its net earnings annually to the payment of the principal and interest of the government subsidy bonds, until the completion of its road as accepted by the president, October 1, 1874.—United States v. Central Pac. R. Co., Case No. 14,763.

Under Act July 1, 1862, the government may recover, at law, of the Union Pacific and other railroad companies receiving United States bonds, 5 per cent. of the net income until the bonds and interest are paid.—United States v. Kansas Pac. Ry. Co., Case No. 15,505.

§ 13. Conditions and performance of agreement.
A condition that the track should be completed and in full operation by a certain date, and that the road should run to L., is substantially complied with where the track is completed, but not equipped with turntables, water tanks, etc., and came within a quarter of a mile of L.—Adams v. Douglas County, Case No. 52.

A grant of land in consideration that the grantee shall build a road, duly accepted, creates a contract binding on the grantee, performance of which may be enforced by mandamus.—Farmers' Loan & Trust Co. v. Henning, Case No. 4,666.

The time for the construction of the road as conditioned in railway aid bonds in which it was not specified *held* to be seven years, as required by an amendatory act passed before their issue.—Green v. Dyersburg, Case No. 5,756.

§ 14. Negotiation and sale of securities.
The reception of railway aid bonds from the company in payment for goods of a character adapted for use in the construction and operation of the road does not prevent the taker from claiming as bona fide holder.—Kennicott v. Wayne County, Case No. 7,710.

IV. LOCATION OF ROAD AND TERMINI.

§ 15. Branches.
Under authority "to construct branch 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.—Works v. Junction R. R., Case No. 18,046.

§ 16. Terminus.
A charter to construct the Union Pacific Railroad from a point on the "western boundary of the state of Iowa" *held* to mean from the Iowa shore to the Missouri river.—United States v. Union Pac. R. Co., Case No. 16,601.

§ 17. Connections with other roads.
Three railroad companies, whose roads terminated in Philadelphia, procured a charter for a continuous road to connect their termini, and took most of the stock in the new company. Part of the connecting road was built by one of the three companies upon its own land. *Held*, that this part was subject to use by the new company for the benefit of the other two roads and its own stockholders.—Lathrop v. Junction R. Co., Case No. 8,110.

§ 18. Extensions.
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.—Works v. Junction R. R., Case No. 18,046.

§ 19. Change of location.
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.—Works v. Junction R. R., Case No. 18,046.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.

§ 20. Capacity to acquire and hold land.
A railroad corporation, when not restricted by its charter, may acquire lands ad libitum.—Blackburn v. Selma, M. & M. R. Co., Case No. 1,467.

Construction of the charter of the Camden & Amboy Railroad Company in reference to the taking of land for a right of way.—Bonaparte v. Camden & A. R. Co., Case No. 1,617.

VI. CONSTRUCTION, MAINTENANCE, AND EQUIPMENT.

§ 21. Statutory provisions.
Statutes relating to the construction of the Baltimore & Ohio Railroad construed.—Baltimore & O. R. Co. v. Van Ness, Case No. 830.

§ 22. Road beds and tracks.
A railroad company must lay its tracks and construct its road so as to render it safe for the public as well as for its employés.—Gohen v. Texas Pac. Ry. Co., Case No. 5,507.

§ 23. Crossing other railroads.
Equity can control the manner in which one railroad shall cross another, when not regulated by statute.—Chicago & N. W. R. Co. v. Chicago & P. R. Co., Case No. 2,665.

Where a new road can at small expense cross an old one at a different level, equity will require it to be done, apportioning the additional expense between the roads.—Chicago & N. W. R. Co. v. Chicago & P. R. Co., Case No. 2,665.

§ 24. Contracts for construction or repair.
Interpretation of railroad construction contract providing for payment in bonds guarantied by certain towns.—Lee v. New Haven, M. & W. R. Co., Case No. 8,197.

A contract for railroad construction, obligating the contractor to complete any work left unfinished by any other contractor on the line, does not render such contractor an insurer of the defaulting contractors, and he is entitled to notice of the default.—Lee v. New Haven, M. & W. R. Co., Case No. 8,197.

A railroad company is not disabled from performing a contract to pay for bridges in stock by having mortgaged its road to secure the payment of debts due to others.—Boody v. Rutland & B. R. Co., Case No. 1,635.

A stipulation to pay for building a railroad, partly in stock, one-half to be reserved until the contract was completed, *held* executory; and, on wrongful interruption of the work, the covenantee was entitled to damages for the value of the stock.—Myers v. York & C. R. Co., Case No. 9,997.

VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION.

§ 25. Sales.
The charter of a railroad company *held* to authorize its purchase of another railroad, or its sale to another company.—Branch v. Atlantic & G. R. Co., Case No. 1,807.

A lien for the purchase price of a railroad of persons accepting preferred stock *held* to be lost by delay and acquiescence in the sale.—Branch v. Atlantic & G. R. Co., Case No. 1,807.

Under a sale of a road, the franchises, right of way, depots, rolling stock, tools, and all other property, real, personal, and mixed, *held*, that the purchaser was not entitled to surplus earnings in the hands of the receiver, but was entitled to all property used to carry on the business of the road and keep it in repair.—Strang v. Montgomery & E. R. Co., Case No. 13,523.

§ 26. Leases—Power to make lease.
A lease of its property by a railroad corporation, which is neither in violation of any statute nor against the public policy of the state, is valid.—Pittsburg, C. & St. L. Ry. Co. v. Columbus, C. & I. C. Ry. Co., Case No. 11,197.

What are continuous or connected lines within the Missouri statutes allowing the purchase or lease of one road by another.—Eakin v. St. Louis, K. C. & N. R. Co., Case No. 4,236.

A lease to a corporation of another state for the purpose of forming a connecting line *held* valid.—Pittsburg, C. & St. L. Ry. Co. v. Columbus, C. & I. C. Ry. Co., Case No. 11,197.

Eight per cent. *held* too low rent for the use of rolling stock, where the owner bears all the loss and deterioration.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,462.

§ 27. —— Requisites and validity.
A lease in perpetuity of another road *held* ratified by the stockholders by acquiescence after three years' delay, as respects innocent holders of bonds issued under and secured by such lease.—Eakin v. St. Louis, K. C. & N. R. Co., Case No. 4,236.

§ 28. —— Construction and operation.
A contract by a guarantor company to either furnish equipment or to lease and operate the road on terms to be agreed on *held* not a contract to lease for a rental sufficient to pay the interest on the guarantied bonds.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

A subsequent agreement in relation to a branch line *held* to refer merely to leasing and operation, and not to include an agreement to guaranty its bonds.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

An unexecuted decree for the sale of a portion of a leased railroad for the purpose of satisfying a mortgage made prior to the lease is not such an eviction of the lessee by paramount title as to terminate the lease.—Pittsburg, C. & St. L. Ry. Co. v. Columbus, C. & I. C. Ry. Co., Case No. 11,197.

A lessor corporation will be required to perform its stipulation to arrange, provide for, adjust, and classify its indebtedness, but will be given a reasonable time therefor.—Pittsburg, C. & St. L. Ry. Co. v. Columbus, C. & I. C. Ry. Co., Case No. 11,197.

Where the payment of rent by a lessee company is guarantied by other companies, holding large blocks of its bonds, the court will require it to pay such rent in advance of the interest on the bonds owned by the guarantors, and will restrain them from disposing of such bonds.—St. Louis, A. & T. H. R. Co. v. Indianapolis & St. L. R. Co., Case No. 12,236.

§ 29. Traffic arrangements.
An agreement to sell tickets over a connecting line in one direction does not give the right to sell in opposite direction.—Anderson v. New York & N. H. R. Co., Case No. 360.

§ 30. Consolidation.
By the act consolidating the New York Central and Hudson River Railroads, any liability of the former for a tax on dividends is enforceable from the property of the new corporation.—New York Cent. & H. R. R. Co. v. Bailey, Case No. 10,203.

See, also, ante, § 10.

VIII. INDEBTEDNESS, SECURITIES, LIENS, AND MORTGAGES.

See, also, ante, § 14; "Bonds," §§ 12–14.

(A) NATURE AND EXTENT OF LIABILITIES.

§ 31. Bonds and other obligations.
Act Pa. April 8, 1861, does not authorize the issue of bonds by a railroad company otherwise than for a new and adequate consideration, increasing the available funds of the corporation.—Kemble v. Wilmington & N. R. Co., Case No. 7,684.

The objection that the petition for the issue of railroad bonds did not give the court jurisdiction, because of irrelevant conditions therein, *held*, could not be raised in an action on the bonds issued on the determination of such court.—Munson v. Lyons, Case No. 9,935.

Where the petition sufficiently conforms to the statute to call for the exercise of judicial judgment, error in the court's determination cannot affect the validity of the bonds.—Munson v. Lyons, Case No. 9,935.

Whether a transaction by an officer of the railroad company amounted to the purchase or the payment of coupons determined on the facts.—Duncan v. Mobile & O. R. Co., Case No. 4,138.

The purchaser of railroad bonds is bound only to take notice of what appears upon the face of the bonds and of the mortgage made to secure them.—Stanton v. Alabama & C. R. Co., Case No. 13,297.

Where a note and mortgage given to aid railroad construction were transferred as collateral to the company's bond, *held*, that a subsequent indorsement of the note by the president of the company was valid to pass its legal title.—Irwin v. Bailey, Case No. 7,079.

Where a later company adopted the route of a former company, which abandoned operations for want of funds, and used grading done by it, *held*, that bonds issued by the former company were a lien only to the extent of the value of the work done by it.—Smythe v. Chicago & S. R. Co., Case No. 13,135.

§ 32. Indorsement or guaranty of bonds.
A railroad company is liable on a negotiable municipal bond, indorsed by it.—Bonner v. New Orleans, Case No. 1,631.

A railroad company may guaranty punctual payment of coupons attached to municipal aid

bonds, and may be sued in the first instance, and without demand or notice.—Evans v. Cleveland & P. R. Co., Case No. 4,557.

§ 33. Liens in general.
Where the lien of bondholders on railroad property is created by statute, the statute regulates their rights, notwithstanding the fact that, without its aid, a resulting equity would have arisen in their favor.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

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.—Wilson v. Boyce, Case No. 17,793.

While the state of Missouri was in full possession of a railroad upon an express trust, to continue until state bonds loaned to the company were paid or exchanged, the county of St. Louis was empowered (Act Jan. 7, 1865) to loan its bonds to the company, and the commissioner theretofore receiving the road's earnings was authorized to pay into the county treasury a sufficient sum to meet the interest on the county bonds. *Held*, that thereby the state waived its lien pro tanto in favor of the county, which became substituted thereto.—Ketchum v. Pacific R. Co., Cases Nos. 7,739, 7,740.

Subsequent mortgagees, with notice of the fact that the county had made the loan, and that it was still unpaid, were chargeable with notice of all that the acts authorizing the lien contained.—Ketchum v. Pacific R. Co., Cases Nos. 7,739, 7,740.

One who builds cars for a railroad company has no lien on the cars for his work, in the absence of a special agreement.—Coe v. Pennock, Case No. 2,942.

A contractor who has a lien on the entire road cannot be required to first exhaust his remedy against the portion covered by the new work.—Smythe v. Chicago & S. R. Co., Case No. 13,135.

In Iowa, mechanics and material men are entitled to a lien on railways for their work and labor.—Taylor v. Burlington, C. R. & M. Ry. Co., Case No. 13,783.

Such lien dates from the commencement of the building of the road, and is prior to a mortgage executed pending such building, and before the particular work was done or materials furnished for which the lien is claimed.—Taylor v. Burlington, C. R. & M. Ry. Co., Case No. 13,783.

See, also, post, § 63.

§ 34. Mortgages—Power to mortgage.
Under a general power to mortgage, the railroad company may mortgage any part.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,461.

Authority to a railroad company to mortgage its "road, income, and other property," does not authorize a mortgage of its franchises.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,461.

Power to sell includes power to mortgage, and the franchises necessary to use and enjoy the road, not including, however, the franchise of being a corporation.—Branch v. Atlantic & G. R. Co., Case No. 1,807.

The power to mortgage franchises and property includes, as incident thereto, power to pledge everything that may be necessary to the enjoyment of the franchise and road.—Dunham v. Earl, Case No. 4,149.

§ 35. —— Requisites and validity.
A mortgage on the road, covering also the rolling stock and other property appertaining thereto, need not be recorded as a chattel mortgage.—Farmers' Loan & Trust Co. v. St. Joseph & D. C. Ry. Co., Case No. 4,669.

A mortgage given to secure bonds issued under legislative authority is valid between the parties without registration.—Illinois Cent. R. Co. v. Mississippi Cent. R. Co., Case No. 7,008.

Bonds issued by a railroad company, expressly pledging its personal and real estate as security, are in effect mortgages, valid, without recording, as against the railroad company and creditors or subsequent purchasers having notice.—King v. Tuscumbia, C. & D. R. Co., Case No. 7,808.

§ 36. —— Property and funds included.
A railroad lying within the chartered limits of another company, by which it is purchased, becomes subject to a mortgage by the latter upon its line of road, completed and to be completed, but not to the prejudice of prior mortgages.—Branch v. Atlantic & G. R. Co., Case No. 1,807.

A mortgage of "all the present and future to be acquired property of the company, including the right of way and land occupied, and all rails and other materials used therein or procured therefor," includes the rolling stock.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,461.

A mortgage covering all after-acquired property will include rolling stock, though it is personal property, under the state constitution, as against creditors who did not secure a lien before the rolling stock was acquired.—Scott v. Clinton & S. R. Co., Case No. 12,527.

A mortgage on the road, covering also rolling stock and other property appertaining thereto, does not cover coal, oil, and personal property which may be used for other than railway purposes.—Farmers' Loan & Trust Co. v. St. Joseph & D. C. Ry. Co., Case No. 4,669.

Equity will hold the road to be included in the mortgage of the right of way, when, from its terms, such appears to be the intention of the parties.—Dunham v. Cincinnati, P. & C. R. Co., Case No. 4,148.

A mortgage by a railroad of all property then in its possession or thereafter acquired includes railroad subsequently leased, and the title to such leased road is good in the hands of the mortgaged trustees, as against assignees in bankruptcy of the mortgagor.—Barnard v. Norwich & W. R. Co., Case No. 1,007.

A general mortgage of a railroad does not pass after-acquired lands, unless used in connection with the actual operations of the road as a part thereof.—Calhoun v. Memphis & P. R. Co., Case No. 2,309.

Sufficiency of description to pass after-acquired property.—Calhoun v. Memphis & P. R. Co., Case No. 2,309.

A mortgage of the entire property of a railroad, including property subsequently acquired, gives an equitable lien to the bondholders on after-acquired property.—Coe v. Pennock, Case No. 2,942.

A mortgage expressly including all after-acquired personal property covers fuel collected and stored by the company for the use of its engines.—Dunham v. Earl, Case No. 4,149.

Under a mortgage providing that the future earnings and profits shall be held in equity by the mortgagee, the mortgagor, receiving such earnings, etc., will be deemed to hold the same in trust.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,462.

§ 37. —— Debts and obligations secured.
Provisions in mortgage given to secure bonds, providing for consent of trustee to contracts before they shall be a charge on proceeds of sale of bonds, *held* not to create a charge in favor of a contractor who built a portion of the road.—Dillon v. Barnard, Case No. 3,915.

§ 38. —— Rights and duties of trustees. Railroad mortgage trustees may maintain a bill in equity to enjoin an illegal proceeding which will injure the value of the bonds, or a bill to have settled a claim of priority with another mortgage, under which an irredeemable sale is about to be made.—Murdock v. Woodson, Case No. 9,942.

§ 39. Sinking funds. Under Act Fla. Jan. 6, 1855, §§ 2, 3, 12, the amount which the railroad company is bound to pay annually towards the sinking fund is to be calculated upon the amount of bonds still uncanceled.—Vose v. Florida R. Co., Case No. 17,007.

§ 40. Priorities of liens and mortgages. A railroad mortgage recorded in one county through which the road runs has priority in that county over the lien of a subsequent judgment, but not so in other counties where it is not recorded.—Ludlow v. Clinton Line R. Co., Case No. 8,600.

A mortgage of a branch line, under a special act providing that it shall be a first lien thereon, takes precedence of a prior mortgage of the railroad, as then "made or to be made."—Randolph v. Wilmington & R. R. Co., Case No. 11,563.

Change of manner of procuring loan by legislative consent *held* not to affect right reserved to make mortgage therefor superior to a prior mortgage.—Campbell v. Texas & N. O. R. Co., Case No. 2,369.

Right of Ohio material men, under statute, to priority over the mortgage on a consolidated road traversing Ohio, Indiana, and Illinois, where no such statutes existed in the latter two states, considered.—King v. Ohio & M. Ry. Co., Case No. 7,801.

A judgment against receivers for personal injuries to a passenger does not take priority over mortgage bonds.—Davenport v. Alabama & C. R. Co., Case No. 3,588.

The equity of a contractor who built the road under an agreement that he should retain possession until receipt of payment out of the income is superior to that of bondholders under a prior mortgage upon the right of way, before the road was built.—Dunham v. Cincinnati, P. & C. R. Co., Case No. 4,148.

A contractor's right to possession of road until its completion is subordinate to right of trustees of mortgage bondholders to possession given upon default in payment of interest.—Allen v. Dallas & W. R. Co., Case No. 221.

§ 41. Interest and coupons. The law of the state in which is situated a railroad mortgaged to secure bonds governs as to the rate of interest, where it appears that the parties contracted with reference to such law, though the bonds were made payable in a larger city in another state.—Codman v. Vermont & C. R. Co., Case No. 2,935.

Coupons severed from bonds are not entitled to priority of payment over the principal or coupons subsequently maturing, in the absence of express provisions to that effect. — Duncan v. Mobile & O. R. Co., Case No. 4,138.

§ 42. Actions on obligations. Authority of a railroad company to guaranty the bonds of another, when made under a general statute, need not be alleged in an action on such bonds.—Toppan v. Cleveland, C. & C. R. Co., Case No. 14,099.

Municipal aid bonds and coupons, being made payable to bearer, pass by mere delivery, and no assignment is necessary to enable the holder to sue.—Evans v. Cleveland & P. R. Co., Case No. 4,557.

It is no defense against railroad bonds in the hands of a bona fide holder that they were exchanged for state bonds, which were used for purposes not contemplated by the statute authorizing the exchange.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

(B) FORECLOSURE OF LIENS AND MORTGAGES.

§ 43. Right to foreclose. The right to foreclose a railroad mortgage is not affected by a provision allowing the trustee on default to take possession and operate the road.—Alexander v. Central R. R. of Iowa, Case No. 166.

The insertion of a power of sale in a mortgage to trustees for the benefit of bondholders does not supersede the right of foreclosure by bill in equity.—Hall v. Sullivan R. Co., Case No. 5,948.

§ 44. Foreclosure without action. The trustee of a railroad mortgage has the right to decide in the first instance as to the right of bondholders to have the property sold to pay the bonds, but persons representing the railroad company may appeal to the courts.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,433.

§ 45. Rights of action and defenses. Misconduct of mortgage trustees in bringing foreclosure suit *held* no ground of denying relief, where all the parties in interest are brought before the court, so that their rights may be properly guarded.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

Bondholders cannot complain of extravagant construction contracts made by the lessee of the road and custodian of its bonds and funds, where, out of the lessee's own means, it has placed the road in first-class condition.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

§ 46. Who may sue. Where the trustees of a railroad mortgage are in such a position that they cannot alone properly represent the bondholders, the latter may sue to foreclose without showing a refusal by the trustees to do so.—Mercantile Trust Co. v. La Moille Val. R. Co., Case No. 9,432.

Individual bondholder may bring foreclosure, where trustee improperly refuses.—Alexander v. Central R. R. of Iowa, Case No. 166.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,776.

Where state bonds issued in exchange for railroad bonds secured by a statutory mortgage are declared invalid, the holders of the state bonds may in equity enforce such mortgage for their own benefit.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

A provision in a deed of trust giving the majority bondholders the option to declare the principal due on default of payment of interest does not prevent a single bondholder from foreclosing for interest.—Alexander v. Central R. R. of Iowa, Case No. 166.

A guarantor of bonds expressly subrogated to the rights of mortgagees in respect to payments made by it may foreclose for interest payments which it has made.—Dows v. Chicago & S. W. Ry. Co., Case No. 4,048.

Court may allow trustee to file bill of foreclosure, after suit by individual bondholder.—Alexander v. Central R. R. of Iowa, Case No. 166.

Pending a suit by mortgage trustees to be put in possession on default in payment of the interest, a funding system was adopted, by which

payment of the interest was postponed to enable the road to be completed. *Held*, that a nonassenting bondholder, who had not made a demand upon the trustees to foreclose, could not file an original bill for such purpose.—Stern v. Wisconsin Cent. R. Co., Case No. 13,378.

§ 47. Parties.
In a case where railroad bondholders are numerous, a suit brought by or against some in behalf of all will be binding on all. The parties who are not named may intervene.—Campbell v. Railroad Co., Case No. 2,366.

It is not necessary to make all bondholders parties to a suit, or to make any of them parties, if their trustees under the mortgages are parties.—Campbell v. Railroad Co., Case No. 2,366; Dows v. Chicago & S. W. Ry. Co., Id. 4,048.

Under equity rule 48, it is unnecessary to have all bondholders present in a suit to foreclose a railroad mortgage.—Kerp v. Michigan L. S. R. Co., Case No. 7,727.

Bondholders aggrieved by a decree in a suit to which they were not made parties may apply for relief, or institute such other proceedings as a party to the suit might institute.—Campbell v. Railroad Co., Case No. 2,366.

In a suit to foreclose a mortgage on the property of a railroad company composed of several consolidated companies, the fact that some of the stock of one of the constituent companies had never been converted into stock of the consolidated company *held* no ground for making such constituent company a party defendant.—Skiddy v. Atlantic, M. & O. R. Co., Case No. 12,922.

The fact that the trustees in a railroad mortgage have approved a reorganization plan recommended by one set of bondholders, rather than that approved by another set, is no ground for admitting a committee of the latter as parties to the foreclosure suit.—Skiddy v. Atlantic, M. & O. R. Co., Case No. 12,922.

Where a subsequent mortgagee is made a party to a foreclosure suit, the bill will be dismissed as to him, where it appears that his being made a party hinders and delays the suit.—Richards v. Chesapeake & O. R. Co., Case No. 11,771.

Where trustees under a mortgage, of whom it is alleged in the bill for a foreclosure that they had refused to realize on the security, apply to come in, and have been admitted as complainants in the bill, they must control the proceedings.—Richards v. Chesapeake & O. R. Co., Case No. 11,771.

On foreclosure of a blanket mortgage given by a consolidated company, containing a covenant to pay interest on mortgages given by the separate companies, the decree cannot extend to the latter where the holders are not made parties.—Union Trust Co. v. St. Louis, I. M. & S. Ry. Co., Case No. 14,403.

That the trustees of a railroad mortgage file a cross bill in a suit to foreclose another mortgage does not make a bondholder under the first mortgage a party to the suit by representation.—Mercantile Trust Co. v. Lamoille Val. R. Co., Case No. 9,432.

In a railroad foreclosure suit, service of process of a state court, outside the state, on a bondholder, as defendant to a cross bill, is ineffectual.—Mercantile Trust Co. v. Lamoille Val. R. Co., Case No. 9,432.

§ 48. Reference.
On a foreclosure of a mortgage of a portion of a road operating as a part of a larger line, where no separate accounts are kept, *held*, that the master properly made a pro rata estimate of the earnings and expenses of the whole road.—Pullan v. Cincinnati & C. Air-Line R. Co., Case No. 11,462.

§ 49. Judgment.
Where the principal sum named in the mortgage was not due, *held*, that a decree of foreclosure could go only in respect of interest due and unpaid.—Union Trust Co. v. St. Louis, I. M. & S. Ry. Co., Case No. 14,403.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,776.

A decree for the sale of a railroad, providing that the purchasers shall pay enough money to liquidate certain judgments, etc., may be amended at a subsequent term by providing that the property shall be sold subject to such judgments, etc.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,259.

The court in which a bill to foreclose a mortgage has been filed and a trustee appointed has jurisdiction to determine the conflicting rights arising out of its orders in the premises.—Bill v. New Albany, etc., Ry. Co., Case No. 1,407.

§ 50. Sale.
Specific property should be sold separately to give specific incumbrancers an opportunity to protect their securities.—Campbell v. Texas & N. O. R. Co., Case No. 2,369.

All questions of priorities should be determined before sale.—Campbell v. Texas & N. O. R. Co., Case No. 2,369.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,776.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,776.

A railroad may be sold, subject to claims against it as finally adjudicated, where their amount depends on a long course of litigation.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,259.

The parts of a railroad lying in counties where a certain judgment constitutes a prior lien cannot be sold, under the judgment, separate from a part lying in another county where a mortgage has priority, but the whole road must be appraised and sold together.—Ludlow v. Clinton Line R. Co., Case No. 8,600.

§ 51. Rights and liabilities of purchasers.
Bondholders, on purchasing at the foreclosure sale, may pay in bonds the residue of their bid, after satisfying the costs and charges of the litigation.—Duncan v. Mobile & O. R. Co., Case No. 4,139.

A purchaser under a decree of foreclosure of a railway mortgage *held* not a bona fide purchaser as to municipal aid bonds, given on a subscription to stock under a condition with which the company has not complied.—Foote v. Mt. Pleasant, Case No. 4,914.

§ 52. Distribution of proceeds.
Material men are not entitled to payment, in advance of mortgage bondholders, out of the fund arising from a foreclosure sale, notwithstanding promises of payment by the receiver.—Denniston v. Chicago, A. & St. L. R. Co., Case No. 3,800.

On a railroad mortgage foreclosure, interest coupons, which have been partly paid, will be paid before coupons coming due afterwards; and detached coupons in the hands of third parties will be paid before the bonds themselves.—Stevens v. New York & O. M. R. Co., Case No. 13,406.

Where there are a larger number of bonds issued than are allowed by law, all at the same time, those bearing the higher numbers stand on an equal footing with the others, in the distribution of the proceeds on foreclosure.—Stanton v. Alabama & C. R. Co., Case No. 13,297.

On mortgage foreclosure the court has no power without the consent of the bondholders to apply the income to a floating debt previously incurred to pay interest on bonds and for supplies and repairs.—Duncan v. Mobile & O. R. Co., Case No. 4,137.

A general judgment creditor under garnishee process against the officers of the company is entitled to the net income of the road between the date of the foreclosure decree and the appointment of a special receiver, where the trustees under the mortgage were not in possession of the road, and did not demand the income, and the decree was silent in regard thereto.—Gilman v. Illinois, etc., Tel. Co., Case No. 5,443.

§ 53. Review of proceedings.

Appeal from the order confirming foreclosure sale granted, but supersedeas denied, under the facts of the particular case.—Farmers' Loan & Trust Co. v. Central R. R. of Iowa, Case No. 4,664.

Individual bondholders, not parties to a decree of foreclosure, have no legal right to have the same executed pending an appeal which does not operate as supersedeas.—Farmers' Loan & Trust Co. v. Central R. R. of Iowa, Case No. 4,663.

§ 54. Actions to set aside foreclosure.

A decree for plaintiff on a bill to set aside a railroad mortgage foreclosure, and subject the property to payment of their judgments, renders the foreclosure invalid only as to the creditors who filed the bill.—Barnes v. Chicago, M. & St. P. R. Co., Case No. 1,016.

IX. RECEIVERS.

§ 55. Grounds of appointment—In general.

The court will not appoint a receiver where it appears that a much greater injury will result to those interested in the railroad than by leaving the property in the hands then holding it.—Tysen v. Wabash Ry. Co., Case No. 14,315.

A junior mortgagee in a suit to foreclose his mortgage may, on sufficient cause shown, have a receiver appointed, but without prejudice to the rights of the senior mortgagee.—Illinois Cent. R. Co. v. Mississippi Cent. R. Co., Case No. 7,008.

Where a junior mortgage covered the whole road, while the senior mortgage covered only a portion, and a receiver was appointed on foreclosure of the former, *held*, that the property should be divided, and another receiver appointed for that portion covered by the senior mortgage.—Illinois Cent. R. Co. v. Mississippi Cent. R. Co., Case No. 7,008.

§ 56. —— To prevent forfeiture of grant or charter.

To prevent from lapsing a land grant, which constitutes the principal security of the bondholders, a receiver will be appointed with authority to borrow money and complete the road. —Kennedy v. St. Paul & P. R. Co., Case No. 7,706.

Imminent danger of forfeiture of railroad charter and land grant for failure to complete road justifies appointment of receiver on application of bondholders.—Allen v. Dallas & W. R. Co., Case No. 221.

§ 57. —— Mismanagement.

Where, by the negligence or misfeasance of the mortgagor, railroad property has been wasted so as to jeopardize the security of the mortgage, a court of equity may take possession, notwithstanding Act Jan. 8, 1853.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

A receiver will be appointed where the tolls and income pledged as security are being applied to other uses.—Ruggles v. Southern Minnesota R. Co., Case No. 12,121.

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, *held* not a misapplication.—Williamson v. New Albany, etc., R. Co., Case No. 17,753.

A receiver may be appointed where trustees under a prior mortgage attempt to execute the trusts prejudicially to subsequent incumbrancers, or equity may enjoin improper execution. —Illinois Cent. R. Co. v. Mississippi Cent. R. Co., Case No. 7,008.

§ 58. —— Inadequacy of security.

Where the security is inadequate, a receiver will be appointed.—Ruggles v. Southern Minnesota R. Co., Case No. 12,121.

A receiver may be appointed in railway foreclosure proceedings where the security is inadequate, the mortgagor irresponsible for any deficiency, earnings are not applied to interest, and the mortgagor is in possession by its tenant where the latter is a party before the court.—Kerp v. Michigan L. S. R. Co., Case No. 7,727.

§ 59. —— Default in payment of debt or interest.

A default in the payment of the debt is no ground for the appointment of a receiver in the absence of a stipulation that the mortgagee shall have the rents.—Tysen v. Wabash Ry. Co., Case No. 14,315.

Default in payment of interest on railroad bonds for which trustee is authorized to take possession of railroad property and operate it justifies appointment of receiver, regardless of question of insolvency.—Allen v. Dallas & W. R. Co., Case No. 221.

A receiver will be appointed on default in the payment of interest, only where it is shown that a loss will happen if the property remains in the hands of its present owners, though the mortgage covers the income, and gives the trustees immediate possession on default.—Union Trust Co. v. St. Louis, I. M. & S. R. Co., Case No. 14,402.

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.—Williamson v. New Albany, etc., R. Co., Case No. 17,753.

Or, on default in the payment of a debt, the court has such discretion.—Tysen v. Wabash Ry. Co., Case No. 14,315.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,775.

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.—

Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,775.

§ 60. Appointment.

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.—Wilmer v. Atlanta & R. Air Line Ry. Co., Case No. 17,775.

Neither a nonresident receiver nor more than one receiver should ordinarily be appointed for a railroad.—Meier v. Kansas Pac. Ry. Co., Case No. 9,395.

A nonresident may be appointed a receiver on the foreclosure of a railroad mortgage.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

The appointment of a receiver of an insolvent company cannot be dictated by the secured creditors.—Richards v. Chesapeake & O. R. Co., Case No. 11,771.

On a motion for the appointment of a receiver in foreclosure proceedings, the case cannot be heard upon its merits as at the final hearing.—Kerp v. Michigan L. S. R. Co., Case No. 7,727.

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.—Williamson v. New Albany, etc., R. Co., Case No. 17,753.

Where appointment of receiver for railroad is not resisted because of concealment of service of notice of motion by officer, case will be reopened.—Allen v. Dallas & W. R. Co., Case No. 221.

§ 61. Control and management.

Under extraordinary circumstances, with consent of the trustees and four-fifths of the bondholders, *held*, that a receiver would be authorized to finish a railroad with money to be advanced by bondholders, and to be secured, after completion, by debentures constituting a lien upon the property.—Kennedy v. St. Paul & P. R. Co., Case No. 7,707.

Petition of receivers to make a car trust loan denied where the funds necessary for rolling stock and equipment can be raised from net earnings, though nothing is left for payment of interest on the bonded debt.—In re Philadelphia & R. R. Co., Case No. 11,085a.

It is a breach of trust for railroad receivers to contract to deliver all live stock coming within their control at the stock yards of one company, to the exclusion of other yards equally well situated.—McCoy v. Marietta & C. R. Co., Case No. 8,730b.

The receiver may be required to pay the claims of operatives and supplymen owing at the time of his appointment, and to hold the property subject to them irrespective of a lien.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,258.

A court in foreclosure proceedings should not enter upon the work of building or completing a railroad except in case of irresistible necessity, and to prevent great and certain sacrifice of rights and securities.—Kennedy v. St. Paul & P. R. Co., Case No. 7,707.

The court may authorize receivers appointed on foreclosure of a first mortgage to borrow money to complete portions of the road, and put it in a condition to transact its business, making the sum so borrowed a lien superior to that of the first mortgage.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

A receiver is liable for damages to engines rented by him arising from omission to make necessary repairs.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,260.

Radical changes in the condition of railroad property in the hands of a receiver not permitted pending an appeal of the principal cause.—Cowdrey v. Railroad Co., Case No. 3,293.

The duties of receivers as to outlays in the management and operation of a railroad, allowances therefor, and for counsel fees and services, considered and determined.—Cowdrey v. Railroad Co., Case No. 3,293.

§ 62. Issue of certificates.

Receivers' certificates payable to bearer, referring to the order of the court authorizing their issue, and sold for less than par, *held* not commercial paper.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

Such certificates are good for the amount of money actually paid for or advanced on them to the receivers in accordance with the terms of the order of court.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

Persons who purchase such certificates, or advance money on them to the receivers, are not bound to see that the money is applied to the purposes of the trust.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

§ 63. Claims and liens.

In distributing the earnings of a mortgaged railroad while in a receiver's hands, and the proceeds of its sale, priority awarded only to laborers and material men who have perfected their lien according to the state law.—Jessup v. Atlantic & G. R. Co., Case No. 7,299.

Advances to pay wages of employés on condition of reimbursement out of first net earnings will be paid out of income in receiver's hands in preference to mortgage claims.—Atkins v. Petersburg R. Co., Case No. 604.

Where a railroad is placed in the hands of a receiver at the instance of mortgage bondholders, the claims for operating expenses are prior liens.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

Wages due for eight months before the appointment of railroad receivers *held* payable to such employés as were retained by the receivers; otherwise as to assigned claims for wages, and claims for rails and supplies furnished on the credit of the company.—Skiddy v. Atlantic, M. & O. R. Co., Case No. 12,922.

Counsel's services to receiver are included within decree giving priority to claims for "labor in operation of the road."—Bayliss v. Lafayette, M. & B. Ry. Co., Case No. 1,141.

Claims of connecting lines for their share of through fares and freight stand upon the same footing as other unsecured debts.—Jessup v. Atlantic & G. R. Co., Case No. 7,299.

§ 64. Effect of judgment against receiver.

A receiver appointed in foreclosure proceedings is the agent of the bondholders and the trustees, and they are bound by a judgment rendered against him.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,260.

§ 65. Rights and liabilities after discharge of receiver.

A party having, as security for a large debt, a lease of a railroad, from whom possession has been taken by a receiver appointed in a suit by another, is, upon his discharge, entitled to have possession restored to him.—Howard v. La Crosse & M. R. Co., Case No. 6,760.

X. OPERATION.

Carriage of goods and passengers, see "Carriers."
Denial of civil rights, see "Civil Rights."

§ 66. Proceedings to compel operation.
A mandamus will issue to compel the company to operate its road over the bridge over the Missouri river in the same manner in which the other portions of its road are operated.—United States v. Union Pac. R. Co., Case No. 16,601.

§ 67. Municipal and official regulations.
A regulation by a railroad company that canal boats unloading coal at its dock to be received on its cars there should employ its shovelers and rent its hoisting tubs at certain rates, being the usual market price, *held* unreasonable.—In re Three Hundred and Eighteen and One-Half Tons of Coal, Case No. 14,010.

The fencing of a railroad in a city with gates at public crossings is a regulation for public safety, and any incidental inconvenience is merged in the superior interest of the public.—Miller v. Long Island R. Co., Case No. 9,580a.

§ 68. Unguarded premises.
An unguarded railroad tunnel in a street *held* a nuisance, the continuance of which rendered the receivers of the roal liable for damages for an injury of which it was the proximate cause. —Morgan v. Illinois & St. L. Bridge Co., Case No. 9,802.

§ 69. Injuries to licensees or trespassers in general.
In the case of a trespasser upon the track, the railroad company is required to do only what prudent owners of railroads are doing in respect to their trains and equipments.—Ex parte Stell, Case No. 13,358.

Duties and liabilities of the parties in the case of a man walking along a railroad track in front of an approaching train, stated in a charge to a jury.—Finlayson v. Chicago, B. & Q. R. Co., Case No. 4,793.

A rule that "no person shall be allowed to ride on the engine without the permission of the engineer," placed in the hands of an engine driver, authorizes him to permit a person to ride upon the engine.—Whitehouse v. Grand Trunk Ry. Co., Case No. 17,565.

Where a boy was killed by attempting to jump on an engine moving through a street, *held*, that there was no liability, unless defendant could have avoided the accident by ordinary care.—Miles v. Receivers, Case No. 9,544.

The failure of a railroad company to keep its turntable locked, so as to prevent its being turned by children or others, is not negligence, where prudent and well-managed railroads are not in the habit of guarding or securing their turntables.—Stout v. Sioux City & P. R. Co., Case No. 13,503.

Under what circumstances a railroad will be *held* liable for an injury to a child of tender years, caused by playing on its unguarded and unlocked turntable, see Stout v. Sioux City & P. R. Co., Case No. 13,504.

Negligence of the parents in permitting a child to wander from home and go upon a dangerous piece of machinery will not prevent liability of the owner for an injury to the child, resulting from his carelessness in not properly guarding and securing the same.—Stout v. Sioux City & P. R. Co., Case No. 13,503.

§ 70. Accidents to trains.
The company is liable for the death of a person lawfully riding on an engine having the right of way, caused by collision with another engine negligently dispatched to meet it on the same track.—Whitehouse v. Grand Trunk Ry. Co., Case No. 17,565.

§ 71. Accidents at crossings.
When an engine is backing a train across city streets, there should be a lookout.—Barley v. Chicago & A. R. Co., Case No. 997.

Irrespective of city ordinances, speed of train across streets should be such as to permit stoppage within reasonable time.—Barley v. Chicago & A. R. Co., Case No. 997.

Great care and vigilance is required where there is steam or smoke upon the track.—Barley v. Chicago & A. R. Co., Case No. 997.

The failure to ring the bell of a switch engine at a crossing where a freight train has just passed on an adjoining track is negligence. —Whiton v. Chicago & N. W. R. Co., Case No. 17,597.

It is not, as matter of law, negligence preventing a recovery by a person injured at a railroad crossing in a city to fail to stop and look and listen before attempting to cross.—Whiton v. Chicago & N. W. R. Co., Case No. 17,597.

The running of a freight train over a crossing at an unlawful rate of speed is not the proximate cause of an injury to persons who attempt to cross after the train has passed, and are struck by a train on an adjoining track.—Whiton v. Chicago & N. W. R. Co., Case No. 17,597.

§ 72. Injuries to animals on track.
Where an animal is a trespasser on the track, the court will presume ordinary care in the management and operation of the train, in the absence of evidence to the contrary.—Campbell v. Receivers, Case No. 2,367.

§ 73. Fires.
The mere fact that a spark from a locomotive enters the window of a building, and sets it on fire, does not render the railroad company liable for the damage, but plaintiffs must prove that the company was negligent in the use of its engine.—Musselwhite v. Receivers, Case No. 9,972.

The company is liable only in case it fails, in using its engines, to use the diligence which good specialists in this department are accustomed to exercise.—Musselwhite v. Receivers, Case No. 9,972.

RANSOM.

Of property captured as prize, see "War," § 71.

RAPE.

§ 1, Aiding others to commit rape. § 2, Indictment. § 3, Punishment.

§ 1. Aiding others to commit rape.
The aiding, abetting, and assisting others to commit rape is punishable under the penitentiary act of March 2, 1831. 4 Stat. 448.—Keenan v. United States, Case No. 18,305.

§ 2. Indictment.
It is not a fatal defect in an indictment for rape that it also alleges that the woman was gotten with child.—United States v. Dickinson, Case No. 14,957a.

§ 3. Punishment.
An attempt by a slave to ravish a white woman is punishable by death.—United States v. Patrick, Case No. 16,006.

RATIFICATION.

See "Bills and Notes," § 13; "Novation," § 2.
Of act of agent, see "Principal and Agent," § 32.
—— of partner, see "Partnership," § 31.
—— of trustee, see "Trusts," § 27.
Of bonds, see "Municipal Corporations," § 31.

REAL ACTIONS.

§ 1, In general. § 2, Writ of right.

See, also, "Ejectment"; "Entry, Writ of"; "Trespass to Try Title."

§ 1. In general.
To most real actions, non tenure is in Massachusetts a good plea, either in bar or abatement. —Fiedler v. Carpenter, Case No. 4,759.

§ 2. Writ of right.
It is not a bar to a writ of right that there has been a judgment on a petition for partition between the same parties in favor of the tenant upon an issue joined therein upon the sole seisin of demandant.—Mallett v. Foxcroft, Case No. 8,989.

In a writ of right, the proof must strictly conform to the allegation; and an allegation by several demandants as equally interested is not supported by proof of different estates.—Scott v. Widdington, Case No. 12,547.

Though persons entering upon state lands are to be deemed mere intruders, yet, as against all others, the entry will be sufficient seisin to support a writ of right.—Thomas v. Hatch, Case No. 13,899.

The seisin shown by demandants will be presumed to continue until some adverse seisin or disseisin is shown.—Thomas v. Hatch, Case No. 13,899.

REAL PROPERTY.

See "Property."

REASONABLE DOUBT.

See "Criminal Law," § 73.

REBELLION.

See "Treason"; "War," §§ 78-90.

REBUTTAL.

Evidence, see "Trial," § 9.

RECEIPTS.

See "Release."
As evidence, see "Payment," § 22.
Warehouse receipts, see "Warehousemen," § 2.

RECEIVERS.

§ 1, Nature and grounds of receivership. § 2, Appointment. § 3, Qualification of receiver. § 4, Management and disposition of property. § 5, Actions by receiver. § 6, Actions against receiver. § 7, Accounting and compensation. § 8, Misconduct and removal.

Effect of appointment on jurisdiction in bankruptcy, see "Bankruptcy," § 14.
In action to foreclose mortgage, see "Mortgages," § 37.
In bankruptcy, see "Bankruptcy," §§ 157, 365.
In creditors' suit, see "Creditors' Suit," § 11.
Interference with, see "Contempt," § 1; "Courts," § 118.
Jurisdiction of action as dependent upon citizenship or residence, see "Courts," § 47.
Of corporation, see "Corporations," §§ 27, 52a, 66.
Of mortgaged property, see "Mortgages," § 19a.
Of national bank, see "Banks and Banking," § 22.
Of railroad companies, see "Railroads," §§ 55-65.
Of telegraph company, see "Telegraphs and Telephones," § 2.

§ 1. Nature and grounds of receivership.
Appointment of receiver is discretionary with court.—Beecher v. Bininger, Case No. 1,222.

A receiver will be appointed in all cases where the interest of the parties seems to require it.—Crane v. McCoy, Case No. 3,354.

A receiver will not be appointed of property which is in the possession of a person not a party to the suit.—Searles v. Jacksonville, P. & M. R. Co., Case No. 12,586.

The peril of a fund in litigation is cause for the interference of the court to secure and protect it by the appointment of a receiver.—Lenox v. Notrebe, Case No. 8,246b; Parkhurst v. Kinsman, Id. 10,760; Union Mut. Life Ins. Co. v. Kellogg, Id. 14,373.

The court will not appoint a receiver of trust funds in the hands of high public officers where the trust involves duties of a public character, except in cases of gross fraud and imminent danger.—Vose v. Reed, Case No. 17,011.

§ 2. Appointment.
The facts essential to the appointment of a receiver need not be pleaded, but may be shown by affidavit at the hearing. A prayer for a receiver is unnecessary.—Commercial & Savings Bank v. Corbett, Case No. 3,057.

Previous notice of a motion for the appointment of a receiver is not necessary when counsel for the opposite party is present in court.—McLean v. Lafayette Bank, Case No. 8,887.

§ 3. Qualification of receiver.
A receiver should be an impartial person, not interested in the litigation or a partisan of any party to it.—Meier v. Kansas Pac. Ry. Co., Case No. 9,395.

§ 4. Management and disposition of property.
The validity of a receiver's act in selling or exchanging property will not be questioned in a collateral suit in another court.—Bradly v. Marine & R. Phosphate Min. & Mfg. Co., Case No. 1,789.

§ 5. Actions by receiver.
A receiver appointed by a federal court cannot maintain a suit in a federal court of a state other than that of his appointment.—Brigham v. Luddington, Case No. 1,874.

On petition of receiver, persons claiming to have pre-existing liens on realty in his possession were required to release them, and an order was made setting apart sufficient of the proceeds of sale to pay them after the determination of their respective rights.—De Visser v. Blackstone, Case No. 3,840.

A receiver appointed by a federal court who has previously been appointed in a state court of an adjoining state is not subject to the jurisdiction of the state court as to the property out of the state.—Lehigh Coal & Navigation Co. v. Central R. Co., Case No. 8,213.

The creditors of a corporation are neither proper nor necessary parties to a suit by its receiver to protect its property.—Gray v. Davis, Case No. 5,715.

§ 6. Actions against receiver.
A suit cannot be maintained against a receiver without leave being first obtained from the court by which he was appointed.—Hale v. Duncan, Case No. 5,914.

The court will not allow its receiver to be sued, unless the petition for leave states a prima facie cause of action against him.—Jordan v. Wells, Case No. 7,525.

A state statute providing that receivers appointed by any court may be sued without leave of the court is inapplicable to receivers appointed by the federal court.—Hale v. Duncan, Case No. 5,914.

The proper remedy for a person, having a demand against a fund in the hands of the receiver, is to bring his demand into the court appointing the receiver.—Thompson v. Scott, Case No. 13,975.

§ 7. Accounting and compensation.
A receiver cannot be called on to account before any court but that which appointed him.—Conkling v. Butler, Case No. 3,100.

Exceptions to master's report on a reference of a receiver's account are unavailing unless first made before the master.—Cowdrey v. Railroad Co., Case No. 3,293.

But the court may direct an account to be reformed where there are manifest errors or clearly improper charges.—Cowdrey v. Railroad Co., Case No. 3,293.

The master in such case acts in place of the court in a judicial, rather than a ministerial, capacity.—Cowdrey v. Railroad Co., Case No. 3,293.

If he adopts an erroneous principle, the court, on petition, will refer the matter back to him for correction.—Cowdrey v. Railroad Co., Case No. 3,293.

The compensation of a receiver must be graduated by his duties and the responsibilities of the office, and not by the amount for which another competent person would have done the work.—Cowdrey v. Railroad Co., Case No. 3,293.

§ 8. Misconduct and removal.
Receivers who willfully and corruptly exceed their powers are liable for the actual damage sustained by reason of their misconduct, but for nothing more.—Stanton v. Alabama & C. R. Co., Case No. 13,296.

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.—Young v. Montgomery & E. R. Co., Case No. 18,166.

Two receivers appointed as representatives of different interests, which became hostile, removed, and a single disinterested receiver appointed.—Meier v. Kansas Pac. Ry. Co., Case No. 9,395.

RECEIVING STOLEN GOODS.

§ 1, Nature and elements of offense. § 2, Prosecution.

§ 1. Nature and elements of offense.
The possession of gold coin received at the mint in exchange for gold dust stolen from the mails is not a possession of such dust.—United States v. Montgomery, Case No. 15,800.

Stolen postage stamps sent by the thief to defendant were delivered up to a postmaster on written order of the thief, but were subsequently allowed to go forward, and to be delivered to defendant. *Held*, that they lost their character as stolen property.—United States v. De Bare, Case No. 14,935.

§ 2. Prosecution.
An indictment for receiving, concealing, and aiding in concealing, gold dust stolen from the mails, charges but one crime, and proof of either warrants a conviction.—United States v. Montgomery, Case No. 15,800.

An indictment for receiving stolen goods, charging that the accused received the goods from the principal felon, is not sustained by proof that they were received from the person to whom the thief had delivered them.—United States v. De Bare, Case No. 14,935.

Where two are indicted together for receiving, etc., stolen property, one may be found guilty of a separate receiving, etc., when the other has been discharged on a plea of prior conviction.—United States v. Montgomery, Case No. 15,800.

Venue, see "Criminal Law," § 21.

RECOGNIZANCES.

See "Bail."

RECORDS.

§ 1, Custody. § 2, Construction. § 3, Supplying or restoring lost records. § 4, Right to inspect, and proceedings to enforce right. § 5, Removal of records.

As evidence, see "Evidence," §§ 43-45.
Authentication for use in evidence, see "Evidence," §§ 60, 61.
Copies as evidence, see "Evidence," §§ 50, 51.
Effect of failure to record conveyance, see "Bankruptcy," § 241.
Estoppel by record, see "Estoppel," § 1.
Notice from, see "Vendor and Purchaser," § 29.
Production in evidence, see "Evidence," § 57.
Transcript as evidence, see "Evidence," §§ 48, 49.

Of judicial proceedings.

See "Depositions," § 35; "Judgment," §§ 18-24.
On appeal, see "Admiralty," § 121; "Appeal and Error," §§ 18-23; "Bankruptcy," §§ 28, 691.
Of courts, see "Courts," § 9.
Of naturalization, see "Aliens," § 12.
On removal of cause, see "Removal of Causes," § 44.

Of particular instruments.

See "Chattel Mortgages," §§ 9-12; "Deeds," §§ 5-8; "Mortgages," § 7.
Bills of sale, see "Sales," § 20.
Bottomry bond, see "Shipping," § 118.
Conditional sale, see "Sales," § 54.
Conveyances of vessels, see "Shipping," § 39.
Mortgages, see "Shipping," §§ 37, 39.
Notice of foreclosure and certificate of publication, see "Mortgages," § 21.

§ 1. Custody.
The register of the orphans' court in Alexandria is entitled to the custody of the record books of wills of the old court of hustings.—United States v. Deneale, Case No. 14,946.

§ 2. Construction.
Where an order to show cause recites that it was made on the filing of a petition, the filing of the petition will be presumed unless the record shows the contrary.—Alabama & C. R. Co. v. Jones, Case No. 127.

§ 3. Supplying or restoring lost records.
The proceedings to restore records in the federal courts must conform to the act of congress, and not to the state statute.—Turner v. Newman, Case No. 14,262.

Official re-establishing under legislative act of records which have been burned.—Hunt v. Innis, Case No. 6,892.

§ 4. Right to inspect, and proceedings to enforce right.
The right to inspect and examine all the records and papers belonging to the court exists only as allowed by statute or rule of court.—In re McLean, Case No. 8,877.

A citizen of the United States has not an unlimited right to inspect all the records belonging to the federal courts, but only the books containing docket or minute entries of judgments or decrees.—In re Cincinnati Enquirer, Case No. 2,719.

A petition for leave to inspect "books containing docket and minute entries of judgments and decrees" of district and circuit courts is sufficient on general demurrer.—In re Cincinnati Enquirer, Case No. 2,719.

§ 5. Removal of records.
Printed exhibits allowed to be taken from the files, and annexed to a commission, on filing photographic facsimiles in lieu thereof.—Daly v. Maguire, Case No. 3,551.

RECOUPMENT.

For defects of title, see "Vendor and Purchaser," § 10.

REDEMPTION.

By assignee in bankruptcy, see "Bankruptcy," § 291.
From foreclosure of mortgage, see "Bankruptcy," § 291; "Mortgages," §§ 43–47.
—— of vendor's lien, see "Vendor and Purchaser," § 37.
From sale for taxes, see "Levees," § 2; "Taxation," § 15.
—— on execution, see "Execution," § 18.
Of property pledged, see "Pledges," § 8.
Transfer of equity, see "Mortgages," § 15.

REFERENCE.

§ 1, Nature, grounds, and order of reference. § 2, Proceedings before referees. § 3, Compensation of referee. § 4, Report and findings—Form. § 5, —— Operation. § 6, —— Sufficiency. § 7, —— Objections and exceptions and hearing thereof. § 8, —— Setting aside report. § 9, —— Judgment on report. § 10, New trial.

See, also, "Arbitration and Award."
In action for infringement of patent, see "Patents," § 259.
—— of trade-mark, see "Trade-Marks and Trade-Names," § 31.
In action of account, see "Account," §§ 1, 2; "Patents," § 259.
—— to foreclose mortgage, see "Railroads," § 48.
In admiralty, see "Admiralty," §§ 101–105; "Collision," § 154.
In equity, see "Equity," §§ 109–118.
Of administrator's account, see "Executors and Administrators," § 65.

§ 1. Nature, grounds, and order of reference.
The circuit court of the United States has no authority to refer a suit at common law to a referee for trial, without the consent of both parties, although, in the state court, such a suit is referable without consent.—Howe Mach. Co. v. Edwards, Case No. 6,784.

A district judge in New York may refer a case involving long accounts to referees, in conformity to the practice of the state courts under the state law.—Eaken v. United States, Case No. 4,235.

A reference by consent of an action at law in the federal circuit court is lawful, and after a trial before the referee the court may grant a new trial.—Robinson v. Mutual Ben. Life Ins. Co., Case No. 11,961.

An order of reference may be entered nunc pro tunc, where a trial is duly had before a referee under a stipulation, and the parties have omitted to enter the order.—Robinson v. Mutual Ben. Life Ins. Co., Case No. 11,961.

§ 2. Proceedings before referees.
The referee, in an action of covenant, is the final judge of the lawful rule of damages.—Myers v. York & C. R. Co., Case No. 9,997.

The referee may disregard all such formal defects as might be amended if the case were tried in court.—Myers v. York & C. R. Co., Case No. 9,997.

Where the amount of a claim which defendant had against certain real estate was referred to a master to determine, he was not bound by the statement in defendant's answer.—Chickering v. Hatch, Case No. 2,671.

§ 3. Compensation of referee.
The compensation of auditors in Pennsylvania is regulated not only by their labor but also by the amount of money to be distributed.—Lombard v. Bayard, Case No. 8,469.

§ 4. Report and findings—Form.
A mistake in entitling a referee's report in the district court, where it was duly filed in the circuit court, and no one was misled, will be disregarded, or the report amended nunc pro tunc.—Fourth Nat. Bank v. Neyhardt, Case No. 4,991.

§ 5. —— Operation.
When the accounts of the parties in an action at law are referred by the court to an auditor, his report is of no avail except to ascertain the points really litigated by the parties.—Barry v. Barry, Case No. 1,060.

§ 6. —— Sufficiency.
The award must be sufficiently specific to enable the court to separate what was, from what was not, awarded, within the submission.—Myers v. York & C. R. Co., Case No. 9,997.

A general award of a specific sum, without specifying the items of which it is composed, is good, in point of form.—Myers v. York & C. R. Co., Case No. 9,997.

§ 7. —— Objections and exceptions, and hearing thereof.
The federal courts will not entertain questions on a referee's report, but will regard and treat it as an award by arbitration.—Denny v. Brown, Case No. 3,805.

Additional exceptions, discovered since the period for filing exceptions to the report has passed, will be allowed to be filed.—Thelasson v. Crammond, Case No. 13,877.

Testimony merely filed with the report, without any bill of exceptions, cannot be considered on exceptions to the referee's decision, under Comp. Laws Mich. c. 186.—MacDonald v. Saginaw Val. & St. L. R. Co., Case No. 8,766.

Evidence not laid before referees cannot be exhibited to the court on exceptions to the report.—Barton v. Anthony, Case No. 1,084.

§ 8. —— Setting aside report.
The court will not set aside the report of referees merely because the court might not have drawn the same conclusions from the evidence.—Jolly v. Blanchard, Case No. 7,438.

Report set aside because of palpable mistake of fact appearing by examination of the referees.—Knox v. Walton, Case No. 7,915.

§ 9. —— Judgment on report.
Following the practice of the state courts, the judgment upon a referee's report in the federal courts may be entered without an application to the court.—Fourth Nat. Bank v. Neyhardt, Case No. 4,991.

Consent to a reference does not authorize a judgment in invitum on the report.—Denny v. Brown, Case No. 3,805.

§ 10. New trial.
The court has no power to grant a new trial after judgment on a reference, though it was stipulated that judgment should be entered the same as if the cause had been tried by the court.—Neafie v. Cheesebrough, Case No. 10,064.

REFORMATION OF INSTRUMENTS.

§ 1, Right to reformation—Mistake. § 2, —— Fraud. § 3, —— Illegal contract. § 4, —— Reformation as against third persons. § 5, Proceedings and relief—Limitations and laches. § 6, —— Parties. § 7,—— Evidence. § 8, Effect of reformation.

See, also, "Cancellation of Instruments."
Policies of insurance, see "Insurance," § 19.

§ 1. Right to reformation—Mistake.
Mistake, to be available as ground of reformation, must not have arisen from negligence, where the means of knowledge were clearly accessible.—Kinney v. Consolidated Virginia Min. Co., Case No. 7,827.

A deed of trust, which, by mistake, states that it secures a certain note, may be reformed so as to secure a bond.—In re Clarke, Case No. 2,843.

Where a loan is made on agreement to give collateral security on property, and by mistake a power of attorney only is taken, equity will relieve the creditor, after the death of the debtor insolvent, by enforcing the original agreement against his administrator.—Hunt v. Ennis, Case No. 6,889.

Where, in a deed of trust to secure a debt to A., the name of B. is inserted by mistake, equity will require the money to be paid to A. in the first instance, the mistake being clearly shown.—McCall v. Harrison, Case No. 8,671.

Where parties deal with each other with knowledge that something is uncertain as to the amount or condition of the subject-matter, and the contract is in the form intended, there is no ground for correcting a mistake, if it should finally appear that one was made.—Kinney v. Consolidated Virginia Min. Co., Case No. 7,827.

If a grantor, conveying part of a mining claim, makes a mistake against himself in one part as to the amount conveyed, and in another part a mistake in his favor for a corresponding amount, the equities between him and his grantee are equal, and the mistake will not be corrected on his application to the injury of the other party upon the entire transaction.—Kinney v. Consolidated Virginia Min. Co., Case No. 7,827.

A written contract will not be reformed by previous parol contract on the same subject.—Andrews v. Essex Fire & Marine Ins. Co., Case No. 374; Tilghman v. Tilghman, Id. 14,045; Hoover v. Reilly, Id. 6,677.

But if a policy of insurance when drawn and received does not correctly express a previously concluded agreement for insurance, which it was designed by both parties to execute, equity will reform it, though the mistake arose from ignorance of law—Oliver v. Mutual Commercial Marine Ins. Co., Case No. 10,498.

Equity has power to reform and cancel an insurance policy issued by mistake for a greater length of time than was intended by the parties.—North American Ins. Co. v. Whipple, Case No. 10,315.

§ 2. —— Fraud.
If an agent in effecting insurance declared the interest in a wrong person through fraudulent design, equity will not relieve the principal; otherwise where there was an honest mistake.—Oliver v. Mutual Commercial Marine Ins. Co., Case No. 10,498.

Equity may reform a policy of insurance, even in material clauses, where, through fraud or mistake, it violates or does not express the intention of the parties.—Dean v. Equitable Fire Ins. Co., Case No. 3,705.

§ 3. —— Illegal contract.
The court will not reform a contract for the running of a horse race, so as to permit the recovery of a stipulated penalty for failure to run the race.—Lemmons v. Flanakin, Case No. 8,239b.

One who conveys his property for the purpose of defrauding his creditors can obtain no relief in equity against his grantee, nor will a trust relation be recognized for the purpose of reforming, on the ground of mistake, a subsequent deed from him to parties taking through the fraudulent grantee without notice of the fraud.—Kinney v. Consolidated Virginia Min. Co., Case No. 7,827.

Complainant conveyed, by unstamped conveyances, an interest in a mining claim, and his grantees, by good conveyances, deeded the same to defendant. Complainant afterwards conveyed his remaining interest directly to defendant, and afterwards filed a bill to correct a mistake in the latter conveyance. To make out the mistake, it was necessary for him to repudiate his unstamped conveyances. *Held,* that equity would not correct the mistake.—Kinney v. Consolidated Virginia Min. Co., Case No. 7,827.

§ 4. —— Reformation as against third persons.
A mistake in a conveyance will not be corrected, to the prejudice of bona fide purchasers from the grantee.—Reeves v. Vinacke, Case No. 11,663.

Where the description in a deed is not impossible or repugnant, the court will not reform it, as against third persons who purchased the remaining interest of the grantor at sheriff's sale without knowledge of the error in the description.—United States v. Payson, Case No. 16,016.

§ 5. Proceedings and relief—Limitations and laches.
A father who takes no steps to have corrected a patent erroneously naming his son as grantee is guilty of laches as against a bona fide mortgagee from the son.—Babcock v. Pettibone, Case No. 700.

An application to reform a deed, *held,* should not be entertained after the lapse of 11 years, where all persons had dealt with the land on the theory that the description was correct.—United States v. Payson, Case No. 16,016.

§ 6. —— Parties.
Where the trustee in a trust deed has reconveyed the property to the grantor under a decree of court, and afterwards died, his representatives are not necessary parties to a suit by the real beneficiary to obtain relief by showing mistake in the deed of trust.—McCall v. Harrison, Case No. 8,671.

§ 7. —— Evidence.
The party alleging the mistake must show exactly in what the error consists.—Dean v. Equitable Fire Ins. Co., Case No. 3,705.

A written instrument will not be reformed upon the ground of mistake unless the same be made out by the clearest and most unequivocal evidence.—United States v. Munroe, Case No. 15,835.

§ 8. Effect of reformation.
Equity may enforce a contract after it has been reformed, or grant the relief to which complainant shows himself entitled.—Brugger v. State Inv. Ins. Co., Case No. ?,051.

REGISTER.

In bankruptcy, see "Bankruptcy," §§ 310–315.

REGISTRATION.

See "Records."
Of vessels, see "Shipping," § 4.
Of voters, see "Elections," § 4.

Of particular instruments or transactions.

See "Chattel Mortgages," §§ 9–12; "Copyrights," § 17; "Deeds," §§ 5–8; "Mortgages," § 7; "Trade-Marks and Trade-Names," § 16.

REHEARING.

See "New Trial."
In admiralty, see "Admiralty," § 100; "Collision," § 157.
In equity, see "Equity," §§ 105–108; "Patents," § 263.
Motion for new trial, see "New Trial," § 25.
On appeal or writ of error, see "Appeal and Error," § 27.
—— in admiralty, see "Admiralty," § 122.

REINSURANCE.

See "Insurance," §§ 192–195.

REISSUED PATENTS.

See "Patents," §§ 102–114.

REJOINDER.

See "Pleading," § 38.

RELEASE.

I. REQUISITES AND VALIDITY.
§ 1, In general. § 2, Fraud.

II. CONSTRUCTION AND OPERATION.
§ 3, Scope and effect in general. § 4, Of joint obligor or promisor. § 5, Of joint tort feasor. § 6, Impeachment and avoidance.

See, also, "Accord and Satisfaction"; "Compositions with Creditors"; "Compromise and Settlement"; "Payment."
Of claims of seamen, see "Seamen," § 159.
Of customs duties, see "Customs Duties," § 58.
Of dower, see "Dower," § 3.
Of mortgage, see "Mortgages," § 16.
Of property on bond, see "Customs Duties," § 96.
Of sureties on bond in admiralty, see "Admiralty," § 76.
—— on bond on appeal, see "Appeal and Error," § 42.

I. REQUISITES AND VALIDITY.

§ 1. In general.
The presumption in favor of the validity of a receipt will prevail in the absence of evidence that it was obtained by fraud, mistake, or ignorance of the rights of the party.—Thompson v. Faussat, Case No. 13,954.

The administratrix of a joint owner of a vessel will be bound by a settlement and release of all claims and demands between the parties, unless she show that she did not understand the transaction.—Crossley v. The Louis, Case No. 3,436.

A release given to one holding the relation of spiritual adviser *held* to be of no effect.—Nachtrieb v. The Harmony Settlement, Case No. 10,003.

§ 2. Fraud.
A release given to a debtor by a creditor who has been misled by his fraudulent misrepresentation or other artifice may be set aside in equity.—Phettiplace v. Sayles, Case No. 11,083.

A statement of property and a representation of insolvency, in a petition for the benefit of an insolvent act, are considered as representations to all creditors acting thereon.—Phettiplace v. Sayles, Case No. 11,083.

II. CONSTRUCTION AND OPERATION.

§ 3. Scope and effect in general.
A release of the party primarily liable is a release of all parties secondarily liable.—Veazie v. Williams, Case No. 16,907.

A release from the assignee of a chose in action is a bar to an action by the assignor for the same cause of action.—Dade v. Herbert, Case No. 3,532.

A release given to a debtor of the United States by an officer of the government will have the same effect as an ordinary release from a creditor to a debtor.—United States v. Thompson, Case No. 16,487.

A release by purchasers at a sale by auction to the agent who made it would release the vendors from all liability for fraudulent by-bidding which enhances the price.—Veazie v. Williams, Case No. 16,907.

§ 4. Of joint obligor or promisor.
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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

Where two persons are bound jointly or jointly and severally in an obligation, the release of one will discharge the other.—United States v. Thompson, Case No. 16,487.

The release of one after a judgment obtained against the other is not available to the latter. —United States v. Thompson, Case No. 16,487.

Where a joint judgment has been rendered against two defendants, a release of one of them subsequent to the judgment will discharge the other.—United States v. Thompson, Case No. 16,487.

While a defendant is charged in execution, the debt is considered as satisfied, and a discharge of one co-debtor is a discharge of all.—United States v. Parker, Case No. 15,992.

The release of one of two or more joint or joint and several debtors does not operate as a release of all of them, where it only extends to the individual liability of the party released to the creditors, and does not affect his liability to his joint debtors for contribution or otherwise.—Paret v. Bryson, Case No. 10,710.

Parol substitution of a third person for one of several obligors does not release the rest.—Garnett v. Macon, Case No. 5,245.

Where, on a joint decree against the executors of two persons, a creditor receives a moiety of the debt from the representatives of one of them, and covenants not to levy the residue of the decree upon the estate of that one, it does not discharge the representatives of the other.—Garnett v. Macon, Case No. 5,245.

§ 5. Of joint tort feasor.
A release of one of several joint tort feasors will not in equity be extended beyond the intent of the parties, regardless of its effect at law.—Ingels v. Mast, Case No. 7,033.

§ 6. Impeachment and avoidance.
A release of a claim by an assignee in insolvency, induced by a false and fraudulent statement of account by the treasurer of respondent corporation, will be set aside on bill in equity brought by the assignor after his debts are extinguished.—James v. Atlantic Delaine Co., Cases Nos. 7,177, 7,178.

RELEVANCY.

Of evidence in civil actions, see "Evidence," §§ 16–18.

RELIGIOUS SOCIETIES.

§ 1, Powers. § 2, Membership. § 3, Officers of church. § 4, Property and pews.

Charitable gifts, trusts, or bequests and devises to, see "Charities."
Disturbance of worship, see "Disturbance of Public Assemblage," § 1.
Subscriptions, see "Subscriptions."

§ 1. Powers.
As to the power of the general conference of the Methodist Episcopal Church to divide the church, and its control of the Book Concern.—Smith v. Swormstedt, Case No. 13,112.

A community cannot interfere with a member's natural rights under the law further than he has agreed to allow it, irrespective of usage long established.—Nachtrieb v. The Harmony Settlement, Case No. 10,003.

A church conference may consent to division of church into two bodies, which will carry with it a division of the common property.—Bascom v. Lane, Case No. 1,089.

Commissioners appointed by one of such divisions may maintain bill against trustees of common property for a division.—Bascom v. Lane, Case No. 1,089.

§ 2. Membership.
Preachers or members of the Methodist Episcopal Church who withdraw therefrom, either individually or with a body of others, lose all rights of property pertaining to them while in the church.—Smith v. Swormstedt, Case No. 13,112.

§ 3. Officers of church.
The vestry and wardens of the "Protestant Episcopal Church of Alexandria" *held* to have been the vestry of the Protestant Episcopal Church in the parish of Fairfax.—Mason v. Muncaster, Case No. 9,247.

§ 4. Property and pews.
An unincorporated religious association cannot hold property in its assumed name, nor can the directors and their successors in office hold it, but another may hold it by a conveyance in trust.—Goesele v. Bimeler, Case No. 5,503.

One taking an assignment of a pew in the Protestant Episcopal Church in St. John's parish, Washington, D. C., for a debt, is not personally liable to the vestry for taxes thereon.—Mauro v. St. John's Parish, Case No. 9,313.

REMAINDERS.

§ 1, Rights of remainder-man. § 2, Effect of renunciation of particular estate.

See, also, "Life Estates."

§ 1. Rights of remainder-man.
The issue of a female slave, born during the pendency of a particular estate, are property of the remainder-man.—Preston v. McGaughey, Case No. 11,397.

§ 2. Effect of renunciation of particular estate.
The renunciation or disclaimer of a life estate will not destroy subsequent remainders, but they immediately take effect and preserve contingent remainders.—Webster v. Gilman, Case No. 17,335.

REMAND.

Of cause on appeal or writ of error, see "Appeal and Error," § 40.
—— removed from state court, see "Removal of Causes," §§ 51–54.

REMEDY AT LAW.

Effect on jurisdiction of equity, see "Equity," §§ 11–14.

REMISSION.

Of forfeiture, see "Forfeitures, §§ 3, 4; "War," § 22.
Of penalties, see "Penalties," § 2.

REMITTITUR.

Of cause on appeal or writ of error, see "Appeal and Error," § 40.

REMOVAL.

From office, see "Executors and Administrators," § 7; "Receivers," § 8; "Sheriffs and Constables," § 10; "United States Marshals."
—— of assignee in bankruptcy, see "Bankruptcy," § 182.
—— of trustee, see "Trusts," § 15.
Of fixtures, see "Fixtures," § 4.
Of records, see "Records," § 5.

REMOVAL OF CAUSES.

I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL.

§ 1, In general. § 2, To what causes applicable. § 3, Restrictions by state statutes. § 4, Relative authority of state and federal courts. § 5, Effect of stipulation, waiver, etc. § 6, To what court cause is removable.

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY.

§ 7, In general. § 8, Acts done under revenue laws. § 9, Acts done under national authority. § 10, Cases arising under federal constitution or laws. § 11, Corporations.

III. CITIZENSHIP OR ALIENAGE OF PARTIES.

§ 12, Construction of statutes in general. § 13, What parties may remove in general. § 14, Suits by and against aliens. § 15, Corporations. § 16, Substituted or intervening parties. § 17, Several plaintiffs or defendants—In general. § 18, —— Nominal parties. § 19, —— Parties not served or not appearing. § 20, —— Separable controversies. § 21, At what time diversity must exist. § 22, Subject-matter.

IV. PREJUDICE, LOCAL INFLUENCE, OR DENIAL OF CIVIL RIGHTS.

§ 23, Prejudice and local influence. § 24, Denial of civil rights.

V. AMOUNT OR VALUE IN CONTROVERSY.

§ 25, In general. § 26, How determined.

VI. PROCEEDINGS TO PROCURE AND EFFECT OF REMOVAL.

(A) At What Time Removal may be Claimed.

§ 27, Time of entering appearance. § 28, Commencement of criminal prosecution. § 29, Before trial or hearing. § 30, Under act of March 3, 1875—Suits pending at passage of act. § 31, —— Before or at term at which cause could be first tried. § 32. —— Before trial. § 33, After reversal on appeal in general. § 34, After granting of new trial.

(B) Procedure.

§ 35, In general. § 36, Parties to application. § 37, Requisites of petition—In general. § 38, —— Averments as to citizenship, alienage, etc. § 39, —— Averments as to subject-matter. § 40, —— Signature and verification. § 41, —— Amendment. § 42, Affidavit. § 43, Bond. § 44, Copy of record. § 45, Certiorari, habeas corpus, etc., as auxiliary proceedings. § 46, Proceedings in state court upon removal.

(C) Effect of Removal.

§ 47, Attachment, injunction, etc. § 48, Costs. § 49, Contempt proceedings. § 50, Parties not served or appearing.

VII. REMAND OR DISMISSAL OF CAUSE.

§ 51, Grounds—Want of jurisdiction or cause not removable. § 52, —— Irregularities or defects in proceedings. § 53, Motion to dismiss or remand. § 54, Order.

VIII. PROCEEDINGS IN CAUSE AFTER REMOVAL.

§ 55, Jurisdiction. § 56, Rights, remedies, and defenses in general. § 57, Parties, appearance, etc. § 58, Procedure in general. § 59, Distinction between legal and equitable remedies. § 60, Pleading. § 61, Trial.

Change of venue or place of trial, see "Venue," § 2.
Removal from one federal court to another, see "Courts," § 91.
—— of offender to another district, see "Criminal Law," § 42.

I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL.

§ 1. In general.
A suit in a state court which falls within the description of suits removable into the federal circuit court may be removed, although it could not originally have been brought in the federal court, and this principle is not changed by Act March 3, 1875, § 5.—Warner v. Pennsylvania R. Co., Case No. 17,186.

Such cases only are liable to removal from the state to the circuit court as might have been brought before such court by original process.—Smith v. Rines, Case No. 13,100.

Act April 20, 1871, does not authorize removal in every case in which the United States courts would have original jurisdiction, but only in the circumstances specified.—Gaughan v. Northwestern Fertilizing Co., Case No. 5,272.

Under the constitution of the United States, causes may be removed to the federal courts from the state courts after as well as before judgment.—Murray v. Patrie, Case No. 9,967.

Act 1863, providing for the transfer of actions for personal trespass committed by virtue of military authority during the Civil war to the federal courts, is constitutional.—Clark v. Dick, Case No. 2,818.

§ 2. To what causes applicable.
A proceeding under the right of eminent domain to condemn land for a railroad is a suit of civil nature, and may be removed.—Warren v. Wisconsin Val. R. Co., Case No. 17,204.

Where an appeal from an appraisement of private lands taken by an incorporated company under the right of eminent domain assumes the shape of a suit docketed and pending as an action at law for the trial of the question of the value of the land, it is a suit of such a nature as may be removed.—Patterson v. Mississippi & R. R. Boom Co., Case No. 10,829.

A proceeding under an Ohio statute to compel an assignee for the benefit of creditors to allow a claim is a suit at law, within the removal act. —Claflin v. Robbins, Case No. 2,776.

A contest in regard to the distribution of a decedent's estate is a removable "controversy." March 3, 1875.—Craigie v. McArthur, Case No. 3,341.

A motion under 1 Wag. St. Mo. p. 291, § 13, for execution against a stockholder, is not removable to the federal court as a "suit at law or in equity." Act 1875, § 2.—Webber v. Humphreys, Case No. 17,326.

A proceeding by mandamus to compel defendant corporation to register transfers of certificates of stock held by plaintiff is a "suit of a civil nature at law." Act March 3, 1875.—Washington Imp. Co. v. Kansas Pac. Ry. Co., Case No. 17,242.

§ 3. Restrictions by state statutes.
A state statute prohibiting nonresident corporations from removing suits into the federal courts having been declared unconstitutional, a provision requiring revocation of a license of a corporation applying for a removal falls with it, and the federal court may restrain a forfeiture thereunder.—Hartford Fire Ins. Co. v. Doyle, Case No. 6,160.

§ 4. Relative authority of state and federal courts.
The federal, and not the state, court has the power to determine whether the case is a proper one for removal under the acts of congress.—Taylor v. Rockefeller, Case No. 13,802; Cobb v. Globe Mut. Life Ins. Co., Id. 2,921.

The federal court must determine for itself the question of its jurisdiction; the allowance of the petition for removal by the state court cannot confer jurisdiction.—Field v. Lownsdale, Case No. 4,769.

The right of removal under any act of congress is not dependent upon the volition, or action, or nonaction of the state court.—Fisk v. Union Pac. R. Co., Case No. 4,827; Clippinger v. Missouri Val. Life Ins. Co., Id. 2,901.

The state court has no power to delay transfer of a cause or review the order of removal.—Akerly v. Vilas, Case No. 119.

§ 5. Effect of stipulation, waiver, etc.
A stipulation for removal will not confer jurisdiction unless the record shows the facts necessary to a removal under the acts of congress.—Kingsbury v. Kingsbury, Case No. 7,817.

A minor is incapable of consenting to a removal either by his guardian ad litem or any other person.—Kingsbury v. Kingsbury, Case No. 7,817.

An agreement of a foreign insurance company, filed with a state officer, waiving the right to remove causes against it to the federal courts, is absolutely void.—Rowland v. Empire State Life Ins. Co., Case No. 12,097.

A written stipulation of submission of a pending cause to the state supreme court after the admission of Colorado *held* a waiver of the

right to remove the cause to the federal court. Act June 26, 1876.—Gaffney v. Gillette, Case No. 5,168.

A written stipulation of submission of a pending cause *held* a waiver of the right of removal after reversal and return for a new trial.—Gaffney v. Gillette, Case No. 5,168.

A person brought into court by order to interplead will not be regarded as voluntarily before the court, and waiving his right of removal.—Healy v. Prevost, Case No. 6,297.

A consent to a reference at the time a cause is called for trial, and might, in the ordinary course, have been tried, *held* a waiver of the right of removal on the ground of prejudice or local influence.—Hanover Nat. Bank v. Smith, Case No. 6,035.

The right to removal is waived or lost where the cause has been remanded after it has been once removed, for failure, by neglect of defendant, to perfect the removal.—McLean v. St. Paul & C. Ry. Co., Case No. 8,893.

§ 6. To what court cause is removable. Cause must be removed to federal court held at place where action was brought in the state court or place convenient.—Cobb v. Globe Mut. Life Ins. Co., Case No. 2,921.

Under the act of 1875, the circuit court, to which the cause is removable, is that for the district within whose territorial limits the cause is pending in the state court.—Knowlton v. Congress & Empire Spring Co., Case No. 7,902.

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY.

§ 7. In general. Under Acts March 2, 1833, March 3, 1863, and July 27, 1868, the right of removal is made to depend upon the subject-matter.—Fisk v. Union Pac. R. Co., Case No. 4,827.

Under these acts, the entire suit is removed if any part of it is removed.—Fisk v. Union Pac. R. Co., Case No. 4,827.

§ 8. Acts done under revenue laws. Act March 2, 1833, § 3, providing for the removal of prosecution in a state court against an officer of the United States for acts done under color of the revenue laws is not applicable to criminal indictments.—Ex parte Carson, Case No. 2,459.

The act of 1861, imposing direct taxes upon the states, is a revenue law, and cases arising under it are subject to removal under Act March 2, 1833.—Peyton v. Bliss, Case No. 11,055.

An action for slanderous words spoken by a United States collector of customs, while in the discharge of his official duty, and explanatory of it, is removable. Act March 2, 1833.—Buttner v. Miller, Case No. 2,254.

A suit against the assistant treasurer of the United States to recover the value of certain United States bonds deposited with him by plaintiff and retained by him under instructions from the treasury department, on the ground that they were unlawfully put into circulation as against the party to whom they were issued, cannot be removed under Act March 2, 1833, § 3.—Victor v. Cisco, Case No. 16,934.

A suit in a state court by an informer against a collector for the proceeds of goods condemned may be removed by certiorari into the federal circuit court. Act March 2, 1833, § 3.—Vanzandt v. Maxwell, Case No. 16,884.

The post-office laws of the United States are "revenue laws," within the meaning of Act March 2, 1833, § 3, providing for removal of a suit brought against a person for an act done under the revenue laws, or under color thereof.—Warner v. Fowler, Case No. 17,182.

An action against a postmaster for a wrongful refusal to deliver a letter to plaintiff is removable under such act.—Warner v. Fowler, Case No. 17,182.

The intention of the removal act of 1866 is to protect revenue officers and agents against suits in the state courts.—Benchley v. Gilbert, Case No. 1,291.

An action against a commissioner to recover money illegally exacted as fees in a criminal proceeding cannot be removed by certiorari, under Act July 13, 1866, § 67.—Benchley v. Gilbert, Case No. 1,291.

Suits against federal revenue officers on account of acts done under color of their offices, may be removed from state courts under Rev. St. § 643.—Venable v. Richards, Case No. 16,913.

Rev. St. § 643, is applicable to an indictment of a revenue officer in a state court for an act done under color of the United States revenue law, but charged to be in violation of the criminal law of the state.—Findley v. Satterfield, Case No. 4,792.

Act March 3, 1875, c. 137, § 10, does not repeal Rev. St. § 643, providing for the removal of suits from the state to the national courts in certain cases.—Venable v. Richards, Case No. 16,913.

Rev. St. § 643, providing for removal to the federal court of prosecutions against federal revenue officers, *held* constitutional.—Findley v. Satterfield, Case No. 4,792.

§ 9. Acts done under national authority. In a cause removed under the act of March 3, 1863, because it involved an act done under the authority of the president of the United States during the Rebellion, *held*, that the act of March 2, 1867, legalizing acts done by the president's authority, and providing that no person shall be held to answer for such acts in any court, did not deprive the court of jurisdiction so as to require a remand.—Lamar v. Dana, Case No. 8,005.

§ 10. Cases arising under federal constitution or laws. Original jurisdiction may be conferred by congress upon the federal circuit courts by the removal into them from the state courts of cases arising under the constitution and laws of the United States and treaties.—Murray v. Patrie, Case No. 9,967.

Under Act March 3, 1875, § 2, only suits involving rights depending upon a disputed construction of the constitution and laws of the United States are removable.—Trafton v. Nougues, Case No. 14,134.

When a defense depends wholly on the construction of the constitution of the United States and acts of congress, the courts of the United States have jurisdiction of the subject-matter, without regard to the citizenship of the parties.—Hodgson v. Millward, Case No. 6,568.

A suit to determine the right to mining claims is not removable under Act March 3, 1875, § 2, where the only questions to be litigated are as to the local laws, rules, regulations, and customs, and the fact of conformance thereto.—Trafton v. Nougues, Case No. 14,134.

A suit in the state courts to enforce a vendor's lien, where the defense is that the land was sold to defendant by the assignee in bankruptcy of the maker of the notes constituting the lien, is removable as involving the construction of federal law.—Connor v. Scott, Case No. 3,119.

An action of trespass is removable where defendant justifies the alleged trespass under the authority of a court and of the laws of the

United States.—Houser v. Clayton, Case No. 6,739.

The Union Pacific Railroad Company, when sued in a state court for negligence, may remove the cause under a petition stating that it has a defense arising under its charter.—Turton v. Union Pac. R. Co., Case No. 14,273.

A claim of title to land under a sale by a marshal upon fi. fa. issued from a federal court is not good ground of removal.—Gay v. Lyons, Case No. 5,281.

Such a case cannot be removed unless the validity or effect of the judgment, or the proceedings and sale under which the plaintiff claims title, is brought in question.—Gay v. Lyons, Case No. 5,281.

An action by the collector of internal revenue against the deputy collector on his official bond may be removed from the state court into the federal court, under Act March 3, 1875. —Orner v. Saunders, Case No. 10,584.

Where the construction of a law of congress is involved, it does not alter the case that there are other questions which do not depend upon the laws of congress.—Connor v. Scott, Case No. 3,119.

The fact that questions may arise, in the course of the litigation, besides those under the acts of congress, and which depend upon general principles of law, cannot withdraw the cause from the jurisdiction of the federal courts. —Fisk v. Union Pac. R. Co., Case No. 4,828.

Nor can the suit be withdrawn from such jurisdiction, by joining defendants who are not within the limitation prescribed by the statute with those who are within such limitation.—Fisk v. Union Pac. R. Co., Case No. 4,828.

§ 11. Corporations.

The act of July 27, 1868, in relation to removal of suits against corporations, is constitutional.—Fisk v. Union Pac. R. Co., Case No. 4,827.

A member of a corporation, sued for a debt or liability of the corporation, may have the suit removed under Act July 27, 1868, § 2.—Gard v. Durant, Case No. 5,216.

But a member sued for alleged misconduct as an officer of the corporation cannot have the suit removed under such section.—Gard v. Durant, Case No. 5,216.

The fact that a state is plaintiff in the action will not affect the right of removal under Rev. St. § 640.—Texas v. Texas & P. R. Co., Case No. 13,848.

The jurisdiction of the federal courts over national banks under Rev. St. § 629, cl. 10, is only concurrent with that of the state courts, and a suit brought against such bank in a state court is not subject to removal thereunder.—Pettilon v. Noble, Case No. 11,044.

The fact that one of the parties to a suit is a national bank is no ground for removal from a state to the federal court.—Wilder v. Union Nat. Bank, Case No. 17,651.

Receivers of national banks have no right as such to have cases against them removed.—Bird v. Cockrem, Case No. 1,429.

The right of one of the class of corporations mentioned in Rev. St. § 640, when sued in a state court to remove the cause, does not depend upon the citizenship of the parties.—Texas v. Texas & P. R. Co., Case No. 13,848.

A suit commenced in a state court against a corporation of a foreign country cannot be removed by defendant under Act July 27, 1868, § 2.—Jones v. Oceanic Steam Nav. Co., Case No. 7,485.

Act July 27, 1868, § 2, construed, as to what suits are removable under it, and at whose instance, and what is the mode of removal.—Fisk v. Union Pac. R. Co., Case No. 4,827.

III. CITIZENSHIP OR ALIENAGE OF PARTIES.

§ 12. Construction of statutes in general.

Under Acts Sept. 24, 1789, § 12, July 27, 1866, and March 2, 1867, the right of removal is made to depend upon citizenship or alienage.—Fisk v. Union Pac. R. Co., Case No. 4,827.

Act March 2, 1867, only adds another cause for removal, and does not repeal the act of 1866.—Fields v. Lamb, Case No. 4,775.

Act March 3, 1875, invests the federal courts with jurisdiction, arising from diverse citizenship of litigant parties, coextensive with the judicial power conferred upon the general government by the constitution.—Girardey v. Moore, Case No. 5,462.

Act March 3, 1875, is inapplicable to causes brought in territorial courts subsequently made state courts by an enabling act.—Ames v. Colorado Cent. R. Co., Case No. 325.

§ 13. What parties may remove in general.

A citizen of the District of Columbia is not a citizen of a state, within the removal laws.—Cissel v. McDonald, Case No. 2,729.

Either plaintiff or defendant has the right of removal under Act March 2, 1867, which may be exercised at any time in the course of the litigation prior to final hearing or trial.—Johnson v. Monell, Case No. 7,399.

A defendant, though a citizen of the state where the suit is brought, may remove the case from the state to the federal court under Act March 3, 1875.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

Where the assignee of a contract made between citizens of the same state is a citizen of another state, a suit against defendant in the state of his residence may be removed under Act March 3, 1875.—Waterbury v. Laredo, Case No. 17,252.

An action is removable, though diverse citizenship does not appear on the face of the writ, if it appears on the petition for removal. —Ladd v. Tudor, Case No. 7,975.

§ 14. Suits by and against aliens.

An alien, complying with the provisions of the judiciary act of 1789, cannot be deprived of his right of removal under section 12.—Brownell v. Gordon, Case No. 2,039.

A corporation created by the laws of a foreign country is an "alien" (Act 1789, § 12), and when sued by a citizen may remove the cause. —Terry v. Imperial Fire Ins. Co., Case No. 13,838.

A citizen of the state sued in the state court by a citizen of a foreign country may remove the cause under Act 1875, § 2, cl. 1.—Deakin v. Lea, Case No. 3,695.

An unnaturalized foreigner may remove a cause as such, though he has long resided in a state, and, by permission of its laws and constitution, has voted at the state elections. Act March 3, 1875.—Lanz v. Randall, Case No. 8,080.

§ 15. Corporations.

Corporations are within the act of 1867, in respect to the removal of causes.—Farmers' Loan & Trust Co. v. Maquillan, Case No. 4,668.

A corporation created under the laws of one state does not become a citizen of another state by complying with its law requiring the filing of a consent to service of process upon its agent within the state.—Lee v. Ætna Ins. Co., Case No. 8,181.

Code Va. §§ 19-36, requiring foreign insurance companies doing business in the state to keep an agent there to receive service of legal process, does not prevent such company removing a cause to the federal court.—Owen v. New York Life Ins. Co., Case No. 10,631.

A foreign corporation, by having an office and transacting business within the state of New York, does not lose the privilege of having all its members regarded as citizens of the state in which it was incorporated. Act N. Y. April 10, 1855.—Hatch v. Chicago, R. I. & P. R. Co., Case No. 6,204.

A foreign corporation against which jurisdiction is obtained by attachment of its property under a state law may remove the case, although no suit could have been commenced in the federal court by original process against it. —Bliven v. New England Screw Co., Case No. 1,550; Barney v. Globe Bank, Id. 1,031.

An action against a foreign corporation in the state court is effectually commenced by the service of summons upon its agent within the state, where it has filed a consent to such service as required by the state law.—Lee v. Ætna Ins. Co., Case No. 8,181. But see Leonard v. Lycoming Fire Ins. Co., Case No. 8,258.

Such action, where the amount in dispute is within the jurisdictional limit, may be removed to the federal court, and will not be remanded for want of jurisdiction.—Lee v. Ætna Ins. Co., Case No. 8,181.

§ 16. Substituted or intervening parties.

Nonresident attachment creditors substituted under a state law, for the sheriff in replevin, may remove the cause.—Beecher v. Gillett, Case No. 1,225.

In ejectment against a tenant, a nonresident owner, admitted as a defendant, is not entitled to a removal.—Beardsley v. Torrey, Case No. 1,190.

Defendants cannot prevent a removal by calling in warranty parties who are citizens of the same state with plaintiffs in a cause pending in a Louisiana state court, though under the local law the trial of the call in warranty cannot be separated from the trial of the main issue.—Ellerman v. New Orleans, etc., R. Co., Case No. 4,382.

§ 17. Several plaintiffs or defendants—In general.

Act 1789, c. 20, § 12, in terms applying only to a single defendant, embraces cases where several aliens or several citizens of another state are jointly sued as defendants.—Smith v. Rines, Case No. 13,100.

In order to remove a cause under Act 1789, c. 20, § 12, all the defendants must join in the petition.—Smith v. Rines, Case No. 13,100.

To authorize a removal on the ground of diverse citizenship under Act Sept. 24, 1789, § 12, all the plaintiffs must be citizens of the state in which the suit is brought, and all the defendants must be citizens of some other state or states.—Hubbard v. Northern R. Co., Case No. 6,818.

In a suit commenced in the state court of Vermont by two plaintiffs, one was a citizen of that state, and the other of New Hampshire, while defendant was a citizen of New York. *Held*, that the cause was not removable under Act 1789, § 12.—Hubbard v. Northern R. Co., Case No. 6,818.

To remove a case under Judiciary Act 1789, § 12, each defendant must be either an alien or a citizen of a state other than that of the state to which plaintiff belongs.—Ex parte Girard, Case No. 5,457.

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. Act 1789, § 12.—Wilson v. Blodget, Case No. 17,792.

A suit in which citizens of the state are joined as defendants with a foreign corporation and nonresidents cannot be removed, under Act Sept. 24, 1789, § 12, unless the citizens of the state are merely nominal parties.—Hatch v. Chicago, R. I. & P. R. Co., Case No. 6,204.

Under Act July 27, 1866, one of several defendants cannot remove the suit unless the controversy is separable as to him.—Bixby v. Couse, Case No. 1,451.

Under such act, all the nonresident defendants need not join in a petition for removal where a final determination can be had between plaintiff and the petitioning defendants without the presence of the others.—Lewis v. White, Case No. 8,335.

The fact that plaintiff and garnishees are citizens of the same state will not prevent a removal under Act March 2, 1867, garnishees not being parties to the suit.—Cook v. Whitney, Case No. 3,166.

All defendants who are not merely nominal parties must be citizens of another state or other states, and must unite in the petition to remove the cause, under Act March 2, 1867.—Bixby v. Couse, Case No. 1,451.

Where, in a suit by a nonresident plaintiff against a citizen of a state where the suit is brought and a citizen of another state, the latter voluntarily appears, plaintiff may obtain a removal of the cause as to all of the defendants under Act March 2, 1867.—Sands v. Smith, Case No. 12,305.

To entitle defendants to remove a case brought by a firm under Act March 2, 1867, it must appear that all the plaintiffs were citizens of a different state from defendant's state.—Case v. Douglas, Case No. 2,491.

If any person who is a necessary plaintiff and any one who is a necessary defendant are citizens of the same state, there is no right of removal, under Act March 3, 1875.—Van Brunt v. Corbin, Case No. 16,832; Tyler v. Hagerty, Id. 14,308; In re Frazer, Id. 5,068; Petterson v. Chapman, Id. 11,042.

In such case all the necessary parties on one side must unite in the petition.—Chicago, St. L. & N. O. R. Co. v. McComb, Id. 2,670; National Union Bank v. Dodge, Id. 10,053. CONTRA, see Stapleton v. Reynolds, Case No. 13,303.

If some of plaintiffs and some of defendants are citizens of the same state, the removal must be sought by all the plaintiffs or all the defendants under Act 1875.—Girardey v. Moore, Case No. 5,462.

But if all the plaintiffs on the one hand, and all the defendants on the other, are citizens of different states, then any one or more of either may remove the cause.—Girardey v. Moore, Case No. 5,462.

The whole suit must be removed, or no removal can take place, under Act 1875.—Girardey v. Moore, Case No. 5,462.

Foreign citizens, where they do not constitute the entire plaintiff or defendant, cannot remove a suit under Act March 3, 1875.—Hervey v. Illinois Midland Ry. Co., Case No. 6,434.

The requisite jurisdictional citizenship must exist as to each individual plaintiff in an action against an alien, to authorize a removal under Act March 3, 1875, § 2.—Sawyer v. Switzerland Marine Ins. Co., Case No. 12,408.

A bill to remove a cloud from plaintiff's title, against a trustee in a deed of trust, to secure a debt, the creditor secured and the person in possession who executed such deed, whose title is attacked, cannot be removed where the latter is a citizen of the same state with plaintiff.

Act March 3, 1875.—Steinkuhl v. York, Case No. 13,356.

§ 18. —— Nominal parties.

Where it is shown that the controversy is wholly between citizens of different states, and can be fully determined as between them, the cause is removable, though some of the formal or nominal plaintiffs or defendants may be citizens of the same state.—Taylor v. Rockefeller, Case No. 13,802; Chicago, St. L. & N. O. R. Co. v. McComb, Id. 2,670; Hatch v. Chicago, R. I. & P. R. Co., Id. 6,204; Hervey v. Illinois Midland Ry. Co., Id. 6,434; Edgerton v. Gilpin, Id. 4,280.

The right of removal cannot be defeated by the joinder as defendants of citizens of the same state with plaintiff against whom no relief is prayed.—Arapahoe County v. Kansas Pac. Ry. Co., Case No. 502.

Where the real controversy is between a city and one of its citizens, a citizen of another state interested cannot remove the cause.—Chicago v. Gage, Case No. 2,664.

The joinder of co-defendants in the petition is not necessary where the controversy is wholly between petitioner and complainant.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

Officers of a corporation, joined as defendants with the corporation, against whom, in their individual capacities, no relief is claimed, are merely nominal parties.—Hatch v. Chicago, R. I. & P. R. Co., Case No. 6,204.

A bill by a citizen of Tennessee to cancel certain policies and a loan against an insurance company of Missouri is removable, though the trustee was a citizen of the same state with complainant.—Chester v. Wellford, Case No. 2,662.

§ 19. —— Parties not served or not appearing.

The alien defendant may remove a case where the other defendants are not served and do not appear.—Ex parte Girard, Case No. 5,457.

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.—Wormser v. Dahlman, Case No. 18,048.

§ 20. —— Separable controversies.

A suit against tenants in common or persons claiming to be such, concerning the title to or possession of land, is divisible and removable by either defendant under Rev. St. § 639.—Goodenough v. Warren, Case No. 5,534.

As to the status of the tenant as a party, and the right of the landlord to appear and defend and have a severance, under Act 1789.—Ex parte Turner, Case No. 14,245.

The substantial controversy in a suit to quiet title brought against resident grantors and nonresident grantee of land *held* to be wholly between plaintiff and the grantee, and wholly removable, under Rev. St. § 639.—Goodenough v. Warren, Case No. 5,534.

Where there is a separable controversy, each defendant has the right of removal without reference to the status of his co-defendant, under Act July 27, 1866.—Field v. Lownsdale, Case No. 4,769; Fields v. Lamb, Id. 4,775; Allen v. Ryerson, Id. 235.

A suit to quiet title to real property against several defendants, who claim to be the owners of the same as tenants in common, "is one in which there can be a final determination of the controversy," as to each defendant, without the presence of the other, under Act July 27, 1866.—Field v. Lownsdale, Case No. 4,769.

One of several defendants sued as co-partners may have the cause removed, so far as concerns himself, under Act July 27, 1866.—McGinnity v. White, Case No. 8,802.

Act March 3, 1875, does not repeal that part of Act July 27, 1866, which authorizes removal of separable controversies.—Girardey v. Moore, Case No. 5,462.

A suit may be removed under Act March 2, 1867, by a defendant who is a citizen of a different state, although there be other defendants who are citizens of the state in which it is brought.—Florence Sewing Mach. Co. v. Grover & Baker Sewing Mach. Co., Case No. 4,883.

The case must be so removed that the controversy can be fully determined under Act March 3, 1875.—Hervey v. Illinois Midland Ry. Co., Case No. 6,434.

A cause cannot be removed under Act March 3, 1875, unless the controversy is so completely one between residents or citizens of different states that its termination will settle the whole suit.—Carraher v. Brennan, Case No. 2,441.

Whenever the controversy is between citizens of different states, the cause is removable, though some of the persons on opposite sides may be citizens of the same state. Act March 3, 1875.—Girardey v. Moore, Case No. 5,462.

A portion of a case cannot be removed under such act because the party interested in such portion is a citizen of another state from that of plaintiff.—Carraher v. Brennan, Case No. 2,441.

Where the landlord or real owner appears as a party, being called in by the tenant in trespass to try title in Texas, the controversy is one wholly between him and the plaintiff, and, if he is a citizen of another state, he may remove the cause. Act March 3, 1875.—Greene v. Klingler, Case No. 5,767.

In an action on the mortgage note of a resident corporation, *held* that a controversy between plaintiff and a nonresident defendant, who was a mortgagee of the company, and had purchased its entire property, was merely incidental to the main controversy, and the cause was not removable under Act March 3, 1875.—First Nat. Bank v. King Wrought Iron Bridge Co., Case No. 4,803.

A suit to foreclose a mortgage is not removable by a nonresident junior incumbrancer party defendant, where the other parties are citizens of the same state, and the only question is as to the validity of the mortgage and the amount due on it. Rev. St. § 639; Act March 2, 1875, § 2.—Donohoe v. Mariposa Land & Min. Co., Case No. 3,989.

On a bill of foreclosure filed by a bondholder of a railroad company, the cause may be removed under Act 1875, on petition of the company, its officers, and the mortgage trustees, without joining the co-defendants.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

The last clause of section 2 of the act of 1875, relating to separable controversies, authorizes removal only in suits between citizens of different states, and does not apply to foreigners.—Deakin v. Lea, Case No. 3,695.

Where there is a controversy between citizens of different states, the removal takes the whole suit, notwithstanding there were other controversies in it.—Farmers' Loan & Trust Co. v. Chicago, P. & S. W. R. Co., Case No. 4,665.

§ 21. At what time diversity must exist.

The right of removal under Act Sept. 24, 1789, § 12, depends upon the facts as they exist when the suit is commenced.—Roberts v. Nelson, Case No. 11,907.

It is sufficient, under Acts March 2, 1867, and March 3, 1875, if the parties are citizens of different states when the petition for removal is filed, though not such when the suit was

brought.—Jackson v. Mutual Life Ins. Co., Case No. 7,141; Cook v. Whitney, Id. 3,166; McGinnity v. White, Id. 8,802; McLean v. St. Paul & C. Ry. Co., Id. 8,892; Wehl v. Wald, Id. 17,356. CONTRA as to Act 1875, see Rawle v. Phelps, Case No. 11,588.

A voluntary change of residence made after suit brought, if real, does not affect the right of removal, under Act 1867, on the ground of diversity of citizenship, caused by such change, although made with intent to give jurisdiction. —Johnson v. Monell, Case No. 7,399.

The fact that plaintiff, who was an alien when the suit was brought and petition for removal filed, has since become a citizen, will not prevent the removal under Act 1875.—Houser v. Clayton, Case No. 6,739.

The right of removal under the act of March 3, 1875, is to be determined by the state of affairs as it appeared at the time of filing the complaint, and is not affected by an admission in the answers.—Latham v. Barney, Case No. 8,102.

Where, in a suit to recover money, defendant pays the same into court, and a third person, claiming the sum, is made defendant, and a new complaint filed, the suit is to be regarded as having been commenced when such substitution is made.—Wehl v. Wald, Case No. 17,356.

§ 22. Subject-matter.

A proceeding by petition of a citizen of the state against a citizen of another state to restrain the execution of a judgment obtained in the state court by the latter against the former is removable (Act March 3, 1875), though federal courts are prohibited by Rev. St. § 720, from granting an injunction to stay proceedings in a state court.—Watson v. Bondurant, Case No. 17,278.

A bill to reform a policy of insurance is an original suit, though an action at law was pending on the policy.—Charter Oak Fire Ins. Co. v. Star Ins. Co., Case No. 2,623.

A petition as an occupying claimant after judgment for plaintiff in ejectment under the statutes of Iowa is not removable, being a mere dependence on the original suit.—Chapman v. Barger, Case No. 2,603.

A petition by persons to recover compensation for services as counsel in procuring a decree and settlement of claim on a creditors' bill *held* to be an independent suit in equity, and removable, under Act March 3, 1875.—Pettus v. Georgia Railroad & Banking Co., Case No. 11,048.

A suit by railroad bondholders under a deed of trust which is paramount to the rights of stockholders may be removed to the federal court, notwithstanding the existence of a prior suit in the state court by the stockholders, and possession of the road taken therein.—Scott v. Clinton & S. R. Co., Case No. 12,527.

If a case is within Act 1789, § 12, the fact that it is connected with and grows out of matters litigated in the state court will not prevent its removal.—Hatch v. Preston, Case No. 6,208.

A cross bill by a nonresident defendant, merely setting up matters put in issue by the original bill and answers, cannot change the character of the case, or affect the question of jurisdiction.—Donohoe v. Mariposa Land & Min. Co., Case No. 3,989.

Collateral issues connected with the res in the state court do not destroy the right of removal, provided the parties are within the statute.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

The existence of judgment creditors and the fact that one of them has filed a cross bill does not affect the right of removal by defendant of a suit by a railroad bondholder to foreclose a mortgage.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

IV. PREJUDICE, LOCAL INFLUENCE, OR DENIAL OF CIVIL RIGHTS.

§ 23. Prejudice and local influence.

Act Feb. 5, 1867, authorizing removal for local prejudice, overrides section 11 of the judiciary act of 1789 as to suits by assignees.—Barclay v. Levee Com'rs, Case No. 977.

Rev. St. § 639, subd. 2, 3, giving the right of removal on the ground of prejudice or local influence, is not repealed by Act March 3, 1875. —Cooke v. Ford, Case No. 3,173; New Jersey Zinc Co. v. Trotter, Id. 10,167; Gurnee v. Brunswick, Id. 5,872.

A colored citizen, when sued by another citizen of the same state, cannot remove the cause because of local influence or prejudice.—Fowlkes v. Fowlkes, Case No. 5,005.

A criminal prosecution against a negro cannot be removed from the state to the federal court, on the ground of local prejudice against his race and color, preventing a fair trial.—Texas v. Gaines, Case No. 13,847.

The right of removal must be determined on the case made by the complaint, unaided by the answers; hence disclaimer by defendants who are residents of the same state with plaintiff will not enable a nonresident defendant to remove.—New Jersey Zinc Co. v. Trotter, Case No. 10,167.

Disclaimer by defendants residing in the same state with plaintiff will not enable a nonresident defendant to remove on the ground of local prejudice; for all the defendants must be nonresidents and must join in the petition.—New Jersey Zinc Co. v. Trotter, Case No. 10,167.

§ 24. Denial of civil rights.

It is only when some state law, statute, ordinance, regulation, or custom hostile to the rights of the petitioner, and their enforcement, is alleged to exist, that the petitioner is entitled to a removal under Rev. St. § 641.—Ex parte Wells, Case No. 17,386.

An allegation that a state law for the selection of jurors, which is on its face fair, will be so administered as to secure a jury inimical to petitioner, and that there is a general prejudice against him in the minds of the court, jurors, officers, and people, is not sufficient. Rev. St. § 641.—Ex parte Wells, Case No. 17,386.

V. AMOUNT OR VALUE IN CONTROVERSY.

§ 25. In general.

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.—Wood v. Matthews, Case No. 17,955.

Where it appears that the amount demanded, with interest thereon, exceeds the sum of $500, exclusive of costs, the case is a proper one for removal.—Roberts v. Nelson, Case No. 11,907.

Under the act of 1875, a suit involving over $500 is removable on the ground of diverse citizenship alone.—Low v. Wayne County Sav. Bank, Case No. 8,562.

To justify removal, it must appear that over $500 is in dispute, but this may appear either by the writ or the declaration; and if there is doubt, from different counts claiming different sums, the court may inquire into it by evidence. —Ladd v. Tudor, Case No. 7,975.

§ 26. How determined.

Where a judgment in one suit would conclusively settle the controversy in others between the same parties, they are to be considered together in determining the jurisdictional amount.—Anderson v. Gerding, Case No. 356.

Where the sum in dispute between plaintiff and defendant in an attachment case is within the jurisdiction of the federal circuit court, the fact that the claims of other creditors are less than $500 will not affect such jurisdiction.—Second Nat. Bank v. New York Silk Mfg. Co., Case No. 12,601a.

It is sufficient if the matter in dispute exceeds $500, besides costs, at the time when the right to the removal accrues and is applied for. Act July 27, 1866.—McGinnity v. White, Case No. 8,802.

The right of removal cannot be taken away by release of damages bringing the matter in dispute below $500.—Ladd v. Tudor, Case No. 7,975.

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. —Wright v. Wells, Case No. 18,101.

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 controversy exceeds $500; and plaintiff is not entitled to a remand by afterwards filing a complaint stating the amount in dispute at less than $500.—Zinkeisen v. Hufschmidt, Case No. 18,214.

The jurisdiction of the federal court, once attached, cannot be devested by a reduction by the declaration filed in such court of the amount of the claim below the jurisdictional amount.—Roberts v. Nelson, Case No. 11,907.

VI. PROCEEDINGS TO PROCURE, AND EFFECT OF REMOVAL.

(A) AT WHAT TIME REMOVAL MAY BE CLAIMED.

§ 27. Time of entering appearance.

A petition for a removal under the judiciary act of 1789 cannot be entered by defendant later than the time of entering his appearance.—Kingsbury v. Kingsbury, Case No. 7,817; Sweeney v. Coffin, Id. 13,686.

A state court cannot cause an appearance to be entered nunc pro tunc, so as to entertain a motion for removal.—Ward v. Arredondo, Case No. 17,148.

The state court cannot agree to consider the petition to have been filed as of a preceding term, when an appearance was entered nunc pro tunc.—Gibson v. Johnson, Case No. 5,397.

Where there are several defendants entitled on appearance to remove a cause, some of whom have appeared and others not, those who have appeared cannot alone remove the cause where the judgment or decree must be joined. —Ward v. Arredondo, Case No. 17,148.

Defendants can remove the cause or appear in the federal court at different times, where their appearance is entered at different times in the state court, but an original appearance cannot be entered in the federal court.—Ward v. Arredondo, Case No. 17,148.

Rev. St. § 639, subd. 1, under which the petition must be filed at the time defendant entered his appearance in the state court, was repealed and superseded by Act March 3, 1875.—La Mothe Mfg. Co. v. National Tube Works Co., Case No. 8,033.

§ 28. Commencement of criminal prosecution.

Under Rev. St. § 643, the prosecution is not commenced until the finding of an indictment.—Georgia v. O'Grady, Case No. 5,352.

A criminal prosecution is commenced, within the meaning of Act March 3, 1863, c. 81, § 5, as soon as a warrant has been issued; and it is then removable.—Pennsylvania v. Artman, Case No. 10,952.

§ 29. Before trial or hearing.

Rev. St. § 639, subd. 3, providing for the removal of causes between citizens of different states on the filing of a petition at any time before trial or final hearing on making an affidavit of prejudice or local influence, was not repealed by the act of March 3, 1875.—Cooke v. Ford, Case No. 3,173; Dennis v. Alachua County, Id. 3,791; Sims v. Sims, Id. 12,894.

A suit by or against a citizen of another state may be removed by petition filed at any time before trial or final hearing, under Rev. St. § 639, subd. 3, on making an affidavit of prejudice or local influence, notwithstanding Act March 3, 1875.—Cooke v. Ford, Case No. 3,173; Dennis v. Alachua County, Id. 3,791.

Where, under the state statutes, its courts can act only in term, a cause referred to a referee for trial in vacation cannot be removed under Rev. St. § 639, subd. 3, by the filing of a petition, affidavit, and bond in vacation.—Scott v. Otis, Case No. 12,543.

A case cannot be removed after final judgment in the court of original jurisdiction where it is brought, though the party is entitled on appeal to a trial de novo. Act March 2, 1867.—Brice v. Somers, Case No. 1,856.

A suit in equity cannot be removed when pending in an appellate tribunal.—Waggener v. Cheek, Case No. 17,035.

§ 30. Under act of March 3, 1875—Suits pending at passage of act.

In determining at what term the cause could first be tried, under the act of 1875, a term prior to the passage of the law is not to be considered.—Merchants' & Manufacturers' Nat. Bank v. Wheeler, Case No. 9,439; Baker v. Peterson, Id. 776.

A cause may be removed under Act March 3, 1875, § 3, pending a new trial, though the same was granted before the act was passed.—Andrews' Ex'rs v. Garett, Case No. 375; Crane v. Reeder, Id. 3,356.

After a reversal on an appeal pending when Act March 3, 1875, was passed, the cause is removable at the first term of the lower court at which a new trial could be had after filing the remittitur.—Hoadley v. San Francisco, Case No. 6,544.

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.—Young v. Andes Ins. Co., Case No. 18,151.

§ 31. —— Before or at term at which cause could be first tried.

A cause may be removed before answer, on the petition of defendants brought in on order of interpleader.—Hodson v. Lake Shore & M. R. Co., Case No. 6,571a.

The petition is in time if filed before or at the term at which the cause "could be tried, and before the trial thereof."—McLean v. St. Paul & C. Ry. Co., Case No. 8,893.

No citizen of a state in which a suit is commenced can remove it except by filing a petition either before or at the term at which it might first be tried.—Cooke v. Ford, Case No. 3,173; Knowlton v. Congress & Empire Spring

Co., Id. 7,902; Wilcox & Gibbs Sewing Mach. Co. v. Follett, Id. 17,643.

Application must be made at or before term in which cause could have been finally heard. —Ames v. Colorado Cent. R. Co., Case No. 325.

The term at which a cause could be first tried is the term at which the issues are first made up, where the party applying for a removal has not been guilty of negligence.—Scott v. Clinton & S. R. Co., Case No. 12,527.

Application must be made at or before the first term at which the cause may be tried, although the court and parties may not be ready to try it.—Gurnee v. Brunswick, Case No. 5,872.

After a case regularly on the calendar for trial goes over the term, though by consent of the parties, it is not thereafter removable.—Stough v. Hatch, Case No. 13,499.

The mere fact that a cause is ready for the ex parte execution of a writ of inquiry by plaintiff after an office judgment is not equivalent to its being ready for trial on issues joined.—Hunter v. Royal Canadian Ins. Co., Case No. 6,909.

The fact that the cause is not actually tried at the first term at which it is at issue and legally triable, because the parties failed to put it upon the trial list, does not preserve the right of removal until a subsequent term.—Huddy v. Havens, Case No. 6,826.

Lapse of terms, while a reply is wanting to complete the issues, does not bar removal by the party not in default.—Michigan Central R. Co. v. Andes Ins. Co., Case No. 9,526.

Causes in Iowa being triable by law at the first term after service of process, such term limits the time for removal, though issue is not then formed.—Atlee v. Potter, Case No. 636.

Under the Code of Iowa, equity suits are not triable at the appearance term, and such suits may be removed to the federal circuit court at the second term.—Palmer v. Call, Case No. 10,-686.

Under that Code, the same rule as to the time of removal applies to suits to foreclose mortgages,—at least when there is no rule of court requiring such suits to be tried at the appearance term.—Palmer v. Call, Case No. 10,-686.

A cause commenced by attachment, in which no process was issued or served, *held* removable by petition filed at the term at which appearance was entered by consent, the cause continued, and time given to answer, under Code Iowa, § 2744.—McCullough v. Sterling School Furniture Co., Case No. 8,741.

A pro confesso taken by complainant at the return term will not prevent a removal.—Chester v. Wellford, Case No. 2,662.

The petition is too late where filed several terms after the cause could have been tried but for the neglect of the rules of the court for the taking of testimony.—Fulton v. Golden, Case No. 5,155.

After a decree in the probate court, the case cannot be removed.—In re Frazer, Case No. 5,068.

The application for removal by the landlord or real owner in trespass to try title in Texas is in time if made on the day after he becomes a defendant, though this be not the first term to which the suit was brought, provided the cause had not been previously at issue or ready for trial.—Greene v. Klinglor, Case No. 5,767.

The jurisdiction of a county or circuit court in Virginia on appeal from a board of county supervisors is original, and not appellate, and application to remove must be made at or before the first term of the court after the appeal is taken.—Gurnee v. Brunswick, Case No. 5,872.

If the term at which the cause could otherwise be first tried is one which occurs during the time a trial of the cause is stayed by an order of the state court, it is not such a term as is meant by the statute.—Warner v. Pennsylvania R. Co., Case No. 17,186.

For the purpose of a motion for judgment on default of a defendant, the court will compute the terms as if the action had continued in the state court.—Dunn v. Duncan, Case No. 4,175.

§ 32. —— Before trial.

Under the act of 1875, a removal cannot be had after entry of default and before vacation thereof.—McCallon v. Waterman, Case No. 8,-675.

An application filed after the commencement though before the conclusion of a trial, upon either the law or the facts of the case, which would conclude the controversy, is too late.—Lewis v. Smythe, Case No. 8,333.

The fact that decrees have been made in the state court as to incidental questions, from which appeals have been taken to the state appellate court, cannot interfere with the right of removal.—Farmers' Loan & Trust Co. v. Chicago, P. & S. W. R. Co., Case No. 4,665.

A contest in regard to the distribution of a decedent's estate cannot be removed after an appeal has been taken from the court of original jurisdiction.—Craigie v. McArthur, Case No. 3,-341.

§ 33. After reversal on appeal in general.

After reversal in the state supreme court on appeal, with instructions to dismiss the suit, the party has no right of removal under Act March 2, 1867.—Boggs v. Willard, Case No. 1,603.

A case reversed by the state supreme court, and remanded for further proceeding, stands like a new cause, and is subject to removal under the act of March 3, 1875, passed during its pendency.—Pettilon v. Noble, Case No. 11,044.

Defendants are not bound to take affirmative action for a removal until complainants cause the case to be redocketed, of which they are entitled to due notice.—Pettilon v. Noble, Case No. 11,044.

§ 34. After granting of new trial.

Under Act July 27, 1866, Act March 2, 1867, Rev. St. § 639, subd. 3, and Act March 3, 1875, after a new trial is granted the case stands for trial as if no former trial had occurred, and is removable.—Akerly v. Vilas, Case No. 119; Andrews' Ex'rs v. Garett, Id. 375; Dart v. McKinney, Id. 3,583; Hoadley v. San Francisco., Id. 6,544; Kellogg v. Hughes, Id. 7,662; Minnett v. Milwaukee & St. P. Ry. Co., Id. 9,636; Sims v. Sims, Id. 12,894.

Under the act of March 3, 1875, the cause is removable after reversal on appeal where a new trial is granted, at the first term of the lower court at which a new trial could be had after filing the remittitur.—Hoadley v. San Francisco, Case No. 6,544.

(B) PROCEDURE.

§ 35. In general.

The provisions and conditions of the statute as to removals must be strictly complied with.—Wilcox & Gibbs Sewing Mach. Co. v. Follett, Case No. 17,643.

All the statutory requirements authorizing the transfer of causes must be complied with to dislodge the jurisdiction of the state court.—Burdick v. Hale, Case No. 2,147.

Irregularities in the removal do not vitiate it, nor authorize the federal court to remand or dismiss it. If it has jurisdiction, it should retain it.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

The affidavit for removal and bond having been filed in term time, but during a temporary recess of the state court, and the record not having been filed in the federal court, *held* that the state court, on a proper case being shown, had jurisdiction to appoint a receiver.—First Nat. Bank v. King Wrought Iron Bridge Co., Case No. 4,803.

Notice of the application for the removal of a cause is not necessary.—Wormser v. Dahlman, Case No. 18,048; Wehl v. Wald, Id. 17,356; Fisk v. Union Pac. R. Co., Id. 4,828.

Proof of publication of notice to defendant in chancery, made according to the state statutes subsequent to the removal, will sustain the jurisdiction of the federal court.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,259.

§ 36. Parties to application.

Presentation of a petition for removal is a sufficient appearance to make the removal proceedings valid.—La Mothe Mfg. Co. v. National Tube Works Co., Case No. 8,033.

A subject of Great Britain brought suit on a joint and several bond in an Illinois state court against a citizen of Illinois and two subjects of Great Britain. The latter were not served, but entered an appearance for the purposes of removal, and all three petitioned. *Held*, the bond being given in a federal court, it would retain jurisdiction.—Deakin v. Lea, Case No. 3,695.

The entry of an appearance solely for the purpose of joining in a petition for removal, and for no other purpose, so expressed, will give the court jurisdiction on removal, the same as though process had been personally served.—Deakin v. Lea, Case No. 3,696.

A cause cannot be removed on petition of one of two defendants under Act 1789, § 12.—Beardsley v. Torrey, Case No. 1,190.

A suit in a state court cannot be removed under the act of 1866 as to some of the parties, where one as to whom it is not removed is a necessary party.—Cape Girardeau & S. L. R. R. v. Winston, Case No. 2,390.

A suit cannot be removed as to one defendant under Act March 2, 1867, where there are other necessary defendants to the bill.—Waggener v. Cheek, Case No. 17,035.

All the defendants need not apply at the same time for the removal, under Act July 27, 1866, or Act July 27, 1868.—Field v. Lownsdale, Case No. 4,769; Fisk v. Union Pac. R. Co., Id. 4,828.

The whole suit, and not a part only, must be removed on a proper case, under Act March 3, 1875.—Arapahoe County v. Kansas Pac. Ry. Co., Case No. 502.

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.—Wormser v. Dahlman, Case No. 18,048.

§ 37. Requisites of petition—In general.

The petition for removal must state facts showing a removable cause.—Ex parte Anderson, Case No. 349.

A petition for removal to the federal "circuit or district court" is not fatally defective, as the removal can only be to the former court.—McVaughter v. Cassily, Case No. 8,930.

The removal act of March 2, 1867, although repealed by the Revised Statutes, is substantially re-enacted therein, and a petition and notice referring thereto are not for that reason defective.—Minnett v. Milwaukee & St. P. Ry. Co., Case No. 9,636.

§ 38. —— Averments as to citizenship, alienage, etc.

A petition which does not state the citizenship of both parties is fatally defective.—McMurdy v. Connecticut Gen. Life Ins. Co., Case No. 8,903.

A suit between citizens of the same state, in which a nonresident third person is made a codefendant on his application stating that he is the legal owner of the land in dispute, cannot be removed on a petition which does not state any facts in relation to the ownership of the land or the relation of the parties.—Allin v. Robinson, Case No. 249.

The averment of citizenship or alienage of defendant need not appear on any one of the papers transmitted with the order of the state court.—Brownell v. Gordon, Case No. 2,039.

§ 39. —— Averments as to subject-matter.

To authorize a removal on the ground that the suit involves a question arising under the constitution and laws of the United States, it must clearly appear from the record that a federal question is presented, and must be passed upon in the disposition of the case, and the laws referred to and the facts relied upon as affected by these laws must be fully and clearly set out.—Wilder v. Union Nat. Bank, Case No. 17,651.

A petition for removal on the ground that the case arises under the constitution and laws of the United States must state the facts and indicate the questions arising which are claimed to give jurisdiction.—Trafton v. Nougues, Case No. 14,134.

A petition in general form that defendant has "a defense to the plaintiff's action arising under and by virtue of a law of the United States" is sufficient.—Kain v. Texas Pac. R. Co., Case No. 7,596.

In a petition under Act March 2, 1833, § 3, for removal of a cause on the ground that it is for acts done by defendant under the revenue laws, it is only necessary that the petition shall show that defendant was sued on account of acts done by him under such laws.—Abranches v. Schell, Case No. 21.

On petition by a United States marshal to have a case against himself removed from the state to the federal court, it must be shown that he is sued on account of some act done by him under color of his office.—Kelsey v. Dallon, Case No. 7,678.

A petition stating that defendant has a defense under a certain act of congress is sufficient, without stating what the defense is or the facts which constitute it.—Jones v. Oceanic Steam Nav. Co., Case No. 7,485.

The question of the actual existence and validity of the alleged defense cannot be determined on an interlocutory motion where the proceedings have conformed to the statute.—Jones v. Oceanic Steam Nav. Co., Case No. 7,485.

§ 40. —— Signature and verification.

Under the act of 1789, the petition for removal need not be verified by affidavit, but under the acts of 1833, 1863, 1866, and 1867, the petition must be verified by affidavit.—Sweeney v. Coffin, Case No. 13,686.

The petition for removal is not required to be verified, by Act March 3, 1875.—Houser v. Clayton, Case No. 6,739; Connor v. Scott, Id. 3,119; Osgood v. Chicago, D. & V. R. Co., Id. 10,604.

Both the signing of the petition for removal and the making of the affidavit may be done by the petitioner's attorney in fact.—Dennis v. Alachua County, Case No. 3,791.

A petition for removal is sufficiently signed and verified by the attorney of the party.—Wormser v. Dahlman, Case No. 18,048.

§ 41. —— Amendment.

The petition for removal may be amended in the federal court to conform to the facts.—Bar-

clay v. Levee Com'rs, Case No. 977; Houser v. Clayton, Id. 6,739.

§ **42. Affidavit.**
An affidavit of prejudice under Act March 2, 1867, is not required for a removal under Act July 27, 1866.—Allen v. Ryerson, Case No. 235.

The president, and perhaps the general manager, of a railroad corporation, is prima facie entitled to make the affidavit for removal.—Minnett v. Milwaukee & St. P. Ry. Co., Case No. 9,636.

The affidavit for removal must be taken and certified as required by the state law for affidavits in its courts.—Bowen v. Chase, Case No. 1,720.

An affidavit purporting to be taken and certified in conformity with Laws N. Y. 1869, c. 133, must have attached the certificate required by section 2.—Bowen v. Chase, Case No. 1,720.

An affidavit stating that defendant has a defense arising under the constitution and laws of the United States, in the words of the act, is sufficient.—Reding v. Texas & P. R. Co., Case No. 11,630a.

The addition of an averment specifying a defense which will not give jurisdiction will be rejected as surplusage.—Reding v. Texas & P. R. Co., Case No. 11,630a.

§ **43. Bond.**
The filing of a proper bond is a condition precedent to a removal.—McMurdy v. Connecticut Gen. Life Ins. Co., Case No. 8,903.

A bond in the form prescribed by the act of 1875 *held* properly given on an application for removal under the act of 1867.—Farmers' Loan & Trust Co. v. Chicago, P. & S. W. R. Co., Case No. 4,665.

A removal bond (Act March 3, 1875) in which the place where the penal sum should have been inserted is left blank is insufficient.—Burdick v. Hale, Case No. 2,147.

The condition in the bond that plaintiff shall file in the circuit court "copies of all process" renders the bond insufficient.—Burdick v. Hale, Case No. 2,147.

The suit is not properly removed where the bond given in a suit commenced after the passage of the act of March 3, 1875, contains no provision for costs.—Torrey v. Grant Locomotive Works, Case No. 14,105; McMurdy v. Connecticut Gen. Life Ins. Co., Id. 8,903.

Special bail, given upon removal, can only surrender the principal in open court.—Holbrook v. Seagraves, Case No. 6,593.

§ **44. Copy of record.**
On a removal under Act 1789, § 12, certified copies of the process in the state court, and of an order of that court for their transmission, should be entered in the federal court. —Martin v. Kanouse, Case No. 9,162.

A party removing a cause under Act 1789, § 12, must file, in the federal court, not only a copy of the process, but also the declaration or bill, the petition for removal, and the order made by the state court, if any.—McBratney v. Usher, Case No. 8,661.

A state court clerk made up the record in detached papers, certifying to each one, and also that the papers constituted the whole record. *Held* a sufficient "copy of the record." Act March 3, 1875.—Commercial & Savings Bank v. Corbett, Case No. 3,057.

It is not essential that the record be certified by the judge of the state court; the attestation of the clerk under the seal of the court is sufficient.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

Proper time for entering in circuit court "copies of the proper papers" is on the first day of the next session after petition for removal. Act 1875.—Clippinger v. Missouri Val. Life Ins. Co., Case No. 2,901.

The terms of the court appointed for the trial and disposal of criminal cases are not sessions, within the meaning of an act requiring copies of proceedings in a suit to be entered on the first day of the session of the court, to perfect the removal.—Jones v. Oceanic Steam Nav. Co., Case No. 7,485.

Where the removal proceedings are perfected, the circuit court, on petition and notice, will grant leave to file the record before the day appointed by statute, for the purpose of administering provisional remedies to which petitioner may be entitled.—Mahoney Min. Co. v. Bennett, Case No. 8,968.

A defect or omission in the transcript of the record of the state court can be cured by certiorari.—Dennis v. Alachua County, Case No. 3,791.

Where the defendant removed the cause under Act 1789, but failed to have the transcript from the state court filed, plaintiff will be given leave to have the same filed and the case docketed.—Hyde v. Phœnix Ins. Co., Case No. 6,973.

The right of removal is not lost where the transcript of record is not filed within the time prescribed by Act March 3, 1875.—Cobb v. Globe Mut. Life Ins. Co., Case No. 2,921.

The failure of the moving party to file a copy of the record from the state court does not deprive the circuit court of jurisdiction under such act, but in such case the court has discretion to remand the case.—Jackson v. Mutual Life Ins. Co., Case No. 7,141.

A failure to file a copy of the record on the first day of the next session of the court will prevent a removal under Act March 3, 1875, though the state court, before such time, vacated its order of removal.—Broadnax v. Eisner, Case No. 1,909.

Where the removing party fails to file a copy of state court record, his opponent may file it.—Arthur v. New England Mut. Life Ins. Co., Case No. 565.

§ **45. Certiorari, habeas corpus, etc., as auxiliary proceedings.**
Certiorari and habeas corpus not required for removal under the act of March 2, 1833.—Abranches v. Schell, Case No. 21.

A certiorari is not necessary where the record of the state court is already before the federal court.—Scott v. Clinton & S. R. Co., Case No. 12,527.

Sufficiency of application for a writ of certiorari to remove a case under Act March 2, 1833.—Salem & L. R. Co. v. Boston & L. R. Co., Case No. 12,249.

The federal court has no jurisdiction to issue a mandamus to compel a state court to allow a removal, as a mandamus is not necessary.—Fisk v. Union Pac. R. Co., Case No. 4,827; In re Cromie, Id. 3,405; Spraggins v. County Court of Humphries, Id. 13,246; Hough v. Western Transp. Co., Id. 6,724. See, also, Ex parte Turner, Case No. 14,245.

When a suit has been removed under the act of 1868, as respects all the parties and all the subject-matter, the court will not make an order staying all proceedings in the state court, as such order is not necessary to the exercise of its jurisdiction.—Fisk v. Union Pac. R. Co., Case No. 4,827.

An injunction will not be granted to restrain a party from proceeding in the state court in a cause which the other party claims has been

removed to the federal court.—Penrose v. Penrose, Case No. 10,958.

§ 46. Proceedings in state court upon removal.

The application to the state court is ex parte. No notice need be given, and no affidavits can be read in opposition.—Fisk v. Union Pac. R. Co., Case No. 4,828.

Where the proper steps to effect a removal have been taken, and evidence thereof is presented to the state court, the right of removal may be perfected by defendant's entering the proper papers in the federal court, and appearing.—Hatch v. Chicago, R. I. & P. R. Co., Case No. 6,204.

The filing of a sufficient petition and bond effects the removal. An order in the state court is not necessary.—Arthur v. New England Mut. Life Ins. Co., Case No. 565; Clippinger v. Missouri Val. Life Ins. Co., Id. 2,901; Cobb v. Globe Mut. Life Ins. Co., Id. 2,921; Commercial & Sav. Bank v. Corbett, Id. 3,057; Connor v. Scott, Id. 3,119; Dennistoun v. Draper, Id. 3,804; Dunham v. Baird, Id. 4,147; Ellerman v. New Orleans, etc., R. Co., Id. 4,382; Fisk v. Union Pac. R. Co., Id. 4,827, 4,828; Hatch v. Chicago, R. I. & P. R. Co., Id. 6,204; Matthews v. Lyall, Id. 9,285; Petrie v. Pennsylvania R. Co., Id. 11,040a; Second Nat. Bank v. New York Silk Mfg. Co., Id. 12,601a.

After such filing the jurisdiction of the state court, except for the purposes of perfecting the removal, is at an end, and its subsequent proceedings are void.—Arthur v. New England Mut. Life Ins. Co., Case No. 565; Ellerman v. New Orleans, etc., R. Co., Id. 4,382; Fisk v. Union Pac. R. Co., Id. 4,828; Matthews v. Lyall, Id. 9,285; Second Nat. Bank v. New York Silk Mfg. Co., Id. 12,601a; United States v. Judges, Id. 15,501.

No action of the state court upon either bond or petition is required to effect the removal. Act 1875.—Dunham v. Baird, Case No. 4,147; Commercial & Sav. Bank v. Corbett, Id. 3,057; Dennis v. Alachua County, Id. 3,791.

When the proper petition is presented with the proper surety, so that the state court acts upon the matter judicially, it loses jurisdiction of the cause eo instanti, unless its refusal is placed upon a valid defect in the petition, or insufficiency in the surety.—Fisk v. Union Pac. R. Co., Case No. 4,827.

The state court may examine into the sufficiency of a petition presented thereto for removal under Rev. St. § 641, but the federal court may assert its jurisdiction by proper process, directed to the state court, which must yield obedience thereto.—Ex parte Wells, Case No. 17,386.

The petition and bond may be filed in the state court during vacation, and may be sufficient though there was no action upon them.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

When the petition and bond are filed in the state court during vacation, the jurisdiction of that court ceases; it does not remain until the court can act upon them in term time; and it is not for the state court to decide whether a proper case is made.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

The circuit court cannot review the decision of the state court on questions arising under the petition for removal under Act 1789, § 12. The remedy is by appeal to the supreme court of the state, and thence by writ of error to the supreme court of the United States.—Hough v. Western Transp. Co., Case No. 6,724.

An appeal does not lie from an order of a state court for the removal of a cause under Act March 3, 1875, and it is ineffectual to prevent a removal.—Ellerman v. New Orleans, etc., R. Co., Case No. 4,382.

The order for removal need not be made before appearance by defendant. Act March 3, 1875.—Houser v. Clayton, Case No. 6,739.

(C) EFFECT OF REMOVAL.

§ 47. Attachment, injunction, etc.

No attachment of property in a state court will hold the same after removal under Act Sept. 24, 1789, where the attachment was not the original process in the suit, but, pursuant to a state statute, was issued after summons, as a separate process.—New England Screw Co. v. Bliven, Case No. 10,156; Clarke v. Chase, Id. 2,845; Barney v. Globe Bank, Id. 1,031.

Seizure of res by a state court does not affect the case, for that is necessarily transferred with the case.—Osgood v. Chicago, D. & V. R. Co., Case No. 10,604.

After removal, the federal court may entertain a motion to dissolve an attachment or discharge the attached property where such practice is authorized by the state law.—Garden City Mfg. Co. v. Smith, Case No. 5,217.

The court may hear such motion, though a similar motion was overruled by the state court prior to the removal.—Garden City Mfg. Co. v. Smith, Case No. 5,217.

An injunction issued by a state court is dissolved by the removal of the cause into the federal court.—Northwestern Distilling Co. v. Corse, Case No. 10,335; McLeod v. Duncan, Id. 8,898; Hatch v. Chicago, R. I. & P. R. Co., Id. 6,204; Bowen v. Kendall, Id. 1,724.

A motion to dissolve an injunction granted by state court of removal will not be considered without leave first asked and obtained.—Carrington v. Florida R. Co., Case No. 2,448.

§ 48. Costs.

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.—Wolf v. Connecticut Mut. Life Ins. Co., Case No. 17,924.

The acts of congress in relation to costs in such cases apply only to such costs as accrue after the removal.—Wolf v. Connecticut Mut. Life Ins. Co., Case No. 17,924.

A party after the removal is not entitled to any costs except such as are taxable under Rev. St. §§ 823, 824, though such items would have been taxable in his favor in the state court.—Clare v. National City Bank, Case No. 2,793.

Plaintiff, after removal, is entitled to costs, if successful, if given by the state law, though the recovery be less than $500, which would have prevented his recovering costs under Rev. St. § 968, had the suit been originally begun in the federal court.—Ellis v. Jarvis, Case No. 4,403; Field v. Schell, Id. 4,771; Howard v. American Dairy, etc., Co., Id. 6,753; Scripps v. Campbell, Id. 12,562. CONTRA, see Coggill v. Lawrence, Case No. 2,957.

§ 49. Contempt proceedings.

An order made in contempt proceedings instituted in a state court before the removal will be recognized and enforced in the federal court.—Williams Mower & Reaper Co. v. Raynor, Case No. 17,748.

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.—Williams Mower & Reaper Co. v. Raynor, Case No. 17,748.

§ 50. Parties not served or appearing.

Defendants not served or appearing in the state court when the order for removal is made

are not affected by it, and as to them the cause is still pending in the state court.—Field v. Lownsdale, Case No. 4,769.

VII. REMAND OR DISMISSAL OF CAUSE.

§ 51. Grounds—Want of jurisdiction, or cause not removable.

A cause will not be remanded unless the court is satisfied that it has no jurisdiction.—Deakin v. Lea, Case No. 3,695.

A cause to which a state is a party will be remanded, as being beyond the jurisdiction of the federal court.—New Jersey v. Babcock, Case No. 10,163.

Where it appears that the cause does not really and substantially involve a dispute or controversy properly within the jurisdiction of the federal court, the cause must be dismissed or remanded.—Ryan v. Young, Case No. 12,188.

Suit remanded to state court where the motion for removal was not filed until after a receiver had been appointed, and where the proceedings were under a local statute.—Lehigh Coal & Navigation Co. v. Central R. Co., Case No. 8,213.

A cause will not be remanded, if one proper for removal under the statute in force at the time the motion is made, though the removal was not authorized by the statute under which the petition was filed.—Burnham v. Chicago, D. & M. R. Co., Case No. 2,174.

Where, after removal, plaintiff pleads anew setting up the removal, he cannot ask to remand the cause on the ground that it was not within the act.—Carrington v. Florida R. Co., Case No. 2,447.

A case was removed in the circuit court of the Southern district of New York on the allegation that plaintiff was a citizen of New York, and defendant a citizen of Massachusetts. *Held*, that a motion to remand on the ground that plaintiff is an alien should be granted, the fact not being denied.—Galvin v. Boutwell, Case No. 5,207.

A cause removed on the ground that defendant has a defense arising under the laws of the United States will be remanded when it appears by defendant's answer that no such defense is claimed or made.—Magee v. Union Pac. R. Co., Case No. 8,945.

Where it appears that the nonresident party upon whose petition the cause was removed, has parted with his interest, and the substantial controversy is between citizens of the same state, the cause will be remanded.—Ryan v. Young, Case No. 12,188.

Where a cause has been removed at the instance of defendants who have appeared, the federal court can remand it in case the defendants do not all eventually appear.—Ward v. Arredondo. Case No. 17,148.

§ 52. —— Irregularities or defects in proceedings.

In the absence of jurisdictional objections, a cause once removed will not be remanded for defects in the bond, insufficiencies of sureties thereon, or other irregularities, which can be remedied, or are not prejudicial to the opposite party.—Dennis v. Alachua County, Case No. 3,791.

Irregularities in the removal are no ground for remanding after several years where all objection to the jurisdiction has been obviated by amendment.—Edgerton v. Gilpin, Case No. 4,280.

The circuit court will not remand the cause on account of erroneous steps in the mode in which it has been removed where otherwise it would have jurisdiction.—Kain v. Texas Pac. R. Co., Case No. 7,596.

A cause removed under Act July 27, 1866, will not be remanded because the petition for removal was unverified.—Allen v. Ryerson, Case No. 235.

The cause will not be remanded because the bond filed under Act 1875, and duly accepted by the state court, was in terms as required by Act 1866.—Baker v. Peterson, Case No. 776.

The cause will be remanded where the removing party fails to file a copy of the record on the first day of the next session of the court after petition filed.—Bright v. Milwaukee & St. P. R. Co., Case No. 1,877.

The cause will be remanded where the removing party fails, without other excuse than inadvertence, to file a copy of the record in the federal court until after the day named in the removal bond for such filing.—McLean v. St. Paul & C. Ry. Co., Case No. 8,892.

The filing of an imperfect transcript of the state court record is no ground for remanding the cause.—Cook v. Whitney, Case No. 3,166.

Admission of service of a rule to declare waives informality in removal. — Abranches v. Schell, Case No. 21.

§ 53. Motion to dismiss or remand.

A party is not guilty of laches affecting his right to move to remand because he did not in the first instance oppose the removal in the state court.—McMurdy v. Connecticut Gen. Life Ins. Co., Case No. 8,903.

A motion to remand may be made before the trial, where there are no disputed facts.—Magee v. Union Pac. R. Co., Case No. 8,945.

The question whether defendant had in fact a right to remove the suit cannot be raised by a motion to remand, made before the trial.—Dennistoun v. Draper, Case No. 3,804.

The matters raised by the application to remove, and passed upon by the state court, and made the subject of bills of exception by plaintiff, cannot be inquired into on a motion to remand, based alone upon the matters contained in the transcript sent from the state court.—Greene v. Klingler, Case No. 5,767.

The truth of an averment that defendant has a defense arising under or by virtue of the constitution or laws of the United States cannot be inquired into upon motion to remand.—Texas v. Texas & P. R. Co., Case No. 13,848.

The averment in a petition that the suit has been brought for a cause of action specified in the act of July 27, 1868, cannot be tried on affidavit on motion to remand.—Fisk v. Union Pac. R. Co., Case No. 4,828.

An act of congress should not be declared unconstitutional upon a motion to remand a cause to a state court.—Lamar v. Dana, Case No. 8,005.

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.—Wood v. Matthews, Case No. 17,955.

On a motion to remand, the burden of proof is upon defendant corporation to show that it was not a citizen of the same state with plaintiff.—Copeland v. Memphis & C. R. Co., Case No. 3,209.

Where the cause is removed on the ground of citizenship, it will not be remanded on motion, where the question of citizenship is fairly disputed.—Heath v. Austin, Case No. 6,305.

Where a rule to show cause why defendant should not be attached for contempt for violat-

ing an injunction was granted by the state court before removal of the cause, the federal court will remand the contempt proceedings while retaining the main cause for adjudication.—Voorhees v. Albright, Case No. 16,999.

§ 54. Order.

The question of jurisdiction is considered as conclusively settled where there has been no appeal from a decision denying a motion to remand for want of jurisdiction.—Turner v. Indianapolis, B. & W. Ry. Co., Case No. 14,259.

VIII. PROCEEDINGS IN CAUSE AFTER REMOVAL.

§ 55. Jurisdiction.

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.—Winans v. McKean R. & N. Co., Case No. 17,862.

The want of jurisdiction may be shown at the trial.—Kain v. Texas Pac. R. Co., Case No. 7,596; Dennistoun v. Draper, Id. 3,804; Murray v. Patrie, Id. 9,967.

A federal court has no power in a removed cause to amend the record of a state court in another action.—King v. French, Case No. 7,793.

The federal court *held* to have jurisdiction on removal notwithstanding a plea to the jurisdiction, filed but not passed upon in the state court, which would have defeated the action, but which set out facts requisite to give jurisdiction to the federal court.—Kelly v. Virginia Protection Ins. Co., Case No. 7,677.

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.—Young v. Andes Ins. Co., Case No. 18,151.

The filing of a petition for removal is no waiver of a fraud in procuring service of process.—Moynahan v. Wilson, Case No. 9,897.

The filing of the petition for removal is a sufficient appearance to the suit to give the court jurisdiction of the person.—Sweeney v. Coffin, Case No. 13,686.

After a foreign corporation, sued in the state court, has removed the case to the federal court, it cannot object to the jurisdiction of the state court, or take exception to the process by which it was brought in.—Sayles v. Northwestern Ins. Co., Case No. 12,421.

A foreign corporation cannot object to the jurisdiction of the court on the ground that it was not an inhabitant of or found within the district, after it has removed the cause from the state court to the federal court, under Act 1789, § 12.—Sayles v. Northwestern Ins. Co., Case No. 12,421.

After the proper proceedings for removal are taken, the federal court has jurisdiction to grant a provisional remedy before the term at which the parties are required to enter a copy of the record.—Commercial & Sav. Bank v. Corbett, Case No. 3,057.

Where objection to the jurisdiction is raised after removal, the court will protect the rights of the parties pending decision of the question.—Warren v. Ives, Case No. 17,197.

The federal court will grant an injunction restraining waste pending decision of the question of its jurisdiction after removal from a state court.—Warren v. Ives, Case No. 17,197.

§ 56. Rights, remedies, and defenses in general.

All rights and defenses under the state laws are recognized by the federal court.—Akerly v. Vilas, Case No. 120.

The defendant in a case removed as one arising under the constitution or laws of the United States will be confined substantially to the ground of defense indicated in the petition for removal.—Houser v. Clayton, Case No. 6,739.

A counterclaim which might have been interposed in the state court may be set up after removal.—Frank v. Chetwood, Case No. 5,051.

Where property was fraudulently decoyed within the jurisdiction of the state court, and seized on a writ of replevin, the service may be set aside on motion, where the case is at once removed.—Moynahan v. Wilson, Case No. 9,897.

Upon the trial of an indictment for murder, removed under Rev. St. § 643, the accused is called to answer to the offense as defined by the laws of the state.—Georgia v. O'Grady, Case No. 5,352.

The averment in the petition, that defendants have a defense arising under the constitution and laws of the United States, must be accepted as true in the federal court, until disposed of on the trial.—Fisk v. Union Pac. R. Co., Case No. 4,827.

Effect of repeal of Act June 30, 1864, § 50, by Act July 13, 1866, § 68, on an action against a collector of internal revenue theretofore removed to the federal court.—Salt Co. of Onondaga v. Wilkinson, Case No. 12,269.

§ 57. Parties, appearance, etc.

On removal by one of two joint defendants, both of whom are nonresidents, one of whom only was served, plaintiff is entitled to process against the other.—Fallis v. McArthur, Case No. 4,627.

But in such case the court may hear and decide the case without making the defendant who was not served a party.—Fallis v. McArthur, Case No. 4,627.

A bill filed after the removal, naming as a party defendant a person who was not a party to the suit as brought in the state court, will be stricken from the files on motion.—Fisk v. Union Pac. R. Co., Case No. 4,829.

In the case of a suit on a nonnegotiable contract, brought by assignees thereof, *held*, after removal the case should be continued in the name of the assignor, where the federal court had not adopted the state statute requiring suits to be brought in the name of the real party in interest.—Suydam v. Ewing, Case No. 13,655.

§ 58. Procedure in general.

Where a cause has been removed under the judiciary act of 1789, the case stands as though it had been originally commenced in the circuit court.—McLeod v. Duncan, Case No. 8,898.

The case stands in the circuit court as it did at the time of the removal in the state court.—Gier v. Gregg, Case No. 5,406.

After removal, the suit must be made to conform substantially to the modes of procedure observed in the federal courts, as in original cases.—Toucey v. Bowen, Case No. 14,107.

Property in custody involved in a replevin suit, removed to the federal court, should be sold, and the proceeds deposited on interest to abide the result.—Dennistoun v. Draper, Case No. 3,804.

Plaintiff may proceed after removal with a reference previously made to take the deposition of a witness to be used in the suit.—Bills v. New Orleans, St. L. & C. R. Co., Case No. 1,409.

§ 59. Distinction between legal and equitable remedies.

Where legal and equitable relief is sought by the same pleading in the state court, the plaintiff must replead after removal. — La Mothe Mfg. Co. v. National Tube Works Co., Case No. 8,033.

A declaration filed in the federal court after removal of a bill in equity, asking relief at law against some only of the defendants, if within the allegations of the complaint filed in the state court, will not be stricken from the files, nor will complainants be compelled to elect whether to proceed at law or in equity.—Fisk v. Union Pac. R. Co., Case No. 4,829.

§ 60. Pleading.

Under the act of 1789, a new declaration must be filed in the federal court, as if the suit were original there, before defendant is required to plead.—Martin v. Kanousè, Case No. 9,162.

Where an action was commenced by summons and complaint, further pleading on the part of plaintiff after removal is not necessary. —Bills v. New Orleans, St. L. & C. R. Co., Case No. 1,409.

New pleadings are not necessary on removal by one of two defendants after the cause is at issue in the state court. Act 1866.—Dart v. McKinney, Case No. 3,583.

An action at law removed when at issue proceeds on the same pleadings after removal.— Merchants' & Manufacturers' Nat. Bank v. Wheeler, Case No. 9,439.

An action removed after issue joined must be tried on the pleadings certified from the state court.—Akerly v. Vilas, Case No. 120.

A controversy is to be determined by the pleadings in the state court before the filing of the petition.—Chicago, St. L. & N. O. R. Co. v. McComb, Case No. 2,670.

The pleadings in a case removed must conform to the federal rules and practice.—Boston Belting Co. v. Judson, Case No. 1,674.

A complaint which does not so conform is demurrable.—Boston Belting Co. v. Judson, Case No. 1,674.

In cases properly removed under 1 Stat. 79, § 12, the defendant is not in default for not having answered or pleaded in the state court before or at the time of filing his petition for the removal.—Webster v. Crothers, Case No. 17,334.

After removal of cause, judgment as in case of nonsuit may be entered on plaintiff's failing to declare, after notice of rule to declare.— Abranches v. Schell, Case No. 21.

§ 61. Trial.

Upon the trial the right of the parties to challenge jurors is regulated by the law of the United States.—Georgia v. O'Grady, Case No. 5,352.

REMOVAL OF CLOUD.

See "Quieting Title."

RENEWAL.

Of filing or record of chattel mortgage, see "Chattel Mortgages," § 12.

RENT.

See "Ground Rents"; "Landlord and Tenant," §§ 8–11.

Rights and liabilities of mortgagor and mortgagee, see "Mortgages," §§ 13, 46.

REPAIRS.

Of highways, see "Highways," § 2.

Of premises demised, see "Landlord and Tenant," § 5.

To vessel, see "Maritime Liens," §§ 5–7, 10–16.

REPEAL.

Of bankruptcy statutes, see "Bankruptcy," § 5.

Of charter, see "Corporations," § 13; "Railroads," § 8.

Of patent, see "Patents," § 96.

Of statute of limitation, see "Limitation of Actions," § 7.

Of statutes in general, see "Statutes," §§ 13–16.

Of tariff laws, see "Customs Duties," § 3.

Of treaty, see "Treaties," § 3.

REPLEADER.

See "Pleading," § 54.

REPLEVIN.

§ 1, Property subject to replevin in general. § 2, Ownership and right to possession of plaintiff. § 3, Possession of defendant. § 4, Property seized under process and in custodia legis. § 5, Parties. § 6, Proceedings for taking and redelivery of property. § 7, Replevin bond. § 8, Pleading. § 9, Issues and proof. § 10, Evidence. § 11, Damages. § 12, Trial. § 13, Judgment. § 14, Action on bond—Nature and right of action. § 15, —— Pleading and evidence. § 16, —— Damages. § 17, —— Judgment and costs.

See, also, "Detinue."

For timber unlawfully cut, see "Public Lands," § 7.

Nonsuit, see "Dismissal and Nonsuit," § 1.

Of goods sold, see "Sales," § 41.

§ 1. Property subject to replevin in general.

Vouchers or documents filed with the treasury department to justify the settlement of a public account cannot be replevied.—Brent v. Hagner, Case No. 1,839.

Replevin lies in the circuit court in Massachusetts for writings or documents of value unlawfully detained. — Gibbs v. Usher, Case No. 5,387.

§ 2. Ownership and right to possession of plaintiff.

Possession by the plaintiff, and an actual wrongful taking by the defendant, are necessary to support replevin.—Dickson v. Mathers, Case No. 3,898a.

A mortgagee who has no right of immediate and exclusive possession cannot maintain replevin against a tax collector who has seized the property under a void assessment against the mortgagor.—Dixwell v. Jones, Case No. 3,-937.

To recover possession of personal property under the Missouri statute, plaintiff must show the same right of property and possession as in the common-law action of replevin.—Dixwell v. Jones, Case No. 3,937.

A re-replevin will be quashed.—Birch v. Gittings, Case No. 1,426.

§ 3. Possession of defendant.

Replevin does not lie for goods converted by a bailee thereof. Detinue or trover is the proper remedy.—Meany v. Head, Case No. 9,379.

§ 4. Property seized under process and in custodia legis.

Replevin lies against any one in whose possession personal property unlawfully taken

may be found, except law officers who have possession by virtue of legal process.—Murphy v. Tindall, Case No. 9,952a.

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.—Williamson v. Ringgold, Case No. 17,755.

Goods in the hands of an officer of the law under an attachment levy cannot be replevied. —Tavenner v. Hunter, Case No. 13,767.

Property released to the defendant on a forthcoming bond is still in the custody of the court, and not subject to seizure under a writ issued out of another court.—United States v. Dantzler, Case No. 14,917.

Property taken from the possession of a person, on suspicion of its being stolen, by a constable having a warrant to arrest him for forgery, is not in custodia legis.—Brent v. Beck, Case No. 1,835.

Property seized to enforce collection of taxes is in custodia legis and irrepleviable.—Dixwell v. Jones, Case No. 3,937.

As to replevin of property distrained for taxes in Washington, D. C.—Orr v. Ingle, Case No. 10,588.

Goods distrained by a collector of taxes in Washington, D. C., cannot be replevied without a special order from a justice of the peace, as required by Act Md. 1790, c. 53.—Dyer v. Coyle, Case No. 4,223.

Act Md. 1785, c. 34, forbidding replevin of goods restricted for tax, is not applicable to the corporation of the city of Washington.—Carroll v. Whitcroft, Case No. 2,458.

Property distrained under authority of the revenue laws is not repleviable.—Brice v. Elliott, Case No. 1,854.

§ 5. Parties.

Where a manufacturer contracted to furnish certain goods to the commissary general in payment of a debt due the latter and a third party, *held*, that the United States could not alone maintain replevin for such goods.—United States v. Kennan, Case No. 15,521.

Replevin will not lie by one joint owner, but the objection can only be taken by plea in abatement where he sues for the whole.—D'Wolf v. Harris, Case No. 4,221.

§ 6. Proceedings for taking and redelivery of property.

An affidavit is fatally defective which omits to state that plaintiff was lawfully possessed of the property, and that it was unlawfully taken from his possession without his consent.—McArthur v. Hogan, Case No. 8,659a.

Property taken from an officer who held the same on a levy under execution will be ordered restored.—Greenwell v. Botelor, Case No. 5,791; Murray v. Beck, Id. 9,957.

Where plaintiff in replevin never had possession of the goods, the court will, of course, order them to be returned to defendant, on motion, upon the usual security.—Emack v. Crabb, Case No. 4,432.

After issue joined in replevin, it is too late to move to quash the writ.—Haller v. Beall, Case No. 5,957.

The return of a United States marshal is conclusive of the facts which it sets forth, and its truth cannot be collaterally impeached.—Crane v. McCoy, Case No. 3,354.

Property replevied does not pass into plaintiff's possession after his bond has been accepted by the officer, until formal delivery by the officer.—Crane v. McCoy, Case No. 3,354.

§ 7. Replevin bond.

It is not necessary to the validity of a replevin bond that the plaintiff in replevin should be bound in the bond.—Wood v. Forrest, Case No. 17,945.

The marshal's commission of 5 per cent. may be included in a replevin bond for goods distrained for rent.—Alexander v. Thomas, Case No. 174.

§ 8. Pleading.

Several counts cannot be joined in the cognizance.—Rotchford v. Meade, Case No. 12,083.

Defendant who has pleaded property in himself will be permitted to amend by pleading property in a stranger, on payment of costs.—Semmes v. Oneale, Case No. 12,654.

§ 9. Issues and proof.

Property in the defendant must be specially pleaded, and cannot be given in evidence under non cepit.—Dickson v. Mathers, Case No. 3,898a.

Where refusal to deliver property to its owner is placed on the ground of a lien for storage and also for freight, and in a suit to recover possession it is decided that there is no lien for freight, defendant cannot claim judgment on the ground that he had a lien for storage alone.—Sicard v. Buffalo, N. Y. & P. Ry. Co., Case No. 12,831.

Upon the issue of "no rent arrear," the plaintiff in replevin will not be permitted to show that the defendant "had nothing in the tenements."—White v. Cross, Case No. 17,546.

§ 10. Evidence.

Upon the plea of property, plaintiff has the burden of proof.—Henderson v. Casteel, Case No. 6,350; Williamson v. Ringgold, Case No. 17,755.

Upon the plea of no rent arrear, in replevin, the whole burden of proof is on the party pleading it.—Hungerford v. Burr, Case No. 6,876.

Possession for 20 years is prima facie evidence of good title.—Mitchell v. Wilson, Case No. 9,672.

In replevin for goods distrained for rent, the defendant cannot give evidence of the value of the use and occupation.—White v. Cross, Case No. 17,546.

On non cepit, the issue must be for defendant if there was not a wrongful taking.—Meany v. Head, Case No. 9,379.

In replevin for goods distrained for rent, upon the issue of "no rent arrear," defendant need not prove that the distress was laid by his order or authority.—McLaughlin v. Riggs, Case No. 8,872.

Upon the issue of non cepit, plaintiff must prove that defendant took the property from his possession.—Calvert v. Stewart, Case No. 2,327.

In replevin, upon the issue of non cepit, proof that the defendant took the goods as marshal, is sufficient proof of the caption.—D'Wolf v. Harris, Case No. 4,221.

§ 11. Damages.

Plaintiff may recover according to the extent of his title proved.—Walker v. Johnson, Case No. 17,074.

Where the title to the goods is in issue, a new trial will be granted where defendant obtained a verdict for the value of the goods, as well as damages for taking them.—Thompson v. Carbery, Case No. 13,946.

An order on account of rent accepted by the landlord cannot be set off in replevin for goods distrained where the landlord produces it canceled and offers to pay the costs in a suit upon it.—Arguelles v. Wood, Case No. 520.

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

erty in controversy.—Treat v. Staples, Case No. 14,162.

§ 12. Trial.
Actions of replevin, in Alexandria, may, on motion, be tried at the first term.—Wilson v. Johnston, Case No. 17,813.

Upon the plea of property in an action of replevin the plaintiff has the right to open and close.—Henderson v. Casteel, Case No. 6,350.

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.—Wood v. May, Case No. 17,956.

Verdict amended in replevin for goods distrained for rent by stating amount of rent in arrears.—Arguelles v. Wood, Case No. 520.

§ 13. Judgment.
Judgment for defendant should, in all cases, be for a return.—Hemstead v. Colburn, Case No. 6,347.

A judgment for defendant in replevin, without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term. —Ringgold v. Elliot, Case No. 11,844.

If the jury find for plaintiff in replevin upon the plea of "non dimisit modo et forma," the judgment must be for the plaintiff upon the whole case, although they find for the defendant upon the issue of "No rent arrear."—Dorsey v. Chenault, Case No. 4,013.

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.—Wood v. May, Case No. 17,956.

A judgment for the return of the goods replevied, and for the rent in arrear for which they were distrained, corrected on motion by striking out the portion calling for a return of the goods.—Reilly v. Maryman, Case No. 11,672.

§ 14. Action on bond—Nature and right of action.
The defendant must rely upon a suit on the replevin bond for his damages, and the only judgment that can be issued in favor of the defendant in replevin is one cent damages and a retorno habendo.—Fields v. Crawford, Case No. 18,296.

A finding for defendant, with damages in the value of the goods, will not prevent defendant maintaining an action upon the replevin bond, and recovering damages beyond the value of the goods.—Hemstead v. Colburn, Case No. 6,347.

The nonpayment of the damages found by the jury is a breach of the condition of the replevin bond, upon which an action may be maintained.—Moore v. Shields, Case No. 9,775.

§ 15. —— Pleading and evidence.
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.—Wood v. Franklin, Case No. 17,946; Lenox v. Gorman, Id. 8,246.

To recover on a replevin bond, where there has been no judgment for a return of the property, plaintiff must show damages by the failure to prosecute the writ with effect.—Burch v. Dowling, Case No. 2,139.

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.—Wood v. May, Case No. 17,956.

§ 16. —— Damages.
The merits of the case may be given in evidence in mitigation of damages in an action upon a replevin bond.—McDaniel v. Fish, Case No. 8,744.

In an action upon a replevin bond, for not returning the property distrained for rent, the defendant may show, in mitigation of damages, that no rent was in arrear.—Wood v. May, Case No. 17,956.

In an action upon a replevin bond, defendant may show, in mitigation of damages, title to the property in plaintiff in replevin, and such evidence may be rebutted by showing that the deed under which title was claimed was fraudulent and void.—Ringgold v. Bacon, Case No. 11,842.

It seems that in an action on a replevin bond defendant may, in mitigation of damages, give evidence of title in himself of the replevied property.—Smith v. Hazel, Case No. 13,055.

§ 17. —— Judgment and costs.
Sureties on a replevin bond are entitled to have their lands sold under the law in force at the date of the bond.—Stockwell v. Kemp, Case No. 13,465.

Upon a judgment on motion upon a replevy bond for rent, the plaintiff is entitled to costs of the motion.—Cooke v. Myers, Case No. 3,175.

REPLY.

In pleading, see "Admiralty," § 82; "Equity," §§ 60–64; "Pleading," § 37.

REPORT.

Of commissioners in admiralty, see "Admiralty," §§ 103–105.

REPORTS.

§ 1, Statutory provisions. § 2, Federal circuit and district court reports.

Copyright of law reports, see "Copyrights," §§ 3, 5.
Of commissioners in admiralty, see "Collision," § 155.
—— on reference of administrator's accounts, see "Executors and Administrators," § 65.
Of masters in chancery, see "Equity," §§ 113–117.
On reference in general, see "Reference," §§ 4–9.

§ 1. Statutory provisions.
The New York statutes in relation to the reporting and publication of the decisions of the court of appeals construed.—Little v. Gould, Case No. 8,394.

§ 2. Federal circuit and district court reports.
Notes and prefaces of the United States circuit and district court reports.—30 Fed. Cas. p. 1261.

REPUTATION.

As evidence, see "Evidence," § 19.
Of witness, see "Witnesses," §§ 76–78.
To prove partnership, see "Partnership," § 6.

REQUESTS.

For instructions in civil actions, see "Trial," § 19.
For instructions in criminal prosecutions, see "Criminal Law," § 95.

REQUISITION.

See "Extradition," § 4.

RESCISSION.

Of act of bankruptcy, see "Bankruptcy," § 89.
Cancellation of written instruments, see "Cancellation of Instruments."
Of charter party, see "Shipping," § 45.
Of compromise agreement, see "Compromise and Settlement," § 4.
Of contract in general, see "Contracts," §§ 27, 28.
Of contract, for sale of goods, see "Sales," §§ 11–18.
—— of land, see "Vendor and Purchaser," §§ 5–9.
Of insurance policy, see "Insurance," §§ 39–43.
Of license, see "Patents," § 158.

RESERVATIONS.

For grantor in assignment, see "Assignments for Benefit of Creditors," § 3.
Of public lands, see "Public Lands," §§ 36, 37.

RES GESTÆ.

In civil actions, see "Evidence," § 18.
In criminal prosecutions, see "Criminal Law," § 53.

RESIDENCE.

See "Domicile."

RESIGNATION.

Of sheriff, see "Sheriffs and Constables," § 10.

RES JUDICATA.

See "Judgment," §§ 46–51, 65, 66.

RESPONDENTIA.

See "Shipping," §§ 105–127.

RESTITUTION.

Of property seized as prize of war, see "War," § 70.

RESTRAINT OF TRADE.

See "Contracts," § 11.

RESTRICTIONS.

In deeds, see "Deeds," § 13.
In wills, see "Wills," § 41.

RESULTING TRUSTS.

See "Trusts," § 2.

RETAINER.

Of attorney, see "Attorney and Client," § 2.

RETIRING PARTNERS.

See "Partnership," §§ 40–49.

RETROSPECTIVE LAWS.

See "Statutes," § 35.
Constitutional restrictions, see "Constitutional Law," § 10.

RETURN.

Of attachment, see "Attachments," § 16.
Of election, see "Elections," § 6.
Of execution, see "Execution," § 21.
Of process in general, see "Process," § 7.
Of service of notices in bankruptcy, see "Bankruptcy," §§ 145, 146.
—— of process, see "Equity," § 33; "Garnishment," § 3.
Of taxes, see "Internal Revenue," § 9.
Of writ of habeas corpus, see "Habeas Corpus," § 7.

REVENUE.

See "Customs Duties"; "Forfeitures"; "Internal Revenue"; "Taxation."
Jurisdiction of suits arising under revenue laws, see "Courts," § 32.
Removal of causes arising under revenue laws, see "Removal of Causes," § 8.

REVIEW.

See "Appeal and Error"; "Audita Querela"; "Certiorari."
Bill of review in equity, see "Equity," §§ 127–135.
In admiralty, see "Admiralty," §§ 100, 124.
In criminal cases, see "Criminal Law," §§ 112, 113; "Indictment and Information," § 2.

REVISION.

Of statutes, see "Statutes," § 12.

REVIVAL.

Of action, see "Abatement and Revival," § 6.
Of judgment, see "Judgment," §§ 71, 72.
Of statutes, see "Statutes," § 16.

REVOCATION.

Of agency, see "Principal and Agent," § 3.
Of pardon, see "Pardon," § 5.
Of submission to arbitration, see "Arbitration and Award," § 1.
Of will, see "Wills," § 12.

REVOLTS.

See "Seamen," §§ 175–177.

REWARDS.

§ 1. Right to reward.
To entitle a person to a reward agreed in writing to be paid for recovering certain property, which was subsequently returned by the police, he must show that it was recovered through information furnished by him.—Franklin v. Heiser, Case No. 5,054.

RIGHT OF WAY.

See "Easements"; "Railroads," § 20.

RIGHT, WRIT OF.

See "Real Actions," § 2.

RIOT.

§ 1, Nature and elements of offense. § 2, Defenses. § 3, Persons liable. § 4, Indictment. § 5, Evidence. § 6, Punishment.

Liability for property destroyed, see "Municipal Corporations," § 12.

§ 1. Nature and elements of offense.
To constitute a riot, three or more persons must assemble with intent, by force and violence, to do some unlawful act, and mutually to assist each other against any one who should oppose them in doing such act; and the act must be done in a violent and turbulent manner, to the terror of the people.—United States v. Peaco, Case No. 16,018.

An assemblage for the purpose of seizing a man without lawful authority, executed by tumultuously surrounding his house, and entering it, is a riot.—United States v. Fenwick, Case No. 15,086.

Three or more persons who act in concert, by prior arrangement, in a violent and turbulent manner, in opposing a public officer in the performance of his duty, *held* guilty of riot.—United States v. Stewart, Case No. 16,401a.

It is not necessary, in order to convict defendant of a riot, that the intended act of violence, or any act of violence, should have been perpetrated.—United States v. Fenwick, Case No. 15,086.

It is not necessary that the unlawful intent should have existed at the time of meeting. It is sufficient if it be afterwards formed; and the unlawful act is evidence of the intent.—United States v. McFarland, Case No. 15,674.

Premeditation and conspiracy, or promises of mutual assistance, are not necessary to constitute a riot.—United States v. Peaco, Case No. 16,018.

§ 2. Defenses.
A person convicted of assault and battery committed in a riot may still be tried and convicted of the riot.—United States v. Peaco, Case No. 16,018.

§ 3. Persons liable.
All concerned in an unlawful assembly are equally guilty of the subsequent acts done by any of them in furtherance of the common object.—United States v. Fenwick, Case No. 15,086.

A man may be convicted of a riot, who was not actively engaged therein, if he was present and ready to give support if necessary.—United States v. Peaco, Case No. 16,018.

Where a defendant has combined with others in an intent to do violence, it is not necessary, in order to convict him of a riot, that he should have been present during the riot.—United States v. Fenwick, Case No. 15,086.

§ 4. Indictment.
In the indictment, it is sufficient to state that defendants assembled to disturb the peace, and, being so assembled, did certain unlawful acts.—United States v. Fenwick, Case No. 15,086.

It is an indictable offense at common law to incite others to insurrection, tumult, and riot; and the indictment need not aver that insurrection, tumult, and riot were thereby excited.—United States v. Fenwick, Case No. 15,086.

§ 5. Evidence.
The previous intent and agreement to do the unlawful act may be inferred from the doing of the act accompanied by the declaration of an intent to do it.—United States v. Stockwell, Case No. 16,405.

Where defendant's witnesses testified that they were of the party concerned in the riot, they will not be allowed to give evidence of their intention.—United States v. Dunn, Case No. 15,007.

§ 6. Punishment.
Riots are punishable at common law notwithstanding the statute. Imprisonment is not a necessary part of the punishment at common law.—United States v. McFarlane, Case No. 15,675.

RIPARIAN RIGHTS.

See "Fish"; "Navigable Waters," § 18; "Waters and Water Courses," § 2.

RISKS OF EMPLOYMENT.

Assumed by employé, see "Master and Servant," § 6.

ROADS.

See "Highways."
Post roads, see "Post Office," § 9.
Streets in cities, see "Municipal Corporations," §§ 22, 25.

ROBBERY.

§ 1, Nature and elements of offense. § 2, Indictment. § 3, Evidence.

Jurisdiction of offense of robbery on vessels, see "Criminal Law," § 11.
Of mails, see "Post Office," § 17.
On high seas, see "Piracy."

§ 1. Nature and elements of offense.
Robbery is the felonious taking of goods from the person of another, or in his presence, by violence, or by putting him in fear, and against his will.—United States v. Jones, Case No. 15,494.

To constitute robbery, there must be fear or force.—United States v. Sims, Case No. 16,290.

§ 2. Indictment.
An indictment for forcibly taking bank notes from another must state whose property they were.—United States v. McNemara, Case No. 15,701.

§ 3. Evidence.
No road in Virginia is a highway, within the statute taking away benefit of clergy, unless it be a public road laid out according to law, no evidence of which can be received but the record.—United States v. King, Case No. 15,534.

ROYALTIES.

See "Patents," § 159.

RULES OF COURT.

See "Admiralty," § 38; "Courts," § 6; "Motions."

RULES OF NAVIGATION.

See "Collision."

S

SALES.

I. REQUISITES AND VALIDITY OF CONTRACT.

§ 1, Offers or orders and acceptance. § 2, Conditions. § 3, What constitutes sale. § 4, Fraud. § 5, Subject of sale. § 6, Future delivery or "options."

II. CONSTRUCTION OF CONTRACT.

§ 7, What law governs. § 8, Price. § 9, Subject-matter. § 10, Conditions.

III. MODIFICATION OR RESCISSION OF CONTRACT.

§ 11, By agreement of parties. § 12, Rescission of contract by seller—In general. § 13, —— Fraud. § 14, —— Insolvency or misrepresentations of purchaser. § 15, Rescission by buyer—Fraud. § 16, —— Breach of contract. § 17, —— Breach of warranty. § 18, —— Return of goods.

IV. PERFORMANCE OF CONTRACT.

§ 19, Title and possession of seller. § 20, Bills of sale—Recording. § 21, —— Construction and effect. § 22, Delivery and acceptance of goods—In general. § 23, —— Time of delivery. § 24, —— Mode of delivery. § 25, —— Place of delivery. § 26, —— Partial delivery and acceptance. § 27, —— Refusal to receive goods. § 28, Payment of price.

V. OPERATION AND EFFECT.

§ 29, When title passes—In general. § 30, —— On delivery. § 31, —— On delivery to carrier. § 32, —— On payment of price or execution of notes. § 33, Rights of buyer as to third persons. § 34, Bona fide purchasers.

VI. WARRANTIES.

§ 35, In general. § 36, Implied warranty. § 37, Waiver of breach. § 38, Release from warranty.

VII. REMEDIES OF SELLER.

§ 39, Stoppage in transitu. § 40, Lien. § § 41, Recovery of goods delivered. § 42, Action for price or value—When action lies. § 43, —— Defences. § 44, —— Pleading. § 45, —— Amount of recovery. § 46, Action for damages.

VIII. REMEDIES OF BUYER.

§ 47, Recovery of price. § 48, Action for breach of contract—When action lies. § 49, —— Evidence. § 50, —— Damages. § 51, Actions for breach of warranty.

IX. CONDITIONAL SALES.

§ 52, Rights and liabilities of parties inter se. § 53, Validity of condition as against third persons. § 54, Recording contract.

See, also, "Vendor and Purchaser."
In admiralty, see "Salvage," § 70.
On execution, see "Execution," §§ 14–19.
On foreclosure of mortgage, see "Mortgages," §§ 18–27, 39–41; "Railroads," §§ 50, 51.
On order or judgment of court, see "Judicial Sales."
Parol evidence, see "Evidence," § 66.
Requirements of statute of frauds, see "Frauds, Statute of," § 3.
Tax sales, see "Taxation," § 13.

By particular persons.

Agent, see "Principal and Agent."
Assignee in bankruptcy, see "Bankruptcy," §§ 159, 296–309, 533.
Auctioneer, see "Auctions and Auctioneers."
Bailee, see "Bailment," § 2.
Executor or administrator, see "Executors and Administrators," §§ 21–27.
Factors, see "Factors," §§ 7–10.
Guardian, see "Guardian and Ward," §§ 5–7.
Partner, see "Partnership," § 24.

Of particular property.

Bankrupt's property, see "Bankruptcy," §§ 159, 296–302.
Bank stock, see "Banks and Banking," §§ 4, 15.
Cargo, see "Shipping," §§ 80–82, 190.
Copyrighted works, see "Copyrights," § 21.
Decedent's estate, see "Executors and Administrators," §§ 37–39.
Exempt property, see "Bankruptcy," § 533.
Forfeited property, see "Internal Revenue," § 88.
Goods for duties, see "Customs Duties," § 61.
Insolvent's estate, see "Insolvency," § 9.
Intoxicating liquors, see "Intoxicating Liquors."
Patented articles, see "Patents," §§ 160–163.
Patent rights, see "Patents," §§ 142–149, 160–163.
Property seized as prize, see "War," § 57.
Public lands, see "Public Lands," §§ 18–25.
Railroads, see "Railroads," § 25.
Trust property, see "Trusts," § 20.
Vessel, see "Shipping," §§ 29–35, 78, 79.
Wrecks, see "Shipping," § 257.

I. REQUISITES AND VALIDITY OF CONTRACT.

§ 1. Offers or orders and acceptance.

Sending a circular naming "present price" of an article is an offer to sell, and its acceptance by ordering a reasonable amount completes a contract.—Hall v. Kimbark, Case No. 5,938.

One to whom sugars were shipped without orders is entitled to a few days, after learning of the shipment, to deliberate whether to receive them on his own account or to reject them.—Kingston v. Kincaid, Case No. 7,822.

Where the market in certain goods is subject to sudden and great fluctuations, an acceptance of a proposition by telegraph, after a delay of 24 hours, is not within a reasonable time.—Minnesota Linseed Oil Co. v. Collier White Lead Co., Case No. 9,635.

§ 2. Conditions.

A contract to buy, made by a broker, on condition that the seller should get information as to the purchaser's financial standing, and, if unsatisfactory, accept security, is enforceable by the purchaser.—Atkinson v. Hubbard, Case No. 612.

§ 3. What constitutes sale.

An agreement whereby A. was to furnish goods to B. at schedule prices, B. to settle every three months for all goods sold or shipped from his warehouse, at the stipulated prices, and for all goods remaining on hand at the end of the year, creates the relation of buyer and seller.—In re Linforth, Case No. 8,369.

The title does not pass where a person receives goods to be paid for at the invoice price when sold by him, with the right to return those unsold at their invoice price.—Merrill v. Rinker, Case No. 9,471.

Where a chain cable is loaned a vessel until another can be manufactured for her, and she fails to return it as agreed, and sails with both cables, she is liable for the price of both.—Sarchet v. The General Isaac Davis, Case No. 12,357.

§ 4. Fraud.
The purchaser is not bound to answer the seller's inquiries respecting the state of the market.—Blydenburgh v. Welsh, Case No. 1,583.

A sale obtained by false representations is affirmed by an action for the purchase price, brought after knowledge of the fraud.—Dibblee v. Sheldon, Case No. 3,889.

A sale of flour branded "Gallego," described as "Haxall," is not void.—Bertram v. Lyon, Case No. 1,362.

See, also, post, §§ 13, 15.

§ 5. Subject of sale.
A contract to deliver goods not in existence at the time is not a sale.—Low v. Andrews, Case No. 8,559.

A sale of a thing not in existence is void.—Bertram v. Lyon, Case No. 1,362.

A valid sale may be made of personal property which is out of possession of the party.—The Sarah Ann, Case No. 12,342.

A bona fide sale by a factor of the goods of his principal for a valuable consideration by assigning over the bill of lading is valid against the principal if the bill of lading has been received by the factor.—Walter v. Ross, Case No. 17,122.

§ 6. Future delivery or "options."
A contract to deliver flour on or before a certain day is not void because the seller has not the flour on hand at the time of the contract.—Dodge v. Van Lear, Case No. 3,956.

A contract for the future delivery of goods which seller does not own, and has no means of obtaining, is not void for illegality.—Clarke v. Foss, Case No. 2,852.

A sale for future delivery is not invalid, as a gaming contract, unless the intention that there should not be actual performance was mutual.—Clarke v. Foss, Case No. 2,852.

A valid contract of sale for future delivery is not rendered illegal by a subsequent settlement by payment of difference. — Clarke v. Foss, Case No. 2,852; Gilbert v. Gaugar, Id. 5,412.

A contract of sale which does not contemplate an actual bona fide delivery, but is to be settled by payment of difference in market price at future time, is void as a gambling contract.—In re Green, Case No. 5,751.

A contract for the purchase or sale of cotton for future delivery is valid unless it be affirmatively shown that neither party intended a delivery, and that the contract should be performed by the payment of differences.—Lehman v. Strassberger, Case No. 8,216.

A contract for the sale and delivery of grain, which the party did not have and did not intend to have, is nevertheless valid, and the purchaser cannot show that the parties intended that the "difference" should be settled in cash.—Porter v. Viets, Case No. 11,291.

Rev. St. Ill. c. 38, § 130, does not prohibit sales of grain or other commodities for future delivery, where the seller reserves to himself a simple option as to the time of delivery within certain limits.—Gilbert v. Gaugar, Case No. 5,412.

II. CONSTRUCTION OF CONTRACT.

§ 7. What law governs.
The merchantable quality of goods sold is to be determined by the law of the place of delivery.—Ladd v. Dulany, Case No. 7,971.

The transfer of personal chattels is governed by the law of the owner's domicile if the contract of transfer was made there, though the chattels may be, at the time, in another state, by the laws of which the transfer would be void.—Wickham v. Dillon, Case No. 17,612.

A mere sale in one state, made with knowledge that the purchaser intended to use the property to violate some positive law of another state, can be the foundation of an action in the state whose law was intended to be violated.—Sortwell v. Hughes, Case No. 13,177.

A statute inflicting a penalty on a sale does not apply to mere executory contracts, especially where they are declared void by another statute.—Sortwell v. Hughes, Case No. 13,177.

§ 8. Price.
A payment in goods at "factory prices" means the prices at which such goods are sold at factories.—Whipple v. Levett, Case No. 17,518.

On the receipt of goods ordered from abroad, where no price was stipulated, the purchasers are only liable for their value at the time and place of shipment, irrespective of the invoice price.—Fenton v. Braden, Case No. 4,730.

An order, "Please ship me at once 25 bbls. same whisky I had before," is an order for a cash sale.—Maddux v. Usher, Case No. 8,936.

§ 9. Subject-matter.
Construction of a contract in relation to the sale of books.—Gray v. Harper, Case No. 5,716.

Construction of contract for sale of stock in a cotton compress manufacturing company and certain presses, where payments were to be made in installments. — Wheeler v. Helmbold, Case No. 17,496.

A contract for material in "tons," *held* to call for 2,240 pounds, though the state has attempted to fix a ton at 2,000.—The Miantinomi, Case No. 9,521.

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.—Winterport Granite & Brick Co. v. The Jasper, Case No. 17,898.

§ 10. Conditions.
The condition "provided it is not sold" applies to the present status of the article.—Blydenburgh v. Welsh, Case No. 1,583.

III. MODIFICATION OR RESCISSION OF CONTRACT.

§ 11. By agreement of parties.
Where the buyer does not accept a modification of terms of payment proposed by the seller after delivering the goods, the original terms remain in full force.—Bauendahl v. Horr, Case No. 1,113.

§ 12. Rescission of contract by seller—In general.
A contract by the consignee of cargo for the sale thereof may be rescinded where the purchaser refuses to receive the cargo and make payment, except upon conditions which he has no right to prescribe.—The Treasurer, Case No. 14,159.

§ 13. —— Fraud.

It seems that, by the law of Massachusetts, a purchase of goods with an intent not to pay for them is voidable by the seller, and so is a sale made upon the faith of any willful misrepresentation.—Parker v. Byrnes, Case No. 10,728.

See, also, ante, § 4.

§ 14. —— Insolvency or misrepresentations of purchaser.

A sale cannot be avoided on the ground that the buyer knew himself to be insolvent, and had no reasonable expectation of being able to pay.—Biggs v. Barry, Case No. 1,402.

Material misrepresentations as to credit made by the purchaser, and relied upon by the seller, are ground of rescission.—Johnson v. Peck, Case No. 7,404.

On rescission by the seller, the articles sold may be recovered back from one to whom they have been mortgaged to secure an existing debt, but not from a third person to whom the title has passed for a new consideration.—Johnson v. Peck, Case No. 7,404.

§ 15. Rescission by buyer—Fraud.

Where teas were sold to be selected by A., and were changed after selection, the buyer can rescind, and refuse to accept them.—Cheongwo v. Jones, Case No. 2,638.

If, at the time of the sale of a horse, the animal is subject to a disease known to the seller, which he conceals, and which was not discoverable by the buyer with ordinary vigilance, the sale is fraudulent.—Pease v. McClelland, Case No. 10,882.

Fraud or misrepresentation cannot be taken advantage of by a purchaser from the original buyer, unless they were practiced on him also by the original seller; and, if so, the latter must be sued alone for what he alone did wrongfully.—Simpson v. Wiggin, Case No. 12,887.

Exaggerated representations as to price or value are not as strong evidence of fraud as untrue statements as to title or other material facts exclusively within the seller's knowledge.—Simpson v. Wiggin, Case No. 12,887.

Where a seller of tobacco in kegs opened some kegs for inspection, and offered to open more, but the quality turned out worse than either party supposed, he is not liable for fraud, nor is there any ground for rescission.—Simpson v. Wiggin, Case No. 12,887.

If the purchaser discovers that the articles are of less value than he supposed, and wishes to proceed in equity, he should offer to return them. He cannot sell them at auction, and then proceed in equity for damages alone.—Simpson v. Wiggin, Case No. 12,887.

If one in great need of money purchase an article on long credit for more than its market value, in order to resell and raise the needed money, such sale is not void for oppression, and probably not for usury, if nothing material was concealed.—Simpson v. Wiggin, Case No. 12,887.

See, also, ante, § 4.

§ 16. —— Breach of contract.

A sale of corporate stock to an alleged agent, and the receipt of a draft on the alleged purchaser for the purchase money, is a sale for cash, and a refusal of the latter to pay the draft nullifies the transaction.—McComb v. Credit Mobilier, Case No. 8,709.

§ 17. —— Breach of warranty.

One who purchases looking glass, advertised as superior quality, after a full examination, cannot claim to be relieved from the bargain because it is in fact of inferior quality.—Calhoun v. Vechio, Case No. 2,310.

See, also, post, §§ 35–38.

§ 18. —— Return of goods.

To rescind a sale, the property must be returned if possible.—Christy v. Cummins, Case No. 2,708; Henckley v. Hendrickson, Id. 6,348; Miller v. Smith, Id. 9,590.

IV. PERFORMANCE OF CONTRACT.

§ 19. Title and possession of seller.

Property distrained for rent may be transferred by the tenant to his creditors, subject to the lien for the rent.—Leonard v. Neale, Case No. 8,259.

Property levied upon by attachment or execution is subject to sale by defendant.—Starr v. Moore, Case No. 13,315.

Actual possession is not necessary to a transfer of personal property, nor is the want of it even an indicium of fraud, where from the circumstances, as in the case of goods at sea, it cannot be obtained.—United States v. Delaware Ins. Co., Case No. 14,942.

It is no objection to the vesting of the right of property in the consignee for value, or whose debt it is to secure, that the goods are, by agreement, to be at the risk and for account of the consignor.—United States v. Delaware Ins. Co., Case No. 14,942.

§ 20. Bills of sale—Recording.

A deed of personal property, not acknowledged and recorded according to Act Md. 1729, c. 8, is valid between the parties and their privies, though not accompanied by possession.—Prather v. Burgess, Case No. 11,367.

An absolute bill of sale of personal property, unaccompanied by possession, is void, at common law, as to subsequent purchasers without notice, although acknowledged and recorded agreeably to Act Md. 1729, c. 8, §§ 5, 6.—Hamilton v. Franklin, Case No. 5,981.

§ 21. —— Construction and effect.

A bill of sale of personal property is valid between the parties to transfer the legal title, although the possession and the beneficial interest remain with the vendor.—Washington v. Wilson, Case No. 17,240.

A clause in a bill of goods respecting deficiencies is inoperative where the contract is previously complete.—Allen v. Schuchardt, Case No. 236.

A bill of parcels, receipted by defendant, is not per se evidence of an unexecuted contract to deliver the goods, but is prima facie evidence of a contract executed.—Richardson v. Peyton, Case No. 11,794.

A joint bill of parcels is not conclusive evidence of joint property in goods sold.—Johnson v. Harris, Case No. 7,388.

§ 22. Delivery and acceptance of goods—In general.

The purchaser of goods sold while at sea acquires, without actual possession, a constructive possession, sufficient to maintain trespass against any wrongdoer.—Howland v. Harris, Case No. 6,794.

If the seller states under seal that he has bargained, sold, and delivered the property to the purchaser, he is estopped to deny the delivery, and the instrument is evidence of property in the purchaser.—Nevett v. Berry, Case No. 10,135.

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.—Winterport Granite & Brick Co. v. The Jasper, Case No. 17,898.

That goods sold on credit were allowed to remain in the seller's warehouse, at option of purchaser, does not prevent the delivery being complete, a note being given for the price. —Barrett v. Goddard, Case No. 1,046.

Under a contract to pay for goods as delivered, and to have an agent at the destination to receive the goods from the carrier, the risk of transportation is on the seller.—Thompson v. Cincinnati, W. & Z. R. Co., Case No. 13,950.

§ 23. —— Time of delivery.
Goods are deliverable in a reasonable time if no time for delivery is fixed, and the contract is broken by refusal to deliver on demand when no objection is made to the time. —Blydenburgh v. Welsh, Case No. 1,583.

If a contract be absolute to deliver flour on or before a particular day, the seller will not be excused by an obstruction of navigation.—Dodge v. Van Lear, Case No. 3,956.

§ 24. —— Mode of delivery.
The indorsement and delivery by the consignee of goods en route of a bill of lading to purchasers at a certain price per ton, and its acceptance by them, is a sufficient delivery to pass title.—Audenried v. Randall, Case No. 644; Balderston v. Manro, Id. 793.

A usage in the grain trade in a certain locality to deliver barley in sacks may be shown, when nothing is said in the contract as to the mode of delivery.—United States v. Robinson, Case No. 16,177.

§ 25. —— Place of delivery.
The place of delivery of wheat purchased by a commission merchant for his principal will be presumed to be the place where the commission merchant does business.—Rice v. Montgomery, Case No. 11,753.

The omission to designate the place of delivery between the points stipulated will not prevent the other party from making delivery at any convenient point he may select between the points stipulated, in discharge of his contract to deliver.—Hartfield v. Patton, Case No. 6,158a.

§ 26. —— Partial delivery and acceptance.
A contract to deliver a certain quantity at such times as may be required by the purchaser may be waived by acceptance of a less amount than that named in the notice, and giving notice to furnish at subsequent periods.—McNaughter v. Cassally, Case No. 8,911.

§ 27. —— Refusal to receive goods.
A refusal to take goods purchased dispenses with the necessity of a tender.—Calhoun v. Vechio, Case No. 2,310.

Where the party refused to accept at subsequent periods, in accordance with his notice to deliver, the previous nonperformance by the other party is no defense.—McNaughter v. Cassally, Case No. 8,911.

After refusal to receive one load of a certain quantity to be delivered, tender of the balance, if ready for delivery, is not necessary to charge the other party.—McNaughter v. Cassally, Case No. 8,911.

§ 28. Payment of price.
When there is no unfairness, the price agreed upon, though extravagant, must be paid.—Henckley v. Hendrickson, Case No. 6,348.

Where acceptance was refused because a delivery is accompanied by a demand for a greater price than agreed, the party is not bound to pay anything.—Detroit Stove Works v. Perry, Case No. 3,835.

Delay incident to the badness of the roads is within the agreement to transmit money through express in payment of the price of goods sold.—Halsey v. Hurd, Case No. 5,967.

V. OPERATION AND EFFECT.

§ 29. When title passes—In general.
The question whether the title has passed depends upon whether anything remains to be done by the seller.—Gates v. Winooski Lumber Co., Case No. 5,270.

The property does not pass unless there be a certain price agreed upon, and a delivery of possession.—Harper v. Dougherty, Case No. 6,087.

The mailing to a purchaser of a warehouse receipt for grain in a distant warehouse, though not separated from the general mass of grain therein, passes title.—Brooke v. Scoggins, Case No. 1,936.

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.—Winsor v. McLellan, Case No. 17,887.

As between the mortgagor and mortgagee, notice to the part owner in possession is not necessary.—Winsor v. McLellan, Case No. 17,887.

§ 30. —— On delivery.
The title does not pass on delivery where the purchaser has agreed that the goods shall remain the property of the seller until payment of purchase price.—Gaylor v. Dyer, Case No. 5,283.

A delivery after the failure of the purchaser of goods purchased before, procured by a fraudulent suppression of the fact, is ineffectual to transfer the title.—D'Wolf v. Babbett, Case No. 4,220.

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.—Wood M. & R. Co. v. Brooke, Case No. 17,980.

§ 31. —— On delivery to carrier.
Under a contract to deliver goods, putting them on board a vessel and transmitting bills of lading vests the property in the consignee, though the bill of lading does not arrive.—Low v. Andrews, Case No. 8,559.

A shipment will remain on the account and risk of the shipper, unless there be an express or implied authority to change the proprietary interest, and put the shipment at the risk of the consignees.—The San Jose Indiano, Case No. 12,324.

A shipment made by a merchant, who purchased goods for another consigned to his own agent, with the right to hold them until arrangements are made with the correspondent, does not devest the title or possession of the shipper.—The San Jose Indiano, Case No. 12,322.

If a shipper have general discretionary orders to ship goods, the shipment will remain at his own risk until he appropriates the shipment to his correspondent.—The Francis, Case No. 5,036.

A shipment made without or contrary to orders still remains at the risk of the shipper.—The Francis, Case No. 5,036.

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.—Wilson v. The Truxillo, Case No. 17,841.

A. having made a contract for the sale of a certain amount of wheat, and for its delivery on ship board, entered into a contract with B. to purchase and supply such wheat on joint account, and B. subsequently purchased the wheat, and delivered it for shipment in fulfillment of A.'s contract. *Held*, that the title passed on such delivery, and, where A. subsequently exercised the right of stoppage in transitu, he did so for his own benefit, and not for B.'s benefit.—In re Comstock, Case No. 3,079.

§ 32. —— On payment of price or execution of notes.

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.—Wilmarth v. Mountford, Case No. 17,774.

On a sale of goods for cash or satisfactory paper, delivered upon condition that the contract should be complied with, title does not pass until performance by the purchaser.—Copland v. Bosquet, Case No. 3,212.

A delivery on board the purchaser's vessel, on condition of compliance with the terms of the contract that indorsed paper shall be given to secure the purchase price, does not pass the title.—D'Wolf v. Babbett, Case No. 4,220.

A contract for the conditional delivery of goods to a debtor gives his creditors no title to them until the account for the same is paid.—Sawyer v. Turpin, Case No. 12,410.

Where the seller sent an invoice for goods ordered, and a draft for the amount, with a request to accept and return it, the sale was conditional, and title did not pass until the condition was complied with.—Maddux v. Usher, Case No. 8,936.

The seller may replevy such goods from a marshal who has levied upon them as the property of the purchaser.—Maddux v. Usher, Case No. 8,936.

§ 33. Rights of buyer as to third persons.

A sale of a chattel is void as to creditors unless the possession accompanies and follows the bill of sale.—Moore v. Ringgold, Case No. 9,773.

The manufacturers received pay for an engine on the false representation that it had been finished and delivered for transportation. *Held*, where they subsequently built the engine, and marked it with the customer's name, that he was entitled to it, by estoppel, as against their assignee in bankruptcy.—In re Rockford, R. I. & St. L. R. Co., Case No. 11,978.

Notice of a lien or incumbrance binds the purchaser if received before payment of the purchase money.—Merrill v. Dawson, Case No. 9,469.

§ 34. Bona fide purchasers.

To constitute a bona fide purchaser for value, he must have been without notice, and have paid a consideration at the time of the transfer, either in money or in other property, or by a surrender of existing debts or securities.—Rison v. Knapp, Case No. 11,861.

A bona fide purchaser without notice can convey an equally good title to any purchaser.—The D. M. French, Case No. 3,938.

A person who purchases property with notice of the wrongful possession of his vendor holds it subject to all remedies that could be enforced against it in the hands of such vendor.—Rateau v. Bernard, Case No. 11,579.

Purchasers or pledgees of stock are not bound to look beyond the certificate to ascertain the validity of the transfer.—Lowry v. Commercial & Farmers' Bank, Case No. 8,581.

Where the existence of a mortgage is known and talked about in the neighborhood, and publicly proclaimed at execution sale, the purchaser is *held* to notice thereof.—Merrill v. Dawson, Case No. 9,469.

VI. WARRANTIES.

See, also, ante, § 17.
Action for breach, see post, § 51.

§ 35. In general.

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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

A representation made in the course of a negotiation does not amount to a warranty, where not contained in the contract, as afterwards reduced to writing.—Randall v. Rhodes, Case No. 11,556.

Letters written before the making of the contract, and not referred to therein, are inadmissible to prove a warranty, where the contract is complete in itself.—Randall v. Rhodes, Case No. 11,556.

Description in sale note of flour as "Haxall" amounts to warranty.—Bertram v. Lyon, Case No. 1,362.

The purchaser cannot claim damages upon a warranty or an advertisement where he purchases after an examination.—McVeigh v. Messersmith, Case No. 8,931.

§ 36. Implied warranty.

Where goods are sold by sample, there is an implied warranty that the articles shall correspond with the samples.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

On a sale by sample exhibited in a sealed bottle, there is implied warranty that the goods correspond with its apparent qualities.—Allen v. Schuchardt, Case No. 236.

A usage of the wool trade to imply a warranty that the bale of wool is not falsely packed is valid and controlling.—Kellogg v. Barnard, Case No. 7,661.

On the sale of a machine ordered for a particular purpose, a warranty is implied that the machine is fit for such purpose, unless the seller, by express contract, relieves himself of responsibility.—Moore v. The Charles Morgan, Case No. 9,754.

There can be no implied warranty of the quality of goods which for some time before the sale have been, and at the time of the sale are, in the custody of the purchaser.—Dooley v. Gallagher, Case No. 3,996.

§ 37. Waiver of breach.

On a contract to deliver teas, to be selected by A., if A. accepts an inferior quality there is an end to the warranty.—Cheongwo v. Jones, Case No. 2,638.

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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

Payment of freight on and receipt of goods sold by sample, where the purchaser had no previous opportunity to examine them, will not estop him from refusing to accept the goods for failure to comply with the warranty, and he may recover back the freight and money paid.—Conrad v. Dater, Case No. 3,127.

§ 38. Release from warranty.

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. —Youqua v. Nixon, Case No. 18,189.

It is no excuse for the nonperformance of a contract to deliver "prime" "first chop" teas that the season of the year when the teas were to have been delivered was unfavorable to the best teas being at market.—Gilpins v. Consequa, Case No. 5,452.

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.—Youqua v. Nixon, Case No. 18,189.

VII. REMEDIES OF SELLER.

§ 39. Stoppage in transitu.
The right of stoppage in transitu exists in favor of the seller of imported goods "to arrive," entered in his name, and stored in a bonded warehouse.—In re Bearns, Case No. 1,191.

A seller of imported goods on long credit who takes notes for the price, delivering the shipping papers to the buyer, who warehouses them in his own name, has no right of stoppage.—Parker v. Byrnes, Case No. 10,728.

The right of stoppage in transitu ceases on a sale by the purchaser to a third person.—Schmidt v. The Pennsylvania, Case No. 12,464.

Where such buyer sells to another, giving an order on the warehouseman which is duly accepted by him, he has no lien or right over them.—Parker v. Byrnes, Case No. 10,728.

The doctrine as to stoppage in transitu does not apply where the actual or constructive possession remains in the shipper or his exclusive agents.—The San Jose Indiano, Case No. 12,322.

The right of the seller, in cases of insolvency, to stop goods for nonpayment of the purchase money, is confined to cases where the goods are still in transit to the vendee.—Conyers v. Ennis, Case No. 3,149.

Goods consigned to the purchaser after his death cannot be reclaimed by the seller after they have been received by his administrator, on the ground of insolvency at the time of the sale, in the absence of fraud.—Conyers v. Ennis, Case No. 3,149.

The seller has the right of stoppage in transitu as to goods sold for cash to be paid for on receipt of the invoice, where they were warehoused by the master of the canal boat on which they were loaded, on its being stopped by ice.—In re Foot, Case No. 4,907.

Goods cannot be stopped by the seller after reaching a forwarding merchant in whose hands they are to await instructions of the buyer as to further transit.—Biggs v. Barry, Case No. 1,402.

The possession of goods by customs officers prior to entry will not defeat the right of stoppage in transitu.—Burnham v. Winsor, Case No. 2,180.

Part payment and acceptance of a draft for the balance, and the fact that the consignees were part owners of the vessel, and the ship's husband, will not defeat the right of stoppage in transitu.—Burnham v. Winsor, Case No. 2,180.

The right of stoppage in transit does not affect the right of property in the purchaser.—Blum v. The Caddo, Case No. 1,573.

Consignees making advances on the goods have a paramount lien therefor, and the consignor has no right to divert them, or stop them in transitu.—Burritt v. Rench, Case No. 2,201.

§ 40. Lien.
The seller has no lien, as such, where he delivers possession to the purchaser and takes a chattel mortgage from him.—In re Leland, Case No. 8,234.

Where goods were deposited in a warehouse in the name of one to whom they were afterwards sold, no further delivery is necessary, and the seller's lien is lost.—In re Batchelder, Case No. 1,099.

Otherwise where goods deposited in the name of another were sold to a third person, and no notice given of that fact.—In re Batchelder, Case No. 1,099.

§ 41. Recovery of goods delivered.
The seller of goods delivered, where the sale was not complete because payment was not made as agreed, may maintain replevin under the Connecticut statute.—Bauendahl v. Horr, Case No. 1,113.

It is not necessary to the seller's right of reclamation, where the conditions of the sale were not performed, that he should return the buyer's promissory note, which was not accepted in payment.—Bauendahl v. Horr, Case No. 1,113.

§ 42. Action for price or value — When action lies.
Where the purchaser of a horse gave in payment an order on a third person, payable at a future day, and subsequently countermanded it, and acceptance was refused, an action will not lie for the price before the time when the order is payable.—Magher v. Johnston, Case No. 8,954.

The seller may sue before expiration of the credit where goods were procured by false representations, and sold in fraud of creditors.—Barrett v. Koella, Case No. 1,048.

The presumption is that the goods were sold for cash, or that notes taken were negotiable.—Barrett v. Koella, Case No. 1,048.

Where bank notes are taken in payment of goods sold with the understanding that they are to be returned if not current, the seller cannot sue for the price without returning the notes unless it appear that the buyer knew the notes were worthless when he made the bargain.—Wilkinson v. Williams, Case No. 17,677a.

A seller who accepts a note or bill in satisfaction of the debt cannot sue on the original cause of action, if there was no fraud or unfairness in the transaction.—Parker v. United States, Case No. 10,750.

A seller who takes negotiable paper from the buyer, without any agreement that it shall be received in payment, may sue on the original cause of action if he is in a position to return the paper.—Parker v. United States, Case No. 10,750.

In assumpsit on a draft drawn by an agent whose authority to draw it is denied, plaintiff may abandon the counts on the draft, and recover the value of the goods on the counts for goods sold and delivered.—Slocomb v. Lurty, Case No. 12,949.

§ 43. —— Defenses.
It is no defense to an action for the price of goods sold that the vendor knew that they were purchased to be sold in another jurisdiction, in violation of its law, unless he did or agreed to do some act in furtherance of the illegal intention.—Green v. Collins, Case No. 5,755.

In an action for the purchase price, defendant need not show an offer to return the property, where he proves fraud in the sale.—Cushwa v. Forrest, Case No. 3,517.

In an action for goods sold, defendant may give in evidence, in mitigation of damages, that the goods were of a quality inferior to what they were represented to be at the sale.—Miller v. Smith, Case No. 9,590.

§ 44. —— **Pleading.**
A declaration on a promise to pay on the delivery of goods to C. is not supported by proof of a promise to pay if C. did not.—Trask v. Duval, Case No. 14,143.

§ 45. —— **Amount of recovery.**
Where notes given for the purchase price of property are misdescribed in the declaration, plaintiff may recover on the general counts, but in such case the recovery is limited to the market value.—Henckley v. Hendrickson, Case No. 6,348.

On a dispute whether the price—$3.25—on the sale of shingles was for a bunch or for a thousand, *held* that, unless both parties had understandingly assented to one of those views, there was no special contract as to the price.—Greene v. Bateman, Case No. 5,762.

The purchaser, having sold the shingles after the seller refused to accept his understanding or their return, is liable for the amount for which he sold them, after deducting fair compensation for his services.—Greene v. Bateman, Case No. 5,762.

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.—Youqua v. Nixon, Case No. 18,190.

§ 46. **Action for damages.**
Sales of goods at auction are not conclusive evidence of the value of goods in an action for damages for breach of contract.—Willings v. Consequa, Case No. 17,766; Consequa v. Willings, Id.

VIII. REMEDIES OF BUYER.

§ 47. **Recovery of price.**
The purchaser of property sold without title cannot recover the purchase money, in assumpsit, without proof of a return, or offer of return, of the property, nor where there was a bill of sale under seal, with an express warranty of title.—Gunnel v. Dade, Case No. 5,869.

Where the contract is terminated solely on account of the default of the purchaser, an action will not lie by him to recover back an advance payment.—Kane v. Jenkinson, Case No. 7,607.

Upon a sale of stock, paying par value, with the addition of a certain sum, to cover an anticipated dividend, *held*, that the purchaser might recover back such addition, where the dividend was not earned or declared.—Riggs v. Tayloe, Case No. 11,832.

§ 48. **Action for breach of contract—When action lies.**
Where the seller notifies the buyer that he regards the contract as rescinded, and will make no more deliveries under it, the purchaser may treat the contract as wholly broken, and at once recover damages upon the entire contract, without demand.—United States v. Robinson, Case No. 16,177.

A customer ordering goods of a manufacturer, knowing the latter's usage in respect to filling orders in turn, as received, cannot maintain suit for breach of contract, unless he establishes some right superior to that arising under the usage.—New England Screw Co. v. Bliven, Case No. 10,157.

§ 49. —— **Evidence.**
Under a contract to deliver within the state pork well put up for a foreign market, the purchaser may show the condition of the article en route to the foreign port, to enable the jury to judge whether it was well put up at the place of delivery.—Lawrence v. White, Case No. 8,147.

§ 50. —— **Damages.**
The measure of damages for failure to deliver an article sold is its value on the day the cause of action accrued.—McAllister v. Douglas, Case No. 8,657.

The rule of damages for breach of the contract is the market price at the time that the goods were deliverable, though defendant's refusal was made with a view to profit.—Blydenburgh v. Welsh, Case No. 1,583.

Where no price is fixed, the jury may give any rate appearing by the evidence.—Blydenburgh v. Welsh, Case No. 1,583.

The measure of damages for a failure to transfer corporate stock according to contract is the price of the stock on the day when it ought to have been transferred.—Tayloe v. Turner, Case No. 13,770.

The rule of damages for the nonfulfillment of a contract for the delivery of property is the difference between the price at which it was agreed it should be delivered and its actual market value at the time and place of delivery specified in the contract.—White v. Arleth, Case No. 17,536; McNaughter v. Cassally, Id. 8,911; Barnard v. Conger, Id. 1,001.

Measure of damages for breach of contract to deliver goods at Boston for shipment to a foreign market is the difference between the contract and the market price at Boston.—Ex parte Becker, Case No. 1,207.

The purchaser may claim as damages the difference between the contract price at the time delivery was to be made and the current price of the article at the actual time of delivery.—Halsey v. Hurd, Case No. 5,967.

The measure of damages for the failure to ship goods as agreed *held* to be their value at the place of shipment at the time of refusal under the contract.—Rabaud v. D'Wolf, Case No. 11,519.

The measure of damages for breach of a contract to deliver goods free on board at Boston, and procure freight to Antwerp, is the difference between the contract price and the market value in Boston at the time of the breach.—Sievers v. North, Case No. 12,847.

In case of loss in transit, the rule of damages is the difference between the contract price and the market value at the time and place of the delivery.—Thompson v. Cincinnati, W. & Z. R. Co., Case No. 13,950.

The damages sustained for unsoundness in pork, due to the manner in which it was put up, are ascertained by comparing the sales of the unsound article with the market price of the good article at the place where it was sold.—Forman v. Miller, Case No. 4,940.

The market price of oats after the bankruptcy of a broker who agreed to buy and hold them on a margin cannot be considered in estimating damages for breach of the contract.—Lehmer v. Smith, Case No. 8,217.

Damages for nonpayment of money or nondelivery of obligations for money is the amount due, with interest. Collateral damages are not given.—Memphis v. Brown, Case No. 9,415.

Damages for a breach of contract for the delivery of goods do not bear interest.—Youqua v. Nixon, Case No. 18,189.

§ 51. **Actions for breach of warranty.**
Assumpsit in the nature of an action of deceit will lie for false representation as to soundness, though there is a bill of sale under seal warranting title.—Grant v. Bontz, Case No. 5,694.

The sale of imported goods of the quality contracted for compared with sales of the goods as delivered furnishes the rate, but not the amount of loss.—Gilpins v. Consequa, Case No. 5,452.

No damages are to be allowed for any profit or gain the plaintiff might have obtained by ex-

change or otherwise.—Gilpins v. Consequa, Case No. 5,452.

The examination by supercargoes of goods purchased, and their expression of satisfaction to the purchaser, is not conclusive of quality if in fact the goods were not as represented.—Gilpins v. Consequa, Case No. 5,452.

IX. CONDITIONAL SALES.

§ 52. Rights and liabilities of parties inter se.

Where, by the contract, title is not to pass until the price is paid, the title remains in the vendor, though but a small part of the price is unpaid, and the vendee has possession.—In re Lyon, Case No. 8,644.

To save a stipulated forfeiture of an advance payment for failure to pay the residue by a certain day, the party must use his best efforts to tender the balance.—Bayley v. Duvall, Case No. 1,139.

§ 53. Validity of condition as against third persons.

The possession of the fixtures and outfit of a tobacco manufactory does not create any presumption as to title.—In re Binford, Case No. 1,411.

A sale on condition that the title shall not pass until the purchase money be paid and the goods delivered is valid even as against subsequent bona fide purchasers.—In re Binford, Case No. 1,411.

As against subsequent bona fide purchasers, the seller has the burden of showing the sale to be conditional.—In re Binford, Case No. 1,411a.

The seller is estopped by his silent allowance of claim of title by another to assert that the sale was conditional.—In re Binford, Case No. 1,411a.

A lease of a machine for a sum equal to its value, to be paid in nine months, in default of which the lessor was to have the right to repossess it, is a conditional sale, and invalid against a subsequent pledgee without notice, where not recorded. Code Iowa, § 1922.—Pittsburgh Locomotive & Car Works v. State Nat. Bank of Keokuk, Case No. 11,198.

§ 54. Recording contract.

A bill of sale on condition, having been recorded in the town where the purchaser represented that he resided, though he actually resided elsewhere, is valid as against his assignee in bankruptcy.—Allen v. Whittemore, Case No. 241.

Conditional sales of personal property are valid in Missouri, and need not be recorded.—Rogers Locomotive Works v. Lewis, Case No. 12,024.

SALVAGE.

I. RIGHT TO COMPENSATION.

§ 1, What constitutes salvage services—In general. § 2, —— Waters and places. § 3, —— Effect of usage. § 4, —— Recapture. § 5, —— Pilotage. § 6, —— Navigation. § 7, —— Transportation. § 8, —— Furnishing materials. § 9, —— Preventing loss or injury. § 10, —— Saving life. § 11, The peril—In general. § 12, —— Disabled or helpless vessel. § 13, Success essential. § 14, Request for, or refusal of, services. § 15, Forcing services. § 16, Towing services. § 17, Derelict property. § 18, Property subject to salvage. § 19, Who may claim salvage—In general. § 20, —— Voluntary or obligatory services in general. § 21, —— Officers and seamen. § 22, —— Passengers. § 23, —— Pilots. § 24, —— Corporations. § 25, Effect of negligence or fraud in causing original loss. § 26, Competing salvors. § 27, Effect of contract for services. § 28, Forfeiture—By misconduct in general. § 29, —— By embezzlement.

II. THE AMOUNT AND APPORTIONMENT.

§ 30, How amount determined in general. § 31, Discretion of court. § 32, The whole value, a proportion, or a specific sum. § 33, Considerations influencing or diminishing amount—Character of services in general. § 34, —— Number of salvors employed. § 35, —— Value of property saved. § 36, —— Peril from which saved. § 36a, —— Value of property employed in service. § 37, —— Equipment of salvors. § 38, —— Deviation, delay, and injury to salvor vessel. § 39, —— Expenses and disbursements of salvors. § 40, —— Negligence or misconduct. § 41, Value of property in peril, how determined. § 42, Derelict property. § 43, Effect of special contracts. § 44, Instances of amount of award—Towage services. § 45, —— Pilotage services. § 46, —— Saving cargo. § 47, —— Floating vessel aground. § 48, —— Navigating shorthanded vessel. § 49, —— Derelict vessel. § 50, —— Miscellaneous cases. § 51, Apportionment—Right to share in general. § 52, —— Right of owner of property used in service. § 53, —— Various sets of salvors. § 54, —— Between owners, officers, crew, and others. § 55, —— Deductions. § 56, —— Shares lost by misconduct or not claimed.

III. LIEN AND RECOVERY.

§ 57, Lien. § 58, Suits for salvage—Jurisdiction. § 59, —— Who may sue. § 60, —— Who may be sued. § 61, —— Time to sue. § 62, —— Defenses. § 63, —— Parties and intervention. § 64, —— Joinder of libels. § 65, —— Pleadings. § 66, —— Hearing. § 67, —— Evidence. § 68, Presentation of claims. § 69, The property and proceeds—Care and custody. § 70, —— Sale of property. § 71, —— Liens. § 72. —— Apportionment of salvage compensation. § 73, —— Restoration after payment of salvage. § 74, —— Claims to proceeds. § 75, —— Unclaimed proceeds. § 76, Costs. § 77, Appeal. § 78, Compromise and payment of salvage and recovery of shares.

Liability of insurer for salvage paid, see "Insurance," § 133.

I. RIGHT TO COMPENSATION.

§ 1. What constitutes salvage services—In general.

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.—Williamson v. The Alphonso, Case No. 17,749; The Centurion, Id. 2,554; The M. B. Stetson, Id. 9,363; The H. B. Foster, Id. 6,290.

Risk of life, expenditure of money, or the application of extraordinary means is not essential to a salvage service. It may be exclusively a case of skill.—Lea v. The Alexander, Case No. 8,153.

Personal exposure and risk is not a necessary element in a salvage service, but it is to be considered in measuring the compensation.—Spencer v. The Charles Avery, Case No. 13,232.

It does not affect the character of the service as a salvage service that it was performed by a steamship with but little peril to herself.—The Acacia, Case No. 22.

That the risk was slight, and the duration of the salvage service brief, affects the value of

the same, but cannot bar the claim.—Coffin v. The John Shaw, Case No. 2,949.

Salvage will be awarded where property is exposed to a chance which might destroy it, and is saved at some personal risk.—In re Seven Coal Barges, Case No. 12,677.

It is no objection to a claim for salvage that the interference or assistance of the salvor did not arise from a desire to preserve the property or benefit the owner.—Le Tigre, Case No. 8,281.

The fact that there was no formal surrender of the vessel to which salvage services were rendered will not detract from their character.—Union Tow-Boat Co. v. The Delphos, Case No. 14,400.

A vessel in distress may refuse the services of salvors, but, where services are accepted without stipulation for absolute compensation, the capacity in which they were rendered will not prevent a recovery of salvage compensation.—The Susan, Case No. 13,630.

A purchaser on an illegal condemnation cannot claim salvage for having brought the vessel within the power of her former owners.—Coulon v. The Neptune, Case No. 3,273.

The act of the master of a steamer in signaling and informing a rescuing vessel of the wreck *held* a salvage service.—The Crown, Case No. 3,450.

The rescue of a steamer grounded in the Ohio river, and in imminent peril of loss, is a salvage service.—Blagg v. The E. M. Bicknell, Case No. 1,476.

Salvors are entitled to compensation for services rendered within the ebb and flow of the tide, without regard to location.—The Boston, Case No. 1,673.

§ 2. —— **Waters and places.**

Wherever services have been rendered in saving property on the sea, or wrecked on the coast of the sea, there is a salvage service in the sense of the maritime law.—The Emulous, Case No. 4,480.

Where a steamboat is sunk on a river by floating ice within a few feet of the shore, persons on the bank who assist, at the request of the master, in saving the cargo, are entitled to salvage.—Spencer v. The Charles Avery, Case No. 13,232.

§ 3. —— **Effect of usage.**

There is no usage or custom of binding obligation whereby steam tugs in New York harbor are obliged to render towage services to each other without compensation when found disabled and in need of assistance within their common field of employment.—Sturgis v. The Joseph Johnson, Case No. 13,576.

An alleged custom of boats running in New York Bay to assist each other in distress free of charge *held* not to have been proved.—Staten Island & N. Y. Ferry Co. v. The Thomas Hunt, Case No. 13,326.

§ 4. —— **Recapture.**

Salvage is allowed upon recapture or rescue from an enemy.—The Ann Green, Case No. 414; Brevoor v. The Fair American, Id. 1,847.

Salvage is not due for rescuing the vessel of a neutral out of the hands of a belligerent, who took possession of her for a supposed breach of treaty or of the law of nations.—Waite v. Antelope, Case No. 17,045.

Salvage allowed upon recapture of a ransomed ship, where the ransom bill declared that the sum agreed upon should only be payable upon the arrival of the vessel at her port of destination, and she never arrived there.—Moodie v. The Harriet, Case No. 9,744.

The rescuing of a vessel from pirates is a salvage service.—Porter v. The Friendship, Case No. 10,783.

To entitle a person to salvage upon property taken from pirates, the taking must have been lawful and meritorious.—Davison v. Seal-Skins, Case No. 3,661.

Salvage will not be awarded upon property taken, without authority, from pirates within the territorial jurisdiction of a country at peace with the United States.—Davison v. Seal-Skins, Case No. 3,661.

The seizure and bringing into port of a vessel in distress in command of mutinied slaves, who had killed the commanding officers, is a salvage service.—Gedney v. L'Amistad, Case No. 5,294a.

Salvage will be awarded in such case notwithstanding treaty provision requiring restoration of vessel taken from owners within jurisdiction.—Gedney v. L'Amistad, Case No. 5,294a.

§ 5. —— **Pilotage.**

Pilotage services rendered to a vessel flying a signal of distress, whose officers and crew, save one, were sick with fever, *held* entitled to salvage remuneration.—Moore v. The Caribon, Case No. 9,753a.

Piloting a vessel through dangerous shoals, where she could not have made her way unaided, is salvage service, if performed in connection with other salvage service.—The Maria Pike, Case No. 9,081.

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.—Winso v. The Cornelius Grinnell, Case No. 17,883.

Services in piloting a vessel after she had worked off a shoal, through a narrow, intricate and unmarked channel, to open water, and in pumping during the passage, are in the nature of salvage services.—Curry v. The Loch Goil, Case No. 3,495.

§ 6. —— **Navigation.**

Giving the benefit of skill and experience and other incidental acts of relief may constitute a salvage service, though there is no actual labor or effort.—Boardman v. The Bethel, Case No. 1,585.

Where a master turned his own vessel over to the supercargo, and navigated into port a vessel whose crew were dead or disabled by yellow fever, *held* a salvage service, entitled to a liberal award.—Lamar v. The Penelope, Case No. 8,007.

Answering signal of distress, and placing navigator aboard the vessel at the request of the only remaining officer, ignorant of navigation, is a salvage service.—Butterworth v. The Washington, Case No. 2,253.

Services in placing a navigator aboard, and navigating back to port a vessel whose principal officers had been killed or injured in an affray, and in charge of a disabled second mate, *held* salvage services.—The J. L. Bowen, Case No. 7,322.

§ 7. —— **Transportation.**

A tug which takes the master and crew off of a ship aground, and carries them to port, is not entitled to salvage where the vessel is subsequently saved by other tugs.—The Puritan, Case No. 11,474.

Where a box of bullion is taken from a vessel abandoned at sea, and transferred while at sea to another vessel, to be taken to its destination, the service of the second vessel is not a continuation of the salvage service.—Williams v. Box of Bullion, Case No. 17,717.

A vessel lost in transporting salved cargo after it had been placed in a state of safety is not entitled to salvage.—Stephens v. Bales of Cotton, Case No. 13,366.

The sale by auction of the cargo of a wrecked whaler, which the master had no means of saving or storing, to other whalers homeward bound, will be regarded as a salvage service, and not a purchase.—Jones v. The Richmond, Case No. 7,492. CONTRA, see Jones v. The Richmond, Case No. 7,491.

§ 8. —— Furnishing materials.
Employment of wrecking tackle, under an agreement to arbitrate the value of services rendered, is a salvage service, and not a hiring of the articles on a quantum meruit.—Boardman v. The Bethel, Case No. 1,585.

§ 9. —— Preventing loss or injury.
Two vessels at anchor came in collision in a storm without fault. To prevent the destruction of both, one slipped her cable, and went ashore. *Held* not a salvage service.—Beane v. The Mayurka, Case No. 1,175.

The cutting of an anchored vessel's cable to avoid collision with an abandoned vessel drifting in a field of ice *held* a salvage service, rendering the latter liable to the extent of paying for the anchor and cable lost.—Nickerson v. The John Perkins, Case No. 10,252.

Persuasions and the stand taken by a passenger and members of the crew of a captured vessel in charge of a prize crew, to prevent her being burned by the captors, *held* not sufficient to entitle them to salvage.—Phillips v. McCall, Case No. 11,104.

§ 10. —— Saving life.
No award can be made for saving life, but it may be considered in fixing the amount of salvage in saving property.—The Emblem, Case No. 4,434.

Rescuing runaway slaves, destitute of food or water, adrift at sea, is a salvage service.—Bass v. Five Negroes, Case No. 1,093.

§ 11. The peril—In general.
Where a vessel has encountered any danger or misfortune which may possibly expose her to destruction if services are not rendered, they are salvage services, though the danger is not imminent or absolute.—The Saragossa, Case No. 12,334.

Salvage compensation may be awarded for services rendered to a vessel in distress, though she is in no imminent peril of loss.—The Mount Washington, Case No. 9,887.

The fact that the assistance rendered might not have been actually necessary does not prevent it being a salvage service, if rendered while the vessel was in such a perilous position as to excite apprehension for her safety.—The Courier, Case No. 3,283.

The fact of peril is to be ascertained from the circumstances surrounding the boat at the time when the salvage services commenced.—McGinnis v. The Pontiac, Case No. 8,801.

The drawing of a boat off when aground is not a salvage service, where there was no peril.—Montgomery v. The T. P. Leathers, Case No. 9,736.

Services performed in righting a wreck after it is saved from immediate danger, and has reached a port of safety, are not compensated as salvage services.—The W. D. B., Case No. 17,306.

A steamer which went to the relief of a sloop drifting towards a dangerous reef in Hell Gate after floating off a rock on which she had struck, and took her in tow, *held* entitled to salvage, though the crew, which had been watching her from the shore, had put out in their boat to board her.—Holmes v. The Joseph C. Griggs, Case No. 6,640.

Rescuing a stranded vessel from impending peril is a salvage service, though not indispensable nor attended with danger.—Boardman v. The Bethel, Case No. 1,585.

Services of wreckers in releasing vessel from perilous position, and bringing her into port, *held* to be pilotage in the nature of salvage, where the master, having facilities at hand, accepted proffered services of wreckers.—The Calcutta, Case No. 2,298.

Unloading a ship which is on fire, attended with danger to life, is a salvage service,—not simply stevedore services.—The Circassian, Case No. 2,723.

§ 12. —— Disabled or helpless vessel.
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.—Williamson v. The Alphonso, Case No. 17,749.

Whether the towing into port of a rudderless vessel is to be considered a salvage service depends upon whether the loss of the rudder rendered the vessel unnavigable.—Hope v. The Dido, Case No. 6,679.

If a vessel, though disabled, is manageable, and receives assistance for expedition only, the fact of being disabled will not of itself make the service salvage.—The Frank A. Hall, Case No. 5,052.

A vessel dismasted in a gale, and lying at anchor on a bank in the open sea, is in a condition to have a salvage service rendered.—The Independence, Case No. 7,014.

The towing to a safer place of a dismasted and rudderless bark, without an anchor, and transmitting information to the owners, *held* a salvage service.—Norris v. The Island City, Case No. 10,306.

Towing an unmanageable vessel into smooth water, and there hanging her rudder, thus making it possible to navigate her, is a salvage service.—The Millinocket, Case No. 9,609.

A barge without small boat, provisions, or means of propulsion, adrift on Lake St. Clair, after she had come to anchor in good weather, *held* in a situation to have salvage services rendered.—The Union Express, Case No. 14,363.

Rescuing and taking to a place of safety a steamer caught in the ice in New York Bay on a dark, foggy night, with a broken crank, is a salvage service calling for a small reward.—Staten Island & N. Y. Ferry Co. v. The Thomas Hunt, Case No. 13,326.

Persons going out to and securing a canal boat, with no one on board, cut adrift from her moorings by ice in New York harbor, and carried by the tide towards the sea, *held* entitled to salvage compensation.—Stilwell v. The Major Anderson, Case No. 13,452.

§ 13. Success essential.
Salvors are not entitled to compensation for an unsuccessful effort, and are only entitled to compensation for property actually saved by their exertions.—Curry v. The Loch Goil, Case No. 3,495; The Huntsville, Id. 6,916; Clarke v. The Dodge Healy, Id. 2,849; Brevoor v. The Fair American, Id. 1,847.

The property must have been in fact saved by the parties who make the claim.—Montgomery v. The T. P. Leathers, Case No. 9,736.

It is an indispensable ingredient of a salvage claim that the service has contributed immediately to the rescue or preservation of property in peril at sea.—The John Wurts, Case No. 7,434.

Where salvors employed by the owner on contingent compensation are compelled to abandon the wreck on account of the severity of the weather, and it drifts to sea, and is saved by another, the former have no claim to salvage compensation.—The John Wurts, Case No. 7,434.

Salvors who fall into distress, and are relieved by other salvors, do not thereby lose their original right to salvage. The second salvors cannot lawfully make a contract to that effect. —The Henry Ewbank, Case No. 6,376.

Where different salvors at different times render salvage service, each is entitled to compensation, though separate service of either would have been unavailing.—Adams v. The Island City, Case No. 55.

The fact that the exertions of the salvor did not save the boat, but she was saved by natural causes, will not affect his right to salvage, where he encountered the danger, and did all he could under the circumstances.—McGinnis v. The Pontiac, Case No. 8,801.

Persons whose exertions did not benefit the property cannot claim compensation as salvors, though for bona fide efforts, which were unsuccessful, they should be allowed something in the nature of a quantum meruit.—The Sailor's Bride, Case No. 12,220.

§ 14. Request for, or refusal of, services.

Licensed wreckers must offer services to vessels in need, though not requested.—The Angeline, Case No. 385.

Salvage will be awarded for keeping company with a distressed vessel at her master's request. —Allen v. The Canada, Case No. 219.

Services rendered to a vessel in need of salvage assistance in pursuance of a signal for a steamer, though not necessarily one of distress, are to be compensated as salvage services.—The James T. Abbott, Case No. 7,202.

A vessel which, by a signal of distress, secures the aid of salvors, will not be heard to say that she could have saved herself without assistance.—The Huntsville, Case No. 6,916; Sanderson v. The Ann Johnson, Id. 12,297a.

Persons who assist a vessel in distress at the request of her master or owner, with no definite arrangement for compensation, must ordinarily be paid as salvors.—The Louisa Jane, Case No. 8,532.

A person requested to take charge as master of a vessel in peril, and save her, if possible, is not deprived of salvage compensation where no definite contract is made with him.—McGinnis v. The Pontiac, Case No. 8,801.

The fact that the services were rendered in response to a signal for a pilot will not prevent the recovery of salvage compensation.—The Susan, Case No. 13,630.

A person authorized by the master of a vessel on fire to save what he can, and look to the property for compensation, is to be regarded as a salvor.—Emerson v. The Pandora, Case No. 4,442.

It is blamable to refuse to interpose to save property without a salvage compensation or a contract fixing its amount.—The Independence, Case No. 7,014.

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.—The Yucatan, Case No. 18,194.

§ 15. Forcing services.

Quaere, whether person taking forcible possession of ship exposed to danger, against will of commander, can claim salvage.—Clarke v. The Dodge Healy, Case No. 2,849.

Services rendered to a burning vessel by tugs, which were in fact supernumeraries, will not be compensated as salvage.—Union Tow-Boat Co. v. The Delphos, Case No. 14,400.

Persons who interfere unnecessarily with wrecked property, which is being saved under a contract between the owners thereof and a third party, cannot claim as salvors, although they bring the property into port.—In re Quantity of Iron, Case No. 11,496.

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.—The Yucatan, Case No. 18,194.

§ 16. Towing services.

Where no agreement is made for compensation for towing a vessel in distress, the rate is to be governed by considerations applicable to salvage cases.—The H. B. Foster, Case No. 6,290.

Towing may be a salvage service, when performed in aid of a vessel in distress.—The H. B. Foster, Case No. 6,290.

The fact that towage services in extricating a vessel from impending peril were rendered in response to a mere signal for towage will not prevent the tug from recovering for salvage services.—Phillips v. The United States, Case No. 11,107.

Services rendered after reaching a port of safety in towing to a port where repairs could be made are towage, not salvage.—The W. D. B., Case No. 17,306; The W. F. Garrison, Id. 17,475.

Owners of steamboat, towing a burning vessel from one shore to another, *held* entitled only to reasonable compensation for towage.—Emerson v. The Pandora, Case No. 4,442.

A tug which gets a burning vessel afloat, and tows her to a place where other parties put out the fire, renders salvage service, although both sets of salvors deny co-operation.—The Huntsville, Case No. 6,916.

A steamboat towing other boats from a wharf to prevent them from coming in contact with a vessel which is on fire is entitled not to salvage, but merely to towage compensation.—Stevens v. The S. W. Downs and The Storm, Case No. 13,411.

Towing oil barges cast loose from a burning wharf, and still in danger, to a place of safety, *held* a salvage service, but only entitled to small compensation.—Fulmer v. Patterson, Case No. 5,152.

Services rendered by a tug in towing to a wharf a vessel which, being overtaken by a storm while entering a harbor, was left by her crew, *held* entitled to salvage remuneration.—The H. B. Foster, Case No. 6,290.

Services of tug in picking up canal boat which had broken from a tow in New York harbor in heavy weather, *held* entitled to salvage remuneration.—The Ontario, Case No. 10,543.

Towing into port a vessel in distress, but in no great danger of loss, is not strictly salvage service, and is worthy of but small compensation.—The Entire, Case No. 4,502.

Compensation will not be awarded as for salvage service for towing into port foreign vessel which only needed a pilot, irrespective of agreement made.—Boggs v. The Loutra, Case No. 1,601.

Small tugs assisting, for less than an hour, a large tug in pulling off a steamship aground in a harbor, entitled to compensation as salvage service.—Baker v. Hemenway, Case No. 770.

Towing a steam vessel which has lost the use of her machinery by an accident, although she is sound in hull and masts, is a salvage service.—The Saragossa, Case No. 12,334.

Meritorious services rendered by a tug in New York harbor in saving a vessel beset with ice are not in the nature of salvage services.—Crary v. The El Dorado, Case No. 3,362.

A libel against such vessel and cargo dismissed against the cargo, but reasonable compensation

decreed against the vessel.—Crary v. The El Dorado, Case No. 3,362.

Services in towing into harbor a vessel leaking badly, anchored near shore of Cohasset, and liable to stranding on change of wind, *held* entitled to salvage remuneration.—Hennessey v. The Versailles, Case No. 6,365.

The towing of a steamer with broken shaft 731 miles to port, in good weather, *held* a salvage service.—The Colon, Case No. 3,024.

A steamer with broken propeller blades, proceeding from St. Thomas to New York, under sail, when 150 miles from Sandy Hook, and not in distress, was spoken by another steamer, which towed her into port without any price being fixed for such service. *Held* not a salvage service.—The Emily B. Souder, Cases Nos. 4,455, 4,458.

§ 17. Derelict property.

No length of time divests the original owner of property found derelict at sea. It will be restored upon payment of salvage according to circumstances unless there be proof of an intention to abandon wholly.—Wilkie v. Two Hundred and Five Boxes of Sugar, Case No. 17,662.

A case of derelict can arise only when there has been an abandonment by the master and crew, without any intention of returning and resuming possession.—The Emulous, Case No. 4,480; The Bee, Id. 1,219; Evans v. The Charles, Id. 4,556; Montgomery v. The T. P. Leathers, Id. 9,736; Tyson v. Prior, Id. 14,319.

A vessel is not derelict where the master and crew voluntarily leave while in peril with the bona fide intention of returning.—The Attacapas, Case No. 637; Bean v. The Grace Brown, Id. 1,171.

A vessel will be held derelict where the master and crew, thinking she had sunk, gave up pursuit of her, though, when they first left her in peril, they expected to return.—The Nathaniel Hooper, Case No. 10,030.

Vessel left by master and crew in sinking condition, who were picked up while yet in sight of the wreck, will be considered derelict.—The Boston, Case No. 1,673.

Ships forsaken through fear of enemies or loss of life are not legally derelict, so as to warrant full right by occupancy.—Warder v. La Belle Creole, Case No. 17,165.

Property found in a vessel abandoned in a harbor on an uninhabited coast comes within the maritime definitions of derelict property, unless it appears that there was an intention to return to the vessel on the part of the officers and crew.—Williams v. The Adolphe, Case No. 17,712.

A schooner in distress was found by a bark, and her crew taken off. The weather having moderated, the bark returned to the schooner, but the latter's master could not induce his crew to go on board. The bark then sent part of her crew, who brought the schooner in. *Held* not a case of derelict.—The Lovett Peacock, Case No. 8,555.

The abandonment of a steamboat by the master to the care and protection of the master and crew of another vessel, for the purpose of procuring assistance and safety, is not a case of derelict.—Montgomery v. The T. P. Leathers, Case No. 9,736.

A vessel with slaves on board, but no white person, will be considered as derelict.—Flinn v. The Leander, Case No. 4,870.

The fact that the owner is in pursuit of barges adrift in a navigable river, unknown to the salvor, does not deprive him of his claim.—In re Seven Coal Barges, Case No. 12,677.

The owner's exclusive right of possession is not lost by temporarily leaving goods for the purpose of obtaining aid.—The Bee, Case No. 1,219.

An anchor lost in a harbor will not be held derelict as to a wrecker who went in search thereof with knowledge that the owner would take means to recover it.—In re One Anchor and Chain, Case No. 10,517.

A disabled bark anchored is not derelict during the absence of a salvor vessel for a necessary and temporary purpose.—Cromwell v. The Island City, Case No. 3,410.

But a person finding the vessel in the meantime, and in good faith taking possession, and by his exertion contributing to its preservation, is entitled to salvage remuneration.—Cromwell v. The Island City, Case No. 3,410.

A vessel without any person on board, and in a condition where her instant destruction was menaced, may be rightfully taken possession of by salvors, though another vessel was employed to go to her relief.—The John Gilpin, Case No. 7,345.

Salvors thus taking possession may retain it if they are able to effect the salvage, and are conducting the business with fidelity and vigor.—The John Gilpin, Case No. 7,345.

Such persons will be regarded as the meritorious salvors where wrongfully interrupted in the work by others who complete the salvage.—The John Gilpin, Case No. 7,345.

The finder, who takes possession with intention of saving derelict goods, gains a right of possession maintainable against the true owner, and a lien for salvage.—The Bee, Case No. 1,219.

A salvor is not entitled to compensation for labor and injury after he is informed that the property is not derelict.—Crowell v. A Chain and Anchor, Case No. 3,443.

No distinction can be made between the boat and cargo of a derelict vessel.—Montgomery v. The T. P. Leathers, Case No. 9,736.

Compensation awarded for the services of a tug and lighter in saving cotton floating near the Narrows, which had been dumped from a lighter in New York Bay.—In re Twenty-Three Bales of Cotton, Case No. 14,284.

The uninterrupted continuance for 30 years of a custom of a certain court in regard to rights to derelicts raises an inference of the legality thereof.—Russell v. Forty Bales Cotton, Case No. 12,154.

§ 18. Property subject to salvage.

Salvage services are not limited to a vessel or cargo, but extend to any valuable property in peril, saved on navigable waters.—In re Raft of Spars, Case No. 11,528.

A steamboat dismantled and stripped of her motive power, and fitted and used as a saloon and hotel, cannot be the subject of salvage services where she went ashore while being towed to another place.—The Hendrick Hudson, Case No. 6,355.

Barges adrift on the Ohio river are a proper subject of salvage.—In re Seven Coal Barges, Case No. 12,677.

Services rendered in pulling boilers out of a navigable river, into which they had fallen from a steamboat, are salvage services.—The Silver Spray, Case No. 12,857.

A derrick boat raised from the bottom of the channel of a public navigable river may be the subject of a libel for salvage in admiralty.—Maltby v. Steam Derrick Boat, Case No. 9,000.

Services rendered in raising sectional docks used for dry-docking vessels are not the subject of salvage compensation.—Salvor Wrecking Co. v. Sectional Dock Co., Case No. 12,273.

Ferryboats in peril on the Ohio river are subjects of salvage.—The Cheeseman v. Two Ferry-Boats, Case No. 2,633.

No salvage will be awarded for saving the United States mails, though the service is in itself meritorious.—The Merchant, Case No. 9,-435.

No award can be made for saving, from a wreck, bills of exchange or other papers, the evidence of debts or of title to property.—The Emblem, Case No. 4,434.

A salvage service is performed when a raft of timber is saved from peril on navigable waters.—In re Fifty Thousand Feet of Timber, Case No. 4,783.

Rescuing a raft of timber found adrift in a harbor, and floating out to sea unaccompanied by any person, is a salvage service.—In re Raft of Spars, Case No. 11,529; Keteltas v. Raft of Timber, Id. 7,741a.

The rescue, while floating down stream, of logs which formed part of a raft of lumber driven from its anchorage and broken up in a high wind and tide, is not a salvage service.—Tome v. Four Cribs of Lumber, Case No. 14,083.

Cotton belonging to the United States, in course of transportation on freight, is liable to pay salvage.—The S. L. Davis, Case No. 12,939.

§ 19. Who may claim salvage—In general.

Those in possession are estopped from claiming as salvors if they requested the aid of those who save the property.—The Cheeseman v. Two Ferry-Boats, Case No. 2,633.

The master, being also a part owner, is entitled to salvage as against the other part owners and the shippers or insurers of the cargo, where he assists in rescuing his vessel from a capture by a belligerent.—Strout v. The Cuba, Case No. 13,549.

The officers and crew of public armed vessels are entitled to salvage for personal services, but at less rates than other persons.—The Mulhouse, Case No. 9,910.

The officers and crew of a foreign vessel of war are entitled to salvage, the same as in the case of other vessels.—Robson v. The Huntress, Case No. 11,971.

Services of no particular hazard rendered by the crew of a United States war vessel, under orders of their officers, in towing in a derelict, give no right to salvage compensation.—Smith v. The Josephine, Case No. 13,069.

Officers and crew of a United States vessel of war towing into port an American merchant vessel found abandoned at sea, 500 miles distant, *held* not entitled to salvage.—The Josephine, Case No. 7,546.

Seaman discharged from a ship of war at sea, to assist in bringing into port a short-handed whaling ship, *held* entitled to compensation as for a salvage service.—The Harvest, Case No. 6,176.

Slaves may receive compensation as salvors.—Small v. The Messenger, Case No. 12,961.

§ 20. —— Voluntary or obligatory services in general.

A salvor is one who, without any particular relation to a vessel in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of the vessel.—The Wave v. Hyer, Case No. 17,300.

Salvage to seamen, pilots, or passengers is only allowed for extraordinary exertions beyond their duty.—The Wave v. Hyer, Case No. 17,-300.

Pilots and others, assisting vessels in distress beyond what their mere duty requires, are entitled to compensation.—Dulany v. The Peragio, Case No. 4,123.

A passenger and members of the crew of a captured vessel, to whom the prize crew surrender her to prevent her from falling into the hands of an enemy, and who navigate her to port, *held* not entitled to salvage.—Phillips v. McCall, Case No. 11,104.

Public servants may recover salvage for assistance of great merit, rendered in the line of their regular duty, but in excess of the official requirements thereof.—The Huntsville, Case No. 6,916.

The mayor of Charleston has power to forbid the coming of a burning ship from sea to the city wharves; also, to make her coming conditional upon her paying all the expenses of saving her.—The Huntsville, Case No. 6,916.

A city fire department may recover salvage for saving a burning ship, brought, by permission of the city authorities, within the city jurisdiction.—The Huntsville, Case No. 6,916.

The extinguishment of a fire in a ship lying at the wharf of a city, by its fire department, does not entitle the firemen to salvage, even though there is no city ordinance requiring them to extinguish fires. Case No. 3,591 affirmed.—Davey v. The Mary Frost, Case No. 3,592.

The keeper of a lighthouse is under no obligation to render salvage services gratuitously.—The Ottawa, Case No. 10,617.

A salvor accepting the agency of the property cannot be allowed salvage, but where he acts in good faith will be allowed commissions as agent.—Acosta v. The Halcyon, Case No. 32.

One purchasing a vessel while wrecked cannot be considered a salvor.—Benjamin v. The Watchman, Case No. 1,305.

A wrecking company which rescues a derelict vessel which had been chartered by it for a wrecking enterprise, in which it was stranded, is entitled to salvage.—Browning v. Baker, Case No. 2,041.

The master and crew of the salvor vessel are entitled to salvage, though both vessels belonged to the same owner, in the absence of a contract, usage, or understanding that no salvage claim shall be made in such case.—The Colima, Case No. 2,996.

§ 21. —— Officers and seamen.

An officer who, while acting as such, exceeds the bounds of his official duty by giving extraordinary assistance to save property, is entitled to salvage.—Le Tigre, Case No. 8,281.

The master, in the case of a rescue of his vessel from capture by a privateer, acts in a new capacity, and is entitled to salvage.—Brevoor v. The Fair American, Case No. 1,847.

Seamen can be salvors only when their connection with the ship is entirely broken.—The Antelope, Case No. 484.

Successful exertions by the crew to avoid impending collision with another vessel are not salvage services.—The Acorn, Case No. 30.

A member of a crew of a vessel at anchor who cuts her cable to avoid collision with a vessel adrift is not entitled to salvage.—The John Perkins, Case No. 7,360.

No exertions for the safety of a vessel by a seaman who remained aboard for his own safety when the others took to the boats will constitute him a salvor thereof.—The John Perkins, Case No. 7,360.

The seaman's allegiance to the ship may be absolved by his being deserted by the master and rest of the crew, so as to entitle him to salvage for navigating the vessel to a place of safety.—The Triumph, Case No. 14,183.

One man left by design or negligence on an abandoned ship is thereby discharged, and may claim salvage for assisting to save her.—Mason v. The Blaireau, Case No. 9,230.

Soon after the crew of a vessel were abandoned by the master near the home port, the vessel was stranded, and the crew got her off with considerable difficulty and danger. *Held*, that they were not salvors.—The Olive Branch, Case No. 10,490.

A capture by a public or private armed vessel of a belligerent power or by a pirate terminates or suspends the contract, which binds the seamen to the ship, and rescue or recapture by the master and crew entitles them to salvage.—Strout v. The Cuba, Case No. 13,549.

The capture by a Confederate cruiser in July, 1861, is capture by a belligerent within the rule.—Strout v. The Cuba, Case No. 13,549.

The crew of a vessel in peril transferred to another vessel cannot recover for subsequent labors in saving the distressed vessel, according to the agreement under which they were transferred.—The D. M. Hall v. The John Land, Case No. 3,939.

The contract of seamen is dissolved by the abandonment of their vessel in distress at sea, and where the rescuing vessel subsequently falls in with the derelict, and they perform services in saving part of her cargo, they are entitled to salvage.—Taylor v. The Cato, Case No. 13,786.

Crew assisting salvors by performing extraordinary labor in pumping, allowed extra compensation.—Anonymous, Case No. 430.

The master and crew of a disabled vessel taken in tow will not be allowed salvage for their exertions in pumping to keep the vessel afloat while being towed.—The D. W. Vaughan, Case No. 4,222.

The crew of a ship wrecked on a desert island, who rescue, with great labor, part of her cargo, *held* not entitled to compensation as salvors.—The Holder Borden, Case No. 6,600.

No claim for salvage can be maintained by the crew of a vessel upon the ground that by their services she is brought through a storm into port, sound in hull.—Miller v. Kelly, Case No. 9,577.

In case of shipwreck, where seamen cannot earn wages, but perform meritorious services, they are entitled to salvage.—Cartwell v. The John Taylor, Case No. 2,482.

Where the crew rescue the vessel, their wages from the last port of delivery will be included in salvage.—Clayton v. The Harmony, Case No. 2,871.

Seamen are entitled to salvage for saving the materials of the ship, where freight is not earned, and under the circumstances salvage was allowed to the extent of their wages for the voyage.—The Two Catherines, Case No. 14,288.

Seamen who contract for a share of the freight, or of the proceeds of the voyage, cannot, in case of wreck, claim compensation for salvage services, or more than day wages for the time actually employed in saving the wreck.—Reed v. Hussey, Case No. 11,646.

Seamen, after a wreck, may recover from the materials and cargo, in relation to their respective values, wages for the time spent in saving them.—Roberts v. The Ocean Star, Case No. 11,908.

A seaman who in November, 1800, assisted in recapturing his vessel from French captors, *held* entitled to salvage, notwithstanding that the convention of October 3, 1800, between the United States and France, had already been signed, it having not yet been ratified at the time of the hearing.—Kennedy v. Ricker, Case No. 7,705.

A seaman cannot have salvage for the boat which has brought him to land after the loss of his ship.—Price v. Sears, Case No. 11,416.

The passengers on a steamer injured in a collision went aboard the other vessel, but the officers and crew stayed about the wreck, in small boats, and subsequently went aboard, and saved the passengers' effects. *Held* not a salvage service.—Mesner v. Suffolk Bank, Case No. 9,493.

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.—The York, Case No. 18,140.

Services of the mate and four men of a wrecked vessel in crossing the Gulf in an open boat to procure assistance *held* a salvage service.—The Mary Hale, Case No. 9,213.

§ 22. —— Passengers.

Salvage compensation will be allowed a passenger who rendered extraordinary service to the vessel in distress, though he had no opportunity of leaving it.—The Pennsylvania, Case No. 10,945.

A passenger who assisted in navigating the salvor vessel after she was short-handed by putting a crew on a deserted vessel is entitled to a portion of the salvage.—Bond v. The Cora, Case No. 1,621.

Passengers who refuse to assist when solicited are not entitled to a share.—The Charles Henry, Case No. 2,617.

Salvage was not allowed to a passenger who superseded an alleged incompetent master and brought the vessel to port, the facts alleged not being sustained by the proof.—The Anastasia, Case No. 346.

A passenger, who after the officers of the ship, in two days of effort, have exhausted all their means to get control of the rudder with a broken shaft, devises, and, with the aid of men put under his direction by the captain, executes a plan for that purpose, thereby saving the ship from peril, is entitled to salvage.—Towle v. The Great Eastern, Case No. 14,110.

Troops carried on a ship under contract with the government, *held* entitled to salvage for staying by vessel, and assisting in saving her from a total wreck, after they might have escaped on coming near shore.—The Merrimac, Case No. 9,473.

§ 23. —— Pilots.

Where a vessel is in such peril as to be the subject of salvage service, a pilot is not bound to give his aid for mere pilotage.—The Susan, Case No. 13,630.

What a pilot does beyond the limits of his duty, as such, may be the foundation of a claim for salvage, but not such acts as are within them.—Hand v. The Elvira, Case No. 6,015.

Pilots may be salvors, even after the relation of pilot to the particular vessel has been begun, the right depending upon the service rendered.—Lea v. The Alexander, Case No. 8,153.

Regularly authorized and licensed pilots are entitled to salvage compensation where their services are extraordinary, and beyond the strict line of their professional duty.—Bean v. The Grace Brown, Case No. 1,171.

If a pilot goes beyond the duty imposed upon him by law, and renders meritorious services to a vessel in distress, he becomes a salvor, and may sue in admiralty for salvage, though the service be performed upon pilotage ground. Case No. 17,297 reversed.—The Wave v. Hyer, Case No. 17,300.

Where the state laws make it a part of the official duty of pilots to assist vessels in distress, they are not entitled to salvage for rendering such service.—The Wave v. Hyer, Case No. 17,300.

The pilot tug at the mouth of the Columbia river (Act Or. Oct. 28, 1868) is entitled to sal-

vage compensation for towing a vessel on her pilot ground only where she incurs extraordinary risk to tow the vessel, or to rescue it from impending peril.—Roff v. Wass, Case No. 11,999.

A pilot is entitled to salvage for extricating from peril a vessel aground upon a shoal, running out into the sea, which is not an entrance to a bay, inlet, river, harbor, or port, though within the cruising ground, if not made by law pilots' water.—Lea v. The Alexander, Case No. 8,153.

The fact that the ordinance from which the pilot derives his commission makes it his duty to go to vessels in distress will not prevent his recovering salvage.—Lea v. The Alexander, Case No. 8,153.

Pilots acting under an agreement for extra compensation will nevertheless be allowed salvage compensation, where there has been extraordinary personal merit or effort, or unforeseen exertion and hazard, in the performance of the service.—Hope v. The Dido, Case No. 6,679.

On the surrender of a vessel in peril to the master and crew of another, the contract with her pilot is dissolved, and he may render salvage services.—Montgomery v. The T. P. Leathers, Case No. 9,736.

Pilots conducting into port vessels in distress or in apprehension thereof are entitled to salvage compensation therefor.—Blunt v. The Frank, Case No. 1,577.

§ 24. —— Corporations.

A corporation organized for wrecking purposes is entitled to compensation for salvage services rendered by its wrecking vessels.—The J. F. Farlan, Cases Nos. 7,313, 7,314. CONTRA, see The Stratton Audley, Case No. 13,529.

A corporation organized to perform salvage services, employed by the owners of a vessel which had gone ashore in a fog, to relieve her from peril, *held* not entitled to salvage compensation, but to a reasonable compensation.—The Morning Star, Case No. 9,818.

A vessel owned by a corporation engaged in the wrecking business may earn salvage.—The Birdie, Case No. 1,432.

A tow-boat company cannot be treated as a salvor, but it is entitled to compensation for its property put at risk, the same as other salvors.—Union Tow-Boat Co. v. The Delphos, Case No. 14,400.

§ 25. Effect of negligence or fraud in causing original loss.

A pilot who is part owner of a pilot boat should not be allowed, on the ground of public policy, to recover salvage for towing in a vessel which received an injury by thumping on the bar while going out of the harbor under his charge as pilot.—The Washington v. The Saluda, Case No. 17,232.

Compensation for extraordinary exertion, for saving passengers' effects, will not be decreed where there is a presumption, against the wrecked vessel, of fault, for the collision.—Mesner v. Suffolk Bank, Case No. 9,493.

A vessel condemned in damages for a collision will not be allowed salvage for rescuing the other vessel from sinking by towing her to a place of safety.—The Sampson, Case No. 12,279.

Licensed wreckers held only entitled to an award for pilotage where salvage services resulted from lack of pilotage refused by them.—The Angeline, Case No. 385.

Salvors are entitled to a liberal compensation for saving vessel abandoned by her crew notwithstanding incompetency or bad faith by her master.—The Annie Leland, Case No. 421.

A tug carelessly ran her tow aground. *Held*, that her share in the salvage allowed for pulling the tow off should be forfeited to the tow.—The Homely, Case No. 6,661.

A salvor is not entitled to compensation for services rendered the vessel wrecked pursuant to an agreement between him and the master.—Church v. Seventeen Hundred and Twelve Dollars, Case No. 2,713.

The wrongful act of a master in wrecking his ship does not bar the claim of a salvor not in collusion with him.—Malone v. The Pedro, Case No. 8,995.

Associates of a salvor with whom a master corruptly agrees to wreck his ship cannot recover salvage.—Malone v. The Pedro, Case No. 8,995.

§ 26. Competing salvors.

First discoverers and bona fide possessors of a derelict have the right of exclusive possession.—The Amethyst, Case No. 330.

But they must accept services offered by others where their force is insufficient to save the derelict without great risk.—The Amethyst, Case No. 330.

Salvors having no means of saving a cargo of cotton but by rafting have no right to exclude others having vessels on the spot from participating in the salvage service.—The Concordia, Case No. 3,092.

A second set of salvors have no right to interfere, and become participators in the salvage, unless it appears that the first set will not be able to save the property without their aid.—Hand v. The Elvira, Case No. 6,015.

§ 27. Effect of contract for services.

To bar a claim for salvage services there must be an agreement to pay a certain sum absolutely.—Adams v. The Island City, Case No. 55; The Susan, Id. 13,630.

A contract for compensation at all events is no bar to salvage, unless it is express, explicit, and clearly proved.—The Huntsville, Case No. 6,916.

Salvage cannot be claimed where there is a bona fide contract to pay a quantum meruit for an attempt to save property, whether successful or not. But any other contract will not change the nature of the service.—The Independence, Case No. 7,014.

That the services were rendered at the request of the owner, and upon a promise to pay the bill if reasonable, otherwise to arbitrate, will not bar salvage compensation.—The Independence, Case No. 7,014.

A statement, by the master of a vessel to the commander of a tug asked to tow her out of danger, "that the ship would pay," is not sufficient evidence of a contract for payment at all events to bar a libel for salvage.—Pope v. The Sapphire, Case No. 11,276.

A voluntary contract for a fixed compensation, made without any controlling necessity, will not alter the character of the services.—The Emulous, Case No. 4,480.

A contract for a specific sum dependent on success does not alter the nature of a salvage service, but only furnishes a rule of compensation.—The Silver Spray, Case No. 12,857.

An agreement by underwriters engaging a steamer to relieve a vessel in distress for liberal compensation if successful is for salvage.—Bowley v. Goddard, Case No. 1,736.

Services of a wrecking tug in towing a ship from a dangerous shoal, which proceeded upon a negotiation for compensation not involving any idea of salvage, and not accepted as a salvage service, *held*, should not be compensated as such.—The Stratton Audley, Cases Nos. 13,529, 13,530.

One hired by a salvor to assist him, with knowledge that his employer is working under

a contract, is limited in his recovery by the contract price. That he is misinformed as to the terms of the contract is no ground of additional liability on the part of the property or its owners.—The Silver Spray, Case No. 12,857.

Admiralty has no jurisdiction of a claim for services rendered to a vessel on the rocks in Hell Gate in the port of New York, and materials furnished in aid thereof, under employment by the owners in charge to assist them.—Sturgis v. The Oregon, Cases Nos. 13,576b, 13,577.

The salved vessel is not liable for salvage services rendered by the salvors under a contract with a wrecking company which was in charge of the vessel.—Baker v. The Tros, Case No. 783.

A person who has knowledge of a contract, between a wrecking company and the owners of a wrecked vessel, to raise the same for a certain interest therein, cannot maintain a libel in rem for services rendered for the wrecking company.—The Marquette, Case No. 9,101.

§ 28. Forfeiture—By misconduct in general.

The fact that a different course of conduct would have been better will not prevent compensation where the course followed was adopted in good faith.—The D. M. Hall v. The John Land, Case No. 3,939.

Salvage will not be denied for refusal of salvors of cotton to surrender it to the master of the vessel sent by the owners to pick it up. —In re Twenty-Three Bales of Cotton, Case No. 14,284.

Salvage on derelict cases and boxes not forfeited for refusal to deliver to owners' agent at a small port, into which the vessel put because of adverse winds.—Hartshorn v. Twenty-Five Cases Silk, Case No. 6,168a.

Seamen of a vessel which rescues a wreck during a voyage do not forfeit their claim for a share of the salvage by misconduct during such voyage, if they are guilty of no misconduct while engaged in the salvage.—The Centurion, Case No. 2,554.

Wreckers will forfeit all compensation by fraudulently keeping vessel aground to fabricate or enhance services.—The Byron, Case No. 2,275.

Wreckers who unnecessarily lighten a vessel, to magnify their services, forfeit all salvage.—The Aurora, Case No. 659.

The fraudulent employment by a salvor of an unnecessary number of assistants in order to magnify the importance of the services should cause a forfeiture of all compensation.—The Mount Washington, Case No. 9,887.

Salvors who at a critical moment refuse to work or embarrass others forfeit all compensation.—Anonymous, Case No. 429.

Salvors, by wrongfully burning a wrecked vessel, forfeit salvage on the cargo saved by them.—Roberts v. The St. James, Case No. 11,914.

Persons who plunder a vessel turned adrift by a privateer before she is stranded are not entitled to salvage for getting her off.—James v. The Sarah A. Boice, Case No. 7,183.

Willful breaking of boxes or packages of cargo by salvors, except in cases of urgent necessity, will forfeit salvage.—The Isaac Allerton, Case No. 7,088.

Salvage claimed for saving passengers refused to owner of wrecking vessel because of its leaky condition, and to crew because of their intoxication at the time when their services were needed.—The Mulhouse, Case No. 9,910.

Where salvors conceal from the court the names of other persons who participated in the salvage service, their libel will be dismissed.—Hessian v. The Edward Howard, Case No. 6,436.

The master of a vessel who neglects to inform another vessel of an imminent and secret danger into which the latter is running, when able to do so, cannot recover salvage compensation for services subsequently performed in relieving the vessel, but is entitled to reasonable compensation therefor.—American Ins. Co. v. Johnson, Case No. 303.

The master of a wrecking vessel, by countenancing a wrongful injury to a wrecked vessel by one of his crew, and by falsely denying knowledge thereof, forfeits all right to salvage. —Roberts v. The St. James, Case No. 11,914.

A licensed wrecker, who proceeds in opposition to the master's protest, is liable, in an extraordinary degree, to forfeiture of all compensation for anything short of final success.—Roberts v. The St. James, Case No. 11,914.

Gross neglect or wanton injury to the property saved works a forfeiture of all claim for salvage, and renders the salvors liable for damages. —The Sumner, Case No. 13,608.

A salvor only undertakes to exercise ordinary skill and diligence.—The Allegiance, Case No. 207.

The negligence or misconduct of the crew will not work a forfeiture of the share of the vessel, where the owner is innocent, and valuable salvage service is rendered, except in the case of wrecking vessels.—The Mulhouse, Case No. 9,910.

All salvors present when one of their number is guilty of willful wrong to the property are liable to forfeiture of their compensation, if the wrongdoer cannot be discovered.—Roberts v. The St. James, Case No. 11,914.

§ 29. —— By embezzlement.

A person who recovers property lost at sea, or shipwrecked, and sells the same and appropriates the proceeds, in violation of law, forfeits the right to salvage.—Harley v. Gawley, Case No. 6,069.

Where a master conceals a cask of oil which he has picked up at sea, and sells it at a secret sale after claim of ownership is made, he is not entitled to salvage compensation, or to be refunded duties paid by him.—Lears v. One Cask Oil, Case No. 8,161a.

Salvage cannot be given by way of set-off when the finder of a whale adrift has throughout contested the title of the owner.—Bartlett v. Budd, Case No. 1,075.

Embezzlement or a fraudulent concealment of any of the goods saved works a forfeiture of the salvage of the guilty person.—The Mulhouse, Case No. 9,910; Nickerson v. The John Perkins, Id. 10,252; The Rising Sun, Id. 11,858; Mason v. The Blaireau, Id. 9,230.

Embezzlement by a salvor does not prejudice his co-salvors, or the innocent owners of the salvor ship.—The Rising Sun, Case No. 11,858; Nickerson v. The John Perkins, Id. 10,252; The L. T. Knights, Id. 8,585; The Boston, Id. 1,673.

The fraudulent conduct of the masters of both vessels, in appropriating and concealing part of the property saved, will not defeat the claim of the salvor crew.—The Missouri, Case No. 9,654.

The share of the officers and crew of the salvor vessel *held* forfeited by acts of plunder committed by the crew.—Cromwell v. The Island City, Case No. 3,410.

Salvors who carry the property stripped from a vessel directly past her home port, where her name and port were painted on her stern, *held* guilty of embezzlement.—The Sumner, Case No. 13,608.

Neglect to produce property resulting from mere thoughtlessness will not forfeit salvage.—Anonymous, Case No. 429.

Appropriation of salved property, though of trifling value, forfeits all compensation.—Anonymous, Case No. 429.

A salvor, by his failure to bring in and report salved property, though it be of little value, and abandoned as worthless, forfeits all right to salvage, as against other property saved by him.—Roberts v. The St. James, Case No. 11,-914.

II. THE AMOUNT AND APPORTIONMENT.

§ 30. How amount determined in general.

The principle of salvage compensation is not confined to mere quantum meruit as to the persons saving, but is expanded so as to comprehend a reward for the risks of life and property, labor, and danger, as well as a premium operating as an inducement to similar exertion.—Warder v. La Belle Creole, Case No. 17,165; Scott v. The Clara E. Bergen, Id. 12,526a; Fisher v. The Sybil, Id. 4,824; Montgomery v. The T. P. Leathers, Id. 9,736; The Waterloo, Id. 17,257; Brooks v. The William Penn, Id. 1,965; Sonderburg v. Ocean Tow Boat Co., Id. 13,175: Pent v. The Ocean Belle, Id. 10,961; Bond v. The Cora, Id. 1,621.

In the case of a derelict sent in by a salvage crew, the reward should be such as would induce reasonable persons to encounter the peril and expense of such undertakings.—The Mary Ford, Case No. 9,212a.

Liberal compensation will be made not only with a view to the value and danger of the thing saved, but for the general interest in promoting exertions in such cases.—Fisher v. The Sybil, Case No. 4,824.

The salvors will be entitled to share to a greater or less degree in the benefit received from the service, when it is sufficient to warrant it.—The W. F. Garrison, Case No. 17,475.

The amount of the award should not increase with the value of the property beyond such as will justify a liberal reward as compared with ordinary profits.—Pope v. The Sapphire, Case No. 11,276.

The amount is estimated by the compound consideration of the danger and importance of the service.—Hand v. The Elvira, Case No. 6,015.

In determining the amount, the court will consider the value of the property saved, the extent of the labor, and the degree of merit and gallantry shown.—The Emulous, Case No. 4,-480; Taylor v. Twenty-Five Thousand Dollars, Id. 13,807.

Amount awarded is to be adjusted in conformity rather with the claims of the owner of property put at risk than with those of salvors for personal courage and heroism.—The Birdie, Case No. 1,432.

Other things being equal, the total award of salvage should vary with the degree of peril from which the property was saved.—The Mount Washington, Case No. 9,887; The Kristrel, Id. 7,935.

Other things being equal, the ratio of the salvage award to the value of the property saved should be less when such value is large than when it is small.—The Philah, Case No. 11,091a.

The value of the services to the property saved, and not the number of salvors, determines the amount.—Sanderson v. The Ann Johnson, Case No. 12,297a.

Where the services are very meritorious, and the value of the property saved very small, the usual proportion will be exceeded in making the award.—Smith v. The Joseph Stewart, Case No. 13,070.

The time occupied in the service is given but little weight in fixing the amount of salvage.—Sonderburg v. Ocean Tow Boat Co., Case No. 13,175.

The amount awarded should be more than a compensation for the mere labor employed.—The D. M. Hall v. The John Land, Case No. 3,939.

The amount of wages seamen receive at the time of the shipwreck is a safe criterion in fixing the quantity of salvage they are to receive.—Cartwell v. The John Taylor, Case No. 2,482.

In awarding salvage upon a foreign vessel, courts in this country will regard the rates of allowance in the courts of the owner's country.—The Waterloo, Case No. 17,257.

The amount may be affected or controlled by the usage of the port as to the rate of payment, where services are rendered at the request of the master or owner.—The Louisa Jane, Case No. 8,532.

The measure of compensation for services rendered upon the ocean will not be adopted in the case of services upon the Great Lakes.—Ensign v. The Peerless, Case No. 4,494.

Allowances in cases arising on the high seas are not safe precedents in cases arising on the Western rivers.—Mattingly v. Three Hundred and Fifty-Seven Bales of Cotton, Case No. 9,294.

§ 31. Discretion of court.

The amount is discretionary with the court, and is dependent on the labor, perils, and dangers incurred by the salvors, and the good faith that they exercise towards the owners of the property saved.—Western Transp. Co. v. The Great Western, Case No. 17,443.

The amount of the reward is left in the discretion of the court upon a just estimate of all the circumstances of the particular case.—The Emulous, Case No. 4,480; Bond v. The Cora, Id. 1,621.

The discretion of the court as to the amount should be used with a view to the circumstances of each case, previous decisions, and commercial policy.—The John and Albert, Case No. 7,333.

§ 32. The whole value, a proportion, or a specific sum.

A salvor will not be allowed the net proceeds as compensation, though his expenditures exceeded them, unless the owner abandons the property.—The Carl Schurz, Case No. 2,414.

Where the owner has expressly abandoned the property to the libelants, the whole amount may be awarded after payment of costs.—Llewellyn v. Two Anchors and Chains, Case No. 8,428.

An apparently empty chest was found floating on the high seas. On being broken up, 70 doubloons were found concealed therein. *Held*, that the finders were entitled to a moiety only, though there were no claims or marks of ownership.—Hollingsworth v. Seventy Doubloons & Three Small Pieces of Gold, Case No. 6,620.

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.—The Zealand, Case No. 18,205.

As against the salvors, the United States are not entitled to the residue of a derelict.—Russell v. Forty Bales Cotton, Case No. 12,154.

A moiety is usually the highest compensation allowed.—Bearse v. Three Hundred and Forty Pigs of Copper, Case No. 1,193.

A moiety is the largest amount decreed.—British Consul v. Twenty-Two Pipes and Ten Hogs-

heads of Wine, Case No. 1,900; Cross v. The Bellona, Id. 3,428.

§ 33. Considerations influencing or diminishing amount—Character of services in general.

Salvage, where a stranded vessel is saved, should be proportionate to the promptness and skill of the rescue.—The Isaac Allerton, Case No. 7,088.

Avarice and hard dealing by a salvor should reduce, and extraordinary energy should increase, the amount of his compensation.—The D. M. Hall v. The John Land, Case No. 3,939.

Saving a cargo in midwinter by diving in the hold of the vessel, on an exposed reef, far from land, is a salvage service of great merit.—Roberts v. The St. James, Case No. 11,914.

The fact that the salvors' services might prove unavailing by the breaking up of the vessel before any amount of property could be saved is to be considered.—The John Gilpin, Case No. 7,345.

Unsuccessful efforts may be considered in fixing compensation for subsequent successful efforts.—Curry v. The Loch Goil, Case No. 3,495.

Salvage services rendered, without uncommon skill or exertions, to a ship in no great danger of loss, are of small merit.—The Marathon, Case No. 9,058.

Salvors of a grounded ship, which was in no great peril, and could have been got off without assistance by jettison of a part of her cargo, are entitled to only moderate compensation.—The Ellen Hood, Case No. 4,377.

The risk to a steam tug being very light, salvage is fixed accordingly.—The Allegiance, Case No. 207.

The owners of salved property cannot avail themselves of a contract, made by the salvor wrecking tug with marine insurance companies, to give services on their request to vessels in need of aid, at $15 per hour, except as evidence of what might be regarded as a reasonable reward for services rendered.—Sturgis v. The Vickery, Case No. 13,577a.

The fact that employés of a wrecking vessel, by their contract of employment, were not entitled to share in salvage compensation, will not reduce the amount of the award.—Bowley v. Goddard, Case No. 1,736.

§ 34. —— Number of salvors employed.

The amount awarded may be affected by the number to share therein.—The D. M. Hall v. The John Land, Case No. 3,939.

The amount of salvage is not increased by the fact that a large number of vessels and persons were employed.—The Crown, Case No. 3,450.

In fixing the amount, the number of salvors necessary to perform the services may be considered, but not a greater number actually employed.—The Mount Washington, Case No. 9,887.

Increased compensation will not be given on account of the employment of supernumeraries.—The Ashburton, Case No. 575; The Albus, Id. 148.

Additional unnecessary labor will not reduce the compensation for services actually necessary.—Sanderson v. The Ann Johnson, Case No. 12,297a.

§ 35. —— Value of property saved.

The value saved is of little importance in awarding salvage when the danger is not immediate and other assistance would probably have been rendered.—Bowley v. Goddard, Case No. 1,736.

As large a compensation should be given where a vessel and cargo are saved without injury, as in cases where the cargo only, or a portion of it, is saved.—The Euphrasia, Case No. 4,545.

Greater compensation should be awarded for saving vessel and cargo from imminent peril of total loss than for saving the cargo alone.—The Philah, Case No. 11,091a.

A less amount is awarded where the vessel is lost than where it is saved.—The Isaac Allerton, Case No. 7,088.

§ 36. —— Peril from which saved.

Unforeseen contingent events which might have increased the peril or occasioned a total loss cannot increase salvage compensation.—The Emulous, Case No. 4,480.

The question whether a crew of a grounded vessel could have got her off without assistance is important as tending to show the degree of peril she was in, and the proper amount to be awarded as salvage.—The Ella Hand, Case No. 4,369.

A written instrument of abandonment, signed by the officers of the vessel, is admissible to prove its perilous situation.—Blagg v. The E. M. Bicknell, Case No. 1,476.

§ 36a. —— Value of property employed in service.

The value of a wrecking tug is not to be considered where the salvage service consists in towing merely, which might have been as well done by a vessel of less power.—Sturgis v. The Joseph Johnson, Case No. 13,576.

Compensation will be made for increased labor due to the size of the salvor's vessels, where they used their best efforts.—Curry v. The H. J. May, Case No. 3,494.

The fact that salvage services were rendered by a steam vessel to a steam vessel is a ground for larger compensation than if both had been sailing vessels.—The Huntsville, Case No. 6,916.

Salvors cannot found a claim for increased compensation upon the use of a steamer furnished by underwriters free of charge.—The Ida L. Howard, Case No. 6,999.

§ 37. —— Equipment of salvors.

Salvage services rendered by professional wreckers on the Florida Coast are to be more liberally rewarded than like services would be if rendered in other places, and by persons and vessels pursuing other avocations.—Walter v. The Montgomery, Case No. 17,120.

The award for services rendered by wrecking vessels is not to be measured on the principle of salvage, but rather on that of a quantum meruit.—Sturgis v. The Vickery, Case No. 13,577a.

Licensed wreckers are entitled to greater compensation, and are charged with a higher degree of care and skill, than other salvors.—Roberts v. The St. James, Case No. 11,914.

Associations for wrecking purposes will be encouraged by the compensation awarded for salvage.—The Susan, Case No. 13,630.

A tug maintained at heavy expense for salvage purposes is entitled to the full remuneration usually awarded to other salvors.—Virden v. The Caroline, Case No. 16,956.

The fact that libelant's vessels were maintained for wrecking and salvage purposes, at heavy expense, and were often unemployed, is inadmissible as a basis for fixing compensation.—The J. F. Farlan, Case No. 7,313.

The owner of a salvor vessel is not liable for loss or damage caused by the unseaworthiness of his vessel, in the absence of fraudulent misrepresentations or concealment, except in the case of vessels engaged in the wrecking business.—The Mulhouse, Case No. 9,910.

§ 38. —— Deviation, delay, and injury to salvor vessel.

Delays for saving ships, goods, or mariners, producing uncommon risks, are deviations which are not excused under policies of insurance, and

the increased risk incurred by the owner is to be considered in determining the amount of salvage. —Warder v. La Belle Creole, Case No. 17,165.

It is not a deviation for a vessel to go out of her course three miles to speak another at sea, on seeing a signal for that purpose, nor to delay three hours to take from a foreign ship, bound to a foreign port, shipwrecked mariners of the United States, for the purpose of bringing them direct to the United States.—Williams v. Box of Bullion, Case No. 17,717.

A stoppage to save life is not a deviation which discharges a policy of insurance, but a stoppage merely to save property is a deviation. —The Henry Ewbank, Case No. 6,376.

The mere possibility that a deviation for the purpose of rendering a salvage service might have forfeited the insurance will not be considered in fixing the amount.—Blagg v. The E. M. Bicknell, Case No. 1,476.

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 Rip, are too remote, and cannot be recovered against the salved vessel.—Winso v. The Cornelius Grinnell, Case No. 17,883.

Neither the fact that the salvor vessel was saved from exposure to storm by going into a port of distress with a disabled steamer under tow, nor the fact that she was injured in a subsequent storm by reason of the delay, can be considered in fixing compensation for salvage.—The Saragossa, Case No. 12,335.

§ 39. —— Expenses and disbursements of salvors.

Extraordinary expenses, such as the breaking of a propeller, in rendering salvage services, are not included in the compensation.—Hattrick v. The Spanish Bark, Case No. 6,218a.

The salvor vessel will be allowed, out of the salvage, extra expenses incident to the salvage service, which may have been incurred over and above her ordinary outlays.—Sonderburg v. Ocean Tow Boat Co., Case No. 13,175.

The salvor of a vessel which is not derelict has no right, after the vessel is brought into port, to provide supplies which will create a lien upon the vessel, or charge the owner therewith.—Vincent v. The Penelope, Case No. 16,-946; Locke v. Same, Id.

The owner of blocks rented for the purpose of getting a wrecked vessel afloat, the owners having agreed that the vessel should be responsible for their hire and safe return, cannot recover either against the property saved, or in personam against the owners of the wreck, as a salvor, either the price agreed upon or for their loss.—Squire v. One Hundred Tons of Iron, Case No. 13,270.

The master will be allowed, out of the fund for disbursements, for pumping necessary to save the vessel after arrival into a port in which she was towed by a salvor vessel.—The D. W. Vaughan, Case No. 4,222.

§ 40. —— Negligence or misconduct.

Intoxication of salvors and refusal to work forfeits compensation in part.—Anonymous, Case No. 429.

Negligence of salvors in failing to make sounding resulting in a vessel being heaved off one shoal, and onto another, will reduce salvage.—The Ashburton, Case No. 575.

The fact that the salvors' boats were not large enough to carry the packages intact will not justify breaking them where there are other vessels at hand sufficiently large for the purpose.—The Isaac Allerton, Case No. 7,088.

Error of judgment in not saving property liable to rapid deterioration is ground for reducing salvage, but not for withholding all compensation.—Curry v. The H. J. May, Case No. 3,494.

From a salvage award of $15,000, for six days' towing of a rudderless bark, $3,500 deducted for the mistake of the mate in charge of the salvor vessel in casting off the towing hawser and anchoring the bark when off Absecom.—The John G. Paint, Case No. 7,346.

An allowance of $23,000 was reduced $5,000 for the failure of a wrecking master to make careful soundings, resulting in an ineffectual effort to heave the vessel off of a shoal in the wrong direction.—The Sultan, Case No. 13,601.

Salvage on cotton saved from a burnt and stranded vessel *held* should not be reduced for neglect of salvors to remove 46 bales undiscovered, where such bales were subsequently saved by others.—The Northwester, Case No. 10,333.

The want of good faith may be such as to reduce the salvage to a very small sum, or to destroy all claims to it.—Western Transp. Co. v. The Great Western, Case No. 17,443.

Refusal of salvors to interrupt their work of saving cargo to save an anchor and chain and rigging at the request of the master *held* not misconduct.—The Northwester, Case No. 10,333.

Salvors are bound to take reasonable care to prevent plundering by others. Slight negligence in this respect may diminish the award, and gross negligence works an entire forfeiture. —Nickerson v. The John Perkins, Case No. 10,-252.

Slight negligence in taking care of the property saved diminishes the amount of salvage, while gross negligence works a total forfeiture.—The Mulhouse, Case No. 9,910.

Salvors are liable for damage done to the sails of the vessel saved by being negligently left exposed to sparks from the salvor vessel.—The Senator, Case No. 12,664.

Salvage awarded to a passenger of the nautical profession, who had rendered extraordinary service to the vessel in peril, *held* should be materially reduced for his illegal usurpation of authority over the vessel after the services were rendered.—The Pennsylvania, Case No. 10,945.

Slight misconduct of salvors under great provocation, not resulting in any loss, should not reduce the amount.—The D. M. Hall v. The John Land, Case No. 3,939.

Only compensation for work and labor performed in saving cargo allowed, where stranded vessel was bored with augers, and guilt could not be fixed.—The Francis Ashby, Case No. 5,040.

A boy who refused to join in plundering a derelict vessel, but who took trifling articles "as keepsakes," *held* entitled to a less share than he otherwise would have had.—The L. T. Knights, Case No. 8,585.

Stores found on board a derelict may be used by the salvors for necessary subsistence during the course of the service.—The Ida L. Howard, Case No. 6,999.

The refusal of a tug to render towage services to a disabled ship on request *held* to reduce the grade of salvage allowance.—The Bolivar v. The Chalmette, Case No. 1,611.

In the case of illiberal conduct of salvors in dealing with a vessel in distress, liberal compensation will not be awarded.—The Howard, Case No. 6,752a.

§ 41. Value of property in peril, how determined.

The value of the vessel to the owners for purposes of repair will be adopted as the value of the vessel in fixing the salvor's award. Such value is determined by deducting from the value

of the vessel just before the accident the cost of repair.—The Ellen Holgate, Case No. 4,375a.

Where it appears in the case of a vessel saved from wreck that a sum may be deposited to secure salvage, a smaller proportion will be awarded than in the case of a judicial sale, where full value is seldom obtained.—Rutter v. The Ferris, Case No. 12,178.

A vessel with cargo of cotton on fire was towed into shallow water, and scuttled and sunk. *Held*, that the amount which they brought at a sale in such condition was the measure of value in estimating salvage.—Hayden v. The C. W. Cochrane, Case No. 6,258.

The value of goods saved depreciating from time is to be ascertained at the time of filing the libel where salvors refused to deliver property to the owners and delayed filing bill.—The Albion Lincoln, Case No. 144.

In the case of a seizure and bringing to port of a vessel in the hands of mutinied slaves the court awarded one-third the appraised value of vessel and cargo as salvage compensation, but refused salvage as to the slaves, they having no value as such in the district (Connecticut), and there being no law under which they could be sold.—Gedney v. L'Amistad, Case No. 5,294a.

§ 42. Derelict property.

Salvage of derelict property is compensated by the same rules that obtain in respect to property not derelict.—The Ida L. Howard, Case No. 6,999.

The fact of the property being derelict only makes out a prima facie case of extreme danger of total loss, which enhances the award.—Hall v. The Paquet Bot De Cayenne, Case No. 5,941.

The rate of salvage in cases of derelict is seldom more than one-half of the net proceeds of the property saved. Two-thirds of the whole proceeds have sometimes been allowed, but the whole proceeds are never allowed unless their amount is so small that less would be an inadequate compensation.—The Waterloo, Case No. 17,257.

The amount of salvage in case of a derelict ought not to be less than one-third, unless the property be very valuable or the services very inconsiderable.—Tyson v. Prior, Case No. 14,-319.

In a case of derelict, where there are no peculiar circumstances, a moiety is awarded.—The Galaxy, Case No. 5,186; The John Wurts, Id. 7,434; The Charles Henry, Id. 2,617; Hindry v. The Priscilla, Id. 6,515.

The rule to allow a moiety in case of derelict is not departed from, except under extraordinary circumstances.—The Henry Ewbank, Case No. 6,376.

The rule to allow a moiety is not inflexible, and a greater or less proportion may be allowed. —The Elizabeth and Jane, Case. No. 4,356; Howland v. Two Hundred and Ten Barrels of Oil, Id. 6,801; The Rising Sun, Id. 11,858; Rowe v. The Brig, Id. 12,093; Sprague v. One Hundred and Forty Barrels of Flour, Id. 13,253; In re Two Hundred and Ten Barrels of Oil, Id. 14,297.

Salvors of derelict vessel stand on same footing as other salvors.—The Georgiana, Case No. 5,355.

One-third of the gross proceeds allowed in the case of a derelict sent in by a salvage crew from a vessel bound to a foreign port.—The Mary Ford, Case No. 9,212a.

Where a canal boat cast adrift from a tow was picked up in Long Island Sound, a salvage of 50 per cent. was proper.—The Capt. Geo. W. Wright, Case No. 2,393.

In the case of a whaler which lost her voyage to save the cargo of another whaler which was stranded and derelict five-sixths was awarded on a total valuation of $6,740.—In re Two Hundred and Ten Barrels of Oil, Case No. 14,297.

In the case of a derelict vessel navigated into port after three days of great exertion and imminent danger, a decree of the district court allowing the salvors one-seventh of the net value, of $21,000, was reversed, and a decree awarded for a moiety.—Rowe v. The Brig, Case No. 12,-093.

In cases of salvage of derelict, the proceeds remaining after payment of all costs and disbursements will be equally divided between the salvors and the owners.—The Cayenne, Case No. 2,532.

§ 43. Effect of special contracts.

Nothing but a contract to pay a given sum for the services to be rendered, or a binding engagement to pay at all events, whether successful or unsuccessful, will operate as a bar to a meritorious salvage claim.—Coffin v. The John Shaw, Case No. 2,949.

Salvage contracts are presumed prima facie to be fair, but, if proven to be unconscionable, they will not be enforced.—Eads v. The H. D. Bacon, Case No. 4,232.

The burden of proving that a salvage agreement between the master and salvors is contrary to equity and justice is on those attacking it.—The Clotilda, Case No. 2,903.

A contract to perform salvage service for a certain sum will bar a recovery of a greater amount, irrespective of the value of the labor performed.—Bounty v. Kerrin, Case No. 1,697a; The Whitaker, Id. 17,525.

An agreement fixing the amount of a salvage award will not be set aside, and commensurate salvage given, because it proves to be a hard one for the salvor.—The Silver Spray, Case No. 12,857.

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.—The Yucatan, Case No. 18,194.

Services rendered in lightening a vessel, with the understanding that they are to be compensated on the basis of daily wages, cannot afterwards be turned into a higher grade, without supervening circumstances changing either the peril or the contract.—The Emulous, Case No. 4,480.

An agreement made with the head and spokesman of wreckers, by persons who had bought the wreck, to assist in saving materials, *held* binding on the wreckers, though special authorization to make the agreement was not shown.—Dominy v. Anchors. Sails, etc., of the D'Alberti, Case No. 3,977.

The stipulations of a written contract are not enforceable against the person for whom the salvage was rendered except so far as they accord with the conscience of the court.—Williams v. The Jenny Lind, Case No. 17,723.

A contract for salvage services will be disregarded if exorbitant or unreasonable or extorted through pressure of impending calamity.—The A. D. Patchin, Case No. 87; Cowell v. The Brothers, Id. 3,294; Schutz v. The Nancy, Id. 12,495; Warder v. La Belle Creole, Id. 17,165.

Salvage contracts will be set aside, not merely in case of fraud or extortion, but where the compensation is excessive.—Sturgis v. The Edward, Case No. 13,575.

Where the sum stipulated in a contract for contingent compensation is unreasonable because of overvaluation of the vessel, it will be reduced by the court.—Collins v. The Fort Wayne, Case No. 3,012.

A contract for payment of salvors, at all events where the danger is not great, and suc-

cess is reasonably certain, should have little influence on the amount of the award.—Pope v. The Sapphire, Case No. 11,276.

A contract for salvage services procured by the salvors upon the false representation that other persons, to whom the contract was originally given, had abandoned the same, is not enforceable.—Eldridge v. Forty-One Bars of Railroad Iron, Case No. 4,334.

A contract for salvage service and salvage compensation, where the salvor has not taken advantage of his power to make an unreasonable bargain, will be enforced.—The J. G. Paint, Case No. 7,318; Bearse v. Three Hundred and Forty Pigs of Copper, Id. 1,193; Collins v. The Fort Wayne, Id. 3,012.

A contract for salvage services will be enforced where it was deliberately made, and not apparently oppressive.—Gager v. The A. D. Patchin, Case No. 5,170.

The salvors' terms cannot be repudiated after they have been rendered by permission of the master, under the impression that they had been assented to by him, where they were not compulsory or unconscionable.—The Ellen Holgate, Case No. 4,375a.

A contract for salvage services to be rendered a vessel in distress will not be disturbed where fairly made, and not in excess of the amount which would have been awarded without the contract.—The Ellen Holgate, Case No. 4,375a.

But it must appear that no advantage was taken of the situation of the owners, and that the rate of compensation is just and reasonable. —The Emulous, Case No. 4,480.

A salvor by contract is not the agent of the owners, and cannot create against them or the property saved any liability beyond the contract price.—The Marquette, Case No. 9,101.

A contract for the salvage of a canal boat and cargo, made by the master, when all parties interested are within easy reach, will not be enforced where the rate agreed upon is exorbitant.—In re Two Hundred and Two Tons of Coal, Case No. 14,299.

Vessel towing disabled steamer *held* not entitled to contract price where the hawser parted, and the latter proceeded under sails, but entitled to salvage.—The Gary v. The Sherman, Case No. 5,259.

Rule of salvage fixed by contract is not imperative as to subsequent services.—Bearse v. Three Hundred and Forty Pigs of Copper, Case No. 1,193.

A contract made by the master with salvors, for the recovery of the cargo of a sunken vessel, sustained.—Harley v. Four Hundred and Sixty-Seven Bars of Railroad Iron, Etc., Case No. 6,068.

As against prior lien holders, a contract for contingent compensation will be enforced only to the extent of an equitable allowance.—Collins v. The Fort Wayne, Case No. 3,012.

An agreement to pay $3,000, for towing 90 miles a vessel worth $8,000, loaded with sugar, sustained by the court.—The J. G. Paint, Case No. 7,318.

$500 agreed to be paid for towing a schooner from a pier on the other side of which a vessel was burning, where both the labor and risk were insignificant, *held* exorbitant, and $100 allowed. —The Jacob E. Ridgway, Case No. 7,155.

An agreement to pay $2,500 for pulling off a brig aground on Romer shoal *held* exorbitant, and $1,250 was allowed.—The Homely, Case No. 6,661.

An agreement by a pilot boat to tow into port, for $2,500, a dismasted brig in distress, worth, with cargo, $3,800, made under threats to leave the brig, where the service occupied nine days, *held* inequitable, and $1,500 allowed. —The Wexford, Case No. 17,472.

A contract to pay $2,000 for towing a rudderless bark from her anchorage off the highlands below Sandy Hook, where she was in no immediate danger, to New York, *held* excessive, and the allowance was reduced to $1,000.—Sturgis v. The Edward, Case No. 13,575.

Contract to pay $10,000 for getting out cargo and raising hull of vessel scuttled to extinguish a fire, worth $28,000, *held* reasonable.—The Osteonthe, Case No. 10,608a.

§ 44. Instances of amount of award—Towage services.

5 per cent. awarded for mere towage service to disabled vessel in no immediate danger.—The Bolivar v. The Chalmette, Case No. 1,611.

20 per cent. allowed a brig for keeping by and towing for six days a bark which had lost her rudder in a gale, valued with her cargo at $75,000.—The John G. Paint, Case No. 7,346.

25 per cent. on a valuation of $90,000 allowed for bringing into port, after 13 days of severe labor and hardship, a schooner not derelict.—The Lovett Peacock, Case No. 8,555.

A wrecking tug allowed $25 per hour for towing into New York harbor in cold and tempestuous weather a bark anchored on the south shore of Long Island.—Sturgis v. The Vickery, Case No. 13,577a.

Owner awarded $50 for towing schooner from slip on fire.—The Arlington, Case No. 534.

$50 awarded five persons for saving a raft of spars worth $700, found floating out to sea in New York harbor.—In re Raft of Spars, Case No. 11,529.

$400 *held* a reasonable compensation for towing a vessel with cargo of cotton on fire, aground in a harbor, to a suitable place to scuttle her.—The Osteonthe, Case No. 10,608a.

$400 allowed a tug on a total value of $1,600 for picking up canal boat which had broken from tow in New York harbor in heavy weather.—The Ontario, Case No. 10,541.

$500 awarded on a net value of $37,500 to a tug for going to the rescue of a barge loaded with railroad cars, drifting in a field of ice.—Seaman v. Erie Ry. Co., Case No. 12,582.

$750 allowed on net proceeds of $2,000 of vessel lying dismasted, and in a helpless condition, near the shore of a dangerous coast, at a great distance from any port.—Hattrick v. The Spanish Bark, Case No. 6,218a.

$800 allowed on a valuation of $12,000, for towing into port a vessel in distress, but in no great danger.—The Entire, Case No. 4,502.

$900 allowed a vessel worth, with cargo, $230,000, for towing a disabled steamer, worth, with cargo, $100,000, 63 miles to port, incurring a loss of three hours' time to the salvor, and saving the other four days.—The Saragossa, Case No. 12,334.

$1,000 allowed a tug for towing into New York harbor a steamer, whose machinery was disabled by a collision, drifting out to sea in a storm.—Sturgis v. The Joseph Johnson, Case No. 13,576.

$1,000 allowed on a total value of $60,000 for towing a leaking vessel from the Southwest Spit into New York harbor.—Phillips v. The United States, Case No. 11,107.

$1,700 allowed a valuable steamer for going in search of, and towing to place of safety, a disabled schooner, worth, with cargo, $11,000.—The W. F. Garrison, Case No. 17,475.

$2,000 awarded a vessel worth $20,000 for two hours' towing of a disabled steamer worth $60,000, where a tug sent for was met on the

way, and the weather was fair.—Pacific Coast Wrecking Co. v. The Eastport, Case No. 10,646.

$2,000 awarded a propeller valued with cargo at $200,000, for towing 45 miles, into harbor, a steamer, worth with cargo $85,000, temporarily disabled in a storm on Lake Michigan.—Ensign v. The Peerless, Case No. 4,494.

$2,250 allowed for towing to Sandy Hook brig rigged with jury masts, discovered 175 miles from New York, valued, with cargo, at $18,500.—The Minnie Miller, Case No. 9,638.

$2,800 awarded where valuable steamer saved, with little danger, in a few hours, brig and cargo valued at $95,000.—The George Gilchrist, Case No. 5,333.

$3,300 awarded schooner, valued, with cargo, at $8,500, for 24 hours' towage services rendered a disabled bark worth, with cargo, $70,000.—Norris v. The Island City, Case No. 10,306.

$3,600 allowed for towing to Boston a ship valued, with cargo, at $120,000, anchored near dangerous reefs near the shore of Cohasset.—Hennessey v. The Versailles, Case No. 6,365.

$4,000 awarded a vessel worth, with cargo, $275,000, for towing into New York harbor disabled steamer, out of the track of commerce, worth, with cargo, $70,000, where one day's time was lost.—The Rebecca Clyde, Case No. 11,621.

$4,500 awarded where the vessel saved was worth, with cargo, $70,000.—Cromwell v. The Island City, Case No. 3,410.

$5,000 allowed tug for towing to place of safety disabled steamship worth $47,000.—The Allegiance, Case No. 207.

$5,500 awarded to two steamers for towing vessel worth, with cargo, $160,000.—Bowley v. Goddard, Case No. 1,736.

$6,000 awarded an Atlantic liner worth, with cargo, $800,000, for towing into New York harbor vessel worth, with cargo, $85,000, found 90 miles from Sandy Hook in disabled condition.—Ocean Steam-Nav. Co. v. The Revenue, Case No. 10,413.

$9,000 allowed salvor vessel worth, with cargo, $434,000, for towing into Norfolk disabled steamer, worth, with cargo, $100,000.—The Saragossa, Case No. 12,335.

$10,000 allowed a tug valued at $60,000, for towing to place of safety a ship worth with cargo $160,000, which had dragged her anchors in a gale in San Francisco harbor.—Johnson v. The Industry, Case No. 7,391.

$10,000 awarded to a vessel valued, with cargo, at $242,000, for towing into port vessel valued, with cargo, at $244,000, in favorable weather, and by a loss of four days' time.—The Costa Rica, Case No. 3,262.

$10,000 awarded for services in towing, in fine weather, a steamer with broken shaft, worth, with cargo, $480,000, by a vessel worth, with cargo, $220,000, detained two and a half days in rendering the service.—The Colon, Case No. 3,024.

$13,000 allowed on property saved valued at $70,000.—Adams v. The Island City, Case No. 55.

$15,000 allowed to two tugs as towage compensation for towing a ship worth, with cargo, $250,000, from Romer shoal into the port of New York.—The Stratton Audley, Cases Nos. 13,529, 13,530.

$30,000 allowed two tugs for towing from the False Hook, into New York harbor, a vessel worth, with cargo and freight, $230,000, where the services lasted about 20 hours.—The Puritan, Case No. 11,474.

§ 45. —— **Pilotage services.**
$100, in addition to pilotage, allowed a pilot for bringing into port a vessel which was being navigated under a jury rig and makeshift rudder.—Topping v. The Warren, Case No. 14,101.

$800 awarded for navigating disabled vessel to port after she had got inside the Florida reefs.—The Herman, Case No. 6,406.

$900 allowed wrecking vessel, for piloting into port brig found among dangerous shoals, worth, with cargo, $12,000.—The Augusta, Case No. 646.

$1,500 awarded salvors on ship and cargo worth $60,000.—The Calcutta, Case No. 2,298.

$2,400 awarded pilots for bringing into port ship and cargo worth $38,000, left by master and crew in peril, with intention of returning.—Bean v. The Grace Brown, Case No. 1,171.

$2,500 allowed for piloting vessel, worth, with cargo, about $150,000.—Curry v. The Loch Goil, Case No. 3,495.

$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.—Winso v. The Cornelius Grinnell, Case No. 17,-883.

§ 46. —— **Saving cargo.**
From 5 to 55 per cent. allowed for saving different portions of cargo of shipwrecked vessel.—The Mulhouse, Case No. 9,910.

8 per cent. allowed first salvors on the value of the cotton saved by the second set, for saving it from fire by scuttling or cutting a hole in the side of the ship.—The Concordia, Case No. 3,092.

12 per cent. awarded on $118,202, the appraised value of cotton saved.—The Bickmore, Case No. 1,388.

14 per cent. awarded on dry cotton saved, amounting to $168,000, and 40 per cent. on damaged cotton, amounting to $22,000, and on materials sold at $3,078.—The Harwood, Case No. 6,186.

For saving a cargo of cotton, 15 per cent. allowed on dry cotton, amounting to $121,826, 33⅓ per cent. on damaged cotton, amounting to $40,000, and 45 and 50 per cent. on the portion dived for.—The John Wesley, Case No. 7,433.

19 per cent. awarded on $123,000 worth of cargo saved by 152 men working 13 days.—The Crown, Case No. 3,450.

One-fifth only allowed for saving a cargo of negroes valued at $38,800, where the risk was great, but the cargo, from its nature, was easily moved.—Jerby v. One Hundred and Ninety-Four Slaves, Case No. 7,288.

20 per cent. allowed salvors on a gross valuation of $207,000.—The Mississippi, Case No. 9,-650.

From 20 to 50 per cent. allowed on different parts of cargo of cotton saved from burnt and stranded vessel.—The Northwester, Case No. 10,-333.

20 per cent., 50 per cent., and 60 per cent. allowed, respectively, on net value of $23,904, $7,-967, and $1,283, in the case of three expeditions to a wreck.—The Telamon, Case No. 13,-820.

One-fourth allowed on a valuation of $12,583, where a small schooner loaded with coal saved floating cases and boxes.—Hartshorn v. Twenty-Five Cases Silk, Case No. 6,168a.

Salvors allowed 25 per cent. of cargo saved uninjured and 50 and 60 per cent. of damaged portions.—The America, Case No. 279.

Salvors allowed on cargo of sugar 27 per cent. of portion saved dry and 42 per cent. of injured portion.—The Arabella, Case No. 501.

Salvors allowed from 28 per cent. to 50 per cent. of value of cargo saved after unsuccessful efforts to float vessel.—In re Buckley v. The William M. Jones, Case No. 2,095.

30 per cent. allowed for saving cargo and materials valued at $18,000.—The Joseph A. Davis, Case No. 7,534.

30 per cent. allowed on $60,000, the value of cargo and materials saved by 145 salvors, employed five weeks.—The Eliza Mallory, Case No. 4,365.

30 per cent. allowed on undamaged cargo, and 40 and 50 per cent. on damaged cargo, and all of certain other portions saved by diving.—The Mississippi, Case No. 9,651.

For saving cargo and material valued at $41,-756, 30 and 50 per cent. allowed.—The Athalia, Case No. 598.

30 and 50 per cent. allowed, on different portions of cargo valued at $56,093.—The Nathaniel Kimball, Case No. 10,033.

One-third of the gross value allowed for saving goods from a wreck with no unusual labor or difficulty.—Small v. The Messenger, Case No. 12,961.

One-third part awarded as salvage in a case where the vessel was lost and part of the cargo saved, and where the salvage was not attended with extraordinary hazard or difficulty.—Weeks v. The Catharina Maria, Case No. 17,351; Jurgenson v. Same, Id.

One-third the proceeds of merchandise, and one-eighth the value of plate and money saved, awarded to a vessel for standing by another in a helpless condition at sea.—Warder v. La Belle Creole, Case No. 17,165.

An allowance of one-third the value of cargo saved for services of a tug consuming half an hour reduced on appeal from nearly $2,700 to $750.—Mattingly v. Three Hundred and Fifty-Seven Bales of Cotton, Case No. 9,294.

One-third allowed on cargo and materials, valued at $31,220, of vessel wrecked on the American reef, saved by four vessels, carrying 49 men. —The F. A. Everett, Case No. 4,603.

One-third allowed for cargo and materials valued at $58,751, saved from ship lost upon Carrysfoot reef.—The Brewster, Case No. 1,852.

35 per cent. on net value of cargo saved, and 45 per cent. on net value of materials, allowed in the case of a vessel wrecked on Florida reef.—Peacon v. The Amazon, Case No. 10,-871.

Salvors allowed 35 per cent. on dry cargo and 50 per cent. on wet cargo saved.—The Ajax, Case No. 117.

36 to 45 per cent. awarded on the value of property saved from a wreck in bad weather.—The Mary Hale, Case No. 9,213.

Two-fifths of net proceeds of vessel and cargo allowed for rescuing it from Malay pirates.—Parter v. The Friendship, Case No. 10,783.

40 per cent. awarded on cargo, 6 per cent. on specie, and 15 per cent. on surveyor's instruments, the specie and surveying instruments having been in no great danger.—The Merchant, Case No. 9,435.

43 to 50 per cent. of cargo and materials saved from a wreck awarded to the salvors.—The May Howland, Case No. 9,348.

43 per cent. allowed upon gross valuation of $41,924 for saving cargo, mainly by diving, from a vessel totally wrecked on Florida reefs.—The Yucatan, Case No. 18,194.

Salvors allowed 45 per cent. of proceeds of sale of cargo saved from ship burning at anchorage. —The Albert Gallatin, Case No. 140.

45 per cent. allowed on net proceeds of cargo valued at $5,500 saved by wreckers.—The North America, Case No. 10,313; The Norway, Id. 10,356.

45 and 50 per cent. of $8,276, the net value of materials and cargo saved, awarded salvors who worked five days in rough weather trying to float a vessel aground on Carrysfoot reef.—The Elizabeth Bruce, Case No. 4,358.

47 per cent. allowed on the value of cargo and materials saved.—The Emery, Case No. 4,-445.

47 per cent. awarded on cargo saved, valued at $29,153.—The Cora Nellie, Case No. 3,217.

One-half and one-third of net value allowed for saving cargo of a vessel wrecked on Charleston bar.—Stephens v. Bales of Cotton, Case No. 13,366.

For saving the cargo of a wrecked vessel, consisting of a locomotive and a quantity of railroad iron, court allowed one-half of the net value of the property saved.—The Cimbus, Case No. 2,-718.

One-half the value of cargo transshipped and 4 per cent. of that of the vessel and remaining cargo allowed where a brig caught and damaged in the ice in Delaware Bay was rescued by the removal of her cargo and towed into port by a steam tug.—Virden v. The Caroline, Case No. 16,956.

One-half allowed on cargo amounting to $7,500 saved from vessel wrecked on Pelican shoals.—The Robert Morris, Case No. 11,893.

One-half the net value of $96,309 allowed for saving cargo of ship sunk in five fathoms of water, where 434 persons were employed two months.—The Isaac Allerton, Case No. 7,088.

A moiety awarded where boxes of wearing apparel were picked up in a heavy sea at some risk.—Curtis v. Quantity of Wearing Apparel, Case No. 3,504.

55 per cent. allowed where sugar was saved from hold of abandoned vessel by great labor.—Curry v. The H. J. May, Case No. 3,494.

60 per cent. allowed for saving brass and other materials stripped from vessel after abandonment by original salvors.—Peacon v. The Amazon, Case No. 10,871.

$326 allowed for saving additional property, of the value of $632, by small boats picking up goods and materials afloat and ashore.—The F. A. Everett, Case No. 4,603.

$5,740 allowed, on valuation of $6,740, for saving oil and materials from a vessel abandoned at a distance of 1,000 miles from any country where assistance could be procured.—Howland v. Two Hundred and Ten Barrels of Oil, Case No. 6,801.

$6,000 allowed for lightening cargo worth $20,-000 from steamer cast ashore in December.—The Clotilda, Case No. 2,903.

$11,931 awarded on a net value of $35,821, in the case of a wreck upon the Florida reef.—The Tellumah, Case No. 13,823.

$16,000 awarded in the case of cargo, valued at $700,000, of a disabled vessel towed to port 730 miles by another vessel belonging to the same owners.—Pacific Mail S. S. Co. v. Ten Bales Gunny Bags, Case No. 10,648.

Eight vessels, with 120 men, saving cargo and materials from a wreck in boisterous weather, awarded $18,468 on a valuation of $50,227.—The Maryland, Case No. 9,218.

$21,050 allowed on cargo of iron valued at $36,222, saved, by diving, from vessel wrecked on Carysfort reef.—The Helen E. Booker, Case No. 6,330.

Salvors entitled to $23,500 on cargo valued at $30,000 about to be jettisoned by master to float

ship and received by salvors who stayed by ship and helped at pumps.—The Alabamian, Case No. 128.

$33,852 allowed for one month's labor in saving property worth $91,076 from ship stranded on Florida reef.—The Indian Hunter, Case No. 7,024.

§ 47. —— Floating vessel aground.

15 per cent. allowed for staying by ship in peril, and dragging her over a shoal, into safe anchorage.—Brooks v. The William Penn, Case No. 1,965.

Where vessel and cargo were of the gross value of $73,000, 15 per cent. of net value allowed.—The Ashburton, Case No. 575.

One-fourth awarded upon a valuation of $35,391, for rescuing, in a partially damaged condition, a vessel and cargo stranded upon Florida reef.—The Howard, Case No. 6,752a.

One-third of net value, of $14,500, allowed for floating vessel aground on Loo-Key shoals by discharging 130 tons of ballast, carrying out anchors, etc.—The Iconiun, Case No. 6,995.

42 per cent. allowed for saving, in bad weather, at considerable risk, brig aground on Alligator reef, worth, with cargo, about $18,500.—Bennett v. The Tevere, Case No. 1,325.

45 per cent. allowed on a net value of $11,616 in the case of a vessel grounded on the Florida reef, where four days were spent in getting her off.—The Scotsman, Case No. 12,515.

Moiety allowed where value small and property saved from inevitable destruction.—Anonymous, Case No. 430.

One-half awarded where the vessel and cargo aground on a Florida reef would have been a total loss but for the timely assistance of the salvors, rendered at great hazard.—The Lexington, Case No. 8,336.

$400 allowed a wrecking tug for pulling off the Romer shoals a schooner worth, with cargo, $23,000.—The J. F. Farlan, Cases Nos. 7,313, 7,314.

$1,200 allowed on a net value of $38,000, for pulling off a vessel aground in a dangerous position in the channel of Charleston harbor.—Scott v. The Clara E. Bergen, Case No. 12,526a.

Small tugs, assisting in pulling off steamship worth, with cargo, $500,000, aground in harbor, allowed $1,200.—Baker v. Hemenway, Case No. 770.

A vessel driven on an island in Boston harbor in the daytime set a signal of distress. A tug pulled her off and towed her to a dock. *Held*, a salvage service, for which $1,500, on a valuation of $33,000, should be awarded.—The M. B. Stetson, Case No. 9,363.

Salvors allowed $2,500 for carrying out anchors for grounded ship worth $20,000.—The Albus, Case No. 148.

Salvors allowed $2,600 on vessel worth $11,000 saved by 20 salvors in 2 hours' time.—The Annie Leland, Case No. 421.

$6,000 allowed for saving a vessel aground on Pellican shoals, worth $20,000.—The John and Albert, Case No. 7,333.

$10,178 allowed professional wreckers for getting ship and cargo of cotton off the Florida reef, being one-fourth of the net value.—Walter v. The Montgomery, Case No. 17,120.

$12,000 *held* reasonable award for getting ship worth, with cargo, $125,000, off a reef at Key West, but reduced one-half because of delay resulting from negligence and gross errors of judgment.—The Diadem, Case No. 3,874.

$13,000 allowed upon a valuation of $95,000 to professional wreckers for getting a ship off of Florida reefs.—The York, Case No. 18,140.

$15,000 awarded for floating ship, aground on Carysfort reef, worth, with cargo, $46,470, and navigating her, through intricate channel, to open sea.—The Euphrasia, Case No. 4,545.

$17,000 awarded for saving a ship and cargo worth $85,000, grounded on Crocus reef, in imminent danger, after 36 hours' labor by 8 wrecking vessels and 92 men.—The Sierra Nevada, Case No. 12,846.

$17,000 allowed on a total valuation of $165,000 for lightening a stranded vessel, and towing her 70 miles, to Key West.—Pent v. The Ocean Belle, Case No. 10,961.

$20,540 awarded on a net value of $130,000 in the case of a vessel aground five miles west of Sombero light.—The Rockland, Case No. 11,981.

$23,000 allowed upon a net value of $127,000 to 12 wrecking vessels, carrying 108 men, for services rendered a vessel aground upon Couch reef.—The Sultan, Case No. 13,601.

§ 48. —— Navigating shorthanded vessel.

One-fourth allowed where an American brig, on the northwest coast of Africa, whose officers were dead or dying from coast fever, was rescued by a British naval vessel, and sent home in charge of one of its officers.—The Huntress, Case No. 6,912.

One-third allowed on a gross value of $4,500, in the case of a bark drifting at sea, with the greater part of her crew dead, and the rest rendered helpless by disease, discovered 40 miles from a port.—Sturtevant v. The George Nicholaus, Case No. 13,578.

$300 awarded on a gross value of $5,000, to a seaman, who, being deserted by the rest of the crew, alone navigated the vessel to a place of safety.—The Triumph, Case No. 14,183.

Salvors of brig worth, with cargo, $26,000, awarded $500 for placing navigator aboard in answer to signal of distress.—Butterworth v. The Washington, Case No. 2,253.

$3,000, on a valuation of $50,000, allowed for placing a navigator aboard and navigating back to port a vessel in charge of a disabled second mate, where the master was killed and the first mate seriously hurt in an affray.—The J. L. Bowen, Case No. 7,322.

$5,400 awarded for placing navigator aboard a vessel valued, with cargo, at $95,000, found in the middle of the Atlantic without a navigator.—The Czarina, Case No. 3,531.

§ 49. —— Derelict vessel.

Moiety allowed where vessel abandoned and partly stripped was worked into port.—Ashbahs v. The Trusty, Case No. 573a.

Moiety allowed for bringing into port abandoned vessel, found in sinking condition.—Bell v. The Ann, Case No. 1,245.

A moiety of the net proceeds of vessel and cargo allowed where found abandoned, on Bahama bank, and with great labor and danger brought to New York.—Concklin v. The Harmony, Case No. 3,089.

In cases of extraordinary merit or extraordinary peril to the rescuing ship, the owner should be allowed a moiety of the salvage.—The Cumberland, Case No. 3,470.

One-ninth awarded owners of salvor vessel for towing 40 miles, into port, derelict vessel, worth with cargo $9,300.—Evans v. The Charles, Case No. 4,556.

One-third allowed where a brig deserted by her crew was navigated to port with great difficulty by relief crew from another vessel.—Bond v. The Cora, Cases Nos. 1,620, 1,621.

Two-fifths allowed where vessel with valuable cargo saved derelict vessel of little value with-

out much risk or labor.—The Georgiana, Case No. 5,355.

Three-fifths of the gross value allowed where a derelict found in a sinking condition was, at great risk, and without boats or anchors, brought 3,000 miles to port.—Mason v. The Blaireau, Case No. 9,230.

One-half allowed where a portion of the crew of the salvor vessel went on board an abandoned vessel and brought her to port after great peril and exertion.—Morehouse v. The Jefferson, Case No. 9,793.

Where a whaling vessel broke up her voyage to save derelict property valued at $3,831, *held*, that one-half should be allowed, less a moiety of the customs duties.—Johnson v. Certain Goods, Case No. 7,377.

One-half allowed on a gross value of $4,000 where a pilot boat went in search of a derelict schooner, and, after great labor, found and towed her to port.—The Saxon, Case No. 12,412.

$75 awarded for six hours' service for saving a water-logged and abandoned scow, worth, with cargo, $5,000.—The Senator, Case No. 12,664.

$350 allowed for four days laborious service in saving vessel worth $2,000.—The Bee, Case No. 1,219.

$750 allowed on a valuation of $3,000 for towing into port derelict schooner loaded with lumber, found by fishing sloop 12 miles from Sandy Hook.—The John E. Clayton, Case No. 7,338.

$850 allowed, being one-half gross amount for bringing into port in pleasant weather derelict found in accustomed track of coasters and fishermen.—The W. D. B., Case No. 17,306.

For saving vessel and freight valued at $3,500, salvors allowed $1,200.—The Attacapas, Case No. 637.

$1,500, on a valuation of $9,500, allowed a schooner for towing into port derelict bark found near the mouth of Delaware Bay.—Hall v. The Paquet Bot De Cayenne, Case No. 5,941.

$2,000 allowed 36 salvors, on a net value of $12,000, for services rendered derelict vessel stranded in Boston harbor.—The Ida L. Howard, Case No. 6,999.

$2,500 allowed on a valuation of $6,400 where a coal-laden schooner found derelict 50 miles from Long Island was brought in by the mate and two men from a coasting schooner, in 30 hours, with some risk.—The L. T. Knights, Case No. 8,585.

Salvors allowed $6,000 for bringing into port brig abandoned 50 miles from Sandy Hook, worth with cargo $30,000.—The Anna, Cases Nos. 398, 401.

§ 50. —— Miscellaneous cases.

6 per cent. of $38,000, the value of the ship and cargo, allowed salvors standing by a vessel in peril, and relieving her of part of cargo.—The Courier, Case No. 3,283.

Where the crew of a captured vessel rescued her from the prize master, they were allowed one-fourth of the whole value of vessel and cargo.—Clayton v. The Harmony, Case No. 2,871.

45 per cent. allowed on a net value of $4,560.—The Nathan Hannan, Case No. 10,029.

1½ per cent. on $15,000 allowed.—Magoun v. Fifteen Thousand Dollars, Case No. 8,959.

A decree awarding $5,000 to a steamer worth, with cargo, $170,000, for staying by a stranded vessel during the night, and saving her passengers and crew, reversed on appeal, and $2,500 allowed.—The Underwriter, Case No. 14,341.

$4,000, the contract price for raising a sunken steamboat in the Mississippi, valued at $20,000, where the work was performed in 12 hours, by the use of machinery and diving bell worth $20,000, *held* reasonable.—Eads v. The H. D. Bacon, Case No. 4,232.

$15,000 allowed on a gross value of $500,000 to a passenger for devising and putting in execution a plan for steering a steamer with a broken rudder shaft.—Towle v. The Great Eastern, Case No. 14,110.

$60,000 allowed upon a valuation of $260,000 for nine months' labor, where the salvor vessel abandoned a whaling cruise at its commencement.—The D. M. Hall v. The John Land, Case No. 3,939.

§ 51. Apportionment — Right to share in general.

All the crew of a vessel, who were ready and willing to engage in salvage service rendered by the vessel to a wreck in the course of the voyage, are entitled to a share of the salvage awarded, though they may not have gone on board of the wreck.—The Centurion, Case No. 2,554.

Where, under a contract, a salvage of 50 per cent. was awarded to a schooner which came to the relief of the wrecked vessel, the court will not give the whole compensation to the master and owners, and leave the seamen to look to the other moiety for their reward.—Cartwell v. The John Taylor, Case No. 2,482.

An owner who was not aboard his vessel when it rendered services to another in peril and did not personally render services cannot claim salvage, but is entitled to compensation for use of his vessel.—The Arlington, Case No. 534.

The owners of the cargo of the salvor vessel detained in rendering the salvage service are entitled to compensation from the vessel to which the services are rendered, for loss arising therefrom.—The Colon, Case No. 3,024.

The freighter, being on board and consenting to deviation to save property, is entitled to salvage; otherwise not.—Bond v. The Cora, Case No. 1,621.

The agent of the owners of the lost property, having purchased the claim of part of the salvors, is allowed from the sum awarded as salvage the amount he paid for the claim, and no more.—The W. D. B., Case No. 17,306.

Contracts of consortship, where reasonable, will be sustained; but the burden of proof of such a contract is upon the party setting it up.—Pent v. Two Thousand Eight Hundred and Fifty Dollars, Case No. 10,961a.

Salvors who save life, but no property, will share with those who save property, according to the merits of the service.—The Mulhouse, Case No. 9,910.

§ 52. —— Right of owner of property used in service.

The owners of the salvor vessel are always entitled to a portion of the award, the amount usually being one-third.—Evans v. The Charles, Case No. 4,556.

The owner of a vessel can come in as a co-salvor only where his vessel has been the direct means of rendering the service for which salvage is awarded.—Waterbury v. Myrick, Case No. 17,253.

The owner of a vessel is not entitled to salvage where his ship master pledged the owner's funds to procure another vessel with which to render the salvage service.—Waterbury v. Myrick, Case No. 17,253.

An action in rem will not lie against money earned by a shipmaster and supercargo as a salvor, whilst in the general employ of the libelant as owner of the vessel and cargo.—Waterbury v. Myrick, Case No. 17,253.

The shipowner is not entitled to recover from the master a share in an award for saving prop-

erty from an island, where it had been landed by the passengers of a wrecked vessel, where the master left his own vessel in port, and employed another in the salvage service, though he used the owner's funds in the service.—Waterbury v. Myrick, Case No. 17,253.

Salvage remuneration cannot be awarded to the owner of a tug on a libel filed by him where he was not present when the salvage service was awarded, but an equitable compensation will be made for the use of the tug.—The Jack Jewett, Case No. 7,122.

The owner of a tug chartered by a wrecking company to perform salvage service, but without stating the services intended, is entitled to salvage compensation.—The Birdie, Case No. 1,431.

The agreement by the master, for a specific sum, to victual, man, and navigate the vessel under the direction of the owner, does not make him owner or part owner, during the voyage.—The Nathaniel Hooper, Case No. 10,032.

Where the owner under a charter party is to equip, victual, man, and sail the ship, he is the owner for the voyage, and entitled to salvage earned by the ship, unless the deviation and delay were authorized by the shipper.—The Nathaniel Hooper, Case No. 10,032.

A person whose oxen are used in a salvage service does not thereby become a salvor.—The Ottawa, Case No. 10,617.

The whole salvage will be awarded to the wrecking firm, where the wages of the crew employed were paid by it, and they make no claim to salvage.—Browning v. Baker, Case No. 2,041.

§ 53. —— Various sets of salvors.

Licensed wrecking vessels are entitled to be admitted to assist in the order in which they arrive, if further assistance is needed; and later vessels, admitted after the exclusion of earlier arrivals, are not entitled to a full share.—Pent v. The Ocean Belle, Case No. 10,961.

A wrecking vessel is deemed to have "arrived," within rule 4 of the Florida district, when within hailing distance, ready to receive and obey orders.—Acosta v. The Halcyon, Case No. 31.

Unlicensed vessels will be excluded from participating in a salvage service, sharing in the award therefor only when licensed vessels are present which are capable of rendering the required services, and their services are not accepted.—Pent v. Two Thousand Eight Hundred and Fifty Dollars, Case No. 10,961a.

Where the consorted vessels are amply sufficient to save the cargo and materials of a stranded vessel, a wrecking vessel subsequently arriving is not entitled to come into the consortship.—The Mimi, Case No. 9,627a.

§ 54. —— Between owners, officers, crew, and others.

Ordinarily, one-third of the entire salvage is given to the owners of the salvor vessel.—Sewell v. Nine Bales of Cotton, Case No. 12,683; The Boston, Id. 1,673; The Henry Ewbank, Id. 6,376.

But, in cases of extraordinary merit or peril to the ship, a greater allowance may be made.—The Henry Ewbank, Case No. 6,376.

The rule in the Fifth circuit is to give one-half to the salvor vessel, and the other half to her officers and crew, in proportion to wages.—Sonderburg v. Ocean Tow Boat Co., Case No. 13,175.

The owners and master of a lighter were allowed three-fourths of the award, where the actual work of lightering was done by the crew of the vessel in distress.—Studley v. Baker, Case No. 13,559.

Owners of large steamer with valuable cargo *held* entitled to three-fifths of the award.—The C. W. Ring, Case No. 3,525.

Where the services are such that the vessels are unable to participate, the rule of dividing the award equally between the vessels and the men will be varied so as to give the men the larger share.—Pent v. Two Thousand Eight Hundred and Fifty Dollars, Case No. 10,961a.

In apportioning salvage among the officers and crew of a steamer, the court regards their responsibilities in their different stations. Equal shares given to the master and pilot.—Brooks v. The William Penn, Case No. 1,965.

A distribution of the salvage among officers and men in proportion to wages *held* proper.—Sewell v. Nine Bales of Cotton, Case No. 12,683.

A passenger who advised the master to attempt the service, and was active in performing it, is entitled to an increased share.—The Charles Henry, Case No. 2,617.

Seaman put on board derelict by salvor vessel allowed a greater proportion of salvage.—Bell v. The Ann, Case No. 1,245.

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.—Williamson v. The Alphonso, Case No. 17,749.

Where a salvor steamer places a mate aboard a vessel which has lost its officers through yellow fever, and is delayed only a few minutes thereby, the officer is entitled to the major part of the salvage allowed.—United States Mail S. S. Co. v. The John Potter, Case No. 16,792a.

A fireman who, at some risk, jumped on board the canal boat to make a line fast, should receive a share equal to that of the master of the tug.—The Ontario, Case No. 10,541.

Master allowed only the share of a common seaman, where he greatly weakened his own vessel to render the salvage service.—The Waterloo, Case No. 17,257.

The first mate of a bark, who refused to volunteer to assist in bringing in a schooner whose crew was taken off by his own vessel, *held* entitled to only the same share as the other seamen remaining on the bark.—The Lovett Peacock, Case No. 8,555.

An assignment and release by a seaman, to the owners of the salvor vessel, of a claim for salvage, executed in ignorance of the facts, will not deprive him of his share.—The Edward Lee, Case No. 4,292.

The salvor vessel allowed one-half the award of $15,000 for six days' towing services of a rudderless bark, where the master was disabled by the breaking of his leg and the fingers of one hand.—The John G. Paint, Case No. 7,346.

On an award of $30,000, the masters of two tugs were each allowed $3,000.—The Puritan, Case No. 11,474.

An award of $50 for saving a raft of spars found drifting out to sea was apportioned between libelants at the rate of $30 to one and $5 to each of the others who were in the employ of the former.—In re Raft of Spars, Case No. 11,529.

For particular instances of apportionment of the award between the owners of the property used in the salvage service and the officers and crews of the vessels and other persons engaged in the service, see The Anna, Case No. 398; Butterworth v. The Washington, Id. 2,253; The Galaxy, Id. 5,186; The Gerard Stuyvesant, Id. 5,356; The Henry Ewbank, Id. 6,376; The Mary Coe, Id. 9,204; The Waterloo, Id. 17,257.

§ 55. —— Deductions.

The share of a mate in charge of the salvor vessel, the master being disabled, reduced, because of his mistake in performance of the services.—The John G. Paint, Case No. 7,346.

An agreement by a salvor to pay the master 10 per cent. of the compensation may be lawfully performed, but in awarding salvage it should be reduced by that amount.—Church v. Seventeen Hundred and Twelve Dollars, Case No. 2,713.

Money given, even in charity, by salvors having salved property in their possession, to officers of the wrecked vessel, may be recovered by the owners and insurers.—Merchants' Ins. Co. v. Seller, Case No. 9,444.

§ 56. —— Shares lost by misconduct or not claimed.

When the compensation of certain salvors has been forfeited for misconduct, the court has discretion to determine what interest shall be benefited thereby.—Roberts v. The St. James, Case No. 11,914.

The forfeited shares of salvors do not accrue to their cosalvors, but go to the owners of the salved property.—The Rising Sun, Case No. 11,-858.

A share declared forfeited for wrongful appropriation or fraudulent concealment of a part of the cargo will inure to the owners thereof.—Flinn v. The Leander, Case No. 4,870; Anonymous, Id. 429.

Compensation forfeited for neglect of duty increasing labors of others should be divided between the latter.—Anonymous, Case No. 429.

Where some of the salvors decline asserting a claim for salvage compensation, their proportion will not accrue to the benefit of either their cosalvors or to the owners of the saving vessel.—Evans v. The Charles, Case No. 4,556.

III. LIEN AND RECOVERY.

§ 57. Lien.

There is no lien for salvage services performed under a contract for a fixed sum, to be paid at all events.—The Whitaker, Cases Nos. 17,524, 17,525; The Marquette, Id. 9,101.

Goods on board of a private ship, belonging to the government, are subject to admiralty process in rem for their proportion of salvage.—United States v. Wilder, Case No. 16,694.

The owners of cargo thrown overboard to make room for the salved property have not a prior lien on the proceeds of such property for reimbursement.—Williams v. The Adolphe, Case No. 17,712.

Where there are separate sets of salvors, they have not separate liens on the several articles saved by each set, but all are entitled to be paid out of all the property saved.—The Albion Lincoln, Case No. 144.

Possession is not necessary to give validity to a lien for salvage on the property saved.—Eads v. The H. D. Bacon, Case No. 4,232.

Retention of possession by salvors is not necessary to their lien.—Nickerson v. The John Perkins, Case No. 10,252.

It requires the most unequivocal acts on the part of the salvors to show that they intend to abandon their lien, and resort to the owners for payment.—Eads v. The H. D. Bacon, Case No. 4,232.

The lien for salvage is lost by an assignment of the claim.—Sturtevant v. The George Nicholaus, Case No. 13,578.

The finder of an abandoned vessel becomes the legal possessor and acquires a privilege against the property for salvage, which takes precedence of all other liens.—Lewis v. The Elizabeth and Jane, Case No. 8,321.

The claim of one who floats and repairs an abandoned stranded vessel is in the nature of salvage, and takes precedence of prior maritime liens, though such person held an immature mortgage.—The Barney Eaton, Case No. 1,028.

A salvage service has priority of lien over claims for wages earned and supplies furnished prior thereto.—Collins v. The Ft. Wayne, Case No. 3,012.

§ 58. Suits for salvage—Jurisdiction.

An action will not lie at common law for salvage on the high seas.—Brevoor v. The Fair American, Case No. 1,847.

A court of admiralty will entertain a suit for salvage as to property within its jurisdiction, where the only question is as to the rate of reward, though all the parties are foreigners.—In re One Hundred and Ninety-Four Shawls, Case No. 10,521.

The jurisdiction of the federal district court in cases of salvage is not confined to American property or to cases occurring in American waters.—Western Transp. Co. v. The Great Western, Case No. 17,443.

The district court in admiralty has jurisdiction in a case of salvage rendered by an American tug to a British vessel in Canadian waters.—The Sailor's Bride, Case No. 12,220.

The district court has jurisdiction over a case of salvage on the Ohio river.—In re Seven Coal Barges, Case No. 12,677.

The district court in admiralty has jurisdiction of a libel in rem as well as in personam for salvage services, though performed under a contract for a fixed compensation not contingent upon success.—The A. D. Patchin, Case No. 87; Gager v. The A. D. Patchin, Id. 5,170; The Louisa Jane, Id. 8,532; The Williams, Id. 17,-710. But see The Whitaker, Cases Nos. 17,-524, 17,525; The Marquette, Id. 9,101.

An action will lie in rem to recover a salvage compensation against the proceeds of salved property converted into specie, provided the same action would lie against the property itself.—Waterbury v. Myrick, Case No. 17,253.

Jurisdiction of salvage cases in Florida.—American Ins. Co. v. Canter, Case No. 302a.

See, further, "Admiralty," §§ 8, 28.

§ 59. —— Who may sue.

The owner of a vessel which is employed in a salvage service may recover compensation for such employment out of the salved property, either as co-salvor, by uniting with the officers and crew of the salving vessel in the suit, or by bringing it himself in his own right in case they refuse or neglect to join.—Waterbury v. Myrick, Case No. 17,253.

Where the right to compensation of persons assisting a salvor who has agreed to render the service for a certain amount is dependent upon success, they may maintain a libel for salvage compensation, but the owner will be protected beyond the amount agreed upon.—The Whitaker, Case No. 17,525.

The pendency of an action for salvage by the salvor vessel is no bar to a suit by the passengers of the injured vessel for salvage services rendered at the same time.—Forbes v. The Merrimac, Case No. 4,927.

A salvage suit will not be stayed pending an action of replevin for the salved property in a court of law, in which the validity of the salvor's lien may be determined.—In re Raft of Spars, Case No. 11,528.

§ 60. —— Who may be sued.

An action for compensation for salvage services rendered to a vessel cannot be maintained in personam against the master unless it was performed for his benefit.—Miller v. Kelly, Case No. 9,577.

The rights acquired by the salvors are only in rem, to be paid by the property. They have

no claim in personam against the owners, if they choose to abandon the goods.—The Emblem, Case No. 4,434.

Where the property is delivered by the salvors to the owners, before a compensation for saving them is made, the salvors may maintain a libel in personam for the salvage.—The Emblem, Case No. 4,434.

As the admiralty rules are not to be regarded as restrictive, but as enumerative of the more common remedies, a libel for salvage services will lie against one with whom the salvor has deposited the property saved, but who had no other interest therein, though rule 19 prescribes that in suits for salvage the suit may be in rem or in personam against the party at whose request and for whose benefit the salvage service has been performed.—Gates v. Johnson, Case No. 5,268.

§ 61. —— Time to sue.
A libel filed before the salvor has completed his undertaking is premature.—Boyd v. The Towner, Case No. 1,748a.

§ 62. —— Defenses.
The merits of a libel in personam for salvage services are not affected by the fact that respondent has replevied the salved property from the salvor.—Bounty v. Kerrin, Case No. 1,697a.

Delay by petty officers and crew in bringing a suit against the owners for their share of the salvage is no defense, where they had no previous knowledge of the amount received.—Sonderburg v. Ocean Tow Boat Co., Case No. 13,-175.

Failure of libelants to refer their claim for salvage, as agreed, *held*, under the circumstances of the case, to be no bar to an action therefor.—Coffin v. The John Shaw, Case No. 2,949.

The tender of adequate compensation for salvage service, without deposit in court before answer, is no bar to an action for such service. —Boardman v. The Bethel, Case No. 1,585.

§ 63. —— Parties and intervention.
All co-salvors should be made parties to a libel for salvage.—Hessian v. The Edward Howard, Case No. 6,436; The Boston, Id. 1,673.

An objection that co-salvors were not joined in the bill comes too late at the final hearing.—Staten Island & N. Y. Ferry Co. v. The Thomas Hunt, Case No. 13,326.

Nonjoinder of the crew in a suit for salvage by the master and owner of the salvor is not objectionable, in the absence of personal danger and extraordinary hardships.—The A. D. Patchin, Case No. 87.

A suit for salvage may be maintained by the master and owner of the salvor vessel without joining its crew.—Gager v. The A. D. Patchin, Case No. 5,170.

Underwriters not having accepted an abandonment are not proper parties.—The Boston, Case No. 1,673.

A foreign consul may appear for citizens of his country to protect proceeds of sale of property for salvage.—The Adolph, Case No. 86.

A libel in the name of a British naval officer and the British consul, joining with him "for all other interests," where the vessel, rescued by a British naval vessel, was sent home in charge of the officer, *held* not fatally defective.—The Huntress, Case No. 6,912.

§ 64. —— Joinder of libels.
Several libels filed against the cargo saved will be joined and considered as one suit for the purposes of awarding salvage.—The Mississippi, Case No. 9,651.

Under the 19th admiralty rule a proceeding in rem cannot be joined with a proceeding in personam for salvage of the same goods.—Nott v. The Sabine, Case No. 10,366.

§ 65. —— Pleadings.
The libel should state the subject-matter in articles, and the answer should meet each material allegation, with an admission and denial or a defense. No evidence is admissible except it be appropriate to an allegation.—The Boston, Case No. 1,673.

Libelants permitted to amend and file a supplemental bill for extra compensation as pilots where their services were *held* not to constitute a claim for salvage.—Dexter v. The Richmond, Case No. 3,865.

§ 66. —— Hearing.
Facts tending to show that the master willfully caused the wreck may be considered, though not introduced by either party, and brought to the court's notice by accident.—Malone v. The Pedro, Case No. 8,995.

Compensation may be fixed by the court, upon consultation with merchants and owners of ships as to the value of service rendered.—George v. The Arctic, Case No. 5,330.

An award of a referee in a salvage case will not be recommitted because the counsel for the libelants omitted to call the attention of the referee to a matter which might have influenced the referee, if his attention had been called to it, to increase the amount of salvage.—The Liverpool Packet, Case No. 8,407.

§ 67. —— Evidence.
The master's neglect of reasonable precautions to prevent wreck, and of reasonable efforts to remedy the same without help, is evidence that the ship was willfully wrecked by him.—Malone v. The Pedro, Case No. 8,995.

Cumulative testimony for salvors is admissible.—Jones v. The Richmond, Case No. 7,492.

§ 68. Presentation of claims.
Co-salvors omitted from the original libel may present their claims by suitable allegations without notice or process to the other parties.—The Henry Ewbank, Case No. 6,376.

In a case of extraordinary merit, where a salvor failed to present his claim until after salvage was decreed and paid, he was allowed compensation out of the proceeds remaining in the marshal's hands, reserved for the owners.—Ryan v. The Cato, Case No. 12,184.

§ 69. The property and proceeds — Care and custody.
Salvors of a derelict have a right to retain possession until the salvage service is completed, but if their own means are inadequate they are bound to accept additional assistance, if offered.—The Ida L. Howard, Case No. 6,999.

Salvors have a right to the possession of the salved property until their claims are legally adjusted.—Hartshorn v. Twenty-Five Cases Silk, Case No. 6,168a.

Salvors must land the property saved at the nearest port of safety, and see that it is properly cared for.—The Sumner, Case No. 13,608.

Neither party is of right entitled to have a delivery of the property on bail, and the vessel owner is not in default in waiting for the regular termination of the salvage proceedings.—The Nathaniel Hooper, Case No. 10,032.

As to the right of salvors to take the vessel into port for adjudication, against the master's protest and offer to pay for services, see The La Bruce, Case No. 7,963.

As to the marshal's duty in relation to the care of the salved property, see The Isaac Allerton, Case No. 7,088.

§ 70. —— Sale of property.
Admiralty courts have jurisdiction to order a survey and decree a condemnation and sale of

the ship, but the judge should be satisfied that the application is made in good faith, and that the vessel is so damaged that no prudent man would think of repairing her.—Walter v. The Montgomery, Case No. 17,120.

The vessel will be ordered to be sold where the master can raise no money, and repairs would exceed value after repairs.—Bennett v. The Tevere, Case No. 1,325.

Salvage on a recapture by a public vessel of war can be ascertained only by a sale, unless an appraisement is consented to.—Cross v. The Dolphin, Case No. 3,432.

Cargo should not be sold for salvage when the vessel cannot be temporarily repaired, and her master prays that she be sold to pay salvage.—The Kristrel, Case No. 7,935.

A sale of the damaged vessel requested by her master will not be ordered, though the repairs will nearly equal her present value, where the court does not think it to the interest of her owners and insurers and the owners of the cargo. —The Lexington, Case No. 8,336.

Where the subject-matter is bags of gold dust, owned by different persons, a sale of so much as may be necessary to raise the amount awarded will be ordered, and not an average on the different parcels.—Edwards v. Thirty-Five Boxes of Gold Dust, Saved from Wreck of the Union, Case No. 4,299a.

A foreign consul has no right to fees for attending a sale where interests of subjects of his government are not involved.—Bennett v. The Tevere, Case No. 1,325.

The owners of the cargo were allowed interest on the proceeds after deducting salvage from the date of a wrongful sale by the master to the claimants.—The Richmond, Case No. 11,797.

The payment of money to the purchaser of property under an unauthorized sale for salvage, with a reservation of all rights, does not prevent an action for wrongful sale.—American Ins. Co. v. Johnson, Case No. 303.

A salvor not guilty of an intentional tort in selling salved property is liable to the owner only for salvage received.—American Ins. Co. v. Johnson, Case No. 303.

§ 71. —— Liens.

The court may order all charges against the property to be produced before it for determination.—Bennett v. The Tevere, Case No. 1,325.

As to the lien for customs duties on the salved property and the duty of the court, see Tucker v. The Mary C. Potter, Case No. 14,223.

Import duties upon wrecked property are to be paid out of the gross proceeds, before deducting salvage, and are not to be charged exclusively on the owner's share of the salvage.—The Waterloo, Case No. 17,257.

A salvor has no claim against the proceeds of goods saved from a wreck for the passage money of the crew carried by him to port under personal contracts.—Brackett v. The Hercules, Case No. 1,762.

§ 72. —— Apportionment of salvage compensation.

All the property saved comes into one general fund, though salvage services were performed by different persons at different times in saving different kinds of property.—The Ottawa, Case No. 10,617.

Costs and charges must be paid by the property saved, and apportioned among the claimants according to their respective interests.—The Nathaniel Hooper, Case No. 10,032.

Where two vessels are in contact, causing mutual damage, salvors who separate them should receive from the one at fault salvage upon the total value of the two.—Pope v. The Sapphire, Case No. 11,276.

Salvors rendering no service except to receive cargo about to be jettisoned by the master to float the ship can claim only against such cargo.—The Albamiau, Case No. 128.

A vessel cast on shore should bear part of salvage earned in landing cargo, thereby lightening the vessel and enabling her to go to a place of safety.—The Clotilda, Case No. 2,903.

Salvage expenses are to be apportioned among vessel, cargo, and freight in proportion to their values, where the labor was carried on with a view of saving both vessel and cargo.—The Mulhouse, Case No. 9,910.

Where the vessel is lost each article of cargo is charged with its own particular expenses of saving.—The Mulhouse, Case No. 9,910; Roberts v. The Ocean Star, Id. 11,908.

The clothing of the master and crew, left aboard on abandonment of the vessel, will be restored free of charge.—The Rising Sun, Case No. 11,858.

Cargo *held* not chargeable with portion of allowance on libel of vessel for salvage, where the disaster occurred through unseaworthiness, and the point as to liability of cargo was not made in the answer.—The Delaware, Case No. 3,761.

§ 73. —— Restoration after payment of salvage.

Property libeled for salvage service is in the possession of the court, and can only be restored by express order.—The Byron, Case No. 2,275.

Restitution, upon payment of salvage, will be adjudged in all cases, if the original owners can be found.—British Consul v. Twenty-Two Pipes and Ten Hogsheads of Wine, Case No. 1,900.

The vessel must be restored after the payment of salvage to those in possession when she was relieved.—Booth v. L'Esperanza, Case No. 1,647.

The court, after decreeing salvage, may refuse to restore the ship and cargo to the master, if the interests of the owners and consignees seem to call for such refusal.—The Montserat, Case No. 9,740.

The court may refuse to restore the property to the master as bailee of the owners, where their interests would be jeopardized thereby. —The Byron, Case No. 2,275.

The proceeds will be withheld from the master where he has been guilty of fraud, embezzlement, or reckless conduct.—The North America, Case No. 10,313.

Circumstances surrounding disappearance of box containing $10,000 in gold *held* not sufficient to justify withholding proceeds from master.—The North America, Case No. 10,313.

§ 74. —— Claims to proceeds.

The surplus proceeds after paying salvage awards will be retained a reasonable time to permit owners or underwriters to file claims.—The Osteonthe, Case No. 10,608a.

In salvage cases, the district court has jurisdiction to determine the right to a balance of proceeds as between adverse claimants; and this notwithstanding that it involves an adjudication upon the validity of a capture at sea, and the effect of a subsequent abandonment.—The Mary Ford, Case No. 9,212a.

Underwriters cannot make any claim for salvage property in the admiralty, unless there has been an abandonment of the property to them, and an acceptance.—The Henry Ewbank, Case No. 6,376.

Duties on goods saved, see "Customs Duties," § 11.

§ 75. —— Unclaimed proceeds.

Unclaimed proceeds, remaining in the registry many years after awarding salvage without claim of ownership, will not be paid to the salvors, but will be paid into the treasury of the United States.—Peabody v. Proceeds of Twenty-Eight Bags of Cotton, Case No. 10,-869.

In the Southern district of Florida, the residue of a derelict, in the absence of any claimant, is delivered to the salvors after the lapse of a year and a day.—Russell v. Forty Bales Cotton, Case No. 12,154.

§ 76. Costs.

Where a libel for salvage is filed without notice to the owner of the vessel to whom the service was rendered, costs will not be allowed. —The Jack Jewett, Case No. 7,122.

On a libel for salvage, where a special agreement is shown in defense, but no tender of the balance of the stipulated price is shown, a decree will be entered for such amount, with costs.—Dominy v. Anchors, Sails, etc., of the D'Alberti, Case No. 3,977.

Libelants will be decreed to pay costs out of their distributive share, where a fair and liberal allowance has been tendered to them or their proctors.—Hessian v. The Edward Howard, Case No. 6,436.

Where a tender of a certain sum as salvage is refused, and the same sum is decreed to libelant, he is chargeable with his own costs subsequent to the tender, and, generally, with the owner's costs, also.—Lubker v. The A. H. Quinby, Case No. 8,586.

There should be but one libel in ordinary salvage cases, and costs paid but for one.— The Charles Henry, Case No. 2,617.

Where two libels are unnecessarily filed for salvage, the increased costs must be borne by the libelants in the second libel.—The Maryland, Case No. 9,218.

Respondents will be charged with costs where they denied the service, though an exorbitant claim was made therefor.—Johnson v. The Industry, Case No. 7,391.

Costs will be awarded salvors, though their claim was inequitable, where claimant offered no particular sum.—The Wexford, Case No. 17,-472.

The refusal of the salvor vessel to deliver up the towing chain of the salved vessel, on demand, will subject its owners to costs.—The Minnie Miller, Case No. 9,638.

The master having been at fault, the costs should be charged to the vessel and cargo, though, from misconduct, salvage was forfeited.—The Byron, Case No. 2,275.

The costs of the proceedings for salvage compensation in rescuing runaway slaves in a stolen canoe are not chargeable to owner of canoe, but to owner of slaves.—Bass v. Five Negroes, Case No. 1,093.

Libelants are not responsible for the expense incurred in effecting an average between the respective owners.—Edwards v. Thirty-Five Boxes of Gold Dust, Saved from Wreck of the Union, Case No. 4,299a.

Nor are they answerable to claimants for sums deposited on bonding the attached property, as rule 68 changes the former practice by securing the return of costs to successful claimants.—Edwards v. Thirty-Five Boxes of Gold Dust, Saved from Wreck of the Union, Case No. 4,299a.

Increased security, under rule 55, will not be required where the security given under rule 44 is not apparently insufficient, where a single libel is filed against a cargo belonging to numerous persons.—Edwards v. Thirty-Five Boxes of Gold Dust, Saved from Wreck of the Union, Case No. 4,299a.

Apportionment of costs among co-salvors and claimants.—The Henry Ewbank, Case No. 6,-376.

See, further, "Admiralty," §§ 127–152.

§ 77. Appeal.

An appeal by any parties interested in the distribution of salvage, as to their shares, brings up incidentally a review of the whole decree, so far as the distribution is concerned. —The Henry Ewbank, Case No. 6,376.

On appeal in a salvage case, the burden to prove mistake of law or fact is on appellant, and error must be clearly shown.—Bearse v. Three Hundred and Forty Pigs of Copper, Case No. 1,193; The Anna, Id. 401; The Emulous, Id. 4,480.

Allowances for salvage services will not ordinarily be disturbed upon appeal.—The Delaware, Case No. 3,761.

In salvage cases, the court on appeal will not alter amount of salvage upon slight grounds.— The Boston, Case No. 1,673.

Decisions on appeal, see "Admiralty," § 125.
—— reviewable, see "Admiralty," § 113.

§ 78. Compromise and payment of salvage and recovery of shares.

An adjustment of salvage, made by the owner of the cargo, is not binding upon the vessel. —The Union Express, Case No. 14,363.

A bona fide compromise will bar further claim for salvage.—Brevoor v. The Fair American, Case No. 1,847.

A master of a wrecked vessel cannot submit the question of compensation for salvage to arbitration, where he acts in bad faith.—Church v. Seventeen Hundred and Twelve Dollars, Case No. 2,713.

Though a settlement by arbitration may be void for fraud of the master, the salvors are entitled to reasonable salvage.—Church v. Seventeen Hundred and Twelve Dollars, Case No. 2,713.

The shares of persons who aid in a salvage service, and receive pay therefor from the owners, revert to the owners.—Spencer v. The Charles Avery, Case No. 13,232.

Salvage earned by an apprentice is payable to him, and not to his master.—Mason v. The Blaireau, Case No. 9,230.

The crew of a salvor vessel may recover their share of the reward by libel in admiralty from the owners, who have received salvage on a settlement with the owners of the property saved. —Studley v. Baker, Case No. 13,559.

The fact that the owners of the salvor vessel did not consider the services of the crew in making the settlement is immaterial where they signed a receipt "for the owners, master, and crew."—Studley v. Baker, Case No. 13,559.

One of the crew of a vessel, for whose services salvage was awarded by arbitrators, and paid to the master without distribution, may maintain a libel in personam against the master for a share.—The Centurion, Case No. 2,554.

Two years' delay is no defense to a libel in personam brought by a salvor against another who had received the salvage moneys.—Sonderburg v. Ocean Tow Boat Co., Case No. 13,175.

An action in personam will lie by one salvor against a co-salvor to recover a proportionate share of the salvage compensation, when the whole is received by the latter, and he withholds the share of the former.—Waterbury v. Myrick, Case No. 17,253.

The master and owners of the salvor vessel have general charge of a claim for salvage, and,

where they present a bill for salvage service, it will be construed as covering the service of the crew, and they cannot maintain a libel for salvage against the vessel and cargo.—Roff v. Wass, Case No. 12,000.

The master and owners of a licensed pilot tug, who receive compensation for salvage services, are accountable to the crew for their shares.—Roff v. Wass, Case No. 11,999.

They are estopped to deny that the service was a salvage one where they receipt for the amount paid as extra compensation for extraordinary services and risk.—Roff v. Wass, Case No. 11,999.

SATISFACTION.

See "Accord and Satisfaction"; "Compromise and Settlement"; "Payment"; "Release."
Of judgment, see "Judgment," §§ 75–78.
Of legacy, see " Wills," § 52.
Of mortgage, see "Chattel Mortgages," §§ 20, 21; "Mortgages," § 16.

SCHEDULE.

In bankruptcy, see "Bankruptcy," §§ 21–27, 480, 563.

SCHOOL LANDS.

See "Public Lands," § 38.

SCHOOLS AND SCHOOL DISTRICTS.

§ 1. **Public schools.**
School district No. 1, of the county of Multnomah, is not the successor of the "trustees of the schoolhouse of Portland."—Chapman v. School District, Case No. 2,608.

The city of Portland is not the successor "of the trustees of the school and meeting house of Portland."—Chapman v. School District, Case No. 2,608.

Schoolhouse bonds issued under Act Mo. March 21, 1870, *held* valid, and enforceable by the ordinary remedies.—Bonham v. Board of Education of Harrisonville, Case No. 1,629.

The fact that free schools and a state university are expressly mentioned in the state constitution, and normal schools are not, *held* not to amount to a prohibition against their establishment.—Briggs v. Johnson County, Case No. 1,872.

SCIRE FACIAS.

§ 1, Amendment. § 2, Execution of writ.

§ 1. **Amendment.**
A sci. fa., in which the name of one person is written for another by mistake, may be amended.—Tayloe v. Wharfield, Case No. 13,772.

§ 2. **Execution of writ.**
A scire facias is an action to which a party may plead, and it may be executed in the same manner as a summons.—Bentley v. Sevier, Case No. 18,233.

SEALS.

§ 1, What constitutes a seal. § 2, Joint seals. § 3, Proof of seals.

By notaries, see "Notaries," § 2.
To bill of exceptions, see "Exceptions, Bill of," § 4.
To process, see "Process," § 1.

§ 1. **What constitutes a seal.**
A seal impressed on paper is equivalent to sealing with wax.—Roberts v. Pillow, Case No. 11,909.

Any forcible indentation on a parchment, though it be not wax, wafer, or a scrawl, may be a seal, if so intended.—Follett v. Rose, Case No. 4,900.

A scroll made with a pen, inclosing the letters "L. S.," will be held to be a seal, if so intended, though not expressly stated in the instrument.—Burton v. Le Roy, Case No. 2,217.

The word "Seal" in a scroll is a sufficient seal.—United States v. Hedges, Case No. 15,339.

A mark with ink, acknowledged by the maker of a deed, *held* sufficient to create a specialty.—United States v. Coffin, Case No. 14,823.

The common-law rule that a seal must consist of wax, or some tenacious substance, does not apply to a bond taken under an act of congress; and, under the general usage, a scroll is sufficient to make the instrument a sealed instrument.—United States v. Stephenson's Ex'rs, Case No. 16,386.

Any impression upon sealing wax or wafer adhering to the paper, without any device or words indicative of the particular official, is evidence of the official character of the officer signing.—In re Phillips, Case No. 11,098.

§ 2. **Joint seals.**
There cannot be a joint seal for diverse persons not incorporated.—Tingey v. Carroll, Case No. 14,056.

§ 3. **Proof of seals.**
Person acquainted with parchment patents may be examined, as to the traces of a seal, on the question whether such a writing had been originally sealed.—Follett v. Rose, Case No. 4,900.

Where there is doubt whether an instrument has been sealed, the fact is properly referable to the jury.—Follett v. Rose, Case No. 4,900.

SEAMEN.

I. REGULATION, PROTECTION, AND RELIEF.

§ 1, Complaints before consul. § 2, Seaworthiness of vessel. § 3, Statutory regulation—Lists, certificates, and return of crew. § 4, —— Shipping commissioners. § 5, —— Colored seamen. § 6, Provisions and supplies—Food. § 7, —— Medicine. § 8, Medical treatment—Liability of vessel or master in general. § 9, —— Treatment at foreign or home port. § 10, —— Expenses chargeable against ship. § 11, —— Fault of seaman. § 12, —— Duration of ship's liability. § 13, Penalties for violation of regulations.

II. EMPLOYMENT IN GENERAL.

§ 14, What law governs. § 15, Who are seamen. § 16, Who may be required to perform seamen's duty. § 17, Minors. § 18, Liabilities of seamen. § 19, Services and care and skill required. § 20, Duration of employment.

III. CONTRACT OF SHIPMENT.

(A) Requisites and Validity.

§ 21, Capacity of parties. § 22, Necessity of writing. § 23, Parol contract. § 24, Duress. § 25, Contracts made after sailing. § 26, Explanation of contract to seamen. § 27, Execution. § 28, Provisions as to voyage or term of employment—Necessity. § 29, —— Sufficiency of description. § 30, Provisions against public policy. § 31, Legality of object.

(B) Construction and Operation.

§ 32, General rules of construction. § 33, What law governs. § 34, Evidence to explain

contract. § 35, Term of employment. § 36, Voyage—In general. § 37, —— Particular voyages. § 38, —— Duration and termination. § 39, Provisions for arbitration.

(C) Performance and Breach.

§ 40, Performance. § 41, Breach.

IV. DISCHARGE.

§ 42, What constitutes discharge. § 43, Authority to discharge. § 44, Grounds for discharge in general. § 45, Discharge in foreign port. § 46, Right of seamen to discharge. § 47, Wrongful discharge. § 48, Revocation of discharge and reinstatement.

V. WAGES.

(A) Right to Wages.

§ 49, Nature of right. § 50, What law governs. § 51, Persons entitled in general. § 52, Deceased seamen. § 53, Sickness of seamen. § 54, Wages as dependent upon freight in general. § 55, Shipwreck. § 56, Capture and confiscation of vessel. § 57, Condemnation of vessel for unseaworthiness. § 58, Abandonment of vessel. § 59, Interdiction of commerce of port of destination. § 60, Agreements to renounce wages. § 61, Absence of written agreement. § 62, Illegality of voyage.

(B) Forfeiture.

§ 63, Nature and cause of forfeiture in general. § 64, Desertion—What constitutes. § 65, —— Excusable or justifiable leaving. § 66, —— By minor. § 67, —— Proof of desertion in general. § 68, —— Entry in log-book. § 69, —— Effect of desertion. § 70, Disobedience and misconduct in general. § 71, Refusal of duty. § 72, Drunkenness. § 73, Negligence. § 74, Rebellious or mutinous conduct. § 75, Larceny and embezzlement. § 76, Smuggling. § 77, Imprisonment of seamen. § 78, Return and tendering amends. § 79, Waiver and remission of forfeiture.

(C) Amount.

§ 80, In absence of valid agreement. § 81, Quantum meruit in general. § 82, Amount measured by voyage or season of navigation. § 83, Breaking up voyage in general. § 84, Refusal to continue voyage. § 85, Attachment of vessel or sale on execution. § 86, Capture of vessel. § 87, Wreck or loss of vessel. § 88, Wrongful discharge. § 89, Sickness or injury of seamen. § 90, Amount in time of war. § 91, Advancement of seamen during voyage. § 92, Disrating.

(D) Extra Wages.

§ 93, Discharge in foreign port. § 94, Extra services. § 95, Insufficient provisions.

(E) Deductions and Offsets.

§ 96, Debts due from seamen to master or owner. § 97, Payment on account. § 98, Contribution among seamen. § 99, Absence from service. § 100, Disobedience, misconduct, and insolence. § 101, Losses or injuries caused by wrongful act of seamen in general. § 102, Sickness by fault of seamen. § 103, Incompetency. § 104, Embezzlement. § 105, Negligence. § 106, Assault. § 107, Expenses upon arrest or imprisonment. § 108, Expense of watch of vessel. § 109, Expense of survey. § 110, Release of claim for deduction.

(F) Who are Liable.

§ 111, In general. § 112, Owners of vessel. § 113, Mortgagee. § 114, Vessel.

(G) Payment, Receipt, and Release.

§ 115, When wages are payable. § 116, In whose presence and to whom payment must be made. § 117, Furnishing accounts to seamen. § 118, Foreign money and valuation thereof. § 119, Payment of advance wages. § 120, Receipts and releases. § 121, Exchange.

(H) Lien.

§ 122, Who entitled to lien. § 123, For what services lien attaches. § 124, Property subject to lien in general. § 125, Sale, pledge, or attachment of vessel or freight. § 126, Wreck of vessel. § 127, Change of master. § 128, Vessel sailed on shares by master. § 129, Priorities as to voyage. § 130, Enforcement of lien. § 131, Waiver or discharge.

(I) Actions and Summary Proceedings.

§ 132, Who may sue. § 133, When suit may be brought. § 134, Jurisdiction. § 135, Defenses. § 136, Limitations and laches. § 137, Parties. § 138, Pleading. § 139, Issues and proof. § 140, Evidence. § 141, Trial. § 142, Recovery. § 143, Costs. § 144, Appeal. § 145, Summary proceedings.

(J) Lays or Shares in Earnings.

§ 146, Nature of agreement. § 147, Liability of owners of vessel. § 148, What is subject to lay. § 149, Amount or rate. § 150, Expenses allowed in determining lays. § 151, Payment and settlement. § 152, Lien. § 153, Actions.

VI. INJURIES.

(A) Injuries to Property.

§ 154, Loss of property. § 155, Wrongful detention of property.

(B) Personal Injuries in General.

§ 156, Injuries caused by negligence of owner or master. § 157, Assault. § 158, False imprisonment. § 159, Release and settlement of claims.

(C) Punishment of Seamen.

§ 160, Right to punish in general. § 161, Who may be punished. § 162, Authority to punish. § 163, When justified in general. § 164, Mode of punishment—Weapons used. § 165, —— Flogging. § 166, —— Imprisonment. § 167, —— Removal to forecastle. § 168, Hearing before master of vessel. § 169, Excessive punishment.

(D) Actions.

§ 170, Nature and right of action. § 171, Limitations. § 172, Evidence. § 173, Issues and proof. § 174, Damages.

VII. OFFENSES.

(A) Offenses by Seamen.

§ 175, Revolts—In general. § 176, —— Endeavors to make revolts. § 177, —— Confining master.

(B) Offenses Against Seamen.

§ 178, Forcing seamen on shore. § 179, Assault in general. § 180, Punishment.

(C) Criminal Prosecutions.

§ 181, Indictment. § 182, Evidence. § 183, Arrest of judgment.

VIII. FOREIGN SEAMEN.

§ 184, What law governs. § 185, Contract of shipment. § 186, Wages. § 187, Punishment. § 188, Offenses.

Authority and duties of master as to seamen, see "Shipping," § 83.

Competency as witnesses, see "Witnesses," § 45.
Jurisdiction over foreign seamen, see "Admiralty," §§ 5, 6.
Maritime character of services, see "Admiralty," §§ 24, 26.

I. REGULATION, PROTECTION, AND RELIEF.

§ 1. Complaints before consul.
The right of the crew to lay complaints before the consul does not apply to mere affrays or quarrels between the officers and crew.—Jordan v. Williams, Case No. 7,528.

A seaman severely beaten without cause by the mate, on a voyage to a foreign port, is entitled to lay his grievance before the American consul, and the master has no right to refuse his request therefor.—Knowlton v. Boss, Case No. 7,901.

§ 2. Seaworthiness of vessel.
If seamen really believe, upon reasonable ground, that a vessel is unseaworthy, and ask for a survey, they are not bound to go to sea in her until such request is granted.—United States v. Givings, Case No. 15,212.

The crew may demand a survey in a foreign port, where they have reasonable grounds to believe the vessel to be unseaworthy.—The Hibernia, Case No. 6,455.

§ 3. Statutory regulation—Lists, certificates, and return of crew.
The bond given for the return of the crew (Act Feb. 28, 1803) does not apply in the case of a vessel sold abroad which does not return to the United States.—Montell v. United States, Case No. 9,723.

Such bond does not extend to cases where the seaman is lawfully separated from the ship, or is separated without fault of the master or owner.—Montell v. United States, Case No. 9,723.

The statutes requiring bond for the return of all the crew do not apply to foreign seamen shipped at their own home for a particular cruise, ending where it began, and discharged there according to the terms of their contract.—United States v. Parsons, Case No. 16,002.

Under the statutory bond to exhibit the crew list and produce the persons named therein, the master is bound to exercise all his lawful authority for the purpose of bringing back the persons named therein.—United States v. Page, Case No. 15,986a.

The master should be considered as relieved from the performance of the condition of the bond when, by reason of sickness, or by being superseded in a foreign port, he becomes unable to perform the conditions.—United States v. Page, Case No. 15,986a.

The master is not exonerated from his covenant by merely showing physical inability subsequently accruing on his part to perform it, or that others, whose consent and concurrence were necessary, would not permit its performance.—United States v. Page, Case No. 15,986a.

A bond given for the exhibition of the list of the ship's company under Act Feb. 28, 1803, *held* valid, though it did not refer to the statute, and did not state which of the obligors was the principal, and which the surety.—United States v. Hatch, Case No. 15,325.

An alteration made by a custom house clerk for the purpose of rectifying the bond, which did not affect its construction, *held* immaterial.—United States v. Hatch, Case No. 15,325.

In an action on a bond for the safe return of the crew, parol evidence is admissible of the contents of a consul's certificate authorizing the discharge of one of the men, on proof that such paper has been lost.—United States v. Parsons, Case No. 16,002.

The certificate of the consul that the seamen were left in a hospital, unable to return, and that the master had paid for their maintenance, and left the amount of their wages, *held* insufficient to excuse the master, under Act Feb. 28, 1803, relating to a bond to be given by the master, conditioned for the exhibition of the list of his ship's company to the first boarding officer at the first port of arrival in United States.—United States v. Hatch, Case No. 15,325.

The sum named in such bond is intended as a forfeiture, and not as a penalty.—United States v. Hatch, Case No. 15,325.

It is the duty of the master to find and apprehend all deserters of seamen leaving the ship openly.—United States v. Page, Case No. 15,986a.

§ 4. —— Shipping commissioners.
Under the act of June 7, 1872, the office expenses of a shipping commissioner are to come out of fees received, after which he may retain, as his emolument, $5,000 per annum, the balance to be paid into the treasury.—In re Shipping Com'r of Port of New York, Case No. 12,792.

The shipping commissioner may appoint clerks with the title of deputy commissioner, under Rev. St. § 4505.—In re Shipping Com'r of Port of New York, Case No. 12,793.

Salaries of employés in the office of the shipping commissioner of the port of New York considered.—In re Shipping Com'r of Port of New York, Case No. 12,793.

§ 5. —— Colored seamen.
Act La. 1842, No. 123, prohibiting colored seamen belonging to domestic vessels being brought in such vessels into the ports of that state, is unconstitutional.—The Cynosure, Case No. 3,529.

A seaman imprisoned at New Orleans under such statute cannot recover damages of the master therefor; and such seaman is not liable for the prison expenses paid by the master, as required by the statute.—The Cynosure, Case No. 3,529.

§ 6. Provisions and supplies—Food.
The owner is bound by his contract to furnish the seamen suitable subsistence. What is suitable depends upon what is usual in similar voyages.—Foster v. Sampson, Case No. 4,982.

Where a seaman is left or put on shore, his reasonable board and wages must be paid by the ship.—Walton v. The Neptune, Case No. 17,135.

The navy ration is the measurement of a food allowance on a merchant vessel.—Gardner v. The New Jersey, Case No. 5,233; The Mary, Id. 9,191; The Mary Paulina, Id. 9,224.

Five pounds a week is a short allowance of bread, within Act July 20, 1790.—The Mary Paulina, Case No. 9,224.

An overabundance of meat cannot be substituted for the bread required by the statute.—The Mary Paulina, Case No. 9,224.

But if the master is unable to obtain the kind of provisions required by the statute, other kinds may be substituted.—The Mary, Case No. 9,191.

Mariners who properly remain by their vessel may recover the amount paid for necessary subsistence not furnished by the master.—The Gazelle, Case No. 5,289.

Where a ship has full supply of provisions, and the crew is insufficiently furnished, their remedy is an action for damages.—The Childe Harold, Case No. 2,676.

Seamen compelled to supply themselves with board have a lien against the vessel for the expenses thereof.—Brown v. The Alexander McNeil, Case No. 1,988.

Proof of short allowance casts the burden upon the owner to show that the vessel had on board the quantity of provisions required by law.—The Elizabeth Frith, Case No. 4,361.

Where there has been long delay in bringing suit for a short allowance, the burden will be put upon libelant of showing that the ship went to sea unprovided with a sufficient supply.—Piehl v. Balchen, Case No. 11,137.

§ 7. —— Medicine.

When the ship is properly furnished with a medicine chest, the seamen must pay for surgical or medical advice and assistance.—Holmes v. Hutchinson, Case No. 6,639; Walton v. The Neptune, Id. 17,135.

The expenses of medical attention on shore, where the seaman is removed from the vessel at his own request, are to be borne by the seamen, where the vessel is properly provided with a chest of medicines.—Pierce v. Patton, Case No. 11,145.

When the sufficiency of the medicine chest is questioned, the proper evidence to be produced is the testimony of some reputable physician who has examined it.—The William Harris, Case No. 17,695.

The onus probandi in respect to the sufficiency of the medicine chest lies on the owner.—Harden v. Gordon, Case No. 6,047; The Nimrod, Id. 10,267.

§ 8. Medical treatment—Liability of vessel or master in general.

A seaman is entitled to be cured at the expense of the ship of a sickness, hurt, or wound contracted or received in the service of the ship.—The Ben Flint, Case No. 1,299; The Forest, Id. 4,936; Holmes v. Hutchinson, Id. 6,639; Myers v. The Lizzie Hopkins, Id. 9,993; The Nimrod, Id. 10,267; The North America, Id. 10,314; Ringgold v. Crocker, Id. 11,843; Swift v. The Happy Return, Id. 13,697.

A steward injured while in performance of his duty on board the vessel is entitled to his wages and board and medical attendance while being cured, though the master and owners are free from negligence.—Jackson v. The Fleta, Case No. 7,135.

This rule applies to seamen employed on lakes and navigable rivers.—The Ben Flint, Case No. 1,299.

The rule extends to fishermen on mackeral voyages, in licensed and enrolled vessels, although they are paid in proportion to their individual catches.—Knight v. Parsons, Case No. 7,886.

And it applies to seaman whose compensation is by share in earnings.—The Atlantic, Case No. 620.

The phrase, "service of the ship," is not confined to acts done for the benefit of the ship, or in the actual performance of the seaman's duty.—Ringgold v. Crocker, Case No. 11,843.

A second mate, wounded by accidental discharge of pistol in his hands while assisting to suppress a riot on board, *held* injured in service of ship.—Callon v. Williams, Case No. 2,324.

The seaman is entitled to be cured, at the expense of the ship, of any injury received by him in executing an improper order, or inflicted upon him by the wrongful violence of an officer in the exercise of his authority, as officer, to punish him.—Ringgold v. Crocker, Case No. 11,843.

An express promise by a sick seaman to pay the amount of a physician's bill for attendance is without consideration and void.—Freeman v. Baker, Case No. 5,084.

A mate succeeding to the command of the ship upon the death of the master is entitled to be cured at the expense of the ship, in the same manner as a seaman.—The George, Case No. 5,329.

The cost of the cure of a mariner injured in the service of the vessel may be recovered by proceeding in rem, together with damages in the nature of additional wages, where the injury is caused by neglect or misconduct of officers or owners.—Brown v. The D. S. Cage, Case No. 2,002.

Such damages are not allowed, however, in the absence of fault of the officers.—Brown v. The Bradish Johnson, Case No. 1,992.

A general averment that a vessel was supplied with a medicine chest according to law is not, of itself, sufficient evidence to discharge a master from his liability for a physician's bill for attendance upon a sick seaman.—Freeman v. Baker, Case No. 5,084.

§ 9. —— Treatment at foreign or home port.

Where a seaman was injured in the home port so severely that he could not be removed to the ship hospital, the shipowners were liable for his expenses.—Canfield v. Reed, Case No. 2,381.

A seaman whose feet are frozen while in the ship's boat, in the service of the ship, before he is discharged therefrom on the return voyage, at the home port, is entitled to be cured at the ship's expense.—Reed v. Canfield, Case No. 11,641.

A seaman disabled in the service of the ship and necessarily left abroad is entitled to the expenses of his cure, and of his return.—Brunent v. Taber, Case No. 2,054.

Expenses for board, medicine, and medical attendance for a seaman who voluntarily goes on shore to be treated for yellow fever are chargeable to the ship.—Lamson v. Westcott, Case No. 8,035.

Under the British law, where an injured seaman is left behind in a foreign port, the ship is liable for his cure and care.—The Magna Charta, Case No. 8,953.

The fact that a seaman is suffering from a malignant and infectious disease will not justify the master in setting him ashore without provision for his care, subsistence, and proper medication.—Tomlinson v. Hewett, Case No. 14,087.

Expenses of care and cure of seaman on shore chargeable to ship which has no means to care for him.—Babcock v. Terry, Case No. 702; The Forest, Id. 4,936; The George, Id. 5,329.

A seaman on a voyage from Calcutta to Boston, 25 days before passing St. Helena, fell from aloft, and broke his legs. *Held*, that the master should have put into St. Helena for his relief.—Brown v. Overton, Case No. 2,024.

§ 10. —— Expenses chargeable against ship.

The expenses of curing a sick seaman, chargeable against a ship, include, not only medicines and medical advice, but nursing, diet, and lodging, where the seaman is carried ashore.—Harden v. Gordon, Case No. 6,047.

The services of a manservant or attendant upon the master, who contracted a sickness in a foreign port, are not a charge upon the vessel or her owners.—Sunday v. Gordon, Case No. 13,616.

A seaman cannot recover against a vessel for gratuitous hospital treatment. The right to recover is limited to actual charges and disbursements.—Davis v. The Erie, Case No. 3,632a.

Nor can he recover for injurious effects still remaining because of the injury, in the absence of negligence.—Davis v. The Erie, Case No. 3,632a.

§ 11. —— Fault of seaman.
The vessel is not chargeable with the expenses of the cure of a seaman who contracted disease by his own vices or faults, and in defiance of the counsel or command of the officers of the vessel.—Pierce v. Patton, Case No. 11,-145.

A seaman who disregards the advice of his physician, and uses a wounded foot, cannot recover of the ship for its subsequent care and cure, and damages for loss of time and general debility caused thereby.—Richardson v. The Juillette, Case No. 11,784.

A seaman who shipped as an able man is not entitled to be treated at the expense of the ship, nor to wages, while he is disabled by disease brought on by his own vices.—Chandler v. The Annie Buckman, Case No. 2,591a.

To forfeit the claim, the disability or sickness of the seaman must be owing to vicious or unjustifiable conduct, not mere negligence.—The Ben Flint, Case No. 1,299.

§ 12. —— Duration of ship's liability.
The right of a seaman to be cured at the ship's expense continues no longer than his right to wages under his contract.—The Ben Flint, Case No. 1,299; The Cambridge, Id. 2,335; Nevitt v. Clarke, Id. 10,138.

Such liability is usually limited to time necessary to enable him to return home.—The Atlantic, Case No. 620.

§ 13. Penalties for violation of regulations.
Foreigners employed as seamen in American merchant ships are seamen "of the United States," within the meaning of the act of 1803, c. 62.—Matthews v. Offley, Case No. 9,290.

An action against a master for the penalty given by Act 1803 for refusing to bring destitute seamen to the United States must be brought in the name of the United States, and not of the consul.—Matthews v. Offley, Case No. 9,290.

In such action the certificate of the consul is prima facie evidence of the facts.—Matthews v. Offley, Case No. 9,290.

Under Act 1803, providing for the recovery of a penalty where a master refuses to take destitute seaman on board, the consul is the proper judge as to what ship shall bring to the United States a destitute seaman.—Matthews v. Offley, Case No. 9,290.

The fact that the seaman has deserted from a ship still in port does not prevent the consul from requiring another ship to bring him home. —Matthews v. Offley, Case No. 9,290.

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.—Wolverton v. Lacey, Case No. 17,-932.

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.—Wolverton v. Lacey, Case No. 17,932.

One, not a shipping commissioner, who engages seamen for a vessel of which he is not the owner, consignee, or master, is liable to the penalties prescribed by Act June 7, 1872.—United States v. Idell, Case No. 15,436.

The provisions of said act apply as well to vessels engaged in the coastwise as to those engaged in the foreign trade.—United States v. Idell, Case No. 15,436.

Where a steamship ships a crew under articles executed before a notary public, it is a violation of Act June 7, 1872, and the ship incurs the penalty provided therein.—The City of Mexico, Case No. 2,756.

The penalty imposed for a failure to provide medical stores, etc., may be recovered by the United States by a civil action, when brought in the circuit court for the district of Massachusetts.—United States v. Elliot, Case No. 15,043.

An attachment of the seaman's wages is no excuse for delay in payment, and the penalty is recoverable. Rev. St. § 4529.—The John E. Holbrook, Case No. 7,339.

Seamen cannot recover the penalty provided by Rev. St. § 4529, for the nonpayment of wages then due them, when the net proceeds from the sale of the vessel are insufficient to pay the officers and crew, and it does not appear that the master could have raised a sufficient sum for the purpose.—The Wenonah, Case No. 17,412.

Seamen discharged at the home port, without payment of any portion of their wages, the amount of which was not disputed, *held* entitled to recover double pay for 10 days, although their suit was brought within 10 days from the discharge. Act June 7, 1872.—The Columbia, Case No. 3,034.

II. EMPLOYMENT IN GENERAL.

Powers of master in the employment of seamen, see "Shipping," § 77.

§ 14. What law governs.
The laws of the United States follow seamen engaged on its vessels until the voyage is completed, whether in a foreign country or here.—Roberts v. Skolfield, Case No. 11,917.

§ 15. Who are seamen.
The clerk of a steamboat is a mariner.—The Sultana, Case No. 13,602.

A fireman on board a steamer is a seaman.—The North America, Case No. 10,314.

Cooks and stewards are mariners.—Black v. The Louisiana, Case No. 1,461.

A woman employed as cook on board a vessel is a mariner.—Sageman v. The Brandywine, Case No. 12,216; Wolverton v. Lacey, Id. 17,-932.

The ship's carpenter ranks with an ordinary seaman, and is subject to the orders of the second mate.—Sheridan v. Furbur, Case No. 12,-761.

Persons shipping as sealers on board a vessel engaged in the sealing business are mariners.—The Ocean Spray, Case No. 10,412.

§ 16. Who may be required to perform seamen's duty.
One who secretes himself on board before sailing, and discovers himself after the vessel is at sea, is not one of the crew, though the master requires him to work, as a condition of his having food, and he does work.—United States v. Small, Case No. 16,314.

Cook may be required to perform service as seaman so far as he is able.—Allen v. Hallet, Case No. 223.

A distressed American seaman, sent home on board an American vessel, his fare being paid by the American consul, is bound to do duty as a seaman when called upon by the mate of the vessel.—United States v. Salisbury, Case No. 16,214.

A deserting seaman, who secretes himself on board after another is shipped in his place, may be required to perform seaman services.—Allen v. Hallet, Case No. 223.

A mate improperly dismissed from his office is not bound to perform the duties of a common seaman.—Thompson v. Busch, Case No. 13,944.

§ 17. Minors.
Where a minor concealed himself on board a whaling vessel until she was at sea, but might have been left at an intermediate port with the American consul there, *held*, that the father was entitled to his wages from the time of leaving that port.—Luscom v. Osgood, Case No. 8,608.

§ 18. Liabilities of seamen.
Seamen are liable for demurrage where the vessel is detained by their refusal to work.—Snell v. The Independence, Case No. 13,139.

Where the mates and crew of a vessel discharge ballast into a lighter or barge so carelessly as to load her on one side, and cause her to sink, they are liable to the owner for the loss.—Fogerty v. Pratt, Case No. 4,896.

Seamen are liable where a loss is caused by their strict obedience to orders which they know are improper, where they fail to remonstrate.—Fogerty v. Pratt, Case No. 4,896.

The crew are not authorized to jettison any part of the cargo without the master's order.—The Nimrod, Case No. 10,267.

Mate and sailor leaving boat unattended on shore, whence it is stolen, are chargeable therefor.—Knap v. The Eliza and Sarah, Case No. 7,873.

§ 19. Services and care and skill required.
A seaman may refuse to inflict punishment on one of the crew unless some justifiable cause is pointed out to him.—United States v. Winn, Case No. 16,739a.

A shipkeeper, by night or day, is not obliged, without an engagement to that end, to pump the ship, wash her decks, etc.—The Harvest, Case No. 6,175.

A seaman is not relieved from working on Sunday by any general law.—Ulary v. The Washington, Case No. 14,323.

Seamen on a vessel lying at anchor off shore, in a place of danger, in case of a change of weather, may be required to help unload on Sunday.—The Richard Matt, Case No. 11,766.

A mate whom the master refuses to allow to act in that capacity need not act in any other station.—Atkyns v. Burrows, Case No. 618.

A person shipping as cook and steward undertakes that he has experience and skill to enable him to perform the duties of those positions.—Forbes v. Parsons, Case No. 4,929.

Hands employed in a special character are responsible for reasonable skill as such, and for faithful performance of duties.—The Buena Vista, Case No. 2,105.

§ 20. Duration of employment.
Where a seaman ships on a general trading voyage without limitation of time or a fixed terminus, either party may put an end to the contract at pleasure, where the time or circumstances are not particularly inconvenient or injurious.—The Crusader, Case No. 3,456.

Officers and seamen must remain by ship and unload the cargo, in default of which they are liable to the owner.—Cloutman v. Tunison, Case No. 2,907.

Seamen who ship for an indefinite period may leave the ship after the termination of any particular voyage, and the discharge of the cargo at the port of delivery.—Jansen v. The Theodor Heinrich, Case No. 7,215.

Whether seamen are bound to remain after the end of a voyage to assist in discharging depends on the custom of the port.—The Mary, Case No. 9,191; The Annie M. Smull, Id. 423.

A shipwreck discharges the principal obligation, but does not release seamen from the obligation of rendering their best services in saving the ship and cargo.—The Dawn, Case No. 3,666.

Legal obligations of seamen do not continue after capture of vessel.—Clayton v. The Harmony, Case No. 2,871.

But it is the right and duty of the mariners of a neutral ship, after capture, and even after condemnation, to remain by the ship, while there is any hope of recovering the property.—Brown v. Lull, Case No. 2,018.

But they are not obliged to await the issue of an appeal.—Powell v. The Betsy, Case No. 11,355.

III. CONTRACT OF SHIPMENT.

See, also, post, § 185.

(A) REQUISITES AND VALIDITY.

§ 21. Capacity of parties.
Seamen are competent to bind themselves by contract as to rate of wages.—The Atlantic, Case No. 620.

§ 22. Necessity of writing.
The maritime law requires that contracts touching the service of seamen shall be in writing.—Smith v. Chase, Case No. 13,023.

The contract must be in writing where the vessel is engaged in a general coasting and trading voyage between ports in different states. Act July 20, 1890.—The Crusader, Case No. 3,456.

An agreement with a seaman on a voyage from New York to a port in Mexico is required under the act of July 20, 1790, in the form prescribed and under the penalty provided by the act of June 7, 1872.—United States v. The City of Mexico, Case No. 14,797.

A tug engaged in towing between Lake Erie and Lake Huron is not within the meaning of Act 1790, § 5, prescribing the contract of shipment to be entered into.—The John Martin, Case No. 7,357.

The term "state," as used in Act July 20, 1790, providing for a written contract where voyage is between ports of other than adjoining states, includes a territory of the United States.—In re Bryant, Case No. 2,067.

The statute requiring written contracts with the crews of vessels on foreign voyages (Rev. St. § 4511) does not apply to vessels bound for the West Indies, Mexico, or British North America.—Smith v. Chase, Case No. 13,023.

Whaling voyage not within Rev. St. § 4520, requiring shipping articles to specify certain particulars.—The Atlantic, Case No. 620.

Act July 20, 1790, requiring a written contract on the shipment of seamen, is not repealed by Act June 7, 1872.—The City of Mexico, Case No. 2,756.

See, also, post, § 61.

§ 23. Parol contract.
A seaman shipped without signing articles is entitled to all benefits and subject to all forfeitures prescribed by the maritime law.—Jameson v. The Regulus, Case No. 7,198.

Though no shipping articles are signed, seamen are bound to remain with the ship until the voyage is terminated.—Jansen v. The Theodor Heinrich, Case No. 7,215. But see The Australia, Case No. 667.

Where two distinct contracts, for service on two distinct voyages, are made at the same time, and one only is reduced to writing, the other may be proved by parol.—Page v. Sheffield, Case No. 10,667.

A stipulation in writing for a series of voyages may be terminated or varied by mutual

consent of the master and crew, and a new voyage substituted by parol agreement.—Piehl v. Balchen, Case No. 11,137.

§ 24. Duress.
New shipping articles at reduced wages, signed by colored seamen, under protest, in a port where they are obliged to remain in jail or on board the vessel while she stays there, are not binding.—Stratton v. Babbage, Case No. 13,527.

§ 25. Contracts made after sailing.
Shipping articles signed by the seamen after they leave port are not binding upon them.—The Theodore Perry, Case No. 13,880.

A contract entered into at sea, changing the terms or duration of the original contract, will be disregarded if prejudicial to the seamen's interest.—Waling v. The Christina, Case No. 17,059.

§ 26. Explanation of contract to seamen.
Stipulations in derogation of general rights void unless fully explained and additional compensation allowed adequate to the restrictions and risks imposed thereby.—The Almatia, Case No. 254; The Australia, Id. 667; Brown v. Lull, Id. 2,018; Dooley v. The Neptune's Car, Id. 3,997; Matern v. Gibbs, Id. 9,273; Mayshew v. Terry, Id. 9,361; The Quintero, Id. 11,517; The Sarah Jane, Id. 12,348.

§ 27. Execution.
It is not necessary that a seaman shipping in a foreign port should sign articles.—Gladding v. Constant, Case No. 5,468.

The agent of the master in shipping a crew cannot also act as the agent of a seaman, and sign his name to the shipping articles.—In re Bryant, Case No. 2,067.

A voyage between the West Indies and the United States is not within Act June 7, 1872, requiring seaman's contract to be executed before shipping commissioner.—The Grace Lothrop, Case No. 5,653.

Seamen who sign articles without reading them, after their services have commenced under an oral contract, will not be held bound by the written agreement.—Sweeney v. Cloutman, Case No. 13,685.

§ 28. Provisions as to voyage or term of employment—Necessity.
A contract for a voyage, which has not a definite time and place of termination, is void.—The Horace E. Bell, Case No. 6,702; Magee v. The Moss, Id. 8,944.

This rule applies to a contract to ship as seamen on a trading voyage on the coast.—Waling v. The Christina, Case No. 17,059.

Seamen may leave the vessel at any time where the shipping articles do not describe the voyage, and an imprisonment by the master for refusing to remain and do duty is a tort.—Snow v. Wope, Case No. 13,149.

§ 29. —— Sufficiency of description.
Shipping articles to a certain port and a market are sufficiently definite.—United States v. Staly, Case No. 16,374.

Specifying the places to which the voyage might extend, *held* an implied agreement that it was not to extend to any other, and a sufficient compliance with the English merchant shipping act of 1873.—The Hermine, Case No. 6,409.

A description of a whaling voyage "to the Northern Pacific Ocean and elsewhere" is defective, having no termination of time and place, and the contract is void.—Gifford v. Kollock, Case No. 5,409; Brown v. Jones, Id. 2,017.

A description of the voyage as "from Boston to one or more ports south, thence to one or more ports in Europe, and back to a port of discharge in the United States," *held* sufficiently certain.—Thompson v. The Oakland, Case No. 13,971.

A description of the voyage as "from the port of Boston to Valparaiso, and from other ports in the Pacific Ocean, at and from thence home, direct, or via ports in the East Indies or Europe," does not comply with Act July 20, 1790, § 1.—Snow v. Wope, Case No. 13,149; Wope v. Hemenway, Id. 18,042.

§ 30. Provisions against public policy.
A stipulation that the seamen shall pay for medical advice and medicines, without any condition that there shall be a suitable medicine chest, etc., is void, as contrary to the policy of the act of congress.—Harden v. Gordon, Case No. 6,047.

§ 31. Legality of object.
An agreement on the shipment of seamen to enter the naval service of a foreign government is illegal, and will not prevent their claiming a discharge upon the change of the flag of the vessel.—Dustin v. Murray, Case No. 4,201.

(B) CONSTRUCTION AND OPERATION.

§ 32. General rules of construction.
Courts of admiralty cannot properly apply to maritime contracts the same strictness that prevails at common law.—Ellison v. The Bellona, Case No. 4,406.

If a vessel be intended to cruise as well as trade, the seamen's articles must be construed with reference to this double object.—Ellison v. The Bellona, Case No. 4,406.

Immaterial erasures in shipping articles will be disregarded. Act 1840.—The Eagle, Case No. 4,233.

The construction most favorable to the seamen will be adopted in the case of ambiguity, uncertainty, or obscurity in the shipping articles.—Jansen v. The Theodor Heinrich, Case No. 7,215; The Disco, Id. 3,922; Wope v. Hemenway, Id. 18,042.

§ 33. What law governs.
Contracts of seamen for maritime services are governed by the maritime law, and enforceable in admiralty. Act 1790.—Bains v. The James and Catherine, Case No. 756; The Countess of Dufferin, Id. 3,280.

§ 34. Evidence to explain contract.
Parol evidence on the part of a seaman is admissible to vary or contradict the shipping articles.—The Cypress, Case No. 3,530.

An agreement made by the shipping agent at the time the articles were signed, and understood by the seaman to form a part of his contract, though not embraced therein, will be given effect.—The Lola, Case No. 8,468.

Accidental omission from shipping articles may be supplied by parol.—The Antelope, Case No. 484; Wickham v. Blight, Id. 17,611.

Where the contract was fully explained to the seamen before they signed it, they cannot vary the voyage by parol evidence.—The Quintero, Case No. 11,517.

The contract expressed in a shipping paper signed at the commencement of a fishing voyage cannot be varied by a parol agreement or understanding which is in violation of an act of congress.—Rich v. The Cherub, Case No. 11,756.

Parol evidence is admissible to show that illiterate seamen signed a contract not read to them, which differed from their oral agreement.—The Tarquin, Case No. 13,755.

Shipping articles specifying no time when service shall begin are valid, and the service is to commence in a reasonable time, which may be shown by parol.—Smith v. Chase, Case No. 13,023.

A parol understanding that the vessel was not to complete the voyage described in the shipping articles is not admissible.—Thompson v. The Oakland, Case No. 13,971.

Where the articles were for a voyage from San Francisco to Calcutta, and no wages were named, *held*, that evidence was admissible to show that the contract was for a voyage from San Francisco to Boston, via Calcutta, at an agreed rate of wages.—Sheffield v. Page, Case No. 12,743.

Where the shipping articles specify the wages, the mate cannot give parol evidence of an agreement to allow him other compensation.—Veacock v. McCall, Case No. 16,904.

§ 35. Term of employment.
The hiring is presumed to be for the voyage out and return, in the absence of proof to the contrary.—Bibbins v. Brookfield, Case No. 1,384.

A hiring "for the season" of navigation is presumptively for the entire season.—The Balize, Case No. 809.

The "season of navigation" on the Great Lakes comprises the eight months commencing April 1st, and ending November 30th.—The Balize, Case No. 809.

§ 36. Voyage—In general.
Term "voyage" imports a definite commencement and end, and not controlled by term "elsewhere."—Anonymous. Case No. 449.

It seems that a "trading voyage" does not include a "freighting voyage."—Brown v. Jones, Case No. 2,017.

A whaling voyage is properly a cruise for taking whales, and does not include a trading voyage to dispose of the cargo after it is obtained.—Gifford v. Kollock, Case No. 5,409.

§ 37. —— Particular voyages.
Articles describing a voyage from England to the United States and back *held* not to include ports on the Pacific coast.—The Disco, Case No. 3,922.

Articles for a voyage from Salem, Mass., to Goree and a market, and back to a final port of discharge in the United States, do not authorize an intermediate trading voyage among the islands and on the coast of Africa.—The Gem, Case No. 5,304.

Where the voyage is "from Philadelphia to South America, or any other port or ports, backwards and forwards, when and where required, and back to Philadelphia," the master may proceed from South America to Europe.—Magee v. The Moss, Case No. 8,944.

Under articles describing a voyage to be from Liverpool to Savannah and any ports of the United States, of the West Indies and of British North America, a voyage to San Francisco is not authorized.—The Ada, Case No. 38.

Shipping articles for a voyage "from P. to G., other ports in Europe, or South America, and back to P.," do not authorize a return to a European port after proceeding to South America.—Douglass v. Eyre, Case No. 4,032.

Under articles for a voyage to Batavia, and thence, if required, to ports beyond the Cape of Good Hope, the voyage may be extended to Japan.—Jones v. Smith, Case No. 7,497.

Under articles for a voyage to a South American port, thence to a port in Europe and back to the United States, the vessel is not authorized to proceed from Europe to South American ports.—Piehl v. Balchen, Case No. 11,137.

Shipping articles for a voyage from Liverpool to ports in the Indian, Pacific, and Atlantic Oceans and back to a final port of discharge in the United Kingdom, where the vessel has sailed from St. Helena to New York, do not authorize accepting a cargo there for Valparaiso.—Reynolds v. The Simoon, Case No. 11,733.

§ 38. —— Duration and termination.
Where the duration of the voyage is described as probably 12 months, the seaman, under the British merchants' shipping act, is absolutely bound to make the voyage, if the master endeavors, in good faith, to accomplish it within the time mentioned.—The Hotspur, Case No. 6,720.

Under shipping articles describing the voyage as "from," "to," "thence," and "finally" certain ports named, for a period not exceeding 12 months, the seamen are not bound for 12 months unless the vessel went to the ports in the order named.—The William Jarvis, Case No. 17,697.

The voyage is not ended until the cargo and ballast are discharged.—Ex parte Sprout, Case No. 13,267.

"Port of destination" and "port of discharge" are not equivalent words. The port of destination is not the port of discharge, unless the voyage is actually terminated there, or some cargo is unladen.—United States v. Barker, Case No. 14,516.

A port where colored seamen are obliged to remain in jail or on board the vessel while she stays there is not a port of discharge within the United States.—Stratton v. Babbage, Case No. 13,527.

Where the shipping articles are to the final port of discharge, the owner may order the vessel from port to port until the whole is discharged.—United States v. Barker, Case No. 14,516.

Time given beyond 15 days for unloading, where it appeared that the vessel could not be unloaded within such time.—Thompson v. The Philadelphia, Case No. 13,973.

A voyage from A. to B., or some other port, and return to the United States, is not ended on arrival at the first port of the United States, unless it be the port of discharge.—United States v. Smith, Case No. 16,337.

Under articles for a voyage from New Orleans to Havre, and thence to one or more ports in Europe, and thence back to a port of discharge in the United States, the seamen cannot be required to proceed to Charleston as a final port of discharge after the vessel has stopped at New York, and landed passengers and freight.—United States v. White, Case No. 16,683.

§ 39. Provisions for arbitration.
There is no "difference" between master and crew, within the meaning of a stipulation providing for arbitration, where wages due were agreed upon and demanded, but payment of them was refused.—The Sarah Jane, Case No. 12,348.

(C) PERFORMANCE AND BREACH.

§ 40. Performance.
The contract is not affected by the death, removal, or resignation of the original master, but the seaman must perform the voyage under the person lawfully substituted in his stead.—United States v. Cassedy, Case No. 14,745; Same v. Haines, Id. 15,275; Same v. Hamilton, Id. 15,291.

Inability to obtain freight is not such a necessity as absolves the owner from his contract to perform the voyage described in the articles.—Thompson v. The Oakland, Case No. 13,971.

A contract for a voyage to different ports in the Pacific and back to the United States, or for a period of 18 months, is not fulfilled on the ship's part by lapse of the term, where the seaman is left abroad in a hospital, without

means or opportunity to return.—Nevitt v. Clarke, Case No. 10,138.

Where by the articles the crew of a fishing vessel were to make the fish, readiness and willingness to make the fish *held* equivalent to actual performance.—Goodrich v. The Domingo, Case No. 5,543.

§ 41. Breach.
Wrongfully withholding suitable medicines from a seaman, or wrongfully setting him ashore in a foreign country, are violations of the contract.—Crapo v. Allen, Case No. 3,360.

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.—Wood v. Nimrod, Case No. 17,959.

IV. DISCHARGE.

§ 42. What constitutes discharge.
An arrest and imprisonment under a criminal charge by the master *held* equivalent to a discharge.—Hill v. The Triumph, Case No. 6,500.

Words which might imply a discharge, when spoken in anger, where seaman is ordered next day to do his duty, do not amount to a discharge.—Babbell v. Gardner, Case No. 692.

§ 43. Authority to discharge.
The first engineer, who employs the second engineer, may discharge him, even against the consent of the master.—The Magnet, Case No. 8,955.

Mate may be displaced by master for cause.—Atkyns v. Burrows, Case No. 618; Wood v. Nimrod, Id. 17,959.

§ 44. Grounds for discharge in general.
Under what circumstances a dismissal of a seaman from duty may be justifiable.—Orne v. Townsend, Case No. 10,583.

The causes for which a seaman may be discharged are ordinarily such as amount to a disqualification, and show him to be an unsafe or an unfit man to have on board the vessel.—Smith v. Treat, Case No. 13,117.

A seaman cannot be discharged for slight offenses, nor for a single offense, unless of a very aggravated character.—Hutchinson v. Coombs, Case No. 6,955; Smith v. Treat, Id. 13,117.

Single act of disobedience, if trivial or provoked, will not justify discharge.—The Almatia, Case No. 254.

When a seaman is incorrigibly disobedient, and will not submit, and offer to make amends, the master may discharge him.—Thorne v. White, Case No. 13,989.

Misconduct of cook *held* not sufficient to justify his discharge, or the alternative of compelling him to work without wages.—The Penang, Case No. 10,915.

Seamen who refuse to work on Sunday because not allowed double pay, under a custom of the port near which they were at anchor, may be discharged.—The Richard Matt, Case No. 11,766.

The seaman has no right to refuse duty required of him on a Sunday by our calendar where the day before was observed as Sunday by the custom of the port, but such refusal is no ground of discharge.—Johnson v. The Cyane, Case No. 7,381.

A mate's refusal, after 21 hours on duty, and going to bed, to turn out, after two hours' sleep, to help take the vessel out of port, *held* not sufficient to justify his discharge.—The Cornelia Amsden, Case No. 3,234.

The refusal of a fireman to accept orders from any engineers or superintendents except the engineer in chief will justify his discharge.—Walter v. The Kamchatker, Case No. 17,119.

Where the mate is discovered in his berth during his watch, while the ship is without an officer in command, the burden is upon him to show that he was not called.—Setzer v. The Sylvia De Grasse, Case No. 12,676.

A mate may be discharged before leaving the home port, for intoxication rendering him disobedient, insolent, and negligent in his duty.—The Garnet, Case No. 5,244.

Where the steward carries ashore, and sells, provisions which have been left on board by passengers, he is guilty of embezzlement, as such stores are not his perquisites, but belong to the master.—Black v. The Louisiana, Case No. 1,461.

Threats by a seaman under the influence of liquor furnished him on board, where his previous character was good, will not justify his immediate discharge.—Jones v. Sears, Case No. 7,494.

The master is justified in discharging a mate who had been drunk several times on board the vessel, and got drunk on the day of her departure, and joined her, while drunk, at another port.—The El Dorado, Case No. 4,327.

The master may discharge seamen at the inception of the voyage where they are quarrelsome and intend mischief.—The George Burnham, Case No. 5,331.

Where a seaman is appointed to act as mate of a vessel, by the master, during the voyage, he may be removed for incompetency.—Wood v. Nimrod, Case No. 17,959.

In the case of a skillful, sober, and diligent first mate, whom the master frequently abused in the presence of the crew, *held*, that his dismissal was not justified by frequent disrespectful allusions made to members of the crew in his absence.—Thompson v. Busch, Case No. 13,944.

A seaman signing articles, and not reporting for duty at the stipulated time, or, if no time is fixed, within a reasonable time, may be discharged.—Smith v. Chase, Case No. 13,023.

Seamen may be discharged at the inception of the voyage for failure to provide themselves with clothing and bedding suitable for the voyage.—The George Burnham, Case No. 5,331.

§ 45. Discharge in foreign port.
An attempt by a seaman to commit rape upon a female passenger in a foreign port, and her refusal to remain on board unless he is discharged, justify his immediate dismissal.—Nieto v. Clark, Case No. 10,261.

The master cannot justify the discharge of a seaman in a foreign port on the ground that he was a dangerous man, except by showing that the danger of bringing him back would be such as might easily affect a mind of ordinary firmness.—The Nimrod, Case No. 10,267.

Though shipping articles describing the voyage to be from "Boston to Goree, Africa, at and from thence to such port or ports as the master might direct" be void, the master is not justified in discharging the seamen in Africa.—Burke v. Buttman, Case No. 2,160.

The discharge made in a foreign port must be before the consul, but the money settlement need not be; and the consul is not entitled to charge a commission on the amount paid, for merely witnessing the payment.—Hathaway v. Jones, Case No. 6,212.

Consul cannot order discharge of seamen in foreign port, except upon consent given.—The Atlantic, Case No. 620.

A consul at a foreign port has no power to discharge a seaman for disability arising from wounds contracted in the service of the ship,

even with his consent.—Callon v. Williams, Case No. 2,324.

The certificate of a consul that the seaman consented to the discharge is not conclusive.—Hutchinson v. Coombs, Case No. 6,955; Campbell v. The Uncle Sam, Id. 2,372. But see Lamb v. Briard, Case No. 8,010.

Settlements of wages and other terms of discharge, made by a consul, may be inquired into or varied where he acted without statutory authority.—Brunent v. Taber, Case No. 2,054.

Discharge of a seaman in a foreign port without his consent or the approval of the American consul places on the master the burden of showing just and sufficient reasons.—Nieto v. Clark, Case No. 10,262.

See, also, post, § 93.

§ 46. Right of seamen to discharge.
Where the master, without any new agreement, undertakes a voyage other than that originally agreed upon, the seamen may demand their wages.—Weiberg v. The St. Oloff, Case No. 17,357.

What deviation from the original voyage will justify seamen in demanding their discharge.—Moran v. Baudin, Case No. 9,785.

Seamen who desert from a ship which is in a perilous position, and are confined at the master's instance, are entitled to discharge on its being shown that the vessel is totally disabled, and the voyage broken up.—Sims v. Mariners, Case No. 12,893.

Where seamen on a foreign vessel have been treated with uncommon cruelty, and, after presenting their grievances in court, were confined and threatened, the contract will be *held* to be discharged.—Weiberg v. The St. Oloff, Case No. 17,357.

A steward disrated for wasting provisions, and put before the mast, may accept the change as a rescission of contract, and claim his discharge at the next port.—The Hotspur, Case No. 6,720.

Consuls have authority to discharge seamen with three months' extra pay, where they have been cruelly treated, though they have not deserted.—Coffin v. Weld, Case No. 2,953.

§ 47. Wrongful discharge.
The mate is entitled to command in the absence of the master, and if a seaman be wrongfully dismissed by him the owners are liable therefor, as the act of their agent.—Orne v. Townsend, Case No. 10,583.

Seamen wrongfully discharged abroad cannot be compelled to ship as seamen for a return in another vessel of the same owners, or their own vessel, in which they have been illtreated.—Burke v. Buttman, Case No. 2,160.

A master who neglects, before leaving an intermediate port, to inquire at the hospital for seamen who have gone there from the vessel, is liable for loss of wages.—Farrell v. French, Case No. 4,683.

Seamen discharged without reason before commencement of the voyage are entitled to damages for the loss of the voyage.—The Dolphin, Case No. 3,972; Hunt v. Colburn, Id. 6,886; The Rovena, Id. 12,090.

The unjustifiable discharge of a mariner in a foreign port entitles him to wages, and to damages, also, if accompanied with oppression.—Hayes v. The J. L. Wickwire, Case No. 6,262.

In the case of a voyage from New York to San Domingo, half a month's wages allowed as damages.—The Dolphin, Case No. 3,972.

The measure of damages where seamen have been wrongfully discharged or left at an intermediate port is the wages for the voyage and expenses.—Farrell v. French, Case No. 4,683; Foye v. Dabney, Id. 5,022; Hutchinson v. Coombs, Id. 6,955; Pierce v. The Victory, Id. 11,149a.

In ascertaining the damages, subsequent earnings of the seaman may be considered.—Bates v. Seabury, Case No. 1,104; Foye v. Dabney, Id. 5,022; Hutchinson v. Coombs, Id. 6,955.

But a mate wrongfully discharged abroad, and returning home before the mast, should be allowed expenses and wages to the home port, without any deduction for wages earned before the mast.—Sheffield v. Page, Case No. 12,743.

The burden is on the master to show, to reduce the recovery, that the seaman has been engaged in other profitable employment.—Farrell v. French, Case No. 4,683.

The value of the seaman's clothing, detained by the master, may be recovered in the same libel with a claim for a wrongful discharge.—Hutchinson v. Coombs, Case No. 6,955.

See, also, post, § 88.

§ 48. Revocation of discharge and reinstatement.
Feeding and caring for sailors after their discharge cannot be held to be a revocation of the discharge.—Gallagher v. Murray, Case No. 5,193.

Where a seaman fails, by his own fault, to rejoin the ship at an intermediate port, at which she touched in the course of the voyage, the master is not bound to reinstate him upon the return of the vessel to such port in the course of her voyage.—Scully v. The Great Republic, Case No. 12,571.

Notwithstanding a sufficient cause for discharge, if the seaman repents, and offers to return to duty, the master is bound to receive him.—Hutchinson v. Coombs, Case No. 6,955; Thorne v. White, Id. 13,989.

V. WAGES.

See, also, post, § 186.
Attachment of wages, see "Attachments," § 3.

(A) RIGHT TO WAGES.

§ 49. Nature of right.
The right of a seaman to wages is not founded in the articles, but in the service.—Mahoon v. The Gloucester. Case No. 8.970.

§ 50. What law governs.
The right in respect to wages depends upon the law of the flag, without regard to the nationality of the seamen themselves.—The Magna Charta, Case No. 8,953.

§ 51. Persons entitled in general.
Persons not strictly mariners may charge a vessel or owners in admiralty for services on shipboard which were necessary to her navigation or safety.—Sunday v. Gordon, Case No. 13,616.

The son of a partner in an adventure of discovery, who went out on the voyage as a passenger, but did full duty as a seaman on the return voyage, *held* not entitled to wages, though his name appeared on the shipping articles.—The Robert Noble, Case No. 11,894.

An unlicensed engineer cannot recover wages for services on a steam vessel engaged in carrying passengers.—The Maria, Case No. 9,075; The Pioneer, Id. 11,177.

A person shipped as steward for a voyage at sea cannot recover wages as such, where he was utterly incompetent, and willfully negli-

gent, though he was continued in service for the voyage.—The Buena Vista, Case No. 2,105.

A sailor on a neutral vessel, who is impressed, while the ship is permitted to proceed, cannot recover his wages from the vessel unless he thereafter rejoins her.—Watson v. The Rose, Case No. 17,288.

A seaman engaged at a foreign port on the homeward voyage has the same rights as to wages and food allowance as one shipping at the point of original departure.—Gardner v. The New Jersey, Case No. 5,233.

Wages are recoverable where seamen are compelled to leave the ship by cruelty and oppression.—Relf v. The Maria, Case No. 11,692; Rice v. The Polly & Kitty, Id. 11,754.

§ 52. **Deceased seamen.**

Where a seaman dies before the voyage is completed, his representatives are entitled to his wages up to the time of his death.—Carey v. The Kitty, Case No. 2,402; Scott v. The Greenwich, Id. 12,531.

The representatives of a seaman dying on a voyage in the service of the ship are entitled to his wages for the whole voyage where the engagement was by the month.—Johnson v. The Coriolanus, Case No. 7,380; Natterstrom v. The Hazard, Id. 10,055; Sims v. Jackson, Id. 12,890; Walton v. The Neptune, Id. 17,-135.

But no wages will be allowed during a sickness which arose from the fault or vice of the seaman.—Walton v. The Neptune, Case No. 17,-135.

Where a seaman suffering from a disease when he ships dies during the voyage, his administrator cannot recover wages.—Writer v. The Richmond, Case No. 18,104.

§ 53. **Sickness of seamen.**

A seaman who ships for a voyage, concealing from the master a long-standing disease, which incapacitates him for labor, is not entitled to wages.—Mowatt v. Brown, Case No. 9,889a.

It is no objection to his claim that the sickness may have had its origin in some previous injury or infection, not occasioned by his own fault, provided he has acted in good faith, and without fraudulent misrepresentation or concealment.—Neilson v. The Laura, Case No. 10,092.

See, also, post, § 89.

§ 54. **Wages as dependent upon freight in general.**

Wages fall with loss of cargo and freight.—Adams v. The Sophia, Case No. 65.

Where only part of freight is allowed, wages are diminished in proportion.—Brown v. Lull, Case No. 2,018.

The rule that freight is the mother of wages does not apply to a voyage made in ballast.—Waling v. The Christina, Case No. 17,059.

Neither does such rule apply to a fishing or sealing voyage.—The Ocean Spray, Case No. 10.412.

There are exceptions to the rule that, to entitle to wages, freight must be earned.—The Saratoga, Case No. 12,355.

Where freight is earned it is not material that it has not been received by the master or owners.—Pitman v. Hooper, Case No. 11,185.

Seamen are entitled to wages for the full period of their employment in the ship's service for any particular voyage in which freight is or might be earned by the owner.—Pitman v. Hooper, Case No. 11,186.

Where freight is earned or damages recovered in lieu of freight, though inadequate, seamen are entitled to wages, except where the recovery is against insurers.—Ardrey v. Karthaus, Case No. 511.

The fact that the cargo belongs to the owner of the vessel does not destroy the connection between freight and wages.—Rand v. The Hercules, Case No. 11,548; Skolfield v. Potter, Id. 12,925.

Private contracts between shipowners and shippers in regard to freight cannot affect the seamen's right to wages.—Pitman v. Hooper, Case No. 11,185.

Wages decreed upon the master's certificate that they were due, though the vessel was in port not earning freight.—Minors v. The Mary, Case No. 9,644.

Where freight is lost by the fraud or wrongful act of the master, seamen are still entitled to their wages.—Henop v. Tucker, Case No. 6,368.

§ 55. **Shipwreck.**

Seamen are not entitled to wages for the voyage on which the vessel was wrecked and earned no freight.—The Two Catherines, Case No. 14,-288; Cartwell v. The John Taylor, Id. 2,482.

But they are entitled to wages, in the case of shipwreck, where the cargo is saved and freight is earned.—Relf v. The Maria, Case No. 11,692; The Dawn, Id. 3,666.

And where they save remnants of their wrecked vessel to the amount of their wages they are entitled to wages as such, though no freight be earned.—The Massasoit, Case No. 9,260; The Dawn, Id. 3,666.

The rule of the maritime law allowing a seaman his wages out of the savings of wrecked vessel, and expenses of his return home, superseded by Act Aug. 18, 1856.—Drew v. Pope, Case No. 4,080.

The standard of seaworthiness, with respect to liability for seamen's wages after a wreck, varies with the character of the voyage and the nature of the cargo.—Farrell v. Mayers, Case No. 4,685.

In case of wreck, the seaman is entitled to wages out of the goods saved for the time served before the loss, and thereafter in caring for the goods saved.—Weeks v. The Catharina Maria, Case No. 17,351; Jurgenson v. Same, Id.

Where the vessel is wrecked on the homeward voyage, the seamen are entitled to wages from the port at which she was laden, though she only carried ballast between such port and that of the destination of her outward cargo.—The Two Catherines, Case No. 14,288.

Liability exists for wages of seamen duly discharged in a home port after a wreck, notwithstanding general maritime law, when the shipping articles promise wages unless forfeited by misconduct.—Davis v. Faucon, Case No. 3,632b.

Wreck and loss of freight caused by a master's negligence do not free the owners from liability for seamen's wages.—Davis v. Faucon, Case No. 3,632b.

The master is negligent in not promptly changing his course when the lead shows a rapid shoaling of the water near dangerous and well-known shoals.—Davis v. Faucon, Case No. 3,-632b.

Where the negligence of a master is in issue, the failure to show or account for the chart used by him raises an inference that the shoal where the vessel was wrecked was set down thereon.—Davis v. Faucon, Case No. 3,632b.

See, also, post, § 87.

Right of seamen to salvage compensation, see "Salvage," § 21.

§ 56. **Capture and confiscation of vessel.**

A capture, unless followed by condemnation, does not dissolve the contract for wages. It is suspended during prize proceedings, and upon a decree of restoration it revives.—The Saratoga, Case No. 12,355; Clayton v. The Harmony, Id.

2,871; Emerson v. Howland, Id. 4,441; Watson v. The Rose, Id. 17,288.

If during the voyage there be a capture and final restitution decreed, the right to wages is not complete until the restitution.—Willard v. Dorr, Case No. 17,679; Brown v. Lull, Id. 2,018.

Seamen forcibly put on shore by the captors, from a vessel, afterwards ransomed, and arriving at her destination under a new crew, *held* entitled to wages, subject to a contribution for the ransom.—Girard v. Ware, Case No. 5,460.

Voluntary stranding for the purpose of repairs, and subsequent capture by Indians, resulting in loss of the vessel, are good defenses to suits for seamen's wages.—Farrell v. Mayers, Case No. 4,685.

Where the ship is captured by a belligerent and condemned, the seamen lose their wages, though the owner receives full insurance on the freight.—McQuirk v. The Penelope, Case No. 8,925.

The voyage will be *held* to be broken up by the confiscation of the vessel, though she is afterwards restored on condition of making a special voyage.—Rand v. The Hercules, Case No. 11,548.

Freight will be considered to have been earned on a portion of a cargo belonging to the owner of the vessel, landed without interference, and its subsequent confiscation will not affect the right to wages.—Rand v. The Hercules, Case No. 11,548.

See, also, post, § 86.

§ 57. Condemnation of vessel for unseaworthiness.

Where a vessel is condemned as unseaworthy at an intermediate port, and sold, and the cargo is transshipped by order of the shipowner's agents, and reaches its destination, the seamen are entitled to wages.—Wallace v. Munford, Case No. 17,102.

§ 58. Abandonment of vessel.

Where a ship was abandoned and set fire to at sea by order of the master, *held*, that the crew were not entitled to any wages, though the ship was insured and certain articles were saved. —The Niphon's Crew, Case No. 10,277.

§ 59. Interdiction of commerce of port of destination.

If, pending the voyage, there be an interdiction of commerce with the port of destination, by war or otherwise, and, in consequence, the voyage is broken up, no wages are due.—The Saratoga, Case No. 12,355.

But the seamen are entitled to a reasonable compensation where they are subsequently retained by the master, to refit and preserve the ship.—The Saratoga, Case No. 12,355.

§ 60. Agreements to renounce wages.

A stipulation not to demand wages until arrival of vessel at final destination will not bar wages.—The General Chamberlain, Case No. 5,310; Relf v. The Maria, Id. 11,692.

Construction of an agreement in the shipping articles that no wages shall be paid until the return of the vessel to the port of outfit.—Johnson v. Sims, Case No. 7,413.

A stipulation not to demand wages before a certain time is void where the service is completed, or the seaman discharged before the expiration of that time.—The Cypress, Case No. 3,530.

An agreement to renounce wages for a share in the catch on a fishing voyage disregarded where unequal and unjust.—Somerville v. The Francisco, Case No. 13,171.

§ 61. Absence of written agreement.

The crew of a fishing vessel, not having signed shipping articles as required by title 51, Rev. St., may collect their shares or wages.—The Grace Darling, Case No. 5,651.

A seaman shipped without signing articles must be paid according to the acts of congress. —Jameson v. The Regulus, Cas. No. 7,198.

§ 62. Illegality of voyage.

Seamen on a vessel forfeited as fitted out for the slave trade are entitled to wages if ignorant of the criminal purpose of the voyage.—The Mary Ann, Case No. 9,194.

The fact that a coasting vessel has no license does not affect the right to wages if the seamen are ignorant thereof.—The Mary, Case No. 9,190.

(B) FORFEITURE.

§ 63. Nature and cause of forfeiture in general.

Forfeiture of wages is not given merely as a compensation to the owner for actual loss suffered by the seaman's misconduct; it is enforced also by way of punishment.—The Florence, Case No. 4,881.

Before a forfeiture of wages can be adjudged it must appear that the contract under which the wages are claimed has been violated, and, upon a suit in rem by a mate for wages, the court will not investigate his conduct while temporarily in command of the ship as master, with a view to inflicting a forfeiture of wages as mate.—Airey v. The Ann C. Pratt, Case No. 114.

§ 64. Desertion—What constitutes.

In order to constitute a desertion, there must be an intention not to return.—The Balize, Case No. 809; Cloutman v. Tunison, Id. 2,907; Coffin v. Jenkins, Id. 2,948; The Rovena, Id. 12,090; The Union, Id. 14,347.

An intention to desert will not bring seamen within the act of July 20, 1790, where there is no actual desertion.—Hart v. The Otis, Case No. 6,154.

The absence from the vessel must be unauthorized.—Coffin v. Jenkins, Case No. 2,948; Magee v. The Moss, Id. 8,944.

A temporary absence, without objection of master, while vessel is loading or unloading, is not a desertion.—Borden v. Hiern, Case No. 1,655.

A seaman who, unknown to the master, but with permission of the mate, leaves the vessel, is not guilty of desertion.—The Caroline E. Kelly, Case No. 2,422.

Seamen are guilty of desertion where they leave the vessel before the voyage is completed, without the master's consent, though with his knowledge, and upon his promise that they shall not be arrested therefor.—The Hermine, Case No. 6,409.

The conduct of a seaman in going ashore against orders, and in breaking away when apprehended, *held* to amount to a desertion.—The Ericson, Case No. 4,510.

Absence from the ship without leave, for two hours, is not desertion or misconduct meriting a forfeiture of wages.—Ruddy v. The Golden State, Case No. 12,111.

Seamen forfeit their wages, under Act July 20, 1790, § 5, by absence without leave and remaining away for 48 hours, though they intended to return.—The Union, Case No. 14,347; Same v. Jansen, Id. 14,348.

Act 1790, declaring any unauthorized absence of a seaman from a ship 48 hours to be a desertion, applies to all cases, though the seaman has been prevented from returning by the sailing of the ship.—Coffin v. Jenkins, Case No. 2,948.

A seaman forfeits all wages due by leaving the vessel at a foreign port during her voyage, with or without leave, and not returning within

a reasonable time, before another man is hired in his place.—The Philadelphia, Case No. 11,-084.

An engineer verbally hired by the month on a tug on the Lakes is guilty of desertion, forfeiting all wages due, where he leaves his post of duty before his month is up, insisting upon a right to accept another offer.—The John Martin, Case No. 7,357.

Where a seaman is hired at a certain sum per month, and no agreement is made as to the duration of his employment, he is not guilty of desertion where he leaves the vessel one day before the expiration of the second month.—Farrell v. Campbell, Case No. 4,681.

A seaman on a lake vessel, having shipped under a verbal agreement, may leave the vessel at any time.—The City of Fremont, Case No. 2,746.

Quære whether an unauthorized absence, after termination of voyage in home port, but before the seaman is entitled to his discharge, is a desertion which will forfeit wages.—The Elizabeth Frith, Case No. 4,361.

Desertion will not forfeit wages, either by maritime law or by the statute, unless it occurs before the end of the voyage, which is when the ship arrives at her port of destination, and is moored in the accustomed place.—Cloutman v. Tunison, Case No. 2,907; Francis v. Bassett, Id. 5,037. But see Knagg v. Goldsmith, Case No. 7,872.

Where there is a stipulation that the seamen shall not sue for wages until the vessel is unladen, leaving the vessel before she is unladen after her arrival is not a desertion which works a forfeiture of wages.—Granon v. Hartshorne, Case No. 5,689; The Martha, Id. 9,144.

That the cargo is owned by the freighter does not make the mere arrival in port a delivery, within the meaning of the shipping articles. Such ownership is no ground of distinction.—The Martha, Case No. 9,144.

Under a contract for the run homeward from a foreign port at a stated sum, the seamen may leave the ship as soon as she anchors in the harbor of her home port.—Ryan v. Green, Case No. 12,186a.

The seaman loses his right to wages where, though especially requested, he made no attempt until the last moment to get aboard.—Smith v. The Utica, Case No. 13,123.

Wages are forfeited where the seaman leaves the vessel in a foreign port, and she sails without him, after waiting a reasonable time.—Piehl v. Balchen, Case No. 11,137.

Seamen bound to remain with captured vessel until an adjudication.—Bordman v. Elizabeth, Case No. 1,657.

Where seamen abandon the wreck, they lose their right to wages.—Lewis v. The Elizabeth and Jane, Case No. 8,321; The Two Catherines, Id. 14,288.

§ 65. —— Excusable or justifiable leaving.

Sickness is an excuse for leaving vessel.—Barron v. Locke, Case No. 1,054.

If a sick seaman is sent to a hospital in a foreign port, and the ship leaves without his rejoining her, he is not absent without leave, so as to stop his wages.—Nevitt v. Clarke, Case No. 10,138.

A seaman arrested and imprisoned in a foreign port is not a deserter, so as to forfeit wages due at the time of the arrest.—Bray v. The Atalanta, Case No. 1,819; Brower v. The Maiden, Id. 1,970; Costello v. American S. S. Co., Id. 3,263; Hayes v. The J. L. Wickwire, Id. 6,262.

A seaman is justified in leaving the vessel through fear induced by cruel treatment and threats.—Bush v. The Alonzo, Case No. 2,223; Coffin v. Weld, Id. 2,953; Magee v. The Moss, Id. 8,944; Sherwood v. McIntosh, Id. 12,778.

Where a seaman had been brutally maltreated by the mate, and was refused permission by the master to see the American consul, and severely punished for refusal to return unconditionally to duty under the mate, *held*, that he was justified in leaving the ship, and was entitled to wages to the time of reaching home by another ship, and to damages.—Knowlton v. Boss, Case No. 7,901.

A single act of assault and battery, though exceeding the bounds of moderation, will not justify a desertion, unless there be reasonable ground for apprehending that the acts of oppression will be repeated.—Steele v. Thacher, Case No. 13,348.

Going ashore to apply to an American consul for redress for alleged cruel treatment on board does not work a forfeiture of wages.—Freeman v. Baker, Case No. 5,084; Hart v. The Otis, Id. 6,154.

Such conduct will not justify their imprisonment, nor the deduction from their wages of the amount paid other hands, in their places, while so imprisoned.—Hart v. The Otis, Case No. 6,154.

Seamen are justified in leaving vessel for just fears for personal safety.—The Alonzo, Case No. 258; The Gem, Id. 5,304.

A seaman, who, in the peril of a collision, jumped aboard the colliding vessel, and afterwards endeavored, without success, to rejoin his own vessel, will be allowed wages up to the time of collision.—Hanson v. Rowell, Case No. 6,043.

Seamen who ship in a leaky vessel, to help pump on her homeward voyage, cannot rightfully abandon her, even if the leak increases, if she was seaworthy when she left port.—The Moslem, Case No. 9,875.

The crew are justified in leaving the ship, and may recover full wages, where they are fed on unwholesome or spoiled provisions.—Swift v. The Happy Return, Case No. 13,697.

But leaving the vessel is not justifiable unless the provisions were positively bad, and unfit for the men's support.—The Balize, Case No. 809; Ulary v. The Washington, Id. 14,323.

A seaman who is sent ashore to get articles belonging to the ship, and does not return before the ship sails, but afterwards goes to the destination of the ship, and takes the articles to the vessel and demands his wages, is not a deserter, so as to incur a forfeiture of wages under Act Aug. 18, 1856, § 25.—The Catawanteak, Case No. 2,510.

It is not a desertion for a mariner to leave a ship at a port from which it intends to start on a voyage not named in the shipping articles.—Brown v. Jones, Case No. 2,017.

Three weeks' time consumed in discharging and taking in cargo at intermediate port does not show abandonment, justifying desertion.—Bibbins v. Brookfield, Case No. 1,384.

A change of a voyage from that specified in the shipping articles must be actually resolved on and known to a seaman, to authorize him to leave a vessel without forfeiting his wages.—Douglass v. Eyre, Case No. 4,032.

Though the leaving of the vessel is not justified by the circumstances, a forfeiture will not be decreed where there is an apparent connivance on the part of an officer of the vessel in efforts by third persons to induce the seamen to desert.—The Lilian M. Vigus, Case No. 8,-346.

§ 66. —— **By minor.**
Where a minor, with the consent of his father, shipped as a seaman, but deserted during the voyage after he had become of age, such desertion does not forfeit his father's right to wages earned during minority.—Coffin v. Shaw, Case No. 2,951.

Desertion, under the statute, by a minor who engaged in a voyage without his father's consent, is no defense to a suit by the father for previous services.—Lovrein v. Thompson, Case No. 8,557.

§ 67. —— **Proof of desertion in general.**
Ship's articles, with the signature of the sailor, are prima facie evidence of his having been on board the vessel.—Malone v. Bell, Case No. 8,994.

Though the entry in the log book of a desertion is defective, a forfeiture may be decreed, under the general maritime law, upon other evidence.—Herron v. The Peggy, Case No. 6,427.

Sufficiency of evidence to convict a seaman of desertion carrying a forfeiture of wages.—The Osceola, Case No. 10,602.

To justify desertion on the ground of unseaworthiness or unwholesome provisions, the proof must be clear.—Bibbins v. Brookfield, Case No. 1,384.

§ 68. —— **Entry in log book.**
The provision of Act July 20, 1790, § 5, in relation to absence without leave and a log-book entry, was repealed by Act June 7, 1872, § 51.—Scott v. Rose, Case No. 12,545.

Act 1874, c. 260, if construed as repealing Act June 7, 1872, § 51, as to coasting voyages, has no effect on rights accruing before the repeal. —Scott v. Rose, Case No. 12,545.

The log book of a vessel is not proof per se of the facts therein stated, except in certain cases provided for by statute.—United States v. Gibert, Case No. 15,204.

Under Act July 20, 1790, the entry in the log book is indispensable to a forfeiture of wages. The Betsy v. Duncan, Case No. 1,367; Cloutman v. Tunison, Id. 2,907; Knagg v. Goldsmith, Id. 7,872; Magee v. The Moss, Id. 8,944; Malone v. Bell, Id. 8,994; The Martha, Id. 9,144; The Rovena, Id. 12,090; Snell v. The Independence, Id. 13,139; The Union, Id. 14,347; Same v. Jansen, Id. 14,348.

Such entry must contain the fact, of the name of the seaman, and of his having gone without leave.—The Cadmus v. Matthews, Case No. 2,282; The Catawanteak, Id. 2,510; Hart v. The Otis, Id. 6,154; The Hercules, Id. 6,401; The Rovena, Id. 12,090; Ulary v. The Washington, Id. 14,323.

A general entry that the crew, or all the crew, were absent, is not sufficient.—The Rovena, Case No. 12,090.

It must state the time of absence.—Brower v. The Maiden, Case No. 1,970.

It must be made on the day that the seaman absented himself.—The Cadmus v. Matthews, Case No. 2,282; The Rovena, Id. 12,090; The Phoebe v. Dignum, Id. 11,110.

The certificate of the British consul, on an appeal to him, that he had examined the entry, and that the desertion was properly entered, will be disregarded where it does not appear that it was made known to him that the entry was not made on the day of the occurrence.—The Lilian M. Vigus, Case No. 8,346.

The failure to date an entry in the log of the seamen's leaving the vessel is fatal to its value as proof of desertion, under the British merchants' shipping act of 1854 (sections 244, 250, 281).—The Lilian M. Vigus, Case No. 8,346.

The entry under Act July 20, 1790, is not incontrovertible.—Malone v. Bell, Case No. 8,994; Orne v. Townsend, Id. 10,583.

But to be falsified it must be disproved by satisfactory evidence.—Douglass v. Eyre, Case No. 4,032.

The log-book entry is legal evidence of the time of the seaman's coming on board and leaving the vessel. Act 1790.—Malone v. Bell, Case No. 8,994.

§ 69. —— **Effect of desertion.**
A desertion during the voyage by the general maritime law works a forfeiture of all wages antecedently earned.—Burton v. Salter, Case No. 2,218; The Cadmus v. Matthews, Id. 2,282; Cloutman v. Tunison, Id. 2,907; The Merrimac, Id. 9,474; The Rovena, Id. 12,090.

As to the power of the court to mitigate the forfeiture according to the circumstances, see Coffin v. Jenkins, Case No. 2,948; Gifford v. Kollock, Id. 5,409; Lovrein v. Thompson, Id. 8,557; Swain v. Howland, Id. 13,661.

The only case of desertion in which the forfeiture is absolute of the whole wages is when all the requisites of the statute have been strictly observed. July 20, 1790.—Gifford v. Kollock, Case No. 5,409.

Section 5 of Act July 20, 1790, designates the only case in which a forfeiture of wages is peremptory.—The Cadmus, Case No. 2,280.

Desertion during a substituted voyage will not operate as a forfeiture of wages earned and due under the first voyage.—Piehl v. Balchen, Case No. 11,137.

Where a seaman employed by the month leaves before his month is up, his entire unpaid wages are forfeited.—The Magnet, Case No. 8,955; The Swallow, Id. 13,664.

Only a qualified forfeiture will be imposed where a seaman, who had gone ashore by permission, and without knowing that the vessel was about to sail, failed to rejoin her because of drunkenness.—The Ericson, Case No. 4,510.

§ 70. **Disobedience and misconduct in general.**
Wages are not forfeited for slight disobedience.—The Mentor, Case No. 9,427.

Wages not always forfeited by disobedience of a captain's orders, unattended by aggravating circumstances.—Drysdale v. The Ranger, Case No. 4,097.

Misconduct will not be punished by an absolute forfeiture of wages and effects on board unless continued or repeated or of a highly aggravated character.—The Maria, Case No. 9,074.

A forfeiture of wages by misconduct must be shown by clear proof.—Benton v. Whitney, Case No. 1,335.

In a case of monthly hirings, although continuous, upon river boats, misconduct by the seaman during one month cannot operate to forfeit wages earned during another month.—The Pioneer, Case No. 11,177.

Wages advanced at the commencement of the voyage are not forfeitable by misconduct so as to be chargeable on wages subsequently earned. But money advanced on the voyage for clothes, etc., and not stipulated for, should be a charge on the unforfeited wages.—The Mentor, Case No. 9,428.

Justifiable discharge for bad conduct forfeits wages previously earned.—The Almatia, Case No. 254.

A forfeiture of half wages decreed for misbehavior making it necessary to dismiss the seaman when the voyage was about half performed.—Humphreys v. The America, Case No. 6,869.

Forfeiture of half of the seaman's wages decreed for misconduct in striking the master, where the seaman was otherwise punished.—Sprague v. Kain, Case No. 13,250.

The seizure and carrying away of the ship's chronometer by a mate, to force the settlement of his claim for wages, *held* not an act of misconduct, working a forfeiture.—The Florence, Case No. 4,881.

The conduct of an engineer of a steamboat in making alterations in the engine at the home port, without the consent of the owner, will work a forfeiture of his wages.—The John Martin, Case No. 7,358.

Willful derangement of the engine by an engineer, in order to compel the boat to stop at a certain port, at which he desired to leave, will work a forfeiture of wages.—The Magnet, Case No. 8,955.

Broils, assaults on or resistance to masters do not ordinarily operate to forfeit wages.—Thorne v. White, Case No. 13,989.

Willful misconduct not imputed to mate failing to rejoin master on island from which vessel is blown by stress of weather.—Airey v. The Ann C. Pratt, Case No. 113a.

Seamen must not interfere when the officers attempt to confine or punish one of the crew for disorderly conduct.—Relf v. The Maria, Case No. 11,692.

§ 71. Refusal of duty.

There is no inflexible rule requiring the court, in all cases, to withhold wages for a wrongful refusal of duty.—Gladding v. Constant, Case No. 5,468.

Disorderly and mutinous conduct in refusing to do duty *held* not to forfeit previously earned wages.—The Moslem, Case No. 9,875.

Seamen forfeit all wages by refusing duty before a fishing voyage is ended, and obliging the master to return with only part of a fare.—The Tarquin, Case No. 13,755.

A forfeiture of wages may be decreed for the refusal of the seamen to unload and reload cargo on the voyage, but not for such a refusal at the last port of delivery.—Swift v. The Happy Return, Case No. 13,697.

A refusal to do duty, at a moment of high excitement from punishment inflicted, if not followed by obstinate perseverance, is not a forfeiture of wages.—Orne v. Townsend, Case No. 10,583.

Seamen refused to proceed to sea until the rigging was repaired, and on arrival in the outward port, finding other persons employed to unload the ship, they went on shore. *Held*, that wages should not be forfeited.—Dixon v. The Cyrus, Case No. 3,930.

A mate, because improperly put off duty, and charged with incompetency and impropriety, is not justified in refusing to return to duty when ordered.—Gladding v. Constant, Case No. 5,468.

A disobedience in refusing to do duty under a claim of deviation, where the seaman was subsequently subdued to the authority of the ship, *held* no ground of forfeiture.—The Moslem, Case No. 9,875.

After application to put back to port, where the vessel was leaky, the voyage was continued on the master's promise to sight a certain port and put in, if necessary. *Held*, that his failure to sight such port did not justify the crew in refusing to do duty.—The Moslem, Case No. 9,875.

On a voyage of a leaky vessel from Cape Town to New York, *held*, that sailing for Pernambuco to take advantage of trade winds and smooth seas, and for repairs, was not a deviation.—The Moslem, Case No. 9,875.

A staunch vessel, with a full crew, which does not leak to exceed four inches an hour, *held* not unseaworthy.—The Moslem, Case No. 9,875.

A usage or custom in fishing voyages to carry only a partial supply of bait, relying upon catching sufficient fish to supply the deficiency, is reasonable; and where the vessel, having failed to catch bait, put into port for supply, causing a delay of a few days, the seamen are not justified in refusing duty.—The Tarquin, Case No. 13,755.

§ 72. Drunkenness.

Intemperance will forfeit wages to the extent that it unfits the seaman for performance of his duties.—The Jasper, Case No. 7,228; Matthew v. Chase, Id. 9,283a; Orne v. Townsend, Id. 10,583.

§ 73. Negligence.

Wages are not forfeitable for slight neglect. There must be habitual neglect.—The Mentor, Case No. 9,427.

The mate forfeits his wages where goods are lost by his negligence.—Conner v. Levering, Case No. 3,114.

§ 74. Rebellious or mutinuous conduct.

Mutinous and rebellious conduct, if persisted in, forfeits all right to wages.—Relf v. The Maria, Case No. 11,692.

Rebellious conduct for which seamen are amenable to criminal prosecution does not forfeit wages.—Thorne v. White, Case No. 13,989.

Rebellious conduct will not justify total forfeiture when resulting from sudden irritation aroused by inconsiderate treatment.—Martin v. The William, Case No. 9,171.

Wages *held* not forfeited by mutiny which was quelled by severe measures of repression and punishment, where the voyage was thereafter performed, as the seamen had been sufficiently punished.—The Wm. Cummings, Case No. 17,-690.

It is not disorderly or mutinous conduct to apply in a body to the officers to put back to port, where a staunch vessel leaks four inches an hour.—The Moslem, Case No. 9,875.

Seamen may recover wages and claims for short allowance, although guilty of mutinous and disobedient conduct, where they had afterwards returned to duty and been criminally prosecuted for the offense.—Hill v. The Triumph, Case No. 6,500.

Forfeiture for rebellious conduct applies only to wages previously earned.—The Mentor, Case No. 9,427.

Insubordination by a steward, who was an educated man, is a greater offense than that of an ordinary seaman.—Peters v. Martens, Case No. 11,031.

Gross deviation from the chartered voyage will not justify seamen in taking possession at sea.—The Mary Ann, Case No. 9,194.

Reasonable ground of suspicion that the vessel is about to engage in the slave trade does not justify the seamen in taking possession of her at sea or in a foreign port and bringing her home; and by so doing they forfeit all wages.—The Mary Ann, Case No. 9,194.

§ 75. Larceny and embezzlement.

Stealing part of cargo forfeits all wages.—Alexander v. Galloway, Case No. 167.

Embezzlement of pieces of the cargo by a seaman does not necessarily work a forfeiture of all his wages, and, if the amount of his wages exceeds the value of the things embezzled, he will be decreed the excess.—Williams v. Waterman, Case No. 17,745.

No wages will be allowed a seaman, though criminally punished for the offense of mutinous

conduct, who has been guilty of embezzlement and desertion.—Hill v. The Triumph, Case No. 6,500.

Acquittal of larceny of cargo not conclusive to rebut charge when set up in defense of wages.—Alexander v. Galloway, Case No. 167.

Sale of part of cargo by direction of mate during permanent absence of master, to procure necessary provisions, is not such an embezzlement as will forfeit wages.—Anderson v. The Solon, Case No. 363.

§ 76. Smuggling.
Wages are not, as a matter of course, wholly forfeited for smuggling.—The Horace E. Bell, Case No. 6,702.

Where a seaman puts the vessel in jeopardy by violating a notorious excise law by smuggling, he is subject to make amends by forfeiture or subtraction of wages.—Scott v. Russell, Case No. 12,546.

§ 77. Imprisonment of seamen.
Where a seaman is imprisoned in a foreign port for misbehavior, he does not necessarily forfeit the wages accruing during his confinement. —Smith v. Treat, Case No 13,117; Wood v. Nimrod, Id. 17,959.

A seaman rightfully imprisoned on shore for misconduct, but wrongfully left behind, may claim wages for the time he was imprisoned.—The Maria, Case No. 9,074.

A seaman cannot recover wages during the time that he was imprisoned by local authorities in the home port on a charge of mutiny.—Thomas v. Gray, Case No. 13,898.

Such imprisonment may be deemed an adequate punishment, and prevent a subtraction of prior wages.—Thomas v. Gray, Case No. 13,-898.

§ 78. Return and tendering amends.
Seamen guilty of misconduct, who subsequently repent and tender amends, will save a forfeiture of wages, in whole or in part.—Johnson v. The Eliza, Case No. 7,383; Relf v. The Maria, Id. 11,692.

If a deserting seaman offers to return to duty and make amends in a reasonable time, the master must receive him back, unless previous conduct would justify his discharge.—Cloutman v. Tunison, Case No. 2,907.

The return within the 48 hours, in order to save a forfeiture, must have been unconditional, and a return to duty generally.—The Cadmus v. Matthews, Case No. 2,282.

A seaman who returns after a week's absence without leave, and continues during the voyage, is entitled to wages under the original contract, unless a new one is made.—Snell v. The Independence, Case No. 13,139.

An offer by an engineer, who left his post of duty before his month was up, made five or six weeks after he was landed, to return, is not within a reasonable time.—The John Martin, Case No. 7,357.

A return to the vessel at night by seamen, absent without leave, without saying who they are or what they want, will not restore the right to wages.—Ulary v. The Washington, Case No. 14,323.

The seaman cannot afterwards acquire a right to reinstatement and wages by coming clandestinely on board and remaining concealed until the vessel is at sea, and in such case he may be compelled to work his passage.—The Philadelphia, Case No. 11,084.

§ 79. Waiver and remission of forfeiture.
Receiving a deserted seaman back into service waives forfeiture of his wages, but allowance will be made for the absence.—Ingraham v. Albee, Case No. 7,044; Whiteman v. The Neptune, Id. 17,569.

Where a seaman was discharged for misconduct, but was received again on board, his services accepted, and wages credited in his account, *held* a waiver of forfeiture, although the shipping articles provided that reinstatement should not be a waiver.—Lang v. Holbrook, Case No. 8,057.

The performance of his duty after the forcible return of a deserting seaman is a condonation of the offense, and a remission of the forfeiture, regardless of stipulations in shipping articles.—Freeman v. Baker, Case No. 5,084.

Where seamen are received on board after they have been entered in the log book as deserters, the forfeiture of their wages is waived. —Whitton v. The Commerce, Case No. 17,604.

The punishment of seamen by the master, and continuing them in his employ after absence without leave, is a waiver of all claim to forfeiture of wages.—The Elizabeth v. Rickers, Case No. 4,353.

Allowance by the master of full wages, and giving a draft therefor, import that any grounds of complaint for intoxication were forgiven.—Matthew v. Chase, Case No. 9,283a.

Receiving a seaman on board after the time appointed does not remit the penalty for his neglect to render himself.—Malone v. Bell, Case No. 8,994.

If the shipping articles prohibit traffic by the seamen, under forfeiture of wages, yet the master may remit a forfeiture incurred thereby.—The Mentor, Case No. 9,427.

A pardon by the master is a reinstatement of the right to wages.—The Mentor, Case No. 9,-427.

Thorough repentance, apology, and subsequent exemplary diligence and obedience authorize the court to remit a forfeiture.—The Mentor, Case No. 9,427.

Permitting the first mate, who had assaulted the master, to continue in office for a few days, until a convenient place was reached to disrate him, is not a condonation.—The Olive Chamberlain, Case No. 10,491.

(C) AMOUNT.

See, also, post, §§ 96–100.

§ 80. In absence of valid agreement.
Act July 20, 1790, c. 29, which allows to seamen shipped without a written contract the highest rate of wages, does not apply to fishing voyages.—The Ianthe, Case No. 6,992.

Neither does it apply to seamen upon tugboats.—Milligan v. The B. F. Bruce, Case No. 9,602.

Where a seaman on a lake vessel ships under a verbal agreement, and draws wages promised, he cannot recover a larger amount under Act July 20, 1840.—The City of Fremont, Case No. 2,746; The Fremont, Case No. 5,093.

Where wages are not stipulated in the shipping articles, the seaman may either prove them by parol, or recover, under Act July 20, 1790, § 1, the highest rate payable, etc.—The Crusader, Case No. 3,456; Graham v. The Exporter, Id. 5,667; The Warrington, Id. 17,208.

The rate of wages for previous service will be taken to be the measure of wages, where the seaman shipped without an agreed rate.—The Magna Charta, Case No. 8,953; Milligan v. The B. F. Bruce, Id. 9,602; Thompson v. Faussat, Id. 13,954.

Rule of ascertaining rate of wages of seamen, where the contract is doubtful, applied in

case of an engineer on inland waters.—The Pioneer, Case No. 11,177.

§ 81. Quantum meruit in general.

Quantum meruit compensation.—The Hermine, Case No. 6,409.

In fixing quantum meruit for wages on whaling voyage, its unusual protraction and hardships may be considered.—Allen v. Hitch, Case No. 224.

Seamen on a fishing voyage, who were discharged on an island in the Pacific, and then entered for a new voyage, *held* not bound by the shipping articles, but entitled to a quantum meruit.—Mayshew v. Terry, Case No. 9,361.

§ 82. Amount measured by voyage or season of navigation.

A mariner may show that the shipping articles do not truly describe the voyage for which he contracted, and may recover accordingly.—Page v. Sheffield, Case No. 10,667.

One who shipped as a seaman, and, after the season of navigation, remained on board the ship during the winter, keeping the ship, can recover as a seaman only for his services during the season of navigation.—The Champion, Case No. 2,584.

§ 83. Breaking up voyage in general.

Seamen are entitled to pro rata wages where voyage is interrupted without their fault.—Bray v. The Atalanta, Case No. 1,819.

Where the voyage is broken up without cause, and without the seaman's consent, he may recover wages for the whole voyage stipulated, deducting his earnings meanwhile.—The Maria, Case No. 9,074; The Ocean Spray, Id. 10,412.

Evidence *held* insufficient to show that the voyage was broken up by the fault of the owner, where the vessel was run on a reef in a well-known channel, where there was plenty of room, and the master was a man of experience.—Hill v. Murray, Case No. 6,495.

§ 84. Refusal to continue voyage.

A seaman refusing to proceed in a vessel provided for the further transportation of the cargo, where the first vessel became unseaworthy during the voyage, *held* not entitled to wages to the end of the voyage.—Hindman v. Shaw, Case No. 6,514.

§ 85. Attachment of vessel or sale on execution.

Where a voyage was broken up by a sale of the vessel on execution, the seamen were allowed wages up to the time of the sale, and compensation for their time and expenses in returning to their home port.—The Gazelle, Case No. 5,289.

An attachment of a vessel on mesne process does not break up the voyage.—The Gazelle, Case No. 5,289.

§ 86. Capture of vessel.

The capture of a neutral ship operates, at most, only as a suspension of the contract for wages, and the seaman is entitled to full wages, if, without fault of his own, he is unable to complete the voyage.—Brown v. Lull, Case No. 2,018.

Where the vessel is captured, seamen are entitled to wages to the last port of unloading.—Jones v. Smith, Case No. 7,497.

The seaman has an absolute right to wages for the portion of the voyage performed, on the capture and condemnation of the vessel, and a claim therefor is barred by lapse of time, though the owner is subsequently indemnified.—Pitman v. Hooper, Case No. 11,186.

Three months *held* a reasonable time for return of seamen home from Denmark in the case of capture.—Pitman v. Hooper, Case No. 11,186.

One half of the time during which a vessel is lying in port is deemed to belong to the outward voyage, and the other half to the homeward voyage.—Pitman v. Hooper, Case No. 11,186.

Owners decreed to pay the usual monthly wages, upon proof of the voyage and of the mariner's doing duty on board vessel captured.—Bouysson v. Miller, Case No. 1,710.

The seamen who await the issue of an appeal at the master's request are entitled to wages, as under a new contract, which, in the absence of evidence to the contrary, will be considered the same as the old contract.—Powell v. The Betsy, Case No. 11,355.

In the case of capture, seamen are entitled to wages to date of condemnation.—Ardrey v. Karthaus, Case No. 511; Bordman v. Elizabeth, Id. 1,657; Vandever v. Tilghman, Id. 16,846; Willard v. Dorr, Id. 17,680.

Where, in case of the capture and condemnation of a vessel, the owners recover a portion of their claim against the government, wages are due the seamen out of such fund to the time of condemnation, without deduction for expenses of recovery, or abatement, in the same proportion as the original claim.—Vandever v. Tilghman, Case No. 16,846.

Where a vessel went to a port out of her course, and there sold part of her cargo, and was afterwards captured, wages were decreed her seamen up to the time of such sale.—Lindsey v. The South Carolina, Case No. 8,368.

Where a vessel had been captured and condemned, and was restored, *held*, that the seamen were entitled to full wages.—Hitchen v. Wilson, Case No. 6,541; Hart v. The Littlejohn, Id. 6,153; Howland v. The Lavinia, Id. 6,797.

Where a captured vessel is recaptured, and restored on payment of salvage, a seaman taken therefrom, and unable to rejoin the vessel, is entitled to full wages, less a deduction for salvage.—Williams v. The Juno, Case No. 17,724.

Seamen taken from their vessel by a privateer, and afterwards escaping, and returning home, some of them earning wages on the return, *held* entitled to wages for the voyage, deducting the amount so earned, where their vessel was afterwards liberated and completed her voyage.—Singstrom v. The Hazard, Case No. 12,905.

Where a vessel is captured and finally acquitted, seamen are entitled to full wages, including the time of detention, even though the master offered to discharge them and send them home, and they refused.—Wesley v. Biays, Case No. 17,419.

The payment to the supercargo of the proceeds of a condemned vessel after reversal on appeal, except a part retained as a pledge that the proceeds of certain cargo should be exported in certain productions, *held* a restoration entitling the seamen to wages to the time of condemnation.—Powell v. The Betsy, Case No. 11,355.

Where the owner of vessel and cargo captured and condemned receives indemnity therefor from the country of the captors, the seamen are entitled to full wages, though the indemnity covered only one-third the loss.—Pitman v. Hooper, Cases Nos. 11,185, 11,186.

Compensation allowed to owner by the shipping commissioners will be presumed to be full indemnity for his loss.—Brown v. Lull, Case No. 2,018.

The last port of lading of a cargo made up at several ports is that to which wages should be paid, where the vessel is captured on her homeward voyage.—Cranmer v. Gernon, Case No. 3,359; The General Chamberlain, Id. 5,310; Giles v. The Cynthia, Id. 5,424; Thompson v. Faussat, Id. 13,954.

The port to which a vessel may proceed, and land her cargo, after being turned from her port of destination because of blockade, is to be considered as the port of delivery.—Cranmer v. Gernon, Case No. 3,359.

See, also, ante, § 56.

§ 87. Wreck or loss of vessel.

Seamen of vessel lost on homeward voyage are entitled to wages to the time of discharge of cargo on outward voyage, but not for any of the time she remained in port.—Bronde v. Haven, Case No. 1,924.

When a vessel is lost on the homeward voyage, and has or might have earned freight on the outward voyage, seamen's wages are due for the outward voyage and for one-half the time spent in the port of destination.—Farrell v. Mayers, Case No. 4,685.

Seamen, who, after stranding of the vessel, are retained at a near-by port, under direction of the master, until hope of getting her off is abandoned, are entitled to wages to the time of their actual discharge.—Tarleton v. Mallory, Case No. 13,753.

Where it appears that the master used his best judgment in abandoning a ship loaded with railroad iron, and leaking in heavy weather, seamen will not be allowed wages for the whole voyage on the ground that the vessel was fraudulently abandoned.—White v. Adams, Case No. 17,534.

On a shipwreck and sale of the vessel abroad, a seaman not entitled to extra wages is entitled to a sum to defray his expenses home, to be paid from the proceeds.—The Dawn, Case No. 3,666.

See, also, ante, § 55.

§ 88. Wrongful discharge.

Where a seaman has been wrongfully discharged, full wages are usually, though not invariably, given to the termination of the voyage. —The Rovena, Case No. 12,090.

Seaman entitled to amount actually due at time of discharge, where his assent was induced, on payment of a nominal sum, from just apprehension of ill treatment.—Bates v. Seabury, Case No. 1,104.

The amount he received by shipping in another vessel cannot be considered.—Bates v. Seabury, Case No. 1,104.

Seamen unlawfully discharged, or required to leave for personal safety from cruelty, entitled to full wages for voyage.—The America, Case No. 286; Atkyns v. Burrows, Id. 618; The Hibernia, Id. 6,455; The Mary Belle Roberts, Id. 9,200; The Nimrod, Id. 10,267; Veacock v. McCall, Id. 16,904.

A hiring at monthly wages imports that the engagement is by the month, and the seaman loses the month's wages where he quits, and recovers the whole wages where he is discharged, before its expiration.—The Hudson, Case No. 6,831.

Seamen employed for a specified time, and discharged without cause before its expiration, *held* entitled to the agreed rate, less the current rate at the time of discharge, with compensation for reasonable length of time to enable them to find other employment.—Jehner v. Philadelphia & R. R. Co., Case No. 7,255.

Seamen discharged at the inception of the voyage because they are quarrelsome and intend mischief are entitled to demand wages only for the time they have actually served.—The George Burnham, Case No. 5,331.

In the case of a slave illegally discharged abroad, his master was allowed full wages up to the time when he might have returned to the United States.—Emerson v. Howland, Case No. 4,441.

A seaman discharged abroad and reshipped at a less sum may recover the difference on his return to the home port.—The Lola, Case No. 8,468.

A discharge ordered by the consul in a foreign port on clear prima facie proofs of criminal conduct, will bar a claim to continuing wages.—Tingle v. Tucker, Case No. 14,057.

The master can claim no benefit from a discharge by a consul in a foreign port, where it was obtained by deceit or collusion practiced by the master.—Tingle v. Tucker, Case No. 14,057.

The propriety of the consul's interference is to be determined upon the facts before him at the time, and not by the case which may be afterwards shown on trial.—Tingle v. Tucker, Case No. 14,057.

Seamen discharged for slight misconduct, and a declaration that they would not continue the voyage, can recover no damages beyond their wages for the time of their actual service.—Ruddy v. The Golden State, Case No. 12,111.

A seaman discharged in foreign port for going ashore in violation of orders *held* entitled to his wages to the date of discharge, with $10 damages and half costs.—Dougherty v. American Steamship Co., Case No. 4,023.

§ 89. Sickness or injury of seamen.

A seaman injured in the service of a ship is entitled to his wages until the end of the voyage.—Brown v. Overton, Case No. 2,024; Callon v. Williams, Id. 2,324; The Cortes, Id. 3,258.

A seaman injured during a voyage, and left sick in a foreign port, is entitled to wages during such sickness, and up to his arrival home, together with medical expenses, deducting wages actually earned on the return voyage.—Harris v. Capen, Case No. 6,118.

A seaman, rejoining his vessel after being left sick in a foreign port, is entitled to the wages originally contracted for, though the master paid the consul three months' extra wages, under Act Feb. 28, 1803.—Shakerly v. Pedrick, Case No. 12,699.

A seaman so severely chastised with an improper weapon, because of insolence, as to be necessarily left behind at a foreign port, is entitled to wages to the last port of delivery, but not to benefit of Act Feb. 28, 1803.—Brown v. The Independence, Case No. 2,014.

A seaman, left sick in a foreign port, who refused to rejoin the ship when able to do so, will not be allowed wages beyond the time of such refusal.—Williams v. The Hope, Case No. 17,721.

Where a seaman is left behind for sickness, he is entitled to wages to the time until his return to his country; and the rule is the same where a seaman is separated from the ship without fault.—Antone v. Hicks, Case No. 493.

Where a sickness began after the seaman entered the service, though before he signed articles, he is entitled to full wages.—Neilson v. The Laura, Case No. 10,092.

See, also, § 53.

§ 90. Amount in time of war.

Seamen engaging for service in time of war *held* only entitled to customary peace wages, from the time peace took place.—Brice v. The Nancy, Case No. 1,855.

The wages of a mariner who ships during war should not be lessened because a peace takes place while the vessel is at her outward port.—McCulloch v. The Lethe, Case No. 8,738; Shaw v. Same, Id. 12,721.

§ 91. Advancement of seamen during voyage.

A seaman advanced during the voyage to a position having a higher rate of pay *held* en-

titled to the advanced rate.—Knee v. American Steamship Co., Case No. 7,877; Mitchell v. The Orozimbo, Id. 9,667.

A sailor made a second mate is entitled to wages, as such, from the time of his appointment, on the voyage being broken up.—The Blohm, Case No. 1,556.

§ 92. Disrating.

The master has authority to displace the mate and all subordinate officers during the voyage, being responsible for an abuse of his authority.—Burton v. Salter, Case No. 2,218.

The power of the master to disrate an officer or seaman is remedial, and not penal, and does not authorize degradation to the lowest place, if there be an intermediate place which the man is probably competent to fill.—Smith v. Jordan, Case No. 13,068.

A master may discharge or degrade a steward for embezzlement.—Black v. The Louisiana, Case No. 1,461.

Dishonesty or intemperate habits are sufficient causes for degrading a steward, and putting him before the mast.—Sherwood v. McIntosh, Case No. 12,778; Black v. The Louisiana, Id. 1,461.

Seamen may be disrated for incapacity.—The Alonzo, Case No. 258; The Australia, Id. 667; The Exchange, Id. 4,594; Mitchell v. The Orozimbo, Id. 9,667; Sherwood v. McIntosh, Id. 12,778.

The decision of a master degrading a cook for incompetency or misconduct will, in ordinary cases, be considered as final.—The Elizabeth Frith, Case No. 4,361.

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.—Wood v. The North, Case No. 17,960.

A mate who, during his watch, turns in and leaves the vessel without an officer in command, may be disrated.—Setzer v. The Sylvia De Grasse, Case No. 12,676.

(D) EXTRA WAGES.

§ 93. Discharge in foreign port.

The payment of three months' wages under Act Feb. 28, 1803, is confined to cases of the voluntary discharge of seamen in a foreign port.—Pool v. Welsh, Case No. 11,269.

The three months' wages (Act 1803) are recoverable on a discharge in a foreign port, whether made at the termination of the seaman's agreement or before such termination.—Dustin v. Murray, Case No. 4,201.

Where an American seaman is discharged by the master in a foreign port, he may recover, in a libel for wages, the three months' advance authorized by Act 1803, c. 62, if the same be not paid to the consul abroad, to be distributed according to the act.—Orne v. Townsend, Case No. 10,583.

It is no objection to the recovery of the three months' advance that the name of the seaman is omitted as an American citizen in the list of the crew, certified from the collector's office, under Act 1796, c. 36, § 4, if he is named as an American citizen on the master's list of the crew.—Orne v. Townsend, Case No. 10,583.

Where a seaman leaves a vessel under permission of the mate, it is a discharge, and, if in a foreign port, he is entitled to three months' extra wages.—The Caroline E. Kelly, Case No. 2,422.

Coercing seaman into remaining on board a vessel sold to a foreign government is equivalent to a discharge, entitling them to the three months' wages given under Act 1803 on a discharge abroad.—Dustin v. Murray, Case No. 4,201.

But where seamen voluntarily enter the service of a foreign government on the sale of the vessel to such government, they are not entitled, on a subsequent discharge, to the three months' wages.—Dustin v. Murray, Case No. 4,201.

Seamen, in whaling service, discharged abroad, are entitled to benefit of statute giving three months' extra wages.—Bates v. Seabury, Case No. 1,104.

Where they are discharged in a foreign port, they are entitled to the two months' wages (Act Feb. 28, 1803, c. 62), and may recover the same in admiralty.—The Saratoga, Case No. 12,355.

Seamen are not entitled to the two months' extra wages as having been discharged abroad, where they are actually returned to the port of shipment, and their wages and expenses paid in full to the date of their return.—Rogers v. Lewis, Case No. 12,014.

A seaman, shipping at Maine and discharged in New Orleans, at his own request, is not entitled to wages for the entire voyage, or to extra wages, as for a discharge in a foreign port. Act 1803, c. 9, § 3.—Brown v. Hartley, Case No. 2,009a.

Nor is the consent of a consul or a commercial agent necessary to render his discharge valid. —Brown v. Hartley, Case No. 2,009a.

The disturbed condition of the country to which a vessel is bound, existing some time before the vessel sailed, is no excuse for breaking up the voyage; and where the vessel is intercepted en route, and directed to discharge the crew, the seamen are entitled to extra wages and their discharge.—Campbell v. The Uncle Sam, Case No. 2,372.

Extra wages allowed seamen who left the ship in a foreign port with the connivance of the master, where a discharge was refused by both master and consul.—The Hermon, Case No. 6,411.

Where a seaman is discharged with three months' extra pay (5 Stat. 396), one-third of such pay goes to the United States.—Coffin v. Weld, Case No. 2,953; Pool v. Welsh, Id. 11,269.

The owner is liable for the two months' wages under Act July 20, 1840, on a discharge by the United States consul in a foreign port without payment of three months' wages or an official entry upon the list of the crew and the shipping articles.—Miner v. Harbeck, Case No. 9,629.

The consul alone has power to remit the extra wages allowed seamen on discharge ordered by him in foreign port, where voyage is voluntarily broken up.—Campbell v. The Uncle Sam, Case No. 2,371.

On a libel for wages the court will enforce the payment of the three months' wages given by Act 1803, where the seaman was discharged abroad.—Emerson v. Howland, Case No. 4,441.

Where an American vessel is condemned as unseaworthy, and voluntarily sold in a foreign port on that account, seamen are entitled to two months' extra wages, under Act Feb. 28, 1803, § 3.—Wells v. Meldrun, Case No. 17,402.

The two months' extra wages, and the expense of returning home, are not allowed the crew of a vessel condemned in a foreign port as unfit for service, where she was seaworthy when she sailed.—Hoffman v. Yarrington, Case No. 6,580; The Rupee, Id. 12,140.

But where the unseaworthiness existed at the inception of the voyage they may recover, under Rev. St. §§ 4582, 4583, from the owners three

months' extra pay.—The Wenonah, Case No. 17,412.

A vessel abandoned to the underwriters on report of surveyors that she be condemned as unseaworthy is "condemned as unfit for service," under Rev. St. § 4582, relieving the vessel from liability for the three months' extra wages where seamen are discharged abroad.—Gallagher v. Murray, Case No. 5,193.

Extra wages (Act 1803, c. 62) are not allowed on a discharge abroad on shipwreck, unless the vessel can be repaired at a reasonable expense and in a reasonable time, the burden of negativing which is upon the owners.—The Dawn, Case No. 3,665.

Seamen are not entitled to the two-months wages allowed by law, where the vessel is abandoned to the insurers in a port of necessity, where it would cost more than half her value to repair her.—Henop v. Tucker, Case No. 6,-368.

Seamen are entitled to three months' extra wages where the vessel is cast away by the master. Rev. St. §§ 4526, 4582, 4583.—Brown v. Chandler, Case No. 1,998.

Where the loss is without the owner's privity, he is liable only to the extent of the proceeds of the vessel, after payment of wages to the termination of the voyage.—Brown v. Chandler, Case No. 1,998.

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.—Woolf v. The Oder, Case No. 18,027.

A sale of a vessel on a decree for advances in an intermediate port is a prevention from continuing the voyage by "higher power," within the Hamburgh law entitling seamen to a free passage home, or extra pay.—The Blohm, Case No. 1,556.

§ 94. Extra services.
Compensation may be allowed for extra services carrying a higher rate of wages than those agreed to be rendered.—The Exchange, Case No. 4,594.

The measure of compensation is the difference between the two rates of wages for the time employed in the extra services.—The Exchange, Case No. 4,594.

Seamen shipped for an undefined voyage, the actual voyage intended being concealed, *held* entitled to extra compensation for labor in loading guano.—The Brookline, Case No. 1,937.

The master's agreement to pay extra compensation *held* binding upon the master and owners, but not upon the seamen.—The Brookline, Case No. 1,937.

A seaman who was engaged as a cook on a foreign voyage, and who performed extra services as stevedore, may recover for the extra services.—The Charles F. Perry, Case No. 2,616.

A seaman shipping "by the run," or "by the voyage," is entitled to subsistence from the vessel while detained in an intermediate port by stress of weather, but he is not entitled to extra compensation.—Miller v. Kelly, Case No. 9,577.

For services rendered for the purpose of saving the ship in case of shipwreck, the seaman may be allowed extra compensation.—The Dawn, Case No. 3,666.

But an extra award to seamen for such services may be allowed against the cargo as well as against the ship.—The Dawn, Case No. 3,-666.

§ 95. Insufficient provisions.
Damages in the form of additional wages will be given where the crew is put on short allowance without necessity.—The John L. Dimmick, Case No. 7,355.

Double wages are given under Act July 20, 1790, § 9, if there is a shortage in any one of the three articles named therein.—The Mary, Case No. 9,191; The Mary Paulina, Id. 9,224.

The penalty of extra wages for short allowance of provisions does not accrue unless the vessel was not provisioned as the act requires, and the crew were actually put on short allowance.—The Elizabeth v. Rickers, Case No. 4,-353; Ferrara v. The Talent, Id. 4,745; The Childe Harold, Id. 2,676; The John L. Dimmick, Id. 7,355.

An accidental or unintentional deficiency in the allowance to the crew will not subject the master or owner to the penalty.—The Elizabeth v. Rickers, Case No. 4,353.

Extra wages are allowed for a short allowance of bread, where an insufficient quantity was provided, though the immediate cause of the deficiency was the spoiling of part of it by a sea peril.—The Hermon, Case No. 6,411.

Where a vessel sails without the statute quantity of bread, and the crew are put upon a short allowance of bread, it is no defense to their claim for double wages that flour was furnished as a substitute.—Foster v. Sampson, Case No. 4,982.

If less than the statutory quantity of all three articles (water, meat, and bread) be provided, and there be a short allowance of all, triple wages are given for each day.—Collins v. Wheeler, Case No. 3,018.

The recovery of such penalty does not necessarily preclude the seaman from recovering damages, also, for a deficiency of other provisions.—Collins v. Wheeler, Case No. 3,018; Foster v. Sampson, Id. 4,982.

One-third additional wages *held* sufficient compensation where there was a deficiency in but one of the specified articles.—Coleman v. The Harriet, Case No. 2,982.

A mate who had supplies on board, which were used for the necessary support of himself and crew, was allowed to recover the amount used by himself as enhanced wages, and the balance out of the surplus in court.—The Rodney, Case No. 11,993.

Seamen in a fishing adventure are entitled to compensation for the neglect of the master in procuring salt, resulting in breaking up the voyage before the close of the season.—The Page, Case No. 10,660.

(E) DEDUCTIONS AND OFFSETS.

§ 96. Debts due from seamen to master or owner.
Where a debt of a seaman to the master or owner did not arise out of or was not connected with his employment, it cannot be allowed against his claim for wages.—The Hudson, Case No. 6,831.

An agreement by a pilot purchasing a share in a vessel that the co-owners shall retain yearly out of his wages such sum as he is able to spare until the balance of the purchase money is paid gives them no authority to apply his wages without his direction.—Somers v. The Jersey Blue, Case No. 13,169.

§ 97. Payment on account.
No set-off allowed on libel for wages, except a payment on account.—Bains v. The James and Catherine, Case No. 756.

§ 98. Contribution among seamen.
If any part of the cargo be missing, all the seamen contribute to make it good, unless the guilt can be placed.—Frederick v. The Fanny, Case No. 5,077; Fogerty v. Pratt, Id. 4,896.

Although part of the embezzlement is fixed on, and paid by some of the crew, yet all are to contribute to the residue, master, officers, and

absent sailors joining in the contribution.—Crammer v. The Fair American, Case No. 3,347.

A slave entered as a seaman, and escaped from the vessel, will not occasion a deduction from the wages of the rest by contribution.—Carey v. The Kitty, Case No. 2,402.

An innocent seaman need not contribute to a loss by reason of embezzlement by other seamen.—Edwards v. Sherman, Case No. 4,298.

All of seamen *held* liable to contribution for embezzlements, although there was no reason to impute to them any participation in the act. —Bradish v. The Friendship, Case No. 1,771.

The net proceeds of the ship and cargo, at the port of discharge, and not the invoice cost of the cargo, with the wages of all the persons belonging to the ship, must contribute to the ransom.—Girard v. Ware, Case No. 5,460.

Seamen must contribute in the ratio of wages. —Fogerty v. Pratt, Case No. 4,896.

§ 99. Absence from service.
Under 7 & 8 Vict. c. 112, § 7, there can be no deductions for absences admitted by seamen, unless noted in log book.—The Ada, Case No. 38.

Seamen absent from a ship without any fault of their own, are nevertheless entitled to full wages.—Five Seamen v. The Fair American, Case No. 4,846.

Where the absence of a seaman without leave or justification caused no pecuniary loss to the master, a small deduction only from the wages was made.—Scott v. Rose, Case No. 12,545.

In the case of a special indulgence to a seaman, wages cannot be deducted for failure to render himself on board at the time appointed in the articles.—Thompson v. The Philadelphia, Case No. 13,973.

No abatement of wages will be made for occasional absence from the ship, if no objection is made thereto until the whole period of service has expired.—The Harvest, Case No. 6,175.

Deductions from wages may be made for voluntary and unfaithful absence from duty, even where the seamen are again accepted on their return to duty.—Whiteman v. The Neptune, Case No. 17,569.

A deduction is allowed to the amount of loss actually sustained by a vessel detained in port by the wrongful absence of a seaman.—Brown v. The Neptune, Case No. 2,022.

Where forfeiture by misconduct was found to be waived, *held*, that deduction should still be made for absence without leave, and for losses or expenses resulting from the misconduct.—Lang v. Holbrook, Case No. 8,057.

A deduction will not be made where, because of illness, the seaman left the vessel after the voyage was ended, but before the cargo was discharged.—Francis v. Bassett, Case No. 5,037.

A deduction of wages not allowed where seaman failed to stay by a fishing vessel until she was unloaded and cleaned, though such was the local usage, where the seamen were not asked to stay by the vessel.—The Olive Branch, Case No. 10,490.

The amount paid a seaman hired in place of another unjustifiably discharged in a foreign port cannot be deducted from his wages.—Johnson v. The Coriolanus, Case No. 7,380.

§ 100. Disobedience, misconduct, and insolence.
One-half of a month's wages was deducted for disobedience, and one month's wages deducted for insolence.—The Elizabeth Frith, Case No. 4,361.

Damages can be recovered for misconduct only when they are the direct and immediate results of the seaman's acts or omissions.—Macomber v. Thompson, Case No. 8,919.

A master who commences a dispute with a seaman by illegal and improper behavior risks the consequences.—Thorne v. White, Case No. 13,989.

Where the owners have not been injured by misconduct of a seaman, and he has been sufficiently punished therefor by imprisonment, a deduction will not be made.—The Olive Chamberlain, Case No. 10,491.

Where the only defense set up to a libel for wages is desertion, a sum less than that due will not be awarded because of misconduct not amounting to desertion.—The Cadmus, Case No. 2,280.

The master of the vessel is bound to see that the loss from the misconduct of seamen is made as small as possible.—The Wm. Cummings, Case No. 17,690.

§ 101. Losses or injuries caused by wrongful act of seamen in general.
Allowances may be made to the master or owner by rebatement of wages in compensation of losses or injuries caused by negligence or fault of the seaman in the performance of his duties. —The Hudson, Case No. 6,831; Thorne v. White, Id. 13,989; Brown v. The Neptune, Id. 2,022.

§ 102. Sickness by fault of seamen.
A seaman, during illness occasioned by his own fault, is not entitled to wages, and is liable for the expenses of his subsistence; but not for the wages paid another man in his place.—Johnson v. Huckins, Case No. 7,390.

In such case the seaman is not liable for the detention of a vessel for want of his services, where the master could have obtained a substitute.—Johnson v. Huckins, Case No. 7,390.

Hospital money is to be charged on unforfeited wages only pro rata in proportion to the whole voyage.—The Mentor, Case No. 9,428.

§ 103. Incompetency.
The measure of compensation for the services of a person who shipped as an able seaman, but was in fact only competent to perform the duties of a green hand, is not the wages of a green hand, but only what his services were actually worth to the owners.—Wheatley v. Hotchkiss, Case No. 17,483.

§ 104. Embezzlement.
The value of portions of the cargo embezzled by the fraud or negligence of a seaman may be deducted from his wages.—Edwards v. Sherman, Case No. 4,298.

Cook *held* not guilty of embezzlement in selling the ship's slush, the evidence showing an agreement with the master for such privilege.—Parker v. The Calliope, Case No. 10,729.

§ 105. Negligence.
A mate of a vessel, through whose negligence in taking account of cargo a loss to the owner has resulted, is liable therefor.—The Tusker, Case No. 14,274.

But the mate is not liable where the master voluntarily pays to the consignee the difference between the amount of goods actually received on board and that receipted for by mistake by the mate, and for which a bill of lading is given. —The Tusker, Case No. 14,274.

A mate cannot be charged with negligence in not keeping a proper account of goods taken on board, when he was ordered on other duty by the master during the loading of the vessel.—Scharlock v. The Globe, Case No. 12,439.

A mate cannot be charged on the ground of negligence with the difference between the amount of goods landed and that shown on the invoice, unless such amounts are clearly shown. —Scharlock v. The Globe, Case No. 12,439.

The vessel owner cannot retain wages as a contribution for injuries from a collision, alleged

to have been caused by the seamen's negligence, until after their legal liability is established.—Mariners v. The Washington, Case No. 9,086.

§ 106. Assault.
The wrongful assault by a mate on one of the seamen on the voyage, to the damage of the ship, may be set off against his claim for wages, though the deduction is not entered in the log nor claimed in the statement made to the shipping master.—The T. F. Whiton, Case No. 13,-849.

§ 107. Expenses upon arrest or imprisonment.
Cost of commitment and support, and the charge for a person necessarily employed in the imprisoned seaman's place, may be deducted.—Brower v. The Maiden, Case No. 1,970; Magee v. The Moss, Id. 8,944; Pierce v. Patton, Id. 11,145.

Where seamen were imprisoned in a foreign jail by order of the American consul, and there was no evidence of bad faith, the men must pay the charges of the imprisonment and the expense of substitutes, but not the charges of the consul.—Chester v. Benner, Case No. 2,660.

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.—Wilson v. The Mary, Case No. 17,823.

A master punishing the misconduct of a seaman by imprisonment cannot deduct from his wages the prison expenses.—The Nimrod, Case No. 10,267.

Seamen not liable for board while unjustly detained in foreign jail by master.—Anonymous, Case No. 473.

A master who, by the authority of his crew, paid their debts, for which he was arrested, may deduct the amounts from their wages, but not the costs incident to the arrest.—The Coldstream, Case No. 2,972.

The police costs and charges incurred by a seaman for improper conduct while on shore, as well as wages paid another to take his place, are to be deducted from his wages.—Snell v. The Independence, Case No. 13,139.

§ 108. Expense of watch of vessel.
A custom of having a watch on vessels in foreign ports at the expense of the sailors will not be sanctioned without strong proof.—Chatfield v. The Wolga, Case No. 2,632.

§ 109. Expense of survey.
When the crew insist on a survey of the vessel, alleging that she is unseaworthy, if there be reasonable cause for a survey, the owners cannot charge the expense to the seamen.—The William Harris, Case No. 17,695.

§ 110. Release of claim for deduction.
Agreement to proceed on voyage beyond terms of shipment, good consideration for release of claims for deduction from wages.—The Ada, Case No. 38.

(F) WHO ARE LIABLE.

§ 111. In general.
Seamen have a triple security for their wages,—the vessel, the owner, and the master.—Bronde v. Haven, Case No. 1,924.

§ 112. Owners of vessel.
The owners of a vessel are liable for wages if the vessel prove insufficient to pay them.—Carey v. The Kitty, Case No. 2,401.

Owners of fishing vessel *held* liable for the wages of the seamen to the extent of the proceeds of the sale of the wreck, though the vessel was hired by the master for the season, and he had undertaken to pay the wages.—Flaherty v. Doane, Case No. 4,849.

The owner of a vessel, although his name is not stated in the shipping articles, and although he sells the vessel subsequent to their execution, is liable for seamen's wages.—Bronde v. Haven, Case No. 1,924.

The owners are liable for the wages of a seaman employed by the master after he had a full complement.—Luscom v. Osgood, Case No. 8,-608.

Where the vessel is let to the master for a portion of her earnings, and he is to have entire control, and to victual, man, and furnish her, the owners are still liable for wages, unless the contract is known to the seamen at the time of shipping.—Skolfield v. Potter, Case No. 12,-925.

In such case the money received by the owners is freight, and they are liable for wages, as having an interest in the freight.—Skolfield v. Potter, Case No. 12,925.

§ 113. Mortgagee.
A mortgagee in possession is liable for the mate's wages.—The Bramen, Case No. 1,805.

§ 114. Vessel.
A vessel is exempt from liability for wages of seamen who hire with knowledge that she is chartered by the master on condition that he victual and man her, and divide the earnings with the owner.—Devoe v. The Fashion, Case No. 3,844.

Where the owner of a wrecked vessel takes the business of salvage out of the hands of the seamen, and furnishes them no subsistence, they may recover wages from the remnants.—The Massasoit, Case No. 9,260.

A vessel illegally seized by an American consul in a foreign port, and sent home, is liable for wages of the crew and pilotage.—The Maria Theresa, Case No. 9,082.

(G) PAYMENT, RECEIPT, AND RELEASE.

See, also, ante, § 13.

§ 115. When wages are payable.
The wages are not payable until the expiration of the period allowed for collecting the freight.—Swift v. The Happy Return, Case No. 13,697.

§ 116. In whose presence and to whom payment must be made.
Payment to the consul of the balance of wages due discharged seaman is not a payment to the seaman.—Jones v. Sears, Case No. 7,494.

The payment to the consul of the extra wages required by law, on the condemnation and sale abroad of an injured vessel, discharges the owner's liability, though the seamen refused to receive it.—Drew v. Pope, Case No. 4,080.

Payment to a sailor need not be made in the presence of the shipping commissioner. Rev. St. §§ 4504, 4549.—The Brothers, Case No. 1,-968.

§ 117. Furnishing accounts to seamen.
Act June 7, 1872, § 23, which requires the master to furnish to seamen or to the commissioner an account of wages and deductions to be made therefrom 48 hours before paying off, does not apply to the case of a seaman forfeiting his wages by desertion, which is provided for by section 55.—Stevenson v. Hare, Case No. 13,416.

§ 118. Foreign money and valuation thereof.
Foreign coin paid seamen on their discharge abroad is to be valued at its rate in the home port, under the laws of the United States; otherwise, where payment is a voluntary advance.—The Cabot, Case No. 2,277.

In the case of wages payable in dollars and cents, *held* that the seamen were entitled to a sum in United States currency that would make the payment equal to specie.—The Rochambeau, Case No. 11,973.

The wages of seamen shipped at Valparaiso, on board a Chilian vessel, for a voyage to Boston and return, should be reckoned in money of the United States, where the contract was for so many dollars, payable here.—The Quintero, Case No. 11,517.

The amount decreed to seamen shipped at Hamburgh for a return voyage, which was broken up at New York, is the amount of their wages in Hamburgh money reduced to United States coined dollars, without adding anything for the premium on gold.—The Blohm, Case No. 1,556.

§ 119. Payment of advance wages.

A draft for advanced wages drawn by the master on the owner, and discounted by a third person, under Rev. St. §§ 4533, 4534, is enforceable in admiralty against the owner without acceptance by him.—Smith v. Pendergast, Case No. 13,090a.

Where the condition of advance security is not performed because the seamen were voluntarily discharged by the master before the time of the performance, the owner is still liable thereon.—Smith v. Pendergast, Case No. 13,090a.

§ 120. Receipts and releases.

It is improper to require of a seaman a receipt in full of all claims, as a condition of the payment of his wages.—The Commerce, Case No. 3,054; Whitney v. Eager, Id. 17,584.

A receipt by a seaman in full of all demands is no bar to a claim for which he has not received compensation.—The David Pratt, Case No. 3,597; The Galloway C. Morris, Id. 5,204; Harden v. Gordon, Id. 6,047; Jackson v. White, Id. 7,151; Leak v. Isaacson, Id. 8,160; The Mary Paulina, Id. 9,224; The Galloway C. Morris, Id. 5,204; Piehl v. Balchen, Id. 11,137; The Rajah, Id. 11,538; The Ringleader, Id. 11,850.

A receipt for less than the amount due will not be set aside where the legal rights of the party were doubtful, honestly contested, and opportunity given him to satisfy himself in relation thereto.—Thompson v. Faussat, Case No. 13,954.

Contracts with seamen, upon a discharge before completion of voyage, concerning wages already earned, will be set aside or disregarded by courts of admiralty, if inequitable.—The Hermine, Case No. 6,409.

An agreement by a needy mariner in a foreign port to take one-third of the amount of wages due in full payment is a nudum pactum.—Savin v. The Juno, Case No. 12,390.

A settlement deliberately made by a seaman with the advice of his proctor will not be opened.—The Hermon, Case No. 6,411.

Receipts procured by improper conduct, imposing on seamen, or deceiving, overawing, or misleading them, will be disregarded, but when given with due deliberation and full explanation of circumstances will not be set aside on light grounds.—Whiteman v. The Neptune, Case No. 17,569.

The father, whose name was used as prochein ami, in a suit by a minor for wages, secretly settled the same, giving a receipt in full. *Held*, that the receipt should be set aside, and full wages decreed the minor.—The Etna, Case No. 4,542.

§ 121. Exchange.

Upon the payment of extra wages in a foreign port, the master has no right to deduct, from the amount due, a charge for exchange.—Drew v. Pope, Case No. 4,080.

(H) LIEN.

Priority of lien for wages, see "Maritime Liens," § 52.

§ 122. Who entitled to lien.

Contract by master for wages of himself and son *held* severable, and son to have a lien for his wages.—The Benjamin English, Case No. 1,306.

The mate and cook of a porgy steamer, employed for the fishing season at stipulated wages, have a lien upon the vessel therefor.—The Helen M. Pierce, Case No. 6,332.

A minor employed on such steamer by the master, at all work, has a lien for his wages, even though the owner is authorized by the sharesmen to retain from their shares his wages.—The Helen M. Pierce, Case No. 6,332.

Seamen shipped by direction of one claiming to be the master, *held* to have no lien, where the voyage was never performed, and there was no evidence of the alleged master's authority.—Gilligan v. The Winged Racer, Case No. 5,439.

The seamen's lien for wages does not pass to a shipping agent by reason of advances made to the seamen at the home port.—Seaver v. The Thales, Case No. 12,594.

A part owner who pays the wages of seamen may be subrogated to the rank of the seamen as against the mortgagee of the share of another part owner.—The J. A. Brown, Case No. 7,118.

Fishermen who ship without a written agreement are not within Act June 19, 1813, c. 9.—The Ianthe, Case No. 6,992.

§ 123. For what services lien attaches.

A mariner's services will be deemed maritime if substantially performed on waters within the ebb or flow of the tide.—The D. C. Salisbury, Case No. 3,694.

A mariner has a lien for wages on a sail vessel engaged in transportation on the tide waters of the Hudson river within the territory of the state.—The Bolivar, Case No. 1,610; Pierce v. The Victory, Id. 11,149a.

A maritime lien arises for services as a mariner on board a vessel having no propelling power, and towed between Philadelphia and New York upon tide waters.—The D. C. Salisbury, Case No. 3,694.

Where a contract of service is for the navigation of tide waters, and laying stone on wharves is incidental thereto, the whole service is maritime.—The Canton, Case No. 2,388.

Persons employed to load and navigate a vessel plying principally for the transportation of stone, and licensed for the coasting trade, have a lien for wages.—The Canton, Case No. 2,388; The Mary, Id. 9,190. But see Packard v. The Louisa, Case No. 10,652.

Incidental condition of contract to work on shore does not deprive seamen of lien.—The Artisan, Case No. 568.

A contract to work at a certain rate per month in port in putting in machinery will not give the person a lien for wages as a seaman.—Walter v. The Kamchatker, Case No. 17,119.

Seamen engaged to serve on a ship for a voyage have a lien for wages while she is getting ready, though she never left the port.—The Blohm, Case No. 1,556; The Island City, Id. 7,109; Levering v. The Bank of Columbia, Id. 8,286.

But where the prosecution of the voyage is abandoned, and he remains on board to take care of the ship, his wages which accrue after such abandonment are not a lien on the ship.—

Levering v. The Bank of Columbia, Case No. 8,286.

And the wages of a seaman on board a vessel in port, who was hired to take care of her while in port, are not a lien.—Levering v. Bank of Columbia, Case No. 8,287.

The seaman has no lien on the vessel for wages while she is moored at the wharf, where he has been paid up to the termination of the voyage.—Phillips v. The Thomas Scattergood, Case No. 11,106.

The mate and engineer of an enrolled steamer employed in towing vessels in Boston harbor have a lien for their wages.—The May Queen, Case No. 9,360.

Wages on an illegal voyage are no lien.—The Langdon Cheves, Case No. 8,063.

§ 124. Property subject to lien in general.

Seamen have a lien on freight for wages.—The Bowditch, Case No. 1,717; Poland v. The Spartan, Id. 11,246.

And such lien is not taken away by the statute allowing process against the vessel.—Poland v. The Spartan, Case No. 11,246.

The right of seamen or bottomry lenders to a lien on freight cannot be affected by a condition making the freight dependent on other than the safe delivery of the cargo.—The Erie, Case No. 4,512.

Where the charterer is to victual and man the vessel, seamen have a lien for wages on cargo shipped by him, superior to all other creditors.—Poland v. The Spartan, Case No. 11,246.

The lien for wages attaches to the ship and freight, and their proceeds, into whosesoever hands they may come, and takes priority of all other claims.—Brown v. Lull, Case No. 2,018.

Where charterer of vessel is also owner of cargo, the freight, subject to the seamen's lien for wages, is the fair value of the transportation of the cargo.—The Clayton, Case No. 2,870.

Seamen on a fishing voyage have a lien on the fish for their wages; and, where the shipowner becomes bankrupt, this lien follows the proceeds of the fish into the hands of his assignees.—In re Low, Case No. 8,558.

Where a portion of a vessel or cargo is saved by extraordinary exertions of seamen, a new lien arises thereon for wages, though freight was lost.—Adams v. The Sophia, Case No. 65; The Bowditch, Id. 1,717; Brackett v. The Hercules, Id. 1,762.

The crew of a vessel abandoned at sea have a lien on her, in the hands of salvors, for wages to the last port of delivery before abandonment, where they were shipped for an indefinite period.—Smith v. The Joseph Stewart, Case No. 13,070.

Seamen have lien on vessel, notwithstanding charter party bound charterers to pay crew.—The Artisan, Case No. 568.

Such lien extends to her boiler, though the seamen knew that the makers who put it in were to retain title until paid, with a right to remove it on any default.—The May Queen, Case No. 9,360.

§ 125. Sale, pledge, or attachment of vessel or freight.

Lien for wages not destroyed by sale of vessel during seizure by customs officers.—Anderson v. The Solon, Case No. 363.

Where a vessel was sold on condition, and possession delivered, and one of the purchasers, after default, sold his interest to his partner, and engaged as mate, *held*, that he had no lien for wages as against a subsequent vendee of the owner.—The Mary Elizabeth, Case No. 9,206.

A lien for wages is discharged by a sale on execution against the owners, of which the seaman is one. Reversing page 569. Foster v. The Pilot No. 2, Case No. 4,980, reversed.—Gallatin v. The Pilot, Case No. 5,199.

A sheriff's sale of a steamboat will not discharge the lien for seaman's wages of the owner's minor son, who for two years had been permitted to receive his own wages, and control his own actions.—McGinnis v. The Grand Turk, Case No. 8,800.

The lien is not defeated by a previous attachment of the vessel, at common law, in a state court, abandoned before the filing of the libel.—The Highlander, Case No. 6,476.

The pledge of freight to a third person cannot displace the seamen's lien for wages.—The Monadnock, Case No. 9,704.

§ 126. Wreck of vessel.

The lien for wages continues after the wreck of the vessel, subject to salvors' liens.—Collins v. The Fort Wayne, Case No. 3,012.

§ 127. Change of master.

The lien of the crew for wages cannot be affected by the assumption of a third person as master by consent of the owner.—The Monadnock, Case No. 9,704.

The death of the owner, who was also master, will not affect the seaman's lien on the vessel.—The Fanny Gardner, Case No. 4,642.

§ 128. Vessel sailed on shares by master.

A vessel being sailed by the master on shares does not affect the lien of the seamen.—The Canton, Case No. 2,388; The Montauk, Id. 9,717.

But a seaman hired by master with knowledge that the vessel is run on shares, and belief that it is not liable for his wages, has no lien.—Bickner v. The William D., Case No. 1,390.

An agreement of the charterer, with the owner, to pay the seamen's wages, will not bar their lien, where they contracted with the master.—Hart v. The Enterprise, Case No. 6,151.

§ 129. Priorities as to voyage.

The wages of the last voyage of a vessel have precedence of all earlier charges.—The J. A. Brown, Case No. 7,118.

Priorities between seamen's liens and other liens, see "Maritime Liens," § 52.

§ 130. Enforcement of lien.

There is no rule prescribing the time for proceedings to enforce the lien for wages.—The Mary, Case No. 9,186.

The lien for wages is not lost by delay where no interests of third persons intervene.—The Canton, Case No. 2,388.

Where there has been no change of ownership in a vessel, forbearance by a seaman to enforce his lien for wages until after 21 months' continuous service does not render his claim stale.—The Galloway C. Morris, Case No. 5,204.

The fact that a vessel has made several voyages since the contract was terminated will not discharge the lien where the seaman exerted himself to follow the vessel, and commenced suit at the earliest moment.—Freeman v. The Jane, Case No. 5,086.

A tacit lien is lost or will be deemed waived by unreasonable delay in enforcing it, where the vessel has passed to a bona fide purchaser.—The Bolivar, Case No. 1,609.

A lien may be enforced against the vessel in the hands of a bona fide purchaser if the seaman pursues his claim at the first opportunity after his debt has accrued.—The Bolivar, Case No. 1,610.

Forbearance by seamen to libel their vessel at a port where they are discharged before the end of the voyage is not a waiver of their lien as

against a subsequent bona fide purchaser.—The Mary, Case No. 9,186.

The lien for wages will not be enforced, as against a bona fide purchaser, where the libel was delayed for many months, and the vessel was repeatedly in port, and her owner had advertised for claims against her.—Herbert v. The Amanda F. Myrick, Case No. 6,395.

A seaman's lien for wages will not be enforced in admiralty, as against a bona fide purchaser, after the lapse of two seasons.—The Harriet Ann, Case No. 6,101.

Lien lost by unexplained delay of four years, where rights of bona fide purchasers intervened. —The Artisan, Case No. 567.

A lien of a seaman for wages on a vessel on the Hudson river *held* not enforceable after a year from the sale of a vessel to a bona fide purchaser without notice.—The Bolivar, Case No. 1,609.

Vessel employed in carrying and laying stone in Quincy river and Massachusetts Bay, chartered by the master with the knowledge of a person employed thereon for general duties, *held* not liable to him for wages, especially after a delay of three years and change of ownership.—Packard v. The Louisa, Case No. 10,652.

A claim for wages not set up until after the vessel has been sold on proceedings to enforce a lien for supplies must be supported by clear evidence.—The Searle W. Jacobs, Case No. 12,588.

The lien for wages cannot be enforced on freight money paid to the master before notice of the claim.—Conley v. The G. C. Barras, Case No. 3,103.

The lien cannot be enforced against freight not sought to be charged in the libel.—Conley v. The G. C. Barras, Case No. 3,103.

Seamen have a paramount lien upon the freight money of the voyage, which is to be administered by a court of admiralty by the service of its attachment upon the freight moneys in the hands of the parties wherever it is found.—The Sailor Prince, Case No. 12,218.

§ 131. Waiver or discharge.
A mariner's lien will not be considered as waived by anything less than an express contract.—The Gate City, Case No. 5,267.

By the law maritime, a mariner, by an agreement understandingly made in a proper case, may waive his lien.—The Countess of Dufferin, Case No. 3,280; The Highlander, Id. 6,476.

The seaman's lien for wages is lost by an assignment of his claim.—Logan v. The Aeolian, Case No. 8,465; Patchin v. The A. D. Patchin, Id. 10,794.

The taking by a mate of an agreement from the master to share the profits in place of interest on money loaned will not prevent a lien for wages.—The Blohm, Case No. 1,556.

The lien on the vessel is lost where seamen, with knowledge of a libel filed by other members of the crew, failed to apply for their wages.—Trump v. The Thomas, Case No. 14,206.

Negotiable note given for wages will not extinguish lien unless accompanied by additional security as compensation for renouncing lien.—The Betsy v. Rhoda, Case No. 1,366.

Acceptance of nonnegotiable note of master, on giving a receipt for wages, and putting the note in suit, do not waive the lien.—The Harriet, Case No. 6,098.

The lien for wages is not lost by taking the owner's time note in settlement, where the circumstances rebut the presumption of payment. —The Helen M. Pierce, Case No. 6,332.

The taking of such note operates as an extension of time of payment.—The Helen M. Pierce, Case No. 6,332.

A seaman's lien is not waived by receiving notes on settling attachment proceedings under state law, where they afterwards become worthless.—The Gate City, Case No. 5,267.

Lien will be held to have been waived by taking note from master, and nine months' delay. —The Bambard, Case No. 831.

The seaman does not lose his lien on the vessel by taking an order on the owner or charterer for the balance due at the close of the voyage. —The Eastern Star, Case No. 4,254.

Rev. St. § 4535, providing that no seaman shall be deprived of any remedy for the recovery of his wages by a provision inconsistent with the statute, is inapplicable to shipping articles made in a foreign port relating to a foreign vessel.—The Countess of Dufferin, Case No. 3,280.

(I) ACTIONS AND SUMMARY PROCEEDINGS.

Joinder of libels for wages, see "Admiralty," § 53.

§ 132. Who may sue.
A mate may sue for wages the same as a seaman.—Atkyns v. Burrows, Case No. 618.

A mate, succeeding to the command of the ship upon the death of the master, does not thereby lose his character as mate, but may sue in the admiralty for his wages.—The George, Case No. 5,329.

A mate who takes command on the death of the master is entitled to maintain a libel for the entire voyage at his contract price as mate.—The Fanny Gardner, Case No. 4,642.

A mate who, upon the decease of the master, succeeds to his command, cannot sue in rem for the extra compensation he thus becomes entitled to as acting master.—The Leonidas, Case No. 8,262.

A seaman, though at the time of service a part owner of the vessel, is not thereby precluded from libeling for wages.—Foster v. The Pilot No. 2, Case No. 4,980.

A minor may recover his wages as seaman upon a libel promoted by his father as prochein ami, where the father has agreed that the son may receive his own wages.—The Grace Darling, Case No. 5,651.

Seamen on board a vessel sailing under letters of marque are entitled to the remedies of seamen in the merchant service, and may sue for wages in a neutral port.—Ellison v. The Bellona, Case No. 4,407.

Right of assignee of claim for wages to sue in admiralty, see "Admiralty," § 52.
Suits by infant seamen, see "Admiralty," § 50.

§ 133. When suit may be brought.
The right to resort to the vessel for wages is not consummated until the legal dissolution of the seaman's connection with the vessel.—The Cypress, Case No. 3,530; Jelly v. Tiddeman, Id. 7,256a; The Swallow, Id. 13,664; The Warrington, Id. 17,208.

The voyage is not completed until the unlading of the cargo or ballast.—The Eagle, Case No. 4,233.

Fifteen days may be allowed for the discharge of the cargo and payment of wages.—Edwards v. The Susan, Case No. 4,299; The Martha, Id. 9,144.

A discharge, actual or constructive, entitles the seaman to sue for wages at once.—The Cabot, Case No. 2,277; The Cadmus, Id. 2,280; The Cadmus v. Matthews, Id. 2,282; Collins v. Nickerson, Id. 3,016; The David Faust, Id. 3,595; Freeman v. Baker, Id. 5,084.

A stipulation that seamen shall not sue for wages until the vessel is unladen, if fairly made, is binding upon them.—Granon v. Hartshorne, Case No. 5,689.

An action for wages earned on a previous voyage may be instituted before the vessel is discharged of her cargo at the return port.—The Edward, Case No. 4,289.

Under Act 1790 a libel in rem for wages, brought within 10 days after discharge of cargo at the last port of delivery, will be dismissed as premature.—The David Faust, Case No. 3,595.

The statute which precludes process against the vessel until 10 days after the discharge of the cargo (Act 1790, c. 29, § 6) does not affect his right to proceed in personam.—The Commerce, Case No. 3,054; Francis v. Bassett, Id. 5,037; Freeman v. Baker, Id. 5,084; The Susan, Id. 13,631; The William Jarvis, Id. 17,697.

When the 10 days commenced to run, after which seamen may sue for wages.—Holmes v. Bradshaw, Case No. 6,635.

A seaman cannot sue in rem for wages in the port of delivery until 10 days after the cargo is discharged, unless the vessel is about to proceed to sea. Act July 20, 1790, c. 29, § 6.—The Cypress, Case No. 3,530; The Trial, Id. 14,170; The William Jarvis, Id. 17,697.

The seaman cannot sue until 10 days after the discharge of the cargo have elapsed, unless there be a dispute as to the wages. Act July 20, 1790.—The Eagle, Case No. 4,233; The William Jarvis, Id. 17,697.

A demand of wages, and a refusal by the owner to pay till after 10 days, do not constitute a dispute, within the statute, so as to authorize process in rem before the expiration of the 10 days.—The Commerce, Case No. 3,054.

The seaman may sue the vessel for his wages within the 10 days after the right to wages has accrued, where the vessel has departed from the port of her discharge, or is about to. Act 1790, c. 29, § 6.—The William Jarvis, Case No. 17,697.

Wages are due immediately on voluntary discharge, and if not paid within 10 days thereafter, the seamen may sue in rem.—The Mary, Case No. 9,191.

Wages are due when vessel is moored at final port of destination, and libel may be filed 10 days thereafter.—The Annie M. Smull, Case No. 423; Granon v. Hartshorne, Id. 5,689.

Seamen shipped for a voyage to "a port of discharge in the United States" cannot maintain a libel for wages after leaving the ship at a port of distress in the United States.—Fairchild v. The Aurelius, Case No. 4,609.

§ 134. Jurisdiction.

A seaman serving on a small vessel navigating the interior waters of the state should seek his remedy for wages in the local courts of the state if the owner is known to him and responsible.—The Bolivar, Case No. 1,609.

Jurisdiction of admiralty, see "Admiralty," § 6.

§ 135. Defenses.

An assignment by libelant, for bona fide consideration, of his claim for wages, is a good defense.—Bibbins v. The Citizen, Case No. 1,384a.

It is no defense to a suit to hold freight for mariner's wages that the consignee, before libels were filed, was summoned as a garnishee of the shipowner.—The Caroline, Case No. 2,419.

An objection that the suit is brought before the cargo is discharged is waived by appearing and contesting the claim on the merits.—The Edward, Case No. 4,289.

The 10 days' exemption from arrest of a ship, under Rev. St. §§ 4546, 4547, is waived by appearance, claim, and answer, without protest, after that time has elapsed.—The Grace Darling, Case No. 5,651.

In a libel in rem for wages, the defense of stale claim will not avail a purchaser who retains part of the purchase money, and defends in the interest of the vendor.—The Melissa, Case No. 9,400.

A libel for wages brought before the wages are due must be dismissed, if duly excepted to on that ground, though the right is perfected in the meantime.—The Martha, Case No. 9,144.

But a libel will not be dismissed where action brought prematurely becomes perfected before stipulations and answer of respondent are filed.—Granon v. Hartshorne, Case No. 5,689.

An allegation, in an answer to a libel by an engineer for wages, that claimant had sued libelant in another jurisdiction for damages for injuries to the boat, and had caused garnishee process to be served upon the master, is impertinent.—The Pioneer, Case No. 11,176.

§ 136. Limitations and laches.

The statute of Anne, limiting suits in the admiralty for seamen's wages to six years, is not a bar to such suit in the courts of the United States.—Willard v. Dorr, Case No. 17,679.

Although there is no statute of limitations barring prosecution of a suit in admiralty against a vessel for wages, yet courts of admiralty systematically refuse to enforce such liens, to the prejudice of a bona fide purchaser for value of the res, where the claim has become "stale."—The Harriet Ann, Case No. 6,101.

A claim for seamen's wages *held* not stale where the libel was not filed for 18 months after the services were performed, as against a purchaser who was told by the seller that the men on the boat had claims.—The Argo, Case No. 515.

A seaman cannot maintain an action in rem for wages on board a small sailing craft, plying on the Hudson river between Troy, Bristol, and the city of New York, if at all, after a year from the sale of the vessel to a bona fide purchaser, without notice of the outstanding wages, especially if the seaman was present and knowing of the sale.—The Bolivar, Case No. 1,609.

§ 137. Parties.

All the seamen suing in personam for wages earned on the same voyage need not unite in one action. Act June 20, 1790.—Collins v. Hathaway, Case No. 3,014; Nelson v. The Hercules, Id. 10,108.

Where the two-months wages are due, and have not been paid to the foreign consul, as provided by the act, the seamen may recover them in an action against the master in their own names.—Wells v. Meldrun, Case No. 17,402.

A minor may recover wages in his own name when the contract was made personally with him, and it does not appear that he has any parent, guardian, or tutor entitled to receive them.—The David Faust, Case No. 3,595.

§ 138. Pleading.

In a libel for seaman's wages, the allegations of the hiring, voyage, etc., must be drawn accurately and with reasonable certainty.—Orne v. Townsend, Case No. 10,583.

A complaint by a seaman under Rev. St. §§ 4546, 4547, must show that 10 days have elapsed after the wages were payable, or that a dispute has arisen between the master and seamen touching the same.—The Rockie E. Yates, Case No. 11,980a.

A libel for wages is sufficient if it state the contract and service performed, without the annexation of an account stating the rate of wages, and the precise balance due.—Pratt v. Thomas, Case No. 11,377.

A plea of misconduct in defense of a suit for wages must allege the facts with due certainty of time, place, and other circumstances; otherwise it will be rejected.—Macomber v. Thompson, Case No. 8,919; Orne v. Townsend, Id. 10,583; The Pioneer, Id. 11,176.

The answer to a libel for extra wages for short allowance is insufficient if it fails to set forth that the vessel shipped the provisions required by law.—The Elizabeth Frith, Case No. 4,361.

§ 139. Issues and proof.

A defense to libel for seamen's wages may be heard without an answer.—Barron v. Locke, Case No. 1,054.

The defense that the suit is prematurely brought is waived, if not specially pleaded.—Hill v. The Triumph, Case No. 6,500.

There can be no specific forfeiture or deduction for misconduct which is not specially charged in the answer.—Hart v. The Otis, Case No. 6,154.

A new clause in the shipping articles, relied upon to repel a claim for wages, must be pleaded.—Heard v. Rogers, Case No. 6,298.

Compensation for short allowance is recovered as wages, and a general form of pleading is sufficient to admit evidence of the right, where not excepted to before trial.—Piehl v. Balchen, Case No. 11,137.

Legal cause for desertion set up in defense may be shown without alleging it in the libel.—Bibbins v. Brookfield, Case No. 1,384.

Extraneous facts to avoid a stipulation in shipping articles set up in defense of a seaman's claim for wages cannot be shown under a replication in the usual form.—The Atlantic, Case No. 620.

Where a libel for seaman's wages under Act July 20, 1790, c. 56, § 6, alleged that the vessel was about to proceed to sea before the end of the 10 days, respondent cannot be permitted to deny the truth of the allegation, the objection not having been taken by a dilatory plea, nor the allegation denied in the answer.—The William Harris, Case No. 17,695.

No cause of forfeiture of seaman's wages is admissible in evidence, unless the answer propounds them, and puts them in issue.—Orne v. Townsend, Case No. 10,583.

§ 140. Evidence.

Where shipping articles are not produced on due notice, libelant's statement of their contents is prima facie evidence thereof.—The Osceola, Case No. 10,602.

The onus probandi is on the master to show that the advance was paid.—Orne v. Townsend, Case No. 10,583.

Where the owner has refused payment, the burden is upon him to show that the seaman had an adequate remedy in the local courts.—The Bolivar, Case No. 1,610.

A delay beyond a reasonable time to unload the vessel may be regarded as equivalent to a discharge of the seamen; but the burden of showing the discharge in such case is on the seaman alleging it, and his own oath is not sufficient evidence.—The Eagle, Case No. 4,233.

A seaman is not entitled to wages unless he show the contract of shipment, and that he performed the voyage, or a legal excuse for not having done so.—Wilcocks v. Palmer, Case No. 17,638.

Respondent has the burden of showing that the shipping agent to whom the alleged payment in advance was made was authorized by libelant to receive it.—Holmes v. Dodge, Case No. 6,637.

A forbearance to sue for nine months, even though the vessel and libelant were within the jurisdiction the entire time, does not raise a presumption of payment.—Holmes v. The Lodemia, Case No. 6,642.

Where the master has admitted a balance due, and subsequently pleads payment, he has the burden of establishing it.—The Napoleon, Case No. 10,015.

Parol proof offered by a shipowner to vary the voyage described in the shipping articles is not admissible in an action in rem by seamen for their wages.—The Triton, Case No. 14,181.

The role d'équipage is good evidence of the shipment of a seaman and of the contract as to wages.—Ketland v. Lebering, Case No. 7,744.

The charges made on the shipping papers of advances to the seamen in the course of the voyage are not evidence until verified by the suppletory oath of the master.—The David Pratt, Case No. 3,597.

The claimants, on proving a reasonable excuse for not producing the shipping articles on trial, may contradict by parol evidence the statement of their contents by the mariner.—The Osceola, Case No. 10,602.

A call for the articles at the time of trial is not a sufficient requirement, unless it be made to appear they are then in presence of the court, or directly within the control of the master or owner.—The Osceola, Case No. 10,602.

The deposition of a master, who has interposed a claim and answer in an action in rem, and continues a party to the suit, cannot be read in evidence, on the part of the owners of the vessel.—The Exchange, Case No. 4,594.

The entry in the log book is not conclusive, and is admissible in support of no circumstances but those stated in the act of congress.—Jones v. The Phœnix, Case No. 7,489.

A mere offer of the master to pay wages, to avoid a libel, is not an admission that the wages are due.—The Martha, Case No. 9,144.

The declarations of the master concerning the contract of the seamen are admissible in a suit against the owners, though not strictly part of the res gestæ.—The Enterprise, Case No. 4,497.

A discharge need not be shown by direct evidence, but may be inferred from circumstances.—The David Faust, Case No. 3,595.

A report of seaworthiness made by marine surveyors, upon the crew demanding to leave on account of unseaworthiness, is not conclusive, in a subsequent action for wages, after leaving.—Bucker v. Klorkgeter, Case No. 2,083.

An admission in an answer to a libel for seaman's wages that the seaman shipped for the voyage, and performed the services, is sufficient to entitle him to recover without evidence, though defenses are set up.—The Belle, Case No. 1,271.

Libelant in a suit for seaman's wages is entitled to use an admission of the answer as to the date of his service without being bound by the allegation of the answer as to the time when it began.—Berry v. The Montezuma, Case No. 1,358a.

A book of original entries kept by the master of a tug, who was also part owner, *held* inadmissible to prove cash payments to seamen, there being no other proof of such payments.—Milligan v. The B. F. Bruce, Case No. 9,602.

Articles signed by "William Henderson," as cook and steward, *held* admissible on a libel for wages by "William Henry."—Henry v. Curry, Case No. 6,381.

On libel against a vessel for wages, an affidavit of a person representing himself as her agent, that she is a foreign vessel, will not overcome the oath of the libelant that she is an American vessel, so as to entitle the claimant

to a dismissal of the libel.—Armstrong v. The Rydesdale, Case No. 547.

Where in a suit for seamen's wages libelant refused to admit a payment alleged in the answer, where the evidence offered raised a strong presumption that such payment had been made, respondent was allowed time to procure proof thereof.—Ingraham v. Albee, Case No. 7,044.

Proof of desertion, see ante, §§ 67, 68.

§ 141. Trial.
The question as to deviation in a voyage is to be determined as a question of fact upon the evidence.—The Cadmus v. Matthews, Case No. 2,282.

§ 142. Recovery.
The court is not limited in its decree to the precise amount stated as due in a libel for seamen's wages, where the libel contains a prayer for further relief.—Pratt v. Thomas, Case No. 11,377.

Interest is allowed from the time of a demand proved; and if no demand is proved, from the commencement of the suit.—Gammell v. Skinner, Case No. 5,210.

Interest, as a general rule, will be allowed from the time the wages were due until a tender or payment under the decree, but no interest is allowable upon extra wages for short allowance.—The Elizabeth Frith, Case No. 4,361.

Decree for wages, see "Admiralty," § 99.

§ 143. Costs.
A seaman who needlessly brings suit separate from his fellows will not be allowed costs.—The Cabot, Case No. 2,277.

It is inequitable for a seaman, knowing that the papers are ready for the immediate commencement of a suit by his shipmates for the recovery of wages earned on the same voyage, or by a bottomry holder, who sues also for a portion of the wages of the voyage, previously paid by him, to endeavor to supplant such action, by urging out, in his individual name, process in advance of it, so as to subject the ship or her proceeds to needless expenses.—The Cabot, Case No. 2,277.

Costs allowed seamen for an underpayment by mistake by the master, who refused to correct the error, though they failed on their main contention.—Hoffman v. Yarrington, Case No. 6,580.

Costs will not be imposed upon seamen, in admiralty, when they establish probable cause for instituting suits for redress.—Howland v. Conway, Case No. 6,793.

Costs will not be given on separate libels by seamen for wages on the same voyage.—Reed v. Hussey, Case No. 11,646.

Where the balance due for wages is small, and the seaman failed to demand it of owner or master, costs will be denied him in a suit therefor.—The Moslem, Case No. 9,876.

Costs will be denied a seaman who has not given the master and owners a reasonable time for an amicable settlement of his claim.—The Susan, Case No. 13,631.

On dismissal of a libel for wages, *held* that costs should be imposed on libelants, when they had taken possession of the vessel and brought her home, though this was done on reasonable grounds of suspicion that she was about to engage in the slave trade.—The Mary Ann, Case No. 9,194.

See, also, "Admiralty," §§ 127–152.

§ 144. Appeal.
A seaman may be required to give security for costs on appeal unless he prove by satisfactory affidavits that he is unable to do so.—Wheatley v. Hotchkiss, Case No. 17,483.

§ 145. Summary proceedings.
On an application for process in rem against a vessel for seaman's wages, the master may appear by attorney before the magistrate in defense of the claim.—The Rockie E. Yates, Case No. 11,980a.

Section 6 of the act of 1790, with respect to the recovery of wages, applies only to the classes of vessels enumerated in section 1.—The M. W. Wright, Case No. 9,983.

The provisions of Rev. St. §§ 4546, 4547, apply only to merchant ships and their masters and crews.—The Grace Darling, Case No. 5,651.

The proceedings by summons to the master (section 6) are cumulative and optional, and the party may resort to an attachment in the first instance.—The M. W. Wright, Case No. 9,983; The Waverly, Id. 17,301; The William Jarvis, Id. 17,697.

The vessel against which process is sought on such complaint must be within the district at the time of hearing.—The Rockie E. Yates, Case No. 11,980a.

In the absence of the judge, the clerk may issue process according to rules prescribed, or instructions given by the judge.—The William Jarvis, Case No. 17,697.

The omission of the summons to the master of the vessel to show cause, etc., is an error of practice which may be waived by claimant by delay in taking advantage of it.—Robinson v. The Lillie Mills, Case No. 11,958.

Though a warrant be issued under a certificate of sufficient cause of complaint for admiralty process, conformably to the statute (Act July 20, 1790), the owner may intervene by answer, and bar the action by proving that libelant had no right to sue.—The Warrington, Case No. 17,208.

A certificate of a United States commissioner to the clerk as the foundation of process in behalf of seamen (Act 1790, § 6) must show on its face that the commissioner had authority to act, and hence must show the absence of the district judge, or that he resided more than three miles distant from the place.—Kief v. The London, Case No. 7,759.

(J) LAYS OR SHARES IN EARNINGS.

§ 146. Nature of agreement.
An agreement for a share in the proceeds of a whaling voyage does not create a partnership in profits of the voyage, but is in the nature of a seaman's wages.—Coffin v. Jenkins, Case No. 2,948; The Crusader, Id. 3,456; Reed v. Canfield, Id. 11,641; Reed v. Hussey, Id. 11,646.

Where a seaman on a wrecking vessel was to receive compensation only by a share of the profits, he acquires no right to wages by the fact that after the owner's death the vessel is carried off by the master to a foreign port.—Williams v. The Sylph, Case No. 17,740.

§ 147. Liability of owners of vessel.
The owners of whaling vessels whose crews are paid by shares are responsible for only ordinary care in selecting agents and carrying the cargo.—Joy v. Allen, Case No. 7,552.

The owners are liable to the seamen for their lay where the master embezzles the proceeds of oil sold abroad on condemnation of the ship.—Jay v. Allen, Case No. 7,235; Joy v. Same, Id. 7,552.

Where the whaler is lost, and the cargo sent home, the seaman's remedy is against the owner for his lay, and not against the master for wages.—Jay v. Almy, Case No. 7,236.

§ 148. What is subject to lay.
Where compensation for a fishing voyage is made by a share of the proceeds, the seamen are entitled to shares only on so much cargo as is

brought safely to home port.—Reed v. Hussey, Case No. 11,646.

The seamen are not entitled to recover wages, as such, on the cargo brought to the port of destination by salvors.—Reed v. Hussey, Case No. 11,646.

But the seaman's interest in such cargo, as quasi owner, may be equitably secured to him, subject to the proper charges for salvage and transportation.—Reed v. Hussey, Case No. 11,-646.

A mariner shipping after a whaling voyage was partly performed *held* entitled to a lay only in the products taken during his time of service. —Tompkins v. Howard, Case No. 14,089.

An agreement on a sealing voyage for shares of every article "procured by the crew" does not give a right to a share of freight earned by the transportation of merchandise.—The Sarah Jane, Case No. 12,348.

The owners are bound to account to the shareholders for any proceeds of her cargo which come to their hands where the vessel is lost, though the contract be not to pay them until her return. —Joy v. Allen, Case No. 7,552.

§ 149. Amount or rate.

The cash market price is the measure of compensation for the officers and crew who are to be paid lays.—Hazard v. Howland, Case No. 6,280.

The amount of a cooper's lay on a whaling voyage fixed where he was disrated for alleged incompetency.—Donahay v. Howland, Case No. 3,978.

A seaman during a whaling voyage, being appointed a ship keeper, is thereafter entitled to the lay of that station.—The William Martin, Case No. 17,698.

Where a whaling vessel did not return home as she ought, a seaman was allowed compensation for his expenses in returning, and his time, calculated at the rate of his last lay, deducting what he earned or might have earned but for his own negligence.—The William Martin, Case No. 17,698.

A seaman disabled in the service of a whaling ship, and necessarily left abroad, *held* entitled to a full lay.—Brunent v. Taber, Case No. 2,-054.

A seaman on a whaling voyage discharged abroad without his own fault, *held* entitled to the pro rata settlement provided in the articles for a discharge from sickness.—Hathaway v. Jones, Case No. 6,212.

A seaman discharged abroad, at his own request, from a whaling ship, is entitled to be paid the pro rata part of his lay reckoned on the value of the catch at the home port.—Jenks v. Cox, Case No. 7,277.

The stipulation that compensation by share in earnings shall be proportioned to the time served in the voyage will be enforced.—The Atlantic, Case No. 620.

A seaman justifiably separated from his ship on a whaling voyage is entitled to such proportion of his lay as the time he served bears to the whole time of the voyage.—Lovrein v. Thompson, Case No. 8,557.

Where a seaman has different lays during the same whaling voyage, he is to have such proportion of each lay, for the whole voyage, as the time he served under such lay was of the time of the whole voyage.—The William Martin, Case No. 17,698.

The owners of a whaler cannot set off or recoup as against a mate's lay a proportion of an advance payment receipted for as a bonus "to perform the voyage," where the mate was discharged before the voyage ended, on agreement with the master that he should have his lay up to the time he was discharged.—Pedro v. Allen, Case No. 10,901.

§ 150. Expenses allowed in determining lays.

Commissions for selling oil, and charges for fitting and discharging ship, disallowed in determining lay.—Bates v. Seabury, Case No. 1,104; Hazard v. Howland, Id. 6,280.

The owners, on the ground of established usage to the contrary, have no right to deduct the value of the casks from the sales of the cargo.—Hazard v. Howland, Case No. 6,280.

The freight home on oil where a whale vessel is condemned abroad as unseaworthy is chargeable to the owners, unless there is a usage of the port to the contrary.—Jay v. Allen, Case No. 7,-235; Joy v. Same, Id. 7,552.

Sharesmen in a cod-fishing voyage are not to suffer loss by bad debts contracted by the owner in the sale of the fish.—Crowell v. Knight, Case No. 3,445.

A stipulation, in shipping articles for whaling voyages, that the owners may ship catchings home on freight, is valid.—Frates v. Howland, Case No. 5,066.

The owners are not liable for the value of catchings as of the time when received, where, in good faith, they held them waiting for a rise in the market.—Frates v. Howland, Case No. 5,066.

Salvage paid by master of whaler acting with prudence and in good faith is a charge upon the oil binding on the crew.—The Antelope, Case No. 484.

§ 151. Payment and settlement.

Where a whaling voyage is broken up in a foreign port, from necessity, the master, on the request of the seamen, may pay their shares by delivering portions of the oil taken.—Hussey v. Fields, Case No. 6,947.

Where libelant was to receive $^1/_{42}$ part of the proceeds of the voyage, he receives his full share if he receives pay in whatever currency makes up the proceeds.—Carter v. Swift, Case No. 2,-479.

The owners of a fishing vessel will be discharged by a payment to the assignee of a non-negotiable order of a sharesman.—Crowell v. Knight, Case No. 3,445.

The reasonableness and equity of an agreement between owners and seamen will always be examined by the court.—The Lucy Anne, Case No. 8,596.

Where a settlement is made on a different basis under protest, the seamen may recover the difference.—Jenks v. Cox, Case No. 7,277.

§ 152. Lien.

Title 51, Rev. St. ("Regulation of Fisheries"), does not apply to vessels and crews engaged in porgy fishing.—The Grace Darling, Case No. 5,-651.

The crew of a steamer, comprised of sharesmen and strikers engaged in porgy fishing, have a maritime lien upon the vessel for their wages, but the master does not.—The Grace Darling, Case No. 5,651.

Seamen in whaling service have no lien on the oil for their services.—The Antelope, Case No. 484.

A crew of a steamer comprised of sharesmen and strikers engaged in porgy fishing, upon being refused payment for their services at the time agreed upon, may enforce their lien upon the vessel before their term of service has expired.—The Grace Darling, Case No. 5,651.

§ 153. Actions.

A contract to sail a vessel in partnership for a share of the earnings gives no right in rem for

wages.—Milne v. The John Cook, Case No. 9,-617a.

A libel for the lay of a minor who shipped under direction of his father, who furnished his outfit, is rightly brought in the father's name.—Gifford v. Kollock, Case No. 5,409.

The master and owners of a whaling ship are not liable to be sued jointly for a seaman's lay.—Matern v. Gibbs, Case No. 9,273.

A seaman in the whale fisheries has no property in the oil or bone taken, and the vessel owners are the proper persons to sue for a wrongful taking by another.—Taber v. Jenny, Case No. 13,720.

Where a long delay (nearly six years) to prosecute for a share in the catch is not shown to have led to any losses, acts, or divisions of profits, injurious to the owners, the delay is no bar.—Joy v. Allen, Case No. 7,552.

A vessel sailed on a voyage from N. to O. She remained at O. over a year waiting for freight. Not obtaining any, the master discharged the seamen, whom he persuaded to return with him to N. to get their wages. The vessel was then sold, and went on a voyage to L., and thence to N. *Held*, that the seamen could libel her on her arrival at N., the claim not being a stale one.—The Mary, Case No. 9,-186.

In an action by a father for wages of his son as seaman on a whaling voyage under articles made during the minority of the son with the consent of the father, the measure of damages is the son's proportion of the oil taken during the minority.—Coffin v. Shaw, Case No. 2,952; Lovrein v. Thompson, Id. 8,557.

Interest allowed from filing of libel for lay in whaling voyage.—Bates v. Seabury, Case No. 1,104.

Interest will be allowed after reasonable time for the sale of the oil, adjustment of the voyage, and demand by libelants.—Jay v. Allen, Case No. 7,235.

Jurisdiction of suit to recover share in proceeds of voyage, see "Admiralty," § 8.

VI. INJURIES.

(A) INJURIES TO PROPERTY.

§ 154. Loss of property.
In the absence of negligence, the vessel owner is not liable for the loss of the clothing and effects of a seaman, left aboard, where he is arrested and imprisoned in a foreign port without the instigation of the master.—Richardson v. Pacific Mail S. S. Co., Case No. 11,793.

A master, lawfully discharging a drunken mate, is responsible for a loss of his personal effects caused by putting him on shore at night, without necessity, and without a responsible companion.—The El Dorado, Case No. 4,327.

The ship is liable for the loss of a seaman's trunk, though he negligently failed to get aboard for the voyage.—Smith v. The Utica, Case No. 13,123.

The master sent the clothes of a seaman, who was left in hospital at a foreign port, to the consul's office. The evidence did not show that the seaman received them. *Held*, that he could recover their value.—Callon v. Williams, Case No. 2,324.

The master is not justified in imprisoning a seaman on mere suspicion that he is a dangerous man, or on request of the crew; and, if his effects are lost while thus imprisoned, the master is liable.—Jay v. Almy, Case No. 7,236.

§ 155. Wrongful detention of property.
The master has no right to detain the effects of men imprisoned on shore on the request of the consul.—Jordan v. Williams, Case No. 7,-528.

The owners are not liable for the act of the master in wrongfully detaining seamen's clothing, unless they have ratified his acts.—The Hibernia, Case No. 6,455.

Where master acting in good faith sells effects of seamen separated from ship, the owner is liable only for amount realized.—Antone v. Hicks, Case No. 493.

(B) PERSONAL INJURIES IN GENERAL.

§ 156. Injuries caused by negligence of owner or master.
Master liable for failure to protect seamen from violence of officers.—Anderson v. Ross, Case No. 361.

The vessel is liable for an injury caused by the failure of her owners to use ordinary care in the employment of competent and skillful officers and mariners.—Brown v. The D. S. Cage, Case No. 2,002.

The master is responsible for the neglect of an injured seaman during the voyage, and after reaching port.—Brown v. Overton, Case No. 2,-024.

The vessel owner is not responsible for injuries to a seaman, caused by negligence of the mate, where no personal negligence on the part of the owner appears.—Halverson v. Nisen, Case No. 5,970.

The court will investigate the conduct of a master of a British vessel in procuring the intervention of a British consul in a foreign port, by which a seaman was imprisoned.—Patch v. Marshall, Case No. 10,793.

§ 157. Assault.
Mate is liable for striking in anger, and not as discipline, a boy, for using an opprobrious epithet in reply to a charge of theft.—Backstack v. Banks, Case No. 711.

When one of the crew of a vessel resists a person in authority over him while in the discharge of his duty, the latter may lawfully use sufficient force to overcome such resistance.—Pendergrast v. Lampman, Case No. 10,919.

The master is liable for an unjustifiable assault by one of his officers upon one of the crew, when done by his connivance, consent, or authority.—Hanson v. Fowle, Case No. 6,042.

Such consent and authority will be presumed when it appears that he knew of the trespass, or had reason to know it, and did not interfere to prevent it.—Hanson v. Fowle, Case No. 6,-042.

The master is civilly responsible for his ill treatment of the crew on board, notwithstanding the advice or direction of a consul.—Shorey v. Rennell, Case No. 12,806.

A mate cannot justify an assault and battery by the orders of the master, not knowing them to be illegal.—Sheridan v. Furbur, Case No. 12,-761.

A saucy retort of the second mate *held* no justification for the master's violently assaulting and inflicting an injury upon him.—Morris v. Cornell, Case No. 9,829.

Where a master, being present, does not interfere to prevent an assault on a seaman by his officers, he is jointly liable for the tort.—Thomas v. Lane, Case No. 13,902.

§ 158. False imprisonment.
An action against a mate by a seaman, for false imprisonment, will not lie, where the imprisonment was ordered by the master through the advice and request of the mate.—Gardner v. Bibbins, Case No. 5,222.

§ 159. Release and settlement of claims. A receipt for all "demands and dues" against a vessel, her master and officers, is not, upon its face, a receipt for assault and battery.—Hanson v. Fowle, Case No. 6,042; Mitchell v. Pratt, Id. 9,668; Payne v. Allen, Id. 10,855.

A receipt given on payment of wages, stating that it is in full for all demands for assault, battery, etc., will not bar a suit for damages.—Thomas v. Lane, Case No. 13,902.

A receipt acknowledging satisfaction of all claims for assault and battery is not binding unless shown to have been the result of a fair compromise, on compensation given.—Hanson v. Fowle, Case No. 6,042; Harden v. Gordon, Id. 6,047; Heard v. Rogers, Id. 6,298.

A settlement for damages for a tort made after suit brought, and in the absence of libelant's proctor, upheld, where fairly made, and consideration not apparently inadequate.—Brooks v. Snell, Case No. 1,961.

(C) PUNISHMENT OF SEAMEN.

See, also, post, §§ 180, 187.

§ 160. Right to punish in general. Seamen may be moderately corrected by master.—Aertsen v. The Aurora, Case No. 95; Rice v. The Polly and Kitty, Id. 11,754.

Punishment must be moderate, administered in a proper manner, and proportioned to the offense.—Cushman v. Ryan, Case No. 3,515.

The law which governs the deportment of men to each other on shore cannot be applied to their habits and intercourse on board of a ship.—Forbes v. Parsons, Case No. 4,929.

§ 161. Who may be punished. As to treatment of intoxicated seamen, see Jones v. Sears, Case No. 7,494.

A minor placed aboard ship by his father to improve his health, and to learn navigation, is subject to the discipline and punishment of an ordinary seaman, though a person of refinement and gentle breeding.—Gould v. Christianson, Case No. 5,636.

§ 162. Authority to punish. Only the highest officer on board can inflict punishment for a past offense for purposes of reformation or example.—Shorey v. Rennell, Case No. 12,806.

§ 163. When justified in general. A seaman is punishable corporally for deportment or language not obedient or respectful to the master.—Fuller v. Colby, Case No. 5,149; Bennett v. Sherman, Id. 1,324.

The master may inflict corporal chastisement for insolence or disobedience to his reasonable commands.—Michaelson v. Denison, Case No. 9,523; The Palledo, Id. 10,677; Turner's Case, Id. 14,248.

To justify punishment for refusal to perform work required, master must show that seaman was capable of performing the work.—Allen v. Hallet, Case No. 223; Payne v. Allen, Id. 10,855.

A refusal of duty because permission is not given to lay complaints before the consul is justifiable only when the refusal is necessary to prevent the loss of the right.—Jordan v. Williams, Case No. 7,528.

The master is not justified in chastising a seaman at the wheel, however flagrant his demeanor may be.—Wagener v. Minot, Case No. 17,033.

A second mate, rightfully displaced from heading a boat in the whale fishery, is bound to perform other duty, and, upon his refusal to do so, may be punished for disobedience.—Morris v. Cornell, Case No. 9,829.

A person who, shipping as cook, is unwilling or unable to do his duty, and keeps the galley in a filthy condition, may be punished.—Forbes v. Parsons, Case No. 4,929.

General orders from one officer will not excuse the disobedience by the seaman of the specific orders of another inferior officer, and such seaman may be punished therefor.—Sheridan v. Furbur, Case No. 12,761.

A seaman is not authorized to use any kind and degree of resistance where the wrong done him will admit of complete indemnity.—Shorey v. Rennell, Case No. 12,806.

§ 164. Mode of punishment — Weapons used. Deadly weapons should only be used when a mutiny exists or is threatened.—Jarvis v. The Claiborne, Case No. 7,225; Fuller v. Colby, Id. 5,149.

Where a seaman is attacked by the master or mate without provocation or disobedience, he may defend himself; and a seaman, on receiving such a blow for such an offense, is not justified in brandishing a knife or an ax, nor in using them to prevent his arrest; and the master is justified in using a deadly weapon to cause his submission.—Fuller v. Colby, Case No. 5,149.

A blow with a dirty frying-pan, or wiping a dirty knife on the face of the person whose duty it was to keep those articles clean, *held* not an aggravated or cruel assault.—Forbes v. Parsons, Case No. 4,929.

Knocking a man down with a belaying pin is an illegal mode of punishment.—Shorey v. Rennell, Case No. 12,806.

An assault with a dangerous weapon cannot be justified by showing that the weapon was casually in the hands of the master, and was used by him in a moment of excitement, under circumstances justifying punishment of the seamen.—Saunders v. Buckup, Case No. 12,373.

§ 165. —— Flogging. Master has no right to flog seaman, though acting under the honest belief that the men had conspired to poison him.—The Josephine, Case No. 7,544.

Since the proviso in Act 1850, c. 80, § 1, punishment by flogging on board of a whale ship is illegal.—Payne v. Allen, Case No. 10,855.

§ 166. —— Imprisonment. The imprisonment of a seaman in a foreign jail at the instance of the master is only justified by extreme necessity.—Anonymous, Case No. 473; Johnson v. The Coriolanus, Id. 7,380; Magee v. The Moss, Id. 8,944; Wilson v. The Mary, Id. 17,823.

The master may retake a deserting seaman, and confine him on board, irrespective of the remedy given under Act 1790, c. 56.—Turner's Case, Case No. 14,248.

Where the master causes any of the crew to be confined in a foreign jail, he must see that they have humane treatment.—Shorey v. Rennell, Case No. 12,806.

The vessel owner is not liable where the seaman is wrongfully arrested and imprisoned on a charge of crime in a foreign port, where the master was not a party thereto.—Richardson v. Pacific Mail S. S. Co., Case No. 11,793.

A master who causes a seaman to be imprisoned on shore must, before leaving port, ascertain if he is willing to return to duty.—The Maria, Case No. 9,074.

A single act of insubordination on the part of a seaman cannot be considered as mutinous.

or as justifying an imprisonment.—Gardner v. Bibbins, Case No. 5,222.

The imprisonment on shore of seamen is not justified where they peacefully refuse labor from an honest mistake of their right to discharge.—Wope v. Hemenway, Case No. 18,042.

The second mate may refuse obedience to an order of the master to slush the masts, or take in light sails, as a punishment, when no offense has been committed that would justify it, and the master has no right to imprison him for his refusal.—Foye v. Dabney, Case No. 5,022; Same v. Leckie, Id. 5,023.

Advice of consul will not justify master in illegally imprisoning seamen in foreign jail, or deprive seamen of legal remedies.—Anonymous, Case No. 473; The William Harris, Id. 17,-695.

Where the master lays a complaint before a consul, who, upon examination, causes the crew to be imprisoned, the responsibility for the tort, if any, is transferred to the consul, where the complaint was such that a competent master might believe it to be within the consul's jurisdiction.—Jordan v. Williams, Case No. 7,528.

The action of the master in confining seamen for insubordination, and in sending seamen on shore for supplies of wood and water, where they were attacked by savages, *held* justifiable.—Healey v. Martin, Case No. 6,295.

When the crime of a sailor is beyond the master's power to punish, he should put him in irons, and bring him to justice on the return home.—Thorne v. White, Case No. 13,989.

Where a seaman is disobedient, and will not submit and offer to make amends, the master may confine him on board or dock him of his provisions.—Thorne v. White, Case No. 13,989.

Where, after the voyage is ended, the master again takes an offending seaman on board, he cannot justify an assault and imprisonment without any new offense.—Roberts v. Dallas, Case No. 11,898.

§ 167. —— Removal to forecastle.
A second mate who contumaciously refuses to perform duty may be removed from the cabin to the forecastle.—Morris v. Cornell, Case No. 9,829.

§ 168. Hearing before master of vessel.
The master is liable in damages for flogging a seaman without a hearing, for disobeying orders, where the seaman acted in good faith.—Sheridan v. Furbur, Case No. 12,761.

The crew are entitled to the protection of the master against illegal violence from his officers; and if he refuse to hear their complaints, and gives no assurance against future wrong, he has no right to require further services from them.—Shorey v. Rennell, Case No. 12,806.

The master should not inflict punishment for threats supposed to have been uttered by seamen while confined in jail, without first seeing them and hearing their statements.—Shorey v. Rennell, Case No. 12,806.

§ 169. Excessive punishment.
The punishment must be not excessive, considering the nature of the offense. A single blow with the hand, producing no wound, is not excessive.—Fuller v. Colby, Case No. 5,149.

It is not a cruel or excessive punishment to keep two waiters ironed together for 10 hours for fighting in the cabin of a vessel.—Lindrop v. Dall, Case No. 8,365.

In the absence of cruelty or needless severity, the degree of punishment inflicted for insubordination will not be measured.—Gardner v. Bibbins, Case No. 5,222.

The balance between the gravity of the offense and the quantum of punishment will not be very exactly adjusted.—Butler v. McClellan, Case No. 2,242.

A master who, without investigating the circumstances, unjustly causes a seaman to be punished for an offense he did not commit, is liable, though he did not act in a cruel or oppressive spirit.—Lindrop v. Dall, Case No. 8,365.

A mate will not be held responsible as a joint trespasser in assisting the master, in obedience to his orders, in inflicting punishment on a seaman, unless obviously and grossly excessive and unjust.—Butler v. McClellan, Case No. 2,242.

Authority from a consul will not excuse excessive punishment of a seaman by the master.—Peters v. Martens, Case No. 11,031.

(D) ACTIONS.

§ 170. Nature and right of action.
Actions for aggravated assaults upon seamen are in personam only.—Fuller v. Colby, Case No. 5,149.

Where a quarrel between the master and mate is made up on the advice of the consul, where both were at fault, the court will not afterwards interfere.—Cornier v. Sawyer, Case No. 3,245.

The remedy given against the officers of a vessel (Act Feb. 28, 1871, § 43) does not preclude an action against the vessel.—Brown v. The D. S. Cage, Case No. 2,002.

The court will discourage actions for damages on account of obsolete grievances.—Saunders v. Buckup, Case No. 12,373.

A seaman is, in general, entitled to recover damages for an assault and battery from the officer of a ship where personal violence is inflicted, not excessively, but wantonly and without provocation or cause; where there was provocation or cause, but the punishment was cruel or excessive; or when the punishment is inflicted with a deadly, or dangerous weapon.—Forbes v. Parsons, Case No. 4,929.

§ 171. Limitations.
Claim of seamen for a loss of their effects by the collision *held* not stale, where they filed libels, but delayed to issue process for five years, during pendency of an appeal on a libel by the vessel owners, where the corporation claimant continued to own the vessel libeled.—The Leo, Cases Nos. 8,252, 8,253.

§ 172. Evidence.
In an action for an assault and battery committed by a master on a seaman where the defense of justification is set up the burden of proof is on respondent.—Treadwell v. Joseph, Case No. 14,157.

A consular certificate of the facts in justification is not evidence.—Johnson v. The Coriolanus, Case No. 7,380.

Habitual carelessness, disobedience, or negligence of the seamen may be shown in justification or in mitigation of damages in a libel against the master for assault; but such conduct must be pleaded.—Pettingill v. Dinsmore, Case No. 11,045.

The weapon used for punishing is entitled to consideration and weight.—Benton v. Whitney, Case No. 1,335.

To entitle a seaman to damages for an assault by the master he must show that the punishment was excessive.—Carleton v. Davis, Case No. 2,408; Elwell v. Martin, Id. 4,425.

Proof that the master and mate separately assaulted and illtreated a seaman will not support an allegation of a combination between them to illtreat and oppress him, without some presumptive evidence of concert between them.—Jenks v. Lewis, Case No. 7,280.

A libel for assault and battery must be made out by clear, credible, and consistent proof.—Benton v. Whitney, Case No. 1,335.

§ 173. Issues and proof.
A master sued for an assault, and denying the same in his answer, cannot, on proof of the assault, rely upon a justification.—The George Kingman, Case No. 5,335.

§ 174. Damages.
Rules for assessment of damages in cases of beating and wounding a seaman.—Hanson v. Fowle, Case No. 6,042.

Measure of damages for excessive or unlawful punishment.—Gould v. Christianson, Case No. 5,636.

A cabin boy injured in the service of the vessel, so that amputation of both legs was necessary, was allowed $3 a week until the healing of his wounds, with costs and counsel fees.—Robinson v. Gifford, Case No. 11,951a.

In fixing the amount of damages in a case of assault and battery, the court will consider the situation of the parties, and the various aggravating and mitigating circumstances of the case.—Schelter v. York, Case No. 12,446; Whitney v. Eager, Id. 17,584.

The conduct of both parties will be considered in estimating the amount of damages for assault and battery.—Saunders v. Buckup, Case No. 12,373.

The court will consider the fact, in estimating damages for an assault and battery by the master, that the mate, in no way connected therewith, was made a party to the libel, to render him incompetent as a witness.—Saunders v. Buckup, Case No. 12,373.

Officers are liable only for the actual pecuniary damages sustained where, in administering merited punishment with unnecessary harshness, a severe injury is unintentionally done.—Elwell v. Martin, Case No. 4,425.

Where a seaman has been wrongfully imprisoned, vindictive damages are not allowed, in the absence of bad motives; but compensation will be allowed for the time of the imprisonment and the articles lost, with interest thereon, and passage home.—Jay v. Almy, Case No. 7,236.

VII. OFFENSES.

See, also, post, § 188.

(A) OFFENSES BY SEAMEN.

As ground for forfeiture of wages, see, ante, §§ 64–78.

§ 175. Revolts—In general.
To constitute the crime of making a revolt, under Act 1835, c. 40, § 1, a certain end must have been accomplished by certain means unlawfully and willfully done.—United States v. Borden, Case No. 14,625.

A revolt, under Act March 3, 1835, c. 40, consists, not only in an attempt to usurp the command from the master, or to transfer it to another, or to deprive him of it, for any purpose, by violence, but in resisting him in the free and lawful exercise of his authority.—United States v. Peterson, Case No. 16,037.

The prevention of a single lawful command by willful and unlawful combination, which intimidates the master, makes the act a revolt within the statute.—United States v. Borden, Case No. 14,625; Same v. Forbes, Id. 15,129.

Seamen who combine together to refuse all duty on board, and refuse obedience to a new master lawfully appointed, are guilty of committing a revolt.—United States v. Haines, Case No. 15,275.

On an indictment for such offense, it is not necessary to prove that it was committed on the high seas.—United States v. Hamilton, Case No. 15,291.

A mere disobedience of orders by one or two seamen, without combining with the others, is not a revolt.—United States v. Forbes, Case No. 15,129.

The master has a discretion as to the number requisite for his crew, and the seamen cannot refuse obedience on the ground of going to sea short-handed.—United States v. Lynch, Case No. 15,648.

Seamen are not liable criminally, where, on going on board, and after examining the vessel, they refuse to serve on the ground that she is unseaworthy, though she was not in fact unseaworthy.—United States v. Staly, Case No. 16,374; Same v. Givings, Id. 15,212.

A bona fide combination to compel the master to return into port for the actual unseaworthiness of the vessel, or where seaworthiness is doubtful, is not punishable as a revolt, under Act 1790, c. 36, § 12.—United States v. Ashton, Case No. 14,470.

The crew may take reasonable measures to protect one of their number from the infliction of what they have reason to believe to be a great wrong.—United States v. Borden, Case No. 14,625.

A seaman may endeavor to escape the infliction of personal chastisement for offensive language used, and may resist for the mere purpose of protecting himself from injury.—United States v. Smith, Case No. 16,345.

Where seamen who request a survey, when in port or within sight of land, are treated with unnecessary severity, their remedy is at law after their return, and not a resort to violence, unless in danger of the actual loss of life, and then at their peril, as the result may turn out.—United States v. Staly, Case No. 16,374.

The pilot of a vessel which is cleared and ready for sea is an officer of the vessel, within Act 1835, § 2; and a disobedience of his orders is a revolt, under Act 1835.—United States v. Lynch, Case No. 15,648.

The crew of a vessel not enrolled and licensed under Act 1793, for the coasting trade and fisheries, cannot be convicted for making a revolt. Such a case is not within the crimes act of 1835.—United States v. Jenkins, Case No. 15,473a.

Seamen of the United States, put on board a vessel of the United States by a consul, are bound to the same obligations which exist in cases of articled seamen.—United States v. Sharp, Case No. 16,264.

Fear, to excuse a seaman guilty of making a revolt, must be fear of death, such as a man of ordinary courage and fortitude might yield to.—United States v. Haskell, Case No. 15,321.

§ 176. —— Endeavors to make revolts.
A conspiracy to usurp the authority and command of a ship, and overthrow that of the master or commanding officer, or to resist a lawful command of the master for such purpose, and any endeavor to stir up others of the crew to such resistance, is an endeavor to commit a revolt.—United States v. Hemmer, Case No. 15,345; Same v. Cassedy, Id. 14,745; Same v. Gardner, Id. 15,188; Same v. Savage, Id. 16,225; Same v. Smith, Id. 16,337; Same v. Thompson, Id. 16,492.

To constitute the offense, neither a previous deliberate combination for mutual aid and encouragement, nor any preconcerted plan, is necessary.—United States v. Morrison, Case No. 15,818.

Insolence, disobedience of orders, or violence to the master, unaccompanied by other acts showing an intent to subvert his command, is

not an endeavor to make a revolt.—United States v. Kelly, Case No. 15,516.

Neither is mere conspiracy of the crew to displace the master, unaccompanied by overt acts; nor is concert among the crew to that end essential to the offense.—United States v. Kelly, Case No. 15,516.

A seaman who comes on deck to ascertain the cause of a disturbance, and refuses to go below when ordered by the master, may be punished for an endeavor to make a revolt.—United States v. Roberts, Case No. 16,173.

Where the crew combined together not to do duty, it is an endeavor to make a revolt, within Act 1790, c. 9, § 12, although no orders are actually given afterwards.—United States v. Barker, Case No. 14,516.

A combination by the crew to prevent the vessel from going to sea pursuant to the order of the master is an attempt to commit a revolt.—United States v. Nye, Case No. 15,906.

Interposition of a crew, by violence and intimidation, whereby the master is compelled to desist from punishing a seaman for gross misbehavior, is an endeavor to commit a revolt.—United States v. Morrison, Case No. 15,818.

Refusal to do duty after a deviation from the voyage described in the shipping articles is not an endeavor to commit a revolt.—United States v. Matthews, Case No. 15,742.

Seamen who, with good reason, believe a vessel to be unseaworthy before the voyage is begun, may lawfully refuse to go to sea in her.—United States v. Nye, Case No. 15,906.

The owners may change the master after the seamen have shipped.—United States v. Nye, Case No. 15,906.

Where the person substituted as master is grossly incompetent from want of skill or bad habits or profligate and cruel behavior, seamen are justified in refusing to do duty.—United States v. Cassedy, Case No. 14,745.

Seamen defending against a prosecution for endeavoring to commit a revolt, on the ground that they were ordered to go on a voyage for which they were not bound by the shipping articles, must show that they made the objection at the time of disobedience.—United States v. Lynch, Case No. 15,648.

The offense of endeavoring to make a revolt (Act 1790, c. 9, § 12) may be committed in any kind of vessel.—United States v. Kelly, Case No. 15,516.

And in a foreign port.—United States v. Keefe, Case No. 15,509.

Where a registered vessel has entered on a whaling voyage without surrender of her register, she is not an American ship, within Act 1835, c. 40, and an indictment will not lie against her crew for an endeavor to make a revolt.—United States v. Rogers, Case No. 16,189.

The mate is a seaman, within the act of 1790, c. 36, § 12.—United States v. Savage, Case No. 16,225.

A cooper of the ship is a seaman, within the provisions of the act.—United States v. Thompson, Case No. 16,492.

§ 177. —— Confining master.

A confinement of the master, within Act 1790, c. 9, § 12, extends to all restraints of personal liberty in freely going about the ship, by present force or threats of bodily injury.—United States v. Hemmer, Case No. 15,345; Same v. Sharp, Id. 16,264; Same v. Smith, Id. 16,344; Same v. Thompson, Id. 16,492.

Seizing the person of the master, although the restraint be but momentary, is a confinement prohibited by law.—United States v. Bladen, Case No. 14,606.

Where the master strikes a seaman, and is seized and so firmly held by him that he cannot extricate himself, the seaman is guilty of confining the master.—United States v. Smith, Case No. 16,345.

Where the master uses an unlawful weapon, or the seaman is exposed to danger of his life or limbs, he may resort to any necessary species of defense to avoid the danger.—United States v. Smith, Case No. 16,345.

To constitute a confinement of the master (Act 1790, c. 36), it is sufficient that there is a personal seizure or restraint, although it may be for the purpose of inflicting personal chastisement.—United States v. Savage, Case No. 16,225.

Restraining the master from performing the duties of his station by such mutinous conduct of the crew as would reasonably intimidate a firm man is confining him, within 2 Laws U. S. 93, § 12.—United States v. Bladen, Case No. 14,606.

The master cannot be confined by the officers and crew, except in a clear case, to prevent his committing acts which might endanger the lives of all on board.—United States v. Sharp, Case No. 16,264.

The crew have no right to disarm the master, though using a deadly weapon, if they are in a mutinous state, and exercising personal violence to resist his lawful command.—United States v. Peterson, Case No. 16,037.

To constitute the offense of confining the master, the act of confinement must be feloniously done.—United States v. Henry, Case No. 15,351.

One who joins in the general conspiracy, and by his presence countenances acts of violence, but who does not individually use force or threats to compel the master to resign the command, is guilty of the offense of confining the master.—United States v. Sharp, Case No. 16,264.

The offense of seamen who revolt against the master on the ground of his intemperance and danger to the vessel, and place him in confinement, continuing the voyage under the mate, is not a felony.—The Ulysses, Case No. 14,330.

Assault and battery by a seaman upon the master is not a confinement of the master, or an attempt to excite a revolt, within the statute.—United States v. Lawrence, Case No. 15,575.

(B) OFFENSES AGAINST SEAMEN.

§ 178. Forcing seamen on shore.

The forcing a mariner on shore must be done both without justifiable cause, and maliciously, to justify a conviction under Act 1825, c. 65, § 10.—United States v. Ruggles, Case No. 16,205; Same v. Lunt, Id. 15,642.

"Maliciously," in such statute, means with a willful disregard of right and duty, or doing the act against a man's own conviction of duty.—United States v. Ruggles, Case No. 16,205.

The offense of maliciously forcing a mate on shore at a foreign port, and leaving him there, may be committed, although no physical force was used, as in the case where the mate left the ship under a well-grounded fear of his life had he remained on board.—United States v. Riddle, Case No. 16,162.

To complete the offense of maliciously and without justifiable cause forcing an officer or mariner on shore, or leaving him behind in a foreign port (Act 1825, c. 276, § 10), it is not necessary that he should be in a condition to return, and willing to return.—United States v. Netcher, Case No. 15,866.

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

plication for a discharge.—United States v. Netcher, Case No. 15,866.

Masters act on their own responsibility in leaving men in foreign ports for misconduct. It is proper to take the advice of the consul, but his opinion is only advice.—United States v. Lunt, Case No. 15,642.

To justify leaving men in a foreign port, there must be such an exigency as would control the judgment of masters of reasonable firmness.—United States v. Lunt, Case No. 15,642.

"Justifiable cause" for forcing a seaman on shore (Act 1825, c. 276, § 10) means a case of moral necessity, for the safety of the ship and crew, or the due performance of the voyage, and not merely a cause justifying a discharge.—United States v. Coffin, Case No. 14,824.

§ 179. Assault in general.

A mere intention to give pain, or to torture the person assaulted, will not support an indictment against the master for an assault on the mate with intent to kill.—United States v. Riddle, Case No. 16,162.

§ 180. Punishment.

The master may inflict reasonable punishment and use means of coercion in case of desertion and persistent refusal to perform duty.—United States v. Alden, Case No. 14,427.

To authorize a conviction, under Act 1835, c. 40, § 3, for injury to a seaman, both malice, hatred, or revenge and a want of justifiable cause must be shown.—United States v. Taylor, Case No. 16,442.

In cases of mutinous conduct the master may use a greater degree of violence than where there is misbehavior only.—United States v. Wickham, Case No. 16,689.

The authority of the officers of a merchant ship to inflict punishment is of a summary, but not a military, character.—United States v. Hunt, Case No. 15,423.

In the absence of the master, the next highest officer on board succeeds to his rights and authority pro tempore, so far as they are necessary for the due performance of the ship's duties.—United States v. Taylor, Case No. 16,442.

Punishment by the mate or other officers when the master is on board can be justified only by an immediate exigency of sea service.—United States v. Hunt, Case No. 15,423; Same v. Taylor, Id. 16,442.

An inferior officer cannot inflict blows upon a seaman for disobedience without consulting the master, except in a case which will not admit of delay.—United States v. Harriman, Case No. 15,311.

The master is justified in using a deadly weapon to reduce a seaman to obedience only in cases of apparent necessity, such as the situation of the ship and the manifestation of a hostile disposition on the part of the crew.—United States v. Colby, Case No. 14,830.

He is justified in using it though the necessity be apparent only.—United States v. Lunt, Case No. 15,643.

"Vessel of commerce," within Act Sept. 28, 1850, abolishing flogging, includes vessels engaged in whale and other fisheries.—Charge to Grand Jury, Case No. 18,249.

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.—Charge to Grand Jury, Case No. 18,249.

Any punishment which, in substance and effect, amounts to corporal punishment by stripes inflicted with a cat, is within the provision of the statute, irrespective of its degree.—United States v. Cutler, Case No. 14,910.

The act abolishing the punishment of flogging (Act March 3, 1835) is not a penal law, and no indictment can be framed upon it.—United States v. Cutler, Case No. 14,910.

Flogging is not a cruel and unusual punishment, within the meaning of Act March 3, 1835, § 3.—United States v. Collins, Case No. 14,836.

On an indictment under Act March 3, 1835, § 3, the government must show that the act was without justifiable cause, and a willful departure from a known duty.—United States v. Cutler, Case No. 14,910.

A whaling ship is a vessel of commerce within the act.—United States v. Cutler, Case No. 14,910.

The word "crew," as used in Act 1835, c. 40, includes the officers as well as common seamen, and the master may be liable thereunder for an imprisonment of the first mate.—United States v. Winn, Case No. 16,740.

A master, who is present when punishment is inflicted by a subordinate officer, is personally responsible therefor.—United States v. Taylor, Case No. 16,442.

(C) CRIMINAL PROSECUTIONS.

§ 181. Indictment.

Sufficiency of indictment against a seaman for endeavoring to make a revolt on board an American vessel in foreign waters.—United States v. Turner, Case No. 16,549.

An indictment for an endeavor to commit a revolt and for confining the master need not allege that he was at the time in the peace of the United States, or a citizen thereof. Act 1790, c. 9, § 12.—United States v. Thompson, Case No. 16,492.

The crime of endeavoring to make a revolt is one against the master, and it is sufficient to charge it in the words of the act of 1835 to give the court cognizance of it, even within the requirements of Act March 3, 1825.—United States v. Seagrist, Case No. 16,245.

The charge that defendants, "with force and arms, did then and there feloniously make a revolt on board the said ship, contrary," etc., is insufficient to charge the offense of revolt or mutiny under the act of 1835.—United States v. Almeida, Case No. 14,433.

An indictment for confining the captain, for an assault in a foreign port on a vessel belonging to a citizen of the United States, need not negative the fact that defendant was tried and convicted or acquitted by the foreign tribunal.—United States v. Stevens, Case No. 16,394.

Proof of an endeavor to commit a revolt in a foreign port will sustain an indictment for an endeavor to commit a revolt on the high seas.—United States v. Keefe, Case No. 15,509.

§ 182. Evidence.

On a charge of revolt a copy of the shipping articles cannot be given in evidence to show that the prisoner was part of the crew, without proof of loss or destruction of the original.—United States v. Doughty, Case No. 14,987.

The original articles cannot be given in evidence unless the handwriting of the prisoner is proved.—United States v. Doughty, Case No. 14,987.

The log book kept by the master is not evidence in an indictment for a revolt and confining the master.—United States v. Sharp, Case No. 16,264.

A seaman cannot be prosecuted under Rev. St. § 4596, unless the circumstance of the offense is entered in the log book as soon as possible

after the occurrence, and is read over to the seaman, or a copy furnished him, and his reply entered in the same manner.—United States v. Brown, Case No. 14,672.

On the trial of an indictment for endeavoring to make a mutiny and revolt, the American character of the vessel must be proved, but the title may be proved by parol.—United States v. Crawford, Case No. 14,890; Same v. Seagrist, Id. 16,245.

§ 183. Arrest of judgment.
Where there is a verdict of guilty on two counts,—one for a revolt, and another for an attempt to excite it,—the judgment will not be arrested.—United States v. Peterson, Case No. 16,037.

VIII. FOREIGN SEAMEN.

§ 184. What law governs.
The case of a French seaman will be determined by the marine law of France.—Moran v. Baudin, Case No. 9,785.

§ 185. Contract of shipment.
Foreign seamen unwittingly shipping for a voyage wherein the navigation acts forbid their employment may recover in rem damages resulting from nonperformance.—McKenzie v. The Oglethorpe, Case No. 8,857.

§ 186. Wages.
A foreigner shipped at a foreign port, and discharged at a foreign port in accordance with his contract, is not entitled to two months' extra pay.—The Hermon, Case No. 6,411.

British seaman does not forfeit wages by coming on shore to legally demand payment.—Babbell v. Gardner, Case No. 692.

The master cannot deduct from the wages of seamen of a wrecked British vessel expenses of their board and transportation home.—MacPherson v. Blytheswood, Case No. 8,920.

Foreign seamen, who abandon their vessel in a United States port upon a strict construction of their contract, can recover only the value of their demands in the currency of the United States, without regard to its depreciation.—Reynolds v. The Simoon, Case No. 11,733.

A foreign seaman who had shipped to this country and was offered passage home cannot sue here for wages, where the master had given security for his return.—The Pacific, Case No. 10,644.

Wages will be decreed on a libel by a French seaman against a French vessel which has changed her voyage from that for which he contracted.—Moran v. Baudin, Case No. 9,785.

The transfer of a crew of a foreign vessel dismantled here to another vessel, under the authority of the consul, *held* to give no right to the seamen to libel the vessel for wages.—Robin v. Cacique, Case No. 11,931.

A libel for wages by a foreign seaman, whom the master has charged with desertion, *held* should be dismissed where the master offered to take the seaman home, and give him a certificate of forgiveness for past offenses.—Willendson v. Forsoket, Case No. 17,682.

An action to recover wages notwithstanding loss of vessel, authorized by the British statute on production of the certificate showing fidelity, is not upon the statute, which simply removed a disability previously imposed by the maritime courts.—Davis v. Leslie, Case No. 3,639.

In such case, proof of fidelity may be shown by other legal evidence than the certificate.—Davis v. Leslie, Case No. 3,639.

Seamen on board a ship of war or vessel belonging to a sovereign independent state cannot libel the vessel for wages due.—Moitez v. The South Carolina, Case No. 9,697.

§ 187. Punishment.
Foreign seamen on board American vessels are as much subject to punishment for acts of revolt, or attempts to commit revolts, as Americans.—United States v. Peterson, Case No. 16,037.

§ 188. Offenses.
Act June 7, 1872, § 51, applies to seamen engaged on foreign vessels while in American waters.—United States v. McArdle, Case No. 15,653.

Act July 20, 1790, c. 29, regulating seamen in the merchants' service, does not apply to foreign seamen on foreign ships.—Ex parte D'Olivera, Case No. 3,967.

SEARCHES AND SEIZURES.

§ 1, In general. § 2, Wrongful seizure. § 3, Certificate of probable cause.

Power to issue search warrant, see "Constitutional Law," § 4.

§ 1. In general.
The right of search is not allowable in times of peace, except against pirates or other offenders against the law of nations.—The Tigris, Case No. 14,038.

A right of seizure on the high seas may exist independently of any right of search.—United States v. The La Jeune Eugenie, Case No. 15,551.

§ 2. Wrongful seizure.
Restitution and acceptance *held* a mutual release, barring a claim for damages for unlawful seizure.—The Malaga, Case No. 8,985.

Reasonable ground for a seizure is a defense to a libel for damages.—The Malaga, Case No. 8,985.

The court will entertain the question of damages, as well as costs, at the same time with the principal question of the legality of the arrest of the vessel.—The Malaga, Case No. 8,985.

§ 3. Certificate of probable cause.
A certificate of probable cause will be given if the officer making the seizure acts in good faith, and has reasonable grounds to suppose that the law has been violated.—United States v. The Reindeer, Case No. 16,145.

A doubt of law is a proper case for a certificate of probable cause of seizure. In what cases such a certificate ought to be allowed.—The Friendship, Case No. 5,125.

A certificate of reasonable cause for seizure will be granted where it appeared that the collector acted under the instruction of the former officer in making the seizure, upon a construction of the statute adopted by the secretary of the treasury in conformity with an opinion of the attorney general.—United States v. The Recorder, Case No. 16,130.

A reasonable ground of suspicion is reasonable cause for a seizure.—United States v. The Recorder, Case No. 16,130.

It makes no difference whether the collector acted under a mistake of facts or of the law.—United States v. The Recorder, Case No. 16,130.

A lapse of two years *held* no bar to the application, but the laches were sufficient to cast the costs of the action against the collector upon him.—United States v. The Recorder, Case No. 16,130.

A certificate of probable cause cannot be granted where there has been neither claim nor trial, nor decree, nor anything to which an appeal could lie.—The Malaga, Case No. 8,985.

A stipulation that a seizure had been made *held* a sufficient foundation for an order of rea-

sonable cause of seizure, though no seizure was in fact made.—United States v. The Henry, Case No. 15,352.

Certificate of probable cause of seizure denied for want of jurisdiction, where the seizure had been abandoned, a new seizure made, and judgment rendered for defendant on appeal to the circuit court.—Ninety-Two Barrels of Spirits, Case No. 10,275.

A certificate of probable cause of seizure is no defense to an action by the claimant against the seizing officer, to recover the value of the property, where it has not been returned.—Smith v. Averill, Case No. 13,007.

SECESSION.

Of states, see "States," § 2.

SECONDARY EVIDENCE.

In civil actions, see "Evidence," §§ 20–26.

SEDUCTION.

§ 1. Civil liability—Actions by parent.
An action upon the case will lie for seduction of plaintiff's daughter, whereby he lost her services.—Mudd v. Clements, Case No. 9,900.

In such action plaintiff may give evidence that defendant promised to marry the daughter, as a means of seduction.—Mudd v. Clements, Case No. 9,900.

SEIZURE.

See "Searches and Seizures."
Certificates of probable cause, see "Customs Duties," § 22.
For violation of internal revenue laws, see "Internal Revenue," §§ 65–90.
In admiralty, see "Admiralty," § 62.
Jurisdiction over, see "Admiralty," § 34; "Courts," § 97.
Of books and papers, see "Customs Duties," § 77.
On execution, see "Execution," § 8.

SENTENCE.

In criminal prosecutions, see "Criminal Law," §§ 104, 106–109; "Embezzlement," § 5; "Homicide," § 10; "Larceny," § 13.

SEPARABLE CONTROVERSY.

See "Courts," § 45; "Removal of Causes," § 20.

SEPARATE ESTATE.

Of married women, see "Husband and Wife," §§ 5–8.

SEPARATION.

See "Husband and Wife," § 12.

SERVICE.

Of notices in bankruptcy, see "Bankruptcy," §§ 144–146.
Of pleading in admiralty, see "Admiralty," § 88.
Of process, see "Garnishment," § 3; "Process," §§ 2–7.
—— in bankruptcy, see "Bankruptcy," § 123.
—— in equity, see "Equity," § 32.
Of subpœna, see "Witnesses," § 3.
Of writ of habeas corpus, see "Habeas Corpus," § 7.
—— of injunction, see "Injunction," § 37.

SERVICES.

See "Work and Labor."
Jurisdiction over contracts for, see "Admiralty," §§ 23–28.

SERVITUDES.

See "Easements."

SET-OFF AND COUNTERCLAIM.

§ 1, Nature and existence of right in general. § 2, Joint and separate debts. § 3, Debts payable in future. § 4, Claims arising out of contract. § 5, Unliquidated claims and damages for tort. § 6, Assigned claims. § 7, Set-off and counterclaim in equity.

In actions by United States, see "United States," § 33.
—— on bills or notes, see "Bills and Notes," § 93.
—— on contracts of indemnity, see "Indemnity," § 2.
In admiralty, see "Admiralty," § 46.
In bankruptcy, see "Bankruptcy," §§ 409–412, 492, 671.
In ejectment, see "Ejectment," §§ 22–26.
Of costs, see "Bankruptcy," § 671.
On execution, see "Execution," § 22.
Pleading matter of set-off or counterclaim, see "Pleading," § 35.

§ 1. Nature and existence of right in general.
The demands of plaintiff and defendant must be specific and mutual, and there must exist a simultaneous right of action at the institution of suit, to enable one to set off against the other.—Pate v. Gray, Case No. 10,794a.

The right of set-off is limited at common law to cases of mutual, connected debts, and does not extend to debts which are unconnected.—Hurlbert v. Pacific Ins. Co., Case No. 6,919.

§ 2. Joint and separate debts.
Joint debts cannot be set off against separate debts, or separate debts against joint debts.—Howe v. Sheppard, Case No. 6,773.

A debt of two joint debtors to two joint creditors cannot be set off against a debt of one of the joint creditors to one of the joint debtors.—Langley v. Brent, Case No. 8,066.

A debt due by the plaintiff to one of two joint defendants cannot be set off against the joint debt to the plaintiff.—Waters v. Bussard, Case No. 17,262.

Defendant cannot set off a joint judgment recovered by himself and wife against plaintiff.—Sutton v. Mandeville, Case No. 13,648.

A plea setting up a claim for damages against plaintiff, which shows that the alleged damage was for wrongs to property in which defendant was interested with others, is no response to a declaration setting out a breach of defendant's individual promise.—Central Ohio R. R. v. Thompson, Case No. 2,550.

§ 3. Debts payable in future.
A debt payable in future cannot be pleaded in bar of a present demand.—Scott v. Jones, Case No. 12,536.

§ 4. Claims arising out of contract.
In an action for goods sold for cash at auction, defendant may set off plaintiff's note.—Stettinius v. Myer, Case No. 13,385.

Property received collaterally, and not in payment of a note, cannot be set up, in an action on the note, by way of set-off.—Homas v. McConnell, Case No. 6,656.

Credit for commissions claimed by an insurance agent from the company cannot be allowed a guarantor of the agent's note in a suit at law. Such claim could only be made available in a suit in equity on an accounting.—Mutual Life Ins. Co. v. Wilcox, Case No. 9,980.

In an action for negligence in keeping plaintiff's sheep, founded on breach of a special contract, defendant cannot have deducted compensation under the contract.—Crowninshield v. Robinson, Case No. 3,451.

§ 5. Unliquidated claims and damages for tort.

Unliquidated damages cannot be pleaded as a set-off.—Homas v. McConnell, Case No. 6,656; Armstrong v. Brown, Id. 542; United States v. Williams, Id. 16,721; Same v. Wells, Id. 16,663.

Damages for use and occupation may be the subject of set-off.—Brohawn v. Van Ness, Case No. 1,920.

Unliquidated damages for breach of warranty of the soundness of a horse cannot be set off against a note given for the purchase price.—Morrison v. Clifford, Case No. 9,846.

A claim founded in tort may be set off against a demand in contract, where defendant's claim is founded in a duty which plaintiff owes him, as to deliver property as bailee; for in such case the tort may be waived.—McCabe v. Winship, Case No. 8,668.

In an action on a bill of exchange, defendant may set off a claim for neglect to insure a vessel in a certain amount, as plaintiff was bound to do, where the vessel was lost without insurance.—De Taslet v. Crousellat, Case No. 3,827.

§ 6. Assigned claims.

In an action brought in the name of the assignor, the defendant may set off a debt due from the assignee.—Corser v. Craig, Case No. 3,255.

Quære, whether a party, who has procured an assignment of a debt of the plaintiff, can set it off against his own debt due to the plaintiff, which was previously assigned.—Greene v. Darling, Case No. 5,765.

A debtor, after notice of an assignment of the debt by the creditor, who purchases a claim against the creditor, cannot set off the same in a suit brought in the name of the creditor for the use of the assignee.—Whitaker v. Pope, Case No. 17,528; Weightman v. Queen, Id. 17,359.

A partnership debt cannot be set off in an action by an assignee of one of the partners.—Wright v. Rogers, Case No. 18,090.

In an action by an insolvent for the use of his trustee, defendant may set off plaintiff's note to a third person, coming to his hands before the insolvency.—Banks v. King, Case No. 960.

A debt due from the obligee to the obligor of a bond ascertained upon a settlement of mutual accounts, after the institution of a suit by an assignee of the bond, cannot be set off against such assignee.—Scott v. Jones, Case No. 12,536.

The right of set-off, either in law or in equity, of mutual debts, is extinguished by a bona fide assignment of one of the debts.—Howe v. Sheppard, Case No. 6,773.

§ 7. Set-off and counterclaim in equity.

Courts of equity, in cases of set-off, follow the law.—Gass v. Stinson, Case No. 5,262; Gordon v. Lewis, Id. 5,613, 5,614; Howe v. Sheppard, Id. 6,773.

Unless there is some equity attaching to the particular transactions between the parties.—Gordon v. Lewis, Cases Nos. 5,613, 5,614; Howe v. Sheppard, Id. 6,773.

And joint debts cannot be set off in equity any more than at law against separate debts, unless there be some other equitable circumstances.—Jackson v. Robinson, Case No. 7,144; Vose v. Philbrook, Id. 17,010.

The fact of the existence of mutual demands without some intervening equity between the parties, would not justify a court of equity in allowing a set-off. Mere insolvency does not constitute such an equity.—Gordon v. Lewis, Case No. 5,614.

Courts of equity, independently of any statute of set-off, do not exercise jurisdiction to set off mutual disconnected debts, unless where the dealings of the parties imply it as matter of agreement, or mutual credit.—Greene v. Darling, Case No. 5,765.

Unliquidated damages arising from the nonperformance of a verbal promise to convey real estate, made without consideration and under a mistake of fact, cannot, in equity, be set off against a judgment at law.—Lee v. Thornton, Case No. 8,203.

Where a set-off or defense to a debt was available at law, and the party omitted by laches to take advantage of it, it seems a court of equity will not relieve him.—Greene v. Darling, Case No. 5,765.

SETTLEMENT.

See "Accord and Satisfaction"; "Account Stated"; "Compromise and Settlement"; "Payment"; "Release."

By executor or administrator, see "Executors and Administrators," §§ 56–69.

By guardian of infant, see "Guardian and Ward," § 9.

By partner, see "Partnership," § 52.

Marriage settlements, see "Husband and Wife," § 2.

Of claims for personal injuries, see "Seamen," § 159.

Of officers' accounts, see "United States," § 12.

SEVERANCE.

Of action, see "Action," § 4.

SHERIFFS AND CONSTABLES.

§ 1, Compensation. § 2, Process as protection from liability. § 3, Liability upon attachment and execution. § 4, Liability for escape of prisoner. § 5, Requiring bail and other bonds. § 6, Actions to enforce liability of officer—Right of action. § 7, —— Pleading and evidence. § 8, —— Damages. § 9, Deputies. § 10, Removal and resignation. § 11, Official bonds.

See, also, "United States Marshals."

Disturbance of possession or interference with, see "Admiralty," § 56; "Courts," § 118.

Sheriffs' deed, see "Execution," § 19.

§ 1. Compensation.

A sheriff is entitled to poundage at time he makes the levy.—In re Black, Case No. 1,458.

The constable is not entitled to any fee on an execution not served.—United States v. Little, Case No. 15,609.

§ 2. Process as protection from liability.

A sheriff is protected from liability in obeying the command of an execution on a dormant

judgment, and his proceedings cannot be collaterally impeached, especially by the person at whose instance they have been commenced. —Goshorn v. Alexander, Case No. 5,630.

An officer executing a writ cannot be *held* liable as a trespasser, however malicious his conduct, if the subject-matter was within the jurisdiction of the magistrate, and the execution regular on its face.—Smith v. Miles, Case No. 13,079a.

A sheriff will be protected in serving process regular on its face issued by a court having jurisdiction of the subject-matter, though it issued irregularly. — United States v. Harris, Case No. 15,313.

§ 3. Liability upon attachment and execution.

The assent of the plaintiff's attorney to the appointment of a receiptor on an attachment on mesne process will conclude the plaintiff.—Pierce v. Strickland, Case No. 11,147.

The consent of the creditor to the bailment to a receiptor of goods attached only exempts the attaching officer for losses not occasioned by his neglect or misfeasance.—Pierce v. Strickland, Case No. 11,147.

Upon general principles, a sheriff can only levy upon such real estate as is within his county.—Kent v. Roberts, Case No. 7,715.

A constable is not liable for wantonly sacrificing property taken under execution, unless it appear that he acted from a corrupt motive. —United States v. Bill, Case No. 14,593.

A motion against a sheriff for not paying over to plaintiff money made upon a fi. fa. may be made in the name of the original plaintiff in the fi. fa., although he had taken the insolvent oath.—Fendall v. Turner, Case No. 4,727.

A sheriff who neglects to sell property seized on execution is liable in damages.—Dunlop v. West, Case No. 4,170.

The sheriff is liable for failure to make the costs of the clerk when practicable, and is not excused by any direction of the judgment creditor or his attorney.—Lewis v. Hamilton, Case No. 8,324a.

§ 4. Liability for escape of prisoner.

The sheriff is accountable for an escape of the jailer where he is committed to his own jail, and no new keeper is appointed.—Steere v. Field, Case No. 13,350.

The escape of a prisoner while insane is no defense to the sheriff.—Hazard v. Hazard, Case No. 6,278.

The assignment of a bond for the limits discharges the sheriff from liability for a subsequent escape.—United States v. Noah, Case No. 15,894.

Though imprisonment for debt is abolished in Michigan, a sheriff is yet liable for permitting the escape of a debtor arrested for fraud under the state statutes.—Mewster v. Spalding, Case No. 9,513.

The sheriff cannot take advantage of an irregularity in the process which does not render it void.—Spafford v. Goodell, Case No. 13,197.

A sheriff who receives as jailer a person arrested by the marshal is bound to keep the prisoner under all the responsibilities as if he had been arrested under state process.—Spafford v. Goodell, Case No. 13,197.

It is not an escape in a jailer to allow prisoners confined for debt the liberty of all the apartments within the jail walls.—Steere v. Field, Case No. 13,350.

It is an escape in a jailer to make a prisoner a turnkey, and to trust him with the keys of both inner and outer doors, at all times.—Steere v. Field, Case No. 13,350.

§ 5. Requiring bail and other bonds.

Delay by the plaintiff, for a period of five years, to call on the officer for bail, will be such laches as to exonerate the officer.—Gill v. Stebbins, Case No. 5,432.

Under Act Jan. 6, 1800, the sheriff is bound to take a bond for the limits, as provided by the state laws, from a prisoner confined on process from a federal court.—United States v. Noah, Case No. 15,894.

Property levied upon is at the risk of the officer if he fails to take a delivery bond, and he is responsible for its forthcoming.—Campbell v. Pope, Case No. 2,365a.

§ 6. Actions to enforce liability of officer—Right of action.

The creditor has a remedy by action against the officer for irregularities in proceeding under the execution.—Azcarati v. Fitzsimmons, Case No. 690.

§ 7. —— Pleading and evidence.

In an action for an escape, the record is inadmissible where varying from the judgment described in the declaration.—Suydam v. Aldrich, Case No. 13,652.

A sheriff is not estopped by the statement in his return of the valuation of the goods attached; but such return casts the burden on him of showing a different value.—Pierce v. Strickland, Case No. 11,147.

No other proof than that defendant acted as sheriff in levying upon property is necessary to charge him as such.—Lawrence v. Sherman, Case No. 8,144.

In an action against the officer for loss of goods levied upon, their value may be shown by parol, where the return is silent on that subject. —Campbell v. Pope, Case No. 2,365a.

§ 8. —— Damages.

In a suit against an officer for official misfeasance plaintiff can recover only his actual loss arising therefrom.—Pierce v. Strickland, Case No. 11,147.

The sheriff is liable for the escape to the extent of the damage sustained by the party issuing the process.—Darst v. Duncan, Case No. 3,580; Duryee v. Webb, Id. 4,198.

In debt on the statute, the recovery is for the debt and costs, without regard to the damages sustained.—Darst v. Duncan, Case No. 3,580.

Where defendant is wholly without property, the sheriff is liable only to nominal damages.—Spafford v. Goodell, Case No. 13,197.

The injury received by plaintiff on an escape of defendant on final process is measured by the amount of property possessed by defendant, not exceeding the sum named in the declaration.—Spafford v. Goodell, Case No. 13,197.

In an action against a sheriff for conversion, the amount which the goods brought at the sheriff's sale is not conclusive as to their value.—Long v. Conner, Case No. 8,479.

§ 9. Deputies.

A sheriff is personally responsible for the acts of his deputy.—Clute v. Goodell, Case No. 2,911.

Where the act of the deputy is sanctioned by the sheriff the latter is liable though the execution was not sealed.—Lawrence v. Sherman, Case No. 8,144.

A new county was set off after certain lands lying therein had been attached. Subsequently execution was issued to the sheriff of the old county, and was levied on the lands by his deputy, who was also deputy of the sheriff of the new county. *Held*, that the levy was utterly void.—Kent v. Roberts, Case No. 7,715.

§ 10. Removal and resignation.

A constable will be dismissed on petition and proof of misconduct while exercising the duties

of his office.—United States v. McGill, Case No. 15,677.

A rule on a constable to show cause why he should not be removed "for extortion under color of his office" need not specify the particular facts relied upon.—Jones v. Woodrow, Case No. 7,509.

A constable suspended from office before rule to show cause.—Ex parte Bowling, Case No. 1,737.

A constable using criminal process to enter forcibly one's premises to serve a civil warrant, and to take unlawful possession of property to secure the debt, will be dismissed from office. —United States v. Merryman, Case No. 15,759a.

A constable ordered to be dismissed from office for collecting an illegal fee, unless he return the same, and pay the cost of the rule served on him.—United States v. McPherson, Case No. 15,704.

It seems that, where an attachment is made by a sheriff who resigns before execution issues, he is not the proper person to levy it.—Kent v. Roberts, Case No. 7,715.

At common law, a sheriff may sell, after going out of office, goods seized on execution while in office.—Kent v. Roberts, Case No. 7,715.

§ 11. Official bonds.

An indictment lies for acting as constable without giving bond.—United States v. Evans, Case No. 15,064.

The temporary removal of a constable from office will not vacate or invalidate his official bond.—United States v. Bill, Case No. 14,594.

The sureties of a constable's bond are not liable for money collected by the constable without legal process.—United States v. Cranston, Case No. 14,889.

The sureties of a sheriff in Virginia are not liable for officer's fees unless the account of the same shall have been delivered to the sheriff for collection before the 1st of March, under Act Va. Dec. 19, 1792, § 11.—Virginia v. Turner, Case No. 16,971.

Sufficiency of averments in debt upon a constable's bond, in not conveying realty sold to plaintiff on a fi. fa.—Hazel v. Waters, Cases Nos. 6,283, 6,284.

In debt on a sheriff's bond, his return upon an execution that he had satisfied the plaintiff is not evidence for defendants.—Virginia v. Wise, Case No. 16,972.

Upon a breach assigned in not paying money received upon a fi. fa., plaintiff must show that the sheriff received the money before the return day.—Virginia v. Wise, Case No. 16,972.

A return produced by plaintiff as evidence of the receipt of the money is also evidence of its payment to plaintiff, where it is so stated therein.—Virginia v. Wise, Case No. 16,972.

SHIPPING.

I. REGULATION IN GENERAL.

§ 1, Nationality of vessel. § 2, Identity of vessel. § 3, Power to control and regulate. § 4, Registry. § 5, Enrollment and license. § 6, Duties and taxes. § 7, Inspection—Vessels in general. § 8, —— Steam vessels. § 9, Regulation of vessels in foreign commerce. § 10, Regulation of vessels in domestic commerce. § 11, Penalties and forfeitures for violations of regulations—Fraudulent enrollment and registration. § 12, —— Violation of licenses for coasting trade and Fisheries. § 13, —— Violations of inspection regulations. § 14, —— Failure to deliver register or report arrival. § 15, —— Lien for penalties. § 16, Offenses against navigation laws.

II. TITLE TO AND EMPLOYMENT OF VESSEL IN GENERAL.

§ 17, Nature of ownership of vessels. § 18, Title under contract for building vessels. § 19, Evidence of title. § 20, Rights of owners in general. § 21, Rights, powers, and liabilities of part owners—Rights and powers of majority. § 22, —— Right to possession. § 23, —— Division of earnings. § 24, —— Rights of minority to security. § 25, —— Stipulations for return. § 26, —— Actions between part owners. § 27, —— Rights, duties, and liabilities as to third persons. § 28, Managing owner, ship's husband, or agent. § 29, Sale—Requisites and validity in general. § 30, —— Who may transfer title. § 31, —— Bill of sale. § 32, —— Conditional sales. § 33, —— Sale to alien. § 34, —— Rights and liabilities of purchasers in general. § 35, —— Rights of bona fide purchasers. § 36, Leases. § 37, Mortgages—Requisites and validity. § 38, —— Rights and liabilities of mortgagees. § 39, Recording conveyances. § 40, Agreements of consortship.

III. CHARTERS.

§ 41, Nature of contract. § 42, What law governs. § 43, Authority to make charter. § 44, Requisites and validity of charter party. § 45, Cancellation, surrender, or rescission. § 46, Construction and operation in general. § 47, Charterer as owner for the voyage.. § 48. Seaworthiness and fitness of vessel. § 49, Readiness and dispatch of vessel. § 50, Charter for carriage of passengers. § 51, Cargo. § 52, Receiving cargo. § 53, Voyage. § 54, Discharge of cargo. § 55, Freight, charter money, or other compensation—When earned in general. § 56, —— Pro rata. § 57, —— Rate and amount. § 58, —— Deductions and offsets. § 59, —— Who liable. § 60, —— Liens in general. § 61, —— Cargo subject to lien. § 62, —— When lien attaches. § 63, —— Waiver and discharge of lien. § 64, —— Enforcement of lien. § 65, Breach of charter party by owner or master—What constitutes a breach. § 66, —— Actions for breach. § 67, Breach of charter by charterer —What constitutes a breach. § 68, —— Effect of breach. § 69, —— Actions for breach. § 70, Loss or injury to cargo. § 71, Loss or injury to vessel. § 72, Subcharter and assignment of charter. § 73, Letting vessel on shares.

IV. MASTER.

§ 74, Appointment and removal. § 75, Authority and duties—Scope and extent in general. § 76, —— Management and navigation of vessel. § 77, —— Employment of seamen. § 78, Sale of vessel by master—When justified. § 79, —— Rights and liabilities of purchasers from master. § 80, Sale of cargo by master—When justified, and validity in general. § 81, —— Sale of perishable cargo. § 81a, —— Rights and liabilities of purchasers. § 82, —— Rights of owners of cargo. § 83, Authority and duties of master as to crew. § 84, Individual rights and privileges as to vessel, cargo, and freight. § 85, Wages and reimbursements of expenses—Rights in general. § 86, —— Forfeiture. § 87, —— Deductions and offsets. § 88, —— Extra wages. § 89, —— Who are liable. § 90, —— Actions and summary proceedings. § 91, —— Liens. § 92, Lay or share in earnings. § 93, Liabilities on contract. § 94, Liabilities for negligence or misconduct.

V. LIABILITIES OF VESSELS AND OWNERS IN GENERAL.

§ 95, Representation of vessel or owners in general. § 96, Contracts in general. § 97, Supplies and repairs—In general. § 98, —— Contracts by master. § 99, Advances. § 100, Negotiable instruments. § 101, Torts committed by master or crew—In general. § 102, —— Negligent management or navigation. § 103, —— Willful or wanton injuries. § 104, Dangerous or defective condition of vessel or appliances.

VI. BOTTOMRY AND RESPONDENTIA.

§ 105, Nature of contract—In general. § 106, —— What constitutes. § 107, Power of owner to make bond. § 108, Power of master to make bond—In general. § 109, —— Necessity. § 110, —— Communication with owner. § 111, —— For what purposes bond may be made. § 112, Who may take bond. § 113, Foreign port. § 114, Requisites and validity—In general. § 115, —— Consideration. § 116, —— Fraud. § 117, —— Partial invalidity. § 118, —— Recording. § 119, Construction and operation. §§ 120, 121, Rights and duties of lender or holder. § 122, Subject-matter hypothecated. § 123, Debt secured. § 124, Liens and priority. § 125, Loss of vessel or cargo. § 126, Payment or satisfaction. § 127, Actions.

VII. CARRIAGE OF GOODS.

§ 128, Nature of vessel's liability. § 129, Who may make contract of affreightment. § 130, What constitutes a contract of affreightment. § 131, Construction and operation in general of contract of affreightment. § 132, Performance and breach of contract of affreightment in general—Who liable for performance. § 133, —— Excuses for nonperformance. § 134, —— Lien for performance. § 135, Delivery to vessel. § 136, Bill of lading and shipping receipts in general—Authority to give. § 137, —— Duty to give. § 138, —— Requisites and validity. § 139, —— Construction and operation. § 140, —— Indorsement. § 141, —— Priority. § 142, Loading and stowage—What constitutes stowage. § 143, —— Delay in loading. § 144, —— Manner of stowage. § 145, —— Place of stowage. § 146, —— Expenses. § 147, Custody and control of goods. § 148, Transshipment and forwarding. § 149, Delivery by vessel—In general. § 150, —— Time of delivery. § 151, —— Place of delivery. § 152, —— Notice to consignee. § 153, —— Duties of consignee or owner as to delivery. § 154, —— What constitutes delivery. § 155, —— Failure or refusal of consignee to receive cargo or pay freight. § 156, —— Delivery of goods shipped C. O. D. § 157, Nondelivery or misdelivery—Failure to deliver in general. § 158, —— Short delivery. § 159, —— Misdelivery. § 160, Delay in transportation or delivery. § 161, Loss or injury—Liability in general. § 162, —— Unseaworthiness or unfitness of vessel as ground of liability. § 163, —— Negligence in loading. § 164, —— Negligent management or navigation. § 165, —— Improper stowage. § 166, —— Deviation or delay. § 167, —— Negligence in discharging. § 168, —— Negligence or wrongful acts of master or crew. § 169, —— Inherent defect in goods. § 170, —— Duties after wreck or other disaster. § 171, —— Presumptions and burdens of proof as to cause of injury. § 172, —— Actions for damages. § 173, —— Extent of liability and amount of damage. § 174, Statutory exemptions from liability. § 175, Limitation of liability by contract or bill of lading—In general. § 176, —— Exemptions from particular risks or causes of loss. § 177, —— Perils of the sea. § 178, —— Presumptions and burden of proof as to cause of injury. § 179, Who liable for loss or damage. § 180, Freight—When earned in general. § 181, —— In case of wreck or other disaster. § 182, —— Pro rata. § 183, —— Rate and amount in general. § 184, —— Amount as depending upon weight or measurement of cargo. § 185, —— Deductions and offsets. § 186, —— Who liable. § 187, —— Payment or tender. § 188, —— Actions. § 189, —— Lien. § 190, —— Sale of cargo for freight. § 191, Damages for violations of regulations. § 192, Forfeitures for violations of regulations. § 193, Offenses incident to carriage of goods.

VIII. CARRIAGE OF PASSENGERS.

§ 194, Nature of liability. § 195, Regulations as to steam vessels. § 196, Regulations as to dangerous articles. § 197, Regulations as to number of passengers. § 198, Contracts for carriage of passengers in general. § 199, Accommodations on vessel—In general. § 200, —— Provisions. § 201, Berths and staterooms. § 202, Voyage and discharge at destination. § 203, Personal injuries. § 204, Passengers' effects. § 205, Damages for violation of regulations. § 206, Penalties and forfeitures for violation of regulations. § 207, Offenses by master and crew in violation of regulations.

IX. DEMURRAGE.

§ 208, Construction of charter party or bill of lading. § 209, effect of customs and usages. § 210, Liability of charterer or shipper in general. § 211, Liability of consignee in general. § 212, Delay in loading or sailing. § 213, Delay during voyage. § 214, Delay in unloading—In general. § 215, —— Time used in unloading. § 216, —— Waiting turn at wharf. § 217, —— Moving vessel during unloading. § 218, —— Effect of customs and usages. § 219, Fault of vessel or owner. § 220, Lay days. § 221, Rate or amount. § 222, Lien.

X. GENERAL AVERAGE.

§ 223, Nature of right to contribution. § 224, Perils and acts grounds of contribution—In general. § 225, —— Stranding. § 226, —— Jettison. § 227, —— Acts to prevent capture. § 228, —— Acts to prevent fire. § 229, —— Acts to avoid collision. § 230, Losses and expenses subject to compensation—Loss of or damage to vessel. § 231, —— Services and expenses in general. § 232, —— Expenses for voyage to port of distress. § 233, —— Expenses at port of distress. § 234, Liability to contribute—Liability of vessel, cargo, and owner. § 235, —— Liability of freight. § 236, —— Liability of master and crew. § 237, Adjustment—In general. § 238, —— As to vessel. § 239, —— As to cargo. § 240, —— As to freight. § 241, Actions. § 242, Lien. § 243, Failure to enforce contribution.

XI. LIMITATION OF OWNER'S LIABILITY.

§ 244, Vessels and interests to which limitation applies. § 245, Who are entitled to benefit of limitation. § 246, Losses and injuries subjects of limitation—In general. § 247, —— Privity or knowledge of owner. § 248, Proceedings—When proceedings may be instituted. § 249, —— Waiver of right to institute. § 250, —— Jurisdiction. § 251, —— Restraining suits against shipowners. § 252, —— Appraisement or valuation. § 253, —— Costs and fees. § 254, —— Release on giving stipulation. § 255, Distribution of proceeds.

XII. WRECK.

§ 256, Rights of property. § 257, Sale of wreck.

See, also, "Admiralty"; "Carriers"; "Collision"; "Ferries"; "Maritime Liens"; "Pilots"; "Piracy"; "Salvage"; "Seamen"; "Towage"; "Wharves."

Death caused by negligence of officers of vessel, see "Death," § 2.

Embargo and nonintercourse, see "War," §§ 7-25.

Jurisdiction of action for penalties, see "Admiralty," § 34.

— of crimes committed upon navigable waters or vessels, see "Criminal Law," §§ 10, 11.

— over foreign vessels, see "Admiralty," §§ 5-7.

Regulation of fisheries, see "Fish," § 6.

I. REGULATION IN GENERAL.

Vessels subject to admiralty jurisdiction, see "Admiralty," § 7.

§ 1. Nationality of vessel.

The ownership of a vessel determines her national character, and this may be proved in the same manner as that of any other chattel.—United States v. Jenkins, Case No. 15,473.

A vessel built in Canada, and owned in the United States, is not a vessel of the United States.—The Mary Merritt, Case No. 9,222.

A vessel does not become denationalized where she continues running without a renewal of her license after being sold to a citizen of the United States.—United States v. The Forrester, Case No. 15,132.

An American vessel belonging to American citizens, and sold abroad to American citizens, does not cease to be an American vessel.—United States v. Gordon, Case No. 15,231.

An omission in the registry and enrollment of an American vessel does not make her foreign, but only deprives her of American privileges.—Fox v. Paine, Case No. 5,014.

§ 2. Identity of vessel.

A boat with an entirely new hull, with parts of the machinery and upper works of an old boat, which had been abandoned or dismantled, *held* a new boat.—Hartupee v. The Coal Bluff, No. 2, Case No. 6,172.

Where, in rebuilding a vessel, each timber of the old vessel is dislocated before being used in the new, the vessel is a new one.—United States v. The Grace Meade, Case No. 15,243.

§ 3. Power to control and regulate.

Congress has power to regulate the building and equipment of vessels in the United States, whether for foreign or interstate commerce.—United States v. Jackson, Case No. 15,458.

§ 4. Registry.

The provisions concerning registry are constitutional. Act July 29, 1850.—Blanchard v. The Martha Washington, Case No. 1,513.

A foreign vessel, abandoned at sea, and picked up and towed into New York, is not a "vessel wrecked in the United States" (Rev. St. § 4136), and is not entitled to an American register as such, where her repairs amounted to three-fourths of her value when repaired.—United States v. The Victoria Perez, Case No. 16,620.

Act March 27, 1804, taking away the privileges of American ships from vessels owned by naturalized citizens who reside for a certain time in foreign countries, etc., did not repeal Act June 27, 1797, which denied registry to American vessels captured and condemned by foreign power, even on again becoming American property.—Smith v. Hammond, Case No. 13,053.

The title to a British vessel purchased by an American was taken in the name of a British subject, and subsequently, without consideration, transferred to a Russian subject, inhabitant of Alaska. An American register was obtained on the taking of the oath prescribed by Act 1792. *Held*, that the register was fraudulent.—United States v. The Fideliter, Case No. 15,088.

Act June 27, 1797, denying right of re-registration to an American vessel seized and condemned by a foreign power, even on again becoming American property, does not apply to American vessels privately sold to foreigners, and again purchased by Americans.—Smith v. Hammond, Case No. 13,053.

A collector wrongfully refusing to re-register a vessel sold to a foreigner, and repurchased by an American, is not personally liable in damages, if his refusal is based on honest mistake in construing the law.—Smith v. Hammond, Case No. 13,053.

The permanent register must issue from, and be recorded in, the office of the collector of the home port as defined by law.—Blanchard v. The Martha Washington, Case No. 1,513.

Fees of British consuls for receiving and recording ship's papers and for certifying to a redelivery.—Lorway v. Lousada, Case No. 8,517.

Under the registry laws, the person in whose name, as master, a vessel is registered, must be deemed her master for every legal intendment and purpose, though another person is employed to navigate and discipline the vessel.—The Dubuque, Case No. 4,110.

If documents by which registry of a vessel has been obtained are identified and come from the possession of the government, the signatures need not be proved.—The Mary Celeste, Case No. 9,202.

An American registered vessel, sold, while at sea, to resident citizens of the United States, without a bill of sale reciting her registry, and without any new registry, until her arrival in the home port, loses her privileges as an American vessel until such new registry is made.—United States v. Willing, Case No. 16,727; Willing v. United States, Id. 17,764; United States v. The Forrester, Id. 15,132.

The ship registry acts of the United States have not changed the common law as to the mode in which ships may be transferred, but only take from any ship not transferred according to these acts the charter of an American ship.—Weston v. Penniman, Case No. 17,455.

The navigation of a vessel under an American register after her sale to a foreign subject is a violation of section 27 of the registry act.—The Maria, Case No. 9,075.

A sale upon credit, and upon the condition that the purchaser shall not use the vessel until the purchase money is all paid, and that on default the seller may retake the vessel, is a sale within the registry laws.—The Maria, Case No. 9,075.

The registry acts do not require a disclosure of the equitable title of the vessel registered or enrolled, unless such title is in the subject of a foreign state.—Scudder v. Calais Steamboat Co., Case No. 12,566; Weston v. Penniman, Id. 17,455.

§ 5. Enrollment and license.

An enrollment and license duly executed does not require delivery to give it validity.—United States v. The Planter, Case No. 16,054.

The enrollment of a vessel is absolutely void where the oath of one of the owners has not been previously taken and subscribed in conformity with Act Feb. 18, 1793, § 2.—United States v. Bartlett, Case No. 14,532.

A canal boat without motive power of its own, towed through a canal by horses, and on nav-

igable waters by a steamer, does not come within Act Feb. 18, 1793, in relation to vessels employed in the coasting trade.—United States v. The Ohio, Case No. 15,915; Same v. The Pennsylvania Canal Boat Nos. 68 and 69, Id. 16,027.

Act April 25, 1866, directing issue of enrollment and license, is mandatory, and an oath, under Act Dec. 31, 1792, § 4, is not necessary, and if false, without effect.—The Acorn, Case No. 29.

Ferryboats running under a ferry franchise granted by the state are not required to be enrolled under the act of 1852.—Elizabethport & N. Y. Ferry Co. v. United States, Case No. 4,362.

A license from the United States is not necessary to authorize the owners of a steamboat to employ her in ferrying.—United States v. The William Pope, Case No. 16,703.

Ferryboats, prior to Act July 7, 1838, were not required to be enrolled and licensed.—United States v. The William Pope, Case No. 16,703.

Act July 7, 1838, does not apply to vessels which were not theretofore required to be enrolled and licensed for the coasting trade.—United States v. The William Pope, Case No. 16,703.

A vessel enrolled or licensed under Act March 2, 1831, became under the protection of the laws of the United States, and bound to observe the revenue laws.—United States v. Sweeney, Case No. 16,426.

A voyage to a foreign port within the usual voyage of vessels licensed for the fisheries is not a "foreign voyage." Act Feb. 18, 1793, c. 8.—The Three Brothers, Case No. 14,009.

Registered vessels, not licensed, may be legally employed on a whaling voyage, and may come into American ports without being subject to the disabilities of foreign vessels.—United States v. Jenkins, Case No. 15,473.

Authority of collector to take bond under Act Feb. 18, 1793, providing for the enrollment and licensing of vessels employed in the coasting trade and fisheries.—United States v. Hipkin, Case No. 15,371.

Sufficiency of allegations of complaint in action against collector of customs for penalty under Act 1852, § 24.—Briscoe v. Hinman, Case No. 1,887.

§ 6. Duties and taxes.

British ships coming from ports in British colonies pay the full duties on foreign vessels.—United States v. Hathaway, Case No. 15,326.

A native citizen of the United States who resides in a foreign country may command a registered vessel without her right to the payment of domestic duties being affected thereby; but he cannot be the owner of such a vessel. Act Dec. 31, 1792.—United States v. Gillies, Case No. 15,206.

Character of vessel, as to whether or not it is a "canal boat," within the exemption from liability for marine hospital tax (Act July 20, 1846), how determined.—Buckley v. Brown, Case No. 2,092.

The United States may have an action against a vessel for tonnage duties.—The George T. Kemp, Case No. 5,341.

Where, by mistake, fraud, or accident, the tonnage and like duties payable by law are not paid by the owner of a vessel, an action of debt lies against him to recover them, but not against a mere consignee of the vessel.—United States v. Hathaway, Case No. 15,326.

See, also, "Commerce," § 3.

§ 7. Inspection—Vessels in general.

An unfinished vessel need not be inspected before being moved from one place to another in the course of her construction.—The Joshua Leviness, Case No. 7,549.

A voyage from the place where the vessel is constructed to another place, by direction of the inspectors, to enable her to be inspected, is not a violation of the navigation laws.—The Joshua Leviness, Case No. 7,549.

§ 8. —— Steam vessels.

It is the duty of the master or owner of a steam vessel engaged in carrying passengers for hire, whether regularly or otherwise, to make a written application for her inspection, under Rev. St. § 4417.—The Jacob G. Neafie, Case No. 7,156.

A steamboat employed in transporting passengers between ports in the same state is not within the inspection law of August 30, 1852.—United States v. The Seneca, Case No. 16,251.

A small steamer whose route was wholly within the state, though engaged in interstate commerce, *held* not subject to inspection and license under the federal laws.—The Daniel Ball, Case No. 3,564.

A vessel engaged in navigation wholly betwen towns in the same state, though used as a connecting line for transportation into other states, is not engaged in interstate commerce, and is not subject to inspection, under Act June 8, 1864.—The Bright Star, Case No. 1,880.

Such act does not extend the requirement of the act of 1852, concerning the inspection of hulls, etc., to vessels engaged in commerce wholly within a state.—The Bright Star, Case No. 1,880.

A boat licensed as a ferryboat, but frequently making trips beyond her ferry limits, is not exclusively engaged in ferrying, and is subject to inspection. Act 1852.—The Bright Star, Case No. 1,880.

Under Act July 7, 1838, more than six months must not elapse after one examination of a steamboat's boilers before another is made.—Virginia & M. Steam Nav. Co. v. United States, Case No. 16,973.

A small steam pleasure yacht, run occasionally by its owners, for amusement, on Buffalo Bayou, below Houston, Tex., is not a vessel navigating the public waters of the United States, in the meaning of the steam inspection law.—United States v. The Mollie, Case No. 15,795.

A vessel engaged in transporting merchandise is not subject to a penalty for failure to have her hull and boilers inspected under Act Aug. 30, 1852.—The Sun, Case No. 13,612.

In the case of a ferryboat running between Astoria and New York on the East river, proof of the carriage of passengers and merchandise is sufficient to throw upon claimants the burden of showing that such passengers and freight were not destined for other states. Act Feb. 28, 1871, § 11.—The Sunswick, Case No. 13,624.

§ 9. Regulation of vessels in foreign commerce.

The master of a vessel merely touching at a port without coming to an entry or transacting any business, need not deposit the ship's papers with the consul. Act Feb. 28, 1803, § 2.—Toler v. White, Case No. 14,079.

A whaling voyage is not a foreign voyage, within the meaning of Act 1803, c. 62, and a bond executed under, but not required by, nor in accordance with, such act, is a nullity.—Taber v. United States, Case No. 13,722.

A vessel arriving in the district of Barnstable from Nova Scotia, bound to New York, must make entry in such district, for New York is not "a more interior district," with reference to Barnstable, in the sense of Act 1799, c. 128, § 29.—United States v. Bearse, Case No. 14,552.

The report required to be made by the master of the arrival of his vessel (Act 1790, c. 35, § 16) must be made at the office of the chief officer of the customs.—United States v. Galacar, Case No. 15,181.

A license from a blockading squadron to a neutral vessel carrying provisions will not authorize refusal of clearance unless illicit intercourse is contemplated.—Bas v. Steele, Case No. 1,088.

Production of certificate of compliance with state inspection laws not necessary to entitle to clearance.—Bas v. Steele, Case No. 1,088.

Party failing to remove the suspicions by evidence in his power is not entitled to damages for refusal of clearance.—Bas v. Steele, Case No. 1,088.

Unless a proper manifest be tendered to the collector by the commander of the vessel, the collector is not bound to grant a clearance.—Bas v. Steel, Case No. 1,087.

In an action for damages for refusal of a clearance, an allegation that plaintiff was owner of vessel laden with a cargo is sufficient allegation as to ownership of cargo.—Bas v. Steele, Case No. 1,088.

§ 10. Regulation of vessels in domestic commerce.

The mackerel fishery and the cod fishery are "trades," for which the vessel must procure a license, under Act 1793, c. 8, § 32.—The Nymph, Cases Nos. 10,388, 10,389.

No registered ship or vessel, while she remains registered, can engage in the whale fisheries (Act 1793, c. 52); but she must surrender her register, and be enrolled and licensed for the fisheries. —United States v. Rogers, Case No. 16,189.

A fishing vessel licensed to catch codfish cannot catch mackerel, except as bait, or provisions for the crew.—United States v. The Paryntha Davis, Cases Nos. 16,003, 16,004; Same v. The Reindeer, Id. 16,145; The Nymph, Id. 10,388, 10,389.

A "foreign port or place," within the meaning of Act July 6, 1812, c. 129, § 1, is a port or place within the sovereignty of a foreign nation.—The Eliza, Case No. 4,346.

"Foreign voyage," in section 8 of the coasting act of February 18, 1793, means a voyage to some place in the jurisdiction of a foreign country, or at least without the waters of the United States.—The Lark, Case No. 8,090.

It is not a foreign voyage if the delivery of the cargo is made within United States waters, though to a British subject residing on the British side of the stream.—The Atlantic, Case No. 621.

§ 11. Penalties and forfeitures for violations of regulations—Fraudulent enrollment and registration.

A foreign vessel, which, after being wrecked, is rebuilt by a citizen of the United States, and enrolled as a new domestic vessel, is liable to forfeiture, as fraudulently enrolled, though she might have been enrolled as a foreign vessel wrecked in the United States and purchased and repaired by a citizen.—The Hud and Frank, Case No. 6,824.

A sum secured in the bond required by Act Dec. 31, 1792, § 7, is recoverable, under section 29, as a penalty or forfeiture, in case of a breach, and not as liquidated damages under a contract; hence the collector, naval officer, and surveyor are entitled to a moiety thereof.—United States v. Montell, Case No. 15,798.

A vessel enrolled and licensed under the act of 1793 for the coasting trade and fisheries is not subject to forfeiture under the act of 1792, § 16, for false swearing on application for registration.—United States v. The Sciota, Case No. 16,240.

The penalty for failure to exhibit an enrollment or license when demanded under Act Feb. 18, 1793, § 13, is not enforceable against a canal boat which was not enrolled or licensed.—The John J. Wiltsie, Case No. 7,353.

Under the act of July 18, 1866, § 24, the forfeiture of a vessel for fraudulently obtaining a certificate of registry is absolute.—The Mary Celeste, Case No. 9,202.

A forfeiture for obtaining an American register for a foreign vessel under a false and fraudulent statement is not defeated by a subsequent sale to a bona fide purchaser.—The Monte Christo, Case No. 9,719.

The forfeiture of a vessel for a fraudulent registry under Rev. St. § 4189, only takes effect from the seizure and condemnation, and a purchaser in good faith before seizure acquires a good title as against the United States.—The Kate Heron, Case No. 7,619.

The forfeiture of a vessel or its value, under Rev. St. § 4143, does not vest either in the government absolutely, but only from the time it elects which to take.—United States v. Hamilton, Case No. 15,289.

A proceeding in rem is the proper remedy for a violation of Act May 5, 1864, requiring steamers to have their names painted conspicuously on their wheel houses and pilot houses.—The Lewellen, Case No. 8,308.

The value of the vessel at the time of the commission of the illegal act governs the amount of penalty, irrespective of any subsequent change or loss.—United States v. Hamilton, Case No. 15,289.

Evidence to prove forfeiture for violation of registry laws as to false ownership must be taken as a whole, and if it support claimant's case, he need not introduce evidence of ownership.—The Acorn, Case No. 29.

Exemplified copy of record of naturalization sufficient prima facie proof of citizenship on information for violation of registry laws.—The Acorn, Case No. 29.

The proceeds of a forfeiture under Act July 18, 1866, are to be paid directly by the court, one-half to the collector of the port for the use of the United States, one-fourth to the informer, if any, and one-twelfth each to the collector, surveyor, and naval officer.—The Monte Christo, Case No. 9,720.

Vessels registered as American, and cargoes entered as such, were jointly owned by an alien and a citizen. *Held*, that the transaction was in violation of the laws of impost and tonnage, and an action would not lie between the parties to recover a balance of accounts.—Cambioso v. Maffet, Case No. 2,330.

§ 12. —— Violation of licenses for coasting trade and fisheries.

A vessel licensed for the codfishery (Act Feb. 18, 1793, § 32) may be forfeited for engaging in transporting goods.—The Active, Case No. 35.

A vessel licensed for the fisheries, which brings merchandise from a foreign port with the knowledge or consent of her officers, is engaged in other trade, and is liable to forfeiture under Act Feb. 18, 1793, § 32.—The Ocean Bride, Case No. 10,404.

The carrying of cattle from an island to the main land in going out or returning, when done gratuitously, is not an act of trading.—The Swallow, Case No. 13,666.

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 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.—The Willie G., Case No. 17,762.

Exportation of American produce in American vessels to British ports on the continent not enumerated as open ports not unlawful. Act March 1, 1823.—The Atlantic, Case No. 621.

A single act of trading will forfeit a vessel licensed for the fisheries. Act Feb. 18, 1793, § 32.—The Swallow, Case No. 13.666; The Ocean Bride, Id. 10,404. But see United States v. The Reindeer, Case No. 16,145.

A vessel sailing under a fishing license may touch at a foreign port, and procure supplies, without incurring forfeiture under the acts of congress.—The Willie G., Case No. 17,762; The Ocean Spray, Id. 10,412.

A vessel not enrolled and licensed, but engaged exclusively in the foreign trade on Lake Champlain, does not become forfeit by having foreign goods on board.—United States v. The Margaret Yates, Case No. 15,720.

A vessel licensed for the coasting trade, or fisheries, if engaged in an illegal traffic, is forfeitable, under Act Feb. 18, 1793, c. 3, § 32.—The Two Friends, Case No. 14.289; United States v. The Mars, Id. 15,723; The Resolution, Id. 11,709; The Julia, Id. 7,574; The Eliza, Id. 4,346.

The sixth section of the coasting act of February, 1793, c. 8, inflicts a forfeiture of the ship and cargo only in cases of unregistered vessels, found with foreign goods on board, in the coasting trade, and not of vessels licensed for the fisheries.—The Eliza, Case No. 4,346.

The forfeiture of a coasting vessel for proceeding on a foreign voyage does not attach until the vessel quits the port with intent to proceed on the foreign voyage. Act Feb. 18, 1793, c. 8, § 8.—The Friendship, Case No. 5,124; The Julia, Id. 7,573.

Under Act Feb. 18, 1793, c. 3, § 32, the cargo found on board at the time of seizure is forfeited, and not merely the cargo on board at the time of committing the offense.—The Two Friends, Case No. 14,289.

On a libel for forfeiture for breach of a license to catch codfish, by catching mackerel at a certain time and place, parol evidence is admissible of catching mackerel at other times and places during the trip, as showing the real business of the voyage.—United States v. The Paryntha Davis, Case No. 16,003.

A libel under Act Feb. 28, 1793, § 32, need not specify the particular trade in which the vessel was engaged at the time of the seizure.—United States v. The Paryntha Davis, Case No. 16,003.

§ 13. —— Violations of inspection regulations.
The owner of a river steamboat is not liable to the penalty for noninspection, where the last year's inspection expires while the vessel is in the service of the government under military impressment.—United States v. Moore, Case No. 15,801.

A vessel using a steam register adopted by the supervising inspectors is not liable to seizure under the act of February 28, 1861, although the same is defective and insufficient. —The Lac La Belle, Case No. 7,968.

The penalty imposed by Act July 7, 1838, for failure to have a steamboat's boilers inspected, cannot be recovered from the owners by a libel in admiralty.—Virginia & M. Steam Nav. Co. v. United States, Case No. 16.973.

§ 14. —— Failure to deliver register or report arrival.
The master is not liable for the penalty for the nondelivery of the temporary register (Act 1793, c. 52, § 3) unless there be an arrival at the port to which the vessel belonged, not by accident or from necessity, but intentionally, as one of the termini of the voyage.—United States v. Shackford, Case No. 16,262.

The mere touching at a port to land passengers when on the way to another port will not make a case within the act.—United States v. Shackford, Case No. 16,263.

Any voluntary arrival in a foreign port in the course of the voyage, although for advices only, is within Act 1803, c. 62, § 2.—Parsons v. Hunter, Case No. 10,778.

In a prosecution for not making the requisite report, the government has the burden of showing that it was not made at the proper office. Act 1790, c. 35, § 16.—United States v. Galacar, Case No. 15,181.

The certificate of a consul is not admissible to prove the arrival or departure of a vessel on an information for a penalty for failure to deposit the ship's register on arrival in the port. —Levy v. Burley, Case No. 8,300.

The penalty of $500 for not depositing the ship's register with the consul on arrival in a foreign port (Act 1803, c. 62, § 2), must be sued for within two years. Act 1790, c. 36, § 31.—Parsons v. Hunter, Case No. 10,778.

An action of debt in the name of the consul is the proper remedy. — Parsons v. Hunter, Case No. 10,778.

§ 15. —— Lien for penalties.
The United States has no lien upon or interest in a vessel for violation of Act 1838, § 2, and Act 1852, § 1, until a seizure, and proceedings to recover the penalty.—The Ranier, Case No. 11,565.

§ 16. Offenses against navigation laws.
What constitutes the casting away of a vessel under Act March 26, 1804, § 1.—United States v. Vanranst, Case No. 16,608.

The circuit court has no jurisdiction of the offense of willfully destroying a vessel (Act March 26, 1804, § 1), unless it was committed upon the high seas, and not merely upon waters within the jurisdiction of the United States.—United States v. Wilson, Case No. 16,-731.

Act June 7, 1872, § 62, making it an offense to board a vessel without permission of her master, before she has actually arrived at her destination, and has been moored *held* valid.—United States v. Anderson, Case No. 14,447.

Climbing on the rail of the vessel from a boat, in the act of entering on the vessel without permission, is within the prohibition.—United States v. Anderson, Case No. 14,447.

Such section is intended to protect foreign vessels as well as vessels of the United States. —United States v. Anderson, Case No. 14,447.

The captain is responsible where he failed at once, after a collision, to ascertain the extent of the injuries, and to run his vessel ashore if he finds she will go down.—United States v. Warner, Case No. 16,643.

Loss of life is not the necessary result of a collision where the persons indiscreetly took to floats or rafts instead of remaining upon the upper deck of the sinking steamer, as commanded, where it appears that they would have been safe; otherwise where in such case they acted with ordinary prudence and discretion under the circumstances.—United States v. Warner, Case No. 16,643.

Under Act March 3, 1825, § 23, which punishes a conspiracy to destroy a vessel or cargo with intent to defraud the underwriters, the burning of the vessel is not necessary to complete the offense.—United States v. Cole, Case No. 14,832.

The destruction of the vessel by the defendants, or by any one of them, identified with

defendants as conspirators, is conclusive against them.—United States v. Cole, Case No. 14,832.

The intention to injure underwriters is an essential ingredient of the crime of conspiring to cast away, burn, or destroy a vessel (Act March 3, 1825, § 23), and must be averred in the indictment.—United States v. Hand, Case No. 15,296.

"Destroy," as used in the act, means to unfit the vessel for service, beyond hope of recovery by ordinary means.—United States v. Johns, Case No. 15,481.

The underwriters meant in such act are those upon the vessel, and not those upon the cargo.—United States v. Johns, Case No. 15,481.

The master of a vessel is indictable for willfully destroying her with intent to defraud the underwriters, though the owner be on board, and authorize or command her destruction.—United States v. Jacobson, Case No. 15,461.

The indictment must aver an intent to prejudice the underwriters, but an allegation of an intent of the owner to gain corrupt advantage to himself is surplusage.— United States v. Johns, Case No. 15,481.

That a ship is insured by a valued policy, beyond what the jury believe her true value, is no evidence that her owner insured her, and sent her out with intent to have her cast away, to obtain the insurance money.—United States v. Morris, Case No. 15,812.

The prosecutor must show that the insurance was valid; and, if made by a corporation, the act of incorporation must be shown.—United States v. Johns, Case No. 15,481.

In such case, evidence of the value of the property insured is admissible to show the inducement for destroying or preserving it.—United States v. Johns, Case No. 15,481.

On an indictment for setting fire to a vessel on the high seas, the mere possibility that the fire might have originated by accident or spontaneous combustion is no answer to strong probable evidence against the accused.—United States v. Lockman, Case No. 15,620.

A minor who ships on a vessel without the knowledge of his parents may be convicted of the offense of burning a vessel on the high seas.—United States v. Lockman, Case No. 15,620.

The offense of willfully setting fire to a ship at sea, created by Act July 29, 1850, § 7, is sufficiently charged in the words of the statute, without adding the averment that the offense was feloniously committed. — United States v. McAvoy, Case No. 15,654.

Jurisdiction of offense of revolt and mutiny, see "Criminal Law," §§ 10, 11.
Offenses by seamen, see "Seamen," §§ 175–183, 187, 188.

II. TITLE TO AND EMPLOYMENT OF VESSEL IN GENERAL.

Jurisdiction of claims to title or possession of vessel, see "Admiralty," § 12.
—— over disputes between vessel owners, see "Admiralty," § 9.
—— over shipbuilding contracts, see "Admiralty," § 20.
Lien of part owners on vessel, see "Maritime Liens," § 30.
Release of vessel on bond, see "Admiralty," § 70.
Stipulations in suits between owners of vessel, see "Admiralty," § 68.

§ 17. Nature of ownership of vessels.

A joint interest in a vessel is a tenancy in common, carrying with it the privileges and limitations of that interest at common law.—Bradshaw v. The Sylph, Case No. 1,791; Revens v. Lewis, Id. 11,711.

§ 18. Title under contract for building vessels.

Title to vessel building, not to be fully paid for until completed and delivered, is in the builder.—The Abby Whitman, Case No. 15.

Merely making part payment under a contract for construction of a vessel does not give the contractee title thereto.—The Sam Slick, Case No. 12,283.

Where the person for whom a vessel is contracted to be built superintends her construction, and makes payments as the work progresses, he is regarded as the real owner.—Scudder v. Calais Steamboat Co., Case No. 12,565.

The assignment by the builders of a vessel of the moneys to become due on the building contract invests the assignee with no such proprietary interest as will enable him to appear as claimant and defend.—The Revenue Cutter No. 1, Case No. 11,713.

Under a contract to build and deliver a vessel after a successful trial trip at sea, though the work is approved, and payments made as it progresses, the title does not pass until the final completion and delivery.—The Revenue Cutter No. 2, Case No. 11,714.

A vessel, building under a contract with the United States to build and deliver her after a successful trial trip at sea, is subject to process to enforce a lien for materials furnished while in the hands of the contractor, though the United States kept a superintendent at the vessel, with power to reject or approve materials used in her construction.—The Revenue Cutter No. 2, Case No. 11,714.

Under the condition that the United States might complete the work, at the expense of the contractor, upon his failure to perform, *held*, that the government would take possession merely as the agent of the contractor, to finish the vessel for and on his account.—The Revenue Cutter No. 2, Case No. 11,714.

§ 19. Evidence of title.

The statement of title of a vessel in the customhouse documents is not conclusive on third parties.—Chickering v. Hatch, Case No. 2,671.

The mere statement of the record owner of a vessel, who had previously sworn that he was the owner, is not sufficient to show that he is not interested in her.—Casey v. Leary, Case No. 2,497.

An agreement as to title and possession of a vessel will govern the rights of the parties, rather than prior shipping articles made on the same day.—The Countess of Dufferin, Case No. 3,280.

The register of a vessel is not, per se, evidence of ownership.—Bas v. Steele, Case No. 1,088.

The register of a vessel is not evidence of ownership unless confirmed by evidence to show that it was made by the authority or assent of the person named in it, who is sought to be charged as owner.—Scudder v. Calais Steamboat Co., Case No. 12,565.

An American registry is not even prima facie evidence of American ownership on prosecution for an offense committed on board a vessel owned in whole or in part by a citizen of the United States.—United States v. Brune, Case No. 14,677.

§ 20. Rights of owners in general.

Members of a voluntary association, who purchase a vessel and stores in the name of certain persons as their agents, have a right to a decree for title and possession, except as to property purchased without their authority.—The Taranto, Case No. 13,751.

An attachment of the vessel at common law by a creditor of the agents in a suit against them will not affect the right of the real owners to a decree for title and possession.—The Taranto, Case No. 13,751.

§ 21. Rights, powers, and liabilities of part owners—Rights and powers of majority.

The majority owners have a right to govern and control the employment of the vessel, and give directions as to her repairs and supplies. —Revens v. Lewis, Case No. 11,711.

The majority owners of a vessel have a right to remove one master and appoint another.—The Lizzie Merry, Case No. 8,423.

The majority owners in value may fit out the vessel against consent of the minority, but they must communicate their design.—Willings v. Blight, Case No. 17,765.

Where the opinion of the majority owners prevents the employment of the vessel, they must yield to the minority owners who desire its employment.—Tunno v. The Betsina, Case No. 14,236.

The majority owner of a foreign vessel merely touching at an American port en route *held* entitled to recover possession against an alien minority owner acting as master.—Diedman v. The Joseph Hume, Case No. 3,901.

§ 22. —— Right to possession.

Possession taken by a joint and equal owner of a vessel while she was improperly left by the other owner without an attendant will not be interfered with by the court.—The Ocean, Case No. 10,401.

§ 23. —— Division of earnings.

The share of a part owner in a vessel or the proceeds of a voyage is not under a lien in law to pay another part owner for his extra advances.—Macy v. De Wolf, Case No. 8,933.

A part owner of a vessel, dissenting from a voyage and receiving a stipulation from the other owners for the vessel's safe return, is not entitled to compensation for the use of his part of the vessel during the voyage.—The Marengo, Case No. 9,065.

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 to him.—Willings v. Blight, Case No. 17,765.

§ 24. —— Rights of minority to security.

A dissenting minority owner is entitled to a stipulation to secure his interest in case of a loss on a voyage undertaken against his wishes. —Tunno v. The Betsina, Case No. 14,236; Fox v. Paine, Id. 5,014.

A part owner, though his name is omitted from the registry and enrollment procured by the others, *held* entitled to ask security for the safety of the vessel on a voyage not approved by him.—Fox v. Paine, Case No. 5,014.

Minority owner *held* entitled to security for the return of the vessel, though he did not dissent from the voyage until the vessel was nearly ready for sea, where he had previously refused to share expenses of the outfit.—The Marengo, Case No. 9,066.

Intemperance of the master is a sufficient ground to require the majority owners to give the dissenting owners a stipulation for the safe return of vessel from a proposed foreign voyage. —Bragdon v. The Kitty Simpson, Case No. 1,-798.

Admiralty cannot require majority owners to give a bond to the minority owners to cover indebtedness of the vessel to them, or to indemnify them against loss in her future employment.—The Ocean Belle, Case No. 10,402.

§ 25. —— Stipulations for return.

A stipulation given to a minority owner for the safe return of a vessel "from the said voyage to the port at New York" is not satisfied by her return to Boston, from which port she is sent out without objections from the minority owner, and lost.—The Susan E. Voorhis, Case No. 13,633.

The amount due upon an accounting between the majority and minority owners cannot be applied to diminish the liability of the stipulators on their bond.—The Susan E. Voorhis, Case No. 13,633.

§ 26. —— Actions between part owners.

A sale will be ordered where moiety owners cannot agree as to control and employment of vessel.—Burr v. The St. Thomas, Case No. 2,-194a; The Seneca, Id. 12,670; The Vincennes, Id. 16,944; The Annie H. Smith, Id. 420. But see Lewis v. Kinney, Case No. 8,325.

A part owner, whose interest does not exceed a moiety, cannot demand the entire possession or sale of the vessel in invitum against his co-owner.—Bradshaw v. The Sylph, Case No. 1,-791.

A libel by moiety owners for sale of a vessel cannot be met by a motion founded on affidavits to continue possession of vessel on giving security.—Burr v. The St. Thomas, Case No. 2,195.

Compulsory sale of vessel not ordered on application of one owner, where the other equal part owner in possession offered to stipulate for her safe return from the voyage contemplated.—Davis v. The Seneca, Case No. 3,650.

Where the equal half ownership and disagreement is denied, claimants will be allowed to retain possession, pending the hearing, on giving security.—Burr v. The St. Thomas, Case No. 2,195.

Where the title of a vessel could not be determined pending accounting between the parties, possession was awarded to the master, who was part owner, on his own stipulation.—Coverdale v. The North America, Case No. 3,289.

Necessary averments and proofs to support a libel between co-owners for supplies furnished ship's husband, or against mortgagee therefor.—Dodge v. Leary, Case No. 3,952b.

§ 27. —— Rights, duties, and liabilities as to third persons.

An individual part owner of a vessel has no power, because of being an owner in common with others, to bind the latter in relation to matters extra the necessary preservation of the property itself.—Montell v. The William H. Rutan, Case No. 9,724.

One owner is bound by a bona fide sale by a co-owner, though not evidenced by a bill of sale, where he has previously authorized it, or has accepted part of the purchase money.—Bradshaw v. The Sylph, Case No. 1,791.

The sale of an entire vessel by one part owner in common does not authorize his co-owner to treat the sale as a tortious conversion.—Bradshaw v. The Sylph, Case No. 1,791.

A supercargo dealing solely with the ostensible owners of the whole cargo may retain out of the whole proceeds a general balance, due him from them, as against a part owner whose interest was not disclosed to him.—Luckett v. West, Case No. 8,593.

The giving of credit to one part owner and the taking of his separate note, where the other owners settle with him on the basis thereof, bars recovery against them by the creditor.—Macy v. De Wolf, Case No. 8,933.

One of two part owners in a vessel run for their common profit cannot contract with a shipper, without the consent of the other, to apply

freight earned on his individual debt.—Donovan v. Dymond, Case No. 3,993.

The part owners may jointly maintain a suit in admiralty to recover the freight, notwithstanding such contract.—Donovan v. Dymond, Case No. 3,993.

A part owner may sustain a petitory suit against a merely fraudulent possessor, without joining the other part owners, and have a decree for possession on proving his title.—The Friendship, Case No. 5,123.

Part owners are liable for the torts of one of their number while acting as master in the execution of the business in which the boat is engaged.—Taylor v. Brigham, Case No. 13,781.

In the case of a purchase of a return cargo with proceeds of the outward cargo, the master has no right to consign the return cargo to one only of such owners; and, where it is so consigned, the consignee has no lien on it for any separate and distinct demand against the other tenants in common.—Jackson v. Robinson, Case No. 7,144.

§ 28. Managing owner, ship's husband, or agent.

A part owner, acting as master, has no right, as between the other part owners and himself, to subject their interests to expense, when forbidden to do so.—Revens v. Lewis, Case No. 11,711.

The implied authority of a part owner, acting as master, to do everything necessary for the employment of the vessel and her equipment, ceases when it is revoked, or anything is done to rebut the presumption.—Revens v. Lewis, Case No. 11,711.

The right of a part owner of a vessel under agreement with the others to sail the vessel as master is a personal right, and cannot be transferred with a sale of his interest.—The Lizzie Merry, Case No. 8,423.

Where one of the owners of a vessel gave his note for supplies furnished by libelant, and on a settlement charged the master, who was the other owner, with his portion thereof, the master was not thereby relieved from liability to libelant.—The Chusan, Case No. 2,717.

Part owners of a vessel are not partners, and each may maintain a separate action against the ship's husband for his proportion of the freight; and this though he be one of the part owners.—Magruder v. Bowie, Case No. 8,964.

The master, who is a part owner, will be presumed to be bound by the provisions of the charter party, though it is not signed by him; and on the voyage he has no power to exercise the rights of a part owner.—Tyson v. Belmont, Case No. 14,316.

In such case the master has no power, as part owner, to submit to arbitration a controversy as to the amount of freight due.—Tyson v. Belmont, Case No. 14,316.

A master being a part owner in a vessel is liable in damages for issuing a fraudulent bill of lading to the assignee in good faith, which may be recovered against the vessel to the extent of his interest therein.—Montell v. The William H. Rutan, Case No. 9,724.

§ 29. Sale—Requisites and validity in general.

The title to a ship built in the United States for alien residents abroad passes like any other chattel without writing.—The Active, Case No. 34.

The title to a vessel may pass by delivery under a parol contract.—Scudder v. Calais Steamboat Co., Case No. 12,565.

No coaster can be sold in a foreign port unless her license be previously surrendered (Act Feb. 18, 1793); and her American character is not changed by the transfer.—United States v. The Hawke, Case No. 15,331.

The mere debiting of an interest in a vessel on the settlement of accounts between parties is not of itself a transfer of the vessel.—Peterson v. United States, Case No. 11,036.

The sale of a licensed schooner to a British subject, followed by an order to the master to make delivery to him, and the presentation of a request for clearance by the captain, which recites the sale, and is signed and sealed by the British consul, though the delivery is not yet actually made, is a "transfer." Act Feb. 18, 1793.—United States v. Vermont, Case No. 16,618a.

The sale of a British vessel, at Alaska, after ratification of the treaty of purchase with Russia, but before the country was turned over to the American government, for the purpose of having such vessel thereby become an American bottom under the treaty, *held* fraudulent.—The Fideliter, Case No. 4,756.

A sale under the authority of the consul is conclusively presumed fraudulent, where the purchase money was secured by his note, and the title transferred to trustees for the benefit of his wife.—Riley v. The Obell Mitchell, Case No. 11,839.

The master of a whaler wrecked on a desert island, and escaping in a small boat to Oahu, purchased a brig by means of a draft on the owners of the wrecked vessel, and rescued the crew and oil left on the island. *Held*, that the drawee of the draft, on its acceptance and payment, became the owner of the brig, and was entitled to compensation for such service over and above his expenses and risk.—The Holder Borden, Case No. 6,600.

Where a vessel is assigned while at sea, and is taken possession of by the assignee in a reasonable time and manner after her return, it is sufficient delivery and possession as against other creditors attaching the vessel before such assignment is made.—Wheeler v. Sumner, Case No. 17,501.

The assignment being for the benefit of the preferred creditors unconditionally, and without any stipulation for a release or otherwise, the law would in such case presume the assent of the creditors.—Wheeler v. Sumner, Case No. 17,501.

It is not necessary to the validity of an assignment to indemnify the assignee for indorsements made, and to pay certain other creditors named, that such creditors assent to it at the time, if they assented before other rights attached.—Wheeler v. Sumner, Case No. 17,501.

§ 30. —— Who may transfer title.

A power of attorney authorizing a person to receive a vessel from her commander, and to sell her, does not give the right to sell the vessel until possession is delivered.—Burckle v. The Tapperheten, Case No. 2,141.

One having neither the actual nor constructive possession of a vessel, nor the right of possession, cannot transfer a good title thereto.—Burckle v. The Tapperheten, Case No. 2,141.

§ 31. —— Bill of sale.

By the general maritime law, a transfer of a ship should be evidence of a bill of sale.—Weston v. Penniman, Case No. 17,455.

Equitable ownership in a vessel, or ownership pro hac vice, need not be shown by a bill of sale or registry.—Hall v. Hudson, Case No. 5,935.

The execution of valid and legal papers conveying title to a vessel is prima facie evidence of a consideration.—Nicoll v. United States, Case No. 10,258.

A bill of sale, made without consideration, for the purpose of fraudulently obtaining an

American register, is a nullity, and the vessel is subject to forfeiture on the oath of ownership by the vendee.—The Fideliter, Case No. 4,756.

The inaccurate recital of the certificate of registry in a bill of sale does not avoid the sale, but merely deprives the vessel of her American character.—Philips v. Ledley, Case No. 11,096.

An agent or broker who purchases a vessel, taking a bill of sale in his own name to secure repayment of money advanced by him to pay the price and interest and commissions, is a mortgagee, not the owner, of the vessel.—The Panama, Case No. 10,703.

A sale of a steamboat with all appurtenances includes a new ash pan previously purchased and delivered to the vendor, but not yet placed on board.—Newberry v. The Fashion, Case No. 10,-143.

The circuit court will administer equitable relief in a case where it is sought to recover back interests in vessels conveyed under a usurious contract.—Graham v. Sheken, Case No. 5,675.

Where a reconveyance is impossible, the value will be awarded.—Graham v. Sheken, Case No. 5,675.

§ 32. —— Conditional sales.

Under a contract for the sale of a vessel, where the title is to pass upon the performance of a condition at a future day, the vendee to have possession in the meantime, the vendor is entitled to possession, where the condition is not performed.—The Oriole, Case No. 10,574.

In a suit for such possession of a vessel it is not necessary to go into all the equities, but only to ascertain the legal title.—The Oriole, Case No. 10,574.

A bill of sale of a ship and cargo merely by way of mortgage or security, if bona fide made, is good as against creditors, though possession is not taken by the purchaser.—D'Wolf v. Harris, Case No. 4,221.

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 until default of payment, is valid as an immediate conditional sale.—Winsor v. McLellan, Case No. 17,887.

The legal title and right to immediate possession of a vessel under an absolute bill of sale given to secure a loan, and registered as a mortgage, is vested in the mortgagee.—The J. B. Lunt, Case No. 7,246; Same v. Merritt, Id. 7,247.

§ 33. —— Sale to alien.

A sale to a corporation organized and existing under the laws of a foreign country is a sale "to a subject or citizen of a foreign prince or state" (Act Dec. 31, 1792, § 16), regardless of the citizenship of the shareholders.—The Maria, Case No. 9,075.

The sale of a registered or licensed vessel to a foreigner is not void, but the vessel is liable to forfeiture.—Phillips v. Ledley, Case No. 11,-096; The Two Friends, Id. 14,289.

The forfeiture takes place at the moment of sale or transfer to an alien, and any subsequent judgment of forfeiture relates back to that time. —The Florenzo, Case No. 4,886.

The vessels included within Act 1831, § 3, are not subject to forfeiture under Act 1792, § 16, relating to sales to foreigners without delivering up the certificate of registry.—United States v. The Sciota, Case No. 16,240.

A vessel which has been enrolled and licensed under the act of 1831, but whose license has become void by a subsequent sale, is no longer a licensed and enrolled vessel, so as to be subject to forfeiture by her sale in whole or in part to a foreigner in violation of section 32.—United States v. The Sciota, Case No. 16,240.

An enrolled vessel sailing under a fishing license is not liable to forfeiture because her part owner, a citizen of the United States, resides in a foreign country.—The Henry, Case No. 6,373.

A bona fide purchaser of the whole interest in a vessel, subsequent to a forfeiture incurred by a sale to an alien (Act Dec. 31, 1792, § 16), is not within the proviso of such section.—The Florenzo, Case No. 4,886.

The title of the alien purchaser, if he acquires any, is divested eo instanti by the statute, and he has left in him no interest which can be seized on execution.—The Florenzo, Case No. 4,886.

A levy on the forfeited property, under an execution against the alien, previous to the prosecution of the forfeiture, will not prevent the forfeiture.—The Florenzo, Case No. 4,886.

A vessel condemned for violation of the law, and sold under order of the court, may become foreign property.—United States v. The Hawke, Case No. 15,331.

§ 34. —— Rights and liabilities of purchasers in general.

One who purchases a vessel sold under process of state courts with knowledge that a proceeding in admiralty was pending against the vessel is not entitled to an order requiring the marshal to deliver possession of the vessel.—The Circassian, Case No. 2,721.

The refusal to fulfill a contract of purchase does not render the possession of the vendee tortious, so as to prevent him making a contract with third persons binding on the vessel.—Jackson v. The Julia Smith, Case No. 7,136.

The taking by a creditor of negotiable paper from the shipwright, in ignorance of the transfer of the vessel, will not impair his right to proceed against the purchaser.—Leslie v. Glass, Case No. 8,275.

In a suit to recover possession of a vessel which has been delivered under a contract for its sale, on performance of a condition, and where the condition has been broken, it is not necessary to go into all the equities, but only to ascertain the legal title.—The Oriole, Case No. 10,574.

§ 35. —— Rights of bona fide purchasers.

A bona fide purchaser of a vessel from the owner of record will be protected as against a prior unrecorded transfer.—The Superior, Case No. 13,626; Bogart v. The John Jay, Id. 1,597.

A purchaser at a sheriff's sale, without notice, or a bona fide purchaser for value from the legal owner of record, will be protected as against a sheriff who has allowed the attached vessel to escape, and has paid a claim for supplies and repairs subsequently furnished.—The Superior, Case No. 13,627.

A master who, with knowledge of a sale to an innocent purchaser, fails to make his claim known, cannot recover for wages theretofore accrued.—The Richmond, Case No. 11,795a.

An arrangement between the mortgagor and mortgagee that the former is to remain in possession of the vessel until the latter has a reasonable opportunity to enforce the mortgage will not affect the rights of bona fide purchasers for valuable consideration.—The Romp, Case No. 12,030.

The mortgagee will not be allowed to set up any priority over a purchaser without notice at a sale of the vessel at public auction for a valuable consideration, who bought after inspecting her papers.—The Romp, Case No. 12,030.

A vessel registered as American, when owned in part by a foreigner, cannot be libeled as forfeited after her sale to a person innocent of the fraud.—United States v. The Anthony Mangin, Case No. 14,461.

A statute sale, if fraudulent, will not bind the owner unless in favor of a bona fide purchaser for a valuable consideration, without notice, actual or constructive, or the fraud.—The Tilton, Case No. 14,054.

The forcible taking possession of a vessel is a maritime tort, and no rights can be acquired thereunder by a purchaser from the wrongdoer. —Thurber v. The Fannie, Case No. 14,014.

§ 36. Leases.

A lessee of a vessel which explodes from some hidden defect is not liable to the lessor.—Stewart v. Western Union R. Co., Case No. 13,438.

A stipulation in a lease of a vessel that she was received in good condition estops the lessee, where she is lost by explosion, from defending against a suit by the owner on the ground of any defects which were known or might have been known by him or his servants.—Stewart v. Western Union R. Co., Case No. 13,438.

Where a vessel is lost by explosion while in the possession of a lessee, and he is held liable for her value, he may be charged with interest from the date of the explosion.—Stewart v. Western Union R. Co., Case No. 13,438.

§ 37. Mortgages—Requisites and validity.

Remedy in admiralty, see "Admiralty," §§ 39, 64.

A shipbuilder may make a valid contract hypothecating his interest in the vessel before he commences building.—The Hull of a New Ship, Case No. 6,859.

A mortgage on a vessel to secure necessary advances *held* valid, though not recorded until after an assignment to an assignee in insolvency proceedings.—Leland v. Medora, Case No. 8,237.

Such mortgage is not fraudulent because unaccompanied by possession, where, by agreement in the mortgage, an immediate voyage by the owners was contemplated.—Leland v. Medora, Case No. 8,237.

The mortgage is good security though part of the consideration was not money actually advanced for the voyage.—Leland v. Medora, Case No. 8,237.

A later mortgage first recorded will be postponed to a prior unrecorded mortgage, of which the mortgagee had notice.—The John T. Moore, Case No. 7,430.

The fact that such prior mortgage could not be registered for want of a proper acknowledgment will not postpone it to the subsequent mortgage taken by one with notice thereof.—The John T. Moore, Case No. 7,430.

§ 38. —— Rights and liabilities of mortgagees.

The mortgagee of a vessel, before possession delivered, is not responsible for repairs made by the mortgagor; nor is he entitled to the earnings of the vessel.—Philips v. Ledley, Case No. 11,096; Macy v. DeWolf, Id. 8,933.

A mortgagee who after taking possession of the vessel, and while she is under arrest for wages, promises to pay outstanding wages earned while he had title to her, becomes thereby personally liable.—Kenneway v. The Wickford, Case No. 7,709.

Foreign attachments are not proceedings in rem, and the sale of a vessel on adjudication therein will not give the purchaser a title superior to that of a prior mortgagee.—Cole v. The Brandt, Case No. 2,978.

The mortgagee of a vessel to secure a contingent liability as indorser upon a note *held* to have a right to intervene to protect his interest in a libel against the vessel for wages.—The Dubuque, Case No. 4,110.

To charge a mortgagee personally, as owner of a vessel, there must be some unequivocal act of possession.—Stalker v. The Henry Kneeland, Case No. 13,282.

Master with knowledge of mortgage, allowing monthly wages to accumulate, not entitled to proceeds of vessel as against mortgagee.—Adams v. The Wyoming, Case No. 71.

Registry notice in New York of a chattel mortgage on a vessel does not affect third persons unless the owner continued to reside in the state. —Thomas v. The Kosciusko, Case No. 13,901.

A renewal notice in New York subsequent to Act July 29, 1850, is ineffectual unless the mortgage be also recorded in the office of the collector of the port.—Thomas v. The Kosciusko, Case No. 13,901.

Marshaling of assets in the case of a mortgage on one-half, and a subsequent mortgage upon three-fourths, of the vessel.—The Edith, Case No. 4,282.

Priorities of mortgage and other liens, see "Maritime Liens," § 53.
Right of mortgagee to intervene in admiralty, see "Admiralty," § 64.

§ 39. Recording conveyances.

The recording or nonrecording of a conveyance of a vessel does not affect the question of the personal liability of the owner.—Mott v. Ruckman, Case No. 9,881.

Quære, whether the law of 1850, § 1, in relation to recording the transfer of vessels, is constitutional.—The Martha Washington, Case No. 9,148.

Act July 29, 1850, requiring the recording of conveyances, etc., of vessels, does not give any force or validity to a domestic mortgage which it has not at the place of its execution.—Srodes v. The Collier, Case No. 13,272a.

A mortgage recorded as prescribed by Act July 29, 1850, is binding upon all parties.—The Grace Greenwood, Case No. 5,652.

Rev. St. § 4192, requiring the conveyance or mortgage of a vessel to be recorded, is inapplicable to a vessel which has never been enrolled or licensed.—Thurber v. The Fannie, Case No. 14,014.

The office of the collector at the home port is the proper place for the register of a conveyance or hypothecation of a vessel.—Blanchard v. The Martha Washington, Case No. 1,513; The John T. Moore, Id. 7,430.

The filing of mortgages on canal boats in New York depends wholly upon the special act of New York of April 28, 1864.—The Independence, Case No. 7,013.

A person purchasing with notice of a prior mortgage is not a purchaser in good faith, within the meaning of the act.—The Independence, Case No. 7,013.

A person having notice enough to put him on inquiry will be held to have notice of everything to which such inquiry would have led.—The Independence, Case No. 7,013.

The grantor in a bill of sale cannot be prejudiced by the grantee's neglect to record it, and cannot be made personally liable for negligent navigation after his interest has ceased.—Hurd v. Reeve, Case No. 6,917.

§ 40. Agreements of consortship.

Agreement of consortship by masters of vessels will be considered general unless limited by special understanding when made.—Cash v. One

Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

Though the interest of a vessel in a consortship may be small, this will never be presumed, but the general principle governs, that the interest of the vessel controls.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

In the absence of stipulation in an agreement of consortship, it can be terminated only by voluntary dissolution and notice.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

An agreement of consortship is for and on account of the vessels, though made by the masters.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

Burden of proving that an agreement of consortship is limited is on the party alleging it.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

Persons joining or becoming interested in a vessel during an agreement of consortship enter on the relation, and assume the risk of profit or loss.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

Change of owners, masters, or crew of one vessel without notice to the other party cannot affect an agreement of consortship.—Cash v. One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Case No. 2,498.

III. CHARTERS.

Jurisdiction of action on charter party, see "Admiralty," §§ 14, 15.
Parol or extrinsic evidence as to charter parties, see "Evidence," § 69.

§ 41. Nature of contract.

Under a charter party giving the whole capacity of the ship, the owner is not a common carrier, but a bailee for hire.—Lamb v. Parkman, Case No. 8,020.

Where the charter operates as a demise of the vessel, the charterer becomes the carrier, and the master his agent, in contracting for the carriage of merchandise; otherwise, where the charter operates merely as a contract of affreightment.—Donahoe v. Kettell, Case No. 3,-980.

§ 42. What law governs.

A charter party to load at a certain place is, in contemplation of law, made at such place.—Balfour v. Wilkins, Case No. 807.

§ 43. Authority to make charter.

Where the vessel owners have no agent in a foreign port, the master has power to make a charter party.—Hurry v. Hurry's Assignees, Case No. 6,922.

The master has no power to enter into a charter in a foreign port for the purpose of giving a creditor of the vessel owner a security for his debt.—Hurry v. Hurry's Assignees, Case No. 6,922.

The vessel is not liable for misrepresentation or concealment of facts by her master or owner in respect to her tonnage or capacity on the making of a charter party.—The Eli Whitney, Case No. 4,345.

A charter party made by agents who were part owners, to enable an individual creditor to repay himself out of earnings, is void as against the vessel and other owners.—The A. M. Bliss, Case No. 274.

The master cannot vary the contract made by the owners with the charterer.—The Salem's Cargo, Case No. 12,248.

A broker negotiating a charter cannot afterwards assert a claim so as to interfere with the voyage, but may enforce it if the vessel is properly arrested by a third party.—Lachenmeyer v. The Angelina, Case No. 7,967.

§ 44. Requisites and validity of charter party.

The cardinal elements of a charter party are a definite voyage to be performed and a definite compensation to be paid by the charterer.—Stalker v. The Henry Kneeland, Case No. 13,-282.

An agreement for a charter party to be made at a later period *held* to amount to a present charter party, though a more formal instrument was contemplated.—The Tribune, Case No. 14,-171.

Where there was a failure to give security as required, *held*, that the charter was not completely executed, though the vessel had gone to take in coal for the voyage.—The H. W. Edye, Case No. 6,964.

The making of a charter party *held* still subject to the condition to furnish a satisfactory guarantor, though duly executed, and guarantied by the person offered as guarantor. Case No. 4,519a reversed.—Erlen v. The Brewer, Case No. 4,519.

A charter to carry Chinese coolies between foreign ports is not void on the ground of immorality, when made before the law prohibited American vessels from engaging in such business.—The Hound, Case No. 6,731.

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, *held*, that the contract was invalid.—Wilson v. Le Roy, Case No. 17,817.

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.—Wilson v. Le Roy, Case No. 17,817.

§ 45. Cancellation, surrender, or rescission.

The implied covenant that a vessel shall sail for the port of lading within a reasonable time, and with reasonable dispatch, is not a condition precedent, and the charterer cannot cancel the contract unless the delay is so great as to frustrate the voyage intended.—Fearing v. Cheeseman, Case No. 4,710.

A failure to proceed "with all possible dispatch" from a certain port to the port of loading gives claim for damages, but no right to avoid contract, where object of voyage not wholly frustrated.—Bangs v. Lowber, Case No. 840.

Charterers who have voluntarily surrendered possession to the owners have no right to reclaim it.—Bergen v. The Taminend, Case No. 1,339.

§ 46. Construction and operation in general.

An agreement purporting to be a charter party, but not containing the essential elements, where loose and informal, may be aided by parol evidence.—Stalker v. The Henry Kneeland, Case No. 13,282; The Eli Whitney, Id. 4,345.

An agreement to assign to one of the parties all the freight earned by a vessel up to certain specified sums, and one-half of all above them, is not a charter party.—Stalker v. The Henry Kneeland, Case No. 13,282.

The meaning of "rainy day" in charter party may be shown by surrounding circumstances, including usage of port or trade.—Balfour v. Wilkins, Case No. 807.

A representation that the ship would sail for the port of lading on a day certain, made in cor-

respondence with reference to its charter, *held* to amount to a warranty, and, where the ship did not sail until later, charterer not bound.—Desbon v. Fosdick, Case No. 3,819.

A stipulation that the charter should commence when the vessel was ready to load does not mean that the charter party does not attach until the vessel arrived at the place of loading.—Fearing v. Cheeseman, Case No. 4,710.

Under the charter of a vessel to carry a load of coal from Baltimore to Pawtucket, charterers to pay three dollars a ton, "with towage from Providence to Pawtucket," the charterers are not bound to furnish the towboat.—Keen v. Audenried, Case No. 7,639.

As between the shipowner and charterer, the charter party, and not the bill of lading, determines the contract of shipment.—Two Hundred and Sixty Hogsheads of Molasses, Case No. 14,296; Higgins v. Watson, Id. 6,470.

The charter party alone will be looked to as the contract of the parties, where the consignee of the cargo had notice by reference to it in the bill of lading.—The Ethel, Case No. 4,540; Strong v. Certain Quantity of Wheat, Id. 13,541.

§ 47. Charterer as owner for the voyage. A stipulation to victual and man the vessel, pay all port charges, and deliver her to owner at end of voyage, makes charterer owner for the voyage, though one of the owners was named as master.—Drinkwater v. The Spartan, Case No. 4,085; Winter v. Simonton, Id. 17,894.

But the general owner is owner for the voyage if the vessel is navigated at his expense, and by his master and crew, and he retains the possession and management during the voyage.—The Volunteer, Case No. 16,991; In re Certain Logs of Mahogany, Id. 2,559; Kleine v. Catara, Id. 7,869; Richardson v. Winsor, Id. 11,795.

The consignee of a charterer, who deals with him in that character, must be presumed to know the contents of the charter party.—Shaw v. Thompson, Case No. 12,726.

§ 48. Seaworthiness and fitness of vessel. 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.—Wilson v. Griswold, Case No. 17,806.

Under a contract where the charter party is to commence when the vessel is at the port of lading and ready to receive cargo and notice thereof is given the charterer, there is no implied warranty or condition precedent that the vessel is seaworthy at the date of the charter.—The Star of Hope, Case No. 13,312.

The owner of the ship who charters her to another tacitly agrees that she is in suitable condition for the use to which she is to be put.—Werk v. Leathers, Case No. 17,415.

The words "charter and to freight let" do not imply a covenant, in law, that the vessel is or shall be seaworthy.—Bowie v. Wheelright, Case No. 1,733.

A ship, to be seaworthy for the voyage, must be manned by a competent master and crew.—The Vincennes, Case No. 16,945.

If the vessel took on board in weight nearly double her measured tonnage, and was in good repair and well manned, she was not a defective or imperfect vessel, though she would not bear filling up entirely with cargo, most of which consisted of such heavy articles as saltpetre and linseed.—Weston v. Minot, Case No. 17,453.

The impossibility of procuring a competent crew will not justify the vessel in leaving port with an inadequate crew.—The Gentleman, Case No. 5,324.

All representations as to carrying capacity are merged in a charter party stating the vessel to be of certain tons burden.—Baker v. Ward, Case No. 785.

Owner not liable for barratry of master and crew beyond sum mentioned in charter party.—Campbell v. The Alknomac, Case No. 2,350.

Owner not liable for repairs to vessel unless warranted to be kept staunch during the voyage.—Campbell v. The Alknomac, Case No. 2,350.

The presumption of seaworthiness is rebutted by proof that the vessel is old and has suddenly failed in a vital part without any apparent cause.—Werk v. Leathers, Case No. 17,415.

Where the question of seaworthiness is in issue, evidence of the performance of voyages immediately before and after that contemplated is inadmissible, except so far as they may offer just inferences as to her actual condition at the time.—The Vincennes, Case No. 16,945.

A survey of the vessel by other sea captains, who report and swear to the truth of the result, is not conclusive as to her proper depth, but is a sound measure of precaution in a dispute between the master and the charterers.—Weston v. Minot, Case No. 17,453.

§ 49. Readiness and dispatch of vessel. The shipowner must use due diligence in dispatching the vessel and prosecuting the voyage to the port of lading, where the charter party is to commence, when the vessel is ready to receive cargo at the place of lading, and notice thereof is given the charterer.—The Star of Hope, Case No. 13,312.

Where the charter contains no stipulation as to time of arrival at port of loading, the shipper takes the risk of detention by any superior force which the vessel could not overcome.—Hall v. Hurlbut, Case No. 5,936.

A provision that the vessel shall sail without delay, and in ballast, to enter upon the charter, is complied with where the vessel carries a cargo of salt, where the charterer is not prejudiced.—The Religione E. Liberta, Case No. 11,694.

Vessel all ready for voyage *held* to have "sailed" when she was towed from her moorings, though she was detained in the harbor several days by head winds.—The Francesca Curro, Case No. 5,029.

The charterer is not relieved from his contract by delays caused by inevitable accident or perils of the sea, if the vessel be tendered in a reasonable time.—The Star of Hope, Case No. 13,312.

Arrival at the port of loading after the season of shipping had gone by, caused by unusual delay, will not release the charterer, in the absence of fault of the master or owner.—Hall v. Hurlbut, Case No. 5,936.

The vessel chartered being delayed in arriving, another vessel was dispatched with the cargo, but her destination was subsequently changed, and the chartered vessel made the voyage for which she was chartered. *Held*, that the charterer was liable under the contract.—Fearing v. Cheeseman, Case No. 4,710.

§ 50. Charter for carriage of passengers. Under a charter for the carriage of steerage passengers, providing that the charterers shall "find breadstuffs, berths, water casks, water and fuel," etc., the charterer is liable for all articles of diet, both during the usual voyage and while detained in a port of distress through springing a leak in a gale.—Weston v. Train, Case No. 17,456.

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

tute for room on shipboard.—Weston v. Train, Case No. 17,456.

The giving of bond by the master conditioned to perform all the requirements of the British passenger act created no privity between the owners and the passengers, and did not, as between owners and charterers, impose on the owners a liability for victualing.—Weston v. Train, Case No. 17,456.

§ 51. Cargo.
Under a charter party to furnish a cargo of salt at a certain port to be purchased by the master with the vessel's funds, the charterer takes the risk of there being salt at such port to make up a cargo.—Crabtree v. Clark, Case No. 3,314.

Where the charter specifies lay days for loading, the charterer is not bound to furnish a cargo. except at his own convenience, during such lay days.—Poland v. Maryland Coal Co., Case No. 11,245.

Under a charter for a series of voyages between certain ports from May 2, 1874, to November 1, 1874, the charterer is not bound to furnish a cargo on October 19th, unless there is reasonable cause to believe that the voyage could be completed by November 1st.—Poland v. Maryland Coal Co., Case No. 11,244.

Under a charter party providing that cargo is to be furnished as "required" by the master, it is sufficient on the ship's part if the master gives notice that he is in want of more cargo.—Tyson v. Belmont, Case No. 14,316.

Under a stipulation by the charterers to furnish a vessel at Calcutta with a full cargo, and, among other articles of freight, "sufficient saltpeter, or its equivalent, for ballast," *held,* that the charterer must furnish ballast paying freight.—Rich v. Parrott, Case No. 11,760.

Under such charter the charterer may, at his election, furnish any article which is an equivalent, and answers the description.—Rich v. Parrott, Case No. 11,761.

A charter for a gross sum to carry all lawful goods placed on board to the entire capacity of the vessel means all goods not contraband nor diseased, and as many as the vessel can in safety carry.—Weston v. Minot, Case No. 17,453.

Charterer of vessel for cargo of timber undertakes to furnish timber suitable to capacity and condition of vessel, and owners are not bound to widen portholes to suit timber furnished. Case No. 1,220a reversed.—Beecher v. Bechtel, Case No. 1,221.

The master must inform the charterer what quantity of the several articles will be necessary to load the vessel.—Rich v. Parrott, Case No. 11,760.

Construction of charter of a ship to carry Chinese coolies from China to a foreign country, as to the number that might be carried, where it was the custom of the business to overcrowd the vessels.—The Hound, Case No. 6,731.

Though the honest opinion of a competent master that he has taken on board all the cargo his vessel will safely carry is not absolutely binding on the charterer, it is entitled to very great weight, and can be controlled only by decisive evidence of a mistake on his part.—Weston v. Foster, Case No. 17,452.

Where, before the ship is full, the cargo sinks her as low as is usual and proper without extra danger, the master may refuse to carry more.—Weston v. Minot, Case No. 17,453.

The master may carry more ballast than the charter allows, but the charterer may recover in admiralty compensation for the room thus lost.—Reynolds v. The Joseph, Case No. 11,730.

The master may refuse to carry forward the cargo received, where a full cargo is not furnished, only where the same is insufficient security for full freight, or is depreciating so rapidly as in all probability to become insufficient, in which case he may discharge it, and then enforce his lien for freight and demurrage.—Stepanovit v. Gillibrand and Four Thousand Nine Hundred and Twenty-Two Bushels of Wheat, Case No. 13,360.

§ 52. Receiving cargo.
Charterer *held* chargeable with knowledge of tonnage and draught of vessel and state of harbor, rendering vessel unable to complete loading in harbor.—Belmont v. Tyson, Case No. 1,281.

A guaranty of eight feet of water "at the place of loading" *held* to mean eight feet, or at least a sufficient depth to enable the vessel to perform her voyage, at the place of loading, and thence to the open sea.—Hart v. Shaw, Case No. 6,155.

A guaranty of the depth of water at the place of loading necessary for a full cargo will be *held* to apply to the channel through which it is necessary that the vessel shall pass to reach the sea.—Shaw v. Hart, Case No. 12,720.

A stipulation that the ship is to employ the charterer's stevedore and clerk does not amount to a special agreement that the charterer shall perform the duty of lading and stowing.—Richardson v. Winsor, Case No. 11,795.

Though the charter stipulates to carry goods on deck, the master may, for sailor's reasons, refuse to allow them to be so loaded, but in such case the charterer may recover damages in admiralty.—Reynolds v. The Joseph, Case No. 11,730.

A charter party for a cargo of merchandise from Calcutta to Boston, prescribing no mode of stowage, tacitly refers to the established and known usage of the trade.—Lamb v. Parkman, Case No. 8,020.

It will be presumed that the parties contracted with reference to the character of the port of loading named, and the incidents and difficulties attendant upon entering the harbor and loading there.—Tyson v. Belmont, Case No. 14,316.

§ 53. Voyage.
A vessel chartered on a time charter for a voyage at a specified rate must sail without unnecessary delay, and proceed with all reasonable dispatch to her destination.—The Success, Case No. 13,586.

Under a charter party for a voyage to a certain port, or, in case it be blockaded, to a market and return, the vessel is not liable for the time necessarily consumed in the deviation to ascertain whether the port of destination was blockaded.—Stokely v. Smith, Case No. 13,473.

The failure to have a sufficient crew when the vessel sailed on the voyage will not excuse deviation to ship more seamen.—The Ethel, Case No. 4,540.

Liability of vessel in the case of a cargo of African rawhides injured by heat and worms, where voyage was delayed by sickness and inadequacy of crew.—The Gentleman, Case No. 5,324.

Under a charter of a vessel from B. to New York, now loading at K., and "to proceed thence direct to load on this charter," *held,* that the charterer was not liable for delay caused by seizure by a military officer to perform necessary services for a military post.—The Onrust, Cases Nos. 10,539, 10,540.

Where, in a port of necessity, the master puts his vessel in charge of the charterer's agent for payment of disbursements, he is bound to produce his accounts when applying for money, according to the usage of the port.—Mauran v. Warren, Case No. 9,310.

Where, in such case, funds were provided by the charterer's agent, but the master broke off

negotiations, and employed some one else, *held*, that the charterer could recover the agreed commission.—Mauran v. Warren, Case No. 9,310.

§ 54. Discharge of cargo.
The ship is not liable for damage done to cargo in unlading by stevedores appointed by the consignees under an express provision therefor in the charter party.—Westray v. The Miletus, Case No. 17,461.

Where goods are landed at the wrong place by the master, and then reloaded, the expenses must be borne by him or the owners; otherwise, where landed at the request of the supercargo or agent of the charterers.—Weston v. Minot, Case No. 17,453.

The ship is not liable for damage to cargo by stevedores selected as agents of the shippers under a special clause in the charter party. Westray v. The Miletus, Case No. 17,461, affirmed. —The Miletus, Case No. 9,545.

Where the vessel arrived two days late, and, without notice to the charterer, discharged the cargo, and employed persons to cart and pile it on the wharf, *held*, that the charterer was not liable for this expense.—The Mary E. Taber, Case No. 9,209.

Charterer *held* liable for costs of discharging, port charges, and demurrage, where naval vessel to which a cargo of coal was consigned was wrecked, and master had to wait for berth to land the cargo, where the charter provided that the cargo should be discharged free of all expense to the vessel, the charterer to pay port charges.—Dow v. Hare, Case No. 4,037a.

The rights of the parties under a charter party providing that the charterers were to pay all port charges are not affected by the fact that unknown to them the consignee had procured an exemption from tonnage dues.—Smith v. Drew, Case No. 13,038.

Tonnage dues are port charges within a stipulation requiring the charterers to pay all port charges at the ship's destination.—Smith v. Drew, Case No. 13,038.

Vessel *held* liable for goods taken aboard by mistake of mate and wharfinger, in excess of the cargo stipulated, and delivered to charterer. —The Blenheim, Case No. 1,539.

§ 55. Freight, charter money, or other compensation — When earned in general.
The owner and charterer, as between themselves, may make the whole freight depend on the safe arrival at the home port or any other contingency.—The Erie, Case No. 4,512.

A chartered vessel which springs a leak in a storm, and puts back to the port of departure, and, on the refusal of the charterer to accept the cargo, sells it as unfit to ship, and dangerous to the crew, cannot recover freight.—Miston v. Lord, Case No. 9,655.

If there is a defect in the ship by which she becomes disabled, even though it may not be apparent upon examination, the charterer cannot recover the charter money, and he will be liable for damages occasioned by the defect.—Werk v. Leathers, Case No. 17,415.

§ 56. —— Pro rata.
Under a charter for a voyage out and return for a round sum, the owner cannot recover a proportionate amount of the charter money, where the voyage was not completed.—Donahoe v. Kettell, Case No. 3,980.

Under a charter out and home, freight is due to each port where the cargo is delivered, though the ship be lost on the return voyage.—The Erie, Case No. 4,512.

Where the charter provides for monthly freight, and leaves it doubtful whether the voyage is single or divisible, it will be presumed to be divisible, though the freight be made payable on the return to the home port.—The Erie, Case No. 4,512.

Where freight is not made payable on any other contingency than the delivery of the cargo, the presumption is that the voyage is divisible.—The Erie, Case No. 4,512.

Freight contracted for in gross for a voyage out and return cannot be apportioned and recovered for a part of the cargo or a part of the voyage unless expressed in or implied from the contract.—Weston v. Minot, Case No. 17,453.

Where the charter contains no exceptions as to perils of the seas, and the vessel, meeting heavy weather, puts back, and a part of the cargo damaged by sea perils is taken out and sold, and the balance is carried forward and delivered to the consignees under bills of lading excepting perils of the seas, no part of the charter money is recoverable.—Willett v. Phillips, Case No. 17,683.

The master of a vessel chartered to proceed with a cargo to a certain port, and discharge the same as directed by the commander of a fleet of war vessels, learning en route that the fleet had left the port badly shattered, turned back. *Held*, that freight was not recoverable as for a partial performance.—The Harriman, Case No. 6,104.

§ 57. —— Rate and amount.
Lumber cargo furnished was "rough-edged" instead of "re-sawn," as required by the charter. The master received it under protest, and provided in the bill of lading for freight "as per charter party, with additional claim as per protest." *Held*, that freight was payable in the same amount as would have been earned if the lumber had been re-sawn.—Nine Hundred and Forty-Eight Pieces of Lumber, Case No. 10,270.

A person who advances money to purchase a cargo under an agreement with the charterer that he shall have a lien thereon as security, the bills of lading being assigned to him, is the owner, and the goods are not liable beyond the freight agreed by the master, irrespective of the terms of the charter party.—Palmer v. Gracie, Case No. 10,692.

Where the charterer refused to load the ship on the return voyage, the master may take cargo from others, which will be bound only for the freight agreed upon by the master, and not under the terms of the charter party.—Palmer v. Gracie, Case No. 10,692.

A vessel chartered "to load with a full cargo" of bamboo of certain size bundles, at a certain freight per bundle, may recover for a full load of the agreed size where those loaded were much larger.—Atkins v. Fibre Disintegrating Co., Case No. 601.

Burden is on carrier to prove quantity carried under charter fixing freight at stipulated price per ton.—The Alonzo, Case No. 257.

Arbitration between consignee of vessel and consignee of cargo of timber as to measurement of timber not binding upon charterer.—Belmont v. Tyson, Case No. 1,281.

§ 58. —— Deductions and offsets.
Custom of deducting for defective pieces of timber cannot control stipulation as to freight.—Belmont v. Tyson, Case No. 1,281.

Where the charter stipulates that the master shall sign a draft on the consignees, in favor of the charterers, for the freight, he cannot refuse his signature on the ground that demurrage is due him.—Reynolds v. The Joseph, Case No. 11,730.

On a libel for freight under a charter, the charterers can recoup damages for a breach only to the amount of the freight.—Holyoke v. Depew, Case No. 6,652.

§ 59. —— **Who liable.**
Where a vessel is chartered for a voyage out and return at a monthly rate, payable three days after her return, a shipper of a portion of the outward cargo, who takes a bill of lading providing for payment of freight "as per charter party," *held* not liable to the vessel for freight. Case No. 10,986 reversed.—Perkins v. Hill, Case No. 10,987.

Goods loaded by third persons under contract with the charterer are liable only for their own freight, and not for the gross sum named in the charter party, though the charter reads: "Bills of lading to be signed when presented without prejudice to this charter party."—Grand v. The Ibis, Case No. 5,682.

The bill of lading, and not the charter, will control as to the liability of the cargo for freight, as against consignees advancing money thereon. —Davis v. Five Hundred and Seventy-Four Bags of Coffee, Case No. 3,633a.

§ 60. —— **Liens in general.**
The owner has a lien on the cargo for the amount due under the charter.—De Wolf v. Two Hundred and Sixty-Six Hogsheads and Thirty-One Tierces Molasses, Case No. 3,853; Kimball v. The Anna Kimball, Id. 7,772.

Where the owner continues in control of the vessel, he is entitled to a lien for freight on goods of a third person, shipped under contract with the charterer.—Ruggles v. Bucknor, Case No. 12,115; Palmer v. Gracie, Id. 10,692.

The owners of a vessel let to the United States in time of war have no lien for their charter money on goods the United States may put on board.—The Undaunted, Case No. 14,336.

Where the charter party gives the charterer the possession and control of the ship, it is a letting of the ship, and not a contract of affreightment, and the owners have no lien on the cargo for the stipulated price.—Drinkwater v. The Spartan, Case No. 4,085.

Where goods shipped abroad were sold at an intermediate port, and the proceeds applied to the payment of freight under the charter party, they are not subject to a lien for the charter money due on arriving at the ultimate port of destination.—The Salem's Cargo, Case No. 12,248.

A contest between the consignee and a third person as to the ownership of the cargo does not put in operation a clause giving the charterer the right to retain freight moneys in case of rival claims thereto.—Crapo v. The Arctic, Case No. 3,361.

Where a charter party provides for a gross sum as freight, payable on the close of the whole voyage, and the bill of lading declares that the return cargo shall be delivered to the shippers, they paying freight as per charter party, a lien attaches to the homeward cargo for freight due for the whole voyage, and the consignee, on receipt of the goods, becomes personally liable.—Certain Logs of Mahogany, Case No. 2,559.

Master *held* entitled to lien for the freight of the outward cargo, on the cargo shipped for the homeward voyage on account of an assignee of the charter party, where, under its terms, the whole freight for the round voyage was to be paid on arrival at the home port.—The Eliza, Case No. 4,347.

The lien of the shipowner on the goods of the charterer is not limited by the amount of the penal sum in the charter party.—The Salem's Cargo, Case No. 12,248.

§ 61. —— **Cargo subject to lien.**
Circus horses are to be regarded as cargo to which a maritime lien will attach for freight under a charter for a voyage out and return to carry a circus outfit.—Fourteen Horses, etc., Case No. 4,990.

Where the freight on a cargo of flour out and a cargo of coffee back is to be paid at a certain sum per barrel on the flour, the charterer has no lien for freight on the coffee, purchased with the proceeds of the flour by one who took an assignment of the bills of lading for advances, except to the extent of the surplus.—Webb v. Anderson, Case No. 17,318.

§ 62. —— **When lien attaches.**
A lien for freight and demurrage expressly reserved by the charter party attaches the moment cargo is put on board under a bill of lading made subject thereto.—Stepanovit v. Gillibrand and Four Thousand Nine Hundred and Twenty-Two Bushels of Wheat, Case No. 13,360.

§ 63. —— **Waiver and discharge of lien.**
Where the charter expressly pledges both vessel and cargo for its performance, the lien for freight will not be held to be waived by making it payable in monthly installments.—Fourteen Horses, etc., Case No. 4,990.

Bills of lading given by the master, waiving the lien of the shipowner, are ineffectual in the hands of a person who had knowledge of the charter party.—The Salem's Cargo, Case No. 12,248.

The fact that a charter party contains a clause giving five and ten days' credit after "discharge" of the homeward cargo is not inconsistent with the retention of a lien for the freight.—Kimball v. The Anna Kimball, Case No. 7,772.

Clause in charter party that freight shall be paid within a certain time after vessel's discharge does not waive a lien for freight, as the word "discharge" merely refers to the unlading, and not to the delivery of the cargo.—Certain Logs of Mahogany, Case No. 2,559.

Giving promissory notes for money due under a charter party discharges the shipowner's lien if the notes are accepted as payment.—Kimball v. The Anna Kimball, Case No. 7,772.

§ 64. —— **Enforcement of lien.**
The owner is not bound to wait until the cargo is discharged to enforce his lien for freight, where there is a breach of the agreement to pay the charter money in monthly installments.—Fourteen Horses, etc., Case No. 4,990.

A clause in the charter that the parties bind the ship and goods, respectively, for the performance of the covenants, payments, and agreements thereof, creates a lien on the goods for such performance and may be enforced by a detention of the goods for the freight, and by a suit in admiralty.—The Volunteer, Case No. 16,991.

§ 65. **Breach of charter party by owner or master — What constitutes a breach.**
The vessel is not liable for breach of a charter party unless the cargo is actually or constructively in her possession.—Salzobel v. The Rolling Wave, Case No. 12,274.

The vessel owners are answerable in damages for refusal of the master to stow all of the cargo in the hold, resulting in the inability of the vessel to carry the limit of passengers stipulated in the charter.—Parsons v. Ogden, Case No. 10,781.

A vessel, under a charter containing no exception of restraints of princes, *held* liable where she failed to take in a cargo of barilla at the Canary Islands, where the authorities required that she should first go to Spain, to quarantine. —Holyoke v. Depew, Case No. 6,652.

The tender and refusal of a new cargo, after repairs to a vessel, so injured by fire as to necessitate unloading the first cargo, entitles the charterer to treat the voyage as broken up, and

to demand the first cargo without payment of freight.—The Luteken, Case No. 8,609.

The departure of the consignee named in a charter-party from the port of destination constitutes no waiver of the contract.—The Harriman, Case No. 6,104.

§ 66. —— Actions for breach.
Vessel chartered by a person to carry out his agreement to transport cargo for a certain company is liable in admiralty for breach of the contract.—Atlantic & P. Guano Co. v. The Robert Center, Case No. 630.

The risk and danger of losing the cargo in attempting to perform the voyage may be shown, in answer to a claim of damages for breach of the contract.—The Harriman, Case No. 6,104.

Libelants suing for breach of charter party are bound to show that there was no default on their part.—Beecher v. Bechtel, Case No. 1,220a.

No action will lie for breach of verbal agreements occurring between the date of a charter party and its signing.—Barclay v. Holme, Case No. 974.

Nominal damages only are recoverable for breach of charter party where libelant fails to prove actual damages, though the agreement binds the parties to a penalty for its breach.—Chadwick v. The Adelaide, Case No. 2,571.

Damages for a breach of an obligation to sail without unnecessary delay, under a time charter, are the difference between the fair market values of the cargo when it ought to have been delivered, and at the time when the vessel actually arrived.—The Success, Case No. 13,586.

The measure of damages, where the voyage is broken up by the shipowners, *held* to be compensation for the actual loss and expense incurred about the voyage, the labor and services in procuring another vessel, and reasonable disbursements in the action beyond the taxed costs.—The Tribune, Case No. 14,171.

Damages for a breach of a charter party are a lien on the vessel, and where the demand is satisfied by the mortgagee, who takes an assignment of the claim, he may claim proceeds in court for repayment.—The Panama, Case No. 10,703.

The measure of damages for failure of the vessel to proceed to the port of loading is the increased freight and charges which the charterer has been obliged to pay to have the goods carried.—Oakes v. Richardson, Case No. 10,390.

Loss of profits are allowed as damages only in exceptional cases.—Oakes v. Richardson, Case No. 10,390.

Estimated profits of the voyage cannot be computed as an element of damages for breach of charter party.—Chadwick v. The Adelaide, Case No. 2,571.

In an action on the charter party, to compel the master to sign bills of lading, libelant can recover only the actual expenses incurred and rendered necessary by the master's refusal.—The Mispah, Case No. 9,648.

§ 67. Breach of charter by charterer—What constitutes a breach.
A failure by the charterer to furnish cargo constitutes a breach of the charter party, and where the master ascertains that no cargo can be obtained he may sail immediately.—Clarke v. The Dodge Healy, Case No. 2,849; Crabtree v. Clark, Id. 3,314; Baetjer v. Bors, Id. 724; Hall v. Hurlbut, Id. 5,936.

The master is not bound to purchase other goods at his own expense, or to go to other places to obtain the salt, to diminish the loss to the charterer.—Crabtree v. Clark, Case No. 3,314.

Charter party to furnish cargo at certain place is broken where cargo could not be obtained, though it stipulated for purchase of cargo with vessel's funds.—Clarke v. Crabtree, Case No. 2,847.

Charterer's failure to provide means of loading guano *held* to constitute a breach and to justify master in returning with partial cargo.—The B. J. Willard, Case No. 1,454.

After the cargo had been loaded the charterer took it out of the vessel, and refused to fulfill the charter party. *Held,* that the owner had a lien on the cargo for the breach.—The Hermitage, Case No. 6,410.

A charter party is violated by refusal of consignees to accept consignment, where they were to pay half of charter money at destination.—Bramhall v. Shaler, Case No. 1,805a.

§ 68. —— Effect of breach.
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.—Wright v. Owners of The Francesca Curro, Case No. 18,088.

Where the covenant is to proceed to a foreign port, take in cargo on account of the charterer, and bring it to the United States, and, when the ship reaches such foreign port, the charterer declines to put any cargo on board, the ship is released, and may take other cargo on the return voyage for the account of her owners.—Kleine v. Catara, Case No. 7,869.

§ 69. —— Actions for breach.
Where the charter gives possession and control to the charterers for a time certain, with no condition of forfeiture for a breach, the court cannot decree possession to the general owners on a libel alleging a breach of the contract.—The Prometheus, Case No. 11,442.

Where the meaning of the charter party is clear, a mistake cannot be alleged in defense to a suit in rem for a breach.—The Hermitage, Case No. 6,410.

A suit on a charter party, signed by the master, to whom the charter money is to be paid, is properly brought in his name alone.—Baker v. Ward, Case No. 785.

A suit is properly brought in the name of the managing owners, who signed the charter party in good faith as owners.—Bangs v. Lowber, Case No. 840.

An action on a charter party cannot be maintained by one who is not a party thereto, though it recites that one of the parties is the agent for such person, but the covenants are with the agent who executed it in his own name, without reference to the alleged party in interest.—Clark v. Wilson, Case No. 2,841.

On a libel against charterers for refusing to furnish a cargo on the pretense that the ship was unseaworthy, the owners have the burden of showing seaworthiness.—The Vincennes, Case No. 16,945.

The measure of damages where the charterer abandons his contract is the difference between the net freight for a full cargo and what would have been netted by any other reasonable cargo which by due diligence could have been obtained.—Stepanovit v. Gillibrand and Four Thousand Nine Hundred and Twenty-Two Bushels of Wheat, Case No. 13,360; Jordan v. Eaton, Id. 7,520.

In computing the damages for refusal to furnish a cargo, the court took into consideration the failure of the master to inform the charterer of a delay en route for repairs.—Hall v. Hurlbut, Case No. 5,936.

§ 70. Loss or injury to cargo.

The charterer of a vessel who ships an article new in commerce, whose dangerous character is unknown, either to him or the owner, is liable for injury to other cargo coming in contact therewith, and the increased expenditure in discharging caused by its peculiar character.—Pierce v. Winsor, Cases Nos. 11,150, 11,151.

Where, in the case of lumber, the master, at the charterer's request, attempted to raft a portion to a place where it could be taken on board to make up a full cargo, *held*, that the charterer must stand the loss caused by the raft's being broken up by the violence of the waves.—Shaw v. Hart, Case No. 12,720.

The master will be *held* negligent in not keeping a vigilant watch while at anchor, and in not being prepared to drop a second anchor when his chain parts in a sudden blow.—The Thomas Jefferson, Case No. 13,923.

Consignees under clean bills of lading are not bound by clauses in a charter party relieving the ship from the duty to properly protect the cargo. —The Wilhelmina, Case No. 17,658.

The liability of the owner to a charterer of the entire vessel is not varied by the fact that the master gives a bill of lading in common form.—Lamb v. Parkman, Case No. 8,020.

The shipper under an ordinary bill of lading has his remedy against the ship, whether the owner retains possession and command, or the control and navigation passes to the charterer; but whether the general owner, or the charterer, is liable, depends upon the terms of the charter party.—Richardson v. Winsor, Case No. 11,795.

A vessel detained in a port of distress from unseaworthiness must take proper means for the preservation of a perishable cargo.—The Gentleman, Case No. 5,324.

Vessel *held* not liable for damages to cargo in lower hold from leakage from casks of lard stowed between decks, and shipped in almost a liquid state, where the charterer agreed to pay all damages caused by such leakage.—Moses v. Boyd, Case No. 9,871.

In a charter to carry a cargo of hides, the clause "the charterer furnishing the lining hides and bones for dunnage only" does not relieve the ship from the duty to properly protect the cargo.—The Wilhelmina, Case No. 17,658.

The general declarations of the owners, unaccompanied by any specific statements of disinterested persons, showing the nature and extent of the damage, are inadmissible.—Eames v. Cavaroc, Case No. 4,238.

§ 71. Loss or injury to vessel.

The charterer is liable for an injury to the vessel sustained in a voyage not authorized by the charter party.—Latson v. Sturm, Case No. 8,115.

Under a charter party out and return with ports undefined, providing a monthly compensation, charterers are liable, where vessel is lost before its return, for the monthly rate, to time of loss.—Brett v. Zachrissen, Case No. 1,-845.

The charterers of a canal boat are not liable to the owner where she is sunk by the explosion of the boiler of a tug which they had employed to tow her, where they were free from negligence.—Jackson v. Easton, Case No. 7,-134.

A charterer who assumes risk by fire is liable, in case of loss thereby, only for the excess in value over insurance money received by the owners.—Merrill v. Arey, Case No. 9,468.

Risk of loss by fire devolves on the charterers, where they covenant to return the vessel in like good condition, ordinary wear and dangers of the sea excepted.—Merrill v. Arey. Case No. 9,468.

Fire accidentally originating on board a vessel is not a "danger of the sea" within exception of charter party excusing restoration to owners.—Airey v. Merrill, Case No. 115.

Owners may recover full value, notwithstanding such vessel was stranded at the time, if her value was not materially diminished thereby.—Airey v. Merrill, Case No. 115.

Charter money preceding destruction may be allowed as damages.—Airey v. Merrill, Case No. 115.

Where master fails to object to port as a "safe port," owners cannot recover for injuries arising from its unsafeness.—Atkins v. Fibre Disintegrating Co., Case No. 601.

Charterers are not presumptively liable for services rendered in floating stranded vessel under a contract made with the owner.—Bell v. Hunt, Case No. 1,254.

Wrecking company chartering vessel for wrecking enterprise is bound only to ordinary diligence as a bailee for hire.—Browning v. Baker, Case No. 2,041.

§ 72. Subcharter and assignment of charter.

Under a subcharter for "a full and complete cargo," made subject to the conditions of the charter, which described the vessel as "of the net measurement of 537 tons, or thereabouts," *held*, that the subcharterers were entitled to a cargo space of the net measurement of 537 tons, and not to the full capacity of the vessel. —Schmidt v. Smith, Case No. 12,466.

Under a guaranty on an assignment of a charter party that the vessel is first class, it is necessary that she be actually classified.—Baetjer v. Bors, Case No. 724.

A delay to classify such vessel, where no damage is set up when she is tendered as ready, for want of a classification, will not excuse performance by the transferee.—Baetjer v. Bors, Case No. 724.

Computation of damages on breach of contract by transferee of charter party to perform its conditions.—Baetjer v. Bors, Case No. 724.

§ 73. Letting vessel on shares.

Where a master hires a vessel "on shares" under an agreement to victual and man the vessel and employ her in such voyages as he thinks best, having thereby the entire possession, command, and navigation of the vessel, and the relation of principal and agent not existing between the master and owners, the master thereby becomes the owner pro hac vice during such time as the contract exists, and he, and not the general owner, is responsible for necessary supplies. Case No. 17,321 reversed.—Webb v. Peirce, Case No. 17,320.

The master of a vessel, frozen in before the return voyage was commenced, and left in charge of the mate, may contract for cargo for the return voyage after the vessel is released.—Fox v. Holt, Case No. 5,012.

IV. MASTER.

Right of master to salvage compensation, see "Salvage," § 21.

§ 74. Appointment and removal.

No formalities are necessary to the appointment of a master. Sufficiency of evidence to show appointment.—The Boston, Case No. 1,-669.

A contract with a person to command and run a vessel on a certain route as captain for a monthly salary and a share in the gross

earnings *held* to give him authority as master, though the clerk of the boat usually received the money for freight and passengers.—Adams v. The Wyoming, Case No. 71.

A master appointed in a foreign port by the American consul on the recovery of a vessel from a master who had barratrously run away with her has the same powers as one appointed directly by the owner.—The Jacmel Packet, Case No. 7,154.

A contract to render services both as master and pilot upon inland waters is not void as against public policy or rules of navigation, and compensation may be recovered as for services in both capacities.—Bissell v. Mepham, Case No. 1,450.

A contract between the owners and master for a whaling voyage not exceeding five years' duration does not mean several voyages extending through five years, but ends when a full cargo is obtained.—Slocum v. Swift, Case No. 12,954.

A person once master of a vessel will be deemed to continue in that character until displaced by some overt act or declaration of the owners.—The Tribune, Case No. 14,171.

Employment as master for a foreign voyage will not be presumed from the rendition of services as master in loading and preparing the vessel for sea.—Jones v. Davis, Case No. 7,460.

A master in possession of a vessel absent from her home port will be deemed to have been master until his actual displacement after return of the vessel, notwithstanding the vote of a majority owner to discharge him.—Fox v. Holt, Case No. 5,012.

A majority of shipowners may dismiss the master at any time without cause.—Childs v. Gladding, Case No. 2,678; Montgomery v. Wharton, Id. 9,737.

A contract by the master hiring a third person, as nominal master for the purpose of clearing the vessel, at monthly wages, *held* binding on owner and vessel, but not as to a stipulation for a further sum in case of discharge.—L'Arina v. The Exchange, Case No. 8,088.

The master and co-owner of a whaling ship who has contracted for a cruise of four seasons at a certain lay, and is wrongfully deprived of his command at the end of three seasons, may have an action against his co-owners for damages for his removal.—Parsons v. Terry, Case No. 10,782.

The measure of damages in such a case is the probable value of his lay for the unemployed season.—Parsons v. Terry, Case No. 10,782.

A clause of the shipping articles prohibiting the bringing on board ship of distilled spirits is not broken by carrying Madeira wine on freight.—Parsons v. Terry, Case No. 10,782.

Where the master is separated from the ship by death or other casualty, the mate succeeds to the command.—Carrington v. The Ann C. Pratt, Case No. 2,445.

§ 75. Authority and duties—Scope and extent in general.

Where the master is also consignee of the cargo, he has the authority of a supercargo during the voyage.—Smedley v. Yeaton, Case No. 12,965.

The power of the master to make contracts in relation to the vessel at her home port is limited.—The Tribune, Case No. 14,171.

The master in a foreign port represents both owners and shippers not having any other agent on the spot.—Gernon v. Cochran, Case No. 5,368.

A master has authority, where customary in the business, to bind the ship by a contract to collect of the consignee advances and charges on the goods, and repay them to the shipper.—The St. Joseph, Case No. 12,230.

§ 76. —— Management and navigation of vessel.

The master of a merchant steamer engaged in the transportation of merchandise has no authority to bind the ship by a contract to tow another vessel on a long ocean voyage; and for breach of such a contract he alone is liable.—Kimball v. The Dispatch, Case No. 7,773.

An agreement by the master or mate of a freighting vessel to tow floating stages, and to look after their safety, is beyond the scope of his employment, and neither the vessel nor owners are liable for their loss.—Walsh v. The Carl Haasted, Case No. 17,113.

A master appointed by the American consul in a foreign port on the death of the master appointed by the owner may draw upon the owner for supplies under authority given to his predecessor.—Pickersgill v. Williams, Case No. 11,123.

A master, acting with reasonable diligence, discretion, and skill upon the advice of competent persons, will be protected, though more skillful persons would have advised a better course.—The Fortitude, Case No. 4,953.

§ 77. —— Employment of seamen.

The master of a vessel prepared by her owners for a fishing voyage with intent to secure the bounty has no implied authority to engage seamen for wages merely, instead of upon shares.—Whalen v. The Silver Spring, Case No. 17,477.

A captain cannot bind his owners and their vessel for the payment of mariners' wages for three months after their discharge.—Canizares v. The Santissima Trinidad, Case No. 2,383.

The master cannot bind the owners by an arbitrary increase of wages.—Neilson v. The Laura, Case No. 10,092.

The vessel owners are not liable for the wages of a cook hired by the master on his exclusive credit.—Scott v. Failes, Case No. 12,530.

§ 78. Sale of vessel by master—When justified.

A sale of the vessel by the master will only be sustained where enjoined by a policy so clear as to be equivalent to a moral necessity.—Hartman v. The Will, Case No. 6,163.

That the master acted in good faith and in the exercise of his best discretion will not justify a sale by him, unless there appears to have been an urgent necessity to sell, for the preservation of the interests of all concerned.—The Sarah Ann, Case No. 12,342; The William Carey, Id. 17,689; The Tilton, Id. 14,054.

And it must also be shown that he was unable to communicate with the owners before the necessity of action became imperative.—The Bridgewater, Case No. 1,864.

The master may, in good faith, in his best discretion, for the benefit of all concerned, sell a wrecked vessel, either in view of a peril then involving her, or of one likely to ensue.—The Lucinda Snow, Case No. 8,591.

Sale, without notice to owner, of unseaworthy vessel, safely anchored in the harbor of St. Thomas, and not exposed to any immediate peril, *held*, did not pass title.—Harrison v. The Susan Ludwig, Case No. 6,145a.

The right of the master to sell the vessel, in cases of necessity, is determined by considering whether, under like circumstances, a sale would have been made by a considerate owner for his own interest and that of all concerned.—Robinson v. Commonwealth Ins. Co., Case No. 11,949; The Sarah Ann, Id. 12,342.

Great circumspection should be used before ordering a sale of a ship in the absence of the owner.—Skrine v. The Hope, Case No. 12,927.

In a case of urgent necessity, the master may sell the vessel as well on a home shore as on a foreign shore, and whether the owner's residence be near or at a distance.—The Sarah Ann, Case No. 12,342. CONTRA, see Scull v. Briddle, Case No. 12,569.

The circumstances enumerated under which the master has the right to sell the vessel in a foreign port.—Fitz v. The Amelie, Case No. 4,838.

A sale in a foreign port by a master, who is without means or credit to repair the vessel, advised on a survey by disinterested persons, where there was no time to consult with the owner, will be upheld.—The Herald, Case No. 6,393.

The master may contract for the employment of the vessel under circumstances of necessity. —Naylor v. Baltzell, Case No. 10,061.

§ 79. —— Rights and liabilities of purchasers from master.

As between the owner and purchaser, a sale without necessity, though made in good faith, is invalid.—The Tilton, Case No. 14,054.

That a master selling a stranded vessel believed at the time that he could get her off would be pertinent to show bad faith avoiding the sale; but that the purchaser believed himself able to do so has no such effect.—The Lucinda Snow, Case No. 8,591.

The purchasers of a stranded vessel at an unauthorized sale by the master will be allowed the value of necessary repairs, the expenses of navigating her home, and the price paid.—The Henry, Case No. 6,372; The Sarah Ann, Id. 12,342.

The right to the freight earned upon the homeward voyage follows the ownership of the vessel.—The Henry, Case No. 6,372.

All liens upon a vessel which is lawfully sold by the master in a foreign port from necessity are transferred to the proceeds of sale, the purchaser taking a title free therefrom.—Fitz v. The Amelie, Case No. 4,838.

A purchaser of a wrecked vessel from the master need not, in order to maintain his title, furnish direct evidence of the master's good faith and of the necessity for the sale. Presumptive proof is sufficient.—The Lucinda Snow, Case No. 8,591.

The burden of proof is on the purchaser to show that the sale of the vessel by the master was bona fide and necessary.—Hartman v. The Will, Case No. 6,163; The Henry, Id. 6,372.

The facility with which a stranded vessel was reclaimed is evidence on this question.—The Henry, Case No. 6,372.

The presence of the owner's agent at the sale does not constitute the sale any the less a sale by the master.—The Henry, Case No. 6,372.

The receipt by a special agent of the proceeds of the sale is no ground for the presumption of ratification by the owner.—The Henry, Case No. 6,372.

A paper purporting to be a survey, but not drawn up, subscribed, or sworn to prior to the sale, will not be received as evidence of a survey.—The Henry, Case No. 6,372.

§ 80. Sale of cargo by master—When justified and validity in general.

Where necessary funds cannot be obtained in any other way, the master may sell a part of the cargo.—Ross v. The Active, Case No. 12,071; Pope v. Nickerson, Id. 11,274; Jones v. The Richmond, Id. 7,491; Naylor v. Baltzell, Id. 10,061; The Harriet, Id. 6,094; Myers v. The Harriet, Id. 9,992; Pope v. Nickerson, Id. 11,274.

In such case the shipper's damages are to be measured by the value of the cargo at the place of shipment, together with all expenses and interest from the time of shipment.—Myers v. The Harriet, Case No. 9,992.

The master has no authority to sell the sound portion of a cargo which may be transshipped. —Pope v. Nickerson, Case No. 11,274.

It is the duty of the master, and not the consignees, to make separation of the sound from the unsound part of the cargo, if necessary to obtain a favorable sale on account of the vessel. —The Columbus, Case No. 3,041.

A sale of the cargo of a stranded ship by the master is unnecessary, and therefore void, if he could have transshipped or stored it, or if he had any other alternative which a prudent owner on the spot would adopt.—The Bridgewater, Case No. 1,864.

A sale by the master of a wrecked whaler of cargo, which he had no means of saving or storing, at auction, to vessels which had come to the wreck, *held* valid.—Jones v. The Richmond, Case No. 7,491. CONTRA, see Jones v. The Richmond, Case No. 7,492.

The master is agent of the cargo as well as the ship, where the vessel is found unable to proceed from a port of distress.—Naylor v. Baltzell, Case No. 10,061.

The vessel is liable for the full value on the sale of the cargo by the master at an intermediate port, unless some justification is affirmatively shown.—Englehart v. The Pedro, Case No. 4,489.

The fact that no money was paid at the time, and no bill of sale delivered, and no entry made in the log book, does not invalidate the sale.—Jones v. The Richmond, Case No. 7,491.

The master cannot buy cargo at his own sale as agent of owners.—Barker v. Marine Ins. Co., Case No. 992.

A sale on unconscionable terms to persons in a position to render salvage services will be set aside.—The Bridgewater, Case No. 1,864.

§ 81. —— Sale of perishable cargo.

Perishable cargo may be sold, and the proceeds applied to the repairs of the vessel.—Pope v. Nickerson, Case No. 11,274.

The master may sell a perishable cargo where the consignee refuses to receive it, and it cannot readily be stored in a place suitable to preserve it; and he need not wait the expiration of lay days.—The Maria White, Case No. 9,083.

Where a ship, on account of injuries caused by dangers of the seas, is obliged to lay up in a port of necessity for repairs, the master may sell such portion of the cargo as is of a perishable nature.—The Velona, Case No. 16,912.

A master, acting under competent advice, is justified in selling at auction, in a port of necessity, a cargo of hides which is filled with vermin.—Maas v. The Pedee, Case No. 8,652.

§ 81a. —— Rights and liabilities of purchasers.

Purchaser of cargo of stranded vessel, under void sale, allowed compensation, in the nature of salvage, for caring for cargo, but not the purchase money embezzled by master.—The Bridgewater, Case No. 1,864.

The refusal of the purchaser to permit his vessel to be used for transshipment estops him from claiming that the sale was necessary.—The Bridgewater, Case No. 1,864.

§ 82. —— Rights of owners of cargo.

Owners of cargo disposed of in foreign port to raise money for necessary repairs have lien upon vessel for value of goods at destination.—

The Boston, Case No. 1,669; Pope v. Nickerson, Id. 11,274; The Gold Hunter, Id. 5,513.

The owner of a cargo sold in a foreign port to supply the necessities of the ship is entitled to proceed against the other owners of cargo for contribution, where the ship or owners cannot satisfy his demand.—The Leonidas, Case No. 8,262.

§ 83. Authority and duties of master as to crew.

The provisions of the ancient sea laws on the authority of the master to punish seamen.—Butler v. McClellan, Case No. 2,242.

When the master is on board he has the exclusive right to punish seamen, and the subordinate officers have no such right.—Elwell v. Martin, Case No. 4,425.

It is the duty of the master to interpose and quell an affray between the mate and the crew.—Jordan v. Williams, Case No. 7,528.

Master has no authority to punish seamen creating ill feeling in another ship's crew, by false and malicious representations about their master.—Bangs v. Little, Case No. 839.

The master has authority to confine his seamen in a common jail in a foreign port for offenses and misconduct, in extreme cases, where the proper correction or punishment cannot be effectual on shipboard.—United States v. Ruggles, Case No. 16,205.

The master may use a deadly weapon, when necessary in order to suppress a mutiny.—Roberts v. Eldridge, Case No. 11,901.

The master has authority to displace the mate and all other subordinate officers during the voyage.—United States v. Savage, Case No. 16,225.

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 offense.—Wilson v. The Mary, Case No. 17,823.

A master can, in cases of necessity, correct a disobedient seaman by reasonable corporal punishment.—Carleton v. Davis, Case No. 2,408; Bangs v. Little, Id. 839.

§ 84. Individual rights and privileges as to vessel, cargo, and freight.

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.—Winsor v. Sampson, Case No. 17,888.

A master claiming the gratuitous privilege of taking his wife and child on the voyage must show a distinct understanding to that effect.—Marshall v. Crawford, Case No. 9,126.

The master cannot recover primage on freight agreed to be paid by the owners, where the vessel is lost, and no freight is earned, though the owners recovered the full amount from underwriters.—Pedrick v. Fisher, Case No. 10,900.

§ 85. Wages and reimbursements of expenses—Rights in general.

The master must render a full and satisfactory account of receipts and disbursements during the voyage, before being entitled to the payment of his wages.—Robinson v. Hinckley, Case No. 11,954.

Under the peculiar customs of the Chinese trade, *held*, that the master was entitled to compensation in the nature of a present from the persons with whom he dealt.—Wilcocks v. Phillips, Case No. 17,639.

Master of whaler has no right to charge commission on money paid to crew on voyage.—Babcock v. Terry, Case No. 702.

The owners are liable for the wages of the master of a captured neutral ship after the capture, and until the condemnation, which are ultimately to be borne as a general average.—Willard v. Dorr, Case No. 17,680.

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.—Winsor v. Sampson, Case No. 17,888.

Where a whaling voyage was to end at New Bedford, but the parties afterwards agreed to end it at San Francisco, *held*, that the master should have the expenses of his passage to New Bedford, and the owners should be allowed freight on oil to the same place.—Slocum v. Swift, Case No. 12,954.

The vessel owner is liable for the expenses of medical attendance rendered the master on board the vessel in a sickness incurred in her service.—Van Lier v. Dord, Case No. 16,862.

Under the custom of the Hudson river, to pay a master for a season's work of 10 months, *held*, that the master was entitled to a proportionate amount for a part of the season.—The Swallow, Case No. 13,665.

§ 86. —— Forfeiture.

Evidence *held* to show no misconduct on the master's part sufficient to forfeit wages.—Nisson v. Wessels, Case No. 10,278.

An error of the master in regard to provisions, making it necessary to return to port for an additional supply, *held* not so gross as to take away his right to wages.—Marshall v. Crawford, Case No. 9,126.

A master who changes the voyage contrary to instructions forfeits all wages.—Robinson v. Hinckley, Case No. 11,954.

But the master will not be held responsible for a deviation, under a charter party requiring it, made by the correspondent of the shipowner.—Robinson v. Hinckley, Case No. 11,954.

Penalty on master for permitting use of spirits contrary to articles.—Babcock v. Terry, Case No. 702.

§ 87. —— Deductions and offsets.

A deduction from the monthly hire will be made, where the voyage has been protracted by reason of the insufficiency of the sails, etc.—Haggett v. Bowman, Case No. 5,900.

Any loss to the owner caused by the smuggling of the master is to be compensated out of his wages.—Willard v. Dorr, Case No. 17,680.

§ 88. —— Extra wages.

The master is entitled to an extra allowance for services rendered out of the line of his duty, such as painting the ship.—String v. Hill, Case No. 13,535.

The master cannot recover for services and expenses in saving the cargo from wreck, when his contract required its delivery at port of destination as a prerequisite to the earning of freight.—The Governor Carey, Case No. 5,645a.

The master cannot maintain a libel for additional services as clerk or manager without showing a special contract designating the extra compensation.—The Gate City, Case No. 5,267.

The master cannot recover additional pay for standing on watch as pilot.—Bartlette v. The Viola, Case No. 1,083.

§ 89. —— Who are liable.

Trustees holding the title of a vessel, and controlling and managing her for the benefit of others, are liable for the master's wages.—Winsor v. Sampson, Case No. 17,888.

§ 90. —— Actions and summary proceedings.

A master who has a right to sue in personam for wages may proceed by summary petition against surplus proceeds in court.—The Stephen Allen, Case No. 13,361.

On a libel by the master for wages after a sale of the vessel, *held*, that it would be presumed that the wages had been paid out of the freight moneys.—The Richmond, Case No. 11,795a.

Remedy in admiralty for services, see "Admiralty," § 39.

§ 91. —— Liens.

A master has no lien upon the vessel for his wages.—The Dubuque, Case No. 4,110; Dudley v. The Superior, Id. 4,115; The Grand Turk, Id. 5,683; The Eolian, Id. 4,504; Ex parte Clark, Id. 2,796; Bartlette v. The Viola, Id. 1,083; Phillips v. The Thomas Scattergood, Id. 11,106; Zollinger v. The Emma, Id. 18,218; Revens v. Lewis, Id. 11,711; Willard v. Dorr, Id. 17,679; The Leonidas, Id. 8,262.

The master has a lien on freight for necessary disbursements for incidental expenses and liabilities incurred therefor during the voyage, and also for his wages.—Drinkwater v. The Spartan, Case No. 4,085; The Bowditch, Id. 1,717; The Grand Turk, Id. 5,683; The Packet, Id. 10,654.

Such lien will be paid prior to that of general creditors and prior claims.—Drinkwater v. The Spartan, Case No. 4,085.

The master has no lien for his wages on goods consigned to the vessel owners.—Vowell v. Bacon, Case No. 17,018.

An alien cannot be deemed master of an American vessel, even for the purpose of defeating his claim to a lien for wages.—The Dubuque, Case No. 4,110.

The lien of the master of a foreign ship, given equal rank with the liens of seamen and material men by the law of the flag, will not be enforced in our courts.—The Selah, Case No. 12,636.

The master of a vessel incumbered for more than her value, appointed by the owner after she was libeled in admiralty, has no lien for his wages, though ordinarily allowed under the law of the flag.—The Island City, Case No. 7,109.

The fact that the master of a British vessel claimed a lien on her under the English law is no ground for his refusal to deliver the vessel to her owners.—Muir v. The Brisk, Case No. 9,901.

The master waives his lien on the goods for freight where he directs the consignee to pay the freight moneys to the charterer.—Shaw v. Thompson, Case No. 12,726.

A master, having no lien for services as such, cannot enforce a lien for additional services as clerk or manager without showing a special contract designating the extra compensation.—The Gate City, Case No. 5,267.

§ 92. Lay or share in earnings.

The custom of the port where the vessel is owned and from which a fishing voyage is made as to the amount of the master's share will control.—Rich v. The Cherub, Case No. 11,756.

A usage for masters of whalers to wait for their lays until the owners sell the oil is unreasonable and void.—Bourne v. Smith, Case No. 1,701.

The burden of proving such an agreement, made for valuable consideration, is on the owners.—Bourne v. Smith, Case No. 1,701.

An agreement for a certain lay on securing a full cargo of oil is enforceable where a full cargo is secured, but not the number of barrels named. —Babcock v. Terry, Case No. 702.

The master cannot claim a lay in oil made by part of his crew, left behind after the ship is fully loaded, and brought home by another vessel.—Babcock v. Terry, Case No. 702.

General advances made by the owners to the master and co-owner of a whaling vessel, *held*, might be appropriated in payment of his lay.—Hazard v. Howland, Case No. 6,280.

The master and co-owner of a whaling ship *held* entitled to recover in admiralty the amount due him as master after the voyage had been made up, and his share of the lay ascertained.—Dexter v. Munroe, Case No. 3,863.

Unascertained indebtedness in the capacity of owner, unconnected with the contract of hiring, cannot be set off in such case.—Dexter v. Munroe, Case No. 3,863.

The master is not to suffer a diminution of his lay for oil sold on credit and never paid for, though due diligence was exercised by the owner.—Bourne v. Smith, Case No. 1,701.

The forfeiture provided in the shipping articles for taking on board spirituous liquors will not be decreed against the master's entire lay.—Hazard v. Howland, Case No. 6,280.

In the absence of fraud, a contract between the master and owners of a whaling ship cannot be varied by parol evidence.—Slocum v. Swift, Case No. 12,954.

§ 93. Liabilities on contract.

A master is personally liable on a contract for the transportation of goods in discharge of a debt due from him, part of which does not rest on a maritime contract.—Fox v. Holt, Case No. 5,012.

The master is not personally liable for the wages of the hands.—Harris v. Nugent, Case No. 6,126.

No account against a vessel is chargeable against a master unless presented within a reasonable time.—Bains v. The James and Catherine, Case No. 756.

Mate becoming master during voyage not liable on contracts of predecessor.—Anonymous, Case No. 467a.

Master giving another shipmaster, brought home by him, a receipt for passage money in a larger amount than actually received, to enable the latter to charge the sum to his owners, liable for full amount of receipt.—Babcock v. Terry, Case No. 702.

Where the master of a fishing vessel is to fit her out and cure the fish himself, giving the owner part of the catch, and paying all bills from the proceeds of the remainder before division with the crew, he is owner pro hac vice, and responsible for the "small generals."—Mayo v. Snow, Case No. 9,356.

The master is not liable for a deficiency on a bottomry bond given by him, in the absence of a covenant binding him personally for the debt. —The Irma, Case No. 7,064.

§ 94. Liabilities for negligence or misconduct.

The master as well as the owners of a vessel is a common carrier, and is personally responsible for his own negligence and misfeasances.—White v. McDonough, Case No. 17,552.

A master who follows the advice of a duly-constituted survey in unloading cargo to repair a leak and in reloading cannot be held negligent.—The Blue Jacket, Case No. 1,569.

The stowing of cargo in steamboats on the western rivers is under the special charge of the mate, and the master is not liable to the owners for negligence therein.—Bissell v. Mepham, Case No. 1,450.

The master, who has stowed goods on deck without the consent of the owner, cannot protect himself for liability for their loss within the exceptions of dangers of the sea.—The Rebecca, Case No. 11,619.

The master is not bound to break up his voyage upon an illegal threat of confiscation, and is not guilty of misconduct in persisting in the

voyage, although the vessel be seized and condemned therefor.—Williams v. Suffolk Ins. Co., Case No. 17,738.

The carrying off of a vessel by her master after her owner's death, to a port of a state other than that of the owner's residence, is an act of barratry, even if it be for the purpose of delivering her to persons supposed to be the owner's heirs.—Williams v. The Sylph, Case No. 17,740.

The charterer instructed the master of a vessel, ready to sail, to proceed if the charterer did not come on board in the morning. *Held*, that the master was not guilty of misconduct in setting sail where the charterer failed to appear.—Dow v. Hare, Case No. 4,037a.

The captain of a steamboat is responsible for the proper performance of the duties of inferior officers whose authority is not expressly made independent of him.—United States v. Farnham, Case No. 15,071.

Is liable for all injury caused by unlawful displacing of mate.—Atkyns v. Burrows, Case No. 618.

The advice of an American consul, in a foreign port, gives to the master of a vessel no justification for an illegal act.—Wilson v. The Mary, Case No. 17,823.

Query whether procuring insurance on unauthorized voyages, and the receiving and selling the cargo, is a ratification of the master's act, waiving his liability for damages.—Robinson v. Hinckley, Case No. 11,954.

The master's liability to the owners is not governed by the same rules which fix his liability to the shippers. He is liable only for reasonable care and diligence.—Bissell v. Mepham, Case No. 1,450.

V. LIABILITIES OF VESSELS AND OWNERS IN GENERAL.

See, also, "Maritime Liens."

Jurisdiction over claims for repairs and supplies, see "Admiralty," § 16.

Liability for seamen's wages, see "Seamen," §§ 111–114.

Remedy on contract for repairs and supplies, see "Admiralty," § 39.

§ 95. Representation of vessel or owners in general.

The ship is liable for all obligations of the master, whether arising ex contractu or ex delicto, where he acts within the scope of his authority as master.—The John L. Dimmick, Case No. 7,355; The Rebecca, Id. 11,619.

The admissions and declarations of the master within the scope of his authority when upon the voyage are admissible against the principal.—Eads v. The H. D. Bacon, Case No. 4,232.

Owners are liable for excess of authority used by master or crew of privateer.—The Amiable Nancy, Case No. 331.

In cases of necessity arising during the voyage, the master's acts are binding upon all parties.—Miston v. Lord, Case No. 9,655.

§ 96. Contracts in general.

Every contract of the master within the scope of his authority as master, by the general maritime law, binds the vessel, and gives the creditor a lien upon it for his security.—The Paragon, Case No. 10,708; McKenzie v. Oglethorpe, Id. 8,857; The Waldo, Id. 17,056.

The shipper has a lien on the vessel for the execution of a contract by a bill of lading, entered into by the master of a chartered vessel, which may be enforced by process in rem in admiralty.—The Phebe, Case No. 11,064.

Only those contracts which the master enters into as such specifically bind the ship, and affect it by way of lien or privilege in favor of the creditor.—The Phebe, Case No. 11,064.

The fact that the vessel was let by a charter party or parol agreement on the condition that the hirer should have the whole control of her will not alter the case.—The Phebe, Case No. 11,064.

The master cannot bind the owners by a contract made in a foreign country, except such as is expressly authorized, or recognized and established by general law of the country of their domicile.—Pope v. Nickerson, Case No. 11,274.

A contract made by the master in his own name, in excess of his authority, is not validated, so as to bind the ship, by the fact that the ship's husband assumed to authorize him to make the contract.—Kimball v. The Dispatch, Case No. 7,773.

The owner is not liable for the contracts of a master, where the charterer was to have entire control, and to victual and man the vessel. —Devoe v. Penrose Ferry Bridge Co., Case No. 3,845; Donahoe v. Kettell, Id. 3,980.

The term "merchandise," in a charter incorporating a steamboat company for the transportation of merchandise, does not apply to mere evidences of value, such as notes, bills, checks, policies of insurance, and bills of lading, and the company is not liable where the master carried such articles unless it be shown that he was authorized to contract for their carriage.—Citizens' Bank v. Nantucket Steamboat Co., Case No. 2,730.

§ 97. Supplies and repairs—In general.

By the general maritime law, material men have a remedy for supplies and materials against the vessel, the owner, and the master. —The Chusan, Case No. 2,717.

One who furnishes supplies, repairs, or advances to a vessel in a foreign port, may elect to hold the owner, master, or vessel.—Brookman v. The Rebecca Fogg, Case No. 1,941.

A shipowner is not liable personally for work upon the ship, unless done by his order or on his credit.—Heppard v. The General Cadwalader and The Major Ringgold, Case No. 6,390.

The obligation of the vessel in the case of a contract for repairs and supplies does not arise until the repairs or supplies are furnished, and for a breach of the contract the vessel is not liable.—The Pacific, Case No. 10,643.

The vessel owners are not liable for supplies furnished to a vessel while frozen in, and in charge of the mate as ship keeper, except for implements for necessary and permanent use on board the vessel.—Fox v. Holt, Case No. 5,012.

The master or owner of a vessel taken into a dry dock for repairs is not bound by a printed tariff of charges not brought to his notice.—Ives v. The Buckeye State, Case No. 7,117.

Where the owner of the dry dock charges for his labor in superintending the work, he will not be allowed to charge for the labor of his men a greater sum than that paid them.—Ives v. The Buckeye State, Case No. 7,117.

Owners sued in personam for repairs made by order of the consignees of the vessel cannot, after admitting ownership, and alleging that the consignees were owners for the voyages under a charter party, and after accepting the repairs, dispute the authority of the consignees to order them made; and such owners are prima facie liable.—McCarthy v. Eggers, Case No. 8,681.

An owner whose name does not appear in the registry is equally liable with the one whose name does so appear for work done on

the vessel, though libelant had no knowledge of his interest.—Leef v. Goodwin, Case No. 8,-207.

A libel against owners for supplies will be dismissed as to one who, though registered as owner, was in fact but a mortgagee of part of the vessel, where he had no ostensible connection with the vessel, and credit was not given on the ground of his partnership.—Dugan v. Pentz, Case No. 4,121.

The general owners of a vessel are not liable for supplies or repairs furnished in a foreign port, to a vessel hired on shares, to one who was to victual, man, and control the vessel, but the vessel is liable.—The H. B. Foster, Case No. 6,291.

A material man cannot maintain an action in personam in admiralty, where a note or other obligation has been taken for the demand. —The Hilarity, Case No. 6,480.

§ 98. —— Contracts by master.

The master has authority in a foreign port to procure all supplies and repairs necessary for the safety of the ship and the due performance of the voyage.—The Fortitude, Case No. 4,953.

This authority includes all such supplies and repairs as are reasonably fit and proper, although not indispensably necessary.—The Fortitude, Case No. 4,953.

The master has authority to bind the owners for necessary repairs and supplies in the port of her registry, at which the owner does not reside, and to whom there is no ready access.—Schultz v. Bosman, Case No. 12,488.

The master may bind the owner for repairs, unless it appear that some other person was in authority, with a knowledge of the creditor. —Philips v. Ledley, Case No. 11,096.

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.—The Woodland, Cases Nos. 17,976, 17,977.

The owners are not personally responsible for debts contracted by the master for repairs, beyond the value of the ship and freight.—Naylor v. Baltzell, Case No. 10,061.

The master cannot bind the owners for supplies when some other person is authorized to manage the business of the ship in that respect, with the knowledge of the creditor.—The Joseph Cunard, Case No. 7,535; Mott v. Ruckman, Id. 9,881.

It need not be shown that supplies furnished on the order of the master in the usual course of business, and appropriated for the voyage, were absolutely necessary, or actually placed on board, in order to bind the owner.—Merritt v. Brewer, Case No. 9,483.

A master acting as general agent for his wife, who is part owner, has no interest in her share, whereby he may bind the vessel for the premium of a policy of insurance taken out in his own name.—Mercantile Ins. Co. v. The Orphan Boy, Case No. 9,431.

A master appointed by the owner, and sailing the vessel on shares with him, has no power to bind one who holds the title merely as security, for supplies furnished in her home port, by representing such person as owner.—Harriman v. Dodge, Case No. 6,104a.

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.—The Woodland, Cases Nos. 17,976, 17,977.

§ 99. Advances.

Advances of cash to the master will bind neither vessel nor owners unless shown to have been appropriated to the necessaries of the vessel.—Merritt v. Brewer, Case No. 9,483.

Master may bind vessel and cargo for loan to pay liens of salvors, and prevent delay and expense in their enforcement.—The Clotilda, Case No. 2,903.

A special agent of the charterer cannot charge, against the owners, expenses, advances, or liabilities incurred for the ship.—The Joseph Cunard, Case No. 7,535.

A vessel is liable for authorized advances to a cook, made by the broker who shipped him, though the cook deserts.—Church v. The H. L. Scanton, Case No. 2,710a.

§ 100. Negotiable instruments.

Where a bill of exchange is drawn by the master by authority of the owners in his own name for cargo supplied by the owners, the latter are liable, and are entitled to the same defense against the bill in case of dishonor that they would be as drawers.—Wallace v. Agry, Case No. 17,096.

Master who is authorized to draw on a certain house for a certain sum, and instructed to "extend his drawing," should he not have funds to purchase a cargo, is only authorized to draw on the house named.—Clement's Ex'rs v. Dickey, Case No. 2,883.

§ 101. Torts committed by master or crew—In general.

Owners are answerable for the master's torts under a general principle of the maritime law, and not by virtue of any special contract.—Dean v. Angus, Case No. 3,702. But see Sunday v. Gordon, Case No. 13,616.

A tug in charge of her pilot, during absence of master on shore, went alongside a ship at anchor, and took off eight sailors and their baggage, against remonstrance of ship. *Held*, that the tug was not liable for the tort, and the bonding of the vessel when sued for the tort was not a ratification of the pilot's acts.—The G. H. Starbuck, Case No. 5,378.

The vessel owners, by abandoning ship and freight, are discharged from personal responsibility for obligations of the master arising ex delicto, both under the general maritime law of Europe and the statutes of Maine.—Stinson v. Wyman, Case No. 13,460.

Quære, whether a ship may be liable in rem for a tort, under circumstances excluding any personal liability of her owners.—Smith v. The Creole, Case No. 13,032.

The owners of a vessel are not liable for the acts of the master in excess of his authority, to the injury of others, in a business different from that for which he was employed.—Dias v. The Revenge, Case No. 3,877.

Under the law of Massachusetts, the liability of the owners for misconduct of the master is limited to the value of the vessel and her freight. —Pope v. Nickerson, Case No. 11,274.

In admiralty, the owner and vessel are liable for injuries done to person or property by the negligence of master and crew only where the owner would, under the same circumstances, be liable in a suit at common law.—The Germania, Case No. 5,360.

The liability of the owners of a vessel for the acts of the master is governed by the law of the place of their domicile, and not by that of the place where the contract was made or to be discharged.—Pope v. Nickerson, Case No. 11,-274.

§ 102. —— Negligent management or navigation.

A shipowner who provides a seaworthy vessel, properly equipped, and commanded by competent officers, has discharged his duty towards the subordinates, and cannot be *held* liable for mere neglect of officers.—Malone v. Western Transp. Co., Case No. 8,996.

A steamship in charge of a pilot is not liable for injury to a seine in such part of the channel that the steamship would have been in danger of grounding if she had attempted to go around it.—The City of Baltimore, Case No. 2,-744.

An error in judgment on the part of a master not shown to be incompetent in respect to the navigation of the vessel, will not render the owners liable for its consequences.—Haggett v. Bowman, Case No. 5,900.

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 custom-house.—The Zenobia, Case No. 18,209.

Owner of vessel *held* not liable for fault of master in failing to notify the shipper's agent of his leaving, so that he might have effected an insurance on the cargo.—Letts v. Hackett, Case No. 8,283.

The neglect or misfeasance of a licensed pilot in securing a vessel improperly to a wharf, whereby she breaks loose and injures another, will not relieve the vessel from liability, as the master is charged with the duty of seeing that she is properly moored.—The Lotty, Case No. 8,524.

The wife of a person killed in a collision with a steamer, while navigating a rowboat in a harbor, may recover against the steamer where she was not navigated with sufficient caution.—The Sea Gull, Case No. 12,578a.

Act July 7, 1838, § 13, makes the fact of the injurious escape of steam full prima facie proof of negligence to charge the defendant in all actions against proprietors of steamboats for injuries occasioned by injurious escape of steam.—The Highland Light, Case No. 6,477.

The acts of congress confine the remedy in rem, for injuries from injurious escape of steam, to actions brought by passengers, and the remedy is in personam against owners for such injuries done to others on board.—The Highland Light, Case No. 6,477.

§ 103. —— Willful or wanton injuries.

Services in detecting the fraud of a master who had barratrously run away with a vessel, and recovering the property, will be recompensed in admiralty, but not as salvage.—The Jacmel Packet, Case No. 7,154.

A vessel is liable for wrongful act of master in his capacity as such, but not for malicious act. —The Aberfoyle, Case No. 16.

Owners are liable for the willful and malicious acts of a master, done in the course and scope of his employment.—Ralston v. The State Rights, Case No. 11,540.

Otherwise of crimes committed by a master, not within the course and scope of his employment.—Ralston v. The State Rights, Case No. 11,540.

A vessel is liable for embezzlement by the master of a portion of the cargo.—The E. M. McChesney, Cases Nos. 4,463, 4,464.

A scow will be *held* liable for the conversion by its master of a lighter used, without authority, in carrying wood from the shores of Lake St. Clair to the scow.—The Florence, Case No. 4,-880.

Admiralty will not take jurisdiction of a libel in personam for assault committed against a mariner by the officers of the vessel, if the case is of doubtful merits, and must be established by questionable proofs, but will remit libelant to his remedy at common law.—Murray v. Donnelly, Case No. 9,958.

The owners of a whaling vessel are liable for damages for the abduction of a minor by the captain without their knowledge.—Walcott v. Wilcutt, Case No. 17,053; Sherwood v. Hall, Id. 12,777.

The measure of damages for the tort of a master of a vessel who had shipped a minor known to him to have run away from another vessel *held* to be the amount of wages he was earning on the other vessel, with expenses and losses.—Sherwood v. Hall, Case No. 12,777.

§ 104. Dangerous or defective condition of vessel or appliances.

A person not in the employment of a vessel or of her owners, nor acting in their service or for their benefit, and sustaining no relation to them by contract, has no right of action in rem, in admiralty, against the vessel, for an injury received by him on board of her by falling through an open hatchway.—The Germania, Case No. 5,360.

The vessel is not liable to stevedore injured by imperfect tackle rigged by master for his own use in unloading.—The Aalesund, Case No. 1.

VI. BOTTOMRY AND RESPONDENTIA.

§ 105. Nature of contract—In general.

A bottomry bond is a contract for a loan of money on the bottom of the ship at an extraordinary interest, upon maritime risks, to be borne by the lender, for a voyage or a definite period. —The Draco, Case No. 4,057.

The true grounds of a maritime hypothecation are the necessities of the case, and the want of personal credit.—Forbes v. The Hannah, Case No. 4,925.

§ 106. —— What constitutes.

Marine interest secured is not alone sufficient to show the bond to be in bottomry.—Greely v. Smith, Case No. 5,750.

The bond may be valid as a bottomry bond where the person is liable in the event that the vessel is not lost.—Greely v. Smith, Case No. 5,750.

It is essential to a bottomry transaction that the money lent should run the hazard of the voyage.—The William and Emmeline, Case No. 17,687.

The risk of the lender, and his right to repayment only on the safe arrival of the vessel, constitute the essential difference between bottomry and a simple loan.—The Mary, Case No. 9,187; Greely v. Smith, Id. 5,750.

When a bond provides for no marine interest or marine risk, and its condition is a mere pledge of a vessel to secure a debt and simple interest, it is not a bottomry bond.—Leland v. Medora, Case No. 8,237.

A draft given for advances for repairs in a foreign port, expressed to be "for value received in disbursements and repairs of the brig H.," with directions to charge the same to her account, is neither an hypothecation of the freight nor an assignment thereof.—Murray v. Lazarus, Case No. 9,962.

§ 107. Power of owner to make bond.

A valid bottomry bond may be made by the owners of a vessel in a foreign or a home port. —The Draco, Case No. 4,057.

The owner of a ship may bottomry her abroad, without regard to the necessities of the ship or his inability to procure funds in other ways or

the receipt of the consideration before the vessel went to sea.—The Panama, Case No. 10,703; The Mary, Id. 9,187; The Draco, Id. 4,057; Eneas v. The Charlotte Minerva, Id. 4,483.

§ 108. Power of master to make bond—In general.

The master of a ship may hypothecate her under certain circumstances to raise money for her use, but he cannot sell her.—Skrine v. The Hope, Case No. 12,927; Ross v. The Active, Id. 12,071.

Conditions preceding the authority of a master to hypothecate his vessel in a foreign port by bottomry.—Furniss v. The Magoun, Case No. 5,163.

Validity of bottomry bond given in foreign port by master appointed by the lender on the death of the master of the outward voyage, where owner had no agent at the port.—The Edward Albro, Case No. 4,290.

Where advances were made, and a bond given, after the master had resigned his command, and another master, appointed by the charterers, had succeeded to it, the bond is not valid.—Walden v. Chamberlin, Case No. 17,055.

The master who is also part owner may create a bottomry on his own interest without the existence of any necessity for a bottomry.—The Kathleen, Case No. 7,624.

The master of a chartered vessel appointed by the charterers has authority to hypothecate her.—Breed v. The Venus, Case No. 1,827.

Authority of the master to raise money upon the vessel itself in the absence of other means is implied where the owner refuses to pay a bill given for supplies furnished, and sends the creditor to demand payment from the master in a foreign port.—Thomas v. Gittings, Case No. 13,897.

Where the owners, with all the facts before them under which a bottomry bond was given by the master in a foreign port, claim and receive their share of the general average from the underwriters, it amounts to a ratification of the making of the bond.—Gardner v. The White Squall, Case No. 5,239.

The objection of want of authority, where a bottomry bond is given in good faith for necessary supplies, will only go to reduce the premium.—The Eureka, Case No. 4,547.

§ 109. —— Necessity.

Both the necessity for repairs or supplies, and of resorting to bottomry to obtain the money, must exist, to justify a master in raising it on bottomry.—Burke v. The M. P. Rich, Case No. 2,161; The Fortitude, Id. 4,953; Patton v. The Randolph, Id. 10,837; The Lavinia v. Barclay, Id. 8,125; Liebart v. The Emperor, Id. 8,340; Tunno v. The Mary, Id. 14,237; Murray v. Lazarus, Id. 9,962; Gibbs v. The Texas, Id. 5,385; Selden v. Hendrickson, Id. 12,639.

Where money is advanced for repairing a vessel on the credit of the owners, a bond given therefor by the master is invalid.—The Hunter, Case No. 6,904; Rucher v. Conyngham, Id. 12,106.

The master may sell part of the cargo or hypothecate it for necessary repairs, though he has money of the shippers on board; otherwise, where he has sufficient funds of the vessel owners.—The Packet, Case No. 10,654.

The master may bottomry the ship for necessaries in a foreign port when he cannot procure the necessary means from the funds or credit of the owner, whether he has sufficient funds of his own on board to meet the expenses or not.—The William and Emmeline, Case No. 17,687.

The master cannot give a valid bottomry on the vessel for money borrowed for repairs, when the owners are present at the place where the repairs are made, or when he has funds of the owners for such purpose which he has not used.—Patton v. The Randolph, Case No. 10,837; Boreal v. The Golden Rose, Id. 1,658; The Lavinia v. Barclay, Id. 8,125.

A bottomry bond executed by the master of a ship is invalid as to items for advances made without an agreement or reasonable expectation that they were to be secured by bottomry.—The Circassian, Case No. 2,724; Gardner v. The White Squall, Id. 5,239.

It is no objection to a bottomry by the master for necessary repairs in a foreign port that the loan was effected after the same were made.—The Kathleen, Case No. 7,624.

The bond is not void because it was given and the loan made after the vessel sailed on the voyage risked.—Atlantic Ins. Co. v. Conard, Case No. 627.

An anticipated necessity for funds will not justify a master's bottomry bond.—Gibbs v. The Texas, Case No. 5,385.

Supplies are "necessary" when fit and proper for the service, and such as a prudent owner would order.—The Medora, Case No. 9,391.

The necessity for supplies to support a bottomry bond made by the master, need not have been so urgent that the vessel must have been lost to the owner without them.—Thomas v. Gittings, Case No. 13,897.

§ 110. —— Communication with owner.

The master must communicate with the owners of vessel and cargo before giving a bottomry bond where communication is practicable.—The Eureka, Case No. 4,547; The Circassian, Id. 2,724; The Julia Blake, Id. 7,578.

Where the master of the vessel which put into St. Thomas in distress failed to communicate with the cargo shippers at Rio de Janeiro or the consignee at Philadelphia by telegraph, *held*, that a bottomry bond on the cargo to raise money for repairs was void.—The Julia Blake, Case No. 7,578.

§ 111. —— For what purposes bond may be made.

The master as such, or as agent of the owners in the absence of a consignee, cannot pledge the freight to raise money for private purposes; otherwise where he acts as mortgagor in possession.—Keith v. Murdoch, Case No. 7,652.

On the necessary abandonment of the voyage in a foreign port after repairs made, the master may hypothecate the vessel for the purpose of getting her back to the owners, or for a voyage to a place where she can be sold without sacrifice.—The Robert L. Lane, Case No. 11,892.

When necessary repairs can be made within a reasonable time, the master may hypothecate freight and cargo for that purpose, instead of transshipping.—Schmidt v. The George Nicholaus, Case No. 12,463.

A regular survey by competent and skillful persons, and repairs made in pursuance of their recommendation, is prima facie evidence of the propriety of making the repairs, to justify the master and lender on bottomry.—The Fortitude, Case No. 4,953.

A master carrying goods or freight has no right to pledge or sell them at an intermediate port except for necessary repairs and expenses to enable him to perform the voyage. If he break up the voyage at an intermediate port, he has no right to sell the goods for the benefit of the vessel.—Watt v. Potter, Case No. 17,291.

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.—The Yuba, Case No. 18,193.

§ 112. Who may take bond.

A cargo owner on board at the time of a disaster may take a bottomry from the master for advances necessary to complete the voyage.—Ross v. The Active, Case No. 12,071.

One part owner cannot take from the master a bottomry bond on the share of another part owner, for repairs done to the vessel.—Patton v. The Randolph, Case No. 10,837.

The consignee of a vessel may apply the proceeds of a cargo and the freight to pay sums due on account of its purchase, without affecting his right to take a bottomry bond from the master for supplies subsequently furnished.—Thomas v. Gittings, Case No. 13,897.

Where the consignee of a vessel employs her without accounting for her earnings, he cannot enforce bonds on the vessel for wages, insurance, and the like.—Clark v. The Leopard, Case No. 2,828.

A consignee who has ample funds to the credit of the vessel cannot take an hypothecation from the master, unless the owner has directed him to appropriate them to another purpose.—The Lavinia v. Barclay, Case No. 8,125; Liebart v. The Emperor, Id. 8,340.

A consignee having cargo and freight or funds in his hands cannot take a bottomry bond from the master for advances made by him.—Hurry v. The John & Alice, Case No. 6,923.

§ 113. —— Foreign port.

Hypothecation can only be made in a foreign port, and under circumstances of absolute necessity, where relief cannot be had otherwise.—Sloan v. The A. E. I., Case No. 12,946.

All maritime ports, other than those of the state where the vessel belongs, are foreign to the vessel, within the rule permitting hypothecation.—Burke v. The M. P. Rich, Case No. 2,161.

Charleston, S. C., is, in respect to hypothecation, a foreign port to New York.—The William and Emmeline, Case No. 17,687.

§ 114. Requisites and validity — In general.

A bond given in a foreign port by the charterers' agent in the charterers' name is good.—Breed v. The Venus, Case No. 1,827.

A bottomry bond is not vitiated by the stipulation that the cost of insurance shall be included in the sum to be paid by the ship in case of her safe arrival.—The Robert L. Lane, Case No. 11,892.

A bond hypothecating a vessel for a particular voyage, and a specific period beyond its termination, *held* valid as a bottomry bond.—Eneas v. The Charlotte Minerva, Case No. 4,483.

Bond taken with bills of exchange on the owner, for the amount of advances, *held* to be upon the risk of the voyage, and valid as a bottomry bond.—The Edward Albro, Case No. 4,290.

A bottomry bond may be upon time as well as upon a specific voyage.—The Draco, Case No. 4,057.

The words "lost or not lost," omitted, may be supplied by equivalent expressions.—Atlantic Ins. Co. v. Conard, Case No. 627.

§ 115. —— Consideration.

The payment of a hypothecation is not a valid consideration for a new hypothecation unless it appear that the former one was valid.—Walden v. Chamberlin, Case No. 17,055.

The credit of a bottomry lender given in aid of the vessel or owner in a foreign port is a sufficient consideration to support the bond.—The Panama, Case No. 10,703.

A respondentia bond, unless given for value or as security, does not pass the right of property in the goods.—United States v. Delaware Ins. Co., Case No. 14,942.

§ 116. —— Fraud.

Acquiescence by part owners in a bottomry loan, the circumstances whereof are suspicious, is evidence that it was bona fide.—Roberts v. The Yuba, Case No. 11,920.

A bottomry bond given by the owner of less than half interest in a vessel, but holding the legal title, covering the whole value of the vessel when only one-third of the sum was actually due, *held* fraudulent as against the other owner.—The William, Case No. 17,684.

A bottomry bond, made for a larger sum than is due, to defraud underwriters, is void.—Carrington v. The Ann C. Pratt, Case No. 2,445; The Ann C. Pratt, Id. 409.

No fraud not participated in by the lender can affect the bond.—Atlantic Ins. Co. v. Conard, Case No. 627.

When a bottomry contract is void for fraud, no recovery can be had as upon an implied contract and lien.—The Ann C. Pratt, Case No. 409.

§ 117. —— Partial invalidity.

A bottomry bond may be held good in part and bad in part, or the maritime interest may be moderated.—The Hunter, Case No. 6,904.

A bottomry covering items of advance not entitled to a bottomry lien is invalid only in part.—Furniss v. The Magoun, Case No. 5,163.

Where a bottomry bond covering the whole vessel is void in toto against a part owner of the vessel for fraud, it cannot be good in part against a purchaser from him, with knowledge that part of the debt secured by the bond was originally good.—The William, Case No. 17,684.

§ 118. —— Recording.

A bottomry bond need not be recorded under a state statute (Act Mass. 1832, c. 57) providing for the registration of chattel mortgages.—The Draco, Case No. 4,057.

A bond, invalid as a bottomry bond, will not be *held* good as a mortgage where the possession is not changed, and it is not recorded, as required by the state law.—Greely v. Smith, Case No. 5,750.

§ 119. Construction and operation.

Bottomry bonds are not to be construed strictly, but liberally, so as to carry into effect the intention of the parties.—Pope v. Nickerson, Case No. 11,274.

All the papers connected with the bond and shipment will be construed together.—Atlantic Ins. Co. v. Conard, Case No. 627.

A bill of exchange taken with a bottomry bond for the same sum must share the fate of the bond.—Maitland v. The Atlantic, Case No. 8,980; The Hunter, Id. 6,904.

A voyage to a foreign port, there to discharge cargo; thence to another foreign port, there to take cargo; thence to a domestic port,—is continuous with respect to liability of freight moneys to satisfy a bottomry bond given for repairs in the first part of the voyage.—Fish v. The George Thomas, Case No. 4,813b.

Construction and legal effect of the terms, "loss," "average," and "salvage," in a bottomry bond.—Morrison v. The Unicorn, Case No. 9,849.

§§ 120, 121. Rights and duties of lender or holder.

The lender must show the necessity for the expenditures for which the money was advanced.—The Bridgewater, Case No. 1,865; Naylor v. Baltzell, Id. 10,061; Joy v. Allen, Id. 7,552; Walden v. Chamberlin, Id. 17,055; Putnam v. The Polly, Id. 11,482.

Lender is bound to ascertain necessity for advances and absence of other resources.—The Boston, Case No. 1,669.

Where there is an apparent necessity, the lender is under no obligation to ascertain the cause of the injury, or to inquire as to the manner of making the repairs.—The Fortitude, Case No. 4,953.

As against the lender, it is sufficient if there is an apparent necessity, so far as he is able, upon due inquiry and due diligence, to ascertain the fact.—The Fortitude, Case No. 4,953.

The lender is prima facie presumed to have made inquiries as to the apparent necessity, and to have acted upon the facts and circumstances, as made known by the survey.—The Fortitude, Case No. 4,953.

A bottomry creditor can entitle himself to a novation in place of seamen, only by the unconditional payment of their wages.—The Cabot, Case No. 2,277.

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. —The Yuba, Case No. 18,193.

The holder of a bottomry bond given by the master as such, who is also owner, has the same rights and privileges as if the bond was given in the character of owner.—The Panama, Case No. 10,703.

Rights of lender as to homeward cargo, how secured—Preference in United States.—Atlantic Ins. Co. v. Conard, Case No. 627.

The holder of a bottomry bond will not lose his money, where the nonperformance of the voyage has not been occasioned by the enumerated perils, but has arisen from the fault or misconduct of the master or owner.—Pope v. Nickerson, Case No. 11,274.

The delivery to the lender of a bill of lading on the arrival of the vessel is equivalent to a direct consignment to him.—Atlantic Ins. Co. v. Conard, Case No. 627.

An agreement in a respondentia bond to have on board the amount lent, in goods, *held* not a condition precedent, but the lender could recover the deficiency on a loss.—Franklin Ins. Co. v. Lord, Case No. 5,057.

A collateral agreement to indorse bills of lading as further security *held* not a condition precedent.—Franklin Ins. Co. v. Lord, Case No. 5,057.

Trover will lie at common law in favor of the lender, against a purchaser who has taken possession of the vessel.—The Draco, Case No. 4,057.

§ 122. Subject-matter hypothecated.

A bottomry bond binds both the ship and her earnings.—The Anastasia, Case No. 347.

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.—The Zephyr, Case No. 18,210.

Freight pledged means the freight of the whole voyage, and not the freight for that part unperformed at the time of giving the bond.—The Zephyr, Case No. 18,210.

Freight prepaid is not liable to the bottomry holder.—The Eureka, Case No. 4,547.

An omission to include the cargo in the hypothecation, if by mistake, may be reformed.—The Zephyr, Case No. 18,210.

§ 123. Debt secured.

Bottomry bonds may be given for security of mercantile or other debts, either in places where the owners dwell, or in foreign places by their order.—Forbes v. The Hannah, Case No. 4,925.

Commissions paid the master by the bondholder are not to be included in the bond, though, if the master has paid them to the owner, he is to repay them without interest.—The Eureka, Case No. 4,547.

No terms inserted in a bottomry by the master can make the owners responsible, beyond the value of ship and freight, for debts contracted for repairs and supplies.—Naylor v. Baltzell, Case No. 10,061.

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.—The Yuba, Case No. 18,193.

Bond given for advances enforced, though the claims to pay which the money was advanced were not all in fact paid.—Miller v. The Rebecca, Case No. 9,587.

A bond for a pre-existing debt is not valid.—Greely v. Smith, Case No. 5,750; Atlantic Ins. Co. v. Conard, Id. 627; Pickersgill v. Williams, Id. 11,123; Hurry v. The John & Alice, Id. 6,923.

Marine interest is requisite to a bottomry loan, but, if not expressed in the bond, it will be presumed to have been included with the principal.—The Mary, Case No. 9,187.

The agents of a ship advertised for bids on bottomry, but gave a wholly insufficient notice. *Held*, that the premium on the bond taken by themselves should be reduced.—The Eureka, Case No. 4,547.

Interest *held* recoverable from the date of a judicial demand, though the bottomry bond contained no stipulation for ordinary interest.—The Grapeshot, Case No. 5,703.

§ 124. Liens and priority.

An hypothecation of a vessel on maritime risks draws after it a maritime lien.—The Draco, Case No. 4,057.

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.—Wilmer v. The Smilax, Case No. 17,777.

A bottomry bond given by the master, though invalid as such, may create a lien on the vessel where the master had power of attorney from the owner to borrow money upon the vessel.—Hurry v. Hurry's Assignees, Case No. 6,922.

The lien will not be affected by the mere departure of the vessel from the return port, with or without the knowledge of the holder of the bond.—Burke v. The M. P. Rich, Case No. 2,161.

The lien of a bottomry bond is not discharged by a payment of the debt by the agents of the shipowners with their own money, where they take an assignment thereof.—Johnson v. The Belle of the Sea, Case No. 7,372.

In such case, freight moneys will be applied first to the payment of unsecured disbursements of such agents, leaving the surplus only to be credited on the bond.—Johnson v. The Belle of the Sea, Case No. 7,372.

A delay of a few weeks after the right to enforce a bottomry bond has accrued does not impair the remedy, or enable a junior creditor to take precedence by reason of a prior attachment. —Eneas v. The Charlotte Minerva, Case No. 4,483.

The lien on the bottomry of a foreign vessel *held* lost by three months' delay to enforce the same, where the vessel was in the meantime sold on an attachment in the state court to bona fide purchasers.—Persee v. The Clarence, Case No. 11,016.

A valid bottomry bond will be upheld, where there are no laches on the part of the lender, even against a bona fide purchaser without notice.—The Draco, Case No. 4,057.

A mortgage on the vessel taken solely to secure money loaned by an assignee of a bottomry bond will not affect its lien.—Burke v. The M. P. Rich, Case No. 2,161.

As between owner of bottomry bond given by master and mortgagee from fictitious owner of vessel sailing under false colors with fraudulent nationality, the proceeds were distributed to the former.—The Acme, Cases Nos. 27, 28.

Advances by the charterer on account of freight will be paid out of freight in preference to subsequent bottomry.—The Anastasia, Case No. 347.

A fraudulent sale by the master in a foreign port, for necessary charges, does not affect the lien arising upon a prior bottomry bond.—Riley v. The Obell Mitchell, Case No. 11,839.

Where a vessel is libeled and sold on a bottomry bond, the fund in court is not subject, as against the bondholder, to any claim for a general average loss subsequent to the date of the bond.—Oologaardt v. The Anna, Case No. 10,545.

The court will marshal the assets so as to make the proper priorities in favor of shippers, against the property of the owner and master. —The Packet, Case No. 10,654.

§ 125. Loss of vessel or cargo.

The borrower on a bottomry and respondentia bond of moneys advanced on the risk of the voyage, payable by its terms on the arrival of the vessel at her port of discharge, and conditioned to be void if the vessel is utterly lost, is discharged, and the bond rendered void, by the total loss of the vessel on her voyage, though part of her tackle and cargo is saved.—Giro v. The Alexander Wise, Case No. 5,463.

Insurers, having satisfied a bottomry claim where the vessel is lost, are entitled to the salved freight, as against a subsequent assignee of the master and owner, who advanced money on the freight for the benefit of the ship and cargo.—Hogan v. Manselly, Case No. 6,584.

In cases of bottomry, a loss, not strictly total, cannot be turned into a technical total loss, by abandonment, so as to excuse the borrower from payment, even although the expense of repairing the ship exceeds her value.—Pope v. Nickerson, Case No. 11,274.

A bond conditioned to be void in case of utter loss of the vessel is not discharged by its stranding and abandonment to insurers as a total loss, and a sale by them at the place of stranding as not worth repairing; and the holder is entitled to the proceeds as against the insurers.—Delaware Mut. Safety Ins. Co. v. Gossler, Case No. 3,766.

§ 126. Payment or satisfaction.

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.—The Zephyr, Case No. 18,210.

One who lends securities for the general use of a shipowner is not subrogated to the lien of the bottomry creditor, who is paid by their proceeds.—Stalker v. The Henry Kneeland, Case No. 13,282.

A sale or transfer of the vessel, or a breaking up of the voyage, by the borrower, after a risk on bottomry has commenced, renders the bond immediately payable.—The Draco, Case No. 4,057.

An acquittance written on a bottomry bond by a son-in-law of the vessel owner, to whom it was sent for collection, who substituted himself as debtor, *held* fraudulent, and not available to one who purchased with notice of the lender's claim.—Herwig v. Oakley, Case No. 6,435.

Such bond is not waived by bringing suit and recovering judgment against the person to whom it was sent for collection, in ignorance of the facts constituting the fraud.—Herwig v. Oakley, Case No. 6,435.

§ 127. Actions.

A bottomry bond good in part and bad in part will be sustained by the court so far as it is good.—The Packet, Case No. 10,654.

The libelant on a bottomry bond must prove, by other evidence than the bond, the loaning of the money and the making of the repairs, etc., and the necessity of the repairs and the hypothecation.—Crawford v. The William Penn, Case No. 3,373; The Bridgewater, Id. 1,865.

In an action to recover advances made upon a bottomry bond, it is necessary for the libelant to exhibit an account of particulars, and establish the necessity of the advances.—The William and Emmeline, Case No. 17,687.

The onus probandi, that the master has other funds, or that the owner has a personal credit in that port, is on the owner, who resists the bottomry bond.—The Fortitude, Case No. 4,953.

Where the necessity for the repairs is shown, claimant has the burden of showing that the money could have been obtained otherwise than by bottomry.—The Kathleen, Case No. 7,624.

The defense to a bottomry bond, given in consideration of the obligee's assuming the vessel's debts, that the debts were not satisfied, must be clearly made out.—Cohen v. The Amanda Frances Myrick, Case No. 2,962.

The master of a vessel who hypothecated her on bottomry is a competent witness in favor of the holder of the bottomry, particularly if released by him.—Furniss v. The Magoun, Case No. 5,163.

In case of extortion the court may moderate the premium.—The Packet, Case No. 10,654.

The premium paid on bottomry will be included in the amount of a decree for the amount due for supplies and repairs, where they were furnished upon bottomry.—The Grapeshot, Case No. 5,703.

The court will give judgment for the whole or part of a bond as the proofs may show to be equitable and right.—The Bridgewater, Case No. 1,865.

The decree in bottomry is to consider the sum lent and the premium as a principal, and to allow common interest on that sum for the delay of payment after it is due.—The Packet, Case No. 10,654.

Jurisdiction over bottomry claims, see "Admiralty," § 17.

VII. CARRIAGE OF GOODS.

Jurisdiction over contracts of affreightment, see "Admiralty," §§ 4, 14, 15.

Parol evidence as to bill of lading, see "Evidence," § 69.

§ 128. Nature of vessel's liability.

The mere acceptance and transportation of goods, though there is no bill of lading or other written agreement, will subject the vessel to the common-law liability of carrier.—Brower v. The Water Witch, Case No. 1,971.

Where there is no qualification agreed upon, or established by custom or usage, seagoing vessels are liable as common carriers, and bound to deliver the cargo as received, unless prevented by act of God or public enemies.—Crosby v. Grinnell, Case No. 3,422.

The common-law doctrine of carriers' liability by land is applicable in admiralty to carriers by

water.—Tompkins v. The Dutchess of Ulster, Case No. 14,087a.

Violation of an express stipulation not to take other cargo makes the carrier an insurer.—Knox v. The Ninetta, Case No. 7,912.

Goods, whether conveyed in the body of a steamboat or in a barge attached thereto, are subject to the same guaranties and protection.—The Dick Keys, Case No. 3,898.

§ 129. Who may make contract of affreightment.

The contract of the master to sell the cargo, and transmit the proceeds to the shipper, will not bind the vessel, where the proceeds are not actually placed on board the vessel.—Herbert v. The James Leakman, Case No. 6,397a.

The ship is liable in rem upon the master's contract of affreightment, though it is let to him by charter party, where the shipper is ignorant of that fact.—McCullough v. The Echo, Case No. 8,740a.

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.—The Zenobia, Case No. 18,208.

Ostensible ownership and present possession and authority are sufficient to give the right to bind the ship by a contract of affreightment.—Jackson v. The Julia Smith, Case No. 7,136.

A contract to collect the price of goods shipped, and the freight, from the consignee, and to pay the balance to the consignor, is within the scope of the master's authority, and binding on the vessel owner, where the shipper had no knowledge that the vessel was already chartered.—The Hardy, Case No. 6,056.

The master of a vessel upon the Great Lakes has power, under the custom of the port, to bind the vessel by receiving for transportation goods subject to prior charges, which he is to collect from the consignee, and to return to the shippers.—The Hendrick Hudson, Case No. 6,358.

The lien of a shipper for the performance of such contract is a privileged hypothecation, and takes preference over the lien of a prior chattel mortgage.—The Hendrick Hudson, Case No. 6,358.

The knowledge of the owners of a vessel that the master carried money for hire will not affect them, unless the hire was on their account, or unless the master hired himself out as their agent in that business.—Citizens' Bank v. Nantucket Steamboat Co., Case No. 2,730.

The master cannot subject the ship in rem, much less the co-owners, to a responsibility for cargo not actually laden on board for transportation in the lawful employment of the vessel.—Montell v. The William H. Rutan, Case No. 9,724.

A vessel employed generally to carry stone to a certain port *held* a general freighting vessel as to return cargoes collected by the master under a custom of the business.—Fox v. Holt, Case No. 5,012.

§ 130. What constitutes a contract of affreightment.

The charter party is a mere contract of affreightment where the owner retains possession, command, and navigation of the ship, and contracts to carry the cargo on freight for the voyage.—Eames v. Cavaroc, Case No. 4,238; The Erie, Id. 4,512.

The charter party is a mere contract of affreightment, where the owners agree to keep the vessel tight, staunch, fitted and provisioned, and to receive on board such lawful goods as the charterers or their agents may think proper to ship.—Richardson v. Winsor, Case No. 11,795.

A charter providing that the owner shall victual and man the vessel, and that the whole of the vessel, except that necessary for the men and stores, shall be at the sole use and disposal of the charterers during the voyage, *held* to constitute a contract of affreightment.—Donahoe v. Kettell, Case No. 3,980.

Charter party in which master and seamen continued subject to control of owner, *held* a contract of affreightment, and not a letting of entire ship.—The Aberfoyle, Case No. 16.

§ 131. Construction and operation in general of contract of affreightment.

All parts of a receipt introduced as evidence of a contract of affreightment must be considered in its interpretation.—Butler v. The Arrow, Case No. 2,237.

An agreement repugnant to the terms of a charter party, of which a shipper has no notice, cannot affect his interests injuriously.—Brower v. The Water Witch, Case No. 1,971.

The obligation of the ship in the case of a contract for the conveyance of goods or persons results directly from the contract, and not from the performance, and the liability of both vessel and owner attach at the same time.—The Pacific, Case No. 10,643.

The master may recover damages for injuries to cargo on board of his vessel as a common carrier.—The Francis King, Case No. 5,043.

§ 132. Performance and breach of contract of affreightment in general—Who liable for performance.

In the absence of a special agreement, the duty of the master extends to all that relates to the lading and transportation of the merchandise, and, in the case of a mere contract of affreightment, the shipowners and master are responsible for the faithful performance of these duties.—Richardson v. Winsor, Case No. 11,795.

By the general law maritime, the vessel is bound to the shipper for the performance of a contract of affreightment made with the master, whether by charter party, by bill of lading, or by parol.—The Flash, Case No. 4,857.

§ 133. —— Excuses for nonperformance.

An unusual difficulty in obtaining a master and crew will not excuse nonperformance of the contract.—The Eliza, Case No. 4,348.

A permanent embargo excuses performance; a temporary embargo suspends it.—Bork v. Norton, Case No. 1,659.

The owner is not excused from the performance of a contract for transportation of a cargo by the freezing in of the vessel and the death of the master, but is entitled to a reasonable time to procure a new master, and to await the relief of the vessel.—The Flash, Case No. 4,858.

The vessel is not liable for performance of a contract of affreightment, where the property has not been shipped in pursuance thereof.—Hannah v. The Carrington, Case No. 6,029.

§ 134. —— Lien for performance.

There is no lien upon the vessel for the performance of a contract of affreightment until a lawful contract of affreightment is made, and the property shipped in pursuance thereof.—Hannah v. The Carrington, Case No. 6,029; The Edwin v. Naumkeag Steam Cotton Co., Id. 4,301; The General Sheridan, Id. 5,319; The Pauline, Id. 10,848; Rynaud v. The Richard Cobdan, Id. 12,191; Torices v. The Winged Racer, Id. 14,102; Vandewater v. The Yankee Blade, Id. 16,847; The William Fletcher, Id. 17,692. CONTRA, see The Flash, Case No. 4,857; The Pacific, Id. 10,643.

See, further, "Admiralty," § 15.

§ 135. Delivery to vessel.
A delivery to a vessel's lighter, where a receipt is given, binds the vessel.—Campbell v. The Sunlight, Case No. 2,368.

The receipt of a lighterman, given upon the count or weighing of the officers of the vessel, is not conclusive as to the delivery of all the cargo shipped.—Perry v. Bangs, Case No. 11,013.

The responsibility of the lighterman ceases, and the liability of the vessel commences, when the articles are properly placed on the slings and hooked to the tackle, where the hoisting apparatus belongs to the vessel or the stevedores. —The Cordillera, Case No. 3,229a.

A delivery of goods on the wharf, without notice to the consignee or a valid excuse therefor, is not a good delivery.—The Peytona, Case No. 11,058.

Where a vessel is discharging and taking on cargo at a wharf, a delivery of goods thereon, by the direction of the master, for transportation, is a delivery to such vessel, and her responsibility commences from that time.—The Oregon, Case No. 10,553.

A delivery to a vessel chartered by the agent of a steamer unable to reach her regular port to convey passengers and freight to her, is equivalent to a delivery to the steamer.—The Oregon, Case No. 10,553.

Giving goods to the mate of a vessel for transportation, and taking his signed receipt therefor, is a good delivery to the vessel.—Burdoin v. The Harriet Smith, Case No. 2,147a.

Master not authorized to accept cargo on behalf of owner short of port of delivery.—The Ann D. Richardson, Case No. 410.

Claiming proceeds of sale at intermediate port is not a ratification of master's act.—The Ann D. Richardson, Case No. 410.

§ 136. Bill of lading and shipping receipts in general—Authority to give.
The master has no power to charge the vessel or her owner by signing a bill of lading for goods which are not on board.—The Loon, Case No. 8,499; The Wellington, Id. 17,384.

A person who is in possession under a contract to purchase cannot authorize the giving of such a bill of lading.—The Loon, Case No. 8,499.

§ 137. —— Duty to give.
The master is bound to give a bill of lading when goods are laden on board, even if the freight is not agreed on, or there is a dispute about it; and in such case the bill need not specify the freight.—The May Flower, Case No. 9,346.

The master is in fault where he refused to sign bills of lading, stating that he will call upon the consignor in relation to their stipulations, and sailed without doing so.—The Peytona, Case No. 11,058.

The master cannot keep the goods shipped, and refuse to sign a bill of lading to the order of the shipper, irrespective of his orders from the charterers, or the contract between the shipper and his vendee.—The M. K. Rawley, Case No. 9,679.

§ 138. —— Requisites and validity.
The proper mode of proving the execution of a bill of lading considered.—The Columbo, Case No. 3,040.

A document signed by the master, purporting to be a bill of purchase by a vessel of certain stone, which is delivered as cargo, is not a bill of lading, and the vessel is not holden for the price.—The Skylark, Case No. 12,930.

A bill of lading, signed in blank by the master of a vessel, is not valid, either against the vessel or owners, even in the hands of a bona fide holder.—The Joseph Grant, Case No. 7,538.

The owners and officers who treat a receipt, asserted to have been given by the mate, as genuine and authentic, cannot deny its execution and validity.—Brown v. The Elvira Harbeck, Case No. 2,005.

§ 139. —— Construction and operation.
A bill of lading may be explained by showing that the goods receipted for as shipped were in fact returned to the shippers.—Sutton v. Kettell, Case No. 13,647.

The acknowledgment that cargo was received in good order may be explained or disproved by parol testimony.—The Martha, Case No. 9,145.

A bill of lading, in so far as it is a contract, cannot be affected by parol, though subject to explanation as a receipt.—The Wellington, Case No. 17,384.

The option to reconsign under the provision "with shipper's reconsignment option" cannot be exercised by the consignee; and parol evidence is inadmissible to show a usage to the contrary.—McGovern v. Heissenbuttel, Case No. 8,805.

Construction of clause providing for shipment on other vessels of the same line if prevented by any cause from shipping on the vessel named. —Kirkpatrick v. American S. S. Co., Case No. 7,846.

Bills of lading signed by the master before the goods are on board operate on the goods as received, as against the shipper and master, by way of relation and estoppel.—The L. J. Farwell, Case No. 8,426.

The owner of a vessel is not estopped from having the circumstances attending the signing and transfer of a blank bill of lading inquired into by the court.—The Joseph Grant, Case No. 7,538.

A factor consignee who is in advance to the shipper, acquires, by the execution and delivery of a clean bill of lading, a property in the goods, and a right to their delivery by the ship, which cannot be devested by any subsequent acts of the shipper and the master.—Wiener v. The Rafael Arroyo, Case No. 17,621.

§ 140. —— Indorsement.
An indorsement, as follows, by the master of a chartered ship on a bill of lading: "Signed under protest,"—prevents assignees of the bill from claiming as bona fide holders.—In re Nine Hundred and Seventy-Nine Boxes of Sugar, Case No. 10,271.

§ 141. —— Priority.
A bill of lading, signed only by the brokers who procured the cargo, *held* of no effect as against a prior regular bill of lading signed by the master and owner of the boat.—Vandover v. Wilmot, Case No. 16,848.

Bills of lading issued at different times for wheat not then delivered become concurrently operative as the wheat is placed on board, and, in the absence of appropriation by the shipper, where only a part is shipped, bona fide holders are entitled to the pro rata quantity called for by their bills.—The L. J. Farwell, Case No. 8,426.

One who advances money upon a bill of lading issued to one of the joint charterers, and covering his property, may recover the value of the same from the ship, notwithstanding a similar bill of lading agreed between the parties to have priority was theretofore issued to the other charterer.—Byrnes v. The Rockaway, Case No. 2,274.

§ 142. Loading and stowage—What constitutes stowage.

See, also, post, §§ 163, 165.

The handling of goods shipped is a part of the stowage, for negligence in which the vessel is liable.—The Black Hawk, Case No. 1,469.

§ 143. —— Delay in loading.

Vessel *held* not liable for delay to lighters in taking heavy timber aboard caused by smallness of vessel's hatch and between decks, where the kind of timber was not specified in the contract.—The Innocenta, Case No. 7,050.

§ 144. —— Manner of stowage.

It is bad stowage to place hogsheads of sugar on barrels of whisky, without dunnage and beds at the bottom.—Crocket v. Brower, Case No. 3,401.

Parol evidence is admissible to show a supplemental agreement for a particular mode of stowage under deck.—The Star of Hope, Case No. 13,313.

A shipper who agrees that his goods shall be carried on deck, and assents to the manner of stowing and protecting them, cannot recover for an injury by rain, where all reasonable care was taken of them during the voyage.—The Thomas P. Thorn, Case No. 13,927.

Conflicting surveys by port wardens and marine surveyors, appointed by the chamber of commerce and board of underwriters, are not evidence as to manner of stowage of cargo.—Crocket v. Brower, Case No. 3,401.

Shippers must notify carriers of their wishes as to stowage where they consider the notorious custom of stowing such goods hazardous.—Baxter v. Leland, Cases Nos. 1,124, 1,125.

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 aboard.—Wilson v. The Belvidere, Case No. 17,790.

Stowage of hogsheads of sugar upon their heads is sanctioned by usage.—Williams v. Mora, Case No. 17,730.

Where a ship was laden with tobacco in hogsheads and lard in barrels, and, without having encountered rough weather, lard was pumped from her on the voyage, and the tobacco was damaged by lard running into it, *held* that the damage was due to causes other than perils of the sea.—The Newark, Case No. 10,141.

§ 145. —— Place of stowage.

Clean bills of lading for the carriage of goods between ports, where no usage to the contrary exists, require the cargo to be stowed under deck.—The Governor Carey, Case No. 5,645a; In re Two Hundred and Sixty Hogsheads of Molasses, Id. 14,296; Vernard v. Hudson, Id. 16,921; The Wellington, Id. 17,384; Clifton v. Quantity of Cotton, Id. 2,895.

Goods carried on deck are at the risk of the vessel, even as against dangers of the seas, unless they would have been equally fatal if the goods had been under deck.—The Waldo, Case No. 17,056.

Whether stowage of goods under a poop deck is a stowage under deck, within the meaning of a bill of lading, is not dependent upon whether or not the poop deck was built when the ship was originally constructed, but upon whether it afforded sufficient protection to the goods.—Williams v. Mora, Case No. 17,730.

The main deck of a propeller bulwarked entirely around, covered by an upper deck, and specially constructed for cargo, *held* a proper place to stow oil.—The Neptune, Case No. 10,118.

There is no established custom of trade between Portland and Boston authorizing the carrying of goods on deck without the consent of the owner.—The Paragon, Case No. 10,708.

§ 146. —— Expenses.

The vessel is not entitled to compensation for storage, wharfage, and incidental expenses of loading where the cargo is returned to the shipper on notice of an embargo being given after it was all loaded, but before the bill of lading was signed.—Kelly v. Johnson, Case No. 7,672.

§ 147. Custody and control of goods.

A stipulation giving the shipper the right to change the destination because of blockade does not authorize such change by the ship, on the advice of the consignee, because of a poor market.—Eneas v. Schiffer, Case No. 4,484.

§ 148. Transshipment and forwarding.

Where a vessel is compelled to lie in a foreign port for five months waiting for means to procure repairs, the voyage is in effect broken up, and the vessel owner should transship the cargo if able to do so.—Phelan v. The Alvarado, Case No. 11,067.

A carrier is not justified, from press of business at a port preventing delivery for several days, in taking the goods to another place, and forwarding them from there to the consignees.—Strong v. Certain Quantity of Wheat, Case No. 13,541.

A custom of a vessel to land and store goods without notice of the consignee is not applicable where the carrier transships the goods by rail without notice to the shipper.—Howe v. The Lexington, Case No. 6,767a.

A contract for transportation on the Great Lakes may be performed by a land conveyance in case of obstruction.—Bork v. Norton, Case No. 1,659.

Burden is on libelant to show that injury to goods transshipped not appearing externally was caused on board vessel libeled.—The Adriatic, Case No. 90.

Shipowners are bound to send the goods by the vessel on which they are laden, and which has an advertised time of leaving, when the bill of lading is delivered.—Harrison v. Stewart, Case No. 6,145.

The vessel owner has no right, without necessity, to change the vehicle of conveyance of goods shipped on freight for a voyage.—Trott v. Wood, Case No. 14,190.

A usage, to control such general rule, will not affect the rights of the parties unless it is very clear and uniform.—Trott v. Wood, Case No. 14,190.

Lighterage does not apply to overloading at the commencement of a voyage.—Dorris v. Copelin, Case No. 4,011.

The condition, "privileges of lighting and reshipping," authorizes the vessel to reship as its interest or convenience may advise, and imposes the duty to do so when necessary and practicable.—Dorris v. Copelin, Case No. 4,011.

Such condition does not authorize reshipping before the voyage has been commenced by the original vessel.—Dorris v. Copelin, Case No. 4,011.

Expense of transshipment to port of destination is a charge on freight alone.—Smith v. Welsh, Case No. 13,126.

§ 149. Delivery by vessel—In general.

Under a bill of lading of a cargo of granite blocks, silent as to delivery, the consignees are bound to discharge the cargo in the usual way with reasonable diligence.—Coombs v. Nolan, Case No. 3,189.

The engagement as to delivery is controlled by a usage of consignees at the particular port to receive shipments during the quarantine season, at the quarantine grounds.—Bradstreet v. Heran, Case No. 1,792.

The contract to deliver will be construed as subject to all restraints of government, such as

sanitary or prohibitory laws.—Bradstreet v. Heran, Case No. 1,792.

The carrier fulfills his undertaking by bringing the cargo to the appointed port, with notice to the consignee of that fact, and the readiness of the ship to deliver it at a convenient and proper place.—Leaning v. Standish, Case No. 8,161.

The existence of a charter party, of which the shipper had no knowledge, will not relieve the vessel from the lien which the shipper has for the safe conveyance and delivery of his goods.—Sanders v. The Ellen Hardy, Case No. 12,293.

An agreement between the consignee of a vessel and the owner or consignee of her cargo as to the time and manner of its delivery will bind the vessel.—The Grafton, Cases Nos. 5,655, 5,656.

The ship must put casks containing cement in proper landing order before discharging them, and recooper them in the hold, if necessary to save their contents.—The Harold Haarfager, Case No. 6,083.

Expense of bringing a vessel into port after separation of cargo is a charge on the vessel alone.—Smith v. Welsh, Case No. 13,126.

§ 150. —— Time of delivery.

The time allowed for delivery will be determined by the usages of the port, where the bill of lading is silent in regard thereto. Evidence of an oral contract as to the time is inadmissible.—Higgins v. United States Mail S. S. Co., Case No. 6,469.

§ 151. —— Place of delivery.

Where the bill of lading is silent as to the place of delivery, the vessel is obliged to discharge the cargo at the shipper's wharf according to the usages of the port.—Higgins v. United States Mail S. S. Co., Case No. 6,469.

The usage of the port in such case is binding as a maritime contract on both parties.—Higgins v. United States Mail S. S. Co., Case No. 6,469.

The shipper has no right to demand the cargo at an intermediate port, without paying full freight, whether it be damaged or not.—Jordan v. Warren Ins. Co., Case No. 7,524.

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.—Woodward v. Illinois Cent. R. Co., Cases Nos. 18,006, 18,007.

Special usage in a trade may give consignee right to choose place of discharge.—The Boston, Case No. 1,671.

A consignee, who has a right to designate where to discharge the cargo, must select a suitable and safe place.—Robbins v. Welsh, Case No. 11,887.

The sole consignee; or all the consignees, if unanimous, may direct the master to unlade at any usual and convenient wharf at the port of discharge.—The E. H. Fittler, Case No. 4,311.

The majority shippers, who have the right to choose the wharf under the usage of the port of Boston, must notify the master of their choice before he renders himself liable to the wharfinger of a wharf chosen by himself.—The E. H. Fittler, Case No. 4,311.

In the case of a general ship having the goods of several shippers, the master may lawfully proceed to any such wharf without consulting the shippers.—The E. H. Fittler, Case No. 4,311.

§ 152. —— Notice to consignee.

Newspaper notice to consignees to present their permits within a certain time is not good, unless it is shown to have been brought home to them.—Snow v. The Inca, Case No. 13,145a.

The publication of the cargo list of a steamer was not such a notice to the consignee as to discharge the shipowner from liability under a bill of lading, the goods having been unloaded, and sold for storage.—Caruana v. British & N. A. Royal Mail Steam-Packet Co., Case No. 2,484.

A carrier by water must, as a general rule, notify the consignee of the arrival of the goods. If he fails to do so, he must prove an excuse.—The Mary Washington, Case No. 9,229.

Where the unloading is temporarily interrupted by the crowded state of the wharf, on account of the other consignees not removing their goods, no new notice need be given on resumption of the work.—Salmon Falls Mfg. Co. v. The Tangier, Cases Nos. 12,266, 12,267.

Casual knowledge of the vessel's arrival and purpose to discharge at a certain wharf does not dispense with notice.—The Middlesex, Case No. 9,533.

A master who has wrongfully omitted to sign bills of lading, and sailed without learning the names of the consignees, cannot avail himself of this ignorance as an excuse for not giving notice of the landing of the goods.—The Peytona, Case No. 11,058.

The vessel has the burden of showing that notice was given to the consignee of the place where the vessel was to discharge.—The Prince Albert, Case No. 11,426.

§ 153. —— Duties of consignee or owner as to delivery.

The consignee takes the risk of roads and means of transportation from the dock, and is bound to remove the cargo from the vessel's side as fast as it can be reasonably discharged. —Sprague v. West, Case No. 13,255.

Under a bill of lading giving the vessel the right to store the cargo at the consignee's risk and expense, where it is not taken from alongside "immediately the vessel is ready to discharge," the consignee in the case of boxwood scattered through the cargo, having been used as dunnage, must receive the same as it is unloaded from day to day.—The Kathleen Mary, Case No. 7,625.

A provision that any extra expense of discharging is to be paid by the consignee makes him liable for such extra expenses as are necessarily incurred.—Barstow v. Wilmot, Case No. 1,066.

A known usage and custom of the ship's agents to protect goods after they are landed, and to make a small charge for services therefor, will control the contract as to delivery.—The Tybee, Case No. 14,304.

§ 154. —— What constitutes delivery.

In the absence of a special contract, goods will be regarded as delivered when deposited upon the proper wharf at their place of destination, at a proper time, and notice given to the consignee, after which he has had a reasonable time and opportunity to remove them.—The Tybee, Case No. 14,304; Kennedy v. Dodge, Id. 7,701; Salmon Falls Mfg. Co. v. The Tangier, Id. 12,266, 12,267; The Grafton, Id. 5,656; The Santee, Id. 12,328; The Middlesex, Id. 9,533; Warner v. The Illinois, Id. 17,184a.

Delivery of goods upon the wharf is not a delivery to the consignee, unless he has authorized such a delivery, or there is proof of a well-defined and notorious custom to that effect.—Snow v. The Inca, Case No. 13,145a.

A landing of goods piled in one bulk upon the wharf on a stormy day, and covered with tarpaulins, so as not to be open to inspection, is not a good delivery, though the bill of lading provides that the landing upon the wharf shall

be considered a delivery.—Dibble v. Morgan, Case No. 3,881.

In a case of goods landed on the steamship's own inclosed wharf, *held*, that the liability of the ship as carrier continued until the expiration of a reasonable time.—The St. Laurent, Case No. 12,231.

Where prior notice has not been given, the responsibility of the carrier continues until the lapse of a reasonable time in which to remove the goods.—Salmon Falls Mfg. Co. v. The Tangier, Case No. 12,266.

Consignees are entitled to a reasonable opportunity to ascertain whether goods delivered correspond in quantity and condition with the description given in the shipping documents, and the carriers liability continues until the expiration of such reasonable time.—Bradstreet v. Heran, Case No. 1,792.

The master's liability as a common carrier ceases when the cargo is unladen on a wharf, by direction of the consignee.—Howland v. The Henry Hood, Case No. 6,795.

Placing goods in a public storehouse without notice to the consignee, when he is known, does not release the liability of the ship for their safe-keeping and ultimate safe delivery.—Snow v. The Inca, Case No. 13,145a.

A stipulation in the bill of lading, that cotton should be received as unloaded, package by package, and thereafter should not be at the expense or risk of the vessel, is not unreasonable, and will be enforced.—The Santee, Cases Nos. 12,328, 12,330.

In such case, where the full number of packages are discharged on the wharf, the ship is not liable, though they were not all received by the consignee, where he had previous notice of the unloading, and the ship did not deliver to another.—The Santee, Cases Nos. 12,328, 12,330.

The fact that the consignee was obliged to receive the cargo as landed on the wharf, package by package, does not dispense with the necessity of due notice to the consignee, and a reasonable opportunity to identify the goods, and receive them into his custody.—The Santee, Case No. 12,330.

A case of goods put over the vessel's side upon a truck and wheeled to the place where it was inspected and marked for the public store, and then wheeled further up the wharf, and disappearing within a half hour within the inclosure, *held* not delivered so as to exonerate the vessel.—The Ville De Paris, Case No. 16,942.

It is not a sufficient delivery of a cargo of wheat in bulk to moor the vessel at the dock of the consignee's elevator during bad weather, without notice to him.—Germania Ins. Co. v. La Crosse, etc., Packet Co., Case No. 5,361.

Delivery of cargo according to the usage of the port is equivalent to delivery to the consignee personally or at his warehouse.—Field v. The Lovett Peacock, Case No. 4,768.

§ 155. —— Failure or refusal of consignee to receive cargo or pay freight.

Master cannot carry cargo to another port where consignees refuse to receive it, but is bound to land and store it.—Arthur v. The Cassius, Case No. 564.

Where master sells it at another port, owners may recover value at port of delivery.—Arthur v. The Cassius, Case No. 564.

Declining to receive cargo, in apprehension of bad weather, will not compel a general ship to lie idle.—The Grafton, Case No. 5,656.

Duty of the ship master, where consignee refuses to pay freight, and there is no proper place for storage at the port of destination.—Fox v. Holt, Case No. 5,012.

On refusal of consignees to pay the freight, the owners may retain sufficient of the cargo to cover the amount.—Fox v. Holt, Case No. 5,012.

The holder of the bill of lading cannot require delivery of the cargo without paying freight, but may require it to be discharged so that it can be inspected by him.—The Treasurer, Case No. 14,159.

§ 156. —— Delivery of goods shipped C. O. D.

Bills of lading "C. O. D." are not a lien on the vessel to secure payment of the money collected from the consignee on delivery of the goods.—The Illinois, Case No. 7,005.

A contract to transport goods, and collect and return the money therefor, is one of affreightment. and the consignor has a lien against the vessel for money so collected.—Zollinger v. The Emma, Case No. 18,218.

§ 157. Nondelivery or misdelivery—Failure to deliver in general.

The shippers are not bound by a sale in a port of distress by the American consul, against the master's protest, of a portion of a cargo of wheat, on information that the inhabitants, on account of scarcity of food, would resist its loading.—O'Connell v. The Tally Ho, Case No. 10,418.

Liability for nondelivery in the case of loss of green sugar by drainage and breaking of bags.—The Gomez De Castro, Case No. 5,525.

A master having stipulated by bill of lading to deliver cargo to a certain consignee, afterwards signed a second bill of lading by which he stipulated to deliver a certain part of the cargo to plaintiff as security for money subsequently borrowed of plaintiff by the shipper. *Held* that, if he delivered all the cargo to the original consignee, he was liable to plaintiff for failure to deliver the stipulated part to him.—Stille v. Traverse, Case No. 13,444.

Failure of master to deliver cargo in accordance with terms of bill of lading renders vessel liable for agreed value less freight and charges. —Atlantic & P. Guano Co. v. The Robert Center, Case No. 630.

The vessel is not liable for failure to deliver according to the bill of lading, where the regular warehouseman, because of personal difficulties with the consignee, would not receive the goods, and the master caused them to be stored with another. Case No. 1,566 reversed.—Blossom v. Smith, Case No. 1,565.

The vessel is not responsible for nondelivery pursuant to the bill of lading, where she puts into a port in a crippled condition because her crew are disabled by disease.—Maas v. The Pedee, Case No. 8,652.

The master of a vessel may lawfully refuse to deliver to the consignee goods which, having been attached on his vessel, are carried to the port of consignment under an agreement with the sheriff that they should be returned.—The Lord, Case No. 8,504.

The detention of the vessel by quarantine officials is no excuse for failure to deliver the goods at the wharf as stipulated in the bill of lading, where such goods are permitted to be removed.—Leland v. Agnew, Case No. 8,236.

Where the shipowners refused to deliver such goods, the expense of removal from the vessel by the consignee may be offset against the freight.—Leland v. Agnew, Case No. 8,236.

The holder of a bill of lading has a remedy in admiralty, where the goods are not delivered, either against the master or the owners or the vessel.—The Leonidas, Case No. 8,262.

On a libel for damages for failure to deliver sovereigns shipped as freight under a bill of lading, their value is to be estimated in the

currency of the country of the port of delivery and where the suit is brought.—The Patrick Henry, Case No. 10,805.

In estimating damages for a failure to deliver the goods, expenses of the shipper in hunting up the property and in defending his title in court are not allowed.—Jackson v. The Julia Smith, Case No. 7,136.

Where the owner of a cargo of a sunken vessel raises it, after notice to the owner of the vessel, the expense of such raising may be allowed as damages in a suit for nondelivery.—The Sunswick, Case No. 13,625.

A vessel is liable to a consignee who has advanced money on the bill of lading, although the goods were illegally seized by the customs authorities at the commencement of the voyage.—The Matilda A. Lewis, Case No. 9,281.

The vessel is not liable under a bill of lading for nondelivery of a cargo sold by the master of a vessel driven ashore by a peril of the sea to pay salvage.—The Wiley Smith, Case No. 17,657.

Consignee of barrels of flour *held* entitled to identical barrels shipped, though description in bill of lading was not complete.—The Ben Adams, Case No. 1,289.

Trover will not lie against the master of a vessel for the cargo, unless the freight is paid or tendered or waived, or where the goods were lost.—Hodgson v. Woodhouse, Case No. 6,571.

§ 158. —— Short delivery.

A vessel giving a clean bill of lading for a specified number of bushels of corn is liable for any deficiency, although she proves that she delivered all she received.—Creighton v. The George's Creek, Case No. 3,382.

The master of the vessel is not liable for a greater quantity of cargo than that actually laden on board, though less than that stated in the bill of lading, where the weighing was done by the shipper.—Hopkins v. Wood, Case No. 6,693.

The wharf being the place of delivery, evidence that the number of articles called for by the bill of lading were placed thereon will exonerate the ship, as against evidence that a lesser number were received at the consignee's storehouse, whither his own cartman conveyed them.—Struver v. The Roderick Dhu, Case No. 13,552.

The owners of a ship must show that missing portions of a cargo were discharged, and placed on that part of the wharf selected for the deposit of the consignee's goods.—Carey v. Atkins, Case No. 2,399.

To charge the carrier with an alleged deficiency, the testimony of the parties who actually loaded the vessel is the best evidence.—Cafiero v. Welsh, Case No. 2,286.

The burden of showing that the vessel did not receive on board the number of bales of cotton receipted for is not sustained by the mere statement of the purser that such number was received, but a part of them left behind.—The Saragossa, Case No. 12,336.

The evidence showing that the cargo as received was all delivered at the port of destination, the official weight at that place is conclusive of the extent of the carrier's responsibility, notwithstanding the terms of the bill of lading.—Cafiero v. Welsh, Case No. 2,286.

§ 159. —— Misdelivery.

A bona fide purchaser of a bill of lading to consignee or order may hold the ship liable, though the goods are replevied on arrival by one who sold them to the shipper, for nonpayment of the price. Case No. 9,197 affirmed.—The Mary Ann Guest, Case No. 9,196.

The indorsee of the shipper's bill of lading, who cashed a draft on the consignee on the faith thereof, may recover the amount of the draft, with interest, against the vessel which delivered the goods to the consignee without production of the shipper's bill of lading.—The Thames, Cases Nos. 13,858, 13,859.

A person to whom a draft secured by a bill of lading is made payable as "cashier," for the purposes of collection, may proceed against the vessel in his own name for a wrongful delivery of the cargo to another.—The Thames, Case No. 13,859.

Person to whom goods were delivered, though not consignee, *held*, on the evidence, in an action for nondelivery, duly authorized by the consignee to receive them.—The Ione v. Davis, Case No. 7,058.

On a libel for not delivering coal according to the terms of the bill of lading, it being landed at a wrong wharf, the measure of damages is the value of the coal less the freight charges.—The Boston, Case No. 1,671.

Counsel fees in a replevin suit by a shipper to recover the coal are not included in the damages assessed.—The Boston, Case No. 1,671.

§ 160. Delay in transportation or delivery.

In the case of delay caused by a sick and incompetent crew, the liability of the vessel is determined by the condition of facts at the time the vessel sailed.—The Gentleman, Case No. 5,323.

While the ship is still detained in port by ice, an action will not lie for breach of a bill of lading for goods laden thereon, without a rescission of the contract.—Jones v. The Floating Zephyr, Case No. 7,462.

The measure of damages for delay in delivering cargo is the difference in market value at the time of the actual delivery and the time when by reasonable diligence it should have been delivered.—Page v. Munro, Case No. 10,665.

§ 161. Loss or injury—Liability in general.

Must take adequate measures to protect cargo against a common and ordinary occurrence, which might have been foreseen.—Bearse v. Ropes, Case No. 1,192.

Not necessarily exonerated by the taking of the usual care and precautions, and the conveyance of goods in the usual manner.—Bearse v. Ropes, Case No. 1,192.

A carrier by sea is not exempt from liability on account of loss through the ordinary perils of navigation.—Tompkins v. The Dutchess of Ulster, Case No. 14,087a.

The master is not answerable for losses arising from unavoidable accidents, mere errors of judgment, or failure of success, after having exercised all reasonable diligence and discretion.—Dean v. Angus, Case No. 3,703.

The vessel is not liable for damages caused by its sweating.—McCullough v. The Echo, Case No. 8,740a.

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.—The Zone, Case No. 18,220.

In a suit in rem for loss or injury of goods, it is not necessary to charge defendant as a common carrier.—Seller v. The Pacific, Case No. 12,644.

§ 162. —— Unseaworthiness or unfitness of vessel as ground of liability.

A carrier by water must provide a seaworthy vessel for the voyage and cargo. He is bound to know the condition and strength of the vessel.—Kellogg v. La Crosse, etc., Packet Co.,

Case No. 7,663; The Northern Belle, Id. 10,-319.

The fact that a vessel is not a common carrier does not relieve her from the warranty implied in a contract of affreightment, that she is sound, stanch, and seaworthy.—The Planter, Case No. 11,207a.

A ship is hypothecated to the shipper for any damages sustained by the insufficiency of the vessel, or the fault of the master or crew.—The Casco, Case No. 2,486.

A vessel equipped in a manner which renders her competent to encounter the ordinary perils of a voyage is seaworthy.—Fitzpatrick v. Eight Hundred Bales of Cotton, Case No. 4,843.

The fact that the mizzen sail of the vessel gave out in the extraordinary storm, and that she had no spare mizzen sail, does not show that she was unseaworthy when she sailed.—Fitzpatrick v. Eight Hundred Bales of Cotton, Case No. 4,843.

Insufficient sail, resulting in lost time on the voyage, *held* would render the vessel liable for subsequent injury and loss of the cargo, where she was obliged to put into port within 200 miles of home in anticipation of heavy weather.—The Thomas Jefferson, Case No. 13,923.

The vessel is liable where damage to cargo is due to the defective and obsolete construction and arrangement of her bulwarks and stanchions.—The Howden, Case No. 6,765.

An underdeck cargo of grain shifted in a storm because of the absence of shifting boards, and contributed to produce a list of the ship. *Held*, that the vessel was liable for the value of cattle washed overboard after the list.—Fleishman v. The John P. Best, Case No. 4,861.

The splitting of the rudder post in a gale of no extraordinary violence is evidence of unseaworthiness.—In re Nine Hundred and Twenty-Eight Barrels of Salt, Case No. 10,272.

Running in a fog, in calm weather, upon a well-known cape, is proof of unseaworthiness, not rebutted by fact that vessel was new, and well built, rigged and manned, and in charge of a captain of reputed skill and experience.—Bazin v. Steamship Co., Case No. 1,152.

Where the loss was not attributable to the undermanning of a vessel, no recovery can be based thereon.—The Planter, Case No. 11,207a.

A lumber-laden sloop *held* unseaworthy because of insufficient crew, and rotten timbers causing her seams to open in a moderate storm. —Lyon v. Fifty-Six Thousand Four Hundred and Twelve Feet of Lumber, Case No. 8,647.

The absence of a crew at night with the consent of the master, who remained on board alone while the ship was anchored in a harbor, renders the vessel unseaworthy; and she is liable for damages to cargo where she is driven ashore by a gale arising after the crew left.—The Sarah, Case No. 12,338.

A vessel is not seaworthy which is not manned by the necessary officers and crew.—The Planter, Case No. 11,207a.

A carrier is not liable for damages to cotton in bales for moisture previous to the time of lading of which the master of the vessel had no knowledge.—Choate v. Crowninshield, Case No. 2,691.

Where goods are lost by the vessel springing a leak while at anchor in a harbor, the shipowner must show some stress of weather or other circumstances sufficient to account for such a leak in a vessel of ordinary strength.—The Vivid, Case No. 16,978.

Vessel 15 years old *held* unseaworthy where she sprung a leak when 24 hours out of port, and her logbook did not show unusual stress of weather.—Tudor v. The Eagle, Case No. 14,-230.

A vessel which springs a leak within 20 hours after leaving port, so as to compel a jettison of part of her cargo, where no tempestuous weather was encountered, *held* presumptively unseaworthy when she left port.—The Planter, Case No. 11,207a.

§ **163. —— Negligence in loading.**

The vessel which receives cargo at her anchorage is liable for its loss by the bursting of a boiler on a steam lighter provided at her expense, under the custom of the port.—The Edwin, Case No. 4,300; The Edwin v. Naumkeag Steam Cotton Co., Id. 4,301.

§ **164. —— Negligent management or navigation.**

Blowing is one of the ordinary occurrences on a sea voyage, and the ship is bound to take proper precautions to guard against injury therefrom.—The Wilhelmina, Case No. 17,658.

Running into the Columbia river without a pilot, and without any imperative necessity for so doing, where the navigators had no knowledge of the tide and wind to be encountered at the season, *held* negligence.—The Jenny Jones, Case No. 7,286.

The necessity to keep schedule time will not justify a vessel in running at full speed in a fog alongshore.—The Rocket, Case No. 11,975.

It is bad seamanship to run at full speed in a fog alongshore, where there is danger of a mistake in reckoning.—The Rocket, Case No. 11,975.

A grounding cannot be imputed to the fault or misconduct of the master where, arriving off Mobile, towards evening, on indications of bad weather, and inability to procure a pilot, he attempts to follow a pilot boat up the bay. —Van Syckel v. The Thomas Ewing, Case No. 16,877.

The vessel is not liable for damages caused by grounding where the officers exercised reasonable care and skill in her navigation.—Levy v. The Great Republic, Case No. 8,302.

In a voyage from a port known by the master to be infested with rats, the keeping of cats on board is not sufficient to excuse the carrier from liability.—Kirkland v. The Fame, Case No. 7,845.

Where a steamboat with loaded barges approached a bridge too closely to back or stop, and was driven against a pier by a sudden gust of wind, *held*, that the carrier was not liable for loss of cargo.—The Lady Pike, Case No. 7,985.

Vessel *held* liable for destruction of cargo by fire caused by a collision through the negligence of the vessel.—The City of Norwich, Case No. 2,760.

Ship *held* liable for damage done to a cargo of tea by defacement of the labels by cockroaches.—Westray v. The Miletus, Case No. 17,461.

§ **165. —— Improper stowage.**

The owner of the cargo may recover for a loss caused by the capsizing of the vessel due solely to improper loading.—Hoboken Land & Improvement Co. v. The Sunswick, Case No. 6,552.

Failure to adopt a system of ventilation, the efficacy of which is in dispute, will not render vessel liable for "sweating" of cargo.—Adrian v. The Live Yankee, Case No. 88.

The vessel is liable for injuries to cotton caused by bad stowage and sea water, owing to inattention to the pumps.—Brower v. The Water Witch, Case No. 1,971.

A vessel is liable in rem for damages caused to goods of one shipper by those of another.—The Cheshire, Case No. 2,658.

A general ship is liable for the injury to flour from the effluvium from turpentine carried in the cargo, in the absence of an established usage to carry such articles in the same cargo.—The Colonel Ledyard, Case No. 3,027.

A vessel which carries paper stock and petroleum in the same cargo is bound to use especial care in stowing them with reference to each other.—The Sabioncello, Case No. 12,198.

Gross negligence in the stowage of glass cases will render the vessel liable, though liability for breakage was expressly excepted.—Merriman v. The May Queen, Case No. 9,481.

Lack of sufficient dunnage to protect cargo from the water in the bilges when the vessel rolls is bad stowage, for which the vessel is liable.—The Sloga, Case No. 12,955.

The ship is not liable for a loss caused by bad stowage, where the goods were stowed by stevedores employed, directed, and paid by the shipper.—The Diadem, Case No. 3,875.

The master is liable for the loss of goods carried on deck without consent of the owner.—The Paragon, Case No. 10.708; The Governor Carey, Id. 5,645a; The Peytona, Id. 11,059; The Wellington, Id. 17,384.

A vessel is liable for carrying goods on deck, though the bill of lading exempts it from liability for the perils of the sea.—Chubb v. Seven Thousand Eight Hundred Bushels of Oats, Case No. 2,709.

The vessel owner is not liable for the loss by sea perils of goods laden on deck with the shipper's consent, in the absence of culpable neglect or misconduct. — Higgins v. Watson, Case No. 6,470.

The vessel is not liable for a loss or damage on account of the deck storage, where it must have been contemplated from the very nature of the cargo that it should be stored on deck.—Talbot v. Wakeman, Case No. 13,731.

But where the loss arises, not on account of the cargo being stored on deck, but because it was improperly secured, the vessel will be *held* liable.—Talbot v. Wakeman, Case No. 13,731.

Libel for injury to wheat from odors of kerosene oil, near which it was stowed in a general ship, dismissed, it not appearing that the odors would not disappear on proper ventilation.—The Fanny Fosdick, Case No. 4,641.

Where an extra freight is paid in consideration of the goods being stored in a cabin stateroom, but the bill of lading was in the usual form, and the goods received damage by being stored in the hold, *held*, that the vessel was liable.—The Star of Hope, Case No. 13,313.

In the case of damage from bad stowage, the recovery is ascertained by taking the difference between the market values of the goods in the damaged and in a sound condition.—The Sabioncello, Case No. 12,199.

The fact that the owner of damaged paper stock sold the same at auction, and bought it in, and manufactured it into paper, will not change the rule.—The Sabioncello, Case No. 12.199.

The fact that the manner of stowing or the carrying of other kinds of cargo produced dryness, and caused casks to leak, does not show negligence, where such stowing and carriage were usual in the trade.—The Invincible, Case No. 7,055.

Proof of greater than average leakage is not sufficient. Actual negligence must be shown.—The Invincible, Case No. 7,055.

The vessel is obliged to protect cargo stowed near the center-board well from damage by the ordinary and usual leakage in the well, however difficult that may be. — Endicott v. Renauld, Case No. 4,482.

§ 166. —— Deviation or delay.

Violation of the contract, by deviation and taking other cargo, does not forfeit the freight, but creates liability for damages.—Knox v. The Ninetta, Case No. 7,912.

An intention to take on cargo at an intermediate port is not a deviation, where made known to the shipper when bills of lading were executed. — Thatcher v. McCulloh, Case No. 13,862.

A known usage of trade and navigation from New Orleans to northern ports to touch at Havana for cargo, prevents such act being a deviation.—Thatcher v. McCulloh, Case No. 13,862.

§ 167. —— Negligence in discharging.

Depositing goods upon the proper wharf at their place of destination at the proper time, and notice given to the consignee, do not free the ship from responsibility for her own wrongful act, as where she overloads the pier, and causes it to break, whereby the goods are damaged.—Kennedy v. Dodge, Case No. 7,701.

The receipt by the consignees of part of the cargo on one day is notice to attend and receive the rest as fast as it should be discharged, and where it is burned on the pier after it is unloaded and ready for delivery, the vessel is not liable.—The Iddo Kimball, Case No. 7,000.

Where goods are unloaded on a fast day, on which by the usage of the port consignees are not in the habit of receiving goods, and are destroyed by fire on the wharf on the same day, the carrier is liable, though due notice was given to the consignees.—Salmon Falls Mfg. Co. v. The Tangier, Cases Nos. 12,265, 12,267.

The act of the master in overloading a pier renders the ship liable for resulting injury to cargo, which she had already deposited thereon, even if such deposit was under circumstances rendering it equivalent to delivery to the consignee.—Kennedy v. Dodge, Case No. 7,701.

The ship is not liable for damage by rain to cargo delivered on wharf at request of consignee, whose clerk assumed charge thereof, but failed to employ sufficient drays to remove them before night.—Ellsworth v. The Wild Hunter, Case No. 4,411.

The carrier is not liable for a loss of part of the cargo on the pier after actual receipt by the consignees of all the cargo shipped, and their verification thereof by weighing.—Dike v. The Von Lefferl Lahsen, Case No. 3,909.

The ship is liable for the loss of consigned goods, placed in a public store without notice to the consignee, a well-known resident of the port.—Burgthal v. The George Skolfield, Case No. 2,155.

A master overloading a pier is personally liable for resulting injury to cargo which he had already delivered thereon.—Kennedy v. Dodge, Case No. 7,701.

The breaking down of a wharf by the pounding of a vessel which had broken from her moorings in a hurricane will not excuse a vessel for loss of goods landed thereon, as a danger of the sea, where they could have been saved by due diligence. — Dibble v. Morgan, Case No. 3,881.

Cases of plate glass placed endwise on unloading were found to contain broken glass, as well as those placed flatwise on each other. *Held*, that it did not appear that the breakage

in the latter was caused by the manner of unloading.—The Delhi, Case No. 3,770.

Where powdered arsenic escaped from broken casks upon sacks of table salt, and, in discharging, all the sacks were so mixed together that the damaged could not be distinguished, and the whole was therefore sold as fertilizer, *held*, that the ship was liable for the difference between the price and the value of the salt as sound salt.—The Niagara, Case No. 10,221.

Where a carrier suffers goods of a consignee, on being discharged from the vessel, to become mingled with the rest of the cargo, and to be carried off by persons claiming to be entitled to similar goods, he is liable to the owner of the goods carried off, whether by fraud or mistake.—Warner v. The Illinois, Case No. 17,-184a.

Consignees cannot claim indemnity for injury to the cargo by a storm to which it was exposed while on conveyance to its place of storage, though they notified the ship not to unload it.—The Grafton, Case No. 5,656.

Where the consignee objects to the wharf selected by the master for the discharge, and the cargo is lost by its breaking and sinking while the vessel is discharging, the vessel is liable therefor.—Vose v. Allen, Cases Nos. 17,-005, 17,006.

Vessel owners are not personally liable for a loss by fire occurring without their design, or neglect of cargo delivered on the wharf into the charge of the officers of the vessel, though they were negligent in not promptly putting the goods on board. Act March 3, 1853, § 1. —Dill v. The Bertram, Case No. 3,910.

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.—Wilson v. The Belvidere, Case No. 17,790.

§ 168. —— Negligence or wrongful acts of master or crew.

The vessel is liable for cargo jettisoned to save the vessel, where its peril is directly attributable to want of diligence or skill of the master or crew.—The Jenny Jones, Case No. 7,286; The Portsmouth, Id. 11,295.

Where the vessel is laid up for the winter with cargo on board, the master must take precautions to prevent injury from dampness or mold, and to protect the deck load from the effects of snow and ice.—The Tan Bark Case, Case No. 13,742.

The shipper has a lien on the vessel for loss or damage to his goods, due to the fault or neglect of the master, or the insufficiency of the vessel.—The Rebecca, Case No. 11,619.

Officers of a vessel, who know the contents of certain boxes to be glass cases, are guilty of gross negligence where they fail to observe every precaution necessary to insure their safe stowage and safe delivery.—Merriman v. The May Queen, Case No. 9,481.

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.—The William Taber, Case No. 17,757.

The vessel is liable for the loss of goods seized by customs officers, and forfeited for the neglect of the master to enter them on the manifest.—The Griffin, Case No. 5,814.

A vessel is not responsible in rem for cargo lost from the pier through negligence of her officers, but after delivery to the consignee.—Field v. The Lovett Peacock, Case No. 4,768.

The disabling of the master and mate by sickness from attending to the duties of the ship will not exonerate the owner from responsibility.—Phelan v. The Alvarado, Case No. 11,067.

A libel in rem will not lie for injuries to goods by fire, caused by the alleged negligence of the master, who was also part owner. Act March 3, 1851.—Keene v. The Whistler, Case No. 7,645.

§ 169. —— Inherent defect in goods.

The vessel being seaworthy when she sailed, *held*, that owners were not liable for the spoiling of cargo of beef where the vessel put back on her return voyage to repair boiler tubes.—The Francis Wright, Case No. 5,044.

In the case of a cargo found in a perishing condition the master is quasi agent for both consignee and vessel owner, and the vessel is not liable for his acts honestly put forth in an emergency.—De Bruns v. Lawrence, Case No. 3,716.

A ship held not liable for leakage and breakage of wine casks under a bill of lading stating that the same were received in good order and condition, "weight and contents unknown; not liable for average leakage or breakage"; the casks being in fact of poor quality.—In re Six Hundred and Thirty Casks of Sherry, Case No. 12,918.

Under the common bill of lading, there is no liability for loss due to deterioration, arising from the nature of the article, when stowed in the manner sanctioned by usage.—Lamb v. Parkman, Case No. 8,020.

But, if there has been want of proper skill and care by the carrier, the damage will be ascribed to negligence.—Lamb v. Parkman, Case No. 8,020.

Vessel is liable for rotting of fruit unduly hastened by stowage which did not permit proper ventilation, though bill of lading excepts losses by inherent deterioration.—The America, Case No. 283.

Fruit shipped being inherently subject to decay, and the bill of lading being qualified with that condition, the vessel is not responsible for its sound delivery, without evidence of some misfeasance of the master which set in action, or aggravated, such tendency.—Lawrence v. The Lieutenant Admiral Callomberg, Case No. 8,139.

Damages to cargo of coffee, from Sumatra and Java to the United States, *held*, on the evidence, due to dampness and sweat in the hold incident to the voyage, and not to negligence.—Ireguist v. Morewood, Case No. 7,061.

Quære: Whether a general ship is liable for damage to well-stowed cargo from dampness arising from other well-stowed cargo, without special contract to that effect.—The Martha, Case No. 9,145.

When no other vessel can be procured to take the cargo, and it would perish or be of no value if left, the cargo is liable for expenses of repairs to the vessel made for its benefit which exceed the benefit to the shipowner therefrom.—Sparks v. Kittredge, Case No. 13,210.

Where stoneware pipes are properly stowed with reference to their character and apparent condition, the vessel is not liable for breakage during the voyage, and may retain all the goods until freight is paid on the broken pipes.—In re Twelve Hundred and Sixty-Five Vitrified Stone-Ware Sewer Pipes, Case No. 14,280.

As between original parties, it is competent to show actual condition of goods at time of shipment.—Baxter v. Leland, Case No. 1,124.

§ 170. —— Duties after wreck or other disaster.

After a vessel is stranded the master is obliged to take all possible care of the cargo.—The Ocean Wave, Case No. 10,416.

The master of a vessel made leaky by an effort to remove her from a sand bar must first stop the leak and secure the cargo from the flow of water.—The Ocean Wave, Case No. 10,416.

In case of wreck, it is the duty of the master to forward cargo by another ship, if practicable; and his duty as a carrier is not ended until the goods are delivered at their destination, returned to the owner, or otherwise lawfully disposed of.—King v. Shepherd, Case No. 7,804.

After a vessel which has sprung a leak, by a peril of the seas, reaches her dock, the vessel is liable for loss to the cargo, caused by the neglect of the master to use such extraordinary measures as are necessary under the circumstances.—The Shand, Case No. 12,702.

The vessel is liable in such case for loss caused by flooding from the failure to continue the working of a steam pump, placed on board during the unloading of the cargo.—The Shand, Case No. 12,702.

In case of wreck, the master has no right to abandon his vessel to the care and custody of wreckers.—King v. Shepherd, Case No. 7,804.

The mere fact that a vessel is wrecked does not vary the liabilities of the owner and master as common carriers, unless the property perished with, and in consequence of, the wreck.—King v. Shepherd, Case No. 7,804.

The acts of the master in cases of necessity or calamity, during the voyage, in the exercise of a sound discretion, are binding upon all parties in interest.—Jordan v. Warren Ins. Co., Case No. 7,524.

Sale at auction, without communicating with the owners, of flour injured by the capsizing of a vessel at her wharf before sailing, *held* an unlawful conversion.—The Joshua Barker, Case No. 7,547.

In such case the cargo owners are entitled to recover the value of the cargo at the port of delivery at the time when the vessel should arrive, deducting freight and charges, with interest on the balance.—The Joshua Barker, Case No. 7,-547.

For injury caused by a rain at night to cement carried on deck while the canal boat was waiting to unload, *held*, that she was liable where she took no means to protect it.—The James Platt, Case No. 7,199.

The vessel is not liable for injuries to her cargo of fruit while detained for necessary repairs, though the means used by the master to preserve it, under the advice of experienced and competent persons, were not the most suitable and well judged.—Lawrence v. The Lieutenant Admiral Callomberg, Case No. 8,139.

Where cargo is so much injured that it will endanger the safety of the vessel and cargo, or it will become utterly worthless, the master must land and sell it at the place where the necessity arises, though it might have been carried to its destination.—Jordan v. Warren Ins. Co., Case No. 7,524.

A vessel which put into St. Thomas in distress, whose cargo of wheat was reshipped in bags, was not able to take in the entire amount, by reason of the increased bulk. *Held*, that the master was justified in selling the wheat necessarily left behind.—Hooper v. Rathbone, Case No. 6,676.

Where a vessel puts into a port of distress, and the shippers and underwriters are informed as to the condition, and do not give any direction, and the cargo, after a regular survey, is sold as unfit for reshipment, *held*, that the vessel is not liable, though the master carries the cargo back to the port of shipment for the purchaser, and subsequently takes it to its original destination.—The Veronica Madre, Case No. 16,-923.

§ 171. —— Presumptions and burden of proof as to cause of injury.

Goods will be presumed to have been damaged en route where it appears that they arrived in a damaged condition, and the shippers swear that they were in good order when loaded.—Kerr v. The Norman, Case No. 7,732.

Where owners of goods claim that they were damaged on the voyage by rats, the burden is on them to show such fact.—The Carlotta, Case No. 2,413a.

The memorandum that casks of plumbago were loose when shipped casts the burden upon the shipper to show that the loss of plumbago from the casks was not caused by such loose condition.—Nelson v. National S. S. Co., Case No. 10,112.

The burden is on the shipowner to prove that the shipper agreed that the goods might be carried on deck.—The Peytona, Cases Nos. 11,058, 11,059.

Where the consignee has received goods at the wharf without qualification or reservation, and the carrier has proved due care, and actual delivery of all goods in his possession on arrival, the burden is then on the consignee to show that a subsequently discovered deficiency was chargeable to the wrongful acts of the carrier.—McCready v. Holmes, Case No. 8,733.

Where goods shipped in good order are damaged on the voyage, the burden is on the carrier to show that it was not due to his fault, or was caused by vis major.—The Martha, Case No. 9,145.

Negligence cannot be inferred from the fact that a vessel is on fire. If the vessel were properly protected from fire, negligence must be proved.—The Buckeye, Case No. 2,084.

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.—The Zone, Case No. 18,220.

Proof of inferior quality of casks throws on claimant the burden of showing that injuries thereto were caused by negligence of the vessel.—In re Six Hundred and Thirty Casks of Sherry, Case No. 12,918.

Where the injury to goods happened after they were received on board, the burden is upon the master to show that the vessel was free from fault.—Soule v. Rodocanachi, Case No. 13,178.

The bill of lading, though not conclusive, is strong evidence of the apparent condition of the cargo.—The Tan Bark Case, Case No. 13,742.

§ 172. —— Actions for damages.

Consignees who made advances on goods shipped may, on delivery of the goods, sue the shipowners for damages to the goods, though the bill of lading was not signed by the master.—Clifton v. Quantity of Cotton, Case No. 2,895.

The several owners of a cargo, to whom separate bills are given, may libel for damages, though a general bill of lading be given, and the consignment be to one party in bulk.—Bucknor v. The Gilbert Green, Case No. 2,099.

A lighterman, who has given a full receipt for cargo where only part was delivered, and elects to pay the loss to his employer, may maintain an action against the carrier in his own name.—Perry v. Bangs, Case No. 11,013.

Consignees, who have made advances and are recognized by the master, can maintain a suit for damages to the goods, although no bills of lading were executed.—Brower v. The Water Witch, Case No. 1,971.

A libel for loss or damage to cargo may be brought either in the name of the shipper or of an insurance company which has paid the loss or accepted an abandonment.—The Keokuk, Case No. 7,721.

The defense that the loss of cargo arose partly from a necessary jettison on account of perils of the sea and partly from a sale for necessaries must be established by clear and conclusive proof.—Talbot v. Wakeman, Case No. 13,731a.

A shipper, whose goods are lost or damaged by the fault or neglect of the master, has a remedy against the owners, and a lien on the ship.—The Waldo, Case No. 17,056.

§ 173. —— Extent of liability and amount of damage.

Where the carrier is unable to show what part of the damage to goods was caused by his fault, and what by perils of the sea, he is liable for the whole.—Speyer v. The Mary Belle Roberts, Case No. 13,240.

Where a shipper of goods received a rebate from the purchaser for damage in the suit by the shipper against the vessel for such damage, he must be charged with the rebate.—The Carlotta, Case No. 2,413.

Interest is allowable on damage occasioned to cargo by the fault of the ship, and the court may enter a decree for such interest on the coming in of the master's report, although the interlocutory decree did not provide for interest.—Westray v. The Miletus, Case No. 17,461.

A bill for the amount of damage, made out after an appraisal, and presented, may be taken to show the difference in the market value of sound and damaged goods at that time.—The Eroe, Case No. 4,521.

A rebate of customs duties for damage to goods obtained by the consignee is not to be considered in computing the damage recoverable against the vessel.—The Eroe, Cases Nos. 4,521, 4,522.

The ship's liability is not affected by private contracts between the shipper and strangers for the purchase and sale of the goods.—The Compta, Case No. 3,070.

The measure of damages for negligence causing injury to cargo is the difference between its cost and the proceeds of sale.—Foster v. The British Oak, Case No. 4,966; Dusar v. Murgatroyd, Id. 4,199; The Columbus, Id. 3,042.

The damage is the difference in value between the goods at the port of shipment and their selling price at the port of destination, if the contract had been performed.—Harrison v. Stewart, Case No. 6,145.

The measure of damages, where cargo has been unlawfully disposed of at an intermediate port, is its first cost, with interest and charges of shipment and transportation.—The Harriet, Case No. 6,094.

The opportunity of shipping by another vessel without additional cost or risk cannot be used as a bar or in mitigation of damages for breach of the contract.—Harrison v. Stewart, Case No. 6,145.

§ 174. Statutory exemptions from liability.

Act March 3, 1851, § 2, limiting liability, does not extend to a loss by fire of goods after they are landed on the wharf.—Salmon Falls Mfg. Co. v. The Tangier, Case No. 12,265.

There can be no limitation of liability under Act March 3, 1851, for damage to cargo by breach of the warranty of seaworthiness.—In re Sinclair, Case No. 12,895.

Construction of Act March 3, 1851, § 2, requiring a note in writing of the true character and value of precious metals on their delivery for shipment.—Greyor v. The Black Warrior, Case No. 5,807.

The vessel is not liable for gold coin intrusted to the master by a person who intended to take passage, where no bill of lading is taken or note in writing delivered, as required by Act March 3, 1851, § 2.—The Island Queen, Case No. 7,110.

§ 175. Limitation of liability by contract or bill of lading—In general.

Brokers by whom a shipment is made may bind the owner to the usual stipulation limiting the carrier's liability.—Hus v. Kempf, Case No. 6,943.

Custom of trade will control where it is doubtful whether injury is caused by excusable perils of seas, or by dangers for which carriers are responsible.—Baxter v. Leland, Case No. 1,124.

A limitation as to the amount of damages is ineffective against a loss arising from negligence. The City of Norwich, Case No. 2,761.

The vessel is liable where, by the negligence of the master, the cargo is exposed to injury by an excepted peril.—The Tan Bark Case, Case No. 13,742.

§ 176. —— Exemptions from particular risks or causes of loss.

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 board, and through want of proper stowage and care.—Zerega v. Gee, Case No. 18,211.

The exception of "any act, neglect, or default whatsoever" of the master or mariners, and of liability for leakage or breakage "when properly stowed," does not exempt the vessel from responsibility for leakage and breakage from bad stowage by the master or mariners. —The Colon, Case No. 3,023.

The exemption of damage resulting from leakage or breakage or from stowage, however such damage may be caused, will not exempt from loss by negligence.—Nelson v. National S. S. Co., Case No. 10,112.

The exception of leakage, breakage, or rust will not excuse the vessel from negligence or want of skill or care in lading, stowing, or delivering the cargo.—The David and Caroline, Case No. 3,593; Dedekam v. Vose, Id. 3,729, 3,732; The Delhi, Id. 3,770.

The vessel is liable for unexplained loss of raisins from boxes, notwithstanding exceptions in bill of lading of loss by breakage of boxes.—The Bellona, Case No. 1,277.

Damage from humidity of the hold, to soda shipped by an iron steamer from Liverpool to New Orleans, and transported through the Gulf in the warm weather of early spring, *held* to be within the exceptions of heat and sweating. —Mendelsohn v. The Louisiana, Case No. 9,421.

§ 177. —— Perils of the sea.

"Dangers of the seas," "dangers of navigation," and "perils of the seas," are convertible terms.—Baxter v. Leland, Case No. 1,124.

Losses by "dangers of the seas" are such as are of an extraordinary nature, or arise from irresistible force, which cannot be guarded against by the ordinary exertions of human skill and prudence.—The Reeside, Case No. 11,657.

The exception "dangers of the seas" excuses the master for a nondelivery, but does not authorize a demand of freight.—The Cuba, Case No. 3,458.

Desertion of seamen is not a peril of the sea. —The Ethel, Case No. 4,540.

The mere rolling of a vessel by a cross sea is not a danger of the sea.—The Reeside, Case No. 11,657.

Fire occurring on the wharf is not within the exception of dangers of the seas.—Salmon Falls Mfg. Co. v. The Tangier, Case No. 12,265.

Damage by vermin during the voyage is not within the exception of perils of the sea.—The Miletus, Case No. 9,545.

Pressure of one part of the cargo upon another is not a peril of the sea.—Muller v. The Iginia, Case No. 9,917.

Blowing of a vessel is a peril of the sea.—Crosby v. Grinnell, Case No. 3,422.

Damage by rats is not a "peril of seas and navigation," within the meaning of a bill of lading.—Kirkland v. The Fame, Case No. 7,845; The Isabella, Id. 7,099; The Carlotta, Id. 2,-413.

Embezzlement is not a "peril of the sea"; neither is theft or robbery, except where it amounts to piracy, which is not the case when committed by persons coming on the ship when she is not on the high seas.—King v. Shepherd, Case No. 7,804.

The bursting of a boiler of a steam lighter on which the cargo was conveyed to the ship at anchor is not a peril of the sea, or of navigation.—The Edwin, Case No. 4,300.

Dampness or sweating of hold, the ordinary accompaniment of the voyage, resulting not from tempestuous weather, but from occult atmospheric causes, is not a "peril of the seas."—Baxter v. Leland, Case No. 1,124.

Injury to millstones properly stowed, where cargo shifted on voyage through vessel being thrown on beam ends, is within exception of dangers of navigation.—Barstow v. Wilmot, Case No. 1,066.

Injury to bags caused by bleaching powders mixed with water, and spilled from casks stowed without dunnage by the rotting of the wood by water coming in from the deck and water ways, not within exception of dangers of the sea.—The Antoinetta C., Case No. 491.

Liable for damage to hemp from oil escaping from casks, not caused by dangers of sea.—Bearse v. Ropes, Case No. 1,192.

To lighten a vessel aground, the deck load of brandy was jettisoned by knocking in the heads of the casks, it being impossible to throw them overboard whole. *Held*, a loss by a peril of the sea.—Van Syckel v. The Thomas Ewing, Case No. 16,877.

Injury to tobacco caused by lard and oil carried by water leaking in the ship, through stress of weather, *held* within the exception of dangers of the seas.—Faber v. The Newark, Case No. 4,602.

Vessel *held* not liable for cargo of barley shipped under bills excepting dangers of the sea, and damaged by salt water from a leak caused by heavy weather.—The Blue Jacket, Case No. 1,569.

Consumption of part of cargo by crew and passengers in consequence of a short allowance made necessary by protracted voyage is not a peril of the sea, within the meaning of a bill of lading.—The Gold Hunter, Case No. 5,513.

Injury to the cargo of a vessel on her maiden voyage, caused by leak from an open knot hole and loose tree-nail in her bottom, where she encountered no unusual gales or stress of weather, is not caused by perils of sea.—Buckner v. The Gilbert Green, Case No. 2,099.

A master who attempts to make the Bay of San Francisco in a dense fog, when the vessel can safely lay outside, is guilty of negligence, and the stranding of the vessel cannot be attributed to perils of the seas.—The Costa Rica, Case No. 3,261.

Where a vessel was wrecked upon the reefs, and the captain removed from a state room a box of gold coin shipped under a bill of lading which excepted the perils of the seas, and placed it where the crew and wreckers had free access to it, without personally looking after it, *held*, that the shipowners were liable for its loss.—King v. Shepherd, Case No. 7,804.

A carrier, shipping goods by a different vessel and at an earlier date than that specified, is liable for loss by shipwreck, notwithstanding exception of "accidents of the seas," etc.—Bazin v. Steamship Co., Case No. 1,152.

A loss from perils of the sea is not proved by showing that the damage was occasioned by a leak, and suggesting that it arose from some inexplicable action of the elements, without negativing other causes for the leak which would leave the carrier liable.—The Emma Johnson, Case No. 4,465.

A strongly-built ship, loaded with wheat, whose bins were properly constructed, and pumps properly arranged, when a few days out from Baltimore, met heavy weather, began leaking, and shipped water, and, her pumps becoming choked with wheat, was obliged to put in to St. Thomas. *Held* a peril of the sea.—Hooper v. Rathbone, Case No. 6,676.

A stranding caused by mistaking a shore light for a pier light on entering on a dark night, with a heavy sea and high wind, a harbor to which access was not usually dangerous or difficult, *held* within the exception of dangers of navigation.—The Juniata Paton, Case No. 7,584.

A sunken log or stump in the channel of a river, concealed from view, *held* an unavoidable danger of the river, within the exception in the bill of lading.—The Favorite, Case No. 4,697.

During heavy weather a noise was heard below, and, on the hatches being opened, several casks of wine, which had been well stowed, were found broken. *Held*, that the vessel was not liable under the exception of sea perils, or insufficient package.—Hus v. Kempf, Case No. 6,-943.

Where casks of hardware, shipped in a tight, staunch, and well-manned steamer, arrived in a damaged condition, *held*, that the burden of showing that the damage was within the exception of dangers of navigation was sustained by proof that the vessel encountered a storm, shipped water, and leaked.—Hunt v. The Cleveland, Case No. 6,885.

§ 178. —— Presumptions and burden of proof as to cause of injury.

The burden is on the shipowner to show that the loss of the cargo was caused by perils of the sea, within the exception of the bill of lading.—Hooper v. Rathbone, Case No. 6,676; The Emma Johnson, Id. 4,465; Bazin v. Steamship Co., Id. 1,152; Bearse v. Ropes, Id. 1,192; The Compta, Id. 3,069; The Mollie Mohler, Id. 9,-701; The Keokuk, Id. 7,721; Muller v. Iginia, Id. 9,917; The William Taber, Id. 17,757; The Ocean Wave, Id. 10,416.

Proof that the injury was occasioned by an excepted cause casts the burden on libelant to show negligence, or want of reasonable skill and attention.—The Rocket, Case No. 11,975.

In the case of injury to paper stock from oil and coal forming part of the cargo, the burden is on the vessel to show that it arose from a peril excepted in the bill of lading.—The Sabioncello, Case No. 12,198.

The fact that a cask of wine, shipped under a bill of lading excepting dangers of the sea, arrived with one of its heads crushed in, is prima facie evidence of negligence in handling or stowage.—The Black Hawk, Case No. 1,469.

Where the bill of lading stipulates against liability for "average leakage or breakage," the burden is on the claimants to prove a greater than average leakage or breakage.—In re Six Hundred and Thirty Casks of Sherry, Case No. 12,918.

Where it appears that the vessel encountered an unusually violent storm, which fully accounted for the damage within an exception in the bill of lading, the burden is on the shipper to show carelessness or negligence on the part of the vessel, leading to the loss.—The Neptune, Case No. 10,118.

Where green sugar in mats was found to be washed or drained out much beyond the usual percentage, *held*, that the burden was on the ship to show that the loss was occasioned by a peril of the sea.—The Sloga, Case No. 12,955.

Casks of sherry wine, shipped under bills of lading containing the words, "Shipped in good order and well conditioned," to be "delivered in like good order and well conditioned, dangers of the sea excepted," "weight and contents unknown, and not acccountable for average leakage and breakage," were delivered, some entirely empty, and others partly empty and leaking. *Held*, that the burden was upon the consignee to show that the loss resulted from negligence of the vessel.—Vaughan v. Six Hundred and Thirty Casks of Sherry Wine, Case No. 16,900.

A piece of statuary, shipped under a bill of lading excepting dangers of the sea, was delivered to the vessel at Leghorn in a wooden case, having been packed at Carrara, and brought to Leghorn in a lighter. It was well stowed, but the vessel met with heavy weather on the passage, and it was found broken when it reached its destination. *Held*, that the burden was upon libelant to show that it was in good condition when it was delivered to the vessel.—The Vincenzo T., Case No. 16,948.

§ 179. Who liable for loss or damage.

Owners of vessel are directly liable for damages to cargo where they share freight with master to whom vessel is chartered, and with whom shippers contract.—Arthur v. The Cassius, Case No. 564.

§ 180. Freight—When earned in general.

A partial conveyance is not a compliance with the contract.—Fleishman v. The John P. Best, Case No. 4,861.

No freight is due unless cargo is delivered in accordance with terms of shipment at destination.—The Ann D. Richardson, Case No. 410; Arthur v. The Cassius, Id. 564.

Where a master agrees, with a mariner, to carry the latter's goods free of expense, a charge for freight thereon cannot be supported, as between the master and mariner.—Harrison v. The Eclipse, Case No. 6,134.

A temporary retardation and subsequent sale of the cargo by the owner does not deprive the carrier of his right to the freight money.—Murray v. Aetna Ins. Co., Case No. 9,955.

Semble, that a shipper has a right, by the maritime law, to examine goods after they are unloaded, in order to ascertain whether they are damaged or not, before he makes himself liable for freight.—In re Certain Logs of Mahogany, Case No. 2,559.

Acquiescence in an unauthorized change of destination renders the shipper liable for the price agreed upon for the voyage, but not for the especial premium agreed to be paid upon delivery of cargo at the port designated in the contract.—Eneas v. Schiffer, Case No. 4,484.

The acceptance of cargo by the shipper with knowledge of a deviation restores the shipowner's right to freight.—Thatcher v. McCulloh, Case No. 13,862.

But receiving cargo with the knowledge of a deviation does not deprive the consignee of his right of action for special damages sustained by the deviation, and such damages may be recouped in an action for freight.—Thatcher v. McCulloh, Case No. 13,862.

A contract for the sale of a boat laden with a cargo stipulated that she should take on, at the port of discharge, certain property belonging to the purchasers, and deliver it with the boat for the stipulated price. *Held* an entire contract; and, where the title to the vessel failed, the purchasers were entitled to their property, free of freight.—The Excelsior, Case No. 4,592.

Where the owner of a vessel, notwithstanding the charter party, makes special contracts through the master in respect to freight, the bills of lading govern the rights of the parties. —The Carlotta, Case No. 2,413.

A vessel which takes from a salvor vessel at sea a box of bullion saved from a wrecked vessel, and carries it to its destination, is entitled to a quantum meruit compensation, and may proceed therefor in rem.—Williams v. Box of Bullion, Case No. 17,717.

The right to such compensation is not lost by a delivery of the bullion to the master of the wrecked vessel.—Williams v. Box of Bullion, Case No. 17,717.

§ 181. —— In case of wreck or other disaster.

Freight is payable in the case of wreck on each package landed if equal in value to the freight.—Smith v. Welsh, Case No. 13,126.

The right to freight in the case of loss of goods by jettison, salvage, sale as perishable, sale to pay duties or salvage, discussed by Story, J.—The Nathaniel Hooper, Case No. 10,032.

Where a vessel is captured and condemned at an intermediate port, no freight is due for the cargo restored and sold at such port.—Sampayo v. Salter, Case No. 12,277.

Where a vessel has been captured and condemned at an intermediate port, and part of the cargo has been restored and sold there, no freight is due therefor.—The Harriet, Case No. 6,094.

Where perishable cargo is sold at a port of distress at which a vessel lays up for repairs on account of injuries due to perils of the seas, no freight is recoverable.—The Velona, Case No. 16,912.

All claims for freight fall where a voyage is broken up at a port of distress, without consent of shipper, because of great injury to the cargo by perils of the sea.—The Ann D. Richardson, Cases Nos. 410, 411.

Where a cargo has lost its original character at a port of distress, or cannot be reshipped without a total destruction of it in specie before arrival at its destination, the shipper is not liable for freight.—Ridyard v. Phillips, Case No. 11,820.

The master cannot recover freight on the portion of the cargo ruined by sea water, so as to lose its character, where the quantity is not ascertained.—The Muriel, Case No. 9,944.

§ 182. —— Pro rata.

Where a portion of the cargo is lost by a danger of navigation, the carrier is entitled to pro rata freight on the cargo delivered.—Chubb v. Seven Thousand Eight Hundred Bushels of Oats, Case No. 2,709.

The freight is not due where the cargo is not carried to its destination. If voluntarily accepted at any other port freight pro rata is due, but if received by compulsion no freight is due. —Hurtin v. Union Ins. Co., Case No. 6,942.

The vessel is not entitled to freight pro rata at intermediate port unless cargo is received by owner, though she is unable to proceed.—Bork v. Norton, Case No. 1,659.

An acceptance of the cargo at an intermediate port from necessity occasioned by an overwhelming calamity or superior force will not

entitle the vessel to freight pro rata itineris.—The Nathaniel Hooper, Case No. 10,032.

Pro rata freight only allowed on goods delivered to underwriters, and in the custody of the court, in an intermediate port into which the vessel was carried by salvors.—The Nathaniel Hooper, Case No. 10,032.

§ 183. —— Rate and amount in general.
"Going rate," as to freight, means the last actual contract, or, where the rate varies, the average of the day.—Barrett v. The Wacousta, Case No. 1,050.

Where the shipowner is ready to forward the goods, and there is a default by the owner, or he waives further prosecution of the voyage, full freight is recoverable.—The Nathaniel Hooper, Case No. 10,032.

Full freight is recoverable on all goods laden, notwithstanding a deterioration in quality or diminution in quantity from natural causes, if without the master's fault.—Steelman v. Taylor, Case No. 13,349.

Where a vessel on the Lakes, late in the season, is laid up by stress of weather, and the cargo is necessarily unloaded, and the owner sells it, though the vessel might have completed the transportation in the spring, she is entitled to full freight.—Murray v. Aetna Ins. Co., Case No. 9,955.

The owner of cargo preventing its transportation from a port of distress is liable for full freight.—Bork v. Norton, Case No. 1,659.

The shipowner is entitled to reasonable freight only, unless he shows an express contract for a specific sum.—Simmes v. Marine Ins. Co., Case No. 12,862.

The vessel is entitled to recover the amount of freight shown by the bill of lading, in the absence of proof that she did not deliver all the cargo that was received.—The Defiance, Case No. 3,740.

Where the freight is payable in pounds sterling, it must be reckoned in currency according to our laws, which fix its legal value.—The Patrick Henry, Case No. 10,805.

Where goods shipped under the common bill of lading at an under-deck freight are carried on deck, the shipowner is entitled only to deck freight.—Vernard v. Hudson, Case No. 16,921.

§ 184. —— Amount as depending upon weight or measurement of cargo.
When quantity of cargo uncertain, master is bound to tender bills of lading stating quantity only as more or less.—The Alonzo, Case No. 257.

Where the amount of freight is made to depend on the gross gauge of casks delivered, it is immaterial whether a loss was occasioned by ordinary leakage or dangers of the sea.—The Cuba, Case No. 3,458.

Freight on molasses to be estimated "gross custom-house gauge of cask" may be recovered on empty and broken casks, where they are customarily carried with bungs out to prevent fermentation.—The Juliet C. Clark v. Welsh, Case No. 7,580.

Where freight is payable by weight, and no weight is specified in the bill of lading, the consignee is not bound by the weight stated by the invoice and entry presented at the custom house; and freight is payable only on the weight delivered.—In re Nine Thousand Six Hundred and Eighty-One Dry Ox Hides, Case No. 10,273.

The ship is bound to weigh cargo whenever weighing is necessary to compute her freight.—In re Nine Thousand Six Hundred and Eighty-One Dry Ox Hides, Case No. 10,273.

Where freight is to be paid on lumber and timber at so much "per M., inch board measure," all timber pays freight, except the butts of sticks where the ends are not square.—In re One Hundred and Eighteen Sticks of Timber, Case No. 10,519.

A variance between the amount of a cargo of coal, as stated in the bill of lading or measurer's bill, and the amount delivered, may be explained by showing a defective method of ascertaining the weight.—Manchester v. Milne, Case No. 9,006; Manning v. Hoover, Id. 9,044.

A bill of lading stating the weight of the cargo on the representations of the shipper, without weighing, binds the consignee to pay freight on such weight, where he receives the goods without weighing them.—Maloney v. Butterly, Case No. 8,997.

Where the quantity is to be ascertained by weighing, the holder of the bill of lading cannot insist that the certificate of a particular weigher shall be conclusive.—The Treasurer, Case No. 14,159.

§ 185. —— Deductions and offsets.
When sued for freight, the owner may offset damages caused by improper stowage.—Dedekam v. Vose, Case No. 3,729.

A consignee who has made advances upon a consignment may recoup damages for breach of the contract of shipment in a suit for freight.—Snow v. Carruth, Case No. 13,144.

Damages to cargo can be recouped in admiralty against the claim for freight, but, where the amount of such damages exceeds the claim for freight, the court will not enter a decree for such excess in favor of the respondents, where there has been no cross libel filed.—Kennedy v. Dodge, Case No. 7,701.

Where perishable cargo is sold by the master on the consignee's refusal to receive it, the vessel owners may recover from the shippers full stipulated freight, less net proceeds from the sale of the cargo.—The Maria White, Case No. 9,083.

In case of wreck from the fault of the master in carrying cargo on deck, amounts paid by cargo owners in recovering their property may be offset against freight and general average charges due the vessel.—The Governor Carey. Case No. 5,645a.

§ 186. —— Who liable.
A person to whom a bill of lading is assigned as security for the payment of goods purchased of him by the shipper, under said bill of lading, is not liable to the shipowner for the freight.—Swett v. Black, Case No. 13,691.

The assignee of the bill of lading who receives the goods is bound for the freight, unless the assignor is bound by the charter party to pay it, or the assignee has contracted with the master in a different right.—Trask v. Duvall, Case No. 14,144.

The person who received cargo from a vessel *held* liable for the freight, though he gave a note for the amount to an assignee of the bill of lading, from whom he purchased it, who failed to pay the same.—Philadelphia & R. R. Co. v. Barnard, Case No. 11,086.

Cargo *held* liable only for the freight specified in the bill of lading given by the master for goods purchased by the charterer, which stated that delivery was to be made to the order of the seller "without prejudice to charter party."—In re Four Hundred and Six Hogsheads of Molasses, Case No. 4,988.

§ 187. —— Payment or tender.
Custom at San Francisco, to pay whole freight upon a receipt of the ship's daily discharge, *held* to be binding upon consignees.—Brittan v. The Alboni, Case No. 1,902.

The master on a tender of freight at the ship, may take a reasonable time to ascertain the correct amount from the consignees of the ship;

but cannot, in the meantime, order the goods to be stored at the expense of the owner.—The Diadem, Case No. 3,875.

A bill of lading, signed by the purser, who was not authorized to sign bills of lading, for goods not entered on the ship's manifest nor stowed with the other freight, acknowledging freight paid, may be contradicted by showing that the goods were carried as a personal favor to the owner, and no freight was expected to be paid.—Suarez v. The George Washington, Case No. 13,585.

Where freight is paid in advance and the voyage is not performed, the shipowner cannot without an express stipulation to this effect, retain it; but the shipper may recover it back.—Pitman v. Hooper, Case No. 11,185.

Freight paid in advance on a cargo lost by calamity may be recovered back.—Fleishman v. The John P. Best, Case No. 4,861.

A suit for freight is prematurely brought where no notice of unloading and of readiness to deliver is given the consignee, who refused the master's demand of freight before the goods were discharged.—In re One Thousand Two Hundred and Sixty-Five Vitrified Pipes, Case No. 10,536.

§ 188. —— Actions.

Where the contract of shipment is made with the master he may sue for freight in his own name.—Hus v. Kempf, Case No. 6,943.

Freight may be recovered by the master against the consignee in admiralty, either in personam or in rem.—Thatcher v. McCulloh, Case No. 13,862.

An independent suit for damages will prevent the owner from setting up such damages by way of abatement in a suit for freight.—Brower v. The Water Witch, Case No. 1,971.

Unreasonable delay in the delivery of a cargo is no defense to a libel for the freight, without proof of damage to the defendant by reason of such delay.—Page v. Munro, Case No. 10,665.

In a suit against the consignees of the charterers for freight on cargo delivered to the holders of the bills of lading as stipulated in the charter, the burden is on defendants to show the extent of damages to the goods alleged as a defense.—Eames v. Cavaroc, Case No. 4,238.

The receipt of the vessel for freight in good order will make a prima facie case against her.—The Live Yankee, Case No. 8,409; Llado v. The Tritone, Id. 8,427.

In such case the burden is upon the carrier to show that the loss of the goods arose from defects therein, or from dangers of navigation, and such burden is not sustained where the proof leaves the question in doubt.—The Live Yankee, Case No. 8,409.

Where the vessel owner on a libel for freight shows that the goods were properly stowed, the shipper has the burden of showing absence of defects.—Atkins v. Horrman, Case No. 602a.

Measure of damages for breach of contract where part of the cargo had been taken on board.—The Flash, Case No. 4,858.

On a libel for freight on coal, compensation for carting it to consignee's coal yard, for which there is no lien in admiralty, may be charged against advances made.—Gaughran v. One Hundred and Fifty-One Tons of Coal, Case No. 5,273.

Damage to cargo, for which the ship is liable, may be recouped in a libel for freight, but respondents can have no decree for damage in excess of the freight.—Kennedy v. Dodge, Case No. 7,701.

Respondents, being garnished in the state court for freight due libelant in admiralty, not having tendered the freight, *held* bound to pay interest at the market rate while the money was under attachment, and at the statute rate after the attachment was dissolved on their giving bond.—Greenish v. Standard Sugar Refinery, Case No. 5,776.

§ 189. —— Lien.

Shipowners have a lien on goods for freight due for maritime transportation, enforceable in admiralty by libel in rem, whether the contract is by bill of lading or charter party.—Drinkwater v. The Spartan, Case No. 4,085.

The master of a vessel which brings to the United States the crew and a portion of a wrecked vessel has a lien on the property for the freight, but not for passage money of the seamen.—Brackett v. The Hercules, Case No. 1,762.

By the general maritime law there is a lien on the goods for freight, whether shipped under a bill of lading or a charter party; but such lien may be waived or displaced by any special agreement inconsistent therewith.—The Volunteer, Case No. 16,991.

The contract price of gas coal at the mines, with cost of transportation, *held* to be the true representative in value, where the consignee agreed to hold its representative in value, subject to a lien for freight.—In re Six Hundred and Four Tons of Coal, Case No. 12,917.

A lien for freight may be abandoned.—In re Certain Logs of Mahogany, Case No. 2,559.

The lien of a vessel on the cargo for freight is lost by an unconditional delivery to the consignee.—In re Cargo of Brimstone, Cases Nos. 1,881, 2,405; In re One Hundred and Eighteen Sticks of Timber, Id. 10,519; The Anna Kimball, Id. 404; Gaughran v. One Hundred and Fifty-One Tons of Coal, Id. 5,273.

Giving to shipper credit for freight beyond time for delivery waives lien.—The Anna Kimball, Case No. 404.

The lien for freight is discharged by delivery to the consignee without demanding freight or notifying him of a lien therefor, in the absence of a special agreement or local usage to the contrary, irrespective of the intentions of the master.—The Tan Bark Case, Case No. 13,742.

In the case of cargo delivered to a consignee, a portion to be reshipped, and the residue without qualification, *held*, that the lien for freight was displaced, though the charter party provided for a credit after "discharge" without impairment of lien.—Sears v. Four Thousand Eight Hundred and Eighty-Five Bags of Linseed, Case No. 12,589.

A stipulation for the payment of freight 10 days after the return of the vessel is not necessarily inconsistent with such lien.—The Volunteer, Case No. 16,991.

The master loses his lien for freight by complying with the charter stipulation requiring delivery of the cargo to the holders of the bills of lading as a condition precedent to receiving freight, and his recourse is against the consignee of the charterer.—Eames v. Cavaroc, Case No. 4,238.

The delivery of coal, with the expectation that freight will be paid at the time, is no waiver of the lien for freight, and the coal may be libeled therefor.—In re One Hundred and Fifty-One Tons of Coal, Case No. 10,520.

A payment of freight to the charterer by the consignee will not discharge the lien on the goods for the charter money where the charterer is not owner for the voyage.—Shaw v. Thompson, Case No. 12,726.

Vessel is liable in admiralty for value of goods shipped wrongfully detained under alleged lien for freight.—The Andover, Case No. 366.

Where the owners of a derelict vessel purchased her at the salvage sale, and then offered

to carry the cargo to its destination, upon the raising of a blockade declared in the meantime, *held*, that they had no lien for freight.—Smith v. The Mansanito, Case No. 13,075.

§ 190. —— Sale of cargo for freight.
The fact that goods sold at auction by the master for freight in San Francisco in 1850, brought only half the amount and were sold within two weeks by the purchaser at three times such amount, does not show fraud or unfairness, where the sale was made in the usual way after due advertisement.—Sutton v. Hennell, Case No. 13,646.

§ 191. Damages for violations of regulations.
A person who puts aboard a vessel silver dollars, against the local regulations, which subjects her to seizure and detention, is liable to the owner for the damages sustained thereby.—Sparks v. West, Case No. 13,213.

§ 192. Forfeitures for violations of regulations.
A forfeiture cannot be enforced against a vessel for taking on board timber removed from public lands (Act March 2, 1831), except on pleading and proof that the acts charged were done by the master willfully.—The Cherokee, Case No. 2,639.

In a libel for the forfeiture of a vessel, confessions of the consignee are not admissible to charge the offense on the owner or captain.—The Cherokee, Case No. 2,639.

§ 193. Offenses incident to carriage of goods.
What facts will justify a conviction for packing for shipment or shipping gunpowder, not put up and marked as required by law. Act Aug. 30, 1852.—United States v. Chenoweth, Case No. 14,792.

VIII. CARRIAGE OF PASSENGERS.

Jurisdiction and remedy in admiralty, see "Admiralty," §§ 22, 33, 39.
Right of transferee of passenger ticket, to sue in admiralty, see "Admiralty," § 52.

§ 194. Nature of liability.
The owners of a steamboat employed in carrying passengers and merchandise on a regular route are responsible as common carriers.—The Huntress, Case No. 6,914.

§ 195. Regulations as to steam vessels.
Act July 7, 1838, to provide for the security of the lives of passengers, embraces all vessels propelled wholly or in part by steam, and is not limited to vessels at sea or on the Great Lakes.—United States v. Jackson, Case No. 15,458.

Such act being founded on the constitutional power of congress to regulate foreign and interstate commerce, does not apply to a ferryboat plying wholly within a state.—United States v. The James Morrison, Case No. 15,465. CONTRA, see United States v. Jackson, Case No. 15,458.

The phrase "coasting trade," as used in the statutes, does not apply to ferrying across a river.—United States v. The James Morrison, Case No. 15,465.

The exception in section 42, Act Aug. 30, 1852, applies to a vessel built and used as a ferryboat, and employed one day only in carrying passengers three miles distant to a state fair.—United States v. The Ottawa, Case No. 15,976.

Negro slaves, shipped by their owner, are passengers under such act.—United States v. The Thomas Swan, Case No. 16,480.

Act Aug. 30, 1852, c. 106, §§ 3-5, requiring steam vessels carrying passengers to be provided with life preservers, etc., applies to a vessel which actually carries passengers, though not usually and regularly engaged in that business.—United States v. The Thomas Swan. Case No. 16,480.

A passenger steamer navigating the Ohio river between Pittsburg and Gallipolis, having but one licensed pilot on board, the captain acting also as pilot, has not the number of pilots required by law.—United States v. The Science, Case No. 16,239.

The captain may temporarily supply a deficiency in the complement of pilots which arises during a voyage without his consent, fault, or collusion, but he cannot begin a new voyage with a deficiency.—United States v. The Science, Case No. 16,239.

§ 196. Regulations as to dangerous articles.
Hay in bales, piled up in the engine or deck room of a steamer, *held* sufficiently protected, under Act July 25, 1866, where surrounded by a tier of grain in sacks, extending from floor to carlings and stripped with planks to make the sacks steady.—Union Ins. Co. v. Shaw, Case No. 14,366.

§ 197. Regulations as to number of passengers.
Passenger Act 1819, § 2, is repealed by Act May 17, 1848, § 10.—United States v. The Anna, Cases Nos. 14,457, 14,458.

The passenger act of March 3, 1855, construed in a charge to a grand jury.—Passenger Act of March 3, 1855, Case No. 10,791.

In estimating the tonnage of a vessel bringing passengers from a foreign country, the custom house measurement at the port of arrival is to be taken.—United States v. The Louisa Barbara, Case No. 15,632; Same v. The Anna, Id. 14,457.

In estimating the number of passengers, no deduction is to be made for children or persons not paying; but the crew are excluded.—United States v. The Louisa Barbara, Case No. 15,632.

§ 198. Contracts for carriage of passengers in general.
Passengers for New York, having certificates from a ship agent engaging that they should be carried to Philadelphia and forwarded to New York free of expense, were received on board a vessel at Cork, and the certificates retained by the master without dissent until arrival at Philadelphia. *Held* a maritime contract binding on the ship, and not separable as to the two stages of transportation.—Dennison v. The Wataga, Case No. 3,799.

The vessel or her owner is liable for performance of contract for carrying passengers.—The Aberfoyle, Cases Nos. 16, 17.

Where the master failed to fulfill his contract to carry libelant, *held*, 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.—The Zenobia, Case No. 18,209.

The contract of passage by vessel entitles a female passenger to protection against all boisterous, obscene, or improper behavior.—Nieto v. Clark, Case No. 10,262.

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.—The Zenobia, Case No. 18,208.

§ 199. Accommodations on vessel — In general.
Passengers on steamship entitled to reasonable accommodations and conveniences, irrespec-

tive of the class in which they travel.—Bailey v. The Sonora, Case No. 746.

The shipowner is bound to furnish all reasonable and proper accommodations usually afforded to passengers on similar voyages in similar vessels, and such as are necessary to a reasonable degree of comfort, and to physical health and safety.—Sparks v. The Sonora, Case No. 13,212.

Contract of carriage by second cabin, when considered broken by reason of overcrowding, and lack of reasonable accommodations, and damages therefor.—Bailey v. The Sonora, Case No. 746.

Where a passenger's contract contains stipulations as to the manner of fitting up the vessel and the number of passengers to be carried, the passenger may consider it as broken on a failure to comply with any part.—The Pacific, Case No. 10,643.

§ 200. —— Provisions.

The owners are estopped to assert that one acting as master had no right as such to order stores for the voyage, where they permitted him to order the articles and retained them.—Stringham v. Schloener, Case No. 13,536.

Liable for short allowance to passenger if master's conduct not malicious.—The Aberfoyle, Cases Nos. 16, 17.

Libel by passengers for deficiency of water and provisions *held* not sustained by the evidence.—Kramme v. The New England, Case No. 7,930.

§ 201. —— Berths and state rooms.

The requirements of Act March 3, 1855, § 2, do not apply to steamships.—United States v. The Manhattan, Case No. 15,715; The Manhattan, Id. 9,020.

An undertaking to carry a passenger in the steerage of a steamship from San Francisco to Portland includes the furnishing of the passenger with a berth, unless there is a fair understanding to the contrary.—The Oriflamme, Case No. 10,572.

A stateroom whose temperature is raised from 25 to 40 degrees with heated air coming from the boiler room, where access of light and air is obstructed, and where bedding is constantly wet from a defective pump, does not comply with a contract for first-cabin passage.—Sparks v. The Sonora, Case No. 13,212.

Where the comfortable staterooms are disposed of, the ship's agent must inform the passengers, so that they may take the risk of such accommodations as are left.—Sparks v. The Sonora, Case No. 13,212.

Punitive damages are recoverable where a husband and wife who have contracted for the exclusive use of a stateroom are forced to receive another male passenger therein.—Morrison v. The John L. Stephens, Case No. 9,847.

The disappointment and irritation of a husband, and the discomfort and suffering of his invalid wife, resulting from assigning them to separate staterooms, in violation of the contract of carriage, are elements of damage.—Morrison v. The John L. Stephens, Case No. 9,847.

Where a child was taken sick with smallpox while on the voyage, *held*, that the master was justified in changing his quarters, and in quarantining him, with his parents, who insisted on going with him.—The Hammonia, Case No. 6,006.

§ 202. Voyage and discharge at destination.

Where the master of a vessel, who had taken passage on a steamer to rejoin his vessel, was carried past the place for which he had bought his ticket, he can recover his own personal loss, and damages for the detention of his vessel.—The Canadian, Case No. 2,376.

Failure of a vessel to arrive at the port from which a ticket of passage was purchased is not excused by the fact that the vessel was disabled by stress of weather, and the passenger is entitled to recover the passage money paid by him.—Cobb v. Howard, Cases Nos. 2,924, 2,925.

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.—Zellweger v. The Robert Cooper, Case No. 18.207.

Where the nonfulfillment of a contract to transport a passenger is caused by shipwreck or other casualty, the passenger may recover back passage money paid in advance, or damages.—Stone v. The Relampago, Case No. 13,-486.

In such case the passenger is obliged to wait a reasonable time for repairs, only where the interruption was not caused by an original defect and unseaworthiness in the vessel.—Stone v. The Relampago, Case No. 13,486.

Where the contract for the carriage of a passenger is broken by the interruption of the voyage, he has an action in rem, as well as in personam, to recover back passage money paid or damages.—Stone v. The Relampago, Case No. 13,486.

§ 203. Personal injuries.

The vessel owner is liable where another is injured from the want of care or skill of the master.—Stone v. Ketland, Case No. 13,483.

Where boxes of tin are so stowed in the steerage room that the rolling of the vessel caused one to fall upon a steerage passenger sitting beside the pile, *held*, that the vessel was liable.—The Oriflamme, Case No. 10,572.

The duties of steamboats carrying passengers to guard them against violence or negligence of other passengers stated in a charge to a jury. —Flint v. Norwich & N. Y. Transp. Co., Case No. 4,873.

The master is authorized to use force to a passenger, not for a mere breach of regulations, but only when there is a clear necessity for it. —Kranskopp v. Ames, Case No. 7,931.

No punishment higher than a reprimand should ever be inflicted on a passenger without conference with the other officers and entry of the facts on the log book.—Kranskopp v. Ames, Case No. 7,931.

Until a passenger is on board the vessel, he is not subject to casualties or misfortunes occurring through stress of weather or otherwise.—Cobb v. Howard, Cases Nos. 2,924, 2,925.

Passenger voluntarily encountering a seen danger, guilty of contributory negligence.—The Anglo Norman, Case No. 393.

The remedy in rem for injuries from injurious escape of steam on steamboats is confined to injuries to passengers. Other persons on board have only a remedy in personam. Acts 1838, 1852.—The Highland Light, Case No. 6,477.

A soldier transported under contract with the government, and discharged at sea during the voyage, does not thereby become a passenger in such a sense that the master is liable for allowing him to be subjected to military discipline.—White v. McDonough, Case No. 17,552.

The vessel owners are liable for torts of the master when they involve a breach of the passenger's contract and are done while acting within the scope of his employment.—McGuire v. The Golden Gate, Case No. 8,815.

Vessel owners are only liable in actual and not in punitive damages for the torts of the master involving a breach of a passenger's con-

tract.—McGuire v. The Golden Gate, Case No. 8,815.

Duties of the captain as to the proper adjustment and care of the safety valve on the stoppage of the boat.—United States v. Farnham, Case No. 15,071.

§ 204. Passengers' effects.

The vessel is liable for loss of baggage by theft from a stateroom in the lady's cabin which was properly fastened, where time and opportunity were given for a thief to enter such room without detection.—Walsh v. The H. M. Wright, Case No. 17,115.

"Personal luggage" (Act 1847) does not include furniture stores, or other articles not necessary for the personal convenience of passengers.—United States v. The Anna, Case No. 14,457.

The master is liable to make good the loss where a common gambler cheated a minor passenger out of a sum of money, and he failed, after notice, to compel restitution.—Smith v. Wilson, Case No. 13,128.

Where a passenger's money is stolen from his stateroom in a steamboat by reason of his neglect to lock and bolt his stateroom door, the owners of the vessel are not liable.—The John Brooks, Case No. 7,335.

§ 205. Damages for violation of regulations.

Under Act May 17, 1848 (9 Stat. 220), conferring concurrent jurisdiction on the circuit and district courts for violations of the provisions relative to food allowance of passengers, the practice must be in accordance with the procedure at common law, and not according to the admiralty procedure, as the circuit court has no original admiralty jurisdiction.—McAfee v. The Creole, Case No. 8,655.

§ 206. Penalties and forfeitures for violations of regulations.

A steam vessel usually employed as a towboat, which transports passengers from Buffalo to Canada, and back, for pay, *held* liable to the penalty for transporting passengers without a license. Act July 7, 1838, §§ 2, 42.—United States v. The Echo, Case No. 15,021.

Act July 7, 1838, declares no forfeiture of the vessel, and creates no lien, express or implied, for the penalty.—United States v. The Laurel, Case No. 15,569.

The United States has no lien for the penalty for violation of Act July 7, 1838, providing for the security of lives of passengers on steam vessels, whereby it may overreach liens of material men under the Missouri statute.—United States v. The Laurel, Case No. 15,569.

To subject a vessel to forfeiture under Act March 2, 1819, there must be an excess of 20 passengers beyond the proportion of 2 to every 5 tons of the vessel.—United States v. The Louisa Barbara, Case No. 15,632.

The offense punished by Act Feb. 22, 1847, § 1, is committed by taking on board the forbidden number of passengers, with intent, etc., as well as the bringing them, or any number of them, into the United States.—United States v. The Anna, Case No. 14,458.

The mere intention to violate the act of 1847, limiting the number of passengers, formed in a foreign country, and not completed by the actual illegal importation, is not punishable.—United States v. The Anna, Case No. 14,457.

Where the statute requires the posting of two copies of the synopsis of the laws relating to the carriage of passengers, it is no defense to a prosecution for violation of the act that one copy was posted up.—The Lewellen, Case No. 8,307.

The only penalty for taking passengers on a steam vessel which has not, in a conspicuous place, the certificate of seaworthiness required by Act Aug. 30, 1852, § 25, is the penalty of $100 given by that section; and neither the vessel nor her owner is liable to the penalty of $500 given by the first section.—United States v. The Manhattan, Case No. 15,714.

A vessel engaged in carrying freight between ports in different states, which on one occasion carries a load of passengers for purposes of a prize fight between ports in the same state, is not subject to a penalty for failure to comply with Act Aug. 30, 1852, §§ 5, 9.—The Thomas Swan, Case No. 13,931.

The Revised Statutes not being enacted until June 22, 1874, the carrying of petroleum upon passenger steamers in April, 1874, cannot be punished thereunder.—The James D. Parker, Case No. 7,193.

Under 1 Stat. 77, § 9, giving exclusive original cognizance of all admiralty causes to the federal courts, the district court has exclusive jurisdiction of a libel in rem based on Acts July 4, 1864, giving a penalty for a neglect to post up in a steamer a synopsis of the laws relating to the carriage of passengers.—The Lewellen, Case No. 8,307.

The penalties provided for by the passenger act of 1848 can only be recovered by an action of debt on the common-law side of the court.—United States v. The Neptune, Case No. 15,865.

A proceeding in rem is the proper mode of prosecution for the violation of Act July 4, 1864, § 8, in neglecting to post up in a conspicuous place in a steamer synopses of the laws relating to the carriage of passengers.—The Lewellen, Case No. 8,307.

A prosecution for a penalty under Act July 4, 1864, § 3, regulating the carriage of passengers on steamships, etc., must be by action of debt, and not a libel in rem.—The Nashville, Case No. 10,023.

An action of debt, and not an information in rem, is the proper remedy to recover a penalty for violation of Act Feb. 28, 1871, § 4, forbidding the carrying of burning or explosive fluids on passenger steamers.—The James D. Parker, Case No. 7,193; United States v. The C. B. Church, Id. 14,762.

An inspector, under Act Aug. 30, 1852, although he may be the informer, is not entitled to any part of the penalty, and is a competent witness for the prosecution.—United States v. The Thomas Swan, Case No. 16,480.

§ 207. Offenses by master and crew in violation of regulations.

Where a mate appointed master in a foreign port knowingly sails with a larger number of passengers than that allowed by law, he is liable for the fine of taking an excessive number of passengers on board, though the agreement of shipment was made by the former master.—United States v. Morton, Case No. 15,822.

Act March 3, 1855, § 15, providing that the penalties imposed by the provisions regulating the carriage of passengers shall be liens on the vessel, does not apply to a fine on the master, imposed for a misdemeanor.—The Candace, Case No. 2,379.

The fines imposed upon the master by Act March 3, 1855, §§ 1, 6, for acts which are therein declared to be misdemeanors, are not made a lien upon the vessel.—United States v. The Ethan Allen, Case No. 15,059.

An indictment under Act July 7, 1838, § 12, against the officers and employés of a steamboat, is sufficient if it charge them substantially in the language of a statute, with misconduct, negligence, or inattention to their respective duties, whereby the lives of passengers are destroyed.—United States v. Collyer, Case No. 14,838.

In such an indictment, several defendants occupying different stations of employment may be joined without showing that their acts were jointly destructive of the lives of those on board, or were joint in their commission.—United States v. Collyer, Case No. 14,838.

A person who takes the place of the captain while he is sick, and exercises the authority and control, and discharges the duties, of that office, is a person "employed on board," within the meaning of the statute.—United States v. Collyer, Case No. 14,838.

Where the captain has employed skillful and faithful subordinate officers and employés, he cannot be held guilty where the destruction of the lives of persons on board is directly caused by their misconduct, negligence, or inattention.—United States v. Collyer, Case No. 14,838.

The burning and loss of life must be shown to have been the direct consequences of the negligence or misconduct shown, but the degree of misconduct is immaterial.—United States v. Collyer, Case No. 14,838.

A willful or intentional mismanagement or misconduct is not of the essence of the offense, but it consists in an improper act of the kind designated, and having the results named.—United States v. Collyer, Case No. 14,838; Same v. Farnham, Id. 15,071.

IX. DEMURRAGE.

§ 208. Construction of charter party or bill of lading.

Under a charter stipulating that demurrage shall be paid day by day, and that the master shall sign bills of lading, the master must sign bills of lading, though demurrage is due and unpaid.—The Mispah, Case No. 9,648.

A provision that, "during the obstruction of navigation by ice, lay days are not to be counted," applies to ice which prevents lading of the vessel as well as to such as prevents her going to sea.—Ladd v. Wilson, Case No. 7,976.

An ordinary bill of lading implies an agreement that the goods shall be received within a reasonable time after the arrival of the vessel at her port of destination.—The Hyperion's Cargo, Case No. 6,987.

Naming a wharf in a charter party containing a stipulation for quick dispatch amounts to an undertaking that the wharf shall be unincumbered.—Thacher v. Boston Gas Light Co., Case No. 13,850.

Charterers are liable for the detention, not due to the fault of the vessel, caused by intervening Sundays, holidays, custom-house and port regulations as to taking in or discharging cargo, and by lack of wharfage or lighterage facilities, under a charter which provided for 45 running days for loading and discharging, and damages for further detention happening "by default" of the charterer. Case No. 3,646 reversed.—Davis v. Pendergast, Case No. 3,647.

A proviso against liability for detention, unless by "default" of the charterer, exempts him only from delay from causes beyond his control acting directly to retard the discharging.—Thacher v. Boston Gas Light Co., Case No. 13,850.

Where a vessel was chartered to carry coal from the charterer's mines, with lay days "as customary in loading," cargo to be "received as customary," and the vessel, according to the custom, waited her turn at the charterer's dock, but was further detained by his delay to furnish coal for the preceding vessels, *held*, that he was liable for the latter delay.—Nichols v. Tremlett, Case No. 10,247.

§ 209. Effect of customs and usages.

A usage by which vessels allow a few days after reporting for a sale of the cargo will not deprive a vessel of the right to demurrage where her cargo is sold before arrival.—Forshay v. Du Fais, Case No. 4,947.

The local usage in respect to reception and delivery of cargo is not admissible to interpret provisions as to demurrage not obscure or equivocal. —Davis v. Wallace, Case No. 3,657.

An agreement for quick dispatch supersedes any custom of discharging vessels by which they are to take their turn at the wharf.—Thacher v. Boston Gas Light Co., Case No. 13,850.

§ 210. Liability of charterer or shipper in general.

The charterer of a vessel takes all risks as to delay from any unforeseen circumstances.—Esseltyne v. Elmore, Case No. 4,531.

Where the charterer abandons his contract, demurrage is due the ship from the expiration of the lay days, until she could, with reasonable diligence, have procured other employment.—Stepanovit v. Gillibrand and Four Thousand Nine Hundred and Twenty-Two Bushels of Wheat, Case No. 13,360.

§ 211. Liability of consignee in general.

A consignee is bound to give only such dispatch as is reasonable under the circumstances.—Fulton v. Blake, Case No. 5,153.

Damages in the nature of demurrage are recoverable from consignee without stipulation in bill of lading.—Fulton v. Blake, Case No. 5,153.

Consignees must provide such reasonable dock room as their business ordinarily requires.—Fulton v. Blake, Case No. 5,153.

Though the shipper only has the right to reconsign, under the bill of lading, the master, by accepting a reconsignment from the consignee, waives his right to object, and cannot recover demurrage for delays incident thereto.—McGovern v. Heissenbuttel, Case No. 8,805.

The consignee is not liable merely as such for damages for detention where no demurrage or lay days are mentioned in the bill of lading.—Sheppard v. Philadelphia Butchers' Ice Co., Case No. 12,757.

Where demurrage is not provided for, the consignee, being the owner of the cargo, has the burden of showing that the detention was reasonable.—Sheppard v. Philadelphia Butchers' Ice Co., Case No. 12,757.

§ 212. Delay in loading or sailing.

Demurrage allowed where shipper caused his own vessel to be loaded before a chartered vessel which was first ready.—Atlantic & P. Guano Co. v. The Robert Center, Case No. 630.

The innocent holders of bills of lading for the delivery of cargo to order on payment of freight as per charter, where the charter contained no clause specially binding the cargo for its performance, are not liable for demurrage in loading.—In re One Hundred and Twelve Sticks of Timber, Case No. 10,524.

The shipmaster cannot report himself "ready to receive cargo," before he is permitted by the revenue laws of the port to receive it.—Pierson v. Ogden, Case No. 11,160.

Demurrage is recoverable for unnecessary or improper detention in loading without an express stipulation therefor.—The M. S. Bacon v. Erie & W. Transp. Co., Case No. 9,898a; Sprague v. West, Id. 13,255.

Delay of a chartered vessel in arriving because she was not at the port where she was represented to be in the charter party excuses the charterer from liability for demurrage for time lost in loading, which would not have been lost if she had proceeded promptly from the port named. —Nichols v. Tremlett, Case No. 10,247.

A formal notice to the consignees that the vessel is ready to receive cargo is not necessary,

where they knew that she was ready, and such knowledge may be inferred from circumstances. —In re Two Hundred and Sixty-Eight Logs of Cedar, Case No. 14,295.

The master is entitled to the presumption that he knows best where his vessel should anchor, and his changing the place of anchorage to a greater distance from the shore *held* no defense to a claim to demurrage in loading.—In re Three Hundred and Ninety-Three Tons of Guano, Case No. 14,011.

The refusal to admit a claim for demurrage in loading will not justify a refusal by the master to sign bills of lading, and the owners cannot recover for a delay caused thereby.—In re Three Hundred and Ninety-Three Tons of Guano, Case No. 14,011.

§ 213. Delay during voyage.

A shipper cannot recover from one vessel demurrage which he paid another, which was detained by the failure of the former to arrive with the cargo on time, unless the shipper show that he was legally liable for such demurrage.—In re Wilkesbarre Coal & Iron Co., Case No. 17,661.

Where there is no contract that demurrage shall depend on the earnings of freight, demurrage for detention at an intermediate port is due at such port.—The Caroline A. White, Case No. 2,421.

§ 214. Delay in unloading—In general.

The consignee is not liable for delays occurring without his fault, where there is no stipulation as to "lay days" or time of unloading.—The Glover, Case No. 5,488.

Where shipper refuses to accept proper bills of lading as tendered, the owner may recover demurrage for delays in unloading caused by want of proper bills of lading.—The Alonzo, Case No. 257.

The vessel owner takes the risk of working weather during the time required for the unlading of the cargo.—Sprague v. West, Case No. 13,255.

A vessel entitled to "dispatch for discharging" *held* entitled to demurrage for delay arising from its being Passion Week, and the crowded state of the mole, from custom's regulation, and from being required to deliver over her bows.—Sleeper v. Puig, Case No. 12,940.

Consignees cannot select a place of discharge within a port which would necessitate greater delay in discharging than the charter allowed.—Davis v. Wallace, Case No. 3,657.

A vessel required to load or discharge her cargo at a particular dock, and there detained by reason of its crowded condition, is entitled to demurrage.—Futterer v. Abenheim, Case No. 5,164.

Where the consignee requires that the cargo be taken to a particular place, he will be *held* liable for any delay caused at that place, for which the vessel cannot be shown to be directly chargeable.—Philadelphia & R. R. Co. v. Northam, Case No. 11,090.

A vessel *held* not entitled to demurrage for time spent in port after discharge, pending a dispute over demurrage and errors in her account.—Sleeper v. Puig, Case No. 12,940.

Where a canal boat, hired to carry a cargo of coal between certain places, was stopped en route, and, after some delay, unloaded, *held*, that she was entitled to freight to the port of unloading, and demurrage for the detention there above the usual time for unloading.—In re Two Hundred and Thirteen Tons of Coal, Case No. 14,298.

The consignees of a cargo of granite blocks are not liable for demurrage where the discharge is delayed for several days, owing to the prevalence of an epidemic among horses, where they used reasonable diligence.—Coombs v. Nolan, Case No. 3,189.

§ 215. —— Time used in unloading.

Where there is no special agreement as to the time within which a vessel is to be unloaded, the law implies that it is to be done within a reasonable time after her arrival.—Henley v. Brooklyn Ice Co., Cases Nos. 6,363, 6,364.

Five days *held* a reasonable time in which to unload 567 tons of coal.—Esseltyne v. Elmore, Case No. 4,531.

Where a charter party contained no provision as to the discharge of a cargo, and the usual time for unloading such a cargo was 15 days, no claim for demurrage could exist until the expiration of the 15 days.—In re Cargo of Salt, Case No. 2,406.

In the case of a cargo of ice from Maine to New York, *held*, that 15 days was not unreasonable, where the vessel waited her turn in the customary way.—Henley v. Brooklyn Ice Co., Cases Nos. 6,363, 6,364.

No orders as to place of discharge were given for three days after notice of arrival. The vessel was detained four days after reaching the wharf, by reason of lack of teams and the loading of other vessels. *Held*, that demurrage should be allowed only for the delay after arrival at the wharf, where the charter provided for quick dispatch in discharging.—Davis v. Wallace, Case No. 3,657.

A ship to "be discharged as fast as the custom of the port will admit," demurrage to be charged after the expiration of 10 days, *held* entitled to demurrage, notwithstanding pre-occupancy of the wharf by other vessels.—Futterer v. Abenheim, Case No. 5,164.

§ 216. —— Waiting turn at wharf.

The shipowner must await his turn for a reasonable time, to be determined by the ordinary volume and exigencies of trade at the place of discharge, where the custom prevails in the trade to unload in the order of arrival.—The M. S. Bacon v. Erie & W. Transp. Co., Case No. 9,898a.

A vessel, chartered to have "dispatch in discharging," *held* not obliged to await her turn in respect to any other vessels which the consignees were discharging.—Keen v. Audenried, Case No. 7,639.

The owner of the cargo *held* not liable for the delay of the boat in waiting her regular turn at the wharf for unloading.—In re One Hundred and Seventy-Five Tons of Coal, Case No. 10,522.

Where the consignee has provided ample dock room for vessels as they are reasonably expected to arrive, vessels arriving out of time must wait their turn. He is not obliged to procure other docks.—Fulton v. Blake, Case No. 5,153.

A stipulation that the cargo should be delivered at the port of discharging, as customary, is inapplicable to a delay caused by the vessel being required to wait her turn at the wharf.—Davis v. Wallace, Case No. 3,657.

§ 217. —— Moving vessel during unloading.

Time lost in getting from one dock to another, by requirement of the charterer and according to the custom of the trade, is not by default of the charterer, for which he must pay demurrage. —The Mary E. Taber, Case No. 9,209.

Where part of the cargo is discharged at one wharf and part at another, without objection from the vessel owner, the charterer is not liable for the time necessarily spent in moving the vessel.—In re Two Hundred and Sixty-Eight Logs of Cedar, Case No. 14,295.

§ 218. —— Effect of customs and usages.
The custom of the port of Chicago to allow one day to provide a dock, when not rendered unreasonable by controlling circumstances, will be considered a law.—Fulton v. Blake, Case No. 5,153.

A custom at the port to unload through an elevator, each vessel waiting its turn, will be considered as a part of the contract.—The Glover, Case No. 5,488.

A provision in a charter party for "dispatch for discharging" at Havana is not controlled by the customs and rules of that port, and the consignees are bound to take the cargo as rapidly as the vessel can deliver it. Case No. 12,940 affirmed.—Sleeper v. Puig, Case No. 12,941.

It being the rule at Havana to deliver only at the mole, the consignees were responsible under the provision "for dispatch in discharging" for delay arising from the crowded condition of the mole. Case No. 12,940 affirmed.—Sleeper v. Puig, Case No. 12,941.

§ 219. Fault of vessel or owner.
There can be no recovery of demurrage for delays caused by the fault or negligence of the officers of the vessel, regardless of stipulations in the bill of lading.—Hall v. Eastwick, Case No. 5,930.

A master who insists on waiting until the wharf to which the vessel was consigned is unoccupied, where the consignee offers to receive the cargo at a safe and suitable adjoining wharf, cannot recover demurrage for the delay.—Robbins v. McDonald, Case No. 11,884.

Where the master waited to have the cargo discharged by the consignee under the terms of the bill of lading, *held*, that he was not entitled to demurrage where he was assigned dock room, where he might himself have discharged the cargo.—Tuttle v. Albany & R. Iron & Steel Co., Case No. 14,276.

§ 220. Lay days.
Lay days do not begin to run until the vessel has arrived at her place of discharge, and is ready to be unloaded.—Aylward v. Smith, Case No. 688.

Where a bill of lading provided for demurrage after lay days beginning 24 hours after arrival and notice, and the vessel, on account of ice, cannot land at the consignee's wharf, lay days begin to run 24 hours after notice to the consignee that she had been taken to another wharf.—Choate v. Meredith, Case No. 2,692.

A bill of lading reciting that the vessel is bound to a certain wharf in C., and undertaking to deliver at the aforesaid port of C., binds the vessel to deliver at such wharf, and lay days begin to run only from the arrival at such wharf.—Cain v. Garfield, Case No. 2,293.

In the absence of any statute or established general usage to the contrary, Fast-Day must be considered as an ordinary working day for the purpose of lading or unlading cargo.—The Tangier, Case No. 13,743.

A discharge of the cargo commenced before may be continued on Fast-Day.—The Tangier, Case No. 13,743.

Where a vessel is entitled to "dispatch for discharging," the time allowed is measured by her capacity to deliver.—Sleeper v. Puig, Case No. 12,940.

"Rainy days," as excepted from lay days for loading a cargo of grain, mean such rainy days as will prevent loading with safety and convenience in the particular port.—Balfour v. Wilkins, Case No. 807.

§ 221. Rate or amount.
The measure of damages for delay in unloading is the gross freight which the vessel would have earned under ordinary circumstances during the time of detention.—Sheppard v. Philadelphia Butchers' Ice Co., Case No. 12,757.

Upon what principles demurrage for the unnecessary detention of a vessel while unloading should be computed.—Sprague v. West, Case No. 13,255.

Demurrage allowed without interest.—In re Three Hundred and Ninety-Three Tons of Guano, Case No. 14,011.

Interest is not allowable on demurrage.—The New Orleans, Case No. 10,178.

§ 222. Lien.
The master has a lien upon the cargo for demurrage, enforceable in admiralty, though not expressly stipulated for in the bill of lading.—The Hyperion's Cargo, Case No. 6,987.

The vessel has a lien on cargo for damages in the nature of demurrage, where the consignee fails to receive it within a reasonable time, although the bill of lading contains no demurrage clause.—Donaldson v. McDowell, Case No. 3,985.

Vessel owners not bound to sign unqualified bills of lading for cargo until lawful claim of demurrage, which is a lien thereon, is satisfied; and for delays caused thereby charterer is liable. —Balfour v. Wilkins, Case No. 807.

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 cargo for the claim will not preserve the lien.—Winslow v. Four Hundred Barrels of Salt, Case No. 17,881.

The vessel owner, having abandoned his lien on the cargo for demurrage, cannot maintain an action for damages against the shippers, who were merely agents.—Stafford v. Watson, Case No. 13,276.

X. GENERAL AVERAGE.

Remedy for general average loss, see "Admiralty," § 39.

§ 223. Nature of right to contribution.
The right to receive contribution in general average is not founded on contract, but on a principle of equity.—Sturgis v. Cary, Case No. 13,573.

§ 224. Perils and acts grounds of contribution—In general.
There can be no contribution for damage caused by the common danger to which both ship and cargo are exposed.—Delano v. The Gallatin, Case No. 3,751.

To make a case for general average, the property saved and the property sacrificed must be exposed to a common danger. The sacrifice of a part must contribute to the saving of the residue, and must be voluntary.—Delano v. The Gallatin, Case No. 3,751.

If the cargo or ship, or any part of either, be voluntarily sacrificed or exposed to danger for the common safety, the part saved shall contribute to repair the loss sustained, provided the object for which the sacrifice was made be obtained.—Caze v. Reilly, Case No. 2,538.

General average is incurred where the expenses or losses arose in a case of emergency, not produced by the misconduct or unskillfulness of the master, and not resulting from the ordinary circumstances of the voyage.—Ross v. The Active, Case No. 12,071.

It is sufficient to justify a claim to contribution if the danger sought to be avoided is so imminent that the measure adopted may be beneficial to all.—Caze v. Reilly, Case No. 2,538.

§ 225. —— Stranding.
The voluntary stranding of a vessel, when required and designed for the common safety of the associated interests, constitutes a case of general contribution, though followed by her total loss.—O'Connor v. The Ocean Star, Case No. 10,419; Patten v. Darling, Id. 10,812.

A three-masted schooner, being unable to keep her head to the wind through the loss of her mizzen sail in a severe storm, was put before the wind, and, the storm continuing, was finally beached on the New Jersey coast, it being considered safer to run such risk than to attempt to bring her head to the wind. *Held* a voluntary stranding, and that the vessel owners were entitled to contribution from the cargo.—Fitzpatrick v. Eight Hundred Bales of Cotton, Case No. 4,843.

The beaching of a vessel by the act of the master to prevent her foundering with a total loss of vessel, cargo, and crew, or to prevent her being driven on shore elsewhere, is a voluntary stranding, and the cargo must contribute in general average to the loss sustained.—In re Eight Hundred Bales of Cotton, Case No. 4,319.

In the case of a vessel dragging her anchors towards the shore in a gale to avoid the danger of being beaten to pieces on rocks the master voluntarily slipped his cable, and allowed the vessel to be thrown on the beach. *Held* a general average loss.—Sturgess v. Cary, Case No. 13,572.

Where a vessel cut through by ice while anchored in deep water was run ashore in shallow water, and injured by lying on an uneven bottom, *held* a general average loss.—Rathbone v. Fowler, Case No. 11,584.

§ 226. —— Jettison.
An intention to consign to inevitable loss goods thrown overboard is not necessary to authorize a claim for general average.—Caze v. Reilly, Case No. 2,538.

Goods laden on deck with consent of the shipper under a bill of lading excepting "dangers of navigation," and necessarily jettisoned, do not make a case for general average.—The Milwaukee Belle, Case No. 9,627.

The fact that the shipment on deck was sought by the master for the purpose of trimming his vessel is not material.—The Milwaukee Belle, Case No. 9,627.

Right of contribution in case of a jettison of a load carried on deck under the usage of the trade, or under special agreement.—Goddefroy v. The Live Yankee, Case No. 5,496.

To constitute a case for general average, there must be a successful attempt, by a voluntary jettison, to avoid an imminent and apparently inevitable danger, in which ship, cargo, and crew all participate.—The Congress, Case No. 3,099.

A usage in the coasting trade to carry a part of the cargo, if heavy and imperishable, on deck, is reasonable, and, if such a deck load be jettisoned, the ship and freight are liable to contribute to the loss in general average.—The William Gillum, Case No. 17,693.

Blubber thrown overboard from a whaler, to prevent its sinking in a violent tempest, *held* a subject of general average.—Rogers v. Mechanics' Ins. Co., Case No. 12,016.

§ 227. —— Acts to prevent capture.
Where a ship is run ashore to avoid capture, and before she is boarded and burned a large part of her cargo is saved, the owner is entitled to contribution.—Caze v. Reilly, Case No. 2,538.

A shipper of money is entitled to reimbursement where it is surrendered by the master of the vessel to prevent her capture and burning by a privateer.—Hunter v. The Hannah, Case No. 6,905.

§ 228. —— Acts to prevent fire.
Damage to cargo by water used in extinguishing fire does not constitute a case for general average.—The Buckeye, Case No. 2,084.

If cargo is destroyed by fire, after being landed and stored in a port of refuge solely to enable the vessel to repair, it must be paid for in general average; otherwise, if it was landed and stored because it was damaged.—The Mary, Case No. 9,188.

§ 229. —— Acts to avoid collision.
The law of contribution by general average cannot be extended to the case of the cutting of a cable by a vessel at anchor to avoid impending collision with a vessel adrift.—The John Perkins, Case No. 7,360.

A loss occurring by accidental collision with a foreign vessel, which by the law of the country where it takes place is apportioned between the vessels, is not by our law deemed a general average.—Peters v. Warren Ins. Co., Case No. 11,034.

§ 230. Losses and expenses subject of compensation—Loss of or damage to vessel.
Injuries to rails and bulwarks by falling masts, cut away in a storm, are to be considered in general average.—Patten v. Darling, Case No. 10,812.

A shipper whose property is sold for the ship's necessities has a right of contribution over against the other shippers.—The Packet, Case No. 10,654.

The expenses of repairs at an intermediate port, required by ordinary decay in the course of a voyage, are not the subject of general average.—Ross v. The Active, Case No. 12,071.

The cargo owner is not liable to contribute towards the expenses of repairs of the vessel when the cargo is in safety, and receives no benefit therefrom.—Sparks v. Kittredge, Case No. 13,210.

Damage to the materials of a lost ship in saving a cargo should be paid by the cargo.—Roberts v. The Ocean Star, Case No. 11,908.

Where the cargo is sold in a port of refuge to obtain funds for repairing the vessel, there is no right of contribution.—Myers v. The Harriet, Case No. 9,992.

Where cargo is sold to raise funds to pay for repairs, the loss of such sale should be contributed for in general and particular average, in proportion to the amounts expended for repairs chargeable in general and particular average respectively.—Annan v. The Star of Hope, Case No. 405.

Repairs of a permanent character not contributed for where vessel seeks port of distress because of incapacity.—Annan v. The Star of Hope, Case No. 405.

Loss or damage to a wrecked vessel, or her tackle, in consequence of efforts to get her afloat, are apportioned upon ship and cargo only where the efforts are successful, and the cargo saved thereby.—Roberts v. The Ocean Star, Case No. 11,908.

The cutting away of masts and rigging in a gale is a general average, and where the cargo is owned by the owner of the vessel, the amount of its contribution may be deducted from the loss on the vessel.—Potter v. Providence Washington Ins. Co., Case No. 11,336.

Damage caused to the vessel by swelling of linseed in her cargo, through its being wet by water which came in through the holes made in the vessel by the ice, and damage to the cargo by such water, must be regarded as damage from a peril of the sea, and therefore not to be allowed for in general average.—Rathbone v. Fowler, Case No. 11,584.

A removal in a port of necessity, for the purpose of repairs, of perishable fruit, which increased an incipient decay and precipitated an entire loss, is not a matter for general average. —Bond v. The Superb, Case No. 1,624.

§ **231. —— Services and expenses in general.**

No loss or expense is to be considered as general average, and so applied in making up a loss, unless, in the first place, it was intended to save and preserve the remaining property, and unless, in the second place, it succeeded in doing so.—Williams v. Suffolk Ins. Co., Case No. 17,739.

Expenses of causing a general average to be adjusted by an experienced despacheure should be contributed for.—Annan v. The Star of Hope, Case No. 405.

Where a vessel captured by a privateer was detained until security should be given that the cargo would not be carried to the port of destination, the expenses of the detention are subjects of general average.—Hurtin v. Phœnix Ins. Co., Case No. 6,941.

Freight on cargo jettisoned, where the vessel was subsequently abandoned, and was saved by salvors, and sold in admiralty proceedings, *held* should be allowed as part of the general average to be borne by ship, cargo, and freight saved.—The Nathaniel Hooper, Case No. 10,032.

Salvage charges are to be deemed a general average only when incurred for the benefit of all concerned.—Peters v. Warren Ins. Co., Case No. 11,034.

Commissions of consignees in collecting value of goods before delivering them should be contributed for.—Annan v. The Star of Hope, Case No. 405.

The rule that the shipowner is entitled to a commission upon the amount contributed for in general average, is founded upon the law merchant, and is not controlled by a particular local usage in contravention thereof.—Sturgis v. Cary, Case No. 13,573.

§ **232. —— Expenses for voyage to port of distress.**

The wages, provisions, and other expenses of the voyage to a port of necessity, for the purpose of making repairs, constitute a general average.—Potter v. Ocean Ins. Co., Case No. 11,335.

The fact that there is no cargo on board will not prevent the application of the principle.—Potter v. Ocean Ins. Co., Case No. 11,335.

Wages and provisions are to be allowed in general average only from the time a vessel in distress alters her course to seek a place of safety, though she lay disabled for some time before.—The Mary, Case No. 9,188.

The expenses and charges of going to a port of necessity to refit can properly be a general average only when the voyage has been or might be resumed; but the doctrine does not apply if the voyage has been abandoned from necessity.—Williams v. Suffolk Ins. Co., Case No. 17,739.

Expense of preparing for repairs follows the expense of repairs.—Annan v. The Star of Hope, Case No. 405.

Where the voyage has been abandoned from necessity, the expenses and charges of going to a port of necessity are not the subject of general average.—The Harriet, Case No. 6,094.

The charges for entering a harbor for repairs, the surveyor's bill, and port charges are items of general average, and the subject of general contribution.—Vowell v. Columbian Ins. Co., Case No. 17,019.

Where a disabled ship, having reached a harbor of safety, might have been repaired in a neighboring port, but the master employed a tug to tow her to her destination, *held*, that no part of the towage expense was chargeable to cargo. The judgment of the master was not conclusive on cargo owners.—In re Nine Hundred and Twenty-Eight Barrels of Salt, Case No. 10,272.

§ **233. —— Expenses at port of distress.**

The law of average has no application to the expense of caring for and maintaining passengers at a port of distress.—Weston v. Train, Case No. 17,456.

The wages and provisions of the crew at a port of necessity are not chargeable on the cargo in general average, unless the voyage is resumed, and the cargo delivered at the port of destination.—Roberts v. The Ocean Star, Case No. 11,908.

Where a voyage is abandoned at a port of distress, the cargo is not liable for the expenses of the master's passage home.—Roberts v. The Ocean Star, Case No. 11,908.

The expenses of traveling, to consult the shipowner or underwriter upon the propriety of abandoning the voyage at a port of distress, do not fall upon the cargo, where the voyage is abandoned.—Roberts v. The Ocean Star, Case No. 11,908.

The regular port charges, and the expenses of ascertaining the amount of injury to the vessel in a port of distress, and the costs of a salvage suit, will be apportioned upon the vessel and cargo.—Roberts v. The Ocean Star, Case No. 11,908.

Cargo transshipped at a port of distress is liable for a reasonable compensation for the master's time and expenses in securing another vessel, where the transshipment is not to earn the original freight.—Roberts v. The Ocean Star, Case No. 11,908.

§ **234. Liability to contribute—Liability of vessel, cargo, and owner.**

The maritime law does not imply, on the part of the owner receiving the goods, a promise for contribution.—The Congress, Case No. 3,099.

The owners of the vessel and the cargo saved must contribute where a part of the cargo is jettisoned for the safety of vessel and passengers.—Dike v. The St. Joseph, Case No. 3,908.

In case of loss and expense by necessary deviation, both vessel and cargo must contribute in general average.—Campbell v. The Alknomac, Case No. 2,350.

In case of total loss of the ship voluntarily stranded for the safety of the cargo, all the property exposed to the risk must contribute, and be contributed for, at its value when the sacrifice was made.—Mutual Safety Ins. Co. v. Cargo of the George, Cases Nos. 9,981, 9,982.

The vessel and the cargo under deck are not liable to contribution for the deck load thrown overboard for the general safety.—Triplet v. Van Name, Case No. 14,176; The Paragon, Id. 10,708.

Where by the bill of lading it is agreed that a portion of the cargo shall be carried on deck, the vessel must contribute for the loss of the deck load by jettison.—The Watchful, Case No. 17,250.

A ship floated off a reef by putting a part of the cargo into a wrecking vessel should contribute to the loss or damage suffered by such part.—Roberts v. The Ocean Star, Case No. 11,908.

Where the vessel will inevitably go ashore, and the master makes sail, and puts her ashore in a place most likely to save the vessel and cargo, and the vessel is lost, the property saved must contribute in general average.—Rea v. Cutler, Case No. 11,599.

Where the cargo is unloaded at a port of necessity for the common benefit of both vessel and cargo, the expenses thereof should be borne by both.—Roberts v. The Ocean Star, Case No. 11,908.

§ 235. —— Liability of freight.
Freight pro rata earned must contribute to the salvage with ship and cargo.—The Nathaniel Hooper, Case No. 10,032.

Where the ship is chartered for a gross sum for a round voyage, and general average occurs on the outward passage, the entire freight for the whole voyage must contribute.—The Mary, Case No. 9,188.

§ 236. —— Liability of master and crew.
The crew were ordered to contribute for a loss by embezzlement where strangers assisted in loading the cargo, but the fault could not be fixed.—Mariners v. The Kensington, Case No. 9,085.

All the crew must contribute to make up the loss of cargo by embezzlement, but proof is admissible to show the innocence of some.—Sullivan v. Ingraham, Case No. 13,595.

The seamen are not liable to contribute for embezzlement on board unless it was caused by their fraud, connivance, or negligence.—Spurr v. Pearson, Case No. 13,268.

The shares of fishermen in mackerel voyages, who sail under the agreements usual in such voyages, are subject to contribution for general average.—Utpadel v. Fears, Case No. 16,-808.

Where a cask of wine was lost while being hoisted aboard by the mate and crew, *held*, 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. —Wilson v. Belvidere, Case No. 17,790.

§ 237. Adjustment—In general.
A foreign adjustment of a loss cannot determine what is a general average.—Peters v. Warren Ins. Co., Case No. 11,034.

§ 238. —— As to vessel.
In estimating the loss where a vessel was beached to prevent her foundering, and went to pieces, the value must be taken as she was when the stranding was determined upon, without regard to her then peril.—In re Eight Hundred Bales of Cotton, Case No. 4,319.

The total salvage upon a ship and cargo saved together should be apportioned between them in the ratio of their values.—Roberts v. The Ocean Star, Case No. 11,908.

Value of vessel at port of delivery not proper measure of her contributory value. In absence of evidence, amount of insurance may be taken. —Annan v. The Star of Hope, Case No. 405.

In the adjustment and settling of general average, the contributory interest of the ship is to be estimated at her value at her port of departure, making reasonable allowance for wear and tear on the voyage, up to the time of the disaster.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,982.

Policies of insurance do not, of themselves, supply proof of the value of ship, cargo, or freight, on general average. But the adjusters can receive the policies as auxiliary evidence of those values.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,981.

As between the parties to a policy, the valuation of the vessel agreed on therein may be taken on general average as the value of the property at risk; but, as against owners of the cargo, the value must be established in the ordinary way.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,982.

§ 239. —— As to cargo.
Where goods are sold at the place of disaster, the adjustment of average will be governed by such price; but, when no sale is made at such place, the value at the place of shipment controls.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,981.

Invoices and bills of lading are competent evidence of the value of the cargo at the place of its purchase and shipment.—Mutual Safety Ins. Co. v. Cargo of the George, Cases Nos. 9,981, 9,982.

In the case of a jettison of goods, their value is generally to be estimated at their prime cost or original value, or, if the vessel has arrived at her port of destination, at their value at such port.—Rogers v. Mechanics' Ins. Co., Case No. 12,017.

Adjustment of general average where voyage broken up at intermediate port because of great injury to cargo by perils of sea.—The Ann D. Richardson, Case No. 410.

Owners of specie shipped for the purpose of purchasing return cargo, and sold by the master on the outward passage in a port of refuge to make repairs, are not entitled to profits they might have made, but only to interest from the time they could have used the specie at the outward port.—The Mary, Case No. 9,189.

§ 240. —— As to freight.
The valuation of freight in the policy may be received as prima facie evidence of its value in favor of and against the shipowner, on general average.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,982.

In adjusting the average, under the usage of the port, the contributory value of the freight was taken as one-half the gross freight agreed to be paid for the voyage on which the disaster occurred.—Rathbone v. Fowler, Case No. 11,-584.

Freight should be estimated at its gross value, both when contributed to and when contributory.—Mutual Safety Ins. Co. v. Cargo of the George, Case No. 9,982.

The contributory value of freight to a general average is ascertained by a deduction of one-third of the gross freight.—Humphreys v. Union Ins. Co., Case No. 6,871.

§ 241. Actions.
General average contribution may be recovered by a libel against the vessel for a total loss. —The William Gillum, Case No. 17,693.

A court of equity has jurisdiction to take an account of a general average loss, and decree contribution among those entitled to receive and bound to pay.—Sturgess v. Cary, Case No. 13,-572.

The court in admiralty will not entertain jurisdiction in cases of general average unless all the parties in interest are before it.—The Congress, Case No. 3,099.

In a suit of contribution for loss of masts sacrificed for the common benefit of ship, cargo, and freight, *held*, that the master was a competent witness for the vessel owners.—Patten v. Darling, Case No. 10,812.

The holders may recover in an action on a bill of lading the amount which the vessel owners offered to pay as their contribution in general average.—The Wiley Smith, Case No. 17,657.

See, also, "Admiralty," § 39.

§ 242. Lien.
A claim for general average contribution is but a qualified lien depending upon possession of the goods.—The Congress, Case No. 3,099.

In cases of general average, the master and owners may retain all goods of the shippers until their share of the contribution towards the aver-

age is either paid or secured; and there is no exception in the case of property of the government.—United States v. Wilder, Case No. 16,-694.

§ 243. Failure to enforce contribution.
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.—Wood v. The Sallie C. Morton, Case No. 17,962.

XI. LIMITATION OF OWNER'S LIABILITY.

By special contract, see ante, §§ 175-178.
For collision, see, also, "Collision," § 135a.

§ 244. Vessels and interests to which limitation applies.
The act limiting liability (Rev. St. § 4283) is a regulation of commerce applicable to foreign vessels.—Levinson v. Oceanic Steam Nav. Co., Case No. 8,292.

Such act is applicable to a vessel, running upon the ocean between ports of the same state, which carries merchandise or passengers on through bills or tickets destined to points in other states.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

A steamer used in the upper Mississippi river is not within Act March 3, 1851, limiting the liability of shipowners, and the district court will not therefore restrain claimants from suing the owner at common law to recover the full value of freight lost by fire.—The War Eagle, Case No. 17,173.

Statutes of the United States limiting the liability of shipowners do not limit the liability of a foreign shipowner for a collision between an American and a foreign vessel on the high seas.—Churchill v. The British America, Case No. 2,715.

The extent of liability of an English vessel stranded in American waters is to be determined by Rev. St. §§ 4283, 4284, and not by the general maritime law.—The John Bramall, Case No. 7,334.

The whaling equipment, provisions, and supplies of a whaling ship are not within the meaning of the words "ship or vessel," as used in Act March 3, 1851, § 3, limiting the liability of owners to the value of their interest in the "ship or vessel and her freight then pending."—Swift v. Brownell, Case No. 13,695.

There is no "freight pending" on a whaling voyage within the meaning of Act March 3, 1851.—Swift v. Brownell, Case No. 13,695; The Ontario, Id. 10,543.

§ 245. Who are entitled to benefit of limitation.
The limited liability act cannot be invoked in an action between foreigners arising out of a collision between foreign vessels on the high seas, where none of the owners are residents of the United States.—Thomassen v. Whitwell, Case No. 13,929.

A suit brought against a part owner of a vessel, who was charterer and owner for the voyage and acting as master, is within Act March 3, 1851, c. 43, exempting vessel owners from personal liability for damages arising out of a collision.—Thorp v. Hammond, Case No. 14,004.

§ 246. Losses and injuries subjects of limitation—In general.
Act March 3, 1851, limits the liability of the owner of a ship for injuries to persons, equally with liability for injuries to property.—The Epsilon, Case No. 4,506.

The act of March 3, 1851, does not limit liability for damage done by a vessel to property on land, as where a warehouse is burned by sparks from a steam tug.—King v. American Transp. Co., Case No. 7,787.

The limitation of liability under Act March 3, 1851, § 3, is not affected by the fact that the vessel has been insured, and the insurance has been paid or become payable.—Wattson v. Marks, Case No. 17,296.

Where actual total loss occurred, formal abandonment is not necessary to entitle the owners to the benefit of the limited liability act.—The Peshtigo, Case No. 11,018.

A tender, made in the libel of the vessel and wreckage to be disposed of by the court, is a sufficient abandonment.—The John Bramall, Case No. 7,334.

Where a vessel runs upon the ocean between ports of the same state which carries merchandise on through tickets to other states, the limitation of liability applies to losses of goods carried between the ports of the same state.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

Under Act March 3, 1851, § 3, the personal liability of the shipowners on a contract of affreightment ceases upon a total destruction of the vessel and loss of freight before the completion of her voyage, though the actual damage to or loss of the goods to be carried, as in the case of theft, has taken place prior to the time of the destruction of the vessel.—Wattson v. Marks, Case No. 17,296.

The absence of the "note in writing" (Act March 3, 1851, § 2) does not discharge the shipowner's liability on a contract of affreightment where the true character and value of the enumerated articles appear in the bill of lading.—Wattson v. Marks, Case No. 17,296.

Act March 3, 1851, § 4, authorizing transfer of owner's interest in ship and freight to a trustee for claimants, does not apply to a loss to another vessel by collision, nor to injuries to cargo on board the vessel in fault.—Barnes v. Steamship Co., Case No. 1,021.

§ 247. —— Privity or knowledge of owner.
The meaning of the words "privity" and "knowledge," as used in the statute, defined.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

The privity or knowledge of the managing officers of a corporation, owners, is privity or knowledge on the part of the corporation itself.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

The owner is in privity where a loss occurs by reason of failure to exercise the utmost care in selecting a competent master and crew, and in providing a seaworthy vessel.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

A vessel is not seaworthy if not furnished with suitable compasses; but, where a deviating compass may be corrected by other correct compasses on board, the vessel is not unseaworthy in this respect.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

Where the vessel is properly officered and manned, and in all respects seaworthy, a loss from causes arising during the voyage, without the privity or knowledge of the owner, is within the statute.—Lord v. Goodall, etc., S. S. Co., Case No. 8,506.

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 to another vessel and her cargo from a collision between the two vessels.—Wright v. Norwich & N. Y. Transp. Co., Case No. 18,087.

§ 248. Proceedings — When Proceedings may be instituted.

The owner of the vessel may, before he is sued, institute proceedings to obtain the benefit of the act.—The John Bramall, Case No. 7,334.

The right to proceed for limitation of liability cannot be exercised after final hearing in an action in rem to recover on claims in respect to which limitation of liability is sought.—In re New York & W. S. S. Co., Case No. 10,200.

Proceedings to limit liability in respect to a collision may be instituted, even after the giving of a stipulation in an action in rem for the full value of the vessel, for the benefit of all demands arising from the collision.—In re New York & W. S. S. Co., Case No. 10,200.

§ 249. —— Waiver of right to institute.

Vessel owners, by allowing a final decree for damages for collision in the district court, waive their right to institute proceedings under the act of March 3, 1851, to limit their liability.—Dyer v. National Steam Nav. Co., Case No. 4,225.

Where the vessel owners have not instituted any proceedings to have the limitation of their liability adjudged, and have not surrendered the savings from the wreck, they are not entitled to the benefit of the act of March 3, 1851, or to the limitation under the general maritime law. —Dyer v. National Steam Nav. Co., Case No. 4,225.

§ 250. —— Jurisdiction.

Admiralty has exclusive jurisdiction of a proceeding under Act March 3, 1851, by vessel owners to limit their liability.—In re Providence & N. Y. S. S. Co., Case No. 11,451.

The jurisdiction of proceedings to obtain the benefit of the act limiting liability belongs to the district court of the district in which the vessel was stranded, where the liability arises from such stranding.—The John Bramall, Case No. 7,334.

Notwithstanding the language of Act March 3, 1851, § 4, it can be carried into effect by a court of admiralty.—The Epsilon, Case No. 4,506.

It is not necessary to jurisdiction of a petition to limit the liability under Act March 3, 1851, that the court should have possession of the vessel or of the proceeds, and the pendency of suits against the vessel and of stipulations of value is no reason why the proceeding should not be taken.—The City of Norwich, Case No. 2,762.

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 proceedings to limit their liability, where neither the ship and freight nor the amount or value is within its control.—Wright v. Norwich & N. Y. Transp. Co., Case No. 18,086.

A person cannot take advantage of the limited liability act by answer to a libel for collision, but must institute separate proceedings therefor, for which leave of court is not necessary.—Thomassen v. Whitwell, Case No. 13,930.

§ 251. —— Restraining suits against shipowners.

The injunction granted in a proceeding to limit the liability of a shipowner restraining the prosecution of suits pending against the shipowner should not prohibit the collection of the taxable costs in such suits.—In re Norwich & N. Y. Transp. Co., Case No. 10,361.

The district court of the United States may enjoin a suit against a ship and shipowners who have sought the benefit of the rule of maritime law limiting their liability.—Churchill v. The British America, Case No. 2,715.

On a petition by vessel owners for the benefit of the limitation of liability, the admiralty court has power to enjoin the further prosecution of suits by shippers against owners, pending in state courts, for their losses by the burning of the vessel at her dock.—In re Providence & N. Y. S. S. Co., Case No. 11,451.

On petition by owners to limit their liability, a paper called "Exceptions and Answer," seeking to contest the right to exemption, filed by a party who had not presented claims to the commissioner, *held*, should be allowed to stand as an exception to the jurisdiction of the court to enjoin his suit in the state court.—In re Providence & N. Y. S. S. Co., Case No. 11,452.

§ 252. —— Appraisement or valuation.

On a petition to limit the liability of owners of a boat set on fire and sunk by a collision, the value of the boat is arrived at by taking the value of the wreck when raised, and deducting therefrom the expenses of raising.—In re Norwich & N. Y. Transp. Co., Cases Nos. 10,360, 10,362.

The value of repairs subsequently made and fire insurance moneys received by the owner cannot be added.—In re Norwich & N. Y. Transp. Co., Cases Nos. 10,360, 10,362.

The valuation of the boat in a stipulation for value given in suits brought against her after she was repaired is immaterial.—In re Norwich & N. Y. Transp. Co., Case No. 10,360.

The outfits of a whaler are a part of the appurtenances of the ship in estimating value.—The Ontario, Case No. 10,543.

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 amount.—In re Wright, Case No. 18,066.

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.—In re Wright, Case No. 18,066.

§ 253. —— Costs and fees.

The petitioner is entitled to a docket fee for each creditor who comes in and proves his claim. But he has no preference for his costs over the costs of the creditor.—In re Norwich & N. Y. Transp. Co., Case No. 10,361.

The costs and expenses of the proceeding are first to be paid out of the fund.—In re Norwich & N. Y. Transp. Co., Case No. 10,361.

§ 254. —— Release on giving stipulation.

Under the act of 1851 the vessel cannot be discharged of liens on giving a bond or stipulation for her value on application by the owners. —Place v. The City of Norwich, Case No. 11,202.

But where the stipulation tendered is sufficient, the court will order the vessel to be released on giving a bond for her value.—Place v. The City of Norwich, Case No. 11,202.

§ 255. Distribution of proceeds.

In case the fund provided for by the act is insufficient to satisfy the demands against it, the claimants on the fund must share pro rata.—The Epsilon, Case No. 4,506.

XII. WRECK.

§ 256. Rights of property.

The owner of a vessel wrecked on a desert island has no title to a small vessel built from her remnants by the master and crew, as the only means of escaping from the island.—The Holder Borden, Case No. 6,600.

For conveying materials of the wrecked vessel in such small vessel, *held* that the master and crew were entitled to compensation for transportation.—The Holder Borden, Case No. 6,600.

Evidence that libelant's whaling vessel was recently wrecked in the vicinity where a cask of oil was picked up at sea; that similar casks of oil were picked up and delivered to libelant; and that the currents were such as to drift casks in that direction from the wreck,—is sufficient prima facie proof of ownership as against the finder who conceals it.—Lears v. One Cask Oil, Case No. 8,161a.

§ 257. Sale of wreck.

A wreck sale made by authority of state laws is valid to pass title to the property, where there is no owner or agent present to protect or claim it.—The Tilton, Case No. 14,054.

The title of a sunken vessel passes to the one who pays the full value of the vessel to the owner, whether after a decree or not.—Fox v. The Lucy A. Blossom, Case No. 5,013.

SIGNALS.

Of vessels, see "Collision," §§ 88-92, 108, 109.

SIGNATURES.

To bonds, see "Bonds," § 4.
To depositions in bankruptcy, see "Bankruptcy," § 418.
To indictment, see "Indictment and Information," § 5.
To petition for removal of cause, see "Removal of Causes," § 40.
To pleading, see "Pleading," § 56.
—— in admiralty, see "Admiralty," § 87.
—— in bankruptcy, see "Bankruptcy," § 116.
—— in equity, see "Equity," § 86.
To warrant of arrest, see "Criminal Law," § 39.

SLANDER.

See "Libel and Slander."

SLAVES.

§ 1, Legality of slavery. § 2, Slave trade—Statutory provisions. § 3, —— Offenses. § 4, —— Suits for penalties and criminal prosecutions. § 5, Who are slaves. § 6, Property in slaves. § 7, Transfer of slaves. § 8, Hiring of slaves. § 9, Fugitive slaves—Fugitive slave laws. § 10, —— Recovery of fugitives. § 11, —— Liabilities for aiding runaway slaves. § 12, Regulation of slaves. § 13, Right to freedom. § 14, Proceedings to obtain freedom. § 15, Rights of property of slaves. § 16, Contracts by slaves. § 17, Crimes by slaves. § 18, Offenses against slaves. § 19, Emancipation—By deed. § 20, —— By will.

Competency as witnesses, see "Witnesses," § 26.
Right of slave to maintain action, see "Action," § 1.

§ 1. Legality of slavery.

Slavery existed only by virtue of the laws of the states where it was sanctioned.—Jones v. Van Zandt, Case No. 7,501.

§ 2. Slave trade—Statutory provisions.

See, also, "Commerce," § 1.

History and construction of the statutes in relation to the slave trade.—Tryphenia v. Harrison, Case No. 14,209; United States v. Darnaud, Id. 14,918; Same v. The La Jeune Eugenie, Id. 15,551; Same v. Naylor, Id. 15,858; Same v. The Ohio, Id. 15,914; Same v. Smith, Id. 16,332; The Wilson v. United States, Id. 17,846.

§ 3. —— Offenses.

The mere transportation of any kind of goods to Africa is not a crime under any act of congress, independently of the intent with which it is done.—United States v. Libby, Case No. 15,597.

The offense of engaging in the slave trade is committed by procuring slaves and shipping them by the vessel of another.—United States v. Andrews, Case No. 14,454.

What is the receiving of a person on board with intent to make him a slave, such as will render the captain guilty of a capital offense.—United States v. Libby, Case No. 15,597.

It is not an indictable offense in the District of Columbia to attempt to sell a free mulatto as a slave.—United States v. Henning, Case No. 15,348.

An indictment will not lie for selling a negro or slave who was unlawfully imported.—United States v. Gould, Case No. 15,239.

The master of a vessel employed in transporting a slave from the Island of St. Thomas to Cuba is indictable under Act May 10, 1800.—United States v. Kennedy, Case No. 15,525.

Kidnapping the inhabitants of a foreign country for the purpose of making them slaves.—Charge to Grand Jury, Case No. 18,269a.

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 citizens and residents of the United States to serve on a vessel used in such transportation.—Charge to Grand Jury, Case No. 18,269a.

The offense of sailing with intent to engage in the slave trade (Act April 20, 1818, §§ 2, 3) is not committed unless the vessel sail out of the port.—United States v. La Coste, Case No. 15,548.

It is an indictable offense, under the act of 1818, to fit, equip, load, or otherwise prepare, a vessel in the United States for the purpose of transporting slaves from a foreign place to any other place.—United States v. Malebran, Case No. 15,711.

An indictment under Act April 20, 1818, may be sustained for the illegal importation of an African brought from any foreign place, or from sea.—United States v. Haun, Case No. 15,329.

A person employed merely in the transportation of negroes from port to port is not guilty of piracy, under the act of 1820, for seizing negroes, or receiving them on a ship, with intent to make slaves of them.—United States v. Battiste, Case No. 14,545.

To bring a case within the act it is necessary that the negroes should have been free when seized or received on board.—United States v. Battiste, Case No. 14,545.

Either the owner of the vessel engaged in slave trade or the accused must be a citizen to constitute the offense described by Act 1820, § 4.—United States v. Brown, Case No. 14,656; Same v. Westervelt, Id. 16,668.

It is an offense under such section to receive negroes on board of the vessel from persons who have seized them and brought them to the vessel's side in violation of law.—United States v. Westervelt, Case No. 16,668.

§ 4. —— Suits for penalties and criminal prosecutions.

The circuit court has no jurisdiction of a suit to recover a penalty for aiding and abetting in the fitting out of a vessel for the slave trade.—Evans v. Bollen, Case No. 4,554.

A suit for a penalty for aiding and abetting in the fitting out of a vessel for the slave trade can only be brought in the district where the offense was committed.—Evans v. Bollen, Case No. 4,554.

A master who brought his ship from a foreign port, and surrendered her, because he believed her about to be engaged in the slave trade, awarded the informer's moiety, as against a claim thereto by the master of a steamer who gave information of facts learned from the crew while towing the slaver into port.—United States v. The Isla De Cuba, Case No. 15,448.

Intent and acts tending to make some one a slave are both necessary, under the act of 1820, to convict a person of a capital offense, though under other laws one may be guilty of a misdemeanor for merely transporting slaves from one place to another abroad.—United States v. Libby, Case No. 15,597.

Finding of 300 Africans on board a vessel *held* sufficient proof of probable cause for issuing warrant of arrest for engaging in slave trade.—In re Bates, Case No. 1,099a.

As to sufficiency of the indictment, see The Caroline, Case No. 2,418; United States v. Johnson, Id. 15,486; Same v. Kelly, Id. 15,515; Same v. La Coste, Id. 15,548; Same v. Smith, Id. 16,338; Same v. Williams, Id. 16,711.

Admissibility of evidence of the acts and statements of the accused to rebut a prima facie case of ownership in a citizen.—United States v. Brown, Case No. 14,656.

Facts and circumstances enumerated which are competent as evidence tending to show a guilty participation of the captain of a vessel in the slave trade, without actually taking slaves on board his own vessel.—United States v. Libby, Case No. 15,597.

Sufficiency of evidence to sustain an indictment for forcibly confining and detaining negroes on board a vessel with intent to make them slaves. Act May 15, 1820, § 5.—United States v. Gordon, Case No. 15,231.

If a foreign claimant of a vessel seized for being engaged in the slave trade sets up a title derived from American owners, he must show affirmatively that there remains no American ownership.—United States v. The La Jeune Eugenie, Case No. 15,551.

The truth or falsity of the charge of being engaged in the slave trade *held* to be dependent on proof of circumstances attending the fitting, equipping, and loading, as well as those of the voyage; both to be weighed in connection with the master's declarations. Case No. 15,449 affirmed.—United States v. The Isla De Cuba, No. 15,447.

Evidence of an importation contrary to Act Md. 1796, c. 67.—Maria v. White, Case No. 9,076.

As to forfeiture of vessel engaged in slave trade or built therefor, see The Alexander, Case No. 165; The Caroline, Id. 2,418; The Orion, Id. 10,575; The Porpoise, Id. 11,284; Strohm v. United States, Id. 13,539; United States v. The Augusta, Id. 14,477; Same v. The Catharine, Id. 14,755; Same v. The Kitty, Id. 15,537; Same v. The La Jeune Eugenie, Id. 15,551; The Wanderer, Id. 17,139; Charge to Grand Jury, Id. 18,269a.

§ 5. Who are slaves.

The child of a female slave is a slave, although the mother has the promise of the master that she shall be free at the end of a certain term of years.—Fanny v. Kell, Case No. 4,639.

The presumption of freedom attaches to every resident of a free state, without regard to color; and, on the same principle, in a slave state every colored man is presumed to be a slave.—Drayton v. United States, Case No. 4,074; Mandeville v. Cookenderfer, Id. 9,009; Miller v. McQuerry, Id. 9,583.

No presumption as to freedom of one born a slave arises from his being permitted to go at large without restraint.—Bell v. Hogan, Case No. 1,253.

The presumption of slavery arising from color is rebutted by evidence of general reputation of freedom.—Minchin v. Docker, Case No. 9,628; United States v. Fisher, Id. 15,101; Same v. West, Id. 16,667.

§ 6. Property in slaves.

Trover will not lie in Iowa to recover the value of slaves.—Daggs v. Frazer, Case No. 3,538.

In Virginia, a person who has been in possession of a slave for five years need not show the deed under which he claims title.—Love v. Boyd, Case No. 8,546.

A child of a slave is a slave of the person entitled to the service of the mother at the time of the birth.—Brooks v. Nutt, Case No. 1,958.

In action upon the statute of Virginia (pages 192, 374) for carrying away the plaintiff's slave, evidence will not be permitted to be given that the slave had hired himself as a free man to another master of a vessel in previous voyage. —Washington v. Wilson, Case No. 17,240.

§ 7. Transfer of slaves.

When deed of, not invalidated by removal.—Bank of United States v. Lee, Case No. 922.

A deed of a gift of a slave in Virginia *held* void unless accompanied by possession.—Lee v. Ramsay, Case No. 8,200.

Parol gift of a slave in Virginia, though accompanied by possession, *held* void, under Act 1758.—Lee v. Ramsay, Case No. 8,200.

Recording of deed of trust of slaves.—Bond v. Ross, Case No. 1,623; Lucy v. Slade, Id. 8,595.

The legacy of a slave gives no title until assented to by the executor.—Lee v. Ramsay, Case No. 8,200.

A power to sell cannot be inferred from a power to hire out a slave and receive his wages. —Daniel v. Kincheloe, Case No. 3,561.

Contracts for the sale of slaves are not enforceable after the passage of amendment 13 to the constitution.—Buckner v. Street, Case No. 2,098.

A bona fide possession of a slave, under an absolute bill of sale, without notice of a prior sale to another, *held* to give a good title after five years.—Reardon v. Miller, Case No. 11,616.

The remedy on a contract for the sale of slaves did not survive the abolition of slavery by the thirteenth amendment to the constitution. —Osborn v. Nicholson, Case No. 10,595.

Parol evidence is inadmissible to show the terms of sale of a slave where the contract was made in writing.—Scott v. Auld, Case No. 12,523.

Quære, whether children of a female slave, born while the mother was in the temporary service of a vendee for years, are slaves of the vendor or vendee.—Peter v. Cureton, Case No. 11,019.

§ 8. Hiring of slaves.

A slave hired to the master of a vessel as a mariner, with authority to sign the shipping articles, forfeits his wages by any act which would forfeit them if he were free.—Slacum v. Smith, Case No. 12,936.

A master of a vessel is not liable to the penalty under the Virginia statute for carrying a slave out of the state, unless he did it knowingly.—Lee v. Lacey, Case No. 8,193; McCall v. Eve, Id. 8,670.

Liability of master of vessel under Act Va. Jan. 25, 1798, for taking slave out of state without consent of owner.—Park v. Willis, Case No. 10,717.

§ 9. Fugitive slaves—Fugitive slave laws. The act of congress relating to the reclamation of fugitive slaves is valid.—In re Martin, Case No. 9,154; United States v. Scott, Id. 16,240b.

The fugitive slave law of September 16, 1850, is not unconstitutional.—In re Long, Case No. 8,478.

The fugitive slave law is not retroactive.—Ex parte Davis, Case No. 3,613.

The history of the enactment of the "Fugitive Slave Law," and such law construed in a charge to a grand jury, by Nelson, C. J.—Charge to Grand Jury, Fugitive Slave Law, Cases Nos. 18,261, 18,262.

Construction of the fugitive slave law of 1850. —Miller v. McQuerry, Case No. 9,583.

Act Feb. 12, 1793, providing a procedure for the reclaiming of a fugitive slave escaping into another state, is valid, and the remedy thereunder supersedes the remedy given by state laws.—In re Susan, Case No. 13,632.

The act respecting fugitives from service does not apply to slaves brought by their masters from one state to another, who afterwards escape or refuse to return.—Ex parte Simmons, Case No. 12,863.

§ 10. —— Recovery of fugitives. As to the right to reclaim fugitive slaves.—Johnson v. Tompkins, Case No. 7,416.

Action for the rescue of a slave. Pleadings, evidence, and damages therein.—Giltner v. Gorham, Case No. 5,453.

A citizen from whom his slave absconds into another state may pursue and take him without warrant, and use as much force as is necessary to carry him back to his residence.—Johnson v. Tompkins, Case No. 7,416.

The master of fugitives from labor may arrest them wherever they may be found, if he can do so without a breach of the peace, and take them back to the state from whence they fled.—Norris v. Newton, Case No. 10,307.

Proceedings under the fugitive slave laws.—Ex parte Anthony, Case No. 485; Campbell v. Kirkpatrick, Id. 2,363; Ex parte Davis, Id. 3,613; Ex parte Garnet, Id. 5,243; Gibbons v. Sloane, Id. 5,382; Johnson v. Tompkins, Id. 7,416; In re Long, Id. 8,478; In re Martin, Id. 9,154; Richardson's Case, Id. 11,778; United States v. Copeland, Id. 14,865a; Same v. Morris, Id. 15,811; Same v. Scott, Id. 16,240b; Case of Williams, Id. 17,709; Worthington v. Preston, Id. 18,055; Charge to Grand Jury, Fugitive Slave Law, Id. 18,262.

§ 11. —— Liabilities for aiding runaway slaves. As to liability for aiding a runaway slave, see Bell v. Hogan, Case No. 1,253; Driskell v. Parish, Id. 4,087–4,089; Johnson v. Tompkins, Id. 7,416; Jones v. Van Zandt, Id. 7,501, 7,502, 7,505; Mandeville v. Cookenderfer, Id. 9,009, 9,010; Oliver v. Kauffman, Id. 10,497; Same v. Weakley, Id. 10,502; Ray v. Donnell, Id. 11,590; Stanback v. Waters, Id. 13,284; Van Metre v. Mitchell, Id. 16,865a; Weimer v. Sloane, Id. 17,363.

A party acting as counsel for a fugitive slave is protected from the consequences of his acts so far only as they are within the proper limits of his professional duty.—Weimer v. Sloane, Case No. 17,363.

As to the recovery of penalties, see Hill v. Low, Case No. 6,494; Driskell v. Parish, Id. 4,087, 4,088, 4,089; Van Metre v. Mitchell, Id. 16,865.

As to criminal liability, see United States v. Cobb, Case No. 14,820; Same v. Pompey, Id. 16,066; Same v. Prout, Id. 16,094; Same v. Rycraft, Id. 16,211; Same v. Vinsent, Id. 16,623; Same v. Williams, Id. 16,705.

§ 12. Regulation of slaves. After negroes imported in violation of the laws prohibiting slave trade are mingled with the mass of the population of a state, congress has no further power over them.—United States v. Gould, Case No. 15,239.

Persons imported contrary to law, against their will, are still subject to federal control, though mingled with persons in the states.—United States v. Haun, Case No. 15,329.

The list of slaves (Act Md. 1796, c. 67) must be filed with the county clerk within three months.—Davis v. Baltzer, Case No. 3,625.

A list of slaves in which one is designated "Jo" is not a sufficient designation of sex.—Crawford v. Slye, Case No. 3,371.

Slaves escaping from Maryland, and suing for their freedom in the District of Columbia, will not be delivered up on security to return them to Maryland.—Simon v. Paine, Case No. 12,873.

Importations are forbidden by Act Md. 1796, c. 67, § 1.—Daniel v. Kincheloe, Case No. 3,561.

An importation of slaves by the owner of the life estate, though without the consent of the reversioner, *held*, would entitle them to freedom.—Taylor v. Buckner, Case No. 13,782.

A sojourner bringing his slave with him to Pennsylvania cannot claim him as a slave after a residence of six months. The slave is free by Act Pa. March 1, 1780.—Ex parte Simmons, Case No. 12,863.

The oath required by the Virginia law of December 17, 1792, is of no avail unless taken within 60 days after the party's removal.—Lucy v. Slade, Case No. 8,595.

Proof of taking the oath by the owner on importing a slave into Virginia.—Garretson v. Lingan, Case No. 5,251; Matilda v. Mason, Id. 9,280; Reeler v. Robinson, Id. 11,655; Rose v. Kennedy, Id. 12,049.

§ 13. Right to freedom. Right to freedom of slaves brought into the District of Columbia.—Amelia v. Caldwell, Case No. 278; Battles v. Miller, Id. 1,110; Ben v. Scott, Id. 1,288; Bias v. Rose, Id. 1,382; Bowman v. Barron, Id. 1,738; Dunbar v. Ball, Id. 4,128; Emanuel v. Same, Id. 4,433; Esther v. Buckner, Id. 4,537; Foster v. Simmons, Id. 4,983; Gardner v. Simpson, Id. 5,237; Harris v. Alexander, Id. 6,113; Harris v. Firth, Id. 6,120; Hobbs v. Magruder, Id. 6,551; Johnson v. Mason, Id. 7,396; Jordan v. Sawyer, Id. 7,521; Keziah v. Slye, Id. 7,752; Lee v. Lee, Id. 8,194; Loudon v. Scott, Id. 8,526; Mary v. Talburt, Id. 9,192; Moody v. Fuller, Id. 9,746; Sam v. Green, Id. 12,275; Tarlton v. Tippett, Id. 13,754; Violette v. Ball, Id. 16,954.

The right to remove slaves from one county to another in the District of Columbia determined.—Bell v. Rhodes, Case No. 1,264; Fenwick v. Tooker, Id. 4,735.

Right of freedom on sale of slave and of her children.—Graham v. Alexander, Case No. 5,662.

Right to freedom of slaves sent out of the state for three years and brought back.—Sylvia v. Coryell, Case No. 13,713.

Right to freedom of Maryland slave carried into Virginia by bailee.—Kennedy v. Purnell, Case No. 7,704.

The sale of a runaway slave *held* not to entitle her to freedom. Act Md. 1796, c. 67.—Moore v. Jacobs, Case No. 9,767.

Time of a slave's being on a voyage from Alexandria is not to be computed as part of the

year's residence which will entitle him to freedom.—Simmons v. Gird, Case No. 12,867.

A slave purchased by defendant at her request to enable her to obtain her freedom, on repayment of the purchase money must repay the whole amount before being entitled to her freedom.—Letty v. Lowe, Case No. 8,285.

Slaves carried by their owner from Mississippi to Ohio, with intent that they should become free, acquired freedom, and did not lose it by returning to Mississippi with their former master for temporary purposes.—Mathews v. Springer, Case No. 9,277.

§ 14. Proceedings to obtain freedom.

Petition and procedure to obtain freedom.—Ex parte Amy, Case No. 340; Brent v. Armfield, Id. 1,833; Burr v. Dunnahoo, Id. 2,189; Butler v. Duvall, Id. 2,238, 2,239; Same v. Hopper, Id. 2,241.

A petition will not lie for freedom to which the slaves will be entitled at a future date; nor will an injunction be granted to prevent their delivery to their owner on the ground of an anticipated violation of the law of the state.—Lee v. Preuss, Case No. 8,199.

Upon a petition for freedom, defendant may appear and disclaim without entering into the usual recognizance.—Thomas v. Scott, Case No. 13,910.

On a petition for freedom, master required to give security to have the petitioner forthcoming to prosecute her claim.—Ex parte Letty, Case No. 8,284.

Upon a petition for freedom, defendant not required to give security for wages of petitioner during the litigation.—Ben v. Scott, Case No. 1,286.

An affidavit is not necessary to continue negro petitions at the first term.—Ben v. Scott, Case No. 1,287.

An injunction will be granted, without security, against a removal pending a petition for freedom.—Rebecca v. Pumphrey, Case No. 11,-620.

The affidavit of a manumitted negro is sufficient ground for an order to issue a summons returnable immediately upon a petition for freedom.—Nan v. Moxley, Case No. 10,007.

The general issue on a petition for freedom is that which puts in issue the simple question whether free or not.—Ben v. Scott, Case No. 1,288.

As to burden of proof and evidence in such proceedings, see Bell v. Greenfield, Case No. 1,251; Davis v. Forrest, Id. 3,634; Gilbert v. Ward, Id. 5,415; United States v. Morris, Id. 15,815; William v. Van Zandt, Id. 17,685; Queen v. Neale, Id. 11,504.

A petitioner for freedom has not a right to go in search of his witnesses.—Moses v. Dunnaho, Case No. 9,873.

In a suit for freedom, the court will not question jurors, as they are called up to be sworn, as to their prepossessions in favor of freedom.—Matilda v. Mason, Case No. 9,280.

The removal of a slave out of the jurisdiction of the court after knowledge of the pendency of his petition for freedom is a contempt.—Richard v. Van Meter, Case No. 11,763.

§ 15. Rights of property of slaves.

A devise to emancipated slaves by their former master is valid in Mississippi.—Mathews v. Springer, Case No. 9,277.

§ 16. Contracts by slaves.

There can be no binding contract between a slave and his master.—Brown v. Wingard, Case No. 2,034; Fanny v. Kell, Id. 4,639; Richard v. Van Meter, Id. 11,763.

A recovery cannot be founded upon an acknowledgment of debt after emancipation.—Crease v. Parker, Case No. 3,377.

The promise of a slave does not bind him when free, although it be to pay for his freedom, or for money borrowed to obtain his freedom.—Contee v. Garner, Case No. 3,139; Crease v. Parker, Id. 3,376.

§ 17. Crimes by slaves.

The word "person," as used in an act of congress punishing any person who shall steal, etc., *held* to include slaves as well as freemen; and such construction does not render the act unconstitutional.—United States v. Amy, Case No. 14,445.

A slave charged with simple larceny is to be tried and punished by a justice of the peace.—United States v. Sims, Case No. 16,290.

The circuit court of the District of Columbia has no jurisdiction of assault and battery by a slave on a white man, and will order him to be taken before a justice of the peace to be dealt with according to law.—United States v. Ellick, Case No. 15,042.

The circuit court of the District of Columbia has no jurisdiction of an indictment for riot and assault and battery by slaves in Alexandria county.—United States v. Calvin, Case No. 14,-711.

§ 18. Offenses against slaves.

Assault and battery of a slave is an indictable offense.—United States v. Brockett, Case No. 14,651; Same v. Butler, Id. 14,697. CONTRA, see United States v. Lloyd, Case No. 15,617.

The owner of a slave who beats him cruelly, and then exposes him to public view, is guilty of a misdemeanor at common law.—United States v. Lloyd, Case No. 15,618; Hickerson v. United States, Id. 18,301.

It is an indictable offense to cruelly beat the slave of another in the public highway, and leave her there, exposed to public view.—United States v. Cross, Case No. 14,894.

The master of a fugitive slave, having him apprehended by the marshal under a warrant, cannot be arrested for assault and battery on such fugitive while making the arrest in aid and at the request of the marshal, before final hearing and order of the judge.—United States v. Morris, Case No. 15,811.

§ 19. Emancipation—By deed.

Deed of manumission, acknowledged and recorded according to law, relates back to time of execution.—Betty v. Deneale, Case No. 1,-375.

Validity of deed of manumission in Maryland.—Samuel v. Childs, Case No. 12,287.

The children of a female slave, born during a term of service for which she is sold, with an obligation by the vendee to manumit her at the expiration of the term, are entitled to freedom.—Sarah v. Taylor, Case No. 12,339.

It is competent evidence tending to show genuineness of manumission papers executed on the coast of Africa that they were attested and sealed by persons purporting to be Portuguese there, and who had acted as such in other business, and that the paper and stamp were of the kind used there in public offices.—United States v. Libby, Case No. 15,597.

A person is not properly charged as a slave after an actual manumission, though the deed is not executed until afterwards.—United States v. Bruce, Case No. 14,676.

Equity will grant relief in a case of lost manumission deed.—Alice v. Morte, Case No. 198.

§ 20. —— By will.

Slaves cannot be manumitted in Washington county, D. C., by last will, if over 45 years old

at the time the manumission is to take effect.—Wigle v. Kirby, Case No. 17,631.

Manumission by will, what constitutes.—Fidelio v. Dermott, Case No. 4,754.

Construction of will on the question of emancipation of slaves.—Quando v. Clagett, Case No. 11,492.

Emancipation by will does not need the assent of executor.—Chapman v. Fenwick, Case No. 2,604.

No implied emancipation arises from a legacy of $25 to slaves ordered by the will to be sold.—Bell v. McCormick, Case No. 1,255.

A will is not admissible as an instrument of manumission, under Act Md. c. 67, § 29.—Bell v. Greenfield, Case No. 1,251.

The child of a slave, born after the death of her owner, and before she arrives at the age at which she is entitled to manumission by his will, is a slave.—Samuel v. Childs, Case No. 12,287.

A slave manumitted by will, to take effect at a future date, is not entitled to freedom until that time, but the court will enjoin the respondent from removing him from its jurisdiction.—Kitty v. McPherson, Case No. 7,860.

Where freedom was granted a slave, provided "he behaves well until the year 1837, and continues to hire for good wages," it may be shown that he did not behave well, but ran away.—Coots v. Morton, Case No. 3,205.

SLEEPING CARS.

See "Carriers," § 52.

SMUGGLING.

See "Customs Duties," §§ 77–128.

SOCIETIES.

See "Associations"; "Religious Societies."

SPANISH GRANTS.

See "Public Lands," §§ 81–103.

SPECIAL LAWS.

See "Statutes," §§ 7, 8.

SPECIFIC LEGACIES.

See "Wills," § 50.

SPECIFIC PERFORMANCE.

§ 1, Adequate remedy at law. § 2, Discretion of court in granting specific performance. § 3, Effectiveness of remedy. § 4, Against whom enforced. § 5, Certainty of contract. § 6, Consideration and mutuality of contract. § 7, Mistake. § 8, Oral contracts. § 9, Sufficiency of vendor's title. § 10, Agreements against conscience and unreasonable or illegal contracts. § 11, Abandonment of contract. § 12, Performance by complainant. § 13, Unfair conduct, negligence, and laches. § 14, Proceedings and relief.

§ 1. Adequate remedy at law.

Specific performance will not be decreed where adequate compensation can be had at law.—Roundtree v. McLain, Case No. 12,084a.

The cases in which specific performance of building contracts have been decreed stated by Miller, J.—Ross v. Union Pac. Ry. Co., Case No. 12,080.

A contract to build a railroad will not be enforced in equity. There is an adequate remedy at law.—Ross v. Union Pac. Ry. Co., Case No. 12,080; Fallon v. Railroad Co., Id. 4,629.

The court may decree specific execution of a contract to give certain specific collateral security.—Robinson v. Cathcart, Case No. 11,946.

A bill in equity will lie for the specific performance of a contract for the sale of three-eighths of a vessel being built, with a right of the purchaser to command, and to enjoin a sale of any interest therein, except with notice of such contract, and to prevent the appointment of any other person as master.—Higgins v. Jenks, Case No. 6,468.

Bonds of the United States are public stocks, and a covenant for their delivery will not be specifically enforced. The same rule is applicable in respect of railway shares.—Ross v. Union Pac. Ry. Co., Case No. 12,080.

Where a harbor board was created by legislative act, with authority to contract for the improvement of a harbor, and the county in which the harbor was situated was required to deliver its bonds to the board, to be used in paying the contractors, *held*, that where the harbor board was afterwards abolished, contractors who had already completed their contract could maintain a bill in equity to compel the county to deliver the bonds directly to them.—Kimball v. Mobile, Case No. 7,774.

§ 2. Discretion of court in granting specific performance.

The specific performance of an agreement is not a matter of right, but rests in the sound discretion of the court.—Tobey v. County of Bristol, Case No. 14,065.

§ 3. Effectiveness of remedy.

Unless the court can decree specific performance of the whole of a contract, it will not interfere to enforce any part of it.—Ross v. Union Pac. Ry. Co., Case No. 12,080.

Specific performance of an agreement will not be enforced where the decree would be a vain and imperfect act, or where the specific performance might be productive of injustice to the parties.—Tobey v. County of Bristol, Case No. 14,065.

§ 4. Against whom enforced.

The assignee of a covenant for title may enforce performance against the heir of the covenantor, to the extent of the interest inherited, although such covenant was the joint covenant of the ancestor and another, and such heir is not named therein.—Fields v. Squires, Case No. 4,776.

Equity will decree specific execution equally in behalf of the vendor as in behalf of the vendee.—Bronson v. Cahill, Case No. 1,926.

§ 5. Certainty of contract.

Specific performance will not be decreed where the contract is uncertain.—Bowen v. Waters, Case No. 1,725; Kendall v. Almy, Id. 7,690; Roundtree v. McLain, Id. 12,084a; Smith v. Burnham, Id. 13,019.

Specific performance of a contract to convey land will be decreed, although the evidence of the conclusion of the agreement is not clear, where valuable improvements have been made by the party put into possession in expectation of such an agreement.—Thompson v. King, Case No. 13,962.

§ 6. Consideration and mutuality of contract.

An executory agreement, or an imperfect conveyance, without a valuable or meritorious consideration, will not be enforced in equity.—Burton v. Le Roy, Case No. 2,217.

The relation of son-in-law does not constitute such a consideration.—Burton v. Le Roy, Case No. 2,217.

A promise by a purchaser, after a sheriff's sale to him, to reconvey to another, is without consideration, and specific performance cannot be required.—Lenox v. Notrebe, Case No. 8,246c.

A bond for a deed, on consideration that the obligors, "the trustees of the schools of Portland, and their successors in office," shall perform certain things, is a mere gratuitous promise until performed, and will not be enforced.—Chapman v. School Dist., Case No. 2,608.

Mere inadequacy of price is no ground for refusing assistance.—Garnett v. Macon, Case No. 5,245.

But this is not the rule where the consideration is grossly inadequate.—Surget v. Byers, Case No. 13,629.

An executory contract will not be specifically enforced unless the remedy is mutual.—Ross v. Union Pac. Ry. Co., Case No. 12,080.

Where only part of vendors were bound for a title, there is a want of mutuality, and a specific execution will not be decreed.—Bronson v. Cahill, Case No. 1,926.

§ 7. Mistake.

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.—Woodworth v. Cook, Case No. 18,011.

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.—Woodworth v. Cook, Case No. 18,011.

§ 8. Oral contracts.

Sufficiency of memorandum under the statute of frauds to render the contract specifically enforceable in equity.—Bissell v. Farmers' & Mechanics' Bank, Case No. 1,446.

An oral promise by purchaser at execution sale to reconvey to the execution debtor on reimbursement is not enforceable in equity.—Cocks v. Izard, Case No. 2,934.

Only those acts are considered as part performance which would operate as a fraud on parties unless the whole contract is executed.—Ex parte Storer, Case No. 13,490.

The payment of part of the price is not such an act of part performance as to form the basis of relief in equity.—Ex parte Storer, Case No. 13,490.

Otherwise as to possession taken of land, or where improvements are made.—Ex parte Storer, Case No. 13,490.

§ 9. Sufficiency of vendor's title.

Where the contract is for a good and operative title, the court will not compel the party to accept a defective title.—Garnett v. Macon, Case No. 5,245; Sohier v. Williams, Id. 13,159; Watts v. Waddle, Id. 17,295.

The vendee's objections may be extended to incumbrances of every description which may embarrass him in the full enjoyment of his purchase.—Garnett v. Macon, Case No. 5,245.

A title may be doubtful because it depends on a doubtful interpretation of a will, if all parties who may be interested in the estate are not bound by the decree.—Sohier v. Williams, Case No. 13,159.

Pending a bill to vacate title, specific performance of a contract for the sale of land will be decreed if the vendor is able to make a good title at any time before the decree is pronounced, notwithstanding dismissal of a former bill by the vendor on account of defective title.—Hepburn v. Auld, Case No. 6,389.

§ 10. Agreements against conscience and unreasonable or illegal contracts.

Specific performance will not be decreed where the contract is oppressive and against conscience. —Surget v. Byers, Case No. 13,629; Roundtree v. McLain, Id. 12,084a; Bowen v. Waters, Id. 1,725.

If a contract is unreasonable, equity will not interfere.—Bowen v. Waters, Case No. 1,725; Garnett v. Macon, Id. 5,245; Roundtree v. McLain, Id. 12,084a.

Specific performance will not be decreed of an agreement of a debtor to procure the obligation of a third person and assign it to the creditor in consideration of forbearance.—Roundtree v. McLain, Case No. 12,084a.

Agreement by foreign railroad company with domestic company to build road different from that required by domestic company's charter will not be specifically enforced.—Cleveland, P. & A. R. Co. v. Franklin Canal Co., Case No. 2,890.

A creditor who induces an assignee in bankruptcy to agree to transfer to him, for a nominal consideration, a property right of value, on the assertion that it is of no value, is not entitled to a specific performance.—In re Mott, Case No. 9,878a.

A decree will not be refused for an incorrect opinion by plaintiff upon a subject respecting which defendant is as competent a judge as the plaintiff, if honestly made.—Robinson v. Cathcart, Case No. 11,947.

§ 11. Abandonment of contract.

To sustain the vendee's allegation that the contract was abandoned by implication, the conduct of the vendor ought to be such as to justify a reasonable man in believing that he acquiesced. —Garnett v. Macon, Case No. 5,245.

§ 12. Performance by complainant.

The party seeking specific performance must show that he has been always ready to perform his part.—Kendall v. Almy, Case No. 7,690; McNeil v. Magee, Id. 8,915.

On a bill against the purchaser of the legal title a notice to defendant, relied on by plaintiff, must be averred and proved.—McNeil v. Magee, Case No. 8,915.

A covenant to convey a particular title if after acquired by the covenantor may be enforced in equity, if such covenantor neglect to perform the same, without a prior demand and refusal.—Fields v. Squires, Case No. 4,776.

Specific performance may be enforced in favor of a party who has not punctually performed the contract, where his default admits of compensation.—Coe v. Bradley, Case No. 2,941.

An entry by consent of the obligor under a bond for title, after consideration partly paid, and the making of improvements, will entitle the obligee to specific performance.—Felch v. Hooper, Case No. 4,717.

A bill will not lie to enforce a contract to sell land, whose consideration was money to be paid and certain work to be done, where the work is not done, and there has been no offer to perform. —Denniston v. Coquillard, Case No. 3,801.

An agreement to convey if certain conditions were complied with within a certain time will not be enforced where the other party was not bound to perform the conditions, and did not do so within the time.—Prentice v. Betteley, Case No. 11,381.

Where a contract of sale provides that the same shall be void if the vendee does not pay the purchase money within a prescribed period, specific performance will not be decreed where payment is not made within such time.—Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

The performance of a comparatively inconsiderable part of a contract (e. g. the expenditure of $50,000 in building a railroad which will cost $12,000,000) does not take it out of the class of executory contracts.—Ross v. Union Pac. Ry. Co., Case No. 12,080.

The failure to tender money due under a contract until five years after the time limited by the contract for payment is such laches as will justify the dismissal of the plaintiff's bill.—Hollingsworth v. Fry, Case No. 6,619.

A delay of two years in making payment *held* not to bar specific performance where the vendee had made valuable improvements without objection from the vendor, who sustained no damage which interest would not compensate.—Mason v. Wallace, Cases Nos. 9,255, 9,256.

§ 13. Unfair conduct, negligence, and laches.

Unfair conduct of complainant in relation to a parol agreement to convey lands, is good ground of refusing performance.—Thompson v. Tod, Case No. 13,978.

Where both parties have been grossly negligent, equity will leave them to their legal remedies.—Longworth v. Taylor, Case No. 8,490.

Specific performance will not be decreed at the instance of the vendor of property greatly deteriorated in value, where he has been guilty of gross negligence.—Cooper v. Brown, Case No. 3,-191.

Where time is material, the right to specific performance may depend upon it.—Garnett v. Macon, Case No. 5,245.

In cases in which the contract and the remedy are not reciprocal, or in which there has been a considerable change in the value of the land, equity will consider time to be material in the case of an agreement to convey.—Prentice v. Betteley, Case No. 11,381.

Time will not be considered as essential, where the same justice can be done between the parties, and neither has sustained inconvenience by the delay, and the property has not changed in value.—Longworth v. Taylor, Case No. 8,490.

Where the property had decreased half in value, the court refused, after a delay of many years, to decree specific performance, but ordered a rescission of the contract and repayment of the amount paid.—McKay v. Carrington, Case No. 8,841.

After long delay and laches, equity will not decree specific performance of an award respecting realty where there has been a material change of circumstance and injury to the other party.—McNeil v. Magee, Case No. 8,915.

Bill for reconveyance of an estate upon an agreement and subsequent award dismissed under the circumstances, the bill being brought against purchasers after a considerable lapse of time, the original vendee having died insolvent. —McNeil v. Magee, Case No. 8,915.

A bill for specific performance of an agreement to deliver a contract of insurance cannot be maintained after the lapse of 10 years.—Markey v. Mutual Ben. Life Ins. Co., Case No. 9,-091.

§ 14. Proceedings and relief.

On a bill for specific performance, where defendant, before the hearing, will probably render itself incapable of performing the contract specifically, an injunction will be allowed only where the bill states a case for the relief asked. —Ross v. Union Pac. Ry. Co., Case No. 12,080.

The assignee of a vendee is a necessary party in a suit for specific performance of a contract to convey.—Longworth v. Taylor, Case No. 8,-490.

The tenant for life and contingent remainder-man in fee may represent the inheritance, in a bill for specific performance, though their interests are merely equitable, if the issue of the remainder-man will take, if he fails to do so by reason of the contingency.—Sohier v. Williams, Case No. 13,159.

The admission of a parol agreement in the answer will not prevent defendant from protecting himself against a performance by pleading the statute.—Thompson v. Tod, Case No. 13,978.

Length of time is no objection to a decree, if not pleaded in the answer, where the condition of the parties and property remains substantially the same.—Hunter v. Marlboro, Case No. 6,908.

Where the agreement admitted by the answer differs from that stated in the bill, complainant must prove the contract aliunde.—Thompson v. Tod, Case No. 13,978.

The distinction between ordering a contract to be rescinded, and decreeing a specific performance, commented upon.—Bowen v. Waters, Case No. 1,725.

On a bill for specific performance the court will not decree repayment of illegal interest which has been paid.—Longworth v. Taylor, Case No. 8,491.

Where the vendor agreed that the deed should be made before payment of the consideration, he cannot require the money to be brought into court.—Johnson v. Sukeley, Case No. 7,414.

A decree in Kentucky, for the conveyance of land in Ohio, though executed by a commissioner under the statute, in pursuance of the decree, can give no title.—Watts v. Waddle, Case No. 17,295.

The decree of title in one state to lands in another state cannot operate so as to vest the legal title.—Watts v. Waddle, Case No. 17,295.

Sufficiency of execution of deed of infant by guardian under decree for specific performance. —Bank of the United States v. Van Ness, Case No. 938.

A purchaser *held* to be entitled to recover back his deposit and expenses incurred in searching and examining the title, where the order compelling him to complete the purchase is withdrawn by consent of the vendor, a receiver.—Drake v. Goodridge, Case No. 4,063.

SPIRITUOUS LIQUORS.

See "Intoxicating Liquors."

STAGE DRIVERS.

See "Carriers."

STALE DEMAND.

See "Equity," §§ 18–21.

STAMP TAXES.

See "Internal Revenue."

STATEMENT.

Of facts agreed on for submission to court, see "Submission of Controversy."

STATES.

§ 1, Admission of states. § 2, Secession and reconstruction. § 3, Boundaries. § 4, Rights of state. § 5, Powers in general. § 6, Contracts. § 7, Bonds and securities. § 8, Officers. § 9, Actions.

See, also, "United States."

Attorney general, see "Attorney General."
Conflict of jurisdiction, see "Courts," §§ 109–119; "Criminal Law," § 13.
Courts, see "Courts."
Effect of state statutes on jurisdiction of federal courts, see "Admiralty," § 1; "Courts," § 14.
Grants to state, see "Public Lands," §§ 38, 39.
Interstate extradition, see "Extradition," §§ 16–20.
Legislative power, see "Constitutional Law," § 2; "Municipal Corporations," § 6.
Priority of claims in bankruptcy, see "Bankruptcy," § 431.
Public lands, see "Public Lands," §§ 60–76.
Rebellion, see "War," §§ 79–90.
Regulation of pilotage, see "Pilots," § 1.
Restriction on states, see "Commerce," § 1.

§ 1. **Admission of states.**

On the admission of a state into the Union, the United States parts with jurisdiction over land owned by it therein, so far as the general purposes of government are concerned, except as to such jurisdiction as is expressly reserved and excepted.—United States v. Stahl, Case No. 16,373.

After a state has been admitted into the Union upon an equal footing with the original states, the United States cannot abridge its sovereign power over territory embraced within its limits, by a treaty with an Indian tribe therein.—United States v. Forty-Three Gallons of Whisky, Case No. 15,136.

The territory of Indiana, by coming into the Union, consents to such constitutional provisions as are repugnant to the compact in the ordinance of 1787.—Vaughan v. Williams, Case No. 16,903.

The fact that congress imposed certain conditions on the application of Georgia for admission into the Union under the constitution of 1868 does not give such constitution the force or effect of an act of congress.—Marsh v. Burroughs, Case No. 9,112.

The validity of a decree of the congress of the state of Tamaulipas cannot be called in question.—Brownsville v. Cavazos, Case No. 2,043.

A resolution of the Tamaulipas congress, passed after the lands in dispute had become a part of the territory of the state of Texas, is not binding as res judicata.—Brownsville v. Cavazos, Case No. 2,043.

§ 2. **Secession and reconstruction.**

No state has a right to withdraw from the Union at pleasure, with or without cause.—United States v. Cathcart, Case No. 14,756.

Act June 25, 1868, to admit certain of the seceding states to representation in congress, did not re-enact the constitutions of such states.—Hatch v. Burroughs, Case No. 6,203.

The recognition by the national government of the government established at Wheeling, Va., after the secession of the state, as the lawful government of Virginia, is binding on the judiciary.—Griffin's Case, Case No. 5,815.

Trials under the reconstruction acts, by military commission, could only be for the violation of some known law in force in the state, and the punishment inflicted only that provided by law.—Ex parte Hewitt, Case No. 6,442.

§ 3. **Boundaries.**

Proper boundaries of New Jersey on the Delaware river under the original grants and the treaty of peace.—Corfield v. Coryell, Case No. 3,230.

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.—Case of Pea Patch Island, Case No. 18,311.

Under the patent and charter of Connecticut of March 19, 1631, and April 23, 1662, respectively, and the patent of March 12, 1664, to the Duke of York, and the possession claimed and held pursuant thereto, the islands lying easterly of the land boundary between Connecticut and New York and adjacent to the Connecticut shore are within the jurisdiction of Connecticut, and this jurisdiction includes Goose Island.—Keyser v. Coe, Case No. 7,750.

The alteration of the boundary line between Michigan and Ohio cannot affect titles to real estate acquired by judicial proceedings within the territory changed, prior to the change.—Piatt v. Oliver, Case No. 11,115.

§ 4. **Rights of state.**

The rights of the crown devolved on the states by the Revolution, and were confirmed by the treaty of peace to them in their sovereign capacity.—Bennett v. Boggs, Case No. 1,319.

The United States laws 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.—Charge to Grand Jury, Treason, Case No. 18,274.

§ 5. **Powers in general.**

In the absence of an express prohibition, a grant of power to congress does not prevent the states from continuing to act on a subject within the grant until congress legislates fully concerning it, and so as to conflict with the acts of the state.—United States v. New Bedford Bridge, Case No. 15,867.

The grant of unqualified power to the general government to do a particular act is considered exclusive, where its exercise by the state government would be inconsistent therewith.—Golden v. Prince, Case No. 5,509.

Where a statute of the United States makes any provision upon a subject within the scope of the powers of the general government, the state laws upon the same subject cease to operate.—United States v. Mundell, Case No. 15,834.

Jurisdiction which a state has once exercised cannot be withdrawn from it, and conferred on the general government, without the consent of the state.—United States v. Stahl, Case No. 16,373.

State statute prohibiting employment of Chinese by contractors upon public works *held* in conflict with the treaty with China, and void.—Baker v. Portland, Case No. 777.

A state cannot pass bankrupt and naturalization laws, notwithstanding congress has failed to legislate on such subjects.—Golden v. Prince, Case No. 5,509.

It is not competent for the legislature of a state to declare that its citizens shall not make such contracts as they please out of the state.—Lamb v. Bowser, Cases Nos. 8,008, 8,009.

§ 6. **Contracts.**

A state may by contract give certain persons exclusive privileges.—Bancroft v. Thayer, Case No. 835.

The colonization contract made with Mercer, January 22, 1844, *held* valid and binding on the republic of Texas.—Hancock v. Walsh, Case No. 6,012.

A compact entered into between two states, with the assent of congress, is binding on those states and the citizens of each.—Fleeger v. Pool, Case No. 4,860.

Grants made by North Carolina and Tennessee, beyond their boundaries, as admitted in the compact between the states of Tennessee and Kentucky, are void by such compact.—Fleeger v. Pool, Case No. 4,860.

The compact between Virginia and Maryland does not prevent Maryland from prohibiting the

importation of Virginia slaves from Virginia.—Delilah v. Jacobs, Case No. 3,773.

The resolution of annexation of Texas, assented to by the convention of Texas, is equally binding on the state, whether considered as a treaty or as a contract.—Hancock v. Walsh, Case No. 6,012.

§ 7. **Bonds and securities.**

Minnesota state railroad aid bonds issued under the amendment of the state constitution of April 15, 1858, are valid.—Chamberlain v. St. Paul & S. C. R. Co., Case No. 2,578.

Amendment of April 15, 1858, to Minnesota state constitution, authorizing the issuance of bonds by the state in aid of railroads, and the nature of the remedies by foreclosure and forfeiture, considered.—Chamberlain v. St. Paul & S. C. R. Co., Case No. 2,578.

The provisions of the Missouri constitution as to aid to railways, amendatory acts, and titles to acts, discussed.—Foster v. Callaway County, Case No. 4,967.

An act authorizing the indorsement by the governor 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.—Young v. Montgomery & E. R. Co., Case No. 18,166.

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.—Young v. Montgomery & E. R. Co., Case No. 18,166.

Act Ga. Dec. 3, 1866, was designed to protect the state from loss by indorsement of railroad bonds, and did not make the state a trustee for bondholders.—Cunningham v. Macon & B. R. Co., Case No. 3,483.

There is nothing in the constitution of the United States forbidding states or counties to borrow money and give proper securities. Such securities are not bills of credit within the meaning of the constitution.—McCoy v. Washington County, Case No. 8,731.

Construction of Const. N. Y. 1846, art. 7, §§ 4, 9, forbidding release or compromise of state claims against incorporated companies, and the giving or loaning of state credit in aid of corporations, in connection with Act N. Y. 1847.—Darby v. Wright, Case No. 3,574.

§ 8. **Officers.**

A state treasurer *held* not personally liable for moneys paid out of a fund deposited by the company for the protection of its policy holders, where he acts in good faith under the advice of the law officers of the state that the claims paid are proper charges on the fund.—Firemen's Ins. Co. v. Hemingway, Case No. 4,797.

A special fund for the payment of a claim having been applied to other uses by the state treasurer, a court of equity cannot restrain such officer from applying to general purposes other subsequently received funds, not specially dedicated by law, nor compel by mandamus that they be substituted in place of the special fund.—Self v. Jenkins, Case No. 12,640.

A taxpayer cannot maintain a suit against state officers to restrain them from executing and issuing bonds authorized by an unconstitutional act.—Morgan v. Graham, Case No. 9,801.

An unconstitutional law affords no justification to a state officer for an act injurious to an individual.—Astrom v. Hammond, Case No. 596.

§ 9. **Actions.**

A state cannot be sued in its courts without its consent.—Adams v. Bradley, Case No. 48.

Appearance of attorney general or district attorney without express authority of law does not give jurisdiction.—Adams v. Bradley, Case No. 48.

Jurisdiction of federal courts, see "Courts," § 17.

STATUTES.

I. ENACTMENT, REQUISITES, AND VALIDITY IN GENERAL.

§ 1, Enactment. § 2, Adoption of existing act. § 3, Provision as to time of taking effect. § 4, Publication. § 5, Mistakes and ambiguities. § 6, Determination of validity.

II. GENERAL AND SPECIAL LAWS.

§ 7, What constitutes a special law. § 8, Curative acts.

III. SUBJECTS AND TITLES OF ACTS.

§ 9, Sufficiency of title and expression of subject in title. § 10, Plurality of subjects.

IV. AMENDMENT AND REVISION.

§ 11, Amendment. § 12, Revised statutes.

V. REPEAL AND REVIVAL.

§ 13, Repeal in general. § 14, Implied repeal. § 15, Effect of repeal. § 16, Revival.

VI. CONSTRUCTION AND OPERATION.

§ 17, General rules of construction—Construction by legislature. § 18, —— Construction by executive officers. § 19, —— Legislative intent. § 20, —— Debates in legislature. § 21, —— Statutes in pari materia. § 22, —— Statutes of other state or country. § 23, —— Statutes adopted from other state or country. § 24, —— Conflicting sections. § 25, —— Words and phrases. § 26, —— Punctuation. § 27, —— Construction in connection with title and preamble. § 28, —— Considering whole act. § 29, —— Giving effect to every part of statute. § 30, —— Effect of partial invalidity. § 31, General and special provisions. § 32, Particular classes of statutes—Penal statutes. § 33, —— Remedial statutes. § 34, Time of taking effect. § 35, Retroactive operation.

VII. PLEADING AND EVIDENCE.

§ 36. Pleading. § 37, Evidence.

Adoption by United States courts of state laws as rules of decision, see "Courts," §§ 75–81.
Constitutionality, see "Constitutional Law," § 1.
Impairing obligation of contract, see "Constitutional Law," §§ 6–9.
Retrospective or ex post facto laws, see "Constitutional Law," § 10.
Statute of frauds, see "Frauds, Statute of."
—— of limitation, see "Limitation of Action."
Statutory new trial, see "New Trial," § 28.

Provisions relating to particular subjects.

See "Bankruptcy," §§ 2–6; "Bastards," § 2; "Corporations"; "Customs Duties"; "Descent and Distribution"; "Frauds, Statute of"; "Insolvency," §§ 1–4; "Internal Revenue"; "Intoxicating Liquors"; "Maritime Liens," §§ 17–26; "Mechanics' Liens"; "Seamen," §§ 1–13.

I. ENACTMENT, REQUISITES, AND VALIDITY IN GENERAL.

§ 1. **Enactment.**

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 constructive notice to anybody of anything.—Young v. Montgomery & E. R. Co., Case No. 18,166.

A ratification by congress of a charter granted a canal company by a state makes it an act of congress.—Chesapeake & O. Canal Co. v. Key, Case No. 2,649.

The senate has constitutional power to originate an act increasing the postage on certain mail matter. (Act March 3, 1875.) Such a bill is not a bill "for raising revenue," such as the house only can originate.—United States v. James, Case No. 15,464.

§ 2. Adoption of existing act.
Where any part of a state law is not applicable to the case at the time of the enactment of an act of congress referring to the laws of the states as rules of decision, the whole statute is inapplicable.—United States v. Mundell, Case No. 15,834.

In the adoption of the laws of another state by the governor and judges of the territory of Michigan a change in one word made a material difference in the construction of the law. *Held*, that a subsequent adoption by a revision commission, without change, made the act as published binding.—Peck v. Pease, Case No. 10,-894.

§ 3. Provision as to time of taking effect.
The time when an act of congress which is approved and signed by the president of the United States takes effect must appear by the act itself. —In re Welman, Case No. 17,407.

§ 4. Publication.
A law authorizing a city to issue bonds is not a "general law" which is required by the Wisconsin constitution to be published before going into effect.—Luling v. Racine, Case No. 8,603.

§ 5. Mistakes and ambiguities.
A mistake apparent upon the face of the act, if it may be corrected by other language therein, is not fatal.—Blanchard v. Sprague, Case No. 1,517.

A mistake in descriptive words, if of the essence of the act, and permitting its reference to other than the subject intended, is fatal.—Blanchard v. Sprague, Case No. 1,517.

A court will not substitute other words and dates to maintain an act making erroneous references to the things aliunde.—Blanchard v. Sprague, Case No. 1,517.

Where there is such an ambiguity in a penal statute as to leave reasonable doubts of its meaning, the penalty will not be inflicted.—The Enterprise, Case No. 4,499.

§ 6. Determination of validity.
Where a law bears upon its face the requisite authentication, the vote by which it was passed cannot be inquired into.—Falconer v. Campbell, Case No. 4,620.

Laws within the general scope of the authority of the legislature cannot be declared void because contrary to the principles of natural justice.—Minge v. Gilmour, Case No. 9,631.

It cannot be set up against the validity of an act of congress that it conflicts with an existing treaty with a foreign nation.—Ropes v. Clinch, Case No. 12,041.

The power to declare statutes void exists only in cases of contravention, opposition, or repugnancy to some express restriction or provision in the constitution.—United States v. The William, Case No. 16,700.

Where an act is capable of two interpretations, the court will adopt the one which will sustain it, rather than one which will render it void as unconstitutional.—St. Louis Nat. Bank v. Papin, Case No. 12,239.

Judicial inquiry into the motives of legislators in passing a statute is not permissible.—Kountze v. Omaha, Case No. 7,928.

A construction which would impute to the legislature a design to perpetrate a fraud should be avoided if it can reasonably be done.—Milner v. Pensacola, Case No. 9,619.

An interpretation which requires the introduction of new provisions and clauses to render the statute sensible or practicable will not be adopted.—United States v. Bassett, Case No. 14,539.

II. GENERAL AND SPECIAL LAWS.

§ 7. What constitutes a special law.
A statute legalizing a special election to authorize the issuing of municipal bonds to aid a private enterprise *held* in violation of Const. Kan. art. 12.—Commercial Nat. Bank v. Iola, Case No. 3,061.

Act Mo. March 31, 1868, relating to the discharge of the state's mortgage on the Pacific Railroad, *held* not unconstitutional, as a special law, or as relating to more than one subject.—Murdock v. Woodson, Case No. 9,942.

§ 8. Curative acts.
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.—Wright v. Taylor, Case No. 18,096.

III. SUBJECTS AND TITLES OF ACTS.

§ 9. Sufficiency of title and expression of subject in title.
Act not void because its title misrecites the date of the act to which it is supplementary.—Baltimore & O. R. Co. v. Van Ness, Case No. 830.

Act not void because its title purports it to be an act supplementary to an act which expired by its own limitation, where such act was subsequently revived.—Baltimore & O. R. Co. v. Van Ness, Case No. 830.

An act entitled "An act to tax and regulate" certain named foreign corporations cannot contain any provision in relation to any other foreign corporation. Const. Or. art. 4, § 20.—Oregon & W. Trust Inv. Co. v. Rathburn, Case No. 10,555.

§ 10. Plurality of subjects.
An act entitled "To incorporate the town of," etc., is not open to the objection that it relates to more than one subject, etc., where it provides for the issue of railroad aid bonds.—Judson v. Plattsburg, Case No. 7,570.

An act whose subject is disposing of insolvent debtors' property may properly include a provision that the assignment in insolvency shall discharge prior attachments.—Mayer v. Cahalin, Case No. 9,340.

Query, whether an act involving alternatives, mutually dependent, whose title specifies all the purposes except one, and that consequential, violates the constitutional provision that no law shall contain more than one subject, which subject shall be clearly expressed in the title.—Leger v. Rice, Case No. 8,210.

IV. AMENDMENT AND REVISION.

§ 11. Amendment.
Under Const. Or. art. 4, § 22, a section of a statute cannot be amended by simply repealing a clause or subdivision of it.—Sayles v. Oregon Cent. Ry. Co., Case No. 12,423.

§ 12. Revised statutes.
Where the language used in a revision cannot possibly bear the same construction as the original act, full effect must be given the new enactment.—The Brothers, Case No. 1,968.

In the construction of the Revised Statutes no change of meaning will be imputed to a

change of phraseology in the re-enacted statute unless the language used indicates an intended departure therefrom.—United States v. Tilden, Case No. 16,520.

A section in a revision will not be given a construction in opposition to its positive provisions, in order to conform it to the pre-existing statute.—Dodge v. Arthur, Case No. 3,950.

The enactment of the Revised Statutes was not original legislation, but merely a more convenient expression of the law existing on December 1, 1873.—United States v. Moore, Case No. 15,804.

The Revised Statutes as enacted June 22, 1874, did not alter statutory provisions in force December 1, 1873.—The L. W. Eaton, Case No. 8,612.

The publication of the second edition of the Revised Statutes under Act March 2, 1877, did not affect any statute passed subsequent to December 1, 1873.—McLean v. St. Paul & C. Ry. Co., Case No. 8,893.

The Revised Statutes must be regarded as passed on December 1, 1873, and all other acts of the same session of congress passed that date are to be treated as subsequent acts repealing the Revised Statutes, so far as they are inconsistent therewith.—In re Oregon Bulletin Printing & Publishing Co., Case No. 10,561.

V. REPEAL AND REVIVAL.

§ 13. Repeal in general.
A statute can be repealed only by an express provision of a subsequent law, or by necessary implication.—Morlot v. Lawrence, Case No. 9,815.

§ 14. Implied repeal.
The law does not favor the repeal of a statute by implication.—Cooke v. Ford, Case No. 3,173; United States v. One Hundred Barrels of Spirits, Id. 15,948.

And only a necessary and irresistible implication will be held to operate a repeal of a statute.—The Argo, Case No. 516; Cooke v. Ford, Id. 3,173; United States v. Ten Thousand Cigars, Id. 16,451.

A statute repeals an earlier one if it covers the same subject-matter.—Butler v. Russell, Case No. 2,243; Ogden v. Witherspoon, Id. 10,461; United States v. Barr, Id. 14,527; Same v. Cheeseman, Id. 14,790.

A subsequent statute inconsistent with or repugnant to a former statute repeals it by implication.—Ogden v. Witherspoon, Case No. 10,461; In re Oregon Bulletin Printing & Publishing Co., Id. 10,561; Schenck v. Peay, Id. 12,451; United States v. Barr, Id. 14,527; Same v. Irwin, Id. 15,445; West v. Pine, Id. 17,423; Woods v. Jackson Iron Mfg. Co., Id. 17,993.

Such repeal will operate only to the extent of the repugnance.—United States v. One Hundred Barrels of Spirits, Case No. 15,948.

The adoption of a treaty, with the stipulations of which the provisions of a state law are inconsistent, is equivalent to a repeal of such law.—Fisher v. Harnden, Case No. 4,819.

The doctrine that a statute is impliedly repealed by a subsequent act revising the whole matter of the first does not apply when the revisory statute itself prescribes its operation upon the previous act. When that is done, no other effect can be given to the revisory act.—Patterson v. Tatum, Case No. 10,830.

A prohibition of amendments by mere reference to the title of an act does not prevent repeals by implication.—Mayer v. Cahalin, Case No. 9,340.

Implied repeal not inferred by omission of short expression in repetition in supplemental act of section of former statute.—Aspden's Estate, Case No. 589.

Where a subsequent statute expressly substitutes a different tribunal to determine a question, it impliedly repeals the former statute.—United States v. One Case of Hair Pencils, Case No. 15,924.

The provision in a subsequent act providing a limitation for a prosecution, "any law or provision to the contrary notwithstanding," repeals prior provisions on the same subject.—United States v. Platt, Case No. 16,054a.

In the case of inconsistent acts passed on consecutive days, a joint resolution passed on the later day directing that the earlier act be not published until some days later shows the legislative intention that the earlier act should not be repealed, where publication is necessary to put the act in force.—In re Northwestern Ry. Co., Case No. 10,340.

A general law admitting interested parties to testify as witnesses in all cases *held* not repealed by a subsequent special law admitting interested parties to testify in certain contingencies.—United States v. Ten Thousand Cigars, Case No. 16,451.

The sections of the Revised Statutes in relation to crime are not repealed by subsequent statutes prescribing different punishments.—United States v. Ulrici, Case No. 16,594.

§ 15. Effect of repeal.
The repealing act will be construed as totally abrogating the law repealed, except as to such rights as became perfect under it.—Pruseux v. Welch, Case No. 11,456.

The repeal of a prohibitory act does not validate contracts made while the prohibition was in force.—Milne v. Huber, Case No. 9,617.

A statute requiring execution against the principal before suing on appeal bond, in force when the bond was executed, *held* to be the law of the contract, and it is not affected by the repeal.—Goshorn v. Alexander, Case No. 5,630.

The provision that the repeal of a statute shall not extinguish any liability incurred under it (Act Feb. 25, 1871, § 4) does not apply to an act not forbidden by statute at the time of its commission.—United States v. Bennett, Case No. 14,570.

Where a statute giving the right to recover money paid under an illegal contract is repealed, a pending suit and the cause of action involved in it fall with the repeal.—Kimbro v. Colgate, Case No. 7,778.

The repeal of a usury law which forfeited all interest upon a usurious contract leaves the contract in full force according to its terms.—Daggs v. Ewell, Case No. 3,537.

The adoption thereafter of a constitution imposing penalties for usurious contracts can have no effect upon such contracts.—Daggs v. Ewell, Case No. 3,537.

A claim for money taken as usury while a law forbidding usury was in force is not destroyed by the repeal of the law.—Whitaker v. Pope, Case No. 17,528.

The repeal of a lien law after the lien has attached by performance of work does not defeat the lien.—In re Hope Min. Co., Case No. 6,681; Sabin v. Connor, Id. 12,197.

An action commenced on the day a law is repealed is within a saving clause of all actions commenced before the passage of the repealing act.—In re Ankrim, Case No. 395.

Where a cause of action falling within the terms of Act 1823, § 2, arose after the passage of Act July 18, 1866, and before the passage

of the Revised Statutes, no suit can be maintained thereon after the passage of the Revised Statutes.—United States v. Claflin, Case No. 14,799.

The repeal of a statute pending proceedings to enforce a penalty or forfeiture under it will bar further proceedings, where there is no saving clause.—Union Iron Co. v. Pierce, Case No. 14,367; United States v. Six Fermenting Tubs, Id. 16,296.

The repeal of an act defining a crime and its punishment does not prevent the prosecution and conviction of a party for the prior violation thereof. Rev. St. § 13.—United States v. Barr, Case No. 14,527.

An offense created by law falls by a repeal of the law without reservation of jurisdiction. —Anonymous, Case No. 475.

§ 16. Revival.
When a statute contains an absolute affirmative repeal of an antecedent statute, or part of it, the expiration of the subsequent statute by its own limitation will not revive the repealed act. —United States v. Twenty-Five Cases of Cloths, Case No. 16,563.

A statute providing that the repeal of a repealing act shall not revive the original act applies to cases of repeal by implication.—Milne v. Huber, Case No. 9,617.

VI. CONSTRUCTION AND OPERATION.

§ 17. General rules of construction — Construction by legislature.
The legislative construction of a statute cannot have a retroactive operation.—Home Mut. Ins. Co. v. Stockdale, Case No. 6,662.

Where the boundaries of a surveyor general's district depend on the construction of various acts of congress, which have been uniformly construed in one way, and that construction repeatedly sanctioned by legislative action, it becomes conclusive on the judiciary.—United States v. Lytle, Case No. 15,652.

The state legislature has no power to construe a statute previously enacted as to acts done.—Union Iron Co. v. Pierce, Case No. 14,367.

§ 18. —— Construction by executive officers.
The construction given to a statute by the officers appointed to execute it, and acted upon for a long term of years, though not conclusive, is entitled to great consideration by the court. —Gear v. Grosvenor, Case No. 5,291.

The construction given to laws by the executive department, in carrying them into effect, for many years, should, as a rule, be followed by the judiciary, when private rights are not affected.—United States v. Lytle, Case No. 15,652.

§ 19. —— Legislative intent.
Where the meaning of a statute is plain, there is nothing open for construction. It is only where the meaning is doubtful that the court can indulge conjecture as to the legislative intent.—Ogden v. Strong, Case No. 10,460.

§ 20. —— Debates in legislature.
In construing a statute, the facts and circumstances which led to and surrounded its passage, as derived from the congressional journals and debates, and documents laid before congress, will be considered.—United States v. Collier, Case No. 14,833.

The statements of members of a legislative body in debate on the passage of a law may be resorted to to ascertain its general object, though not for the purpose of explaining the meaning of the terms used.—Ho Ah Kow v. Nunan, Case No. 6,546.

§ 21. —— Statutes in pari materia.
In the construction of a statute, other statutes in pari materia will be considered.—The Harriet, Case No. 6,099; Le Roy v. Chabolla, Id. 8,267; United States v. Collier, Id. 14,833.

When a statute is made in addition to another on the same subject-matter, without express words of repeal as to any part of the former, the provisions of both must be construed together. —United States v. Woolsey, Case No. 16,763.

§ 22. —— Statutes of other state or country.
The construction given to the statutes of a state or country by its courts will be followed by the courts of other countries.—Humphreyville Copper Co. v. Sterling, Case No. 6,872; Prentice v. Zane, Id. 11,383; United States v. Sherebeck, Id. 16,275.

§ 23. —— Statutes adopted from other state or country.
A legislature re-enacting a British statute in this country presumably adopts the construction given to it by the British courts.—Kirkpatrick v. Gibson, Case No. 7,848.

The construction put by a state court upon its statute, which is subsequently adopted verbatim by another state, is not controlling where the constitution of the latter shows that a different construction was intended.—In re Swearinger, Case No. 13,683.

§ 24. —— Conflicting sections.
As between conflicting sections of the same statute, the last in order of arrangement will control.—Hall v. Equator Mining & Smelting Co., Case No. 5,931.

§ 25. —— Words and phrases.
In the interpretation of statutes, words of common use are to be taken in their natural, plain, and ordinary signification.—Apperson v. City of Memphis, Case No. 497; United States v. Clark, Id. 14,804; Schriefer v. Wood, Id. 12,481.

General words in a statute, following an enumeration of particular cases, apply only to cases of the same kind as those enumerated.—United States v. Irwin, Case No. 15,445.

Effect must be given to the words used in the statute when there is no uncertainty or ambiguity in their meaning.—United States v. Warner, Case No. 16,643.

In the absence of statutory provisions, the federal courts resort to the common law for guidance in the construction of legal terms and phrases.—United States v. Outerbridge, Case No. 15,978.

And the meaning of "robbery," as used in relation to acts declared piratical, is to be ascertained by reference to the common law.—United States v. Jones, Case No. 15,494.

Wherever, in a statute, the words "master and crew" occur in connection with each other, the word "crew" embraces all the officers as well as the common seamen.—United States v. Winn, Case No. 16,740.

The phrase "subsequent to the passage of this act" *held* to mean subsequent to its approval by the governor.—Walker v. Mississippi Val. & W. Ry. Co., Case No. 17,079.

§ 26. —— Punctuation.
In the construction of laws, punctuation is no criterion of the sense of the legislature, unless it is in conformity with their intention, as expressed in the words used.—In re Irwine, Case No. 7,086.

§ 27. —— Construction in connection with title and preamble.
The title of the act may be resorted to to explain and show the general purport and the inducement which led to its enactment.—Ogden v. Strong, Case No. 10,460.

The title of an act cannot control plain words in the body thereof, but, taken in connection with other parts, may assist in removing ambiguities.—Copeland v. Memphis & C. R. Co., Case No. 3,209; United States v. McArdle, Id. 15,653; Same v. Randolph, Id. 16,120.

The same rule is applicable in regard to the preamble.—Copeland v. Memphis & C. R. Co., Case No. 3,209; United States v. Webster, Id. 16,658.

§ 28. —— Considering whole act.
In construing a statute, the whole act must be considered.—Strode v. The Stafford Justices, Case No. 13,537.

§ 29. —— Giving effect to every part of statute.
A statute must be so construed, if possible without doing violence to language, as to give force and meaning and effect to every part of it. —In re Davis, Case No. 3,615.

Every part of a statute must be viewed in connection with the whole to effect harmony and give a sensible and intelligent effect to each.—Ogden v. Strong, Case No. 10,460.

§ 30. —— Effect of partial invalidity.
Statutes partly in conflict with the constitution will be held void only in part.—Northwestern Union Packet Co. v. St. Louis, Case No. 10,-345.

§ 31. General and special provisions.
The presumption is that provisions of a general character in an appropriation act are limited to the subject-matter of the act, and are not permanent regulations, unless clearly so provided.—United States v. Jarvis, Case No. 15,-468.

A statute applicable in its terms to particular actions cannot be applied by construction to other actions standing on the same reason.—Jacob v. United States, Case No. 7,157.

§ 32. Particular classes of statutes—Penal statutes.
The language of the statute is to be particularly adhered to in the construction of penal laws. —Ferrett v. Atwill, Case No. 4,747; United States v. Clayton, Id. 14,814; Same v. Wilson, Id. 16,730.

And a doubt whether an act charged in an indictment is embraced in the criminal prohibition must be resolved in favor of the accused.—United States v. Reese, Case No. 16,137.

The rule that penal statutes are to be strictly construed will not prevent the courts from inquiring into the intention of the legislature.—The Bolina, Case No. 1,608; The Enterprise, Id. 4,499.

All the provisions or sections of a penal statute must be taken together, and interpreted according to the import of the words, so as to give effect to its objects and intent.—The Harriet, Case No. 6,099.

In construing penal statutes courts will not, by construction, ingraft words in one section upon those of another, unless the legislative intention be plain and clear.—United States v. Clayton, Case No. 14,814; Same v. Twenty-Four Coils of Cordage, Id. 16,566.

In the construction of penal statutes that sense will be adopted which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature.—United States v. Winn, Case No. 16,740.

In the construction of a penal statute an offender who is protected by its letter cannot be deprived of its benefit on the ground that his case is not within the spirit and intention of the law.—United States v. Ragsdale, Case No. 16,113.

Where a penal statute is complete without certain words, and giving them effect will render the whole act meaningless, they should be rejected as surplusage.—United States v. Stern, Case No. 16,389.

Consent is essential to guilt, and the legislature is supposed to pass all penal laws with the understanding that courts will not inflict the penalties for such violations as are unintentional.—The William Gray, Case No. 17,694.

§ 33. —— Remedial statutes.
Remedial statutes should be liberally construed, to advance the remedy, rather than strictly to the destruction of a right.—Edmondson v. Hyde, Case No. 4,285.

§ 34. Time of taking effect.
Statutes cannot, by any fiction or relation, have any effect before they are actually passed. —Warren Mfg. Co. v. Etna Ins. Co., Case No. 17,206.

When no time is fixed, statutes take effect from date.—Warren Mfg. Co. v. Etna Ins. Co., Case No. 17,206.

Penal statute takes effect from time of passage when no other time is fixed.—The Ann, Case No. 397.

A public law takes effect under the constitution from the very time of its approval.—In re Richardson, Case No. 11,777.

When the priority of different events comes in question, an act will be considered as taking effect only from the actual time of its approval by the president.—Salmon v. Burgess, Case No. 12,262.

An act takes effect from the day of its approval by the executive, and includes that day, unless its operation is postponed by its own terms.—Weed v. Snow, Case No. 17,347.

Rev. St. § 5481, defining the crime of extortion under color of office, being passed after the cession of Alaska, is in force there from the time of its passage.—United States v. Carr, Case No. 14,730.

§ 35. Retroactive operation.
A public law operates prospectively, and not retrospectively.—In re Richardson, Case No. 11,777.

A statute will not be construed as retroactive unless the intention appears on its face.—In re Billing, Case No. 1,408; Schenck v. Peay, Id. 12,450; United States v. Starr, Id. 16,379.

And not then where it will impair vested rights or violate a contract.—In re Billing, Case No. 1,408.

The specification in an amendatory act of its retroactive effect excludes all unspecified cases. —Oxford Iron Co. v. Slafter, Case No. 10,637.

VII. PLEADING AND EVIDENCE.

§ 36. Pleading.
A declaration founded upon a statute must conclude against the form of the statute, etc.—Jones v. Vanzandt, Case No. 7,502.

A declaration founded on an amendatory act, which refers to and continues the provisions of a former act, should conclude "against the form of the statute," and not "statutes."—Falconer v. Campbell, Case No. 4,620.

§ 37. Evidence.
A state law certified by the clerk of the executive council and the seal of the state is sufficiently proved, under Act May 26, 1790.—United States v. Johns, Case No. 15,481.

The charter of a corporation may be proved by the pamphlet laws of the state, published by the authority of the legislature.—Rockville & W. Turnpike Road v. Andrews, Case No. 11,984.

A state statute book purporting to be published by legislative authority *held* admissible evidence of the laws of the state, though not authenticated.—Commercial & Farmers' Bank v. Patterson, Case No. 3,056.

Where a statute makes it a felony to steal the notes of any particular incorporated bank, the act of incorporation becomes a public statute, and may be proved by the statute book.—United States v. Porte, Case No. 16,070.

The existence, tenor, and effect of the law of the place of payment of negotiable paper, determining the question as to due presentment of a bill of exchange, may be proved by parol.—Indseth v. Pierce, Case No. 7,026.

Foreign written laws must be proved by the laws themselves.—Consequa v. Willings, Case No. 3,128; Robinson v. Clifford, Id. 11,948; United States v. Ortega, Id. 15,971.

But, if they cannot be procured, inferior evidence may be received.—Consequa v. Willings, Case No. 3,128; Seton v. Delaware Ins. Co., Id. 12,675; United States v. Gardiner, Id. 15,186a.

Printed statute books of the parliament of Great Britain, purchased of the queen's printer, are admissible as prima facie evidence of the laws contained therein.—United States v. Certain Casks of Glass Ware, Case No. 14,764; Same v. One Hundred and Ninety-One Casks of Glassware, Id. 15,935a.

The law of England may be proved in the admiralty court by printed books of statutes, reports, and text writers, as well as by the sworn testimony of experts.—The Pawashick, Case No. 10,851.

The laws of an isolated country may be proved by parol and by persons not jurisconsults if they testify directly and positively.—Wilcocks v. Phillips, Case No. 17,639.

Judicial notice, see "Criminal Law," § 51; "Evidence," § 1.

STAY.

Of execution, see "Execution," § 10.
Of judgment, see "Ejectment," § 18.
Of proceedings in admiralty, see "Admiralty," § 48.
—— on appeal in admiralty, see "Admiralty," § 120.
—— on appeal in bankruptcy, see "Bankruptcy," § 690.
Of sentence, see "Criminal Law," § 109.
Pending appeal or writ of error, see "Appeal and Error," § 17.
Until payment of costs, see "Costs," § 27.

STEAMSHIPS.

See "Shipping."

STENOGRAPHERS.

Taxation of fees of, see "Costs," § 21.

STEVEDORES.

Jurisdiction over contract for services, see "Admiralty," § 25.

STIPULATIONS.

§ 1, Requisites and validity. § 2, Construction and effect.

For release of property in admiralty, see "Admiralty," §§ 67–77, 110, 152; "Shipping," § 254.

In relation to removal of causes, see "Removal of Causes," § 5.
To abide event of another suit pending, see "Admiralty," § 133.
To return vessel, see "Shipping," §§ 24, 25.

§ 1. Requisites and validity.

The court will not allow mere verbal understandings between counsel to control the rights of the parties.—The Martha, Case No. 9,144; In re Amory and Leeds, Id. 336a.

A stipulation induced by misrepresentations is not binding on the court.—United States v. Peralta, Case No. 16,032.

§ 2. Construction and effect.

An oral agreement by counsel made out of court will not be construed on conflicting opinions.—American Saddle Co. v. Hogg, Case No. 316.

Effect of written stipulation between attorneys after verdict as to the disposal of future questions.—Tomes v. Redfield, Case No. 14,085.

STOCK.

Of corporation, see "Banks and Banking," §§ 4, 15; "Corporations," §§ 16–25; "Insurance," § 2.
Of unincorporated associations, see "Joint Stock Companies."

STOCKHOLDERS.

Competency as witnesses, see "Witnesses," § 36.
Of associations, see "Associations," § 3.
Of corporations, see "Banks and Banking," §§ 5, 16; "Corporations," §§ 26–33; "Insurance," § 2; "Railroads," § 5.
Of unincorporated association, see "Joint Stock Companies."

STOLEN GOODS.

See "Receiving Stolen Goods."
Negotiable instruments, see "Bills and Notes," § 92.

STOPPAGE IN TRANSITU.

Of goods sold, see "Sales," § 39.

STORAGE.

See "Warehousemen."

STREET RAILROADS.

See, also, "Railroads."
Compensation for use of street, see "Eminent Domain," § 3.

§ 1. Elevated railroads.

Acts N. Y. April 22, 1867, and June 3, 1868, relating to construction of elevated railroad in New York City, are not void as containing a delegation of legislative authority.—Currier v. West-Side Elevated Patent Ry. Co., Case No. 3,493.

Erection of posts for elevated railroad in street not enjoined at suit of abutting owner not showing title to the soil in the street.—Currier v. West-Side Elevated Patent Ry. Co., Case No. 3,493.

Legislative authorization will prevent enjoining construction of elevated railroad in street as a nuisance.—Currier v. West-Side Elevated Patent Ry. Co., Case No. 3,493.

STREETS.

See "Highways"; "Municipal Corporations," §§ 22, 25.
Dedication, see "Dedication," § 3.
Injuries to pedestrians, see "Municipal Corporations," § 25; "Negligence," § 1.

SUBMISSION.

To arbitration, see "Arbitration and Award," § 1.

SUBMISSION OF CONTROVERSY.

§ 1, Construction, scope, and effect of submission.
§ 2, Correction of statement.

§ 1. Construction, scope, and effect of submission.
The whole controversy is submitted, without limitation, under an agreed statement providing that "the court may make any other order or judgment in the case which they shall think it may require."—Derby v. Jacques, Case No. 3,817.

Annexing letters without reservation to an agreed statement of facts under which the case is submitted waives a statutory requirement that they shall be stamped.—Snow v. Miles, Case No. 13,146.

§ 2. Correction of statement.
To support a motion made after a decision to correct an agreed statement of facts on which the case is tried, the moving party must not only show that the statement was actually erroneous, but that he had not been guilty of laches.—United States v. Butterfield, Case No. 14,704.

SUBROGATION.

§ 1, To rights of lienors generally. § 2, To rights of mortgagees. § 3, To rights of vendor. § 4, To rights of surety. § 5, To rights of creditors. § 6, To rights of payee or indorsee.

Of insurer on payment of loss, see "Insurance," § 166.

§ 1. To rights of lienors generally.
One having a lien on certain property may pay off prior incumbrancers, and be substituted to their rights.—Russell v. Howard, Case No. 12,156.

A surety on a bond in admiralty, who pays the money, is subrogated to the rights of the original libelant.—Carroll v. The Leathers, Case No. 2,455.

A purchaser of a fishing vessel from assignees in bankruptcy, who is afterwards compelled to pay a secret lien for wages, is subrogated to the lien of the seamen upon the proceeds of fish caught during the voyage, which proceeds came to the hands of the assignees.—In re Low, Case No. 8,558.

See, also, "Maritime Liens," § 65.

§ 2. To rights of mortgagee.
Notes taken up by agents of the maker at maturity, and charged in their account current with the maker, will be *held* to have been paid, and the agents are not entitled to the benefit of a mortgage given to secure such notes.—Turnbull v. Thomas, Case No. 14,243.

§ 3. To rights of vendor.
Lands mortgaged to indemnify the mortgagee against an incumbrance on other property which the mortgagee subsequently conveyed with a covenant against incumbrances, may be reached by the latter's grantee, who has been evicted, or been obliged to pay the incumbrance.—Upham v. Brooks, Case No. 16,797.

§ 4. To rights of surety.
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.—Young v. Montgomery & E. R. Co., Case No. 18,166.

The security given by the maker of a note to the indorser may, after both are insolvent and the surety's liability has become fixed, be recovered by the holder and applied in payment.—Mathews v. Abbott, Case No. 9,275.

A mortgage pledge or lien received by the surety to secure him may be enforced by the creditors, where both principal and surety are insolvent, and the latter has not been released.—Ex parte Morris, Case No. 9,823.

A surety holding collateral security for his indemnity is a trustee for the creditor, where the debtor is insolvent.—In re Baldwin, Case No. 796.

A creditor may enforce application to the payment of his debt of security given as indemnity to a surety.—Branch v. Macon & B. R. Co., Case No. 1,808; Burroughs v. United States, Id. 2,202.

A surety is entitled to the protection of a court of equity; also sub modo to the benefit of all the securities which the creditor has.—Wiggin v. Dorr, Case No. 17,625.

§ 5. To rights of creditors.
A surety discharging the debt of his principal is subrogated to all the rights of the creditor.—Bank of the United States v. Winston, Case No. 944; Dennis v. Rider, Id. 3,797.

§ 6. To rights of payee or indorsee.
Notes secured by a trust deed were paid by the maker as they matured, with funds borrowed from a third person under an agreement that he should hold the notes on the same security, of which the payees had no knowledge. *Held*, that the lender was not subrogated to any rights under the trust deed.—Dooley v. Virginia Fire & Marine Ins. Co., Case No. 3,999.

SUBSCRIPTIONS.

To corporate stock, see "Corporations," §§ 17–22.

§ 1. Consideration.
A promise, made publicly in church, to subscribe a portion of the indebtedness due from the church, is valid, where expenses were incurred on the faith of such promise.—Capelle v. Trinity M. E. Church, Case No. 2,392.

Subscriptions in aid of college endowments become fixed and legal obligations as soon as the college performs its undertaking.—Sturges v. Colby, Case No. 13,566.

Want of consideration for a subscription to a college endowment fund is no defense to a note given in settlement thereof.—Sturges v. Colby, Case No. 13,566.

SUBSTITUTED SERVICE.

See "Process," § 4.

SUBSTITUTION.

Of agent, see "Principal and Agent," § 5.
Of devisees or legatees, see "Wills," § 29.
Of parties, see "Parties," § 4.
—— in bankruptcy proceedings, see "Bankruptcy," §§ 102, 567.
Of property, see "Pledges," § 5.

SUBTERRANEAN WATERS.

See "Waters and Water Courses," § 6.

SUIT.

See "Action."

SUMMONS.

See "Process."

SUNDAY.

§ 1, Work or labor. § 2, Contracts. § 3, Injuries received while violating law. § 4, Service of process and judicial proceedings.

§ 1. Work or labor.
A statute, in general terms, against laboring on Sunday, applies to corporations.—Powhattan Steamboat Co. v. Appomattox R. Co., Case No. 11,363.

Under a state law providing a penalty for laboring on Sunday, a common carrier is not responsible for failure to deliver goods delivered to him on Sunday.—Powhattan Steamboat Co. v. Appomattox R. Co., Case No. 11,363.

§ 2. Contracts.
Note made on Sunday not void.—Barrett v. Aplington, Case No. 1,045.

§ 3. Injuries received while violating law.
The fact that a vessel was hauled into a dock on Sunday, which was an illegal act under the state law, will not prevent her recovering damages in admiralty, where she is injured on such day, on the falling of the tide, from defects in the bottom.—Sawyer v. Oakman, Cases Nos. 12,402, 12,404.

See, also, "Collision," § 120.

§ 4. Service of process and judicial proceedings.
A notice cannot be lawfully served on Sunday.—Chesapeake & O. Canal Co. v. Bradley, Case No. 2,646.

As a general rule, judicial acts cannot be performed on Sunday.—Kirkpatrick v. Baltimore & O. R. Co., Case No. 7,847.

Depositions taken on Monday, after adjournment from Saturday to Sunday, and from Sunday to Monday, must be suppressed.—Kirkpatrick v. Baltimore & O. R. Co., Case No. 7,847.

Sunday is not a day on which a supersedeas can be given.—Gannon v. Donn, Case No. 5,211.

SUPERSEDEAS.

In bankruptcy, see "Bankruptcy," §§ 295, 501.
On appeal or writ of error, see "Appeal and Error," § 17.

SUPERVISING INSPECTORS.

See "Collision," § 4.

SUPERVISORS.

Of county, see "Counties," § 2.

SUPPLEMENTAL PLEADING.

See "Pleading," § 53.
In admiralty, see "Admiralty," § 86.
In equity, see "Equity," §§ 84, 85.

SUPPLEMENTARY PROCEEDINGS.

See "Execution," § 23.
Creation of lien in bankruptcy, see "Bankruptcy," § 271.

SURETYSHIP.

See "Principal and Surety."

SURGEONS.

See "Physicians and Surgeons."

SURPLUS MONEYS.

Distribution of, see cross-references under "Distribution."

SURPRISE.

As ground of continuance, see "Continuance," § 1.
— of new trial, see "New Trial," § 11.
— of rehearing in equity, see "Equity," § 106.
— of relief against judgment, see "Judgment," § 41.

SURRENDER.

Of charter, see "Municipal Corporations," § 4.
Of charter party, see "Shipping," § 45.
Of insurance policy, see "Insurance," §§ 39–43.
Of patent, see "Patents," § 106.
Of preference to creditor, see "Bankruptcy," §§ 395, 601.
Of security in bankruptcy, see "Bankruptcy," § 399.
Of written instrument for cancellation, see "Cancellation of Instruments."

SURVEYS.

Of public lands, see "Public Lands," §§ 11–17, 67, 70, 78, 95–100.

SURVIVAL.

Of cause of action, see "Abatement and Revival," § 5.

SURVIVING PARTNERS.

See "Partnership," §§ 45–49.

SURVIVORSHIP.

Evidence, see "Death," § 1.
Of co-tenant, see "Joint Tenancy," § 4.
Of devisees or legatees, see "Wills," § 29.

SUSPENSION.

Of attorney, see "Attorney and Client," § 1.
Of lien of judgment, see "Judgment," § 61.
Of payment of commercial paper, see "Bankruptcy," §§ 79–87.
Of writ of habeas corpus, see "Habeas Corpus," § 16.

SWINDLING.

See "False Pretenses"; "Fraud," §§ 10, 11.

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TARIFF.

See "Customs Duties."

TAXATION.

§ 1, Nature and extent of power in general. § 2, Constitutional requirements and restrictions. § 3, Constitutional and statutory provisions. § 4, Persons and property taxable—Property in general. § 5, —— Corporations, and corporate stock and property. § 6, —— Public property and institutions. § 7, —— Exemptions. § 8, Place of taxation. § 9, Levy and assessment. § 10, Lien and priority. § 11, Recovery of taxes paid. § 12, Collection and enforcement against persons or personal property. § 13, Sale of land for nonpayment of tax. § 14, Restraining collection of tax. § 15, Redemption from tax sale. § 16, Tax titles—Title and rights of purchaser at tax sale. § 17, —— Tax deeds and actions to try title. § 18, Forfeitures and penalties. § 19, Legacy, inheritance, and transfer taxes.

See, also, "Customs Duties"; "Internal Revenue."
Assessments for municipal improvements, see "Municipal Corporations," § 18.
By municipal corporations, see "Municipal Corporations," § 38.
Effect on title of paying taxes, see "Adverse Possession," § 5.
Enforcing collection of taxes to pay judgment, see "Mandamus," § 4.
For levees, see "Levees," § 2.
Income tax, see "Internal Revenue," §§ 22–24.
Liability of life tenant for taxes, see "Life Estates."
—— of trustees, see "Trusts," § 18.
Of costs, see "Admiralty," §§ 141–148; "Costs," §§ 13–25.
Of demised premises, see "Landlord and Tenant," § 5.
Of vessel, see "Shipping," § 6.
Proof and priority of tax claim in bankruptcy, see "Bankruptcy," §§ 382, 432.

§ 1. Nature and extent of power in general.

The power of taxation belongs to the legislative department of the government. The judicial department has no general jurisdiction over the subject.—Heine v. Levee Com'rs, Case No. 6,325; Talcott v. Pine Grove, Id. 13,735.

A state legislature has no authority to authorize taxation in aid of private enterprises.—Commercial Nat. Bank v. Iola, Case No. 3,061.

A state law taxing nonresident merchants, etc., on all sums invested in business in the state, is not unconstitutional.—Duer v. Small, Case No. 4,116.

A constitutional provision abolishing all laws exempting property from taxation does not thereby impose any tax, and none can be collected which is not specially authorized by statute.—Savannah v. Atlantic & G. R. Co., Case No. 12,385.

A state has authority by legislative act to compel a county, against its will, to levy a tax for the improvement of a harbor within its limits, although other counties may derive some benefit therefrom.—Kimball v. Mobile, Case No. 7,774.

The Iowa statute of April 12, 1870, authorizing townships, towns, and cities to vote a tax to raise money to be absolutely given to a railway company, is not in conflict either with the constitution of the state or of the United States.—King v. Wilson, Case No. 7,810.

§ 2. Constitutional requirements and restrictions.

A provision for the collection of a tax, in districts where the same is forcibly resisted, so soon as such resistance is put down, does not show a want of uniformity in the tax.—United States v. Riley, Case No. 16,164.

A law imposing a higher tax upon a foreign corporation doing business within the state than upon a domestic corporation, *held* not in violation of a constitutional provision that "taxation shall be equal and uniform throughout the state."—Insurance Co. v. New Orleans, Case No. 7,052.

A statute providing that the rate per cent. of the tax in each municipality shall be in proportion to the indebtedness of each is not in conflict with a constitutional provision that taxation shall be equal and uniform throughout the state.—Maenhaut v. New Orleans, Case No. 8,939.

Want of uniformity in the application of a tax will not defeat it.—Apperson v. City of Memphis, Case No. 497.

§ 3. Constitutional and statutory provisions.

Constitutional provisions for the protection of taxpayers must be strictly construed.—Denike v. Rourke, Case No. 3,787.

Statutes in relation to the enforcement and collection of taxes must be strictly construed.—Minturn v. Smith, Case No. 9,647.

§ 4. Persons and property taxable—Property in general.

The courts cannot, by construction or legal fiction, include subjects of taxation not within the terms of the law.—United States v. Watts, Case No. 16,653.

The funds in the hands of an assignee in bankruptcy may be taxed by the state.—In re Mitchell, Case No. 9,658. CONTRA, see In re Booth, Case No. 1,645.

A fee simple cannot be sold for taxes where an estate for life, in existence, is of sufficient value to pay them.—Hellrigle v. Ould, Case No. 6,344.

Ores extracted from mining claims immediately become subject to state taxation, though the legal title to the land is still in the United States.—Forbes v. Gracey, Case No. 4,924.

§ 5. —— Corporations, and corporate stock and property.

Revenue Act La. 1870 construed as to taxes upon insurance companies.—Insurance Co. v. New Orleans, Case No. 7,052.

The franchise of a corporation is taxable, as well as its property; but the tax must be uniform as to the class on which it operates.—Jessup v. Chicago & A. R. Co., Case No. 7,300.

Individual property held within the state may be taxed by the state. The property of the Bank of the United States is no exception.—Bank of United States v. Deveaux, Case No. 916.

Construction of the charter of the Hannibal & St. Joseph Railroad Company, as to the taxation of its property.—Moore v. Holliday, Case No. 9,765.

The Kentucky Improvement Company, which has authority under its charter (Act Ky. Dec. 14, 1865) to construct a railroad from its lands to the Ohio or the Little Sandy river or to connect with other railroads, is liable to be taxed as a railroad company.—Kentucky Imp. Co. v. Slack, Case No. 7,718.

A provision for the taxation of railroad property (Laws Vt. 1874, Act No. 1) is not invalid by reason of the fact that lands improved by having a railroad built on them are not made taxable until they have been so improved 10 years.—Wells v. Central Vermont R. Co., Case No. 17,390.

The capital stock of a national bank cannot be assessed, as such, by state authority, but the shares may be assessed to the individual holders.—Collins v. Chicago, Case No. 3,011.

Under the statutes of Nebraska, national bank shares may be taxed, and the tax enforced by distraint against the property of the bank.—First Nat. Bank v. Douglas County, Case No. 4,799.

A taxation of national bank shares above their par value renders the whole tax inoperative and void.—Union Nat. Bank v. Chicago, Case No. 14,374.

Where moneyed capital was taxed a fixed amount per share, but a reduction of indebtedness was allowed before the assessment, a similar tax, without a deduction, on national banks, was invalid.—City Nat. Bank v. Paducah, Case No. 2,743.

Where different rates of taxation are imposed on different classes of moneyed capital, the rates of taxation on national bank shares should not exceed the rate imposed upon shares in state banks.—City Nat. Bank v. Paducah, Case No. 2,743.

§ 6. —— **Public property and institutions.**

Taxability of the land grant to the Burlington & Missouri River Railroad Company.—Hunnewell v. Burlington & M. R. Co., Case No. 6,879.

The land is not taxable by a state during the suspension of a location, under a warrant canceled for fraud.—Bronson v. Kukuk, Case No. 1,929.

Quære, whether uninhabited township owned in severalty is rightly included in a tax act which did not provide for the valuation of the land of the different owners.—Clarke v. Strickland, Case No. 2,864.

Land purchased from the United States, and paid for, is liable to taxation, though patent not issued.—Astrom v. Hammond, Case No. 596; Carroll v. Perry, Id. 2,456.

Lands patented to the Indian reservees, under the treaty with the Miami Indians of June 5, 1854, are liable to be taxed by the state authority after the title has passed from the Indian reservee to a citizen.—Peck v. Miami County, Case No. 10,891.

The lands patented to the Union Pacific Railroad Company are liable to state taxations before their sale by the company. Reversing Union Pac. R. Co. v. McShane, Case No. 14,381.—Union Pac. R. Co. v. McShane, Case No. 14,382; Same v. Lincoln County, Id. 14,378.

An act of the state legislature laying a tax on "all real estate, to wit" (specifying various sorts of real estate shown to be private property), does not include property of any sort of the United States within its territory.—United States v. Weise, Case No. 16,659.

The federal government has no power to tax agencies employed by a municipal corporation in the exercise of its legitimate powers, such as an advance of money to aid in the construction of a railroad to the city.—United States v. Baltimore & O. R. Co., Case No. 14,511.

§ 7. —— **Exemptions.**

Restriction of taxation to the proceeds alone of "mines and mining claims" does not exempt surface improvements. Const. Nev. art. 10.—Gold Hill v. Caledonia Silver Min. Co., Case No. 5,512.

A state statute passed under a compact with the United States exempting lands sold by them therein from taxation for five years from the sale, cannot be repealed, as to prior purchasers, before the termination of such time.—Thompson v. Holton, Case No. 13,958.

An exemption from taxation by charter must be expressly conferred, or must appear by clear and necessary implication from the language used.—Minot v. Philadelphia, W. & B. R. Co., Case No. 9,645.

Right of exemption from taxation of certain railroads under Act Dec. 25, 1852, § 12.—Parmley v. St. Louis, I. M. & S. R. Co., Case No. 10,768; Atlantic & P. R. Co. v. Cleino, Case No. 631; Bailey v. Atlantic & P. R. Co., Id. 732.

The Central Pacific Railroad Company is not exempt from state taxation, as an instrumentality created by congress, and employed for transportation of mails, armies, etc., of the United States.—Huntington v. Central Pac. R. Co., Case No. 6,911.

The payment of a bonus for a charter does not protect the grantee from taxation not expressly reserved therein.—Minot v. Philadelphia, W. & B. R. Co., Case No. 9,645.

§ 8. **Place of taxation.**

Placing the property of a corporation in the hands of a receiver does not exempt it from the operation of the tax laws of the jurisdiction in which it lies.—Stevens v. New York & O. M. R. Co., Case No. 13,405.

School lands held by the state of Alabama, under Act June 22, 1854, in the state of Nebraska, are not taxable by the latter state.—Stoutz v. Brown, Case No. 13,505.

Shares of stock cannot be taxed in the place where the corporation is located, without regard to the residence of the owner.—Union Nat. Bank v. Chicago, Case No. 14,374.

Taxation of the shares of a bank in the place where the bank is located, being void as to all shareholders not residing in the district, is also void as to those residing there.—Union Nat. Bank v. Chicago, Case No. 14,374.

The portion of a railroad bridge over the Missouri river, between Iowa and Nebraska, which lies within the limits of Iowa, may be taxed as a bridge, under Code Iowa, 1873, §§ 808, 810.—Union Pac. R. Co. v. Pottawattamie County, Case No. 14,384.

The Burlington & Southwestern Railroad Company, an Iowa corporation, *held* liable to taxation in Missouri, in which its road was extended by special acts upon its road, and property therein.—Burlington & S. Ry. Co. v. Putnam County, Case No. 2,169.

A national bank located in New Jersey, which, for the convenience of persons in Philadelphia, keeps a clerk there to receive deposits, is not located in Philadelphia, so as to be liable to taxation.—National State Bank v. Pierce, Case No. 10,052.

Ores extracted from mines within a state, and there reduced, may be taxed by the state, although mined by a corporation of another state, and though the assessment is not made until the end of a quarter after the proceeds are carried out of the state.—Forbes v. Gracey, Case No. 4,924.

§ 9. **Levy and assessment.**

A statute declaring that a majority of the board shall have full authority to transact business, and that no proceedings shall be declared invalid on account of the absence of one of them, will not be construed to have a retroactive effect.—Schenck v. Peay, Case No. 12,450.

Where a statute provides for a board of three tax commissioners, and that number is appointed, but only two acted or qualified, the proceed-

ings of the board are void ab initio.—Schenck v. Peay, Case No. 12,450.

A memorandum on the books of the town clerk that certain persons were "sworn to office" as assessors, signed by the clerk as a justice of the peace, and not as town clerk, *held* a sufficient certificate of the official oath under the Maine statutes.—Ware v. Bradbury, Case No. 17,168.

The action of a board of equalization in disregarding the return under oath of a corporation, and raising the value of its property without evidence or a chance to be heard, *held* illegal.—Jessup v. Chicago & A. R. Co., Case No. 7,300.

The board of equalization created by the Missouri constitution of 1875 (article 10, § 18) became at once the only board for that purpose, was clothed with all the powers of the previous board, and had power to act as an original assessing body.—Ketchum v. Pacific R. Co., Case No. 7,738.

Under Laws Mo. 1852-53, p. 13, the state board of equalization cannot act as an original assessing body and make an assessment de novo of railroad taxes, but it is only authorized to equalize the aggregate valuation of the county boards.—Paul v. Pacific R. Co., Case No. 10,845.

An assessment de novo by the state board will not vitiate the entire tax, but will leave the final valuation as fixed by the county boards.—Paul v. Pacific R. Co., Case No. 10,845.

A mere error of judgment on the part of assessing officers as to the valuation of property, in the absence of fraud, is not subject to judicial revision.—Paul v. Pacific R. Co., Case No. 10,845.

The assessment of a tax must be made in the mode or on the principle prescribed by statute. —Huntington v. Central Pac. R. Co., Case No. 6,911; Tilton v. Oregon Cent. Military Road Co., Id. 14,055.

In California a railroad must be taxed as real estate, and assessed in the counties in which each portion lies, at its cash value as so much land.—Huntington v. Central Pac. R. Co., Case No. 6,911.

The lands and improvements thereon must be assessed separately, like other real estate.—Huntington v. Central Pac. R. Co., Case No. 6,911.

The omission to assess other property exempted from taxation under an unconstitutional statute does not render void a tax upon property of others liable to taxation, or give them a remedy by injunction.—Muscatine v. Mississippi & M. R. Co., Case No. 9,971.

Assessment by county commissioner of larger sum than is granted by legislature vitiates the whole tax.—Clarke v. Strickland, Case No. 2,864.

Where the taxpayer does not present a complete schedule, the tax will not be rendered illegal if the assessors tax for property not contained therein.—Ware v. Bradbury, Case No. 17,168.

An assessment of real property, which contains no valuation except certain figures without mark or sign to indicate for what they stand, is void for uncertainty.—Tilton v. Oregon Cent. Military Road Co., Case No. 14,055.

Personal property not listed for taxation, as required by law, may be assessed against the apparent owner by possession or muniment of title.—The North Cape, Case No. 10,316.

The assessment of taxes on a vessel and the warrant may be against the vessel by name.—The North Cape, Case No. 10,316.

A state cannot tax shares in a national bank by requiring the value of the property of the bank to be added to the value of the shares, otherwise ascertained, to obtain its assessable value.—St. Louis Nat. Bank v. Papin, Case No. 12,239.

National banks cannot be compelled by the auditor or probate judge to present for inspection the deposit books of the bank in order to reach such deposits for purposes of taxation.—First Nat. Bank of Youngtown v. Hughes, Case No. 4,811.

Levies which were not ascertained until the summer of 1876, although the assessment related back to August, 1875, were governed by the rates prescribed by the Missouri constitution of November, 1875.—Ketchum v. Pacific R. Co., Case No. 7,738.

What constitutes a district for the purposes of taxation within Act 1862, providing for the collection of direct taxes in insurrectionary districts.—Sharpleigh v. Surdam, Case No. 12,711.

§ 10. Lien and priority.

The lien of the state for taxes is paramount to all private rights.—Steubenville & I. R. Co. v. Tuscarawas County, Case No. 13,388.

The lien of the state for taxes upon railroad property in the custody of the law is prior to all other liens whatsoever, except for judicial costs.—Georgia v. Atlantic & G. R. Co., Case No. 5,351.

The lien of the state for taxes attaches to personal property upon the seizure thereof by the collecting officers, from which time the property is in the custody of the law.—Steubenville & I. R. Co. v. Tuscarawas County, Case No. 13,388.

Taxes on chattels are not a lien on the real property of the owner until after judgment on a suit to recover them.—Metcalf v. Davies Screw Co., Case No. 9,495.

§ 11. Recovery of taxes paid.

A tax paid under protest, and with notice that the person intends to bring a suit to test its validity, may be recovered back where it is illegal.—Northwestern Union Packet Co. v. St. Paul, Case No. 10,346.

The payment of illegal taxes under protest to relieve the party from an accumulation of penalties, which could only be enforced by judicial proceedings, is voluntary, and cannot be recovered back.—Oceanic S. S. Co. v. Tappan, Case No. 10,405.

Allowance or recovery in ejectment, see "Ejectment," § 27.

§ 12. Collection and enforcement against persons or personal property.

Act Ark. T. Oct. 26, 1825, is inapplicable to nonresidents; and, where fees were received by the sheriff acting as tax collector, he is liable for the penalty prescribed in such act.—McGunnegle v. Rutherford, Case No. 8,815a.

Where a collector of taxes is charged with the duty of collecting arrearages, his bond is liable for all such collections made by him after its date.—Washington v. Walker, Case No. 17,235.

Duties of county justices and the tax collector in relation to the collection of taxes levied in obedience to a mandamus of a federal court.—United States v. Lafayette County Court, Case No. 15,549.

Back taxes on realty (in Missouri) cannot be collected from the personal property of a subsequent purchaser.—Atlantic & P. R. Co. v. Cleino, Case No. 631.

The rolling stock of a railroad may be sold for taxes as against mortgagees, though the road be unable to replace it.—Steubenville & I. R. Co. v. Tuscarawas County, Case No. 13,388.

In a suit to recover taxes, the court cannot reduce assessable value or include omitted property; it cannot go behind the action of the board

of equalization, finding the number of miles of a railroad in a county, or adjust the amount of taxable property, or correct mistakes of fact. —Ketchum v. Pacific R. Co., Case No. 7,738.

Intervening petitions by taxing officers in a railroad receivership case, for payment of taxes, are not suits to recover taxes, within the meaning of the act allowing 5 per cent. for attorney's fees. Act Mo. March 29, 1875, § 4.—Ketchum v. Pacific R. Co., Case No. 7,738.

In a suit to collect taxes, tax bills purporting to be certified by duly-authorized officers are presumed to be correct, and the burden of proof is upon those contesting them.—Ketchum v. Pacific R. Co., Case No. 7,738.

A set-off is not admissible against a demand for taxes.—Apperson v. City of Memphis, Case No. 497.

Replevin lies for property seized by a tax collector under a void assessment.—Atlantic & P. R. Co. v. Cleino, Case No. 631.

Personal estate upon the premises may be distrained for taxes against the realty.—Hayman's Adm'rs v. Rothwell, Case No. 6,267.

§ 13. Sale of land for nonpayment of tax.

A lawful tender of the tax on lands to the officer authorized to receive it is tantamount to an actual payment, and devests the authority of the officer to sell the land for taxes.—Schenck v. Peay, Case No. 12,451.

A collector must make a demand on the owner of land for taxes before judgment can be rendered against the land.—Mayhew v. Davis, Case No. 9,347.

To bind the owner by a tax sale the land must have been proceeded against in the name of the real owner, or by such a description as will clearly identify it.—Bush v. Williams, Case No. 2,225.

Advertisement of delinquent tax as including an illegal county tax as part of the amount due is a fatal defect.—Clarke v. Strickland, Case No. 2,864.

Tax sale of part of lot *held* void for failure to state its number in the advertisement of sale. —Bradley v. Conner, Case No. 1,774.

Notice of sale as provided by the statute is an essential requisite to the validity of the sale. —Moore v. Brown, Case No. 9,753.

A sale of land under several levies is void if one of the levies is illegal.—Gresham v. Montgomery, Case No. 5,805.

A levy or seizure of real property may be made without going upon the premises, by making a memorandum upon the warrant of the description of the premises, for the purpose of a levy and sale.—United States v. Hess, Case No. 15,358.

The purchase by a deputy of the sheriff who made the tax sale, where he took no part therein, does not render it void.—O'Reilly v. Holt, Case No. 10,563.

The purchase by a clerk of the chancery court, in whose office the deed must be filed, does not render the sale void.—O'Reilly v. Holt, Case No. 10,563.

A tax sale will not be set aside for an alleged fraudulent combination among bidders, where there were more lands for sale than all wanted, and it does not appear that they did not bid against each other.—Swartz v. Funk, Case No. 13,678.

A tax sale will be set aside in equity where there was fraud and collusion between the officer making the sale and the purchaser.—Schenck v. Peay, Case No. 12,451.

The assessment of the penalty of 50 per cent. simultaneously with the apportionment, under Act June 7, 1862, is unauthorized, and renders void a sale for taxes made thereunder.—Schenck v. Peay, Case No. 12,451.

An ex-sheriff cannot, under order of court years after the time to redeem has expired, amend his return of a tax sale so as to show that the sale was valid, when it appeared on the record to be void.—French v. Edwards, Case No. 5,098.

A change in the assessment, made after the return, without the knowledge of the owner, who complied with all legal requirements, will vitiate a sale for nonpayment of taxes.—Brettaugh v. Locust Mountain Coal & Iron Co., Case No. 1,846.

The annulment by decree of court of a tax sale of premises mortgaged to secure notes held by different parties inures to the benefit of all such holders, and not solely of the holder at whose suit the decree was made.—Weaver v. Alter, Case No. 17,308.

Even though a state had power to tax real estate of the United States within its territory, it cannot enforce the tax by levy and seizure.—United States v. Weise, Case No. 16,659.

A sale of land for taxes in an Indian reservation not subject to state taxation is void.—Swope v. Purdy, Case No. 13,704.

The land is not subject to a sale for taxes by the state until the legal title passes by the issuing of a patent.—Bronson v. Kukuk, Case No. 1,929.

Upon a petition to confirm a tax sale, the purchaser must show every fact necessary to give jurisdiction and authority to the officer making the sale, and a strict compliance with the statute.—Overman v. Parker, Case No. 10,623.

§ 14. Restraining collection of tax.

The nature and extent of the jurisdiction of equity to restrain the collection of taxes considered.—Parmley v. St. Louis, I. M. & S. R. Co., Cases Nos. 10,767, 10,768.

A party coming into court to restrain the collection of taxes must have paid or tendered the part admitted to be due. A willingness to pay or payment into court is not sufficient.—Parmley v. St. Louis, I. M. & S. R. Co., Case No. 10,768.

A distinction, on principle and policy, suggested between enjoining local or municipal taxes and taxes levied by the state for purposes of general revenue.—Parmley v. St. Louis, I. M. & S. R. Co., Case No. 10,768.

A bank is a proper party complainant to enjoin a collection of a tax upon its shares assessed against its stockholders.—City Nat. Bank v. Paducah, Case No. 2,743.

Whether Rev. St. § 3224, which provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," applies to a suit in a federal court to restrain the collection of a state tax, quære.—Wells v. Central Vermont R. R. Co., Case No. 17,390.

Equity will enjoin the collection of taxes which are invalid where the remedy at law is inadequate.—Union Nat. Bank v. Chicago, Case No. 14,374.

A suit will lie to restrain the collection of an unlawful tax against a corporation, the remedy at law being inadequate.—Woolsey v. Dodge, Case No. 18,032; First Nat. Bank of Omaha v. Douglas County, Id. 4,809.

A sale of personal property for an illegal tax will not be enjoined, there being an adequate remedy at law.—Union Pac. R. Co. v. Lincoln County, Case No. 14,379; Trask v. Maguire, Id. 14,145.

A collection of a tax may be enjoined where its enforcement would lead to a multiplicity of suits.—City Nat. Bank v. Paducah, Case No.

2,743; Union Nat. Bank v. Chicago, Id. 14,-374.

The collection of an illegal tax upon real property will be restrained where its enforcement will result in a cloud upon the title.—Huntington v. Central Pac. R. Co., Case No. 6,911; Minturn v. Smith, Id. 9,647; Tilton v. Oregon Central Military Road Co., Id. 14,055.

A bank whose capital stock is assessed at full value, while all other property is assessed at less than half value, may obtain relief in equity by enjoining collection of the excess.—Merchants' Nat. Bank of Toledo v. Cumming, Case No. 9,453.

The court will not, on the petition of railroad receivers appointed by it, enjoin the execution of state tax warrants which are regular on their face, and where the collectors are acting in good faith.—Stevens v. New York & O. M. R. Co., Case No. 13,405.

The court cannot interfere where the manner of assessing and collecting taxes prescribed by law is not unconstitutional, and the officers charged with such duties conform to the law.—Steubenville & I. R. Co. v. Tuscarawas County, Case No. 13,388.

Where the assessing officers, in taxing national bank shares, have arrived at a correct result, the collection of the taxes will not be restrained because the method was erroneous.—St. Louis Nat. Bank v. Papin, Case No. 12,239; Union Pac. R. Co. v. Lincoln County, Id. 14,-379.

The assessment or collection of any tax authorized cannot be restrained where the officer has power to inquire and determine whether the thing assessed by him is liable to taxation, however erroneous his decision of that question may be.—Pullan v. Kinsinger, Case No. 11,463.

Temporary injunction against collection of taxes under state authority granted, with leave to bring question before full bench.—Bailey v. Atlantic & P. R. Co., Case No. 732.

The validity of a provision as to collection of taxes against nonresidents from property within the state of the firms, etc., to which they belong, cannot be determined on a bill filed by a nonresident to restrain collection, to which the other members of the firm are not made parties.—Duer v. Small, Case No. 4,116.

A bill of peace to restrain the collection of a tax brought by a number of persons liable therefor in the name of themselves, and for all who may come in, will not lie.—Cutting v. Gilbert, Case No. 3,519.

Taxation by state authority of the capital stock of a national bank, invested in United States securities, restrained.—First Nat. Bank of Omaha v. Douglas County, Case No. 4,809.

See, also, "Corporations," §§ 28, 29.

§ 15. Redemption from tax sale.

The purchaser under decree of the court *held* entitled to redeem from a tax sale.—Oneale v. Caldwell, Case No. 10,515.

Infants whose property has been sold for taxes due may redeem at any time within one year after they have arrived at full age.—Mockbee v. Upperman, Case No. 9,687.

The right of redemption is against the person possessed of the title at the time of redemption.—Bright v. Boyd, Case No. 1,875.

Outstanding tax title in another is no lawful ground for a refusal by the county auditor to receive from the owner of the regular title money tendered to redeem from another tax sale.—Lancaster v. County Auditor, Case No. 8,038.

A formal offer, by a relative or friend of the owner, to pay a tax, where he went to the commissioners' office for that purpose, is not necessary where the commissioners decline to receive any tender unless made by the owner in person.—Lee v. Chase, Case No. 8,185; Same v. Kaufman, Id. 8,192.

A tender, by a relative or friend of the owner, of a tax due upon property advertised for sale, is a sufficient tender, irrespective of rules of the tax commissioners as to its validity.—Lee v. Chase, Case No. 8,185; Same v. Kaufman, Id. 8,192.

A lien creditor of the owner of the fee may make a lawful tender of the tax, under the act of 1862, and may redeem the land from a tax sale.—Schenck v. Peay, Case No. 12,451.

§ 16. Tax titles—Title and rights of purchaser at tax sale.

In a sale of land for taxes, any material act which the law requires, or which may prejudice the rights of the owner, will be fatal to the title of the purchaser.—Ogden v. Harrington, Case No. 10,457.

A payment of the money received on the sale into the county treasury instead of the state, or the treasury of the county instead of the treasury of the township, cannot affect the title.—Ogden v. Harrington, Case No. 10,457.

A tax title is utterly void if the land be sold in a wrong name, under a wrong assessment.—Stansbury v. Taggart, Case No. 13,292.

Where the title to a railroad company exempted by charter from taxation passes to the state, and is sold by it to a new organization, after the adoption of a new constitution prohibiting the exemption of private property from taxation, the right of exemption does not pass.—Trask v. Maguire, Case No. 14,145.

To support a title under a tax sale a strict compliance with the statute is requisite, and, where the reputed owner is proceeded against as though he were occupier, the sale is illegal.—Rule v. Parker, Case No. 12,125.

Irregularities will not affect the validity of the title under a sale for direct taxes within insurrectionary districts, under Act 1862, where the proceedings are colorable, and free from fraud, accident, or mistake.—Sharpleigh v. Surdam, Case No. 12,711.

A title made in the name of a deceased person, under the act of 1836, inures to the benefit of his heirs.—Schedda v. Sawyer, Case No. 12,-443.

A purchaser at a sale for taxes acquires only the right of the person in whose name the property was assessed.—Blodget v. Brent, Case No. 1,553.

A party in possession and claiming title at the time a tax levy is perfected cannot acquire an outstanding title by neglecting to pay the tax or judgment, and purchasing at the tax sale.—Le Roy v. Reeves, Case No. 8,272.

In Illinois, an auditor's tax deed, coupled with seven years' possession and payment of taxes, gives good title.—Mattison v. Walker, Case No. 9,297.

A sale of other premises than that levied upon will not convey a good title.—United States v. Hess, Case No. 15,358.

A tax sale and conveyance in pursuance thereof (in Virginia) vests the purchaser with the title of the person assessed with the taxes at the beginning of the tax year, notwithstanding irregularities in the proceedings, if they do not appear on the face thereof.—McQuain v. Meline, Case No. 8,923.

§ 17. —— Tax deeds and actions to try title.

The right of a purchaser at a tax sale in Illinois to a deed is postponed on a resale with-

in two years for taxes.—Denike v. Rourke, Case No. 3,787.

Recitals in tax deed in Wisconsin *held* sufficient compliance with the statute.—Geekie v. Kirby Carpenter Co., Case No. 5,295.

The deed need not recite that the land was assessed on the commissioners' book.—McQuain v. Meline, Case No. 8,923.

A recital that the land was returned delinquent for the nonpayment of the taxes is sufficient as a recital of the assessment.—McQuain v. Meline, Case No. 8,923.

A tax deed made pursuant to sales had prior to the passage of the act may be declared void for want of a lawful notice of redemption.—Lord v. Milwaukee & M. R. Co., Case No. 8,507.

A tax deed reciting a sale to the highest bidder is void upon its face where the statute only authorized a sale of the smallest portion of the property which any one would take and pay the judgment and costs.—Le Roy v. Reeves, Case No. 8,272.

Tax deed *held* void where there was added to the sum assessed the price of a revenue stamp.—Geekie v. Kirby Carpenter Co., Case No. 5,295.

Equity will not cancel a tax deed where there has been no fraud practiced against the owner of the land, and no substantial injustice done to him.—Craig v. Pollock, Case No. 3,335.

A tax deed, made to the assignee of a tax-sale certificate assigned by the county clerk without authority of law, is void on its face.—Swope v. Saine, Case No. 13,705.

A tax deed in Kansas, made and recorded as required by law, bars a recovery of the land after two years.—Sprague v. Pitt, Case No. 13,254.

Under the Arkansas statutes, a tax deed which shows by its recitals that two or more separate town lots were sold en masse for a gross sum is void on its face, and cannot be contradicted by evidence aliunde.—Walker v. Moore, Case No. 17,080.

The deed, when regular, is prima facie evidence that the proceedings were regular, and that the title passed.—Lamb v. Gillett, Case No. 8,016; McQuain v. Meline, Id. 8,923; Mattison v. Walker, Id. 9,297; Roberts v. Pillow, Id. 11,909. CONTRA, see Arrowsmith v. Burlingim, Id. 563; Dunn v. Games, Id. 4,176; Miner v. McLean, Id. 9,630.

Act Wis. April 19, 1852, making a recorded tax deed conclusive in regard to any errors of officers in levying taxes and selling lands to enforce payment, *held* not unconstitutional.—Lord v. Milwaukee & M. R. Co., Case No. 8,507.

Under a statute making tax deeds prima facie evidence of valid title (Act Ohio, March 14, 1831), the deed is admissible in evidence, without proof of the preliminary proceedings.—Lamb v. Gillett, Case No. 8,016.

In such case the burden of showing that the prior proceedings were irregular or illegal rests on the other party.—Lamb v. Gillett, Case No. 8,016.

The purchaser from a person holding only a tax title has the burden of maintaining that such title extinguished the patent title, which, as to him, is an adverse claim.—Curts v. Cisna, Case No. 3,507.

The owner may rely upon the truth of the record made by the sheriff's return showing a tax sale to be void.—French v. Edwards, Case No. 5,098.

Plaintiff in ejectment cannot recover, on a tax deed, lands originally held by the United States, without showing a sale by the United States before the levy of the state taxes; it is not necessary to show that a patent issued.—Lord v. Milwaukee & M. R. Co., Case No. 8,507.

The purchaser at a tax sale in Illinois must show that the person in whose name the land was taxed resided in the county when the notice of sale and time for redemption was served upon him.—Denike v. Rourke, Case No. 3,787.

In proof of the proceedings preliminary to the sale, it is only necessary to show by the county auditor's record such facts as the statute requires to be of record; other facts may be proved by parol.—Lamb v. Gillett, Case No. 8,016.

A record from the books of the county auditor must show the transactions as they occurred. A historical account of the events is not a record. The auditor must state facts, not conclusions.—Dunn v. Games, Case No. 4,176.

A state statute of limitations is not applicable to a sale of land exempted by federal authority from state taxation.—Swope v. Purdy, Case No. 13,704.

§ 18. Forfeitures and penalties.

Statutory provision for enforcing forfeiture for nonpayment of tax must be strictly followed.—Clarke v. Strickland, Case No. 2,864; Schenck v. Peay, Id. 12,451.

Congress may declare a forfeiture for nonpayment of taxes that will take effect ipso jure.—Schenck v. Peay, Case No. 12,451.

Forfeiture for nonpayment of tax is waived by levy of another tax after title of state had become perfect.—Clarke v. Strickland, Case No. 2,864.

An act of legislature giving further time to pay a tax after forfeiture for nonpayment waives the forfeiture.—Clarke v. Strickland, Case No. 2,864.

Where the receiver of a railroad and the taxing officers agreed to submit to the court the question of the validity of certain levies, *held*, that the company was not subject to the penalty prescribed by the Missouri statute of March 15, 1875, against railroad companies failing to pay taxes, but the court would allow 10 per cent. interest from the date the taxes became due.—Ketchum v. Pacific R. Co., Case No. 7,738.

In Ohio there can be no forfeiture for nonpayment of taxes of delinquent lands which the county treasurer and collector has not returned under oath to the county auditor.—Miner v. McLean, Case No. 9,630.

The county auditor is required to make a record of such return, which record cannot be altered by parol evidence.—Miner v. McLean, Case No. 9,630.

The making of lists of lands forfeited for the nonpayment of taxes and the sale thereof in Ohio, considered.—Raymond v. Longworth, Case No. 11,595.

§ 19. Legacy, inheritance, and transfer taxes.

Deposits in a Pennsylvania savings bank, made by a citizen of New Jersey, not subject to Pennsylvania collateral inheritance tax.—Allen v. Philadelphia Sav. Fund Soc., Case No. 234.

A savings bank is not liable for the collateral inheritance tax on a deposit therein.—Allen v. Philadelphia Sav. Fund Soc., Case No. 234.

Stocks and bonds of Pennsylvania corporations, and claims against Pennsylvania debtors, belonging to a decedent not domiciled in Pennsylvania, and passing to collateral heirs, but not under the intestate laws of the state, nor under any will proved and administered therein, are not subject to the state collateral inheritance tax.—Kintzing v. Hutchinson, Case No. 7,834.

See, also, "Internal Revenue," § 21.

TELEGRAPHS AND TELEPHONES.

§ 1, Establishment. § 2, Receivers. § 3, Delivery of messages. § 4, Limitation of liability. § 5, Liability for damages, and measure of damages.

Contracts by telegraph, see "Contracts," § 3.
Liability for injury by cable in navigable stream, see "Navigable Waters," § 14.
Presumption of delivery of telegram, see "Evidence," § 12.
Taxation of expenses for telegraphing, see "Costs," § 20.

§ 1. Establishment.

A provision of a state statute, giving an exclusive right to a telegraph company to erect and use lines of telegraph within certain counties, *held* to be in conflict with Act July 24, 1866, in relation to the construction of telegraph lines.—Pensacola Tel. Co. v. Western Union Tel. Co., Case No. 10,960.

Congress has constitutional power to grant to telegraph companies organized under state laws the right to construct and use lines of telegraph along any of the military or post roads of the United States.—Pensacola Tel. Co. v. Western Union Tel. Co., Case No. 10,960.

When a railroad is in possession of a receiver of the United States court. a telegraph company can acquire no title to its right of way by condemnation proceedings in a state court.—Western Union Tel. Co. v. Atlantic & P. Tel. Co., Case No. 17,445.

Not authorized by acts establishing post roads, or Act July 24, 1866. to establish lines over right of way of railroad company without making compensation.—Atlantic & P. Tel. Co. v. Chicago, R. I. & P. R. Co., Case No. 632.

A railroad cannot grant to a telegraph company the sole right to construct a line over its right of way, so as to exclude other telegraph companies. Act July 24, 1866.—Western Union Tel. Co. v. American Union Tel. Co., Case No. 17,444.

A telegraph company having a grant from a railroad of such exclusive right to construct a line along the right of way is entitled to an injunction against actual interference with its line, but not against such interruption of its business as results from mere competition by other companies constructing rival lines along the same railroad.—Western Union Tel. Co. v. American Union Tel. Co., Case No. 17,444.

§ 2. Receivers.

If the receiver ratifies a contract previously made with the company, the rights under such contract are not affected by the foreclosure proceedings.—Western Union Tel. Co. v. Atlantic & P. Tel. Co., Case No. 17,445.

§ 3. Delivery of messages.

Telegraph companies are bound to deliver messages impartially, in good faith, and in the order in which they are received.—Dorgan v. Telegraph Co., Case No. 4,004.

A person using the telegraph, unless he insures his message, takes the risk of delay and failure to deliver arising from accidents and obstructions incident to telegraph lines.—Dorgan v. Telegraph Co., Case No. 4,004.

A telegraph company is entitled to a reasonable time for the delay on account of other business at the repeating office.—Behm v. Western Union Tel. Co., Case No. 1,234.

The fact that a message left at a telegraph office in New York at 5:20 p. m. was not delivered at Mobile until 10:30 a. m. on the next day *held* prima facie evidence of negligence.—Dorgan v. Telegraph Co., Case No. 4,004.

A telegraph company is not guilty of negligence where a message left at a small station during a reasonable absence of the operator is forwarded on his return.—Behm v. Western Union Tel. Co., Case No. 1,234.

§ 4. Limitation of liability.

A contract exempting the company from liability for damages resulting from delay, unless the message was ordered repeated, is void, as against public policy.—Dorgan v. Telegraph Co., Case No. 4,004.

§ 5. Liability for damages, and measure of damages.

A telegraph company, negligently delivering a forged dispatch, is liable for the damage thereby sustained, though plaintiff has a remedy ex contractu against a solvent indorser of a forged draft, which was the subject of the dispatch.—Strause v. Western Union Tel. Co., Case No. 13,531.

The company is only liable for damages which were within the reasonable contemplation of the parties at the time of making the contract for transmission.—Dorgan v. Telegraph Co., Case No. 4,004.

Liable only for nominal damages where the dispatch does not on its face indicate that the sender is liable to sustain loss if not promptly forwarded, and the company is not so informed.—Behm v. Western Union Tel. Co., Case No. 1,234.

The liability is limited to nominal damages merely, notwithstanding the agent was informed that the message was important, where the dispatch does not in any way indicate that damages will be suffered by delay.—Dorgan v. Telegraph Co., Case No. 4,004.

TENANCY IN COMMON.

§ 1, Creation and existence. § 2, Mutual rights and liabilities of co-tenants. § 3, Rights and liabilities of co-tenants as to third persons.

See, also, "Joint Tenancy."
Ejectment by cotenant, see "Ejectment," § 3.

§ 1. Creation and existence.

Where there are several grantees in a conveyance who take in trust for certain purposes, they are, under Act Mass. 1785, c. 62, to be deemed tenants in common, and not joint tenants.—Robison v. Codman, Case No. 11,970.

Under a joint demise, by the statute of Tennessee, a tenancy in common may be proved.—Fleeger v. Pool, Case No. 4,860.

§ 2. Mutual rights and liabilities of co-tenants.

One tenant in common may disseise another.—Prescott v. Nevers, Case No. 11,390.

A refusal by one tenant in common to permit his cotenant to participate in the enjoyment of the property constitutes an adverse possession.—Roberts v. Moore, Case No. 11,905.

An adverse possession held by a tenant in common, to the exclusion of his cotenants, bars under the statute of limitations or by lapse of time.—Scott v. Evans, Case No. 12,529.

The statute of limitations is set in motion by an ouster of a cotenant, and an adverse claim.—Four Hundred and Twenty Min. Co. v. Bullion Min. Co., Case No. 4,989.

A purchaser at a tax sale by a tenant in common in possession, who is an agent of the other cotenants, will be *held* to be a trustee for them.—Baker v. Whiting, Case No. 787.

A purchase made by one of two parties interested together by mutual agreement, made agreeably thereto, will inure to the benefit of the other.—Flagg v. Mann, Case No. 4,847.

Upon the death of one of two tenants in common of land sold by an attorney in fact, who

took bonds in payment, running to his principals jointly, the survivor is entitled, as against the executors of deceased, to have possession of all the bonds.—Penn v. Butler, Case No. 10,930.

The liability of a tenant in common of mineral land, who takes ore therefrom, is the value of his cotenant's share of the ore in place.—Clowser v. Joplin Min. Co., Case No. 2,908a.

Act Me. March 15, 1821, c. 35, § 2, punishing waste by a tenant in common by treble damages, does not apply where the title is held adversely.—Prescott v. Nevers, Case No. 11,390.

Equity will enjoin a tenant in common from stripping the land of its timber pending a bill in equity.—Bradley v. Reed, Case No. 1,785.

§ 3. Rights and liabilities of co-tenants as to third persons.

A deed by a tenant in common, of his interest in a particular part of the tract, though void as to cotenants, is good against himself and those claiming under him.—Lamb v. Wakefield, Case No. 8,024.

A tenant in common cannot, without consent of his cotenants, grant permits to others to cut timber on the premises.—Baker v. Whiting, Case No. 787.

A tenant in common can recover no more than his own portion of the estate, where he has not disseised his cotenant.—Stevens v. Ruggles, Case No. 13,408.

The holder of an undivided interest in land under the laws of California may recover the entire land, as against all parties, except his cotenants.—French v. Edwards, Case No. 5,098.

TENANCY IN TAIL.

See "Estates Tail."

TENDER.

§ 1, Necessity. § 2, Waiver. § 3, Sufficiency. § 4, Effect.

See, also, "Deposits in Court."
In admiralty, see "Admiralty," § 66.
Of freight, see "Shipping," § 187.
Of services, see "Pilots," § 5.

§ 1. Necessity.

A demand of payment in a certain kind of money will not excuse the debtor from proving a lawful tender.—Searight v. Calbraith, Case No. 12,585.

§ 2. Waiver.

A tender is dispensed with by a previous refusal to accept it.—Blight v. Ashley, Case No. 1,541.

A declaration by a person that he will not receive money about to be tendered excuses its production.—Barker v. Parkenhorn, Case No. 993.

§ 3. Sufficiency.

It is not a tender for one to ask if the money will be taken, and to say he is ready to pay it, and offer to give a check.—Ladd v. Patten, Case No. 7,973.

Treasury notes issued under Act 1814, cc. 77, 699, being receivable in payment of duties, taxes, and land debts due the United States, are a good tender in payment of such debts.—Thorndike v. United States, Case No. 13,987.

The interest on such notes continues to run until their payment.—Thorndike v. United States, Case No. 13,987.

A tender of a less amount than is due is of no effect.—Leitch v. Union R. Transp. Co., Case No. 8,224.

A tender after suit brought must include costs, though the process has not been served.—The Sunshine, Case No. 13,623.

A tender made after suit brought, where it does not include interest and costs, and the money is not deposited in court as required by the rules, is unavailing.—Hus v. Kempf, Case No. 6,943.

A tender of more than the amount due upon condition of receiving change and a receipt in full of the claim is not a legal tender.—Perkins v. Beck, Case No. 10,984.

A tender by the pledgor to the pledgee of a vessel, who has bought her at an attachment sale by another creditor, must include the expense of repairs made by him.—Barker v. Parkenhorn, Case No. 993.

§ 4. Effect.

A tender admits the cause of action in admiralty as at law.—Cain v. Garfield, Case No. 2,293.

A tender by respondents on libel for services as stewardess of a ship is an admission of ownership of the vessel.—Jones v. Crowell, Case No. 7,459.

Where general and special counts are pleaded, payment of money into court generally does not admit liability upon the special count.—Snow v. Miles, Case No. 13,146.

Where plaintiff does not establish more at the trial than the amount paid into court, he must be nonsuited, or have a verdict against him.—Donnell v. Columbian Ins. Co., Case No. 3,987.

Where defendant pleads a tender, plaintiff cannot accept the money and proceed for more. —Alexandria v. Patten, Case No. 186.

Effect on an allowance of costs, see "Admiralty," § 130; "Costs," § 6.

TERMS.

Of courts, see "Courts," § 5.
Of leases, see "Landlord and Tenant," § 3.

TERRITORIES.

§ 1, Authority over and application of acts of congress. § 2, Officers. § 3, Ordinances for the government of Northwest Territory.

Courts, see "Courts," § 104.
Regulation of pilotage, see "Pilots," § 1.

§ 1. Authority over, and application of acts of congress.

The government and laws of the United States do not extend to territory ceded by a foreign power by the mere act of cession.—American Ins. Co. v. Canter, Case No. 302a.

Act July 20, 1868, imposing a tax on distilled spirits, being a general act, and passed since the acquisition of Alaska, is in force there.—United States v. Seveloff, Case No. 16,252.

Congress has power to authorize the president to regulate or prohibit the introduction of distilled spirits into the district of Alaska, under penalties, as prescribed by Act July 27, 1868.—The Louisa Simpson, Case No. 8,533.

When distilled spirits are imported into the district of Alaska, within the meaning of the act.—The Louisa Simpson, Case No. 8,533.

§ 2. Officers.

The governor and judges of the territory of Michigan had power to adopt the laws of the respective states, but had no legislative authority.—Peck v. Pease, Case No. 10,894.

Salaries of officers of the territory of Minnesota.—United States v. Smith, Case No. 16,321.

§ 3. Ordinances for the government of Northwest Territory.

As to the force and effect generally of provisions of the ordinance of 1787 for the government of the Northwest Territory.—Spooner v. McConnell, Case No. 13,245.

Any provisions of the ordinance of 1787 for the government of the Northwest Territory which are repugnant to the Ohio constitution, sanctioned by congress, are abrogated by its provisions.—Spooner v. McConnell, Case No. 13,245.

The article in such ordinance respecting the navigableness of certain waters, and the carrying places between them, remains without modification.—Spooner v. McConnell, Case No. 13,-245.

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.—Woodman v. Kilbourn Mfg. Co., Case No. 17,978.

TESTAMENTARY CAPACITY.

See "Wills," §§ 3-5.

TESTAMENTARY POWERS.

Construction and operation, see "Powers."
Creation, see "Wills," §§ 42, 43.
Restrictions on power to devise or bequeath, see "Wills," §§ 1, 2.

THEATERS AND SHOWS.

Production and reproduction of plays, see "Literary Property."

THEFT.

See "Larceny."

THREATS.

See "Extortion."
Enjoining threatened injury, see "Injunction," § 5; "Patents," § 236.

TICKETS.

For carriage of passengers, see "Carriers," § 39.

TIMBER.

See "Logs and Logging."
Cutting from public lands, see "Public Lands," §§ 5-9.

TIME.

§ 1, Days—Excluding first or last day. § 2, —— Excluding Sunday. § 3, —— Disregarding fractions of a day.

For appearance, see "Appearance," § 2.
For application for security for costs, see "Costs," § 8.
For giving notice of nonpayment, see "Bills and Notes," § 74.
For holding courts, see "Courts," § 5.
For performance of contract, see "Contracts," § 23.
For presenting bill or note for payment, see "Bills and Notes," § 67.
—— claims against decedents' estates, see "Executors and Administrators," § 29.
—— or suing out writ of error, see "Appeal and Error," § 11.
For taking appeal in admiralty, see "Admiralty," § 117.
For taking depositions, see "Depositions," § 7.
—— effect of statutes, see "Statutes," § 34.
For trial, see "Criminal Law," § 80.

§ 1. Days—Excluding first or last day.

Where an act is to be performed within a certain time, the day on which the instrument requiring it is made is to be excluded.—Pearpoint v. Graham, Case No. 10,877.

§ 2. —— Excluding Sunday.

Where the last day for doing an act falls upon Sunday, it must be performed on the day preceding.—Pearpoint v. Graham, Case No. 10,877.

§ 3. —— Disregarding fractions of a day.

The doctrine that in law there is no fraction of a day is a mere legal fiction, and is true only sub modo, and in a limited sense, where it will promote the right and justice of the case.—In re Richardson, Case No. 11,777.

Fractions of a day will be considered, when it is necessary to ascertain which of two events first happened.—Lockett v. Hill, Case No. 8,-443; In re Wynne, Id. 18,117.

Fractions of a day are not to be noticed in determining the time of a passage of a law of congress. The law goes into effect from the beginning of the day of its date, unless otherwise provided.—In re Welman, Case No. 17,407.

TITLE.

Abstracts of title, see "Abstracts of Title."
Color of title, see "Adverse Possession."
Removal of cloud, see "Quieting Title."
Representations as to, see "Insurance," § 59.
Sufficiency of title of seller of goods, see "Sales," § 19.
—— of vendor of land, see "Vendor and Purchaser," § 10.
Tax titles, see "Taxation," §§ 16, 17.

Particular matters affecting title.

See "Adverse Possession," § 8; "Eminent Domain," § 13.
Covenants, see "Covenants," §§ 2-8.
Defects, see "Vendor and Purchaser," § 8.
Estoppel to assert title, see "Estoppel," § 5.
Sale of goods, see "Sales," §§ 29-32.

Particular species of property or rights.

See "Patents," §§ 138-159; "Trade-Marks and Trade-Names," §§ 9-14.
Goods stored, see "Warehousemen," § 2.
Inventions, see "Patents," § 138.
Vessels, see "Shipping," §§ 17-40.
Wrecks, see "Shipping," §§ 256, 257.

Title necessary to maintain particular actions.

See "Ejectment," § 3; "Escheat."

Titles of particular acts or proceedings.

Pleading, see "Equity," § 41.
Statutes, see "Statutes," §§ 9, 10.

TORTS.

Assignment of right of action, see "Assignments," § 1.
Measure of damages, see "Damages," §§ 9, 10.

By particular classes of parties.

Agents, see "Principal and Agent," §§ 24-32.
Assignee in bankruptcy, see "Bankruptcy," § 294.
Employés, see "Master and Servant," § 9; "Municipal Corporations," §§ 24, 25; "Shipping," §§ 101-104.
Municipal corporations, see "Municipal Corporations," §§ 24, 25.
Partner, see "Partnership," § 29.

Particular remedies for torts.

See "Action on the Case"; "Arrest," §§ 1–10; "Trespass," §§ 3–11; "Trover and Conversion," §§ 2–4.
Election of remedies, see "Election of Remedies," § 2.
Jurisdiction of admiralty, see "Admiralty," §§ 4, 5, 30–33, 39.
Proof of claims in bankruptcy, see "Bankruptcy," § 376.

Particular torts.

See "Assault and Battery," § 6; "Conspiracy," §§ 1–5; "False Imprisonment"; "Fraud"; "Libel and Slander"; "Malicious Prosecutions"; "Negligence"; "Nuisance"; "Trespass"; "Trover and Conversion"; "Waste."
Abuse of process, see "Process," § 9.
Causing death, see "Death," §§ 2, 3.
Injuries to seamen, see "Seamen," §§ 156–174.
Maritime torts, see "Collision."
Wrongful capture as prize, see "War," § 34.

§ 1. What constitutes liability.
It is a maritime tort for the master to shave the head of a stowaway on board his vessel for the mere purpose of putting a mark upon him. —Turbett v. Dunlevy, Case No. 14,241.

In cases of tort, plaintiff may elect or make his action joint or several, and no defendant can take away such election.—Smith v. Rines, Case No. 13,100.

TOWAGE.

I. REGULATION IN GENERAL.
§ 1, Statutory regulation.

II. CONTRACT IN GENERAL.
§ 2, Nature in general. § 3, Parties. § 4, Consideration. § 5, Performance. § 6, Compensation—Right in general. § 7, —— Amount. § 8, —— Lien. § 9, Relation of tug to tow. § 10, Duties and liabilities of tug to tow in general—Nature of tug's liability. § 11, —— Skill, care, and knowledge required in general. § 12, —— Making up tow. § 13, —— Furnishing force and appliances. § 14, —— Abandonment of tow.

III. LOSS OF OR INJURY TO TOW.
§ 15, Liability of tug in general. § 16, Negligent navigation. § 17, Stranding of tow. § 18, Unknown or concealed obstructions. § 19, Collision. § 20, Contributory negligence or fault of tow—Duties and liabilities of tow in general. § 21, —— Unseaworthiness or unfitness of tow. § 22, —— Failure to obey orders of tug. § 23, Duties of tug after disaster. § 24, Limiting liability of tug. § 25, Actions for damages—Nature and form of remedy. § 26, —— Stale claims. § 27, —— Parties. § 28, —— Evidence. § 29, —— Damages.

IV. LOSS OF OR INJURY TO TUG.
§ 30, Duty and liability of tow.

See, also, "Collision," §§ 47–59.
Jurisdiction over action for injury to tow, see "Admiralty," § 31.
—— towage contracts, see "Admiralty," §§ 4, 21.
Salvage compensation for towing services, see "Salvage," § 16.

I. REGULATION IN GENERAL.

§ 1. Statutory regulation.
A steam tug engaged exclusively in towing upon a river within the limits of a state is not subject to inspection, under Act June 8, 1864, § 4.—The Farragut, Case No. 4,677; The Oconto, Id. 10,421.

It is not material that the vessels towed were engaged in interstate commerce.—The Farragut, Case No. 4,677.

In a libel of information brought under Act Feb. 23, 1871, a seizure must be alleged in order to give the court jurisdiction.—The Oconto, Case No. 10,421.

A steam tug, regularly licensed under the acts of congress, plying between ports in different states, is not amenable to local laws regulating Sunday labor.—Philadelphia & Havre De Grace Steam Tow-Boat Co. v. Philadelphia, W. & B. R. Co., Case No. 11,085.

II. CONTRACT IN GENERAL.

§ 2. Nature in general.
A contract to tow a vessel out to sea is maritime, though the service does not extend beyond the district.—Betts v. Goodwin, Case No. 1,374.

§ 3. Parties.
A vessel engaged in towing is liable in rem for refusal to perform a contract of towage made by her master, where the agreed price has been received therefor.—The James McMahon, Case No. 7,197.

A person who ships cargo by barge which he knows must be towed to her place of destination is bound by the terms of towage which the barge agrees on with the tug which the barge procures to tow her.—The W. E. Gladwish, Case No. 17,355.

The owner of a canal boat cannot recover for damages caused by the negligence of a tug in the performance of a contract of towage which the former knew that the master of the tug made against the positive instructions of the owner.—The R. F. Cahill, Case No. 11,735.

§ 4. Consideration.
Contracts for towage, made between masters of tugs and persons in charge of a wreck, should be scrutinized by courts of admiralty, and annulled if it appears that undue advantage was taken of the necessities of the persons in charge of the wreck to procure unreasonable recompense.—The W. D. B., Case No. 17,306.

The promise of a tug, which had towed a schooner from imminent danger of fire, and, with the assent of her master, left her at an apparently safe berth, to return in case of danger, is without consideration, and the tug is not liable for a breach thereof.—Bothwell v. Vessel-Owners' Towing Ass'n, Case No. 1,687.

§ 5. Performance.
A contract to tow a canal boat to a certain dock, and there leave her in a safe and suitable place to discharge her cargo, *held* performed by leaving the canal boat at the upper side of the pier, where, on a change of tide, she was crushed by floating ice.—The Nellie, Case No. 10,094.

§ 6. Compensation—Right in general.
A steamboat owner, calling for the assistance of another steamboat to remove his boat from a position of danger from fire, cannot escape paying for such services on the ground that his boat would have been safe in its original position.—Stevens v. The S. W. Downs & The Storm, Case No. 13,411.

§ 7. —— Amount.
The full sum fixed by the contract for towage service will not be allowed, but only a quantum meruit, if it appears that the service did not accomplish the result agreed to be performed.—The W. D. B., Case No. 17,306.

A threat to attach a vessel is not such duress as will avoid the effect of a certificate made by a master as to the amount agreed to be paid for services.—The Senator, Case No. 12,665.

The master's certificate as to the amount agreed to be paid for services will not be set

aside unless it appear clearly and satisfactorily that the sum named is so unreasonable as to raise a suspicion of fraud.—The Senator, Case No. 12,665.

§ 8. —— Lien.
Towage services constitute a lien upon the vessel.—Ward v. The Banner, Case No. 17,149; The General Cass, Id. 5,307.

The lien for towage is devested by an assignment of the claim.—Sturtevant v. The George Nicholaus, Case No. 13,578.

A contract to tow boats for a certain sum per trip during the season *held* inconsistent with the right to a lien, and a libel in rem will not lie for the towage services.—The J. M. Welsh, Case No. 7,327.

§ 9. Relation of tug to tow.
A tug towing a coal heaver is the servant of the latter, and bound to obey its orders; and is not responsible, though, in point of fact, giving orders to her, for damages in the proper course of its employment.—The Sampson, Case No. 12,-280.

§ 10. Duties and liabilities of tug to tow in general—Nature of tug's liability.
A tug is not liable as a common carrier upon a contract of towage.—Bothwell v. Vessel-Owners' Towing Ass'n, Case No. 1,687; Abbey v. The Robert L. Stevens, Id. 8; The Neaffie, Id. 10,063; The Princeton, Id. 11,433a; The Angelina Corning, Id. 384; Dunn v. The Young America, Id. 4,178; The Enterprise, Id. 4,500.

§ 11. —— Skill, care, and knowledge required in general.
The master of the tug in performing a contract of towage is responsible for ordinary skill and diligence.—The Merrimac, Case No. 9,478; The Adelia, Id. 79.

The tug, unless wholly under the command of the tow, and implicitly obeying its orders, is bound to use all necessary care, foresight, and skill to provide for the safety of the tow.—I—— v. The I. M. Lewis and The Aline, Case No. 6,991.

Proper skill and caution is such skill and caution as persons of ordinary prudence, duly qualified for the business, and exercising an honest care of the interests confided to them, ordinarily use.—Miller v. The Eastern Railroad, Case No. 9,567.

The tug is bound to know the channel and to keep the tow in the deepest water, and she must resort to sounding where the ordinary lights and landmarks are obscured.—The Morton, Case No. 9,864.

The contract of towage implies knowledge of the channel and safe pilotage.—The Zouave, Case No. 18,221.

The master of the tug is bound to know the sailing qualities of a vessel which he has several times before towed into the harbor, and to know the condition of the harbor; and he is responsible for the manner in which he enters it.—The Margaret, Case No. 9,068.

§ 12. —— Making up tow.
The master of the tug has the duty of making up the tow, and he may exercise his judgment in that regard without reference to directions by the master of the tow.—The Sweepstakes, Case No. 13,687.

In arranging the tow, the tug must direct as to the length of lines and the position of the vessels with reference to care in navigation.—The Morton, Case No. 9,864.

The tug is bound to the exercise of ordinary care in taking up, arranging, and managing the tow.—The Morton, Case No. 9,864.

In making up a tow, vessels of heavy draft should be placed behind those of lighter draft.—The Zouave, Case No. 18,221.

The steamer must arrange her tow with reference to her capacity and the nature of the voyage and the waters to be navigated.—Flannery v. The Ontario, Case No. 4,856.

In passing through the channel of St. Clair Flats, the vessel of the heaviest draft should be placed last.—The Sweepstakes, Case No. 13,-687.

The tug is not liable as a common carrier, but is bound to the exercise of ordinary skill and diligence in taking up, arranging, and managing its tow.—The Stranger, Case No. 13,525.

Steamboat *held* in fault for unwieldy arrangement of tow on the Schuylkill river.—Flannery v. The Ontario, Case No. 4,856.

§ 13. —— Furnishing force and appliances.
One who contracts to tow a vessel from sea into port must furnish sufficient force for the undertaking.—Dunn v. The Young America, Case No. 4,178.

The tug is bound to furnish the towing line as a part of the contract of towage, in the absence of a usage or understanding to the contrary.—The Merrimac, Case No. 9,478.

A tug whose master also acts as pilot and engineer is not properly manned.—The Armstrong, Case No. 540.

A hawser, lengthened by a piece of stern line, parted when another tug took hold to help in the increasing wind, and the tows were seriously injured by pounding together, and afterwards sank. *Held*, that the tug was liable.—The Francis King, Case No. 5,042.

§ 14. —— Abandonment of tow.
A tug is justifiable in abandoning tow where towline breaks at night during severe storm, and attempts to regain it would be very dangerous to tug.—The Clematis, Case No. 2,876.

Decision of master of tug, acted on in good faith, to abandon tow in storm, will not be impeached, unless clearly erroneous.—The Clematis, Case No. 2,876.

A propeller, having barges in tow, left them outside of the port of Cleveland, while she went in to take on fuel. *Held*, that she was liable for a loss by a storm during the night.—The Elmira, Case No. 4,417.

III. LOSS OF OR INJURY TO TOW.

§ 15. Liability of tug in general.
The liability of a tug for injuries to her tow arises from the nature of the service, and exists although the contract of towage is not made immediately between tug and tow.—Jennings v. Muller, Case No. 7,282.

A tug is liable for damages done to her tows through want of ordinary care on her part.—The Lyon, Case No. 8,645.

A tug, exercising that degree of caution and skill which prudent navigators usually employ in simliar services, is not liable for injury to tow.—The Brazos, Case No. 1,821.

The tug is not responsible for damages done by the tow, whether lashed alongside or drawn by hawsers, except it be proved that the injury was owing to want of care or skill in the tug, in performing the duties belonging to her.—The Express, Case No. 4,598.

The responsibility for navigation where the tow is lashed to the side of the tug, and depends wholly upon it for motive power and steerage, is wholly on the tug.—Dutton v. The Express, Case No. 4,209.

The tug is not liable for taking one of several courses open to it in an emergency, unless it ap-

pear that such course was manifestly the most dangerous.—The Mohawk, Case No. 9,693.

§ 16. Negligent navigation.

A tug is liable for damages, resulting from negligence in her navigation, to a vessel in tow, whether she is towing under a contract or not. —The Deer, Case No. 3,737.

Owners of steamer towing a flat boat at a low stage of water in the Ohio river *held* not liable as common carriers for a loss, in the absence of negligence or want of skill in navigation.—Brawley v. The Jim Watson, Case No. 1,817.

Tow boat *held* guilty of negligence in navigating close to shore, through anchored vessels, and in not anticipating sudden anchoring of vessels ahead.—The Brooklyn, Case No. 1,938.

The towing boat on the Mississippi river *held* in fault for attempting to run bridge piers in tempestuous weather with loaded barges in tow. —The Mollie Mohler, Case No. 9,701.

Tug *held* not to have exercised ordinary skill and diligence in leaving Astoria on the ebb tide with a tow for Cape Disappointment.—The Merrimac, Case No. 9,478.

A carrier is guilty of negligence in towing two loaded barges around a point where the channel is narrow and the water shallow, where one barge could have passed in safety.—The Northern Belle, Case No. 10,319.

A tug towing in narrow channel encountering blinding snow storm should anchor.—The Armstrong, Case No. 540.

A steamboat, towing canal boats between New Brunswick and New York, *held* negligent in venturing beyond the mouth of the Raritan river in a high wind.—The Blanche Page, Case No. 1,523.

To make a tug liable for keeping on through running ice, it must appear that the error was one which a careful and prudent navigator would not have made under the circumstances. —The W. E. Gladwish, Case No. 17,355.

Tug *held* liable for the loss of a canal boat run upon Flood Rock in a field of soft ice, on the ground that she should have waited until the ice had passed.—The U. S. Grant, Case No. 16,-804.

Tug *held* liable for damages to ship towed stern foremost from pier in East river, and drifting into pier on opposite shore, where the ship's hands failed to catch the line thrown from the tug.—The M. A. Lennox, Case No. 8,-987.

A tug towing a lighter from the North into the East river, without slackening speed upon coming round against the ebb tide, *held* liable for the capsizing of the lighter.—The Trojan, Case No. 14,184.

A vessel with a heavy tow in passing from the North river into the East river, where the harbor is crowded with vessels at anchor, should pass around Governor's Island.—The Syracuse, Case No. 13,717.

Tug *held* not in fault when, having a clear passage, she was forced ashore, with her tow, by a cake of ice which swung on the tide.—The General William McCandless, Case No. 5,322.

Injuries to tow *held*, on the evidence, incident to the navigation by hawser.—Patlen v. The Illinois, Case No. 10,798.

The tug must take proper measures to guard against the effect of the tide and the passing of other tugs.—The Olive Baker, Case No. 10,489.

A tug employed to take a vessel out of a slip is bound to adopt a method of taking her out without injury.—The M. M. Caleb, Case No. 9,-680.

§ 17. Stranding of tow.

A tug which strands a tow by negligence is liable for expenses of getting her off; and the court will not scrutinize very closely items of expense for lighterage, etc., where the master acted in good faith.—The Michael Groh, Case No. 9,522.

A tug which ran its tow aground is liable for the amount the tow was compelled to pay another tug as salvage for pulling her off.—The C. F. Ackerman, Case No. 2,562.

Miscalculation, resulting in failure to reach a bar at high water, and the grounding of the tow, is negligence rendering the tug liable.—The Brazos, Case No. 1,821.

Owners of tug *held* liable for grounding of tow where the master of the tug did not take the channel agreed, and gave confused and contradictory orders.—Dutton v. The Express, Case No. 4,209.

Tug *held* liable for grounding of tow in Hell Gate, resulting from maneuvers rendered necessary by failure of the pilot to observe in proper time that a schooner preceding the tug and tow had lost the wind.—The Niagara, Case No. 10,-219.

A tug will be held liable for injury to her tow run ashore by reason of the breaking of the tug's rudder chain, which was known to the owner to be worn out and insufficient.—The M. M. Caleb, Cases Nos. 9,681, 9,683.

§ 18. Unknown or concealed obstructions.

A tug engaged to tow a schooner from one anchorage in New York harbor to another is not responsible for the safe transportation of the schooner over sunken rocks, provided she exercise ordinary care and skill in directing the movements of the two vessels.—Whitehead v. The Tempest, Case No. 17,563a.

A tug using ordinary care is not liable for damages to the tow in striking a sunken rock, caused by the sudden and unexplained sheering of the tow.—The Stranger, Case No. 13,525.

A tug is not liable for a tow sunk when in ordinary and proper channel, by striking a single rock on the bottom, whose presence was not known to mariners and could not have been known by exercise of care.—The America, Case No. 282; The Angelina Corning, Id. 384.

Liability for injury to schooner by striking on rocks in attempt of tug to wind her by means of an eddy and the current.—The Adelia, Case No. 79.

The running of the tow on a sunken pier known to the master of the tug *held* conclusive evidence of negligence, in the absence of proof of vis major.—The Deer, Case No. 3,737.

It is culpable negligence for a tug in her home port to leave her tow beside a dock where, upon the ebbing of the tide, the latter will be in danger from a sunken obstruction.—Jennings v. Muller, Case No. 7,282.

§ 19. Collision.

The question of the tug's liability where the tow is injured by being brought into collision with another vessel is to be determined by the same rules applicable to ordinary cases of collision.—Nelson v. The Goliah, Case No. 10,106.

Tug *held* liable for injury to tow in collision when rounding a high dock which shut off view of approaching vessels.—The C. Y. Davenport, Case No. 3,527.

The tug will be *held* solely liable for a collision between boats in her tow, caused by the grounding of one on attempting to pass a raft moving in the same direction in a narrow channel.—The David Morris, Case No. 3,596.

Where a vessel to be towed is known to the tug to be a bad steerer, the tug will be liable

for injuries to other vessels in the tow caused thereby.—Orhanovich v. The America, Case No. 10,568.

A steamboat endeavoring to round the Battery in New York harbor with a large tow, against a strong tide, being apparently without sufficient power, *held* liable for loss of tow by collision with a vessel at anchor.—Langley v. The Syracuse, Case No. 8,068.

A tug which gives a different signal from that intended, resulting in a collision, is liable therefor to her tow.—The Volunteer, Case No. 16,990.

Tug *held* not liable for collision of tow with dock.—McFadden v. The Illinois, Case No. 8,784.

A tug descending a river about a mile wide, with tows astern on long lines, *held* in fault for damage to one of them by collision with an anchored vessel, for not passing to leeward, where lay three-fourths of the navigable water.—The Lyon, Case No. 8,645.

§ 20. Contributory negligence or fault of tow—Duties and liabilities of tow in general.

Vessel in tow must keep in proper trim to follow tug, and steer accordingly.—The Allegiance, Case No. 207; The Sea Breeze, Id. 12,572a; The Brothers, Id. 1,969.

The vessel towed is bound to prevent a collision if she can, or to make the damages as light as possible.—The Morton, Case No. 9,864.

Where the master of a boat, left by her tug to wait the tug's return to complete the towing contract, at a place from which she is obliged to move for other vessels, moves her to an unsafe place, the tug is not liable for resulting injuries. —The P. C. Schultz, Case No. 10,865.

Where the tug acts pursuant to the direction of the owners of the tow and a pilot employed by them, it is not liable for resulting damages.—Goodwin v. The C. Durant, Case No. 5,552.

When tug not liable to vessel in stern tier of tow, injured when leaving dock at night.—Abbey v. The Robert L. Stevens, Case No. 8.

The refusal of the master of the tow to go on board after she had broken adrift, to aid in her rescue, will prevent a recovery for her loss, if it contributed thereto, unless such refusal was based upon a well-grounded fear of endangering his life.—Hope v. Eastern Transp. Line, Case No 6,680.

§ 21. —— Unseaworthiness or unfitness of tow.

Towboat *held* not liable for sinking of canal boat in tier of boats towed astern, where she was old and weak, and no notice of danger was given the towboat.—The Oswego, Case No. 10,610.

A canal boat in a tow on the Hudson river, being unseaworthy, began to leak, and was cast off from the steamboat, but failed to reach a dock, and sunk. *Held*, that the steamboat was liable for half the loss caused by the failure to reach the dock.—The J. L. Hasbrouck, Cases Nos. 7,324, 7,325, 7,326.

Tug *held* not liable by loss of tow in severe storm, sunk by water getting into her hold through an insufficiently secured forecastle hatch.—Schurtz v. The New York, Case No. 12,492.

Tug *held* not liable for loss of canal boat by striking pier, where it did not have strength enough to bear ordinary contacts and blows.—The General Geo. G. Meade, Case No. 5,312.

Where the tow undertakes to furnish the line, and the tug objects to its insufficiency, it is not liable for the consequences of its breaking. —Moore v. The C. P. Morey, Case No. 9,756.

The tug will not be held liable, as between the tug and the tow, for the condition and strength of a hawser furnished by the tow, where it is not shown that it was parted by the negligence of the tug.—The Echo, Case No. 4,263.

The failure of canal boats towed through Long Island Sound to have anchors ready for use, where the tug takes shelter in the lea of an island on a storm arising, and to use the same on notice from the master of the tug, where the latter's anchor breaks in the increasing sea, and the boats are cut adrift, will cast upon the tow the burden of the loss.—The Thomas Kiley, Case No. 13,925.

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.—The Workman, Case No. 18,045.

A tug which negligently places a tow in danger cannot set up in defense to a suit for the loss, mistake, or want of skill of the tow's crew in an emergency, or the absence of extraordinary ground tackle.—The Merrimac, Case No. 9,478.

§ 22. —— Failure to obey orders of tug.
The master of a vessel towed on a line astern is bound to obey all proper orders of the master of the tug, and the latter is not liable for damages caused by refusal or negligence in such particular.—Dutton v. The Express, Case No. 4,209.

Tug *held* relieved from responsibility where master of injured tow refused to be towed to a place of safety, and tow sank.—The General Geo. G. Meade, Case No. 5,312.

A general direction that the tow brace off from the dock will not excuse the tug when the latter was ignorant of the specific danger to which the tow was exposed.—Jennings v. Muller, Case No. 7,282.

§ 23. Duties of tug after disaster.
The tug must be extremely diligent to render assistance to tow in distress.—Abbey v. The Robert L. Stevens, Case No. 8.

Tug *held* negligent in casting off tow at destination without inquiring as to the condition of one of the boats, with which she had come in violent contact during the day.—Gilooley v. Pennsylvania R. Co., Case No. 5,448a.

The tug is not bound to lay by a tow aground where it would endanger her own safety.—The Mosher, Case No. 9,874.

Where the tow is sunk in a collision without any fault on the part of the tug, the latter's obligation is at an end, and she is under no obligation to mark the wreck by a light or otherwise, so as to prevent injury to other vessels thereby.—The Swan, Case No. 13,667.

§ 24. Limiting liability of tug.
A steam tug cannot limit its responsibility by a notice, given at the time of commencing the voyage, that it must be at the risk of the tow. —Vanderslice v. The Superior, Case No. 16,843.

The tug must use reasonable carefulness and ordinary skill, and cannot bargain to be exempted from all the risks of the service.—Ulrich v. The Sunbeam, Case No. 14,329.

Whether a contract stipulating for the exemption of the tug from proper and reasonable care and skill in navigation would be lawful, quære.—The Princeton, Case No. 11,434.

A contract for towage at the risk of the tow does not exempt the tug from liability for damages caused to the tow by the negligence of the tug.—The Syracuse, Case No. 13,717; Deems v. Albany & Canal Line, Id. 3,736; Langley v. The Syracuse, Id. 8,068; Williams v. The Vim, Id. 17,744a.

Under a contract to tow "at the risk of the master and owners" of the tow, a tug is respon-

sible only for the exercise of ordinary skill and diligence in her navigation. — The Princeton, Case No. 11,434.

Under such contract the tug is not liable for a loss resulting from mere error of judgment, in the absence of gross negligence or willful misconduct.—The Princeton, Case No. 11,434.

Tow cannot recover for injury from ice where tug gave due notice of danger and refused to take any responsibility.—The Alfred and Edwin, Case No. 190.

Where the agent of the owner of a barge informs the master of a tug that the master of the barge has no authority to take the risk of being towed through dangerous ice, the tug will be liable for a loss caused thereby.—The James A. Wright, Cases Nos. 7,190, 7,191.

The tug must exercise reasonable diligence and ordinary skill; and where the tow takes the chances of entering, in a storm, a harbor with a shifting channel, the tug is not liable, in the absence of negligence, where the tow grounds on a new shoal.—The Mosher, Case No. 9,874.

§ 25. Actions for damages — Nature and form of remedy.
An action to recover damages arising out of the negligent performance of a towing contract rests in contract, and not in tort.—Goodwin v. The C. Durant, Case No. 5,552.

§ 26. —— Stale claims.
A delay of three years to enforce a claim against a tug for negligent towing, where the ownership of the tow had changed, *held* to render the claim stale.—The Jessie Russell, Case No. 7,298.

§ 27. —— Parties.
Owner of barge lost by negligence of tug may sue such tug therefor, though the barge was turned over to defendant tug by another tug, with which the contract for towage was made.—The Clematis, Case No. 2,875.

The liability of a tug guilty of negligence is not diminished by the fact that another vessel, not joined in the action, was equally in fault. —The C. Y. Davenport, Case No. 3,527.

§ 28. —— Evidence.
Burden is on libelant to prove negligent performance of contract.—The Adelia, Case No. 79; Dunn v. The Young America, Id. 4,178; Nelson v. The Goliah, Id. 10,106.

A tug is liable for the loss of a tow in a sudden squall where she does not complete the contract of towage at one trip, unless she shows that between the time when the tow was left at an intermediate place and when she was taken up again there was no time when the towage contract could have been safely performed.—The W. E. Cheney, Case No. 17,344.

Where cargo is shipped by a barge, and lost by contact with ice while the barge is being towed by a tug, the owner of the cargo must show negligence on the part of the tug to recover against it for a loss.—The W. E. Gladwish, Case No. 17,355.

Burden is on tug which abandons tow in storm to show sufficient excuse therefor.—The Clematis, Case No. 2,876.

The burden is on the tug to show that the object under water, which the tow struck, was one the presence of which the tug was not bound to have known.—The George Farrell, Case No. 5,332.

The tug is prima facie at fault in a case of damages resulting from the slipping of the tow line.—The Sweepstakes, Case No. 13,687.

The admission of the owner of a tug that he was liable for the loss of a tow, coupled with payment of damages to the owner, is sufficient to sustain a decree against him in favor of the owner of the cargo.—The U. S. Grant, Case No. 16,804.

§ 29. —— Damages.
The value of the vessel at the time and place of loss, in the local currency or its equivalent, will be allowed.—Cramer v. Allen, Case No. 3,346.

The uncertainty as to the degree of fault and its consequences, where both vessels are chargeable, brings the case within the reason of the rule of apportionment.—Cramer v. Allen, Case No. 3,346.

The damages will be divided where a tow on the Niagara river was separated from the tug, through negligent navigation of the tug, and drifted over the falls, because it had no anchor on board.—Cramer v. Allen, Case No. 3,346.

Item of cost of raising cargo of sunken tow will be stricken from a decree against the tug where libelant is shown to have been released from claim of the cargo owner.—The Francis King, Case No. 5,043.

IV. LOSS OF OR INJURY TO TUG.

§ 30. Duty and liability of tow.
Where a steamer stranded in a river employs a less powerful one to assist in getting her off, and directs the maneuver, it is her duty to see that there are no obstacles or dangers in the place where the latter is to work; and she is liable for the sinking of the latter in the maneuver.—The Virginia, Case No. 16,957.

TOWNS.

§ 1, Officers. § 2, Contracts in general. § 3, Bonds—Issue and validity. § 4, —— Coupons. § 5, —— Actions on bonds. § 6, Actions.

See, also, "Counties"; "Municipal Corporations."
Liabilities for injuries from defective highways, see "Highways," §§ 4, 5.
Reservation of town sites, see "Public Lands," § 24.

§ 1. Officers.
In Illinois, town officers continue to be such until their successors are qualified, and resignation does not relieve them from duty and liability.—United States v. Badger, Case No. 14,493.

§ 2. Contracts in general.
A contract entered into by a town is not destroyed and annulled by its subsequent obliteration by legislative act.—Beckwith v. Racine, Case No. 1,213.

§ 3. Bonds—Issue and validity.
Act Mo. March 23, 1868, authorizing townships to subscribe to the capital stock of a railroad company when two-thirds of the persons voting upon the question vote in favor thereof, *held* valid.—Pepper v. Saline County, Case No. 10,972.

A subscription, made by a township in aid of a railway under a statute which has been declared unconstitutional because it required only two-thirds of the voters voting (Act Mo. May 23, 1868), while the constitution required two-thirds of all the voters in the township, is void, although the officers certify that two-thirds of all the voters voted for it.—Kirkbride v. Lafayette County, Case No. 7,840.

It is no defense to railroad aid bonds that after the meeting at which the donation was authorized, but before its formal acceptance by the company, the action of the first meeting was rescinded by the town.—Portsmouth Sav. Bank v. Yellow Head, Case No. 11,296.

The assent by majority taxpayers to the issuing of railway aid bonds, once duly made under Laws Vt. 1867, No. 1, cannot be withdrawn, though attempted to be made before the assent has been certified.—First Nat. Bank v. Dorset, Case No. 4,808.

Sufficiency of affidavit of assessors under Laws N. Y. 1869, c. 241, § 2, as to the facts authorizing the issue of town bonds.—Smith v. Ontario, Case No. 13,085.

The affidavit of the assessor as to the consent of taxpayers, when attached to and filed with such consent, *held* sufficient, although it did not state on its face what the consent was to, or for, or about.—Phelps v. Lewiston, Case No. 11,076.

A provision in a statute under which railroad aid bonds were issued, that they should be registered in the office of the county clerk, *held* directory merely.—First Nat. Bank v. Arlington, Case No. 4,806.

Proper proceedings for the issue of railroad aid bonds, where proceedings were commenced under an old act (Laws N. Y. 1869, c. 907), and continued under a new one (Id. 1871, c. 925), passed during their pendency.—Munson v. Lyons, Case No. 9,935.

Town bonds issued after, but authorized by vote before, the adoption of a new constitution, are not affected by it.—Balcheller v. Mascoutah, Case No. 792.

Validity of bonds issued by the town of Lewiston, N. Y., under Acts N. Y. May 11, 1868, and April 19, 1869.—Phelps v. Lewiston, Case No. 11,076.

§ 4. —— Coupons.
A statement in bonds that the commissioners have caused one of their number to sign the coupons is equivalent to a signing of the coupons by all of them.—Phelps v. Lewiston, Case No. 11,076.

Interest is recoverable on coupons from the time of the demand.—Phelps v. Lewiston, Case No. 11,076.

§ 5. —— Actions on bonds.
In a suit on railway aid bonds, evidence of declarations made to taxpayers before they assented to the issuing of the bonds inducing such assent, *held* inadmissible.—First Nat. Bank v. Arlington, Case No. 4,806.

§ 6. Actions.
No action at law can be maintained against a town which has been obliterated by legislative act.—Beckwith v. Racine, Case No. 1,213.

A detective employed by a town to ascertain what individuals composed a mob that destroyed property for which the town was liable may recover compensation, with interest from the time of his demand.—Sargent v. Inhabitants of Bristol, Case No. 12,363.

TRADE-MARKS AND TRADE-NAMES.

I. MARKS AND NAMES SUBJECTS OF OWNERSHIP.

§ 1, Nature of trade-marks. § 2, Devices or symbols. § 3, Numerals. § 4, Fictitious or fanciful names. § 5, Geographical names. § 6, Names of manufacturers. § 7, Names of patented articles. § 8, Form of articles or packages.

II. TITLE, CONVEYANCES, AND CONTRACTS.

§ 9, Nature of property. § 10, Who may acquire trade-mark. § 11, Extent of rights acquired. § 12, Abandonment and forfeiture. § 13, Construction and operation of assignments. § 14, Change in or dissolution of partnership.

III. REGISTRATION, REGULATION, AND OFFENSES.

§ 15, Power to regulate trade-marks. § 16, Registration. § 17, Criminal prosecutions—Searches.

IV. INFRINGEMENT.

(A) What Constitutes Infringement.

§ 18, Nature of injury. § 19, Imitation—In general. § 20, —— Marks, devices, or symbols. § 21, —— Names. § 22, —— Packages. § 23, Use of trade-mark for different goods. § 24, Use of goods for different purposes. § 25, Deception of public.

(B) Actions.

§ 26, Grounds of action and defenses. § 27, Persons entitled to sue. § 28, Persons liable. § 29, Pleading. § 30, Evidence. § 31, Reference. § 32, Temporary injunction. § 33, Permanent injunction. § 34, Damages and profits.

I. MARKS AND NAMES SUBJECTS OF OWNERSHIP.

§ 1. Nature of trade-marks.
A trade-mark signifies anything that has become in time adopted as the prima facie means of detecting the goods, wares, or properties of certain proprietors.—Washington Medalion Pen Co. v. Esterbrook, Case No. 17,246a.

Words, to be upheld as a trade-mark, must either be merely arbitrary or indicate origin or ownership.—Blackwell v. Dibrell, Case No. 1,-475.

§ 2. Devices or symbols.
The fact that the eagle is the national emblem of the United States does not prevent its appropriation by private parties for use as a trademark, especially when there is but slight resemblance in the figure of the eagle so used to that of the national emblem.—United States v. Steffens, Case No. 16,384.

An illustration of a crown used by brand, stencil plate, etc., upon vessels and labels for paints, may be a lawful trade-mark.—Smith v. Reynolds, Case No. 13,098.

§ 3. Numerals.
A trade-mark in the symbol "½," as ordinarily printed, cannot be acquired for cigarettes made of two kinds of tobacco, half and half; but *held*, that plaintiff had acquired a right to it in a particular form, size, color, and style, under which it was registered.—Kinney v. Allen, Case No. 7,826.

§ 4. Fictitious or fanciful names.
The words "Stoga Kip," as applied to boots, indicate neither ownership nor origin, but merely designate quality, and are not the subject of valid trade-mark.—Walker v. Reid, Case No. 17,084.

The words "The Star Shirt," and such words used with a star, and the device "The * Shirt," are a lawful trade-mark.—Morrison v. Case, Case No. 9,845.

There can be no trade-mark in the name "Singer Sewing Machine."—Singer Mfg. Co. v. Larsen, Case No. 12,902.

The term "Yankee" applied as the name or label upon soap *held* to be a valid trade-mark.—Williams v. Adams, Case No. 17,711.

The word "Parabola," used as the name of needles, not being descriptive of any particular quality, *held* a valid trade-mark.—Roberts v. Sheldon, Case No. 11,916.

The word "Centennial" is general property, and cannot be used for a trade-mark.—Hartell v. Viney, Case No. 6,158.

The word "Eureka," first used in a compounded fertilizer, will be protected.—Alleghany Fertilizer Co. v. Woodside, Case No. 206.

§ 5. Geographical names.
The term "Worcestershire Sauce" is generically applied to a certain kind of table sauce, and cannot be exclusively appropriated by persons residing in Worcestershire, England.—Lea v. Deakin, Case No. 8,154.

The right of exclusively using the word "Durham" in labels on smoking tobacco belongs to manufacturers in the town of Durham, N. C.—Blackwell v. Dibrell, Case No. 1,475.

§ 6. Names of manufacturers.
The words "J. C. Frese & Co., Hopfensack, 6, Hamburg," in an oval, *held* a valid trade-mark for a medical preparation known as "Hamburg Tea."—Frese v. Bachof, Case No. 5,109.

The name "Dr. J. Blackman's Genuine Healing Balsam," given to a medicine by its inventor, *held* a valid trade-mark, the exclusive right to use which would pass on an assignment of the exclusive right to make and sell it.—Filkins v. Blackman, Case No. 4,786.

§ 7. Names of patented articles.
A person has no right to mark his goods with any words or terms indicating that they are manufactured under a patent which he does not own and has no right to use, and the courts will restrain him from such action.—Washburn & Moen Mfg. Co. v. Haish, Case No. 17,217.

The names on fruit jars, "Mason's Patent, Nov. 30th, 1858," "Mason's Improved," and "The Mason Jar of 1858," *held* not entitled to protection because having a tendency to mislead the public, a patent therefor having been adjudged invalid.—Consolidated Fruit-Jar Co. v. Dorflinger, Case No. 3,129.

The designation "The Mason Jar of 1872" *held* not open to the same objection.—Consolidated Fruit-Jar Co. v. Dorflinger, Case No. 3,-129.

The words "Fairbanks' Patent," used by Fairbanks & Co., *held* not a trade-mark; and another manufacturer will not be enjoined from using such words on scales made in imitation of Fairbanks' scales after the patents have expired.—Fairbanks v. Jacobus, Case No. 4,608.

§ 8. Form of articles or packages.
An ornamented tin pail, given away on the sale of paper collars contained therein, *held* not a trade-mark.—Harrington v. Libby, Case No. 6,107.

A barrel of peculiar form, dimensions, and capacity, irrespective of any marks or brands impressed upon or connected with it, cannot become a lawful trade-mark, or a substantive part of a lawful trade-mark.—Moorman v. Hoge, Case No. 9,783.

There may be a valid trade-mark in a stick upon which carpets are rolled, and which presents a peculiar shape and appearance at the ends of the roll.—Lowell Mfg. Co. v. Larned, Case No. 8,570.

II. TITLE, CONVEYANCES, AND CONTRACTS.

§ 9. Nature of property.
The privilege of a party to the exclusive enjoyment of a trade-mark does not rest upon a right of property therein, but on its prior use and application in the manner in which it has been imitated and employed by defendant.—Walton v. Crowley, Case No. 17,133.

The right of the proprietor of a trade-mark to its exclusive use, and to protect and enforce such right by proceedings in chancery, exists by virtue of the common law, and independently of the trade-mark acts.—United States v. Roche, Case No. 16,180.

Trade-marks are an entirety, and are incapable of exclusive use at different places by more than one independent proprietor.—Manhattan Medicine Co. v. Wood, Case No. 9,026.

The interest of a partner in the firm's brand or trade-mark is too intangible, and cannot be reached in equity at the suit of a judgment creditor.—Taylor v. Bemis, Case No. 13,779.

§ 10. Who may acquire trade-mark.
The owner of goods is entitled to the exclusive use of a trade-mark devised and applied by him, although he is not himself the manufacturer, and the name of the manufacturer is used as a part of the trade-mark.—Walton v. Crowley, Case No. 17,133.

§ 11. Extent of rights acquired.
The words imprinted upon a patented article of manufacture are common property from the date of the expiration of the patent.—Tucker Mfg. Co. v. Boyington, Case No. 14,229; Singer Mfg. Co. v. Larsen, Id. 12,902; Filley v. Child, Id. 4,787.

§ 12. Abandonment and forfeiture.
Abandonment of a trade-mark is not made out by showing numerous infringements in which the owners of such trade-mark have not acquiesced.—Williams v. Adams, Case No. 17,-711.

The right to a trade-mark is forfeited by its deceptive use to designate a spurious article.—Manhattan Medicine Co. v. Wood, Case No. 9,-026.

Disregard of territorial limits allotted by license, and misuse of the trade-mark, forfeit the right to the same.—Manhattan Medicine Co. v. Wood, Case No. 9,026.

The right to use a trade-mark *held* forfeited by nonuser for eight years.—Blackwell v. Dibrell, Case No. 1,475.

Voluntary relinquishment of the original mark for a new device forfeits the right to the old mark.—Manhattan Medicine Co. v. Wood, Case No. 9,026.

§ 13. Construction and operation of assignments.
Under an assignment of the exclusive right to use the name of the inventor in the manufacture and sale of certain medicine for a term of 10 years, with the condition that, on the performance of the covenant for such time, the assignee shall have "all of the rights and privileges" to use the inventor's name, without reward, for 50 years, the assignee acquires, after the 10 years, the same exclusive rights which he had during such years.—Filkins v. Blackman, Case No. 4,786.

A writing extending to the purchasers of a Cincinnati distillery "the use of all my brands formerly used by me in my Cincinnati house," where the seller also had a New York house, *held* to convey an exclusive right to use the trade-mark.—Johnson v. Schenck, Case No. 7,-412.

§ 14. Change in or dissolution of partnership.
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.—Young v. Jones, Case No. 18,159. CONTRA, see Blackwell v. Dibrell, Case No. 1,475.

A trade-mark adopted by a partnership may be used by either member after its dissolution, and where one obtains letters of registration in his own name he may be compelled to transfer an equal interest to the other.—Taylor v. Bothin, Case No. 13,780.

The surviving partner *held* estopped by partnership letters to purchasers of part of its business, showing assent to the use of trade-marks previously conveyed by one partner, to deny his power to convey the same.—Johnson v. Schenck, Case No. 7,412.

III. REGISTRATION, REGULATION, AND OFFENSES.

§ 15. Power to regulate trade-marks.
The legislation by congress upon the subject of trade-marks cannot be sustained under the power to legislate in favor of authors and inventors, nor under the power to regulate commerce, and the act of July 8, 1870, on this subject, is unconstitutional.—Leidersdorf v. Flint, Case No. 8,219.

§ 16. Registration.
The right to a recorded trade-mark is limited to its use in connection with the articles particularly described in the filed statement.—Osgood v. Rockwood, Case No. 10,605.

In the case of a trade-mark owned by a firm, it is not necessary to record the name of each individual partner, and his place of residence, under Act July 8, 1870, § 77.—Smith v. Reynolds, Case No. 13,098.

Where a trade-mark is claimed for paints generally, it is sufficient to specify paints as the class of merchandise, without specifying any description of paints.—Smith v. Reynolds, Case No. 13,098.

The certificate of the registration of a trademark need not include a certified copy of the declaration filed with the trade-mark.—Walker v. Reid, Case No. 17,084.

Sufficiency of evidence of the filing of the declaration under oath as to the right to a trademark, under Act July 8, 1870, § 77.—Smith v. Reynolds, Case No. 13,097.

The commissioner of patents may institute an interference between opposing claimants for registration of the same trade-mark, to determine ownership.—Hanford v. Westcott, Case No. 6,022.

§ 17. Criminal prosecutions—Searches.
Relief by search warrant under Act Aug. 14, 1876, § 7, denied for lack of definiteness in the affidavit and proof of the applicant's right or title.—In re O'Donnell, Case No. 10,434.

IV. INFRINGEMENT.

(A) WHAT CONSTITUTES INFRINGEMENT.

§ 18. Nature of injury.
The essence of the wrong in the infringement of a trade-mark consists in the sale of the goods of one person as those of another.—Osgood v. Allen, Case No. 10,603.

§ 19. Imitation—In general.
A resemblance sufficient only to deceive ordinary purchasers is sufficient to constitute infringement.—Manhattan Medicine Co. v. Wood, Case No. 9,026; Consolidated Fruit-Jar Co. v. Thomas, Id. 3,131.

Infringement may consist in an imitation, though not amounting to forgery, yet so close as to deceive an unwary purchaser.—Blackwell v. Armistead, Case No. 1,474.

§ 20. —— Marks, devices, or symbols.
A person cannot imitate the trade-mark of another by using any of its prominent and distinguishing words, where calculated to deceive the cautious and careful purchaser.—United States v. Roche, Case No. 16,180.

A trade-mark for soap, "Mottled German Soap," with a circle and moon and stars in the middle, *held* infringed by "S. W. McBride's German Mottled Soap," with a crescent and single star, though "Mottled German Soap" or "Mottled Soap" had been in common use for years.—Proctor v. McBride, Case No. 11,441.

A registered trade-mark for plug tobacco, consisting of longitudinal and transverse lines for dividing the plug, will not prevent the use of Greek crosses and half crosses for the same purpise.—Dausman & Drummond Tobacco Co. v. Ruffner, Case No. 3,585.

The use of a monogram in the same manner and with accessories in imitation of plaintiff's trade-mark *held* to be an infringement.—Consolidated Fruit-Jar Co. v. Thomas, Case No. 3,131.

A trade-mark consisting of the words "Genuine Durham Smoking Tobacco," with the side figure of a bull as a symbol, is infringed by the use of the words "The Durham Smoking Tobacco," in connection with the head of a bull.—Blackwell v. Armistead, Case No. 1,474.

Use of "Apollinis" with representation of bow and arrow or anchor restrained as infringing trade-mark of "Apollinaris" with representation of anchor.—Apollinaris Brunnen v. Somborn, Case No. 496.

A trade-mark for seamless bags, consisting of the word "Stark" over a simicircular arch with the letter "A" below, is infringed by a like device, except that the word "Star" is substituted for "Stark."—Gardner v. Bailey, Case No. 5,221.

§ 21. —— Names.
"William Clark & Sons' Parabola Needles" is an infringement of "Roberts' Parabola Needles."—Roberts v. Sheldon, Case No. 11,916.

The imitation of a manufacturer's label, where the only change was "Holsteter" and "Holsteter & Smyte," for "Hostetter" and "Hostetter & Smith," *held* to be illegal.—Hostetter v. Vowinkle, Case No. 6,714.

The owner of the trade-mark "Best Spanish Flavored Durham" cannot enjoin the use of "Genuine Durham Smoking Tobacco" where he used the word "Durham" as a mere unmeaning incident.—Blackwell v. Armistead, Case No. 1,474.

§ 22. —— Packages.
Imitation of package of medicine, as to form, color, and style, enjoined, though defendants substituted their own names in the various places where plaintiffs used theirs.—Frese v. Bachof, Cases Nos. 5,109, 5,110.

§ 23. Use of trade-mark for different goods.
Plaintiff recorded the word "Heliotype" as used in connection with a print made by a patented process called "Heliotype." *Held*, that its use on a print not made by such process was not an infringement.—Osgood v. Rockwood, Case No. 10,605.

A manufacturer had no right to use the illustration of a crown as a trade-mark for paints generally, where another has previously used it for white lead.—Smith v. Reynolds, Cases Nos. 13,098, 13,099.

§ 24. Use of goods for different purposes.
A trade-mark used only in connection with the dry white oxide of zinc is not infringed by use in connection with paint composed of white oxide of zinc, ground in oil, falsely represented as containing white oxide of zinc made by the owner of the trade-mark.—La Societe Anonyme Des Mines v. Baxter, Case No. 8,099.

§ 25. Deception of public.
Where the representations employed bear such resemblance to plaintiff's trade-mark as to be calculated to mislead the public generally who are the purchasers of the article, and to make it pass with them for the one sold by him, such

representations will be enjoined.—Walton v. Crowley, Case No. 17,133.

A person not connected with the Singer Manufacturing Company may make a Singer sewing machine, and sell it by that name, after the patents have expired, but he may not do any act conveying an intimation that such machine was made by that company.—Singer Mfg. Co. v. Larsen, Case No. 12,902.

The use of one's label for the purpose of deceiving purchasers will be enjoined.—Coffeen v. Brunton, Case No. 2,946.

(B) ACTIONS.

Jurisdiction, see "Courts," § 34.

§ 26. Grounds of action and defenses.
It is no bar to protection in our courts that a remedy is not reciprocally allowed to aliens in the country to which such owner belongs.—Taylor v. Carpenter, Case No. 13,785.

Equity will not protect by an injunction the trade-marks of owners of quack medicines.—Heath v. Wright, Case No. 6,310; Fowle v. Spear, Id. 4,996.

Equity will not interfere in behalf of the owner of a trade-mark acquired by advertising the subject of it under false representations as to its origin and qualities.—Seabury v. Grosvenor, Case No. 12,576.

A long delay of alien manufacturers to prosecute after knowledge of a fraudulent use of their trade-mark may be competent proof to show their acquiescence in it but is not an absolute bar to recovery unless extending to the period of the statute of limitation.—Taylor v. Carpenter, Case No. 13,785.

Acts of acquiescence in the use of complainant's alleged trade-mark by defendant will estop complainant to claim that the defendant has no right thereto.—Delaware & H. Canal Co. v. Clark, Case No. 3,764.

The basis of the action of a court of equity to restrain infringement is fraud on the part of the defendant.—Delaware & H. Canal Co. v. Clark, Case No. 3,764.

§ 27. Persons entitled to sue.
An alien manufacturer abroad is entitled to protection in our courts against a fraudulent infringement of his trade-mark in this country.—Taylor v. Carpenter, Cases Nos. 13,784, 13,785.

The assignee of a whole right in a trade-mark, and of the property in the goods to which it is attached, may enjoin its wrongful use by others to the like extent as his assignor.—Walton v. Crowley, Case No. 17,133.

§ 28. Persons liable.
The owner of a trade-mark for goods which he manufactures under a patent is not entitled to enjoin the use thereof by a dealer purchasing his goods from a manufacturer licensed under the patent.—Walker v. Reid, Case No. 17,084.

§ 29. Pleading.
The fraudulent intent, as charged in a bill for infringement of a trade-mark, must be taken as confessed, on demurrer to the bill, and complainant will be entitled to an injunction.—Enoch Morgan's Sons' Co. v. Hunkele, Case No. 4,493.

§ 30. Evidence.
The certificate of the commissioner of patents as to the registration of a trade-mark *held* admissible in evidence under Rev. St. § 4940, and prima facie evidence of proper registration.—United States v. Steffens, Case No. 16,384.

The certificate of registry issued under Act July 8, 1870, is not conclusive of the claimant's right to appropriate the device.—Moorman v. Hoge, Case No. 9.783.

§ 31. Reference.
Where it did not appear whether the public was actually deceived or in danger of being deceived, the cause was referred to a master to ascertain such fact.—Osgood v. Allen, Case No. 10,603:

§ 32. Temporary injunction.
The decision of the examiner cannot be questioned collaterally, and the successful party is entitled to a provisional injunction against the licensees of the unsuccessful party when no doubt exists as to the infringement.—Hanford v. Westcott, Case No. 6,022.

A preliminary injunction will be granted to restrain the use of a trade-mark where plaintiff has been in exclusive possession of the same for a number of years, and defendant has just commenced to manufacture under such name.—Filkins v. Blackman, Case No. 4,786.

Delay in making the application is no bar to a preliminary injunction. although it may preclude complainant's obtaining past profits.—Consolidated Fruit-Jar Co. v. Thomas, Case No. 3,-131.

On an application for a preliminary injunction to restrain the use of a trade-mark, the court cannot pass upon the merits of the defense.—Blackwell v. Armistead, Case No. 1,474.

§ 33. Permanent injunction.
Injunction against use of a label will not be granted unless complainant's right is clear.—Coffeen v. Brunton, Case No. 2,947.

§ 34. Damages and profits.
Exemplary damages are recoverable for an injury from counterfeiting plaintiff's trade-mark.—Warner v. Roehr, Case No. 17,189a.

Nominal damages only will be given for infringing a label, where no specific injury has been proved.—Coffeen v. Brunton, Case No. 2,-946.

An alien owner is entitled to recover to the extent of his damages in the loss of sales and their profits, though defendant's goods were of inferior quality.—Taylor v. Carpenter, Case No. 13,785.

Equity will protect the owner of a trade-mark by an injunction against an infringer and a decree for damages, which is ordinarily the loss of profits from the infringement.—Hostetter v. Vowinkle, Case No. 6,714.

Where complainants' sales fell off in an amount at least equal to sales made by defendant of the imitated article, damages were awarded to the extent of the profits they would have made on the number sold by the defendant.—Hostetter v. Vowinkle, Case No. 6,714.

An accounting for past profits will not be decreed where there has been laches in bringing suit, and long acquiescence in the adverse use of the mark by others.—Manhattan Medicine Co. v. Wood, Case No. 9,026.

TRANSCRIPTS.

As evidence, see "Evidence," §§ 47–50.
On appeal, see "Justices of the Peace," § 15.

TREASON.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

§ 1, Powers of congress. § 2, Levying war—In general. § 3, —— Intent. § 4, —— Overt acts. § 5, —— Procuring treasonable assemblies. § 6, —— Assembly of troops. § 7, —— Taking possession of public property. § 8, —— Resisting law. § 9, —— Resisting government military force. § 10, —— Levying war by

persons confederated to form new government. § 11, Adhering to enemies and giving them aid and comfort. § 12, Writing or speaking treasonable words. § 13, Misprision of treason. § 14, Defenses. § 14a, Persons liable.

II. PROSECUTION AND PUNISHMENT.

§ 15, Preliminary proceedings. § 16, Indictment. § 17, Evidence—Admissibility. § 18, —— Weight and sufficiency. § 19, Trial—Reception of evidence. § 20, Punishment and forfeiture.

Change of venue, see "Criminal Law," § 24.
Treasonable conspiracies, see "Conspiracy," § 3.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

§ 1. Powers of congress.
Congress has no power to change, in any way, the crime of treason, as defined by Const. art. 3, § 2, and acts of congress cannot be considered as legislative definitions of the crime.—Case of Fries, Case No. 5,126.

Treason is defined by the constitution, and the power of congress over the subject is limited to prescribing the punishment.—United States v. Greathouse, Case No. 15,254.

§ 2. Levying war—In general.
The expression "levying war" in the constitutional definition of "treason" was borrowed from the law of England, and is to be understood in the sense which it bore in England when the constitution was adopted.—Charge to Grand Jury, Treason, Case No. 18,276.

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.—Charge to Grand Jury, Treason, Case No. 18,275.

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.—Charge to Grand Jury, Treason, Case No. 18,275.

There may be treason against a state by levying war which is aimed altogether against the sovereignty of the state.—Charge to Grand Juty, Treason, Case No. 18,275.

§ 3. —— Intent.
If a man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law judges of the intent by the fact.—Case of Fries, Case No. 5,127.

Treason in the assembling of bodies of men, armed or arrayed in a warlike manner, is determined by the intent. If the purpose be of a private nature, it is not treason, regardless of the acts actually committed; otherwise, where the intent is to effect some object of general public nature.—Case of Fries, Case No. 5,127.

A conspiracy to resist by force the execution of a law of the United States in particular instances only, for personal or private purposes only, is not treason.—United States v. Hoxie, Case No. 15,407.

Either acts of hostility and resistance to the government, or a hostile intention in the body assembled, are necessary to convert a meeting of men with ordinary appearances into an act of levying war. A treasonable intent on the part of the leader, uncommunicated to the assemblage, is not sufficient.—United States v. Burr, Case No. 14,694a.

§ 4. —— Overt acts.
Where a body of armed men is mustered in military array for a treasonable purpose, every step which any one of them takes, by marching or otherwise, in part execution of such purpose, is an overt act of treason in levying war.—United States v. Greiner, Case No. 15,262.

Purchase of a vessel, and fitting her up for service with arms and ammunition, and the employment of men to manage it, in pursuance of a design to commit hostilities on the high seas in aid of an existing rebellion against the United States, are overt acts of treason.—United States v. Greathouse, Case No. 15,254.

§ 5. —— Procuring treasonable assemblies.
The engaging or enlisting of men for levying war against the United States, not followed by a future embodying of such men, is not punishable as treason.—United States v. Burr, Case No. 14,692a.

Query, whether a person who advises or procures a treasonable warlike assemblage, and does nothing more, is guilty of treason under the constitution.—United States v. Burr, Case No. 14,-693.

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.—Charge to Grand Jury, Treason, Case No. 18,276.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

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.—Charge to Grand Jury, Treason, Case No. 18,274.

The act of revolutionizing a territory of the United States, though only as a means for an expedition against a foreign power, is treason.—United States v. Burr, Case No. 14,692a.

The fact that treason might incidentally arise in the attempt to embark troops against a foreign nation, with which the United States are at peace, will not affect a previous assemblage of troops, where the treason was neither committed nor intended.—United States v. Burr, Case No. 14,694a.

§ 6. —— Assembly of troops.
An intention to commit treason against the United States by levying war, not carried out by the actual assembling of troops, is not punishable as treason.—United States v. Burr, Case No. 14,692a.

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.—Charge to Grand Jury, Treason, Case No. 18,273; United States v. Greathouse, Id. 15,254; Same v. Burr, Id. 14,-693.

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 requi-

site force.—Charge to Grand Jury, Treason, Case No. 18,274.

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. —Charge to Grand Jury, Treason, Case No. 18,275.

§ 7. —— Taking possession of public property.

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.—Charge to Grand Jury, Treason, Cases Nos. 18,270, 18,274.

§ 8. —— Resisting law.

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, but 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.—Charge to Grand Jury, Neutrality Laws and Treason, Case No. 18,269; Charge to Grand Jury, Treason, Id. 18,276.

A combination to suppress the excise officers, and prevent the execution of an act of congress, accompanied by a display of force arrayed in a military manner, with arms, and by acts of violence to compel them to resign their offices, is a levying of war.—United States v. Mitchell, Case No. 15,788.

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. —Charge to Grand Jury, Treason, Case No. 18,275.

An insurrection to resist by force the execution of a federal tax law, or the militia called out to enforce it, on any ground whatever, is a levying of war against the United States.—Case of Fries, Case No. 5,127.

Opposing, by force of arms, an act of congress, with a view to defeating its efficacy, and thus defying the authority of the government, is levying war against the United States, and constitutes treason.—Case of Fries, Case No. 5,126.

A conspiracy to raise an insurrection to resist the execution of a federal statute by force is only a misdemeanor. Treason is not committed until the persons proceed to carry the intention into execution by force.—Case of Fries, Case No. 5,127.

To go with a large party in arms, marshaled and arrayed, to houses of officers of excise, and there commit acts of violence and devastation, with the avowed object of suppressing such offices, and compelling the resignation of the officers, for the purpose of nullifying an act of congress, is treason.—United States v. Vigol, Case No. 16,621.

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.—Charge to Grand Jury, Treason, Case No. 18,276.

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.—Charge to Grand Jury, Treason, Case No. 18,275.

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.—Charge to Grand Jury, Treason, Case No. 18,276.

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.—Charge to Grand Jury, Fugitive Slave Law, Case No. 18,262; Charge to Grand Jury, Treason, Id. 18,274.

§ 9. —— Resisting government military force.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

§ 10. —— Levying war by persons confederated to form new government.

Levying war against the United States by persons however combined and confederated, even though successful in establishing their actual authority in several states, is treason.—Keppel v. Petersburg R. Co., Case No. 7,722.

Levying war against the United States by citizens of the republic, under the pretended authority of the new state government of North Carolina, or of the so-called "Confederate Government," is treason against the United States. —Shortridge v. Macon, Case No. 12,812.

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.—Charge to Grand Jury, Case No. 18,256.

§ 11. Adhering to enemies and giving them aid and comfort.

The expression, "adhering to their enemies, giving them aid and comfort," in the constitutional definition of "treason," was borrowed from the ancient law of England, and is to be understood in the sense which it bore in England when the constitution was adopted.—Charge to Grand Jury, Treason, Case No. 18,276.

The term "enemies" (Const. art. 3, § 3) applies only to subjects of a foreign power in a state of open hostility with us. It does not embrace rebels in insurrection against their own govern-

ment.—United States v. Greathouse, Case No. 15,254.

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.—Charge to Grand Jury, Treason, Case No. 18,270.

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.—Charge to Grand Jury, Treason, Case No. 18,271.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

Overt acts which, if successful, would advance the interests of the rebellion, amount to aid and comfort, though they failed.—United States v. Greathouse, Case No. 15,254.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

And it makes no difference how distant he may be from the place of the assemblage of the enemy.—Charge to Grand Jury, Treason, Case No. 18,274.

The going from the enemy's squadron to the shore for the purpose of peaceably procuring provisions for the enemy is not an act of treason; otherwise where provisions are carried towards the enemy with intent to supply them, though such intention is defeated.—United States v. Pryor, Case No. 16,096.

Delivering up prisoners and deserters to an enemy is treason, and nothing but a well-grounded fear of life will excuse the act.—United States v. Hodges, Case No. 15,374.

§ 12. Writing or speaking treasonable words.

Words, oral, written, or printed, however treasonable, seditious, or criminal of themselves, do not constitute an overt act of treason.—Charge to Grand Jury, Treason, Case No. 18,271.

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.—Charge to Grand Jury, Treason, Case No. 18,272.

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.—Charge to Grand Jury, Treason and Piracy, Case No. 18,277.

§ 13. Misprision of treason.

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.—Charge to Grand Jury, Treason, Case No. 18,270.

§ 14. Defenses.

Quaere, whether the constitutional disqualifications from holding office by having engaged in Rebellion (Amend. 14) operates to exempt from prosecution for treason.—Case of Davis, Case No. 3,621a.

The ordinances of secession of the states in rebellion do not furnish any defense to their citizens for treasonable acts against the United States government.—United States v. Cathcart, Case No. 14,756.

The whole existence of the Confederate government was a continued rebellion against the lawful government of the United States; and no one can be protected by the sanction of its authority save in acts of war.—United States v. Morrison, Case No. 15,817.

The national government conceded belligerent rights to the armies of the Confederate States; and acts of a strictly military character, performed under military authority, may be protected by reason thereof.—United States v. Morrison, Case No. 15,817.

Belligerent rights conceded to the Confederate States cannot be invoked for the protection of persons entering within the limits of a loyal state, and secretly getting up hostile expeditions against the government.—United States v. Greathouse, Case No. 15,254.

A letter of marque issued by an insurrectionary government, which has not been recognized by the legislative and executive departments of the existing government, is no defense to treason in levying war under such letter.—United States v. Greathouse, Case No. 15,254.

Except in the case of force under a personal fear of death, a private soldier or subordinate officer cannot excuse a treasonable act on the ground of compulsion.—United States v. Greiner, Case No. 15,262.

A person who advised or procured a warlike assemblage, charged as the overt act of treason, cannot be convicted of treason until after the conviction of one of those charged with the overt act.—United States v. Burr, Case No. 14,693.

The agreement of capitulation between Generals Sherman and Johnston was a mere military parol, terminating with the war, and the persons included were liable to arrest for treason after the war.—United States v. Rucker, Case No. 16,203.

Instructions of the secretary of war *held* acts of the president, within Act March 3, 1863, relieving persons from acts done during the Rebellion under the order of the president.—Crosby v. Cadwalader, Case No. 3,419.

§ 14a. Persons liable.

An alien resident may be guilty of treason by co-operating either with rebels or foreign enemies.—Charge to Grand Jury, Treason, Cases Nos. 18,274, 18,276.

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.—Charge to Grand Jury, Neutrality Laws and Treason, Case No. 18,269; Charge to Grand Jury, Treason and Piracy, Id. 18,277.

All who aid in the prosecution of war levied against the United States, whether by open hostilities in the field, or by performing any part in the furtherance of the common object, however minute, or however remote from the scene of action, are guilty of treason.—United States v. Greathouse, Case No. 15,254.

The fact of levying war may consist of a multiplicity of acts performed in different places by different persons, and any one of such persons, when leagued in the general conspiracy, is liable as a principal traitor.—United States v. Burr, Case No. 14,693.

In treason there are no accessaries. All who engage in rebellion, or who designedly give to it any species of aid and comfort, in whatever part of the country they may be, are principals. —United States v. Greathouse, Case No. 15,254; Case of Fries, Id. 5,127.

II. PROSECUTION AND PUNISHMENT.

§ 15. Preliminary proceedings.
A person will not be *held* to trial for treason in levying war against the United States on an affidavit that he is enlisting men for such purpose, without proof of the actual embodying of men, where ample time is given to get such proof.—United States v. Burr, Case No. 14,-692a.

The provision of the constitution 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, is inapplicable to preliminary hearings and commitments. —United States v. Greiner, Case No. 15,262; Charge to Grand Jury, Treason, Id. 18,276.

The question raised by a defense made in the nature of a plea autrefois acquit will not be determined on a preliminary examination to commit a person for high treason.—United States v. Burr, Case No. 14,694a.

§ 16. Indictment.
An indictment under Act July 17, 1862, § 2, need not use the phrase "levying war" specifically; it is sufficient to follow the language of the act.—United States v. Greathouse, Case No. 15,254.

An indictment for levying war against the United States must specify an overt act, and the charge must be proved as laid.—United States v. Burr, Case No. 14,693.

§ 17. Evidence—Admissibility.
The declaration of the prisoner accompanying the overt act charged may be proved to show his intention in doing it; but his confession of committing such act is not admissible.—United States v. Lee, Case No. 15,584.

Query, whether, after proving a connection for some general object between persons accused of treason in levying war, the conversations of one with third persons may be given in evidence against the other to prove what that object was. —United States v. Burr, Case No. 14,694a.

Proof of remote intentions may be relevant by proof of the continuance of the intention, and consequently is admissible.—United States v. Burr, Case No. 14,693.

Facts occurring and rumors prevalent in the neighborhood which would explain certain particulars relied upon to show treasonable intent, and make them show a different intent, though a long time in advance of the alleged treasonable occurrence, are admissible.—United States v. Hanway, Case No. 15,299.

Facts out of the district may be proved after the overt act as corroborative evidence of the intention.—United States v. Burr, Case No. 14,-693.

It is not competent, on a trial for treason, to prove that the accused, in the course of the insurrection, joined with others in robbing the mails, when a separate indictment for that offense is already pending against him.—United States v. Mitchell, Case No. 15,789.

Where it was claimed that a circular letter had been written by leaders of an insurrection calling citizens to assemble with arms, etc., *held*, that a copy thereof was not admissible, unless it was proved to be one of the copies actually circulated.—United States v. Mitchell, Case No. 15,789.

§ 18. —— Weight and sufficiency.
Where it is charged that a war was levied without striking the blow, the intention to strike must be plainly proved.—United States v. Burr, Case No. 14,694a.

Where defendant is charged with being present at the place of the treasonable assemblage, charged as the overt act, the proof must show defendant's presence with such assemblage, or his intention to join it at such place.—United States v. Burr, Case No. 14,693.

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.—Charge to Grand Jury, Treason, Case No, 18,272.

Where it is shown by several witnesses that accused took part in a treasonable conspiracy, it seems that it is sufficient to prove by two witnesses that he marched, as a volunteer, with arms, in military array, with a party which used force to prevent the execution of an act of congress.—United States v. Mitchell, Case No. 15,788.

Where the overt act has been proved by two witnesses, evidence is admissible to show the course of the prisoner's conduct at other places, and the purpose with which he went to the place where the treason is laid; and, if he went with a treasonable design, then the proof of treason is complete.—Case of Fries, Case No. 5,126.

Proof of procurement of a warlike assemblage, if admissible to establish a charge of actual presence, must be made in the same manner, and by the same kind of testimony, which would be required to prove actual presence.—United States v. Burr, Case No. 14,693.

§ 19. Trial—Reception of evidence.
On the trial of a person indicted for treason in levying war against the United States, the court cannot control the order of proof to the extent of requiring the prosecution to prove the overt act charged, before proving the intention with which such act was committed.—United States v. Burr. Cases Nos. 14,692h, 14,693; Same v. Lee, Id. 15,584.

The overt act of levying war must be proved by two witnesses before testimony is admissible relative to the conduct or declarations of the prisoner elsewhere, and subsequent to the overt act charged.—United States v. Burr, Case No. 14,693.

Everything tending to show that there was an intention to make public resistance to a law of the United States is entirely evidence in chief, and cannot be received in rebuttal.—United States v. Hanway, Case No. 15,299.

§ 20. Punishment and forfeiture.
Where the treason consists in engaging in or assisting a rebellion or insurrection, the death penalty cannot be inflicted, under Act July 17, 1862.—United States v. Greathouse, Case No. 15,254.

Under Act N. Y. 1778, estates forfeited for treason are not sold free from incumbrances. But otherwise as to Act N. Y. 1783.—Beach v. Woodhull, Case No. 1,154.

Construction of Act N. J. Dec. 11, 1778, relating to forfeited estates, and of inquisition proceedings thereunder.—Kemp v. Kennedy, Case No. 7,686.

The owners of estates wrongfully forfeited under Act N. J. Dec. 11, 1778, have no remedy by ejectment to recover the property forfeited,

but can only proceed by writ of error according to the statute.—Kemp v. Kennedy, Case No. 7,686.

TREATIES.

§ 1, Nature. § 2, Construction, operation, and effect. § 3, Repeal of treaty.

See, also, "Extradition," §§ 1–15.
Effect of treaties on rights of aliens, see "Aliens," § 2.
In relation to duties, see "Customs Duties," § 6.
Lands acquired by, see "Public Lands," § 2.
With Indians, see "Indians," § 4.

§ 1. Nature.

Treaties with foreign nations comprise a portion of the public and supreme law of the land, and a violation by a citizen of the United States may be punished in the federal courts by indictment.—Henfield's Case, Case No. 6,360.

A treaty which stipulates for the payment of money is not the supreme law of the land, for such stipulation is not within the treaty-making power.—Turner v. American Baptist Missionary Union, Case No. 14,251.

The stipulations in a treaty between the United States and a foreign nation are paramount to the provisions of the constitution of a particular state.—Gordon v. Kerr, Case No. 5,611.

§ 2. Construction, operation, and effect.

The operation of a treaty before ratification by the governing powers of the state by whose agents it has been signed.—Hylton v. Brown, Case No. 6,982.

A treaty takes effect from its date when ratified, unless a different period is fixed, or must be adopted to fulfill the manifest intent.—In re Metzger, Case No. 9,511.

The effect of a treaty of peace and acts of congress on the attainder laws.—Gordon v. Kerr, Case No. 5,611; Hylton v. Brown, Id. 6,981, 6,982.

Construction of treaties of 1762–83, between Spain and England, as to right to cut mahogany in Honduras.—Graham v. Pennsylvania Ins. Co., Case No. 5,674.

A debt due to a British subject may be recovered, under the treaty of peace of 1783, though paid to a state under its confiscation act.—Hamilton v. Eaton, Case No. 5,980.

Under the treaty with Great Britain of 1794, the precincts and jurisdictions of army posts are not to be considered as extending three miles in every direction by analogy to the jurisdiction at sea from the coast line.—Jackson v. Porter, Case No. 7,143.

The award under the French convention of 1831 was properly made to the legal and ostensible owner of the property at the time of seizure.—Dutilh v. Coursault, Case No. 4,206.

The judgment of the commissioners did not deprive a person of the right to resort to the ordinary tribunals of the country to establish his claim to participate in the sum awarded.—Dutilh v. Coursault, Case No. 4,206.

An intervener who did not participate in the making of a false oath by the original claimant is not prejudiced thereby.—Dutilh v. Coursault, Case No. 4,206.

In a contest between two litigants respecting a sum awarded, it is not necessary to make all the other claimants under the convention parties to the suit.—Dutilh v. Coursault, Case No. 4,206.

The party who receives the sum awarded for the whole claim is a trustee for such as may be entitled to participate therein.—Dutilh v. Coursault, Case No. 4,206.

Rights of consignees of goods seized by a foreign government under the French treaty of 1831.—Ridgway v. Hays, Case No. 11,817.

The share of the loss of an alien partner of a firm was not allowable as a claim under such treaty, but he is entitled to be paid for freight and advances out of the moneys allowed to the other members.—Ridgway v. Hays, Case No. 11,817.

The commissioners under the French treaty of 1831 could not decide between conflicting American claimants.—Ridgway v. Hays, Case No. 11,817.

The commissions of a supercargo of a cargo sequestered by the king of the Sicilies is a charge on the indemnity fund provided for by treaty.—Stewart v. Callaghan, Case No. 13,423.

Omission of the secretary of the treasury to retain the amount of debts due the United States from a person entitled to an award under the Spanish treaty does not prevent the United States from suing the claimant's assignee, who has received the money.—United States v. Hunter, Case No. 15,426.

Construction of the decision of the commissioners under article 4 of the treaty of Ghent.—Open Boat, Case No. 10,548.

The United States, by their alliance with France during the Revolutionary War, *held* not to be considered parties to the capitulation made by the Marquis De Bouille with the inhabitants of Dominica.—Miller v. The Resolution, Case No. 9,588.

The convention of April 30, 1852, between the United States and the Hanseatic League, does not preclude an action in the admiralty courts of the United States by an American citizen for wages as seaman on board a Bremen ship.—Leavit v. The Shakespeare, Case No. 8,167.

§ 3. Repeal of treaty.

A treaty, whose subject is within the legislative power of congress, may be repealed by congress so far as it is a municipal law.—Taylor v. Morton, Case No. 13,799; United States v. Tobacco Factory, Id. 16,528.

Mode specified in which congress may destroy the operative effect of a treaty.—Ropes v. Clinch, Case No. 12,041.

TREES.

See "Logs and Logging."
Unlawful cutting, see "Public Lands," §§ 5–9; "Waste."

TRESPASS.

I. ACTS CONSTITUTING TRESPASS, AND LIABILITY THEREFOR.

§ 1, What constitutes trespass. § 2, Persons liable.

II. ACTIONS.

§ 3, Rights of action and defenses—When action lies in general. § 4, —— Possession to support. § 5, —— Defenses. § 6, Parties. § 7, Pleading. § 8, Issues and proofs. § 9, Evidence. § 10, Damages. § 11, Trial and judgment.

See, also, "Action on the Case."
By animals, see "Animals," § 3.
Ejection of trespasser, see "Carriers," § 48.
Injuries to trespassers, see "Railroads," § 69.
On public lands, see "Public Lands," § 4.
On United States property, see "United States," § 14.
Restraining, see "Injunction," § 6.
To the person, see "False Imprisonment."

I. ACTS CONSTITUTING TRESPASS, AND LIABILITY THEREFOR.

§ 1. What constitutes trespass.
An entry on the part of land lying within the county, with intent to do injury in the part lying without the county, is unlawful.—Gorman v. Marsteller, Case No. 5,629.

§ 2. Persons liable.
All who instigate, promote, or co-operate in the commission of a trespass, or aid, abet, or encourage its commission, are guilty.—Berry v. Fletcher, Case No. 1,357; Johnson v. Tompkins, Id. 7,416.

But the mere presence of persons will not make them trespassers.—Berry v. Fletcher, Case No. 1,357.

A person who, with knowledge that another has committed a trespass, receives part of the property taken, is guilty of the trespass.—Voss v. Baker, Case No. 17,012.

II. ACTIONS.

§ 3. Rights of action and defenses—When action lies in general.
Trespass vi et armis will lie for the master against one who beats his slave, although there should be no loss of service.—Garey v. Johnson, Case No. 5,240; Wilson v. Kedgeley, Id. 17,815; Newman v. Davis, Id. 10,176.

§ 4. —— Possession to support.
Possession alone is sufficient to support trespass quare clausum fregit against one who has no title.—Edmondson v. Lovell, Case No. 4,286.

Possession in fact or in law is necessary to maintain trespass quare clausum fregit.—Tayloe v. Varden, Case No. 13,771; Corfield v. Coryell, Id. 3,230.

There must be actual possession by the plaintiff, of the locus in quo, at the time of the supposed trespass.—Fraser v. Hunter, Case No. 5,063; O'Neale v. Brown, Id. 10,514.

Possession taken by a customs officer of imported goods, before they are unladen, to secure the lien for duties, will not prevent one who purchased them while at sea from maintaining trespass against a wrongdoer.—Howland v. Harris, Case No. 6,794.

§ 5. —— Defenses.
Where defendant pleaded that civil war existed, and that the alleged trespasses were by virtue of an order of the general commanding the army in that department, defendant is protected by Const. Mo. art. 11, § 4.—Clark v. Dick, Case No. 2,818.

§ 6. Parties.
None can recover where all the plaintiffs have not a right to recover.—Fraser v. Hunter, Case No. 5,063.

§ 7. Pleading.
Sufficiency of complaint in action to recover treble damages for cutting and carrying away timber, and defenses thereto, under Civ. Code Or. §§ 385, 386.—Neff v. Pennoyer, Case No. 10,085.

In trespass, any matter done by virtue of a warrant must be specially pleaded.—Martin v. Clark, Case No. 9,158a.

In trespass to land, plats are not a part of the pleadings, but are evidence merely.—Pancoast v. Barry, Case No. 10,705.

§ 8. Issues and proofs.
Under a plea of not guilty and notice of "defense on warrant," defendant may give his title in evidence in justification.—Pancoast v. Barry, Case No. 10,705.

In trespass, defendant cannot justify under the general issue.—Goddard v. Davis, Case No. 5,491.

Where plaintiff, in trespass to land, relies upon possession without title, defendant, under the general issue, may show title in another, under whose authority he claimed to enter.—Reynolds v. Baker, Case No. 11,727.

Where a day is laid, and from such day to the commencement of the action divers trespasses are committed, one trespass only, prior to the day named, may be proved. But divers trespasses may be shown within the time laid.—United States v. Kennedy, Case No. 15,524.

§ 9. Evidence.
In an action for a tort to personal property, possession, accompanied by an assertion of ownership, is prima facie evidence of property.—Bas v. Steele, Case No. 1,088.

Plaintiff cannot give evidence of trespasses committed on land not within his location at the time of the trespass.—Holmead v. Corcoran, Case No. 6,627.

Plaintiff must prove every abuttal set forth in his declaration.—Fraser v. Hunter, Case No. 5,063.

In a suit for trespass to personal property, plaintiff must show what property was injured, and that defendant participated therein.—McKenna v. Fisk, Case No. 8,852.

§ 10. Damages.
In an action of trespass vi et armis, plaintiff cannot recover for any injury done to real property.—McKenna v. Fisk, Case No. 8,852.

To authorize the giving of exemplary or vindictive damages, either malice, violence, oppression, or wanton recklessness must appear.—Berry v. Fletcher, Case No. 1,357.

§ 11. Trial and judgment.
It is the province of the jury to ascertain the damages when they are uncertain.—Davis v. Pitman, Case No. 3,647a.

Where the defendants are sued jointly, the jury must find a single verdict, and estimate the damages according to the most culpable of the joint trespassers.—Berry v. Fletcher, Case No. 1,357.

The person who forcibly carries another on board a steamer, and the master who carries him to sea against his will, are joint trespassers, and a recovery and satisfaction against one will bar an action against the other.—Duane v. Goodall, Case No. 4,105.

TRESPASS TO TRY TITLE.

See "Ejectment"; "Quieting Title," § 7.

§ 1. Pleading and evidence.
Defendant in an action of trespass to try title in Texas, who has pleaded not guilty, and has also, in pleading the statute of limitations, set up a title for himself, is not precluded from showing the invalidity of plaintiff's title.—Sheirburn v. Hunter, Case No. 12,744.

In an action of trespass to try title in Texas it is not necessary to prove an actual trespass by defendant, except in cases where there is no controversy about the title, but only as to boundaries, and where the plaintiff, having the superior title, charges defendant with trespassing on his land.—Viesca v. Wyche, Case No. 16,940.

TRIAL.

§ 1, Notice of trial and preliminary proceedings. § 2, Course and conduct of trial—Exclusion of persons. § 3, —— Right to open and close. § 4, —— View and inspection. § 5, Reception of evidence—Taking oral testimony. § 6, —— Introduction of documentary ev-

idence. § 7, —— Separation and exclusion of witnesses. § 8, —— Offer of proof. § 9, —— Order of proof, rebuttal, and reopening cause. § 10, —— Objections and motions to strike out. § 11, Arguments of counsel. § 12, Taking case or question from jury—Questions of law or of fact in general. § 13, —— Demurrer to evidence. § 14, —— Dismissal or nonsuit. § 15, —— Direction of verdict. § 16, Instructions to jury—Province of court and jury in general. § 17, —— Necessity and sufficiency. § 18, —— Form and requisites. § 19, —— Requests or prayers. § 20, —— Objections and exceptions. § 21, Custody, conduct, and deliberations of jury. § 22, Verdict—General verdict. § 23, —— Special interrogatories and findings. § 24, Trial by court. § 25, Correction of irregularities.

See, also, "New Trial"; "Reference"; "Witnesses."
By courts-martial, see "Army and Navy," §§ 17–19.
Evidence at former trial, see "Criminal Law," § 72.
Exclusion of persons from court room, see "Courts," § 7; "Criminal Law," § 90.
In admiralty, see "Admiralty," §§ 97–100; "Seamen," § 141.
In bankruptcy, see "Bankruptcy," §§ 316–336.
Of criminal prosecutions, see "Criminal Law," §§ 80–99.
Place of bringing prosecution, see "Criminal Law," §§ 15–24.
—— of trial in civil actions, see "Venue."

Proceedings incident to trials.

Conformity of judgment to verdict or findings, see "Judgment," § 16.
Continuance, see "Continuance."
Entry of judgment after trial of issues, see "Judgment," §§ 18–24.
Production of books and papers at trial, see "Evidence," §§ 56, 57.
Right to trial by jury, see "Jury," §§ 1–4.
Summoning and impaneling jury, see "Jury," §§ 6–11.

Trial of particular civil actions or proceedings.

By or against assignees in bankruptcy, see "Bankruptcy," § 364.
—— executors or administrators, see "Executors and Administrators," § 51.
For assault and battery, see "Assault and Battery," § 6.
For infringement of patent, see "Patents," § 208.
For penalties, see "Penalties," § 9.
For trespass, see "Trespass," § 11.
For violation of customs laws, see "Customs Duties," § 106.
In admiralty, see "Collision," § 156.
In equity, see "Equity," § 99–108.
On bills or notes, see "Bills and Notes," §§ 103, 104.
On petition in bankruptcy, see "Bankruptcy," § 133.
To condemn property for public use, see "Eminent Domain," § 11.
To recover duties or charges paid, see "Customs Duties," § 72.
—— goods, see "Replevin," § 12.
—— land, see "Ejectment," § 15; "Trespass to Try Title."
To set aside fraudulent conveyances, see "Fraudulent Conveyances," § 33.
To try tax titles, see "Taxation," § 17.

Trial of particular criminal prosecutions.

See "Assault and Battery," § 5; "Counterfeiting," § 12; "Homicide," § 9; "Larceny," § 12; "Perjury," § 9; "Treason," § 19.
Offenses against bankrupt laws, see "Bankruptcy," § 680.

§ 1. Notice of trial and preliminary proceedings.

Where several actions on policies of insurance are brought by the same plaintiffs against different companies, and the questions are the same, the evidence the same, and the counsel the same, the court may order them all to be tried to the same jury.—Wiede v. Insurance Co. of North America, Case No. 17,617; Same v. International Ins. Co., Id.; Same v. Home Ins. Co., Id.

Plaintiff in an action at law cannot be ruled to trial without notice where defendant has filed a bill in equity on the ground that the remedy at law was not adequate.—Baptist Missionary Union v. Turner, Case No. 968.

A case is not regularly for trial unless it has been put at issue at a preceding term.—Boyer v. Roberts, Case No. 1,754; Schnertzel v. Purcell, Id. 12,472.

Where a cause has been continued from term to term by consent, the parties are bound to be ready for trial at any subsequent time, and notice of intention to try is not requisite.—King of Spain v. Oliver, Case No. 7,812.

§ 2. Course and conduct of trial—Exclusion of persons.

The court can exclude from within the bar any person coming there to report testimony during the trial.—United States v. Holmes, Case No. 15,383.

§ 3. —— Right to open and close.

The party holding the affirmative of the issue has the right to open and close the argument.—Beall v. Newton, Case No. 1,164; Davidson v. Henop, Id. 3,605; Dunlop v. Peter, Id. 4,168; Henderson v. Casteel, Id. 6,350; Murray v. Mason, Id. 9,966; Sutton v. Mandeville, Id. 13,651.

On a plea of tender, etc., defendant has the right to open and close.—Auld v. Hepburn, Case No. 650.

In an action of covenant plaintiff has the right to open and close.—Moncure v. Dermott, Case No. 9,707.

Where defendant pleads payment, and adopts such a course as to throw the whole affirmative proof on the plaintiff, the plaintiff has a right to reply.—United States v. Ingersoll, Case No. 15,440.

If there be judgment for plaintiff on demurrer to some of the pleas, and if issue of fact be joined upon others, the jury may be charge to assess damages upon the judgment on the demurrers in case they should find the issues of fact for plaintiff; but this does not give plaintiff the right to open and close the argument where defendant holds the affirmative of all the issues of fact.—Kerr v. Force, Case No. 7,730.

§ 4. —— View and inspection.

A party has no right to inspect papers which he has given the other notice to produce at the trial, unless he consent that they shall be used in evidence.—Jordan v. Wilkins, Case No. 7,526.

Before the jury are sworn and the trial commenced, a party cannot call for a paper which his opponent has received notice to produce on the trial.—Hylton v. Brown, Case No. 6,981.

§ 5. Reception of evidence—Taking oral testimony.

A sworn interpreter may take advantage of the suggestions of others who are not sworn with regard to the proper interpretation of testimony, stating the result to the court as his own interpretation.—United States v. Gibert, Case No. 15,204.

The court may demand a statement in writing of questions intended to be put to a witness, in order that no illegal evidence may be heard by the jury and make an undue impression.—United States v. Callender, Case No. 14,709.

§ 6. —— Introduction of documentary evidence.

Defendant, by reading part of account filed by plaintiff, makes the whole account evidence.—Bell v. Davis, Case No. 1,249; Griffin v. Jeffers, Id. 5,817.

Papers are not made evidence by a notice calling on the opposite party for them, and he may waive reading them.—Blight v. Ashley, Case No. 1,541.

Plaintiff may read his books in evidence where, being called for by defendant, they are inspected by him, or retained without objection.—Coote v. Bank of the United States, Case No. 3,203; Corps v. Robinson, Id. 3,252.

Written testimony to which objection has been made should be handed to the court for inspection, without being read, for a determination of its admissibility.—Polk v. Robertson, Case No. 11,250.

§ 7. —— Separation and exclusion of witnesses.

Witnesses may be separated, and examined each out of hearing of the others.—Joice v. Alexander, Case No. 7,435; Patton v. Janney, Id. 10,836.

§ 8. —— Offer of proof.

An offer to allow the jury to examine, with a microscope, papers whose genuineness is doubted, is too late, when made during the argument.—Howell v. Hartford Fire Ins. Co., Case No. 6,780.

§ 9. —— Order of proof, rebuttal, and reopening cause.

It is not necessary, in order to impart a rebutting character to testimony, that the contradiction should be complete and entire, but it is sufficient if it has a tendency to contradict or disprove the opposite statement.—United States v. Holmes, Case No. 15,382.

A witness cannot be called to prove handwriting to contradict another who has neither admitted nor denied that the letters were in his handwriting.—United States v. Gardiner, Case No. 15,186a.

After defendant has closed his testimony, plaintiffs will not be permitted to give additional evidence on a point upon which they had already examined witnesses, and defendant has proved nothing new. Otherwise where defendant has brought out other facts or transactions.—Gilpins v. Consequa, Case No. 5,452.

After the jury has retired, and returned into court to give their verdict, a witness who has come into court since the jury retired cannot be examined.—Riley v. Cooper, Case No. 11,836.

Where the jury, after retiring, come into court to ask questions of a witness, counsel will not be permitted to interrogate the witness.—United States v. Greenwood, Case No. 15,260.

Additional proofs cannot be produced as to a point reserved for further argument after trial and decree.—Abbey v. The Robert L. Stevens, Case No. 8.

§ 10. —— Objections and motions to strike out.

The exclusion on cross-examination of a question intended to affect the witness' credibility cannot be sustained on the ground that counsel should have so stated when the objection was made.—Nichols v. Harris, Case No. 10,243.

When a resort to circumstantial evidence is necessary, objections to testimony on the ground that any particular circumstance is irrelevant or inconclusive are not favored, as each circumstance usually depends on others for its force.—United States v. The Isla De Cuba, Case No. 15,447.

Objections to testimony must point out a part to which the objection lies.—Carr v. Gale, Case No. 2,434.

Objections to a deed on the ground that there was no proof of execution by one of the parties *held* to apply to its effect and not to its admissibility.—Rhoades v. Selin, Case No. 11,740.

An objection to evidence, on which the court is divided, does not prevail.—Henry v. Ricketts, Case No. 6,385; Melvin v. Lackland, Id. 9,407.

The objection to the incompetency of a witness for interest which appears upon his cross-examination is not waived by pursuing the cross-examination upon the merits of the case.—Walker v. Parker, Case No. 17,082.

Where it subsequently appears, on examination of a witness sworn on his voir dire, that he is incompetent, his testimony will be set aside.—Evans v. Eaton, Case No. 4,559.

§ 11. Arguments of counsel.

Opinions of counsel not in practice may be quoted at the bar in court's discretion.—Anonymous, Case No. 474.

Counsel will not be permitted to argue to the jury against an instruction given in the case.—United States v. Columbus, Case No. 14,841.

§ 12. Taking case or question from jury —Questions of law or fact in general.

Where both parties testify that a note appearing at the trial to have been duly stamped was not stamped when negotiated, *held*, that defendant was entitled to go to the jury on the question.—Platt v. Broach, Case No. 11,216.

It is discretionary with the court whether or not to take a question from the jury, and dispose of it as a matter of law, where the facts are undisputed.—In re Jelsh, Case No. 7,257.

Province of court and jury, see "Insurance," § 189; "Negligence," § 5; "Nuisance," § 4; "Payment," § 23.

§ 13. —— Demurrer to evidence.

A demurrer to evidence waives all objections to its admissibility, and admits every conclusion that may be fairly deduced from it.—Jacob v. United States, Case No. 7,157; Johnson v. Same, Id. 7,419; Jones v. Vanzandt, Id. 7,501; Miller v. Baltimore & O. R. Co., Id. 9,560; United States v. Williams, Case No. 16,724.

The court will infer in favor of the party demurring to evidence all the facts which the evidence on the other side conduces to prove.—Johnson v. United States, Case No. 7,419.

Upon a demurrer to evidence, judgment not rendered for plaintiff if declaration substantially defective.—Bank of the United States v. Smith, Case No. 935.

The plaintiff is not obliged to join in demurrer to the evidence unless the demurrer expressly admits every fact which the jury might reasonably infer from the testimony. But if demurrer be joined, the court will infer what the jury might infer.—Patty v. Edelin, Case No. 10,840.

§ 14. —— Dismissal or nonsuit.

On a trial before a jury the court has no power to grant a nonsuit against plaintiff's will.—Foote v. Silsby, Case No. 4,916; Thompson v. Campbell, Id. 13,944a; Miller v. Baltimore & O. R. Co., Id. 9,560.

Where the evidence for a party having the burden of proof is not such as would warrant a verdict in his favor, the judge need not submit the case to the jury.—Bowditch v. Boston, Case No. 1,719; United States v. One Still, Id. 15,954.

A nonsuit for variance set aside, and the declaration amended on payment of costs.—Craig v. Brown, Case No. 3,326.

Dismissal before trial, see "Dismissal and Nonsuit."

§ 15. —— **Direction of verdict.**
Where there are material facts in the case, depending upon the weight of evidence and the credibility of witnesses, which are in dispute, and the proper inferences to be drawn from the evidence are not certain, necessary, or undisputed, defendant is not entitled to have a verdict directed.—United States v. Babcock, Case No. 14,486.

Where a finding in favor of plaintiffs would be contrary to evidence, the court may instruct the jury to find a verdict for defendant.—Goddard v. Cunningham, Case No. 5,490a; Kielley v. Belcher Silver Min. Co., Id. 7,761.

A motion to direct a verdict for defendant must be made at the close of plaintiff's case. It is not addressed to the court's discretion, but presents a question of law, the ruling on which is subject to exception.—Merchants' Nat. Bank v. State Nat. Bank, Case No. 9,449.

The defendant, by introducing evidence in defense, waived its request, made at the close of the plaintiff's evidence, that the court direct a verdict for the defendant.—Whitehouse v. Grand Trunk Ry. Co., Case No. 17,565.

§ 16. **Instructions to jury—Province of court and jury in general.**
The construction of a bill of sale is a question of law.—Nason v. United States, Case No. 10,024.

Bonds were advanced in payment for building a railroad on security given to apply the proceeds to the construction. *Held*, that it was a question for the jury whether the goods purchased with the proceeds belonged to the contractor or the surety.—Comstock v. Carnley, Case No. 3,081.

When, by pleading or by special verdict or demurrer to evidence, the law is separated from the fact, the jury have no right to decide the law.—Stettinius v. United States, Case No. 13,-387.

The construction of an oral contract is for the jury, where there is a conflict as to the words used or ambiguity; otherwise, it is for the court.—Detroit Stove Works v. Perry, Case No. 3,835.

Whether an instrument is of itself a fraud in law must be determined from the instrument alone. The existence of a collateral understanding different from the written instrument is a question for the jury.—Miller v. Jones, Case No. 9,576.

If a contract is to be made out through a correspondence, the question of its construction is one for the court, regardless of its extent.—United States v. Shaw, Case No. 16,266.

Question of usury in written contract is for court.—Bank of Washington v. Walker, Case No. 955.

The effect of bankruptcy and death of a party to prevent the barring, by lapse of time, of a judgment against him, is a question of law for the court.—In re Morris, Case No. 9,825.

The construction of unwritten laws or usages of foreign countries, when duly proved, is for the court.—Consequa v. Willings, Case No. 3,-128.

The constitutionality of an act of congress is not a proper subject for the consideration of a jury.—United States v. Shive, Case No. 16,278.

The court may give an opinion and present its views of the nature, tendency, and weight of the evidence.—Bollmans v. Parry, Case No. 1,612; Consequa v. Willings, Id. 3,128; United States v. Fourteen Packages of Pins, Id. 15,151.

Dates fixed by records of court may be stated to jury as facts.—Andrews v. Graves, Case No. 376.

§ 17. —— **Necessity and sufficiency.**
It is no ground of error that the court refused to instruct the jury on a point of law which was so stated as to involve an opinion on matters of fact.—United States v. Burnham, Case No. 14,690.

When the issue is joined upon a matter of law, the court will not, at the prayer of either party, instruct the jury upon the matter of law submitted to the jury by the pleadings.—Alexandria v. Brockett, Case No. 182.

The court will not give an instruction unless justified by the evidence. Rules of determining such fact.—Bank of Alexandria v. Deneale, Case No. 846; Gardner v. Collins, Id. 5,223.

The right of the court to instruct the jury is not confined to the giving of such instructions as may be requested by counsel.—Stettinius v. United States, Case No. 13,387.

The federal circuit court is not bound to notice in its charge any matters to which its attention is not called, and in regard to which instructions are not requested.—Seabury v. Field, Case No. 12,575.

The court will not give an instruction upon a point not material to the issue.—Harper v. Smith, Case No. 6,092.

The court has no right to give the jury any direction upon questions of fact, but should call their attention to particular points, and observe upon the tendency, force, and comparative weight of conflicting testimony.—United States v. Sarchet, Case No. 16,224.

A point of law embraced in the argument need not be noticed in the charge unless the court's opinion upon it is explicitly required.—United States v. Fourteen Packages of Pins, Case No. 15,151.

It is not error to direct the attention of the jury to the distinction between "reasonable cause to believe" and "actual belief."—Lawrence v. Graves, Case No. 8,138.

In determining the sufficiency of instructions, they should be taken as a whole.—Willis v. Carpenter, Case No. 17,770.

§ 18. —— **Form and requisites.**
The court is not bound to give an instruction in the precise form and manner in which it is put by counsel.—Pitts v. Whitman, Case No. 11,196.

An instruction stating a fact contrary to a previous correct instruction *held* to be misleading.—Blake v. Smith, Case No. 1,502.

Abstract, irrelevant, vague, or general instructions need not be given.—Bottomley v. United States, Case No. 1,688.

§ 19. —— **Requests or prayers.**
Where the instructions given by the court cover the whole controversy, and are sufficiently full to enable the jury to decide the entire issue between the parties, the refusal of the court to give other instructions is not error.—Locke v. United States, Case No. 8,442.

Prayers for instructions not complied with by the court are to be considered as refused.—Emerson v. Hogg, Case No. 4,440.

On a difference of opinion between two judges, the court will refuse to give the instructions asked.—Clark v. Ford, Case No. 2,820.

§ 20. —— **Objections and exceptions.**
Failure to furnish written instructions precludes counsel's objecting to court's statement as to instruction refused.—Allen v. Blunt, Case No. 217.

Exceptions will lie to the refusals of the court to give instructions when requested, in like manner as to the instructions actually given.—Emerson v. Hogg, Case No. 4,440.

The waiver of an objection should be entered on the record with the objection.—American Saddle Co. v. Hogg, Case No. 316.

§ 21. Custody, conduct, and deliberations of jury.

A verdict agreed upon after a juror has separated from his fellows by mistake, and returned, may be allowed to stand, in the discretion of the court.—Burrill v. Phillips, Case No. 2,200.

The jury cannot be allowed to take to the jury room a letter, the genuineness of which is denied, for the purpose of comparing it with a genuine letter. Such comparison must be made in the progress of the trial.—Howell v. Hartford Fire Ins. Co., Case No. 6,779.

If the jury send a written request for instructions to the court, when not in session, the court, after notice to the counsel, will reply in writing, if it deems it safe and proper to do so.—Norris v. Cook, Case No. 10,305.

The court is not bound to instruct the jury after they have retired, unless the jurors request it.—Forrest v. Hanson, Case No. 4,943; Turner v. Foxall, Id. 14,255.

The construction of the federal constitution by the supreme court is binding on the jury as well as the court.—United States v. Shive, Case No. 16,278.

§ 22. Verdict—General verdict.

A general finding for the plaintiff or defendant by a jury is good, and disposes of all the issues. —Archer v. Morehouse, Case No. 18,225.

A verdict, though informal, is good if the substance of the issue has been found.—Russell v. Wheeler, Case No. 12,164a.

Form of verdict on bond conditioned to pay money by installments, rendered before all installments are due.—Davidson v. Brown, Case No. 3,601.

A verdict which is repugnant or uncertain in a material point is void.—Stearns v. Barrett, Case No. 13,337.

In a suit in the name of the United States of America, a verdict finding in favor of the United States, without the addition "of America," is sufficient.—Sears v. United States, Case No. 12,592; Smith v. Same, Id. 13,122.

Where, in a joint action of tort, there is no evidence as to one defendant, a verdict against all of them will be set aside.—United States v. Chaffee, Case No. 14,773.

Where, in such case, defendants sever in their pleas, and a verdict is returned against all, the case may be non pros'd as to one against whom there was no testimony, and judgment entered against the others.—United States v. Chaffee, Case No. 14,773.

If the jury find the point in issue, a finding as to another matter out of the issue may be rejected as surplusage.—Stearns v. Barrett, Case No. 13,337; United States v. One Case Stereoscopic Slides, Id. 15,927.

Where a verdict is rendered on certain counts of the declaration by the express direction of plaintiff, the other counts cannot be referred to as sustaining the verdict.—Jones v. Van Zandt, Case No. 7,502.

Plaintiff is entitled to legal interest on a verdict where judgment is delayed by defendant by motion for new trial or otherwise.—Dowell v. Griswold, Case No. 4,040.

On a plea in abatement, if the jury find against the plea, they ought to assess the damages on the plaintiff's declaration. If this is omitted, a venire de novo must be awarded.—Hollingsworth v. Duane, Case No. 6,615.

Where separate and distinct pleas are taken to different parts of the count, and some of the issues thereon are found for plaintiff, and some for defendant, several damages should be assessed, and judgment rendered for each party as to the issues found for him.—Kerr v. Force, Case No. 7,730.

Where the statute gives double or triple damages, a general verdict will be deemed for single damages, unless the contrary appear, and the court will double or treble them; but a verdict may be found for double or treble damages.—Cross v. United States, Case No. 3,434.

A finding in pounds, when damages were laid in the declaration in dollars, is no cause for arresting judgment.—Butts v. Shreve, Case No. 2,-258.

The court, on rendering judgment on a verdict assessing damages, cannot add interest from a time anterior thereto.—Byington v. Lemmons, Case No. 2,264a.

In an action ex contractu against two or more, the verdict must be against all or none.—Milne v. Huber, Case No. 9,617.

A jury which has given a verdict of one cent damages, under the mistaken view that it will carry costs, cannot change the same after they have been discharged.—Snowden v. McGuire, Case No. 13,150.

Under Act Sept. 24, 1789, § 32, the court may give judgment as the right appears, without regarding any imperfection or want of form in the verdict.—United States v. Quantity of Tobacco, Case No. 16,106a.

The record of the verdict will be amended in the case of a clerical mistake to conform to the verdict as rendered.—Tomes v. Redfield, Case No. 14,085.

After a special verdict, a motion by plaintiff to enter the verdict on certain counts and nol. pros. the others was granted.—Stokes v. Kendall, Case No. 13,480.

It is not error to allow the plaintiff to remit an excess of interest found in the verdict, and then affirm the verdict, so amended.—Paige v. Loring, Case No. 10,672.

§ 23. —— Special interrogatories and findings.

The court is not bound to give an opinion instanter, on the trial of a cause, but may direct the point to be saved by a special verdict.—Croudson v. Leonard, Case No. 3,439.

Court cannot, upon a special verdict, infer facts not actually found.—Bank of Alexandria v. Swann, Case No. 853.

The conclusion from facts found in a special verdict must be drawn by the court.—Butler v. Hopper, Case No. 2,241.

Danger of prejudice to successful party by special finding of facts stated. — Clement v. Phœnix Ins. Co., Case No. 2,882.

§ 24. Trial by court.

Procedure on trial in action at law by the court stated. — Clement v. Phœnix Ins. Co., Case No. 2,882.

On trial of an action at law without a jury, it is discretionary with the court to make either general or special findings on the facts.—Clement v. Phœnix Ins. Co., Case No. 2,882; Folsom v. Mercantile Mut. Ins. Co., Id. 4,903; Archer v. Morehouse, Id. 18,225.

Trial by court without jury is not concluded until formal findings of facts are made.—Clement v. Phœnix Ins. Co., Case No. 2,882.

On the question whether a tract of land is sufficiently described, the judge may weigh his personal knowledge thereof in connection with the testimony.—United States v. Juares, Case No. 15,500.

§ 25. Correction of irregularities.

Errors committed on the trial of an action at law against the party who obtains a verdict are

merged in the verdict.—Schmeider v. Barney, Case No. 12,462.

Either a verdict or judgment cures a defective venue.—Crittenden v. Davis, Case No. 3,393b.

The verdict will cure defects in substance in the pleadings if, from the issue in the case, the facts omitted or defectively stated may fairly be presumed to have been proved on the trial.—Stanley v. Whipple, Case No. 13,286.

TROVER AND CONVERSION.

§ 1, Acts constituting and liability therefor. § 2, Actions—Right of action and defenses. § 3, —— Pleading and evidence. § 4, —— Damages.

By agent, see "Principal and Agent," § 11.
By bailee, see "Bailment," § 5.
By executor, see "Executors and Administrators," § 17.
By wife, see "Husband and Wife," § 10.

§ 1. Acts constituting, and liability therefor.

The unauthorized transfer of plaintiff's property by defendant, though without wrongful intent, and before demand, is still a conversion.—Savary v. Germania Bank, Case No. 12,387.

All persons aiding to deprive the true owner of his goods are liable for their conversion, whether they profit by the transaction or not.—Longfellow v. Lewis, Case No. 8,487.

§ 2. Actions—Right of action and defenses.

General property in the goods without actual possession is sufficient to maintain trover.—Cooke v. Woodrow, Case No. 3,181.

A bailiff who distrains goods for rent, and leaves them on the premises of the owner, who takes them away, cannot maintain trover therefor.—King v. Fearson, Case No. 7,789.

Trover will lie by the general owner of goods against another, who had converted them to his own use, although a lien existed thereon in favor of a third person, who had the immediate possession.—Longfellow v. Lewis, Case No. 8,487.

A purchaser at sheriff's sale on credit, the property being retained as security, has sufficient title to maintain an action for its conversion.—Abbott v. McCartney, Case No. 12.

An agreement to sell and transfer goods seized and held as a distress for rent due from the seller will transfer the general property.—Cooke v. Woodrow, Case No. 3,181.

The possession of tobacco notes *held* evidence of the possession of the tobacco which they represent.—Hance v. McCormick, Case No. 6,009.

A demand and refusal or an actual conversion is necessary to sustain trover.—Chapin v. Siger, Case No. 2,600; Carr v. Gale, Id. 2,434.

Tender of storage charges for goods held adversely not necessary.—Allen v. Ogden, Case No. 233.

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.—Blakely v. Ruddell, Case No. 18,241.

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.—Blakely v. Ruddell, Case No. 18,241.

In trover for the conversion of goods, it is a good defense that plaintiff obtained possession of the same on a sale in fraud of the bankrupt act, and that the title and right of possession is in the assignee in bankruptcy of his vendor.—Eiseman v. Maul, Case No. 4,322.

§ 3. —— Pleading and evidence.

A declaration in trover for "a chest containing sundry tools," is sufficient to admit evidence of the value of the tools.—Ball v. Patterson, Case No. 814. CONTRA, see Ball v. Patterson, Case No. 813.

The defense that the seizure and conversion of the property in question was an act of war is admissible under the general issue in trover.—Coolidge v. Guthrie, Case No. 3,185.

Possession at the time of seizure is prima facie evidence of ownership, shifting the burden of proof.—Eiseman v. Maul, Case No. 4,322.

Expression of intention to retain goods demanded, evidence of conversion.—Allen v. Ogden, Case No. 233.

In trover, a mere demand and refusal is not in all cases evidence of conversion. Where the demand is made by an agent, and the refusal is for defect of authority in the agent, or for a refusal to show authority, it is not evidence of a conversion. Otherwise, where there is no request to see the authority, and the refusal to deliver the property turns on other distinct grounds.—Watt v. Potter, Case No. 17,291.

In trover for the conversion of goods, plaintiff must prove title as against the world when his title is denied.—Eiseman v. Maul, Case No. 4,322.

To establish a conversion, there must be proof of wrongful possession, or of exclusion of the owner's right, or of unauthorized and injurious use, or of wrongful detention after demand.—Maine v. Haley, Case No. 8,977.

§ 4. —— Damages.

A person who tortiously sells the property of another, without his consent, is liable for its full value at the time of the sale, though he does not receive any of the purchase money.—Flagg v. Mann, Case No. 4,848.

In an action of trover and conversion for articles purchased from a person who sold them without authority, the measure of damages is the real value of the property.—Scull v. Briddle, Case No. 12,569.

A person holding goods under a respondentia bond, with an assignment of the bill of lading, may recover damages for their unlawful taking in the full value of the goods, irrespective of the amount of his debt.—Pacific Ins. Co. v. Conard, Case No. 10,647.

Measure of damages for the conversion of a whale.—Bartlett v. Budd, Case No. 1,075; Taber v. Jenny, Id. 13,720; Bourne v. Ashley, Id. 1,699.

In trover for slaves plaintiff may recover damages beyond the value of the property converted.—Nevett v. Berry, Case No. 10,135.

Substantial doubts existing as to any of the elements of damage in a case of tortious taking must operate against the wrongdoer.—Taber v. Jenny, Case No. 13,720.

A jury may as part of the damages give interest on the value of property converted.—Matthews v. Menedger, Case No. 9,289.

A person who tortiously converts goods temporarily landed at an intermediate port from necessity for the purpose of repairing the vessel is not entitled to a deduction from the damages of the amount of duties payable.—Watt v. Potter, Case No. 17,291.

TRUSTEE PROCESS.

See "Garnishment."

TRUSTS.

I. CREATION, EXISTENCE, AND VALIDITY.

§ 1, Express trusts. § 2, Resulting trusts. § 3, Constructive trusts—In general. § 4, —— Necessity of writing. § 5, —— Dealings by persons in fiduciary relation with trust property or interests. § 6, —— Acquisition of property by fraud, or undue influence. § 7, —— Wrongful assumption of control of property. § 8, —— Evidence to establish trust.

II. CONSTRUCTION AND OPERATION.

§ 9, General rules. § 10, Estate of trustee and of cestui que trust. § 11, Evidence to aid construction.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEES.

§ 12, Acceptance or disclaimer by appointee. § 13, Jurisdiction of courts. § 14, Corporation as trustee. § 15, Removal.

IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY.

§ 16, Diligence and good faith of trustee. § 17, Collection of outstanding property. § 18, Repairs, improvements, and taxes. § 19, Payment of claims against property. § 20, Sale. § 21, Mortgage. § 22, Contracts—Negotiable instruments. § 23, Investments. § 24, Submission to arbitration. § 25, Individual interest in transactions. § 26, Loss of property. § 27, Ratification of unauthorized acts. § 28, Cotrustees. § 29, Actions by or against trustees—Form of remedy, rights of action, and defenses. § 30, —— Jurisdiction. § 31, —— Parties.

V. EXECUTION OF TRUST BY TRUSTEE.

§ 32, Apportionment of capital and income. § 33, Sufficiency of execution of trust. § 34, Reconveyance of trust property to creator of trust. § 35, Effect of execution.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE.

§ 36, Release from liability. § 37, Actions for accounting. § 38, Charges. § 39, Credits. § 40, Compensation.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.

§ 41, Rights of cestui que trust as against trustee. § 42, Right to follow trust property or proceeds thereof—In general. § 43, —— Election to take property or proceeds. § 44, —— Trust property transferred to third persons. § 45, Actions—Grounds of action. § 46, —— Limitations and laches. § 47, —— Parties. § 48, —— Pleading and evidence.

See, also, "Powers"; "Principal and Agent."
Affecting rights in public lands, see "Public Lands," § 56.
As ground of jurisdiction in equity, see "Equity," § 4.
Charitable trusts, see "Charities."
Claims in bankruptcy, see "Bankruptcy," §§ 202, 203, 387, 436.
Conveyances in trust for creditors, see "Assignment for Benefit of Creditors."
Creation by will, see "Wills," §§ 42, 43.
Merger of trust estate and legal estate, see "Estate."
Transfers in trust for aliens, see "Aliens," § 3.
Trust deeds, see "Chattel Mortgages"; "Mortgages."

I. CREATION, EXISTENCE, AND VALIDITY.

§ 1. Express trusts.

The Massachusetts statute of frauds is substantially similar, as respects trusts, to the statute of 29 Car. II.—Jenkins v. Eldredge, Case No. 7,266.

An agreement of defendant to reduce a trust to writing, or to keep a private memorandum thereof, will take the case out of the statute.—Jenkins v. Eldredge, Case No. 7,266.

A deed from an equitable mortgagee, and an assignment of a bond to reconvey to persons who had agreed to purchase on joint account, *held* to create a fiduciary relation between them, grounded on privity of title or estate, under which the purchase of an outstanding incumbrance or adverse title by one would be a trust for the benefit of both, taking the agreement out of the statute of frauds.—Flagg v. Mann, Case No. 4,847.

The statute of frauds, which requires that a declaration of trust of lands should be in writing, can be pleaded only by him who has the legal estate and is sought to be charged with the trust.—Oneale v. Caldwell, Case No. 10,515.

A trust, created by a parol contract, will be enforced in equity against a party who does not insist upon the defense of the statute of frauds.—Flagg v. Mann, Case No. 4,847.

The statute of frauds is never allowed as a protection to fraud, or as a means of seducing the unwary into false confidence to their injury.—Jenkins v. Eldredge, Case No. 7,266.

A declaration of trust not recorded is inoperative, under Act Ill. Jan. 31, 1827.—Hubbard v. Turner, Case No. 6,819.

A loose settlement in trust for children *held* not controlling as against a subsequent deed of trust.—Ingraham v. Meade, Case No. 7,045.

Under an act "for the relief of the widow and children of" H., by which moneys were directed to be paid to them, *held*, that such moneys were not a trust for the creditors of H.—Ogden v. Strong, Case No. 10,460.

Contractors for the building of a railroad, having stock of the railroad company as security for their contract, hold such stock for the common benefit of themselves and others whom they have admitted to share in their contract, and must deal with such stock accordingly.—Wiggins v. European & N. A. Ry. Co., Case No. 17,626.

The mere deposit of money in a savings bank, entered in the name of the depositor "in trust for" another person, without notice to him, is not sufficient to show that the money passed to him, especially where he had no knowledge thereof until after the death of the depositor.—Stone v. Bishop, Case No. 13,482.

A credit given by the grantee to the grantor of land for the proceeds of a sale by him of part of the land *held* to amount to a declaration of trust.—Prevost v. Gratz, Case No. 11,406.

A feme sole created a trust for herself for life, with remainders, reserving a power to revoke or declare new trusts. *Held*, that an instrument to "renew the trust for five years" was a complete execution of the power, and operated as a revocation at the end of five years.—Hidelt v. Girard Life Insurance, Annuity & Trust Co., Case No. 6,464.

A deed made by a bankrupt to the trustee, in pursuance of the requirements of the bankrupt law, is a revocation of a prior trust.—Bronaugh v. Mason, Case No. 1,923.

A trust *held* extinguished by the cestui que trust conveying the land, though the grantee

failed to fulfill its agreement on which the conveyance was made; the remedy of the cestui que trust being at law, for damages, or by bill in equity, for specific performance.—Hunter v. Marlboro, Case No. 6,908.

§ 2. Resulting trusts.
Rules as to the creation of resulting trusts, by Story, J.—Hoxie v. Carr, Case No. 6,802.

Where the equity of each party is equal, the court will not deprive one party of the advantage he may have gained by obtaining a legal estate in property which was promised as a security for a debt due to each.—Philips v. Crammond, Case No. 11,092.

A resulting trust arises on a conveyance for a consideration which is to be afterwards ascertained by the price at which the grantee may sell it.—Prevost v. Gratz, Case No. 11,406.

Where a judgment note is given by an agent for all moneys advanced to him by the principal, including the purchase price of property the title to which was taken in the agent's name, *held*, that a resulting trust could not be asserted therein.—Napier v. Server, Case No. 10,010.

A deed in satisfaction of precedent debt, under agreement that grantor should have surplus on resale, creates trust only in proceeds of sale.—Alexander v. Rodriguez, Case No. 172.

When money or other assets of one person are used by another to purchase property in his own name, a resulting trust arises in favor of the former.—Friedlander v. Johnson, Case No. 5,117.

A conveyance by husband and wife of the wife's land in exchange for lands conveyed to the husband raises a resulting trust in her favor, in the absence of evidence that she assented to the conveyance to her husband.—Nicklin v. Wythe, Case No. 10,253.

A resulting trust arises where lands have been purchased by one partner and paid for out of the funds of the partnership as a resulting trust arises where a person takes the conveyance to himself of property purchased with money which he holds in a fiduciary capacity.—Philips v. Crammond, Case No. 11,092.

What is sufficient evidence of a resulting trust and its recognition by the grantee.—Hunter v. Marlboro, Case No. 6,908.

Where a memorandum of sale recited a receipt of money from B. and C. on a contract of sale, parol evidence is admissible to show that C. did not advance any of the price and that no resulting trust was created.—Clark v. Burnham, Case No. 2,816.

§ 3. Constructive trusts—In general.
Equity will not raise a use by implication for a person who by law cannot hold it.—Philips v. Crammond, Case No. 11,092.

A person who agrees to pay a certain sum from a particular fund as soon as he shall receive it will, in equity, be regarded as a trustee of the fund to that extent.—United States v. Carlisle, Case No. 14,724.

§ 4. —— Necessity of writing.
Where a trust is implied in favor of a principal whose agent acquires the legal estate in property as such agent, such a trust is not within the statute of frauds, and it need not be manifested by a writing.—Manning v. Hayden, Case No. 9,043.

§ 5. —— Dealings by persons in fiduciary relation with trust property or interests.
A person acquiring the legal estate in property as the agent of another will be required to account for the same in equity. Therefore an attorney employed to foreclose a mortgage who purchases at the sale will be held a trustee for his client, at the option of the latter, unless it appears that such client has not been prejudiced thereby.—Manning v. Hayden, Case No. 9,043.

An administrator who purchases in his own name on a sale under foreclosure of a mortgage belonging to his intestate holds the property for the benefit of the heirs, and cannot sell it without authority of the court.—Rafferty v. Mallory, Case No. 11,526.

A written agreement to purchase lands on joint account creates a fiduciary relation, and a purchase by one, on his sole account, will be treated as in trust for the joint account.—Flagg v. Mann, Case No. 4,847.

The fraud of an agent in availing himself of his confidential relation to create an interest adverse to that of his principal creates a trust, even when the agency must be established by parol.—Jenkins v. Eldredge, Case No. 7,266.

Under an agreement of separation between husband and wife, property was transferred to trustees to pay the income to the wife, it being provided that the agreement should continue notwithstanding the parties elected to cohabit. *Held*, that the husband, subsequently receiving the income under an agreement to invest it for the wife and her children, became a trustee of the wife.—Walker v. Beal, Case No. 17,065.

A person who assumes to act as agent in redeeming lands sold for taxes will be considered as acting in that capacity in subsequent dealings with the title.—Schedda v. Sawyer, Case No. 12,443.

§ 6. —— Acquisition of property by fraud or undue influence.
The holder of the legal title to land will in equity be charged as trustee, where it was acquired by fraud or under such circumstances as to render it inequitable for him to retain it.—Norton v. Meader, Case No. 10,351; Hardy v. Harbin, Id. 6,060.

Persons who secure the legal title of a Mexican grant by the presentation of a worthless document as a transfer of the grantee's interest will, in equity, be treated as trustees of the heirs of the grantee.—Hardy v. Harbin, Case No. 6,060.

Verbal promise to dying person by heirs to convey his property in a certain way, though fraudulent, does not raise a trust adhering to the land.—Bedilian v. Seaton, Case No. 1,218.

The manager of a railroad company, who, by an oppressive exercise of his powers, procures donations of property to be made to him in trust for the company, will be considered to hold the property in trust for the donors.—Union Pac. R. Co. v. Durant, Case No. 14,377.

§ 7. —— Wrongful assumption of control of property.
A person who intermeddles with the property of an infant will be treated in equity as a trustee for such infant, and he will not be allowed to buy an outstanding legal title, to the infant's prejudice.—Lenox v. Notrebe, Cases Nos. 8,-246b, 8,246c.

One in possession, claiming under an adverse but defective title, without fraud, cannot be *held* to be the trustee of the true owner, nor be made to account for the proceeds of a sale by him.—Gaines v. Lizardi, Case No. 5,174.

But where the possession was not in good faith, the possessors are liable for rents and profits, and are not entitled to compensation for improvements.—Gaines v. Lizardi, Case No. 5,174.

§ 8. —— Evidence to establish trust.
In cases of a joint purchase, where each purchaser is to have an interest in the purchase in proportion to his advances, parol evidence is admissible to establish the trust, as well as to rebut, control, or vary it.—Jenkins v. Eldredge, Case No. 7,266.

Parol evidence is admissible to show that the purchase made in the name of one was made for the joint benefit of two, and in such case the grantee will be considered a trustee of a moiety for the other purchaser.—Powell v. Monson & Brimfield Mfg. Co., Case No. 11,356.

See, also, post, § 48.

II. CONSTRUCTION AND OPERATION.

§ 9. General rules.

When a trust is created, the legal effect of which is declared by the law, the court is bound to presume that the intent of the creator was in conformity with it.—Pennoyer v. Shelden, Case No. 10,943.

§ 10. Estate of trustee and of cestui que trust.

A covenant by the father of the intended wife to stand seised to her use, after marriage, of a piece of real estate, does not operate after marriage to pass the legal estate by the statute of uses; the use remains executory in the trustee and his heirs.—Magniac v. Thompson, Case No. 8,956.

A conveyance by a husband and wife of her estate to a third person and his heirs, to the use of the grantees during their joint lives, and for the use of the survivor in fee simple, is valid and operative under the statute of uses.—Durant v. Ritchie, Case No. 4,190.

Public lands, purchased at an auction sale by an agent of an association of individuals, cannot be sold on an attachment against him; and an assignment by him of certificates of patent to the purchaser on the sale under the attachment is invalid.—Piatt v. Oliver, Case No. 11,115.

An unexecuted trust for the benefit of one for life, and on his death for the heirs of another, cannot be separated into distinct trusts.—Curtis v. Smith, Case No. 3,505.

A trustee, by an instrument intending to convey a complete title in the thing, may convey his individual interest, though the instrument is inoperative as to his cestuis que trustent.—Piatt v. Oliver, Case No. 11,116.

A trustee cannot attack the validity of a deed under which he took possession, unless he was deceived into taking title, not knowing that the property really belonged partly or wholly to himself.—Hunt v. Danforth, Case No. 6,888.

The equitable interest of a cestui que trust by way of contingent remainder is capable of assignment.—Sullivan v. Sullivan, Case No. 13,598.

A conveyance from a cestui que trust, confirmed by the trustee, will entitle the purchaser to protection against a secret trust unknown to him.—Flagg v. Mann, Case No. 4,847.

A trustee who was a creditor before the trust arose may pursue the same legal remedies for enforcement of his debt which would have been otherwise available.—Prevost v. Gratz, Case No. 11,406.

§ 11. Evidence to aid construction.

The written declaration of a trustee in a conveyance by him of the trust property to a third person is not admissible against the creator of the trust to show the intent of the parties in the original conveyance to the trustee.—Waterman v. Wallace, Case No. 17,261.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEES.

§ 12. Acceptance or disclaimer by appointee.

Any act done by the trustee under a trust deed is evidence of the acceptance of the trust. —Lewis v. Baird, Case No. 8,316.

§ 13. Jurisdiction of courts.

Jurisdiction of courts of equity over trusts, and of the appointment of agent.—Baring v. Willing, Case No. 985.

§ 14. Corporation as trustee.

A corporation may be a trustee if not prohibited, where the trust is germane to or in harmony with the objects of the corporation.—Jones v. Habersham, Case No. 7,465.

§ 15. Removal.

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.—Young v. Young, Case No. 18,177.

Where, by contract, a trust was created and trustees appointed, but the trust was not to take effect until the happening of a certain event, *held*, that before that time the court would not, at the instance of one of the parties, remove the trustees for alleged misfeasance.—Sloo v. Law, Case No. 12,956.

An executor who has taken charge of a trust estate under a will will not be displaced, and a receiver appointed, unless it appear that the property is in danger, and the trustee is irresponsible.—Haines v. Carpenter, Case No. 5,905.

To preserve a trust estate mainly within the jurisdiction, the court may remove ex parte a nonresident naked trustee, who cannot be served because he is in a hostile territory, and appoint another.—Ketchum v. Mobile & O. R. Co., Case No. 7,737.

A trustee removed without notice while in a hostile territory *held* to have abandoned his office by a silence of 10 years after cessation of hostilities and notice of removal.—Ketchum v. Mobile & O. R. Co., Case No. 7,737.

IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY.

See, also, post, §§ 32-35.

Right to follow trust property, see post, §§ 42-44.

§ 16. Diligence and good faith of trustee.

A trustee is only bound to manage lands conveyed on an undefined trust with the same diligence as he does his own property.—Burr v. McEwen, Case No. 2,193.

§ 17. Collection of outstanding property.

Trustees under an assignment of assets for certain purposes cannot vary its terms and accept payment of debts in a manner not contemplated therein.—Bank of United States v. Bomford, Case No. 909.

A trustee who receives, in payment of a loan, Confederate treasury notes at par which were worth only 30 cents on the dollar, is liable, unless he show that he acted under compulsion.—Moore v. Mitchell, Case No. 9,770.

Parol understandings had with the testator cannot be set up to save the trustee from liability under the law.—Moore v. Mitchell, Case No. 9,770.

§ 18. Repairs, improvements, and taxes.

A trustee is not chargeable with failure to rent unproductive property, or to inclose open lands.—Burr v. McEwen, Case No. 2,193.

The trustee is bound to pay taxes, if in funds, or he may advance his own money, and charge it against the property in his hands.—Burr v. McEwen, Case No. 2,193.

§ 19. Payment of claims against property.

Payment of a debt by a trustee to a receiver under a confiscation decree of a Confederate

court is a breach of trust.—Clark v. Gibboney, Case No. 2,821.

§ 20. Sale.
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.—Wormeley v. Wormeley, Case No. 18,047.

The trustee may sell at private sale, where the trust is general, and no mode of sale is prescribed.—Burr v. McEwen, Case No. 2,193.

A trustee, if acting in good faith, is justified in selling for fair market value, though special circumstances enhance value to the purchaser.—Burr v. McEwen, Case No. 2,193.

Where a deed purports to be executed by the trustees of a town, there must be evidence that the persons who signed it were trustees, and that they had power to make the conveyance.—Wallace v. Dewey, Case No. 17,099.

A conveyance of land in consideration of coupon bonds by a trustee empowered to sell may be valid, though it be not a sale for money.—Speigle v. Meredith, Case No. 13,227.

A purchase made by a trustee is voidable at the election of the cestui que trust only if he disaffirms it within a reasonable time after notice thereof.—Prevost v. Gratz, Case No. 11,406.

Length of time affords no presumption of an acquiescence in a purchase by a trustee of property held by him in trust, unless it appears that the cestui que trust had notice that the trustee had become the purchaser.—Prevost v. Gratz, Case No. 11,406.

There is no principle of equity which will invalidate the title of a trustee to land which the law has taken out of his hands, and which he has purchased from one appointed to sell it.—Prevost v. Gratz, Case No. 11,406.

The burden is upon a trustee for creditors who claims that a purchase by a co-trustee in his own name, on a sale to enforce payment of a judgment recovered by the trustees, was made by the co-trustee as trustee, to show that fact.—Cushing v. Smith, Case No. 3,511.

If a cestui que trust under an assignment for the benefit of creditors buys a right of property which the assignees were empowered to sell in the execution of their trust, he must claim as a purchaser under them, not as a cestui que trust.—Wilkinson v. Wilkinson, Case No. 17,677.

Where all of the living trustees having a power to sell negotiated the contract of sale, a purchaser under a deed executed by a part only, who has performed his contract, is entitled to have the heirs and legatees decreed to complete the contract.—Long v. Soule, Case No. 8,483.

As to the priorities between the parties where a trustee in a deed of trust is also made agent to collect the notes secured thereby, which he sells to bona fide purchasers, where he subsequently obtains title to the property, having previously executed a release as trustee.—Smith v. Perkins, Case No. 13,091.

The legal estate passes by a deed of bargain and sale made by a trustee, whether the terms of the trust are complied with or not.—Bank of the United States v. Benning, Case No. 908.

Defendant who has no title cannot question conduct of trustee in conveying to plaintiff.—Bayard v. Colefax, Case No. 1,130.

In order to set aside a purchase of trust property from a trustee authorized to sell, on the ground of collusion, the fraud must be clearly proven.—Carpenter v. Robinson, Case No. 2,431.

§ 21. Mortgage.
A power in a trust deed to sell and reinvest on the same limitations and trusts does not include by implication the power to mortgage.—Patapsco Guano Co. v. Morrison, Case No. 10,792.

A statutory provision giving the court power to authorize a trustee to sell or convey the corpus of the trust estate does not confer power to authorize the trustee to mortgage it.—Patapsco Guano Co. v. Morrison, Case No. 10,792.

§ 22. Contracts—Negotiable instruments.
A trustee, unless expressly authorized, cannot issue negotiable paper executed in his trust character so as to bind the trust estate.—Patapsco Guano Co. v. Morrison, Case No. 10,792.

§ 23. Investments.
A trustee resident in the Confederate States *held* not personally liable for the amount of investments in Confederate bonds, where he did not deal directly with the Confederate government, except as to nonresident cestuis que trustent adhering to the United States.—Head v. Starke, Case No. 6,293.

Third persons cannot object to the unauthorized investment of trust funds.—Blagge v. Miles, Case No. 1,479.

A state legislature may authorize a change of investments by trustees.—Hoyt v. Sprague, Case No. 6,810.

§ 24. Submission to arbitration.
A trustee of one to whom a loss is payable by the policy may refer it to arbitration, where empowered by the cestui que trust to adjust and sue for the loss.—Brown v. Hartford Fire Ins. Co., Case No. 2,009.

§ 25. Individual interest in transactions.
A trustee will not be permitted to obtain any personal benefit to himself at the expense of his cestui que trust.—Sloo v. Law, Case No. 12,957.

§ 26. Loss of property.
Where the trusteee mingles the trust fund with his own money, he is liable on its loss.—Moore v. Mitchell, Case No. 9,770.

A trustee who uses trust money in trade is chargeable with all profits which he has made, and in case of loss it must be borne by himself.—In re Thorp, Case No. 14,002.

§ 27. Ratification of unauthorized acts.
Where trust funds are fraudulently used by the trustee to purchase stock in a railroad company which is subsequently consolidated with another company, the beneficial owner, having prior knowledge of the misappropriation, must seek his remedy against the stock of the consolidated company in the hands of the trustee.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

§ 28. Co-trustees.
One trustee will be enjoined from denying another access to the books and papers relating to the trust.—Sloo v. Law, Case No. 12,957.

Where money is paid to a trustee, a co-trustee who joined in the receipt is not liable unless the trustee had no right to receive the money.—Wallis v. Thornton, Case No. 17,111.

An attorney for trustees charged with a public trust, or one of such trustees acting as attorney for the others, has not the implied power to consent to a decree which has the effect of taking the trust out of the hands of the trustees, or of placing its execution in other hands.—Vose v. Internal Imp. Fund, Case No. 17,008.

§ 29. Actions by or against trustees—Form of remedy, rights of action, and defenses.

A trustee appropriating the proceeds of trust property is liable in assumpsit.—Baker v. Root, Case No. 780.

The remedy of the cestui que trust against the trustee for negligence is in equity, not at law.—Hukill v. Page, Case No. 6,854.

A cestui que trust may maintain a suit to enjoin the trustee from collecting, appropriating, or disposing of the trust property.—St. Luke's Hospital v. Barclay, Case No. 12,241.

See, also, post, §§ 37, 45.

§ 30. —— Jurisdiction.

Equity has jurisdiction of a suit by the trustee against the cestuis que trustent, to direct an issue devisavit vel non, and to decree possession of the land to the trustee to enable him to execute the trust.—Harrison v. Rowan, Case No. 6,143.

A trustee whose title is derived solely by act of the law cannot sue in another state without having his appointment repeated by the local tribunal.—Curtis v. Smith, Case No. 3,505.

A trustee deriving title from a will must prove the will in the local jurisdiction before suing to recover a trust fund in the hands of a person therein.—Curtis v. Smith, Case No. 3,505.

§ 31. —— Parties.

Trustees implicated in a common breach of trust are liable to suit jointly or severally, at the election of the cestui que trust.—Heath v. Erie Ry. Co., Case No. 6,306.

The same doctrine applies to any wrongdoer who is confederated with a fraudulent trustee.—Heath v. Erie Ry. Co., Case No. 6,306.

A deed of trust to secure creditors with ascertained debts marshaled them into four classes. *Held*, that a bill would lie by one of the fourth class for breach of the trust, without making the others parties.—Dorr v. Gibboney, Case No. 4,006.

The cestuis que trustent must be made parties to a suit by the trustee, whose object is to devest them of title.—Piatt v. Oliver, Case No. 11,115.

V. EXECUTION OF TRUST BY TRUSTEE.

See, also, ante, §§ 16-31.

§ 32. Apportionment of capital and income.

The cestui que trust will not be deprived of a proper allowance for maintenance and education to enhance the contingent estate of another, where the trust allows an expenditure of the principal for such purpose.—Curtis v. Smith, Case No. 3,505.

§ 33. Sufficiency of execution of trust.

A secret trust *held* to be executed by a deed from the trustee and the cestuis que trust to a third person.—Flagg v. Mann, Case No. 4,847.

A strict trust, entirely private in its nature, must be executed by all the trustees, unless otherwise provided. But a public trust may be executed by a majority of the trustees, unless otherwise provided.—Sloo v. Law, Case No. 12,957; Boone v. Clarke, Id. 1,641.

§ 34. Reconveyance of trust property to creator of trust.

The presumption of a reconveyance of lands conveyed in trust, after it becomes impossible to execute the trust, *held* to be conclusive.—French v. Edwards, Case No. 5,098.

On the death of trustees in a deed of trust leaving infant heirs, the court, on application of the owner of the property conveyed in trust, will order the guardian of said heirs, duly appointed, to execute a deed releasing to the said owner the property so conveyed.—Orme v. Clarke, Case No. 10,577.

§ 35. Effect of execution.

An executed trust cannot be revived by nonexecution of a trust resulting from subsequent agreement relating to same subject.—Baker v. Biddle, Case No. 764.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE.

§ 36. Release from liability.

The profit gained by the trustee on a sale of property held by him in trust belongs to the cestui que trust, and the trustee cannot so purchase or hold the property as to release the claim of the cestui que trust to compel him to account.—Prevost v. Gratz, Case No. 11,406.

§ 37. Actions for accounting.

A court of equity has jurisdiction over a controversy between a cestui que trust and his trustee in relation to accounts for services and disbursements in the management of the trust.—Parsons v. Lyman, Case No. 10,780.

Nature and extent of the jurisdiction of the courts of probate of Connecticut over the administration of testamentary trusts.—Parson v. Lyman, Case No. 10,780.

Creditors of an insolvent trustee need not be made parties to a bill against his administrator for an account.—Burton v. Smith, Case No. 2,219.

The settlement by a probate court of the accounts of a testamentary trustee must, in order to bind the cestui que trust, be made upon due previous notice to him of the time and place of settlement.—Parsons v. Lyman, Case No. 10,780.

All presumptions are against a trustee who does not keep accurate and distinct accounts.—Bourne v. Maybin, Case No. 1,700.

While a trustee cannot be charged with negligence or maladministration not set out in the bill for an account, it may be considered in fixing his compensation.—Burr v. McEwen, Case No. 2,193.

§ 38. Charges.

If a trustee, executor, or agent buy in debts due by his cestui que trust, testator, or principal for less than their nominal amount, the benefit arising therefrom belongs to the person for whom he acted.—Prevost v. Gratz, Case No. 11,406.

A trustee who previous to the Civil War appropriated the trust estate to his own use is liable for interest during the war.—Bourne v. Maybin, Case No. 1,700.

A trustee who fails to execute a direction to sell property and invest the proceeds in productive funds is liable for interest.—Nicholson v. McGuire, Case No. 10,249.

Interest will not be allowed against a trustee where he had received no interest, if there was no neglect or use of the money on his part.—Cassels v. Vernon, Case No. 2,503.

A trustee acting bona fide under invalid letters testamentary should not be charged with interest, where the property did not earn interest.—Grattan v. Appleton, Case No. 5,707.

§ 39. Credits.

Fees paid for professional advice as to the execution of the trust are chargeable against the trust; otherwise as to fees in a litigation of the trustee's account.—Burr v. McEwen, Case No. 2,193.

§ 40. Compensation.

Trustees are entitled to compensation by way of commissions.—Burr v. McEwen, Case No. 2,193.

They are in equity entitled to commissions allowed to executors by statute.—Prevost v. Gratz, Case No. 11,407.

Trustees are entitled to commissions of 5 per cent. on money passing through their hands.—Askew v. Odenheimer, Case No. 587.

Commissions are not allowed to a trustee who makes a sale in violation of his trust.—Flagg v. Mann, Case No. 4,848.

One who holds premises as trustee of another is entitled to commissions on renting the same where not guilty of gross misconduct, although he is not an open and express trustee.—Jenkins v. Eldredge, Case No. 7,268.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.

§ 41. Rights of cestui que trust as against trustee.

There can be no disseisin of a trust, though the exercise of an adverse possession for a great length of time may in equity bar it.—Baker v. Whiting, Case No. 787.

Where a trust made to defraud creditors is executed by the trustee conveying the property to a third person to secure a loan to the cestui que trust, whose rights the grantee distinctly recognizes, the trust is enforceable.—Hunter v. Marlboro, Case No. 6,908.

The trustee is not answerable to the representatives of the cestui que trust for acts done with the latter's approval.—Burr v. McEwen, Case No. 2,193.

A receipt given by one just arrived at full age for a certain sum as his share of an estate under a trust deed is no bar in equity to his demanding interest and dividends due on the fund.—Nicholson v. McGuire, Case No. 10,249.

The original trust may be enforced against a son of the trustee, who assisted his father in a scheme to get possession of the trust estate, for a grossly inadequate consideration.—Bunnel v. Stoddard, Case No. 2,135.

§ 42. Right to follow trust property or proceeds thereof—In general.

Partnership funds fraudulently diverted to individual purposes by one member may be followed by the other members, and treated as trust property, if they can be distinctly traced in the hands of any one except a bona fide purchaser without notice.—Kelley v. Greenleaf, Case No. 7,657.

Public lands, made a trust estate for the payment of certain bonds, and placed under the control of trustees, are subject to the power of a court of equity to raise therefrom the money due and chargeable thereon.—Vose v. Internal Imp. Fund, Case No. 17,008.

§ 43. —— Election to take property or proceeds.

The person entitled to the resulting trust is not obliged to take the land, but may elect to take the money.—Philips v. Crammond, Case No. 11,092.

Where the identity of a trust fund converted by the trustee can be traced, the cestui que trust may elect to take it, though it has greatly increased in value.—Piatt v. Oliver, Cases Nos. 11,115, 11,116.

A bill praying for specific relief may be considered as an election.—Piatt v. Oliver, Case No. 11,116.

§ 44. —— Trust property transferred to third persons.

The beneficiaries may follow a trust fund into the hands of any one receiving it with notice of the trust.—In re Tesson, Case No. 13,844; United States v. Waterborough, Id. 16,648.

One purchasing the legal title, with notice of a prior equitable title, is trustee for the holder of the equitable title; but, if the latter encouraged the purchaser to pay the purchase money, the legal title will not be disturbed in equity.—Kurtz v. Bank of Columbia, Case No. 7,949.

An individual having an interest in certain real estate held by a trustee must be presumed to know the nature of his title and the acts of the trustee, and on a sale by the trustee cannot claim to be an innocent purchaser without notice.—Piatt v. Oliver, Case No. 11,115.

Persons who loan money on certificates of stock which state that the borrower holds them in trust, with knowledge that the same is borrowed for the private use of the trustee, are liable to the cestui que trust.—Jaudon v. National City Bank, Case No. 7,230.

Where an officer of a bank, being a member of a firm, lends to it money of the bank, it cannot be followed into the hands of the firm.—Case v. Beauregard, Case No. 2,487.

Where a husband, a trustee of land in which his wife has a life interest, conveys the same, the wife also signing the deed, and deposits the proceeds in a firm of which he was a member, the wife has no title in the money so deposited.—In re Chisolm, Case No. 2,687.

A broker for an army paymaster, who accepts his official checks in payment for stock transactions, is charged with notice of the trust which a suitable inquiry would have revealed, and is liable to the government for property thus embezzled.—United States v. Polhamus, Case No. 16,062.

A cotrustee purchased in his own name an equity of redemption sold to enforce payment of a judgment recovered by the trustees. *Held*, that a purchaser from him obtained a good title.—Cushing v. Smith, Case No. 3,511.

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.—Wormeley v. Wormeley, Case No. 18,047.

When the principal can trace his property as distinct from that of the factor, he can recover it in whosesoever hands it may come.—Thompson v. Perkins, Case No. 13,972.

A judgment creditor is not a bona fide purchaser who as such is protected against a resulting trust.—Flanders v. Thompson, Case No. 4,853.

§ 45. Actions—Grounds of action.

Equity will not lend its aid to enforce a trust made to defraud creditors.—Hunter v. Marlboro', Case No. 6,908.

A trust created by a release of all claim in land to another for the purpose of freeing it from all claims of the releasor, so as to induce others to advance funds for its improvement, will be enforced in equity.—Jenkins v. Eldredge, Case No. 7,266.

The heirs of a deceased beneficiary whose estate has been fully settled, and debts satisfied, may maintain suit in respect to a trust in real estate, notwithstanding it has in equity been converted into personalty.—Bunnel v. Stoddard, Case No. 2,135.

An action at law will not lie by a successor of a deceased trustee against his administrator to recover the trust fund.—Curtis v. Smith, Case No. 3,505.

§ 46. —— Limitations and laches.

Constructive trusts being purely of equitable cognizance, lapse of time is no absolute bar to relief; and, when the trust arises out of fraud,

each case is to be determined on its own circumstances.—Stevens v. Sharp, Case No. 13,410; Manning v. Hayden, Id. 9,043.

Neither lapse of time, nor any defense analogous to the statute of limitations, can be set up by the trustee of an express trust as a defense to his liability to execute the trust.—Hancock v. Walsh, Case No. 6,012.

The statute of limitations does not run against an established trust.—Piatt v. Oliver, Case No. 11,115; Walton v. Coulson, Id. 17,132.

The statute does not run against an equitable title, nor in favor of one.—Baird v. Wolfe, Case No. 760.

Time begins to run against a trust as soon as it is openly disavowed by the trustees insisting upon an adverse right and interest, which is unequivocally made known to the cestui que trust.—Robinson v. Hook, Case No. 11,956; Baker v. Whiting, Id. 787.

The principle that the statute will not protect trustees applies only to express, not to constructive, trusts.—Hayman v. Keally, Case No. 6,265.

Neither the trustee of an express trust, guilty of malversation, nor a confederate procuring the property of the beneficiaries by fraud, can claim a bar by lapse of time.—Bunnel v. Stoddard, Case No. 2,135.

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.—Wyman v. Babcock, Case No. 18,-113.

A residuary legatee who took real estate subject to the payment, in three years after testator's death, of a certain sum to another, in trust for testator's children, *held* not an express trustee, and the claim was barred after 30 years. —In re O'Neale, Case No. 10,512.

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.—Wisner v. Odgen, Case No. 17,914.

§ 47. —— **Parties.**

In a suit by a surety to cancel a conveyance of land made by him in trust to secure a note of the principal, the trustee is a necessary, and not a nominal, party.—Teal v. Walker, Case No. 13,812.

The rights of different parties in trust property may be enforced in one suit, when they claim under a common source of title, and assert a joint wrong, involving the trust property.—Bunnel v. Stoddard, Case No. 2,135.

In a suit in equity to convert the holders of the legal title to land into trustees for the true owners, a previous holder of such legal title, who has parted with all his interest in it, is not a necessary party.—Hardy v. Harbin, Case No. 6,060.

In a suit to enforce a trust created by a person since deceased, and also to set aside certain conveyances procured from her heirs, as alleged, by fraud, the administrator of the ancestor, and the heirs or their representatives, are properly joined as complainants.—Bunnel v. Stoddard, Case No. 2,135; Allen v. Simons, Id. 237.

In a suit to enforce a trust, where one of the joint equitable owners with plaintiff is out of the jurisdiction, and will not join in the suit, the court has power to proceed in his absence.—Scudder v. Calais Steamboat Co., Case No. 12,-566.

§ 48. —— **Pleading and evidence.**

It need not be alleged that a trust in lands was created by writing, for that will be presumed until the contrary appears. The statute of frauds requiring such trusts to be created or evidenced by writing is a rule of evidence, not of pleading.—Lamb v. Starr, Case No. 8,021.

The party who alleges a trust has the burden of establishing it.—Prevost v. Gratz, Case No. 11,406.

The record of a suit in admiralty brought by a trustee is admissible, in favor of the cestuis que trustent, to show the recovery, and the title on which it rested.—Church v. Shelton, Case No. 2,714.

See, also, ante, § 8.

TUGS.

See "Towage."

U

ULTRA VIRES.

See "Corporations," § 47.

UNDERTAKINGS.

See "Bonds."
On arrest, see "Arrest," § 7.

UNDISCOVERED PRINCIPAL.

See "Principal and Agent," §§ 23, 24.

UNDUE INFLUENCE.

As ground of cancellation of written instrument, see "Cancellation of Instruments," § 1.
Procuring making of will, see "Wills," § 11.

UNITED STATES.

I. GOVERNMENT AND OFFICERS.

§ 1, Nature of the Union. § 2, Territory, boundaries, and jurisdiction. § 3, Congress. § 4, President. § 5, Executive departments. § 6, Officers—Qualifications. § 7, —— Appointment and tenure. § 8, —— Powers. § 9, —— Liabilities. § 10, —— Compensation, fees, and expenses. § 11, —— Actions against. § 12, —— Accounting and settlement of accounts. § 13, Liability on official bonds.

II. PROPERTY, CONTRACTS, AND LIABILITIES.

§ 14, Property. § 15, Contracts. § 16, Right of government to priority of payment—Debts, persons, and property affected. § 17, —— Insolvency, assignment, or attachment. § 18, —— Nature and extent of the priority. § 19,

—— Relative right of United States and other lien creditors. § 20, —— Proceedings to enforce priority. § 21, Estoppel.

III. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.

§ 22, Money—Wrongful issue. § 23, Redemption of forged notes.

IV. CLAIMS AGAINST UNITED STATES.

§ 24, Assignment. § 25, Contracts to collect—Lien. § 26, Rejection or allowance. § 27, False and fraudulent claims.

V. ACTIONS.

§ 28, Action by United States—Right of. § 29, —— Remedies and procedure. § 30, —— Power to institute. § 31, —— Limitations and laches. § 32, —— Parties. § 33, —— Set-off and counterclaim. § 34, —— Judgment. § 35, Actions against United States.

See, also, "District of Columbia"; "States"; "Territories."
Admission of states, see "States," § 1.
Citizens, see "Citizens."
Claims of, when discharged in bankruptcy, see "Bankruptcy," § 631.
Courts, see "Courts," §§ 14–107; "Removal of Causes."
Distribution of governmental powers and functions, see "Constitutional Law," § 2.
Duties on United States property, see "Customs Duties," § 14.
Indians, see "Indians."
Jurisdiction of crimes on property of, see "Criminal Law," § 12.
—— over property, see "Admiralty," § 7.
—— over United States territory, see "Courts," § 16.
Officers, see "Army and Navy"; "Clerks of Courts"; "Customs Duties," §§ 17–27; "District and Prosecuting Attorneys"; "Post Office"; "United States Commissioners"; "United States Marshals."
—— jurisdiction over, see "Courts," § 2.
Powers and duties of secretary of treasury as to customs duties, see "Customs Duties," § 20.
Power to suspend writ of habeas corpus, see "Habeas Corpus," § 16.
Public lands, see "Public Lands."
Right to use invention, see "Patents," § 141.

I. GOVERNMENT AND OFFICERS.

§ 1. Nature of the Union.

Cases on the subject of sovereignty reviewed by Hughes, J.—Lee v. Kaufman, Case No. 8,-191.

All powers of the United States government arise from the grant expressed in their written constitution. None of the prerogatives of the English crown devolved by succession upon them.—Russell v. Forty Bales Cotton, Case No. 12,154.

The United States, in their political capacity, are a collective, invisible body, and can only act by their officers, who constitutionally and legally administer the government, and by the agents duly appointed by them.—United States v. Hillegas, Case No. 15,366.

§ 2. Territory, boundaries, and jurisdiction.

The right to acquire territory by cession is incidental to treaty-making power.—American Ins. Co. v. Canter, Case No. 302a.

The boundary line between the United States and the British provinces on the Passamaquoddy is the middle of the stream or channel, running the line at low-water mark.—The Fame, Case No. 4,634.

But each nation may also have a common right of passage and navigation over the whole river or bay, where it is necessary for the convenient access and trade of its own ports.—The Fame, Case No. 4,634.

The small island called "Pope's Folly," in the Bay of Passamaquoddy, is within the jurisdiction of the United States.—Open Boat, Case No. 10,548.

The purchase of lands by the United States for public purposes within the territorial limits of a state does not of itself oust the jurisdiction of sovereignty of the state over such lands.—United States v. Cornell, Case No. 14,867.

Where the purchase of land for the erection of forts, magazines, arsenals, dock yards, or other needful buildings is made by consent of the state legislature, such land, under the constitutional provision, falls within the exclusive legislation of congress.—United States v. Cornell, Case No. 14,867.

On the admission of Kansas into the Union, jurisdiction within forts of the United States within the state was not excepted, and the consent of the state is necessary to the exercise of federal jurisdiction therein.—United States v. Stahl, Case No. 16,373.

Congress has exclusive legislative power over a place ceded by a state for a military post, though the state reserves a right to send process therein.—United States v. Knapp, Case No. 15,-538.

Congress can legislate in respect of murder only where the crime is connected with some subject-matter or was committed in some place which brings it within the exclusive jurisdiction of the federal government.—United States v. Ward, Case No. 16,639.

§ 3. Congress.

The senate may punish for contempts of its authority in cases of which it has jurisdiction.—Ex parte Nugent, Case No. 10,375.

The warrant of commitment need not set forth the particular facts which constitute the alleged contempt.—Ex parte Nugent, Case No. 10,375.

An inquiry by the senate as to the violation of a rule of secrecy in relation to pending treaties is within its jurisdiction, and it may punish for contempt of such rule.—Ex parte Nugent, Case No. 10,375.

The senate has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session.—Ex parte Nugent, Case No. 10,375.

A commitment for contempt by the senate or house of representatives cannot be inquired into by any other body or court, either by habeas corpus or otherwise.—Ex parte Nugent, Case No. 10,375.

The superintendent of public printing is subject wholly to the control of the joint committee of congress on printing. Act Aug. 26, 1852.—United States v. Seaman, Case No. 16,245a.

Privilege of members of congress from service of process, see "Process," § 6.

§ 4. President.

The president has no power to interfere with a public prosecution, except to put an end to it and discharge the accused. He has no power to change the proceedings, nor the place of trial.—United States v. Corrie, Case No. 14,869.

The president's power of controlling an officer is limited to those functions which, by law, are to be exercised by the will of the president, and in which his order would be a justification.—United States v. Kendall, Case No. 15,517.

In the case of a letter written to the president, and in the hands of the prosecuting attorney, the president alone can decide as to the propriety of

withholding parts of it, and he cannot delegate his discretion.—United States v. Burr, Case No. 14,694.

The interposition of the president to protect abroad the lives and property of citizens of the United States is a matter resting in his discretion.—Durand v. Hollins, Case No. 4,186.

Compelling attendance as witness, see "Witnesses," § 2.
Powers of president, see, also, "Habeas Corpus," § 16; "Militia"; "Neutrality Laws," § 13; "Pardon," § 1.
Power to establish blockade, see "War," § 26.

§ 5. Executive departments.
Orders issued by the department of state in relation to such public measures as are not immediately connected with the duties of some other department are to be considered as orders of the president.—Lockington v. Smith, Case No. 8,448.

The head of a department is authorized, in the administration of the duties of his office, to employ agents, and to determine when an exigency arises demanding their employment.—United States v. Potter, Case No. 16,076.

The secretary of the treasury has no power to compromise criminal proceedings pending in court.—United States v. George, Case No. 15,198.

An assignment of a bond for jail limits to the United States, when they are plaintiffs, is valid, and its acceptance by the secretary of the treasury will be presumed to have been authorized.—United States v. Noah, Case No. 15,894.

The direction of the president will be presumed, where money is advanced by the direction of the head of a proper department.—United States v. Cutter, Case No. 14,911.

The construction of a law by the navy department, and the practice under it, cannot be allowed to alter the law, nor to control its construction in a court of justice.—Goldsborough v. United States, Case No. 5,519.

An order issued by the secretary of the navy to an officer of the navy to apply a sum of money to expenses resulting from injuries incurred while on special duty cannot be controlled by the accounting officers of the treasury.—United States v. Jones, Case No. 15,493a.

A regulation of the treasury department made pursuant to an act of congress is of the same force as if incorporated in the body of the act itself.—United States v. Barrows, Case No. 14,529.

The regulations of a department in settling its accounts are subject to the revision of a court and jury, when they work manifest injustice to individuals.—United States v. Cadwalader, Case No. 14,706.

A marshal obeying order of secretary of war, rather than that of court, should not be punished for contempt of court.—Ex parte Benedict, Case No. 1,292.

The relation of the executive to the judicial department stated in an opinion by Washington, J.—Lockington v. Smith, Case No. 8,448.

§ 6. Officers—Qualifications.
A person disqualified by the fourteenth amendment from holding office, by having engaged in the Rebellion after taking an oath to support the constitution of the United States, is indictable, under Act May 31, 1870, § 15, for subsequently accepting the office of sheriff.—United States v. Powell, Case No. 16,079.

Accepting and holding the office of justice of the peace under the Confederate government is not of itself sufficient evidence of engaging in the insurrection.—United States v. Powell, Case No. 16,079.

Acts done under compulsion of force, or of a well-grounded fear of bodily harm, do not come within the constitutional provision.—United States v. Powell, Case No. 16,079.

§ 7. —— Appointment and tenure.
Under article 2 of the constitution, all offices under the federal government must be established by law, except where the constitution itself otherwise provides.—United States v. Maurice, Case No. 15,747.

A person appointed to an office without authority, and who never performed an official duty as such officer, is not an officer de jure or de facto.—Schenck v. Peay, Case No. 12,451.

An appointment by the president to an office, during a recess of the senate, to fill a vacancy happening by the expiration of a term when the senate was in session, cannot constitutionally take effect.—In re District Attorney of United States, Case No. 3,924.

Where a session of congress passes without the filling of an office which was created and took effect during a previous session of the senate, the president cannot make a valid appointment during a recess of the senate.—Schenck v. Peay, Case No. 12,451.

Act July 23, 1868, to authorize the temporary supplying of vacancies in the executive department, applied to existing vacancies.—American Wood-Paper Co. v. Glen's Falls Paper Co., Case No. 321a.

A "permanent agent" is one appointed by the president with the advice and consent of the senate.—Armstrong v. United States, Case No. 548.

There is no distinction between foreign and domestic agents of the government, under Act 1809, as to the mode of appointment and tenure of office.—Armstrong v. United States, Case No. 548.

Where the appointing power is the president and senate, acting concurrently, the president alone has not the power of removal, in the absence of legislation and precedent to the contrary.—United States v. Avery, Case No. 14,481.

Where, from the beginning, congress has practically conceded the authority to the president to make removals, without the consent of the senate, from offices to which appointments were made for fixed terms by consent of the senate, the courts cannot deny such power.—United States v. Avery, Case No. 14,481.

§ 8. —— Powers.
A contract by the clerk of the house of representatives, made with a person to furnish wood, where no appropriation has been made to pay for the same, is not binding on either party.—United States v. Derringer, Case No. 14,950a.

A contract made with the secretary of the navy cannot be rescinded by the chief of the bureau having charge of such contracts.—United States v. Shaw, Case No. 16,266.

Under Act May 29, 1830, the solicitor of the treasury has authority to compromise suits and take lands in trust for the United States, and control and dispose of the same.—United States v. Lane, Case No. 15,559.

An agent charged with enforcing claims due the United States may exercise reasonable discretion in the management and compromise of suits.—United States v. Hudson, Case No. 15,413.

The executive may compromise doubtful claims by taking a conveyance of lands, in satisfaction, and may afterwards sell and convey them.—United States v. Hudson, Case No. 15,413.

A federal officer cannot, without the authority of congress, submit to arbitration a dispute as to the riparian rights of the United States.—United States v. Ames, Case No. 14,441.

The principles of natural equity governing the relation of principal and agent to each other

apply in the case of government agencies.—United States v. Jarvis, Case No. 15,468.

The United States are not bound by the declarations and representations of their agent, unless it is clear that he was acting within the scope of his authority, and was empowered to make the declaration.—United States v. Martin, Case No. 15,732.

The government is not bound by the acts of its officers in excess of their powers.—United States v. City Bank, Case No. 14,796.

§ 9. —— Liabilities.

Executive federal officers are personally liable at law in the ordinary forms of action for illegal official, ministerial acts, or omissions, to the injury of an individual.—United States ex rel. Stokes v. Kendall, Case No. 15,517.

A public agent of the government, contracting for the use of the government, is not personally liable, although the contract be under his seal.—Hodgson v. Dexter, Case No. 6,565.

A public ministerial officer who caused the arrest of one residing in the rebellious states on an order emanating from the president is not liable for false imprisonment unless he co-operated with or induced the president to issue the order with motive to oppress.—Lamar v. Dana, Case No. 8,006.

An officer paying money of the United States to the Confederate States under compulsion is not liable therefor, especially as the Confederate government was recognized as a belligerent by the United States.—United States v. Huger, Case No. 15,415.

Instructions not supported by law are illegal, and the inferior officer is not bound to obey them.—Gilchrist v. Collector of Charleston, Case No. 5,420.

The clerk of the house of representatives is not personally responsible in damages for refusing to give the public printing to a person to whom the preceding clerk had promised it.—Davis v. Garland, Case No. 3,635.

Government moneys in the hands of the assistant quartermaster for disbursement, deposited by him with an assistant treasurer of the United States, still continue to be moneys of the United States, and such treasurer is not liable in assumpsit to the depositor therefor.—Morgan v. Van Dyck, Case No. 9,810.

§ 10. —— Compensation, fees, and expenses.

The compensation of special officers employed by the head of a department may be fixed by special agreement.—United States v. Cadwalader, Case No. 14,706.

Where the accounts of a public officer employed by the head of a department under a special contract are settled, and a certain rate of compensation allowed, he continues to be entitled to the same rate of compensation until a new agreement is made.—United States v. Cadwalader, Case No. 14,706.

An officer with a salary payable quarterly, appointed for four years "unless sooner removed by the president," is not entitled to his salary to the end of a quarter during which he is removed.—United States v. Smith, Case No. 16,321.

The register of the treasury, though receiving pay as such, *held* entitled to compensation as agent for disbursing money appropriated for contingent expenses of the treasury department, library of congress, and other appropriations for public purposes.—United States v. Nourse, Case No. 15,901.

The executive cannot alter compensation given to a public officer or agent by act of congress.—Goldsborough v. United States, Case No. 5,519.

The head of a department has discretionary power to allow for a bona fide performance of service by a public officer, or a bona fide expenditure of money, though not so expressly authorized by law.—United States v. Duval, Case No. 15,015.

Where a public officer, at the request of the head of a department, performs other public duties than those properly belonging to his office, he is entitled to extra compensation.—United States v. Duval, Case No. 15,015.

Construction of Act Aug. 6, 1846, §§ 6, 22, and Act June 30, 1864, § 170, as to the allowance to an assistant treasurer of commissions on the sale of stamps.—United States v. Butterfield, Case No. 14,703.

A receiver of public moneys is entitled to 1 per cent. on moneys received until the allowance amounts to $2,500, though the same accrue within the first six months of the year.—United States v. McCarty, Case No. 15,657.

The commission should be paid quarterly as it arises, and payment cannot be refused by the treasury department because the whole amount accrues in the first two quarters.—United States v. McCarty, Case No. 15,657.

A receiver of public moneys is entitled to his commissions on moneys received, though he resigns or is removed from office at the termination of the first six months of the last year covered by his appointment.—United States v. Edwards, Case No. 15,026.

An officer who has realized money on an execution in favor of the United States may retain it by way of set-off for fees of his office due him from the United States.—United States v. Mann, Case No. 15,716.

Government agent must be reimbursed damages paid in consequence of protest of bill of exchange authorized to be drawn by him.—Armstrong v. United States, Case No. 548.

§ 11. —— Actions against.

A warrant of distress under Act May 15, 1820, has the effect of a judgment.—Armstrong v. United States, Case No. 548.

No claim of a public officer for a credit can be admitted on a trial unless presented to and disallowed by the accounting officers of the treasury. Act March 3, 1797. A suspension is not a disallowance.—United States v. Duval, Case No. 15,015.

In an action by the government against an officer or individual to recover moneys claimed of him, defendant is entitled to an allowance of all equitable demands of his against the United States which have been disallowed by the accounting officers.—United States v. Collier, Case No. 14,833.

An account duly authenticated from the treasury department is not per se evidence of a balance due on a former account, or of items transferred from the account of another person, or of items recharged.—United States v. Kuhn, Case No. 15,545.

The auditor's report of a balance due from a person accountable for public money is not evidence in an action for the debt.—United States v. Patterson, Case No. 16,008.

If the United States, suing on an account, introduce evidence of defendant's account current, showing a balance in his favor, he is entitled to a verdict therefor, unless plaintiff show errors or omissions turning the balance the other way.—United States v. Kuhn, Case No. 15,545.

A transcript from the treasury books charging the balance of a former settlement is not per se evidence warranting a verdict for such balance.—United States v. Laub, Case No. 15,568.

A receiver of public moneys is not entitled to offset rejected accounts for unauthorized clerk hire, fuel, lights, or for transmitted money. Office rent may be allowed under extraor-

dinary circumstances.—United States v. Lowe, Case No. 15,635.

In an action to recover a balance due from a receiver of public moneys, a claim that a certain sum had been stolen from him *held* not supported, he never having presented a claim for a credit of such amount.—United States v. Reymert, Case No. 16,149.

§ 12. —— Accounting and settlement of accounts.

After a credit has been given by the United States, and the account settled, they cannot open the account and revoke the credit, unless originally given by fraud, imposition, or mistake.—United States v. Kuhn, Case No. 15,545.

Federal officers holding the public money as money of the United States are only accountable to the United States.—Vasse v. Comegyss, Case No. 16,894.

The acts of agents of the treasury department in stating and settling accounts of officers and issuing warrants for balances found due are ministerial acts, and the authority given by law must be strictly and literally pursued.—Ex parte Randolph, Case No. 11,558.

Payments by the post-office department to the treasury may be carried in quarterly by large "covering warrants."—Boody v. United States, Case No. 1,636.

§ 13. Liability on official bonds.

A public officer who receives money in advance for the contingencies of his office is a receiver of public money within the meaning of Act March 3, 1797.—United States v. Lee, Case No. 15,585.

The bondsmen of the assistant treasurer of the United States at New York are liable for moneys lost by his clerks while in his hands as an officer.—United States v. Butterfield, Case No. 14,703.

Sureties on a bond for the faithful execution of the agency of an officer in paying invalid pensioners are not answerable for his defaults in not paying navy and privateer pensions.—United States v. White, Case No. 16,686.

Sureties on the bond of a receiver of public moneys are only bound for the paying over of all moneys received after execution of the bond, and not for any previous shortage or defalcation.—United States v. Linn, Case No. 15,606.

The government cannot apply money received by a receiver of public moneys, and paid over, after the date of the bond, in discharge of a previous defalcation, to the prejudice of the new sureties.—Myers v. United States, Case No. 9,996.

The sureties on the bond of a receiver of public moneys are not liable for moneys received before the date of the bond, but during his term of office.—United States v. Spencer, Case No. 16,368.

As against the sureties on the bond of a receiver of public moneys, the government has no right to apply payments made after execution of the bond to the discharge of a shortage existing prior thereto.—United States v. Linn, Case No. 15,606.

The sureties on the bond of a receiver of public moneys are not liable for money which came into his hands the day after the expiration of his term of office.—United States v. Spencer, Case No. 16,367.

Where the government employs a person to perform labor neglected by a public officer pertaining to his duties, his sureties are liable only for a reasonable compensation for such labor.—United States v. Wann, Case No. 16,638.

Where an officer receiving a salary from the United States is surety for a defaulter, the continuance of the payment of his salary is no relinquishment of the claim against him as surety.—United States v. Beattie, Case No. 14,554.

Act May 15, 1820, providing for the better organization of the treasury department, substituted, by implication, the new official bond called for by the act for the former bond, and discharged the sureties on the latter, as to subsequent transactions.—United States v. Maurice, Case No. 15,747.

The United States, suing on an official bond, has the burden of showing that the principal failed to discharge the duties of his office.—United States v. Bell, Case No. 14,565.

In an action on a bond of a disbursing officer, the sureties may prove that a disputed item of credit claimed has been presented to and disallowed by the proper accounting officers, though the treasury transcript does not show such fact.—United States v. Corwin, Case No. 14,870.

In such action defendant is entitled to a credit for moneys reasonable in amount paid by such officer, and for services rendered by him in good faith, in the proper discharge of his official duties.—United States v. Corwin, Case No. 14,870.

United States, in an action upon a collector's bond, cannot obtain judgment against the surety for more than the penalty.—United States v. Ricketts, Case No. 16,159.

An assignment by a collector in trust to pay any judgment recovered on his official bond enables the United States, on recovering such judgment, to sue the trustees for an accounting.—United States v. Hoyt, Case No. 15,410.

But, where the first act of the United States in affirmance of the trust is the filing of their bill for an account, the trustees are not liable for property previously disposed of with the consent of the assignor and sureties.—United States v. Hoyt, Case No. 15,410.

Moneys collected by the government on execution may be proved as a credit in a subsequent action on the same bond, against a different party to the bond, without exhibiting the voucher for such payment to the treasury department.—Myers v. United States, Case No. 9,996.

II. PROPERTY, CONTRACTS, AND LIABILITIES.

Priority of claims in bankruptcy, see "Bankruptcy," § 430.

§ 14. Property.

The United States, purchasing land within a state merely to secure a debt, takes it as any other corporation, and cannot claim any of the immunities or prerogatives of a sovereign.—Elliot v. Van Voorst, Case No. 4,390.

No property belonging to the United States can be disposed of except by authority of an act of congress. Const. art. 4, § 3.—United States v. Nicoll, Case No. 15,879.

Neither the war department nor the treasury department has authority to sell public property put under its management or superintendence, and the bringing of an action for the price or value of such property is not an affirmance of a sale made without authority.—United States v. Nicoll, Case No. 15,879.

The Massachusetts laws of flowage do not apply to the case of machinery used by the United States on its lands, over which jurisdiction has been ceded to them.—United States v. Ames, Case No. 14,441.

The United States, in cases where congress has not provided adequate remedies for injuries to public property, may resort to those of common-law origin or those provided by the

laws of the state.—United States v. Ames, Case No. 14,441.

The lex rei sitæ will govern the rights and remedies in relation to land owned by the United States within the limits of a state over which they have no cession of jurisdiction.—United States v. Ames, Case No. 14,441.

But lands over which jurisdiction has been ceded, or which are not within the limits of any state used for constitutional purposes, are subject only to the laws of congress in the case of conflict.—United States v. Ames, Case No. 14,441.

A suit in admiralty to enforce a lien given by the state law is not a judicial proceeding under such law, and the United States is not entitled in such suit to have the res discharged from arrest under Rev. St. § 3753.—The Revenue Cutter, Case No. 11,712.

§ 15. Contracts.

The United States government has power to make a contract as incident to its sovereignty. It may compromise a suit, and receive real and personal property in discharge of the debt, in trust, and sell the same.—United States v. Lane, Case No. 15,559.

The capacity of the United States to contract is co-extensive with the duties and powers of government; and every contract subserving the performance of a duty may be rightfully made. —United States v. Maurice, Case No. 15,747.

It is not essential to a contract between an individual and the government that it should express the circumstances under which it was made so precisely and distinctly as to show the motives inducing it, and the objects to be effected.—United States v. Maurice, Case No. 15,-747.

The rule that every contract, legal on its face, imports a consideration, and is presumed to be obligatory until the contrary is shown, if the parties be ostensibly able to contract, applies to government contracts.—United States v. Maurice, Case No. 15,747.

The duty of the government to secure its debts necessarily implies the means of securing them; and sureties may therefore be required to the bond of a government debtor.—United States v. Maurice, Case No. 15,747.

Quære, whether, if congress, after authorizing the construction of a bridge according to certain plans, arbitrarily changes the plans while the bridge is in course of construction, there is any breach of contract which will render the United States liable for the expenses necessary to make the change.—Newport & C. Bridge Co. v. United States, Case No. 10,186.

Where congress directed a change in the conditions previously prescribed by it for the construction of a bridge, and authorized the bridge company to sue the United States for the necessary cost and expenditures to be incurred in making the change, *held*, that this did not authorize the recovery of damages for which the bridge company became liable to a material man for a breach of contract rendered necessary by the change.—Newport & C. Bridge Co. v. United States, Case No. 10,186.

Act Feb. 16, 1876, appropriating $1,500,000 to the Centennial Exhibition, does not require repayment to the United States before stockholders of the exhibition shall be repaid their subscriptions, but only requires repayment before a percentage of the profits is paid to the stockholders.—Centennial Board of Finance v. Patterson, Case No. 2,545.

As to the existence of liens arising for work and labor done in connection with property of the government.—United States v. Wilder, Case No. 16,694.

§ 16. Right of government to priority of payment — Debts, persons, and property affected.

Act March 3, 1797, § 5, declaring that "where any revenue officer or other person thereafter becoming indebted to the United States by bond or otherwise shall become insolvent," the debt due to the United States shall be first satisfied, is limited by the title of the act to persons accountable for public money, and does not apply to all debtors of the United States.—United States v. Fisher, Case No. 15,103.

Act 1797, c. 74, giving a priority to the United States, applies to equitable as well as legal debts; but such priority cannot be enforced in a suit at law brought in the name of a private creditor, who has assigned his claim to the United States.—Howe v. Sheppard, Case No. 6,772.

A judgment in favor of the United States arising out of a fraudulent entry of goods is, in case of the debtor's insolvency, entitled to the same preference given to bonds for the payment of duties (Act 1799, § 65), but only in case of a general assignment of the debtor's property.—United States v. Wood, Case No. 16,755.

In case of the insolvency of surviving judgment debtors in a suit on a bond for customs duties, the United States may in equity recover the debt out of the assets of a deceased judgment debtor, whose estate was also insolvent, in virtue of their general priority.—United States v. Cushman, Case No. 14,908.

If both principal and surety be insolvent and assign to the same person, the funds of the principal to the extent of the surety's claim are deemed assets of the surety; so that, if he also be indebted to the United States, they may sue in equity against the assignee to insure their priority.—United States v. Hunter, Case No. 15,426.

A debt due from the administrator, and returned on the inventory as solvent, is presumed to have been collected, and is therefore assets in his hands applicable to the payment of a debt due from the deceased to the United States.—United States v. Eggleston, Case No. 15,027.

A bona fide conveyance, mortgage, or execution, before the right of preference in the United States has accrued by an act of insolvency, will pass the right of property freed from liability for debts due to the United States.—United States v. Delaware Ins. Co., Case No. 14,942.

The priority of the United States gives no lien on property which is under execution when it accrued.—United States v. Mechanics' Bank, Case No. 15,756.

§ 17. —— Insolvency, assignment, or attachment.

Insolvency or inability to pay debts by a debtor to the United States does not give the United States a preference, under Act 1790 (1 Stat. 145), Act 1797 (1 Stat. 512), and Act 1799 (1 Stat. 627), unless such insolvency is accompanied by a voluntary assignment of all the property of the debtor for the benefit of his creditors. —Thelluson v. Smith, Case No. 13,878.

The United States are not entitled to a priority under Act 1799, c. 128, § 65, out of funds in the hands of assignees, unless there be a general assignment by the debtor of all his property.—United States v. Munroe, Case No. 15,835.

The United States have a preference in the payment of customhouse bonds only in cases of notorious insolvency, such as assignment of the debtor's property, absconding, etc.—United States v. King, Case No. 15,536.

The United States have no priority in payment of their debts, under Act March 3, 1797, § 5, unless the assignment by the debtor be a general assignment, or in the case of legal insolvency, where, by operation of law, the debtor's property

is taken out of his hands to be distributed by others.—United States v. Clark, Case No. 14,-807.

The assignee is liable only if he has notice of the debt to the United States, but the notice need be such only as is sufficient to put a prudent man on inquiry.—United States v. Clark, Case No. 14,807.

The right of the United States to priority in the payment of their debts, and the remedies for its enforcement against assignees of debtors.—United States v. Clark, Case No. 14,807.

A deed by a debtor of the United States conveying all his property to trustees for payment of his debts, not including the debts of the United States, is an act of insolvency, so that the priority of the United States immediately attaches.—United States v. Marshal of District of North Carolina, Case No. 15,727.

The priority of the United States is not defeated, it seems, by the fact that the debtor afterwards recovers property in the right of his wife by legal proceedings, whatever the amount thereof.—United States v. Marshal of District of North Carolina, Case No. 15,727.

Whether property omitted from the debtor's deed is so inconsiderable as to show an intent to evade the statute is a question in the sound discretion of the court.—United States v. Marshal of District of North Carolina, Case No. 15,-727.

An assignment by partners of all their effects for the payment of their debts, for which the partnership estate is inadequate, is an act of insolvency which will give the United States preference in the payment of their debts against the firm or its members.—United States v. Shelton, Case No. 16,272.

The fact that a creditor gave up his intention of levying in consideration of a general assignment in trust, first to pay his claim, and then the debt of the United States, will not prevent the assignment being fraudulent and void as against the United States.—United States v. Mott, Case No. 15,826.

An assignment, to entitle the United States to their priority (Act March 3, 1797, § 5), must be an assignment of all the debtor's property, but it need not be for the benefit of all his creditors.—United States v. Mott, Case No. 15,826.

A conveyance, by a known insolvent, of all his property, to one or more creditors in discharge of their own claims, not exceeding the sum due them, is not a "voluntary assignment," within Act 1799, § 65, so as to be affected by the priority of the United States, unless made with intent to evade such priority.—United States v. McLellan, Case No. 15,698.

If an assignment does not on its face purport to be of all the debtor's property, the United States, to obtain priority, must show that it does in fact transfer all.—United States v. Langton, Case No. 15,560.

The omission of a small part of the debtor's property from the assignment, by mistake or fraud, will not defeat the priority of the United States.—United States v. Langton, Case No. 15,-560.

The priority of the United States as a creditor, under Rev. St. §§ 3466, 3467, is secured only when by law or the act of the debtor his property is attached, sequestered or being administered for the benefit of his creditors generally. —United States v. Wilkinson, Case No. 16,-695.

The attachment mentioned is not such an attachment as is authorized by the laws of Missouri, which is for the exclusive benefit of the creditor who makes it.—United States v. Wilkinson, Case No. 16,695.

§ 18. —— Nature and extent of the priority.

The priority of the United States is not affected by the local rule that lands consisting of different parcels, subject to a general incumbrance, are, in equity, to be charged in the inverse order of alienation of the separate fund.—United States v. Duncan, Case No. 15,003.

Act March 3, 1797, § 5, does not give to one part of a debt due to the United States a priority over any other part, nor does it affect the right of the debtor to apply a payment of money in his hands to either of two debts to the United States.—United States v. Cochran, Case No. 14,821.

Where the United States have various debts due by bonds with different sureties, payments by the assignees must be applied pro rata.—United States v. Amory, Case No. 14,443.

The United States are not entitled to a preference over firm creditors for the payment of the individual debt of a partner out of the assets of the partnership.—United States v. Duncan, Case No. 15,003; Same v. Evans, Id. 15,062.

The United States have not priority, under Act March 3, 1797, over the allowance to the widow of a deceased debtor, under the state law.—Postmaster General v. Robbins, Case No. 11,314.

The priority given to the United States (Rev. St. § 3466) is not a lien upon the property of the insolvents in the hands of the assignee or administrator, but only a right to a priority of payment out of the proceeds of such property after notice of the claim.—United States v. Eggleston, Case No. 15,027.

The necessary expenses of administration are to be paid before a debt due to the United States. —United States v. Eggleston, Case No. 15,027.

A debt due to the United States is to be preferred to the expenses of the last illness; but, where the same have been duly paid by the administrator without notice of the claim of the government, the priority of the latter is lost.—United States v. Eggleston, Case No. 15,027.

The administrator is bound to discharge taxes and funeral charges before satisfying the claim of the United States as a creditor.—United States v. Eggleston, Case No. 15,027.

Expenses incurred by an assignee in insolvency in recovering a demand are chargeable on the fund, and the right of the United States to priority attaches to the residue.—United States v. Hunter, Case No. 15,427.

§ 19. —— Relative right of United States and other lien creditors.

The priority of the United States does not yield to the claims of any creditors, however high may be the dignity of their debts.—United States v. Duncan, Case No. 15,003.

The acts giving the United States preference in cases of insolvency will not be so construed as to destroy prior legal liens.—United States v. Sheriff of Charleston, Case No. 16,276.

The priority of the United States does not supersede a mortgage on land, nor a judgment made perfect by the issue of an execution and a levy on real estate.—United States v. Duncan, Case No. 15,003.

The priority of the United States does not entitle them to prior satisfaction by attachment and levy over prior attaching creditors.—United States v. Canal Bank, Case No. 14,715.

Execution creditors may sell vessels on which the government has a lien under chattel mortgages made for advances to build them, subject to such lien, where a sale under the mortgages can only be had on six months' notice.—United States v. Collins, Case No. 14,834.

The United States, not made parties to a bill in a state court for the payment of partnership

debts out of partnership assets in the hands of the administrator of a partner who had died insolvent indebted to the United States, are not bound by the decree rendered therein.—United States v. Duncan, Case No. 15,003.

§ 20. —— Proceedings to enforce priority.

State statutes in relation to the proof of claims against decedents' estates are not binding on the United States in the collection of their debts.—United States v. Backus, Case No. 14,491.

The United States are not bound by general words in a statute, but only when included expressly or by necessary implication.—United States v. Hewes, Case No. 15,359.

The United States and their debtors are not included in the provisions of Act Feb. 28, 1839, to abolish imprisonment for debt.—United States v. Hewes, Case No. 15,359.

§ 21. Estoppel.

The government is not ordinarily bound by an estoppel.—Johnson v. United States, Case No. 7,419.

III. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.

§ 22. Money—Wrongful issue.

Bridge, railroad, and passenger railway companies may issue tickets good for one trip, without violating Act July 17, 1862, prohibiting the issuance by private persons or corporations of obligations intended to circulate as money, etc. —United States v. Monongahela Bridge Co., Case No. 15,796.

Sufficiency of indictment under Act July 7, 1838, c. 212, § 1, to restrain the circulation of small notes and currency in the District of Columbia.—Stettinius v. United States, Case No. 13,387.

§ 23. Redemption of forged notes.

The receipt for redemption by the assistant treasurer of certain notes of the United States as genuine will not bind the United States in any manner if the notes were not in fact genuine; and an action will lie to recover the amount paid thereon, irrespective of the bona fides of defendant.—United States v. Cooke, Case No. 14,854.

The United States may recover back money paid by their assistant treasurer for the redemption of forged treasury notes or treasury notes which, being printed by the treasury department and ready for issue, were not in fact issued.—Cooke v. United States, Case No. 3,178.

In an action by the United States to recover the amount of money paid on notes presented for retirement, on the ground that they were not genuine, the burden of proof is on plaintiff to show that fact.—United States v. Cooke, Case No. 14,854.

IV. CLAIMS AGAINST UNITED STATES.

§ 24. Assignment.

The term "claim" (Rev. St. § 3477) *held* not to include claims for supplies furnished the Oregon expedition to protect the emigrants of 1854.—Dowell v. Cardwell, Case No. 4,039.

The proof of an assignment of a claim for indemnity cannot be by parol.—Bell v. Lewis, Case No. 18,231.

§ 25. Contracts to collect—Lien.

An agent employed to collect a claim against the United States for a certain per centum of the amount realized, whether in cash or scrip, has a lien upon the fund for his compensation.—Dowell v. Cardwell, Case No. 4,039.

§ 26. Rejection or allowance.

The rules prescribed by the treasury department for the adjustment of claims against the government will, if reasonable, be respected; otherwise if they go to a complete denial of justice.—United States v. Mann, Case No. 15,716.

Where congress has acted upon a claim for damages to property from its occupancy by the government troops, no further allowance can be made.—United States v. Williams, Cases Nos. 16,720, 16,721.

§ 27. False and fraudulent claims.

To constitute the offense of knowingly presenting a false paper in support of a claim, with intent to defraud the United States (Act March 3, 1823, § 1), it is not necessary that the claim be in favor of the accused.—United States v. Kohnstamm, Case No. 15,542.

It is a felony to transmit to the pension office forged papers in support of a claim for bounty land. Act March 3, 1823, § 1.—United States v. Wilcox, Case No. 16,691.

An indictment for transmitting such forged papers is sufficient if it show that the purpose was to obtain the allowance of the claim, though they were not sufficient for that purpose.—United States v. Wilcox, Case No. 16,691.

The repealing clause of Act March 2, 1863, saves prosecution under Act March 3, 1823, for offenses previously committed.—United States v. Kohnstamm, Case No. 15,542.

In Rev. St. § 3490, prescribing penalties for the presentation of fraudulent claims against the government, the word "person" does not include corporations.—United States v. Kansas Pac. Ry. Co., Case No. 15,506.

Making a claim against the government within Rev. St. § 5438, punishing the making of false or fraudulent claims, consists in asking or demanding payment for services.—United States v. Bittinger, Case No. 14,599.

The making and the presenting of false claims against the United States are distinct offenses, under Rev. St. § 5438.—Ex parte Shaffenburg, Case No. 12,696.

The offense under Rev. St. § 5438, is not sufficiently charged in the words of the statute; but the facts constituting it must be alleged with such particularity as to apprise the accused with reasonable certainty of the nature of the accusation against him.—United States v. Green, Case No. 15,257.

The action to recover a penalty or damages for making a false claim against the United States (Rev. St. §§ 3490-3493) may be brought without the previous authority or consent of the district attorney; and under Civ. Code Or. § 7981, the complaint may be subscribed by the attorney of the person who brings it.—United States v. Griswold, Case No. 15,266.

Conspiracy to defraud United States, see "Conspiracy," § 2.

V. ACTIONS.

Jurisdiction of suits by and against United States, see "Courts," §§ 2, 100.

§ 28. Action by United States—Right of.

Congress cannot create damages to be recovered by the United States by suit, or cause acts to be wrongs to the United States, which are in their nature wrongs to another.—United States v. Union Pac. R. Co., Case No. 16,598.

The United States may sue in debt to recover the penalty given by Act Aug. 30, 1852, notwithstanding section 41, which provides that all penalties "may be recovered in an action of debt by any person who will sue therefor."—United States v. Bougher, Case No. 14,627.

A suit to redress fraudulent acts on the part of the managing officers of the Union Pacific Railroad Company cannot be obtained in a suit brought by the United States.—United States v. Union Pac. R. Co., Case No. 16,598.

Construction of Act March 3, 1873, § 4, directing a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company and others.—United States v. Union Pac. R. Co., Case No. 16,598.

The United States cannot convert to themselves the property of another by their own declaration or their own authority, nor can they maintain an action in their own name against one to recover a debt which he may owe to another.—United States v. Union Pac. R. Co., Case No. 16,598.

Where the money of the government is improperly placed in a bank, the illegality of the transaction is no bar to a recovery.—United States v. City Bank, Case No. 14,796.

On a note given to an agent of the United States for their benefit suit may be brought in their name.—United States v. Boice, Case No. 14,619.

The United States, like individuals, can sue in their own name without special authority.—United States v. Barker, Case No. 14,517.

A bill of exchange indorsed to the treasurer of the United States may be declared on in the name of the United States, and an averment that it was indorsed immediately to them will be good.—United States v. Barker, Case No. 14,517.

§ 29. —— Remedies and procedure.

The United States, when suing to enforce demands against individuals, are subject to the same rules of decisions and limitation of remedies as private parties, in the absence of an act of congress.—United States v. Zerega, Case No. 16,786.

The United States has the same remedy against the lands of delinquent collectors that the state gives against the lands of those against whom she has obtained judgment. 1 Stat. 275.—United States v. Graves, Case No. 15,250.

Where the United States enter the court as litigants, they waive their exemption from legal proceedings, and stand upon the same footing with private individuals.—United States v. Flint, Case No. 15,121.

Where the United States prosecute their suits in the state court, they are subject to the state law as to the manner of enforcing their rights.—Stearns v. United States, Case No. 13,341.

In such case a discharge from imprisonment of a judgment debtor under a law of the state will bar an action of debt on a bond given for the jail liberties.—Stearns v. United States, Case No. 13,341.

The process and forms of proceedings adopted by congress from the state laws are binding upon the United States as parties to an action.—United States v. Tetlow, Case No. 16,456.

The United States, as plaintiffs in an action at common law, are not exempt from the provisions of Act March 2, 1867, adopting the modifications, conditions, and restrictions upon imprisonment for debt existing by state laws by virtue of their prerogative.—United States v. Tetlow, Case No. 16,456.

The principle of the common law that a man shall not be taken twice in execution for the same cause is as applicable to the United States as to other creditors.—United States v. Watkins, Case No. 16,650.

§ 30. —— Power to institute.

A suit prosecuted in the name and for the benefit of the United States will not be recognized in the federal courts unless they are represented by the district attorney, or some one designated by him.—United States v. Stowell, Case No. 16,409; Same v. Doughty, Id. 14,986; Same v. McAvoy, Id. 15,654.

Quære, whether an action can, in any case, be brought for an individual in the name of the United States, by any attorney other than the district attorney, when the latter refuses to bring it.—United States v. Morris, Case No. 15,816.

§ 31. —— Limitation and laches.

A statute of limitations does not bind the government unless it be specially named.—United States v. Davis, Case No. 14,929; Miller v. Lindsey, Id. 9,580.

A state statute of limitations is ineffectual to bar a right of action secured to the United States by act of congress.—McGlinchy v. United States, Case No. 8,803; Perkins v. Same, Id. 10,990.

Neither the general statute of limitations nor that of Massachusetts as to executors and administrators binds the United States in a suit in the circuit court, and neither can be pleaded in bar of such suit.—United States v. Hoar, Case No. 15,373.

The statute of limitations does not run against the government, nor is it chargeable with delays, so as to raise a presumption of payment.—United States v. Williams, Cases Nos. 16,720, 16,721.

The fact that the United States is a stockholder does not exempt a corporation from the operation of the statute of limitations.—Bank of the United States v. M'Kenzie, Case No. 927.

§ 32. —— Parties.

The assignee of an insolvent debtor to the United States is a necessary party to a suit by them, for an accounting of property of the debtor, in the hands of third persons.—United States v. Couch, Case No. 14,874.

§ 33. —— Set-off and counterclaim.

A claim of damages sustained by a public officer against the government cannot be set off against a legal demand.—United States v. Wells, Case No. 16,663.

Unliquidated damages arising from torts may be set off against a government claim, but such damages can only include actual loss, not anticipated profits.—United States v. Buchanan, Case No. 14,678.

Claims against the government are not admissible as a set-off which have not previously been presented to and disallowed by the proper accounting officer, except in the case of absence from the United States, or unavoidable accident preventing such presentation.—United States v. Smith, Case No. 16,321.

The rejection of a claim by an officer authorized by special act to settle the same on equitable principles does not preclude its being set up as a set-off.—United States v. Smith, Case No. 16,321.

A set-off in a suit by the United States on a bill of exchange against a private individual, where the course required by the act for the settlement of accounts between the United States and receivers of public moneys has not been pursued, will be rejected.—United States v. Barker, Case No. 14,517.

A party claiming a set-off against the government has the burden of showing that the claim has been presented to the accounting officers, and disallowed.—United States v. Martin, Case No. 15,732.

A defendant sued by the United States is not entitled to a finding in any form of a sum due him by the United States in excess of the claim for which he was sued.—Schaumburg v. United States, Case No. 12,442.

§ 34. —— **Judgment.**
The right of the United States to summary judgment under Act March 3, 1797, c. 74, § 3, does not extend the suits brought by them as indorsees of promissory notes.—United States v. Blacklock, Case No. 14,604.

Act March 3, 1797, providing that judgment shall be given at the return term against debtors of the United States, on motion, is limited to cases in which the principal debtor is a party. —United States v. Lyon, Case No. 15,651.

§ 35. **Actions against United States.**
The United States cannot be sued.—United States v. Barney, Case No. 14,525.

Quære: Whether the United States can compulsorily be made a defendant to a foreclosure bill, where it holds a lien on the property.—Meier v. Kansas Pac. Ry., Case No. 9,394.

The United States can be brought into court by the entry of an order that it shall plead, etc., within a given time, and the service of a copy of such order upon the proper representatives of the government.—Fifth Nat. Bank v. Long, Case No. 4,780.

Jurisdiction of actions against United States, see "Courts," § 2.

UNITED STATES COMMISSIONERS.

§ 1, Powers. § 2, Compensation.

§ 1. **Powers.**
The commissioners have no power to issue attachments returnable to the circuit courts of the United States.—Chittenden v. Darden, Case No. 2,688.

The commissioner has no power to direct the warrant to be returned before another commissioner.—In re Crittenden, Case No. 3,393.

A commissioner of a United States court has not power to commit a citizen for an alleged contempt.—Ex parte Doll, Case No. 3,968.

A commissioner for a state appointed by the federal circuit court therein to take depositions in a case pending in said court has authority to administer an oath under the laws of the United States.—United States v. Coons, Case No. 14,-860.

§ 2. **Compensation.**
When performing the duties of a referee, a commissioner is entitled to master's compensation.—Crosby v. The Prince Albert, Case No. 3,-424b.

See, also, "Admiralty," § 145.

UNITED STATES MARSHALS.

I. APPOINTMENT AND TENURE.

§ 1, Appointment. § 2, Removal.

II. DEPUTIES AND ASSISTANTS.

§ 3, Appointment and qualification. § 4, Who is a deputy. § 5, Liabilities. § 6, Liability of marshal for acts of deputy. § 7, Compensation.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES.

§ 8, Fees. § 9, Commissions. § 10, Mileage and traveling and transportation expenses. § 11, Poundage. § 12, Reimbursement of expenses. § 13, Interest on fees and expenses. § 14, Proceedings for collection.

IV. POWERS, DUTIES, AND LIABILITIES.

§ 15, Powers. § 16, Liabilities—Attachment. § 17, —— Custody of property. § 18, Arrest. § 19, Requiring bail and other bonds by marshal. § 20, Actions to enforce liability—Right of action. § 21, —— Pleading. § 22, —— Damages. § 23, Amercement and contempt.

V. LIABILITIES ON OFFICIAL BOND.

§ 24, Requisites and validity of bond. § 25, Acts of marshal rendering surety liable. § 26, Action on bond.

Disturbance of possession, or interference with, see "Courts," § 118.
Fees in admiralty, see "Admiralty," § 143.
—— in bankruptcy, see "Bankruptcy," §§ 663, 664.
Jurisdiction of actions on marshals' bonds, see "Courts," § 38.
Marshal of District of Columbia, see "District of Columbia," § 3.
Taxation of commissions, see "Costs," § 24.

I. APPOINTMENT AND TENURE.

§ 1. **Appointment.**
Upon a motion to discharge a defendant arrested upon a cap. ad res. by a marshal appointed by the president de facto of the United States, the court will not decide the question whether he was duly elected to that office.—Peyton v. Brent, Case No. 11,056.

§ 2. **Removal.**
Notice of removal from office is not necessary to effect such removal.—Overton v. Gorham, Case No. 10,626.

A marshal is removed by the receipt of a commission from the president by an appointee who takes the oath of office and gives the requisite bond, though no notice is given.—United States v. Bank of Arkansas, Case No. 14,515.

The acts of the marshal after the appointment of a new one, and before he received notice thereof, are good.—Bowerbank v. Morris, Case No. 1,726.

A sale on execution by a marshal after he has been removed is null and void.—United States v. Bank of Arkansas, Case No. 14,515.

II. DEPUTIES AND ASSISTANTS.

§ 3. **Appointment and qualification.**
A marshal has power to appoint a special bailiff to execute a particular process, where the state sheriffs have like power.—United States v. Jailer, Case No. 15,463.

A deputy's commission and proof that he was performing the duties of his office raise a presumption that he has taken all prerequisite oaths. —United States v. Hudson, Case No. 15,412.

Such presumption is not negatived by proof that the "iron-clad oath" (Act 1862) has not been deposited with the clerk of the district court, as it may lawfully be deposited elsewhere.—United States v. Hudson, Case No. 15,412.

§ 4. **Who is a deputy.**
A bailiff appointed by a marshal, and authorized to perform a particular act, becomes a special deputy.—In re Crittenden, Case No. 3,393.

§ 5. **Liabilities.**
The deputy is an officer of the court, and may be held responsible as such.—Bagley v. Yates, Case No. 725; The Laurens, Id. 8,122.

The deputy may be attached for disobedience of an order to pay over money received on a judgment after return of execution.—Bagley v. Yates, Case No. 725.

§ 6. **Liability of marshal for acts of deputy.**
A marshal is not responsible for acts of his deputy not in the line of his duty.—Bagley v. Yates, Case No. 725.

A deputy marshal, after taking a debtor on capias ad respondendum, has no authority to receive payment thereof, and discharge the debtor; and his act is not binding on the marshal. But the act is a misfeasance in office, for which the marshal is responsible.—United States v. Moore, Case No. 15,802.

§ 7. Compensation.
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.—Wintermute v. Smith, Case No. 17,897.

The legality of the service of subpœnas 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.—Wintermute v. Smith, Case No. 17,897.

The deputy's remedy for compensation for services performed by him is against the marshal for whom he performed the services.—Wintermute v. Smith, Case No. 17,897.

A sale of treasury notes by the marshal for currency at 8 per cent. premium, and a payment of his deputy in such currency, is a violation of the law.—United States v. Patterson, Cases Nos. 16,009, 16,010.

A marshal who pays over to his deputies or assistants, for taking a census, less funds than he received from the government, is liable to the penalty of $500. Act March 3, 1839.—United States v. Patterson, Cases Nos. 16,009, 16,010.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES.

Compensation of deputies, see, ante, § 7.

§ 8. Fees.
If the state court compensates services similar to those performed by a marshal, although not performed there by a like officer, the marshal is entitled to the same compensation.—The Trial, Case No. 14,170.

Fees, when not regulated by law, are to be allowed upon the principles of a quantum meruit. —Bottomley v. United States, Case No. 1,689.

Fees of marshal for "a service," "aid," commitment and discharge, for keeping prisoners, etc. —Ex parte Paris, Case No. 10,714.

Fees of marshals in proceedings relating to slaves.—In re Runaways & Petitioners for Freedom, Case No. 12,137.

Marshal allowed two dollars for the service of each venire on town clerks.—United States v. Cogswell, Case No. 14,825; Same v. Smith, Id. 16,346.

Fees of marshal as keeper of alcohol seized for violation of internal revenue laws.—United States v. Three Hundred Barrels of Alcohol, Case No. 16,509.

Fees of marshal for attending examination and bringing in and guarding prisoners before a commissioner. Rev. St. § 829.—In re Crittenden, Case No. 3,393.

The marshal is not entitled to fees for serving a rule to plead.—Parker v. Bigler, Case No. 10,726.

A marshal is not entitled to compensation for custody of property under process in admiralty, beyond $2.50 per day.—The Circassian, Case No. 2,725.

A marshal who holds property under several processes in admiralty is entitled to a per diem custody fee, to be apportioned among the cases in which the several processes were issued.—The Circassian, Case No. 2,725.

Where more than two days are employed in making an arrest, the necessity for the extra time must be shown.—In re Crittenden, Case No. 3,393.

No fees can be allowed for an arrest in another state by a marshal believing at the time that the place of arrest is within his own state. —In re Crittenden, Case No. 3,393.

Where the wrong person is arrested, the marshal can be allowed no fees of any kind.—In re Crittenden, Case No. 3,393.

An officer who, in executing admiralty process in rem, does not take and hold actual and manifest possession, cannot charge custody fees, although he may be liable for the safe-keeping of the vessel.—The Hibernia, Case No. 6,455.

A marshal is not to be allowed for services as keeper or inspector of the state jails, except in a case where especially directed by the court.—United States v. Smith, Case No. 16,346.

A marshal who extends an execution on real estate for the government is entitled to his fees from the government, though the land be not yet sold or redeemed or in any way converted into money.—United States v. Smith, Case No. 16,346.

The marshal has no right to the fees provided by law in case of settlement where the settlement is made before the claimant appears in court.—Bone v. The Norma, Case No. 1,626.

§ 9. Commissions.
The marshal is entitled to the commissions on execution allowed by the state law where the money is paid without a sale of property.—Pomroy v. Harter, Case No. 11,263.

Where property is not sold, nor money made nor received by the marshal on execution, he is not entitled to half commissions.—Erwin v. Cummins, Case No. 4,525.

Under Rev. St. § 829, a marshal is entitled to a commission as for the sale of property in a suit in rem against a vessel, where process issued and a bond was given, though the amount of the final decree was paid before execution.—The City of Washington, Case No. 2,772.

A vessel was seized by the marshal under a monition, and thereafter was released on a stipulation for her appraised value. *Held*, that the marshal was not entitled to a commission on such appraised value, under Rev. St. § 829, providing for a commission to the marshal "when the debt or claim is settled by the parties without a sale of the property."—The Acadia, Case No. 23. But see The Russia, Case No. 12,170.

A marshal is not entitled to commissions on forfeited delivery bond.—Anonymous, Case No. 448.

A marshal is not entitled to commissions on interlocutory sales of prize.—The Avery, Case No. 671.

A marshal is not entitled to commissions on money paid to his deputies for taking a census. —United States v. Smith, Case No. 16,346.

The marshal may include his commissions in a forthcoming bond, and is also entitled to commissions upon an execution on the bond.—Thomas v. Brent, Case No. 13,893.

§ 10. Mileage and traveling and transportation expenses.
A marshal is entitled to actual mileage traveled on return of nulla bona.—Anonymous, Case, No. 448.

Where a marshal sends a process by mail to his deputy in a distant county, he is entitled to be paid mileage on such process; but, where he sends a deputy from the court house to a distant county for service, he is entitled to the reasonable expenses of the deputy, but not to mileage.—Anonymous, Case No. 437.

A marshal who traveled 160 miles to serve a witness residing, in an air line, within 100 miles

from the place of trial will be allowed mileage for 100 miles only.—Parker v. Bigler, Case No. 10,726.

The marshal must name the place of service in his return, so that the correctness of the mileage charged may appear upon its face.—In re Donahoe, Case No. 3,979.

The expenses allowed for "traveling" must be actually proven by the marshal, deputy, or bailiff who incurred the expenses, and should be referred to specifically.—In re Crittenden, Case No. 3,393.

Transportation fees should be allowed, notwithstanding the first name of the person arrested is wrongly given by affiant who accompanied the officer.—In re Crittenden, Case No. 3,393.

The costs of transporting a guard should be allowed only where it is shown that he is necessary.—In re Crittenden, Case No. 3,393.

Such costs will be allowed, even though the guards are summoned as witnesses and paid mileage.—In re Crittenden, Case No. 3,393.

Mileage in transporting a prisoner should be allowed only for the route usually traveled.—In re Crittenden, Case No. 3,393.

"Travel" or "mileage" is to be computed from the place where the process is returned to the place of service.—In re Crittenden, Case No. 3,393.

Rev. St. § 829, adhered to as to the rule governing computation of mileage.—In re Crittenden, Case No. 3,393.

A charge for constructive travel and attendance at the monthly rules disallowed.—United States v. Cogswell, Case No. 14,825; Same v. Smith, Id. 16,346.

A marshal having two or more processes at the same time, in the same proceeding, can charge mileage but once; but additional travel made necessary may be charged.—In re Donahoe, Case No. 3,979.

Mileage allowed in each case for serving warrants on different parties at the same place where the parties in whose favor they are served are not the same.—In re Crittenden, Case No. 3,393.

§ 11. Poundage.

Marshal *held* entitled to poundage where an insolvent debtor to the United States imprisoned on a ca. sa. is discharged therefrom by the secretary of the treasury "on payment of costs."—Townsend v. United States, Case No. 14,119.

The marshal is not entitled to poundage on the attachment of money on deposit in a bank, where the same is not taken into his actual custody.—Ringgold v. Lewis, Case No. 11,847.

Plaintiff is liable to the marshal for his whole poundage if he levy goods to the value of the debt, whether they be sold or not.—Mason v. Muncaster, Case No. 9,248.

§ 12. Reimbursement of expenses.

Marshal will be reimbursed for rent paid for an office for the clerk of the courts of the United States.—United States v. Cogswell, Case No. 14,825.

Claimants not liable to marshal for expenses attending seizure, on bonding vessel, pending appeal from decrees of condemnation.—The Aigburth, Case No. 105.

The marshal is entitled to a reasonable charge for dockage of a vessel which was on a marine railway when seized, and could not be removed without danger of sinking.—The Novelty, Case No. 10,368.

A notice to the marshal is not sufficient to relieve the libelant from expense of a keeper of the vessel arrested. Application must be made to the court.—The Independent, Case No. 7,016.

The marshal is entitled only to his actual necessary expenses for ship-keeping, which must be established by vouchers or otherwise to the satisfaction of the court.—The Free Trader, Case No. 5,091.

Expenses of marshal as keeper of alcohol seized for violation of internal revenue laws.—United States v. Three Hundred Barrels of Alcohol, Case No. 16,509.

A marshal who, in taking the census, advances money to pay the expenses, after repeated attempts to obtain it from the proper department, may retain the amount thus paid out of the public money in his hands.—United States v. Ten Eyk, Case No. 16,449.

The marshal is entitled to charge, as part of the expense of serving a writ in a criminal case, a per diem paid his deputy, not to exceed two dollars a day. Rev. St. § 829, par. 18.—United States v. Harker, Case No. 15,307.

The marshal cannot appoint an auctioneer to conduct a judicial sale at the expense of the government or of a private party, without the consent of the party for whose benefit the services are performed.—The Tubal Cain, Case No. 14,212.

Expenses incurred by the marshal for the purpose of establishing and settling his accounts with the government will be disallowed.—United States v. Cogswell, Case No. 14,825.

§ 13. Interest on fees and expenses.

The marshal may be allowed interest on expenditures.—In re Donahoe, Case No. 3,979; United States v. Cogswell, Id. 14,825.

And on fees.—United States v. Cogswell, Case No. 14,825. CONTRA, see In re Donahoe, Case No. 3,979.

The marshal is entitled to interest on sums due to him and not paid after demand, and must pay interest on sums due from him after demand.—United States v. Smith, Case No. 16,346.

§ 14. Proceedings for collection.

A marshal has a remedy by attachment to enforce payment of his fees.—Anonymous, Case No. 445. CONTRA, see In re Atlantic Mut. Life Ins. Co., Case No. 629.

Marshal cannot detain defendant on a ca. sa. for poundage, if plaintiff has received the debt and costs.—Causin v. Chubb, Case No. 2,527.

The person to whose use the suit is entered of record is not liable to the marshal for his poundage on a ca. sa.—Ringgold v. Hoffman, Case No. 11,846.

The marshal may recover his poundage from defendant, committed in execution, in an action of assumpsit.—Ringgold v. Glover, Case No. 11,845.

In case of dispute in regard to fees not regulated by law the matter will be referred to an auditor.—Bottomley v. United States, Case No. 1,689.

Though the certificate of a judge allowing a marshal's account is prima evidence of its legality and proper amount, the treasury department may reject it, if believed improper.—United States v. Smith, Case No. 16,346.

IV. POWERS, DUTIES, AND LIABILITIES.

§ 15. Powers.

The marshal has the right to take the posse, and to call on all citizens to aid him in arresting rioters, and the citizens have a right to arm themselves.—United States v. Fenwick, Case No. 15,086.

§ 16. Liabilities—Attachment.
The marshal and his deputies are personally answerable for failure to pay into court forthwith moneys attached by them.—The Laurens, Case No. 8,122.

A marshal attaching foreign coin must pay it into court as money, and cannot consider it as cargo merely.—The Laurens, Case No. 8,122.

§ 17. —— Custody of property.
A marshal who rents, without an order of the court, a building in his custody, is liable for injuries thereto by the tenants.—Perrin v. Epping, Case No. 10,996.

The marshal has no right, without consent of parties, to insure, at their expense, vessel in his custody, pending disposal of case in circuit court.—Burke v. The M. P. Rich, Case No. 2,162.

A marshal selling under a vend. ex. has no power to pay arrears of taxes out of the proceeds of other property sold under the same writ.—Bleeker v. Bond, Case No. 1,536.

A marshal is liable for malfeasance where he disposes of the property, to the injury of the defendant, without complying with the requisites of the law.—Corning v. Burdick, Case No. 3,246.

§ 18. Arrest.
The marshal is relieved from his liability for failure to bring in defendant on the return of the writ, where the latter has been discharged under the insolvent law.—Trundle v. Heise, Case No. 14,207.

A marshal having a person in custody under lawful process may use such force as is necessary to keep him in custody, and in doing so is not guilty of any crime against the state law.—Ex parte Sifford, Case No. 12,848.

Congress has power to protect officers making arbitrary arrests and imprisonments, where the writ of habeas corpus is suspended, by passing laws indemnifying them or declaring them not liable to legal proceedings.—McCall v. McDowell, Case No. 8,673.

§ 19. Requiring bail and other bonds by marshal.
The marshal is bound to take sufficient bail for the appearance of defendant, and he is judge of the sufficiency.—Winter v. Simonton, Case No. 17,892.

The marshal is bound to obey the writ as he receives it, where the statute is directory to the court or the clerk only, but in demanding bail he acts at his peril.—United States v. Mundell, Case No. 15,834.

An indorsement even by the court will not justify the marshal in requiring bail, where the statute does not require it.—United States v. Mundell, Case No. 15,834.

A marshal who takes sureties not freeholders on a replevin bond (in Indiana) is liable on their failure.—Bispham v. Taylor, Case Nos. 1,443, 1,444.

§ 20. Actions to enforce liability—Right of action.
The remedy against a marshal for failure of duty is by an action for a false return.—Corning v. Burdick, Case No. 3,246.

And not for a rule on the marshal for a return.—Segourney v. Ingraham, Case No. 12,-634.

§ 21. —— Pleading.
A declaration in an action against a marshal for neglect to make the money on a judgment must negative every presumption of duty on his part.—Bispham v. Taylor, Case No. 1,443.

An averment that the marshal took insolvent sureties, and not freeholders, on a replevin bond, is sufficient to charge him.—Bispham v. Taylor, Case No. 1,443.

§ 22. —— Damages.
If the loss of the debt be the direct legal consequence of failure to serve the process, the amount of the debt is the measure of damages; but the mere failure to serve the process does not imply the loss of the debt by the officer's negligence.—United States v. Moore, Case No. 15,802.

If a marshal levies on the property of a third person, pursuant to instructions, without any abuse of his authority, he is liable only for the injury actually sustained.—Pacific Ins. Co. v. Conard, Case No. 10,647.

In such case the rule of damages is the value of the goods, with interest from the time of taking them; or, if they are articles of merchandise, from the expiration of the usual term of credit on sales.—Pacific Ins. Co. v. Conard, Case No. 10,647.

If an auction sale has become necessary in consequence of the levy, the plaintiff will be entitled to recover the expenses of such sale; also the amount of the premium for insurance against fire effected on the goods. But he is not entitled to recover for money paid counsel, or other expenses incurred in prosecuting the suit.—Pacific Ins. Co. v. Conard, Case No. 10,647.

§ 23. Amercement and contempt.
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.—Winter v. Simonton, Case No. 17,892.

If a defendant arrested upon a capias ad respondendum be discharged under the insolvent act, before the return of the writ, and fail to appear, the marshal cannot be amerced.—Williams v. Craven, Case No. 17,719.

If the marshal, upon a ca. resp., be amerced debt and costs nisi, the defendant may, on or before the next term, give bail, and exonerate the marshal.—Heyer v. Wilson, Case No. 6,446.

The resignation of a marshal or of his deputy does not oust the court's jurisdiction to punish for misconduct in office by attachment for contempt.—The Laurens, Case No. 8,122.

V. LIABILITIES ON OFFICIAL BOND.

§ 24. Requisites and validity of bond.
A bond given by a marshal payable to the president of the United States and his successors, instead of the United States, is not good, and the sureties are not liable thereon.—Jackson v. Simonton, Cases Nos. 7,146, 7,147.

§ 25. Acts of marshal rendering surety liable.
The marshal is liable upon his official bond if he suffer a debtor to escape after arrest upon a cap. ad sat., although he has him in court at the return day.—United States v. Brent, Case No. 14,639.

A marshal is liable on his official bond for failure of his deputy to serve original process; but the measure of his liability is the actual damage plaintiff receives by such negligence.—United States v. Moore, Case No. 15,802.

§ 26. Action on bond.
Rev. St. § 786, limiting the time within which actions must be commenced on marshal's bonds, does not apply to actions instituted by the United States.—United States v. Rand, Case No. 16,-116; Same v. Godbold, Id. 15,219.

In a suit by the government on a marshal's bond to recover moneys collected on execution, defendant cannot set off accounts which had been presented as a charge against the government in another claim, to which they have a good defense under the statute of limitations.—United States v. Prentice, Case No. 16,083.

Under Act April 10, 1806, it is optional with the injured party to bring suit on the marshal's bond in his own name, or in the name of the United States.—United States v. Davidson, Case No. 14,921.

Petition in suit upon marshal's bond should ask actual damages.—Adler v. Newcomb, Case No. 83.

In a declaration on a marshal's bond, it is not necessary to aver that the penalty has not been paid. The usual averment of the breach of the condition is sufficient.—Sperring v. Taylor, Case No. 13,235.

To an action on a marshal's bond for taking insufficient security on a replevin bond, a plea that a levy was made on goods and chattels, lands and tenements, sufficient to satisfy the judgment, is good in bar.—Sedam v. Taylor, Case No. 12,608.

A judgment entered for the penalty of a marshal's bond remains as security for all persons injured by default of the marshal.—Wetmore v. Rice, Case No. 17,468.

UNLAWFUL DETAINER.

See "Forcible Entry and Detainer."

USAGES.

See "Customs and Usages."

USE AND OCCUPATION.

§ 1, When the action lies. § 2, Amount of recovery.

§ 1. When the action lies.

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.—Wise v. Decker, Case No. 17.907.

Partial eviction does not bar an action for use and occupation.—McGunnigle v. Blake, Case No. 8,816.

§ 2. Amount of recovery.

Plaintiff can recover only for the time of the actual occupation, though there be a parol lease for a whole year at a fixed rent.—Carroll v. Finnagan, Case No. 2,453.

USURY.

§ 1, What constitutes—In general. § 2, —— Purchase of obligations to pay money. § 3, —— Antedating contract. § 4, —— Compounding interest. § 5, —— Payment of interest in advance. § 6, —— Adding exchange. § 7, —— Bonus from borrower to lender. § 8, —— Transactions through agents. § 9, —— Failure to specify rate of interest. § 10, Effect on contract or security. § 11, What law governs. § 12, Estoppel. § 13, Application of payments. § 14, Relief in equity. § 15, Usury as a defense. § 16, Pleading. § 17, Evidence. § 18, Rights and remedies of third persons.

Effect of repeal of law, see "Statutes," § 15.
Form of action to recover, see "Assumpsit, Action of," § 1.
In contracts of loan associations, see "Building and Loan Associations."
Taking by national bank, see "Banks and Banking," § 20.

§ 1. What constitutes—In general.

To constitute usury, there must be a corrupt loan of money.—Lafayette Bank v. Bank of Illinois, Case No. 7,987.

Where the principal of a loan is to be returned at all events, any profit made, or loss imposed upon the borrower in addition to the legal rate of interest, is usury.—Buttrick v. Harris, Case No. 2,256.

Where there is no right to demand payment there can be no forbearance, and if no forbearance no usury, under the Virginia statutes.—Lloyd v. Scott, Case No. 8,434.

A sale of an indorsed negotiable note for merchandise which is disposed of for a sum less than the value of the note is not usurious.—Riddle v. Mandeville, Case No. 11,807.

An agreement by a bank to pay the face of its bills is not usurious, though they are depreciated in the market.—Lafayette Bank v. Bank of Illinois, Case No. 7,987.

The owner of property borrowed money to pay off an incumbrance, and deeded the same to the lender, who gave back a lease at a greater rental than legal interest, with the privilege of purchasing during the term for the amount loaned. *Held* not a usurious transaction.—Sherwood v. Burgess, Case No. 12,775.

A confession of judgment for $6,000 in favor of a person who procured satisfactions of that amount of judgments, on an advance of $3,000, should stand only as security for $3,000.—Moore v. Union Mut. Life Ins. Co., Case No. 9,777.

A mortgage of $20,000, where a life insurance of $80,000 was also taken from the lender, as security for a net loan of $16,000, is usurious.—Moore v. Union Mut. Life Ins. Co., Case No. 9,777.

Where a bank, on discounting a note for an indorser at the legal rate, gave time post notes, not bearing interest, the transaction is usurious, and the bank cannot recover on the discounted note.—Farmers' & Mechanics' Bank v. Gaither, Case No. 4,655.

The prohibition against receiving "any greater sum or value" for the loan or use of money than that prescribed (Code Or. § 755) applies to a receipt at any time for or on account of such loan or use.—In re Pittock, Case No. 11,189.

Ill. Act 1857, in relation to interest and usury, construed.—Barrett v. Aplington, Case No. 1,045.

The statute of usury applies to contracts of corporations.—Bank of Alexandria v. Mandeville, Case No. 850.

A contract not usurious at the time it is made cannot become so by any future contingency.—York Bank v. Asbury, Case No. 18,142.

A stipulation in a judgment that the interest on it shall bear interest if not paid annually is void, and does not make such judgment usurious.—In re Fuller, Case No. 5,148.

§ 2. —— Purchase of obligations to pay money.

The purchase of a bond at a price which produces a greater than the legal rate of interest is usurious, where the transaction is intended only as a cloak for usury.—Moncure v. Dermott, Case No. 9,707.

Where the sale of depreciated bank notes at a greater or less than the market price is a mere device to evade the statute, it is usurious.—Judy v. Gerard, Case No. 7,571.

A purchase of a bill at any discount or premium, not done to cover usury, is not usurious.—Orr v. Lacy, Case No. 10,589.

A purchase of a bill in the market, like a commodity, at any price, is not usurious. But an unaccepted bill is not so purchased.—McLean v. Lafayette Bank, Case No. 8,888.

The difference in value of notes of a Western bank and those of Eastern banks may be covered by a contract, without usury.—Orr v. Lacy, Case No. 10,589.

The purchase of a rent charge of $1,000 per annum for $12,500 is not usurious, where the legal rate is 6 per cent.—Gordon v. Dooley, Case No. 5,607.

A rent charge or annuity of $500 a year in consideration of $5,000 advanced, where there was no agreement to repay the principal, is not usurious, though the grantor reserved the right of redemption.—Lloyd v. Scott, Case No. 8,434.

A lease at a yearly rental of $270, taken from a mortgagee on a mortgage to secure a loan of $3,000, is void for usury.—Gordon v. Hobart, Case No. 5,608.

§ 3. —— Antedating contract.
It is not usury to charge interest from the date of the contract, though the writings are not executed until later.—United States v. Williams, Case No. 16,721.

Treating a note as discounted on the day of its date, where proceeds were not carried to the credit of the party until later, is not usury where checks were previously drawn against it.—Bank of Washington v. Walker, Case No. 955.

The maker, when transferring, as collateral security, bonds bearing an earlier date, may agree that interest shall run from their date according to their tenor.—In re Moore, Case No. 9,752.

§ 4. —— Compounding interest.
Compound interest is not illegal, and may be recovered when a part of the contract.—Bainbridge v. Wilcocks, Case No. 755.

If the interest is, by the agreement, payable annually, it is not usury to add it to the principal at the end of the year, and take a new note for the whole, bearing interest.—Oliver v. Decatur, Case No. 10,495.

Charging interest on balances of running accounts, regularly transmitted according to custom of trade, is not usury.—Barclay v. Kennedy, Case No. 976.

§ 5. —— Payment of interest in advance.
The discounting of an indorsed note received in a fair transaction, at a rate exceeding the lawful rate of interest, is a usurious transaction.—Nicholls v. Fearson, Case No. 10,227.

The discount by a bank of a note made directly payable to itself is not usurious.—Bank of the Metropolis v. Moore, Case No. 901; Union Bank of Georgetown v. Corcoran, Id. 14,353.

Taking 64 days' discount on a 60 days' note is not usury.—Bank of the United States v. Crabb, Case No. 913; Union Bank of Georgetown v. Gozler, Id. 14,358.

Charging different rates of discount for different localities, if not intended as a cloak for usury, *held* not usurious.—Bradley v. McKee, Case No. 1,784.

The question whether such transaction is bona fide is one for the jury.—Bradley v. McKee, Case No. 1,784.

§ 6. —— Adding exchange.
Adding exchange on the place of the payee's residence, where the note is made and payable in another state, renders it usurious.—Buttrick v. Harris, Case No. 2,256.

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.—York Bank v. Asbury, Case No. 18,-142.

A discount of a bill upon which exchange is charged, to take up a prior bill, is not usurious unless the agreement was made at the discount of the first bill.—McLean v. Lafayette Bank, Case No. 8,888.

Where the rate of exchange charged is only colorable, it is usurious.—McLean v. Lafayette Bank, Case No. 8,888.

When paper is the basis of exchange, it may be shown as influencing the rate of exchange.—McLean v. Lafayette Bank, Case No. 8,888.

§ 7. —— Bonus from borrower to lender.
It is not usury for a broker who has advanced money to purchase a vessel to charge legal interest and commissions.—The Panama, Case No. 10,703.

It is usury to take 2½ per cent. commission besides the usual bank discount on a draft at 45 days.—Nicholls v. Wright, Case No. 10,236.

§ 8. —— Transactions through agents.
A principal betrayed into loaning money at a usurious rate by an agent may recover legal interest from the borrower.—Short v. Skipwith, Case No. 12,809.

Payment of commissions to a loan broker in addition to the lawful interest does not make the contract of lending usurious, unless it appear that the claim for commissions was but a device to evade the law.—Eddy v. Badger, Case No. 4,276.

The purchase of a note drawn by the maker to his own order, and indorsed in blank, from his brokers, without knowledge of their agency, in the regular course of business, at a greater rate than 6 per cent., is not usurious, within Act Pa. May 28, 1858.—Sparhawk v. Cochran, Case No. 13,203.

§ 9. —— Failure to specify rate of interest.
Act Ill. Feb. 12, 1857, *held* inapplicable to a contract where no rate of interest was fixed by agreement.—Bradley v. Lill, Case No. 1,783.

§ 10. Effect on contract or security.
A bill drawn, accepted, and indorsed to raise money for the use of the payee is void for usury where discounted by a broker at a usurious rate.—Gaither v. Lee, Case No. 5,182.

A mortgage is infected with the usury in a note which it is given to secure.—Morgan v. Tipton, Case No. 9,809.

Under a constitutional provision that no higher rate of interest than 6 per cent. shall be taken or demanded, and that the legislature shall provide by law all necessary forfeitures and penalties against usury, a contract for a greater rate of interest is void in toto, though the legislature has not provided forfeitures, etc.—Dill v. Ellicott, Case No. 3,911.

In Indiana, usury makes void the instrument infected with it.—Morgan v. Tipton, Case No. 9,809.

In Ohio, usury avoids the contract only for the excess.—McLean v. Lafayette Bank, Case No. 8,888.

A covenant absolutely to pay a usurious debt directly to the lender is not a covenant simply to indemnify the surety, though delivered to him; and under the Virginia law it is void.—Moncure v. Dermott, Case No. 9,707.

A bank charter silent as to the effect or penalty if more than the charter rate of interest be taken, renders a contract void only as to the excess of interest stipulated.—Darby v. Boatman's Sav. Inst., Case No. 3,571.

§ 11. What law governs.
Where notes drawn, dated, signed, and indorsed at Philadelphia, where the drawer and indorser resided, were delivered and discounted in New York at a rate of interest which rendered the notes void for usury under the New York law, the indorser is not liable.—In re Conrad, Case No. 3,126.

Accommodation paper made in New York was placed in the hands of note brokers there, who sold the same by correspondence at 10 per cent. discount, as first-class business paper, to a Connecticut corporation, who paid for the same by check on a New York bank. *Held*, that the transaction was governed by the law of New York, and that the notes were void for usury.—In re Dodge, Case No. 3,948.

A draft drawn and indorsed in Ohio for the accommodation of the drawee in New York, in which place it is negotiated for a usurious consideration, is avoided for usury under the New York laws.—Davis v. Clemson, Case No. 3,630.

There is no usury in charging exchange on a bill drawn in Indiana payable in New York.—Orr v. Lacy, Case No. 10,589.

§ 12. Estoppel.
If the cause of action be usurious, no waiver of the objection by defendant in pais will avail plaintiff.—Moncure v. Dermott, Case No. 9,707.

§ 13. Application of payments.
Where a statute forbids a corporation taking over a certain amount of interest, all money taken over such amount must be credited to the debtor on the principal.—Market Bank of Troy v. Smith, Case No. 9,090.

A mortgagee will not be required to account that he may be charged with usury.—Bowen v. Kendall, Case No. 1,724.

§ 14. Relief in equity.
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.—Yardley v. New York Guaranty & Indemnity Co., Case No. 18,125; Kilgour v. Same, Id.; Goodman v. Same, Id.

A contract by a corporation with purchasers of certificates of stock to pay them a higher rate of interest than that permitted by law is invalid, and a subsequent contract founded thereon, to apply the excess of interest in a manner contemplated therein, will not be enforced in equity.—Sullivan v. Portland & K. R. Co., Case No. 13,596.

§ 15. Usury as a defense.
Usury must be pleaded and proved.—Cleveland Ins. Co. v. Reed, Case No. 2,889.

Usury cannot be set up on a bill to set aside a mortgage unless it is alleged.—Baldwin v. Raplee, Case No. 801.

The defense of usury can be pleaded so long as any part of the principal debt remains unpaid.—In re Prescott, Case No. 11,389.

The New York act of 1850 providing that no corporation shall interpose the defense of usury does not extend to suits against accommodation indorsers for corporations.—Market Bank of Troy v. Smith, Case No. 9,090.

§ 16. Pleading.
Sufficiency of pleas in bar of avowry of distress for rent due under a grant of a rent charge or annuity, setting up usury.—Lloyd v. Scott, Case No. 8,434.

A special plea in assumpsit averring that the contract was entered into in another state, by the law of which it was usurious, is good on special demurrer.—Juillard v. Remington, Case No. 7,572.

A variance between November and September in the allegation and proof of the making of a usurious contract *held* not material.—Harper v. Smith, Case No. 6,092.

§ 17. Evidence.
In an action to recover on a note given for a usurious loan, the burden is on plaintiff to show the actual amount lent.—Hill v. Scott, Case No. 6,498.

§ 18. Rights and remedies of third persons.
A stranger cannot set up usury as a defense.—Yardley v. New York Guaranty & Indemnity Co., Case No. 18,125; Kilgour v. Same, Id.; Goodman v. Same, Id.

The purchaser of checks payable to bearer, though bona fide and without notice, is affected by usury therein.—Hill v. Scott, Case No. 6,498.

Alleged usury in a loan of money and sale of goods cannot be taken advantage of by one purchasing the goods from the vendee.—Simpson v. Wiggin, Case No. 12,887.

V

VACATION.

Vacating particular proceedings.

Administrators' sale, see "Executors and Administrators," § 26.
Attachment, see "Attachments," § 14.
Composition in bankruptcy, see "Bankruptcy," § 497.
Decree in admiralty, see "Admiralty," § 107.
—— in bankruptcy, see "Bankruptcy," § 136.
—— in equity, see "Equity," § 124.
Discharge in bankruptcy, see "Bankruptcy," §§ 636–639.
—— in insolvency, see "Insolvency," § 14.
Execution, see "Execution," § 11.
Injunction, see "Injunction," §§ 25–34; "Patents," § 249.
Judgment, see "Judgment," §§ 12–14, 35–40; "Internal Revenue," § 89.
Judicial sale, see "Judicial Sales," § 2.
Report of master in chancery, see "Equity," § 117.
—— of referee, see "Reference," § 8.
Sale in bankruptcy, see "Bankruptcy," § 306.
—— on execution, see "Execution," § 15.
—— on foreclosure, see "Mortgages," § 26; "Railroads," § 54.
Survey, see "Public Lands," § 99.
Verdict, see "Internal Revenue," § 87.

VALUE.

Limits of jurisdiction, see "Courts," §§ 64–66; "Removal of Causes," §§ 25, 26.

VARIANCE.

As ground of arrest of judgment, see "Judgment," § 17.
Between pleading and proof in civil actions, see "Admiralty," § 89; "Equity," § 89; "Pleading," §§ 14, 68.
—— indictment and proof, see "Conspiracy," § 7; "Counterfeiting," § 9; "Indictment and Information," § 25; "Larceny," § 8; "Post Office," § 28.

VENDOR AND PURCHASER.

I. REQUISITES AND VALIDITY OF CONTRACT.
§ 1, What constitutes a sale. § 2, Formal requisites. § 3, Consideration.

II. CONSTRUCTION AND OPERATION OF CONTRACT.
§ 4, In general.

III. RESCISSION OF CONTRACT.
§ 5, By vendor. § 6, By purchaser—Mistake. § 7, —— Misrepresentation and fraud. § 8, —— Defects of title. § 9, —— Return of consideration.

IV. PERFORMANCE OF CONTRACT.
§ 10, Allowance and recoupment for defects of title. § 11, Conveyance. § 12, Quantity of land. § 13, Payment of purchase money.

V. RIGHTS AND LIABILITIES OF THE PARTIES.

(A) As to Each Other.
§ 14, Payment of taxes. § 15, Damages to premises. § 16, Improvements by purchaser.

(B) As to Third Persons in General.
§ 17, Prior purchasers in general. § 18, Equities of vendor's grantor. § 19, Charges on land.

(C) Bona Fide Purchasers.
§ 20, Who are in general. § 21, Parting with value. § 22, Quitclaim deed. § 23, Notice—Time of notice. § 24, —— Actual notice. § 25, —— Constructive notice in general. § 26, —— Notice to agent or attorney. § 27, —— Facts putting on inquiry. § 28, —— Recitals in conveyance. § 29, —— Notice from records. § 30, —— Notice from possession. § 31, Rights of bona fide purchasers.

VI. REMEDIES OF VENDOR.
§ 32, Vendor's lien—When exists and extent. § 33, —— Waiver and extinguishment. § 34, —— Assignment. § 35, —— Rights and liabilities of subsequent purchasers. § 36, —— Laches. § 37, —— Redemption. § 38, —— Sale of land. § 39, Recovery of land. § 40, Actions for purchase money.

VII. REMEDIES OF PURCHASER.
§ 41, Recovery of purchase money paid. § 42, For defects in title. § 43, Damages for breach of contract. § 44, Relief in equity. § 45, Evidence.

See, also, "Exchange of Property"; "Sales."
Cancellation of contract, see "Cancellation of Instruments."
Fixtures, see "Fixtures," § 3.
Purchasers at sale on execution, see "Execution," § 17.
—— at tax sales, see "Taxation," § 16.
—— of property fraudulently conveyed, see "Fraudulent Conveyances," §§ 26, 27.
Requirements of statute of frauds, see "Frauds, Statute of," § 2.
Sale by executor to administrator, see "Executors and Administrators," §§ 21–26.
Specific performance of contract, see "Specific Performance."
Subrogation to rights of vendor, see "Subrogation," § 3.

I. REQUISITES AND VALIDITY OF CONTRACT

§ 1. What constitutes a sale.

A penal bond construed as a contract of sale with covenant to make good title.—Lamb v. Carter, Case No. 8,013.

§ 2. Formal requisites.

A contract to sell land or an equitable interest therein is not void for want of an acknowledgment or recording.—Arden v. Brown, Case No. 510.

Act Md. 1766, c. 14, providing for enrollment relates to estates at law only.—Arden v. Brown, Case No. 510.

§ 3. Consideration.

A simple hope, expectation, or possibility of benefit is a sufficient consideration to support a contract of sale.—Garrow v. Davis, Case No. 5,257.

II. CONSTRUCTION AND OPERATION OF CONTRACT.

§ 4. In general.

Contract for sale of undivided half of land, and to pay for same out of proceeds of sales in parcels, construed.—Buckingham v. Jackson, Case No. 2,090.

The vendor of land contracted to be sold is a trustee for the purchaser.—McKay v. Carrington, Case No. 8,841.

A valid contract of sale vests the equitable interest in the vendee, from the execution of the contract, though the purchase money is not then paid.—Lane v. Ludlow, Case No. 8,052.

A bond for title given on an executory contract for the purchase of land conveys an equitable estate to the vendee which is assignable.—In re Reynolds, Case No. 11,724; Wescott v. Cole, Id. 17,417.

The vendor who has received the purchase money, but retains the legal title, is a mere trustee for the vendee, and can avail himself of no act prejudicial to the trust.—Waddington v. Banks, Case No. 17,028.

A person holding a bond for a deed whose conditions have been broken acquires no title to timber which he has cut on the land without the consent of the owner.—In re Gregg, Case No. 5,796.

III. RESCISSION OF CONTRACT.

§ 5. By vendor.

Representations respecting the value of what was taken for the consideration, made by the vendee, or by another in his presence, which were false in material points, and which influenced the vendor to sell, whether the vendee knew them to be false or not, will vitiate the sale.—Warner v. Daniels, Case No. 17,181.

A contract for the sale of land, providing for the right of annulment, on failure of any of the payments, by giving notice and paying the money received into a certain bank, can be annulled in no other way, except by consent.—McKay v. Carrington, Case No. 8,841.

The vendor cannot put an end to the contract for negligence where he is himself in default in not returning the portion of the consideration paid by the vendee.—Longworth v. Taylor, Case No. 8,490.

§ 6. By purchaser—Mistake.

A sale will not be rescinded for mistake alone if the party had full opportunity to examine the land, and did examine it.—Mason v. Crosby, Case No. 9,234.

A tract of land supposed to contain sixty million of timber was found to contain but five million, there being a mistake in the exploration. *Held*, that the conveyance must be rescinded, and the purchase money restored.—Daniel v. Mitchell, Case No. 3,562.

On the rescission of a conveyance for gross mistake, the purchasers cannot avail themselves of an agreement between the sellers, who di-

vided the purchase-money notes, to jointly bear any losses sustained.—Daniel v. Mitchell, Case No. 3,562.

§ 7. —— **Misrepresentation and fraud.**
The vendee cannot rescind on the ground of fraud unless he place the vendor in the condition he was in before the purchase.—Murphy v. McVicker, Case No. 9,951.

A material false representation by the vendor or his agent vitiates the sale, though not known to be false when made.—Mason v. Crosby, Case No. 9,234.

That the purchaser examined the land will not prevent a rescission, if falsehood was practiced, whereby he was led to make only a slight and general examination.—Mason v. Crosby, Case No. 9,234.

Fraud practiced by one of several owners, or by one having a bond for a deed from some of the owners, is ground for rescission of the whole sale, where the owners take the benefit of the price obtained by the fraud.—Mason v. Crosby, Case No. 9,234.

If a person most benefited by a sale of land make false statements as to material matters relating to value, and which, from being more within his private knowledge or from other circumstances, were clearly relied on by the purchaser, the sale is void, whether the seller believe them to be true or not.—Smith v. Babcock, Case No. 13,009.

Where, on the sale of a timber tract, the vendor states that he is not acquainted with the land, and requests the vendee's agent to examine for himself, which he does, an action will not lie for false representations after five years, during which the vendee has sold part of the land, and cut part of the timber.—Sanborn v. Stetson, Case No. 12,291.

The vendees are not entitled to rely upon the opinion of the vendor's agent, where they have the means of ascertaining the facts.—Hough v. Richardson, Case No. 6,722.

Rescission of a sale is not precluded because the purchaser had an opportunity to examine the land, and he or his agent does examine it, if false representations of the vendor were relied on as to details, and others hired by him united in statements and acts likely to mislead the examiner.—Smith v. Babcock, Case No. 13,-009; Tuthill v. Same, Id. 14,275.

§ 8. —— **Defects of title.**
One who purchases land with knowledge that the title is defective, relying upon his vendor's warranty and promise to have the defect cured, cannot ask a rescission of the contract upon the ground of such defect.—Peters v. Bowman, Case No. 11,028.

§ 9. —— **Return of consideration.**
Where one having an interest in lands contracted with trustees to purchase the whole at a given price, but failed to pay at the time agreed, and afterwards sold to others at a profit, and received the consideration, before conveyance to him by the trustees, *held*, that he was to be regarded as the agent of his vendees, so that they must aid him to refund the consideration.—Smith v. Babcock, Case No. 13,009.

Where a sale is rescinded after several years, for fraud, each of the several equitable owners is liable to refund only the money he received, and not that received by the others, or paid to an agent since insolvent.—Mason v. Crosby, Case No. 9,234.

IV. PERFORMANCE OF CONTRACT.

§ 10. **Allowance and recoupment for defects of title.**
An outstanding title, purchased by the vendee, will inure to the benfit of the vendor, who can be compelled to refund only the amount paid therefor.—Pintard v. Goodloe, Case No. 11,171.

A subpurchaser who gets in the paramount title is bound in equity to fulfill his contract with the first purchaser, deducting what he has been obliged to pay to get in the title.—Smith v. Arden, Case No. 13,003.

§ 11. **Conveyance.**
The vendor is bound to make and tender the deed.—Cooper v. Brown, Case No. 3,191.

The representatives of a deceased vendor, who has received the consideration of a purchase, are bound to use reasonable diligence in executing a conveyance.—Cooper v. Brown, Case No. 3,-191.

A reasonable time, only, can be allowed to a vendor to execute his part of the contract.—Bronson v. Cahill, Case No. 1,926.

Unforeseen circumstances and embarrassments may excuse the performance at the day if the party act in good faith.—Watts v. Waddle, Case No. 17,295.

A contract to convey a certain tract of land so soon as a suit then pending for the title shall be decided gives to the party that agrees to convey all the time necessary to close the litigation in all the forms it may assume.—Watts v. Waddle, Case No. 17,295.

A covenant to convey by "a good general warranty deed, with the fee simple annexed," is complied with by a deed containing a covenant against incumbrances and a general warranty of title, without covenant of seisin.—Kirkendall v. Mitchell, Case No. 7,841.

Where a deed is made under a defective power, the court will decree a conveyance on payment of the residue of the purchase money.—Murphy v. McVicker, Case No. 9,951.

§ 12. **Quantity of land.**
The words "sale in gross," when applied to the land itself, are synonymous with "contract of hazard," and preclude any claim for abatement in the purchase money.—Green v. Taylor, Case No. 5,761.

Where the statement of the quantity is mere matter of description, and not of the essence of the contract, the vendee takes upon himself the risk of the quantity, where there is no fraud or willful misrepresentation.—Stebbins v. Eddy, Case No. 13,342.

Equity will grant relief in the case of mistake by the parties where land is sold at a certain sum per acre, and the vendee will be allowed compensation for the deficiency.—Stebbins v. Eddy, Case No. 13,342.

The same rule will obtain where the sale is for a gross sum, and there is a positive representation of the quantity by the vendor.—Stebbins v. Eddy, Case No. 13,342.

The purchaser of lots in the city of Washington, by the square foot, is not bound to pay for a proportion of the alleys, if there be no special agreement to that effect.—Brent v. Smith, Case No. 1,841.

The metes and bounds, when they can be ascertained, will control the location, although they contained less than the amount of land specified.—Jackson v. Sprague, Case No. 7,148.

This rule obtains though parallel lines were to be run from each extremity of a base line, to be ascertained from a known point, until a certain quantity was obtained, where a portion of the base has been cut off by prior grants.—Jackson v. Sprague, Case No. 7,148.

§ 13. **Payment of purchase money.**
One who purchases with full knowledge of the title, and of pretended claims, and receives a deed, cannot withhold a part of the purchase money on account of the alleged defect, but

must seek redress on his warranty.—Stansbury v. Taggart, Case No. 13,292.

The vendee will be required to pay interest where he refused to receive and pay for the title on tender of a conveyance on the day fixed, though there was a doubtful point of law involved in the title.—Sohier v. Williams, Case No. 13,160.

V. RIGHTS AND LIABILITIES OF THE PARTIES.

(A) AS TO EACH OTHER.

§ 14. Payment of taxes.
A vendor of property is not liable to the vendee for taxes for the current year, not then assessed, and not payable until January 1st following.—Hunt v. Smith, Case No. 6,899.

§ 15. Damages to premises.
A vendee or mortgagee in possession, with the great bulk of the purchase money due and unpaid, will not be permitted to cut and take away the timber to the prejudice of the security.—Bradley v. Reed, Case No. 1,785.

§ 16. Improvements by purchaser.
A person who has a lien on a lot for improvements made under expectation of obtaining a title may enforce his claim against the insolvent owner of the lot as a general creditor.—Thompson v. King, Case No. 13,963.

See, also, post, § 31.

(B) AS TO THIRD PERSONS IN GENERAL.

§ 17. Prior purchasers in general.
Where a rightful estate is claimed by each of two purchasers, whose titles in other respects are equal, the maxim prevails, "Qui prior est in tempore potior est jure."—Flagg v. Mann, Case No. 4,847.

A purchaser for a valuable consideration, though with notice of a prior voluntary conveyance by his grantor, is protected against it by the statute of 27 Eliz.—Ridgeway v. Underwood, Case No. 11,815.

A purchaser under a judgment and execution against such grantor is not protected as a purchaser under such statute, but is considered a creditor standing in the place of the judgment creditor.—Ridgeway v. Underwood, Case No. 11,815.

A purchaser by deed will take a fee, as against one holding from his grantor a prior bond for a deed whose conditions have been violated.—In re Gregg, Case No. 5,796.

§ 18. Equities of vendor's grantor.
One who purchases land with knowledge of defects in the vendor's title stands in the same position as his vendor, with respect to the latter's grantor.—Peters v. Bowman, Case No. 11,029.

§ 19. Charges on land.
Notes given for taxes on real estate in Georgetown, D. C., *held* to create an equitable lien on the land, of which a purchaser was bound to take notice.—Georgetown v. Smith, Case No. 5,347.

Real estate purchased with actual or constructive notice that it is partnership property is chargeable, in the hands of the purchaser, with the payment of the partnership debts, of whose existence they had no knowledge.—Hoxie v. Carr, Case No. 6,802.

Where judgment is obtained against a vendor before the making of a deed or payment of the purchase money, the vendee may enjoin execution upon paying the purchase money into court to satisfy the judgment.—Lane v. Ludlow, Case No. 8,052.

A creditor obtaining judgment against the vendor, after the latter has received the purchase money, but before he makes a deed, will be enjoined, at suit of the vendee, from levying on the land.—McSorlay v. Ludlow, Case No. 8,927.

(C) BONA FIDE PURCHASERS.

§ 20. Who are in general.
A mortgagee is a bona fide purchaser, though the mortgage was given to secure a pre-existing debt.—Partridge v. Smith, Case No. 10,787.

A purchaser under a contract for a deed is not protected as a bona fide purchaser, though he has paid the consideration.—Curts v. Cisna, Case No. 3,507.

One may protect himself as a bona fide purchaser by showing either that he paid without notice, or took through some bona fide purchaser without notice.—Mills v. Smith, Case No. 9,615.

The doctrine of a purchaser without notice applies only to equitable rights. In the case of legal titles the rule is, "Caveat emptor."—Hurst v. McNeil, Case No. 6,936.

When the vendor was not vested with a legal title, his vendee cannot be considered an innocent purchaser without notice.—Oakley v. Ballard, Case No. 10,393.

A plea of a purchase for a valuable consideration, without notice of the plaintiff's title, must aver that the person who conveyed was seised, or pretended to be seised, at the time when he executed the purchase deeds.—Flagg v. Mann, Case No. 4,847.

§ 21. Parting with value.
One making payment of purchase money in Confederate notes in a Confederate state during the Rebellion is not a bona fide purchaser for value, entitled to equitable protection or relief in the federal court.—Cuyler v. Ferrill, Case No. 3,523.

§ 22. Quitclaim deed.
The grantee under a quitclaim deed from one who purchased land on joint account *held* entitled to protection as a bona fide purchaser without notice to the extent of the purchase money paid before notice of the title of the other party to the agreement.—Flagg v. Mann, Case No. 4,847.

The other party to the agreement *held* entitled to a lien to the extent of the purchase money unpaid at the time of notice to the grantee, for the payment of his moiety of the purchase money.—Flagg v. Mann, Case No. 4,847.

§ 23. Notice—Time of notice.
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.—Wormeley v. Wormeley, Case No. 18,047.

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.—Wood v. Mann, Case No. 17,951.

§ 24. —— Actual notice.
Knowledge of an adverse claim will prevent a grantee being a bona fide purchaser, though he pays full value and supposes he is getting a good title.—Norton v. Meader, Case No. 10,351.

Where a purchaser has notice of the facts upon which an adverse claim depends, he is deemed to have notice of the consequences of those facts.—Cuyler v. Ferrill, Case No. 3,523.

Actual notice of a deed is as effectual as constructive notice based on the record.—King v. Young Men's Ass'n, Case No. 7,811.

Actual knowledge of the existence of a prior unrecorded mortgage is of the same effect as a recording.—Lord v. Doyle, Case No. 8,505.

A purchaser who agreed to assume a certain proportion of the liabilities to which the land was subject *held* to have sufficient knowledge of a prior unrecorded mortgage given by his grantor.—Lord v. Doyle, Case No. 8,505.

§ 25. —— Constructive notice in general. The registry of a deed or paper not duly or legally recorded is not constructive notice.—McNeil v. Magee, Case No. 8,915.

§ 26. —— Notice to agent or attorney. Notice to plaintiff's attorney in attachment proceedings of an unrecorded deed of the land attached operates as notice to plaintiff.—Polk v. Cosgrove, Case No. 11,248.

The grantee in a conveyance obtained through the agency of a third person is bound by the knowledge of such agent as to the existence of a prior unrecorded deed.—Goodenough v. Warren, Case No. 5,534.

As between the owner of land whose agent to pay taxes acquired a tax deed, and a purchaser from such agent who acted through an agent having notice of the fraud, the equitable right of the original owner will prevail.—Curts v. Cisna, Case No. 3,507.

§ 27. —— Facts putting on inquiry. Notice of a claim is sufficient if it put the party on inquiry.—Godfrey v. Beardsley, Case No. 5,497.

A knowledge of facts which, if traced and understood, will lead to a knowledge of title, is sufficient to charge a purchaser.—Tardy v. Morgan, Case No. 13,752.

A purchaser who has notice of such facts as, with ordinary diligence, would lead him to a full knowledge of an outstanding equity, is a purchaser with notice.—Hinde v. Vattier, Case No. 6,512.

Vague reports and rumors from strangers, and suspicion of notice, are not sufficient to charge a purchaser with notice of title in a third person.—Flagg v. Mann, Case No. 4,847.

§ 28. —— Recitals in conveyance. A purchaser is bound to take notice of the recitals in deeds in his chain of title.—Reeves v. Vinacke, Case No. 11,663.

A clause in a deed from a stranger to the title is not notice to purchasers.—Polk v. Cosgrove, Case No. 11,248.

Where a deed in a chain of title made by an administrator recites that he conveyed the land in that capacity, the person takes the title with full knowledge of the trust.—Rafferty v. Mallory, Case No. 11,526.

A recital in a recorded deed by one having no record title is not constructive notice.—Mills v. Smith, Case No. 9,615.

An assignment, recited in a patent, that the warrant was assigned by the representatives of A. B., is no notice to the purchaser that the assignment was made without authority.—Scott v. Evans, Case No. 12,529.

The purchaser is chargeable with notice of a fact which the instrument through which he is obliged to make out his title leads him to.—Hardy v. Harbin, Case No. 6,060.

Recitals in patent *held* not sufficient to affect the grantee of the patentee with constructive notice of defective proceedings under which the land was sold.—Hardy v. Harbin, Case No. 6,059.

§ 29. —— Notice from records. A purchaser has not by law constructive notice of all matters of record, but only of those to which the title deeds of the estate refer, or put him upon inquiry.—Dexter v. Harris, Case No. 3,862.

A recorded deed misdescribing the premises by transposing the township and range numbers, where not applicable to any other land in the county, *held* constructive notice to a purchaser.—Partridge v. Smith, Case No. 10,787.

Disqualification of the notary to acknowledge a deed, on the ground of interest, does not prevent the record being notice to subsequent incumbrancers.—National Bank of Fredericksburg v. Conway, Case No. 10,037.

The record of a deed in Kentucky for lands in Ohio is no notice to a subsequent purchaser.—Lewis v. Baird, Case No. 8,316.

It being the universal practice in Texas, though not required by law, to record deeds and mortgages in separate books, *held*, that a deed recorded in a mortgage book did not operate as constructive notice.—King v. Young Men's Ass'n, Case No. 7,811.

The registry of a mortgage not executed in such manner as to authorize its record is not of itself notice.—Branch v. Atlantic & G. R. Co., Case No. 1,807.

If the acknowledgment of a deed be substantially defective, the record is not notice.—Shults v. Moore, Case No. 12,824; Morton v. Smith, Id. 9,867; Strong v. Same, Id. 13,544.

A person who takes a conveyance upon the assumption that a former mortgage to his grantor has been merged in a subsequent recorded conveyance of the fee, does so at his peril.—Oregon & W. Trust Inv. Co. v. Shaw, Case No. 10,556.

§ 30. —— Notice from possession. What is sufficient possession to constitute notice to judgment creditors or bona fide purchasers.—Lash v. Hardick, Case No. 8,097.

Actual possession is constructive notice to all the world of the title under which it is held.—Gum v. Equitable Trust Co., Case No. 5,867.

Visible possession and occupation by the grantee under an unregistered deed, known to a subsequent grantee, is sufficient, if not controlled by other circumstances, to warrant a finding of notice to the grantee.—Lonsdale Co. v. Moies, Case No. 8,496.

Possession by a tenant is constructive notice to the purchaser of the tenant's title, though not of the title of the lessor, or of the party under whom the tenant claims.—Flagg v. Mann, Case No. 4,847.

Open, notorious, and exclusive possession, making valuable improvements for 16 years, constitutes implied notice to an attaching creditor of a deed to the person in possession, though the same is not recorded until after the levy.—Weld v. Madden, Case No. 17,373.

The effect of possession of land, as constructive notice of title, cannot be extended to lands, outside the limits of the possession, claimed by another under the same title.—Daggs v. Ewell, Case No. 3,537.

§ 31. Rights of bona fide purchasers. A deed of lands to a purchaser without notice, duly recorded, cuts off any claim thereto founded on a resulting trust.—Daggs v. Ewell, Case No. 3,537.

A bona fide purchaser for a valuable consideration, without notice of any fraud in the grant to his vendor, takes a good title as against the original grantor and his heirs.—Dexter v. Harris, Case No. 3,862.

A bona fide purchaser without notice, at a sale by a person appointed by the legislature

to sell intestate's estate for payment of his debts, takes a good title as against the heirs, though the sale be fraudulent.—Dexter v. Harris, Case No. 3,862.

A purchaser for valuable consideration and without notice from one who has obtained the legal title to land by fraud will be protected.—Norton v. Meader, Case No. 10,351.

In Massachusetts and Maine a prior unrecorded deed is not good as against a subsequent attachment creditor without notice thereof.—United States v. Canal Bank, Case No. 14,715.

Innocent purchasers from a grantee who fraudulently obtained possession of a deed, who make valuable and lasting improvements, are entitled to compensation therefor.—Utterback v. Binns, Case No. 16,809.

In such case the annual rents and profits will be deducted from the value of the improvements.—Utterback v. Binns, Case No. 16,809.

VI. REMEDIES OF VENDOR.

§ 32. Vendor's lien — When lien exists, and extent.

A lien is neither a jus ad rem, nor a jus in re; and the lien of a vendor on the land sold is so mere a creature of the court of equity that its existence cannot be safely predicated in any case, until established by the decree of the court.—Gilman v. Brown, Case No. 5,441.

A vendor who has not parted with the legal title has a lien for the unpaid purchase money, enforceable either against the vendee, his representatives or assigns.—English v. Russell, Case No. 4,491.

A vendor's lien for unpaid purchase money does not exist, as against a bona fide purchaser without notice.—Gilman v. Brown, Case No. 5,441.

A vendee of land who never took the title, but resold it to his vendor, taking a bond with surety for the amount due, has no vendor's lien for the same.—Strider v. King, Case No. 13,534.

In Texas a vendor's lien reserved in the deed is equivalent to a mortgage for purchase money, and the purchaser has the same equity of redemption as if he had received a deed and given a mortgage for the purchase money.—King v. Young Men's Ass'n, Case No. 7,811.

A conveyance of the grantor's interest in firm property, made subject to the payment of his share of the firm debts, which the grantees assumed, *held*, upon a condition subsequent, giving a right of re-entry for nonperformance, and a lien superior to subsequent mortgagees.—Nash v. Le Clercq, Case No. 10,021.

§ 33. —— Waiver and extinguishment.

A vendor's lien will not be decreed where the parties do any unequivocal act by which they clearly show that they do not contemplate such a lien to exist.—Gilman v. Brown, Case No. 5,441.

If the vendor take a distinct security for the money, either property, or the responsibility of a third person, the lien is waived.—Gilman v. Brown, Case No. 5,441; Nash v. Le Clercq, Id. 10,021.

Taking a negotiable note of the vendee, indorsed by a third person, payable at future times by installments, extinguishes the lien.—Gilman v. Brown, Case No. 5,441.

But merely taking the note or bond of the vendee himself, without a surety, is no waiver of the lien.—Gilman v. Brown, Case No. 5,441.

The vendor's lien is not waived by the subsequent taking of a mortgage, and it takes precedence over a judgment lien acquired between the date of the transfer and the mortgage.—In re Bryan, Case No. 2,062.

§ 34. —— Assignment.

A purchase-money lien does not pass to the transferee of a note taken in part payment.—In re Brooks, Case No. 1,943.

§ 35. —— Rights and liabilities of subsequent purchasers.

The vendor has a lien for the purchase price as against purchasers from his vendee with notice.—Pintard v. Goodloe, Case No. 11,171.

If the purchaser sells the land to a third person, and the deed is duly recorded or made known to the original vendor, the latter cannot, by virtue of his lien, extinguish the third person's rights without legal process.—King v. Young Men's Ass'n, Case No. 7,811.

Certain parties purchased a railroad, and received a deed therefor, but left a part of the purchase price unpaid, and then procured an act of the legislature by which they, as purchasers and owners, were incorporated. *Held*, that the company so formed took the railroad subject to the vendor's lien for the unpaid purchase money.—Western Division of Western N. C. R. Co. v. Drew, Case No. 17,434; Schutte v. Florida Cent. R. Co., Id.

§ 36. —— Laches.

Equitable lien of assignee of bond for purchase money will not be enforced, as against other lienors, after 15 years' delay.—In re Butler, Case No. 2,235.

§ 37. —— Redemption.

Where a vendor's lien was reserved for part of the purchase money, and the grantee conveyed to another in trust for a joint-stock company, and the trustee went into possession, *held*, that a foreclosure of the lien, without making the trustee a party, did not extinguish the joint-stock company's right to redeem.—King v. Young Men's Ass'n, Case No. 7,811.

In such case the proper party to file a bill to redeem would be the trustee; but where he had been removed, and the directors of the company failed to appoint a new trustee, the stockholders might file the bill.—King v. Young Men's Ass'n, Case No. 7,811.

§ 38. —— Sale of land.

A sale of land for unpaid purchase money is not vitiated by the fact that it was made while the purchaser is absent during war with the other belligerent power, and had no notice of the sale.—Johns v. Slack, Case No. 7,363.

The pendency of confiscation proceedings by the United States against such purchaser does not help to vitiate the sale.—Johns v. Slack, Case No. 7,363.

§ 39. Recovery of land.

The vendor of land cannot maintain ejectment against the vendee in possession who has failed to pay a balance of the purchase price, without a notice to quit, or a demand to pay and notice of rescission.—Costigan v. Wood, Case No. 3,265.

§ 40. Actions for purchase money.

A purchaser who has received a deed, and holds under it, cannot set up a defect of title to avoid the recovery of the purchase money.—Taggart v. Stanbery, Case No. 13,724. See, also, Campbell v. Medbury, Case No. 2,365.

In an action by the payee of a note given for the purchase price of land, defendant, who has not gone into possession, may set up in defense plaintiff's want of title to the land.—Scudder v. Andrews, Case No. 12,564.

In an action for the purchase money defendant cannot set off the amount paid on the compromise of an outstanding claim made without

the consent or knowledge of the grantor.—Taggart v. Stanbery, Case No. 13,724.

On an issue joined on a plea of want of title in an action on a bond expressed to be given for the purchase money of land, plaintiff has the burden of showing title.—Hotchkiss v. Floyd, Case No. 6,716.

VII. REMEDIES OF PURCHASER.

§ 41. Recovery of purchase money paid. Where, through neligence, the vendor cannot compel specific performance, the vendee may disaffirm the contract, and recover back the money paid. A demand for a deed is not necessary.—Cooper v. Brown, Case No. 3,191.

Where the vendee refuses to perform the contract, he cannot recover back the money paid, where the vendor obtains possession of the land.—Utterbach v. Binns, Case No. 16,809.

The vendee cannot recover back the purchase money paid upon failure of the vendor to convey, without tendering the form of a deed of conveyance, unless the vendor's title is defective.—Guttschlick v. Bank of the Metropolis, Case No. 5,880.

The vendee may recover back the purchase money in assumpsit, where the vendor's title was defective, though he has been in possession several years.—Guttschlick v. Bank of the Metropolis, Case No. 5,880.

§ 42. For defects in title. No action lies against grantor on a deed without covenants.—Baldwin v. Le Roy, Case No. 800a.

Where deed is without covenants, assumpsit will not lie for failure of consideration on complete failure of grantor's title.—Baldwin v. Le Roy, Case No. 800a.

§ 43. Damages for breach of contract. The measure of damages in an action for refusal to convey because of a defective title *held* to be the purchase money, with interest, where no rents and profits have been received. —Letcher v. Woodson, Case No. 8,280.

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.—Wilson v. Robertson, Case No. 17,830.

§ 44. Relief in equity. A purchaser in undisturbed possession will not be relieved from payment of the purchase money on the ground of defect of title, there being no fraud or misrepresentation; but he must rely upon his covenants.—Campbell v. Medbury, Case No. 2,365.

The neglect of the vendee to pay the purchase money and demand a conveyance from the vendor in his lifetime will prevent an injunction to restrain the collection of a judgment at law for the purchase money, on the ground of the difficulty of obtaining a title from the infant heirs.—Prout v. Gibson, Case No. 11,-445.

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.—Wright v. Fullerton, Case No. 18,079.

§ 45. Evidence. An insufficient deed, received by the vendee of land, *held* admissible in evidence, in an action to recover back the purchase money, to show defective title.—Guttschlick v. Bank of the Metropolis, Case No. 5,880.

A written contract by a bank to convey, under the hands and seals of the president and cashier, reciting authority from the directors, is admissible without further evidence of authority of such officers to make the contract.—Guttschlick v. Bank of the Metropolis, Case No. 5,880.

VENUE.

§ 1, Place of trial. § 2, Change of venue.

In affidavits, see "Affidavits," §§ 3, 4.
In attachment, see "Attachments," § 4.
In criminal cases, see "Criminal Law," §§ 15–24.
Statement in pleading, see "Pleading," § 5.

§ 1. Place of trial. An action to recover for payments due under a railroad construction contract is not local.—Babbitt v. Burgess, Case No. 693.

A clerk of the circuit court of the District of Columbia is not entitled to sue by attachment of privilege.—Forrest v. Hanson, Case No. 4,942.

§ 2. Change of venue. A motion for change must be accompanied by an affidavit stating the grounds of belief that an impartial trial cannot be had in the county in which the suit is instituted.—Lewis v. Fire Ins. Co., Case No. 8,323.

The convenience of a party and his witnesses is an insufficient ground for the transfer of the cause from one place to another in the district for trial.—In re Preston, Case No. 11,393.

An issue from the orphans' court to the circuit court of the District of Columbia cannot be removed to another county.—Carter v. Cutting, Case No. 2,476.

Where the judges of the circuit court are incompetent from interest or having been of counsel to sit in a cause, it is to be certified to the nearest circuit court in the circuit competent in point of law to try it.—Richardson v. Boston, Case No. 11,780.

If the disability of the district judge terminates in his death, the circuit court must remand the certified causes to the district court under Act March 2, 1809, c. 94.—Ex parte United States, Case No. 14,411.

VERDICT.

Directing verdict in civil actions, see "Trial," § 15.
In civil actions, see "Trial," §§ 22, 23.
—— for forfeiture, see "Internal Revenue," § 87.
—— for infringement of patent, see "Patents," § 209.
—— on insurance policy, see "Insurance," § 191.
In criminal prosecutions, see "Criminal Law," §§ 97–99.
—— for conspiracy, see "Conspiracy," § 9.
—— for violation of revenue laws, see "Internal Revenue," § 108.
In equity, see "Equity," § 103.
Irregularities or defects as ground for new trial, see "New Trial."
Necessity of conformity of judgment, see "Judgment," § 16.
Operation and effect as curing defect in pleadings, see "Pleading," § 70.
Review on appeal or writ of error, see "Appeal and Error," § 34.
Setting aside, see "New Trial," §§ 8–10.

VERIFICATION.

Of schedule in bankruptcy, see "Bankruptcy," § 24.
Of petition for removal of cause, see "Removal of Causes," § 40.
—— in bankruptcy, see "Bankruptcy," § 38.
Of pleading, see "Pleading," §§ 29, 57–59.
—— in admiralty, see "Admiralty," § 87.
—— in bankruptcy, see "Bankruptcy," § 116.
—— in equity, see "Equity," § 87.

VESTED REMAINDERS.

Creation, see "Wills," § 39.

VESTED RIGHTS.

Protection, see "Constitutional Law," § 5.

VICE PRINCIPALS.

See "Master and Servant," § 5.

VILLAGES.

See "Municipal Corporations."

VINDICTIVE DAMAGES.

See "Damages," § 8.

VOTERS.

See "Elections."

W

WAGERS.

See "Gaming," § 1.

WAGES.

Of seamen, see "Seamen," §§ 49–153, 186.
Priority of claims, see "Bankruptcy," § 433.

WAIVER.

See, also, "Estoppel."

Of objections to particular acts or proceedings.

At trial, see "Trial," § 25.
By insurance company, see "Insurance," §§ 89–95.
Defects in process or service, see "Equity," § 34.
Effect of appearance, see "Appearance"; "Courts," § 63.
In admiralty, see "Admiralty," § 90.
In equity, see "Equity," § 90.
In indictment or information, see "Indictment and Information," § 27.
In pleading, see "Pleading," § 69.
Jurisdiction, see "Admiralty," § 36.
To deposition, see "Depositions," § 37.
To discharge, see "Bankruptcy," § 582.
To form of action, see "Action," § 2.
To witness, see "Witnesses," § 27.

Of rights or remedies.

See "Bail," § 2; "Homestead," § 7; "New Trial," § 18.
Abandonment to insurer, see "Insurance," § 126.
Breach of warranty," see "Sales," § 37.
Change of venue, see "Criminal Law," § 24.
Condition in contract, see "Contracts," § 34.
Constitutional provision that defendant shall not be put twice in jeopardy, see "Criminal Law," § 37.
Exemption, see "Bankruptcy," § 527.
Forfeiture of wages, see "Seamen," § 79.
Grounds of abatement, see "Abatement and Revival," § 7.
In admiralty, see "Admiralty," § 37.
Liens, see "Maritime Liens," §§ 34–37.
— for freight, see "Shipping," §§ 63, 189.
— for wages, see "Seamen," § 131.
— in bankruptcy, see "Bankruptcy," §§ 273, 400.
— of vendor, see "Vendor and Purchaser," § 33.
— on animals, see "Animals," § 1.
Notice and proofs of loss, see "Insurance," §§ 152–157.
Presentment, demand, protest, and notice of bill or note, see "Bills and Notes," § 79.
Priority of lien, see "Maritime Liens," § 50.
Privilege as to communications to witness, see "Witnesses," § 58.
Process, see "Equity," § 30; "Process," § 3.
Replication, see "Equity," § 63.
Security, see "Marshaling Assets and Securities," § 1.
— for costs, see "Admiralty," § 137.
Share in forfeiture, see "Forfeitures," § 26.
Tender, see "Tender," § 2.
To demand prisoner, see "Extradition," § 15.
To remove cause, see "Removal of Causes," § 5.
Trial by jury, see "Jury," § 4.

WAR.

I. IN GENERAL.

§ 1, Power to make war. § 2, Effect of war on existing rights and liabilities. § 3, Alien enemies. § 4, Confiscation and conquest. § 5, Martial law. § 6, Prisoners of war.

II. EMBARGO AND NONINTERCOURSE.

§ 7, Statutory provisions. § 8, Effect on existing contracts. § 9, What constitutes an importation. § 10, Clearance or permit. § 11, Goods prohibited. § 12, To what countries and persons laws apply. § 13, Vessels prohibited. § 14, Embargo bonds—Requisites, sufficiency, and construction. § 15, — Actions on bond. § 16, Forfeitures—Grounds of forfeiture and defenses. § 17, — Release of property on bond. § 18, — Property forfeited. § 19, — Pleading. § 20, — Evidence. § 21, — Judgment. § 22, — Remission of forfeiture. § 23, — Distribution of proceeds. § 24, Penalties and enforcement thereof. § 25, Offenses.

III. PRIZE.

(A) Blockade.

§ 26, Power to establish. § 27, Notice of blockade. § 28, What constitutes a blockade. § 29, Withdrawal of blockade.

(B) Capture and Liability of Captors.

§ 30, What constitutes, in general. § 31, Who may capture. § 32, Place of capture. § 33, Powers and duties of captors. § 34, Wrongful capture and wrongful acts of captors. § 35, Persons liable. § 36, Proceedings against captors. § 37, Damages.

(C) Grounds of Condemnation.

§ 38, Carrying contraband goods. § 39, Violation of blockade. § 40, Enemy property—In general. § 41, — Property of neutrals domiciled in enemy country. § 42, — Property of temporary residents and withdrawal thereof. § 43, — Property shipped from enemy country. § 44, — Property shipped to enemy country. § 45, — Produce of soil of

enemy country. § 46, —— Flag under which property is carried. § 47, —— Change of ownership during war. § 48, —— Fraudulent claim by neutral. § 49, —— Rights of neutral lienors. § 50, Trading and intercourse with enemy.

(D) Jurisdiction and Procedure.

§ 51, Jurisdiction—In general. § 52, —— As affected by locality of capture. § 53, —— Courts of neutral country. § 54, Procedure in general. § 55, Release of property on bond. § 56, Transferring property seized to use of government. § 57, Sale of property. § 58, Parties. § 59, Pleadings and claims. § 60, Evidence—Presumptions and burden of proof. § 61, —— Admissibility. § 62, —— Weight and sufficiency. § 63, Further proof. § 64, Commissioners and proceedings before them. § 65, Survey and report. § 66, Hearing and reference. § 67, Costs and fees. § 68, Decree. § 69, Appeal.

(E) Restitution and Ransom.

§ 70, Restitution. § 71, Ransom.

(F) Distribution of Proceeds.

§ 72, In general. § 73, Who entitled to share. § 74, Amount of shares. § 75, Forfeiture of share. § 76, Title of captors and transfer of share. § 77, Rights of lienors. § 78, Proceedings for distribution.

IV. CIVIL WAR.

§ 79, Commencement and termination. § 80, Application of rules of international law in general. § 81, Effect of Civil War on existing laws and contracts. § 82, Contracts between residents of belligerent states. § 83, Martial law. § 84, Status of residents of confederate states. § 85, The Confederate government and seceded states, their laws and judicial proceeding. § 86, Confiscation—Statutory provisions. § 87, —— Grounds of forfeiture. § 88, —— Property forfeited. § 89, —— Captured and abandoned property act. § 90, —— Jurisdiction and procedure.

See, also, "Army and Navy"; "Militia"; "Neutrality Laws."
Judicial notice, see "Courts," § 2; "Evidence," § 8.
Levying war as criminal offense, see "Treason," §§ 2–10.
Military expeditions, see "Neutrality Laws," §§ 7–13.
Recognition and effect of, see "Courts," § 2.
Treaties of peace, see "Treaties."

I. IN GENERAL.

§ 1. Power to make war.

The power of making war is exclusively vested in congress, but the president has power to repel invasions by hostile forces, even when congress has not declared war.—United States v. Smith, Case No. 16,342.

§ 2. Effect of war on existing rights and liabilities.

A state of war suspends existing contracts between the belligerent parties, and, upon the termination of the war, obligations theretofore contracted are revived.—Semmes v. City Fire Ins. Co., Case No. 12,651.

A declaration of war, or the commencement of actual hostilities between two states, ipso facto dissolves the partnership relation existing between citizens of the hostile states.—Planters' Bank v. St. John, Case No. 11,208.

The authority of an agent is not affected by war with the principal's country.—Cocks v. Izard, Case No. 2,934.

A declaration of war by competent authority suspends interest upon debts between citizens of the belligerents, until the conclusion of peace.—Conn v. Penn, Case No. 3,104; Jackson Ins. Co. v. Stewart, Id. 7,152.

Interest will not abate during a war, where the alien enemy has a resident agent known to the debtor.—Denniston v. Imbrie, Case No. 3,802; Conn v. Penn, Id. 3,104.

The usage of making annual rests in an account does not apply where commercial intercourse is suspended between the countries of the parties' residence by war.—Denniston v. Imbrie. Case No. 3,802.

The claims of creditors which existed prior to the American Revolution were not destroyed by the dissolution of the government, though the judicial means of enforcement were for the time lost.—Jones v. Walker, Case No. 7,507.

Debts due to a subject of Great Britain before the revolutionary war *held* within the treaty of peace, and the hostile legislation of the commonwealths were extinguished thereby.—Jones v. Walker, Case No. 7,507.

A debtor of a subject of Great Britain who accepted the offer of Act Va. Oct. 20, 1777, to pay the amount of the debt into the loan office, and receive a certificate of discharge, *held* not relieved from payment of the debt where the commonwealth did nothing to extinguish the same.—Jones v. Walker, Case No. 7,507.

The intervention of war pending a suit by a foreign corporation will not defeat the action unless it appear on the record that plaintiff is not within any of the exceptions which enable an alien enemy to sue.—Society for the Propagation of the Gospel v. Wheeler, Case No. 13,156.

See, also, post, § 81.
Effect on contract of insurance, see "Insurance," § 170.
—— on limitation of action, see "Limitation of Actions," § 15.
Revocation of agency, see "Insurance," § 5.

§ 3. Alien enemies.

The rules of the common law in cases of alien enemy do not apply with the same rigor in courts acting under the general laws of nations.—Crawford v. The William Penn, Case No. 3,372.

An alien enemy cannot sustain or defend a suit in the courts of the United States.—The D. Sargeant, Case No. 4,098; The Emulous, Id. 4,479; Johnson v. Thirteen Bales, etc., Id. 7,415; Mumford v. Mumford, Id. 9,918.

An alien enemy resident in the United States by license of the government may maintain a personal action.—Otteridge v. Thompson, Case No. 10,618.

No suit or proceeding can be maintained in the courts of a neutral nation by the subject of one belligerent against the subjects of the other for acts growing out of the war.—Juando v. Taylor, Case No. 7,558.

Contracts made for equipping and fitting a cartel will be enforced in the courts of either belligerent having jurisdiction.—Crawford v. The William Penn, Case No. 3,372.

An alien enemy beneficially interested in a suit cannot support it in the name of a neutral trustee unless the subject-matter arises out of a trade licensed by the government in whose courts redress is sought.—Crawford v. The William Penn, Case No. 3,372.

An alien enemy may sue and be sued in the enemy's country.—Cocks v. Izard, Case No. 2,934.

An alien enemy is not permitted to make a declaration preparatory to naturalization.—Ex parte Newman, Case No. 10,174.

Contracts made with an alien enemy are lawful if arising out of the trade carried on under

license of the government, if the enemy be in the hostile country by license of the government, or if the contract be a ransom bond.—Crawford v. The William Penn, Case No. 3,373.

Contracts made by prisoners of war, in the enemy's country, for subsistence, are binding.—Crawford v. The William Penn, Case No. 3,373.

The existence of war does not prevent the citizens of one belligerent power from taxing proceedings for the protection of their own property in their own courts, against the citizens of the other, where the latter can be reached by process.—Lee v. Rogers, Case No. 8,201.

A vessel may be hypothecated by the master in an enemy's country for money advanced to return to the home port.—Crawford v. The William Penn, Case No. 3,373.

There is no legal difference as to the plea of alien enemy between a corporation and an individual.—Society for the Propagation of the Gospel v. Wheeler, Case No. 13,156.

In a plea of alien enemy in abatement of an action of detinue, it must be averred that such was the status of plaintiff at commencement of the suit.—Elgee's Adm'r v. Lovell, Case No. 4,344.

If the disability arise afterwards, the further prosecution of the suit is suspended merely until peace is restored.—Elgee's Adm'r v. Lovell, Case No. 4,344.

It is no answer to a plea of alien enemy to aver that the plaintiff has taken the oath prescribed by the amnesty proclamation.—Elgee's Adm'r v. Lovell, Case No. 4,344.

§ 4. Confiscation and conquest.

The law as to conquests and confiscation of enemy's territory and property.—The Amy Warwick, Case No. 342.

Operation of the treaty of 1783, upon the exercise of legislative powers for the confiscation of enemy's property.—Gordon v. Holiday, Case No. 5,610.

Enemy property found within our territory on the breaking out of war cannot be confiscated without an act of congress authorizing such confiscation.—Britton v. Butler, Case No. 1,903; Wagner v. The Juanita, Id. 17,039. But see The Emulous, Case No. 4,479.

A belligerent has the right to take such course, and impose such conditions, with regard to the confiscation of enemies' property, as it sees fit.—The Confiscation Cases, Case No. 3,097.

Trading with the enemy's country, which has been reduced to subjection, with permission and encouragement of the invading army, is not unlawful.—Harmony v. Mitchell, Case No. 6,082.

Debts, credits, and corporeal property of an enemy, found in the country on the breaking out of war, are confiscable.—The Emulous, Case No. 4,479.

Proceedings for the confiscation of enemy's property under a state law *held* coram non judice on the adoption of a treaty of peace stipulating against subsequent condemnation.—Fisher v. Harnden, Case No. 4,819.

Confiscation under Act Mass. April 3, 1779, divests only the estate of the absentee, and not the estate of a remainder-man.—Borland v. Dean, Case No. 1,660.

A purchaser from one who bought corporate stock on a sale under an invalid decree of confiscation, after notice of the corporation's claim of invalidity, is not a bona fide purchaser.—Avil v. Alexandria Water Co., Case No. 679.

On intervention by a third person setting up some charge or lien, collateral proceedings may be taken.—The Confiscation Cases, Case No. 3,097.

Intervention proceedings in proceedings on confiscation of land, setting up a lien on property, may be reviewed by appeal.—The Confiscation Cases, Case No. 3,097.

A judgment in confiscation proceedings is not subject to collateral attack.—Bragg v. Lorio, Case No. 1,800.

The record in confiscation proceedings is conclusive as between the maker and payee of a note confiscated therein.—Vogler v. Spaugh, Case No. 16,988.

Construction of the New York statute limiting the period of bringing claims and prosecutions against forfeited estate.—Fisher v. Harnden, Case No. 4,819.

Property seized in confiscation proceedings, or its proceeds before order of distribution made, will be restored to the owner, upon petition setting out a pardon for the offenses charged.—Brown v. United States, Case No. 2,032.

The marshals of the several districts, in enforcing the regulations established by the president, under the act of July 6, 1798, in relation to alien enemies, could act without the aid of the judicial authority.—Lockington v. Smith, Case No. 8,448.

If the island of St. Domingo was conquered by the British and given up to the blacks, the right of France would have revived, as a conqueror gains nothing but the temporary right of possession, and cannot, in the meantime, impair the rights of the former sovereign.—Clark v. United States, Case No. 2,838.

See, also, post, §§ 86–90.

§ 5. Martial law.

The president had authority to issue his proclamation of September 24, 1862, proclaiming martial law and the suspension of the writ of habeas corpus in the case of military arrests.—Ex parte Field, Case No. 4,761.

The president's proclamation, issued under authority of congress, declaring the inhabitants of certain states in rebellion to be in a state of insurrection, and forbidding all commercial intercourse with them, suspends suits in federal courts until after re-establishment of loyal government.—Currie v. The Josiah Harthorn, Case No. 3,491a.

The existence of martial law does not prevent the administration of justice between citizens in the civil courts, when such courts are authorized thereto by the military power; and their decrees are binding on the parties.—Kimball v. Taylor, Case No. 7,775.

Neither the chief justice nor any associate justice of the United States can sit either as a circuit court or as a single judge in a region subject to martial law, even to the extent of hearing an application to admit to bail.—Case of Davis, Case No. 3,621a.

A decree in an attachment case instituted during the war by seizure of the property and publication of notice *held* void as against a loyal citizen.—Dorr v. Gibboney, Case No. 4,006.

The crime of murdering the president of the United States in time of civil war is triable by a military commission.—Ex parte Mudd, Case No. 9,899.

A person committing an offense in a place where the federal courts are closed by civil war, and arrested and tried in a place where the federal courts are open, cannot be tried by military commission.—In re Murphy, Case No. 9,947.

A person cannot be tried by a military commission for a murder committed in a rebel country five months after hostilities have terminated and the rebel army has surrendered.—In re Egan, Case No. 4,303.

Private property cannot be seized for the purpose of insuring the success of a distant expe-

dition upon which the army is about to march.—Harmony v. Mitchell, Case No. 6,082.

A military commander, under circumstances of actual, urgent, immediate, and pressing public necessity may take private property.—Harmony v. Mitchell, Case No. 6,082; Holmes v. Sheridan, Id. 6,644.

Private property may be seized to prevent it from falling into the hands of the enemy.—Harmony v. Mitchell, Case No. 6,082.

See, also, post, § 83.

§ 6. Prisoners of war.
Persons found on board a prize vessel are not subject to order of the court, but the detention or discharge is purely a matter of naval cognizance.—The Amelia, Case No. 276.

Prisoners and persons brought in with the prize for examination do not pass into the custody of the court, but their custody continues to be military in its character, and the duty of providing for their support devolves upon the government.—The Salvor, Case No. 12,272.

Slaves captured are neither prize nor prisoners of war.—Almeida v. Certain Slaves, Case No. 255.

A military parole is limited by the duration of the war.—In re Milliken, Case No. 9,608.

II. EMBARGO AND NONINTERCOURSE.

§ 7. Statutory provisions.
Construction of Act Jan. 9, 1808, c. 8.—The Sally, Case No. 12,257.

Construction of the nonimportation act of March 1, 1809.—The Falmouth, Case No. 4,631; United States v. The Good Friends, Id. 15,227; Same v. Hayward, Id. 15,336.

Construction of laws of July 1, 1812, July 5, 1812, and January 27, 1813.—Perots v. United States, Case No. 10,993.

Construction of nonimportation acts of 1811 and 1814.—United States v. Hayward, Case No. 15,336.

Construction of acts of April 18, 1818, May 15, 1820, and March 1, 1823, interdicting trade in British vessels.—In re Open Boat, Case No. 10,549.

Section 2 of the embargo law of April 25, 1808, *held* inoperative for ambiguity.—The Enterprise, Case No. 4,499.

By Act March 1, 1809, c. 91, § 19, and Act June 28, 1809, c. 9, § 2, the embargo acts were as to future cases repealed.—The Orono, Case No. 10,585.

Section 3 of the act of 1808 not repealed by the act of 1809, c. 91.—The Argo, Case No. 516.

The president's proclamation of August 9, 1809, was without legal operation, and did not revive the nonintercourse act of March 1, 1809, c. 91.—The Orono, Case No. 10,585.

The nonintercourse law was not repealed by the declaration of war with Great Britain, except so far as its provisions were inconsistent with a state of war.—Thomson v. United States, Case No. 13,985.

The embargo laws of December 22, 1807, and March 12, 1808, are not unconstitutional, either on the ground that they exceed the powers of congress to "regulate," because they interdict all foreign commerce, or because they are not, by their terms, limited to a specific duration.—United States v. The William, Case No. 16,700.

The proclamation of August 9, 1809, interdicting commerce with Great Britain, *held* not legal.—President's Proclamation Declared Illegal, Case No. 11,391.

Persons will be charged with a violation of the penal provision of trade laws, of which previous notice is not brought home to them, only from the time they are received by the collector of the district.—The Cotton Planter, Case No. 3,270.

§ 8. Effect on existing contracts.
An embargo does not render the performance of a contract, the execution of which it prevents, unlawful, but only suspends its execution.—Odlin v. Insurance Co. of Pennsylvania, Case No. 10,433.

§ 9. What constitutes an importation.
An involuntary coming into port by stress of weather is not an "importation" of cargo contrary to the embargo laws.—The Mary, Case No. 9,183.

Voluntary arrival at port of destination, though without breaking bulk, constitutes an importation.—The Boston, Case No. 1,670.

§ 10. Clearance or permit.
A vessel licensed for the coasting trade was not required to obtain a clearance or permit on departing from a port of the United States, but only when departing from a district of the United States.—The Elizabeth, Case No. 4,352.

A coasting vessel sailing from New York into Long Island Sound must have a clearance, such waters not belonging to either the district of New York or the district of Connecticut.—The Elizabeth, Case No. 4,352.

Departure from any place within jurisdictional limits, although not a port, is within the provisions of the act.—The Ann, Case No. 397.

§ 11. Goods prohibited.
Act March 1, 1809, c. 91, applies to all goods of British manufacture, etc., although imported into a neutral country before the passage of that act.—In re Ten Hogsheads of Rum, Case No. 13,830.

Goods of British growth, though not liable to duties, are prohibited from importation by Act March 1, 1809.—United States v. The Mars, Case No. 15,723.

The construction by the customhouse of arms and ammunition for the defense of a vessel, as sea stores, adopted by the court.—The Isabella, Case No. 7,101.

§ 12. To what countries and persons laws apply.
The island of St. Domingo is a dependence of France, within the nonintercourse act of March 1, 1807.—Clark v. United States, Case No. 2,838.

A port conquered and occupied by the enemy *held* not a port of the United States, within the nonimportation acts.—United States v. Hayward, Case No. 15,336.

Construction and effect of Acts March 1, 1809, and March 2, 1811, in relation to the place of lading of prohibited articles.—United States v. The Nancy, Case No. 15,854.

A British subject living in Bermuda, who came to the United States in his own vessel to take his children home from school, returning after two weeks with a cargo, *held* not a resident within the United States, under 2 Stat. 351.—United States v. The Penelope, Case No. 16,024.

§ 13. Vessels prohibited.
An open boat is not a ship or vessel, within Acts 1820, c. 122, and 1823, c. 150, which prohibit commercial intercourse from the British colonies.—United States v. Open Boat, Cases Nos. 15,967, 15,968.

British ships or vessels excluded from our ports by such statutes are such as are owned by British subjects having a British domicile, and sailing under a British flag, and not ships

or vessels owned by British subjects domiciled in the United States.—United States v. Open Boat, Case No. 15,967.

British-owned vessels are included in the prohibition, although not registered or navigated according to the British navigation and registry acts.—United States v. Open Boat, Case No. 15,968.

A registered vessel is within the prohibitions of Act Jan. 9, 1808, § 3, which was not repealed by Act March 1, 1809, § 19, or Act June 28, 1809, § 2.—The Short Staple, Case No. 12,-813.

Bringing British vessel with British cargo captured on high seas by French vessel, and given to American crew, into United States port, not a violation of Act March 1, 1809.—The Adventure, Case No. 93.

§ 14. Embargo bonds—Requisites, sufficiency, and construction.

Sufficiency of bond given under Act March 1, 1809, c. 91, § 13.—United States v. Sawyer, Case No. 16,227.

Validity of bond given under Act Dec. 22, 1807.—United States v. Smith, Case No. 16,334.

An embargo bond *held* void because of the insertion of stipulations not authorized by the statute.—United States v. Morgan, Case No. 15,809.

An embargo bond made payable to the United States is good under an act requiring it to be given to the collector of the district.—Dixon v. United States, Case No. 3,934.

Effect of want of seaworthiness as depriving the obligee of an embargo bond of the excuse of prevention of performance of the voyage by perils of the sea.—United States v. Dixey, Case No. 14,967.

What constitutes a "peril of the sea" within the condition of an embargo bond.—United States v. Hall, Case No. 15,285.

§ 15. —— Actions on bond.

A declaration on an embargo bond is not good without an assignment of breaches.—Dixon v. United States, Case No. 3,934.

In debt on an embargo bond, where it was alleged that the vessel was driven by stress of weather to the Island of St. Thomas, and there compelled by the authorities to sell her cargo, *held*, that a certificate by the governor of the island, without seal (his signature being proved), that a petition for leave to depart with the cargo was denied, was an official act, admissible in evidence.—United States v. Mitchell, Case No. 15,792.

In debt on an embargo bond, where it was claimed the vessel was driven by stress of weather to the Island of St. Thomas, *held*, that defendants must clear themselves of any imputation that the vessel was not seaworthy; but if sufficient cause, such as storms, were shown for her disability, the want of seaworthiness must be proved by the plaintiff.—United States v. Mitchell, Case No. 15,792.

In debt on an embargo bond, *held*, that the log book was admissible, having been identified by witness, though he did not recollect seeing the mate make regular entries in it; it also appearing that every exertion had been made to procure the attendance of the mate.—United States v. Mitchell, Case No. 15,792.

The certificate of an American consul, under his seal, that the ship's papers were lodged with him, as required by the embargo law, is evidence of that fact, but not of other facts stated in it.—United States v. Mitchell, Case No. 15,-791.

An action of debt upon a bond given under the embargo laws is a penal action, and the jury are judges both of the law and the facts. —United States v. Poyllon, Case No. 16,081.

Where a collector died pending suit for the penalty of an embargo bond given to him, and his deputy continued to act until after judgment, *held*, that the deceased collector's right to share in the moiety given to the revenue officers was preserved, and the same did not go to his successor.—United States v. Jones, Case No. 15,492.

§ 16. Forfeitures—Grounds of forfeiture and defenses.

Condemnation of a vessel, and part of her cargo, for a breach of the nonimportation laws. —Nelson v. United States, Case No. 10,116.

Goods placed on board with intent to import them are forfeited, irrespective of owners' intention to violate act.—The Boston, Case No. 1,670; United States v. The Little Charles, Id. 15,612.

An entry in a port of the United States by a derelict vessel, brought in by salvors without the consent of her owner or master, does not work her forfeiture under Acts April 18, 1818, and May 15, 1820, as such acts apply only to a voluntary entry.—The Waterloo, Case No. 17,-257.

Goods of British manufacture, though imported from a neutral country, *held* forfeited under Act March 1, 1809, c. 91.—The Rose, Case No. 12,044.

A vessel sailing to an interdicted port, unless by permission of the president, on the public service, was liable to forfeiture, under Act June 28, 1809, c. 9, § 3. Under the same act, British ports were permitted ports.—The Wasp, Case No. 17,249.

The value of $400, in determining the liability to forfeiture for taking on goods without permit and inspection (Act Jan. 9, 1808), may be made up by the aggregate of different shipments at different times and places.—United States v. The Polly and Jane, Case No. 16,063.

A vessel having the president's permission to go to the West Indies for American property, condemned, with her cargo, for having on board other merchandise besides that authorized.—United States v. The Little Ann, Case No. 15,-611.

The arrival of a vessel within the Chesapeake Bay for the purpose of procuring a pilot in anticipation of a storm, *held* sufficient to subject her to forfeiture.—Thomson v. United States, Case No. 13,985.

The use of a British license is no ground of condemnation, unless the vessel was seized during the voyage.—The Saunders, Case No. 12,-372.

No penalty attached (Act April 25, 1808, § 2), for loading without inspection.—The Active, Case No. 35.

Intention of touching off port of United States for supplies, and of terminating voyage in United States, if lawful, not cause of forfeiture.—The Ann Maria, Case No. 427.

What necessity will excuse from forfeiture.—The Argo, Case No. 516; United States v. The James Wells, Id. 15,467; The William Gray, Id. 17,694.

§ 17. —— Release of property on bond.

Vessels and cargoes liable for forfeiture under Act April 18, 1818, may be delivered to the claimants upon giving a bond for value.—United States v. The Pitt, Case No. 16,052.

An order by a district judge for the release of a vessel libeled for breach of the embargo laws is as valid when made at chambers as if made in open court.—United States v. The Little Charles, Case No. 15,613.

After affirmance of the sentence of condemnation of the district court for a breach of the revenue or nonimportation laws, the court

will forthwith, on motion, give judgment against the claimant and his sureties on the bond given upon the delivery of the cargo to him, at the appraised value.—Nelson v. United States, Case No. 10,116.

§ 18. —— Property forfeited.

The forfeiture attaches to the cargo on board at the time the vessel enters or attempts to enter our ports, and not to any cargo subsequently taken on board, though on board at the time of the seizure.—United States v. Open Boat, Case No. 15,968.

Return cargo was not affected with forfeiture under Act Jan. 9, 1808, § 3.—The Short Staple, Case No. 12,813; United States v. The James Wells, Id. 15,467.

Sea stores and provisions are not to be considered as a part of the cargo, so as to be forfeitable under such act, along with goods which the vessel was prohibited from taking on board. —United States v. The Polly and Nancy, Case No. 16,064.

A bona fide purchaser without notice is protected against an antecedent forfeiture to the United States.—The Mars, Case No. 9,106.

§ 19. —— Pleading.

Sufficiency of information under Act Jan. 9, 1809.—The Bolina, Case No. 1,608.

A libel against a vessel for violating the embargo laws must contain a substantial statement of the offense, and it must be made with reasonable precision.—United States v. The Little Charles, Case No. 15,612.

A libel of forfeiture under the acts of 1807 and 1808 need not set forth the particular character of the vessel, since vessels of all kinds are subject to forfeiture under the law.—United States v. The Little Charles, Case No. 15,612.

The exception in the embargo laws exempting from its penalties foreign vessels in certain cases need not be negatived in the libel.—United States v. The Little Charles, Case No. 15,612.

§ 20. —— Evidence.

Imported cargo taken in at a port with which intercourse is prohibited is prima facie presumed to have been laden with an intention to import the same into the United States.—United States v. The Paul Shearman, Case No. 16,012.

The burden of proof of the vessel's being neutral in an information, under Act March 1, 1809, c. 91, and subsequent acts, rests on the claimant.—United States v. Hayward, Case No. 15,336.

The government has the burden of showing that the goods seized were part of the cargo on board at the time of the offense.—United States v. Open Boat, Case No. 15,968.

In the absence of fraud, the court will not hold that sea stores taken on board under a permit from the collector were more than were necessary.—The Isabella, Case No. 7,101.

The report required of the master must state truly the voyage and the place whence the vessel last sailed; and the owner is considered as authorizing the master to make the report. Therefore, though he may controvert it, it is yet prima facie evidence.—United States v. The Little Charles, Case No. 15,612.

Where the claimants set up a special defense against a forfeiture under the nonintercourse laws, the onus probandi lies on them.—The Short Staple, Case No. 12,813.

On a libel of forfeiture under the embargo laws, the report, manifest, and affidavit of the master before the collector constitute one entire transaction, so as to be admissible in evidence. The entry of the ship is a separate matter, and not necessary to complete the transaction.—United States v. The Little Charles, Case No. 15,612.

Vessel and cargo condemned upon the evidence for violation of embargo laws.—United States v. The William and Samuel, Case No. 16,701.

§ 21. —— Judgment.

The judgment should ascertain and decree the informers' share.—The Bolina, Case No. 1,608.

§ 22. —— Remission of forfeiture.

Until final judgment, no part of the forfeiture under the embargo and nonintercourse act vests absolutely in the collector; but after final judgment his share vests absolutely, and cannot be remitted.—The Margaretta, Case No. 9,072.

§ 23. —— Distribution of proceeds.

Upon the seizure and condemnation of a vessel for violation of Act Feb. 28, 1806, only half of the forfeiture goes to the United States.—United States v. Yeaton, Case No. 16,779.

§ 24. Penalties and enforcement thereof.

A forfeiture of a vessel imposed by the embargo laws cannot be enforced after she has arrived within the jurisdiction of a foreign power. The remedy then is for the penalty of double the value of vessel and cargo.—Parker v. United States, Case No. 10,751.

The secretary of the treasury had no authority under Act Feb. 27, 1813, c. 175, to remit the penalties for goods subsequently imported contrary to the nonimportation act.—The Margaretta, Case No. 9,072.

Procedure for a penalty under section 3 of the embargo act.—Cross v. United States, Case No. 3,434.

Debt will lie in favor of the United States to recover the penalty given by the embargo act for being knowingly concerned in a foreign voyage in violation of such act.—United States v. Allen, Case No. 14,431.

An action of debt to recover a penalty for violation of the embargo laws (1807–1808) may be brought in any district where the offender may be found. Act Feb. 28, 1839.—United States v. Woolsey, Case No. 16,762.

Penalties under Act Jan. 9, 1808, are to be sued for within the time limited by the statute of limitations of April 30, 1790, and not by Act March 2, 1799, § 89, or Act March 26, 1804.—United States v. Mayo, Case No. 15,755.

The limitation prescribed by Act March 2, 1799, § 89, continues to apply to suits brought for penalties under the embargo act of 1808.—United States v. Woolsey, Case No. 16,763.

A verdict for a specific sum in debt for the double value, under Act Jan. 9, 1808, c. 8, § 3, where the statute gives the double value, is to be considered as the double value, unless the contrary appear.—Cross v. United States, Case No. 3,434.

§ 25. Offenses.

An offense punishable by fine and imprisonment, under Act Jan. 9, 1809, was not saved from repeal by the saving clause in Act June 28, 1809, § 2.—United States v. Mann, Case No. 15,718.

Exportation of goods contrary to Act Jan. 9, 1809, § 1, is a misdemeanor, of which the circuit court has original cognizance; and it seems the prosecution may be by information.—United States v. Mann, Case No. 15,717.

A piece of colored cloth is a pass within the meaning of Act Aug. 13, 1813, c. 56, § 1, if used for the purpose of protection in concert with the commander of the foreign vessel.—United States v. Briggs, Case No. 14,646.

An inspector may go on board of any vessel to discover if any goods, etc., were illegally laden on board contrary to the embargo acts; and, if obstructed, an indictment will lie, under Act March 1, 1799, c. 128, § 71.—United States v. Sears, Case No. 16,247.

The power to remit fines (Act Jan. 2, 1813) extends to cases of joint ownership between citizens of the United States and citizens of Great Britain, so far as the former were concerned.—Gallego v. United States, Case No. 5,-201.

The power is lodged entirely with the secretary of the treasury. The court has no revisory power.—Gallego v. United States, Case No. 5,201.

III. PRIZE.

(A) BLOCKADE.

§ 26. Power to establish.
Powers of president in establishing blockades, and directing capture of hostile property.—The Amy Warwick, Case No. 341; The Sarah Starr, Id. 12,352; United States v. The Tropic Wind, Id. 16,541a.

A blockade of the enemy's ports is as lawful a means of war in civil warfare as it is in a war between nations foreign to each other.—The Hiawatha, Case No. 6,451.

As against the states in rebellion, the United States had both sovereign and belligerent rights, and might both establish a blockade and interdict all commerce with their ports.—The Revere, Case No. 11,716.

The acts of July 13, 1861, and August 6, 1861, did not affect prior proceedings of the president in authorizing acts of war, in establishing blockades, and making captures of enemy property.—The Hiawatha, Case No. 6,451.

The proclamation of the blockade is of itself conclusive evidence of the existence of war warranting the blockade.—The Mary Clinton, Case No. 9,203.

§ 27. Notice of blockade.
A neutral must be sufficiently informed of the existence of a blockade to be affected with the penal consequences of a violation.—The Louisa Agnes, Case No. 8,531.

A notice of a blockade, to the officials of a neutral government, is a sufficient notice of it to the subject of such government.—The Hiawatha, Case No. 6,451.

Only those who are ignorant of the blockade are entitled to the warning and indorsement mentioned therein.—The Revere, Case No. 11,716; The Louisa Agnes, Id. 8,531.

A warning on the register of a vessel is not necessary to establish notice of a blockade, where actual notice of it to the master or owner is satisfactorily made out otherwise.—The Hiawatha, Case No. 6,451.

§ 28. What constitutes a blockade.
A blockade, as understood by the law of nations, is an investment of a town of one belligerent by the forces of another.—United States v. The William Arthur, Case No. 16,702.

To constitute a blockade of a port, an adequate force must be stationed to render the entrance or departure of vessels into or from the port dangerous.—The Sarah Starr, Case No. 12,-352.

§ 29. Withdrawal of blockade.
Effect of proclamation "relaxing blockade" of Beaufort, N. C.—The Alma, Case No. 253.

(B) CAPTURE AND LIABILITY OF CAPTORS.

See, also, post, § 89.

§ 30. What constitutes, in general.
An animus capiendi, and a submission, constitute a capture, though no prize crew is put on board.—The Alexander, Case No. 164.

The surrender of Charleston operated as a capture of all the prize or booty in the town and harbor.—The Siren, Case No. 12,911.

The prize act of 1864 does not exhaust the subject of prize or no prize. There may still be captures which go to the United States only, and there may be prize without captors.—The Siren, Case No. 12,911.

The liability to condemnation is not affected by the right of the captors to prize money, or the fact that the capture was brought about by a revolt of the crew of the vessel.—United States v. The Wren, Case No. 16,768.

§ 31. Who may capture.
It is immaterial by whom the vessel was seized if she was subject to capture and condemnation for being engaged in an unlawful trade.—The Ouachita, Case No. 10,620.

Any person may take possession of property seizable as prize, when found within the jurisdiction of the court.—The Tropic Wind, Case No. 14,186.

A vessel subject to capture may be arrested by any person, officer, or citizen, as property belonging to the government.—The Prince Leopold, Case No. 11,428.

Captures under a commission to cruise are valid, if war existed at the time of the capture, though the commission was granted in time of peace.—Chacon v. Eighty-Nine Bales of Cochineal, Case No. 2,568.

Seizure of a vessel for violation of a blockade is lawful, though made by a national vessel forming no part of the blockading squadron. Case No. 9,414 affirmed.—The Memphis, Case No. 9,413.

The filing of a libel by the United States against a vessel captured by a transport vessel in its service, not commissioned as a vessel of war, is a ratification equivalent to an original seizure by authority of the government.—The Emma, Case No. 4,461.

A captured vessel is subject to trial and condemnation for violating the law, whether the persons or means employed in making the seizure were authorized or not.—United States v. The Onachita, Case No. 15,919a.

An abandoned merchant vessel, saved and taken possession of by a cruiser on the surrender of Charleston, was prize to the United States, but neither the cruiser nor the fleet generally were captors.—The Siren, Case No. 12,911.

Vessels used merely as transports for troops and neither armed nor commanded by government officers do not bring within the prize jurisdiction a capture by military forces.—United States v. Two Hundred and Sixty-Nine and One-Half Bales of Cotton, Case No. 16,583.

§ 32. Place of capture.
A capture may be made by a privateer of the United States within the territorial limits of the United States at any place below low-water mark.—The Joseph, Case No. 7,533.

A vessel subject to capture may be arrested anywhere at sea or within the dominions of the capturing power.—The Prince Leopold, Case No. 11,428.

Enemy property captured by a public vessel in an enemy port, although, when seized, stored in a warehouse on land, near the water, *held*, under the facts in this case, to be lawful prize.—In re One Thousand Two Hundred and Fifty-Three Bags of Rice, Case No. 10,535.

Property seized by an armed vessel of the United States empowered to make prizes while afloat in an enemy port, on board of an enemy vessel, is lawful prize under the law of nations.—In re One Thousand Two Hundred and Fifty-Three Bags of Rice, Case No. 10,535.

Property found on shore, or even land itself, may be condemned under Act Aug. 6, 1861, declaring private property used in promoting insurrection to be lawful subject of prize and capture.—United States v. Athens Armory, Case No. 14,473.

A neutral vessel on a lawful voyage from Washington City to Halifax, during the Civil War, is not subject to arrest on the Potomac river.—The Tropic Wind, Case No. 14,186.

The seizure of enemy property by the United States as prize of war on land, jure belli, is not authorized by the law of nations, and can be upheld only by an act of congress.—United States v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, Case No. 15,961.

§ 33. Powers and duties of captors.

It is the duty of captors to bring in the prize crew, or at least the master and principal officers, with the prize, for adjudication.—The Bothnea, Case No. 1,686; The Jane Campbell, Id. 7,205.

The captors must bring in the master of the captured ship and the ship's papers, or satisfactorily explain the omission.—The Arabella, Case No. 501.

And the omission of the captors of a vessel to bring in the captured crew will not inure to defeat a capture by a government vessel.—The Shark, Case No. 12,708.

A vessel, after her capture, appropriated to the use of the United States, and not sent into port, where none of her company are sent in as witnesses, will be discharged for want of legal arrest and prosecution.—The Wave, Case No. 17,299.

The vessel will not be condemned to the United States for failure of the captors to bring in the master of the captured vessel, where he was released from motives of compassion.—The Flying Fish, Case No. 4,892.

The captor will be excused from sending in his prize for adjudication, only where his doing so will weaken his command, so as to endanger the public service.—Fay v. Montgomery, Case No. 4,709.

A vessel documented as neutral, and sailing under a neutral flag, will not be condemned instanter, where the captors failed, without any excuse, to send in the master of the prize as a witness.—The Julia, Case No. 7,576.

The failure to send the officer or crew of the captured vessel into port with her, or produce them as witnesses, *held* cured by the subsequent appearance and examination in preparatorio of the master.—The Henry Middleton, Case No. 6,378.

The captors must immediately upon arrival in port deliver, upon oath, all the papers of captured vessels into the registry of the prize court.—The Diana, Case No. 3,876.

Captors have a right to carry their prizes to a proper and convenient port for adjudication, and are not controlled by the revenue officers.—The Lively, Case No. 8,403.

The prize will be given into the custody of the marshal pending the production of the prisoners taken in her whose examination is important.—The Albion, Case No. 143.

§ 34. Wrongful capture and wrongful acts of captors.

Probable cause is a sufficient justification for a capture.—The George, Case No. 5,328; The Liverpool Packet, Id. 8,406; The Rover, Id. 12,091.

But such protection may be forfeited by subsequent misconduct or negligence.—The George, Case No. 5,328.

Captors are bound to good faith and ordinary diligence, and are therefore liable for ordinary negligence.—The George, Case No. 5,328.

Captors are not liable for damages where the vessel presented probable cause for capture, though her predicament was involuntary, and caused by mistakes of the revenue officers of the captor's own government.—The La Manche, Case No. 8,004.

A voyage by a vessel from an enemy port with a cargo on board, without the license of our government, is of itself a probable cause for the capture of the vessel and cargo.—The Liverpool Packet, Case No. 8,406.

Circumstances which warrant a reasonable suspicion of illegal conduct will constitute probable cause for capture. It is not necessary that there be prima facie evidence to condemn.—The George, Case No. 5,328.

What constitutes a probable cause of capture may depend on the ordinances of the country of the captors, as well as on the law of nations.—The Invincible, Case No. 7,054.

A capture after a treaty of peace, though made in good faith, will entitle the owner to damages for goods taken and costs.—The Ulpiano, Case No. 14,326.

A seizure as prize is no tresspass, though it may be wrongful.—Juando v. Taylor, Case No. 7,558.

On recapture, owners *held* entitled to damages out of goods put on board by privateers.—British Consul v. Thompson, Case No. 1,899.

Where a capture is lawful, the subsequent bringing in of the captured vessel is not a cause for giving damages.—The Marianna Flora, Case No. 9,080.

Damages for personal ill usage will be awarded where the captors wantonly injured the captured crew.—The Jane Campbell, Case No. 7,205; The Lively, Id. 8,403.

The captors will be held liable in damages for unjustifiable conduct towards the property on the prize after her arrest.—The Jane Campbell, Case No. 7,205.

The question of condemnation is not affected by the wrongful acts of the captors towards the prize or its crew subsequent to capture.—The Louisa Agnes, Case No. 8,531.

§ 35. Persons liable.

The extent of the liability of the owners of a commissioned privateer for acts of the officers and crew discussed.—Dias v. The Revenge, Case No. 3,877; The Amiable Nancy, Id. 331.

A district court cannot proceed against a captor into whose hands the proceeds of the capture have never arrived.—Carson v. Jennings, Case No. 2,464.

One claiming by acts of record to be part owner of a privateer is responsible for damages assessed against her, though not named in the ship's papers.—The Mary, Case No. 9,185.

An officer of a public armed vessel of the United States who makes seizure of a neutral vessel on the high seas is liable for all consequential damages, unless he show probable cause for the seizure.—Shattuck v. Maley, Case No. 12,714.

§ 36. Proceedings against captors.

Claimants who complain of irregularities, delay, and acts of negligence by the captors must proceed by libel and monition, and not by special motion. Rule 23.—The Tropic Wind, Case No. 14,186.

The right of reclamation for damages, in cases of captures by public vessels, must be pursued by plea and proof.—The Louisa Agnes, Case No. 8,531.

Redress for wrongs committed by the captors, or for want of diligence in proceeding to trial, cannot be had by way of defense in the

prize suit.—The Joseph H. Toone, Case No. 7,541.

As to the jurisdiction of courts of admiralty in an action for damages for unlawful capture, where the court of appeals of the United States, under the Articles of Confederation, had reversed a decree of condemnation, and awarded restitution without ordering damages.—Jennings v. Carson, Case No. 7,281.

False papers divest a neutral vessel of all right to redress for an unlawful capture.—Mann v. Sacks, Case No. 9,035.

A suit will not lie in a neutral tribunal against a lawfully commissioned cruiser for an alleged illegal capture.—The Invincible, Case No. 7,054.

Where a vessel is wrongfully captured, the owner may libel against the capturing vessel and her captain, for reparation of the loss and damage sustained by such capture.—Gibbs v. The Two Friends, Case No. 5,386.

Burden of proof of necessity of spoliation in action for unlawful seizure of vessel.—Arnold v. Delcol, Case No. 556.

Probable or reasonable cause of capture must be shown to rest on strong facts apparent at the time of capture. What facts are sufficient. —United States v. The Ariadne, Case No. 14,465.

§ 37. Damages.

A suit for consequential damages will lie for the illegal seizure of a vessel, by a French privateer, where there was a decree of restitution by the French court of admiralty.—McGrath v. The Candalero, Case No. 8,809.

Loss of voyage is not an item of damages in case of marine trespass.—The Amiable Nancy, Case No. 331.

Freight is not a proper item of damage for an illegal capture where the voyage has not been lost.—The Lively, Case No. 8,403.

A speculative loss of profits is not a proper item of damage in a case of illegal capture.—The Lively, Case No. 8,403.

The measure of damages for an illegal capture, where the vessel and cargo have been wholly lost, is the prime cost and interest.—The Lively, Case No. 8,403.

Injury alleged to the cargo after it came into the possession of the captors should be ascertained under the direction of the prize court, by a survey and appraisement or sale.—The Lively, Case No. 8,403.

Vindictive damages not allowable against owners of privateer for trespasses committed by crew.—The Amiable Nancy, Case No. 331.

Commissioners to whom the case is referred to state the amount of damages for an illegal capture must state the items of the allowances in detail in their report.—The Lively, Case No. 8,403.

Commissioners appointed to state damages should not hear ex parte evidence without notice to the other side.—The Lively, Case No. 8,403.

The captured, who has failed to enforce a decree of a superior court reversing the decree of a court of admiralty, cannot claim as damages losses sustained by depreciation of the funds in which the proceeds of the capture were invested.—Carson v. Jennings, Case No. 2,464.

French owners are entitled to the benefit of the ordinance of congress relative to recaptures.—Ducatur v. The Desire, Case No. 4,111.

(C) GROUNDS OF CONDEMNATION.

§ 38. Carrying contraband goods.

In what cases provisions are contraband.—The Commercen, Case No. 3,055.

Articles which, in their actual condition, may be and are used either for purposes of war or peace, are contraband, when destined to the enemy's country or to the enemy's use.—The Peterhoff, Case No. 11,024.

All military equipments and military clothing are regarded as contraband.—The Peterhoff, Case No. 11,024.

The destination of arms and munitions of war, and the use intended to be made thereof at the time of seizure, furnishes a test of their status as contraband or otherwise.—United States v. Six Boxes of Arms, Case No. 16,295.

Contraband merchandise is liable to capture when destined to a hostile country, or for the use of the enemy.—The Peterhoff, Case No. 11,024.

Contraband goods may be transported by a neutral between neutral ports.—The Peterhoff, Case No. 11,024.

The master in time of war is bound to know the contents of contraband packages on board. —The Springbok, Case No. 13,264.

The owner of a neutral vessel *held* chargeable with knowledge of the fact that contraband cargo was destined for the enemy's use, and liable for the acts of the master in violation of the rights of the belligerent.—The Peterhoff, Case No. 11,024.

Under Act July 13, 1861, goods forming the cargo of a vessel proceeding to a point in the insurrectionary states are liable to forfeiture only when in transitu, and the vessel only while the contraband cargo is on board.—United States v. The Francis Hatch, Case No. 15,158.

Under the regulations made under the authority of Acts July 13, 1861, May 20, 1862, and July 2, 1864, a vessel engaged in a prohibited trade is liable to forfeiture, even after the termination of the prohibited voyage and the discharge of the contraband cargo.—United States v. The Francis Hatch, Case No. 15,158.

Innocent goods on board will share the fate of contraband goods where they belong to the same owner.—The Peterhoff, Case No. 11,024; The Springbok, Id. 13,264.

Contraband articles intended to be delivered from a neutral port, by transshipment into the enemy's country, and for the use of the enemy, are liable to capture.—The Peterhoff, Case No. 11,024.

A neutral cannot lawfully become the carrier of provisions for the supply of the enemy's army, though such army be in a neutral country, and engaged only in hostilities against another belligerent; and in such case the vessel employed is not entitled to freight.—The Commercen, Case No. 3,055.

Where the vessel is employed with the knowledge of her master in carrying contraband goods to the enemy's country by means of transshipment at an intermediate port, from which they are sent on in another vessel, the vessel is subject to condemnation with the cargo.—The Springbok, Case No. 13,264; The Stephen Hart, Id. 13,364.

The offense of attempting to carry contraband of war to the enemy is complete at the moment when a vessel begins her voyage for that purpose, and she is from that time liable to capture.—The Dolphin, Case No. 3,975; The Stephen Hart, Id. 13,364; The Peterhoff, Id. 11,024.

And this is the rule although the vessel intended to transship the same at an intermediate port.—The Stephen Hart, Case No. 13,364; The Springbok, Id. 13,264.

Vessel and cargo condemned for transporting contraband of war to the enemy.—The Ezilda, Cases Nos. 4,599, 4,600; The Gertrude, Id. 5,369; The Nassau, Id. 10,026; The Peterhoff,

Id. 11,023; The Richard O'Bryan, Id. 11,767; The Springbok, Id. 13,263; The Stephen Hart, Id. 13,363.

§ 39. Violation of blockade.

To constitute a violation of blockade, there must be the existence of the blockade, a knowledge thereof, and a running of the same with a cargo laden after the commencement of the blockade.—Conner v. The Coosa, Case No. 3,113.

The act of sailing for a blockaded port with knowledge of the blockade, and an intention to violate it, is an attempt which will authorize the capture and condemnation of the vessel.—The Circassian, Case No. 2,727; The Dolphin, Id. 3,975; Ingraham v. The Nayade, Id. 7,046. CONTRA, see The John Gilpin, Case No. 7,343.

If a vessel, after sailing with intent to break a blockade, abandons such purpose, and changes her destination, the original offense is condoned.—The Circassian, Case No. 2,727; The John Gilpin. Id. 7,343.

Neutral vessel *held* not subject to forfeiture for sailing to a blockaded port with knowledge of a proclamation declaring an intent to blockade the port, where it was not its intention to violate an actual blockade. Case No. 4,477 reversed.—The Empress, Case No. 4,478.

The voyage of a vessel to a blockaded port, although broken by a stop at a neutral port, is one continuous illegal voyage.—The Dolphin, Case No. 3,975; The Pearl, Id. 10,874.

An attempted breach of blockade cannot be predicated on the intention to land the cargo of a vessel wrecked on an enemy's coast temporarily on the adjoining shore, until it could be conveyed to a loyal port.—United States v. The F. W. Johnson, Case No. 15,179.

The departure of a vessel from a blockaded port, under the compulsory direction of a blockading cruiser, does not reintegrate her to the state of an innocent trader, where she approached the port with knowledge of the blockade, and with intent to violate it.—The Louisa Agnes, Case No. 8,531.

After cargo has been delivered to a neutral consignee at a neutral port, it is not subject to capture as having been originally brought from an enemy blockaded port in violation of the blockade.—The Isabella Thompson, Case No. 7,102.

A vessel approaching a blockaded port, with intent to violate the blockade, is not entitled to be warned off.—The Hallie Jackson, Case No. 5,961; United States v. The Hattie Jackson, Id. 15,327.

A vessel having knowledge of a blockade at the time of sailing cannot lawfully approach the port for the bona fide purpose of inquiring as to the continuance of the blockade.—The Delta, Cases Nos. 3,777, 3,778; The Cheshire, Id. 2,655, 2,657.

The master is entitled to make inquiry and to receive notice of blockade of whose existence he had no previous knowledge.—The Delta, Case No. 3,778.

An entry into a blockaded port to obtain necessary supplies excused.—The Forest King, Case No. 4,937.

Owners of vessel, and generally owners of cargo, bound by violation of blockade by master.—The Aries, Case No. 528.

Cotton picked up at sea by a United States cruiser *held* properly proceeded against as prize where the circumstances showed that it had recently been abandoned either by an enemy or a neutral engaged in breaking the blockade.—In re Seventy-Eight Bales of Cotton, Case No. 12,679.

The running of a neutral vessel into a blockaded port, of which its owner had due notice, subjects her to forfeiture, regardless of the instructions of the owner, or her intentions.—The Napoleon, Case No. 10,013.

On notice of a blockade a neutral vessel may withdraw from the port, with all the cargo honestly laden on board before the commencement of the blockade.—The Hiawatha, Case No. 6,451.

Where 15 days are allowed for neutral vessels to leave on proclamation of a blockade, a vessel cannot leave within such time with a cargo put on board after notice that the blockade had become effective.—United States v. The Tropic Wind, Case No. 16,541a.

The act of egress is as culpable as the act of ingress, when done in fraud of a blockade.—The Hiawatha, Case No. 6,451.

The acts of a master in breach of a blockade affect the cargo equally with the vessel, if the cargo is laden on board after the blockade has become effective as to the vessel.—The Hiawatha, Case No. 6,451.

An innocent shipment will share the fate of the vessel and other cargo, where an attempt has been made to violate a blockade of which the shipper had notice.—The Sunbeam, Case No. 13,615; United States v. The Hattie Jackson, Id. 15,327.

Coin taken in a vessel which was captured in the act of breaking a blockade is liable to condemnation, though belonging to a neutral, and not intended to be used in trade.—The Wando, Case No. 17,140.

Cargo on board a neutral vessel, to which it has been transshipped in a neutral port from a vessel which has run a blockade, is subject to capture, where there is a solidarity of interests between the vessels, and the voyage was continuous.—The Isabella Thompson, Case No. 7,102.

Neither a consul nor the commander of an American vessel of war has authority, by virtue of his official station, to grant any license or permit which could have the legal effect of exempting the vessel of an enemy from capture and confiscation.—Rogers v. The Amado, Case No. 12,005.

§ 40. Enemy property—In general.

As soon as war is declared, all the property of the enemy or of his subjects, wherever found, whether on the land or water, is lawful prize.—Johnson v. Twenty-One Bales, etc., Case No. 7,417; The Emulous, Id. 4,479.

But books intended for a public library will not be confiscated.—The Amelia, Case No. 277.

§ 41. —— Property of neutrals domiciled in enemy country.

Political status, and not individual loyalty or disloyalty, is controlling on the question of enemy ownership.—The Amy Warwick, Case No. 342; The Hiawatha, Id. 6,451; The Peterhoff, Id. 11,024; The Pioneer, Id. 11,171a, 11,174; The Sally Magee, Id. 12,260; United States v. The Allegheny, Id. 14,429; Same v. The F. W. Johnson, Id. 15,179.

National character depends upon domicile.—The Ann Green, Case No. 414; United States v. El Telegrafo, Id. 15,049; Johnson v. Twenty-One Bales, etc., Id. 7,417.

The intention as to residence openly declared, however short the residence, will establish the domicile.—Johnson v. Twenty-One Bales, etc., Case No. 7,417.

A temporary excursion to the place of the original domicile, or to any other, will not be deemed to interrupt the residence.—Johnson v. Twenty-One Bales, etc., Case No. 7,417.

The character of a ship is determined by the residence of her owners, and not by the flag she

carries.—The San Jose Indiano, Case No. 12,-322.

And property belonging to a neutral who is domiciled and carrying on trade at an enemy port is enemy property.—The Delta, Case No. 3,777; The Francis, Id. 5,034; The Sarah Starr, Id. 12,352.

Inhabitants of Chincoteague island, separated from the coast of Virginia by a ship canal, *held* not to be enemies on the ground of their residence.—The Elizabeth Ann, Case No. 4,357.

A foreign consul, carrying on trade as a merchant in the enemy's country, where he is stationed, is considered as on the same footing with other resident merchants, and his property on the high seas is subject to capture and condemnation.—The Pioneer, Case No. 11,175.

Thirteen years' residence in the enemy's country of a citizen of another country *held* to subject him to the disabilities of an enemy.—Rogers v. The Amado, Case No. 12,005.

The commercial residence of the master of a vessel will define his personal relations as apparent owner.—The Island Belle, Case No. 7,-107.

Property of persons residing within the rebel lines during the War of the Rebellion is proper prize.—The Mary Clinton, Case No. 9,203.

The fact that a person's place of residence is occupied by the army of the United States will not affect his status, where the government of the state is still under the control of the insurgents.—United States v. The Allegheny, Case No. 14,429.

A person who puts himself in itinere to return to his native country is deemed to have assumed his native character.—The Francis, Case No. 5,034; The St. Lawrence, Id. 12,232.

The separate property of a neutral partner in a house of trade established in an enemy's country is not subject to confiscation; otherwise, as to property of the firm.—The San Jose Indiano, Case No. 12,322.

Where a partner in a neutral house is domiciled in the enemy's country, and engaged in its general commerce, for the benefit of his neutral house, his property is liable as prize.—The San Jose Indiano, Case No. 12,322.

In the case of a joint shipment from enemy country, the share of the partner domiciled in the enemy country was condemned.—The Francis, Case No. 5,035.

Under the treaties of 1794, 1814, and 1815, a British merchant, residing in a port of a seceding state during the war, has no immunity from the general principles of public law, applicable to resident neutral merchants.—The Sarah Starr, Case No. 12,352.

Vessel and cargo owned by aliens residing in the enemy's country will be restored where delivered to the blockading squadron on fleeing the country to save it from the enemy.—The Evening Star, Case No. 4,575.

§ 42. —— Property of temporary residents, and withdrawal thereof.

A citizen temporarily residing in the enemy's country at the breaking out of the war is entitled to a reasonable time to collect and convert his effects to enable him to withdraw them from the country. Case No. 7,343 reversed.—The John Gilpin, Case No. 7,344; The San Jose Indiano, Id. 12,322; The Sarah Starr, Id. 12,353.

A loyal citizen converted his property into a vessel and cargo for the purpose of withdrawing himself and effects from the enemy's country. *Held* not subject to capture as enemy's property. Case No. 5,308 reversed.—The General C. C. Pinckney, Case No. 5,309.

But a naturalized citizen cannot lawfully bring away his property from an enemy country after knowledge of the war, without the license of the government.—The St. Lawrence, Case No. 12,-232; The Rapid, Id. 11,576.

§ 43. —— Property shipped from enemy country.

Enemy property, shipped by an enemy, from an enemy port, to his creditor, to be applied on a debt, is subject to capture at sea before it comes to the creditor's hands.—The Hannah M. Johnson, Cases Nos. 6,029a, 6,030.

Property shipped from an enemy's country by an American citizen, after knowledge of the war, is subject to condemnation as enemy property.—The Mary, Case No. 9,184.

Cargo purchased with the proceeds of an outward cargo *held* to be the property of the consignees from the time it was laden on board and bills of lading executed therefor.—The Sally Magee, Case No. 12,260.

A shipment made by an enemy shipper to his correspondent in America, to belong to the latter at his election, in 24 hours after arrival, is liable to condemnation as hostile property.—The Francis, Case No. 5,032.

Cotton purchased during the Civil War with the proceeds of debts collected by a citizen of a loyal state, who went south before the war to collect such debts, captured while water borne in Texas, *held* not enemy's property. Case No. 4,-784 reversed.—Fifty-One Bales of Cotton, Case No. 4,785.

A shipment made by a person domiciled in the enemy's country to a house established in a neutral country, in which he is a partner, if made upon their joint account and risk, is not liable to condemnation.—The San Jose Indiano, Case No. 12,322.

A shipment made by such house to the partner domiciled in a neutral country is only liable as prize where made on joint account.—The San Jose Indiano, Case No. 12,322.

§ 44. —— Property shipped to enemy country.

Property shipped to become the property of the enemy is not protected by neutrality of shipper.—The Ann Green, Case No. 414.

Property purchased as stock, in a trade to be carried on in the enemy's country, by a person domiciled and permanently residing there, is subject to forfeiture.—The Lilla, Case No. 8,348.

§ 45. —— Produce of soil of enemy country.

Produce of the enemy's soil owned by a neutral, while it remains in the enemy's country, is enemy property.—The Mary Clinton, Case No. 9,203.

Produce of the soil of a hostile country, embarked in the commerce thereof, is legitimate prize, regardless of the owner's domicile.—The Mary Clinton, Case No. 9,203.

§ 46. —— Flag under which property is carried.

Mortgaged property put on board a belligerent vessel by the mortgagor, rightfully in possession, is subject to capture.—Bolchos v. Darrel, Case No. 1,607.

A vessel sailing under the flag of the enemy is considered as enemy property, and is liable to confiscation, jure belli.—United States v. El Telegrafo, Case No. 15,049.

Neutral property in an enemy's ship is forfeited by the treaty with France. Article 14.—Bolchos v. Darrel, Case No. 1,607.

A neutral flag constitutes no protection to enemy's property, and a belligerent flag communicates no hostile character to neutral prop-

erty.—United States v. El Telegrafo, Case No. 15,049.

Vessel does not forfeit neutral character by hoisting foreign flag in conformity to trade regulations.—Arnold v. Delcol, Case No. 556.

§ 47. —— Change of ownership during war.

In war, property cannot change its hostile character in transitu.—The Francis, Case No. 5,032.

A change of ownership during hostilities will not be recognized where the disposition and control of the vessel continue in the former agent of her formerly hostile proprietors.—The Island Belle, Case No. 7,107.

A sale of property during hostilities in an enemy port, by a person domiciled and trading there, to a neutral, will not prevent the property being subject to capture as prize.—The Sarah Starr, Case No. 12,352.

Enemy property transferred to a neutral residing at the time in the enemy's country does not lose its character as enemy property.—The Stephen Hart, Case No. 13,364.

§ 48. —— Fraudulent claim by neutral.

Fraudulent conduct of a neutral owner of a portion of the property captured, in claiming another part which belongs to an enemy, is ground of forfeiture of his portion.—The Lilla, Case No. 8,348; United States v. The Lilla, Id. 15,600.

Portion of cargo clearly owned by neutral not confiscated because of his claim of ownership to the whole, unless fraudulently made.—The Betsy, Case No. 1,364.

§ 49. —— Rights of neutral lienors.

The interests of a loyal mortgagee under a mortgage recorded before the outbreak of hostilities will not be condemned because of enemy ownership.—United States v. The Arcola, Case No. 14,464a.

§ 50. Trading and intercourse with enemy.

During war, all trade with the enemy, unless by permission of the sovereign, is interdicted, and subjects the property engaged therein to confiscation.—The Eliza, Case No. 4,346; The Rapid, Id. 11,576; The San Jose Indiano, Id. 12,322; The Shark, Id. 12,708.

American vessel loading in enemy's port after knowledge of war declared, liable to confiscation for trading with enemy.—The Alexander, Case No. 164.

A vessel has not proceeded or departed on her voyage within Acts July 13, 1861, and May 20, 1862, and the rules and regulations of the secretary of the treasury supplementary thereto, until she is outside the limits of the harbor or her port of departure.—United States v. The George Darby, Case No. 15,200.

A trade to a neutral port is not illegal, although the public enemy derive benefit thereby, unless such trade be carried on in connection with or subservient to hostile interests and policy.—The Liverpool Packet, Case No. 8,406.

An American vessel, which, after a knowledge of the war, proceeds from a neutral to an enemy port on freight, is subject to forfeiture on her return voyage to the United States.—The Joseph, Case No. 7,533.

The law of prize is a part of the law of nations, and by it hostile character of trade does not depend upon the character of the trader who pursues it.—Conner v. The Coosa, Case No. 3,113.

A vessel guilty of an unlawful trade with the enemy is liable to capture at any time during the voyage. Case No. 9,414 affirmed.—The Memphis, Case No. 9,413.

If a vessel be sent from the United States, after knowledge of war, to the enemy's country, to withdraw such property, the vessel and the cargo are confiscated jure belli.—The Rapid, Case No. 11,576.

A shipment made after known war, by an American citizen from an enemy's port to one of her colonies, is illegal, as a trading with the enemy.—The Diana, Case No. 3,876.

An American vessel is liable to condemnation as prize of war for taking on board a cargo from an enemy's ship under the pretense that it is ransomed, and she may be seized on the return voyage.—The Lord Wellington, Case No. 8,508.

A trading voyage by an American vessel is not made unlawful by directing that the proceeds shall be remitted to American citizens detained in the enemy's country in bills of exchange drawn upon that country.—United States v. The Ariadne, Case No. 14,465.

A British subject domiciled in United States, though temporarily absent in British territory, is an American merchant as to purposes of trade.—The Ann Green, Case No. 414.

The trade between Jamaica and Canada not national during war between the United States and Great Britain.—The Ann Green, Case No. 414.

A neutral friend to both belligerents cannot transport the effects of one to the use of the other.—The Mary Clinton, Case No. 9,203.

The carrying of military or naval persons in the service of the enemy to enemy ports subjects the offending vessel to condemnation.—United States v. The Wren, Case No. 16,768.

Sailing under enemy's license is cause for forfeiture of neutral vessel.—The Alliance, Case No. 245; The Aurora, Id. 660; The Julia, Id. 7,575. But see The Sarah Starr, Case No. 12,352; United States v. The Ariadne, Id. 14,465; Hooper v. The Hiram, Id. 6,675; United States v. The South Carolina, Id. 16,360.

A transfer of property to a neutral by an enemy in time of war, or in aid of a contemplated war, is illegal, as in violation and fraud of vested belligerent rights.—The Mersey, Case No. 9,489.

The transfer of an enemy vessel by an enemy to a neutral in an enemy port during the war is void.—The Cheshire, Case No. 2,655; The Delta, Id. 3,777.

The sale of a vessel of war by a belligerent to a neutral during hostility is not valid as against the other belligerent.—United States v. The Etta, Case No. 15,060.

A war ship of a belligerent, sold in a neutral port to a neutral, who had full notice of its character, but bought it in good faith for the merchant service, is subject to capture on the high seas, and condemnation as a prize.—The Georgia, Case No. 5,349.

An American ship, carrying dispatches from a foreign minister in this country to his government after declaration of war, is subject of condemnation as prize.—The Tulip, Case No. 14,234.

A neutral vessel which endeavors, by false appearances, to cover the property of a belligerent from the lawful seizure of the enemy, is herself liable to seizure.—Schwartz v. Insurance Co. of North America, Case No. 12,504.

A neutral owner is concluded by the act of his agent in charge, in allowing the vessel to be employed by the enemy.—The Napoleon, Cases Nos. 10,012, 10,013.

Property captured trading with the enemy is deemed quasi enemy property.—The Joseph, Case No. 7,533; The Rapid, Id. 11,576.

French privateers protected in bringing prizes into American ports, though such privateers

were originally American vessels. Treaty Feb. 6, 1778, art. 17.—British Consul v. The Mermaid, Case No. 1,897.

(D) JURISDICTION AND PROCEDURE.

Jurisdiction over captures and prizes, see, also, "Admiralty," 35; "Courts," § 98.

§ 51. Jurisdiction—In general.

The United States district courts are permanent prize tribunals, and take cognizance of questions of prize by virtue of their general jurisdiction.—The Amy Warwick, Cases Nos. 341, 342.

The court of the district into which the property is carried and proceeded against has jurisdiction.—The Peterhoff, Case No. 11,024.

The exclusive cognizance of prize cases is vested in the courts of the capturing power.—The Invincible, Case No. 7,054.

A foreign prize court which has once acquired jurisdiction over the corpus does not lose it because the same is taken into another jurisdiction by a purchaser from the captors. Case No. 12,047 reversed.—Rose v. Himely, Case No. 12,046.

Jurisdiction may be taken while property captured is lying in foreign neutral port.—The Arabella, Case No. 501.

Where the captured vessel was destroyed because unfit to be sent in for adjudication, but the cargo was sent in, *held*, that the court had jurisdiction.—The Zaralla, Case No. 18,203.

Where the captured vessel is appraised by a naval survey, and appropriated to the United States, she may be proceeded against in a prize court, where her papers and crew, together with the appraisal, are sent in.—The Advocate, Case No. 94.

It is the usage of prize courts to exercise jurisdiction over property captured on board a vessel without having the vessel itself brought within their cognizance.—The Edward Barnard, Case No. 4,291; Proceeds of Prizes of War, Id. 11,440.

The confiscations provided for by Act July 3, 1861, § 6, and Act Aug. 6, 1861, can be carried into effect by the prize courts of the United States, as respects property captured at sea.—The Sarah Starr, Case No. 12,352.

§ 52. —— As affected by locality of capture.

The prize jurisdiction embraces the whole question of prize, unrestrained by the locality of the capture.—Johnson v. Twenty-One Bales, etc., Case No. 7,417; The Hiawatha, Id. 6,451; Two Hundred and Eighty-Two Bales of Cotton, Id. 14,291.

The courts of the United States have jurisdiction over all prizes made in ports, as well as on the high seas, by virtue of the delegation of admiralty and maritime jurisdiction.—The Emulous, Case No. 4,479.

The prize court has cognizance of all captures in an enemy country, made in creeks, havens, and rivers by a naval force acting alone or in co-operation with land forces.—Two Hundred and Eighty-Two Bales of Cotton, Case No. 14,291.

Captures of vessels on navigable rivers are not within the prize jurisdiction unless made by the naval arm, or by its co-operation, contributing immediately in effecting the capture.—United States v. Two Hundred and Sixty-Nine and One-Half Bales of Cotton, Case No. 16,583.

A capture by naval forces of property stored in a warehouse near the shore of a harbor is a subject of prize jurisdiction.—United States v. Seven Hundred and Three Casks of Rice, Case No. 16,253b.

The district courts have prize jurisdiction in case of property, recently water-borne, captured on a wharf by man-of-war's men in boats.—Six Hundred and Eighty Pieces of Merchandise, Case No. 12,915.

The admiralty courts have jurisdiction in prize over captures made on the Mississippi river during the Civil War.—United States v. Two Hundred and Sixty-Nine and One-Half Bales of Cotton, Case No. 16,583.

§ 53. —— Courts of neutral country.

Jurisdiction of a neutral court is ousted in case of capture on the high seas, by a privateer lawfully commissioned, of the property of an enemy to the sovereign issuing the commission, though the capture was originally made by a proscribed privateer.—Castello v. Bouteille, Case No. 2,504.

A prize court of the United States has no jurisdiction on the capture of a British vessel by a French privateer, within the territorial jurisdiction of the United States.—Findlay v. The William, Case No. 4,790.

The federal district courts will not assume jurisdiction of prize matters of foreign nations occurring upon the high seas flagrante bello.—Hernandez v. Aury, Case No. 6,413.

Though the question of prize or no prize belongs exclusively to the courts of the captor, a neutral will restore a prize wrongfully taken by one of the belligerents in violation of the rights of the neutral.—Chacon v. Eighty-Nine Bales of Cochineal, Case No. 2,568.

§ 54. Procedure in general.

Common-law principles and rules of evidence cannot be applied in a prize court.—The Tulip, Case No. 14,234.

The rules of practice in admiralty are the basis of practice in prize in our national courts.—The Wave, Case No. 17,298.

The practice in prize proceedings is governed by the English practice, where not regulated by decisions or rules of our courts.—The Prince Leopold, Case No. 11,428.

Construction of Act 1862, c. 50, for better administration of law of prize.—The Amy Warwick, Case No. 342.

In a proceeding under Act Aug. 6, 1861, to forfeit an interest in a vessel, the pleadings and proceedings are subject to like rules as in ordinary cases of prize of war.—United States v. The Picayune, Case No. 16,041a.

§ 55. Release of property on bond.

Prize goods will not be delivered on bail unless claimant shows a prima facie legal title.—The Diana, Case No. 3,876.

No delivery on bail will be made to either captor or claimant until after hearing.—The Diana, Case No. 3,876; The George, Id. 5,327.

Unless by consent.—The Euphrates, etc., Case No. 4,546.

The appellate court will not hold itself bound by the action of the district court in allowing a delivery on bail in a gross case of illegality.—The Diana, Case No. 3,876.

A sale is preferable to an appraisement when the value is to be ascertained for the purpose of a delivery on bail.—The George, Case No. 5,327.

Where cargo delivered on what afterwards appeared insufficient bail had passed to bona fide purchasers, *held*, that a monition should issue against the claimants to pay into court the excess in value over the amount of bail.—The Lynchburg, Case No. 8,638.

A vessel seized as prize and released on bonds is subject to capture and condemnation for a

subsequent violation of the blockade on the same voyage.—The Rising Dawn, Case No. 11,857.

In a suit on a bond for the redelivery of property seized, the amount of the judgment is the highest price for the property between the date of the bond and the date of the judgment.—United States v. The Rob Roy, Case No. 16,179.

§ 56. Transferring property seized to use of government.

The court has power to appraise property captured as prize, and to transfer it to the use of the government before condemnation, at its appraised value.—The Ella Warley, Case No. 4,371.

The appraised value at which a prize is accepted by the United States and devoted to the public use will be regarded as her true value in decreeing a forfeiture.—The Express, Case No. 4,597.

An order appointing appraisers before libel filed, without notice to any claimant, but under circumstances showing assent of subsequent claimants thereto, will not be set aside on their subsequent motion.—The Memphis, Case No. 9,412.

That an order appointing appraisers was signed by the judge out of his district does not affect its validity.—The Memphis, Case No. 9,412.

§ 57. Sale of property.

Order to sell cargo denied when allegation of necessity is not supported by preponderance of evidence.—The Alliance, Case No. 244.

On motion for the sale of a cargo as perishable, the judgment of the prize commissioners will control, unless overborne by evidence produced.—The Nassau, Case No. 10,025.

Prize property which is in a perishing condition will be ordered to be sold.—The Crenshaw, Case No. 3,384; The Ella Warley, Id. 4,372; Stoddard v. Read, Id. 13,470.

After the condemnation of a vessel and cargo, but before entry of the decree, a sale of the same will not be ordered, where it does not appear that they were perishable.—The Cheshire, Case No. 2,656.

The district court may order a sale of cargo as perishable, pending an appeal to the circuit court.—The Pioneer, Case No. 11,172.

Where the cargo captured is in a perishable condition, it will be ordered to be sold by the circuit court pending an appeal to the supreme court.—The Hiawatha, Case No. 6,452.

On interlocutory sales of prize, marshal must bring proceeds of sale into court, with a regular account.—The Avery, Case No. 671.

Sale by order of the provisional agent at Barracoa is valid, being subsequently confirmed by the proper jurisdiction at Guadaloupe, under a law existing before the capture.—Dennis v. The Lear, Case No. 3,796.

Belligerents have no right, unless secured by treaty, to sell their prizes in a neutral port.—Consul of Spain v. Consul of Great Britain, Case No. 3,138.

If French privateers, duly commissioned, make lawful captures on the high seas, sales by them in our ports cannot be prevented.—Moodie v. The Amity, Case No. 9,741.

§ 58. Parties.

Prize proceedings should be taken in the name of the government and not in the names of the individual captors.—Proceeds of Prizes of War, Case No. 11,440.

But where the United States district attorney authorizes a suit, for the condemnation of a prize, to be filed in the names of the individual captors, the court will allow the proceedings to be so conducted, instead of requiring that the suit be instituted on behalf of the government.—Proceeds of Prizes of War, Case No. 11,440.

Notice to the master of a prize suit against the vessel is notice to her real owner, making him a party.—Cushing v. Laird, Case No. 3,509.

§ 59. Pleadings and claims.

The proper form of a libel in prize is a mere general allegation of prize.—The Empress, Case No. 4,476; The Sally Magee, Id. 12,260.

The libel need not specifically set forth the grounds on which condemnation is sought.—The Revere, Case No. 11,716.

This is the rule under Act Aug. 6, 1861.—United States v. The Picayune, Case No. 16,041a.

A prize delivered to the court by the prize master is under its control, and the filing of a libel is not necessary to give it jurisdiction of the property.—The Memphis, Case No. 9,412.

A general prize allegation cannot be properly joined with an information on a seizure for the violation of a statute.—The Dimon, Case No. 3,917.

The defense, in the claim, must be limited to a contestation of the allegations of the libel.—The Empress, Case No. 4,476.

An answer or claim need contain nothing more than a general denial of the grounds of condemnation alleged.—The Delta, Case No. 3,777; The Joseph H. Toone, Id. 7,540; The Lynchburg, Id. 8,637a.

It is irregular to subjoin to the claim anything besides a test oath.—The Empress, Case No. 4,476.

Such irregularities will be corrected on motion, without formal exceptions.—The Empress, Case No. 4,476.

The practice stated as to the claim and test oath.—The Empress, Case No. 4,476.

Prolixity of statement in answer and claim criticised.—The Lynchburg, Case No. 8,637a.

A motion by the owner of the cargo for leave to put in a claim allowed, omitting the special averments.—The Joseph H. Toone, Case No. 7,540.

A claim and answer in a prize suit cannot put in issue anything but the question of prize or no prize.—The Napoleon, Case No. 10,012.

A claimant cannot put in a special claim or answer leading to any other issue than the one simply of prize or no prize without the assent of the United States attorney or the special order of the court.—The Louisa Agnes, Case No. 8,531.

Claims should be made by the parties themselves, if within the jurisdiction, and not by their agents.—The Lively, Case No. 8,403; The St. Lawrence, Id. 12,232; The Sally, Id. 12,258.

Effect of a claim and answer in a prize suit put in and verified by an agent, and not by the owner.—The D. Sargeant, Case No. 4,098.

The consul of a nation may claim on behalf of its subjects in the absence of any authorized agent.—The London Packet, Case No. 8,474.

A claim to the captured property may be interposed by the master or agent, but it must be in behalf of the proper party. If no claim is made, the property will be condemned as belonging to an enemy.—United States v. The Lilla, Case No. 15,600.

Claims presented after the proofs have been opened and examined, and after hearing the reasons assigned for condemnation, are never favored.—United States v. The Lilla, Case No. 15,600.

A claimant will not be allowed to inspect documents found on board a prize for the purpose of stating his claim correctly.—The Cuba, Case No. 3,457.

An averment that claimants were citizens of the United States *held* a suppression of the fact that they were resident traders in the enemy's country.—The Sally Magee, Case No. 12,260.

§ 60. Evidence—Presumptions and burden of proof.

The burden of proof in all prize causes is on claimants.—Johnson v. Thirteen Bales, etc., Case No. 7,415.

Claimants, admitted or proved to be alien enemies, must be presumed to be in the ordinary and usual situation of alien enemies; that is, out of our country.—Johnson v. Thirteen Bales, etc., Case No. 7,415.

If the constitution of a foreign tribunal be not known, it will be presumed to be a legal one. —Snell v. Faussatt, Case No. 13,138.

All goods found on board an enemy's ship, are presumed to be enemy property unless a distinct neutral character is impressed upon, and accompanies, them.—The Flying Fish, Case No. 4,892: The San Jose Indiano, Id. 12,322.

Where a shipment is made to partners, they will be *held* by the court to take in equal moieties, unless upon the original papers a different proportion appears.—The San Jose Indiano, Case No. 12,322.

Either spoliation of papers or falsified destination creates a legal presumption of hostile ownership.—The Bermuda, Case No. 1,345.

The absence of all papers, where the vessel was captured off a blockaded coast, far out of the route of her ostensible voyage, after a long chase, *held* a strong presumption of intentional destruction.—United States v. The Onachita, Case No. 15,919a.

Claimant has the burden of showing by clear evidence that the vessel was compelled to enter the blockaded port, as alleged, by overwhelming necessity, arising from injuries received at sea, and the loss of fuel, water, and provisions.—The Sunbeam, Case No. 13,613.

A vessel clearing from Nassau for St. John, N. B., laden with arms and munitions of war, found off Charleston, S. C., during a blockade, *held* prima facie liable to condemnation.—The Elizabeth, Case No. 4,351.

On a monition to proceed to adjudication, the onus probandi rests on the claimant.—The Rover, Case No. 12,091.

§ 61. —— Admissibility.

During war, no claim standing in opposition to the ship's papers and preparatory evidence is ever admitted in a prize court.—The Diana, Case No. 3,876.

Verified copies are admissible where the documents themselves which were the cause of the capture have been surreptitiously taken from the possession of the prize master.—The Julia, Case No. 7,575.

Where no prevarication or other improper conduct on the part of the captured vessel is shown the question of condemnation of the vessel is to be determined from the papers found on board. —United States v. The South Carolina, Case No. 16,360.

On a libel of a captured vessel, a settled course of trade in violating the blockade, and the employment of the vessel before in such trade by the same owner, may be considered.—The William H. Northrop, Case No. 17,696.

In seizures for breach of blockade, the captors may put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an attempt to violate the blockade. —The Joseph H. Toone, Case No. 7,541.

Claimants *held* not estopped, by license and clearance for one place, to show that the primary destination of the voyage was another place, so as to save forfeiture.—The David E. Wolf, Case No. 3,594.

A statement made on the record by the prize commissioner, in regard to the reluctance of a witness to answer, is not evidence.—The Peterhoff, Case No. 11,024.

A document produced for the first time at the hearing, and forming no part of the deposition in the case, is not admissible in evidence. —The Peterhoff, Case No. 11,024.

Papers in a prize court of another country are inadmissible to show that there was no cause for capture, unless the whole papers are produced.—The Rover, Case No. 12,091.

Proofs from two other cases on the docket of the court for trial at the same time allowed under Prize Rules No. 33.—The Springbok, Case No. 13,264.

The proof in one case invoked in another, where the bill of lading on one vessel covered the cargo of both, and the shippers and consignees were the same.—The Albert, Case No. 138.

The rule requiring evidence obtained directly from documents or witnesses found on board of a vessel at the time of her seizure is not imperative.—Proceeds of Prizes of War, Case No. 11,440.

The rule requiring the master and crew of the prize vessel to be produced as witnesses may be dispensed with where there is no means of complying therewith, and secondary evidence admitted.—The Actor, Case No. 36.

On special order the testimony of the captors and witnesses present at the capture was allowed, the master, crew, and passengers having inadvertently been allowed to escape.—The Falcon, Case No. 4,616.

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. On special leave of the court witnesses for the capturing vessel were examined.—The Zaralla, Case No. 18,203.

Examination of witnesses confined to persons on board vessel at time of capture.—The Alliance, Case No. 246.

§ 62. —— Weight and sufficiency.

Effect of spoliation of ship's papers.—The Peterhoff, Case No. 11,024; The Stephen Hart, Id. 13,364.

The mutilation of a logbook of a vessel in a position to violate a blockade is ground of condemnation where not satisfactorily explained.— The Ella Warley, Cases Nos. 4,373, 4,374.

The intentional mutilation of a logbook is a suspicious circumstance, which cannot be overcome by doubtful evidence.—The Mersey, Case No. 9,489.

An obstinate suppression of the ship's papers, etc., coupled with a voyage from an enemy country, is sufficient cause of condemnation.— The St. Lawrence, Case No. 12,232.

Effect of absence of invoice.—The Peterhoff, Case No. 11,024; The Springbok, Id. 13,264.

Effect of false and simulated papers.—The George, Case No. 5,328; The Gertrude, Id. 5,369; The J. W. Wilder, Id. 7,592; The Louisa Agnes, Id. 8,531; The Peterhoff, Id. 11,023; The Revere, Id. 11,715; The Robert Bruce, Id. 11,889; The Scotia, Id. 12,514.

Vessel captured close in shore near blockaded port, with falsified papers, and cargo of first importance to enemy, condemned.—The Mary Jane, Case No. 9,214.

Spanish papers found on board an American vessel do not prove double papers if no other marks of fraud appear.—Arnold v. Delcol, Case No. 556.

The refusal to send the ship's papers to the capturing vessel is a suspicious circumstance.—The Peterhoff, Case No. 11,024.

The effect of deficiencies in the manifest, and defects in the bills of lading, considered.—The Peterhoff, Case No. 11,024.

Persistent misrepresentation by the claimant of the character and destination of the voyage of the captured vessel is sufficient cause for condemnation of vessel and cargo.—The Revere, Case No. 11,716; The San Jose Indiano, Id. 12,322.

A vessel condemned because her destination was falsified at the port of departure, and because the master, in the preparatory examination, made false statements as to the ownership of the cargo.—The Herald, Case No. 6,391.

The purchase of an enemy's vessel in a neutral port is itself a suspicious circumstance, so that the evidence of an absolute bona fide transfer should be clearly established.—United States v. The Lilla, Case No. 15,600.

Vessel captured with contraband cargo near enemy's coast, and 150 miles off her course as designated on her papers, condemned.—The Nymph, Case No. 10,387.

Cargo sent in by another vessel, the captured vessel being appropriated by the United States, condemned on the evidence of a person present at the capture.—The Wave, Case No. 17,299.

The spoliation of property or the failure to send in the officers and crew with the vessel for examination can only be justified by an overruling necessity.—The Jane Campbell, Case No. 7,205.

Defendant, claiming a vessel under condemnation of a foreign tribunal, must prove that the tribunal was properly constituted.—Snell v. Faussatt, Case No. 13,138.

The case, in the first instance, is to be tried on evidence coming from the captured; and, if that does not raise a doubt, the property will be restored.—The Stephen Hart, Case No. 13,364.

Where it is claimed that an enemy vessel has been transferred during the war to a neutral, competent proof of the transfer must be produced, or the vessel will be regarded as enemy property.—The Stephen Hart, Case No. 13,364.

The mere registry of the vessel in the name of the neutral claimant as owner is not enough. —The Stephen Hart, Case No. 13,364.

A contingent destination to a blockaded port, if it in fact existed, must appear on the ship's papers.—The Delta, Case No. 3,777.

Previous notorious enemy ownership and illicit trade *held* sufficient to condemn vessel where bona fide purchase and voyage not shown. —The Belle, Case No. 1,272.

A vessel was condemned which had among her cargo arms, described in her freight list as "hardware" and cotton cards, not marketable at the port for which the vessel cleared, though her papers did not show any other destination.—The Dolphin, Case No. 3,975.

A clear necessity will justify an entrance into a blockaded port, but satisfactory evidence will be required of the reality and urgency of the necessity.—Ingraham v. The Nayade, Case No. 7,046; The Major Barbour, Id. 8,983.

Vessel loaded with arms, ammunition, etc., found several hundred miles out of her true course, and heading towards a blockaded port, *held* properly condemned.—The Joseph H. Toone, Case No. 7,543.

Vessel sailing under neutral flag, whose open papers show neutral ownership, was condemned upon other papers found, artfully concealed, tending to show enemy ownership.—The Fortuna, Case No. 4,954.

Evidence showing actual hostile destination of vessel.—The Alma, Case No. 253.

Where the testimony of witnesses from the delinquent vessel is dispensed with, adequate proof must be supplied aliunde of the delictum charged.—The Thomas Watson, Case No. 13,933.

Enemy ownership *held* proved by the uncontradicted testimony of the owner as to his residence, supported by a recital in a mortgage given by him.—United States v. The Arcola, Case No. 14,464a.

Clearing for one legal port with design to proceed to another legal port, in order to conceal the real voyage, for mercantile purposes, is not liable to condemnation.—Gibbs v. The Two Friends, Case No. 5,386.

Where property is shipped in an enemy's vessel, the presumption of its being enemy's property can only be repelled by strong and clear proofs of a neutral interest.—The London Packet, Case No. 8,474.

Proof that the claimant is a citizen or ally of the enemy country will authorize condemnation.—Conner v. The Coosa, Case No. 3,113.

Proof *held* not sufficient to show an intent to violate a blockade.—The Jane Campbell, Case No. 7,206.

For particular instances of condemnation of vessel and cargo for violating or attempting to violate a blockade, decided on conflicting evidence, see The Actor, Case No. 37; The Admiral, Id. 85; The A. D. Vance, Id. 92; The Advocate, Id. 94; The Agnes H. Ward, Id. 99; The A. J. View, Id. 118; The Albert, Id. 138, 139; The Albion, Id. 142; The Angelina, Id. 383; The Anglia, Id. 390; The Ann, Id. 396; The Anna, Id. 400; The Annie, Id. 416, 417, 418; The Annie Deas, Id. 419; The Annie Sophia, Id. 424; The Antelope, Id. 483; The Antona, Id. 492; The Banshee, Id. 965; The Belle, Id. 1,273; The Blenheim, Id. 1,538; The British Empire, Id. 1,901; The Captain Spedden, Id. 2,394; The Charlotte, Id. 2,621; The Cuba, Id. 3,457; The Delight, Id. 3,772; The Delta, Id. 3,777, 3,778; The Douro, Id. 4,034; The D. Sargeant, Id. 4,098; The Edward Barnard, Id. 4,291; The Elizabeth, Id. 4,350; The Emeline, Id. 4,435; The Emma, Id. 4,461; The Express, Id. 4,597; The Ezilda, Id. 4,599, 4,600; The Flash, Id. 4,859; The Florida, Id. 4,888; The Garonne, Id. 5,246; The Gipsey, Id. 5,456; The Granite City, Id. 5,686; The Hallie Jackson, Id. 5,961; The Henry Lewis, Id. 6,377; The Henry Middleton, Id. 6,378; The Hetwan, Id. 6,439; The Jesse J. Cox, Id. 7,295; The Joanna Ward, Id. 7,328; The Joseph H. Toone, Id. 7,541; The J. W. Wilder, Id. 7,592; The Kate, Id. 7,618; The Lady Stirling, Id. 7,986; The Levi Rowe, Id. 8,294; The Lizzie, Id. 8,421; The Lizzie Weston, Id. 8,424; The Major Barbour, Id. 8,983; The Margaret & Jesse, Id. 9,071; The Maria, Id. 9,073; The Maria Bishop, Id. 9,077; The Mars, Id. 9,105; The Mary, Id. 9,182; The Mary Stewart, Id. 9,227; The Memphis, Id. 9,413, 9,414; The Mercury, Id. 9,456; The Merrimac, Id. 9,475; The Mersey, Id. 9,490, reversing Id. 9,489; The Minna, Case No. 9,634; The Nassau, Id. 10,026; The Neptune, Id. 10,119; The Nicolai First, Id. 10,255; The Ocean Bird, Id. 10,403; The Oddfellow, Id. 10,425; The Ouachita, Id. 10,620, 10,621; The Patras, Id. 10,801, 10,802; The Pevensey, Id. 11,054; The Pioneer, Id. 11,173, 11,175; The Rambler, Id. 11,541; The Reindeer, Id. 11,681; The Revere, Id. 11,715; The Richard O'Bryan, Id. 11,767; The Robert Bruce, Id. 11,889; The St. George, Id. 12,221; The Sarah & Caro-

line, Id. 12,341; The Solidad Cos, Id. 13,164; The Springbok, Id. 13,263; The Stag, Id. 13,277; The Stephen Hart, Id. 13,363; The Stettin, Id. 13,383, 13,384; The Sue, Id. 13,589; The Tampico, Id. 13,741; The Troy, Id. 14,193; The Tubal Cain, Id. 14,211; The Venus, Id. 16,914; The Water Witch, Id. 17,268; The Wave, Id. 17,298; The William H. Northrop, Id. 17,696.

For particular instances of acquittal of vessel and cargo for violation or attempted violation of blockade, decided on conflicting evidence, see The Alliance, Case No. 246; The Gondar, Id. 5,527, reversing Id. 5,526; The Prince Leopold, Cases Nos. 11,428, 11,429; The Sarah M. Newhall, Id. 12,351.

For particular instances of condemnation of vessel and cargo as enemy property, decided on conflicting evidence, see The Aigburth, Case No. 106; The A. J. View, Id. 118; The Albion, Id. 142; The Angelina, Id. 383; The Anna, Id. 400; The Captain Spedden, Id. 2,394; The Cuba, Id. 3,457; The Delight, Id. 3,772; The D. Sargeant, Id. 4,098; The Edward Barnard, Id. 4,291; The Ellis, Id. 4,401; The Express. Id. 4,597; The Ezilda, Id. 4,599, 4,600; The Florida, Id. 4,888; The Forest King, Id. 4,937; The Garonne, Id. 5,246; The Hallie Jackson, Id. 5,961; The Henry C. Brooks, Id. 6,374; The Henry Lewis, Id. 6,377; The Henry Middleton, Id. 6,378; The Hetwan. Id. 6,439; The Jesse J. Cox, Id. 7,295; The J. G. McNeil, Id. 7,317; The Joanna Ward, Id. 7,328; The Lizzie Weston, Id. 8,424; The Lucy C. Holmes, Id. 8,597; The Lynchburg, Id. 8,637a, 8,639; The Maria, Id. 9,073; The Maria Bishop, Id. 9,077; The Mercury, Id. 9,456; The Merrimac, Id. 9,475; The Mersey, Id. 9,490, reversing Id. 9,489; The Ned, Case No. 10,078; The Neptune, Id. 10,119; The New Eagle, Id. 10,149; The North Carolina, Id. 10,316a, 10,317; The Oddfellow, Id. 10,425; The Olive, Id. 10,487; The Osceola, Id. 10,601; The Pioneer, Id. 11,173, 11,175; The Prince Leopold, Id. 11,428, 11,429; The Reindeer, Id. 11,680, 11,681; The Sally Magee, Id. 12,259; The Sarah, Id. 12,337; The Solidad Cos, Id. 13,164; The Troy, Id. 14,193; The Venus, Id. 16,914; The Water Witch, Id. 17,268; The Wave, Id. 17,298.

Vessels and cargoes were *held* to be neutral property, and ordered to be restored to the claimants. Case No. 5,526 reversed.—The Gondar, Case No. 5,528.

§ 63. Further proof.

A witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court. —The Peterhoff, Case No. 11,022.

A motion for leave to take further proof will be refused persons who have shown themselves unworthy of trust.—The Cuba, Case No. 3,457.

Further proof is never allowed to a party who is guilty of fraud or of illegal conduct.—The Sally, Case No. 12,258.

Further proof will not be allowed in cases of fraudulent concealment and falsification of papers.—The Liverpool Packet, Case No. 8,406; The Bermuda, Id. 1,345.

An application for further proof will be refused where the claim and test affidavit of the claimant are utterly at variance with his answers to the standing interrogatories.—United States v. El Telegrafo, Case No. 15,049.

After a decision that a forfeiture had been incurred, the court allowed the case to stand open for further proof that the strictness of the blockade had been relaxed.—United States v. The Tropic Wind, Case No. 16,541a.

Where the captors have been guilty of irregularity in not bringing in the papers or the master of the captured ship, further proof will be ordered.—The London Packet, Case No. 8,474.

If the shippers in a hostile ship neglect to put on board any documentary evidence of its neutral character, they will not be allowed the benefit of further proof.—The Flying Fish, Case No. 4,892.

Where capture is admitted on original evidence, further proof not allowed to create doubts.—The Alexander, Case No. 164.

Further proof in cases of collusive capture.—The Bothnea, Case No. 1,686; The George, Id. 5,327.

Where the evidence affords probable cause for belief that the vessel was engaged in an illicit adventure, final decision was suspended to permit further proofs within the year.—The Levi Rowe, Case No. 8,293.

Before an order for further proof will be made, plaintiff must make it probable that, if it is granted, he will be able to overcome the probative force of the suspicious circumstances. —United States v. The Lilla, Case No. 15,600.

Case allowed to stand over for six months for additional proof, where no witnesses were sent in with the vessel, and no proof was made of violation of blockade.—The Nellie, Case No. 10,095.

On further proof, the affidavits of the captors are admissible evidence without a release.—The Sally, Case No. 12,258.

Further proof in prize causes is never admitted by way of oral testimony, but always by written evidence and depositions.—The George, Case No. 5,327.

Practice as to the taking of additional proof in prize cases.—The Amy Warwick, Case No. 343; The Lilla, Id. 8,348.

Where the claimants delayed until the hearing to object that only two of the persons on board the captured vessel were produced as witnesses, *held* a waiver, but the court suspended the final decree to give libelants an opportunity to submit further proof.—The Elizabeth, Case No. 4,350.

After an appeal, the court may allow evidence not received in season to be made a part of the case to be put upon the record de bene esse, with a memorandum of the fact.—The London Packet, Case No. 8,474.

Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, especially authorized by the court after a decision on the first issue.—The Napoleon, Case No. 10,012.

Leave for further proof is granted in cases of honest mistake or ignorance, and to clear doubts and remedy defects; but the application must be supported by evidence of probable cause and good faith.—United States v. The Lilla, Case No. 15,600.

Proceedings in condemnation suspended to permit production of evidence.—The Actor, Case No. 36; The Annie, Id. 415.

§ 64. Commissioners and proceedings before them.

A commission to take evidence in an enemy's country will not be allowed.—The Diana, Case No. 3,876.

A prize commissioner has no right to put to a witness any interrogatories, except the standing one, or those specially framed by the court for the particular case.—The Peterhoff, Case No. 11,024.

Relief for irregularities in the admission of testimony, or in the method of conducting the examinations before the prize commissioners, can be had only by special motion. Such mat-

ters will not be noticed on final hearing.—The Ezilda, Case No. 4,599.

Witnesses who, it appeared, had not fully answered, and had not disclosed the truth in regard to papers on board a voyage, were allowed to be re-examined on standing interrogatories.—The Stephen Hart, Case No. 13,364.

A master, who had been examined as a witness in preparatorio, was allowed to be examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories, framed by the court.—The Peterhoff, Cases Nos. 11,022, 11,024.

§ 65. Survey and report.

If the character and origin of the captured property be in question, on the original hearing the court will order a survey and report.—The Liverpool Packet, Case No. 8,406.

The prize court of a belligerent, to which a captured neutral vessel is sent for adjudication, may order an examination of the cargo to ascertain its character, and to secure evidence to establish the culpability of the voyage.—The Springbok, Case No. 13,262.

§ 66. Hearing and reference.

The first hearing is limited to the inquiry whether the captured property is prize of war or not.—The Empress, Case No. 4,476.

Parties agreeing to refer a matter of prize or no prize to their respective governments are concluded by the decision of the ministers of those governments resident here.—Gernon v. Cochran, Case No. 5,368.

Such decision *held* sufficiently evidenced by a letter from the consul general of country of party against whom rendered.—Gernon v. Cochran, Case No. 5,368.

§ 67. Costs and fees.

The allowance of costs and fees to counsel and officers in prize cases discussed.—The Major Barbour, Case No. 8,984.

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.—Costs, Fees, and Compensations in Prize Cases, Case No. 18,283.

A counsel employed by the captors, not authorized or recognized by the secretary of the navy, is not entitled to his bill of costs out of the prize fund.—The Nassau, Case No. 10,027.

Of the rule for apportionment of costs among the several claimants in prize causes.—The Hiram, Case No. 6,527.

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 employés 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.—Costs, Fees, and Compensations in Prize Cases, Case No. 18,283.

Compensation to the officers of court for their services will not be measured by a percentage on the amount of property involved.—Costs, Fees, and Compensations in Prize Cases, Case No. 18,283.

When a vessel is taken by the secretary of the navy under Act 1863, c. 86, § 2, the marshal is not entitled to his fees as in the case of a sale, or to half commission as when a case is settled without a sale.—The Victory, Case No. 16,938.

The charges of appraising and bonding prize property must be borne by the party who applies to have it bonded.—The Sally Magee, Case No. 12,261.

Such appraiser is entitled to no allowance beyond the per diem allowance provided by statute or the standing rules of the court for that description of services.—The Sally Magee, Case No. 12,261.

Pending an appeal to the supreme court, the district court refused to order the costs of the prize commissioner to be paid out of the funds in its registry.—The Peterhoff, Case No. 11,025.

As to costs to be taxed on several claims in one information, upon a remission of the forfeiture.—The Francis, Case No. 5,033.

Act July 17, 1862, forbids the allowance to a prize commissioner in the Southern district of New York of any larger emolument than a salary of $3,000 a year.—The Hattie, Case No. 6,217.

The marshal is entitled to commissions on prize property removed from his district by consent of the parties to another district, and there sold.—The San Jose Indiano, Case No. 12,323.

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.—Costs, Fees, and Compensations in Prize Cases, Case No. 18,283.

Where a claim is rejected, the claimant is liable to pay all expenses which have accrued in consequence of his claim.—The Sally, Case No. 12,258.

Custody fees in prize cases are payable in the first instance out of the proceeds, and, in case of condemnation, are taxable to the claimant.—The Langdon Cheves, Case No. 8,063.

Commission of one-half of one per cent. allowed auctioneer on sale of prize cargo.—The Amy Warwick, Case No. 344.

Where property in a prize proceeding is restored to the owner, no costs will be allowed him, where there was probable cause for the capture.—The Argonaut, Case No. 518; The Forest King, Id. 4,937; The General Green, Id. 5,312a, 5,313; The Glen, Id. 5,479; The Hannah M. Johnson, Id. 6,029a; The Henry C. Brooks, Id. 6,374; Ingraham v. The Nayade, Id. 7,046; The Sybil, Id. 13,706.

Costs, fees, and compensation.—Anonymous, Case No. 432a; The Merrimac, Id. 9,477; The Nassau, Id. 10,027; The Sally, Id. 12,258.

§ 68. Decree.

In the absence of instructions of the sovereign, the rules of decision of prize courts are to be ascertained by reference to the known powers of such tribunals, and the principles by which they are governed under the public law and the practice of nations.—The Amy Warwick, Case No. 341.

The suspension of a year and a day after a default is allowed only when it is doubtful upon the evidence whether the property captured belongs to the enemy or is neutral.—The Falcon, Case No. 4,616.

Where the apparent ownership of a cargo is in an absent party, capable of claiming, it will not be condemned until he has had the benefit of the rule allowing a year for the assertion of claims.—The Herald, Case No. 6,391.

The rule of a year and a day for claimants to appear is not a vested right in neutrals.—The Julia, Case No. 7,576.

After a year and a day without claim made, condemnation is of course.—The Avery, Case No. 672.

Where, upon ship's papers, enemy ownership is doubtful, condemnation will be delayed, though no claim is interposed.—The Avery, Case No. 672.

Decree for condemnation for want of an answer where proctor on whom monition was

served filed exceptions under oath on behalf of the owner against the requirements of the monition.—The Joseph H. Toone, Case No. 7,542.

Where no claimant appears upon return of the monition, the proctor of the captors may move for a decree upon the evidence as it appears on the record.—Conner v. The Coosa, Case No. 3,113.

Vessel condemned after the lapse of a year and a day for an attempt to break the blockade of Beaufort, N. C.—The Julia, Case No. 7,576.

Every resident of a hostile place or country is regarded in an admiralty court as a citizen or subject, and his property is condemned as that of an enemy without his being heard.—United States v. The Isaac Hammett, Case No. 15,446.

In the absence of legal proof of actual capture in the case of enemy property, a decree of condemnation was deferred to await its production, or an excuse therefor.—The Sarah and Caroline, Case No. 12,340.

The district court, as a prize court, has no power to open a decree after the expiration of the term or session in which it was rendered.—The Lizzie Weston, Case No. 8,425.

Decree of condemnation opened to permit loyal owners to show that the vessel had been previously captured from them by an enemy's privateer, and restoration awarded on the payment of one-eighth of the value, as salvage, to the captors.—The Hattie, Case No. 6,216.

A decree of condemnation passed by a court held on board a vessel at sea, out of the territorial jurisdiction of the country of the captors, is not binding.—Jolly v. The Neptune, Case No. 7,439.

Nothing will be presumed in favor of a foreign tribunal erected by a military commander. —Snell v. Faussatt, Case No. 13,138.

After the lapse of the term in which a decree is rendered in a prize case, the authority of the court to revoke or alter it is extinct.—The Major Barbour, Case No. 8,984.

The claimant of record to whom the property is ordered to be delivered on sentence of acquittal holds the same in trust for the true owner. The decree is not conclusive as to ownership, even as against the person procuring its rendition. Case No. 3,509 reversed.—Cushing v. Laird, Case No. 3,510.

A condemnation of a prize in court of admiralty is binding and conclusive against all the world.—Juando v. Taylor, Case No. 7,558.

Courts of U. S. will not, for purposes of retaliation, depart from fixed principles of the law of nations declaring decrees of foreign prize courts conclusive.—Armroyd v. Williams, Case No. 538.

A decree of a foreign prize court is conclusive both as to the right established and fact decided. —Armroyd v. Williams, Case No. 538. But see Bradstreet v. Neptune Ins. Co., Case No. 1,793.

A foreign decree of condemnation as prize *held* not examinable in our courts, although on its face appearing to have been founded upon an ordinance passed subsequent to the commission of the act for which the vessel and cargo were condemned. Rose v. Himili, Case No. 12,048, reversed.—Ropes v. Clinch, Case No. 12,041.

The practice of American prize courts is to make final condemnation of enemy property at the hearing of the cause, upon the ship's papers and the evidence in preparatorio.—The Falcon, Case No. 4,616.

§ 69. Appeal.
An appeal to the circuit court from a decree of condemnation operates as a stay of all proceedings in the district court.—The Sunbeam, Case No. 13,614.

On an appeal to the circuit court, the property follows the appeal into that court, and the district court has no authority over it.—The Grotius, Case No. 5,844.

An appeal to the supreme court from a decree of the district court in a prize cause places the prize property exclusively under the control of the appellate tribunal.—The Peterhoff, Case No. 11,025.

Irregularities in the proceedings in not making the captors parties, and not bringing the prize into court for adjudication, may be corrected.—United States v. Two Hundred and Sixty-Nine and One-Half Bales of Cotton, Case No. 16,583.

(E) RESTITUTION AND RANSOM.

§ 70. Restitution.
The prize court has jurisdiction to decree restitution of a vessel recaptured from the enemy.—The Dove, Case No. 4,035.

Belligerent captures by privateers armed and equipped within the United States in violation of the neutrality of the United States may be restored to the injured belligerent, if brought within the jurisdiction of the federal courts.—Chacon v. Eighty-Nine Bales of Cochineal, Case No. 2,568.

A vessel captured by a Confederate privateer, and condemned and sold by a Confederate prize court, on recapture will be restored to the original owners, upon payment of salvage.—The Lilla, Case No. 8,348.

Prizes made by armed vessels, either equipped originally, or whose force has been augmented, in the United States, will be restored if brought within their jurisdiction.—Juando v. Taylor, Case No. 7,558.

An American ship captured by a French privateer, with a neutral cargo on board, and brought into an American port for condemnation, will be restored.—Hollingsworth v. The Betsey, Case No. 6,612.

Admiralty has no jurisdiction of a libel for the restoration of a vessel belonging to a subject of a neutral nation, captured by an armed vessel of another nation within five miles of Port Henry, as taken within our territorial jurisdiction.—Moxon v. The Fanny, Case No. 9,-895.

The court of admiralty has no power to order restitution of a British ship, brought into our ports after seizure by French prisoners, who were being conveyed therein to England.—Reid v. The Vere, Case No. 11,670.

Property taken as prize may be pursued in rem in the hands of any persons becoming possessed of it, or by monition against them if its proceeds have been brought into court.—The Lynchburg, Case No. 8,638. But see Young v. Tavel, Case No. 18,175.

The claim for restoration on the ground that the property was captured within neutral waters can only be presented by the neutral nation whose rights have been infringed. The owner cannot make the claim.—The Lilla, Case No. 8,348.

The costs and expenses of the captors will be required as a condition of the restoration of the property where the proofs in preparatory showed a clear case of enemy's property.—The James Andrews, Case No. 7,189.

On a libel by the owners for restitution and damages, the court will ascertain whether there is a real question of prize to be tried, and, if so, will direct the captors to institute proceedings.—Fay v. Montgomery, Case No. 4,709.

The claimant can cause the suit to be disposed of where libelants are guilty of wrongful delay in its prosecution.—The Springbok, Case No. 13,-262.

A resident of South Carolina, after she proclaimed her independence and hostile measures were taken by the general government to restore its authority, cannot claim restitution of a vessel captured as prize of war during such hostilities.—The Parkhill, Case No. 10,755a.

§ 71. **Ransom.**
A friendly belligerent may ransom the property of a neutral after capture.—Maisonnaire v. Keating, Case No. 8,978.

An action may be sustained in a court of common law upon a bill of exchange given for the ransom of a vessel.—Maisonnaire v. Keating, Case No. 8,978.

In such action the capture must be taken to be justifiable and the ransom regular, for a court of common law cannot incidentally decide a question of prize.—Maisonnaire v. Keating, Case No. 8,978.

Duress arising from threats of destruction of the vessel and cargo cannot be admitted to avoid a contract of ransom, where the capture was justified by probable cause.—Maisonnaire v. Keating, Case No. 8,978.

(F) DISTRIBUTION OF PROCEEDS.

§ 72. **In general.**
The question of the disposition of prize proceeds is not governed by the international law. —United States v. The Active, Case No. 14,420.

All property captured in time of war belongs to the government, unless granted by it to other persons.—The Emulous, Case No. 4,479; The Merrimac, Id. 9,476.

Sale and distribution under decree of prize goods lying in foreign neutral port.—The Arabella, Case No. 501.

Distribution of proceeds on capture of prize by United States steam transport ship.—The Emma, Case No. 4,462.

In cases of recapture, French owners have the benefit of American laws in our ports if American owners are allowed the benefit of American laws in the admiralty courts of France.—Falliage v. The Hope, Case No. 4,626.

§ 73. **Who entitled to share.**
A vessel, to be entitled to share in the proceeds of prize property under the acts of congress, must show that she was within signal distance of the vessel making the prize, in circumstances which might have justified the capturing vessel in demanding and expecting her assistance.—The Anglia, Case No. 391; Rice v. Taylor, Id. 11,755; The Selma, Id. 12,647.

Who entitled as within "signal distance" to share in prize money.—The Aries, Case No. 529; The R. E. Lee, Id. 11,691; The St. John, Id. 12,225.

A vessel, to share with the actual captor, must show her position to have been such that the usual signals from the actual captor could have been read from the deck or topgallant forecastle.—The Ella, Case No. 4,367; The Ella & Anna, Id. 4,368.

Co-operation in a blockade does not constitute the blockading vessels joint captors.—The Cherokee, Case No. 2,640.

Vessels which pick up enemy's goods thrown overboard during a chase are entitled to them as captors, and not as salvors.—The Victory, Case No. 16,938.

A vessel not commissioned must be considered as a mere merchantman, and not entitled to share in a prize as a vessel in sight.—Pray v. The Recovery, Case No. 11,379; The Merrimac, Id. 9,476.

Where seamen duly shipped on board a privateer are put ashore without their consent or lawful cause, they are entitled to share in prizes made on the cruise.—Keane v. The Gloucester, Case No. 7,632; Mahoon v. The Glocester, Id. 8,970.

A seaman disabled and leaving the privateer before departure on her cruise is not entitled to share in prizes.—Ex parte Giddings, Case No. 5,404.

Officers and crew are entitled to the shares given under the prize act, where the shipping articles omit to state them.—The Dash, Case No. 3,584.

Abandonment by captors does not restore the rights of the owner; and, if the vessel is saved by others, the captors have a right, as against the owners, to a balance of proceeds.—The Mary Ford, Case No. 9,212a.

Rights of a nonconsenting mariner, where the cruise of a privateer is broken up, and a new one commenced, with the consent of all the others.—Hainey v. The Tristram Shandy, etc., Case No. 5,906.

A cruise begins and ends in the country to which the ship belongs, and from which she derives here commission, when it is not otherwise specially agreed.—The Brutus, Case No. 2,060.

A cruise begins when the ship breaks ground for the purpose of sailing.—The Brutus, Case No. 2,060.

When the term of a cruise once begins to run, it is not suspended by any intermediate accident or casualty happening in the course of the cruise.—The Brutus, Case No. 2,060.

Cruise of privateer, *held* not broken up in a foreign port into which the vessel went for repairs, though the term for which the crew shipped expired while in such port, and new articles were entered into.—The Brutus, Case No. 2,060.

Members of the crew of a privateer on a cruise broken up by distress are not entitled to share in prizes made in a second cruise.—Blanchard v. Haven, Case No. 1,511.

A court of prize has power to give salvage in lieu of prize money to persons, not of the navy, who have rendered valuable service in making a capture.—The Deer, Case No. 3,739.

Soldiers belonging to the land forces of the United States have not, in the absence of statute, any right of property in a vessel captured by them on the sea. The acts of April 23, 1800, and June 26, 1812, and articles of war do not give such right.—United States v. The Active, Case No. 14,420.

Land forces, who act in concert with vessels of war in making a capture, must prove that the capture was produced by their active interference to entitle them to share in the prize.—Two Hundred and Eighty-Two Bales of Cotton, Case No. 14,291.

If the party filing a libel against property, as prize of war, is not entitled to it, condemnation will go to the United States.—The Emulous, Case No. 4,479.

Captures by noncommissioned vessels belong to the government.—The Joseph, Case No. 7,533.

When the "capturing force" is superior within the act providing that in such case the prize shall be divided with the government.—The Atlanta, Case No. 619.

A war vessel within signal distance only of another, making a prize, is entitled to share, but is not a part of the "capturing force," so as to make it superior, and cause the prize to be divided equally with the government.—The Atlanta, Case No. 619.

A vessel fitted out in a loyal state to cruise against the United States, and seized on the

instance side of the court, is not a prize entitling the officers and crew of the United States man of war aiding in the seizure to a share of the proceeds.—The Chapman, Case No. 2,602.

Neither were they entitled to such share under the act of August 5, 1861, as for a vessel fitted out for acts of piracy.—The Chapman, Case No. 2,602.

In cases of trading with the enemy, the property is to be condemned to the captors, and not to the United States.—The Joseph, Case No. 7,533.

Captors are entitled to property captured in a trade from an enemy's port, though it was previously forfeited to the United States by a breach of the nonimportation act of 1809.—The Rapid, Case No. 11,576.

Where title of claimants and captors was defeated, and the United States interposed a claim, the property was condemned to them.—The Gefla, Case No. 5,296.

§ 74. Amount of shares.

Salvors of captured property shipwrecked after seizure were allowed one-half the net proceeds. —The Maria Bishop, Case No. 9,077.

Four per cent. of the value of the prize and counsel fees granted to two persons who made known the rebel signals, and thus enabled the naval officers to make the prize.—The Deer, Case No. 3,739.

In cases of joint capture by privateers, they share in proportion to the number of men composing their respective crews.—The Despatch, Case No. 3,823.

The commander of a squadron is entitled to the flag twentieth of all prizes made by a ship attached to his command, although the other part of the squadron never sailed on the cruise, being blockaded by a superior force.—Decatur v. Chew, Case No. 3,721.

To deprive such a commander of his flag twentieth on account of having left his station (Act April 23, 1800, c. 33, § 6), it is indispensable that some local station should have been assigned to him.—Decatur v. Chew, Case No. 3,721.

Captors entitled to freight if goods are carried to port of destination.—The Ann Green, Case No. 414.

A parol agreement as to distribution of prize money being void, distribution will be made under the statute. Act 1812.—The Dash, Case No. 3,584.

§ 75. Forfeiture of share.

A captor may forfeit his title by misconduct.—Fay v. Montgomery, Case No. 4,709.

Irregularities against the property seized or the captured crew will forfeit the right of prize to the captors.—The Jane Campbell, Case No. 7,205.

§ 76. Title of captors and transfer of share.

The purchasers from captors acquire an inchoate right to the property, which is made perfect by its subsequent condemnation.—Rose v. Himely, Case No. 12,046.

Captors on public armed vessel have no title until distribution.—The Aigburth, Case No. 105; The Peterhoff, Id. 11,025.

A bill of lading transmitted to a party to cover advances on the cargo does not pass title to the cargo as against the captors.—The Lynchburg, Case No. 8,637a.

A parol assignment of a share in prizes is void. —The Dash, Case No. 3,584.

§ 77. Rights of lienors.

Property seized as prize of war under the law of nations is discharged from all latent liens or incumbrances.—Harlan v. The Nassau, Cases Nos. 6,066, 6,067; The Delta, Id. 3,777; The Mary Clinton, Id. 9,203; The Napoleon, Id. 10,012; The Nassau, Id. 10,028; The Sally Magee, Id. 12,260; The San Jose Indiano, Id. 12,322; United States v. The Isaac Hammett, Id. 15,446.

Claim of neutral will be recognized only where he is in possession with right of retention.—The Amy Warwick, Case No. 343.

A neutral having made advances on cargo shipped to enemy correspondents under bill of lading to his own order, has a claim cognizable in a prize court.—The Amy Warwick, Case No. 343.

Where the share of one owner in a vessel was condemned under the act of July 13, 1861, and the remainder acquitted, *held*, that the owner of the latter had no lien for outlays in fitting the vessel.—The Mary McRae, Case No. 9,221.

The claim of a warehouseman for storage, at the instance of the officers of the court, of property seized as prize, presented after the property was restored to the claimant, was allowed payable out of the fund for defraying expenses of suits in which the United States is a party, under Act June 30, 1864, § 14.—Two Hundred and Eighty-Two Bales of Cotton, Case No. 14,292.

Prize cargoes sent in for adjudication in a transport chartered by the government are not chargeable with freight, or any part of the charter money, in favor of the vessel owner.—The Undaunted, Case No. 14,336.

Freight on property captured as prize by a government vessel, shipped on board a merchant vessel under a bill of lading, will be paid out of the proceeds of the property in court.—Eight Hundred and Fifty-Eight Bales of Cotton, Case No. 4,318.

Expenses of crew of prize vessel, who are not needed or used as witnesses, incurred after arrival in port, are not chargeable upon the proceeds.—The Britannia, Case No. 1,894.

The amount of money sufficient for the necessary expenses of the master of a vessel captured in breaking a blockade, while detained as a witness, will be allowed him out of coin belonging to him found on board.—The Wando, Case No. 17,140.

Seamen on board a prize captured and condemned as enemy property have no lien for wages, as against the title of the United States and the rights of the captors.—United States v. The Sally Magee, Case No. 16,216; The Langdon Cheves, Id. 8,063; The Lilla, Id. 8,348.

Where the voyage was begun before hostilities were commenced, mariners not hostile are entitled to wages out of the proceeds.—The Parkhill, Case No. 10,756.

Where a vessel is condemned as enemy property, but the cargo is released as belonging to a neutral engaged in lawful trade, seamen are not entitled to wages out of the proceeds, nor will the master be allowed his advances for necessary repairs and supplies.—The Velasco, Case No. 16,910a.

The master of the vessel is not entitled to be paid freight for the voyage out of the proceeds of condemned property.—The Hannah M. Johnson, Case No. 6,031.

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.—The Winifred, Case No. 17,873.

§ 78. Proceedings for distribution.

The members of a privateer's crew may maintain a libel in admiralty for their respective proportions of the prize.—Keane v. The Gloucester, Case No. 7,632.

Where the proceeds of prizes have been brought into court, the parties entitled to dis-

tributive shares therein may file their libel in their individual names.—In re Proceeds of Prizes of War, Case No. 11,440.

Until a final adjustment of all claims arising from the capture, the prize court will entertain a supplemental suit for the distribution of prize proceeds.—The St. Lawrence, Case No. 12,233.

The court will take cognizance of a second libel by members of a privateer's crew improperly omitted from the distribution of the proceeds on a sale under a decree of condemnation.—Keane v. The Gloucester, Case No. 7,632.

The moiety of the proceeds due to the officers and crew of the ship of war that made the seizure is not to be paid into the United States treasury, but must be distributed by the court.—The Glamorgan, Case No. 5,472.

Where the captured property is taken for the use of the government, its value is to be ascertained by sworn appraisal, and deposited in court or in the treasury, subject to the order of the court.—The Ella Warley, Case No. 4,370.

One-eighth of the vessel being condemnable in any event, the libelants have a right to enforce their remedy against her as an entirety, whether they retain or remit the proceeds.—The Napoleon, Case No. 10,013.

If the vessel and cargo are subject to condemnation, claimants cannot contest the competency of libelants alone to control the proceeds of the forfeiture.—The Gondar, Case No. 5,526; United States v. The Gordon, Id. 15,234a.

Where the proceeds have been paid to prize agents, the proper jurisdiction is the district court. Where they remain in the circuit court application may be originally made there.—The St. Lawrence, Case No. 12,233.

A commander of a privateer, authorized to award certain reserved shares among the most deserving in the cruise, cannot award a share to himself.—The St. Lawrence, Case No. 12,233.

The marshal is liable where he distributes the proceeds without an order of court.—Keane v. The Gloucester, Case No. 7,632.

The federal district court may enforce the decrees of the court of appeals under the articles of confederation, in prize causes, against the proceeds of prizes condemned in that court.—Olmstead v. The Active, Case No. 10,503a.

IV. CIVIL WAR.

§ 79. Commencement and termination.

Where a portion of an empire, by force of arms, throws off the authority of the general government, so as to compel it to resort to regular hostilities, a state of civil war exists, as distinguished from rebellion, so as to prevent the parties being liable as trespassers in the United States courts, though the independence of the new government is not politically recognized.—Juando v. Taylor, Case No. 7,558.

The existence of a state of war with a Southern state dated from the time that the government was justified in exercising belligerent rights, and not from the passage or adoption of the ordinance of secession.—United States v. The Arcola, Case No. 14,464a.

The Civil War did not end as to Arkansas until the proclamation by the president so declaring it.—Brown v. Hiatt, Case No. 2,011.

As far as South Carolina is concerned, the Civil War began April 19, 1861, and ended April 1, 1866.—Gooding v. Varn, Case No. 5,539.

The courts will be governed by the decision of the political department of the government in determining when the Civil War ended.—Philips v. Hatch, Case No. 11,094.

No formal declaration of war by the president, in the case of the war of the Rebellion, was necessary to render lawful the means adopted by him to repel the warlike measures of the enemy.—The Hiawatha, Case No. 6,451.

§ 80. Application of rules of international law in general.

Under the law of nations, the rights incident to a war waged by a government to subdue an insurrection or revolt of its own subjects or citizens are the same, in regard to neutral powers, as if the hostilities were carried on between independent nations.—The Hiawatha, Case No. 6,451; The Mary Clinton, Id. 9,203.

The principle of the law of nations, that where a war exists between two distinct and independent powers there must be a suspension of all commercial intercourse between their citizens, is not applicable to the war of the Rebellion.—United States v. Six Boxes of Arms, Case No. 16,295.

The proclamation of April 19, 1861, did not interdict commercial intercourse between the citizens of the states in rebellion and those of the other states.—Speed v. Smith, Case No. 13,226.

§ 81. Effect of Civil War on existing laws and contracts.

Contracts made prior to July 13, 1861, were not invalidated by the operation of the principles of international law.—Speed v. Smith, Case No. 13,226.

The Civil War did not revoke an agency in the Southern states for a citizen of a Northern state.—Anderson v. Bank, Case No. 354; Botts v. Crenshaw, Id. 1,690.

An agent of rebel owners of vessel insured their interests, and collected the loss during the war. *Held*, that he was liable to account to them after peace declared.—Caldwell v. Harding, Case No. 2,302.

A partnership between citizens of an insurgent state, one of whom continues a loyal citizen, and saves his citizenship by retiring within the Federal lines, is ipso facto dissolved, and an agreement that the partnership continue is void as against public policy.—Planters' Bank v. St. John, Case No. 11,208.

The suspension of intercourse during the Civil War did not prevent the accrual of interest on a debt due by a citizen of a state in insurrection to a citizen of a loyal state.—Shortridge v. Macon, Case No. 12,812; Rogers v. Arthur, Id. 12,006.

But, in the case of a debt owing by an inhabitant of a loyal state to an inhabitant of a state in insurrection, interest did not accrue during the war.—Chappelle v. Olney, Case No. 2,613; Bigler v. Waller, Id. 1,404.

For the purpose of computing interest, the Civil War, so far as Virginia was concerned, terminated on the establishment of the government at Richmond, May 26, 1865.—Bigler v. Waller, Case No. 1,404.

Where the creditors were residents of a loyal state, a sale, during the War of the Rebellion under a power of sale in a trust deed whose grantors were residents of a state in rebellion, and were not in default when the war broke out, is void.—Kanawha Coal Co. v. Kanawha & O. Coal Co., Case No. 7,606.

The right of redemption from the lien of the trust deed upon paying the debt may be enforced against the grantee of the creditor who purchased the lands on such sale.—Kanawha Coal Co. v. Kanawha & O. Coal Co., Case No. 7,606.

Obligations suspended during the Civil War *held* revived by the president's proclamation of June 13, 1865.—Semmes v. City Fire Ins. Co., Case No. 12,651.

The concession of belligerent rights by the government of the United States to the Confederate States did not operate to suspend the revenue laws, so as to relieve goods imported in a port under control of the insurgents from the payment of duties to the United States.—United States v. Stark, Case No. 16,378.

Nor was such effect produced by the proclamation of April 19, 1861, declaring a blockade of certain ports.—United States v. Stark, Case No. 16,378.

See, also, ante, § 2.

§ 82. Contracts between residents of belligerent states.

A contract between a resident of a state in insurrection and a loyal state is void where made without license or authority from the government.—Philips v. Hatch, Case No. 11,094.

A contract for the purchase of cotton, made during the Civil War by a subject of Norway, domiciled in New York, with a citizen of Texas, actually residing therein at the date of the contract, *held* void.—Habricht v. Alexander, Case No. 5,886.

A draft drawn within the Confederate States, in a section not under the control of the federal forces, upon a person in a loyal state, is absolutely void as to all parties.—Britton v. Butler, Case No. 1,903; Moore v. Foster, Id. 9,760.

A bill of exchange, drawn by a bank in Mobile while that city was in possession of the Confederate forces, on a bank in New Orleans, after that city had surrendered to and was occupied by the Federal forces, is void.—Williams v. Mobile Sav. Bank, Case No. 17,729.

Such a bill is void, even though the payee of the bill, at the time he received it, supposed the city of New Orleans was still occupied by the Confederate forces.—Williams v. Mobile Sav. Bank, Case No. 17,729.

In such case, the payee, acting in good faith, without knowledge, may recover from the drawer under the money counts the amount paid for the bill.—Williams v. Mobile Sav. Bank, Case No. 17,729.

Assumpsit will lie by the United States, after the return of peace, to recover against a person indebted for money had and received to one of the insurgent state governments, as on a common-law obligation.—United States v. Smith, Case No. 16,335.

§ 83. Martial law.

Military commissions and their acts in the trial of persons not in the military service, during the Civil War, in states where the courts were undisturbed, were unconstitutional.—Milligan v. Hovey, Case No. 9,605.

After the Rebellion had ceased, and the authority of the United States was acknowledged in a state, there is no jurisdiction to try offenses by citizens against soldiers upon military commission.—United States v. Commandant of Fort Delaware, Case No. 14,842.

The establishment of the provisional court for Louisiana by the president, as commander in chief of the forces of the United States, while they held the territory in which it was to exercise its functions, was an act warranted by the law of nations.—United States v. Reiter, Case No. 16,146.

Such court continued rightfully to exercise its functions so long as its commission remained unrevoked, and the power of the United States continued to support it in the exercise of them.—United States v. Reiter, Case No. 16,146.

Regulations of secretary of treasury, exacting certain payments as condition precedent to shipment of cotton from disloyal states (Act July 13, 1861), *held* legal and valid.—Hamilton v. Dillin, Case No. 5,979.

The two orders issued by the war department August 8, 1862, one "to prevent the evasion of military duty, and for the suppression of disloyal practices," and the other "authorizing the arrest of persons discouraging enlistments," *held* unconstitutional.—Ex parte Field, Case No. 4,761.

The order of the secretary of war, dated May 13, 1863, directing commanders of departments to prohibit the sale of live stock for exportation, and to cause live stock so sold to be appraised and appropriated by the government, was unauthorized and illegal.—The Matilda A. Lewis, Case No. 9,281.

Fowls are not "live stock," within the meaning of the order issued by the secretary of war dated May 13, 1863.—The Matilda A. Lewis, Case No. 9,281.

§ 84. Status of residents of Confederate states.

In determining the status of rebel persons the federal courts are guided by municipal, and not by international, law.—United States v. One Hundred Barrels of Cement, Case No. 15,945.

In the Rebellion, a resident in the "Confederacy," and subject to its control, is a public enemy.—Elgee's Adm'r v. Lovell, Case No. 4,344; Kanawha Coal Co. v. Kanawha & O. Coal Co., Id. 7,606; United States v. One Hundred Barrels of Cement, Id. 15,945; Same v. One Thousand Seven Hundred and Fifty-Six Shares, Id. 15,960a, 15,960b.

A proclamation of amnesty cannot relieve such person of the disabilities imposed upon him in such case.—Elgee's Adm'r v. Lovell, Case No. 4,344.

A granting of a license to trade by the secretary of the treasury restores the standing of the grantee, so as to enable him to be heard in the federal courts.—United States v. One Hundred Barrels of Cement, Case No. 15,945.

A citizen of a seceding state, who adheres to the Union cause, and retires within the Federal lines, and remains there during the Rebellion, though he intends to return after hostilities cease, continues to be a citizen of the United States.—Planters' Bank v. St. John, Case No. 11,208.

§ 85. The Confederate government and seceded states, their laws and judicial proceedings.

The acts of the people of the states in rebellion merely suspended the practical relations of those states to the Union, but did not for a moment effect their separation therefrom.—Shortridge v. Macon, Case No. 12,812.

"De facto," as descriptive of a government, is most correctly used as signifying a government completely, though only temporarily, established, in place of the lawful or regular government, occupying its capital and exercising its powers. In this sense the Confederate government was never a de facto government.—Keppel v. Petersburg R. Co., Case No. 7,722.

The Confederate government was not a de facto government in any such sense that its acts are entitled to judicial recognition as valid.—Keppel v. Petersburg R. Co., Case No. 7,722.

The insurgent government of Virginia during the Civil War *held* a de facto government, and its acts regulating the common transactions of life were valid; but otherwise as to acts intended to subvert the authority of the United States.—Evans v. Richmond, Case No. 4,570.

Legal rights can neither be created nor defeated by the action of the government of the Confederate States.—Shortridge v. Macon, Case No. 12,812.

Concession of belligerent rights by the legislative and executive departments to rebels estab-

lishes no rights except during the war.—Shortridge v. Macon, Case No. 12,812.

The prescriptions of the Confederate government impose no legal or moral obligation, and obedience is justified only on the ground of deadly coercion by violence or threats.—United States v. One Thousand Five Hundred Bales of Cotton, Case No. 15,958.

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.—Woodson v. Fleck, Case No. 17,996.

An act of the insurrectionary legislature of Georgia abolishing the vendor's lien is valid and binding.—Cook v. Oliver, Case No. 3,164.

Transactions between individuals, which would be legal under ordinary circumstances, are not void because done in conformity with laws enacted by an insurgent body actually organized as a government within a large territory, and in complete exclusion of the regular government.—Keppel v. Petersburg R. Co., Case No. 7,722.

An act of an insurgent government authorizing a guardian appointed by it to invest the estate of the ward in Confederate bonds, and a decree of the probate court of the state settling his accounts, will not relieve the guardian from his liability to account to the ward for the funds so invested, where she was at the time within the Federal lines.—Van Epps v. Walsh, Case No. 16,850.

The act of the insurgent government of a seceding state in appointing a guardian for a resident infant is as valid and lawful as if done by a government de jure.—Van Epps v. Walsh, Case No. 16,850.

A bond given by a guardian after a state had seceded, conditioned to perform all the duties required by law, refers to the law of the insurgent government of the state, and a compliance with such law discharges the sureties.—Van Epps v. Walsh, Case No. 16,850.

The courts of a state forming part of the Confederate States had no jurisdiction during the Civil War over parties residing in states which adhered to the national government.—Livingston v. Jordan, Case No. 8,415; Keppel v. Petersburg R. Co., Id. 7,722; Van Epps v. Walsh, Id. 16,850.

The proceedings of a confederate prize court are null and void.—The Lilla, Case No. 8,348.

The sequestration acts of the Confederate States, and all acts under them injurious to citizens of Union-adhering states, are null and void.—Perdicaris v. Charleston Gas-Light Co., Case No. 10,974.

Stock in a Southern corporation owned by loyal citizens, and sequestrated by a Confederate court, and sold to citizens of the state, does not pass by such proceedings.—Perdicaries v. Charleston Gas-Light Co., Case No. 10,973.

A stockholder in a corporation of a Southern state, being a loyal citizen, whose stock is sequestered, may sue in equity to have canceled certificates issued to the purchaser on a sale in the sequestration proceedings.—Perdicaris v. Charleston Gas-Light Co., Case No. 10,974.

Compulsory payment of a debt to a receiver under the Confederate sequestration acts is no defense to a suit by the creditor.—Shortridge v. Macon, Case No. 12,812.

Payment of a debt, by the trustee, to a receiver under a decree of confiscation of a Confederate court, *held* a breach of trust as against a loyal citizen.—Dorr v. Gibboney, Case No. 4,006.

Where stock of a Virginia railroad company, owned by a citizen of a loyal state, was confiscated by a decree of a Confederate court, and dividends thereon paid to its receiver without protest, *held*, that the company was liable after the war for the dividends so declared, but to an amount equal only to what the Confederate money in which they were declared was worth at the time.—Keppel v. Petersburg R. Co., Case No. 7,722.

The judgment of a court of a state in insurrection merely settling the rights of private parties actually within its jurisdiction, not tending to defeat the just rights of citizens of the United States, nor in furtherance of laws passed in aid of the Rebellion, is valid.—Cook v. Oliver, Case No. 3,164; French v. Tumlin, Id. 5,104.

A judge whose term of office had not expired when a state seceded, and who continued to serve thereafter, became a judge of the new insurgent government without any new election or appointment.—Van Epps v. Walsh, Case No. 16,850.

§ 86. Confiscation—Statutory provisions. The confiscation act of August 6, 1861, is constitutional.—United States v. Republican Banner Officers, Case No. 16,148.

The constitutional provision that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted," does not apply to the confiscation of rebels' property. Act July 17, 1862.—In re Confiscation Cases, Case No. 3,097.

Construction of acts of congress and regulations of the treasury department in relation to commercial intercourse between the loyal and insurgent states.—United States v. The Henry C. Homeyer, Case No. 15,353.

Act July 13, 1861, is not a penal, but a revenue, statute, and is to be construed liberally, so as to accomplish its proposed object.—United States v. One Hundred and Twenty-Nine Packages, Case No. 15,941.

Acts July 13, 1861, and Aug. 6, 1861, are purely municipal regulations, with which foreigners have no concern.—United States v. The William Arthur, Case No. 16,702.

§ 87. —— Grounds of forfeiture. A forfeiture of property is imposed by Act Aug. 6, 1861, only where it is employed, with the knowledge or consent of its owner, in aid of insurrection.—United States v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, Case No. 15,961.

A license to trade in the rebellious states, obtained through error, mistake, or fraud, will not prevent the forfeiture under Acts July 13, 1861, and May 20, 1862, the same being prohibitory acts.—United States v. One Hundred Barrels of Cement, Case No. 15,945; Same v. One Hundred and Twenty-Nine Packages, Id. 15,941.

Land conveyed to the Confederate States government for the purpose of aiding the Rebellion ipso facto became the property of the United States by right of conquest.—United States v. Tract of Land, Case No. 16,535.

Dry goods, groceries, and medicines sold to the inhabitants along the Mississippi river during the last year of the Civil War *held* not articles contraband of war by the legislation of congress, or the regulations of the treasury department, or by the law of nations.—United States v. The Henry C. Homeyer, Case No. 15,353.

Act July 13, 1861, positively prohibits residents of both the loyal and insurrectionary states from all commercial intercourse for whatever purposes, and subjects to confiscation the vehicles employed therein either for profit or gratuitously.—United States v. The Josie, Case No. 15,498a.

Transporting gold to a territory in insurrection, without a license, will subject it to forfeiture, though the insurrectionary district was at the time in possession of the federal forces. —United States v. Gay's Gold, Case No. 15,194.

Loans made in France by a citizen of France to a Confederate agent are valid when not knowingly made for the purpose of carrying on hostilities against the United States.—In re Confiscation Cases, Case No. 3,097.

Vessel belonging to alien woman residing transiently in rebel territory, not engaged in mercantile business, *held* not subject to confiscation. Act July 13, 1861.—The D. F. Keeling, Case No. 3,873.

The fact that the libelant, who was at the time of the capture resident in the district in insurrection, afterwards came into the United States, and took the oath prescribed by the acts of congress, could not divest the title of the government.—White v. Red Chief, Case No. 17,556.

A capture of a steamer, within the insurrectionary district, by the forces of the United States, vested in the government of the United States an absolute title to the property, without the necessity of any legal condemnation.—White v. Red Chief, Case No. 17,556.

A sale of contraband property by a citizen of one belligerent country to a citizen in the other belligerent country is a breach of allegiance.—United States v. One Hundred and Twenty-Nine Packages, Case No. 15,941.

§ 88. —— Property forfeited.

The confiscation act of July 13, 1861, did not embrace choses in action, such as bonds, stocks, etc., nor money.—United States v. Virginia Bonds, Case No. 16,626.

Gold coin comes within the description of "goods and chattels, wares and merchandise," within Act July 13, 1861, prohibiting intercourse with the inhabitants of the states in insurrection.—United States v. American Gold Coin, Case No. 14,439; Same v. Canoe, Id. 14,718.

The confiscation act (Aug. 6, 1861) applies to real estate.—United States v. Republican Banner Officers, Case No. 16,148.

Under the confiscation act of July 17, 1862, no interest in land could be forfeited which would extend beyond the life of the offender. —Pike v. Wassell, Case No. 11,164.

A transfer of property within the Union lines as security, after it became subject to confiscation, will not defeat the right of confiscation.—In re Confiscation Cases, Case No. 3,097.

The individual property of all officers and agents of the Confederate government having been declared confiscable, and all transfers thereof void, by Act July 17, 1862, § 5, one trading in insurgent territory under a license could acquire no title to such property by purchase or otherwise.—United States v. McKee, Case No. 15,689.

Merchandise at sea, consigned to merchants in an insurrectionary state, but assigned to creditors in New York, to cover previous advances, three days before the proclamation of August 16, 1861, and passing into the custody of the assignees on its arrival, *held* not subject to confiscation.—United States v. One Hundred and Fifty-Six Packages of Tea, Case No. 15,933.

The heirs apparent or presumptive of one whose estate in land has been condemned under the confiscation act have no interest which they can protect from forfeiture or incumbrance.—Pike v. Wassell, Case No. 11,164.

The mere existence of a law prescribed by an insurrectionary government in itself is not sufficient to justify a sale to it, and prevent a forfeiture of the property sold, under Act Aug. 6, 1861. Case No. 15,957 reversed.—United States v. One Thousand Five Hundred Bales of Cotton, Case No. 15,958.

A steamboat sunk while under impressment by the Confederate government, and subsequently paid for in full, is the property of such government, and on surrender of the Confederate forces becomes the property of the United States.—Leathers v. Salvor Wrecking, Etc., Co., Case No. 8,164.

§ 89. —— Captured and abandoned property act.

Recovery of money paid for the release of captured property.—Shipley v. Thompson, Case No. 12,790.

No treasury agent could receive after June 30, 1865, any captured or abandoned property, unless theretofore surrendered by Confederate agents or officers.—McLeod v. Callicott, Case No. 8,897.

Property surrendered by the military authorities of the Confederate government could not be released by any state or provost court.—McLeod v. Callicott, Case No. 8,897.

A treasury agent acting under color of the captured and abandoned property act, or under a mistaken sense of duty, cannot be held personally responsible.—McLeod v. Callicott, Case No. 8,897.

Where property was seized and sold, and the proceeds paid into the United States treasury, under the captured and abandoned property act, the question whether the property was in fact captured or abandoned is not open to litigation in the courts, but the only remedy of the person claiming to be the owner is by a proceeding for the proceeds in the court of claims.—Chamberlain v. Stanton, Case No. 2,579.

Property was not "abandoned," in the meaning of the statute (13 Stat. 375), unless the owner was voluntarily absent engaged in aiding or encouraging the Rebellion by arms or otherwise.—Kimball v. Taylor, Case No. 7,775.

The claimant of property seized and forcibly removed from his possession, as captured or abandoned property, is not liable for freight and charges on it, where the seizure was wrongful.—The Saratoga v. Four Hundred and Thirty-Eight Bales of Cotton, Case No. 12,356.

The remedy provided by the act of March 3, 1863, for the recovery of property captured or abandoned in the enemy's country, whether the capture be in accordance with its provisions or not, is exclusive in the court of claims.—Elgee's Adm'r v. Lovell, Case No. 4,344.

A plea in detinue, based on the act of March 3, 1863, which does not aver that the property had been taken in a district which had been declared in insurrection, is bad.—Elgee's Adm'r v. Lovell, Case No. 4,344.

The plea must exclude the idea of any special property in the plaintiff, with a present right of possession in him, in order to be good. —Elgee's Adm'r v. Lovell, Case No. 4,344.

The bar to an action provided in section 6 of the "Confiscation Act" applies only to property seized under the act. A plea in detinue which does not allege that the property was seized under the act is bad.—Elgee's Adm'r v. Lovell, Case No. 4,344.

§ 90. —— Jurisdiction and procedure.

Proceedings for condemnation of land under the confiscation acts of August, 1861, and July, 1862, as to form, and trial, exceptions, and review.—Semple v. United States, Case No. 12,661.

Forfeitures declared under Acts July 13, 1861, § 5, Aug. 6, 1861, May 20, 1862, July 17, 1862, can only be enforced by seizure of the property.—United States v. Stevenson, Case No. 16,396.

A seizure by the marshal under the confiscation acts, upon written order of the United States attorney, is sufficient to give jurisdiction of the res.—Bragg v. Lorio, Case No. 1,800.

A federal district court in New York cannot acquire jurisdiction in rem to declare a forfeiture under the confiscation acts of August 6, 1861, and July 17, 1862, of shares in the capital stock of an Illinois corporation.—United States v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, Case No. 15,961.

Forfeitures incurred under Act July 13, 1861, during the continuance of hostilities, might be enforced afterwards.—United States v. Stevenson, Case No. 16,396.

A proceeding under the confiscation act (July 17, 1862) is not a criminal proceeding.—In re Confiscation Cases, Case No. 3,097.

Such proceedings are in rem, conforming to proceedings in admiralty or in revenue cases, according as the seizure is on water or on land. —In re Confiscation Cases, Case No. 3,097; United States v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, Id. 15,961.

An alien enemy has a right to appear as claimant, and to answer and defend the suit under such acts.—United States v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, Case No. 15,961. But see United States v. The Isaac Hammett, Case No. 15,446.

A charge of defendant's acts of service under the Confederate States, in the alternative, in the libel of information, will not support a confiscation decree.—In re Confiscation Cases, Case No. 3,097.

Upon a libel of information to condemn certain railway shares of an alien enemy, the railway company cannot become a party without showing that it is the true and bona fide owner, and that no other person is the owner of the property in dispute. Admiralty rule 12. —United States v. One Thousand Seven Hundred and Fifty-Six Shares, Case No. 15,960b.

Issues of fact raised by the claimant of land or property seized on land are to be tried by jury.—In re Confiscation Cases, Case No. 3,097; United States v. Athens Armory, Id. 14,473.

When no answer is filed, judgment by default may be taken, and the court may proceed to ascertain the material facts in the case ex parte and without a jury.—In re Confiscation Cases, Case No. 3,097.

A decree condemning as forfeited an estate for the life of the owner does not immediately cast the entire beneficial estate in the property upon his children, so as to make them, while he is still living, his heirs.—Pike v. Wassell, Case No. 11,164.

A decree condemning property under the confiscation act cannot be collaterally assailed by disputing the recitals of the record as to seizure. —Brown v. Hiatt, Case No. 2,011.

A sale under a decree of confiscation, where the court has jurisdiction, will stand, though the decree be reversed for error.—In re Confiscation Cases, Case No. 3,097.

WARDS.

See "Guardian and Ward."

WAREHOUSEMEN.

§ 1, Contracts for storage in general. § 2, Warehouse receipts. § 3, Loss or injury to goods.

Liability of carrier, see "Carriers," § 26.
Warehouses for imported goods, see "Customs Duties," §§ 53, 54.

§ 1. Contracts for storage in general.
The Minnesota statute of March 3, 1876, "to regulate the storage of grain," does not abrogate the essential distinctions between bailments and sales.—McCabe v. McKinstry, Case No. 8,667.

Where grain is stored in an elevator warehouse under whose invariable course of business the highest market price or the same amount of grain of like quality is given on surrender of the receipt, but not the identical grain deposited, nor grain from any specific mass, the transaction is a sale and not a bailment.—Rahilly v. Wilson, Case No. 11,532.

§ 2. Warehouse receipts.
An instrument, "Received in store, for account of B. & W., 3,000 sacks of corn," signed by a warehouseman, *held* a warehouse receipt, and the title to the corn will pass by its indorsement and delivery.—Harris v. Bradley, Case No. 6,116.

In the absence of statute or usage, "warehouse receipts" need not be in a particular form.—Harris v. Bradley, Case No. 6,116.

A warehouse receipt to the order of a third person may be impeached if no advance has been made or responsibility incurred by him on account thereof.—Bebee v. Moore, Case No. 1,202.

A mill company's receipt for grain *held* to be subject to explanation by parol proof as to whether the grain was deposited merely for storage or for purposes of sale.—McCabe v. McKinstry, Case No. 8,667.

The owner of a warehouse receipt is not entitled to the specific grain deposited, but to the quantity specified in the receipt and contained in the warehouse.—Rahilly v. Wilson, Case No. 11,531.

The indorsement and delivery of a warehouse receipt will transfer the title to the property covered thereby.—Rahilly v. Wilson, Case No. 11,531; McNeil v. Hill, Id. 8,914.

The title to goods in a warehouse does not pass by the indorsement and delivery of warehouse receipts, as against an attachment laid before notice of the assignment.—Gibson v. Stevens, Case No. 5,401.

The warehouseman is estopped to deny that he has the articles mentioned in his receipt, in an action by an indorsee or assignee, who has purchased the paper in good faith.—McNeil v. Hill, Case No. 8,914.

§ 3. Loss or injury of goods.
Warehousemen are not liable for discoloration of coffee stored with them, arising from the storage of guano in the same building, unless it appear that they were wanting in ordinary diligence in storing the two articles together.—Tucker v. Oelrichs, Case No. 14,225.

Putting 160 kegs of gunpowder in the same warehouse with plaintiff's goods is negligence rendering the warehouseman liable for a loss resulting therefrom.—White v. Colorado Cent. R. Co., Case No. 17,543.

In delivering wheat from a warehouse through a pipe into a vessel, the liability of the warehouseman ceases with the discharge of the wheat into the pipe, and he is not responsible for negligence in its loading, causing the breaking of the pipe and the loss of grain.—The R. G. Winslow, Case No. 11,736.

WARRANT.

County warrants, see "Counties," §§ 4, 6.
For arrest, see "Criminal Law," § 39.
—— of fugitive from justice, see "Extradition," §§ 6, 18.
For attachment, see "Attachment," § 7.
For public lands, see "Public Lands," § 69.
In bankruptcy, see "Bankruptcy," §§ 139–146.
Municipal warrants, see "Municipal Corporations," § 28.
Search warrant, see "Searches and Seizures."
To confess judgment, see "Judgment," § 6.

WARRANTY.

By insured, see "Insurance," §§ 44–95.
Covenant of, see "Covenants," § 3.
On indorsement of commercial paper, see "Bills and Notes," § 40.
On sale of goods, see "Sales," §§ 17, 35–38, 51.

WASTE.

§ 1, What constitutes waste. § 2, Persons liable. § 3, Actions.

By co-tenant, see "Tenancy in Common," § 2.
By life tenant, see "Life Estates."
By tenant for years, see "Landlord and Tenant," § 6.
By vendee, see "Vendor and Purchaser," § 15.
Ground of opposition to discharge in bankruptcy, see "Bankruptcy," § 590.

§ 1. What constitutes waste.
The working of a gold mine is the taking away the substance of the estate.—United States v. Parrott, Case No. 15,998.

§ 2. Persons liable.
An action of waste is not maintainable against a tenant by elegit, either under the common law or the statutes of Virginia.—Scott v. Lenox, Case No. 12,538.

§ 3. Actions.
The holder of a certificate of sale of land on execution cannot maintain a bill to restrain waste. Rev. St. Wis. 1849, c. 102, § 100.—Law v. Wilgees, Case No. 8,132.

In an action of waste in the removal of a building, evidence of its cost is relevant to enable the jury to test the worth of opinions of witnesses as to its value.—Patterson v. Kingsland, Case No. 10,827.

In the District of Columbia, defendant in equity is not bound to discover the waste, unless complainant in his bill expressly waives the forfeiture and penalty.—Thruston v. Mustin, Case No. 14,013.

A court of equity will, in some cases, enjoin the removal of the fruits of past waste.—United States v. Parrott, Case No. 15,998.

On a motion for injunction to enjoin waste, complainant, on bill and answer, cannot read affidavits in support of his title.—United States v. Parrott, Case No. 15,998.

An injunction against waste will not be granted where the title of complainant is denied by answer, or where he had no sufficient notice of the motion.—Morse v. O'Reilly, Case No. 9,858.

Restraining waste, see, also, "Injunction," § 6.

WATERS AND WATER COURSES.

§ 1, Appropriation of rights in public lands. § 2, Natural water courses—Riparian rights in general. § 3, —— Obstruction and detention. § 4, —— Diversion. § 5, —— Bed of stream. § 6, Subterranean waters. § 7, Appropriation and prescription. § 8, Conveyances and contracts. § 9, Public water supply. § 10, Control and regulation.

See, also, "Canals"; "Levees"; "Navigable Waters."
As boundaries, see "Boundaries," § 4.
Injury from overflow, see "Mines and Minerals," § 15.
Jurisdiction over, see "Admiralty," § 4.

§ 1. Appropriation of rights in public lands.
So long as the title to land through which a stream flows remains in the United States, there can be no use of the waters of the stream which will ripen into a title by prescription, either against the government or its grantee.—Union Mill & Mining Co. v. Ferris, Case No. 14,371.

Act July 26, 1866, granting a right of way to ditch and canal owners, is prospective in its operation, and does not in any manner qualify or limit the effect of a patent issued before its passage.—Union Mill & Mining Co. v. Ferris, Case No. 14,371.

§ 2. Natural water courses—Riparian rights in general.
One who has entered land under the homestead act, and continues to reside thereon, is entitled to use water as other riparian proprietors may.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

One who has entered and paid for land and received a certificate of purchase has the equitable title, and is entitled to riparian rights, although he has not received his patent.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

The riparian right is protected as any other right.—Bowman v. Wathen, Case No. 1,740.

The owner of lots in Washington lying on Rock creek is entitled to the compensation awarded for the condemnation of the water privileges in front of them.—Chesapeake & O. Canal Co. v. Union Bank, Case No. 2,654.

The riparian proprietor may use the water as it flows according to his pleasure, if the use be not to the prejudice of another proprietor.—Tyler v. Wilkinson, Case No. 14,312.

The right of each proprietor is limited and qualified by the precisely equal right of every other riparian proprietor, and this right determines reasonable use.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370; Same v. Ferris, Id. 14,371.

In the exercise of his common right, every proprietor may consume so much water as is necessary for his household and domestic purposes and for watering his stock.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

The use of water for irrigation is not for a natural want, as in the case of quenching thirst, and water cannot be diverted to such purpose so as to destroy or render useless or materially affect the application of the water by other riparian proprietors.—Union Mill & Mining Co. v. Ferris, Case No. 14,371.

A mill owner, as such, has no right to the water of a river beyond what has been legally appropriated to his mill by title or long use.—Tyler v. Wilkinson, Case No. 14,312.

§ 3. —— Obstruction and detention.
Where the construction of booms and piers has been acquiesced in by the public, one boom owner cannot sue another for the obstruction caused thereby.—Leigh v. Holt, Case No. 8,220.

The owner below the line of a riparian proprietor cannot subtract from the proprietor above by swelling or backing the water upon him.—Good v. Dodge, Case No. 5,531.

Actual damages need not be shown to sustain an action for an invasion of water rights, where defendant's use is not made in the exercise of the riparian owner's natural right.—

Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

In the case of an alleged violation of a water privilege, the bill will not be retained after a decree in order to give plaintiffs an opportunity, by a new trial and proofs, to establish the fact that a further lowering of defendant's dam is necessary to the protection of plaintiff's rights. —Mann v. Wilkinson, Case No. 9,036.

§ 4. —— Diversion.

The riparian owner has no right to throw water back on a proprietor above, or to divert it from a proprietor below to his injury.—Tyler v. Wilkinson, Case No. 14,312; Webb v. Portland Mfg. Co., Id. 17,322.

In the case of mills owned in severalty on the same milldam, one cannot divert the water to his mill by means of a canal into the pond above the dam, though he takes less than he would naturally use at his mill on the dam.—Webb v. Portland Mfg. Co., Case No. 17,322.

Where parties on opposite sides of a stream between two states each have a water power, and own the land to the center line, so that each owns one-half of a dam, they are tenants in common of the water; and if one construct a canal on his own side, and draw off the water, the other has a right of action which he may enforce by injunction in the state where the canal is built.—Stillman v. White Rock Mfg. Co., Case No. 13,446.

In such case the laws which govern are those of the state within whose borders the injurious act is done.—Stillman v. White Rock Mfg. Co., Case No. 13,446.

Where there is a mere fugitive and temporary diversion of water, without damage, and without pretense of right, a court of equity will not interfere, by way of injunction. Quære, whether there would be any redress at law.—Webb v. Portland Mfg. Co., Case No. 17,322.

Proof that the natural flow of a stream was changed by a person not having a legal right to do so will entitle a riparian proprietor to recover nominal damages, though there has been no actual injury.—Whipple v. Cumberland Mfg. Co., Case No. 17,516.

Injunction granted to restrain an entry on land without authority of law to divert a stream thereon.—Baring v. Erdman, Case No. 981.

An injunction will not be granted to prevent the diversion of water from its natural course unless serious damage, actually incurred or impending, be shown.—Pierson v. Elgar, Case No. 11,157.

A party may proceed in equity to enjoin a diversion of a water course, where no actual damage has occurred, as a means of establishing and protecting his right.—Webb v. Portland Mfg. Co., Case No. 17,322.

In an action to restrain the diversion of water by tort feasors, one of the tort feasors, who resides out of the jurisdiction of the court, may be omitted.—Cole Silver Min. Co. v. Virginia & Gold Hill Water Co., Case No. 2,989.

On a bill to restrain maintenance of a well alleged to have caused a diversion of plaintiff's stream, where the testimony was voluminous and contradictory, the facts were submitted to a jury.—Dexter v. Providence Aqueduct Co., Case No. 3,864.

Construction of decree confirming complainants in their right and title to divert and use the water of a certain stream, on exceptions to a master's report refusing to award damages for diversion.—Lonsdale Co. v. Moies, Case No. 8,-497.

§ 5. —— Bed of stream.

Prima facie the proprietor upon each bank of a nonnavigable river is entitled to the land covered with water in front of his bank to the middle thread of the stream.—Tyler v. Wilkinson, Case No. 14,312.

In virtue of this ownership he has the right to the use of the water flowing over it in its natural current without diminution or obstruction, without any property in the water itself.—Tyler v. Wilkinson, Case No. 14,312.

§ 6. Subterranean waters.

The diversion and appropriation by defendants, by means of a mining tunnel, of subterranean waters previously appropriated and enjoyed by plaintiffs, will be enjoined.—Cole Silver Min. Co. v. Virginia & Gold Hill Water Co., Case No. 2,989.

In such case a preliminary injunction will be granted, though requiring defendants to build a bulkhead across their tunnel.—Cole Silver Min. Co. v. Virginia & Gold Hill Water Co., Cases Nos. 2,989, 2,990.

§ 7. Appropriation and prescription.

Priority of occupancy of flowing water creates no right, unless the appropriation be for a period which the law deems a presumption of right.—Tyler v. Wilkinson, Case No. 14,312.

Of the nature and effect of presumptions arising from use of water as to pre-eminent or prior use in case of a deficiency to supply all concerned.—Tyler v. Wilkinson, Case No. 14,312.

The use of water by a riparian proprietor does not become adverse until it amounts to an actionable invasion of another's right.—Union Mill & Mining Co. v. Ferris, Case No. 14,371.

No presumption of grant arises from an adverse use of water, unless the use has been peaceable; and to be peaceable it must have been with the acquiescence of the owner of the servient tenement.—Union Mill & Mining Co. v. Dangberg, Case No. 14,370.

The exclusive use of flowing water for 20 years is a conclusive presumption of the right.—Tyler v. Wilkinson, Case No. 14,312; Hazard v. Robinson, Id. 6,281; Stillman v. White Rock Mfg. Co., Id. 13,446.

Acquiescence by plaintiff or his grantors in a diversion of water by defendant, even for a shorter period than 20 years, *held* sufficient to induce a refusal of injunction.—Haight v. Morris Aqueduct, Case No. 5,902.

The owner of a lower mill lowered his dam so as to prevent obstruction of an upper mill, and, after 38 years, sold his mill to the upper owner, who sold it to a third person. *Held*, that the lower owner had no right to raise the dam so as to obstruct the upper mill.—Hazard v. Robinson, Case No. 6,281.

Unity of possession does not extinguish the right to use a water course appurtenant to a mill.—Hazard v. Robinson, Case No. 6,281.

A right to use water, obtained by prescription, only operates against the property, and not against the proprietor, and he may purchase and hold other lands unaffected by such right.—Union Mill & Mining Co. v. Ferris, Case No. 14,371.

Twenty years' adverse possession of water which had previously flowed to plaintiff's mill *held* to vest a complete title, which was not impaired by three years' nonuse, during which the water reflowed to plaintiff's mill, where defendant did not intend to abandon its right.—Haight v. Morris Aqueduct, Case No. 5,902.

§ 8. Conveyances and contracts.

An incorporeal right to water may be granted in gross.—Lonsdale Co. v. Moies, Case No. 8,-496.

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

Union Mill & Mining Co. v. Ferris, Case No. 14,371.

Where estates subject to mill privileges are subsequently united in ownership, and are again conveyed, any change in privileges, claimed to have been made by such conveyances, must distinctly appear.—Perry v. Parker, Case No. 11,010.

The proprietor of adjoining lands, who is also owner of the bed of a creek, may grant and convey the bed of the creek, separate from the land which bounds it.—Hartshorn v. Wright, Case No. 6,169.

A lease for 500 years of certain land, covered with a pond of water, conveys, as incident, the water and the fish therein.—Smith v. Miller, Case No. 13,080.

§ 9. Public water supply.
A company required to supply water to a city, "in case of fire or other great necessity, without charge," *held* bound to furnish free water for irrigating public parks and squares, flushing sewers, etc.—Hawes v. Contra Costa Water Co., Case No. 6,235.

§ 10. Control and regulation.
It is doubtful whether state laws relating to weights and measures can have any validity, though congress has never exercised its power of regulation.—The Miantinomi, Case No. 9,521.

WAYS.

Private rights of way, see "Easements."
Public ways, see "Highways"; "Municipal Corporations," §§ 22, 23, 25.

WHARVES.

§ 1, Power to control and regulate. § 2, Management and conduct of business. § 3, Wharfage—Right in general. § 4, —— Amount. § 5, —— Actions. § 6, —— Liens and enforcement. § 7, Injuries to vessels or cargoes.

Collision with vessels at wharves, see "Collision," §§ 68–74.
Jurisdiction of admiralty, see "Admiralty," § 19.
—— of action for injury to, see "Admiralty," § 31.

§ 1. Power to control and regulate.
A municipality in the exercise of its police powers may control the landing of boats, by designating the place where they shall receive or discharge freight or passengers, and charge a reasonable compensation therefor.—Northwestern Union Packet Co. v. St. Louis, Case No. 10,345.

A city may charge reasonable compensation, proportioned to the tonnage of the vessel, for the use of its wharves, where there is ample space elsewhere to land in the harbor.—Northwestern Union Packet Co. v. Clarksville, Case No. 10,342; Same v. Hannibal, Id. 10,343; Same v. Louisiana, Id. 10,344; Same v. St. Louis, Id. 10,345.

§ 2. Management and conduct of business.
A contract for the wharfage of a canal boat is a maritime contract.—The Kate Tremaine, Case No. 7,622.

A recovery cannot be had for an entire contract price where the vessel was not at the dock the whole period.—Earle v. The Alida, Case No. 4,245.

As to the right to occupy wharves in the city of Philadelphia, under the regulations and customs of the port.—Lincoln v. The Volusia, Case No. 8,357.

In Philadelphia, wharf owners have a right to use their wharfs for the unloading of their own vessels to the exclusion of others.—The Volusia, Case No. 16,992.

A usage for wharfingers to accept goods arriving at their wharves, as agents for the consignees, is not binding on the consignees.—The Middlesex, Case No. 9,533.

§ 3. Wharfage—Right in general.
Wharfage is the use of a wharf by a vessel for the loading or unloading of goods or passengers. Mere anchorage at a wharf is not wharfage.—The Gem, Case No. 5,303.

Act La. March 6, 1869, does not confer upon the railroad company or those claiming under it the right to collect wharfage dues from vessels, etc., landing at the levee front of its riparian property.—Ellerman v. New Orleans, etc., R. Co., Case No. 4,382.

A lease giving the lessee "the sole and exclusive right to use a public wharf" for his ferryboat does not authorize the collection of a toll for wharfage.—Russel v. The Empire State, Case No. 12,145.

Where libelant is the owner of a part of a wharf, he can recover as wharfage only his proportionate share of the statutory rate.—The City of Hartford, Case No. 2,751.

A large steamship, while at the end of her pier, with her ends lapping the piers on either side, while waiting for slack water to enter her regular berth, put out a bow-line for better security. *Held*, that she was not "made fast to" the pier, within the New York wharfage act.—The Cornwall, Case No. 3,249.

A wharf owner whose wharf was used as a free public highway *held* entitled to the regular wharfage for goods carried over the wharf to a vessel lying at another wharf, 400 feet distant.—The J. H. Starin, Case No. 7,320.

A vessel which makes fast to two distinct landing places must pay wharfage for each under Act N. Y. May 21, 1875.—The Virginia Rulon, Case No. 16,974.

The liability of a canal boat for wharfage under Act N. Y. May 21, 1875, and the validity of such act, which discriminates between vessels of different classes engaged in different occupations.—The John M. Welch, Case No. 7,359.

§ 4. —— Amount.
The wharfinger, under Act N. Y. 1875, is entitled to full rates for the use of a stage berth.—The Francesca T., Case No. 5,030.

N. Y. Act May 6, 1870, fixing rates of wharfage and providing penalties in double wharfage for nonpayment is not unconstitutional.—The Ann Ryan, Case No. 428.

A vessel propelled by steam power, designed for the sole purpose of towing boats on the canals, while in the process of construction, is a canal boat, but is not engaged in navigating the canal, within the exception in Act N. Y. May 6, 1870, fixing rates of wharfage.—The Vermont, Case No. 16,917.

An Erie canal boat employed about New York harbor is not a boat "navigating the canals of this state" within Act N. Y. May 6, 1870.—The Ann Ryan, Case No. 428.

The presentation of a bill made out in English to the mate, a foreigner who cannot read it, the wharfinger agreeing to refer it to the master, is not such a demand of payment as Act N. Y. 1875, requires to entitle to double rates.—The Francesca T., Case No. 5,030.

§ 5. —— Actions.
The liability for wharfage of an agent to whom a vessel is consigned, created by a state law (Laws N. Y. 1873, p. 430), is maritime in its character, and enforceable in admiralty.—Atlantic Dock Co. v. Wenberg, Case No. 622.

Admiralty has jurisdiction in rem of a claim for double wharfage under Act N. Y. May 6,

1870, for leaving the wharf without paying wharfage due.—The Ann Ryan, Case No. 428.

Vessel not allowed to set off, against wharfage, damages for delay in loading by the wharfinger.—The Francesca T., Case No. 5,030.

§ 6. —— Liens and enforcement.
A wharfinger has a lien on a vessel under the common law for wharfage.—Johnson v. The McDonough, Case No. 7,395.

The wharfinger loses his lien where he parts with possession of the vessel.—Russel v. The Asa R. Swift, Case No. 12,144.

Where a vessel, removed from a wharf secretly or wrongfully, is afterwards brought back without fraud or force, the lien of the wharfinger is revived.—Johnson v. The McDonough, Case No. 7,395.

And this is so though the vessel has been levied upon in the meantime by the marshal.—Johnson v. The McDonough, Case No. 7,395.

There is no lien for wharfage when there is a personal agreement between the wharfinger and shipowner as to the rate of wharfage.—New York Mail Steamship Co. v. The Baltic, Case No. 10,213.

Query, whether a personal contract for wharfage, made with the shipowner, is a waiver of the wharfinger's lien.—Ex parte Lewis, Case No. 8,310.

The lessee of a wharf is entitled (in Pennsylvania) to a lien for wharfage upon vessels using the wharf.—Earle v. The Alida, Case No. 4,245.

A lien arises under the maritime law for wharfage to a vessel in a foreign port.—Ex parte Lewis, Case No. 8,310; United Hydraulic Cotton-Press Co. v. The Alexander McNeil, Id. 14,404.

A wharfinger, having a lien for wharfage on a vessel under arrest on legal process, cannot enforce his lien by detention of the vessel, but must apply to the court for its allowance.—The Phebe, Case No. 11,065.

A lien for wharfage arising under the common law is not enforceable in admiralty.—Delaware River Storage Co. v. The Thomas, Case No. 3,769.

No lien arises under the maritime law for wharfage to a domestic vessel.—Russel v. The Asa R. Swift, Case No. 12,144; The Gem, Id. 5,303; Squires v. The Charlotte Vanderbilt, Id. 13,271; Earle v. The Alida, Id. 4,245. CONTRA, see The Kate Tremaine, Case No. 7,622; The Ann Ryan, Id. 428.

A lien given by the local law for wharfage to a domestic vessel is not enforceable in admiralty.—Russel v. The Asa R. Swift, Case No. 12,144; The Gem, Id. 5,303. CONTRA, see The Ann Ryan, Case No. 428.

There is a lien on a vessel under Act N. Y. May 21, 1875, for double wharfage, where she leaves a wharf without paying the wharfage due, which is enforceable in admiralty.—The Virginia Rulon, Case No. 16,974.

§ 7. Injuries to vessels or cargoes.
Wharf owners are liable for damages suffered by a vessel lawfully using their wharf for defects in the bottom, known to them, and not to the master of the vessel.—Sawyer v. Oakman, Cases Nos. 12,402, 12,404.

Cases stated in which fees paid for surveys of injured vessels are allowed as part of the recovery for injuries caused by negligence.—Sawyer v. Oakman, Case No. 12,402.

The mere fact of insufficiency of water in a berth does not show fault on the part of the wharfinger that renders him liable to the vessel for damage or delay.—The Francesca T., Case No. 5,030.

A direction by the wharfinger who is consignee of the cargo to place the vessel in the dock is not equivalent to a notification that the water is deep enough at all times to float the vessel.—Nelson v. Phœnix Chemical Works, Case No. 10,113.

The master must ascertain that the depth of water in the dock is sufficient for the draught of his vessel. The wharfinger does not impliedly warrant the depth.—Nelson v. Phœnix Chemical Works, Case No. 10,113.

But the wharfinger must inform the master as to inequalities in the surface of the bottom when material to the safety of the vessel.—Nelson v. Phœnix Chemical Works, Case No. 10,113.

Under what circumstances the owner of a wharf must notify the master of a vessel about to enter of the condition of the bottom alongside.—Sawyer v. Oakman, Case No. 12,402.

WIDOWS.

Dower, see "Dower."
Rights under statutes of descent and distribution, see "Descent and Distribution," §§ 2, 3.

WILLS.

I. NATURE AND EXTENT OF TESTAMENTARY POWER.

§ 1, Restrictions as to charitable devises or bequests. § 2, Omission of children.

II. TESTAMENTARY CAPACITY.

§ 3, What constitutes capacity. § 4, Married women. § 5, Evidence.

III. CONTRACTS TO DEVISE OR BEQUEATH.

§ 6. Agreement to make mutual wills.

IV. REQUISITES AND VALIDITY.

§ 7, Form and contents of instrument. § 8, Execution and attestation. § 9, Holographic wills. § 10, Nuncupative wills. § 11, Fraud and undue influence. § 12, Revocation.

V. PROBATE, ESTABLISHMENT, AND ANNULMENT.

§ 13, Probate in general. § 14, Probate or establishment of lost or destroyed wills. § 15, Probate of foreign wills. § 16, Limitations. § 17, Who may contest validity of will. § 18, Evidence. § 19, Hearing or trial. § 20, Judgment and decree. § 21, Review. § 22, Operation and effect.

VI. CONSTRUCTION.

§ 23, General rule—What law governs. § 23a, —— Evidence to aid in construction. § 24, —— Intention of testator. § 25, —— Presumptions. § 26, —— Particular words and phrases. § 27, —— Ambiguity and uncertainty. § 28, Designation of devisees and legatees. § 29, Survivorship, representation, and substitution. § 30, Description of property. § 31, Nature of estates and interests created—Fee simple. § 32, —— General devise or bequest with power of disposal. § 33, —— Conditional fee. § 34, —— Estates tail. § 35, —— Rule in Shelley's Case. § 36, —— Life estate. § 37, —— Devise or bequest for life with power of disposal. § 38, —— Devises in lieu of dower. § 39, Vested estates and interests. § 40, Contingent estates and interests. § 41, Conditions and restrictions. § 42, Estates in trust, and powers—Estate of trustee. § 43, —— Powers of trustee as to use and disposition of property. § 43a, Actions to construe.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.

§ 44, Acceptance of devise or bequest. § 45, When a devise or bequest takes effect. § 46, Time of payment. § 47, Property pledged as security for legacy. § 48, Interest on legacies. § 49, Actions for legacies. § 50, Specific legacies. § 51, Advancements. § 52, Satisfaction. § 53, Election—By widow. § 54, —— Right of other devisees and legatees. § 55, Abatement. § 56, Legacies charged on estate in general. § 57, Charges on land.

See, also, "Descent and Distribution"; "Executors and Administrators."
Appointment of guardian, see "Guardian and Ward," § 2.
Charitable bequests and devises, see "Charities."
Construction and execution of powers, see "Powers."
—— of trusts, see "Trusts."
Courts of probate, see "Courts," § 12.
Emancipation by will, see "Slaves," § 20.
Equitable conversion, see "Conversion."
Legacy and succession taxes, see "Internal Revenue," § 21; "Taxation," § 19.
Restrictions on perpetuities, see "Perpetuities."

I. NATURE AND EXTENT OF TESTAMENTARY POWER.

§ 1. Restrictions as to charitable devises or bequests.

A devise for the purpose of establishing a female school, not subject to denominational control, is not within the prohibition of devises to religious or ecclesiastical corporations, or for their use, or for the purpose of being given or appropriated to charitable uses. Code Ga. 1857, art. 55, p. 302.—Peters v. Bowman, Case No. 11,029.

A legacy to or for the use or support of a minister of the Gospel, as such, or to or for the use or support of a religious denomination, is void by the bill of rights of Maryland.—Newton v. Carbery, Case No. 10,190.

A devise which increases the income of an incorporated society beyond the sum which it is allowed by law to take and hold is not void.—Jones v. Habersham, Case No. 7,465.

§ 2. Omission of children.

Grandchildren of testator born before the date of the will, to whose father a life estate was given with remainder to certain charitable uses, *held* to have been intentionally omitted from the will. Gen. St. Mass. 1860, c. 92, § 25.—Loring v. Marsh, Case No. 8,515.

Rev. St. Mass. 1835, c. 62, § 21, providing for the case of a descendant omitted from the provisions of a will, is inapplicable to wills made in execution of a power of appointment.—Blagge v. Miles, Case No. 1,479.

II. TESTAMENTARY CAPACITY.

§ 3. What constitutes capacity.

The testator should appear to have had a sound disposing mind and memory; that is, that he was capable of making his will, with an understanding of what he was doing.—Harrison v. Rowan, Case No. 6,141.

A man may be capable of disposing by will, and yet incapable, by reason of infirmity, of making a contract, or of managing his estate.—Harrison v. Rowan, Case No. 6,141.

Whether a testator had a sound and disposing mind is to be determined by finding whether his mind and memory were sufficiently sound to enable him to understand the business in which he was engaged at the time of executing the will. The only time to be looked to is the time of the execution of the instrument.—Stevens v. Vancleve, Case No. 13,412.

§ 4. Married women.

At common law a will by a married woman disposing of her freehold estate is void.—Picquet v. Swan, Case No. 11,133.

In the absence of consent on the part of her husband, a wife cannot dispose of her personal property by will during his lifetime.—Hines v. Gordon, Case No. 18,302.

§ 5. Evidence.

The presumption is in favor of the sanity of the testator, and the burden of proof is on the party questioning it. Contra, if a previous state of insanity has been established.—Stevens v. Vancleve, Case No. 13,412.

A witness may depose as to what he thought of the testator's sanity, at or about the time the will was made; but not as to what the witness had declared upon the subject to others.—Harrison v. Rowan, Case No. 6,141.

In determining the soundness of a testator's mind the court will look rather to the facts on which witnesses have formed their opinions than to the opinions themselves, but will not entirely disregard the opinions.—Newton v. Carbery, Case No. 10,189.

On the question of testator's mental capacity the court will look to his substantial business acts, more than to his conversation, or occasional doings, not connected with business.—Turner v. Hand, Case No. 14,257.

III. CONTRACTS TO DEVISE OR BEQUEATH.

§ 6. Agreement to make mutual wills.

Under an agreement in writing to make mutual wills, neither party can make a will without notice to the other.—Robinson v. Mandell, Case No. 11,959.

IV. REQUISITES AND VALIDITY.

§ 7. Form and contents of instrument.

Any instrument may constitute a will which appears to be intended to operate after the death of the one making it, and not before.—Grattan v. Appleton, Case No. 5,707.

A devise is never construed absolutely void for uncertainty except from necessity.—Jackson v. Kip, Case No. 7,138.

A devise "in aid of the erection of a new Catholic church in Georgetown" is void for uncertainty.—Newton v. Carbery, Case No. 10,190.

§ 8. Execution and attestation.

Where a will of personalty is defectively executed, it must appear that testator intended it to operate as his will, or that he was prevented from completing it by being overtaken by sickness or other casualty.—In re McIntire, Case No. 8,823a.

No defect in the execution of a will conveying land can be supplied by parol proof.—In re McIntire, Case No. 8,823a.

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.—Darrell v. Brooke, Case No. 18,287.

A will is legally executed where the hand of a testator, by his consent, is guided by another, and he afterwards acknowledges the will.—Stevens v. Vancleve, Case No. 13,412.

Proof of forgery, derived from knowledge of handwriting, will not prevail against positive

and unimpeached evidence of actual execution. —Turner v. Hand, Case No. 14,257.

A will not required by law to be sealed is good without a seal.—Piatt v. McCullough, Case No. 11,113.

A will may be republished by the testator's verbal declarations, so as to include property acquired after its original execution. Act Pa. 1833.—Dike v. Kuhns, Case No. 3,907.

A codicil confirming a will is in law a republication of the will so as to pass real estate intermediately purchased. — Brownell v. De Wolf, Case No. 2,037.

A will concerning land in Pennsylvania, no matter where made, must be proved by two witnesses.—Hylton v. Brown, Case No. 6,981.

The custom in California under the Mexican government authorizing two witnesses to a will, operated as a repeal of the law requiring three witnesses.—Adams v. De Cook, Case No. 51.

The title of office added by a ministerial officer attesting a will may be disregarded, and he be considered an attesting witness.—Adams v. De Cook, Case No. 51.

A will cannot be proved by witnesses who were appointed by a testator as guardians to testator's infant children.—Williams v. Wells, Case No. 17,746.

Witnesses ignorant of language in which a will is drawn, not interpreted, are incompetent. —Adams v. De Cook, Case No. 51.

The person to whom a fee is given by testator if she should survive his daughter dying without issue then living, is not a competent witness.—Harrison v. Rowan, Case No. 6,141.

§ 9. **Holographic wills.**
The month alone is sufficient to show the dating of an holographic will, under Civ. Code La., requiring that such a will shall be written, dated, and signed by the testator.—Gaines v. Lizardi, Case No. 5,175.

§ 10. **Nuncupative wills.**
From 1676, when the act of 29 Car. II. was enacted, no nuncupative will can, under any circumstances, pass real estate.—In re Kelby's Will, Case No. 18,306.

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.—In re Kelby's Will, Case No. 18,306.

§ 11. **Fraud and undue influence.**
The devisee must show that the will was read or that its contents were known to testator, where it appears that he was blind or incapable of reading, or if a reasonable ground be laid for believing that it was not read to him, or that there was fraud in the transaction. —Harrison v. Rowan, Case No. 6,141.

Declarations of an intention to alter a will, and of being prevailed upon not to do so, are inadmissible to show that testator was fraudulently prevented from revoking the will.—Smith v. Fenner, Case No. 13,046.

Declarations of the testator before and at the time of making the will, and afterwards, if so near as to be part of the res gestæ, are admissible to show fraud in obtaining the will. But declarations at any distance of time after execution are inadmissible.—Smith v. Fenner, Case No. 13,046.

Declarations of testator, after the alleged making of a will, as to the disposition of his property, tending to show a want of knowledge of the existence of the will, *held* admissible upon the question of forgery.—Turner v. Hand, Case No. 14,257.

The influence of the general doctrines of the church of which testator was a member is not such undue influence as will justify the avoidance of his will.—Newton v. Carbery, Case No. 10,189.

§ 12. **Revocation.**
Evidence as to the execution and destruction by Daniel Clark of a will making his daughter, Myra Clark, his universal legatee, reviewed.—Gaines v. Lizardi, Case No. 5,175.

An alteration of a pecuniary legacy in the will, by the legatee or a stranger, does not avoid the will as to other bequests.—Smith v. Fenner, Case No. 13,046.

A legacy to a granddaughter by codicil, "in lieu" of a devise in the will to her mother, since deceased, is a revocation of the original devise to the mother.—Brownell v. De Wolf, Case No. 2,037.

V. PROBATE, ESTABLISHMENT, AND ANNULMENT.

§ 13. **Probate in general.**
The common-law distinction between the probate of wills of realty and wills of personalty does not obtain in California.—Adams v. De Cook, Case No. 51.

Rev. St. Me. c. 62, § 25, in relation to the probate of wills, is merely affirmative of the law, as it antecedently stood.—Ex parte Fuller, Case No. 5,147.

A will is not effective until probated in the proper court.—Baldwin v. Wylie, Case No. 18,228.

An unprobated will executed in California under the Mexican government is not a nullity, and its due execution may be proved to sustain title to property thereunder.—Adams v. De Cook, Case No. 51.

Republished wills and codicils have the effect of new wills, and are to be probated in the same way.—Musser v. Curry, Case No. 9,973.

§ 14. **Probate or establishment of lost or destroyed wills.**
Code Prac. La. arts. 942, 943, relating to proving wills, do not apply to lost wills.—Gaines v. Lizardi, Case No. 5,175.

The presumption arising from the failure to find a will proved to have been executed by the testator is that it was destroyed, animo cancellandi; but such presumption may be overcome by circumstantial evidence.—Southworth v. Adams, Case No. 13,194.

In a suit to establish a lost will, secondary evidence of its existence and contents is admissible.—Southworth v. Adams, Case No. 13,194.

§ 15. **Probate of foreign wills.**
The will of a feme covert, under a power reserved in a postnuptial settlement, must be proved in the courts of probate of the country of her residence before it can be acted upon elsewhere.—Picquet v. Swan, Case No. 11,133.

§ 16. **Limitations.**
Civ. Code La. art. 3540, limiting the time to sue to annul a will, is not applicable to a suit in which the will is relied upon as a muniment of title by a party out of possession.—Gaines v. Lizardi, Case No. 5,175.

§ 17. **Who may contest validity of will.**
Parties to a suit in equity in the federal court, who are not barred by prescription, waiver, estoppel, or some other supervening cause, may contest the validity of a will involving the question of title to property by answer, or by proceedings for revocation in the probate court. —Fuentes v. Gaines, Case No. 5,145.

§ 18. **Evidence.**
On an issue as to the validity of a will, evidence for defendant that plaintiff purloined a

former will of the testator is inadmissible, there being no purpose to prove the contents of the former will.—Stevens v. Vancleve, Case No. 13,412.

General declarations of testator applicable to any will are not competent to prove execution of a particular will.—Adams v. De Cook, Case No. 51.

§ 19. **Hearing or trial.**
On an issue devisavit vel non, the party contesting the will has the right to open and close. —Carrico v. Kirby, Case No. 2,442.

No exception can be taken at nisi prius to the opinion of the judge who tries an issue of devisavit vel non.—Harrison v. Rowan, Case No. 6,141.

§ 20. **Judgment and decree.**
When the validity of a will is brought in question incidentally on question of title to property, it is open for investigation in any court in which the title may be litigated.—Fuentes v. Gaines, Case No. 5,145.

The Massachusetts probate courts have complete jurisdiction over the probate of wills of both real and personal estate, and its decrees are conclusive upon all parties, and not reexaminable in any other court.—Tompkins v. Tompkins, Case No. 14,091.

A like effect is given to the probate of a will by the Rhode Island supreme court.—Tompkins v. Tompkins, Case No. 14,091; Spencer v. Spencer, Id. 13,233.

The probate of a will, in Louisiana, is not conclusive against parties in possession of property which is sought to be recovered from them by virtue of it, unless they were parties litigant in the probate proceedings.—Fuentes v. Gaines, Case No. 5,145.

The proceedings of the Pennsylvania orphans' court, upon the offer for probate of a will as to personal property, and the decree of the prerogative court, refusing the probate, are not admissible upon an issue to determine the validity of the will to pass real estate.—Harrison v. Rowan, Case No. 6,141.

§ 21. **Review.**
On appeal from the sentence of the orphans' court sustaining a will, the circuit court of the District of Columbia cannot inquire into the validity of any particular legacy.—Newton v. Carbery, Case No. 10,189.

§ 22. **Operation and effect.**
A derivative title to personalty may be proved under a foreign will without probate here.—Trecothick v. Austin, Case No. 14,164.

A will of lands, in Rhode Island, cannot be admitted as evidence of a devise, unless it has been duly probated.—Moore v. Greene, Case No. 9,763.

Where a suit brings incidentally in question the title to land held under devise in another state, the will need not be probated in the state where the suit is brought, before it can be used as evidence of title.—Slack v. Walcott, Case No. 12,932.

Under the statute of Indiana, a will made and recorded in any other state, according to the laws of such state, is valid to pass lands or other property in Indiana; and a copy duly certified from such record is made evidence.—O'Brien v. Woody, Case No. 10,398.

VI. CONSTRUCTION.

§ 23. **General rule—What law governs.**
As to the effect of the domicile of testator in the construction of his will.—Packer v. Nixon, Case No. 10,653; Grattan v. Appleton, Id. 5,707.

A will is to be construed under the law as existing at the time of testator's death.—Adams v. Wilbur, Case No. 70.

§ 23a. —— **Evidence to aid in construction.**
Parol evidence is not admissible to affect the construction of a will, but it is admissible where its introduction is required by considerations extrinsic of the will, and which, necessarily, depend upon such evidence.—Gallego v. Chevallie, Case No. 5,200.

Instructions given to a solicitor for the preparation of a will are not admissible to control or contradict its plain terms, nor to supply an omission, unless there is something on the face of the instrument to connect them therewith.—Warner v. Brinton, Case No. 17,179.

§ 24. —— **Intention of testator.**
The intention of the testator which is controlling in the construction of a will must be collected from the whole will.—Jackson v. Kip, Case No. 7,138; Nightingale v. Sheldon, Id. 10,265.

Testator's intention, when clearly expressed, will control technical words and set phrases.—Blagge v. Miles, Case No. 1,479.

§ 25. —— **Presumptions.**
Technical words will be presumed to be used in the sense the law has appropriated to them, unless a contrary intention is manifest.—Jackson v. Kip, Case No. 7,138; Nightingale v. Sheldon, Id. 10,265.

§ 26. —— **Particular words and phrases.**
The word "estate" will apply to real or personal estate, or to both, according to the manner in which it is used in reference to the respective clauses of the will.—Stump v. Deneale, Case No. 13,560.

The word "or" may be read "and" when it becomes necessary for the purpose of carrying into effect the clear and obvious intention of testator.—Jackson v. Kip, Case No. 7,138.

§ 27. —— **Ambiguity and uncertainty.**
Where a will is ambiguous in its words, and contains no reference to anything which can make it certain, or on its face admits of no construction, it is void.—Warner v. Brinton, Case No. 17,179.

§ 28. **Designation of devisees and legatees.**
"Issue" prima facie means heirs of the body, and refers to all lineal descendants.—Whartenby v. Daniel, Case No. 17,479.

"Issue," in a will penned with great regard to technical words, includes all direct descendants, and is not limited to children.—Maxwell v. Call, Case No. 9,323.

A general testamentary disposition of all one's "estate, real and personal," to his "heir at law," by one who has no realty, is not a disposition to the next of kin.—Aspden's Estate, Case No. 589.

"Heir at law," when used in context as a synonym with "lawful heir," does not create an ambiguity, and must be held to mean in Pennsylvania, where testator was technically domiciled, though resident most of his life in England, the person on whom the law of Pennsylvania casts an intestate's estate at the time of his death, though testator evidently meant otherwise.—Aspden's Estate, Case No. 589.

A devise to W. as bishop of the Roman Catholic Church, or his successor, in trust for the benefit of the community attached thereto in which testatrix should die a member, *held*, not a good bequest to the "Sisters of St. Joseph," as beneficiaries, and to K., successor to W., as trustee.—Kain v. Gibboney, Case No. 7,595.

§ 29. Survivorship, representation, and substitution.

Under a devise to the children of A., to be divided among them when they arrive of age, all children living when the eldest arrives of age, though born after the death of testator, take a share, and the shares of those dying in the meantime fall into the general residuum.—Moffit v. Varden, Case No. 9,689.

The revocation by codicil as to one child, without a devise over, of her share of a devise to "all surviving children in equal divisions," does not pass such share to the other surviving children.—Brownell v. De Wolf, Case No. 2,037.

A devise to "Zenas K. or his heirs; N. B. Ezra K. is to have a double portion of my estate more than Zenas K.'s other children,"—is a devise to Zenas K. and his heirs, but, in case of Zenas K.'s death before testator's, to such of his children as shall be living at testator's death, Ezra to have a double portion. —Kinsey v. Kinsey, Case No. 7,828.

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. *Held*, that the will had reference only to a death during the lifetime of testator.—Wood v. Denny, Case No. 17,942.

Under a devise directly to the children of testator's brother and sister, the devisees take per capita, and not per stirpes.—Moffit v. Varden, Case No. 9,689.

§ 30. Description of property.

A bequest of "all my estate, and the proceeds thereof, to my daughters," gives a married woman, a residuary legatee, the proceeds of the sale, and not a share of stocks constituting the residue, disencumbered from the marital rights of the husband.—Canby v. McLear, Case No. 2,378.

Bags, bottles, and casks, containing coffee, wine, and brandy for current use, do not pass under a bequest of all "furniture and other household effects," but go with their contents, as incidents thereto.—Foxall v. McKenney, Case No. 5,016.

Proceeds of mortgages identified in lands will pass under a devise of "proceeds" of such mortgages where they were foreclosed before testator's death.—American Bible Soc. v. Holman, Case No. 291.

A Kentucky will, by which testator bequeathed "every part of my estate, of every kind whatsoever, to be equally divided (by sale or otherwise, as may seem best) between" his wife and children and their heirs, forever, *held* not to authorize the executors to divide or sell real property in Ohio.—Dunlap v. Pyle, Case No. 4,163.

A determination that certain premises are not within the operation of a will may be made without questioning its validity or its probate.—Coulson v. Holmes, Case No. 3,274.

A devise of a mill with appurtenances conveys, not the buildings merely, but the land under and adjoining which is necessary to the use, and is actually used with it.—Whitney v. Olney, Case No. 17,595.

A good title acquired after the date of a devise of land by a testator who had possession with claim of ownership, which might have ripened into a good title, is not merged therein so as to pass the land as land acquired prior to the date of the devise.—Girard v. Philadelphia, Case No. 5,459.

A will does not take effect upon an after-acquired estate; and any alteration of the estate of the testator in the premises after a specific devise works a revocation of the devise. —Coulson v. Holmes, Case No. 3,274.

The effect of an introductory clause, and of the words "remainder" and "residue," in the construction of a will. — Ferguson v. Zepp, Case No. 4,742.

A devise of "all the residue of my estate, of every name and kind," *held* sufficient to pass real estate.—Blagge v. Miles, Case No. 1,479.

Devise of property in Third street may be explained to mean property in Fourth street, where testator had no property in Third street. —Allen v. Lyons, Case No. 227.

§ 31. Nature of estates and interests created—Fee simple.

A devise for life to testator's wife, then to his son, passes the fee by implication to the son.—King v. Ackerman, Case No. 7,786.

A devisee takes a fee by implication where the will charges him personally with the payment of legacies.—King v. Ackerman, Case No. 7,786.

It is not competent for the purpose of preventing a devisee from taking a fee by implication, where he is personally charged with payment of legacies, to show the value of other real estate expressly devised to him in fee.—King v. Ackerman, Case No. 7,786.

A devise expressly for life or in tail cannot be enlarged into a fee by other words of doubtful import.—Willis v. Bucher, Case No. 17,769.

Under a devise as follows: "As to my worldly goods, I devise to my wife, A., all and singular my goods and effects, both real and personal, of what kind soever, after my debts and funeral expenses are paid,"—*held*, that the wife took a fee simple.—Ferguson v. Zepp, Case No. 4,742.

Under a law giving all the annual income of testator's estate to his wife during her widowhood, to be equally divided between her and his son, *held*, that the fee did not pass, and the title went to his heirs at law.—Pryor v. Dunkle, Case No. 11,458.

A devise upon certain conditions *held* to carry a fee when the conditions were performed.—McCoun v. Lay, Case No. 8,729.

§ 32. —— General devise or bequest with power of disposal.

A power of disposal by will does not enlarge an interest in the donee of the power beyond what is expressly limited.—Ward v. Amory, Case No. 17,146.

A devise of a fee to trustees and their heirs, with authority to sell, is consistent with an executory bequest with a fee to others after a life estate.—Ward v. Amory, Case No. 17,146.

An express limitation in a bequest or devise will not be *held* to be controlled by implications drawn from other provisions in the will, if the latter, by any fair intendment, can be reconciled with the former.—Ward v. Amory, Case No. 17,146.

§ 33. —— Conditional fee.

A devise over to the survivor or survivors of such as should die without issue, in a case of devises to several grandchildren, *held* to cut down a fee simple absolute, previously devised, to a fee simple conditional, or to an estate tail.—Crane v. Cowell, Case No. 3,353.

A devise, "If either of my sons, A. and B., should happen to die without any lawful heirs of their own, then the share of him who may first decease shall accrue to the other survivor and his heirs," *held* to give a fee simple conditional, and not a fee tail.—Abbott v. Essex Co., Case No. 11.

§ 34. —— Estates tail.

Under a devise to A. for life, remainder to her son B. and to his children in fee simple,

but, in case B. die without children, to her son C. and to his children in fee simple, *held*, that B. took a fee tail with remainder to C. on an indefinite failure of issue of B.—Parkman v. Bowdoin, Case No. 10,763.

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.—Wright v. Scott, Case No. 18,092.

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.—Willis v. Bucher, Case No. 17,769.

A devise of lands to be held by the executors until the last born grandchild should become of age, then to be divided among all grandchildren per capita, the issue of those dead to take per stirpes, rents and profits to be divided among the devisees in the meantime, does not create an estate in fee tail.—McArthur v. Allen, Case No. 8,659.

§ 35. —— Rule in Shelley's Case.

The rule in Shelley's Case *held* not to apply where there were qualifying and explanatory expressions showing clearly a different intent. —McArthur v. Allen, Case No. 8,659.

To take a case out of the rule in Shelley's Case, the intent of the testator to change the primary meaning of the word "issue," and employ it in an unusual sense, must manifestly appear in the will itself.—Whartenby v. Daniel, Case No. 17,479.

The rule in Shelley's Case is not applicable to a devise of an equitable estate for life to the ancestor, and a legal estate after the termination of the life estate to the heirs.—Ward v. Amory, Case No. 17,146.

§ 36. —— Life estate.

A devise to a person for life with the remainder to his issue and heirs of the issue, does not give a mere life estate to the first taker unless there are also in the devise of the remainder words of distributive modification.—Whartenby v. Daniel, Case No. 17,479.

Where a gross sum in debts, etc., is charged by the will on the estate devised, and not on the devisee, the devisee in a general devise to him takes only an estate for life. But where the charge is on him personally, in respect of the devise, he takes a fee.—Ferguson v. Zepp, Case No. 4,742.

A devise of two houses to a daughter, the mother to be permitted to "occupy and dwell" in the better one during her life, *held* not a grant to the mother of a beneficial interest, but a mere permission to reside in one house.—Gardener v. Wagner, Case No. 5,218.

Where a person, having permission by will merely to reside in a house, leased the same, *held*, that her executors should account for the net income for six years back.—Gardener v. Wagner, Case No. 5,218.

A devise to A. for her support during life, and at her decease to become the property of B., not to be subject to his disposal, but to descend to his children free and unincumbered; but, in case he has none living at his death, to become the property of C. in fee simple, or of her heirs if she be not then living,—construed.—Leavitt v. Logan, Case No. 8,173.

Under a gift of the residuum to testator's wife "provided that she has no lawful issue," followed by a gift of all his property to her, "by her freely to be possessed and enjoyed," *held*, that the wife took only a life estate.—Page v. Wright, Case No. 10,669.

A devise to "A. and to his male children, lawfully begotten of his body, and their heirs, forever, to be equally divided amongst them and their heirs forever," passes a life estate to A., with a contingent remainder in fee to his children.—Sisson v. Seabury, Case No. 12,913.

§ 37. —— Devise or bequest for life with power of disposal.

Construction of will devising life estate with the remainders over as to provisions for the disposal of the estate.—Waldron v. Chasteney, Case No. 17,058.

A general devise of all testator's property for "life, and to do with as she sees proper before her death," *held* to give a life estate in land with power of disposal, in fee during her life.—Brandt v. Virginia Coal & Iron Co., Case No. 1,814.

§ 38. —— Devises in lieu of dower.

Under Rev. St. Ill. 1833, p. 624, declaring that any provision in the will bars dower, the amount must be such as to afford a reasonable presumption that it was given in lieu of dower.—United States v. Duncan, Case No. 15,002.

§ 39. Vested estates and interests.

A will giving all testator's property to his children share and share alike, but postponing distribution until the majority of the youngest child, and providing that the children should have college educations chargeable to the estate and to a sufficient allowance after majority until distribution, *held* to give a vested interest payable at a future day.—Lenox v. Lenox, Case No. 8,246a.

The title to property willed to executors to convert into a fund, and to keep and distribute, etc., remains in them until actual distribution; and, where a discretion is to be exercised, the ultimate distributee has no previous vested interest. —In re Jones, Case No. 7,444.

Under a devise to testator's wife, for life, remainder to his daughters A. and B., their heirs and assigns, but, in case they should die without issue, then to their sisters C. and D., *held* that, at common law, A. and B. took joint estates for life with several remainders in tail to their issue, which, under the statute of Rhode Island, was turned into a tenancy in common, and that the several estates tail in possession vested in them. —Lillibridge v. Adie, Case No. 8,350.

Under a devise to testator's wife until his son P. should attain the age of 21 years, then to him and his heirs, but, if he should die before attaining such age or without lawful issue, then to the testator's heir male in fee simple, P. takes an immediate vested estate in fee simple, liable to be defeated by his death before 21, but indefeasible, on attaining such age.—Arnold v. Buffum, Case No. 554.

The residuary estate was directed to be divided between certain persons according to their several specific legacies. *Held*, that the residuary legacies vested on the death of testator.—Reading v. Blackwell, Case No. 11,612.

Devise to executor for use of wife for life, remainder to persons named, gives vested interest to remainder-man, which will pass to his assignee.—Beecher v. Gillespie, Case No. 1,224.

Under a devise to testator's wife, "during her widowhood," and, in case of her marriage, the whole of the estate to be given to testator's daughter and her heirs, forever, the daughter takes a vested remainder in fee.—Farmers' Bank v. Hooff, Case No. 4,659.

§ 40. Contingent estates and interests.

Under a devise to A. "and if he shall die, without an heir, before he shall arrive at the age of 21 years," then to be equally divided among his brothers and sisters or their heirs, *held*, that A. took a fee simple, with an executory devise over to his brothers and sisters.—Lippett v. Hopkins, Case No. 8,380.

Where a bequest is to a daughter, with provision that her husband should have the income after her death, and on his death the property to go to her children, the limitation in favor of the children terminates on the death of the daughter's husband in her lifetime.—Clarke v. Johnston, Case No. 2,856.

Under a devise to S. "and to his male heir, * * * and to his heirs and assigns forever," and, in case of the death of S. without male heir, to O. in fee, *held*, that S. took an estate tail, with remainder to O. on indefinite failure of the issue of S.—Osborne v. Shrieve, Case No. 10,598.

Will construed as an executory devise to W. in tail, after an estate for life in himself, remainder in fee to his children living at his death, which executory devise in tail is to take effect on the contingency of his dying without children living at the time of his death.—Murdock v. Shackelford, Case No. 9,937.

A devise "in fee" to testator's granddaughter, "but, in case of her death without issue," then over, *held* a good executory devise, which took effect upon her death without issue.—Jackson v. Kip, Case No. 7,138.

In limitations of legal estates, where a remainder of inheritance is limited in contingency by way of use or by devise, the inheritance in the meantime remains in the grantor or his heirs, or in the heirs of the testator, until the contingency happens to take it out of them.—Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

§ 41. Conditions and restrictions.
Testator may provide that the estate of the devisee on his becoming a bankrupt shall determine and go somewhere else.—Sanford v. Lackland, Case No. 12,312; Nichols v. Eaton, Id. 10,241.

A condition annexed to a devise that it shall not be liable for the devisee's debts is invalid.—Sanford v. Lackland, Case No. 12,312.

A bequest of slaves on condition that they be not carried out of the state or sold, in either of which events said slaves are to be free, is a conditional bequest of freedom, and valid as such.—Ash v. Williams, Case No. 573.

§ 42. Estates in trust and powers—Estate of trustee.
Under a devise "to my executor herein named in trust," *held*, that the executor's relation to the trust estate was the same as if he had not been named as executor in the will.—Parsons v. Lyman, Case No. 10,780.

Under a devise to A., on condition of his intermarriage with the unborn daughter of certain persons, in trust for his eldest son by such marriage, where such persons die without the birth of a daughter, A. takes no beneficial estate, but an estate in trust, and the resulting trust remains in the heirs, which vested at the time of the testator's death, and was then subject to alienation.—Vint v. King, Case No. 16,950; Findlay v. Vint, Id.; Allen v. Same, Id.; Sheffey v. Same, Id.

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.—Wisner v. Ogden, Case No. 17,914.

A devise to the executor, in trust to apply the rents and income to the support of the widow, with power to sell the estate if the income should not be sufficient, is a devise in fee to the executor, and he is entitled to receive the rents accruing after the death of the wife.—Hardy v. Redman, Case No. 6,061.

Under a devise of real estate to an executor and trustee, in trust to sell and convey it, and distribute the proceeds, the executor, under 1 Rev. St. N. Y. p. 728, § 55, takes no estate in the land, but it descends to the heirs at law, subject to the execution of the power in trust.—Pennoyer v. Shelden, Case No. 10,943; Lindenberger v. Matlack, Id. 8,360.

§ 43. —— Powers of trustee as to use and disposition of property.
Where a partner, by his will, makes his copartner executor, and devises the residue of his estate in trust for certain purposes, and authorizes him to use the property in the business until wanted for distribution, the residue, only, can be used in the business.—In re Clap, Case No. 2,783.

A bequest to trustees of the use of testator's "property" in a certain banking business *held* to include the use of slaves employed therein.—Foxall v. McKenney, Case No. 5,016.

Under a power in a trustee to sell land "when the major part of my children shall recommend and advise the same," the consent of the major part of those living at the time of the sale is sufficient.—Sohier v. Williams, Case No. 13,159.

§ 43a. Actions to construe.
Upon a bill to obtain the construction of a will the court will not allow parties whose estates and interests under a will are sought to be destroyed, on the ground of alienage and illegitimacy, to be represented by trustees, but will give them an opportunity to come in. Rule 49. —Cross v. De Valle, Case No. 3,431.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.

§ 44. Acceptance of devise or bequest.
In the absence of an unequivocal act of disclaimer or renunciation, the consent of the devisee will be presumed where the devise is plainly for his benefit.—Ex parte Fuller, Case No. 5,147.

A mere nonpossession of real estate by the devisee under a devise, short of the period prescribed by the statute of limitations to bar a right of entry, does not amount to a positive renunciation or disclaimer of the devise, or to proof thereof.—Webster v. Gilman, Case No. 17,335.

A renunciation or disclaimer by a devisee must be evidenced by some solemn act or acknowledgment in writing, or by some open and positive act which will operate as an estoppel.—Webster v. Gilman, Case No. 17,335.

§ 45. When a devise or bequest takes effect.
The title passes to the devisee of real estate at the death of the testator, and the probate of the will relates back to that time.—Ex parte Fuller, Case No. 5,147.

Upon a devise that a slave should be sold for eight years, after which he should be free, the term begins to run from testator's death, or within a reasonable time thereafter.—Bazil v. Kennedy, Case No. 1,151.

§ 46. Time of payment.
Executors may, at their discretion, pay over legacies at any time within the year after testator's decease.—Sullivan v. Winthrop, Case No. 13,600.

§ 47. Property pledged as security for legacy.
Testator directed that a certain legacy be invested in an institution of savings to be paid to the legatee on her marriage or arrival of age, and that all of certain stocks standing in his name should be bound to pay the legacy. *Held*, that the whole of such stock was pledged as security for the principal legacy, but not for the

accruing interest.—Vernon v. D'Wolf, Case No. 16,922.

§ 48. Interest on legacies.
Interest commences on a pecuniary legacy at the expiration of one year from testator's decease, whatever may be the posture of the estate, where not otherwise specified in the will.—Sullivan v. Winthrop, Case No. 13,600.

The cases of infant children and of adopted children under age, not otherwise provided for, are exceptions to such rule.—Sullivan v. Winthrop, Case No. 13,600.

An investment by executors, in the name of a legatee, of a sum less than the whole amount of the legacy, *held* a payment pro tanto, entitling the legatee to the interest accruing thereon.—Sullivan v. Winthrop, Case No. 13,600.

§ 49. Actions for legacies.
A previous demand for the legacy is not necessary under Code La. art. 1626, where the purpose of the bill is merely to establish the validity of the bequest.—Haines v. Carpenter, Case No. 5,905.

A court of equity will not interfere to declare future rights which may arise under a will.—Cross v. De Valle, Case No. 3,430.

§ 50. Specific legacies.
A bequest of "$20,000 out of the 6 per cent. stock of the corporation of Washington in my name, if so much should remain out of my personal estate after satisfying all previous bequests," is a specific legacy.—Larned v. Adams, Case No. 8,092.

A bequest of corporate stocks, or money in lieu thereof, with power to the executors to change the investment, *held* not a specific legacy, but liable to contribution on deficiency of assets.—Ladd v. Ladd, Case No. 7,972.

If there be a fund for the payment of debts and legacies, the executor may be compelled to assent to a specific legacy.—Chapman v. Fenwick, Case No. 2,604.

§ 51. Advancements.
An advancement by the testator to a husband, whose wife was an heir, with direction that it be deducted "from the share coming to the family," *held* should not be deducted from a legacy to the wife.—Gallego v. Chevallie, Case No. 5,-200.

§ 52. Satisfaction.
A conveyance accompanied by a deed of trust in favor of the grantor works a revocation of a previous devise of such property to the grantee. —Coulson v. Holmes, Case No. 3,274.

§ 53. Election—By widow.
The acceptance of a small installment of the income of a trust fund given by will *held* not a conclusive election to accept the provisions of the will in lieu of dower.—Crocker v. Beal, Case No. 3,396.

Where the widow accepts a devise in lieu of dower, not knowing the extent of the estate, she may renounce under the will, and claim, after the lapse of years.—United States v. Duncan, Case No. 15,002.

Where necessary, she may bring a suit to ascertain the true condition of the estate to enable her to make a proper election.—United States v. Duncan, Case No. 15,002.

§ 54. —— Rights of other devisees and legatees.
On renunciation by the widow, the remainderman takes an immediate estate subject to her dower.—Ladd v. Ladd, Case No. 7,972.

A widow who receives the portion of her husband's estate devised and bequeathed to her is not entitled to a share in the personalty, as to which the husband died intestate.—Reed v. Campbell, Case No. 11,640a.

The renunciation of the provisions in a will by the widow will have no effect on a clause manumitting slaves, where there is sufficient other personal estate to satisfy her claim.—Thompson v. Clarke, Case No. 13,951.

§ 55. Abatement.
A specific legacy will not abate or contribute if there be enough without.—Chapman v. Fenwick, Case No. 2,604.

Payment of general and specific legacies where fund set apart for payment of debts was inadequate, and a sale of the whole estate was directed.—Byrd v. Byrd, Case No. 2,267.

§ 56. Legacies charged on estate in general.
Under the Louisiana Code, a particular legacy is a charge upon the whole estate in preference to all others; it descends to the heir as a personal debt when he takes possession.—Labitut v. Prewett, Case No. 7,962.

A charge of the payment of debts and legacies made upon one to whom an estate is devised is always treated as a charge in rem, as well as in personam, unless the contrary is evident from the language in the will.—Sands v. Champlin, Case No. 12,303.

Annuities charged on real and personal estate will be paid out of personalty if there is sufficient to pay both annuities and legacies not specially charged.—Allen's Heirs v. Allen's Ex'rs, Case No. 242.

Otherwise the legatees will be subrogated to annuitants already paid out of personalty.—Allen's Heirs v. Allen's Ex'rs, Case No. 242.

Where testatrix charged her land and her personalty with her debts and legacies, and emancipated her slaves, and her personal estate was not sufficient without the slaves, but with the real estate was more than sufficient, the slaves were entitled to their freedom.—Chapman v. Fenwick, Case No. 2,604.

§ 57. Charges on land.
The words, "I will, in the first place, that my just debts be paid," charge the realty with the payment of debts.—McCulloch v. McLain, Case No. 8,739.

A devise of real estate "after the payment of debts" is a charge on the real estate.—Chapman v. Fenwick, Case No. 2,604; Wright v. West, Id. 18,102.

The word "condition," annexed to a devise of real estate, construed as a charge upon the real estate devised.—Sands v. Champlin, Case No. 12,303.

Under a devise to a son in fee of two third parts of a certain farm, "he paying all my just debts out of said estate," *held*, that the land was charged, but a bona fide purchaser was not bound to look to the application of the purchase money.—Gardner v. Gardner, Case No. 5,227.

If the purchase money is unpaid, it may be followed into the hands of the purchaser, and he is liable in equity for its misapplication after notice.—Gardner v. Gardner, Case No. 5,227.

A devise of land to an individual required to pay specific legacies constitutes a charge on the land in the hand of the vendee.—Morancy v. Quarles, Case No. 9,788.

A clause of a will construed as not charging the real estate with the payment of debts.—Stump v. Deneale, Case No. 13,560.

WITNESSES.

I. ATTENDANCE, PRODUCTION OF DOCUMENTS, AND COMPENSATION.

§ 1, Jurisdiction and power to compel attendance. § 2, Persons who may be compelled

to attend or testify. § 3, Mode of compelling attendance — Subpœna and service thereof. § 4, —— Attachment. § 5, —— Habeas corpus ad testificandum. § 6, —— Requiring bond or recognizance. § 7, Contempt. § 8, Right of accused to compulsory process. § 9, Subpœna duces tecum. § 10, Compensation of witnesses —Parties. § 11, —— Attendance for several cases or purposes. § 12, —— Mileage and travel fees. § 13, —— Manner of summoning and voluntary appearance. § 14, —— Imprisonment of witness. § 15, —— Suspension of case. § 16, —— Tender of fees in advance. § 17, —— Actions and proceedings for fees.

II. COMPETENCY.

(A) Capacity and Qualifications in General.

§ 18. Qualifications and competency in general. § 19, Knowledge or means of knowledge. § 20, Witnesses subjected to improper influences. § 21, Husband and wife. § 22, Idiots. § 23, Defect of religious sentiment or belief. § 24, Infamous persons and persons convicted of crime. § 25, Jurors. § 26, Negroes, mulattoes, and slaves. § 27, Objections and waiver thereof.

(B) Parties and Persons Interested in Event.

§ 28, Parties to civil actions and proceedings. § 29, Defendants in criminal cases. § 30, Incompetency by reason of interest in general. § 31, Establishing interest of witness. § 32, Interest voluntarily acquired by witness after knowledge of subject-matter of suit. § 33, Principal and surety. § 34, Principal and agent. § 35, Attorney of witness. § 36, Competency of members of a partnership or corporation. § 37, Creditor of party. § 38, Inhabitants where municipality is a party. § 39, Parties to deeds collaterally in evidence. § 40, Legatees, heirs, and distributees. § 41, Parties to negotiable instruments in actions relating thereto. § 42, Persons who were injured or intended to be injured by crime. § 43, Prosecutors, informers, and persons entitled to portion of penalty or fine. § 44, Master and crew of vessel in actions relating to vessel or against owner. § 45, Seamen as witnesses for each other. § 46, Patent cases. § 47, Salvage cases. § 48, Removal of incompetency by release or assignment of interest, or by the statute of limitations. § 49, Particular instances of interest disqualifying witness. § 50, Construction and effect of statutes removing incompetency by reason of interest.

(C) Transactions and Communications with Persons Subsequently Deceased or Incompetent.

§ 51, Interest of witness. § 52, Parties as witnesses. § 53, Proof of claims against estate of deceased person.

(D) Confidential Relations and Privileged Communications.

§ 54. Communication between attorney and client. § 55, Communication between partners. § 56, Communications between officer and informant in a criminal prosecution. § 57, Communications between a foreign government and its representatives. § 58, Waiver of privilege.

III. EXAMINATION.

§ 59, Mode of examination in general. § 60, Questions allowed. § 61, Refreshing memory. § 62, Testifying from memoranda. § 63, Effect of examination. § 64, Cross-examination. § 65, Re-examination. § 66, Privilege of witness —Testifying against interest. § 67, —— Exposure to criminal charge. § 68, —— Exposure to disgrace. § 69, —— Cautioning witness.

IV. CREDIBILITY, IMPEACHMENT, CONTRADICTION, AND CORROBORATION.

§ 70, Credibility in general. § 71, Effect of mistake. § 72, Corroboration in general. § 73, Impeachment in general. § 74, Right to impeach one's own witness. § 75, Requiring payment of fees by expert. § 76, Proof of general reputation and character in general. § 77, General reputation for veracity. § 78, Proof of reputation for unchastity. § 79, Proof of particular facts and crimes. § 80, Interest and bias of witness. § 81, Proof of witness making same statement out of court. § 82, Effect of untruthful statement by witness. § 83, Inconsistent statements by witness.

See, also, "Affidavits"; "Depositions"; "Evidence"; "Grand Jury," § 4.
Attesting witnesses, see "Deeds," § 16; "Evidence," § 24; "Wills," § 8.
Evidence of deceased witness, see "Evidence," § 80.
Experts, see "Evidence," §§ 75–79.
Furnishing lists of witnesses, see "Criminal Law," § 84.
In bankruptcy, see "Bankruptcy," §§ 316–336.
In criminal prosecutions, see "Bankruptcy," § 680.
Oath, see "Oath."
On hearing before master in chancery, see "Equity," § 111.
Opinions, see "Evidence," §§ 75–79.
Perjury, see "Perjury."
Privilege from arrest, see "Arrest," § 3.
Punishment for contempt, see "Depositions," § 24.
Separation and exclusion from court rooms, see "Trial," § 7.
Subscribing witnesses, see "Deeds," § 16; "Evidence," § 24; "Wills," § 8.
Testimony of accomplices, see "Criminal Law," § 66.

I. ATTENDANCE, PRODUCTION OF DOCUMENTS, AND COMPENSATION.

Absence, as ground of continuance, see "Continuance," § 2; "Criminal Law," § 82.
—— as ground of relief against judgment, see "Judgment," § 41.
Compelling witnesses to attend, see "Depositions," § 17.
Taxation of fees and mileage, see "Costs," § 15; "Bankruptcy," §§ 335, 367.

§ 1. Jurisdiction and power to compel attendance.

A state magistrate cannot issue process for defendant's witnesses, into another state; and in such case the cause must be continued.—United States v. Little, Case No. 15,610.

In New York, defendant in a federal court in a civil case in a trial at common law may be required to appear and be examined as a witness for plaintiff.—Fowler v. Hecker, Case No. 5,001.

The attendance of a witness living within 100 miles, but outside of the District of Columbia, may be compelled by the circuit court of the District.—Gustine v. Ringgold, Case No. 5,877.

Witnesses residing more than 100 miles from the place of trial, and out of the district, cannot be compelled to attend.—Henry v. Ricketts, Case No. 6,386.

§ 2. Persons who may be compelled to attend or testify.

A subpœna may issue to the president to compel his attendance as a witness.—United States v. Burr, Case No. 14,692d.

Members of congress are not exempt from compulsory process to require their attendance

as witnesses in behalf of one charged with crime.—United States v. Cooper, Case No. 14,-861.

County court judges are not excused from obeying a subpœna on the ground that the state supreme court judges are holding a nisi prius court in the county.—United States v. Caldwell, Case No. 14,708.

Neither the jurors, nor the officer to whose care they were committed, can be compelled to testify to the fact that the jury separated after the cause was submitted, and before the verdict was agreed upon.—Howard v. Cobb, Case No. 6,755.

Persons who are material as witnesses for a party in a federal court may be compelled to appear, though they are members of the cabinet of the president of the United States.—United States v. Smith, Case No. 16,342.

§ 3. Mode of compelling attendance—Subpœna, and service thereof.

It is not necessary that the subpœna for witnesses should be served by the marshal.—Cummings v. Akron Cement & Plaster Co., Case No. 3,473; Gordon v. Scott, Id. 5,620; In re Schwartz, Id. 12,502.

The indorsement, by a witness, of "Accepted" on a subpœna never placed in the hands of an officer, will not take the place of service of the subpœna.—Dreskill v. Parish, Cases Nos. 4,075, 4,076.

§ 4. —— Attachment.

The power to issue an attachment to punish a person for failure to obey a subpœna is incident to courts of justice.—United States v. Smith, Case No. 16,342.

A motion to bring on the trial will take precedence of a motion for an attachment against absent witnesses.—United States v. Smith, Case No. 16,342.

Where a witness living in another state and district fails to obey a subpœna, and an attachment is issued for him, such attachment should be directed to the marshal of the court issuing it.—United States v. Potter, Case No. 16,075.

Prior service of a subpœna upon a witness who fails to appear is an indispensable requisite to awarding an attachment against him.—United States v. Caldwell, Case No. 14,708.

Where a witness arrives before service of an attachment for not attending, and makes a reasonable excuse, the attachment will be countermanded on payment of the cost of issuing it.—United States v. Scholfield, Case No. 16,230.

An attachment for contempt for not attending must not be served in the court house.—United States v. Scholfield, Case No. 16,230.

An attachment against witnesses for disobedience to a subpœna must be served by the marshal, though the witnesses reside in a distant county.—United States v. Montgomery, Case No. 15,799.

An attachment may issue against a witness for failure to attend before a commissioner for examination de bene esse, in obedience to a subpœna.—Ex parte Humphrey, Case No. 6,867.

Granting of attachment for disobedience of subpœna running beyond the district is discretionary, and will be refused where circumstances render it oppressive.—Ex parte Beebees, Case No. 1,220.

On a motion for an attachment against witnesses, the court will not examine to determine whether the foreign suit is real or fictitious.—Ex parte Judson, Case No. 7,561.

The circuit court of the District of Columbia can issue an attachment for a witness residing in Virginia within 100 miles.—Lewis v. Mandeville, Case No. 8,326; Voss v. Luke, Id. 17,014.

A witness residing in Virginia cannot be compelled, by attachment, to attend the circuit court of the District of Columbia, in a criminal cause.—Ex parte Pleasants, Case No. 11,225.

Attachments may run from the District of Columbia into Maryland for witnesses residing within 100 miles of the place of trial.—Sommerville v. French, Case No. 13,173.

The circuit court of the District of Columbia will grant a rule on a witness residing in Baltimore, Md., to show cause why he should not be attached for not attending according to summons.—Hodgson v. Butts, Case No. 6,563.

In the district court of the Southern district of New York, an attachment may be issued in aid of a common-law information prosecuted by the United States.—United States v. Stevenson, Case No. 16,395.

Under Act Md. 1791, c. 68, § 8, an attachment for contempt can be issued against a witness who refuses to obey a summons issued by a justice of the peace.—Washington v. Dawson, Case No. 17,227.

The court will not compel the attendance of an interpreter or expert who has neglected to obey a subpœna, unless in case of necessity.—Ex parte Roelker, Case No. 11,995.

Quære: Whether an attachment should issue for the refusal of federal cabinet officers to obey a subpœna in a case where their testimony would not be legally admissible.—United States v. Smith, Case No. 16,342.

An attachment will not be issued against a member of congress who declines to attend as a witness.—United States v. Thomas, Case No. 16,476.

Attachment and penalty on failure to obey summons of justice of peace.—Ex parte Gorman, Case No. 5,628.

§ 5. —— Habeas corpus ad testificandum.

A commissioner has no power, by habeas corpus, to bring before him a committed person, for the purpose of giving his deposition to be used in a pending cause.—Ex parte Barnes, Case No. 1,010.

A person brought from another state under a writ of habeas corpus ad testificandum, and discharged on habeas corpus, must be sent back in charge of the marshal of the district.—In re Hamilton, Case No. 5,976.

§ 6. —— Requiring bond or recognizance.

Where there is any doubt whether witnesses for the prosecution will appear, they should be recognized.—United States v. Durling, Case No. 15,010.

Where a witness appears in court at the term mentioned in his recognizance, and the same is not respited, he is not bound to attend at the following term to which the cause is continued.—United States v. Butler, Case No. 14,698.

One arrested as a witness for the United States in a criminal case, under Act Aug. 8, 1846, § 7, discharged on his own recognizance, under circumstances of peculiar hardship.—United States v. Lloyd, Case No. 15,614.

§ 7. Contempt.

Refusal of a physician to testify as an expert, even in criminal cases, unless first paid a reasonable fee, is not a contempt.—United States v. Howe, Case No. 15,404a.

One who was not a Quaker, being called as a witness, and refusing to be sworn on the ground of conscientious scruples arising from a declaration formerly made, may be committed for a contempt.—United States v. Coolidge, Case No. 14,858.

An order to commit a witness for not recognizing in a criminal case to appear and testify, or for a contempt of court, need not be in writing and sealed.—Ex parte Paris, Case No. 10,714.

Where fees of travel and one day's attendance, demanded by a witness at the time of the service of the subpœna in a civil cause in the federal court, are not paid, the witness is not liable for contempt for failure to attend.—In re Thomas, Case No. 13,889.

§ 8. Right of accused to compulsory process.

Any person charged with a crime in the federal courts has a right before as well as after indictment to the process of the court to compel the attendance of his witnesses.—United States v. Burr, Case No. 14,692d.

The constitutional provision securing to an accused the right to have compulsory process for obtaining witnesses does not authorize process to ambassadors or consuls.—In re Dillon, Case No. 3,914.

It is the duty of the court, on application of the prisoner showing that he is unable to send for his witnesses, to summon them at the expense of the government.—United States v. Kenneally, Case No. 15,522.

§ 9. Subpœna duces tecum.

Practice in respect to the issue and form of subpœna duces tecum stated.—United States v. Babcock, Case No. 14,484.

A subpœna duces tecum will be given for any witness to bring in the books who is supposed to have them.—Russell v. McLellan, Case No. 12,-158.

The court has no right to refuse its aid to motions for papers to which the accused may be entitled, and which may be material to his defense.—United States v. Burr, Case No. 14,-692d.

It is sufficient in an affidavit for the production of a paper in the possession of the prosecution to aver that it "may be material" to the defense.—United States v. Burr, Case No. 14,-694.

In Virginia a motion for subpœna duces tecum is to the discretion of the court, and, as a legal means of obtaining testimony, it cannot be regularly opposed by the opposite party, in his character as such.—United States v. Burr, Case No. 14,692d.

The federal courts will not grant a subpœna duces tecum for the purpose of bringing up the original papers in a cause in a state court.—Dexter v. Sullivan, Case No. 3,868.

On application for a subpœna duces tecum directed to a consul, it must appear that the document is not an official paper protected by law from examination and seizure.—In re Dillon, Case No. 3,914.

An officer of a corporation, party to a suit, can be compelled by subpœna duces tecum to bring its books before a master to whom the cause is referred.—Erie Ry. Co. v. Heath, Case No. 4,513.

A subpœna duces tecum may issue to the president directing him to bring any paper of which the party praying it has a right to avail himself as testimony.—United States v. Burr, Case No. 14,692d.

Where it does not affirmatively appear that letters and executive orders in the hands of the president, which may be material to the defense of an accused, contain any matter which it would be imprudent to disclose, a subpœna duces tecum will issue.—United States v. Burr, Case No. 14,692d.

And in such case he is entitled to the production of the original letter, a copy not being sufficient.—United States v. Burr, Case No. 14,-692d.

A subpœna duces tecum requiring a military officer to produce official papers on file at headquarters at his department will be set aside, copies of such papers being admissible in evidence.—Corbett v. Gibson, Case No. 3,221.

A subpœna duces tecum will not be ordered to compel the clerk of another court to produce original paper.—Craig v. Richards, Case No. 3,-337.

The vice president, who was also secretary and treasurer, of a foreign railroad corporation, having an office in New York, *held* could not be required to produce books of the company, which had been in his control, but several years before had been sent to the home office, in another state, and were there in charge of a co-ordinate officer, over whom he had no control.—In re Sykes, Case No. 13,707.

It is the duty of the person to whom the writ is directed to use reasonable diligence to obey it, and to find and produce the required instruments of evidence if they are within his custody.—United States v. Babcock, Case No. 14,-484.

§ 10. Compensation of witnesses—Parties.

A party testifying in his own behalf is not entitled to travel and attendance as a witness.—Nichols v. Brunswick, Case No. 10,239.

Members of a partnership, summoned as trustee, who answer severally and are discharged, are entitled to several costs of travel and attendance, but not for counsel fees.—Perry Mfg. Co. v. Brown, Case No. 11,014.

§ 11. —— Attendance for several cases or purposes.

General rule adopted giving a witness summoned in several cases fees and mileage for but one case, charged equally among all.—Parker v. Cartzler, Case No. 10,730.

A person attending court, in obedience to process, both as a juror and a witness, is entitled to compensation for each service.—Edwards v. Bond, Case No. 4,294.

A witness attending for defendant, if sworn and sent before the grand jury by the government, is entitled to be paid by it for his attendance on the trial.—Ex parte Johnson, Case No. 7,367.

If a witness be summoned in several suits brought by the same plaintiff against different defendants, he is entitled to his attendance and mileage in each case.—Parker v. Bigler, Case No. 10,726.

§ 12. —— Mileage and travel fees.

A witness, subpœnaed at the place of trial on the day on which he is required by the subpœna to attend in court, is not entitled to travel fees.—The Sunnyside, Case No. 13,619.

Witnesses are entitled to travel "from the places of their abode," though beyond the line of the state, unless otherwise agreed by the parties.—Hathaway v. Roach, Case No. 6,213.

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.—Woodruff v. Barney, Case No. 17,986.

A deputy marshal is not entitled to charge for mileage for himself as a witness.—Wintermute v. Smith, Case No. 17,897.

§ 13. —— Manner of summoning and voluntary appearance.

A witness may be allowed his fees, although not regularly summoned.—United States v. Williams, Case No. 16,709.

Witnesses who attended in response to a summons, though served by a private person, are entitled to their fees.—Power v. Semmes, Case No. 11,360.

Travel fees allowed for witness residing out of state, more than 100 miles from place of trial, attending upon mere request, though his

deposition is on file.—Anderson v. Moe, Case No. 359. CONTRA, see Anonymous, Case No. 432.

A witness attending voluntarily is entitled to his fees from the party at whose instance he attends, though they cannot be taxed against the losing party.—Dreskill v. Parish, Case No. 4,076.

§ 14. —— Imprisonment of witness.

A witness who, for want of surety to appear and testify, has been imprisoned, is entitled to the daily compensation for the time of imprisonment.—Higginson's Case, Case No. 6,471.

§ 15. —— Suspension of case.

Where a case is suspended for a few days, witnesses from a distance will be paid for continued attendance, rather than for travel fees home and return.—In re Griffen, Case No. 5,810; Hance v. McCormick, Id. 6,009; Hathaway v. Roach, Id. 6,213.

A witness is entitled to his fees taxed during the whole time of his actual attendance during the trial, although the examination on both sides has been closed or the trial suspended by illness of counsel.—Whipple v. Cumberland Cotton Mfg. Co., Case No. 17,515.

Witnesses from a distance are entitled to fees for attendance on Sunday when they are detained over that day.—Schott v. Benson, Case No. 12,479.

§ 16. —— Tender of fees in advance.

The fees must be paid or tendered at the time the summons or subpœna is served.—In re Griffen, Case No. 5,810.

A failure to tender travel fees to a witness subpœnaed by the government will not excuse his failure to appear, if he has means to travel. —United States v. Durling, Case No. 15,010.

§ 17. —— Actions and proceedings for fees.

If the fees are not paid, and the witness attends, they may be collected as in ordinary actions.—In re Griffen, Case No. 5,810.

The court will not grant an attachment against a party for not paying his witness, unless payment shall have been demanded by a person having authority to receive payment, and unless that authority appear.—Nally v. Lambell, Case No. 10,006.

A witness cannot have an attachment for his fees until he has shown, by affidavit, defendant's refusal to pay after service upon him of an order for payment.—Sadler v. More, Case No. 12,208.

II. COMPETENCY.

(A) CAPACITY AND QUALIFICATIONS IN GENERAL.

§ 18. Qualifications and competency in general.

The court will not look to remote contingencies in order to disqualify a witness from giving testimony.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

Act July 6, 1862, in relation to the competency of witnesses, does not apply to criminal cases.—United States v. Brown, Case No. 14,671.

§ 19. Knowledge or means of knowledge.

A witness may be competent to testify to general reputation of pedigree, though not one of the family or intimately acquainted with it.—Banert v. Day, Case No. 836.

§ 20. Witnesses subjected to improper influences.

A witness is not rendered incompetent by having received a letter from one of the parties requesting him to tell the whole truth, without any suggestion as to what the writer considered the truth to be.—Warner v. Daniels, Case No. 17,181.

A witness is not rendered incompetent by having received a copy of the interrogatories before the time of testifying, without any comments or any influence used to affect his answers.—Warner v. Daniels, Case No. 17,181.

§ 21. Husband and wife.

The incompetency of the husband to testify as a witness for his wife rests on grounds of public policy, and is not removed by a statute removing the disqualification of interest.—In re Jones, Case No. 7,444.

In an action against husband and wife, where the wife was not a necessary party, *held*, that the husband was competent as a witness in her favor, but not against her.—Green v. Taylor, Case No. 5,761.

A woman offered as a witness, and objected to on the ground that she is the wife of the party calling her, cannot be examined to disprove the marriage, when there is sufficient evidence aliunde before the court to raise a presumption of marriage.—Rose v. Niles, Case No. 12,050.

The wife of an accomplice who has testified for the government is competent to prove any independent facts not sworn to by her husband, and not forming any part of his acts.—United States v. Horn, Case No. 15,389.

The wife of the lessor in ejectment is not a competent witness to prove that he is living, on a motion to dismiss the action on the ground that he is dead.—Gilleland v. Martin, Case No. 5,433.

The wife of a party to an interference in the patent office is incompetent to testify in his behalf.—Nichols v. Harris, Case No. 10,243.

Wife of one of defendants not competent for plaintiff, though husband has been discharged under insolvent act.—Bank of Alexandria v. Mandeville, Case No. 851.

On the separate trial of one of two persons jointly indicted, the wife of the other is a competent witness for defendant.—United States v. Addatte, Case No. 14,422; Same v. Wade, Id. 16,629.

Upon an indictment against the husband for assault and battery of his wife, she may be examined as a witness against him.—United States v. Fitton, Case No. 15,106; Same v. Smallwood, Id. 16,316.

The wife of the owner of stolen goods is not a competent witness for the prosecution, unless the husband has released to the United States his share of the fine.—United States v. Shorter, Case No. 16,283.

§ 22. Idiots.

On a suggestion that a witness whose affidavit has been taken on a motion for new trial is an idiot, the court may require him to be brought before it for examination.—United States v. Lloyd, Case No. 15,619.

§ 23. Defect of religious sentiment or belief.

One who does not believe in a God or in a future life is not competent to testify as a witness.—Anonymous, Case No. 446; United States v. Kennedy, Case No. 15,524; Same v. Lee, Id. 15,586; Wakefield v. Ross, Id. 17,050.

A witness is competent if he believes that punishments are meted out in this life, but such belief may go to his credibility.—United States v. Kennedy, Case No. 15,524.

Query, whether a declaration of disbelief in a future state of rewards and punishment renders a witness incompetent.—Rutherford v. Moore, Case No. 12,174.

A witness objected to on the ground of his disbelief in a God and a future state of rewards and punishments cannot be examined respect-

ing his religious sentiments, but will be permitted to explain them.—United States v. White, Case No. 16,675.

§ 24. Infamous persons and persons convicted of crime.

Where incompetency depends upon an infamous punishment, and the same is not inflicted where it might have been inflicted, the witness is not rendered incompetent.—United States v. Brockius, Case No. 14,652; Same v. Dickinson, Id. 14,958.

A particeps criminis, where the statute of limitations has run in his favor, may be compelled to testify against the defendant.—United States v. Smith, Case No. 16,332.

A person convicted in Pennsylvania of an assault and battery with intent to murder, and sentenced to fine and imprisonment, is a competent witness.—United States v. Brockius, Case No. 14,652.

A person who has been convicted of a conspiracy to defraud the creditors of an insolvent debtor is incompetent as a witness.—United States v. Porter, Case No. 16,072.

A person convicted of an infamous crime is restored to competency by a pardon.—United States v. Rutherford, Case No. 16,210. CONTRA, see Wallamet R. T. Co. v. Oregon S. N. Co., Case No. 17,106.

Serving out a term of imprisonment in the penitentiary for felony does not restore the person's competency.—United States v. Brown, Case No. 14,661.

A convict who has served out a sentence for felony may be restored by pardon to competency as a witness, but the jury are to judge of his credibility.—United States v. Jones, Case No. 15,493.

§ 25. Jurors.

Grand jurors may testify as to the confessions made by the prisoner before them upon oath, when under examination as a witness against another.—United States v. Charles, Case No. 14,786.

Jurors cannot be examined as witnesses of each other's conduct, to prove fraud, partiality, or irregularity.—Curtiss v. Georgetown & A. Turnpike Co., Case No. 3,506.

§ 26. Negroes, mulattoes, and slaves.

Competency of negroes, mulattoes, and slaves.—Minchin v. Docker, Case No. 9,628; O'Neale v. Willis, Id. 10,516; Pipsico v. Bontz, Id. 11,183; Queen v. Hepburn, Id. 11,503; Thomas v. Jamesson, Id. 13,900; United States v. Barton, Id. 14,533; Same v. Beddo, Id. 14,556; Same v. Beddo, Id. 14,557; Same v. Bell, Id. 14,564; Same v. Birch, Id. 14,596; Same v. Butler, Id. 14,699; Same v. Davis, Id. 14,925; Same v. Douglass, Id. 14,988; Same v. Dow, Id. 14,990; Same v. Farrell, Id. 15,074; Same v. Fisher, Id. 15,101; Same v. Gray, Id. 15,252; Same v. Hill, Id. 15,365; Same v. Minifie, Id. 15,782; Same v. Mullany, Id. 15,832; Same v. Neale, Id. 15,859; Same v. Shorter, Id. 16,284; Same v. Swann, Id. 16,425; Same v. Terry, Id. 16,454; Same v. Woods, Id. 16,760.

§ 27. Objections, and waiver thereof.

A party who has read the cross-examination of his adversary's witness, in support of his case, cannot thereafter object to his competency.—The Osceola, Case No. 10,602.

(B) PARTIES AND PERSONS INTERESTED IN EVENT.

See, also, ante, § 21; post, §§ 51–53.

§ 28. Parties to civil actions and proceedings.

Parties to suits in equity are not competent witnesses.—Blanchard v. Sprague, Case No. 1,516.

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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

One defendant in a joint action of trespass cannot be a witness for the other, although they plead severally.—Johnson v. Chapman, Case No. 7,378.

One defendant in a joint action upon a promissory note, who suffers judgment by default, is not a competent witness for the other defendant.—Franklin Bank v. Hipkins, Case No. 5,056.

Defendant in replevin, bailiff of the landlord, and indemnified by him, may be examined as a witness in the cause.—Dixon v. Waters, Case No. 3,936; Hilton v. Beck, Id. 6,509; Wise v. Bowen, Id. 17,905.

A party remaining such on the record cannot, by any arrangement with his co-claimants, discharge himself from liability to the libelant, so as to become a competent witness for them.—Lane v. The Buck, Case No. 8,048.

In a suit between contending mortgagees, the mortgagor is a competent witness for the first mortgagee to identify the goods described in the first mortgage.—Wagner v. Watts, Case No. 17,040.

In a joint action of trespass against two defendants, if they plead severally, they may be mutually examined as witnesses for each other.—Piles v. Plum, Case No. 11,165.

Complainant *held* not a competent witness in a suit to restrain the removal of his slave from the district.—Thomas v. Mackall, Case No. 13,903.

A partner upon whose individual check firm moneys have been paid, and who has been released from all liability by the other members of the firm, is not a competent witness for the bank in an action by the partnership.—Coote v. Bank of the United States, Case No. 3,203.

The court can, against libelant's consent, discharge a claimant who has parted with all his interest, and make him a competent witness.—Lane v. The Buck, Case No. 8,048.

While parties to the record cannot be examined as witnesses, the name of a party for good cause shown may be stricken from the pleadings.—The Neptune, Case No. 10,120.

Executors who are parties in the cause cannot be examined as witnesses without an order of the court, and such order will not be given if they are interested in the event.—Walker v. Parker, Case No. 17,082.

Under the rule that a party cannot be a witness in his own cause, the record of conviction in a criminal prosecution in which such party has been sworn as a witness is inadmissible in his favor in an action by him, as a party will not be permitted to avail himself by indirect means of evidence which would be incompetent if offered directly.—Buck v. Hermance, Case No. 2,081.

§ 29. Defendants in criminal cases.

A defendant in a criminal case in the federal courts cannot testify in his own behalf, although by statute his testimony is admissible in the state courts.—United States v. Hawthorne, Case No. 15,332.

On an investigation before a commissioner sitting in the state of New York, the accused has the right to be examined as a witness in his own behalf.—In re Farez, Case No. 4,645.

§ 30. Incompetency by reason of interest in general.

One interested in result of suit is not competent.—Baird v. Wolfe, Case No. 760; Harrison v. Evans, Id. 6,135.

A witness who has a direct and positive interest in the event of the suit is incompetent.—Reece v. Johnson, Case No. 11,633a.

An expectant or contingent interest will not disqualify a witness.—Burroughs v. United States, Case No. 2,202.

A witness who is interested equally on both sides is competent to testify.—Stump v. Roberts, Case No. 13,561.

§ 31. Establishing interest of witness.

Interest of a witness to prove his incompetency cannot be shown by hearsay evidence or declarations out of court.—Vining v. Wooten, Case No. 16,949.

A witness cannot discharge himself of an objection to him on the ground of interest, by matter sworn by himself.—Murray v. Marsh, Case No. 9,965.

An objection on the ground of interest may be supported either by examining the witness himself, or by other independent evidence, but not by both such methods.—The Watchman, Case No. 17,251.

§ 32. Interest voluntarily acquired by witness after knowledge of subject-matter of suit.

A witness, who voluntarily became interested after acquiring knowledge of the subject-matter in dispute, may be compelled to testify.—Tatum v. Lofton, Case No. 13,766.

§ 33. Principal and surety.

The principal obligor in a bond is a competent witness for the surety.—Harper v. Smith, Case No. 6,092; Virginia v. Evans, Id. 16,969.

A surety in an administration bond is a competent witness for the administrator.—Burch v. Spaulding, Case No. 2,140; Craig v. Reintzel, Id. 3,336; Davies v. Davies, Id. 3,612; Fairfax v. Fairfax, Id. 4,613; Thompson v. Afflick, Id. 13,940.

One surety is a competent witness for another surety. but the sureties are not competent witnesses for the principal.—Virginia v. Evans, Case No. 16,969.

A surety in a replevin bond is not a competent witness for plaintiff in replevin, although he has an indemnifying bond.—Thompson v. Carbery, Case No. 13,945.

§ 34. Principal and agent.

An agent is competent to prove his authority as agent.—Livingston v. Swanwick, Case No. 8,419; Pannill v. Eliason, Id. 10,707.

An agent is a competent witness to prove what he did as agent.—Chapin v. Siger, Case No. 2,600; Livingston v. Swanwick, Id. 8,419.

An agent who purchased a chattel, and is interested therein, is not competent for plaintiff in a suit for fraud in a sale.—Ferson v. Sanger, Case No. 4,751.

Brokers who negotiate a contract of affreightment, their commissions not being dependent on its performance, are competent witnesses in a suit for breach.—Quirk v. Clinton, Case No. 11,518.

An agent who fitted out an expedition under authority of a written subscription, and drew on one of the subscribers for the expense, *held* a competent witness to prove the facts, in a suit by the payee of the draft against the drawee.—Lowber v. Shaw, Case No. 8,563.

On a libel in rem upon a bill of lading, the clerks and agents of the transportation company claimant, having personally no interest in the business, and not responsible for its defaults, are competent witnesses.—Howe v. The Lexington, Case No. 6,767b.

§ 35. Attorney of witness.

A proctor in the admiralty court in New York is a competent witness, though he is interested in the recovery; but where the claim is sustained upon his testimony alone, he cannot recover costs.—Richardson v. Eldridge, Case No. 11,781a.

§ 36. Competency of members of a partnership or corporation.

A stockholder in a company which itself owns stock in plaintiff company is competent for plaintiff.—Bank of Alexandria v. Mandeville, Case No. 851.

In assumpsit for goods sold and delivered, defendant may prove a partnership between plaintiff and a witness by such witness.—Lovejoy v. Wilson, Case No. 8,551.

On a prosecution of a vessel owner for casting away his vessel with intent to prejudice the underwriters, the president of an incorporated insurance company is a competent witness to prove defendant's handwriting to the manifest of cargo.—United States v. Johns, Case No. 15,481.

§ 37. Creditor of party.

A creditor of a firm is competent to prove its existence.—Bank of Alexandria v. Mandeville, Case No. 851.

A creditor of an insolvent debtor is not competent, in a suit by his trustee.—Herbert v. Bannatyne, Case No. 6,396.

A creditor of a firm is not a competent witness to prove defendant a dormant partner therein.—Corps v. Robinson, Case No. 3,252.

A creditor of a bankrupt is not a competent witness for the assignee in a suit to increase the estate.—Carr v. Hilton, Case No. 2,437.

§ 38. Inhabitants where municipality is a party.

Inhabitants of towns are competent witnesses in actions where the towns are parties.—Hunter v. Marlboro, Case No. 6,908.

In an action for the use of a county, inhabitants of the county are competent witnesses for the plaintiff.—Virginia v. Evans, Case No. 16,969.

§ 39. Parties to deeds collaterally in evidence.

Grantor in deed collaterally introduced, in cause inter alios, is competent to prove that the deed was fraudulently obtained.—Bank of Columbia v. French, Case No. 867.

§ 40. Legatees, heirs, and distributees.

A paid legatee is a competent witness where payment has been made by the executor, voluntarily, with knowledge of the claim sued upon, and without a refunding bond, and a long time has elapsed since the death of the testator. The length of time is regulated by analogy to the statute of limitations.—Wilcocks v. Phillips, Case No. 17,639.

The heirs of a deceased mortgagor are not competent witnesses, in a suit in equity by an assignee to redeem, to prove the assignment fraudulent.—Randall v. Phillips, Case No. 11,555.

A co-heir, or co next of kin is not a competent witness for the plaintiff in a suit brought for an account of a trust fund created for the benefit of all the heirs or next of kin.—West v. Randall, Case No. 17,424.

§ 41. Parties to negotiable instruments in actions relating thereto.

An indorser is a competent witness for the maker of a note.—Bank of Alexandria v. Clarke, Case No. 844; Gilman v. King, Id. 5,444; Mason v. Masi, Id. 9,244.

A bankrupt who indorsed a note before his bankruptcy, and who has obtained his certificate, is a good witness for the indorsee.—Murray v. Marsh, Case No. 9,965.

In an action by the indorsee against the acceptor of an inland bill of exchange, the indorser is a competent witness for defendant to prove usury in plaintiff's discounting of the bill.—Gaither v. Lee, Case No. 5,182.

The drawer of an inland bill of exchange is not a competent witness, in an action against the acceptor, to prove a usurious consideration.—Nicholls v. Wright, Case No. 10,236.

In an action on a bill of exchange, plaintiff's indorser is not competent to prove that the bill belonged to him.—Cropper v. Nelson, Case No. 3,417.

A person who borrows checks payable to bearer, to raise money upon for his accommodation, but has not indorsed them, is a competent witness for the defendant, to prove usury.—Hill v. Scott, Case No. 6,498.

The maker of a note is a competent witness for the indorser.—Bank of Columbia v. French, Case No. 867; Bank of Washington v. Way, Id. 957; Knowles v. Parrott, Id. 7,898; White v. Burns, Id. 17,539.

A discharge in insolvency will not make the maker competent, for in case of recovery he would be liable over, as upon a new cause of action.—Knowles v. Parrott, Case No. 7,898.

In an action by the drawee against the drawer, the acceptor, after being released by the drawer from liability for costs, is a competent witness to prove that the bill was drawn for the indorsee's accommodation without consideration.—Knowles v. Stewart, Case No. 7,900.

The maker of a note, released from costs, is competent in a suit against indorsers to impeach the note by facts subsequent to its execution, and negotiation by him.—Frazer v. Carpenter, Case No. 5,069.

§ 42. Persons who were injured or intended to be injured by crime.

The person whose right is averred to be prejudiced by a forgery is a competent witness to prove the forgery.—United States v. Jackson, Case No. 15,454.

A person whose name is forged is a good witness for the prosecution.—United States v. Brown, Case No. 14,658; Same v. Jackson, Id. 15,454; Same v. Peacock, Id. 16,019.

The drawee of a forged draft is a competent witness to support the prosecution.—United States v. Bates, Case No. 14,542.

The person intended to be injured by a forgery, and the person whose name is forged, if they have not paid money upon the forged paper, are competent to prove the forgery.—United States v. Crandell, Case No. 14,884.

Upon an indictment for forgery, a person interested in setting aside the instrument forged is not a competent witness to prove the forgery.—United States v. Anderson, Case No. 14,452.

The person defrauded is a competent witness for the prosecution upon an indictment for the fraud.—United States v. Porter, Case No. 16,072.

Defendant in equity is a competent witness upon an indictment against plaintiff for perjury in his affidavit made to procure an injunction.—United States v. Burford, Case No. 14,685.

A person who has given a receipt for goods to be delivered is a competent witness upon a prosecution against a third person for stealing the goods.—United States v. Bates, Case No. 14,543.

The jurisdiction of the circuit court of the District of Columbia is given by act of congress, and the Maryland act excluding the owner of stolen goods as a witness on a prosecution for larceny is inapplicable.—United States v. Tarlton, Case No. 16,433.

Upon an indictment for usury, the borrower is a competent witness for the prosecution, if he has paid the money, and be not the informer.—United States v. Moxley, Case No. 15,830.

§ 43. Prosecutors, informers, and persons entitled to portion of penalty or fine.

The prosecutor whose name is indorsed on an indictment for a misdemeanor is not a competent witness for the prosecution.—United States v. Birch, Case No. 14,595.

An informer is a competent witness, although he may receive part of the penalty.—United States v. Patterson, Cases Nos. 16,009, 16,010; Same v. Voss, Id. 16,628. CONTRA, see United States v. McCormick, Case No. 15,662.

A deposition, taken before trial, of an informer, who is entitled under the act of congress to a portion of a fine, forfeiture, or penalty, is not admissible.—The Thomas & Henry v. United States, Case No. 13,919.

The owner of goods stolen by a slave, being entitled to one-half of the fine, is not a competent witness for the prosecution.—United States v. Rhodes, Case No. 16,152.

§ 44. Master and crew of vessel in actions relating to vessel or against owner.

The master of a vessel is a competent witness for the owners, in a suit in rem for wages of a seaman.—The Hudson, Case No. 6,831; Malone v. Bell, Id. 8,994; The Trial, Id. 14,170.

In a libel against a vessel for wages, the master is incompetent to prove any matter of defense which originates in his own acts, for which he is responsible.—The William Harris, Case No. 17,695; Jones v. The Phœnix, Id. 7,489.

The master is not a competent witness to prove that a medicine chest was on board, for the purpose of throwing the expense of medical advice on a seaman.—The William Harris, Case No. 17,695.

The master of a vessel who hypothecated her on bottomry is a competent witness in favor of the holder of the bottomry.—Furniss v. The Magoun, Case No. 5,163.

In a suit on a bottomry bond, the master is competent to prove that the supplies for which it was given were furnished and were necessary.—The Medora, Case No. 9,391.

The master of a ship is not a competent witness in an information in rem for a forfeiture occasioned by his misconduct.—The Hope, Case No. 6,678; The Nymph, Id. 10,389.

The master and crew of a vessel are competent witnesses for the owner of the vessel in a cause of collision.—The Neptune, Case No. 10,120.

One party to a collision suit may call as witnesses persons who were on board the vessel of the other party.—The Monticello, Case No. 9,739.

§ 45. Seamen as witnesses for each other.

Seamen not interested in the event, though interested in the question, are competent to testify for each other.—The Elizabeth v. Rickers, Case No. 4,353.

Seamen are competent witnesses for each other in suits for wages earned on the same voyage.—The Cypress, Case No. 3,530; Spurr v. Pearson, Id. 13,268.

§ 46. Patent cases.

An assignee of a patent is incompetent to testify for the patentee on an interference.—Cressler v. Custer, Case No. 3,388.

On an interference in a patent case depositions of an inventor, who has assigned his rights, and of his wife, as to priority of invention, are incompetent and inadmissible.—Eames v. Richards, Case No. 4,240.

In a suit for infringement of a patent, a witness who uses a machine resembling that of the plaintiff is incompetent for defendant.—Evans v. Eaton, Case No. 4,560; Same v. Hettick, Id. 4,562.

A person having an exclusive right to a patent in a certain territory, but no interest in a certain county, or in the suit for infringement therein, may testify for plaintiff.—Buck v. Hermance, Case No. 2,081.

One who had sold an interest in an invention, but was to be paid something if it was successful, *held* disqualified.—Marshall v. Mee, Case No. 9,129.

§ 47. Salvage cases.

The rules as to the incompetency of witnesses for interest do not apply in salvage cases except as to facts occurring in port after the property is brought in.—The Boston, Case No. 1,673.

In cases of salvage, the salvors, though interested, are admitted as witnesses, from necessity.—The Elizabeth and Jane, Case No. 4,356.

A person claiming as a salvor will be permitted to testify in his own behalf without determining, by technical refinements, whether the service was strictly a salvage service or not.—The Huntress, Case No. 6,912.

§ 48. Removal of incompetency by release or assignment of interest, or by the statute of limitations.

Where a person has an interest in a fine, and releases his interest therein, he becomes a competent witness upon the prosecution of the offender.—United States v. Brown, Case No. 14,-657; Same v. Carnot, Id. 14,726; Same v. Clancey, Id. 14,800; Same v. Hare, Id. 15,302; Same v. McCann, Id. 15,655; Same v. Morgan, Id. 15,808; Same v. Tolson, Id. 16,530.

When a certificated bankrupt who has released all future claims upon his estate is a competent witness.—Barnes v. Billington, Case No. 1,015.

A grantee of a deed alleged to be fraudulent is a competent witness in support of the deed, in an action against his grantee upon receiving from him a release.—Linthicum v. Remington, Case No. 8,377.

The principal obligor, having confessed judgment, and having been released by the surety from the costs of the suit against him, is a competent witness for him to prove usury.—Peirce v. Reintzel, Case No. 10,908.

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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

An owner of a vessel who has settled with his co-owner may testify against a passenger in a suit for passage money, where his co-owner has released him.—Massoletti v. Miller, Case No. 9,264.

One of several defendants, who has judgment upon demurrer to his separate plea of bankruptcy, may be a witness for the others, upon releasing all rights in his estate.—Hurliki's Adm'r v. Bacon, Case No. 6,921.

In a libel against a vessel on a contract of affreightment by the shipper, the master is not a competent witness for the owners, without a release, but a release from some of the part owners is sufficient.—The Peytona, Cases Nos. 11,058, 11,059.

An interested party will not be allowed to assign his interest immediately before the hearing, so as to make him a competent witness.—Hill v. Dunklee, Case No. 6,489.

A release, in favor of a witness, of all actions and causes of actions or a particular cause of action which had happened before the time of the release, will discharge the witness from all liability pending on the event of the suit in which he is called to testify.—Citizens' Bank v. Nantucket Steamboat Co., Case No. 2,730.

Sufficiency of release to make a party competent in favor of an executor.—Oliver v. Vernon, Case No. 10,501.

An interested witness, who has been sworn in chief and examined, and whose interest is disclosed upon cross-examination, may be released, and re-examined.—Hall v. Fox, Case No. 5,932.

A release may be executed by the party leaving a blank for the name of the witness, to be filled up by the party's attorney.—Hall v. Fox, Case No. 5,932.

If a witness be surety for costs, the court will permit other security to be substituted so as to remove his interest.—Virginia v. Evans, Case No. 16,969.

Where a witness is protected from liability by the act of limitation, he is competent without a release.—Waller v. Stewart, Case No. 17,109.

In ejectment against two, if there be no evidence whatever of any possession by one, the jury may find a verdict for him at the bar, so as to authorize the other to examine him as a witness.—Lanning v. Case, Case No. 8,072.

§ 49. Particular instances of interest disqualifying witness.

It is no objection to the competency of a witness that a reward has been offered, to be paid on conviction of the prisoner, to which witness may be entitled.—United States v. Wilson, Case No. 16,730.

A wager on the event of a trial, being void at law, will not render the person incompetent as a witness.—United States v. Carrico, Case No. 14,734.

A liability for costs in the event of a recovery on notes prevents the person so liable from being a competent witness in a suit to have the notes surrendered and canceled.—Ferson v. Sanger, Cases Nos. 4,751, 4,752.

A customs officer, who has assisted in the seizure of goods for violation of the revenue laws, is competent in a suit for forfeiture.—United States v. Twenty-Five Cases of Cloths, Case No. 16,563.

On an indictment for bigamy, a person having an action pending against the prisoner for goods furnished to the supposed first wife is incompetent, by reason of interest, as a witness to prove the first marriage.—United States v. Maxwell, Case No. 15,749.

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.—Willings v. Consequa, Case No. 17,767; Consequa v. Willings, Id.

Owners of whale ships, in the absence of express contract making them partners, are only part owners in the vessel; and a mortgagee of the share of one of them has no interest in the vessel to prevent him from being a witness in a suit against the part owners for supplies.—Macy v. DeWolf, Case No. 8,933.

A mere honorary obligation to indemnify a prosecutor who is liable for costs is not a sufficient interest to exclude the testimony of the witness.—United States v. Lyles, Case No. 15,-645; Washington v. Fowler, Id. 17,229.

Possession of goods by a witness will not render his testimony inadmissible in favor of the

party under whom he holds.—Hamilton v. Russell, Case No. 5,989.

In an action against a sheriff for an escape upon mesne process, the escaped prisoner is not competent to prove his bankruptcy at the time of his escape.—Duryee v. Webb, Case No. 4,198.

Consignee who has delivered goods to the owner without the payment of freight is competent in a suit by the master to recover freight. —Bork v. Norton, Case No. 1,659.

The cashier of a bank is competent to prove that defendant has overdrawn his account.—Bank of Alexandria v. McCrea, Case No. 849.

A bookkeeper who has given a credit to A. instead of B., by mistake, is a competent witness to prove the mistake.—Patriotic Bank v. Frye, Case No. 10,808.

Where, in a case of collision between vehicles, the question of negligence is not settled, plaintiff's driver is incompetent without a release.—Beltzhoover v. Stockton, Case No. 1,283.

§ **50. Construction and effect of statutes removing incompetency by reason of interest.**

The phrase "civil action," as used in Act July 2, 1864, making a party or interested persons competent, includes suits in equity as well as actions at law.—Rison v. Cribbs, Case No. 11,860.

The phrase "civil action," in the third section of Act July 2, 1864 (13 Stat. 351), included all cases of a civil, as contradistinguished from those of a criminal, nature. A seizure of property for violation of the internal revenue law, and the controversy arising upon a claim interposed thereto by a third party, are within the act.—United States v. Ten Thousand Cigars, Case No. 16,451.

The phrase "civil action" (Act July 2, 1864, § 3) includes all cases of a civil, as contradistinguished from those of a similar, nature.—United States v. Ten Thousand Cigars, Case No. 16.451.

A seizure of property for violation of the internal revenue law, and the controversy arising upon a claim interposed thereto by a third person, is within Act July 2, 1864, § 3, which provides that in the federal courts there shall be no exclusion of any witness on account of color, nor in civil actions because he is a party to or interested in the issue tried.—United States v. Ten Thousand Cigars, Case No. 16,451.

A state statute allowing interested persons to be witnesses does not apply to suits in equity or criminal cases in the federal courts. Act 1789, § 34.—Segee v. Thomas, Case No. 12,633.

(C) TRANSACTIONS AND COMMUNICATIONS WITH PERSONS SUBSEQUENTLY DECEASED OR INCOMPETENT.

§ **51. Interest of witness.**

In the case of the death of a claimant in admiralty who has given a stipulation to answer judgment, where the answer is filed by his administrator, the same rule as to the exclusion of parties in interest as witnesses (Rev. St. § 858) applies as in case of a common-law action brought against an administrator.—The Poland, Case No. 11,242.

But the court may permit a party to testify when it appears that justice demands it.—The Poland, Case No. 11,242.

In a proceeding by an assignee for relief from a mortgage for usury, the mortgagors, though not parties, are not competent against the executors of the deceased mortgagee, to testify as to transactions with or statements made by testator. Act March 3, 1865.—Bromley v. Smith, Case No. 1,922.

§ **52. Parties as witnesses.**

In Massachusetts, where an executor or administrator is a party, the other party cannot testify in his own favor, unless the contract was originally made with a party who was living and competent to testify.—Robinson v. Mandell, Case No. 11,959.

Defendant may testify in his own behalf as to matters embraced in the deposition of plaintiff's intestate, offered in evidence on continuance of the suit by his administrator. Act March 3, 1865.—Mumm v. Owens, Case No. 9,919.

An execution creditor of complainant in a bill filed to establish a parol trust in lands, against the heirs and representatives of an intestate, is an "opposite party" to complainant, within Act March 3, 1865.—Eslava v. Mazange's Adm'r, Case No. 4,527.

An ex parte order obtained by complainant before process issued for his own examination as a witness does not qualify him as such, on the ground that he is required by the court to testify. Act March 3, 1865.—Eslava v. Mazange's Adm'r, Case No. 4,527.

§ **53. Proof of claims against estate of deceased person.**

Creditors of plaintiff's intestate are competent witnesses to support a claim by plaintiff as administrator against the defendant.—Robertson v. Selby, Case No. 11,929.

(D) CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS.

On examinations in bankruptcy, see "Bankruptcy," § 328.

§ **54. Communication between attorney and client.**

The extent of the privilege of the client to exclude the examination of his attorney as witness, and what papers of his client the attorney may be compelled to produce on notice, considered.—Rhoades v. Selin, Case No. 11,740.

An attorney at law cannot be compelled to disclose any fact the knowledge of which has been communicated to him by his client.—Murray v. Dowling, Case No. 9,959; Linthicum v. Remington, Id. 8,377.

Counsel may testify as to facts not communicated to them in confidence by their clients.—Bank of Columbia v. French, Case No. 867; In re Donohue, Id. 3,990; In re O'Donohoe, Id. 10,435.

Matters relating to a conveyance to an attorney by his client, and a reconveyance to the client's wife, are not within the attorney's privilege.—In re Bellis, Case No. 1,274.

A communication relating to the perpetration of a crime by the counsel is not privileged.—In re Cole, Case No. 2,975.

A head clerk of a party is not privileged to refuse to testify for his adversary because standing in confidential relations to his employer.—Corps v. Robinson, Case No. 3,252.

Rule as to privileged communications does not extend to student in attorney's office.—Andrews v. Solomon, Case No. 378.

§ **55. Communications between partners.**

Letters between partners concerning a lawsuit which they expect to and do begin are privileged; so are letters which concern only litigation of the party writing them.—In re Krueger, Case No. 7,942.

§ **56. Communications between officer and informant in a criminal prosecution.**

In a criminal prosecution, the officer who apprehended defendant will not be compelled to disclose the name of his informant.—United States v. Moses, Case No. 15,825.

§ 57. Communication between a foreign government and its representatives.
In a suit by the United States against a minister to a foreign government to recover the difference between the amount of a private claim collected by him and the sum paid over, where the defense was that the difference had been paid to persons in Brazil with the consent of the state department, *held*, that defendant would not be required to disclose the names of such persons.—United States v. Webb, Case No. 16,-655..

§ 58. Waiver of privilege.
If plaintiff examines his attorney as a witness, he waives his privilege, and upon cross-examination he is bound to answer generally.—Crittenden v. Strother, Case No. 3,394.

III. EXAMINATION.

§ 59. Mode of examination in general.
Under Act 1789, § 30, witnesses may be examined and cross-examined ore tenus in equity suits as well as suits at law. This power was not taken away by any subsequent act, or by rule 67, promulgated March 2, 1842.—Sickles v. Gloucester Co., Case No. 12,840.

§ 60. Questions allowed.
A question cannot be put to a witness the relevancy of which does not appear.—United States v. Gibert, Case No. 15,204.

A question will not be allowed to be put to a witness which ought not to be answered.—United States v. Craig, Case No. 14,883.

Impertinent inquiries in examining a witness, having no bearing upon the case, should not be allowed.—Day v. Boston Belting Co., Case No. 3,673.

Upon an indictment for a nuisance in keeping a public gaming house, the question, "Who dealt the cards?" is objectionable as too general.—United States v. Strother, Case No. 16,412.

A witness with a chart before him may be asked whether, under the circumstances stated of the supposed time of the starting of the two vessels, they would or would not be likely to meet at the point marked on the chart; such question is a direct and proper question, and not leading.—United States v. Gibert, Case No. 15,204.

§ 61. Refreshing memory.
A witness cannot refresh his memory as to conversations by reference to memoranda copied by himself from notes made by him at the time of the conversations.—United States v. Burr, Case No. 14,693.

A witness will be permitted to refresh his memory as to the items of an account by the original entries only, made by himself, or by another in his presence, and he may swear to such items though he has no distinct recollection as to each one.—Jones v. Johns, Case No. 7,471.

A witness may refresh his memory from notes taken at the time of the former trial or from a newspaper printed by him, containing the evidence as taken down by him.—United States v. Wood, Case No. 16,756.

§ 62. Testifying from memoranda.
A notary who has no personal recollection of making a demand may testify from entries made in his book at the time.—Thornton v. Caldwell, Case No. 13,996; Same v. Stoddert, Id. 14,000.

§ 63. Effect of examination.
The complainant, who produces defendant as a witness, must accept the whole of his testimony.—Powden v. Johnson, Case No. 11,353.

The examination of respondent in equity as a witness, by the orator, does not operate as a release to him of the matters concerning which he is examined.—Scammon v. Hobson, Case No. 12,434.

§ 64. Cross-examination.
The general rule at law is that no evidence shall be admitted but what is or might be under the examination of both parties.—Gass v. Stinson, Case No. 5,262.

Leading questions may be asked in cross-examining a witness.—Dawes v. Corcoran, Case No. 3,664.

Upon the cross-examination of a witness, he may be asked leading questions, to draw a further disclosure in reference to the matter testified about on his direct examination, but not as to other matters.—Harrison v. Rowan, Case No. 6,141.

A witness cannot be asked a collateral question not relevant to the matter in issue, merely to test his credibility.—Odiorne v. Winkley, Case No. 10,432; United States v. Dickinson, Id. 14,-958.

Plaintiff's witness cannot be cross-examined by plaintiff to discredit himself by confessing that he had previously made a different and inconsistent statement of the matter.—Harris v. Berry, Case No. 6,115.

In a patent-interference case, a witness who, on direct examination, refers to and partly describes a device of his own, cannot refuse, on cross-examination, to give a further description, on the ground of exposing his private affairs.—Nichols v. Harris, Case No. 10,243.

Where a witness, in his direct examination, has testified that a certain person was reputed to be a man of large property, he may be asked on cross-examination in what such property was reputed to consist.—United States v. Flowery, Case No. 15,122.

§ 65. Re-examination.
Where a cross-examination calls out collateral facts tending to create distrust of the integrity, fidelity, or truth of a witness, it is competent for the adverse party to call for an explanation from the witness.—United States v. Eighteen Barrels High Wines, Case No. 15,033.

Where a witness is cross-examined upon a collateral matter, evidence will not be admitted to disprove that matter to discredit him.—United States v. White, Case No. 16,675.

§ 66. Privilege of witness—Testifying against interest.
A witness will not be compelled to testify against his interest in a cause in which he is interested.—Carne v. McLane, Case No. 2,416; Pritchard v. Georgetown, Id. 11,437.

§ 67. —— Exposure to criminal charge.
A witness is not bound to answer a question which might possibly criminate him.—United States v. Burr, Case No. 14,692e; Same v. Goosely, Id. 15,230; Same v. Lynn, Id. 15,-649.

If the legislative protection against a witness' evidence being used against himself is as broad as the constitutional provision against compelling a person to criminate himself, he can be compelled to answer.—United States v. Three Tons of Coal, Case No. 16,515.

The secretary of a person charged with treason cannot refuse to answer whether he has present knowledge of the cipher in which is written a letter purporting to have been written by the accused, as any direct answer could not tend to implicate him.—United States v. Burr, Case No. 14,692e.

A witness is not bound to answer the question whether he sold certain stolen goods to defendant.—United States v. Moses, Case No. 15,-824.

A bookkeeper of a bank is not obliged, in an action between the bank and a depositor, to answer a question, where the answer might charge him with a loss.—Bank of United States v. Washington, Case No. 940.

A witness may be compelled to answer the question whether he saw defendant at a public gaming table.—Ex parte Lindo, Case No. 8,364.

On an indictment for keeping a house of ill fame, where a witness is asked as to whether she resided in the house, and as to whether other women resided there who were of ill fame, she will not be required to disclose the names of the inhabitants.—United States v. McDowell, Case No. 15,671.

The witness' privilege of refusing to answer on the ground that the answer would criminate him does not extend to examinations before a grand jury.—Devaughn's Case, Case No. 3,837. CONTRA, see Sanderson's Case, Case No. 12,-297.

A person may be compelled, in a judicial proceeding, to testify to matters tending to criminate himself, but no use can be made of such testimony against the witness in a criminal proceeding. Act Feb. 25, 1868.—United States v. Brown, Case No. 14,671; Same v. Williams, Id. 16,717.

In determining the right of a witness to refuse to answer on the ground that his answer might tend to incriminate him, it is the province of the court to judge whether any direct answer to the question proposed will furnish evidence against him.—United States v. Burr, Case No. 14,692e; Same v. Miller, Id. 15,772.

A witness who cannot testify in a cause without criminating himself shall not be sworn.—Neale v. Coningham, Case No. 10,067.

A stipulation by the government officials of immunity from penalties or forfeitures in consideration of testimony of violations of the law will be enforced by the courts.—United States v. Roelle. Case No. 16,186.

Examinations in bankruptcy, see "Bankruptcy," § 327.

§ 68. —— Exposure to disgrace.
A witness need not answer a question which does not relate to any matter of fact in issue, or to any matter contained in his direct testimony, where a truthful answer would tend to degrade him.—In re Lewis, Case No. 8,312; United States v. Craig, Id. 14,883; Same v. Dickinson. Id. 14,958.

A witness, on cross-examination, cannot be asked as to any fact tending to disgrace him, which the other party would not be permitted to prove aliunde.—United States v. Hudland, Case No. 15,411.

An officer is not bound to be a witness against himself on a charge of misconduct, whether amounting to an indictable offense, or only to his discredit, which would furnish ground for his removal or impeachment.—United States v. Collins, Case No. 14,837.

A witness cannot be asked, on cross-examination, a question tending to degrade him, unless it be in relation to a fact in issue in the record.—United States v. White, Case No. 16,-676.

The mother of the child is a competent witness for the prosecution on an indictment of the putative father, under Act Md. 1781, c. 13, and may be cross-examined as to her connection with other persons.—United States v. Collins, Case No. 14,835.

§ 69. —— Cautioning witness.
The court should not instruct witnesses as to their privilege of refusing to answer questions, on the ground that the answers might incriminate them, until the questions are asked.—United States v. Darnaud, Case No. 14,918.

IV. CREDIBILITY, IMPEACHMENT, CONTRADICTION, AND CORROBORATION.

§ 70. Credibility in general.
Jurors should not disbelieve a witness unless for good reason.—United States v. Stevens, Case No. 16,392.

§ 71. Effect of mistake.
Mere mistake by a witness, without willful or corrupt falsehood, should not discredit him.—Marshall v. Mee, Case No. 9,129.

§ 72. Corroboration in general.
Testimony is not admissible to support the credit of a witness except in reply to impeaching testimony.—United States v. Holmes, Case No. 15,382.

A witness produced to testify to the credibility of another may not be asked to specify persons.—Patriotic Bank v. Coote, Case No. 10,-807.

Proper questions to be asked a witness called to testify as to the credibility of another.—Patriotic Bank v. Coote, Case No. 10,807.

§ 73. Impeachment in general.
The court will not permit testimony offered to discredit a witness on the opposite side if, in its opinion, the testimony will not have that effect.—Evans v. Eaton, Case No. 4,559.

An assertion of fact made by a wife in her husband's presence, and denied by him, is not admissible to impeach his testimony.—In re McCarty, Case No. 8,684.

§ 74. Right to impeach one's own witness.
A party may not contradict testimony of his own witness except in case of a surprise.—Trefz v. Knickerbocker Life Ins. Co., Case No. 14,166.

Although respondent is a competent witness in the trial of feigned issues, still he cannot be asked any question by the defense calling for testimony which contradicts his answer.—Cahoon v. Ring, Case No. 2,292.

§ 75. Requiring payment of fees by expert.
The fact that an expert requires payment for his opinions, as such, should not discredit him before the jury.—Harvey v. Evansville, Etc., Steam Packet Co., Case No. 6,179.

§ 76. Proof of general reputation and character in general.
Evidence of the general bad character of a witness will not be permitted to impeach his credibility, but only his general reputation for veracity.—United States v. Vansickle, Case No. 16,609; Same v. White, Id. 16,675.

The character of a witness may be impeached by general questions as to his truth.—United States v. Dickinson, Case No. 14,958.

The general good character of a witness cannot be proved, where his general character has not been impeached, though he has been contradicted by other witnesses.—Ray v. Donnell, Case No. 11,590.

A party cannot discredit his own witness by testimony as to his general character, but may contradict him as to any important fact.—United States v. Watkins, Case No. 16,649.

§ 77. General reputation for veracity.
The usual questions asked, in order to discredit a witness, are: What is the witness' general reputation for truth? Is it good or bad?—Gass v. Stinson, Case No. 5,261.

The witness may be asked whether, from his knowledge of the general character of the person, he would believe such person under oath.—United States v. Vansickle, Case No. 16,609.

The general reputation of a witness for veracity cannot be proven by the testimony of a

juror as to what witnesses testified to at a former trial.—United States v. White, Case No. 16,679.

§ 78. Proof of reputation for unchastity.
Evidence is inadmissible that the witness is a common prostitute, to discredit her testimony. The question must go to her general reputation for veracity.—United States v. Masters, Case No. 15,739.

The attorney for the government will not be permitted to prove that his own witness is a woman of ill fame.—United States v. McDowell, Case No. 15,671.

§ 79. Proof of particular facts and crimes.
Particular acts of turpitude cannot be given in evidence to discredit a witness. The question is only as to his general character for veracity.—Davis v. Forrest, Case No. 3,634; United States v. Vansickle, Id. 16,609.

A customs officer, who has given evidence for defendant on a prosecution for smuggling, cannot be interrogated as to violations by him of the revenue laws not connected with the charge in question, for the purpose of discrediting him. —United States v. Harris, Case No. 15,314.

§ 80. Interest and bias of witness.
The interest of a party in the result should be considered on the question of his credibility. —White v. Commonwealth Nat. Bank, Case No. 17,544.

The court will instruct the jury to disregard the testimony of a witness who, upon cross-examination, is shown to be interested.—Brohawn v. Van Ness, Case No. 1,920.

A strong bias in favor of a party goes to the witness' credibility, and not to his competency. —Burroughs v. United States, Case No. 2,202.

The testimony of witnesses, who, while testifying under circumstances calculated to create a strong bias, state what is, in its nature, incredible, need not be believed.—The Helen R. Cooper, Case No. 6,334.

Inconsistencies in the testimony of a witness whose relation to the cause puts him under a strong bias to testify in favor of one of the parties may be used to discredit his entire testimony.—Sanders v. Parsons, Case No. 12,296.

If there be reason to suppose that the perjury or prevarication of one witness is the result of subornation, it affords a reasonable ground in doubtful cases, for suspecting the testimony of other witnesses adduced by the same party. —Wellman v. Blood, Case No. 17,385; Same v. Woodman, Id.

§ 81. Proof of witness making same statement out of court.
Testimony is not admissible that the witness gave the same account out of court, although it has been proved in order to contradict him that he had given a different account.—United States v. Holmes, Case No. 15,382.

§ 82. Effect of untruthful statement by witness.
The whole testimony of a witness may be rejected where it is found that he has willfully testified falsely as to a material fact.—United States v. Blaisdell, Case No. 14,608; Same v. Harries, Id. 15,309.

§ 83. Inconsistent statements by witness.
A witness cannot be impeached by proving that at other times he made contradictory statements, unless he be first interrogated as to such statements.—McKinney v. Neil, Case No. 8,865; United States v. Dickinson, Id. 14,958; Same v. White, Id. 16,679. CONTRA, see Howland v. Conway, Case No. 6,793.

But such rule does not apply where an ex parte deposition was read, of the taking of which no notice was given.—McKinney v. Neil, Case No. 8,865.

Error in admitting evidence of statements by a witness inconsistent with his testimony, without first calling his attention to such statements, is cured if, on being afterwards called by the prisoner, he denies such statements.—United States v. McHenry, Case No. 15,681.

Little reliance can be placed on the testimony of a witness who contradicted himself on cross-examination.—The Carroll, Case No. 2,451.

Inconsistencies and incongruities in the testimony of witnesses whose general character for veracity has not been impeached will be reconciled, if possible.—Dietz v. Wade, Case No. 3,903.

A shipmaster's protest may be read to discredit what he says on his examination in the cause.—Lamalere v. Caze, Case No. 8,002.

The declarations of a witness, not under oath, may be given in evidence to discredit his testimony.—Harper v. Reily, Case No. 6,091.

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.—Wright v. Deklyne, Case No. 18,076.

Where defendant shows that plaintiff's witness made statements at other times different from those sworn to, plaintiff cannot show other statements corroborative of his evidence.—Ellicott v. Pearl, Case No. 4,386.

A previous and contradictory statement of a witness may be given in evidence to impeach his credit, but not as proof of the facts formerly stated.—Hand v. The Elvira, Case No. 6,015.

A party cannot discredit his own witness by proving that formerly he swore differently.— United States v. Jones, Case No. 15,494.

WORK AND LABOR.

§ 1, When contract implied. § 2, Persons in family relations.

Form of action to recover for, see "Assumpsit, Action of," § 1.
Liens for work and materials, see "Mechanics' Liens."
On Sunday, see "Sunday," § 1.

§ 1. When contract implied.
One held in slavery abroad, who remains with his master on coming into the United States, cannot recover for his services upon an implied promise.—Curranee v. McQueen, Case No. 3,488.

A person who performs valuable services as an officer of an association is entitled to compensation therefor unless he waive it.—Oliver v. Vernon, Case No. 10,501.

The mere knowledge of the doing of extra work and failure to object will not of itself raise a contract.—Belt v. Cook, Case No. 1,282.

Extra work done upon a house built by contract cannot be recovered unless there was an express or implied agreement therefor.—Belt v. Cook, Case No. 1,282.

An action will not lie for services to defendant's slave in nursing him in his last sickness, while on a visit to plaintiff's wife, where defendant offered to remove him.—Manning v. Cox, Case No. 9,042.

A person who contracts to do certain work at a certain price, and quits without cause before it is finished, cannot recover, upon a quantum meruit, the value of his labor.—Lewis v. Esther, Case No. 8,322.

Where there is a written contract, no recovery can be had for extra work or materials unless

authorized or directed by the other party.—Cameron v. Chesapeake & O. Canal Co., Case No. 2,341.

A government contractor is not liable for extra work done by a subcontractor by direction of the government superintendent without proof that the work was embraced in the contract with the government, and not embraced in the subcontract.—Donohue v. Culley, Case No. 3,991.

§ 2. **Persons in family relations.**

In the absence of any contract, between brother and sister living together, to pay her for domestic services, she has no claim on him for such services.—Bartlett v. Mercer, Case No. 1,078.

WRECKS.

See "Shipping," §§ 256, 257.

WRITS.

See "Process."

Particular writs.

See "Assistance, Writ of"; "Attachments," § 7; "Audita Querela"; "Certiorari"; "De Homine Replegiando"; "Entry, Writ of"; "Execution"; "Garnishment"; "Habeas Corpus"; "Injunction'; "Mandamus"; "Ne Exeat"; "Prohibition"; "Quo Warranto"; "Replevin"; "Scire Facias."

Certiorari to justice of the peace, see "Justices of the Peace," § 17.

Search warrant, see "Searches and Seizures."

Writ of error, see "Appeal and Error."

—— of formedon, see "Entry, Writ of."

—— of procedendo, see "Certiorari," § 3.

—— of right, see "Real Actions," § 2.

WRONGFUL ATTACHMENT.

See "Attachments," § 18.

WRONGFUL EXECUTION.

See "Execution," § 27.

WRONGS.

See "Torts."

Y

YEAR.

Estates for years, see "Landlord and Tenant."

†

TABLE OF CITATIONS

Giving the citation by volume and page of each Federal case reported in the United States Circuit and District Courts, and other Reports and Periodicals, and the number under which such case is reported in the Federal Cases.

This table gives the volume and page of the report in which each case was originally reported, and the number under which each such case is reported in this series. It furnishes the means of finding any case reported in this series, where a citation refers to the volume and page of a report, but fails to give the title of the case.

ABBOTT'S ADMIRALTY REPORTS.

Vol. 1, Abb. Adm.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,434	215	7,547	411	12,050
11	7,089	222	6,290	418	8,720
37	3,041	235	1,148	422	5,180
41	8,160	242	16	433	6,381
48	18,208	258	12,546	436	8,548
57	6,704	261	167	444	17,614
60	6,637	263	7,030	446	7,460
67	4,857	270	9,194	451	620
73	9,894	281	6,793	481	7,545
80	18,209	291	11,528	483	2,110
97	3,042	297	5,179	485	11,529
100	11,740a	302	8,121	490	5,874
106 (note)	11,744	305	8,591	495	11,440
108	5,645	317	10,521	499	410
115	9,006	327	7,031	508	8,122
119	4,858	330	7,020	519	14,057
123	3,639	336	17,243	529	4,197
141	5,230	340	3,304	539	12,880
150	2,277	344	11,843	546	9,629
158	9,007	348	1,124	548	13,255
163	2,294	361	3,235	555	3,486
165	199	367	8,010	564	9,577
173	200	373	13,081	569	1,773
188	9,044	384	3,043	570	8,799
196	5,545	391	14,204	573	223
202	10,146	397	18,213	579	9,170
209	1,792	402	2,083	588	7,090

ABBOTT'S NEW CASES.

Vol. 1, Abb. N. C.

Page.	F. C. No.
53	8,763

ABBOTT'S PRACTICE, (N. S.)

Vol. 2, Abb. Pr. (N. S.)

Page.	F. C. No.
3	2,525

ABBOTT'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Abb. U. S.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,229	191	8,604	388	8,408
9	827	196	16,513	407	16,555
14	5,646	212	8,673	426	16,500
22	5,350	246	674	431	16,273
28	16,151	261	740	440	4,083
58	12,812	268	16,296	451	3,050
66	16,635	275	15,918	465	10,063
74	15,067	284	119	470	16,291
81	5,903	299	359	474	2,457
84	14,247	302	12,823	483	15,580
89	11,323	311	16,470	495	16,395
93	15,095	317	9,375	503	18,139
110	15,312	336	12,517	514	10,304
120	15,678	343	486	518	14,365
126	1,299	351	14,529	525	6,638
135	15,861	356	9,173	556	6,895
140	4,678	364	15,099	567	7,273
158	17,978	368	12,305	573	15,943
169	3,523	377	16,212	577	4,755
185	2,349				

ABBOTT'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Abb. U. S.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,660	164	5,204	416	12,801
15	17,996	169	16,084	424	13,435
20	4,110	172	7,357	434	29
20 (note)	10,482	184	13,301	448	8,267
35	6,705	192	14,965	456	16,358
42	2,532	197	10,773	471	6,677
49	11,690	232	9,052	478 (note)	17,258
53	16,538	243	12,855	479	13,189
60	231	257	6,811	494	16,035
67	13,308	261	17,172	495	8,946
74	5,038	265	15,463	500	15,116
94	11,463	283	9,277	503	10,327
114	16,473	305	15,948	507	5,949
120	8,839	323	9,645	523	16,235
129	14,473	346	4,645	527	7,978
151	5,011	364	15,254	531	15,721
156	2,403	382	5,741	542	5,721
160	2,422	398	7,519	559	7,668

ALABAMA LAW JOURNAL.

Vol. 1, Ala. Law J.

Page.	F. C. No.
58	1,613

ALBANY LAW JOURNAL.

Vol. 2, Alb. Law J.

Page.	F. C. No.
343	10,168

Vol. 3, Alb. Law J.

Page.	F. C. No.
75	8,876
97	13,016
156	4,828

Vol. 4, Alb. Law J.

Page.	F. C. No.
49	1,407
49	5,660
49	6,337
50	8,401

Vol. 6, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
276	2,967	292	9,101	421	7,232
277	4,530	358	6,402	422	3,815
291	4,741	358 (note)	2,224	422	5,787
291	10,674	358	17,890	422	5,488
291	17,991	401	2,720a	422	17,919
292	3,769	407	10,416		

Vol. 7, Alb. Law J.

Page.	F. C. No.
13	5,031
13	9,038
119	5,413

Vol. 8, Alb. Law J.

Page.	F. C. No.
54	1,030
235	17,645

ALBANY LAW JOURNAL—Cont'd.

Vol. 10, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	12,427	199	9,286	247	10,983
36	7,006	204	8,976	249	5,825
141	5,995	214	12,568	249	7,781
155	3,062				

Vol. 11, Alb. Law J.

Page.	F. C. No.
7	8,858
199	15,416
342	1,718

Vol. 12, Alb. Law J.

Page.	F. C. No.
280	11,198
354	8,519

Vol. 13, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
218	11,126	254	9,636	361	1,844
221	15,868	305	5,486	393	14,019
240	16,748	353	7,150	400	11,126

Vol. 14, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
19	6,363	279	15,286	400	13,975
130	10,561	294	763	408	17,758
153	18,052	319	11,527	427	7,408
236	15,337	363	8,080	448	4,336
264	15,337				

Vol. 15, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	12,313	199	10,197	330	4,135
16	7,870	219	16,350	332	12,847
16	17,264	235	744	333	4,717
39	9,635	257	15,660	340	11,791
52	2,940	271	4,534	350	12,502
67	131	271	6,023	351	3,242
103	3,356	273	11,416	351	13,390
106	2,545	280	12,396	392	9,694
107	10,345	293	8,429	392	17,917
121	3,341	293	8,680	436	4,188
167	5,809	293	12,788	472	14,527
194	4,257	311	12,599	493	15,027
194	6,045	328	12,212	517	11,139

Vol. 16, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No
62	10,127	165	7,800	417	14,168
63	18,051	167	13,191	453	628
156	10,221	224	14,805		

Vol. 17, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	7,903	167	11,439	345	9,453
26	9,658	170	210	363	1,321
72	18,030	172	12,442	385	104
98	1,334	192	4,269	407	10,164
111	17,386	237	8,191	426	9,980
117	7,393	285	8,292	434	1,557
146	7,393	297	9,453		

Vol. 18, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	11,719	153	13,234	323	6,198
16	10,052	220	16,840	330	4,676
83	13,234	242	7,966	353	5,068
110	16,688	252	5,359	382	8,219
115	18,078	294	6,785	416	13,707
151	5,939	313	17,720	429	8,219

Vol. 19, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
40	9,555	182	9,670	403	15,813
55	1,879	220	3,821	482	10,552
60	15,097	226	4,876	509	2,158
119	2,732	253	5,276	521	12,387
136	8,480	281	9,824	522	7,453
138	12,715	295	11,418		

Vol. 20, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	3,835	206	777	335	11,804
18	12.130	229	5,155	335	12,250
73	8,892	250	6,546	336	3,759
78	13,499	257	3,478	378	11,018
78	17,326	257	5,754	490	3,653
79	12,188	318	6,786		

ALBANY LAW JOURNAL—Cont'd.

Vol. 21, Alb. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
28	12,063	82	12,496	196	12,642
47	8,893	94	10,890		

AMERICAN JURIST.

Vol. 2, Amer. Jur.

Page.	F. C. No.
119	10,869

Vol. 3, Amer. Jur.

Page.	F. C. No.
26	4,085

Vol. 6, Amer. Jur.

Page.	F. C. No.
5	11,619

Vol. 7, Amer. Jur.

Page.	F. C. No.
30	8,321
70	2,242

Vol. 11, Amer. Jur.

Page.	F. C. No.
21	1,673

Vol. 13, Amer. Jur.

Page.	F. C. No.
279	15,807

Vol. 14, Amer. Jur.

Page.	F. C. No.
302	14,076

Vol. 17, Amer. Jur.

Page.	F. C. No.
51	8,054

Vol. 18, Amer. Jur.

Page.	F. C. No.
46	12,670
294	6,959

Vol. 19, Amer. Jur.

Page.	F. C. No.
206	14,079
219	17,712

Vol. 20, Amer. Jur.

Page.	F. C. No.
421	9,191
428	11,186

Vol. 23, Amer. Jur.

Page.	F. C. No.
453	2,316

Vol. 24, Amer. Jur.

Page.	F. C. No.
486	6,914

Vol. 26, Amer. Jur.

Page.	F. C. No.
216	3,666

AMERICAN LAW JOURNAL.

Vol. 1, Amer. Law J.

Page.	F. C. No.
232	15,636

Vol. 3, Amer. Law J.

Page.	F. C. No.
188	15,979a

Vol. 4, Amer. Law J.

Page.	F. C. No.
275	17,419

Vol. 7, Amer. Law J.

Page.	F. C. No.
13	16,175

AMERICAN LAW JOURNAL, (N. S.)

Vol. 1, Amer. Law J. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
107	10,375	354	1,564	448	563
248	14,307	385	13,443	529	5,170
289	4,596	436	4,856	539	5,626

Vol. 2, Amer. Law J. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
73	3,538	204	15,359	347	16,843
97	8,985	317	10,480	385	12,925
111	6,163	337	6,557	563	8,598
179	13,634	341	9,484		

Vol. 3, Amer. Law J. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
82	10,748	202	13,255	402	7,437
111	8,581	268	12,299	419	6,878
155	13,027	294	8,478	438	16,915
193	5,230	307	6,912	468	1,612
199	5,180	337	5,484		

Vol. 4, Amer. Law J. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
81	17,621	183	8,622a	334	9,483
83	18,276	186	3,831	335	11,016
88	16,659	193	1,089	352	11,067
103	14,285	214	15,445	440	14,783
140	11,971	241	15,815	458	15,299
145	14,820	279	3,844	486	16,705
150	5,103	332	26	498	17,860
164	2,541	333	2,281	533	3,763
181	3,318	333	3,423	558	13,032

AMERICAN LAW MAGAZINE.

Vol. 1, Amer. Law Mag.

Page.	F. C. No.
35	5,424a

AMERICAN LAW RECORD.

Vol. 1, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
93	15,958	533	7,824	736	11,597
356	4,530				

Vol. 2, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
145	2,135	230	7,630	513	15,441
171	2,878	314	15,441	577	15,441a
202	2,135	502	12,252	666	13,461
222	1,170				

Vol. 3, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
19	10,186	107	3,062	298	5,046
96	3,728	148	889	403	102
103	11,483	187	8,788	611	8,858
105	4,728	226	13,166	724	12,061

Vol. 4, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
23	3,816	456	1,570	561	11,511
132	1,862	469	11,771	570	2,104
304	4,855	505	2,776	585	2,901
445	4,005	510	3,480	632	5,486
453	7,119	559	8,807	726	1,692

Vol. 5, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	4,532	306	8,650	571	9,976
140	362	361	1,007	628	10,569a
155	10,668	436	12,541	630	17,854
173	12,379	461	1,761	679	8,429
247	12,027	536	7,408	689	14,210

Vol. 6, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	1,080	196	6,078	385	14,308
15	12,926	198	15,688	523	10,555
25	5,255	203	2,204	574	10,918
129	14,805	266	7,989	597	3,404
193	638	302	15,904	675	17,965
193	6,753	311	1,746	743	11,400
194	8,258	352	12,181	744	11,402

AMERICAN LAW RECORD—Cont'd.

Vol. 7, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
48	13,566	239	11,402	575	4,876
154	15,472	283	8,289	613	9,301
168	4,810	310	8,215	650	9,514
197	4,578	366	11,455	751	5,534
236	11,400	370	13,707		

Vol. 8, Amer. Law Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	9,043	257	835	460	859
72	6,546	264	11,804	466	15,421
163	6,786	338	1,372	541	14,645

Vol. 9, Amer. Law Rec.

Page.	F. C. No.
65	6,803

AMERICAN LAW REGISTER.

Vol. 1, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
15	3,763	139	2,262	403	4,980
18	6,589	142	10,497	520	13,437
82	10,124	198	9,581	584	1,965
87	13,645	262	7,584	654	1,584

Vol. 2, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
20	18,093	279	16,865a	563	17,005
144	7,259	324	17,093	645	16,111
157	17,296	348	15,811	697	5,199
210	13,514	421	14,457	712	16,950

Vol. 3, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	7,441	229	673	477	8,980
47	7,693	232	11,654	622	4,115
48	15,865	337	12,280	659	8,588
79	3,845	391	7,458	729	16,725
136	313	465	8,958	745	2,560

Vol. 4, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	16,726	277	8,724	526	1,586
152	2,004	307	17,110	591	2,854
174	17,363	427	11,362	617	11,934
187	5,382				

Vol. 5, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
106	14,068	203	1,721	400	9,165
139	7,361	268	16,321	406	14,236
142	6,492	280	11,085	459	1,152
148	574	330	17,151	659	12,848

Vol. 6, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	9,620	273	6,491	422	6,020
27	2,942	328	9,117	485	18,095
42	3,389	368	8,223	504	12,265
51	3,476	385	3,126	511	7,589
222	16,956	406	2,889	632	14,934
229	8,733				

Vol. 7, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	2,944	413	2,024	606	11,626
79	4,581	494	7,462	661	1,410
178	5,209	500	4,116	667	9,090
193	8,731	536	2,887	725	10,442
334	3,184				

Vol. 8, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
144	6,122	459	11,713	603	8,603
156	11,917	525	15,239	654	4,836
206	12,895	540	14,680	663	15,329
271	9,998				

Vol. 9, Amer. Law Reg.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	11,905	224	7,355	475	12,295
33	7,644	232	15,281	524	9,487
145	15,541	349	12,517	655	13,082
171	17,152	350	1,930	661	8,751
217	3,608				

AMERICAN LAW REGISTER, (N. S.)

Vol. 1, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	236	207	4,447	281	16,251
116	3,136	277	13,612		

Vol. 2, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
139	11,150	287	13,541	419	15,941
221	1,031	394	14,687	672	9,865

Vol. 3, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
112	2,256	675	619	735	15,945
289	2,640				

Vol. 4, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	15,060	534	16,146	750	827
289	15,158				

Vol. 5, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
44	10,334	159 (note)	1,118	555	14,351
45	3,279	286	5,646	692	9,229
158 (note)	8,679	492	4,011		

Vol. 6, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
32	15,095	238	17,978	707	1,299
169	6,893	410 (note)	8,126	732	7,152

Vol. 7, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
26	10,814	291	7,304	533	6,692
30	3,614	294	7,309	539	1,693
32	2,133	306	15,067	618	12,058
100	2,349	332	4,496	624	499
105	2,182	365	16,470	659	644
109	1,846	369	16,103	690	3,843
149	2,900	371	740	693	8,205
157	12,172	419	7,292	695	11,046
163	17,387	423	7,819	749	5,620
204	12,471	429	11,006	751	16,296
209	7,076	438	3,947	757	14,509
213	3,981	484	12,753	786	3,924
226	5,735	499	2,270	818	9,366
233	16,151	505	1,790	824	4
283	11,589				

Vol. 8, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	3,185	113	10,465	423	160
34	1,315	179	6,710	427	8,067
39	13,639	229	119	470	7,137
42	13,994	279	13,189	614	7,985
44	12,057	286	3,552	673	12,651
100	3,523	358	5,815	747	1,274

Vol. 9, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
47	13,007	415	16,538	557	11,463
297	1,417	435	17,996	627	18,117
311	9,627	475	10,545	694	9,164
349	12,517	481	16,084	739	2,818
362	2,403				

Vol. 10, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
36	18,139	379	9,004	523	13,392
53	8,415	383	10,154	638	8,108
57	1,209	389	602	641	5,104
101	10,266	449	15,001	718	9,112
115	11,907	455	15,634	737	14,814
181	1,168	458	14,378	774	4,573
190	388	512	17,372	777	12,228
333	13,308	519	3,610	786	13,324
340	5,093				

Vol. 11, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
37	16,378	320	14,985	706	13,448
101	4,952	386	2,678	709	17,902
214	4,282	424	16,665	716	12,767
226	13,503	557	7,968	760	7,811
293	1,903	629	9,415	769	7,319
315	3,969				

AMERICAN LAW REGISTER, (N. S.)—Cont'd.

Vol. 12, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	334	511	10,861	585	333
291	2,720a	561	10,341	777	10,991
300	7,842	566	6,587	779	5,153
379	1,167	569	5,272		

Vol. 13, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
103	6,011	511	6,743	630	14,897
310	2,590	561	10,945	697	8,789
502	13,788	624	3,728	761	102

Vol. 14, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
30	889	166	3,829	433	15,750
86	13,787	238	16,036	506	10,604
105	16,036	300	10,485	627	6,074
153	9,286	566	1,862	688	4,855

Vol. 15, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
45	14,424	346	8,519	418	4,532
49	14,598	367	10,083	522	13,934

Vol. 16, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
48	13,303	417	3,173	491	89
181	10,634				

Vol. 17, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
52	8,714	376	10,167	698	17,720
127	14,881	516	1,475	713	7,457
266	4,666	626	10,600	783	17,543

Vol. 18, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
37	8,219	298	13,802	624	2,618
101	773	322	8,154	676	6,546
191	13,750	497	5,276		

Vol. 19, Amer. Law Reg. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
44	17,175	248	12,482	433	12,561
173	17,444	295	13,413		

AMERICAN LAW REPORTER, (N. S.)

Vol. 1, Amer. Law Rep. (N. S.)

Page.	F. C. No.
512	9,286

AMERICAN LAW REVIEW.

Vol. 1, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
84	12,647	217	6,428	576	14,842
88	9,065	217	16,203	587	5,469
92	8,517	401	9,498		

Vol. 2, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
95	12,812	359	5,735	577	15,441a
101	3,739	359	9,608	771	1,240
188	10,296	455	12,349	772 (note)	10,106
188	12,006	458	289	774	9,008
188	17,571	569	4,873	776	10,939
259	3,525	570	740	782	15,415
346	899	577	9,217	785	16,256
359	431				

Vol. 3, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
173	15,760	382	6,442	777	7,777
174	17,094	386	9,911	777	15,710
368	3,621a	387	3,924	778	6,477
372	15,059	389	7,722	779	8,256
374	17,705	453	3,552	779	13,226
375	3,523	575	2,379	779	13,888
377	11,959	582	3,185	784	4,570
		582	12,513	784	5,815

Vol. 4, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
173	6,199	194	9,822	615	3,508
186	12,229	397	13,435	769	7,381
188	3,814	450	3,441		

AMERICAN LAW REVIEW—Cont'd.

Vol. 5, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
163	4,895	187	3,419	564	6,660
166	9,375	187	16,291	564	6,811
169	11,932	188	5,501	565	602
171	8,408	370	9,645	566	4,828
176	3,675	375	47	566	10,089
181	7,211	381	12,402	567	9,052
181	7,668	382	12,513	568	13,308
181	11,690	383	11,087	570	1,404
184	3,050	562	6,173	752	15,712
184	7,606	562	7,810	753	3,671
184	11,463	563	29		

Vol. 6, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	1,203	383	15,502	582	1,678
161	13,221	385	2,552	584	13,115
162	4,381	386	7,885	754	360
164	17,479	386	16,371	755	214
166	14,374	572	10,595	755	2,470
168	13,684	573	16,378	759	6,037
181	12,620	574	4,573	759	10,520
183	15,460	574	12,307	759	13,503
365	1,677	575	10,616	762	1,829
365	3,250	575	16,168	763	7,064
365	9,783	576	16,456	763	7,639
366	7,750	577	124	765	2,700
367	5,104	578	5,986	765	3,769
367	8,108	581	1,903	765	16,171
369	13,839			766	15,958

Vol. 7, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
172	1,603	382	2,567	576	10,273
177	13,867	384	7,968	664	6,044
178	7,806	457	6,987	749	1,596
355	9,119	560	6,137	751	9,925
357	10,784	565	16,876	751	11,296
361	10,851	567	4,796	752	10,341
362	7,019	568	10,603	754	6,729
362	13,145	572	9,446	754	10,543
365	4,651	573	7,015	755	17,710
366	16,665	573	10,329	762	3,509
369	17,902	574	12,767	765	3,921
381	3,769	575	2,720a		

Vol. 8, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
162	16,027	356	16,598	775	5,950
168	2,878	614	9,051	779	14,376
169	1,030	620	5,653	786	3,728

Vol. 9, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
150	1,639	167	7,655	365	13,599
150	14,075	359	102	370	16,036
151	7,006	362	2,665		

Vol. 10, Amer. Law Rev.

Page.	F. C. No.
380	10,558
600	1,844

Vol. 11, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
169	3,397	379	15,286	615	10,517
181	10,561	609	1,761		

Vol. 12, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
391	8,506	598	11,439	819	10,164
401	14,109	602	7,125		

Vol. 13, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
161	10,600	375	4,566	390	8,219
167	13,234				

Vol. 14, Amer. Law Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
84	3,024	85	2,913	163	8,893
84	3,653	85	17,212	164	8,261
84	10,569	86	7,425	247	15,043

AMERICAN LAW TIMES.

Vol. 2, Amer. Law T.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
104	103	121	17,130	137	163
105	11,978	122	1,980	137	14,235
105	17,508	122	8,398	138	3,624
105	17,532	123	4,946	154	16,982
106	8,455	123	7,629	168	10,254
106	10,446	124	8,105	169	12,849
107	12,729	136	3,587	170	6,473
107	10,681	136	10,907	206	4,084
107	13,936				

Vol. 3, Amer. Law T.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	12,974	169	3,363	221	14,094
38	13,990	170	1,274	226	14,806
71	5,092	197	6,960	251	8,820
134	2,519	215	7,970	280	161
140	4,326	216	10,304	285	7,401
165	4,044	218	8,375		

Vol. 4, Amer. Law T.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	1,209	126	9,121	185	8,228
16	12,597	131	3,276	189	3,126
39	1,338	136	1,233	201	13,801
42	3,127	141	2,862	218	12,681
60	7,836	162	7,635	220	9,259
62	388	168	9,018	223	14,321
117	3,571	174	13,684		

Vol. 5, Amer. Law T.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	2,744	85	1,474	166	14,855
42	2,700	107	14,374		

Vol. 6, Amer. Law T.

Page.	F. C. No.
38	13,097
41	13,098

AMERICAN LAW TIMES, (N. S.)

Vol. 1, Amer. Law T. (N. S.)

Page.	F. C. No.
182	6,192

Vol. 2, Amer. Law T. (N. S.)

Page.	F. C. No.
15	12,440

Vol. 4, Amer. Law T. (N. S.)

Page.	F. C. No.
47	6,107
258	7,826

AMERICAN LAW TIMES BANKRUPTCY REPORTS.

Vol. 1, Amer. Law T. Rep. Bankr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	7,767	46	9,494	83	499
2	14,116	46	11,589	85	11,567
4	10,998	46	12,471	89	4,143
5	3,981	47	2,182	90	3,843
6	2,781	47	11,578	92	6,529
7	4,093	47	12,059	94	1,184
9	3,699	47	12,774	95	1,396
11	9,020	48	1,866	97	1,728
15	740	48	6,048	97	12,622
16	13,418	48	6,210	99	5,620
17	17,876	48	8,157	100	12,057
19	11,476	48	8,694	105	6,287
20	17,387	49	12,753	107	17,705
22	1,266	56	6,483	108	9,366
25	11,937	57	5,474	111	5,848
28	12,455	59	2,920	112	12,973
30	2,349	61	7,292	113	17,705
32	3,841	63	1,057	114	11,581
32	10,474	65	3,343	119	6,048
34	11,006	70	11,583	120	1,614
38	17,061	72	1,790	120	3,343
39	1,457	73	5,279	120	3,947
44	11,580	73	9,451	120	5,810
45	1,350	74	10,041	120	7,562
45	6,841	78	8,205	120	8,823
46	1,183	79	11,644	121	7,916
46	9,320	81	12,058	121	9,553

AMERICAN LAW TIMES BANKRUPTCY REPORTS—Cont'd.

Vol. 1, Amer. Law T. Rep. Bankr.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
121	13,745	147	12,974	218	231
121	17,778	151	1,420	224	14,343
122	2,270	156	13,990	226	6,960
122	8,297	159	8,455	226	7,970
122	8,951	159	10,446	227	10,304
122	9,318	160	4,084	229	8,375
122	12,600	162	17,130	232	14,094
122	13,475	164	8,398	237	14,806
122	13,739	167	7,629	238	161
123	1,396	168	4,946	241	1,209
123	5,074	170	16,982	244	12,597
123	6,530	171	12,849	246	7,836
123	10,465	175	6,473	248	388
123	16,880	178	1,276	251	3,571
125	11,433	179	5,536	257	3,276
127	4,961	181	5,092	262	1,233
129	103	183	1,417	266	7,635
133	11,978	186	1,418	272	9,018
136	17,508	187	1,419	273	13,684
136	17,532	189	2,798	284	8,228
137	13,936	192	2,519	287	13,991
139	10,681	198	4,326	295	10,066
140	10,254	207	4,044	298	5,796
144	1,043	210	3,363		

Vol. 2, Amer. Law T. Rep. Bankr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	3,008	52	7,769	75	8,527
7	7,309	53	4,743	77	7,170
7	12,256	53	6,791	79	7,725
7	13,564	53	6,951	80	4,835
8	4,971	53	8,819	81	160
15	13,727	53	9,510	84	8,067
18	11,939	53	17,875	85	12,494
20	11,774	59	12,113	87	1,398
21	3,402	60	741	87	1,408
23	5,813	61	5,973	87	3,071
25	11,071	64	1,594	87	11,942
28	17,032	65	546	87	13,163
33	9,912	65	4,965	87	17,313
39	7,728	65	17,794	87	8,459
39	10,081	66	1,809	89	9,031
41	1,397	66	1,943	92	675
45	2,156	66	10,878	93	17,271
47	6,222	69	11,551	95	1,156
52	3,618	74	17,293	116	18,117
52	5,279				

Vol. 3, Amer. Law T. Rep. Bankr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	1,420	188	231	195	14,343
69	5,536				

AMERICAN LAW TIMES REPORTS.

Vol. 1, Amer. Law T. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
416	12,568	471	8,976	507	9,647
444	13,317	476	5,825		

Vol. 2, Amer. Law T. Rep.

Page.	F. C. No.
182	1,043

Vol. 4, Amer. Law T. Rep.

Page.	F. C. No.
142	3,737

Vol. 5, Amer. Law T. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	5,307	168	4,651	335	10,047
76	124	175	7,594	400	6,402
87	7,319	309	15,437	424	9,415
89	9,704	320	606	495	647
101	1,903				

Vol. 6, Amer. Law T. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
28	18,168	111	4,796	418	1,170
45	7,824	169	8,847	424	12,435
53	2,245	277	13,620	476	13,611
78	16,618	324	7,842	490	3,912
101	5,272	401	5,090	519	10,609
105	10,784	409	1,928		

AMERICAN LAW TIMES REPORTS, (N. S.)

Vol. 1, Amer. Law T. Rep. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
94	6,911	336	3,728	402	10,945
160	9,795	351	13,166	406	4,004
167	8,649	354	6,975	421	6,484
214	3,186	359	13,679	423	1,505
218	8,201	363	17,197	451	889
239	3,290	368	12,640	493	2,583
271	4,541	372	12,427	519	12,132
319	9,755	382	6,502	523	5,206

Vol. 2, Amer. Law T. Rep. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	8,766	238	16,082	386	986
33	1,068	242	10,604	402	8,136
97	7,311	279	10,762	464	1,862
179	1,639	300	15,416	502	5,861
186	9,619	381	10,572	511	3,129

Vol. 3, Amer. Law T. Rep. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	17,775	350	3,397	469	10,561
91	18,166	370	13,964	537	1,761
335	12,996				

Vol. 4, Amer. Law T. Rep. (N. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	9,338	280	3,173	387	5,462
226	12,829	353	89	406	7,430

AMERICAN LAW TIMES UNITED STATES COURTS.

Vol. 1, Amer. Law T. Rep. U. S. Cts.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	14,247	52	7,154	103	3,923
9	9,217	53	15,197	103	8,604
14	16,269	58	15,067	105	5,350
15	14,281	60	27	107	1,880
22	16,151	60	15,013	110	16,555
35	12,812	63	16,669	114	16,513
38	14,953	67	16,835	119	15,918
40	6,559	69	16,603	123	9,008
41	12,217	70	5,664	123	9,911
42	3,123	72	8,537	126	16,296
43	4,359	94	5,555	129	2,311
44	5,903	95	4,100	131	16,651
45	16,635	97	3,523	133	254
47	16,470				

Vol. 2, Amer. Law T. Rep. U. S. Cts.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	4,678	109	16,315	130	3,814
12	1,938	111	12,450	140	9,375
15	12,578	112	12,451	149	13,226
23	11,494	113	8,897	153	9,375
43	16,493	116	2,466	153	15,693
48	16,559	117	10,974	154	11,097
60	12,513	118	6,477	156	3,275
93	5,815	121	14,898	179	12,651
101	4,570	124	15,721	187	12,823

Vol. 3, Amer. Law T. Rep. U. S. Cts.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,007	89	633	143	5,298
4	2,724	97	17,996	155	6,293
10	11,495	109	12,677	157	1,404
17	16,770	112	11,932	168	11,690
18	13,686	113	16,212	170	11,087
21	14,293	119	7,668	177	7,273
50	3,508	124	18,079	180	16,110
59	15,091	127	10,145	186	8,839
65	9,627	131	2,403	191	11,094
77	9,136	133	13,301	193	9,645
79	5,940	137	5,204	199	9,164

Vol. 4, Amer. Law T. Rep. U. S. Cts.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	602	136	9,605	208	13,221
24	9,052	145	9,701	213	16,371
30	2,613	147	9,625	214	7,322
47	10,479	148	15,460	217	9,783
58	9,429	153	10,089	225	12,551
60	10,300	161	13,525	226	9,455
68	2,934	166	13,219	228	3,366
73	2,011	171	6,660	231	14,724
84	9,696	179	12,620	237	5,039
92	7,622	187	4,268	240	7,885
110	6,576	190	6,550	245	13,991
116	1,428	195	12,088	247	10,918
134	12,685	202	9,735		

AMERICAN LAW TIMES UNITED STATES COURTS—Cont'd.

Vol. 5, Amer. Law T. Rep. U. S. Cts.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
30	5,986	240	5,533	380	4,285
96	7,254	299	17,902	407	8,840
132	2,314	311	10,674	419	4,446
147	10,616	330	18,112	482	2,720a
150	11,660	367	9,345	500	3,308

Vol. 6, Amer. Law T. Rep. U. S. Cts.

Page	F. C. No.
20	10,603

AMERICAN LEADING CASES.

Vol. 1, Amer. Lead. Cas.

Page.	F. C. No.
200	9,926
429	365
687	3,232

Vol. 2, Amer. Lead. Cas. (5th Ed.)

Page.	F. C. No.
419	15,405

AMERICAN RAILWAY TIMES.

Vol. 9, Amer. Ry. Times.

Page.	F. C. No.
682	17,753

ANTHON'S NEW YORK NISI PRIUS REPORTS.

Anth. N. P.

Page.	F. C. No.
200	12,923

BALDWIN'S UNITED STATES CIRCUIT COURT REPORTS.

Baldw.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	13,881	177	11,840	380	587
15	15,528	188	4,823	394	764
36	11,652	196	17,428	424	8,416
38	10,456	205	1,617	454	5,218
49	9,936	234	14,563	462	12,741
57	3,516	246	13,974	463	2,131
60	1,319	287	12,525	464	14,045
78	16,730	289	2,505	502	16,566
123	5,942	291	10,744	510	10,278
129	6,071	292	15,370	514	16,198
132	3,757	296	17,975	519	14,977
133	17,803	303	17,585	528	9,471
138	10,647	331	1,583	536	755
148	13,463	344	8,956	543	1,038
154	2,193	366	15,787	544	756
166	11,612	370	16,271	571	7,416

BALTIMORE LAW TRANSCRIPT.

Vol. 1, Balt. Law Trans.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	3,735	67	17,369	196	4,121
21	1,315	117	15,812	625	12,043
52	8,604	195	12,801		

Vol. 2, Balt. Law Trans.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
244	12,790	433	5,815	759	160
276	7,777	521	8,067	943	10,567
361	6,477	610	4,570	951	13,435
369	13,533	666	9,764	955	12,578
378	15,589	743	14,898		

Vol. 3, Balt. Law Trans.

Page.	F. C. No.
— (No. 7)	73
— (No. 9)	12,498
133 (No. 17)	6,218

BANKERS' MAGAZINE.

Vol. 11, Bankers' Mag. (3d S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
140	6,970	481	16,989	793	744
142	4,532	787	4,135		

Vol. 12, Bankers' Mag. (3d S.)

Page.	F. C. No.
721	1,485

Vol. 14, Bankers' Mag.

Page.	F. C. No.
387	1,714

BANKRUPT COURT REPORTER.

Bankr. Ct. Rep.

Page.	F. C. No.
123	18,109
162	10,281

BANKRUPTCY REGISTER SUPPLEMENT.

Bankr. Reg. Supp.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,757	19	268	36	2,349
1	11,637	21	1,267	37	17,387
2	1,116	22	1,543	38	2,182
2	11,936	22	10,814	38	10,397
3	8,821	23	8,298	38	12,455
4	6,481	24	8,295	39	3,981
5	6,447	24	8,643	40	8,299
5	7,891	25	1,268	40	12,641
6	18,282	26	3,614	41	2,842
7	12,684	26	7,165	41	12,471
8	3,841	27	457	42	7,767
9	9,512	27	10,815	43	1,350
11	11,466	30	8,296	43	9,494
13	10,581	32	10,818	44	11,589
14	1,266	33	8,822	46	458
14	2,959	33	10,816	46	459
16	7,892	33	10,815	46	471
16	8,577	33	12,172	46	9,796
17	6,189	35	10,820	46	10,680
18	10,582	35	11,476	46	12,983

BANNING & ARDEN'S PATENT CASES.

Vol. 1, Ban. & A.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,128	240	10,051	470	8,453
24	13,756	256	3,548	485	17,464
30	16,794	261	9,517	491	14,394
34	6,502	267	978	494	14,388
41	9,747	270	13,808	497	9,607
44	14,408	282	17,382	515	11,650
47	9,472	289	3,963	520	5,151
58	13,050	291	6,493	529	2,207
60	17,398	294	2,345	531	13,260
77	17,393	315	5,417	534	9,950
78	3,186	320	3,135	535	9,989
84	17,337	327	81	537	10,082
92	12,118	330	4,015	544	14,244
98	14,199	337	2,106	549	815
105	17,463	340	2,969	553	5,299
113	14,389	351	967	556	3,339
117	13,010	356	3,132	560	11,163
120	12,132	362	751	565	9,990
126	9,705	365	4,817	568	5,603
135	12,131	375	5,642	587	5,434
138	11,997	384	5,597	589	7,910
145	3,438	386	7,809	594	18,040
155	1,466	396	4,882	599	10,913
159	12,167	399	2,627	605	4,975
165	1,434	400	4,242	608	17,608
177	10,337	401	9,714	610	13,453
198	11,483	403	8,632	621	5,416
201	5,598	420	17,500	625	2,166
215	577	426	1,433	627	8,633
222	1,676	428	7,960	629	12,411
225	1,648	439	309	633	14,231
229	11,625	463	310	639	14,132

BANNING & ARDEN'S PATENT CASES—Cont'd.

Vol. 2, Ban. & A.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,383	233	6,167	457	6,754
5	11,915	235	12,426	459	8,998
10	6,234	237	11,486	460	9,508
24	7,034	244	14,391	465	2,108
25	18,050	249	12,814	467	12,643
30	3,133	252	5,600	469	10,876
39	7,461	256	11,661	479	2,826
40	17,454	260	14,039	488	13,662
46	6,166	263	13,689	493	16,793
50	7,371	264	4,246	501	1,185
55	17,450	268	1,675	506	8,950
60	14,396	271	5,418	514	3,236
67	17,338	277	371	519	1,436
72	11,998	315	14,268	522	298
73	9,516	318	17,616	529	5,594
78	11,485	321	17,458	531	8,510
81	7,947	324	3,238	534	11,413
91	18,039	327	4,151	537	16,898
98	13,509	331	2,468	542	9,908
106	1,638	334	2,543	544	12,456
113	10,150	348	10,994	551	317
119	2,467	351	12,133	556	16,987
126	17,261	364	17,459	561	7,961
131	5,379	369	570	567	10,328
152	8,949	371	13,077	570	10,436
164	16,788	375	3,134	574	9,599
167	16,789	386	12,134	584	12,136
170	17,596	390	13,407	587	372
172	4,976	396	6,595	590	17,933
176	1,176	398	11,792	593	14,369
178	3,725	401	14,227	595	2,050
185	14,267	408	12,313	601	18,137
190	9,907	412	2,999	602	379
195	487	417	11,122	604	6,351
199	4,470	420	13,495	615	9,350
208	7,695	427	4,535	618	9,597
212	5,879	433	8,631	623	1,463
215	2,317	436	1,794	627	12,116
221	6,382	442	624	637	3,437
225	3,549	449	3,693	629	147
229	2,231	452	2,107		

Vol. 3, Ban. & A.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	56	206	6,573	396	6,422
7	5,668	209	9,462	403	14,392
13	9,776	211	5	413	17,735
20	9,563	214	4,072	428	7,384
27	16,897	217	2,998	435	4,578
36	18,200	219	12,417	438	7,653
39	1,460	222	17,577	455	5,937
42	307	226	7,925	458	14,269
55	6,424	228	13,147	462	722
69	4,505	229	1,956	468	4,306
75	5,643	232	2,028	471	5,596
77	72	235	721	478	3,444
82	380	241	18,041	480	3,446
83	13,512	243	17,850	481	12,866
96	752	246	12,902	485	11,012
99	18,195	249	17,934	491	12,457
108	4,608	252	12,101	499	8,814
112	1,497	256	10,486	501	6,384
114	8,960	260	13,238	515	8,966
115	5,589	263	6,156	518	1,734
121	12,587	268	304	521	1,491
124	13,248	274	17,659	523	2,906
130	7,479	279	11,121	533	17,720
133	13,269	281	13,321	539	7,564
138	13,865	287	10,431	550	10,747
139	7,741	291	5,858	553	6,194
142	10,963	292	3,742	557	13,911
145	7,868	297	13,287	565	13,002
148	11,686	304	7,040	568	2,968
150	11,101	308	5,632	573	5,290
157	5,988	312	7,724	577	1,795
161	623	320	293	580	2,291
168	305	324	5,635	595	9,934
174	638	329	382	598	319
176	11,688	332	13,841	607	4,910
179	7,036	337	994	610	5,504
180	7,959	346	5,984	616	7,095
188	3,082	352	5,248	618	4,073
191	1,810	361	7,283	623	7,696
195	2,132	366	12,010	625	6,596
199	6,695	368	11,613	627	14,407
205	5,111	376	6,789		

BANNING & ARDEN'S PATENT CASES—Cont'd.

Vol. 4, Ban. & A.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	308	228	4,812	469 (7 F. 860)	16,793a
5	13,148	236	7,794	479	12,458
7	2,145	239	12,424	485	995
23	10,964	248	5,605	489	720
25	7,907	263	626	495	61
36	2,995	292	625	499	1,489
68	13,864	307	9,706	500	1,490
74	14,405	314	9,589	501	3,288
78	8,757	317	11,963	506	2,704
80	531	319	18,037	518	4,127a
86	6,703	320	5,229	520	294
88	17,342	326	3,305	536	5,250
100	17,970	328	4,325	540	10,437
107	3,096	331	3,743	543	54
111	6,003	343	8,767	545	4,583
116	11,535	344	7,974	551	296
121	13,840	347	11,100	559	2,992
124	16,863	353	4,787	562	2,994
128	17,083	355	17,851	564	8,511
133	17,763	361	7,039	566	13,320
141	2,146	364	13,334	569	14,216
148	306	366	11,689	571	17,217
159	2,344	379	11,421	574	12,366
163	11,962	394	4,866	579	12,367
165	4,875	398	3,176	583	5,783
169	5,757	403	2,855	586	8,768
173	14,410	411	7,085	588	295
181	14,393	415	2,991	599	2,113
184	17,852	427	13,258	603	297
189	3,499	429	12,423	607	10,962
192	12,240	432	10,050	609	2,993
197	149	434	6,461	612	9,041
203	10,109	437	5,601	615	5,985
213	970	441	17,716	624	11,008
215	719	445	13,335	637	17,836
225	9,691	456	2,361	641	1,471

Vol. 5, Ban. & A.

Page.	F. C. No.	Page.	F. C. No.
1	4,256	276 (1 F. 222)	—
4	5,633	279 (1 F. 225)	—
38	7	280 (2 F. 225)	—
40	4,765	284 (2 F. 229)	—
42	4,279	287 (5 F. 810)	—
47	7,063	288 (14 F. 108)	—
50	6,086	292 (1 F. 870)	—
53	9,598	296 (1 F. 851)	—
56	18,038	300 (2 F. 239)	—
57	232	302 (1 F. 856)	—
61	18,062	308 (3 F. 566)	—
63 (1 F. 140)	—	316 (2 F. 74)	—
66	2,573a	319 (2 F. 232)	—
67	4,582	324	9,393b
68 (4 F. 545)	—	326 (1 F. 862)	—
71 (13 F. 903)	—	334 (2 F. 464)	—
73 (3 F. 898)	—	335	13,336
77 (4 F. 151)	—	338 (2 F. 236)	—
78 (1 F. 91)	—	341	17,209a
80 (1 F. 610)	—	345 (2 F. 356)	—
81 (4 F. 539)	—	346 (2 F. 355)	—
85 (4 F. 148)	—	347 (2 F. 353)	—
88 (1 F. 411)	—	349 (2 F. 214)	—
92 (1 F. 138)	—	352	1,493a
95 (4 F. 436)	—	354 (2 F. 338)	—
96 (13 F. 893)	—	369 (3 F. 513)	—
108 (2 F. 78)	—	372 (2 F. 206)	—
112 (1 F. 199)	—	380 (2 F. 359)	—
116 (1 F. 416)	—	385 (2 F. 570)	—
118 (4 F. 441)	—	389 (2 F. 544)	—
122 (4 F. 536)	—	390 (2 F. 688)	—
125 (1 F. 87)	—	395 (2 F. 451)	—
127 (1 F. 408)	—	399 (2 F. 697)	—
131 (2 F. 82)	—	405 (2 F. 707)	—
135 (1 F. 640)	—	411 (2 F. 692)	—
136 (4 F. 83)	—	416 (10 F. 673)	—
140 (8 F. 434)	—	418 (2 F. 683)	—
154	5,191a	423 (2 F. 702)	—
157 (4 F. 428)	—	429 (2 F. 357)	—
165 (1 F. 304)	—	431 (2 F. 568)	—
189 (4 F. 423)	—	432 (2 F. 902)	—
195 (1 F. 174)	—	435 (2 F. 542)	—
199 (4 F. 445)	—	437	2,993a
210 (4 F. 531)	—	439 (2 F. 330)	—
215 (7 F. 485)	—	447 (2 F. 781)	—
217 (7 F. 922)	—	449 (2 F. 574)	—
220 (5 F. 808)	—	453 (2 F. 649)	—
222 (1 F. 328)	—	455 (5 F. 812)	—
237 (1 F. 203)	—	456	12,587a
240 (1 F. 342)	—	458 (85 F. 481)	—
244 (11 F. 859)	—	461 (7 F. 483)	—
256 (1 F. 597)	—	463 (3 F. 517)	—
263 (1 F. 604)	—	465 (3 F. 26)	—
269 (1 F. 722)	—	475 (2 F. 774)	—
275	12,240a	482 (2 F. 901)	—

BANNING & ARDEN'S PATENT CASES—Cont'd.

Vol. 5, Ban. & A.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
484 (2 F. 899)	—	572 (3 F. 222)	—
486 (3 F. 338)	—	575	17,579a
488 (3 F. 335)	—	577 (3 F. 143)	—
491 (2 F. 855)	—	584 (3 F. 151)	—
509 (3 F. 95)	—	586 (3 F. 298)	—
511 (3 F. 636)	—	590 (3 F. 509)	—
514 (2 F. 677)	—	594	10,964a
519 (3 F. 288)	—	595	12,470b
529 (86 F. 906)	—	596 (11 F. 896)	—
530	5,885a	609 (4 F. 214)	—
533 (10 F. 283)	—	615 (3 F. 801)	—
540 (85 F. 864)	—	617 (8 F. 761)	—
541 (3 F. 642)	—	619 (3 F. 639)	—
544 (7 F. 479)	—	622	16,787a
548 (3 F. 225)	—	622 (4 F. 816)	—
551 (3 F. 711)	—	624 (4 F. 813)	—
553 (3 F. 153)	—	627 (3 F. 714)	—
562	10,510a	630 (5 F. 806)	—
563 (3 F. 333)	—	632 (5 F. 804)	—
565	12,470a	634 (3 F. 862)	—
571 (3 F. 161)	—	636 (4 F. 334)	—

BEE'S UNITED STATES DISTRICT COURT REPORTS.

Bee.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,515	131	1,658	244	6,144
2	12,927	134	4,846	248	7,225
5	556	136	3,294	250	12,946
6	14,238	139	12,493	252	15,537
9	13,815	140	14,823	254	2,401
11	7,216	141	1,899	255	2,402
29	2,504	146	8,257	258	9,176
34	15,331	148	4,097	260	4,870
38	7,660	151	9,587	262	5,077
39	1,896	152	3,432	263	3,138
40	13,291	154	6,905	266	16,175
43	12,247	157	11,482	292	9,742
48	1,819	161	95	300	12,047
51	9,175	163	12,730	308	12,048
57	6,427	167	11,438	313	12,045
60	8,809	170	13,366	316	12,046
64	8,810	173	8,368	327 (4 Cranch, 241)	—
66	11,670	175	13,807	339	8,340
67	17,750	178	1,900	345	14,242
69	1,897	182	13,595	348	4,925
73	1,898	184	13,250	353	2,383
74	1,607	186	1,709	369	3,702
76	9,743	190	1,710	378	3,703
78	10,309	193	3,428	385	4,111
80	2,982	196	16,276	385	4,626
82	17,662	198	8,088	386	11,755
86	14,206	199	8,089	388	9,737
87	692	201	1,093	393	11,379
89	9,741	202	9,035	395	8,970
90	219	204	13,179	399	7,632
92	1,647	209	5,368	404	9,588
97	3,277	212	4,123	414	5,906
100	10,467	213	3,796	416	5,386
104	559	217	13,984	419	2,898
106	4,406	226	7,288	422	9,697
112	4,407	228	18,175	423	8,738
116	2,116	232	5,330	424	12,721
119	9,644	233	17,045	429	1,855
120	14,237	237	6,869	433	12,819
124	2,350	239	11,898	441	10,055
128	9,744	241	12,184		

BENCH & BAR.

Vol. 2, Bench & Bar.

Page.	F. C. No.
65	1,061
325	3,558

BENCH & BAR, (N. S.)

Vol. 1, Bench & Bar, (N. S.)

Page.	F. C. No.
50	13,735
98	12,307

Vol. 3, Bench & Bar, (N. S.)

Page.	F. C. No.
38	12,928
41	7,824
151	3,621

BENEDICT'S UNITED STATES DISTRICT COURT REPORTS.

Vol. 1, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,339	225	13,202	397	17,474
8	2,617	226	6,416	398	7,892
15	16,510	228	1,556	402	6,189
19	4,472	234	12,218	406	8,577
19 (note)	8,412	241	14,012	407	1,543
23	2,642	264	9,796	408	11,834
30	4,693	266	1,757	420	10,582
40	14,161	270	11,936	426	1,267
43	2,483	274	1,116	431	268
46	12,094	277	8,821	431	10,539
57	17,586	282	4,337	448	10,814
65	12,717	286	2,451	454	8,295
68	4,927	292	10,805	455	5,976
72	16,509	295	6,232	461	12,219
77	3,977	309	78	472	4,316
80	8,428	311	7,701	474	1,268
81	6,640	317	1,269	476	122
86	11,516	321	6,481	490	9,474
89	11,202	328	8,536	493	10,357
105	9,209	330	7,891	496	8,296
109	384	333	6,447	508	10,815
112	7,195	335	3,841	521	481
118	600	338	2,896	526	318
125	4,778	341	13,474	527	17,633
128	2,721	342	11,468	529	2,766
156	18,086	343	480	532	17,037
166	346	348	12,684	534	11,211
171	2,536	356	9,512	535	11,628
174	2,765	361	10,581	536	7,585
183	3,595	367	14,282	543	8,822
188	347	374	10,534	544	10,816
201	9,473	381	11,466	545	7,318
209	2,722	388	2,959	551	12,334
211	10,194	390	1,266	553	12,335
214	4,986				

Vol. 2, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,090	171	2,723	416	4,450
5	12,455	174	7,346	419	16,835
9	8,899	178	4,473	424	9,518
14	10,526	180	5,474	429	13,995
21	13,270	186	8,390	432	12,973
25	4,270	189	1,614	434	4,592
31	4,340	189	2,510	437	753
38	7,767	192	12,223	438	10,537
44	1,350	196	1,457	443	10,478
47	9,217	209	5,810	445	1,289
53	11,589	210	7,562	452	823
62	14,116	211	13,745	456	15,120
63	14,281	212	17,438	458	7,624
67	6,333	214	3,316	462	12,600
71	11,629	223	4,305	463	7,122
72	2,842	226	4,100	466	6,530
72	12,471	240	12,217	467	5,074
76	15,627	249	14,279	468	1,237
78	9,494	292	17,246	469	1,395
81	4,271	294	5,319	472	524
85	6,841	299	6,036	475	280
85	17,531	303	11,215	478	1,912
88	9,020	318	17,244	479	4,781
96	8,311	323	17,245	480	1,396
98	821	325	9,749	485	11,469
100	5,709	327	8,115	486	3,923
101	11,493	329	17,757	488	4,143
105	2,420	332	9,318	493	6,529
107	7,154	334	6,652	498	17,192
111	11,765	345	8,823	500	10,075
113	12,971	347	3,947	502	3,095
118	1,199	348	13,739	503	39
121	10,358	349	6,483	504	6,734
122	9,317	353	7,121	506	3,598
122	12,972	356	14,612	508	2,905
123	7,105	362	16,603	509	18,065
125	2,535	365	4,359	511	534
128	12,582	369	8,951	513	8,665
133	5,075	371	8,537	514	3,402
136	6,482	381	601	517	11,774
138	11,580	386	27	519	12,328
144	10,474	394	7,356	527	5,702
145	11,937	396	822	530	2,497
153	13,174	399	17,439	533	11,501
155	10,817	404	13,740	540	2,797
158	192	405	482	544	12,336
166	4,099	407	13,473	547	1,938
166	13,935	412	9,319	554	7,768
169	8,297	414	7,956		

BENEDICT'S UNITED STATES DISTRICT COURT REPORTS—Cont'd.

Vol. 3, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,651	200	12,494	369	8,750
7	40	204	13,163	371	12,849
8	4,631	206	7,313	379	5,520
11	663	211	8,455	386	1,274
14	12,054	212	1,408	386	4,962
20	10,175	215	10,946	391	129
25	8,391	220	4,987	394	17,091
28	6,984	226	10,970	396	5,336
29	15,350	228	13,924	397	16,977
35	7,725	231	12,498	398	2,724
39	11,086	233	1,196	419	6,355
42	4,843	236	3,071	422	8,572
50	11,581	237	16,879	424	281
63	3,527	238	10,121	431	16,814
65	11,467	241	13,529	434	678
66	2	248	7,190	436	10,532
68	14,499	251	7,353	438	9,211
70	11,494	253	13,327	442	4,746
95	8,382	257	14,616	450	3,870
98	8,042	260	2,933	456	5,337
100	9,225	261	10,076	471	12,168
106	1,918	263	8,256	479	5,650
108	5,704	273	1,431	481	8,666
110	17,658	276	16,942	482	3,615
114	4,292	279	13,858	487	8,278
119	16,396	283	3,884	488	1,966
131	8,819	298	16,931	490	8,103
132	14,608	299	10,795	497	4,928
146	1,397	302	13,923	499	785
148	10,477	307	3,814	508	9,652
153	8,527	327	13,855	519	14,528
157	16,197	330	13,111	520	5,676
159	4,454	332	10,282	536	12,914
162	4,716	334	3,472	552	11,495
163	10,359	337	7,315	565	9,728
166	17,293	341	14,131	566	9,729
168	2,542	346	12,452	567	9,730
173	4,224	347	12,754	567	9,727
181	4,938	353	3,322	569	8,250
189	4,779	354	3,885	572	4,586
191	10,446	355	14,327	573	16,883
192	14,137	360	12,619	575	2,760
195	824	364	9,726	580	201
198	1,398	366	12,055		

Vol. 4, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	12,974	152	1,422	352	3,737
9	18,029	153	2,589	357	1,212
10	3,599	167	14,343	359	7,323
15	9,680	171	9,888	366	2,332
16	13,536	173	10,489	370	16,473
18	12,412	178	7,364	376	14,854
19	7,348	181	5,049	397	1,890
27	633	186	1,523	404	17,460
42	17,654	190	8,987	410	9,653
53	1,275	194	15,189	413	4,427
55	1,889	207	17,410	433	801
58	7,349	225	1,238	448	6,161
62	5,705	227	17,305	452	4,887
67	8,312	235	4,451	454	1,302
68	12,453	237	16,107	457	8,221
70	3,508	245	5,082	459	15,709
88	2,798	247	3,875	468	17,619
99	10,926	252	9,901	469	6,026
101	4,354	257	10,947	471	15,153
102	17,999	264	12,332	476	15,533
103	11,506	271	2,761	479	1,195
106	9,283	272	6,996	500	18,215
109	7,248	278	5,012	503	1,277
112	10,326	303	11,769	508	4,104
120	9,499	304	3,887	510	3,436
125	8,456	305	8,457	513	13,391
126	6,425	310	17,138	515	6,005
127	4,272	316	5,332	523	8,614
128	12,700	319	16,978	526	15,925
132	4,694	326	7,864	547	16,593
135	818	328	8,458	562	12,610
137	3,886	330	14,771	565	7,919
138	14,138	340	7,981	567	14,139
142	1,974	345	3,770	568	2,748
143	13,165	349	16,099	572	12,169
147	13,381				

BENEDICT'S UNITED STATES DISTRICT COURT REPORTS—Cont'd.

Vol. 5, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,975	220	16,699	386	11,426
4	4,317	228	1,654	389	2,799
5	6,027	230	17,366	391	194
7	16,926	231	10,185	395	17,200
8	9,458	239	8,909	402	14,280
10	4,201	242	2,136	407	11,500
19	10,550	244	7,324	413	14,200
53	5,378	246	14,175	420	1,488
57	1,270	251	14,500	421	4,399
60	7,622	252	9,808	422	7,329
72	17,922	253	10,948	430	5,254
74	966	255	10,016	432	4,282
79	17,309	259	7,473	447	6,988
81	9,238	261	8,251	453	7,779
82	12,530	265	14,302	457	16,106a
83	4,968	266	1,414	469	7,319
84	12,170	277	2,460	474	2,744
89	10,927	278	17,367	476	1,239
98	11,621	279	10,850	482	17,661
104	1,232	280	6,997	483	10,278
110	11,040	290	2,886	486	8,252
112	16,105	293	12,290	486	10,314
144	4,281	296	7,322	489	12,615
147	569	301	13,925	500	10,928
151	7,316	311	16,927	501	6,037
154	4,540	313	9,142	533	6,989
162	13,619	315	3,234	535	7,639
163	9,681	323	10,275	537	10,889
164	5,050	325	12,285	541	15,907
168	8,228	343	12,286	544	41
177	7,201	348	7,567	545	10,414
183	8,808	352	6,454	552	5,772
184	12,620	355	17,534	554	157
198	14,331	357	9,704	562	6,707
199	8,104	366	7,431	564	491
203	9,500	372	12,767	566	13,581
206	6,829	375	2,788	571	16,928
211	5,184	376 (note)	2,789	574	13,273

Vol. 6, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,064	196	795	356	1,224
12	3,103	199	10,273	368	10,140
14	1,829	205	15,287	370	2,745
20	9,150	208	6,713	371	4,287
21	12,624	218	16,591	372	364
33	13,582	223	5,321	375	6,111
35	6,402	227	7,429	378	4,506
42	13,931	230	11,522	392	14,513
48	4,205	231	6,525	398	3,034
51	6,345	232	3,815	400	11,850
56	42	245	7,232	402	3,972
58	4,414	249	9,787	404	13,932
68	16,106	253	10,402	405	10,195
112	13,624	258	11,452	407	5,898
115	16,917	259	5,185	408	3,509
117	9,638	264	6,709	465	5,320
119	17,472	268	4,963	469	10,219
122	282	270	9,038	473	4,748
124	11,451	272	7,325	475	6,487
135	17,430	275	2,830	477	1,891
137	12,065	280	14,147	482	2,389
138	2,770	284	9,048	483	14,328
141	6,495	286	10,719	493	15,922
142	8,468	287	1,271	497	13,030
146	11,507	288	3,258	507	12,066
148	9,719	289	10,196	512	2,725
150	6,367	290	422	515	2,044
159	17,435	297	1,351	517	2,484
162	3,740	301	9,019	523	13,712
165	11,369	309	2,775	533	14,011
166	398	309	7,818	536	6,331
172	16,383	324	13,693	543	16,584
173	9,532	326	1,917	550	5,311
175	8,229	327	9,720	556	8,844
178	17,344	330	2,762	558	16,498
183	14,523	339	17,935	562	2,399
187	12,975	340	399	564	10,538
189	4,338	342	10,170	565	8,609
195	17,657	346	14,061	571	9,509

BENEDICT'S UNITED STATES DISTRICT COURT REPORTS—Cont'd.

Vol. 7, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,554	194	17,878	395	4,226
5	7,943	195	16,803	399	9,786
7	12,231	211	12,477	401	4,378
11	5,042	213	7,113	405	15,932
15	14,298	219	1,906	412	14,703
17	6,863	235	6,715	420 (note)	5,045
19	12,301	238	9,325	420	5,046
20	428	242	10,271	427	6,986
26	8,634	249	2,689	433	591
28	12,345	251	14,878	436	8,231
31	2,756	259	8,385	444	16,534
34	14,303	261	11,212	448	11,235
37	10,113	280	724	450	13,328
40	6,864	296	14,344	452	9,610
42	5,830	301	3,189	455	11,673
53	7,340	304	515	481	8,528
60	14,141	306	16,525	482	3,512
61	11,060	313	4,204	483	519
63	10,171	328	16,943	485	1,951
69	10,279	337	16,804	488	5,099
70	4,263	340	10,112	491	5,422
72	11,226	343	14,299	495	16,975
88	5,044	344	4,339	497	10,093
102	6,787	350	2,749	499	4,101
110	17,976	355	711	505	11,674
120	158	356	7,339	506	16,900
137	190	357	12,198	510	2,750
139	9,693	361	12,466	513	8,858
141	8,476	367	5,078	521	2,747
154	590	371	12,568	525	12,917
155	11,775	378	6,484	528	13,207
156	8,230	380	5,043	539	17,420
177	12,346	382	14,048	550	4,455
182	5,960	384	12,554	562	8,864
183	130	386	10,130	564	3,412
190	389	389	10,270	566	7,245
191	7,134	391	13,190	571	11,474

Vol. 8, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,536	206	2,763	411	14,062
3	13,927	209	11,430	419	5,659
6	9,649	210	17,686	421	4,997
7	14,060	211	7,327	423	17,047
9	489	212	3,248	424	12,691
11	4,635	214	10,524	426	1,297
19	9,502	216	6,083	429	14,014
23	14,704	219	2,393	437	5,317
27	4,731	221	10,483	439	1,078
29	15,416	223	13,663	443	2,544
36	3,905	228	4,906	446	4,379
38	11,741	232	9,798	452	8,813
43	8,208	233	5,053	455	12,067
45	1,881, 2,405	235	3,072	459	17,683
46	8,805	237	17,936	463	7,073
50	11,742	239	2,705	469	3,518
52	17,629	242	2,687	471	6,363
59	3,004	248	5,100	473	14,962
61	11,952	251	7,156	475	6,032
64	3,411	254	8,233	478	14,332
65	9,905	256	5,371	481	5,312
67	12,747	261	10,094	483	16,947
74	6,632	263	6,392	485	241
81	3,723	265	17,349	487	10,441
84	3,646	267	7,207	489	3,986
90	12,199	269	15,872	491	283
93	1,822	272	10,407	493	831
98	5,971	293	11,453	495	6,661
99	159	297	7,000	496	2,562
100	6,467	301	10,979	498	14,184
101	10,179	309	6,230	500	10,541
109	16,620	312	10,360	502	13,371
112	18,000	321	3,215	506	8,253
114	2,549	328	3,005	509	12,668
118	3,816	331	13,545	510	2,706
127	9,906	333	8,422	512	3,022
128	10,463	343	16,655	518	10,607
129	10,610	347	11,244	523	12,291b
139	7,099	349	11,052	526	9,699
144	4,288	350	594	533	6,033
150	4,463	353	12,499	537	17,692
162	4,278	355	6,601	538	567
163	9,251	357	13,299	541	4,132
165	7,625	365	4,131	543	10,428
171	10,959	384	11,678	547	9,302
175	11,294	388	5,812	556	6,449
176	271	389	11,188	559	10,289
179	7,155	390	14,096	561	1,312
181	12,555	392	5,353	563	18,001
183	5,356	394	7,626	568	17,758
186	9,797	396	5,770	574	15,713
188	11,677	401	337	579	8,763
189	5,974	406	11,938	585	12,483
191	7,421	407	5,864	594	1,200
204	8,232	409	6,393		

Vol. 9, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,413	186	16,586	333	4,757
17	260	187	9,198	337	629
18	2,411	188	11,449	339	7,549
20	4,309	191	4,521	348	13,716
22	15,334	194	12,910	350	14,479
26	4,222	195	10,368	352	11,735
31	5,318	197	7,923	354	3,023
34	5,030	200	9,639	356	5,360
39	9,130	203	1	360	3,440
42	10,098	207	1,469	368	16,519
44	10,200	209	10,426	395	7,013
48	14,284	212	539	395	11,124
55	12,480	215	2,076	400	10,522
66	12,773	218	14,008	403	13,929
67	15,056	223	1,165	413	15,873
76	4,251	224	7,748	427	506
78	9,708	225	3,407	429	12,612
79	11,236	232	10,202	433	12,625
83	9,503	236	2,045	436	6,405
89	8,484	238	10,100	449	6,370
91	6,526	243	10,074	455	507
98	89	247	10,427	458	13,930
106	568	249	17,669	464	622
108	537	254	3,035	466	2,769
113	13,928	260	11,698	472	4,939
119	12,068	265	13,464	473	641
144	10,673	267	558	480	3,948
149	2,580	270	628	485	10,396
154	14,430	274	3,219	489	7,016
159	9,682	279	11,231	491	7,199
160	9,053	286	11,070	494	12,976
165	9,466	289	8,612	498	16,981
166	2,374	303	10,180	502	14,334
169	10,886	309	3,556	507	7,359
171	18,217	311	2,601	516	2,715
179	2,563	314	14,617	524	6,147
181	7,298	318	7,389	526	13,157
182	2,620	324	2,214	529	16,578
185	5,114	331	7,351	534	737
				536	10,949

Vol. 10, Ben.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,916	223	16,848	447	11,499
4	8,133	228	16,948	449	14,276
6	12,613	231	6,943	453	5,322
9	16,102	234	14,335	455	9,717
14	18,066	238	6,964	458	4,420
17	2,757	242	7,601	460	4,585
24	16,923	246	7,539	482	23
34	13,607	248	1,569	484	16,300
38	10,971	254	10,086	488	7,337
42	1,235	264	16,783	494	2,565
46	13,753	268	15,433	495	7,334
49	8,362	284	16,431	512	6,006
53	10,268	290	5,193	517	7,243
58	9,401	294	12,702	520	4,241
60	3,024	315	12,955	532	4,091
79	1,011	326	7,289	536	10,865
86	10,519	338	7,290	540	5,525
92	7,053	343	15,936	541	5,622
99	508	347	15,161	547	16,521
101	178	349	10,369	553	9,640
103	7,197	358	4,990	558	14,300
108	3,249	364	6,944	566	16,522
110	420	366	3,025	582	4,482
140	8,423	369	13,849	588	2,913
144	15,874	371	15,145	607	3,524
150	2,751	374	16,592	610	11,419
155	3,280	380	13,633	614	13,038
158	4,485	385	8,346	620	10,569
162	13,707	400	1,968	628	3,738
170	16,520	403	4,893	631	825
177	9,258	408	16,597	638	8,261
181	12,940	410	7,050	660	8,590
188	9,709	415	6,379	666	5,623
189	15,793	417	1,895	668	4,290
193	10,361	430	7,192	688	8,681
196	9,147	435	9,898	693	1,344
197	8,162	440	12,667		

BIGELOW'S LIFE AND ACCIDENT INSURANCE REPORTS.

Vol. 1, Bigelow, Ins. Cas.

Page.	F. C. No.
70	13,182
645	4,496
689	10,266

BIGELOW'S LIFE AND ACCIDENT INSURANCE REPORTS—Cont'd.

Vol. 2, Bigelow, Ins. Cas.

Page.	F. C. No.
4	5,282
31	13,839
35	9,564
738	11,854

Vol. 3, Bigelow, Ins. Cas.

Page.	F. C. No.
787	5,986

Vol. 4, Bigelow, Ins. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	18,168	158	9,795	283	10,171
34	14,098	169	3,290	287	3,719
58	14,059	171	9,968	424	13,154
138	9,755	176	13,692	479	13,726
149	582	181	6,587	488	6,011
153	8,854	187	3,121	665	4,202

Vol. 5, Bigelow, Ins. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	13,964	114	16,795	473	2,104
18	8,190	221	5,214	487	1,430
110	2,606	233	8,509	527	362

BISSELL'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,541	221	2,072	408	3,898
15	7,584	227	15,024	412	1,052
19	6,208	230	18,142	416	8,550
23	13,093	237	17,468	419	10,507
29	4,878	242	1,028	425	6,724
35	7,955	246	13,568	433	14,921
42	3,099	255	4,956	437	13,276
49	11,796	260	1,260	440	11,766
57	10,312	275	6,503	442	2,256
62	9,297	279	17,384	447	18,007
64	673	284	17,969	453	1,053
69	9,220	287	17,081	459	17,881
73	17,942	292	9,998	461	2,668
76	7,590	300	6,948	468	12,414
81	14,107	309	16,426	476	5,734
87	11,194	314	8,603	485	3,503
98	2,854	321	4,504	490	5,646
106	7,361	325	8,187	497	204
110	3,760	337	4,836	503	6,275
121	4,957	346	3,608	510	12,526
128	1,721	354	11,975	515	11,337
140	10,699	362	3,302	521	12,650
146	12,309	367	4,447	522	7,721
149	1,056	371	16,251	525	4,696
159	11,168	373	13,612	529	10,319
168	11,191	377	18,143	533	12,449
177	11,291	382	2,488	539	3,198
180	2,889	390	10,848	546	17,978
193	7,538	400	4,448	557	7,982
198	17,753	403	18,006	562	1,299
210	10,386				

Vol. 2, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,572	136	5,288	291	11,509
12	11,610	139	675	297	12,677
18	14,345	141	7,985	303	7,272
20	1,790	146	10,047	309	11,932
23	8,401	156	12,729	315	12,751
25	5,735	160	3,405	319	10,272
29	205	163	4,835	325	16,084
34	1,698	166	13,936	328	5,501
41	9,079	169	4,877	333	7,001
47	16,559	174	15,437	336	18,079
51	15,014	183	10,787	342	3,127
56	11,295	189	12,420	344	16,095
62	17,957	195	8,982	351	3,272
71	17,623	197	9,627	354	11,514
73	2,800	201	8,979	356	13,835
75	2,377	208	3,441	362	4,330
77	15,589	216	4,474	368	10,479
88	16,460	226	16,292	373	13,392
97	15,178	235	7,550	377	15,141
99	9,252	244	2,403	381	9,222
104	1,969	248	12,459	383	7,593
110	119	251	12,928	390	1,407
116	11,433	255	9,136	405	13,636
121	7,983	259	17,350	408	16,388
124	2,576	263	15,159	412	16,399
126	2,577	268	11,824	415	2,746
131	5,652	282	17,597	418	10,315

BISSELL'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Biss.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
421	4,180	457	2,030	505	9,701
423	2,370	472	2,669	509	9,625
434	5,524	481	13,937	511	1,922
442	7,031	485	5,293	515	1,772
446	12,607	496	6,178	518	7,880
449	5,660	502	4,697	527	4,573
453	15,142				

Vol. 3, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	9,605	195	2,470	362	11,526
24	9,711	199	11,853	370	11,707
28	5,951	204	7,992	374	3,558
39	3,787	208	14,610	380	3,557
43	12,685	219	5,533	389	3,792
48	16,957	244	10,110	394	16,876
52	12,415	256	1,603	399	14,098
60	7,817	260	12,921	405	7,824
66	14,270	266	334	415	3,006
72	14,271	273	4,066	417	16,801
77	1,494	276	6,535	431	16,798
82	14,374	293	12,400	436	6,805
99	4,268	300	16,980	442	9,925
105	10,377	301	4,530	452	11,704
116	3,151	307	14,262	462	4,796
122	3,150	309	7,712	469	10,380
128	7,265	313	7,968	474	11,296
144	8,798	317	10,416	480	10,336
153	6,337	321	9,119	485	5,272
157	11,480	325	12,120	491	10,292
162	9,441	332	120	496	7,663
169	7,594	344	12,649	501	5,361
175	12,307	351	9,118	504	10,364
181	13,519	359	18,067	520	16,799
187	13,365				

Vol. 4, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	11,736	234	7,557	409	17,004
18	5,542	241	13,882	414	3,800
22	3,100	245	12,799	417	9,955
26	15,929	249	8,602	425	16,352
29	16,241	253	4,157	430	997
35	11,461	262	11,457	437	11,248
51	10,334	265	6,822	442	9,615
53	9,883	269	2,530	445	11,822
59	15,105	274	9,874	448	1,796
62	9,817	277	4,158	453	6,276
75	11,753	280	14,913	456	18,156
78	9,891	283	15,292	460	8,470
93	15,810	288	16,988	466	7,899
99	16,478	295	2,090	469	6,701
105	16,542	302	16,706	472	3,011
108	11,734	307	18,115	473	1,783
114	4,449	315	10,048	477	13,118
117	15,020	317	16,812	482	10,531
120	13,227	319	7,780	486	2,817
128	9,782	323	4,159	490	4,643
137	3,929	327	14,367	501	10,720
149	4,094	336	16,479	503	9,710
156	8,307	346	10,287	505	6,553
167	8,308	349	6,721	506	10,509
171	17,655	354	6,383	507	886
176	15,177	357	16,795	508	4,047
188	10,023	362	13,438	509	15,010
195	3,148	365	11,481	511	12,436
206	1,069	388	12,929	513	3,491
214	17,656	391	12,843	514	10,335
220	13,701	395	1,667	517	2,352
227	4,156	406	13,779	518	7,069

Vol. 5, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	8,132	79	9,750	154	8,183
19	5,088	82	5,852	156	12,680
22	1,630	86	5,286	159	13,120
26	11,105	89	10,248	160	17,467
31	11,790	91	16,602	162	2,870
33	2,365	95	12,105	165	12,397
36	11,372	99	5,287	166	12,022
40	1,048	102	4,162	172	8,534
44	10,105	104	5,853	177	6,319
48	4,844	106	6,821	179	2,353
50	11,373	110	13,836	181	1,986
56	3,677	113	13,708	183	8,764
57	4,002	120	2,247	186	6,025
60	13,153	122	15,522	190	12,276
62	1,843	125	12,646	193	16,329
64	7,582	128	15,770	195	16,229
66	10,976	129	10,036	198	5,394
69	10,977	131	9,712	200	5,267
73	13,748	133	17,136	209	4,642
77	5,991	134	17,068	211	2,289

BISSELL'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 5, Biss.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
217	1,811	344	14,272	449	9,329
223	4,673	353	9,068	451	3,983
226	7,754	359	5,739	460	10,421
233	7,753	363	5,740	465	9,985
237	11,462	371	5,153	476	2,499
254	10,982	378	10,417	480	4,789
269	10,864	381	9,027	486	12,252
280	3,638	387	17,780	490	13,072
287	7,023	393	10,381	497	9,040
295	17,482	401	5,540	499	9,051
311	6,292	405	2,185	510	4,922
315	8,996	410	15,778	515	890
320	10,991	420	15,779	523	11,389
324	5,845	426	14,051	526	11,247
330	17,590	431	12,435	529	13,709
338	8,220	444	12,368		

Vol. 6, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	6,101	183	6,854	358	14,935
16	4,851	185	10,983	364	17,173
22	2,124	193	8,776	367	7,620
26	8,976	195	12,429	370	9,528
30	9,551	197	14,401	377	11,989
35	10,046	203	5,151	379	16,515
39	12,701	213	5,134	405	3,566
44	8,141	219	2,665	409	8,715
48	685	225	14,244	414	2,707
53	18,145	233	17,700	416	8,482
68	7,444	238	2,606	420	8,018
79	10,980	243	9,330	425	17,204
88	17,492	250	11,635	432	10,632
91	5,972	252	9,442	436	6,215
98	8,974	259	16,165	443	10,288
107	7,006	269	12,253	448	13,196
111	8,789	280	12,254	453	17,180
121	4,767	286	5,284	461	6,160
130	12,427	294	8,783	467	2,664
138	7,710	301	7,068	474	17,921
145	12,428	308	14,493	477	12,804
150	11,525	312	7,260	483	14,966
154	2,702	315	2,915	494	2,317
156	6,321	317	18,068	501	14,956
158	632	321	16,361	505	10,316
163	6,779	325	7,994	516	17,512
166	13,357	330	10,604	520	545
167	5,995	345	2,192	526	13,637
174	335	350	15,735	529	12,527
177	11,138				

Vol. 7, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
23	2,084	231	8,291	372	8,009
26	8,227	233	350	382	16,987
30	16,792	238	7,621	387	6,418
35	9,028	242	7,305	393	10,011
40	6,792	245	17,748	400	3,242
45	10,324	249	5,166	408	11,859
56	15,400	260	3,507	414	5,873
60	7,853	269	8,031	419	9,695
69	4,531	275	2,171	426	11,139
73	6,761	280	7,123	430	2,285
86	8,973	289	17,365	440	15,555
96	2,147	293	10,128	446	13,861
99	10,142	296	1,095	449	11,044
103	6,434	303	1,921	455	18,051
111	15,902	315	8,008	460	12,689
125	11,933	321	7,484	465	17,301
129	15,903	324	4,258	473	7,307
142	1,213	328	7,306	477	8,485
154	11,530	338	5,751	480	5,255
156	6,970	346	3,236	490	5,668
160	4,690	351	13,981	497	2,441
167	12,379	354	12,599	502	4,780
175	15,223	358	10,852	504	13,345
193	4,532	360	5,800	513	12,605
201	4,950	362	6,906	526	2,204
208	2,055	365	17,928	529	7,800
223	4,151	367	17,445	540	2,852
227	7,021				

Vol. 8, Biss.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	5,708	83	202	139	13,886
21	6,239	99	6,179	151	12,902
23	18,038	100	10,038	154	17,850
31	6,865	104	13,531	158	9,450
35	12,380	107	6,842	162	16,359
44	5,802	112	12,052	166	14,899
47	13,512	116	1,328	174	12,489
61	8,426	122	5,994	177	2,114
73	13,091	131	1,234	180	11,923
79	13,565	134	10,624	188	3,404

BISSELL'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 8, Biss.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
193	1,140	293	10,862	426	11,896
197	9,979	303	6,198	429	17,852
203	9,980	312	13,002	435	8,276
208	6,785	315	14,258	439	15,667
211	14,286	321	17,362	452	17,711
214	5,412	327	8,219	456	11,197
219	5,632	358	11,380	493	8,032
224	15,228	362	8,682	503	12,250
227	16,610	369	3,109	507	16,166
234	6,055	371	12,765	510	7,794
238	4,276	376	13,459	514	1,016
243	18,078	380	14,259	523	7,079
247	14,315	394	12,202	527	14,260
259	15,073	398	11,916	534	11,143
265	1,908	404	16,213	537	635
270	15,928	414	10,347	545	17,851
276	7,733	421	14,559	552	13,542

Vol. 9, Biss.

Page.		F. C. No.	Page.		F. C. No.
13		1,453	320	(2 F. 202)	—
23		5,624	326	(4 F. 210)	—
31		12,830	330	(14 F. 9)	—
44		10,001	334	(14 F. 108)	—
55		14,853	338	(1 F. 779)	—
63		12,188	343	(3 F. 628)	—
69		13,659	348	(3 F. 632)	—
72		17,444	353	(4 F. 55)	—
76		13,192	358	(14 F. 88)	—
85	(3 F. 790)	12,139a	365	(4 F. 511)	—
90		1,141	368	(4 F. 13)	—
95		734	372	(14 F. 69)	—
99		12,236	375	(2 F. 393)	—
117		11,969	378	(2 F. 609)	—
127		3,918	385	(2 F. 574)	—
133		4,665	390	(2 F. 182)	—
141		17,217	396	(2 F. 174)	—
144		12,237	405	(2 F. 882)	—
157		12,437	416	(3 F. 492)	—
167	(1 F. 68)	5,119a	421	(2 F. 535)	—
173		17,836	429	(2 F. 664)	—
178		17,651	435	(3 F. 215)	—
183		16,935	440	(3 F. 83)	—
188		11,444	451	(50 F. 190)	—
199	(4 F. 136)	—	455	(2 F. 897)	—
204		2,168	458	(3 F. 520)	—
216		12,770	472	(3 F. 563)	—
221		14,645	475	(14 F. 103)	—
225	(13 F. 893)	—	479	(14 F. 123)	—
239	(1 F. 712)	—	482	(14 F. 125)	—
244	(1 F. 716)	—	487	(14 F. 247)	—
251	(13 F. 903)	—	492	(4 F. 188)	—
253	(13 F. 811)	—	499	(4 F. 620)	—
258	(3 F. 26)	—	503	(4 F. 219)	—
269	(1 F. 49)	—	508	(14 F. 42)	—
275	(50 F. 323)	—	511	(14 F. 70)	—
278	(2 F. 36)	—	521	(4 F. 1)	—
285	(1 F. 775)	—	528	(4 F. 623)	—
289	(2 F. 33)	—	535	(4 F. 775)	—
293	(2 F. 49)	—	539	(5 F. 559)	—
296	(2 F. 30)	—	549	(14 F. 141)	—
300	(13 F. 806)	—	552	(6 F. 555)	—
307	(1 F. 789)	—	560	(4 F. 629)	—

Vol. 10, Biss.

Page.		F. C. No.	Page.		F. C. No.
13		12,686	240	(7 F. 7)	—
18		11,112	252	(6 F. 468)	—
39	(11 F. 859)	—	263	(7 F. 163)	—
51	(2 F. 618)	—	270	(7 F. 518)	—
57	(5 F. 203)	—	273	(6 F. 787)	—
60	(5 F. 336)	—	281	(7 F. 851)	—
65	(4 F. 900)	—	283	(6 F. 819)	—
83	(7 F. 906)	—	289	(48 F. 816)	—
90	(47 F. 696)	—	293	(8 F. 740)	—
100	(8 F. 828)	—	300	(8 F. 576)	—
107	(47 F. 676)	—	312	(7 F. 257)	—
116	(5 F. 425)	—	323	(7 F. 566)	—
122	(5 F. 19)	—	338	(7 F. 609)	—
128	(5 F. 762)	—	354	(7 F. 301)	—
135	(5 F. 801)	—	368	(8 F. 322)	—
139	(5 F. 726)	—	372	(7 F. 684)	—
151	(5 F. 846)	—	377	(9 F. 821)	—
159	(48 F. 656)	—	394	(7 F. 723)	—
165	(6 F. 30)	—	402	(9 F. 450)	—
170	(7 F. 68)	—	418	(8 F. 289)	—
182	(5 F. 779)	—	430	(7 F. 887)	—
188	(6 F. 132)	—	436	(8 F. 280)	—
191	(6 F. 443)	—	445	(8 F. 755)	—
199	(6 F. 477)	—	454	(8 F. 49)	—
203	(6 F. 100)	—	466	(8 F. 473)	—
217	(6 F. 290)	—	470	(8 F. 769)	—
230	(6 F. 676)	—	483	(8 F. 881)	—
238	(6 F. 375)	—	486	(8 F. 782)	—

BISSELL'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 10, Biss.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
488 (8 F. 777)	—	530 (9 F. 517)	—
494 (9 F. 202)	—	536 (9 F. 709)	—
498 (9 F. 205)	—	546 (9 F. 448)	—
503 (8 F. 867)	—	550 (9 F. 348)	—
511 (9 F. 634)	—	555 (9 F. 351)	—
520 (9 F. 78)	—	559 (9 F. 547)	—
523 (9 F. 146)	—	572 (10 F. 799)	—
527 (9 F. 472)	—		

Vol. 11, Biss.

Page.	F. C. No.	Page.	F. C. No.
13	7,703	306 (12 F. 481)	—
23	8,154	309 (12 F. 554)	—
27	3,695	314 (13 F. 82)	—
34	3,696	320 (12 F. 750)	—
40 (13 F. 514)	—	324 (12 F. 789)	—
44 (15 F. 891)	—	325 (12 F. 737)	—
57	17,761	328 (12 F. 801)	—
64 (3 F. 617)	—	331 (12 F. 809)	—
68 (5 F. 791)	—	334 (12 F. 773)	—
70 (10 F. 92)	—	340 (12 F. 856)	—
76 (9 F. 558)	—	353 (14 F. 38)	—
81 (10 F. 17)	—	356 (13 F. 534)	—
85 (9 F. 442)	—	360 (14 F. 107)	—
88 (9 F. 693)	—	362 (14 F. 277)	—
92 (9 F. 666)	—	370 (14 F. 171)	—
100 (10 F. 269)	—	373 (14 F. 523)	—
108 (9 F. 247)	—	376 (48 F. 828)	—
112 (11 F. 749)	—	382 (14 F. 471)	—
126 (10 F. 793)	—	389 (14 F. 576)	—
133 (9 F. 801)	—	395 (14 F. 143)	—
138 (9 F. 856)	—	405 (14 F. 465)	—
144 (10 F. 236)	—	415 (15 F. 589)	—
148 (9 F. 738)	—	422 (14 F. 652)	—
154 (14 F. 874)	—	427 (14 F. 691)	—
158 (50 F. 145)	—	432 (16 F. 161)	—
165 (12 F. 281)	—	438 (50 F. 410)	—
168 (10 F. 725)	—	440 (14 F. 902)	—
175 (10 F. 312)	—	444 (15 F. 322)	—
180 (10 F. 305)	—	452 (15 F. 97)	—
184 (11 F. 422)	—	459 (14 F. 728)	—
187 (11 F. 353)	—	465 (15 F. 35)	—
191 (11 F. 582)	—	479 (14 F. 862)	—
197 (11 F. 389)	—	484 (15 F. 129)	—
210 (12 F. 159)	—	497 (14 F. 742)	—
217 (12 F. 32)	—	500 (14 F. 922)	—
223 (12 F. 37)	—	510 (15 F. 763)	—
233 (12 F. 127)	—	516 (16 F. 75)	—
240 (12 F. 131)	—	531 (15 F. 847)	—
246 (14 F. 211)	—	539 (16 F. 309)	—
251 (12 F. 42)	—	550 (15 F. 292)	—
256	13,194	561 (16 F. 193)	—
283 (12 F. 213)	—	568 (16 F. 289)	—
289 (12 F. 398)	—	572 (15 F. 833)	—
294 (12 F. 372)	—	582 (16 F. 705)	—
298 (12 F. 57)	—	584 (16 F. 706)	—
301 (14 F. 28)	—		

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,876	335	2,502	506	5,280
3	17,832	343	12,383	511	17,648
149	9,162	346	5,831	512	12,956
151	4,747	351	14,005	526	1,125
159	9,180	354	9,655	529	5,395
163	5,390	358 (note)	411	532	5,402
165	18,022	358	9,196	536	17,833
167	5,396	360	17	542	4,917
173	5,655	360	4,345	545	4,918
179	4,010	361	12,577	549	6,082
187	16,851	363	11,743	564	12,479
196	5,323	365	4,596	565	5,568
203	10,141	370	12,326	567	238
205	13,208	372	9,055	569	10,643
211	10,017	388	5,389	588	1,188
218	16,129	393	6,211	593	10,301
232	8,676	398	2,082	597	17,649
236	4,452	407	10,733	599	5,837
238	11,880	409	9,702	602	2,956
244	5,881	412	11,460	605	12,850
247	1,646	414	87	607	1,711
251	12,776	425	2,736	608	9,815
258	1,521	438	2,737	613	8,521
280	3,375	445	4,916	615	7,745
290	7,675	467	14,195	616	1,712
297	924	475	13,104	618	7,437
318	8,410	480	215	628	3,685
322	2,081	488	10,757	635	18,261
326	15,409	499	2,661	647	18,290
330	14,446	501	11,785	652	18,284
332	15,410	504	8,971		

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	4,440	151	18,011	383	15,644
14	2,739	162	11,385	385	13,983
20	13,654	165	8,394	396	4,187
23	7,167	186	11,217	399	14,310
26	2,740	194	5,954	401	8,462
29	13,209	201	14,696	405	9,023
31	17,650	207	14,989	411	1,506
37	13,368	220	5,699	421	16,884
39	640	228	6,867	425	4,490
49	13,764	229	11,192	427	5,483
51	11,266	240	8,726	433 (note)	14,182
59	16,232	260	4,919	435	16,134
62	17,058	275	14,127	470	14,872
69	1,520	279	17,865	471	3,032
72	10,758	301	4,788	474	13,760
76	10,759	304	2,957	495	11,158
78	10,760	308	14,309	507	11,159
82	782	314	17,635	508	4,894
85	16,852	316	17,824	512	3,241
95	3,836	322	7,546	514	17,816
99	6,387	329	12,242	517	14,224
104	16,000	336	4,424	521	2,263
108	15,724	340	1,996	528	15,071
111 (note)	15,725	340	5,498	541	4,207
113	11,744	341	3,418	545	3,334
116	1,792a	343	1,786	548	4,208
119	16,130	359	13,655	552	4,760
121	1,888	362	8,395	555	11,731
127	16,319	370	17,955	557	263
132	17,634	373	18,155	559	18,262
144	5,393	379	11,866		

Vol. 3, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,597	142	12,025	356	13,500
11	12,633	143	9,834	360	8,672
25	1,635	145	5,838	364	9,932
32	5,574	146	6,799	365	13,344
34	6,263	148	7,563	368	16,810
37	10,220	153	3,731	378	8,972
40	1,221	154	3,686	382	17,142
44	3,729	160	16,824	383	3,448
48	1,149	166	16,870	385	11,781
50	4,273	170	3,574	390	11,875
54	11,434	179	3,687	391	12,034
56	3,782	184	16,790	397	12,484
64	4,617	187	2,758	399	264
67	7,352	190	313	401	3,449
70	11,571	201	11,193	408	12,460
71	9,881	209	8,727	413	3,231
75	2,276	227	17,811	420	2,417
77	3,730	231	5,840	421	6,105
79	6,264	240	10,156	425	16,526
80	10,136	244	11,579	431	2,683
84	6,818	249	14,275b	435	16,731
89	7,561	255	14,275a	440	17,133
91	5,581	255	16,320	449	5,565
92	10,320	259	12,241	456	13,454
111	1,550	266	5,561	459	12,957
113	10,885	268	5,564	486	8,721
115	12,470	270	15,714	488	3,691
117	5,722	273	11,111	507	4,920
119	1,280	276	17,220	510	2,105
120	4,774	279	9,721	513	7,287
122	9,816	282	6,469	515	7,188
124	11,738	285	13,667	517	13,926
125	8,243	289	17,006	521	3,040
127	11,759	293	12,838	524	2,924
129	2,698	303	366	526	11,443
131	5,492	305	25	528	18,057
134	12,207	307	1,519	530	1,281
135	841	310	4,908	535	12,832
137	6,432	316	1,565	545	13,106
138	13,283	319	10,458	548	12,835
140	101	325	14,833		

Vol. 4, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	10,153	74	12,851	125	6,324
14	12,833	84	11,797	129	5,673
21	7,091	86	13,765	136	17,374
23	13,551	88	11,870	142	14,834
24	13,711	90	14,346	157	11,572
28	12,279	94	14,341	163	2,188
32	1,126	97	10,157	174	9,970
41	8,351	99	10,781	179	12,176
43	11,267	101	17,221	182	10,523
45	11,359	103	17,570	184	11,281
50	5,677	105	9,436	190	17,517
55	6,475	107	4,375	193	10,199
58	3,081	109	12,837	199	6,317
61	12,671	112	10,804	200	2,439
63	5,586	116	4,065	203	5,814
70	10,311	120	11,261	205	408

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Blatchf.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
206	11,329	337	14,591	427	15,614
219	7,583	341	3,301	432	10,779
221	9,131	347	1,070	435	4,771
223	964	352	18,193	438	5,558
224	2,406	355	14,192	439	11,871
227	7,012	356	2,250	441	6,408
229 (note)	12,841	359	15,352	443	11,820
237	11,838	362	11,072	*444	7,427
238	11,330	365	1,939	446	15,021
252	13,066	367	4,618	448	7,717
253	11,282	368	10,520	451	4,186
256	21	370	12,718	455	10,354
262	3,888	372	7,338	461	5,377
263	4,116	374	4,641	465	2,042
268	12,958	376	10,367	469	18,197
271	5,562	378	3,400	470	4,889
307	4,408	381	11,821	472	1,605
311	17,182	383	15,692	474	6,410
314	18,192	384	1,438	477	8,756
316	10,943	385	16,691	478	3,746
319	4,988	391	16,692	484	7,889
323	17,756	393	16,693	489	9
325	7,716	395	12,852	493	11,279
326	15,089	416	3,920	503	5,795
328	11,676	418	15,654	508	12,834
332	16,765	420	16,245	509	14,100
333	13,457	425	5,001	518	18,270

Vol. 5, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	4,772	219	17,713	366	10,597
5	1,606	221	2,354	369	14,158
6	14,501	222	15,542	379	16,830
15	17,872	225	2,525	383	17,448
18	15,231	227	12,512	386	16,590
30	16,668	229	7,778	387	1,563
35	16,204	231	15,961	400	12,558
38	4,625	238	13,037	403	15,954
40	9,855	243	12,320	407	15,113
46	11,280	245	10,097	411	2,643
54	3,086	247	10,753	414	6,369
56	2,983	248	3,346	427	15,897
59	17,727	251	1,435	429	5,577
63	4,761	256	7,002	438	7,837
84	14,944	259	3,519	455	18,123
87	1,691	264	7,108	463	5,578
102	15,389	266	3,593	468	5,587
104	16,222	268	14,088	477	17,425
106	15,090	274	9,698	481	2,133
107	1,031	279	18,054	493	10,410
116	9,865	280	13,625	494	17,071
128	16,934	282	18,036	496	7,196
130	8,943	284	14,978	497	1,189
134	432	285	12,748	500	16,565
134	6,946	294	14,524	501	2,301
151	2,074	303	9,151	502	7,670
157	7,072	315	9,381	503	17,496
160	11,325	317	2,912	511	10,103
166	7,066	319	4,303	512	16,389
170	10,780	325	17,938	514	13,404
183	4,422	330	2,822	516	15,916
185	7,103	334 (note)	10,868	518	3,229a
189	10,454	335	9,545	520	9,281
191	10,009	336	3,804	523	6,205
193	4,262	342	10,611	525	2,025
195	745	343	9,967	538	7,059
196	14,185	346	17,640	539	10,133
198	4,362	349	6,893	542	16,294
200	1,216	352	3,165	546	16,269
202	11,361	357	9,871	549	18,271
204	16,164	360	15,748	556	18,264
210	6,946a	362	12,082	558	18,246
215	12,481				

Vol. 6, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	12,329	105	6,204	188	6,417
2	13,717	119	2,985	190	3,256
3	1,860	121	5,671	193	10,118
5	9,460	130	5,585	195	1,504
14	4,067	132	14,423	207	4,677
24	10,411	134	11,003	208	2,623
27	320	137	3,551	210	17,440
33	5,555	138	12,939	215	17,862
37	15,197	139	8,170	225	5,782
48	6,961	151	4,062	229	5,584
60	3,120	153	11,695	235	3,840
64	6,692	154	9,818	238	13,718
71	14,953	156	12,616	241	10,363
76	14,422	158	4,873	253	11,939
77	9,986	165	6,560	256	3,552
80	5,165	174	16,253	271	17,504
85	6,559	177	3,317	275	15,175
95	14,213	180	9,366	276	758

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 6, Blatchf.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
279	7,661	419	3,545	503	15,681
287	5,773	421	14,789	509	3,473
291	2,986	425	13,237	511	578
292	7,769	426	5,054	513	4,019
294	11,584	429	4,028	514	7,957
299	11,241	435	7,487	515	5,546
305	4,601	438	5,926	521	7,726
307	5,508	445	12,651	524	4,773
315	1,452	461	759	527	3,761
317	6,415	464	14,923	528	4,102
326	6,414	468	3,415	530	15,235
328	14,196	477	13,543	531	4,063
356	9,488	481	2,881	533	10,540
362	4,827	487	3,493	537	3,505
401	2,008	496	13.710	555	18,247
406	15,198	499	5,875		

Vol. 7, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,338	175	1,627	308	12,513
5	10,246	177	15,176	345	4,645
7	1,548	178	10,208	361	1,861
16	14,197	180	4,360	366	28
18	16,982	186	12,330	374	12,180
23	9,911	192	2,979	378	6,334
29	13,007	195	11,004	385	2,537
34	4,644	207	5,470	391	7,606
51	2,882	209	3,883	424	14,986
58	6,578	211	525	426	16,826
60	16,652	214	17,441	443	5,904
61	2,950	216	16,932	459	16,468
73	6,311	220	12,224	469	16,469
77	1,401	226	13,859	475	532
86	3,879	230	11,762	480	3,183
97	11,321	232	12,727	483	15,850
112	3,764	235	11,666	491	4,646
120	6,168	238	1,432	495	17,001
126	17,641	244	8,499	505	833
139	14,085	249	8,358	507	12,020
147	9,810	255	1,720	513	5,627
152	10,671	262	1,420	521	12,897
158	4,682	279	1,547	536	4,874
159	1,417	284	6,814	548	1,113
165	1,418	288	6,038	551	13,586
168	1,419	290	12,402	555	602
170	1,222				

Vol. 8, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,129	194	2,759	344	13,289
3	3,141	200	135	347	6,306
14	18,087	207	7,314	413	4,513
30	12,269	209	10,331	416	10,042
36	3,296	221	4,319	426	9,271
41	11,757	228	6,915	430	7,230
45	4,020	234	11,502	440	6,538
48	16,110	243	4,828	446	9,991
67	8,876	250	14,742	461	12,977
73	1,451	254	17,406	465	14,201
74	11,907	259	10,166	468	7,799
79	7,493	260	14,337	474	17,487
81	6,130	264	13,530	475	15,033
85	7,025	266	9,836	480	15,892
89	2,323	267	17,498	483	3,013
102	10,256	278	10,827	488	3,182
107	4,030	282	16,827	499	17,411
113	4,884	295	3,142	513	321
131	14,707	299	4,829	513	321a
134	15,567	302	11,200	533	1,544
137	9,052	304	12,041	535	218
147	1,291	315	13,778	536	4,514
150	18,082	321	1,243	539	4,695
153	13,016	324	6,576	544	16,404
156	10,089	337	4,456	552	8,993
170	4,902	339	4,457	556 (note)	8,992
177	4,885	341	4,418	557	2,856

Vol. 9, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,041	185	12,912	274	13,832
18	14,042	189	16,925	277	18,160
32	7,750	191	14,202	285	3,871
50	1,379	193	17,201	294	7,586
65	17,100	194	10,903	301	2,833
77	17,254	196	2,824	316	6,307
101	1,677	201	4,903	320	7,065
114	3,250	205	7,911	323	3,051
139	18,024	214	7,856	336	9,461
142	5,282	226	4,515	342	11,222
156	13,792	234	5,986	345	3,672
170	13,871	262	4,026	352	17,324
173	12,161	267	17,806	359	3,583
176	3,568	270	9,586	361	12,398

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 9, Blatchf.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
363	9,397	447	11,0[illegible]0	494	804
369	11,201	451	10,950	509	797
372	2,801	456	1,903	513	17,674
379	2,802	467	2,447	516	7,271
385	6,539	468	2,443	524	12,369
390	124	470	5,207	542	6,159
400	13,041	471	12,719	548	9,845
409	1,678	476	17,726	550	6,540
421	14,044	479	2,109	553	1,022
433	15,785	490	12,102	559	11,213
438	4,426				

Vol. 10, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,331	203	13,8[illegible]6	361	1,167
16	5,025	204	2,825	376	2,495
21	16,429	211	9,159	384	6,719
29	12,200	212	6,335	403	4,312
34	8,005	214	4,516	417	1,109
39	11,702	217	1,545	428	15,960
52	12,117	217	5,859	436	3,715
56	3,310	221	16,305	444	12,333
66	1,465	223	14,198	456	401
85	13,097	226	14,447	459	634
89	9,893	229	2,047	467	9,683
96	13,757	232	5,198	475	10,018
100	13,098	243	10,329	478	7,332
109	14,395	256	9,344	481	11,928
122	12,135	264	11,182	490	11,924
140	12,166	271	12,226	493	17,202
155	284	280	16,618	503	8,234
160	7,191	292	8,452	511	4,341
167	9,177	307	7,838	515	7,851
168	4,593	327	5,080	518	4,830
173	13,249	331	3,726	521	1,546
178	3,889	343 (note)	3,724	524	17,675
181	17,493	344	9,024	530	1,329
201	11,701	350	8,706	537	1,892

Vol. 11, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,851	218	6,998	413	6,007
11	11,913	225	8,254	415	8,615
34	2,478	233	1,030	416	16,108
43	11,597	237	1,500	419	8,172
54	5,841	241	17,092	422	5,128
6[illegible]	12,403	243	17,645	445	996
72	2,752	255	14,963	451	4,283
76	3,727	274	12,853	472	2,726
77	12,611	290	2,753	482	123
79	8 771	295	12,370	485	285
101	2,279	304	706	487	2,771
120	2,611	310	10,605	489	14,797
124	13,562	317	656	499	3,964
162	9,270	334	17,499	511	15,780
168	14,983	346	14,626	513	14,199
170	8,772	350	1,904	519	7,666
193	17,470	354	14,325	524	12,118
197	3,122	362	12,602	530	4,907
200	14,459	374	16,428	533	2,244
212	3,030	379	14,390	538	14,600
215	18,035	385	16,598	549	14,389
		406	7,485	552	12,132

Vol. 12, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,705	217	6,939	403	11,622
11	11,051	221	9,467	405	8,633
20	1,466	225	2,969	407	367
24	1,639	237	1,874	426	5,416
36	12,167	243	5,642	430	10,415
42	4,173	252	2,209	434	15,314
43	3,178	256	1,223	435	4,203
67	10,951	270	7,809	438	4,762
68	11,625	280	11,265	444	11,915
80	10,051	298	17,670	449	15,017
96	3,548	303	8,632	452	6,443
101	9,517	320	6,305	480	2,635
107	978	322	7,965	484	5,026
110	13,808	341	1,893	491	15,462
122	2,345	345	14,570	494	7,461
144	5,417	354	700	495	9,179
149	3,135	359	18,026	497	15,736
156	2,814	366	11,650	501	13,563
163	12,621	370	13,887	530	7,947
179	12,919	380	9,990	539	9,935
195	3,793	384	18,040	548	3,007
199	751	389	16,410	553	15,417
202	4,015	390	14,778	562	11,675
209	7,237	391	3,747		

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 13, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,067	216	8,324	375	2,543
22	9,988	218	9,439	389	10,994
31	2,690	220	5,089	393	4,991
34	3,611	224	6,035	395	11,042
37	12,462	227	1,409	401	9,033
44	16,929	231	17,186	403	4,038
47	1,692	234	5,109	410	2,772
60	15,628	237	7,714	412	13,406
67	12,945	242	9,995	418	15,128
70	7,238	245	9,562	421	18,073
83	7,999	251	16,998	424	738
88	18,039	252	16,752	429	9,956
95	13,509	255	16,976	432	5,278
104	13,405	258	2,634	434	3,202
107	1,638	267	15,631	438	5,439
114	10,150	271	208	440	4,736
119	2,467	276	16,743	447	17,459
127	16,403	279	269	453	570
128	17,261	282	17,725	455	10,637
134	8,519	289	6,149	458	13,039
151	8,949	295	15,573	462	3,642
163	961	307	371	469	9,585
170	7,902	330	15,372	481	11,220
173	9,907	333	16,744	503	12,347
178	14,798	335	15,476	505	11,237
187	3,725	339	12,792	509	2,787
194	9,842	349	17,341	512	9,838
200	16,062	351	11,214	514	14,049
205	5,140	357	3,549	519	16,974
207	15,464	361	1,848	521	3,036
210	2,894	364	17,458	523	3,565
211	15,572	366	1,909	534	15,769
		371	2,468	546	18,307

Vol. 14, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,286	185	5,129	355	2,126
5	16,550	189	17,759	357	6,397
9	689	196	12,502	360	2,564
15	16,627	198	2,050	362	7,036
19	2,107	204	9,748	364	7,903
24	7,341	207	9,700	370	17,618
30	7,326	214	1,877	371	1,810
34	10,054	216	2,120	376	6,054
37	6,399	223	16,080	380	496
41	195	225	196	381	15,244
43	9,953	229	15,574	396	6,695
46	9,508	233	11,454	402	5,111
51	11,596	234	13,837	403	18,041
53	8,998	240	8,235	405	19
55	14,799	242	10,039	411	4,467
63	4,721	245	7,124	422	1,321
69	16,192	254	1,298	426	17,390
71	16,228	257	6,857	432	5,110
72	12,643	261	8,099	436	1,682
74	14,522	262	12,576	438	304
79	2,826	263	9,121	445	2,793
89	7,679	265	1,463	446	1,821
90	15,491	269	14,105	449	8,562
91	14,686	272	676	451	12,408
92	14,460	274	10,536	453	14,010
93	15,771	279	14,492	463	1,964
94	16,793	282	9,563	473	16,289
102	1,185	289	3,300	474	3,736
107	5,808	293	6,424	480	5,062
109	8,950	307	4,505	483	4,225
117	2,469	313	10,064	496	16,832
119	298	315	5,643	497	9,212
126	16,023	317	1,749	499	17,977
128	6,107	321	15,084	505	3,742
130	1,878	324	9,722	510	13,287
133	11,593	328	6,758	517	12,918
137	16,844	334	4,234	519	11,245
141	9,908	337	4,608	522	6,364
143	1,138	342	1,497	524	7,233
146	1,236	344	16,233	531	2,767
152	12,456	346	5,885	541	7,040
159	10,197	347	17,966	545	4,636
169	9,599	349	13,359	549	10,214
179	12,136	352	10,963	550	12,906
182	372				

Vol. 15, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,309	47	12,010	131	11,076
6	15,3[illegible]5	49	994	160	14,392
13	6,341	58	9,207	170	6,632a
15	13,851	64	5,984	183	4,464
20	4,124	70	5,248	185	4,458
26	12,164	79	10,600	192	7,384
29	17,292	89	13,131	200	17,735
35	6,874	94	11,613	216	12,392
38	18,105	103	6,789	219	3,510
42	7,283	124	6,422	249	10,408

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 15, Blatchf.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
267	13,085	334	17,041	444	6,703
274	5,596	335	5,731	446	17,342
281	13,432	343	4,911	459	8,480
290	722	347	10,964	467	11,623
295	4,306	349	2,145	472	10,884
298	15,911	365	2,995	473	7,320
302	15,123	398	5,364	504	6,875
303	12,457	402	6,784	525	12,831
312	8,814	406	2,980	532	10,332
314	11,319	432	8,033	536	14,306
315	308	437	531	550	2,127
319	14,407	440	13,750	562	16,863

Vol. 16, Blatchf.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,524	182	1,960	383	11,689
9	8,279	189	14,681	397	3,743
20	14,936	192	11,082	410	5,192
29	6,177	194	11,961	421	4,310
48	14,035	216	2,249	424	90
53	4,807	220	4,812	427	6,233
57	4,806	228	17,294	433	5,648
62	4,808	232	11,882	439	10,269
65	15,794	233	13,499	447	13,187
68	14,410	234	5,605	453	11,421
76	14,393	250	626	468	4,866
80	16,839	281	625	472	7,578
92	12,793	296	10,405	495	2,855
105	2,146	303	5,229	503	2,991
112	17,781	309	8,892	516	10,221
122	11,881	319	18,048	537	10,608
133	15,813	324	9,432	542	4,103
134	149	334	3,221	547	15,166
139	10,109	336	3,222	549	8,418
150	2,729	338	14,571	563	10,050
155	719	376	4,787	565	3,647
165	2,935	378	7,039	569	4,758
178	14,150	381	13,334		

Vol. 17, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1		2,936	312		16,039
5		5,601	318		12,063
9		17,476	325		5,803
16		4,522	332		10,958
18		10,997	333		1,471
21		17,716	341		1,320
24		13,335	342		17,356
36		12,941	348		6,050
42		2,361	350		232
55	(7 F. 860)	16,793a	352		5,008
66		12,458	357		14,572
72		9,851	363		8,893
77		17,355	368		18,038
88		4,335	369		12,894
106		7,296	371		2,670
122		10,131	378	(1 F. 14)	—
132		12,692	389	(1 F. 39)	—
138		16,781	396	(4 F. 151)	—
142		3,107	398	(1 F. 385)	—
148		2,704	400	(1 F. 610)	—
160		294	402	(1 F. 111)	—
176		91	407	(1 F. 116)	—
200		4,583	410	(1 F. 302)	—
206		10,747	412	(1 F. 382)	—
208		296	416	(1 F. 387)	—
216		10,181	421	(1 F. 232)	—
220		7,297	423	(1 F. 676)	—
221		1,525	432	(3 F. 898)	—
221		10,362	436	(8 F. 434)	—
238		14,448	451	(7 F. 849)	—
240		13,086	452	(7 F. 263)	—
244		12,366	460	(4 F. 428)	—
249		12,367	468	(4 F. 441)	—
253		5,783	472	(4 F. 493)	—
256		5,249	478	(4 F. 423)	—
258		15,852	484	(1 F. 304)	—
259		3,653	510	(1 F. 799)	—
264		5,985	512	(4 F. 531)	—
272		11,008	517	(7 F. 705)	—
287		1,826	522	(1 F. 459)	—
291		295	527	(1 F. 396)	—
303		297	531	(1 F. 328)	—
306		10,962	546	(1 F. 597)	—
308		2,993	554	(1 F. 426)	—

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 18, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(1 F. 641)	—	291	(3 F. 298)	—
38	(1 F. 862)	—	295	(7 F. 17)	—
47		13,336	297	(11 F. 514)	—
50	(1 F. 870)	—	302	(10 F. 553)	—
54	(2 F. 364)	—	305	(4 F. 614)	—
77	(2 F. 14)	—	308	(5 F. 436)	—
82	(2 F. 239)	—	310	(4 F. 816)	—
84	(2 F. 232)	—	312	(4 F. 816)	—
88	(2 F. 236)	—	315	(11 F. 171)	—
92	(2 F. 338)	—	319	(4 F. 748)	—
108	(2 F. 357)	—	321	(8 F. 761)	—
110	(2 F. 206)	—	324	(10 F. 661)	—
118	(2 F. 330)	—	327	(4 F. 74)	—
126	(2 F. 359)	—	336	(48 F. 527)	—
132	(2 F. 697)	—	344	(4 F. 552)	—
138	(10 F. 673)	—	353	(4 F. 334)	—
140	(2 F. 683)	—	357	(4 F. 635)	—
146	(2 F. 356)	—	368	(4 F. 753)	—
147	(2 F. 355)	—	383	(10 F. 541)	—
148	(2 F. 353)	—	384	(4 F. 394)	—
150	(2 F. 417)	—	397	(10 F. 517)	—
163	(3 F. 93)	—	411	(4 F. 834)	—
165	(2 F. 517)	—	420	(8 F. 702)	—
180	(2 F. 623)	—	426	(4 F. 455)	—
181	(2 F. 702)	—	430	(4 F. 303)	—
187	(2 F. 669)	—	443	(4 F. 257)	—
190	(2 F. 707)	—	450	(4 F. 437)	—
202	(48 F. 519)	—	454	(4 F. 386)	—
209	(3 F. 636)	—	459	(5 F. 63)	—
212	(10 F. 513)	—	469	(7 F. 869)	—
218	(2 F. 774)	—	478	(5 F. 248)	—
225	(3 F. 12)	—	485	(7 F. 100)	—
227	(10 F. 547)	—	493	(6 F. 42)	—
234	(3 F. 335)	—	495	(6 F. 163)	—
237	(3 F. 338)	—	502	(6 F. 727)	—
241	(3 F. 95)	—	507	(7 F. 17)	—
243	(3 F. 761)	—	520	(6 F. 181)	—
246	(2 F. 834)	—	532	(6 F. 611)	—
248	(3 F. 288)	—	548	(6 F. 493)	—
259	(3 F. 49)	—	555	(5 F. 573)	—
273	(7 F. 479)	—	561	(7 F. 215)	—
277	(4 F. 469)	—	566	(6 F. 49)	—
287	(3 F. 22)	—			

Vol. 19, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(3 F. 566)	—	263	(9 F. 647)	—
9	(6 F. 45)	—	279	(8 F. 369)	—
13	(6 F. 63)	—	290	(7 F. 562)	—
26	(6 F. 76)	—	294	(8 F. 269)	—
35	(6 F. 97)	—	308	(7 F. 649)	—
38	(6 F. 500)	—	312	(8 F. 182)	—
48	(6 F. 882)	—	314	(11 F. 852)	—
63	(6 F. 897)	—	315	(9 F. 258)	—
69	(7 F. 426)	—	340	(8 F. 624)	—
73	(7 F. 821)	—	354	(50 F. 225)	—
79	(6 F. 6)	—	359	(8 F. 493)	—
89	(8 F. 909)	—	363	(9 F. 106)	—
94	(6 F. 342)	—	367	(8 F. 586)	—
100	(5 F. 833)	—	369	(8 F. 807)	—
113	(7 F. 477)	—	370	(7 F. 892)	—
115	(6 F. 587)	—	372	(7 F. 843)	—
123	(6 F. 377)	—	377	(8 F. 519)	—
143	(7 F. 451)	—	381	(8 F. 610)	—
145	(7 F. 468)	—	383	(8 F. 81)	—
147	(6 F. 561)	—	388	(11 F. 848)	—
148	(7 F. 219)	—	392	(8 F. 513)	—
151	(6 F. 562)	—	397	(9 F. 225)	—
158	(9 F. 44)	—	399	(48 F. 385)	—
165	(6 F. 743)	—	473	(14 F. 457)	—
175	(6 F. 417)	—	482	(8 F. 600)	—
184	(7 F. 96)	—	487	(8 F. 417)	—
189	(7 F. 129)	—	493	(8 F. 521)	—
201	(7 F. 272)	—	495	(8 F. 591)	—
202	(7 F. 187)	—	507	(8 F. 523)	—
205	(8 F. 710)	—	512	(11 F. 820)	—
209	(7 F. 469)	—	522	(8 F. 534)	—
214	(7 F. 475)	—	529	(8 F. 377)	—
216	(7 F. 273)	—	533	(8 F. 729)	—
239	(7 F. 78)	—	538	(9 F. 299)	—
242	(7 F. 152)	—	544	(9 F. 390)	—
249	(7 F. 193)	—	558	(8 F. 852)	—
257	(7 F. 453)	—	560	(8 F. 695)	—
259	(7 F. 455)	—	562	(8 F. 612)	—

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 20, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(8 F. 904)	—	315	(10 F. 746)	—
3	(9 F. 199)	—	320	(10 F. 741)	—
7	(9 F. 38)	—	326	(10 F. 838)	—
10	(9 F. 445)	—	333	(11 F. 510)	—
13	(9 F. 14)	—	338	(9 F. 877)	—
15	(9 F. 99)	—	341	(9 F. 884)	—
17	(9 F. 460)	—	344	(10 F. 8)	—
21	(9 F. 400)	—	349	(10 F. 874)	—
23	(9 F. 8)	—	351	(10 F. 873)	—
32	(11 F. 887)	—	353	(10 F. 669)	—
38	(9 F. 347)	—	355	(10 F. 750)	—
39	(9 F. 363)	—	358	(11 F. 72)	—
42	(9 F. 462)	—	360	(19 F. 825)	—
45	(18 F. 596)	—	362	(85 F. 846)	—
53	(9 F. 191)	—	370	(10 F. 907)	—
59	(9 F. 226)	—	381	(18 F. 592)	—
63	(9 F. 509)	—	386	(10 F. 835)	—
67	(9 F. 500)	—	390	(10 F. 830)	—
73	(11 F. 880)	—	392	(11 F. 425)	—
82	(9 F. 365)	—	395	(11 F. 601)	—
85	(9 F. 438)	—	397	(12 F. 353)	—
87	(11 F. 918)	—	405	(11 F. 284)	—
91	(11 F. 891)	—	411	(11 F. 438)	—
97	(9 F. 659)	—	413	(12 F. 144)	—
106	(11 F. 872)	—	417	(11 F. 711)	—
118	(11 F. 868)	—	426	(12 F. 140)	—
123	(9 F. 757)	—	430	(12 F. 111)	—
129		16,040	443	(12 F. 279)	—
137	(9 F. 897)	—	445	(12 F. 567)	—
142	(10 F. 413)	—	448	(12 F. 8)	—
170	(9 F. 706)	—	450	(19 F. 801)	—
174	(9 F. 578)	—	452	(12 F. 97)	—
178	(18 F. 647)	—	465	(19 F. 808)	—
185	(11 F. 303)	—	466	(12 F. 615)	—
192	(9 F. 779)	—	474	(12 F. 367)	—
200	(9 F. 785)	—	479	(12 F. 803)	—
210	(9 F. 795)	—	482	(19 F. 823)	—
212	(9 F. 797)	—	484	(12 F. 120)	—
218	(9 F. 793)	—	493	(11 F. 573)	—
221	(9 F. 905)	—	498	(12 F. 436)	—
229	(10 F. 1)	—	505	(12 F. 149)	—
233	(10 F. 606)	—	508	(18 F. 561)	—
235	(10 F. 469)	—	508	(11 F. 689)	—
237	(10 F. 80)	—	512	(12 F. 842)	—
253	(10 F. 263)	—	513	(12 F. 361)	—
256	(11 F. 83)	—	515	(12 F. 359)	—
263	(19 F. 815)	—	517	(12 F. 515)	—
266	(9 F. 853)	—	522	(12 F. 375)	—
267	(18 F. 584)	—	525	(12 F. 454)	—
273	(10 F. 268)	—	528	(12 F. 874)	—
274	(10 F. 608)	—	530	(12 F. 621)	—
276	(11 F. 547)	—	535	(12 F. 607)	—
278	(11 F. 829)	—	538	(12 F. 491)	—
288	(10 F. 585)	—	542	(18 F. 561)	—
296	(10 F. 357)	—	557	(13 F. 127)	—
307	(10 F. 220)	—	569	(12 F. 670)	—
311	(10 F. 666)	—			

Vol. 21, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(12 F. 707)	—	226	(15 F. 739)	—
13	(12 F. 743)	—	236	(15 F. 377)	—
18	(12 F. 876)	—	240	(15 F. 328)	—
26	(13 F. 272)	—	246	(15 F. 716)	—
45	(12 F. 891)	—	249	(15 F. 483)	—
66	(13 F. 477)	—	255	(15 F. 786)	—
68	(13 F. 464)	—	258	(15 F. 432)	—
80	(13 F. 86)	—	260	(15 F. 608)	—
83	(13 F. 172)	—	263	(16 F. 149)	—
95	(13 F. 456)	—	268	(16 F. 262)	—
106	(13 F. 370)	—	271	(16 F. 240)	—
109	(13 F. 358)	—	275	(15 F. 858)	—
113	(13 F. 386)	—	278	(16 F. 37)	—
116	(13 F. 377)	—	284	(15 F. 808)	—
119	(14 F. 618)	—	287	(16 F. 376)	—
130	(13 F. 415)	—	300	(16 F. 332)	—
134	(15 F. 55)	—	302	(16 F. 243)	—
136	(23 F. 583)	—	308	(16 F. 513)	—
138	(13 F. 567)	—	311	(23 F. 650)	—
162	(13 F. 672)	—	314	(17 F. 671)	—
164	(13 F. 565)	—	318	(16 F. 838)	—
167	(14 F. 113)	—	322	(16 F. 888)	—
168	(14 F. 269)	—	324	(16 F. 915)	—
169	(23 F. 585)	—	325	(16 F. 566)	—
171	(15 F. 600)	—	330	(16 F. 778)	—
177	(15 F. 575)	—	332	(16 F. 688)	—
184	(19 F. 826)	—	339	(17 F. 620)	—
188	(15 F. 262)	—	342	(16 F. 560)	—
190	(14 F. 740)	—	348	(16 F. 522)	—
192	(14 F. 778)	—	351	(16 F. 532)	—
196	(14 F. 688)	—	354	(16 F. 609)	—
197	(15 F. 405)	—	358	(17 F. 466)	—
203	(15 F. 494)	—	364	(17 F. 159)	—
211	(15 F. 212)	—	367	(17 F. 83)	—
217	(23 F. 721)	—	368	(17 F. 500)	—
222	(16 F. 676)	—	376	(17 F. 79)	—

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 21, Blatchf.—Cont'd.

Page.		F. C. No.	Page.		F. C. No.
383	(17 F. 244)	—	473	(17 F. 784)	—
392	(18 F. 5)	—	485	(18 F. 43)	—
400	(17 F. 414)	—	492	(18 F. 52)	—
407	(17 F. 465)	—	497	(18 F. 105)	—
410	(17 F. 653)	—	499	(18 F. 299)	—
415	(17 F. 528)	—	506	(18 F. 519)	—
417	(17 F. 447)	—	511	(18 F. 508)	—
421	(17 F. 450)	—	516	(18 F. 511)	—
428	(17 F. 539)	—	519	(18 F. 638)	—
429	(17 F. 497)	—	534	(18 F. 467)	—
431	(17 F. 623)	—	540	(18 F. 636)	—
435	(17 F. 845)	—	543	(19 F. 145)	—
435	(17 F. 836)	—	552	(18 F. 667)	—
437	(23 F. 572)	—	553	(18 F. 823)	—
439	(17 F. 905)	—	554	(19 F. 802)	—
445	(17 F. 841)	—	556	(19 F. 99)	—
450	(17 F. 838)	—	558	(19 F. 263)	—
454	(17 F. 817)	—	560	(18 F. 891)	—
460	(18 F. 135)	—	563	(18 F. 824)	—
469	(18 F. 87)	—			

Vol. 22, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(19 F. 49)	—	209	(22 F. 457)	—
2	(18 F. 893)	—	213	(20 F. 812)	—
7	(19 F. 46)	—	221	(20 F. 699)	—
10	(19 F. 817)	—	225	(20 F. 661)	—
13	(19 F. 308)	—	229	(20 F. 693)	—
19	(19 F. 315)	—	235	(20 F. 875)	—
22	(19 F. 283)	—	239	(20 F. 800)	—
27	(19 F. 312)	—	240	(20 F. 709)	—
29	(19 F. 235)	—	242	(20 F. 792)	—
32	(19 F. 307)	—	246	(20 F. 826)	—
34	(19 F. 322)	—	261	(20 F. 898)	—
36	(19 F. 323)	—	266	(20 F. 850)	—
39	(19 F. 250)	—	268	(20 F. 916)	—
41	(19 F. 408)	—	272	(21 F. 90)	—
45	(19 F. 313)	—	281	(20 F. 890)	—
47	(19 F. 317)	—	287	(21 F. 70)	—
48	(19 F. 388)	—	294	(20 F. 903)	—
58	(19 F. 301)	—	298	(21 F. 74)	—
61	(19 F. 422)	—	302	(21 F. 99)	—
65	(19 F. 337)	—	307	(21 F. 51)	—
69	(19 F. 419)	—	334	(21 F. 85)	—
72	(19 F. 663)	—	342	(21 F. 159)	—
82	(19 F. 723)	—	353	(21 F. 35)	—
85	(19 F. 725)	—	355	(21 F. 349)	—
88	(19 F. 727)	—	360	(21 F. 253)	—
94	(19 F. 749)	—	364	(21 F. 189)	—
100	(19 F. 756)	—	367	(21 F. 313)	—
103	(20 F. 667)	—	372	(22 F. 715)	—
106	(19 F. 677)	—	405	(21 F. 223)	—
108	(19 F. 660)	—	412	(21 F. 318)	—
113	(22 F. 444)	—	413	(21 F. 281)	—
115	(19 F. 803)	—	414	(21 F. 228)	—
118	(19 F. 828)	—	421	(21 F. 276)	—
120	(22 F. 412)	—	427	(21 F. 641)	—
122	(85 F. 728)	—	441	(21 F. 631)	—
124	(19 F. 926)	—	462	(21 F. 284)	—
128	(20 F. 117)	—	463	(21 F. 566)	—
131	(20 F. 71)	—	464	(21 F. 383)	—
146	(22 F. 445)	—	469	(85 F. 692)	—
148	(85 F. 683)	—	471	(21 F. 458)	—
157	(20 F. 126)	—	473	(21 F. 618)	—
161	(20 F. 222)	—	481	(21 F. 568)	—
167	(20 F. 477)	—	484	(21 F. 875)	—
169	(20 F. 633)	—	489	(21 F. 749)	—
182	(20 F. 505)	—	498	(22 F. 186)	—
184	(20 F. 410)	—	503	(22 F. 129)	—
185	(20 F. 501)	—	505	(22 F. 92)	—
187	(20 F. 577)	—	508	(22 F. 380)	—
195	(20 F. 535)	—	520	(22 F. 519)	—
203	(20 F. 545)	—	524	(22 F. 252)	—
206	(20 F. 502)	—	527	(22 F. 373)	—
207	(20 F. 454)	—	531	(22 F. 309)	—

Vol. 23, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(22 F. 275)	—	77	(22 F. 833)	—
3	(22 F. 506)	—	84	(32 F. 185)	—
19	(22 F. 522)	—	86	(23 F. 82)	—
23	(22 F. 530)	—	92	(24 F. 139)	—
27	(22 F. 656)	—	95	(23 F. 86)	—
31	(22 F. 653)	—	99	(23 F. 98)	—
33	(22 F. 582)	—	107	(23 F. 65)	—
40	(22 F. 699)	—	110	(23 F. 3)	—
43	(22 F. 635)	—	112	(23 F. 49)	—
46	(22 F. 823)	—	137	(23 F. 21)	—
51	(22 F. 803)	—	142	(23 F. 706)	—
54	(22 F. 805)	—	144	(32 F. 552)	—
65	(22 F. 822)	—	147	(32 F. 221)	—
66	(22 F. 625)	—	152	(23 F. 187)	—
71	(22 F. 634)	—	155	(23 F. 150)	—
72	(22 F. 830)	—	159	(23 F. 36)	—
74	(22 F. 637)	—	161	(23 F. 161)	—

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 23, Blatchf.—Cont'd.

Page.		F. C. No.	Page.		F. C. No.
163	(32 F. 292)	—	347	(25 F. 183)	—
165	(32 F. 302)	—	354	(25 F. 271)	—
167	(23 F. 191)	—	371	(32 F. 327)	—
173	(23 F. 185)	—	373	(25 F. 466)	—
177	(23 F. 413)	—	378	(25 F. 727)	—
181	(23 F. 360)	—	389	(25 F. 771)	—
185	(23 F. 303)	—	395	(25 F. 765)	—
186	(23 F. 350)	—	399	(25 F. 627)	—
191	(23 F. 311)	—	403	(26 F. 106)	—
194	(23 F. 313)	—	412	(25 F. 719)	—
196	(23 F. 257)	—	416	(25 F. 639)	—
199	(23 F. 340)	—	419	(26 F. 55)	—
205	(23 F. 397)	—	422	(32 F. 278)	—
209	(23 F. 363)	—	423	(26 F. 450)	—
216	(23 F. 882)	—	425	(26 F. 304)	—
223	(23 F. 438)	—	431	(26 F. 519)	—
227	(23 F. 587)	—	435	(26 F. 629)	—
233	(23 F. 652)	—	440	(26 F. 633)	—
235	(23 F. 785)	—	444	(26 F. 692)	—
237	(24 F. 137)	—	453	(26 F. 677)	—
239	(24 F. 185)	—	457	(26 F. 737)	—
242	(24 F. 82)	—	459	(27 F. 18)	—
245	(24 F. 149)	—	465	(27 F. 33)	—
248	(24 F. 187)	—	470	(26 F. 881)	—
249	(25 F. 38)	—	475	(27 F. 77)	—
253	(32 F. 214)	—	476	(27 F. 22)	—
263	(24 F. 168)	—	479	(27 F. 285)	—
268	(25 F. 844)	—	481	(27 F. 307)	—
271	(24 F. 523)	—	484	(27 F. 247)	—
277	(24 F. 371)	—	486	(27 F. 286)	—
282	(25 F. 782)	—	489	(27 F. 243)	—
286	(24 F. 374)	—	494	(27 F. 484)	—
288	(25 F. 283)	—	502	(27 F. 529)	—
292	(25 F. 601)	—	511	(27 F. 581)	—
293	(24 F. 559)	—	517	(27 F. 625)	—
297	(24 F. 701)	—	531	(27 F. 689)	—
299	(24 F. 690)	—	535	(27 F. 579)	—
302	(24 F. 542)	—	537	(29 F. 614)	—
303	(24 F. 558)	—	541	(27 F. 808)	—
305	(32 F. 293)	—	544	(27 F. 723)	—
308	(24 F. 543)	—	546	(27 F. 737)	—
312	(24 F. 571)	—	552	(27 F. 722)	—
321	(24 F. 561)	—	554	(29 F. 399)	—
325	(24 F. 632)	—	556	(28 F. 79)	—
329	(24 F. 741)	—	558	(27 F. 810)	—
332	(24 F. 739)	—	562	(27 F. 874)	—
335	(25 F. 562)	—	566	(27 F. 878)	—

Vol. 24, Blatchf.

Page.		F. C. No.	Page.		F. C. No.
1	(28 F. 244)	—	221	(30 F. 228)	—
16	(28 F. 98)	—	223	(30 F. 775)	—
18	(28 F. 29)	—	239	(30 F. 1)	—
18	(28 F. 85)	—	242	(29 F. 781)	—
27	(28 F. 156)	—	244	(30 F. 48)	—
33	(40 F. 875)	—	247	(30 F. 366)	—
38	(28 F. 95)	—	254	(30 F. 57)	—
40	(28 F. 249)	—	264	(30 F. 225)	—
49	(41 F. 74)	—	269	(30 F. 387)	—
50	(28 F. 202)	—	271	(30 F. 396)	—
59	(28 F. 132)	—	272	(31 F. 43)	—
72	(28 F. 121)	—	274	(30 F. 395)	—
75	(28 F. 146)	—	275	(30 F. 446)	—
78	(28 F. 114)	—	278	(30 F. 448)	—
81	(28 F. 179)	—	280	(30 F. 397)	—
85	(28 F. 264)	—	282	(30 F. 234)	—
87	(28 F. 218)	—	289	(31 F. 47)	—
89	(28 F. 231)	—	291	(30 F. 298)	—
93	(28 F. 228)	—	306	(30 F. 802)	—
97	(28 F. 356)	—	310	(30 F. 484)	—
99	(28 F. 462)	—	314	(30 F. 417)	—
111	(28 F. 469)	—	319	(30 F. 617)	—
122	(28 F. 452)	—	321	(30 F. 437)	—
124	(28 F. 722)	—	325	(31 F. 277)	—
136	(28 F. 433)	—	328	(30 F. 629)	—
139	(28 F. 656)	—	332	(31 F. 1)	—
142	(28 F. 881)	—	339	(30 F. 772)	—
149	(28 F. 613)	—	343	(30 F. 465)	—
150	(28 F. 733)	—	345	(30 F. 785)	—
151	(29 F. 538)	—	348	(30 F. 747)	—
155	(28 F. 878)	—	351	(30 F. 627)	—
159	(28 F. 842)	—	353	(30 F. 632)	—
160	(28 F. 919)	—	355	(30 F. 613)	—
163	(29 F. 142)	—	359	(31 F. 5)	—
167	(29 F. 96)	—	369	(30 F. 690)	—
168	(29 F. 145)	—	371	(31 F. 154)	—
170	(29 F. 246)	—	374	(30 F. 721)	—
172	(29 F. 237)	—	376	(30 F. 729)	—
173	(29 F. 341)	—	384	(31 F. 516)	—
177	(29 F. 864)	—	392	(31 F. 80)	—
181	(29 F. 496)	—	396	(31 F. 41)	—
184	(29 F. 508)	—	398	(31 F. 220)	—
194	(29 F. 474)	—	405	(30 F. 881)	—
198	(30 F. 11)	—	406	(31 F. 76)	—
201	(29 F. 853)	—	412	(30 F. 921)	—
214	(29 F. 678)	—	416	(31 F. 447)	—
219	(29 F. 813)	—	420	(31 F. 182)	—

BLATCHFORD'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 24, Blatchf.—Cont'd.

Page.		F. C. No.	Page.		F. C. No.
422	(31 F. 184)	—	488	(31 F. 513)	—
430	(31 F. 282)	—	492	(31 F. 533)	—
436	(31 F. 216)	—	496	(33 F. 170)	—
442	(31 F. 271)	—	519	(32 F. 415)	—
448	(31 F. 297)	—	522	(31 F. 729)	—
453	(32 F. 309)	—	533	(31 F. 592)	—
455	(31 F. 266)	—	539	(31 F. 625)	—
463	(31 F. 742)	—	540	(31 F. 601)	—
466	(31 F. 705)	—	542	(31 F. 816)	—
473	(40 F. 907)	—	548	(31 F. 696)	—
475	(31 F. 840)	—	550	(32 F. 130)	—
478	(41 F. 73)	—	566	(32 F. 79)	—
479	(31 F. 749)	—			

BLATCHFORD'S PRIZE CASES.

Blatchf. Prize Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,451	211	10,535	377	7,102
22	11,171a	213	4,372	379	12,259
33	17,873	214	12,341	379	13,363
35	6,029a	215	37	380	13,263
40	5,312a	215	12,708	381	11,023
41	5,961	219	424	382	12,260
44	10,316a	220	6,067	387	13,364
45	4,937	222	416	434	13,264
49	8,637a	223	7,541	463	11,024
52	4,616	232	4,599	550	7,618
54	16,910a	235	17,696	551	12,221
57	8,638	240	14,211	552	9,077
61	11,172	241	11,680	553	10,095
62	518	242	396	554	13,741
64	14,186	243	8,421	556	9,203
69	12,352	245	1,901	561	4,461
89	11,428	246	14,193	563	9,475
91	9,221	248	4,401	564	10,387
92	3,873	250	4,350	566	391
94	13,164	258	7,542	572	492
95	142	260	9,413	576	4,098
97	6,030	262	245	579	6,216
99	6,374	265	8,425	580	965
101	7,205	266	5,526	581	9,071
107	8,531	269	10,301	582	4,575
119	10,078	271	10,026	584	9,476
120	13,933	272	13,383	585	9,477
121	6,378	275	11,889	595	6,217
122	4,291	276	11,715	596	12,261
123	12,340	278	5,308	601	10,027
124	7,540	280	138	607	4,462
126	5,456	283	9,073	608	92
127	2,394	286	9,228	610	14,292
128	4,597	288	4,373	612	418
129	16,914	291	7,343	614	7,986
130	7,206	294	1,272	615	13,706
131	6,377	296	10,012	618	9,182
132	5,246	299	12,514	620	11,025
133	3,777	300	390	623	2,621
142	94	300	17,268	625	13,277
143	118	302	11,541	626	1,538
144	8,424	302	14,291	628	11,054
145	3,772	305	419	629	12,351
146	4,476	306	10,620	631	3,384
148	17,298	309	4,784	632	6,452
150	9,105	310	8,984	635	105
150	10,601	316	13,613	638	13,614
151	2,655	323	8,293	641	7,543
160	6,031	325	4,318	642	4,351
162	7,317	327	4,888	643	2,657
163	11,173	328	9,456	644	4,785
164	7,328	329	17,299	645	106
165	2,656	330	11,681	645	10,317
165	7,964	331	6,439	646	246
167	8,983	332	400	647	11,429
173	18,203	333	9,634	648	4,374
175	4,477	335	417	649	5,527
181	7,592	337	402	649	11,174
183	4,859	345	11,022	650	12,353
185	10,487	347	14,212	652	10,621
186	244	349	13,262	654	3,778
187	9,489	353	1,273	654	5,313
195	12,337	354	10,255	656	9,414
196	7,295	355	5,686	656	13,615
196	8,597	357	10,013	658	9,490
196	10,149	361	13,589	659	4,478
197	99	362	4,034	659	8,639
198	10,025	363	9,214	661	7,344
199	6,066	367	10,119	663	139
200	36	368	11,857	664	4,600
202	9,412	370	483	664	10,802
204	4,370	370	4,435	665	10,028
206	432a	371	383	665	13,384
206	18,283	372	10,425	666	11,175
207	4,371	373	8,294	668	5,309
209	415	374	5,369	669	5,528
210	9,227	375	5,479		

BLATCHFORD & HOWLAND'S UNITED STATES DISTRICT COURT REPORTS.

Vol. 1, Blatchf. & H.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	303	215	339	356	5,222
34	17,253	218	16,806	366	4,594
52	4,886	226	11,993	372	5,084
66	17,687	235	17,297	385	11,017
79	12,325	264	12,373	390	9,215
83	3,530	270	5,186	401	12,348
90	6,480	275	4,683	423	12,761
94	14,170	279	9,155	435	4,349
114	17,257	282	14,181	443	16,937
126	4,615	286	4,289	454	5,689
139	2,280	289	7,044	465	6,372
149	826	293	1,655	487	11,037
151	9,144	300	5,513	493	13,898
175	13,361	309	1,669	507	5,636
185	286	331	9,074	525	11,646
187	10,644	335	17,208	545	14,347
189	5,876	342	17,402	569	13,616
195	4,361	347	11,618		

BOND'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Bond.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,860	197	4,531	422	3,354
5	15,641	210	17,897	432	15,527
27	17,303	212	1,247	440	3,211
39	11,934	222	3,184	446	16,295
51	14,895	237	7,747	453	8,812
57	12,448	254	9,827	459	17,436
63	16,321	259	8,116	476	3,012
81	11,930	267	8,465	492	4,150
92	14,017	270	1,476	500	7,161
100	4,627	277	5,801	506	13,430
103	14,949	279	6,271	511	14,046
105	12,581	285	7,569	528	17,986
117	13,232	302	8,910	536	611
123	16,043	315	9,690	540	4,095
126	7,270	319	17,536	554	3,315
142	12,698	327	7,565	556	14,756
149	14,870	339	14,871	571	16,517
152	13,950	345	10,770	574	15,418
154	12,204	352	9,613	578	1,486
158	17,064	361	8,182	580	16,653
164	12,528	369	8,658	587	15,938
172	9,437	387	8,186	590	5,998
175	175	393	3,951	592	11,957
189	13,305	397	14,003	601	11,333
194	1,256	407	6,950	609	18,272

Vol. 2, Bond.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,997	147	14,773	296	2,550
7	15,115	158	5,630	305	15,036
13	1,180	170	10,041	311	15,309
16	8,702	181	749	320	13,976
23	15,814	183	15,737	323	16,322
29	12,506	189	5,556	332	15,011
34	15,801	210	6,610	336	7,530
36	11,877	214	4,165	340	16,494
42	10,882	217	15,353	342	16,418
45	17,592	234	12,143	346	15,098
66	9,835	244	6,222	356	1,817
78	16,543	252	12,069	359	11,633
84	1,514	261	9,031	363	2,633
97	15,526	267	17,170	379	16,547
100	1,806	271	16,258	386	6,574
104	11,560	281	16,258a	389	14,719
110	14,772	285	16,258b	392	4,509
115	13,700	287	103	395	16,579
137	16,302	294	17,003	399	15,930
140	15,267				

BOYCE'S PRACTICE IN UNITED STATES COURTS.

Boyce, U. S. Pr.

Page.	F. C. No.
98	16,075

BREWSTER'S PENNSYLVANIA REPORTS.

Vol. 3, Brewst.

Page.	F. C. No.
502	10,266
558	11,910

Vol. 4, Brewst.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
234	17,544	253	9,333	275	8,902
246	14,965	253	16,985	563	2,331
250	7,208	260	11,899		

BRIGHTLY'S PENNSYLVANIA NISI PRIUS REPORTS.

Brightly, N. P.

Page.	F. C. No.
19 (note)	14,647
346	8,952

BROCKENBROUGH'S MARSHALL'S UNITED STATES CIRCUIT COURT DECISIONS.

Vol. 1, Brock.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
33	13,719	203	8,411	380	15,613
62	1,531	212	8,280	384	2,418
72	10,633	220	6,696	389	11,384
77	3,218	228	13,538	396	12,639
85	4,130	235	93	407	13,985
97	17,028	244	12,536	423	17,846
103	12,809	248	4,564	439	5,201
119	2,325	255	15,082	447	17,817
126	8,671	261	10,906	456	365
131	9,937	266	267	466	11,926
135	9,941	285	15,492	478	2,568
147	2,071	299	4,954	500	710
156	15,364	316	1,623	517	16,272
162	13,537	324	9,372	520	7,157
166	12,559	330	18,047	529	2,916
177	3,934	347	15,612	539	2,917
190	15,232	356	12,031	551	2,918
195	14,413	367	13,919		

Vol. 2, Brock.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	15,716	159	8,337	325	1,464
14	5,162	169	2,267	350	5,978
20	6,697	179	2,268	379	15,250
43	13,811	185	5,245	388	7,848
57	12,538	252	944	393	927
64	15,862	256	13,351	403	5,759
75	10,924	274	14,821	422	17,111
81	5,178	280	14,563	436	8,317
96	15,747	285	5,200	447	11,558
119	9,323	293	13,668	488	15,727
125	9,030	298	3,645	493	4,016
132	6,698	311	18,094	516	15,844
156	6,577	317	15,802		

BROWNE'S PENNSYLVANIA REPORTS.

Browne, (Pa.)

Page.	F. C. No.
335	11,355

BROWNE, TRADE-MARKS. (2d Ed.)

Browne, Trade-Marks. (2d Ed.)

Page.	F. C. No.
638	1,474

BROWN'S UNITED STATES ADMIRALTY REPORTS.

Vol. 1, Brown, Adm.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,183	141	3,832	411	3,029
11	2,376	149	7,358	415	13,621
13	7,003	151	13,742	419	9,522
13	13,602	156	9,558	424	809
32	10,014	159	16,990	432	2,875
35	13,603	161	1,805	436	9,266
36	12,930	162	7,996	442	12,042
37	5,303	166	5,488	445	14,077
40	5,992	170	680	449	16,933
42	4,633	193	3,564	453	2,622
48	11,229	202	12,229	456	2,981
51	9,459	208	17,710	462	18,178
52	13,608	227	13,620	469	17,250
55	7,602	251	5,090	476	9,400
59	8,645	270	10,482	480	8,283
65	2,085	273	3,596	485	11,435
66	8,417	279	7,110	489	597
68	12,220	281	13,525	495	7,060
72	5,091	290	9,983	497	7,004
73	24	300	6,812	499	2,876
74	2,795	310	13,215	503	13,921
75	13,623	313	9,626	509	13,687
76	11,713	334	5,307	516	14,363
96	7,100	342	9,267	520	2,583
105	4,031	347	509a	537	14,364
110	18,221	349	12,857	544	12,665
115	10,002	356	10,616	547	8,955
124	11,203	364	9,101	549	18,179
128	12,865	372	12,664	553	5,437
130	540	376	9,345	560	6,400
137	9,864	393	3,028		

BRUNNER'S COLLECTIVE CASES.

Brunner, Col. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,863	174	11,397	446	16,309
2	10,701	175	13,766	449	15,304
3	1,619	180	10,838	456	16,757
3	6,872	185	10,832	462	15,493
8	9,050	187	16,949	465	15,374
13	6,855	188	6,354	467	16,537
18	4,147	190	1,092	489	15,429
19	5,403	193	10,834	493	14,692
19	13,814	194	4,025	497	3,137
20	12,294	196	9,276	500	9,078
21	17,663	196	12,869	502	10,177
22	9,965	201	1,182	519	16,739a
24	5,983	202	14,449	521	3,580
24	8,656	205	12,868	523	13,722
25	5,990	207	10,833	529	14,330
25	7,506	208	2,463	532	15,360
27	4,170	210	3,547	533	1,059
27	8,315	216	2,945	536	10,587
27	9,974	218	13,246	540	15,320
28	13,813	219	12,870	543	4,657
29	433	221	13,970	547	11,014
30	5,849a	224	13,561	550	2,079
31	13,517	228	5,665	554	15,620
31	15,384	231	10,835	554	17,319
33	2,938	233	17,281	559	8,781
40	2,939	234	2,225	571	11,656
43	4,296	237	12,177	573	13,005
51	11,739	239	12,125	577	10,277
52	13,012	240	8,832	585	3,868
53	1,448	242	12,755	585	3,674
54	16,074	247	6,272	588	6,590
58	8,277	249	5,420	589	2,261
59	3,268	253	6,541	593	2,682
63	9,523	254	1,123	598	3,780
65	15,467	254	17,419	600	18,186
71	2,586	255	7,497	602	5,494
74	434	258	15,741	605	9,533
75	6,755	268	5,426	608	7,522
77	13,555	274	4,824	613	5,948
78	13,013	290	1,410	623	2,218
82	16,332	296	10,375	627	13,068
89	16,041	327	5,626	631	14,228
90	15,171	331	8,581	633	5,268
91	2,923	345	13,027	635	2,910
94	14,431	348	1,089	637	2,827
95	10,923	373	15,807	638	2,845
100	4,538	383	9,631	642	13,598
101	2,203	398	10,896	650	2,937
103	11,250	400	4,571	653	15,006
109	17,830	405	9,964	655	8,496
111	12,405	410	15,461	663	2,009
121	3,497	418	14,537	672	13,103
125	3,161	422	14,454	678	6,888
125	10,831	426	15,711	683	12,012
126	11,249	430	16,323	686	14,869
168	11,251	431	4,366	698	11,906
172	12,584	444	14,782	704	1,724

CALIFORNIA LAW JOURNAL.

Vol. 1, Cal. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
195	14,937	254	15,054	341	15,855
196	14,578	275	16,673	345	16,029
199	14,938	283	4,105	358	16,181a
217	15,837	298	16,190	361	16,182
229	14,466	315	15,140	363	16,183
233	15,183	325	16,016	372	15,362
235	16,015	328	16,354	387	15,363
252	16,419				

CALIFORNIA LAW JOURNAL AND LITERARY REVIEW.

Cal. Law J. & Lit. Rev.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
41	16,030	71	14,769	126	16,633
55	14,435	78	16,044	137	14,750
56	14,749	106	15,500		

CALIFORNIA REPORTS.

Vol. 42, Cal.

Page.	F. C. No.
529	6,776

CALL'S VIRGINIA REPORTS.

Vol. 6, Call.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
241	12,736	271	959	308	5,245
245	15,834	279	13,719		

CAROLINA LAW REPOSITORY.

Vol. 1, Car. Law Repos.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
34	9,631	60	16,081	209	4,571
53	10,896	190	6,675	346	14,829
55	12,808	204	660		

Vol. 2, Car. Law Repos.

Page.	F. C. No.
47	6,478
186	9,964
192	14,420
329	9,372

CARPENTER'S MINING CODE.

Carp. Min. Code.

Page.	F. C. No.
65	13,414
71	13,723
73	8,158

CENTRAL LAW JOURNAL.

Vol. 1, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	15,908	241	8,802	436	889
19	9,051	257	4,809	440	12,864
33	10,592	263	4,967	451	9,994
35	7,697	265	9,665	453	9,376
46	7,945	267	14,055	454	7,004
53	2,578	278	7,664	469	9,286
69	14,117	288	5,950	470	12,003
80	11,532	290	11,370	491	5,206
83	12,919	301	17,924	506	7,781
101	15,633	312	17,197	507	5,825
106	13,379	315	4,668	507	10,983
106	14,380	316	3,728	516	102
125	9,111	320	3,728	529	8,240
127	13,643	326	5,714	531	6,192
137	8,649	328	12,430	531	17,054
139	9,795	340	7,006	543	166
140	7,631	341	2,594	554	9,103
144	18,214	362	10,395	555	13,800
149	8,443	363	386	556	1,044
155	11,253	364	11,525	566	16,600
164	8,688	364 (note)	12,062	570	17,046
177	6,847	365 (note)	13,869	580	3,169
178	5,710	365	13,870	581	14,377
189	5,653	371	11,120	583	12,061
191	14,797	404	5,995	584	4,799
205	15,019	418	732	595	13,599
206	96	425	15,582	597	3,121
216	13,909	428	15,786	607	1,178
232	8,976				

CENTRAL LAW JOURNAL—Cont'd.

Vol. 2, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	9,102	312	2,102	508	17,085
42	739	314	15,750	542	17,204
46	17,462	327	1,862	570	10,288
77	15,199	331	6,532	670	4,679
79	2,315	347	12,771	685	8,271
88	13,185	349	7,034	692	11,198
92	7,782	349	8,576	705	7,760
107	16,380	368	1,862	707	7,874
119	707	396	18,002	719	1,955
141	12,899	440	9,732	721	3,129
153	4,202	455	665	749	14,966
188	5,996	459	13,838	757	4,802
218	12,898	473	10,572	758	16,788
219	7,111	475	17,348	769	4,976
233	8,783	478	7,658	771	14,877
256	3,339	481	17,079	772	10,499
264	6,018	495	8,190	772	10,584
265	1,942	505	4,803	797	375
275	10,604	507	1,342	801	15,505
283	10,604			822	4,364

Vol. 3, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	14,547	305	3,119	557	17,365
12	7,596	306	10,845	559	10,668
13	9,439	321	488	561	13,964
41	6,160	333	272	569	12,804
56	9,679	336	14,688	574	8,031
78	6,925	351	18,084	591	1,574
82	8,573	352	4,690	608	1,007
95	15,686	354	362	628	3,973
100	15,685	356	1,954	635	8,742a
101	14,484	366	16,858	640	12,273
134	8,216	382	5,507	653	15,337
143	14,487	383	14,991	655	4,236
156	11,568	386	12,996	669	12,239
157	3,921	386	13,083	688	8,080
207	8,165	398	17,278	699	8,552
210	12,805	399	16,539	704	7,739
223	14,391	416	2,303	715	17,818
252	12,557	419	3,591	719	18,151
258	15,683	443	14,090	725	7,738
270	16,748	447	6,221	737	13,975
273	15,708	448	5,158	750	2,171
281	9,636	460	2,546	765	17,818
285	18,218	495	1,207	768	6,119
286	1,844	515	10,541	773	10,412
292	15,687	521	12,562	784	9,002
302	4,323	526	18,052	784	12,024
303	7,221	527	3,397	799	7,870
303	11,126	544	12,379	815	324

Vol. 4, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	1,761	225	17,853	413	8,675
16	131	228	14,134	414	1,872
29	12,519	237	3,341	441	14,881
58	10,345	247	7,829	463	13,449
72	4,336	249	4,880	468 (note)	3,546
103	270	255	15,660	534	13,861
125	12,599	262	12,663	535	13,783
127	2,390	270	1,185	536	13,783
174	15,506	282	10,603	557	12,784
198	3,468	323	14,210	558	1,371
199	325	345	4,321	560	3,173
211	1,436	390	12,794	585	14,402

Vol. 5, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
56	4,663	263	8,947	368	17,489
66	6,826	281	5,993	380	5,392
78	5,462	284	2,573	418	14,109
102	502	311	10,912	425	752
114	2,441	313	3,427	446	5,391
206	17,089	323	11,223	460	9,592
220	10,858	325	8,506	465	5,352
241	2,204	328	10,711	467	9,597
258	4,664	347	2,743	482	14,168
260	4,000	351	11,069	486	17,545
260	11,224	364	12,380	527	17,164

Vol. 6, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	12,214	147	12,315	387	104
28	9,897	151	13,886	406	13,451
84	13,234	188	10,338	409	1,663
106	10,038	265	13,439	446	6,785
109	11,068	305	4,904	457	3,989
124	7,393	345	4,912		

CENTRAL LAW JOURNAL—Cont'd.

Vol. 7, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
51	16,688	227	5,068	349	13,802
84	13,234	249	8,289	353	17,432
89	7,457	269	8,215	365	4,792
130	15,472	287	8,320	405	8,219
146	5,914	308	6,198	409	4,566
167	8,575	311	9,802	430	4,934
170	4,810	334	4,676	446	3,274

Vol. 8, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
68	4,876	188	17,966	358	5,276
86	13,346	191	13,879	393	6,012
109	17,903	227	9,294	417	17,326
147	2,414	272	1,445	445	6,297
185	3,669	314	12,149	453	16,137
186	796	333	17,852		

Vol. 9, Cent. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	4,053	111	169	208	3,478
46	11,588	129	14,844	285	11,018
48	6,786	151	4,134	286	5,155
66	2,309	206	5,754	425	8,877
91	12,235				

Vol. 10, Cent. Law J.

Page.	F. C. No.
7	14,644
47	5,767
113	12,881

Vol. 12, Cent. Law J.

Page.	F. C. No.
193	15,404a

Vol. 22, Cent. Law J.

Page.	F. C. No.
560	4,259a

CHASE'S TRIAL (IMPEACHMENT) BY THE UNITED STATES SENATE.

Chase's Trial.

Page.	F. C. No.
65 (App.)	14,709

CHASE'S UNITED STATES CIRCUIT COURT DECISIONS.

Chase.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,621a	268	7,142	443	8,897
125	9,229	276	9,674	454	8,415
136	12,812	286	5,539	460	266
145	12,578	288	9,675	466	6,840
150	6,477	295	160	468	5,259
157	14,247	305	17,996	475	2,466
162	8,604	312	6,293	502	14,293
167	7,722	316	1,404	521	15,817
222	9,760	349	11,668	527	8,504
224	1,690	364	5,815	531	3,848
227	18,117	427	6,796	535	354
259	12,661	430	10,996	540	17,567
263	18,248	432	800	546	3,395
267	12,800	435	10,974	551	4,570

CHICAGO LAW JOURNAL.

Vol. 1, Chi. Law J.

Page.	F. C. No.
524	4,801
599	5,769

Vol. 2, Chi. Law J.

Page.	F. C. No.
18	6,055

CHICAGO LEGAL NEWS.

Vol. 1, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,969	137	4,971	273	7,982
22	1,315	139	5,775	285	12,293
30	1,705	139	11,467	313	8,256
30	1,818	139	17,032	314	14,789
30	12,138	145	546	321	12,229
30	17,094	145	16,559	321	16,315
30	18,109	153	3,523	326	1,156
57	9,079	161	119	326	1,196
57	15,014	163	4,743	326	12,694
65	11,295	163	6,791	326	16,879
73	9,322	163	7,769	326	17,532
77	13,167	163	8,819	326	17,562
81	205	163	9,510	337	103
103	816	163	17,875	337	11,978
103	1,406	169	6,881	342	4,686
103	1,867	171	3,618	342	1,599
103	4,961	171	10,081a	342	4,459
103	5,813	177	6,951	345	12,729
103	8,932	185	741	345	13,936
103	12,054	185	16,990	349	1,914
107	40	186	12,113	353	4,084
107	1,918	193	17,794	353	6,823
107	4,628	195	1,594	355	3,884
107	11,581	195	12,002	361	3,405
107	13,167	201	5,973	361	8,775
107	13,727	202	1,043	361	10,047
107	18,106	202	3,009	363	12,450
113	2,377	209	11,551	363	12,451
113	2,800	210	4,716	370	3,713
121	15,589	210	8,026	370	8,188
123	3,957	210	9,515	377	1,887
123	5,774	210	10,210	377	4,877
123	8,042	210	16,983	389	4,328
123	8,391	211	1,598	393	4,474
123	8,574	225	4,121	401	1,752
123	10,175	245	7,777	409	1,980
123	12,984	245	9,095	409	14,529
123	14,124	245	13,888	417	3,505
129	254	261	675	427	15,437
129	9,911	261	12,445	449	11,097
129	15,172				

Vol. 2, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,249	201	9,136	325	5,298
9	6,473	218	1,869	333	5,501
9	12,420	234	11,824	367	5,868
17	12,651	236	15,159	373	3,272
34	486	241	4,326	373	5,148
49	10,254	249	6,659	381	4,110
49	17,388	257	2,457	385	1,053
50	9,627	265	4,044	385	5,288
57	13,007	277	12,677	385	6,275
73	5,676	285	694	385	13,276
90	15,733	285	11,509	385	14,921
97	9,652	293	2,403	385	15,991
113	8,979	297	11,932	385	16,095
121	1,420	301	3,050	385	17,623
121	14,345	301	18,079	393	8,838
131	15,189	304	7,668	393	8,837
137	7,550	309	231	397	8,017
139	5,092	310	7,001	397	11,690
139	15,189	313	4,045	398	12,517
148	2,370	313	17,314	405	7,211
157	13,990	317	10,272	405	7,273
161	17,838	317	16,273	413	29
186	12,461				

Vol. 3, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,087	169	9,052	321	9,605
10	12,513	177	4,330	329	12,415
17	8,408	177	12,610	329	16,957
25	15,948	180	7,081	330	7,817
26	1,404	185	2,011	330	13,620
33	11,803	187	16,388	337	14,271
41	17,172	201	2,669	338	16,842
50	6,811	209	5,293	341	6,178
73	13,636	217	13,525	345	3,787
77	13,308	218	11,200	345	15,460
81	16,292	225	10,927	353	1,494
85	7,593	233	2,746	353	9,711
97	6,660	233	5,093	353	17,617
106	13,835	233	8,937	355	16,842
113	15,141	242	7,604	369	14,374
113	15,759	243	8,069	370	4,281
123	6,894	245	1,083	377	3,276
125	7,636	249	3,571	378	1,169
130	4,878	253	7,711	394	9,178
130	15,153	258	12,733	401	5,951
137	7,810	260	15,282	402	5,933
141	10,315	297	1,922	402	9,018
145	9,696	297	4,527	409	12,620
153	9,098	306	10,649	410	3,151
156	8,167	313	9,983		

CHICAGO LEGAL NEWS—Cont'd.

Vol. 4, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,150	153	10,616	289	12,200
5	6,883	156	4,933	297	10,110
7	8,210	156	8,260	299	12,816
9	9,332	156 (note)	17,392	309	8,218
41	11,801	169	1,903	311	14,098
50	14,814	175	13,309	325	1,603
66	7,445	183	1,800	325	6,662
73	9,441	187	2,470	341	14,979
75	8,466	201	9,921	357	4,530
75	9,099	209	4,260	359	606
81	2,742	210	437	361	14,262
89	5,307	210	3,992	405	17,902
105	15,478	218	3,769	406	8,695
113	16,665	241	9,101	421	8,644
121	7,594	245	15,958	452	14,590
130	13,115	281	7,806	461	7,968
137	12,307	281	7,992	461	9,119
139	16,168	284	4,066	473	5,533
145	13,519	284	6,535	485	5,533
153	7,996	284	12,435	486	10,416

Vol. 5, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	4,651	206	6,137	462	2,284
1	8,798	208	15,306	462	14,459
13	2,967	217	7,824	465	11,554
13	11,853	217	11,531	469	17,590
25	7,510	230	8,467	470	7,793
37	7,712	242	16,801	471	15,393
49	7,007	243	10,264	472	10,991
73	120	265	4,796	477	10,863
74	17,890	271	9,657	485	16,799
75	2,567	289	6,504	493	5,739
88	6,116	290	8,014	493	14,459
97	3,740	302	14,610	501	15,187
97	6,547	303	8,589	511	2,878
97	11,707	313	10,336	525	14,837
109	10,469	314	1,170	526	13,461
109	12,649	314	4,079	526	14,381
110	12,121	326	693	527	5,153
124	5,787	337	5,272	528	8,220
125	5,488	351	9,457	528	13,304
137	15,501	352	16,268	535	1,030
146	2,245	363	15,988	542	10,381
146	2,720a	373	5,090	549	10,380
149	9,038	374	11,296	549	17,780
158	13,092	385	11,705	550	6,587
181	16,876	423	4,313	557	10,292
193	4,753	423	6,292	557	10,679
196	5,080	434	10,861	565	9,068
197	1,351	445	10,864	565	10,417
205	17,194	461	3,061		

Vol. 6, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	6,536	192	9,424	316	7,006
27	6,952	197	13,709	328	12,427
27	17,796	197	18,178	333	11,138
33	5,845	199	8,854	334	13,788
33	12,986	224	15,346	338	13,357
41	680	224	15,949	341	386
49	14,272	229	2,590	341	11,525
61	3,689	239	12,929	342	12,062
69	12,252	248	9,478	342	14,383
70	15,757	248	12,821	344	3,062
86	13,072	256	1,687	349	335
94	4,789	256	6,252	355	14,376
101	3,983	264	7,488	358	632
101	7,727	268	6,101	358	6,321
102	3,922	271	7,444	359	8,976
110	2,185	271	9,400	366	2,172
110	9,839	279	6,085	366	17,207
118	9,051	280	990	397	12,640
125	5,488	283	8,283	398	6,409
126	9,027	284	5,710	398	7,004
134	7,719	290	1,814	405	2,876
142	7,879	291	11,435	407	1,648
144	3,143	296	146	413	3,077
151	11,389	304	6,991	413	8,776
157	8,226	304	16,732	413	17,492
157	8,227	306	5,938	414	5,046
181	11,247	307	5,950	491	597
186	12,000	310	3,728		

CHICAGO LEGAL NEWS—Cont'd.

Vol. 7, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,583	130	3,829	276	10,084
9	613	137	9,330	282	2,396
9	10,983	155	8,543	282	16,601
10	1,932	162	6,843	291	8,224
17	102	162	7,452	298	16,742
18	8,240	162	12,665	306	1,862
19	13,921	173	10,299	313	2,496
25	5,151	175	5,414	321	14,935
26	16,745	178	12,253	331	10,346
26	7,781	186	2,606	347	10,572
26	16,745	187	13,891	347	15,417
26	17,054	195	12,254	363	8,011
33	14,401	229	7,300	363	8,715
41	7,710	230	792	371	2,549
41	14,244	231	505	371	10,632
42	5,134	231	8,783	379	5,407
42	12,429	231	12,898	387	2,707
49	17,700	241	10,604	387	7,620
57	2,665	242	18,173	387	18,000
62	11,776	243	1,210	395	4,699
65	6,720	251	8,707	395	5,271
76	11,635	258	14,615	403	17,204
79	2,556	259	12,244	411	8,018
99	504	260	2,915	411	9,528
116	8,335	266	2,192	419	6,400
116	15,247	268	10,762	419	10,288
116	15,394	275	17,599	420	1,462
126	3,078				

Vol. 8, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,361	123	14,788	280	18,119
9	16,165	134	6,544	284	14,062
10	9,357	134	17,512	290	1,570
11	14,424	140	13,242	290	1,856
17	3,566	143	10,560	291	14,672
17	9,524	147	6,925	307	1,645
17	17,180	155	2,901	313	5,007
25	5,861	164	3,062	313	16,631
25	9,794	165	3,480	314	14,961
26	12,497	169	9,636	315	12,996
26	14,603	192	2,147	322	1,854
33	13,196	194	1,050	322	4,950
41	5,005	195	17,580	323	14,019
41	11,198	202	2,104	329	12,689
41	17,921	210	12,527	330	3,060
49	2,664	211	10,142	345	5,158
57	14,966	211	15,288	345	12,804
74	16,255	227	7,226	362	18,052
81	10,558	235	14,058	370	12,379
82	3,080	244	15,361	372	16,150
98	4,364	257	1,692	385	10,668
106	3,345	258	2,407	386	8,031
111	15,464	258	5,486	388	7,621
114	2,317	262	6,970	401	3,973
115	7,486	267	4,690	402	3,507
121	10,316	267	7,260	409	11,098
122	375	274	6,434	410	7,844

Vol. 9, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	5,166	161	12,599	322	11,268
18	8,650	165	6,023	322	2,368
18	9,034	174	12,826	323	10,636
19	13,934	175	5,800	324	8,903
20	15,337	175	17,928	329	13,783
26	11,527	183	6,322	330	14,430
33	8,483	186	1,436	337	3,974
33	13,303	191	744	345	7,307
34	9,526	191	1,981	346	151
40	8,778	191	5,334	346	18,051
48	4,531	201	1,138	362	5,255
50	4,151	217	16,987	363	2,441
50	7,847	218	15,027	369	502
65	3,244	225	2,077	370	5,668
65	16,989	234	14,609	372	17,301
73	17,106	253	6,418	377	1,080
84	2,171	254	3,242	377	5,171
84	12,024	255	5,873	377	10,554
92	12,541	255	16,898	377	12,926
92	17,758	256	15,222	381	4,780
94	7,840	270	9,695	385	1,746
99	17,264	271	17,917	385	9,021
106	4,336	272	3,020	385	13,191
108	9,097	280	10,011	393	12,605
115	11,712	291	3,173	394	4,544
124	7,354	300	8,009	394	5,802
124	10,634	300	11,139	395	9,121
132	324	303	1,091	401	7,800
134	10,569a	304	15,018	402	17,885
142	3,236	305	5,175	409	10,866
156	3,341	307	15,555	417	7,430
156	17,325	308	14,527	425	13,512
157	270	314	11,044	426	7,623
161	10,852	315	193	427	14,333
		321	10,570	427	14,805

CHICAGO LEGAL NEWS—Cont'd.

Vol. 10, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,746	84	1,485	252	12,243
1	4,017	86	12,992	258	7,223
1	8,435	99	17,643	260	6,424
4	5,988	100	14,308	268	9,979
9	8,426	107	4,041	269	9,980
10	10,912	108	5,154	269	12,230
11	4,040	113	17,105	275	11,770
11	8,102	122	17,104	276	10,486
18	15,688	131	5,994	278	1,481
18	17,489	131	13,812	296	14,286
22	638	132	8,538	299	7,648
22	6,078	139	1,334	309	4,904
22	6,753	140	15,219	315	4,964
22	8,258	147	2,551	323	4,276
22	15,274	149	9,978	323	4,992
25	202	156	10,038	340	5,412
26	12,944	180	9,450	347	10,148
27	17,317	204	3,404	348	18,078
33	13,565	204	12,308	353	1,539
41	752	210	10,624	353	1,770
41	12,543	211	2,852	355	13,234
41	15,673	213	1,140	356	4,213
49	733	216	4,839	364	12,195
49	13,091	219	5,956	371	9,207
50	15,266	220	11,923	388	4,810
58	10,555	227	7,959	388	5,632
60	15,570	228	11,400	390	5,068
60	15,904	229	11,402	395	4,650
68	17,265	229	16,688	395	13,566
73	8,701	230	7,549	403	60
83	17,545	240	7,925	404	8,575

Vol. 11, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	5,359	152	8,154	353	12,188
9	10,164	167	16,213	353	17,851
9	15,928	176	9,340	354	15,581
17	7,733	189	5,118	367	10,594
18	16,186	190	441	367	12,511
25	9,029	191	16,382	367	13,659
33	2,199	200	3,669	375	777
41	9,395	207	17,852	375	14,260
49	3,274	223	8,325	376	7,079
49	4,676	237	7,005	376	16,166
57	10,862	246	3,223	377	17,962
58	5,624	249	17,711	383	734
58	6,198	256	7,026	383	7,794
65	17,362	256	16,076	383	12,423
66	8,219	273	14,093	384	12,250
74	4,396	276	1,234	384	13,378
82	5,889	281	12,424	391	1,141
82	11,455	289	5,534	391	14,785
84	5,172	297	8,082	392	17,137
98	4,466	304	835	399	1,016
114	5,060	314	9,530	400	5,295
115	12,830	320	15,358	407	13,135
138	2,020	327	1,864	407	17,491
138	17,903	328	15,420	408	17,530
140	15,804	336	15,289	415	12,709
141	6,747	344	234	415	12,710
151	10,001	344	14,853		

Vol. 12, Chi. Leg. News.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,329	65	4,665	130	1,467
1	11,804	65	17,836	133	14,645
9	5,155	73	12,237	138	15,421
17	13,774	75	17,651	144	11,444
25	6,810	82	17,212	151	7,009
41	4,494	89	11,112	152	8,032
49	12,437	112	2,168	279	6,803
50	3,918	112	4,322	421	7,801
65	1,372	130	1,179		

Vol. 13, Chi. Leg. News.

Page.	F. C. No.
59	12,902

Vol. 14, Chi. Leg. News.

Page.	F. C. No.
297	3,696

CHITTY'S CRIMINAL LAW.

Vol. 1, Chit. Crim. Law.

Page.	F. C. No.
770 (note)	15,638

CINCINNATI LAW BULLETIN.

Vol. 1, Cin. Law Bul.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	14,438	52	14,487	235	13,934
21	6,322	58	14,391	246	8,650
27	15,288	69	15,868	258	11,527
29	3,062	87	10,559	266	7,847
31	3,356	107	15,683	276	9,560
36	15,726	123	1,856	282	8,483
37	4,064	123	7,221	346	10,283
37	17,736	131	1,645	350	3,397
37	17,972	165	1,207	357	6,119
43	2,104	178	16,858	358	1,761
44	1,050	198	18,084	367	10,634
45	1,034	203	362	371	15,430
45	8,217	206	4,265	373	10,569a
45	1,026	210	13,964	374	7,412
51	2,103	224	10,668		

Vol. 2, Cin. Law Bul.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	2,545	152	9,326	243	13,025
27	16,674	153	5,277	244	5,392
38	5,334	154	7,153	257	12,181
39	16,898	157	7,153	263	15,570
46	4,739	189	18,051	263	15,904
47	16,350	190	9,021	268	5,391
56	12,097	199	7,800	268	15,570
60	4,880	203	9,121	269	15,904
70	6,107	212	17,885	271	2,584
71	2,077	214	7,623	276	2,306
71	6,901	217	7,430	294	4,417
78	13,733	218	2,901	301	14,308
84	10,328	220	14,805	301	17,643
108	3,173	223	12,605	304	17,925a
119	12,990	225	10,160	305	5,154
133	17,084	226	2,584	307	15,048
139	1,653	232	8,102	329	1,334
140	10,570	237	2,573	329	4,649
146	10,021	238	2,382	330	12,214
151	11,268				

Vol. 3, Cin. Law Bul.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
30	16,069	500	13,377	809	9,029
42	9,754	533	4,213	919	6,198
49	17,643	593	9,431	925	11,146
59	16,759	594	12,157	942	5,939
73	3,082	598	5,939	967	9,552
141	5,374	625	12,195	988	11,455
151	9,561	643	13,566	1003	13,234
211	9,453	668	5,068	1029	12,468
212	11,402	680	10,164	1054	9,940
321	12,243	714	13,628	1066	6,832
456	9,495	794	5,359	1126	16,382
471	8,659				

Vol. 4, Cin. Law Bul.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
42	17,966	361	15,483	585	5,276
49	14,809	385	11,100	620	777
136	3,669	391	9,514	624	1,141
170	7,005	433	16,767	655	17,491
172	9,670	448	1,864	758	5,155
196	10,339	545	6,546	904	2,719
313	12,424	553	10,594	922	12,237
334	1,234	569	14,260	965	12,802
350	234	574	734	1003	17,175

Vol. 5, Cin. Law Bul.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
56	2,114	219	7,701a	634	9,580a
193	2,337b	515	4,811	637	9,898a

Vol. 7, Cin. Law Bul.

Page.	F. C. No.
93	8,730b
219	13,323a

CITY HALL RECORDER.

Vol. 2, City H. Rec.

Page.	F. C. No.
131	15,461

Vol. 4, City H. Rec.

Page.	F. C. No.
161	14,537

Vol. 5, City H. Rec.

Page.	F. C. No.
120	14,454
122	15,711

CLIFFORD'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Cliff.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,473	230	2,949	425	3,817
5	16,707	237	717	439	14,189
28	1,399	247	10,752	446	603
43	3,481	254	10,812	453	8,505
55	11,760	269	2,823	463	1,513
63	10,690	282	3,430	474	2,094
68	12,589	288	1,516	481	2,347
75	765	300	4,277	493	18,196
85	898	308	2,161	501	3,754
93	17,049	317	16,266	509	2,162
98	15,382	322	4,301	511	5,913
125	9,405	331	11,275	519	892
135	3,980	348	5,557	524	17,630
145	10,262	358	6,155	532	16,003
150	805	367	7,186	538	1,820
158	4,970	370	12,565	545	2,831
186	5,763	383	13,743	565	17,157
204	1,058	388	12,752	580	16,571
210	55	396	12,266	592	2,292
219	10,306	404	338	633	2,430
221	3,410	420	766		

Vol. 2, Cliff.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,417	266	6,463	469	8,515
4	7,772	270	15,668	494	686
18	11,150	287	8,344	500	11,903
29	18,169	295	15,447	507	8,653
40	14,067	304	14,397	512	14,577
57	16,144	311	8,514	528	2,288
70	10,746	325	14,480	537	3,064
82	13,275	340	16,666	538	8,497
85	13,685	351	5,583	548	2,223
89	17,867	379	4,923	551	3,442
108	7,409	394	3,966	555	3,810
130	6,833	435	113	569	2,173
137	718	440	4,838	574	8,442
157	840	449	17,869	584	17,373
169	15,600	454	5,160	590	2,198
191	9,963	458	15,448	597	735
203	12,839	462	5,219	601	16,647
224	17,535	465	14,163	637	7,410
245	6,778				

Vol. 3, Cliff.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,055	221	15,318	429	7,885
28	16,056	239	7,516	439	12,596
71	5,631	244	17,731	456	7,765
81	10,238	251	2,243	462	4,209
88	10,239	261	16,580	472	12,432
91	4,710	271	4,487	484	17,009
99	644	277	12,306	494	5,755
114	3,567	284	13,466	507	4,446
117	8,045	308	16,306	516	377
123	3,657	318	6,301	523	336
134	9,008	328	6,299	537	10,784
146	14,398	332	10,155	552	12,762
155	17,065	339	13,684	563	7,495
169	11,959	356	2,397	595	10,241
184	2,691	371	10,155	608	13,146
191	2,922	371	8,400	614	7,177
201	9,448	376	3,675	622	7,178
205	9,449	395	11,795	636	13,375
211	14,887	408	5,591	639	14,399
215	1,101	416	10,922		

Vol. 4, Cliff.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,136	212	13,596	388	13,495
88	5,671	228	17,401	393	2,999
96	6,052	237	9,607	397	14,227
101	1,498	254	10,082	404	12,313
107	15,856	260	5,455	408	1,794
113	5,216	265	13,394	417	13,407
122	8,053	272	7,182	424	7,653
128	11,786	291	3,963	447	5,445
132	3,906	294	6,273	461	9,026
138	9,470	301	15,935	489	4,718
147	16,223	306	2,628	495	319
156	15,728	312	8,803	508	4,934
166	683	321	10,990	549	12,552
173	6,790	323	1,719	568	13,321
178	6,834	343	13,183	575	3,705
185	17,981	348	13,396	582	2,159
186	5,041	351	1,007	593	13,482
189	12.021	366	1,775	598	12,715
192	6,300	375	1,776	611	2,211
200	6,302	383	11,122	618	15,369
203	2,283				

CODDINGTON'S DIGEST OF THE LAW OF TRADE-MARKS.

Codd. Trade-Marks.

Page.	F. C. No.
50	17,963
131	5,221
341	8,570

CODE REPORTER.

Vol. 1, Code Rep.

Page.	F. C. No.
30	14,307
91	2,081
128	16,246

CONNECTICUT REPORTS.

Vol. 4, Conn.

Page.	F. C. No.
323	934
333	931

Vol. 16, Conn.

Page.	F. C. No.
558 (note)	4,198

Vol. 32, Conn.

Page.	F. C. No.
566	10,780

Vol. 34, Conn.

Page.	F. C. No.
552	12,622
554	4,873
561	10,363
574	13,182

Vol. 36, Conn.

Page.	F. C. No.
543	12,651
558	5,012
578	1,233

Vol. 43, Conn.

Page.	F. C. No.
569	17,725
576	18,297
596	11,593

Vol. 44, Conn.

Page.	F. C. No.
548	14,010
558	13,837
564	9,438
569	3,658
582	3,633
587	9,479

Vol. 45, Conn.

Page.	F. C. No.
585	7,320
600	3,655

COOKE'S REPORTS, TENNESSEE.

Vol. 1, Cooke.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
110	12,584	137	12,869	346	13,970
113	11,397	142	1,182	350	13,561
115	13,766	143	14,449	353	5,665
119	10,838	146	12,868	356	10,835
126	10,832	148	10,833	359	17,281
127	16,949	149	2,463	360	2,225
128	6,354	152	3,547	363	12,177
130	1,092	159	2,945	365	12,125
133	10,834	160	13,246	366	8,832
134	4,025	345	12,870	369	12,755
136	9,276				

COX'S AMERICAN TRADE-MARK CASES.

Cox, Amer. Trade-Mark Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	13,784	82	2,946	154	6,310
32	13,785	132	2,947	166	17,133
67	4,996				

COX'S ENGLISH CRIMINAL CASES.

Vol. 10, Cox, Crim. Cas.

Page.	F. C. No.
626	6,369

COX'S MANUAL OF TRADE-MARK CASES.

Cox, Manual Trade-Mark Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	13,784	206	5,221	282	4,786
41	13,784	207	6,714	285	13,099
44	13,785	210	9,783	301	6,107
48	4,996	220	1,474	311	7,826
51	12,553	220	9,845	313	8,099
52	2,946	225	13,097	316	12,576
57	7,437	225	13,098	337	1,475
60	2,947	231	10,603	346	5,110
76	6,310	241	8,570	351	4,213
78	17,133	242	10,605	359	9,026
132	13,779	250	3,129	360	8,219
180	10,144	264	17,963	382	11,441
187	3,764	273	5,109	387	13,780
206	206	276	2,941	387	17,711

CRABBE'S UNITED STATES DISTRICT COURT REPORTS.

Crabbe.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	363	239	7,380	449	12,446
19	6,868	243	17,709	452	4,033
22	11,540	265	16,400	454	13,535
50	1,416	271	5,014	456	1,830
52	6,154	277	2,962	466	6,712
54	2,014	278	12,439	469	11,344
60	15,062	281	3,245	479	14,165
63	12,699	283	4,929	482	12,815
64	5,804	296	4,329	493	11,566
66	16,846	307	15,359	496	6,185
70	9,825	307	15,605	499	14,815
135	15,440	324	14,588	516	5,258
178	5,086	326	7,881	525	13,594
179	8,057	335	2,902	529	609
185	12,357	356	16,563	534	7,912
204	14,323	405	16,877	544	5,079
210	13,660	417	1,335	551	616
216	4,745	420	3,289	558	15,129
218	13,070	422	17,584	563	14,678
223	6,134	426	1,640	580	4,297
226	7,215	434	6,642	584	14,801
236	5,385	440	2,976		

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Cranch, C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,964	36	12,179	55	15,180
2	13,648	36	14,682	56	13,021
3	9,762	36	14,683	56	16,285
3	10,068	37	6,380	57	10,072
4	1,911	38	2,343	57	11,348
4	9,017	38	10,488	58	10,235
4	11,813	39	1,737	58	15,233
5	63	39	5,167	60	222
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35	4,727	55	14,873	80	3,496
35	7,387	55	15,063	81	15,234

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1, Cranch, C. C.—Cont'd.

Page.	F. C. No.
81	16,613
82	15,302
82	16,959
83	16,123
83	16,960
84	3,337
84	15,695
85	2,031
85	3,532
85	7,849
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97	5,989
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104	17,012
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116	15,386
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123	16,771
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124	13,402
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132	15,504
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134	880
134	7,042
134	9,812
135	7,551
136	12,011
137	3,664
137	5,758
138	6,628
138	7,937

Page.	F. C. No.
139	442
139	5,015
139	10,452
140	12,076
140	15,674
141	13,403
141	15,842
142	16,972
143	5,429
145	11,240
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157	8,824
157	9,715
158	9,713
159	588
159	6,131
159	9,409
160	9,358
160	17,801
161	13,893
163	15,675
164	14,998
164	16,158
165	15,007
165	15,919
166	651
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166	11,836
167	848
167	6,669
167	11,542
168	855
170	8,247
170	15,824
171	17,906
171	17,982
173	3,641
173	8,742
174	3,838
174	16,370
174	16,708
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194	784
198	17,813
199	1,151
199	6,165
199	17,984
200	17,289
201	3,894
201	11,422
203	5,071
203	14,875
203	16,093
204	11,000
206	1,147
206	8,367
206	11,747
207	8,287
207	15,655
210	5,213

Page.	F. C. No.
210	14,657
211	11,929
212	9,889
212	12,208
213	9,830
213	10,448
214	17,799
215	16,019
218	583
219	4,024
219	11,662
219	12,378
221	867
233	8,481
234	2,453
234	5,344
235	7,362
236	14,531
237	251
237	15,490
237	16,293
238	3,306
238	13,110
238	18,162
239	9,542
241	8,657
242	12,935
243	168
243	10,788
244	11,682
244	15,101
244	15,591
245	2,091
245	9,826
245	15,602
246	12,472
246	12,654
247	1,732
247	11,360
248	1,033
249	771
250	3,601
250	6,691
251	1,753
251	17,013
253	2,152
253	9,410
254	13,605
254	14,222
255	16,231
255	17,848
257	7,388
260	7,913
261	16,970
262	845
262	17,913
263	7,973
263	8,193
264	8,526
264	17,379
265	3,285
266	4,794
267	2,527
267	13,508
267	13,947
268	14,502
268	15,763
269	13,999
269	16,530
276	2,148
278	15,808
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280	4,732
281	4,106
281	4,749
282	9,046
283	1,139
283	11,103
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285	8,736
285	9,045
286	3,718
286	16,971
287	3,652
288	6,079
288	11,811
290	7,926
291	3,439
292	4,612
293	7,976
294	186
294	239
294	11,423
295	485
295	13,960

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1, Cranch, C. C.—Cont'd.

Page.	F. C. No.
299	17,627
300	11,627
302	2,609
303	18,102
304	8,739
304	11,545
304	17,788
305	7,977
305	11,888
310	15,845
310	16,049
311	11,021
311	13,124
312	15,523
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312	16,645
313	5,670
313	14,023
314	13,834
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315	9,873
315	16,283
315	17,807
316	4,983
317	15,424
318	16,454
318	17,239
319	1,425
319	13,372
320	273
322	15,645
323	9,902
323	16,221
327	10,365
328	5,072
328	8,284
329	5,619
329	17,020
330	14,673
331	17,014
338	171
339	1,323
339	7,464
340	6,518
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340	8,361
341	9,758
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349	11,591
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351	18,009
352	10,828
357	10,716
357	11,399
359	4,231
360	8,326
361	8,028
361	8,624
361	18,060
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366	6,569
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372	7,440
372	8,871
372	9,387
372	11,118
373	14,622
373	14,697
373	15,625
387	8,212
388	12,173
389	11,445
392	340
392	3,709
393	17,103
394	8,176
394	17,789

Page.	F. C. No.
397	17,090
399	11,544
400	156
400	5,777
400	9,388
401	9,368
401	17,943
402	16,632
402	16,905
403	4,168
403	17,622
404	1,164
404	12,174
405	4,754
407	1,288
408	6,972
408	17,798
410	8,872
410	17,016
410	17,238
411	15,609
411	15,899
414	14,968
416	3,576
416	16,615
417	14,909
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418	11,794
418	17,910
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419	10,638
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422	8,595
422	14,698
423	8,833
424	8,830
424	13,267
425	10,825
427	5,869
428	17,021
429	17,484
430	1,017
432	18,153
433	11,148
433	17,820
434	1,840
435	8,200
436	10,639
437	3,181
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440	185
440	4,701
440	6,270
441	4,705
442	3,697
442	9,351
442	17,557
443	5,850
443	7,285
444	15,534
444	15,697
445	8,364
446	1,326
446	15,425
447	6,563
447	16,152
448	3,376
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451	17,485
452	17,821
452	18,163
455	7,509
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465	17,819
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473	8,623
473	12,548
474	13,173
474	14,982
475	4,750
475	16,325
476	8,875
477	8,204
477	11,617
477	17,815
479	3,140

Page.	F. C. No.
481	2,271
481	8,806
482	3,625
483	8,873
483	13,096
483	13,472
485	16,311
485	17,380
486	15,078
487	15,079
488	6,564
489	17,370
491	11,667
492	17,842
493	8,259
495	6,092
496	3,933
497	17,408
498	4,166
499	12,817
500	14,674
502	11,095
503	7,210
504	10,449
505	181
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510	14,999
510	15,375
511	16,728
512	17,843
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514	17,381
516	12,962
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551	747
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566	7,204
566	18,164
567	7,077
567	7,104
568	5,450
569	3,717
569	6,566
569	13,152
570	2,257
571	10,823
571	14,595
571	15,000
572	10,450
575	851
575	7,078
578	11,262
579	9,139
580	6,386
581	16,969
583	7,971
584	8,863
585	5,348
585	9,846
586	13,421
588	5,616

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1, Cranch, C. C.—Cont'd.

Page.	F. C. No.
589	8,203
592	5,232
592	14,835
593	15,663
604	813
605	15,749
606	11,829
607	814
607	16,532
608	8,245
608	17,822
609	2,458
610	6,019

Vol. 2, Cranch, C. C.

Page.	F. C. No.
1	14,542
2	1,114
2	13,910
3	11,503
3	11,504
4	17,478
5	856
6	13,150
6	16,909
7	17,779
8	9,140
9	2,515
9	12,108
11	514
11	15,989
12	6,396
12	7,914
13	182
13	1,354
13	16,191
14	17,282
15	946
15	12,740
16	1,074
16	10,070
16	10,176
17	3,177
17	17,546
18	1,684
18	9,903
19	5,121
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20	11,683
21	1,253
21	15,485
22	12,810
23	3,634
25	4,613
25	14,535
26	3,711
27	187
27	17,844
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30	14,816
31	7,213
31	16,896
32	7,378
32	11,165
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35	3,627
35	13,945
36	14,882
36	16,474
37	4,840
37	11,011
37	13,771
38	9,309
38	16,347
39	9,633
39	13,946
41	9,595
41	14,151
42	15,016
42	15,979
42	18,167
43	15,339
43	16,661
44	14,207
44	15,207
44	17,302
45	8,249
45	15,701
45	16,662
46	13,939
46	16,483
47	11,288
47	16,741
48	5,444
49	10,192
51	3,489
51	5,723
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52	8,641
53	9,596
54	5,451
56	1,916
57	3,146
57	5,449
58	2,476
58	5,442
59	1,836
60	16,072
60	17,719
64	15,830
65	3,942
65	15,328
66	1,426
66	10,232
66	10,687
66	16,006
67	1,198
67	13,940
67	17,276
68	8,334
68	16,772
70	9,800
70	14,791
71	10,836
72	9,569
73	6,736
73	11,810
73	16,779
75	2,184
75	14,699
76	14,339
76	14,786
78	12,311
80	3,147
81	3,506
82	17,371
83	10,717
86	2,150
86	6,389
92	14,969
92	17,034
93	7,898
93	14,340
94	14,988
95	10,230
95	14,676
96	17,505
96	17,507
97	5,464
98	16,034
98	17,722
99	2,516
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102	16,954
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111	2,229
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114	16,531
115	5,798
115	12,475
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117	7,162
117	16,042
118	8,691
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120	7,262
121	3,710
121	3,806
123	11,057
125	3,712
128	3,336
128	10,580
129	12,712
132	69
132	12,883
133	14,628
133	15,385
133	16,199
134	4,614
137	15,554
138	13,170
139	12,085
139	12,937
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141	3,049
141	16,124
143	11,828
144	8,127
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148	8,874
148	9,807
149	12,936
152	1,227
152	14,810
153	15,221
153	17,240
154	17,283
155	12,339
156	1,375
156	8,546
157	11,806
157	14,450
158	9,293
158	14,811
159	1,382
159	16,125
160	7,402
160	8,744
160	14,149
161	6,629
162	3,139
163	3,114
163	15,196
164	10,250
164	16,753
165	12,275
166	7,643
166	14,604
167	653
167	1,733
167	7,084
169	17,040
171	11,830
172	5,532
172	17,359
173	6,243
174	16,646
175	8,306
176	10,476
180	535
182	654
182	17,911
183	852
183	15,920
184	5,694
186	8,440
187	9,929
187	9,930
188	10,069
190	5,253
190	7,649
191	11,437
193	10,088
193	10,588
193	12,924
195	14,007
195	14,601
198	2,553
198	16,126
199	7,386
199	8,198
199	8,705
199	17,912
200	3,785
200	16,955
202	14,256

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Cranch, C. C.—Cont'd.

Page.	F. C. No.
202	14,593
203	12,539
203	13,770
203	17,073
204	14,361
205	5,182
205	12,759
205	12,786
207	7,498
207	13,969
208	2,790
208	3,656
208	7,791
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210	9,606
211	10,225
212	15,224
215	7,641
215	8,704
216	9,616
217	9,382
217	9,383
218	12,298
218	14,349
219	5,727
220	11,655
220	12,590
221	13,672
224	184
226	3,370
226	13,129
226	17,262
227	5,957
227	8,723
228	4,284
233	13,079
234	7,805
234	14,148
235	11,911
235	18,005
236	5,251
237	13,029
237	14,177
238	14,354
239	17,905
240	4,561
240	8,835
241	952
241	15,859
243	353
243	11,317
243	14,739
244	13,997
245	6,651
245	17,602
246	5,790
246	9,384
246	16,066
247	2,779
247	15,772
248	13,772
249	957
249	3,578
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251	16,411
252	15,544
252	17,471
253	2,026
254	3,266
258	11,864
259	6,763
259	15,623
259	16,866
260	1,363
260	8,935
261	4,128
262	9,927
263	11,849
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264	8,697
265	1,729
266	14,840
274	9,247
281	13,728
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287	1,837
287	14,261
289	954
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291	8,081
292	17,397
293	16,060
293	17,235
294	903
294	14,624
295	3,561
296	16,773
298	11,826
299	913
300	2,034
300	13,427
303	7,792
303	17,945
305	5,517
306	863
307	907
307	17,741
309	15,649
310	11,699
311	5,629
312	1,642
312	17,022
313	9,264
313	10,071
313	12,524
314	7,080
315	5,056
315	13,804
316	4,013
318	6,723
318	13,168
319	935
324	14,255
331	4,503
331	18,049
332	14,176
334	5,263
334	13,051
335	14,006
336	8,660
336	9,339
337	6,873
337	17,560
338	5,238
338	16,611
342	920
342	18,100
343	9,280
346	3,056
348	1,838
349	4,469
349	8,050
349	14,358
350	5,641
351	10,619
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356	1,651
358	14,720
361	904
363	183
363	10,447
364	5,895
364	16,163
365	6,958
366	15,263
367	9,306
368	937
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373	7,521
373	14,884
376	16,868
379	2,186
401	5,518
401	6,636
404	9,643
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405	14,543
406	8,926
407	1,480
407	5,107
407	17,751
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409	14,957
409	16,484
410	15,738
411	4,661
412	4,639
412	15,042
412	16,117
413	5,827
415	3,111
417	11,604
418	278
418	3,786
418	10,628
419	817
421	2,228
422	58
422	2,140
423	8,322
423	11,364
425	16,889
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427	2,548
427	11,845
429	7,608
429	10,234
430	2,299
431	12,963
431	13,485
432	13,896
433	7,954
434	13,769
438	16,710
439	14,729
439	16,154
440	5,302
441	11,700
441	14,651
442	13,554
444	2.539
444	18,161
446	12,760
446	14,723
447	11,751
449	11,986
451	11,984
451	11,985
452	572
452	3,228
453	18,150
454	3,365
457	7,900
458	3,649
458	17,827
459	3,755
459	13,133
460	8,818
462	11,844
462	15,585
463	13,754
464	844
464	3,394
465	9,928
466	932
466	3,988
467	10,188
469	14,726
470	1,376
471	4,660
473	5,224
474	6,798
477	16,641
478	18,202
481	13,031
485	198
486	15,836
488	846
499	7,214
500	8,323
501	3,837
501	15,764
502	2,839
505	7,972
507	9,386
507	15,751
508	15,406
509	5,105
510	872
514	11,620
515	3,602
516	870
517	1,834
518	11,030
518	14,594
520	15,255
521	9,920
522	10,629
523	8,934
524	2,220
524	10,529
525	774
525	1,751
526	10,226
527	3,936
528	8,782
528	16,210
529	878
529	9,775
530	900

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Cranch, C. C.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
530	12,537	579	520	651	13,061
534	12,655	581	3,926	657	1,041
535	7,472	582	10,231	659	8,305
538	948	585	17,892	667	14,355
539	767	590	11,946	669	9,269
541	5,743	612	1,311	670	7,651
542	17,233	614	4,656	673	17,714
543	4,387	615	13,436	675	15,251
544	670	615	14,503	676	1,685
547	3,188	618	12,862	676	3,278
550	4,730	620	8,692	677	3,429
550	5,225	620	14,802	677	9,957
551	1,316	622	9,573	678	4,388
552	6,558	623	793	678	7,385
552	16,408	625	3,312	680	16,629
553	10,451	625	18,170	681	6,653
553	16,159	626	8,962	682	769
556	17,376	627	10,809	684	4,223
560	10,811	628	10,844	684	10,808
561	9,766	629	14,350	685	953
561	11,019	631	873	685	10,193
564	16,894	632	17,241	687	11,832
566	11,748	633	6,976	687	14,360
567	16,193	634	8,285	693	12,967
568	9,531	636	9,407	695	14,359
569	10,513	637	11,823	696	910
570	871	637	12,656	699	7,950
571	8,332	639	9,541	701	7,949
574	864	639	11,615	703	10,227
575	879	640	13,560	703	10,914
576	7,895	640	14,711	704	881
577	8,964	645	13,067	707	17,791
578	10,630	646	10,800		

Vol. 3, Cranch, C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	775	146	7,807	291	4,994
2	9,067	147	9,312	291	6,956
3	4,059	167	8,745	292	875
3	9,900	168	6,303	292	17,503
4	1,249	169	10,807	292	17,909
5	12,187	172	17,956	293	882
5	13,980	173	911	293	16,475
6	230	173	926	294	5,144
6	8,711	174	16,194	294	7,396
7	5,791	176	1,554	295	940
8	7,730	176	6,609	295	8,129
46	912	178	5,161	296	1,110
47	971	178	16,260	298	8,761
48	5,516	179	15,344	299	8,965
50	3,203	180	14,596	312	10,515
51	9,373	181	12,965	319	6,200
52	7,758	182	8,642	323	10,615
55	13,055	183	11,831	324	8,128
55	17,685	192	2,514	325	6,265
56	15,131	199	2,904	328	12,703
61	16,169	205	14,451	330	930
62	17,893	206	5,016	331	12,401
64	5,932	211	11,728	335	9,331
64	8,816	212	11,671	335	14,013
65	5,146	212	14,001	341	2,164
65	16,711	213	943	343	9,960
66	4,049	214	11,763	343	13,132
66	16,327	216	883	344	11,616
67	13,534	216	7,263	346	1,347
68	7,952	217	3,807	347	4,654
70	4,993	218	14,356	347	8,918
77	17,236	227	1,842	348	13,022
81	7,671	228	919	353	868
81	15,295	230	2,615	353	2,858
81	16,910	233	5,241a	354	14,152
82	11,647	240	942	355	6,108
83	17,019	241	13,806	355	13,014
84	14,952	242	9,672	358	10,707
85	7,828	249	8,954	359	2,778
86	11,841	250	17,553	359	18,176
91	5,241	251	15,608	361	874
92	3,818	251	17,732	362	4,995
92	9,671	254	8,566	363	2,007
93	10,308	254	15,377	363	11,155
94	906	255	7,789	365	6,350
95	3,204	256	11,737	365	6,654
101	11,318	257	9,009	365	8,066
102	1,568	257	11,842	367	8,636
103	8,282	268	14,658	367	11,847
104	17,894	269	1,014	369	15,202
112	8,199	276	6,977	371	17,831
115	17,946	283	1,072	374	8,189
116	17,918	285	12,540	376	6,136
117	1,405	287	16,261	376	6,978
118	5,024	288	921	377	11,947
120	1,060	289	14,889	389	1,641
123	14,080	289	16,053	391	12,075
142	6,472	290	8,124	394	1,553
143	3,226	290	14,047	397	9,010

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 3, Cranch, C. C.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
403	9,248	594	2,442	650	5,865
411	8,130	594	5,892	650	12,083
414	866	595	7,708	650	13,558
416	8,389	597	17,631	651	17,117
420	6,283	598	2,651	653	17,234
420	16,109	599	2,649	654	10,813
423	14,740	611	2,238	654	13,087
424	2,384	618	16,201	655	12,358
424	9,016	620	16,202	656	15,381
424	11,056	628	1,644	662	13,962
425	6,591	629	3,307	663	876
425	11,183	630	2,319	663	9,076
428	17,023	631	9,013	666	1,161
432	862	635	6,061	666	1,282
432	6,899	638	12,297	672	1,317
432	16,412	639	8,735	681	1,042
434	9,773	645	15,380	681	15,252
435	7,790	646	14,178	682	6,284
435	15,529	647	1,317	684	14,221
437	6,979	647	12,523	698	14,056
439	12,652	648	9,245	698	1,228
440	4,655	649	849	699	9,284
441	16,649	649	6,126		

Vol. 4, Cranch, C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,113	170	213	333	14,659
1	15,477	170	4,275	333	14,924
2	13,284	171	14,705	334	16,416
3	3,112	171	5,415	334	16,546
4	9,349	172	7,860	335	15,566
11	13,484	173	15,550	335	16,485
12	7,146	174	17,995	336	15,479
13	1,496	176	5,343	337	9,411
15	1,825	180	7,953	338	15,499
17	11,492	184	6,650	338	16,436
18	1,162	185	7,443	340	1,369
19	584	186	16,038	341	6,225
21	14,362	187	9,192	341	16,391
37	3,517	187	18,158	342	13,386
38	869	188	15,050	342	16,642
39	17,755	189	12,287	343	17,699
68	2,645	190	15,218	347	7,702
68	10,984	191	5,877	349	6,876
70	1,040	191	15,875	349	13,385
71	5,004	193	2,646	350	3,348
71	13,895	194	10,249	350	10,280
72	6,344	197	8,177	351	11,972
75	2,653	199	6,133	352	17,228
81	908	200	3,156	368	1,582
83	15,279	201	8,746	371	17,263
84	649	201	11,846	372	15,853
85	2,647	203	15,107	372	16,712
86	947	205	3,227	400	5,681
86	8,693	206	8,434	401	9,246
90	2,629	229	15,283	401	15,545
90	4,267	231	2,449	423	4,862
91	5,347	232	17,163	423	15,671
96	173	235	7,375	427	14,655
97	17,018	238	3,773	429	6,551
98	7,927	238	13,674	431	2,604
98	14,471	247	13,673	438	5,870
99	12,873	250	14,126	441	11,206
100	17,024	251	8,942	444	15,220
101	8,593	252	2,246	445	941
102	10,382	253	4,537	446	13,904
103	17,226	253	10,810	446	15,586
104	11,727	255	7,147	448	3,698
104	15,661	261	15,398	449	11,873
104	15,773	270	15,052	450	1,738
105	15,065	271	16,650	451	9,574
107	6,509	290	15,876	454	11,157
107	10,139	291	2,652	457	3,371
107	14,970	292	12,657	457	7,803
114	3,935	293	3,206	458	10,494
116	9,313	293	13,028	458	17,229
118	15,474	294	1,000	461	10,495
121	510	295	6,649	462	7,698
123	2,650	297	5,002	463	7,752
124	10,578	298	3,944	464	15,615
124	13,101	299	15,057	465	14,264
130	1,348	301	16,094	465	15,075
134	610	303	15,486	466	8,241
134	12,789	304	5,962	467	15,616
135	9,335	304	15,656	468	15,617
136	853	309	16,057	469	15,646
139	902	309	16,058	470	1,958
142	2,850	311	14,428	470	15,618
143	13,011	312	9,767	470	15,857
150	7,796	312	15,565	471	6,520
151	15,901	313	14,549	472	15,619
160	16,237	314	11,225	473	6,343
161	3,790	323	4,659	475	1,049
167	2,239	330	4,658	475	4,055
169	4,212	332	1,250	476	14,452

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Cranch, C. C.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
477	2,001	577	2,305	668	8,696
477	8,244	577	15,454	670	5,499
478	15,765	578	3,603	670	13,042
479	8,856	579	1,833	671	16,405
479	15,739	579	14,621	673	15,622
483	15,453	579	15,863	674	15,546
484	16,760	580	9,243	675	15,086
488	15,240	582	11,634	681	15,838
489	12,137	592	10,496	682	15,547
499	18,177	592	15,520	682	16,433
500	13,998	593	16,267	683	14,885
503	5,388	594	13,423	693	9,042
506	14,803	595	830	695	1,283
507	15,039	601	16,018	696	2,663
508	14,660	603	14,894	696	9,128
509 (App.)	12,046	604	14,629	698	2,425
509	14,352	606	14,530	699	1,731
514	15,576	606	14,925	699	6,326
517	14,892	607	14,661	700	10,236
518	15,577	608	15,348	701	7,047
527	4,054	613	14,880	702	2,183
527	5,793	616	16,364	703	15,568
527	8,747	617	15,561	704	15,471
528	2,596	618	16,290	707	772
531	1,940	619	3,904	707	14,859
531	5,977	623	8,471	709	5,818
532	17,109	623	16,353	710	6,120
533	915	624	925	710	13,040
533	8,678	626	3,842	711	6,768
534	18,080	627	951	712	936
537	8,567	629	16,328	715	12,724
539	15,173	641	4,735	719	15,767
540	13,782	643	8,194	721	15,666
541	11,487	644	15,367	722	5,953
550	15,236	645	15,349	726	16,001
552	15,766	658	14,714	727	16,330
572	5,628	658	15,106	728	2,327
572	8,376	659	2,644	729	5,981
573	15,699	659	16,329	731	1,824
574	15,237	664	14,556	731	16,437
576	10,228	666	7,990	732	14,741
576	14,922	667	3,891		

Vol. 5, Cranch, C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,131	310	1,157	461	5,283
13	2,404	311	15,074	462	17,072
23	11,817	312	617	463	5,113
35	16,316	314	854	464	13,827
35	16,667	315	12,934	465	9,237
36	6,266	316	8,931	467	13,063
37	16,092	317	13,798	469	6,353
38	16,174	319	922	470	5,063
38	16,623	328	3,892	470	12,376
38	16,675	338	11,778	474	8,607
62	16,713	343	6,630	484	6,496
71	1,839	345	11,696	484	16,331
73	16,676	347	14,569	485	933
87	15,354	348	16,155	485	12,300
93	13,963	349	4,206	485	13,003
95	15,081	367	16,308	486	1,931
96	4,012	368	16,678	492	17,457
102	17,540	371	15,895	496	16,899
112	14,734	376	11,367	498	11,886
113	14,856	378	14,557	498	17,231
114	6,501	378	16,167	500	17,225
115	15,323	381	10,635	502	3,722
116	16,677	381	17,230	503	6,046
120	17,589	383	11,020	504	4,662
123	13,587	385	15,518	505	6,655
123	17,539	390	15,768	506	2,187
124	5,020	390	16,458	507	3,265
125	11,988	391	15,672	507	10,706
127	16,867	392	16,022	508	5,345
154	11,316	393	13,333	509	2,654
157	17,224	397	9,244	509	4,492
162	4,935	398	1,255	512	7,284
163	12,872	399	4,915	513	14,353
163	15,517	400	16,714	514	2,452
278	3,956	401	17,541	515	13,049
283	7,382	403	847	515	18,157
283	9,780	403	1,008	517	220
285	12,658	405	3,117	518	901
291	10,135	409	3,205	523	6,498
293	1,778	409	9,534	524	3,484
294	938	412	14,560	526	18,126
297	1,782	434	7,420	530	17,542
298	1,784	434	13,912	531	8,246
302	18,053	435	5,880	533	5,112
303	9,746	439	4,733	535	9,687
304	14,841	444	5,817	536	13,903
306	9,093	444	17,368	537	9,092
308	1,723	445	9,707	539	12,653
309	15,411	457	16,679	542	509
309	17,421	461	1,835	543	9,568

CRANCH'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 5, Cranch, C. C.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
546	8,377	603	4,734	644	12,871
548	8,729	605	11,863	646	2,139
549	10,843	607	3,229	647	7,499
550	8,163	610	1,999	655	6,347
551	10,372	611	4,432	656	10,373
552	7,704	611	17,660	658	9,689
553	10,240	615	1,774	663	5,662
554	1,972	617	13,588	666	5,493
559	16,953	619	16,715	667	5,028
561	5,234	620	14,567	669	1,251
562	15,087	622	14,926	669	2,780
563	13,024	623	12,998	671	7,951
569	9,355	626	10,189	672	1,841
570	3,635	632	10,190	674	573
571	17,108	637	11,874	674	7,251
573	13,387	639	17,082	677	8,792
602	10,806	643	2,648		

CRANCH'S PATENT DECISIONS.

Cranch, Pat. Dec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
89	7,687	116	13,047	132	6,309
96	6,309	121	2,929	132	11,002
103	552	125	17,183	139	608
109	553	128	3,477	143	7,209
112	11,259	130	11,001		

CRANCH'S UNITED STATES SUPREME COURT REPORTS.

(See United States Supreme Court Reports.)

CRIMINAL LAW MAGAZINE.

Vol. 1, Crim. Law Mag.

Page.	F. C. No.
472	6,803

CURTIS' UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Curt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,679	206	4,814	384	2,433
15	2,036	223	2,958	390	2,437
23	15,815	230	2,436	395	114
63	17,671	239	17,195	401	6,993
69	7,528	244	13,177	404	1,005
87	86	250	11,780	413	7,933
90	11,556	253	13,039	419	17,146
93	13,506	260	2,264	433	15,754
100	2,262	266	4,709	434	1,025
104	17,320	276	14,766	437	2,450
114	10,294	279	4,978	439	17,672
122	237	294	13,677	452	10,793
130	10,124	297	2,863	457	9,278
136	6,240	306	3,822	464	10,305
148	2,122	311	5,764	471	6,445
157	13,437	340	409	479	13,159
168	1,370	353	6,365	494	17,561
178	8,988	364	15,157	497	6,606
186	11,184	369	16,147	501	14,910
193	6,589	376	17,749	504	6,201
201	13,507			509	18,249

Vol. 2, Curt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,781	98	3,380	200	13,395
6	12,206	102	9,356	202	9,763
8	115	105	9,288	212	12,421
14	10,691	119	17,452	216	2,154
21	11,058	126	11	225	15,906
28	9,997	141	17,494	229	6,241
41	16,208	147	224	231	17,198
49	17,456	150	13,606	236	15,214
59	13,572	153	16,409	239	7,934
69	2,424	171	5,768	241	16,314
72	1,175	178	3,353	244	6,597
79	7,669	187	5,766	250	5,212
87	2,847	190	12,209	256	9,546
94	2,513	194	14,836	259	1,402
97	2,003	195	13,160	264	9,403

CURTIS' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Curt.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
265	16,067	416	11,472	506	2,909
271	2,714	421	7,762	524	14,372
277	10,498	426	5,123	548	18,091
301	13,149	427	8,085	553	12,365
306	9,486	436	16,450	559	8,627
307	11,284	439	2,864	562	2,977
317	4,497	446	14,467	567	6,683
322	5,487	452	4,890	571	7,897
340	12,364	454	13,799	579	12,210
350	7,014	465	3,416	582	17,677
363	2,879	475	7,857	586	2,232
371	2,004	480	12,282	592	6,887
377	10,667	485	13,141	608	13,399
382	13,573	488	11,436	610	12,422
386	18,113	491	5,083	617	14,911
404	18,180	499	12,077	630	18,269
414	10,503	502	13,455	637	18,250.

CUSHMAN'S MISSISSIPPI REPORTS.

Vol. 6, Cushm.

Page.	F. C. No.
447	13,295

DALLAS' UNITED STATES SUPREME COURT REPORTS.

(See United States Supreme Court Reports.)

DANE'S ABRIDGMENT OF AMERICAN LAW.

Vol. 6, Dane, Abr.

Page.	F. C. No.
718	16,323

DAY'S CONNECTICUT REPORTS.

Vol. 3, Day.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,517	281	1,448	303	2,586
3	2,938	283	16,074	308	434
12	2,939	287	8,277	309	6,755
16	4,296	289	3,268	311	13,555
279	11,739	294	9,523	312	13,013
280	13,012	296	15,467		

Vol. 4, Day.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
81 (note)	1,015	471	15,171	474	14,431
121	16,332	472	2,923	476	10,923
469	16,041				

DEADY'S UNITED STATES CIRCUIT COURT REPORTS.

Deady.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,578	204	14,481	442	17,128
17	12,644	216	9,173	447	8,022
27	10,702	224	6,510	457	3,369
39	8,579	228	9,089	461	15,918
49	17,059	233	8,673	469	3,253
54	10,919	264	14,920	473	254
58	11,176	268	13,314	481	3,275
62	13,828	281	16,635	502	15,758
72	11,177	288	4,769	510	17,129
82	7,286	294	14,927	513	9,912
89	9,075	299	1,318	524	16,118
104	5,925	322	3,890	557	11,551
108	2,607	344	13,638	566	14,662
118	2,067	350	8,021	573	13,640
124	14,973	366	4,776	575	7,599
127	15,753	400	6,359	579	15,155
139	2,608	405	10,773a	585	17,508
165	33	413	6,800	588	1,887
176	4,332	416	13,639	591	5,340
179	10,553	420	8,409	598	17,130
186	14,974	425	2,156	609	10,144
192	10,645	430	4,775	620	4,756
196	10,576	433	17,094	649	13,220
197	2,395	438	11,565	657	18,251

DILLON'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Dill.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,728	217	14,179	420	13,889
8	2,818	219	10,595	421	6,555
16	3,291	248	2,098	422	15,332
19	694	261	5,421	424	6,660
24	1,168	264	16,528	439	2,210
33	4,044	267	12,451	441	17,358
40	231	271	16,212	443	5,298
45	1,209	281	7,668	449 (note)	5,297
49	15,948	290	12,305	451	15,124
66	1,356	299	2,491	453	6,245
67	1,357	301	17,334	455	8,096
73	13,686	303	10,803	458	13,977
79	6,288	305	5,217	460	4,096
85	9,164	308	1,225	460	6,056
104	6,561	311	7,133	462	6,244
105	12,533	313	12,673	465	17,172
108	376	314	14,378	469	15,001
116	5,405	329	6,714	476	16,842
118	4,691	333	9,952	485	16,716
119	249	338	2,667	497	9,098
121	4,629	344	7,614	512	11,077
130	17,372	349	13,704	515	16,994
139	10,786	351	6,644	522	16,538
141	3,571	358	13,161	529	12,013
151	1,169	362	562	531	9,429
156	7,831	363	4,921	536	9,971
158	5,169	367	8,661	544	11,803
161	8,374	372	2,011	555	7,810
164	3,573	392	13,256	569	1,159
171	18,077	393	10,649	571	11,094
174	736	403	13,839	579	4,793
178	9,178	406	16,607	585	15,635
181	11,860	413	15,226	586	15,893
187	11,861	414	13,201	587	5,920
202	498	416	13,705	587	12,461
203	9,167	417	10,988	588	10,399
212	16,333	418	998	589	11,395
213	4,182				

Vol. 2, Dill.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,907	244	8,770	414	13,092
6	12,312	249	17,605	421	8,467
11	13,324	253	7,830	426	15,284
14	14,366	256	17,080	427	10,863
23	18,096	259	4,952	435	582
26	6,366	269 (note)	6,521	441	8,685
38	17,991	270	12,251	444	11,554
41	8,843	278	13,121	448	7,706
45	83	279	14,379	460	8,780
45	3,308	282	13,793	465	7,969
50	13,071	284	6,116	469	12,601
64	7,510	290	1,071	475	9,919
70	7,007	294	13,504	478	8,038
92	6,671	299	15,696	479	10,341
94	15,393	310	14,385	487	17,890
99	6,196	312	9,866	493	12,478
108	1,170	316	9,867	498	1,928
120	9,968	320	3,426	501	235
127	12,501	324	2,777	504	10,861
129	1,832	327	9,099	509	5,842
132	12,487	332	10,772	513	3,320
136	4,046	339	13,842	518	11,078
146	11,285	343	7,445	519	3,319
154	10,191	347	7,097	525	6,973
156	1,111	353	3,061	527	16,599
160	13,692	367	11,869	533	2,877
166 (note)	6,587	371	7,611	539	17,793
169	693	375	3,338	546	3,982
175	631	376	4,313	548	10,445
182 (note)	14,145	383	1,661	548	11,136
184 (note)	3,937	385	9,332	551	6,448
188	9,942	392	6,538	555	11,164
213	7,568	396	6,690	560	17,035
215	884	398	12,486	566	17,404
219	14,814	405	16,085	570	17,676
229	6,137	406	17,902	572	6,449a
229	15,390				

Vol. 3, Dill.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	96	87	4,202	171	6,850
3	7,781	101	1,483	175	6,847
7	13,909	110	12,898	181	7,570
13	10,767	113	8,884	185	7,517
22	732	116	2,102	195	11,253
25	10,768	124	5,899	198	243
37	10,395	126	4,976	200	4,967
44	8,240	131	16,788	210	8,851
53	3,994	136	1,942	214	9,376
55	10,546	145	8,573	217	3,121
74	17,340	147	7,697	224 (note)	3,143
80	13,450	150	6,148	228	7,612
83	3,536	163	10,257	230	5,987

DILLON'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 3, Dill.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
236	12,771	367	1,117	448	8,854
239	18,173	368	10,499	454	10,346
245	7,518	370	14,117	457	1,780
251	17,213	372	7,945	460	9,636
261	17,348	376	2,734	465	10,829
267	17,728	378	17,551	469	3,976
275	15,750	379	4,668	474	10,062
281	14,877	381	15,908	477	2,594
284	10,584	385	16,805	480	252
285	16,255	389	13,870	487	166
287	4,652	391	2,987	490	1,929
290	6,018	392 (note)	7,218	496	16,800
295	2,960	392	13,869	506 (note)	4,679
298	4,809	393	5,714	511	7,111
300	14,380	402	7,219	514 (note)	11,408a
303	14,382	403	17,462	515	5,950
313	6,879	406	17,734	524	16,600
319	3,916	408	13,838	532	16,594
330	4,799	412	4,669	543	15,670
343	14,377	413	6,458	546	15,685
350	8,802	418	9,924	551	15,686
357	7,662	420	11,532	566	14,484
359	14,383	431	15,199	571	14,485
364	7,782	437	12,690	577	14,486
366	14,273	444	9,102	581	14,487

Vol. 4, Dill.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,687	200	3,577	396	13,547
10	10,345	207	17,668	407	14,547
17 (note)	10,344	209	12,794	411	16,858
18 (note)	10,342	216	1,663	415	16,859
18 (note)	10,343	224	16,288	425	8,080
19	2,572	230	5.541	431	9,635
24	2,573	233	15,776	436	10,634
29	12,239	239	3,468	439	131
35	10,845	242	3,119	448	307
41 (note)	7,738	251	324	463	744
52	9,765	260	325	464	1,581
58	14,210	264 (note)	5,168	469 (note)	2,908a
66	15,983	265	1,103	470	379
71	15,984	267	1,080	472	380
78	7.739	271	12,696	474	3,341
87 (note)	7,740	277	502	479	16,601
88	11,069	287	10,338	497	14,384
93	1,371	290	4,810	501	7,112
100	305	297	14,688	503	2,174
107	10,912	307	12,909	508	13,975
111	10,711	314	4,798	518	1,761
114	14,402	321	14,019	524	1,955
124	11,223	323	2,119	532	3,949
125 (note)	11,224	330	17,164	533	4,663
128	15,688	340	9,592	546	4,664
131	12,942	345	1,850	549	6,285
133	6,119	349	3,339	551	8,387
136	488	353	13,083	557	2,603
145	14,881	358	3,397	558	819
148	1,872	363	8,165	559	636
156	1,629	367	15,505	562 (note)	776
158	12,024	370	10,891	563	8,741
162	13,884	372	5,855	566	10,686
165	17,089	376	12,556	570	13,783
169	11,027	378	9,394	584	13,130
173	8,714	380	6,312	588	12,784
177	17,545	386	10,858	593	1,032
185	6,114	387	16,014	601	15,633
194	8,111	391	8,062		

Vol. 5, Dill.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,403	253	7,223	443	7,928
35	16,688	265	9,485	445	13,505
45	11,068	270 (note)	10,972	449	3,335
58	16,636	275	16,695	453	14,891
65	7,393	281	4,912	473	10,859
91	13,439	285	14,679	476	9,395
96	9,802	288 (note)	15,259	481	4,871
104	8,289	288 (note)	15,549	482	6,786
112	17,432	289	2,169	486	13,401
116	7,839	299	9,445	488	12,903
119	17,416	310	15,472	489	17,242
122	17,948	325	8,575	491	550
127	306	329	8,320	495	5,988
140	5,549	340	8,215	498	17,199
146	7,115	348	13,329	503	10,127
151	4,876	381 (note)	605	505	8,097
159	8,325	382	12,635	509	8,667
165	5,276	385	7,720	519	7,707
184	15,503	392	3,469	537	7,664
207 (note)	15,489	394	11,719	547	17,046
219	4,692	405	16,137	549	1,142
223	17,326	414	10,040	556	2,429
228	7,673	419	8,225	561	12,417
235	12,149	423	17,543	565	9,496
241	12,235	438	4,520		

ENGLISH LAW TIMES, (N. S.)

Vol. 13, Eng. Law T. (N. S.)

Page.	F. C. No.
613	4,881

FEDERAL REPORTER.

Vol. 1, Fed. Rep.

Page.	F. C. No.
54	13,658a
145	6,320
187	4,810a
242	6,403
842	10,237
847	3,259

Vol. 2, Fed. Rep.

Page.	F. C. No.
851	6,457

Vol. 3, Fed. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
177	17,469	435	3,696a	552	15,784
134	4,536	496	6,673	552	16,206

Vol. 4, Fed. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
318	8,363	543	4,127a	617	8,842
337	11,619b	548	12,465	816	16,787a

Vol. 5, Fed. Rep.

Page.	F. C. No.
302	13,434
721	11,600

Vol. 6, Fed. Rep.

Page.	F. C. No.
60	10,493
356	3,544a
651	7,878
706	9,529

Vol. 7, Fed. Rep.

Page.	F. C. No.
705	17,968a
806	17,853a
859	7,041

Vol. 9, Fed. Rep.

Page.	F. C. No.
495	12.716
515	12,420a
556	6,423

Vol. 10, Fed. Rep.

Page.	F. C. No.
23	11,483a

Vol. 11, Fed. Rep.

Page.	F. C. No.
365	3,496a
397	10,721

Vol. 12, Fed. Rep.

Page.	F. C. No.
157	4,493a

Vol. 13, Fed. Rep.

Page.	F. C. No.
59	12,015a
418	13,545a

Vol. 14, Fed. Rep.

Page.	F. C. No.
59	5,380a
373	10,183a
424	5,138

Vol. 17, Fed. Rep.

Page.	F. C. No.
653	11,082a

Vol. 21, Fed. Rep.

Page.	F. C. No.
191	8,686

FEDERAL REPORTER—Cont'd.

Vol. 22, Fed. Rep.

Page.	F. C. No.
302	5,115a

Vol. 23, Fed. Rep.

Page.	F. C. No.
406 (note)	275

Vol. 27, Fed. Rep.

Page.	F. C. No.
61	3,609a

Vol. 30, Fed. Rep.

Page.	F. C. No.
690	7,857a

Vol. 32, Fed. Rep.

Page.	F. C. No.
457	13,188a
608	638a

Vol. 42, Fed. Rep.

Page.	F. C. No.
113	1,059

Vol. 44, Fed. Rep.

Page.	F. C. No.
361 (note)	677

FENTON ON PATENTS.

Fent. Pat.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
19	18,036	63	3,096	93	11,012
28	10,328	73	12,035	122	13,208
31	72	77	1,646	138	5,627
35	17,850	83	3,000		

FESSENDEN ON PATENTS.

Fess. Pat.

Page.	F. C. No.
130	17,583

FISHER'S UNITED STATES PATENT CASES.

Vol. 1, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	53	239	17,896	465	8,116
17	9,056	252	11,573	472	5,570
31	9,057	277	12,362	475	13,279
44	10,740	285	10,726	479	11,072
58	10,727	289	12,672	483	16,837
64	13,036	298	10,662	487	3,690
93	10,748	317	4,930	509	6,948
103	1,515	320	9,970	516	1,070
108	3,030	325	2,439	521	8,413
127	3,831	327	11,329	527	57
133	5,103	340	7,012	532	6,271
152	13,034	349	13,278	537	13,059
154	12,947	351	7,411	544	7,569
160	6,775	372	1,247	558	12,900
181	17,861	380	1,256	586	6,769
189	2,673	382	11,330	602	9,291
196	11,577	397	2,292	610	9,690
198	2,440	424	5,562	615	7,565
213	17,863	461	9,827	626	5,563
222	12,841			647	10,245

Vol. 2, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,758	133	5,847	244	17,986
20	17,303	146	4,239	251	11,327
31	4,957	154	5,559	268	2,488
37	7,270	163	11,338	275	2,190
52	11,191	167	12,295	291	7,409
58	10,737	174	3,302	311	13,280
62	11,283	179	10,218	312	5,580
74	11,281	181	11,279	320	9,865
80	11,282	192	4,447	330	8,948
83	4,408	195	14,100	341	2,074
89	8,182	199	3,233	362	6,946
96	5,558	202	12,834	381	11,325
97	13,060	203	17,219	387	4,448
102	11,342	207	8,414	389	14,368
112	5,846	213	11,280	395	6,778
116	3,951	221	2,866	417	12,839
120	6,950	229	14,046	440	17,535

FISHER'S UNITED STATES PATENT CASES—Cont'd.

Vol. 2, Fish. Pat. Cas.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
461	17,260	541	3,017	583	18,036
465	11,334	543	2,288	586	7,500
472	8,569	543 (note)	10,735	588	2,142
477	2,143	553	4,029	600	14,399
499	5,583	560	4,018	631	11,333
518	14,043	563	12,320	635	17,787
523	12,414	565	5,915	642	9,884
531	6,771	572	12,999	661	1,957
535	17,869	577	14,088	668	4,931

Vol. 3, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,882	259	5,578	456	5,584
5	8,084	265	7,837	462	14,266
9	3,676	279	18,123	464	17,957
32	3,683	289	5,165	472	11,324
43	17,256	294	1,504	474	11,326
55	11,162	306	17,425	476	11,241
63	10,367	310	11,610	483	9,488
66	17,537	316	322	489	5,508
67	9,833	330	14,270	497	14,196
72	15,814	335	6,738	515	9,862
77	11,341	340	1,806	522*	——
82	11,337	343	13,700	525	2,888
87	3,810	362	320	526	6,187
98	17,979	369	4,021	531	2,008
112	11,323	371	4,022	536	3,406
116	12,506	372	10,579	536	18,285
120	2,630	374	5,555	555	12,688
124	14,158	378	6,190	580	4,028
134	5,571a	382	3,120	586	13,543
141	9,536	386	3,123	591	7,487
147	5,572	390	5,571	595	5,926
157	17,592	400	14,213	602	1,400
176	9,835	410	6,559	607	17,870
186	1,514	420	5,579	609	1,529
197	110	423	10,954	621	1,548
209	5,577	428	11,331	629	11,910
218	6,575	432	10,251	632	12,420
242	5,587	439	5,556	638	6,578
251	5,573			640	2,950

*A District of Columbia case, but not found in the regular reports.

Vol. 4, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,864	216	4,687	433	17,498
12	3,125	221	4,688	443	13,289
29	17,514	224	5,591	446	1,243
37	7,755	232	7,519	449	13,778
41	17,520	248*	——	456	6,576
50	1,558	253	4,020	468	10,713
57	3,124	256	6,834	469	13,095
64	4,431	263	6,790	488	7,797
81	7,161	269	3,160	493	9,991
86	6,261	275	3,296	508	6,538
107	13,281	279	11,757	514	10,042
117	17,568	284	302	524	9,271
133	4,229	315	7,025	528	17,280
137	1,919	318	4,030	532	11,899
141	17,593	324	321	550	17,941
148	3,809	329	4,884	561	321
156	4,877	348	4,885	561	321a
161	6,561	359	7,081	577	7,799
163	18,003	363	2,030	584	12,415
170	7,401	377	9,836	591	1,494
175	11,180	379	750	596	1,544
186	11,932	388	6,250	598	218
189	312	392	50	599	14,041
198	12,751	395	2,669	615	14,042
201	7,273	404	2,472	628	8,993
207	17,594	423	3,794	633	13,221
		428	3,142	641	13,219

*A District of Columbia case, but not found in the regular reports.

Vol. 5, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No
1	5,671	116	13,792	208	4,109
10	11,194	130	13,871	211	10,904
12	2,582	134	12,161	213	7,856
15	4,249	136	17,399	224	4,026
23	1,379	148	10,956	230	18,160
37	17,100	153	5,039	237	7,586
48	17,254	160	9,332	245	2,833
72	18,024	166	14,387	259	9,461
75	804	174	7,911	265	11,222
90	2,397	185	7,523	268	3,672
109	12,912	187	13,968	276	17,324
113	10,903	189	8,902	283	12,398

FISHER'S UNITED STATES PATENT CASES—Cont'd.

Vol. 5, Fish. Pat. Cas.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
285	9,397	381	17,726	528	580
290	5,672	384	8,708	531	1,022
295	11,912	396	3,155	537	6,540
302	4,623	411	12,314	540	4,826
306	9,949	415	12,369	543	13,048
310	6,539	433	7,271	548	17,871
315	13,041	442	797	550	1,465
323	14,044	448	13,872	569	11,702
334	11,480	452	1,061	581	12,117
340	9,559	456	11,660	586	9,893
347	7,275	468	7,751	593	13,757
353	315	471	7,365	597	14,395
357	18,008	477	13,331	610	9,119
366	2,109	517	14,406	615	12,135
377	12,102	524	2,033	632	12,166

Vol. 6, Fish. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,493	278	11,924	457	9,270
31	11,701	281	4,443	462	7,694
35	13,556	286	10,099	465	11,925
50	17,465	289	1,546	476	13,128a
61	13,084	293	11,913	480	12,904
67	316	314	5,291	488	706
71	2,567	325	11,897	495	12,370
74	1,499	327	4,069	506	3,122
82	5,859	336	7,798	509	1,500
85	14,198	343	7,495	514	18,035
89	17,394	370	2,012	517	2,631
115	12,687	374	3,727	519	17,451
124	3,558	375	8,847	528	4,949
130	3,557	382	17,967	534	656
138	3,792	387	4,014	551	17,499
143	3,726	402	14,386	562	9,115
156	7,838	413	6,228	572	13,570
180	11,182	415	7,033	574	17,395
187	8,452	420	7,993	575	5,745
203	5,198	424	311	582	14,390
219	4,312	434	1,530	587	4,574
236	1,858	439	12,040	595	5,292
240	11,181	446	13,045	599	6,004
244	5,982	452	4,415	603	11,340
254	8,706	454	11,787	606	2,675
268	11,928				

FISHER'S UNITED STATES PATENT REPORTS.

Vol. 1, Fish. Pat. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,876	146	17,839	303	215
4	14,261	149	13,764	312	5,280
5	13,914	151	5,881	317	17,648
12	2,191	154	1,646	319	10,749
14	1,517	158	1,520	339	13,043
28	17,845	161	10,757	355	11,585
41	1,953	173	10,759	357	4,918
65	1,945	175	10,758	361	17,833
72	1,946	180	10,760	366	5,395
77	4,440	184	1,521	369	5,402
88	13,654	205	16,852	376	1,559
91	5,390	215	11,075	385	5,568
94	10,736	219	2,081	387	17,649
108	18,022	222	9,055	388	238
110	13,208	238	5,389	391	4,917
115	5,396	251	2,082	394	3,685
120	16,851	260	10,733	401	17,634
128	17,650	261	17,840	415	5,393
135	13,209	268	4,916	423	18,011
137	1,963	290	14,195	433	5,954
144	13,368	298	13,104	441	11,192
				452	1,389

FISHER'S UNITED STATES PRIZE CASES.

Fish. Pr. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,234	63	16,360	69	6,675
32	14,465				

FLIPPIN'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Flip.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,787	341	146	507	13,934
15	4,836	350	13,379	517	1,050
25	8,600	353	11,370	521	14,058
34	4,729	356	17,197	536	4,053
41	14,129	363	9,755	543	11,527
49	17,057	377	17,924	548	7,221
61	2,212	379	4,174	551	18,125
74	14,099	381	1,648	559	362
85	2,303	385	13,800	568	18,084
92	4,496	388	5,603	574	1,856
97	3,185	410	8,036	580	3,973
104	345	413	16,802	592	3,974
108	15,460	421	5,414	599	18,151
116	3,366	424	7,034	603	2,776
120	13,735	427	17,926	606	5,334
182	3,992	436	12,181	611	9,002
188	9,415	441	5,488	616	270
228	4,651	445	375	621	16,898
242	889	449	3,062	627	4,321
260	15,633	456	2,901	635	8,947
272	6,504	462	6,925	640	2,077
276	2,245	472	12,711	651	8,675
281	8,589	491	14,391	655	9,021
288	13,726	500	1,574		

Vol. 2, Flip.

Page.	F. C. No.	Page.	F. C. No.
1	16,350	324	13,346
6	10,569a	330	2,414
9	2,104	336	17,966
15	12,541	347	2,662
18	193	355	17,929
22	3,173	363	497
33	18,030	376	13,356
37	10,570	383	7,005
50	7,623	440	18,186
56	4,880	442	2,309
61	2,743	451	11,547
76	14,412	459	12,130
79	13,191	462	17,144
84 (3 F. 248)	——	466	11,018
86	4,698	471	11,588
88	5,391	477	5,756
92	11,101	503	10,594
100	11,286	507	1,377
105	12,315	510	6,926
111	1,485	512	8,877
121	5,392	518	11,302
130	9,897	525	1,467
139	12,157	546 (4 F. 198)	——
144 (3 F. 228)	——	559 (4 F. 35)	——
149 (3 F. 232)	——	562 (1 F. 737)	——
153	5,939	572 (47 F. 420)	——
163	13,566	576 (3 F. 558)	——
168	4,213	581 (1 F. 564)	——
177	6,249	590 (4 F. 72)	——
181	3,059	593 (47 F. 422)	——
183	7,125	596 (1 F. 347)	——
191	7,457	599 (47 F. 756)	——
212	3,393	601 (48 F. 129)	——
228	13,628	603 (48 F. 347)	——
234	4,578	605 (2 F. 147)	——
239	638	611 (1 F. 417)	——
241	9,029	621 (3 F. 266)	——
257	14,308	640 (2 F. 255)	——
260	5,154	645 (2 F. 835)	——
263	17,643	650 (2 F. 401)	——
267	4,566	660 (4 F. 32)	——
274	2,618	664 (2 F. 633)	——
280	1,766	672 (2 F, 465)	——
285	17,903	692 (4 F. 357)	——
288	9,294	703 (3 F. 47)	——
291	5,060	704 (3 F. 97)	——
301	3,668	715 (3 F. 673)	——
305	3,669	735 (48 F. 818)	——
319	16,382		

GALLISON'S REPORTS, UNITED STATES CIRCUIT COURTS.

Vol. 1, Gall.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,165	55	8,090	123	6,081
3	15,717	58	12,257	130	4,631
5	16,750	62	397	133	14,319
22	444	66	10,008	137	10,585
26	3,434	69	3,522	140	17,249
32	6,900	75	1,608	142	14,009
37	13,873	86	16,227	145	248
41	11,230	104	12,813	150	516
43	7,573	111	5,125	160	6,207
45	5,124	114	7,028	166	3,485
53	10,024	118	14,289	168	703

GALLISON'S REPORTS, UNITED STATES CIRCUIT COURTS —Cont'd.

Vol. 1, Gall.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
170	13,046	360	2,200	467	12,232
177	15,718	365	15,603	474	3,967
187	13,830	366	9,918	476	13,550
192	9,106	367	8,640	478	17,601
206	9,183	371	16,871	485	12,391
211	12,044	387	15,700	488	10,422
215	16,247	388	16,486	488	14,857
227	8,895	392	16,656	497	14,804
230	287	396	15,755	503	5,844
233	7,574	400	14,725	505	3,721
237	15,723	401	12,258	513	8,406
239	1,670	416	9,734	532	164
247	16,545	417	13,698	545	7,533
257	12,592	419	9,392	563	4,479
261	13,122	429	17,600	585	4,035
268	7,713	438	17,971	594	7,575
274	414	441	12,783	614	5,034
295	11,576	443	14,190	618	5,035
315	8,403	445	5,032	620	9,184
338	14,411	451	4,546	622	13,233
342	2,693	453	5,033	624	16,196
348	14,469	454	8,380	630	16,872

Vol. 2, Gall.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,823	184	8,405	353	6,816
4	4,346	191	7,293	359	15,193
11	10,174	204	11,425	361	16,754
12	4,569	210	12,372	363	14,646
15	14,490	216	6,182	364	14,858
19	12,233	233	10,860	368	501
29	7,054	240	12,091	374	4,892
45	5,210	249	5,327	377	1,364
47	11,709	261	3,055	386	672
48	6,678	268	12,322	391	5,036
51	10,432	306	3,917	398	3,776
55	5,404	307	8,535	477	2,017
60	6,527	308	671	483	8,310
61	7,869	311	12,323	485	15,336
78	1,686	313	14,975	515	9,072
93	3,876	314	517	526	2,060
101	445	315	7,048	552	9,100
103	8,508	320	11,879	555	6,183
105	13,156	325	8,978	557	2,021
146	11,388	345	7,294	560	4,622
152	6,209	351	10,867	565	13,721
164	12,355				

GAZETTE AND BANKRUPT COURT REPORTER.

Vol. 1, Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	1,665	78	6,269	123	18,109
77	17,037	78	7,175	132	5,373
78	1,886	78	12,256		

GEORGIA REPORTS.

Vol. 35, Ga.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
285	8,126	330	740	344	14,473
315	5,350	336	14,611	364	12,567
320	9,157	336	18,312		

GILPIN'S UNITED STATES DISTRICT COURT REPORTS.

Gilp.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,106	155	14,663	435	11,145
10	3,650	184	1,762	439	14,534
31	17,823	193	11,269	447	6,639
34	3,651	203	13,090	452	17,611
41	14,565	207	7,872	457	10,837
44	16,008	219	8,944	461	4,298
49	15,543	235	15,151	473	3,643
51	15,756	262	15,276	489	3,753
58	16,091	273	16,224	505	17,825
60	6,015	294	1,970	507	16,553
77	65	299	16,573	514	14,136
83	17,959	306	16,561	517	17,968
89	2,022	329	16,904	524	13,852
92	14,554	332	15,632	536	6,090
101	7,395	338	15,985	554	11,312
106	11,310	349	15,986	563	14,706
135	11,313	352	15,277	579	11,659
140	13,139	356	15,015	592	1,924
147	4,032	399	548	614	16,487

GRANT'S PENNSYLVANIA CASES.

Vol. 3, Grant, Cas.

Page.	F. C. No.
418	6,568
436	10,952

HALL, LAW JOURNAL.

Vol. 1, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
36	12,560	263	916	483	16,064
209	449	429	5,420	483	16,577
260	6,272	482	16,701		

Vol. 2, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
80	15,371	255	16,700	457	15,611
221	10,433	359	10,055	458	16,063
238	4,896	456	16,334		

Vol. 3, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
121	16,088	176	14,760	180	4,572
128	14,525				

Vol. 4, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
56	8,420	115	4,499	461	17,708
78	8,411	233	8,786	473	660
88	17,987	275	6,541	478	15,741
97	17,988	276	1,123	488	15,227
102	9,926	276	7,497		

Vol. 5, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
459	255	502	5,509	536	9,372
497	9,482	514	9,964	543	14,420

Vol. 6, Hall, Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,054	68	7,417	474	66
12	12,355	97	7,415	509	4,824
21	11,548	117	5,426		

HARRIS & JOHNSON'S MARYLAND REPORTS.

Vol. 1, Har. & J.

Page.	F. C. No.
427	16,619

HASKELL'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Hask.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	11,665	236	17,306	432	5,310
24	14,296	250	10	439	7,335
32	15,167	253	17,762	447	16,406
36	13,312	262	12,856	452	10,674
52	12,344	267	9,954	462	9,059
65	527	271	15,596	474	9,201
78	12,343	276	8,845	489	9,685
87	369	296	5,466	495	4,144
89	3,343	304	4,715	496	12,431
100	6,373	308	6,920	505	79
108	5,279	313	17,033	517	13,310
122	17,626	314	10,325	527	15,412
134	9,751	325	9,303	542	9,820
146	15,431	331	10,404	547	9,300
163	6,048	341	6,193	559	13,916
166	15,729	348	5,535	570	14,602
173	5,796	358	5,467	576	67
184	257	372	2,175	586	5,778
192	6,824	381	5,331	593	762
194	8,169	391	9,122	606	17,412
204	9,083	406	12,434	620	17,752
214	12,433	412	2,903	630	2,097
232	3,616				

HASKELL'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Hask.

Page.	F. C. No.	Page.	F. C. No.
17	3,990	289	9,275
19	10,302	293	1,360
28	5,510	299	6,507
34	5,604	310	16,427
66	12,027	323	13,644
74	10,303	331	9,298
76	8,778	337	12,394
76	11,968	340	5,551
87	16,873	349	4,324
90	6,603	354	8,977
96	17,070	362	7,511
101	3,475	363	13,966
106	13,023	374	4,468
109	2,333	375	13,330a
112	12,363	376 (2 F. 455)	—
120	5,159	381	13,359a
124	6,180	388 (2 F. 459)	—
130	8,853	394	16,589a
141	6,703	406 (3 F. 652)	—
153	12,393	416 (4 F. 89)	—
157	9,789	430	11,980a
164	16,392	432 (4 F. 173)	—
189	17,565	437 (4 F. 111)	—
205	6,332	455	2,970a
215	2,096	458 (5 F. 412)	—
221	8,486	464 (5 F. 192)	—
228	2,199	469	14,720a
236	7,520	472 (8 F. 351)	—
242	5,712	483 (8 F. 266)	—
244	6,945	487	5,645a
246	12,723	492 (9 F. 84)	—
250	6,181	503 (7 F. 837)	—
256	8,487	510	12,572a
261	8,936	518 (9 F. 159)	—
270	9,684	526 (9 F. 529)	—
278	5,651	531 (9 F. 562)	—

HAYWARD & HAZELTON'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Hayw. & H.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,689	95	4,630	208	15,587
3	13,479	96	9,354	211	18,098
6	2,820	103	1,264	215	15,821
9	11,672	105	15,704	218	17,107
11	8,246a	106	13,805	226	13,955
18	12,321	109	15,205a	229	13,528
21	15,040	114	10,577	232	15,045
25	8,025	116	17,746	236	17,227
30	13,172	120	9,966	237	7,227
33	7,929	123	17,554	239	11,950
35	4,250	125	3,636	243	16,476
37	14,759	127	17,558	246	2,474
39	1,923	132	12,775	249	12,441
41	13,422	134	2,027	251	16,869
45	8,118	136	16,785	256	909
48	4,712	139	5,346	259	4,726
50	3,391	148	14,053	261	4,517
53	955	151	2,501	263	1,788
59	15,677	156	6,267	268	14,072
60	956	158	2,341	269	16,543a
62	4,528	161	9,757	271	13,876
65	3,882	163	13,671	272	6,115
67	14,219	167	6,040	285	8,817
68	9,840	174	15,190	287	10,375
70	13,480	176	2,477	323	9,239
72	5,785	177	4,653	329	9,240
74	7,746	179	8,852	346	5,211
77	6,626	186	4,868	348	8,781
81	13,767	189	17,042	363	11,656
82	16,746a	191	3,854	369	4,074
86	8,728	195	9,295	384	8,092
88	1,211	200	4,869	394	8,922
90	11,488	201	18,097	400	9,314
94	10,353a	203	10,152		

Vol. 2, Hayw. & H.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No
1	17,677a	72	14,950a	140	15,271a
9	18,299	86	8,588a	146	18,304
13	18,226	89	15,186a	149	18.306
21	18,294	114	18,279	151	16 245a
24	18,245	119	16,760a	155	11,780a
35	14,311a	122	13,133a	156	15,660a
44	9,885a	124	18,289	160	15,493a
47	10,811a	126	18,228	173	9,764a
49	14,680a	132	8,867a	175	17,416a
54	8,813a	136	18,231	185	12,015b

HAYWARD & HAZELTON'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Hayw. & H.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
187	17,387a	258	18,303	341	18,305
189	15,663a	278	18,238	343	14,262a
198	18,236	280	16,401a	347	9,062a
200	18,292	290	18,286	357	18,229
202	18,298	293	15,347a	364	18,235
205	15,726a	302	18,281	367	8,553
207	18,293	312	17,816a	374	16,541a
208	8,931a	315	18,234	386	13,151
210	15,354a	316	18,291	392	15,726b
220	13,123b	319	16,287a	394	16,074a
222	18,302	329	18,287	402	14,865a
226	16,650a	332	16,249a	404	18,239
228	18,301	334	17,840a	405	18,288
230	17,085a	337	15,759a	417	11,640a
241	9,593a	339	8,823a	430	18,308
256	18,296				

HAYWOOD'S NORTH CAROLINA REPORTS.

Vol. 2, Hayw. N. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
226	12,294	290	8,656	346	8,315
227	10,461	290	9,965	346	9,974
281	5,403	291	5,983	377	13,813
281	13,814	291	5,990	378	433
282	12,294	291	7,506	378	5,849a
282	17,663	346	4,170	379	15,384

HAZARD'S PENNSYLVANIA REGISTER.

Vol. 1, Haz. Reg. Pa.

Page.	F. C. No.
9	14,142

Vol. 3, Haz. Reg. Pa.

Page.	F. C. No.
289	14,633

Vol. 4, Haz. Reg. Pa.

Page.	F. C. No.
227	975
248	12,670

Vol. 14, Haz. Reg. Pa.

Page.	F. C. No.
10	615
129	981
305	8,952

Vol. 15, Haz. Reg. Pa.

Page.	F. C. No.
49	17,179
314	15,278
380	11,350

Vol. 16, Haz. Reg. Pa.

Page.	F. C. No.
18	11,312
153	18,141

HAZARD'S UNITED STATES REGISTER.

Vol. 1, Haz. Reg. U. S.

Page.	F. C. No.
87	446
202	12,140

Vol. 2, Haz. Reg. U. S.

Page.	F. C. No.
57	6,008
374	16,563a

Vol. 3, Haz. Reg. U. S.

Page.	F. C. No.
6	4,671
8	11,825
227	15,253

HEMPSTEAD'S UNITED STATES CIRCUIT COURT REPORTS.

Hempst.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,957a	111	17,986a	300	4,863a
3	12,164a	114	18,239	302	8,157a
8	13,944a	117	13,546a	304	16,435
9	10,082a	118	16,216a	306	7,637
9	12,570b	154	3,736a	313	14,849
10	4,399a	155	10,794a	315	14,812
10	9,952a	160	12,680a	320	14,992
11	18,240	164	1,788a	332	11,484
12	7,253a	172	9,324a	333	2,128
12	2,264a	173	6,497a	334	2,321
14	6,561a	174	2,347a	335	16,822
16	5,530a	176	2,393a	338	8,131
16	13,794a	179	9,647a	344	17,895
17	9,950a	181	3,912a	389	3,839
17	18,106a	184	18,225	394	5,481
18	18,241	187	2,929a	407	5,908
20	6,584a	189	7,181a	409	2,287
20	12,584a	190	2,833a	411	16,452
21	8,324a	192	8,933a	413	447
21	14,055a	194	2,943a	422	16,453
22	11,974a	195	2,367b	423	3,984
24	18,237	197	2,172a	426	11,955
24	11,054a	197	14,038a	428	3,775
25	12,066a	201	12,967a	431	12,949
27	14,789a	204	5,104a	434	7,376
28	12,895a	205	9,949a	436	6,807
29	11,184a	207	2,833b	438	2,685
30	15,119a	209	13,284a	440	14,217
32	8,239b	211	9,917a	442	9,844
34	13,079a	213	2,817a	444	14,426
35	4,491	213	4,999a	450	448
36	5,400a	215	18,224	450	16,187
38	11,968a	216	8,730a	460	14,515
39	13,676a	217	18,227	460	17,904
41	17,656a	218	18,232	464	10,114
42	6,478b	219	11,931a	469	16,379
44	3,647a	221	9,947b	472	17,718
45	8,815a	222	2,591b	475	10,393
47	8,868a	223	10,911a	478	16,243
48	4,241a	225	8,246b	479	16,113
49	4,092a	229	14,238a	481	16,115
50	3,694b	231	6,351a	483	16,220
51	9,772a	232	2,114a	487	14,555
52	9,774a	235	6,346a	502	11,171
53	6,050a	236	2,929b	533	7,374
54	3,809a	238	6,154a	534	2,362
55	3,809b	240	7,206a	536	9,761
58	18,223	243	17,751a	538	14,172
59	7,395a	245	12,084a	541	530
61	14,890a	249	18,233	546	12,150
61	4,785a	251	8,246c	558	5,730
62	11,105a	259	9,158a	559	5,909
62	15,591a	259	7,206b	562	15,451
64	9,782a	261	2,268a	563	9,469
65	3,898a	264	1,683a	620	1,758
67	2,355a	265	2,367a	624	11,909
69	10,829a	268	6,158a	643	14,933
72	5,817a	271	2,365a	659	13,136
72	10,741a	274	8,744a	662	14,239
80	10,254a	275	12,528a	665	1,346
82	4,822a	279	3,015a	678	12,674
82	11,633a	282	3,070a	688	9,141
84	3,156a	283	7,838a	689	11,536
85	8,239a	284	17,801a	692	10,623
90	12,570a	286	8,659a	698	18,116
91	11,700a	287	2,440a	700	11,608
91	12,156a	288	7,206c	701	17,248
94	13,428a	289	13,123a	703	4,525
96	3,393b	290	4,041a	704	12,153
98	9,543a	294	2,831a	708	5,792
99	6,778a	296	4,572a	710	5,242
101	7,161a	299	16,533a	711	14,173
103	12,570c	299	9,128a	715	13,629
105	5,682a				

HOFFMAN'S DECISIONS.

Hoff. Dec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	761	25	16,680	63	16,734
2	14,620	27	16,424	65	16,045
3	16,606	36	18,187	66	16,818
4	15,388	38	16,217	67	15,246
5	14,592	40	14,736	69	16,156
6	16,032	42	15,125	75	14,940
8	17,329	44	15,126	77	14,941
10	17,328	47	14,579	81	14,728
11	16,275	48	16,160	84	16,455
14	16,250	51	16,605	93	14,623
16	14,664	52	14,879	95	16,680
18	10,704	53	14,939	97	14,753
20	15,182	56	14,580	107	14,770
22	16,604	58	16,681	190	16,029
23	15,562	62	15,980	212	16,030

HOFFMAN'S LAND CASES.

Hoff. Land Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	16,355	97	15,990	170	16,185
9	14,768	98	3,872	171	16,270
18	16,127	99	14,582	172	16,046
20	15,164	99	14,586	173	8,850
28	13,843	100	15,972	174	16,819
37	12,662	101	14,862	175	16,181
41	15,563	103	15,806	176	14,436
43	18,188	104	1,327	182	16,357
49	16,784	105	14,751	188	11,129
50	14,581	107	5,828	191	10,379
66	9,491	109	14,618	197	16,195
69	4,720	110	16,421	204	15,058
72	2,509	111	14,649	207	15,317
72	15,261	112	14,538	211	15,137
74	16,140	113	10,641	216	10,695
74	16,420	116	11,127	219	12,029
75	15,564	124	15,590	227	10,696
76	14,437	125	14,752	230	13,680
77	15,839	126	16,657	239	15,053
77	16,356	129	16,141	242	10,286
78	15,391	130	2,566	248	536
79	15,981	133	16,218	249	10,697
79	16,488	135	15,970	272	3,741
80	15,987	137	15,265	273	18,191
81	15,840	138	16,017	279	11,130
82	16,184	139	14,583	281	14,573
82	16,481	141	16,068	284	16,061
83	16,482	142	11,128	298	14,015
84	16,735	146	9,168	301	9,120
85	1,763	150	15,982	305	11,631
86	14,712	154	15,841	313	8,091
87	3,555	155	14,780	325	8,396
89	16,031	156	16,397	345	8,594
90	14,761	157	5,215	373	15,138
92	14,504	161	16,161	376	15,139
94	15,269	162	10,285	389	15,601
96	14,737				

HOFFMAN'S OPINIONS.

Hoff. Op.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
32	3,878	96	3,939	460	405
32	16,061	234	15,998	464	6,132
44	14,623	404	9,792	465	746
53	761	412	16,047	467	16,511
53	16,606	429	2,371	469	10,704
54	14,592	433	5,496	473	9,847
55	14,620	441	11,142	475	16,680
57	14,753	445	4,685	477	12,111
59	14,770	447	12,331	481	10,106
60	15,246	448	12,542	488	7,391
63	16,032	450	9,419	500	15,710
66	17,329	452	13,212	504	11,276
69	3,997	456	5,196	532	13,053
74	14,664	459	2,571	535	15,008
77	15,182				

HOLMES' UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Holmes.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No
1	14,162	149	12,314	267	11,232
7	3,971	152	580	272	12,732
15	7,559	155	14,406	274	2,631
20	11,180	161	9,507	275	10,672
28	10,895	167	11,209	278	4,949
30	47	172	13,084	284	5,745
37	7,469	177	316	287	9,305
40	50	180	2,741	290	3,985
42	6,250	185	10,603	293	11,340
45	2,398	196	11,181	296	6,004
48	2,290	200	1,499	299	5,548
53	1,857	205	1,858	303	2,675
61	4,050	208	4,069	309	16,794
67	2,431	209	9,857	312	13,756
75	2,955	215	5,291	317	6,502
80	12	224	11,897	325	9,747
85	781	226	12,409	328	14,408
88	5,672	228	17,773	331	9,472
92	7,277	229	1,081	340	13,050
96	4,623	231	9,527	342	5,653
99	17,898	232	10,665	348	5,387
103	7,017	234	7,694	354	5,598
113	9,949	235	4,883	366	577
117	7,400	245	17,247	372	1,676
120	7,275	248	10,419	375	9,506
124	18,008	251	9,641	379	17,993
133	315	253	12,904	386	3,915
136	12,886	261	984	395	2,627
142	9,559	263	3,106	396	9,286

HOLMES' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1, Holmes—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
412	4,242	445	11,163	475	3,766
413	9,714	450	2,166	483	8,512
415	4,882	451	1,781	485	14,226
417	9,233	454	5,522	488	17,454
421	16,007	456	12,411	493	6,166
427	14,394	459	14,231	497	11,485
429	14,388	465	17,889	500	2,692
432	9,950	467	13,695	503	302
433	1,779				

HOWARD'S NEW YORK PRACTICE REPORTS.

Vol. 17, How. Pr.

Page.	F. C. No.
201	4,116

Vol. 18, How. Pr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
20	10,115	185	778	328	4,641
47	11,062	238	12,718	380	15,654
85	3,400	319	7,338	482	11,649
87	11,821	322	5,675	526	2,250
141	3,716				

Vol. 19, How. Pr.

Page.	F. C. No.	Page.	F C. No.	Page.	F. C. No.
36	13,731	229	13,576	334	12,604
168	7,887	241	1,971	462	10,354
191	1,438	315	1,797		

Vol. 20, How. Pr.

Page.	F. C. No.
216	7,889
447	17,578
517	15,021

Vol. 22, How. Pr.

Page.	F. C. No.
78	8

Vol. 23, How. Pr.

Page.	F. C. No.
371	16,882

Vol. 24, How. Pr.

Page.	F. C. No.
72	3,295
128	3,362
142	14,482
159	2,626

Vol. 25, How. Pr.

Page.	F. C. No.
467	4,171

Vol. 27, How. Pr.

Page.	F. C. No.
161	9,165

Vol. 28. How. Pr.

Page.	F. C. No.
283	14,114

Vol. 31, How. Pr.

Page.	F. C. No.
272	13,128

Vol. 34, How. Pr.

Page.	F. C. No.
289	1,350

Vol. 35, How. Pr.

Page.	F. C. No.
15	7,562
20	13,745
249	5,074

Vol. 36, How. Pr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
42	11,469	176	11,939	249	6,447
51	39	188	11,216	270	40
167	18,065	206	3,552	282	6,984

HOWARD'S NEW YORK PRACTICE REPORTS—Cont'd.

Vol. 37, How. Pr.

Page.	F. C. No.
77	11,241
262	12,495

Vol. 38, How. Pr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
31	9,452	88	1,276	392	7,815
79	1,274	111	1,598		

Vol. 39, How. Pr.

Page.	F. C. No.
108	11,834
155	8,312

Vol. 40, How. Pr.

Page.	F. C. No.
107	4,645
387	11,907
409	9,052
461	18,216

Vol. 41, How. Pr.

Page.	F. C. No.
112	2,426
213	6,339
406	2,136

Vol. 42, How. Pr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
169	17,200	283	1,561	469	5,772
274	1,488	397	13,239		

Vol. 43, How. Pr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	11,940	86	6,063	250	12,201
64	18,215	110	13,273	252	12,200
70	2,803				

Vol. 48, How. Pr.

Page.	F. C. No.
535	5,026

Vol. 49, How. Pr.

Page.	F. C. No.
178	4,463

Vol. 52, How. Pr.

Page.	F. C. No.
426	5,523
471	15,333
513	12,502

Vol. 53, How. Pr.

Page.	F. C. No.
192	12,576

Vol. 55, How. Pr.

Page.	F. C. No.
205	7,013
205	11,124

Vol. 57, How. Pr.

Page.	F. C. No.
175	2,729
286	18,048

Vol. 58, How. Pr.

Page.	F. C. No.
114	2,704

Vol. 62, How. Pr.

Page.	F. C. No.
177	4,862a

HOWARD'S UNITED STATES SUPREME COURT REPORTS.

(See United States Supreme Court Reports.)

HOWISON'S CRIMINAL TRIALS.

Howison, Crim. Trials.

Page.	F. C. No.
89	14,817

HUGHES' UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Hughes.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	13,679	239	6,762	402	8,185
23	12,640	246	12,736	408	679
28	11,771	249	5,980	410	5,419
37	10,037	261	959	412	15,746
47	154	268	7,483	415	15,834
59	1,436	270	5,872	439	15,790
64	1,437	279	10,776	448	14,893
67	7,734	282	10,774	457	14,700
69	10,973	288	9,113	493	16,036
72	1,787	290	838	514	16,438
76	6,643	295	17,853	520	16,274
78	12,175	297	10,666	525	15,311
80	14,321	307	1,714	529	15,222
90	17,502	310	7,152	531	15,455
101	12,801	313	15,977	533	14,961
106	7,826	322	10,631	536	3,466
115	206	326	16,913	541	18,258
118	1,029	332	5,191	552	14,744
133	10,318	337	9,219	560	16,153
138	14,510	340	7,855	568	7,261
148	12,018	343	1,526	571	4,336
158	1,716	347	16,335	588	13,759
163	12,535	356	12,262	592	4,488
168	6,254	365	17,196	598	8,732
172	14,243	373	13,119	601	14,108
177	8,393	378	1,715	604	10,764
183	3,455	386	9,977	607	18,195
188	6,072	391	6,073	617	13,773
207	6,074	397	15,415	620	8,383
232	5,000				

Vol. 2, Hughes.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	2,368	208	7,843	339	2,259
12	10,485	210	12,096	341	6,607
17	7,591	215	8,981	349	1,745
30	2,041	224	1,570	355	14,174
44	11,539	227	12,791	361	6,827
58	11,730	228	17,782	369	894
64	6,694	230	9,984	374	9,976
66	4,121	233	8,029	378	351
70	3,735	235	5,252	394	10,902
78	6,062	238	11,297	401	7,560
83	15,243	239	11,298	405	2,843
89	5,826	245	6,954	411	5,921
91	8,730	247	2,235	418	9,152
96	10,510	250	828	420	8,525
99	3,525	255	7,253	433	10,636
112	1,171	256	4,331	435	4,081
121	1,708	264	4,855	444	1,043
123	10,297	273	2,061	447	2,471
128	7,600	284	12,978	449	18,112
144	1,965	286	4,738	467	7,363
156	1,313	291	2,300	482	3,998
164	13,166	293	5,070	484	1,828
169	4,172	297	16,986	489	14,898
175	8,606	307	12,979	492	5,573
177	10,678	313	2,954	501	1,814
183	3,728	319	1,735	513	1,338
190	3,912	320	8,313	518	18,252
200	17,279	322	7,630	527	7,479
204	13,374	334	1,809	531	1,094
207	8,904				

Vol. 3, Hughes.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	7,825	274	18,159	483	13,382
23	8,848	276	2,348	488	9,433
26	1,789	290	7,401	494	6,218
36	8,191	295	1,411	494	8,734
139	8,192	304	1,411a	504	1,602
151	1,475	307	604	505	1,380
163	1,474	320	12,922	508	7,291
172	12,424	344	15,664	509	14,817
182	5,607	382	4,006	542	17,949
191	4,511	391	2,821	545	14,525
201	15,422	397	7,595	549	15,209
207	3,928	400	5,761	553	15,774
214	3,996	414	13,494	557	14,636
221	3,999	421	17,603	559	11,720
227	5,067	422	13,736	576	18,259
231	15,456	430	76	584	11,654
234	6,909	437	3,644	589	4,404
239	15,846	449	7,677	593	14,496
249	9,307	452	2,921	609	11,523
251	290	459	13,428	637	820
257	17,874	464	9,540	641	4,181
260	9,505	466	14,574	647	12,642
272	2,970	468	5,856	657	7,425
		477	9,000	662	12,053

HUGHES' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Hughes.

Page.		F. C. No.	Page.		F. C. No.
9	(3 F. 66)	—	415	(4 F. 849)	—
12	(8 F. 118)	—	421	(9 F. 177)	—
41	(1 F. 361)	—	430	(10 F. 860)	—
47	(5 F. 149)	—	436	(89 F. 52)	—
57		3,392	438	(48 F. 823)	—
61	(10 F. 696)	—	441		4,928a
125	(88 F. 840)	—	446	(48 F. 489)	—
157		13,358	450	(3 F. 623)	—
166		9,972	455	(10 F. 802)	—
170		2,367	464	(12 F. 50)	—
172		9,544	467	(12 F. 59)	—
180		3,550	470	(48 F. 542)	—
192	(88 F. 773)	—	473	(10 F. 369)	—
203	(1 F. 351)	—	483	(9 F. 674)	—
204	(88 F. 657)	—	487	(9 F. 689)	—
215		2,459	491	(48 F. 669)	—
217	(88 F. 707)	—	493	(5 F. 43)	—
220	(12 F. 538)	—	501	(1 F. 784)	—
236	(5 F. 72)	—	512		14,701
239	(1 F. 24)	—	514	(6 F. 247)	—
253	(1 F. 174)	—	522	(88 F. 855)	—
258		9,609a	524	(89 F. 79)	—
262	(48 F. 832)	—	535	(88 F. 952)	—
265	(5 F. 593)	—	545	(19 F. 609)	—
271	(6 F. 283)	—	553	(1 F. 167)	—
278	(9 F. 465)	—	560		6,225a
282	(9 F. 699)	—	562	(10 F. 531)	—
290	(6 F. 641)	—	572	(5 F. 503)	—
300	(5 F. 465)	—	579	(2 F. 325)	—
312	(4 F. 673)	—	584	(4 F. 770)	—
327		6,255a	589	(7 F. 634)	—
331		6,254a	596	(10 F. 900)	—
377		5,245a	606		8,411
382		9,353	616		11,415
384		9,353a	621	(26 F. 57)	—
387	(3 F. 817)	—	640	(7 F. 429)	—

Vol. 5, Hughes.

Page.		F. C. No.	Page.		F. C. No.
1		5,420	237	(8 F. 833)	—
32		449	253	(5 F. 630)	—
40		7,497	257	(9 F. 120)	—
44		15,741	266	(6 F. 918)	—
55		255	275	(7 F. 490)	—
61		4,824	282	(7 F. 878)	—
79		9,849	284	(7 F. 487)	—
89		6,625	287	(8 F. 620)	—
97		12,488	292	(8 F. 923)	—
104		4,295	298	(8 F. 629)	—
109	(48 F. 760)	—	310	(88 F. 984)	—
116	(1 F. 916)	—	311	(48 F. 835)	—
125	(48 F. 569)	—	312	(10 F. 137)	—
133	(2 F. 91)	—	316	(10 F. 556)	—
137	(2 F. 264)	—	351	(10 F. 753)	—
141	(2 F. 783)	—	359		11,047a
143	(2 F. 785)	—	362	(17 F. 353)	—
146	(2 F. 919)	—	372	(12 F. 296)	—
152	(2 F. 911)	—	387	(88 F. 781)	—
161	(4 F. 236)	—	391	(11 F. 429)	—
169	(48 F. 836)	—	401	(88 F. 703)	—
172	(3 F. 581)	—	404	(13 F. 796)	—
180	(3 F. 535)	—	410	(48 F. 726)	—
191	(88 F. 853)	—	416	(48 F. 749)	—
194	(3 F. 717)	—	429	(13 F. 916)	—
196	(3 F. 802)	—	445	(88 F. 983)	—
201	(3 F. 661)	—	448	(88 F. 649)	—
205	(48 F. 566)	—	462	(48 F. 742)	—
210	(48 F. 580)	—	474		6,082a
217	(4 F. 231)	—	487		2,336
221	(4 F. 346)	—	490		14,718
228	(4 F. 463)	—	494	(16 F. 657)	—
233	(5 F. 209)	—			

HUNT'S MERCHANTS' MAGAZINE.

Vol. 1, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
62	17,695	167	16,736	334	10,032
67	11,035	252	4,007	351	136
68	11,335	252	15,029	506	4,945
159	17,738	255	8,583	521	9,444
166	15,144	331	10,030	523	3,038

Vol. 2, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
169	6,679	262	4,009	343	5,891
259	16,447	269	5,890	508	1,793
261	4,008	342	5,934		

Vol. 3, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
71	15,338	153	17,120	439	15,112

HUNT'S MERCHANTS' MAGAZINE—Cont'd.

Vol. 4, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
83	6,914	455	3,865	456	2,233
264	16,448				

Vol. 5, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	5,639	168	14,874	262	14,230
75	6,815	170	16,755	263	4,609
76	544a	171	16,576	450	10,525

Vol. 6, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
72	8,034	174	8,195	355	450
174	6,429	175	4,901		

Vol. 9, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
173	2,786	369	11,512	462	16,499
173	9,189	369	15,245		

Vol. 10, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
79	8,140	175	17,868	469	151a
80	14,421	377	1,985	470	2,485
81	7,756	378	3,401		

Vol. 11, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
265	1,059	361	6,096	364	8,608
266	13,368a	363	13,681	553	17,628
268	1,865				

Vol. 12, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
82	10,022	179	11,274	367	9,260
177	10,587				

Vol. 13, Hunt, Mer. Mag.

Page.	F. C. No.
81	17,684
356	16,907
557	8,605
558	4,436

Vol. 14, Hunt, Mer. Mag.

Page.	F. C. No.
69	13,117
73	13,295
355	4,533

Vol. 15, Hunt, Mer. Mag.

Page.	F. C. No.
290	2,486
486	7,046

Vol. 16, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
66	18,017	386	6,511	603	10,120
383	7,434	602	4,984		

Vol. 17, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
79	46	287	9,273	508	4,899
183	9,396	394	16,129	508	10,123
				596	11,015

Vol. 18, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
186	12,776	189	10,700	295	10,401

Vol. 19, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
78	7,256	186	5,108	533	5,831
80	16,992	186	8,542	535	9,992
183	7,168	296	5,626		

Vol. 23, Hunt, Mer. Mag.

Page.	F. C. No.
528	2,144

Vol. 24, Hunt, Mer. Mag.

Page.	F. C. No.
71	15,341
717	9,241

Vol. 25, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
77	794	594	9,483	718	3,844
80	6,781	715	12,263	719	3,732
336	11,971				

Vol. 26, Hunt, Mer. Mag.

Page.	F. C. No.
60	5,699
337	17,621
588	12,263

Vol. 27, Hunt, Mer. Mag.

Page.	F. C. No.
77	7,680
589	3,763

Vol. 28, Hunt, Mer. Mag.

Page.	F. C. No.
462	10,418
583	14,316
709	7,491

Vol. 29, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	17,747	458	3,897	716	2,276
77	11,795a	459	288	717	14,322
203	10,294	586	12,648	719	10,220
455	3,502				

Vol. 30, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
196	1,221	331	17,005	713	11,664
199	7,352	710	11,123	714	3,115
201	4,617				

Vol. 31, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	6,468	206	451	456	8,236
203	1,566	328	11,160	712	2,880

Vol. 32, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
80	5,314	715	14,793	716	2,819
711	17,477				

Vol. 33, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	2,134	456	11,107	703	88
330	4,475				

Vol. 34, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
71	15	450	17,006	453	14,101
74	1,231				

Vol. 35, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
68	3,362	450	2,105	454	2,046
194	1,902	451	10,791	455	5,338
446	13,926	452	7,287	586	5,700
447	5,485	453	7,188	716	4,519
449	3,040				

Vol. 36, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
61	574	449	6,492	575	10,643
202	1,281	452	5,239	706	2,895
325	14,225	454	4,979	707	2,924
326	7,224				

Vol. 37, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
64	9,165	448	11,761	709	1,798
196	6,118	449	1,152	710	10,781
322	15,038	707	452		

HUNT'S MERCHANTS' MAGAZINE—Cont'd.

Vol. 38, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
193	4,841	325	1,508	710	11,920
322	5,239	582	10,157	711	8,046
324	2,196	710	10,781	712	7,589

Vol. 39, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
71	7,492	197	2,944	332	14,951
73	4,483	329	6,744	458	14,102
74	3,090	330	8,652	577	1,801
75	3,504	331	9,430	706	7,061
75	4,308	332	2,605	707	7,583
75	5,273	332	8,051		

Vol. 40, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
75	964	319	12,593	705	1,606a
195	9,131	323	11,958	707	2,512
196	11,764	437	2,406	707	12,594
198	17,730			708	1,339

Vol. 41, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
72	17,877	575	1,070	708	15,352
74	13,553	577	11,626	709	18,193
74	15,109	707	1,939	710	10,117
75	7,716	708	2,250	711	778

Vol. 42, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
66	17,389	191	9,910	453	12,265
67	1,971	192	6,476	589	5,209
69	12,718	335	2,024		

Vol. 43, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
68	6,741	205	4,772	586 (2d case)	898
69	5,439	206	612	586	905
69	6,470	583	4,186	586	7,010
70	1,374	585	15,942	710	10,354
70	5,552				

Vol. 44, Hunt, Mer. Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
73	6,410	623	3,978	626	9,360
74	1,605	624	13,642	627	3,163

Vol. 45, Hunt, Mer. Mag.

Page.	F. C. No.
590	962

INGRAHAM ON INSOLVENCY.

Ingr. Insolv.

Page.	F. C. No.
277	945

INSURANCE LAW JOURNAL.

Vol. 1, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
132	13,839	735	7,017	750	12,533
573	5,986				

Vol. 2, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
275	14,098	599	10,864	863	13,726
289	18,168	657	5,027	895	10,171
415	13,692	733	10,863	903	6,011
443	8,589	775	12,435	935	4,066
524	9,968	860	10,171	938	6,535
588	6,587				

Vol. 3, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
55	9,305	390	11,705	631	4,174
58	14,059	444	9,755	649	6,780
89	3,719	455	12,430	743	16,800
113	3,290	493	9,795	815	6,743
153	9,027	579	13,154	919	1,851
385	8,854				

INSURANCE LAW JOURNAL—Cont'd.

Vol. 4, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	7,182	198	252	632	8,509
27	1,639	265	9,975	812	4,202
50	704	307	5,214	824	13,838
93	3,121	503	1,145	827	10,299
189	16,802	511	2,606	829	8,519

Vol. 5, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
26	8,190	297	9,945	605	362
37	6,160	310	2,901	613	4,323
73	12,244	395	3,261	736	3,642
116	9,524	449	1,430	752	9,841
134	7,658	504	7,221	817	13,964
183	4,005	507	7,226	858	18,136
274	2,104	517	9,777	931	3,973

Vol. 6, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
109	1,138	341	121	591	8,929
155	270	375	8,009	666	8,903
239	8,552	426	10,128	850	14,166
240	17,818	528	3,974	928	11,286
311	7,226	537	9,091		

Vol. 7, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
23	17,566	343	12,238	697	12,476
101	17,545	468	4,904	897	11,368
129	4,211	552	17,353	926	3,821
207	7,430	675	4,211	937	12,715

Vol. 8, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
59	9,207	331	290	651	17,866
95	5,649	336	17,267	731	5,648
97	17,929	415	7,453	740	1,960
159	11,964	461	12,830	773	3,705
208	8,682	520	4,797	815	9,980
293	2,051	624	17,530		

Vol. 9, Ins. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
68	17,212	124	10,147	424	17,216
73	11,961	145	11,444	497	3,590
113	8,304	265	6,875	523	12,896

Vol. 10, Ins. Law J.

Page.	F. C. No.
223	6,478a

Vol. 12, Ins. Law J.

Page.	F. C. No.
125	7,863a
127	2,415a
614	5,052a

INTERNAL REVENUE CASES.

Int. Rev. Cas.

Page.	F. C. No.
66	15,882
70	15,689

INTERNAL REVENUE RECORD.

Vol. 1, Int. Rev. Rec.

Page.	F. C. No.
63	16,149
125	9,724
145	7,114

Vol. 2, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	13,037	62	8,860	117	4,367
10	15,104	62	10,097	117	17,140
22	15,933	63	10,753	133	5,339
34	14,995	70	14,831	133	16,541
45	7,183	77	7,002	139	16,508
45	16,307	94	3,519	157	9,698
54	16,393	108	4,782	165	16,510
61	17,461	109	4,822	174	7,142
62	1,215	109	7,108		

INTERNAL REVENUE RECORD—Cont'd.

Vol. 3, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
46	14,524	83	15,678	135	16,504
62	15,070	114	16,502	143	9,381
67	14,607	123	16,503	159	15,678
67	16,443	134	1,977	163	3,720

Vol. 4, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	15,829	130	5,471	170	11,877
42	2,822	134	16,216	202	16,348
106	15,095	146	15,921		

Vol. 5, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	1,307	69	5,959	181	4,986
3	10,213	93	16,207	182	14,954
21	15,312	94	3,604	189	15,954
54	17,448	102	16,543	190	15,113
68	7,195	161	15,135	206	12,812
69	3,413	166	15,114		

Vol. 6, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	12,693	115	8,577	181	10,103
5	16,375	116	1,543	181	13,404
12	9,796	116	10,582	181	17,387
19	15,743	117	268	182	2,182
21	11,637	124	15,028	182	10,397
28	1,116	127	10,815	183	12,455
28	1,757	132	14,634	187	16,294
29	8,867	134	8,295	188	16,100
29	11,936	134	8,298	198	16,269
44	16,575	135	8,643	199	3,981
45	10,680	141	1,268	203	15,934
51	6,481	141	16,557	203	16,445
52	6,447	146	16,647	203	16,552
53	7,891	147	14,247	206	2,842
53	18,282	149	3,614	206	12,641
59	10,534	149	7,165	212	16,635
60	12,684	161	5,903	213	16,567
61	3,841	163	8,296	214	12,471
67	15,955	165	8,822	215	7,767
74	9,512	166	10,816	220	15,956
76	11,466	166	12,172	221	16,398
84	10,581	169	16,389	222	1,350
85	2,959	173	11,476	222	15,627
86	1,266	174	2,349	223	9,494
87	13,376	179	10,526	223	11,589
115	6,189				

Vol. 7, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	14,281	75	192	141	16,603
4	15,030	75	16,470	148	14,612
4	16,257	77	821	149	27
12	9,217	77	11,765	161	16,669
28	9,020	84	6,961	163	14,432
29	11,493	86	7,678	177	14,710
38	16,463	94	14,953	189	16,513
44	14,955	101	15,067	193	9,008
51	15,197	108	7,154	194	3,594
61	15,909	109	17,244	201	16,415
69	14,827	114	14,279	205	10,537
69	15,032	122	15,013	206	15,120
69	15,408	123	16,103	206	16,564

Vol. 8, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	14,613	114	10,118	145	3,924
3	17,245	114	15,715	148	14,509
9	16,296	121	2,922	161	15,014
20	15,946	122	2,497	162	16,253a
81	3,923	129	16,555	169	2,311
89	9,911	130	1,880	170	16,651
105	15,888	131	6,417	177	15,918
105	16,509	132	2,733	193	13,261
113	5,350	137	3,924	194	3,523
114	5,618				

Vol. 9, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C No.
1	8,382	65	16,493	145	4,987
3	15,175	67	16,460	169	16,462
4	16,558	82	14,608	169	17,313
9	11,494	97	14,540	177	2,379
25	15,589	98	14,541	177	14,789
35	15,178	99	15,099	186	14,416
41	15,172	105	16,259	201	16,280
49	16,396	121	15,093	202	16,281
		137	17,332	202	16,282

Vol. 10, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	16,562	74	15,693	139	10,532
20	11,009	86	14,529	139	13,007
34	3,814	93	15,966	140	16,396
42	15,681	94	8,897	156	13,007
42	15,721	95	16,559	157	4,316
50	3,415	107	11,097	157	13,226
52	14,478	110	10,974	164	16,580
52	15,957	115	14,898	179	9,652
53	1,887	124	15,881	205	15,148
53	13,888	126	15,035	205	16,369
54	12,450	126	16,501	206	11,495
54	12,451	131	1,498	206	16,188
74	9,375	132	13,435	206	16,514

Vol. 11, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	11,495	36	15,155	119	15,401
5	9,652	45	9,810	125	16,466
5	14,915	45	15,952	126	2,570
5	15,118	46	16,131	126	14,767
5	16,444	62	4,756	133	2,570
6	6,705	63	7,348	134	13,301
11	15,108	63	15,034	142	8,041
11	15,147	63	17,088	149	15,580
11	15,189	78	12,980	150	8,041
11	16,304	78	14,283	157	16,170
11	16,551	78	16,028	158	15,740
12	12,450	78	16,761	174	14,965
13	12,914	92	14,293	181	17,141
21	1,043	94	15,091	182	13,548
22	12,451	103	6,052	191	15,940
22	16,770	109	16,671	197	11,463
30	2,243	110	14,774	205	3,675
35	16,770	117	17,762	207	12,413
36	3,968	118	12,856		

Vol. 12, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	16,273	72	15,318	130	10,545
10	16,291	88	13,466	135	16,341
34	16,095	94	15,850a	145	14,863
39	14,562	98	16,292	146	15,624
40	16,468	98	17,522	151	16,110
41	16,469	104	15,851	153	15,948
42	15,444	105	8,053	161	16,473
42	16,107	112	11,087	170	6,811
43	15,174	113	29	175	16,301
50	15,319	122	9,443	194	17,172
54	16,223	123	7,211	209	9,653
56	16,538	123	15,889	209	16,292
		129	12,517	211	13,636

Vol. 13, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	14,854	77	4,828	126	14,671
11	15,759	77	15,130	132	12,041
12	15,533	78	10,256	134	7,604
13	7,273	85	14,500	135	8,937
19	15,730	87	8,167	142	8,069
20	1,662	91	16,528	142	8,098
20	8,408	94	10,154	142	9,250
23	5,011	95	14,641	148	16,135
27	15,709	100	16,388	149	2,746
28	15,860	101	9,052	149	5,093
29	10,089	106	10,595	150	13,525
31	10,854	114	2,098	151	14,483
35	9,052	116	18,134	158	16,105
36	7,810	117	14,511	164	5,979
52	12,855	118	15,300	166	2,313
52	15,153	118	15,402	174	15,893
54	2,053	124	12,041	181	15,282
58	15,925	124	15,634	188	16,461
58	15,951	125	9,004	195	14,506
68	16,593				

Vol. 14, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	2,862	62	15,460	139	2,552
6	14,331	70	9,711	140	5,104
6	15,890	77	14,374	142	15,088
13	1,428	87	15,379	147	6,129
14	15,847	93	17,372	147	16,371
20	9,605	94	7,831	149	10,967
22	7,201	95	5,169	155	9,783
28	11,883	100	15,376	163	16,978
29	5,184	103	13,622	164	6,693
29	2,886	103	13,620	165	8,533
36	6,829	122	14,630	172	15,965
37	10,185	125	7,885	173	2,678
38	8,909	126	15,396	180	7,776
45	15,460	124	6,997	182	15,085
47	7,324	138	5,362	205	16,456

INTERNAL REVENUE RECORD—Cont'd.

Vol. 15, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	15,682	35	11,426	91	7,639
8	15,823	39	7,319	98	1,903
8	16,128	40	194	105	368
9	14,972	41	14,417	114	7,996
9	16,774	43	16,168	115	491
10	14,928	48	16,378	115	4,833
11	16,533	50	14,417	130	7,064
18	15,777	56	12,767	137	15,958
19	8,347	56	16,665	143	3,969
19	16,106a	57	15,478	144	966
24	4,282	59	4,933	146	7,372
26	14,280	59	7,070	147	3,769
27	17,806	59	8,260	154	13,624
30	15,012	59	13,309	155	16,171
32	14,587	59	17,392	193	14,979
33	9,704	74	15,785	194	11,451
34	10,520	83	15,907	199	16,717

Vol. 16, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	1,603	134	5,041	154	120
25	15,775	134	9,336	156	17,465
30	6,662	141	10,599	164	2,567
85	14,590	142	83	165	6,116
86	7,968	142	7,510	166	10,273
92	455	143	14,855	173	8,843
92	14,566	147	3,542	174	83
114	14,371	147	15,436	174	11,707
118	11,853	148	6,402	196	10,329
132	16,106a	148	7,712	198	14,147

Vol. 17, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	6,547	44	6,137	109	12,317
10	9,678	46	11,531	125	2,752
12	8,523	53	2,245	126	15,025
20	16,252	54	14,640	155	1,596
22	12,649	54	15,205	158	15,988
26	6,137	61	10,264	181	14,983
28	5,080	68	4,506	181	15,922
29	12,121	76	14,845	189	15,210
31	9,720	84	1,329	195	15,211
38	13,515	86	15,960	196	13,712
38	15,394	93	10,264	197	14,459
39	15,306	99	3,767		

Vol. 18, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	16,277	79	7,023	163	8,006
5	16,548	84	10,679	164 (note)	12,928
6	14,265	85	10,380	164	14,653
11	8,772	92	11,088	164	14,702
18	13,562	93	17,780	164	16,595
30	2,284	94	1,308	165	680
31	15,393	95	5,917	165	9,136
32	5,027	103	16,838	166	5,845
46	15,187	118	12,435	166	6,536
54	16,516	142	10,953	166	7,880
55	1,030	143	13,611	166	15,757
56	16,027	149	333	167	12,986
59	14,963	156	14,325	173	16,498
63	6,292	157	10,341	174	4,113
68	15,393	159	1,832	190	2,185
69	14,837	159	4,066	203	17,247
77	10,381	162	5,272		

Vol. 19, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	16,428	86	9,424	132	11,212
5	15,142	94	11,247	134	4,541
14	13,726	94	12,000	143	7,172
14	16,108	101	15,780	149	13,010
18	15,908	101	15,891	149	14,226
20	7,512	108	6,197	150	6,820
20	9,051	116	14,600	158	15,136
30	3,310	117	996	181	3,178
67	2,964	118	15,061	207	2,814
78	8,649	125	14,878		

Vol. 20, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	10,340	82	7,638	137	14,526
25	10,203	98	15,935	137	14,727
32	3,062	110	9,286	153	8,240
33	12,430	112	102	175	2,834
63	15,932	121	14,494	175	3,769
64	13,788	122	8,976	176	1,988
73	5,995	122	16,745	176	3,312a
79	3,062	135	10,983	176	13,186
80	12,568	136	14,916	170	14,404
81	6,484				

Vol. 21, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	6,513	173	18,260	309	6,400
30	2,432	182	15,783	310	5,407
38	12,964	205	3,611	315	9,528
48	4,364	205	3,747	316	14,424
74	3,093	211	15,417	317	8,018
76	15,419	212	16,929	324	5,778
79	3,714	213	14,935	326	16,165
84	15,416	214	1,862	333	12,262
109	2,635	219	2,496	340	14,790
110	5,667	221	4,463	342	12,497
115	14,984	221	10,346	342	14,599
116	2,102	235	15,715a	348	3,129
124	5,026	236	13,838	348	5,861
125	10,913	237	10,572	349	4,194
142	14,396	243	1,208	349	11,198
148	15,750	245	15,735	358	5,005
149	10,604	251	16,515	366	14,966
163	10,762	268	4,523	374	2,664
164	16,361	268	9,233	382	4,802
165	14,964	300	17,204	391	16,255

Vol. 22, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	9,842	146	15,708	257	6,221
10	14,788	150	1,692	257	9,956
11	11,026	152	1,844	266	1,207
19	707	152	2,407	267	16,998
33	8,519	152	4,323	273	7,844
39	15,595	154	18,218	281	10,668
41	5,220	160	7,150	282	17,855
42	375	161	4,690	299	16,913
42	9,439	162	7,221	305	1,574
43	14,550	169	7,260	306	11,098
46	7,596	169	14,462	309	15,337
47	2,901	187	15,944	312	1,007
48	10,584	195	14,961	317	15,885
49	9,679	202	15,665	321	15,286
49	17,412	206	1,854	337	9,527a
66	3,062	207	16,539	343	12,239
67	9,636	217	16,358	344	8,483
82	3,591	218	14,962	345	13,303
91	15,243	234	12,689	368	17,360
98	16,748	235	16,150	369	9,526
106	2,147	239	12,804	375	4,707
106	15,288	246	7,718	376	13,975
114	12,814	247	4,253	383	7,738
114	15,870	248	18,084	385	3,244
115	15,868	249	362	386	2,171
135	15,683	250	12,562	395	14,799
137	11,661	251	14,019	402	3,950
138	14,039	256	5,278	403	15,713
138	15,361	257	5,489		

Vol. 23, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	15,498	187	10,127	306	14,805
10	15,947	192	14,430	311	10,160
19	7,354	193	14,527	319	2,382
25	8,763	202	13,846	319	4,505
26	10,569a	203	193	320	8,102
33	10,345	209	11,044	330	2,573
42	3,341	210	5,277	338	4,417
49	270	210	10,636	338	15,688
49	3,600	211	15,507	344	752
50	6,045	211	2,368	351	202
65	3,356	216	10,570	354	12,944
66	7,193	218	3,173	355	2,584
73	6,322	224	7,826	359	2,584
78	16,350	226	1,185	362	2,204
79	744	232	7,307	367	12,543
80	15,660	233	18,051	368	8,701
83	5,334	234	151	368	15,673
90	8,510	234	17,185	377	10,555
90	15,506	241	3,812	378	13,126
105	4,880	241	3,813	382	11,533
111	1,138	242	4,663	383	2,306
112	6,107	248	2,441	384	14,109
112	16,987	281	4,544	384	15,984
113	15,027	281	5,802	386	15,904
120	2,077	282	151	387	15,343
129	11,236	282	9,121	392	5,392
129	15,222	286	7,800	392	18,222
146	13,928	288	9,121	393	5,507
147	14,960	294	5,462	403	4,040
155	9,253	295	7,430	410	10,167
176	12,068	297	7,556	419	15,048
186	14,881	297	10,077		

INTERNAL REVENUE RECORD—Cont'd.

Vol. 24, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	5,352	118	15,873	236	12,238
6	2,111	122	8,292	245	13,802
11	7,903	122	11,400	254	4,213
12	12,214	123	13,929	314	5,939
13	628	124	7,549	316	5,359
14	16,384	126	16,688	317	15,928
28	4,041	142	17,105	327	15,886
29	16,069	150	9,453	320	17,720
30	1,334	150	16,759	331	13,234
44	15,846	159	4,376	332	16,186
46	14,617	164	104	334	4,676
53	8,097	165	4,912	334	10,163
53	10,841	166	1,557	340	3,392
54	13,880	167	1,321	341	15,874
54	16,569	174	10,164	342	2,199
68	14,899	180	17,965	354	15,472
70	11,068	198	4,225	357	17,432
76	12,442	206	4,804	358	3,274
76	15,056	207	7,359	373	8,219
77	16,297	211	4,992	374	5,939
90	8,191	212	4,276	380	4,112
99	16,519	212	10,052	381	12,468
103	9,450	223	8,709	391	13,707
108	5,154	231	15,073	413	5,364
110	506	234	16,688	414	13,707
111	15,356	236	6,785		

Vol. 25, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	16,382	201	15,358	306	10,568
56	14,743	202	4,698	312	6,546
57	15,433	208	15,420	313	12,710
64	9,670	209	12,130	319	15,043
64	17,966	209	12,424	319	15,166
71	8,279	217	15,289	321	777
95	6,177	226	5,068	321	5,155
113	11,418	240	6,297	321	13,774
132	15,154	240	15,358	335	2,913
137	17,852	241	17,962	335	15,280
138	2,729	248	2,249	352	16,522
138	8,325	249	4,866	359	9,756
138	16,076	249	8,892	359	14,681
145	13,323	250	10,594	360	4,665
159	14,093	266	14,853	361	11,018
160	6,012	274	13.659	377	61
161	9,514	279	5,534	377	8,511
161	14,787	280	1,141	378	3,653
168	6,962	280	5,843	378	17,212
169	10,049	281	14,785	384	1,067
170	234	289	17,144	384	8,877
171	16,471	289	17,473	385	7,425
177	10,405	304	10,035	385	12,642
179	1,234	304	10,053	386	6,220
185	9,670	305	835	394	1,471
186	8,082	305	14,571	405	1,714
186	16,076	305	15,435	405	16,363

Vol. 26, Int. Rev. Rec.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	9,539	27	5,803	45	14,572
6	5,152	30	11,041	132	14,207a
12	15,421	35	11,636	267	15,800a
13	12,063	38	299	316	9,898a
14	4,861	43	8,893	325	7,801

Vol. 27, Int. Rev. Rec.

Page.	F. C. No.
130	11,750a

Vol. 28, Int. Rev. Rec.

Page.	F. C. No.
81	8,730b
314	16,190a
370	4,429a

Vol. 29, Int. Rev. Rec.

Page.	F. C. No.
46	6,261a

JOURNAL OF THE FRANKLIN INSTITUTE.

Vol. 6, Jour. Fr. Inst.

Page.	F. C. No.
132	6,860

Vol. 20, Jour. Fr. Inst.

Page.	F. C. No.
47	3,753

JOURNAL OF THE FRANKLIN INSTITUTE—Cont'd.

Vol. 21, Jour. Fr. Inst.

Page.	F. C. No.
165	13,285

Vol. 37, Jour. Fr. Inst.

Page.	F. C. No
63	17,858

Vol. 40, Jour. Fr. Inst.

Page.	F. C. No.
27	4,440

Vol. 42, Jour. Fr. Inst.

Page.	F. C. No.
319	10,736

Vol. 43, Jour. Fr. Inst.

Page.	F. C. No.
408	7,884

Vol. 46, Jour. Fr. Inst.

Page.	F. C. No.
254	5,626

Vol. 47, Jour. Fr. Inst.

Page.	F. C. No.
259	1,509

Vol. 48, Jour. Fr. Inst.

Page.	F. C. No.
58	754
208	17,787

Vol. 52, Jour. Fr. Inst.

Page.	F. C. No.
20	3,831

Vol. 53, Jour. Fr. Inst.

Page.	F. C. No.
96	1,107
256	17,865

Vol. 61, Jour. Fr. Inst.

Page.	F. C. No.
176	8,724

JOURNAL OF THE FRANKLIN INSTITUTE, (3d S.)

Vol. 24, Jour. Fr. Inst. (3d S.)

Page.	F. C. No.
23	12,947

Vol. 26, Jour. Fr. Inst. (3d S.)

Page.	F. C. No.
10	11,758

Vol. 44, Jour. Fr. Inst. (3d S.)

Page.	F. C. No.
188	13,764

Vol. 61, Jour. Fr. Inst. (3d S.)

Page.	F. C. No.
316	17,864

JOURNAL OF JURISPRUDENCE.

Vol. 1, Jour. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	16,175	131	6,413	250	11,102

KANSAS REPORTS.

Vol. 1, Kan.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
597	16,660	610	13,254	624	2,032
601	16,639	612	12,288	627	52
606	16,373				

KENTUCKY LAW REPORTER.

Vol. 2, Ky. Law Rep.

Page.	F. C. No.
397	5,805

KING'S LAWS AND RULES OF PRACTICE, COLO.

Page.	F. C. No.
197	12,239a
202	12,239b

LAW DIGEST.

Law Dig.

Page.	F. C. No.
617	3,678
620	812

LAW REPORTER.

Vol. 1, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	6,013	157	9,191	257	15,539
17	11,335	189	16,694	281	11,035
63	16,739a	223	1,517	313	8,583
64	17,695	226	11,186	319	44
124	4,953	249	9,493	354	9,825
153	17,738				

Vol. 2, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
71	10,151	146	15,473	294	5,728
76	17,739	165	10,032	298	13,722
104	17,709	239	17,652	325	4,945
113	5,696	246	3,580	329	15,359
133	10,032	262	1,793	357	3,581

Vol. 3, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,653	181	1,324	386	714
69	2,316	220	12,186	387	2,632
92	6,146	250	9,087	412	3,562
95	14,654	255	14,755	428	14,038
127	8,961	374	17,322	449	16,877
175	4,972	383	153		

Vol. 4, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	7,524	153	2,828	371	15,423
20	3,865	197	15,917	382	17,056
22	10,108	233	10,216	444	5,370
35	17,772	256	1,479	471	2,486
36	14,764	297	12,016	480	18,204
54	18,107	301	8,195	482	6,727
98	10,698	303	983	483	5,130
106	3,666	324	5,716	486	8,178
134	2,859	342	11,645	488	8,986
141	4,179	349	13,971	488	11,227
143	6,593	353	11,204	489	7,616

Vol. 5, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	5,693	241	14,330	351	10,743
17	16,941	250	1,468	360	6,633
19	2,636	255	6,053	362	5,305
24	17,900	258	1,979	369	13,142
25	5,744	258	8,501	370	3,758
55	4,960	259	13,817	370	8,404
75	9,188	269	5,919	371	958
81	14,971	273	4,302	372	12,993
106	9,316	289	6,953	392	4,043
115	11,550	296	561	401	7,032
117	4,237	303	5,690	402	17,702
120	2,415	306	10,159	403	5,910
121	1,978	309	17,051	406	4,959
124	10,293	313	133	408	2,540
125	2,307	319	6,856	415	2,380
128	18,147	320	726	416	9,716
129	2,308	320	7,784	443	3,152
155	17,761	321	6,728	447	4,210
158	9,149	321	11,921	453	12,722
161	11,447	322	8,684	456	8,518
163	3,073	323	1,799	457	2,569
200	5,916	323	4,428	462	6,708
206	12,017	324	1,984	498	682
210	5,147	325	9,814	503	13,816
214	1,085	326	6,485	505	6,224
217	4,818	327	10,392	507	2,180
224	5,423	328	20	510	6,440
225	4,576			533	12,165

LAW REPORTER—Cont'd.

Vol. 6, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	13,253	156	17,940	311	7,390
16	3,789	158	5,691	313	13,052
21	4,674	201	14,539	347	9,673
57	12,968	255	11,045	363	17,717
67	9,108	261	10,873	392	11,777
71	1,961	272	17,783	397	11,571
73	9,189	297	6,788	440	17,887
107	13,266	298	12,095	508	1,985
111	2,786	304	9,829	546	3,269
118	7,377				

Vol. 7, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	17,407	275	7,804	377	6,801
32	15,531	276	17,214	437	13,784
88	14,715	279	18,019	465	10,587
119	1,278	281	1,873	469	14,427
132	8,608	343	4,141	471	11,274
135	7,537	361	15,360	522	9,260
222	3,528	374	1,059	527	17,845
226	3,529				

Vol. 8, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
70	1,937	258	15,122	375	16,903
77	15,320	270	4,436	410	11,642
116	5,707	275	2,129	413	3,200
161	4,657	314	10,590	465	15,191
165	216	361	9,981	496	14,830
169	9,181	361	9,982		

Vol. 9, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	14,115	295	14,441	451	16,489
28	11,867	314	1,010	510	832
67	10,134	318	13,210	542	11,014
160	17,181	397	5,149	545	2,079
269	10,916	441	10,652		

Vol. 10, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
32	4,984	127	15,867	305	17,453
35	13,785	152	17,323	344	13,143
69	46	193	6,600	395	4,087
70	3,398	264	11,015	400	2,373
81	17,839			501	17,691

Vol. 11, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
16	12,508	151	15,620	321	2,081
80	8,248	156	924	399	8,781
84	17,319	204	11,383	448	11,656
130	4,996				

Vol. 12, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	13,751	90	14,414	355	8,637
13	7,901	115	12,925	408	13,005
21	10,794	183	4,737	470	6,557
24	7,432	354	8,971	511	9,484

Vol. 13, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
61	16,911	399	16,843	608	16,915
266	10,277	488	5,484		

Vol. 14, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
200	17,321	450	3,844	453	11,016
235	16,145	451	2,281	455	3,868
260	16,659	451	11,067	465	17,149
301	3,613	452	3,423	555	7,579
421	7,528	452	9,483	669	16,878
450	26				

Vol. 15, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	17,320	208	11,538	428	16,134
36	16,051	421	5,483	578	479
137	17,826	427 (note)	14,182	614	5,764
149	10,294				

Vol. 16, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	11,919	397	9,881	568	6,994
92	409	401	13,039	584	3,314
264	288	433	10,320	686	228
284	15,950	449	10,320	692	17,483
330	3,674				

LAW REPORTER—Cont'd.

Vol. 17, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
93	6,358	324	5,314	491	3,380
217	11,471	384	10,606	494	9,356
264	12,858	435	15,781	497	17,222
266	15,878	439	15,659	607	11
316	6,818	442	6,298	617	5,487
322	15	444	2,880		

Vol. 18, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	9,654	162	12,283	497	17,525
50	9,772	185	2,261	550	13,647
76	16,409	250	16,572	557	13,500
89	6,590	254	15,508	610	14,372
91	84	387	13,573	622	15,643
94	13,527	390	18,042	672	17,932
96	7,886	433	10,667	678	2,792
99	12,743	494	8,352	683	15,642
151	7,014	496	17,524	685	2,054

Vol. 19, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	5,409	146	2,952	449	15,858
27	13,720	198	13,144	490	10,252
36	13,349	201	16,480	544	11,598
90	14,467	376	3,040	548	1,192
91	16,336	376	18,057	607	10,663
95	14,474	377	2,924	667	16,050
140	16,512	379	13,926		

Vol. 20, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
129	1,152	443	666	606	3,780
135	11,761	444	16,570	608	18,186
186	8,020	498	12,566	664	4,931
324	10,247	561	2,682	669	12,248
331	17,025			673	6,947

Vol. 21, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	12,265	157	8,765	473	2,388
12	5,494	201	12,176	478	16,808
14	9,533	204	13,068	531	13,598
18	3,482	208	14,228	586	2,937
21	7,577	210	12,249	589	8,019
34	2,845	267	15,092	591	15,006
37	14,834	273	4,941	593	14,848
40	1,305	279	5,268	598	16,523
41	8	281	11,713	601	11,764
41	7,852	341	4,979	612	14,183
41	15,066	343	2,944	616	16,945
83	7,522	390	2,910	651	12,362
87	7,360	392	2,827	658	8,496
99	30	397	11,210	666	1,104
100	14,625	463	2,951	726	2,009
138	5,948	466	3,447	734	3,431
148	2,218	469	17,559	739	13,103
153	18,031	471	4,930		

Vol. 22, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
74	6,888	198	4,300	339	12,012
79	15,927	273	14,591	473	6,476
150	6,226	276	9,910	531	13,630
152	4,512			725	18,220

Vol. 23, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
70	6,769	396	11,906	597	18,270
139	17,139	533	3,521	658	9,360
145	14,869	538	1,724	705	18,273
277	4,301	545	8,596	724	404

Vol. 24, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
78	9,487	276	11,716	544	343
91	15,262	335	341	546	11,496
144	16,541a	494	342	731	10,530
270	5,913	501	343		

Vol. 25, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	1,513	459	16,777	600	15,964
81	8,348	523	12,089	657	15,515
345	14,808	535	8,004	663	253
451	16,583				

LAW REPORTER—Cont'd.

Vol. 26, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	14,781	423	9,963	566	15,200
107	15,796	485	7,180	609	2,831
204	619	492	2,709	669	4,368
263	7,107	558	15,668	677	17,883
336	529	564	11,973		

Vol. 27, Law Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
24	16,491	257	6,999	377	8,515
29	6,731	267	16,768	391	17,140
251	12,679				

LAW TIMES, (ENG.)

Vol. 9, Law T. (Eng.)

Page.	F. C. No.
514	13,785

LAW & EQUITY REPORTER.

Vol. 1, Law & Eq. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	7,761	104	11,771	393	3,129
15	7,874	132	4,005	401	9,299
16	16,788	138	2,901	402	4,175
25	1,955	196	1,950	420	5,418
28	4,364	246	2,147	473	4,194
35	14,788	338	9,524	505	1,430
40	375	351	3,921	570	1,854
52	8,271	371	17,275	591	843
56	11,198	391	4,147	617	4,532
64	6,544				

Vol. 2, Law & Eq. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
42	16,631	257	6,970	638	18,084
236	12,804	321	1,856		

Vol. 3, Law & Eq. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C No.
614	11,791	715	3,173	736	8,009
647	9,091				

Vol. 4, Law & Eq. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
27	11,268	159	2,441	441	10,912
28	5,873	166	5,255	459	8,102
29	3,242	181	502	488	1,746
29	6,418	196	12,926	505	7,430
49	10,636	197	1,080	517	4,040
68	16,987	210	4,780	556	17,199
69	8,903	232	11,027	561	5,988
74	13,783	237	16,581	598	12,543
77	7,307	254	10,554	616	17,265
78	18,051	261	5,668	650	10,555
101	13,783	283	5,802	659	13,091
105	14,010	283	12,605	676	8,701
149	14,412	349	4,544	684	733

Vol. 7, Law & Eq. Rep.

Page.	F. C. No.
16	15,464

LEGAL GAZETTE.

Vol. 1, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	12,229	30	8,256	47	16,315
22	12,293	46	12,729	148	3,523
22	4,121	46	13,936	154	12,823
30	12,445				

Vol. 2, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
133	5,092	293	5,148	362	11,803
185	2,582	294	14,806	381	9,333
193	9,375	298	11,690	385	9,645
201	5,204	299	8,375	390	16,985
230	17,996	300	11,087	405	7,593
249	3,675	302	13,301	413	7,273
275	3,272				

LEGAL GAZETTE—Cont'd.

Vol. 3, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	2,286	230	18,077	331	3,126
121	10,713	268	16,842	334	12,551
132	10,300	316	9,455	335	5,039
226	7,622	316	10,956	336	10,967
		317	16,371	371	7,523

Vol. 4. Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
50	13,961	329	17,465	346	12,687
108	7,372	333	4,651	347	3,542
113	3,969	343	10,599	347	15,436
114	3,769	345	2,567	355	7,007

Vol. 5, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
34	5,080	255	15,393	336	12,928
60	16,801	263	12,183	337	9,136
61	10,264	275	7,023	341	10,047
139	4,014	294	17,780	350	12,986
236	8,772	321	12,435	381	4,252
247	6,292	332	13,611		

Vol. 6, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	9,051	229	12,427	308	9,286
116	5,164	236	10,945	324	8,453
132	10,337	252	7,006	342	2,571a
148	6,820			386	2,665

Vol. 7, Leg. Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
201	14,092	297	10,288	324	15,595
210	14,935	306	6,400	329	17,180
277	9,233	316	16,361	322	9,524
289	4,699	321	5,861	414	4,364

Vol. 8, Leg. Gaz.

Page.	F. C. No.
44	4,375a

LEGAL GAZETTE REPORTS.

Vol. 1, Leg. Gaz. Rep.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
121	2,286	282	16,371	289	12,551
145	10,713	284	3,126	291	5,039
275	10,956	288	3,544	354	7,523
279	9,455				

LEGAL & INSURANCE REPORTER.

Vol. 2, Leg. & Ins. Rep.

Page.	F. C. No.
10	8,186
27	11,820

Vol. 3, Leg. & Ins. Rep.

Page.	F. C. No.
58	6,412

Vol. 4, Leg. & Ins. Rep.

Page.	F. C. No.
3	4,567
170	15,446

Vol. 5, Leg & Ins. Rep.

Page.	F. C. No.
2	245
10	16,778
18	10,217
146	9,913

Vol. 6, Leg. & Ins. Rep.

Page.	F. C. No.
59	9,476
178	11,089

Vol. 9, Leg. & Ins. Rep.

Page.	F. C. No.
124	10,242
276	1,269
292	9,512

LEGAL & INSURANCE REPORTER—Cont'd.

Vol. 10, Leg. & Ins. Rep.

Page.	F. C. No.
377	14,509

Vol. 11, Leg. & Ins. Rep.

Page.	F. C. No.
108	6,415

LEGAL INTELLIGENCER.

Vol. 1, Leg. Int.

Page.	F. C. No.
6	2,541
150	8,717

Vol. 3, Leg. Int.

Page.	F. C. No.
41	9,958
41	15,301

Vol. 4, Leg. Int.

Page.	F. C. No.
— (No. 5)	14,433
39	13,496
195	9,781

Vol. 7, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
138	10,748	174	5,243	203	1,054
150	8,717	202	6,912	203	4,966
162	15,849				

Vol. 8, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	8,478	22	9,547	146	3,831
10	17,802	26	11,626	150	14,820
21	8,622	31	12,299	154	8,622
22	1,257	82	8,655	158	5,103
22	2,195	126	1,107	162	1,089

Vol. 9, Leg. Int.

Page.	F. C. No.	Page.	F. C No.	Page.	F. C. No.
22	15,299	74	13,032	82	13,034
38	13,380	74	17,860	136	3,763
47	16,878	82	3,763	152	10,497

Vol. 10, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	13,645	122	1,584	166	7,259

Vol. 11, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	13,514	70	12,377	74	5,459
7	3,799				

Vol. 12, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	2,673	198	16,725	326	2,099
58	8,920	199	16,725	335	4,589
98	10,003				

Vol. 13, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
292	12,840	361	2,924	369	4,419
321	12,648	364	2,092	369	13,231
332	9,165	369	1,989	372	7,045
361	3,040	369	4,245	388	12,841
361	18,057				

Vol. 14, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
148	211	156	1,152	180	10,726
148	5,010	172	13,108	393	7,406

Vol. 15, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	666	388	8,731	404	13,568
25	5,673	404	4,956		

Vol. 16, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
45	4,149	316	15,352	340	17,891
110	1,449	317	14,240	348	4,641
190	14,642	317	18,193	348	17,891
228	1,410	324	3,716	349	1,971
245	4,512	324	5,675	358	10,262
293	68	325	10,117	388	15,604
316	1,070	332	17,891	388	16,249

LEGAL INTELLIGENCER—Cont'd.

Vol. 17, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	10,444	325	10,354	357	18,197
116	12,178	332	2,697	373	1,549
181	14,680	333	11,342	373	7,890
245	4,771	349	7,644	381	11,063
245	12,220	350	2,699	405	4,078
255	13,795	356	1,218	405	11,906
260	17,139	357	18,137	412	338
318	11,239				

Vol. 18, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
109	242	332	6,451	357	276
149	15,262	334	15,179	357	12,272
214	16,434	340	8,414	388	277
293	8,413	348	15,327	396	4,390
308	4,357	348	17,219	397	5,570
324	5,096	349	11,172	405	143

Vol. 19, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	4,567	220	2,727	396	12,089
13	10,756	300	85	404	8,173
181	2,421	364	2,092	412	5,457

Vol. 20, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	14,245	125	7,205	284	16,439
12	9,232	181	16,777	292	8,669
21	16,778	212	14,468	300	495
28	10,796	228	17,939	301	9,913
37	1,532	229	8,294	341	16,697
68	16,239	229	10,425	348	6,568
76	17,974	229	11,857	364	10,952
108	8,669				

Vol. 21, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	4,557	172	7,180	372	11,089
60	7,107	244	12,683		

Vol. 22, Leg. Int.

Page.	F. C. No.
284	8,180

Vol. 23, Leg. Int.

Page.	F. C. No.
12	12,748
116	1,345
308	827
404	14,158

Vol. 24, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	3,102	356	2,349	380	3,981
196	11,637	356	12,172	380	7,076
220	9,796	357	2,182	381	5,903
292	11,466				

Vol. 25, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
60	11,580	148	5,896	276	5,620
76	12,774	164	1,205	316	1,315
92	9,813	164	5,897	348	3,924
92	11,578	180	499	364	13,167
140	3,443	196	1,021	380	14,121
140	8,205	244	13,062	412	3,523

Vol. 26, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
36	7,722	276	14,529	349	8,477
92	15,099	332	11,141		

Vol. 27, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
20	3,968	188	9,567	308	11,087
67	6,262	196	2,582	364	5,941
84	16,671	204	5,204	373	4,398
111	2,227	212	2,422	396	9,645
116	17,690	236	16,291	404	4,145
148	9,774	292	7,519		

Vol. 28, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	5,011	300	14,374	325	9,455
20	2,286	309	8,210	325	12,551
36	13,308	317	5,661	333	5,039
36	15,860	317	9,018	333	16,371
124	1,019	317	10,956	340	6,664
125	2,165	324	3,126	373	7,523
277	9,364	325	3,544	388	13,968

LEGAL INTELLIGENCER—Cont'd.

Vol. 29, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
20	456	236	17,990	332	8,798
28	7,580	238	14,979	332	13,556
76	9,060	252	15,915	348	2,567
116	3,769	268	17,902	357	12,687
116	3,969	284	10,674	357	17,465
124	11,660	284	18,061	365	2,224
125	7,751	285	4,741	389	4,146
196	13,048	309	2,967	405	17,396
213	3,239	325	17,550	412	9,666
221	11,855				

Vol. 30, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	9,343	249	16,027	338	7,880
29	8,488	266	14,459	344	15,757
124	4,259	272	10,045	352	11,475
141	8,109	281	11,088	361	18,044
149	2,331	296	7,514	404	3,167
169	4,014	313	10,861	404	4,252
185	1,308	321	17,796	425	10,292
232	5,073	329	11,887	433	12,602
233	13,203	329	13,611		

Vol. 31, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
61	8,712	229	13,498	278	8,976
85	7,640	237	10,945	293	5,106
126	13,010	254	12,062	293	5,995
133	783	254	81	316	11,179
133	5,164	254	386	324	8,453
148	10,337	261	14,376	332	2,207
173	5,058	261	17,207	357	3,169
189	12,162	269	3,062	265	591
197	18,198	269	13,357	365	13,800
229	3,132				

Vol. 32, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	9,398	362	3,129	362	12,497
22	5,398	362	4,194	363	1,462
136	6,338	362	5,861	371	15,595
143	14,396	362	9,524	388	3,921
229	14,092	362	10,789		

Vol. 33, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
54	1,430	149	14,039	349	8,650
94	15,868	213	9,904	360	8,573
120	12,814	221	11,563	401	3,244
149	11,661	258	16,150	402	16,989

Vol. 34, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	2,545	365	7,834	394	14,109
78	8,510	384	8,701	402	18,222
312	14,805				

Vol. 35, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	8,709	194	4,376	404	1,952
29	12,442	251	4,804	404	4,676
71	6,884	284	13,802	440	17,720
147	11,402	341	10,164	468	3,692
165	1,557	346	17,636	468	8,219
165	7,684				

Vol. 36, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	9,752	215	9,824	405	61
66	9,084	228	4,805	414	2,812
67	6,464	279	10,568	444	8,511
74	9,670	294	403	462	1,067
158	9,670	294	6,465	462	3,653
158	14,188	328	17,434	462	6,220
176	3,654	239	12,787	488	16,363
204	234	339	12,881	496	5,152
204	10,049	366	5,155		

Vol. 37, Leg. Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	4,861	30	11,041	237	14,793a
18	10,890	52	299	317	15,800a
30	4,178	166	14,207a		

LEGAL OPINIONS.

Vol. 1, Leg. Op.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	11,854	161	15,460	201	3,126
146	3,571	178	1,169	202	9,018
151	2,862				

Vol. 2, Leg. Op.

Page.	F. C. No.
27	12,533
27	13,839

Vol. 3, Leg. Op.

Page.	F. C. No.
221	2,470

Vol. 4, Leg. Op.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
453	2,224	529	9,038	537	16,876
492	5,031	533	17,194	622	10,264
506	5,080				

Vol. 5, Leg. Op.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
58	5,272	101	13,203	145	1,308
63	14,459	105	8,772	153	17,780
89	6,711	116	2,878	169	7,514
92	18,007	137	11,088	171	13,304
93	14,837	139	13,461	182	17,796
95	15,187				

LIVINGSTON'S LAW MAGAZINE.

Vol. 1, Liv. Law Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
95	10,733	193	2,502	594	12,357
96	3,375	545	15,359	606	13,070
126	10,017				

Vol. 2, Liv. Law Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
277	15,815	364	17,749	427	18,249
314	2,262	366	6,365	524	14,560
316	2,264	366	15,679	538	13,387
326	15,754	417	13,514	703	11,160
354	3,822				

Vol. 3, Liv. Law Mag.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
44	3,688	386	11,935	586	13,527
141	3,380	490	7,014	595	16,725
275	15,781	568	16,114	598	9,521

LOUISIANA LAW JOURNAL.

Vol. 1, La. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
90	11,669	153	7,658	176	3,060
108	3,921	173	7,135	184	1,696a
118	7,150	175	10,366	184	3,569

LOWELL'S UNITED STATES DISTRICT COURT REPORTS.

Vol. 1, Low.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	18,205	66	702	126	2,379
2	6,999	71	144	130	484
11	12,679	77	8,517	134	12,404
18	17,140	83	4,347	139	17,475
22	4,782	87	11,341	143	8,555
27	1,699	91	5,355	148	4,849
30	12,647	95	3,739	153	13,540
36	11,691	96	5,349	154	1,736
38	11,517	100	8,752	161	4,998
43	3,938	107	16,002	163	10,527
46	8,354	110	12,920	165	7,234
52	9,065	114	4,311	168	6,580
57	11,894	117	15,069	173	2,419
60	10,782	119	9,363	176	289
65	11,144	124	4,056	179	15,822

LOWELL'S UNITED STATES DISTRICT COURT REPORTS—Cont'd.

Vol. 1, Low.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
180	5,304	313	4,965	444	5,738
184	9,739	319	16,086	447	9,443
190	6,813	321	7,170	450	12,413
191	2,160	323	1,156	455	4,498
194	17,681	326	2,302	456	5,930
199	15,156	331	8,398	458	9,642
203	12,349	335	7,629	462	9,123
207	17,044	336	4,946	464	1,671
211	8,345	338	8,343	470	161
215	13,745	340	5,410	475	2,616
216	7,819	342	2,908	477	17,522
222	17,060	345	11,978	478	2,591
223	1,075	350	513	483	2,293
225	7,055	362	9,939	485	1,473
230	2,781	366	5,478	491	11,442
232	16,136	373	1,098	493	3,849
234	5,333	375	7,109	494	5,326
237	17,061	381	5,999	497	4,672
239	16,470	384	3,586	500	4,550
244	15,946	386	9,850	504	18,045
251	3,843	388	11,892	506	9,418
253	4,152	394	7,681	510	5,536
258	13,261	396	8,585	515	6,411
262	11,685	398	2,479	520	7,062
266	14,632	400	10,276	523	10,650
270	6,287	402	14,806	525	4,551
274	10,617	404	4,704	528	13,516
278	9,061	406	17,703	530	162
280	12,911	409	5,325	532	3,118
286	10,490	414	14,906	536	6,173
289	4,327	416	3,396	539	10,728
290	11,768	420	18,133	543	1,527
293	8,439	423	12,001	547	1,701
297	12,014	425	301	550	2,534
299	98	429	17,564	554	6,725
303	14,994	431	3,540	560	1,012
306	4,955	435	10,901	561	323
309	10,081	437	17,124	569	1,203
310	421	439	2,570	575	12,733

Vol. 2, Low.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,324	220	7,984	404	17,513
5	3,037	226	2,784	407	4,587
7	13,744	232	15,803	409	14,169
15	4,854	238	8,263	411	11,252
18	4,183	243	6,729	417	4,547
21	2,334	245	1,099	424	9,823
29	12,410	250	5,438	428	9,205
36	5,066	252	17,488	430	4,090
40	10,543	259	6,588	436	3,492
53	9,310	264	8,558	440	789
58	9,259	267	14,665	444	12,371
64	4,783	270	8,917	447	9,679
66	7,941	273	13,145	451	7,446
69	12,981	281	1,244	453	17,784
72	5,203	286	10,785	455	17,580
76	2,660	289	11,381	458	1,844
81	2,953	295	8,532	464	7,118
87	11,375	305	8,043	466	16,748
93	6,987	307	3,445	468	2,785
96	11,371	310	8,539	470	10,528
97	7,018	315	11,800	472	17,573
101	17,523	320	13,184	475	12,395
103	274	323	4,845	477	5,341
107	15,965	326	11,941	487	6,764
110	13,696	228	6,730	491	6,549
115	15,579	331	2,086	494	10,096
119	18,063	333	8,044	496	6,346
122	4,999	339	7,655	501	770
124	12,109	340	5,825	505	14,133
127	8,804	343	11,140	508	4,638
129	7,369	346	10,384	511	17,664
136	8,953	352	10,370	519	4,837
140	11,884	354	9,202	522	11,977
142	10,851	358	13,755	523	17,529
154	17,693	361	13,850	526	6,322
159	16,456	364	6,524	537	15,498
168	2,783	367	4,120	544	7,991
173	10,390	370	9,226	547	4,534
180	6,253	374	3,267	549	10,517
182	7,942	378	14,295	551	12,396
187	7,019	381	12,545	553	5,776
192	688	383	493	553	11,416
196	9,223	387	8,058	555	12,350
200	6,044	389	1,868	563	12,212
205	13,559	393	7,303	568	6,109
212	12,954	399	5,021	571	5,993
218	1,306	400	1,314	575	4,188

McALLISTER'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, McAll.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	12,574	119	1,760	360	8,513
9	16,847	142	5,119	370	9,646
17	13,818	151	14,069	401	9,520
20	3,825	175	1,137	408	1,801
26	14,068	181	14,253	419	8,134
48	13,819	186	14,070	430	5,380
53	1,362	196	15,009	443	2,266
60	12,575	207	2,039	447	15,999
68	3,824	212	5,819	467	18,124
77	2,372	229	14,249	480	3,784
82	13,353	235	5,638	491	10,683
85	1,136	243	15,310	497	13,211
91	3,333	253	51	505	17,427
97	1,135	263	2,265	513	5,621
104	8,815	267	5,095	523	7,691
113	1,134	271	15,998		

McARTHUR'S PATENT CASES.

Vol. 1, McA. Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,687	255	12,982	485	7,126
12	6,309	259	7,308	493	2,593
27	552	262	14,320	510	17,038
36	553	271	9,308	519	1,439
40	11,259	278	1,696	521	3,224
46	13,047	286	12,086	530	17,112
52	2,929	292	13,373	536	9,352
60	17,183	302	10,243	539	2,974
63	3,477	310	1,722	543	6,314
66	11,001	315	2,208	552	1,528
68	11,002	332	17,521	563	9,892
80	608	334	6,685	568	8,349
86	7,209	335	11,783	569	3,513
90	754	351	1,252	574	8,399
123	17,879	358	13,199	577	3,514
126	107	362	10,244	581	2,454
130	108	366	6,891	585	4,409
134	3,414	378	4,060	599	3,606
136	7,321	379	13,369	607	698
143	9,292	388	2,475	618	4,648
160	12,122	406	4,580	622	1,470
168	2,167	409	7,508	628	3,617
173	5,784	420	12,114	634	4,410
178	5,156	423	3,237	635	7,588
193	18,131	432	17,385	641	2,581
210	10,158	443	7,795	645	17,610
216	3,388	455	10,385	691	12,389
218	10,566	459	5,963	696	13,338
229	9,129	467	6,371	699	13,223
238	8,719	473	2,848	702	5,383
248	12,632	475	6,489		

McCAHON'S KANSAS REPORTS.

McCahon.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
199	16,639	212	13,254	299	2,032
206	16,373	214	12,288	235	52

McCRARY'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, McCrary.

Page.		F. C. No.	Page.		F. C. No.
1	(1 F. 97)	—	72	(1 F. 289)	—
9	(1 F. 45)	—	75	(1 F. 292)	—
11	(1 F. 264)	—	78	(1 F. 353)	—
18	(1 F. 270)	—	86		14,375
20	(1 F. 193)	—	96	(1 F. 444)	—
25	(1 F. 197)	—	101		4,914
26	(1 F. 199)	—	112	(1 F. 449)	—
31	(1 F. 203)	—	114	(1 F. 450)	—
34	(1 F. 206)	—	117	(1 F. 453)	—
42	(1 F. 213)	—	120	(1 F. 456)	—
46	(1 F. 216)	—	123	(1 F. 471)	—
48	(1 F. 273)	—	130	(4 F. 168)	—
49	(1 F. 274)	—	132	(4 F. 166)	—
51		5,867	134	(1 F. 469)	—
62	(1 F. 276)	—	136	(1 F. 571)	—
65	(1 F. 283)	—	144	(1 F. 578)	—
67	(1 F. 285)	—	151		11,819
70	(1 F. 287)	—	155	(1 F. 604)	—

McCRARY'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1. McCrary—Cont'd.

Page.		F. C. No.	Page.		F. C. No.
161	(1 F. 640)	—	383	(30 F. 85)	—
162	(1 F. 692)	—	384	(48 F. 810)	—
166		15,213	385		16,180
168	(1 F. 696)	—	388	(8 F. 303)	—
170		5,443	392	(2 F. 877)	—
175	(1 F. 698)	—	402	(6 F. 651)	—
176	(1 F. 768)	—	405		2,973
183		16,381	418	(3 F. 1)	—
188	(1 F. 745)	—	429	(3 F. 14)	—
204		13,325	431	(3 F. 16)	—
206	(2 F. 41)	—	434	(3 F. 19)	—
209	(2 F. 82)	—	436	(3 F. 77)	—
213		11,663	438	(3 F. 79)	—
218	(2 F. 1)	—	443	(48 F. 808)	—
222	(2 F. 5)	—	446	(48 F. 664)	—
226		15,475	452	(3 F. 106)	—
234	(2 F. 113)	—	458	(3 F. 191)	—
238		5,537	466	(3 F. 177)	—
247	(2 F. 117)	—	474	(3 F. 185)	—
250	(2 F. 120)	—	480		13,413
252	(2 F. 122)	—	491	(3 F. 257)	—
256	(2 F. 126)	—	501	(8 F. 106)	—
258	(2 F. 128)	—	505	(50 F. 189)	—
264	(2 F. 133)	—	508	(3 F. 325)	—
268	(2 F. 138)	—	513	(3 F. 330)	—
276	(2 F. 273)	—	515	(3 F. 332)	—
281	(2 F. 285)	—	516	(3 F. 353)	—
291	(2 F. 295)	—	521	(3 F. 356)	—
299	(2 F. 302)	—	528	(3 F. 378)	—
301	(2 F. 447)	—	535	(3 F. 384)	—
302	(3 F. 702)	—	538	(3 F. 391)	—
306	(3 F. 705)	—	541	(1 F. 745)	—
308	(3 F. 764)	—	551	(3 F. 417)	—
312	(3 F. 768)	—	558	(3 F. 423)	—
316	(2 F. 545)	—	565	(3 F. 430)	—
323	(2 F. 616)	—	570	(3 F. 439)	—
325	(2 F. 640)	—	579	(40 F. 56)	—
329	(2 F. 653)	—	581	(3 F. 721)	—
332	(2 F. 656)	—	598	(3 F. 545)	—
335	(2 F. 658)	—	601	(3 F. 548)	—
337	(2 F. 660)	—	606	(8 F. 110)	—
338	(2 F. 661)	—	608	(5 F. 556)	—
341	(2 F. 740)	—	610		15,582
343	(2 F. 743)	—	624		15,786
348	(2 F. 747)	—	626	(3 F. 609)	—
352	(2 F. 751)	—	630	(3 F. 612)	—
356		15,472	634		169
372	(5 F. 394)	—	647	(3 F. 772)	—
377	(5 F. 269)	—			

Vol. 2, McCrary.

Page.		F. C. No.	Page.		F. C. No.
1	(7 F. 622)	—	216	(4 F. 10)	—
11	(5 F. 163)	—	220	(4 F. 166)	—
13	(7 F. 800)	—	222	(4 F. 168)	—
18	(5 F. 165)	—	224	(4 F. 172)	—
25	(7 F. 318)	—	226	(4 F. 392)	—
33	(5 F. 419)	—	227	(12 F. 641)	—
39	(5 F. 172)	—	235	(8 F. 544)	—
44	(4 F. 702)	—	244	(7 F. 533)	—
48	(4 F. 170, 706)	—	251	(6 F. 844)	—
58	(4 F. 779)	—	259	(5 F. 790)	—
73	(4 F. 694)	—	260	(4 F. 688)	—
82	(4 F. 792)	—	267	(12 F. 562)	—
87	(4 F. 768)	—	268	(8 F. 488)	—
89	(4 F. 7)	—	275	(12 F. 513)	—
92	(5 F. 551)	—	279	(9 F. 16)	—
97	(7 F. 441)	—	289	(8 F. 883)	—
103	(7 F. 447)	—	307	(12 F. 658)	—
107	(2 F. 505)	—	311	(12 F. 559)	—
121	(3 F. 368)	—	314	(12 F. 844)	—
129	(7 F. 312)	—	318	(8 F. 60)	—
135	(6 F. 840)	—	332	(12 F. 485)	—
138	(8 F. 724)	—	333	(7 F. 630)	—
139	(8 F. 693)	—	337	(7 F. 558)	—
141	(8 F. 692)	—	341	(7 F. 435)	—
143	(10 F. 543)	—	344	(7 F. 438)	—
148	(7 F. 745)	—	348	(7 F. 399)	—
152	(7 F. 833)	—	350	(7 F. 358)	—
156	(6 F. 797)	—	352	(7 F. 338)	—
159	(8 F. 725)	—	356	(7 F. 341)	—
165	(4 F. 927)	—	359	(7 F. 317)	—
167	(7 F. 81)	—	360	(7 F. 208)	—
172	(6 F. 658)	—	362	(7 F. 139)	—
175	(6 F. 794)	—	370	(13 F. 100)	—
178	(6 F. 799)	—	375	(7 F. 91)	—
181	(7 F. 537)	—	380		4,520
187	(6 F. 1)	—	386	(7 F. 47)	—
191	(8 F. 297)	—	390	(12 F. 805)	—
196	(4 F. 282)	—	394	(12 F. 864)	—
198	(4 F. 294)	—	395	(13 F. 198)	—
203	(4 F. 298)	—	403	(12 F. 461)	—
208	(3 F. 922)	—	407	(13 F. 103)	—
211	(4 F. 59)	—	413	(8 F. 686)	—

McCRARY'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, McCrary—Cont'd.

Page.		F. C. No.
415	(6 F. 828)	—
417	(6 F. 804)	—
421	(6 F. 802)	—
422	(6 F. 484)	—
425	(6 F. 487)	—
432	(6 F. 449)	—
438	(48 F. 433)	—
441	(6 F. 455)	—
445	(5 F. 895)	—
449	(5 F. 775)	—
451	(5 F. 777)	—
453	(5 F. 677)	—
455	(5 F. 389)	—
457	(5 F. 340)	—
459	(5 F. 265)	—
464	(5 F. 269)	—
469	(5 F. 274)	—
471	(6 F. 833)	—
479	(6 F. 27)	—
483	(5 F. 23)	—
486	(7 F. 668)	—
489	(6 F. 654)	—
494	(6 F. 569)	—
505	(6 F. 348)	—
509	(6 F. 339)	—
512	(6 F. 279)	—
516	(6 F. 221)	—
520	(7 F. 766)	—
522	(7 F. 737)	—
531	(7 F. 748)	—
532	(48 F. 501)	—
543	(13 F. 161)	—
550	(13 F. 106)	—
556	(13 F. 109)	—
558	(13 F. 203)	—
565	(5 F. 399)	—
570	(8 F. 799)	—
576	(7 F. 805)	—
577	(12 F. 871)	—
581	(12 F. 460)	—
583	(12 F. 487)	—
586	(40 F. 315)	—
603	(12 F. 848)	—
606	(12 F. 457)	—
608	(12 F. 680)	—
615	(12 F. 676)	—
622	(12 F. 668)	—
625	(5 F. 556)	—
628	(5 F. 584)	—
631	(5 F. 578)	—
635	(12 F. 661)	—
637	(10 F. 232)	—
642	(48 F. 770)	—
644	(8 F. 529)	—

Vol. 3, McCrary.

Page.		F. C. No.
1	(8 F. 794)	—
9	(8 F. 540)	—
14	(8 F. 863)	—
19	(8 F. 860)	—
27	(8 F. 550)	—
35	(8 F. 783)	—
42	(16 F. 903)	—
46	(9 F. 256)	—
48	(9 F. 581)	—
53	(10 F. 227)	—
60	(13 F. 317)	—
76	(9 F. 721)	—
87	(13 F. 59)	—
95	(8 F. 97)	—
107	(8 F. 143)	—
108	(8 F. 854)	—
113	(8 F. 872)	—
119	(8 F. 876)	—
121	(9 F. 589)	—
126	(10 F. 601)	—
130	(11 F. 1)	—
147	(10 F. 210)	—
157	(8 F. 696)	—
158	(8 F. 641)	—
162	(8 F. 721)	—
166	(8 F. 792)	—
169	(8 F. 788)	—
174	(8 F. 803)	—
175	(8 F. 733)	—
177	(8 F. 713)	—
181	(8 F. 647)	—
186	(9 F. 155)	—
190	(9 F. 65)	—
200	(9 F. 80)	—
206	(9 F. 536)	—
208	(9 F. 625)	—
219	(9 F. 747)	—
223	(13 F. 334)	—
226	(9 F. 813)	—
230	(9 F. 809)	—
233	(9 F. 811)	—
236	(9 F. 873)	—
249	(9 F. 879)	—
253	(10 F. 406)	—
259	(10 F. 395)	—
261	(10 F. 338)	—
266	(9 F. 886)	—
278	(9 F. 896)	—
280	(10 F. 435)	—
302	(10 F. 454)	—
310	(10 F. 401)	—
316	(10 F. 243)	—
332	(13 F. 254)	—
332	(13 F. 508)	—
352	(10 F. 711)	—
359	(11 F. 569)	—
364	(10 F. 593)	—
368	(10 F. 596)	—
374	(10 F. 529)	—
377	(8 F. 805)	—
378	(10 F. 800)	—
381	(10 F. 823)	—
383	(10 F. 828)	—
385	(16 F. 435)	—
387	(11 F. 29)	—
390	(10 F. 11)	—
393	(9 F. 861)	—
399	(10 F. 20)	—
405	(16 F. 725)	—
410	(9 F. 368)	—
412	(9 F. 371)	—
414	(9 F. 402)	—
423	(9 F. 337)	—
436	(10 F. 866)	—
440	(9 F. 385)	—
443	(10 F. 13)	—
446	(10 F. 891)	—
450	(10 F. 884)	—
455	(17 F. 408)	—
460	(17 F. 97)	—
463	(17 F. 200)	—
477	(17 F. 494)	—
479	(17 F. 572)	—
484	(17 F. 566)	—
489	(17 F. 301)	—
500	(11 F. 470)	—
507	(11 F. 31)	—
510	(11 F. 47)	—
517	(11 F. 73)	—
519	(11 F. 81)	—
521	(11 F. 193)	—
538	(11 F. 209)	—
543	(11 F. 280)	—
547	(11 F. 282)	—
549	(11 F. 295)	—
551	(11 F. 297)	—
553	(17 F. 136)	—
555	(17 F. 476)	—
558	(16 F. 323)	—
638	(11 F. 559)	—
569	(17 F. 54)	—
578	(16 F. 232)	—
581	(16 F. 906)	—
586	(17 F. 492)	—
589	(16 F. 732)	—
591	(11 F. 355)	—
595	(11 F. 362)	—
599	(11 F. 375)	—
603	(11 F. 377)	—
608	(16 F. 513)	—
608	(11 F. 705)	—
609	(11 F. 381)	—
614	(11 F. 427)	—
616	(11 F. 529)	—
620	(16 F. 331)	—
622	(16 F. 433)	—
627	(14 F. 77)	—
635	(12 F. 392)	—
637	(11 F. 551)	—
638	(11 F. 559)	—
645	(11 F. 634)	—
650	(11 F. 795)	—

McCRARY'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, McCrary.

Page.		F. C. No.
1	(18 F. 62)	—
12	(17 F. 36)	—
20	(20 F. 167)	—
34	(20 F. 756)	—
46	(16 F. 295)	—
50	(16 F. 305)	—
55	(48 F. 548)	—
59	(48 F. 659)	—
61	(50 F. 319)	—
66	(50 F. 310)	—
70	(50 F. 279)	—
77	(16 F. 712)	—
85	(11 F. 657)	—
93	(11 F. 847)	—
94	(50 F. 155)	—
109	(12 F. 609)	—
112	(12 F. 612)	—
115	(12 F. 600)	—
119	(48 F. 431)	—
123	(41 F. 742)	—
127	(50 F. 258)	—
129	(48 F. 607)	—
133	(13 F. 242)	—
138	(14 F. 114)	—
145	(12 F. 63)	—
149	(12 F. 465)	—
160	(12 F. 526)	—
176	(12 F. 666)	—
179	(12 F. 739)	—
184	(13 F. 345)	—
194	(48 F. 820)	—
198	(48 F. 523)	—
205		13,478
215	(47 F. 753)	—
218	(48 F. 661)	—
221	(13 F. 250)	—
232	(13 F. 208)	—
241	(13 F. 215)	—
244	(12 F. 847)	—
246	(12 F. 855)	—
247	(13 F. 595)	—
259	(13 F. 537)	—
264	(13 F. 522)	—
269	(14 F. 319)	—
272	(14 F. 324)	—
276	(14 F. 370)	—
279	(14 F. 377)	—
286	(14 F. 311)	—
290	(14 F 394)	—
293	(14 F. 634)	—
295	(14 F. 631)	—
299	(14 F. 636)	—
303	(15 F. 196)	—
307	(15 F. 193)	—
311	(14 F. 812)	—
317	(15 F. 220)	—
319	(14 F. 763)	—
325	(13 F. 546)	—
338	(15 F. 650)	—
360	(15 F. 588)	—
361	(15 F. 225)	—
366	(15 F. 410)	—
368	(13 F. 37)	—
371	(13 F. 116)	—
383	(13 F. 181)	—
388	(13 F. 263)	—
401	(13 F. 305)	—
405	(13 F. 330)	—
410	(13 F. 368)	—
412	(13 F. 373)	—
418	(13 F. 379)	—
426	(13 F. 353)	—
432	(13 F. 516)	—
440	(13 F. 526)	—
446	(14 F. 846)	—
449	(13 F. 530)	—
454	(13 F. 591)	—
459	(13 F. 650)	—
466	(13 F. 656)	—
470	(13 F. 659)	—
486	(13 F. 802)	—
492	(13 F. 827)	—
500	(13 F. 833)	—
505	(13 F. 872)	—
508	(14 F. 23)	—
515	(14 F. 83)	—
522	(14 F. 93)	—
527	(14 F. 97)	—
535	(14 F. 177)	—
539	(14 F. 203)	—
543	(14 F. 207)	—
549	(14 F. 219)	—
554	(14 F. 222)	—
558	(14 F. 236)	—
561	(14 F. 315)	—
566	(14 F. 323)	—
567	(14 F. 327)	—
573	(14 F. 332)	—
581	(14 F. 369)	—
583	(14 F. 399)	—
586	(14 F. 407)	—
587	(14 F. 433)	—
606	(14 F. 525)	—
616	(14 F. 539)	—
618	(14 F. 554)	—
622	(14 F. 558)	—
629	(14 F. 564)	—
634	(14 F. 567)	—
636	(14 F. 699)	—
643	(14 F. 705)	—
646	(14 F. 801)	—

Vol. 5, McCrary.

Page.		F. C. No.
1	(14 F. 807)	—
5	(14 F. 881)	—
12	(14 F. 889)	—
16	(15 F. 1)	—
23	(15 F. 46)	—
34	(15 F. 138)	—
38	(15 F. 205)	—
43	(15 F. 299)	—
53	(15 F. 338)	—
59	(15 F. 365)	—
64	(15 F. 401)	—
70	(15 F. 649)	—
71	(15 F. 438)	—
73	(15 F. 683)	—
76	(15 F. 704)	—
80	(15 F. 774)	—
93	(15 F. 794)	—
99	(15 F. 804)	—
103	(14 F. 710)	—
122	(14 F. 869)	—
126	(15 F. 840)	—
130	(15 F. 863)	—
132	(16 F. 35)	—
135	(16 F. 71)	—
140	(16 F. 128)	—
142	(16 F. 173)	—
145	(16 F. 644)	—
147	(16 F. 206)	—
155	(16 F. 221)	—
158	(16 F. 350)	—
181	(16 F. 387)	—
215	(16 F. 412)	—
217	(16 F. 444)	—
221	(16 F. 516)	—
228	(16 F. 612)	—
230	(16 F. 614)	—
232	(16 F. 658)	—
236	(16 F. 661)	—
246	(16 F. 669)	—
251	(17 F. 46)	—
253	(16 F. 738)	—
257	(16 F. 744)	—
258	(16 F. 749)	—
260	(16 F. 760)	—
265	(16 F. 800)	—
266	(16 F. 810)	—
269	(16 F. 812)	—
274	(16 F. 829)	—
280	(16 F. 836)	—
284	(16 F. 850)	—
287	(16 F. 853)	—
294	(16 F. 878)	—
296	(17 F. 1)	—
298	(17 F. 57)	—
300	(17 F. 67)	—
307	(17 F. 72)	—
310	(17 F. 98)	—
319	(17 F. 104)	—
325	(17 F. 108)	—
327	(17 F. 125)	—
328	(17 F. 126)	—
329	(17 F. 130)	—
334	(17 F. 133)	—
339	(17 F. 140)	—
342	(17 F. 167)	—
348	(17 F. 275)	—
360	(17 F. 283)	—
364	(17 F. 383)	—
373	(23 F. 565)	—
380	(17 F. 407)	—
382	(17 F. 419)	—
391	(17 F. 425)	—

McCRARY'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 5, McCrary—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
393 (17 F. 471)	—	515 (18 F. 221)	—
397 (17 F. 478)	—	528 (18 F. 229)	—
401 (17 F. 482)	—	538 (18 F. 236)	—
403 (17 F. 583)	—	542 (18 F. 239)	—
404 (17 F. 660)	—	549 (18 F. 243)	—
414 (17 F. 667)	—	558 (18 F. 250)	—
416 (17 F. 668)	—	561 (18 F. 260)	—
420 (17 F. 718)	—	563 (18 F. 273)	—
421 (17 F. 758)	—	574 (18 F. 282)	—
425 (17 F. 776)	—	588 (18 F. 316)	—
438 (17 F. 837)	—	590 (18 F. 318)	—
440 (17 F. 865)	—	592 (18 F. 324)	—
443 (17 F. 867)	—	597 (18 F. 344)	—
449 (17 F. 871)	—	615 (18 F. 372)	—
453 (17 F. 873)	—	617 (18 F. 373)	—
462 (17 F. 880)	—	623 (18 F. 486)	—
465 (17 F. 882)	—	629 (18 F. 490)	—
474 (17 F. 909)	—	634 (18 F. 493)	—
477 (17 F. 919)	—	637 (17 F. 407)	—
484 (18 F. 14)	—	639 (89 F. 583)	—
487 (18 F. 126)	—	639 (18 F. 873)	—
496 (18 F. 151)	—	642 (18 F. 865)	—
502 (18 F. 155)	—	643 (18 F. 571)	—
504 (18 F. 172)	—	651 (18 F. 576)	—
508 (18 F. 209)	—	653 (48 F. 663)	—

McLEAN'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,645	217	11,307	411	1,442
11	4,395	221	939	412	1,456
16	8,327	226	1,230	413	16,892
18	10,065	234	14,495	414	8,700
22	13,105	242	16,809	423	17,346
32	9,580	246	15,628	427	3,087
35	923	249	17,576	429	15,510
41	7,896	254	14,795	448	11,263
44	6,076	266	4,591	450	11,546
50	8,841	270	15,272	454	15,249
69	11,113	275	17,266	460	17,143
85	9,582	282	8,489	462	16,386
87	13,116	295	11,114	466	4,392
90	918	306	15,657	467	15,026
95	14,313	309	2,205	471	18,074
96	9,669	313	16,887	473	12,289
110	6,512	315	2,206	476	1,037
120	17,132	317	7,468	483	18,043
135	1,181	319	6,749	486	12,529
143	8,175	321	4,176	493	9,996
146	11,117	330	9,843	499	15,900
167	2,446	332	7,682	509	16,775
178	891	333	8,556	514	8,491
185	4,860	334	4,027	518	10,107
193	12,547	334	12,825	520	12,824
194	9,788	337	13,245	528	5,724
197	10,879	384	13,257	533	17,171
200	17,295	395	8,490	540	8,865
206	4,386				

Vol. 2, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	18,265	143	3,216	344	4,177
10	6,188	145	9,289	347	1,293
14	16,020	155	15,335	352	14,619
19	12,764	157	9,315	355	1,443
21	8,318	168	18,020	362	13,235
28	17,563	176	13,089	363	9,497
29	3,622	180	12,532	366	17,375
30	2,357	189	7,692	369	4,909
35	13,286	191	13,198	374	3,498
44	4,791	193	2,911	376	1,740
59	13,610	194	13,894	402	7,763
69	4,061	195	4,620	405	16,368
74	16,890	213	1,304	408	1,444
78	12,818	216	327	412	5,497
85	791	219	16,609	422	1,659
87	1,441	226	5,968	431	15,556
92	17,074	233	3,454	446	6,499
98	8,698	235	5,069	451	3,797
99	13,657	249	15,651	458	12,827
103	6,748	253	3,803	462	1,131
111	6,246	255	17,075	464	12,564
114	16,279	256	15,731	469	5,190
122	13,952	265	16,367	473	8,355
126	12,015	267	11,115	488	8,144
127	4,905	322	17,632	489	12,156
129	7,169	323	3,958	491	8,171
130	1,769	325	14,958	493	11,304
135	16,739	332	5,952	495	3,191
139	13,216	341	861	501	15,606

McLEAN'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, McLean—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
509	10,626	557	6,024	581	5,854
511	17,446	562	7,414	581	8,145
516	13,789	568	8,516	589	11,835
519	6,819	579	7,229	596	7,501
543	13,724	580	4,219	611	7,502
553	3,880				

Vol. 3, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	5,946	224	16,540	383	13,652
19	7,217	226	10,688	386	2,708
20	5,274	229	18,090	387	1,202
22	10,892	230	11,586	390	14,784
26	10,893	233	14,666	391	3,640
27	11,116	235	8,891	393	13,580
41	9,263	241	6,554	397	4,141
53	16,009	245	11,587	405	14,695
56	8,316	248	11,038	411	8,651
86	4,307	250	1,944	415	8,886
89	7,418	265	17,347	427	1,748
91	12,763	268	888	431	8,451
92	14,097	270	6,767	432	1,953
94	4,217	272	7,683	457	13,292
96	6,990	275	4,068	465	725
97	13,197	276	6,259	467	18,114
100	5,695	279	1,537	469	14,507
101	12,203	281	4,722	471	17,715
102	12,037	283	14,155	472	6,613
104	4,216	285	395	480	11,643
105	5,265	289	17,737	481	12,205
106	5,141	291	17,549	483	14,929
107	596	295	1,747	486	2,059
111	17,548	297	6,902	487	4,723
121	12,968	299	16,010	490	5,433
140	13,571	302	1,143	492	7,187
144	7,841	303	5,742	494	2,861
147	10,822	317	1,637	503	8,887
148	9,255	319	10,111	509	14,103
150	6,658	324	15,368	517	12,933
151	7,022	326	10,104	523	1,962
156	15,413	330	12,798	530	16,903
158	8,699	332	4,900	539	16,440
163	14,902	336	2,181	542	13,319
165	12,854	339	9,809	545	13,006
167	13,906	354	13,315	547	12,608
171	15,707	357	11,983	548	17,099
172	701	358	13,752	549	2,089
174	13,520	362	13,544	551	5,401
175	15,524	364	2,087	568	8,319
177	8,137	365	15,559	571	3,162
179	16,638	368	2,088	571	15,195
180	1,927	369	13,907	573	14,847
181	13,440	371	5,882	575	12,112
185	8,885	374	1,020	576	2,040
199	8,890	376	8,561	580	8,621
202	8,883	377	5,436	582	2,070
204	4,140	379	10,101	583	6,497
212	9,617	381	6,656	587	8,888
221	790	383	9,771	631	4,089

Vol. 4, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,736	105	16,758	207	15,005
3	14,945	106	12,078	208	5,799
6	3,195	110	8,114	208	7,987
7	9,890	112	6,206	211	9,753
8	12,039	113	14,488	213	9,347
10	980	117	9,163	224	4,001
12	13,653	119	16,449	226	17,378
15	10,481	120	4,670	230	12,036
18	8,071	122	1,804	233	4,243
19	1,926	125	1,340	236	16,719
23	15,880	128	226	239	6,918
24	6,505	133	3,246	240	12,704
25	2,456	136	3,631	241	17,422
29	8,616	138	9,630	243	10,589
44	8,617	142	14,667	252	9,951
45	10,899	159	11,729	253	13,244
51	12,609	160	13,496	254	17,950
56	8,148	162	13,653	255	6,971
57	1,263	166	4,129	257	3,192
61	10,736	168	6,665	258	7,278
64	1,945	173	11,169	259	10,917
70	1,946	174	2,080	262	1,683
75	10,398	177	12,035	268	2,101
77	9,256	181	12,443	272	17,839
79	17,417	186	3,015	275	1,963
80	13,465	192	16,820	279	11,960
82	8,584	199	2,523	282	11,570
87	16,886	200	11,979	286	5,907
93	16,891	201	11,417	300	1,082
96	13,953	202	5,406	306	13,497
99	15,002	203	16,979	317	14,888
103	15,588	206	13,054	319	6,777

McLEAN'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, McLean—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
325	2,201	388	4,416	538	13,343
329	5,275	396	3,194	539	1,259
333	1,187	402	5,453	540	5,888
337	2,524	427	4,958	540	9,279
339	12,360	430	8,889	544	3,464
350	642	436	9,571	549	760
351	8,930	437	10,429	554	11,980
352	12,882	440	2,684	563	13,424
353	11,075	442	13,251	565	11,918
356	969	456	6,718	567	16,720
360	7,571	462	10,731	569	1,294
363	17,792	463	16,643	572	780
364	9,116	481	11,595	574	4,558
365	5,065	486	4,107	576	1,035
365	13,915	489	563	577	1,341
366	9,799	504	11,590	577	17,947
370	10,738	516	2,946	580	1,423
375	10,125	521	7,467	581	4,218
378	2,600	525	11,099	589	1,051
378	14,668	526	2,494	599	7,503
383	8,449	530	8,911	604	7,504
384	3,207	534	13,429	607	15,003
387	3,626	535	5,887		

Vol. 5, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,840	178	15,445	328	11,465
4	10,730	186	5,538	337	12,008
4	11,414	189	6,599	342	8,898
9	15,652	194	12,163	344	14,251
21	10,187	207	15,843	350	14,028
23	14,691	208	15,535	354	2,943
23	15,102	211	6,357	358	16,133
32	1,076	213	4,075	359	8,801
44	10,749	214	7,565	369	13,112
64	4,088	218	4,940	424	6,717
76	13,043	223	5,503	425	18,046
92	10,307	236	1,389	441	14,551
106	2,364	241	4,076	444	10,321
108	8,147	242	16,441	448	5,285
109	1,258	249	18,266	450	3,047
111	10,204	253	3,801	455	10,198
117	9,110	256	2,947	456	14,128
131	11,585	262	1,295	457	2,117
133	16,721	267	13,298	459	11,927
135	14,027	269	11,594	461	5,102
147	12,960	272	18,129	468	4,867
148	1,403	273	15,342	469	9,583
153	661	279	6,907	486	10,894
158	1,559	281	4,037	495	1,446
166	2,318	286	15,702	507	7,688
167	8,113	300	4,294	509	15,512
170	6,348	306	18,267	513	14,832
172	14,073	313	6,075	616	4,913
174	16,132	318	13,311	622	17,158
175	2,363	322	4,163		

Vol. 6, McLean.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	4,667	184	7,759	422	7,426
11	5,064	186	16,078	422	8,620
13	7,735	189	7,605	443	14,491
13	9,285	195	17,155	446	8,618
14	5,966	200	8,049	459	13,656
15	8,619	209	3,045	463	12,544
16	17,678	221	4,977	466	16,011
21	1,296	231	17,153	470	2,237
23	17,052	237	7,441	472	9,772
24	9,513	248	3,461	478	5,150
27	11,378	259	17,363	482	8,613
28	16,234	273	5,382	484	7,136
43	968	274	15,296	487	712
44	17,345	277	14,627	491	2,261
46	14,919	282	8,588	496	3,798
56	16,490	296	1,910	497	1,001
63	17,147	303	225	499	713
65	16,083	324	12,084	500	2,599
68	13,866	340	17,666	508	18,128
70	3,046	342	16,672	517	16,114
76	6,885	344	17,304	539	8,724
80	14,020	345	6,327	558	11,195
89	16,059	349	15,143	562	4,951
93	3,201	355	11,935	568	860
102	5,967	365	8,016	573	3,908
106	6	382	12,072	577	12,152
106	3,031	386	13,958	584	15,133
112	3,157	390	6,089	587	17,607
121	16,286	393	97	596	15,910
125	2,093	395	10,676	598	16,219
128	16,430	401	3,501	603	12,885
130	14,796	406	15,051	604	16,737
139	14,792	409	16,376	612	3,158
142	18,032	413	10,005	622	3,630
152	17,154	416	9,272	630	8,112
182	16,077	418	10,457	631	10,725

MARTIN'S LOUISIANA REPORTS.

Vol. 2, Mart. O. S. (La.)

Page.	F. C. No.
733	15,569a

MARTIN'S NORTH CAROLINA REPORTS.

Vol. 2, Mart. (N. C.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,980	79	15,746	83	1,619
78	5,863	81	7,483	83 (2d Ed.)	5,980
78	10,701				

MARYLAND LAW RECORD.

Vol. 1, Md. Law Rec.

Page.	F. C. No.
107	8,320
115	17,720
236	11,410

MARYLAND LAW REPORTER.

Vol. 1, Md. Law Rep.

Page.	F. C. No.
169	2,370

Vol. 2, Md. Law Rep.

Page.	F. C. No.
297	828
353	4,530
485	4,146

MASON'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Mason.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	15,072	127	12,583	346	1,511
4	3,584	147	16,337	354	1,365
9	10,911	149	10,423	360	14
14	8,474	151	14,669	365	9,185
24	5,328	152	15,290	368	12,160
38	12,324	153	13,337	372	12,093
43	12,277	176	9,661	381	6,184
45	4,441	182	8,568	431	6,608
57	14,690	191	5,441	437	9,590
71	14,497	224	8,250	440	16,825
88	5,296	243	2,121	443	15,291
91	14,326	302	1,217	447	1,047
93	3,451	306	17,455	482	15,647
96	2,163	319	9,379	508	412
104	13,268	323	3,383	515	6,845
117	11,273	341	2,711	520	17,547

Vol. 2, Mason.

Page.	F. C. No.	Page.	F. C. No	Page.	F. C. No.
1	13,987	123	15,719	342	6,898
22	14,851	129	15,548	369	992
28	10,430	143	16,338	373	16,200
31	1,279	151	8,269	378	6,051
48	16,303	181	17,424	393	13,749
58	8,063	208	554	407	4,355
60	14,867	229	15,552	409	15,551
69	15,519	230	6,229	464	14,650
71	16,312	236	3,149	472	1,391
77	17,291	241	9,172	475	11,332
85	8,064	244	6,889	478	16,365
89	17,518	252	1,174	486	13,350
91	14,868	303	3,866	531	3,862
112	9,745	311	15,373	541	6,047
119	1,681	319	14,288		

Vol. 3, Mason.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,590	132	14,130	247	4,891
6	374	136	5,055	255	10,654
27	10,905	138	7,144	269	8,869
88	6,523	147	4,634	272	6,281
91	17,679	153	684	280	17,595
96	1,127	156	15,044	284	3,855
98	15,752	158	4,852	294	6,897
101	13,746	161	17,680	308	17,944
102	1,578	175	165	324	15,326
107	1,046	178	5,227	329	3,756
116	9,080	232	13,972	331	18
126	14,418	242	2,575	334	10,655

MASON'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 3, Mason—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
341	18,210	443	10,352	478	2,112
347	11,356	446	8,441	482	15,256
378	11,555	457	4,403	486	2,037
391	10,598	459	11,357	503	7,279
398	5,223	469	11,132	505	17,646
405	17,733	474	10,508	508	12,932
429	6,871	475	15,509	520	5,720

Vol. 4, Mason.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	4,247	172	10,472	310	6,459
15	6,394	174	1,660	312	11,083
16	14,164	183	17,501	326	11,390
45	4,190	186	7,149	333	11,308
74	12,119	192	14,552	336	17,096
84	9,427	196	6,001	349	4,164
102	9,428	206	5,964	380	11,233
105	15,345	232	14,905	390	10,473
108	9,404	248	5,057	397	14,312
112	1,656	256	1,133	414	13,342
113	16,815	268	13,477	427	15,258
115	3,867	273	5,944	435	3,954
118	1,100	275	10,501	439	14,024
121	13,017	289	4,220	443	11,133
122	557	296	11,802	467	3,159
123	16,922	298	11,336	497	6,794
128	15,229	302	3,860	505	15,162
131	13,790	307	16,176	515	4,221
139	11,956	308	2,520	541	10,583
158	16,682				

Vol. 5, Mason.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	12,781	161	3,479	378	14,063
11	8,777	174	1,381	380	7,905
13	8,498	176	16,791	402	15,188
16	17,050	191	13,080	404	14,516
28	14,993	192	16,205	407	8,460
30	14,813	195	8,626	410	6,782
35	11,134	201	5,765	414	13,004
56	14,081	221	13,408	421	2,000
58	13,863	227	2,038	425	7,419
59	11,450	229	15,427	445	16,262
60	2,438	232	15,968	451	12,103
62	15,426	241	8,563	453	15,511
67	9,005	244	8,915	455	14,443
70	2,490	272	15,275	460	16,225
71	6,699	280	15,560	462	4,621
80	18,127	290	15,268	465	14,054
82	16,640	303	3,856	497	14,018
95	11,376	305	13,259	534	12,104
115	11,772	332	2,503	537	15,827
118	17,097	336	10,265	555	11,033
120	15,967	356	14,930	561	11,135
143	12,782	366	917	572	15,835
157	10,596				

MERWIN, PATENTABILITY OF INVENTIONS.

Merw. Pat. Inv.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
85	18,107	133	12,135	204	1,022
88	2,292	134	3,726	206	11,100
89	6,946	136	3,725	209	1,471
91	686	137	11,928	211	7,837
91	8,948	138	14,051	211	17,520
92	12,320	139	8,632	212	3,558
95	110	141	8,631	213	9,115
97	1,529	142	3,548	214	5,417
99	302	142	5,128	216	2,317
104	7,911	150	6,493	217	2,467
106	17,254	153	7,495	218	3,645
108	750	156	7,479	218	17,971
110	7,797	165	12,456	219	3,557
111	2,397	166	5,635	220	5,745
112	2,290	166	12,458	221	4,505
113	1,857	167	5,632	223	10,876
113	9,271	169	994	225	2,906
114	9,270	170	531	226	7,095
116	13,289	170	721	234	7,875
117	11,660	172	719	236	17,811
121	13,048	173	626	237	7,569
122	14,044	175	625	237	9,970
124	7,275	179	5,229	238	7,565
125	13,556	193	4,877	242	1,061
126	18,008	193	13,041	242	17,493
128	11,702	197	18,035	244	6,236
129	2,833	200	3,672	244	6,237
130	9,949	201	13,864	244	6,242
132	11,222	203	17,634	245	5,857

MERWIN, PATENTABILITY OF INVENTIONS—Cont'd.

Merw. Pat. Inv.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
247	10,082	356	12,101	502	4,247
249	371	358	304	518	11,486
249	16,987	359	2,991	519	3,549
252	56	359	2,995	521	6,595
252	14,269	362	9,934	560	10,740
253	1,734	363	3,288	564	4,916
254	147	411	17,601	571	3,831
254	4,578	412	10,941	589	9,865
254	8,511	413	12,186	616	1,247
263	8,059	414	2,082	649	153
265	10,954	414	3,662	650	53
267	9,607	416	8,084	650	9,055
269	11,650	416	17,865	654	10,757
271	12,643	419	17,861	655	5,569
272	149	421	17,864	657	8,727
273	7,794	422	17,863	658	8,413
310	10,715	423	4,931	660	57
311	7,882	424	11,330	662	2,292
312	1,173	425	4,448	663	9,291
312	6,766	425	8,182	664	6,261
313	11,196	426	13,700	664	17,260
313	17,858	428	14,213	665	17,979
316	1,820	430	18,003	666	6,190
316	7,569	432	17,280	667	5,926
319	14,158	433	8,902	669	2,950
320	17,425	435	12,369	671	10,713
321	11,241	439	12,166	672	14,406
322	2,008	440	8,452	673	656
324	13,543	444	1,499	673	12,814
325	10,042	443	4,949	674	10,913
326	12,398	448	12,081	677	11,121
328	11,899	450	1,434	678	4,072
335	14,395	450	7,033	678	14,392
339	14,394	451	10,051	701	11,072
340	315	452	815	701	13,208
340	3,792	455	13,453	702	4,408
340	5,198	456	2,231	703	3,302
342	5,841	459	6,424	704	7,409
345	1,676	459	7,724	705	1,529
346	10,337	462	7,564	705	17,535
351	14,396	462	8,966	707	12,420
352	7,082	467	12,010	708	17,324
356	9,034	468	17,716	710	7,910

MICHIGAN LAWYER.

Vol. 1, Mich. Lawy.

Page.	F. C. No.
10	12,562
17	362

Vol. 2, Mich. Lawy.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	5,334	27	8,571	435	7,153
14	7,193	27	11,491	441	14,333
16	11,242				

Vol. 3, Mich. Lawy.

Page.	F. C. No.
128	1,334

MIRROR OF THE PATENT OFFICE.

Mirror, Pat. Off.

Page.	F. C. No.
35	11,386
94	7,884
131	7,884
135	7,884

MONTHLY JURIST.

Vol. 1, Month. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
123	1,141	344	5,462	499	15,904
155	10,127	350	12,926	750	12,238
167	6,826				

Vol. 2, Month. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	12,315	58	209	250	1,321
40	11,400	136	6,785	549	13,482
40	11,402				

Vol. 3, Month. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
93	4,532	614	12,556	629	1,761
457	11,098				

MONTHLY LAW REPORTER.

Vol. 11, Month. Law Rep.

Page.	F. C. No.
651	12,362

MONTHLY WESTERN JURIST.

Vol. 1, Month. West. Jur.

Page.	F. C. No.
188	1,625
556	17,205

MORRISON'S MINING REPORTS.

Vol. 1, Morr. Min. Rep.

Page.	F. C. No.
497	2,610
537	13,414
536	8,402
566	13,413
576	13,398

Vol. 4, Morr. Min. Rep.

Page.	F. C. No.
380	8,158

Vol. 7, Morr. Min. Rep.

Page.	F. C. No.
335	15,998
516	2,990
667	13,986

Vol. 8, Morr. Min. Rep.

Page.	F. C. No.
597	988

Vol. 9, Morr. Min. Rep.

Page.	F. C. No.
578	4,548
614	13,723
616	9,886

Vol. 11, Morr. Min. Rep.

Page.	F. C. No.
608	4,989

MORRISON'S MINING RIGHTS.

Vol. 1, Morr. Min. Rights.

Page.	F. C. No.
579	13,398

Vol. 7, Morr. Min. Rights.

Page.	F. C. No.
335	15,998

MORRISON'S MINING RIGHTS, (3d Ed.)

Morr. Min. Rights, (3d Ed.)

Page.	F. C. No.
282	5,931

MORRISON'S MINING RIGHTS, (4th Ed.)

Morr. Min. Rights, (4th Ed.)

Page.	F. C. No.
65	5,732
65	8,402

NATIONAL BANK CASES, (BROWNE.)

Vol. 2, Nat. Bank Cas. (Browne.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
110	3,633	154	744	180	9,670
115	3,658	156	9,519	182	4,805
120	11,044	158	3,653	187	6,551a
124	17,651	162	13,299	199	7,425
128	14,853	170	4,196	195	12,642
138	18,078	172	13,545	204	11,418
144	9,769	173	1,485	207	10,184
146	1,714	176	4,811	437	4,807
148	14,844	177	10,052	439	6,177

NATIONAL BANKRUPTCY REGISTER.

Vol. 1, N. B. R.

Page.	F. C. No.
1	11,637
2	1,757
5	1,116
8	11,936
11	8,821
16	6,481
21	6,447
23	7,891
24	18,282
29	12,684
35	3,841
38	9,512
46	11,466
52	7,819
57	10,581
62	2,959
64	1,266
70	7,892
74	8,577
75	6,189
78	1,543
79	10,582
85	268
86 (6 Phila. 402; 3 Pittsb. R. 70)	——
96	1,267
100	10,814
105	8,298
107	8,295
111	8,613
113	1,268
118	7,165
120	3,614
122	457
125	10 815
136	8 296
147	10.818
150	10.815
151	8,822
152	10,816
154	12,172
161	10,820
163	11,476
165	2,349
171	17,387
174	2,182
176	10,397
177	12,455
181	3,981
184	8,299
186	12,641
188	2,842
190	12,471
193	7,767
199	1,350
201	9,494
203	11,589
211	9,796
213	10,680
214	12,983
215	471
216	458
216	459
217 (Quarto, 1)	14,116
218 (Quarto, 1)	17,531
219 (Quarto, 1)	460
219 (Quarto, 2)	461
220 (Quarto, 2)	10,998
223 (Quarto, 9)	9,879
226 (Quarto, 9)	6,841
231 (Quarto, 10)	4,093
237 (Quarto, 19)	5,709
239 (Quarto, 19)	8,311
241 (Quarto, 18)	5,475
242 (Quarto, 18)	2.346
243 (Quarto, 25)	12,971
249 (Quarto, 26)	3,699
264 (Quarto, 33)	7,105
265 (Quarto, 33)	9,317
268 (Quarto, 34)	5,075
271 (Quarto, 41)	9,320
275 (Quarto, 42)	6,482
276 (Quarto, 42)	2,781
278 (Quarto, 42)	13,418
280 (Quarto, 42)	3,297
285 (Quarto, 49)	11,937
294 (Quarto, 50)	11,580
297 (Quarto, 51)	11,366
299 (Quarto, 51)	2,427
303 (Quarto, 52)	10,474
304 (Quarto, 52)	1.183
307 (Quarto, 58)	10,817
310 (Quarto, 58)	13,174
312 (Quarto, 59)	1,866
316 (Quarto, 59)	13,745
318 (Quarto, 60)	17,060
319 (Quarto, 60)	12,059

Page.	F. C. No.
323 (Quarto, 65)	13,935
327 (Quarto, 66)	8,297
329 (Quarto, 66)	7,819
335 (Quarto, 67)	17,062
336 (Quarto, 73)	5,474
341 (Quarto, 74)	8,390
344 (Quarto, 74)	12.774
353 (Quarto, 81)	1,457
364 (Quarto, 82)	7,562
370 (Quarto, 83)	1,614
371 (Quarto, 83)	5,810
373 (Quarto, 84)	17,044
378 (Quarto, 89)	3,316
386 (Quarto, 90)	17,061
389 (Quarto, 91)	8,694
390 (Quarto, 91)	6,210
391 (Quarto, 91)	8.157
393 (Quarto, 91)	18.069
395 (Quarto, 97)	6,048
400 (Quarto, 98)	11,578
402 (Quarto, 98)	9,813
403†	——
410 (Quarto, 105)	9,553
414 (Quarto, 106)	2.920
419 (Quarto, 107)	740
425 (Quarto, 108)	12,617
426 (Quarto, 113)	7.292
431 (Quarto, 114)	6.483
435 (Quarto, 115)	3,947
436 (Quarto, 115)	8,823
437 (Quarto, 115)	9,318
439 (Quarto, 115)	12,753
457 (Quarto, 121)	1,184
460 (Quarto, 121)	6.223
462 (Quarto, 122)	13.739
464 (Quarto, 122)	2.270
470 (Quarto, 123)	10 041
481 (Quarto, 125)	1.057
485 (Quarto, 126)	6,231
485 (Quarto, 126; 5 Abb. Pr. [N. S.] 68)	——
489 (Quarto, 130)	13,475
491 (Quarto, 130)	7,304
495 (Quarto, 131)	7,309
496 (Quarto, 131)	18 034
498 (Quarto, 131)	13,564
499 (Quarto, 131)	17.876
504 (Quarto, 132)	3,343
516 (Quarto, 137)	11,644
521 (Quarto, 138)	8,205
522 (Quarto, 138)	8,951
525 (Quarto, 139)	11.071
531 (Quarto, 140)	13,638
536 (Quarto, 145)	11,583
540 (Quarto, 145)	13.740
542 (Quarto, 146)	1,790
545 (Quarto, 146)	9.451
547 (Quarto, 147)	5,896
548 (Quarto, 153)	9.319
549 (Quarto, 153)	7,916
551 (Quarto, 153)	3,008
555 (Quarto, 154)	4,400
557 (Quarto, 154)	17,131
558 (Quarto, 155)	12,758
559 (Quarto, 155)	11.006
570 (Quarto, 157)	10.938
572 (Quarto, 157)	10,939
575 (Quarto, 161)	12.058
581 (Quarto, 162)	9,518
586 (Quarto, 163)	5,897
588 (Quarto, 163)	1,205
592 (Quarto, 164)	10,281
595 (Quarto, 165)	7,475
599 (Quarto, 169)	12,973
601 (Quarto, 169)	14.277
603 (Quarto, 170)	12.785
604 (Quarto, 170)	5,373
613 (Quarto, 177)	753
618 (Quarto, 178)	11.433
621 (Quarto, 178)	499
626 (Quarto, 185)	12,600
628 (Quarto, 185)	1.728
632 (Quarto, 186)	1.396
636 (Quarto, 193)	16 880
642 (Quarto, 195)	6,530
644 (Quarto, 195)	533
647 (Quarto, 196)	11,567
660 (Quarto, 201)	5,074
666 (Quarto, 202)	1.237
667 (Quarto, 202)	1.395
673 (Quarto, 204)	12.622
675 (Quarto, 204)	12,616
677	10,527
679	6,813
680	4,998

†A Maryland case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 2, N. B. R.

Page.		F. C. No.
1	(Quarto, 1)	12,510
3	(Quarto, 1)	6,529
3		12,939
7	(Quarto, 2)	1,912
9	(Quarto, 2)	11,638
10	(Quarto, 2)	1,492
12	(Quarto, 3)	6,866
14	(Quarto, 3)	11,258
15	(Quarto, 6)	10,394
17	(Quarto, 9)	4,143
21	(Quarto, 10)	3,095
22	(Quarto, 10)	11,469
27	(Quarto, 11)	3,843
31	(Quarto, 12)	6,287
36	(Quarto, 13)	5,918
41	(Quarto, 14)	18,070
42	(Quarto, 14)	1,240
43	(Quarto, 17)	11,459
44	(Quarto, 17)	11,046
45	(Quarto, 17)	11,354
47	(Quarto, 17)	12,879
48	(Quarto, 18)	13,532
54	(Quarto, 19)	8,149
56	(Quarto, 19)	12,268
59	(Quarto, 20)	7,447
61	(Quarto, 20)	7,076
68	(Quarto, 21)	461
70	(Quarto, 25)	16,881
73	(Quarto, 26)	1,090
74	(Quarto, 26)	10,209
75	(Quarto, 26)	4
81	(Quarto, 27; 6 Wall. 78)	—
83	(Quarto, 28)	17,704
86	(Quarto, 28)	5,620
89	(Quarto, 29)	3,700
92	(Quarto, 33)	6,734
95	(Quarto, 33)	39
105	(Quarto, 35)	6,112
105	(Quarto, 35)	10,475
106	(Quarto, 35)	5,692
107	(Quarto, 41)	2,461
110	(Quarto, 44)	2,844
110	(Quarto, 44)	4,391
111	(Quarto, 44)	3,317
113	(Quarto, 44)	8,150
113	(Quarto, 49)	12,138
114	(Quarto, 49)	3,598
116	(Quarto, 49)	12,057
128	(Quarto, 51)	9,378
129	(Quarto, 51)	1,705
134	(Quarto, 52)	17,094
137	(Quarto, 53)	18,109
139	(Quarto, 53)	1,818
140	(Quarto, 53)	6,486
141	(Quarto, 53)	462
142	(Quarto, 57)	18,065
151	(Quarto, 59)	2,905
154	(Quarto, 59)	8,070
160	(Quarto, 61)	551
168	(Quarto, 62)	4,647
171	(Quarto, 65)	1,458
171	(Quarto, 62)	1,665
173	(Quarto, 65)	9,366
180	(Quarto, 66)	9,061
181	(Quarto, 66)	1,315
183	(Quarto, 67)	10,975
189	(Quarto, 68)	13,994
192	(Quarto, 68)	5,922
194	(Quarto, 69)	5,843
197	(Quarto, 73)	8,665
200	(Quarto, 73)	14,314
201	(Quarto, 74)	3,995
202	(Quarto, 74)	11,774
204	(Quarto, 74)	7,768
208	(Quarto, 75)	3,402
211	(Quarto, 75)	6,039
212	(Quarto, 76)	4,082
212	(Quarto, 76)	13,476
214	(Quarto, 76)	17,778
215	(Quarto, 76)	1,812
219	(Quarto, 77)	8,907
220	(Quarto, 77)	12,844
226	(Quarto, 78)	1,886
227	(Quarto, 78)	6,269
227	(Quarto, 78)	7,175
228	(Quarto, 78)	12,256
229	(Quarto, 78)	1,392
229	(Quarto, 79)	17,705
232	(Quarto, 81)	4,961
236	(Quarto, 81)	12,054
241	(Quarto, 82)	1,406
250	(Quarto, 84)	816
252	(Quarto, 84)	1,867
254	(Quarto, 85)	5,813
257	(Quarto, 85)	8,932

Page.		F. C. No.
260	(Quarto, 89)	11,581
272	(Quarto, 92)	40
277	(Quarto, 92)	4,628
278	(Quarto, 93)	1,918
280	(Quarto, 93)	13,727
285	(Quarto, 94)	13,167
288	(Quarto, 94)	18,106
294	(Quarto, 97)	8,391
297	(Quarto, 98)	12,984
298	(Quarto, 98)	5,774
298	(Quarto, 98)	14,124
302	(Quarto, 99)	10,175
306	(Quarto, 99)	8,574
308	(Quarto, 100)	3,957
309	(Quarto, 100)	8,042
311	(Quarto, 100)	5,775
313	(Quarto, 101)	11,467
316	(Quarto, 101)	17,032
324	(Quarto, 105)	5,547
329	(Quarto, 106)	5,794
330	(Quarto, 106)	1,628
333	(Quarto, 107)	6,984
336	(Quarto, 107)	12,943
337	(Quarto, 108)	6,244
341	(Quarto, 108)	11,939
343	(Quarto, 109)	8,908
345	(Quarto, 109)	1,813
349	(Quarto, 109)	4,293
349	(Quarto, 113)	17,875
352	(Quarto, 113)	8,819
353	(Quarto, 114)	4,743
354	(Quarto, 114)	7,769
355	(Quarto, 114)	9,510
357	(Quarto, 114)	6,791
358	(Quarto, 114)	5,279
371	(Quarto, 121)	1,397
378	(Quarto, 122; 34 Conn. 548)	—
382	(Quarto, 123)	8,439
387	(Quarto, 124)	10,081
388	(Quarto, 124)	7,728
391	(Quarto, 125)	3,613
396	(Quarto, 125)	8,151
397	(Quarto, 129)	12,002
398	(Quarto, 129)	5,476
399	(Quarto, 129)	6,222
406	(Quarto, 131)	4,971
419	(Quarto, 133)	1,594
422	(Quarto, 137)	9,515
423	(Quarto, 137)	10,210
425	(Quarto, 137)	4,716
426	(Quarto, 138)	8,026
427	(Quarto, 138)	16,983
435	(Quarto, 139)	1,598
437	(Quarto, 140)	6,951
447	(Quarto, 145)	17,293
449	(Quarto, 145)	8,527
452	(Quarto, 146)	7,170
455	(Quarto, 147)	4,965
466	(Quarto, 149)	1,943
468	(Quarto, 149)	17,794
473	(Quarto, 150)	546
477	(Quarto, 151)	10,878
478	(Quarto, 151)	741
480	(Quarto, 151)	8,056
481	(Quarto, 153)	9,538
484	(Quarto, 154)	10,446
485	(Quarto, 154; 30 Md. 128)	—
488	(Quarto, 155)	12,498
490	(Quarto, 155)	18,071
498	(Quarto, 157)	5,973
506	(Quarto, 158)	8,826
508	(Quarto, 158)	7,127
512	(Quarto, 161)	1,408
515	(Quarto, 161)	8,459
516	(Quarto, 162)	11,942
517	(Quarto, 162)	8,455
519	(Quarto, 162)	13,163
521	(Quarto, 163)	9,803
525	(Quarto, 163)	5,181
526	(Quarto, 164)	13,447
528	(Quarto, 164)	7,725
531	(Quarto, 164)	4,835
533	(Quarto, 165)	1,043
537	(Quarto, 166)	352
539	(Quarto, 166)	6,881
546	(Quarto, 167)	6,361
548	(Quarto, 169)	9,153
549	(Quarto, 169)	12,494
552	(Quarto, 170)	10,970
554	(Quarto, 170)	10,211
556	(Quarto, 170)	1,398
561	(Quarto, 171)	3,071
562	(Quarto, 172)	3,021
567	(Quarto, 173)	8,878

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 2, N. B. R.—Cont'd.

Page.		F. C. No.
570	(Quarto, 174)	17,271
573	(Quarto, 174)†	—
575	(Quarto, 175)	9,095
577	(Quarto, 175)	12,113
579	(Quarto, 177)	16,879
582	(Quarto, 177)	1,196
585	(Quarto, 178)	1,599
586	(Quarto, 178)	12,694
587	(Quarto, 178)	1,156
590	(Quarto, 179)	17,532
591	(Quarto, 179)	12,445
595	(Quarto, 179)	4,459
596	(Quarto, 180)	8,067
599	(Quarto, 180)	17,562

Page.		F. C. No.
602	(Quarto, 181)	4,686
607	(Quarto, 182)	3,940
614	(Quarto, 183)	17,313
617	(Quarto, 185)	3,884
643	(Quarto, 190)	1,914
648		17,246
649		7,956
651		6,610
655	(36 Cal. 105)	—
662		4,955
665		9,850
668		7,530
671		2,979

†An Ohio case, but not found in the regular reports.

Vol. 3, N. B. R.

Page.		F. C. No.
1	(Quarto, 1)	9,675
7	(Quarto, 2)	1,618
8	(Quarto, 2)	7,676
11	(Quarto, 3)	2,377
13	(Quarto, 3)	7,629
15	(Quarto)	471
16	(Quarto, 3)	2,800
18	(Quarto, 4)	11,551
20	(Quarto)	163
27	(Quarto, 5)	17,361
29	(Quarto, 6)	160
31	(Quarto)	10,547
33	(Quarto, 7)	3,624
38	(Quarto, 7)	13,890
39	(Quarto, 9)	9,674
41	(Quarto, 9; 3 Brewst. 329; 7 Phila. 114)	—
46	(Quarto, 11)	7,957
46	(Quarto, 11)	8,105
48	(Quarto, 11)	4,946
50	(Quarto, 12)	11,978
55	(Quarto, 13)	6,806
57	(Quarto, 13)	8,398
61	(Quarto, 14)	12,110
66	(Quarto, 15)	4,714
66	(Quarto)	8,477
70	(Quarto, 17)	11,943
72	(Quarto, 17)	3,885
73	(Quarto, 18)	12,056
75	(Quarto, 18)	3,039
77	(Quarto, 18)	3,587
80	(Quarto, 19)	10,907
82	(Quarto, 19)	14,235
84	(Quarto, 21)	13,604
87	(Quarto, 22)	11,074
96	(Quarto, 25)	10,282
98	(Quarto, 25)	9,465
100	(Quarto, 26)	3,322
103	(Quarto, 27)	11,392
104	(Quarto, 27)	8,785
106	(Quarto, 27)	4,314
108	(Quarto, 28)	13,419
110	(Quarto, 28)	2,062
118	(Quarto, 29)	103
125	(Quarto, 31)	7,726
128	(Quarto, 33)	459
128	(Quarto, 33)	8,750
130	(Quarto, 33)	12,055
133	(Quarto, 34)	14,327
137	(Quarto, 35)	9,726
139	(Quarto, 35)	12,619
144	(Quarto, 36)	675
146	(Quarto, 36)	9,939
150	(Quarto, 37)	1,098
152	(Quarto, 37)	5,410
153	(Quarto, 38)	9,999
156	(Quarto, 38)	10,000
157	(Quarto, 38)	13,775
160	(Quarto, 39)	4,315
161	(Quarto, 39)	4,084
164	(Quarto, 41)	5,520
170	(Quarto, 42)	12,452
172	(Quarto, 42)	12,754
175	(Quarto)	15,159
177	(Quarto, 43)	10,066
182	(Quarto, 45)	7,513
184	(Quarto, 45)	13,936
187	(Quarto, 46)	12,729
191	(Quarto, 46)	6,473
196	(Quarto, 47)	2,153
198	(Quarto, 49)	16,982
199	(Quarto, 49)	1,274
207	(Quarto, 51)	12,849
215	(Quarto, 52)	2,221
215	(Quarto, 52)	13,162

Page.		F. C. No.
217	(Quarto, 52)	7,833
218	(Quarto, 53)	8,188
221	(Quarto, 53)	8,775
224	(Quarto, 54)	9,578
227	(Quarto, 54)	5,654
230	(Quarto, 55)	10,254
236	(Quarto, 57)	4,962
241	(Quarto, 58)	6,646
243	(Quarto, 58)	8,502
244	(Quarto, 58)	3
245	(Quarto, 59)	10,435
250	(Quarto, 60)	1,980
256	(Quarto, 61)	4,328
258	(Quarto, 61)	11,141
261	(Quarto, 62)	4,552
263	(Quarto, 62)	10,567
265	(Quarto, 63)	12,043
267	(Quarto, 63)	10,291
268	(Quarto, 63)	5,294
268	(Quarto, 65)	8,572
270	(Quarto, 65)	1,276
273	(Quarto, 71)	5,999
276	(Quarto, 71)	17,633
278	(Quarto, 73)	16,814
280	(Quarto, 73)	10,212
281	(Quarto, 73)	3,378
283	(Quarto, 74)	10,681
285	(Quarto, 74)	318
286	(Quarto, 74)	17,667
286	(Quarto, 74)	17,703
291	(Quarto, 75)	9,031
296	(Quarto, 76)	2,156
301	(Quarto, 77)	10,682
302	(Quarto, 78)	12,623
304	(Quarto, 81)	4,244
305	(Quarto, 81)	3,870
309	(Quarto, 82)	6,621
312	(Quarto, 83)	3,586
314	(Quarto, 83)	13,639
317	(Quarto, 84)	7,816
324	(Quarto, 85)	1,809
329	(Quarto, 86)	9,912
339	(Quarto, 89)	3,615
343	(Quarto, 90)	1,966
344	(Quarto, 90)	8,666
347	(Quarto, 91)	9,380
351	(Quarto, 91)	6,516
357	(Quarto, 93)	5,676
371	(Quarto, 95)	17,388
374	(Quarto, 97)	9,728
377	(Quarto, 98)	12,974
385	(Quarto, 99)	1,420
393	(Quarto, 100)	12,433
410	(Quarto, 105)	8,103
417	(Quarto, 106)	5,550
418	(Quarto, 106)	3,599
422	(Quarto, 107)	6,164
423	(Quarto, 108)	9,729
426	(Quarto, 108)	9,730
429	(Quarto, 109)	9,727
430	(Quarto, 109)	9,731
435	(Quarto, 110)	13,990
440	(Quarto, 111)	18,148
441	(Quarto, 111)	9,656
443	(Quarto, 113)	3,110
444	(Quarto, 113)	1,967
444	(Quarto, 113)	18,029
446	(Quarto, 113)	7,815
452	(Quarto, 114)	5,536
455	(Quarto, 115; 97 Mass. 246)	—
465	(Quarto, 117)	5,092
468	(Quarto, 117)	5,435
473	(Quarto, 118)	7,550
481	(Quarto, 121)	1,417
487	(Quarto, 122)	1,418

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 3, N. B. R.—Cont'd.

Page.	F. C. No.
489 (Quarto, 122)	1,419
491 (Quarto, 123)	2,798
496 (Quarto, 124)	1,275
498 (Quarto, 124)	2,370
508 (Quarto, 126)	3,313
511 (Quarto, 126; 19 La. Ann. 497)	—
512 (Quarto, 127)	13,241
517 (Quarto, 127)	1,627
518 (Quarto, 129; 38 How. Pr. 341)	—
524 (Quarto, 130)	2,798
529 (Quarto, 131)	5,796
540 (Quarto, 134)	2,519
551 (Quarto, 137)	12,509
557 (Quarto, 138)	4,077
558 (Quarto, 138; 5 Abb. Pr. [N. S.] 64)	—
561 (Quarto, 139)	43
564 (Quarto, 139)	12,001
566 (Quarto, 140)	10,622
575 (Quarto, 142)	585
580 (Quarto, 142)	4,524
582 (Quarto, 145)	10,926
584 (Quarto, 145)	1,975
587 (Quarto, 146)	3,010
588 (Quarto, 146; 7 Abb. Pr. [N. S.] 212)	—
590 (Quarto, 146)	2,338
594 (Quarto, 147; 1 Sheld. 189)	—
601 (Quarto, 148)†	—
602 (Quarto, 149)	4,083
618 (Quarto, 153)	6,426
621 (Quarto, 153)	8,312
627 (Quarto, 155)	10,208
629 (Quarto, 155)*	—
638 (Quarto, 157)	1,869
640 (Quarto, 158)	4,051
647 (Quarto, 159; 99 Mass. 376)	—
649 (Quarto, 161)	6,425
651 (Quarto, 161)	1,600
655 (Quarto, 162)	8,456
656 (Quarto, 162; 103 Mass. 233)	—
660 (Quarto, 163)	4,703
661 (Quarto, 163)	18,138
670 (Quarto, 165)	4,326
685 (Quarto, 167)	2,227
686 (Quarto, 169)*	—
696 (Quarto, 171)	16,930
698 (Quarto, 171)	3,363
710 (Quarto, 173)	2,574
717 (Quarto, 177)	818
719 (Quarto, 177)	17,999
720 (Quarto, 178)	1,974
720 (Quarto, 177)	17,314
723 (Quarto, 178)	14,343
726 (Quarto, 179)	13,381
730 (Quarto, 179; 8 Abb. Pr. [N. S.] 191)	—
731 (Quarto, 179)	3,540
736 (Quarto, 180)	5,135
741 (Quarto, 181)	4,045
742 (Quarto, 181)	12,517
748 (Quarto, 182)	4,044
754 (Quarto, 185)	3,886
756 (Quarto, 185)	10,208
757 (Quarto, 186)	10,887
761 (Quarto, 186)	13,165
765 (Quarto, 187)	9,954
768 (Quarto, 188)	3,701
772 (Quarto, 189)††	—
776 (Quarto, 189)	7,272
782 (Quarto, 190)	4,052
787 (Quarto, 191)	6,960

†A New Mexico case, but not found in the regular reports.

*A Utah case, but not found in the regular reports.

††An Ohio case, but not found in the regular reports.

Vol. 4, N. B. R.

Page.	F. C. No.
1 (Quarto, 1)	12,285
17 (Quarto, 4)	4,127
20 (Quarto, 5; 56 Me. 559)	—
23 (Quarto, 5)	18,117
32 (Quarto, 7)	4,704
34 (Quarto, 7)	11,080
35 (Quarto, 10)	10,304
38 (Quarto, 10)	8,866
46 (Quarto, 12)	8,375
50 (Quarto)	3,323
52 (Quarto)	3,324
52 (Quarto, 13)	14,091
59 (Quarto, 14)	14,806
62 (Quarto, 15)	7,970
63 (Quarto, 15)	17,564
64 (Quarto, 17)	5,082
66 (Quarto, 17)	8,837
67 (Quarto, 17)	8,838
68 (Quarto, 18)	13,165
73 (Quarto, 19)	11,322
84 (Quarto, 21)	7,835
92 (Quarto, 23)	5,868
93 (Quarto)	8,106
93 (Quarto, 25)	11,769
95 (Quarto, 25)	12,141
97 (Quarto, 26)	9,399
100 (Quarto, 26)	7,208
103 (Quarto, 27)	6,162
104 (Quarto, 27)	14,305
106 (Quarto, 27)	9,123
108 (Quarto, 28)	9,642
112 (Quarto, 29)	16,084
115 (Quarto, 29)	5,148
121 (Quarto, 30)	694
126 (Quarto, 33)	13,835
131 (Quarto, 34, 8 Abb. Pr. [N. S.] 220)	—
143 (Quarto)	675
144 (Quarto, 36)	7,978
146 (Quarto, 37)	10,484
147 (Quarto, 37)	1 562
153 (Quarto, 38)	8,990
160 (Quarto, 41)	17,598
164 (Quarto, 42)	5,376
168 (Quarto, 43)†	—
177 (Quarto)	4,513
178 (Quarto, 145)	161
183 (Quarto, 46; 38 Ga. 224)	—
185 (Quarto, 46; 21 Law T. [N. S.] 407)	—
190 (Quarto, 50)	8,457
194 (Quarto, 57)	1,241
196 (Quarto, 57)	1,168
203 (Quarto, 59)	1,209
207 (Quarto, 60)	13,533
210 (Quarto, 60; 3 Ch. L. N. 13)	—
211 (Quarto, 61)	3,570
212 (Quarto, 66; 9 Wall. 664)	—
213 (Quarto, 66)	2,591
220 (Quarto, 67; 7 Bush, 344)	—
221 (Quarto, 67)	11,803
233 (Quarto, 69)	4,715
237 (Quarto, 70)	2,805
240 (Quarto, 71)	10,505
242 (Quarto, 71)	9,764
243 (Quarto, 74)	11,987
248 (Quarto, 75)	231
254 (Quarto, 76)	17,838
257 (Quarto, 77)	8,400
262 (Quarto, 77)	1,420
271 (Quarto, 82)	12,597
274 (Quarto, 83)	9,164
291 (Quarto, 86)	1,404
295 (Quarto, 90)	9,923
302 (Quarto, 91)	9,418
307 (Quarto, 92)	16,823
309 (Quarto, 98)	3,570
314 (Quarto, 99)	47
323 (Quarto, 106)	1,195
341 (Quarto, 110)	13,308
347 (Quarto, 114)	7,448
349 (Quarto, 114)	11,861
364 (Quarto, 116)	17,350
367 (Quarto, 122)	13,391
370 (Quarto, 123)	13,216

†A Utah case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 4, N. B. R.—Cont'd.

Page.	F. C. No.
373 (Quarto, 123)	5,009
376 (Quarto, 124)	13,557
378 (Quarto, 124)	7,593
384 (Quarto, 125)	6,542
389 (Quarto, 126)	7,636
390 (Quarto, 130)	17,619
391 (Quarto, 130)	1,301
392 (Quarto, 131)	6,161
394 (Quarto, 131)	7,978
397 (Quarto, 133)	13,016
400 (Quarto, 134)	3,251
406 (Quarto, 137)	11,409
408 (Quarto, 138)	1,302
411 (Quarto, 139)	6,026
412 (Quarto, 139)	3,849
412 (Quarto, 139)	7,049
414 (Quarto, 139)	12,518
427 (Quarto, 142)	13,522
431 (Quarto, 142; 2 Woodw. Dec. 30)	—
436 (Quarto, 145)	18,215
439 (Quarto, 146)	16,985
446 (Quarto, 148; 64 Pa. St. 74)	—
450 (Quarto, 148)	4,895
456 (Quarto, 150)	5,797
459 (Quarto, 150)	1,233
466 (Quarto, 154)	17,130
471 (Quarto, 155; 57 Me. 85)	—
477 (Quarto, 156)	13,833
478 (Quarto, 156)	9,323
479 (Quarto, 156)	18,139
488 (Quarto, 158)	9,167
496 (Quarto, 161)	12,610
498 (Quarto, 162)	4,330
503 (Quarto, 163; 57 Me. 69)	—
510 (Quarto, 164)	1,697
510 (Quarto, 165)	9,098
522 (Quarto, 173)	12,855
534 (Quarto, 175)	15,195a
537 (Quarto, 176)††	—
538 (Quarto, 176)	10,550
540 (Quarto, 176)	2,612
541 (Quarto, 178)	11,200
543 (Quarto, 178)	2,426
548 (Quarto, 179)	12,697
553 (Quarto, 180)	9,268
558 (Quarto, 181)	6,191
562 (Quarto, 182)	8,255
569 (Quarto, 185)*	—
571 (Quarto, 185)	6,750
579 (Quarto, 187)	3,379
585 (Quarto, 188)	8,880
587 (Quarto, 189)	494
588 (Quarto, 189)	12,503
593 (Quarto, 190)	7,836
597 (Quarto, 191)	2,165
599 (Quarto, 194)	16,926
600 (Quarto, 195)	3,571
610 (Quarto, 197)	18,077
613 (Quarto, 197)	17,272
616 (Quarto, 198; 11 Wall. 391)	—
619 (Quarto, 199)	388
619 (Quarto, 199)	788
623	6,814
626	18,082
629	14,201
631	3,013
635	3,182
645	7,065
648	7,864
649	7,473
651	376
657	5,405
660 (64 Pa. St. 74)	—
667 (104 Mass. 245)	—
672 (108 Mass. 309)	—
677 (108 Mass. 502)	—
683 (108 Mass. 508)	—
684 (108 Mass. 111)	—
689	4,066
690	6,535
706 (103 Mass. 184)	—
710 (32 Iowa, 209)	—
713 (23 Mich. 22)	—
714 (41 Cal. 545)	—
715	3,620
724 (36 Md. 32)	—
729	5,202

††A New York case, but not found in the regular reports.

*A Maryland case, but not found in the regular reports.

Vol. 5, N. B. R.

Page.	F. C. No.
1 (11 Wall. 65)	—
11	11,299
16	3,183
19	802
20	12,985
23	14,174
30	10,927
34	12,733
39	1,527
43	8,104
46	6,339
54	12,318
56	5,524
64	3,276
72	1,064
78 (11 Wall. 484)	—
82	2,136
93	12,447
95	8,221
97	126
112	13,393
116	7,936
119	5,132
122	5,133
123	7,613
125	4,680
128	1,654
130 (19 L. Ed. 953)	—
133	7,635
144	4,381
148	13,702
152	1,922
155	5,661
157 (39 Cal. 559)	—
159	7,919
161	6,896
168	12,620
181	5,951
191	3,074
194	5,050
199	1,745
205	6,193
211	1,229
214	12,921
218	6,178
222	8,228
230	152
232	1,679
233	1,680
234	13,684
252 (8 Phila. 100)	—
254	8,808
255	2,806
257	12,432
270	16,842
279	8,138
285	6,437
288	10,929
290	2,460
292	6,026
293	11,393
298	13,392
301	3,364
303	2,100
305	7,883
318	8,503
333	1,172
339	12,410
347	12,618
348	17,366
350	17,209
351 (47 Mo. 385)	—
353	5,203
358	6,664
366	10,625
367	13,992
377	13,991
381	11,537
393	16,984
399	13,801
408	9,259
414	17,177
421	17,937
423	3,390

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 5, N. B. R.—Cont'd.

Page.	F. C. No.
433	6,882
437	3,572
439	7,941
443	3,309
452 (39 N. Y. 164)	——
459	12,286
466	10,318
472	1,052
479	17,200
485 (38 Conn. 80)	——
491	9,018
493	6,883

Vol. 6, N. B. R.

Page.	F. C. No.
1 (14 Wall. 419).	——
10	2,955
16	14,200
22	8,991
33	3,487
40	11,477
43	9,441
49 (13 Wall. 40).	——
57	4,342
71	2,742
78	1,488
84†	——
85	806
89	4,183
92	7,093
101	12,307
107	124
117	7,329
127	1,415
130	1,413
132	10,657
139	11,375
145	3,623
163	12,032
165	7,567
169	7.018
173	10,880
175	17,550
179	2.222
181	9,869
183	13,293
189	7,594
194	2,807
197	2,799
202	2,808
204	2,809
207	2,547
209	1,677
222	1,678
235	12,182
238 (note)	17,780
246	12,023
252	7,980
255	13,239
257*	——
260	7,017
272	13,581
276	11,371
277	10,371
284	16,098
295	5,500
297	10,348
299	2,470
302	17,315
304	4,142
305	3,250
331	1,493
338	6,402
351	9,060
353 (14 Wall. 87).	——
359	695
365	10,310
372	6,751
377 (59 Me. 191).	——
379	2,966
386	7,449
388	9,049
396	10,658
398	12,201
400	11,410
401	12,284
403	2,801
410	2,802
416 (33 Iowa, 60).	——
425	10,512
429	13,513
433	4,260
440	5,495
443	1,239
449	4,282
465	11,213
497	12,200
501	2,236
509	7,330
518	16.928
521	7,689
533	13,365
541	1,883
542	7,992
545	11,394
552	6.988
557	6,989
558	10,674
569	4,741
573	16,874
579*	——
586	12,816

†An Ohio case, but not found in the regular reports.

*A Utah case, but not found in the regular reports.

Vol. 7, N. B. R.

Page.	F. C. No.
1	4,285
15†	——
26	13,829
31	2,967
37	6,367
45	11,478
47	17,178
49	4,380
56	9,852
61	5,883
72	4,160
97	13,071
107	4,161
126	17,990
133	4,530
138	16,951
140	7,239
143	606
145	127
174	4,948
182	8,644
186	12,626
188*	——
191††	——
192	6,257
193	5,533
217	4,446
226	13,448
230	323
238 (9 Phila. 63).	——
241	3,308
246	5,256
250	11,178
255	2,098
269	6,607
279	7,779
283	10,995
285	17,430
287	5,254
289	17,890
294	8,798
299	2,224
303	7,240
320	9,426
329	11,614
332	11,040
334	8,353
337	7,699
339	17,919
341	6,419
342	9,038
344	6,253
346	5,226
351	12,310
353	709
359	5,031
376	7,997
392	12,211
400	7,222
401 (17 Wall. 351).	——
405	17,991
407	12,860
412 (31 Wis. 607).	——
421	1,884
439	7,824
445	13,582
448	6,304
449	8,488
451	17,194
459	9,463
468	9,925
477	10,170
481	17,202
490	12,762
502	6,027
505	10,090
506	7,450
509	8,014
513 (16 Wall. 277).	——
527	11,597
538	3,965
552	1,394
558	7,818
559	6,157
561	693
568	1,170
578	7,241
591	13,693
595	1,917
598	6,682
601	6,711
604	6,430

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††An Illinois case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 8, N. B. R.

Page.	F. C. No.
1 (15 Wall. 610)	——
6	9,968
12	1,071
15	14,328
24	14,513
30	5,684
38	14,111
40	14,112
44	8,912
47	9,657
49 (15 Wall. 410)	——
56	10,982
71	2,495
78	11,189
90†	——
93	10,928
94†	——
97 (16 Wall. 551)	——
106	3,815
117	9,821
123	4,796
129	664
132	16,986
142†	——
145 (16 Wall. 258)	——
152 (25 Mich. 476)	——
159 (63 Barb. 339)	——
165	16,981
167	3.620
175	4.820
180	7,514
189	5,884
190	6.604
193	10,861
197	11,705
208	9,868
214	62
218 (65 Ill. 441)	——
221	16,798
225	6,974
228	1,167
237	5,073
239	18,206
241	7,242
279	2,878
285*	——
287	3,535
289	12,615
302	7,023
309	16,516
312	5,845
317	11,706
319	13,330
332	6,444
337	12,435
345	12,737
353	12,738
357	11,061
361	13,461
367	7,636
380	5,540
385†	——
390	11,079
396	17,780
401	12,986
409††	——
412	14,203
415	12,491
422	10,045
424	7,128
426 (53 N. Y. 419)	——
429	503
430	18,067
433	3,536
436	7,880
444	1,832
447	11,475
451	10,439
453	3.979
458	6,952
462 (52 N. H. 301)	——
484 (15 Wall. 549)	——
487	17,579
494 (59 Tenn. 58)	——
509	12,066
514	11,411
521	13,993
525	4.795
527	17,796
528	2,703
529 (15 Wall. 635)	——
533	7,373
537 (46 N. Y. 200)	——
541 (37 Iowa, 102)	——
546	8,313
548	9,666
557 (14 Abb. Pr. [N. S.] 274)	——
559 (46 Ala. 53)	——
562	3,310
571 (43 Vt. 662)	——

†A Utah case, but not found in the regular reports.

*A Georgia case, but not found in the regular reports.

††A Dakota case, but not found in the regular reports.

Vol. 9, N. B. R.

Page.	F. C. No.
1 (16 Wall. 577)	——
6 (12 Wall. 452)	——
8	3,912
19	2,825
26	9,586
29	5,830
38	13,030
47	11,369
48	13,688
49 (17 Wall. 590)	——
50	11,723
57	2.877
62	10,171
67	2,810
71 (43 Vt. 574)	——
74 (37 Tex. 56)	——
76	7,610
83	4,789
88	3,075
90	4,579
97 (17 Wall. 473)	——
107	12,252
111	13,072
117 (14 Op. Atty. Gen. 330)	——
122	9,051
132	17,307
135 (54 Mo. 137)	——
137	5,829
138 (42 Ga. 37)	——
140†	——
142	13,304
143*	——
144 (68 Pa. St. 13)	——
145 (17 Wall. 610)	——
152	2,735
155 (55 N. Y. 150)	——
167	8,443
184	890
191 (46 Ga. 412)	——
193	3,964
205	8,227
209	8,230
227	8,476
245 (18 Wall. 375)	——
255	13,374
258	2,115
267	17,606
270	10.765
274	14,191
278	3,745
281	10,592
285	9,423
289 (19 Wall. 274)	——
298	13,643
314	2,185
318	12,919
324	12,438
331	5,081
337 (18 Wall. 629)	——

†A Georgia case, but not found in the regular reports.

*An Ohio case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 9, N. B. R.—Cont'd.

Page.	F. C. No.
342	2,521
349	17,145
354 (2 Thomp. & C. 568)	—
357	5,710
360	351
366	5,921
373	11,750
376	11,247
378	13,844
380	9,424
383	12,193
385	11,389
387	3,712
395	17,980
402	9,779
408	11,632
412	7,257
416	7,529
419	9,325
423	6,787
430	4,227
433 (18 Wall. 332)	—
441	7,640
445	1,906
458 (5 S. C. 159)	—
466	6,968
474	10,785
478	1,086
481 (18 Wall. 1)	—
484	7,879
487	4,173
488	6,715
491	7,451
494	8,055
497	9,425
502	13,184
506	8,385
508	3,919
514	2,590
523	6,820
526	12,821
527	2,340
529 (20 Wall. 171)	—
535 (20 Wall. 251)	—
546	18,198
556	7,444
566	7,729
568	1,421
573	10,769

Vol 10, N. B. R.

Page.	F. C. No.
1	3,728
9	13,163
14	12,162
21	2,843
28	12,621
44 (68 Ill. 398)	—
48	9,946
49 (20 Wall. 31)	—
54	6,975
60	7,436
66	12,430
69	11,525
73	386
76	7,998
82	10,754
86	13,188
90	12,573
97	2,073
104	7,783
105	9,839
107	11,153
126	3,168
132 (10 Phila. 573)	—
133	6,484
135	8,044
141	18,295
145	1,555
150	2,138
151	10,395
157	1,009
165	12,568
172	5,995
178	14,376
188	13,217
191	12,062
193	11,154
200	10,957
206	2,086
208	11,120
209	17,920
213	6,321
214	13,357
215	2,782
224	6,743
236	2,594
239	17,207
241 (18 Wall. 635)	—
244	6,139
250	4,728
253	12,864
260	13,074
268	2,702
270 (1 Hun, 223)	—
274	13,190
277 (52 N. Y. 587)	—
280	6,070
285 (36 N. Y. Super. 290)	—
288 (37 Tex. 413)	—
289	894
290	894
294 (46 Cal. 575)	—
295	5,945
300 (52 N. Y. 404)	—
305 (37 Tex. 13)	—
306 (37 Tex. 515)	—
310	14,160
313 (53 N. Y. 521)	—
316	7,607
326 (69 N. C. 464)	—
330	10,292
335	3,006
337	6,730
340 (35 N. Y. Super. 355)	—
355 (53 N. Y. 123)	—
359 (55 Mo. 435)	—
363 (15 Abb. Pr. [N. S.] 24)	—
368	16,801
381	8,788
383	5,898
385	1,223
399	12,919
411	9,994
414	12,222
419	7,638
421	9,376
424 (42 Ind. 26)	—
427	7,515
433	6,986
438	5,046
444	12,003
448	591
451	3,077
456	5,825
459	8,776
461	1,932
467 (76 Pa. St. 313)	—
469	7,609
477	7,965
498 (48 Miss. 337)	—
503 (48 Miss. 101)	—
512 (1 Hun, 647)	—
515 (58 N. Y. 253)	—
517	11,179
523	4,963
523	4,981
526 (45 Ga. 117)	—
529	10,983
535	613
538 (44 Ga. 116)	—
540	18,028
545 (44 Ga. 18)	—
548 (44 Ga. 161)	—
549 (44 Ga. 339)	—
553	13,044
566	7,781
568	17,645
580 (76 Pa. St. 142)	—

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 11, N. B. R.

Page.	F. C. No.
1	3,169
21	11,673
46	1,178
49 (10 Bush, 367)	—
59	370
61	1,068
66	17,211
69	5,134
74	9,611
80	2,506
83	17,613
86	12,061
91	13,800
94	11,635
96	1,666
97 (23 Wall. 150)	—
108	5,422
111	10,370
114	11,776
117	9,610
121	7,666
125 (20 Minn. 81 [Gil. 66])	—
131	9,103
134	8,789
143	2,556
145	17,700
149	504
153	4,907
156	13,521
161	17,279
164	6,192
167	4,898
169	3,078
182	8,858
189	5,099
191	11,221
193	2,315
214	14,052
221	8,564
225	9,102
229 (20 Wall. 414)	—
235 (55 N. Y. 24)	—
241 (20 Wall. 407)	—
247	5,398
253	828
258	1,936
270	4,172
271	739
276 (20 Wall. 520)	—
280	12,429
282	6,672
287	7,253
289	10,073
293	3,829
296	11,559
303	11,298
308	16,849
313 (115 Mass. 52)	—
315	8,543
317 (21 Wall. 642)	—
322	6,762
330	13,891
337 (21 Wall. 360)	—
350 (2 Hun, 659)	—
352	373
369	6,562
371	4,046
381 (21 Wall. 325)	—
390	7,179
398	154
408 (49 Miss. 223)	—
415	4,762
420	11,136
423	12,253
433	12,899
443	7,303
448 (115 Mass. 27)	—
452	6,843
454 (49 Ga. 361)	—
457	4,203
460	3,982
461	6,967
462	6,827
470	14,064
471 (55 N. Y. 652)	—
472 (22 Wall. 263)	—
478 (44 Ga. 460)	—
482	9,853
486 (44 Ind. 413)	—
490 (56 N. Y. 649)	—
493	5,252
495 (22 Wall. 395)	—
505 (22 Wall. 170)	—
511	3,319
516	12,254
521 (56 Mo. 369)	—
524	17,513
527	1,044
529 (22 Wall. 381)	—
535	4,731
536	2,392
553 (22 Wall. 513)	—
563	18,173
568 (49 Miss. 597)	—
573	6,448

Vol. 12, N. B. R.

Page.	F. C. No.
1	2,391
11	8,783
17	505
19 (43 Ind. 108)	—
24 (21 Wall. 342)	—
30	3,170
39	2,899
48	7,452
49	6,018
53 (49 Ga. 415)	—
56	314
59	12,945
61 (46 Cal. 547)	—
63	12,747
70 (117 Mass. 343)	—
74	13,205
81	3,320
86	6,632
92 (49 Ga. 384)	—
95 (20 Wall. 575)	—
97	8,859
110	3,079
121 (42 Md. 164)	—
130	895
132 (21 Wall. 640)	—
134 (21 (Wall. 500)	—
137 (21 Wall. 475)	—
142	12,194
143 (1 Wkly. Notes Cas. 304)	—
145 (23 Wall. 128)	—
152 (21 Wall. 398)	—
170	7,303
173 (22 Wall. 150)	—
176 (23 Wall. 289)	—
179	5,407
181	1,314
185	9,143
191	17,095
193 (10 R. I. 448)	—
201	1,210
203	2,915
204	7,111
208	12,898
211	2,192
215	1,822
217	1,942
223	707
230	4,855
241	3,816
248	5,746
253	2,396
257	1,313
266	3,002
277	5,975
282 (43 Md. 153)	—
286	2,549
289 (42 Md. 393)	—
297	18,000
299	1,764
303 (116 Mass. 527)	—
305 (116 Mass. 440)	—
308	5,000
315	12,861
321	9,732
329	665
334 (78 Pa. St. 147)	—
337	4,906
340	14,602
345	7,421
358	9,623
360 (111 Mass. 67)	—
366	5,894
376 (116 Mass. 534)	—
379	3,097
385	1,342

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 12, N. B. R.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
389	16,812	493	5,271
390	11,639	498 (10 R. I. 261)	—
391	4,159	502	350
394	17,085	507	6,531
398	1,650	518	10,632
402	1,533	522	8,011
403	6,605	524 (63 Me. 118)	—
405 (34 Wis. 259)	—	526	16,929
413	4,157	529	1,741
422	10,288	533	9,420
427 (40 Md. 401)	—	540	4,331
438 (48 Cal. 439)	—	548	6,215
450	13,204	554	6,837
474	986	559 (58 N. Y. 61)	—
480	6,525	567 (3 Hun, 666)	—
481	1,462	575 (6 Thomp. & C. 546)	—
484 (47 Ind. 31)	—		
491	17,054		

Vol. 13, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1 (4 Hun, 284)	—	258	3,648
7	648	263	17,349
14 (4 Hun, 135)	—	271 (91 U. S. 114)	—
17	8,018	276	6,441
22	2,378	280	17,615
33	15,595	283	7,140
43	8,043	286	7,446
46	3,566	289 (91 U. S. 426)	—
49	9,524	295	13,420
52	17,180	296	7,119
60	8,058	300	13,938
61	16,339	304	10,350
68	3,492	312	6,420
72	13,196	315	1,570
77	9,179	319	17,752
78	1,893	328	2,731
82	4,679	334 (37 Iowa, 661)	—
88	14,548	335 (47 Vt. 457)	—
91	9,467	337	2,097
95 (4 Hun, 131)	—	345 (73 N. C. 293)	—
96	17,935	349	5,131
97 (31 Mich. 391)	—	356	11,453
106	17,921	360 (54 N. H. 504)	—
108	6,939	362 (47 Vt. 88)	—
112	4,090	366 (54 N. H. 190)	—
118	5,786	373	17,512
122	7,237	376	9,854
128	11,675	378	13,274
137	2,209	380 (37 Iowa, 493)	—
141 (10 Bush, 83)	—	385 (91 U. S. 656)	—
144	12,361	397	9,152
145 (67 Ill. 301)	—	400	14,547
149	10,902	404 (54 N. H. 84)	—
154 (10 Bush, 148)	—	407 (37 Iowa, 654)	—
157 (10 Bush, 400)	—	413 (59 N. Y. 233)	—
160	789	421 (91 U. S. 716)	—
164	12,371	433 (92 U. S. 183)	—
168	10,881	437 (92 U. S. 135)	—
170	14,095	440 (91 U. S. 496)	—
171 (91 U. S. 45)	—	445 (92 U. S. 362)	—
183	4,117	455	6,925
193	3,080	464	16,025
195 (117 Mass. 17)	—	472 (91 U. S. 516)	—
197 (117 Mass. 291)	—	477	2,259
199	10,558	479	8,573
208	2,443	496 (43 Md. 404)	—
209 (117 Mass. 228)	—	500	12,987
214	13,242	503	10,559
216	1,823	520†	—
222	9,088	523	7,407
225	3,345	525	3,480
226 (91 U. S. 56)	—	529	17,330
235	16,179	543 (76 Pa. St. 50)	—
239	4,973	546 (91 U. S. 521)	—
241	762	551	11,678
253	17,784	559	17,331
256	12,995	575	17,972

†A New York case, but not found in the regular reports.

Vol. 14, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1	17,580	49 (52 Ga. 605)	—
4	11,568	50 (52 Ga. 593)	—
7	594	53 (49 Ala. 525)	—
9†	—	59	11,188
18	4,131	60 (29 Mich. 390)	—
35	14,096	64 (92 U. S. 618)	—
37 (42 Tex. 1)	—	71	2,061
43 (52 Ga. 544)	—	82	8,166
46 (52 Ga. 371)	—	89	8,179

†An Illinois case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol 14, N. B. R.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
92	8,165	346 (7 W. Va. 532)	—
97	723	356	10,322
99 (5 S. C. 504)	—	364	12,379
112	14,058	371	9,828
125	999	379 (50 How. Pr. 455)	—
127	8,077	380	10,637
130	11,938	383 (53 Ga. 64)	—
132	17,706	385	8,291
139	7,843	387 (53 Ga. 208)	—
141	5,286	388	18,052
144	8,314	391 (5 Daly, 301)	—
145 (5 Hun, 39)	—	393 (16 Abb. Pr. [N. S.] 303)	—
147	2,247	394	10,530
148	4,673	403 (23 Minn. 111)	—
150	4,058	405	10,561
156	5,394	425	16,828
157	7,844	430 (2 Wkly. Notes Cas. 404; 81 Pa. St. 39)	—
159	8,079	432	12,988
162	10,856	433	763
173 (120 Mass. 81)	—	437	10,678
175	10,037	443 (1 Abb. N. C. 27)	—
182	1,166	445 (92 U. S. 179)	—
184	12,557	449	7,123
189	241	457	8,650
191	2,785	460	8,031
193 (92 U. S. 257)	—	466	17,365
195	2,248	469	1,007
201	12,027	477	8,753
209	6,634	479 (114 Mass. 543)	—
210	10,528	481 (44 Iowa, 265)	—
213	5,158	492 (54 Ga. 125)	—
218	17,620	493	6,631
219	11,098	495	6,549
223	1,652	498	2,171
232	1,645	503	3,267
236	11,126	507	14,133
241	12,395	510	6,119
243	3,833	513	10,037
249	9,904	521	17,770
253	11,293	525	6,195
258	17,270	529	2,055
264 (91 U. S. 308)	—	543	16,989
273	17,126	547 (119 Mass. 245)	—
276	7,260	551	4,086
278	1,027	555 (119 Mass. 429)	—
286	3,060	563 (119 Mass. 426)	—
289	7,073	565 (15 Kan. 595)	—
294	3,518	569	7,423
295	12,996	570	12,791
301	1,844	571 (38 N. J. Law, 198)	—
307	17,573	572	9,033
311	5,486	575 (3 Wkly. Notes Cas. 196)	—
329 (118 Mass. 551)	—		
332	11,852		
336	8,778		
337 (53 Ga. 659)	—		
339*	—		
345 (40 Iowa, 97)	—		

*A New York case, but not found in the regular reports.

Vol. 15, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1	7,408	198	5,751
11	1,921	205	18,149
23	17,854	213	1,878
26	8,763	216	3,243
31	5,923	224	12,826
34 (55 Ga. 172)	—	228	1,236
36 (55 Ga. 579)	—	233	6,023
40	2,157	238 (54 Ala. 378)	—
41 (3 Wkly. Notes Cas. 202)	—	246	6,045
44	9,976	250	2,469
48	727	257	8,429
49 (93 U. S. 130)	—	271	111
60	17,664	277 (93 U. S. 631)	—
69 (82 Pa. St. 301)	—	280 (75 N. C. 172)	—
71	6,017	281 (68 N. Y. 362)	—
73	12,519	283 (82 Pa. St. 159)	—
92	17,529	289 (40 Wis. 131)	—
95	11,977	300 (75 N. C. 213)	—
97	12,989	301	7,276
104	12,556	305	12,473
106	1,761	313 (7 Hun, 288)	—
113 (50 Ala. 573)	—	316 (7 Hun, 295)	—
120	3,352	318 (7 Hun, 488)	—
126	7,396	322 (61 Mo. 185)	—
140 (28 Ark. 6)	—	325	14,609
142 (50 Ind. 490)	—	330	12,592
145 (62 Mo. 412)	—	333	8,879
150	9,576	350 (9 Hun, 277)	—
161	12,483	353	9,338
163	17,325	368	1,653
173	6,072	370	716
194 (8 Hun, 516)	—	373	5,873
		377 (3 Mo. App. 342)	—

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 15, N. B. R.—Cont'd.

Page.	F. C. No.	Page.	F. C. No.
383 (34 Leg. Int. 140)	—	489	10,636
385 (56 N. H. 466)	—	491 (10 Hun, 362)	—
402 (56 Ga. 271)	—	495	6,322
405 (92 U. S. 81)	—	508 (27 Ohio St. 452)	—
409	17,196	515 (56 Ga. 559)	—
416	1,981	518 (94 U. S. 523)	—
417	3,408	522	5,129
421 (93 U. S. 347)	—	526 (80 Pa. St. 149)	—
426	6,418	532	12,784
431	3,242	536	1,371
438	7,153	543 (56 Ga. 570)	—
447 (27 Ohio St. 339)	—	545	5,515
449	11,139	546 (94 U. S. 734)	—
453	1,091	553 (80 Pa. St. 391)	—
456	9,748	560	11,268
459	12,990	564	12,212
468	9,337	569 (55 Ind. 52)	—
473 (42 Iowa, 582)	—	571	3,455
476	8,525		

Vol. 16, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1 (9 Hun, 473)	—	301	7,820
22	10,593	302	1,242
27 (9 Hun, 543)	—	304	13,565
32 (84 Pa. St. 31)	—	308	11,069
35	9,466	312	10,100
38	8,635	315	10,711
39	151	318	2,045
40	13,773	320	5,993
43	10,886	324	4,188
48	7,307	331 (94 U. S. 553)	—
52	18,051	340	12,052
56	3,847	343 (53 Miss. 195)	—
59 (10 Hun, 140)	—	351	13,725
62 (84 Pa. St. 366)	—	356 (53 Miss. 119)	—
64 (95 U. S. 3)	—	363	12,215
72 (85 Pa. St. 44)	—	368	12,381
75	1,333	372 (28 Ohio, 625)	—
79 (10 Hun, 277)	—	377	1,328
85 (80 Ill. 109)	—	382	733
93	2,374	385 (95 U. S. 58)	—
96 (72 Ill. 435)	—	387	15,848
98 (80 Ill. 304)	—	391 (95 U. S. 342)	—
101	6,890	397	14,169
105	13,345	399	12,992
113	12,991	402	12,213
116	261	405 (52 How. Pr. 481)	—
135	5,408	414 (6 S. C. [N. S.] 345)	—
137	1,746	420	6,764
145 (27 Va. 33)	—	425	7,397
152	17,885	432	6,109
158	11,724	435	8,369
168	7,989	440 (95 U. S. 418)	—
170 (10 Hun, 443)	—	448	14,168
175	12,926	452	7,442
176	11,725	460	12,396
178	3,190	461	11,974
181	12,380	464	6,842
188	7,770	468 (57 N. H. 460)	—
191 (80 Ill. 404)	—	470	2,096
197	8,435	476	12,148
202	4,017	478 (57 N. H. 149)	—
204	1,746	481	1,702
205†	—	485	9,282
208	11,224	489	1,703
211	1,080	497	7,991
215	12,123	501	10,427
217 (2 McA. 375)	—	503	4,624
243	10,866	505	8,235
251	12,888	508 (66 N. Y. 597)	—
252 (2 McA. 322)	—	514	17,466
258	17,317	518	662
261	14,008	522	5,994
265	10,912	530	4,738
268	13,294	535	9,658
275	539	537 (95 U. S. 665)	—
277	17,489	541	628
280	18,222	544 (45 Md. 278)	—
285	17,089	550	6,526
289 (34 Mich. 362)	—	558 (53 Ala. 418)	—
294	3,427	569	13,352
296 (52 Miss. 536)	—	572	9,823

†A New Hampshire case, but not found in the regular reports.

Vol. 17, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1	2,076	316	7,482
4	2,348	319	7,650
19	571	324	3,404
22	7,074	329 (122 Mass. 308)	—
23	10,074	332 (66 Me. 432)	—
27	8,486	335	6,421
34 (95 U. S. 670)	—	337	3,440
37	10,673	345	13,825
42 (45 Md. 290)	—	353	1,411
49	2,580	362	6,342
54	13,886	368	629
64 (95 U. S. 347)	—	369	12,742
73	10,426	377	10,981
75 (96 U. S. 539)	—	380	3,896
76	11,231	385 (32 Mich. 313)	—
82 (95 U. S. 252)	—	393	3,355
90 (12 Hun, 220)	—	399	1,459
102 (95 U. S. 704)	—	402	9,401
107	1,165	404	10,562
109	4,588	406	641
112	12,773	412 (120 Mass. 447)	—
113	8,668	413	17,442
116	12,695	419 (86 Pa. St. 188)	—
124 (29 La. Ann. 17)	—	421	14,036
138	13,683	423	17,923
144	11,070	425	1,557
147 (67 Me. 140)	—	429	9,053
153	1,704	434 (62 N. Y. 5)	—
157	210	440	6,405
158	6,219	452	12,308
167	12,489	459	8,592
170	8,432	461	11,053
175	11,439	463	6,370
177 (85 Pa. St. 384)	—	468 (14 Hun, 120)	—
181 (58 Ga. 119)	—	472	9,612
183 (29 La. Ann. 280)	—	474 (95 U. S. 99)	—
187 (95 U. S. 764)	—	479 (95 U. S. 266)	—
192	9,327	482 (95 U. S. 180)	—
196 (43 Conn. 289)	—	485 (45 Iowa, 311)	—
205	6,884	489 (96 U. S. 328)	—
208	3,435	492	1,481
212	2,214	495	4,196
218 (68 N. Y. 267)	—	498 (97 U. S. 80)	—
225	9,274	502	14,029
228	11,252	504	3,948
225	10,624	508	12,157
239 (68 N. Y. 418)	—	514	9,054
246 (12 Hun, 144)	—	517	4,125
251 (29 La. Ann. 88)	—	520 (68 N. Y. 41)	—
257	5,549	540	8,479
259	18,103	543	9,406
261	2,852	546	10,396
277 (63 Mo. 143)	—	550	14,030
283 (77 N. C. 134)	—	554	2,811
287	145	555	3,284
293	5,956	558*	—
300	10,712	562	11,770
305	13,439	563 (64 N. Y. 242)	—
310 (29 La. Ann. 719)	—	569	13,451
314 (77 N. C. 249)	—	573	7,948

*A New York case, but not found in the regular reports.

Vol. 18, N. B. R.

Page.	F. C. No.	Page.	F. C. No.
1	6,857	125	7,457
6 (13 Hun, 526)	—	144	13,464
10	7,647	146 (72 N. Y. 159)	—
24	12,976	151	12,195
28	7,116	162 (71 N. Y. 20)	—
31	5,270	168	13,574
34	9,519	168	13,566
36	7,648	173 (86 Pa. St. 350)	—
42	4,133	177	14,032
43	10,724	178	17,636
48	7,159	199	13,229
56	17,063	207	4,650
62	1,119	217	3,850
64	4,964	222	4,543
74†	—	227	14,033
78	14,031	230	6,632a
81	18,105	243	11,969
85	10,148	252	11,991
87	18,078	260	17,048
91	10,268	264 (8 Daly, 78)	—
95	7,067	268	3,943
97	5,987	270	7,966
102	6,832	276 (89 Ill. 144)	—
106	17,533	279	2,732
111 (84 Ill. 92)	—	282	1,453
114 (72 N. Y. 70)	—	289	490
120	1,235	299	6,985
123	1,682	300	17,785

†A New York case, but not found in the regular reports.

NATIONAL BANKRUPTCY REGISTER —Cont'd.

Vol. 18, N. B. R.—Cont'd.

Page.	F. C. No.
306 (13 Bush, 340)	—
311 (57 Ind. 367)	—
317 (13 Bush, 581)	—
319 (3 McA. 405)	—
328	1,551
331	7,654
335	5,911
339	6,686
340 (97 U. S. 304)	—
347	8,386
353 (123 Mass. 390)	—
354 (67 Me. 420)	—
358 (67 Me. 526)	—
359 (123 Mass. 278)	—
362	11,798
365 (3 Colo. 43)	—
367	2,199
375	12,750
379	7,617
381	11,992
385	17,490
388	8,906
393	11,833
396	6,684
399 (44 Conn. 437)	—
411	9,479
419	5,624
426	4,932
429	12,092
433	2,269
439	4,850
447	11,470
454	3,744

Page.	F. C. No.
457	4,934
469	10,223
480	6,835
493	10,971
497	1,120
500	1,191
504	6,903
505 (6 Wkly. Notes Cas. 317)	—
507 (98 U. S. 240)	—
510	5,820
514	3,895
516	8,133
518 (49 Md. 51)	—
525	17,377
527 (39 Mich. 319)	—
526	6,433
530	6,545
533 (54 Miss. 341)	—
543	16,841
544 (53 Cal. 267)	—
549 (87 Pa. St. 513; 6 Wkly. Notes Cas. 321)	—
555	1,575
557	6,657
560	1,121
563	17,581
565	6,747
566	1,879
570	7,918
575	1,576

Vol. 19, N. B. R.

Page.	F. C. No.
1	12,628
13 (73 N. Y. 218)	—
15 (5 Abb. N. C. 356)	—
16	2,637
24 (98 U. S. 20)	—
36	14,084
41	13,346
45 (98 U. S. 507)	—
52	796
57	12,889
61	3,654
63	11,190
65	9,003
68	1,226
71 (30 N. J. Eq. 124)	—
73	1,144
78	9,555
81	9,365
83 (72 N. Y. 548)	—
90	13,494
97	7,115
101	9,328
109	2,891
111	9,824
113 (98 U. S. 248)	—
120	13,140
122	5,118
124 (72 N. Y. 424)	—
132	9,877
133	2,961
136	8,794
142	3,094
144 (74 N. Y. 154)	—
149	16,833
152	7,861
161	645
164	896
168	1,633
171	10,552
172 (97 U. S. 392)	—
178	10,506
181	3,539
187 (99 U. S. 298)	—
195	1,882
197	12,511
201	14,034
213	635
221 (90 Ill. 371)	—
224	5,192
227 (90 Ill. 82)	—
229	13,659
234	8,392
237	581

Page.	F. C. No.
238	7,862
241	11,219
253	8,001
253	14,188
258	17,491
263 (6 Wkly. Notes Cas. 363)	—
268	394
270	1,982
276	3,478
283	7,627
287	2,069
289	11,953
291	10,492
295	1,122
297	9,109
299	6,456
301	2,812
302	5,116
303	2,528
307	7,863
309	1,634
312	1,983
314	897
326	7,656
330	5,912
332	12,580
335	9,370
347 (101 U. S. 731)	—
359	12,745
370	12,053
372†	—
378	12,709a
383	7,302
394	4,126
404	13,192
412	9,870
414	12,787
422	3,259
424 (101 U. S. 225)	—
440 (2 F. 202)	—
445 (4 F. 13)	—
452	8.662
455 (4 F. 318)	8,363
461 (103 U. S. 22)	—
465 (2 F. 319)	—
471 (102 U. S. 263)	—
484	16,860
500	17,043
502	17,176
508 (4 F. 804)	1,856a
518 (103 U. S. 293)	—
523	13,026

†A New York case, but not found in the regular reports.

NATIONAL MAGAZINE, NO. 3.

Nat. Mag. No. 3.

Page.	F. C. No.
254	17,708

NEWBERRY'S UNITED STATES ADMIRALTY REPORTS.

Vol. 1, Newb.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,048	187	17,607	412	14,400
4	8,610	195	2,046	421	9,736
5	12,216	197	10,766	432	2,455
6	7,759	205	7,958	438	4,442
8	17,154	215	4,980	443	17,723
37	10,883	221	6,885	449	13,578
41	17,155	225	17,147	458	13,411
45	3,893	227	4,977	461	3,462
49	9,772	236	17,153	464	9,481
56	12,544	241	15,465	474	12,908
59	2,237	256	16,703	481	7,930
61	7,136	262	16,054	489	1,102
67	10,143	269	15,569	492	9,174
69	7,117	274	4,232	494	17,115
73	11,827	284	6,121	497	11,562
81	15,132	296	574	501	8,000
95	17,162	308	6,492	504	13,178
101	12,549	323	18,253	510	11,292
107	12,550	329	4,556	514	8,980
111	13,445	341	2,482	522	6,436
115	5,927	348	8,759	525	7,732
123	8,152	352	17,039	528	4,238
129	8,849	366	7,046	533	1,626
130	8,801	383	15,049	536	15,976
139	17,158	393	3,113	539	9,602
158	8,588	400	12,005	541	12,145
171	1,910	409	15,914	553	12,144
176	4,115				

NEW CHANCERY CASES.

N. C. Cas.

Page.	F. C. No.
77	5,980
81	16,332

NEW JERSEY LAW JOURNAL.

Vol. 1, N. J. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	16,776	141	14,329	228	1,952
42	6,836	162	15,487	228	11,412
66	12,695	183	10,431	230	7,771
99	8,473	184	2,322	248	13,234
113	7,482	195	7,724	259	13,218
115	13,238	227	8,438	315	17,720
139	5,806				

Vol. 2, N. J. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	13,864	148	5,757	272	3,131
26	9,365	150	5,602	274	13,258
48	11,353	150	7,723	275	71
49	6,318	170	11,962	278	10,205
50	9,566	171	11,561	298	5,155
57	16,999	179	1,455	301	17,962
81	17,267	181	16,471	328	1,495
82	3,094	211	8,392	331	2,058
83	5,235	212	12,418	333	10,053
122	3.260	213	11,885	338	3.130
124	17,880	231	7,627	359	13,169
147	14,188	233	10,755		

Vol. 3, N. J. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	5,502	49	15,041a	240	5,151a
18	17,113	176	5,488a	279	17,445a
47	7	204	11,040a		

NEW YORK CITY HALL RECORDER.

Vol. 2, N. Y. City H. Rec.

Page.	F. C. No.
131	15,461

NEW YORK CODE REPORTER.

Vol. 2, N. Y. Code Rep.

Page.	F. C. No.
102	5,180

NEW YORK LEGAL OBSERVER.

Vol. 1, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,856	119	1,799	276	7,785
5 (note)	5,187	131	5,306	291	12,994
8	1,085	132	17,051	292	2,415
8	10,263	146	11,489	309	7,832
18	726	166	133	310	1,632
20	11,921	180	9,556	322	8,599
22	7,784	195	4,215	325	12,563
38	9,550	199	11,550	326	3,076
39	6,174	200	2,307	326	12,171
40 (note)	18,204	211	6,633	327	5,411
53	17,027	212	4,237	343	4,429
69	1,984	213	5,744	344	15,473a
83	8,178	227	15,690	348	6,735
84	4,302	231	3,254	349	463
87	5,423	232	4,959	356	3,789
92	15,594	234	2,380	371	18,313
98	14,140	249	12,993	388	14,890
100	10,293	264	13,142	391	803
115	5,305	274	958		

Vol. 2, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	15,457	68	4,333	256	16,549
4	6,767a	84	15,110	267	10,873
23	11,784	99	16,173	271	6,788
35	14,931	115	6,500	285	12,095
51	15,648	119	11,045	312	330
53	16,214	131	7,496	325	13,052
55	15,378	185	7,866	370	3,269
67	13,853	251	1,503	388	7,537

Vol. 3, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
43	544	152	6,110	282	5,928
86	2,408	155	464	286	9,181
110	13,737	215	1,366	346	16,644
143	16,065	260	9,981	350	5,264
147	3,628	262	11,640		

Vol. 4, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	15,191	254	10,992	373	16,875
13	13,117	294	4,747	377	14,002
98	465	298	15,468	450	15,458
215	4,747	333	15,465		

Vol. 5, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	12,756	205	8,676	293	10,120
43	4,751	207	13,763	327	17,191
83	9,511	245	11,880	363	9,434
122	13,208	247	15,923	406	12,776
172	4,010	286	16,129	442	12,508

Vol. 6, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	11,745	230	16,683	369	10,521
99	1,646	262	10,700	374	1,564
103	11,740a	302	6,674	401	4,596
198	1,148	340	{ 4,452	434	4,598
223	6,290		{ 4,453	441	9,805

Vol. 7, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	17,243	174	8,122	342	9,125
38	11,743	238	12,925	345	3,486
97	17,297	331	6,211		

Vol. 8, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
45	5,180	105	215	294	12,479
73	10,758	146	10,757	297	13,400
77	5,230	241	13,255	329	6,082
				340	10,643

Vol. 9, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	7,437	193	15,973	281	3,422
73	8,478	232	7 466	289	14,285
129	16,915	257	15,974	321	11,271
137	16,915				

Vol. 10, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,418	193	2,445	257	7,598
65	11,303	199	113a	353	2,925
97	11,199	225	5,257		

NEW YORK LEGAL OBSERVER—Cont'd.

Vol. 11, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	13,901	225	2,512	297	1,150
97	8,591	242	7,173	327	5,485
137	7,246	263	7,057	353	4,273
161	15,071				

Vol. 12, N. Y. Leg. Obs.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	11,434	161	16,870	259	4,475
33	2,639	163	17,223	299	7,092
65	6,323	257	17,193	300	2,758
100	17,005				

NEW YORK WEEKLY DIGEST.

Vol. 1, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
33	18,000	175	10,632	347	1,862
34	1,764	176	8,011	348	1,862
36	665	177	16,929	349	7,761
53	5,975	178	1,342	355	7,874
55	2,549	179	4,159	364	9,467
76	4,906	182	14,424	365	8,058
76	9,623	223	16,165	365	9,179
77	14,602	229	4,679	366	17,935
78	3,007	243	4,331	378	14,877
100	1,741	245	11,343	383	10,584
100	11,639	269	5,861	385	10,499
101	1,533	271	3,566	387	1,955
101	5,407	272	9,524	427	3,129
101	12,194	276	14,603	435	12,361
101	16,812	282	12,497	436	17,921
125	1,650	291	17,180	437	14,095
125	10,288	296	8,043	444	15,505
126	6,605	318	648	452	375
127	895	318	8,018	511	4,802
127	6,525	326	9,794	517	4,364
155	16,361	331	2,664	534	7,140
174	1,462	332	11,198	535	6,441
174	17,054				

Vol. 2, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	13,420	193	9,524	479	7,658
4	10,350	262	7,150	480	9,904
4	13,938	331	1,844	499	4,690
83	1,430	342	6,970	500	7,073
91	13,299	378	11,126	532	12,996
97	3,062	458	362	539	18,084
142	375	478	1,856	562	738
161	2,104				

Vol. 3, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
12	3,060	111	999	307	8,080
50	4,058	112	8,077	357	4,531
60	1,207	140	3,833	363	18,151
92	5,158	143	12,395	421	16,989
95	17,620	167	10,668	432	6,119
96	12,379	174	6,221	461	8,763
101	6,634	180	17,270	552	12,556
105	3,397	303	8,650	573	1,761

Vol. 4, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	12,599	382	8,675	431	10,636
70	10,569a	407	3,173	471	193
95	270	422	10,011	494	7,307
145	3,468				

Vol. 5, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
51	11,725	194	10,536	264	12,543
137	2,204	202	17,489	322	12,992
145	8,102	241	8,701	418	7,903
174	17,317			529	9,282

Vol. 6, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
43	210	181	7,393	400	14,286
46	9,450	218	3,404	543	18,078
70	11,231	335	12,315	545	1,539

Vol. 7, N. Y. Wkly. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	13,802	35	12,230	279	5,359
13	9,980	63	4,804	360	8,219
29	13,234				

NEW YORK WEEKLY DIGEST—Cont'd.

Vol. 8, N. Y. Wkly. Dig.

Page.	F. C. No.
551	11,588
554	13,774

Vol. 9, N. Y. Wkly. Dig.

Page.	F. C. No.
220	17,651
338	17,836
371	11,041

NILE'S WEEKLY REGISTER.

Vol. 2, Nile, Reg.

Page.	F. C. No.
216	11,391

Vol. 10, Nile, Reg.

Page.	F. C. No.
251	14,677a

Vol. 18, Nile, Reg.

Page.	F. C. No.
328	5,182

Vol. 19, Nile, Reg.

Page.	F. C. No.
104	6,620
319	16,339a

Vol. 20, Nile, Reg.

Page.	F. C. No.
137	15,157a
346	15,033a

Vol. 24, Nile, Reg.

Page.	F. C. No.
255	11,931

Vol. 29, Nile, Reg.

Page.	F. C. No.
290	17,150

Vol. 31, Nile, Reg.

Page.	F. C. No.
73	2,141
110	13,322

Vol. 38, Nile, Reg.

Page.	F. C. No.
256	15,387a

Vol. 41, Nile, Reg.

Page.	F. C. No.
273	15,931a

Vol. 47, Nile, Reg.

Page.	F. C. No.
157	2,928
189	12,749

Vol. 50, Nile, Reg.

Page.	F. C. No.
240	14,919a

Vol. 56, Nile, Reg.

Page.	F. C. No.
262	2,400

NORTH CAROLINA REPORTS.

Vol. 1, Dev. Law.

Page.	F. C. No.
271	17,527a
280	17,527a

Vol. 63, N. C.

Page.	F. C. No.
112	7,163

Vol. 65, N. C.

Page.	F. C. No.
709	16,079
714	10,318

Vol. 71, N. C.

Page.	F. C. No.
571	13,679
578	12,640

NORTHWESTERN REPORTER, (O. S.)

Vol. 1, N. W. Rep. (O. S.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	10,127	109	18,051	165	4,017
77	379	116	7,989	173	2,382
91	307	149	10,841	173	8,102
100	17,199	165	380	205	5,988
108	12,926				

Vol. 2, N. W. Rep. (O. S.)

Page.	F. C. No.
13	15,673
150	8,097
245	291

Vol. 3, N. W. Rep. (O. S.)

Page.	F. C. No.
111	382

OFFICIAL GAZETTE.

Vol. 1, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	11,899	331	13,041	524	11,222
48	5,039	359	7,275	525	17,324
91	2,397	382	1,061	551	3,672
117	17,100	407	12,102	574	14,044
165	12,398	409	9,559	578	14,406
282	50	437	12,369	609	5,672
306	6,250	466	11,660	633	6,540
		471	7,751	634	4,826

Vol. 2, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	2,833	295	2,109	523	74
32	11,340	315	804	524	13,556
58	4,623	319	804	544	9,845
59	315	320	797	545	9,397
61	9,949	340	9,119	546	580
62	1,022	342	17,871	568	13,757
89	3,155	342	18,160	590	17,394
94	7,365	361	14,395	595	316
117	8,708	388	1,465	619	10,784
120	18,008	392	11,702	645	5,198
175	13,048	442	17,493	649	13,084
225	11,480	470	12,314	675	12,687
248	2,033	471	17,465	677	3,557
249	18,160	495	12,166	680	3,558

Vol. 3, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	11,182	181	7,838	384	2,012
30	5,982	213	13,097	412	11,928
33	8,706	214	13,098	441	3,727
65	3,726	268	11,897	441	8,847
93	8,452	269	1,546	522	311
97	11,181	293	4,443	551	11,913
121	1,858	349	12,135	630	7,495
122	1,499	354	4,069	688	1,336
124	10,603	380	5,291	689	3,000
150	4,312				

Vol. 4, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	12,040	398	11,787	612	5,745
31	14,386	476	2,631	633	13,095
55	9,270	501	706	636	17,451
83	4,415	527	4,949	666	12,370
132	11,925	553	12,904	669	17,395
181	7,798	579	13,570	692	17,499
398	7,694				

Vol. 5, O. G.

Page.	F. C. No.	Page	F. C. No.	Page.	F. C. No.
3	656	273	9,747	496	13,010
31	6,004	364	17,398	522	17,337
58	4,574	398	9,115	555	11,997
61	2,675	429	13,050	585	5,598
92	13,756	430	6,502	615	3,548
117	12,081	458	3,186	644	12,132
149	5,857	459	14,389	696	1,676
173	14,390	460	17,463	697	11,625
201	5,128	491	6,242	725	577
208	16,794	493	6,236	752	2,106
268	9,472	494	6,237	753	2,345
272	14,408				

OFFICIAL GAZETTE—Cont'd.

Vol. 6, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	978	327	3,135	729	4,242
3	6,493	435	17,500	764	309
34	10,337	575	11,163	772	310
117	967	604	1,433	801	14,388
118	3,963	642	8,632	802	7,910
154	5,597	682	1,434	837	9,607
187	3,438	685	9,714	927	8,453
224	10,051	724	7,960	932	2,628
259	2,969	728	2,627	933	815
297	1,501	728	4,882		

Vol. 7, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
41	5,603	385	14,132	781	12,411
81	8,136	425	10,913	829	13,453
173	14,244	514	4,975	836	2,166
176	1,466	563	5,299	836	7,034
177	9,705	606	17,382	877	14,396
221	14,394	608	17,383	1012	9,517
302	9,950	649	10,082	1096	17,454
341	13,260	698	14,396	1098	17,608
383	12,167				

Vol. 8, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	5,417	321	9,990	644	13,040
90	13,808	361	7,809	685	6,234
94	6,166	401	7,481	773	8,949
144	5,416	435	7,371	860	961
146	7,947	437	9,516	908	17,596
193	11,650	558	13,509	944	3,725
239	14,231	598	10,150	986	14,267
277	5,642	600	12,845	1032	4,976
320	11,485				

Vol. 9, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
105	3,144	497	5,600	837	3,238
151	2,467	538	17,450	838	12,087
153	5,690	541	2,941	885	11,661
199	487	542	5,017	886	14,039
201	7,695	543 (No. 1)	5,018	922	3,238
202	16,789	543 (No. 2)	5,019	923	10,215
203	17,338	594	2,230	965	17,341
204	9,907	595	6,167	1011	371
253	16,788	642	7,082	1018	4,246
254	8,135	689	11,486	1110	10,150
255	1,176	691	14,391	1112	3,549
300	2,231	745	1,675	1162	12,814
352	4,470	746	5,418	1163	14,268
408	6,382	746	8,758	1164	12,426
455	14,229	795	2,317	1196	17,458

Vol. 10, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	2,468	421	13,495	702	1,794
4	13,689	464	14,227	789	9,034
41	2,543	466	12,313	828	570
113	9,034	467	2,999	828	16,787
244	18,039	505	13,407	907	2,107
289	12,133	507	11,792	907	2,107a
375	13,077	508	6,595	909	4,535
420	11,122	588	8,631	981	6,754
				1019	17,343

Vol. 11, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	10,876	373	16,793	789	16,898
831	12,456	420	1,436	831	12,456
67	2,826	501	8,950	833	3,795
112	2,108	600	12,136	879	579
112	7,132	639	11,413	923	16,987
153	13,662	640	8,510	924	2,050
197	3,693	641	1,437	1011	17,933
330	12,134	740	317	1112	3,437
331	3,236	741	9,908	1113	14,369

Vol. 12, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1 (No. 14)	5,589	351	9,597	753	6,424
3 (No. 14)	624	352	10,994	842	1,460
3	11,791	430	10,328	842	11,686
4	6,351	431	3,240	890	13,982
93	56	518	18,200	940	72
188	6,107	667	9,563	942	5,643
189	3,834	714	4,505	1025	13,269
227	147	716	12,116	1026	5,965

OFFICIAL GAZETTE—Cont'd.

Vol. 13, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	7,868	274	5	675	17,659
6	7,479	276	4,072	772	12,587
7	9,121	277	2,998	773	5,858
7	11,687	325	5,594	818	11,121
10	5,717	368	17,850	870	11,688
45	623	369	2,028	965	10,431
47	10,355	455	17,577	966	7,040
47	18,083	499	1,956	967	293
123	2,197	500	6,573	969	382
124	2,132	548	13,147	1009	7,724
125	10,940	548	17,934	1011	12,485
178	7,741	549	12,101	1046	1,497
230	3,082	597	9,462	1081	5,635
273	721	635	5,110	1128	5,632

Vol. 14, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,776	448	5,984	679	12,576
3	6,695	485	5,248	713	12,457
5	6,624	519	9,026	748	5,504
45	6,156	523	17,720	822	4,306
203	9,599	559	994	855	6,384
270	4,213	599	11,012	859	8,966
308	13,248	601	10,747	860	4,910
346	5,596	601	12,010	861	7,095
377	14,269	633	1,475	861	13,148
378	5,937	673	7,653	897	7,907
379	10,434	678	9,121	900	319
414	722	679	8,099	943	2,995

Vol. 15, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
421	304	608	6,789	919	3,499
423	14,392	653	17,735	965	1,795
467	306	697	2,291	966	7,696
509	6,194	829	2,968	1009	2,906
510	1,734	877	2,145	1051	13,864
559	3,585	881	1,491		

Vol. 16 O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
43	12,424	627	11,101	856	3,176
87	626	629	4,073	905	12,458
135	12,240	675	17,342	906	17,716
171	7,564	719	3,288	956	7,794
215	5,757	720	2,344	1045	4,325
261	4,787	721	13,258	1046	4,578
313	9,589	761	10,109	1091	17,836
314	18,037	805	6,461	1092	4,493
355	11,689	806	5,250	1093	5,229
403	149	807	995	1135	5,605
455	4,812	853	7,085	1181	6,022
495	625	854	1,493a	1231	5,290
541	13,911	854	10,437	1231	8,511
583	2,991				

Vol. 17, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
51	11,008	194	2,994	675	5,633
55	6,596	259	1,859	743	5,191a
105	12,366	325	14,407	852	9,598
106	12,367	389	294	903	2,704
107	1,471	565	295	908	13,841
147	5,985	568	4,765	909	13,840
191	11,100	624	17,209a	1281	232
193	2,992	625	5,783	1401	2,855
194	2,993				

Vol. 18, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
193	8,768	466	3,444	857	18,062
194	9,934	571	12,240a	979	2,361
360	3,446	734	5,061	1277	11,916
412	54	735	7,063	1531	9,493c
465	17,217				

Vol. 19, O. G.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
177	6,261b	791	12,426a	1000	5,061a
545	4,830a	998	9,706	1140	1,648a

Vol. 23, O. G.

Page.	F. C. No.
2513	18,039a

OLCOTT'S UNITED STATES DISTRICT COURT (ADMIRALTY) REPORTS.

Olcott.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
1	5,736	157	9,982	334	13,665
4	13,664	176	3,014	343	10,703
12	8,262	184	6,095	365	13,862
18	9,146	188	1,564	374	9,876
24	11,137	196	12,030	382	11,697
35	1,865	208	10,015	388	10,020
38	17,760	216	11,084	396	6,831
43	5,656	222	6,096	401	7,536
55	5,163	224	5,669	407	1,672
67	10,573	229	6,097	415	10,161
71	3,694	232	4,233	428	12,327
77	7,345	240	3,762	444	10,162
89	9,981	246	10,019	450	10,602
104	11,693	258	4,598	462	7,434
110	5,324	271	6,175	474	1,609
120	7,535	275	2,676	480	1,610
127	10,059	286	34	483	10,120
130	150	289	9,875	498	9,197
132	4,453	304	521	502	12,588
140	9,145	316	10,138	505	11,745
144	12,726	329	8,524		

OLIVER'S FORMS. EDITION 1842.

Oliv. Forms.

Page.	F.C.No.
496 (Ed. 1842)	2,381

OREGON REPORTS.

Vol. 1, Ore.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
381	8,578	409	12,644	430	17,059
397	8,579	418	10,702		

OVERTON'S TENNESSEE REPORTS.

Vol. 1, Overt.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
235	11,093	366	2,203	464	17,830
236	12,746	456	11,250	465	12,405
273	4,538				

Vol. 2, Overt.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
118	11,249	110	3,497	114	10,831
433	11,251	113	3,161		

PACIFIC COAST LAW JOURNAL.

Vol. 1, Pac. Coast Law J.

Page.	F.C.No.
211	3,989

Vol. 3, Pac. Coast Law J.

Page.	F.C.No.
390	3,067
415	6,546
469	777

Vol. 4, Pac. Coast Law J.

Page.	F.C.No.
51	3,759

PACIFIC LAW JOURNAL.

Vol. 5, Pac. Law J.

Page.	F.C.No.
315	3,358

PACIFIC LAW MAGAZINE.

Vol. 1, Pac. Law Mag.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
241	14,481	267	13,986	360	8,673
242	10,057	291	3,788		

PACIFIC LAW REPORTER.

Pac. Law Rep.

Page.	F.C.No.
102	17,919

Vol. 1, Pac. Law Rep.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
3 (No. 8)	5,868	45	13,393	173	466
11	5,157	100	17,002	257	15,018

Vol. 2, Pac. Law Rep.

Page.	F.C.No.
146	6,883
212	6,361

Vol. 4, Pac. Law Rep.

Page.	F.C.No.
123	17,178
127	9,885
193	709

Vol. 5, Pac. Law Rep.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
52	3,332	106	9,038	217	12,860
105	8,847	213	5,031	240	10,968

Vol. 9, Pac. Law Rep.

Page.	F.C.No.
189	7,034

Vol. 12, Pac. Law Rep.

Page.	F.C.No.
74	12,273

Vol. 13, Pac. Law Rep.

Page.	F.C.No.
33	11,752
49	14,134

Vol. 14, Pac. Law Rep.

Page.	F.C.No.
274	16,897

PAINE'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Paine.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
1	7,101	252	15,997	435	15,150
10	4,352	256	427	441	13,597
16	17,694	261	16,723	453	13,064
23	3,270	265	15,407	457	7,143
32	4,499	285	2,677	483	5,834
40	8,397	290	12,952	486	13,065
45	8,420	295	6,278	494	7,148
55	4,819	300	5,576	499	12,916
64	11,032	305	16,524	525	16,414
68	17,810	336	15,325	539	16,698
73	5,683	348	9,831	549	982
79	66	358	12,115	559	989
111	331	368	15,894	572	9,962
129	15,884	377	2,883	580	11,519
149	10,274	390	5,835	594	2,517
156	14,517	396	8,587	620	11,890
180	9,186	400	15,924	629	14,807
188	15,826	410	17,148	646	15,879
203	8,059	417	15,593	652	16,919
209	15,816	422	14,670	661	929
247	35	426	1,853	671	9,187

Vol. 2, Paine.

Page.	F.C.No.	Page.	F.C.No.	Page.	F.C.No.
1	1,725	267	13,224	454	5,432
11	8,628	277	14,348	457	11,954
54	15,037	291	4,353	466	8,153
68	15,732	300	13,341	476	11,260
74	134	313	11,290	492	5,836
82	2,118	324	3,661	501	17,206
92	13,914	340	14,518	517	8,341
103	9,688	348	9,154	525	16,372
109	3,488	356	3,852	536	13,155
115	141	366	7,138	545	16,920
131	17,300	382	2,872	564	1,997
151	6,368	393	1,579	569	2,202
162	16,448	397	1,580	578	18,121
168	13,355	409	12,304	584	10,460
180	15,592	417	5,431	591	8,052
184	18,099	426	357	600	8,927
189	11,309	426	2,191	601	7,417
200	15,146	429	9,618	639	7,415
202	11,711	432	1,593	652	7,558
209	17,526	437	10,260	655	7,558
229	2,282	440	7,659	688	7,507
243	6,679	447	15,185	721	14,755
251	7,924	451	14,455		

PARKER'S NEW YORK CRIMINAL CASES.

Vol. 4, Parker, Crim. Cas.

Page.	F. C. No.
164	15,833

PARKER'S NEW YORK CRIMINAL REPORTS.

Vol. 6, Parker, Crim. Rep.

Page.	F. C. No.
276	11,722

PARSONS ON SHIPPING AND ADMIRALTY.

Vol. 1, Pars. Adm.

Page.	F. C. No.
597 (note)	962

PATENT OFFICE APPEALS.

(See Appeals from Commissioners of Patents.)

PENNSYLVANIA LAW JOURNAL REPORTS.

Vol. 1, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	14,971	145	1,309	245	8,083
9	14,971	146	9,537	270	4,818
10	5,901	147	3,560	287	6,712
26	9,402	148	3,560	291	7,086
28	1,309	149	12,997	302	4,114
31	3,560	159	11,344	323	467
33	1,830	183	1,830	326	9,581
62	8,265	188	9,149	344	7,866
82	7,086	209	1,085	367	10,670
96	4,114	212	17,701	368	13,354
121	467	223	8,265	370	10,722
133	11,550	225	1,540	370	10,723
135	9,402	227	12,815	402	16,861
135	10,293				

Vol. 2, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
220	8,896	305	9,581	383	13,594

Vol. 3, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
212	592	380	592	473	15,301
261	1,129	416	10,689	493	8,896
301	16,877	444	13,078	508	13,088

Vol. 4, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	8,582	171	13,594	358	15,359
52	2,963	211	15,432	388	16,843
65	8,357	281	13,443	443	10,748
75	9,858	312	4,856	472	6,390
100	7,931	339	8,985	493	12,299
111	16,865	350	6,163	510	6,912
145	4,996				

Vol. 5, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	1,612	186	13,032	377	16,726
33	7,912	231	4,980	431	3,389
38	3,200	231	16,877	482	11,626
52	17,621	246	1,584	485	10,442
55	18,276	254	17,296	501	7,644
95	8,622	290	17,093	529	13,078
99	3,831	313	3,845	555	10,916
160	1,129	365	16,725		

Vol. 6, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
14	15,301	189	13,088	344	13,208
80	6,490	213	12,670	469	8,357
132	15,465	277	8,582	473	6,390
178	18,017	333	2,963	501	9,858

PENNSYLVANIA LAW JOURNAL REPORTS—Cont'd.

Vol. 7, Pa. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
77	7,931	166	7,808	365	15,432
115	16,865	176	4,996		

PENNSYLVANIA STATE REPORTS.

Vol. 33, Pa. St.

Page.	F. C. No.
442 (note)	10,177

PETERS' UNITED STATES CIRCUIT COURT REPORTS.

Pet. C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,325	168	15,521	364	11,406
2	1,154	171	3,327	380	13,978
7	16,625	172	17,766	390	15,316
10	15,428	180	16,446	394	5,718
14	14,637	182	13,954	404	11,605
15	1,541	188	13,730	406	1,087
30	7,686	195	13,878	410	3,340
41	1,542	199	18,076	418	5,823
44	5,397	207	11,592	429	17,768
45	17,418	213	14,606	431	3,331
46	549	215	4,565	431	12,828
49	13,908	217	7,812	433 (note)	9,604
59	3,065	220	18,101	433	9,603
64	6,169	221	18,189	441	17,809
74	5,760	224	18,190	443	3,329
85	5,452	225	3,128	444	13,905
96	14,208	233	1,742	446	10,936
98	16,012	235	10,116	450	15,470
106	3,372	241	18,056	452	1,108
113	16,026	245	5,679	455	526
116	3,543	256	10,993	457	468
118	16,264	262	10,750	458	16,432
131	16,265	269	17,847	460	5,448
132	9,262	276	7.813	466	8,448
139	3,326	291	2,006	476	5,719
140	17,808	301	17,767	484	2,356
142	5,460	322	4,559	487	10,080
145	14,839	350	7,802	489	6,140
155	4,766	351	10,909	493	4,740
159	15,206	352	3,328	496	3,104
163	6,585	356	378	497	10,935
166	5,822				

PETERS' UNITED STATES DISTRICT COURT REPORTS (ADMIRALTY DECISIONS.)

Vol. 1, Pet. Adm.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	7,281	139	8,994	210	13,973
12	4,790	142	17,135	212	7,198
31	17,165	155	12,531	215	7,413
34	3,089	157	12,890	219	9,086
46	9,793	160	17,604	223	5,233
48	13,786	165	4,299	233	13,409
70	2,871	168	13,989	239	9,085
87	1,847	179	7,151	242	3,347
104	13,949	180	17,569	244	618
115	6,153	186	11,692	247 (note)	467a
123	6,797	197	17,682	250	9,667
128	1,657	200	7,873	253	13,697
132	17,288	201	7,489	258	17,790
138	17,721	203	5,424		

Vol. 2, Pet. Adm.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
261	18,027	295	17,777	397	9,737
263	18,104	309	9,895	403	8,970
264	6,514	330	6,612	407	3,930
268	1,461	345	7,439	415	9,785
272	10,729	356	3,273	420	11,754
276	8,925	361	1,620	424	17,351
278	1,245	373	1,621	428	17,357
284	12,961	384	12,905	438	16,024
288	17,765	390	3,359	452	14,461
295	12,106	393	12,893		

PETERS' UNITED STATES SUPREME COURT REPORTS.

(See United States Supreme Court Reports.)

PHILADELPHIA REPORTS.

Vol. 1, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
122	6,912	327	16,878	451	7,259
138	17,802	358	3,763	468	3,799
149	11,626	401	3,763	546	8,920
190	8,655	423	13,645	576	4,589
302	13,380				

Vol. 3, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
290	8,731	426	14,642	523	15,604
304	13,568	464	17,891	527	18,269a
312	4,956	517	16,249	547	1,410

Vol. 4, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	12,178	396	15,262	412	276
157	7,644	405	16,434	417	277
161	14,680	409	12,272	418	143

Vol. 5, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
112	2,421	289	9,913	304	10,952
116	85	293	16,697	501	7,107
257	16,239	296	16,777	508	12,683
259	8,669	299	16,778	512	4,557
273	14,468	302	6,568	515	11,089
278	495				

Vol. 6, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
96	8,180	451	7,076	474	5,897
187	1,345	461	12,774	475	1,205
190	827	466	11,578	478	3,443
438	12,172	468	8,205	479	1,021
443	3,981	468	9,813	481	13,167
445	2,349	469	499	482	14,121
448	2,182	472	1,315	484	5,620

Vol. 7, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
533	7,519	572	5,204	597	9,567
543	11,087	575	2,582	598	17,690
550	5,941	576	9,774	603	16,671
555	9,645	578	8,477	607	16,291
568	4,398	594	6,262	609	14,529
570	2,422	595	3,968	611	4,145

Vol. 8, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
130	2,286	152	9,455	167	8,210
133	1,019	155	16,371	169	15,860
144	10,956	157	5,039	171	9,018
147	3,126	160	6,664	172	2,165
150	3,544	165	7,523	174	9,364
151	12,551	166	13,968	639	5,011

Vol. 9, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
364	3,969	392	2,224	448	15,915
364	3,769	394	8,488	467	18,061
368	11,660	395	4,014	468	14,855
374	7,751	403	11,088	469	7,580
376	13,556	408	13,611	470	15,757
378	2,567	409	11,887	471	4,146
380	12,687	411	2,331	475	4,259
385	17,465				

Vol. 10, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
219	7,640	247	11,179	275	17,796
221	13,010	251	81	276	5,058
223	783	262	2,207	281	13,498
225	5,164	262	3,169	283	10,945
227	10,337	268	3,132	286	17,207
239	12,162	273	5,073	287	8,712
243	18,198	274	10,045	292	5,106

Vol. 11, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
476	5,398	500	14,039	516	14,092
479	14,396	502	11,563	519	15,868
483	3,921	511	16,989	521	16,150
485	1,430	514	12,814	522	8,650
498	11,661				

PHILADELPHIA REPORTS—Cont'd.

Vol. 13, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
461	8,510	468	8,709	473	4,676
463	8,701	468	11.402	476	14,805
464	14,109	469	7,684	479	17,636
466	12,442	470	4,376		

Vol. 14, Phila.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
401	6,464	422	14,207a	527	4,861
402	12,787	515	10,568	527	5,152
405	10,049	517	6,465	531	10,890
408	234	521	403	532	4,178
410	8,511	523	12,881	554	14,793a
411	1,067	525	16,363	564	15,800a
412	11,041				

PHILLIPS' NORTH CAROLINA LAW REPORTS.

Phil. N. C.

Page.	F. C. No.
392	12,812

PITTSBURGH LAW JOURNAL.

Vol. 15, Pittsb. Law J.

Page.	F. C. No.
233	11,580

Vol. 17, Pittsb. Law J.

Page.	F. C. No.
140	15,159

Vol. 23, Pittsb. Law J.

Page.	F. C. No.
221	15,868

PITTSBURGH LEGAL JOURNAL.

Vol. 1, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	4,393	21	16,120	37	10,942
9	11,758	21 (No. 7)	11,758	122	16,865a
9	18,132	30	7,955	129	13,514
17	3,409	36	2,890		

Vol. 2, Pittsb. Leg. J.

Page.	F. C. No.
32	14,627
33	469

Vol. 3, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
20	9,521	45	14,901a	232	10,474
29	14,900	194	15,357	405	14,901
44	7,458	210	14,901b		

Vol. 5, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	3,382	29	8,749	37	5,010
22	211	37	3,048	239	3,907

Vol. 6, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	12,638	89	11,713	443	3,500
50	16,387	403	5,947	446	10,442
68	13,388	411	1,449	454	6,757

Vol. 7, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
41	68	169	8,413	282	3,941
81	10,444	170	57	346	9,690
119	14,591	249	10,444	373	11,255
145	59	266	8,475		

Vol. 8, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
146	11,982	353	404	361	12,295
266	3,608				

PITTSBURGH LEGAL JOURNAL—Cont'd.

Vol. 9, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
27	8,924	90	4,148	308	13,612
73	13,272	153	5,096	313	14,099
89	3,233	193	13,272a	377	16,626
89	12,834	257	8,800		

Vol. 10, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
41	15,004	154	16,778	233	4,568
89	17,727	161	11,990	241	8,544
97	15,446	178	3,068	276	14,429
106	17,316	203	16,239	305	16,777
130	15,238				

Vol. 11, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	16,239	73	16,697	169	15,796
9	16,239	123	10,952	193	4,557
49	495	153	16,148		

Vol. 12, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
65	1,785	186	11,089	337	12,797
140	15,869	220	470		

Vol. 13, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
88	16,541	244	3,208	538	13,128
110	15,104	514	4,303	576	827

Vol. 14, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	15,030	529	16,575	613	10,581
137	11,877	547	7,891	616	2,959
361	15,387	589	11,466		

Vol. 15, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,266	235	7,819	398	14,953
1	1,267	241	10,817	409	13,062
1	1,268	242	13,174	433	1,790
4	4,316	244	13,745	448	1,728
4	15,028	245	12,059	450	12,600
13	2,349	265	5,474	494	6,866
16	5,903	268	8,390	531	7,916
17	2,182	277	7,819	534	11,459
62	12,172	291	4,714	541	12,268
73	1,024	315	2,270	542	5,620
81	471	329	6,482	547	1,240
103	3,614	343	6,048	553	18,070
121	7,076	343	11,578	581	3,700
125	3,981	343	15,067	583	3,700
127	16,294	354	7,304	589	4
134	10,465	361	8,205	605	3,923
137	9,366	389	5,896	616	1,705
222	13,418	391	12,785		

Vol. 16, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	12,113	110	8,775	204	1,128
11	7,777	110	17,532	204	11,141
12	9,095	117	8,067	210	1,498
25	2,905	121	3,814	213	15,178
30	7,982	123	12,498	219	13,226
43	17,313	124	14,529	233	10,254
45	8,527	130	15,957	234	17,992
52	5,922	133	15,693	236	3,378
54	16,462	144	18,089	237	17,667
78	103	150	6,477	243	15,178
84	5,531	189	11,097	250	16,580
85	12,729	193	6,473	254	15,099
85	13,936	194	12,578a	310	14,540
91	160	194	12,823	313	10,081
94	12,494	196	15,172	326	4,121

Vol. 17, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	9,047	61	1,420	148	9,627
17	11,495	91	16,671	153	13,301
18	8,979	116	14,774	169	4,044
19	988	128	14,767	177	1,417
20	16,770	148	6,659	178	4,326

Vol. 18, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	16,292	81	161	154	47
21	16,084	82	5,148	154	3,570
53	12,517	85	312	164	10,266
60	16,291	105	9,333	289	788
61	14,965	106	16,985	309	2,862
67	7,208	148	5,011		

PITTSBURGH LEGAL JOURNAL—Cont'd.

Vol. 19, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
5	9,018	137	11,899	154	13,048
82	7,523	142	17,280	173	3,544
83	13,968	146	2,236	181	14,979
99	11,746	149	8,902	188	606

Vol. 20, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,353	32	9,441	170	5,027
19	3,769	34	4,530	184	10,999
21	17,990	65	2,224	185	5,073
29	2,967	77	4,753	193	7,700
29	8,798	107	8,488	199	14,459
32	3,150	158	15,988	208	10,045

Vol. 21, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,381	77	8,313	141	13,010
4	7,023	77	9,666	155	18,198
10	1,030	80	9,051	159	2,521
17	15,393	81	15,908	159	5,710
17	17,796	82	2,825	159	11,750
22	17,780	82	3,912	162	3,719
30	2,877	82	5,830	171	2,245
33	11,475	82	9,586	193	17,207
34	5,845	82	11,369	197	10,945
37	15,757	82	13,688	200	13,357
43	7,880	88	8,906	205	8,976
56	12,252	101	8,549	206	386
73	10,292	107	8,712	206	11,525
77	3,310	116	783	207	12,427
77	7,373	116	9,051		

Vol. 22, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	3,052	41	370	85	9,398
9	15,932	43	10,983	103	15,199
23	3,062	47	8,240	150	16,361
25	3,077	59	3,169	155	14,396
29	11,179	74	2,665	164	6,448
34	12,568	75	591	194	13,838
38	9,286				

Vol. 23, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	1,462	107	4,976	161	1,692
18	4,699	107	15,685	179	1,854
33	5,861	112	1,430	185	14,096
34	10,789	112	3,921	185	16,539
34	15,595	123	487	196	2,061
38	9,524	123	12,814	196	8,166
50	7,874	131	2,231	196	8,179
57	2,443	151	16,748	196	11,188
58	16,788	158	4,323	196	14,096
87	13,242	159	7,150	199	16,150
90	11,026			207	7,844

Vol. 24, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	10,668	107	2,545	187	3,847
14	8,650	113	8,429	187	3,974
39	15,286	119	8,510	190	12,784
42	8,753	140	1,138	195	1,371
47	13,934	140	15,660	205	8,635
50	11,527	143	11,403	205	9,466
51	7,847	152	4,534	205	13,773
54	16,989	152	6,023	206	1,080
68	8,080	154	8,903	207	7,989
73	3,397	159	12,212	207	9,121
83	8,763	169	3,455	207	12,926
96	9,635	185	3,847	208	89
100	6,045	187	1,138		

Vol. 25, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	3,812	49	8,701	125	11,400
4	151	51	733	125	11,402
10	7,800	59	14,109	125	16,936
14	5,208	64	12,123	141	7,424
14	12,605	69	8,430	143	210
17	7,556	84	14,169	143	11,068
17	14,805	99	8,709	143	15,846
24	4,017	99	12,442	157	4,376
29	18,222	107	17,386	157	11,121
30	752	109	5,115	169	4,804
34	2,573	113	7,925	177	10,052
35	3,427	118	7,650	182	13,802
39	15,688	119	7,393	188	8,709
46	13,126	123	1,481	204	6,785
48	11,223	123	8,431		

PITTSBURGH LEGAL JOURNAL—Cont'd.

Vol. 26, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	18,105	43	4,676	140	6,835
3	10,148	64	13,707	140	10,971
8	9,401	76	8,386	143	3,895
8	10,562	81	9,752	143	8,133
8	15,472	84	17,490	145	6,172
11	7,067	86	9,069	147	5,068
11	10,263	92	12,750	171	234
11	11,412	95	4,805	172	1,144
11	12,238	95	9,670	172	1,226
11	18,078	112	5,624	175	9,555
12	17,353	115	3,654	178	10,049
15	17,636	120	6,684	180	1,455
16	9,592	120	9,479	180	16,471
16	9,897	121	9,824	185	8,687
24	4,810	128	2,269	191	8,325
25	2,732	128	4,850	191	9,514
29	11,718	128	4,934	191	12,359
32	5,914	129	4,135	199	6,464
32	6,055	140	1,120	203	10,568
38	15,886	140	5,820	204	17,326

Vol. 27, Pittsb. Leg. J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	6,297	40	4,103	152	14,644
15	10,755	40	6,546	154	11,510
21	11,953	40	13,378	160	12,063
36	5,843	55	17,212		

PITTSBURGH (PENNSYLVANIA) REPORTS.

Vol. 1, Pittsb. R.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	4,393	37	10,942	516	3,500
20	18,132	82	13,514	522	10,442
24	16,120	372	5,010	531	6,757
31	11,758	513	5,947		

Vol. 2, Pittsb. R.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
21	68	304	13,272	411	8,544
60	59	318	13,272a	437	14,429
68	8,413	326	8,800	440	16,777
73	57	328	15,004	446	16,239
93	10,444	358	15,446	467	16,697
115	8,475	369	15,238	475	15,796
120	3,941	370	16,778	483	4,557
137	11,255	374	11,990	519	1,785
241	12,295	405	4,568		

Vol. 3, Pittsb. R.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	16,541	155	15,693	352	11,899
20	827	165	1,128	366	17,280
54	15,387	190	988	369	2,236
96	2,349	192	16,770	377	8,902
105	5,903	261	16,291	397	13,048
107	2,182	268	16,985	403	14,979
109	5,620	289	5,011	423	606
111	10,465	293	10,266	440	8,353
116	18,089	323	788	480	4,753
126	15,099	326	9,018	557	5,531
151	14,529	340	11,746	559	1,024

QUARTERLY LAW JOURNAL.

Vol. 1, Quart. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
55	2,013	70	16,725	251	12,648
69	14,987	153	1,412		

Vol. 2, Quart. Law J.

Page.	F. C. No.
1	12,374
347	7,406

Vol. 3, Quart. Law J.

Page.	F. C. No.
42	14,864
244	16,387
333	9,849
369	14,228

QUARTERLY LAW JOURNAL—Cont'd.

Vol. 4, Quart. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
28	8,923	134	6,716	218	11,553
100	11,363	163	14,445	230	2,887

Vol. 5, Quart. Law J.

Page.	F. C. No.
266	4,836

REDFIELD'S AMERICAN RAILWAY CASES.

Vol. 2, Redf. Amer. Ry. Cas.

Page.	F. C. No.
682	17,753

REPORTER.

Vol. 5, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	15,688	258	10,038	518	16,936
39	17,545	259	18,030	519	9,648
40	1,485	300	14,308	551	12,442
78	4,041	328	9,592	552	8,097
102	752	329	9,897	583	7,223
103	5,154	363	11,068	586	13,439
104	17,105	364	15,846	616	11,400
135	5,391	389	17,076	617	11,402
136	13,510	390	8,709	645	291
137	11,320	425	17,104	646	11,694
166	7,903	426	9,450	680	9,453
168	15,219	427	7,925	681	9,980
201	8,538	489	7,650	682	10,052
202	13,812	490	9,505	682	14,373
229	2,551	492	8,834	738	10,841

Vol. 6, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
8	9,979	293	9,207	609	8,320
9	12,659	294	13,234	611	8,215
40	4,376	324	7,457	613	15,886
40	14,286	336	4,810	641	12,185
43	12,476	357	5,068	642	9,395
69	4,804	390	5,632	643	2,019
71	4,904	420	6,055	673	17,720
99	8,969	422	5,914	674	3,274
101	11,121	423	4,211	676	4,676
136	6,785	454	8,575	705	392
165	17,353	484	5,359	706	13,482
193	382	486	15,472	707	9,802
194	4,276	515	2,921	737	7,094
226	13,802	548	7,733	738	7,677
229	18,078	550	16,186	739	8,219
231	12,238	577	5,939	769	2,595
260	16,688	579	2,732	771	15,369
262	4,213			772	4,396

Vol. 7, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
6	4,792	325	7,907	519	5,276
8	5,889	326	1,524	522	1,371
37	6,909	327	9,340	523	16,839
38	17,362	329	565	550	1,445
68	5,098	330	15,422	551	8,325
70	4,566	357	17,920	552	149
100	6,235	358	8,279	553	2,729
101	17,432	358	11,964	581	5,726
136	3,821	360	6,289	581	15,813
137	4,934	361	15,209	582	11,418
138	8,033	388	5,649	613	17,711
169	12,830	389	1,849	614	12,149
171	12,715	390	15,794	615	12,387
172	8,480	391	6,464	616	2,051
173	13,750	420	6,784	644	7,453
198	15,804	422	17,966	645	10,405
199	9,752	423	9,043	675	7,026
199	13,864	424	9,043	675	16,076
229	10,001	425	9,670	710	1,234
231	12,359	455	17,852	712	7,825
261	8,154	456	14,035	740	18,048
262	4,950	456	17,267	741	14,093
265	4,876	457	3,669	742	12,130
293	11,368	484	3,654	743	12,424
294	11,353	484	9,025	772	5,534
295	6,703	485	9,294	772	9,916
296	11,405	486	8,682	775	234
298	17,903	517	13,471		

REPORTER—Cont'd.

Vol. 8, Reporter.

Page.	F. C. No.	Page.	F. C. No	Page.	F. C. No.
6	8,082	297	4,310	549	17,866
7	9,514	299	4,134	550	12,831
7	13,499	326	6,786	551	16,781
8	10,049	327	3,835	579	1,141
36	541	328	10,608	580	17,137
37	15,435	329	10,997	582	14,681
38	14,571	330	12,511	583	9,756
39	835	356	11,588	612	61
66	17,326	357	12,941	613	11,961
68	2,249	358	8,329	615	91
69	8,892	389	13,187	616	6,810
70	15,420	390	179	641	3,918
71	6,012	391	15,166	642	17,530
102	15,358	392	777	643	14,306
103	6,297	393	12,787	673	12,437
105	2,975	395	2,309	674	17,491
136	5,843	421	7,079	675	15,043
136	17,144	422	17,476	676	11,082
163	4,053	423	5,601	677	14,448
164	11,574	424	12,423	709	13,135
165	8,427	426	16,166	710	3,653
166	15,289	453	14,260	741	4,797
195	6,546	455	734	743	10,181
198	14,853	455	2,361	744	290
229	12,188	456	12,710	771	5,648
230	4,787	486	10,884	772	15,852
231	90	487	4,103	773	1,067
232	9,670	488	13,378	774	1,960
261	13,659	489	12,250	776	1,016
262	17,851	490	7,794	806	8,586
263	10,612	516	13,780	808	12,830
263	16,112	517	5,155	810	4,335
293	7,320	518	11,804	811	295
296	10,594	548	3,759	813	8,877

Vol. 9, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
3	17,651	107	15,421	204	859
4	2,168	134	14,785	232	15,041a
6	5,051	136	14,572	233	12,496
36	14,844	137	12,561	235	15,257
37	5,295	165	7,009	272	12,063
70	294	166	2,993	337	9,041
72	12,642	167	11,041	402	8,461a
74	14,645	168	8,032	467	6,551a
103	12,237	199	11,444	502	16,831
105	7,039	201	18,038	569	2,670
106	6,875			572	12,709a

Vol. 10, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
136	11,630a	257	1,471	577	4,493
197	9,580a	258	14,935a	651	17,832a
232	17,546a	549	17,112a		

Vol. 11, Reporter.

Page.	F. C. No.
526	18,106b
627	11,750a

Vol. 12, Reporter.

Page.	F. C. No.
41	6,571a
295	4,813a
644	11,085a

Vol. 13, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
293	6,207a	581	11,218a	742	8,139a
355	12,601a	650	3,352a		

Vol. 14, Reporter.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
43	3,694a	513	4,429a	579	10,965a

Vol. 15, Reporter.

Page.	F. C. No.
259	6,261a
524	18,039a

Vol. 16, Reporter.

Page.	F. C. No.
7	5,490a
199	11,865a

Vol. 17, Reporter.

Page.	F. C. No.
168	5,108a
263	12,031a

REPORTER—Cont'd.

Vol. 18, Reporter.

Page.	F. C. No.
10	3,584a
11	17,184a
642	8,795a

REVENUE CASES.

Rev. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	16,583	70	15,689	72	4,344

ROBB'S PATENT CASES.

Vol. 1, Robb, Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.
1	11,710	320	1,681
7	4,555	324	3,931
9	3,670	332	7,096
10	4,572	336 (7 Wheat. 356)	—
14 (6 Cranch, 324)	—	417 (7 Wheat. 453)	—
17	10,715	433	8,059
20	4,564	438 (9 Wheat. 603)	—
28	17,600	448	9,831
37	17,971	458 (10 Wheat. 358)	—
40	17,601	465	12,004
47	12,391	466	10,941
50	5,576	477	13,597
52	10,432	490	4,247
57 (9 Cranch, 199)	—	505	6,394
64	14,208	506	9,404
66	4,565	510	17,277
68	4,559	516	10,462
97	13,337	518	3,645
120	5,718	531	14,154
131	8,568	542 (2 Pet. 1)	—
140	5,719	567	17,585
148	1,217	604 (6 Pet. 218)	—
152	11,043	643 (7 Pet. 292)	—
159	3,520	681	3,945
166	4,562	689	326
193	4,560	700	3,753
207	1,047	717	17,968
243 (3 Wheat. 454)	—	725	12,186
300	10,430	734	1,518
303	7,875	742	1,518
312	9,745		

Vol. 2, Robb, Pat. Cas.

Page.	F. C. No.	Page.	F. C. No.
1	13,286	323	10,590
10	13,487	331	10,591
13	13,089	335 (4 How. 380)	—
17	153	372 (4 How. 646)	—
23	18,107	467 (4 How. 712)	—
46 (14 Pet. 448)	—	469 (4 How. 709)	—
72	4,255	473 (4 How. 712)	—
75	11,446	479	6,745
81	11,645	495	18,016
92 (16 Pet. 336)	—	510	2,080
99	6,766	513	12,035
105 (1 How. 202)	—	517	18,017
116	11,038	530	217
118	1,944	567	6,746
133	1,173	588 (5 How. 1)	—
136	17,858	595	13,456
141	2,485	603	18,013
161	1,948	610	18,014
189	11,196	625	18,018
203	1,747	641	17,857
206	17,214	644	109
257	18,019	655 (6 How. 437)	—
268	11,156	724	11,099
277	1,748	725	10,738
281	1,962	730	6,718
288	216	736	10,731
296	18,021	737	1,510
302	2,070	741	2,494
303	3,662	746	11,918
311	10,123	749	17,787

SAN FRANCISCO LAW JOURNAL.

Vol. 1, San Fran. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
13	8,435	117	12,742	277	1,998
33	8,968	199	8,369	329	2,764
52	8,506	235	4,041	392	8,432
85	9,043	259	17,105	398	15,864
87	4,040				

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Sawy.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,068	194	6,059	410	12,855
4	5,900	212	8,013	423	10,773
7	2,518	219	16,177	456	8,267
15	13,307	224	5,202	463	2,312
31	12,571	227	8,012	470	2,989
37	2,519	233	4,895	484	10,300
47	10,622	238	8,017	494	18,134
56	11,552	243	5,148	497	6,041
63	10,145	249	6,974	507	15,402
70	708	251	8,024	512	2,472
73	4,326	260	3,620	531	14,671
84	14,767	268	18,206	539	6,042
88	8,991	270	13,316	547	7,604
99	6,638	277	16,341	553	1,447
126	9,848	306	62	596	2,313
129	8,087	309	5,205	605	13,548
135	9,199	343	5,376	609	8,015
142	15,740	347	16,048	641	2,552
150	7,381	349	7,978	653	9,735
153	4,755	353	5,038	685	2,990
156	4,834	374	8,839	695	5,362
176	10,571	383	15,186	701	16,634
182	5,543	390	13,171	702	13,219
188	15,940	397	13,393	710	6,681
192	16,340	401	2,613	713	13,206

Vol. 2, Sawy.

Page	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,240	269	9,678	474	3,922
7	6,069	278	14,087	476	15,346
12	2,314	286	5,031	479	15,347
15	13,313	302	6,548	481	15,949
21	1,713	305	6,362	482	15,488
33	1,428	311	16,252	486	2,521
42	3,276	320	12,860	493	8,268
50	13,221	325	18,168	503	6,911
57	8,533	333	12,317	515	6,125
72	4,080	338	10,264	520	17,352
78	9,783	342	17,591	524	8,649
91	361	345	3,332	527	1,759
94	4,342	348	7,645	530	2,964
108	10,918	351	6,682	535	10,253
118	8,840	353	15,988	538	12,000
135	7,254	356	9,821	540	12,822
144	5,839	361	6,556	546	10,656
148	15,744	364	16,268	549	8,201
152	17,078	367	15,653	571	3,186
161	8,023	373	8,847	576	17,980
176	14,371	381	16,838	583	13,416
200	728	389	11,999	586	9,478
205	4,285	396	1,596	598	4,541
219	4,380	411	12,183	603	13,317
226	423	416	11,189	641	13,318
231	5,883	428	2,893	642	13,317
242	10,092	434	4,842	644	715
248	10,693	441	7,793	645	3,953
255	3,621	447	8,945	655	6,975
259	10,469	450	14,370	663	18,254
261	14,123	461	13,095	667	18,255
264	709	468	7,719		

Vol. 3, Sawy.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	17,915	261	1,393	485	9,200
22	14,055	262	15,322	491	9,206
27	14,721	274	10,083	495	10,085
35	7,093	302	14,730	500	7,761
44	990	305	12,861	506	5,943
46	14,722	311	17,552	517	3,080
59	15,459	316	2,432	519	4,364
62	1,079	320	3,079	523	7,486
66	8,266	330	10,762	529	10,560
69	4,817	335	10,084	533	3,261
80	6,409	337	16,742	542	5,879
88	12,222	342	9,420	544	15,800
93	5,206	346	1,764	553	6,544
123	3,077	350	5,244	556	15,308
134	11,967	352	12,595	559	4,510
142	9,647	369	8,271	562	5,970
144	102	397	10,572	566	15,514
161	16,745	405	4,699	571	5,694
164	10,830	412	18,120	574	18,118
176	7,056	415	49	584	15,870
187	10,648	422	7,906	590	10,593
194	6,720	424	14,790	595	18,119
201	17,916	434	5,929	601	5,515
206	9,393	437	7,760	602	14,672
218	3,078	446	7,874	605	5,158
230	1,349	448	5,379	610	3.262
237	15,307	469	9,784	614	10,561
240	2,315	473	16,631	634	4,989
259	5,434	477	14,731		

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Sawy.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	18,122	185	393	341	14,763
28	2,610	190	17,442	363	12,742
37	9,126	195	6,508	370	8,369
40	12,636	199	15,027	375	3,069
42	15,121	206	5,381	382	7,827
88	18,121	211	14,609	457	15,254
92	13,825	217	4,039	487	5,741
100	10,915	232	17,917	501	2,602
105	10,412	241	3,020	517	15,540
114	2,940	245	15,018	523	4,764
119	8,654	250	12,907	530	8,273
121	17,264	252	2,335	536	6,060
125	5,097	254	14,527	551	9,492
133	6,969	257	3,896	553	12,316
136	11,712	262	1,746	590	15,047
138	3,355	272	16,116	594	3,607
143	11,714	274	4,544	597	5,832
158	17,325	280	16,897	602	10,351
163	6,342	289	8,968	623	16,138
168	17,923	292	8,506	638	5,721
169	10,562	302	4,548	653	15,303
172	2,972	326	17,317	672	5,949
174	12,826	330	12,944	688	11,508
178	14,134	334	13,294	692	10,251

Vol. 5, Sawy.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	17,265	192	1,539	421	16,505
23	4,040	195	13,234	427	1,706
25	15,266	201	3,368	429	807
32	10,555	206	3,220	439	9,886
39	4,041	209	14,180	458	7,160
44	17,105	217	48	463	8,436
52	13,683	226	4,700	464	9,916
58	10,724	229	60	475	9,530
63	2,764	237	5,172	484	541
66	9,304	249	4,396	487	3,044
68	15,864	252	11,793	494	5,534
74	8,432	255	392	502	835
79	13,810	260	12,185	510	2,217
83	13,626	266	5,098	528	14,785
88	12,659	279	3,274	533	15,358
102	8,272	286	8,461	537	15,420
107	11,510	287	6,235	543	3,058
115	14,205	299	10,660	549	12,511
118	2,551	304	2,051	552	6,546
121	4,549	312	4,850	566	777
128	10,486	320	10,223	573	3,759
133	17,998	331	2,997	575	5,612
137	3,070	336	10,556	584	13,780
141	8,969	344	3,774	587	16,831
146	14,113	346	13,627	594	15,280
155	104	351	1,155	601	8,209
160	6,453	355	9,340	605	5,454
163	3,989	360	9,043	608	1,919
172	3,057	385	17,930	611	6,104
181	2,996	389	6,765	620	15,978
186	12,124	394	12,660	625	14,754
188	4,389	403	3,223	630	8,713

Vol. 6, Sawy.

Page.	F. C. No.	Page.	F. C. No.
17	15,581	332 (2 F. 440)	——
29	16,413	339 (11 F. 107)	——
31	12,423	349 (1 F. 481)	——
40	11,804	390 (5 F. 475)	——
48	12,710	396 (6 F. 259)	——
52	10,557	406 (2 F. 58)	——
54	170	410 (5 F. 899)	——
63	15,280	424 (11 F. 410)	——
68	207	427 (2 F. 824)	——
77	13,826	430	7,907
79	112	442 (2 F. 624)	——
91	13	451 (2 F. 733)	——
96	859	459 (3 F. 134)	——
106	7,619	469 (5 F. 60)	——
113	13,410	471 (2 F. 829)	——
118	348	473 (3 F. 471)	——
126 (6 F. 356)	——	480 (11 F. 896)	——
146	1,588	493 (11 F. 104)	——
148	1,179	498 (4 F. 161)	——
157 (32 F. 457)	——	503 (11 F. 125)	——
199	15,421	508 (4 F. 720)	——
204 (5 F. 483)	——	527 (5 F. 197)	——
220 (1 F. 541)	——	533 (4 F. 153)	——
234 (11 F. 133)	——	538 (11 F. 129)	——
237 (47 F. 717)	——	541 (6 F. 256)	——
244 (2 F. 61)	——	544 (4 F. 645)	——
248 (11 F. 397)	——	556 (6 F. 753)	——
255 (11 F. 807)	——	567 (4 F. 366)	——
262 (5 F. 75)	——	574 (4 F. 577)	——
275 (5 F. 523)	——	585 (5 F. 510)	——
295 (2 F. 65)	——	593 (5 F. 1)	——
299 (1 F. 522)	——	603 (5 F. 11)	——
319 (11 F. 118)	——	612 (5 F. 680)	——
328 (11 F. 165)	——	640	16,317

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 7, Sawy.

Page.		F. C. No.
17	(5 F. 225)	—
30	(5 F. 403)	—
39	(5 F. 317)	—
48	(5 F. 326)	—
58	(14 F. 302)	—
61	(5 F. 852)	—
69	(14 F. 354)	—
74	(14 F. 153)	—
77	(6 F. 517)	—
85	(6 F. 152)	—
96	(11 F. 666)	—
117	(7 F. 811)	—
122	(6 F. 321)	—
127	(6 F. 326)	—
141	(6 F. 780)	—
148	(6 F. 766)	—
163	(6 F. 545)	—
173	(7 F. 119)	—
180	(7 F. 248)	—
184	(7 F. 730)	—
190	(8 F. 821)	—
200	(7 F. 604)	—
205	(7 F. 326)	—
210	(7 F. 146)	—
217	(7 F. 331)	—
224	(7 F. 698)	—
232	(7 F. 881)	—
239	(8 F. 698)	—
243	(7 F. 894)	—
252	(8 F. 71)	—
265	(8 F. 688)	—
270	(8 F. 150)	—
274	(8 F. 163)	—
279	(8 F. 767)	—
280	(8 F. 207)	—
296	(8 F. 496)	—
311	(8 F. 556)	—
337	(8 F. 476)	—
348	(8 F. 468)	—
355	(8 F. 449)	—
360	(8 F. 638)	—
364	(8 F. 583)	—
368	(9 F. 423)	—
380	(9 F. 229)	—
403	(48 F. 492)	—
418	(9 F. 726)	—
434	(9 F. 916)	—
439		16,235
442	(14 F. 118)	—
448	(10 F. 239)	—
451	(10 F. 616)	—
455	(10 F. 634)	—
466	(10 F. 785)	—
477	(10 F. 843)	—
483	(11 F. 607)	—
498	(11 F. 15)	—
504	(14 F. 281)	—
509	(11 F. 219)	—
517	(13 F. 145)	—
526	(13 F. 229)	—
532	(13 F. 420)	—
536	(13 F. 286)	—
542	(13 F. 291)	—
546	(13 F. 605)	—
561		3,914
575		14,713
602		15,127
617		14,950

Vol. 8, Sawy.

Page.		F. C. No.
17	(17 F. 712)	—
22	(10 F. 678)	—
29	(11 F. 19)	—
41	(11 F. 268)	—
51	(11 F. 97)	—
60	(11 F. 253)	—
81	(11 F. 449)	—
93		12,319
100	(11 F. 487)	—
108	(11 F. 493)	—
110	(17 F. 726)	—
116	(12 F. 52)	—
122	(12 F. 245)	—
129	(12 F. 402)	—
142	(12 F. 415)	—
156	(12 F. 449)	—
162	(12 F. 522)	—
167	(12 F. 478)	—
171	(12 F. 586)	—
176	(12 F. 649)	—
187	(12 F. 646)	—
191	(12 F. 693)	—
194	(12 F. 671)	—
198	(12 F. 807)	—
201	(13 F. 125)	—
209	(13 F. 39)	—
214	(13 F. 217)	—
229	(13 F. 93)	—
232	(13 F. 295)	—
238	(13 F. 722)	—
312	(13 F. 789)	—
316	(13 F. 540)	—
322	(13 F. 625)	—
328	(14 F. 321)	—
330	(17 F. 657)	—
334	(17 F. 742)	—
349	(17 F. 705)	—
350	(14 F. 44)	—
357	(14 F. 305)	—
366	(14 F. 347)	—
370	(14 F. 130)	—
384	(14 F. 338)	—
394	(14 F. 833)	—
403	(14 F. 447)	—
412	(14 F. 609)	—
415	(14 F. 639)	—
420	(14 F. 657)	—
427	(15 F. 419)	—
435	(17 F. 710)	—
438	(14 F. 724)	—
443	(17 F. 735)	—
445	(15 F. 465)	—
456	(17 F. 887)	—
468	(17 F. 515)	—
469	(17 F. 454)	—
473	(14 F. 817)	—
482	(17 F. 519)	—
488	(17 F. 912)	—
498	(17 F. 525)	—
502	(18 F. 56)	—
511	(15 F. 25)	—
523	(17 F. 216)	—
535	(15 F. 186)	—
543	(15 F. 177)	—
555	(16 F. 615)	—
592	(15 F. 581)	—
600	(15 F. 561)	—
618	(15 F. 707)	—
625	(17 F. 198)	—
628	(16 F. 25)	—
640	(16 F. 344)	—
645	(16 F. 348)	—
648	(17 F. 231)	—

Vol. 9, Sawy.

Page.		F. C. No.
17	(23 F. 462)	—
19	(23 F. 417)	—
20	(16 F. 233)	—
24	(16 F. 168)	—
29	(23 F. 442)	—
31	(17 F. 119)	—
49	(17 F. 723)	—
53	(17 F. 253)	—
61	(16 F. 524)	—
71	(23 F. 463)	—
73	(16 F. 734)	—
79	(17 F. 75)	—
84	(17 F. 59)	—
90	(17 F. 150)	—
102	(17 F. 91)	—
106	(17 F. 205)	—
112	(17 F. 614)	—
120	(19 F. 291)	—
125	(17 F. 561)	—
132	(17 F. 401)	—
142	(17 F. 568)	—
148	(19 F. 14)	—
155	(17 F. 638)	—
159	(17 F. 579)	—
165	(18 F. 385)	—
253	(18 F. 10)	—
259	(23 F. 367)	—
306	(18 F. 28)	—
313	(18 F. 106)	—
333	(18 F. 253)	—
343	(18 F. 506)	—
346	(23 F. 441)	—
348	(18 F. 339)	—
354	(24 F. 869)	—
370	(18 F. 517)	—
374	(18 F. 475)	—

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 9, Sawy.—Cont'd.

Page.		F. C. No.
381	(19 F. 1)	—
386	(18 F. 880)	—
395	(18 F. 539)	—
401	(18 F. 609)	—
412	(18 F. 622)	—
417	(18 F. 898)	—
421	(18 F. 700)	—
426	(18 F. 667)	—
435	(18 F. 689)	—
439	(18 F. 900)	—
441	(18 F. 753)	—
551	(18 F. 875)	—
558	(18 F. 866)	—
568	(19 F. 26)	—
601	(19 F. 20)	—
606	(25 F. 77)	—
614	(19 F. 42)	—
620	(19 F. 184)	—
630	(19 F. 424)	—
632	(19 F. 340)	—
634	(19 F. 207)	—
643	(19 F. 347)	—
662	(19 F. 562)	—

Vol. 10, Sawy.

Page.		F. C. No.
17	(19 F. 254)	—
23	(19 F. 509)	—
29	(19 F. 580)	—
38	(19 F. 490)	—
48	(20 F. 1)	—
52	(19 F. 359)	—
70	(21 F. 151)	—
80	(20 F. 100)	—
84	(20 F. 4)	—
95	(19 F. 578)	—
104	(19 F. 603)	—
111	(19 F. 881)	—
117	(19 F. 643)	—
122	(20 F. 80)	—
132	(19 F. 912)	—
134	(20 F. 46)	—
136	(20 F. 28)	—
144	(20 F. 39)	—
151	(20 F. 188)	—
155	(26 F. 672)	—
161	(20 F. 364)	—
176	(20 F. 519)	—
183	(20 F. 801)	—
200	(21 F. 103)	—
210	(21 F. 122)	—
212	(20 F. 906)	—
220	(21 F. 628)	—
222	(21 F. 182)	—
230	(21 F. 169)	—
243	(21 F. 167)	—
246	(21 F. 200)	—
261	(21 F. 288)	—
264	(21 F. 285)	—
268	(21 F. 386)	—
277	(21 F. 393)	—
280	(21 F. 355)	—
284	(21 F. 496)	—
289	(26 F. 759)	—
294	(21 F. 611)	—
300	(21 F. 539)	—
303	(21 F. 459)	—
325	(21 F. 594)	—
336	(21 F. 601)	—
336	(21 F. 701)	—
345	(21 F. 785)	—
351	(21 F. 789)	—
353	(21 F. 905)	—
361	(21 F. 791)	—
387	(21 F. 808)	—
390	(22 F. 98)	—
394	(22 F. 28)	—
398	(22 F. 10)	—
401	(21 F. 827)	—
415	(22 F. 13)	—
431	(22 F. 602)	—
441	(23 F. 469)	—
460	(22 F. 525)	—
464	(22 F. 245)	—
472	(23 F. 232)	—
489	(22 F. 465)	—
491	(22 F. 285)	—
501	(22 F. 543)	—
506	(22 F. 489)	—
523	(22 F. 452)	—
526	(22 F. 468)	—
532	(22 F. 701)	—
539	(23 F. 258)	—
606	(22 F. 865)	—
612	(23 F. 645)	—
615	(24 F. 154)	—
621	(23 F. 1)	—
625	(23 F. 67)	—
630	(23 F. 71)	—
634	(23 F. 353)	—
639	(23 F. 279)	—
666	(26 F. 722)	—

Vol. 11, Sawy.

Page.		F. C. No.
17	(23 F. 329)	—
25	(23 F. 878)	—
28	(23 F. 315)	—
33	(37 F. 733)	—
35	(49 F. 16)	—
37	(23 F. 529)	—
45	(23 F. 573)	—
50	(23 F. 577)	—
56	(23 F. 741)	—
65	(24 F. 361)	—
74	(24 F. 49)	—
83	(24 F. 196)	—
86	(24 F. 252)	—
92	(24 F. 257)	—
92	(24 F. 197)	—
103	(24 F. 348)	—
113	(24 F. 401)	—
115	(24 F. 407)	—
122	(24 F. 726)	—
137	(24 F. 657)	—
139	(24 F. 823)	—
147	(24 F. 705)	—
173	(24 F. 723)	—
178	(24 F. 847)	—
183	(24 F. 893)	—
190	(25 F. 201)	—
191	(25 F. 73)	—
195	(25 F. 610)	—
211	(25 F. 141)	—
215	(25 F. 349)	—
231	(25 F. 337)	—
250	(25 F. 475)	—
259	(25 F. 361)	—
272	(25 F. 541)	—
276	(25 F. 296)	—
280	(25 F. 533)	—
290	(26 F. 337)	—
398	(26 F. 84)	—
404	(26 F. 89)	—
405	(48 F. 697)	—
406	(26 F. 80)	—
411	(26 F. 296)	—
416	(89 F. 508)	—
418	(26 F. 15)	—
422	(26 F. 207)	—
426	(47 F. 744)	—
438	(26 F. 479)	—
447	(26 F. 512)	—
452	(26 F. 421)	—
472	(26 F. 611)	—
479	(26 F. 586)	—
489	(27 F. 827)	—
493	(26 F. 708)	—
501	(26 F. 665)	—
512	(27 F. 769)	—
514	(26 F. 744)	—
522	(26 F. 749)	—
530	(26 F. 877)	—
533	(28 F. 384)	—
533	(27 F. 187)	—
545	(26 F. 831)	—
553	(26 F. 837)	—
554	(28 F. 40)	—
563	(28 F. 47)	—
564	(27 F. 277)	—
575	(27 F. 172)	—
579	(27 F. 351)	—
590	(27 F. 795)	—
597	(27 F. 509)	—
600	(27 F. 412)	—
611	(27 F. 788)	—
620	(28 F. 223)	—
624	(27 F. 830)	—
652	(28 F. 117)	—
657	(28 F. 127)	—
663	(28 F. 33)	—
667	(28 F. 708)	—

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 12, Sawy.

Page.	F. C. No.
17 (28 F. 17)	—
33 (28 F. 346)	—
39 (39 F. 629)	—
40 (28 F. 164)	—
47 (28 F. 275)	—
62 (28 F. 265)	—
77 (28 F. 308)	—
82 (28 F. 403)	—
88 (29 F. 181)	—
92 (28 F. 396)	—
95 (28 F. 599)	—
99 (28 F. 482)	—
109 (28 F. 505)	—
122 (28 F. 738)	—
126 (29 F. 70)	—
129 (28 F. 855)	—
138 (30 F. 309)	—
151 (29 F. 86)	—
156 (29 F. 89)	—
156 (29 F. 187)	—
164 (29 F. 134)	—
167 (29 F. 252)	—
179 (30 F. 147)	—
204 (29 F. 226)	—
220 (40 F. 854)	—
227 (30 F. 142)	—
231 (29 F. 830)	—
242 (29 F. 837)	—
243 (30 F. 99)	—
252 (30 F. 94)	—
257 (30 F. 176)	—
268 (30 F. 133)	—
275 (30 F. 30)	—
284 (30 F. 36)	—
285 (30 F. 112)	—
293 (30 F. 547)	—
341 (30 F. 867)	—
347 (30 F. 734)	—
352 (30 F. 762)	—
355 (34 F. 515)	—
365 (30 F. 579)	—
379 (31 F. 680)	—
381 (30 F. 851)	—
398 (30 F. 604)	—
402 (30 F. 754)	—
409 (40 F. 902)	—
412 (31 F. 418)	—
416 (31 F. 68)	—
424 (31 F. 53)	—
429 (31 F. 366)	—
433 (31 F. 141)	—
438 (31 F. 331)	—
446 (31 F. 315)	—
457 (31 F. 362)	—
463 (31 F. 391)	—
467 (31 F. 879)	—
469 (31 F. 616)	—
473 (31 F. 602)	—
477 (31 F. 896)	—
485 (31 F. 580)	—
492 (31 F. 577)	—
496 (31 F. 580)	—
497 (32 F. 331)	—
502 (31 F. 772)	—
508 (31 F. 804)	—
514 (31 F. 667)	—
519 (31 F. 670)	—
519 (32 F. 51)	—
526 (89 F. 418)	—
529 (31 F. 736)	—
538 (32 F. 451)	—
547 (31 F. 827)	—
559 (32 F. 241)	—
604 (31 F. 890)	—
613 (32 F. 24)	—
631 (32 F. 503)	—
643 (32 F. 142)	—
651 (32 F. 680)	—

Vol. 13, Sawy.

Page.	F. C. No.
17 (33 F. 279)	—
20 (32 F. 429)	—
25 (32 F. 192)	—
30 (32 F. 516)	—
33 (32 F. 670)	—
36 (32 F. 386)	—
38 (32 F. 417)	—
53 (32 F. 534)	—
60 (32 F. 810)	—
64 (32 F. 738)	—
68 (32 F. 899)	—
86 (32 F. 745)	—
97 (33 F. 589)	—
99 (33 F. 146)	—
113 (33 F. 562)	—
121 (33 F. 377)	—
126 (33 F. 459)	—
141 (33 F. 168)	—
143 (33 F. 170)	—
143 (33 F. 333)	—
148 (33 F. 449)	—
157 (33 F. 455)	—
158 (33 F. 812)	—
169 (49 F. 164)	—
172 (34 F. 57)	—
188 (34 F. 104)	—
199 (34 F. 111)	—
200 (36 F. 332)	—
202 (34 F. 368)	—
212 (34 F. 86)	—
218 (34 F. 129)	—
221 (34 F. 353)	—
223 (34 F. 382)	—
229 (34 F. 534)	—
232 (34 F. 477)	—
236 (34 F. 496)	—
243 (36 F. 29)	—
260 (35 F. 22)	—
266 (35 F. 272)	—
280 (35 F. 81)	—
283 (35 F. 83)	—
284 (35 F. 83)	—
284 (35 F. 43)	—
295 (35 F. 107)	—
298 (35 F. 403)	—
304 (35 F. 816)	—
310 (35 F. 661)	—
314 (35 F. 348)	—
318 (35 F. 230)	—
322 (35 F. 261)	—
333 (35 F. 354)	—
337 (35 F. 826)	—
341 (35 F. 561)	—
349 (35 F. 575)	—
355 (36 F. 1)	—
359 (35 F. 824)	—
362 (36 F. 176)	—
365 (48 F. 668)	—
367 (47 F. 722)	—
368 (36 F. 86)	—
383 (36 F. 4)	—
387 (36 F. 337)	—
440 (36 F. 419)	—
473 (36 F. 129)	—
475 (36 F. 279)	—
479 (36 F. 335)	—
481 (36 F. 383)	—
482 (36 F. 437)	—
486 (36 F. 431)	—
495 (36 F. 896)	—
497 (36 F. 440)	—
498 (36 F. 442)	—
507 (36 F. 710)	—
510 (36 F. 441)	—
513 (36 F. 490)	—
516 (36 F. 481)	—
521 (36 F. 923)	—
523 (36 F. 668)	—
526 (36 F. 484)	—
530 (36 F. 553)	—
532 (36 F. 449)	—
535 (36 F. 726)	—
543 (38 F. 187)	—
548 (37 F. 145)	—
551 (37 F. 394)	—
583 (37 F. 37)	—
595 (37 F. 155)	—
598 (37 F. 649)	—
604 (37 F. 560)	—
607 (37 F. 846)	—
614 (38 F. 762)	—
616 (37 F. 662)	—
618 (37 F. 780)	—
622 (38 F. 69)	—
532 (38 F. 308)	—
635 (38 F. 328)	—
639 (38 F. 614)	—

SAWYER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 14, Sawy.

Page.	F. C. No.
17 (38 F. 377)	—
19 (38 F. 400)	—
21 (38 F. 378)	—
23 (46 F. 839)	—
30 (38 F. 711)	—
33 (38 F. 789)	—
40 (40 F. 52)	—
44 (39 F. 355)	—
60 (39 F. 132)	—
75 (39 F. 266)	—
77 (39 F. 158)	—
84 (39 F. 89)	—
96 (39 F. 324)	—
102 (39 F. 496)	—
109 (39 F. 376)	—
118 (39 F. 551)	—
120 (39 F. 565)	—
124 (40 F. 177)	—
131 (39 F. 525)	—
150 (47 F. 218)	—
151 (39 F. 626)	—
155 (39 F. 654)	—
171 (40 F. 62)	—
178 (47 F. 211)	—
179 (39 F. 807)	—
211 (39 F. 773)	—
213 (39 F. 730)	—
220 (39 F. 696)	—
224 (40 F. 52)	—
229 (39 F. 877)	—
232 (39 F. 833)	—
317 (39 F. 719)	—
321 (39 F. 900)	—
334 (40 F. 120)	—
334 (40 F. 419)	—
340 (40 F. 415)	—
346 (46 F. 877)	—
351 (40 F. 618)	—
361 (40 F. 660)	—
364 (40 F. 774)	—
376 (41 F. 142)	—
380 (46 F. 807)	—
382 (41 F. 523)	—
387 (41 F. 493)	—
400 (41 F. 501)	—
401 (41 F. 842)	—
410 (41 F. 883)	—
416 (42 F. 317)	—
420 (41 F. 729)	—
424 (41 F. 771)	—
430 (42 F. 295)	—
434 (42 F. 269)	—
438 (42 F. 287)	—
440 (42 F. 78)	—
442 (45 F. 62)	—
467 (42 F. 316)	—
469 (42 F. 285)	—
472 (42 F. 320)	—
476 (46 F. 805)	—
479 (42 F. 351)	—
495 (42 F. 401)	—
499 (42 F. 755)	—
502 (42 F. 704)	—
531 (42 F. 398)	—
535 (38 F. 1)	—
549 (46 F. 754)	—
555 (42 F. 308)	—
560 (42 F. 470)	—
568 (43 F. 333)	—
577 (42 F. 865)	—
584 (43 F. 196)	—
595 (43 F. 339)	—
600 (43 F. 236)	—
610 (43 F. 602)	—
615 (45 F. 199)	—
619 (45 F. 81)	—
620 (45 F. 596)	—

SERGEANT'S CONSTITUTIONAL LAW.

Serg. Const. Law.

Page.	F. C. No.
195 (note)	12,382

SMITH'S NEW HAMPSHIRE REPORTS.

Smith, (N. H.)

Page.	F. C. No.
374	1,815
432	7,705

SOUTHERN LAW REVIEW.

Vol. 1, South. Law Rev.

Page.	F. C. No.
127	9,783

Vol. 2, South. Law Rev.

Page.	F. C. No.
725	7,630

Vol. 3, South. Law Rev.

Page.	F. C. No.
712	5,206

SPEAR'S LAW OF EXTRADITION, (2d Ed.)

Spear, Extrad. (2d Ed.)

Page.	F. C. No.
451	2,158

SPRAGUE'S UNITED STATES DISTRICT COURT (ADMIRALTY) DECISIONS.

Vol. 1, Spr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
9	10,491	184	3,360	378	5,289
11	11,204	186	1,006	382	7,577
13	7,220	188	3,018	389	12,248
16	5,037	192	17,321	394	6,947
17	9,188	196	16,051	399	15,607
23	9,316	199	11,538	402	6,226
31	10,574	204	9,190	404	3,482
33	6,098	206	479	407	12,806
34	3,054	210	5,023	418	12,807
37	9,716	212	5,022	423	1,750
39	2,716	213	14,852	424	13,661
40	2,786	215	6,886	428	14,183
45	9,224	217	3,314	433	1,104
48	1,961	219	228	437	2,388
51	9,189	225	17,483	441	11,764
54	11,901	227	15,583	453	12,354
57	17,717	229	17,524	462	2,024
62	9,829	230	11,471	467	15,927
67	7,390	232	15,878	470	2,358
69	2,796	236	5,487	473	14,159
71	14,274	243	2,054	475	14,294
73	5,468	245	10,606	477	4,300
75	15,212	257	2,880	485	17,697
78	6,455	260	9,654	499	13,630
82	8,608	273	5,472	506	9,066
85	387	276	11,995	510	6,476
88	3,529	277	5,687	512	10,694
91	14,297	279	7,880	515	17,139
95	14,427	282	17,525	522	3,521
97	9,260	284	11,891	527	4,465
104	1,937	285	12,743	530	3,027
109	15,122	289	12,283	534	6,401
117	6,043	294	16,572	535	10,401
119	14,830	299	14,597	537	6,176
123	10,986	300	18,042	539	7,579
126	3,016	304	10,855	545	15,181
128	11,867	307	8,352	546	16,119
130	7,235	309	13,647	548	17,888
133	1,010	311	15,643	551	12,858
135	11,599	315	13,720	554	5,314
138	9,391	324	13,144	556	6,298
141	3,398	328	11,598	558	14,474
144	6,600	331	1,192	559	16,808
152	4,363	335	10,663	564	17,698
158	9,273	339	16,050	565	10,900
160	8,248	343	8,020	567	12,720
163	7,901	355	8,557	571	12,579
167	14,089	358	11,761	574	13,690
170	13,751	361	10,247	584	9,361
178	7,432	369	10,846	588	9,360
180	4,737	372	17,025	593	18,263
182	4,982	374	14,625	602	18,273

Vol. 2, Spr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,880	61	6,913	177	8,348
7	15,508	65	5,935	194	14,336
16	11,708	68	6,280	197	11,767
17	9,062	73	1,572	198	528
19	18,220	77	15,515	203	253
26	15,449	85	15,964	207	8,004
28	2,658	91	4,604	225	1,894
31	12,338	100	15,094	226	16,938
33	404	101	7,202	233	12,915
35	11,151	103	16,491	235	2,640
37	8,407	107	11,716	251	619
39	3,863	121	7,189	261	10,403
43	7,494	123	341	262	529
48	3,531	143	342	266	12,225
49	13,691	150	343	267	4,368
51	11,496	160	344	279	18,256
52	10,530	164	7,576	285	18,277
55	14,808	168	3,457	292	18,274
56	6,212				

STORY'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Story.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,722	91	3,515	218	786
11	5,728	109	2,832	244	11,609
22	17,653	135	1,688	251	6,099
38	8,559	153	1,689	270	13,487
43	4,945	157	8,961	273	18,107
57	2,428	169	2,930	296	1,947
64	6,146	172	3,562	307	15,866
68	9,087	198	3,563	310	137
77	4,972	204	13,339	314	1,193

STORY'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 1, Story—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
332	2,931	426	1,479	546	6,593
336	153	458	10,216	547	14,091
341	714	463	11,034	560	17,575
342	7,524	474	8,989	568	11,446
360	10,698	478	1,875	574	5,716
371	6,279	499	17,335	590	11,645
376	12,303	516	2,671	601	13,265
387	3,864	528	4,255	603	12,016
396	983	531	2,859	610	8,195
423	2,587	543	4,179	614	18,275

Vol. 2, Story.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	2,816	292	11,147	455	2,717
16	2,730	312	5,693	471	8,140
59	10,406	322	4,237	481	12,291
81	564	327	5,147	492	17,887
100	4,901	334	10,743	502	1,985
120	15,423	349	561	525	1,948
131	4,960	360	10,159	553	1,949
164	1,513	366	17,940	555	4,864
173	12,017	369	16,690	571	11,777
176	5,916	376	3,152	582	4,831
190	6,766	383	13,266	591	7,715
195	13,253	389	14,539	605	1,876
199	11,447	408	1,173	609	11,196
202	381	412	17,858	623	16,796
213	12,165	416	12,678	630	9,673
243	5,608	421	188	648	9,662
267	8,060	432	2,485	661	17,516
278	2,874	452	17,414		

Vol. 3, Story.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,624	299	7,267	544	10,897
13	8,061	325	7,268	556	3,511
25	2,480	335	17,010	590	7,858
54	16,906	349	7,804	611	16,907
68	5,370	364	9,856	646	14,135
76	5,747	393	696	657	5,748
79	14,715	402	11,156	659	6,722
84	17,515	411	17,884	700	3,960
87	15,820	428	1,278	742	216
93	7,657	446	4,577	749	18,021
108	2,948	458	13,784	755	5,707
122	17,214	465	11,274	768	4,436
171	18,019	507	17,886	800	14,065
181	7,266	516	5,637		

SUMNER'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Sumn.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,600	218	6,282	448	15,818
21	15,315	232	5,482	451	262
46	4,675	235	12,913	478	11,131
73	10,126	263	13,468	482	326
89	1,246	276	229	492	14,463
109	3,857	319	3,945	504	1,870
121	11,970	328	1,673	506	17,951
131	11,799	359	10,763	514	3,421
133	14,912	373	2,907	516	10,388
151	5,329	384	8,919	525	5,612
159	14,638	390	14,157	537	5,606
168	16,492	394	14,824	551	16,991
173	6,802	400	6,376	578	17,952
195	11,641	434	2,522	591	8,035
207	4,480	447	12,796		

Vol. 2, Sumn.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,902	273	9,036	426	14,908
13	14,470	278	7,690	443	2,018
19	15,204	299	16,624	453	5,260
108	3,858	310	14,907	470	15,742
133	6,772	316	17,953	471	6,919
143	5,613	336	14,684	482	14,932
157	4,057	338	13,100	486	4,847
197	11,339	355	8,300	567	11,657
206	12,342	362	14,776	575	16,021
221	7,258	366	3,987	582	14,745
228	13,796	383	1,368	584	16,442
238	555	387	6,000	589	2,559
240	14,545	401	5,609	605	5,261
251	1,871	409	6,773	612	13,018
262	2,857	419	10,778	628	5,614
266	70				

SUMNER'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 3, Sumn.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,399	209	16,740	422	17,797
12	15,403	220	11,949	429	2,137
20	8,146	228	4,953	435	13,019
27	11,335	270	17,738	472	885
50	11,185	279	1,517	474	2,672
70	11,272	286	11,186	475	787
84	4,848	308	16,694	488	8,206
98	5,262	318	17,954	495	10,151
115	9,290	335	11,805	510	17,739
127	12,777	339	6,152	514	12,186
132	6,013	342	16,189	523	5,696
144	14,171	345	15,698	530	2,932
152	3,859	358	15,539	535	1,518
165	17,031	379	14,066	542	10,032
170	13,899	384	44	583	13,008
186	17,168	389	11,035	593	17,652
189	17,322	405	16,921	600	1,793
204	14,825	410	17,625		

SYLLABI.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	13,883	115	3,341	175	11,413
74	9,635	117	639	182	5,521
86	10,634	122	3,600	198	6,202
109	292	151	744		

TANEY'S UNITED STATES CIRCUIT COURT REPORTS.

Taney.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,465	171	1,373	418	16,973
11	12,271	173	9,241	422	8,275
24	9,723	180	8,084	437	13,794
34	14,990	186	1,077	448	9,668
47	15,798	200	4,118	453	472
55	10,061	204	9,124	456	7,490
69	6,579	227	5,788	460	8,207
72	11,642	233	3,911	468	3,991
75	3,463	243	6,844	472	13,897
80	5,519	244	2,170	485	6,145
94	7,615	246	9,487	492	11,703
100	11,825	271	4,119	500	11,119
106	7,882	278	17,845	502	8,861
110	8,047	297	13,913	504	17,318
112	240	310	8,581	519	6,676
119	2,738	339	9,371	533	14,083
121	3,053	362	17,210	549	14,458
126	75	374	3,424	567	2,965
130	5,354	379	511	575	5,752
132	2,052	386	100	583	14,252
146	14,220	389	6,435	589	5,936
152	16,684	400	11,073	602	6,021
159	6,838	413	13,539	615	18,257

TEXAS LAW JOURNAL.

Vol. 1, Tex. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	18,149	47	14,976	197	4,269
39	10,555	89	11,944	315	10,640
41	2,204	92	13,875	319	12,744
41	3,352	97	5,507	337	11,851
42	12,926	116	6,065	393	6,533
42	12,989	157	1,358		

Vol. 2, Tex. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
42	13,234	116	13,234	166	16,688
54	5,939	150	5,359	171	14,215
74	4,810	164	15,472	356	4,566

TEXAS SUPPLEMENT.

Vol. 25, Tex. Supp.

Page.	F. C. No.
623	5,815

THOMPSON'S NATIONAL BANK CASES.

Vol. 1, Thomp. Nat. Bank Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
161	9,052	230	2,279	300	2,743
169	12,801	246	17,645	312	2,382
175	13,435	256	16,428	315	11,198
181	11,211	260	2,635	317	3,397
182	11,215	264	7,611	321	18,084
185	16,835	267	4,809	326	12,239
189	4,573	268	4,799	331	7,393
191	3,011	271	1,716	353	9,450
192	9,051	276	2,489	350	10,038
200	8,976	284	1,429	356	744
203	7,068	285	2,496	358	16,150
208	16,826	294	3,062	360	4,135
219	16,827				

UNITED STATES LAW INTELLIGENCER AND REVIEW.

Vol. 1, U. S. Law Int.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
22	5,701	69	2,872	214	15,268
24	10,258	121	473	244	14,082
56	560	214	3,650	313	2,078

Vol. 2, U. S. Law Int.

Page.	F. C. No.
34	5,698
34	7,924

Vol. 3, U. S. Law Int.

Page.	F. C. No.
249	17,232

UNITED STATES LAW JOURNAL.

Vol. 1, U. S. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	14,519	145	11,548	545	4,235
15	12,302	154	17,724	563	13,956
85	13,956	305	13,481	563	13,957
88	8,793	533b	14,119	575	13,956

UNITED STATES LAW MAGAZINE.

Vol. 2, U. S. Law Mag.

Page.	F. C. No.
42	13,486

UNITED STATES SUPREME COURT REPORTS.

Vol. 2, U. S. (2 Dall.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
36	7,632	332	5,375	364	17,481
40	13,470	333	14,708	365	7,743
294	3,001	335	15,443	370	16,622
297	16,122	335	15,799	373	15,992
299 (note)	16,122a	343	16,401	380	6,010
300	8,419	345	16,073	381	9,321
302	543	346	16,621	382	443
302	2,049	348	15,788	383	13,714
304	16,857	357	15,789	384	16,766
321	15,270	358	6,862	396	6,611
330	10,709	360	12,454	396	17,673

Vol. 3, U. S. (3 Dall.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
54	10,925	369	4,471	513	15,442
190	9,212a	510	11,254	515	5,126
288 (note)	9,742	512	6,929		

Vol. 4, U. S. (4 Dall.)

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
325	12,585	353	6,933	392	6,851
329	13,134	354	10,930	402	10,935
330	9,321	358	14,850	410	5,871
340	10,468	360	7,908	412	15,481
341	14,861	363	808	414 (note)	16,209
342	4,554	370	6,870	417	12,875
342	9,943	372	16,005	419	3,098
345	6,619	374	17,764	421	12,146
348 (Append. xxxii.)	14,016	376 (note)	16,727	426	15,676
353	6,618	387	6,924	430	13,137
		389	17,086		

UNITED STATES SUPREME COURT REPORTS—Cont'd.

Vol. 5, U. S. (1 Cranch.)

Page.	F. C. No.
367 (Append.)	4,169

Vol. 6, U. S. (2 Cranch.)

Page.	F. C. No.
82 (note)	17,708

Vol. 8, U. S. (4 Cranch.)

Page.	F. C. No.
5 (note)	7,281

Vol. 9, U. S. (5 Cranch.)

Page.	F. C. No.
124	10,503a

Vol. 26, U. S. (1 Pet.)

Page.	F. C. No.
516 (note)	302a

Vol. 28, U. S. (3 Pet.)

Page.	F. C. No.
316	302b

Vol. 32, U. S. (7 Pet.)

Page.	F. C. No.
324	11,207

Vol. 33, U. S. (8 Pet.)

Page.	F. C. No.
725	17,486

Vol. 34, U. S. (9 Pet.)

Page.	F. C. No.
770 (Append.)	11,270
793 (Append.)	10,653

Vol. 42, U. S. (1 How.)

Page.	F. C. No.
277 (note)	7,865

Vol. 53, U. S. (12 How.)

Page.	F. C. No.
246	16,696

Vol. 56, U. S. (15 How.)

Page.	F. C. No.
126	10,564

Vol. 70, U. S. (3 Wall.)

Page.	F. C. No.
782 (Append.)	9,620

Vol. 74, U. S. (7 Wall.)

Page.	F. C. No.
1	5,458

Vol. 76, U. S. (9 Wall.)

Page.	F. C. No.
203	405

Vol. 86, U. S. (19 Wall.)

Page.	F. C. No.
640	5,737

Vol. 87, U. S. (20 Wall.)

Page.	F. C. No.
323	13,462

Vol. 136, U. S.

Page.	F. C. No.
597 (note)	1,059

VAN NESS' PRIZE CASES.

Van Ness.

Page.	F. C. No.
5	7,417
45	7,415

VERMONT REPORTS.

Vol. 20, Vt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
653	17,407	662	9,180	666	924

Vol. 21, Vt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
599	4,043	619	6,788	627	5,264
611	10,873	620	12,095	635	11,640

VERMONT REPORTS—Cont'd.

Vol. 22, Vt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
642	3,073	655	15,953	663	15,720
649	2,624	659	6,211		

Vol. 23, Vt.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
720	1,786	735	17,955	739	9,768

Vol. 24, Vt.

Page.	F. C. No.
660	1,635
666	2,263

Vol. 25, Vt.

Page.	F. C. No.
715	6,818

Vol. 29, Vt.

Page.	F. C. No.
535	13,500
540	12,176

VIRGINIA LAW JOURNAL.

Vol. 1, Va. Law J.

Page.	F. C. No.
290	9,022
301	5,872
309	3,455

Vol. 2, Va. Law J.

Page.	F. C. No.
52	2,921
312	3,928
695	6,309

Vol. 3, Va. Law J.

Page.	F. C. No.
370	7,825

WALLACE'S (J. B.) UNITED STATES CIRCUIT COURT REPORTS.

Wall. Sr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,002	46	6,614	118	1,726
4	10,931	51	6,615	134	16,654
5	14,996	58	1,330	139	1,695
13	15,536	66	3,292	141	6,617
23	15,805	77	6,616	147	6,618
29	4,261	102	14,997	178	14,850
33	4,136	108	7,909		

WALLACE'S (J. W.) UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Wall. Jr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
iii. (App.)	6,934	164	13,456	309	1,507
ix. (App.)	18,311	173	14,464	311	13,803
1	15,383	187	8,565	337	1,510
33	8,896	189	10,290	342	17,786
39	4,200	192	17,857	343	17,311
47	17,639	196	8,469	344	10,741
69	4,815	210	9,579	345	8,560
85	5,924	217	17,538	347	17,787
107	474	269	10,739	355	1,624
127	15,301	275	12,139	359	17,310
149	10,732	305	2,680	370	8,748
161	16,178	307	2,444		

Vol. 2, Wall. Jr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
33	7,932	139	15,299	339	2,851
52	16,878	209	8,957	348	5,530
59	11,971	264	14,677	356	5,563
72	16,659	268	3,763	368	589
81	5,849	278	7,470	453	11,228
101	1,107	283	5,569	485	13,033
103	3,318	301	5,459	521	7,259
116	9,070	311	16,865	547	13,514
127	1,220	324	10,502	569	3,409
131	2,500	327	13,645	592	5,199
134	18,276	334	9,549		

WALLACE'S (J. W.) UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 3, Wall. Jr.

Page.	F. C. No.	Page.	F C No.	Page.	F. C. No.
1	757	186	12,840	292	11,905
14	12,280	196	1,532	299	4,390
20	2,673	199	2,092	306	9,791
32	7,045	206	9,165	310	5,570
46	9,521	215	10,796	313	3,136
53	7,458	219	13,108	320	17,219
58	4,500	229	1,152	330	8,414
66	10,003	243	5,010	346	5,096
87 (note)	8,239	248	211	358	11,990
88	14,257	252	9,232	361	85
124	1,106	258	14,245	367	12,089
134	4,589	263	5,457	375	16,992
139	4,590	267	17,939	379	2,963
141	6,310	274	17,974	381	8,731
143	14,918	279	1,218	395	12,670
184	8,173	289	242		

WARE'S UNITED STATES DISTRICT COURT REPORTS.

Vol. 1, Ware.

[The figures in parentheses ( ) refer to the old edition.]

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1 (9)	10,267	173 (175)	16,724	385 (378)	11,858
13 (21)	13,666	184 (185)	4,254	393 (385)	6,959
18 (26)	10,548	187 (188)	11,619	411 (402)	11,257
27 (35)	4,356	214	14,777	429 (420)	4,936
33 (41)	8,321	220 (219)	2,242	437 (427)	11,377
43 (51)	7,280	233 (232)	17,251	448 (437)	3,456
45 (53)	4,425	251 (249)	6,904	462 (450)	14,489
58 (65)	6,955	259 (257)	10,389	465 (454)	9,191
69 (75)	11,234	265 (263)	11,064	474 (462)	4,542
77 (83)	14,248	280 (277)	14,079	490 (477)	2,554
85 (91)	13,348	289 (286)	8,054	499 (485)	3,665
99 (104)	9,195	313 (309)	12,090	509 (495)	3,597
104 (109)	12,778	326 (322)	10,708	520 (506)	839
121	621	336 (332)	1,219	529	10,058
124 (128)	10,549	348 (343)	6,100	535	18,181
130 (134)	11,246	355 (350)	14,324	541	11,059
145 (149)	4,085	360 (354)	11,065	546	7,634
163 (165)	11,314	368 (362)	11,066	556	11,473
169 (171)	16,263	373 (367)	17,695	565	12,682

Vol. 2, Ware.

Page.	F. C. No.	Page.	F. C. No.
17 (Dav. 9)	14,532	225 (Dav. 221)	2,408
28 (Dav. 20)	330	233 (Dav. 229)	9,181
37 (Dav. 29)	2,316	240 (Dav. 236)	2,178
46 (Dav. 38)	16,658	246 (Dav. 242)	12,756
68 (Dav. 61)	4,434	256 (Dav. 252)	4,751
78 (Dav. 71)	3,628	270 (Dav. 266)	13,117
89 (Dav. 82)	6,914	278 (Dav. 274)	15,468
117 (Dav. 112)	1,366	294 (Dav. 290)	14,002
126 (Dav. 121)	3,666	298 (Dav. 294)	13,490
150 (Dav. 146)	14,635	306 (Dav. 303)	9,235
158 (Dav. 154)	16,648	318 (Dav. 316)	4,348
165 (Dav. 161)	17,056	322 (Dav. 320)	17,191
176 (Dav. 172)	13,460	330 (Dav. 328)	2,434
181 (Dav. 176)	5,370	344 (Dav. 343)	10,700
188 (Dav. 184)	2,486	360 (Dav. 359)	12,508
197 (Dav. 193)	8,264	371 (Dav. 370)	6,674
203 (Dav. 199)	6,859	382 (Dav. 381)	5,490
212 (Dav. 208)	11,045	394 (Dav. 392)	12,925
220 (Dav. 216)	12,722	408 (Dav. 407)	38

Vol. 3, Ware.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	6,468	143	8,330	253	8,596
28	8,086	148	13,093	260	3,458
39	2,792	154	18,031	264	7,350
45	5,409	159	16,004	269	16,670
52	13,349	165	6,291	273	7,336
58	18,182	171	16,945	276	16,702
65	637	180	11,210	289	4,264
71	1,717	184	11,917	294	12,099
75	16,512	196	7,355	296	7,228
82	2,952	205	16,570	300	9,346
87	10,252	211	12,234	304	11,973
105	6,102	215	9,468	307	11,521
110	12,267	222	13,631	309	7,250
126	6,992	225	4,512	313	17,689
130	8,529	236	6,702	318	258
134	17,691	240	667	321	10,677
139	16,912	245	9,148	324	16,464

WASHINGTON'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Wash. C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	9,166	216	13,669	396	6,647
4	15,103	219	2,296	400	6,941
11	11,865	226	11,096	409	12,146
13	4,199	230	6,466	413	8,002
18	808	232	2,278	414	12,890
29	1,015	238	13,213	417	7,553
39	8,811	241	1,158	419	6,582
43	542	245	12,714	424	3,255
44	6,870	252	7,438	429	2,035
47	7,367	257	6,849	433	9,832
48	11,110	258	6,851	435	8,003
49	8,125	262	6,927	438	6,928
56	6,930	271	13,138	440	12,147
65	3,311	276	6,940	443	12,876
70	6,936	278	11,161	445	7,130
84	475	279	6,460	446	15,271
93	7,920	283	16,811	448	7,821
100	11,005	285	5,610	454	7,822
109	6,848	293	6,923	461	768
123	7,921	298	6,981	463	15,676
125	17,764	316	16,689	466	2,328
129	2,464	317	1,084	467	17,026
135	6,853	319	13,877	470	11,109
136	6,852	320	5,194	477	17,030
142	13,483	322	5,611	479	9,464
144	7,742	328	9,362	484	1,990
145	12,100	330	7,184	491	4,719
152	17,086	333	7,181	494	2,681
156	11,902	340	2,342	499	2,241
158	7,922	343	6,982	503	17,101
168	11,710	354	3,749	504	3,827
174	233	363	15,481	506	1,383
178	9,096	375	6,937	509	13,137
186	6,924	376	3,286	512	2,015
189	6,935	378	7,405	517	7,554
191	6,117	382	12,875	521	3,299
198	2,295	385	9,872	522	14,209
202	17,087	390	10,932	525	3,750
204	6,980	394	7,129	530	6,942
207	10,935				

Vol. 2, Wash. C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	11,948	198	11,301	361	10,751
4	3,765	199	5,366	366	15,285
7	17,901	200	12,570	375	3,257
24	2,016	201	7,744	378	9,914
29	16,685	203	9,837	380	9,819
31	9,601	204	13,593	382	4,816
23	2,462	205	15,593	388	3,252
36	11,036	212	6,732	391	1,112
41	16,845	219	1,767	393	5,780
44	5,779	223	8,270	397	12,953
47	893	224	8,625	403	12,190
49	6,938	226	12,071	406	7,944
51	3,264	243	13,236	411	9,134
54	9,127	253	7,171	413	5,357
61	3,733	254	9,161	416	11,458
69	6,931	258	9,604	422	3,913
80	1,621	262	3,453	429	7,814
89	8,862	266	7,555	433	9,389
96	10,684	270	476	435	15,297
98	2,330	271	1,743	441	11,092
107	12,560	272	1,367	449	13,734
113	5,674	274	13,389	452	9,135
125	4,555	279	5,958	456	17,339
127	6,932	280	5,753	460	16,090
130	5,367	282	2,272	462	10,500
132	3,828	283	17,122	463	9,931
139	7,185	294	12,189	464	1,727
142	993	297	7,652	465	6,543
145	6,922	200	7,788	467	9,390
150	12,569	310	16,343	468	2,465
152	17,284	311	3,670	473	12,877
155	4,770	312	10,433	475	227
157	17,336	323	5,511	478	15,791
159	15,610	325	10,659	480	17,285
160	16,856	328	14,631	482	7,526
161	16,663	331	11,505	485	5,087
164	6,733	336	12,634	487	10,944
165	6,983	337	2,066	488	13,791
167	13,107	339	3,452	490	11,256
169	15,636	342	4,572	493	5,554
172	2,125	346	6,150	505	3,331
175	12,675	353	13,768	507	7,915
180	8,101	354	3,214	508	538
186	9,961	356	16,089	514	11,611
191	5,195	357	9,133	519	2,837
196	9,880				

WASHINGTON'S UNITED STATES CIRCUIT COURT REPORTS —Cont'd.

Vol. 3, Wash. C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	17,286	149	3,003	313	5,509
5	1,477	151	8,500	328	1,248
10	15,809	156	2,868	335	15,639
12	17,184	159	2,988	340	15,404
15	14,967	165	2,310	350	976
17	5,760	170	12,505	354	10,910
28	9,725	177	691	356	2,360
31	9,926	178	7,642	359	2,638
43	13,444	181	14,234	369	17,769
45	7,672	184	5,452	381	1,088
48	2,068	195	15,969	396	3,802
58	1,478	196	10,715	404	8,492
60	1,359	199	7,454	408	4,562
65	15,248	201	17,961	434	11,407
70	15,366	206	8,905	440	16,756
78	16,344	209	15,494	443	4,560
81	8,328	224	15,495	456	5,657
90	10,933	226	17,665	464	12,406
95	15,792	228	15,496	475	11,347
99	14,652	234	16,096	481	9,973
101	2,838	241	5,647	484	3,373
108	2,329	243	836	498	4,974
109	11,782	245	16,664	503	3,330
110	7,527	246	12,028	508	14,472
117	12,504	248	17,638	515	16,738
122	1,765	250	17,405	525	16,345
125	3,417	256	9,064	529	1,534
126	14,263	262	3,877	546	3,193
127	13,035	276	5,729	558	4,610
134	690	281	15,854	560	2,841
138	11,278	290	17,055	567	8,281
140	12,388	298	2,538	580	6,141
146	16,608				

Vol. 4, Wash. C. C.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	6,963	253	9,156	474	14,025
6	1,535	259	7,096	476	11,862
9	7,875	262	13,412	477	4,724
16	18,092	271	6,124	480	13,635
26	9,591	278	8,360	482	1,592
32	6,142	280	979	487	4,584
38	1,130	285	6,247	492	17,429
45	8,921	286	1,190	503	9,342
48	1,424	289	8,737	513	1,768
53	17,804	296	2,226	513	8,076
59	5,477	297	14,078	514	11,601
61	11,543	301	12,891	514	12,004
64	10,934	305	8,211	519	16,895
64	15,557	307	9,948	521	18,172
68	3,931	308	7,685	522	2,219
74	4,108	310	7,823	528	15,516
79	17,774	317	1,589	531	15,971
84	7,854	320	12,892	538	10,941
86	8,493	322	1,536	546	12,598
91	15,525	323	3,952	547	16,394
92	2,359	325	837	549	3,282
97	14,143	325	2,585	555	6,407
98	6,123	326	11,306	556	11,602
101	2,240	327	6,494	558	11,603
105	16,908	332	8,075	559	16,351
106	7,876	333	1,590	562	8,143
108	931	335	11,607	564	14,026
110	10,692	336	10,920	570	16,893
126	4,155	338	13,944	578	3,783
127	13,015	344	10,163	580	17,277
128	4,185	347	11,315	584	10,462
129	11,815	349	9,341	585	8,790
139	11,814	356	6,648	588	3,212
141	11,104	370	4,266	595	7,850
148	8,494	371	3,230	601	5,902
159	6,519	388	1,591	609	5,236
159	8,074	391	10,921	620	15,405
169	8,072	393	11,277	624	8,073
169	16,313	396	12,863	631	17,914
171	5,821	398	15,068	644	16,162
174	11,606	402	15,321	645	4,742
181	14,144	412	11,789	651	2,849
186	1,694	414	16,686	657	1,567
191	2,507	418	14,942	662	627
194	10,669	424	5,480	678	11,311
199	5,188	426	17,161	691	17,423
200	17,426	428	15,351	698	8,288
202	6,143	430	3,105	700	14,819
209	17,403	442	3,287	702	15,438
211	5,657	443	4,611	703	14,154
215	11,043	445	1,132	710	3,321
220	3,520	446	16,087	711	595
224	8,373	453	18,201	714	5,553
226	16,402	461	18,055	715	11,740
227	12,407	464	14,520	726	15,825
232	10,877	471	3,582	729	14,883
242	14,104	472	17,160	733	15,819
248	985				

WEEKLY DIGEST.

Vol. 7, Wkly. Dig.

Page.	F. C. No.
129	5,068

WEEKLY GAZETTE.

Vol. 3, Wkly. Gaz.

Page.	F. C. No.
126	13,598

WEEKLY JURIST.

Vol. 1, Wkly. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
249	6,786	584	12,642	701	11,041
447	17,476	639	1,714		

WEEKLY LAW GAZETTE.

Vol. 2, Wkly. Law Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
296	9,131	316	7,583	342	13,568
299	17,730	321	1,261	401	4,956

Vol. 3, Wkly. Law Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
17	1,260	246	17,182	309	7,747
25	203	248	8,139	343	13,271
26	593	279	1,449	366	10,295
237	12,969	297	2,410	393	1,476

Vol. 4, Wkly. Law Gaz.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,881	188	10,117	327	10,575
175	15,352	214	18,268	407	9,090
183	11,072	283	3,920	413	14,871

WEEKLY NOTES OF CASES.

Vol. 1, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
10	3,171	30	17,574	204	3,263
10	17,431	37	9,969	204	4,195
12	6,049	39	11,300	222	3,714
15	7,166	42	5,059	302	6,352
15	7,255	42	8,664	318	3,170
15	7,877	51	3,169	334	4,872
16	8,453	52	7,893	334	17,274
16	8,663	52	14,040	362	14,396
16	13,776	64	5,680	377	10,955
21	1,013	73	5,139	378	4,184
21	8,941	86	4,023	391	8,740
21	12,520	86	17,273	394	6,680
22	2,130	89	10,857	497	14,092
22	7,967	107	17,203	510	13,205
29	10,349	126	11,091	560	13,204
30	3,172	172	2,056	637	11,343
30	12,521				

Vol. 2, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
31	15,595	356	17,275	496	17,637
52	4,147	399	5,365	523	11,661
99	3,129	400	10,010	542	843
100	10,044	405	12,475a	560	1,854
100	13,942	410	1,430	601	2,546
115	2,836	431	4,194	602	6,158
275	3,921	432	1,166	603	11,031
308	7,846	479	9,265	604 (note)	15,994
339	9,524	480	4,175	604	16,150
356	6,488	480	8,718	612	5,811

Vol. 3, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
172	6,151	547	1,333	565	12,757
307	2,545	548	11,403	567	3,830
372	7,572				

Vol. 4, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	8,903	383	13,126	480	4,800
20	6,826	415	5,029	528	10,797
187	8,213	432	6,106	544	17,076
288	5,208	432	17,077		

WEEKLY NOTES OF CASES—Cont'd.

Vol. 5, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
80	8,709	152	11,402	344	10,052
104	18,088	172	7,684	366	12,476
149	11,404	211	11,694	477	14,373
151	11,400	212	8,834		

Vol. 6, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
158	4,804	356	2,791	417	6,289
283	13,802	370	12,359	435	6,464
304	9,069	371	2,732	542	15,886
353	4,376	403	565	579	6,297

Vol. 7, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
50	5,335	115	8,779	261	11,405
51	5,843	147	9,944	263	11,408
51	11,418	226	7,834	264	11,405a
98	12,464	231	234	509	8,586
114	2,975	246	4,134	576	12,881

Vol. 8, Wkly. Notes Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
30	4,861	163	8,461a	269	12,769
47	1,454	188	10,890	328	11,619a
61	12,561	204	6,251	407	6,825
131	6,551a				

Vol. 9, Wkly. Notes Cas.

Page.	F. C. No.
277	8,110
351 (4 F. 548)	12,465

WESTERN JURIST.

Vol. 1, West. Jur.

Page.	F. C. No.
359	9,863
367	3,297

Vol. 2, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
167	13,704	279	10,975	349	3,378
221	11,074	341	3,210	350	17,667
268	1,450	348	17,992	351	10,710
275	12,110				

Vol. 3, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
15	16,562	294	12,823	333	13,686
209	9,375	329	9,047		

Vol. 4, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
189	12,305	339	6,644	392	1,168
204	9,774	351	2,403	399	11,094
252	11,932				

Vol. 5, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
61	9,429	342	4,793	499	12,533
121	6,561	448	7,831	505	1,169
150	15,937	450	5,169	538	5,951
212	18,077	496	13,839	550	14,814
366	10,649				

Vol. 6, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
65	2,742	360	7,992	495	9,415
71	7,445	447	4,530	515	4,446
123	11,746	451	13,071	562	17,890
274	2,222				

Vol. 7, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
18	7,240	192	1,351	441	1,071
32	5,533	238	16,801	505	5,073
59	2,245	320	1,928	622	6,196a
72	9,038	324	1,170	625	11,554
110	7,824	379	10,999	629	3,965
131	12,120				

Vol. 8, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
232	5,425	501	4,668	666	1,929
345	16,800	597	12,222	670	10,546

WESTERN JURIST—Cont'd.

Vol. 9, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
32	13,599	347	2,666	551	13,838
157	3,169	356	16,601	721	2,664
175	12,429	412	13,678		

Vol. 11, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
151	3,600	337	13,783	617	636
153	3,356	428	4,663	696	10,686
203	12,711				

Vol. 12, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
369	11,400	372	11,402	593	5,914

Vol. 13, West. Jur.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
317	9,043	357	8,082	505	13,774
318	9,043	409	6,546		

WESTERN LAW JOURNAL.

Vol. 1, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
2	7,501	203	1,440	355	17,717
15	8,885	207	13,571	359	10,104
51	8,890	240	9,600	381	12,836
56	7,502	245	16,452	399	15,531
143	18,064	246	447	444	2,129
150	1,944	300	8,891	465	17,214
189	8,883	315	14,421	513	8,381

Vol. 2, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	1,953	138	13,681	396	1,962
27	4,141	187	13,784	424	7,804
63	14,695	252	2,861	441	8,887
119	14,695	360	8,561	511	17,800

Vol. 3, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
4	9,630	109	1,946	153	6,742
35	1,945	144	477	183	15,045
65	16,903	151	3,662		

Vol. 4, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
38	6,914	89	11,867	371	17,839
49	13,078	261	4,436	412	1,963

Vol. 5, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
25	4,089	145	13,497	304	9,347
80	16,820	206	4,087	525	5,626

Vol. 6, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No
47	14,307	137	4,821	418	13,751
49	5,453	190	2,081	431	478
82	1,512	218	14,071	464	17,787
84	12,553	255	16,643	529	11,590
102	9,859	372	754	555	3,538
121	8,581				

Vol. 7, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	1,076	222	4,088	417	10,740
59	2,946	310	12,956	431	13,762
168	10,749	346	12,925	515	10,307

Vol. 8, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
158	1,559	385	5,503	481	16,441
241	5,484				

Vol. 9, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	1,389	145	15,445	163	18,276
14	3,613	151	15,815	510	12,008
103	15,299	162	1,089	550	12,947
106	9,861				

WESTERN LAW JOURNAL—Cont'd.

Vol. 10, West. Law J.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
174	8,801	370	18,046	459	12,648
197	13,645	416	7,955	461	13,200
289	15,071	433	17,158	528	9,583

WESTERN LAW MONTHLY.

Vol. 1, West. Law Month.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
31	5,816	161	15,006	356	9,050
53	1,045	163	16,523	425	7,716
107	4,430	179	13,568	443	6,855
126	6,872	186	7,787	522	17,969
159	8,019				

Vol. 2, West. Law Month.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
209	11,456	343	6,358	520	17,527
235	11,713	456	6,029	523	17,384
252	7,100	511	17,612	566	3,608
279	288	518	1,959	621	17,152

Vol. 3, West. Law Month.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
7	11,975	246	9,676	404	8,181
14	10,444	249	17,057	430	15,262
68	11,255	290	2,212	440	8,924
74	3,941	299	8,600	461	9,487
78	11,736	347	6,839	521	13,272
208	4,729	355	13,082	574	14,129

Vol. 4, West. Law Month.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
67	14,099	120	13,272a	415	5,013
75	13,612	165	14,792	425	15,004
78	16,251	193	4,563	449	1,292
80	8,800	281	17,443	486	15,446
82	13,541	314	699	561	15,238

Vol. 5, West. Law Month.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
29	16,240	98	7,995	209	7,773
37	16,816				

WESTERN LEGAL OBSERVER.

Vol. 1, West. Leg. Obs.

Page.	F. C. No.
80	16,246
212	3,538

WHARTON'S AMERICAN CRIMINAL LAW.

Vol. 1, Whart. Crim. Law.

Page.	F. C. No.
407	13,380

Vol. 2, Whart. Crim. Law.

Section.	F. C. No.
2802 (note)	15,975

WHARTON'S LAW OF HOMICIDE.

Whart. Hom.

Page.	F. C. No.
483	14,838

WHARTON'S PENNSYLVANIA DIGEST.

Vol. 1, Whart. Dig.

Page.	F. C. No.
572	10,172

Vol. 2, Whart. Dig.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
408	17,856	410	17,856	414	12,884
409	17,856	413	17,609	415	12,948

WHARTON'S PRECEDENTS OF INDICTMENTS AND PLEAS.

Whart. Prec. Ind.

Section.	F. C. No.
905 (note)	15,761
1061 (note)	14,433
1123 (note)	15,357

WHARTON'S UNITED STATES TRIALS.

Whart. St. Tr.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
49	6,360	175	16,621	610	5,127
90	16,122	176	15,788	652	17,708
93	5,862	185	16,622	659	14,865
93	15,270	189	16,766	682	16,472
102	15,443	333	8,646	684	15,324
172	16,401	392	16,175	688	14,709
174	16,073	458	5,126		

WHEELER'S NEW YORK CRIMINAL CASES.

Vol. 1, Wheeler, Crim. Cas.

Page.	F. C. No.
503	2,186

Vol. 2, Wheeler, Crim. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
xliv	14,442	283	15,304	543	15,429
xliv	14,584	325	16,757	573	14,692
56	4,366	451	15,493	594	13,632
96	16,033	477	15,374	597	3,137
101	15,321	490	16,537	600	9,078
102	15,241	513	14,525	602	16,052
205	14,782	521	14,497	615	14,248
232	16,309				

Vol. 3, Wheeler, Crim. Cas.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
11	4,425	264	14,420	382	7,558
100	16,341a	304	15,316	433	7,417
100	16,342	308	15,206	538	255

WHITMAN'S PATENT CASES.

Whit. Pat. Cas.

Page.	F. C. No.
392	5,627

WISCONSIN REPORTS.

Vol. 17, Wis.

Page.	F. C. No.
588 (570) note	8,507

WOODBURY & MINOT'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Woodb. & M.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	3,961	115	14,115	280	11,010
7	2,176	138	4,752	290	6,745
13	10,590	150	1,636	305	16,037
21	4,437	172	2,179	323	2,251
26	697	181	5,749	325	1,994
29	5,860	184	16,346	334	7,404
34	10,123	195	3,962	338	16,374
45	15,163	213	12,707	342	9,234
53	3,662	221	15,697	368	2,835
61	7,269	244	7,859	376	10,591
66	12,734	248	18,016	381	7,145
76	14,441	262	7,236	389	18,017
90	17,181	272	155	401	15,867

WOODBURY & MINOT'S UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Woodb. & M.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,785	211	4,759	365	2,260
23	11,152	217	4,984	371	256
48	10,652	229	6,404	407	16,797
63	6,213	233	46	417	2,177
75	2,023	246	13,009	426	1,331
87	3,704	298	14,275	449	11,015
92	8,237	303	7,552	472	2,829
118	3,820	329	17,647	497	17,323
121	217	337	6,861	524	18,013
158	10,987	347	576	531	4,899
168	6,908	359	5,762		

Vol. 3, Woodb. & M.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	5,149	185	4,711	368	7,256
17	6,746	193	8,933	380	17,509
38	2,435	217	15,469	390	17,510
69	10,985	227	10,714	399	9,686
97	12,399	236	5,750	403	1,332
105	13,609	258	9,236	413	12,887
120	18,014	277	7,310	426	14,232
135	18,018	325	7,975	430	13,143
151	11,218	333	6,316	437	17,453
157	12,158	341	17,116	456	14,233
164	16,390	348	109	519	8,196
168	10,761	359	17,098	529	10,259
179	13,158	364	4,985	539	13,446

WOODS' UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Woods.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	13,992	209	1,800	439	6,203
11	842	214	4,384	452	9,703
14	15,119	221	3,097	456	3,610
15	9,806	234	16,299	461	10,775
19	16,467	238	5,173	463	9,112
21	8,408	246	6,325	474	8,108
37	9,088	254	977	475	16,535
40	17,556	257	5,495	476	7,222
42	16,179	262	5,905	478	12,995
47	16,506	271	17,415	480	14,732
50	2,234	274	12,019	487	265
55	15,194	275	14,762	489	6,064
56	5,174	279	10,613	493	16,885
64	1,573	284	4,042	496	18,212
68	6,441	286	3,819	499	14,837
72	7,051	290	13,102	523	12,278
75	12,356	294	14,561	530	7,311
80	2,731	296	3,271	537	6,550
85	7,052	300	12,390	544	5,955
92	11,856	301	1,992	549	7,119
96	13,585	302	13,797	552	8,443
99	9,324	306	14,765	569	15,831
104	5,177	308	14,897	573	4,248
112	5,145	331	3,293	581	15,439
118	5,176	353	11,534	585	11,208
124	9,801	358	14,304	593	10,614
125	2,487	363	9,594	598	16,850
131	12,060	368	2,366	612	12,228
138	7,365	383	17,615	620	2,254
144	7,962	386	7,811	623	4,527
153	8,708	397	1,611	628	8,445
163	10,350	400	15,217	638	1,343
170	9,993	401	2,002	642	3,751
172	2,529	406	3,881	647	17,011
175	3,553	413	5,886	654	14,587
179	10,685	418	5,733	661	3,648
184	6,084	420	5,715	667	7,455
187	10,374	428	8,123	674	6,623
193	5,833	433	7,140	680	3,899
195	3,155	437	3,164		

Vol. 2, Woods.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	10,777	71	4,713	137	5,544
7	3,144	73	6,214	141	7,150
13	8,688	77	2,496	144	7,764
23	2,489	87	986	151	11,669
32	1,429	92	15,192	156	4,383
33	8,302	100	11,026	160	9,987
35	8,274	103	6,892	164	2,579
37	7,775	108	8,939	166	17,278
42	5,703	115	9,621	168	1,300
48	8,707	117	8,333	173	1,210
54	16,585	120	4,382	175	15,083
58	12,795	128	11,564	178	11,951
63	8,290	135	1,631	188	12,246

WOODS' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 2, Woods—Cont'd.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
197	15,294	346	5,506	506	13,296
204	2,710	349	2,355	519	3,588
206	329	354	9,828	523	13,297
211	10,366	357	8,855	532	7,737
213	5,266	368	12,630	542	4,137
215	13,426	372	11,205	547	13,964
220	3,060	380	13,521	554	8,216
222	729	385	1,808	564	13,860
225	17,118	390	7,532	571	82
229	10,842	395	10,792	574	13,113
230	15,871	407	6,016	578	739
236	2,493	409	17,775	584	2,686
241	987	428	1,862	596	13,114
243	9,377	433	6,438	599	13,176
244	9,804	435	14,254	606	18,166
254	7,139	437	2,688	621	12,586
263	2,369	443	7,403	628	358
272	6,532	447	17,776	632	9,619
287	10,091	458	12,996	643	10,960
293	2,043	463	17,528	647	17,008
306	3,592	467	9,665	657	5,746
310	17,616	474	2,892	663	9,795
315	4,411	479	7,894	667	13,918
318	15,795	483	9,770	670	665
323	4,926	490	11,207a	673	18,110
336	5,996	494	3,213	675	5,117
342	13,847	501	17,729	680	8,164

Vol. 3, Woods.

Page.	F. C. No.	Page.	F. C. No.	Page.	F. C. No.
1	8,940	182	14,342	441	7,299
5	1,039	187	15,225	443	7,465
9	4,853	199	16,139	481	1,807
13	8,601	205	8,331	487	356
16	4,703	215	15,877	493	17,707
18	11,684	222	8,541	494	7,463
19	1,649	269	6,533	496	5,352
21	10,184	273	6,739	502	12,126
28	5,682	277	4,280	504	4,792
32	3,460	281	12,744	510	15,080
34	8,540	287	6,534	514	17,188
39	14,947	304	6,258	527	7,525
43	17,495	308	13,848	529	16,244
46	9,421	313	7,757	535	12,829
47	14,948	216	221	542	8,446
53	9,769	334	16,242	550	15,219
56	5,281	336	16,940	553	3,812
61	7,430	342	18,171	555	7,774
69	7,392	344	3,537	567	4,138
75	11,289	351	6,012	582	798
77	5,175	367	5,047	587	13,670
94	3,387	371	17,252	597	4,139
98	16,997	377	13,781	603	14,246
103	10,182	380	6,949	613	13,523
111	5,446	382	1,091	620	11,048
115	10,183	386	11,904	631	17,828
124	349	388	5,120	642	17,814
128	17,386	390	14,120	651	3,209
134	8,100	397	5,462	667	17,449
141	3,993	404	13,501	670	1,695
146	13,175	408	2,846	674	17,433
146	13,809	413	7,141	683	3,791
152	17,308	418	3,483	691	17,434
158	2,386	427	5,461	715	3,166
167	8,202	432	12,385	719	14,917
177	1,361	434	5,351	724	1,700

Vol. 4, Woods.

Page.	F. C. No.	Page.	F. C. No.
1 (14 F. 373)	—	100 (9 F. 645)	—
6	4,402	102 (10 F. 347)	—
17	11,427	114 (14 F. 214)	—
18 (20 F. 653)	—	116 (15 F. 747)	—
19 (5 F. 99)	—	118 (10 F. 388)	—
25 (20 F. 655)	—	126 (11 F. 688)	—
28 (50 F. 222)	—	127 (11 F. 763)	—
30 (5 F. 305)	—	129 (12 F. 788)	—
43 (10 F. 330)	—	130 (12 F. 66)	—
48 (9 F. 333)	—	134 (14 F. 194)	—
48 (10 F. 394)	—	145 (16 F. 255)	—
50 (10 F. 397)	—	152 (16 F. 22)	—
52 (9 F. 353)	—	156 (16 F. 140)	—
65 (8 F. 707)	—	158 (16 F. 49)	—
69 (9 F. 855)	—	163 (14 F. 216)	—
71 (9 F. 211)	—	165 (14 F. 180)	—
72 (9 F. 860)	—	167 (14 F. 390)	—
74 (8 F. 115)	—	169 (16 F. 20)	—
78 (10 F. 722)	—	171 (15 F. 481)	—
81 (9 F. 865)	—	174 (15 F. 489)	—
83 (50 F. 215)	—	174 (16 F. 119)	—
90 (11 F. 277)	—	185 (16 F. 109)	—
94 (10 F. 720)	—	189 (16 F. 116)	—
96 (9 F. 743)	—	192 (16 F. 145)	—

WOODS' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Woods—Cont'd.

Page.	F. C. No.
197 (15 F. 555)	—
199 (15 F. 639)	—
201 (14 F. 615)	—
203 (14 F. 646)	—
206 (16 F. 11)	—
208 (16 F. 890)	—
213 (17 F. 16)	—
246 (16 F. 148)	—
247 (17 F. 265)	—
252 (16 F. 897)	—
255 (16 F. 916)	—
263 (17 F. 161)	—
265 (16 F. 924)	—
268 (48 F. 838)	—
270 (17 F. 399)	—
273 (12 F. 754)	—
280 (17 F. 109)	—
295 (50 F. 263)	—
308 (48 F. 640)	—
312 (50 F. 219)	—
317 (11 F. 625)	—
327 (14 F. 419)	—
331 (10 F. 717)	—
335 (16 F. 86)	—
337 (4 F. 796)	—
345 (9 F. 40)	—
349 (20 F. 630)	—
353 (5 F. 391)	—
356 (6 F. 824)	—
360 (10 F. 497)	—
370 (6 F. 426)	—
381 (50 F. 411)	—
383 (13 F. 1)	—
386 (13 F. 793)	—
389 (16 F. 89)	—
394 (16 F. 1)	—
399 (16 F. 4)	—
402 (15 F. 860)	—
404 (16 F. 7)	—
406 (15 F. 853)	—
411 (13 F. 705)	—
415	4,320
420 (2 F. 249)	—
427 (5 F. 641)	—
454 (10 F. 879)	—
455 (11 F. 814)	—
460 (9 F. 753)	—
462 (12 F. 61)	—
464 (12 F. 686)	—
472 (12 F. 725)	—
475 (14 F. 393)	—
477 (48 F. 892)	—
483 (48 F. 708)	—
491 (3 F. 112)	—
496 (4 F. 855)	—
503 (14 F. 4)	—
510 (14 F. 1)	—
513 (3 F. 117)	—
521 (14 F. 497)	—
523 (48 F. 705)	—
529	2,064
536 (12 F. 768)	—
541 (15 F. 101)	—
547 (49 F. 447)	—

WOODS' UNITED STATES CIRCUIT COURT REPORTS—Cont'd.

Vol. 4, Woods—Cont'd.

Page.	F. C. No.
557	13,526
560 (12 F. 595)	—
569 (15 F. 199)	—
575 (13 F. 152)	—
587 (16 F. 53)	—
592 (48 F. 902)	—
605	2,869
611 (16 F. 910)	—
614 (16 F. 900)	—
618 (17 F. 42)	—
625	13,675
637 (8 F. 485)	—
641 (14 F. 824)	—
645	10,563
652 (9 F. 867)	—
656 (20 F. 592)	—
659 (10 F. 831)	—
663 (16 F. 316)	—

WOOLWORTH'S UNITED STATES CIRCUIT COURT REPORTS.

Vol. 1, Woolw.

Page.	F. C. No.
17	16,639
26	12,080
49	6,760
63	5,713
69	4,189
75	15,215
80	13,180
88	5,685
93	15,658
96	8,914
99	657
102	4,344
123	16,451
128	15,216
141	9,947
150	2,900
170	11,055
175	12,450
192	16,373
198	2,032
204	11,074
217	14,439
225	1,450
236	16,583
266	1,880
278	3,210
293	2,926
299	8,388
313	12,142
324	7,373
330	12,110
340	12,038
365	6,340
372	9,047
377	4,191
383	13,682
390	7,399
400	12,288
422	730

ALPHABETICAL TABLE OF CASES.

Giving in brackets the number of each case reported in the Federal Cases, and citing by pages and volumes each report, periodical, or other publication in which each case has been heretofore reported.

Cross-references are also given, under the names of the defendants, and the second and other alternate titles of the cases, showing the case number in brackets under which such cases are reported in this series.

A

AALESUND, The [1], 9 Ben. 203.
A. B., In re [2], 3 Ben. 66.
A. B., In re [3], 3 N. B. R. 244 (Quarto, 58).
——, A Bankrupt, In re. [See 463.]
——, A Bankrupt, In re. [See 3,957.]
ABBE, In re [4], 2 N. B. R. 75 (Quarto, 26); 7 Amer. Law Reg. (N. S.) 824; 15 Pittsb. Leg. J. 589.
ABBE v. CLARK [5], 3 Ban. & A. 211; 13 O. G. 274.
ABBE v. ROOD [6], 6 McLean, 106.
ABBETT v. ZUSI [7], 5 Ban. & A. 38; 3 N. J. Law J. 47.
Abbey, Flanders v. [See 4,851.]
ABBEY v. ROBERT L. STEVENS, The [8], 22 How. Pr. 78; 21 Law Rep. 41.
ABBOT v. AMERICAN HARD RUBBER CO. [9], 4 Blatchf. 489.
Abbot, Bamfield v. [See 832.]
Abbot, Rogers v. [See 12,004.]
Abbot, United States v. [See 14,415.]
ABBOTT, In re [10], 1 Hask. 250.
Abbott, The James T. [See 7,202.]
Abbott, Bank of the United States v. [See 906.]
Abbott, Crum v. [See 3,454.]
Abbott, Davis v. [See 3,622.]
ABBOTT v. ESSEX CO. [11], 2 Curt. 126; 17 Law Rep. 607.
Abbott, Howe v. [See 6,766.]
ABBOTT v. McCARTNEY [12], 1 Holmes, 80.
Abbott, Mathews v. [See 9,275.]
Abbott, Neil v. [See 10,088.]
ABBOTT v. POWELL [13], 6 Sawy. 91.
Abbott, United States v. [See 14,416.]
Abbott, Wood v. [See 17,938.]
ABBY, The [14], 1 Mason, 360.
ABBY WHITMAN, The [15], 17 Law Rep. 322; 34 Hunt, Mer. Mag. 71.
Abeel, The John H. [See 7,349.]
Abel, Coblens v. [See 2,926.]
Abenheim, Futterer v. [See 5,164.]
ABERFOYLE, The [16], 1 Abb. Adm. 242.
ABERFOYLE, The [17], 1 Blatchf. 360.
ABIGAIL, The [18], 3 Mason, 331.
Able v. One Hundred Barrels of Spirits. [See 15,948.]
Able, Payne v. [See 10,854.]
Able, United States v. [See 14,417.]
Abner Taylor, The. [See 5,704.]
ABORN v. MASON [19], 14 Blatchf. 405.
Aborn, United States v. [See 14,418.]
A. B. Preston, The. [See 3,524.]
Abraham, Isaacs v. [See 7,094.]
Abraham Leggett, The. [See 4,450.]
ABRAHAMS, In re [20], 5 Law Rep. 328.
Abrams, Isaacs v. [See 7,095.]
ABRANCHES v. SCHELL [21], 4 Blatchf. 256.
ACACIA, The [22].
ACADIA, The [23], 10 Ben. 482.
ACADIA, The [24], 1 Brown, Adm. 73.
Accounts of. [See 12,792.]
A. CHEESEBROUGH, The [25], 3 Blatchf. 305.
Achilles, The, McCloskey v. [See 8,701.]
Achsah, The, Orr v. [See 10,586.]
Acker, Martin v. [See 9,155.]
ACKER v. RAINBOW, The [26], 4 Amer. Law J. (N. S.) 332; 14 Law Rep. 450.
Ackerly v. Vilas. [See 119.]
Ackerman, The C. F. [See 2,562.]
ACME, The [27], 2 Ben. 386; 7 Int. Rev. Rec. 149; 1 Amer. Law T. Rep. U. S. Cts. 60.
ACME, The [28], 7 Blatchf. 366.
ACORN, The [29], 2 Abb. U. S. 434; 12 Int. Rev. Rec. 113; 2 Chi. Leg. News, 413; 5 Amer. Law Rev. 563.
ACORN, The [30], 21 Law Rep. 99.
Acorn, The [See 10,252.]
ACOSTA v. HALCYON, The [31].
ACOSTA v. HALCYON, The [32].
Actien Gesellschaft Apollinaris Brunnen v. Somborn [See 496.]
ACTIVE, The [33], 1 Deady, 165.
ACTIVE, The [34], Olc. 286.
ACTIVE, The [35], 1 Paine, 247.
Active, The, Ross v. [See 12,071.]
Active, The, United States v. [See 14,420.]
Acton, Bancroft v. [See 833.]
ACTOR, The [36], Blatchf. Pr. Cas. 200.
ACTOR, The [37], Blatchf. Pr. Cas. 215.
ADA, The [38], 2 Ware (Dav. 407) 408.
Adair, Walker v. [See 17,064.]
ADAMS, Ex parte [38a], 3 App. Comr. Pat. 410.
ADAMS, In re [39], 2 Ben. 503; 2 N. B. R. 95 (Quarto, 33); 36 How. Pr. 51.
ADAMS, In re [40], 3 Ben. 7; 2 N. B. R. 272 (Quarto, 92); 36 How. Pr. 270; 1 Chi. Leg. News, 107.
ADAMS, In re [41], 5 Ben. 544.
ADAMS, In re [42], 6 Ben. 56.
ADAMS, In re [43], 3 N. B. R. 561 (Quarto, 139).
Adams, The Ben. [See 1,289.]
Adams, Bailey Wringing-Mach. Co. v. [See 752.]
ADAMS v. BANCROFT [44], 3 Sumn. 384; 1 Law Rep. 319.
ADAMS v. BARNARD [45].
Adams v. Beach. [See 52.]
Adams, Bennett v. [See 1,316.]
ADAMS v. BLODGETT [46], 2 Woodb. & M. 233; 10 Law Rep. 69; 17 Hunt, Mer. Mag. 79.
ADAMS v. BOSTON, H. & E. R. CO. [47], 1 Holmes, 30; 4 N. B. R. 314 (Quarto, 99); 5 Amer. Law Rev. 375; 18 Pittsb. Leg. J. 154.
ADAMS v. BRADLEY [48], 5 Sawy. 217.

[Federal Case numbers are given in brackets.]

Adams, Brown v. [See 1,986.]
ADAMS v. BURKE [49], 3 Sawy. 415.
ADAMS v. BURKS [50], Holmes, 40; 4 Fish. Pat. Cas. 392; 1 O. G. 282.
Adams, Burnham v. [See 2,173.]
Adams, Child v. [See 2,673.]
Adams, Codrington v. [See 2,937.]
Adams, Cottrell v. [See 3,272.]
ADAMS v. DE COOK [51], McAll. 253.
Adams, Dickinson v. [See 3,896.]
ADAMS v. DOUGLAS COUNTY [52], McCahon, 235; 1 Kan. 627.
ADAMS v. EDWARDS [53], 1 Fish. Pat. Cas. 1; Merw. Pat. Inv. 650.
Adams, Falls Bridge Turnpike Co. v. [See 4,630.]
Adams, Gelston v. [See 5,302.]
Adams, Herbert v. [See 6,394.]
Adams, Hollingsworth v. [See 6,611.]
Adams, Hudson v. [See 6,832.]
ADAMS v. ILLINOIS MFG. CO. [54], 4 Ban. & A. 543; 18 O. G. 412.
ADAMS v. ISLAND CITY, The [55], 1 Cliff. 210.
ADAMS v. JOLIET MFG. CO. [56], 3 Ban. & A. 1; 12 O. G. 93; Merw. Pat. Inv. 252.
ADAMS v. JONES [57], 1 Fish. Pat. Cas. 527; 2 Pittsb. Rep. 73; 7 Pittsb. Leg. J. 170; Merw. Pat. Inv. 660.
Adams, Karrahoo v. [See 7,614.]
Adams, Kemper v. [See 7,688.]
ADAMS v. KINCAID [58], 2 Cranch, C. C. 422.
Adams, Larned v. [See 8,092.]
ADAMS v. LAWRENCE CO. [59], 7 Pittsb. Leg. J. 145; 2 Pittsb. Rep. 60.
ADAMS v. LEWIS [60], 5 Sawy. 229; 10 Chi. Leg. News, 403.
ADAMS v. LOFT [61], 4 Ban. & A. 495; 8 Reporter, 612; 25 Int. Rev. Rec. 377; 36 Leg. Int. 405.
ADAMS v. MEYERS [62], 1 Sawy. 306; 8 N. B. R. 214.
ADAMS v. MILLER [63], 1 Cranch, C. C. 5.
Adams, Mini v. [See 9,632.]
Adams, Monce v. [See 9,705.]
Adams, New Orleans Nat. Banking Ass'n v. [See 10,184.]
Adams, Northrup v. [See 10,328.]
ADAMS v. OCEAN QUEEN, The [64].
Adams, Owens v. [See 10,633.]
ADAMS v. SOPHIA, The [65], Gilp. 77.
ADAMS v. STOREY [66], 1 Paine, 79; 6 Hall, Law J. 474.
Adams, United States v. [See 14,421.]
Adams, United States Life Ins. Co. v. [See 16,792.]
Adams, Waller v. [See 17,107.]
ADAMS v. WEST ROXBURY [67], 1 Hask. 576.
ADAMS v. WHITE [68], 2 Pittsb. Rep. 21; 7 Pittsb. Leg. J. 41; 16 Leg. Int. 293.
Adams, White v. [See 17,534.]
ADAMS v. WHITING [69], 2 Cranch, C. C. 132.
ADAMS v. WILBUR [70], 2 Sumn. 266.
Adams, Wilder v. [See 17,647.]
Adams, Williams v. [See 17,711.]
ADAMS v. WYOMING, The [71], 2 N. J. Law J. 275.
ADAMS & W. MFG. CO. v. ST. LOUIS WIRE-GOODS CO. [72], 3 Ban. & A. 77; 12 O. G. 940; Fent. Pat. 31.
Adams Exp. Co., Bank of Kentucky v. [See 889.]
ADAMS EXP. CO. v. DAVISON [73], 3 Balt. Law Trans. No. 7.
Adams Exp. Co., Norwalk Bank v. [See 10,354.]
ADAMSON v. DEDRICK [74], 2 O. G. 523.
Addatte, United States v. [See 14,422, 14,423.]
ADDERLY v. AMERICAN MUT. INS. CO. OF BALTIMORE [75], Taney, 126.
ADDISON, In re [76], 3 Hughes, 430.
ADDISON v. DUCKETT [77], 1 Cranch, C. C. 349.
Addison, Smith v. [See 12,998.]
Adelaide, The, Chadwick v. [See 2,571.]
Adelaide, The, Green v. [See 5,752.]
ADELE, The [78], 1 Ben. 309.
ADELIA, The [79], 1 Hask. 505.
ADELPHI, The [80].
A. Denike, The, Lane v. [See 8,045.]
Adger, The James. [See 7,188.]
Adie, Lillibridge v. [See 8,350.]
ADJUSTABLE WINDOW SCREEN CO. v. BOUGHTON [81], 1 Ban. & A. 327; 10 Phila. 251; 31 Leg. Int. 254.
ADLER, In re [82], 2 Woods, 571.
Adler, Ex parte. [See 7,066.]
ADLER v. NEWCOMB [83], 16 Int. Rev. Rec. 142, 174; 2 Dill. 45.
Adler, United States v. [See 14,424.]
ADMIRAL, The [84], 18 Law Rep. 91.
ADMIRAL, The [85], 3 Wall. Jr. 361; 5 Phila. 116; 19 Leg. Int. 300.
ADOLPH, The [86], 1 Curt. 87.
Adolphe, The, Williams v. [See 17,712.]
A. D. PATCHIN, The [87], 1 Blatchf. 414.
A. D. Patchin, The, Gager v. [See 5,170.]
A. D. Patchin, The, Patchin v. [See 10,794.]
ADRIAN v. LIVE YANKEE, The [88], 33 Hunt, Mer. Mag. 703.
Adriance, Hotchkiss v. [See 6,715a.]
Adriance, Sprague v. [See 13,248.]
ADRIATIC, The [89], 9 Ben. 98; 16 Amer. Law Reg. (N. S.) 491; 4 Amer. Law T. Rep. (N. S.) 353; 24 Pittsb. Leg. J. 208.
ADRIATIC, The [90], 16 Blatchf. 424; 8 Reporter, 231.
ADRIATIC, The [91], 17 Blatchf. 176; 8 Reporter, 615.
A. D. VANCE, The [92], Blatchf. Pr. Cas. 608.
Advance, The, United States v. [See 14,425.]
ADVENTURE, The [93], 1 Brock. 235.
ADVOCATE, The [94], Blatchf. Pr. Cas. 142.
A. E. Douglass, The, Southworth v. [See 13,195.]
A. E. I., The, Sloan v. [See 12,946.]
Aeolian, The, Logan v. [See 8,465.]
AERTSEN v. AURORA, The [95], Bee, 161.
Aetna Ins. Co., Anthony v. [See 486.]
Aetna Ins. Co., Baubie v. [See 1,111.]
Aetna Ins. Co., Boon v. [See 1,639.]
Aetna Ins. Co., Collins v. [See 3,009.]
AETNA INS. CO. v. HANNIBAL & ST. J. R. CO. [96], 3 Dill. 1, 1 Cent. Law J. 206.
Aetna Ins. Co., Jones v. [See 7,453.]
Aetna Ins. Co., Lee v. [See 8,181.]
Aetna Ins. Co., Murray v. [See 9,955.]
Aetna Ins. Co., Porter v. [See 11,286.]
AETNA INS. CO. v. SABINE [97], 6 McLean, 393.
Aetna Life Ins. Co., France v. [See 5,027.]
Affiick, Thompson v. [See 13,939, 13,940.]
Agawam Woolen Co., Jordan v. [See 7,516.]
A. G. BROOKS, The [98], 1 Lowell, 299.
Agnelly, Gaines v. [See 5,173.]
Agnes, The, Egleston v. [See 4,308.]
Agnes, The, Menzies v. [See 9,430.]
AGNES H. WARD, The [99], Blatchf. Pr. Cas. 197.
Agnes, The Louisa. [See 8,531.]
AGNEW v. DORMAN [100], Taney, 386.
Agnew, Leland v. [See 8,236.]
Agry, Wallace v. [See 17,097.]
Aguilla, The. [See 500.]
AGUIRRE v. MAXWELL [101], 3 Blatchf. 140.
AH FONG, In re [102], 3 Sawy. 144; 13 Amer. Law Reg. (N. S.) 761; 7 Chi. Leg. News, 17; 3 Amer. Law Rec. 403; 9 Amer. Law Rev. 359; 20 Int. Rev. Rec. 112; 1 Cent. Law J. 516.
AHL v. THORNER [103], 2 Bond, 287; 3 N. B. R. 118 (Quarto, 29); 16 Pittsb. Leg. J. 78; 2 Amer. Law T. 104; 1 Chi. Leg. News, 337; 1 Amer. Law T. Rep. Bankr. 129.
AH YUP, In re [104], 5 Sawy. 155; 6 Cent. Law J. 387; 17 Alb. Law J. 385; 24 Int. Rev. Rec. 164.
AIGBURTH, The [105], Blatchf. Pr. Cas. 635.
Aigburth, The. [See 12,352.]
AIGBURTH, The [106], Blatchf. Pr. Cas. 645.
AIKEN, In re [107], 1 McA. Pat. Cas. 126.
AIKEN, In re [108], 1 McA. Pat. Cas. 130.
AIKEN v. BEMIS [109], 3 Woodb. & M. 348; 2 Robb, Pat. Cas. 644.
Aiken, Crowe v. [See 3,441.]
AIKEN v. DOLAN [110], 3 Fish. Pat. Cas. 197; Merw. Pat. Inv. 95.
AIKEN v. EDRINGTON [111], 15 N. B. R. 271.
AIKEN v. FERRY [112], 6 Sawy. 79.
AIKEN v. MANCHESTER PRINT WORKS [113], 2 Cliff. 435.
AIREY v. ANN C. PRATT, The [113a], 10 N. Y. Leg. Obs. 199.

[Federal Case numbers are given in brackets.]

AIREY v. ANN C. PRATT, The [114], 1 Curt. 395.
AIREY v. MERRILL [115], 2 Curt. 8.
AITKEN v. MAY POWELL, The [116].
AJAX, The [117], 1 Adm. Rec. 431.
A. J. VIEW, The [118], Blatchf. Pr. Cas. 143.
Aken, Warburton v. [See 17,143.]
AKERLY v. VILAS [119], 1 Abb. U. S. 284; 2 Biss. 110; 1 Chi. Leg. News, 161; 8 Amer. Law Reg. (N. S.) 229.
AKERLY v. VILAS [120], 3 Biss. 332; 5 Chi. Leg. News, 73; 16 Int. Rev. Rec. 154.
AKIN v. LIVERPOOL & LONDON & GLOBE INS. CO. [121], 6 Ins. Law J. 341.
Akron Cement & Plaster Co., Cummings v. [See 3,473.]
ALABAMA, The [122], 1 Ben. 476.
ALABAMA, The [123], 11 Blatchf. 482.
Alabama, The, Smith v. [See 12,998a.]
ALABAMA & C. R. CO., In re [124], 9 Blatchf. 390; 6 N. B. R. 107; 5 Amer. Law T. Rep. 76; 6 Amer. Law Rev. 577.
ALABAMA & C. R. CO., In re [125].
Alabama & C. R. Co., Blake v. [See 1,493.]
Alabama & C. R. Co., Davenport v. [See 3,588.]
ALABAMA & C. R. CO. v. JONES [126], 5 N. B. R. 97.
ALABAMA & C. R. CO. v. JONES [127], 7 N. B. R. 145.
Alabama & C. R. Co., Stanton v. [See 13,297.]
ALABAMIAN, The [128], 2 Adm. Rec. 254.
ALASKA, The [129], 3 Ben. 391.
ALASKA, The [130], 7 Ben. 183.
ALBANY, The [131], 4 Dill. 439; 15 Alb. Law J. 67; 4 Cent. Law J. 16.
Albany, The, Brown v. [See 1,987.]
Albany & Canal Line, Deems v. [See 3,736.]
ALBANY DREDGING CO. v. GLADIOLUS, The [132].
ALBANY EXCH. BANK v. JOHNSON [133], 5 Law Rep. 313; 1 N. Y. Leg. Obs. 166.
Albany Rensselaer Iron & Steel Co., Tuttle v. [See 14,276.
Albatross, The, Sutton v. [See 13,645.]
Albee, Ingraham v. [See 7,044.]
ALBEE v. MAY [134], 2 Paine, 74.
ALBEMARLE, The [135], 8 Blatchf. 200.
ALBERS v. FRICK [136], 1 Hunt, Mer. Mag. 351.
ALBERS v. WHITNEY [137], 1 Story, 310.
ALBERT, The [138], Blatchf. Pr. Cas. 280.
ALBERT, The [139], Blatchf. Pr. Cas. 663.
Albert, Burnap v. [See 2,170.]
Albert, The, Kissam v. [See 7,852.]
ALBERT GALLATIN, The [140].
Albert G. Lawson, The. [See 7,364.]
Albert, The John. [See 7,333.]
ALBERTI v. VIRGINIA, The [141], 2 Paine, 115.
Alberto, The, Pierce v. [See 11,142.]
Alberty, United States v. [See 14,426.]
Albin, Haughey v. [See 6,222.]
ALBION, The [142], Blatchf. Pr. Cas. 95.
ALBION, The [143], 18 Leg. Int. 405; 4 Phila. 418.
ALBION LINCOLN, The [144], 1 Lowell, 71.
Alboni, The, Brittan v. [See 1,902.]
ALBRECHT, In re [145], 17 N. B. R. 287.
ALBREE v. JOHNSON [146], 1 Flip. 341; 6 Chi. Leg. News, 296.
ALBRIGHT v. CELLULOID HARNESS TRIMMING CO. [147], 2 Ban. & A. 629; 12 O. G. 227; Merw. Pat. Inv. 254.
Albright v. Empire Transp. Co. [See 17,720.]
Albright, Voorhees v. [See 16,999.]
Albro, The Edward. [See 4,290.]
ALBUS, The [148].
ALCOTT v. YOUNG [149], 16 Blatchf. 134; 4 Ban. & A. 197; 16 O. G. 403; Merw. Pat. Inv. 272; 7 Reporter, 552.
ALDEBARAN, The [150], Olc. 130.
ALDEN, In re [151], 16 N. B. R. 39; 23 Int. Rev. Rec. 234, 282; 9 Chi. Leg. News, 346; 25 Pittsb. Leg. J. 4.
ALDEN, In re [151a], 10 Hunt, Mer. Mag. 469.
ALDEN v. BOSTON, H. & E. R. CO. [152], 5 N. B. R. 230.
ALDEN v. DEWEY [153], 1 Story, 336; 2 Robb, Pat. Cas. 17; 3 Law Rep. 383; Merw. Pat. Inv. 649.
Alden, Hills v. [See 6,507.]
Alden, United States v. [See 14,427.]
ALDERDICE v. STATE BANK OF VIRGINIA [154], 1 Hughes, 47; 11 N. B. R. 398.
ALDRICH v. EQUITABLE SAFETY INS. CO. [155], 1 Woodb. & M. 272.
Aldrich, Suydam v. [See 13,652.]
ALDRIDGE v. DRUMMOND [156], 1 Cranch, C. C. 400.
Aldridge, Muirhead v. [See 9,904.]
Aldridge, Parkes v. [See 10,755.]
Aldridge, Turner v. [See 14,249.]
ALEPPO, The [157], 5 Ben. 554.
ALEPPO, The [158], 7 Ben. 120.
ALEXANDER, In re [159], 8 Ben. 99.
ALEXANDER, In re [160], Chase, 295; 3 N. B. R. 29 (Quarto, 6); 8 Amer. Law Reg. (N. S.) 423; 2 Amer. Law T. Rep. Bankr. 81; 16 Pittsb. Leg. J. 91; 2 Balt. Law Trans. 759.
ALEXANDER, In re [161], 1 Lowell, 470; 4 N. B. R. 178 (Quarto, 145); 18 Pittsb. Leg. J. 81; 3 Amer. Law T. 280; 1 Amer. Law T. Rep. Bankr. 238.
ALEXANDER, In re [162], 1 Lowell, 530.
ALEXANDER, In re [163], 3 N. B. R. 20 (Quarto); 2 Amer. Law T. 137.
Alexander, The. [See 1,988, 13,186, 3,312a.]
ALEXANDER, The [164], 1 Gall. 532.
ALEXANDER, The [165], 3 Mason, 175.
Alexander, Allison v. [See 251.]
Alexander, Bennet v. [See 1,310.]
Alexander, Bryan v. [See 2,064.]
ALEXANDER v. CENTRAL RAILROAD OF IOWA [166], 3 Dill. 487; 1 Cent. Law J. 543.
Alexander, Conway v. [See 3,146.]
Alexander, Dunlop v. [See 4,166.]
ALEXANDER v. GALLOWAY [167], 1 Abb. Adm. 261.
Alexander, Goshorn v. [See 5,630.]
Alexander, Graham v. [See 5,662.]
Alexander, Habricht v. [See 5,886.]
Alexander, Harris v. [See 6,113.]
ALEXANDER v. HARRIS [168], 1 Cranch, C. C. 243.
ALEXANDER v. HORNER [169], 1 McCrary, 634; 9 Cent. Law J. 111.
Alexander, Jamieson v. [See 7,203.]
Alexander, Joice v. [See 7,435.]
ALEXANDER v. KNOX [170], 6 Sawy. 54.
Alexander, The, Lea v. [See 8,153.]
Alexander, Little v. [See 8,393.]
Alexander, Morrison v. [See 9,840.]
ALEXANDER v. PATTEN [171], 1 Cranch, C. C. 338.
ALEXANDER v. RODRIGUEZ [172].
ALEXANDER'S ADM'R v. SELDEN [173], 4 Cranch, C. C. 96.
ALEXANDER v. THOMAS [174], 1 Cranch, C. C. 92.
ALEXANDER v. TODD [175], 1 Bond, 175.
ALEXANDER v. TURNER [176], 1 Cranch, C. C 86.
Alexander, United States v. [See 14,428.]
Alexander, Vowell v. [See 17,017.]
ALEXANDER v. WEST'S EX'X [177], 1 Cranch, C. C. 88.
Alexander McNeil, The [See 14,404, 1,988, 3,312a, 13,186.]
ALEXANDRIA, The [178], 10 Ben. 101.
ALEXANDRIA, The [179], 8 Reporter, 390.
ALEXANDRIA v. BOWNE [180], 1 Cranch, C. C. 124.
ALEXANDRIA v. BROCKETT [181], 1 Cranch, C. C. 505
ALEXANDRIA v. BROCKETT [182], 2 Cranch, C. C. 13.
ALEXANDRIA v. CORSE [183], 2 Cranch, C. C. 363.
Alexandria, Fowle v. [See 4,993.]
Alexandria, Hooe v. [See 6,666.]
Alexandria, Hooe v. [See 6,667.]
Alexandria, Lyles v. [See 8,623.]
Alexandria, Lyles v. [See 8,624.]
ALEXANDRIA v. MANDEVILLE [184], 2 Cranch, C. C. 224.
ALEXANDRIA v. MOORE [185], 1 Cranch, C. C. 440.
ALEXANDRIA v. PATTEN [186], 1 Cranch, C. C. 294.
ALEXANDRIA v. WISE [187], 2 Cranch, C. C. 27.
Alexandria Canal Co., Swann v. [See 13,671.]

[Federal Case numbers are given in brackets.]

Alexandria, etc., R. Co., Hay v. [See 6,254.]
Alexandria Water Co., Avil v. [See 679.]
ALFONSO v. UNITED STATES [188], 2 Story, 421.
ALFRED, The [189], 1 Adm. Rec. 461.
ALFRED AND EDWIN, The [190], 7 Ben. 137.
ALFRED AND EDWIN, The [191].
A. L. Griffin, The, Councer v. [See 3,279.]
ALHAMBRA, The [192], 2 Ben. 158; 7 Int. Rev. Rec. 75.
Alice, The. [See 98.]
Alice v. Morte. [See 198.]
ALICE GETTY, The [193], 2 Flip. 18; 9 Chi. Leg. News, 315; 4 N. Y. Wkly. Dig. 471; 23 Int. Rev. Rec. 203.
ALICE TAINTER, The [194], 5 Ben. 391; 15 Int. Rev. Rec. 40.
ALICE TAINTER, The [195], 14 Blatchf. 41.
ALICE TAINTER, The [196], 14 Blatchf. 225.
ALICE VIVIAN, The [197], 8 Adm. Rec. 403.
ALICE v. MORTE [198], 2 Cranch, C. C. 485.
ALIDA, The [199], 1 Abb. Adm. 165.
ALIDA, The [200], 1 Abb. Adm. 173.
ALIDA, The [201], 3 Ben. 580.
Alida, The, Brown v. [See 1,989.]
Alida, The, Earle v. [See 4,245.]
Alida, The, Elmore v. [See 4,419.]
Alida, The, Spencer v. [See 13,231.]
ALIEN, An, In re [201a], Betts' Scr. Bk. 101.
Aline, The. [See 6,991.]
ALKAN v. BEAN [202], 8 Biss. 83; 23 Int. Rev. Rec. 351; 10 Chi. Leg. News, 25.
Alknomac, The, Campbell v. [See 2,350.]
ALLAIR v. FRANCIS A. PALMER, The [203], 3 Wkly. Law Gaz. No. 25.
Allaire Works, Hubbard v. [See 6,814.]
Allderdice, Boutwell v. [See 1,708.]
ALLEGHANY, The [204], 1 Biss. 497.
ALLEGHANY, The [205], 2 Biss. 29; 1 Chi. Leg. News, 81.
ALLEGHANY FERTILIZER CO. v. WOODSIDE [206], 1 Hughes, 115; Cox, Manual Trade-Mark Cas. 206.
Allegheny, The, United States v. [See 14,429.]
Allegheny, The, Wolverton v. [See 17,931.]
Allegheny City, McCormick v. [See 8,717.]
Allegheny County, Dobbin v. [See 3,941.]
Allegheny County, Loute v. [See 8,544.]
Allegheny County, Wood v. [See 17,939.]
Allegheny Ins. Co., Constant v. [See 3,136.]
ALLEGIANCE, The [207], 6 Sawy. 68.
ALLEGRO v. NIAGARA, The [207a], 21 Betts' D. C. MS. 89.
ALLEN, Ex parte [207b], 3 App. Comr. Pat. 388.
Allen, In re. [See 5,306.]
ALLEN, In re [208], 13 Blatchf. 271.
ALLEN, In re [209], 2 Month. Jur. 58.
ALLEN, In re [210], 17 N. B. R. 157; 17 Alb. Law J. 170; 6 N. Y. Wkly. Dig. 43; 25 Pittsb. Leg. J. 143.
ALLEN v. ALLEN [18,223], Hempst. 58.
ALLEN v. ALLEN'S EX'R [211], 3 Wall. Jr. 248; 14 Leg. Int. 148; 5 Pittsb. Leg. J. 22.
ALLEN v. ALTER [212], 3 App. Comr. Pat. 322.
ALLEN v. ARGUELLES [213], 4 Cranch, C. C. 170.
ALLEN v. BENNETT [214], 6 Amer. Law Rev. 755.
ALLEN v. BLUNT [215], 1 Blatchf. 480; 1 Fish. Pat. Rep. 303; 8 N. Y. Leg. Obs. 105.
ALLEN v. BLUNT [216], 3 Story, 742; 2 Robb, Pat. Cas. 288; 8 Law Rep. 165.
ALLEN v. BLUNT [217], 2 Woodb. & M. 121; 2 Robb, Pat. Cas. 530.
ALLEN v. BROOKLYN [218], 8 Blatchf. 535; 4 Fish. Pat. Cas. 598.
ALLEN v. CANADA, The [219], Bee, 90.
ALLEN v. CROGHAN [220], 5 Cranch, C. C. 517.
ALLEN v. DALLAS & W. R. CO. [221], 3 Woods, 316.
ALLEN v. GREENWOOD [222], 1 Cranch, C. C. 60.
ALLEN v. HALLET [223], 1 Abb, Adm. 573.
ALLEN v. HITCH [224], 2 Curt. 147.
ALLEN v. HUNTER [225], 6 McLean, 303.
Allen, The Stephen. [See 13,361.]
Allen v. Allen. [See 211.]
Allen, Blair v. [See 1,483.]
Allen, Bond v. [See 1,619.]
Allen, Cramer v. [See 3,346.]
Allen, Crapo v. [See 3,330.]
Allen, Cull v. [See 3,465.]
Allen, Green v. [See 5,753.]
Allen, Hammond v. [See 6,000.]
Allen, Harvey v. [See 6,177.]
Allen v. The H. P. Baldwin. [See 6,811.]
Allen, Jay v. [See 7,235.]
Allen, Joy v. [See 7,552.]
ALLEN v. KING [226], 4 McLean, 128.
Allen, Kinney v. [See 7,826.]
ALLEN v. LYONS [227], 2 Wash. C. C. 475.
Allen, McArthur v. [See 8,659.]
ALLEN v. MACKAY [228], 1 Spr. 219; 16 Law Rep. 686.
ALLEN v. McKEAN [229], 1 Sumn. 276.
ALLEN v. MAGRUDER [230], 3 Cranch, C. C. 6.
ALLEN v. MASSEY [231], 2 Abb. U. S. 60; 1 Dill. 40; 4 N. B. R. 248 (Quarto, 75); 2 Chi. Leg. News, 309; 3 Amer. Law T. Bankr. 188; 1 Amer. Law T. Bankr. 218.
ALLEN v. NEW YORK [232], 17 Blatchf. 350; 5 Ban. & A. 57; 17 O. G. 1281.
Allen, Nourse v. [See 10,367.]
ALLEN v. OGDEN [233], 1 Wash. C. C. 174.
Allen, Osgood v. [See 10,603.]
Allen, Payne v. [See 10,855.]
Allen, Pedro v. [See 10,901.]
ALLEN v. PHILADELPHIA SAV. FUND SOC. [234], 36 Leg. Int. 204; 7 Reporter, 775; 4 Cin. Law Bul. 350; 14 Phila. 408; 25 Int. Rev. Rec. 170; 7 Wkly. Notes Cas. 231; 26 Pittsb. Leg. J. 171; 11 Chi. Leg. News, 344.
Allen, Rocksell v. [See 11,983.]
Allen, Russell v. [See 12,149.]
ALLEN v. RYERSON [235], 2 Dill. 501.
ALLEN v. SCHUCHARDT [236], 1 Amer. Law Reg. (N. S.) 13.
ALLEN v. SIMONS [237], 1 Curt. 122.
Allen, Smith v. [See 12,999.]
ALLEN v. SPRAGUE [238], 1 Blatchf. 567; 1 Fish. Pat. Rep. 388.
ALLEN v. THOMAS [239], 1 Cranch, C. C. 294.
Allen, United States v. [See 14,430, 14,431, 14,432.]
ALLEN v. UNITED STATES [240], Taney, 112.
Allen v. Vint. [See 16,950.]
Allen, Vose v. [See 17,005, 17,006.]
Allen, White v. [See 17,535.]
ALLEN v. WHITTEMORE [241], 8 Ben. 485; 14 N. B. R. 189.
ALLEN'S HEIRS v. ALLEN'S EX'RS [242], 3 Wall. Jr. 289; 18 Leg. Int. 109.
ALLER v. CAMERON [243], 3 Dill. 198.
Allerton, The Isaac. [See 7,087.]
Alliance, The. [See 5,527.]
ALLIANCE, The [244], Blatchf. Pr. Cas. 186.
ALLIANCE, The [245], Blatchf. Pr. Cas. 262; 5 Leg. & Ins. Rep. 2.
ALLIANCE, The [246], Blatchf. Pr. Cas. 646.
ALLIANCE INS. CO. v. MORNING LIGHT, The [246a], Betts' Scr. Bk. 531.
ALLIANCE INS. CO. v. MORNING LIGHT, The [246b], Betts' Scr. Bk. 586.
ALLIANCE INS. CO. v. MORNING LIGHT, The [246c], Betts' Scr. Bk. 709.
Alliance Life Ins. Co., Lovell v. [See 8,552.]
ALLIGATOR, The [247].
ALLIGATOR, The [248], 1 Gall. 145.
ALLIN v. ROBINSON [249], 1 Dill. 119.
Alling, Denver & R. G. Ry. Co. v. [See 3,811.]
Allis, Davidson v. [See 3,600.]
ALLIS v. STOWELL [250].
ALLISON v. ALEXANDER [251], 1 Cranch, C. C. 237.
Allison, Hartshorn v. [See 6,165.]
ALLISON v. PHŒNIX INS. CO. [252], 3 Dill. 480; 4 Ins. Law J. 198.
Allison, Whitfield v. [See 17,571.]
Allwine, Camac v. [See 2,328.]
Allyn, Goodyear v. [See 5,555.]
Allyn, Smith v. [See 13,000, 13,001.]
ALMA, The [253], 2 Spr. 203; 25 Law Rep. 663.
ALMATIA, The [254], Deady, 473; 1 Amer. Law T. Rep. U. S. Cts. 133; 1 Chi. Leg. News, 129.
ALMEIDA v. CERTAIN SLAVES [255], 5 Hall, Law J. 459; 5 Hughes, 55; 3 Wheeler, Cr. Cas. 538.
Almeida, United States v. [See 14,433.]
Almy, Hartshorn v. [See 6,166.]
Almy, Jay v. [See 7,236.]
Almy, Kendall v. [See 7,690.]
Almy, Walcott v. [See 17,052.]

[Federal Case numbers are given in brackets.]

ALMY v. WILBUR [256], 2 Woodb. & M. 371.
Alonso, The, Bush v. [See 2,223.]
ALONZO, The [257], 1 Hask. 184.
ALONZO, The [258], 3 Ware, 318.
Alphonso, The, Williamson v. [See 17,749.]
ALRICKS v. SLATER [259], 1 Cranch, C. C. 72.
ALSBERG, In re [260], 9 Ben. 17.
ALSBERG, In re [261], 16 N. B. R. 116.
ALSOP v. COMMERCIAL INS. CO. [262], 1 Sumn. 451.
ALSOP v. MAXWELL [263], 2 Blatchf. 557.
ALSOP v. MAXWELL [264], 3 Blatchf. 399.
ALSTON v. COHEN [265], 1 Woods, 487.
ALSTON v. MANNING [266], Chase, 460.
ALSTON v. MUNFORD [267], 1 Brock. 266.
Altemus, Harding v. [See 6,049.]
ALTENHEIM, In re [268], 1 Ben. 431; 1 N. B. R. 85; Bankr. Reg. Supp. 19; 6 Int. Rev. Rec. 117.
Alter, Weaver v. [See 17,308.]
Alton, Sturtevants v. [See 13,580.]
Alton, Turner v. [See 14,250.]
Alvarado, The, Phelan v. [See 11,067.]
Alviso, United States v. [See 14,434.]
Alvisu, United States v. [See 14,435, 14,436.]
ALVORD v. UNITED STATES [269], 13 Blatchf. 279.
Amado, The, Rogers v. [See 12,005.]
Amador, United States v. [See 14,437.]
Amanda F. Myrick, The, Herbert v. [See 6,395.]
Amanda Frances Myrack, The, Cohen v. [See 2,962.]
Amaranth, The, Regan v. [See 11,664.]
Amazon, The, Peacon v. [See 10,871.]
AMAZON INS. CO. v. IRON MOUNTAIN, The [270], 1 Flip. 616; 6 Ins. Law J. 155; 23 Int. Rev. Rec. 49; 4 N. Y. Wkly. Dig. 95; 4 Cent. Law J. 103; 9 Chi. Leg. News, 157.
Ambassador, The, Keys v. [See 7,747.]
AMBLER, In re [271], 8 Ben. 176.
AMBLER v. CHOUTEAU [272], 3 Cent. Law J. 333.
AMBLER v. McMECHEN [273], 1 Cranch, C. C. 320.
A. M. BLISS, The [274], 2 Lowell, 103.
Ambramovic, Demartini v. [See 3,779.]
AMELIA, The [275], 23 Fed. 406, note.
AMELIA, The [276], 18 Leg. Int. 357; 4 Phila. 412.
AMELIA, The [277], 18 Leg. Int. 388; 4 Phila. 417.
Amelia, The, Hill v. [See 6,487.]
AMELIA v. CALDWELL [278], 2 Cranch, C. C. 418.
Amelie, The, Fitz v. [See 4,838.]
AMERICA, The [279], 1 Adm. Rec. 449.
AMERICA, The [280], 2 Ben. 475.
AMERICA, The [281], 3 Ben. 424.
AMERICA, The [282], 6 Ben. 122.
AMERICA, The [283], 8 Ben. 491.
AMERICA, The [284], 10 Blatchf. 155.
AMERICA, The [285], 11 Blatchf. 485.
AMERICA, The [286], 1 Blatchf. & H. 185.
AMERICA, The [287], 1 Gall. 230.
AMERICA, The [288], 2 West. Law Month. 279; 16 Law Rep. 264; 29 Hunt, Mer. Mag. 459.
AMERICA, The [289], 1 Lowell, 176; 2 Amer. Law Rev. 458.
America, The, Bruce v. [See 2,046.]
America, The, Brunsgaard v. [See 2,056.]
America, The, Humphreys v. [See 6,869.]
America, The, Orhanovich v. [See 10,568.]
American, Gaytes v. [See 5,286.]
American Banner, The, Town v. [See 14,112a.]
American Baptist Missionary Union, Turner v. [See 14,251.]
AMERICAN BASKET CO. v. FARMVILLE INS. CO. [290], 3 Hughes, 251; 8 Reporter, 744; 8 Ins. Law J. 331.
AMERICAN BIBLE SOC. v. HOLMAN [291], 2 N. W. (O. S.) 245; 5 Reporter, 645.
American Bridge Co., Smith v. [See 13,002.]
American Button-Hole & Over-Seaming Co., Chabot v. [See 2,567.]
AMERICAN BUTTON-HOLE, OVER-SEAMING & SEWING-MACHINE CO. v. MURRAY [292], Syllabi, 109.
American Button-Hole, Over-Seaming & Sewing-Mach. Co., Parham v. [See 10,713.]
American Cent. Ins. Co., Grace v. [See 5,648.]
AMERICAN COTTON-TIE CO. v. SIMMONS [293], 3 Ban. & A. 320; 13 O. G. 967.
AMERICAN COTTON-TIE SUPPLY CO. v. BULLARD [294], 17 Blatchf. 160; 4 Ban. & A. 520; 17 O. G. 389; 9 Reporter, 70.
AMERICAN COTTON-TIE SUPPLY CO. v. McCREADY [295], 17 Blatchf. 291; 4 Ban. & A. 588; 17 O. G. 565; 8 Reporter, 811.
American Dairy, etc., Co., Howard v. [See 6,753.]
AMERICAN DIAMOND ROCK BORING CO. v. SHELDON [296], 17 Blatchf. 208; 4 Ban. & A. 551.
AMERICAN DIAMOND ROCK BORING CO. v. SHELDON [297], 17 Blatchf. 303; 4 Ban. & A. 603.
AMERICAN DIAMOND ROCK BORING CO. v. SULLIVAN MACH. CO. [298], 14 Blatchf. 119; 2 Ban. & A. 522.
AMERICAN DREDGING CO. v. BEDOWIN, The [299], 37 Leg. Int. 52; 26 Int. Rev. Rec. 38.
AMERICAN EAGLE, The [300].
AMERICAN EAGLE, The [301], 1 Lowell, 425.
American Exp. Co., Maltz v. [See 9,002.]
American Exp. Co., Indiana v. [See 7,021.]
American Fire Ins. Co., Bassell v. [See 1,094.]
American Gold Coin, United States v. [See 14,439.]
American Hair Mfg. Co., Muscan Hair Mfg. Co. v. [See 9,970.]
American Hard Rubber Co., Abbot v. [See 9.]
AMERICAN HIDE & LEATHER SPLITTING & DRESSING MACH. CO. v. AMERICAN TOOL & MACH. CO. [302], 1 Holmes, 503; 4 Fish. Pat. Cas. 284; Merw. Pat. Inv. 99.
AMERICAN INS. CO. v. CANTER [302a], 1 Pet. (26 U. S.) 516, note.
AMERICAN INS. CO. v. CANTER [302b], 3 Pet. (28 U. S.) 316.
American Ins. Co., Carpenter v. [See 2,428.]
American Ins. Co., Holbrook v. [See 6,589.]
AMERICAN INS. CO. v. JOHNSON [303], 1 Blatchf. & H. 9.
American Ins. Co., Nicoll v. [See 10,259.]
AMERICAN MFG. CO. v. LANE [304], 14 Blatchf. 438; 3 Ban. & A. 268; 15 O. G. 421; Merw. Pat. Inv. 358.
AMERICAN MIDDLINGS PURIFIER CO. v. ATLANTIC MILLING CO. [305], 4 Dill. 100; 3 Ban. & A. 168.
AMERICAN MIDDLINGS PURIFIER CO. v. ATLANTIC MILLING CO. [306], 5 Dill. 127; 4 Ban. & A. 148; 15 O. G. 467.
American Middlings Purifier Co. v. Christian. [See 305.]
AMERICAN MIDDLINGS PURIFIER CO. v. CHRISTIAN [307], 4 Dill. 448; 3 Ban. & A. 42; 1 N. W. (O. S.) 91.
AMERICAN MIDDLINGS PURIFIER CO. v. VAIL [308], 15 Blatchf. 315; 4 Ban. & A. 1.
American Mut. Ins. Co., Adderly v. [See 75.]
AMERICAN NICHOLSON PAVEMENT CO. v. ELIZABETH [309], 1 Ban. & A. 439; 6 O. G. 764.
AMERICAN NICHOLSON PAVEMENT CO. v. ELIZABETH [310], 1 Ban. & A. 463; 6 O. G. 772.
AMERICAN NICHOLSON PAVEMENT CO. v. ELIZABETH [311], 6 Fish. Pat. Cas. 424; 3 O. G. 522.
AMERICAN NICHOLSON PAVEMENT CO. v. ELIZABETH [312], 4 Fish. Pat. Cas. 189; 18 Pittsb. Leg. J. 85.
American Nickel Plating Works, United Nickel Co. v. [See 14,405.]
AMERICAN PIN CO. v. OAKVILLE CO. [313], 3 Blatchf. 190; 3 Amer. Law Reg. 136.
AMERICAN PLATE-GLASS, Etc., INS. CO., In re [314], 12 N. B. R. 56.
American Popular Life Ins. Co., Morrison v. [See 9,841.]
AMERICAN SADDLE CO. v. HOGG [315], Holmes, 133; Merw. Pat. Inv. 340; 2 O. G. 59; 5 Fish. Pat. Cas. 353.
AMERICAN SADDLE CO. v. HOGG [316], Holmes, 177; 2 O. G. 595; 6 Fish. Pat. Cas. 67.
AMERICAN SHOE-TIP CO. v. NATIONAL SHOE-TOE PROTECTOR CO. [317], 2 Ban. & A. 551; 11 O. G. 740.
American Steam Gauge Co., United States Steam Gauge Co. v. [See 16,794.]
American Steamship Co., Brady v. [See 10,951.]
American Steamship Co., Costello v. [See 3,263.]
American Steamship Co., Dougherty v. [See 4,023.]
American Steamship Co., Kirkpatrick v. [See 7,846.]
American Steamship Co., Knee v. [See 7,877.]
American Tool & Mach. Co., American Hide & Leather Splitting & Dressing Mach. Co. v. [See 302.]

[Federal Case numbers are given in brackets.]

American Transp. Co., King v. [See 7,787.]
American Union Tel. Co., Western Union Tel. Co. v. [See 17,444.]
AMERICAN WATER-PROOF CLOTH CO., In re [318], 1 Ben. 526; 3 N. B. R. 285 (Quarto, 74).
AMERICAN WHIP CO. v. LOMBARD [319], 4 Cliff. 495; 3 Ban. & A. 598; 14 O. G. 900.
AMERICAN WOOD-PAPER CO. v. FIBRE DISINTEGRATING CO. [320], 3 Fish. Pat. Cas. 362; 6 Blatchf. 27.
AMERICAN WOOD-PAPER CO. v. GLEN'S FALLS PAPER CO. [321], 8 Blatchf. 513; 4 Fish. Pat. Cas. 324.
AMERICAN WOOD-PAPER CO. v. GLEN'S FALLS PAPER CO. [321a], 4 Fish. Pat. Cas. 561; 8 Blatchf. 513.
AMERICAN WOOD-PAPER CO. v. HEFT [322], 3 Fish. Pat. Cas. 316.
AMES, Ex parte [323], 1 Lowell, 561; 7 N. B. R. 230.
AMES v. COLORADO CENT. R. CO. [324], 4 Dill. 251; 9 Chi. Leg. News, 132; 3 Cent. Law J. 815.
AMES v. COLORADO CENT. R. CO. [325], 4 Dill. 260; 4 Cent. Law J. 199.
Ames, Dwight v. [See 4,214.]
Ames, Foster v. [See 4,965.]
AMES v. HOWARD [326], 1 Sumn. 482; 1 Robb, Pat. Cas. 689.
Ames, Krauskopp v. [See 7,931.]
AMES v. LE RUE [327], 2 McLean, 216.
AMES v. MANHATTAN LIFE INS. CO. [328].
AMES v. NEW ORLEANS, M. & T. R. CO. [329], 2 Woods, 206.
Ames v. Nine Hundred and Five Packages of Tobacco. [See 15,881.]
Ames v. Two Hundred and Seventy-Five Caddies of Tobacco. [See 15,881.]
Ames, United States v. [See 14,440.]
Amesbury Nail Factory, Odiorne v. [See 10,430.]
AMETHYST, The [330], 2 Ware (Dav. 20) 28; 2 N. Y. Leg. Obs. 312.
AMIABLE NANCY, The [331], 1 Paine, 111.
Aminhisor, United States v. [See 14,442.]
AMISIA, The [332], 10 Adm. Rec. 254.
Amity, The, Moodie v. [See 9,741.]
AMORY v. AMORY [333], 18 Int. Rev. Rec. 149; 12 Amer. Law Reg. (N. S.) 585.
AMORY v. AMORY [334], 3 Biss. 266; 12 Amer. Law Reg. (N. S.) 38.
AMORY v. AMORY [335], 6 Biss. 174; 6 Chi. Leg. News, 349.
AMORY v. LAWRENCE [336], 3 Cliff. 523.
Amory, Tremain v. [See 14,167.]
Amory, United States v. [See 14,443.]
Amory, Ward v. [See 17,146.]
AMORY and LEEDS, In re [336a], Betts' Scr. Bk. 97.
AMORY and LEEDS, In re [336b], Betts' Scr. Bk. 101.
AMORY and LEEDS, In re [336c], Betts' Scr. Bk. 113.
AMOS C. BARSTOW, The [337], 8 Ben. 401.
AMOSKEAG MFG. CO. v. JOHN ADAMS, The [338], 1 Cliff. 404; 17 Leg. Int. 412.
Amphitrite, The, United States v. [See 14,444.]
Amsden, The Cornelia. [See 3,234.]
Amsden, Torrance v. [See 14,103.]
Amsinck, Bean v. [See 1,167.]
AMSTEL, The [339], 1 Blatchf. & H. 215.
AMY, Ex parte [340], 1 Cranch, C. C. 392.
Amy v. Shelby County. [See 345.]
Amy, United States v. [See 14,445.]
AMY WARWICK, The [341], 2 Spr. 123; 24 Law Rep. 335.
AMY WARWICK, The [342], 2 Spr. 143; 24 Law Rep. 494.
AMY WARWICK, The [343], 2 Spr. 150; 24 Law Rep. 501, 544.
AMY WARWICK, The [344], 2 Spr. 160.
AMY v. SHELBY COUNTY [345], 1 Flip. 104.
ANASTASIA, The [346], 1 Ben. 166.
ANASTASIA, The [347], 1 Ben. 188.
Anchors, Sails, Etc., of the D'Alberti, Dominy v. [See 3,977.]
ANCON, The [348], 6 Sawy. 118.
ANDERSON, Ex parte [349], 3 Woods, 124.
ANDERSON, In re [350], 7 Biss. 233; 12 N. B. R. 502.
ANDERSON, In re [351], 2 Hughes, 378; 9 N. B. R. 360.
ANDERSON, In re [352], 2 N. B. R. 537 (Quarto, 166).
ANDERSON'S CASE [353], 2 Cranch, C. C. 243.
ANDERSON v. BANK [354], Chase, 535.
ANDERSON v. BROWN [355], N. Y. Daily Times Oct. 25, 1851.
Anderson, Davis v. [See 3,623.]
Anderson, Gardner v. [See 5,220.]
ANDERSON v. GERDING [356], 3 Woods, 487.
ANDERSON v. JACKSON [357], 2 Paine, 426.
ANDERSON v. JACKSONVILLE, P. & M. R. CO. [358], 2 Woods, 628.
Anderson, McKenzie v. [See 8,855.]
Anderson, Masury v. [See 9,270.]
ANDERSON v. MOE [359], 1 Abb. U. S. 299.
Anderson v. Mutual Life Ins. Co. [See 362.]
ANDERSON v. NEW YORK & N. H. R. CO. [360], 6 Amer. Law Rev. 754.
Anderson, Riley v. [See 11,835.]
ANDERSON v. ROSS [361], 2 Sawy. 91.
ANDERSON v. ST. LOUIS MUT. LIFE INS. CO. [362], 1 Flip. 559; 5 Amer. Law Rec. 140; 22 Int. Rev. Rec. 249; 5 Ins. Law J. 605; 2 N. Y. Wkly. Dig. 458; 1 Mich. Lawy. 17; 3 Cent. Law J. 354; 1 Cin. Law Bul. 203; 5 Bigelow, Ins. Cas. 527.
ANDERSON v. SOLON, The [363], Crabbe, 17.
Anderson, Stewart v. [See 13,421.]
ANDERSON v. STRASSBURGER [364], 6 Ben. 372.
ANDERSON v. TOMPKINS [365], 1 Brock. 456; 1 Amer. Lead. Cas. 429.
Anderson, United States v. [See 14,446-14,452.]
Anderson, Webb v. [See 17,318.]
Andes Ins. Co., Cahill v. [See 2,289.]
Andes Ins. Co., Michigan Cent. R. Co. v. [See 9,526.]
Andes Ins. Co., Young v. [See 18,151.]
ANDOVER, The [366], 3 Blatchf. 303.
ANDRAE v. REDFIELD [367], 12 Blatchf. 407.
ANDREAE v. REDFIELD [368], 15 Int. Rev. Rec. 105.
ANDREWS, In re [369], 1 Hask. 87.
Andrews, The James. [See 7,189.]
ANDREWS, In re [370], 11 N. B. R. 59; 22 Pittsb. Leg. J. 41.
Andrews v. Bassett. [See 379, 380.]
Andrews, Browning v. [See 2,040.]
ANDREWS v. CARMAN [371], 13 Blatchf. 307; 2 Ban. & A. 277; 9 O. G. 1011; Merw. Pat. Inv. 249.
Andrews v. Case. [See 379, 380.]
ANDREWS v. DENSLOW [372], 14 Blatchf. 182; 2 Ban. & A. Pat. Cas. 587.
ANDREWS v. DOLE [373], 11 N. B. R. 352.
ANDREWS v. ESSEX FIRE & MARINE INS. CO. [374], 3 Mason, 6.
ANDREWS' EX'RS v. GARETT [375], 1 Flip. 445; 22 Int. Rev. Rec. 42; 1 N. Y. Wkly. Dig. 452; 2 Cent. Law J. 797; 2 N. Y. Wkly. Dig. 142; 8 Chi. Leg. News, 122; 1 Law & Eq. Rep. 40.
ANDREWS v. GRAVES [376], 1 Dill. 108; 4 N. B. R. 651.
ANDREWS v. HYDE [377], 3 Cliff. 516.
Andrews v. Kelly. [See 379, 380.]
Andrews, Low v. [See 8,559.]
Andrews v. Nichols. [See 379, 380.]
Andrews, Palmer v. [See 10,683.]
Andrews v. Platt. [See 379, 380.]
Andrews v. Pratt. [See 379, 380.]
Andrews v. Pray. [See 379, 380.]
Andrews, Rockville & W. Turnpike Road v. [See 11,984.]
Andrews, Scudder v. [See 12,564.]
Andrews v. Snyder. [See 379, 380.]
ANDREWS v. SOLOMON [378], Pet. C. C. 356.
ANDREWS v. SPEAR [379], 4 Dill. 470; 2 Ban. & A. 602; 1 N. W. (O. S.) 77.
ANDREWS v. SPEAR [380], 4 Dill. 472; 3 Ban. & A. 82; 1 N. W. (O. S.) 165.
Andrews, Tiernan v. [See 14,025, 14,026.]
ANDREWS v. UNITED STATES [381], 2 Story, 202.
Andrews, United States v. [See 14,453-14,455.]
Andrews v. Wagner. [See 379, 380.]
Andrews v. Wright. [See 379, 380.]
ANDREWS v. WRIGHT [382], 3 Ban. & A. 329; 13 O. G. 969; 3 N. W. (O. S.) 111; 6 Reporter, 193.
Androscoggin Pulp Co., Miller v. [See 9,559.]
ANGELINA, The [383], Blatchf. Pr. Cas. 371.
Angelina, The, Day v. [See 7,967.]
Angelina, The, Lachenmeyer v. [See 7,967.]
Angelina, The, Watson v. [See 7,967.]
ANGELINA CORNING, The [384], 1 Ben. 109.
ANGELINE, The [385], 5 Adm. Rec. 202.

[Federal Case numbers are given in brackets.]

Angelique, The, Shannon v. [See 12,705.]
ANGELL, In re [386], 10 N. B. R. 73; 1 Cent. Law J. 363; 6 Chi. Leg. News, 341; 31 Leg. Int. 254; 21 Pittsb. Leg. J. 206.
ANGELL v. BENNETT [387], 1 Spr. 85.
Angevine, Tyler v. [See 14,306.]
ANGIER, In re [388], 10 Amer. Law Reg. (N. S.) 190; 4 Amer. Law T. 62; 4 N. B. R. 619 (Quarto, 199); 1 Amer. Law T. Rep. Bankr. 248.
ANGLIA, The [389], 7 Ben. 190.
ANGLIA, The [390], Blatchf. Pr. Cas. 300.
ANGLIA, The [391], Blatchf. Pr. Cas. 566.
ANGLO-CALIFORNIAN BANK v. MAHONEY MIN. CO. [392], 5 Sawy. 255; 6 Reporter, 705.
ANGLO NORMAN, The [393], 4 Sawy. 185.
Anglo Norman, The, Martinez v. [See 9,174.]
Angus, Dean v. [See 3,702, 3,703.]
Anilin v. Cochrane. [See 719.]
Anilin v. Cummins. [See 720.]
Anilin v. Hamilton Mfg. Co. [See 721.]
Anilin v. Higgin. [See 722.]
ANKETELL, In re [394], 19 N. B. R. 268.
ANKRIM, In re [395], 3 McLean, 285.
ANN, The [396], Blatchf. Pr. Cas. 242.
ANN, The [397], 1 Gall. 62.
Ann, The, Bell v. [See 1,245.]
Ann, The, United States v. [See 14,456.]
ANNA, The [398], 6 Ben. 166.
ANNA, The [399], 6 Ben. 340.
ANNA, The [400], Blatchf. Pr. Cas. 332.
ANNA, The [401], 10 Blatchf. 456.
ANNA, The [402], Blatchf. Pr. Cas. 337.
ANNA, The, v. GOLDEN HORN, The [403], 36 Leg. Int. 294; 14 Phila. 521.
Anna, The, Oologaardt v. [See 10,545.]
Anna, The, United States v. [See 14,457, 14,458.]
ANNA KIMBALL, The [404], 2 Spr. 33; 23 Law Rep. 724; 8 Pittsb. Leg. J 353.
Anna Kimball, The, Harrison v. [See 6,132.]
Anna Kimball, The, Kimball v. [See 7,772.]
ANNAN v. STAR OF HOPE, The [405], Hoff. Op. 460; 9 Wall. (76 U. S.) 203.
ANNAPOLIS, The [406].
ANN ARBOR, The [407], N. Y. Times, Dec. 21, 1854.
ANN ARBOR, The [408], 4 Blatchf. 205.
Ann Barton, The, Westcott v. [See 17,431.]
Ann Caroline, The, Wells v. [See 17,389.]
ANN C. PRATT, The [409], 1 Curt. 340; 16 Law Rep. 92.
Ann C. Pratt, The Airey v. [See 113a, 114.]
Ann C. Pratt, The Carrington v. [See 2,445, 409.]
ANN D. RICHARDSON, The [410], Abb. Adm. 499.
ANN D. RICHARDSON, The [411], 1 Blatchf. 358, note.
ANNE, The [412], 1 Mason, 508.
Ann, The Elizabeth. [See 4,357.]
Anne, The, Johnson v. [See 7,370.]
Anne, The Lucy. [See 8,596.]
Anne, The Martha. [See 9,146.]
Anne, The Mary. [See 9,195.]
Anness, Reissner v. [See 11,686, 11,687, 11,688.]
ANNETTE v. STORM, The [413], N. Y. Daily Times, July 14, 1865.
ANN GREEN, The [414], 1 Gall. 274.
Ann, The Harriet. [See 6,101.]
ANNIE, The [415], Blatchf. Pr. Cas. 209.
ANNIE, The [416], Blatchf. Pr. Cas. 222.
ANNIE, The [417], Blatchf. Pr. Cas. 335.
ANNIE, The [418], Blatchf. Pr. Cas. 612.
Annie Deas, The. [See 400, 402.]
Annie Deas, The. [See 14,211, 14,212.]
ANNIE DEAS, The [419], Blatchf. Pr. Cas. 305.
ANNIE H. SMITH, The [420], 10 Ben. 110.
ANNIE LELAND, The [421], 1 Lowell, 310.
ANNIE LINDSEY, The [422], 6 Ben. 290.
ANNIE M. SMULL, The [423], 2 Sawy. 226.
ANNIE SOPHIA, The [424], Blatchf. Pr. Cas. 219.
ANNIE TEAS, The [425].
ANNIE W. GREEN, The [426].
Ann, The Julia. [See 7,577.]
ANN MARIA, The [427], 1 Paine, 256.
Ann, The Mary. [See 9,194.]
ANN RYAN, The [428], 7 Ben. 20.
Ann, The Sarah. [See 12,342.]
ANONYMOUS [429], 1 Adm. Rec. 368.
ANONYMOUS [430], 1 Adm. Rec. 149.
ANONYMOUS [431], 2 Amer. Law Rev. 359.
ANONYMOUS [432], 5 Blatchf. 134.
ANONYMOUS [432a], Blatchf. Pr. Cas. 206.
ANONYMOUS [433], Brunner, Col. Cas. 29; 2 Hayw. (N. C.) 378.
ANONYMOUS [434], Brunner, Col. Cas. 74; 3 Day, 308.
ANONYMOUS [6,675], 1 Car. Law Repos. 190.
ANONYMOUS [14,829], 1 Car. Law Repos. 346.
ANONYMOUS [437], 4 Chi. Leg. News, 210.
ANONYMOUS [11,138], 6 Chi. Leg. News, 333.
ANONYMOUS [16,745], 7 Chi. Leg. News, 26.
ANONYMOUS [15,337], 9 Chi. Leg. News, 20.
ANONYMOUS [441], 11 Chi. Leg. News, 190.
ANONYMOUS [442], 1 Cranch, C. C. 139.
ANONYMOUS [443], 2 Dall. 382.
ANONYMOUS [444], 1 Gall. 22.
ANONYMOUS [445], 2 Gall. 101.
ANONYMOUS [446], 1 Haz. U. S. Reg. 87.
ANONYMOUS [18,224], Hempst. 215.
ANONYMOUS [447], Hempst. 413, 1 West. Law J. 246.
ANONYMOUS [448], Hempst. 450.
ANONYMOUS [449], 1 Hall, Law J. 209; 5 Hughes, 32.
ANONYMOUS [450], 6 Hunt, Mer. Mag. 355.
ANONYMOUS [451], 31 Hunt, Mer. Mag. 206.
ANONYMOUS [452], 37 Hunt, Mer. Mag. 707.
ANONYMOUS [10,256], 13 Int. Rev. Rec. 78.
ANONYMOUS [13,622], 14 Int. Rev. Rec. 103.
ANONYMOUS [455], 16 Int. Rev. Rec. 92.
ANONYMOUS [456], 29 Leg. Int. 20.
ANONYMOUS [457], 1 N. B. R. 122; Bankr. Reg. Supp. 27.
ANONYMOUS [458], 1 N. B. R. 216; Bankr. Reg. Supp. 46.
ANONYMOUS [459], 1 N. B. R. 216; Bankr. Reg. Supp. 46; 3 N. B. R. 128 (Quarto, 33).
ANONYMOUS [460], 1 N. B. R. 219 (Quarto, 1).
ANONYMOUS [461], 1 N. B. R. 219 (Quarto, 2); 2 N. B. R. 68 (Quarto, 21).
ANONYMOUS [462], 2 N. B. R. 141 (Quarto, 53).
ANONYMOUS [463], 1 N. Y. Leg. Obs. 349.
ANONYMOUS [464], 3 N. Y. Leg. Obs. 155.
ANONYMOUS [465], 4 N. Y. Leg. Obs. 98.
ANONYMOUS [466], 1 Pac. Law Rep. 173.
ANONYMOUS [467], 1 Pa. Law J. 323; 1 Pa. Law J. R. 121.
ANONYMOUS [467a], 1 Pet. Adm. 247, note.
ANONYMOUS [468], Pet. C. C. 457.
ANONYMOUS [469], 2 Pittsb. Leg. J. Dec. 2, 1854, No. 33.
ANONYMOUS [470], 12 Pittsb. Leg. J. 220.
ANONYMOUS [471], 15 Pittsb. Leg. J. 81; 1 N. B. R. 215; Bankr. Reg. Supp. 46; 3 N. B. R (Quarto) 15.
ANONYMOUS [472], Taney, 453.
ANONYMOUS [473], 1 U. S. Law Int. 121.
ANONYMOUS [474], 1 Wall. Jr. 107.
ANONYMOUS [475], 1 Wash. C. C. 84.
ANONYMOUS [476], 2 Wash. C. C. 270.
ANONYMOUS [477], 3 West. Law J. 144.
ANOWEURTH v. BURLINGIN [478], 6 West. Law J. 431.
Anshutz v. Campbell. [See 17,796.]
ANTARCTIC, The [479], 1 Spr. 206; 15 Law Rep. 578.
ANTELOPE, The [480], 1 Ben. 343.
ANTELOPE, The [481], 1 Ben. 521.
ANTELOPE, The [482], 2 Ben. 405.
ANTELOPE, The [483], Blatchf. Pr. Cas. 370.
ANTELOPE, The [484], 1 Lowell, 130.
Antelope, The, Waite v. [See 17,045.]
Anthes, United Nickel Co. v. [See 14,406.]
Anthony, Ex parte. [See 5,070.]
ANTHONY, Ex parte [485], 1 Cranch, C. C. 295.
ANTHONY v. ÆTNA INS. CO. [486], 1 Abb. U. S. 343; 2 Chi. Leg. News, 34.
Anthony, Barton v. [See 1,084.]
ANTHONY v. CARROLL [487], 2 Ban. & A. 195; 9 O. G. 199; 23 Pittsb. Leg. J. 123.
Anthony, Gordon v. [See 5,605.]
ANTHONY v. JASPER COUNTY [488], 4 Dill. 136; 3 Cent. Law J. 321.
Anthony, United States v. [See 14,459, 14,460.]
Anthony Kelly, The Scottish Bride v. [See 12,551.]
Anthony Mangin, The, United States v. [See 14,461.]
Anthracite, The, Hern v. [See 6,412.]
Anthracite Ins. Co., Germond v. [See 5,365.]

ANTILLES, The [489], 8 Ben. 9.
ANTISDEL, In re [490], 18 N. B. R. 289.
Antisdel, Hawes v. [See 6,234.]
ANTOINETTA C., The [491], 5 Ben. 564; 15 Int. Rev. Rec. 115.
ANTONA, The [492], Blatchf. Pr. Cas. 572.
ANTONE v. HICKS [493], 2 Lowell, 383.
ANTRIM v. KELLY [494], 4 N. B. R. 587 (Quarto, 189).
ANTRIM'S CASE [495], 5 Phila. 278; 20 Leg. Int. 300; 11 Pittsb. Leg. J. 49.
Apegues, Ex parte. [See 10,907.]
Aplington, Barrett v. [See 1,045.]
APOLLINARIS BRUNNEN v. SOMBORN [496], 14 Blatchf. 380.
Appel, United States v. [See 14,462.]
APPERSON v. MEMPHIS [497], 2 Flip. 363.
Appleback, Postmaster General v. [See 11,305.]
Appleby, Hopner v. [See 6,699.]
APPLETON v. CHAMBERS [497a], 3 App. Comr. Pat. 384.
Appleton, Dwight v. [See 4,215.]
Appleton, Grattan v. [See 5,707.]
Appleton, Heine v. [See 6,324.]
APPLETON v. SMITH [498], 1 Dill. 202.
Appleton, Stevens v. [See 13,394.]
Appleton, United States v. [See 14,463.]
Appller, Travers v. [See 14,148.]
APPOLD, In re [499], 1 N. B. R. 621 (Quarto, 178); 7 Amer. Law Reg. (N. S.) 624; 6 Phila. 469; 25 Leg. Int. 180; 1 Amer. Law T. Rep. Bankr. 83.
Appomattox R. Co., Powhattan Steamboat Co. v. [See 11,363.]
AQUILA, The [500].
ARABELLA, The [501], 2 Gall. 368.
ARAPAHOE COUNTY v. KANSAS PAC. RY. CO. [502], 4 Dill. 277; 5 Cent. Law J. 102; 9 Chi. Leg. News, 369; 4 Law & Eq. Rep. 181.
Arbor, The Ann. [See 407, 408.]
Arbuncle, Bowne v. [See 1,742.]
Arbunckle, Brown v. [See 1,990.]
Arbustel, The, Justi Pon v. [See 7,589.]
Archbold, German Sav. Bank v. [See 5,364.]
Archembroun, In re. [See 503, 504, 505.]
Archenbraun, In re. [See 503, 504, 505.]
ARCHENBROWN, In re [503], 8 N. B. R. 429.
ARCHENBROWN, In re [504], 11 N. B. R. 149; 7 Chi. Leg. News, 99.
ARCHENBROWN, In re [505], 12 N. B. R. 17; 7 Chi. Leg. News, 231.
ARCHER, In re [506], 9 Ben. 427; 24 Int. Rev. Rec. 110.
ARCHER, The [507], 9 Ben. 455.
ARCHER, The [508], 10 Ben. 99.
Archer v. The Adriatic. [See 89-91.]
ARCHER v. MOREHOUSE [18,225], Hempst. 184.
Archer, Platt v. [See 11,213, 11,214.]
ARCHER v. POOR [509], 5 Cranch, C. C. 542.
Archer, Taylor v. [See 13,778.]
Archer, United States v. [See 14,464.]
ARCTIC, The [509a], 1 Brown, Adm. 347.
Arctic, The. [See 6,392.]
Arctic, Cargo of The, Crapo v. [See 3,361.]
Arctic, The, George v. [See 5,330.]
Arctic Oil Co., National Filtering Oil Co. v. [See 10,042.]
Arcturus, The, Tibbetts v. [See 14,021.]
ARCULARIUS v. STAPLES [509b].
ARDEN v. BROWN [510], 4 Cranch, C. C. 121.
Arden, Smith v. [See 13,003.]
Arden, Yates v. [See 18,126.]
ARDREY v. KARTHAUS [511], Taney, 379.
ARDREY v. WADSWORTH [512], 1 Cranch, C. C. 109.
A. R. DUNLAP, The [513], 1 Lowell, 350.
ARELL v. MARSTELLER [514], 2 Cranch, C. C. 11.
Aresta, Fontaine v. [See 4,905.]
Arey, Merrill v. [See 9,468.]
ARGO, The [515], 7 Ben. 304.
ARGO, The [516], 1 Gall. 150.
ARGO, The [517], 2 Gall. 314.
ARGONAUT, The [518], Blatchf. Pr. Cas. 62.
A. R. GRAY, The [519], 7 Ben. 483.
A. R. Gray, The. [See 10,949.]
Arguelles, Allen v. [See 213.]
Arguelles, Lenox v. [See 8,244.]
ARGUELLES v. WOOD [520], 2 Cranch, C. C. 579.
ARGUS, The [521], Olc. 304.
ARIADNE, The [522].
ARIADNE, The [523].
ARIADNE, The [524], 2 Ben. 472.
ARIADNE, The [525], 7 Blatchf. 211.
ARIADNE, The [526], Pet. C. C. 455.
Ariadne, The, United States v. [See 14,465.]
ARIEL, The [527], 1 Hask. 65.
ARIES, The [528], 2 Spr. 198.
ARIES, The [529], 2 Spr. 262; 26 Law Rep. 336.
ARKANSAS v. BALL [530], Hempst. 541.
ARKELL, In re [531], 15 Blatchf. 437; 4 Ban. & A. 80; Merw. Pat. Inv. 170.
ARKELL v. J. M. HURD PAPER-BAG CO. [532], 7 Blatchf. 475.
ARLEDGE, In re [533], 1 N. B. R. 644 (Quarto, 195).
Arledge, Boyle v. [See 1,758.]
Arleth, White v. [See 17,536.]
ARLINGTON, The [534], 2 Ben. 511.
Arlington Case. [See 8,191, 8,192.]
Arlington, Town of, First Nat. Bank of North Bennington v. [See 4,806.]
ARMAT v. UNION BANK OF GEORGETOWN [535], 2 Cranch, C. C. 180.
Armfield, Brent v. [See 1,833.]
ARMIJO v. UNITED STATES [536], Hoff. Land Cas. 248.
Armijo, United States v. [See 14,466.]
Armistead, Blackwell v. [See 1,474.]
ARMITAGE BREARLEY, The [537], 9 Ben. 108.
Armour, Jenkins v. [See 7,260.]
ARMROYD v. WILLIAMS [538], 2 Wash. C. C. 508.
Arms & Ammunition of The Amelia v. United States. [See 14,466a].
ARMSTRONG, In re [539], 9 Ben. 212; 16 N. B. R. 275.
ARMSTRONG, The [540], 1 Brown's Adm. 130.
ARMSTRONG v. BEADLE [541], 5 Sawy. 484; 8 Reporter, 36.
ARMSTRONG v. BROWN [542], 1 Wash. C. C. 43.
ARMSTRONG v. CARSON [543], 2 Dall. 302.
Armstrong, Davis v. [See 3,624.]
ARMSTRONG v. HANLENBECK [544], 3 N. Y. Leg. Obs. 43.
ARMSTRONG v. HOYT [544a], 5 Hunt, Mer. Mag. 76.
ARMSTRONG v. JOHNSON [18,226], 2 Hayw. & H. 13.
Armstrong v. Kosciusko. [See 18,226.]
ARMSTRONG v. MECHANICS' NAT. BANK [545], 6 Biss. 520.
Armstrong, Morrill v. [See 9,822.]
ARMSTRONG v. RICKEY [546], 1 Chi. Leg. News, 145; 2 N. B. R. 473 (Quarto, 150); 2 Amer. Law T. Rep. Bankr. 65.
ARMSTRONG v. RYDESDALE, The [547].
Armstrong, Toler v. [See 14,078.]
Armstrong, United States v. [See 14,467, 14,468.]
ARMSTRONG v. UNITED STATES [548], Gilp. 399.
ARMSTRONG v. UNITED STATES [549], Pet. C. C. 46.
Armstrong, Winter's Bank v. [See 17,899.]
ARMSWORTHY v. MISSOURI RIVER, FT. S. & G. R. CO. [550], 5 Dill. 491.
ARNOLD, In re [551], 2 N. B. R. 160 (Quarto, 61).
Arnold, In re. [See 17,118.]
ARNOLD v. BISHOP [552], McA. Pat. Cas. 27; Cranch. Pat. Dec. 103.
ARNOLD v. BISHOP [553], McA. Pat. Cas. 36; Cranch, Pat. Dec. 109.
ARNOLD v. BUFFUM [554], 2 Mason, 208.
ARNOLD v. CLIFFORD [555], 2 Sumn. 238.
ARNOLD v. DELCOL [556], Bee, 5.
ARNOLD v. DEXTER [557], 4 Mason, 122.
ARNOLD v. FROST [558], 9 Ben. 267.
ARNOLD v. JONES [559], Bee, 104.
Arnold, Lyman v. [See 8,626.]
ARNOLD v. MARSHAL OF UNITED STATES [560], 1 U. S. Law Int. 56.
ARNOLD v. MAYNARD [561], 2 Story, 349; 5 Law Rep. 296.
ARNOLD v. PECK [561a].
ARNOLD v. PETTEE [561b].
Arnold, Smith v. [See 13,004.]
Arnold, Swatzel v. [See 13,682.]
Arnold, Swope v. [See 13,702.]
Arnold, United States v. [See 14,469.]
ARNOTT v. WEBB [562], 1 Dill. 362.

[Federal Case numbers are given in brackets.]

Aroma Mills, The. [See 2,041.]
Aronson, Hoffman v. [See 6,576.]
A. Rossiter, The, Ward v. [See 17,147.]
Arredondo, Ward v. [See 17,148.]
Arrow, The, Butler v. [See 2,237.]
ARROWSMITH v. BURLINGIM [563], 4 McLean, 489; 1 Amer. Law J. (N. S.) 448.
Arrowsmith, The T. V. [See 5,337.]
ARTHUR, Ex parte [563a], 3 App. Comr. Pat. 287.
Arthur, Butterfield v. [See 2,249.]
ARTHUR v. CASSIUS, The [564], 2 Story, 81.
Arthur, Davies v. [See 3,611.]
Arthur, Dodge v. [See 3,950.]
Arthur, Duden v. [See 4,112.]
Arthur, Gautier v. [See 5,278.]
Arthur, Goddard v. [See 5,489.]
Arthur, Haas v. [See 5,885.]
Arthur, Keyser v. [See 7,749.]
Arthur, Morrison v. [See 9,842.]
Arthur, Murray v. [See 9,956.]
ARTHUR v. NEW ENGLAND MUT. LIFE INS. CO. [565], 7 Reporter, 329; 6 Wkly. Notes Cas. 403.
Arthur, Pott v. [See 11,319.]
Arthur, Rogers v. [See 12,006, 12,007.]
Arthur, Von Stade v. [See 16,993.]
Arthur, Weihenmyer v. [See 17,360.]
Arthur, Whitney v. [See 17,582.]
Arctic, The. [See 6,392.]
ARTISAN, The [566].
ARTISAN, The [567], 8 Ben. 538.
ARTISAN, The [568], 9 Ben. 106.
Artisans' Ins. Co., Washburn v. [See 17,212.]
Artman, Commonwealth of Pennsylvania v. [See 10,-952.]
A. R. WETMORE, The [569], 5 Ben. 147.
Asa R. Swift, The, Russel v. [See 12,144.]
ASBESTOS FELTING CO. v. UNITED STATES & F. S. FELTING CO. [570], 13 Blatchf. 453; 2 Ban. & A. 369; 10 O. G. 828.
Asbestos Felting Co., United States & F. S. Felting Co. v. [See 16,787.]
Asbury, York Bank v. [See 18,142.]
ASH, In re [571], 17 N. B. R. 19.
ASH v. HAYMAN [572], 2 Cranch, C. C. 452.
ASH v. WILLIAMS [573], 5 Cranch, C. C. 674.
ASHBAHS v. TRUSTY, The [573a].
ASHBROOK v. GOLDEN GATE, The [574], Newb. 296; 5 Amer. Law Reg. 148; 36 Hunt, Mer. Mag. 61.
ASHBURTON, The [575], 5 Adm. Rec. 432.
ASHBY v. STEERE [576], 2 Woodb. & M. 347.
ASHCROFT v. BOSTON & L. R. CO. [577], Holmes, 366; 1 Ban. & A. 215; 5 O. G. 725.
ASHCROFT v. CUTTER [578], 6 Blatchf. 511.
ASHCROFT v. HOLLINGS [579], 11 O. G. 879.
Ashcroft, Richardson v. [See 11,779.]
ASHCROFT v. WALWORTH [580], Holmes, 152; 5 Fish. Pat. Cas. 528; 2 O. G. 546.
ASHLEY, In re [581], 19 N. B. R. 237.
Ashley, Bernard v. [See 1,346.]
Ashley, Blight v. [See 1,541.]
Ashley, Bourne v. [See 1,699.]
Ashley, Columbian Ins. Co. of Alexandria v. [See 3,038.]
Ashley, The, Eldridge v. [See 4,333.]
ASHLEY v. MADDOX [18,227], Hempst. 217.
Ashley, Russell v. [See 12,150.]
ASHTON v. BURBANK [582], 2 Dill. 435; 4 Bigelow, Ins. Cas. 149.
Ashton, Durham v. [See 4,192.]
ASHTON v. FITZHUGH [583], 1 Cranch, C. C. 218.
Ashton, Lynch v. [See 8,636.]
ASHTON v. McKIM [584], 4 Cranch, C. C. 19.
Ashton, United States v. [See 14,470.]
ASKEW, In re [585], 3 N. B. R. 575 (Quarto, 142).
ASKEW v. ODENHEIMER [586].
ASKEW v. ODENHEIMER [587], Baldw. 380.
ASKEW v. SMITH [588], 1 Cranch, C. C. 159.
Askins, United States v. [See 14,471.]
ASPDEN'S ESTATE [589], 2 Wall. Jr. 368.
ASPINWALL, In re [590], 7 Ben. 154.
ASPINWALL, In re [591], 7 Ben. 433; 10 N. B. R. 448; 31 Leg. Int. 365; 22 Pittsb. Leg. J. 75.
ASPINWALL'S CASE [592], 3 Pa. Law J. 212, 380.
ASPINWALL v. COUNTY COMMISSIONERS [593], 3 Wkly. Law Gaz. 26.
ASSIGN v. G. B. LAMAR, The [593a].
ASTEN, In re [594], 8 Ben. 350; 14 N. B. R. 7.
Astley, United States v. [See 14,472.]
ASTOR v. GIRARD [595], 4 Wash. C. C. 711.
Astoria, The. [See 11,539.]
ASTROM v. HAMMOND [596], 3 McLean, 107.
ATALANTA, The [597], 1 Brown, Adm. 489; 6 Chi. Leg. News, 491.
Atalanta, The, Bray v. [See 1,819.]
ATHALIA, The [598], 5 Adm. Rec. 295.
Athens Armory, United States v. [See 14,473.]
Atherton, Patterson v. [See 10,822.]
ATHON v. MORTON [599].
Atkins, Carey v. [See 2,399.]
ATKINS v. FIBRE DISINTEGRATING CO. [600], 1 Ben. 118.
ATKINS v. FIBRE DISINTEGRATING CO. [601], 2 Ben. 381.
ATKINS v. FIBRE DISINTEGRATING CO. [602], 7 Blatchf. 555; 10 Amer. Law Reg. (N. S.) 389; 4 Amer. Law T. Rep. U. S. Cts. 13; 5 Amer. Law Rev. 565.
ATKINS v. HORRMAN [602a.]
ATKINS v. PEASLEE [603], 1 Cliff. 446.
ATKINS v. PETERSBURG R. CO. [604], 3 Hughes, 307.
Atkins, State of Georgia v. [See 5,350.]
ATKINS v. STEACY [605], 5 Dill. 381, note.
Atkins, United States v. [See 14,474.]
ATKINSON, In re [606], 3 Pittsb. Rep. 423; 5 Amer. Law T. Rep. 320; 7 N. B. R. 143; 4 Chi. Leg. News, 359; 19 Pittsb. Leg. J. 188.
Atkinson, In re. [See 613.]
ATKINSON v. BOARDMAN [607].
ATKINSON v. BOARDMAN [608], 1 McA. Pat. Cas. 80; Cranch, Pat. Dec. 139.
ATKINSON v. FARMERS' BANK [609], Crabbe, 529.
ATKINSON v. GLENN [610], 4 Cranch, C. C. 134.
ATKINSON v. HAMILTON, The [611], 1 Bond, 536.
ATKINSON v. HUBBARD [612], 43 Hunt, Mer. Mag. 206.
ATKINSON v. KELLOGG [613], 10 N. B. R. 535; 7 Chi. Leg. News, 9.
ATKINSON v. PATTON [614], 1 Cranch, C. C. 46.
ATKINSON v. PHILADELPHIA & T. R. CO. [615], 14 Haz. Reg. Pa. 10.
ATKINSON v. PURDY [616], Crabbe, 551.
Atkinson v. The R. B. Hamilton. [See 611.]
ATKINSON v. ROBBINS [617], 5 Cranch, C. C. 312.
ATKYNS v. BURROWS [618], 1 Pet. Adm. 244.
ATLANTA, The [619], 2 Spr. 251; 3 Amer. Law Reg. (N. S.) 675; 26 Law Rep. 204.
Atlanta, The. [See 597.]
Atlanta & R. Air-Line R. Co., Wilmer v. [See 17,-775, 17,776.]
ATLANTIC, The [620], Abb. Adm. 451.
ATLANTIC, The [621], 1 Ware, 121.
Atlantic, The, Auther v. [See 668.]
Atlantic, The, Cole v. [See 2,976.]
Atlantic, The, Maitland v. [See 8,980.]
Atlantic Delaine Co., James v. [See 7,177.]
ATLANTIC DOCK CO. v. WENBERG [622], 9 Ben. 464.
ATLANTIC GIANT-POWDER CO. v. GOODYEAR [623], 13 O. G. 45; 3 Ban. & A. 161.
ATLANTIC GIANT-POWDER CO. v. MOWBRAY [624], 12 O. G. No. 14, p. iii.; 2 Ban. & A. 442.
ATLANTIC GIANT-POWDER CO. v. PARKER [625], 16 Blatchf. 281; 4 Ban. & A. 292; 16 O. G. 495; Merw. Pat. Inv. 175.
ATLANTIC GIANT-POWDER CO. v. RAND [626], 16 Blatchf. 250; 4 Ban. & A. 263; 16 O. G. 87; Merw. Pat. Inv. 173.
Atlantic Giant-Powder Co. v. Townsend. [See 623.]
ATLANTIC INS. CO. v. CONARD [627], 4 Wash. C. C. 662.
Atlantic Milling Co., American Middlings Purifier Co. v. [See 305.]
Atlantic, M. & O. R. Co., Skiddy v. [See 12,922.]
Atlantic Mut. Fire Ins. Co., Smith v. [See 13,005.]
Atlantic Mut. Ins. Co., Luma v. [See 8,605.]
ATLANTIC MUT. LIFE INS. CO., In re [628], 9 Ben. 270; 16 N. B. R. 541; 16 Alb. Law J. 453; 24 Int. Rev. Rec. 13.
ATLANTIC MUT. LIFE INS. CO., In re [629], 9 Ben. 337; 17 N. B. R. 368.

[Federal Case numbers are given in brackets.]

Atlantic Mut. Life Ins. Co., Holabird v. [See 6,-587.]
Atlantic & G. R. Co., Branch v. [See 1,807.]
Atlantic & G. R. Co., City of Savannah v. [See 12,385.]
Atlantic & G. R. Co., Jessup v. [See 7,299.]
Atlantic & G. R. Co., State of Georgia v. [See 5,-351.]
ATLANTIC & P. GUANO CO. v. ROBERT CENTER, The [630].
Atlantic & P. R. Co., Bailey v. [See 732.]
ATLANTIC & P. R. CO. v. CLEINO [631], 2 Dill. 175.
ATLANTIC & P. TEL. CO. v. CHICAGO, R. I. & P. R. CO [632], 6 Biss. 158; 6 Chi. Leg. News, 358.
Atlantic & P. Tel. Co., Western Union Tel. Co. v. [See 17,445.]
Atlantic Royal Mail Steam Nav. Co., Remington v. [See 11,695.]
Atlantic Works, Brady v. [See 1,795.]
ATLAS, The [633], 4 Ben. 27; 3 Amer. Law T. Rep. U. S. Cts. 89.
ATLAS, The [634], 10 Blatchf. 459.
Atlas, The. [See 2,769.]
ATLAS NAT. BANK v. F. B. GARDNER CO. [635], 8 Biss. 537; 19 N. B. R. 213.
Atlee, Northwestern Union Pkt. Co. v. [See 10,-341.]
ATLEE v. POTTER [636], 4 Dill. 559; 11 West. Jur. 617.
ATTACAPAS, The [637], 3 Ware, 65.
ATTERBURY v. GILL [638], 2 Flip. 239; 3 Ban. & A. 174; 13 O. G. 276; 10 Chi. Leg. News, 22; 6 Amer. Law Rec. 193.
Atterbury, Marrett v. [See 9,102.]
Attila, The, Knight v. [See 7,881.]
Attorney General, Chicago, B. & Q. R. Co. v. [See 2,666.
ATTORNEY GENERAL v. RUMFORD CHEMICAL WORKS [638a], 32 Fed. 608.
Attorney's Fees. [See 18,290.]
ATWATER v. HADLEY [639], Syllabi, 117.
Atwill, Ferrett v. [See 4,747.]
ATWILL v. FERRETT [640], 2 Blatchf. 39.
ATWOOD v. KITTELL [641], 9 Ben. 473; 17 N. B. R. 406.
ATWOOD v. LOCKHART [642], 4 McLean, 350.
Atwood, Sancho v. [See 12,291a.]
Atwood, Smith v. [See 13.006.]
AUBREY v. AUBREY [643].
Aubrey, United States v. [See 14,476.]
Audenried, Crook v. [See 3,412.]
Audenried, Keen v. [See 7,639.]
AUDENRIED v. RANDALL [644], 3 Cliff. 99; 7 Amer. Law Reg. (N. S.) 659.
Audley, The Stratton. [See 13,529.]
Augur, Dibble v. [See 3,879.]
August, Ex parte. [See 12,979.]
AUGUST, In re [645], 19 N. B. R. 161.
AUGUSTA, The [646], 2 Adm. Rec. 273.
AUGUSTA, The [647], 5 Amer. Law T. Rep. 495.
Augusta, The, The Cuba v. [See 3,459.]
Augusta, The, United States v. [See 14,447.]
Augusta Insurance & Banking Co., Hugg v. [See 6,838.]
AUGUSTINE v. McFARLAND [648], 13 N. B. R. 7; 1 N. Y. Wkly. Dig. 318.
Auja, United States v. [See 14,478.]
AULD v. AULD [649], 4 Cranch, C. C. 84.
Auld, Breckenridge v. [See 1,824.]
Auld, Hepburn v. [See 6,389.]
AULD v. HEPBURN [650], 1 Cranch, C. C. 122.
AULD v. HEPBURN [651], 1 Cranch, C. C. 166.
AULD v. HOYL [652], 1 Cranch, C. C. 544.
AULD v. MANDEVILLE [653], 2 Cranch, C. C. 167.
AULD v. PEYTON [654], 2 Cranch, C. C. 182.
Auld, Scott v. [See 12,523.]
AULT v. ELLIOT [655], 2 Cranch, C. C. 372.
AULTMAN v. HOLLEY [656], 11 Blatchf. 317; 5 O. G. 3; 6 Fish. Pat. Cas. 534; Merw. Pat. Inv. 673.
AULTMAN v. JONES [657], 1 Woolw. 99.
Aultman & Taylor Mfg. Co., Sawyer v. [See 12,-397.]
AUMACH v. QUEEN OF THE SOUTH, The [657a].
Aurelius, The, Fairchild v. [See 4,609.]
AURORA, The [658].
AURORA, The [659].
AURORA, The [660], 4 Hall, Law J. 473; 1 Car. Law Repos. 204.
Aurora, The, Aertsen v. [See 95.]
Aury, Hernandez v. [See 6,413.]
AUSTEN v. MILLER [661], 5 McLean, 153.
AUSTIN, In re [662], 16 N. B. R. 518.
AUSTIN, The [663], 3 Ben. 11.
Austin, Cahart v. [See 2,288.]
Austin, Hall v. [See 5,925.]
Austin, Heath v. [See 6,305.]
AUSTIN v. O'REILLY [664], 8 N. B. R. 129.
AUSTIN v. O'REILLY [665], 2 Woods, 670; 12 N. B. R. 329; 2 Cent. Law J. 455; 1 N. Y. Wkly. Dig. 36.
Austin v. O'Rielly. [See 664.]
AUSTIN v. PEASLEE [666], 20 Law Rep. 443; 15 Leg. Int. 12.
Austin, Shelton v. [See 12,752.]
Austin, Trecothick v. [See 14,164.]
Austin, United States v. [See 14,479.]
Austin, The, United States v. [See 14,480.]
AUSTRALIA, The [667], 3 Ware, 240.
AUTHER v. ATLANTIC, The [668].
Autocrat, The. [See 8,958.]
AUTONA, The [492].
Averill, Smith v. [See 13,007.]
AVERILL v. TUCKER [670], 2 Cranch, C. C. 544.
AVERY, The [671], 2 Gall. 308.
AVERY, The [672], 2 Gall. 386.
AVERY v. DOANE [673], 1 Biss. 64; 3 Amer. Law Reg. 229.
AVERY v. FOX [674], 1 Abb. U. S. 246.
AVERY v. JOHANN [675], 3 N. B. R. 144 (Quarto, 36); 2 Amer. Law T. Rep. Bankr. 92; 4 N. B. R. 434 (Quarto, 143); 1 Chi. Leg. News. 261; 2 Biss. 139.
AVERY v. SPRINGPORT [676], 14 Blatchf. 272.
Avery, United States v. [See 14,481.]
AVERY v. WANATA, The [677], 44 Fed. 361, note.
AVID, The [678], 3 Ben. 434.
AVIL v. ALEXANDRIA WATER CO. [679], 1 Hughes, 408.
AVON, The [680], 1 Brown, Adm. 170; 18 Int. Rev. Rec. 165; 6 Chi. Leg. News, 41.
AYER v. ADAMS [681].
AYER v. BRASTOW [682], 5 Law Rep. 498.
AYER v. GLAUCUS, The [683], 4 Cliff. 166.
AYER v. THACHER [684], 3 Mason, 153.
AYERS, In re [685], 6 Biss. 48.
AYLING v. HULL [686], 2 Cliff. 494; Merw. Pat. Inv. 91.
Ayling, Town of Weyauwegan v. [See 17,473.]
AYLWARD v. SMITH [687].
AYLWARD v. SMITH [688], 2 Lowell, 192.
Aylward, United States v. [See 14,482.]
Aymar, United States v. [See 14,483.]
AYRES v. WESTERN R. CORP. [689], 14 Blatchf. 9.
AZCARATI v. FITZSIMMONS [690], 3 Wash. C. C. 134.
AZURIA v. INSURANCE CO. OF PENNSYLVANIA [691], 3 Wash. C. C. 177.

[Federal Case numbers are given in brackets.]

B

Baack, Manufacturers' Nat. Bank v. [See 9,052.]
Babbage, Stratton v. [See 13,527.]
BABBELL v. GARDNER [692], Bee, 87.
Babbett, D'Wolf v. [See 4,220.]
BABBITT v. BURGESS [693], 2 Dill. 169; 7 N. B. R. 561; 5 Chi. Leg. News, 326.
Babbitt, Harris v. [See 6,114.]
BABBITT v. WALBRUN [694], 1 Dill. 19; 4 N. B. R. 121 (Quarto, 30); 2 Chi. Leg. News, 285.
BABBITT v. WALBRUN [695], 6 N. B. R. 359.
Babbitt, Wilkinson v. [See 17,668.]
BABCOCK, In re [696], 3 Story, 393.
BABCOCK, In re [697], 1 Woodb. & M. 26.
Babcock, City Bank of Racine v. [See 2,741.]
BABCOCK v. DEGENER [698], 1 McA. Pat. Cas. 607.
Babcock, Gale v. [See 5,188.]
BABCOCK v. MILLARD [699], 4 West. Law Month. 314.
Babcock, State of New Jersey v. [See 10,163.]
BABCOCK v. PETTIBONE [700], 12 Blatchf. 354.
Babcock, Smith v. [See 13,008, 13,009.]
BABCOCK v. STONE [701], 3 McLean, 172.
BABCOCK v. TERRY [702], 1 Lowell, 66.
Babcock, Tuthill v. [See 14,275.]
Babcock, United States v. [See 14,484-14,488.]
BABCOCK v. WESTON [703], 1 Gall. 168.
Babcock, Wyman v. [See 18,113.]
BABSON v. THOMASTON MUT. FIRE INS. CO. [704], 4 Ins. Law J. 50.
Babson, United States v. [See 14,489.]
BACH, In re [705].
Bache, Frevall v. [See 5,113.]
Bache, Jones v. [See 7,454.]
BACHELDER v. MOULTON [706], 11 Blatchf. 304; 4 O. G. 501; 6 Fish. Pat. Cas. 488.
Bachelder, United States v. [See 14,490.]
BACHMAN, In re [707], 12 N. B. R. 223; 2 Cent. Law J. 119; 22 Int. Rev. Rec. 19.
BACHMAN v. EVERDING [708], 1 Sawy. 70.
BACHMAN v. PACKARD [709], 2 Sawy. 264; 7 N. B. R. 353; 4 Pac. Law Rep. 193.
Bachof, Frese v. [See 5,109, 5,110.]
Backhaus, Seckel v. [See 12,599.]
BACKHOUSE v. JETT [710], 1 Brock. 500.
BACKSTACK v. BANKS [711], 7 Ben. 355.
Backus, The, Franconet v. [See 5,048.]
BACKUS v. MARENGO, The [712], 6 McLean, 487.
BACKUS v. MARENGO, The [713], 6 McLean, 499.
Backus, Miller's Falls Co. v. [See 9,598.]
Backus, United States v. [See 14,491.]
BACON v. BANCROFT [714], 1 Story, 341; 3 Law Rep. 386.
Bacon, De Butts v. [See 3,717.]
Bacon, Den v. [See 3,783.]
Bacon, Hurliki v. [See 6,921.]
Bacon, Lemon v. [See 8,241.]
Bacon, Ringgold v. [See 11,842.]
BACON v. STARK [715], 2 Sawy. 644.
Bacon, United States v. [See 14,492.]
Bacon, Vowell v. [See 17,018.]
BADENHEIM, In re [716], 15 N. B. R. 370.
Badgely v. The Juniata Paton. [See 7,584.]
BADGER v. BADGER [717], 1 Cliff. 237.
BADGER v. BADGER [718], 2 Cliff. 137.
Badger, Byrd v. [See 2,265, 2,266.]
Badger, Eddy v. [See 4,276.]
Badger, Kendall v. [See 7,691.]
Badger, Orr v. [See 10,587.]
Badger, Reynolds v. [See 11,726.]
Badger, United States v. [See 14,493.]
BADISCHE ANILIN & SODA FABRIK v. COCHRANE [719], 16 Blatchf. 155; 4 Ban. & A. 215; Merw. Pat. Inv. 172.
BADISCHE ANILIN & SODA FABRIK v. CUMMINS [720], 4 Ban. & A. 489.
BADISCHE ANILIN & SODA FABRIK v. HAMILTON MFG. CO. [721], 3 Ban. & A. 235; 13 O. G. 273; Merw. Pat. Inv. 170.
BADISCHE ANILIN & SODA FABRIK v. HIGGIN [722], 15 Blatchf. 290; 3 Ban. & A. 462; 14 O. G. 414.
BAER, In re [723], 14 N. B. R. 97.
BAETJER v. BORS [724], 7 Ben. 280.
Baggot, Janney v. [See 7,210.]
Bagley, In re. [See 1,144.]
BAGLEY v. YATES [725], 3 McLean, 465.
Bagwell, United States v. [See 14,494.]
Bailee v. Comings. [See 733.]
BAILEY, In re [726], 1 N. Y. Leg. Obs. 18; 5 Law Rep. 320.
BAILEY, In re [727], 15 N. B. R. 48.
BAILEY, In re [728], 2 Sawy. 200.
BAILEY, In re [729], 2 Woods, 222.
BAILEY, In re [730], 1 Woolw. 422.
BAILEY'S CASE [731].
BAILEY v. ATLANTIC & P. R. CO. [732], 3 Dill. 22; 1 Cent. Law J. 418.
Bailey v. Atlantic & P. R. Co. [See 10,767, 10,768.]
Bailey v. Atlantic & P. R. Co. [See 10,845.]
Bailey, Chemical Nat. Bank v. [See 2,635.]
Bailey, Clark v. [See 2,814.]
Bailey, Collender v. [See 2,998.]
BAILEY v. COMINGS. [733], 16 N. B. R. 382; 4 Law & Eq. Rep. 684; 10 Chi. Leg. News, 49; 25 Pittsb. Leg. J. 51.
BAILEY v. CRIM [734], 9 Biss. 95; 8 Reporter, 455; 11 Chi. Leg. News, 383; 4 Cin. Law Bul. 574.
Bailey, Gardner v. [See 5,221.]
BAILEY v. GOODRICH [735], 2 Cliff. 597.
BAILEY v. HANNIBAL & ST. J. R. CO. [736], 1 Dill. 174.
BAILEY v. HENDERSON [737], 9 Ben. 534.
Bailey, Irwin v. [See 7,079.]
BAILEY v. LANSING [738], 13 Blatchf. 424; 2 N. Y. Wkly. Dig. 562.
BAILEY v. LOEB [739], 2 Woods, 578; 11 N. B. R. 271; 2 Cent. Law J. 42.
Bailey, Meyer v. [See 9,516.]
BAILEY v. MILNER [740], 1 Abb. U. S. 261; 35 Ga. 330; 7 Amer. Law Reg. (N. S.) 371; 1 N. B. R. 419 (Quarto, 107); 1 Amer. Law T. Rep. Bankr. 15; 2 Amer. Law Rep. 570.
BAILEY v. NICHOLS [741], 2 N. B. R. 478 (Quarto, 151); 2 Amer. Law T. Rep. Bankr. 60; 1 Chi. Leg. News, 185.
BAILEY v. PACIFIC R. CO. [742].
BAILEY v. ROSS [743].
BAILEY v. SAWYER [744], 4 Dill. 463; 1 Thomp. Nat. Bank Cas. 356; 2 Browne, Nat. Bank Cas. 154; Syllabi, 151; 9 Chi. Leg. News, 191; 11 Bankers' Mag. (3d S.) 793; 15 Alb. Law J. 235; 23 Int. Rev. Rec. 79.
BAILEY v. SCHELL [745], 5 Blatchf. 195.
BAILEY v. SONORA, The [746], Hoff. Op. 465.
Bailey, Stanley Rule & Level Co. v. [See 13,287.]
BAILEY v. SUTTON [747], 1 Cranch, C. C. 551.
Bailey, Teakle v. [See 13,811.]
Bailey, United States v. [See 14,495.]
BAILEY v. WHITFIELD [748].
BAILEY v. WRIGHT [749], 2 Bond, 181.
BAILEY WASHING & WRINGING MACH. CO. v. LINCOLN [750], 4 Fish. Pat. Cas. 379; Merw. Pat. Inv. 108.
BAILEY WASHING MACH. CO. v. YOUNG [751], 12 Blatchf. 199; 1 Ban. & A. 362.
BAILEY WRINGING MACH. CO. v. ADAMS [752], 5 Cent. Law J. 425; 3 Ban. & A. 96; 10 Chi. Leg. News, 41; 5 Reporter, 102; 23 Int. Rev. Rec. 344; 25 Pittsb. Leg. J. 30.
BAILY, In re [753], 2 Ben. 437; 1 N. B. R. 613 (Quarto, 177).
Baily v. Milner. [See 740.]
Baily, Shepherd v. [See 12,755.]
Bain, Harmanson v. [See 6,072.]
BAIN v. MORSE [754], 6 West Law J. 372; 1 McA. Pat. Cas. 90; 48 Jour. Fr. Inst. 58.
Bain, United States v. [See 14,496.]
Bainbridge, United States v. [See 14,497.]
BAINBRIDGE v. WILCOCKS [755], Baldw. 536.
BAINS v. JAMES & CATHERINE, The [756], Baldw. 544.
BAIRD v. BYRNE [757], 3 Wall. Jr. 1.
Baird, Dunham v. [See 4,147.]

[Federal Case numbers are given in brackets.]

Baird, Lewis v. [See 8,316.]
BAIRD v. SHORE LINE RAILWAY CO. [758], 6 Blatchf. 276.
BAIRD v. SHORE LINE RAILWAY CO. [759], 6 Blatchf. 461.
BAIRD v. WOLFE [760], 4 McLean, 549.
BAJORQUES v. UNITED STATES [761], Hoff. Op. 53; Hoff. Dec. 1.
Baker, Ex parte. [See 8,558.]
BAKER, In re [762], 1 Hask. 593; 13 N. B. R. 241.
BAKER, In re [763], 14 N. B. R. 433; 14 Alb. Law J. 294.
Baker, Bank of Columbia v. [See 862.]
BAKER v. BIDDLE [764], Baldw. 394.
Baker, Bronson v. [See 1,605.]
Baker v. Browning. [See 2,041.]
Baker, Carter v. [See 2,472.]
Baker, Chew v. [See 2,663.]
Baker, Christ v. [See 2,697.]
BAKER v. CITY OF NEW YORK, The [765], 1 Cliff. 75.
BAKER v. DRAPER [766], 1 Cliff. 420.
Baker, Field v. [See 4,762.]
Baker, Freeman v. [See 5,084.]
BAKER v. FRENCH [767], 2 Cranch, C. C. 539.
BAKER v. GALLAGHER [768], 1 Wash. C. C. 461.
BAKER v. GLOVER [769], 2 Cranch, C. C. 682.
Baker, Goldsborough v. [See 5,516.]
BAKER v. HEMENWAY [770], 2 Lowell, 501.
BAKER v. HERTY [771], 1 Cranch, C. C. 249.
Baker, Hyde v. [See 6,965.]
Baker, Jackson v. [See 7,129, 7130.]
BAKER v. JEFFERS [772], 4 Cranch, C. C. 707.
BAKER v. KANSAS CITY TIMES CO. [773], 18 Amer. Law Reg. (N. S.) 101.
Baker, Mack v. [See 8,834.]
Baker, McKenney v. [See 8,853.]
Baker, Mayor, etc., of Georgetown v. [See 5,342.]
BAKER v. MIX [774], 2 Cranch, C. C. 525.
BAKER v. MIX [775], 3 Cranch, C. C. 1.
Baker, New Jersey Mut. Life Ins. Co. v. [See 10,165.]
Baker, The Olive. [See 10,489.]
BAKER v. PETERSON [776], 4 Dill. 562, note.
BAKER v. PORTLAND [777], 5 Sawy. 566; 20 Alb. Law J. 206; 4 Cin. Law Bul. 620; 8 Reporter, 392; 11 Chi. Leg. News, 375; 25 Int. Rev. Rec. 321; 3 Pac. Coast Law J. 469.
BAKER v. POTOMAC, The [778], 18 How. Pr. 185; 41 Hunt, Mer. Mag. 711.
BAKER v. REDFIELD [See 1,606a].
Baker, Reynolds v. [See 11,727.]
BAKER v. ROOT [780], 4 McLean, 572.
Baker, Schaum v. [See 12,440.]
Baker, Simms v. [See 12,868.]
Baker, Smith v. [See 13,010.]
BAKER v. SMITH [781], 1 Holmes, 85.
Baker, Studley v. [See 13,559.]
Baker, Sunderland v. [See 13,617.]
BAKER v. TAYLOR [782], 2 Blatchf. 82.
BAKER v. TROS, The [783], 10 Phila. 223; 31 Leg. Int. 133; 21 Pittsb. Leg. J. 116.
Baker, United States v. [See 14,498, 14,503.]
BAKER v. VASSE [784], 1 Cranch, C. C. 194.
Baker, Voss v. [See 17,012.]
BAKER v. WARD [785], 3 Ben. 499.
BAKER v. WHITING [786], 1 Story, 218.
BAKER v. WHITING [787], 3 Sumn. 475.
BAKEWELL, In re [788], 4 N. B. R. 619 (Quarto, 199); 18 Pittsb. Leg. J. 289; 3 Pittsb. Rep. 323.
BALCH, Ex parte [789], 2 Lowell, 440; 13 N. B. R. 160.
BALCH, Ex parte [790], 3 McLean, 221.
BALCH v. COLMAN [791], 2 McLean, 85.
BALCHELLER v. MASCOUTAH [792], 7 Chi. Leg. News, 230.
BALCHEN v. ELI WHITNEY, The [792a], 9 Betts, D. C. MS. 30.
Balchen, Phiel v. [See 11,137.]
BALDERSTON v. MANRO [793], 2 Cranch, C. C. 623.
BALDRAFF v. CAMDEN & A. R. Co. [794], 25 Hunt, Mer. Mag. 77.
BALDWIN, In re [795], 6 Ben. 196.
BALDWIN, In re [796], 8 Cent. Law J. 186; 19 N. B. R. 52.
Baldwin, The H. P. [See 6,811, 6,812.]
Baldwin, Bank of Newberry v. [See 892.]
BALDWIN v. BERNARD [797], 2 O. G. 320; 5 Fish. Pat. Cas. 442; 9 Blatchf. 509, note.
BALDWIN v. BRADISH JOHNSON, The [798], 3 Woods, 582.
BALDWIN v. E. MORRIS, The [799].
Baldwin, Hale v. [See 5,913.]
Baldwin v. Harter. [See 11,263.]
Baldwin, Hester v. [See 6,438.]
Baldwin, The Hezekiah. [See 6,449.]
BALDWIN v. LAMAR [800], Chase, 432.
BALDWIN v. LEROY [800a].
BALDWIN v. RAPLEE [801], 4 Ben. 433.
BALDWIN v. RAPLEE [802], 5 N. B. R. 19.
BALDWIN v. ROSSEAU [803], 1 N. Y. Leg. Obs. 391.
BALDWIN v. SCHULTZ [804], 9 Blatchf. 494; 2 O. G. 315, 319; 5 Fish. Pat. Cas. 75.
BALDWIN v. SIBLEY [805], 1 Cliff. 150.
BALDWIN v. WILDER [806], 6 N. B. R. 85.
Baldwin, Woodside v. [See 17,995.]
BALDWIN v. WYLIE [18,228], 2 Hayw. & H. 126.
Baldwin Mfg. Co., Whipple v. [See 17,514.]
Baldy, Piper v. [See 11,179.]
Bale, United States v. [See 14,504.]
Bales of Cotton, Stephens v. [See 13,366.]
Bales of Tobacco, United States v. [See 14,505.]
BALFOUR v. WILKINS [807], 5 Sawy. 429.
BALFOUR'S LESSEE v. MEADE [808], 4 Dall. 363; 1 Wash. C. C. 18.
BALIZE, The [809], 1 Brown's Adm. 424.
BALL, Ex parte [810], 3 App. Comr. Pat. 328.
BALL, Ex parte [811], 3 App. Comr. Pat. 344.
BALL, Ex parte [812], Law Dig. 620.
Ball v. Bailie. [See 815.]
Ball, Dunbar v. [See 4,128.]
Ball, Emanuel v. [See 4,433.]
Ball, Governor of State of Arkansas v. [See 530.]
BALL v. PATTERSON [813], 1 Cranch, C. C. 604.
BALL v. PATTERSON [814], 1 Cranch, C. C. 607.
Ball, Root v. [See 12,035.]
Ball v. The Sam Kirkman. [See 8,658.]
Ball, Violette v. [See 16,954.]
BALL v. WITHINGTON [815], 1 Ban. & A. 549; 6 O. G. 933; Merw. Pat. Inv. 452.
Ball, The Daniel. [See 3,564.]
Ballance, Forsythe v. [See 4,951.]
BALLARD, In re [816], 2 N. B. R. 250 (Quarto, 84); 1 Chi. Leg. News, 103.
BALLARD v. EDMONSTON [817], 2 Cranch, C. C. 419.
Ballard, Gould v. [See 5,635.]
Ballard, Grow v. [See 5,848.]
Ballard, Martins v. [See 9,175, 9,176.]
Ballard, Oakley v. [See 10,393.]
Ballard, United States v. [See 14,506, 14,507.]
BALLOU, In re [818], 4 Ben. 135; 3 N. B. R. 717 (Quarto, 177).
BALMEAR v. OTIS [819], 4 Dill. 558.
BALMER, In re [820], 3 Hughes, 637.
BALTIC, The [821], 2 Ben. 98; 7 Int. Rev. Rec. 77.
BALTIC, The [822], 2 Ben. 396.
BALTIC, The [823], 2 Ben. 452.
BALTIC, The [824], 3 Ben. 195.
BALTIC, The [825], 10 Ben. 631.
BALTIC, The [826], 1 Blatchf. & H. 149.
Baltic, The, New York Mail Steamship Co. v. [See 10,213.]
Baltic, The, United States v. [See 821.]
Baltimore, Barney v. [See 1,029.]
Baltimore v. Connellsville & S. P. R. Co. [See 827.]
Baltimore, Duffy v. [See 4,118.]
Baltimore, Hughes v. [See 6,844.]
BALTIMORE v. PITTSBURG & C. R. CO. [827], 1 Abb. U. S. 9; 13 Pittsb. Leg. J. 576; 4 Amer. Law Reg. (N. S.) 750; 6 Phila. 190; 3 Pittsb. Rep. 20; 23 Leg. Int. 308.
Baltimore, Wheeling v. [See 17,502.]
Baltimore & O. R. Co., Cully v. [See 3,466.]
Baltimore & O. R. Co., Egbert v. [See 4,305.]
Baltimore & O. R. Co., Kirkpatrick v. [See 7,847.]
Baltimore & O. R. Co., Knight v. [See 7,882.]
Baltimore & O. R. Co., Marshall v. [See 9,124.]
Baltimore & O. R. Co., Miller v. [See 9,560, 9,561.]

[Federal Case numbers are given in brackets.]

Baltimore & O. R. Co. v. Supervisors. [See 829.]
Baltimore & O. R. Co. v. United States. [See 14,509-14,511.]
Baltimore & O. R. Co. v. Van Ness. [See 830.]
Baltimore & O. R. Co., State of Maryland v. [See 9,219.]
Baltimore City Pass. R. Co., Field v. [See 4,763.]
Baltimore City Pass. R. Co., Thompson v. [See 13,-941.]
BALTIMORE COUNTY DAIRY ASS'N, In re [828], 2 Hughes, 250; 11 N. B. R. 253; 2 Md. Law Rep. 297.
BALTIMORE & O. R. CO. v. SUPERVISORS [829.]
BALTIMORE & O. R. CO. v. VAN NESS [830], 4 Cranch, C. C. 595.
Baltimore Steam Towing Co., Ware v. [See 17,167.]
Baltzell, Naylor v. [See 10,061.]
Baltzer, Davis v. [See 3,625.]
BAMBARD, The [831], 8 Ben. 493.
Bamberger, Terry v. [See 13,837.]
BAMFIELD v. ABBOT [832], 9 Law Rep. 510.
Bamker, Parker v. [See 10,725.]
BANCROFT v. ACTON [833], 7 Blatchf. 505.
Bancroft, Adams v. [See 44.]
BANCROFT v. AMERICA, The [288].
Bancroft, Bacon v. [See 714.]
Bancroft, Champney v. [See 2,587.]
Bancroft, Farnham v. [See 4,671.]
Bancroft, Hyde v. [See 6,966.]
BANCROFT v. THAYER [835], 8 Reporter, 39; 5 Sawy. 502; 11 Chi. Leg. News, 304; 8 Amer. Law Rec. 257; 25 Int. Rev. Rec. 305.
Bancroft, United States v. [See 14,512, 14,513.]
Bancroft, Whiting v. [See 17,575.]
BANERT v. DAY [836], 3 Wash. C. C. 243.
BANERT v. ECKERT [837], 4 Wash. C. C. 325.
BANG v. FARMVILLE INS. & BANKING CO. [838], 1 Hughes, 290.
Bang v. The Theodore Heinrich. [See 7,215.]
BANGS v. LITTLE [839], 1 Ware (506), 520.
BANGS v. LOWBER [840], 2 Cliff. 157.
BANGS v. MAXWELL [841], 3 Blatchf. 135.
Bank, Anderson v. [See 354.]
BANK v. LABITUT [842], 1 Woods, 11.
Bank, Samples v. [See 12,278.]
BANK v. SHAW [843], 1 Law & Eq. Rep. 591; 2 Wkly. Notes Cas. 542.
Banker, Woollen v. [See 18,030.]
Bankers' & Brokers' Tel. Co., Day v. [See 3,672.]
BANK OF ALEXANDRIA v. CLARKE [844], 2 Cranch, C. C. 464.
BANK OF ALEXANDRIA v. DAVIS [845], 1 Cranch, C. C. 262.
BANK OF ALEXANDRIA v. DENEALE [846], 2 Cranch, C. C. 488.
BANK OF ALEXANDRIA v. DYER [847], 5 Cranch, C. C. 403.
BANK OF ALEXANDRIA v. HENDERSON [848], 1 Cranch, C. C. 167.
BANK OF ALEXANDRIA v. McCREA [849], 3 Cranch, C. C. 649.
BANK OF ALEXANDRIA v. MANDEVILLE [850], 1 Cranch, C. C. 552.
BANK OF ALEXANDRIA v. MANDEVILLE [851], 1 Cranch, C. C. 575.]
BANK OF ALEXANDRIA v. SAUNDERS [852], 2 Cranch, C. C. 183.
BANK OF ALEXANDRIA v. SWANN [853], 4 Cranch, C. C. 136.
BANK OF ALEXANDRIA v. TAYLOR [854], 5 Cranch, C. C. 314.
Bank of Alexandria, United States v. [See 14,514.]
BANK OF ALEXANDRIA v. WILSON [855], 1 Cranch, C. C. 168.
BANK OF ALEXANDRIA v. WILSON [856], 2 Cranch, C. C. 5.
Bank of Alexandria v. Yeaton. [See 858.]
BANK OF ALEXANDRIA v. YOUNG [857], 1 Cranch, C. C. 458.
BANK OF ALEXANDRIA v. YOUNG [858], 2 Cranch, C. C. 52.
Bank of Arkansas, United States v. [See 14,515.]
Bank of British Columbia, Semple v. [See 12,659, 12,-660.]
BANK OF BRITISH NORTH AMERICA v. ELLIS [859], 9 Reporter, 204; 8 Amer. Law Rec. 460; 6 Sawy. 96.
BANK OF CIRCLEVILLE v. IGLEHART [860], 6 McLean, 568.
BANK OF CLEVELAND v. STURGES [861], 2 McLean, 341.
BANK OF COLUMBIA v. BAKER [862], 3 Cranch, C. C. 432.
BANK OF COLUMBIA v. BUNNEL [863], 2 Cranch, C. C. 306.
BANK OF COLUMBIA v. COOK [864], 2 Cranch, C. C. 574.
BANK OF COLUMBIA v. DAWES [865].
Bank of Columbia v. Dawes. [See 862.]
BANK OF COLUMBIA v. DUNLOP [866], 3 Cranch, C. C. 414.
BANK OF COLUMBIA v. FRENCH [867], 1 Cranch, C. C. 221.
BANK OF COLUMBIA v. GALLOWAY [868], 3 Cranch, C. C. 353.
BANK OF COLUMBIA v. HYATT [869], 4 Cranch, C. C. 38.
BANK OF COLUMBIA v. JONES [870], 2 Cranch, C. C. 516.
BANK OF COLUMBIA v. KING [871], 2 Cranch, C. C. 570.
BANK OF COLUMBIA v. LAWRENCE [872], 2 Cranch, C. C. 510.
Bank of Columbia, Kurtz v. [See 7,949.]
Bank of Columbia, Levering v. [See 8,286, 8,287.]
BANK OF COLUMBIA v. MACKALL [873], 2 Cranch, C. C. 631.
BANK OF COLUMBIA v. McKENNY [874], 3 Cranch, C. C. 361.
BANK OF COLUMBIA v. MOORE [875], 3 Cranch, C. C. 292.
BANK OF COLUMBIA v. MOORE [876], 3 Cranch, C. C. 663.
BANK OF COLUMBIA v. OKELEY [877].
BANK OF COLUMBIA v. OTT [878], 2 Cranch, C. C. 529.
BANK OF COLUMBIA v. OTT [879], 2 Cranch, C. C. 575.
Bank of Columbia, Renner v. [See 11,699.]
BANK OF COLUMBIA v. SCOTT [880], 1 Cranch, C. C. 134.
Bank of Columbia, Smith v. [See 13,011.]
BANK OF COLUMBIA v. SWEENY [881], 2 Cranch, C. C. 704.
BANK OF COLUMBIA v. SWEENY [882], 3 Cranch, C. C. 293.
BANK OF COLUMBIA v. WRIGHT [883], 3 Cranch, C. C. 216.
BANK OF COMMERCE v. RUSSELL [884], 2 Dill. 215.
BANK OF CUMBERLAND v. WILLIS [885], 3 Sumn. 472.
BANK OF DANVILLE v. TRAVERS [886], 4 Biss. 507.
BANK OF DOVER v. DODGE [10,053], 25 Int. Rev. Rec. 304.
BANK OF ILLINOIS v. BRADY [888], 3 McLean, 268.
Bank of Illinois, Lafayette Bank v. [See 7,987.]
Bank of Illinois, Stickney v. [See 13,440.]
BANK OF KENTUCKY v. ADAMS EXP. CO. [889], 1 Flip. 242; 14 Amer. Law Reg. (N. S.) 30; 1 Amer. Law T. Rep. (N. S.) 451; 3 Amer. Law Rec. 148; 1 Cent. Law J. 436.
Bank of Louisiana, Thornhill v. [See 13,990-13,992.]
BANK OF MADISON, In re [890], 5 Biss. 515; 9 N. B. R. 184.
Bank of Mobile, Eslava v. [See 4,526.]
Bank of Montreal, Essex County Nat. Bank v. [See 4,532.]
BANK OF MOUNT PLEASANT v. SPRIGG [891], 1 McLean, 178.
BANK OF NEWBURY v. BALDWIN [892], 1 Cliff. 519.
Bank of North America, Lemoine v. [See 8,240.]
BANK OF NORTH AMERICA v. MEREDITH [893], 2 Wash. C. C. 47.
BANK OF NORTH CAROLINA, In re [894], 2 Hughes, 369; 10 N. B. R. 289, 290.
BANK OF NORTH CAROLINA, In re [895], 12 N. B. R. 130; 1 N. Y. Wkly. Dig. 127.
BANK OF NORTH CAROLINA, In re [896], 19 N. B. R. 164.
BANK OF NORTH CAROLINA v. DEWEY [897], 19 N. B. R. 314.

[Federal Case numbers are given in brackets.]

Bank of Passamaquoddy, Wild v. [See 17,646.]
Bank of Pennsylvania, Bullet v. [See 2,125.]
Bank of Pittsburg, Cromwell v. [See 3,409.]
Bank of River Raisin, Davis v. [See 3,626.]
BANK OF SOUTH CAROLINA v. BICKNELL [898], 1 Cliff. 85; 43 Hunt, Mer. Mag. 586, (2d Case); 17 Lawy. Ed. U. S. Sup. Ct. Rep. 241.
Bank of Stockton, Pendergast v. [See 10,918.]
BANK OF TENNESSEE v. UNION BANK OF LOUISIANA [899], 2 Amer. Law Rev. 346.
BANK OF THE METROPOLIS v. BRENT [900], 2 Cranch, C. C. 530.
Bank of the Metropolis, Guttschlick v. [See 5,880.]
BANK OF THE METROPOLIS v. MOORE [901], 5 Cranch, C. C. 518.
Bank of the Metropolis, New England Bank v. [See 10,152.]
BANK OF THE METROPOLIS v. SWANN [902], 4 Cranch, C. C. 139.
BANK OF THE METROPOLIS v. WALKER [903], 2 Cranch, C. C. 294.
BANK OF THE METROPOLIS v. WALKER [904], 2 Cranch, C. C. 361.
BANK OF THE STATE OF SOUTH CAROLINA v. BICKNALL [905], 43 Hunt, Mer. Mag. 586.
BANK OF THE UNITED STATES v. ABBOTT [906], 3 Cranch, C. C. 94.
Bank of the United States, Bank of Washington v. [See 947.]
BANK OF THE UNITED STATES v. BARRY [907], 2 Cranch, C. C. 307.
BANK OF THE UNITED STATES v. BENNING [908], 4 Cranch, C. C. 81.
BANK OF THE UNITED STATES v. BOMFORD [909], 1 Hayw. & H. 256.
BANK OF THE UNITED STATES v. BRENT [910], 2 Cranch, C. C. 696.
BANK OF THE UNITED STATES v. BUSSARD [911], 3 Cranch, C. C. 173.
Bank of the United States, Coote v. [See 3,203, 3,204.]
BANK OF THE UNITED STATES v. CORCORAN [912], 3 Cranch, C. C. 46.
BANK OF THE UNITED STATES v. CRABB [913], 2 Cranch, C. C. 299.
BANK OF THE UNITED STATES v. DANDRIDGE [914].
BANK OF THE UNITED STATES v. DAVIS [915], 4 Cranch, C. C. 533.
BANK OF THE UNITED STATES v. DEVEAUX [916], 1 Hall, Law J. 263.
Bank of the United States, Findlay's Ex'rs v. [See 4,791.]
Bank of the United States, Georgetown v. [See 5,343.]
BANK OF THE UNITED STATES v. GODDARD [917], 5 Mason, 366.
BANK OF THE UNITED STATES v. HATCH [918], 1 McLean, 90.
Bank of the United States, Hubbard v. [See 6,815.]
Bank of the United States, Jackson v. [See 7,131.]
BANK OF THE UNITED STATES v. JOHNSON [919], 3 Cranch, C. C. 228.
Bank of the United States, Key v. [See 7,746.]
BANK OF THE UNITED STATES v. KURTZ [920], 2 Cranch, C. C. 342.
BANK OF THE UNITED STATES v. LEE [921], 3 Cranch, C. C. 288.
BANK OF THE UNITED STATES v. LEE [922], 5 Cranch, C. C. 319.
BANK OF THE UNITED STATES v. LONGWORTH [923], 1 McLean, 35.
BANK OF THE UNITED STATES v. LYMAN [924], 1 Blatchf. 297; 20 Vt. 666; 11 Law Rep. 156.
BANK OF THE UNITED STATES v. MacDONALD [925], 4 Cranch, C. C. 624.
BANK OF THE UNITED STATES v. McKENNEY [926], 3 Cranch, C. C. 173.
BANK OF THE UNITED STATES v. McKENZIE [927], 2 Brock. 393.
BANK OF THE UNITED STATES v. McLAUGHLIN [928], 2 Cranch, C. C. 20.
BANK OF THE UNITED STATES v. MAGILL [929], 1 Paine, 661.
Bank of the United States, Martin v. [See 9,156.]
BANK OF THE UNITED STATES v. MOORE [930], 3 Cranch, C. C. 330.
BANK OF THE UNITED STATES v. NORTHUMBERLAND BANK [931], 4 Wash. C. C. 108; 4 Conn. 333.
BANK OF THE UNITED STATES v. O'NEALE [932], 2 Cranch, C. C. 466.
BANK OF THE UNITED STATES v. PETER [933], 5 Cranch, C. C. 485.
Bank of the United States, Ritchie v. [See 11,863.]
BANK OF THE UNITED STATES v. ROBERTS [934], 4 Conn. 323.
BANK OF THE UNITED STATES v. SMITH [935], 2 Cranch, C. C. 319.
BANK OF THE UNITED STATES v. SMITH [936], 4 Cranch, C. C. 712.
Bank of the United States, Swan v. [See 13,668.]
BANK OF THE UNITED STATES v. SWANN [937], 2 Cranch, C. C. 368.
BANK OF THE UNITED STATES v. VAN NESS [938], 5 Cranch, C. C. 294.
BANK OF THE UNITED STATES v. VOORHEES [939], 1 McLean, 221.
BANK OF THE UNITED STATES v. WASHINGTON [940], 3 Cranch, C. C. 295.
BANK OF THE UNITED STATES v. WATTERSTON [941], 4 Cranch, C. C. 445.
Bank of the United States, Whiting v. [See 17,576.]
BANK OF THE UNITED STATES v. WILLIAMS [942], 3 Cranch, C. C. 240.
BANK OF THE UNITED STATES v. WILSON. [943], 3 Cranch, C. C. 213.
BANK OF THE UNITED STATES v. WINSTON [944], 2 Brock. 252.
BANK OF UNITED STATES v. FREDERICKSON [945], Ingr. Insolv. 277.
BANK OF UNITED STATES v. ROBERTS [946], 2 Cranch, C. C. 15.
Bank of United States v. Wilson. [See 943.]
BANK OF WASHINGTON v. BANK OF THE UNITED STATES [947], 4 Cranch, C. C. 86.
BANK OF WASHINGTON v. BRENT [948], 2 Cranch, C. C. 538.
Bank of Washington, Brent v. [See 1,834.]
BANK OF WASHINGTON v. ELIOT [949].
Bank of Washington, Ellsworth v. [See 18,294.]
BANK OF WASHINGTON v. KURTZ [950], 2 Cranch, C. C. 110.
Bank of Washington, Magruder v. [See 8,963.]
BANK OF WASHINGTON v. NEALE [951], 4 Cranch, C. C. 627.
Bank of Washington, Patriotic Bank v. [See 10,806.]
Bank of Washington v. Peirson. [See 953.]
BANK OF WASHINGTON v. PELTZ [952], 2 Cranch, C. C. 241.
BANK OF WASHINGTON v. PEIRSON [953], 2 Cranch, C. C. 685.
Bank of Washington, Pierson v. [See 11,155.]
BANK OF WASHINGTON v. REYNOLDS [954], 2 Cranch, C. C. 289.
Bank of Washington, Triplett v. [See 14,178.]
BANK OF WASHINGTON v. WALKER [955], 1 Hayw. & H. 53.
BANK OF WASHINGTON v. WALKER [956], 1 Hayw. & H. 60.
BANK OF WASHINGTON v. WAY [957], 2 Cranch, C. C. 249.
BANKS, In re [958], 1 N. Y. Leg. Obs. 274; 5 Law Rep. 371.
Banks, Backstack v. [See 711.]
Banks, Charge to Grand Jury in Relation to Frauds of Officers of National Banks. [See 18,246.]
Banks, Cowen v. [See 3,295.]
BANKS v. GREENLEAF [959], 1 Hughes. 261; 6 Call, 271.
BANKS v. KING [960], 1 Cranch, C. C. 543.
BANKS v. McDIVITT [961], 13 Blatchf. 163; 8 O. G. 860.
BANKS v. METROPOLIS, The [962], 45 Hunt, Mer. Mag. 590; 1 Pars. Adm. 597, note.
BANKS v. MILLER [963], 1 Cranch, C. C. 543.
Banks, Paige v. [See 10,671.]
Banks, Smyth v. [See 13,134.]
Banks, Waddington v. [See 17,028.]
Bannatyne, Herbert v. [See 6,396.]
BANNENDAHL v. REDFIELD [964], 4 Blatchf. 223; 40 Hunt, Mer. Mag. 75.
Banner, The, Ward v. [See 17,149.]
BANSHEE, The [965], Blatchf. Pr. Cas. 580.
BANTA v. McNEIL [966], 5 Ben. 74; 15 Int. Rev. Rec. 144.
Banter v. McNeil. [See 966.]

[Federal Case numbers are given in brackets.]

BANTZ v. ELSAS [967], 1 Ban. & A. 351; 6 O. G. 117.
BAPTIST MISSIONARY UNION v. TURNER [968], 6 McLean, 43.
BARBEE v. WILLARD [969], 4 McLean, 356.
BARBER v. HALLETT [970], 4 Ban. & A. 213.
Barber, Guidet v. [See 5,857.]
Barber, Mowry v. [See 9,892.]
Barber, Neederer v. [See 10,079.]
Barber, Washington v. [See 17,224.]
BARBOUR v. RUSSELL [971], 3 Cranch, C. C. 47.
Barbour, Woodworth v. [See 18,010.]
Barclay, Campbell v. [See 2,352, 2,353.]
BARCLAY v. GOODALE [972].
BARCLAY v. GOVERS [973], 1 Cranch, C. C. 147.
BARCLAY v. HOLM [974].
BARCLAY v. HOWELL [975], 4 Haz. Reg. Pa. 227.
BARCLAY v. KENNEDY [976], 3 Wash. C. C. 350.
BARCLAY v. LEVEE COM'RS [977], 1 Woods, 254.
Barclay, McMillin v. [See 8,902.]
Barclay, St. Luke's Hospital v. [See 12,241.]
BARCLAY v. THAYER [978], 12 Blatchf. 107; 1 Ban. & A. 267; 6 O. G. 2.
Barcroft, Chesapeake & O. Canal Co. v. [See 2,644.]
Barcroft, Stewart v. [See 13,422.]
Bard, Rapp v. [See 11,577.]
Barent v. Day. [See 836.]
Barger, Chapman v. [See 2,603.]
BARGER v. MILLER [979], 4 Wash. C. C. 280.
BARGH v. PAGE [980], 4 McLean, 10.
BARGIE v. UNITED STATES [18,229], 2 Hayw. & H. 357.
BARING v. ERDMAN [981]; 14 Hag. Reg. Pa. 129.
BARING v. FANNING [982], 1 Paine, 549.
BARING v. LYMAN [983], 1 Story, 396; 4 Law Rep. 303.
BARING v. PUTNAM [984], 1 Holmes, 261.
BARING v. WILLING [985], 4 Wash. C. C. 248.
BARKER v. BARKER'S ASSIGNEE [986], 2 Woods, 87; 12 N. B. R. 474; 2 Amer. Law T. Rep. (N. S.) 386.
BARKER v. BARKER'S ASSIGNEE [987], 2 Woods, 241.
BARKER v. DALE [988], 17 Pittsb. Leg. J. 19; 3 Pittsb. Rep. 190; 8 Morr. Min. Rights, 597.
Barker, Doyne v. [See 4,055.]
Barker v. Henry. [See 989.]
BARKER v. JACKSON [989], 1 Paine, 559.
Barker, The Joshua. [See 7,547.]
Barker v. Ladd. [See 17,352.]
BARKER v. LADD [990], 3 Sawy. 44; 6 Chi. Leg. News, 280.
BARKER v. LAWRENCE [991].
BARKER v. MARINE INS CO. [992], 2 Mason, 369.
Barker, Marks v. [See 9,096.]
Barker, Nelson v. [See 10,101.]
Barker v. Newhall. [See 994, 995.]
Barker, Norton v. [See 10,349.]
BARKER v. PARKENHORN [993], 2 Wash. C. C. 142.
Barker v. Smith. [See 986, 987.]
Barker, Smith v. [See 13,012, 13,013.]
BARKER v. STOWE [994], 15 Blatchf. 49; 3 Ban. & A. 337; 14 O. G. 559; Merw. Pat. Inv. 169.
BARKER v. STOWE [995], 4 Ban. & A. 485; 16 O. G. 807.
Barker, United States v. [See 14,516-14,520.]
BARKER v. WHITE [996], 11 Blatchf. 445; 19 Int. Rev. Rec. 117.
Barkley, Ronald v. [See 12,031.]
Barksdale, Lewis v. [See 8,317.]
BARLEY v. CHICAGO & A. R. CO. [997], 4 Biss. 430.
BARLOW v. BARNER [998], 1 Dill. 418.
Barlow, United States v. [See 14,521.]
BARMAN, In re [999], 14 N. B. R. 125; 3 N. Y. Wkly. Dig. 111.
Barnabo, United States v. [See 14,522.]
BARNARD, Ex parte [1,000], 4 Cranch, C. C. 294.
Barnard, Adams v. [See 45.]
BARNARD v. CONGER [1,001], 6 McLean, 497.
Barnard, Dillon v. [See 3,915.]
BARNARD v. FARWELL [1,002].
Barnard, Gibson v. [See 5,389.]
BARNARD v. HARTFORD, P. & F. R. CO. [1,003].
BARNARD v. HERBERT [1,347].
Barnard, Kellogg v. [See 7,661.]
BARNARD v. MORTON [1,005], 1 Curt. 404.
BARNARD v. MORTON [1,006], 1 Spr. 186.
BARNARD v. NORWICH & W. R. CO. [1,007], 4 Cliff. 351; 14 N. B. R. 469; 3 Cent. Law J. 608; 5 Amer. Law Rec. 361; 22 Int. Rev. Rec. 312.
Barnard, Philadelphia & R. R. Co. v. [See 11,086.]
BARNARD v. TAYLOE [1,008], 5 Cranch, C. C. 403.
Barnard, Wilkinson v. [See 17,669.]
Barnard, The Edward. [See 4,291.]
Barner, Barlow v. [See 998.]
BARNERT v. HIGHTOWER [1,009], 10 N. B. R. 157.
BARNES, Ex parte [1,010], 1 Spr. 133; 9 Law Rep. 314.
BARNES, In re [1,011], 10 Ben. 79.
BARNES, In re [1,012], 1 Lowell, 560.
BARNES, In re [1,013], 1 Wkly. Notes Cas. 21.
BARNES' HEIRS v. BARNES [1,014], 3 Cranch, C. C. 269.
BARNES v. BILLINGTON [1,015], 1 Wash. C. C. 29; 4 Day, 81, note.
BARNES v. CHICAGO, M. & ST. P. R. CO. [1,016], 8 Biss. 514; 8 Reporter, 776; 11 Chi. Leg. News, 399.
Barnes, Howenstein v. [See 6,786.]
Barnes, Inman v. [See 7,048.]
BARNES v. LEE [1,017], 1 Cranch, C. C. 430.
BARNES v. LEE [1,018], 1 Cranch, C. C. 471.
Barnes v. Milwaukee & St. P. R. Co. [See 1,016.]
Barnes, Philadelphia & R. R. Co. v. [See 11,087.]
BARNES v. RETTEW [1,019], 28 Leg. Int. 124; 8 Phila. 133.
BARNES v. RYDER [1,020], 3 McLean, 374.
BARNES v. STEAMSHIP CO. [1,021], 25 Leg. Int. 196; 6 Phila. 479.
BARNES v. STRAUS [1,022], 9 Blatchf. 553; 2 O. G. 62; 5 Fish. Pat. Cas. 531; Merw. Pat. Inv. 204.
BARNES v. UNITED STATES [16,929], 12 N. B. R. 526.
Barnes, United States v. [See 14,523.]
Barnes v. Vetterlein. [See 16,929.]
Barnet v. Day. [See 836.]
BARNETT, In re [1,024], 3 Pittsb. Rep. 559; 15 Pittsb. Leg. J. 73.
Barnett v. Hightower. [See 1,009.]
BARNETT v. LUTHER [1,025], 1 Curt. 434.
BARNETT v. MUNCIE NAT. BANK [1,026], 1 Cin. Law Bul. 45.
BARNEWALL v. JONES [1,027], 14 N. B. R. 278.
BARNEY EATON, The [1,028], 1 Biss. 242.
BARNEY v. BALTIMORE [1,029], 1 Hughes, 118.
Barney v. Barney. [See 18,230, 18,308.]
Barney, Campbell v. [See 2,354.]
Barney, Cateaux v. [See 2,511.]
Barney, Cox v. [See 3,300.]
Barney, Dale v. [See 3,541.]
Barney, De Kraft v. [See 18,288.]
BARNEY v. DE KRAFT [18,230], 2 Hayw. & H. 404.
BARNEY v. D. R. MARTIN, The [1,030], 11 Blatchf. 233; 8 Alb. Law J. 54; 5 Chi. Leg. News, 535; 18 Int. Rev. Rec. 55; 8 Amer. Rev. 169; 21 Pittsb. Leg. J. 10.
Barney, Echeverria v. [See 4,262.]
Barney, Faber v. [See 4,601.]
Barney, Falleck v. [See 4,625.]
BARNEY v. GLOBE BANK [1,031], 5 Blatchf. 107; 2 Amer. Law Reg. (N. S.) 221.
Barney, Iselin v. [See 7,103.]
Barney, Kaupe v. [See 7,628.]
BARNEY v. KEOKUK [1,032], 4 Dill. 593.
Barney, Latham v. [See 8,102.]
Barney, Moke v. [See 9,698.]
Barney, Morris v. [See 9,826.]
Barney, Napier v. [See 10,009.]
Barney, Oelrichs v. [See 10,443.]
Barney, Ogden v. [See 10,454.]
Barney, Parrott v. [See 10,773.]
Barney, Powers v. [See 11,361.]
Barney, Russell v. [See 12,152.]
Barney, Schmeider v. [See 12,462.]
Barney, Troost v. [See 14,185.]
Barney, United States v. [See 14,524, 14,525.]
BARNEY v. WASHINGTON CITY [1,033], 1 Cranch, C. C. 248.
Barney, Westfall v. [See 17,447.]
Barney, Williams v. [See 17,713.]
Barney, Woodruff v. [See 17,986.]

[Federal Case numbers are given in brackets.]

Barney Eaton, The. [See 1,028.]
Barnhardt, United States v. [See 14,526.]
Barnits v. First Nat. Bank of Eaton. [See 1,034.]
BARNITS v. FIRST NAT. BANK OF HAMILTON [1,034], 1 Cin. Law Bul. 45.
BARNS v. OMALLY [1,035], 4 McLean, 576.
Barnum, Dixon v. [See 3,928.]
BARNUM v. GOODRICH [1,036].
Barnum, Hopkins v. [See 6,685.]
Barnum, Wilson v. [See 17,786, 17,787.]
BARR v. GALLOWAY [1,037], 1 McLean, 476.
BARR v. SIMPSON [1,038], Baldw. 543.
Barr, United States v. [See 14,527.]
BARRAS v. BIDWELL [1,039], 3 Woods, 5.
Barrell, Edmondson v. [See 4,284.]
BARRELL v. LIMINGTON [1,040], 4 Cranch, C. C. 70.
BARRELL v. SIMONTON [1,041], 2 Cranch, C. C. 657.
BARRELL v. SIMONTON [1,042], 3 Cranch, C. C. 681.
BARRETT, In re [1,043], 2 Hughes, 444; 2 N. B. R. 533 (Quarto, 165); 1 Chi. Leg. News, 202; 2 Amer. Law T. Rep. 182; 11 Int. Rev. Rec. 21; 1 Amer. Law T. Rep. Bankr. 144.
BARRETT, In re [1,044], 11 N. B. R. 527; 1 Cent. Law J. 556.
BARRETT v. APLINGTON [1,045], 1 West. Law Month. 53.
Barrett, Brown v. [See 1,991.]
BARRETT v. GODDARD [1,406], 3 Mason, 107.
BARRETT v. HALL [1,047], 1 Mason, 447; 1 Robb. Pat. Cas. 207.
BARRETT v. KOELLA [1,048], 5 Biss. 40.
BARRETT v. McPHERSON [1,049], 4 Cranch, C. C. 475.
Barrett, Morris v. [See 9,827.]
Barrett, Pope v. [See 11,273.]
Barrett, Stearns v. [See 13,337.]
BARRETT v. WACOUSTA, The [1,050], 1 Flip. 517; 8 Chi. Leg. News, 194; 1 Cin. Law Bul. 44.
Barrett, Williams v. [See 17,714.]
BARRETT v. WILLIAMSON [1,051], 4 McLean, 589.
Barron, In re. [See 1,057.]
Barron, Bowman v. [See 1,738.]
BARRON v. ILLINOIS CENT. R. CO. [1,052], 1 Biss. 412.
BARRON v. ILLINOIS CENT. R. CO. [1,053], 1 Biss. 453; 2 Chi. Leg. News, 385.
BARRON v. LOCKE [1,054], 7 Leg. Int. 203.
BARRON v. MORRIS [9,828], 14 N. B. R. 371.
BARRON v. NEWBERRY [1,056], 1 Biss. 149.
Barron County, North Wisconsin Ry. Co. v. [See 10,347.]
BARROW, In re [1,057], 1 N. B. R. 481 (Quarto, 125); 1 Amer. Law T. Rep. Bankr. 63.
Barrowcliff, United States v. [See 14,528.]
Barrows, In re. [See 1,057.]
BARROWS v. CARPENTER [1,058], 1 Cliff. 204.
Barrows, United States v. [See 14,529.]
BARRY, In re [1,059], 7 Law Rep. 374; 1 Brunner, Col. Cas. 533; 136 U. S. 597, note; 42 Fed. 113; 11 Hunt, Mer. Mag. 265.
Barry, Bank of the United States v. [See 14,529.]
BARRY v. BARRY [1,060], 3 Cranch, C. C. 120.
Barry, Biggs v. [See 1,402.]
Barry v. Everett. [See 1,061.]
BARRY v. GUGENHEIM [1,061], 5 Fish. Pat. Cas. 452; 1 O. G. 382; Merw. Pat. Inv. 242; 2 Bench & Bar, 65.
Barry, Hearne v. [See 6,303.]
Barry, McAllister v. [See 8,656.]
BARRY v. MERCEIN [1,062].
Barry, Pancost v. [See 10,705.]
Barry, Perry v. [See 11,000.]
Barry, Rice v. [See 11,751.]
Barry, Sackett's Harbor Bank v. [See 12,204.]
Barry, Thompson v. [See 13,942.]
Barry, United States v. [See 14,530.]
BARSTOW, Ex parte [1,063], 3 App. Com'r Pat. 268.
BARSTOW v. PECKHAM [1,064], 5 N. B. R. 72.
BARSTOW v. SWAN [1,065].
BARSTOW v. WILMOT [1,066], 18 Betts, D. C. Ms. 77.
Barstow, The Amos C. [See 337.]
Barstow Stove Co., Forbes v. [See 4,923.]
BARTELSON v. CYNTHIA, The [1,067], 25 Int. Rev. Rec. 384; 14 Phila. 411; 36 Leg. Int. 462; 8 Reporter, 773.
BARTENBACH, In re [1,068], 11 N. B. R. 61; 2 Amer. Law T. Rep. (N. S.) 33.
BARTH v. MAKEEVER [1,069], 4 Biss. 206.
Bartholew, Kinsing's Assignee v. [See 7,831.]
Bartholomae, Gottfried v. [See 5,632.]
BARTHOLOMEW v. SAWYER [1,070], 4 Blatchf. 347; 1 Fish. Pat. Cas. 516; 41 Hunt, Mer. Mag. 575; 16 Leg. Int. 316.
BARTHOLOMEW v. WEST [1,071], 2 Dill. 290; 8 N. B. R. 12; 7 West. Jur. 441.
BARTLE v. COLEMAN [1,072], 3 Cranch, C. C. 283.
Bartle, United States v. [See 14,531.]
BARTLEMAN v. DOUGLASS [1,073], 1 Cranch, C. C. 450.
Bartleman, Scott v. [See 12,524.]
BARTLEMAN v. SMARR [1,074], 2 Cranch, C. C. 16.
BARTLETT v. BUDD [1,075], 1 Lowell, 223.
BARTLETT v. CRITTENDEN [1,076], 5 McLean, 32; 7 West. Law J. 49.
Bartlett, Goodhue v. [See 5,538.]
BARTLETT v. KANE [1,077], Taney, 186.
BARTLETT v. MERCER [1,078], 8 Ben. 439.
BARTLETT v. ROGERS [1,079], 3 Sawy. 62.
BARTLETT v. RUSSELL [1,080], 4 Dill. 267; 16 N. B. R. 211; 9 Chi. Leg. News, 377; 6 Amer. Law Rec. 13; 4 Law & Eq. Rep. 197; 24 Pittsb. Leg. J. 206.
Bartlett, United States v. [See 14,532.]
BARTLETT v. WILLIAMS [1,081], Holmes, 229.
BARTLETTE v. CRITTENDEN [1,082], 4 McLean, 300.
BARTLETTE v. VIOLA, The [1,083], 3 Chi. Leg. News, 245.
Barton, In re. [See 1,085.]
BARTON v. ANTHONY [1,084], 1 Wash. C. C. 317.
Barton, Prentiss v. [See 11,384.]
BARTON v. TOWER [1,085], 5 Law Rep. 214; 1 Pa. Law J. 209; 1 N. Y. Leg. Obs. 8.
Barton, United States v. [See 14,533, 14,534.]
Bartow Iron Works, Martin v. [See 9,157.]
BARTUSCH, In re [1,086], 9 N. B. R. 478.
BAS v. STEEL [1,087], Pet. C. C. 406.
BAS v. STEELE [1,088], 3 Wash. C. C. 381.
Bascadore, United States v. [See 14,535, 14,536.]
BASCOM v. LANE [1,089], 4 Amer. Law J. (N. S.) 193; 9 West. Law J. 162; Brunner, Col. Cas. 348; 8 Leg. Int. 162.
BASHFORD, In re [1,090], 2 N. B. R. 73 (Quarto, 26).
Bashore, Shryock v. [See 12,820.]
Basket, Chaney v. [See 2,595.]
Basket, Hässell v. [See 6,198.]
BASS, In re [1,091], 3 Woods, 382; 15 N. B. R. 453; 9 Chi. Leg. News, 303.
BASS v. DINWIDDIE [1,092], Cooke, 130; Brunner, Col. Cas. 190.
BASS v. FIVE NEGROES [1,093], Bee, 201.
Bass, United States v. [See 14,537.]
BASSELL v. AMERICAN FIRE INS. CO. [1,094], 2 Hughes, 531.
Bassett, Francis v. [See 5,037.]
BASSETT v. ORR [1,095], 7 Biss. 296.
Bassett, United States v. [See 14,538, 14,539.]
BASSILL v. JEFFERSONVILLE [1,449], 3 Wkly. Law Gaz. 279.
BASTABLE v. WILSON [1,097], 1 Cranch, C. C. 124.
Bastable, Wilson v. [See 17,788, 17,789.]
Basye, Veitch v. [See 16,909.]
BATCHELDER, In re [1,098], 1 Lowell, 373; 3 N. B. R. 150 (Quarto, 37).
BATCHELDER, In re [1,099], 2 Lowell, 245.
Batchelder v. The Success. [See 13,586.]
Batchelder, United States v. [See 14,540, 14,541.]
Batelson v. The Cynthia. [See 1,067.]
Bateman, Greene v. [See 5,762.]
BATES, In re [1,099a].
Bates, Dean v. [See 3,704.]
BATES v. DRURY [1,100], 4 Mason, 118.
BATES v. EQUITABLE FIRE & MARINE INS. CO. [1,101], 3 Cliff. 215.
BATES v. NATCHEZ, The [1,102], Newb. 489.
BATES v. PAYSON [1,103], 4 Dill. 265.
BATES v. SEABURY [1,104], 1 Spr. 433; 21 Law Rep. 666.

[Federal Case numbers are given in brackets.]

Bates, United States v. [See 14,542-14,544.]
Bates, Wheeler v. [See 17,492.]
Bates County, Harshman v. [See 6,148.]
Batley, Cole v. [See 2,977.]
Baton Rouge, Spalding v. [See 13,200.]
BATTEN v. CLAYTON [1,105].
BATTEN v. SILLIMAN [1,106], 3 Wall. Jr. 124.
BATTEN v. TAGGERT [1,107], 2 Wall. Jr. 101; 8 Leg. Int. 126; 53 Jour. Fr. Inst. 96.
Battey, In re. [See 14,169.]
Battie v. Taggert. [See 1,107.]
BATTIN v. BIGELOW [1,108], Pet. C. C. 452.
Battin v. Taggert. [See 1,107.]
Battiste, United States v. [See 14,545.]
BATTLE v. MUTUAL LIFE INS. CO. [1,109], 10 Blatchf. 417.
BATTLES v. MILLER [1,110], 3 Cranch, C. C. 296.
BAUBIE v. ÆTNA INS. CO. [1,111], 2 Dill. 156.
Baudin, Moran v. [See 9,785.]
BAUDUY v. UNION INS. CO. [1,112], 2 Wash. C. C. 391.
BAUENDAHL v. HORR [1,113], 7 Blatchf. 548.
Bauer, United States v. [See 14,546.]
Bauert, Eckert v. [See 4,266.]
BAUGH v. NOLAND [1,114], 2 Cranch, C. C. 2.
BAULIGUY v. UNITED STATES [1,696a], 1 La. Law J. 184.
BAUM, In re [1,116], 1 Ben. 274; 1 N. B. R. 5; Bankr. Reg. Supp. 2; 6 Int. Rev. Rec. 28.
BAUMAN v. UNION PAC. R. CO. [1,117], 3 Dill. 367.
BAXTER, In re [1,118], 5 Amer. Law Reg. (N. S.) 159, note.
BAXTER, In re [1,119], 18 N. B. R. 62.
BAXTER, In re [1,120], 18 N. B. R. 497; 26 Pittsb. Leg. J. 140.
BAXTER, In re [1,121], 18 N. B. R. 560.
BAXTER, In re [1,122], 19 N. B. R. 295.
BAXTER v. BIAYS [1,123], Brunner, Col. Cas. 254; 4 Hall, Law J. 276.
BAXTER v. DONA FERMOAS, The [1,123a].
Baxter, La Société Anonyme Des Mines v. [See 8,099.]
BAXTER v. LELAND [1,124], 1 Abb. Adm. 348.
BAXTER v. LELAND [1,125], 1 Blatchf. 526.
BAXTER v. MAXWELL [1,126], 4 Blatchf. 32.
BAXTER v. NEW ENGLAND INS. CO. [1,127], 3 Mason, 96.
Baxter, Williams v. [See 17,715.]
Baxter, The Edgar. [See 4,278.]
BAYARD, The, v. COAL VALLEY, The [1,128], 3 Pittsb. Rep. 165; 16 Pittsb. Leg. J. 204.
BAYARD v. BAYARD [1,129], 3 Pa. Law J. 261; 5 Pa. Law J. 160.
BAYARD v. COLEFAX [1,130], 4 Wash. C. C. 38.
Bayard, Grubb v. [See 5,849.]
Bayard, Koning v. [See 7,924.]
BAYARD v. LATHY [1,131], 2 McLean, 462.
Bayard, Lombard v. [See 8,469.]
BAYARD v. MANDEVILLE [1,132], 4 Wash. C. C. 445.
BAYARD v. MASSACHUSETTS FIRE & MARINE INS. CO. [1,133], 4 Mason, 256.
Bayer, United States v. [See 14,547, 14,548.]
BAYERQUE v. COHEN [1,134], McAll. 113.
BAYERQUE v. HALEY [1,135], McAll. 97.
BAYERQUE v. JACKSON WATER CO. [1,136], McAll. 85.
BAYERQUE v. SAN FRANCISCO [1,137], McAll. 175.
Bayless, Manufacturers' & Farmers' Bank v. [See 9,050.]
BAYLESS v. TRAVELLERS' INS. CO. [1,138], 14 Blatchf. 143; 6 Ins. Law J. 109; 9 Chi. Leg. News, 201; 23 Int. Rev. Rec. 111; 24 Pittsb. Leg. J. 140, 187.
BAYLEY v. DUVALL [1,139], 1 Cranch, C. C. 283.
Bayley, Lingan v. [See 8,370.]
Bayley, Watson v. [See 17,276.]
BAYLISS v. LAFAYETTE, M. & B. RY. CO. [1,140], 8 Biss. 193; 10 Chi. Leg. News, 213.
BAYLISS v LAFAYETTE, M. & B. RY. CO. [1,141], 9 Biss. 90; 8 Reporter, 579; 11 Chi. Leg. News, 391; 25 Int. Rev. Rec. 280; 1 Month. Jur. 123; 4 Cin. Law Bul. 624.
Bayliss, Mann v. [See 9,034.]
BAYLISS v. POTTAWATTAMIE COUNTY, Board of Sup'rs of [1,142], 5 Dill. 549.
BAYLOR v. NEFF [1,143], 3 McLean, 302.
BAYLY, In re [1,144], 19 N. B. R. 73; 26 Pittsb. Leg. J. 172.
BAYLY v. LONDON & L. INS. CO. [1,145], 4 Ins. Law J. 503.
BAYNE, Case of [1,146].
Bayne, May v. [See 9,331.]
BAYSAND v. LOVERING [1,147], 1 Cranch, C. C. 206.
BAY STATE, The [1,148], 1 Abb. Adm. 235; 6 N. Y. Leg. Obs. 198.
BAY STATE, The [1,149], 3 Blatchf. 48.
BAY STATE, The [1,150], 11 N. Y. Leg. Obs. 297.
BAZIL v. KENNEDY [1,151], 1 Cranch, C. C. 199.
Bazin, Marshall v. [See 9,125.]
Bazin v. Richardson. [See 1,152.]
BAZIN v. STEAMSHIP CO. [1,152], 3 Wall. Jr. 229; 5 Amer. Law Reg. 459; 20 Law Rep. 129; 14 Leg. Int. 156; 37 Hunt, Mer. Mag. 449.
Beach, City Bank of Columbus v. [See 2,736, 2,737.]
BEACH v. NATIVE, The [1,152a].
Beach, Platt v. [See 11,215.]
BEACH v. TUCKER [1,153], 3 App. Com'r Pat. 263½.
BEACH v. WOODHULL [1,154], Pet. C. C. 2.
Beacham, Turner v. [See 14,252.]
BEADLE, In re [1,155], 5 Sawy. 351.
Beadle, Armstrong v. [See 541.]
BEAL, In re [1,156], 1 Lowell, 323; 2 N. B. R. 587 (Quarto, 178); 2 Amer. Law T. Rep. Bankr. 95; 1 Chi. Leg. News, 326.
Beal, Walker v. [See 17,065.]
BEALE v. BURCHELL [1,157], 5 Cranch, C. C. 310.
Beale, Crocker v. [See 3,396.]
Beale, Emmerson v. [See 4,469.]
Beale, Lindenberger v. [See 8,359.]
Beale, Meade v. [See 9,371.]
Beale, Nugent v. [See 10,376.]
Beale, Pennock v. [See 10,940.]
BEALE v. PETTIT [1,158], 1 Wash. C. C. 241.
BEALE v. RAILWAY CO. [1,159], 1 Dill. 569.
Beale, United States v. [See 14,549.]
BEALE v. VOSS [1,160], 1 Cranch, C. C. 179.
BEALL v. BECK [1,161], 3 Cranch, C. C. 666.
Beall, Cook v. [See 3,153.]
BEALL v. DICK [1,162], 4 Cranch, C. C. 18.
Beall, Haller v. [See 5,957.]
BEALL v. HARRELL [7,222], 7 N. B. R. 400.
BEALL v. NEWTON [1,164], 1 Cranch, C. C. 404.
Beall, O'Neale v. [See 10,513.]
Beall, Traverse v. [See 14,153.]
BEALS, In re [1,165], 9 Ben. 223; 17 N. B. R. 107.
Beals, Suydam v. [See 13,653.]
BEAN, In re [1,166], 14 N. B. R. 182; 2 Wkly. Notes Cas. 432.
Bean, Alkan v. [See 202.]
BEAN v. AMSINCK [1,167], 10 Blatchf. 361; 12 Amer. Law Reg. (N. S.) 379; 8 N. B. R. 228.
BEAN v. BROOKMIRE [1,168], 1 Dill. 25; 4 N. B. R. 196 (Quarto, 57); 10 Amer. Law Reg. (N. S.) 181; 4 West. Jur. 392.
BEAN v. BROOKMIRE [1,169], 1 Dill. 151; 3 Chi. Leg. News, 378; 1 Leg. Op. 178; 5 West. Jur. 505.
BEAN v. BROOKMIRE [1,170], 2 Dill. 108; 7 N. B. R. 568; 5 Chi. Leg. News, 314; 2 Amer. Law Rec. 222; 6 Amer. Law T. Rep. 418; 7 West. Jur. 324.
Bean, Brookmire v. [See 1,942.]
BEAN v. GRACE BROWN, The [1,171], 2 Hughes, 112.
Bean, Kissinger v. [See 7,853.]
BEAN v. LAFLIN [1,172], 5 N. B. R. 333.
BEAN v. SMALLWOOD [1,173], 2 Story, 408; 2 Robb. Pat. Cas. 133; Merw. Pat. Inv. 312.
BEAN v. SMITH [1,174], 2 Mason, 252.
Bean, United States v. [See 14,550.]
BEANE v. MAYURKA, The [1,175], 2 Curt. 72.
BEANE v. ORR [1,176], 2 Ban. & A. 176; 9 O. G 255.
BEAR, In re [1,177].
BEAR, In re [1,178], 11 N. B. R. 46; 1 Cent. Law J. 607.
BEAR v. LUSE [1,179], 6 Sawy. 148; 12 Chi. Leg. News, 130.
BEARD v. BOWLER [1,180], 2 Bond, 13.
Beard, Johnson v. [See 7,371.]

[Federal Case numbers are given in brackets.]

Beard, McComb v. [See 8,706.]
BEARD v. ROWAN [1,181], 1 McLean, 135.
BEARD v. TALBOT [1,182], Brunner, Col. Cas. 201; Cooke, 142.
Beard, United States v. [See 14,551.]
BEARDSLEY, In re [1,183], 1 N. B. R. 304 (Quarto, 52); 1 Amer. Law T. Rep. Bankr. 46.
BEARDSLEY, In re [1,184], 1 N. B. R. 457 (Quarto, 121); 1 Amer. Law T. Rep. Bankr. 94.
Beardsley, Godfrey v. [See 5,497.]
Beardsley, Grannis v. [See 5,688.]
Beardsley, Kirby v. [See 7,837.]
BEARDSLEY v. LITTELL [1,185], 14 Blatchf. 102; 2 Ban. & A. 501; 23 Int. Rev. Rec. 226; 4 Cent. Law J. 270.
BEARDSLEY v. METAMORA, The [1,186].
BEARDSLEY v. SWANN [1,187], 4 McLean, 333.
BEARDSLEY v. TAPPAN [1,188], 1 Blatchf. 588.
BEARDSLEY v. TAPPAN [1,188a].
BEARDSLEY v. TAPPAN [1,189], 5 Blatchf. 497.
BEARDSLEY v. TORREY [1,190], 4 Wash. C. C. 286.
Beardsley, Torrey v. [See 14,104.]
BEARNS, In re [1,191], 18 N. B. R. 500.
BEARSE v. ROPES [1,192], 1 Spr. 331; 19 Law Rep. 548.
BEARSE v. THREE HUNDRED AND FORTY PIGS OF COPPER [1,193], 1 Story, 314.
Bearse, United States v. [See 14,552.]
Beatauga v. Nicholson. [See 1,194.]
BEATAUGH v. NICHOLSON [1,194].
BEATTIE v. GARDNER [1,195], 4 Ben. 479; 4 N. B. R. 323 (Quarto, 106).
Beattie, United States v. [See 14,554.]
Beatty, Ex parte. [See 9,976.]
BEATTY, In re [1,196], 3 Ben. 233; 2 N. B. R. 582 (Quarto, 177); 1 Chi. Leg. News, 326.
BEATTY v. BROOKLYN, The [1,939].
Beatty v. The Brooklyn. [See 1,938.]
Beatty, Buckley v. [See 2,091.]
Beatty, Clementson v. [See 2,884.]
Beatty, Georgetown v. [See 5,344.]
Beatty, Hellen v. [See 6,336.]
Beatty, Kurtz v. [See 7,950.]
Beatty, Offutt v. [See 10,448.]
BEATTY v. VAN NESS [1,198], 2 Cranch, C. C. 67.
Beaty, Knowles v. [See 7,896.]
Beaty, United States v. [See 14,555.]
Beauregard, Case v. [See 2,487.]
BEAVER, The [1,199], 2 Ben. 118.
BEAVER, The [1,200], 8 Ben. 594.
Beaver County, Woodhull v. [See 17,974.]
BEAVERS v. NORTH AMERICA, The [1,201].
BEBEE v. MOORE [1,202], 3 McLean, 387.
BECHERDASS AMBAIDASS, The [1,203], 1 Lowell, 569; 6 Amer. Law Rev. 74.
BECHTEL'S CASE [1,204].
Bechtel, Beecher v. [See 1,221.]
BECK, In re [1,205], 25 Leg. Int. 164; 1 N. B. R. 588 (Quarto, 163); 6 Phila. 475.
Beck, Beall v. [See 1,161.]
Beck, Brent v. [See 1,835.]
Beck, Hilton v. [See 6,509.]
BECK v. JONES [1,206], 1 Cranch, C. C. 347.
Beck, Murray v. [See 9,957.]
Beck, Perkins v. [See 10,984.]
BECKER, Ex parte [1,207], 3 Cent. Law J. 495; 22 Int. Rev. Rec. 266; 3 N. Y. Wkly. Dig. 60; 1 Cin. Law Bul. 165.
BECKER, In re [1,208], 21 Int. Rev. Rec. 243.
Becker, Dingee v. [See 3,919.]
Becker, Kurtz v. [See 7,951.]
BECKERFORD, In re [1,209], 1 Dill. 45; 4 N. B. R. 203 (Quarto, 59); 10 Amer. Law Reg. (N. S.) 57; 4 Amer. Law T. 14; 1 Amer. Law T. Rep. Bankr. 241.
BECKET, In re [1,210], 2 Woods, 173; 12 N. B. R. 201; 7 Chi. Leg. News, 243.
Beckford, Cahill v. [See 2,290.]
BECKLEY v. UNITED STATES [1,211], 1 Hayw. & H. 88.
Beckwith, Bill v. [See 1,406.]
BECKWITH v. EASTON [1,212], 4 Ben. 357.
Beckwith, Halderman v. [See 5,907.]
BECKWITH v. RACINE [1,213], 7 Biss. 142.
Beddo, United States v. [See 14,556, 14,557.]
Bede, United States v. [See 14,558.]
BEDELL v. EMILY, The [4,452, 4,453], 6 N. Y. Leg. Obs. 340.
BEDELL v. POTOMAC, The [1,215], 2 Int. Rev. Rec. 62.
BEDFORD, The [1,216], 5 Blatchf. 200.
Bedford, Lane v. [See 8,046.]
BEDFORD v. HUNT [1,217], 1 Mason, 302; 1 Robb, Pat. Cas. 148.
BEDILIAN v. SEATON [1,218], 3 Wall. Jr. 279; 17 Leg. Int. 356.
Bedowin, The, American Dredging Co. v. [See 299.]
BEE, The [1,219], 1 Ware (332), 336.
Bee v. The Minnie. [See 9,117.]
Beebe, Russell v. [See 12,153.]
BEEBEES, Ex parte [1,220], 2 Wall. Jr. 127.
BEECHER v. BECHTEL [1,220a], 19 Betts, D. C. MS. 63.
BEECHER v. BECHTEL [1,221], 3 Blatchf. 40; 30 Hunt, Mer. Mag. 196.
BEECHER v. BININGER [1,222], 7 Blatchf. 170.
Beecher v. Bininger. [See 1,417-1,421.]
BEECHER v. CLARK [1,223], 12 Blatchf. 256; 10 N. B. R. 385.
BEECHER v. GILLESPIE [1,224], 6 Ben. 356.
BEECHER v. GILLETT [1,225], 1 Dill. 308.
Beecher, Wilbur v. [See 17,634.]
BEEDE, In re [1,226], 19 N. B. R. 68; 26 Pittsb. Leg. J. 172.
BEEDING v. PIC [1,227], 2 Cranch, C. C. 152.
BEEDING v. THORNTON [1,228], 3 Cranch, C. C. 698.
Beedle, Wormsley v. [See 18,049.]
Beef Slough Mfg., Etc., Co., Heerman v. [See 6,320.]
Beef Slough Mfg., Etc., Co., United States v. [See 14,559.]
Beerman, United States v. [See 14,560.]
BEERS, In re [1,229], 5 N. B. R. 211.
Beers, Blanchard v. [See 1,506.]
BEERS v. HAUGHTON [1,230], 1 McLean, 226.
BEERS v. JOHN ADAMS, The [1,231], 34 Hunt, Mer. Mag. 74.
BEERS v. KNAPP [1,232], 5 Ben. 104.
BEERS v. PLACE [1,233], 4 N. B. R. 459 (Quarto, 150); 36 Conn. 578; 4 Amer. Law T. 136; 1 Amer. Law T. Rep. Bankr. 262.
Beeston, Pentlarge v. [See 10,963, 10,964.]
Behlin, Gale v. [See 5,189.]
BEHM v. WESTERN UNION TEL. CO. [1,234], 8 Biss. 131; 7 Reporter, 710; 4 Cin. Law Bul. 334; 25 Int. Rev. Rec. 179; 11 Chi. Leg. News, 276.
BEISENTHAL, In re [1,235], 10 Ben. 42; 18 N. B. R. 120.
BEISENTHAL, In re [1,236], 14 Blatchf. 146; 15 N B. R. 228.
Bejandio, United States v. [See 14,561.]
BELCHER, In re [1,237], 2 Ben. 468; 1 N. B. R. 666 (Quarto, 202).
Belcher Silver Min. Co., Kielley v. [See 7,760, 7,761.]
Belcher Silver Min. Co., Knaresborough v. [See 7,874.]
BELDEN, In re [1,238], 4 Ben. 225.
BELDEN, In re [1,239], 5 Ben. 476; 6 N. B. R. 443.
BELDEN, In re [1,240], 2 N. B. R. 42 (Quarto, 14); 2 Amer. Law Rev. 771; 15 Pittsb. Leg. J. 547.
BELDEN, In re [1,241], 4 N. B. R. 194 (Quarto, 57).
BELDEN v. SMITH [1,242], 16 N. B. R. 302.
BELDING v. TURNER [1,243], 8 Blatchf. 321, 4 Fish. Pat. Cas. 446.
Belding, United States v. [See 14,562.]
Belew, United States v. [See 14,563.]
BELKNAP, The [1,244], 2 Lowell, 281.
Belknap Mills, Crompton v. [See 3,406, 18,285.]
BELL v. ANN, The [1,245], 2 Pet. Adm. 278.
Bell, Billingsley v. [See 18,237.]
Bell, Bullard v. [See 2,121.]
Bell, Collins v. [See 3,010.]
BELL v. CUNNINGHAM [1,246], 1 Sumn. 89.
Bell, Cunningham v. [See 3,479.]
BELL v. DANIELS [1,247], 1 Bond, 212; 1 Fish. Pat. Cas. 372; Merw. Pat. Inv. 616.
BELL v. DAVIDSON [1,248], 3 Wash. C. C. 328.
BELL v. DAVIS [1,249], 3 Cranch, C. C. 4.
BELL v. ENGLISH [1,250], 4 Cranch, C. C. 332.
Bell, Fossitt v. [See 4,958.]
Bell, Gauthier v. [See 5,277.]
BELL v. GREENFIELD [1,251], 5 Cranch, C. C. 669.
Bell, Hays v. [See 6,270.]

[Federal Case numbers are given in brackets.]

BELL v. HILL [1,252], 1 McA. Pat. Cas. 351.
BELL v. HOGAN [1,253], 2 Cranch, C. C. 21.
BELL v. HUNT [1,254].
BELL v. LEWIS [18,231], 2 Hayw. & H. 136.
BELL v. McCORMICK [1,255], 5 Cranch, C. C. 398.
BELL v. McCULLOUGH [1,256], 1 Bond, 194; 1 Fish. Pat. Cas. 380.
Bell, Malone v. [See 8,994.]
Bell, Milledollar v. [See 9,549.]
BELL v. NELSON [1,257], 8 Leg. Int. 22.
Bell, Nelson v. [See 10,101a.]
BELL v. NIMMO [1,258], 5 McLean, 109.
BELL v. NIMMON [1,259], 4 McLean, 539.
BELL v. OHIO LIFE & TRUST CO. [1,260], 1 Biss. 260; 3 Wkly. Law Gaz. 17.
BELL v. OHIO LIFE INS. CO. [1,261], 2 Wkly. Law Gaz. 321.
BELL v. PHILLIPS [1,262].
BELL v. POMEROY [1,263], 4 McLean, 57.
BELL v. RHODES [1,264], 1 Hayw. & H. 103.
Bell v. Secretary of Treasury. [See 18,231.]
Bell, Smoot v. [See 13,132.]
Bell v. The Traveller. [See 14,147.]
Bell, Travers v. [See 14,149.]
Bell, United States v. [See 14,564, 14,565.]
Bell, Young v. [See 18,152.]
Bell, The Horace E. [See 6,702.]
Bell, The Mary. [See 9,199.]
Bella Donna, The, Portevant v. [See 11,292.]
BELLAMY, Ex parte [1,265], 15 Pittsb. Leg. J. 1.
BELLAMY, In re [1,266], 1 Ben. 390; Bankr. Reg. Supp. 14; 1 N. B. R. 64; 1 Amer. Law T. Rep. Bankr. 22; 6 Int. Rev. Rec. 86; 15 Pittsb. Leg. J. 1.
BELLAMY, In re [1,267], 1 Ben. 426; 1 N. B. R. 96; Bankr. Reg. Supp. 21; 15 Pittsb. Leg. J. 1.
BELLAMY, In re [1,268], 1 Ben. 474; 1 N. B. R. 113 (Quarto, 25); Bankr. Reg. Supp. 25; 6 Int. Rev. Rec. 141; 15 Pittsb. Leg. J. 1.
Bellamy, Varnum v. [See 16,886.]
BELLE, The [1,269], 1 Ben. 317; 9 Leg. & Ins. Rep. 276.
BELLE, The [1,270], 5 Ben. 57.
BELLE, The [1,271], 6 Ben. 287.
BELLE, The [1,272], Blatchf. Pr. Cas. 294.
BELLE, The, [1,273], Blatchf. Pr. Cas. 353.
Belle Ida, The, Patterson v. [See 10,824.]
Belle Lee, The, Janney v. [See 7,211.]
Belle of the Sea, The, Johnson v. [See 7,372.]
Bellingstein, United States v. [See 14,566.]
BELLIS, In re [1,274], 3 Ben. 386; 8 Amer. Law Reg. (N. S.) 747; 38 How. Pr. 79; 3 N. B. R. 199 (Quarto, 49); 3 Amer. Láw T. 170.
BELLIS, In re [1,275], 4 Ben. 53; 3 N. B. R. 496 (Quarto, 124).
BELLIS, In re [1,276], 38 How. Pr. 88; 3 N. B. R. 270 (Quarto, 65); 1 Amer. Law T. Rep. Bankr. 178.
BELLONA, The [1,277], 4 Ben. 503.
Bellona, The, Cross v. [See 3,428.]
Bellona, The, Ellison v. [See 4,406, 4,407.]
BELLOWS, In re [1,278], 3 Story, 428; 7 Law Rep. 119.
BELLOWS v. HALLOWELL & A. BANK [1,279], 2 Mason, 31.
BELMONT v. LAWRENCE [1,280], 3 Blatchf. 119.
BELMONT v. TYSON [1,281], 3 Blatchf. 530; 36 Hunt, Mer. Mag. 202.
Belmont, Tyson v. [See 14,315a, 14,316.]
Belson, Spear v. [See 13,223.]
Belt, Connolly v. [See 3,117.]
BELT v. COOK [1,282], 3 Cranch, C. C. 666.
Belt v. Pickerell. [See 3,117.]
Belton v. Valentine. [See 1,370.]
Beltzhoover, Lane v. [See 8,047.]
BELTZHOOVER v. STOCKTON [1,283], 4 Cranch, C. C. 695.
BELUN v. WESTERN UNION TEL. CO. [1,284], 7 Reporter, 710.
Belvidere, The, Wilson v. [See 17,790.]
Beman, Cadmus v. [See 2,281.]
Bemis, Aiken v. [See 109.]
Bemis, Blair v. [See 1,484.]
Bemis, Hodge v. [See 6,557.]
Bemis, Taylor v. [See 13,779.]
BEN, Ex parte [1,285], 1 Cranch, C. C. 532.
BEN v. SCOTT [1,286], 1 Cranch, C. C. 350.
BEN v. SCOTT [1,287], 1 Cranch, C. C. 365.
BEN v. SCOTT [1,288], 1 Cranch, C. C. 407.
BEN ADAMS, The [1,289], 2 Ben. 445.
BENARY v. PRINCE ALBERT, The [11,426], 15 Int. Rev. Rec. 35.
BENCHLEY v. GILBERT [1,291], 8 Blatchf. 147.
Bender, United States v. [See 14,567.]
BENEDICT, Ex parte [1,292], 4 West. Law Month. 449.
BENEDICT v. DAVIS [1,293], 2 McLean, 347.
BENEDICT v. MAYNARD [1,294], 4 McLean, 569.
BENEDICT v. MAYNARD [1,295], 5 McLean, 262.
BENEDICT v. MAYNARD [1,296], 6 McLean, 21.
BENEFACTOR, The [1,297], 8 Ben. 426.
BENEFACTOR, The [1,298], 14 Blatchf. 254.
BEN FLINT, The [1,299], 1 Abb. U. S. 126; 1 Biss. 562; 6 Amer. Law Reg. (N. S.) 707.
Benham, Ingersoll v. [See 7,036.]
Benity, Central Pac. R. Co. v. [See 2,551.]
BENJAMIN v. CAVAROC [1,300], 2 Woods, 168.
BENJAMIN v. GRAHAM [1,301], 4 N. B. R. 391 (Quarto, 130).
BENJAMIN v. HART [1,302], 4 Ben. 454; 4 N. B. R. 408 (Quarto, 138).
Benjamin, The, Lowe v. [See 8,565.]
BENJAMIN v. NELSON [1,303].
BENJAMIN v. TILLMAN [1,304], 2 McLean, 213.
BENJAMIN v. WATCHMAN, The [1,305], 21 Law Rep. 40.
BENJAMIN ENGLISH, The [1,306], 2 Lowell, 218.
BENKARD v. SCHELL [1,307], 5 Int. Rev. Rec. 3.
Benledi, The. [See 807.]
BENN v. LECLERCQ [1,308], 30 Leg. Int. 185; 18 Int. Rev. Rec. 94; 5 Leg. Op. 145.
Benner, Chester v. [See 2,660.]
Benner, United States v. [See 14,568, 14,569.]
BENNET, Ex parte [1,309], 1 Pa. Law J. 145; 1 Pa. Law J. Rep. 28.
BENNET v. ALEXANDER [1,310], 1 Cranch, C. C. 90.
Bennet, Doremas v. [See 4,001.]
Bennet, Morrison v. [See 9,843.]
BENNETT, Ex parte [1,311], 2 Cranch, C. C. 612.
BENNETT, In re [1,312], 8 Ben. 561.
BENNETT, In re [1,313], 2 Hughes, 156; 12 N. B. R. 257.
BENNETT, In re [1,314], 2 Lowell, 400; 12 N. B. R. 181.
BENNETT, In re [1,315], 2 N. B. R. 181 (Quarto, 66); 8 Amer. Law Reg. (N. S.) 34; 6 Phila. 472; 25 Leg. Int. 316; 1 Balt. Law Trans. 21; 1 Chi. Leg. News, 22.
Bennett's Case. [See 1,312-1,315.]
BENNETT v. ADAMS [1,316], 2 Cranch, C. C. 551.
Bennett, Allen v. [See 214.]
Bennett, Angell v. [See 387.]
BENNETT v. BENNETT [1,317], 3 Cranch, C. C. 647, 672.
BENNETT v. BENNETT [1,318], Deady, 299.
BENNETT v. BOGGS [1,319], Baldw. 60.
BENNETT v. HOEFNER [1,320], 17 Blatchf. 341.
Bennett v. The J. H. Gautier. [See 7,319.]
Bennett, Mahoney Min. Co. v. [See 8,968, 8,969.]
Bennett, Marsh v. [See 9,110.]
BENNETT v. MARYLAND FIRE INS. CO. [1,321], 14 Blatchf. 422; 17 Alb. Law J. 363; 2 Month. Jur. 250; 24 Int. Rev. Rec. 167.
Bennett, Motte v. [See 9,884.]
BENNETT v. PENDLETON [1,322], 1 Cranch, C. C. 146.
BENNETT v. SCOTT [1,323], 1 Cranch, C. C. 339.
BENNETT v. SHERMAN [1,324], 3 Law Rep. 181.
BENNETT v. TEVERE, The [1,325], 5 Adm. Rec. 364.
Bennett, United States v. [See 14,570-14,574.]
BENNETT v. WILSON [1,326], 1 Cranch, C. C. 446.
Benning, Bank of United States v. [See 908.]
Bennington, First Nat. Bank of North Bennington v. [See 4,807.]
BENNITZ v. UNITED STATES [1,327], Hoff. Land Cas. 104.
Bennitz, United States v. [See 1,327.]
BENSON, In re [1,328], 8 Biss. 116; 16 N. B. R. 377.
Benson, Osborne v. [See 10,596.]
Benson, Schott v. [See 12,479.]
BENSUSAN v. MURPHY [1,329], 10 Blatchf. 530; 17 Int. Rev. Rec. 84.
BENTALOE v. PRATT [1,330], Wall. Sr. 58.

[Federal Case numbers are given in brackets.]

Bentley, Dougherty v. [See 4,024.]
BENTLEY v. JOSLIN [18,232], Hempst. 218.
BENTLEY v. PHELPS [1,331], 2 Woodb. & M. 426.
BENTLEY v. PHELPS [1,332], 3 Woodb. & M. 403.
BENTLEY v. SEVIER [18,233], Hempst. 249.
Bentley, Smedberg v. [See 12,964.]
BENTON, In re [1,333], 16 N. B. R. 75; 3 Wkly. Notes Cas. 547.
BENTON, The [1,334], 24 Int. Rev. Rec. 30; 3 Mich. Lawy. 128; 2 Cin. Law Bul. 329; 10 Chi. Leg. News, 139; 17 Alb. Law J. 98.
BENTON v. WHITNEY [1,335], Crabbe, 417.
BENTON'S WILL, In re [18,234], 2 Hayw. & H. 315.
Benz, United States v. [See 14,576.]
Benzon, United States v. [See 14,577.]
BERDAN FIRE ARMS MFG. CO. v. REMINGTON [1,336], 3 O. G. 688.
Berdin, Lehman v. [See 8,215.]
BERG v. THISTLE [1,337], 3 App. Com'r Pat. 365.
BERGEN, In re [1,338], 2 Hughes, 513; 4 Amer. Law T. 39.
BERGEN v. TAMINEND, The [1,339], 40 Hunt, Mer. Mag. 708.
BERGEN v. WILLIAMS [1,340], 4 McLean, 125.
Berger, Norwalk Lock Co. v. [See 10,355.]
BERGER v. WILLIAMS [1,341], 4 McLean, 577.
BERGERON, In re [1,342], 12 N. B. R. 385; 2 Cent. Law J. 507; 1 N. Y. Wkly. Dig. 178.
BERLIN v. JONES [1,343], 1 Woods, 638.
Berlin, Miller v. [See 9,562.]
BERMUDA, The [1,344], 10 Ben. 693.
BERMUDA, The [1,345], 23 Leg. Int. 116; 6 Phila. 187.
Bernal, United States v. [See 14,578-14,583.]
BERNARD v. ASHLEY [1,346], Hempst. 665.
Bernard, Baldwin v. [See 797.]
BERNARD v. HERBERT [1,347], 3 Cranch, C. C. 346.
BERNARD v. McKENNA [1,348], 4 Cranch, C. C. 130.
Bernard, Merrick v. [See 9,464.]
Bernard, Rateau v. [See 11,579.]
Bernard, United States' v. [See 14,584.]
BERNHARD v. CREENE [1,349], 3 Sawy. 230.
Bernice, The Sarah. [See 12,343.]
BERNSTEIN, In re [1,350], 2 Ben. 44; 1 N. B. R. 199; Bankr. Reg. Supp. 43; 6 Int. Rev. Rec. 222; 34 How. Pr. 289; 1 Amer. Law T. Rep. Bankr. 45.
Berreyesa, United States v. [See 14,585, 14,586.]
BERRIAN, In re [1,351], 6 Ben. 297; 7 West. Jur. 192; 5 Chi. Leg. News, 197.
BERRY, Case of [1,352].
BERRY, Ex parte [1,353], 3 App. Com'r Pat. 295.
BERRY, In re [1,354], 2 Cranch, C. C. 13.
BERRY v. DINSMORE [1,355].
BERRY v. FLETCHER [1,356], 1 Dill. 66.
BERRY v. FLETCHER [1,357], 1 Dill. 67.
Berry, Goodyear v. [See 5,556.]
Berry, Harris v. [See 6,115.]
BERRY v. MOBILE LIFE INS. CO. [1,358], 1 Tex. Law J. 157.
Berry, Nevett v. [See 10,135.]
BERRY v. MONTEZUMA, The [1,358a].
BERRY v. SMITH [1,359], 3 Wash. C. C. 60.
Berry, Thompson v. [See 13,943.]
Berry, Wilson v. [See 17,791.]
BERRYMAN, In re [1,360], 2 Hask. 293.
BERTHOUD, In re [1,360a].
BERTONNEAU v. DIRECTORS OF CITY SCHOOLS [1,361], 3 Woods, 177.
Bertram, The, Dill v. [See 3,910.]
BERTRAM v. LYON [1,362], McAll. 53.
Bertrand, Read v. [See 11,601-11,603.]
Bertraud, Calkins v. [See 2,317.]
BESTOR v. SARDO [1,363], 2 Cranch, C. C. 260.
Bethel, The, Boardman v. [See 1,585.]
Bethel v. The Euphrasia. [See 4,545.]
Bethel v. The Millinocket. [See 9,609.]
Betsey, The, v. Duncan. [See 1,367.]
Betsey, The, Hollingsworth v. [See 6,612.]
Betsey, The, The Montgomery v. [See 9,734.]
Betsina, The, Tunno v. [See 14,236.]
BETSY, The [1,364], 2 Gall. 377.
BETSY, The [1,365], 1 Mason, 354.
BETSY AND RHODA, The [1,366], 2 Ware (Dav. 112) 117; 3 N. Y. Leg. Obs. 215.
BETSY, The, v. DUNCAN [1,367], 2 Wash. C. C. 272.
Betsy, The, Powell v. [See 11,355.]
Betsy, The, Williamson v. [See 17,750.]
Bettely, Prentice v. [See 11,381.]
BETTES v. DANA [1,368], 2 Sumn. 383.
Bettillini, United States v. [See 14,587.]
BETTINGER v. RIDGWAY [1,369], 4 Cranch, C. C. 340.
BETTON v. VALENTINE [1,370], 1 Curt. 168.
BETTS, In re [1,371], 4 Dill. 93; 15 N. B. R. 536; 7 Reporter, 522; 4 Cent. Law J. 558; 24 Pittsb. Leg. J. 195.
BETTS v. DREW [1,372], 8 Amer. Law Rec. 338; 12 Chi. Leg. News, 65.
BETTS v. FRANKLIN FIRE INS. CO. [1,373], Taney, 171.
Betts, Gibson v. [See 5,390.]
BETTS v. GOODWIN [1,374], 43 Hunt, Mer. Mag. 70.
Betty Carthcart, The, Moodie v. [See 9,742.]
BETTY v. DENEALE [1,375], 2 Cranch, C. C. 156.
Bevan, United States v. [See 14,588.]
Bevans, Montgomery v. [See 9,735.]
Bevans, United States v. [See 14,589.]
BEVERLEY v. BEVERLEY [1,376], 2 Cranch, C. C. 470.
BEVERLY v. DAVIDSON COUNTY [1,377], 2 Flip. 507.
Beverly, Davis v. [See 3,627.]
BEVERLY v. HENDERSON [1,378].
Beverly Rubber Co., Goodyear v. [See 5,557.]
BEVIN v. EAST HAMPTON BELL CO. [1,379], 9 Blatchf. 50; 5 Fish. Pat. Cas. 23.
BEYER v. NURNBERG, The [1,380], 3 Hughes, 505.
B. F. Bruce, The, Milligan v. [See 9,602.]
BHOLEN v. CLEVELAND [1,381], 5 Mason, 174.
BIAS v. ROSE [1,382], 2 Cranch, C. C. 159.
Biays, Baxter v. [See 1,123.]
BIAYS v. UNION INS. CO. [1,383], 1 Wash. C. C. 506.
Biays, Wesley v. [See 17,419.]
Bibb v. The Washington Irving. [See 17,243-17,245.]
BIBBINS v. BROOKFIELD [1,384].
BIBBINS v. CITIZEN, The [1,384a].
Bibbins, Gardner v. [See 5,222.]
BIBBS v. DAVIS [18,235], 2 Hayw. & H. 364.
Bibbs v. Waters. [See 18,235.]
Bickett, United States v. [See 14,590.]
BICKFORD v. CAROLINE, The [1,385].
Bickford, Franz & Pope Knitting Mach. Co. v. [See 5,061.]
Bickford, United States v. [See 14,591.]
BICKHAM v. LAKE [1,386].
BICKLEY, In re [1,387].
Bickley, Leiper v. [See 8,222.]
BICKMORE, The [1,388].
Bicknell, Bank of South Carolina v. [See 898.]
Bicknell, Brooks v. [See 1,944-1,946.]
BICKNELL v. TODD [1,389], 5 McLean, 236; 1 Fish. Pat. Rep. 452; 9 West. Law J. 1.
BICKNER v. WILLIAM D., The [1,390].
BIDDLE, Ex parte [1,391], 2 Mason, 472.
BIDDLE, In re [18,236], 2 Hayw. & H. 198.
Biddle, Baker v. [See 764.]
Biddle, Tscheider v. [See 14,210.]
BIDWELL, In re [1,392], 2 N. B. R. 229 (Quarto, 78).
Bidwell, Barras v. [See 1,039.]
BIDWELL v. CONNECTICUT LIFE INS. CO. [1,393], 3 Sawy. 261.
Bidwell, United States v. [See 14,592.]
Biedenfeld, Frese v. [See 5,111.]
BIELER, In re [1,394], 7 N. B. R. 552.
Biesenthal, In re. [See 1,235, 1,236.]
BIGELOW, In re [1,395], 2 Ben. 469; 1 N. B. R. 667 (Quarto, 202).
BIGELOW, In re [1,396], 2 Ben. 480; 1 N. B. R. 632 (Quarto, 186); 1 Amer. Law T. Rep. Bankr. 95, 123.
BIGELOW, In re [1,397], 3 Ben. 146; 2 N. B. R. 371 (Quarto, 121); 2 Amer. Law T. Rep. Bankr. 41.
BIGELOW, In re [1,398], 3 Ben. 198; 2 N. B. R. 556 (Quarto, 170); 2 Amer. Law T. Rep. Bankr. 87.
Bigelow, Battin v. [See 1,108.]
BIGELOW v. ELLIOT [1,399], 1 Cliff. 28.
Bigelow, Foreman v. [See 4,934.]

[Federal Case numbers are given in brackets.]

BIGELOW v. LOUISVILLE [1,400], 3 Fish. Pat. Cas. 602.
BIGELOW v. MATTHEWS [1,401], 7 Blatchf. 77.
Bigelow v. New Jersey R. Co. [See 9,620.]
Bigelow, Tuckerman v. [See 14,228.]
BIGGS v. BARRY [1,402], 2 Curt. 259.
BIGGS v. BLUE [1,403], 5 McLean, 148.
Bigler v. Avery. [See 14,481.]
Bigler, Parker v. [See 10,726.]
BIGLER v. WALLER [1,404], Chase, 316; 3 Amer. Law T. Rep. U. S. Cts. 157; 4 N. B. R. 291 (Quarto, 86); 3 Chi. Leg. News, 26; 5 Amer. Law Rev. 570.
BILL, Ex parte [1,405], 3 Cranch, C. C. 117.
BILL v. BECKWITH [1,406], 2 N. B. R. 241 (Quarto, 82); 1 Chi. Leg. News, 103.
BILL v. NEW ALBANY, ETC., RY. CO. [1,407], 2 Biss. 390; 4 Alb. Law J. 49.
Bill, United States v. [See 14,593, 14,594.]
BILLING, In re [1,408], 3 Ben. 212; 2 N. B. R. 512 (Quarto, 161); 2 Amer. Law T. Rep. Bankr. 87.
Billing, Smith v. [See 13,014.]
Billings, Ruddick v. [See 12,110.]
BILLINGSLEY v. BELL [18,237], Hempst. 24.
Billington, Barnes v. [See 1,015.]
BILLS v. NEW ORLEANS, ETC., R. CO. [1,409], 13 Blatchf. 227.
Billy, Fendall v. [See 4,725.]
BILSON v. MANUFACTURERS' INS. CO. [1,410], 7 Amer. Law Reg. 661; Brunner, Col. Cas. 290; 3 Phila. 547; 16 Leg. Int. 228.
Bimeler, Goesele v. [See 5,503.]
BINFORD, In re [1,411], 3 Hughes, 295; 17 N. B. R. 353.
BINFORD, In re [1,411a], 3 Hughes, 304.
BINFORD v. VIRGINIA, The [1,412], 1 Quart. Law J. 153.
BINGHAM v. FROST [1,413], 6 N. B. R. 130.
BINGHAM v. REDDY [1,414], 5 Ben. 266.
BINGHAM v. RICHMOND [1,415], 6 N. B. R. 127.
Bingham, Shearman v. [See 12,732, 12,733.]
Bingham, Sherman v. [See 12,762.]
BINGHAM v. WILKINS [1,416], Crabbe, 50.
Bingham v. Williams. [See 1,413.]
BININGER, In re [1,417], 7 Blatchf. 159; 3 N. B. R. 481 (Quarto, 121); 1 Amer. Law T. Rep. Bankr. 183; 17 Pittsb. Leg. J. 177; 9 Amer. Law Reg. (N. S.) 297.
BININGER, In re [1,418], 7 Blatchf. 165; 3 N. B. R. 487 (Quarto, 122); 1 Amer. Law T. Rep. Bankr. 186.
BININGER, In re [1,419], 7 Blatchf. 168; 3 N. B. R. 489 (Quarto, 122); 1 Amer. Law T. Rep. Bankr. 187.
BININGER, In re [1,420], 7 Blatchf. 262; 3 N. B. R. 385 (Quarto, 99); 4 N. B. R. 262 (Quarto, 77); 3 Amer. Law T. Rep. Bankr. 11; 17 Pittsb. Leg. J. 61; 2 Chi. Leg. News, 121; 1 Amer. Law T. Rep. Bankr. 151.
BININGER, In re [1,421], 9 N. B. R. 568.
Bininger, In re. [See 6,058.]
Bininger, Beecher v. [See 1,222.]
Bininger, Clark v. [See 2,815.]
Bininger, Hardy v. [See 6,057.]
Binney, Chesapeake & O. Canal Co. v. [See 2,645.]
Binney, Heckscher v. [See 6,316.]
Binney, Union Paper-Bag Mach. Co. v. [See 14,387.]
Binney, United States Bank v. [See 16,791.]
BINNS, In re [1,422], 4 Ben. 152.
Binns, Utterbach v. [See 16,809.]
BINNS v. WILLIAMS [1,423], 4 McLean, 580.
BINNS v. WOODRUFF [1,424], 4 Wash. C. C. 48.
BIRCH v. BUTLER [1,425], 1 Cranch, C. C. 319.
BIRCH v. GITTINGS [1,426], 2 Cranch, C. C. 66.
BIRCH v. SIMMS [1,427], 1 Cranch, C. C. 550.
Birch, United States v. [See 14,595, 14,596.]
Birchard v. The George Prescott. [See 5,339.]
BIRD, In re [1,428], 2 Sawy. 33; 4 Amer. Law T. Rep. U. S. Cts. 116; 14 Int. Rev. Rec. 13.
BIRD v. COCKREM [1,429], 2 Woods, 32; 1 Thomp. Nat. Bank Cas. 284.
Bird, Hall v. [See 5,926.]
BIRD v. PENN MUT. LIFE INS. CO. [1,430], 33 Leg. Int. 54; 11 Phila. 485; 1 Law & Eq. Rep. 505; 2 Wkly. Notes Cas. 410; 5 Ins. Law J. 449; 2 N. Y. Wkly. Dig. 83; 23 Pittsb. Leg. J. 112; 5 Bigelow, Ins. Cas. 487.
Bird v. United States. [See 1,428.]
Bird, United States v. [See 14,597.]
Birde, In re. [See 1,428.]
BIRDIE, The [1,431], 3 Ben. 273.
BIRDIE, The [1,432], 7 Blatchf. 238.
Birdsall v. Ashland Mach. Co. [See 1,434.]
BIRDSALL v. HAGERSTOWN AGRICULTURAL IMPLEMENT MFG. CO. [1,433], 1 Ban. & A. 426; 6 O. G. 604.
BIRDSALL v. McDONALD [1,434], 1 Ban. & A. 165; 6 O. G. 682; Merw. Pat. Inv. 450.
BIRDSALL v. PEREGO [1,435], 5 Blatchf. 251.
BIRDSELL v. HAGERSTOWN AGRICULTURAL IMPLEMENT MFG. CO. [1,436], 1 Hughes, 59; 2 Ban. & A. 519; 11 O. G. 420; 4 Cent. Law J. 211; 9 Chi. Leg. News, 186.
BIRDSELL v. HAGERSTOWN AGRICULTURAL IMPLEMENT MFG. CO. [1,437], 1 Hughes, 64; 11 O. G. 641.
Birdseye v. Lake Superior Ship Canal, R. & I. Co. [See 13,643.]
BISCHOFF v. MAXWELL [1,438], 4 Blatchf. 384; 19 How. Pr. 191.
Biscoe, Blakeley v. [See 18,239.]
BISHOP, In re [1,439], 1 McA. Pat. Cas. 519.
Bishop, The Maria. [See 9,077.]
Bishop, Arnold v. [See 552.]
Bishop, Goodyear v. [See 5,558, 5,559.]
Bishop, Greene v. [See 5,763.]
Bishop, Johnson v. [See 7,373.]
BISHOP v. STOCKTON [1,440], 1 West. Law J. 203.
Bishop, Stone v. [See 13,482.]
BISPHAM v. PATTERSON [1,441], 2 McLean, 87.
BISPHAM v. POLLOCK [1,442], 1 McLean, 411.
BISPHAM v. TAYLOR [1,443], 2 McLean, 355.
BISPHAM v. TAYLOR [1,444], 2 McLean, 408.
BISSELL v. BUGBEE [1,445], 8 Cent. Law J. 272; 7 Reporter, 550.
Bissell, Draper v. [See 4,068.]
BISSELL v. FARMERS' & MECHANICS' BANK OF MICHIGAN [1,446], 5 McLean, 495.
BISSELL v. HENSHAW [1,447], 1 Sawy. 553.
BISSELL v. HORTON [1,448], 3 Day, 281; Brunner, Col. Cas. 53.
BISSELL v. JEFFERSONVILLE [1,449], 6 Pittsb. Leg. J. 411; 16 Leg. Int. 110; 3 Wkly. Law Gaz. 279.
Bissell, Meister v. [See 9,398.]
BISSELL v. MEPHAM [1,450], 1 Woolw. 225; 2 West. Jur. 263.
Bissett, Ketland v. [See 7,742.]
Bittinger, United States v. [See 14,598, 14,599.]
BIXBY v. COUSE [1,451], 8 Blatchf. 73.
BIXBY v. JANSSEN [1,452], 6 Blatchf. 315.
Bixby, Sawyer v. [See 12,398.]
BJORNSTAD, In re [1,453], 9 Biss. 13; 18 N. B. R. 282.
B. J. WILLARD, The [1,454], 8 Wkly. Notes Cas. 47.
BLABON v. HUNT [1,455], 2 N. J. Law J. 179; 26 Pittsb. Leg. J. 180.
BLACHLY v. DAVIS [1,456], 1 McLean, 412.
BLACK, In re [1,457], 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; 1 N. B. R. 353 (Quarto, 81).
BLACK, In re [1,458], 2 N. B. R. 171 (Quarto, 65).
BLACK, In re [1,459], 17 N. B. R. 399.
Black, Holbrook v. [See 6,590.]
BLACK v. HUBBARD [1,460], 3 Ban. & A. 39; 12 O. G. 842.
BLACK v. LOUISIANA, The [1,461], 2 Pet. Adm. 268.
BLACK v. McCLELLAND [1,462], 12 N. B. R. 481; 7 Chi. Leg. News, 420; 1 N. Y. Wkly. Dig. 174; 32 Leg. Int. 363; 23 Pittsb. Leg. J. 9.
BLACK v. MUNSON [1,463], 14 Blatchf. 265; 2 Ban. & A. 623.
BLACK v. SCOTT [1,464], 2 Brock. 325.
Black v. Stoddart. [See 12,561.]
Black, Swett v. [See 13,690, 13,691.]
BLACK v. THORNE [1,465], 10 Blatchf. 66; 2 O. G. 388; 5 Fish. Pat. Cas. 550.
BLACK v. THORNE [1,466], 12 Blatchf. 20; 1 Ban. & A. 155; 7 O. G. 176.
Black, United States v. [See 14,600-14,602.]
Black v. Wells. [See 1,463.]
Black, Young v. [See 18,153.]
BLACKBURN v. SELMA, M. & M. R. R. CO. [1,467], 2 Flip. 525; 12 Chi. Leg. News, 130.

[Federal Case numbers are given in brackets.]

BLACKBURN v. STANNARD [1,468], 5 Law Rep. 250.
Blackburn, United States v. [See 14,603.]
BLACK HAWK, The [1,469], 9 Ben. 207.
BLACKINTON v. DOUGLASS [1,470], 1 McA. Pat. Cas. 622.
Blackinton, Simmons v. [See 12,866.]
Blacklock, Bowie v. [See 1,729.]
Blacklock, United States v. [See 14,604.]
Blackman, Filkins v. [See 4,786.]
BLACKMAN v. HIBBLER [1,471], 17 Blatchf. 333; 4 Ban. & A. 641; 17 O. G. 107; Merw. Pat. Inv. 209; 25 Int. Rev. Rec. 394; 10 Reporter, 257.
BLACKMAN v. STAGHOUND, The [1,472].
Blackman, Von Roy v. [See 16,997.]
Blackmer, MacDonald v. [See 8,757, 8,758.]
Black River Ins. Co., Simonds v. [See 12,874.]
BLACKSTONE, The [1,473], 1 Lowell, 485.
Blackstone, De Visser v. [See 3,840.]
Blackstone Canal Co., Farnum v. [See 4,675.]
Blackstone Canal Co., McDowell v. [See 8,777.]
Black Warrior, The, Greyor v. [See 5,807.]
Black Warrior, The, Turner v. [See 14,253.]
BLACKWELL v. ARMISTEAD [1,474], 3 Hughes, 163; 5 Amer. Law T. 85; Browne, Trade-Marks, 510 (2d Ed. 638); Cox. Manual Trade-Mark Cas. 220.
BLACKWELL v. DIBRELL [1,475], 3 Hughes, 151; 17 Amer. Law Reg. (N. S.) 516; 14 O. G. 633; Cox, Manual Trade-Mark Cas. 337.
Blackwell, Patton v. [See 10,831.]
Blackwell, Reading v. [See 11,612.]
Bladen, Treadwell v. [See 14,154.]
Bladen, United States v. [See 14,605, 14,606.]
Bladen, Watson v. [See 17,277.]
Blag v. Insurance Co. [See 1,477, 1,478.]
BLAGDEN v. BROADRUP [18,238], 2 Hayw. & H. 278.
BLAGG v. E. M. BICKNELL, The [1,476], 1 Bond, 270; 3 Wkly. Law Gaz. 393.
BLAGG v. PHŒNIX INS. CO. [1,477], 3 Wash. C. C. 5.
BLAGG v. PHŒNIX INS. CO. [1,478], 3 Wash. C. C. 58.
BLAGGE v. MILES [1,479], 1 Story, 426; 4 Law Rep. 256.
BLAGROVE v. RINGGOLD [1,480], 2 Cranch, C. C. 407.
Blain, Bullene v. [See 2,124.]
Blaine, Scott v. [See 12,525.]
BLAIR, In re [1,481], 17 N. B. R. 492; 10 Chi. Leg. News, 278; 25 Pittsb. Leg. J. 123.
BLAIR, In re [1,481], 25 Pittsb. Leg. J. 123.
BLAIR v. ALLEN [1,483], 3 Dill. 101.
BLAIR v. BEMIS [1,484].
Blair, Dove v. [See 18,292.]
Blair, Hallack v. [See 18,292.]
BLAIR v. FIRST NAT. BANK [1,485], 2 Flip. 111; 10 Chi. Leg. News, 84; 5 Reporter, 40; 2 Browne, Nat. Bank. Cas. 173; 12 Bank. Mag. (3d S.) 721.
Blair, Mayo v. [See 9,354.]
Blair, United States v. [See 14,607.]
BLAIR v. WESTERN FEMALE SEMINARY [1,486], 1 Bond, 578.
BLAIREAU, The [1,487].
BLAISDELL, In re [1,488], 5 Ben. 420; 6 N. B. R. 78; 42 How. Pr. 274.
BLAISDELL v. DOWS [1,489], 4 Ban. & A. 499.
BLAISDELL v. PUFFER [1,490], 4 Ban. & A. 500.
BLAISDELL v. TUFTS [1,491], 3 Ban. & A. 521; 15 O. G. 881.
Blaisdell, United States v. [See 14,608.]
BLAKE, In re [1,492], 2 N. B. R. 10 (Quarto, 2).
Blake, The Julia. [See 7,578.]
BLAKE v. ALABAMA & C. R. CO. [1,493], 6 N. B. R. 331.
BLAKE v. BOISSELIER [1,493a], 5 Ban. & A. 352; 16 O. G. 854.
Blake v. Cargo and Materials of the H. J. May. [See 3,494.]
BLAKE v. EAGLE WORKS MFG. CO. [1,494], 3 Biss. 77; 3 Chi. Leg. News, 353; 4 Fish. Pat. Cas. 591.
BLAKE v. ELIZABETH [1,495], 2 N. J. Law J. 328.
Blake, Fitzhugh v. [See 4,840.]
Blake, Fulton v. [See 5,153.]
Blake, Goodyear v. [See 5,560.]
BLAKE v. GRAMMER [1,496], 4 Cranch, C. C. 13.
BLAKE v. GREENWOOD CEMETERY [1,497], 14 Blatchf. 342; 13 O. G. 1046; 3 Ban. & A. 112.
Blake, Howland v. [See 6,792.]
Blake, Hughes v. [See 6,845.]
BLAKE v. McCARTNEY [1,498], 4 Cliff. 101; 10 Int. Rev. Rec. 131; 16 Pittsb. Leg. J. 210.
Blake, McGunnigle v. [See 8,816.]
BLAKE v. RAWSON [1,499], Holmes, 200; 3 O. G. 122; 6 Fish. Pat. Cas. 74; Merw. Pat. Inv. 444.
BLAKE v. ROBERTSON [1,500], 11 Blatchf. 237; 6 Fish. Pat. Cas. 509.
BLAKE v. ROBERTSON [1,501], 6 O. G. 297.
Blake, Samson v. [See 12,284.]
BLAKE v. SMITH [1,502], 4 Betts, C. C. MS. 14.
BLAKE v. SPERRY [1,503], 2 N. Y. Leg. Obs. 251.
BLAKE v. STAFFORD [1,504], 6 Blatchf. 195; 3 Fish. Pat. Cas. 294.
BLAKELEY v. BISCOE [18,239], Hempst. 114.
BLAKELY v. FISH [18,240], Hempst. 11.
BLAKELY v. RUDDELL [18,241], Hempst. 18.
Blakeman v. The Pacific. [See 1,571.]
Blakemore, Estill v. [See 4,538.]
Blakeney, Evans v. [See 4,553.]
Blakeslee, Wright v. [See 18,073.]
Blanc, Lastrapes v. [See 8,100.]
BLAKE CRUSHER CO. v. WARD [1,505], 1 Amer. Law T. Rep. (N. S.) 423.
BLANCHARD v. BEERS [1,506], 2 Blatchf. 411.
BLANCHARD v. BROWN [1,507], 1 Wall. Jr. 309.
BLANCHARD v. CAVALIER, The [1,508], 38 Hunt. Mer. Mag. 325.
BLANCHARD v. ELDRIDGE [1,509], 47 Jour. Fr. Inst. 259.
BLANCHARD v. ELDRIDGE [1,510], 1 Wall. Jr. 337; 2 Robb. Pat. Cas. 737.
BLANCHARD v. HAVEN [1,511], 1 Mason, 346.
BLANCHARD v. HAYNES [1,512], 6 West. Law J. 82.
Blanchard, Jolly v. [See 7,438.]
BLANCHARD v. MARTHA WASHINGTON, The [1,513], 1 Cliff. 463; 25 Law Rep. 22.
Blanchard, Owen v. [See 10,628.]
BLANCHARD v. PUTTMAN [1,514], 2 Bond, 84; 3 Fish. Pat. Cas. 186.
BLANCHARD v. REEVES [1,515], 1 Fish. Pat. Cas. 103.
BLANCHARD v. SPRAGUE [1,516], 1 Cliff. 288.
BLANCHARD v. SPRAGUE [1,517], 3 Sumn. 279; 1 Law Rep. 223; 1 Fish. Pat. Rep. 14.
BLANCHARD v. SPRAGUE [1,518], 3 Sumn. 535; 2 Story, 164; 1 Robb, Pat. Cas. 734, 742.
BLANCHARD v. WHITNEY [1,519], 3 Blatchf. 307.
BLANCHARD'S GUN-STOCK TURNING FACTORY v. JACOBS [1,520], 2 Blatchf. 69; 1 Fish. Pat. Rep. 158.
BLANCHARD'S GUN-STOCK TURNING FACTORY v. WARNER [1,521], 1 Blatchf. 258; 1 Fish. Pat Rep. 184.
BLANCHE PAGE, The [1,522].
BLANCHE PAGE, The [1,523], 4 Ben. 186.
BLANCHE PAGE, The [1,524], 16 Blatchf. 1; 7 Reporter, 326.
BLANCHE PAGE, The [1,525], 17 Blatchf. 221.
Blanche Page, The. [See 7,296, 7,297.]
BLAND v. SOUTHERN EXP. CO [1,526], 1 Hughes. 343.
BLANDIN, In re [1,527], 1 Lowell, 543; 5 N. B. R. 39.
BLANDY, Ex parte [1,527a].
BLANDY, In re [1,528], 1 McA. Pat. Cas. 552.
BLANDY v. GRIFFITH [1,529], 3 Fish. Pat. Cas. 609; Merw. Pat. Inv. 97, 705.
BLANDY v. GRIFFITH [1,530], 6 Fish. Pat. Cas. 434.
Blandy, Lee v. [See 8,182.]
BLANE v. DRUMMOND [1,531], 1 Brock. 62.
Blanford, Cross v. [See 3,429.]
BLANK v. MANUFACTURING CO. [1,532], 3 Wall. Jr. 196; 20 Leg. Int. 37.
Blauvelt, James v. [See 7,180.]
BLEDSOE, In re [1,533], 12 N. B. R. 402; 1 N. Y. Wkly. Dig. 101.
BLEECKER v. BOND [1,534], 3 Wash. C. C. 529.
BLEECKER v. BOND [1,535], 4 Wash. C. C. 6.
BLEEKER v. BOND [1,536], 4 Wash. C. C. 322.
BLEEKER v. HYDE [1,537], 3 McLean, 279.
BLENHEIM, The [1,538], Blatchf. Pr. Cas. 626.
BLENHEIM, The [1,539], 5 Sawy. 192; 6 N. Y. Wkly. Dig. 545; 10 Chi. Leg. News, 353.
BLIGHT'S ESTATE, In re [1,540], 1 Pa. Law J. 225.
BLIGHT v. ASHLEY [1,541], Pet. C. C. 15.

[Federal Case numbers are given in brackets.]

Blight, Ewing v. [See 4,589, 4,590.]
BLIGHT v. FISHER [1,542], Pet. C. C. 41.
Blight, Palmer v. [See 10,684.]
Blight, Wickham v. [See 17,611.]
Blight, Willings v. [See 17,765.]
Blight's Assignees, Humphreys v. [See 6,870.]
Bliss, The A. M. [See 274.]
BLISS, In re [1,543], 1 Ben. 407; 1 N. B. R. 78; Bankr. Reg. Supp. 17; 6 Int. Rev. Rec. 116.
BLISS v. BROOKLYN [1,544], 8 Blatchf. 533; 4 Fish. Pat. Cas. 596.
BLISS v. BROOKLYN [1,545], 10 Blatchf. 217.
BLISS v. BROOKLYN [1,546], 10 Blatchf. 521; 6 Fish. Pat. Cas. 289; 3 O. G. 269.
BLISS v. GAYLORD PATENT COUPLING & MFG. CO. [1,547], 7 Blatchf. 279.
BLISS v. HAIGHT [1,548], 7 Blatchf. 7; 3 Fish. Pat. Cas. 621.
Bliss, Peyton v. [See 11,055.]
BLISS v. REDFIELD [1,549], 17 Leg. Int. 373.
Bliss v. Schell. [See 1,549.]
BLIVEN v. NEW ENGLAND SCREW CO. [1,550], 3 Blatchf. 111.
Bliven, New England Screw Co. v. [See 10,156, 10,157.]
BLOCH, In re [1,551], 18 N. B. R. 328.
Block, United States v. [See 14,609, 14,610.]
BLODGET, In re [1,552], 5 N. B. R. 472.
BLODGET v. BRENT [1,553], 3 Cranch, C. C. 394.
BLODGET v. THORNTON [1,554], 3 Cranch, C. C. 176.
Blodget, Wilson v. [See 17,792.]
BLODGETT, In re [1,555], 10 N. B. R. 145.
Blodgett, Adams v. [See 46.]
Blodgett, United States v. [See 14,611, 18,312.]
BLOHM, The [1,556], 1 Ben. 228.
Blood, Wellman v. [See 17,385.]
Blood v. Woodman. [See 17,385.]
BLOOM, In re [1,557], 17 N. B. R. 425; 17 Alb. Law J. 434; 24 Int. Rev. Rec. 166; 35 Leg. Int. 165.
Bloomer v. Bunting. [See 18,242.]
Bloomer v. Dilworth. [See 18,242.]
Bloomer v. Douglas. [See 18,242.]
Bloomer v. Draher. [See 18,242.]
BLOOMER v. GILPIN [1,558], 4 Fish. Pat. Cas. 50.
Bloomer, The Hay v. [See 6,255.]
Bloomer v. Hill. [See 18,242.]
Bloomer v. Kelly. [See 18,242.]
BLOOMER v. McQUEWAN [18,242].
Bloomer v. Matson. [See 18,242.]
Bloomer v. Milligan. [See 18,242.]
Bloomer v. Ross. [See 18,242.]
BLOOMER v. STOLLEY [1,559], 5 McLean, 158; 8 West. Law J. 158; 1 Fish. Pat. R. 376.
BLOOMER v. VAUGHT [1,560].
Bloomgart, United States v. [See 14,612, 14,613.]
BLOOMINGTON, In re [1,561], 42 How. Pr. 283.
BLOSS, In re [1,562], 4 N. B. R. 147 (Quarto, 37).
BLOSSBURG & C. R. CO. v. TIOGA R. CO. [1,563], 5 Blatchf. 387.
BLOSSOM, The [1,564], Olc. 188; 6 N. Y. Leg. Obs. 374; 1 Amer. Law J. (N. S.) 354.
Blossom, Fox v. [See 5,008.]
BLOSSOM v. SMITH [1,565], 3 Blatchf. 316.
BLOSSOM v. SMITH [1,566], 31 Hunt, Mer. Mag. 203.
BLOUNT v. DARRACH [1,567], 4 Wash. C. C. 657.
Blue, Biggs v. [See 1,403.]
BLUE v. RUSSELL [1,568], 3 Cranch, C. C. 102.
BLUE JACKET, The [1,569], 10 Ben. 248.
BLUE RIDGE R. CO., In re [1,570], 2 Hughes, 224; 13 N. B. R. 315; 8 Chi. Leg. News, 290; 4 Amer. Law Rec. 456.
BLUKEMAN v. PACIFIC, The [1,571].
BLUM, In re [1,572], 2 Spr. 73.
BLUM v. CADDO, The [1,573], 1 Woods, 64.
BLUM v. SOUTHERN PULLMAN PALACE CAR CO. [1,574], 1 Flip. 500; 22 Int. Rev. Rec. 305; 3 Cent. Law J. 591.
Blum, United States v. [See 14,614.]
BLUMENTHAL, In re [1,575], 18 N. B. R. 555.
BLUMENTHAL, In re [1,576], 18 N. B. R. 575.
Blumenthal, In re. [See 7,105.]
Blunt, Allen v. [See 215-217.]
BLUNT v. FRANK, The [1,577].
BLUNT v. LITTLE [1,578], 3 Mason, 102.
BLUNT v. PATTEN [1,579], 2 Paine, 393.
BLUNT v. PATTEN [1,580], 2 Paine, 397.
Blunt, United States v. [See 14,615.]
BLY v. UNITED STATES [1,581], 4 Dill. 464.
BLYDENBURGH v. LOWRY [1,582], 4 Cranch, C. C. 368.
BLYDENBURGH v. WELSH, [1,583], Baldw. 331.
Blytheswood, The MacPherson v. [See 8,920].
BOALER v. CUMMINES [1,584], 10 Leg. Int. 122; 1 Amer. Law Reg. 654; 5 Pa. Law J. Rep. 246.
Boardman, Atkinson v. [See 607, 608.]
BOARDMAN v. BETHEL [1,585], 17 Betts D. C. MS. 58.
BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH v. McMASTER [1,586], 4 Amer. Law Reg. 526.
Boatmen's Sav. Inst., Darby v. [See 3,571.]
BOB CORNELL, The [1,587].
Bobo, Maltby v. [See 8,998.]
BOBOLINK, The [1,588], 6 Sawy. 146.
BOBYSHALL v. OPPENHEIMER [1,589], 4 Wash. C. C. 317.
BOBYSHALL v. OPPENHEIMER [1,590], 4 Wash. C. C. 333.
BOBYSHALL v. OPPENHEIMER [1,591], 4 Wash. C. C. 388.
BOBYSHALL v. OPPENHEIMER [1,592], 4 Wash. C. C. 482.
Boccaline, Gernow v. [See 5,366.]
Bockee v. Beekman. [See 1,593.]
BOCKEE v. CROSBY [1,593], 2 Paine, 432.
BODENHEIM, In re [1,594], 2 N. B. R. 419 (Quarto, 133); 2 Amer. Law T. Rep. Bankr. 64; 1 Chi. Leg. News, 195.
Bodfish, Eastman v. [See 4,255.]
Bodilian v. Seaton. [See 1,218.]
BODIN v. THULE, The [1,595], 3 Woods, 670.
Boecaline, Gernon v. [See 5,367.]
BOGART, In re [1,596], 2 Sawy. 396; 17 Int. Rev Rec. 155; 7 Amer. Law Rev. 749.
BOGART v. JOHN JAY, The [1,597].
Bogart v. The John Jay. [See 7,352.]
Bogart, United States v. [See 14,616, 14,617.]
BOGERT, In re [1,598], 2 N. B. R. 435 (Quarto, 139); 38 How. Pr. 111; 1 Chi. Leg. News, 211.
BOGERT, In re [1,599], 2 N. B. R. 585 (Quarto, 178); 1 Chi. Leg. News, 342.
BOGERT, In re [1,600], 3 N. B. R. 651 (Quarto, 161).
Bogert v. The John Jay. [See 7,352.]
Boget, In re. [See 1,599.]
Boggs, Bennett v. [See 1,319.]
BOGGS v. LOUTRA, The [1,601].
BOGGS v. PARR [1,602], 3 Hughes, 504.
Boggs, United States v. [See 14,618.]
BOGGS v. WILLARD [1,603], 3 Biss. 256; 4 Chi. Leg. News, 325; 16 Int. Rev. Rec. 22; 7 Amer. Law Rev. 172.
Boggs, The Paul. [See 10,846.]
BOHEMIAN, The [1,604].
Bohlens, Muller v. [See 9,914.]
Bohmer, Duwell v. [See 4,213.]
Bohn, Smith v. [13,015.]
Boice, United States v. [See 14,619.]
Boileau, Lambson v. [See 8,030.]
Boit, De Lovio v. [See 3,776.]
Bojorques, United States v. [See 14,620.]
BOKER v. BRONSON [1,605], 4 Blatchf. 472; 44 Hunt, Mer. Mag. 74.
BOKER v. BRONSON [1,606], 5 Blatchf. 5.
BOKER v. REDFIELD [1,606a], 40 Hunt, Mer. Mag. 705.
Boket, White v. [See 17,537.]
BOLCHOS v. DARRELL [1,607], Bee, 74.
Bold Runner, The Gove v. [See 5,644.]
Bolier, Reiling v. [See 11,671.]
BOLINA, The [1,608], 1 Gall. 75.
Boling, United States v. [See 14,621.]
BOLIVAR, The [1,609], Olc. 474.
BOLIVAR, The [1,610], Olc. 480.
BOLIVAR, The, v. CHALMETTE, The [1,611], 1 Woods, 397.
Bollen, Evans v. [See 4,554.]
Bolles, Bradley v. [See 1,773.]
Bollman, United States v. [See 14,622.]
BOLLMANS v. PARRY [1,612], 5 Pa. Law J. Rep. 29; 3 Amer. Law J. (N. S.) 468.
Bolting, Schulze v. [See 12,489.]

[Federal Case numbers are given in brackets.]

BOLTON, Ex parte [1,613], 1 Ala. Law J. 58.
BOLTON, In re [1,614], 2 Ben. 189; 1 N. B. R. 370 (Quarto, 83); 1 Amer. Law T. Rep. Bankr. 120.
BOLTON v. BUENA VISTA, The [2,105].
Bolton, United States v. [See 14,623.]
BOLTON v. WHITE [1,616], 2 Cranch, C. C. 426.
Bomford, Bank of United States v. [See 909.]
Bomford, Eriko v. [See 4,517.]
Bonaffon, Hill v. [See 6,488.]
BONAPARTE v. CAMDEN & A. R. CO. [1,617], Baldw. 205.
BOND, In re [1,618], 3 N. B. R. 7 (Quarto, 2).
BOND v. ALLEN [1,619], Brunner, Col. Cas. 3; 2 Mart. (N. C.) 83.
Bond, Bleecker v. [See 1,534, 1,535.]
Bond, Bleeker v. [See 1,536.]
BOND v. CORA, The [1,620], 2 Pet. Adm. 361.
BOND v. CORA, The [1,621], 2 Wash. C. C. 80; 2 Pet. Adm. 373.
Bond, Edwards v. [See 4,294.]
BOND v. GRACE [1,622], 1 Cranch, C. C. 96.
Bond, Johnson v. [See 7,374.]
BOND v. ROSS [1,623], 1 Brock. 316.
BOND v. SUPERB, The [1,624], 1 Wall. Jr. 355.
BONDHOLDERS v. RAILROAD COM'RS [1,625], 1 Month. West. Jur. 188.
Bondurant, Watson v. [See 17,278.]
BONE v. NORMA, The [1,626], 1 Newb. 533.
BONESTEEL, In re [1,627], 7 Blatchf. 175; 3 N. B. R. 517 (Quarto, 127).
BONESTEEL, In re [1,628], 2 N. B. R. 330 (Quarto, 106).
Bonesteel, Perego v. [See 10,976, 10,977.]
Bonesteel, Voorhies v. [See 17,001.]
BONHAM v. BOARD OF EDUCATION OF HARRISONVILLE [1,629], 4 Dill. 156.
BONNELL v. WEAVER [1,630], 5 Biss. 22.
BONNER v. NEW ORLEANS [1,631], 2 Woods, 135.
BONNET, In re [1,632], 1 N. Y. Leg. Obs. 310.
BONNETT, In re [1,633], 19 N. B. R. 168.
BONNETT, In re [1,634], 19 N. B. R. 309.
Bonney v. The Huntress. [See 6,912-6,914.]
Bontz, Grant v. [See 5,694.]
Bontz, Gregg v. [See 5,798.]
Bontz, Pipsico v. [See 11,183.]
Boody, Fisher v. [See 4,814.]
BOODY v. RUTLAND & B. R. CO. [1,635], 3 Blatchf. 25; 24 Vt. 660.
BOODY v. UNITED STATES [1,636], 1 Woodb. & M. 150.
BOOK'S CASE [1,637], 3 McLean, 317.
Book, United States v. [See 14,624.]
Booker, The Helen E. [See 6,330.]
Boom Co., Mason v. [See 9,232.]
BOOMER v. UNITED POWER PRESS CO. [1,638], 13 Blatchf. 107; 2 Ban. & A. 106.
BOON v. AETNA INS. CO. [1,639], 12 Blatchf. 24; 2 Amer. Law T. Rep. (N. S.) 179; 9 Amer. Law Rev. 150; 4 Ins. Law J. 27.
BOON v. HORNET, The [1,640], Crabbe, 426.
BOONE v. CLARKE [1,641], 3 Cranch, C. C. 389.
BOONE v. JANNEY [1,642], 2 Cranch, C. C. 312.
BOONE v. QUEEN [1,643], 2 Cranch, C. C. 371.
BOONE v. SMALL [1,644], 3 Cranch, C. C. 628.
BOOTH, In re [1,645], 14 N. B. R. 232; 8 Chi. Leg. News, 307; 1 Cin. Law Bul. 131.
BOOTH v. GARELLY [1,646], 1 Blatchf. 247; 6 N. Y. Leg. Obs. 99; Fent. Pat. 77; 1 Fish. Pat. Rep. 154.
Booth, Illinois Masons' Ben. Soc. v. [See 7,009.]
BOOTH v. L'ESPERANZA [1,647], Bee, 92.
Booth, National Bank of Commerce v. [See 10,036.]
BOOTH v. PARKS [1,648], 1 Flip. 381; 1 Ban. & A. 225; 6 Chi. Leg. News, 407.
Booth v. Seevers [1,648a], 19 O. G. 1140.
BOOTH v. SMITH [1,649], 3 Woods, 19.
BOOTHE v. BROOKS [1,650], 12 N. B. R. 398; 1 N. Y. Wkly. Dig. 125.
BOOTHE v. GEORGETOWN [1,651], 2 Cranch, C. C. 356.
BOOTHROYD, In re [1,652], 14 N. B. R. 223.
BOOTHROYD, In re [1,653], 15 N. B. R. 368; 2 Cin. Law Bul. 139.
Booze, Ex parte. [See 12,096.]
BORDEN, In re [1,654], 5 Ben. 228; 5 N. B. R. 128.
BORDEN v. HIERN [1,655], 1 Blatchf. & H. 293.
BORDEN v. MANCHESTER [1,656], 4 Mason, 112.
Borden, Sickels v. [See 12,832, 12,833.]
Borden, United States v. [See 14,625.]
Borden, The Holder. [See 6,600.]
Bordentown, The. [See 12,180.]
BORDMAN v. ELIZABETH, The [1,657], 1 Pet. Adm. 128.
Bordman, Forrestier v. [See 4,945.]
BOREAL v. GOLDEN ROSE, The [1,658], Bee, 131.
BORK v. NORTON [1,659], 2 McLean, 422.
BORLAND v. DEAN [1,660], 4 Mason, 174.
BORLAND v. PHILLIPS [1,661], 2 Dill. 383.
BORNIO v. STOCKDALE [1,662], 13 Int. Rev. Rec. 20.
BORO v. PHILLIPS COUNTY [1,663], 4 Dill. 216; 6 Cent. Law J. 409.
Bors, Baetjer v. [See 724.]
BORST, Ex parte [1,665], 1 Gaz. 18.
BORST, In re [1,665], 2 N. B. R. 171 (Quarto, 62), 1 Gaz. 18.
BORST, In re [1,666], 11 N. B. R. 96.
Bosman, Schultz v. [See 12,488.]
Bosquet, Copland v. [See 3,212.]
Boss v. The General Jackson. [See 5,314.]
Boss, Knowlton v. [See 7,901.]
BOSSEAU v. O'BRIEN [1,667], 4 Biss. 395.
Bossieux, Mutual Bldg. Fund Soc. [See 9,977.]
BOSTON, The [1,668].
BOSTON, The [1,669], 1 Blatchf. & H. 309.
BOSTON, The [1,670], 1 Gall. 239.
BOSTON, The [1,671], 1 Lowell, 464.
BOSTON, The [1,672], Olc. 407.
BOSTON, The [1,673], 1 Sumn. 328; 11 Amer. Jur. 21.
Boston, Bowditch v. [See 1,718, 1,719.]
Boston, Burrill v. [See 2,198.]
Boston, Richardson v. [See 11,780.]
Boston Belting Co., Day v. [See 3,673, 3,674.]
BOSTON BELTING CO. v. JUDSON [1,674], N. Y. Times, July 2, 1852.
Boston Diatite Co., Florence Mfg. Co. v. [See 4,882.]
Boston Elastic Fabric Co., Carew v. [See 2,397, 2,398.]
BOSTON ELASTIC FABRICS CO. v. EAST HAMPTON RUBBER THREAD CO. [1,675], 2 Ban. & A. 268; 9 O. G. 745.
BOSTON ELASTIC FABRICS CO. v. EAST HAMPTON RUBBER THREAD CO. [1,676], 1 Holmes, 372; 1 Ban. & A. 222; 5 O. G. 696; Merw. Pat. Inv. 345.
Boston Gaslight Co., Thacher v. [See 13,850.]
BOSTON, H. & E. R. CO., In re [1,677], 9 Blatchf. 101; 6 N. B. R. 209; 6 Amer. Law Rev. 365.
BOSTON, H. & E. R. CO., In re [1,678], 9 Blatchf. 409; 6 N. B. R. 222; 6 Amer. Law Rev. 582.
BOSTON, H. & E. R. CO., In re [1,679], 5 N. B. R. 232.
BOSTON, H. & E. R. CO., In re [1,680], 5 N. B. R. 233.
Boston, H. & E. R. Co., Adams v. [See 47.]
Boston, H. & E. R. Co., Alden v. [See 152.]
Boston, H. & E. R. Co., Sweatt v. [See 13,684.]
Boston Mach. Co., Tufts v. [See 14,231.]
BOSTON MFG. CO. v. FISKE [1,681], 2 Mason, 119; 1 Robb. Pat. Cas. 320.
Boston & A. R. Co., Lightner v. [See 8,343.]
Boston & A. R. Co., Williams v. [See 17,716.]
Boston & F. Iron Works, Child v. [See 2,674, 2,675.]
Boston & L. R. Co., Ashcroft v. [See 577.]
Boston & L. R. Co., Salem & L. R. Co. v. [See 12,249.]
Boston & P. R. Co., Winans v. [See 17,858.]
Bostwick, Cartwright v. [See 2,481.]
BOSTWICK v. FOSTER [1,682], 14 Blatchf. 436; 18 N. B. R. 123.
BOSWELL v. DICKERSON [1,683], 4 McLean, 262.
BOSWELL v. NEWTON [1,683a], Hempst. 264.
BOSWELL v. WASHINGTON [1,684], 2 Cranch, C. C. 18.
Botelor, Greenwell v. [See 5,791.]
BOTELOR v. WASHINGTON [1,685], 2 Cranch, C. C. 676.
Bothin, Taylor v. [See 13,780.]
BOTHNEA, The [1,686], 2 Gall. 78.
BOTHWELL v. VESSEL OWNERS' TOWING ASS'N [1,687], 6 Chi. Leg. News, 256.

[Federal Case numbers are given in brackets.]

Botlor, Mauro v. [See 9,311.]
Bott, United States v. [See 14,626.]
BOTTOMLEY v. UNITED STATES [1,688], 1 Story, 135.
BOTTOMLEY v. UNITED STATES [1,689], 1 Story, 153.
BOTTS v. CRENSHAW [1,690], Chase, 224.
Boucher, Simonton v. [See 12,877.]
BOUCICAULT v. FOX [1,691], 5 Blatchf. 87.
BOUCICAULT v. HART [1,692], 13 Blatchf. 47; 4 Amer. Law Rec. 726; 8 Chi. Leg. News, 257; 22 Int. Rev. Rec. 150; 23 Pittsb. Leg. J. 161.
BOUCICAULT v. WOOD [1,693], 2 Biss. 34; 7 Amer. Law Reg. (N. S.) 539.
BOUDEREAU v. MONTGOMERY [1,694], 4 Wash. C. C. 186.
Boudinot, Bradford v. [See 1,765.]
Boudinot, Carson v. [See 2,462.]
BOUDINOT v. SYMMES [1,695], Wall. Sr. 139.
Bougher, United States v. [See 14,627.]
BOUGHTON, In re [1,696], 1 McA. Pat. Cas. 278.
Boughton, Adjustable Window Screen Co. v. [See 81.]
BOUKER v. The DELAWARE [18,243].
BOUKER v. The DELAWARE [18,244].
BOULIGNEY v. UNITED STATES [1,696a], 1 La. Law J. 184.
BOUND, In re [1,697], 4 N. B. R. 510 (Quarto, 164).
BOUNTY v. KERRIN [1,697a], Betts, Scr. Bk. 533.
Bourn, Goodyear v. [See 5,561.]
BOURNE v. ASHLEY [1,698].
BOURNE v. ASHLEY [1,699], 1 Lowell, 27.
BOURNE v. MAYBIN [1,700], 3 Woods, 724.
Bourne, Merriman v. [See 9,480.]
BOURNE v. SMITH [1,701], 1 Lowell, 547.
Bours, Dessau v. [See 3,825.]
BOUSFIELD, In re [1,702], 16 N. B. R. 481.
BOUSFIELD & POOLE MFG. CO., In re [1,703], 16 N. B. R. 489.
BOUSFIELD & POOLE MFG. CO., In re [1,704], 17 N. B. R. 153.
BOUTELLE, In re [1,705], 2 N. B. R. 129 (Quarto, 51) 15 Pittsb. Leg. J. 616; 1 Chi. Leg. News, 30.
BOUTON, In re [1,706], 5 Sawy. 427.
BOUTOUR v. PECKHAM [1,707].
BOUTWELL v. ALLDERDICE [1,708], 2 Hughes, 121.
Boutwell, Galvin v. [See 5,207.]
BOUYSSON v. MILLER [1,709], Bee, 186.
BOUYSSON v. MILLER [1,710], Bee, 190.
BOVING v. LAWRENCE [1,711], 1 Blatchf. 607.
BOVING v. LAWRENCE [1,712], 1 Blatchf. 616.
BOWAS v. PIONEER TOW LINE [1,713], 2 Sawy. 21.
Bowdell v. Farmers' & Merchants' Nat. Bank. [See 1,714.]
BOWDEN v. FARMERS' & MERCHANTS' BANK OF BALTIMORE [1,714], 1 Hughes, 307; 2 Browne, Nat. Bank Cas. 146; 14 Bank. Mag. 387; 25 Int. Rev. Rec. 405; 1 Wkly. Jur. 639.
BOWDEN v. MORRIS [1,715], 1 Hughes, 378.
BOWDEN v. SANTOS [1,716], 1 Hughes, 158; 1 Thomp. Nat. Bank Cas. 271.
Bowden v. Turner. [See 1,716.]
BOWDITCH, The [1,717], 3 Ware, 71.
BOWDITCH v. BOSTON [1,718], 11 Alb. Law J. 342.
BOWDITCH v. BOSTON [1,719], 4 Cliff. 323.
Bowdoin, The, The Haugesund v. [See 6,220.]
Bowdoin, Parkman v. [See 10,763.]
Bowen, Buxton v. [See 2,260.]
BOWEN v. CHASE [1,720], 7 Blatchf. 255.
BOWEN v. CLARK [1,721], 1 Biss. 128; 5 Amer. Law Reg. 203.
BOWEN v. HERRIET [1,722], 1 McA. Pat. Cas. 310.
BOWEN v. HOWARD [1,723], 5 Cranch, C. C. 308.
BOWEN v. KENDALL [1,724], 1 Brunner, Col. Cas. 704; 23 Law Rep. 538.
Bowen, Lee v. [See 8,183.]
Bowen, Pawtucket Inst. for Savings v. [See 10,852.]
Bowen, Toucey v. [See 14,107.]
Bowen, United States v. [See 14,628, 14,629.]
BOWEN v. WATERS [1,725], 2 Paine, 1.
Bowen, Wise v. [See 17,905.]
Bowen, The James. [See 7,192.]
Bowen, The J. L. [See 7,322.]
BOWERBANK v. MORRIS [1,726], Wall. Sr. 118.
BOWERBANK v. PAYNE [1,727], 2 Wash. C. C. 464.
Bowerman, United States v. [See 14,630.]
Bowers, Scammon v. [See 12,431.]
Bowers, Webb v. [See 17,319.]
BOWIE, In re [1,728], 1 N. B. R. 628 (Quarto, 185); 15 Pittsb. Leg. J. 448; 1 Amer. Law T. Rep. Bankr. 97.
BOWIE v. BLACKLOCK [1,729], 2 Cranch, C. C. 265.
Bowie, Fowle v. [See 4,994, 4,995.]
BOWIE v. HENDERSON [1,730].
BOWIE v. HUNTER [1,731], 4 Cranch, C. C. 699.
Bowie, Magruder v. [See 8,964.]
Bowie, Patterson v. [See 10,825.]
Bowie, Swann v. [See 13,672.]
BOWIE v. TALBOT [1,732], 1 Cranch, C. C. 247.
BOWIE v. WHEELRIGHT [1,733], 2 Cranch, C. C. 167.
BOWKER v. DOWS [1,734], 3 Ban. & A. 518; 15 O. G. 510; Merw. Pat. Inv. 253.
BOWLER, In re [1,735], 2 Hughes, 319.
Bowler, Beard v. [See 1,180.]
Bowler, Connecticut Mut. Life Ins. Co. v. [See 3,106.]
Bowler, Dundas v. [See 4,140, 4,141.]
BOWLEY v. GODDARD [1,736], 1 Lowell, 154.
BOWLING, Ex parte [1,737], 1 Cranch, C. C. 39.
Bowling, Garland v. [See 5,242.]
BOWMAN v. BARRON [1,738], 4 Cranch, C. C. 450.
BOWMAN v. FRENCH [1,739], 1 Cranch, C. C. 74.
Bowman, Haggett v. [See 5,900.]
Bowman, Lawrence v. [See 8,134.]
Bowman, Mariposa County v. [See 9,089.]
Bowman, Peters v. [See 11,028, 11,029.]
Bowman v. United States. [See 14,631.]
Bowman v. Wagner. [See 14,174.]
BOWMAN v. WATHEN [1,740], 2 McLean, 376.
BOWNE, In re [1,741], 12 N. B. R. 529; 1 N. Y. Wkly. Dig. 100.
Bowne, Alexandria v. [See 180.]
BOWNE v. ARBUNCLE [1,742], Pet. C. C. 233.
BOWNE v. BROWN [1,743], 2 Wash. C. C. 271.
Bowrie, Curtis v. [See 3,498.]
Bowring v. The Edith. [See 4,281-4,283.]
Bowring v. The Polar Star. [See 4,281-4,283.]
Bowser, Lamb v. [See 8,008, 8,009.]
Box of Bullion. [See 17,717.]
Box of Bullion, Williams v. [See 17,717.]
Box of Dry Goods, United States v. [See 14,419.]
BOYCE v. PATAPSCO [1,744], N. Y. Daily Times, July 23, 1867.
Boyce, Wilson v. [See 17,793.]
BOYD, In re [1,745], 2 Hughes, 349; 5 N. B. R. 199.
BOYD, In re [1,746], 4 Sawy. 262; 16 N. B. R. 137, 204; 9 Chi. Leg. News, 385; 10 Chi. Leg. News, 1; 4 Law & Eq. Rep. 488; 6 Amer. Law Rec. 311.
Boyd, Bright v. [See 1,875, 1,876.]
BOYD v. BROWN [1,747], 3 McLean, 295; 2 Robb. Pat. Cas. 203.
Boyd, Butterfield v. [See 2,250.]
Boyd, Dawson v. [See 3,667.]
Boyd, Galvin v. [See 5,208.]
Boyd, Harrison v. [See 6,133.]
Boyd, Love v. [See 8,546.]
BOYD v. McALPIN [1,748], 3 McLean, 427; 2 Robb. Pat. Cas. 277.
Boyd, Moses v. [See 9,871.]
Boyd, Okely v. [See 10,476.]
Boyd, Sanford v. [See 12,311.]
BOYD v. TOWNER, The [1,748a], Betts Scr. Bk. 517.
BOYD v. UNITED STATES [1,749], 14 Blatchf. 317.
BOYD v. URQUHART [1,750], 1 Spr. 423.
BOYD v. WILSON [1,751], 2 Cranch, C. C. 525.
BOYD v. WITHERS [1,752], 1 Chi. Leg. News, 401.
Boyden, United States v. [See 14,632.]
BOYER v. HERTY [1,753], 1 Cranch, C. C. 251.
BOYER v. ROBERTS [1,754], 1 Cranch, C. C. 73.
Boyer, Sheepshanks v. [See 12,741.]
Boyer, Stuart v. [See 13,553.]
Boyer, United States v. [See 14,633.]
BOYER v. WISCONSIN, The [6,317].
BOYER v. WISCONSIN, The, and HECTOR, The [1,756].
Boyington, Tucker Mfg. Co. v. [See 14,229.]
BOYLAN, In re [1,757], 1 Ben. 266; 1 N. B. R. 2; Bankr. Reg. Supp. 1; 6 Int. Rev. Rec. 28.

Boylan, Riggs v. [See 11,822.]
Boylan, United States v. [See 14,634.]
BOYLE v. ARLEDGE [1,758], Hempst. 620.
Boyle v. The Breeze. [See 1,829.]
BOYLE v. HINDS [1,759], 2 Sawy. 527.
Boyle, Jenkins v. [See 7,262.]
Boynton, In re. [See 8,042-8,044.]
BOYREAU v. CAMPBELL [1,760], 1 McAll. 119.
Brachen, Snyder v. [See 13,153.]
Bracheo, Doubleday v. [See 4,018.]
BRACKEN v. JOHNSTON [1,761], 4 Dill. 518; 15 N. B. R. 106; 5 Amer. Law Rec. 461; 3 Month. Jur. 629; 4 Cent. Law J. 9; 3 Amer. Law T. Rep. (N. S.) 537; 11 Amer. Law Rev. 609; 3 N. Y. Wkly. Dig. 573; 1 Cin. Law Bul. 358.
Brackenridge, Frazier v. [See 5,071.]
Brackenridge, Page v. [See 10,661.]
Brackett, Downer v. [See 4,043.]
BRACKETT v. HERCULES, The [1,762], Gilp. 184.
BRACKETT v. UNITED STATES [1,763], Hoff. Land Cas. 85.
BRADBURY v. GALLOWAY [1,764], 3 Sawy. 346; 12 N. B. R. 299; 1 N. Y. Wkly. Dig. 34.
Bradbury, United States v. [See 14,635.]
Bradbury, Ware v. [See 17,168.]
Braden, Fenton v. [See 4,730.]
BRADFORD v. BOUDINOT [1,765], 3 Wash. C. C. 122.
BRADFORD v. BRADFORD [1,766], 2 Flip. 280.
BRADFORD v. EASTBURN [1,767], 2 Wash. C. C. 219.
Bradford, Forbush v. [See 4,930.]
BRADFORD v. GEISS [1,768], 4 Wash. C. C. 513.
Bradford v. Hunt. [See 1,217.]
BRADFORD v. JENKS [1,769], 2 McLean, 130.
Bradford, Judson v. [See 7,564.]
Bradford, Thomson v. [See 13,981.]
Bradford, Westcot v. [See 17,429.]
BRADICH JOHNSON, The [1,770], 10 Chi. Leg. News, 353.
BRADISH v. FRIENDSHIP, The [1,771].
Bradish Johnson, The, Baldwin v. [See 798.]
Bradish Johnson, The, Brown v. [See 1,992.]
BRADLEY, In re [1,772], 2 Biss. 515.
Bradley, Adams v. [See 48.]
BRADLEY v. BOLLES [1,773], 1 Abb. Adm. 569.
Bradley, Chesapeake & O. Canal Co. v. [See 2,646.]
Bradley, Coe v. [See 2,941.]
BRADLEY v. CONNER [1,774], 5 Cranch, C. C. 615.
BRADLEY v. CONVERSE [1,775], 4 Cliff. 366.
BRADLEY v. CONVERSE [1,776], 4 Cliff. 375.
BRADLEY v. CURRIER [1,777].
Bradley, Dobbins v. [See 3,944.]
BRADLEY v. ELIOT [1,778], 5 Cranch, C. C. 293.
BRADLEY v. FARWELL [1,779], Holmes, 433.
BRADLEY v. FROST [1,780], 3 Dill. 457.
Bradley, Harris v. [See 6,116.]
BRADLEY v. HEALEY [1,781], Holmes, 451.
Bradley, Hudson v. [See 6,833.]
Bradley, Hussey v. [See 6,946.]
BRADLEY v. KNOX [1,782], 5 Cranch, C. C. 297.
BRADLEY v. LILL [1,783], 4 Biss. 473.
BRADLEY v. McKEE [1,784], 5 Cranch, C. C. 298.
Bradley, Monroe v. [See 9,713.]
BRADLEY v. REED [1,785], 12 Pittsb. Leg. J. 65; 2 Pittsb. Rep. 519.
BRADLEY v. RICHARDSON [1,786], 2 Blatchf. 343; 23 Vt. 720.
BRADLEY v. SOUTH CAROLINA PHOSPHATE & PHOSPHATIC RIVER MIN. CO. [1,787], 1 Hughes, 72.
Bradley, Steam-Packet Co. v. [See 13,333.]
BRADLEY v. TOCHMAN [1,788], 1 Hayw. & H. 263.
BRADLEY v. TRAMMEL [1,788a], Hempst. 164.
Bradley Mfg. Co., Dorsey Revolving Harvester Rake Co. v. [See 4,015.]
BRADLY v. MARINE & RIVER PHOSPHATE MIN. & MFG. CO. OF SOUTH CAROLINA [1,789], 3 Hughes, 26.
Bradshaw, Griffith v. [See 5,821.]
Bradshaw, Holmes v. [See 6,635.]
BRADSHAW v. KLEIN [1,790], 2 Biss. 20; 1 N. B. R. 542 (Quarto, 146); 7 Amer. Law Reg. (N. S.) 505; 1 Amer. Law T. Rep. Bankr. 72; 15 Pittsb. Leg. J. 433.
BRADSHAW v. SYLPH, The [1,791], 2 Betts, D. C. MS. 58.
BRADSTREET v. HERAN [1,792], 1 Abb. Adm. 209.
BRADSTREET v. HERAN [1,792a], 2 Blatchf. 116.
BRADSTREET v. NEPTUNE INS. CO. [1,793], 3 Sumn. 600; 2 Law Rep. 262; 2 Hunt, Mer. Mag. 508.
Bradt, In re. [See 5,993.]
Brady v. American Steamship Co. [See 10,945.]
BRADY v. ATLANTIC WORKS [1,794], 4 Cliff. 408; 10 O. G. 702; 2 Ban. & A. 436.
BRADY v. ATLANTIC WORKS [1,795], 3 Ban. & A. 577; 15 O. G. 965.
Brady, Bank of Illinois v. [See 888.]
BRADY v. CHICAGO [1,796], 4 Biss. 448.
BRADY v. NEW PHILADELPHIA, The [1,797], 19 How. Pr. 315.
Brady's Bend Iron Co., M. & M. Nat. Bank of Pittsburgh v. [See 9,018.]
BRAGDON v. KITTY SIMPSON, The [1,798], 37 Hunt, Mer. Mag. 709.
BRAGG, In re [1,799], 1 N. Y. Leg. Obs. 119; 5 Law Rep. 323.
BRAGG v. LORIO [1,800], 1 Woods, 209; 4 Chi. Leg. News, 183.
BRAGG v. MEYER [1,801], McAll. 408; 39 Hunt, Mer. Mag. 577.
BRAGG v. PORTLAND [1,802].
BRAGG v. SAN JOSE [1,803].
Brainard v. The Traveller. [See 2,597.]
BRAINARD v. WILLIAMS [1,804], 4 McLean, 122.
BRAINARD v. WORCESTER, The [1,804a].
Braintree Mfg. Co., Carver v. [See 2,485.]
Bramall, The John. [See 7,334.]
BRAMEN, The [1,805], 1 Brown, Adm. 161.
BRAMHALL v. SHALER [1,805a].
Bramham, United States v. [See 14,636.]
Bramhill, Tuck v. [See 14,213.]
BRAMMER v. JONES [1,806], 2 Bond, 100; 3 Fish. Pat. Cas. 340.
Bramson, Whitaker v. [See 17,526.]
BRANCH v. ALTANTIC & G. R. CO. [1,807], 3 Woods, 481.
Branch, Curtis v. [See 3,499.]
BRANCH v. MACON & B. R. CO. [1,808], 2 Woods, 385.
BRAND, In re [1,809], 2 Hughes, 334; 3 N. B. R. 324 (Quarto, 85); 2 Amer. Law T. Rep. Bankr. 66.
BRANDON MFG. CO. v. PRIME [1,810], 14 Blatchf. 371; 3 Ban. & A. 191.
Brandon Mfg. Co. v. Prime. [See 11,421.]
BRANDT, In re [1,811], 5 Biss. 217.
BRANDT, In re [1,812], 2 N. B. R. 215 (Quarto, 76).
BRANDT, In re [1,813], 2 N. B. R. 345 (Quarto, 109).
Brandt, The Cole v. [See 2,978.]
Brandt, Hoffheins v. [See 6,575.]
BRANDT v. VIRGINIA COAL & IRON CO. [1,814], 2 Hughes, 501; 6 Chi. Leg. News, 290.
Brandywine, The Sageman v. [See 12,216.]
Brannan, Shelly v. [See 12,751.]
Brannick v. The Sea Gull. [See 12,578.]
Brant, In re. [See 1,812.]
Brant, Parker v. [See 10,727.]
Brant, United States v. [See 14,637.]
Branton, Teasdale v. [See 13,813.]
Brashears, Brent v. [See 1,836.]
Brastow, Ayer v. [See 682.]
BRATTLE v. WILLARD [1,815], Smith (N. H.) 374.
BRAUER v. SOUTHERN HOME, The [13,187], 8 Reporter, 389.
Braunsdorf, Potter v. [See 11,321.]
Braunsdorf, Singer v. [See 12,897.]
BRAWLEY v. JIM WATSON, The [1,817], 2 Bond, 356.
BRAY, In re [1,818], 2 N. B. R. 139 (Quarto, 53); 1 Chi. Leg. News, 30.
BRAY v. ATLANTA, The [1,819], Bee, 48.
BRAY v. HARTSHORN [1,820], 1 Cliff. 538; Merw. Pat. Inv. 316.
Bray, Woodsum v. [See 17,998.]
BRAZOS, The [1,821], 14 Blatchf. 446.
Brazos, The M. R. [See 9,898.]
BRECK, In re [1,822], 8 Ben. 93; 12 N. B. R. 215.
BRECK, In re [1,823], 13 N. B. R. 216.
Breck, Edgarton v. [See 4,279.]
Breck, Jackson v. [See 7,132.]
BRECKENRIDGE v. AULD [1,824], 4 Cranch, C. C. 731.

[Federal Case numbers are given in brackets.]

Breckenridge, Dallum v. [See 3,547.]
BRECKENRIDGE v. PETER [1,825], 4 Cranch, C. C. 15.
Breckenridge, Peters v. [See 11,030.]
BREED v. PROVIDENCE WASHINGTON INS. CO. [1,826], 17 Blatchf. 287.
Breed, United States v. [See 14,638.]
BREED v. VENUS, The [1,827].
BREEDEN v. LEE [1,828], 2 Hughes, 484.
BREEZE, The [1,829], 6 Ben. 14; 6 Amer. Law Rev. 762.
Brenell, Vuyton v. [See 17,026.]
BRENEMAN, Ex parte [1,830], Crabbe, 456; 1 Pa. Law J. 33, 183.
Brennan, Carraher v. [See 2,441.]
Brennan, Prentiss v. [See 11,385.]
BRENNAN v. VIRGO, The [1,831].
BRENT, In re [1,832], 2 Dill. 129; 8 N. B. R. 444; 18 Int. Rev. Rec. 159.
BRENT v. ARMFIELD [1,833], 4 Cranch, C. C. 579.
Brent, Bank of The Metropolis v. [See 900.]
Brent, Bank of The United States v. [See 910.]
BRENT v. BANK OF WASHINGTON [1,834], 2 Cranch, C. C. 517.
Brent, Bank of Washington v. [See 948.]
BRENT v. BECK [1,835], 5 Cranch, C. C. 461.
Brent, Blodget v. [See 1,553.]
BRENT v. BRASHEARS [1,836], 2 Cranch, C. C. 59.
BRENT v. COYLE [1,837], 2 Cranch, C. C. 287.
BRENT v. COYLE [1,838], 2 Cranch, C. C. 348.
Brent, Fenwick v. [See 4,732.]
BRENT v. HAGNER [1,839], 5 Cranch, C. C. 71.
BRENT v. JUSTICES OF THE PEACE [1,840], 1 Cranch, C. C. 434.
Brent, Langley v. [See 8,066.]
Brent, Noyes v. [See 10,372, 10,373.]
Brent, Peyton v. [See 11,056.]
BRENT v. SMITH [1,841], 5 Cranch, C. C. 672.
Brent, Thomas v. [See 13,893.]
Brent, United States v. [See 14,639, 14,640.]
BRENT v. VENABLE [1,842], 3 Cranch, C. C. 227.
Brents, Carrington v. [See 2,446.]
BREST v. SMITH [1,843], 5 Biss. 62.
BRETT v. CARTER [1,844], 2 Lowell, 458; 2 N. Y. Wkly. Dig. 331; 14 N. B. R. 301; 22 Int. Rev. Rec. 152; 3 Cent. Law J. 286; 13 Alb. Law J. 361; 10 Amer. Law Rev. 600.
BRETT v. ZACHRISSEN [1,845].
BRETTAUGH v. LOCUST MOUNTAIN COAL & IRON CO. [1,846], 7 Amer. Law Reg. (N. S.) 109.
BREVOOR v. FAIR AMERICAN, The [1,847], 1 Pet. Adm. 87.
Brevoort, Hilliard v. [See 6,505.]
BREWER v. CALDWELL [1,848], 13 Blatchf. 361.
BREWER v. CALDWELL [1,849], 7 Reporter, 389.
Brewer, Clum v. [See 2,909, 2,910.]
Brewer, French v. [See 5,096.]
Brewer, Merritt v. [See 9,483.]
Brewer, The Erlen v. [See 4,519.]
BREWER & BEMIS BREWING CO., In re [1,850], 4 Dill. 345.
BREWER'S FIRE INS. CO. v. CLAUSON [1,851], 3 Ins. Law J. 919.
Brewery Utensils, United States v. [See 14,641.]
BREWSTER, The [1,852], 4 Adm. Rec. 116.
BREWSTER v. GELSTON [1,853], 1 Paine, 426.
Brewster, Lewis v. [See 8,318.]
Briard, Lamb v. [See 8,010.]
BRICE v. ELLIOTT [1,854], 2 Wkly. Notes Cas. 560; 1 Law & Eq. Rep. 570; 22 Int. Rev. Rec. 206; 8 Chi. Leg. News, 322; 23 Pittsb. Leg. J. 179.
BRICE v. NANCY, The [1,855], Bee, 429.
BRICE v. SOMERS [1,856], 1 Flip. 574; 2 Law & Eq. Rep. 321; 2 N. Y. Wkly. Dig. 478; 8 Chi. Leg. News, 290; 1 Cin. Law Bul. 123.
BRICK, In re [1,856a], 4 Fed. 804.
Brick, The Lane v. [See 8,048.]
Bricker, United States v. [See 14,642.]
Brickford, United States v. [See 14,643.]
Briddle, Scull v. [See 12,569, 12,570.]
BRIDGE v. BROWN [1,857], Holmes, 53; Merw. Pat. Inv. 113.
BRIDGE v. BROWN [1,858], Holmes, 205; 3 O. G. 121; 6 Fish. Pat. Cas. 236.
BRIDGE v. EXCELSIOR MFG. CO. [1,859], 17 O. G. 259.
BRIDGEPORT, The [1,860], 6 Blatchf. 3.
BRIDGEPORT, The [1,861], 7 Blatchf. 361.
Bridgeport, Hart v. [See 6,149.]
Bridgeport, The Shaw v. [See 12,717.]
Bridgeport Brass Co., Miller v. [See 9,563.]
BRIDGES, Ex parte [1,862] (BROWN v. UNITED STATES); 14 Amer. Law Reg. (N. S.) 566; 2 Amer. Law T. Rep. (N. S.) 464; 2 Woods, 428; 2 Cent. Law J. 327, 368; 1 N. Y. Wkly. Dig. 347, 348; 4 Amer. Law Rec. 132; 7 Chi. Leg. News, 306; 21 Int. Rev. Rec. 214.
Bridges, Reason v. [See 11,617.]
Bridges, United States v. [See 14,644.]
BRIDGETON, The [1,863], 11 Hunt, Mer. Mag. 268.
BRIDGEWATER, The [1,864], 4 Cin. Law Bul. 448; 11 Chi. Leg. News, 327.
BRIDGEWATER, The [1,865], Olc. 35.
BRIDGMAN, In re [1,866], 1 N. B. R. 312 (Quarto, 59); 1 Amer. Law T. Bankr. 48.
BRIDGMAN, In re [1,867], 2 N. B. R. 252 (Quarto, 84); 1 Chi. Leg. News, 103.
Bridgman, United States v. [See 14,465.]
Brig, The Rowe v. [See 12,093.]
BRIGGS, Ex parte [1,868], 2 Lowell, 389.
BRIGGS, In re [1,869], 3 N. B. R. 638 (Quarto, 157); 2 Chi. Leg. News, 218.
BRIGGS v. FRENCH [1,870], 1 Sumn. 504.
BRIGGS v. FRENCH [1,871], 2 Sumn. 251.
Briggs, Goodsell v. [See 5,548.]
Briggs, Greene v. [See 5,764.]
BRIGGS v. JOHNSON COUNTY [1,872], 4 Dill. 148; 4 Cent. Law J. 414.
BRIGGS v. STEPHENS [1,873], 7 Law Rep. 281.
Briggs, United States v. [See 14,646.]
BRIGHAM v. LUDDINGTON [1,874], 12 Blatchf. 237.
Brigham, Taylor v. [See 13,781.]
BRIGHT v. BOYD [1,875], 1 Story, 478.
BRIGHT v. BOYD [1,876], 2 Story, 605.
BRIGHT v. MILWAUKEE & ST. P. R. CO. [1,877], 14 Blatchf. 214.
Bright, United States v. [See 14,647.]
BRIGHTMAN, In re [1,878], 14 Blatchf. 130; 15 N. B. R. 213.
BRIGHTMAN, In re [1,879], 18 N. B. R. 566; 19 Alb. Law J. 55.
BRIGHT STAR, The [1,880], 1 Woolw. 266; 1 Amer. Law T. Rep. U. S. Cts. 107; 8 Int. Rev. Rec. 130.
Bright Star, The, United States v. [See 14,648.]
BRIMSTONE, In re a Cargo of [1,881], 8 Ben. 45.
BRINKER, In re [1,882], 19 N. B. R. 195.
BRINKMAN, In re [1,883], 6 N. B. R. 541.
BRINKMAN, In re [1,884], 7 N. B. R. 421.
Brinkman, Wilson v. [See 17,794.]
Brinton, Warner v. [See 17,179.]
Briones, United States v. [See 14,649.]
BRISCO, Ex parte [1,885], 1 Gaz. 78.
BRISCO, In re [1,886], 2 N. B. R. 226 (Quarto, 78); 1 Gaz. 78.
BRISCOE v. HINMAN [1,887], Deady, 588; 10 Int. Rev. Rec. 53; 1 Chi. Leg. News, 377.
Brisk, The, Muir v. [See 9,901.]
BRISSAC v. LAWRENCE [1,888], 2 Blatchf. 121.
BRISTOL, The [1,889], 4 Ben. 55.
BRISTOL, The [1,890], 4 Ben. 397.
BRISTOL, The [1,891], 6 Ben. 477.
BRISTOL, The [1,892], 10 Blatchf. 537.
BRISTOL v. SANFORD [1,893], 12 Blatchf. 341; 13 N. B. R. 78.
Bristol, Sargent v. [See 12,363.]
Bristol, Tobey v. [See 14,065.]
BRITANNIA, The [1,894], 2 Spr. 225.
BRITISH AMERICA, The [1,895], 10 Ben. 417.
British America, The, Churchill v. [See 2,715.]
British American Assur. Co., Fonda v. [See 4,904.]
British & N. A. Royal Mail Steam-Packet Co., Caruana v. [See 2,484.]
BRITISH CONSUL v. FAVORITE, The [1,896], Bee, 39.
BRITISH CONSUL v. MERMAID, The [1,897], Bee, 69.
BRITISH CONSUL v. NANCY, The [1,898], Bee, 73.
BRITISH CONSUL v. THOMPSON [1,899], Bee, 141.
BRITISH CONSUL v. TWENTY-TWO PIPES AND TEN HOGSHEADS OF WINE [1,900], Bee, 178.
BRITISH EMPIRE, The [1,901], Blatchf. Pr. Cas. 245.

[Federal Case numbers are given in brackets.]

British Oak, The, Foster v. [See 4,966.]
Brittain v. The City of Fremont. [See 2,746.]
BRITTAN v. ALBONI, The [1,902], 35 Hunt, Mer. Mag. 194.
Brittan, Jones v. [See 7,455.]
Britton v. Brewster. [See 1,905, 1,906.]
BRITTON v. BUTLER [1,903], 9 Blatchf. 456; 11 Amer. Law Reg. (N. S.) 293; 5 Amer. Law T. Rep. 101; 15 Int. Rev. Rec. 98; 4 Chi. Leg. News, 169; 6 Amer. Law Rev. 581.
BRITTON v. BUTLER [1,904], 11 Blatchf. 350.
BRITTON v. PAYEN [1,905].
BRITTON v. PAYEN [1,906], 7 Ben. 219; 9 N. B. R. 445.
BRITTON v. PLATTE CITY [1,907], 2 Dill. 1.
Britton, United States v. [See 14,650.]
Broach, Platt v. [See 11,216.]
BROAD v. DEUSTER [1,908], 8 Biss. 265.
Broadhag, Johns v. [See 7,362.]
BROADNAX v. EISNER [1,909], 13 Blatchf. 366.
Broadrup, Blagden v. [See 18,238.]
BROADWELL v. BUTLER [1,910], 6 McLean, 296; Newb. 171.
Broadwell v. Keys. [See 1,910.]
Broadwell, Lewis v. [See 8,319.]
BROADWELL v. McCLISH [1,911], 1 Cranch, C. C. 4.
BROCK v. HOPPOCK [1,912], 2 N. B. R. 7 (Quarto, 2); 2 Ben. 478.
BROCK v. JOHN M. WALSH, The [7,359], 24 Int. Rev. Rec. 207.
BROCK v. TERRELL [1,914], 2 N. B. R. 643 (Quarto, 190); 1 Chi. Leg. News, 349.
BROCKET v. JOHNS [1,915], 1 Cranch, C. C. 100.
Brockett, Alexandria v. [See 181, 182.]
BROCKETT v. HAMMOND [1,916], 2 Cranch, C. C. 56.
Brockett, United States v. [See 14,651.]
Brockius, United States v. [See 14,652.]
BROCKWAY, In re [1,917], 6 Ben. 326; 7 N. B. R. 595.
Brod, United States v. [See 14,653.]
BRODHEAD, In re [1,918], 3 Ben. 106; 2 N. B. R. 278 (Quarto, 93); 1 Chi. Leg. News, 107.
Brodhead, United States v. [See 14,654.]
Brodie, McComb v. [See 8,708.]
BRODIE v. OPHIR SILVER MIN. CO. [1,919], 5 Sawy. 608; 4 Fish. Pat. Cas. 137.
Brodt, In re. [See 5,993.]
BROHAWN v. VAN NESS [1,920], 1 Cranch, C. C. 366.
BROICH, In re [1,921], 7 Biss. 303; 15 N. B. R. 11.
BROMLEY v. SMITH [1,922], 2 Biss. 511; 5 N. B. R. 152; 3 Chi. Leg. News, 297.
Bronaugh, Fugate v. [See 5,146.]
BRONAUGH v. MASON [1,923], 1 Hayw. & H. 39.
BRONDE v. HAVEN [1,924], Gilp. 592.
BRONSON v. BAKER [1,605], 44 Hunt, Mer. Mag. 74.
Bronson, Boker v. [See 1,605, 1,606.]
BRONSON v. CAHILL [1,926], 4 McLean, 19.
BRONSON v. KENSEY [1,927], 3 McLean, 180.
BRONSON v. KEOKUK [1,928], 2 Dill. 498; 6 Amer. Law T. Rep. 409; 7 West. Jur. 320.
BRONSON v. KUKUK [1,929], 3 Dill. 490; 8 West. Jur. 666.
BRONSON v. LA CROSSE & M. R. CO. [1,930], 9 Amer. Law Reg. 350.
Bronson, The Tracy J. [See 14,131.]
BROOK v. BROWN [1,931], 5 Cranch, C. C. 486.
Brooke, Darrell v. [See 18,287.]
BROOKE v. McCRAKEN [1,932], 10 N. B. R. 461; 7 Chi. Leg. News, 10.
Brooke, Payson v. [See 10,857.]
BROOKE v. PEYTON [1,933], 1 Cranch, C. C. 96.
BROOKE v. PEYTON [1,934], 1 Cranch, C. C. 128.
Brooke, Rhodes v. [See 11,747.]
BROOKE v. POTOWMACK CO. [1,935], 1 Cranch, C. C. 526.
BROOKE v. SCOGGINS [1,936], 11 N. B. R. 258.
Brooke, Wood M. & R. Co. v. [See 17,980.]
Brookfield, Yearsley v. [See 18,131.]
BROOKLINE, The [1,937], 1 Spr. 104; 8 Law Rep. 70.
BROOKLYN, The [1,938], 2 Ben. 547; 2 Amer. Law T. Rep. U. S. Cts. 12.
BROOKLYN, The [1,939], 4 Blatchf. 365; 41 Hunt. Mer. Mag. 707.
Brooklyn, Allen v. [See 218.]
Brooklyn, Bliss v. [See 1,544-1,546.]
Brooklyn, Guidet v. [See 5,858.]
Brooklyn City R. Co., Horman Patent Mfg. Co. v. [See 6,703.]
Brooklyn City R. Co., Osborne v. [See 10,597.]
Brooklyn City R. Co., Van Bokelen v. [See 16,830.]
Brooklyn City, Etc., R. Co., National Bank of the Republic v. [See 10,039.]
Brooklyn Ice Co., Henley v. [See 6,363, 6,364.]
Brooklyn Life Ins. Co., Dutcher v. [See 4,202.]
Brooklyn Life Ins. Co., Miller v. [See 9,564.]
BROOKLYN WHITE LEAD CO. v. PIERCE [1,940], 4 Cranch, C. C. 531.
BROOKMAN v. REBECCA FOGG, The [1,941].
BROOKMAN v. SIXTY BARRELS OF MOLASSES [1,941a].
BROOKMIRE v. BEAN [1,942], 3 Dill. 136; 12 N. B. R. 217; 2 Cent. Law J. 265.
Brookmire, Bean v. [See 1,168-1,170.]
BROOKS, In re [1,943], 2 N. B. R. 466 (Quarto, 149); 2 Amer. Law T. Rep. Bankr. 66.
BROOKS v. BICKNELL [1,944], 3 McLean, 250; 1 West. Law J. 150; 2 Robb, Pat. Cas. 118.
BROOKS v. BICKNELL [1,945], 4 McLean, 64; 3 West. Law J. 35; 1 Fish. Pat. Rep. 65.
BROOKS v. BICKNELL [1,946], 4 McLean, 70; 3 West. Law J. 109; 1 Fish. Pat. Rep. 72.
Brooks v. Bicknell. [See 1,953.]
Brooks, Boothe v. [See 1,650.]
BROOKS v. BYAM [1,947], 1 Story, 296.
BROOKS v. BYAM [1,948], 2 Story, 525; 2 Robb, Pat. Cas. 161.
BROOKS v. BYAM [1,949], 2 Story, 553.
BROOKS v. DAVIS [1,950], 1 Law & Eq. Rep. 196.
BROOKS v. D'ORVILLE [1,951], 7 Ben. 485.
BROOKS v. D. W. LENOX, The [1,952], 35 Leg. Int. 404; 1 N. J. Law J. 228.
BROOKS v. JENKINS [1,953], 3 McLean, 432; 2 West. Law J. 11; 1 Fish. Pat. Rep. 41.
Brooks, Lightner v. [See 8,344.]
BROOKS v. MEMPHIS [1,954], 3 Cent. Law J. 356.
BROOKS v. MILLS COUNTY [1,955], 4 Dill. 524; 1 N. Y. Wkly. Dig. 387; 2 Cent. Law J. 719; 1 Law & Eq. Rep. 25.
BROOKS v. MOORHOUSE [1,956], 3 Ban. & A. 229; 13 O. G. 499.
BROOKS v. NORCROSS [1,957], 2 Fish. Pat. Cas. 661.
BROOKS v. NUTT [1,958], 4 Cranch, C. C. 470.
BROOKS v. PEYTONA, The [1,959], 2 West. Law Month. 518.
BROOKS v. PHŒNIX MUT. LIFE INS. CO. [1,960], 16 Blatchf. 182; 8 Ins. Law J. 740; 8 Reporter, 774.
BROOKS v. SNELL [1,961], 1 Spr. 48; 6 Law Rep. 71.
Brooks, Stimpson v. [See 13,454.]
BROOKS v. STOLLEY [1,962], 3 McLean, 523; 2 West. Law J. 396; 2 Robb, Pat. Cas. 281.
BROOKS v. STOLLEY [1,963], 1 Fish. Pat. Rep. 137; 4 McLean, 275; 4 West. Law. J. 412.
Brooks, United States v. [See 14,655.]
Brooks, Upham v. [See 16,796, 16,797.]
BROOKS v. VERMONT CENT. R. CO. [1,964], 14 Blatchf. 463.
BROOKS v. WILLIAM PENN, The [1,965], 2 Hughes, 144; 1 Amer. Law Reg. 584.
Brooks, The A. G. [See 98.]
Brooks, The Helen E. [See 6,330.]
Brooks, The Henry C. [See 6,374.]
Brooks, The John. [See 7,335.]
Brooks, The John C. [See 7,336.]
Brookville Nat. Bank, Walz v. [See 17,137.]
BROOME, In re [1,966], 3 Ben. 488; 3 N. B. R. 343 (Quarto, 90).
BROOME, In re [1,967], 3 N. B. R. 444 (Quarto, 113).
Brother Jonathan, The, McCready v. [See 8,732a.]
BROTHERS, The [1,968], 10 Ben. 400.
BROTHERS, The [1,969], 2 Biss. 104; 1 Chi. Leg. News, 1.
Brothers, The, Cowell v. [See 3,294.]
Brothers, The, Maxwell v. [See 9,322.]
Brothers, The, Moodie v. [See 9,743.]
Brotherson, Root v. [See 12,036.]

[Federal Case numbers are given in brackets.]

Brotherton, Hade v. [See 5,892.]
BROWER v. MAIDEN, The [1,970], Gilp. 294.
Brower v. The Water Witch. [See 2,895.]
BROWER v. WATER WITCH, The [1,971], 16 Leg. Int. 349; 19 How. Pr. 241; 42 Hunt, Mer. Mag. 67.
Brower, Crocket v. [See 3,401.]
BROWN, Ex parte [1,972], 5 Cranch, C. C. 554.
BROWN, In re [1,973].
BROWN, In re [1,973a].
BROWN, In re [1,974], 4 Ben. 142; 3 N. B. R. 720 (Quarto, 178).
BROWN, In re [1,975], 5 Ben. 1; 3 N. B. R. 584 (Quarto, 145).
BROWN, In re [1,985], 10 Hunt, Mer. Mag. 377.
BROWN, In re [1,977], 3 Int. Rev. Rec. 134.
BROWN, In re [1,978], 5 Law Rep. 121.
BROWN, In re [1,979], 5 Law Rep. 258.
BROWN, In re [1,980], 3 N. B. R. 250 (Quarto, 60); 2 Amer. Law T. 122; 1 Chi. Leg. News, 409.
BROWN, In re [1,981], 15 N. B. R. 416; 9 Chi. Leg. News, 191.
BROWN, In re [1,982], 19 N. B. R. 270.
BROWN, In re [1,983], 19 N. B. R. 312.
BROWN, In re [1,984], 1 N. Y. Leg. Obs. 69; 5 Law Rep. 324.
BROWN, In re [1,985], 2 Story, 502; 6 Law Rep. 508; 10 Hunt, Mer. Mag. 377.
BROWN v. ADAMS [1,986], 5 Biss. 181.
BROWN v. ALBANY, The [1,987].
BROWN v. ALEXANDER McNEIL, The [1,988], 20 Int. Rev. Rec. 176.
BROWN v. ALIDA, The [1,989], 13 Leg. Int. 369.
BROWN v. ARBUNKLE [1,990], 1 Wash. C. C. 484.
Brown, Arden v. [See 510.]
Brown, Armstrong v. [See 542.]
BROWN v. BARRETT [1,991].
Brown, Blanchard v. [See 1,507.]
Brown, Bowne v. [See 1,743.]
Brown, Boyd v. [See 1,747.]
BROWN v. BRADISH JOHNSON, The [1,992], 1 Woods, 301.
Brown, Bridge v. [See 1,857, 1,858.]
Brown v. Bridges. [See 1,862.]
Brown, Brook v. [See 1,931.]
BROWN v. BROWN [1,993].
BROWN v. BROWN [1,994], 1 Woodb. & M. 325.
Brown, Buckley v. [See 2,092.]
BROWN v. BURROWS [1,995].
BROWN v. BURROWS [1,996], 2 Blatchf. 340.
BROWN v. CADMUS, The [1,997], 2 Paine, 564.
Brown, Cahill v. [See 2,291.]
Brown, Campbell v. [See 2,355.]
Brown, Case v. [See 2,488.]
BROWN v. CHANDLER [1,998], 1 San Fran. Law J. 277.
Brown, Cooper v. [See 3,191.]
BROWN v. CORCORAN [1,999], 5 Cranch, C. C. 610.
Brown, Corcoran v. [See 3,226.]
Brown, Craig v. [See 3,326-3,330.]
BROWN v. CURTIS [2,000], 5 Mason, 421.
Brown, Davidson v. [See 3,601.]
Brown, Davoll v. [See 3,662.]
BROWN v. DECATUR [2,001], 4 Cranch, C. C. 477.
Brown, Denny v. [See 3,805.]
Brown, Devoll v. [See 3,846.]
BROWN v. D. S. CAGE, The [2,002], 1 Woods, 401.
BROWN v. DUCHESNE [2,003], 2 Curt. 97.
BROWN v. DUCHESNE [2,004], 2 Curt. 371; 4 Amer. Law Reg. 152.
Brown, Dunbar v. [See 4,129.]
Brown, Ellery v. [See 4,383.]
BROWN v. ELVIRA HARBECK, The [2,005].
BROWN v. ELVIRA HARBECK, The [4,224], Betts' Scr. Bk. 232.
Brown v. Emmett. [See 2,029.]
Brown, Farrow v. [See 4,689.]
Brown, Foote v. [See 4,909.]
BROWN v. GALLOWAY [2,006], Pet. C. C. 291.
BROWN v. GIDEON LEE, The [2,006a].
BROWN v. GILLES [2,007], 3 Cranch, C. C. 363.
Brown, Gilman v. [See 5,441.]
Brown v. Gould. [See 1,862.]
Brown, Greatrake v. [See 5,743.]
Brown, Guppy v. [See 5,871.]
BROWN v. HALL [2,008], 6 Blatchf. 401; 3 Fish. Pat. Cas. 531; Merw. Pat. Inv. 322.
Brown, Handy v. [See 6,019.]
BROWN v. HARTFORD FIRE INS. CO. [2,009], Brunner, Col. Cas. 663; 21 Law Rep. 726.
BROWN v. HARTLEY [2,009a].
Brown, Haven v. [See 6,228.]
BROWN v. HENRY PRATT, The [2,010].
BROWN v. HIATT [2,011], 1 Dill. 372; 4 Amer. Law T. Rep. U. S. Cts. 73; 3 Chi. Leg. News, 185.
BROWN v. HINKLEY [2,012], 6 Fish. Pat. Cas. 370; 3 O. G. 384.
Brown, Hogan v. [See 6,581.]
BROWN v. HUGER [2,013], 1 Quart. Law J. 55.
Brown, Hylton v. [See 6,980-6,983.]
Brown, Iasigi v. [See 6,993, 6,994.]
BROWN v. INDEPENDENCE, The [2,014], Crabbe, 54.
Brown, Irwin v. [See 7,080.]
BROWN v. JACKSON [2,015], 1 Wash. C. C. 512.
BROWN v. JACKSON [2,016], 2 Wash. C. C. 24.
Brown, Johnson v. [See 10,511.]
Brown, Johnson v. [See 7,375.]
BROWN v. JONES [2,017], 2 Gall. 477.
Brown, Lamb v. [See 8,011.]
Brown, Lathrop v. [See 8,108.]
Brown v. Lennox. [See 2,029.]
Brown, Lonsdale v. [See 8,492-8,495.]
BROWN v. LULL [2,018], 2 Sumn. 443.
Brown, Lyman v. [See 8,627.]
Brown, McLean v. [See 8,880.]
Brown, Magill v. [See 8,952.]
BROWN v. MECHANICS' & MERCHANTS' INS. CO. OF POTTSVILLE [2,019], 6 Reporter, 643.
BROWN v. MEMPHIS [2,020], 11 Chi. Leg. News, 138.
Brown v. Memphis. [See 9,415.]
BROWN v. MINTURN [2,021], 2 Gall. 557.
Brown, Moore v. [See 9,753.]
Brown, Mowatt v. [See 9,889a.]
BROWN v. NEPTUNE, The [2,022], Gilp. 89.
BROWN v. NOYES [2,023], 2 Woodb. & M. 75.
Brown, O'Brien County v. [See 10,399.]
Brown, O'Neal v. [See 10,511.]
BROWN v. OVERTON [2,024], 1 Spr. 462; 7 Amer. Law Reg. 413; 42 Hunt, Mer. Mag. 335.
BROWN v. PACIFIC MAIL STEAMSHIP CO. [2,025], 5 Blatchf. 525.
Brown, Patton v. [See 10,832.]
Brown, Perry Mfg. Co. v. [See 11,014, 11,015.]
Brown, Phelps v. [See 11,072.]
BROWN v. PIATT [2,026], 2 Cranch, C. C. 253.
Brown, Pierce v. [See 11,143.]
Brown, Piper v. [See 11,180.]
BROWN v. ROBERTSON [2,027], 1 Hayw. & H. 134.
BROWN v. RUBBER STEP MFG. CO. [2,028], 3 Ban. & A. 232; 13 O. G. 369.
Brown, Sacrider v. [See 12,205.]
BROWN v. SCHOONMAKER [2,029].
BROWN v. SELBY [2,030], 2 Biss. 457; 4 Fish. Pat. Cas. 363.
Brown, Slacum v. [See 12,934.]
Brown, Stoutz v. [See 13,505.]
Brown, Swann v. [See 13,673.]
Brown, Tarrow v. [See 13,758.]
Brown, Tilly v. [See 14,053.]
BROWN v. TONKIN [2,031], 1 Cranch, C. C. 85.
BROWN v. UNITED STATES [2,032], 1 Woolw. 198; McCahon, 229; 1 Kan. 624.
Brown, United States v. [See 14,656-14,672.]
Brown v. United States ex rel. Bridges. [See 1,862.]
Brown v. United States ex rel. Gould. [See 1,862.]
Brown, Ware v. [See 17,170.]
Brown v. White. [See 1,152.]
Brown, White v. [See 17,538.]
BROWN v. WHITTEMORE [2,033], 5 Fish. Pat. Cas. 524; 2 O. G. 248.
Brown v. The William T. Graves. [See 17,758.]
BROWN v. WINGARD [2,034], 2 Cranch, C. C. 300.
Brown, The Dan. [See 3,556.]
Brown, The George S. [See 1,889-1,892.]
Browne v. Arbunkle. [See 1,990.]
Browne v. Ashley. [See 1,699.]
BROWNE v. BROWNE [2,035], 1 Wash. C. C. 429.
Browne v. The Henry Platt. [See 2,010.]
Browne, Sullivan v. [See 13,593.]
BROWNE v. UNITED STATES [2,036], 1 Curt. 15.

[Federal Case numbers are given in brackets.]

BROWNELL v. DE WOLF [2,037], 3 Mason, 486.
BROWNELL v. DYER [2,038], 5 Mason, 227.
BROWNELL v. GORDON [2,039], 1 McAll. 207.
Brownell v. Swift. [See 13,695.]
BROWNING v. ANDREWS [2,040], 3 McLean, 576.
BROWNING v. BAKER [2,041], 2 Hughes, 30.
Browning, United States v. [See 14,673, 14,674.]
Brown, The J. A. [See 7,118.]
Brown, The J. W. [See 7,590.]
Brownson v. Chapman. [See 11,042.]
BROWNSON v. WALLACE [2,042], 4 Blatchf. 465.
BROWNSVILLE v. CAVAZOS [2,043], 2 Woods, 293.
Bruan, United States v. [See 14,675.]
BRUCE, In re [2,044], 6 Ben. 515.
BRUCE, In re [2,045], 9 Ben. 236; 16 N. B. R. 318.
BRUCE v. AMERICA, The [2,046], Newb. 195; 35 Hunt, Mer. Mag. 454.
Bruce, Livingston v. [See 8,410.]
BRUCE v. MURPHY [2,047], 10 Blatchf. 229.
BRUCE v. SWAZEY [13,751].
Bruce, United States v. [See 14,676.]
Bruce, The Elizabeth. [See 4,358.]
Bruce, The Robert. [See 11,889.]
BRUDENELL v. VAUX [2,049], 2 Dall. 302.
BRUFF v. IVES [2,050], 14 Blatchf. 198; 2 Ban. & A. 595; 11 O. G. 924.
BRUGGER v. STATE INV. INS. CO. [2,051], 5 Sawy. 304; 7 Reporter, 616; 8 Ins. Law J. 293.
BRUNE v. MARRIOTT [2,052], Taney, 132.
BRUNE v. SMITH [2,053], 13 Int. Rev. Rec. 54.
Brune, United States v. [See 14,677.]
BRUNENT v. TABER [2,054], 1 Spr. 243; 18 Law Rep. 685.
Brunnen v. Somborn. [See 496.]
BRUNGUEST, In re [2,055], 7 Biss. 208; 14 N. B. R. 529.
BRUNSGAARD v. AMERICA, The, and MAGDALENE, The [2,056], 1 Wkly. Notes Cas. 172.
BRUNSWICK v. HOLZALB [2,057].
Brunswick, Nichols v. [See 10,238, 10,239.]
Brunswick, Gurnee v. [See 5,872.]
Brunton, Coffeen v. [See 2,946, 2,947.]
BRUSH v. PLAINFIELD, The [2,058], 2 N. J. Law J. 331.
BRUSH v. ROBBINS [2,059], 3 McLean, 486.
Brush, Ware v. [See 17,171.]
BRUTUS, The [2,060], 2 Gall. 526.
BRYAN, Ex parte [2,061], 2 Hughes, 273; 14 N. B. R. 71; 23 Pittsb. Leg. J. 196.
Bryan, Ex parte. [See 8,793.]
BRYAN, In re [2,062], 3 N. B. R. 110 (Quarto, 28).
BRYAN'S CASE [2,063], 1 Cranch, C. C. 151.
BRYAN v. ALEXANDER [2,064], 4 Woods, 529.
BRYAN v. DAVIS [2,065].
Bryan, McGaw v. [See 8,793.]
BRYAN v. McGEE [2,066], 2 Wash. C. C. 337.
Bryan v. Sims. [See 18,028.]
BRYAN v. STEVENS [2,066a].
Bryan, Williamson v. [See 17,751.]
BRYANT, In re [2,067], Deady, 118.
BRYANT v. HUNTER [2,068], 3 Wash. C. C. 48.
Bryant v. The Lillie Mills. [See 8,352.]
BRYCE, In re [2,069], 19 N. B. R. 287.
BRYCE v. DORR [2,070], 3 McLean, 582; 2 Robb, Pat. Cas. 302.
BRYDIE v. MILLER [2,071], 1 Brock. 147.
Bryson, Paret v. [See 10,710.]
B. S. SHEPPARD, The [2,072], 1 Biss. 221.
BUCHANAN, In re [2,073], 10 N. B. R. 97.
BUCHANAN v. HOWLAND [2,074], 5 Blatchf. 151; 2 Fish. Pat. Cas. 341.
Buchanan, Jones v. [See 7,456.]
Buchanan, Rutledge v. [See 12,177.]
Buchanan, Smith v. [See 13,016.]
BUCHANAN v. TROTTER [2,075].
Buchanan, United States v. [See 14,678.]
Buchanan, Waring v. [See 17,176.]
Buchanan County, Huidekoper v. [See 6,847.]
Buchanan County, United States ex rel. Huidekoper v. [See 14,679.]
Bucher, Willis v. [See 17,769.]
BUCHSTEIN, In re [2,076], 9 Ben. 215; 17 N. B. R. 1.
BUCHTEL v. MASON LUMBER CO. [2,077], 1 Flip. 640; 23 Int. Rev. Rec. 120; 2 Cin. Law Bul. 71; 9 Chi. Leg. News, 225.
BUCK v. CHESAPEAKE INS. CO. [2,078], 1 U. S. Law Int. 313.
BUCK v. COBB [2,079], Brunner, Col. Cas. 550; 9 Law Rep. 545.
BUCK v. GILL [2,080], 4 McLean, 174; 2 Robb, Pat. Cas. 510.
BUCK v. HERMANCE [2,081], 1 Blatchf. 322; 11 Law Rep. 321; 1 Fish. Pat. Rep. 219; 6 West. Law J. 190; 1 Code Rep. 91.
BUCK v. HERMANCE [2,082], 1 Blatchf. 398; Merw. Pat. Inv. 414; 1 Fish. Pat. Rep. 251.
Buck, The Lane v. [See 8,048.]
Buck, Roberts v. [See 11,897.]
Buck, United States v. [See 14,680.]
BUCKER v. KLORKGETER [2,083], 1 Abb. Adm. 402.
Buckewell, Woods v. [See 17,991.]
BUCKEYE, The [2,084], 7 Biss. 23.
Buckeye Ins. Co., Christie v. [See 2,700.]
BUCKEYE STATE, The [2,085], 1 Brown, Adm. 65.
Buckeye State, The, Ives v. [See 7,117.]
Buckeye State, The, Stillman v. [See 13,445.]
BUCKHAUSE, In re [2,086], 2 Lowell, 331; 10 N. B. R. 206.
BUCKINGHAM v. BURGESS [2,087], 3 McLean, 364.
BUCKINGHAM v. BURGESS [2,088], 3 McLean, 368.
BUCKINGHAM v. BURGESS [2,089], 3 McLean, 549.
BUCKINGHAM v. JACKSON [2,090], 4 Biss. 295.
BUCKLEY v. BEATTY [2,091], 1 Cranch, C. C. 245.
BUCKLEY v. BROWN [2,092], 3 Wall. Jr. 199; 13 Leg. Int. 364; 19 Leg. Int. 364.
BUCKLEY v. CARLTON [2,093], 6 McLean, 125.
BUCKLEY v. PAGE [2,094], 1 Cliff. 474.
BUCKLEY v. WILLIAM M. JONES, The [2,095].
BUCKNAM v. DUNN [2,096], 2 Hask. 215; 16 N. B. R. 470.
BUCKNAM v. GOSS [2,097], 1 Hask. 630; 13 N. B. R. 337.
Buckner, Esther v. [See 4,537.]
Buckner v. Jewell. [See 3,060.]
Buckner, McCormick v. [See 8,718.]
Buckner, Morrison v. [See 9,844.]
BUCKNER v. STREET [2,098], 1 Dill. 248; 13 Int. Rev. Rec. 114; 7 N. B. R. 255.
Buckner, Taylor v. [See 13,782.]
BUCKNOR v. GILBERT GREEN, The [2,099], 12 Leg. Int. 326.
Bucknor, Ruggles v. [See 12,115.]
Buckup, Saunders v. [See 12,373.]
BUCYRUS MACH. CO., In re [2,100], 5 N. B. R. 303.
Budd, Bartlett v. [See 1,075.]
BUEL v. TULEY [2,101], 4 McLean, 268.
BUELL, In re [2,102], 3 Dill. 116; 2 Cent. Law J. 312; 21 Int. Rev. Rec. 116.
BUELL v. CONNECTICUT MUT. LIFE INS. CO. [2,103], 1 Cin. Law Bul. 51.
BUELL v. CONNECTICUT MUT. LIFE INS. CO. [2,104], 2 Flip. 9; 5 Ins. Law J. 274; 2 N. Y. Wkly. Dig. 161; 4 Amer. Law Rec. 570; 1 Cin. Law Bul. 43; 8 Chi. Leg. News, 202; 5 Bigelow, Ins. Cas. 473.
BUENA VISTA, The [2,105], 3 Blatchf. 510; 35 Hunt, Mer. Mag. 450.
Buena Vista, The, v. Bolton. [See 2,105.]
Buena Vista Co., Carpenter v. [See 2,429.]
BUERK v. IMHAEUSER [2,106], 1 Ban. & A. 337; 5 O. G. 752.
BUERK v. IMHAEUSER [2,107], 14 Blatchf. 19; 2 Ban. & A. 452; 10 O. G. 907.
Buerk v. Imhaeuser [2,107a], 10 O. G. 907.
BUERK v. IMHAEUSER [2,108], 11 O. G. 112; 2 Ban. & A. 465.
BUERK v. VALENTINE [2,109], 9 Blatchf. 479; 2 O. G. 295; 5 Fish. Pat. Cas. 366.
BUFFALO, The [2,110], 1 Abb. Adm. 483.
BUFFALO, The [2,111], 24 Int. Rev. Rec. 6.
Buffalo, The, Hall v. [See 5,927.]
Buffalo, The, Savage v. [See 12,382.]
Buffalo, N. Y. & P. R. Co., Sicard v. [See 12,831.]
Buffalo Park, United States v. [See 14,681.]
Buffington, Bulkley v. [See 2,117.]
Buffington, Day v. [See 3,675.]
Buffum, Arnold v. [See 554.]
BUFFUM v. MERRY [2,112], 3 Mason, 478.
BUFFUM v. OAKLAND MFG. CO. [2,113], 4 Ban. & A. 599.

[Federal Case numbers are given in brackets.]

BUFORD v. HENZIER [2,114], 8 Biss. 177; 5 Cin. Law Bul. 56.
BUFORD v. HICKMAN [2,114a], Hempst. 232.
Bugbee, Ex parte. [See 7,941, 7,942.]
BUGBEE, In re [2,115], 9 N. B. R. 258.
Bugbee, Bissell v. [See 1,445.]
Bujac v. The Magoun. [See 5,163.]
BULGIN v. RAINBOW, The [2,116], Bee, 116.
BULKLEY v. BUFFINGTON [2,117], 5 McLean, 457.
Bulkley v. Naumkeag Steam Cotton Co. [See 4,301.]
BULKLEY v. PROTECTION INS. CO. [2,118], 2 Paine, 82.
BULL, In re [2,119], 4 Dill. 323; 29 Myer's Fed. Dec. 676.
Bull v. McClay. [See 15,660.]
BULL v. SOUTHFIELD [2,120], 14 Blatchf. 216.
Bullard, American Cotton-Tie Supply Co. v. [See 294.]
BULLARD v. BELL [2,121] 1 Mason, 243.
Bullard, Byam v. [See 2,262.]
BULLARD v. ROGER WILLIAMS INS. CO. [2,122], 1 Curt. 148.
BULLEN v. YATES [2,123].
BULLENE v. BLAIN [2,124], 6 Biss. 22.
BULLET v. BANK OF PENNSYLVANIA [2,125], 2 Wash. C. C. 172.
BULLINGER v. MACKEY [2,126], 14 Blatchf. 355.
BULLINGER v. MACKEY [2,127], 15 Blatchf. 550.
Bullion Min. Co., Four Hundred and Twenty Min. Co. v. [See 4,989.]
BULLITT v. UNITED STATES [2,128], Hempst. 333.
BULLOCH v. LAMAR, The [2,129], 1 West. Law J. 444; 8 Law Rep. 275.
BULLOCK, In re [2,130], 1 Wkly. Notes Cas. 22.
BULLOCK v. VAN PELT [2,131], Baldw. 463.
BULLOCK PRINTING PRESS CO. v. JONES [2,132], 3 Ban. & A. 195; 13 O. G. 124.
Bull's Head Bank, Wait v. [See 17,043.]
Bullus, Cure v. [See 3,486.]
Bundy, Carlisle v. [See 2,410.]
BUNCE v. GALLAGHER [2,133], 5 Blatchf. 481; 7 Amer. Law Reg. (N. S.) 32.
Bunel, Conframp v. [See 3,098.]
BUNKLEY v. DE WITT [2,134], 33 Hunt, Mer. Mag. 74.
BUNNEL v. STODDARD [2,135], 2 Amer. Law Rec. 145, 202.
Bunnel, Bank of Columbia v. [See 863.]
BUNSTER, In re [2,136], 5 Ben. 242; 5 N. B. R. 82; 41 How. Pr. 406.
Bunting, Bloomer v. [See 18,242.]
Burbank, Ashton v. [See 582.]
BURBANK v. HAMMOND [2,137], 3 Sumn. 429.
Burbank, Lamb v. [See 8,012.]
BURCH, In re [2,138], 10 N. B. R. 150.
Burch, Burr v. [See 2,187.]
BURCH v. DOWLING [2,139], 5 Cranch, C. C. 646.
Burch, Gittings v. [See 5,464.]
Burch, Nichols v. [See 10,240.]
BURCH v. SPAULDING [2,140], 2 Cranch, C. C. 422.
Burch, United States v. [See 14,682, 14,683.]
Burchan, Harris v. [See 6,117.]
Burchell, Beale v. [See 1,157.]
BURCKLE v. TAPPERHETEN, The [2,141], 31 Nile, Reg. 73.
BURDELL v. DENIG [2,142], 2 Fish. Pat. Cas. 588.
BURDEN v. CORNING [2,143], 2 Fish. Pat. Cas. 477.
BURDEN v. CORNING [2,144], 23 Hunt, Mer. Mag. 528.
Burden, The James A. [See 7,296, 7,297.]
Burden, The William F. [See 12,558.]
BURDETT v. ESTEY [2,145], 15 Blatchf. 349; 4 Ban. & A. 7; 15 O. G. 877.
BURDETT v. ESTEY [2,146], 16 Blatchf. 105; 4 Ban. & A. 141.
Burdett, United States v. [See 14,684.]
Burdick, Corning v. [See 3,246.]
BURDICK v. HALE [2,147], 7 Biss. 96; 8 Chi. Leg. News, 192; 1 Law & Eq. Rep. 246; 22 Int. Rev. Rec. 106.
Burdick, Mower v. [See 9,890.]
Burditt, Tucker v. [See 14,216.]
BURDOIN v. HARRIET SMITH, The [2,147a].
Burpee v. First Nat. Bank of Janesville. [See 2,185.]
BURFORD, Ex parte [2,148], 1 Cranch, C. C. 276.
BURFORD, Ex parte [2,149], 1 Cranch, C. C. 456.
BURFORD v. CRANDELL [2,150], 2 Cranch, C. C. 86.
BURFORD v. KLIPPELL [2,114], 5 Cin. Law Bul. 56.
BURFORD v. RINGGOLD [2,152], 1 Cranch, C. C. 253.
Burford, United States v. [See 14,685.]
Burford, Whetcroft v. [See 17,505.]
BURGESS, In re [2,153], 3 N. B. R. 196 (Quarto, 47).
Burgess, Babbitt v. [See 693.]
Burgess, Buckingham v. [See 2,088, 2,089.]
BURGESS v. CONVERSE [2,154], 2 Curt. 216.
Burgess, Prather v. [See 11,367.]
Burgess, Roach v. [See 11,873.]
Burgess, Safford v. [See 12,213.]
Burgess, Salmon v. [See 12,262.]
Burgess, Sherwood v. [See 12,775.]
BURGTHAL v. GEORGE SKOLFIELD, The [2,155].
BURK, In re [2,156], Deady, 425; 3 N. B. R. 296 (Quarto, 76); 2 Amer. Law T. Rep. Bankr. 45.
BURKE, Ex parte [2,156a].
BURKE, In re [2,157], 15 N. B. R. 40.
BURKE, In re [2,158], Spear, Extrad. (2d Ed.) 451; 19 Alb. Law. J. 509.
BURKE, The [2,159], 4 Cliff. 582.
Burke, Adams v. [See 49.]
BURKE v. BUTTMAN [2,160], 1 Lowell, 191.
Burke, Jackson v. [See 7,133.]
Burkham v. The L. J. Farwell. [See 8,426.]
BURKE v. M. P. RICH, The [2,161], 1 Cliff. 308.
BURKE v. M. P. RICH, The [2,162], 1 Cliff. 509.
BURKE v. TREVITT [2,163], 1 Mason, 96.
BURKE v. WHEATON [2,164], 3 Cranch, C. C. 341.
BURKHOLDER v. STUMP [2,165], 28 Leg. Int. 125; 4 N. B. R. 597 (Quarto, 191); 8 Phila. 172.
Burks, Adams v. [See 50.]
BURLEIGH ROCK DRILL CO. v. LOBDELL [2,166], 1 Holmes, 450; 7 O. G. 836; 1 Ban. & A. 625.
BURLEW v. O'NEIL [2,167], 1 McA. Pat. Cas. 168.
BURLEY v. FLINT [2,168], 9 Biss. 204; 12 Chi. Leg. News, 112; 9 Reporter, 4.
Burley, Levy v. [See 8,300.]
Burley, United States v. [See 14,686.]
Burlingame, Smith v. [See 13,017.]
Burlingim, Arrowsmith v. [See 563.]
Burlingin, Anoweurth v. [See 478.]
Burlington, Guernsey v. [See 5,855.]
Burlington, United States ex rel. Learned v. [See 14,687.]
Burlington & M. R. Co., Hunnewell v. [See 6,879.]
Burlington & M. R. Co., United States v. [See 14,688.]
BURLINGTON & S. RY. CO. v. PUTNAM COUNTY [2,169], 5 Dill. 289.
Burlington, C. R. & M. Ry. Co., Taylor v. [See 13,783.]
BURNAP v. ALBERT [2,170], Taney, 244.
Burnap, Fellows v. [See 4,721.]
BURNELL, In re [2,171], 7 Biss. 275; 14 N. B. R. 498; 9 Chi. Leg. News, 84; 3 Cent. Law J. 750; 22 Int. Rev. Rec. 386.
Burnell, Camfranque v. [See 2,342.]
Burnes, Covington v. [See 3,291.]
Burnet, Ewing v. [See 4,591.]
BURNETT, In re [2,172], 6 Chi. Leg. News, 366.
Burnett, United States v. [See 14,689.]
BURNETT v. WYLIE [2,172a], Hempst. 197.
BURNHAM v. ADAMS [2,173], 2 Cliff. 569.
BURNHAM v. CHICAGO, D. & M. R. CO. [2,174], 4 Dill. 503.
Burnham, Clark v. [See 2,816.]
Burnham, Crawford v. [See 3,366.]
BURNHAM v. HEWEY [2,175], 1 Hask. 372.
BURNHAM v. RANGELEY [2,176], 1 Woodb. & M. 7.
BURNHAM v. RANGELEY [2,177], 2 Woodb. & M. 417.
Burnham, Smith v. [See 13,018.]
Burnham, United States v. [See 14,690.]
Burnham, Upton v. [See 16,798, 16,799.]
BURNHAM v. WEBSTER [2,178], 2 Ware (Dav. 236) 240.

BURNHAM v. WEBSTER [2,179], 1 Woodb. & M. 172.
BURNHAM v. WINSOR [2,180], 5 Law Rep. 507.
Burnham, The George. [See 5,331.]
Burnite, The Martha C. [See 9,147.]
BURNLEY v. JEFFERSONVILLE [2,181], 3 McLean, 336.
BURNS, In re [2,182], 1 N. B. R. 174; Bankr. Reg. Supp. 38; 7 Amer. Law Reg. (N. S.) 105; 3 Pittsb. Rep. 107; 6 Phila. 448; 6 Int. Rev. Rec. 182; 24 Leg. Int. 357; 1 Amer. Law T. Rep. Bankr. 47; 15 Pittsb. Leg. J. 17.
Burns, Martin v. [See 9,158.]
Burns, Peck v. [See 10,889.]
BURNS v. SEMMES [2,183], 4 Cranch, C. C. 702.
BURNS v. SIM [2,184], 2 Cranch, C. C. 75.
Burns, United States v. [See 14,691.]
Burns, White v. [See 17,539.]
Burnside, Palmer v. [See 10,685.]
BURPEE v. FIRST NAT. BANK OF JANESVILLE [2,185], 5 Biss. 405; 9 N. B. R. 314; 18 Int. Rev. Rec. 190; 6 Chi. Leg. News, 110.
BURR, Ex parte [2,186], 2 Cranch, C. C. 379; 1 Wheeler, Crim. Cas. 503.
BURR v. BURCH [2,187], 5 Cranch, C. C. 506.
BURR v. COWPERTHWAIT [2,188], 4 Blatchf. 163.
Burr, Davidson v. [See 3,602.]
BURR v. DUNNAHOO [2,189], 1 Cranch, C. C. 370.
BURR v. DURYEE [2,190], 2 Fish. Pat. Cas. 275.
BURR v. GREGORY [2,191], 2 Paine, 426; 1 Fish. Pat. Rep. 12.
BURR v. HOPKINS [2,192], 6 Biss. 345; 12 N. B. R. 211; 7 Chi. Leg. News, 266.
Burr, Hungerford v. [See 6,876.]
BURR v. McEWEN [2,193], Baldw. 154.
Burr, Pratt v. [See 11,372, 11,373.]
BURR v. PRENTISS [2,194].
BURR v. ST. THOMAS, The [2,194a].
BURR v. ST. THOMAS, The [2,195], 8 Leg. Int. 22.
BURR v. SMITH [2,196], 38 Hunt, Mer. Mag. 324.
BURR v. THOMAS ELWELL, The [2,195.]
Burr, United States v. [See 14,692-14,694.]
BURRALL v. RUMSEY [2,197], 13 O. G. 123.
BURRILL v. BOSTON [2,198], 2 Cliff. 590.
BURRILL v. LAWRY [2,199], 2 Hask. 228; 18 N. B. R. 367; 11 Chi. Leg. News, 33; 24 Int. Rev. Rec. 342.
BURRILL v. PHILLIPS [2,200], 1 Gall. 360.
BURRITT v. RENCH [2,201], 4 McLean, 325
Burroughs, Hatch v. [See 6,203.]
Burroughs, Marsh v. [See 9,111, 9,112.]
BURROUGHS v. UNITED STATES [2,202], 2 Paine, 569.
Burroughs, United States v. [See 14,695.]
BURROW v. DICKSON [2,203], Brunner, Col. Cas. 101; 1 Overt. 366.
Burrowes, The R. W. [See 12,180.]
BURROWS, In re [2,204], 7 Biss. 526; 5 N. Y. Wkly. Dig. 137; 6 Amer. Law Rec. 203; 1 Tex. Law J. 41; 23 Int. Rev. Rec. 362; 5 Cent. Law J. 241.
Burrows, Atkyns v. [See 618.]
Burrows, Brown v. [See 1,996.]
BURROWS v. HANNEGAN [2,205], 1 McLean, 309.
BURROWS v. HANNEGAN [2,206], 1 McLean, 315.
BURROWS v. LEHIGH ZINC CO. [2,207], 1 Ban. & A. 529; 10 Phila. 262; 31 Leg. Int. 332.
Burrows, Peckham v. [See 10,897.]
BURROWS v. WETHERILL [2,208], 1 MacA. Pat. Cas. 315.
Burrus, Huidekoper v. [See 6,848, 6,849.]
BURT, In re [2,209], 12 Blatchf. 252; 13 N. B. R. 137.
BURT, In re [2,210], 1 Dill. 439.
BURT v. DELANO [2,211], 4 Cliff. 611.
BURT v. KEYES [2,212], 1 Flip. 61; 3 West. Law Month. 290.
Burt, Krumbaar v. [See 7,944.]
BURTIN v. CARNE [2,213].
Burtis, Copeland v. [See 3,208.]
BURTON, In re [2,214], 9 Ben. 324; 17 N. B. R. 212.
BURTON v. COMMANDER IN CHIEF, The [2,215].
BURTON v. COMMANDER IN CHIEF, The [2,216].
Burton, Doremus v. [See 4,002.]
BURTON v. LEROY [2,217], 5 Sawy. 510.
Burton, Milburn v. [See 9,541.]
BURTON v. SALTER [2,218], Brunner, Col. Cas. 623; 21 Law Rep. 148.
Burton, Samson v. [See 12,285, 12,286.]
Burton, Searchy v. [See 12,584.]
BURTON v. SMITH [2,219], 4 Wash. C. C. 522.
BURTON v. VARNUM [2,220], 2 Cranch, C. C. 524.
Busch, Chicago Fruit House Co. v. [See 2,669.]
Busch, Thompson v. [See 13,944.]
BUSE, In re [2,221], 3 N. B. R. 215 (Quarto, 52).
BUSH, In re [2,222], 6 N. B. R. 179; 6 West. Jur. 274.
BUSH v. ALONZO, The [2,223], 2 Cliff. 548.
BUSH v. CRAWFORD [2,224], 7 N. B. R. 299; 29 Leg. Int. 365; 9 Phila. 392; 20 Pittsb. Leg. J. 65.
Bush, Morris v. [See 9,828.]
BUSH v. WILLIAMS [2,225], 1 Brunner, Col. Cas. 234; Cooke, 360.
BUSHBY v. CAMAC [2,226], 4 Wash. C. C. 296.
BUSHEY, In re [2,227], 3 N. B. R. 685 (Quarto, 167); 27 Leg. Int. 111.
Bushnell, Hatfield v. [See 6,211.]
Bushong, Du Pont v. [See 4,184.]
Bussard, Bank of the United States v. [See 911.]
BUSSARD v. CATALINO [2,228], 2 Cranch, C. C. 421.
Bussard, Entwisle v. [See 4,503.]
Bussard, Holmes v. [See 6,636.]
BUSSARD v. WARNER [2,229], 2 Cranch, C. C. 111.
Bussard, Waters v. [See 17,262.]
BUSSEY v. HICKS [2,230], 9 O. G. 594.
BUSSEY v. WAGER [2,231], 9 O. G. 300; 2 Ban. & A. 229; 23 Pittsb. Leg. J. 131; Merw. Pat. Inv. 456.
Bussing, Gilbert & Barker Mfg. Co. v. [See 5,416.]
Busteed, The Richard. [See 11,764.]
BUSY, The [2,232], 2 Curt. 586.
BUTCHER v. TYSON [2,233], 4 Hunt, Mer. Mag. 456.
BUTCHERS' ASS'N v. SLAUGHTER-HOUSE CO. [2,234], 1 Woods, 50.
BUTLER, In re [2,235], 2 Hughes, 247.
BUTLER, In re [2,236], 6 N. B. R. 501; 19 Pittsb. Leg. J. 146; 3 Pittsb. Rep. 369.
Butler, In re. [See 9,418, 10,650.]
BUTLER v. ARROW, The [2,237], 6 McLean, 470; Newb. Adm. 59.
Butler, Birch v. [See 1,425.]
Butler, Britton v. [See 1,903, 1,904.]
Butler, Broadwell v. [See 1,910.]
Butler, Button v. [See 1,903.]
Butler, Conkling v. [See 3,100.]
BUTLER v. DUVALL [2,238], 3 Cranch, C. C. 611.
BUTLER v. DUVALL [2,239], 4 Cranch, C. C. 167.
BUTLER v. FARNSWORTH [2,240], 4 Wash. C. C. 101.
Butler, Herbert v. [See 6,397.]
BUTLER v. HOPPER [2,241], 1 Wash. C. C. 499.
Butler, Kimberly v. [See 7,777.]
BUTLER v. McCLELLAN [2,242], 1 Ware (219) 220; 7 Amer. Jur. 70.
Butler, Miller v. [See 9,565.]
Butler, Mitchell v. [See 9,660.]
Butler, Penn v. [See 10,930, 10,931.]
BUTLER v. RUSSELL [2,243], 3 Cliff. 251; 11 Int. Rev. Rec. 30.
BUTLER v. THOMSON [2,244], 11 Blatchf. 533.
Butler, United States v. [See 14,697-14,702.]
Butler, Waters v. [See 17,263.]
Butler, Whitman v. [See 17,579.]
BUTLER v. YOUNG [2,245], 1 Flip. 276; 17 Int. Rev. Rec. 53; 7 West. Jur. 59; 6 Amer. Law T. Rep. 53; 5 Chi. Leg. News, 146; 21 Pittsb. Leg. J. 171.
Butler County, Curtis v. [See 3,500.]
Butrick, Hicks v. [See 6,458.]
Butt, Ellett v. [See 4,384.]
Butt, Ingram v. [See 7,047.]
Butt v. The Norfolk. [See 10,297.]
BUTT v. STINGER [2,246], 4 Cranch, C. C. 252.
Butt v. The Union. [See 10,297.]
BUTTERFIELD, In re [2,247], 5 Biss. 120; 14 N. B. R. 147.
BUTTERFIELD, In re [2,248], 14 N. B. R. 195.
BUTTERFIELD v. ARTHUR [2,249], 16 Blatchf. 216; 25 Int. Rev. Rec. 248; 8 Reporter, 68.
BUTTERFIELD v. BOYD [2,250], 4 Blatchf. 356; 18 How. Pr. 526; 41 Hunt, Mer. Mag. 708.
Butterfield, Gallahue v. [See 5,198.]
Butterfield, United States v. [See 14,703, 14,704.]
BUTTERWORTH'S CASE [2,251], 1 Woodb. & M. 323.

[Federal Case numbers are given in brackets.]

BUTTERWORTH v. LYNAN, The [2,252].
BUTTERWORTH v. WASHINGTON, The [2,253].
Buttman, Burke v. [See 2,160.]
BUTTNER v. MILLER [2,254], 1 Woods, 620.
BUTTON v. BUTLER [1,903] 15 Int. Rev. Rec. 98.
BUTTRICK v. HARRIS [2,256], 1 Biss. 442; 3 Amer. Law Reg. (N. S.) 112.
BUTTS v. CHAPMAN [2,257], 1 Cranch, C. C. 570.
Butts, Hodgson v. [See 6,563, 6,564.]
BUTTS v. SHREVE [2,258], 1 Cranch, C. C. 40.
BUXBAUM, In re [2,259], 2 Hughes, 339; 13 N. B. R. 477.
BUXTON v. BOWEN [2,260], 2 Woodb. & M. 365.
BUZZARD v. PETREL, The [2,261], 6 McLean, 491.
Buzzard, Wetzell v. [See 17,471.]
Byam, Brooks v. [See 1,947-1,949.]
BYAM v. BULLARD [2,262], 1 Curt. 100; 1 Amer. Law Reg. 139; 2 Liv. Law Mag. 314.
BYAM v. EDDY [2,263], 2 Blatchf. 521; 24 Vt. 666.
BYAM v. FARR [2,264], 1 Curt. 260; 2 Liv. Law Mag. 316.
Byers, Surget v. [See 13,629.]
Byers, United States v. [See 14,705.]
BYINGTON v. LEMMONS [2,264a], Hempst. 12.
BYRD v. BADGER [2,265], 1 McAll. 263.
BYRD v. BADGER [2,266], 1 McAll. 443.
BYRD v. BYRD [2,267], 2 Brock. 169.
BYRD v. BYRD [2,268], 2 Brock. 179.
BYRD v. GASQUET [2,268a], Hempst. 261.
BYRD v. HARROLD [2,269], 18 N. B. R. 433; 26 Pittsb. Leg. J. 128.
Byrd, Hoyt v. [See 6,807.]
Byrd, Johnson v. [See 7,376.]
BYRNE, In re [2,270], 7 Amer. Law Reg. (N. S.) 499; 1 N. B. R. 464 (Quarto, 122); 1 Amer. Law T. Rep. Bankr. 122; 15 Pittsb. Leg. J. 315.
Byrne, Baird v. [See 757.]
BYRNE v. CARPENTER [2,271], 1 Cranch, C. C. 481.
Byrne, Hinckley v. [See 6,510.]
BYRNE v. HOLT [2,272], 2 Wash. C. C. 282.
Byrne, Milburne v. [See 9,542.]
Byrne, Williams v. [See 17,718.]
BYRNES v. ALEXANDRIA, The [179], 8 Reporter, 390.
Byrnes, Parker v. [See 10,728.]
BYRNES v. ROCKAWAY, The [2,274].
Byrnes, Walker v. [See 17,066.]
BYRON, The [2,275], 5 Adm. Rec. 240.

C

CABARGA, The [2,276], 3 Blatchf. 75; 29 Hunt. Mer. Mag. 716.
CABOT, The [2,277], 1 Abb. Adm. 150.
Cabot, The, McDonald v. [See 8,759.]
CABRERA, Ex parte [2,278], 1 Wash. C. C. 232.
Caddo, The, Blum v. [See 1,573.]
CADLE v. TRACY [2,279], 11 Blatchf. 101; 1 Thomp. Nat. Bank Cas. 230.
CADMUS, The, [2,280], 1 Blatchf. & H. 139.
CADMUS v. BEMAN [2,281], 4 Amer. Law J. (N. S.) 333; 14 Law Rep. 451.
Cadmus, The, Brown v. [See 1,997.]
CADMUS, The, v. MATTHEWS [2,282], 2 Paine, 229.
CADMUS v. POLHAMUS [2,282a].
Cadwalader, Crosby v. [See 3,419.]
Cadwalader, United States v. [See 14,706.]
Cadwallader, Stotesbury v. [See 13,498.]
Cady, Cunningham v. [See 3,480.]
CADY v. IMPERIAL INS. CO. [2,283], 4 Cliff. 203.
Cady, Mattox v. [See 9,301.]
CADY v. PHŒNIX FIRE INS. CO. [2,284], 18 Int. Rev. Rec. 30; 5 Chi. Leg. News, 462.
Cady, Stevens v. [See 13,395.]
CADY v. WHALING [2,285], 7 Biss. 430.
CAFIERO v. WELSH [2,286], 8 Phila. 130; 1 Leg. Gaz. Rep. 121; 3 Leg. Gaz. 21; 28 Leg. Int. 20.
CAGE v. JEFFRIES [2,287], Hempst. 409.
Cahalin, Mayer v. [See 9,340.]
CAHART v. AUSTIN [2,288], 2 Cliff. 528; 2 Fish. Pat. Cas. 543.
CAHILL v. ANDES INS. CO. [2,289], 5 Biss. 211.
CAHILL v. BECKFORD [2,290], Holmes, 48; Merw. Pat. Inv. 112.
Cahill, Bronson v. [See 1,926.]
CAHILL v. BROWN [2,291], 3 Ban. & A. 580; 15 O. G. 697.
Cahill, The R. F. [See 11,735.]
CAHOON v. RING [2,292], 1 Cliff. 592; 1 Fish. Pat. Cas. 397; Merw. Pat. Inv. 88, 662.
Cahoone, Ex parte. [See 8,064.]
CAIN v. GARFIELD [2,293], 1 Lowell, 483.
Cain, Shuford v. [See 12,823.]
Cain, Thebo v. [See 13,875.]
Cairo City Ferry Co. v. The Virginia. [See 16,957.]
CAITHNESHIRE, The [2,294], 1 Abb. Adm. 163.
Cake, New York Wire Railing Co. v. [See 10,217.]
Calais Steamboat Co., Scudder v. [See 12,565, 12,566.]
Calbraith, Searight v. [See 12,585.]
CALBREATH v. GRACY [2,295], 1 Wash. C. C. 198.
CALBREATH v. GRACY [2,296], 1 Wash. C. C. 219.
CALBY, In re [2,297.]
CALCUTTA, The [2,298], 5 Adm. Rec. 216.
CALDER v. PYFER [2,299], 2 Cranch, C. C. 430.
CALDWELL, In re [2,300], 2 Hughes, 291.
Caldwell, Amelia v. [See 278.]
Caldwell, Brewer v. [See 1,848, 1,849.]
Caldwell, First Nat. Bank v. [See 4,798.]
CALDWELL v. HARDING [2,301], 5 Blatchf. 501.
CALDWELL v. HARDING [2,302], 1 Lowell, 326.
Caldwell, McGowan v. [See 8,806.]
Caldwell, Mecklin v. [See 9,387, 9,388.]
Caldwell, Oneale v. [See 10,515.]
Caldwell, Paine v. [See 10,674.]
CALDWELL v. SOUTHERN EXP. CO. [2,303], 1 Flip. 85; 3 Cent. Law J. 416.
CALDWELL v. STATE OF MAINE, The [2,304.]
Caldwell, Stephens v. [See 13,367.]
Caldwell, Thornton v. [See 13,996.]
Caldwell, United States v. [See 14,707, 14,708.]
CALDWELL v. WALTERS [2,305], 4 Cranch, C. C. 577.
CALDWELL v. WEITZEL [2,306], 23 Int. Rev. Rec. 383; 2 Cin. Law Bul. 276.
CALDWELL v. WINDER [18,245], 2 Hayw. & H. 24.
Caleb, The M. M. [See 9,680-9,683.]
Caledonian, The. [See 8,063, 8,064.]
Caledonia Silver-Min. Co., Gold Hill v. [See 5,512.]
CALENDAR, Ex parte [2,307], 1 N. Y. Leg. Obs. 200; 5 Law Rep. 125.
CALENDAR, In re [2,308], 5 Law Rep. 129.
Calender, Culver v. [See 2,307.]
CALHOUN v. MEMPHIS & P. R. CO. [2,309], 2 Flip. 442; 9 Cent. Law J. 66; 8 Reporter, 395.
CALHOUN v. VECHIO [2,310], 3 Wash. C. C. 165.
Calhoun, Wooster v. [See 18,035.]
Calhoun Co., Woodward v. [See 18,002.]
CALICOTT, In re [2,311], 1 Amer. Law T. Rep. U. S. Cts. 129; 8 Int. Rev. Rec. 169.
CALIFORNIA, The [2,312], 1 Sawy. 463.
CALIFORNIA, The [2,313], 1 Sawy. 596; 13 Int. Rev. Rec. 166.
CALIFORNIA, The [2,314], 2 Sawy. 12; 5 Amer. Law T. Rep. U. S. Cts. 132.
CALIFORNIA PAC. R. CO., In re [2,315], 3 Sawy. 240; 11 N. B. R. 193; 2 Cent. Law J. 79.
California Powder Works, Giant Powder Co. v. [See 5,379.]
CALISTO, The [2,316], 2 Ware (Dav. 29) 37; 3 Law Rep. 69; 23 Amer. Jur. 453.
CALKINS v. BERTRAND [2,317], 6 Biss. 494; 2 Ban. & A. 215; 9 O. G. 795; 8 Chi. Leg. News, 114; Merw. Pat. Inv. 216.
Call, Gray v. [See 5,712.]
Call, Maxwell v. [See 9,323.]
Call, Palmer v. [See 10,686.]
CALLADAY v. McKINSEY [2,318], 5 McLean, 165.
Callaghan, Stewart v. [See 13,423.]
CALLAN v. KENNEDY [2,319], 3 Cranch, C. C. 630.
Callan, Magee v. [See 8,942.]
CALLENDER'S TRIAL [14,709], Whart. St. Tr. 688.
CALLENDER v. UNITED STATES [2,321], Hempst. 334.
Callender, United States v. [See 14,709.]
CALLER v. McNABB [2,322], 1 N. J. Law J. 184.
CALLICOT, In re [2,323], 8 Blatchf. 89.
Callicott, United States v. [See 14,710.]
Callicott, McLeod v. [See 8,897.]
Calliope, The, Parker v. [See 10,729.]

[Federal Case numbers are given in brackets.]

Callison, Mount Diablo Mill & Mining Co. v. [See 9,886.]
CALLON v. WILLIAMS [2,324], 2 Lowell, 1.
CALLOWAY v. DOBSON [2,325], 1 Brock. 119.
Calloway County, Foster v. [See 4,967.]
Calvert, Jenkins v. [See 7,263.]
Calvert, Nesmith v. [See 10,123.]
Calvert, Reynolds v. [See 11,728.]
CALVERT v. SLATER [2,326], 1 Cranch, C. C. 44.
CALVERT v. STEWART [2,327], 4 Cranch, C. C. 728.
Calvert Lithographing, etc., Co., Farmer v. [See 4,-651.]
Calvin, United States v. [See 14,711.]
Calypso, The. [See 11,506.]
CAMAC v. ALLWINE [2,328], 1 Wash. C. C. 466.
Camac, Bushby v. [See 2,226.]
Camac, Fairchild v. [See 4,610.]
CAMAC v. FRANCIS [2,329], 3 Wash. C. C. 108.
Camac, Murphy v. [See 9,948.]
CAMBIOSO v. MAFFET [2,330], 2 Wash. C. C. 98.
CAMBLOS v. PHILADELPHIA & R. R. CO. [2,-331], 4 Brewst. 563; 9 Phila. 411; 30 Leg. Int. 149.
CAMBRIDGE, The [2,332], 4 Ben. 366.
CAMBRIDGE, The [2,333], 2 Hask. 109.
CAMBRIDGE, The [2,334], 2 Lowell, 21.
CAMBRIDGE, The [2,335], 4 Sawy. 252.
CAMBRIDGE, The, v. OMEGA, The [2,336], 5 Hughes, 487.
Cambuston, United States v. [See 14,712, 14,713.]
Camden & A. R. Co., Baldraff v. [See 794.]
Camden & A. R. Co., Bonaparte v. [See 1,617.]
CAMDEN & A. R. CO. v. THOMAS WALLACE, The [2,337.]
CAMDEN & A. R. TRANSP. CO. v. LOTTY, The [2,337a].
CAMDEN CONSOL. OIL CO. v. OHIO INS. CO. [2,-337b], 5 Cin. Law Bul. 193.
CAMDEN ROLLING MILL CO., In re [2,338], 3 N. B. R. 590 (Quarto, 146).
Came, Collender v. [See 2,999.]
CAMELLOS v. REVEREZ [2,339], 1 Cranch, C. C. 62.
Camellos, Reverez v. [See 11,717.]
Cameron, Aller v. [See 243.]
CAMERON v. CANIEO [2,340], 9 N. B. R. 527.
CAMERON v. CHESAPEAKE & O. CANAL CO. [2,-341], 1 Hayw. & H. 158.
Cameron, Leeds v. [See 8,206.]
Camerrer, Turrell v. [See 14,266.]
CAMFRANQUE v. BURNELL [2,342], 1 Wash. C. C. 340.
Camilla, The, Phelps v. [See 11,073.]
CAMILLOZ v. JOHNS [2,343], 1 Cranch, C. C. 38.
CAMMEYER v. NEWTON [2,344], 4 Ban. & A. 159; 16 O. G. 720.
CAMMEYER v. NEWTON [2,345], 12 Blatchf. 122; 1 Ban. & A. 294; 5 O. G. 753.
CAMP, In re [2,346], 1 N. B. R. 242 (Quarto, 18).
CAMP v. MARCELLUS, The [2,347], 1 Cliff. 481.
CAMP v. PRICE [2,347a], Hempst. 174.
CAMPBELL, In re [2,348], 3 Hughes, 276; 17 N. B. R. 4.
Campbell, In re. [See 2,349, 2,370, 5,305, 5,306.]
CAMPBELL'S CASE [2,349], 1 Abb. U. S. 185; 1 Amer. Law T. Rep. Bankr. 30; 1 N. B. R. 165; Bankr. Reg. Supp. 36; 7 Amer. Law Reg. (N. S.) 100; 6 Int. Rev. Rec. 174; 6 Phila. 445; 3 Pittsb. Rep. 96; 15 Pittsb. Leg. J. 13; 24 Leg. Int. 356.
CAMPBELL v. ALKNOMAC, The [2,350], Bee, 124.
CAMPBELL v. AYSHIRE [2,351].
CAMPBELL v. BARCLAY [2,352], 4 Biss. 517.
CAMPBELL v. BARCLAY [2,353], 5 Biss. 179.
CAMPBELL v. BARNEY [2,354], 5 Blatchf. 221.
Campbell, Boyreau v. [See 1,760.]
CAMPBELL v. BROWN [2,355], 2 Woods, 349.
CAMPBELL v. CLARK [2,355a], Hempst. 67.
CAMPBELL v. CLAUDIUS [2,356], Pet. C. C. 484.
Campbell, Dobson v. [See 3,945.]
Campbell, Elting v. [See 4,422.]
CAMPBELL v. EMERSON [2,357], 2 McLean, 30.
Campbell, Falconer v. [See 4,620.]
Campbell, Farrell v. [See 4,681, 4,682.]
Campbell, Forman v. [See 4,939.]
CAMPBELL v. HADLEY [2,358], 1 Spr. 470.
CAMPBELL v. HAMILTON [2,359], 4 Wash. C. C. 92.
CAMPBELL v. HARPER [2,360], 3 Wash. C. C. 356.
CAMPBELL v. JAMES [2,361], 17 Blatchf. 42, 4 Ban. & A. 456; 18 O. G. 979; 8 Reporter, 455.
CAMPBELL v. JORDAN [2,362], Hempst. 534.
CAMPBELL v. KIRKPATRICK [2,363], 5 McLean, 175.
Campbell, Leitensdorfer v. [See 8,225.]
Campbell, McKay v. [See 8,839, 8,840.]
CAMPBELL v. McMANUS [2,364], 5 McLean, 106.
CAMPBELL v. MEDBURY [2,365], 5 Biss. 33.
Campbell, Patterson v. [See 10,826.]
CAMPBELL v. POPE [2,365a], Hempst. 271.
Campbell, Pratt v. [See 11,374.]
CAMPBELL v. RAILROAD CO. [2,366], 1 Woods, 368.
CAMPBELL v. RECEIVERS [2,367], 4 Hughes, 170.
Campbell, Scripps v. [See 12,562.]
CAMPBELL v. STRONG [2,367a], Hempst. 265.
CAMPBELL v. STRONG [2,367b], Hempst. 195.
CAMPBELL v. SUNLIGHT, The [2,368], 2 Hughes, 9; 23 Int. Rev. Rec. 211; 9 Chi. Leg. News, 322.
CAMPBELL v. TEXAS & N. O. R. CO. [2,369], 2 Woods, 263.
CAMPBELL v. TRADERS' NAT. BANK [2,370], 2 Biss. 423; 3 N. B. R. 498 (Quarto, 124); 2 Chi. Leg. News, 143; 1 Md. Law Rep. 169.
CAMPBELL v. UNCLE SAM, The [2,371], Hoff. Op. 429.
CAMPBELL v. UNCLE SAM, The [2,372], 1 McAll. 77.
CAMPBELL v. UNITED STATES [2,373], 10 Law Rep. 400.
Campbell, United States v. [See 14,714.]
Campbell, Vance v. [See 16,836, 16,837.]
Campbell, Varnum v. [See 16,887.]
CAMPBELL v. WAITE [2,374], 9 Ben. 166; 16 N. B. R. 93.
Campbell, Waters v. [See 17,264, 17,265.]
Campbell, The Jane. [See 7,205, 7,206.]
CANA v. FRIEND [2,375], 2 Cranch, C. C. 370.
Canada, The, Allen v. [See 219.]
Canaday, In re. [See 2,377.]
CANADIAN, The [2,376], Brown, Adm. 11.
CANADY, In re [2,377], 2 Biss. 75; 3 N. B. R. 11 (Quarto, 3); 1 Chi. Leg. News, 113.
Canaher v. Brennan. [See 2,441.]
Canal Bank, United States v. [See 14,715.]
Canal Boat, Lowry v. [See 8,580.]
Canal Boat No. 68, United States v. [See 16,027.]
Canal Nat. Bank, Emery v. [See 4,446.]
CANBY v. McLEAR [2,378], 13 N. B. R. 22.
Canby, Randolph v. [See 11,559.]
CANDACE, The [2,379], 1 Lowell, 126; 3 Amer. Law Rev. 575; 9 Int. Rev. Rec. 177.
Candace, The, United States v. [See 2,379.]
Candalero, The, McGrath v. [See 8,809, 8,810.]
Candee, Day v. [See 3,676.]
Candee, Evory v. [See 4,582, 4,583.]
CANFIELD, In re [2,380], 1 N. Y. Leg. Obs. 234; 5 Law Rep. 415.
CANFIELD v. REED [2,381], Oliver's Forms (Ed. 1842) p. 496.
Canfield, Reed v. [See 11,641.]
CANFIELD v. STATE NAT. BANK OF MINNEAPOLIS [2,382], 1 N. W. (O. S.) 173; 1 Thomp. Nat. Bank Cas. 312; 23 Int. Rev. Rec. 319; 2 Cin. Law Bul. 238.
Canieo, Cameron v. [See 2,340.]
CANIZARES v. SANTISSIMA TRINIDAD, The [2,383], Bee, 353.
CANNELL v. MILBURN [2,384], 3 Cranch, C. C. 424.
Cannon, The. [See 11,539.]
Cannon, Converse v. [See 3,144.]
CANNON v. DAVIS [2,385], 1 Cranch, C. C. 457.
Cannon, Locke v. [See 8,440.]
Cannon, McNeil v. [See 8,913.]
Cannon, People v. [See 10,967.]
CANNON v. POTOMAC, The [2,386], 3 Woods, 158.
CANNON v. VOSE [2,386a], Betts' Scr. Bk. 554.
Canoe, United States v. [See 14,718.]
CANON CITY & S. J. RY CO. v. DENVER & R. G. RY. CO. [2,387], Trans. Rec. U. S. Sup. Ct. Oct. Term, 1878, p. 9884.
Cansey v. The Shark. [See 2,526.]
Canter, United States v. [See 14,719.]
CANTON, The [2,388], 1 Spr. 437; 21 Law Rep. 473.
CANTRELL, In re [2,389], 6 Ben. 482.
Cape Ann Isinglass & Glue Co., Manning v. [See 9,041.]

[Federal Case numbers are given in brackets.]

CAPE GIRARDEAU & S. L. R. R. v. WINSTON [2,390], 4 Cent. Law J. 127.
Cape Girardeau County, Westermann v. [See 17,432.]
CAPELLE v. HALL [2,391], 12 N. B. R. 1.
CAPELLE v. TRINITY M. E. CHURCH [2,392], 11 N. B. R. 536.
Capen, Harris v. [See 6,118.]
Capitol Bank, Rix v. [See 11,869.]
Capriccio, The. [See 7,248.]
CAPT. GEO. W. WRIGHT, The [2,393], 8 Ben. 219.
CAPTAIN SPEDDEN, The [2,394], Blatchf. Pr. Cas. 127.
Carbarga, The, Ingersoll v. [See 2,276, 7,038.]
Carbery, Maye v. [See 9,339.]
Carbery, Newton v. [See 10,189, 10,190.]
Carbery, Read v. [See 11,604.]
Carbery, Thompson v. [See 13,945, 13,946.]
Carbery, United States v.. [See 14,720.]
Carbon Stove Co., Thatcher Heating Co. v. [See 13,864.]
Card, Dodge v. [See 3,951.]
CARDINEL v. SMITH [2,395], Deady, 197.
Cardwell, Dowell v. [See 4,039.]
CARDWELL v. REPUBLIC FIRE INS. CO. [2,396], 12 N. B. R. 253; 7 Chi. Leg. News, 282.
Carenough, Thompson v. [See 13,947.]
CAREW v. BOSTON ELASTIC FABRIC CO. [2,397], 3 Cliff. 356; 5 Fish. Pat. Cas. 90; 1 O. G. 91; Merw. Pat. Inv. 111.
CAREW v. BOSTON ELASTIC FABRIC CO. [2,398], Holmes, 45.
CAREY v. ATKINS, [2,399], 6 Ben. 562.
CAREY v. COLLIER [2,400], 56 Nile's Reg. 262.
CAREY v. KITTY, The [2,401], Bee, 254.
CAREY v. KITTY, The [2,402], Bee, 255.
CAREY v. NAGLE [2,403], 2 Abb. U. S. 156; 2 Biss. 244; 9 Amer. Law Reg. (N. S.) 362; 3 Amer. Law T. Rep. U. S. Cts. 131; 4 West. Jur. 351; 2 Chi. Leg. News, 293.
CAREY v. WASHINGTON [2,404], 5 Cranch, C. C. 13.
Carey, The William. [See 17,688, 17,689.]
CARGO OF BRIMSTONE [2,405], 8 Ben. 45.
CARGO OF SALT [2,406], 4 Blatchf. 224; 40 Hunt. Mer. Mag. 457.
Cargo of Salt, Freeman v. [See 2,406.]
Cargo of Sugar, United States v. [See 14,721, 14,722.]
Carhart v. Austin. [See 2,288.]
Carhart v. Miller Co. [See 15,776.]
Carico, United States v. [See 14,723.]
CARILLO v. SHOOK [2,407], 22 Int. Rev. Rec. 152; 8 Chi. Leg. News, 258.
CARLETON v. DAVIS [2,408], 2 Ware (Dav. 221) 225; 3 N. Y. Leg. Obs. 86.
Carleton, Poor v. [See 11,272.]
CARLETON v. ROANOKE, The [2,409], N. Y. Times, Oct. 1, 1855.
Carl Haasted, The, Walsh v. [See 17,113.]
CARLISLE v. BUNDY [2,410], 3 Wkly. Law Gaz. 297.
Carlisle, Carter v. [See 2,474.]
CARLISLE v. DAVIS [2,411], 9 Ben. 18.
Carlisle, United States v. [See 14,724.]
Carlisle Bank, Krebs v. [See 7,932.]
Carll, Mauldin v. [See 9,307.]
CARLOCK v. TAPPAN [2,412], Betts, C. C. MS. No. 1.
CARLOTTA, The [2,413], 9 Ben. 1.
CARLOTTA, The [2,413a].
CARLOTTA, The [2,413b].
CARL SCHURZ, The [2,414], 2 Flip. 330; 8 Cent. Law J. 147.
CARLTON, Ex parte [2,415], 1 N. Y. Leg. Obs. 292; 5 Law Rep. 120.
Carlton, Buckley v. [See 2,093.]
Carlton, McGinnis v. [See 8,799.]
Carlton, United States v. [See 14,725.]
CARLWITZ v. GERMANIA FIRE INS. CO. [2,415a], 12 Ins. Law J. 127.
Carman, Andrews v. [See 371.]
Carman, Nelson v. [See 10,103.]
Carmichael, Cragin v. [See 3,319.]
Carne, Burtin v. [See 2,213.]
CARNE v. McLANE [2,416], 1 Cranch, C. C. 351.
Carnes, Hamilton v. [See 5,977.]
CARNES v. MAXWELL [2,417], 3 Blatchf. 420.
Carnley, Comstock v. [See 3,081.]
Carnot, United States v. [See 14,726.]
Carolin, Smith v. [See 13,020.]
CAROLINE, The [2,418], 1 Brock. 384.
CAROLINE, The [2,419], 1 Lowell, 173.
Caroline, The, Bickford v. [See 1,385.]
Caroline, The, Levy v. [See 8,301.]
Caroline, The, Virden v. [See 16,956.]
CAROLINE & CORNELIA, The [2,420], 2 Ben. 105.
CAROLINE A. WHITE, The [2,421], 5 Phila. 112; 19 Leg. Int. 181.
CAROLINE CASEY, The [2,421a], 23 Betts, D. C. MS. 141.
CAROLINE E. KELLY, The [2,422], 2 Abb. U. S. 160; 7 Phila. 570; 27 Leg. Int. 212.
CAROLINE NESMITH, The [2,423], 9 Adm. Rec. 122.
Caroline Casey, The, Pounder v. [See 2,421a.]
CAROLUS, The [2,424], 2 Curt. 69.
Carondolet Marine Ry., etc., Co. v. The Sam Kirkman. [See 8,658.]
CAROTHERS v. CHESAPEAKE & O. CANAL CO. [2,425], 4 Cranch, C. C. 698.
Carothers, Patton v. [See 10,833.]
CAROW, In re [2,426], 4 N. B. R. 543 (Quarto, 178); 41 How. Pr. 112.
CARPENTER, In re [2,427], 1 N. B. R. 299 (Quarto, 51).
CARPENTER v. AMERICAN INS. CO. [2,428], 1 Story, 57.
Carpenter, Barrows v. [See 1,058.]
CARPENTER v. BUENA VISTA COUNTY [2,429], 5 Dill. 556.
Carpenter, Byrne v. [See 2,271.]
CARPENTER v. EMMA JOHNSON, The [2,430], 1 Cliff. 633.
Carpenter, Fiedler v. [See 4,759.]
Carpenter, Frazer v. [See 5,069.]
Carpenter, Haines v. [See 5,905.]
Carpenter, Hopkins v. [See 6,686.]
Carpenter, Innes v. [See 7,049.]
Carpenter v. The Island City. [See 7,108, 7,109.]
CARPENTER v. ROBINSON [2,431], 1 Holmes, 67.
Carpenter, Ross v. [See 12,072.]
Carpenter, Taylor v. [See 13,784, 13,785.]
Carpenter, Tucker v. [See 14,217.]
Carpenter, United States v. [See 14,727.]
Carpenter, Willis v. [See 17,770.]
Carpentier, Courtois v. [See 3,286.]
Carpentier, United States v. [See 14,728.]
CARR, In re [2,432], 3 Sawy. 316; 21 Int. Rev. Rec. 30.
CARR v. GALE [2,433], 1 Curt. 384.
CARR v. GALE [2,434], 2 Ware (Dav. 328) 330.
CARR v. GALE [2,435], 3 Woodb. & M. 38.
CARR v. HILTON [2,436], 1 Curt. 230.
CARR v. HILTON [2,437], 1 Curt. 390.
CARR v. HOXIE [2,438], 5 Mason, 60.
Carr, Hoxie v. [See 6,802.]
CARR v. RICE [2,439], 4 Blatchf. 200; 1 Fish. Pat. Cas. 325.
CARR v. RICE [2,440], 1 Fish. Pat. Cas. 198.
CARR v. TWEEDY [2,440a], Hempst. 287.
Carr, United States v. [See 14,729-14,732.]
Carr, Wood v. [See 17,940.]
CARRAHER v. BRENNAN [2,441], 7 Biss. 497; 5 Cent. Law J. 114; 9 Chi. Leg. News, 363; 4 Law & Eq. Rep. 159; 23 Int. Rev. Rec. 248.
CARRICK v. HOOPER [2,441a].
CARRICO v. KIRBY [2,442], 3 Cranch, C. C. 594.
Carrico, United States v. [See 14,733, 14,734.]
Carrie, The. [See 398-402.]
Carrie Brooks, The, Reyley v. [See 11,718.]
CARRIER, In re [2,443], 13 N. B. R. 208; 23 Pittsb. Leg. J. 57.
CARRIGAN v. CHARLES PITMAN, The [2,444], 1 Wall. Jr. 307.
Carrigo, United States v. [See 14,735.]
Carrillo, United States v. [See 14,736, 14,737.]
CARRINGTON v. ANN C. PRATT, The [2,445], 10 N. Y. Leg. Obs. 193.
CARRINGTON v. BRENTS [2,446], 1 McLean, 167.
CARRINGTON v. FLORIDA R. CO. [2,447], 9 Blatchf. 467.
CARRINGTON v. FLORIDA R. CO. [2,448], 9 Blatchf. 468.
CARRINGTON v. FORD [2,449], 4 Cranch, C. C. 231.
Carrington, The Hannah v. [See 6,029.]
Carrington, McKay v. [See 8,841.]
CARRINGTON v. STIMSON [2,450], 1 Curt. 437.

CARROLL, The [2,451], 1 Ben. 286.
Carroll, Anthony v. [See 487.]
CARROLL v. DOWSON [2,452], 5 Cranch, C. C. 514.
CARROLL v. FINNAGAN [2,453], 1 Cranch, C. C. 234.
CARROLL v. GAMBRILL [2,454], 1 McA. Pat. Cas. 581.
Carroll, Grammer v. [See 5,681.]
CARROLL v. LEATHERS, The [2,455], Newb. 432.
Carroll, Le Roy v. [See 8,266.]
CARROLL v. PERRY [2,456], 4 McLean, 25.
Carroll, Tingey v. [See 14,056.]
CARROLL v. WATKINS [2,457], 1 Abb. U. S. 474; 2 Chi. Leg. News, 257.
CARROLL v. WHITCROFT [2,458], 1 Cranch, C. C. 609.
Carroll, The, Winne v. [See 17,876a.]
Carroni, The, Seaver v. [See 12,593.]
Carruth, Snow v. [See 13,144.]
CARSON, Ex parte [2,459], 4 Hughes, 215.
CARSON, In re [2,460], 5 Ben. 277; 5 N. B. R. 290.
CARSON, In re [2,461], 2 N. B. R. 107 (Quarto, 41).
Carson, Armstrong v. [See 543.]
CARSON v. BLAZER [2,461a].
CARSON v. BOUDINOT [2,462], 2 Wash. C. C. 33.
CARSON v. GORDEN [2,463], Brunner, Col. Cas. 208; Cooke, 149.
CARSON v. JENNINGS [2,464], 1 Wash. C. C. 129.
Carson, Jennings v. [See 7,281.]
CARSON v. MARINE INS. CO. [2,465], 2 Wash. C. C. 468.
CARSON v. ROBERTSON [2,466], Chase, 475; 2 Amer. Law T. Rep. U. S. Cts. 116.
Carson, Thompson v. [See 13,948.]
CARSTAEDT v. UNITED STATES CORSET CO. [2,467], 13 Blatchf. 119; 2 Ban. & A. 119; 9 O. G. 151; Merw. Pat. Inv. 217.
CARSTAEDT v. UNITED STATES CORSET CO. [2,468], 13 Blatchf. 371; 2 Ban. & A. 331; 10 O. G. 3.
CARSTENS, In re [2,469], 14 Blatchf. 117; 15 N. B. R. 250.
Cartacho, United States v. [See 14,738.]
Carter, Ex parte. [See 8,981, 17,488-17,491.]
CARTER, In re [2,470], 3 Biss. 195; 6 N. B. R. 299; 4 Chi. Leg. News, 187; 3 Leg. Op. 221; 6 Amer. Law Rev. 755.
CARTER, In re [2,471], 2 Hughes, 447.
CARTER v. BAKER [2,472], 1 Sawy. 512; 4 Fish. Pat. Cas. 404.
Carter, Brett v. [See 1,844.]
CARTER v. BYZANTIUM, The [2,473], 1 Cliff. 1.
CARTER v. CARLISLE [2,474], 1 Hayw. & H. 246.
CARTER v. CARTER [2,475], 1 McA. Pat. Cas. 388.
CARTER v. CUTTING [2,476], 2 Cranch, C. C. 58.
Carter, Fisher v. [See 4,815.]
Carter v. Haigh. [See 2,475.]
Carter, Lamb v. [See 8,013.]
CARTER v. LANE [2,477], 1 Hayw. & H. 176.
Carter v. McGehee. [See 11,721-11,725.]
Carter, Mendenhall v. [See 9,426.]
CARTER v. MESSINGER [2,478], 11 Blatchf. 34.
Carter, Sargent v. [See 12,362.]
CARTER v. SWIFT [2,479], 1 Lowell, 398.
CARTER v. TREADWELL [2,480], 3 Story, 25.
Carter, United States v. [See 14,739-14,741.]
Carter, Whitney v. [See 17,583.]
CARTRIGHT v. BOSTWICK [2,481], 1 Betts, C. C. MS. 55.
Cartter, Westlake v. [See 17,451.]
CARTWELL v. JOHN TAYLOR, The [2,482], Newb. 341.
Cartwright, Goodwin v. [See 5,551.]
Cartwright, Loraine v. [See 8,500.]
CARTWRIGHT v. OTHELLO, The [2,483], 1 Ben. 43.
Cartzler, Parker v. [See 10,730.]
CARUANA v. BRITISH & N. A. ROYAL MAIL STEAM-PACKET CO. [2,484], 6 Ben. 517.
Carusi, Reed v. [See 11,642.]
CARVER v. BRAINTREE MFG. CO. [2,485], 2 Story, 432; 2 Robb, Pat. Cas. 141; 10 Hunt, Mer. Mag. 470.
Cary, Goodyear v. [See 5,562.]
Cary v. Nagel. [See 2,403.]
Cary, San Francisco Savings & Loan Society v. [See 12,317.]
Cary, Sturgess v. [See 13,572.]
Cary, Sturgis v. [See 13,573.]
Casanave, Washington v. [See 17,225.]
CASCO, The [2,486], 2 Ware (Dav. 184) 188; 4 Law Rep. 471; 15 Hunt, Mer. Mag. 290.
CASE v. BEAUREGARD [2,487], 1 Woods, 125.
CASE v. BROWN [2,488], 1 Biss. 382; 2 Fish. Pat. Cas. 268.
CASE v. CITIZENS' BANK OF LOUISIANA [2,489], 2 Woods, 23; 1 Thomp. Nat. Bank Cas. 276.
CASE v. CLARKE [2,490], 5 Mason, 70.
CASE v. DOUGLAS [2,491], 1 Dill. 299.
CASE v. KELLY [2,492].
Case, Lanning v. [See 8,072.]
Case, Morrison v. [See 9,845.]
CASE v. NEW ORLEANS & C. R. CO. [2,493], 2 Woods, 236.
CASE v. REDFIELD [2,494], 4 McLean, 526; 2 Robb, Pat. Cas. 741.
Case, United States v. [See 14,742, 14,743.]
CASEY, In re [2,495], 10 Blatch. 376; 8 N. B. R. 71.
CASEY v. LA SOCIETE DE CREDIT MOBILIER [2,496], 2 Woods, 77; 1 Thomp. Nat. Bank Cas. 285; 7 Chi. Leg. News, 313; 21 Int. Rev. Rec. 219.
CASEY v. LEARY [2,497], 2 Ben. 530; 8 Int. Rev. Rec. 122.
Casey, Sedgwick v. [See 12,610.]
Casey v. Societe De Credit Mobilier. [See 2,496.]
Cash, House v. [See 6,736.]
CASH v. ONE THOUSAND TWO HUNDRED AND SEVENTY-SEVEN DOLLARS AND FIVE CENTS [2,498].
CASHAU v. NORTHWESTERN NAT. INS. CO. [2,499], 5 Biss. 476.
Cashiel, United States v. [See 14,744.]
CASKIE v. WEBSTER [2,500], 2 Wall. Jr. 131.
Caskin, Leonard v. [See 8,257.]
Cass, Citizens' Nat. Bank v. [See 2,732.]
Cassally, McNaughter v. [See 8,911.]
Cass County, Jordan v. [See 7,517, 7,518.]
Cass County, Kennard v. [See 7,697.]
Cass County, Washburn v. [See 17,213.]
Cassedy, United States v. [See 14,745.]
CASSEDY v. WILLIAMS [2,501], 1 Hayw. & H. 151.
CASSEL v. DOWS [2,502], 1 Blatchf. 335; 1 Liv. Law Mag. 193.
CASSELS v. VERNON [2,503], 5 Mason, 332.
Cassily, McVaughter v. [See 8,930.]
Cassin, Lee v. [See 8,184.]
Cassin, Palmer v. [See 10,687.]
Cassius, The, Arthur v. [See 564.]
Cassius, The, Ketland v. [See 7,743.]
Casteel, Henderson v. [See 6,350.]
CASTELLO v. BOUTEILLE [2,504], Bee, 29.
CASTER v. WOOD [2,505], Baldw. 289.
Castillero, United States v. [See 14,746, 14,747.]
CASTLE v. LEE [2,506], 11 N. B. R. 80.
CASTOR v. MITCHEL [2,507], 4 Wash. C. C. 191.
Castor, United States v. [See 14,748.]
CASTRO v. UNITED STATES [2,508].
CASTRO v. UNITED STATES [2,509], Hoff. Land Cas. 72.
Castro, United States v. [See 14,749-14,754.]
Catalino, Bussard v. [See 2,228.]
Catara, Kleine v. [See 7,869.]
CATAWANTEAK, The [2,510], 2 Ben. 189.
CATEAUX v. BARNEY [2,511].
Catharina, The, Thompson v. [See 13,949.]
Catharina Maria, The, Jurgenson v. [See 7,587.]
Catharine, The, Dickinson v. [See 3,897.]
Catharine, The, United States v. [See 14,755.]
CATHARINE AND MARTHA, The [2,512], 11 N. Y. Leg. Obs. 225; 40 Hunt, Mer. Mag. 707.
Catharine Whiting, The. [See 9,068, 9,069.]
Cathcart, Robinson v. [See 11,946, 11,947.]
Cathcart, United States v. [See 14,756.]
Catherina, The, Nordlinger v. [See 10,295.]
Catharina Maria, The, Weeks v. [See 17,351.]
Catharine, The. [See 692.]
Catherine, The, United States v. [See 14,756a, 14,757.]
CATHERWOOD v. GAPETE [2,513], 2 Curt. 94.
CATLETT v. COLUMBIAN INS. CO. [2,514], 3 Cranch, C. C. 192.
CATLETT v. COOKE [2,515], 2 Cranch, C. C. 9.
CATLETT v. FAIRFAX [2,516], 2 Cranch, C. C. 99.
CATLETT v. PACIFIC INS. CO. [2,517], 1 Paine, 594.

[Federal Case numbers are given in brackets.]

Catlett, Smith v. [See 13,021.]
CATLIN v. CURRIER [2,518], 1 Sawy. 7.
CATLIN v. FOSTER [2,519], 1 Sawy. 37; 3 N. B. R. 540 (Quarto, 134); 3 Amer. Law T. 134; 1 Amer. Law T. Rep. Bankr. 192.
CATLIN v. GLADDING [2,520], 4 Mason, 308.
CATLIN v. HOFFMAN [2,521], 2 Sawy. 486; 9 N. B. R. 342; 21 Pittsb. Leg. J. 159.
CATLIN v. SPRINGFIELD FIRE INS. CO. [2,522], 1 Sumn. 434.
CATLIN v. UNDERHILL [2,523], 4 McLean, 199.
CATLIN v. UNDERHILL [2,524], 4 McLean, 337.
Cato, The, Ryan v. [See 12,184.]
Cato, The, Taylor v. [See 13,786.]
Caton, United States v. [See 14,758.]
CAUJOLLE v. FERRIE [2,525], 5 Blatchf. 225; 2 Abb. Pr. (N. S.) 3.
Caulkins, Simpson v. [See 12,880.]
CAUSEY v. SHARK, The [2,526], N. Y. Times, May 4, 1862.
CAUSIN v. CHUBB [2,527], 1 Cranch, C. C. 267.
Causin, United States v. [See 14,759.]
Cavalier, The, Blanchard v. [See 1,508.]
CAVAN, In re [2,528], 19 N. B. R. 303.
Cavan v. The D. S. Gregory. [See 4,099-4,103.]
Cavaroc, Benjamin v. [See 1,300.]
CAVAROC v. COLLECTOR, The [2,529], 1 Woods, 172.
Cavaroc, Eames v. [See 4,238.]
Cavazos, Brownsville v. [See 2,043.]
Cave, United States v. [See 14,760.]
CAVENDER v. GROVE [2,530], 4 Biss. 269.
CAWOOD v. NICHOLS [2,531], 1 Cranch, C. C. 180.
CAYENNE, The [2,532], 2 Abb. U. S. 42.
CAYENNE, The [5,941], 7 Phila. 550.
CAYLUS, Ex parte [2,534], 1 Lowell, 550.
CAYUGA, The [2,535], 2 Ben. 125.
CAYUGA, The [2,536], 1 Ben. 171.
CAYUGA, The [2,537], 7 Blatchf. 385.
Cazares, United States v. [See 14,761.]
Caze, Lamalere v. [See 8,002, 8,003.]
CAZE v. REILLY [2,538], 3 Wash. C. C. 298.
CAZENOVE v. DARREL [2,539], 2 Cranch, C. C. 444.
C. B. Church, The, United States v. [See 14,762.]
C. D., The, Lallande v. [See 8,000.]
C. D. Jr., The, Insurance Co. v. [See 7,051.]
C. Durant, The, Goodwin v. [See 5,552.]
CEASE, In re [2,540], 5 Law Rep. 408.
Celeste, The Mary. [See 9,202.]
CELESTINE, The [2,541], 1 Biss. 1; 4 Amer. Law J. (N. S.) 164; 1 Leg. Int. 6.
CELLA, The [2,542], 3 Ben. 168.
Celluloid Harness Trimming Co., Albright v. [See 147.]
CELLULOID MFG. CO. v. GOODYEAR DENTAL VULCANITE CO. [2,543], 13 Blatchf. 375; 2 Ban. & A. 334; 10 O. G. 41.
CEMENT ROCK, The [2,544], 8 Ben. 443.
CENTENNIAL BOARD OF FINANCE v. PATTERSON [2,545], 3 Wkly. Notes Cas. 307; 15 Alb. Law J. 106; 2 Cin. Law Bul. 7; 34 Leg. Int. 29; 24 Pittsb. Leg. J. 107.
CENTENNIAL CATALOGUE CO. v. PORTER [2,546], 2 Wkly. Notes Cas. 601; 3 Cent. Law J. 460.
CENTRAL BANK, In re [2,547], 6 N. B. R. 207.
Central Bank, Patrick v. [See 10,803.]
CENTRAL BANK v. TAYLOE [2,548], 2 Cranch, C. C. 427.
CENTRAL BANK OF BROOKLYN, In re [2,549], 8 Ben. 114; 12 N. B. R. 286; 7 Chi. Leg. News, 371; 1 N. Y. Wkly. Dig. 55.
CENTRAL OHIO RAILROAD v. THOMPSON [2,550], 2 Bond. 296.
CENTRAL PAC. R. CO. v. BENITY [2,551], 5 Sawy. 118; 10 Chi. Leg. News, 147; 5 Reporter, 229.
Central Pac. R. Co., Cody v. [See 2,940.]
CENTRAL PAC. R. CO. v. DYER [2,552], 1 Sawy. 641; 14 Int. Rev. Rec. 139; 6 Amer. Law Rev. 385.
Central Pac. R. Co., Huntington v. [See 6,911.]
Central Pac. R. Co., Quigley v. [See 11,510.]
Central Pac. R. Co., Ryan v. [See 12,185.]
Central Pac. R. Co., United States v. [See 14,763.]
Central Pac. R. Co., Vaughan v. [See 16,897.]
Central R. Co., Clymer v. [See 2,912.]
Central R. Co., Lehigh Coal, etc., Co. v. [See 8,213.]
Central R. Co. of New Jersey, Goodyear v. [See 5,563.]
Central R. Co. of New Jersey, Mackay v. [See 8,842.]
Central Railroad of Iowa, Alexander v. [See 166.]
Central Railroad of Iowa, Farmers' Loan & Trust Co. v. [See 4,663, 4,664.]
Central Railway, Curtis v. [See 3,501.]
Central Vermont R. Co., Wells v. [See 17,390.]
CENTRE v. KEENE [2,553], 2 Cranch, C. C. 198.
CENTURION, The [2,554], 1 Ware (477) 490.
C. E. Page, The. [See 13,540.]
CERES, The [12,881], 7 Wkly. Notes Cas. 576; 10 Cent. Law J. 113.
Ceres, The. [See 12,881.]
Ceres, The, Simpson v. [See 12,881.]
CERF, In re [2,556], 11 N. B. R. 143; 7 Chi. Leg. News, 79.
CERRO GORDO, The [2,557], 6 Adm. Rec. 537.
Certain Casks of Glassware, United States v. [See 14,764.]
Certain Cigars, United States v. [See 14,765.]
CERTAIN DISTILLED SPIRITS [3,923], 2 Ben. 486.
Certain Goods, Johnson v. [See 7,377.]
Certain Hogsheads of Molasses, United States v. [See 14,766.]
CERTAIN LOGS OF MAHOGANY [2,559], 2 Sumn. 589.
Certain Piece of Land, United States v. [See 14,767.]
Certain Quantity of Wheat, Strong v. [See 13,541.]
Certain Slaves, Almeida v. [See 255.]
CERVANTES v. UNITED STATES [2,560], 3 Amer. Law Reg. 745.
Cervantes, United States v. [See 14,768.]
C. F. ACKERMAN, The [2,561].
C. F. ACKERMAN, The [2,562], 8 Ben. 496.
C. F. ACKERMAN, The [2,563], 9 Ben. 179.
C. F. ACKERMAN, The [2,564], 14 Blatchf. 360.
C. F. STARIN, The [2,565], 10 Ben. 494.
Chabolla, Le Roy v. [See 8,267.]
CHABOLLA v. UNITED STATES [2,566], Hoff. Land Cas. 130.
CHABOT v. AMERICAN BUTTON-HOLE & OVER-SEAMING CO. [2,567], 6 Fish. Pat. Cas. 71; 9 Phila. 378; 5 Chi. Leg. News, 75; 29 Leg. Int. 348; 16 Int. Rev. Rec. 164; 7 Amer. Law Rev. 382; 4 Leg. Gaz. 345.
Chaboya, United States v. [See 14,769, 14,770.]
CHACON v. EIGHTY-NINE BALES OF COCHINEAL [2,568], 1 Brock. 478.
Chacon, Eldredge v. [See 4,329.]
CHADWICK, In re [2,569], 5 Law Rep. 457.
CHADWICK, In re [2,570], 1 Lowell, 439; 11 Int. Rev. Rec. 126, 133.
CHADWICK v. ADELAIDE, The [2,571], Hoff. Op. 459.
CHAFFEE v. COGGSHALL [2,571a], 6 Leg. Gaz. 342.
Chaffee, Goodyear v. [See 5,564.]
Chaffee, May v. [See 9,332.]
Chaffee v. N. E. Car-Spring Co. [See 3,685-3,687.]
Chaffee, United States v. [See 14,771-14,774.]
CHAFFIN v. ST. LOUIS [2,572], 4 Dill. 19.
CHAFFIN v. ST. LOUIS [2,573], 4 Dill. 24; 2 Cin. Law Bul. 237; 5 Cent. Law J. 284; 25 Pittsb. Leg. J. 34; 23 Int. Rev. Rec. 330.
Chaflin, United States v. [See 14,775.]
Chain and Anchor, Crowell v. [See 3,443.]
Chain Cable, United States v. [See 14,776.]
Chalmers v. Howell. [See 9,302, 9,303.]
CHALMERS SPENCE PAT. NON-CONDUCTOR CO. v. CRAMP [2,573a], 5 Ban. & A. 66.
Chalmette, The, The Bolivar v. [See 1,609-1,611.]
Chaloner, United States v. [See 14,777.]
CHAMBERLAIN, In re [2,574], 3 N. B. R. 710 (Quarto, 173).
CHAMBERLAIN v. CHANDLER [2,575], 3 Mason, 242.
CHAMBERLAIN v. ECKERT [2,576], 2 Biss. 124.
CHAMBERLAIN v. ECKERT [2,577], 2 Biss. 126.
Chamberlain, Emigh v. [See 4,447.]
Chamberlain, Gladstone v. [See 5,469-5,471.]
Chamberlain, Lyman Ventilating & Refrigerator Co. v. [See 8.631.]
Chamberlain v. The McDonald. [See 11,238.]
CHAMBERLAIN v. ST. PAUL & S. C. R. CO. [2,578], 1 Cent. Law J. 53.
CHAMBERLAIN v. STANTON [2,579], 2 Woods, 164.
Chamberlain v. The Thomas Sparks. [See 10,115.]

[Federal Case numbers are given in brackets.]

Chamberlain, United States v. [See 14,778.]
Chamberlain, Walden v. [See 17,055.]
Chamberlain, Ward v. [See 17,151, 17,152.]
Chamberlain, The Olive. [See 10,491.]
Chamberlaines, In re. [See 4,855.]
CHAMBERLIN, In re [2,580], 9 Ben. 149; 17 N. B. R. 49.
Chamberlin, Dow v. [See 4,037.]
CHAMBERS, In re [2,581], 1 MacA. Pat. Cas. 641.
Chambers, Evans v. [See 4,555.]
CHAMBERS v. HENRY KNEELAND, The [2,581a], 4 Betts, D. C. MS. 17.
Chambers, Marvin v. [See 9,179.]
CHAMBERS v. SMITH [2,582], 5 Fish. Pat. Cas. 12; 7 Phila. 575; 27 Leg. Int. 196; 2 Leg. Gaz. 185.
CHAMPION, The [2,582a], N. Y. Even. Post, March 5, 1857.
CHAMPION, The [2,583], 1 Brown's Adm. 520; 1 Amer. Law T. Rep. (N. S.) 493; 7 Chi. Leg. News, 1.
CHAMPION, The [2,584], 10 Chi. Leg. News, 10; 23 Int. Rev. Rec. 355, 359; 2 Cin. Law Bul. 226, 271.
Champion, The, Hurley v. [See 6,919a.]
CHAMPION v. ROSS [2,585], 4 Wash. C. C. 325.
Champion, United States v. [See 14,779.]
Champlin, Sands v. [See 12,303.]
CHAMPLIN v. TILLEY [2,586], 3 Day (Conn.) 303; 1 Brunner, Col. Cas. 71.
CHAMPNEY v. BANCROFT [2,587], 1 Story, 423.
Chana, United States v. [See 14,780.]
CHANCE v. UNION MUT. LIFE INS. CO. [2,588].
CHANCELLOR, The [2,589], 4 Ben. 153.
CHANDLER, In re [2,590], 13 Amer. Law Reg. (N. S.) 310; 9 N. B. R. 514; 6 Chi. Leg. News, 229.
CHANDLER, In re [2,591], 1 Lowell, 478; 4 N. B. R. 213 (Quarto, 66).
CHANDLER v. ANNIE BUCKMAN, The [2,591a], 21 Betts, D. C. MS. 112.
Chandler, Brown v. [See 1,998.]
CHANDLER v. BYRD [2,591b], Hempst. 222.
Chandler, Chamberlain v. [See 2,575.]
CHANDLER v. DODGE COUNTY [2,592].
CHANDLER v. LADD [2,593], 1 McA. Pat. Cas. 493.
Chandler, Mankin v. [See 9,030.]
Chandler, Pritchard v. [See 11,436.]
CHANDLER v. SIDDLE [2,594], 3 Dill. 477; 10 N. B. R. 236; 1 Cent. Law J. 341.
CHANEY v. BASKET [2,595], 6 Reporter, 769.
CHANNING v. REILEY [2,596], 4 Cranch, C. C. 528.
Chapel, United States v. [See 14,781.]
Chapels, United States v. [See 14,782.]
CHAPIN v. E. BRAINARD, The [2,597], N. Y. Times, July 1, 1854, p. 3.
CHAPIN v. HATTIE ROSS, The [2,598].
CHAPIN v. NORTON [2,599], 6 McLean, 500.
CHAPIN v. SIGER [2,600], 4 McLean, 378.
CHAPMAN, In re [2,601], 9 Ben. 311.
CHAPMAN, The [2,602], 4 Sawy. 501.
CHAPMAN v. BARGER [2,603], 4 Dill. 557.
Chapman, Butts v. [See 2,257.]
Chapman, Crump v. [See 3,455.]
Chapman, Ellicott v. [See 4,385.]
Chapman v. The Empire State. [See 4,473-4,475.]
CHAPMAN v. FENWICK [2,604], 4 Cranch, C. C. 431.
Chapman, Jaycox v. [See 7,243.]
Chapman, Johnson v. [See 7,378.]
CHAPMAN v. LUCERNE, The [2,605], 39 Hunt. Mer. Mag. 332.
Chapman, Petterson v. [See 11,042.]
Chapman, Read v. [See 11,605.]
CHAPMAN v. REPUBLIC LIFE INS. CO. [2,606], 6 Biss. 238; 4 Ins. Law J. 511; 7 Chi. Leg. News, 186; 5 Bigelow, Ins. Cas. 110.
CHAPMAN v. SCHOOL DISTRICT [2,607], Deady, 108.
CHAPMAN v. SCHOOL DISTRICT [2,608], Deady, 139.
CHAPMAN v. SCOTT [2,609], 1 Cranch, C. C. 302.
Chapman, Thornton v. [See 13,997.]
CHAPMAN v. TOY LONG [2,610], 4 Sawy. 28; 1 Morr. Min. Rep. 497.
Chapman, United States v. [See 14,783-14,785.]
Chapman, Wells v. [See 17,391.]
Chapman, Young v. [See 18,154.]
CHAPON v. SMYTHE [2,611], 11 Blatchf. 120.
CHAPPEL, In re [2,612], 4 N. B. R. 540 (Quarto, 176).
Chappel v. The John E. Clayton. [See 7,338.]
CHAPPELLE v. OLNEY [2,613], 1 Sawy. 401; 4 Amer. Law T. Rep. U. S. Cts. 30.
CHARD v. KATE L. BRUCE, The [2,614], N. Y. Times, April 1, 1863.
CHARGE TO GRAND JURY [18,246], 5 Blatchf. 558.
CHARGE TO GRAND JURY [18,247], 6 Blatchf. 555.
CHARGE TO GRAND JURY [18,248], Chase, 263.
CHARGE TO GRAND JURY [18,249], 1 Curt. 509; 2 Liv. Law Mag. 427.
CHARGE TO GRAND JURY [18,250], 2 Curt. 637.
CHARGE TO GRAND JURY [18,251], 1 Deady, 657.
CHARGE TO GRAND JURY [18,252], 2 Hughes, 518.
CHARGE TO GRAND JURY [18,253], 1 Newb. 323.
CHARGE TO GRAND JURY [18,254], 2 Sawy. 663.
CHARGE TO GRAND JURY [18,255], 2 Sawy. 667.
CHARGE TO GRAND JURY [18,256], 2 Spr. 279.
CHARGE TO GRAND JURY [18,257], Taney, 615.
CHARGE TO GRAND JURY [18,258], 1 Hughes, 541.
CHARGE TO GRAND JURY [18,259], 3 Hughes, 576.
CHARGE TO GRAND JURY [18,260], 21 Int. Rev. Rec. 173.
CHARGE TO GRAND JURY [18,261], 1 Blatchf. 635.
CHARGE TO GRAND JURY [18,262], 2 Blatchf. 559.
CHARGE TO GRAND JURY [18,263], 1 Spr. 593.
CHARGE TO GRAND JURY [18,264], 5 Blatchf. 556.
CHARGE TO GRAND JURY [18,265], 2 McLean, 1.
CHARGE TO GRAND JURY [18,266], 5 McLean, 249.
CHARGE TO GRAND JURY [18,267], 5 McLean, 306.
CHARGE TO GRAND JURY [18,268], 4 Wkly. Law Gaz. 214.
CHARGE TO GRAND JURY [18,269], 2 Curt. 630.
CHARGE TO GRAND JURY [18,269a], 3 Phila. 527.
CHARGE TO GRAND JURY [18,270], 4 Blatchf. 518; 23 Law Rep. 597.
CHARGE TO GRAND JURY [18,271], 5 Blatchf. 549.
CHARGE TO GRAND JURY [18,272], 1 Bond, 609.
CHARGE TO GRAND JURY [18,273], 1 Spr. 602; 23 Law Rep. 705.
CHARGE TO GRAND JURY [18,274], 2 Spr. 292.
CHARGE TO GRAND JURY [18,275], 1 Story, 614.
CHARGE TO GRAND JURY [18,276], 2 Wall. Jr. 134; 4 Amer. Law J. (N. S.) 83; 5 Pa. Law J. R. 55; 9 West Law J. 163.
CHARGE TO GRAND JURY [18,277], 2 Spr. 285.
Charles, The, Evans v. [See 4,556.]
CHARLES v. MATLOCK [2,615], 3 Cranch, C. C. 230.
Charles, Mutual Benefit Life Ins. Co. v. [See 9,975.]
Charles, United States v. [See 14,786.]
Charles Avery, The, Spencer v. [See 13,232.]
CHARLES F. PERRY, The [2,616], 1 Lowell, 475.
CHARLES HENRY, The [2,617], 1 Ben. 8.
Charles Mears, The, Parmlee v. [See 10,766.]
CHARLES MORGAN, The [2,618], 2 Flip. 274; 18 Amer. Law Reg. (N. S.) 624.
Charles Morgan, The, Moore v. [See 9,754.]
Charles Pitman, The, Carrigan v. [See 2,444.]
CHARLES R. STONE, The [2,619].
CHARLES R. STONE, The [2,620], 9 Ben. 182.
Charleston, Gilchrist v. [See 5,420.]
Charleston Gaslight Co., Perdicaris v. [See 10,974.]
Charlestown, Marsh v. [See 9,113.]
CHARLOTTE, The [2,621], Blatchf. Pr. Cas. 623.
Charlotte Minerva, The, Eneas v. [See 4,483.]
CHARLOTTE RAAB, The [2,622], Brown's Adm. 453.
Charlottesville Nat. Bank, Johnston v. [See 7,425.]
Charlottesville Nat. Bank, Seligman v. [See 12,642.]
Charlotte Vanderbilt, The, Squires v. [See 13,271.]
CHARTER OAK FIRE INS. CO. v. STAR INS. CO. [2,623], 6 Blatchf. 208.
Charter Oak Life Ins. Co., McGowan v. [See 8,807.]
CHASE, In re [2,624], 22 Vt. 649.
Chase, The. [See 2,332-2,335.]
Chase v. The Alice Tainter. [See 194-196.]
Chase, Bowen v. [See 1,720.]
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Chase, Clarke v. [See 2,845.]
CHASE v. CRARY [2,626], 24 How. Pr. 159.
Chase, Lee v. [See 8,185.]
Chase, Matthew v. [See 9,283a.]
CHASE v. SABIN [2,627], Holmes, 395; 1 Ban. & A. 399; 6 O. G. 728.
CHASE v. SANBORN [2,628], 4 Cliff. 306; 6 O. G. 932.

[Federal Case numbers are given in brackets.]

CHASE v. SMITH [2,629], 4 Cranch, C. C. 90.
Chase, Smith v. [See 13,022, 13,023.]
Chase, United States v. [See 14,787, 14,788.]
Chase v. Vermont Val. R. Co. [See 11,264, 11,265.]
CHASE v. WALKER [2630], 3 Fish. Pat. Cas. 120.
CHASE v. WESSON [2,631], 1 Holmes, 274; 6 Fish. Pat. Cas. 517; 4 O. G. 476.
Chase, The M. M. [See 9,684.]
Chase, The R. P. [See 12,099.]
Chaskel, New York Rubber Co. v. [See 10,215.]
Chassell, United States v. [See 14,789.]
Chasteney, Waldron v. [See 17,058.]
CHATFIELD, Ex parte [2,631a], 3 App. Com'r, Pat. 221.
CHATFIELD v. WOLGA, The [2,632], 3 Law Rep. 387.
Chauncey v. The Mary Belle Roberts. [See 13,240.]
Cheek, The. [See 7,002-7,005.]
Cheek, Waggener v. [See 17,035.
Cheesebrough, Neafie v. [See 10,064.]
Cheesebrough, The A. [See 25.]
Cheeseman, Fearing v. [See 4,710.]
CHEESEMAN, The, v. TWO FERRYBOATS [2,633], 2 Bond, 363.
Cheeseman, United States v. [See 14,790.]
CHEEVER v. SHEDD [2,634], 13 Blatchf. 258.
Cheeves, The Langdon. [See 8,063, 8,064.]
Chelsea, The Williamsburg Ferry Co. v. [See 17,-747.]
CHEMICAL NAT. BANK v. BAILEY [2,635], 12 Blatchf. 480; 1 Thomp. Nat. Bank Cas. 260; 21 Int. Rev. Rec. 109.
Chenault, Dorsey v. [See 4,013.]
Chenault, United States v. [See 14,791.]
CHENEY, In re [2,636], 5 Law Rep. 19.
CHENEY, In re [2,637], 10 N. B. R. 16.
Cheney, Knight v. [See 7,883.]
Cheney, The W. E. [See 17,344.]
Chenoweth, United States v. [See 14,792.]
CHEONGWO v. JONES [2,638], 3 Wash. C. C. 359.
CHEROKEE, The [2,639], 12 N. Y. Leg. Obs. 33.
CHEROKEE, The [2,640], 2 Spr. 235; 3 Amer. Law Reg. (N. S.) 289.
CHERRY v. SWEENY [2,641], 1 Cranch, C. C. 530.
Cherub, The Rich v. [See 11,756.]
CHESAPEAKE, The [2,642], 1 Ben. 23.
CHESAPEAKE, The [2,643], 5 Blatchf. 411.
Chesapeake Ins. Co., Buck v. [See 2,078.]
CHESAPEAKE & O. CANAL CO. v. BARCROFT [2,644], 4 Cranch, C. C. 659.
CHESAPEAKE & O. CANAL CO. v. BINNEY [2,-645], 4 Cranch, C. C. 68.
CHESAPEAKE & O. CANAL CO. v. BRADLEY [2,-646], 4 Cranch, C. C. 193.
Chesapeake & O. Canal Co., Cameron v. [See 2,341.]
Chesapeake & O. Canal Co., Carothers v. [See 2,-425.]
CHESAPEAKE & O. CANAL CO v. DULANY [2,-647], 4 Cranch, C. C. 85.
Chesapeake & O. Canal Co., Holmead v. [See 6,-626.]
CHESAPEAKE & O. CANAL CO. v. JOHNSON [2,-648], 5 Cranch, C. C. 643.
CHESAPEAKE & O. CANAL CO. v. KEY [2,649], 3 Cranch, C. C. 599.
CHESAPEAKE & O. CANAL CO. v. MASON [2,650], 4 Cranch, C. C. 123.
CHESAPEAKE & O. CANAL CO. v. POOR [2,651], 3 Cranch, C. C. 598.
CHESAPEAKE & O. CANAL CO. v. ROBERTSON [2,652], 4 Cranch, C. C. 291.
Chesapeake & O. Canal Co., Smith v. [See 13,024.]
CHESAPEAKE & O. CANAL CO v. UNION BANK [2,653], 4 Cranch, C. C. 75.
CHESAPEAKE & O. CANAL CO. v. UNION BANK [2,654], 5 Cranch, C. C. 509.
Chesapeake & O. R. Co., Richards v. [See 11,771.]
CHESHIRE, The [2,655], Blatchf. Pr. Cas. 151.
CHESHIRE, The [2,656], Blatchf. Pr. Cas. 165.
CHESHIRE, The [2,657], Blatchf. Pr. Cas. 643.
CHESHIRE, The [2,658], 2 Spr. 28.
CHESHIRE PROVIDENT INST. v. JOHNSTON [2,659].
Chesney, Wallis v. [See 17,110.]
Chesnut, Vanhorn v. [See 16,856.]
CHESTER v. BENNER [2,660], 2 Lowell, 76.
CHESTER v. CURTIS [2,661], 1 Blatchf. 499.
Chester, Riggs v. [See 11,823.]
CHESTER v. WELLFORD [2,662], 2 Flip. 347.
Chetwood, Frank v. [See 5,051.]
Chevallie, Gallego v. [See 5,200.]
Cheves, The Langdon. [See 8,063, 8,064.]
CHEW v. BAKER [2,663], 4 Cranch, C. C. 696.
Chew, Decatur v. [See 3,721.]
Chew, Georgetown v. [See 5,345.]
C. H. Frost, The, Roosevelt v. [See 12,033.]
Chicago, Brady v. [See 1,796.]
Chicago, Clark v. [See 2,817.]
Chicago, Collins v. [See 3,011.]
CHICAGO v. GAGE [2,664], 6 Biss. 467; 1 N. Y. Wkly. Dig. 331; 9 West. Jur. 721; 8 Chi. Leg. News, 49; 21 Int. Rev. Rec. 374.
Chicago, Garrison v. [See 5,255.]
Chicago, Goodrich v. [See 5,542.]
Chicago, Lombard v. [See 8,470.]
Chicago, Nicholson v. [See 10,248.]
Chicago, Northern Transp. Co. v. [See 10,324.]
Chicago, Scott v. [See 12,526.]
Chicago, Stow v. [See 13,512.]
Chicago, Union Nat. Bank v. [See 14,374.]
Chicago, A. & St. L. R. Co., Denniston v. [See 3,-800.]
Chicago & A. R. Co., Barley v. [See 997.]
Chicago & A. R. Co., Illinois v. [See 7,006.]
Chicago & A. R. Co., Jessup v. [See 7,300.]
CHICAGO & N. W. R. CO. v. CHICAGO & P. R. CO. [2,665], 6 Biss. 219; 7 Chi. Leg. News, 57; 9 Amer. Law Rev. 362; 22 Pittsb. Leg. J. 74; 6 Leg. Gaz. 386.
Chicago & N. W. Ry. Co., Menzell v. [See 9,429.]
Chicago & N. W. Ry. Co., Piek v. [See 11,138.]
Chicago & N. W. R. Co., Sayles v. [See 12,414, 12,-415.]
Chicago & N. W. R. Co., Whiton v. [See 17,597.]
Chicago & P. R. Co., Chicago & N. W. R. Co. v. [See 2,665.]
Chicago & S. R. Co., Smythe v. [See 13,135.]
Chicago & S. W. Ry. Co., Dows v. [See 4,048.]
CHICAGO, B. & Q. R. CO. v. ATTORNEY GENERAL [2,666]; 9 West. Jur. 347; 2 Cent. Law J. 335.
Chicago, B. & Q. R. Co., Emigh v. [See 4,448.]
Chicago, B. & Q. R. Co., Finlayson v. [See 4,793.]
Chicago, B. & Q. R. Co., Hazard v. [See 6,275, 6,-276.]
CHICAGO, B. & Q. R. CO. v. OTOE COUNTY [2,-667], 1 Dill. 338.
CHICAGO, B. & Q. R. CO. v. PAGE [2,668], 1 Biss. 461.
Chicago, B. & Q. R. Co., Sayles v. [See 12,416.]
Chicago, B. & Q. Ry. Co., Seymour v. [See 12,685.]
Chicago, D. & M. R. Co., Burnham v. [See 2,174.]
Chicago, D. & V. R. Co., Osgood v. [See 10,604.]
CHICAGO FRUIT-HOUSE CO. v. BUSCH [2,669], 2 Biss. 472; 4 Fish. Pat. Cas. 395; 3 Chi. Leg. News, 201; 3 Leg. Gaz. 107.
Chicago, I. & N. R. Co., Gray v. [See 5,713.]
Chicago, M. & St. P. R. Co., Barnes v. [See 1,016.]
Chicago Mfg. Co., Dane v. [See 3,557.]
Chicago, P. etc., R. Co., Farmers' Loan & Trust Co. v. [See 4,665.]
Chicago, R. I. & P. R. Co., Atlantic & P. Tel. Co. v. [See 632.]
Chicago, R. I. & P. R. Co., Hatch v. [See 6,204.]
CHICAGO, ST. L. & N. O. R. CO. v. McCOMB [2,670], 17 Blatchf. 371; 9 Reporter, 569.
CHICKERING v. HATCH [2,671], 1 Story, 516.
CHICKERING v. HATCH [2,672], 3 Sumn. 474.
CHILD v. ADAMS [2,673], 1 Fish. Pat. Cas. 189; 3 Wall. Jr. 20; 12 Leg. Int. 4.
CHILD v. BOSTON & F. IRON WORKS [2,674].
CHILD v. BOSTON & F. IRON WORKS [2,675], Holmes, 303; 6 Fish. Pat. Cas. 606; 5 O. G. 61.
Child, Davis v. [See 3,628.]
Child, Filley v. [See 4,787.]
CHILDE HAROLD, The [2,676], Olc. 275.
CHILDS v. CORP [2,677], 1 Paine, 285.
CHILDS v. GLADDING [2,678], 11 Amer. Law Reg. (N. S.) 386; 14 Int. Rev. Rec. 173.
CHILDS v. GLADDING [2,678].
CHILDS v. LENIG [2,680], 1 Wall. Jr. 305.
Childs, Samuel v. [See 12,287.]
CHILDS v. SHOEMAKER [2,681], 1 Wash. C. C. 494.

[Federal Case numbers are given in brackets.]

CHILDS v. SOMERSET & K. R. CO. [2,682], 20 Law Rep. 561; Brunner, Col. Cas. 593.
Childs, Wilson v. [See 17,796.]
Childs, The Minnie R. [See 9,639, 9,640.]
Chillicothe Branch Bank, Lee v. [See 8,186.]
CHILLICOTHE BRANCH OF STATE BANK OF OHIO v. FOX [2,683], 3 Blatchf. 431.
Chillicothe Branch of State Bank, Lee v. [See 8,187.]
China, The, Walsh v. [See 17,114.]
CHINN v. DARNELL [2,684], 4 McLean, 440.
CHINN v. HAMILTON [2,685], Hempst. 438.
Chipman v. Wentworth. [See 4,623.]
CHISHOLM v. MONTGOMERY [2,686], 2 Woods, 584.
CHISOLM, In re [2,687], 8 Ben. 242.
CHITTENDEN v. DARDEN [2,688], 2 Woods, 437.
C. H. NORTHAM, The [2,689], 7 Ben. 249.
C. H. NORTHAM, The [2,690], 13 Blatchf. 31.
C. H. Northram, The, Lonan v. [See 8,473.]
Choat, Rambler v. [See 11,542.]
CHOATE v. CROWNINSHIELD [2,691], 3 Cliff. 184.
CHOATE v. MEREDITH [2,692], Holmes, 500.
CHOMQUA v. MASON [2,693], 1 Gall. 342.
CHOTEAU v. RICE [2,694].
CHOTEAU v. RICE [2,695].
Choteau, United States v. [See 14,793.]
Chouteau, Ambler v. [See 272.]
CHOUTEAU v. REDFIELD [2,696].
CHRIST v. BAKER [2,697], 17 Leg. Int. 332.
CHRIST v. MAXWELL [2,698], 3 Blatchf. 129.
CHRIST v. SCHELL [2,699], 17 Leg. Int. 350.
Christian, American Middlings Purifier Co. v. [See 307.]
Christiana Case. [See 16,705.]
Christiana Treason Case. [See 15,299.]
Christianson, Gould v. [See 5,636.]
CHRISTIE v. BUCKEYE INS. CO. [2,700], 5 Amer. Law T. 42; 6 Amer. Law Rev. 765.
CHRISTINA, The [17,059], Deady, 49.
Christina, The, Waling v. [See 17,059.]
CHRISTLEY, In re [2,702], 6 Biss. 154; 10 N. B. R. 268.
CHRISTMAN v. HAYNES [2,703], 8 N. B. R. 528.
CHRISTMAN v. RUMSEY [2,704], 17 Blatchf. 148; 58 How. Pr. 114; 17 O. G. 903; 4 Ban. & A. 506.
CHRISTOPHER COLUMBUS, The [2,705], 8 Ben. 239.
CHRISTOPHER COLUMBUS, The [2,706], 8 Ben. 510.
CHRISTOPHER NORTH, The [2,707], 6 Biss. 414; 7 Chi. Leg. News, 387.
CHRISTY v. CUMMINS [2,708], 3 McLean, 386.
Christy, Howard v. [See 6,754.]
Chubb, Causin v. [See 2,527.]
CHUBB v. SEVEN THOUSAND EIGHT HUNDRED BUSHELS OF OATS [2,709], 26 Law Rep. 492.
CHUCK v. MESRITZ [2,710], 2 Woods, 204.
Church, Fisk v. [See 4,826.]
CHURCH v. H. L. SCANTON, The [2,710a], Betts, Scr. Book, 534.
CHURCH v. MARINE INS. CO. [2,711], 1 Mason, 341.
CHURCH v. SEVENTEEN HUNDRED AND SIXTY DOLLARS [2,713], 4 Adm. Rec. 647.
CHURCH v. SEVENTEEN HUNDRED AND TWELVE DOLLARS [2,713], 4 Adm. Rec. 647.
CHURCH v. SHELTON [2,714], 2 Curt. 271.
CHURCHILL v. BRITISH AMERICA, The [2,715], 9 Ben. 516.
CHUSAN, The [2,716], 1 Spr. 39.
CHUSAN, The [2,717], 2 Story, 455.
Ciccariello, In re. [See 3,747.]
CIMBUS, The [2,718], 5 Adm. Rec. 30.
Cincinnati, Rogers v. [See 12,008.]
Cincinnati & C. A. L. R. Co., Pullan v. [See 11,461, 11,462.]
Cincinnati Coal Co., Jones v. [See 7,458.]
CINCINNATI ENQUIRER, In re [2,719], 4 Cin. Law Bul. 904.
Cincinnati Enquirer, Gibson v. [See 5,391, 5,392.]
Cincinnati Gas-Light & Coke Co., Stilwell & Bierce Mfg. Co. v. [See 13,453.]
Cincinnati, H. & D. R. Co., Smith v. [See 13,025.]
Cincinnati, Peru & Chicago R. Co., Dunham v. [See 4,148.]
Cincinnati, W. & Z. R. Co., Thompson v. [See 13,950.]
Cinque, United States v. [See 14,794.]
CIRCASSIAN, The [2,727], 19 Leg. Int. 220.
Circassian, The. [See 2,727.]
CIRCASSIAN, The [2,720a], 12 Amer. Law Reg. (N. S.) 291; 5 Amer. Law T. Rep. U. S. Cts. 482; 5 Chi. Leg. News, 146; 6 Alb. Law J. 401; 7 Amer. Law Rev. 575.
CIRCASSIAN, The [2,721], 1 Ben. 128.
CIRCASSIAN, The [2,722], 1 Ben. 209.
CIRCASSIAN, The [2,723], 2 Ben. 171.
CIRCASSIAN, The [2,724], 3 Ben. 398; 3 Amer. Law T. Rep. U. S. Cts. 4.
CIRCASSIAN, The [2,725], 6 Ben. 512.
CIRCASSIAN, The [2,726], 11 Blatchf. 472.
CIRCASSIAN, The [2,727], 19 Leg. Int. 220.
CIRCUIT COURT, In re [2,728], 1 Dill. 1.
Cisco, Victor v. [See 16,934.]
Cisna, Curts v. [See 3,507.]
Cisna, United States v. [See 14,795.]
CISSEL v. McDONALD [2,729], 16 Blatchf. 150; 25 Int. Rev. Rec. 138; 7 Reporter, 553; 57 How. Pr. 175.
Citizen, The, Bibbins v. [See 1,384a.]
Citizens' Sav. Bank, Watson v. [See 17,279.]
CITIZENS' BANK v. NANTUCKET STEAMBOAT CO. [2,730], 2 Story, 16.
CITIZENS' BANK v. OBER [2,731], 1 Woods, 80; 13 N. B. R. 328.
Citizens' Bank v. Ober. [See 18,139.]
Citizens' Bank of Louisiana, Case v. [See 2,489.]
Citizens' Bank of Topeka, First Nat. Bank of Manhattan v. [See 4,802.]
CITIZENS' NAT. BANK v. CASS [2,732], 18 N. B. R. 279; 6 Wkly. Notes Cas. 371; 6 Reporter, 579; 19 Alb. Law J. 119; 26 Pittsb. Leg. J. 25.
CITIZENS' NAT. BANK v. LEMING [2,733], 8 Int. Rev. Rec. 132.
Citizens of Cincinnati, In re. [See 13,628.]
CITIZENS' SAV. ASS'N v. TOPEKA, City of [2,734], 3 Dill. 376.
CITIZENS' SAV. BANK, In re [2,735], 9 N. B. R. 152.
City Bank, Jaudon v. [See 7,230.]
City Bank, United States v. [See 14,796.]
City Bank, Wilson v. [See 17,797.]
CITY BANK OF COLUMBUS v. BEACH [2,736], 1 Blatchf. 425.
CITY BANK OF COLUMBUS v. BEACH [2,737], 1 Blatchf. 438.
CITY BANK OF COLUMBUS v. FARMERS' & PLANTERS' BANK OF BALTIMORE [2,738], Taney, 119.
CITY BANK OF NEW YORK v. SKELTON [2,739], 2 Blatchf. 14.
CITY BANK OF NEW YORK v. SKELTON [2,740], 2 Blatchf. 26.
City Bank of New York v. Yonge. [See 2,739.]
CITY BANK OF RACINE v. BABCOCK [2,741], Holmes, 180.
City Bank of St. Paul, Vanderhoof v. [See 16,842.]
CITY BANK OF SAVINGS, LOAN & DISCOUNT, In re [2,742], 6 N. B. R. 71; 4 Chi. Leg. News, 81; 6 West. Jur. 65.
City Fire Ins. Co., Semmes v. [See 12,651.]
City Ins. Co., Roth v. [See 12,084.]
City Ins. Co., Trott v. [See 14,189.]
CITY NATIONAL BANK v. PADUCAH [2,743], 2 Flip. 61; 5 Cent. Law J. 347; 1 Thomp. Nat. Bank Cas. 300.
CITY OF BALTIMORE, The [2,744], 5 Ben. 474; 5 Amer. Law T. 25.
CITY OF BRUSSELS, The [2,745], 6 Ben. 370.
City of Dublin, The, Rowe v. [See 12,094.]
CITY OF FREMONT, The [2,746], 2 Biss. 415; 13 Int. Rev. Rec. 149; 3 Chi. Leg. News, 233.
CITY OF GUATEMALA, The [2,747], 7 Ben. 521.
CITY OF HARTFORD, The [2,748], 4 Ben. 568.
CITY OF HARTFORD, The [2,749], 7 Ben. 350.
CITY OF HARTFORD, The [2,750], 7 Ben. 510.
CITY OF HARTFORD, The [2,751], 10 Ben. 150.
CITY OF HARTFORD, The [2,752], 11 Blatchf. 72; 17 Int. Rev. Rec. 125.
CITY OF HARTFORD, The [2,753], 11 Blatchf. 290.
CITY OF HOUSTON, The [2,754].
CITY OF HOUSTON, The [2,755].
CITY OF MEXICO, The [2,756], 7 Ben. 31.
City of Mexico, The, United States v. [See 14,797.]
CITY OF NEW BEDFORD, The [2,757], 10 Ben. 17.

[Federal Case numbers are given in brackets.]

CITY OF NEW YORK, The [2,758], 3 Blatchf. 187; 12 N. Y. Leg. Obs. 300.
CITY OF NEW YORK, The [2,759], 8 Blatchf. 194.
City of New York, The, Baker v. [See 765.]
CITY OF NORWICH, The [2,760], 3 Ben. 575.
CITY OF NORWICH, The [2,761], 4 Ben. 271.
CITY OF NORWICH, The [2,762], 6 Ben. 330.
CITY OF NORWICH, The [2,763], 8 Ben. 206.
City of Norwich, The, Place v. [See 11,202.]
CITY OF PANAMA, The [2,764], 5 Sawy. 63; 1 San Fran. Law J. 329.
CITY OF PARIS, The [2,765], 1 Ben. 174.
CITY OF PARIS, The [2,766], 1 Ben. 529.
CITY OF PARIS, The [2,767], 14 Blatchf. 531.
CITY OF PHILADELPHIA, The [1,152], 37 Hunt, Mer. Mag. 449.
CITY OF TROY, The [2,769], 9 Ben. 466.
CITY OF WASHINGTON, The [2,770], 6 Ben. 138.
CITY OF WASHINGTON, The [2,771], 11 Blatchf. 487.
CITY OF WASHINGTON, The [2,772], 13 Blatchf. 410.
CITY OF WASHINGTON, The [18,278].
City Schools, Bertonneau v. [See 1,361.]
Civil Cases, Fees and Costs in Civil Cases. [See 18,284.]
Civil Rights Act. [See 18,258-18,260.]
CIVIL RIGHTS ACT [18,260], 21 Int. Rev. Rec. 173.
CIVIL RIGHTS BILL, The [18,258], 1 Hughes, 541.
CIVILTA, The [2,775], 6 Ben. 309.
CLAFLIN v. ROBBINS [2,776], 1 Flip. 603; 4 Amer. Law Rec. 505.
Claflin, Ex parte. [See 17,387, 17,388.]
Claflin, Smith v. [See 13,026.]
CLAFLIN v. STEINBERG [2,777], 2 Dill. 324.
Claflin, Tobey v. [See 14,066.]
Claflin, United States v. [See 14,798, 14,799.]
Claflin v. Wells. [See 17,387, 17,388.]
CLAGETT v. GIBSON [2,778], 3 Cranch, C. C. 359.
Clagett, Quando v. [See 11,492.]
CLAGGETT'S CASE [2,779], 2 Cranch, C. C. 247.
CLAGGETT v. WARD [2,780], 5 Cranch, C. C. 669.
Claiborne, The, Jarvis v. [See 7,225.]
CLAIRMONT, In re [2,781], 1 Lowell, 230; 1 N. B. R. 276 (Quarto, 42); 1 Amer. Law T. Rep. Bankr. 6.
Clancey, United States v. [See 14,800.]
CLANCY, In re [2,782], 10 N. B. R. 215.
CLAP, In re [2,783], 2 Lowell, 168.
CLAP, In re [2,784], 2 Lowell, 226.
CLAPP, In re [2,785], 2 Lowell, 468; 14 N. B. R. 191.
Clapp, Forsyth v. [See 4,949.]
Clapp, Mason v. [See 9,233.]
Clapp, Wilson Packing Co. v. [See 17,850, 17,851.]
CLAPP v. YOUNG [2,786], 1 Spr. 40; 9 Hunt. Mer. Mag. 173; 6 Law Rep. 111.
CLARA, The [2,787], 13 Blatchf. 509.
CLARA, The [2,788], 5 Ben. 375.
CLARA, The [2,789], 5 Ben. 376, note.
CLARA v. EWELL [2,790], 2 Cranch, C. C. 208.
Clara Clarita, The. [See 2,787-2,789.]
CLARA DAVIDSON, The [2,791], 6 Wkly. Notes Cas. 356.
CLARA M. PORTER, The [2,792]; 3 Ware, 39; 18 Law Rep. 678.
CLARE v. NATIONAL CITY BANK [2,793], 14 Blatchf. 445.
Claremont Bank, Kittredge v. [See 7,858, 7,859.]
Clarence, The, Persee v. [See 11,016.]
Clarendon, Lewis v. [See 8,320.]
CLARION, The [2,794].
CLARION, The [2,795], 1 Brown's Adm. 74.
Clarissa Ann, The, Grigg v. [See 5,826.]
Clarita, The Clara. [See 2,787-2,789.]
CLARK, Case of [2,795a].
CLARK, Ex parte [2,796], 1 Spr. 69.
CLARK, In re [2,797], 2 Ben. 540.
CLARK, In re [2,798], 4 Ben. 88; 3 N. B. R. 491 (Quarto, 123); 3 N. B. R. 524 (Quarto, 130); 1 Amer. Law T. Rep. Bankr. 189.
CLARK, In re [2,799], 5 Ben. 389; 6 N. B. R. 197.
CLARK, In re [2,800], 2 Biss. 73; 3 N. B. R. 16 (Quarto, 3); 1 Chi. Leg. News, 113.
CLARK, In re [2,801], 9 Blatchf. 372; 6 N. B. R. 403.
CLARK, In re [2,802], 9 Blatchf. 379; 6 N. B. R. 410.
CLARK, In re [2,803], 43 How. Pr. 70.
CLARK, In re [1,418], 3 N. B. R. 487 (Quarto, 122); 1 Amer. Law T. Rep. Bankr. 186.
CLARK, In re [2,805], 4 N. B. R. 237 (Quarto, 70).
CLARK, In re [2,806], 5 N. B. R. 255.
CLARK, In re [2,807], 6 N. B. R. 194.
CLARK, In re [2,808], 6 N. B. R. 202.
CLARK, In re [2,809], 6 N. B. R. 204.
CLARK, In re [2,810], 9 N. B. R. 67.
CLARK, In re [2,811], 17 N. B. R. 554.
CLARK, In re [2,812], 19 N. B. R. 301; 36 Leg. Int. 414.
Clark, In re. [See 2,842-2,844.]
Clark, Abbe v. [See 5.]
CLARK v. BAILEY [2,813].
CLARK v. BAILEY [2,814], 12 Blatchf. 156; 19 Int. Rev. Rec. 207.
Clark, Beecher v. [See 1,223.]
CLARK v. BININGER [2,815].
Clark, Bowen v. [See 1,721.]
CLARK v. BURNHAM [2,816], 2 Story, 1.
CLARK v. CHICAGO [2,817], 4 Biss. 486.
Clark, Cory v. [See 3,260.]
Clark, Crabtree v. [See 3,314.]
CLARK v. CROPPER [2,817a], Hempst. 213.
Clark, Delaware & H. Canal Co. v. [See 3,764.]
CLARK v. DICK [2,818], 1 Dill. 8; 9 Amer. Law Reg. (N. S.) 739.
Clark, Doyle v. [See 4,053.]
CLARK v. ELLEN, The [2,819], 32 Hunt, Mer. Mag. 716.
CLARK v. FORD [2,820], 1 Hayw. & H. 6.
Clark v. Foss. [See 2,852.]
Clark, Garretson v. [See 5,248-5,250.]
CLARK v. GIBBONEY [2,821], 3 Hughes, 391.
CLARK v. GILBERT [2,822], 5 Blatchf. 330; 4 Int. Rev. Rec. 42.
Clark, Gong Bell Co. v. [See 5,529.]
Clark, Greenough v. [See 5;784.]
CLARK v. HACKETT [2,823], 1 Cliff. 269.
Clark, Hardy v. [See 6,058.]
CLARK v. ISELIN [2,824], 9 Blatchf. 196.
CLARK v. ISELIN [2,825], 10 Blatchf. 204; 9 N. B. R. 19; 21 Pittsb. Leg. J. 82.
CLARK v. KENNEDY MFG. CO. [2,826], 14 Blatchf. 79; 2 Ban. & A. 479; 11 O. G. 67.
Clark, Lanmon v. [See 8,071.]
CLARK v. LAWRENCE [2,827]; 21 Law Rep. 392; Brunner, Col. Cas. 637.
CLARK v. LEOPARD, The [2,828], 4 Law Rep. 153.
CLARK v. MANUFACTURERS' INS. CO [2,829], 2 Woodb. & M. 472.
CLARK v. MARX [2,830], 6 Ben. 275.
Clark, Nieto v. [See 10,261, 10,262.]
Clark, North v. [See 10,308.]
Clark, Packwood v. [See 10,656.]
CLARK v. PEASLEE [2,831], 1 Cliff. 545; 26 Law Rep. 609.
CLARK v. PHILLIPS [2,831a], Hempst. 294.
CLARK v. PROTECTION INS. CO. [2,832], 1 Story, 109.
Clark, Reed v. [See 11,643.]
CLARK v. SCOTT [2,833], 9 Blatchf. 301; 5 Fish. Pat. Cas. 245; 2 O. G. 4; Merw. Pat. Inv. 129.
CLARK v. SHELTON [2,833a], Hempst. 190.
CLARK v. SHELTON [2,833b], Hempst. 207.
CLARK v. SKILTON [2,834], 20 Int. Rev. Rec. 175.
Clark, Smith v. [See 13,027.]
CLARK v. SOHIER [2,835], 1 Woodb. & M. 368.
CLARK v. SPARHAWK [2,836], 2 Wkly. Notes Cas. 115.
Clark, Thomas v. [See 13,894.]
CLARK v. UNITED STATES [2,837], 2 Wash. C. C. 519.
CLARK v. UNITED STATES, [2,838], 3 Wash. C. C. 101.
Clark, United States v. [See 14,801-14,808.]
Clark, Wallace v. [See 17,098.]
CLARK v. WASHINGTON [2,839], 2 Cranch, C. C. 502.
CLARK v. WILSON [2,840].
CLARK v. WILSON [2,841], 3 Wash. C. C. 560.
Clark, The Juliet C. v. Welsh. [See 7,580.]
Clark, The W. H. [See 17,482.]
CLARKE, In re [2,842], 2 Ben. 72; Bankr. Reg. Supp. 41; 1 N. B. R. 188; 6 Int. Rev. Rec. 206.
CLARKE, In re [2,843], 2 Hughes, 405; 10 N. B. R. 21.

[Federal Case numbers are given in brackets.]

CLARKE, In re [2,844], 2 N. B. R. 110 (Quarto, 44).
Clarke, Bank of Alexandria v. [See 844.]
Clarke, Boone v. [See 1,641.]
Clarke, Case v. [See 2,490.]
CLARKE v. CHASE [2,845], 21 Law Rep. 34; 1 Brunner, Col. Cas. 638.
CLARKE v. CLARKE [18,279], 2 Hayw. & H. 114.
CLARKE v. CLARKE [18,280].
CLARKE v. CLARKE [2,846], 3 Woods, 408.
CLARKE v. CRABTREE [2,847], 2 Curt. 87.
CLARKE v. CRAMER [2,848], 1 McA. Pat. Cas. 473.
CLARKE v. DODGE HEALY, The [2,849], 4 Wash. C. C. 651.
CLARKE v. DRUET [2,850], 4 Cranch, C. C. 142.
CLARKE v. FASHION, The [2,851], 2 Wall. Jr. 339.
CLARKE v. FOSS [2,852], 7 Biss. 540; 17 N. B. R. 261; 10 Chi. Leg. News, 211.
CLARKE v. HEMPSTONE [2,853].
CLARKE v. JANESVILLE [2,854], 1 Biss. 98; 4 Amer. Law Reg. 591.
CLARKE v. JOHNSON [2,855], 16 Blatchf. 495; 4 Ban. & A. 403; 17 O. G. 1401.
CLARKE v. JOHNSTON [2,856], 8 Blatchf. 557.
Clarke, Johnston v. [See 18,303.]
Clarke, Kounsalaer v. [See 7,927.]
Clarke, Lorman v. [See 8,516.]
Clarke, McComber v. [See 8,711.]
CLARKE v. MATHEWSON [2,857], 2 Sumn. 262.
CLARKE v. MAYFIELD [2,858], 3 Cranch, C. C. 353.
Clarke, Nevitt v. [See 10,138.]
CLARKE v. NEW JERSEY STEAM NAV. CO. [2,859], 1 Story, 531; 4 Law Rep. 134.
Clarke, Orme v. [See 10,577.]
Clarke, Peltz v. [See 10,914.]
CLARKE v. PROTECTION INS. CO. [2,860].
CLARKE v. RIST [2,861], 3 McLean, 494; 2 West. Law J. 252.
Clarke v. Secretary of the Treasury. [See 18,279.]
CLARK v. SICKEL [2,862], 14 Int. Rev. Rec. 6; 4 Amer. Law T. 141; 18 Pittsb. Leg. J. 309; 1 Leg. Op. 151.
Clarke, Smith v. [See 13,028.]
CLARKE v. SOUTHWICK [2,863], 1 Curt. 297.
CLARKE v. STRICKLAND [2,864], 2 Curt. 439.
Clarke, Thompson v. [See 13,951.]
CLARKE v. THRELKELD [2,865], 2 Cranch, C. C. 408.
Clarke, United States v. [See 14,809—14,813.]
Clarke, White v. [See 17,540—17,542.]
CLARK PATENT STEAM & FIRE REGULATOR CO. v. COPELAND [2,866], 2 Fish. Pat. Cas. 221.
CLARKSON v. MANSON [2,867].
Clarksville, Gause v. [See 5,276.]
Clarksville, Northwestern Union Packet Co. v. [See 10,342.]
Clark Thread Co., Willimantic Linen Co. v. [See 17,763.]
Clasen, Phelps v. [See 11,074.]
CLASON v. SMITH [2,868], 3 Wash. C. C. 156.
Claudius, Campbell v. [See 2,356.]
Clauson, Brewers' Fire Ins. Co. v. [See 1,851.]
CLAY v. McCALLY [2,869], 4 Woods, 605.
CLAYTON, The [2,870], 5 Biss. 162.
Clayton, Batten v. [See 1,105.]
Clayton, Grubb v. [See 5,849a.]
Clayton, Hammekin v. [See 5,996.]
CLAYTON v. HARMONY, The [2,871], 1 Pet. Adm. 70.
Clayton, Houser v. [See 6,739.]
Clayton, Le Roy v. [See 8,268.]
CLAYTON v. STONE [2,872], 2 Paine, 382; 1 U. S. Law Int. 69.
Clayton, United States v. [See 14,814.]
Clayton, The John E. [See 7,338.]
C. L. B. Reed, The Manhattan Fire Ins. Co. v. [See 9,021.]
CLEARY v. MARTZ [2,873].
CLEAVELAND v. SMITH [2,874], 2 Story, 278.
Cleaveland, Treadwell v. [See 14,155.]
Cleaver, First Nat. Bank of Ashland v. [See 4,800.]
Cleins, Atlantic & Pac. R. Co. v. [See 631.]
CLEMATIS, The [2,875], 1 Brown's Adm. 432.
CLEMATIS, The [2,876], 1 Brown's Adm. 499; 6 Chi. Leg. News, 405.
CLEMENS, In re [2,877], 2 Dill. 533; 9 N. B. R. 57; 21 Pittsb. Leg. J. 30.
CLEMENS, In re [2,878], 8 N. B. R. 279; 5 Chi. Leg. News, 511; 5 Leg. Op. 116; 2 Amer. Law Rec. 171; 8 Amer. Law Rev. 168.
Clement, In re [See 8,917.]
CLEMENT, The [2,879], 2 Curt. 363.
CLEMENT, The [2,880], 1 Spr. 257; 17 Law Rep. 444; 31 Hunt, Mer. Mag. 712.
CLEMENT v. PHOENIX INS. CO. [2,881], 6 Blatchf. 481.
CLEMENT v. PHOENIX INS. CO. [2,882], 7 Blatchf. 51.
Clement, United States v. [See 14,815.]
CLEMENT'S EX'RS v. DICKEY [2,883], 1 Paine, 377.
Clements, Mudd v. [See 9,900.]
Clements, Odorless Excavating Co. v. [See 10,437.]
Clements, United States v. [See 14,816, 14,817.]
CLEMENTSON v. BEATTY [2,884], 1 Cranch, C. C. 178.
Clemson, Davis v. [See 3,630.]
CLEMENTSON v. WILLIAMS [2,885].
CLEOPATRA, The [2,886], 5 Ben. 290; 14 Int. Rev. Rec. 29.
Cleopatra, The, United States v. [See 2,886.]
Clerk's Fees, Case of. [See 472.]
Clerk's Fees In Bankruptcy Cases [See 18,282.]
Cleveland, The Hunt v. [See 6,885.]
Cleveland, Bholen v. [See 1,381.]
Cleveland, Drake v. [See 4,059.]
CLEVELAND v. LA CROSSE & M. R. CO. [2,887], 7 Amer. Law Reg. 536; 4 Quart. Law J. 230.
CLEVELAND v. TOWLE [2,888], 3 Fish. Pat. Cas. 525.
Cleveland & P. R. Co., Evans v. [See 4,557.]
Cleveland Co-Operative Stove Co., Henderson v. [See 6,351.]
Cleveland, C. & C. R. Co., Toppan v. [See 14,099.]
Cleveland Ins. Co., Globe Ins. Co. v. [See 5,486.]
CLEVELAND INS. CO. v. REED [2,889], 1 Biss. 180; 6 Amer. Law Reg. 406.
Cleveland Ins. Co., Starkweather v. [See 13,308, 13,309.]
CLEVELAND, P. & A. R. CO. v. FRANKLIN CANAL CO. [2,890], 1 Pittsb. Leg. J. No. 36.
Cleveland Rolling-Mill Co., Wood v. [See 17,941.]
Clew, United States v. [See 14,819.]
CLEWS, In re [2,891], 19 N. B. R. 109.
CLEWS v. LEE COUNTY [2,892], 2 Woods, 474.
CLIFFORD, In re [2,893], 2 Sawy. 428.
Clifford, Arnold v. [See 555.]
CLIFFORD v. COLEMAN [2,894], 13 Blatchf. 210.
Clifford, Morrison v. [See 9,846.]
Clifford, Robinson v. [See 11,948.]
Clifton, Jones v. [See 7,457.]
CLIFTON v. QUANTITY OF COTTON [2,895], 36 Hunt, Mer. Mag. 706.
Clifton v. Quantity of Cotton [See 1,971.]
Clinch, Merriam v. [See 9,460.]
Clinch, Ropes v. [See 12,041.]
CLINE, In re [2,896], 1 Ben. 338.
CLINE v. HULERY [2,897].
Clinton, Grover & Baker Sewing Mach. Co. v. [See 5,845.]
CLINTON v. HANNAH, Etc., The [2,898], Bee, 419.
CLINTON v. MAYO [2,899], 12 N. B. R. 39.
Clinton, Quirk v. [See 11,518.]
Clinton & S. R. Co., Scott v. [See 12,527.]
CLINTON BRIDGE, In re [2,900], 1 Woolw. 150; 7 Amer. Law Reg. (N. S.) 149.
Clinton Line Extension R. Co., Griffin v. [See 5,816.]
Clinton Line R. Co., Ludlow v. [See 8,600.]
Clinton, The Mary. [See 9,203.]
Clipper Mower, etc., Co., Wheeler v. [See 17,493.]
CLIPPINGER v. MISSOURI VAL. LIFE INS. CO. [2,901], 1 Flip. 456; 5 Ins. Law J. 310; 22 Int. Rev. Rec. 47; 2 Cin. Law Bul. 218; 8 Chi. Leg. News, 155; 4 Amer. Law Rec. 585; 1 Law & Eq. Rep. 138.
Close, Longworth v. [See 8,489.]
Close, Rich v. [See 11,757.]
CLOTH CASES, The [2,902], Crabbe, 335.
CLOTILDA, The [2,903], 1 Hask. 412.
CLOUD v. HEWITT [2,904], 3 Cranch, C. C. 199.
CLOUGH, In re [2,905], 2 Ben. 508; 2 N. B. R. 151 (Quarto, 59); 16 Pittsb. Leg. J. 25.

[Federal Case numbers are given in brackets.]

CLOUGH v. GILBERT & B. MFG. CO. [2,906], 3 Ban. & A. 523; 15 O. G. 1009; Merw. Pat. Inv. 225.
Cloutman, Sweeney v. [See 13,685.]
CLOUTMAN v. TUNISON [2,907], 1 Sumn. 373.
CLOVER, The [2,908], 1 Lowell, 342.
CLOWSER v. JOPLIN MIN. CO. [2,908a], 4 Dill. 469, note.
CLUM v. BREWER [2,909], 2 Curt. 506.
CLUM v. BREWER [2,910], 21 Law Rep. 390; Brunner, Col. Cas. 635.
CLUTE v. GOODELL [2,911], 2 McLean, 193.
Clyburn, Strachen v. [See 13,520.]
Clyde, The Rebecca. [See 11,621, 11,622.]
CLYMER v. CENTRAL R. CO. [2,912], 5 Blatchf. 317.
CLYTIE, The [2,913], 10 Ben. 588; 25 Int. Rev. Rec. 335; 14 Amer. Law Rev. 85.
CLYTIE, The [2,914], 8 Wkly. Notes Cas. 188.
Clytie, The, Hitchcock v. [See 2,913.]
Coal Barges, Jones v. [See 7,458.]
Coal Bluff No. 2, The, Hartupee v. [See 6,172.]
Coal Bluff No. 2, The, McCaskey v. [See 8,687.]
Coal Valley, The, Bayard, The, v. [See 1,128.]
COAN & TEN BROEKE MFG. CO., In re [2,915], 6 Biss. 315; 12 N. B. R. 203; 7 Chi. Leg. News, 260.
Coates, Dundore v. [See 4,142.]
COATES v. MUSE [2,916], 1 Brock. 529.
COATES v. MUSE [2,917], 1 Brock. 539.
COATES v. MUSE [2,918], 1 Brock. 551.
Cobanks v. The Midland. [See 12,068.]
COBAÑKS v. ROSLYN, The [2,919], 23 Int. Rev. Rec. 176.
COBB, In re [2,920], 1 N. B. R. 414 (Quarto, 106); 1 Amer. Law T. Rep. Bankr. 59.
Cobb, Buck v. [See 2,079.]
COBB v. GLOBE MUT. LIFE INS. CO. [2,921], 3 Hughes, 452; 6 Reporter, 515; 2 Va. Law J. 52.
COBB v. HAMLIN [2,922], 3 Cliff. 191; 8 Int. Rev. Rec. 121.
COBB v. HAYDOCK [2,923], 4 Day, 472; Brunner, Col. Cas. 91.
COBB v. HOWARD [2,924], 3 Blatchf. 524; 19 Law Rep. 377; 36 Hunt, Mer. Mag. 707; 13 Leg. Int. 361.
COBB v. HOWARD [2,925], 10 N. Y. Leg. Obs. 353.
Cobb, Howard v. [See 6,755, 6,756.]
Cobb, Howe v. [See 6,767.]
Cobb, McCloskey v. [See 8,702.]
Cobb, United States v. [See 14,820.]
Cobin, Owsley v. [See 10,636.]
COBLENS v. ABEL [2,926], 1 Woolw. 293.
Coblidge v. Guthrie. [See 3,185.]
Coburn, Cropper v. [See 3,416.]
Cocheco Mfg. Co., Sprague v. [See 13,249.]
Cochran, Gernon v. [See 5,368.]
Cochran, Lake Shore & M. S. R. Co. v. [See 7,996.]
Cochran v. McLean [2,927a], Betts Scr. Bk. 114.
Cochran, The Neil. [See 10,087.]
Cochran, Sparhawk v. [See 13,203.]
Cochran, United States v. [See 14,821.]
Cochrane, In re. [See 6,109, 6,110.]
Cochrane, Badische-Anilin & Soda Fabrik v. [See 719.]
COCHRANE v. SWARTOUT [2,928], 47 Nile's Reg. 157.
COCHRANE v. WATERMAN [2,929], Cranch, Pat. Dec. 121; 1 McA. Pat. Cas. 52.
COCKE v. HENSON [2,929a], Hempst. 187.
COCKE v. KENDALL [2,929b], Hempst. 236.
Cocke, Munroe v. [See 9,928.]
COCKER v. FRANKLIN HEMP & BAGGING CO. [2,930], 1 Story, 169.
COCKER v. FRANKLIN HEMP & BAGGING CO. [2,931], 1 Story, 332.
COCKER v. FRANKLIN HEMP & FLAX MFG. CO. [2,932], 3 Sumn. 530.
Cockerill, Conner v. [See 3,112.]
Cockrem, Bird v. [See 1,429.]
Cockrin, United States v. [See 14,822.]
Cockrun v. McLean. [See 2,927a.]
COCKS, In re [2,933], 3 Ben. 260.
COCKS v. IZARD [2,934], 4 Amer. Law T. Rep. U. S. Cts. 68.
Coddington, Hatch v. [See 6,205.]
Codman, Robison v. [See 11,970.]
CODMAN v. VERMONT & C. R. CO [2,935], 16 Blatchf. 165.
CODMAN v. VERMONT & C. R. Co. [2,936], 17 Blatchf. 1.
CODRINGTON v. ADAMS [2,937], 21 Law Rep. 586; Brunner, Col. Cas. 650.
CODWISE v. GLEASON [2,938], Brunner, Col. Cas. 33; 3 Day, 3.
CODWISE v. GLEASON [2,939], 3 Day, 12; Brunner, Col. Cas. 40.
CODY v. CENTRAL PAC. R. CO. [2,940] 4 Sawy. 114; 15 Alb. Law J. 52.
COE v. BRADLEY [2,941], 9 O. G. 541; Cox, Manual Trade-Mark Cas. 276.
Coe, Keyser v. [See 7,750.]
COE v. PENNOCK [2,942], 6 Amer. Law Reg. 27.
COE v. RANKIN [2,943], 5 McLean, 354.
Coe, The Mary. [See 9,204.]
COELLE v. LOEKHEAD [2,943a], Hempst. 194.
COERNINE, The [2,944], 21 Law Rep. 343; 7 Amer. Law Reg. 5; 39 Hunt, Mer. Mag. 197.
COFFEE v. EASTLAND [2,945], Brunner, Col. Cas. 216; Cooke, 159.
Coffee, The Joseph E. [See 7,536.]
COFFEEN v. BRUNTON [2,946], 4 McLean, 516; 7 West. Law J. 59; Cox, Amer. Trade-Mark Cas. 82; Cox, Manual Trade-Mark Cas. 52.
COFFEEN v. BRUNTON [2,947], 5 McLean, 256; Cox, Amer. Trade-Mark Cas. 132; Cox, Manual Trade-Mark Cas. 60.
Coffin, Goddard v. [See 5,490.]
COFFIN v. JENKINS [2,948], 3 Story, 108.
COFFIN v. JOHN SHAW, The [2,949], 1 Cliff. 230.
COFFIN v. OGDEN [2,950], 7 Blatchf. 61; 3 Fish. Pat. Cas. 640; Merw. Pat. Inv. 669.
Coffin, Payson v. [See 10,858, 10,859.]
COFFIN v. SHAW [2,951], 21 Law Rep. 463.
COFFIN v. SHAW [2,952], 3 Ware, 82; 19 Law Rep. 146.
Coffin, Sweeney v. [See 13,686.]
Coffin, United States v. [See 14,823, 14,824.]
COFFIN v. WELD [2,953], 2 Lowell, 81.
Coffin, Wiggin v. [See 17,624.]
Coffin v. The Witch Queen. [See 17,915, 17,916.]
Coffin, The E. H. [See 4,309, 4,310.]
Coffman, Gray v. [See 5,714.]
COGBILL, In re [2,954], 2 Hughes, 313.
COGGESHALL v. POTTER [2,955], Holmes, 75; 6 N. B. R. 10.
Coggeshall, Potter v. [See 11,322.]
COGGILL v. LAWRENCE [2,956], 1 Blatchf. 602.
COGGILL v. LAWRENCE [2,957], 2 Blatchf. 304.
Coggins v. Helmsley. [See 14,109.]
COGGSWELL v. WARREN [2,958], 1 Curt. 223.
COGSWELL, In re [2,959], 1 Ben. 388; 1 N. B. R. 62; Bankr. Reg. Supp. 14; 14 Pittsb. Leg. J. 616; 6 Int. Rev. Rec. 85.
Cogswell, United States v. [See 14,825.]
Cogswell, Wright v. [See 18,074.]
COHAN v. ROLLING WAVE, The [2,959a], 23 Betts, D. C. MS. 121.
COHAUS, In re [2,959b], Betts Scr. Bk. 91.
Cohen, Ex parte. [See 12,175.]
COHEN, In re [2,960], 3 Dill. 295.
COHEN, In re [2,961], 19 N. B. R. 133.
Cohen, Alston v. [See 265.]
COHEN v. AMANDA FRANCES MYRICK, The [2,962], Crabbe, 277.
Cohen, Bayerque v. [See 1,134.]
COHEN v. GRATZ [2,963], 3 Wall. Jr. 379; 4 Pa. Law J. Rep. 52; 6 Pa. Law J. 333.
Cohen, Hyde v. [See 6,967.]
COHEN v. PHELPS [2,964], 2 Sawy. 530; 19 Int. Rev. Rec. 67.
COHEN v. MARY T. WILDER, The [2,965], Taney, 567.
Cohen, United States v. [See 14,826.]
COHN, In re [2,966], 6 N. B. R. 379.
COHN, In re [2,967], 7 N. B. R. 31; 29 Leg. Int. 309; 5 Chi. Leg. News, 13; 6 Alb. Law J. 276; 20 Pittsb. Leg. J. 29.
COHN v. NATIONAL RUBBER CO. [2,968], 15 O. G. 829; 3 Ban. & A. 568.
Cohn, United States v. [See 14,827, 14,828.]
COHN v. UNITED STATES CORSET CO. [2,969], 12 Blatchf. 225; 1 Ban. & A. 340; 6 O. G. 259.

[Federal Case numbers are given in brackets.]

COHN v. VIRGINIA FIRE & MARINE INS. CO. [2,970], 3 Hughes, 272.
Cohn, Wilcox v. [See 17,640.]
Coit, Converse v. [See 3,145.]
Coit, United States v. [See 14,829.]
Colburn, Hemstead v. [See 6,347.]
Colburn, Hunt v. [See 6,886.]
Colby, In re. [See 2,297.]
Colby, Fuller v. [See 5,149.]
Colby, Sturges v. [See 13,566.]
Colby, Sturgis v. [See 13,574.]
Colby, United States v. [See 14,830.]
Colchester, United States v. [See 14,831.]
COLCORD, In re [2,970a], 2 Hask. 455.
Colcord, Williamson v. [See 17,752.]
COLDILLERA, The [3,229a].
COLD STREAM, The [2,972], 4 Sawy. 172.
COLE, Ex parte [2,973], 1 McCrary, 405.
COLE, In re [2,974], 1 McA. Pat. Cas. 539.
COLE, In re [2,975], 8 Reporter, 105; 7 Wkly. Notes Cas. 114.
COLE v. ATLANTIC, The [2,976], Crabbe, 440.
COLE v. BATLEY [2,977], 2 Curt. 562.
COLE v. BRANDT, The [2,978], 1 Betts, D. C. MS. 36.
Cole, Hoe v. [See 6,572.]
Cole v. The Kate Hunter. [See 3,474.]
Cole, Scammon v. [See 12,432, 12,433.]
Cole, United States v. [See 14,832.]
Cole, Westcott v. [See 17,417.]
Colefax, Bayard v. [See 1,130.]
COLEMAN, In re [2,979], 7 Blatchf. 192; 2 N. B. R. 671.
COLEMAN, In re [2,980], 15 Blatchf. 406.
COLEMAN, The [2,981], 1 Brown, Adm. 456.
COLEMAN v. BAILEY [8,604].
Coleman, Bartle v. [See 1,072.]
Coleman, Clifford v. [See 2,894.]
Coleman, Furlong v. [See 5,161.]
COLEMAN v. HARRIET, The [2,982], Bee, 80.
Coleman v. Hudson River Bridge Co. [See 12,851, 12,852.]
COLEMAN v. HUDSON RIVER BRIDGE CO. [2,-983], 5 Blatchf. 56.
Coleman, Jencks v. [See 7,258.]
COLEMAN v. LIESOR [2,984].
COLEMAN v. MARTIN [2,985], 6 Blatchf. 119.
COLEMAN v. MARTIN [2,986], 6 Blatchf. 291.
Coleman, Smith v. [See 13,029.]
Coleman, Woodrow v. [See 17,982-17,984.]
COLER v. WYANDOT COUNTY [2,987], 3 Dill. 391, note.
COLES v. MARINE INS. CO. [2,988], 3 Wash. C. C. 159.
COLE SILVER MIN. CO. v. VIRGINIA & GOLD HILL WATER CO. [2,989], 1 Sawy. 470.
COLE SILVER MIN. CO. v. VIRGINIA & GOLD HILL WATER CO. [2,990], 1 Sawy. 685; 7 Morr. Min. Rep. 516.
COLGATE v. GOLD & STOCK TEL. CO. [2,991], 16 Blatchf. 503; 4 Ban. & A. 415; 16 O. G. 583; Merw. Pat. Inv. 359.
COLGATE v. GOLD & STOCK TEL. CO. [2,992], 17 O. G. 193; 4 Ban. & A. 559.
COLGATE v. INTERNATIONAL OCEAN TEL. CO. [2,993], 17 Blatchf. 308; 9 Reporter, 166; 4 Ban. & A. 609; 17 O. G. 194.
Colgate, Kimbro v. [See 7,778.]
COLGATE v. LAW TELEGRAPH CO. [2,993a], 5 Ban. & A. 437.
COLGATE v. WESTERN UNION TEL. CO. [2,994], 4 Ban. & A. 562; 17 O. G. 194.
COLGATE v. WESTERN UNION TEL. CO. [2,995], 15 Blatchf. 365; 4 Ban. & A. 36; 14 O. G. 943; Merw. Pat. Inv. 359.
COLIMA, The [2,996], 5 Sawy. 181.
Collard, Ingle v. [See 7,042, 7,043.]
COLLATERAL LOAN & SAV. BANK, In re [2,997], 5 Sawy. 331.
Collector, Cavaroc v. [See 2,529.]
Collector, Cotton Press Co. v. [See 3,271.]
Collector, Graham v. [See 5,663.]
Collector, Passavant v. [See 10,790.]
Collector of Charleston, Gilchrist v. [See 5,420.]
COLLENDER v. BAILEY [2,998], 3 Ban. & A. 217; 13 O. G. 277.
COLLENDER v. CAME [2,999], 4 Cliff. 393; 2 Ban. & A. 412; 10 O. G. 467.
COLLENDER v. GRIFFITH [3,000], 11 Blatchf. 212; 3 O. G. 689; Fent. Pat. 83.
Collerd, Fenton v. [See 4,731.]
COLLET v. COLLET [3,001], 2 Dall. 294.
COLLIER, In re [3,002], 12 N. B. R. 266.
Collier, Carey v. [See 2,400.]
Collier, The Srodes v. [See 13,272.]
Collier, United States v. [See 14,833.]
Collier White Lead Co., Minnesota Linseed Oil Co. v. [See 9,635.]
COLLINGS v. HOPE [3,003], 3 Wash. C. C. 149.
COLLINS, In re [3,004], 8 Ben. 59.
COLLINS, In re [3,005], 8 Ben. 328.
COLLINS, In re [3,006], 3 Biss. 415; 10 N. B. R. 335.
COLLINS, In re [3,007], 12 Blatchf. 548; 12 N. B. R. 379; 1 N. Y. Wkly. Dig. 78.
COLLINS, In re [3,008], 1 N. B. R. 551 (Quarto, 153); 2 Amer. Law T. Rep. Bankr. 7.
COLLINS v. ÆTNA INS. CO. [3,009], 1 Chi. Leg. News, 202.
COLLINS v. BELL [3,010], 3 N. B. R. 587 (Quarto, 146).
COLLINS v. CHICAGO [3,011], 4 Biss. 472; 1 Thomp. Nat. Bank Cas. 191.
COLLINS v. FORT WAYNE, The [3,012], 1 Bond, 476.
Collins, Gardner v. [See 5,223.]
COLLINS v. GRAY [3,013], 8 Blatchf. 483; 4 N. B. R. 631.
Collins, Green v. [See 5,755.]
COLLINS v. HATHAWAY [3,014], Olc. 176.
Collins, Holden v. [See 6,599.]
COLLINS v. HOOD [3,015], 4 McLean, 186.
Collins, Jacques v. [See 7,167, 7,168.]
COLLINS v. JOHNSON [3,015a], Hempst. 279.
COLLINS v. NICKERSON [3,016], 1 Spr. 126.
COLLINS v. PEEBLES [3,017], 2 Fish. Pat. Cas. 541.
Collins, Riggs v. [See 11,824.]
Collins, Serrell v. [See 12,671, 12,672.]
Collins, Tenny v. [See 13,833.]
Collins, United States v. [See 14,834-14,837.]
COLLINS v. WHEELER [3,018], 1 Spr. 188.
COLLINS v. WHITE [3,019], 3 App. Com'r Pat. 392.
COLLINSON v. TEAL [3,020], 4 Sawy. 241; 9 Chi. Leg. News, 272.
Collis v. The Coernine. [See 2,944.]
Collyer, Shaw v. [See 12,718.]
Collyer, United States v. [See 14,838.]
COLMAN, In re [3,021], 2 N. B. R. 562 (Quarto, 172).
Colman, Balch v. [See 791.]
Colman, Wilson v. [See 17,798.]
Colombo, The. [See 3,040.]
COLON, The [3,022], 8 Ben. 512.
COLON, The [3,023], 9 Ben. 354.
COLON, The [3,024], 10 Ben. 60; 14 Amer. Law Rev. 84.
COLON, The [3,025], 10 Ben. 366.
COL. HOWARD, The, v. HAYDEN [3,026], 17 Betts, D. C. MS. 70.
COLONEL LEDYARD, The [3,027], 1 Spr. 530.
COLORADO, The [3,028], 1 Brown's Adm. 393.
COLORADO, The [3,029], 1 Brown's Adm. 411.
Colorado Cent. R. Co., Ames v. [See 324, 325.]
Colorado Cent. R. Co., White v. [See 17,543.]
COLT v. MASSACHUSETTS ARMS CO. [3,030], 1 Fish. Pat. Cas. 108.
COLT v. ROOD [3,031], 6 McLean, 106.
Colt, United States v. [See 14,839.]
COLT v. YOUNG [3,032], 2 Blatchf. 471.
Colt, Young v. [See 18,155.]
Coltman, McCloud v. [See 8,703.]
Colton, National Bank v. [See 10,034.]
Columbet, Field v. [See 4,764.]
COLUMBIA, The [3,033].
COLUMBIA, The [3,034], 6 Ben. 398.
COLUMBIA, The [3,035], 9 Ben. 254.
COLUMBIA, The [3,036], 13 Blatchf. 521.
COLUMBIAN INS. CO., Ex parte [3,037], 2 Lowell, 5.
Columbian Ins. Co., Catlett v. [See 2,514.]
Columbian Ins. Co., Donnell v. [See 3,987.]
Columbian Ins. Co., Gardner v. [See 5,224, 5,225.]
Columbian Ins. Co., Sanderson v. [See 12,298.]
Columbian Ins. Co., Stuart v. [See 13,554.]
Columbian Ins. Co., United States v. [See 14,840.]
Columbian Ins. Co., Vowell v. [See 17,019.]

Columbian Ins. Co., West v. [See 17,421.]
COLUMBIAN INS. CO. OF ALEXANDRIA v. ASHBY [3,038], 1 Hunt, Mer. Mag. 523.
COLUMBIAN METAL WORKS, In re [3,039], 3 N. B. R. 75 (Quarto, 18.)
COLUMBO, The [3,040], 3 Blatchf. 521; 35 Hunt, Mer. Mag. 449; 19 Law Rep. 376; 13 Leg. Int. 361.
Columbo, The, v. Dill. [See 3,040.]
COLUMBUS, The [3,041], Abb. Adm. 37.
COLUMBUS, The [3,042], Abb. Adm. 97.
COLUMBUS, The [3,043], Abb. Adm. 384.
COLUMBUS, The [3,044], 5 Sawy. 487.
Columbus, The Christopher. [See 2,705, 2,706.]
Columbus, The, Sanderson v. [See 12,299.]
Columbus, United States v. [See 14,841.]
Columbus, C. & I. C. Ry. Co., Pittsburg, C. & St. L. Ry. Co. v. [See 11,197.]
Columbus, Etc., R. Co., Dixon v. [See 3,929.]
COLUMBUS INS. CO. v. CURTENIUS [3,045], 6 McLean, 209.
COLUMBUS INS. CO. v. PEORIA BRIDGE ASS'N [3,046], 6 McLean, 70.
COLUMBUS, P. & I. R. CO. v. INDIANAPOLIS & B. R. CO. [3,047], 5 McLean, 450.
Colwell, In re. [See 17,529.]
COMBS v. HODGE [3,048], 5 Pittsb. Leg. J. 37.
Combstock, Phillips v. [See 11,099.]
Comegys, Vasse v. [See 16,893.]
COMEGYSS v. ROBB [3,049], 2 Cranch, C. C. 141.
Comegyss, Vasse v. [See 16,894.]
COMET, The [3,050], 1 Abb. U. S. 451; 2 Chi. Leg. News, 301; 5 Amer. Law Rev. 184.
COMET, The [3,051], 9 Blatchf. 323.
Comings, Bailey v. [See 733.]
COMINGS v. IDA STOCKDALE, The [3,052], 22 Pittsb. Leg. J. 9.
COMLY v. FISHER [3,053], Taney, 121.
Commandant of Fort Delaware, United States v. [See 14,842.]
COMMERCE, The [3,054], 1 Spr. 34.
Commerce, The Fitzhugh v. [See 4,841.]
Commerce, The, Whitton v. [See 17,604.]
COMMERCEN, The [3,055], 2 Gall. 261.
Commercial & Farmers' Bank, Lowry v. [See 8,581.]
COMMERCIAL & FARMERS' BANK v. PATTERSON [3,056], 2 Cranch, C. C. 346.
COMMERCIAL & SAV. BANK v. CORBETT [3,057], 5 Sawy. 172.
COMMERCIAL & SAV. BANK v. CORBETT [3,058], 5 Sawy. 543.
Commercial Bank of Albany v. Townsend. [See 9,381.]
Commercial Bank of Cleveland v. Simmons. [See 3,062.]
Commercial Bank of Cleveland, Woolsey v. [See 18,032.]
COMMERCIAL BANK OF COMMERCE v. GREEN [3,059], 2 Flip. 181.
COMMERCIAL BULLETIN CO., In re [3,060], 2 Woods, 220; 14 N. B. R. 286; 8 Chi. Leg. News, 330; 3 N. Y. Wkly. Dig. 12; 1 La. Law J. 176.
Commercial Ins. Co., Alsop v. [See 262.]
Commercial Mutual Marine Ins. Co., Union Mut. Ins. Co. v. [See 14,372.]
COMMERCIAL NAT. BANK v. IOLA [3,061], 2 Dill. 353; 5 Chi. Leg. News, 461.
COMMERCIAL NAT. BANK v. SIMMONS [3,062], 1 Flip. 449; 20 Int. Rev. Rec. 32, 79; 22 Int. Rev. Rec. 66; 2 N. Y. Wkly. Dig. 97; 8 Chi. Leg. News, 164; 10 Alb. Law J. 155; 1 Thomp. Nat. Bank Cas. 294; 6 Chi. Leg. News, 344; 3 Amer. Law Rec. 107; 31 Leg. Int. 269; 22 Pittsb. Leg. J. 23; 1 Cin. Law Bul. 29.
COMMERCIAL NAT. BANK v. SIMMONS [3,063].
COMMERCIAL STEAMBOAT Co. v. DUTTON [3,064], 2 Cliff. 537.
Commins v. The Minnie. [See 9,117.]
Commissioner of Patents, Marsh v. [See 9,114.]
COMMITTEE OF WEST NEW JERSEY SOC. v. MORRIS [3,065], Pet. C. C. 59.
COMMON COUNCIL v. SWANN [3,066].
COMMONWEALTH v. MURPHY [3,067], 3 Pac. Coast Law J. 390.
COMMONWEALTH v. ROGERS [3,068], 10 Pittsb. Leg. J. 178.
Commonwealth, Taylor v. [See 13,787, 13,788.]
Commonwealth Ins. Co., Dunn v. [See 4,174.]
Commonwealth Ins. Co., Robinson v. [See 11,949.]
Commonwealth Nat. Bank, White v. [See 17,544.]
COMPTA, The [3,069], 4 Sawy. 375.
COMPTA, The [3,070], 5 Sawy. 137.
Compton, Doan v. [See 3,940.]
COMPTON v. PALMER [3,070a], Hempst. 282.
COMSTOCK, In re [3,071], 3 Ben. 236; 2 N. B. R. 561 (Quarto, 171); 2 Amer. Law T. Rep. Bankr. 87.
COMSTOCK, In re [3,072], 8 Ben. 235.
COMSTOCK, In re [3,073], 5 Law Rep. 163; 22 Vt. 642.
COMSTOCK, In re [3,074], 5 N. B. R. 191.
COMSTOCK, In re [3,075], 9 N. B. R. 88.
COMSTOCK, In re [3,076], 1 N. Y. Leg. Obs. 326.
COMSTOCK, In re [3,077], 3 Sawy. 128; 10 N. B. R. 451; 6 Chi. Leg. News, 413; 22 Pittsb. Leg. J. 25.
COMSTOCK, In re [3,078], 3 Sawy. 218; 11 N. B. R. 169; 7 Chi. Leg. News, 126.
COMSTOCK, In re [3,079], 3 Sawy. 320; 12 N. B. R. 110.
COMSTOCK, In re [3,080], 3 Sawy. 517; 13 N. B. R. 193; 8 Chi. Leg. News, 82.
COMSTOCK v. CARNLEY [3,081], 4 Blatchf. 58.
Comstock v. Connelly. [See 3,081.]
Comstock, Knickerbocker Ins. Co. v. [See 7,879.]
Comstock, Lockwood v. [See 8,449.]
Comstock, Phelps v. [See 11,075.]
COMSTOCK v. SANDUSKY SEAT CO. [3,082], 3 Ban. & A. 188; 13 O. G. 230; 3 Cin. Law Bul. 73.
COMSTOCK v. SEAGRAVES [6,593], 1 Story, 546.
Comstock, Sherman v. [See 12,764.]
COMSTOCK v. WHEELER [3,071], 2 N. B. R. 561 (Quarto, 171); 2 Amer. Law T. Rep. Bankr. 87.
CONANT, In re [3,085].
CONANT, In re [3,086], 5 Blatchf. 54.
Conant, United States v. [See 14,843, 14,844.]
CONANT v. WILLS [3,087], 1 McLean, 427.
CONARD v. ATLANTIC INS. CO. [627].
Conard, Pacific Ins. Co. v. [See 10,647.]
Conception, The Consul of Spain v. [See 3,137.]
CONCKLIN v. HARMONY, The [3,089], 1 Pet. Adm. 34, note.
CONCKLIN v. SYLVAN SHORE, The [3,090], 39 Hunt, Mer. Mag. 74.
Concord, The, Home Ins. Co. v. [See 6,659.]
CONCORDA, The [3,092].
CONCORDIA, The [3,092], 5 Adm. Rec. 400.
CONCORD R. CORP. v. TOPLIFF [3,093], 21 Int. Rev. Rec. 74.
CONDICT, In re [3,094], 19 N. B. R. 142; 2 N. J. Law J. 82.
Condon v. Murray. [See 5,193.]
CONE, In re [3,095], 2 Ben. 502; 2 N. B. R. 21 (Quarto, 10).
CONE v. MORGAN ENVELOPE CO. [3,096], 4 Ban. & A. 107; Fent. Pat. 63.
Cone v. Powers. [See 3,096.]
Cone v. Whiting Paper Co. [See 3,096.]
Conestoga, The, Lyle v. [See 8,622.]
CONFISCATION CASES, The [3,097], 1 Woods, 221.
CONFRAMP v. BUNEL [3,098], 4 Dall. 419.
Conger, Barnard v. [See 1,001.]
CONGRESS, The [3,099], 1 Biss. 42.
Congress, The, Jenkins v. [See 7,264.]
CONGRESS RUBBER CO. v. AMERICAN ELASTIC CLOTH CO. [3,099a].
Congress Rubber Co., Goodyear v. [See 5,565.]
Congress & Empire Spring Co., Knowlton v. [See 7,902, 7,903.]
Conine v. The Deer. [See 3,737-3,739.]
Coningham, Neale v. [See 10,067.]
Conklin, United States v. [See 14,845.]
CONKLING v. BUTLER [3,100], 4 Biss. 22.
Conkling, Crompton v. [See 3,407, 3,408.]
CONLEY, Case of [3,102].
CONLEY, In re [3,102], 24 Leg. Int. 21.
CONLEY v. G. C. BARRAS, The [3,103], 6 Ben. 12.
CONN v. PENN [3,104], Pet. C. C. 496.
CONN v. PENN [3,105], 4 Wash. C. C. 430.
Connecticut, The. [See 6,391-6,393.]
Connecticut Gen. Life Ins. Co., McMurdy v. [See 8,903.]
Connecticut Life Ins. Co., Bidwell v. [See 1,393.]

CONNECTICUT MUT. LIFE INS. CO. v. BOWLER [3,106], Holmes, 263.
Connecticut Mut. Life Ins. Co., Buell v. [See 2,103, 2,104.]
Connecticut Mut. Life Ins. Co., Coverston v. [See 3,290.]
Connecticut Mut. Life Ins. Co., Hards v. [See 6,055.]
CONNECTICUT MUT. LIFE INS. CO. v. HOME INS. CO. [3,107], 17 Blatchf. 142.
Connecticut Mut. Life Ins. Co., Jarvis v. [See 7,226.]
Connecticut Mut. Life Ins. Co., Lorie v. [See 8,509.]
Connecticut Mut. Life Ins. Co., Moore v. [See 9,755.]
CONNECTICUT MUT. LIFE INS. CO. v. PLUMMER [3,106], Holmes, 263.
Connecticut Mut. Life Ins. Co., Plummer v. [See 11,232.]
CONNECTICUT MUT. LIFE INS. CO. v. TYLER [3,109], 8 Biss. 369.
Connecticut Mut. Life Ins. Co., White v. [See 17,545.]
Connecticut Mut. Life Ins. Co., Wolf v. [See 17,924.]
Connecticut Mut. Life Ins. Co., Wolff v. [See 17,929.]
Connecticut Peat Co., Leavitt v. [See 8,170.]
CONNELL, In re [3,110], 3 N. B. R. 443 (Quarto, 113).
Connell, The Bob. [See 1,587.]
CONNELLY'S CASE [3,111], 2 Cranch, C. C. 415.
Conner, Bradley v. [See 1,774.]
CONNER v. COCKERILL [3,112], 4 Cranch, C. C. 3.
CONNER v. COOSA, The [3,113], Newb. 393.
CONNER v. LEVERING [3,114], 2 Cranch, C. C. 163.
Conner, Long v. [See 8,479.]
CONNER v. SARAH SANDS, The [3,115], 30 Hunt, Mer. Mag. 714.
Conner, United States v. [See 14,846, 14,847.]
Connestoga, The Margaret v. [See 9,070].
CONNINGHAM v. LACEY [3,116], 1 Cranch, C. C. 101.
Connison, Pomeroy v. [See 11,259.]
CONNOLLY v. BELT [3,117], 5 Cranch, C. C. 405.
Connolly, Griswold v. [See 5,833.]
CONNOR, In re [3,118], 1 Lowell, 532.
Connor, Sabin v. [See 12,196, 12,197.]
CONNOR v. SCOTT [3,119], 4 Dill. 242; 3 Cent. Law J. 305.
CONOVER v. DOHRMAN [3,120], 6 Blatchf. 60; 3 Fish. Pat. Cas. 382.
CONOVER v. MASSACHUSETTS MUT. LIFE INS. CO [3,121], 3 Dill. 217; 4 Ins. Law J. 93; 1 Cent. Law J. 597; 4 Bigelow, Ins. Cas. 187.
CONOVER v. MERS [3,122], 11 Blatchf. 197; 6 Fish. Pat. Cas. 506.
CONOVER v. MERS [3,123], 3 Fish. Pat. Cas. 386; 1 Amer. Law T. Rep. U. S. Cts. 42.
CONOVER v. RAPP [3,124], 4 Fish. Pat. Cas. 57.
CONOVER v. ROACH [3,125], 4 Fish. Pat. Cas. 12.
CONRAD, In re [3,126], 8 Phila. 147; 1 Leg. Gaz. Rep. 284; 28 Leg. Int. 324; 3 Leg. Gaz. 331; 4 Amer. Law T. 189; 1 Leg. Op. 201; 6 Amer. Law Rev. 385.
CONRAD v. DATER [3,127], 2 Biss. 342; 4 Amer. Law T. 42.
Conrad, Hazlett v. [See 6,288.]
Conrad v. United States. [See 3,097.]
Consequa, Fisher v. [See 4,816.]
Consequa, Gilpins v. [See 5,452.]
Consequa, Read v. [See 11,606, 11,607.]
CONSEQUA v. WILLINGS [3,128], Pet. C. C. 225.
Consequa, Willings v. [See 17,766, 17,767.]
CONSOLIDATED COAL CO. v. SECRET, The [3,128a].
CONSOLIDATED FRUIT-JAR CO. v. DORFLINGER [3,129], 2 Amer. Law T. Rep. (N. S.) 511; Cox, Manual Trade-Mark Cas. 250; 2 Wkly. Notes Cas. 99; 2 Cent. Law J. 721; 1 Law & Eq. Rep. 393; 21 Int. Rev. Rec. 348; 1 N. Y. Wkly. Dig. 427; 32 Leg. Int. 362.
CONSOLIDATED FRUIT-JAR CO. v. STRONG, [3,130], 2 N. J. Law J. 338.
CONSOLIDATED FRUIT-JAR CO. v. THOMAS [3,131], 2 N. J. Law J. 272.
CONSOLIDATED FRUIT-JAR CO. v. WHITNEY, [3,132], 1 Ban. & A. 356; 10 Phila. 268; 31 Leg. Int. 229.
CONSOLIDATED FRUIT-JAR CO. v. WHITNEY [3,133], 2 Ban. & A. 30.
CONSOLIDATED FRUIT-JAR CO. v. WHITNEY [3,134], 2 Ban. & A. 375.
CONSOLIDATED FRUIT-JAR CO. v. WRIGHT [3,135], 12 Blatchf. 149; 6 O. G. 327; 1 Ban. & A. 320.
Consolidated Va. Min. Co., Kinney v. [See 7,827.]
CONSTANT v. ALLEGHENY INS. CO. [3,136], 3 Wall. Jr. 313; 1 Amer. Law Reg. (N. S.) 116.
Constant, Gladding v. [See 5,468.]
Constitution, The, Reeves v. [See 11,659.]
CONSUL OF SPAIN v. CONCEPTION, The [3,137], 2 Wheeler, Crim. Cas. 597; Brunner, Col. Cas. 497.
CONSUL OF SPAIN v. CONSUL OF GREAT BRITAIN [3,138], Bee, 263.
CONTEE v. GARNER [3,139], 2 Cranch, C. C. 162.
CONTEE v. GODFREY [3,140], 1 Cranch, C. C. 479.
Content, Riston v. [See 11,862.]
CONTINENTAL, The [3,141], 8 Blatchf. 3.
Continental, The, Culberg v. [See 3,460.]
Continental, The, Gill v. [See 5,425.]
Continental Ins. Co., Severance v. [See 12,680.]
CONTINENTAL WINDMILL CO. v. EMPIRE WINDMILL CO. [3,142], 8 Blatchf. 295; 4 Fish. Pat. Cas. 428.
Contra Costa Water Co., Hawes v. [See 6,235.]
Contracts for Union Wharf v. The J. H. Starin. [See 7,320.]
CONVER v. PHOENIX MUT. LIFE INS. CO. [3,143], 3 Dill. 224, note; 6 Chi. Leg. News, 144.
Converse, Bradley v. [See 1,775, 1,776.]
Converse, Burgess v. [See 2,154.]
CONVERSE v. CANNON [3,144], 2 Woods, 7; 9 O. G. 105.
CONVERSE v. COIT [3,145].
Converse, Maltby v. [See 8,999.]
Converse, United States v. [See 14,848.]
CONWAY v. ALEXANDER [3,146], 2 Cranch, C. C. 57.
Conway, Cook v. [See 3,154].
Conway, Howland v. [See 6,793].
Conway, National Bank of Fredericksburg v. [See 10,037.]
CONWAY v. SHERRON [3,147], 2 Cranch, C. C. 80.
Conway, Trigg v. [See 14,172, 14,173.]
Conway, United States v. [See 14,849.]
CONWELL v. WHITE WATER VALLEY CANAL CO. [3,148], 4 Biss. 195.
CONYERS v. ENNIS [3,149], 2 Mason, 236.
Conyngham, Rucher v. [See 12,106.]
Conyngham, Wortman v. [See 18,056.]
Conyngham, United States v. [See 14,850.]
COOK, In re [3,150], 3 Biss. 122; 4 Chi. Leg. News, 1; 20 Pittsb. Leg. J. 32.
COOK, In re [3,151], 3 Biss. 116; 3 Chi. Leg. News, 410.
COOK, In re [3,152], 2 Story, 376; 5 Law Rep. 443.
Cook, Bank of Columbia v. [See 864.]
COOK v. BEALL [3,153], 2 Cranch, C. C. 264.
Cook, Belt v. [See 1,282.]
COOK v. CONWAY [3,154], 2 Cranch, C. C. 99.
Cook, Eames v. [See 4,239.]
COOK v. ERNEST [3,155], 5 Fish. Pat. Cas. 396; 2 O. G. 89; 1 Woods, 195.
COOK v. FENTON [3,156], 4 Cranch, C. C. 200.
Cook, Forbush v. [See 4,931.]
Cook, Fry v. [See 5,138.]
Cook, Gardner v. [See 5,226.]
Cook, Gibson v. [See 5,393.]
COOK v. GRAY [3,156a], Hempst. 84.
COOK v. HAMILTON COUNTY COM'RS [3,157], 6 McLean, 112.
COOK v. HAMILTON COUNTY COM'RS [3,158], 6 McLean, 612.
COOK v. HAMMOND [3,159], 4 Mason, 467.
Cook, Hawes v. [See 6,236.]
COOK v. HOWARD [3,160], 4 Fish. Pat. Cas. 269.
COOK v. HUNTER [3,161], 2 Overt. 113; 1 Brunner, Col. Cas. 125.
COOK v. LANSING [3,162], 3 McLean, 571.
COOK v. MALLORY [3,163], 44 Hunt, Mer. Mag. 627.
Cook, Norris v. [See 10,305.]
COOK v. OLIVER [3,164], 1 Woods, 437.
Cook, Taylor v. [See 13,789.]
Cook, Thompson v. [See 13,952.]
COOK v. TRIBUNE ASS'N [3,165], 5 Blatchf. 352.
Cook, Union Bank v. [See 14,349.]
Cook, United States v. [See 14,851, 14,852.]

[Federal Case numbers are given in brackets.]

Cook, Van Bokkelen v. [See 16,831.]
COOK v. WHITNEY [3,166], 3 Woods, 715.
Cook, Woodworth v. [See 18,011.]
Cook County, Walworth v. [See 17,136.]
Cook County Nat. Bank, United States v. [See 14,-853.]
COOKE, In re [3,167], 30 Leg. Int. 404.
COOKE, In re [3,168], 10 N. B. R. 126.
COOKE, In re [3,169], 11 N. B. R. 1; 10 Phila. 262; 31 Leg. Int. 357; 1 Wkly. Notes Cas. 51; 9 West. Jur. 157; 22 Pittsb. Leg. J. 59; 1 Cent. Law J. 580.
COOKE, In re [3,170], 12 N. B. R. 30; 1 Wkly. Notes Cas. 318.
COOKE, In re [3,171], 1 Wkly. Notes Cas. 10.
COOKE, In re [3,172], 1 Wkly. Notes Cas. 30.
Cooke, Catlett v. [See 2,515.]
COOKE v. FORD [3,173], 2 Flip. 22; 16 Amer. Law Reg. (N. S.) 417; 4 Amer. Law T. Rep. (N. S.) 280; 3 Law & Eq. Rep. 715; 4 N. Y. Wkly. Dig. 407; 4 Cent. Law J. 560; 2 Cin. Law Bul. 108; 9 Chi. Leg. News, 291; 23 Int. Rev. Rec. 218.
Cooke, Grahame v. [See 5,678.]
Cooke, Harper v. [See 6,086.]
Cooke, Mayor & Commonalty v. [See 9,358.]
COOKE v. MYERS [3,174], 1 Cranch, C. C. 6.
COOKE v. MYERS [3,175], 1 Cranch, C. C. 166.
COOKE v. NEW YORK CENT. & H. R. R. CO. [3,176], 4 Ban. & A. 398; 16 O. G. 856.
COOKE v. O'BRIEN [3,177], 2 Cranch, C. C. 17.
COOKE v. UNITED STATES [3,178], 12 Blatchf. 43; 19 Int. Rev. Rec. 181.
Cooke, United States v. [See 14,854, 14,855.]
COOKE v. VOSS [3,179], 1 Cranch, C. C. 25.
COOKE v. WEIGHTMAN [3,180], 1 Cranch, C. C. 439.
COOKE v. WOODROW [3,181], 1 Cranch, C. C. 437.
Cookenderfer, Mandeville v. [See 9,009, 9,010.]
Cookendorfer, United States v. [See 14,856.]
Cooker, The John. [See 7,337.]
COOKINGHAM v. FERGUSON [3,182], 8 Blatchf. 488; 4 N. B. R. 635.
COOKINGHAM v. MORGAN [3,183], 7 Blatchf. 480; 5 N. B. R. 16.
Cooledge v. McCone. [See 3,186.]
Cooley, Hall v. [See 5,928.]
COOLIDGE v. CURTIS [3,184], 1 Bond, 222; 7 Amer. Law Reg. 334.
Coolidge, Gordon v. [See 5,606.]
COOLIDGE v. GUTHRIE [3,185], 1 Flip. 97; 8 Amer. Law Reg. (N. S.) 22; 3 Amer. Law Rev. 582.
Coolidge, Hubbard v. [See 6,816.]
COOLIDGE v. McCONE [3,186], 2 Sawy. 571; 1 Ban. & A. 78; 5 O. G. 458; 1 Amer. Law T. Rep. (N. S.) 214.
COOLIDGE v. PAYSON [10,860].
Coolidge, United States v. [See 14,857, 14,858.]
Cooly, United States v. [See 14,859.]
Cooly, Washington v. [See 17,226.]
Coombe, Homans v. [See 6,653, 6,654.]
COOMBE v. MEADE [3,188], 2 Cranch, C. C. 547.
Coombs, Hutchinson v. [See 6,955.]
COOMBS v. NOLAN [3,189], 7 Ben. 301.
Coons, United States v. [See 14,860.]
COOPER, In re [3,190], 16 N. B. R. 178.
COOPER v. BROWN [3,191], 2 McLean, 495.
COOPER v. DUNGLER [3,192], 4 McLean, 257.
COOPER v. GALBRAITH [3,193], 3 Wash. C. C. 546.
COOPER v. GIBBS [3,194], 4 McLean, 396.
COOPER v. GORDON [3,195], 4 McLean, 6.
COOPER v. HARDY [3,196].
Cooper, Isaacs v. [See 7,096.]
Cooper, Keene v. [See 7,641.]
COOPER v. JOHNSON [3,197].
COOPER v. LABER [3,198], 1 Biss. 539.
COOPER v. MATTHEYS [3,199].
COOPER v. MATTHEYS [3,200], 5 Pa. Law J. 38; 8 Law Rep. 413.
Cooper, Patton v. [See 10,834.]
Cooper, Preston v. [See 11,395.]
Cooper, Renwick v. [See 11,701.]
Cooper, Riley v. [See 11,836.]
COOPER v. ROBERTS [3,201], 6 McLean, 93.
COOPER v. THOMPSON [3,202], 13 Blatchf. 434.
Cooper, United States v. [See 14,861-14,865.]
Cooper, Webster v. [See 17,333.]
Cooper, The Helen R. [See 6,333-6,335.]
Coosa, The, Conner v. [See 3,113.]
COOTE v. BANK OF THE UNITED STATES [3,-203], 3 Cranch, C. C. 50.
COOTE v. BANK OF THE UNITED STATES [3,-204], 3 Cranch, C. C. 95.
Coote, Patriotic Bank v. [See 10,807.]
COOTS v. MORTON [3,205], 5 Cranch, C. C. 409.
COPE v. HUNTT [3,206], 4 Cranch, C. C. 293.
Cope, Judson v. [See 7,565.]
COPE v. ROMEYNE [3,207], 4 McLean, 384.
COPELAND v. BURTIS [3,208], 13 Pittsb. Leg. J. 244.
Copeland, Clark Patent Steam & Fire Regulator Co. v. [See 2,866.]
COPELAND v. MEMPHIS & C. R. CO. [3,209], 3 Woods, 651.
COPELAND v. PHOENIX INS. CO. [3,210], 1 Woolw. 278; 2 West. Jur. 341.
Copeland v. Security Ins. Co. [See 3,210.]
Copelin, Dorris v. [See 4,011.]
COPEN v. FLESHER [3,211], 1 Bond, 440.
Coperthwaite v. Gill. [See 3,298.]
COPLAND v. BOSQUET [3,212], 4 Wash. C. C. 588.
COPLEY v. GROVER & BAKER SEWING-MACH. CO. [3,213], 2 Woods, 494.
COPLEY v. RIDDLE [3,214], 2 Wash. C. C. 354.
COPP v. DE CASTRO & DONNER SUGAR-REFINING CO. [3,215], 8 Ben. 321.
COPPENBUSEN v. FOLKE [3,215a], Betts, Scr. Bk. 681.
Copper Sill, United States v. [See 14,866.]
COPPERTHWAIT v. McCORD [3,216], 2 McLean, 143.
Coquillard, Denniston v. [See 3,801.]
Cora, The, Bond v. [See 1,620, 1,621.]
CORA NELLIE, The [3,217], 2 Adm. Rec. 332.
CORBET v. JOHNSON [3,218], 1 Brock. 77.
CORBETT, In re [3,219], 9 Ben. 274.
CORBETT, In re [3,220], 5 Sawy. 206.
Corbett, Commercial Bank v. [See 3,057, 3,058.]
CORBETT v. GIBSON [3,221], 16 Blatchf. 334.
CORBETT v. GIBSON [3,222], 16 Blatchf. 336.
CORBETT v. WOODWARD [3,223], 5 Sawy. 403; 11 Chi. Leg. News, 246.
CORBIN, In re [3,224], 1 MacA. Pat. Cas. 521.
Corbin, Hopkins & D. Mfg. Co. v. [See 6,695.]
Corbin, Parker v. [See 10,731.]
Corbin, Post v. [See 11,299.]
Corbin, Van Brunt v. [See 16,832.]
CORCLE v. MAXWELL [3,231].
Corcoran, Bank of the United States v. [See 912.]
CORCORAN v. BROWN [3,226], 3 Cranch, C. C. 143.
Corcoran, Brown v. [See 1,999.]
Corcoran, Dawes v. [See 3,664.]
CORCORAN v. DOUGHERTY [3,227], 4 Cranch, C. C. 205.
CORCORAN v. HODGES [3,228], 2 Cranch, C. C. 452.
Corcoran, Holmead v. [See 6,627.]
CORCORAN v. JONES [3,229], 5 Cranch, C. C. 607.
Corcoran, Judson v. [See 18,304.]
Corcoran, Union Bank of Georgetown v. [See 14,353.]
Cordery, Reynolds v. [See 11,729.]
CORDILLERA, The [3,229a], 5 Blatchf. 518.
CORFIELD v. CORYELL [3,230], 4 Wash. C. C. 371.
Coringa, The. [See 1,736.]
Coriolanus, The, Johnson v. [See 7,380.]
CORKLE v. MAXWELL [3,231], 3 Blatchf. 413.
CORKS v. BELLE, The [3,231a], 8 Betts, D. C. MS. 63.
CORLIES, In re [3,232], 1 Betts, C. C. MS. 10.
CORLISS v. WHEELER & WILSON MFG. CO. [3,233], 2 Fish. Pat. Cas. 199; 9 Pittsb. Leg. J. 89.
CORNELIA AMSDEN, The [3,234], 5 Ben. 315.
Cornelius, Henry v. [See 6,380.]
CORNELIUS C. VANDERBILT, The [3,235], Abb. Adm. 361.
Cornelius Grinnell, The, Winso v. [See 17,883.]
Cornell v. American Bush Co. [See 3,236.]
CORNELL v. DOWNER & BEMIS BREWING CO. [3,236], 7 Biss. 346; 2 Ban. & A. 514; 11 O. G. 331; 9 Chi. Leg. News, 142.
Cornell, Fitch v. [See 4,834.]
Cornell, Gay v. [See 5,280.]
CORNELL v. HYATT [3,237], 1 MacA. Pat. Cas. 423.
CORNELL v. LITTLEJOHN [3,238], 9 O. G. 837, 922; 2 Ban. & A. 324.

[Federal Case numbers are given in brackets.]

CORNELL v. MARGARETTA, The [3,239], 29 Leg. Int. 213.
Cornell, Morris v. [See 9,829.]
Cornell, Perry v. [See 11,001, 11,002.]
Cornell v. Racine. [See 1,213.]
Cornell, United States v. [See 14,867, 14,868.]
CORNELY v. HENDERICKX [3,240], 12 O. G. 431.
CORNETT v. LAWRENCE [3,241], 2 Blatchf. 512.
CORN EXCHANGE BANK, In re [3,242], 7 Biss. 400; 15 N. B. R. 431; 9 Chi. Leg. News, 254; 4 Law & Eq. Rep. 29; 15 Alb. Law J. 351.
CORN EXCHANGE BANK, In re [3,243], 15 N. B. R. 216.
CORN EXCH. NAT. BANK v. PHILADELPHIA TRUST, SAFE-DEPOSIT & INS. CO. [3,244], 11 Phila. 510; 33 Leg. Int. 401; 22 Int. Rev. Rec. 385; 9 Chi. Leg. News, 65.
CORNIER v. SAWYER [3,245], Crabbe, 281.
Corning, Burden v. [See 2,143, 2,144.]
CORNING v. BURDICK [3,246], 4 McLean, 133.
Corning, Perry v. [See 11,003, 11,004.]
Corning, Troy I. & N. Factory v. [See 14,195-14,198.]
Corning, The Angelina. [See 384.]
CORNUBIA, The [3,247.]
CORNWALL, The [3,248], 8 Ben. 212.
CORNWALL, The [3,249], 10 Ben. 108.
CORNWALL, In re [3,250], 9 Blatchf. 114; 6 N. B. R. 305; 6 Amer. Law Rev. 365.
CORNWALL, In re [3,251], 4 N. B. R. 400 (Quarto, 134).
Cornwall v. Cornwall. [See 3,250, 3,251.]
Corp, Childs v. [See 2,677.]
CORPORATION OF GEORGETOWN v. UNITED STATES [18,281], 2 Hayw. & H. 302.
CORPS v. ROBINSON [3,252], 2 Wash. C. C. 388.
CORREY v. LAKE [3,253], Deady, 469.
Corrie, United States v. [See 14,869.]
Corrigan, Hyde v. [See 6,968.]
CORSE, Ex parte [3,254], 1 N. Y. Leg. Obs. 231.
Corse, Alexandria v. [See 183.]
Corse, Northwestern Distilling Co. v. [See 10,335.]
CORSER v. CRAIG [3,255], 1 Wash. C. C. 424.
CORSICA, The [3,256], 6 Blatchf. 190.
Corsica, The, Schuyler v. [See 12,495.]
CORT v. DELAWARE INS. CO. [3,257], 2 Wash. C. C. 375.
CORTES, The [3,258], 6 Ben. 288.
Cortlan, Larabee v. [See 8,084.]
CORWIN, In re [3,259], 1 Fed. 847; 19 N. B. R. 422.
Corwin, United States v. [See 14,870.]
Corwine, United States v. [See 14,871.]
CORY v. CLARK [3,260], 2 N. J. Law J. 122.
Cory, Liddle v. [See 8,338.]
Cory v. The Norfolk. [See 10,297.]
Cory v. The Union. [See 10,297.]
Coryell, Corfield v. [See 3,230.]
Coryell, Sylvia v. [See 13,713.]
Cosgrove, Polk v. [See 11,248.]
COSTA RICA, The [3,261], 3 Sawy. 538; 5 Ins. Law J. 395.
COSTA RICA, The [3,262], 3 Sawy. 610.
COSTELLO v. AMERICAN STEAMSHIP CO. [3,263], 1 Wkly. Notes Cas. 204.
Coster, In re. [See 17,027.]
COSTER v. PHOENIX INS. CO. [3,264], 2 Wash. C. C. 51.
COSTIGAN v. WOOD [3,265], 5 Cranch, C. C. 507.
COSTIN v. WASHINGTON [3,266], 2 Cranch, C. C. 254.
Costs. [See 18,282.]
COSTS AND FEES [18,282], 1 N. B. R. 24; Bankr. Reg. Supp. 6; 6 Int. Rev. Rec. 53.
COSTS, FEES, AND COMPENSATION IN PRIZE CASES [18,283], Blatchf. Pr. Cas. 206.
COSTS IN CIVIL CASES [18,284], 1 Blatchf. 652.
COTE, In re [3,267], 2 Lowell, 374; 14 N. B. R. 503.
Cottingham, United States v. [See 14,872.]
COTTLE v. PAYNE [3,268], 3 Day, 289; Brunner, Col. Cas. 59.
Cottom, United States v. [See 14,873.]
COTTON, In re [3,269], 2 N. Y. Leg. Obs. 370; 6 Law Rep. 546.
COTTON PLANTER, The [3,270], 1 Paine, 23.
COTTON-PRESS CO. v. COLLECTOR [3,271], 1 Woods, 296.
COTTRELL v. ADAMS [3,272], 2 Biss. 351; 2 Chi. Leg. News, 373; 2 Leg. Gaz. 275.
Cottrill, Myers v. [See 9,985.]
Couch, United States v. [See 14,874.]
COULON v. NEPTUNE, The [3,273], 2 Pet. Adm. 356.
COULSON v. HOLMES [3,274], 5 Sawy. 279; 6 Reporter, 674; 11 Chi. Leg. News, 49; 24 Int. Rev. Rec. 358; 7 Cent. Law J. 446.
COULSON v. PORTLAND [3,275], Deady, 481; 2 Amer. Law T. Rep. U. S. Cts. 156.
Coulson, Walton v. [See 17,132.]
COULTER, In re [3,276], 2 Sawy. 42; 5 N. B. R. 64; 1 Amer. Law T. Rep. Bankr. 257; 3 Chi. Leg. News, 377; 4 Amer. Law T. 131.
COULTER v. L'ESPERANZA [3,277], Bee, 97.
Coulter, United States v. [See 14,875.]
COUMBE v. NAIRN [3,278], 2 Cranch, C. C. 676.
COUNCER v. A. L. GRIFFIN, The [3,279], 5 Amer. Law Reg. (N. S.) 45.
Counterfeiting—Charge to Grand Jury in Relation to Counterfeiting. [See 18,248, 18,251.]
COUNTESS OF DUFFERIN, The [3,280], 10 Ben. 155.
County Auditor, Lancaster v. [See 8,038.]
County Commissioners, Aspinwall v. [See 593.]
County Court of Humphries, Spraggins v. [See 13,-246.]
County Court of Lincoln County, United States v. [See 15,503.]
County Court of Ouachita County, United States v. [See 14,876.]
County Court of Vernon County, United States v. [See 14,877.]
COUNTY JUDGES OF VIRGINIA [18,259], 3 Hughes, 576.
COURCIER v. RITTER [3,282], 4 Wash. C. C. 549; 1 Amer. Lead. Cas. 687.
COURIER, The [3,283], 1 Adm. Rec. 287.
Coursault, Dutilh v. [See 4,206.]
Couse v. Johnson. [See 3,288.]
COURT, In re [3,284], 17 N. B. R. 555.
Court, United States v. [See 14,877a.]
COURTNEY v. HUNTER [3,285], 1 Cranch, C. C. 265.
Courtney, Swope v. [See 13,703.]
COURTOIS v. CARPENTIER [3,286], 1 Wash. C. C. 376.
Courtwright v. Clark. [See 10,767, 10,768.]
COUSCHER v. TULAM [3,287], 4 Wash. C. C. 442.
Couse, Bixby v. [See 1,451.]
COUSE v. JOHNSON [3,288], 4 Ban. & A. 501; 16 O. G. 719; Merw. Pat. Inv. 363.
Cousinery, United States v. [See 14,878.]
Coventry Co., Pearl v. [See 10,875.]
Cover, Farmers' & Mechanics' Bank v. [See 4,653.]
COVERDALE v. NORTH AMERICA, The [3,289], Crabbe, 420.
COVERSTON v. CONNECTICUT MUT. LIFE INS. CO. [3,290], 1 Amer. Law T. Rep. (N. S.) 239; 3 Ins. Law J. 113; 4 Bigelow, Ins. Cas. 169.
Covillaud, United States v. [See 14,879.]
COVINGTON v. BURNES [3,291], 1 Dill. 16.
Cowan v. The Jacmel Packet. [See 7,154.]
COWAN v. MAGAURAN [3,292], Wall. Sr. 66.
COWDREY v. RAILROAD CO. [3,293], 1 Woods, 331.
COWELL v. BROTHERS, The [3,294], Bee, 136.
Cowell, Crane v. [See 3,353.]
COWEN v. BANKS [3,295], 24 How. Pr. 72.
Cowing, Gould's Mfg. Co. v. [See 5,642, 5,643.]
Cowing, McKenzie v. [See 8,856.]
COWING v. RUMSEY [3,296], 8 Blatchf. 36; 4 Fish. Pat. Cas. 275.
Cowing, United States v. [See 14,880.]
COWLES, In re [3,297], 1 N. B. R. 280 (Quarto, 42) 1 West. Jur. 367.
Cowles, Leavitt v. [See 8,171.]
Cowperthwait, Burr v. [See 2,188.]
COWPERWAITHE v. GILL [3,298].
COWQUA v. LAUDERBRUN [3,299], 1 Wash. C. C. 521.
Cox, Ex parte. [See 1,878, 1,879.]
COX v. BARNEY [3,300], 14 Blatchf. 289.
COX v. GOULD [3,301], 4 Blatchf. 341.
COX v. GRIGGS [3,302], 1 Biss. 362; 2 Fish. Pat. Cas. 174; Merw. Pat. Inv. 703.
Cox, Hanson v. [See 6,040.]
Cox, Hawkins v. [See 6,243.]
Cox, Jenks v. [See 7,277.]
COX v. JONES [3,303], 2 Cranch, C. C. 370.

[Federal Case numbers are given in brackets.]

Cox, Manning v. [See 9,042.]
COX v. MURRAY [3,304], 1 Abb. Adm. 340.
COX v. RAMSDELL [3,305], 4 Ban. & A. 326.
COX v. SIMMS [3,306], 1 Cranch, C. C. 238.
COX v. WATKINS [3,307], 3 Cranch, C. C. 629.
COX v. WILDER [3,308], 2 Dill. 45; 7 N. B. R. 241; 5 Amer. Law T. Rep. U. S. Cts. 500.
COX v. WILDER [3,309], 5 N. B. R. 443.
Cox, The Jesse J. [See 7,295.]
Coxe, Ewer v. [See 4,584.]
COXE v. HALE [3,310], 10 Blatchf. 56; 19 Int. Rev. Rec. 30; 8 N. B. R. 562; 21 Pittsb. Leg. J. 77.
Coxe, Markoe v. [See 9,092.]
COXE v. PENNINGTON [3,311], 1 Wash. C. C. 65.
Coyle, Brent v. [See 1,837, 1,838.]
Coyle, Dyer v. [See 4,223.]
COYLE v. GOZZLER [3,312], 2 Cranch, C. C. 625.
Coyle, Leach v. [See 8,156.]
COYNE v. ALEXANDER McNEIL, The [3,312a], 20 Int. Rev. Rec. 176.
Coyne, The Emma L. [See 4,466.]
COZART, In re [3,313], 3 N. B. R. 508 (Quarto, 126).
Cozzens, Creditors v. [See 3,378.]
C. P. Morey, The, Moore v. [See 9,756.]
Crabb, Bank of the United States v. [See 913.]
Crabb, Emack v. [See 4,432.]
CRABTREE v. CLARK [3,314], 1 Spr. 217; 16 Law Rep. 584.
Crabtree, Clarke v. [See 2,847.]
CRABTREE v. NEFF [3,315], 1 Bond, 554.
Craefe, Morrell v. [See 9,819.]
CRAFT, In re [3,316], 2 Ben. 214; 1 N. B. R. 378 (Quarto, 89.)
CRAFT, In re [3,317], 6 Blatchf. 177; 2 N. B. R. 111 (Quarto, 44).
CRAFT v. LATHROP [3,318], 2 Wall. Jr. 103; 4 Amer. Law J. (N. S.) 181.
Crafton, United States, v. [See 14,881.]
CRAGIN v. CARMICHAEL [3,319], 2 Dill. 519; 11 N. B. R. 511.
Cragin, Nazro v. [See 10,062.]
CRAGIN v. THOMPSON [3,320], 2 Dill. 513; 12 N. B. R. 81.
CRAIG, Ex parte [3,321], 4 Wash. C. C. 710.
CRAIG, In re [3,322], 3 Ben. 353; 3 N. B. R. 100 (Quarto, 26).
CRAIG, In re [3,323], 4 N. B. R. 50 (Quarto).
CRAIG, In re [3,324], 4 N. B. R. 52 (Quarto).
CRAIG'S CASE [3,325], Pet. C. C. 1.
CRAIG v. BROWN [3,326], Pet. C. C. 139.
CRAIG v. BROWN [3,327], Pet. C. C. 171.
CRAIG v. BROWN [3,328], Pet. C. C. 352.
CRAIG v. BROWN [3,329], Pet. C. C. 443.
CRAIG v. BROWN [3,330], 3 Wash. C. C. 503.
Craig v. Campbell. [See 3,335.]
Craig v. Cones. [See 3,335.]
Craig, Corser v. [See 3,255.]
CRAIG v. CUMMINGS [3,331], Pet. C. C. 431; 2 Wash. C. C. 505.
CRAIG v. FISHER [3,332], 2 Sawy. 345; 5 Pac. Law Rep. 52.
Craig, Fisher v. [See 4,817.]
CRAIG v. HARTFORD, The [3,333], 1 McAll. 91.
Craig, Hines v. [See 6,518.]
CRAIG v. MAXWELL [3,334], 2 Blatchf. 545.
Craig, Millard v. [See 9,547, 9,548.]
CRAIG v. POLLOCK [3,335], 5 Dill. 449.
CRAIG v. REINTZEL [3,336], 2 Cranch, C. C. 128.
CRAIG v. RICHARDS [3,337], 1 Cranch, C. C. 84.
CRAIG v. SMITH [3,338], 2 Dill. 375.
CRAIG v. SMITH [3,339], 4 Dill. 349; 1 Ban. & A. 556; 2 Cent. Law J. 256.
CRAIG v. UNITED STATES INS. CO. [3,340], Pet. C. C 410.
Craig, United States v. [See 14,882, 14,883.]
CRAIGIE v. McARTHUR [3,341], 4 Dill. 474; 9 Chi. Leg. News, 156; 4 Cent. Law J. 237; 15 Alb. Law J. 121; Syllabi, 115; 23 Int. Rev. Rec. 42.
CRAIK v. HILTON [3,342], 2 Cranch, C. C. 116.
CRAM, In re [3,343], 1 Hask. 89; 1 N. B. R. 504 (Quarto, 132); 1 Amer. Law T. Rep. Bankr. 65, 120.
CRAMER, In re [3,344].
CRAMER, In re [3,345], 13 N. B. R. 225; 8 Chi. Leg. News, 106.
CRAMER v. ALLEN [3,346], 5 Blatchf. 248.
Cramer, Clarke v. [See 2,848.]
CRAMMER v. FAIR AMERICAN, The [3,347], 1 Pet. Adm. 242.
Crammond, Perry v. [See 11,005.]
Crammond, Philips v. [See 11,092.]
Crammond, Thellasson v. [See 13,877.]
Crampton, Thrall v. [See 14,008.]
CRAMPTON v. VAN NESS [3,348], 4 Cranch, C. C. 350.
CRAMTON v. TARBELL [3,349].
Crandall, Cropsey v. [See 3,418.]
Crandell, Burford v. [See 2,150.]
Crandell, Gilpin v. [See 5,449.]
Crandell, United States v. [See 14,884, 14,885.]
CRANDELL'S TRIAL [3,350].
CRANDLE v. LIPPINCOTT [11,758]; 1 Pittsb. Leg. J. 9.
CRANE, In re [3,352], 15 N. B. R. 120; 1 Tex. Law J. 41.
CRANE v. BOSTON ADVERTISER [3,352a], 13 Reporter, 650.
CRANE v. COWELL [3,353], 2 Curt. 178.
Crane, Errett v. [See 4,523.]
Crane, Harvey v. [See 6,178.]
CRANE v. McCOY [3,354], 1 Bond, 422.
CRANE v. MORRISON [3,355], 4 Sawy. 138; 17 N. B. R. 393.
Crane v. The Rebecca. [See 11,618, 11,619.]
CRANE v. REEDER [3,356], 11 West. Jur. 153; 15 Alb. Law J. 103; 23 Int. Rev. Rec. 65; 1 Cin. Law Bul. 31.
CRANE v. SAMSON, The [3,357], N. Y. Times, Feb. 24, 1855.
Crane, Union Paper-Bag Mach. Co. v. [See 14,388.]
Crane, United States v. [See 14,886-14,888.]
Crane, Walker v. [See 17,067.]
CRANE v. WEYMOUTH [3,358], 5 Pac. Law J. 315.
Crane, Wooster v. [See 18,036.]
CRANMER v. GERNON [3,359], 2 Pet. Adm. 390.
Cranston, United States v. [See 14,889.]
CRAPO v. ALLEN [3,360], 1 Spr. 184.
CRAPO v. ARCTIC, The [3,361], N. Y. Times, Aug. 2, 1862.
Crary, Chase v. [See 2,626.]
CRARY v. EL DORADO, The [3,362], 24 How. Pr. 128; 35 Hunt, Mer. Mag. 68.
Crary v. Hunter. [See 15,426.]
Crase, Jenny v. [See 7,285].
Craven, Williams v. [See 17,719].
CRAWFORD, In re [3,363], 3 N. B. R. 698 (Quarto, 171); 3 Amer. Law T. 169; 1 Amer. Law T. Rep. Bankr. 210.
CRAWFORD, In re [3,364], 5 N. B. R. 301.
CRAWFORD'S CASE [3,365], 2 Cranch, C. C. 454.
CRAWFORD v. BUFFALO, The [3,365a], 14 Betts, D. C. MS. 85.
CRAWFORD v. BURNHAM [3,366], 1 Flip. 116; 4 Amer. Law T. Rep. U. S. Cts. 228.
Crawford, Bush v. [See 2,224.]
CRAWFORD v. CRUSE [3,367].
CRAWFORD v. DEXTER [3,368], 5 Sawy. 201.
Crawford, Farrin v. [See 4,686.]
Crawford, Fields v. [See 18,296.]
Crawford, Gittings v. [See 5,465.]
CRAWFORD v. JOHNSON [3,369], Deady, 457.
Crawford, Latton v. [See 18,296.]
Crawford, Marshall v. [See 9,126.]
Crawford, Mathuson v. [See 9,279].
CRAWFORD v. MILLIGAN [3,370], 2 Cranch, C. C. 226.
CRAWFORD v. SLYE [3,371], 4 Cranch, C. C. 457.
Crawford, Smith v. [See 13,030.]
Crawford, United States v. [See 14,890.]
Crawford, Van Campbush v. [See 2,224.]
CRAWFORD v. WILLIAM PENN, The [3,372], Pet. C. C. 106.
CRAWFORD v. WILLIAM PENN, The [3,373], 3 Wash. C. C. 484.
Crawford County, Culver v. [See 3,468.]
Crawford County, Flint v. [See 4,871.]
Crawford County, Howard v. [See 6,757.]
CRAY v. HARTFORD FIRE INS. CO. [3,374.]
CRAY v. HARTFORD FIRE INS. CO. [3,375], 1 Blatchf. 280; 1 Liv. Law Mag. 96.
CREASE v. PARKER [3,376], 1 Cranch, C. C. 448.
CREASE v. PARKER [3,377], 1 Cranch, C. C. 506.
Crease, Smith v. [See 13,031.]
Credit Mobilier, Hazzard v. [See 6,289.]

[Federal Case numbers are given in brackets.]

Credit Mobilier, McComb v. [See 8,709.]
CREDITORS v. COZZENS [3,378], 2 West. Jur. 349; 3 N. B. R. 281 (Quarto, 73); 16 Pittsb. Leg. J. 236.
CREDITORS v. WILLIAMS [3,379], 4 N. B. R. 579 (Quarto, 187).
Creditors of Bailey, Ex parte. [See 726-729.]
Creene, Bernhard v. [See 1,349.]
CREGG, Ex parte [3,380], 2 Curt. 98; 3 Liv. Law Mag. 141; 17 Law Rep. 491.
CREHORE v. NORTON [3,381].
CREIGHTON v. GEORGE'S CREEK, The [3,382], 5 Pittsb. Leg. J. 13.
Creighton, Hargrave v. [See 6,064.]
CREMER v. HIGGINSON [3,383], 1 Mason, 323.
CRENSHAW, The [3,384], Blatchf. Pr. Cas. 631.
Crenshaw, The. [See 6,450-6,452.]
Crenshaw, Botts v. [See 1,690.]
Creole, The, M'Afee v. [See 8,655.]
Creole, The, Smith v. [See 13,032, 13,033.]
CRERAR v. MONTREAL OCEAN STEAMSHIP CO. [3,385.]
CRESCENT, The [3,386].
Crescent City, The, Seaman v. [See 12,581.]
CRESCENT CITY ICE CO. v. STAFFORD [3,387], 3 Woods, 94.
Crescent City Live-Stock Landing & Slaughterhouse Co., Live-Stock Dealers' & Butchers' Ass'n v. [See 8,408.]
CRESSLER v. CUSTER [3,388], 1 MacA. Pat. Cas. 216.
CRESSON v. CRESSON [3,389], 6 Amer. Law Reg. 42; 5 Pa. Law J. Rep. 431.
CRETIEW, In re [3,390], 5 N. B. R. 423.
Cribbs, Rison v. [See 11,860.]
CRIPPS v. MUDD [3,391], 1 Hayw. & H. 50.
Crim, Bailey v. [See 734.]
Criscuola, Martin v. [See 9,159.]
CRISP v. PROUD [3,392], 4 Hughes, 57; 24 Int. Rev. Rec. 340.
CRITTENDEN, In re [3,393], 2 Flip. 212.
CRITTENDEN, Ex parte [3,393a], Hempst. 176.
Crittenden, Bartlett v. [See 1,076.]
CRITTENDEN v. DAVIS [3,393b], Hempst. 96.
Crittenden, Hank v. [See 6,024.]
CRITTENDEN v. STROTHER [3,394], 2 Cranch, C. C. 464.
Crittenden, Union Bank of Georgetown v. [See 14,354.]
CROATAN, The [3,395], Chase 546.
CROCKER v. BEAL [3,396], 1 Lowell, 416.
CROCKER v. FIRST NAT. BANK [3,397], 4 Dill. 358; 3 Amer. Law T. Rep. (N. S.) 350; 3 N. Y. Wkly. Dig. 105; 1 Thomp. Nat. Bank Cas. 317; 3 Cent. Law J. 527; 11 Amer. Law Rev. 169; 1 Cin. Law Bul. 350; 24 Pittsb. Leg. J. 73.
CROCKER v. JACKSON [3,398], 1 Spr. 141; 10 Law Rep. 70.
CROCKER v. LEWIS [3,399], 3 Sumn. 1.
CROCKER v. REDFIELD [3,400], 4 Blatchf. 378; 18 How. Pr. 85.
Crocker, Ringgold v. [See 11,843.]
Crocker, Rutland & B. R. Co. v. [See 12,176.]
CROCKET v. BROWER [3,401], 10 Hunt, Mer. Mag. 378.
Crocket, The Isaac Newton v. [See 7,092.]
CROCKETT, In re [3,402], 2 Ben. 514; 2 N. B. R. 208 (Quarto, 75); 2 Amer. Law T. Rep. Bankr. 21.
Crockett, Gurney v. [See 5,874.]
CROCKETT v. RILEY [3,402a], Betts' Scr. Bk. 141.
CROFFORD v. MORGAN [3,403].
CROFT, In re [3,404], 8 Biss. 188; 6 N. Y. Wkly. Dig. 218; 17 N. B. R. 324; 10 Chi. Leg. News, 204; 6 Amer. Law Rec. 597.
Croghan, Allen v. [See 220].
CROMIE, In re [3,405], 2 Biss. 160; 1 Chi. Leg. News, 361.
Crommelin, Rogers v. [See 12,009.]
CROMPTON v. BELKNAP MILLS [3,406], 3 Fish. Pat. Cas. 536.
CROMPTON v. BELKNAP MILLS [18,285], 3 Fish. Pat. Cas. 536.
CROMPTON v. CONKLING [3,407], 9 Ben. 225.
CROMPTON v. CONKLING [3,408], 15 N. B. R. 417.
Crompton, Howard v. [See 6,758.]
CROMWELL v. BANK OF PITTSBURG [3,409], 2 Wall. Jr. 569; 1 Pittsb. Leg. J. 17.
CROMWELL v. ISLAND CITY, The [3,410], 1 Cliff. 221.
Cromwell, Wilson v. [See 17,799.]
CRONEY, In re [3,411], 8 Ben. 64.
Cronkhite, Warner v. [See 17,180.]
CROOK v. AUDENREID [3,412], 7 Ben. 564.
Crook v. Bronsen. [See 1,549.]
Crook v. Redfield. [See 1,549.]
Crook, United States v. [See 14,891.]
Crooke v. Lafayette County Court. [See 15,549.]
CROOKE v. MAXWELL [3,413], 5 Int. Rev. Rec. 69.
CROOKER, In re [3,414], 1 McA. Pat. Cas. 134.
CROOKES v. MAXWELL [3,415], 6 Blatchf. 468; 10 Int. Rev. Rec. 50.
Cropley, United States v. [See 14,892.]
CROPPER v. COBURN [3,416], 2 Curt. 465.
CROPPER v. NELSON [3,417], 3 Wash. C. C. 125.
CROPSEY v. CRANDALL [3,418], 2 Blatchf. 341; 10 N. Y. Leg. Obs. 1.
Crosby, Bockee v. [See 1,593.]
CROSBY v. CADWALADER [3,419], 5 Amer. Law Rev. 187.
CROSBY v. CALDWELL [3,420].
CROSBY v. FOLGER [3,421], 1 Sumn. 514.
CROSBY v. GRINNELL [3,422], 9 N. Y. Leg. Obs. 281.
Crosby, Harding v. [See 6,050.]
CROSBY v. LANE [3,423], 4 Amer. Law J. (N. S.) 333; 14 Law Rep. 452.
CROSBY v. LAPOURAILLE [3,424], Taney, 374.
Crosby, Mason v. [See 9,234-9,236.]
CROSBY v. ORIENTAL, The [3,424a], 19 Betts, D. C. MS. 76.
CROSBY v. PRINCE ALBERT, The [3,424b], Betts, Scr. Bk. 589.
CROSBY v. SUNSHINE, The [3,425].
Crosby, United States v. [See 14,893.]
Crose, In re. [See 3,426, 3,427.]
CROSS, In re [3,426], 2 Dill. 320.
CROSS, In re [3,427], 16 N. B. R. 294; 25 Pittsb. Leg. J. 35; 5 Cent. Law J. 313.
CROSS v. BELLONA, The [3,428], Bee, 193.
CROSS v. BLANFORD [3,429], 2 Cranch, C. C. 677.
Cross, Dennis v. [See 3,792.]
CROSS v. DE VALLE [3,430], 1 Cliff. 282.
CROSS v. DE VALLE [3,431], 21 Law Rep. 734.
CROSS v. DOLPHIN, The [3,432], Bee, 152.
Cross, Greenleaf v. [See 5,777.]
CROSS v. MORGAN [3,433].
Cross, Postmaster General v. [See 11,306.]
CROSS v. UNITED STATES [18,286], 2 Hayw. & H. 290.
CROSS v. UNITED STATES [3,434], 1 Gall. 26.
Cross, United States v. [See 14,894.]
Cross, White v. [See 17,546.]
CROSSETTE, In re [3,435], 17 N. B. R. 208.
CROSSLEY v. LOUIS, The [3,436], 4 Ben. 510.
Crossman, Star Salt Caster Co. v. [See 13,320, 13,321.]
Crothers, Webster v. [See 17,334.]
CROUCH v. ROEMER [3,437], 2 Ban. & A. 637; 11 O. G. 1112.
CROUCH v. SPEER [3,438], 6 O. G. 187; 1 Ban. & A. 145.
CROUDSON v. LEONARD [3,439], 1 Cranch, C. C. 291.
CROUGHWELL, In re [3,440], 9 Ben. 360; 17 N. B. R. 337.
Crousellat, De Taslet v. [See 3,827.]
Crousillat, De Tastett v. [See 3,828.]
Crow, United States v. [See 14,895.]
Crowder, Lynch v. [See 8,637.]
CROWE v. AIKEN [3,441], 2 Biss. 208; 4 Amer. Law Rev. 450.
CROWEL v. RADAMA, The [3,442], 2 Cliff. 551.
CROWELL v. A CHAIN AND ANCHOR [3,443], 6 Phila. 478; 25 Leg. Int. 140.
CROWELL v. HARLOW [3,444], 3 Ban. & A. 478; 18 O. G. 466.
CROWELL v. KNIGHT [3,445], 2 Lowell, 307.
Crowell v. One Hundred and Ninety-Four Shawls. [See 10,521.]
CROWELL v. PARMENTER [3.446], 3 Ban. & A. 480; 18 O. G. 360.

[Federal Case numbers are given in brackets.]

Crowell, Potter v. [See 11,323.]
Crowell, The Stephen. [See 13,362.]
CROWELL v. UNITED STATES [3,447], 21 Law Rep. 466.
Crowley, In re. [See 11,644.]
CROWLEY v. MAXWELL [3,448], 3 Blatchf. 383.
CROWLEY v. MAXWELL [3,449], 3 Blatchf. 401.
Crowley, Reed v. [See 11,644.]
Crowley, Walton v. [See 17,133.]
CROWN, The [3,450], 5 Adm. Rec. 675-681.
Crowninshield, Choate v. [See 2,691.]
Crowninshield, Delaplaine v. [See 3,756.]
Crowninshield, Le Roy v. [See 8,269.]
CROWNINSHIELD v. ROBINSON [3,451], 1 Mason, 93.
Crozier, United States v. [See 14,896.]
CRUDER v. PENNSYLVANIA INS. CO. [3,452], 2 Wash. C. C. 339.
CRUDER v. PHILADELPHIA INS. CO. [3,453], 2 Wash. C. C. 262.
Cruikshank, United States v. [See 14,897.]
CRUM v. ABBOTT [3,454], 2 McLean, 233.
Crum, Woodbury v. [See 17,969.]
Crumb, Todd v. [See 14,073.]
CRUMP v. CHAPMAN [3,455], 1 Hughes, 183; 15 N. B. R. 571; 1 Va. Law J. 309; 24 Pittsb. Leg. J. 169.
CRUSADER, The [3,456], 1 Ware (437) 448.
Cruse, Crawford v. [See 3,367.]
Cruttenden, Thomas v. [See 13,895.]
CUBA, The [3,457], 2 Spr. 168.
CUBA, The, [3,458], 3 Ware, 260.
CUBA, The, v. AUGUSTA, The [3,459].
Cuba, The, Strout v. [See 13,549.]
Cuba, The, United States v. [See 14,898.]
Cubana, The, Fletcher v. [See 4,863.]
CULBERG v. CONTINENTAL, The [3,460], 3 Woods, 32.
CULBERTSON v. ELLIS [3,461], 6 McLean, 248.
CULBERTSON v. SOUTHERN BELLE, The [3,462], Newb. 461.
CULBERTSON v. STILLINGER [3,463], Taney, 75.
CULBERTSON v. WABASH NAV. CO. [3,464], 4 McLean, 544.
CULL v. ALLEN [3,465], 1 Cranch, C. C. 45.
Cullerton, United States v. [See 14,899.]
Culley, Donohue v. [See 3,991.]
CULLY v. BALTIMORE & O. R. CO. [3,466], 1 Hughes, 536.
Culpeper County, Jenkins v. [See 7,261.]
CULVER v. CALENDER [2,307], 5 Law Rep. 125.
CULVER v. CRAWFORD COUNTY [3,468], 4 Dill. 239; 4 Cent. Law J. 198; 4 N. Y. Wkly. Dig. 145.
CULVER v. WOODRUFF COUNTY [3,469], 5 Dill. 392.
Culverson, Gimmy v. [See 5,454.]
Culvertson, Parker v. [See 10,732.]
CUMBERLAND, The [3,470].
Cumberland Cotton Co., Whipple v. [See 17,515.]
Cumberland Mfg. Co., Whipple v. [See 17,516.]
CUMBRIA, The [3,471].
CUMBRIA, The [3,472], 3 Ben. 334.
Cummines, Boaler v. [See 1,584.]
Cumming, Merchants' Nat. Bank v. [See 9,453.]
Cumming, Parsons v. [See 10,775.]
CUMMINGS v. AKRON CEMENT & PLASTER CO. [3,473], 6 Blatchf. 509.
CUMMINGS v. EMILY JOHNSON, The [3,474], N. Y. Times, Sept. 30, 1853.
Cummings, Gillespie v. [See 5,434.]
CUMMINGS v. GRAND TRUNK RY CO. [3,475], 2 Hask. 101.
Cummings v. The Irma. [See 7,064.]
CUMMINGS v. MEAD [3,476], 6 Amer. Law Reg. 51.
Cummings, Smith v. [See 13,034.]
Cummings, United States v. [See 14,900.]
Cummings, The William. [See 17,690.]
Cummins, Badische Anilin & Soda Fabrik v. [See 720.]
Cummins, Christy v. [See 2,708.]
Cummins, Craig v. [See 3,331.]
Cummins, Erwin v. [See 4,525.]
Cummins, McClintick v. [See 8,698, 8,699.]
Cummins, United States v. [See 14,901.]
Cumpton, United States v. [See 14,902.]
Cunard, Jewett v. [See 7,310.]
Cunard, The Joseph. [See 7,535.]
CUNDELL v. PARKHURST [3,477], Cranch, Pat. Dec. 128; 1 McA. Pat. Cas. 63.
CUNNINGHAM, In re [3,478], 9 Cent. Law J. 208; 19 N. B. R. 276; 20 Alb. Law J. 257.
CUNNINGHAM v. BELL [3,479], 5 Mason, 161.
Cunningham, Bell v. [See 1,246.]
CUNNINGHAM v. CADY [3,480], 13 N. B. R. 525; 8 Chi. Leg. News, 165; 4 Amer. Law Rec. 510.
Cunningham, Drake v. [See 4,060.]
CUNNINGHAM v. HALL [3,481], 1 Cliff. 43.
CUNNINGHAM v. HALL [3,482], 1 Spr. 404; 21 Law Rep. 18.
Cunningham, Hamilton v. [See 5,978.]
CUNNINGHAM v. MACON & B. R. CO. [3,483], 3 Woods, 418.
CUNNINGHAM v. OFFUTT [3,484], 5 Cranch, C. C. 524.
Cunningham, Oliver v. [See 10,493.]
CUNNINGHAM v. OTIS [3,485], 1 Gall. 166.
Cunningham, United States v. [See 14,850.]
Cunningham, Watson v. [See 17,280.]
Cupples, Lawrence v. [See 8,135.]
CURE v. BULLUS [3,486], 1 Abb. Adm. 555; 7 N. Y. Leg. Obs. 345.
Cureton, Peters v. [See 11,019.]
CURRAN v. MUNGER [3,487], 6 N. B. R. 33.
CURRANEE v. McQUEEN [3,488], 2 Paine, 109.
CURRAY v. McMUNN [3,489], 2 Cranch, C. C. 51.
CURREY v. FLETCHER [3,490], 1 Cranch, C. C. 113.
CURRIE v. JORDAN [3,491], 4 Biss. 513.
CURRIE v. JOSIAH HARTHORN, The [3,491a], Betts' Scr. Bk. 710.
CURRIER, In re [3,492], 2 Lowell, 436; 13 N. B. R. 68.
Currier, Bradley v. [See 1,777.]
Currier, Catlin v. [See 2,518.]
Currier, Fisher v. [See 4,818.]
Currier, Perkins v. [See 10,985.]
CURRIER v. WEST-SIDE ELEVATED PATENT RY CO. [3,493], 6 Blatchf. 487.
Currituck, The, McCoy v. [See 8,730.]
Curro, The Francesca. [See 5,029.]
Curry, Henry v. [See 6,381.]
CURRY v. H. J. MAY, The [3,494].
Curry v. The John Neilson. [See 2,337.]
CURRY v. LOCH GOIL, The [3,495].
CURRY v. LOVELL [3,496], 1 Cranch, C. C. 80.
CURRY v. McCAULEY [3,496a], 11 Fed. 365.
Curry, Musser v. [See 9,973.]
CURRY v. ROULSTONE [3,497], 2 Overt. 110; Brunner, Col. Cas. 121.
Curtenius, Columbus Insurance Co. v. [See 3,045.]
Curtenius, Morgan v. [See 9,799.]
Curtice v. Storrs. [See 1,291.]
CURTIS v. BOWRIE [3,498], 2 McLean, 374.
CURTIS v. BRANCH [3,499], 4 Ban. & A. 189; 15 O. G. 919.
Curtis, Brown v. [See 2,000.]
CURTIS v. BUTLER COUNTY [3,500], 6 Pittsb. Leg. J. 443; 1 Pittsb. Rep. 516.
CURTIS v. CENTRAL RAILWAY [3,501], 6 McLean, 401.
Curtis, Chester v. [See 2,661.]
Curtis, Coolidge v. [See 3,184.]
Curtis, Farwell v. [See 4,690.]
CURTIS v. FESTE [3,502], 29 Hunt, Mer. Mag. 455.
CURTIS v. HOME INS. CO. [3,503], 1 Biss. 485.
Curtis, Hoyt v. [See 6,808.]
Curtis v. The John Wurts. [See 7,434.]
Curtis, Picquet v. [See 11,131.]
Curtis, Pratt v. [See 11,375.]
CURTIS v. QUANTITY OF WEARING APPAREL [3,504], 39 Hunt, Mer. Mag. 75.
Curtis, Richardson v. [See 11,781.]
Curtis, Size v. [See 12,920.]
CURTIS v. SMITH [3,505], 6 Blatchf. 537; 1 Chi. Leg. News, 417.
Curtis, United States v. [See 14,904, 14,905.]
Curtis, Wight v. [See 17,628.]
Curtis, Woodworth v. [See 18,012, 18,013.]
Curtis, Wright v. [See 18,075.]
Curtis, Yates v. [See 18,127.]
CURTISS v. GEORGETOWN & A. TURNPIKE CO. [3,506] 2 Cranch, C. C. 81.
Curtiss v. Storrs. [See 1,291.]

Curtius, Wilson v. [See 17,800.]
CURTS v. CISNA [3,507], 7 Biss. 260; 8 Chi. Leg. News, 402.
CUSHING v. LAIRD [3,508], 4 Ben. 70; 3 Amer. Law T. Rep. U. S. Cts. 50; 4 Amer. Law Rev. 615.
CUSHING v. LAIRD [3,509], 6 Ben. 408; 7 Amer. Law Rev. 762.
CUSHING v. LAIRD [3,510], 15 Blatchf. 219.
CUSHING v. SMITH [3,511], 3 Story, 556.
Cushing, Young v. [See 18,156.]
CUSHMAN, In re [3,512], 7 Ben. 482.
CUSHMAN, In re [3,513], 1 McA. Pat. Cas. 569.
CUSHMAN, In re [3,514], 1 McA. Pat. Cas. 577.
Cushman, The Jeannie. [See 7,249, 7,250.]
CUSHMAN v. RYAN [3,515], 1 Story, 91.
Cushman, United States v. [See 14,906-14,908.]
CUSHMAN v. WADDELL [3,516], Baldw. 57.
CUSHWA v FORREST [3,517], 4 Cranch, C. C. 37.
Custer, Cressler v. [See 3,388.]
Custis, Georgetown Turnpike-Road Co. v. [See 5,-348.]
Custis, Shedden v. [See 12,736.]
Custis, United States v. [See 14,909.]
Cutler, Hinman v [See 6,524.]
Cutler, Rea v. [See 11,599.]
Cutler, United States v. [See 14,910.]
Cutter, Ashcroft v. [See 578.]
CUTTER v. DINGEE [3,518], 8 Ben. 469; 14 N. B. R. 294.
Cutter, Nelson v. [See 10,104.]
Cutter, Reed v. [See 11,645.]
Cutter, United States v. [See 14,911.]
Cutter, Whittemore v. [See 17,600, 17,601.]
Cutting, Carter v. [See 2,476.]
CUTTING v. GILBERT [3,519], 5 Blatchf. 259; 2 Int. Rev. Rec. 94.
CUTTING v. MYERS [3,520], 4 Wash. C. C. 220; 1 Robb, Pat. Cas. 159.
CUTTING v. SEABURY [3,521], 1 Spr. 522; 23 Law Rep. 533.
Cutts, Mason v. [See 9,237.]
CUTTS v. UNITED STATES [3,522], 1 Gall. 69.
Cutts, United States v. [See 14,912.]
Cuyahoga Co., Palmer v. [See 10,688.]
CUYLER v. FERRILL [3,523], 1 Abb. U. S. 169; 1 Amer. Law T. Rep. U. S. Cts. 97; 8 Int. Rev. Rec. 194; 8 Amer. Law Reg. (N. S.) 100; 1 Chi. Leg. News, 153; 3 Amer. Law Rev. 375; 25 Leg. Int. 412; 1 Leg. Gaz. 148.
C. VANDERBILT, The [3,524], 10 Ben. 607.
C. W. Cochrane, The, Hayden v. [See 6,258.]
C. W. RING, The [3,525], 2 Hughes, 99; 2 Amer. Law Rev. 259.
CYANE, The [7,381], 4 Amer. Law Rev. 769.
Cyane, The, Johnson v. [See 7,381.]
C. Y. DAVENPORT, The [3,527], 3 Ben. 63.
CYNOSURE, The [3,528], 7 Law Rep. 222.
CYNOSURE, The [3,529], 1 Spr. 88; 7 Law Rep. 226.
Cynthia, The, Bartelson v. [See 1,067.]
Cynthia, The, Giles v. [See 5,424.]
CYPRESS, The [3,530], 1 Blatchf. & H. 83.
Cypress Raft, Gastrel v. [See 5,266.]
Cyrus, The, Dixon v. [See 3,930.]
CZARINA, The [3,531], 2 Spr. 48.

D

Dabney, Foye v. [See 5,022.]
Dade, Gunnel v. [See 5,869.]
DADE v. HERBERT [3,532], 1 Cranch, C. C. 85.
DADE v. MANDEVILLE [3,533], 1 Cranch, C. C. 92.
DADE v. YOUNG [3,534], 1 Cranch, C. C. 123.
DAGGETT, In re [3,535], 8 N. B. R. 287.
DAGGETT, In re [3,536], 8 N. B. R. 433.
DAGGS v. EWELL [3,537], 3 Woods, 344.
DAGGS v. FRAZER [3,538], 2 Amer. Law J. (N. S.) 73; 1 West. Leg. Obs. 212; 6 West. Law J. 555.
Dahlman, Wormser v. [See 18,048.]
Dair, United States v. [See 14,913.]
DAKIN, In re [3,539], 19 N. B. R. 181.
D'Alberti, The, Dominy v. [See 3,977.]
DALBY, Ex parte [3,540], 1 Lowell, 431; 3 N. B. R. 731 (Quarto. 179).
Dale, Barker v. [See 988.]
DALE v. BARNEY [3,541].
DALEY v. UNITED STATES [3,542], 16 Int. Rev. Rec. 147; 4 Leg. Gaz. 347.
Dall, Lindrop v. [See 8,365.]
DALLAM v. WAMPOLE [3,543], Pet. C. C. 116.
DALLAS v. FLUES [3,544], 8 Phila. 150, 28 Leg. Int. 325; 1 Leg. Gaz. Rep. 288; 19 Pittsb. Leg. J. 173.
Dallas, The, Knox v. [See 7,904a.]
Dallas, Roberts v. [See 11,898.]
Dallas & W. R. Co., Allen v. [See 221.]
Dallas County, Huidekoper v. [See 6,850.]
DALLES CITY v. MISSIONARY SOC. OF M. E. CHURCH [3,544a], 6 Fed. 356.
DALLET v. SMYTHE [3,545], 6 Blatchf. 419.
Dallett, Palmer v. [See 10,689.]
DALLMEYER v. FARMERS', MERCHANTS' & MANUFACTURERS' FIRE INS. CO. [3,546], 4 Cent. Law J. 464, note.
Dallon, Kelsey v. [See 7,678.]
DALLUM v. BRECKENRIDGE, Etc. [3,547], Cooke, 152; Brunner, Col. Cas. 210.
Dalrymple, Wells v. [See 17,392.]
DALTON v. JENNINGS [3,548], 12 Blatchf. 96; 1 Ban. & A. 256; 5 O. G. 615; Merw. Pat. Inv. 142.
DALTON v. NELSON [3,549], 13 Blatchf. 357; 2 Ban. & A. 225; 9 O. G. 1112; Merw. Pat. Inv. 519.
DALTON v. RECEIVERS [3,550], 4 Hughes, 180.
Daly v. Freligh. [See 3,552.]
DALY v. MAGUIRE [3,551], 6 Blatchf. 137.
DALY v. PALMER [3,552], 6 Blatchf. 256; 8 Amer. Law Reg. (N. S.) 286; 36 How. Pr. 206; 3 Amer. Law Rev. 453.
DALY v. SHERIFF [3,553], 1 Woods, 175.
Damiani, United States v. [See 14,914, 14,915.]
Damron, Lamb v. [See 8,014.]
DANA, In re [3,554], 7 Ben. 1.
Dana, Bettes v. [See 1,368.]
Dana, Lamar v. [See 8,005, 8,006.]
Dana, Lawrence v. [See 8,136.]
DANA v. UNITED STATES [3,555], Hoff. Land Cas. 87.
DAN BROWN, The [3,556], 9 Ben. 309.
Danbury & Norwalk R. Co., Raymond v. [See 11,-593.]
Dandridge, Bank of the United States v. [See 914.]
Dandridge, Wilson v. [See 17,801.]
DANE v. CHICAGO MFG. CO. [3,557], 3 Biss. 380; 6 Fish. Pat. Cas. 130; 2 O. G. 677; Merw. Pat. Inv. 219; 2 Bench & Bar, 321.
Dane, Gindrat v. [See 5,455.]
DANE v. ILLINOIS MFG. CO. [3,558], 3 Biss. 374; 2 O G. 680; 6 Fish. Pat. Cas. 124; Merw. Pat. Inv. 212; 2 Bench & Bar, 325.
Dane, Irwin v. [See 7,081, 7,082.]
Danford, Parrish v. [See 10,770.]
Danford, Varnum v [See 16,888.]
DANFORTH, Ex parte [3,560].
DANFORTH, In re [3,560], 1 Pa. Law J. 148; 1 Pa. Law J. Rep. 31.
Danforth, Dyson v. [See 4,229.]
Danforth, Hunt v. [See 6,887, 6,888.]
Dangberg, Union Mill & Min. Co. v. [See 14,370.]
Daniel, Dawson v. [See 3,668, 3,669.]
DANIEL v. KINCHELOE [3,561], 2 Cranch, C. C. 295.
DANIEL v. MITCHELL [3,562], 1 Story, 172; 3 Law Rep. 412.
DANIEL v. MITCHELL [3,563], 1 Story, 198.
Daniel, Whartenby v. [See 17,479.]
Daniel Augusta, The, Milbourne v. [See 9,540.]
DANIEL BALL, The [3,564], 1 Brown's Adm. 193.
DANIEL DREW, The [3,565], 13 Blatchf. 523.
DANIELS, In re [3,566], 6 Biss. 405; 13 N. B. R. 46; 1 N. Y. Wkly. Dig. 271; 8 Chi. Leg. News, 17.
Daniels, Bell v. [See 1,247.]
DANIELS v. McCABE [3,567], 3 Cliff. 114.
Daniels, Riley v. [See 11,837.]
DANIELS v. TARBOX [3,568], 9 Blatchf. 176.
Daniels, United States v. [See 14,916.]
Daniels, Warner v. [See 17,181.]
Dantzler, United States v. [See 14,917.]

[Federal Case numbers are given in brackets.]

DA PONTE v. LOUISIANA STATE LOTTERY CO. [3,569], 1 La. Law J. 184.
DARBY, In re [3,570], 4 N. B. R. 211 (Quarto, 61); 4 N. B. R. 309 (Quarto, 98); 18 Pittsb. Leg. J. 154.
DARBY v. BOATMAN'S SAV. INST. [3,571], 1 Dill. 141; 4 N. B. R. 600 (Quarto, 195); 3 Chi. Leg. News, 249; 4 Amer. Law T. 117; 1 Leg. Op. 146; 1 Amer. Law T. Rep. Bankr. 251.
DARBY v. LUCAS [3,572], 5 N. B. R. 437.
DARBY v. LUCAS [3,573], 1 Dill. 164.
DARBY v. WRIGHT [3,574], 3 Blatchf. 170.
Darden, Chittenden v. [See 2,688.]
DARIEN, The [3,575], 6 Adm. Rec. 21.
Darieux, Ramdulollday v. [See 11,543.]
Darling, The Grace. [See 5,651.]
Darling, Greene v. [See 5,765.]
Darling v. The Irma. [See 7,064.]
Darling, Kelleher v. [See 7,653.]
Darling, Patten v. [See 10,812.]
Darling, Tappan v. [See 13,746.]
DARLINGTON v. GROVERMAN [3,576], 1 Cranch, C. C. 416.
DARLINGTON v. LA CLEDE COUNTY [3,577], 4 Dill. 200.
DARNALL v. TALBOT [3,578], 2 Cranch, C. C. 249.
Darnaud, United States v. [See 14,918.]
Darnell, Chinn v. [See 2,684.]
Darrach, Blount v. [See 1,567.]
Darrel, Cazenove v. [See 2,539.]
DARRELL v. ALICE GRAY, The [3,579], N. Y. Times, April 19, 1865.
Darrel, Bolchos v. [See 1,607.]
DARRELL v. BROOKE [18,287], 2 Hayw. & H. 329.
DARST v. DUNCAN [3,580], 2 Law Rep. 246; Brunner, Col. Cas. 521.
DARST v. DUNCAN [3,581], 2 Law Rep. 357.
DARST v. ROTH [3,582], 4 Wash. C. C. 471.
DART v. McKINNEY [3,583], 9 Blatchf. 359.
Darton, United States v. [See 14,919.]
DASH, The [3,584], 1 Mason, 4.
Dater, Conrad v. [See 3,127.]
DAUPHIN v. TIMES PUB. CO. [3,584a], 18 Reporter, 10.
DAUSMAN & DRUMMOND TOBACCO CO. v. RUFFNER [3,585], 15 O. G. 559.
DAVENPORT, Ex parte [3,586], 1 Lowell, 384; 3 N. B. R. 312 (Quarto, 83).
DAVENPORT, In re [3,587], 2 Amer. Law T. 136; 3 N. B. R. 77 (Quarto, 18).
DAVENPORT v. ALABAMA & C. R. CO. [3,588], 2 Woods, 519.
Davenport, The C. Y. [See 3,527.]
Davenport, Evans v. [See 4,558.]
Davenport, Howard v. [See 6,759.]
Davenport v. Lamb. [See 8,015.]
DAVENPORT v. SEA FLOWER, The [3,589].
Davenport, United States v. [See 14,920.]
DAVEY v. GLENS FALLS INS. CO. [3,590], 9 Ins. Law J. 497.
DAVEY v. MARY FROST, The [3,591], 3 Cent. Law J. 419; 22 Int. Rev. Rec. 82.
DAVEY v. MARY FROST, The [3,592], 2 Woods, 306.
DAVID & CAROLINE, The [3,593], 5 Blatchf. 266.
DAVID E. WOLF, The [3,594], 7 Int. Rev. Rec. 194.
DAVID FAUST, The [3,595], 1 Ben. 183.
DAVID MORRIS, The [3,596], 1 Brown's Adm. 273.
DAVID PRATT, The [3,597], 1 Ware (495) 509.
David Reeves, The, Hollyday v. [See 6,625.]
DAVIDSON, In re [3,598], 2 Ben. 506; 2 N. B. R. 114 (Quarto, 49).
DAVIDSON, In re [3,599], 4 Ben. 10; 3 N. B. R. 418 (Quarto, 106).
DAVIDSON v. ALLIS [3,600], 11 West. Jur. 151; Syllabi, 122; 23 Int. Rev. Rec. 49.
Davidson, Bell v. [See 1,248.]
DAVIDSON v. BROWN [3,601], 1 Cranch, C. C. 250.
DAVIDSON v. BURR [3,602], 2 Cranch, C. C. 515.
Davidson, Davis v. [See 3,631.]
DAVIDSON v. DONOVAN [3,603], 4 Cranch, C. C. 578.
DAVIDSON v. DRAPER [3,604], 5 Int. Rev. Rec. 94.
DAVIDSON v. HENOP [3,605], 1 Cranch, C. C. 280.
DAVIDSON v. LEWIS [3,606], 1 MacA. Pat. Cas. 599.
DAVIDSON v. PHOENIX INS. CO. [3,607], 4 Sawy. 594.
DAVIDSON v. SMITH [3,608], 1 Biss. 346; 9 Amer. Law Reg. 217; 2 West. Law Month. 566; 8 Pittsb. Leg. J. 266.
DAVIDSON v. SMYTHE [3,609], 5 Int. Rev. Rec. 94.
Davidson, Tayloe v. [See 13,769.]
Davidson, United States v. [See 14,922.]
DAVIDSON v. WHEELOCK [3,609a], 27 Fed. 61.
Davidson, Young v. [See 18,157.]
Davidson, The Clara. [See 2,791.]
Davidson County, Beverly v. [See 1,377.]
DAVIE v. HATCHER [3,610], 1 Woods, 456; 10 Amer. Law Reg. (N. S.) 519.
DAVIES v. ARTHUR [3,611], 13 Blatchf. 34; 21 Int. Rev. Rec. 205.
DAVIES v. DAVIES [3,612], 2 Cranch, C. C. 105.
Davies, Emerson v. [See 4,436, 4,437.]
Davies County, Ogden v. [See 10,455].
DAVIS, Ex parte [3,613], 14 Law Rep. 301; 9 West. Law J. 14.
DAVIS, In re [3,614], Bankr. Reg. Supp. 26; 1 N. B. R. 120; 7 Amer. Law Reg. (N. S.) 30; 6 Int. Rev. Rec. 149; 15 Pittsb. Leg. J. 103.
DAVIS, In re [3,615], 3 Ben. 482; 3 N. B. R. 339 (Quarto, 89).
DAVIS, In re [3,616], 1 Hask. 232.
DAVIS, In re [3,617], 1 MacA. Pat. Cas. 628.
DAVIS, In re [3,618], 2 N. B. R. 391 (Quarto, 125). 2 Amer. Law T. Rep. Bankr. 52; 1 Chi. Leg. News, 171.
DAVIS, In re [3,620].
DAVIS, In re [3,620], 1 Sawy. 260; 4 N. B. R. 715; 8 N. B. R. 167.
DAVIS, In re [3,621], 2 Sawy. 255; 3 Bench & Bar, (N. S.) 151.
DAVIS, Case of [3,621a], Chase, 1; 3 Amer. Law Rev. 368.
DAVIS v. ABBOTT [3,622], 2 McLean, 29.
DAVIS v. ANDERSON [3,623], 6 N. B. R. 145.
DAVIS v. ARMSTRONG [3,624], 2 Amer. Law T. 138; 3 N. B. R. 33 (Quarto, 7).
DAVIS v. BALTZER [3,625], 1 Cranch, C. C. 482.
Davis, Bank of Alexandria v. [See 845.]
DAVIS v. BANK OF RIVER RAISIN [3,626], 4 McLean, 387.
Davis, Bank of the United States v. [See 915.]
Davis, Bell v. [See 1,249.]
Davis, Benedict v. [See 1,293.]
DAVIS v. BEVERLY [3,627], 2 Cranch, C. C. 35.
Davis, Bibbs v. [See 18,235.]
Davis, Blachly v. [See 1,456.]
Davis, Brooks v. [See 1,950.]
Davis, Byran v. [See 2,065.]
Davis, Cannon v. [See 2,385.]
Davis, Carleton v. [See 2,408.]
Davis, Carlisle v. [See 2,411.]
DAVIS v. CHILD [3,628], 2 Ware (Dav. 71) 78; 3 N. Y. Leg. Obs. 147.
DAVIS v. CHILDS [3,629].
DAVIS v. CLEMSON [3,630], 6 McLean, 622.
DAVIS v. DAVIDSON [3,631], 4 McLean, 136.
Davis, Dessor v. [See 3,826.]
Davis, The Eleanora v. [See 4,335.]
Davis, Ellis v. [See 4,402.]
DAVIS v. ENTERPRISE, The [3,632].
DAVIS v. ERIE, The [3,632a].
DAVIS v. FAUCON [3,632b].
DAVIS v. FIRST BAPTIST SOCIETY OF ESSEX [3,633], 44 Conn. 582; 2 Browne, Nat. Bank Cas. 110.
DAVIS v. FIVE HUNDRED AND SEVENTY-FOUR BAGS OF COFFEE [3,633a].
DAVIS v. FORREST [3,634], 2 Cranch, C. C. 23.
DAVIS v. GARLAND [3,635], 5 Cranch, C. C. 570.
DAVIS v. GARLAND [3,636], 1 Hayw. & H. 125.
Davis, Garrow v. [See 5,257.]
DAVIS v. GEORGETOWN BRIDGE CO. [3,637], 1 Cranch, C. C. 147.
Davis, Goddard v. [See 5,491.]
Davis, Goodyear Dental Vulcanite Co. v. [See 5,589.]
Davis, Gray v. [See 5,715.]
Davis, Green County Court v. [See 15,259.]
Davis, Hatcher v. [See 3,610.]
Davis, Hayden v. [See 6,259.]
Davis, Heriot v. [See 6,404.]
Davis, Jones v. [See 7,460.]
DAVIS v. KENDALLVILLE [3,638], 5 Biss. 280.

Davis, Lawrence v. [See 8,137.]
DAVIS v. LESLIE [3,639], 1 Abb. Adm. 123.
DAVIS v. McCONNELL [3,640], 3 McLean, 391.
Davis, McCormick v. [See 3,645.]
DAVIS v. MARSHALL [3,641], 1 Cranch, C. C. 173.
DAVIS v. MASSACHUSETTS MUT. LIFE INS. CO. [3,642], 13 Blatchf. 462; 5 Ins. Law J. 736.
Davis, Mayhew v. [See 9,347.]
Davis, Morse v. [See 9,855.]
Davis, Myers v. [See 9,986.]
Davis, National Bank of Madison v. [See 10,038.]
DAVIS v. NEW BRIG [3,643], Gilp. 473.
Davis, Newman v. [See 10,176.]
DAVIS v. NEW YORK LIFE INS. CO. [3,644], 3 Hughes, 437.
DAVIS v. PALMER [3,645], 2 Brock. 298; 1 Robb, Pat. Cas. 518; Merw. Pat. Inv. 218.
DAVIS v. PENDERGAST [3,646], 8 Ben. 84.
DAVIS v. PENDERGAST [3,647], 16 Blatchf. 565.
DAVIS v. PITMAN [3,647a], Hempst. 44.
DAVIS v. RAILROAD CO. [3,648], 1 Woods, 661; 13 N. B. R. 258.
DAVIS v. ROBB [3,649], 2 Cranch, C. C. 458.
Davis, Robbins v. [See 11,880.]
Davis, Sackett v. [See 12,203.]
Davis, Schuessler v. [See 12,485.]
DAVIS v. SENECA, The [3,650], Gilp. 10; 1 U. S. Law Int. 214.
DAVIS v. SENECA, The [3,651], Gilp. 34.
Davis, The Seneca v. [See 12,670.]
DAVIS v. SHERRON [3,652], 1 Cranch, C. C. 287.
Davis, Shute v. [See 12,828.]
Davis, Stanley Rule & Level Co. v. [See 13,288.]
Davis, Stearns v. [See 13,338.]
DAVIS v. STEVENS [3,653], 17 Blatchf. 259; 20 Alb. Law J. 490; 25 Int. Rev. Rec. 378; 8 Reporter, 710; 2 Browne, Nat. Bank Cas. 158; 14 Amer. Law Rev. 84; 36 Leg. Int. 462.
DAVIS v. STITZER [3,654], 7 Reporter, 484; 19 N. B. R. 61; 36 Leg. Int. 176; 26 Pittsb. Leg. J. 115.
Davis, Thornton v. [See 13,998.]
Davis, United States v. [See 14,923-14,932.]
DAVIS v. VAN SANDS [3,655], 45 Conn. 600.
DAVIS v. VAN ZANDT [3,656], 2 Cranch, C. C. 208.
DAVIS v. WALLACE [3,657], 3 Cliff. 123.
DAVIS v. WEED [3,658], 44 Conn. 569; 2 Browne, Nat. Bank Cas. 115.
Davis, West v. [See 17,422.]
Davis, Wilkins v. [See 17,664.]
DAVIS v. WOOD [3,659].
DAVIS v. WYER [3,660], 1 Cranch, C. C. 527.
Davis, Jefferson, Case of. [See 3,621a.]
Davis, The Joseph A. [See 7,534.]
Davis, The S. L. [See 12,939.]
Davis Sewing Mach. Co., Potter v. [See 11,324.]
Davison, Adams Exp. Co. v. [See 73.]
DAVISON v. SEAL-SKINS [3,661], 2 Paine, 324.
DAVOLL v. BROWN [3,662], 1 Woodb. & M. 53; 2 Robb, Pat. Cas. 303; 3 West. Law J. 151; Merw. Pat. Inv. 414.
DAVY v. FAW [3,663], 1 Cranch, C. C. 89.
Davy, Faw v. [See 4,701.]
Davy, Ross v. [See 12,073.]
Dawes, Bank of Columbia v. [See 865.]
DAWES v. CORCORAN [3,664], 1 Cranch, C. C. 137.
Dawes, Stokes v. [See 13,477.]
DAWN, The [3,665], 1 Ware (485) 499.
DAWN, The [3,666], 2 Ware (Dav. 121) 126; 4 Law Rep. 106; 26 Am. Jur. 216.
Daws, Johnson v. [See 7,382.]
DAWSON v. BOYD [3,667].
DAWSON v. DANIEL [3,668], 2 Flip. 301.
DAWSON v. DANIEL [3,669], 2 Flip. 305; 8 Cent. Law J. 185; 11 Chi. Leg. News, 200; 7 Reporter, 457; 4 Cin. Law Bul. 136.
DAWSON v. FOLLEN [3,670], 2 Wash. C. C. 311; 1 Robb, Pat. Cas. 9.
Dawson, Merrill v. [See 9,469.]
DAWSON v. RANKIN [3,671], 5 Amer. Law Rev. 753.
Dawson, Street v. [See 13,533.]
Dawson, United States v. [See 14,933.]
Dawson, Washington v. [See 17,227.]
Dawson Bank, Kent v. [See 7,714.]
DAY, In re [3,671a].
Day, The Angelina v. [See 7,967.]
DAY v. BANKERS' & BROKERS' TEL. CO. [3,672], 9 Blatchf. 345; 1 O. G. 551; 5 Fish. Pat. Cas. 268; Merw. Pat. Inv. 200.
DAY v. BOSTON BELTING CO. [3,673].
DAY v. BOSTON BELTING CO. [3,674], Brunner, Col. Cas. 585; 16 Law Rep. 330.
DAY v. BUFFINTON [3,675], 3 Cliff. 376; 11 Int. Rev. Rec. 205; 5 Amer. Law Rev. 176; 2 Leg. Gaz. 249.
DAY v. CANDEE [3,676], 3 Fish. Pat. Cas. 9.
Day, Cary v. [See 5,562.]
Day, Doughty v. [See 4,026.]
DAY v. EMERSON [3,677], 5 Biss. 56.
DAY v. GOODYEAR [3,678], Law Dig. 617.
Day, Goodyear v. [See 5,556-5,569.]
DAY v. HACKLEY [3,679], 2 Cranch, C. C. 251.
DAY v. HARTSHORN [3,682].
DAY v. HARTSHORN [3,683].
DAY v. HARTSHORN [3,680, 3,683].
DAY v. HARTSHORN [3,683], 3 Fish. Pat. Cas. 32.
Day, Kentucky Silver Min. Co. v. [See 7,719.]
DAY v. LYONS [3,684].
DAY v. NEWARK INDIA-RUBBER MFG. CO. [3,685], 1 Blatchf. 628; 1 Fish. Pat. Rep. 394.
DAY v. NEW ENGLAND CAR CO. [3,686], 3 Blatchf. 154.
DAY v. NEW ENGLAND CAR-SPRING CO. [3,687], 3 Blatchf. 179.
DAY v. NEW ENGLAND CAR-SPRING CO. [3,688], 3 Liv. Law. Mag. 44.
DAY v. PHELPS [3,689], 6 Chi. Leg. News, 61.
Day, Seligman v. [See 12,643.]
DAY v. STELLMAN [3,690], 1 Fish. Pat. Cas. 487.
Day, Suydam v. [See 13,654.]
DAY v. UNION INDIA-RUBBER CO. [3,691], 3 Blatchf. 488.
Day, United States v. [See 14,934.]
DAY v. WALLS [3,692], 35 Leg. Int. 468.
Dayton, Leveringe v. [See 8,288.]
DAYTON v. WRIGHT [3,693], 2 Ban. & A. 449; 11 O. G. 197.
Dayton, The L. P. [See 7,192.]
D. C. SALISBURY, The [3,694], Olc. 71.
DEACON v. SEWING MACH. CO. [3,694a], 14 Reporter, 43.
DEADRICK v. HARRINGTON [3,694b], Hempst. 50.
DEAKIN v. LEA [3,695], 11 Biss. 27.
DEAKIN v. LEA [3,696], 11 Biss. 34; 14 Chi. Leg. News, 297.
Deakin, Lea v. [See 8,154.]
DEAKIN v. STANTON [3,696a], 3 Fed. Rep. 435.
DEAKINS v. LEE [3,697], 1 Cranch, C. C. 442.
DEALE v. KROFFT [3,698], 4 Cranch, C. C. 448.
DEAN, In re [3,699], 1 N. B. R. 249 (Quarto, 26); 1 Amer. Law T. Rep. Bankr. 9.
DEAN, In re [3,700], 2 N. B. R. 89 (Quarto, 29); 15 Pittsb. Leg. J. 581, 583.
DEAN, In re [3,701], 3 N. B. R. 768 (Quarto, 188).
DEAN v. ANGUS [3,702], Bee, 369.
DEAN v. ANGUS [3,703], Bee, 378.
DEAN v. BATES [3,704], 2 Woodb. & M. 87.
Dean, Borland v. [See 1,660.]
Dean, Donovan v. [See 3,992.]
DEAN v. EQUITABLE FIRE INS. CO. [3,705], 4 Cliff. 575; 8 Ins. Law J. 773.
DEAN v. EQUITABLE FIRE INS. CO. [3,706].
DEAN v. FLANNERY [3,707].
DEAN v. HARVEY [3,708].
Dean, Hines v. [See 6,519.]
DEAN v. LEGG [3,709], 1 Cranch, C. C. 392.
DEAN v. MARSTELLER [3,710], 2 Cranch, C. C. 121.
DEAN v. TUCKER [3,711], 2 Cranch, C. C. 26.
DEANE, Ex parte [3,712], 2 Cranch, C. C. 125.
Deane, In re. [See 3,700.]
Deanee, Scriba v. [See 12,559.]
DEAN RICHMOND, The [3,713], 1 Chi. Leg. News, 370.
Dearborn, Partridge v. [See 10,785.]
DEARBORN v. UNION, The [3,714], 1 Wkly. Notes Cas. 222; 21 Int. Rev. Rec. 79.
Deas, The Annie. [See 402, 419, 14,212.]
De Bare, United States v. [See 14,935.]
De Basavilbaso, Thibault v. [See 13,881.]
Deblois, Krouse v. [See 7,937, 7,938.]
Deblois, Taylor v. [See 13,790.]

[Federal Case numbers are given in brackets.]

DE BRIMONT v. PENNIMAN [3,715], 10 Blatchf. 436.
DE BRUNS v. LAWRENCE [3,716], 18 How. Pr. 141; 16 Leg. Int. 324.
Debtor v. The Comet. [See 3,050.]
DE BUTTS v. BACON [3,717], 1 Cranch, C. C. 569.
DE BUTTS v. McCULLOCH [3,718], 1 Cranch, C. C. 286.
De Butts, McCulloch v. [See 8,736.]
DE CAMP v. NEW JERSEY MUT. LIFE INS. CO. [3,719], 3 Ins. Law J. 89; 21 Pittsb. Leg. J. 162; 4 Bigelow, Ins. Cas. 287.
DE CASSE v. SPADER [3,720], 3 Int. Rev. Rec. 163.
De Castro & Donner Sugar-Refining Co., Copp v. [See 3,215.]
De Castro, The Gomez. [See 5,525.]
Decatur, Brown v. [See 2,001.]
DECATUR v. CHEW [3,721], 1 Gall. 505.
Decatur, Hutchinson v. [See 6,956.]
Decatur, Oliver v. [See 10,494-10,496.]
DECATUR v. YOUNG [3,722], 5 Cranch, C. C. 502.
DECKER, In re [3,723], 8 Ben. 81.
DECKER v. GRIFFITH [3,724], 10 Blatchf. 343, note.
DECKER v. GRIFFITH [3,725], 13 Blatchf. 187; 2 Ban. & A. 178; 8 O. G. 944; Merw. Pat. Inv. 136.
DECKER v. GROTE [3,726], 10 Blatchf. 331; 3 O. G. 65; 6 Fish. Pat. Cas. 143; Merw. Pat. Inv. 134.
DECKER v. NEW YORK BELTING & PACKING CO. [3,727], 11 Blatchf. 76; 6 Fish. Pat. Cas. 374; 3 O. G. 441.
Decker, Rue v. [See 12,112.]
Decker v. Silverbrandt. [See 3,724, 3,725.]
Decker, Wise v. [See 17,906, 17,907.]
DECKERT, In re [3,728], 2 Hughes, 183; 10 N. B. R. 1; 3 Amer. Law Rec. 96; 1 Cent. Law J. 316, 320; 6 Chi. Leg. News, 310; 1 Amer. Law T. Rep. (N. S.) 336; 13 Amer. Law Reg. (N. S.) 624; 8 Amer. Law Rev. 786.
De Comean, Field v. [See 4,765.]
De Cook, Adams v. [See 51.]
DEDEKAM v. VOSE [3,729], 3 Blatchf. 44.
DEDEKAM v. VOSE [3,730], 3 Blatchf. 77.
DEDEKAM v. VOSE [3,731], 3 Blatchf. 153.
DEDEKAM v. VOSE [3,732], 25 Hunt, Mer. Mag. 719.
DEDERER v. DELAWARE INS. CO. [3,733], 2 Wash. C. C. 61.
DEDERICKS, Ex parte [3,734].
Dedrick, Adamson v. [See 74.]
DEEGAN v. CERES, The [3,734a].
DEELY v. ERNEST & ALICE, The [3,735], 2 Hughes, 70; 1 Balt. Law Trans. 12.
DEEMS v. ALBANY & CANAL LINE [3,736], 14 Blatchf. 474.
DEEN v. HEMPHILL [3,736a], Hempst. 154.
DEER, The [3,737], 4 Ben. 352; 4 Amer. Law T. Rep. 142.
DEER, The [3,738], 10 Ben. 628.
DEER, The [3,739], 1 Lowell, 95; 2 Amer. Law Rev. 101.
Defender, The, Thorp v. [See 14,003.]
DEFIANCE, The [3,740], 6 Ben. 162; 5 Chi. Leg. News, 97.
DE FITCH v. UNITED STATES [3,741], Hoff. Land Cas. 272.
DE FLOREZ v. RAYNOLDS [3,742], 14 Blatchf. 505; 3 Ban. & A. 292.
DE FLOREZ v. RAYNOLDS [3,743], 16 Blatchf. 397; 4 Ban. & A. 331.
DE FORD, In re [3,744], 18 N. B. R. 454.
DE FOREST, In re [3,745], 9 N. B. R. 278.
DE FOREST v. REDFIELD [3,746], 4 Blatchf. 478.
De Garcia v. United States. [See 15,186.]
Degener, Babcock v. [See 698.]
DE GIACOMO, In re [3,747], 12 Blatchf. 391; 21 Int. Rev. Rec. 205.
DE GRAFF v. MOFFAT, The [3,748].
De Grand, Mitchell v. [See 9,661.]
De Grieff, United States v. [See 14,936.]
De Groot, Langdon v. [See 8,059.]
De Haro, United States v. [See 14,937-14,941.]
De Haven, Town v. [See 14,113.]
De Herrera v. The Acme. [See 27.]
Deklyne, Wright v. [See 18,076.]
DE KRAFT v. BARNEY [18,288], 2 Hayw. & H. 405.
De Kraft, Barney v. [See 18,230, 18,308.]
De Kraft, Lindsley v. [See 18,308.]
Delafield, Sands v. [See 12,304.]
DELANCEY v. McKEEN [3,749], 1 Wash. C. C. 354.
DELANCEY v. M'KEEN [3,750], 1 Wash. C. C. 525.
Delano, Burt v. [See 2,211.]
DELANO v. GALLATIN, The [3,751], 1 Woods, 642.
DELANO v. J. WALLS, JR., The [3,752.]
DELANO v. SCOTT [3,753], Gilp. 489; 1 Robb, Pat. Cas. 700; 20 Jour. Fr. Inst. 47.
DELANO v. WINSOR [3,754], 1 Cliff. 501.
Delany, Ladd v. [See 7,971.]
DELANY v. WASHINGTON [3,755], 2 Cranch, C. C. 459.
DELAPLAINE v. CROWNINSHIELD [3,756], 3 Mason, 329.
DELAUNEY v. HERMANN [3,757], Baldw. 132.
DELAVAN, In re [3,758], 5 Law Rep. 370.
DE LAVEAGA v. WILLIAMS [3,759], 5 Sawy. 573; 8 Reporter, 548; 4 Pac. Coast Law J. 51; 20 Alb. Law J. 336.
De La Villebeuve, Norton v. [See 10,350.]
DELAWARE, The [3,760], 1 Biss. 110.
DELAWARE, The [3,761], 6 Blatchf. 527.
DELAWARE, The [3,762], Olc. 240.
Delaware, The, Bouker v. [See 18,243.]
DELAWARE, The, v. OSPREY, The [3,763], 2 Wall. Jr. 268; 1 Amer. Law Reg. 15; 1 Phila. 358, 401; 27 Hunt, Mer. Mag. 589; 9 Leg. Int. 82, 136; 4 Amer. Law J. (N. S.) 533.
DELAWARE & H. CANAL CO. v. ALIDA, The [3,763a].
DELAWARE & H. CANAL CO. v. CLARK [3,764], 7 Blatchf. 112; Cox, Manual Trade-Mark Cas. 187.
Delaware & H. Canal Co., Littlefield v. [See 8,400.]
Delaware & R. Canal, Rundle v. [See 12,139.]
Delaware Ins. Co., Cort v. [See 3,257.]
Delaware Ins. Co., Dederer v. [See 3,733.]
Delaware Ins. Co., Hart v. [See 6,150.]
DELAWARE INS. CO. v. HOGAN [3,765], 2 Wash. C. C. 4.
Delaware Ins. Co., Hogan v. [See 6,582.]
Delaware Ins. Co., King v. [See 7,788.]
Delaware Ins. Co., Le Roy v. [See 8,270.]
Delaware Ins. Co., Marshall v. [See 9,127.]
Delaware Ins. Co., Martin v. [See 9,161.]
Delaware Ins. Co., Moses v. [See 9,872.]
Delaware Ins. Co., Seton v. [See 12,675.]
Delaware Ins. Co., Smith v. [See 13,035.]
Delaware Ins. Co., Snell v. [See 13,137.]
Delaware Ins. Co., Sperry v. [See 13,236.]
Delaware Ins. Co., Talcott v. [See 13,734.]
Delaware Ins. Co., United States v. [See 14,942.]
Delaware, L. & W. R. Co., Miller v. [See 9,566.]
Delaware, L. & W. R. Co., Warren v. [See 17,194.]
DELAWARE MUT. SAFETY INS. CO. v. GOSSLER [3,766], Holmes, 475.
DELAWARE R. CO. v. PRETTYMAN [3,767], 17 Int. Rev. Rec. 99.
DELAWARE RIVER CO. v. THOMAS, The [3,769]. 20 Int. Rev. Rec. 175; 20 Pittsb. Leg. J. 19.
DELAWARE RIVER STORAGE CO. v. THOMAS, The [3,769], 15 Int. Rev. Rec. 147; 4 Chi. Leg. News, 218; 29 Leg. Int. 116; 6 Alb. Law J. 292; 6 Amer. Law Rev. 765; 7 Amer. Law Rev. 381; 20 Pittsb. Leg. J. 19; 20 Int. Rev. Rec. 175; 4 Leg. Gaz. 114; 9 Phila. 364.
Delcol, Arnold v. [See 556.]
DELHI, The [3,770], 4 Ben. 345.
DELIESSLINE v. FRIENDSHIP, The [13,807].
Deliesseline, Elkison v. [See 4,366.]
DELIGHT, The [3,772], Blatchf. Pr. Cas. 145.
DELILAH v. JACOBS [3,773], 4 Cranch, C. C. 238.
DELL, In re [3,774], 5 Sawy. 344.
DELOACH v. DIXON [3,775], Hempst. 428.
DE LOVIO v. BOIT [3,776], 2 Gall. 398.
De Loyne v. Davidson. [See 14,921.]
Delphos, The, Union Tow-Boat Co. v. [See 14,400.]
DELTA, The [3,777], Blatchf. Pr. Cas. 133.
DELTA, The [3,778], Blatchf. Pr. Cas. 654.
Delvalle, United States v. [See 14,943.]
Demarchi, United States v. [See 14,944.]
DEMARTINI v. AMBRAMOVIC [3,779].

[Federal Case numbers are given in brackets.]

DEMERITT v. EXCHANGE BANK [3,780], Brunner, Col. Cas. 598; 20 Law Rep. 606.
DE METZ, In re [3,781].
DE MILL v. LOCKWOOD [3,782], 3 Blatchf. 56.
Deming, United States v. [See 14,945.]
DEN v. BACON [3,783], 4 Wash. C. C. 578.
DEN v. HILL [3,784], 1 McAll. 480.
Deneale, Bank of Alexandria v. [See 846.]
Deneale, Betty v. [See 1,375.]
Deneale, Stump v. [See 13,560.]
Deneale, United States v. [See 14,946.]
DENEALE v. YOUNG [3,785], 2 Cranch, C. C. 200.
DENEALE v. YOUNG [3,786], 2 Cranch, C. C. 418.
De Nemours, Munns v. [See 9,926.]
De Nemours, Muns v. [See 9,931.]
Denig, Burdell v. [See 2,142.]
DENIKE v. ROURKE [3,787], 3 Biss. 39, 3 Chi. Leg. News, 345.
Denison, Michaelson v. [See 9,523.]
Denison University, Sturges v. [See 13,566.]
Denmead, Winans v. [See 17,860.]
Denn ex dem. Fisher v. Harnden. [See 4,819.]
Dennee, United States v. [See 14,947, 14,948.]
DENNER v. PALMER [3,788], 1 Pac. Law Mag. 291.
DENNETT v. MITCHELL [3,789], 6 Law Rep. 16; 1 N. Y. Leg. Obs. 356.
DENNEY v. ELKINS [3,790], 4 Cranch, C. C. 161.
Denney, Odiorne v. [See 10,431.]
DENNIS v. ALACHUA COUNTY [3,791], 3 Woods, 683.
DENNIS v. CROSS [3,792], 3 Biss. 389; 6 Fish. Pat. Cas. 138; Merw. Pat. Inv. 340.
DENNIS v. EDDY [3,793], 12 Blatchf. 195.
DENNIS v. EDDY [3,794], 4 Fish. Pat. Cas. 423.
DENNIS v. EDDY [3,795], 11 O. G. 833.
Dennis, Jaffray v. [See 7,171.]
DENNIS v. LEAR, The [3,796], Bee, 213.
DENNIS v. RIDER [3,797], 2 McLean, 451.
Dennis, United States v. [See 14,949.]
DENNISON v. LARNED [3,798], 6 McLean, 496.
Dennison, Marvin v. [See 9,180.]
DENNISON v. WATAGA, The [3,799], 11 Leg. Int. 7; 1 Phila. 468.
DENNISTON v. CHICAGO, A. & ST. L. R. CO. [3,800], 4 Biss. 414.
DENNISTON v. COQUILLARD [3,801], 5 McLean, 253.
DENNISTON v. IMBRIE [3,802], 3 Wash. C. C. 396.
DENNISTON v. McKEEN [3,803], 2 McLean, 253.
DENNISTOUN v. DRAPER [3,804], 5 Blatchf. 336.
DENNY v. BROWN [3,805].
DENNY v. HENDERSON [3,806], 2 Cranch, C. C. 121.
DENNY v. QUEEN [3,807], 3 Cranch, C. C. 217.
Denny v. The Thomas Sparks. [See 10,115.]
Denny, Wood v. [See 17,942.]
DEN ONZEHEREN, The [3,808].
Densley, Stover v. [See 13,508.]
Densley, Tenny v. [See 13,834.]
Denslow, Andrews v. [See 372.]
DENSMORE v. SCHOFIELD [3,809], 4 Fish. Pat. Cas. 148.
DENT v. ASHLEY [3,809a], Hempst. 54.
DENT v. ASHLEY [3,809b], Hempst. 55.
DENTAL VULCANITE CO. v. WETHERBEE [3,810], 2 Cliff. 555; 3 Fish. Pat. Cas. 87.
Denton, Magee v. [See 8,943.]
Denton, Peabody v. [See 10,867.]
DENVER & R. G. RY. CO. v. ALLING [2,387].
Denver & R. G. Ry. Co., Cannon City & S. J. Ry. Co. v. [See 2,387.]
Depew, Holyoke v. [See 6,652.]
DEPOSIT SAV. ASS'N v. MARKS [3,812], 3 Woods, 553; 23 Int. Rev. Rec. 241; 25 Pittsb. Leg. J. 3.
DEPOSIT SAV. ASS'N v. MAYER [3,813], 23 Int. Rev. Rec. 241.
Deputy Marshal, Meade v. [See 9,372.]
DE PUY, In re [3,814], 3 Ben. 307; 2 Amer. Law T. Rep. U. S. Cts. 130; 10 Int. Rev. Rec. 34; 4 Amer. Law Rev. 188; 16 Pittsb. Leg. J. 121.
DERBY, In re [3,815], 6 Ben. 232; 8 N. B. R. 106; 6 Alb. Law J. 422.
DERBY, In re [3,816], 8 Ben. 118; 12 N. B. R. 241; 4 Amer. Law Rec. 23.
Derby, Everett v. [See 4,576.]
DERBY v. JACQUES [3,817], 1 Cliff. 425.
Derby, Pulte v. [See 11,465.]
Derby, Story v. [See 13,496.]
Derby, Walker v. [See 17,068.]
Dermott, Fidelio v. [See 4,754.]
DERMOTT v. FOWLER [18,289], 2 Hayw. & H. 124.
Dermott, Moncure v. [See 9,707.]
DERMOTT v. TUCKER [3,818], 3 Cranch, C. C. 92.
De Rodriguez, United States v. [See 14,950.]
Derringer, Pettibone v. [See 11,043.]
Derry v. Hersey. [See 2,388.]
Derry Mills, Ex parte. [See 7,015.]
DESHON v. FOSDICK [3,819], 1 Woods, 286.
DESHON v. MEDORA, The [3,820], 2 Woodb. & M. 118.
Desire, The, Decatur v. [See 4,111.]
DESMAZES v. MUTUAL BEN. LIFE INS. CO. [3,821], 7 Ins. Law J. 926; 7 Reporter, 136; 19 Alb. Law J. 220.
Des Moines County, Rusch v. [See 12,142.]
Desmond, United States v. [See 14,951.]
DESPAN v. OLNEY [3,822], 1 Curt. 306; 2 Liv. Law Mag. 354.
DESPATCH, The [3,823], 2 Gall. 1.
DES ROCHERS, Ex parte [3,824], 1 McAll. 68.
DESSAU v. BOURS [3,825], 1 McAll. 20.
D'Este, Zane v. [See 18,199.]
DESSOR v. DAVIS [3,826].
DE TASLET v. CROUSELLAT [3,827], 1 Wash. C. C. 504.
DE TASTETT v. CROUSILLAT [3,828], 2 Wash. C. C. 132.
DETERT, In re [3,829], 11 N. B. R. 293; 7 Chi. Leg. News, 130; 14 Amer. Law Reg. (N. S.) 166.
Detlor v. The Comet. [See 3,050.]
Detmold v. Fisher. [See 3,830.]
DETMOLD v. GATE VEIN COAL CO. [3,830], 3 Wkly. Notes Cas. 567.
DETMOLD v. REEVES [3,831], 1 Fish. Pat. Cas. 127; 5 Pa. Law J. Rep. 99; 4 Amer. Law J. (N. S.) 186; Merw. Pat. Inv. 571; 52 Jour. Fr. Inst. 270; 8 Leg. Int. 146.
DETROIT, The [3,832], 1 Brown's Adm. 141.
Detroit, Farrington v. [See 4,687.]
Detroit, Hollingsworth v. [See 6,613.]
Detroit, Phillips v. [See 11,100, 11,101.]
Detroit & C. Steam Nav. Co., New England Ins. Co. v. [See 10,154.]
DETROIT CAR WORKS, In re [3,833], 14 N. B. R. 243; 3 N. Y. Wkly. Dig. 140.
DETROIT STOVE WORKS v. MICHIGAN STOVE CO. [3,834], 12 O. G. 189.
DETROIT STOVE WORKS v. PERRY [3,835], 20 Alb. Law J. 10; 8 Reporter, 327.
Deuster, Broad v. [See 1,908.]
Deval, Tyler v. [See 14,307.]
De Valle, Cross v. [See 3,430, 3,431.]
DE VARAIGNE v. FOX [3,836.]
DE VARAIGNE v. FOX [3,836], 2 Blatchf. 95.
Devaughan, United States v. [See 14,952.]
DEVAUGHN'S CASE [3,837], 2 Cranch, C. C. 501.
Deveaux, Bank of the United States v. [See 916.]
Devens, Knox v. [See 7,905.]
DEVIGNY v. MOORE [3,838], 1 Cranch, C. C. 174.
DE VILLEMONT v. UNITED STATES [3,839], Hempst. 389.
DE VISSER v. BLACKSTONE [3,840], 6 Blatchf. 235.
DEVLIN, In re [3,841], 1 Ben. 335; 1 N. B. R. 35; Bankr. Reg. Supp. 8; 6 Int. Rev. Rec. 61; 1 Amer. Law T. Rep. Bankr. 32.
DEVLIN v. GIBBS [3,842], 4 Cranch, C. C. 626.
Devlin, United States v. [See 14,953-14,955.]
DEVOE, In re [3,843], 2 N. B. R. 27 (Quarto, 11); 1 Lowell, 251; 1 Amer. Law T. Rep. Bankr. 90; 7 Amer. Law Reg. (N. S.) 690.
DEVOE v. FASHION, The [3,844], 4 Amer. Law J. (N. S.) 279; 25 Hunt, Mer. Mag. 718; 14 Law Rep. 450.
DEVOE v. PENROSE FERRY-BRIDGE CO. [3,845], 3 Amer. Law Reg. (O. S.) 79; 5 Pa. Law J. Rep. 313.
Devoe Mfg. Co., Meissner v. [See 9,397.]
DEVOLL v. BROWN [3,662], 3 West. Law J. 151; Merw. Pat. Inv. 414.
DEVORE, In re [3,847], 16 N. B. R. 56; 24 Pittsb. Leg. J. 185, 187.
DEWEES' CASE [3,848], Chase, 531.

[Federal Case numbers are given in brackets.]

DEWEY, In re [3,849], 1 Lowell, 493, 4 N. B. R. 412 (Quarto, 139).
Dewey, Alden v. [See 153.]
Dewey, Bank of North Carolina v. [See 897.]
Dewey, Holleman v. [See 6,607.]
DEWEY v. KELTON [3,850], 18 N. B. R. 217.
Dewey, United States v. [See 14,956.]
Dewey, Wallace v. [See 17,099.]
DE WITT v. BROOKS [3,851].
De Witt, Bunkley v. [See 2,134.]
De Wolf, Brownell v. [See 2,037.]
De Wolf, Fearing v. [See 4,711.]
De Wolf v. Harris. [See 4,221.]
DE WOLF v. HOWLAND [3,852], 2 Paine, 356.
De Wolf, Macy v. [See 8,933.]
DE WOLF v. TWO HUNDRED AND SIXTY-SIX HOGSHEADS AND THIRTY-ONE TIERCES MOLASSES [3,853].
DEXTER, Ex parte [3,854], 1 Hayw. & H. 191.
DEXTER v. ARNOLD [3,855], 3 Mason, 284.
DEXTER v. ARNOLD [3,856], 5 Mason, 303.
DEXTER v. ARNOLD [3,857], 1 Sumn. 109.
DEXTER v. ARNOLD [3,858], 2 Sumn. 108.
DEXTER v. ARNOLD [3,859], 2 Sumn. 152.
Dexter, Arnold v. [See 557.]
Dexter, Crawford v. [See 3,368.]
DEXTER v. DEXTER [3,860], 4 Mason, 302.
Dexter, Earl v. [See 4,242.]
DEXTER v. HAIGHT [3,861].
Dexter, Hall v. [See 5,929.]
DEXTER v. HARRIS [3,862], 2 Mason, 531.
Dexter, Hodgson v. [See 6,565.]
Dexter, Mallett v. [See 8,988.]
DEXTER v. MUNROE [3,863], 2 Spr. 39.
DEXTER v. PROVIDENCE AQUEDUCT CO. [3,864], 1 Story, 387.
DEXTER v. RICHMOND, The [3,865], 4 Law Rep. 20; 4 Hunt, Mer. Mag. 455.
DEXTER v. SMITH [3,866], 2 Mason, 303.
DEXTER v. SPEAR [3,867], 4 Mason, 115.
DEXTER v. SULLIVAN [3,868], Brunner, Col. Cas. 585; 14 Law Rep. 455.
Dexter, Tabor v. [See 13,723.]
DEXTER v. UNITED STATES [3,869].
DEY, In re [3,870], 3 Ben. 450; 3 N. B. R. 305 (Quarto, 81.)
DEY, In re [3,871], 9 Blatchf. 285.
DE ZALDO v. UNITED STATES [3,872], Hoff. Land Cas. 98.
D. F. KEELING, The [3,873], Blatchf. Pr. Cas. 92.
DIADEM, The [3,874], 5 Adm. Rec. 561.
DIADEM, The [3,875], 4 Ben. 247.
Dialogue, Pennock v. [See 10,941.]
Diamond, Waskern v. [See 17,248.]
DIANA, The [3,876], 2 Gall. 93.
DIAS v. REVENGE, The [3,877], 3 Wash. C. C. 262.
DIAZ v. UNITED STATES [3,878], Hoff. Op. 32.
DIBBLE v. AUGUR [3,879], 7 Blatchf. 86.
DIBBLE v. DUNCAN [3,880], 2 McLean, 553.
Dibble, Egberts v. [See 4,307.]
DIBBLE v. MORGAN [3,881], 1 Woods, 406.
DIBBLE v. ROBERTSON [3,882], 1 Hayw. & H. 65.
DIBBLE v. SIBLEY [3,883], 7 Blatchf. 209.
DIBBLEE, In re [3,884], 3 Ben. 283; 2 N. B. R. 617 (Quarto, 185); 1 Chi. Leg. News, 355.
DIBBLEE, In re [3,885], 3 Ben. 354; 3 N. B. R. 72 (Quarto, 17).
DIBBLEE, In re [3,886], 4 Ben. 137; 3 N. B. R. 754 (Quarto, 185).
DIBBLEE, In re [3,887], 4 Ben. 304.
DIBBLEE v. FURNISS [3,888], 4 Blatchf. 262.
DIBBLEE v. SHELDON [3,889], 10 Blatchf. 178.
Dibrell, Blackwell v. [See 1,475.]
Dick, Beall v. [See 1,162.]
Dick, Clark v. [See 2,818.]
DICK v. HAMILTON [3,890], Deady, 322.
DICK v. LAIRD [3,891], 4 Cranch, C. C. 667.
DICK v. LAIRD [3,892], 5 Cranch, C. C. 328.
Dick, Laird v. [See 7,990.]
Dick, United States v. [See 14,957.]
DICKENSON v. GORE, The [3,893], Newb. 45.
Dickerson, Boswell v. [See 1,683.]
Dickerson, Long v. [See 8,480.]
Dickey, Clement's Ex'rs v. [See 2,883.]
Dickey, Fenner v. [See 4,729.]
DICKEY v. HARMON [3,894], 1 Cranch, C. C. 201.
Dickey, Roberts v. [See 11,899.]
DICKINSON, In re [3,895], 18 N. B. R. 514; 26 Pittsb. Leg. J. 143.
DICKINSON v. ADAMS [3,896], 4 Sawy. 257; 17 N. B. R. 380.
DICKINSON v. CATHARINE, The [3,897], 29 Hunt, Mer. Mag. 458.
Dickinson, Fuzzard Wadding Mfg. Co. v. [See 5,165.]
Dickinson, United States v. [See 14,958.]
DICK KEYS, The [3,898], 1 Biss. 408.
Dick Keyes, The, Scott v. [See 12,528.]
Dickson, Burrow v. [See 2,203.]
DICKSON v. MATHERS [3,898a], Hempst. 65.
Dickson, Milligan v. [See 9,603, 9,604.]
Dickson, Peisch v. [See 10,911.]
Dickson, Simms v. [See 12,869.]
DIDLAKE v. ROBB [3,899], 1 Woods, 680.
DIDO, The [3,900].
Dido, The, Hope v. [See 6,679.]
Dido, The, Trask v. [See 14,142.]
DIEDMAN v. JOSEPH HUME, The [3,901].
DIETZ, Ex parte [3,902].
Dietz, Payson v. [See 10,861.]
DIETZ v. WADE [3,903], 3 App. Com'r Pat. 142.
DIGGES v. ELIASON [3,904], 4 Cranch, C. C. 619.
DIGGLES, In re [3,905], 8 Ben. 36.
Diggs, Gusty v. [See 5,878.]
Dignum, Phoebe, The v. [See 11,110.]
DIKE v. HOWE [3,906], 4 Cliff. 132.
DIKE v. KUHNS [3,907], 5 Pittsb. Leg. J. 239.
DIKE v. ST. JOSEPH, The [3,908], 6 McLean, 573.
DIKE v. VON LEFFERL LAHSEN, The [3,909].
DILL v. BERTRAM, The [3,910].
DILL v. COLOMBO, The [3,910a].
DILL v. ELLICOTT [3,911], Taney, 233.
Dill, International Grain Ceiling Co. v. [See 7,053.]
DILLARD, In re [3,912], 2 Hughes, 190; 9 N. B. R. 8; 6 Amer. Law T. Rep. 490; 21 Pittsb. Leg. J. 82.
Dillin, Hamilton v. [See 5,979.]
DILLINGHAM v. SKEIN [3,912a], Hempst. 181.
DILLINGHAM v. UNITED STATES [3,913], 2 Wash. C. C. 422.
DILLON, In re [3,914], 7 Sawy. 561.
DILLON v. BARNARD [3,915], Holmes, 386.
Dillon, Fowler v. [See 5,000.]
DILLON v. UNION PAC. R. CO. [3,916], 3 Dill. 319.
Dillon, Wickham v. [See 17,612.]
Dilworth, Bloomer v. [See 18,242.]
Dimick, Stoughton v. [See 13,500.]
Dimmick, The John L. [See 7,355.]
DIMON, The [3,917], 2 Gall. 306.
DIMPFEL v. OHIO & M. RY. CO. [3,918], 9 Biss. 127; 8 Reporter, 641; 12 Chi. Leg. News, 50.
DINGEE v. BECKER [3,919], 9 N. B. R. 508.
Dingee, Cutter v. [See 3,518.]
Dinike v. Rourke. [See 3,787.]
Dinsmore, Berry v. [See 1,355.]
DINSMORE v. MARONEY [3,920], 4 Blatchf. 416; 4 Wkly. Law Gaz. 283.
Dinsmore v. Nashville, etc., R. Co. [See 3,920a].
Dinsmore, Pettingill v. [See 11,045.]
DINSMORE v. PHILADELPHIA & R. R. CO. [3,921], 11 Phila. 483; 1 Law & Eq. Rep. 351; 3 Cent. Law J. 157; 2 Wkly. Notes Cas. 275; 32 Leg. Int. 388; 1 La. Law J. 108; 7 Amer. Law Rev. 765; 23 Pittsb. Leg. J. 112.
Dinsmore v. Philadelphia, etc., R. Co. [See 2,331.]
Dinsmore, Woodward v. [See 18,003.]
Dinwiddie, Bass v. [See 1,092.]
Directors of City Schools, Bertonneau v. [See 1,361.]
DISCO, The [3,922], 2 Sawy. 474; 6 Chi. Leg. News, 102.
Dispatch, The, Kimball v. [See 7,773.]
DISTILLED SPIRITS, Etc., All the, Found at Distillery of England & Evans [3,923], 2 Ben. 486; 1 Amer. Law T. Rep. U. S. Cts. 103; 8 Int. Rev. Rec. 81; 15 Pittsb. Leg. J. 605.
Distilled Spirits, United States v. [See 14,959.]
Distillery, United States v. [See 14,960.]
Distillery, etc., of J. C. McCoy, United States v. [See 14,964.]
Distillery at Petersburg, United States v. [See 14,961.]
Distillery at Spring Valley, United States v. [See 14,962, 14,963.]
Distillery in West Front Street, United States v. [See 14,965.]
Distillery No. 28, United States v. [See 14,966.]

[Federal Case numbers are given in brackets.]

DISTRICT ATTORNEY OF UNITED STATES, Case of [3,924], 7 Amer. Law Reg. (N. S.) 786; 8 Int. Rev. Rec. 137, 145; 3 Amer. Law Rev. 387; 25 Leg. Int. 348.
DISTRICT ATTORNEY OF UNITED STATES, In re [3,925].
DISTRICT ATTORNEY'S FEES [18,290], 1 Blatchf. 647.
District of Columbia, Riddle v. [See 11,808.]
District of Columbia, Wilson v. [See 17,822.]
District of North Carolina, United States v. [See 15,-727.]
District Sav. Ass'n v. Marks. [See 3,812.]
Dittenthaler, Sharp v. [See 12,709.]
DIX v. NICHOLLS [3,926], 2 Cranch, C. C. 581.
Dixey, United States v. [See 14,967.]
DIXON, Ex parte [3,927].
DIXON v. BARNUM [3,928], 3 Hughes, 207; 2 Va. Law J. 312.
DIXON v. COLUMBUS, Etc., R. CO. [3,929], 4 Biss. 137.
DIXON v. CYRUS, The [3,930], 2 Pet. Adm. 407.
Dixon, Deloach v. [See 3,775.]
DIXON v. MOYER [3,931], 4 Wash. C. C. 68; 1 Robb, Pat. Cas. 324.
Dixon, Potter v. [See 11,325.]
DIXON v. RAMSAY [3,932], 1 Cranch, C. C. 472.
DIXON v. RAMSAY [3,933], 1 Cranch, C. C. 496.
DIXON v. UNITED STATES [3,934], 1 Brock. 177.
Dixon, United States v. [See 14,968-14,970.]
DIXON v. WALKER [18,291], 2 Hayw. & H. 316.
DIXON v. WASHINGTON [3,935], 4 Cranch, C. C. 114.
DIXON v. WATERS [3,936], 2 Cranch, C. C. 527.
Dixon, Wood v. [See 17,943.]
DIXWELL v. JONES [3,937], 2 Dill. 184.
D'Meza, Myers v. [See 9,987.]
D. M. FRENCH, The [3,938], 1 Lowell, 43.
D. M. HALL, The, v. JOHN LAND, The [3,939], Hoff. Op. 96.
DOAN v. COMPTON [3,940], 2 N. B. R. 607 (Quarto, 182).
Doane, Avery v. [See 673.]
Doane, Flaherty v. [See 4,849.]
Doane, Penhallow v. [See 10,925.]
Doane, The Mary. [See 9,205.]
Doane, The Richard. [See 11,765.]
Dobbie, Wilkinson v. [See 17,670.]
DOBBIN v. ALLEGHENY [3,941], 3 West. Law Month. 74; 7 Pittsb. Leg. J. 282; 2 Pittsb. Rep. 120.
DOBBIN v. FOYLES [3,942], 2 Cranch, C. C. 65.
DOBBINS, In re [3,943], 18 N. B. R. 268.
DOBBINS v. BRADLEY [3,944], 4 Cranch, C. C. 298.
Dobbins, United States v. [See 14,971.]
Dobbins, Watson v. [See 17,281.]
Dobbs, United States v. [See 14,972.]
Dobie, Gibson v. [See 5,394.]
Dobson, Calloway v. [See 2,325.]
Dobson, Goodrich v. [See 18,297.]
DOBSON v. CAMPBELL [3,945], 1 Sumn. 319; 1 Robb, Pat. Cas. 681.
Dobson, Jordan v. [See 7,519.]
Dobson, Wardrop v. [See 17,166.]
DOCKER'S CASE [3,946].
Docker, Minchin v. [See 9,628.]
DODGE, In re [3,946a].
DODGE, In re [3,947], 2 Ben. 347; 7 Amer. Law Reg. (N. S.) 438; 1 N. B. R. 435 (Quarto, 115); 1 Amer. Law T. Rep. Bankr. 120.
DODGE, In re [3,948], 9 Ben. 480; 17 N. B. R. 504.
DODGE, In re [3,949], 4 Dill. 532.
DODGE v. ARTHUR [3,950], 22 Int. Rev. Rec. 402.
Dodge, Bank of Dover v. [See 10,053.]
DODGE v. CARD [3,951], 1 Bond, 393; 2 Fish. Pat. Cas. 116.
Dodge, Good v. [See 5,531.]
Dodge, Harriman v. [See 6,104a.]
Dodge, Holmes v. [See 6,637.]
Dodge v. Illinois, The. [See 7,002.]
DODGE v. ISRAEL [3,952], 4 Wash. C. C. 323.
DODGE v. JOHN STUART, The [3,952a].
Dodge, Kennedy v. [See 7,701.]
DODGE v. LEARY [3,952b].
Dodge, National Union Bank v. [See 10,053.]
DODGE v. PEREZ [3,953], 2 Sawy. 645.
DODGE v. PERKINS [3,954], 4 Mason, 435.
Dodge, Roberts v. [See 11,900.]
DODGE v. STUART [7,427].
Dodge, United States v. [See 14,975, 14,976.]
DODGE v. VAN LEAR [3,956], 5 Cranch, C. C. 278.
Dodge, Woolsey v. [See 18,032.]
Dodge & S. Mfg. Co., Kirby v. [See 7,838.]
Dodge & S. Mfg. Co., Marsh v. [See 9,115.]
Dodge County, Chandler v. [See 2,592.]
Dodge Healy, The, Clarke v. [See 2,849.]
DOE, In re [3,957]; 2 N. B. R. 308 (Quarto, 100); 1 Chi. Leg. News, 123.
Doe ex dem. Sturgess v. Bank of Cleveland. [See 13,571.]
Doe ex dem. Lewis v. Barksdale. [See 8,317.]
Doe, Hyde v. [See 6,969.]
DOE v. JOHNSTON [3,958], 2 McLean, 323.
DOE v. WELCH [11,456].
Doebler, United States v. [See 14,977.]
DOGGETT v. EMERSON [3,960], 3 Story, 700.
DOGGETT v. EMERSON [3,961], 1 Woodb. & M. 1.
DOGGETT v. EMERSON [3,962], 1 Woodb. & M. 195.
Doherty v. Caroline E. Kelly, The. [See 2,422.]
DOHERTY v. HAYNES [3,963], 4 Cliff. 291; 1 Ban. & A. 289; 6 O. G. 118.
Dohrman, Conover v. [See 3,120.]
Dolan, Aiken v. [See 110.]
Dolan, United States v. [See 14,978.]
DOLE, In re [3,964], 11 Blatchf. 499; 9 N. B. R. 193.
DOLE, In re [3,965], 7 N. B. R. 538; 7 West. Jur. 629.
Dole, Ex parte. [See 9,181.]
Dole, Andrews v. [See 373.]
DOLE v. NEW ENGLAND MUT. MARINE INS. CO. [3,966], 2 Cliff. 394.
Dole, The Louis. [See 8,534.]
Dolick, Lane v. [See 8,049.]
D'OLIVERA, Ex parte [3,967], 1 Gall. 474.
DOLL, Ex parte [3,968], 7 Phila. 595; 27 Leg. Int. 20; 11 Int. Rev. Rec. 36.
DOLL v. EVANS [3,969], 11 Amer. Law Reg. (N. S.) 315; 15 Int. Rev. Rec. 143; 29 Leg. Int. 116; 9 Phila. 364; 4 Leg. Gaz. 113.
Dollar Savings Bank, United States v. [See 14,979.]
DOLLNER v. GARCIA [3,970].
DOLNER v. MONTICELLO, The [3,971], Holmes, 7.
Dolph, Lanning v. [See 8,073.]
DOLPHIN, The [3,972], 6 Ben. 402.
DOLPHIN, The [3,973], 1 Flip. 580; 5 Ins. Law J. 931; 8 Chi. Leg. News, 401; 3 Cent. Law J. 628.
DOLPHIN, The [3,974], 1 Flip. 592; 9 Chi. Leg. News, 337; 6 Ins. Law J. 528; 24 Pittsb. Leg. J. 187.
DOLPHIN, The [3,975].
Dolphin, The, Cross v. [See 3,432.]
DOLTON v. NELSON [3,976], 3 Dill. 469.
Doman, United States v. [See 14,980.]
Domestic Sewing-Mach. Co., Spring v. [See 13,258.]
Domingo, The, Goodrich v. [See 5,543.]
Dominguez, Graham v. [See 5,664.]
DOMINY v. ANCHORS, SAILS, Etc., of The D'ALBERTI [3,977], 1 Ben. 77.
DONAHAY v. HOWLAND [3,978], 44 Hunt, Mer. Mag. 623.
DONAHOE, In re [3,979], 8 N. B. R. 453.
Donahoe, In re. [See 3,979.]
DONAHOE v. KETTELL [3,980], 1 Cliff. 135.
Donahoo, United States v. [See 14,982.]
DONALDSON, Ex parte [3,981], 6 Phila. 443; 7 Amer. Law Reg. (N. S.) 213; 1 Amer. Law T. Rep. Bankr. 5; Bankr. Reg. Supp. 39; 1 N. B. R. 181; 24 Leg. Int. 380; 6 Int. Rev. Rec. 199; 15 Pittsb. Leg. J. 125.
DONALDSON, In re [3,982], 2 Dill. 546; 11 N. B. R. 460.
DONALDSON v. FARWELL [3,983], 5 Biss. 451; 6 Chi. Leg. News, 101.
DONALDSON v. HAZEN [3,984], Hempst. 423.
DONALDSON v. McDOWELL [3,985], Holmes, 290.
Donaldson, Pollock v. [See 11,254.]
Donaldson, Utley v. [See 16,807.]
Donau, United States v. [See 14,983.]
DON JUAN, The [3,986], 8 Ben. 489.
Donn, Gannon v. [See 5,211.]
DONNELL, Case of [3,986a].
DONNELL v. COLUMBIAN INS. CO. [3,987], 2 Sumn. 366.
Donnell, Ray v. [See 11,590.]

[Federal Case numbers are given in brackets.]

DONOGHUE'S CASE [3,988], 2 Cranch, C. C. 466.
DONOHOE v. MARIPOSA L. & M. CO. [3,989], 5 Sawy. 163; 6 Cent. Law J. 457; 1 Pac. Coast Law J. 211.
DONOHUE, In re [3,990], 2 Hask. 17.
DONOHUE v. CULLEY [3,991], Taney, 468.
Donovan, Davidson v. [See 3,603.]
DONOVAN v. DEAN [3,992], 1 Flip. 182; 4 Chi. Leg. News, 210.
DONOVAN v. DYMOND [3,993], 3 Woods, 141.
DONOVAN v. UNITED STATES [3,994], 3 Dill. 53.
Dood, Giddings v. [See 5,405.]
DOODY, In re [3,995], 2 N. B. R. 201, (Quarto, 74).
DOOLEY v. GALLAGHER [3,996], 3 Hughes, 214.
Dooley, Gordon v. [See 5,607.]
DOOLEY v. NEPTUNE'S CAR, The [3,997], Hoff. Op. 69.
Dooley, United States v. [See 14,984.]
DOOLEY v. VIRGINIA FIRE & MARINE INS. CO [3,998], 2 Hughes, 482.
DOOLEY v. VIRGINIA FIRE & MARINE INS. CO. [3,999], 3 Hughes, 221.
DORAN, In re [4,000], 5 Cent. Law J. 260.
Dord, Van Lier v. [See 16,862.]
Dore, Moore v. [See 9,757.]
DOREMAS v. BENNET [4,001], 4 McLean, 224.
DOREMUS v. BURTON [4,002], 5 Biss. 57.
Dorflinger, Consolidated Fruit-Jar Co. v. [See 3,129.]
DORGAN v. PENTZ [4,121], 1 Chi. Leg. News, 225; 16 Pittsb. Leg. J. 326.
DORGAN v. TELEGRAPH CO. [4,004], 1 Amer. Law T. Rep. (N. S.) 406.
Dorman, Agnew v. [See 100.]
DORN v. GERMANIA INS. CO. [4,005], 4 Amer. Law Rec. 445; 5 Ins. Law J. 183; 1 Law & Eq. Rep. 132.
Dorr, Bryce v. [See 2,070.]
DORR v. GIBBONEY [4,006], 3 Hughes, 382.
Dorr, Hatch v. [See 6,206.]
DORR v. HOYT [4,007], 1 Hunt, Mer. Mag. 252.
DORR v. HOYT [4,008], 2 Hunt, Mer. Mag. 261.
DORR v. HOYT [4,009], 2 Hunt, Mer. Mag. 262.
Dorr v. Ludlow. [See 8,052.]
Dorr, Myers v. [See 9,988.]
DORR v. SWARTWOUT [4,010]; 1 Blatchf. 179; 5 N. Y. Leg. Obs. 172.
Dorr, Wiggin v. [See 17,625.]
Dorr, Willard v. [See 17,679, 17,680.]
Dorr Mfg. Co., Essex Hosiery Mfg. Co. v. [See 4,533.]
Dorrance, Vanhorn v. [See 16,857.]
Dorris, The. [See 9,225.]
DORRIS v. COPELIN [4,011], 5 Amer. Law Reg. (N. S.) 492.
Dorset, First Nat. Bank of North Bennington v. [See 4,808.]
DORSETT v. MARSHALL [4,012], 5 Cranch, C. C. 96.
Dorsett, Marshall v. [See 9,128.]
DORSEY v. CHENAULT [4,013], 2 Cranch, C. C. 316.
Dorsey, Holt v. [See 6,647.]
Dorsey, Medford v. [See 9,389, 9,390.]
DORSEY HARVESTER REVOLVING RAKE CO. v. MARSH [4,014], 6 Fish. Pat. Cas. 387; 9 Phila. 395; 30 Leg. Int. 169; 5 Leg. Gaz. 139.
DORSEY REVOLVING HARVESTER RAKE CO. v. BRADLEY MFG. CO. [4,015], 12 Blatchf. 202; 1 Ban. & A. 330.
D'Orville, Brooks v. [See 1,951.]
Doss, U. S. v. [See 14,985.]
DOS SANTOS, Ex parte [4,016], 2 Brock. 493.
DOTY, In re [4,017], 16 N. B. R. 202; 1 N. W. Rep. (O. S.) 165; 10 Chi. Leg. News, 1; 25 Pittsb. Leg. J. 24.
DOUBLEDAY v. BRACHEO [4,018], 2 Fish. Pat. Cas. 560.
DOUBLEDAY v. SHERMAN [4,019], 6 Blatchf. 513.
DOUBLEDAY v. SHERMAN [4,020], 8 Blatchf. 45; 4 Fish. Pat. Cas. 253.
DOUBLEDAY v. SHERMAN [4,021], 3 Fish. Pat. Cas. 369.
DOUBLEDAY v. SHERMAN [4,022], 3 Fish. Pat. Cas. 371.
DOUGHERTY v. AMERICAN STEAMSHIP CO. [4,023], 1 Wkly. Notes Cas. 86.
DOUGHERTY v. BENTLEY [4,024], 1 Cranch, C. C. 219.
Dougherty, Corcoran v. [See 3,227.]
DOUGHERTY v. EDMISTON [4,025], Brunner, Col. Cas. 194; Cooke, 134.
Dougherty, Harper v. [See 6,087.]
DOUGHTY v. DAY [4,026], 9 Blatchf. 262; 5 Fish. Pat. Cas. 224.
DOUGHTY v. HILDT [4,027], 1 McLean, 334.
Doughty, United States v. [See 14,986, 14,987.]
DOUGHTY v. WEST [4,028], 6 Blatchf. 429; 3 Fish. Pat. Cas. 580.
DOUGHTY v. WEST [4,029], 2 Fish. Pat. Cas. 553.
DOUGHTY v. WEST, BRADLEY & CARY MFG. CO. [4,030], 8 Blatchf. 107; 4 Fish. Pat. Cas. 318.
Douglas, Bloomer v. [See 18,242.]
Douglas, Case v. [See 2,491.]
Douglas, McAllister v. [See 8,657.]
Douglas, Magic Ruffle Co. v. [See 8,948.]
Douglas, United States v. [See 14,988.]
Douglas County, First Nat. Bank v. [See 4,799.]
Douglas County, First Nat. Bank of Omaha v. [See 4,809.]
Douglas County, Board of County Com'rs of Adams v. [See 52.]
DOUGLASS, The [4,031], 1 Brown's Adm. 105.
Douglass, Bartleman v. [See 1,073.]
Douglass, Blackinton v. [See 1,470.]
DOUGLASS v. EYRE [4,032], Gilp. 147.
Douglass, Huidekoper v. [See 6,851.]
Douglass v. Justices of the County Court of Lincoln County. [See 15,503.]
Douglass, Mathews v. [See 9,276.]
Douglass v. S. L. Davis, The. [See 12,939.]
Douglass, Union Nat. Bank v. [See 14,375.]
Douglass, United States v. [See 14,989.]
DOUGLASS v. WASHINGTON, The [4,033], Crabbe, 452.
DOURO, The [4,034], Blatchf. Pr. Cas. 362.
Dousman, The, Ward v. [See 17,153.]
DOVE v. BLAIR [18,292], 2 Hayw. & W. H. 200.
DOVE, The [4,035], 1 Gall. 585.
Dover Stamping Co., Monroe v. [See 9,714.]
DOW, In re [2,955], 6 N. B. R. 10.
Dow, In re. [See 17,573.]
DOW v. CHAMBERLIN [4,037], 5 McLean, 281.
DOW v. HARE [4,037a].
Dow, Robinson v. [See 11,950.]
Dow, United States v. [See 14,990.]
DOWDALL v. PENNSYLVANIA R. CO. [4,038], 13 Blatchf. 403.
DOWELL v. CARDWELL [4,039], 4 Sawy. 217.
DOWELL v. GRISWOLD [4,040], 5 Sawy. 23; 4 Law & Eq. Rep. 517; 10 Chi. Leg. News, 11; 1 San Fran. Law J. 87; 23 Int. Rev. Rec. 403.
DOWELL v. Griswold [4,041], 5 Sawy. 39; 5 Reporter, 78; 10 Chi. Leg. News, 107; 1 San Fran. Law J. 235; 24 Int. Rev. Rec. 28.
Dowell v. Niagara, The. [See 10,221.]
DOWLIN v. STANDIFER. [4,041a], Hempst. 290.
Dowling, Burch v. [See 2,139.]
Dowling, Murray v. [See 9,959.]
DOWLING v. RELIANCE, The [4,042], 1 Woods, 284.
DOWNER v. BRACKETT [4,043], 5 Law Rep. 392; 21 Vt. 599.
Downer, Loring v. [See 8,513.]
Downer & Bemis Brewing Co., Cornell v. [See 3,236.]
DOWNING, In re [4,044], 1 Dill. 33; 3 N. B. R. 748 (Quarto, 182); 17 Pittsb. Leg. J. 169; 3 Amer. Law T. 165; 2 Chi. Leg. News, 265; 1 Amer. Law T. Rep. Bankr. 207.
DOWNING, In re [4,045], 3 N. B. R. 741 (Quarto, 181); 2 Chi. Leg. News, 313.
Downing, In re. [See 12,212.]
Downing, Smith v. [See 13,036.]
DOWNING v. TRADERS' BANK [4,046], 2 Dill. 136; 11 N. B. R. 371.
Downing, United States v. [See 14,991.]
DOWNS v. ROCK ISLAND COUNTY [4,047], 4 Biss. 508.
DOWNTON v. YAEGER MILLING CO. [4,047a], 9 Fed. Rep. 402.
Dows, Blaisdell v. [See 1,489.]
Dows, Bowker v. [See 1,734.]
Dows, Cassel v. [See 2,502.]
DOWS v. CHICAGO & S. W. RY. CO. [4,048].
Dowson, Carroll v. [See 2,452.]
DOWSON v. PACKARD [4,049], 3 Cranch, C. C. 66.
DOYLE, In re [4,050], Holmes, 61.

[Federal Case numbers are given in brackets.]

DOYLE, In re [4,051], 3 N. B. R. 640 (Quarto, 158).
DOYLE, In re [4,052], 3 N. B. R. 782 (Quarto, 190).
DOYLE v. CLARK [4,053], 1 Flip. 536; 8 Reporter, 163; 9 Cent. Law J. 5.
Doyle, Hartford Fire Ins. Co. v. [See 6,160.]
Doyle, Lord v. [See 8,505.]
Doyle, Peckham v. [See 10,898.]
DOYLE v. RICHARDS [4,054], 4 Cranch, C. C. 527.
DOYNE v. BARKER [4,055], 4 Cranch, C. C. 475.
D. P., The [4,056], 1 Lowell, 124.
DRACO, The [4,057], 2 Sumn. 157.
Draher, Bloomer v. [See 18,242.]
DRAIN v. RANKIN, The [2,294.]
DRAKE, In re [4,058], 14 N. B. R. 150; 3 N. Y. Wkly. Dig. 50.
DRAKE v. CLEVELAND [4,059], 3 Cranch, C. C. 3.
DRAKE v. CUNNINGHAM [4,060], 1 McA. Pat. Cas. 378.
DRAKE v. FISHER [4,061], 2 McLean, 69.
DRAKE v. GOODRIDGE [4,062], 6 Blatchf. 151.
DRAKE v. GOODRIDGE [4,063], 6 Blatchf. 531.
Drake, Lathrop v. [See 8,109.]
DRAKE v. LIME ROCK, The [4,064], 1 Cin. Law Bul. 37.
Drake, Merriam v. [See 9,461.]
Drake v. Oriental, The. [See 10,570.]
DRAKE v. REDFIELD [4,065], 4 Blatchf. 116.
DRAKE v. ROLLO [4,066], 3 Biss. 273; 2 Ins. Law J. 935; 4 N. B. R. 689; 4 Chi. Leg. News, 284; 18 Int. Rev. Rec. 159.
DRAKE v. TAYLOR [4,067], 6 Blatchf. 14.
Draper, Baker v. [See 766.]
DRAPER v. BISSEL [4,068], 3 McLean, 275.
Draper, Davidson v. [See 3,604.]
Draper, Dennistoun v. [See 3,804.]
Draper, Eagle Mfg. Co. v. [See 4,234.]
DRAPER v. HUDSON [4,069], Holmes, 208; 6 Fish. Pat. Cas. 327; 3 O. G. 354.
Draper, Hudson v. [See 6,834.]
DRAPER v. MORAN, KELLY & CO. [4,070].
DRAPER v. O. C. CLARY, The [4,071].
DRAPER v. POTOMSKA MILLS CORP. [4,072], 3 Ban. & A. 214, 13 O. G. 276; Merw. Pat. Inv. 678.
Draper, Prouty v. [See 11,446, 11,447.]
Draper, Smith v. [See 13,037.]
DRAPER v. WATTLES [4,073], 16 O. G. 629; 3 Ban. & A. 618.
Drasha, Stewart v. [See 13,424.]
Dray v. The Rajah. [See 11,538.]
DRAYTON v. UNITED STATES [4,074], 1 Hayw. & H. 369.
Drennen, United States v. [See 14,992.]
Dresden, The, Sinnott v. [See 12,908.]
DRESKILL v. PARISH [4,075], 5 McLean, 213.
DRESKILL v. PARISH [4,076], 5 McLean, 241.
DRESSER, In re [4,077], 3 N. B. R. 557 (Quarto, 138).
Dresser, The E. K. [See 4,324.]
Drew, Betts v. [See 1,372.]
Drew, Elminger v. [See 4,416.]
DREW v. HULL OF A NEW SHIP [4,078], 17 Leg. Int. 405.
DREW v. MILWAUKEE & ST. P. R. CO. [4,079], 5 Chi. Leg. News, 314.
DREW v. POPE [4,080], 2 Sawy. 72.
Drew, Smith v. [See 13,038.]
Drew, United States v. [See 14,993.]
Drew, Western Division of Western N. C. R. Co. v. [See 17,433, 17,434.]
Drew, The Daniel. [See 3,565.]
DREWRY, Ex parte [4,081], 2 Hughes, 435.
Drexel, Sparhawk v. [See 13,204.]
DREYER, In re [4,082], 2 N. B. R. 212 (Quarto, 76).
Dreyfous, Richmond v. [See 11,799.]
Dreyfus, Ex parte. [See 8,043.]
Driggs, Ketchum v. [See 7,735.]
DRIGGS v. MOORE [4,083], 1 Abb. U. S. 440; 3 N. B. R. 602 (Quarto, 149).
DRIGGS v. RUSSELL [4,084], 3 N. B. R. 161 (Quarto, 39); 1 Chi. Leg. News, 353; 2 Amer. Law T. 206; 1 Amer. Law T. Rep. Bankr. 160.
DRINKWATER v. SPARTAN, The [4,085], 1 Ware (149) 145; 3 Amer. Jur. 26.
DRISCO, In re [4,086], 14 N. B. R. 551.
Driscoll, United States v [See 14,994.]
DRISKELL v. PARISH [4,087], 10 Law Rep. 395; 5 West. Law J. 206.
DRISKELL v. PARISH [4,088], 5 McLean, 64; 7 West. Law J. 222.
DRISKILL v. PARRISH [4,089], 3 McLean, 631; 5 West. Law J. 25.
DRISKO, In re [4,090], 2 Lowell, 430; 13 N. B. R. 112.
D. R. MARTIN, The [4,091], 10 Ben. 532.
D. R. MARTIN, The [1,030].
D. R. Martin, The, Barney v. [See 1,030.]
DROPE v. MILLER [4,092a], Hempst. 49.
Druet, Clarke v. [See 2,850.]
DRUMMOND, In re [4,093], 1 N. B. R. 231 (Quarto, 10); 1 Amer. Law T. Rep. Bankr. 7.
DRUMMOND, In re [4,094], 4 Biss. 149.
Drummond, Aldridge v. [See 156.]
Drummond, Blane v. [See 1,531.]
Drummond, Thatcher Heating Co. v. [See 13,865.]
Drury, Bates v. [See 1,100.]
DRURY v. EWING [4,095], 1 Bond, 540.
DRURY v. FOSTER [4,096], 1 Dill. 461.
Dryer, McFeely v. [See 8,791.]
Dry Ox and Cow Hides, United States v. [See 14,995.]
DRYSDALE v. RANGER, The [4,097], Bee, 148.
D. SARGEANT, The [4,098], Blatchf. Pr. Cas. 576.
D. S. Cage, The, Brown v. [See 2,002.]
D. S. GREGORY, The [4,099], 2 Ben. 166.
D. S. GREGORY, The [4,100], 2 Ben. 226; 1 Amer. Law. T. Rep. U. S. Cts. 95.
D. S. GREGORY, The [4,101], 7 Ben. 499.
D. S. GREGORY, The [4,102], 6 Blatchf. 528.
D. S. GREGORY, The [4,103], 16 Blatchf. 542; 8 Reporter, 487; 27 Pittsb. Leg. J. 40.
D. S. STETSON, The [4,104], 4 Ben. 508.
Duane, Goldhawk v. [See 5,511.]
DUANE v. GOODALL [4,105], 1 Cal. Law J. 283.
Duane, Hollingsworth v. [See 6,614-6,618.]
DUANE v. RIND [4,106], 1 Cranch, C. C. 281.
Duane, Romayne v. [See 12,028.]
Duane, United States v. [See 14,996, 14,997.]
Dubois, Fitzpatrick v. [See 4,842.]
DUBOIS v. McLEAN [4,107], 4 McLean, 486.
DUBOIS v. NEWMAN [4,108], 4 Wash. C. C. 74.
DUBOIS v. PHILADELPHIA, W. & B. R. CO. [4,109], 5 Fish. Pat. Cas. 208.
DUBOIS v. T. B. ABEEL, The [4,109a].
Du Brul, Miller & Peters Mfg. Co. v. [See 9,597.]
Dubuclet, Louisiana ex rel. Moncure v. [See 8,538.]
DUBUQUE, The [4,110], 2 Abb. U. S. 20; 2 Chi. Leg News, 381.
Dubuque, The, Moir v. [See 9,696.]
Dubuque & S. C. R. Co., Sayles v. [See 12,417.]
DUCATUR v. DESIRE, The [4,111], Bee, 385.
Duchesne, Brown v. [See 2,003, 2,004.]
Duckett, Addison v. [See 77.]
Duckworth, Minifie v. [See 9,633.]
DUDEN v. ARTHUR [4,112], 24 Int. Rev. Rec. 380.
DUDEN v. MURPHY [4,113], 18 Int. Rev. Rec. 174.
DUDLEY'S CASE [4,114], 1 Pa. Law J. 302; 1 Pa. Law J. Rep. 96.
Dudley, Graham v. [See 5,665.]
DUDLEY v. SUPERIOR, The [4,115], 1 Newb. 176; 3 Amer. Law Reg. 622.
Dudley S. Gregory, The. [See 537.]
DUER v. SMALL [4,116], 4 Blatchf. 263; 7 Amer. Law Reg. 500; 17 How. Pr. 201.
DUERSON, In re [4,117], 13 N. B. R. 183.
Duff, Maynadier v. [See 9,349.]
Duffey, Stewart v. [See 13,425.]
DUFFY v. BALTIMORE [4,118], Taney, 200.
DUFFY v. NEALE'S ADM'R [4,119], Taney, 271.
Duffy, United States v. [See 14,998.]
DUGAN, In re [4,120], 2 Lowell, 367.
DUGAN v. PENTZ [4,121], 2 Hughes, 66; 1 Balt. Law Trans. 196; 1 Chi. Leg. News, 225; 16 Pittsb. Leg. J. 326; 1 Leg. Gaz. 22.
Dugan, In re. [See 4,120.]
DUIVELAND, The [4,122].
Duker, Myers v. [See 9,989.]
Dulany, Chesapeake & O. Canal Co. v. [See 2,647.]
Dulany, Hellrigle v. [See 6,343.]
Dulany, Ladd v. [See 7,971.]
Dulany, Moore v. [See 9,758.]
Dulany, Murray v. [See 9,960.]
DULANY v. PERAGIO, The [4,123], Bee, 212.
Dulany, Shreve v. [See 12,817.]
Dulany, United States v. [See 14,999, 15,000.]
Dulany, Virginia v. [See 16,959.]

[Federal Case numbers are given in brackets.]

Duluth, United States v. [See 15,001.]
DUMAHAUT, In re [4,124], 15 Blatchf. 20.
DUMAHAUT, In re [4,125], 17 N. B. R. 517.
DUMAHAUT, In re [4,126], 19 N. B. R. 394.
Dumell, Tombeckbee Bank v. [See 14,081.]
Dummer, Wood v. [See 17,944.]
DUMONT, In re [4,127], 4 N. B. R. 17 (Quarto, 4).
Dun, Duncan v. [See 4,134.]
Dun, Selman v. [See 12,648.]
DUNBAR v. ALBERT FIELD TACK CO. [4,127a], 4 Fed. 543; 4 Ban. & A. 518.
DUNBAR v. BALL [4,128], 2 Cranch, C. C. 261.
DUNBAR v. BROWN [4,129], 4 McLean, 166.
Dunbar, Estabrook v. [See 4,535.]
Dunbar, Goodyear v. [See 5,570.]
DUNBAR v. MILLER [4,130], 1 Brock. 85.
Dunbar, Myers v. [See 9,990.]
DUNCAN, In re [4,131], 8 Ben. 365; 14 N. B. R. 18.
DUNCAN, In re [4,132], 8 Ben. 541.
DUNCAN, In re [4,133], 18 N. B. R. 42.
Duncan, The, Betsey v. [See 1,367.]
Duncan, Darst v. [See 3,580, 3,581.]
Duncan, Dibble v. [See 3,880.]
DUNCAN v. DUNN [4,134], 8 Reporter, 299; 9 Cent. Law J. 151; 7 Wkly. Notes Cas. 246.
Duncan, Dunn v. [See 4,175.]
DUNCAN v. FIRST NAT. BANK OF MT. PLEASANT [4,135], 26 Pittsb. Leg. J. 129; 11 Bank. Mag. (3d S.) 787; 15 Alb. Law J. 330; 1 Thomp. Nat. Bank Cas. 360.
Duncan, First Nat. Bank of Mt. Pleasant v. [See 4,804.]
Duncan, Hale v. [See 5,914.]
Duncan, January v. [See 7,217.]
DUNCAN v. KOCH [4,136], Wall. Sr. 33.
Duncan, McLeod v. [See 8,898.]
DUNCAN v. MOBILE & O. R. CO. [4,137], 2 Woods, 542.
DUNCAN v. MOBILE & O. R. CO. [4,138], 3 Woods, 567.
DUNCAN v. MOBILE & O. R. CO. [4,139], 3 Woods, 597.
Duncan, Thwing v. [See 14,019a.]
Duncan, United States v. [See 15,002-15,004.]
Duncan's Heirs, United States v. [See 15,005.]
DUNDAS v. BOWLER [4,140], 3 McLean, 204.
DUNDAS v. BOWLER [4,141], 3 McLean, 397; 2 West. Law J. 27; 7 Law Rep. 343.
DUNDORE v. COATES [4,142], 6 N. B. R. 304.
Dungler, Cooper v. [See 3,192.]
DUNHAM, In re [4,143], 2 Ben. 488; 2 N. B. R. 17 (Quarto, 9); 1 Amer. Law T. Rep. Bankr. 89.
DUNHAM, In re [4,144], 1 Hask. 495.
DUNHAM, In re [4,145], 7 Phila. 611; 27 Leg. Int. 404.
DUNHAM, In re [4,146], 29 Leg. Int. 389; 9 Phila. 471; 2 Md. Law Rep. 485.
DUNHAM v. BAIRD [4,147], Brunner, Col. Cas. 18; 1 Law & Eq. Rep. 391; 2 Wkly. Notes Cas. 52.
DUNHAM v. CINCINNATI, P. & C. R. CO. [4,148], 9 Pittsb. Leg. J. 90.
DUNHAM v. EARL [4,149], 16 Leg. Int. 45.
DUNHAM v. EATON & H. R. CO. [4,150], 1 Bond, 492.
Dunham, Equitable Safety Ins. Co. v. [See 10,155.]
DUNHAM v. INDIANAPOLIS & ST. L. R. CO. [4,151], 7 Biss. 223; 2 Ban. & A. 327; 9 Chi. Leg. News, 50.
DUNHAM v. NEW ENGLAND MUT. INS. CO. [4,152], 1 Lowell, 253.
Dunham, New England Mut. Marine Ins. Co. v. [See 10,155.]
DUNHAM v. ONE THOUSAND TWO HUNDRED AND SIXTY-FIVE VITRIFIED PIPES [10,536], 5 N. Y. Wkly. Dig. 194.
DUNHAM v. ONE THOUSAND TWO HUNDRED AND SIXTY VITRIFIED STONE-WARE SEWER PIPES [14,280], 15 Int. Rev. Rec. 26.
DUNHAM v. RILEY [4,155], 4 Wash. C. C. 126.
Dunham, United States v. [See 15,006.]
DUNKERSON, In re [4,156], 4 Biss. 227.
DUNKERSON, In re [4,157], 4 Biss. 253; 12 N. B. R. 413.
DUNKERSON, In re [4,158], 4 Biss. 277.
DUNKERSON, In re [4,159], 4 Biss. 323; 12 N. B. R. 391; 1 N. Y. Wkly. Dig. 179.
DUNKLE, In re [4,160], 7 N. B. R. 72.
DUNKLE, In re [4,161], 7 N. B. R. 107.
Dunkle, Pryor v. [See 11,458.]
DUNKLE v. WORCESTER [4,162], 5 Biss. 102.
Dunklee, Hill v. [See 6,489.]
Dunlap, Dakin v. [See 4,163.]
Dunlap, Greathouse v. [See 5,742.]
Dunlap, Irwin v. [See 7,083.]
Dunlap, McKinder v. [See 8,863.]
Dunlap, Manny v. [See 9,047.]
DUNLAP v. PYLE [4,163], 5 McLean, 322.
DUNLAP v. STETSON [4,164], 4 Mason, 349.
Dunlap, Watson v. [See 17,282.]
Dunlap, The A. R. [See 513.]
DUNLEVY v. MOWRY [4,165], 2 Bond, 214.
Dunlevy, Turbett v. [See 14,241.]
Dunlop, Ex parte. [See 1,735.]
DUNLOP v. ALEXANDER [4,166], 1 Cranch, C. C. 498.
Dunlop, Bank of Columbia v. [See 866.]
Dunlop v. Hepburn. [See 6,389.]
Dunlop, Moore v. [See 9,759.]
DUNLOP v. MUNROE [4,167], 1 Cranch, C. C. 536.
DUNLOP v. PETER [4,168], 1 Cranch, C. C. 403.
DUNLOP v. SILVER [4,169], 1 Cranch, C. C. 27; 1 Cranch (5 U. S.) Append. 367.
DUNLOP v. WEST [4,170], Brunner, Col. Cas. 27; 2 Hayw. N. C. 346.
Dunlop, Whetcroft v. [See 17,506.]
DUNN, In re [4,171], 25 How. Pr. 467.
DUNN, In re [4,172], 2 Hughes, 169; 11 N. B. R. 270.
DUNN, In re [4,173], 9 N. B. R. 487; 12 Blatchf. 42.
Dunn, Bucknam v. [See 2,096.]
DUNN v. COMMONWEALTH INS. CO. [4,174], 1 Flip. 379; 3 Ins. Law J. 631.
DUNN v. DUNCAN [4,175], 1 Law & Eq. Rep. 402; 2 Wkly. Notes Cas. 480.
DUNN v. GAMES [4,176], 1 McLean, 321.
DUNN v. GAMES [4,177], 2 McLean, 344.
Dunn, Kibbe v. [See 7,753.]
Dunn, United States v. [See 15,007.]
DUNN v. YOUNG AMERICA, The [4,178], 37 Leg. Int. 30; 14 Phila. 532.
Dunnaho, Moses v. [See 9,873.]
Dunnahoo, Burr v. [See 2,189.]
DUNNELL v. MASON [4,179], 1 Story, 543; 4 Law Rep. 141.
DUNNING v. PERKINS [4,180], 2 Biss. 421.
DUNSTAN v. R. R. KIRKLAND, The [4,181], 3 Hughes, 641.
DUPAS v. WASSELL [4,182], 1 Dill. 213.
DUPEE, In re [4,183], 2 Lowell, 18; 6 N. B. R. 89.
DU PONT v. BOSHONG [4,184], 1 Wkly. Notes Cas. 378.
Dupont, Munns v. [See 9,926.]
Dupont, Muns v. [See 9,931.]
DUPONTI v. MUSSY [4,185], 4 Wash. C. C. 128.
DURAND v. HOLLINS [4,186], 4 Blatchf. 451; 43 Hunt, Mer. Mag. 583.
DURAND v. LAWRENCE [4,187], 2 Blatchf. 396.
Durant, Gard v. [See 5,216.]
DURANT v. HOSPITAL LIFE INS. CO. OF MASSACHUSETTS [4,188], 2 Lowell, 575; 16 N. B. R. 324; 15 Alb. Law J. 436.
DURANT v. IOWA COUNTY [4,189], 1 Woolw. 69.
DURANT v. RITCHIE [4,190], 4 Mason, 45.
Durant, Union Pac. R. Co. v. [See 14,377.]
DURANT v. WASHINGTON COUNTY [4,191], 1 Woolw. 377.
Durfee v. Flora, The. [See 4,878.]
Durfee, Pugh v. [See 11,460.]
DURHAM v. ASHTON [4,192].
Durham v. Eclipse, The. [See 4,268.]
DURHAM v. RANGELY [2,117.]
Durham Smoking Tobacco Case. [See 1,474, 1,475.]
Durkee, United States v. [See 15,008, 15,009.]
DURKEE v. WORKMAN [4,194], 1 Law & Eq. Rep. 473; 2 Wkly. Notes Cas. 431; 21 Int. Rev. Rec. 349; 32 Leg. Int. 362.
DURKEE v. WORKMAN [4,195], 1 Wkly. Notes Cas. 204.
Durling, United States v. [See 15,010.]
Durnell, Hurst v. [See 6,927, 6,928.]
DURYEA, In re [4,196], 17 N. B. R. 495; 2 Nat. Bank Cas. (Browne) 170.
Duryee, Burr v. [See 2,190.]
DURYEE v. ELKINS [4,197], 1 Abb. Adm. 529.
DURYEE v. WEBB [4,198], 16 Conn. 558, note.
DUSAR v. MURGATROYD [4,199], 1 Wash. C. C. 13.

[Federal Case numbers are given in brackets.]

DUSSERT v. DOE [4,200], 1 Wall. Jr. 39.
DUSTIN v. MURRAY [4,201], 5 Ben. 10.
Dustin, United States v. [See 15,011, 15,012.]
DUTCHER v. BROOKLYN LIFE INS. CO. [4,202], 3 Dill. 87; 4 Ins. Law J. 812; 2 Cent. Law J. 153; 4 Bigelow, Ins Cas. 665.
DUTCHER v. MARINE NAT. BANK [4,203], 12 Blatchf. 435; 11 N. B. R. 457.
Dutcher v. Rocket, The. [See 11,975.]
Dutcher, United States v. [See 15,013, 15,014.]
DUTCHER v. WOODHULL [4,204], 7 Ben. 313.
DUTCHESS, The [4,205], 6 Ben. 48.
Dutchess of Ulster, The, Tompkins v. [See 14,087a.]
DUTILH v. COURSAULT [4,206], 5 Cranch, C. C. 349.
DUTILH v. MAXWELL [4,207], 2 Blatchf. 541.
DUTILH v. MAXWELL [4,208], 2 Blatchf. 548.
Dutton, Commercial Steamboat Co. v. [See 3,064.]
DUTTON v. EXPRESS, The [4,209], 3 Cliff. 462.
DUTTON v. FREEMAN [4,210], 5 Law Rep. 447.
DUTTON v. NEW YORK LIFE INS. CO. [4,211], 7 Ins. Law J. 129, 675; 6 Reporter, 423.
Duval, Trask v. [See 14,143, 14,144.]
Duval, United States v. [See 15,015.]
Duvall, Bayley v. [See 1,139.]
Duvall, Butler v. [See 2,238, 2,239.]
Duvall, United States v. [See 15,016.]
DUVALL v. WRIGHT [4,212], 4 Cranch, C. C. 169.
Duvivier, United States v. [See 15,017.]
DUWELL v. BOHMER [4,213], 2 Flip. 168; 14 O. G. 270; 10 Chi. Leg. News, 356; 3 Cin. Law Bul. 533; Cox, Manual Trade-Mark Cas. 351; 6 Reporter, 262; 24 Int. Rev. Rec. 254.
DWIGHT v. AMES [4,965], 2 N. B. R. 455 (Quarto, 147); 2 Amer. Law T. Rep. Bankr. 65.
DWIGHT v. APPLETON [4,215], 1 N. Y. Leg. Obs. 195.
DWIGHT v. HUMPHREYS [4,216], 3 McLean, 104.
DWIGHT v. PEASE [4,217], 3 McLean, 94.
DWIGHT v. WILLIAMS [4,218], 4 McLean, 581.
DWIGHT v. WING [4,219], 2 McLean, 580.
D. W. Lennox, The, Brooks v. [See 1,952.]
D'WOLF v. BABBETT [4,220], 4 Mason, 289.
D'WOLF v. HARRIS [4,221], 4 Mason, 515.
D'Wolf, Rabaud v. [See 11,519.]
D'Wolf, Savage v. [See 12,383.]
D'Wolf, Vernon v. [See 16,922.]
D. W. VAUGHAN, The [4,222], 9 Ben. 26.
Dyeing, Bleaching & Calendering Co., Nesmith v. [See 10,124.]
Dyer, Bank of Alexandria v. [See 847.]
Dyer, Brownell v. [See 2,038.]
Dyer, Central Pac. R. Co. v. [See 2,552.]
DYER v. COYLE [4,223], 2 Cranch, C. C. 684.
Dyer, Gaylor v. [See 5,283.]
Dyer, Lane v. [See 8,050.]
DYER v. NATIONAL STEAM NAV. CO. [4,224], 3 Ben. 173.
DYER v. NATIONAL STEAM NAV. CO. [4,225], 14 Blatchf. 483; 24 Int. Rev. Rec. 198.
DYER v. NATIONAL STEAMSHIP CO. [4,226], 7 Ben. 395.
Dyer, Travers v. [See 14,150.]
Dyer, Waller v. [See 17,108.]
Dyer, Wigfield v. [See 17,622.]
Dyersburg, Green v. [See 5,756.]
DYKE, In re [4,227], 9 N. B. R. 430.
Dymond, Donovan v. [See 3,993.]
DYSON, Ex parte [4,228], 3 App. Com'r Pat. 375.
DYSON v. DANFORTH [4,229], 4 Fish. Pat. Cas. 133.
Dyson, Faxon v. [See 4,705.]
DYSON v. GAMBRILL [4,230], 3 App. Com'r Pat. 472.
DYSON v. WHITE [4,231], 1 Cranch, C. C. 359.

E

EADS v. H. D. BACON, The [4,232], Newb. 274.
Eager, Hockholzer v. [See 6,556.]
Eager, Whitney v. [See 17,584.]
EAGLE, The [4,233], Olc. 232.
Eagle, The, North v. [See 10,309.]
Eagle, The, Tudor v. [See 14,230.]
Eagle Insurance Co., Ohl v. [See 10,472, 10,473.]
EAGLE MFG. CO. v. DRAPER [4,234], 14 Blatchf. 334.
Eagle Screw Co., Pierson v. [See 11,156.]
Eagle Works Mfg. Co., Blake v. [See 1,494.]
EAKEN v. UNITED STATES [4,235], 1 U. S. Law J. 545.
EAKIN v. ST. LOUIS, K. C. & N. R. CO. [4,236], 3 Cent. Law J. 655.
Eakin v. United States. [See 4,235.]
Eakin, Virginia v. [See 16,960.]
Eakin, Wellford v. [See 17,379.]
EAMES, Ex parte [4,237], 2 Story, 322; 1 N. Y. Leg. Obs. 212; 5 Law Rep. 117.
EAMES v. CAVAROC [4,238], Newb. 528.
EAMES v. COOK [4,239], 2 Fish. Pat. Cas. 146.
Eames, McGuire v. [See 8,814.]
EAMES v. RICHARDS [4,240], 3 App. Com'r Pat. 240.
E. A. PACKER, The [4,241], 10 Ben. 520.
EARHART v. CAMPBELL [4,241a], Hempst. 48.
Earhart, United States v. [See 15,018.]
EARL v. DEXTER [4,242], Holmes, 412; 1 Ban. & A. 400; 6 O. G. 729.
Earl, Dunham v. [See 4,149.]
EARL v. RAYMOND [4,243], 4 McLean, 233.
EARLE, In re [4,244], 3 N. B. R. 304 (Quarto, 81).
EARLE v. ALIDA, The [4,245], 13 Leg. Int. 369.
EARLE v. HARLOW [4,246], 2 Ban. & A. 264; 9 O. G. 1018.
EARLE v. SAWYER [4,247], 4 Mason, 1; 1 Robb, Pat. Cas. 490; Merw. Pat. Inv. 502.
Earle, Washing-Machine Co. v. [See 17,219.]
EARNEST v. EXPRESS CO. [4,248], 1 Woods, 573.
EASBY v. EASBY [18,293], 2 Hayw. & H. 207.
EARTH CLOSET CO. v. FENNER [4,249], 5 Fish. Pat. Cas. 15.
EASBY v. FLETCHER [4,250], 1 Hayw. & H. 35.
Easley, Kellom v. [See 7,668.]
EAST, The [4,251], 9 Ben. 76.
Eastburn, Bradford v. [See 1,767.]
EASTBURN v. YARDLEY [4,252], 30 Leg. Int. 404; 5 Leg. Gaz. 381.
EASTERN KY. R. CO. v. SLACK [4,253], 22 Int. Rev. Rec. 247.
Eastern Railroad, The. [See 13,039.]
Eastern Railroad, The, Miller v. [See 9,567.]
Eastern Railroad, The, Smith v. [See 13,039.]
EASTERN STAR, The [4,254], 1 Ware (185), 184.
Eastern State, The, Wheeler v. [See 17,494.]
Eastern Transp. Line, Hope v. [See 6,680.]
Eastham, Murphy v. [See 9,949.]
East Hampton Bell Co., Bevin v. [See 1,379.]
East Hampton Rubber Thread Co., Boston Elastic Fabrics Co. v. [See 1,676.]
Eastland, Coffee v. [See 2,945.]
EASTMAN v. BODFISH [4,255], 1 Story, 528; 2 Robb, Pat. Cas. 72.
EASTMAN v. HINCKEL [4,256], 5 Ban. & A. 1.
Easton, In re. [See 8,780.]
Easton, Beckwith v. [See 1,212.]
EASTON v. CUTTER [4,257], 15 Alb. Law J. 194.
EASTON v. HODGES [4,258], 7 Biss. 324.
Easton, Jackson v. [See 7,134.]
Easton, Mackay v. [See 8,843.]
EASTON v. NEW YORK & L. B. R. CO. [4,259], 30 Leg. Int. 124; 9 Phila. 475.
Eastport, The, Pacific Coast Wrecking Co. v. [See 10,646.]
East Tennessee, V.. etc., R. Co., Vaughan v. [See 16,898.]
Eastwick, Hall v. [See 5,930.]
Eaton, Evans v. [See 4,559, 4,560.]
Eaton, Hamilton v. [See 5,980.]
Eaton, Hedden v. [See 6,318.]
Eaton, Jordan v. [See 7,520.]
Eaton, Nichols v. [See 10,241.]
EATON v. SUPREME LODGE K. OF H. [4,259a]. 22 Cent. Law J. 560.
Eaton, Washington v. [See 17,228.]
Eaton, Winans v. [See 17,861.]
Eaton, The Barney. [See 1,028.]
Eaton, The James W. [See 7,337.]
Eaton, The L. W. [See 8,612.]
Eaton & H. R. Co., Dunham v. [See 4,150.]

[Federal Case numbers are given in brackets.]

E. Benjamin, The, Lowry v. [See 8,582.]
Ebert, United States v. [See 15,019.]
Ebner, United States v. [See 15,020.]
ECFORT v. GREELY [4,260], 6 N. B. R. 433; 4 Chi. Leg. News, 209.
Ecker, Madison Mut. Ins. Co. v. [See 8,937.]
ECHEVERIA v. NAIRAC [4,261], Wall. Sr. 29.
ECHEVERRIA v. BARNEY [4,262], 5 Blatchf. 193.
ECHO, The [4,263], 7 Ben. 70.
ECHO, The [4,264], 3 Ware, 289.
Echo, The, McCullough v. [See 8,740a.]
Echo, The, United States v. [See 15,021.]
Eckel, United States v. [See 15,022.]
ECKENROTH, In re [4,265], 1 Cin. Law Bul. 206.
Eckert, Banert v. [See 837.]
ECKERT v. BAUERT [4,266], 4 Wash. C. C. 370.
Eckert, Chamberlain v. [See 2,576, 2,577.]
ECKLE v. FITZGERALD [4,267], 4 Cranch, C. C. 90.
Eckstein, Fox v. [See 5,009.]
ECLIPSE, The [4,268], 3 Biss. 99; 4 Amer. Law T. Rep. U. S. Cts. 187.
ECLIPSE, The [4,269], 1 Tex. Law J. 197; 17 Alb. Law J. 192.
Eclipse, The, Harrison v. [See 6,134.]
Eclipse, The, United States v. [See 15,023.]
E. C. SCRANTON, The [4,270], 2 Ben. 25.
E. C. SCRANTON, The [4,271], 2 Ben. 81.
E. C. SCRANTON, The [4,272], 4 Ben. 127.
E. C. SCRANTON, The [4,273], 3 Blatchf. 50; 11 N. Y. Leg. Obs. 353.
EDDINGTON, The [2,786], 9 Hunt, Mer. Mag. 173.
Edds, Mickum v. [See 9,531.]
EDDS v. WATERS [4,275], 4 Cranch, C. C. 170.
EDDY v. BADGER [4,276], 8 Biss. 238; 6 Reporter, 194; 10 Chi. Leg. News, 323; 24 Int. Rev. Rec. 212.
Eddy, Byam v. [See 2,263.]
Eddy, Dennis v. [See 3,793-3,795.]
Eddy, Ruggles v. [See 12,116-12,118.]
Eddy, Stebbins v. [See 13,342.]
Eddy, United States v. [See 15,024.]
EDDY STREET IRON FOUNDRY v. HAMPDEN STOCK & MUTUAL FIRE INS. CO. [4,277], 1 Cliff. 300.
Edelin, Patty v. [See 10,840.]
EDGAR BAXTER, The [4,278], 8 Ben. 162.
EDGARTON v. BRECK [4,279], 5 Ban. & A. 42.
Edgell, In re. [See 6,285.]
EDGERTON v. GILPIN [4,280], 3 Woods, 277.
Edgerton, Winnebrenner v. [See 17,877.]
EDITH, The [4,281], 5 Ben. 144; 3 Chi. Leg. News, 370.
EDITH, The [4,282], 5 Ben. 432; 6 N. B. R. 449; 15 Int. Rev. Rec. 24; 11 Amer. Law Reg. (N. S.) 214.
EDITH, The [4,283], 11 Blatchf. 451.
Edmiston, Dougherty v. [See 4,025.]
Edmonds, Pitts v. [See 11,191.]
EDMONDSON v. BARRELL [4,284], 2 Cranch, C. C. 228.
EDMONDSON v. HYDE [4,285], 2 Sawy. 205; 7 N. B. R. 1; 5 Amer. Law T. Rep. U. S. Cts. 380.
EDMONDSON v. LOVELL [4,286], 1 Cranch, C. C. 103.
Edmonston, Ballard v. [See 817.]
EDMUND LEVY, The [4,287], 6 Ben. 371.
EDMUND LEVY, The [4,288], 8 Ben. 144.
Edrington, Aiken v. [See 111.]
Edsall, Nones v. [See 10,290.]
Edsell, Welddes v. [See 17,375.]
Education, Board of, of Harrisonville, Bonham v. [See 1,629.]
EDWARD, The [4,289], 1 Blatchf. & H. 286.
Edward, The, Sturgis v. [See 13,575.]
EDWARD ALBRO, The [4,290], 10 Ben. 668.
EDWARD BARNARD, The [4,291], Blatchf. Pr. Cas. 122.
Edward Howard, The, Hessian v. [See 6,436.]
EDWARD LEE, The [4,292], 3 Ben. 114.
EDWARDS, In re [4,293], 2 N. B. R. 349 (Quarto, 109).
Edwards, Adams v. [See 53.]
EDWARDS v. BOND [4,294], 5 McLean, 300.
Edwards, Foot v. [See 4,908.]
Edwards, French v. [See 5,097.]
Edwards, Howe Mach. Co. v. [See 6,784.]
EDWARDS v. MANHASSET, The [4,295], 5 Hughes, 104.
EDWARDS v. NICHOLS [4,296], Brunner, Col. Cas. 43; 3 Day, 16.
Edwards v. Panama, The. [See 10,702.]
EDWARDS v. ROBERT F. STOCKTON, The [4,297]. Crabbe, 580.
EDWARDS v. SHERMAN [4,298], Gilp. 461.
Edwards, Snow v. [See 13,145.].
EDWARDS v. SUSAN, The [4,299], 1 Pet. Adm. 165.
EDWARDS v. THIRTY-FIVE BOXES OF GOLD DUST, Saved from Wreck of The Union [4,299a].
Edwards, Turner v. [See 14,254.]
Edwards, United States v. [See 15,025, 15,026.]
Edwards, Woodworth v. [See 18,014.]
EDWIN, The [4,300], 1 Spr. 477; 22 Law Rep. 198.
EDWIN, The, v. NAUMKEAG STEAM COTTON CO. [4,301], 1 Cliff. 322; 23 Law Rep. 277.
Edye, The H. W. [See 6,964.]
EELES, In re [4,302], 1 N. Y. Leg. Obs. 84; 5 Law Rep. 273.
EGAN, In re [4,303], 5 Blatchf. 319; 13 Pittsb. Leg. J. (O. S.) 514.
EGAN'S CASE [4,303], 13 Pittsb. Leg. J. (O. S.) 514.
EGBERT v. BALTIMORE & O. R. CO. [4,305], 2 Ben. 223.
EGBERT v. LIPPMANN [4,306], 15 Blatchf. 295; 14 O. G. 822; 3 Ban. & A. 468.
EGBERTS v. DIBBLE [4,307], 3 McLean, 86.
Ege, Ogle v. [See 10,462.]
Eggers, McCarthy v. [See 8,681.]
Eggers v. The Mary Belle Roberts. [See 13,240.]
Eggleston, United States v. [See 15,027.]
EGLESTON v. AGNES, The [4,308], 39 Hunt, Mer. Mag. 75.
E. H. COFFIN, The [4,309], 9 Ben. 20.
E. H. COFFIN, The [4,310], 16 Blatchf. 421; 8 Reporter, 297.
E. H. FITTLER, The [4,311], 1 Lowell, 114.
EICKEMEYER HAT-BLOCKING MACH. CO. v. PEARCE [4,312], 10 Blatchf. 403; 3 O. G. 150; 6 Fish. Pat. Cas. 219.
EIDEMILLER v. WYANDOTTE CITY [4,313], 2 Dill. 376; 5 Chi. Leg. News, 423.
EIDOM, In re [4,314], 3 N. B. R. 106 (Quarto, 27).
EIDOM, In re [4,315], 3 N. B. R. 160 (Quarto, 39).
EIGHT BARRELS DISTILLED SPIRITS [4,316], 1 Ben. 472; 10 Int. Rev. Rec. 157; 15 Pittsb. Leg. J. 4.
Eight Barrels of Whiskey, United States v. [See 15,028.]
Eight Cases of Lamps, United States v. [See 15,029.]
Eight Casks, United States v. [See 15,030.]
Eight Casks of Whiskey, United States v. [See 15,031.]
Eighteen Bales of Blankets, United States v. [See 15,032.]
Eighteen Barrels High Wines, United States v. [See 15,033.]
EIGHTEEN THOUSAND GALLONS OF DISTILLED SPIRITS [4,317], 5 Ben. 4.
EIGHT HUNDRED AND FIFTY-EIGHT BALES OF COTTON [4,318], Blatchf. Pr. Cas. 325.
Eight Hundred and Fifty-Five Boxes of Sugar, United States v. [See 15,034.]
EIGHT HUNDRED BALES OF COTTON [4,319], 8 Blatchf. 221.
Eight Hundred Bales of Cotton, Fitzpatrick v. [See 4,843.]
Eight Hundred Barrels of Spirits, United States v. [See 15,035.]
Eight Hundred Caddies of Tobacco, United States v. [See 15,036.]
Eighty-Five Hogsheads of Sugar, United States v. [See 15,037.]
Eighty-Nine Bales of Cochineal, Chacon v. [See 2,568.]
Eighty-Two Packages of Glass, United States v. [See 15,038.]
EINSTEIN v. GOURDIN [4,320], 4 Woods, 415.
Einstein, Jenkins v. [See 7,265.]
EISEMAN v. JUDAH [4,321], 1 Flip. 627; 4 Cent Law J. 345.
EISEMAN v. MAUL [4,322], 12 Chi. Leg. News, 112.
Eisner, Broadnax v. [See 1,909.]
EISNER v. GUARDIAN MUT. LIFE INS. CO. [4,323], 23 Pittsb. Leg. J. 158; 5 Ins. Law J. 613; 22 Int. Rev. Rec. 152; 3 Cent. Law J. 302.

[Federal Case numbers are given in brackets.]

E. K. DRESSER, The [4,324], 2 Hask. 349.
ELASTIC TRUSS CO. v. PAGE [4,325], 4 Ban. & A. 328; 16 O. G. 1045.
ELDER, In re [4,326], 1 Sawy. 73; 3 N. B. R. 670 (Quarto, 165); 17 Pittsb. Leg. J. 178; 3 Amer. Law T. 140; 2 Chi. Leg. News, 241; 1 Amer. Law T. Rep. Bankr. 198.
Elder, United States v. [See 15,039].
EL DORADO, The [4,327], 1 Lowell, 289.
El Dorado, The, Crary v. [See 3,362.]
ELDRED, In re [4,328], 1 Chi. Leg. News, 389; 8 N. B. R. 256 (Quarto, 61).
Eldred, Michigan Ins. Bank v. [See 9,528.]
Eldredge, Jenkins v. [See 7,266-7,269].
ELDREGE v. CHACON [4,329], Crabbe, 296.
ELDRIDGE, In re [4,330], 2 Biss. 362; 3 Chi. Leg. News, 177; 4 N. B. R. 498 (Quarto, 162).
ELDRIDGE, In re [4,331], 2 Hughes, 256; 12 N. B. R. 540; 1 N. Y. Wkly. Dig. 243.
ELDRIDGE, The [4,332], Deady, 176.
ELDRIDGE v. ASHLEY, The [4,333], 2 N. Y. Leg. Obs. 68.
Eldridge, Blanchard v. [See 1,509, 1,510.]
ELDRIDGE v. FORTY-ONE BARS OF RAILROAD IRON [4,334].
Eldridge, Richardson v. [See 11,781a.]
Eldridge, Roberts v. [See 11,901.]
Eldridge, Stevens v. [See 13,396.]
ELEANORA, The [4,335], 17 Blatchf. 88; 8 Reporter, 810.
Election Laws—Charge to Grand Jury in Relation to Illegal Voting. [See 18,254.]
ELECTORAL COLLEGE, Case of [4,336], 1 Hughes, 571; 9 Chi. Leg. News, 106; 14 Alb. Law J. 448; 4 Cent. Law J. 72.
ELECTRA, The [4,337], 1 Ben. 282.
ELECTRA, The [4,338], 6 Ben. 189.
ELECTRA, The [4,339], 7 Ben. 344.
ELEDONA, The [4,340], 2 Ben. 31.
ELEDONA, The [4,341], 10 Blatchf. 511.
ELFELT v. SNOW [4,342], 2 Sawy. 94; 6 N. B. R. 57.
Elgar, Pierson v. [See 11,157.]
ELGEE v. LOVELL [4,344].
ELGEE'S ADM'R v. LOVELL [4,344], 1 Woolw. 102; Rev. Cas. 72.
Eliason, Digges v. [See 3,904.]
Eliason, Pannill v. [See 10,707.]
Eliason, Union Bank v. [See 14,350.]
Eliason, Union Bank of Georgetown v. [See 14,355.]
Eliason, United States v. [See 15,040.]
Eliot, Bank of Washington v. [See 949.]
Eliot, Bradley v. [See 1,778.]
Eliot Felting Mills, In re. [See 789, 11,252.]
Eliot Nat. Bank, Hayward v. [See 6,273.]
ELI WHITNEY, The [4,345], 1 Blatchf. 360.
Eli Whitney, The, Balchen v. [See 792a.]
ELIZA, The [4,346], 2 Gall. 4.
ELIZA, The [4,347], 1 Lowell, 83.
ELIZA, The [4,348], 2 Ware (Dav. 316) 318.
Eliza, The, Johnson v. [See 7,383.]
Eliza, The, United States v. [See 15,041.]
ELIZA AND ABBY, The [4,349], 1 Blatchf. & H. 435.
Eliza and Sarah, The, Knap v. [See 7,873.]
ELIZABETH, The [4,350], Blatchf. Pr. Cas. 250.
ELIZABETH, The [4,351], Blatchf. Pr. Cas. 642.
ELIZABETH, The [4,352], 1 Paine, 10.
Elizabeth, The, Bordman v. [See 1,657.]
Elizabeth, American Nicholson Pavement Co. v. [See 309-312.]
Elizabeth, Blake v. [See 1,495.]
Elizabeth, Goelet v. [See 5,502.]
ELIZABETH, The, v. RICKERS [4,353], 2 Paine, 291.
ELIZABETH AND HELEN, The [4,354], 4 Ben. 101.
ELIZABETH AND JANE, The [4,355], 2 Mason, 407.
ELIZABETH AND JANE, The [4,356], 1 Ware (35) 27.
Elizabeth and Jane, The, Lewis v. [See 8,321.]
ELIZABETH ANN, The [4,357], 18 Leg. Int. 308.
ELIZABETH BRUCE, The [4,358], 5 Adm. Rec. 162.
ELIZABETH ENGLISH, The [4,359], 2 Ben. 365; 1 Amer. Law T. Rep. U. S. Cts. 43.
ELIZABETH ENGLISH, The [4,360], 7 Blatchf. 180.
ELIZABETH FRITH, The [4,361], 1 Blatchf. & H. 195.
Elizabeth Frith, The, Rickers v. [See 4,353.]
Elizabeth, The Mary. [See 9,206.]
ELIZABETHPORT & N. Y. FERRY CO. v. UNITED STATES [4,362], 5 Blatchf. 198.
ELIZA JANE, The [4,363], 1 Spr. 152.
ELIZA LADD, The [4,364], 3 Sawy. 519; 1 N. Y. Wkly. Dig. 517; 8 Chi. Leg. News, 98; 21 Int. Rev. Rec. 48; 2 Cent. Law J. 822; 1 Law & Eq. Rep. 28; 7 Leg. Gaz. 414.
ELIZA MALLORY, The [4,365], 6 Adm. Rec. 428.
Elkins, Denney v. [See 3,790.]
Elkins, Duryee v. [See 4,197.]
Elkinton, Stainthorp v. [See 13,278.]
ELKISON v. DELIESSELINE [4,366], 2 Wheeler, Crim. Cas. 56; Brunner, Col. Cas. 431.
ELLA, The [4,367], 2 Int. Rev. Rec. 117.
ELLA & ANNA, The [4,368], 2 Spr. 267; 26 Law Rep. 669.
Ella Franklin, The. [See 2,160.]
ELLA HAND, The [4,369], 2 Adm. Rec. 24.
ELLA WARLEY, The [4,370], Blatchf. Pr. Cas. 204.
ELLA WARLEY, The [4,371], Blatchf. Pr. Cas. 207.
ELLA WARLEY, The [4,372], Blatchf. Pr. Cas. 213.
ELLA WARLEY, The [4,373], Blatchf. Pr. Cas. 288.
ELLA WARLEY, The [4,374], Blatchf. Pr. Cas. 648.
ELLEN, The [4,375], 4 Blatchf. 107.
Ellen, The, Clark v. [See 2,819.]
Ellen E. Borker, The. [See 6,330.]
Ellen Hardy, The, Sanders v. [See 12,293.]
ELLEN HOLGATE, The [4,375a], 8 Leg. Gaz. 44.
ELLEN HOLGATE, The, v. ILLINOIS, The [4,376], 35 Leg. Int. 194; 13 Phila. 470; 6 Reporter, 40; 6 Wkly. Notes Cas. 353; 24 Int. Rev. Rec. 159; 25 Pittsb. Leg. J. 157.
ELLEN HOOD, The [4,377], 5 Adm. Rec. 347.
ELLEN S. TERRY, The [4,378], 7 Ben. 401.
Ellen Stewart, The, Raymond v. [See 11,594.]
ELLEN TOBIN, The [4,379], 8 Ben. 446.
ELLERHORST, In re [4,380], 2 Sawy. 219; 7 N. B. R. 49.
ELLERHORST, In re [4,381], 5 N. B. R. 144; 6 Amer. Law Rev. 162.
ELLERMAN v. NEW ORLEANS, ETC., R. CO. [4,382], 2 Woods, 120.
ELLERY v. BROWN [4,383], 2 Woods, 156.
Ellery, McLanahan v. [See 8,869.]
ELLETT v. BUTT [4,384], 1 Woods, 214.
Ellick, United States v. [See 15,042.]
ELLICOTT v. CHAPMAN [4,385], 1 Cranch, C. C. 419.
Ellicott, Dill v. [See 3,911.]
Ellicott, Georgia Ins. & Trust Co. v. [See 5,354.]
ELLICOTT v. PEARL [4,386], 1 McLean, 206.
ELLICOTT v. SMITH [4,387], 2 Cranch, C. C. 543.
ELLINTHORP v. ROBERTSON [4,408].
Elliot, Ault v. [See 655.]
Elliot, Bigelow v. [See 1,399.]
Elliot, Brice v. [See 1,854.]
ELLIOT v. HAYMAN [4,388], 2 Cranch, C. C. 678.
Elliot, Miller v. [See 9,568.]
Elliot, Palmer v. [See 10,690.]
Elliot, Ringgold v. [See 11,844.]
Elliot, Smith v. [See 13,040.]
ELLIOT v. TEAL [4,389], 5 Sawy. 188.
Elliot, Thomas v. [See 13,896.]
Elliot, United States v. [See 15,043, 15,044.]
ELLIOT v. VAN VOORST [4,390], 18 Leg. Int. 396; 3 Wall. Jr. 299.
Elliot, Wilkes v. [See 17,660.]
ELLIOTT, In re [4,391], 2 N. B. R. 110 (Quarto, 44).
ELLIOTT v. HOLMES [4,392], 1 McLean, 466.
ELLIOTT v. JAMES NELSON, The [4,393], 1 Pittsb. Rep. 6; 1 Pittsb. Leg. J. 5.
ELLIOTT v. LEAH H. MILLER, The [4,393a].
ELLIOTT v. NICHOLLS [4,394].
ELLIOTT v. PEIRSOLL [4,395], 1 McLean, 11.
Elliott, Schuylkill Nav. Co. v. [See 12,497.]
Elliott, Smith v. [See 13,041.]
ELLIOTT v. TEAL [4,396], 5 Sawy. 249; 6 Reporter, 772; 11 Chi. Leg. News, 74.
Elliott, United States v. [See 15,045.]
ELLIOTT v. UPTON [6,547].
ELLIOTT v. VOLUNTEER, The [4,398], 27 Leg. Int. 373; 7 Phila. 568.
Elliott Felting Mills, In re. [See 789.]
ELLIS, In re [4,399], 5 Ben. 421.
ELLIS, In re [4,399a], Hempst. 10.
ELLIS, In re [4,400], 1 N. B. R. 555 (Quarto, 154).
ELLIS, The [4,401], Blatchf. Pr. Cas. 248.
Ellis, Bank of British North America v. [See 859.]

Ellis, Culbertson v. [See 3,461.]
ELLIS v. DAVIS [4,402], 4 Woods, 6.
Ellis, Foster v. [See 4,968.]
Ellis, Furniss v. [See 5,162.]
ELLIS v. JARVIS [4,403], 3 Mason, 457.
ELLIS v. KATY WISE, The [4,404], 3 Hughes, 589.
ELLIS v. PATTERSON [4,405].
Ellis, United States v. [See 15,046, 15,047.]
Ellis, Wicks v. [See 17,614.]
ELLISON v. BELLONA, The [4,406], Bee, 106.
ELLISON v. BELLONA, The [4,407], Bee, 112.
Elliston, Shelley v. [See 12,750.]
Ellithorp, Gibbs v. [See 5,383.]
ELLITHORP v. ROBERTSON [4,408], 4 Blatchf. 307; 2 Fish. Pat. Cas. 83; Merw. Pat. Inv. 702.
ELLITHORP v. ROBERTSON [4,409], 1 McA. Pat. Cas. 585.
ELLITHORP v. ROBERTSON [4,410], 1 McA. Pat. Cas. 634.
Ellsworth v. Bank of Washington. [See 18,294.]
ELLSWORTH v. GUNTON [18,294], 2 Hayw. & H. 21.
ELLSWORTH v. WILD HUNTER, The [4,411], 2 Woods, 315.
Ellworth, Prentiss v. [See 11,386.]
ELLZEY v. MOSOROP [4,412].
Elm, United States v. [See 15,048.]
ELM CITY, The [4,413].
ELM CITY, The [4,414], 6 Ben. 58.
Elm City Co., Magic Ruffle Co. v. [See 8,949, 8,950.]
ELM CITY CO. v. WOOSTER [4,415], 6 Fish. Pat. Cas. 452; 4 O. G. 83.
ELMINGER v. DREW [4,416], 4 McLean, 388.
ELMIRA, The [4,417], 23 Int. Rev. Rec. 338; 2 Cin. Law Bul. 294.
ELMIRA SHEPHERD, The [4,418], 8 Blatchf. 341.
ELMORE v. ALIDA, The [4,419], 13 Leg. Int. 369.
Elmore, Esseltyne v. [See 4,531.]
ELOINA, The [4,420], 10 Ben. 458.
EL REFUGIO CASE [4,421].
Elsas, Bantz v. [See 967.]
Elsworth, Prentiss v. [See 11,387.]
El Telegrafo, The, United States v. [See 15,049.]
ELTING v. CAMPBELL [4,422], 5 Blatchf. 183.
ELVIRA, The [4,423].
Elvira, The, Hand v. [See 6,015.]
ELVIRA HARBECK, The [4,424], 2 Blatchf. 336.
Elvira Harbeck, The, Brown v. [See 4,424.]
ELWELL v. MARTIN [4,425], 1 Ware (53) 45; 3 Wheeler, Crim. Cas. 11.
Elwell v. Prince Albert, The. [See 3,424b.]
ELWINE KREPLIN, The [4,426], 9 Blatchf. 438.
ELWIN KREPLIN, The [4,427], 4 Ben. 413.
Elwood, Smith v. [See 13,042.]
ELY, In re [4,428], 5 Law Rep. 323.
ELY, In re [4,429], 1 N. Y. Leg. Obs. 343.
Ely, In re. [See 5,306.]
ELY v. ELLIOTT [4,429a], 14 Reporter, 513; 28 Int. Rev. Rec. 370.
ELY v. HANKS [4,430], 1 West. Law Month. 107.
ELY v. MONSON & B. MFG. CO. [4,431], 4 Fish. Pat. Cas. 64.
Ely, Pinnes v. [See 11,169.]
Ely, Smith v. [See 13,043, 13,044.]
EMACK v. CRABB [4,432], 5 Cranch, C. C. 611.
EMANUEL v. BALL [4,433], 2 Cranch, C. C. 101.
E. M. Bicknell, The, Blagg v. [See 1,476.]
EMBLEM, The [4,434], 2 Ware (Dav. 61) 68.
EMELINE, The [4,435], Blatchf. Pr. Cas. 370.
Emerald Isle, The. [See 4,270.]
Emerson, Campbell v. [See 2,357.]
EMERSON v. DAVIES [4,436], 3 Story, 768; 4 West. Law J. 261; 8 Law Rep. 270; 13 Hunt, Mer. Mag. 558.
EMERSON v. DAVIES [4,437], 1 Woodb. & M. 21.
Emerson, Day v. [See 3,677.]
Emerson, Doggett v. [See 3,960-3,962.]
EMERSON v. GENNEY [4,438].
EMERSON v. HOGG [4,439].
EMERSON v. HOGG [4,440], 2 Blatchf. 1; 1 Fish. Pat. Rep. 77; 40 Jour. Fr. Inst. 27.
EMERSON v. HOWLAND [4,441], 1 Mason, 45.
Emerson, Kellum v. [See 7,669.]
EMERSON v. PANDORA, The [4,442], Newb. 438.
EMERSON v. SIMM [4,443], 6 Fish. Pat. Cas. 281; 3 O. G. 293.
Emerson, United States v. [See 15,050, 15,051.]
Emerson, Warren v. [See 17,195.]
EMERY, Ex parte [4,444], 3 App. Com'r Pat. 215.
EMERY, The [4,445], 2 Adm. Rec. 342.
EMERY v. CANAL NAT. BANK [4,446], 3 Cliff. 507; 7 N. B. R. 217; 6 West Jur. 515; 5 Amer. Law T. Rep. U. S. Cts. 419.
Emery, Gerbier v. [See 5,357.]
Emery, Nusbaum v. [See 10,380, 10,381.]
Emery, United States v. [See 15,052.]
EMIGH v. CHAMBERLAIN [4,447], 1 Biss. 367; 2 Fish. Pat. Cas. 192; 1 Amer. Law Reg. (N. S.) 207.
EMIGH v. CHICAGO, B. & Q. R. CO. [4,448], 1 Biss. 400; 2 Fish. Pat. Cas. 387; Merw. Pat. Inv. 425.
EMIGH v. PITTSBURG, FT. W. & C. R. CO. [4,449], 4 Biss. 114.
EMILIE, The [4,450], 2 Ben. 416.
EMILIE, The [4,451], 4 Ben. 235.
EMILY, The [4,452], 1 Blatchf. 236; 6 N. Y. Leg. Obs. 340.
EMILY, The [4,453], Olc. 132; 6 N. Y. Leg. Obs. 340.
Emily, The, Bedell v. [See 4,452, 4,453.]
EMILY B. SOUDER, The [4,454], 3 Ben. 159.
EMILY B. SOUDER, The [4,455], 7 Ben. 550.
EMILY B. SOUDER, The [4,456], 8 Blatchf. 337.
EMILY B. SOUDER, The [4,457], 8 Blatchf. 339.
EMILY B. SOUDER, The [4,458], 15 Blatchf. 185.
EMISON, In re [4,459], 2 N. B. R. 595 (Quarto, 179); 1 Chi. Leg. News, 342.
EMMA, The [18,218].
EMMA, The [4,461], Blatchf. Pr. Cas. 561.
EMMA, The [4,462], Blatchf. Pr. Cas. 607.
Emma, The, Zollinger v. [See 18,218.]
E. M. McCHESNEY, The [4,463], 8 Ben. 150; 49 How. Pr. 178; 21 Int. Rev. Rec. 221.
E. M. McCHESNEY, The [4,464], 15 Blatchf. 183.
Emma Graham, The, Murdock v. [See 9,940.]
EMMA JOHNSON, The [4,465], 1 Spr. 527.
Emma Johnson, The, Carpenter v. [See 2,430.]
EMMA L. COYNE, The [4,466], 11 Chi. Leg. News, 98.
Emma Peterson, The, Hill v. [See 6,490.]
EMMA SILVER MIN. CO. v. PARK [4,467], 14 Blatchf. 411.
EMMA V., The [4,468], 2 Hask. 374.
EMMERSON v. BEALE [4,469], 2 Cranch, C. C. 349.
Emmert, Thompson v. [See 13,953.]
Emmett, Whitney v. [See 17,585.]
Emmons, Kendrick v. [See 7,694-7,696.]
EMMONS v. SLADDIN [4,470], 9 O. G. 352; 2 Ban. & A. 199.
E. Morris, The. [See 799.]
EMORY v. GREENOUGH [4,471], 3 Dall. (3 U. S.) 369.
Emperor, The, Liebart v. [See 8,340.]
EMPIRE, The [4,472], 1 Ben. 19.
Empire Fire Ins. Co., Stillwell v. [See 13,449.]
Empire Sewing-Mach. Co., Potter v. [See 11,326.]
EMPIRE STATE, The [4,473], 2 Ben. 178.
EMPIRE STATE, The [4,474], 2 Biss. 216; 1 Chi. Leg. News, 393.
EMPIRE STATE, The [4,475], 12 N. Y. Leg. Obs. 259; 33 Hunt, Mer. Mag. 330.
Empire State, The, Russel v. [See 12,145.]
Empire State, The, Whitney v. [See 17,586.]
Empire State Life Ins. Co., Rowland v. [See 12,097.]
Empire Transp. Co., Williams v. [See 17,720.]
Empire Windmill Co., Continental Windmill Co. v. [See 3,142.]
EMPRESS, The [4,476], Blatchf. Pr. Cas. 146.
EMPRESS, The [4,477], Blatchf. Pr. Cas. 175.
EMPRESS, The [4,478], Blatchf. Pr. Cas. 659.
EMULOUS, The [4,479], 1 Gall. 563.
EMULOUS, The [4,480], 1 Sumn. 207.
ENDEAVOR, The [12,297a].
ENDICOTT v. RENAULD [4,482], 10 Ben. 582.
ENEAS v. CHARLOTTE MINERVA, The [4,483], 39 Hunt, Mer. Mag. 73.
ENEAS v. SCHIFFER [4,484].
ENERGY, The [4,485], 10 Ben. 158.
Enforcement Act, Charge to Grand Jury in Relation to Enforcement Act of March 31, 1870. [See 18,-252.]
ENGEL, In re [4,486].
ENGLAND v. THOMPSON [4,487], 3 Cliff. 271.
ENGLE, In re [4,488], 1 Hughes, 592.
ENGLEHART v. PEDRO, The [4,489].
Englehart, Upton v. [See 16,800.]

[Federal Case numbers are given in brackets.]

English, Bell v. [See 1,250.]
English, McElroy v. [See 8,782.]
ENGLISH v. OCEAN STEAM NAV. CO. [4,490], 2 Blatchf. 425.
ENGLISH v. OCEAN STEAM NAV. CO. [4,490a].
ENGLISH v. RUSSELL [4,491], Hempst. 35.
English v. Tyler. [See 16,955.]
English, The Benjamin. [See 1,306.]
English, The Elizabeth. [See 4,359, 4,360.]
Ennis, Conyers v. [See 3,149.]
ENNIS v. HOLMEAD [4,492], 5 Cranch, C. C. 509.
Ennis, Hunt v. [See 6,889.]
Ennis, Rogers v. [See 12,010.]
Enoch Moore, The. [See 6,331.]
ENOCH MORGAN'S SONS CO. v. HUNKELE [4,493], 10 Reporter, 577; 16 O. G. 1092.
Enright, United States v. [See 15,053.]
ENRIGHT, The [4,493a], 12 Fed. Rep. 157.
ENSIGN v. PEERLESS, The [4,494], 12 Chi. Leg. News, 41.
ENSLOW v. SARAH & ABIGAIL, The [4,495].
ENSWORTH v. NEW YORK LIFE INS. CO. [4,496], 1 Flip. 92; 7 Amer. Law Reg. (N. S.) 332; 1 Bigelow, Ins. Cas. 645.
ENTERPRISE, The [4,497], 2 Curt. 317.
ENTERPRISE, The [4,498], 1 Lowell, 455.
ENTERPRISE, The [4,499], 1 Paine, 32; 4 Hall, Law J. 115.
ENTERPRISE, The [4,500], 3 Wall. Jr. 58.
Enterprise, The. [See 247.]
Enterprise, The, Davis v. [See 3,632.]
Enterprise, The, Hart v. [See 6,151.]
Enterprise, The, Haslett v. [See 6,197.]
ENTERPRISE, The, v. UNITED STATES [4,499], 4 Hall, Law J. 115.
Enterprise Co., Geib v. [See 5,297.]
Enterprize, The, Turnbull v. [See 14,242.]
ENTIRE, The [4,502], 5 Adm. Rec. 477.
ENTWISLE v. BUSSARD [4,503], 2 Cranch, C. C. 331.
Envoy, The, Wilson v. [See 17,802.]
Enwright, United States v. [See 15,054.]
EOLIAN, The [4,504], 1 Biss. 321.
Epping, Perrin v. [See 10,996.]
Epping, Townsend Savings Bank v. [See 14,120.]
Eppinger v. Missouri Valley Life Ins. Co. [See 2,901.]
EPPINGER v. RICHEY [4,505], 14 Blatchf. 307; 3 Ban. & A. 69; 12 O. G. 714; Merw. Pat. Inv. 221; 23 Int. Rev. Rec. 319.
EPSILON, The [4,506], 6 Ben. 378; 17 Int. Rev. Rec. 68.
Epsilon, The. [See 569.]
Equator Mining & Smelting Co., Hall v. [See 5,931.]
Equitable Fire Ins. Co., Dean v. [See 3,705, 3,706.]
Equitable Fire & Marine Ins. Co., Bates v. [See 1,101.]
Equitable Safety Ins. Co., Aldrich v. [See 155.]
EQUITABLE SAFETY INS. CO. v. DUNHAM [10,155], note.
Equitable Safety Ins. Co., Hearn v. [See 6,299, 6,300.]
Equitable Trust Co., Gum v. [See 5,867.]
EQUITABLE TRUST CO. v. SELDON [4,508].
Erben, In re. [See 1,315.]
ERDHOUSE v. HICKENLOOPER [4,509], 2 Bond, 392.
Erdman, Baring v. [See 981.]
Erich, Muller v. [See 9,915.]
ERICSON, The [4,510], 3 Sawy. 559.
ERICSSON v. MANCHESTER [4,511], 3 Hughes, 191.
ERIE, The [4,512], 16 Leg. Int. 245; 22 Law Rep. 152; 3 Ware, 225.
Erie, The, Davis v. [See 3,632a.]
Erie, The, Killam v. [See 7,765.]
Erie Ry. Co. v. D. S. Gregory, The. [See 4,101.]
ERIE RY. CO. v. HEATH [4,513], 8 Blatchf. 413; 4 N. B. R. 177 (Quarto).
ERIE RY. CO. v. HEATH [4,514], 8 Blatchf. 536.
ERIE RY. CO. v. HEATH [4,515], 9 Blatchf. 226.
ERIE RY. CO. v. HEATH [4,516], 10 Blatchf. 214.
Erie Ry. Co., Heath v. [See 6,306, 6,307.]
Erie Ry. Co., Locomotive Engine Safety Truck Co. v. [See 8,452.]
Erie Ry. Co., St. John v. [See 12,226.]
Erie Ry. Co., Sayles v. [See 12,418.]
Erie Ry. Co., Seaman v. [See 12,582.]
Erie Ry. Co., Sperry v. [See 13,237.]
Erie Ry. Co., United States v. [See 15,055, 15,056.]
Erie Ry. Co., Whelpley v. [See 17,504.]
Erie & W. Transp. Co., Phœnix Ins. Co. v. [See 11,112.]
ERIKO v. BOMFORD [4,517], 1 Hayw. & H. 261.
ERLANDSEN v. OCEAN SPRAY, The [4,518].
ERLEN v. BREWER, The [4,519], 35 Hunt, Mer. Mag. 716.
Ernest, Cook v. [See 3,155.]
Ernest, McComb v. [See 3,155.]
ERLEN v. BREWER, The [4,519a].
ERNEST v. STOLLER [4,520], 5 Dill. 438; 2 McCrary, 380.
Ernest and Alice, The, Deely v. [See 3,735.]
EROE, The [4,521], 9 Ben. 191.
EROE, The [4,522], 17 Blatchf. 16.
ERRETT v. CRANE [4,523], 21 Int. Rev. Rec. 268.
Erskine, United States v. [See 15,057.]
ERWIN, In re [4,524], 3 N. B. R. 580 (Quarto, 142).
ERWIN v. CUMMINS [4,525], Hempst. 703.
Erwin, Philips v. [See 11,093.]
ESLAVA v. BANK OF MOBILE [4,527], 3 Chi. Leg. News, 297.
ESLAVA v. MAZANGE'S ADM'R [4,527], 1 Woods, 623; 3 Chi. Leg. News, 297.
ESLINE v. UNITED STATES [4,528], 1 Hayw. & H. 62.
ESPINOSA v. UNITED STATES [4,529].
ESS, In re [4,530], 3 Biss. 301; 7 N. B. R. 133; 4 Chi. Leg. News, 357; 20 Pittsb. Leg. J. 34; 2 Md. Law Rep. 353; 1 Amer. Law Rec. 356; 6 Alb. Law J. 277; 6 West. Jur. 447.
ESSELTYNE v. ELMORE [4,531], 7 Biss. 69; 3 N. Y. Wkly. Dig. 357; 9 Chi. Leg. News, 48.
Essex Co., Abbott v. [See 11.]
ESSEX COUNTY NAT. BANK v. BANK OF MONTREAL [4,532], 7 Biss. 193; 15 Amer. Law Reg. (N. S.) 418; 5 Amer. Law Rec. 49; 3 Month. Jur. 93; 11 Banker's Mag. (3d S.) 142; 1 Law & Eq. Rep. 617.
Essex Fire & Marine Ins. Co., Andrews v. [See 374.]
Essex Fire & Marine Ins. Co., Hammond v. [See 6,001.]
ESSEX HOSIERY MFG. CO. v. DOOR MFG. CO. [4,533], 14 Hunt, Mer. Mag. 355.
ESSLER v. WORTH [4,533a].
ESTABROOK, Ex parte [4,534], 2 Lowell, 547; 15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152.
ESTABROOK v. DUNBAR [4,535], 2 Ban. & A. 427; 10 O. G. 909.
Esterbrook Steel-Pen Mfg. Co., Morse Fountain-Pen Co. v. [See 9,862.]
ESTES, In re [4,536], 3 Fed. 134.
Estey, Burdett v. [See 2,145, 2,146.]
ESTHER v. BUCKNER [4,537], 4 Cranch, C. C. 253.
Esther, Lewis v. [See 8,322.]
ESTILL v. BLAKEMORE [4,538], Brunner, Col. Cas. 100; 1 Overt. 273.
ESTILL v. DOLL [4,539].
Estudillo, United States v. [See 15,058.]
Etcheson, Worthington v. [See 18,053.]
Ethan Allen, The, United States v. [See 15,059.]
ETHEL, The [4,540], 5 Ben. 154.
ETHRIDGE v. JACKSON [4,541], 2 Sawy. 598; 19 Int. Rev. Rec. 134; 1 Amer. Law T. Rep. (N. S.) 271.
Ethridge, Eighmey v. [See 1,928.]
ETNA, The [4,542], 1 Ware (462) 474.
Etna Ins. Co., Flanders v. [See 4,852.]
Etna Ins. Co., Warren Mfg. Co. v. [See 17,206.]
Etta, The, United States v. [See 15,060.]
ETTINGER, In re [4,543], 18 N. B. R. 222.
EUBANKS v. LEVERIDGE [4,544], 4 Sawy. 274; 9 Chi. Leg. News, 394; 4 Law & Eq. Rep. 349; 23 Int. Rev. Rec. 281.
Eugenie, The Jeune. [See 7,301.]
Eunson v. Peddie. [See 9,991.]
Euphemia, The, Quimby v. [See 11,512.]
EUPHRASIA, The [4,545], 4 Adm. Rec. 136.
EUPHRATES, The [4,546], 1 Gall. 451.
Euphrates, The, Todd v. [See 14,074.]
EUREKA, The [4,547], 2 Lowell, 417.
EUREKA CONSOL. MIN. CO. v. RICHMOND MIN. CO. [4,548], 4 Sawy. 302; 9 Morr. Min. Rep. 578.

[Federal Case numbers are given in brackets.]

EUREKA CONSOL. MIN. CO. v. RICHMOND MIN. CO. [4,549], 5 Sawy. 121.
EUREKA MFG. CO., In re [4,550], 1 Lowell, 500.
European & N. A. Ry. Co., Wiggins v. [See 17,626.]
Eustis, Hatch v. [See 6,207.]
Eustis, Haughton v. [See 6,224.]
EVANS, In re [4551], 1 Lowell, 525.
EVANS, In re [4,552], 3 N. B. R. 261 (Quarto, 62).
EVANS v. BLAKENEY [4,553], 1 Cranch, C. C. 126.
EVANS v. BOLLEN [4,554], 4 Dall. 342.
EVANS v. CHAMBERS [4,555], 2 Wash. C. C. 125; 1 Robb, Pat. Cas. 7.
EVANS v. CHARLES, The [4,556], 1 Newb. 329.
EVANS v. CLEVELAND & P. R. CO. [4,557], 21 Leg. Int. 29; 2 Pittsb. Rep. 483; 5 Phila. 512; 11 Pittsb. Leg. J. 193.
EVANS v. DAVENPORT [4,558], 4 McLean, 574.
Evans, Doll v. [See 3,969.]
EVANS v. EATON [4,559], Pet. C. C. 322; 1 Robb, Pat. Cas. 68.
EVANS v. EATON [4,560], 3 Wash. C. C. 443; 1 Robb, Pat. Cas. 193.
EVANS v. EVANS [4,561], 2 Cranch, C. C. 240.
Evans, Goodyear v. [See 5,571.]
Evans, Grace v. [See 5,650.]
Evans, Griffith v. [See 5,822.]
Evans, Harrison v. [See 6,135.]
EVANS v. HETTICK [4,562], 3 Wash. C. C. 408; 1 Robb, Pat. Cas. 166.
EVANS v. JOHN F. WARNER, The [4,563], 4 West. Law Month. 193.
EVANS v. JORDAN [4,564], 1 Brock. 248; 1 Robb, Pat. Cas. 20.
EVANS v. KREMER [4,565], Pet. C. C. 215; 1 Robb, Pat. Cas. 66.
Evans, Miller v. [See 9,569.]
Evans, Morgan v. [See 9,800.]
EVANS v. PACK [4,566], 2 Flip. 267; 7 Cent. Law J. 409; 7 Reporter, 70; 2 Tex. Law J. 356; 13 Amer. Law Rev. 375.
Evans, Paterson v. [See 10,796.]
Evans, Pendleton v. [See 10,920, 10,921.]
EVANS v. PITTSBURG [4,567], 19 Leg. Int. 4; 4 Leg. & Ins. Rep. 3.
EVANS v. PITTSBURGH [4,568], 2 Pittsb. R. 405; 10 Pittsb. Leg. J. 233.
EVANS v. POTTER [4,569], 2 Gall. 12.
EVANS v. RICHMOND [4,570], Chase, 551; 2 Amer. Law T. Rep. U. S. Cts. 101; 2 Balt. Law Trans. 610; 3 Amer. Law Rev. 784.
EVANS v. ROBINSON [4,571], Brunner, Col. Cas. 400; 1 Car. Law Repos. 209.
Evans, Samuels v. [See 12,289.]
Evans, Scott v. [See 12,529.]
Evans, Sickles v. [See 12,839.]
Evans, Spaulding v. [See 13,216.]
Evans, Susquehanna Bridge & Bank Co. v. [See 13,635.]
Evans, United States v. [See 15,061-15,065.]
Evans, Virginia v. [See 16,969.]
EVANS v. WEISS [4,572], 2 Wash. C. C. 342; 3 Hall, Law J. 180; 1 Robb, Pat. Cas. 10.
EVANS v. WHITE [4,572a], Hempst. 296.
Evansville, etc., Steam Packet Co., Harvey v. [See 6,179.]
EVANSVILLE NAT. BANK v. METROPOLITAN NAT. BANK [4,573], 2 Biss. 527; 10 Amer. Law Reg. (N. S.) 774; 1 Thomp. Nat. Bank Cas. 189; 6 Amer. Law Rev. 574.
EVARTS v. FORD [4,574], 6 Fish. Pat. Cas. 587; 5 O. G. 58.
Eve, McCall v. [See 8,670.]
Eveline, The Mary. [See 9,210-9,212.]
EVENING STAR, The [4,575], Blatchf. Pr. Cas. 582.
Everding, Bachman v. [See 708.]
EVERETT v. DERBY [4,576], 5 Law Rep. 225.
Everett, Meador v. [See 9,376.]
EVERETT v. STONE [4,577], 3 Story, 446.
EVERETT v. THATCHER [4,578], 2 Flip. 234; 3 Ban. & A. 435; 16 O. G. 1046; Merw. Pat. Inv. 254; 7 Amer. Law Rec. 197.
EVERITT, In re [4,579], 9 N. B. R. 90.
Everman, The J. W. [See 7,591.]
EVERSON, In re [4,580], 1 McA. Pat. Cas. 406.
EVERTS, Ex parte [4,581], 1 Bond, 197; 7 Amer. Law Reg. 79.
EVORY v. CANDEE [4,582], 5 Ban. & A. 67.
EVORY v. CANDEE [4,583], 17 Blatchf. 200; 4 Ban. & A. 545.
Ewbank, The Henry. [See 6,376.]
Ewell, Clara v. [See 2,790.]
Ewell, Daggs v. [See 3,537.]
Ewell, Law v. [See 8,127.]
EWER v. COXE [4,584], 4 Wash. C. C. 487.
E. W. GORGAS, The [4,585], 10 Ben. 460.
E. W. Gorgas, The. [See 7,248.]
E. W. GORGUS, The [4,586], 3 Ben. 572.
EWING, In re [4,587], 2 Lowell, 407.
EWING, In re [4,588], 17 N. B. R. 109.
EWING v. BLIGHT [4,589], 3 Wall. Jr. 134; 1 Phila. 576; 12 Leg. Int. 335.
EWING v. BLIGHT [4,590], 3 Wall. Jr. 139.
EWING v. BURNET [4,591], 1 McLean, 266.
Ewing, Drury v. [See 4,095.]
Ewing, Suydam v. [See 13,655.]
EXCELSIOR, The [4,592], 2 Ben. 434.
Excelsior Ins. Co., Shaw v. [See 14,366.]
Excelsior Mfg. Co., Bridge v. [See 1,859.]
EXCHANGE, The [4,593], 10 Blatchf. 168.
EXCHANGE, The [4,594], 1 Blatchf. & H. 366.
Exchange, The, L'Arina v. [See 8,088.]
Exchange, The, M'Faden v. [See 8,786.]
Exchange Bank, Demeritt v. [See 3,780.]
EXCHANGE NAT. BANK OF COLUMBUS v. HARRIS [6,119], 14 N. B. R. 510; 1 Cin. Law Bul. 357.
Exporter, The, Graham v. [See 5,667.]
EXPRESS, The [4,596], 1 Blatchf. 365; 6 N. Y. Leg. Obs. 401; 1 Amer. Law J. (N. S.) 289.
EXPRESS, The [4,597], Blatchf. Pr. Cas. 128.
EXPRESS, The [4,598], Olc. 258; 6 N. Y. Leg. Obs. 434.
Express, The, Dutton v. [See 4,209.]
Express, The, United States v. [See 15,066.]
Express Co., Earnest v. [See 4,248.]
Express Co., Rosenfield v. [See 12,060.]
Eyre, Douglass v. [See 4,032.]
EZILDA, The [4,599], Blatchf. Pr. Cas. 232.
EZILDA, The [4,600], Blatchf. Pr. Cas. 664.

F

FABER v. BARNEY [4,601], 6 Blatchf. 305.
FABER v. NEWARK, The [4,602].
Faber, Reckendorfer v. [See 11,625.]
Factors' & Traders' Ins. Co., Wheeler v. [See 17,495.]
F. A. EVERETT, The [4,603].
FAGAN, In re [4,604], 2 Spr. 91.
FAGAN v. PLUTO, The [4,605].
Fagan, Stewart v. [See 13,426.]
Failes, Scott v. [See 12,530.]
FAILING v. STARK [13,317].
Fair American, The, Brevoor v. [See 1,847.]
Fair American, The, Crammer v. [See 3,347.]
Fair American, The, Five Seamen v. [See 4,846.]
FAIRBANKS, The [4,607].
Fairbanks, Halsey v. [See 5,964.]
FAIRBANKS v. JACOBUS [4,608], 14 Blatchf. 337; 3 Ban. & A. 108.
Fairbanks, Tucker v. [See 14,218.]
FAIRBANKS & CO. v. ARBUSTIS, The [7,589].
FAIRCHILD v. AURELIUS, The [4,609], 5 Hunt, Mer. Mag. 263.
FAIRCHILD v. CAMAC [4,610], 3 Wash. C. C. 558.
Fairchild, Loving v. [See 8,556.]
FAIRCHILD v. SHIVERS [4,611], 4 Wash. C. C. 443.
Fairchilds, United States v. [See 15,067.]
Fairclough, United States v. [See 15,068.]
Fairfax, Catlett v. [See 2,516.]
FAIRFAX v. FAIRFAX [4,612], 1 Cranch, C. C. 292.
FAIRFAX v. FAIRFAX [4,613], 2 Cranch, C. C. 25.

[Federal Case numbers are given in brackets.]

FAIRFAX v. HOPKINS [4,614], 2 Cranch. C. C. 134.
Fairfield Township, Wescott v. [See 17,418.]
FAIR PLAY, The [4,615], 1 Blatchf. & H. 136.
FALCON, The [4,616], Blatchf. Pr. Cas. 52.
FALCON, The [4,617], 3 Blatchf. 64; 30 Hunt, Mer. Mag. 201.
FALCON, The [4,618], 4 Blatchf. 367.
FALCON, The [4,619].
FALCONER v. CAMPBELL [4,620], 2 McLean, 195.
FALES v. GIBBS [4,621], 5 Mason, 462.
FALES v. MAYBERRY [4,622], 2 Gall. 560.
FALES v. WENTWORTH [4,623], Holmes, 96; 2 O. G. 58; 5 Fish. Pat. Cas. 302.
Falke, Poppenhusen v. [See 11,279, 11,280.]
FALKNER, In re [4,624], 16 N. B. R. 503.
FALLECK v. BARNEY [4,625] 5 Blatchf. 38.
Fallen, Sadlier v. [See 12,209, 12,210.]
FALLIAGE v. HOPE, The [4,626], Bee, 385.
FALLIS v. McARTHUR [4,627], 1 Bond, 100.
FALLON, In re [4,628], 2 N. B. R. 277 (Quarto, 92) 1 Chi. Leg. News, 107.
FALLON v. RAILROAD CO. [4,629], 1 Dill. 121.
Fallon, Sadlier v. [See 12,210.]
FALLS BRIDGE TURNPIKE CO. v. ADAMS [4,-630], 1 Hayw. & H. 95.
Falls Co., Miller v. [See 9,570.]
Falls Co., Sickels v. [See 12,834.]
FALMOUTH, The [4,631], 1 Gall. 130.
FAME, The [7,845].
FAME, The [4,633], 1 Brown's Adm. 42.
FAME, The [4,634], 3 Mason, 147.
FANITA, The [4,635], 8 Ben. 11.
FANITA, The [4,636], 14 Blatchf. 545.
Fanjul, United States v [See 15,069.]
Fannie, The, Thurber v. [See 14,014.]
Fanning, Baring v. [See 982.]
FANNY, The [4,637].
FANNY, The [4,638], 2 Lowell, 508.
Fanny, The, Frederick v. [See 5,077.]
FANNY v. KELL [4,639], 2 Cranch, C. C. 412.
Fanny, The, Moxon v. [See 9,895.]
FANNY, The, v. SIMPSON [4,640].
FANNY FOSDICK, The [4,641], 4 Blatchf. 374; 18 How. Pr. 328; 16 Leg. Int. 348.
FANNY GARDNER, The [4,642], 5 Biss. 209.
FANSHAWE v. TRACY [4,643], 4 Biss. 490.
FAREZ, In re [4,644], 7 Blatchf. 34.
FAREZ, In re [4,645], 7 Blatchf. 345; 2 Abb. U. S. 346; 40 How. Pr. 107.
FAREZ, In re [4,646], 7 Blatchf. 491.
FARISH, In re [4,647], 2 N. B. R. 168 (Quarto, 62).
Farlan, The J. F. [See 7,313, 7,314.]
FARLEY v. NATIONAL STEAM-GAUGE CO. [4,-648], 1 McA. Pat. Cas. 618.
FARLOW v. LEA [4,649], 2 Cin. Law Bul. 329.
FARMER, In re [4,650], 18 N. B. R. 207; 10 Chi. Leg. News, 395.
FARMER v. CALVERT LITHOGRAPHING, ETC., CO. [4,651], 1 Flip. 228; 5 Amer. Law T. Rep. 168; 5 Chi. Leg. News, 1; 7 Amer. Law Rev. 365; 4 Leg. Gaz. 333.
Farmer of Salem, The, Thackarey v. [See 13,852.]
Farmers' & Citizens' Nat. Bank, Manhattan Life Ins. Co. v. [See 9,024.]
FARMERS' & DROVERS' SAV. BANK v. KANSAS, CITY PUB. CO. [4,652], 3 Dill. 287.
FARMERS' & MECHANICS' BANK v. COVER [4,-653], 1 Hayw. & H. 177.
FARMERS' & MECHANICS' BANK v. GAITHER [4,654], 3 Cranch, C. C. 347.
FARMERS' & MECHANICS' BANK v. GAITHER [4,655], 3 Cranch, C. C. 440.
FARMERS' & MECHANICS' BANK v. MELVIN [4,656], 2 Cranch, C. C. 614.
FARMERS' & MECHANICS' BANK v. STICKNEY [4,657], Brunner, Col. Cas. 543; 8 Law Rep. 161.
Farmers' & Merchants' Bank of Baltimore, Bowden v. [See 1,714.]
Farmers' & Planters' Bank of Baltimore, City Bank of Columbus v. [See 2,738.]
Farmers' Bank, Atkinson v. [See 609.]
FARMERS' BANK v. FOX [4,658], 4 Cranch, C. C. 330.
FARMERS' BANK v. HOOFF [4,659], 4 Cranch, C. C. 323.
FARMERS' BANK v. ROBBINS [4,660], 2 Cranch, C. C. 471.
Farmers' Bank, Veitch v. [See 16,910.]
FARMERS' BANK OF ALEXANDRIA v. LLOYD [4,661], 2 Cranch, C. C. 411.
Farmers' Bank of Alexandria, Patriotic Bank of Washington v. [See 10,811.]
FARMERS' BANK OF VIRGINIA v. OWEN [4,662], 5 Cranch, C. C. 504.
FARMERS' LOAN & TRUST CO. v. CENTRAL RAILROAD OF IOWA [4,663], 4 Dill. 533; 11 West. Jur. 428; 23 Int. Rev. Rec. 242; 5 Cent. Law J. 56.
FARMERS' LOAN & TRUST CO. v. CENTRAL RAILROAD OF IOWA [4,664], 4 Dill. 546; 5 Cent. Law J. 258.
FARMERS' LOAN & TRUST CO. v. CHICAGO, P., & S. W. R. CO. [4,665], 9 Biss. 133; 12 Chi. Leg. News, 65; 25 Int. Rev. Rec. 360.
FARMERS' LOAN & TRUST CO. v. HENNING [4,666], 17 Amer. Law Reg. (N. S.) 266.
Farmers' Loan & Trust Co., Ketchum v. [See 7,736.]
FARMERS' LOAN & TRUST CO. v. McKINNEY [4,667], 6 McLean, 1.
FARMERS' LOAN & TRUST CO. v. MAQUILLAN [4,668], 3 Dill. 379; 8 West. Jur. 501; 1 Cent. Law J. 315.
FARMERS' LOAN & TRUST CO. v. ST. JOSEPH & D. C. R. CO. [4,669], 3 Dill. 412.
Farmers' Loan & Trust Co., United States v. [See 15,070.]
Farmers', Merchants' & Manufacturers' Fire Ins. Co., Dallmeyer v. [See 3,546.]
Farmers' Mutual Ins. Co., Nichols v. [See 10.242.]
FARMERS' TRUST & CANAL BANK v. KETCHUM [4,670], 4 McLean, 120.
Farmville Ins. Co., American Basket Co. v. [See 290.]
Farmville Ins. & Banking Co., Bang v. [See 838.]
Farmville Ins., etc., Co., Whittle v. [See 17,603.]
FARNHAM v. BANCROFT [4,671], 3 Haz. Reg. U. S. 6.
Farnham, United States v. [See 15,071.]
FARNSWORTH, Ex parte [4,672], 1 Lowell, 497.
FARNSWORTH, In re [4,673], 5 Biss. 223; 14 N. B. R. 148.
Farnsworth, Butler v. [See 2,240.]
Farnsworth, United States v. [See 15,072.]
FARNUM, In re [4,674], 6 Law Rep. 21.
FARNUM v BLACKSTONE CANAL CORP. [4,675], 1 Sumn. 46.
Farnum v. Sickel. [See 2,862.]
FARQUHAR v. FIDELITY INS., ETC., CO. [4,676], 35 Leg. Int. 404; 13 Phila. 473; 18 Alb. Law J. 330; 6 Reporter, 676; 7 Cent. Law J. 334; 11 Chi. Leg. News, 49; 24 Int. Rev. Rec. 334; 26 Pittsb. Leg. J. 43.
Farr, Byam v. [See 2,264.]
FARRAGUT, The [4,677], 6 Blatchf. 207.
FARRAND, In re [4,678], 1 Abb. U. S. 140; 2 Amer. Law T. Rep. U. S. Cts. 4.
FARRAR v. WALKER [4,679], 13 N. B. R. 82; 3 Dill. 506, note; 1 N. Y. Wkly. Dig. 229; 2 Cent. Law J. 670.
FARRELL, In re [4,680], 5 N. B. R. 125.
FARRELL v. CAMPBELL [4,681], 3 Ben. 8.
FARRELL v. CAMPBELL [4,682], 7 Blatchf. 158.
FARRELL v. FRENCH [4,683], 1 Blatchf. & H. 275.
FARRELL v. KNAPP [4,684], 1 Cranch, C. C. 131.
FARRELL v. MAYERS [4,685], Hoff. Op. 445.
Farrell, United States v. [See 15,073, 15,074.]
Farrell, The George. [See 5,332.]
FARRIN v. CRAWFORD [4,686], 2 N. B. R. 602 (Quarto, 181); 1 Chi. Leg. News, 342.
Farring, United States v. [See 15,075.]
FARRINGTON v. BOARD OF WATER COM'RS OF DETROIT [4,687], 4 Fish. Pat. Cas. 216.
FARRINGTON v. GREGORY [4,688], 4 Fish. Pat. Cas. 221.
Farrington, Mattocks v. [See 9,298.]
Farron, The John. [See 7,340, 7,341.]
FARROW v. BROWN [4,689].
Farwell, Barnard v. [See 1,002.]
Farwell, Bradley v. [See 1,779.]
FARWELL v. CURTIS [4,690], 7 Biss. 160; 22 Int. Rev. Rec. 161; 2 N. Y. Wkly. Dig. 499; 8 Chi. Leg. News, 267; 3 Cent. Law J. 352.
Farwell, Donaldson v. [See 3,983.]
Farwell v. Kinkead. [See 7,824.]

[Federal Case numbers are given in brackets.]

Farwell, The L. J. [See 8,426.]
Fashion, The. [See 9,772.]
Fashion, The, Clarke v. [See 2,851.]
Fashion, The, Devoe v. [See 3,844.]
Fashion, The, Newberry v. [See 10,143.]
Fashion, The Ward v. [See 17,154, 17,155.]
Fassman, Johnsen v. [See 7,365.]
Faulbree, United States v. [See 15,076.]
FAUNTLEROY v. HANNIBAL [4,691], 1 Dill. 118.
FAUNTLEROY v. HANNIBAL [4,692], 5 Dill. 219.
Fauquier & Alexandria Turnpike Co., Holbrook v. [See 6,591.]
Faussat, Thompson v. [See 13,954.]
Faussatt, Snell v. [See 13,138.]
Faust, The David. [See 3,595.]
FAVORITA, The [4,693], 1 Ben. 30.
FAVORITA, The [4,694], 4 Ben. 132.
FAVORITA, The [4,695], 8 Blatchf. 539.
FAVORITE, The [4,696], 1 Biss. 525.
FAVORITE, The [4,697], 2 Biss. 502.
FAVORITE, The [4,698], 2 Flip. 86; 25 Int. Rev. Rec. 202.
FAVORITE, The [4,699], 3 Sawy. 405; 7 Chi. Leg. News, 395; 23 Pittsb. Leg. J. 18, 7 Leg. Gaz. 289.
FAVORITE, The [4,700], 5 Sawy. 226.
Favorite, The, British Consul v. [See 1,896.]
FAW v. DAVY [4,701], 1 Cranch, C. C. 440.
Faw, Davy v. [See 3,663.]
FAW v. MARSTELLER [9,137].
Faw, United States v. [See 15,077-15,079.]
FAWCETT v. NATCHEZ, The [4,703], 3 Woods, 16.
FAXON, Ex parte [4,704], 1 Lowell, 404; 4 N. B. R. 32 (Quarto, 7).
FAXON v. DYSON'S ADM'RS [4,705], 1 Cranch, C. C. 441.
FAXON v. RUSSELL [4,706], 154 U. S. 644, 14 Sup. Ct. 1201.
FAXON v. RUSSELL [4,707], 22 Int. Rev. Rec. 375.
FAY, In re [4,708], 3 N. B. R. 660 (Quarto, 163).
FAY v. MONTGOMERY [4,709], 1 Curt. 266.
Fay, Smith v. [See 13,045.]
F. B. Gardner Co., Atlas Nat. Bank v. [See 635.]
F. B. Thurber, The. [See 17,355.]
FEARING v. CHEESEMAN [4,710], 3 Cliff. 91.
FEARING v. DE WOLF [4,711], 3 Woodb. & M. 185.
Fears, United States v. [See 15,080.]
Fears, Utpadel v. [See 16,808.]
Fearson, King v. [See 7,789, 7,790.]
Fearson, Nicholls v. [See 10,226, 10,227.]
FEARSON v. UNITED STATES [4,712], 1 Hayw. & H. 48.
Fearson, United States v. [See 15,081.]
FEATHERMAN v. LOUISIANA STATE SEMINARY [4,713], 2 Woods, 71.
FEDERHEN, In re [4,713a].
FEELY, In re [4,714], 3 N. B. R. 66 (Quarto, 15); 15 Pittsb. Leg. J. (O. S.) 291.
Feely, United States v. [See 15,082.]
FEENY, In re [4,715], 1 Hask. 304; 4 N. B. R. 233 (Quarto, 69).
Fees. [See 18,282-18,284, 18,290, 18,295.]
Fees and Costs in Prize Cases. [See 18,283.]
FEES FOR REGISTERING [18,295], 10 N. B. R. 141.
Fees in Bankruptcy Cases. [See 18,282, 18,295.]
Fees of Attorneys in Civil Cases. [See 18,284.]
Fees of District Attorneys. [See 18,290.]
Fehrenback, United States v. [See 15,083.]
Feigelstock, United States v. [See 15,084.]
FEINBERG, In re [4,716], 3 Ben. 162; 2 N. B. R. 425 (Quarto, 137); 1 Chi. Leg. News, 210.
FELCH v. HOOPER [4,717], 15 Alb. Law J. 333.
FELCH v. HOOPER [4,718], 4 Cliff. 489.
FELICHY v. HAMILTON [4,719], 1 Wash. C. C. 491.
FELIZ v. UNITED STATES [4,720], Hoff. Land Cas. 69.
FELLOWS v. BURNAP [4,721], 14 Blatchf. 63.
FELLOWS v. CRESCENT CITY, The [4,721a].
FELLOWS v. HALL [4,722], 3 McLean, 281.
FELLOWS v. HALL [4,723], 3 McLean, 487.
FELLOWS v. PEDRICK [4,724], 4 Wash. C. C. 477.
Felt, Stephens v. [See 13,368.]
Femberg, In re. [See 4,743.]
FENDALL v. BILLY [4,725], 1 Cranch, C. C. 87.
Fendall, Love v. [See 8,547.]
FENDALL v. TOCHMAN [4,726], 1 Hayw. & H. 259.
FENDALL v. TURNER [4,727], 1 Cranch, C. C. 35.
FENDLEY, In re [4,728], 10 N. B. R. 250; 3 Amer. Law Rec. 105.
Fenelon, United States v. [See 15,085.]
Fenlon, Lonergan v. [See 8,475.]
Fenn, Lytle v. [See 8,651.]
Fennel, Woodworth v. [See 18,015.]
Fennell, Postmaster General v. [See 11,307.]
FENNER v. DICKEY [4,729], 1 Flip. 34; 3 West. Law Month. 208.
Fenner, Earth Closet Co. v. [See 4,249.]
Fenner, Smith v. [See 13,046.]
Fenner, White v. [See 17,547.]
FENTON v. BRADEN [4,730], 2 Cranch, C. C. 550.
FENTON v. COLLERD [4,731], 8 Ben. 27; 11 N. B. R. 535.
Fenton, Cook v. [See 3,156.]
FENWICK v. BRENT [4,732], 1 Cranch, C. C. 280.
Fenwick, Chapman v. [See 2,604.]
Fenwick, Goulding v. [See 5,641.]
FENWICK v. GRIMES [4,733], 5 Cranch, C. C. 439.
FENWICK v. GRIMES [4,734], 5 Cranch, C. C. 603.
Fenwick, Rogers v. [See 12,011.]
FENWICK v. TOOKER [4,735], 4 Cranch, C. C. 641.
Fenwick, United States v. [See 15,086. 15,087.]
FENWICK v. VOSS [4,736], 1 Cranch, C. C. 106.
FERAX, The [4,737], 1 Spr. 180; 12 Law Rep. 183.
FERDON v. JUSTUS E. EARLE, The [4,737a].
Ferguson, Cookingham v. [See 3,182.]
Ferguson, Ex parte. [See 7,560.]
FERGUSON, In re [4,738], 2 Hughes, 286; 16 N. B. R. 530.
Ferguson v. The Jack Park. [See 13,984.]
FERGUSON v. LAMBERT [4,739], 2 Cin. Law Bul. 46.
FERGUSON v. O'HARRA [4,740], Pet. C. C. 493.
Ferguson, Parker v. [See 10,733.]
FERGUSON v. PECKHAM [4,741], 6 N. B. R. 569; 29 Leg. Int. 285; 6 Alb. Law J. 291.
FERGUSON v. ZEPP [4,742], 4 Wash. C. C. 645.
FERNBERG, In re [4,743], 2 N. B. R. 353 (Quarto, 114); 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53.
FERRAND v. FOWLER [4,678], 2 Amer. Law T. Rep. U. S. Cts. 4.
FERRARA v. TALENT, The [4,745], Crabbe, 216.
FERRENS, In re [4,746], 3 Ben. 442.
Ferrer v. Nairac. [See 4,261.]
FERRETT v. ATWILL [4,747], 1 Blatchf. 151; 4 N. Y. Leg. Obs. 215, 294.
Ferrett, Atwill v. [See 640.]
Ferrie, Caujolle v. [See 2,525.]
Ferrill, Cuyler v. [See 3,523.]
FERRIS, In re [4,748], 6 Ben. 473.
Ferris, The, Rutter v. [See 12,178.]
Ferris, Union Mill. & Min. Co. v. [See 14,371.]
FERRIS v. WILLIAMS [4,749], 1 Cranch, C. C. 281.
FERRIS v. WILLIAMS [4,750], 1 Cranch, C. C. 475.
Ferry, Aiken v. [See 112.]
Ferry, Page v. [See 10,662.]
FERSON v. SANGER [4,751], 2 Ware (Dav. 252) 256; 5 N. Y. Leg. Obs. 43.
FERSON v. SANGER [4,752], 1 Woodb. & M. 138.
Feste, Curtis v. [See 3,502.]
FETHERSTON, In re [4,753], 5 Chi. Leg. News, 193; 3 Pittsb. Rep. 480; 20 Pittsb. Leg. J. 77.
Fibre Disintegrating Co., American Wood Paper Co. v. [See 320.]
Fibre Disintegrating Co., Atkins v. [See 600-602.]
FIDELIO v. DERMOTT [4,754], 1 Cranch, C. C. 405.
FIDELITER, The [4,755], 1 Abb. U. S. 577; 1 Sawy. 153.
FIDELITER, The [4,756], Deady, 620; 11 Int. Rev. Rec. 62.
Fideliter, The, v. United States. [See 4,755, 4,756.]
Fideliter, The, United States v. [See 15,088.]
FIDELITY, The [4,757], 9 Ben. 333.
FIDELITY, The [4,758], 16 Blatchf. 569.
Fidelity Ins., etc., Co., Farquahar v. [See 4,676.]
FIEDLER v. CARPENTER [4,759], 2 Woodb. & M. 211.
FIEDLER v. MAXWELL [4,760], 2 Blatchf. 552.
Field v. The Argus. [See 521.]
FIELD, Ex parte [4,761], 5 Blatchf. 63.
FIELD v. ARGUS, The [521].
FIELD v. BAKER [4,762], 12 Blatchf. 438; 11 N. B. R. 415.
FIELD v. BALTIMORE C. P. R. CO. [4,763].
FIELD v. COLUMBET [4,764], 4 Sawy. 523.

FIELD v. DE COMEAN [4,765], 5 Ban. & A. 40; 17 O. G. 568.
FIELD v. GIBBS [4,766], Pet. C. C. 155.
FIELD v. INSURANCE CO. OF NORTH AMERICA [4,767], 6 Biss. 121.
Field, Jones v. [See 7,461.]
Field v. Lamb. [See 4,775.]
FIELD v. LOVETT PEACOCK, The [4,768].
FIELD v. LOWNSDALE [4,769], Deady, 288.
FIELD v. MOULSON [4,770], 2 Wash. C. C. 155.
FIELD v. SCHELL [4,771], 4 Blatchf. 435; 17 Leg. Int. 245.
FIELD v. SCHELL [4,772], 5 Blatchf. 1; 43 Hunt, Mer. Mag. 205.
Field v. Schnell. [See 4,771, 4,772.]
Field, Seabury v. [See 12,574, 12,575.]
Field, Steere v. [See 13,350.]
FIELDEN v. LAHENS [4,773], 6 Blatchf. 524.
FIELDEN v. LAWRENCE [4,774], 3 Blatchf. 120.
FIELDS v. CRAWFORD [18,296], 2 Hayw. & H. 256.
Fields, Hussey v. [See 6,947.]
FIELDS v. LAMB [4,775], Deady, 430.
Fields, Ocean Ins. Co. v. [See 10,406.]
Fields v. Rainey. [See 18,296.]
Fields, The, v. The Sailor's Bride. [See 12,220.]
FIELDS v. SQUIRES [4,776], Deady, 366.
FIELDS v. TAYLOR [4,777].
Fields, United States v. [See 15,089.]
FIFTEEN EMPTY BARRELS [4,778], 1 Ben. 125.
Fifteen Hogsheads of Brandy, United States v. [See 15,090.]
FIFTEEN PIECES OF BLACK SILK [4,779], 3 Ben. 189.
Fifteen Thousand Dollars Specie, Magoun v. [See 8,959.]
FIFTH NAT. BANK v. LONG [4,780], 7 Biss. 502; 9 Chi. Leg. News, 381; 4 Law & Eq. Rep. 210.
Fifty Barrels of Whiskey, United States v. [See 15,091.]
Fifty-Eight Thousand Eight Hundred and Fifty Cigars, United States v. [See 15,092.]
Fifty-Four Barrels of Distilled Spirits, United States v. [See 15,093.]
FIFTY-ONE BALES OF GOATS' HAIR [4,781], 2 Ben. 479.
Fifty-One Casks of Brandy, Hooper v. [See 6,674.]
Fifty-One Dozen Pieces of Merchandise, United States v. [See 15,094.]
Fifty-Six Barrels of Whiskey, United States v. [See 15,095.]
Fifty-Six Thousand Four Hundred and Twelve Feet of Lumber, Lyon v. [See 8,647.]
FIFTY THOUSAND CIGARS [4,782], 1 Lowell, 22; 2 Int. Rev. Rec. 108.
Fifty Thousand Cigars, United States v. [See 4,782.]
FIFTY THOUSAND FEET OF TIMBER [4,783], 2 Lowell, 64.
Fifty-Three Boxes of Havana Sugar, United States v. [See 15,098.]
FIFTY-TWO BALES OF COTTON [4,784], Blatchf. Pr. Cas. 309.
FIFTY-TWO BALES OF COTTON [4.785], Blatchf. Pr. Cas. 644.
FIKES v. BENTLEY [4,785a], Hempst. 61.
FILKINS v. BLACKMAN [4,786], 13 Blatchf. 440; Cox, Manual Trade-Mark Cas. 282.
FILLEY v. CHILD [4,787], 16 Blatchf. 376; 4 Ban. & A. 353; 16 O. G. 261; 8 Reporter, 230.
Filley, Wright v. [See 18,077.]
FINCH v. RIKEMAN [4,788], 2 Blatchf. 301.
FINDLAY, In re [4,789], 5 Biss. 480; 9 N. B. R. 83; 6 Chi. Leg. News, 94.
Findlay, Potts v. [See 11,345.]
Findlay, Stokes v. [See 13,478.]
FINDLAY v. WILLIAM, The [4,790], 1 Pet. Adm. 12.
FINDLAY'S EX'RS v. BANK OF THE UNITED STATES [4,791], 2 McLean, 44.
FINDLEY v. SATTERFIELD [4,792], 3 Woods, 504; 7 Cent. Law J. 365; 7 Reporter, 6.
Findlay v. Vint. [See 16,950.]
Fink, La Mothe v. [See 8,032.]
Fink, Salentine v. [See 12,250.]
Finlay, United States v. [See 15,099.]
FINLAYSON v. CHICAGO, B. & Q. R. R. CO. [4,793], 1 Dill. 579; 5 West. Jur. 342.
FINLEY v. McCARTHY [4,794], 1 Cranch, C. C. 266.
FINN, In re [4,795], 8 N. B. R. 525.
Finnagan, Carroll v. [See 2,453.]
Finnie, Rumford Chemical Works v. [See 12,130.]
Fire Ass'n, Harrington v. [See 6,106.]
Fire Ins. Co., Lewis v. [See 8,323.]
Firemen's Fund Ins. Co., Robbins v. [See 11,881, 11,882.]
FIREMEN'S INS. CO., In re [4,796], 3 Biss. 462; 8 N. B. R. 123; 5 Chi. Leg. News, 265; 6 Amer. Law T. Rep. 111; 7 Amer. Law Rev. 567.
FIREMEN'S INS. CO. v. HEMINGWAY [4,797], 8 Ins. Law J. 520; 8 Reporter, 741.
First Baptist Society of Essex, Davis v. [See 3,633.]
First Nat. Bank, Blair v. [See 1,485.]
First Nat. Bank, Burpee v. [See 2,185.]
FIRST NAT. BANK v. CALDWELL [4,798], 4 Dill. 314.
First Nat. Bank, Crocker v. [See 3,397.]
FIRST NAT. BANK v. DOUGLAS COUNTY [4,799], 3 Dill. 330; 1 Thomp. Nat. Bank Cas. 268; 1 Cent. Law J. 584.
First Nat. Bank, French v. [See 5,099, 5,100.]
First Nat. Bank, Hough v. [See 6,721.]
First Nat. Bank, Hyde v. [See 6,970.]
First Nat. Bank, Markson v. [See 9,097.]
First Nat. Bank, Sargeant v. [See 12,359.]
First Nat. Bank, Wright v. [See 18,078.]
FIRST NAT. BANK OF ASHLAND v. CLEAVER [4,800], 4 Wkly. Notes Cas. 480.
First Nat. Bank of Ashland, McElhenny v. [See 8,779.]
FIRST NAT. BANK OF CHICAGO v. THIRD NAT. BANK [4,801], 1 Chi. Law J. 524.
First Nat. Bank of Denver, First Nat. Bank of Trinidad v. [See 4,810.]
FIRST NAT. BANK OF HANNIBAL v. SMITH [4,801a], 6 Fed. Rep. 215.
First Nat. Bank of Jamestown, Lakin v. [See 7,999.]
FIRST NAT. BANK OF MANHATTAN v. CITIZENS' BANK OF TOPEKA [4,802], 2 Cent. Law J. 757; 21 Int. Rev. Rec. 382; 1 N. Y. Wkly. Dig. 511.
FIRST NAT. BANK OF MANHATTAN v. KING WROUGHT-IRON BRIDGE CO. [4,803], 2 Cent. Law J. 505.
FIRST NAT. BANK OF MOUNT PLEASANT v. DUNCAN [4,804], 35 Leg. Int. 251; 25 Pittsb. Leg. J. 169; 24 Int. Rev. Rec. 206; 7 N. Y. Wkly. Dig. 63; 6 Reporter, 69; 6 Wkly. Notes Cas. 158.
First Nat. Bank of Mt. Pleasant, Duncan v. [See 4,135.]
First Nat. Bank of Mt. Pleasant, Mellinger v. [See 4,135.]
FIRST NAT. BANK OF MOUNT PLEASANT v. TINSTMAN [4,805], 36 Leg. Int. 228; 2 Browne, Nat. Bank Cas. 182; 26 Pittsb. Leg. J. 95.
FIRST NAT. BANK OF NORTH BENNINGTON v. ARLINGTON [4,806], 16 Blatchf. 57.
FIRST NAT. BANK OF NORTH BENNINGTON v. BENNINGTON [4,807], 16 Blatchf. 53; 2 Browne, Nat. Bank Cas. 437.
FIRST NAT. BANK OF NORTH BENNINGTON v. DORSET [4,808], 16 Blatchf. 62.
FIRST NAT. BANK OF OMAHA v. DOUGLAS COUNTY [4,809], 3 Dill. 298; 1 Thomp. Nat. Bank Cas. 267; 1 Cent. Law J. 257.
FIRST NAT. BANK OF TRINIDAD v. FIRST NAT. BANK OF DENVER [4,810], 4 Dill. 290; 7 Amer. Law Rec. 168; 6 Reporter, 356; 10 Chi. Leg. News, 388; 2 Tex. Law J. 74; 7 Cent. Law J. 170; 26 Pittsb. Leg. J. 24.
FIRST NAT. BANK OF UNIONTOWN v. STAUFFER [4,810a], 1 Fed. 187.
First Nat. Bank of Warren v. Palmer. [See 17,207.]
First Nat. Bank of Wilmington, Loudon v. [See 8,525.]
FIRST NAT. BANK OF YOUNGTOWN v. HUGHES [4,811], 2 Browne, Nat. Bank Cas. 176; 5 Cin. Law Bull. 515.
Firth, Harris v. [See 6,120.]
FISCHER v. WILSON [4,812], 16 Blatchf. 220; 4 Ban. & A. 228; 16 O. G. 455.
FISH v. BLACK WARRIOR, The [4,813].
Fish, Blakely v. [See 18,240.]
FISH v. FOND DU LAC [4,813a], 12 Reporter, 295.
FISH v. GEORGE THOMAS, The [4,813b].

[Federal Case numbers are given in brackets.]

Fish, Hicks v. [See 6,459.]
Fish, McDaniel v. [See 8,744.]
Fisher, Blight v. [See 1,542.]
FISHER v. BOODY [4,814], 1 Curt. 206.
FISHER v. CARTER [4,815], 1 Wall. Jr. 69.
Fisher, Comly v. [See 3,053.]
FISHER v. CONSEQUA [4,816], 2 Wash. C. C. 382.
FISHER v. CRAIG [4,817], 3 Sawy. 69; 1 Ban. & A. 365.
Fisher, Craig v. [See 3,332.]
FISHER v. CURRIER [4,818], 5 Law Rep. 217; 1 Pa. Law J. 270.
Fisher, Drake v. [See 4,061.]
Fisher v. The Galloway C. Morris. [See 5,204.]
FISHER v. HARNDEN [4,819], 1 Paine, 55.
FISHER v. HENDERSON [4,820], 8 N. B. R. 175.
Fisher, Hoge v. [See 6,585.]
FISHER v. LORD [4,821], 6 West. Law J. 137.
Fisher, Pedrick v. [See 10,900.]
FISHER v. PLYMOUTH, The [4,822], 2 Int. Rev. Rec. 109.
FISHER v. REIDER [4,822a], Hempst. 82.
FISHER v. RUTHERFORD [4,823], Baldw. 188.
FISHER v. SYBIL, The [4,824], Brunner, Col. Cas. 274; 6 Hall, Law J. 509; 5 Hughes, 61.
Fisher, United States v. [See 15,100-15,103.]
Fisher, Wilson v. [See 17,803.]
Fishing Ins. Co., Hancox v. [See 6,013.]
FISHLEY v. FISHLEY [4,825].
FISK v. CHURCH [4,826], 5 Fish. Pat. Cas. 540; 1 O. G. 634.
Fisk, McKenna v. [See 8,852.]
FISK v. UNION PAC. R. CO. [4,827], 6 Blatchf. 362.
FISK v. UNION PAC. R. CO. [4,828], 8 Blatchf. 243; 13 Int. Rev. Rec. 77; 3 Alb. Law J. 156; 5 Amer. Law Rev. 566.
FISK v. UNION PAC. R. CO. [4,829], 8 Blatchf. 299.
FISK v. UNION PAC. R. CO. [4,830], 10 Blatchf. 518.
Fisk, United States v. [See 15,104.]
FISK v. WEST BRADLEY & CARY MFG. CO. [4,830a], 19 O. G. 545.
Fiske, Boston Mfg. Co. v. [See 1,681.]
FISKE v. HUNT [4,831]. 2 Story, 582.
FISKE v. MASSACHUSETTS NAT. BANK [9,857].
Fiske, Moody v. [See 9,745.]
Fiske, Palmer v. [See 10,691.]
Fiske, Risch v. [See 11,855.]
FISKE v. SMYTHE [4,833], 15 Int. Rev. Rec. 115.
Fisler, United States v. [See 15,105.]
FITCH v. CORNELL [4,834], 1 Sawy. 156.
Fitch, Gear v. [See 5,290.]
FITCH v. McGIE [4,835], 2 Biss. 163; 2 N. B. R. 531 (Quarto, 164); 2 Amer. Law T. Rep. Bankr. 80.
Fitch, Middletown Tool Co. v. [See 9,535.]
FITCH v. REMER [4,836], 1 Biss. 337; 1 Flip. 15; 8 Amer. Law Reg. 654; 5 Quart. Law J. 266.
Fittler, The E. H. [See 4,311.]
Fitton, United States v. [See 15,106.]
FITZ, Ex parte [4,837], 2 Lowell, 519.
FITZ v. AMELIE, The [4,838], 2 Cliff. 440.
Fitzgerald, Eckle v. [See 4,267.]
FITZGERALD v. H. A. RICHMOND, The [4,839], 10 Chi. Leg. News, 216.
Fitzgerald, Lake v. [See 7,993.]
Fitzgerald, Leadville Co. v. [See 8,158.]
Fitzgerald, United States v. [See 15,107.]
FITZHUGH v. BLAKE [4,840], 2 Cranch, C. C. 37.
FITZHUGH v. COMMERCE, The [4,841], 38 Hunt, Mer. Mag. 193.
Fitzhugh, Ashton v [See 583.]
Fitzhugh, Hines v. [See 18,302.]
Fitzhugh, Scholfield v. [See 12,474.]
FITZPATRICK v. DUBOIS [4,842], 2 Sawy. 434.
FITZPATRICK v. EIGHT HUNDRED BALES OF COTTON [4,843], 3 Ben. 42.
Fitzpatrick, Louisiana State Lottery Co. v. [See 8,541.]
FITZPATRICK v. TROY INS. CO. [4,844], 5 Biss. 48.
Fitzsimmons, Azcarati v. [See 690.]
Fitzsimmons, Hicks v. [See 6,460.]
Five Barrels of Whiskey, United States v. [See 15,108.]
Five Cases of Cigars, United States v. [See 15,109.]
Five Cases of Cloth, United States v. [See 15,110.]
Five Cases of Linen Table Cloths, United States v. [See 15,111.]
Five Casks of Files, United States v. [See 15,112.]
Five Hundred and Eight Barrels Distilled Spirits, United States v. [See 15,113.]
Five Hundred and Eight Barrels of Spirits, United States v. [See 15,114.]
Five Hundred and Eleven Tons of Nitrate of Soda, United States v. [See 4,540.]
FIVE HUNDRED AND TWENTY-EIGHT PIECES OF MAHOGANY [4,845], 2 Lowell, 323.
Five Hundred Barrels of Whisky, United States v. [See 15,115.]
Five Hundred Boxes of Pipes, United States v. [See 15,116.]
Five Jugs of Brandy, United States v. [See 15,117, 15,118.]
Five Negroes, Bass v. [See 1,093.]
FIVE SEAMEN v. FAIR AMERICAN, The [4,846], Bee, 134.
Five Thousand One Hundred Dollars in Specie, United States v. [See 15,119.]
Flagg, Goodyear Dental Vulcanite Co. v. [See 5,590.]
FLAGG v. MANN [4,847], 2 Sumn. 486.
FLAGG v. MANN [4,848], 3 Sumn. 84.
FLAHERTY v. DOANE [4,849], 1 Lowell, 148.
FLANAGAN, In re [4,850]. 5 Sawy. 312; 18 N. B. R. 439; 26 Pittsb. Leg. J. 128.
FLANDERS v. ABBEY [4,851], 6 Biss. 16.
FLANDERS v. ÆTNA INS. CO. [4,852], 3 Mason, 158.
FLANDERS v. THOMPSON [4,853], 3 Woods, 9.
FLANDERS v. TRIPP [4,854], 2 Lowell, 15.
FLANNAGANS, Ex parte [4,855], 2 Hughes, 264; 12 N. B. R. 230; 14 Amer. Law Reg. (N. S.) 688; 4 Amer. Law Rec. 304.
Flannery, Dean v. [See 3,707.]
FLANNERY v. ONTARIO, The [4,856], 1 Amer. Law J. (N. S.) 436; 4 Pa. Law J. Rep. 312.
FLASH, The [4,857], Abb. Adm. 67.
FLASH, The [4,858], Abb. Adm. 119.
FLASH, The [4,859], Blatchf. Pr. Cas. 183.
Fleck, Woodson v. [See 17,996.]
Flecke, United States v. [See 15,120.]
Fleckenstein, Shuman v. [See 12,826.]
FLEEGER v. POOL [4,860], 1 McLean, 185.
Fleet, Woodson v. [See 17,997.]
FLEISHMAN v. JOHN P. BEST, The [4,861], 37 Leg. Int. 18; 8 Wkly. Notes Cas. 30; 26 Int. Rev. Rec. 14; 14 Phila. 527.
FLEMING v. FOY [4,862], 4 Cranch, C. C. 423.
FLEMING v. NORTHAMPTON NAT. BANK [4,862a], 62 How. Pr. 177.
Flesher, Copen v. [See 3,211.]
Fleta, The, Jackson v. [See 7,135.]
Fletcher, Berry v. [See 1,356, 1,357.]
FLETCHER v. CUBANA, The [4,863].
Fletcher, Currey v. [See 3,490.]
Fletcher, Easby v. [See 4,250.]
FLETCHER v. ELLIS [4,863a], Hempst. 300.
FLETCHER v. MOREY [4,864], 2 Story, 555.
FLETCHER v. PECK [4,865].
Fletcher, Rouse v. [See 12,087.]
FLETCHER v. SELDEN [4,866], 16 Blatchf. 468; 4 Ban. & A. 394; 25 Int. Rev. Rec. 249.
FLETCHER v. TURNER [4,867], 5 McLean, 468.
FLETCHER v. UNITED STATES [4,868], 1 Hayw. & H. 186.
FLETCHER v. UNITED STATES [4,869], 1 Hayw. & H. 200.
Fletcher, The William. [See 17,692.]
Flickenger, Smith v. [See 13,047.]
FLINN v. LEANDER, The [4.870], Bee, 260.
Flint, Burley v. [See 2,168.]
FLINT v. CRAWFORD COUNTY [4,871], 5 Dill. 481.
FLINT v. JONES [4,872], 1 Wkly. Notes Cas. 334.
Flint, Leidersdorf v. [See 8,219.]
FLINT v. NORWICH & N. Y. TRANSP. CO. [4,873], 6 Blatchf. 158; 34 Conn. 554; 2 Amer. Law Rev. 569.
FLINT v. NORWICH & N. Y. TRANSP. CO. [4,874], 7 Blatchf. 536.
FLINT v. ROBERTS [4,875], 4 Ban. & A. 165.
FLINT v. RUSSELL [4,876], 5 Dill. 151; 8 Cent. Law J. 68; 7 Reporter, 265; 7 Amer. Law Rec. 575; 19 Alb. Law J. 226.
Flint, United States v. [See 15,121.]
Flint, The Ben. [See 1,299.]
Floating Dock, Jerome v. [See 7,291.]

[Federal Case numbers are given in brackets.]

Floating Steam Pump, Winslow v. [See 17,880.]
Floating Zephyr, The, Jones v. [See 7,462.]
FLOOD v. HICKS [4,877], 2 Biss. 169; 4 Fish. Pat. Cas. 156; 1 Chi. Leg. News, 377; Merw. Pat. Inv. 193.
Flood, Odell v. [See 10,428.]
FLORA, The [4,878], 1 Biss. 29; 3 Chi. Leg. News, 130.
FLORA v. GLOBE, The [5,484].
Flora, The Marianna. [See 9,080.]
FLORENCE, The [4,880], 2 Flip. 56; 23 Int. Rev. Rec. 105; 4 Cent. Law J. 249; 2 Cin. Law Bul. 60.
FLORENCE, The [4,881], 13 Eng. Law T. (N. S.) 613.
FLORENCE MFG. CO. v. BOSTON DIATITE CO. [4,882], Holmes, 415; 1 Ban. & A. 396; 6 O. G. 728.
FLORENCE SEWING-MACH. CO. v. GROVER & BAKER SEWING-MACH. CO. [4,883], Holmes, 235.
FLORENCE SEWING-MACH. CO. v. SINGER MFG. CO. [4,884], 8 Blatchf. 113; 4 Fish. Pat. Cas. 329.
FLORENCE SEWING-MACH. CO. v. SINGER MFG. CO. [4,885], 8 Blatchf. 177; 4 Fish. Pat. Cas. 348.
Florens v. The Sam Kirkman. [See 8,658.]
FLORENZO, The [4,886], Blatchf. & H. 52.
FLORIDA, The [4,887], 4 Ben. 452.
FLORIDA, The [4,888], Blatchf. Pr. Cas. 327.
FLORIDA, The [4,889], 4 Blatchf. 470.
Florida, The, Mercer v. [See 9,433.]
Florida, A. & G. C. R. Co., Rankin v. [See 11,567.]
Florida R. Co., Carrington v. [See 2,447, 2,448.]
Florida R. Co., Vose v. [See 17,007.]
FLORIO v. PEASLEE [4,890], 2 Curt. 452.
Flournoy, Penaro v. [See 10,916.]
FLOWER v. PARKER [4,891], 3 Mason, 247.
Flowery, United States v. [See 15,122.]
Floyd, Hotchkiss v. [See 6,716.]
Flues, Dallas v. [See 3,544.]
Flushing & N. R. Co., Johnson v. [See 7,384.]
FLYING FISH, The [4,892], 2 Gall. 373.
Flynn, Ex parte. [See 2,086.]
Flynn v. The Falcon. [See 4,619.]
Flynn, United States v. [See 15,123, 15,124.]
F. MERWIN, The [4,893], 10 Ben. 403.
F. Merwin, The. [See 10,369.]
FOCKE v. LAWRENCE [4,894], 2 Blatchf. 508.
FOGARTY v. GERRITY [4,895], 1 Sawy. 233; 4 N. B. R. 450 (Quarto, 148); 5 Amer. Law Rev. 163.
Fogarty, Great Western Ins. Co. v. [See 5,737.]
Fogerty, In re. [See 4,895.]
FOGERTY v. PRATT [4,896], 2 Hall, Law J. 238.
FOGG v. LAWRY [4,897].
FOGG v. STICKNEY [4,898], 11 N. B. R. 167.
Folger, Crosby v. [See 3,421.]
Folger, Hyde v. [See 6,971.]
FOLGER v. ROBERT G. SHAW, The [4,899], 2 Woodb. & M. 531; 17 Hunt, Mer. Mag. 508.
Follen, Dawson v. [See 3,670.]
FOLLETT v. ROSE [4,900], 3 McLean, 332.
Follett, Wilcox & Gibbs Sewing-Mach. Co. v. [See 17,642, 17,643.]
FOLSOM v. MARSH [4,901], 2 Story, 100; 6 Hunt, Mer. Mag. 175.
FOLSOM v. MERCANTILE MUT. INS. CO. [4,902], 8 Blatchf. 170.
FOLSOM v. MERCANTILE INS. CO. [4,903], 9 Blatchf. 201.
Folsom, Tarr v. [See 13,756.]
Folsom, United States v [See 15,125-15,127.]
FONDA v. BRITISH-AMERICAN ASSUR. CO. [4,904], 6 Cent. Law J. 305; 6 Reporter, 71; 7 Ins. Law J. 468; 10 Chi. Leg. News, 309.
Fond du lac County, Olcott v. [See 10,479.]
Fongeres, Sardo v [See 12,358.]
Fontain, Guillou v. [See 5,861.]
FONTAINE v. ARESTA [4,905], 2 McLean, 127.
FOOT, In re [4,906], 8 Ben. 228; 12 N. B. R. 337; 1 N. Y. Wkly. Dig. 76.
FOOT, In re [4,907], 11 Blatchf. 530; 11 N. B. R. 153.
FOOT v. Edwards [4,908], 3 Blatchf. 310.
FOOTE v. BROWN [4,909], 2 McLean, 369.
FOOTE v. FROST [4,910], 3 Ban. & A. 607; 14 O. G. 860.
FOOTE v. HANCOCK [4,911], 15 Blatchf. 343.
FOOTE v. JOHNSON COUNTY [4,912], 5 Dill. 281; 24 Int. Rev. Rec. 165; 6 Cent. Law J. 345.
Foote v. Johnson County. [See 15,489.]
FOOTE v. LINCK [4,913], 5 McLean, 616.
FOOTE v. MT. PLEASANT [4,914], 1 McCrary, 101.
FOOTE v. NOLAND [4,915], 5 Cranch, C. C. 399.
FOOTE v. SILSBY [4,916], 1 Blatchf. 445; Merw. Pat. Inv. 564; 1 Fish. Pat. Rep. 268.
FOOTE v. SILSBY [4,917], 1 Blatchf. 542; 1 Fish. Pat. Rep. 391.
FOOTE v. SILSBY [4,918], 1 Blatchf. 545; 1 Fish. Pat. Rep. 357.
FOOTE v SILSBY [4,919], 2 Blatchf. 260.
FOOTE v. SILSBY [4,920], 3 Blatchf. 507.
Foote, United States v. [See 15,128.]
FORBES, Ex parte [4,921], 1 Dill. 363.
FORBES, In re [4,922], 5 Biss. 510.
FORBES v. BARSTOW STOVE CO. [4,923], 2 Cliff. 379.
FORBES v. GRACEY [4,924].
FORBES v. HANNAH, The [4,925], Bee, 348.
FORBES v. MEMPHIS, E. P. & P. R. CO. [4,926], 2 Woods, 323.
FORBES v. MERRIMAC, The [4,927], 1 Ben. 68.
FORBES v. MURRAY [4,928], 3 Ben. 497.
FORBES v. OVERBY [4,928a], 4 Hughes, 441.
FORBES v. PARSONS [4,929], Crabbe, 283.
Forbes, Pentleton v. [See 10,966.]
Forbes, United States v. [See 15,129.]
Forbes, The R. B. [See 11,598.]
FORBUSH v. BRADFORD [4,930], 1 Fish. Pat. Cas. 317; 21 Law Rep. 471.
FORBUSH v. COOK [4,931], 2 Fish. Pat. Cas. 668; 20 Law Rep. 664; Merw. Pat. Inv. 423.
Forbush v. Southwick. [See 4,930.]
Forbush v. Walling. [See 4,930.]
Forbush v. Wheelock. [See 4,930.]
Force, Kerr v. [See 7,730.]
Force, King v. [See 7,791.]
FORD, In re [4,932], 18 N. B. R. 426.
Ford, Carrington v. [See 2,449.]
Ford, Clark v. [See 2,820.]
Ford, Cooke v. [See 3,173.]
Ford, Evarts v. [See 4,574.]
FORD v. KEYS [4,933], 15 Int. Rev. Rec. 59; 4 Chi. Leg. News, 156.
Fordyce, Stanwood v. [See 13,300.]
Fordyce, United States v. [See 15,130.]
Foreign Missions of Presbyterian Church, Board of, v. McMaster. [See 1,586.]
FOREMAN v. BIGELOW [4,934], 4 Cliff. 508; 7 Cent. Law J. 430; 18 N. B. R. 457; 7 Reporter, 137; 26 Pittsb. Leg. J. 128.
FOREMAN v. HOLMEAD [4,935], 5 Cranch, C. C. 162.
FOREST, The [4,936], 1 Ware (420) 429.
Forest City, The. [See 301.]
FOREST KING, The [4,937], Blatchf. Pr. Cas. 45.
Forest King, The. [See 6,451, 12,261.]
FOREST QUEEN, The [4,938], 3 Ben. 181.
FORMAN v. CAMPBELL [4,939], 9 Ben. 472.
FORMAN v. MILLER [4,940], 5 McLean, 218.
FORMAN v. PEASLEE [4,941], 21 Law Rep. 273.
Forrest, Cushwa v. [See 3,517.]
Forrest, Davis v. [See 3,634.]
FORREST v. HANSON [4,942], 1 Cranch, C. C. 12.
FORREST v. HANSON [4,943], 1 Cranch, C. C. 63.
Forrest, Jeffers v. [See 7,251.]
Forrest, Union Bank of Georgetown v. [See 14,356.]
Forrest, United States v. [See 15,131.]
Forrest, Wood v. [See 17,945.]
FORRESTER, The [15,132].
Forrester, The, United States v. [See 15,132.]
FORRESTIER v. BORDMAN [4,945], 1 Story, 43; 2 Law Rep. 325; 1 Hunt, Mer. Mag. 506.
FORSAITH v. MERRITT [4,946], 1 Lowell, 336; 3 N. B. R. 48 (Quarto, 11); 2 Amer. Law T. 123; 1 Amer. Law T. Rep. Bankr. 168.
FORSHAY v. DU FAIS [4,947].
Forsoket, The, Willendson v. [See 17,682.]
FORSYTH, In re [4,948], 7 N. B. R. 174.
FORSYTH v. CLAPP [4,949], Holmes, 278; 6 Fish. Pat. Cas. 528; 4 O. G. 527; Merw. Pat. Inv. 448.

[Federal Case numbers are given in brackets.]

FORSYTH v. SMALE [4,950], 7 Biss. 201; 8 Chi. Leg. News, 322; 7 Reporter, 262.
Forsyth, Woods v. [See 17,992.]
FORSYTHE v. BALLANCE [4,951], 6 McLean, 562.
Forsythe, United States v. [See 15,133.]
Forsythe, Vorhis v. [See 17,004.]
FORT v. UNION PAC. R. CO. [4,952], 2 Dill. 259; 11 Am. Law Reg. (N. S.) 101.
FORT, WHITNEY, v. [See 17,587, 17,588.]
FORTITUDE, The [4,953], 3 Sumn. 228; 1 Law Rep. 124.
Fort Scott, Keane v. [See 7,631.]
FORTUNA, The [4,954], 1 Brock. 299.
FORTUNE, In re [4,955], 1 Lowell, 306; 2 N. B. R. 662.
Fortune, In re. [See 3,586, 6,725.]
Fort Wayne, The, Collins v. [See 3,012.]
Fort Wayne, etc., R. Co., Gaylord v. [See 5,284.]
Forty Bales of Cotton, Proceeds of, Russell v. [See 12,154.]
Forty-Eight Hundred Gallons Distilled Spirits, United States v. [See 15,134.]
Forty-Eight Hundred Gallons of Spirits, United States v. [See 15,153.]
Forty-Six Casks of California Grape Brandy, United States v. [See 15,135.]
Forty-Three Gallons of Whiskey, United States v. [See 15,136.]
Fosbender, McClellan v. [See 8,695.]
Fosdick, Deshon v. [See 3,819.]
FOSDICK v. STURGES [4,956], 1 Biss. 255; 3 Phila. 312; 15 Leg. Int. 404; 2 Wkly. Law Gaz. 401.
Fosdick, The Fanny. [See 4,641.]
Foss, Clarke v. [See 2,852.]
FOSS v. HERBERT [4,957], 1 Biss. 121; 2 Fish. Pat. Cas. 31.
Fossat, United States v. [See 15,137-15,139.]
Fossatt, United States v. [See 15,140.]
FOSSITT v. BELL [4,958], 4 McLean, 427.
FOSTER, Ex parte [4,959], 5 Law Rep. 406; 1 N. Y. Leg. Obs. 232.
FOSTER, Ex parte [4,960], 2 Story, 131; 5 Law Rep. 55.
FOSTER, In re [4,961], 2 N. B. R. 232 (Quarto, 81); 1 Amer. Law T. Rep. Bankr. 127; 1 Chi. Leg. News, 103.
FOSTER, In re [4,962], 3 Ben. 386; 3 N. B. R. 236 (Quarto, 57).
FOSTER, In re [4,963], 6 Ben. 268; 10 N. B. R. 523.
FOSTER, In re [4,964], 18 N. B. R. 64; 10 Chi. Leg. News, 315.
Foster, The. [See 2,981.]
FOSTER v. AMES [4,965], 1 Lowell, 313; 2 N. B. R. 455 (Quarto, 147); 2 Amer. Law T. Rep. Bankr. 65.
Foster, Bostwick v. [See 1,682.]
FOSTER v. BRITISH OAK, The [4,966], 7 Leg. Int. 203.
FOSTER v. CALLOWAY COUNTY [4,967], 3 Dill. 200; 1 Cent. Law J. 263.
Foster, Catlin v. [See 2,519.]
Foster, Drury v. [See 4,096.]
FOSTER v. ELLIS [4,968], 5 Ben. 83.
Foster v. Gardner. [See 1,673.]
FOSTER v. GODDARD [4,969].
FOSTER v. GODDARD [4,970], 1 Cliff. 158.
FOSTER v. HACKLEY [4,971], 2 N. B. R. 406 (Quarto, 131); 2 Amer. Law T. Rep. Bankr. 8; 1 Chi. Leg. News, 137.
FOSTER v. HILLIARD [4,972], 1 Story, 77; 3 Law Rep. 175.
FOSTER v. INGLEE [4,973], 13 N. B. R. 239.
FOSTER v. JOICE [4,974], 3 Wash. C. C. 498.
FOSTER v. LINDSAY [4,975], 1 Ban. & A. 605; 7 O. G. 514.
FOSTER v. LINDSAY [4,976], 3 Dill. 126; 2 Ban. & A. 172; 8 O. G. 1032; 2 Cent. Law J. 769; 23 Pittsb. Leg. J. 107.
Foster, McPherson v. [See 8,921.]
FOSTER v. MIRANDA, The [4,977], 6 McLean, 221; Newb. 227.
FOSTER v. MOORE [4,978], 1 Curt. 279.
Foster, Moore v. [See 9,760.]
Foster, Mora v. [See 9,784.]
Foster, Nelson v. [See 10,105.]
FOSTER v. PEASLEE [4,979], 21 Law Rep. 341; 36 Hunt, Mer. Mag. 454.
FOSTER v. PILOT NO 2, The [4,980], Newb. 215; 1 Amer. Law Reg. 403; 5 Pa. Law J. Rep. 231.
Foster v. Remick. [See 4,959.]
FOSTER v. RHODES [4,981], 10 N. B. R. 523.
FOSTER v. SAMPSON [4,982], 1 Spr. 182.
FOSTER v. SIMMONS [4,982a].
FOSTER v. SIMMONS [4,983], 1 Cranch, C. C. 316.
Foster, Springer v. [See 13,265, 13,266.]
FOSTER v. SWASEY [4,984], 2 Woodb. & M. 217; 10 Law Rep. 32; 16 Hunt, Mer. Mag. 602.
FOSTER v. SWASEY [4,985], 3 Woodb. & M. 364.
Foster, United States v. [See 15,141, 15,142.]
Foster, Weston v. [See 17,452.]
Foster, The H. B. [See 6,290, 6,291.]
Foulke, United States v. [See 15,143.]
Foulkrod, Mayer v. [See 9,341, 9,342.]
Four Cases Cutlery, United States v. [See 15,144.]
Four Cases of Lastings, United States v. [See 15,145.]
Four Cases Printed Merinoes, United States v. [See 15,146.
FOUR CASES OF SILK RIBBONS [4,986], 1 Ben. 214; 5 Int. Rev. Rec. 181.
Four Cribs of Lumber, Tome v. [See 14,083.]
FOUR CUTTING MACHINES [4,987], 3 Ben. 220; 9 Int. Rev. Rec. 145.
FOUR HUNDRED AND SIX HOGSHEADS OF MOLASSES [4,988], 4 Blatchf. 319.
Four Hundred and Sixty Barrels of Fermented Liquors, United States v. [See 15,147.]
Four Hundred and Sixty-Nine Barrels of Spirits, United States v. [See 15,148.]
Four Hundred and Sixty-Seven Bars of Railroad Iron, Harley v. [See 6,068.]
Four Hundred and Thirty-Eight Bales of Cotton, Saratoga, The, v. [See 12,356.]
FOUR HUNDRED AND TWENTY MIN. CO. v. BULLION MIN. CO. [4,989], 3 Sawy. 634; 11 Morr. Min. Rep. 608.
Four Hundred Barrels of Salt, Winslow v. [See 17,881.]
Four Hundred Baskets of Champagne, United States v. [See 15,149.]
Four Part Pieces of Woolen Cloth, United States v. [See 15,150.]
FOURTEEN HORSES, Etc. [4,990], 10 Ben. 358.
Fourteen Packages of Pins, United States v. [See 15,151.]
FOURTH NAT. BANK v. NEYHARDT [4,991], 13 Blatchf. 393.
Fourth Nat. Bank v. Papin. [See 12,239.]
FOURTH NAT. BANK v. WALKER [4,992], 24 Int. Rev. Rec. 211; 10 Chi. Leg. News, 323.
Four Thousand American Gold Coins, United States v. [See 15,152.]
Four Thousand Eight Hundred and Eighty-Five Bags of Linseed, Sears v. [See 12,589.]
Four Thousand One Hundred and Seventy-Five Cigars, United States v. [See 15,154.]
FOWLE v. ALEXANDRIA [4,993], 3 Cranch, C. C. 70.
FOWLE v. BOWIE [4,994], 3 Cranch, C. C. 291.
FOWLE v. BOWIE [4,995], 3 Cranch, C. C. 362.
Fowle, Hanson v. [See 6,041, 6,042.]
Fowle, McClean v. [See 8,691.]
Fowle, Pierpont v. [See 11,152.]
FOWLE v. SPEAR [4,996]; 11 Law Rep. 130; 7 Pa. Law J. 176; 4 Pa. Law J. Rep. 145; Cox, Amer. Trade-Mark Cas. 67; Cox, Manual Trade-Mark Cas. 48.
FOWLER, In re [4,997], 8 Ben. 421.
FOWLER, In re [4,998], 1 Lowell, 161; 1 N. B. R. 680.
FOWLER, In re [4,999], 2 Lowell, 122.
Fowler, In re. [See 10,527.]
FOWLER v. BYRD [4,999a], Hempst. 213.
Fowler, Dermott v. [See 13,289.]
FOWLER v. DILLON [5,000]; 1 Hughes, 232; 12 N. B. R. 308.
Fowler, Ferrand v. [See 4,678.]
FOWLER v. HECKER [5,001], 4 Blatchf. 425.
FOWLER v. McDONALD [5,002], 4 Cranch, C. C. 297.
Fowler, Moore v. [See 9,761.]
Fowler, Rathbone v. [See 11,584.]
FOWLER v. REDFIELD [5,003].
Fowler, Tucker v. [See 14,219.]
Fowler, Vore v. [See 17,003.]

[Federal Case numbers are given in brackets.]

FOWLER v. WARFIELD [5,004], 4 Cranch, C. C. 71.
Fowler, Warner v. [See 17,182.]
Fowler, Washington v. [See 17,229.]
Fowler, Withrow v. [See 17,919.]
Fowler, Wyman v. [See 18,114.]
FOWLKES v. FOWLKES [5,005]; 21 Int. Rev. Rec. 358; 8 Chi. Leg. News, 41.
FOX, In re [5,006].
FOX, In re [5,007], 8 Chi. Leg. News, 313.
Fox, Avery v. [See 674.]
FOX v. BLOSSOM [5,008], 17 Blatchf. 352.
Fox, Boucicault v. [See 1,691.]
Fox, Chillicothe Branch of the State Bank of Ohio v. [See 2,683.]
Fox, De Varaigne v. [See 3,836.]
FOX v. ECKSTEIN [5,009], 4 N. B. R. 373 (Quarto, 123).
Fox, Farmers' Bank v. [See 4,658.]
Fox, Hall v. [See 5,932.]
FOX v. HEMPFIELD R. CO. [5,010]; 3 Wall. Jr. 243; 14 Leg. Int. 148; 1 Pittsb. Rep. 372; 5 Pittsb. Leg. J. 37.
FOX v. HEMPFIELD R. CO. [5,011]; 2 Abb. U. S. 151; 13 Int. Rev. Rec. 23; 8 Phila. 639; 28 Leg. Int. 4; 3 Pittsb. Rep. 289; 18 Pittsb. Leg. J. 148.
Fox, Holmead v. [See 6,628.]
FOX v. HOLT [5,012], 36 Conn. 558; 4 Ben. 278.
FOX v. LUCY A. BLOSSOM, The [5,013], 4 West. Law Month. 415.
FOX v. PAINE [5,014], Crabbe, 271.
Fox v. Revenue Cutter No. 1. [See 11,713.]
Fox, Roche v. [See 11,974.]
Fox, Shannon v. [See 12,706.]
Fox, United States v. [See 15,155, 15,156.]
FOXALL v. LEVI [5,015], 1 Cranch, C. C. 139.
FOXALL v. McKENNEY [5,016], 3 Cranch, C. C. 206.
Foxall, Turner v. [See 14,255.]
Foxcroft, Mallett v. [See 8,989.]
Foy, Fleming v. [See 4,862.]
FOY v. HUNTER [5,017], 9 O. G. 542.
FOY v. HUNTER [5,018], 9 O. G. 543 (No. 1).
FOY v. HUNTER [5,019], 9 O. G. 543 (No. 2).
FOY v. TALBURT [5,020], 5 Cranch, C. C. 124.
FOYE, In re [5,021], 2 Lowell, 399.
Foye, In re. [See 9,823.]
FOYE v. DABNEY [5,022], 1 Spr. 212.
FOYE v. LECKIE [5,023], 1 Spr. 210.
Foye, United States v. [See 15,157.]
Foyles, Dobbin v. [See 3,942.]
Foyles, King v. [See 7,792.]
FOYLES v. LAW [5,024], 3 Cranch, C. C. 118.
FRALOFF v. NEW YORK CENT. & H. R. R. CO. [5,025], 10 Blatchf. 16.
FRALOFF v. NEW YORK CENT. & H. R. R. CO. [5,026], 12 Blatchf. 484; 48 How. Pr. 535; 21 Int. Rev. Rec. 124.
Frame, Myers v. [See 9,991.]
Frame, Peek v. [See 10,903, 10,904.]
FRANCE v. ÆTNA LIFE INS. CO. [5,027], 20 Pittsb. Leg. J. 170; 2 Ins. Law J. 657; 18 Int. Rev. Rec. 32.
FRANCE v. WASHINGTON [5,028], 5 Cranch, C. C. 667.
FRANCESCA CURRO, The [5,029], 4 Wkly. Notes Cas. 415.
Francesca Curro, The, Wright v. [See 18,088.]
FRANCESCA T., The [5,030], 9 Ben. 34.
Francestown Soap-Stone Store Co., Henry v. [See 6,382.]
FRANCIS, In re [5,031], 2 Sawy. 286; 7 N. B. R. 359; 5 Pac. Law Rep. 213; 4 Leg. Op. 493; 7 Alb. Law J. 13.
FRANCIS, The [5,032], 1 Gall. 445.
FRANCIS, The [5,033], 1 Gall. 453.
FRANCIS, The [5,034], 1 Gall. 614.
FRANCIS, The [5,035], 1 Gall. 618.
FRANCIS, The [5,036], 2 Gall. 391.
Francis, The. [See 4,546.]
FRANCIS v. BASSETT [5,037], 1 Spr. 16.
Francis, Camac v. [See 2,329.]
FRANCIS v. HARRISON, The [5,038]; 1 Sawy. 353; 2 Abb. U. S. 74.
Francis v. Mahn. [See 5,039.]
FRANCIS v. MELLOR [5,039]; 5 Fish. Pat. Cas. 153; 4 Am. Law T. Rep. U. S. Cts. 237; 28 Leg. Int. 333; 8 Phila. 157; 3 Leg. Gaz. 335; 1 Leg. Gaz. Rep. 291; 1 O. G. 48.
FRANCIS ASHBY, The [5,040], 3 Adm. Rec. 142.
FRANCIS v. SLACK [5,041], 4 Cliff. 186; 16 Int. Rev. Rec. 134.
Francis A. Palmer, The, Allair v. [See 203.]
Francis A. Palmer, The, Harbeck v. [See 6,045a.]
Francis Ashby, The. [See 5,040.]
Francisco, The, Somerville v. [See 13,171.]
Francis Hatch, The, United States v. [See 15,158.]
FRANCIS KING, The [5,042], 7 Ben. 11.
FRANCIS KING, The [5,043], 7 Ben. 380.
Francis King, The. [See 17,355.]
Francis Palmer, The, Harbeck v. [See 6,045a.]
Francis Skiddy, The, Hovey v. [See 6,741.]
FRANCIS WRIGHT, The [5,044], 7 Ben. 88.
FRANCKE, In re [5,045], 7 Ben. 420, note.
FRANCKE, In re [5,046], 7 Ben. 420; 10 N. B. R. 438; 6 Chi. Leg. News, 414; 3 Amer. Law Rec. 298.
FRANCOIS, Ex parte [5,047], 3 Woods, 367.
FRANCONET v. F. W. BACKUS, The [5,048], Newb. 1.
FRANCONIA, The [5,049], 4 Ben. 181.
FRANK, In re [5,050], 5 Ben. 164; 5 N. B. R. 194.
FRANK v. CHETWOOD [5,051], 9 Reporter, 6.
Frank, United States v. [See 15,159.]
FRANK A. HALL, The [5,052].
FRANKLE v. PENNSYLVANIA FIRE INS. CO. [5,052a], 12 Ins. Law J. 614.
FRANKLIN, In re [5,053], 8 Ben. 233.
Franklin, The. [See 11,646.]
Franklin, Hamilton v. [See 5,981.]
FRANKLIN v. HEISER [5,054], 6 Blatchf. 426.
Franklin, The, Swaim v. [See 13,660.]
Franklin v. Terry. [See 9,361.]
Franklin, The, United States v. [See 15,160.]
FRANKLIN v. WARD [5,055], 3 Mason, 136.
Franklin, Wood v. [See 17,946.]
Franklin Avenue German Sav. Inst., Lee v. [See 8,188.]
FRANKLIN BANK v. HIPKINS [5,056], 2 Cranch, C. C. 315.
Franklin Canal Co., Cleveland, P. & A. R. Co. v. [See 2,890.]
Franklin, The Ella. [See 2,160.]
Franklin Fire Ins. Co., Betts v. [See 1,373.]
Franklin Hemp & Bagging Co., Cocker v. [See 2,930, 2,931.]
Franklin Hemp & Flax Mfg. Co., Cocker v. [See 2,932.]
Franklin Ins. Co., Holtzman v. [See 6,649.]
FRANKLIN INS. CO. v. LORD [5,057], 4 Mason, 248.
FRANKLIN SAV. FUND SOC., Estate of [5,058], 31 Leg. Int. 173; 10 Phila. 276.
FRANKLIN SAV. FUND SOC., In re [5,059], 1 Wkly. Notes Cas. 42.
FRANK MOFFAT, The [5,060], 2 Flip. 291; 11 Chi. Leg. News, 114.
FRANZ & POPE KNITTING MACH. CO. v. BICKFORD [5,061], 18 O. G. 734.
FRANZ & POPE KNITTING MACH. CO. v. LAMB KNITTING MACHINE MFG. CO. [5,061a], 19 O. G. 1000.
FRANZ SIGEL, The [5,062], 14 Blatchf. 480.
FRASER v. HUNTER [5,063], 5 Cranch, C. C. 470.
FRASER v. WELLER [5,064], 6 McLean, 11.
FRASER v. WOLCOTT [5,065], 4 McLean, 365.
FRATES v. HOWLAND [5,066], 2 Lowell, 36.
Frauds—Charge to Grand Jury in Relation to Frauds of Officers of National Banks. [See 18,246.]
Frauds—Charge to Grand Jury in Relation to Frauds on the Revenue. [See 18,247, 18,251.]
FRAYSER v. RUSSELL [5,067], 3 Hughes, 227.
FRAZER, In re [5,068], 18 Alb. Law J. 353; 25 Int. Rev. Rec. 226; 6 Reporter, 357; 3 Cin. Law Bul. 668; 7 Wkly. Dig. 129; 10 Chi. Leg. News, 380; 7 Cent. Law J. 227; 26 Pittsb. Leg. J. 147.
FRAZER v. CARPENTER [5,069], 2 McLean, 235.
Frazer, Daggs v. [See 3,538.]
Frazer, Smith v. [See 13,048.]
Frazer, United States v. [See 15,161.]
FRAZIER, In re [5,070], 2 Hughes, 293.

[Federal Case numbers are given in brackets.]

FRAZIER v. BRACKENRIDGE [5,071], 1 Cranch, C. C. 203.
Frazier, Irving v. [See 7,075.]
FRAZIER v. LOMAX [5,072], 1 Cranch, C. C. 328.
FRAZIER v. McDONALD [5,073], 8 N. B. R. 237; 20 Pittsb. Leg. J. 185; 7 West. Jur. 505; 10 Phila. 273; 30 Leg. Int. 232.
FREAR, In re [5,074], 2 Ben. 467; 1 N. B. R. 660 (Quarto, 201); 35 How. Pr. 249; 1 Amer. Law T. Rep. Bankr. 123.
FREDENBERG, In re [5,075], 2 Ben. 133; 1 N. B. R. 268 (Quarto, 34).
FREDERICK, In re [5,407], 21 Int. Rev. Rec. 310.
FREDERICK v. FANNY, The, [5,077], Bee, 262.
FREDERICK M. WILSON, The, [5,078], 7 Ben. 367.
Frederickson, Bank of United States v. [See 945.]
Fred Lorents, The, Whitaker v. [See 17,527.]
FREEBORN v. FALCON, The [5,078a].
FREEDLEY, Ex parte [5,079], Crabbe, 544.
FREEDMAN v. SIGEL [5,080], 10 Blatchf. 327; 5 Chi. Leg. News, 196; 17 Int. Rev. Rec. 28; 4 Leg. Op. 506; 5 Leg. Gaz. 34.
Freedmen's Sav. & Trust Co., State Nat. Bank v. [See 13,324.]
Freeland, Robbins v. [See 11,883.]
FREELANDER v. HOLLOMAN [5,081], 9 N. B. R. 331.
FREEMAN, In re [5,082], 4 Ben. 245; 4 N. B. R. 64 (Quarto, 17).
FREEMAN, In re [5,083], 2 Curt. 491.
FREEMAN v. ALBANY, The [5,083a].
FREEMAN v. BAKER [5,084], 1 Blatchf. & H. 372.
FREEMAN v. CARGO OF SALT [2,406], 40 Hunt, Mer. Mag. 457.
Freeman, Dutton v. [See 4,210.]
FREEMAN v. JANE, The [5,086], Crabbe, 178.
Freeman, Kendall v. [See 7,692.]
FREEMAN v. PEROT [5,087], 2 Wash. C. C. 485.
FREEMAN v. STEWART [5,088], 5 Biss. 19.
Freeman, United States v. [See 15,162, 15,163.]
FREEMAN'S NAT. BANK v. SMITH [5,089], 13 Blatchf. 220.
FREE STATE, The [5,090], 1 Brown's Adm. 251; 6 Amer. Law T. Rep. 401; 5 Chi. Leg. News, 373.
Freestone, The, Rusk v. [See 12,143.]
FREE TRADER, The [5,091], 1 Brown's Adm. 72.
FREIDERICK, In re [5,092], 3 N. B. R. 465 (Quarto, 117); 3 Amer. Law T. 71; 2 Chi. Leg. News, 139; 1 Amer. Law T. Rep. Bankr. 181; 2 Leg. Gaz. 133.
Freidman v. Sigel. [See 5,080.]
FRELIGH v. CARROLL [5,092a].
FREMONT, The [5,093], 3 Chi. Leg. News, 233; 10 Amer. Reg. (N. S.) 340; 13 Int. Rev. Rec. 149.
FREMONT, The [5,094], 3 Sawy. 571.
FREMONT v. MERCED MIN. CO. [5,095], 1 McAll. 267.
Fremont, The, Schenck v. [See 12.448.]
Fremont, United States v. [See 15,164.]
French, Baker v. [See 767.]
French, Bank of Columbia v. [See 867.]
French, Bowman v. [See 1,739.]
FRENCH v. BREWER [5,096], 3 Wall. Jr. 346; 18 Leg. Int. 324; 9 Pittsb. Leg. J. 153.
French, Briggs v. [See 1,870, 1,871.]
FRENCH v. EDWARDS [5,097], 4 Sawy. 125.
FRENCH v. EDWARDS [5,098], 5 Sawy. 266; 7 Reporter, 68.
French, Farrell v. [See 4,683.]
FRENCH v. FIRST NAT. BANK [5,099], 7 Ben. 488; 11 N. B. R. 189.
FRENCH v. FIRST NAT. BANK [5,100], 8 Ben. 248.
French, Green v. [See 5,757.]
French, King v. [See 7,793.]
FRENCH v. KINGSLAND [5,096], 9 Pittsb. Leg. J 153.
FRENCH v. LAFAYETTE INS. CO. [5,102], 5 McLean, 461.
French, Pigou v. [See 11,161.]
FRENCH v. ROGERS [5,103], 1 Fish. Pat. Cas. 133; 4 Amer. Law J. (N. S.) 150; 8 Leg. Int. 158.
French, Shoemaker v. [See 12,800.]
French, Sommerville v. [See 13,173.]
French, Stewart v. [See 13,427.]
FRENCH v. SUPERB, The [5,103a].
FRENCH v. TUMLIN [5,104], 10 Amer. Law Reg. (N. S.) 641; 14 Int. Rev. Rec. 140; 6 Amer. Law Rev. 367.
FRENCH v. TUNSTALL [5,104a], Hempst. 204.
French, United States v. [See 15,165.]
FRENCH v. VENABLE [5,105], 2 Cranch, C. C. 509.
FRENCH v. VICTORIA, The [5,106], 31 Leg. Int. 293; 10 Phila. 292.
French, The D. M. [See 3,938.]
FRERE v. MUDD [5,107], 2 Cranch, C. C. 407.
FREREZ v. GENESEE, The, [5,108], 19 Hunt, Mer. Mag. 186.
Frerichs, United States v. [See 15,166.]
FRERICKS v. COSTER [5,108a], 17 Reporter, 168.
FRESE v. BACHOF [5,109], 13 Blatchf. 234; Cox, Manual Trade-Mark Cas. 273.
FRESE v. BACHOF [5,110], 14 Blatchf. 432; 13 O. G. 635; Cox, Manual Trade-Mark Cas. 346.
FRESE v. BIEDENFELD [5,111], 14 Blatchf. 402; 3 Ban. & A. 205.
FRESH v. GILSON [5,112], 5 Cranch, C. C. 533.
Fretter, The John. [See 7,342.]
FREUDENFELS, In re [5,112a].
FREVALL v. BACHE [5,113], 5 Cranch, C. C. 463.
FREY, In re [5,114], 9 Ben. 185.
FREYVOGEL, In re [5,115], 25 Pittsb. Leg. J. 109.
Frick, Albers v. [See 136.]
Frick, Karthaus v. [See 7,615.]
Frick, Riggs v. [See 11,825.]
FRICKE v. HAM [5,115a], 22 Fed. Rep. 302.
Friction Match Machinery, United States v. [See 15,167.]
Fridenberg, Sedgwick v. [See 12,611.]
Fridenberg, United States v [See 15,168, 15,169.]
Fridge, Raverty v. [See 11,586, 11,587.]
FRIEDBERG, In re [5,116], 19 N. B. R. 302.
FRIEDLANDER v JOHNSON [5,117], 2 Woods, 675.
FRIEDLOB, In re [5,118], 19 N. B. R. 122; 11 Chi. Leg. News, 189.
FRIEDMAN v. GOODWIN [5,119], 1 McAll. 142.
FRIEMANSDORF v. WATERTOWN INS. CO. [5,119a], 1 Fed. Rep. 68.
FRIEND, In re [5,120], 3 Woods, 388.
Friend, Cana v. [See 2,375.]
FRIEND v. WASHINGTON [5,121], 2 Cranch, C. C. 19.
FRIENDSHIP, The [5,122].
FRIENDSHIP, The [5,123], 2 Curt. 426.
FRIENDSHIP, The [5,124], 1 Gall. 45.
FRIENDSHIP, The [5,125], 1 Gall. 111.
Friendship, The, Deliessline v. [See 13,807.]
Friendship, The, Parter v. [See 10,783.]
Friendship, The, Stannick v. [See 13,291.]
FRIES, Case of [5,126], Whart. St. Tr. 458; 3 Dall. 515.
FRIES, Case of [5,127], Whart. St. Tr. 610.
Fries, United States v. [See 5,126.]
FRINK v. PETRY [5,128], 11 Blatchf. 422; 1 Ban. & A. 1; 5 O. G. 201; Merw. Pat. Inv. 142.
Frink, United States v. [See 15,171.]
FRISBEE, In re [5,129], 14 Blatchf. 185; 15 N. B. R. 522.
FRISBEE, In re [5,130], 4 Law Rep. 483.
FRISBIE, In re [5,131], 13 N. B. R. 349.
Frisbie, Voorhees v. [See 17,000.]
Fritchery, Shaffer v. [See 12,697.]
Frith, The Elizabeth. [See 4,361.]
FRIZELLE, In re [5,132], 5 N. B. R. 119.
FRIZELLE, In re [5,133], 5 N. B. R. 122.
Frolic, The, Risher v. [See 11,856.]
FROST, In re [5,134], 6 Biss. 213; 11 N. B. R. 69; 7 Chi. Leg. News, 42.
FROST, In re [5,135], 3 N. B. R. 736 (Quarto, 180).
Frost, Arnold v. [See 558.]
Frost, Bingham v. [See 1,413.]
Frost, Bradley v [See 1,780.]
Frost, Foote v. [See 4,910.]
Frost, Kittle v. [See 7,856.]
Frost, Providence County Sav. Bank v. [See 11,453, 11,454.]
Frost, Redick v. [See 11,630.]
FROST v. UNION PAC. R. CO. [4,952], 11 Amer. Law Reg. (N. S.) 101.
FROST v. UNITED STATES [15,172], 9 Int. Rev. Rec. 41.
Frostel, King v. [See 7,794.]

Fry, Ex parte. [See 5,143.]
FRY v. COOK [5,138], 14 Fed. 424.
Fry, Green v. [See 5,758.]
FRY v. GRIGG [5,139], 1 Wkly. Notes Cas. 73.
Fry, Hollingsworth v. [See 6,619.]
FRY v. QUINLAN [5,140], 13 Blatchf. 205.
FRY v. ROUSSEAU [5,141], 3 McLean, 106.
FRY v. YEATON [5,142], 1 Cranch, C. C. 550.
Fry, Zahm v. [See 18,198.]
FRY, Ex parte [5,143], 3 App. Com'r Pat. 251.
Frye, Haskill v. [See 6,195.]
Frye, Patriotic Bank v. [See 10,808.]
FRYE v. SCOTT [5,144], 3 Cranch, C. C. 294.
Frye, Smith v. [See 13,049.]
Frye, United States v. [See 15,173.]
FUENTES v. GAINES [5,145], 1 Woods, 112.
Fuentes v. Gaines. [See 5,174, 5,175.]
Fuers, United States v. [See 15,174.]
FUGATE v. BRONAUGH [5,146], 3 Cranch, C. C. 65.
Fugitive Slave Law—Charge to Grand Jury in Relation to Fugitive Slave Law. [See 18,261-18,263.]
FULLER, Ex parte [5,147], 2 Story, 327; 5 Law Rep. 210.
FULLER, In re [5,148], 1 Sawy. 243; 4 N. B. R. 115 (Quarto, 29); 18 Pittsb. Leg. J. 32; 2 Chi. Leg. News, 373; 2 Leg. Gaz. 293.
FULLER v. COLBY [5,149], 3 Woodb. & M. 1; 9 Law Rep. 397.
Fuller v. Goodrich. [See 5,151.]
FULLER v. IVES [5,150], 6 McLean, 478.
Fuller, Moody v. [See 9,746.]
Fuller, Potter v. [See 11,327.]
FULLER v. YENTZER [5,151], 6 Biss. 203; 1 Ban. & A. 520; 7 Chi. Leg. News, 25.
Fullerton, United States v. [See 15,175, 15,176.]
Fullerton, Wright v. [See 18,079.]
FULLINGS v. FULLINGS [5,151a], 3 N. J. Law J. 240.
FULMER v. PATTERSON [5,152], 36 Leg. Int. 496; 14 Phila. 527; 26 Int. Rev. Rec. 6.
FULTON v. BLAKE [5,153], 5 Biss. 371; 12 Amer. Law Reg. (N. S.) 779; 5 Chi. Leg. News, 527.
FULTON v. GILMORE [5,154], 2 Flip. 260; 5 Reporter, 103; 10 Chi. Leg. News, 108; 2 Cin. Law Bul. 305; 24 Int. Rev. Rec. 108.
FULTON v. GOLDEN [5,155], 36 Leg. Int. 366; 20 Alb. Law J. 229; 9 Cent. Law J. 286; 25 Int. Rev. Rec. 321; 8 Reporter, 517; 4 Cin. Law Bul. 758; 12 Chi. Leg. News, 9; 2 N. J. Law J. 298.
Fulton, Marble v. [See 9,059.]
Fulton, Scaife v. [See 12,426.]
Fulton, The Robert. [11,890.]
FULTZ, In re [5,156], 1 MacA. Pat. Cas. 178.
Funk, Swartz v. [See 13,678.]
FUNKENSTEIN, In re [5,157], 1 Pac. Law Rep. 11.
FUNKENSTEIN, In re [5,158], 3 Sawy. 605; 14 N. B. R. 213; 8 Chi. Leg. News, 345; 3 Cent. Law J. 448; 3 N. Y. Wkly. Dig. 92.
Funkhouser, United States v. [See 15,177.]
Furber, Postmaster General v. [See 11,308.]
Furber, Sheridan v. [See 12,761.]
FURBISH, In re [5,159], 2 Hask. 120.
FURBISH v. SEARS [5,160], 2 Cliff. 454.
Furbush v. Bradford. [See 4,930.]
FURLONG v. COLEMAN [5,161], 3 Cranch, C. C. 178.
Furlong, United States v. [See 15,178.]
Furniss, Dibblee v. [See 3,888.]
FURNISS v. ELLIS [5,162], 2 Brock. 14.
FURNISS v. MAGOUN, The [5,163], Olc. 55.
Furst, Ex parte. [See 8,369.]
FUTTERER v. ABENHEIM [5,164], 10 Phila. 225; 31 Leg. Int. 133; 6 Leg. Gaz. 116.
FUZZARD WADDING MFG. CO. v. DICKINSON [5,165], 6 Blatchf. 80; 3 Fish. Pat. Cas. 289.
F. W. GIFFORD, The [5,166], 7 Biss. 249; 9 Chi. Leg. News, 9.
F. W. Johnson, The, United States v. [See 15,179.]
F. Woodruff, The. [See 2,763.]

G

GAAR, MOFFITT v. [See 9,690.]
GADSBY v MILLER [5,167], 1 Cranch, C. C. 39.
Gadsby, Moore v. [See 9,762.]
Gadsby, United States v. [See 15,180.]
GAFFNEY v. GILLETTE [5,168], 4 Dill. 264, note.
GAFFNEY'S ASSIGNEE v. SIGNAIGO [5,169], 1 Dill. 158; 14 Int. Rev. Rec. 95; 5 West. Jur. 450.
Gage, Chicago v. [See 2,664.]
Gage, Hawes v. [See 6,237.]
Gage, Herring v. [See 6,422.]
Gage, Tompkins v. [See 14,088.]
Gage, Yellow Jacket Silver Min. Co. v. [See 18,134.]
GAGER v. A. D. PATCHIN, The [5,170], 1 Amer. Law J. (N. S.) 529.
GAGER v. HARRISON [5,171], 9 Chi. Leg. News, 377.
GAGER v. HENRY [5,172], 5 Sawy. 237; 11 Chi. Leg. News, 84.
Gages, Miller v. [See 9,571.]
GAINES v AGNELLY [5,173], 1 Woods, 238.
Gaines v. Brown. [See 5,174, 5,175.]
Gaines v. Compton. [See 5,174, 5,176.]
Gaines v. Cronan. [See 5,174-5,176.]
Gaines v De La Croix. [See 5,174, 5,175.]
Gaines, Fuentes v. [See 5,145.]
Gaines v. Herman. [See 5,174, 5,175.]
GAINES v LIZARDI [5,174], 1 Woods, 56.
GAINES v. LIZARDI [5,175], 3 Woods, 77; 9 Chi. Leg. News, 305.
Gaines v. Lizardi. [See 5,177.]
Gaines v. Louque. [See 5,174, 5,175.]
GAINES v. MAUSSEAUX [5,176], 1 Woods, 118.
Gaines v. Mousseaux. [See 5,174, 5,175.]
GAINES v. NEW ORLEANS [5,177], 1 Woods, 104.
Gaines v. New Orleans. [See 5,174, 5,175.]
GAINES v. SPANN [5,178], 2 Brock. 81.
Gaines, Texas v. [See 13,847.]
GAINES v. TRAVIS [5,179], Abb. Adm. 297.
GAINES v. TRAVIS [5,180], Abb. Adm. 422; 8 N. Y. Leg. Obs. 45; 3 Amer. Law J. (N. S.) 199; 2 N. Y. Code Rep. 102.
Gaines v. United States. [See 3,097.]
GAINEY, In re [5,181], 2 N. B. R. 525 (Quarto, 163).
Gaither, Farmers' & Mechanics' Bank v. [See 4,654, 4,655.]
Gaither, Greenway v. [See 5,788.]
GAITHER v. LEE [5,182], 2 Cranch, C. C. 205; 18 Niles, Reg. 328.
Galacar, United States v. [See 15,181.]
GALA PLAID, The [5,183], 1 Brown, Adm. 1.
GALATEA, The [5,184], 5 Ben. 211; 14 Int. Rev. Rec. 29.
GALATEA, The [5,185], 6 Ben. 259.
GALAXY, The [5,186], 1 Blatchf. & H. 270.
GALBRAITH, Ex parte [5,187], 1 N. Y. Leg. Obs. 5, note.
Galbraith, Cooper v. [See 3,193.]
Galbraith, United States v. [See 15,182.]
GALE v. BABCOCK [5,188], 4 Wash. C. C. 199.
GALE v. BEHLIN [5,189].
Gale, Carr v. [See 2,433-2,435.]
GALE v. NORRIS [5,190], 2 McLean, 469.
GALE v. SAUERWEIN [5,191], 1 Hughes, 332.
GALE MFG. CO. v. PRUTZMAN [5,191a], 5 Ban. & A. 154; 17 O. G. 743.
Gales, Harrison v. [See 6,136.]
Gales, Lapeyre v. [See 8,081.]
Galindo, United States v. [See 15,183.]
Gallagan, McPherson v. [See 8,922.]
GALLAGHER, In re [5,192], 16 Blatchf. 410; 19 N. B. R. 224.
Gallagher, In re. [See 5,197.]
Gallagher, Baker v. [See 768.]
Gallagher, Bunce v. [See 2,133.]
Gallagher, Dooley v. [See 3,996.]
GALLAGHER v. MURRAY [5,193], 10 Ben. 290.

[Federal Case numbers are given in brackets.]

GALLAGHER v. ROBERTS [5,194], 1 Wash. C. C. 320.
GALLAGHER v. ROBERTS [5,195], 2 Wash. C. C. 191.
Gallagher, Roberts v. [See 11,902.]
Gallagher, United States v. [See 15,184, 15,185.]
GALLAGHER v. YANKEE, The [5,196], Hoff. Op. 456.
Gallagher, Yankee v. [See 18,124.]
GALLAHER, In re [5,192].
GALLAHUE v. BUTTERFIELD [5,198], 10 Blatchf. 232; 6 Fish. Pat. Cas. 203; 2 O. G. 645; Merw. Pat. Inv. 340.
Gallatin, The, Delano v. [See 3,751.]
GALLATIN v. PILOT, The [5,199], 2 Wall. Jr. 592; 2 Amer. Law Reg. 697.
Gallatin, The Albert. [See 140.]
GALLEGO v. CHEVALLIE [5,200], 2 Brock. 285.
GALLEGO v. UNITED STATES [5,201], 1 Brock. 439.
Gallier, Robinson v. [See 11,951.]
GALLINGER, In re [5,202], 1 Sawy. 224; 4 N. B. R. 729.
GALLISON, In re [5,203], 2 Lowell, 72; 5 N. B. R. 353.
Galloway, Alexander v. [See 167.]
Galloway, Bank of Columbia v. [See 868.]
Galloway, Barr v. [See 1,037.]
Galloway, Bradbury v. [See 1,764.]
Galloway, Brown v. [See 2,006.]
GALLOWAY C. MORRIS, The [5,204], 2 Abb. U. S. 164; 7 Phila. 572; 3 Amer. Law T. Rep. U. S. Cts. 137; 27 Leg. Int. 204; 2 Leg. Gaz. 201.
GALPIN v. PAGE [5,205], 1 Sawy. 309.
GALPIN v. PAGE [5,206], 3 Sawy. 93; 3 South. Law Rev. 712; 1 Amer. Law T. Rep. (N. S.) 523; 1 Cent. Law J. 491.
Galveston, Hitchcock v. [See 6,532-6,534.]
GALVIN v. BOUTWELL [5,207], 9 Blatchf. 470.
GALVIN v. BOYD [5,208], 4 Wkly. Notes Cas. 288; 25 Pittsb. Leg. J. 14.
Gamble, Lee v. [See 8,189.]
GAMBLE v. MASON [5,209], 7 Amer. Law Reg. 178; 42 Hunt, Mer. Mag. 589.
Gamble, Spain v. [See 13,199.]
Gambrill, Carroll v. [See 2,454.]
Gamecock, The. [See 122, 123.]
Games, Dunn v. [See 4,176, 4,177.]
GAMMELL v. SKINNER [5,210], 2 Gall. 45.
Gammon, Graham v. [See 5,668.]
GANNON v. DONN [5,211], 1 Hayw. & H. 346.
Gansevoort, United States v. [See 18,313.]
GANT v. PEASLEE [5,212], 2 Curt. 250.
GANTT v. JONES [5,213], 1 Cranch, C. C. 210.
Gapete, Catherwood v. [See 2,513.]
GARBER v. GLOBE MUT. LIFE INS. CO. [5,214], 4 Ins. Law J. 307; 5 Bigelow, Ins. Cas. 221.
Garber, Warren v. [See 17,196.]
Garcia, McKay v. [See 8,844.]
GARCIA v. UNITED STATES [5,215], Hoff. Land Cas. 157.
Garcia, United States v. [See 15,186.]
GARD v. DURANT [5,216], 4 Cliff. 113.
Garden, etc., Air-Brake Co., Westinghouse v. [See 17,450.]
GARDEN CITY MFG. CO. v. SMITH [5,217], 1 Dill. 305.
GARDENER v. WAGNER [5,218], Baldw. 454.
Gardiner, Goodyear Dental Vulcanite Co. v. [See 5,591.]
GARDINER v. HOWE [5,219], 2 Cliff. 462.
GARDNER v. ANDERSON [5,220], 22 Int. Rev. Rec. 41.
Gardner, Babbel v. [See 692.]
GARDNER v. BAILEY [5,221], Codd. Trade-Marks, 131; Cox, Manual Trade-Mark Cas. 206.
Gardner, Beattie v. [See 1,195.]
GARDNER v. BIBBINS [5,222], 1 Blatchf. & H. 356.
GARDNER v. COLLINS [5,223], 3 Mason, 398.
GARDNER v. COLUMBIAN INS. CO. [5,224], 2 Cranch, C. C. 473.
GARDNER v. COLUMBIAN INS. CO [5,225], 2 Cranch, C. C. 550.
GARDNER v. COOK [5,226], 7 N. B. R. 346.
GARDNER v. GARDNER [5,227], 3 Mason, 178.
GARDNER v. GOODYEAR DENTAL VULCANITE CO. [5,228], 21 Lawy. Ed. U. S. Sup. Ct. Rep. 141.
Gardner, Goodyear Dental Vulcanite Co. v. [See 5,592.]
GARDNER v. HERZ [5,229], 16 Blatchf. 303; 4 Ban. & A. 320; Merw. Pat. Inv. 179; 16 O. G. 1093.
GARDNER v. ISAACSON [5,230], 1 Abb. Adm. 141; 8 N. Y. Leg. Obs. 77; 3 Amer. Law J. (N. S.) 193.
GARDNER v. LINDO [5,231], 1 Cranch, C. C. 78.
GARDNER v. LINDO [5,232], 1 Cranch, C. C. 592.
Gardner, Morris v. [See 9,830.]
GARDNER v. NEW JERSEY, The [5,233], 1 Pet. Adm. 223.
GARDNER v. PEYTON [5,234], 5 Cranch, C. C. 561.
GARDNER v. ROSEDALE, The [5,235], 2 N. J. Law J. 83.
Gardner, Ruan v. [See 12,100.]
GARDNER v. SHARP [5,236], 4 Wash. C. C. 609.
GARDNER v. SIMPSON [5,237], 2 Cranch, C. C. 405.
Gardner, Taylor v. [See 13,791.]
GARDNER v. TENNISON [5,238], 2 Cranch, C. C. 338.
Gardner, United States v. [See 15,187, 15,188.]
GARDNER v. WHITE SQUALL, The [5,239], 36 Hunt, Mer. Mag. 452; 38 Hunt, Mer. Mag. 322.
Gardner, The Fanny. [See 4,642.]
Garelly, Booth v. [See 1,646.]
GAREY v. JOHNSON [5,240], 2 Cranch, C. C. 107.
GAREY v. UNION BANK [5,241], 3 Cranch, C. C. 91.
GAREY v. UNION BANK [5,241a], 3 Cranch, C. C. 233.
Garey v. Union Bank of Georgetown. [See 5,241a.]
Garfield, Cain v. [See 2,293.]
Garity v. Ocean Tow Boat Co. [See 13,175.]
GARLAND v. BOWLING [5,242], Hempst. 710.
Garland, Davis v. [See 3,635, 3,636.]
Garland v. Morris. [See 15,811.]
Garlick, Halsey v. [See 5,965.]
Garlinghouse, United States v. [See 15,189.]
Garner, Contee v. [See 3,139.]
GARNET, Ex parte [5,243], 7 Leg. Int. 174.
GARNET, The [5,244], 3 Sawy. 350.
Garnett, Ex parte. [See 13,494.]
Garnett, Lisberger v. [See 8,383.]
GARNETT v. MACON [5,245], 2 Brock. 185; 6 Call, 308.
GARNETT v. MAYO [5,245a], 4 Hughes, 377.
Garnett, Rosenbaum v. [See 12,053.]
GARONNE, The [5,246], Blatchf. Pr. Cas. 132.
GARRATT v. DAVIDSON [5,247], 3 App. Com'r Pat. 21.
Garratt, Siebert v. [See 12,845.]
GARRETSON v. CLARK [5,248], 15 Blatchf. 70; 3 Ban. & A. 352; 14 O. G. 485.
GARRETSON v. CLARK [5,249], 17 Blatchf. 256.
GARRETSON v. CLARK [5,250], 16 O. G. 806; 4 Ban. & A. 536.
Garretson, Jenks v. [See 7,278.]
GARRETSON v. LINGAN [5,251], 2 Cranch, C. C. 236.
Garretson, Taylor v. [See 13,792.]
GARRETT, In re [5,252], 2 Hughes, 235; 11 N. B. R. 493.
Garrett, Andrews v. [See 375.]
Garrett, Robertson v. [See 11,924.]
GARRETT v. WOODWARD [5,253], 2 Cranch, C. C. 190.
GARRISON, In re [5,254], 5 Ben. 430; 7 N. B. R. 287.
GARRISON v. CHICAGO [5,255], 7 Biss. 480; 9 Chi. Leg. News, 362; 6 Amer. Law Rec. 25; 4 Law & Eq. Rep. 166.
GARRISON v. MARKLEY [5,256], 7 N. B. R. 246.
Garrison, The W. F. [See 17,475.]
GARROW v. DAVIS [5,257], 10 N. Y. Leg. Obs. 225.
GARWOOD, Ex parte [5,258], Crabbe, 516.
Garwood, Newlin v. [See 10,172.]
GARY, The, v. SHERMAN, The [5,259], Chase, 468.
Garza, Neilson v. [See 10,091.]
Gas Consumers' Ass'n, Herring v. [See 6,423.]
GASS v. STINSON [5,260], 2 Sumn. 453.
GASS v. STINSON [5,261], 2 Sumn. 605.
GASS v. STINSON [5,262], 3 Sumn. 98.
GASSAWAY v. JONES [5,263], 2 Cranch, C. C. 334.
Gassaway, United States v. [See 15,190.]
GASSETT v. MORSE [5,264], 21 Vt. 627; 3 N. Y. Leg. Obs. 350.
GASSETT v. PALMER [5,265], 3 McLean, 105.

[Federal Case numbers are given in brackets.]

GASTREL v. CYPRESS RAFT [5,266], 2 Woods, 213.
GATE CITY, The [5,267], 5 Biss. 200.
Gate Vein Coal Co., Detmold v. [See 3,830.]
Gates, Goodyear Dental Vulcanite Co. v. [See 5,593.]
GATES v. JOHNSON [5,268], Brunner, Col. Cas. 633; 21 Law Rep. 279.
GATES v. SMITH [5,286].
GATES v. WINOOSKI LUMBER CO. [5,270], 18 N. B. R. 31.
Gates, United States v. [See 15,191.]
Gate Vein Coal Co., Detmold v. [See 3,830.]
GATTMAN v. HONEA [5,271], 12 N. B. R. 493; 7 Chi. Leg. News, 395.
Gaty, The Sam. [See 12,276.]
Gaugar, Gilbert v. [See 5,412.]
GAUGHAN v. NORTHWESTERN FERTILIZING CO. [5,272], 3 Biss. 485; 12 Amer. Law Reg. (N. S.) 569; 5 Chi. Leg. News, 337; 6 Amer. Law T. Rep. 101; 18 Int. Rev. Rec. 162; 5 Leg. Op. 58.
GAUGHRAN v. ONE HUNDRED AND FIFTY-ONE TONS OF COAL [5,273], 39 Hunt, Mer. Mag. 75.
Gaughran v. One Hundred and Fifty-One Tons of Coal. [See 10,520.]
GAULT v. McMILLAN [5,274], 3 McLean, 20.
GAULT v. WOODBRIDGE [5,275], 4 McLean, 329.
GAUSE v. CLARKSVILLE [5,276], 5 Dill. 165; 19 Alb. Law J. 253; 18 Amer. Law Reg. (N. S.) 497; 8 Cent. Law J. 358; 7 Reporter, 519; 4 Cin. Law Bul. 585.
Gaussen, United States v. [See 15,192.]
GAUTHIER v. BELL [5,277], 23 Int. Rev. Rec. 210; 2 Cin. Law Bul. 153.
GAUTIER v. ARTHUR [5,278], 13 Blatchf. 432; 22 Int. Rev. Rec. 256.
Gautier, Parassel v. [See 10,709.]
Gautier, The J. H. [See 6,399, 7,319.]
Gavit, Knight v. [See 7,884.]
Gawley, Harley v. [See 6,069.]
GAY, In re [5,279], 1 Hask. 108; 2 N. B. R. 358 (Quarto, 114); 1 Amer. Law T. Rep. Bankr. 73; 2 Amer. Law T. Rep. Bankr. 52.
GAY v. CORNELL [5,280], 1 Blatchf. 506; 1 Fish. Pat. Rep. 312.
GAY v. LYONS [5,281], 3 Woods, 56.
GAY v. UNION MUT. LIFE INS. CO. [5,282], 9 Blatchf. 142; 2 Bigelow, Ins. Cas. 4.
Gay, United States v. [See 15,193.]
Gayler, Wilder v. [See 17,648, 17,649.]
GAYLOR, In re [5,282a].
GAYLOR v. DYER [5,283], 5 Cranch, C. C. 461.
GAYLORD v. FT. WAYNE, M. & C. R. CO. [5,284], 6 Biss. 286.
GAYLORD v. JOHNSON [5,285], 5 McLean, 448.
Gaylord, McNamara v. [See 8,910.]
Gaylord Patent Coupling & Mfg. Co., Bliss v. [See 1,547.]
Gay's Gold, United States v. [See 15,194.]
GAYTES v. AMERICAN [5,286], 5 Biss. 86, 14 N. B. R. 141.
GAYTES v. HIBBARD [5,287], 5 Biss. 99.
GAYTES v. LEWIS [5,288], 2 Biss. 136; 2 Chi. Leg. News, 385.
GAZELLE, The [5,289], 1 Spr. 378.
G. C. Barras, The, Conley v. [See 3,103.]
GEAR v. FITCH [5,290], 16 O. G. 1231; 3 Ban. & A. 573.
GEAR v. GROSVENOR [5,291], 6 Fish. Pat. Cas. 314; Holmes, 215; 3 O. G. 380.
GEAR v. HOLMES [5,292], 6 Fish. Pat. Cas. 595.
Gear, United States v. [See 15,195.]
GEARY, Ex parte [5,293], 2 Biss. 485; 3 Chi. Leg. News, 209.
Geary, Union Bank of Georgetown v. [See 5,241a.]
GEBHARDT, In re [5,294], 3 N. B. R. 268 (Quarto, 63).
Gedney, King v. [See 7,795.]
GEDNEY v. L'AMISTAD, The [5,294a].
Gee, United States v. [See 15,196.]
GEEKIE v. KIRBY CARPENTER CO. [5,295], 11 Chi. Leg. News, 400; 9 Reporter, 37.
GEFLA, The [5,296], 1 Mason, 88.
GEIB v. ENTERPRISE CO. [5,297], 1 Dill. 449, note.
GEIB v. INTERNATIONAL INS. CO. [5,298], 1 Dill. 443; 2 Chi. Leg. News, 325; 3 Amer. Law T. Rep. U. S. Cts. 143.
GEIER v. GOETINGER [5,299], 1 Ban. & A. 553; 7 O. G. 563.
Geiger v. The Eliza Mallory. [See 4,365.]
Geiger, Janney v. [See 7,212.]
Geiger v. Montserat, The. [See 9,740.]
Geiger, Muir v. [See 9,902.]
GEIGER v. WILLIAM TABER, The [5,300].
Geiger, Wise v. [See 17,908.]
Geis, In re. [See 5,407.]
Geiss, Bradford v. [See 1,768.]
GELL v. JACOBS [5,426].
GELSTON v. ADAMS [5,302], 2 Cranch, C. C. 440.
Gelston, Brewster v. [See 1,853.]
GEM, The [5,303], 1 Brown's Adm. 37.
GEM, The [5,304], 1 Lowell, 180.
GENERAL ASSIGNEE, Ex parte [5,305], 5 Law Rep. 362; 1 N. Y. Leg. Obs. 115.
GENERAL ASSIGNEE, Ex parte [5,306], 1 N. Y. Leg. Obs. 131.
General Cadwalader, The, Heppard v. [See 6,390.]
GENERAL CASS, The [5,307], 5 Amer. Law T. Rep. 12; 4 Chi. Leg. News, 89; 1 Brown's Adm. 334.
GENERAL C. C. PINCKNEY, The [5,308], Blatchf. Pr. Cas. 278.
GENERAL C. C. PINCKNEY, The [5,309], Blatchf. Pr. Cas. 668.
GENERAL CHAMBERLAIN, The [5,310], 1 Hask. 432.
GENERAL FRANZ SIGEL, The [5,311], 6 Ben. 550.
GENERAL GEO. G. MEADE, The [5,312], 8 Ben. 481.
GENERAL GREEN, The [5,312a], Blatchf. Pr. Cas. 40.
General Green, The. [See 6,451, 6,452.]
GENERAL GREENE, The [5,313], Blatchf. Pr. Cas. 654.
General Interest Insurance Co., Ruggles v. [See 12,119.]
General Isaac Davis, The, Sarchet v. [See 12,357.]
GENERAL JACKSON, The [5,314], 1 Spr. 554; 17 Law Rep. 324; 32 Hunt, Mer. Mag. 80.
GENERAL KNOX, The [5,315].
General Knox, The. [See 2,898.]
GENERAL McCULLOM, The [5,316].
GENERAL McCULLUM, The [5,317], 8 Ben. 437.
GENERAL McCULLUM, The [5,318], 9 Ben. 31.
General McDonald, The. [See 11,238.]
General Mut. Ins. Co., Sherwood v. [See 12,776.]
General Parkhill, The. [See 10,755a.]
GENERAL SHERIDAN, The [5,319], 2 Ben. 294.
General Sheridan, The. [See 5,078.]
GENERAL U. S. GRANT, The [5,320], 6 Ben. 465.
GENERAL WILLIAM McCANDLESS, The [5,321], 6 Ben. 223.
GENERAL WILLIAM McCANDLESS, The [5,322], 10 Ben. 453.
Genesee, The, Frerez v. [See 5,108.]
Geneva Boxer, The, Sheckler v. [See 12,735.]
Genney, Emerson v. [See 4,438.]
GENTLEMAN, The [5,323], 1 Blatchf. 196.
GENTLEMAN, The [5,324], Olc. 110.
GEORGE, In re [5,325], 1 Lowell, 409.
GEORGE, In re [5,326], 1 Lowell, 494.
George, In re. [See 14,169.]
GEORGE, The [5,327], 2 Gall. 249.
GEORGE, The [5,328], 1 Mason, 24.
GEORGE, The [5,329], 1 Sumn. 151.
GEORGE v. ARCTIC, The [5,330], Bee, 232.
George, The, Mutual Safety Ins. Co. v. [See 9,982.]
George, United States v. [See 15,197-15,199.]
George Bell, The, Guibert v. [See 5,856.]
GEORGE BURNHAM, The [5,331], 1 Hask. 381.
George Darby, The, United States v. [See 15,200.]
GEORGE FARRELL, The [5,332], 4 Ben. 316.
GEORGE GILCHRIST, The [5,333], 1 Lowell, 234.
GEORGE H. PARKER, The [5,334], 1 Flip. 606; 23 Int. Rev. Rec. 83; 9 Chi. Leg. News, 191; 2 Cin. Law Bul. 38; 2 Mich. Lawy. 12.
GEORGE KINGMAN, The [5,335], 7 Wkly. Notes Cas. 50.
GEORGE LAW, The [5,336], 3 Ben. 396.
GEORGE LAW, The [5,337], 3 Ben. 456.
George Law, The, Leitch v. [See 8,223.]
George M. Bain, Jr., The, United States v. [See 15,201.]
GEORGE M. DALLAS, The, v. NEW HAVEN, The [5,338], 35 Hunt, Mer. Mag. 455.

George Nicholaus, The, Sturtevant v. [See 13,578.]
GEORGE PRESCOTT, The [5,339], 1 Ben. 1; 2 Int. Rev. Rec. 133.
George S. Brown, The. [See 1,889, 1,890.]
George's Creek, The, Creighton v. [See 3,382.]
George's Creek, The, Reeder v. [See 11,654.]
George Skolfield, The, Burgthall v. [See 2,155.]
GEORGE S. WRIGHT, The [5,340], Deady, 591.
George Thomas, The, Fish v. [See 4,813b.]
GEORGE T. KEMP, The [5,341], 2 Lowell, 477.
GEORGETOWN v. BAKER [5,342], 2 Cranch, C. C. 291.
GEORGETOWN v. BANK OF THE UNITED STATES [5,343], 4 Cranch, C. C. 176.
GEORGETOWN v. BEATTY [5,344], 1 Cranch, C. C. 234.
Georgetown, Boothe v. [See 1,651.]
GEORGETOWN v. CHEW [5,345], 5 Cranch, C. C. 508.
Georgetown, Lenox v. [See 8,245.]
Georgetown, Nicholls v. [See 10,228.]
GEORGETOWN v. PORTER [5,346], 1 Hayw. & H. 139.
Georgetown, Pritchard v. [See 11,437.]
GEORGETOWN v. SMITH [5,347], 4 Cranch, C. C. 91.
Georgetown, Wright v. [See 18,080.]
Georgetown & A. Turnpike Co., Curtiss v. [See 3,506.]
Georgetown Bridge Co., Davis v. [See 3,637.]
Georgetown Bridge Co., United States v. [See 15,-202.]
Georgetown, Corporation of, v. United States. [See 18,281.]
GEORGETOWN TURNPIKE ROAD CO. v. CUSTIS [5,348], 1 Cranch, C. C. 585.
George Washington, The. [See 4,100.]
George Washington, The, Suarez v. [See 13,585.]
GEORGIA, The [5,349], 1 Lowell, 96.
GEORGIA v. ATKINS [5,350], 1 Abb. U. S. 22; 35 Ga. 315; 8 Int. Rev. Rec. 113; 1 Amer. Law T. Rep. U. S. Cts. 105.
GEORGIA v. ATLANTIC & G. R. CO. [5,351], 3 Woods, 434.
GEORGIA v. O'GRADY [5,352], 3 Woods, 496; 5 Cent. Law J. 465; 24 Int. Rev. Rec. 5.
GEORGIA D. LOUD, The [5,353], 8 Ben. 392.
GEORGIA INS. & TRUST CO. v. ELLICOTT [5,-354], Taney, 130.
GEORGIANA, The [5,355], 1 Lowell, 91.
Georgia Railroad & Banking Co., Pettus v. [See 11,048.]
Gerard, Hourquibee v. [See 6,733.]
Gerard, Judy v. [See 7,571.]
GERARD STUYVESANT, The [5,356], 8 Ben. 183.
GERBIER v. EMERY [5,357], 2 Wash. C. C. 413.
Gerding, Anderson v. [See 356.]
Gerhard, Gross & P. Mfg. Co. v. [See 5,843.]
Gerke, Seaverns v. [See 12,595.]
GERMAIN v. KNOX [5,358].
GERMAN-AMERICAN BANK v. THIRD NAT. BANK [5,359], 18 Alb. Law J. 252; 6 Reporter, 484; 11 Chi. Leg. News, 7; 2 Tex. Law J. 150; 7 N. Y. Wkly. Dig. 279; 24 Int. Rev. Rec. 316; 3 Cin. Law Bul. 794.
GERMANIA, The [5,360], 9 Ben. 356.
Germania Bank, Savary v. [See 12,387.]
GERMANIA INS. CO. v. LA CROSSE, Etc., PACKET CO. [5,361], 3 Biss. 501.
Germania Ins. Co. v. The Lady Pike. [See 7,985.]
Germania Ins. Co., Taylor v. [See 13,793.]
Germania Ins. Co., Weide v. [See 17,358.]
Germania Life Ins. Co., Dorn v. [See 4,005.]
GERMAN SAVINGS & LOAN SOC. v. OULTON [5,362], 1 Sawy. 695; 14 Int. Rev. Rec. 138.
GERMAN SAV. BANK, In re [5,362], 14 Int. Rev. Rec. 138.
GERMAN SAV. BANK v. ARCHBOLD [5,364], 15 Blatchf. 398; 24 Int. Rev. Rec. 413.
GERMOND v. ANTHRACITE INS. CO. [5,365], 2 Wkly. Notes Cas. 399.
GERNON v. BOCCALINE [5,366], 2 Wash. C. C. 199.
GERNON v. BOECALINE [5,367], 2 Wash. C. C. 130.
GERNON v. COCHRAN [5,368], Bee, 209.
Gernon, Cranmer v. [See 3,359.]
Gerrity, Fogarty v. [See 4,895.]
GERTRUDE, The [5,369], Blatchf. Pr. Cas. 374.
GERTRUDE, The [5,370], 3 Story, 68; 2 Ware (Dav. 176) 181; 4 Law Rep. 444.
Gertrude, The, United States v. [See 5,369.]
GETCHELL, In re [5,371], 8 Ben. 256.
GETTLESON, Ex parte [5,373], 1 Gaz. 132.
GETTLESTON, In re [5,373], 1 N. B. R. 604 (Quarto, 170); 1 Gaz. 132.
Getty, Wise v. [See 17,909.]
Getty, The Alice. [See 193.]
GETZ v. FIRST NAT. BANK OF WASHINGTON [5,374], 3 Cin. Law Bul. 141.
GEYGER'S LESSEE v. GEYGER [5,375], 2 Dall. 332.
Ghequier, Ridgeway v. [See 11,813.]
Ghequier, Ridgway v. [See 11,816.]
Ghequiere, Potts v. [See 11,346.]
GHIRARDELLI, In re [5,376], 1 Sawy. 343; 4 N. B. R. 164 (Quarto, 42).
G. H. MONTAGUE, The [5,377], 4 Blatchf. 461.
G. H. STARBUCK, The [5,378], 5 Ben. 53.
GIANT POWDER CO. v. CALIFORNIA POWDER WORKS [5,379], 3 Sawy. 448; 2 Ban. & A. 131.
Gibb, Griffin v. [See 5,819.]
GIBB v. WASHINGTON [5,380], 1 McAll. 430.
Gibbes, The J. C. [See 7,248.]
Gibboney, Clark v. [See 2,821.]
Gibboney, Dorr v. [See 4,006.]
Gibboney, Kain v. [See 7,595.]
Gibboney, Preston v. [See 11,396.]
GIBBONS v. MARTIN [5,381], 4 Sawy. 206.
GIBBONS v. SLOANE [5,382], 6 McLean, 273; 4 Amer. Law Reg. 187.
Gibbons, The Thomas. [See 13,922.]
Gibbs, Cooper v. [See 3,194.]
Gibbs, Devlin v. [See 3,842.]
GIBBS v. ELLITHORP [5,383], 1 McA. Pat. Cas. 702.
Gibbs, Fales v. [See 4,621.]
Gibbs, Field v. [See 4,766.]
GIBBS v. JOHNSON [5,384], 3 App. Com'r Pat. 255.
Gibbs, Matern v. [See 9,273.]
Gibbs, Stoddard v. [See 13,468.]
GIBBS v. TEXAS, The [5,385], Crabbe, 236.
GIBBS v. TWO FRIENDS, The [5,386], Bee, 416.
GIBBS v. USHER [5,387], Holmes, 348.
GIBERSON, Ex parte [5,388], 4 Cranch, C. C. 503.
Giberson, Stephenson v. [See 13,372.]
Gibert, United States v. [See 15,204.]
Gibney v. The Waverly. [See 17,301.]
GIBSON v. BARNARD [5,389], 1 Blatchf. 388; 1 Fish. Pat. Rep. 238.
GIBSON v. BETTS [5,390], 1 Blatchf. 163; 1 Fish. Pat. Rep. 91.
GIBSON v. CINCINNATI ENQUIRER [5,391], 2 Flip. 88; 5 Reporter, 135; 5 Cent. Law J. 446; 2 Cin. Law Bul. 268.
GIBSON v. CINCINNATI ENQUIRER [5,392], 2 Flip. 121; 5 Cent. Law J. 380; 23 Int. Rev. Rec. 392; 2 Cin. Law Bul. 244.
Gibson, Clagett v. [See 2,778.]
GIBSON v. COOK [5,393], 2 Blatchf. 144; 1 Fish. Pat. Rep. 415.
Gibson, Corbett v. [See 3,221, 3,222.]
GIBSON v. DOBIE [5,394], 5 Biss. 198; 14 N. B. R. 156.
GIBSON v. GIFFORD [5,395], 1 Blatchf. 529; 1 Fish. Pat. Rep. 366.
GIBSON v. HARRIS [5,396], 1 Blatchf. 167; 1 Fish. Pat. Rep. 115.
GIBSON v. JOHNSON [5,397], Pet. C. C. 44.
Gibson, Kirkpatrick v. [See 7,848.]
GIBSON v. LEWIS [5,398], 11 N. B. R. 247; 11 Phila. 476; 32 Leg. Int. 22.
Gibson, Prout v. [See 11,445.]
GIBSON v. RICHARDS [5,399].
GIBSON v. RICHARDS [5,399].
Gibson, Ross v. [See 12,074.]
GIBSON v. SCULL [5,400a], Hempst. 36.
GIBSON v. STEVENS [5,401], 3 McLean, 551.
GIBSON v. VAN DRESAR [5,402], 1 Blatchf. 532; 1 Fish. Pat. Rep. 369.
GIBSON v. WILLIAMS [5,403], Brunner, Col. Cas. 19; 2 Hayw. N. C. 281.
GIDDINGS, Ex parte [5,404], 2 Gall. 55.
GIDDINGS v. DODD [5,405], 1 Dill. 116; 4 N. B. R. 657.

[Federal Case numbers are given in brackets.]

GIER v. GREGG [5,406], 4 McLean, 202.
Gier, Gregg v. [See 5,799.]
GIES, In re [5,407], 12 N. B. R. 179; 7 Chi. Leg. News, 379; 21 Int. Rev. Rec. 310; 1 N. Y. Wkly. Dig. 101.
GIFFORD, In re [5,408], 16 N. B. R. 135.
Gifford, Gibson v. [See 5,395.]
GIFFORD v. KOLLOCK [5,409], 3 Ware, 45; 19 Law Rep. 21.
Gifford, Swift v. [See 13,696.]
Gifford, The F. W. [See 5,166.]
GILBERT, In re [5,410], 1 Lowell, 340; 3 N. B. R. 152 (Quarto, 37).
GILBERT, In re [5,411], 1 N. Y. Leg. Obs. 327.
Gilbert, Benchley v. [See 1,291.]
Gilbert, Clark v. [See 2,822.]
Gilbert, Cutting v. [See 3,519.]
GILBERT v. GAUGAR [5,412], 8 Biss. 214; 10 Chi. Leg. News, 340.
Gilbert, Packard v. [See 10,651.]
Gilbert, Peabody v. [See 10,868.]
Gilbert, Potts v. [See 11,347.]
GILBERT v. PRIEST [5,413], 7 Alb. Law J. 119.
Gilbert, Sisson v. [See 12,912.]
Gilbert, United States v. [See 15,205.]
GILBERT v. VAN ARMAN [5,414], 1 Flip. 421; 7 Chi. Leg. News, 175.
GILBERT v. WARD [5,415], 4 Cranch, C. C. 171.
GILBERT & BARKER MFG. CO. v. BUSSING [5,-416], 12 Blatchf. 426; 1 Ban. & A. 621; 8 O. G. 144.
Gilbert Green, The, Bucknor v. [See 2,099.]
Gilbert & Barker Mfg. Co., Clough v. [See 2,906.]
Gilbert & Barker Mfg. Co., Munson v. [See 9,934.]
GILBERT & BARKER MFG. CO. v. TIRRELL [5,-417], 12 Blatchf. 144; 1 Ban. & A. 315; 8 O. G. 2; Merw. Pat. Inv. 214.
GILBERT & BARKER MFG. CO. v. WALWORTH MFG. CO. [5,418], 2 Ban. & A. 271; 9 O. G. 746; 1 Law & Eq. Rep. 420.
GILBOUGH v. NORFOLK & P. R. CO. [5,419], 1 Hughes, 410.
GILCHRIST v. COLLECTOR OF CHARLESTON [5,420], 1 Hall, Law J. 429; Brunner, Col. Cas. 249; 5 Hughes, 1.
GILCHRIST v. LITTLE ROCK [5,421], 1 Dill. 261.
Gilchrist, The George. [See 5,333.]
GILDAY, In re [5,422], 7 Ben. 491; 11 N. B. R. 108.
GILE, In re [5,423], 5 Law Rep. 224; 1 N. Y. Leg. Obs. 87.
GILES v. CYNTHIA, The [5,424], 1 Pet. Adm. 203.
Gilham, Welford v. [See 17,376.]
GILKERSON v. HAMILTON [5,424a], 1 Amer. Law Mag. 35.
Gill, Atterbury v. [See 638.]
Gill, Buck v. [See 2,080.]
GILL v. CONTINENTAL, The [5,425], 8 West. Jur. 232.
GILL v. JACOBS [5,426], Brunner, Col. Cas. 268; 6 Hall, Law J. 117.
GILL v. PATTEN [5,427], 1 Cranch, C. C. 114.
GILL v. PATTEN [5,428], 1 Cranch, C. C. 465.
GILL v. PATTON [5,429], 1 Cranch, C. C. 143.
GILL v. PATTON [5,430], 1 Cranch, C. C. 188.
Gill, Sawyer v. [See 12,399.]
GILL v. STEBBINS [5,431], 2 Paine, 417.
GILL v. STEBBINS [5,432], 2 Paine, 454.
Gill, Stevens v. [See 13,398.]
Gill, Wells v. [See 17,393-17,395.]
GILLELAND v. MARTIN [5,433], 3 McLean, 490.
Gilleland, Pennock v. [See 10,942.]
Gilles, Brown v. [See 2,007.]
Gillespie, Beecher v. [See 1,224.]
GILLESPIE v. CUMMINGS [5,434], 3 Sawy. 259; 1 Ban. & A. 587.
Gillespie v. The Leonard. [See 8,256.]
GILLESPIE v. McKNIGHT [5,435], 3 N. B. R. 468 (Quarto, 117).
GILLESPIE v. REED [5,436], 3 McLean, 377.
GILLET v. PIERCE [5,437], 1 Brown's Adm. 553.
Gillett, Beecher v. [See 1,225.]
Gillett, Lamb v. [See 8,016.]
Gillette, Gaffney v. [See 5,168.]
GILLEY, In re [5,438], 2 Lowell, 250.
Gillies v. Cone. [See 3,095.]
Gillies, United States v. [See 15,206.]
GILLIGAN v. WINGED RACER, The [5,439], 43 Hunt, Mer. Mag. 69.
Gillingham, Ogden v. [See 10,456.]
Gillis, United States v. [See 15,207.]
GILLIS v. VAN NESS [5,440], 1 Cranch, C. C. 369.
Gillum, The William. [See 17,693.]
GILMAN v. BROWN [5,441], 1 Mason, 191.
GILMAN v. HERBERT [5,442], 2 Cranch, C. C. 58.
GILMAN v. ILLINOIS, Etc., TEL. CO. [5,443], 1 McCrary, 170.
GILMAN v. KING [5,444], 2 Cranch, C. C. 48.
GILMAN v. LIBBEY [5,445], 4 Cliff. 447.
Gilman, Potomac Company v. [See 11,317.]
GILMAN v. TYLER, The [5,446], 3 Woods, 111.
Gilman, Webster v. [See 17,335.]
Gilman, Wonson v. [See 17,933.]
Gilmartin, Godfrey v. [See 5,498.]
Gilmore, Fulton v. [See 5,154.]
GILMORE v. GOODRICH [5,447].
GILMORE v. NORTH AMERICAN LAND CO. [5,-448], Pet. C. C. 460.
Gilmour, Minge v. [See 9,631.]
Gilmour, United States v. [See 15,208.]
GILOOLEY v. PENNSYLVANIA R. CO. [5,448a].
GILOOLEY v. PENNSYLVANIA R. CO. [5,448b].
Gilpin, Bloomer v. [See 1,558.]
GILPIN v. CRANDELL [5,449], 2 Cranch, C. C. 57.
Gilpin, Edgerton v. [See 4,280.]
Gilpin v. O'Neill. [See 3,924.]
GILPIN v. OXLEY [5,450], 1 Cranch, C. C. 563.
GILPIN v. PLUMMER [5,451], 2 Cranch, C. C. 54.
Gilpin, The John. [See 7,343-7,345.]
GILPINS v. CONSEQUA [5,452], Pet. C. C. 85; 3 Wash. C. C. 184.
Gilson, Fresh v. [See 5,112.]
GILTNER v. GORHAM [5,453], 4 McLean, 402; 6 West. Law J. 49.
Gimbel, Mayer v. [See 9,343.]
GIMMY v. CULVERSON [5,454], 5 Sawy. 605.
GINDRAT v. DANE [5,455], 4 Cliff. 260.
GIPSEY, The [5,456], Blatchf. Pr. Cas. 126.
GIRARD, Ex parte [5,457], 3 Wall. Jr. 263; 19 Leg. Int. 412.
Girard, Astor v. [See 595.]
Girard, Hourquebie v. [See 6,732.]
Girard, McCulloch v. [See 8,737.]
GIRARD v. PHILADELPHIA [5,458], 7 Wall. (74 U. S.) 1.
GIRARD v. PHILADELPHIA [5,459], 2 Wall. Jr. 301; 11 Leg. Int. 74.
GIRARD v. WARE [5,460], Pet. C. C. 142.
GIRARD FIRE & MARINE INS. CO. v. GUERARD [5,461], 3 Woods, 427.
Girard Fire & Marine Ins. Co., Yeomans v. [See 18,136.]
Girard Life Insurance, Annuity & Trust Co., Hidelt v. [See 6,464.]
GIRARDEY v. MOORE [5,462], 3 Woods, 397; 4 Amer. Law T. Rep. (N. S.) 387; 23 Int. Rev. Rec. 294; 5 Cent. Law J. 78; 1 Month. Jur. 344.
Girard's Heirs. [See 5,457.]
Gird, Simmons v. [See 12,867.]
GIRO v. ALEXANDER WISE, The [5,463].
Gist, Tabb v. [See 13,719.]
Gitchell, In re. [See 5,371.]
Gitma, United States v. [See 15,209.]
Gittings, Birch v. [See 1,426.]
GITTINGS v. BURCH [5,464], 2 Cranch, C. C. 97.
GITTINGS v. CRAWFORD [5,465], Taney, 1.
Gittings, Thomas v. [See 13,897.]
GIVEEN v. SMITH [5,466], 1 Hask. 296.
GIVEEN v. SMITH [5,467], 1 Hask. 358.
Given, United States v. [See 15,210, 15,211.]
Givings, United States v. [See 15,212.]
Gjessing v. The Hansa. [See 6,036-6,038.]
Glab, United States v. [See 15,213.]
Gladding, Catlin v. [See 2,520.]
Gladding, Childs v. [See 2,678.]
GLADDING v. CONSTANT [5,468], 1 Spr. 73.
Gladding, Stevens v. [See 13,399, 13,400.]
Gladiolus, The, Albany Dredging Co. v. [See 132.]
GLADSTONE v. CHAMBERLAIN [5,469], 1 Amer. Law Rev. 587.
GLADSTONE v. CHAMBERLAIN [5,470], 7 Blatchf. 207.
GLADSTONE v. CHAMBERLAIN [5,471], 4 Int. Rev. Rec. 130.

[Federal Case numbers are given in brackets.]

Gladwish, The W. E. [See 17,355.]
GLAMORGAN, The [5,472], 1 Spr. 273.
Glamorgan, The, United States v. [See 15,214.]
GLANCY v. MOORE [5,473].
GLASER, In re [5,474], 2 Ben. 180; 1 Amer. Law T. Rep. Bankr. 57; 1 N. B. R. 336 (Quarto, 73); 15 Pittsb. Leg. J. 265.
GLASER, In re [5,475], 1 N. B. R. 241 (Quarto, 18).
GLASER, In re [5,476], 2 N. B. R. 398 (Quarto, 129).
Glasgow, Hotchkiss v. [See 6,717.]
Glass, Leslie v. [See 8,275.]
GLASSELL'S ADM'R v. WILSON'S ADM'R [5,477], 4 Wash. C. C. 59.
GLAUCUS, The [5,478], 1 Lowell, 366.
Glaucus, The, Ayer v. [See 683.]
Gleason, Codwise v. [See 2,938, 2,939.]
Gleason, United States v. [See 15,215, 15,216.]
GLEN, The [5,479], Blatchf. Pr. Cas. 375.
Glen, Main v. [See 8,973.]
Glendale Elastic Fabrics Co., Smith v. [See 13,050.]
Glen Iron Works. [See 17,636.]
Glenn, Atkinson v. [See 610.]
GLENN v. HUMPHREYS [5,480], 4 Wash. C. C. 424.
Glenn, Studer v. [See 13,558.]
GLENN v. UNITED STATES [5,481], Hempst. 394.
Glenn, United States v. [See 15,217.]
Glenny v. The Globe. [See 5,484.]
Glens Falls Ins. Co., Davey v. [See 3,590.]
Glens Falls Paper Co., American Wood-Paper Co. v. [See 321, 321a.]
GLIDDEN v. MANUFACTURERS' INS. CO. [5,482], 1 Sumn. 232.
Glide, The. [See 2,159.]
Glidewell, Lowenstein v. [See 8,575.]
GLOBE, The [5,483], 2 Blatchf. 427; 15 Law Rep. 421.
GLOBE, The [5,484], 13 Law Rep. 488; 3 Amer. Law J. (N. S.) 337; 8 West. Law J. 241.
GLOBE, The [5,485], 11 N. Y. Leg. Obs. 327; 35 Hunt, Mer. Mag. 447.
Globe, The, Flora v. [See 5,484.]
Globe, The, Scharlock v. [See 12,439.]
Globe, The, The Splendid v. [See 5,485.]
Globe Bank, Barney v. [See 1,031.]
GLOBE INS. CO. v. CLEVELAND INS. CO. [5,486], 14 N. B. R. 311; 8 Chi. Leg. News, 258; 4 Amer. Law Rec. 652; 13 Alb. Law J. 305.
Globe Mut. Life Ins. Co., Cobb v. [See 2,921.]
Globe Mut. Life Ins. Co., Garber v. [See 5,214.]
Globe Mut. Life Ins. Co., Winindger v. [See 17,874.]
Glocester, The, Mahoon v. [See 8,970.]
Gloucester, The, Keane v. [See 7,632.]
Gloucester Co., Sickles v. [See 12,840.]
GLOUCESTER INS. CO. v. YOUNGER [5,487], 2 Curt. 322; 1 Spr. 236; 17 Law Rep. 617.
Gloucester Mfg. Co., Sickles v. [See 12,841.]
Gloucester Marine Ins. Co., Younger v. [See 18,183.]
GLOVER, The [5,488], Brown's Adm. 166; 1 Flip. 441; 6 Chi. Leg. News, 125; 6 Alb. Law J. 422.
Glove, The, Glenny v. [See 5,484.]
Glover, Baker v. [See 769.]
Glover, Johnson v. [See 7,385.]
Glover, Owen v. [See 10,629, 10,630.]
Glover, Ringgold v. [See 11,845.]
Glover, Smith v. [See 13,051.]
Glover, United States v. [See 15,218.]
Gloyd, McCleod v. [See 8,697.]
Glyn, In re. [See 6,322.]
Glyn, Poland v. [See 11,243.]
Gobbold, Lane v. [See 8,051.]
GOBLE v. DELAWARE, L. & W. R. CO. [5,488a], 3 N. J. Law J. 176.
Godard, Root v. [See 12,037.]
Godbold, United States v. [See 15,219.]
GODDARD v. ARTHUR [5,489], 13 Blatchf. 438; 22 Int. Rev. Rec. 257.
Goddard, Bank of the United States v. [See 917.]
Goddard, Barrett v. [See 1,046.]
Goddard, Bowley v. [See 1,736.]
GODDARD v. COFFIN [5,490], 2 Ware (Dav. 381) 382.
GODDARD v. CUNNINGHAM [5,490a], 16 Reporter, 7.
GODDARD v. DAVIS [5,491], 1 Cranch, C. C. 33.
Goddard, Foster v. [See 4,969, 4,970.]
Goddard, Langdon v. [See 8,060, 8,061.]
GODDARD v. MAXWELL [5,492], 3 Blatchf. 131.
GODDARD v. MOCKBEE [5,493], 5 Cranch, C. C. 666.
Goddard, Salmon Falls Mfg. Co. v. [See 12,263.]
Goddard, Stein v. [See 13,353.]
GODDARD v. TANGIER, The, [5,494], Brunner, Col. Cas. 602; 21 Law Rep. 12.
Goddard v. The Tangier. [See 12,265-12,267.]
Goddard, United States v. [See 15,220.]
GODDARD v. WEAVER [5,495], 1 Woods, 257; 6 N. B. R. 440.
GODDEFROY v. LIVE YANKEE, The, [5,496], Hoff. Op. 433.
Godfrey, Ex parte. [See 13,513.]
GODFREY v. BEARDSLEY [5,497], 2 McLean, 412.
Godfrey, Contee v. [See 3,140.]
GODFREY v. GILMARTIN [5,498], 2 Blatchf. 340.
Godfrey, Morse v. [See 9,856.]
Godley, United States v. [See 15,221.]
GODY v. PLANT [5,499], 4 Cranch, C. C. 670.
Goe, Savary v. [See 12,388.]
GOEDDE, In re [5,500], 6 N. B. R. 295.
GOEDGEN v. MANITOWOC COUNTY [5,501], 2 Biss. 328; 2 Chi. Leg. News, 333; 5 Amer. Law Rev. 188.
GOELET v. ELIZABETH [5,502], 3 N. J. Law J. 14.
GOESELE v. BIMELER [5,503], 5 McLean, 223; 8 West. Law J. 385.
Goetinger, Geier v. [See 5,299.]
GOFF v. STAFFORD [5,504], 14 O. G. 748; 3 Ban. & A. 610.
GOHEEN v. TEXAS RY. CO. [5,505], 3 Cent. Law J. 382.
GOHEN v. TEXAS PAC. RY. CO. [5,506], 2 Woods, 346.
GOHEN v. TEXAS PAC. RY. CO. [5,507], 3 Cent. Law J. 382; 1 Tex. Law J. 97; 23 Int. Rev. Rec. 393.
Gold, Wood v. [See 17,947.]
GOLD & SILVER ORE SEPARATING CO. v. UNITED STATES DISINTEGRATING ORE CO. [5,508], 6 Blatchf. 307; 3 Fish. Pat. Cas. 489.
Gold & Stock Tel. Co., Colgate v. [See 2,991, 2,992.]
Goldback, United States v. [See 15,222.]
Goldberg, United States v. [See 15,223.]
Golden, Fulton v. [See 5,155.]
GOLDEN v. PRINCE [5,509], 3 Wash. C. C. 313; 5 Hall, Law J. 502.
Golden, Richardson v. [See 11,782.]
Golden Gate, The, Ashbrook v. [See 574.]
Golden Gate, The, Hill v. [See 6,491, 6,492.]
Golden Gate, The, McGuire v. [See 8,815.]
Golden Rose, The, Boreal v. [See 1,658.]
Golden State, The, Ruddy v. [See 12,111.]
GOLDER, In re [5,510], 2 Hask. 28.
GOLDHAWK v. DUANE [5,511], 2 Wash. C. C. 323.
GOLD HILL v. CALEDONIA SILVER MIN. CO. [5,512], 5 Sawy. 575.
GOLD HUNTER, The [5,513], 1 Blatchf. & H. 300
GOLDING v. GOOD [5,514].
Golding, United States v. [See 15,224.]
Goldman, Strong v. [See 13,542.]
Goldman, United States v. [See 15,225.]
GOLD MOUNTAIN MIN. CO., In re [5,515], 3 Sawy. 601; 15 N. B. R. 545.
GOLDSBOROUGH v. BAKER [5,516], 3 Cranch, C. C. 48.
GOLDSBOROUGH v. JONES [5,517], 2 Cranch, C. C. 205.
GOLDSBOROUGH v. McWILLIAMS [5,518], 2 Cranch, C. C. 401.
GOLDSBOROUGH v. UNITED STATES [5,519], Taney, 80.
GOLDSCHMIDT, In re [5,520], 3 Ben. 379; 3 N. B. R. 164 (Quarto, 41).
Goldsmith v. The Bay State. [See 1,148.]
GOLDSMITH v. GREVE [5,521], Syllabi, 182.
GOLDSMITH v. HAPGOOD [5,522], Holmes, 454.
Goldsmith, Knagg v. [See 7,872.]
Goldsmith, The L. B. [See 8,152.]
GOLDSTEIN, In re [5,523], 52 How. Pr. 426.
Goldstein's Sureties, United States v. [See 15,226.]
Goliah, The, Nelson v. [See 10,106.]
GOLSON v. NIEHOFF [5,524], 2 Biss. 434; 5 N. B. R. 56.
GOMEZ DE CASTRO, The [5,525], 10 Ben. 540.
GONDAR, The [5,526], Blatchf. Pr. Cas. 266.
GONDAR, The [5,527], Blatchf. Pr. Cas. 649.
GONDAR, The [5,528], Blatchf. Pr. Cas. 669.
GONG BELL CO. v. CLARK [5].

[Federal Case numbers are given in brackets.]

GONZALES v. MINOR [5,530], 2 Wall. Jr. 348.
GOOD v. DAVIS [5,530a], Hempst. 16.
GOOD v. DODGE [5,531], 16 Pittsb. Leg. J. 84; 3 Pittsb. Rep. 557.
Good, Golding v. [See 5,514.]
GOOD v. SPRIGG [5,532], 2 Cranch, C. C. 172.
Goodale, Barclay v. [See 972.]
Goodall, Duane v. [See 4,105.]
GOODALL v. TUTTLE [5,533], 3 Biss. 219; 5 Amer. Law T. Rep. U. S. Cts. 240; 7 N. B. R. 193; 7 West. Jur. 32; 4 Chi. Leg. News, 473, 485.
Goodall, etc., Steamship Co., Lord v. [See 8,506.]
Goodell, Clute v. [See 2,911.]
Goodell, Spafford v. [See 13,197.]
GOODENOUGH v. WARREN [5,534], 5 Sawy. 494; 11 Chi. Leg. News, 289; 7 Reporter, 772; 25 Int. Rev. Rec. 279; 7 Amer. Law Rec. 751.
GOODENOW v. MILLIKEN [5,535], 1 Hask. 348.
GOODFELLOW, In re [5,536], 1 Lowell, 510; 3 N. B. R. 452 (Quarto, 114); 3 Amer. Law T. Rep. Bankr. 69; 1 Amer. Law T. Rep. Bankr. 179.
GOODFELLOW v. MUCKEY [5,537], 1 McCreary, 238.
Good Friends, The, United States v. [See 15,227.]
GOODHUE v. BARTLETT [5,538], 5 McLean, 186.
GOODING v. VARN [5,539], Chase, 286.
Goodloe, Pintard v. [See 11,171.]
GOODMAN, In re [5,540], 5 Biss. 401; 8 N. B. R. 380.
Goodman, Kampshall v. [See 7,605.]
Goodman, McFarland v. [See 8,789.]
Goodman v. New York Guaranty, etc., Co. [See 18,-125.]
Goodenough v. Warren. [See 5,534.]
GOODRICH, In re [5,541], 4 Dill. 230.
Goodrich, Bailey v. [See 735.]
Goodrich, Barnum v. [See 1,036.]
GOODRICH v. CHICAGO [5,542], 4 Biss. 18.
GOODRICH v. DOBSON [18,297], 43 Conn. 576.
GOODRICH v. DOMINGO, The [5,543], 1 Sawy. 182.
Goodrich, Gilmore v. [See 5,447.]
Goodrich, Gossler v. [See 5,631.]
Goodrich, Greenleaf v. [See 5,778.]
GOODRICH v. HUNTON [5,544], 2 Woods, 137.
GOODRICH v. NORRIS [5,545], 1 Abb. Adm. 196.
Goodrich v. Packard. [See 5,546.]
GOODRICH v. REMINGTON [5,546], 6 Blatchf. 515.
Goodrich Transp. Co., United States v. [See 15,228.]
GOODRIDGE, In re [5,547], 2 N. B. R. 324 (Quarto, 105).
Goodridge, Drake v. [See 4,062, 4,063.]
GOODSELL v. BRIGGS [5,548], Holmes, 299.
GOODWIN, In re [5,549], 5 Dill. 140; 17 N. B. R. 257.
GOODWIN, In re [5,550], 3 N. B. R. 417 (Quarto, 106).
Goodwin, Betts v. [See 1,374.]
GOODWIN v. CARTWRIGHT [5,551], 2 Hask. 340.
GOODWIN v. C. DURANT, The [5,552], 43 Hunt, Mer. Mag. 70.
Goodwin, Friedman v. [See 5,119.]
Goodwin, Leef v. [See 8,207.]
Goodwin, Lyell v. [See 8,616, 8,617.]
GOODWIN v. LYNN [5,553], 4 Wash. C. C. 714.
Goodwin, Ryan v. [See 12,186.]
GOODWIN v. UNITED STATES [5,554], 2 Wash. C. C. 493.
Goodwin, United States v. [See 15,229.]
GOODYEAR v. ALLYN [5,555], 6 Blatchf. 33; 3 Fish. Pat. Cas. 374; 1 Amer. Law T. Rep. U. S. Cts. 94.
Goodyear, Atlantic Giant Powder Co. v. [See 623.]
GOODYEAR v. BERRY [5,556], 3 Fish. Pat. Cas. 439; 2 Bond, 189.
GOODYEAR v. BEVERLY RUBBER CO. [5,557], 1 Cliff. 348.
GOODYEAR v. BISHOP [5,558], 4 Blatchf. 438; 2 Fish. Pat. Cas. 96.
GOODYEAR v. BISHOP [5,559], 2 Fish. Pat. Cas. 154.
GOODYEAR v. BLAKE [5,560].
GOODYEAR v. BOURN [5,561], 3 Blatchf. 266.
GOODYEAR v. CARY [5,562], 4 Blatchf. 271; 1 Fish. Pat. Cas. 424.
GOODYEAR v. CENTRAL R. CO. OF N. J. [5,563], 1 Fish. Pat. Cas. 626; 2 Wall. Jr. 356.
GOODYEAR v. CHAFFEE [5,564], 3 Blatchf. 268.
GOODYEAR v. CONGRESS RUBBER CO. [5,565], 3 Blatchf. 449.
GOODYEAR v. DAY [5,566].
GOODYEAR v. DAY [5,567].
GOODYEAR v. DAY [5,568], 1 Blatchf. 565; 1 Fish. Pat. Rep. 385.
GOODYEAR v. DAY [5,569], 2 Wall. Jr. 283; Merw. Pat. Inv. 655.
Goodyear, Day v. [See 3,678.]
GOODYEAR v. DUNBAR [5,570], 1 Fish. Pat. Cas 472; 3 Wall. Jr. 310; 18 Leg. Int. 397.
GOODYEAR v. EVANS [5,571], 6 Blatchf. 121; 3 Fish. Pat. Cas. 390.
GOODYEAR v. HILLS [5,571a], 3 Fish. Pat. Cas. 134.
GOODYEAR v. HONSINGER [5,572], 2 Biss. 1; 3 Fish. Pat. Cas. 147.
GOODYEAR v. HULLIHEN [5,573], 2 Hughes. 492; 3 Fish. Pat. Cas. 251.
Goodyear v. Lunsford. [See 5,573.]
GOODYEAR v. McBURNEY [5,574], 3 Blatchf. 32.
GOODYEAR v. MALLEC [5,575].
GOODYEAR v. MATHEWS [5,576], 1 Paine, 300; 1 Robb, Pat. Cas. 50.
GOODYEAR v. MULLEE [5,577]; 5 Blatchf. 429; 3 Fish. Pat. Cas. 209.
GOODYEAR v. MULLEE [5,578], 5 Blatchf. 463; 3 Fish. Pat. Cas. 259.
GOODYEAR v. MULLEE [5,579], 3 Fish. Pat. Cas. 420.
GOODYEAR v. NEW YORK GUTTA PERCHA, Etc., CO. [5,580], 2 Fish. Pat. Cas. 312.
GOODYEAR v. PHELPS [5,581], 3 Blatchf. 91.
GOODYEAR v. PROVIDENCE RUBBER CO. [5,583].
GOODYEAR v. PROVIDENCE RUBBER CO. [5,583]. 2 Cliff. 351; 2 Fish. Pat. Cas. 499.
GOODYEAR v. RUST [5,584], 6 Blatchf. 229; 3 Fish. Pat. Cas. 456.
GOODYEAR v. TOBY [5,585], 6 Blatchf. 130.
GOODYEAR v. UNION INDIA RUBBER CO. [5,586], 4 Blatchf. 63.
GOODYEAR v. WAIT [5,587], 5 Blatchf. 468; 3 Fish. Pat. Cas. 242.
Goodyear, Warner v. [See 17,183.]
Goodyear v. Wingerter. [See 5,573.]
GOODYEAR & N. E. CAR-SPRING CO. v. ELASTIC CAR-SPRING CO. [5,588].
Goodyear Dental Vulcanite Co. v. Benjamin. [See 5,597.]
Goodyear Dental Vulcanite Co., Celluloid Mfg. Co. v. [See 2,543.]
GOODYEAR DENTAL VULCANITE CO. v. DAVIS [5,589], 3 Ban. & A. 115; 12 O. G. No. 14, p. 1.
Goodyear Dental Vulcanite Co. v. Dickinson. [See 5,594.]
GOODYEAR DENTAL VULCANITE CO. v. FLAGG [5,590], 9 O. G. 153.
GOODYEAR DENTAL VULCANITE CO. v. GARDINER [5,591], 3 Cliff. 408; 4 Fish. Pat. Cas. 224.
GOODYEAR DENTAL VULCANITE CO. v. GARDNER [5,592].
Goodyear Dental Vulcanite Co., Gardner v. [See 5,228.]
GOODYEAR DENTAL VULCANITE CO. v. GATES [5,593].
Goodyear Dental Vulcanite Co. v. Ireland. [See 5,597.]
Goodyear Dental Vulcanite Co. v. Lowe. [See 5,594.]
GOODYEAR DENTAL VULCANITE CO. v. OSGOOD [5,594], 13 O. G. 325; 2 Ban. & A. 529.
Goodyear Dental Vulcanite Co. v. Perry. [See 5,597.]
GOODYEAR DENTAL VULCANITE CO. v. PRETERRE [5,595].
GOODYEAR DENTAL VULCANITE CO. v. PRÊTERRE [5,596], 15 Blatchf. 274; 3 Ban. & A. 471; 14 O. G. 346.
GOODYEAR DENTAL VULCANITE CO. v. ROOT [5,597], 1 Ban. & A. 384; 6 O. G. 154.
Goodyear Dental Vulcanite Co. v. Schemerhorn. [See 5,597.]
GOODYEAR DENTAL VULCANITE CO. v. SMITH [5,598], Holmes, 354; 5 O. G. 585; 1 Ban. & A. 201.
GOODYEAR DENTAL VULCANITE CO. v. STOCKTON [5,599.]
GOODYEAR DENTAL VULCANITE CO. v. VAN ANTWERP [5,600], 9 O. G. 497; 2 Ban. & A. 252.
GOODYEAR DENTAL VULCANITE CO. v. WHITE [5,601], 17 Blatchf. 5; 4 Ban. & A. 437; 8 Reporter, 423.
GOODYEAR DENTAL VULCANITE CO. v. WHITE [5,602], 2 N. J. Law J. 150.

[Federal Case numbers are given in brackets.]

GOODYEAR DENTAL VULCANITE CO. v. WILLIS [5,603], 1 Flip. 388; 1 Ban. & A. 568; 7 O. G. 41.
Goodyear Rubber Co., Gutta Percha & Rubber Mfg. Co. v. [See 5,879.]
Goody Friends, The, Western Ins. Co. v. [See 17,-436.
GOOLD, In re [5,604], 2 Hask. 34.
Gooseley, United States v. [See 15,230.]
Gorden, Carson v. [See 2,463.]
GORDON v. ANTHONY [5,605], 16 Blatchf. 234; 4 Ban. & A. 248; 16 O. G. 1135.
Gordon, Brownell v. [See 2,039.]
GORDON v. COOLIDGE [5,606], 1 Sumn. 537.
Gordon, Cooper v. [See 3,195.]
GORDON v. DOOLEY [5,607], 3 Hughes, 182.
Gordon, Harden v. [See 6,047.]
Gordon, Hines v. [See 18,302.]
GORDON v. HOBART [5,608], 2 Story, 243.
GORDON v. HOBART [5,609], 2 Sumn. 401.
GORDON v. HOLIDAY [5,610], 1 Wash. C. C. 285.
Gordon, James v. [See 7,181.]
GORDON v. KERR [5,611], 1 Wash. C. C. 322.
GORDON v. LEWIS [5,612], 1 Sumn. 525.
GORDON v. LEWIS [5,613], 2 Sumn. 143.
GORDON v. LEWIS [5,614], 2 Sumn. 628.
GORDON v. LINDO [5,231].
GORDON v. LINDO [5,616], 1 Cranch, C. C. 588.
GORDON v. MARY J. VAUGHAN, The, and TELEGRAPH, The [5,617].
GORDON v. MARY VAUGHAN, The [5,618], 8 Int. Rev. Rec. 114.
GORDON v. RIDDLE [5,619], 1 Cranch, C. C. 329.
GORDON v. SCOTT [5,620], 2 N. B. R. 86 (Quarto, 28); 3 Pittsb. Rep. 109; 7 Amer. Law Reg. (N. S.) 749; 6 Phila. 484; 25 Leg. Int. 276; 15 Pittsb. Leg. J. 542; 1 Amer. Law T. Rep. Bankr. 99.
Gordon, Smith v. [See 13,052.]
GORDON v. SOUTH FORK CANAL CO. [5,621], 1 McAll. 513.
Gordon, South-Fork Canal Co. v. [See 13,189.]
Gordon v. Scott. [See 5,620.]
Gordon, Sunday v. [See 13,616.]
Gordon, United States v. [See 15,231-15,234a.]
Gordon, Virginia v. [See 16,961.]
Gore, The, Dickenson v. [See 3,893.]
GORGAS, The [5,622], 10 Ben. 541.
GORGAS, The [5,623], 10 Ben. 666.
Gorgas, The E. W. [See 4,585, 7,248.]
Gorgoza, Stewart v. [See 13,428.]
Gorgus, The E. W. [See 4,586.]
GORHAM, In re [5,624], 9 Biss. 23; 18 N. B. R. 419; 11 Chi. Leg. News, 58; 26 Pittsb. Leg. J. 112.
GORHAM, In re [7,537], 2 N. Y. Leg. Obs. 388.
Gorham, Giltner v. [See 5,453.]
Gorham, Lyndon v. [See 8,640.]
GORHAM v. MIXTER [5,626], Brunner, Col. Cas. 327; 46 Jour. Fr. Inst. 254; 1 Amer. Law J. (N. S.) 539; 19 Hunt, Mer. Mag. 296; 5 West. Law J. 525.
Gorham, Overton v. [See 10,626.]
Gorham, United States v. [See 15,235.]
GORHAM MFG. CO. v. WHITE [5,627], 7 Blatchf. 513; Fent. Pat. 138; 2 Whitm. Pat. Cas. 392.
Gorham, The Joseph. [See 7,537.]
GORMAN, Ex parte [5,628], 4 Cranch, C. C. 572.
Gorman, Kennedy v. [See 7,702.]
Gorman, Lenox v. [See 8,246.]
GORMAN v. MARSTELLER [5,629], 2 Cranch, C. C. 311.
Gorman, United States v. [See 15,236, 15,237.]
GORMLEY v. SMITH [18,298], 2 Hayw. & H. 202.
Gorrell, Prevost v. [See 11,400-11,405.]
Gorsline, King v. [See 7,796.]
GOSHORN v. ALEXANDER [5,630], 2 Bond, 158.
Goslee v. Shute. [See 8,958.]
Gosler, Union Bank of Georgetown v. [See 14,358.]
Goss, Bucknam v. [See 2,097.]
Goss & P. Mfg. Co. v. Gerhard. [See 5,843.]
Gossler, Delaware Mut. Safety Ins. Co. v. [See 3,-766.]
GOSSLER v. GOODRICH [5,631], 3 Cliff. 71.
Goszler, Mackall v. [See 8,835.]
GOTTFRIED v. BARTHOLOMAE [5,632], 8 Biss. 219; 3 Ban. & A. 308; 13 O. G. 1128; Merw. Pat. Inv. 167; 10 Chi. Leg. News, 388; 6 Reporter, 390.
GOTTFRIED v. PHILLIP BEST BREWING CO. [5,633], 17 O. G. 675; 5 Ban. & A. 4.
Gotzian, Owens v. [See 10,634.]
Goughnour, United States v. [See 15,238.]
GOUGHRAN v. ONE HUNDRED AND FIFTY-SEVEN TONS OF COAL [5,634].
GOULD v. BALLARD [5,635], 3 Ban. & A. 324; 13 O. G. 1081; Merw. Pat. Inv. 166.
Gould, United States ex rel., Brown v. [See 1,862.]
GOULD v. CHRISTIANSON [5,636], 1 Blatchf. & H. 507.
Gould, Cox v. [See 3,301.]
GOULD v. GOULD [5,637], 3 Story, 516.
GOULD v. HAMMOND [5,638], 1 McAll. 235.
GOULD v. HASTINGS [5,639], 5 Hunt, Mer. Mag. 74.
Gould, Lewis v. [See 8,324.]
Gould, Little v. [See 8,394, 8,395.]
GOULD v. LITTLE [8,395].
Gould, United States v. [See 15,239.]
Gould, Washburn v. [See 17,214.]
Gould, Woodward v. [See 18,004.]
Gould, The Jay. [See 7,245.]
GOULDING v. FENWICK [5,641], 2 Cranch, C. C. 350.
Goulding, Palyart v. [See 10,701.]
GOULD'S MFG. CO. v. COWING [5,642], 12 Blatchf. 243; 1 Ban. & A. 375; 8 O. G. 277.
GOULD'S MFG. CO. v. COWING [5,643], 14 Blatchf. 315; 3 Ban. & A. 75; 12 O. G. 942.
Gourdin, Einstein v. [See 4,320.]
Gourdin, Strain v. [See 13,521.]
Goure, United States v. [See 15,240.]
Gourlay, United States v. [See 15,241.]
GOVE v. BOLD RUNNER, The [5,644].
GOVERNOR, The [5,645], 1 Abb. Adm. 108.
Governor, The, Wakefield v. [See 17,049.]
GOVERNOR CAREY, The [5,645a], 2 Hask. 487.
GOVERNOR CUSHMAN, The [5,646], 1 Abb. U. S. 14; 1 Biss. 490; 5 Amer. Law Reg. (N. S.) 286.
Govers, Barclay v. [See 973.]
GOYON v. PLEASANTS [5,647], 3 Wash. C. C. 241.
Gozzler, Coyle v. [See 3,312.]
GRACE v. AMERICAN CENT. INS. CO. [5,648], 16 Blatchf. 433; 8 Reporter, 771; 8 Ins. Law J. 731.
GRACE v. AMERICAN CENT. INS. CO. [5,649], 7 Reporter, 388; 8 Ins. Law J. 95.
Grace, Bond v. [See 1,622.]
GRACE v. EVANS [5,650], 3 Ben. 479.
Grace Brown, The, Bean v. [See 1,171.]
GRACE DARLING, The [5,651], 2 Hask. 278.
Grace Girdler, The, Lockwood v. [See 8,450.]
GRACE GREENWOOD, The [5,652], 2 Biss. 131.
GRACE LOTHROP, The [5,653], Holmes, 342; 8 Amer. Law Rev. 620; 1 Cent. Law J. 189.
Grace Meade, The, United States v. [See 15,243.]
Grace's Ex'rs, Mahon v. [See 8,967.]
Gracey, Forbes v. [See 4,924.]
Gracie, Palmer v. [See 10,692.]
Gracy, Calbreath v. [See 2,296.]
GRADY, In re [5,654], 3 N. B. R. 227 (Quarto, 54).
Graeff, Riggs v. [See 11,826.]
Graff, Keime v. [See 7,650.]
Graff, United States v. [See 15,244.]
GRAFTON, The [5,655], 1 Blatchf. 173.
GRAFTON, The [5,656], Olc. 43.
Grafton, United States v. [See 15,245.]
GRAHAM, Ex parte [5,657], 3 Wash. C. C. 456; 4 Wash. C. C. 211.
GRAHAM, Ex parte [5,657].
GRAHAM, In re [5,659], 8 Ben. 419.
GRAHAM, In re [5,660], 2 Biss. 449; 4 Alb. Law J. 49.
GRAHAM, In re [5,661], 5 N. B. R. 155; 28 Leg. Int. 317.
GRAHAM v. ALEXANDER [5,662], 5 Cranch, C. C. 663.
Graham, Benjamin v. [See 1,301.]
GRAHAM v. COLLECTOR [5,663].
GRAHAM v. DOMINGUEZ [5,664], 1 Amer. Law T. Rep. U. S. Cts. 70.
GRAHAM v. DUDLEY [5,665], Cooke, 353; Brunner, Col. Cas. 228.

[Federal Case numbers are given in brackets.]

GRAHAM v. ESCORIAZA, The [5,666].
GRAHAM v. EXPORTER, The [5,667], 21 Int. Rev. Rec. 110.
GRAHAM v. GAMMON [5,668], 7 Biss. 490; 3 Ban. & A. 7; 9 Chi. Leg. News, 370; 4 Law & Eq. Rep. 261.
GRAHAM v. HOSKINS [5,669], Olc. 224.
GRAHAM v. KONKAPOT [5,670], 1 Cranch, C. C. 313.
GRAHAM v. MASON [5,671], 4 Cliff. 88; 5 Fish. Pat. Cas. 1.
GRAHAM v. MASON [5,672], Holmes, 88; 5 Fish. Pat. Cas. 290; 1 O. G. 609.
Graham, Massie v. [See 9,263.]
GRAHAM v. MEYER [5,673], 4 Blatchf. 129; 15 Leg. Int. 25.
Graham, Morgan v. [See 9,801.]
Graham, Pearpoint v. [See 10,877.]
GRAHAM v PENNSYLVANIA INS. CO. [5,674], 2 Wash. C. C. 113.
GRAHAM v. SHEKEN [5,675], 16 Leg. Int. 324; 18 How. Pr. 322.
GRAHAM v. STARK [5,676], 3 Ben. 520; 3 N. B. R. 357 (Quarto, 93); 2 Chi. Leg. News, 73.
Graham, State v. [See 13,323.]
GRAHAM v. STUCKEN [5,677], 4 Blatchf. 50.
Graham, United States v. [See 15,246.]
Graham, Wilson v. [See 17,804.]
Graham v. Woodward. [See 5,253.]
GRAHAME v. COOKE [5,678], 1 Cranch, C. C. 116.
GRAIGHLE v. NOTNAGLE [5,679], Pet. C. C. 245.
GRAMBO, In re [5,680], 1 Wkly. Notes Cas. 64.
Grammer, Blake v. [See 1,496.]
GRAMMER v. CARROLL [5,681], 4 Cranch, C. C. 400.
Granberry, Hastings v. [See 6,200.]
GRAND v. IBIS, The [5,682], 3 Woods, 28.
GRANDE v. FOY [5,682a], Hempst. 105.
Grand Era, The, Harp v. [See 6,084.]
Grand Lodge of Free & Accepted Masons, Second Nat. Bank of St. Louis v. [See 12,603.]
Grand Street & N. Ry. Co., Mowry v. [See 9,893.]
Grand Trunk Ry. Co., Cummings v. [See 3,475.]
Grand Trunk Ry. Co., Harvey v. [See 6,180, 6,181.]
Grand Trunk Ry. Co., Sayles v. [See 12,419.]
Grand Trunk Ry. Co., Walker v. [See 17,070.]
Grand Trunk Ry. Co., Whitehouse v. [See 17,565.]
GRAND TURK, The [5,683], 1 Paine, 73.
Grand Turk, The, McGinnis v. [See 8,800.]
GRANGER, In re [5,684], 8 N. B. R. 30.
GRANGER v. SWART [5,685], 1 Woolw. 88.
GRANITE CITY, The [5,686], Blatchf. Pr. Cas. 355.
GRANITE STATE, The [5,687], 1 Spr. 277.
GRANNIS v. BEARDSLEY [5,688].
GRANON v. HARTSHORNE [5,689], 1 Blatchf. & H. 454.
GRANT, In re [5,690], 5 Law Rep. 303.
GRANT, In re [5,691], 6 Law Rep. 158.
GRANT, In re [5,692], 2 N. B. R. 106 (Quarto, 35).
GRANT, In re [5,693], 2 Story, 312; 5 Law Rep. 11.
GRANT v. BONTZ [5,694], 2 Cranch, C. C. 184.
GRANT v. HAMILTON [5,695], 3 McLean, 100.
Grant, Hartford & N. H. R. Co. v. [See 6,159.]
GRANT v. HEALEY [5,696], 3 Sumn. 523; 2 Law Rep. 113.
GRANT v. MASON [5,701].
GRANT v. MASON [5,698], 2 U. S. Law Int. 34.
GRANT v. MAXWELL [5,699], 2 Blatchf. 220; 26 Hunt, Mer. Mag. 60.
GRANT v. POILLION [5,700], 35 Hunt, Mer. Mag. 586.
Grant, United States v. [See 15,247.]
GRANT & TOWNSEND v. ——— [5,701], 1 U. S. Law Int. 22.
Grant, The General U. S. [See 5,320.]
Grant, The Joseph. [See 7,538.]
Grant Locomotive Works, Torrey v. [See 14,105.]
Grant, The U. S. [See 16,803, 16,804.]
GRAPESHOT, The [5,702], 2 Ben. 527.
GRAPESHOT, The [5,703], 2 Woods, 42.
Grassin, United States v. [See 15,248.]
Gratiot, United States v. [See 15,249.]
GRATITUDE, The [5,704], 3 Ben. 108.
GRATITUDE, The [5,705], 4 Ben. 62.
GRATITUDINE, The [5,706].
GRATTAN v. APPLETON [5,707], 3 Story, 755; 8 Law Rep. 116.
Gratz, Cohen v. [See 2,963.]
Gratz, Prevost v. [See 11,406, 11,407.]
GRAU v. McVICKER [5,708], 8 Biss. 13.
GRAVES, In re [5,709], 2 Ben. 100; 1 N. B. R. 237 (Quarto, 19).
Graves, Andrews v. [See 376.]
Graves, Lawrence v. [See 8,138.]
Graves, United States v. [See 15,250.]
Graves, Whiting v. [See 17,577.]
GRAVES v. WINTER [5,710], 9 N. B. R. 357; 6 Chi. Leg. News, 284; 1 Cent. Law J. 178; 21 Pittsb. Leg. J. 159.
Graves, The William T. [See 17,758, 17,759.]
GRAVIER v. NEW ORLEANS [5,711].
GRAY v. CALL [5,712], 2 Hask. 242.
GRAY v. CHICAGO, I. & N. R. CO. [5,713], 1 Woolw. 63.
Gray v. Clinton Bridge. [See 2,900.]
GRAY v. COFFMAN [5,714], 3 Dill. 393; 1 Cent. Law J. 326.
Gray, Collins v. [See 3,013.]
GRAY v. DAVIS [5,715], 1 Woods, 420.
GRAY v. HARPER [5,716], 1 Story, 574; 4 Law Rep. 334.
Gray, Hart v. [See 6,152.]
GRAY v. HULSHIZER [5,717], 13 O. G. 10.
GRAY v. JAMES [5,718], Pet. C. C. 394; 1 Robb, Pat. Cas. 120.
GRAY v. JAMES [5,719], Pet. C. C. 476; 1 Robb, Pat. Cas. 140.
GRAY v. JENKS [5,720], 3 Mason, 520.
Gray, Jones v. [See 7,463.]
GRAY v. LARRIMORE [5,721], 4 Sawy. 638; 2 Abb. U. S. 542.
GRAY v. LAWRENCE [5,722], 3 Blatchf. 117.
GRAY v. MECHANICS' BANK OF ALEXANDRIA [5,723], 2 Cranch, C. C. 51.
GRAY v. MUNROE [5,724], 1 McLean, 528.
GRAY v. MURPHY [5,725].
GRAY v. NATIONAL STEAMSHIP CO. [5,726], 7 Reporter, 581.
Gray, People v. [See 10,968.]
GRAY v. REARDON [5,727], 2 Cranch, C. C. 219.
GRAY v. RUSSELL [5,728], 1 Story, 11; 2 Law Rep. 294.
GRAY v. SIMS [5,729], 3 Wash. C. C. 276.
Gray, Spring v. [See 13,259.]
Gray, Thomas v. [See 13,898.]
GRAY v. TUNSTALL [5,730], Hempst. 558.
Gray, United States v. [See 15,251-15,253.]
GRAY v. YORK [5,731], 15 Blatchf. 335.
Gray, The A. R. [See 519.]
Gray, The A. R. [See 10,949.]
GRAYDON v. HOOD [5,732], Morr. Min. Rights (4th Ed.) 65.
GRAYDON v. SWEET [5,733], 1 Woods, 418.
GRAY EAGLE, The [5,734], 1 Biss. 476.
GRAY EAGLE, The [5,735], 2 Biss. 25; 7 Amer. Law Reg. (N. S.) 226; 2 Amer. Law Rev. 359.
Gray, The William. [See 17,694.]
Great Eastern, The, Towle v. [See 14,110.]
GREAT BRITAIN, The [5,736], Olc. 1.
Greathouse, In re. [See 5,741.]
Greathouse v. Dunlap. [See 5,742.]
Greathouse, United States v. [See 15,254.]
Greatrake v. Brown. [See 5,743.]
Great Republic, The, Levy v. [See 8,302.]
Great Republic, The, Scully v. [See 12,571.]
Great Western, The, Western Transp. Co. v. [See 17,443.]
GREAT WESTERN INS. CO. v. FOGARTY [5,737], 19 Wall. (86 U. S.) 640.
GREAT WESTERN INS. CO. v. THWING [5,738], 1 Lowell, 444.
Great Western Quicksilver Min. Co., Knox v. [See 7,906, 7,907.]
GREAT WESTERN TEL. CO., In re [5,739], 5 Biss. 359; 5 Chi. Leg. News, 493.
GREAT WESTERN TEL. CO., In re [5,740], 5 Biss. 363.
Great Works Milling & Mfg. Co., Mitchell v. [See 9,662.]
GREATHOUSE, In re [5,741], 4 Sawy. 487; 2 Abb. U. S. 382.
GREATHOUSE v. DUNLAP [5,742], 3 McLean, 303.
GREATRAKE v. BROWN [5,743], 2 Cranch, C. C. 541.

[Federal Case numbers are given in brackets.]

GREAVES, In re [5,744], 5 Law Rep. 25; 1 N. Y. Leg. Obs. 213.
GREELEY, Ex parte [5,745], 6 Fish. Pat. Cas. 575; Holmes, 284; 4 O. G. 612; Merw. Pat. Inv. 220.
GREELEY v. SCOTT [5,746], 2 Woods, 657; 12 N. B. R. 248.
GREELEY v. SMITH [5,747], 3 Story, 76.
GREELEY v. SMITH [5,748], 3 Story, 657.
Greely, Ecfort v. [See 4,260.]
Greely, Norcross v. [See 10,294.]
GREELY v. SMITH [5,749], 1 Woodb. & M. 181.
GREELY v. SMITH [5,750], 3 Woodb. & M. 236.
Greely, Wilkinson v. [See 17,671, 17,672.]
GREEN, In re [5,751], 7 Biss. 338; 15 N. B. R. 198.
GREEN v. ADELAIDE, The [5,752], Taney, 575.
GREEN v. ALLEN [5,753], 2 Wash. C. C. 280.
GREEN v. CITY OF BRIDGETON, The [5,754], 9 Cent. Law J. 206; 20 Alb. Law J. 257.
GREEN v. COLLINS [5,755], 3 Cliff. 494.
Green, Commercial Bank of Commerce v. [See 3,-059.]
GREEN v. DYERSBURG [5,756], 2 Flip. 477.
GREEN v. FRENCH [5,757], 16 O. G. 215; 2 N. J. Law J. 148; 4 Ban. & A. 169.
GREEN v. FRY [5,758], 1 Cranch, C. C. 137.
Green v. Gardiner. [See 5,757.]
GREEN v. GARDNER [5,758a], 5 N. J. Law J. 174; 22 O. G. 683.
GREEN v. HANBERRY [5,759], 2 Brock. 403.
Green, Head v. [See 6,292.]
Green, Jaycox v. [See 7,237.]
Green, Neal v. [See 10,065.]
Green, Ryan v. [See 12,186a.]
Green, Sam v. [See 12,275.]
GREEN v. SARMIENTO [5,760], Pet. C. C. 74; 3 Wash. C. C. 17.
Green v. Smalley. [See 5,757.]
Green, Stanwood v. [See 13,301.]
GREEN v. TAYLOR [5,761], 3 Hughes, 400.
Green, Turner v. [See 14,256.]
Green, United States v. [See 15,255-15,257.]
Green v. Van Winkle. [See 5,757.]
Green, The Ann. [See 414.]
Green Bay, Mygatt v. [See 9,998.]
GREENE v. BATEMAN [5,762], 2 Woodb. & M. 359.
GREENE v. BISHOP [5,763], 1 Cliff. 186.
GREENE v. BRIGGS [5,764], 1 Curt. 311; 15 Law Rep. 614.
GREENE v. DARLING [5,765], 5 Mason, 201.
GREENE v. JAMES [5,766], 2 Curt. 187.
GREENE v. KLINGLER [5,767], 10 Cent. Law J. 47.
Greene, Moore v. [See 9,763.]
GREENE v. SISSON [5,768], 2 Curt. 171.
Greene, United States v. [See 15,258.]
GREENEBAUM, In re [5,769], 1 Chi. Law J. 599.
Greene County Court, United States v. [See 15,259.]
GREENE COUNTY TANNER, The [5,770], 8 Ben. 396.
GREENFIELD, Ex parte [5,772].
GREENFIELD, In re [5,772], 5 Ben. 552; 42 How. Pr. 469.
GREENFIELD, In re [5,773], 6 Blatchf. 287.
GREENFIELD, In re [5,774], 2 N. B. R. 298 (Quarto, 98); 1 Chi. Leg. News, 123.
GREENFIELD, In re [5,775], 2 N. B. R. 311 (Quarto, 100); 1 Chi. Leg. News, 139.
Greenfield, Bell v. [See 1,251.]
GREENHOUGH v. KEYWORTH [18,299], 2 Hayw. & H. 9.
Greening v. The Grey Eagle. [See 5,734, 5,735.]
GREENISH v. STANDARD SUGAR REFINERY [5,776], 2 Lowell, 553.
Greenleaf, Banks v. [See 959.]
GREENLEAF v. CROSS [5,777], 1 Cranch, C. C. 400.
GREENLEAF v. GOODRICH [5,778], 1 Hask. 586; 21 Int. Rev. Rec. 324.
Greenleaf, Kelley v. [See 7,657.]
Greenleaf, Knox v. [See 7,908, 7,909.]
GREENLEAF v. MAHER [5,779], 2 Wash. C. C. 44.
GREENLEAF v. MAHER [5,780], 2 Wash. C. C. 393.
GREENLEAF v. SCHELL [5,781].
GREENLEAF v. SCHELL [5,782], 6 Blatchf. 225.
Greenleaf, Stuart v. [See 13,555.]
GREENLEAF v. YALE LOCK MFG. CO. [5,783], 17 Blatchf. 253; 4 Ban. & A. 583; 17 O. G. 625.
Greenolds, Jones v. [See 7,464.]
GREENOUGH v. CLARK [5,784], 1 McA. Pat. Cas. 173.
Greenough, Emory v. [See 4,471.]
GREENOUGH v. LANGTREE [5,785], 1 Hayw. & H. 72.
GREEN POND R. CO., In re [5,786], 13 N. B. R. 118.
GREENVILLE & C. R. CO., In re [5,787], 5 Chi. Leg. News, 124; 6 Alb. Law J. 422.
Greenville & C. R. Co., Parsons v. [See 10,776.]
Greenwald, Jenkins v. [See 7,270.]
GREENWAY v. GAITHER [5,788], Taney, 227.
GREENWAY v. GRIFFIN, The [5,789].
GREENWAY v. ROBERTS [5,790], 2 Cranch, C. C. 246.
GREENWELL v. BOTELOR [5,791], 3 Cranch, C. C. 7.
Greenwich, The, Scott v. [See 12,531.]
Greenwood, Allen v. [See 222.]
Greenwood, Hotchkiss v. [See 6,718.]
GREENWOOD v. RECTOR [5,792], Hempst. 708.
Greenwood, United States v. [See 15,260.]
Greenwood Cemetery, Blake v. [See 1,497.]
Greenwood, The Grace. [See 5,652.]
GREER v. NOURSE [5,793], 4 Cranch, C. C. 527.
Greer, United States v. [See 15,261.]
GREFE, In re [5,794], 2 N. B. R. 329 (Quarto, 106).
GREGERSON v. IMLAY [5,795], 4 Blatchf. 503.
GREGG, In re [5,796], 1 Hask. 173; 3 N. B. R. 529 (Quarto, 131); 1 Amer. Law T. Rep. Bankr. 298.
GREGG, In re [5,797], 4 N. B. R. 456 (Quarto, 150).
GREGG v. BONTZ [5,798], 2 Cranch, C. C. 115.
GREGG v. GIER [5,799], 4 McLean, 208.
Gregg, Gier v. [See 5,406.]
GREGG v. WESTON [5,800], 7 Biss. 360; 9 Chi. Leg. News, 175.
Gregory, Burr v. [See 2,191.]
Gregory, Farrington v. [See 4,688.]
GREGORY v. HEWSON [5,801], 1 Bond, 277.
GREGORY v. MARKS [5,802], 8 Biss. 44; 4 Law & Eq. Rep. 283; 9 Chi. Leg. News, 394; 23 Int. Rev. Rec. 281.
Gregory, Northrup v. [See 10,327.]
Gregory, Seymour v. [See 12,686.]
Gregory, Stranahan v. [See 13,522.]
GREGORY v. UNITED STATES [5,803], 17 Blatchf. 325; 26 Int. Rev. Rec. 27.
Gregory, The D. S. [See 4,099-4,103.]
Gregory, The Dudley's. [See 4,099-4,103.]
GREIGG v. READE [5,804], Crabbe, 64.
Greiner, United States v. [See 15,262.]
GRESHAM v. MONTGOMERY [5,805], 2 Ky. Law Rep. 397.
Greve, Goldsmith v. [See 5,521.]
GREY v. THOMAS [5,806], 1 N. J. Law J. 139.
GREYOR v. BLACK WARRIOR, The [5,807].
GRIDLEY v. NORTHWESTERN MUT. LIFE INS. CO. [5,808], 14 Blatchf. 107.
GRIEVES, In re [5,809], 15 Alb. Law J. 167.
GRIFFEN, In re [5,810], 2 Ben. 209; 1 N. B. R. 371 (Quarto, 83); 1 Amer. Law T. Rep. Bankr. 120.
GRIFFENBERG v. JOHN LAUGHLIN, The [5,811], 2 Wkly. Notes Cas. 612.
Griffin, Ex parte. [See 4,650.]
GRIFFIN, In re [5,812], 8 Ben. 388.
GRIFFIN, In re [5,813], 2 N. B. R. 254 (Quarto, 85); 2 Amer. Law T. Rep. Bankr. 23; 1 Chi. Leg. News, 103.
Griffin, In re. [See 5,810, 5,815.]
GRIFFIN, The [5,814], 4 Blatchf. 203.
GRIFFIN'S CASE [5,815], Chase, 364; 2 Amer. Law T. Rep. U. S. Cts. 93; 8 Amer. Law Reg. (N. S.) 358; 25 Tex. Supp. 623; 2 Balt. Law Trans. 433; 3 Amer. Law Rev. 784.
GRIFFIN v. CLINTON LINE EXTENSION R. CO. [5,816], 1 West. Law Month. 31.
Griffin, The, Greenway v. [See 5,789.]
GRIFFIN v. JEFFERS [5,817], 5 Cranch, C. C. 444.
GRIFFIN v. NOKES [5,817a], Hempst. 72.
GRIFFIN v. WOODWARD [5,818], 4 Cranch, C. C. 709.
GRIFFING v. GIBB [5,819], 1 McAll. 212.
Griffin, The John. [See 7,347, 7,348.]
Griffin's Case. [See 5,815.]
GRIFFITH, In re [5,820], 18 N. B. R. 510; 26 Pittsb. Leg. J. 140.
Griffith, Blandy v. [See 1,529, 1,530.]

GRIFFITH v. BRADSHAW [5,821], 4 Wash. C. C. 171.
Griffith, Decker v. [See 3,724, 3,725.]
GRIFFITH v. EVANS [5,822], Pet. C. C. 166.
Griffith, Hayford v. [See 6,263, 6,264.]
Griffith, Johnson v. [See 7,386.]
Griffith, McFarlane v. [See 8,790.]
GRIFFITH v. TUNCKHOUSER [5,823], Pet. C. C. 418.
Griffith, United States v. [See 15,263.]
GRIFFITH v. WORTMAN [18,057], 13 Leg. Int. 361; 19 Law Rep. 376.
Griffith, Wortman v. [See 18,057.]
GRIFFITHS, In re [5,825], 2 Lowell, 340; 10 N. B. R. 456; 1 Cent. Law J. 507; 10 Alb. Law J. 249; 1 Amer. Law T. Rep. 476.
Griffiths, In re. [See 3,540.]
Griffiths, Collender v. [See 3,000.]
Griffon, The, Greenaway v. [See 5,789.]
GRIGG v. CLARISSA ANN, The [5,826], 2 Hughes, 89.
Grigg, Fry v. [See 5,139.]
Griggs, Cox v. [See 3,302.]
GRIGSBY v. LOVE [5,827], 2 Cranch, C. C. 413.
Grimes, Fenwick v. [See 4,733, 4,734.]
GRIMES v. UNITED STATES [5,828], Hoff. Land Cas. 107.
Grimes, United States v. [See 15,264, 15,265.]
GRINNELL, In re [5,829], 9 N. B. R. 137.
GRINNELL, In re [5,830], 7 Ben. 42; 9 N. B. R. 29; 21 Pittsb. Leg. J. 82.
Grinnell, Crosby v. [See 3,422.]
GRINNELL v. LAWRENCE [5,831], 1 Blatchf. 346; 19 Hunt, Mer. Mag. 533.
Grinnell, Sedgwick v. [See 12,612, 12,613.]
Grinnell, Shaw v. [See 12,719.]
GRISAR v. McDOWELL [5,832], 4 Sawy. 597.
GRISWOLD v. CONNOLLY [5,833], 1 Woods, 193.
Griswold, Dowell v. [See 4,040, 4,041.]
GRISWOLD v. HILL [5,834], 1 Paine, 483.
GRISWOLD v. HILL [5,835], 1 Paine, 390.
GRISWOLD v. HILL [5,836], 2 Paine, 492.
GRISWOLD v. LAWRENCE [5,837], 1 Blatchf. 599.
GRISWOLD v. MAXWELL [5,838], 3 Blatchf. 145.
GRISWOLD v. NEVADA, The [5,839], 2 Sawy. 144.
Griswold, Ridgway Tp. v. [See 11,819.]
GRISWOLD v. UNION MUT. INS. CO. [5,840], 3 Blatchf. 231.
Griswold, United States v. [See 15,266.]
Griswold, Wilson v. [See 17,806.]
Groff, Penn. v. [See 10,932.]
Groh, The Michael. [See 9,522.]
GROSJEAN v. PECK, STOW & WILCOX CO. [5,841], 11 Blatchf. 54; Merw. Pat. Inv. 342.
GROSS v. SIOUX COUNTY [5,842], 2 Dill. 509.
GROSS & P. MFG. CO. v. GERHARD [5,843], 8 Reporter, 136; 7 Wkly. Notes Cas. 51; 25 Int. Rev. Rec. 280; 27 Pittsb. Leg. J. 36.
Grosvenor, Gear v. [See 5,291.]
Grosvenor, Seabury v. [See 12,576.]
Grote, Decker v. [See 3,726.]
Grotenkemper, United States v. [See 15,267.]
GROTIUS, The [5,844], 1 Gall. 503.
Grove, Cavender v. [See 2,530.]
Grove, Ransdale v. [See 11,570.]
Grover v. Clinton. [See 5,845.]
GROVER & BAKER SEWING-MACH. CO. v. CLINTON [5,845], 5 Biss. 324; 8 N. B. R. 312; 6 Chi. Leg. News, 33; 18 Int. Rev. Rec. 166; 21 Pittsb. Leg. J. 34.
Grover & Baker Sewing Mach. Co., Copley v. [See 3,213.]
Grover & Baker Sewing Mach. Co., Florence Sewing Mach. Co. v. [See 4,883.]
GROVER & BAKER SEWING-MACH. CO. v. SLOAT [5,846], 2 Fish. Pat. Cas. 112.
GROVER & BAKER SEWING-MACH. CO. v. WILLIAMS [5,847], 2 Fish. Pat. Cas. 133.
Groverman, Darlington v. [See 3,576.]
Groverman, Wise v. [See 17,910.]
GROW v. BALLARD [5,848], 2 N. B. R. 194 (Quarto, 69); 1 Amer. Law T. Rep. Bankr. 111.
GRUBB v. BAYARD [5,849], 2 Wall. Jr. 81.
GRUBB v. CLAYTON [5,849a], Brunner, Col. Cas. 30; 2 Hayw. N. C. 378.
GRUNDY v. YOUNG [5,850], 1 Cranch, C. C. 443.
GRUNDY v. YOUNG [5,851], 2 Cranch, C. C. 114.
GRUNNINGER v. PHILPOT [5,852], 5 Biss. 82.
GRUNNINGER v. PHILPOT [5,853], 5 Biss. 104.
Grush, United States v. [See 15,268.]
GRUTACAP v. WOULLUISE [5,854], 2 McLean, 581.
Guardian Life Ins. Co., Lee v. [See 8,190.]
Guardian Mut. Life Ins. Co., Eisner v. [See 4,323.]
Guderyalen v. The F. W. Gifford. [See 5,166.]
Guerard, Girard Fire & Marine Ins. Co. v. [See 5,461.]
GUERNSEY v. BURLINGTON [5,855], 4 Dill. 372.
Guerrero, United States v. [See 15,269.]
Guest, The Mary Ann. [See 9,196, 9,197.]
Gugenheim, Barry v. [See 1,061.]
Gugenheim, Pennsylvania Salt Mfg. Co. v. [See 10,954.]
GUIBERT v. GEORGE BELL, The [5,856], 3 Hughes, 468.
GUIDET v. BARBER [5,857], 5 O. G. 149; Merw. Pat. Inv. 245.
GUIDET v. BROOKLYN [5,858], 3 Ban. & A. 291; 13 O. G. 773.
GUIDET v. PALMER [5,859], 10 Blatchf. 217; 6 Fish. Pat. Cas. 82.
GUILD, In re [5,860], 1 Woodb. & M. 29.
Guild, Sawin v. [See 12,391.]
Guild, Woodman Pebbling Mach. Co. v. [See 17,981.]
GUILLOU v. FONTAIN [5,861], 32 Leg. Int. 362; 21 Int. Rev. Rec. 348; 2 Amer. Law T. Rep. (N. S.) 502; 1 N. Y. Wkly. Dig. 269; 8 Chi. Leg. News, 25; 23 Pittsb. Leg. J. 33; 7 Leg. Gaz. 321.
GUINET'S CASE [5,862], Whart. St. Tr. 93.
Guinet, United States v. [See 15,270.]
GUION v. McCULLOUGH [5,863], Brunner, Col. Cas. 1; 2 Mart. N. C. 78.
GUISBOROUGH, The [5,864], 8 Ben. 407.
GULICK'S EX'RS v. McIVER [5,865], 3 Cranch, C. C. 650.
GULLAT v. TUCKER [5,866], 2 Cranch, C. C. 33.
GUM v. EQUITABLE TRUST CO. [5,867], 1 McCrary, 51.
GUNIKE, In re [5,868], 4 N. B. R. 92 (Quarto, 23); 2 Chi. Leg. News, 367; 1 Pac. Law Rep. No. 8, p. 3.
Gunn, Plant v. [See 11,205.]
GUNNEL v. DADE [5,869], 1 Cranch, C. C. 427.
Gunther, Schillinger v. [See 12,456-12,458.]
Gunton, Ellsworth v. [See 18,294.]
GUNTON v. INGLE [5,870], 4 Cranch, C. C. 438.
GUPPE v. BROWN [5,871], 4 Dall. 410.
GURNEE v. BRUNSWICK [5,872], 1 Hughes, 270; 1 Va. Law J. 301.
GURNEY, In re [5,873], 7 Biss. 414; 15 N. B. R. 373; 9 Chi. Leg. News, 255; 4 Law & Eq. Rep. 28.
GURNEY v. CROCKETT [5,874], 1 Abb. Adm. 490.
GURNEY v. HOGE [5,875], 6 Blatchf. 499.
Gurney, United States v. [See 15,271.]
GUSTAVIA, The [5,876], 1 Blatchf. & H. 189.
GUSTINE v. RINGGOLD [5,877], 4 Cranch, C. C. 191.
GUSTY v. DIGGS [5,878], 2 Cranch, C. C. 210.
Guthrie, Coblidge v. [See 3,185.]
Guthrie, Coolidge v. [See 3,185.]
GUTTA PERCHA & RUBBER MFG. CO. v. GOODYEAR RUBBER CO. [5,879], 3 Sawy. 542; 2 Ban. & A. 212.
GUTTSCHLICK v. BANK OF THE METROPOLIS [5,880], 5 Cranch, C. C. 435.
Guy, The James. [See 7,195, 7,196.]
GUYON v. SERRELL [5,881], 1 Blatchf. 244; 1 Fish. Pat. Rep. 151.
GWATHNEY v. McLANE [5,882], 3 McLean, 371.
Gwynne, Harmer v. [See 6,075.]
Gwynne, United States v. [See 15,272.]

[Federal Case numbers are given in brackets.]

H

HAAKE, In re [5,883], 2 Sawy. 231; 7 N. B. R. 61.
Haarfager, The Harold. [See 6,083.]
HAAS, In re [5,884], 8 N. B. R. 189.
HAAS v. ARTHUR [5,885], 14 Blatchf. 346.
HABEMAN v. WHITMAN [5,885a], 5 Ban. & A. 530.
Habersham, Jones v. [See 7,465.]
Habersham, Parrot v. [See 10,771.]
Haberstro, Peaslee v. [See 10,884.]
HABRICHT v. ALEXANDER [5,886], 1 Woods, 413.
HACKER v. STEVENS [5,887], 4 McLean, 535.
HACKER v. STEVENS [5,888], 4 McLean, 540.
Hackett, Clark v. [See 2,823.]
Hackett, Letts v. [See 8,283.]
HACKETT v. OTTAWA [5,889], 7 Reporter, 8; 11 Chi. Leg. News, 82.
Hackfeld v. The Costa Rica. [See 3,261, 3,262.]
Hackley, Day v. [See 3,679.]
Hackley, Foster v. [See 4,971.]
Hadden, Howe Machine Co. v. [See 6,785.]
HADDEN v. HOYT [5,890], 2 Hunt, Mer. Mag. 269.
HADDEN v. HOYT [5,891], 2 Hunt, Mer. Mag. 343.
Hadduck, Payson v. [See 10,862.]
HADE v. BROTHERTON [5,892], 3 Cranch, C. C. 594.
Hade, United States v. [See 15,273, 15,274.]
HADEN v. PERRY [5,893], 1 Cranch, C. C. 285.
Hadfield, Rhodes v. [See 11,748.]
HADLEY, In re [5,894], 12 N. B. R. 366.
Hadley, Atwater v. [See 639.]
Hadley, Campbell v. [See 2,358.]
Hadley, Harrison v. [See 6,137.]
HADRY, Ex parte [5,895], 2 Cranch, C. C. 364.
HAFER, In re [5,896], 1 N. B. R. 547 (Quarto, 147); 25 Leg. Int. 148; 15 Pittsb. Leg. J. 389.
HAFER, In re [5,897], 1 N. B. R. 586 (Quarto, 163); 6 Phila. 474; 25 Leg. Int. 164.
Hagaman, Wells v. [See 17,396.]
HAGAN, In re [5,898], 6 Ben. 407; 10 N. B. R. 383.
Hagan's Petition. [See 9,802.]
HAGEN v. KEAN [5,899], 3 Dill. 124.
Hagerstown Agricultural Implement Mfg. Co., Birdsell v. [See 1,436, 1,437.]
Hagerty, Tyler v. [See 14,308.]
HAGGETT v. BOWMAN [5,900], 1 Sawy. 4.
Hagner, Brent v. [See 1,839.]
Hagner, Hall v. [See 5,933.]
HAHNLEN, In re [5,901], 1 Pa. Law J. 10.
Haight, Bliss v. [See 1,548.]
Haight, Dexter v. [See 3,861.]
HAIGHT v. MORRIS AQUEDUCT [5,902], 4 Wash. C. C. 601.
HAIGHT v. PITTSBURGH, FT. W. & C. R. CO. [5,903], 1 Abb. U. S. 81; 24 Leg. Int. 381; 6 Int. Rev. Rec. 161; 15 Pittsb. Leg. J. 16; 3 Pittsb. Rep. 105; 1 Amer. Law T. Rep. U. S. Cts. 44.
Haight, Thompson v. [See 13,956, 13,957.]
HAILES v. VAN WORMER [5,904], 7 Blatchf. 443.
HAINES v. CARPENTER [5,905], 1 Woods, 262.
Haines, Rugg v. [See 12,114.]
Haines, United States v. [See 15,275.]
HAINEY v. TRISTRAM SHANDY, The [5,906], Bee, 414.
Haish, Washburn & Moen Mfg. Co. v. [See 17,217.]
Haizlette v. Lake. [See 3,253.]
Halberstadt, United States v. [See 15,276-15,278.]
Halcyon, The, Acosta v. [See 31, 32.]
HALDERMAN v. BECKWITH [5,907], 4 McLean, 286.
HALDERMAN v. HALDERMAN [5,908], Hempst. 407.
HALDERMAN v. HALDERMAN [5,909], Hempst. 559.
HALE, Ex parte [5,910], 5 Law Rep. 403.
HALE, In re [5,911], 18 N. B. R. 335.
HALE, In re [5,912], 19 N. B. R. 330.
HALE v. BALDWIN [5,913], 1 Cliff. 511; 24 Law Rep. 270.
Hale, Burdick v. [See 2,147.]
Hale, Coxe v. [See 3,310.]
HALE v. DUNCAN [5,914], 7 Cent. Law J. 146; 12 West. Jur. 593; 6 Reporter, 422; 26 Pittsb. Leg. J. 32.
HALE v. STIMPSON [5,915], 2 Fish. Pat. Cas. 565.
Hale, United States v. [See 15,279.]
HALE v. WASHINGTON INS. CO. [5,916], 2 Story, 176; 5 Law Rep. 200.
HALE v. WILKINSON [5,917], 18 Int. Rev. Rec. 95.
Hale, The Mary. [See 9,213.]
Hale, The Sylvester. [See 13,712.]
HALEY, In re [5,918], 2 N. B. R. 36 (Quarto, 13).
Haley, Bayerque v. [See 1,135.]
Haley, Maine v. [See 8,977.]
Half Barrel, Etc., United States v. [See 15,280.]
HALL, Ex parte [5,919], 5 Law Rep. 269.
HALL, In re [5,920], 1 Dill. 587.
HALL, In re [5,921], 2 Hughes, 411; 9 N. B. R. 366.
HALL, In re [5,922], 2 N. B. R. 192 (Quarto, 68) 16 Pittsb. Leg. J. 52.
HALL, In re [5,923], 15 N. B. R. 31.
HALL'S DEPOSITION [5,924], 1 Wall. Jr. 85.
HALL v. AUSTIN [5,925], Deady, 104.
Hall, Barrett v. [See 1,047.]
HALL v. BIRD [5,926], 6 Blatchf. 438; 3 Fish. Pat. Cas. 595; Merw. Pat. Inv. 667.
Hall, Brown v. [See 2,008.]
HALL v. BUFFALO, The [5,927], 1 Newb. 115.
Hall, Capelle v. [See 2,391.]
HALL v. COOLEY [5,928], 3 N. Y. Leg. Obs. 282.
Hall, Cunningham v. [See 3,481, 3,482.]
HALL v. DEXTER [5,929], 3 Sawy. 434.
HALL v. EASTWICK [5,930], 1 Lowell, 456.
HALL v. EQUATOR MINING & SMELTING CO. [5,931], Morr. Min. Rights (3d Ed.) 282.
Hall, Fellows v. [See 4,722, 4,723.]
HALL v. FOX [5,932], 3 Cranch, C. C. 64.
HALL v. HAYNER [5,933], 3 Chi. Leg. News, 402.
HALL v. HOYT [5,934], 2 Hunt, Mer. Mag. 342.
HALL v. HUDSON [5,935], 2 Spr. 65.
HALL v. HURLBUT [5,936], Taney, 589.
HALL v. JONES [5,937], 3 Ban. & A. 455; 14 O. G. 378.
HALL v. KIMBARK [5,938], 6 Chi. Leg. News, 306.
HALL v. LITTLE [5,939], 2 Flip. 153; 18 Alb. Law J. 151; 6 Reporter, 617; 2 Tex. Law J. 54; 24 Int. Rev. Rec. 314, 374; 3 Cin. Law Bul. 598, 942.
Hall, Lynn v. [See 8,641.]
HALL v. NASHVILLE & C. R. CO. [5,940], 3 Amer. Law T. Rep. U. S. Cts. 79.
Hall, Nelson v. [See 10,107.]
Hall, Offut v. [See 10,447.]
Hall, Offutt v. [See 10,449, 10,450.]
Hall, O'Harra v. [See 10,468.]
HALL v. PAQUET BOT DE CAYENNE, The [5,941], 7 Phila. 550; 27 Leg. Int. 364.
HALL v. PEROTT [5,942], Baldw. 123.
Hall, Pitts v. [See 11,192, 11,193.]
Hall, Robinson v. [See 11,952.]
Hall, Rossiter v. [See 12,082.]
HALL v. RUSSELL [5,943], 3 Sawy. 506.
Hall, Sarven v. [See 12,369, 12,370.]
HALL v. SAVAGE [5,944], 4 Mason, 273.
Hall v. Schneider. [See 11,952.]
HALL v. SCOVEL [5,945], 10 N. B. R. 295.
Hall, Sherwood v. [See 12,777.]
HALL v. SINGER [5,946], 3 McLean, 17.
HALL v. SPEER [5,947], 1 Pittsb. Rep. 513; 6 Pittsb. Leg. J. 403.
HALL v. SULLIVAN R. CO. [5,948], Brunner, Col. Cas. 613; 21 Law Rep. 138.
HALL v. UNGER [5,949], 4 Sawy. 672; 2 Abb. U. S. 507.
HALL v. UNION PAC. R. CO. [5,950], 3 Dill. 515; 6 Chi. Leg. News, 307; 8 Amer. Law Rev. 775.
Hall v. Union Pac. R. Co. [See 16,599-16,601.]
Hall, United States v. [See 15,281-15,285.]
HALL v. WAGER [5,951], 3 Biss. 28; 5 West. Jur. 538; 5 N. B. R. 181; 3 Chi. Leg. News, 401.
HALL v. WARREN [5,952], 2 McLean, 332.
HALL v. WASHINGTON [5,953], 4 Cranch, C. C. 722.
Hall, Watson v. [See 17,283.]
Hall, Whann v. [See 17,478.]

[Federal Case numbers are given in brackets.]

HALL v. WILES [5,954], 2 Blatchf. 194; 1 Fish. Pat. Rep. 433.
Hall, Woodward v. [See 18,005.]
Hall, Woodworth v. [See 18,016, 18,017.]
HALL v. YAHOOLA RIVER MIN. CO. [5,955], 1 Woods, 544.
Hall, The D. M. v. The John Land. [See 3,939.]
Hall, The Frank A. [See 5,052.]
Hall, The Joseph [See 7,539.]
Hallack v. Blair. [See 18,292.]
HALLACK v. TRITCH [5,956], 17 N. B. R. 293; 10 Chi. Leg. News, 219.
Halle, In re. [See 5,960.]
HALLER v. BEALL [5,957], 2 Cranch, C. C. 227.
Hallet, Allen v. [See 223.]
HALLET v. PHOENIX INS. CO. [5,958], 2 Wash. C. C. 279.
Hallett, Barber v. [See 970.]
Hallett, Oh Chow v. [See 10,469.]
HALLETT v. SMYTHE [5,959], 5 Int. Rev. Rec. 69.
Hallett, Toy William v. [See 14,123.]
HALLIE, In re [5,960], 7 Ben. 182.
HALLIE JACKSON, The [5,961], Blatchf. Pr. Cas. 41.
Hallie Jackson, The. [See 6,451.]
HALLIHAN v. WASHINGTON [5,962], 4 Cranch, C. C. 304.
Hallock, Parker v. [See 10,734, 10,735.]
Hallock, The Julia M. [See 7,579.]
Halloran, United States v. [See 15,286.]
Hallowell, Seidenbach v. [See 12,635.]
Hallowell & Augusta Bank, Bellows v. [See 1,279.]
Hall's Deposition. [See 5,924.]
HALSEY, In re [5,963], 1 McA. Pat. Cas. 459.
HALSEY v. FAIRBANKS [5,964], 4 Mason, 206.
HALSEY v. GARLICK [5,965], 12 O. G. 1026.
HALSEY v. HURD [5,966], 6 McLean, 14.
HALSEY v. HURD [5,967], 6 McLean, 102.
Halstead, United States v. [See 15,287.]
HALSTED v. LYON [5,968], 2 McLean, 226.
HALSTED v. MILLER [5,969].
Halsted, Miller v. [See 9,572.]
Halsted, Stover v. [See 13,509.]
HALVERSON v. NISEN [5,970], 3 Sawy. 562.
HAMBERGER, In re [5,971], 8 Ben. 98.
HAMBLETON v. HOME INS. CO. [5,972], 6 Biss. 91.
HAMBRIGHT, In re [5,973], 2 N. B. R. 498 (Quarto, 157) 2 Amer. Law T. Rep. Bankr. 61; 1 Chi. Leg. News, 201.
HAMBURGER, In re [5,974], 8 Ben. 189.
HAMBURGER, In re [5,975], 12 N. B. R. 277; 1 N. Y. Wkly. Dig. 53.
HAMILTON, In re [5,976], 1 Ben. 455.
Hamilton, The, Atkinson v. [See 611.]
Hamilton v. Butler. [See 5,988.]
Hamilton, Campbell v. [See 2,359.]
HAMILTON v. CARNES [5,977], 4 Cranch, C. C. 531.
Hamilton, Chinn v. [See 2,685.]
HAMILTON v. CUNNINGHAM [5,978], 2 Brock. 350.
Hamilton, Dick v. [See 3,890.]
HAMILTON v. DILLIN [5,979], 13 Int. Rev. Rec. 164.
HAMILTON v. EATON [5,980], 1 Hughes, 249; 2 Mart. (N. C.) 1; Mart. (2d Ed.) 83; N. C. Cas. 77.
Hamilton, Felichy v. [See 4,719.]
HAMILTON v. FRANKLIN [5,981], 4 Cranch, C. C. 729.
Hamilton, Grant v. [See 5,695.]
HAMILTON v. IVES [5,982], 6 Fish. Pat. Cas. 244; 3 O. G. 30.
HAMILTON v. JONES [5,983], 2 Hayw. N. C. 291; Brunner, Col. Cas. 24.
Hamilton, Kerr v. [See 7,731.]
HAMILTON v. KINGSBURY [5,984], 15 Blatchf. 64; 3 Ban. & A. 346; 14 O. G. 448.
HAMILTON v. KINGSBURY [5,985], 17 Blatchf. 264; 4 Ban. & A. 615; 17 O. G. 147.
Hamilton v. Ludlow. [See 8,052.]
Hamilton, Mutter v. [See 9,974.]
HAMILTON v. MUTUAL LIFE INS. CO. [5,986], 9 Blatchf. 234; 5 Amer. Law T. Rep. U. S. Cts. 30; 1 Ins. Law J. 573; 6 Amer. Law Rev. 578; 3 Bigelow, Ins. Cas. 787.
HAMILTON v. NATIONAL LOAN BANK [5,987], 3 Dill. 230; 18 N. B. R. 97.
HAMILTON v. ROLLINS [5,988], 5 Dill. 495; 3 Ban. & A. 157; 4 Law & Eq. Rep. 561; 1 N. W. Rep. (O. S.) 205; 10 Chi. Leg. News, 4.
HAMILTON v. RUSSELL [5,989], 1 Cranch, C. C. 97.
Hamilton, Sanders v. [See 12,294.]
Hamilton v. Sherwood. [See 5,988.]
HAMILTON v. SIMMS [5,990], 2 Hayw. N. C. 291; Brunner, Col. Cas. 25.
HAMILTON v. SIMONS [5,991], 5 Biss. 77.
Hamilton, Starr v. [See 13,314.]
Hamilton, Stedman v. [See 13,343.]
Hamilton, Stevenson v. [See 13,415.]
Hamilton, Stewart v. [See 13,429.]
Hamilton, Thistle v. [See 13,884.]
Hamilton v. Todd. [See 5,988.]
Hamilton, United States v. [See 15,288-15,291.]
Hamilton County Com'rs, Cook v. [See 3,157, 3,158.]
Hamilton County, Jacobs v. [See 7,161.]
Hamilton Mfg. Co., Badische Anilin & Soda Fabrik v. [See 721.]
Hamilton, The M. M. [See 9,685.]
HAMILTON v. MORTON, The [5,992], 1 Brown's Adm. 40.
HAMLIN, Ex parte [5,993], 2 Lowell, 571; 16 N. B. R. 320; 5 Cent. Law J. 281.
HAMLIN, In re [5,994], 8 Biss. 122; 16 N. B. R. 522; 10 Chi. Leg. News, 131.
Hamlin, Cobb v. [See 2,922.]
HAMLIN v. PETTIBONE [5,995], 6 Biss. 167; 10 N. B. R. 172; 10 Alb. Law J. 141; 20 Int. Rev. Rec. 73; 1 Cent. Law J. 404; 31 Leg. Int. 293.
HAMMEKIN v. CLAYTON [5,996], 2 Woods, 336; 2 Cent. Law J. 188.
HAMMER v. KAUFMAN [5,997], 2 Bond, 1.
HAMMER v. KLEIN [5,998], 1 Bond, 590.
Hammer, Putnam v. [See 11,479.]
HAMMOND, In re [5,999], 1 Lowell, 381; 3 N. B. R. 273 (Quarto, 71).
HAMMOND v. ALLEN [6,000], 2 Sumn. 387.
Hammond, Astrom v. [See 596.]
Hammond, Brockett v. [See 1,916.]
Hammond, Burbank v. [See 2,137.]
Hammond, Cook v. [See 3,159.]
Hammond v. Coolidge. [See 5,999.]
HAMMOND v. ESSEX FIRE & MARINE INS. CO. [6,001], 4 Mason, 196.
Hammond, Gould v. [See 5,638.]
HAMMOND v. HAWS [6,002], Wall. Sr. 1.
HAMMOND v. HUNT [6,003], 4 Ban. & A. 111.
Hammond, King v. [See 7,797.]
HAMMOND v. MASON & HAMLIN ORGAN CO. [6,004], Holmes, 296; 6 Fish. Pat. Cas. 599; 5 O. G. 31.
Hammond, Saxe v. [See 12,411.]
Hammond, Smith v. [See 13,053.]
Hammond, Thorp v. [See 14,004.]
Hammond, United States v. [See 15,292-15,294.]
HAMMONIA, The [6,005], 4 Ben. 515.
HAMMONIA, The [6,006], 10 Ben. 512.
HAMMONIA, The [6,007], 11 Blatchf. 413.
HAMPDEN BANK v. MORGAN [6,008], 2 Haz. Reg. U. S. 57.
Hampden Stock & Mut. Fire Ins. Co., Eddy Street Iron Foundry v. [See 4,277.]
Hampton, Rouse v. [See 12,088.]
Hanan, The Nathan. [See 10,029.]
Hanberry, Green v. [See 5,759.]
HANCE v. McCORMICK [6,009], 1 Cranch, C. C. 522.
Hancock, Foote v. [See 4,911.]
HANCOCK v HILLEGAS [6,010], 2 Dall. 380.
HANCOCK v. NEW YORK LIFE INS. CO. [6,011], 13 Amer. Law Reg. (N. S.) 103; 2 Ins. Law J. 903; 4 Bigelow, Ins. Cas. 488.
Hancock, United States v. [See 15,295.]
HANCOCK v. WALSH [6,012], 3 Woods, 351; 8 Cent. Law J 393; 25 Int. Rev. Rec. 160; 8 Reporter, 71.
HANCOCK v. WILMINGTON & R. R. CO. [18,300].
Hancock Mut. Life Ins. Co., Winchell v. [See 17,-866.]
HANCOX v. FISHING INS. CO. [6,013], 3 Sumn. 132; 1 Law Rep. 5.
HANCOX v. PHENIX, The [11,111].
HAND v. ELVIRA, The [6,015], Gilp. 60.
Hand, Turner v. [See 14,257.]
Hand, United States v. [See 15,296, 15,297.]

[Federal Case numbers are given in brackets.]

HAND v. YAHOOLA MIN. CO. [6,016], 2 Woods, 407.
HANDELL, In re [6,017], 15 N. B. R. 71.
HANDLIN, In re [6,018], 3 Dill. 290; 12 N. B. R. 49; 2 Cent. Law J. 264.
HANDY v. BROWN [6,019], 1 Cranch, C. C. 610.
HANEY v. LOUISIANA, The [6,020], 6 Amer. Law Reg. 422.
HANEY v. LOUISIANA, The [6,021], Taney, 602.
Haney, Markson v. [See 9,098.]
HANFORD v. WESTCOTT [6,022], 16 O. G. 1181.
HANIBEL, In re [6,023], 15 N. B. R. 233; 9 Chi. Leg. News, 165; 15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152.
HANK v. CRITTENDEN [6,024], 2 McLean, 557.
HANKIN v. SQUIRES [6,025], 5 Biss. 186.
Hanks, Ely v. [See 4,430.]
Hanlenbeach, Armstrong v. [See 544.]
Hanley, Triplett v. [See 14,179.]
Hanly, Sneed v. [See 13,136.]
HANNA, In re [6,026], 4 Ben. 469; 4 N. B. R. 411 (Quarto, 139); 5 N. B. R. 292.
HANNA, In re [6,027], 5 Ben. 5; 7 N. B. R. 502.
Hanna, Rockhill v [See 11,979, 11,980.]
HANNAH, The [6,028].
HANNAH v. CARRINGTON, The [6,029], 2 West. Law Month. 456.
Hannah, The, Clinton v. [See 2,898.]
Hannah, The, Forbes v. [See 4,925.]
Hannah, The, Hunter v. [See 6,905.]
Hannah M. Buell, The, Henderson v. [See 6,352.]
HANNAH M. JOHNSON, The [6,029a], Blatchf. Pr. Cas. 35.
HANNAH M. JOHNSON, The [6,030], Blatchf. Pr. Cas. 97.
HANNAH M. JOHNSON, The [6,031], Blatchf. Pr. Cas. 160.
Hannah M. Johnson, The. [See 6,451.]
HANNAHS, In re [6,032], 8 Ben. 475.
HANNAHS, In re [6,033], 8 Ben. 533.
Hannan, The Nathan. [See 10,029.]
Hannegan, Burrows v. [See 2,205, 2,206.]
Hannibal, Fauntleroy v. [See 4,691, 4,692.]
Hannibal, Northwestern Union Packet Co. v. [See 10,343.]
Hannibal, The, United States v. [See 15,298.]
Hannibal & St. J. R. Co., Ætna Ins. Co. v. [See 96.]
Hannibal & St. J. R. Co., Bailey v. [See 736.]
HANOVER, The [7,466].
Hanover, The, Jones v. [See 7,466.]
Hanover, The, Saunders v. [See 12,374.]
HANOVER NAT. BANK v. SMITH [6,035], 13 Blatchf. 224.
Hanrick, Seventh Ward Bank v. [See 12,678.]
HANSA, The [6,036], 2 Ben. 299.
HANSA, The [6,037], 5 Ben. 501; 6 Amer. Law Rev. 759.
HANSA, The [6,038], 7 Blatchf. 288.
Hansbrough, Upton v. [See 16,801.]
HANSEN, In re [6,039], 2 N. B. R. 211 (Quarto, 75).
Hansen v. The Louisiana. [See 8,537.]
Hansen, Major v. [See 8,982.]
HANSON v. COX [6,040], 1 Hayw. & H. 167.
Hanson, Forrest v. [See 4,942, 4,943.]
HANSON v. FOWLE [6,041], 1 Sawy. 497.
HANSON v. FOWLE [6,042], 1 Sawy. 539.
Hanson, Odenheimer v. [See 10,429.]
HANSON v. ROWELL [6,043], 1 Spr. 117.
Hanway, Robinson v. [See 11,953.]
Hanway, United States v. [See 15,299.]
Hanway's Case. [See 15,299.]
HAPGOOD, In re [6,044], 2 Lowell, 200; 7 Amer. Law Rev. 664.
Hapgood, In re. [See 6,549.]
Hapgood, Goldsmith v. [See 5,522.]
Hapgood, Sayles v. [See 12,420.]
Happy Return, The, Swift v. [See 13,697.]
HARBAUGH, In re [6,045], 15 N. B. R. 246; 15 Alb. Law J. 194; 23 Int. Rev. Rec. 50; 24 Pittsb. Leg. J. 100.
Harbaugh, Veatch v. [See 16,905.]
Harbaugh, Wilson v. [See 17,807.]
HARBECK v. FRANCIS A. PALMER, The [6,045a].
Harbeck, Miner v. [See 9,629.]
Harbeck, The Elvira. [See 4,424.]
Harbert, National Hay Rake Co. v. [See 10,044.]
Harbin, Hardy v. [See 6,059, 6,060.]
Harbison, United States v. [See 15,300.]
HARD v. STONE [6,046], 5 Cranch, C. C. 503.
Harden, In re. [See 6,048.]
HARDEN v. GORDON [6,047], 2 Mason, 541.
Hardick, Lash v. [See 8,097.]
HARDIN, In re [6,048], 1 Hask. 163; 1 N. B. R. 395 (Quarto, 97); 1 Amer. Law T. Rep. Bankr. 48, 119; 15 Pittsb. Leg. J. 343.
Hardin, Truman v [See 14,205.]
HARDING v. ALTEMUS [6,049], 1 Wkly. Notes Cas. 12.
Harding, Caldwell v. [See 2,301, 2,302.]
HARDING v. CROSBY [6,050], 17 Blatchf. 348.
Harding, Haskins v. [See 6,196.]
Harding, Kelly v. [See 7,670.]
Harding, McKinsey v. [See 8,866.]
Harding v. The Maverick. [See 9,316.]
Harding v. Replier. [See 10,401.]
Harding, United States v. [See 15,301.]
HARDING v. WALKER [6,050a], Hempst. 53.
HARDING v. WHEATON [6,051], 2 Mason, 378.
HARDING v. WHITNEY [6,052], 4 Cliff. 96; 11 Int. Rev. Rec. 103.
HARDISON, In re [6,053], 5 Law Rep. 255.
HARDON v. NEWTON [6,054], 14 Blatchf. 376.
HARDS v. CONNECTICUT MUT. LIFE INS. CO. [6,055], 8 Biss. 234; 6 Reporter, 420; 2 Chi. Law J. 18; 26 Pittsb. Leg. J. 32.
Hardy, Ex parte. [See 1,420.]
HARDY, The [6,056], 1 Dill. 460.
HARDY v. BININGER [1,420], 4 N. B. R. 262 (Quarto, 77).
HARDY v. CLARK [1,420], 3 N. B. R. 385 (Quarto, 99); 3 Amer. Law T. Rep. Bankr. 11; 17 Pittsb. Leg. J. 61; 2 Chi. Leg. News, 121; 1 Amer. Law T. Rep. Bankr. 151.
Hardy, Cooper v. [See 3,196.]
HARDY v. HARBIN [6,059], 1 Sawy. 194.
HARDY v. HARBIN [6,060], 4 Sawy. 536.
HARDY v. REDMAN [6,061], 3 Cranch, C. C. 635.
HARDY v. RUGGLES, The [6,062], 2 Hughes, 78.
HARE, In re [6,063], 43 How. Pr. 86.
Hare, Stevenson v. [See 13,416.]
Hare, United States v. [See 15,302-15,305.]
HARGRAVE v. CREIGHTON [6,064], 1 Woods, 489.
Hargrave, United States v. [See 15,306.]
H. A. Richmond, The, Fitzgerald v. [See 4,839.]
Harker, United States v. [See 15,307.]
HARKEY v. TEXAS & P. RY. CO. [6,065], 1 Tex. Law J. 116.
Harkness, Monroe v. [See 9,715.]
HARLAN v. NASSAU, The [6,066], Blatchf. Pr. Cas. 199.
HARLAN v. NASSAU, The [6,067], Blatchf. Pr. Cas. 220.
HARLEY v. FOUR HUNDRED AND SIXTY-SEVEN BARS OF RAILROAD IRON, etc. [6,068], 1 Sawy. 1.
HARLEY v. GAWLEY [6,069], 2 Sawy. 7.
Harley, Moore v. [See 9,764.]
Harley, Orem v. [See 10,567.]
HARLOW, In re [6,070], 10 N. B. R. 280.
Harlow, Crowell v. [See 3,444.]
Harlow, Earle v. [See 4,246.]
HARMAN v. HARMAN [6,071], Baldw. 129.
HARMANSON v. BAIN [6,072], 1 Hughes, 188; 15 N. B. R. 173.
HARMANSON v. BAIN [6,073], 1 Hughes, 391.
HARMANSON v. WILSON [6,074], 1 Hughes, 207; 14 Amer. Law Reg. (N. S.) 627.
HARMER v. GWYNNE [6,075], 5 McLean, 313.
HARMER v. MORRIS [6,076], 1 McLean, 44.
Harmison, United States v. [See 15,308.]
HARMON, In re [6,078].
HARMON, In re [6,078], 10 Chi. Leg. News, 22; 6 Amer. Law Rec. 196.
Harmon, Dickey v. [See 3,894.]
HARMON v. JAMESSON [6,079], 1 Cranch, C. C. 288.
HARMONIA, The [6,005].
HARMONY, The [6,081], 1 Gall. 123.
Harmony, The, Clayton v. [See 2,871.]
Harmony, The, Concklin v. [See 3,089.]
HARMONY v. MITCHELL [6,082], 1 Blatchf. 549; 8 N. Y. Leg. Obs. 329.
Harmony Settlement, Nachtrieb v. [See 10,003.]
Harmony Society, Lemix v. [See 8,239.]
Harnden, Fisher v. [See 4,819.]
Harnden, Roberts v. [See 11,903.]

HARNEY v. SYDNEY L. WRIGHT, The [6,082a], 5 Hughes, 474.
HAROLD HAARFAGER, The [6,083], 8 Ben. 216.
HARP v. GRAND ERA, The [6,084], 1 Woods, 184.
HARPER, In re [6,085], 6 Chi. Leg. News, 279.
Harper, Campbell v. [See 2,360.]
HARPER v. COOKE [6,086], 5 Ban. & A. 50.
HARPER v. DOUGHERTY [6,087], 2 Cranch, C. C. 284.
Harper, Gray v. [See 5,716.]
Harper, Hilliard v. [See 5,716.]
HARPER v. MARINE INS. CO. [6,088].
Harper, May v. [See 9,333.]
Harper, Metropolitan Life Ins. Co. v. [See 9,505.]
HARPER v. NEFF [6,089], 6 McLean, 390.
HARPER v. NEW BRIG [6,090], Gilp. 536.
HARPER v. REILY [6,091], 1 Cranch, C. C. 100.
HARPER v. SMITH [6,092], 1 Cranch, C. C. 495.
Harper v. Stevens. [See 6,086.]
HARPER v. WEST [6,093], 1 Cranch, C. C. 192.
Harper's Ferry Case. [See 2,013.]
Harrell, Beall v. [See 7,222.]
Harrell, Jarrell v. [See 7,222.]
Harrell, United States v. [See 15,310.]
Harries, United States v. [See 15,309.]
HARRIET, The [6,094].
HARRIET, The [6,095], Olc. 184.
HARRIET, The [6,096], Olc. 222; 11 Hunt, Mer. Mag. 361.
HARRIET, The [6,097], Olc. 229.
HARRIET, The [6,098], 1 Spr. 33.
HARRIET, The [6,099], 1 Story, 251.
HARRIET, The [6,100], 1 Ware (343) 348.
Harriet, The, Coleman v. [See 2,982.]
Harriet, The, Moodie v. [See 9,744.]
HARRIET ANN, The [6,101], 6 Biss. 13; 6 Chi. Leg. News, 268.
HARRIET NEWHALL, The [6,102], 3 Ware, 105.
HARRIET ROGERS, The [6,103].
Harriett, The, Myers v. [See 9,992.]
HARRIMAN, The [6,104], 5 Sawy. 611.
HARRIMAN v. DODGE [6,104a].
HARRIMAN v. MAXWELL [6,105], 3 Blatchf. 421.
Harriman, Schulenburg v. [See 12,486.]
Harriman, United States v. [See 15,311.]
HARRINGTON v. FIRE ASS'N [6,106], 4 Wkly. Notes Cas. 432.
HARRINGTON v. LIBBY [6,107], 14 Blatchf. 128; 12 O. G. 188; 4 Amer. Law T. (N. S.) 47; Cox, Manual Trade-Mark Cas. 301; 23 Int. Rev. Rec. 112; 2 Cin. Law Bul. 70.
HARRINGTON v. McDUEL [6,108], 3 Cranch, C. C. 355.
Harrington, Ogden v. [See 10,457.]
HARRIS, Ex parte [6,109], 2 Lowell, 568; 16 N. B. R. 432.
HARRIS, Ex parte [6,110], 3 N. Y. Leg. Obs. 152.
HARRIS, In re [6,110a].
HARRIS, In re [6,111], 6 Ben. 375.
HARRIS, In re [6,112], 2 N. B. R. 105 (Quarto, 35).
HARRIS v. ALEXANDER [6,113], 4 Cranch, C. C. 1.
Harris, Alexander v. [See 168.]
HARRIS v. BABBITT [6,114], 4 Dill. 185.
HARRIS v. BERRY [6,115], 1 Hayw. & H. 272.
HARRIS v. BRADLEY [6,116], 2 Dill. 284; 16 Int. Rev. Rec. 165; 5 Chi. Leg. News, 88.
HARRIS v. BURCHAN [6,117], 1 Wash. C. C. 191.
Harris, Buttrick v. [See 2,256.]
HARRIS v. CAPEN [6,118], 37 Hunt, Mer. Mag. 196.
Harris, Dexter v. [See 3,862.]
Harris, D'Wolf v. [See 4,221.]
HARRIS v. EXCHANGE NAT. BANK [6,119], 4 Dill. 133; 14 N. B. R. 510; 3 N. Y. Wkly. Dig. 432; 3 Cent. Law J. 768; 1 Cin. Law Bul. 357.
HARRIS v. FIRTH [6,120], 4 Cranch, C. C. 710.
Harris, Gibson v. [See 5,396.]
HARRIS v. HENRIETTA, The [6,121], Newb. 284.
Harris, Howland v. [See 6,794.]
Harris, Johnson v. [See 7,387, 7,388.]
Harris, Keene v. [See 7,642.]
HARRIS v. KENSINGTON, The [6,122], 8 Amer. Law Reg. 144.
HARRIS v. LINDSAY [6,123], 4 Wash. C. C. 98.
HARRIS v. LINDSAY [6,124], 4 Wash. C. C. 271.
HARRIS v. McGOVERN [6,125], 2 Sawy. 515.
Harris, Nichols v. [See 10,243, 10,244.]
HARRIS v. NUGENT [6,126], 3 Cranch, C. C. 649.
HARRIS v. PROMETHEUS, The [6,127].
Harris, Ripley v. [See 11,853.]
HARRIS v. ROBINSON, The [6,128].
Harris, Shirly v. [See 12,798.]
Harris, United Nickel Co. v. [See 14,407.]
Harris, United States v. [See 15,312-15,315.]
HARRIS v. WHEELER [6,129], 8 Blatchf. 1; 14 Int. Rev. Rec. 147.
HARRIS v. WHEELER [6,130], 8 Blatchf. 81.
Harris, The Sarah. [See 12,345-12,347.]
Harris, The Sarah B. [See 12,344.]
Harris, The William. [See 17,695.]
Harris, The William A. [See 17,686.]
Harrison, The. [See 5,038.]
HARRISON'S CASE [6,131], 1 Cranch, C. C. 159.
HARRISON v. ANNA KIMBALL, The [6,132], Hoff. Op. 464.
HARRISON v. BOYD [6,133], 4 Cranch, C. C. 199.
HARRISON v. ECLIPSE, The [6,134], Crabbe, 223.
HARRISON v. EVANS [6,135], 1 Cranch, C. C. 364.
Harrison, The, Francis v. [See 5,038.]
Harrison, Gager v. [See 5,171.]
HARRISON v. GALES [6,136], 3 Cranch, C. C. 376.
HARRISON v. HADLEY [6,137], 2 Dill. 229; 17 Int. Rev. Rec. 26, 44; 5 Chi. Leg. News, 206; 7 Amer. Law Rev. 560.
HARRISON v. HADLEY [6,137].
Harrison, McCall v. [See 8,671.]
HARRISON v. McLAREN [6,139], 10 N. B. R. 244.
Harrison, Nichols v. [See 10,229.]
Harrison, Rinehart v. [See 11,840.]
HARRISON v. ROWAN [6,140], Pet. C. C. 489.
HARRISON v. ROWAN [6,141], 3 Wash. C. C. 580.
HARRISON v. ROWAN [6,142], 4 Wash. C. C. 32.
HARRISON v. ROWAN [6,143], 4 Wash. C. C. 202.
HARRISON v. STERRY [6,144], Bee, 244.
HARRISON v. STEWART [6,145], Taney, 485.
HARRISON v. SUSAN LUDWIG, The [6,145a].
Harrison, Tryphenia v. [See 14,209.]
HARRISON v. URANN [6,146], 1 Story, 64; 3 Law Rep. 92.
Harrisonville, Bonham v. [See 1,629.]
Harrold, Byrd v. [See 2,269.]
HARRY, The [6,147], 9 Ben. 524.
HARSHMAN v. BATES COUNTY [6,148], 3 Dill. 150.
Hart, Benjamin v. [See 1,302.]
Hart, Boucicault v. [See 1,692.]
HART v. BRIDGEPORT [6,149], 13 Blatchf. 289
HART v. DELAWARE INS. CO. [6,150], 2 Wash. C. C. 346.
HART v. ENTERPRISE, The [6,151], 3 Wkly. Notes Cas. 172.
HART v. GRAY [6,152], 3 Sumn. 339.
HART v. LITTLEJOHN, The [6,153], 1 Pet. Adm. 115.
HART v. OTIS, The [6,154], Crabbe, 52.
HART v. ROSE [6,154a], Hempst. 238.
HART v. SHAW [6,155], 1 Cliff. 358.
Hart, Shaw v. [See 12,720.]
Hart, United States v. [See 15,316.]
HART, B. & M. MFG. CO. v. SARGEANT [6,156], 3 Ban. & A. 263; 14 O. G. 45.
Hart, The Stephen. [See 13,363, 13,364.]
HARTEL, In re [6,157], 7 N. B. R. 559.
Hartell, Tilghman v. [See 14,039, 14,040.]
HARTELL v. VINEY [6,158], 2 Wkly. Notes Cas. 602.
Harter, Pomroy v. [See 11,263.]
HARTFIELD v. PATTON [6,158a], Hempst. 268.
Hartford, The, Craig v. [See 3,333.]
HARTFORD & N. H. R. CO. v. GRANT [6,159], 9 Blatchf. 542.
Hartford Carpet Co., Lowell Mfg. Co. v. [See 8,-569.]
Hartford City Gaslight Co., Staples v. [See 13,302.]
HARTFORD FIRE INS. CO. v. DOYLE [6,160], 6 Biss. 461; 5 Ins. Law J. 37; 3 Cent. Law J. 41.
Hartford Fire Ins. Co., Cray v. [See 3,374, 3,375.]
Hartford Fire Ins. Co., Howell v. [See 6,779, 6,780.]
Hartford Fire Ins. Co., Humphry v. [See 6,874, 6,875.]
Hartford Ins. Co., Brown v. [See 2,009.]
Hartford Ins. Co., Spratley v. [See 13,256.]
Hartford P. & F. R. Co., Barnard v. [See 1,003.]
HARTHILL, In re [6,161], 4 Ben. 448; 4 N. B. R. 392 (Quarto, 131).
HARTHORN, In re [6,162], 4 N. B. R. 103 (Quarto, 27).

[Federal Case numbers are given in brackets.]

Hartland, Society for the Propagation of the Gospel v. [See 13,155.]
Hartley, Brown v. [See 2,009a.]
Hartley, Talbott v. [See 13,732.]
Hartley v. United States. [See 1,581.]
HARTMAN v. WILL, The [6,163], 4 Pa. Law J. Rep. 350; 2 Amer. Law J. (N. S.) 111.
Hartnell, United States v. [See 15,317.]
HARTOUGH, In re [6,164], 3 N. B. R. 422 (Quarto, 107).
Hartshorn, Bray v. [See 1,820.]
Hartshorn, Day v. [See 3,683.]
HARTSHORN v. ALLISON [6,165], 1 Cranch, C. C. 199.
HARTSHORN v. ALMY [6,166], Holmes, 493; 2 Ban. & A. 46; 8 O. G. 94.
HARTSHORN v. SHOREY [6,167], 9 O. G. 595; 2 Ban. & A. 233.
HARTSHORN v. TRIPP [6,168], 7 Blatchf. 120.
HARTSHORN v. TWENTY-FIVE CASES SILK [6,168a].
HARTSHORN v. WRIGHT [6,169], Pet. C. C. 64.
Hartshorne, Granon v. [See 5,689.]
HARTSHORNE v. INGLE [6,170], 1 Cranch, C. C. 91.
HARTSHORNE v. McIVER [6,171], 1 Cranch, C. C. 421.
Hartshorne v. Sanford. [See 11,739.]
HARTUPEE v. COAL BLUFF NO. 2, The [6,172], 26 Pittsb. Leg. J. 145.
HARTWELL, In re [6,173], 1 Lowell, 536; 5 Amer. Law Rev. 562.
Hartwell, Smith v. [See 13,054.]
Hartwell, United States v. [See 15,318, 15,319.]
HARTWELL v. VINEY [6,158].
HARTZ, Ex parte [6,174], 1 N. Y. Leg. Obs. 39.
HARVEST, The [6,175], Olc. 271.
HARVEST, The [6,176], 1 Spr. 537.
HARVEST QUEEN, The [91].
HARVEY v. ALLEN [6,177], 16 Blatchf. 29; 2 Browne, Nat. Bank Cas. 439; 25 Int. Rev. Rec. 95.
HARVEY v. CRANE [6,178], 2 Biss. 496; 5 N. B. R. 218; 3 Chi. Leg. News, 341.
Harvey, Dean v. [See 3,708.]
HARVEY v. EVANSVILLE, Etc., STEAM PACKET CO. [6,179], 8 Biss. 99.
HARVEY v. GRAND TRUNK RY. CO. [6,180], 2 Hask. 124.
HARVEY v. GRAND TRUNK RY. CO. [6,181], 2 Hask. 250.
HARVEY v. RICHARDS [6,182], 2 Gall. 216.
HARVEY v. RICHARDS [6,183], 2 Gall. 555.
HARVEY v. RICHARDS [6,184], 1 Mason, 381.
Harvey, United States v. [See 15,320.]
Harvey v. The Vivid. [See 16,978.]
Harward, The. [See 6,186.]
HARWOOD, Ex parte [6,185], Crabbe, 496.
HARWOOD, The [6,186], 9 Adm. Rec. 150.
Harwood, Mahn v. [See 8,966.]
HARWOOD v. MILL RIVER WOOLEN MFG. CO. [6,187], 3 Fish. Pat. Cas. 526.
Harwood, Taylor v. [See 13,794.]
HASBROOK v. PALMER [6,188], 2 McLean, 10.
HASBROUCK, In re [6,189], 1 Ben. 402; 1 N. B. R. 75; Bankr. Reg. Supp. 17; 6 Int. Rev. Rec. 115.
Hasbrouck, The J. L. [See 7,323-7,326.]
HASELDEN v. OGDEN [6,190], 3 Fish. Pat. Cas. 378; Merw. Pat. Inv. 666.
HASKELL, In re [6,191], 4 N. B. R. 558 (Quarto, 181).
HASKELL, In re [6,192], 11 N. B. R. 164; 1 Cent. Law J. 531; 1 Amer. Law T. (N. S.) 182.
HASKELL v. INGALLS [6,193], 1 Hask. 341; 5 N. B. R. 205.
Haskell, Mabie v. [See 8,653.]
HASKELL v. SHOE MACHINERY MFG. CO. [6,194], 3 Ban. & A. 553; 15 O. G. 509.
Haskell, United States v. [See 15,321.]
Haskell, Wythe v. [See 18,118.]
HASKILL v. FRYE [6,195], 14 N. B. R. 525.
HASKINS v. HARDING [6,196], 2 Dill. 99.
HASKINS v. HARDING [6,196a], 7 West. Jur. 622.
Haskins, United States v. [See 15,322.]
HASLETT v. ENTERPRISE, The [6,197], 19 Int. Rev. Rec. 108.
HASSELL v. BASKET [6,198], 8 Biss. 303; 7 Cent. Law J. 308; 11 Chi. Leg. News, 58; 18 Alb. Law J. 323; 3 Cin. Law Bul. 919.
HASTINGS, In re [6,199], 4 Amer. Law Rev. 173.
Hastings, Gould v. [See 5,639.]
HASTINGS v. GRANBERRY [6,200], 3 Cranch, C. C. 319.
HASTINGS v. SPENSER [6,201], 1 Curt. 504.
HASTINGS v. THOMPSON [6,202], Syllabi, 198.
Hastings, United States v. [See 15,323.]
Hastings Bank, Hawkins v. [See 6,244.]
Hastings Nat. Bank, Hawkins v. [See 6,245.]
Hatch, Bank of the United States v. [See 918.]
HATCH v. BURROUGHS [6,203], 1 Woods, 439.
HATCH v. CHICAGO, R. I. & P. R. CO. [6,204], 6 Blatchf. 105.
Hatch, Chickering v. [See 2,671, 2,672.]
HATCH v. CODDINGTON [6,205], 5 Blatchf. 523.
HATCH v. DORR [6,206], 4 McLean, 112.
HATCH v. EUSTIS [6,207], 1 Gall. 160.
HATCH v. METROPOLE INS. CO. [6,207a], 13 Reporter, 293.
Hatch, Nicholson Pavement Co. v. [See 10,251.]
Hatch, Philips v. [See 11,094.]
HATCH v. PRESTON [6,208], 1 Biss. 19.
Hatch, Stough v. [See 13,499.]
Hatch, Thaxter v. [See 13,866.]
Hatch, Thomas v. [See 13,899.]
Hatch v. United States. [See 3,097.]
Hatch, United States v. [See 15,325.]
HATCH v. WHITE [6,209], 2 Gall. 152.
HATCHER, In re [6,210], 1 N. B. R. 390 (Quarto, 91); 1 Amer. Law T. Rep. Bankr. 48.
Hatcher, Davie v. [See 3,610.]
HATFIELD v. BUSHNELL [6,211], 1 Blatchf. 393; 22 Vt. 659; 7 N. Y. Leg. Obs. 331.
Hatfield, Parker v. [See 10,736.]
Hathaway, Collins v. [See 3,014.]
HATHAWAY v. JONES [6,212], 2 Spr. 56.
HATHAWAY v. ROACH [6,213], 2 Woodb. & M. 63.
Hathaway, Slocum v. [See 12,952.]
Hathaway, Swift v. [See 13,698.]
Hathaway, United States v. [See 15,326.]
HATHORN, In re [6,214], 2 Woods, 73.
HATJE, In re [6,215], 6 Biss. 436; 12 N. B. R. 548.
HATTIE, The [6,216], Blatchf. Pr. Cas. 579.
HATTIE, The [6,217], Blatchf. Pr. Cas. 595.
Hattie Jackson, The, United States v. [See 15,327.]
Hattie Ross, The. [See 2,598.]
Hattie Ross, The, Chapin v. [See 2,598.]
HATTON v. MELITA, The [6,218], 3 Hughes, 494; 3 Balt. Law Trans. 133 (No. 17).
HATTRICK v. SPANISH BARK, The [6,218a].
HAUCK, In re [6,219], 17 N. B. R. 158.
Hauel, Low v. [See 8,560.]
HAUGESUND, The, v. BOWDOIN, The [6,220], 36 Leg. Int. 462; 25 Int. Rev. Rec. 386.
HAUGH v. TEXAS & P. R. CO. [6,221], 22 Int. Rev. Rec. 257; 3 N. Y. Wkly. Dig. 174; 3 Cent. Law J. 447.
HAUGHEY v. ALBIN [6,222], 2 Bond, 244; 2 N. B. R. 399 (Quarto, 129); 2 Amer. Law T. Rep. Bankr. 47.
HAUGHTON, In re [6,223], 1 N. B. R. 460 (Quarto, 121).
Haughton, Beers v. [See 1,230.]
HAUGHTON v. EUSTIS [6,224], 5 Law Rep. 505.
Haukey, United States v. [See 15,328.]
Haun, United States v. [See 15,329.]
HAUPTMAN v. NELSON [6,225], 4 Cranch, C. C. 341.
HAUST v. BURGESS [6,225a], 4 Hughes, 560.
HAVANA, The [6,226], 1 Spr. 402; 22 Law Rep. 150.
HAVEMEYER v. LOEB [6,227].
Haven, Blanchard v. [See 1,511.]
Haven, Bronde v. [See 1,924.]
HAVEN v. BROWN [6,228], 6 Fish. Pat. Cas. 413.
HAVEN v. HOLLAND [6,229], 2 Mason, 230.
Haven, United States v. [See 16,788.]
Haven, United States & Foreign Salamander Felting Co. v. [See 16,788.]
HAVENS, In re [6,230], 8 Ben. 309.
HAVENS, In re [6,231], 1 N. B. R. 485 (Quarto, 126).
Havens, Huddy v. [See 6,826.]
HAVRE, The [6,232], 1 Ben. 295.
HAVRE, The [6,233], 16 Blatchf. 427.
HAWES v. ANTISDEL [6,234], 2 Ban. & A. 10; 8 O. G. 685.
HAWES v. CONTRA COSTA WATER CO. [6,235], 5 Sawy. 287; 7 Reporter, 100.

HAWES v. COOK [6,236], 5 O. G. 493; Merw. Pat. Inv. 244.
HAWES v. GAGE [6,237], 5 O. G. 494; Merw. Pat. Inv. 244.
HAWES v. JAMES SMITH, The [6,238].
HAWES v. MANN [6,239], 8 Biss. 21.
HAWES v. MARCHANT [6,240], 1 Curt. 136.
HAWES v. NEW ENGLAND MUT. MARINE INS. CO. [6,241], 2 Curt. 229.
HAWES v. WASHBURNE [6,242], 5 O. G. 491; Merw. Pat. Inv. 244.
Hawk, Parker v. [See 10,737.]
Hawke, The, United States v. [See 15,331.]
Hawkeye Steel Bar Fence Co., Washburn & M. Mfg. Co. v. [See 17,218.]
Hawkins, In re. [See 3,700.]
HAWKINS v. COX [6,243], 2 Cranch, C. C. 173.
Hawkins v. First Nat. Bank of Hastings. [See 6,-244.]
HAWKINS v. HASTINGS BANK [6,244], 1 Dill. 462; 2 N. B. R. 337 (Quarto, 108).
HAWKINS v. HASTINGS NAT. BANK [6,245], 1 Dill. 453.
Hawkins, La Baw v. [See 7,960, 7,961.]
Hawkins, Olcott v. [See 10,480.]
Hawks, Starling v. [See 13,311.]
HAWKINS v. THOMPSON [6,246], 2 McLean, 111.
HAWKINS v. WILLBANK [6,247], 4 Wash. C. C. 285.
HAWLEY v. BAGLEY [6,248].
HAWLEY v. KEPP [6,249], 2 Flip. 177.
HAWLEY v. MITCHELL [6,250], Holmes, 42; 4 Fish. Pat. Cas. 388; 1 O. G. 306.
Hawley, Molson v. [See 9,702.]
HAWORTH v. NYSTROM [6,251], 8 Wkly. Notes Cas. 204.
Haworth, Parker v. [See 10,738.]
Haws, Hammond v. [See 6,002.]
Hawsman, Scott v. [See 12,532.]
Hawthorne, United States v. [See 15,332.]
Hawxhurst, Walker v. [See 17,071.]
HAY, In re [6,252], 6 Chi. Leg. News, 256.
HAY, In re [6,253], 2 Lowell, 180; 7 N. B. R. 344.
HAY v. ALEXANDRIA & W. R. CO. [6,254], 1 Hughes, 168.
HAY v. ALEXANDRIA & W. R. CO. [6,254a], 4 Hughes, 331.
HAY v. BLOOMER, The [6,255].
HAY v. WASHINGTON & A. R. CO. [6,255a], 4 Hughes, 327.
HAYDEN, Ex parte [6,256], 3 App. Com'r Pat. 354.
HAYDEN, In re [6,257], 7 N. B. R. 192.
HAYDEN v. ANDROSCOGGIN MILLS [6,257a], 1 Fed. 93.
Hayden, The Colonel Howard v. [See 3,026.]
HAYDEN v. C. W. COCHRANE, The [6,258], 3 Woods, 304.
HAYDEN v. DAVIS [6,259], 3 McLean, *276.
HAYDEN v. JAMES [6,260].
Hayden, Manning v. [See 9,043.]
HAYDEN v. SUFFOLK MFG. CO. [6,261], 4 Fish. Pat. Cas. 86; Merw. Pat. Inv. 664.
Hayden, United States v. [See 15,333.]
Haydock, Cobb v. [See 2,923.]
HAYES, In re [6,261a], 15 Reporter, 259; 29 Int. Rev. Rec. 46.
HAYES v. BICKELHOUPT [6,261b], 19 O. G. 177.
HAYES v. J. L. WICKWIRE, The [6,262], 27 Leg. Int. 67; 7 Phila. 594.
Hayes, Sykes v. [See 13,709.]
HAYFORD v. GRIFFITH [6,263], 3 Blatchf. 34.
HAYFORD v. GRIFFITH [6,264], 3 Blatchf. 79.
Hayman, Ash v. [See 572.]
Hayman, Elliot v. [See 4,388.]
HAYMAN v. KEALLY [6,265], 3 Cranch, C. C. 325.
HAYMAN v. MOXLEY [6,266], 5 Cranch, C. C. 36.
HAYMAN'S ADM'RS v. ROTHWELL [6,267], 1 Hayw. & H. 156.
Hayne, Ex parte. [See 4,336.]
HAYNES, Ex parte [6,269].
HAYNES, In re [6,269], 2 N. B. R. 227 (Quarto, 78); 1 Gaz. 78.
Haynes, Blanchard v. [See 1,512.]
Haynes, Christman v. [See 2,703.]
Haynes, Doherty v. [See 3,963.]
Haynes, Rainer v. [See 11,536.]
Haynes, United States v. [See 15,334, 15,335.]
Haynie, Read v. [See 11,608.]
HAYS v. BELL [6,270], 1 Cranch, C. C. 440.
Hays v. Heidelbaugh. [See 3,318.]
Hays, Hunter v. [See 6,906.]
Hays, Jones v. [See 7,467.]
Hays, Ridgway v. [See 11,817.]
HAYS v. SULSOR [6,271], 1 Fish. Pat. Cas. 532; 1 Bond, 279.
HAYTON v. WILKINSON [6,272], Brunner, Col. Cas. 247; 1 Hall, Law J. 260.
HAYWARD v. ELIOT NAT. BANK [6,273], 4 Cliff. 294.
Hayward, United States v. [See 15,336.]
HAYWOOD, In re [6,274].
HAZARD v. CHICAGO, B. & Q. R. CO. [6,275], 1 Biss. 503; 2 Chi. Leg. News, 385.
HAZARD v. CHICAGO, B. & Q. R. CO. [6,276], 4 Biss. 453.
HAZARD v. GREEN [6,277], Cranch, Pat. Dec. 127.
HAZARD v. HAZARD [6,278], 1 Paine, 295.
HAZARD v. HAZARD [6,279], 1 Story, 371.
HAZARD v. HOWLAND [6,280], 2 Spr. 68.
Hazard, The, Natterstrom v. [See 10,055.]
Hazard, Phelan v. [See 11,068.]
HAZARD v. ROBINSON [6,281], 3 Mason, 272.
Hazard, The, Singstrom v. [See 12,905.]
Hazard, United States v. [See 15,337.]
HAZARD v. NEW ENGLAND MARINE INS. CO. [6,282], 1 Sumn. 218.
Hazel, Nicholls v. [See 10,230.]
Hazel, Smith v. [See 13,055.]
HAZEL v. WATERS [6,283], 3 Cranch, C. C. 420.
HAZEL v. WATERS [6,284], 3 Cranch, C. C. 682.
Hazen, Donaldson v. [See 3,984.]
HAZENS, In re [6,285], 4 Dill. 549.
HAZLETON, In re [6,287].
HAZLETON v. VALENTINE [6,287], 1 Lowell, 270; 2 N. B. R. 31 (Quarto, 12); 1 Amer. Law T. Rep. Bankr. 105.
HAZLETT v. CONRAD [6,288], 1 Dill. 79.
HAZZARD v. CREDIT MOBILIER [6,289], 7 Reporter, 360; 6 Wkly. Notes Cas. 417.
H. B. FOSTER, The [6,290], 1 Abb. Adm. 222; 6 N. Y. Leg. Obs. 223.
H. B. FOSTER, The [6,291], 3 Ware, 165.
H. D. Bacon, The, Eads v. [See 4,232.]
HEAD v. GREEN [6,292], 5 Biss. 311; 18 Int. Rev. Rec. 63; 5 Leg. Gaz. 247; 5 Chi. Leg. News, 423.
Head, Meany v. [See 9,379.]
HEAD v. STARKE [6,293], Chase, 312; 3 Amer. Law T. Rep. U. S. Cts. 155.
HEAD v. TALLEY [6,293].
Heald, Rice v. [See 11,752.]
Healey, In re. [See 2,796.]
Healey, Bradley v. [See 1,781.]
Healey, Grant v. [See 5,696.]
HEALEY v. MARTIN [6,295].
Healy, Johnson v. [See 7,389.]
HEALY v. MOTHERSHED [6,296].
Healy, Prevost v. [See 11,408.]
HEALY v. PREVOST [6,297], 8 Reporter, 103; 25 Int. Rev. Rec. 240; 6 Wkly. Notes Cas. 579; 8 Cent. Law J. 445; 27 Pittsb. Leg. J. 6.
Heaney, Markson v. [See 9,098.]
Heard, Lovering v. [See 8,554.]
HEARD v. ROGERS [6,298], 1 Spr. 556; 17 Law Rep. 442.
HEARN v. EQUITABLE SAFETY INS. CO. [6,299], 3 Cliff. 328.
HEARN v. EQUITABLE SAFETY INS. CO. [6,300], 4 Cliff. 192.
HEARN v. NEW ENGLAND MUT. MARINE INS. CO. [6,301], 3 Cliff. 318.
HEARN v. NEW ENGLAND MUT. MARINE INS. CO. [6,302], 4 Cliff. 200.
HEARNE v. BARRY [6,303], 3 Cranch, C. C. 168.
HEATH, In re [6,304], 7 N. B. R. 448.
HEATH v. AUSTIN [6,305], 12 Blatchf. 320.
HEATH v. ERIE RY. CO. [6,306], 8 Blatchf. 347.
HEATH v. ERIE RY. CO. [6,307], 9 Blatchf. 316.
Heath, Erie Railway Co. v. [See 4,513-4,516.]
HEATH v. HILDRETH [6,309].
HEATH v. HILDRETH [6,309], 1 McA. Pat. Cas. 12; Cranch, Pat. Dec. 96, 132.
HEATH v. WRIGHT [6,310], 3 Wall. Jr. 141; Cox, Amer. Trade-Mark Cas. 154; Cox, Manual Trade-Mark Cas. 76.

[Federal Case numbers are given in brackets.]

Heath, The Martha M. [See 7,113.]
Heaton, Jones v. [See 7,468.]
Heaton, March v. [See 9,061.]
HEATON v. QUINTARD [6,311], 7 Blatchf. 73.
HEBARD, Ex parte [6,312], 4 Dill. 380.
HEBBARD, Ex parte [6,314].
HEBBARD, In re [6,314], 1 McA. Pat. Cas. 543; 3 App. Com'r Pat. 65.
HEBBARD v. BANK OF UNITED STATES [6,815].
Hecker, Fowler v. [See 5,001.]
Hecker, Rumford Chemical Works v. [See 12,131, 12,134.]
HECKSCHER v. BINNEY [6,316], 3 Woodb. & M. 333.
Heckscher, United States v. [See 15,338.]
Hector, The. [See 6,317.]
HECTOR, The [6,317], 4 Blatchf. 199.
HEDDEN v. EATON [6,318], 2 N. J. Law J. 49.
HEDGES v. PAULIN [6,319], 5 Biss. 177.
Hedges, United States v. [See 15,339.]
HEERMAN v. BEEF SLOUGH MFG., Etc., CO. [6,320], 1 Fed. 145.
HEFFRON, In re [6,321], 6 Biss. 156; 10 N. B. R. 213; 6 Chi. Leg. News, 358.
Heft, American Wood Paper Co. v. [See 322.]
HEIDELBACK, Ex parte [6,322], 2 Lowell, 526; 15 N. B. R. 495; 23 Int. Rev. Rec. 73; 9 Chi. Leg. News, 183; 1 Cin. Law Bul. 21.
Heidelbaugh, Hays v. [See 3,318.]
HEILBRONN, In re [6,323], 12 N. Y. Leg. Obs. 65.
HEINE v. APPLETON [6,324], 4 Blatchf. 125.
HEINE v. LEVEE COM'RS [6,325], 1 Woods, 246.
HEINECKE v. RAWLINGS [6,326], 4 Cranch, C. C. 699.
Heinegan, United States v. [See 15,340.]
Heineke, Van Ness v. [See 16,866.]
HEINRICH v. LUTHER [6,327], 6 McLean, 345.
HEINSHEIMER v. SHEA [12,729], 3 N. B. R. 187 (Quarto, 46); 2 Amer. Law T. 107; 1 Chi. Leg. News, 345; 16 Pittsb. Leg. J. 85; 1 Leg. Gaz. 46.
HEIRSCHBERG, In re [6,530], 1 N. B. R. 642 (Quarto, 195); 1 Amer. Law T. Rep. Bankr. 123.
Heise, Trundle v. [See 14,207.]
Heiser, Franklin v. [See 5,054.]
Heiskell, Smith v. [See 13,056.]
Heissenbuttel, McGovern v. [See 8,805.]
Helena, The, United States v. [See 15,341, 15,342.]
HELEN E. BOOKER, The [6,330], 5 Adm. Rec. 714.
Helen E. Brooks, The. [See 6,330.]
HELEN J. HOLWAY, The [6,331], 6 Ben. 536.
Helen Mar, The. [See 10,543.]
HELEN M. PIERCE, The [6,332], 2 Hask. 205.
HELEN R. COOPER, The [6,333], 2 Ben. 67.
HELEN R. COOPER, The [6,334], 7 Blatchf. 378.
HELEN R. COOPER, The [6,335], 10 Blatchf. 212.
HELLEN v. BEATTY [6,336], 2 Cranch, C. C. 29.
HELLER, In re [6,337], 3 Biss. 153; 4 Alb. Law J. 49.
HELLER, In re [6,338], 32 Leg. Int. 136.
HELLER, In re [6,339], 5 N. B. R. 46; 41 How. Pr. 213.
HELLMAN v. HOLLADAY [6,340], 1 Woolw. 365.
HELLMAN v. UNITED STATES [6,341], 15 Blatchf. 13.
Hellman, United States v. [See 15,343.]
HELLMAR, In re [6,342], 4 Sawy. 163; 17 N. B. R. 362.
HELLRIGLE v. DULANY [6,343], 4 Cranch, C. C. 473.
HELLRIGLE v. OULD [6,344], 4 Cranch, C. C. 72.
Helmbold, Wheeler v. [See 17,496.]
Helms, Sweetser v. [See 13,689.]
Helmsley, Coggins v. [See 14,109.]
Helriggle, United States v. [See 15,344.]
HELVETIA, The [6,345], 6 Ben. 51.
HEMENWAY, Ex parte [6,346], 2 Lowell, 496.
Hemenway, Baker v. [See 770.]
Hemenway, Wope v. [See 18,042.]
Hemingway, Firemen's Ins. Co. v. [See 4,797.]
Hemmer, United States v. [See 15,345.]
Hempfield R. Co., Fox v. [See 5,010, 5,011.]
HEMPHILL v. DIXON [6,346a], Hempst. 235.
HEMSTEAD v. COLBURN [6,347], 5 Cranch, C. C. 655.
Hempstone, Clarke v. [See 2,853.]
HENCKLEY v. HENDRICKSON [6,348], 5 McLean, 170.
HENDERSON, Ex parte [6,349].
Henderson, Bailey v. [See 737.]
Henderson, Bank of Alexandria v. [See 848.]
Henderson, Beverly v. [See 1,378.]
Henderson, Bowie v. [See 1,730.]
HENDERSON v. CASTEEL [6,350], 3 Cranch, C. C. 365.
HENDERSON v. CLEVELAND CO-OPERATIVE STOVE CO. [6,351], 2 Ban. & A. 604; 12 O. G. 4.
Henderson, Denny v. [See 3,806.]
HENDERSON v. DESHA [6,351a], Hempst. 231.
Henderson, Fisher v. [See 4,820.]
HENDERSON v. HANNAH M. BUELL, The [6,352], 1 Wkly. Notes Cas. 302.
HENDERSON v. HENDERSON [6,353], 5 Cranch, C. C. 469.
Henderson, Irwin v. [See 7,084.]
HENDERSON v. LONG [6,354], Cooke, 128; Brunner, Col. Cas. 188.
Henderson, Offutt v. [See 10,451.]
Henderson, Ricketts v. [See 11,806.]
Henderson, Silver v. [See 12,854.]
Henderson v. Wright [See 16,777.]
Henderson, Yeatman v. [See 18,132.]
Henderson's Case. [See 16,777.]
Hendric, United States v. [See 15,346, 15,347.]
HENDRICK HUDSON, The [6,355], 3 Ben. 419.
Hendrick Hudson, The. [See 6,358.]
HENDRICKSON v. GESNER, The [6,356].
Hendrickson, Henckley v. [See 6,348.]
HENDRICKSON v. HINKLEY [6,357], 5 McLean, 211.
Hendrickson v. The James Gesner. [See 6,356.]
Hendrickson, Selden v. [See 12,639.]
HENDRIK HUDSON, The [6,358], 17 Law Rep. 93; 2 West. Law Month. 343.
HENDY v. SOULE [6,359], 1 Deady, 400.
HENFIELD'S CASE [6,360], Whart. St. Tr. 49.
HENKEL, In re [6,361], 2 N. B. R. 546 (Quarto, 167); 2 Pac. Law Rep. 212.
HENKEL, In re [6,362], 2 Sawy. 305.
HENLEY v. BROOKLYN ICE CO. [6,363], 8 Ben. 471; 14 Alb. Law J. 19.
HENLEY v. BROOKLYN ICE CO. [6,364], 14 Blatchf. 522.
HENNESSEY v. VERSAILLES, The [6,365], 1 Curt. 353; 2 Liv. Law Mag. 366.
Henning, Farmers' Loan & Trust Co. v. [See 4,666.]
HENNING v. UNITED STATES INS. CO. [6,366], 2 Dill. 26.
Henning, United States v. [See 15,348, 15,349.]
HENNOCKSBURGH, In re [6,367], 6 Ben. 150; 7 N. B. R. 37.
Henop, Davidson v. [See 3,605.]
HENOP v. TUCKER [6,368], 2 Paine, 151.
HENRICH, In re [6,369], 5 Blatchf. 414; 10 Cox, Crim. Cas. 626.
Henrici, Shoup v. [See 12,814.]
Henrietta, The, Harris v. [See 6,121.]
HENRY, In re [6,370], 9 Ben. 449; 17 N. B. R. 463.
HENRY, In re [6,371], 1 McA. Pat. Cas. 467.
HENRY, The [6,372], 1 Blatchf. & H. 465.
HENRY, The [6,373], 1 Hask. 100.
Henry Buck, The, Larra v. [See 8,094.]
HENRY C. BROOKS, The [6,374], Blatchf. Pr. Cas. 99.
Henry C. Homeyer, The, United States v. [See 15,353.]
HENRY CLAY, The [6,375].
HENRY EWBANK, The [6,376], 1 Sumn. 400.
Henry Hood, The, Howland v. [See 6,795.]
Henry Kneeland, The, Chambers v. [See 2,581a.]
Henry Kneeland, The, Stalker v. [See 13,282.]
HENRY LEWIS, The [6,377], Blatchf. Pr. Cas. 131.
HENRY MIDDLETON, The [6,378], Blatchf. Pr. Cas. 121.
Henry Morrison, The, Van Winkle v. [See 16,882.]
Henry Pratt, The, Brown v. [See 2,010.]
HENRY TROWBRIDGE, The [6,379], 10 Ben. 415.
HENRY v. CORNELIUS [6,380], 1 Cranch, C. C. 37.
HENRY v. CURRY [6,381], 1 Abb. Adm. 433.
HENRY v. FRANCESTOWN SOAPSTONE STOVE CO. [6,382], 2 Ban. & A. 221; 9 O. G. 408.
Henry, Gager v. [See 5,172.]
HENRY v. HENRY [6,383], 4 Biss. 354.
Henry, Hovey v. [See 6,742.]
Henry, Muller v. [See 9,916.]
Henry v. The Parkersburgh. [See 10,753.]

[Federal Case numbers are given in brackets.]

HENRY v. PROVIDENCE TOOL CO. [6,384], 3 Ban. & A. 501; 14 O. G. 855.
HENRY v. RICKETTS [6,385], 1 Cranch, C. C. 545.
HENRY v. RICKETTS [6,386], 1 Cranch, C. C. 580.
Henry, United States v. [See 15,350, 15,351.]
Henry, The Charles. [See 2,617.]
Henry, The John. [See 7,350.]
Henry, The Patrick. [See 10,805.]
Henry, The, United States v. [See 15,352.]
Henshaw, Bissell v. [See 1,447.]
HENSHAW v. MUTUAL SAFETY INS. CO. [6,387], 2 Blatchf. 99.
HENTZ v. IDAHO, The [6,997], 14 Int. Rev. Rec. 134.
Hentz, McGehee v. [See 8,794.]
Henzier, Buford v. [See 2,114.]
Hepburn, Auld v. [See 650, 651.]
HEPBURN v. AULD [6,389], 2 Cranch, C. C. 86.
Hepburn, Queen v. [See 11,503.]
HEPPARD v. GENERAL CADWALADER, The, and MAJOR RINGGOLD, The [6,390], 6 Pa. Law J. 473; 4 Pa. Law J. Rep. 472.
HeQuembourg, Lake v. [See 7,994.]
HERALD, The [6,391].
HERALD, The [6,392], 8 Ben. 263.
HERALD, The [6,393], 8 Ben. 409.
Heran, Bradstreet v. [See 1,792.]
HERBERT v. ADAMS [6,394], 4 Mason, 15; 1 Robb, Pat. Cas. 505.
HERBERT v. AMANDA F. MYRICK, The [6,395].
HERBERT v. BANNATYNE [6,396], 2 Cranch, C. C. 12.
Herbert, Barnard v. [See 1,347.]
Herbert, Bernard v. [See 1,347.]
HERBERT v. BUTLER [6,397], 14 Blatchf. 357.
Herbert, Dade v. [See 3,532.]
Herbert, Foss v. [See 4,957.]
Herbert, Gilman v. [See 5,442.]
Herbert, Hooff v. [See 6,670.]
HERBERT v. JAMES LEAKMAN, The [6,397a].
Herbert, United States v. [See 15,354.]
HERBERT v. WARD [6,398], 1 Cranch, C. C. 30.
Herbert, Whittemore v. [See 17,602.]
Herbert Manton, The. [See 7,319.]
HERBERT MANTON, The [6,399], 14 Blatchf. 37.
HERCULES, The [6,400], 1 Brown's Adm. 560; 7 Chi. Leg. News, 419; 21 Int. Rev. Rec. 309; 7 Leg. Gaz. 306.
HERCULES, The [6,401], 1 Spr. 534.
Hercules, The, Brackett v. [See 1,762.]
Hercules, The, Nelson v. [See 10,108.]
Hercules, The, Rand v. [See 11,548.]
Hercules, The, Winter v. [See 17,889.]
HERCULES MUT. LIFE ASSUR. SOC., In re [6,402], 6 Ben. 35; 5 Amer. Law T. Rep. 400; 16 Int. Rev. Rec. 148; 6 N. B. R. 338; 6 Alb. Law J. 358.
HERDIC, In re [6,403], 1 Fed. 242.
Hereth, Witt v. [See 17,921.]
HERIOT v. DAVIS [6,404], 2 Woodb. & M. 229.
HERMAN, In re [6,405], 9 Ben. 436; 17 N. B. R. 440.
HERMAN, The [6,406], 2 Adm. Rec. 322.
HERMAN v. HERMAN [6,407], 4 Wash. C. C. 555.
HERMANN, The [6,408], 4 Blatchf. 441.
Hermance, Buck v. [See 2,081, 2,082.]
Hermance, United States v. [See 15,355, 15,356.]
Hermann, Delauney v. [See 3,757.]
Hermann, Mayer v. [See 9,344.]
HERMINE, The [6,409], 3 Sawy. 80; 6 Chi. Leg. News, 398.
HERMITAGE, The [6,410], 4 Blatchf. 474; 44 Hunt, Mer. Mag. 73.
HERMON, The [6,411], 1 Lowell, 515.
HERN v. ANTHRACITE, The [6,412], 2 Leg. & Ins. Rep. 58.
HERNANDEZ v. AURY [6,413], 1 Jour. Jur. 131.
HERNANDEZ v. NEW YORK MUT. INS. CO. [6,414], 6 Blatchf. 326.
HERNANDEZ v. SUN MUT. INS. CO. [6,415], 6 Blatchf. 317; 11 Leg. & Ins. Rep. 108.
Herndon, Ramsey v. [See 11,546.]
Hero, The, Tisdall v. [See 14,059a.]
HEROINE, The [6,416], 1 Ben. 226.
HEROINE, The [6,417], 6 Blatchf. 188; 8 Int. Rev. Rec. 131.
Heron, The Kate. [See 7,619.]
HERPICH, In re [6,418], 7 Biss. 387; 15 N. B. R. 426; 9 Chi. Leg. News, 253; 4 Law & Eq. Rep. 29.
Herrera v. The Acme. [See 27.]
HERRICK, In re [6,419], 7 N. B. R. 341.
HERRICK, In re [6,420], 13 N. B. R. 312.
HERRICK, In re [6,421], 17 N. B. R. 335.
Herrick, Thayer v. [See 13,868.]
Herriet, Bowen v. [See 1,722.]
HERRING v. GAGE [6,422], 15 Blatchf. 124; 3 Ban. & A. 396.
Herring v. Gage. [See 6,424.]
HERRING v. GAS CONSUMERS' ASS'N [6,423], 9 Fed. 556.
HERRING v. NELSON [6,424], 14 Blatchf. 293; 3 Ban. & A. 55; 12 O. G. 753; Merw. Pat. Inv. 459; 10 Chi. Leg. News, 260.
HERRMAN, In re [6,425], 4 Ben. 126; 3 N. B. R. 649 (Quarto 161).
HERRMAN, In re [6,426], 3 N. B. R. 618 (Quarto 153).
HERRON v. PEGGY, The [6,427], Bee, 57.
HERRON v. RUNKLE [6,428], 1 Amer. Law Rev. 217.
HERSEY v. NORTH AMERICA, The [6,429], 6 Hunt. Mer. Mag. 174.
HERSHMAN, In re [6,430], 7 N. B. R. 604.
Herty, Baker v. [See 771.]
Herty, Boyer v. [See 1,753.]
HERTY'S CASE [6,431].
HERTZ v. MAXWELL [6,432], 3 Blatchf. 137.
Hertz, United States v. [See 15,357.]
HERTZOG, In re [6,433], 18 N. B. R. 526.
HERVEY v. ILLINOIS MIDLAND RY. CO. [6,434], 7 Biss. 103; 8 Chi. Leg. News, 274.
HERWIG v. OAKLEY [6,435], Taney, 389.
Herz, Gardner v. [See 5,229.]
Hess, United States v. [See 15,358.]
HESSIAN v. EDWARD HOWARD, The [6,436], 1 Newb. 522.
HESTER, In re [6,437], 5 N. B. R. 285.
HESTER v. BALDWIN [6,438], 2 Woods, 433.
Hettick, Evans v. [See 4,562.]
HETWAN, The [6,439], Blatchf. Pr. Cas. 331.
Heugh, Higgs v. [See 6,472.]
HEUSTED, In re [6,440], 5 Law Rep. 510.
Hewes, United States v. [See 15,359.]
HEWETT v. NORTON [6,441], 1 Woods, 68; 13 N. B. R. 276; 1 N. Y. Wkly. Dig. 535.
Hewett v. Silverman. [See 16,288.]
Hewett, Tomlinson v. [See 14,087.]
Hewey, Burnham v. [See 2,175.]
HEWITT, Ex parte [6,442], 3 Amer. Law Rev. 382.
Hewitt, Cloud v. [See 2,904.]
Hewitt, Hines v. [See 6,520.]
HEWITT v. NEW YORK & O. M. R. CO. [6,443], 12 Blatchf. 452.
Hewitt, Stanley v. [See 13,285.]
Hewlett v. The Antoinetta. [See 491.]
Hewson, Gregory v. [See 5,801.]
Hewson, United States v. [See 15,360.]
HEYDETTE, In re [6,444], 8 N. B. R. 332.
HEYDOCK v. STANHOPE [6,445], 1 Curt. 471.
HEYE v. LIEMAN [6,445a.]
HEYER v. WILSON [6,446], 2 Cranch, C. C. 369.
HEYS, In re [6,447], 1 Ben. 333; 1 N. B. R. 21; Bankr. Reg. Supp. 5; 6 Int. Rev. Rec. 52; 36 How. Pr. 249.
HEZEKIAH, In re [6,448], 2 Dill. 551; 11 N. B. R. 573; 22 Pittsb. Leg. J. 164.
HEZEKIAH BALDWIN, The [6,449], 8 Ben. 556.
H. L. Scranton, The, Church v. [See 2,710a.]
Hiatt, Brown v. [See 2,011.]
HIATT v. MUTUAL LIFE INS CO. [6,449a], 2 Dill. 572.
HIAWATHA, The [6,450].
HIAWATHA, The [6,451], Blatchf. Pr. Cas. 1; 18 Leg. Int. 332.
HIAWATHA, The [6,452], Blatchf. Pr. Cas. 632.
HIAWATHA, The [6,453], 5 Sawy. 160.
Hibbard, Gaytes v. [See 5,287.]
Hibbler, Blackman v. [See 1,471.]
HIBERNIA, The [6,454], 5 Ben. 352.
HIBERNIA, The [6,455], 1 Spr. 78.
Hichland, New York v. [See 10,196.]
Hickenlooper, Erdhouse v. [See 4,509.]
HICKERSON v. UNITED STATES [18,301], 2 Hayw. & H. 228.
Hickey, Putnam v. [See 11,480.]
HICKS, In re [6,456], 19 N. B. R. 299.

[Federal Case numbers are given in brackets.]

HICKS, In re [6,457], 2 Fed. 851.
Hicks, Antone v. [See 493.]
Hicks, Bussey v. [See 2,230.]
HICKS v. BUTRICK [6,458], 3 Dill. 413.
HICKS v. FISH [6,459], 4 Mason, 310.
HICKS v. FITZSIMMONS [6,460], 1 Wash. C. C. 279.
Hicks, Flood v. [See 4,877.]
HICKS v. MOLLER [6,461], 4 Ban. & A. 434; 16 O. G. 805.
Hicks, New York Dry Dock v. [See 10,204.]
Hicks, Potter v. [See 11,328.]
Hicks, Quicksilver Mining Co. v. [See 11,508.]
Hicks, Richardson v. [See 11,783.]
HICKS v. SHAVER [6,462], 3 App. Com'r Pat. 439.
HIDDEN v. SLATER MUT. FIRE INS. CO. [6,463], 2 Cliff. 266.
HIDELL v. GIRARD LIFE INS. ANNUITY & TRUST CO. [6,464], 26 Pittsb. Leg. J. 199; 7 Reporter, 391; 14 Phila. 401; 36 Leg. Int. 67; 6 Wkly. Notes Cas. 435.
Hiern, Borden v. [See 1,655.]
Hieskill, Sullivan v. [See 13,594.]
HIGBEE v. NIPOTI ACCAME, The [6,465], 36 Leg. Int. 294; 14 Phila. 517.
HIGBIE v. HOPKINS [6,466], 1 Wash. C. C. 230.
Higgens, Postley v. [See 11,304.]
Higgin, Badische Anilin & Soda Fabrik v. [See 722.]
HIGGINS, In re [6,467], 8 Ben. 100.
HIGGINS v. JENKS [6,468], 3 Ware, 17; 31 Hunt, Mer. Mag. 74.
Higgins, Smith v. [See 13,057-13,060.]
Higgins, Sparkman v. [See 13,208, 13,209.]
HIGGINS v. UNITED STATES MAIL STEAMSHIP CO. [6,469], 3 Blatchf. 282.
HIGGINS v. WATSON [6,470], 43 Hunt, Mer. Mag. 69.
Higgins, Webster Loom Co. v. [See 17,341, 17,342.]
Higgins, The Richard R. [See 11,768.]
HIGGINSON'S CASE [6,471], 1 Cranch, C. C. 73.
Higginson, Cremer v. [See 3,383.]
HIGGS v. HEUGH [6,472], 3 Cranch, C. C. 142.
Higgs, Hodge v. [See 6,558.]
HIGH, In re [6,473], 3 N. B. R. 191 (Quarto, 46); 2 Amer. Law T. 170; 2 Chi. Leg. News, 9; 16 Pittsb. Leg. J. 193; 1 Amer. Law T. Rep. Bankr. 175.
HIGHLANDER, The [12,604].
HIGHLANDER, The [6,475], 4 Blatchf. 55.
HIGHLANDER, The [6,476], 1 Spr. 510; 22 Law Rep. 473; 42 Hunt, Mer. Mag. 192.
Highlander, The, Secor v. [See 12,604.]
HIGHLAND LIGHT, The [6,477], Chase, 150; 2 Amer. Law T. Rep. U. S. Cts. 118; 16 Pittsb. Leg. J. 150; 2 Balt. Law Trans. 361; 3 Amer. Law Rev. 778.
Highland St. Ry. Co., Railway Register Mfg. Co. v. [See 11,535.]
Highleyman, The, United States v. [See 15,361.]
HIGHT, Ex parte [6,478], 2 Car. Law Repos. 47.
HIGHT v. CONTINENTAL LIFE INS. CO. [6,478a], 10 Ins. Law J. 223.
Hight, Travers v. [See 14,151.]
Hightower, Barnet v. [See 1,009.]
HIGHTOWER v. HAWTHORN [6,478b], Hempst. 42.
Hignera, United States v. [See 15,362, 15,363.]
HIKE v. PROVIDENCE, Etc., R. CO. [11,163], 6 O. G. 575.
HILARITY, The [6,480], 1 Blatchf. & H. 90.
Hildreth, Heath v. [See 6,309.]
Hildrup, Stinson v. [See 13,459.]
Hildt, Doughty v. [See 4,027.]
HILL, In re [6,481], 1 Ben. 321; Bankr. Reg. Supp. 4; 1 N. B. R. 16; 6 Int. Rev. Rec. 51.
HILL, In re [6,482], 2 Ben. 136; 1 N. B. R. 275 (Quarto, 42); 15 Pittsb. Leg. J. 329.
HILL, In re [6,483], 2 Ben. 349; 1 N. B. R. 431 (Quarto, 114); 1 Amer. Law T. Rep. Bankr. 56.
HILL, In re [6,484], 7 Ben. 378; 10 N. B. R. 133; 1 Amer. Law T. Rep. (N. S.) 421; 20 Int. Rev. Rec. 81.
HILL, In re [6,485], 5 Law Rep. 326.
HILL, In re [6,486], 2 N. B. R. 140 (Quarto, 53).
Hill, In re. [See 8,443.]
Hill, The. [See 9,711.]
HILL v. AMELIA, The [6,487], 6 Ben. 475.
Hill, Bell v. [See 1,252.]
Hill, Bloomer v. [See 18,242.]
HILL v. BONAFFON [6,488], 2 Wkly. Notes Cas. 356.
Hill, Den v. [See 3,784.]
HILL v. DUNKLEE [6,489], 1 McA. Pat. Cas. 475.
HILL v. EMMA PETERSON, The [6,490], 6 Pa. Law J. 80.
HILL v. GOLDEN GATE, The [6,491], 6 Amer. Law Reg. 273.
HILL v. GOLDEN GATE, The [6,492], Newb. 308; 5 Amer. Law Reg. 142; 36 Hunt, Mer. Mag. 449.
Hill, Griswold v. [See 5,834-5,836.]
HILL v. HOUGHTON [6,493], 1 Ban. & A. 291; 6 O. G. 3; Merw. Pat. Inv. 150.
Hill, Lockett v. [See 8,443.]
HILL v. LOW [6,494], 4 Wash. C. C. 327.
Hill, McKay v. [See 8,845.]
Hill, McNeil v. [See 8,914.]
HILL v. MURRAY [6,495], 6 Ben. 141.
HILL v. MYERS [6,496], 5 Cranch, C. C. 484.
Hill, Neale v. [See 10,068.]
HILL v. NORVELL [6,497], 3 McLean, 583.
HILL v. PATTERSON [6,497a], Hempst. 173.
Hill, Perkins v. [See 10,986, 10,987.]
Hill, Polk v. [See 11,249.]
Hill, Robertson v. [See 11,925.]
HILL v. SCOTT [6,498], 5 Cranch, C. C. 523.
Hill, Sloughton v. [See 13,501.]
HILL v. SMITH [6,499], 2 McLean, 446.
Hill v. Storrs. [See 1,291.]
Hill, Stoughton v. [See 13,501.]
Hill, String v. [See 13,535.]
Hill v. Towns. [See 16,534.]
HILL v. TRIUMPH, The [6,500], 2 N. Y. Leg. Obs. 115.
Hill, United States v. [See 15,364, 15,365.]
HILL v. WASHINGTON [6,501], 5 Cranch, C. C. 114.
HILL v. WHITCOMB [6,502], 1 Ban. & A. 34; Holmes, 317; 5 O. G. 430; 1 Amer. Law T. Rep. (N. S.) 382.
HILL v. WINNE [6,503], 1 Biss. 275.
Hill, Zeiber v. [See 18,206.]
Hilleary, McCutchen v. [See 8,742.]
Hillegas, Hancock v. [See 6,010.]
Hillegas, United States v. [See 15,366.]
HILLER v. SHATTUCK [6,504], 1 Flip. 272; 5 Chi. Leg. News, 289
HILLIARD v. BREVOORT [6,505], 4 McLean, 24.
Hilliard, Foster v. [See 4,972.]
Hilliard v. Harper. [See 5,716.]
Hilliard, United States v. [See 15,367, 15,368.]
HILLS v. ALDEN [6,507], 2 Hask. 299.
HILLS v. HOMTON [6,508], 4 Sawy. 195.
Hills, United States v. [See 15,369.]
Hilmer v. The Bowen. [See 7,322.]
HILTON, Case of [6,508a].
HILTON v. BECK [6,509], 4 Cranch, C. C. 107.
Hilton, Carr v. [See 2,436, 2,437.]
Hilton, Craik v. [See 3,342.]
Himely, Rose v. [See 12,045, 12,046.]
Himili, Rose v. [See 12,047, 12,048.]
Hinchley, Love v. [See 8,548.]
Hinchman, The Kate. [See 7,620, 7,621.]
Hinckel, Eastman v. [See 4,256.]
HINCKLEY v. BYRNE [6,510], Deady, 224.
HINCKLEY v. NORTHUMBERLAND, The [6,510a].
HINCKLEY v. NORTHUMBERLAND, The [6,511]. 16 Hunt, Mer. Mag. 386.
Hinckley, Robinson v. [See 11,954.]
HINDE v. VATTIER [6,512], 1 McLean, 110.
HINDLEY v. WELLINGTON, The [6,513], 21 Int. Rev. Rec. 14.
HINDMAN v. SHAW [6,514], 2 Pet. Adm. 264.
HINDRY v. PRISCILLA, The [6,515], Bee, 1.
HINDS, In re [6,516], 3 N. B. R. 351 (Quarto, 91).
Hinds, Boyle v. [See 1,759.]
HINE v. WAHL [6,517].
Hiner v. The Sea Gull. [See 12,578.]
HINES v. CRAIG [6,518], 1 Cranch, C. C. 340.
HINES v. DEAN [6,519], 4 Wash. C. C. 159.
Hines v. Fitzhugh. [See 18,302.]
HINES v. GORDON [18,302], 2 Hayw. & H. 222.
HINES v. HEWITT [6,520], 4 Cranch, C. C. 471.
HINES v. UNION PAC. R. CO. [6,521], 2 Dill. 269, note.

[Federal Case numbers are given in brackets.]

HINGSLEY v. HERRIET [1,722].
Hinkle, Stewart v. [See 13,430.]
Hinkley, Brown v. [See 2,012.]
Hinkley, Hendrickson v. [See 6,357.]
HINKLEY v. MAREAN [6,523], 3 Mason, 88.
Hinman, Briscoe v. [See 1,887.]
HINMAN v. CUTLER [6,524], 2 Lowell, 364.
Hinman, United States v. [See 15,370.]
HINSDALE, In re [6,525], 6 Ben. 231; 12 N. B. R. 480; 1 N. Y. Wkly. Dig. 127.
HINSDALE, In re [6,526], 9 Ben. 91; 16 N. B. R. 550.
Hipkin, United States v. [See 15,371.]
Hipkins, Franklin Bank v. [See 5,056.]
HIRAM, The [6,527], 2 Gall. 60.
Hiram, The, Hooper v. [See 6,675.]
Hiram Perry, The. [See 9,019.]
HIRSCH, In re [6,528].
HIRSCH, In re [6,529], 2 Ben. 493; 1 Amer. Law T. Rep. Bankr. 92; 2 N. B. R. 3 (Quarto, 1).
HIRSCHBERG, In re [6,530], 2 Ben. 466; 1 N. B. R. 642 (Quarto, 195); 1 Amer. Law T. Rep. Bankr. 123.
Hirschfield, United States v. [See 15,372.]
HISCOCK v. JAYCOX [6,531], 12 N. B. R. 507.
Hitch, Allen v. [See 224.]
Hitch v. Jordan. [See 13,068.]
Hitchcock v. The Clytie. [See 2,913.]
HITCHCOCK v. GALVESTON [6,532], 2 Woods, 272; 2 Cent. Law J. 351.
HITCHCOCK v. GALVESTON [6,533], 3 Woods, 269; 1 Tex. Law J. 393.
HITCHCOCK v. GALVESTON [6,534], 3 Woods, 287.
HITCHCOCK v. ROLLO [6,535], 3 Biss. 276; 2 Ins. Law J. 938; 4 N. B. R. 690; 4 Chi. Leg. News, 284.
HITCHCOCK v. ROLLO [6,536], 6 Chi. Leg. News, 9; 18 Int. Rev. Rec. 166.
HITCHCOCK v. SHONINGER MELODEON CO. [6,537].
HITCHCOCK v. TREMAINE [6,538], 8 Blatchf. 440; 4 Fish. Pat. Cas. 508.
HITCHCOCK v. TREMAINE [6,539], 9 Blatchf. 385; 5 Fish. Pat. Cas. 310.
HITCHCOCK v. TREMAINE [6,540], 9 Blatchf. 550; 1 O. G. 633; 5 Fish. Pat. Cas. 537.
HITCHEN v. WILSON [6,541], 4 Hall, Law J. 275; Brunner, Col. Cas. 253.
HITCHINGS, In re [6,542], 4 N. B. R. 384 (Quarto, 125).
HITNER v. SUCKLEY [6,543], 2 Wash. C. C. 465.
H. J. May, The. [See 3,494.]
H. Logan, The. [See 611.]
H. M. Wright, The, Walsh v. [See 17,115.]
HOADLEY v. SAN FRANCISCO [6,544], 3 Sawy. 553; 8 Chi. Leg. News, 134; 1 Law & Eq. Rep. 64.
Hoag, Sawyer v. [See 12,400.]
HOAGLAND, In re [6,545], 18 N. B. R. 530.
HO AH KOW v. NUNAN [6,546], 5 Sawy. 552; 20 Alb. Law J. 250; 8 Amer. Law Rec. 72; 18 Amer. Law Reg. (N. S.) 676; 4 Cin. Law Bul. 545; 25 Int. Rev. Rec. 312; 3 Pac. Coast Law J. 415; 8 Reporter, 195; 13 West. Jur. 409; 27 Pittsb. Leg. J. 40.
Hoar, United States v. [See 15,373.]
Hobart, Gordon v. [See 5,608, 5,609.]
Hobart, Titus v. [See 14,063.]
HOBART v. UPTON [6,547], 5 Chi. Leg. News, 97; 17 Int. Rev. Rec. 6.
HOBART v. UPTON [6,548], 2 Sawy. 302.
HOBBS, Ex parte [6,549], 2 Lowell, 491; 14 N. B. R. 495.
HOBBS, In re [6,550], 1 Woods, 537; 4 Amer. Law T. Rep. U. S. Cts. 190.
HOBBS v. MAGRUDER [6,551], 4 Cranch, C. C. 429.
HOBBS v. WESTERN NAT. BANK [6,551a], 8 Wkly. Notes Cas. 131; Brown Nat. Bank Cas. 187; 9 Reporter, 467.
Hoboken Land & Imp. Co. v. The Columbus. [See 3,043.]
HOBOKEN LAND & IMP. CO. v. SUNSWICK, The [6,552].
HOBSON v. JOHNSON [6,553], 4 Biss. 505.
HOBSON v. McARTHUR [6,554], 3 McLean, 241.
HOBSON v. MARKSON [6,555], 1 Dill. 421.
Hobson, Markson v. [See 9,099.]
Hobson, Scammon v. [See 12,434.]
HOCKHOLZER v. EAGER [6,556], 2 Sawy. 361.
HODGE ads. BEMIS [6,557], 2 Amer. Law J. (N. S.) 337; 12 Law Rep. 470.
Hodge, Combs v. [See 3,048.]
HODGE v. HIGGS [6,558], 2 Cranch, C. C. 552.
HODGE v. HUDSON RIVER R. CO. [6,559], 3 Fish. Pat. Cas. 410; 6 Blatchf. 85; 1 Amer. Law T. Rep. U. S. Cts. 40.
HODGE v. HUDSON RIVER R. CO. [6,560], 6 Blatchf. 165.
Hodge v. Iron Mountain Railroad. [See 6,561.]
Hodge v. New York & Harlem R. Co. [See 6,559, 6,560.]
Hodge, Nicholls v. [See 10,231.]
HODGE v. NORTH MISSOURI R. R. [6,561], 1 Dill. 104; 4 Fish. Pat. Cas. 161; 5 West. Jur. 121.
HODGE v. PLOTT [6,561a], Hempst. 14.
HODGES, In re [6,562], 11 N. B. R. 369.
Hodges, Corcoran v. [See 3,228.]
Hodges, Easton v. [See 4,258.]
Hodges, Jones v. [See 7,469.]
Hodges, United States v. [See 15,374.]
Hodgkin v. The Highlander. [See 6,476.]
Hodgkin, United States v. [See 15,375.]
HODGSON v. BUTTS [6,563], 1 Cranch, C. C. 447.
HODGSON v. BUTTS [6,564], 1 Cranch, C. C. 488.
HODGSON v. DEXTER [6,565], 1 Cranch, C. C. 109.
HODGSON v. MARINE INS. CO. [6,566], 1 Cranch, C. C. 569.
HODGSON v. MARINE INS. CO. OF ALEXANDRIA [6,567], 1 Cranch, C. C. 460.
HODGSON v. MILLWARD [6,568], 20 Leg. Int. 348; 5 Phila. 302; 3 Grant (Pa.) 418.
HODGSON v. MOUNTZ [6,569], 1 Cranch, C. C. 366.
Hodgson, Payen v. [See 10,853.]
Hodgson, Reid v. [See 11,667.]
HODGSON v. TURNER [6,570], 1 Cranch, C. C. 74.
HODGSON v. WOODHOUSE [6,571], 1 Cranch, C. C. 549.
HODSON v. LAKE SHORE & M. R. CO. [6,571a], 12 Reporter, 41.
Hodson, United States v. [See 15,376.]
HOE v. COLE [6,573], 13 O. G. 500.
Hoe v. Simpson. [See 17,500.]
HOE v. TUTHILL [6,573], 3 Ban. & A. 206; 13 O. G. 500.
Hoefner, Bennett v. [See 1,320.]
Hoeller, Hoeltge v. [See 6,574.]
HOELTGE v. HOELLER [6,574], 2 Bond, 386.
Hoelzle, Manhattan Life Ins. Co. v. [See 9,025.]
HOFFHEINS v. BRANDT [6,575], 3 Fish. Pat. Cas. 218.
HOFFMAN v. ARONSON [6,576], 8 Blatchf. 324; 4 Fish. Pat. Cas. 456; 4 Amer. Law T. Rep. U. S. Cts. 110.
Hoffman, Catlin v. [See 2,521.]
HOFFMAN v. McLEAN [13,665].
HOFFMAN v. PORTER [6,577], 2 Brock. 156.
Hoffman, Ringgold v. [See 11,846.]
Hoffman, Smith v. [See 13,061.]
HOFFMAN v. STIEFEL [6,578], 3 Fish. Pat. Cas. 638; 7 Blatchf. 58.
HOFFMAN v. WILLIAMS [6,579], Taney, 69.
HOFFMAN v. YARRINGTON [6,580], 1 Lowell, 168.
Hogan, Bell v. [See 1,253.]
HOGAN v. BROWN [6,581], 1 Cranch, C. C. 75.
HOGAN v. DELAWARE INS. CO. [6,582], 1 Wash. C. C. 419.
Hogan, Delaware Ins. Co. v. [See 3,765.]
HOGAN v. INGLE [6,583], 2 Cranch, C. C. 352.
HOGAN v. MANSELLY [6,584].
Hogan, O'Neil v. [See 10,529.]
HOGAN v. TAYLOR [6,584a], Hempst. 20.
HOGE v. FISHER [6,585], Pet. C. C. 163.
Hoge, Gurney v. [See 5,875.]
Hoge, Lockett v. [See 8,443.]
Hoge, Moorman v. [See 9,783.]
Hogg, American Saddle Co. v. [See 315, 316.]
HOGG v. EMERSON [6,586].
Hogg, Emerson v. [See 4,439, 4,440.]
Hoguet, Kohlsaat v. [See 7,919.]
HOLABIRD v. ATLANTIC MUT. LIFE INS. CO. [6,587], 2 Dill. 166, note; 12 Amer. Law Reg. (N. S.) 566; 2 Ins. Law J. 588; 5 Chi. Leg. News, 550; 4 Bigelow, Ins. Cas. 181.
Holbrook, In re. [See 2,534.]
HOLBROOK, In re [6,588], 2 Lowell, 259.

[Federal Case numbers are given in brackets.]

HOLBROOK v. AMERICAN INS. CO. [6,589], 1 Curt. 193; 1 Amer. Law Reg. 18.
HOLBROOK v. BLACK [6,590], Brunner, Col. Cas. 588; 18 Law Rep. 89.
HOLBROOK v. FAUQUIER & A. TURNPIKE CO. [6,591], 3 Cranch, C. C. 425.
Holbrook, Lang v. [See 8,057.]
Holbrook v. Matthews. [See 6,594-6,596.]
HOLBROOK v. ROSS [6,592].
HOLBROOK v. SEAGRAVES [6,593], 1 Story, 546; 4 Law Rep. 143.
HOLBROOK v. SMALL [6,594].
HOLBROOK v. SMALL [6,595], 10 O. G. 508; 2 Ban. & A. 396; Merw. Pat. Inv. 521.
HOLBROOK v. SMALL [6,596], 17 O. G. 55; 3 Ban. & A. 625.
HOLBROOK v. WORCESTER BANK [6,597], 2 Curt. 244.
Holbrook, The John E. [See 7,339.]
HOLCOMB, Ex parte [6,598], 2 Dill. 392.
Holcombe, Story v. [See 13,497.]
HOLDEN v. COLLINS [6,599], 5 McLean, 189.
Holenshade, Schwarzel v. [See 12,506.]
HOLDER BORDEN, The [6,600], 1 Spr. 144; 10 Law Rep. 193.
HOLGATE, In re [6,601], 8 Ben. 355.
Holgate, The Ellen v. The Illinois. [See 4,376.]
HOLIDAY v. MATTHESON [6,602].
Holladay, Hellman v. [See 6,340.]
Holladay, Samuel v. [See 12,288.]
HOLLAND, In re [6,603], 2 Hask. 90.
HOLLAND, In re [6,604], 8 N. B. R. 190.
HOLLAND, In re [6,605], 12 N. B. R. 403; 1 N. Y. Wkly. Dig. 126.
HOLLAND v. CRANSTON [6,606], 1 Curt. 497.
Holland, Haven v. [See 6,229.]
Holland, Knowlton v. [See 7,904.]
Holland, Potter v. [See 11,329, 11,330.]
Holland, Swain v. [See 13,661.]
Holland, United States v. [See 15,377, 15,378.]
HOLLEMAN v. DEWEY [6,607], 2 Hughes, 341; 7 N. B. R. 269.
HOLLEN, The [6,608], 1 Mason, 431.
HOLLENBACK v. MILLER [6,609], 3 Cranch, C. C. 176.
HOLLENSHADE, In re [6,610], 2 Bond, 210; 2 N. B. R. 651.
Holley, Aultman v. [See 656.]
Holley, United States v. [See 15,379.]
Holliday, Gordon v. [See 5,610.]
Holliday, Moore v. [See 9,765.]
Hollings, Ashcroft v. [See 579.]
Hollingshead, Kurtz v. [See 7,952, 7,953.]
HOLLINGSWORTH v. ADAMS [6,611], 2 Dall. 396.
HOLLINGSWORTH v. BETSEY, The [6,612], 2 Pet. Adm. 330.
HOLLINGSWORTH v. DETROIT [6,613], 3 McLean, 472.
HOLLINGSWORTH v. DUANE [6,614], Wall. Sr. 46.
HOLLINGSWORTH v. DUANE [6,615], Wall. Sr. 51.
HOLLINGSWORTH v. DUANE [6,616], Wall. Sr. 77.
HOLLINGSWORTH v. DUANE [6,617], Wall. Sr. 141.
HOLLINGSWORTH v. DUANE [6,618], Wall. Sr. 147; 4 Dall. 353.
HOLLINGSWORTH v. FRY [6,619], 4 Dall. 345.
HOLLINGSWORTH v. SEVENTY DOUBLOONS & THREE SMALL PIECES OF GOLD, Each of the Value of an Eighth of a Doubloon [6,620], 19 Niles, Reg. 104.
Hollins, Durand v. [See 4,186.]
Hollinsberry, United States v. [See 15,380.]
HOLLIS, In re [6,621], 3 N. B. R. 309 (Quarto, 82).
HOLLISTER v. LEFERN [6,622].
Holloman, Freelander v. [See 5,081.]
HOLLOMAN v. LIFE INS. CO. [6,623], 1 Woods, 674.
Hollowell, Schwab v. [See 12,500.]
Hollowell, Seidenbach v. [See 12,635.]
HOLLY v. UNION CITY [6,624], 14 O. G. 5.
Holly, United States v. [See 15,381.]
HOLLYDAY v. DAVID REEVES, The [6,625], 5 Hughes, 89.
Holman, American Bible Soc. v. [See 291.]
HOLMEAD v. CHESAPEAKE & O. CANAL CO. [6,626], 1 Hayw. & H. 77.
HOLMEAD v. CORCORAN [6,627], 2 Cranch, C. C. 119.
Holmead, Ennis v. [See 4,492.]
Holmead, Foreman v. [See 4,935.]
HOLMEAD v. FOX [6,628], 1 Cranch, C. C. 138.
HOLMEAD v. MADDOX [6,629], 2 Cranch, C. C. 162.
HOLMEAD v. SMITH [6,630], 5 Cranch, C. C. 343.
HOLMES, Ex parte [6,631], 14 N. B. R. 493.
HOLMES, In re [6,632], 8 Ben. 74; 12 N. B. R. 86.
HOLMES, In re [6,632a], 15 Blatchf. 170; 18 N. B. R. 230.
HOLMES, In re [6,633], 5 Law Rep. 360; 1 N. Y. Leg. Obs. 211.
HOLMES, In re [6,634], 14 N. B. R. 209; 3 N. Y. Wkly. Dig. 101.
Holmes, In re. [See 13,183.]
HOLMES v. BRADSHAW [6,635].
HOLMES v. BUSSARD [6,636], 2 Cranch, C. C. 401.
Holmes, Coulson v. [See 3,274.]
HOLMES v. DODGE [6,637], 1 Abb. Adm. 60.
Holmes, Elliott v. [See 4,392.]
Holmes, Gear v. [See 5,292.]
HOLMES v. HOLMES [6,638], 1 Abb. U. S. 525; 1 Sawy. 99.
Holmes, Hunt v. [See 6,890.]
HOLMES v. HUTCHINSON [6,639], Gilp. 447.
HOLMES v. JOSEPH C. GRIGGS, The [6,640], 1 Ben. 81.
HOLMES v. LISSBERGER [6,632a].
HOLMES v. LODEMIA, The [6,642], Crabbe, 434.
Holmes, McCready v. [See 8,733.]
HOLMES v. OLDHAM [6,643], 1 Hughes, 76.
HOLMES v. SHERIDAN [6,644], 1 Dill. 351; 4 West. Jur. 339.
HOLMES v. TROUT [6,645], 1 McLean, 1.
Holmes, United States v. [See 15,382, 15,383.]
Holmes, Wallace v. [See 17,100.]
Holmes, Wayne v. [See 17,303.]
Holmes, The Lucy C. [See 8,597.]
HOLT, In re [6,646], 3 N. B. R. 241 (Quarto, 58).
Holt, Byrne v. [See 2,272.]
HOLT v. DORSEY [6,647], 1 Wash. C. C. 396.
Holt, Fox v. [See 5,012.]
Holt, Leigh v. [See 8,220.]
Holt v. The Miantinomi. [See 9,521.]
Holt, O'Reilly v. [See 10,563.]
Holt, Robinson v. [See 11,955.]
Holton, Thompson v. [See 13,958.]
Holtsclaw, United States v. [See 15,384.]
HOLTZAPPLE v. PHILLIBAUM [6,648], 4 Wash. C. C. 356.
HOLTZMAN v. FRANKLIN INS. CO. [6,649], 4 Cranch, C. C. 295.
Holtzman, Plant v. [See 11,206.]
HOLTZMAN v. PLUMSEL [6,650], 4 Cranch, C. C. 184.
Holtzman, Ross v. [See 12,075.]
Holway, The Helen J. [See 6,331.]
HOLY v. RHODES [6,651], 2 Cranch, C. C. 245.
HOLYOKE v. DEPEW [6,652], 2 Ben. 334.
Holyoke Mut. Fire Ins. Co., Mauger v. [See 9,305.]
HOMANS v. COOMBE [6,653], 2 Cranch, C. C. 681.
HOMANS v. COOMBE [6,654], 3 Cranch, C. C. 365.
HOMANS v. MOORE [6,655], 5 Cranch, C. C. 505.
HOMAS v. McCONNELL [6,656], 3 McLean, 381.
HOME, The [6,657], 18 N. B. R. 557.
HOME v. SEMPLE [6,658], 3 McLean, 150.
Homea, Gattman v. [See 5,271.]
Home Fire Ins. Co., Huchberger v. [See 6,821.]
HOME INS. CO. v. CONCORD, The [6,659], 17 Pittsb. Leg. J. 148; 2 Chi. Leg. News, 249.
Home Ins. Co., Connecticut Mut. Life Ins. Co. v. [See 3,107.]
Home Ins. Co., Hambleton v. [See 5,972.]
Home Ins. Co., Hovey v. [See 6,743.]
Home Ins. Co., Kelley v. [See 7,658.]
Home Ins. Co. v. The Mollie Mohler. [See 9,701.]
Home Ins. Co. v. The Ocean Wave. [See 10,416, 10,417.]
Home Ins. Co., Scott v. [See 12,533, 12,534.]
HOME INS. CO. v. STANCHFIELD [6,660], 1 Dill. 424; 2 Abb. U. S. 1; 4 Amer. Law T. Rep. U. S. Cts. 171; 3 Chi. Leg. News, 97; 5 Amer. Law Rev. 564.
Home Ins. Co., Stillwell v. [See 13,450.]
Home Ins. Co., Swick v. [See 13,692.]
HOMELY, The [6,661], 8 Ben. 495.
HOME MUT. INS. CO. v. STOCKDALE [6,662], 16 Int. Rev. Rec. 30; 4 Chi. Leg. News, 325.
Homton, Hills v. [See 6,508.]

Hone, Jewett v. [See 7,311.]
Honea, Gattman v. [See 5,271.]
HONER, Ex parte [6,663].
Honsinger, Goodyear v. [See 5,572.]
Hood, Collins v. [See 3,015.]
Hood, Graydon v. [See 5,732.]
HOOD v. KARPER [6,664], 5 N. B. R. 358; 8 Phila. 160; 28 Leg. Int. 340.
HOOD v. SPENCER [6,665], 4 McLean, 168.
Hood, United States v. [See 15,385.]
Hood, The Ellen. [See 4,377.]
HOOE v. ALEXANDRIA [6,666], 1 Cranch, C. C. 90.
HOOE v. ALEXANDRIA [6,667], 1 Cranch, C. C. 98.
Hooe, Miller v. [See 9,573.]
HOOE v. REES [6,668].
Hooe, United States v. [See 15,386.]
HOOF v. LADD [6,669], 1 Cranch, C. C. 167.
Hooff, Farmers' Bank v. [See 4,659.]
HOOFF v. HERBERT [6,670].
Hooff v. Ladd. [See 6,669.]
Hooff, Virginia v. [See 16,962.]
HOOK, In re [6,671], 2 Dill. 92.
HOOK, In re [6,672], 11 N. B. R. 282.
Hook, Robinson v. [See 11,956.]
Hook, United States v. [See 15,387.]
HOOLE, In re [6,673], 3 Fed. 496.
Hooper, Felch v. [See 4,717, 4,718.]
HOOPER v. FIFTY-ONE CASKS OF BRANDY [6,674], 2 Ware (Dav. 370) 371; 6 N. Y. Leg. Obs. 302.
HOOPER v. HIRAM, The [6,675], Fish. Pr. Cas. 69; 1 Car. Law Repos. 190.
Hooper, Pitman v. [See 11,185, 11,186.]
HOOPER v. RATHBONE [6,676], Taney, 519.
Hooper v. The Sam Slick. [See 12,283.]
Hooper, The Nathaniel. [See 10,030-10,032.]
Hoo Sue, Lloyd v. [See 8,432.]
Hoover, Manning v. [See 9,044.]
HOOVER v. REILLY [6,677], 2 Abb. U. S. 471.
Hoover, Welch v. [See 17,368.]
Hoover, Young v. [See 18,158.]
HOPE, The [6,678], 2 Gall. 48.
Hope, Collings v. [See 3,003.]
HOPE v. DIDO, The [6,679], 2 Paine, 243; 2 Hunt, Mer. Mag. 161.
HOPE v. EASTERN TRANSP. LINE [6,680], 1 Wkly. Notes Cas. 394.
Hope, The, Falliage v. [See 4,626.]
Hope, The, Skrine v. [See 12,927.]
Hope, The, Williams v. [See 17,721.]
HOPE MIN. CO., In re [6,681], 1 Sawy. 710.
HOPE MIN. CO., In re [6,682], 2 Sawy. 351; 7 N. B. R. 598.
HOPKINS, In re [6,683], 2 Curt. 567.
HOPKINS, In re [6,684], 18 N. B. R. 396; 26 Pittsb. Leg. J. 120.
HOPKINS v. BARNUM [6,685], 1 McA. Pat. Cas. 334.
Hopkins, Burr v. [See 2,192.]
HOPKINS v. CARPENTER [6,686], 18 N. B. R. 339.
Hopkins, Fairfax v. [See 4,614.]
Hopkins, Higbie v. [See 6,466.]
HOPKINS v. JACKSON [6,687].
HOPKINS v. LEWIS [6,688].
Hopkins, Lippett v. [See 8,380.]
HOPKINS v. MENEDGER [9,289].
Hopkins, Northwestern Car Co. v. [See 10,334.]
HOPKINS v. ST. PAUL & P. R. CO. [6,690], 2 Dill. 396.
HOPKINS v. SIMMONS [6,691], 1 Cranch, C. C. 250.
HOPKINS v. WESTCOTT [6,692], 6 Blatchf. 64; 7 Amer. Law Reg. (N. S.) 533.
Hopkins, Williams v. [See 17,722.]
HOPKINS v. WOOD [6,693], 14 Int. Rev. Rec. 164.
HOPKINS v. ZEBA, The [6,694], 2 Hughes, 64.
HOPKINS & D. MFG. CO. v. CORBIN [6,695], 14 Blatchf. 396; 3 Ban. & A. 199; 14 O. G. 3.
Hopkins & D. Mfg. Co. v. Parker & W. Co. [See 6,695.]
HOPKIRK v. McCONICO [6,696], 1 Brock. 220.
HOPKIRK v. PAGE [6,697], 2 Brock. 20.
HOPKIRK v. RANDOLPH [6,698], 2 Brock. 132.
HOPNER v. APPLEBY [6,699], 5 Mason, 71.
Hoppe, United States v. [See 15,388.]
Hopper, Butler v. [See 2,241.]
HOPPOCK, Ex parte [1,912], 2 Ben. 478.
Hoppock, Brock v. [See 1,912.]
Hoppock, Hyslop v. [See 6,988, 6,989.]
HOPPOCK v. WICKER [6,701], 4 Biss. 469.
HORACE E. BELL, The [6,702], 3 Ware, 236.
Hore, Scott v. [See 12,535.]
HORMAN PATENT MFG. CO. v. BROOKLYN CITY R. CO. [6,703], 15 Blatchf. 444; 4 Ban. & A. 86; 7 Reporter, 295.
Horn, Lockhart v. [See 8,445, 8,446.]
Horn, United States v. [See 15,389.]
Horner, Alexander v. [See 169.]
HORNET, The [6,704], 1 Abb. Adm. 57.
HORNET, The [6,705], 2 Abb. U. S. 35; 11 Int. Rev. Rec. 6.
Hornet, The, Boon v. [See 1,640.]
Hornibrook, United States v. [See 15,390.]
Hornum Patent Mfg. Co. v. Brooklyn City R. Co. [See 6,703.]
Horr, Bauendahl v. [See 1,113.]
Horrell, United States v. [See 15,391.]
HORTENSIA, The [6,706], 2 Hask. 141.
HORTON, In re [6,707], 5 Ben. 562.
HORTON, In re [6,708], 5 Law Rep. 462.
Horton, Bissell v. [See 1,448.]
HORTON v. SMITH [6,709], 6 Ben. 264.
HORTON v. SQUANKUM & FREEHOLD MARL CO. [6,710], 8 Amer. Law Reg. (N. S.) 179.
Horton, United States v. [See 15,392, 15,393.]
HOSIE, In re [6,711], 7 N. B. R. 601; 5 Leg. Op. 89.
HOSKINS, Ex parte [6,712], Crabbe, 466; 1 Pa. Law J. 287.
Hoskins, Graham v. [See 5,669.]
HOSMER v. JEWETT [6,713], 6 Ben. 208.
Hosmer, United States v. [See 15,394.]
Hossack, United States v. [See 15,395.]
HOSTETTER v. VOWINKLE [6,714], 1 Dill. 329; Cox, Manual Trade-Mark Cas. 207.
HOTALING v. TITAN, The [6,714a].
HOTCHKISS, In re [6,715], 7 Ben. 235; 9 N. B. R. 488.
HOTCHKISS v. ADRIANCE [6,715a].
HOTCHKISS v. FLOYD [6,716], 4 Quart. Law J. 134.
HOTCHKISS v. GLASGOW [6,717], 5 McLean, 424.
HOTCHKISS v. GREENWOOD [6,718], 4 McLean, 456; 2 Robb. Pat. Cas. 730.
Hotchkiss, Manchester v. [See 9,004.]
HOTCHKISS v. NEW YORK & V. S. S. CO. [6,718a].
Hotchkiss, Parker v. [See 10,739.]
HOTCHKISS v. TRADESMEN'S NAT. BANK [6,719], 10 Blatchf. 384.
Hotchkiss, Wheatley v. [See 17,483.]
HOTSPUR, The [6,720], 3 Sawy. 194; 7 Chi. Leg. News, 65.
HOUGH v. FIRST NAT. BANK [6,721], 4 Biss. 349.
Hough, Manchester v. [See 9,005.]
Hough, Moore v. [See 9,766.]
HOUGH v. RICHARDSON [6,722], 3 Story, 659.
HOUGH v. SMOOT [6,723], 2 Cranch, C. C. 318.
HOUGH v. WESTERN TRANSP. CO. [6,724], 1 Biss. 425.
HOUGHTON, Ex parte [6,725], 1 Lowell, 554.
HOUGHTON, In re [6,727].
HOUGHTON, In re [6,727], 4 Law Rep. 482.
HOUGHTON, In re [6,728], 5 Law Rep. 321.
HOUGHTON, In re [6,729], 2 Lowell, 243; 7 Amer. Law Rev. 754.
HOUGHTON, In re [6,730], 2 Lowell, 328; 10 N. B. R. 337.
Houghton, Hill v. [See 6,493.]
Houghton, Sheldon v. [See 12,748.]
Houghton, United States v. [See 15,396.]
HOUND, The [6,731], 27 Law Rep. 29.
HOURQUEBIE v. GIRARD [6,732], 2 Wash. C. C. 212.
HOURQUIBEE v. GERARD [6,733], 2 Wash. C. C. 164.
HOUSBERGER, In re [6,734], 2 Ben. 504; 2 N. B. R. 92 (Quarto, 33).
HOUSE, In re [6,735], 1 N. Y. Leg. Obs. 348.
HOUSE v. CASH [6,736], 2 Cranch, C. C. 73.
HOUSE v. LEXINGTON, The [6,767a], 2 N. Y. Leg. Obs. 4.
House, North v. [See 10,310.]
HOUSE v. YOUNG [6,738], 3 Fish. Pat. Cas. 335.
House and Lot No. 3 Abattoir Place, United States v. [See 15,166.]
HOUSER v. CLAYTON [6,739], 3 Woods, 273.
HOUSTON, In re [6,740].
Houston, United States v. [See 15,398.]

[Federal Case numbers are given in brackets.]

Houston & Great Northern R. Co., Kidwell v. [See 7,757.]
HOUTMAN, In re [6,740a].
Houtz, Smith v. [See 13,062.]
HOVEY v. FRANCIS SKIDDY, The [6,741], 43 Hunt, Mer. Mag. 68.
HOVEY v. HENRY [6,742], 3 West. Law J. 153.
HOVEY v. HOME INS. CO. [6,743], 10 N. B. R. 224; 13 Amer. Law Reg. (N. S.) 511; 3 Ins. Law J. 815.
Hovey, Milligan v. [See 9,605.]
HOVEY v. SARAH E. BROWN, The [6,744], 39 Hunt, Mer. Mag. 329.
HOVEY v. STEVENS [6,745], 1 Woodb. & M. 290; 2 Robb, Pat. Cas. 479.
HOVEY v. STEVENS [6,746], 3 Woodb. & M. 17; 2 Robb, Pat. Cas. 567.
HOW, In re [6,747], 18 N. B. R. 565; 11 Chi. Leg. News, 141.
HOW v. KEMBALL [6,748], 2 McLean, 103.
HOW v. McKINNEY [6,749], 1 McLean, 319.
How, White v. [See 17,548, 17,549.]
HOWARD, In re [6,750], 4 N. B. R. 571 (Quarto, 185).
HOWARD, In re [6,751], 6 N. B. R. 372.
HOWARD, The [6,752].
HOWARD, The [6,752a], 2 Adm. Rec. 148.
HOWARD v. AMERICAN DAIRY, ETC., CO. [6,753], 10 Chi. Leg. News, 22; 6 Amer. Law Rec. 193.
Howard, Ames v. [See 326.]
Howard, Bowen v. [See 1,723.]
HOWARD v. CHRISTY [6,754], 2 Ban. & A. 457; 10 O. G. 981.
HOWARD v. COBB [6,755], Brunner, Col. Cas. 75; 3 Day, 309.
HOWARD v. COBB [2,924], 19 Law Rep. 377; 36 Hunt, Mer. Mag. 707; 13 Leg. Int. 361.
Howard, Cobb v. [See 2,924, 2,925.]
Howard, Cook v. [See 3,160.]
HOWARD v. CRAWFORD COUNTY [6,757], 1 Pittsb. Rep. 531; 6 Pittsb. Leg. J. 454.
HOWARD v. CROMPTON [6,758], 14 Blatchf. 328.
HOWARD v. DAVENPORT [6,759].
HOWARD v. LA CROSSE & M. R. CO. [6,760], Woolw. 49.
Howard, McCormick v. [See 8,719.]
Howard, Mellus v. [See 9,403.]
HOWARD v. MILWAUKEE & ST. P. RY. CO. [6,761], 7 Biss. 73.
Howard, Parsons v. [See 10,777.]
HOWARD v. PRINCE [6,762], 1 Hughes, 239; 11 N. B. R. 322.
Howard, Rubber Tip Pencil Co. v. [See 12,102.]
Howard, Russell v. [See 12,156.]
Howard, Saunders v. [See 12,375.]
Howard, Tompkins v. [See 14,089.]
HOWARD v. UNITED STATES [6,763], 2 Cranch, C. C. 259.
Howard, United States v. [See 15,399-15,404.]
Howard, Virginia v. [See 16,963.]
Howard, Voss v. [See 17,013.]
Howard, The Edward [See 6,436.]
Howard, The Ida L. [See 6,999.]
Howard, The May [See 9,348.]
HOWARD NAT. BANK, Ex parte [6,764], 2 Lowell. 487; 16 N. B. R. 420.
HOWDEN, The [6,765], 5 Sawy. 389.
HOWE v. ABBOTT [6,766], 2 Story, 190; 2 Robb, Pat. Cas. 99; Merw. Pat. Inv. 312.
HOWE v. COBB [6,767], 3 McLean, 270.
Howe, Dike v. [See 3,906.]
Howe, Gardiner v. [See 5,219.]
Howe, Hunt v. [See 6,891.]
HOWE v. LEXINGTON, The [6,767a], 2 N. Y. Leg. Obs. 4.
HOWE v. LEXINGTON, The [6,767b].
HOWE v. McDERMOTT [6,768], 4 Cranch, C. C. 711.
HOWE v. MORTON [6,769], 1 Fish. Pat. Cas. 586; 23 Law Rep. 70.
HOWE v. NESBIT [6,770].
HOWE v. NEWTON [6,771], 2 Fish. Pat. Cas. 531.
HOWE v. SHEPPARD [6,772], 2 Sumn. 133.
HOWE v. SHEPPARD [6,773], 2 Sumn. 409.
HOWE v. SHUMAWAY [6,774].
Howe, Storrs v. [See 13,495.]
HOWE v. UNDERWOOD [6,775], 1 Fish. Pat. Cas. 160.
HOWE v. UNION INS. CO. [6,776], 42 Cal. 529.
HOWE v. WADE [6,777], 4 McLean, 319.
HOWE v. WILLIAMS [6,778], 2 Cliff. 245; 2 Fish. Pat. Cas. 395.
Howe v. Williams. [See 6,769.]
Howe Ins. Co., Curtis v. [See 3,503.]
Howell, Barclay v. [See 975.]
HOWELL v. CRUTCHFIELD [6,778a], Hempst. 99.
HOWELL v. HARTFORD FIRE INS. CO. [6,779], 6 Biss. 163.
HOWELL v. HARTFORD FIRE INS. CO. [6,780], 3 Ins. Law J. 649.
HOWELL v. PHILADELPHIA MUT. INS. CO. [6,781], 25 Hunt, Mer. Mag. 80.
HOWELL v. SAULE [6,782], 5 Mason, 410.
HOWELL v. TODD [6,783].
Howell, United States v. [See 15,406.]
Howell, Warner v. [See 17,184.]
HOWE MACH. CO. v. EDWARDS [6,784], 15 Blatchf. 402; 7 Reporter, 420.
HOWE MACH. CO. v. HADDEN [6,785], 8 Biss. 208; 6 Reporter, 136; 6 Cent. Law J. 446; 2 Month. Jur. 136; 18 Alb. Law J. 294; 24 Int. Rev. Rec. 236; 25 Pittsb. Leg. J. 204.
Howe Mach. Co., Wooster v. [See 18,037.]
HOWENSTEIN v. BARNES [6,786], 5 Dill. 482; 9 Cent. Law J. 48; 8 Reporter, 326; 1 Wkly. Jur. 249; 8 Amer. Law Rec. 163; 20 Alb. Law J. 318.
HOWES, In re [6,787], 7 Ben. 102; 9 N. B. R. 423.
HOWES, In re [6,788], 21 Vt. 619; 2 N. Y. Leg. Obs. 271; 6 Law Rep. 297.
HOWES v. McNEAL [6,789], 15 Blatchf. 103; 3 Ban. & A. 376; 15 O. G. 608.
Howes, New York Balance Dry Dock Co. v. [See 10,201, 10,202.]
HOWES v. NUTE [6,790], 4 Cliff. 173; 4 Fish. Pat. Cas. 263.
Howes v. Spalding. [See 4,043.]
Howes, The Mary A. [See 9,193.]
HOWLAND, In re [6,791], 2 N. B. R. 357 (Quarto, 114); 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53.
HOWLAND v. BLAKE [6,792], 7 Biss. 40.
Howland, Buchanan v. [See 2,074.]
HOWLAND v. CONWAY [6,793], 1 Abb. Adm. 281.
Howland, De Wolf v. [See 3,852.]
Howland, Donahay v. [See 3,978.]
Howland, Emerson v. [See 4,441.]
Howland, Frates v. [See 5,066.]
HOWLAND v. HARRIS [6,794], 4 Mason, 497.
Howland, Hazard v. [See 6,280.]
HOWLAND v. HENRY HOOD, The [6,795].
HOWLAND v. KELLY [6,796], Chase, 427.
HOWLAND v. LAVINIA, The [6,797], 1 Pet. Adm. 123.
HOWLAND v. MARINE INS. CO. OF ALEXANDRIA [6,798], 2 Cranch, C. C. 474.
HOWLAND v. MAXWELL [6,799], 3 Blatchf. 146.
Howland, Renner v. [See 11,700.]
HOWLAND v. SOULE [6,800], Deady, 413.
HOWLAND v. TWO HUNDRED AND TEN BARRELS OF OIL [6,801], 7 Law Rep. 377.
Howland, United States v. [See 15,406.]
HOXIE v. CARR [6,802], 1 Sumn. 173.
Hoxie, Carr v. [See 2,438.]
Hoxie, United States v. [See 15,407.]
Hoy v. The Joseph Stewart. [See 13,070.]
Hoye, Stieber v. [See 13,441.]
Hoyl, Auld v. [See 652.]
HOYLE, In re [6,803], 9 Amer. Law Rec. 65; 1 Crim. Law Mag. 472; 12 Chi. Leg. News, 279.
Hoyle, The J. R. [See 7,557.]
Hoym, United States v. [See 15,408.]
HOYT, Ex parte [6,804], 3 App. Com'r Pat. 297.
Hoyt, Ex parte. [See 17,051.]
HOYT, In re [6,805], 3 Biss. 436.
HOYT, In re [6,806], 3 N. B. R. 55 (Quarto, 13).
Hoyt, Armstrong v. [See 544a.]
HOYT v. BYRD [6,807], Hempst. 436.
HOYT v. CURTIS [6,808].
Hoyt, Dorr v. [See 4,007-4,009.]
Hoyt, Hadden v. [See 5,890, 5,891.]
Hoyt, Hall v. [See 5,934.]
HOYT v. JOSHUA BARKER, The [7,547].
HOYT v. SPRAGUE [6,810], 8 Reporter, 616; 12 Chi. Leg. News, 25.
Hoyt, Stephenson v. [See 13,373.]
Hoyt, United States v. [See 15,409, 15,410.]

[Federal Case numbers are given in brackets.]

Hoyt, Wakeman v. [See 17,051.]
Hoyt, Willison v. [See 17,772.]
H. P. BALDWIN, The [6,811], 2 Abb. U. S. 257; 12 Int. Rev. Rec. 170; 3 Chi. Leg. News, 50; 5 Amer. Law Rev. 564.
H. P. BALDWIN, The [6,812], 1 Brown, Adm. 300.
HUBBARD, In re [6,813], 1 Lowell, 190; 1 N. B. R. 679.
HUBBARD v. ALLAIRE WORKS [6,814], 7 Blatchf. 284; 4 N. B. R. 623.
Hubbard, Atkinson v. [See 612.]
HUBBARD v. BANK OF THE UNITED STATES [6,815], 5 Hunt, Mer. Mag. 75.
Hubbard, Black v. [See 1,460.]
HUBBARD v. COOLIDGE [6,816], 2 Gall. 353.
Hubbard, Miller v. [See 9,574.]
HUBBARD v. MORGAN [6,817].
HUBBARD v. NORTHERN R. CO. [6,818], 3 Blatchf. 84; 25 Vt. 715; 17 Law Rep. 316.
Hubbard, Page v. [See 10,663.]
Hubbard v. Proceeds of the Kate Hinchman. [See 7,620, 7,621.]
HUBBARD v. TURNER [6,819], 2 McLean, 519.
Hubbard, Wells v. [See 17,397.]
HUBBEL, In re [6,820], 9 N. B. R. 523; 19 Int. Rev. Rec. 150; 6 Leg. Gaz. 148.
Hubby, Huggins v. [See 6,839.]
Huber, Milne v. [See 9,617.]
Huber v. Seven Coal Barges. [See 12,677.]
Huber, Shimer v. [See 12,787.]
HUCHBERGER v. HOME FIRE INS. CO. [6,821], 5 Biss. 106.
HUCHBERGER v. MERCHANTS' FIRE INS. CO. [6,822], 4 Biss. 265.
HUCHBERGER v. PROVIDENCE WASHINGTON INS. CO. [6,823], 1 Chi. Leg. News, 353.
Huckins, Johnson v. [See 7,390.]
HUD & FRANK, The [6,824], 1 Hask. 192.
HUDDELL, In re [6,825], 8 Wkly. Notes Cas. 407.
Huddlestone, Underwood v. [See 14,339, 14,340.]
HUDDY v. HAVENS [6,826], 4 Wkly. Notes Cas. 20; 5 Cent. Law J. 66; 1 Month. Jur. 167.
HUDGINS v. LANE [6,827], 2 Hughes, 361; 11 N. B. R. 462.
Hudland, United States v. [See 15,411.]
HUDSON, The [6,828].
HUDSON, The [6,829], 5 Ben. 206; 14 Int. Rev. Rec. 36.
HUDSON, The [6,830], 14 Int. Rev. Rec. 36.
HUDSON, The [6,831], Olc. 396.
HUDSON v. ADAMS [6,832], 18 N. B. R. 102; 3 Cin. Law Bul. 1066.
HUDSON v. BRADLEY [6,833], 2 Cliff. 130.
HUDSON v. DRAPER [6,834], 4 Fish. Pat. Cas. 256; 4 Cliff. 178.
Hudson, Draper v. [See 4,069.]
Hudson, Hall v. [See 5,935.]
Hudson, Saddler v. [See 12,206.]
HUDSON v. SCHWAB [6,835], 18 N. B. R. 480; 26 Pittsb. Leg. J. 140.
Hudson, The, United States v. [See 6,829.]
Hudson, United States v. [See 15,412, 15,413.]
Hudson, Vernard v. [See 16,921.]
Hudson, The Hendrick. [See 6,355.]
Hudson, The Hendrik. [See 6,358.]
HUDSON COAL CO. v. MINNIE R. CHILDS, The [6,836], 1 N. J. Law J. 42.
Hudson River Bridge Co., Coleman v. [See 2,983.]
Hudson River Bridge Co., Silliman v. [See 12,851, 12,852.]
Hudson River R. Co., Hodge v. [See 6,559, 6,560.]
Huffington, Kelly v. [See 7,671.]
Huffman v. Kemp. [See 13,465.]
HUFNAGEL, In re [6,837], 12 N. B. R. 554.
Hufschmidt, Zinkeisen v. [See 18,214.]
Huger, Brown v. [See 2,013.]
Huger, United States v. [See 15,415.]
HUGG v. AUGUSTA INSURANCE & BANKING CO. [6,838], Taney, 159.
HUGGINS v. HUBBY [6,839], 3 West. Law Month. 347.
HUGH v. McRAE [6,840], Chase, 466.
HUGHES, In re [6,841], 2 Ben. 85; 1 N. B. R. 226 (Quarto, 9); 1 Amer. Law T. Rep. Bankr. 45.
HUGHES, In re [6,842], 8 Biss. 107; 16 N. B. R. 464.
HUGHES, In re [6,843], 11 N. B. R. 452; 7 Chi. Leg. News, 162.
HUGHES v. BALTIMORE [6,844], Taney, 243.
HUGHES v. BLAKE [6,845], 1 Mason, 515.
Hughes, First Nat. Bank of Youngstown v. [See 4,811.]
HUGHES v. HOYT [6,846].
Hughes, Irving v. [See 7,076.]
Hughes, Kellogg v. [See 7,662.]
Hughes v. Maxcy. [See 9,093.]
Hughes, Sortwell v. [See 13,177.]
Hughes, Swan v. [See 13,669.]
Hughes, United States v. [See 15,416-15,419.]
Hugo v. The Quickstep. [See 11,509.]
Huguenot, The, North Shore S. I. Ferry Co. v. [See 10,330.]
Hugunon, Jacquette v. [See 7,169.]
HUIDEKOPER v. BUCHANAN COUNTY [6,847], 3 Dill. 175; 1 Cent. Law J. 177.
Huidekoper v. Buchanan County. [See 14,679.]
HUIDEKOPER v. BURRUS [6,848], 1 Wash. C. C. 109.
HUIDEKOPER v. BURRUS [6,849], 1 Wash. C. C. 257.
HUIDEKOPER v. DALLAS COUNTY [6,850], 3 Dill. 171.
HUIDEKOPER v. DOUGLASS [6,851], 1 Wash. C. C. 258; 4 Dall. 392.
HUIDEKOPER v. McCLEAN [6,852], 1 Wash. C. C. 136.
HUIDEKOPER v. STILES [6,853], 1 Wash. C. C. 135.
HUKILL v. PAGE [6,854], 6 Biss. 183.
Hulbert, Marsh v. [See 9,116.]
Hulburd, Van Antwerp v. [See 16,826, 16,827.]
HULBURT v. SQUIRES [6,855], 1 West. Law Month. 443; Brunner, Col. Cas. 13.
Hulery, Cline v. [See 2,897.]
Hulings, Roach v. [See 11,874.]
HULL, Ex parte [6,856], 1 N. Y. Leg. Obs. 1; 5 Law Rep. 319.
HULL, In re [6,856a].
HULL, In re [6,857], 14 Blatchf. 257; 18 N. B. R. 1.
HULL OF A NEW BRIG [2,316], 3 Law Rep. 69; 23 Amer. Jur. 453.
Hull of a New Brig, Read v. [See 11,609.]
HULL OF A NEW SHIP, The [6,859], 2 Ware (Dav. 199) 203.
Hull of a New Ship, Drew v. [See 4,078.]
Hull of a New Ship, Purinton v. [See 11,472, 11,473.]
Hull of a New Ship, Sewall v. [See 12,682.]
HULL'S TRUSS [6,860], 6 Jour. Fr. Inst. 132.
Hull, Ayling v. [See 686.]
HULL v. RICHMOND [6,861], 2 Woodb. & M. 337.
Hullihen, Goodyear v. [See 5,573.]
Hulme, Parker v. [See 10,740.]
HULSECAMP v. TEEL [6,862], 2 Dall. 358.
Hulshizer, Gray v. [See 5,717.]
HULST, In re [6,863], 7 Ben. 17.
HULST, In re [6,864], 7 Ben. 40.
Humason, United States v. [See 15,421.]
HUME v. PITTSBURGH, C. & ST. L. R. CO. [6,865], 8 Biss. 31.
Humiston, Stainthorp v. [See 13,279-13,281.]
HUMMITSH, In re [6,866], 2 N. B. R. 12 (Quarto, 3); 15 Pittsb. Leg. J. (O. S.) 494.
Humphreville Copper Co. v. Sterling. [See 6,872.]
HUMPHREY, Ex parte [6,867], 2 Blatchf. 228.
HUMPHREYS, Case of [6,868], Crabbe, 19.
HUMPHREYS v. AMERICA, The [6,869], Bee, 237.
HUMPHREYS v. BLIGHT'S ASSIGNEES [6,870], 1 Wash. C. C. 44; 4 Dall. 370.
Humphreys, Dwight v. [See 4,216.]
Humphreys, Glenn v. [See 5,480.]
HUMPHREYS v. UNION INS. CO. [6,871], 3 Mason, 429.
Humphreys, United States v. [See 15,422.]
Humphreys, Webber v. [See 17,326.]
HUMPHREYVILLE COPPER CO. v. STERLING [6,872], Brunner, Col. Cas. 3; 1 West. Law Month. 126.
Humphries, Spraggins v. [See 13,246.]
HUMPHRIES v. TENCH [6,873], 2 Cranch, C. C. 337.
HUMPHRY v. HARTFORD FIRE INS. CO. [6,874], 15 Blatchf. 35.
HUMPHRY v. HARTFORD FIRE INS. CO. [6,875], 15 Blatchf. 504; 9 Ins. Law J. 265; 9 Reporter, 106.

[Federal Case numbers are given in brackets.]

HUNGERFORD v. BURR [6,876], 4 Cranch, C. C. 349.
Hunkele, Enoch Morgan's Son's Co. v. [See 4,493.]
HUNN v. MARSHALL [6,877].
HUNNEMAN v. MILWAUKEE [6,878], 3 Amer. Law J. (N. S.) 419.
HUNNEWELL v. BURLINGTON & M. R. R. CO. [6,879], 3 Dill. 313.
HUNNEWELL v. TABER [6,880], 2 Spr. 1.
HUNT, In re [6,881], 2 N. B. R. 539 (Quarto, 166); 1 Chi. Leg. News, 169.
HUNT, In re [6,882], 5 N. B. R. 433.
HUNT, In re [6,883], 5 N. B. R. 493; 4 Chi. Leg. News, 5; 2 Pac. Law Rep. 146.
HUNT, In re [6,884], 17 N. B. R. 205; 35 Leg. Int. 71.
Hunt, In re. [See 5,305.]
Hunt, Bedford v. [See 1,217.]
Hunt, Blabon v. [See 1,455.]
Hunt v. The Clement. [See 2,880.]
HUNT v. CLEVELAND, The [6,885], 6 McLean, 76; Newb. 221.
HUNT v. COLBURN [6,886], 1 Spr. 215.
HUNT v. DANFORTH [6,887], 2 Curt. 592.
HUNT v. DANFORTH [6,888], Brunner, Col. Cas. 678; 22 Law Rep. 74.
HUNT v. ENNIS [6,889], 2 Mason, 244.
Hunt, Fiske v. [See 4,831.]
Hunt, Hammond v. [See 6,003.]
HUNT v. HOLMES [6,890], 16 N. B. R. 101.
HUNT v. HOWE [6,891], 1 McA. Pat. Cas. 366.
HUNT v. INNIS [6,892], 2 Woods, 103.
HUNT v. JACKSON [6,893], 5 Blatchf. 349; 6 Amer. Law Reg. (N. S.) 169.
Hunt, Montford v. [See 9,725.]
HUNT v. OLIVER [6,894], 3 Chi. Leg. News, 123.
HUNT v. POOKE [6,895], 1 Abb. U. S. 556.
HUNT v. POOKE [6,896], 5 N. B. R. 161.
HUNT v. ROUSMANIER [6,897], 3 Mason, 294.
HUNT v. ROUSMANIERE [6,898], 2 Mason, 342.
HUNT v. SMITH [6,899], 3 Cranch, C. C. 432.
HUNT v. UNITED STATES [6,900], 1 Gall. 32.
Hunt, United States v. [See 15,423.]
HUNT v. WOODWARD [6,901], 2 Cin. Law Bul. 71.
HUNTER, In re [6,902], 3 McLean, 297.
HUNTER, In re [6,903], 18 N. B. R. 504.
HUNTER The [6,904], 1 Ware (249) 251.
Hunter, The. [See 10,326.]
Hunter, Allen v. [See 225.]
Hunter, Bowie v. [See 1,731.]
Hunter, Bryant v. [See 2,068.]
Hunter, Cook v. [See 3,161.]
Hunter, Courtney v. [See 3,285.]
Hunter, Foy v. [See 5,017-5,019.]
Hunter, Fraser v. [See 5,063.]
HUNTER v. HANNAH, The [6,905], Bee, 154.
HUNTER v. HAYS [6,906], 7 Biss. 362.
HUNTER v. KIBBE [6,907], 5 McLean, 279.
HUNTER v. MARLBORO [6,908], 2 Woodb. & M. 168.
Hunter, Murdock v. [See 9,941.]
Hunter, Parsons v. [See 10,778.]
HUNTER v. ROYAL CANADIAN INS. CO. [6,909], 3 Hughes, 234; 7 Reporter, 37; 2 Va. Law J. 695.
HUNTER v. ROYAL CANADIAN INS. CO. [6,909].
Hunter, Sheirburn v. [See 12,744.]
Hunter, Smith v. [See 13,063.]
Hunter, Tavenner v. [See 13,767.]
Hunter, United States v. [See 15,428.]
Hunter, The, United States v. [See 15,424-15,427.]
Hunter, Walker v. [See 17,072.]
Hunter, Wilson Packing Co. v. [See 17,852.]
Huntington, Morris v. [See 9,831.]
HUNTINGTON v. CENTRAL PAC. R. CO. [6,911], 2 Sawy. 503; 1 Amer. Law T. Rep. (N. S.) 94.
Hunter v. Royal Canadian Ins. Co. [See 6,909.]
Hunton, Goodrich v. [See 5,544.]
HUNTRESS, The [6,912], 1 Phila. 122; 7 Leg. Int. 202; 4 Pa. Law J. Rep. 510; 3 Amer. Law J. (N. S.) 307.
HUNTRESS, The [6,913], 2 Spr. 61.
HUNTRESS, The [6,914], 2 Ware (Dav. 82) 89; 4 West. Law J. 38; 4 Hunt, Mer. Mag. 83; 24 Amer. Jur. 486.
Huntress, The, Robson v. [See 11,971.]
HUNTSVILLE, The [6,915], 8 Blatchf. 228.
HUNTSVILLE, The [6,916].
Huntsville, The, Roberts v. [See 11,904.]
Huntt, Cope v. [See 3,206.]
Huntt, Whitney v. [See 17,589.]
Huppenbauer v. U. S. [See 3,097.]
Hurd, Halsey v. [See 5,966, 5,967.]
HURD v. REEVE [6,917].
HURD v. WILLIAMS [6,918], 4 McLean, 239.
Hurd Paper-Bag Co., Arkell v. [See 532.]
HURLBERT v. PACIFIC INS. CO. [6,919], 2 Sumn. 471.
Hurlbert, Paul v. [See 10,841.]
Hurlbut, Hall v. [See 5,936.]
HURLEY v. CHAMPION, The [6,919a].
HURLEY v. SMITH [6,920], 1 Hask. 308.
HURLIKI'S ADM'R v. BACON [6,921], 1 Cranch, C. C. 340.
HURRY v. HURRY'S ASSIGNEES [6,922], 2 Wash. C. C. 145.
HURRY v. JOHN & ALICE, The [6,923], 1 Wash. C. C. 293.
HURST, Ex parte [6,924], 1 Wash. C. C. 186; 4 Dall. 387.
HURST, In re [6,925], 1 Flip. 462; 13 N. B. R. 455; 8 Chi. Leg. News, 147; 3 Cent. Law J. 78.
HURST, In re [6,926], 2 Flip. 510.
HURST v. DURNELL [6,927], 1 Wash. C. C. 262.
HURST v. DURNELL [6,928], 1 Wash. C. C. 438.
HURST v. HURST [6,929], 3 Dall. 512.
HURST v. HURST [6,930], 1 Wash. C. C. 56.
HURST v. HURST [6,931], 2 Wash. C. C. 69.
HURST v. HURST [6,932], 2 Wash. C. C. 127.
HURST v. JONES [6,933], 4 Dall. 353.
HURST v. JONES [6,934], 1 Wall. Jr. Append. iii.
HURST v. KER [6,935], 1 Wash. C. C. 189.
HURST v. McNEIL [6,936], 1 Wash. C. C. 70.
Hurst, Morris v. [See 9,832.]
HURST v. RODNEY [6,937], 1 Wash. C. C. 375.
HURST v. RODNEY [6,938], 2 Wash. C. C. 49.
HURST v. TEFT [6,939], 12 Blatchf. 217; 13 N. B. R. 108.
HURST v. WICKERLY [6,940], 1 Wash. C. C. 276.
Hurst, Wilson v. [See 17,808, 17,809.]
HURTIN v. PHOENIX INS. CO. [6,941], 1 Wash. C. C. 400.
HURTIN v. UNION INS. CO. [6,942], 1 Wash. C. C. 530.
HUS v. KEMPF [6,943], 10 Ben. 231.
HUS v. KEMPF [6,944], 10 Ben. 364.
HUSSEY, In re [6,945], 2 Hask. 244.
HUSSEY v. BRADLEY [6,946], 5 Blatchf. 134; 2 Fish. Pat. Cas. 362; Merw. Pat. Inv. 89.
HUSSEY v. BRADLEY [6,946a], 5 Blatchf. 210.
HUSSEY v. FIELDS [6,947], 1 Spr. 394; 20 Law Rep. 673.
HUSSEY v. McCORMICK [6,948], 1 Biss. 300; 1 Fish. Pat. Cas. 509.
Hussey, Reed v. [See 11,646.]
HUSSEY v. SARAGOSSA, The [6,949], 3 Woods, 380.
HUSSEY v. WHITELY [6,950], 2 Fish. Pat. Cas. 120; 1 Bond, 407.
HUSSMAN, In re [6,951], 2 N. B. R. 437 (Quarto, 140); 2 Amer. Law T. Rep. Bankr. 53; 1 Chi. Leg. News, 177.
Husted, The Nellie. [See 10,098.]
HUTCHINGS v. MUZZY IRON WORKS [6,952], 8 N. B. R. 458; 6 Chi. Leg. News, 27.
Hutchings, United States v. [See 15,429.]
HUTCHINS v. TAYLOR [6,953], 5 Law Rep. 289.
HUTCHINSON, In re [6,954], 2 Hughes, 245.
HUTCHINSON v. COOMBS [6,955], 1 Ware (65) 58.
HUTCHINSON v. DECATUR [6,956], 3 Cranch, C. C. 291.
Hutchinson, Holmes v. [See 6,639.]
Hutchinson, Kintzing v. [See 7,834.]
HUTCHINSON v. MEYER [6,957], 3 App. Com'r Pat. 436.
HUTCHINSON v. PEYTON [6,958], 2 Cranch, C. C. 365.
Hutchinson, United States v. [See 15,431.]
Hutchinson, Whipple v. [See 17,517.]
Hutchinson, United States v. [See 15,432]
HUTSON v. JORDAN [6,959], 1 Ware (385) 393; 18 Amer. Jur. 294.
HUTTO, In re [6,960], 3 N. B. R. 787 (Quarto, 191); 3 Amer. Law T. 197; 1 Amer. Law T. Rep. Bankr. 226.

HUTTON v. SCHELL [6,961], 6 Blatchf. 48; 7 Int. Rev. Rec. 84.
HUTTON v. SCHELL [6,962], 25 Int. Rev. Rec. 168.
Hutton, United States v. [See 15,433-15,435.]
HUTZ v. KARTHAUSE [6,963], 4 Wash. C. C. 1.
H. W. EDYE, The [6,964], 10 Ben. 238.
Hyatt, Bank of Columbia v. [See 869.]
Hyatt, Cornell v. [See 3,237.]
Hyatt, Hyer v. [See 6,976, 6,977.]
Hyatt, Van Ness v. [See 16,867.]
Hyde, Andrews v. [See 377.]
HYDE v. BAKER [6,965].
HYDE v. BANCROFT [14,513], 8 N. B. R. 24.
Hyde, Bleeker v. [See 1,537.]
HYDE v. COHEN [6,967], 11 N. B. R. 461.
HYDE v. CORRIGAN [6,968], 9 N. B. R. 466.
HYDE v. DOE [6,969], 4 Sawy. 133.
Hyde, Edmondson v. [See 4,285.]
HYDE v. FIRST NAT. BANK [6,970], 7 Biss. 156; 2 N. Y. Wkly. Dig. 342; 8 Chi. Leg. News, 262; 11 Bankers' Mag. (3d S.) 140; 2 Law & Eq. Rep. 257.
HYDE v. FOLGER [6,971], 4 McLean, 255.
Hyde, Knevals v. [See 6 Fed. 651.]
HYDE v. LIVERSE [6,972], 1 Cranch, C. C. 408.
HYDE v. PHOENIX INS. CO. [6,973], 2 Dill. 525.
HYDE v. SONTAG [6,974], 1 Sawy. 249; 8 N. B. R. 225.
Hyde, Tyler v. [See 14,309, 14,310.]
HYDE v. WOODS [6,975], 2 Sawy. 655; 10 N. B. R. 54; 1 Amer. Law T. Rep. (N. S.) 354.
Hyde Park, Northwestern Fertilizing Co. v. [See 10,336.]
HYER v. HYATT [6,976], 2 Cranch, C. C. 633.
HYER v. HYATT [6,977], 3 Cranch, C. C. 276.
HYER v. SMITH [6,978], 3 Cranch, C. C. 376.
HYER v. SMITH [6,979], 3 Cranch, C. C. 437.
Hyer v. The Wave. [See 17,297.]
Hyer, The Wave v. [See 17,300.]
HYLTON v. BROWN [6,980], 1 Wash. C. C. 204.
HYLTON v. BROWN [6,981], 1 Wash. C. C. 298.
HYLTON v. BROWN [6,982], 1 Wash. C. C. 343.
HYLTON v. BROWN [6,983], 2 Wash. C. C. 165.
HYMAN, In re [6,984], 3 Ben. 28; 2 N. B. R. 333 (Quarto, 107); 36 How. Pr. 282.
HYMAN, In re [6,985], 18 N. B. R. 299.
HYMES, In re [6,986], 7 Ben. 427; 10 N. B. R. 433.
Hyndman, Roots v. [See 12,040.]
Hynes, Patton v. [See 10,835.]
HYPERION'S CARGO, The [6,987], 2 Lowell, 93; 7 Amer. Law Rev. 457.
HYSLOP v. HOPPOCK [6,988], 5 Ben. 447; 6 N. B. R. 552.
HYSLOP v. HOPPOCK [6,989], 5 Ben. 533; 6 N. B. R. 557.
HYSLOP v. JONES [6,990], 3 McLean, 96.

I

I—— v. I. M. LEWIS, The, and ALINE, The [6,991], 6 Chi. Leg. News, 304.
IANTHE, The [6,992], 3 Ware, 126.
IASIGI v. BROWN [6,993], 1 Curt. 401.
IASIGI v. BROWN [6,994], 16 Law Rep. 568.
Ibis, The, Grand v. [See 5,682.]
ICONIUN, The [6,995], 5 Adm. Rec. 287.
IDAHO, The [6,996], 4 Ben. 272.
IDAHO, The [6,997], 5 Ben. 280; 14 Int. Rev. Rec. 134.
IDAHO, The [6,998], 11 Blatchf. 218.
Idaho, The, Hentz v. [See 6,997.]
IDA L. HOWARD, The [6,999], 1 Lowell, 2; 27 Law Rep. 257.
Ida Stockdale, The, Comings v. [See 3,052.]
IDDO KIMBALL, The [7,000], 8 Ben. 297.
IDE v. PHŒNIX INS. CO. [7,001], 2 Biss. 333; 2 Chi. Leg. News, 310.
Ide, Tutt v. [See 14,275a, 14,275b.]
Idell, United States v. [See 15,436.]
Iginia, The, Muller v. [See 9,917.]
Iglehart, Bank of Circleville v. [See 860.]
Ihmsen, McLean v. [See 8,882.]
Ilex, The, Paul v. [See 10,842.]
Illegal Voting—Charge to Grand Jury in Relation to Illegal Voting. [See 18,254.]
ILLINOIS, The [7,002], 5 Blatchf. 256; 2 Int. Rev. Rec. 77.
ILLINOIS, The [7,003], 1 Brown's Adm. 13.
ILLINOIS, The [7,004], 1 Brown's Adm. 497; 6 Chi. Leg. News, 398; 1 Cent. Law J. 454.
Illinois, The. [See 4,376.]
ILLINOIS, The [7,005], 2 Flip. 383; 11 Chi. Leg. News, 237; 4 Cin. Law Bul. 170.
ILLINOIS v. CHICAGO & A. R. CO. [7,006], 6 Biss. 107; 6 Chi. Leg. News, 316; 10 Alb. Law J. 36; 9 Amer. Law Rev. 151; 1 Cent. Law J. 340; 6 Leg. Gaz. 252.
Illinois, The, The Ellen Holgate v. [See 4,376.]
Illinois, The, McFadden v. [See 8,784.]
Illinois, The, Nall v. [See 10,005.]
Illinois & Miss. Tel. Co., Gilman v. [See 5,443.]
Illinois & St. L. Bridge Co., Morgan v. [See 9,802.]
ILLINOIS & ST. LOUIS RAILROAD & CANAL CO. v. ST. LOUIS [7,007], 2 Dill. 70; 5 Chi. Leg. News, 49; 4 Leg. Gaz. 355.
Illinois Cent. R. Co., Barron v. [See 1,052, 1,053.]
ILLINOIS CENT. R. CO. v. MISSISSIPPI CENT. R. CO. [7,008].
Illinois Cent. R. Co., Turrill v. [See 14,270-14,272.]
Illinois Cent. R. Co., United States v. [See 15,437.]
Illinois Cent. R. Co., Woodward v. [See 18,006, 18,007.]
Illinois Cent. Ry. Co., York Mfg. Co. v. [See 18,143.]
Illinois Mfg. Co., Adams v. [See 54.]
Illinois Mfg. Co., Dane v. [See 3,558.]
ILLINOIS MASONS' BEN. SOC. v. BOOTH [7,009], 9 Reporter, 165; 12 Chi. Leg. News, 151.
Illinois Midland Ry. Co., Hervey v. [See 6,434.]
ILLIUS v. NEW YORK & N. H. R. CO. [7,010], 43 Hunt, Mer. Mag. 586.
Imbert, United States v. [See 15,438.]
Imbrie, Denniston v. [See 3,802.]
IMHAEUSER v. BUERK [7,011].
Imhaeuser, Buerk v. [See 2,106-2,108.]
Imlay, Gregerson v. [See 5,795.]
IMLAY v. NORWICH & W. R. CO. [7,012], 4 Blatchf. 227; 1 Fish. Pat. Cas. 340.
I. M. Lewis, The, I—— v. [See 6,991.]
Imperial Fire Ins. Co., Terry v. [See 13,838.]
Imperial Ins. Co., Cady v. [See 2,283.]
Imsand, United States v. [See 15,439.]
Inca, The, Snow v. [See 13,145a.]
Income Tax, Assessment of. [See Assessment of Income Tax, Appendix.]
Inconium, The. [See 6,995.]
INDEPENDENCE, The [7,013], 9 Ben. 395; 55 How. Pr. 205.
INDEPENDENCE, The [7,014], 2 Curt. 350; 3 Liv. Law Mag. 490; 18 Law Rep. 151.
Independence, The, Brown v. [See 2,014.]
Independence, The, Pickert v. [See 7,013.]
Independence, The, Snell v. [See 13,139.]
INDEPENDENCE INS. CO., In re [7,015], 7 Amer. Law Rev. 573.
INDEPENDENT, The [7,016], 9 Ben. 489.
INDEPENDENT INS. CO., In re [7,017], Holmes, 103; 6 N. B. R. 260; 1 Ins. Law J. 735.
INDEPENDENT INS. CO., In re [7,018], 2 Lowell, 97; 6 N. B. R. 169.
INDEPENDENT INS. CO., In re [7,019], 2 Lowell, 187; 7 Amer. Law Rev. 362.
INDIANA, The [7,020], 1 Abb. Adm. 330.
INDIANA v. AMERICAN EXP. CO. [7,021], 7 Biss. 227.
INDIANA v. MILLER [7,022], 3 McLean, 151.
Indiana, The, Tree v. [See 14,165.]
Indianapolis, Kennedy v. [See 7,703.]
Indianapolis & B. R. Co., Columbus, P. & I. R. Co. v. [See 3,047.]
Indianapolis & C. R. Co., Mowrey v. [See 9,891.]
Indianapolis & St. L. R. Co., Dunham v. [See 4,151.]
Indianapolis & St. L. R. Co., St. Louis, A. & T. H. R. Co. v. [See 12,236, 12,237.]

[Federal Case numbers are given in brackets.]

Indianapolis, B. & W. Ry. Co., Risley v. [See 11,-859.]
Indianapolis, B. & W. Ry. Co., Turner v. [See 14,258, 14,260.]
INDIANAPOLIS, C. & L. R. CO., In re [7,023], 5 Biss. 287; 8 N. B. R. 302; 18 Int. Rev. Rec. 79; 21 Pittsb. Leg. J. 4; 5 Leg. Gaz. 275.
INDIAN HUNTER, The [7,024], 6 Adm. Rec. 343.
INDIA RUBBER COMB CO. v. PHELPS [7,025], 8 Blatchf. 85; 4 Fish. Pat. Cas. 315.
INDSETH v. PIERCE [7,026], 11 Chi. Leg. News, 256; 7 Reporter, 675.
INDUS, The [7,027].
INDUSTRY, The [7,028], 1 Gall. 114.
INDUSTRY, The [13,926], 35 Hunt, Mer. Mag. 446.
Industry, The, Johnson v. [See 7,391.]
INFANTA, The [7,030], Abb. Adm. 263.
INFANTA, The [7,031], Abb. Adm. 327.
INGALLS, In re [7,032], 5 Law Rep. 401.
Ingalls, Haskell v. [See 6,193.]
INGELS v. MAST [7,033], 6 Fish. Pat. Cas. 415; Merw. Pat. Inv. 450.
INGELS v. MAST [7,034], 1 Flip. 424; 2 Ban. & A. 24; 7 O. G. 836; 2 Cent. Law J. 349; 9 Pac. Law Rep. 189.
INGELS v. MAST [7,034].
INGERSOLL v. BENHAM [7,036], 14 Blatchf. 362; 3 Ban. & A. 179.
Ingersoll v. Benham. [See 7,040.]
INGERSOLL v. CARBARGA, The [2,276], 29 Hunt, Mer. Mag. 716.
INGERSOLL v. CARBARGA, The [7,038].
Ingersoll v. The Carbarz. [See 7,038.]
INGERSOLL v. JEWETT [7,039], 16 Blatchf. 378; 4 Ban. & A. 361; 9 Reporter, 105.
INGERSOLL v. MUSGROVE [7,040], 14 Blatchf. 541; 3 Ban. & A. 304; 13 O. G. 966.
Ingersoll, Perkins v. [See 10,988.]
INGERSOLL v. TURNER [7,041], 7 Fed. 859.
Ingersoll, United States v. [See 15,440.]
Ingersoll, Wilber v. [See 17,632.]
Ingham, Penn v. [See 10,933.]
INGLE v. COLLARD [7,042], 1 Cranch, C. C. 134.
INGLE v. COLLARD [7,043], 1 Cranch, C. C. 152.
Ingle, Gunton v. [See 5,870.]
Ingle, Hartshorne v. [See 6,170.]
Ingle, Hogan v. [See 6,583.]
Ingle, Orr v. [See 10,588.]
Inglee, Foster v. [See 4,973.]
INGRAHAM v. ALBEE [7,044], 1 Blatchf. & H. 289.
Ingraham, Mason v. [See 9,238.]
INGRAHAM v. MEADE [7,045], 3 Wall. Jr. 32; 13 Leg. Int. 372.
Ingraham, Penns v. [See 10,944.]
Ingraham, Segourney v. [See 12,634.]
Ingraham, Sullivan v. [See 13,595.]
INGRAHAM v. NAYADE, The [7,046], Newb. 366; 15 Hunt, Mer. Mag. 486.
INGRAM v. BUTT [7,047], 4 Cranch, C. C. 701.
Inlots, United States v. [See 15,441.]
INMAN v. BARNES [7,048], 2 Gall. 315.
INNES v. CARPENTER [7,049], 4 N. B. R. 412 (Quarto, 139).
Innis, Hunt v. [See 6,892.]
INNOCENTA, The [7,050], 10 Ben. 410.
Insdeth v. Pierce. [See 7,026.]
INSURANCE CO. v. C. D. Jr., The [7,051], 1 Woods. 72.
Insurance Co., Jones v. [See 7,470.]
INSURANCE CO. v. NEW ORLEANS [7,052], 1 Woods, 85.
Insurance Co., Rouse v. [See 12,089.]
Insurance Co., Stockdale v. [See 13,462.]
Insurance Co. of North America, Field v. [See 4,-767.]
Insurance Co. of North America, Kohne v. [See 7,920-7,922.]
Insurance Co. of North America, Neidlinger v. [See 10,086.]
Insurance Co. of North America, Norman v. [See 10,299.]
Insurance Co. of North America, Schwartz v. [See 12,504.]
Insurance Co. of North America, Scriba v. [See 12,-560.]
Insurance Co. of North America, Watson v. [See 17,284-17,286.]
Insurance Co. of North America, Wiede v. [See 17,-617.]
Insurance Co. of Pennsylvania, Azuria v. [See 691.]
Insurance Co. of Pennsylvania, McGregor v. [See 8,-811.]
Insurance Co. of Pennsylvania, Murray v. [See 9,-961.]
Insurance Co. of Pennsylvania, Odlin v. [See 10,-433.]
Insurance Co. of Pennsylvania, Phillips v. [See 11,-104.]
Insurgents, United States v. [See 15,442, 15,443.]
International Bank, Sherman v. [See 12,765.]
Internal Revenue Laws—Charge to Grand Jury in Relation to Frauds upon the Revenue. [See 18,251.]
Internal Revenue Laws—Charge to Grand Jury in Relation to Internal Revenue Laws. [See 18,248.]
INTERNATIONAL GRAIN CEILING CO. v. DILL [7,053], 10 Ben. 92.
International Improvement Fund, Vose v. [See 17,-008.]
International Insurance Co., Geib v. [See 5,298.]
International Insurance Co., Lieb v. [See 5,298.]
International Ocean Tel. Co., Colgate v. [See 2,993.]
Inventors' Mfg. Co., In re. [See 4,550.]
INVINCIBLE, The [7,054], 2 Gall. 29; 6 Hall, Law J. 1.
INVINCIBLE, The [7,055], 1 Lowell, 225.
INVINCIBLE, The [7,056], 3 Sawy. 176.
IOLA, The [7,057], 11 N. Y. Leg. Obs. 263.
Iola, The. [See 12,279.]
Iola, City of, Commercial Nat. Bank v. [See 3,061.]
IONE, The, v. DAVIS [7,058].
IONIC, The [7,059], 5 Blatchf. 538.
IOSCO, The [7,060], 1 Brown's Adm. 495.
Iowa County, Durant v. [See 4,189.]
Iowa, M. & N. P. R. Co., Winter v. [See 17,890.]
IREGUIST v. MOREWOOD [7,061], 39 Hunt, Mer. Mag. 706.
IRIS, The [7,062], 1 Lowell, 520.
IRISH v. KNAPP [7,063], 5 Ban. & A. 47; 18 O. G. 735.
IRMA, The [7,064], 6 Ben. 1; 6 Amer. Law Rev. 763; 15 Int. Rev. Rec. 130.
Irma, The, United States v. [See 15,444.]
Iron Clad Mfg. Co., Tifft v. [See 14,035.]
IRON MOUNTAIN CO., In re [7,065], 9 Blatchf. 320; 4 N. B. R. 645.
Iron Mountain, The, Amazon Ins. Co. v. [See 270.]
Iron Mountain Bank, Phelan v. [See 11,069.]
IRONS, In re [7,066], 5 Blatchf. 166.
IRONS, In re [7,067], 18 N. B. R. 95; 26 Pittsb. Leg. J. 11.
IRONS v. MANUFACTURERS' NAT. BANK [7,068], 6 Biss. 301; 1 Thomp. Nat. Bank Cas. 203.
IRONSIDES, The [7,069], 4 Biss. 518.
IRONSIDES, The [7,070], 15 Int. Rev. Rec. 59.
IRRISISTIBLE, The [7,071].
IRVIN v. SCHELL [7,072], 5 Blatchf. 157.
Irvine, Symes v. [See 13,714.]
IRVING, In re [7,073], 8 Ben. 463; 14 N. B. R. 289; 2 N. Y. Wkly. Dig. 500.
IRVING, In re [7,074], 17 N. B. R. 22.
Irving, The Washington. [See 17,243-17,245.]
IRVING v. FRAZIER [7,075].
IRVING v. HUGHES [7,076], 2 N. B. R. 61 (Quarto, 20); 7 Amer. Law Reg. (N. S.) 209; 6 Phila. 451; 24 Leg. Int. 380; 15 Pittsb. Leg. J. 121.
IRVING v. SUTTON [7,077], 1 Cranch, C. C. 567.
IRVING v. SUTTON [7,078], 1 Cranch, C. C. 575.
IRWIN v. BAILEY [7,079], 8 Biss. 523; 8 Reporter, 421; 11 Chi. Leg. News, 376.
IRWIN v. BROWN [7,080], 2 Cranch, C. C. 314.
IRWIN v. DANE [7,081], 2 Biss. 442; 4 Fish. Pat. Cas. 359; 3 Chi. Leg. News, 180.
IRWIN v. DANE [7,082], 9 O. G. 642; Merw. Pat. Inv. 352.
IRWIN v. DUNLAP [7,083], 1 Cranch, C. C. 552.
IRWIN v. HENDERSON [7,084], 2 Cranch, C. C. 167.
IRWIN v. McROBERTS [7,085], 4 Ban. & A. 411; 16 O. G. 853.
Irwin, United States v. [See 15,445.]
Irwin, Williar v. [See 17,761.]
IRWINE, In re [7,086], 1 Pa. Law J. 291; 1 Pa. Law J. Rep. 82.

[Federal Case numbers are given in brackets.]

ISAAC ALLERTON, The [7,088].
ISAAC ALLERTON, The [7,088], 5 Adm. Rec. 612.
Isaac Hammett, The, United States v. [See 15,446.]
ISAAC NEWTON, The [7,089], 1 Abb. Adm. 11.
ISAAC NEWTON, The [7,090], 1 Abb. Adm. 588.
ISAAC NEWTON, The [7,091], 4 Blatchf. 21.
ISAAC NEWTON, The [7,092], 12 N. Y. Leg. Obs. 299.
ISAACS, In re [7,093], 3 Sawy. 35; 6 N. B. R. 92.
ISAACS v. ABRAHAM [7,094], 6 Reporter, 737.
ISAACS v. ABRAMS [7,095], 3 Ban. & A. 616; 14 O. G. 861; Merw. Pat. Inv. 226.
ISAACS v. COOPER [7,096], 4 Wash. C. C. 259; 1 Robb, Pat. Cas. 332.
ISAACS v. PRICE [7,097], 2 Dill. 347.
Isaacson, Gardner v. [See 5,230.]
Isaacson, Leak v. [See 8,160.]
ISABEL, The [7,098], 2 Adm. Rec. 346.
ISABELLA, The [7,099], 8 Ben. 139.
ISABELLA, The [7,100], 1 Brown's Adm. 96; 2 West. Law Month. 252.
ISABELLA, The [7,101], 1 Paine, 1.
ISABELLA THOMPSON, The [7,102], Blatchf. Pr. Cas. 377.
ISELIN v. BARNEY [7,103], 5 Blatchf. 185.
Iselin, Clark v. [See 2,824, 2,825.]
ISH v. MILLS [7,104], 1 Cranch, C. C. 567.
ISIDOR, In re [7,105], 2 Ben. 123; 1 N. B. R. 264 (Quarto, 33).
ISIS, The [7,106].
ISLAND BELLE, The [7,107], 21 Leg. Int. 60; 26 Law Rep. 263; 5 Phila. 501.
ISLAND CITY, The [7,108], 5 Blatchf. 264; 2 Int. Rev. Rec. 109.
ISLAND CITY, The [7,109], 1 Lowell, 375.
Island City, The, Adams v. [See 55.]
Island City, The, Cromwell v. [See 3,410.]
Island City, The, Norris v. [See 10,306.]
ISLAND QUEEN, The [7,110], 1 Brown's Adm. 279.
Isle De Cuba, The, United States v. [See 15,447-15,449.]
Ismenard, United States v. [See 15,450.]
ISRAEL, In re [7,111], 3 Dill. 511; 12 N. B. R. 204; 2 Cent. Law J. 219.
ISRAEL, In re [7,112], 4 Dill. 501.
Israel, Dodge v. [See 3,952.]
IVANHOE, The [7,113], 7 Ben. 213.
IVES, Ex parte [7,114], 1 Int. Rev. Rec. 145.
IVES, In re [7,115], 5 Dill. 146; 19 N. B. R. 97.
IVES, In re [7,116], 18 N. B. R. 28.
Ives, The Lucia B. [See 8,590.]
Ives, Bruff v. [See 2,050.]
IVES v. BUCKEYE STATE, The [7,117], 1 Newb. 69.
Ives, Fuller v. [See 5,150.]
Ives, Hamilton v. [See 5,982.]
Ives, Lapham v. [See 8,082.]
Ives, McCormick v. [See 8,720.]
Ives, Miller's Falls Co. v. [See 9,599.]
Ives, Warren v. [See 17,197.]
Ivy, United States v. [See 15,451.]
Izard, Cocks v. [See 2,934.]
Izard, Wilson v. [See 17,810.]

J

J. A. BROWN, The [7,118], 2 Lowell, 464.
JACK, In re [7,119], 13 N. B. R. 296; 4 Amer. Law Rec. 453; 1 Woods, 549.
JACK'S CASE [7,119].
Jack, United States v. [See 15,452.]
JACK JEWETT, The [7,121], 2 Ben. 353.
JACK JEWETT, The [7,122], 2 Ben. 463.
JACKSON, In re [7,123], 7 Biss. 280; 14 N. B. R. 449.
JACKSON, In re [7,124], 14 Blatchf. 245.
JACKSON, In re [7,125], 2 Flip. 183; 12 Amer. Law Rev. 602.
JACKSON, In re [7,126], 1 McA. Pat. Cas. 485.
JACKSON, In re [7,127], 2 N. B. R. 508 (Quarto, 158).
JACKSON, In re [7,128], 8 N. B. R. 424.
Jackson, The Hallie. [See 6,451.]
Jackson, Anderson v. [See 357.]
JACKSON v. BAKER [7,129], 1 Wash. C. C. 394.
JACKSON v. BAKER [7,130], 1 Wash. C. C. 445.
JACKSON v. BANK OF THE UNITED STATES [7,131], 5 Cranch, C. C. 1.
Jackson, Barker v. [See 989.]
JACKSON v. BRECK [7,132], 11 O. G. 112.
Jackson, Brown v. [See 2,015, 2,016.]
Jackson, Buckingham v. [See 2,090.]
JACKSON v. BURKE [7,133], 1 Dill. 311.
Jackson, Crocker v. [See 3,398.]
JACKSON v. EASTON [7,134], 7 Ben. 191.
Jackson, Ethridge v. [See 4,541.]
JACKSON v. FLETA, The [7,135], 1 La. Law J. 173.
Jackson, Hopkins v. [See 6,687.]
Jackson, Hunt v. [See 6,893.]
JACKSON v. JULIA SMITH, The [7,136], Newb. 61; 6 McLean, 484.
Jackson, Keene v. [See 7,643.]
Jackson, Kelley v. [See 7,659.]
JACKSON v. KINNIE, The [7,137], 8 Amer. Law Reg. (N. S.) 470.
JACKSON v. KIP [7,138], 2 Paine, 366.
JACKSON v. LUDELING [7,139], 2 Woods, 254.
JACKSON v. McCULLOCH [7,140], 1 Woods, 433; 13 N. B. R. 283; 1 N. Y. Wkly. Dig. 534.
JACKSON v. MUTUAL LIFE INS. CO. [7,141], 3 Woods, 413.
JACKSON v. NORTHERN CENT. RY. [7,142], Chase, 268; 2 Int. Rev. Rec. 174.
JACKSON v. PORTER [7,143], 1 Paine, 457.
JACKSON v. ROBINSON [7,144], 3 Mason, 138.
JACKSON v. RUNDLET [7,145], 1 Woodb. & M. 381.
Jackson, Schneider v. [See 12,469.]
JACKSON v. SIMONTON [7,146], 4 Cranch, C. C. 12.
JACKSON v. SIMONTON [7,147], 4 Cranch, C. C. 255.
Jackson, Sims v. [See 12,890.]
Jackson, Smith v. [See 13,064, 13,065.]
JACKSON v. SPRAGUE [7,148], 1 Paine, 494.
Jackson, Stephenson v. [See 13,374.]
JACKSON v. UNITED STATES [7,149], 4 Mason, 186.
Jackson, United States v. [See 15,453-15,459.]
Jackson, Upton v. [See 16,802.]
JACKSON v. VICKSBURG, S. & T. R. CO. [7,150], 2 Woods, 141; 2 N. Y. Wkly. Dig. 262; 13 Alb. Law J. 353; 1 La. Law J. 118; 22 Int. Rev. Rec. 160; 23 Pittsb. Leg. J. 159.
JACKSON v. WHITE [7,151], 1 Pet. Adm. 179.
Jackson, Wilson Sewing-Machine Co. v. [See 17,853.]
JACKSON INS. CO. v. STEWART [7,152], 1 Hughes, 310; 6 Amer. Law Reg. (N. S.) 732.
JACKSON IRON MFG. CO., In re [7,153], 15 N. B. R. 438; 2 Mich. Lawy. 435; 2 Cin. Law Bul. 154, 157.
Jackson Iron Mfg. Co., Woods v. [See 17,993.]
Jacksonville P. & M. R. Co., Anderson v. [See 358.]
Jacksonville P. & M. R. Co., Searles v. [See 12,586.]
Jackson Water Co., Bayerque v. [See 1,136.]
JACMEL PACKET, The [7,154], 2 Ben. 107; 7 Int. Rev. Rec. 108; 1 Amer. Law T. Rep. U. S. Cts. 52.
JACOB E. RIDGWAY, The [7,155], 8 Ben. 179.
JACOB G. NEAFIE, The [7,156], 8 Ben. 251.
JACOB v. UNITED STATES [7,157], 1 Brock. 520.
Jacobi, United States v. [See 15,460.]
JACOBS, Ex parte [7,158], 3 App. Com'r Pat. 245.
JACOBS, In re [7,159], 18 N. B. R. 48.
JACOBS, In re [7,160], 5 Sawy. 458.
JACOBS, The Searle W. [See 12,588.]
Jacobs, Blanchard's Gun-Stock Turning Factory v. [See 1,520.]

[Federal Case numbers are given in brackets.]

Jacobs, Delilah v. [See 3,773.]
Jacobs, Gell v. [See 5,426.]
Jacobs, Gill v. [See 5,426.]
JACOBS v. HAMILTON COUNTY [7,161], 1 Bond, 500; 4 Fish. Pat. Cas. 81.
JACOBS v. JACOBS [7,161a], Hempst. 101.
JACOBS v. LEVERING [7,162], 2 Cranch, C. C. 117.
Jacobs, Moore v. [See 9,767.]
Jacobs, Thomson v. [See 13,982.]
JACOBS v. UNDERWOOD [7,163], 63 N. C. 112.
Jacobson, United States v. [See 15,461.]
JACOBSON'S CASE [15,461].
Jacobus, Fairbanks v. [See 4,608.]
JACOBY, In re [7,165], 1 N. B. R. 118; Bankr. Reg. Supp. 26; 6 Int. Rev. Rec. 149.
JACOBY, In re [7,166], 1 Wkly. Notes Cas. 15.
Jacoby, United States v. [See 15,462.]
JACQUES v. COLLINS [7,167], 2 Blatchf. 23.
JACQUES v. COLLINS [7,168], 19 Hunt, Mer. Mag. 183.
Jacques, Derby v. [See 3,817.]
Jacques, Wells v. [See 17,398, 17,399.]
JACQUETTE v. HUGUNON [7,169], 2 McLean, 129.
JAFFRAY, Ex parte [7,170], 1 Lowell, 321; 2 N. B. R. 452 (Quarto, 146); 2 Amer. Law T. Rep. Bankr. 77.
JAFFRAY v. DENNIS [7,171], 2 Wash. C. C. 253.
JAFFRAY v. MURPHY [7,172], 19 Int. Rev. Rec. 143.
Jagger, Many v. [See 9,055.]
Jailer, United States v. [See 15,463.]
Jailer of Warren County, Ramsey v. [See 11,547.]
JAMAICA, The [7,173], 11 N. Y. Leg. Obs. 242.
JAMES, Ex parte [7,175].
JAMES, In re [7,175], 2 N. B. R. 227 (Quarto, 78), 1 Gaz. 78.
JAMES, The [7,176].
JAMES v. ATLANTIC DELAINE CO. [7,177], 3 Cliff. 614.
JAMES v. ATLANTIC DELAINE CO. [7,178], 3 Cliff. 622.
JAMES v. ATLANTIC DELAINE CO. [7,179], 11 N. B. R. 390.
JAMES v. BLAUVELT [7,180], 21 Leg. Int. 172; 26 Law Rep. 485.
James, Campbell v. [See 2,361.]
JAMES v. GORDON [7,181], 1 Wash. C. C. 333.
James, Gray v. [See 5,718, 5,719.]
James, Greene v. [See 5,766.]
James, Hayden v. [See 6,260.]
JAMES v. JENKINS [7,181a], Hempst. 189.
JAMES v. LYCOMING INS. CO. [7,182], 4 Cliff. 272; 4 Ins. Law J. 9.
JAMES v. SARAH A. BOICE, The [7,183], 2 Int. Rev. Rec. 45.
JAMES v. STOOKEY [7,184], 1 Wash. C. C. 330.
JAMES v. STOOKEY [7,185], 2 Wash. C. C. 139.
JAMES v. THURSTON [7,186], 1 Cliff. 367.
James, United States v. [See 15,464.]
JAMES v. WHARTON [7,187], 3 McLean, 492.
James A. Burden, The. [See 7,296.]
JAMES ADGER, The [7,188], 3 Blatchf. 515; 35 Hunt, Mer. Mag. 453.
James Adger, The, Todd v. [See 14,074a.]
James and Catherine, The, Bains v. [See 756.]
JAMES ANDREWS, The [7,189], 2 Spr. 121.
JAMES A. WRIGHT, The [7,190], 3 Ben. 248.
JAMES A. WRIGHT, The [7,191], 10 Blatchf. 160.
JAMES BOWEN, The [7,192], 10 Ben. 430.
JAMES D. PARKER, The [7,193], 23 Int. Rev. Rec. 66; 2 Mich. Lawy. 14.
JAMES D. PARKER, The [7,193].
JAMES GUY, The [7,195], 1 Ben. 112; 5 Int. Rev. Rec. 68.
JAMES GUY, The [7,196], 5 Blatchf. 496.
James Guy, The, Youngfall v. [See 7,195.]
James Leakman, The, Herbert v. [See 6,397a.]
JAMES McMAHON, The [7,197], 10 Ben. 103.
James Morrison, The, United States v. [See 15,465.]
James Nelson, The, Elliott v. [See 4,393.]
JAMESON v. REGULUS, The [7,198], 1 Pet. Adm. 212.
JAMES PLATT, The [7,199], 9 Ben. 491.
JAMES ROY, The [7,200].
JAMES ROY, The [7,201], 5 Ben. 177; 14 Int. Rev. Rec. 22.
James Smith, The, Hawes v. [See 6,238.]
Jamesson, Harmon v. [See 6,079.]
Jamesson, Mandeville v. [See 9,011.]
Jamesson, Manning v. [See 9,045.]
Jamesson, Thomas v. [See 13,900.]
Jamesson, Thompson v. [See 13,960.]
Jamesson, United States v. [See 15,466.]
JAMES T. ABBOTT, The [7,202], 2 Spr. 101.
James E. Eaton, The. [See 7,337.]
James Wells, The, United States v. [See 15,467.]
JAMIESON v. ALEXANDER [7,203], 1 Cranch, C. C. 6.
Jamieson, McCutchin v. [See 8,743.]
JAMIESON v. WILLIS [7,204], 1 Cranch, C. C. 566.
Jamison, Le Roy v. [See 8,271.]
Jamison, Levy v. [See 8,271.]
Jamison, Pearson v. [See 10,879.]
JANE CAMPBELL, The [7,205], Blatchf. Pr. Cas. 101; 20 Leg. Int. 125.
JANE CAMPBELL, The [7,206], Blatchf. Pr. Cas. 130.
Jane, The Eliza. [See 4,363.]
Jane, The Louisa. [See 8,532.]
Jane, The Mary. [See 9,214, 9,215.]
Jane, The, Freeman v. [See 5,086.]
Jane, The Sarah. [See 12,348, 12,349.]
Jane M. Harward, The. [See 6,186.]
JANES v. BUZZARD [7,206a], Hempst. 240.
JANES v. BUZZARD [7,206b], Hempst. 259.
JANES v. MAY [7,206c], Hempst. 288.
Janes, Wilson v. [See 17,811.]
Janesville, Clarke v. [See 2,854.]
Janesville Gazette, Whitney v. [See 17,590.]
JANEWAY, In re [7,207], 8 Ben. 267.
JANEWAY, In re [7,208], 4 N. B. R. 100 (Quarto, 26); 18 Pittsb. Leg. J. 67; 4 Brewst. 250.
Janisch, Tracy v. [See 14,125.]
JANNEY, In re [7,209], 1 McA. Pat. Cas. 86; Cranch, Pat. Dec. 143.
JANNEY v. BAGGOT [7,210], 1 Cranch, C. C. 503.
JANNEY v. BELLE LEE, The [7,211], 12 Int. Rev. Rec. 123; 2 Chi. Leg. News, 405; 5 Amer. Law Rev. 181.
Janney, Boone v. [See 1,642.]
JANNEY v. GEIGER [7,212], 1 Cranch, C. C. 547.
Janney, Lupton v. [See 8,607.]
JANNEY v. MANDEVILLE [7,213], 2 Cranch, C. C. 31.
Janney, Neale v. [See 10,069.]
Janney, Patton v. [See 10,836.]
Janney, Philips v. [See 11,095.]
JANNEY v. SMITH [7,214], 2 Cranch, C. C. 499.
JANSEN v. THEODOR HEINRICH, The [7,215], Crabbe, 226.
Jansen, The Union v. [See 14,348.]
JANSEN v. VROW CHRISTINA MAGDALENA, The [7,216], Bee, 11.
Janssen, Bixby v. [See 1,452.]
Janstoff, The. [See 1,686.]
JANUARY v. DUNCAN [7,217], 3 McLean, 19.
JANUARY v. JOHNSON COUNTY [7,218], 3 Dill. 392, note.
JANUARY v. JOHNSON COUNTY [7,219], 3 Dill. 402.
JANVRIN v. SMITH [7,220], 1 Spr. 13.
Jaques, Jollie v. [See 7,437.]
Jaques, Randall v. [See 11,553.]
Jaques, Wells v. [See 17,400.]
JARMAN v. ST. LOUIS MUT. LIFE INS. CO. [7,221], 1 Flip. 548; 5 Ins. Law J. 504; 22 Int. Rev. Rec. 162; 3 Cent. Law J. 303; 1 Cin. Law Bul. 123.
JARRELL v. HARRELL [7,222], 1 Woods, 476; 7 N. B. R. 400.
JARROTT v. MOBERLY [7,223], 5 Dill. 253; 10 Chi. Leg. News, 258; 5 Reporter, 583.
JARVIES v. MAINE, The State of [7,224], 36 Hunt, Mer. Mag. 326.
Jarvis, The William. [See 17,697.]
JARVIS v. CLAIBORNE, The [7,225], Bee, 248.
JARVIS v. CONNECTICUT MUT. LIFE INS. CO. [7,226], 8 Chi. Leg. News, 227; 5 Ins. Law J. 507; 6 Ins. Law J. 311.
Jarvis, Ellis v. [See 4,403.]
JARVIS v. KENDALL [7,227], 1 Hayw. & H. 237.
Jarvis, United States v. [See 15,468, 15,469.]
Jarvis, Van Winkle v. [See 16,883.]
Jason, The, United States v. [See 15,470.]

[Federal Case numbers are given in brackets.]

JASPER, The [7,228], 3 Ware, 296.
JASPER v. PORTER [7,229], 2 McLean, 579.
Jasper, The, Winterport Granite & Brick Co. v. [17,898.]
Jasper County, Anthony v. [See 488.]
J. A. Travis, The, Whittaker v. [See 17,599.]
JAUDON v. NATIONAL CITY BANK [7,230], 8 Blatchf. 430.
JAUREKHE v. S. G. TROOP, The [7,231].
JAVA, The [7,232], 6 Ben. 245; 6 Alb. Law J. 421.
JAVA, The [7,233], 14 Blatchf. 524.
JAVA, The [7,234], 1 Lowell, 165.
Java, The, Judd Linseed, etc., Co. v. [See 7,559.]
Jay, The John. [See 7,352.]
JAY v. ALLEN [7,235], 1 Spr. 130.
JAY v. ALMY [7,236], 1 Woodb. & M. 262.
JAYCOX, In re [7,237], 12 Blatchf. 209; 13 N. B. R. 122.
JAYCOX, In re [7,238], 13 Blatchf. 70.
JAYCOX, In re [7,239], 7 N. B. R. 140.
JAYCOX, In re [7,240], 7 N. B. R. 303; 7 West. Jur. 18.
JAYCOX, In re [7,241], 7 N. B. R. 578.
JAYCOX, In re [7,242], 8 N. B. R. 241.
JAYCOX v. CHAPMAN [7,243], 10 Ben. 517.
JAYCOX v. GREEN [7,237], 13 N. B. R. 122.
Jaycox, Hiscock v. [See 6,531.]
JAY GOULD, The [7,245], 7 Ben. 566.
J. B. LUNT, The [7,246], 11 N. Y. Leg. Obs. 137.
J. B. LUNT, The, v. MERRITT [7,247], 21 Betts, D. C. MS. 85.
J. C. GIBBES, The [7,248], 4 Ben. 109.
JEANNIE CUSHMAN, The [7,249].
JEANNIE CUSHMAN, The [7,250], 3 Ware, 309.
Jeffers, Baker v. [See 772.]
JEFFERS v. FORREST [7,251], 5 Cranch, C. C. 674.
Jeffers, Griffin v. [See 5,817.]
Jeffers, United States v. [See 15,471.]
Jefferson, Livingston v. [See 8,411.]
Jefferson, The, Morehouse v. [See 9,793.]
Jefferson County, United States v. [See 15,472.]
JEFFERSON DAVIS, Case of [3,621a].
Jefferson, The Thomas. [See 13,923.]
JEFFERSON INS. CO., In re [7,253], 2 Hughes, 255; 11 N. B. R. 287.
Jeffersonville, Bissell v. [See 1,449.]
Jeffersonville, Burnley v. [See 2,181.]
JEFFREY v. SCHLASINGER [7,253a], Hempst. 12.
Jeffries, Cage v. [See 2,287.]
JEFFRIES v. WIESTER [7,254], 2 Sawy. 135; 5 Amer. Law T. Rep. U. S. Cts. 96.
JEHNER v. PHILADELPHIA & R. R. CO. [7,255], 1 Wkly. Notes Cas. 15.
JELISON v. LEE [7,256], 3 Woodb. & M. 368; 19 Hunt, Mer. Mag. 78.
JELLY v. TIDDEMAN [7,256a].
JELSH, In re [7,257], 9 N. B. R. 412.
JENCKS v. COLEMAN [7,258], 2 Sumn. 221.
JENKINS, Ex parte [7,259], 2 Wall. Jr. 521; 2 Amer. Law Reg. 144; 1 Phila. 451; 10 Leg. Int. 166.
JENKINS v. ARMOUR [7,260], 6 Biss. 312; 14 N. B. R. 276; 8 Chi. Leg. News, 267; 22 Int. Rev. Rec. 169.
JENKINS v. BOARD OF SUP'RS OF CULPEPER COUNTY [7,261], 1 Hughes, 568.
JENKINS v. BOYLE [7,262], 2 Cranch, C. C. 120.
Jenkins, Brooks v. [See 1,953.]
JENKINS v. CALVERT [7,263], 3 Cranch, C. C. 216.
Jenkins, Coffin v. [See 2,948.]
JENKINS v. CONGRESS, The [7,264].
JENKINS v. EINSTEIN [7,265], 3 Biss. 128.
JENKINS v. ELDREDGE [7,266], 3 Story, 181.
JENKINS v. ELDREDGE [7,267], 3 Story, 299.
JENKINS v. ELDREDGE [7,268], 3 Story, 325.
JENKINS v. ELDREDGE [7,269], 1 Woodb. & M. 61.
JENKINS v. GREENWALD [7,270], 2 Fish. Pat. Cas. 37; 1 Bond, 126.
JENKINS v. JOHNSON [7,271], 9 Blatchf. 516; 5 Fish. Pat. Cas. 433.
JENKINS v. MAYER [7,272], 2 Biss. 303; 3 N. B. R. 776 (Quarto, 189).
Jenkins, Muir v. [See 9,903.]
JENKINS v. NICOLSON PAVEMENT CO. [7,273], 1 Abb. U. S. 567; 4 Fish. Pat. Cas. 201; 3 Amer. Law T. Rep. U. S. Cts. 177; 2 Chi. Leg. News, 405; 13 Int. Rev. Rec. 13; 2 Leg. Gaz. 413.
JENKINS v. PORTER [7,274], 2 Cranch, C. C. 116.
Jenkins, Pye v. [See 11,487.]
Jenkins, Self v. [See 12,640.]
Jenkins, United States v. [See 15,473.]
JENKINS v. WALKER [7,275], Holmes, 120; 5 Fish. Pat. Cas. 347; 1 O. G. 359; Merw. Pat. Inv. 124.
Jenkinson, Kane v. [See 7,607.]
JENKS, In re [7,276], 15 N. B. R. 301.
Jenks, Bradford v. [See 1,769.]
JENKS v. COX [7,277], Holmes, 92.
JENKS v. GARRETSON [7,278], 4 McLean, 258.
Jenks, Gray v. [See 5,720.]
Jenks, Higgins v. [See 6,468.]
JENKS v. LEWIS [7,279], 3 Mason, 503.
JENKS v. LEWIS [7,280], 1 Ware (51) 43.
Jennegan, United States v. [See 15,474.]
Jennie Cushman, The, Sterling v. [See 13,375.]
JENNINGS v. CARSON [7,281], 1 Pet. Adm. 1; 4 Cranch (8 U. S.) 5, note.
Jennings, Carson v. [See 2,464.]
Jennings, Dalton v. [See 3,548.]
JENNINGS v. MULLER [7,282].
JENNINGS v. PIERCE [7,283], 15 Blatchf. 42; 3 Ban. & A. 361.
JENNINGS v. WASHINGTON [7,284], 5 Cranch, C. C. 512.
Jennison, United States v. [See 15,475.]
JENNY v. CRASE [7,285], 1 Cranch, C. C. 443.
Jenny, Taber v. [See 13,720.]
JENNY JONES, The [7,286], Deady, 82.
JENNY LIND, The [7,287], 3 Blatchf. 513; 35 Hunt, Mer. Mag. 452.
Jenny Lind, The, Williams v. [See 17,723.]
Jensen v. The Una. [See 14,331.]
Jenther, United States v. [See 15,476.]
JERBY v. ONE HUNDRED AND NINETY-FOUR SLAVES [7,288], Bee, 226.
JEREMIAH, The [7,289], 10 Ben. 326.
JEREMIAH, The [7,290], 10 Ben. 338.
Jernegan, United States v. [See 15,477.]
JEROME v. FLOATING DOCK [7,291], 3 Hughes, 508.
Jerome, McCormick v. [See 8,721.]
Jerome, Platt v. [See 11,217.]
Jerome, Worthington v. [See 18,054.]
Jerrett v. Hone. [See 7,311.]
Jersey Blue, The, Somers v. [See 13,169.]
JERSEY CITY WINDOW-GLASS CO., In re [7,292]; 1 N. B. R. 426 (Quarto, 113); 7 Amer. Law Reg. (N. S.) 419; 1 Amer. Law T. Rep. Bankr. 61.
JERUSALEM, The [7,293], 2 Gall. 191.
JERUSALEM, The [7,294], 2 Gall. 345.
JESSE J. COX, The [7,295], Blatchf. Pr. Cas. 196.
JESSE WILLIAMSON, Jr., The [7,296], 17 Blatchf. 106.
JESSE WILLIAMSON, Jr., The [7,297], 17 Blatchf. 220.
JESSIE RUSSELL, The [7,298], 9 Ben. 181.
JESSUP v. ATLANTIC & G. R. CO. [7,299], 3 Woods, 441.
JESSUP v. CHICAGO & A. R. CO. [7,300], 7 Chi. Leg. News, 229.
Jett, Backhouse v. [See 710.]
JEUNE EUGENIE, The [7,301].
JEWELL, In re [7,302], 19 N. B. R. 383.
Jewess, The, Livingston v. [See 8,412.]
JEWETT, Ex parte [7,303], 2 Lowell, 393; 11 N. B. R. 443; 12 N. B. R. 170.
JEWETT, In re [7,304], 1 N. B. R. 491 (Quarto, 130); 7 Amer. Law Reg. (N. S.) 291; 15 Pittsb. Leg. J. (O. S.) 354.
JEWETT, In re [7,305], 7 Biss. 242.
JEWETT, In re [7,306], 7 Biss. 328; 15 N. B. R. 126.
JEWETT, In re [7,307], 7 Biss. 473; 16 N. B. R. 48; 4 N. Y. Wkly. Dig. 494; 9 Chi. Leg. News, 345; 4 Law & Eq. Rep. 77; 23 Int. Rev. Rec. 232.
JEWETT, In re [7,308], 1 McA. Pat. Cas. 259.
JEWETT, In re [7,309], 1 N. B. R. 495 (Quarto, 131); 7 Amer. Law Reg. (N. S.) 294; 2 Amer. Law T. Rep. Bankr. 7.
JEWETT v. CUNARD [7,310], 3 Woodb. & M. 277.
JEWETT v. HONE [7,311], 1 Woods, 530; 2 Amer. Law T. Rep. (N. S.) 97.
Jewett, Hosmer v. [See 6,713.]
Jewett, Ingersoll v. [See 7,039.]
JEWETT v. LEAVENWORTH COUNTY [7,312].
Jewett, The Jack. [See 7,121, 7,122.]
Jewett, Leavitt v. [See 8,172.]

[Federal Case numbers are given in brackets.]

Jewett, Rogers v. [See 12,012.]
Jewett, Thompson v. [See 13,961.]
J. F. FARLAN, The [7,313], 3 Ben. 206.
J. F. FARLAN, The [7,314], 8 Blatchf. 207.
J. F. SPENCER, The [7,315], 3 Ben. 337.
J. F. SPENCER, The [7,316], 5 Ben. 151.
J. G. McNEIL, The [7,317], Blatchf. Pr. Cas. 162.
J. G. PAINT, The [7,318], 1 Ben. 545.
J. H. Gautier, The. [See 6,399.]
J. H. GAUTIER, The [7,319], 5 Ben. 469; 11 Amer. Law Reg. (N. S.) 769; 5 Amer. Law T. Rep. 87; 15 Int. Rev. Rec. 39.
J. H. STARIN, The [7,320], 15 Blatchf. 473; 45 Conn. 585; 8 Reporter, 293.
JILLSON v. WINSOR [7,321], 1 McA. Pat. Cas. 136.
Jim Watson, The, Brawley v. [See 1,817.]
J. L. BOWEN, The [7,322], 5 Ben. 296; 4 Amer. Law T. Rep. U. S. Cts. 214.
J. L. HASBROUCK, The [7,323], 4 Ben. 359.
J. L. HASBROUCK, The [7,324], 5 Ben. 244; 14 Int. Rev. Rec. 47.
J. L. HASBROUCK, The [7,325], 6 Ben. 272.
J. L. HASBROUCK, The [7,326], 14 Blatchf. 30.
J. M. WELSH, The [7,327], 8 Ben. 211.
J. L. Wickwire, The, Hayes v. [See 6,262.]
JOANNA WARD, The [7,328], Blatchf. Pr. Cas. 164.
JOBBINS v. MONTAGUE [7,329], 5 Ben. 422; 6 N. B. R. 117.
JOBBINS v. MONTAGUE [7,330], 6 N. B. R. 509.
Joe, United States v. [See 15,478.]
JOHANN, In re [7,331], 2 Biss. 139.
Johann, Avery v. [See 675.]
JOHANNES, The [7,332], 10 Blatchf. 478.
John, United States v. [See 15,479.]
John Adams, The, Amoskeag Mfg. Co. v. [See 338.]
John Adams, The, Beers v. [See 1,231.]
JOHN AND ALBERT, The [7,333], 4 Adm. Rec. 534.
John & Alice, The, Hurry v. [See 6,923.]
John A. Warner, The, Woolston v. [See 18,033.]
John B. Cole, The, Van Santwood v. [See 16,875.]
JOHN BRAMALL, The [7,334], 10 Ben. 495.
JOHN BROOKS, The [7,335], 1 Hask. 439.
JOHN C. BROOKS, The [7,336], 3 Ware, 273.
John Cook, The, Milne v. [See 9,617a.]
JOHN COOKER, The [7,337], 10 Ben. 488.
JOHN E. CLAYTON, The [7,338], 4 Blatchf. 372; 18 How. Pr. 319.
JOHN E. HOLBROOK, The [7,339], 7 Ben. 356.
JOHN FARRON, The [7,340], 7 Ben. 53.
JOHN FARRON, The [7,341], 14 Blatchf. 24.
JOHN FRETTER, The [7,342].
John F. Warner, The, Evans v. [See 4,563.]
JOHN GILPIN, The [7,343], Blatchf. Pr. Cas. 291.
JOHN GILPIN, The [7,344], Blatchf. Pr. Cas. 661.
JOHN GILPIN, The [7,345], Olc. 77.
JOHN G. PAINT, The [7,346], 2 Ben. 174.
JOHN GRIFFIN, The [7,347].
JOHN GRIFFIN, The [7,348], 4 Ben. 19; 11 Int. Rev. Rec. 63.
JOHN H. ABEEL, The [7,349], 4 Ben. 58.
John Hart, The, Stannard v. [See 13,290.]
JOHN HENRY, The [7,350], 3 Ware, 264.
JOHN H. STARIN, The [7,351], 9 Ben. 331.
JOHN JAY, The [7,352], 3 Blatchf. 67; 30 Hunt, Mer. Mag. 199.
JOHN J. WILTSIE, The [7,353], 3 Ben. 251.
JOHN KYLE STEAMBOAT CO. v. NEW ORLEANS [7,354], 23 Int. Rev. Rec. 19; 9 Chi. Leg. News, 124.
John Land, The, The D. M. Hall v. [See 3,939.]
John Laughlin, The, Griffenberg v. [See 5,811.]
JOHN L. DIMMICK, The [7,355], 3 Ware, 196; 9 Amer. Law Reg. 224.
JOHN LOWE, The [7,356], 2 Ben. 394.
John L. Stephens, The, Morrison v. [See 9,847.]
JOHN MARTIN, The [7,357], 2 Abb. U. S. 172.
JOHN MARTIN, The [7,358], Brown's Adm. 149.
John M. Welsh, The, Brock v. [See 7,359.]
JOHN M. WELCH, The [7,359], 9 Ben. 507, 24 Int. Rev. Rec. 207.
John Neilson, The. [See 4,241.]
John P. Best, The, Fleishman v. [See 4,861.]
JOHN PERKINS, The [7,360], 21 Law Rep. 87.
John Perkins, The, Nickerson v. [See 10,252.]
JOHN RICHARDS, The [7,361], 1 Biss. 106; 5 Amer. Law Reg. 139.
John Richards, The, Riggs v. [See 11,827.]
Johns, Brocket v. [See 1,915.]
JOHNS v. BRODHAG [7,362], 1 Cranch, C. C. 235.
Johns, Camilloz v. [See 2,343.]
Johns, Jones v. [See 7,471.]
Johns, McLaughlin v. [See 8,871.]
Johns, Nicholls v. [See 10,232.]
JOHNS v. SLACK [7,363], 2 Hughes, 467.
JOHN SANDERSON, The [7,364], 4 Ben. 178.
Johns, United States v. [See 15,480, 15,481.]
JOHNSEN v. FASSMAN [7,365], 1 Woods, 138; 5 Fish. Pat. Cas. 471; 2 O. G. 94.
John Shaw, The, Coffin v. [See 2,949.]
JOHNSON, Case of [7,365a].
JOHNSON, Ex parte [7,366], 1 N. Y. Leg. Obs. 166.
JOHNSON, Ex parte [7,367], 1 Wash. C. C. 47.
JOHNSON, In re [7,368].
JOHNSON, In re [7,369], 2 Lowell, 129.
Johnson, Albany Exch. Bank v. [See 133.]
Johnson, Albree v. [See 146.]
Johnson v. The Ambassador. [See 6,491.]
Johnson, American Ins. Co. v. [See 303.]
JOHNSON v. ANNE, The [7,370].
JOHNSON v. A RAFT OF SPARS [7,370a].
Johnson, Armstrong v. [See 18,226.]
Johnson, Bank of United States v. [See 919.]
JOHNSON v. BEARD [7,371], 2 Ban. & A. 50; 8 O. G. 435.
JOHNSON v. BELLE OF THE SEA, The [7,372], 15 Int. Rev. Rec. 146; 4 Leg. Gaz. 108.
JOHNSON v. BISHOP [7,373], Woolw. 324; 8 N. B. R. 533; 21 Pittsb. Leg. J. 77.
JOHNSON v. BOND [7,374], Hempst. 533.
Johnson v. Bradley Mfg. Co. [See 4,015.]
JOHNSON v. BROWN [7,375], 4 Cranch, C. C. 235.
JOHNSON v. BYRD [7,376], Hempst. 434.
JOHNSON v. CERTAIN GOODS [7,377], 6 Law Rep. 118.
JOHNSON v. CHAPMAN [7,378], 2 Cranch, C. C. 32.
Johnson, Chesapeake & O. Canal Co. v. [See 2,648.]
JOHNSON v. CHICAGO [10,316], 8 Chi. Leg. News, 121.
Johnson, Clarke v. [See 2,855.]
Johnson, Cooper v. [See 3,197.]
Johnson, Corbet v. [See 3,218.]
JOHNSON v. CORIOLANUS, The [7,380], Crabbe, 239.
Johnson, Couse v. [See 3,288.]
Johnson, Crawford v. [See 3,369.]
JOHNSON v. CYANE, The [7,381], 1 Sawy. 150; 4 Amer. Law Rev. 769.
JOHNSON v. DAWS [7,382], 5 Cranch, C. C. 283.
JOHNSON v. ELIZA, The [7,383].
JOHNSON v. FLUSHING & N. S. R. CO. [7,384], 15 Blatchf. 192; 3 Ban. & A. 428.
Johnson, Friedland v. [See 5,117.]
Johnson, Garey v. [See 5,240.]
Johnson, Gates v. [See 5,268.]
Johnson, Gaylord v. [See 5,235.]
Johnson, Gibson v. [See 5,397.]
JOHNSON v. GLOVER [7,385], 2 Cranch, C. C. 678.
JOHNSON v. GRIFFITH [7,386], 2 Cranch, C. C. 199.
JOHNSON v. HARRIS [7,387], 1 Cranch, C. C. 35.
JOHNSON v. HARRIS [7,388], 1 Cranch, C. C. 257.
JOHNSON v. HEALY [7,389], 9 Ben. 318.
Johnson, Hobson v. [See 6,553.]
JOHNSON v. HUCKINS [7,390], 1 Spr. 67; 6 Law Rep. 311.
JOHNSON v. INDUSTRY, The [7,391], Hoff. Op. 488.
Johnson, Jenkins v. [See 7,271.]
JOHNSON v. JUMEL [7,392], 3 Woods, 69.
Johnson, Kelly v. [See 7,672.]
JOHNSON v. LAFLIN [7,393], 5 Dill. 65; 17 Alb. Law J. 117, 146; 1 Thomp. Nat. Bank Cas. 331; 6 N. Y. Wkly. Dig. 181; 6 Cent. Law J. 124; 25 Pittsb. Leg. J. 119.
Johnson, Litchfield v. [See 8,387.]
JOHNSON v. McCULLOUGH [7,401], 4 Fish. Pat. Cas. 170.
JOHNSON v. M'DONOUGH, The [7,395], Gilp. 101.
JOHNSON v. McLAIN [7,395a], Hempst. 59.
Johnson, McLean v. [See 8,883.]
Johnson v. Martin. [See 9,194.]
Johnson v. The Mary Ann. [See 9,194.]
JOHNSON v. MASON [7,396], 3 Cranch, C. C. 294.

[Federal Case numbers are given in brackets.]

JOHNSON v. MAY [7,397], 16 N. B. R. 425.
JOHNSON v. MERCHAND [7,398].
Johnson v. The Merchant. [See 9,434.]
JOHNSON v. MONELL [7,399], Woolw. 390.
Johnson, Nevins v. [See 10,136.]
JOHNSON v. NORTH BRITISH, Etc., INS. CO. [7,400], Holmes, 117.
JOHNSON v. ONION [7,401], 3 Hughes, 290; 4 Fish. Pat. Cas. 170; 3 Amer. Law T. 285.
JOHNSON v. OWENS [7,402], 2 Cranch, C. C. 160.
JOHNSON v. PATTERSON [7,403], 2 Woods, 443.
JOHNSON v. PECK [7,404], 1 Woodb. & M. 334.
JOHNSON v. PHŒNIX INS. CO. [7,405], 1 Wash. C. C. 378.
Johnson, Ponsford v. [See 11,266.]
Johnson v. Ponsonby. [See 12,772.]
JOHNSON v. POTOMAC BLDG. ASS'N [7,406], 2 Quart. Law J. 347; 14 Leg. Int. 393.
Johnson, Powden v. [See 11,353.]
JOHNSON v. PRICE [7,407], 13 N. B. R. 523.
JOHNSON v. ROGERS [7,408], 5 Amer. Law Rec. 536; 15 N. B. R. 1; 14 Alb. Law J. 427.
JOHNSON v. ROOT [7,409], 2 Cliff. 108; 2 Fish. Pat. Cas. 291; Merw. Pat. Inv. 704.
JOHNSON v. ROOT [7,410], 2 Cliff. 637.
JOHNSON v. ROOT [7,411], 1 Fish. Pat. Cas. 351.
Johnson, St. Louis v. [See 12,235.]
Johnson, Sampson v. [See 12,281.]
JOHNSON v. SCHENCK [7,412], 1 Cin. Law Bul. 374.
JOHNSON v. SIMS [7,413], 1 Pet. Adm. 215.
Johnson, Smith v. [See 13,066, 13,067.]
JOHNSON v. SUKELEY [7,414], 2 McLean, 562.
JOHNSON v. THIRTEEN BALES, Etc. [7,415], 2 Paine, 639; 6 Hall, Law J. 97; Van Ness, 45.
Johnson v. Three Hundred and Eighteen and One-Half Tons of Coal. [See 14,010.]
JOHNSON v. TOMPKINS [7,416], Baldw. 571.
Johnson, Turner v. [See 14,261.]
JOHNSON v. TWENTY-ONE BALES, Etc. [7,417], 2 Paine, 601; 6 Hall, Law J. 68; 3 Wheeler, Crim. Cas. 433; Van Ness, 5.
JOHNSON v. UNITED STATES [7,418], 3 McLean, 89.
JOHNSON v. UNITED STATES [7,419], 5 Mason, 425.
Johnson, United States v. [See 15,482-15,488.]
Johnson, Walker v. [See 17,073-17,075.]
JOHNSON v. WASHINGTON [7,420], 5 Cranch, C. C. 434.
Johnson, Wilson v. [See 17,813.]
Johnson, Wright v. [See 18,082.]
Johnson, Yuengling v. [See 18,195.]
Johnson, The Bradich. [See 1,770.]
Johnson, The Emma. [See 4,465.]
Johnson, The Hannah M. [See 6,030, 6,031, 6,451.]
Johnson County, Briggs v. [See 1,872.]
Johnson County, Foote v. [See 4,912.]
Johnson County, January v. [See 7,218, 7,219.]
Johnson County, May v. [See 9,334.]
Johnson County, Thayer v. [See 13,869.]
Johnson County, United States v. [See 15,489.]
John Stephens, The, Stiles v. [See 13,443.]
JOHNSTON, In re [7,421], 8 Ben. 191; 12 N. B. R. 345.
JOHNSTON, In re [7,421].
JOHNSTON, In re [7,423], 14 N. B. R. 569.
JOHNSTON, In re [7,424], 25 Pittsb. Leg. J. 141.
Johnston, Bracken v. [See 1,761.]
Johnston, Chapman v. [See 7,378.]
JOHNSTON v. CHARLOTTESVILLE NAT. BANK [7,425], 3 Hughes, 657; 25 Int. Rev. Rec. 385; 2 Browne, Nat. Bank Cas. 199; 14 Amer. Law Rev. 86.
JOHNSTON v. CLARKE [18,303], 2 Hayw. & H. 258.
Johnston, Cheshire Provident Inst. v. [See 2,659.]
Johnston, Clarke v. [See 2,856.]
Johnston, Doe v. [See 3,958.]
Johnston, Harris v. [See 7,388.]
Johnston, McClintick v. [See 8,700.]
Johnston, Magner v. [See 8,954.]
Johnston v. Potomac Bldg. Ass'n. [See 18,303.]
Johnston v. Ratcliff. [See 18,303.]
Johnston, United States v. [See 15,490.]
JOHNSTON v. VANDYKE [7,426], 6 McLean, 422.
Johnston Harvester Co., Ketchum Harvesting Machine Co. v. [See 7,741.]
JOHN STUART, The [7,427], 4 Blatchf. 444.
John Stuart, The, Dodge v. [See 3,952a.]
JOHN TAYLOR, The [7,428].
JOHN TAYLOR, The [7,429], 6 Ben. 227.
John Taylor, The, Cartwell v. [See 2,482.]
JOHN T. MOORE, The [7,430], 3 Woods, 61; 7 Ins. Law J. 207; 4 Amer. Law T. Rep. (N. S.) 406; 23 Int. Rev. Rec. 295; 4 Law & Eq. Rep. 505; 9 Chi. Leg. News, 417; 2 Cin. Law Bul. 217.
JOHN TUCKER, The [7,431], 5 Ben. 366.
JOHN WALLS, JR., The [7,432], 1 Spr. 178; 12 Law Rep. 24.
JOHN WESLEY, The [7,433].
John W. Gandy, The, Red Bank Co. v. [See 11,626.]
JOHN WURTS, The [7,434], Olc. 462; 16 Hunt, Mer. Mag. 383.
JOICE v. ALEXANDER [7,435], 1 Cranch, C. C. 528.
Joice, Foster v. [See 4,974.]
JOLIET IRON & STEEL CO., In re [7,436], 10 N. B. R. 60.
Joliet Mfg. Co., Adams v. [See 56.]
JOLLIE v. JAQUES [7,437], 1 Blatchf. 618; 9 N. Y. Leg. Obs. 11; Cox, Manual Trade-Mark Cas. 57; 3 Amer. Law J. (N. S.) 402.
JOLLY v. BLANCHARD [7,438], 1 Wash. C. C. 252.
JOLLY v. NEPTUNE, The [7,439], 2 Pet. Adm. 345.
JOLLY v. RANKIN [7,440], 1 Cranch, C. C. 372.
JOLLY v. TERRE HAUTE DRAWBRIDGE CO. [7,441], 6 McLean, 237; 3 Amer. Law Reg. 29.
JONAS, In re [7,442], 16 N. B. R. 452.
JONES, Ex parte [7,443], 4 Cranch, C. C. 185.
JONES, In re [7,444], 6 Biss. 68; 9 N. B. R. 556; 6 Chi. Leg. News, 271.
JONES, In re [7,445], 2 Dill. 343; 4 Chi. Leg. News, 66; 6 West. Jur. 71.
JONES, In re [7,446], 2 Lowell, 451; 13 N. B. R. 286.
JONES, In re [7,447], 2 N. B. R. 59 (Quarto, 20).
Jones, In re [7,448], 4 N. B. R. 347 (Quarto, 114).
JONES, In re [7,449], 6 N. B. R. 386.
JONES, In re 7,450], 7 N. B. R. 506.
JONES, In re [7,451], 9 N. B. R. 491.
JONES, In re [7,452], 12 N. B. R. 48; 7 Chi. Leg. News, 162.
Jones, Adams v. [See 57.]
JONES v. ÆTNA INS. CO. [7,453], 7 Reporter, 644; 8 Ins. Law J. 415; 19 Alb. Law J. 522.
Jones, Alabama & C. R. Co. v. [See 126, 127.]
Jones, Arnold v. [See 559.]
Jones, Aultman v. [See 657.]
JONES v. BACHE [7,454], 3 Wash. C. C. 199.
Jones, Bank of Columbia v. [See 870.]
Jones, Barnewall v. [See 1,027.]
Jones, Beck v. [See 1,206.]
Jones, Berlin v. [See 1,343.]
Jones, Brammer v. [See 1,806.]
JONES v. BRITTAN [7,455], 1 Woods, 667.
Jones, Brown v. [See 2,017.]
JONES v. BUCHANAN [7,497], 5 Hughes, 40.
Jones, Bullock Printing Press Co. v. [See 2,132.]
Jones, Cheongwo v. [See 2,638.]
Jones v. Cincinnati Coal Co. [See 7,458.]
JONES v. CLIFTON [7,457], 2 Flip. 191; 18 N. B. R. 125; 17 Amer. Law Reg. (N. S.) 713; 6 Reporter, 324; 7 Cent. Law J. 89.
JONES v. COAL BARGES [7,458], 3 Wall. Jr. 53; 3 Amer. Law Reg. 391; 3 Pittsb. Leg. J. 44.
Jones, Corcoran v. [See 3,229.]
Jones, Cox v. [See 3,303.]
JONES v. CROWELL [7,459].
JONES v. DAVIS [7,460], 1 Abb. Adm. 446.
Jones, Dixwell v. [See 3,937.]
JONES v. FIELD [7,461], 12 Blatchf. 494; 2 Ban. & A. 39.
Jones, Flint v. [See 4,872.]
JONES v. FLOATING ZEPHYR, The [7,462], 7 Amer. Law Reg. 494.
Jones, Gantt v. [See 5,213.]
Jones, Gassaway v. [See 5,263.]
Jones, Goldsborough v. [See 5,517.]
JONES v. GRAY [7,463], 3 Woods, 494.
JONES v. GREENOLDS [7,464], 1 Cranch, C. C. 339.
JONES v. HABERSHAM [7,465], 3 Woods, 443.
Jones, Hall v. [See 5,937.]
Jones, Hamilton v. [See 5,983.]
JONES v. HANOVER, The [7,466], 9 N. Y. Leg. Obs 232.
Jones, Hathaway v. [See 6,212.]

[Federal Case numbers are given in brackets.]

JONES v. HAYS [7,467], 4 McLean, 521.
JONES v. HEATON [7,468], 1 McLean, 317.
JONES v. HODGES [7,469], Holmes, 37.
Jones, Hurst v. [See 6,933, 6,934.]
Jones, Hyslop v. [See 6,990.]
JONES v. INSURANCE CO. [7,470], 2 Wall. Jr. 278.
Jones v. Insurance Co. of North America. [See 7,453.]
JONES v. JOHNS [7,471], 2 Cranch, C. C. 426.
Jones, Justice v. [See 7,588.]
JONES v. KEMPER [7,472], 2 Cranch, C. C. 535.
JONES v. KINNEY [7,473], 5 Ben. 259; 4 N. B. R. 649.
JONES v. KNOWLES [7,474], 1 Cranch, C. C. 523.
Jones, Kurtz v. [See 7,954.]
JONES v. LEACH [7,475], 1 N. B. R. 595 (Quarto, 165).
JONES v. LEAR [7,476].
Jones, Linthecum v. [See 8,376.]
Jones, Livingston v. [See 8,413, 8,414.]
JONES v. LLEWELLYN [7,477].
JONES v. LOVELL [7,478], 1 Cranch, C. C. 183.
JONES v. McMURRAY [7,479], 3 Ban. & A. 130; 2 Hughes, 527; 13 O. G. 6; Merw. Pat. Inv. 156.
Jones, McMurtrie v. [See 8,905.]
Jones, Mason v. [See 9,239, 9,240.]
JONES v. MASSACHUSETTS, The [7,480].
Jones v. The Massassoit. [See 9,260.]
JONES v. MERRILL [7,481], 8 O. G. 401.
Jones, Merryfield v. [See 9,486.]
JONES v. MILLER [7,482], 17 N. B. R. 316; 1 N. J. Law J. 113.
Jones, Miller v. [See 9,575, 9,576.]
Jones, Moore v. [See 9,768, 9,769.]
Jones, Morehead v. [See 9,791.]
Jones, Mountz v. [See 9,889.]
JONES v. NEALE [7,483], 1 Hughes, 268; 2 Mart. N. C. 81.
JONES v. NEWSOM [7,484], 7 Biss. 321.
Jones v. Noyes. [See 7,481.]
JONES v. OCEANIC STEAM NAV. CO. [7,485], 11 Blatchf. 406.
JONES v. OREGON CENT. RY. CO. [7,486], 3 Sawy. 523; 8 Chi. Leg. News, 115.
Jones v. The Orpheus. [See 8,330.]
JONES v. OSGOOD [7,487], 6 Blatchf. 435; 3 Fish. Pat. Cas. 591.
Jones v. Ostrander. [See 7,481.]
Jones, Otts v. [See 10,619.]
JONES v. PENSACOLA [7,488], 6 Chi. Leg. News, 264.
JONES v. PHŒNIX, The [7,489], 1 Pet. Adm. 201.
JONES v. RATLER, The [7,490], Taney, 456.
JONES v. RICHMOND, The [7,491], 28 Hunt, Mer. Mag. 709.
JONES v. RICHMOND, The [7,492], 39 Hunt, Mer. Mag. 71.
JONES v. SCHELL [7,493], 8 Blatchf. 79.
Jones, Scott v. [See 12,536.]
JONES v. SEARS [7,494], 2 Spr. 43.
JONES v. SEWALL [7,495], 3 Cliff. 563; 6 Fish. Pat. Cas. 343; 3 O. G. 630; Merw. Pat. Inv. 153.
Jones, Shrew v. [See 12,818.]
JONES v. SLEEPER [7,496], 2 N. Y. Leg. Obs. 131.
JONES v. SMITH [7,497], 4 Hall, Law J. 276; Brunner, Col. Cas. 255; 5 Hughes, 40.
JONES v. SMOOT [7,498], 2 Cranch, C. C. 207.
JONES v. UNITED STATES [7,499], 5 Cranch, C. C. 647.
Jones, United States v. [See 15,491-15,496.]
JONES v. VAN KIRK [7,500], 2 Fish. Pat. Cas. 586.
JONES v. VANZANDT [7,501], 2 McLean, 596; 1 West. Law J. 2.
JONES v. VANZANDT [7,502], 2 McLean, 611; 1 West. Law J. 56.
JONES v. VAN ZANDT [7,503], 4 McLean, 599.
JONES v. VAN ZANDT [7,504], 4 McLean, 604.
JONES v. VAN ZANDT [7,505], 5 McLean, 214.
JONES v. WALKER [7,506], Brunner, Col. Cas. 25; 2 Hayw. N. C. 291.
JONES v. WALKER [7,507], 2 Paine, 688.
JONES v. WETHERILL [7,508], 1 McA. Pat. Cas. 409.
Jones v. Wetherill. [See 2,208.]
Jones, White v. [See 17,550.]
Jones, Whitehead v. [See 17,563.]
Jones, Wickershaff v. [See 17,609.]
JONES v. WOODROW [7,509], 1 Cranch, C. C. 455.
JONES v. YEAGER [7,510], 2 Dill. 64; 16 Int. Rev. Rec. 142; 5 Chi. Leg. News, 25.
Jones, Young v. [See 18,150.]
Jones, The Jenny. [See 7,286.]
Jones, The Maggie. [See 8,947.]
Jonnson. United States v. [See 15,497.]
JORDAN, In re [7,511], 2 Hask. 362.
JORDAN, In re [7,512], 19 Int. Rev. Rec. 20.
JORDAN, In re [7,513], 3 N. B. R. 182 (Quarto, 45).
JORDAN, In re [7,514], 8 N. B. R. 180; 5 Leg. Op. 169; 30 Leg. Int. 296.
JORDAN, In re [7,515], 10 N. B. R. 427.
JORDAN v. AGAWAM WOOLEN CO. [7,516], 3 Cliff. 239.
Jordan, Campbell v. [See 2,362.]
JORDAN v. CASS COUNTY [7,517], 3 Dill. 185.
JORDAN v. CASS COUNTY [7,518], 3 Dill. 245.
Jordan, Currie v. [See 3,491.]
JORDAN v. DOBSON [7,519], 2 Abb. U. S. 398; 4 Fish. Pat. Cas. 232; 7 Phila. 533; 27 Leg. Int. 292.
JORDAN v. EATON [7,520], 2 Hask. 236.
Jordan, Evans v. [See 4,564.]
Jordan v. Gates. [See 7,528.]
Jordan v. Hodson. [See 7,523.]
Jordan, Hutson v. [See 6,959.]
Jordan v. Lewis. [See 7,523.]
Jordan, Livingston v. [See 8,415.]
JORDAN v. SAWYER [7,521], 2 Cranch, C. C. 373.
Jordan v. Schofield. [See 7,523.]
Jordan v. Scholes. [See 7,523.]
Jordan, Smith v. [See 13,068.]
Jordan, Teasdale v. [See 13,814.]
JORDAN v. UNION MUT. FIRE INS. CO. [7,522], 21 Law Rep. 83; Brunner, Col. Cas. 608.
Jordan, United States v. [See 15,498.]
JORDAN v. WALLACE [7,523], 8 Phila. 165; 5 Fish. Pat. Cas. 185; 28 Leg. Int. 373; 1 Leg. Gaz. Rep. 354; 3 Leg. Gas. 371; 19 Pittsb. Leg. J. 82.
JORDAN v. WARREN INS. CO. [7,524], 1 Story, 342; 4 Law Rep. 12.
JORDAN v. WELLS [7,525], 3 Woods, 527.
JORDAN v. WILKINS [7,526], 2 Wash. C. C. 482.
JORDAN v. WILKINS [7,527], 3 Wash. C. C. 110.
Jordan, Wilkins v. [See 17,665.]
JORDAN v. WILLIAMS [7,528], 1 Curt. 69; 14 Law Rep. 421.
Jordan, Wilson v. [See 17,814.]
Jordan v. Young. [See 7,523.]
Jordan, The Oliver. [See 10,503.]
JORDON, In re [7,529], 9 N. B. R. 416.
JOREY, In re [7,530], 2 Bond, 336; 2 N. B. R. 668.
JOSE FERREIRA DOS SANTOS, Case of [4,016].
JOSEPH, In re [7,532], 2 Woods, 390.
JOSEPH, The [7,533], 1 Gall. 545.
Joseph, The, Reynolds v. [See 11,730.]
Joseph, Treadwell v. [See 14,157.]
Josepha, The Maria. [See 9,078.]
JOSEPH A. DAVIS, The [7,534].
Joseph C. Griggs, The, Holmes v. [See 6,640.]
JOSEPH CUNARD, The [7,535], Olc. 120.
JOSEPH E. COFFEE, The [7,536], Olc. 401.
JOSEPH GORHAM, The [7,537], 2 N. Y. Leg. Obs. 388; 7 Law Rep. 135.
JOSEPH GRANT, The [7,538], 1 Biss. 193.
JOSEPH HALL, The [7,539], 10 Ben. 246.
JOSEPH H. TOONE, The [7,540], Blatchf. Pr. Cas. 124.
JOSEPH H. TOONE, The [7,541], Blatchf. Pr. Cas. 223.
JOSEPH H. TOONE, The [7,542], Blatchf. Pr. Cas. 258.
JOSEPH H. TOONE, The [7,543], Blatchf. Pr. Cas. 641.
JOSEPHINE, The [7,544].
JOSEPHINE, The [7,545], 1 Abb. Adm. 481.
JOSEPHINE, The [7,546], 2 Blatchf. 322.
Josephine, The, Senab v. [See 12,663.]
Joseph Johnson, The, Sturgis v. [See 13,576.]
Joseph Stewart, The, Smith v. [See 13,070.]
Joseph Walker, The, Taylor v. [See 13,795.]
JOSHUA BARKER, The [7,547], 1 Abb. Adm. 215.
JOSHUA BARKER, The, v. HOYT [7,547].
JOSHUA LEVINESS, The [7,549], 9 Ben. 339; 10 Chi. Leg. News, 230; 24 Int. Rev. Rec. 124.
Joslin, Bentley v. [See 18,232.]

JOSLYN, In re [7,550], 2 Biss. 235; 3 N. B. R. 473 (Quarto, 118); 2 Chi. Leg. News, 137.
JOSSE v. SHULTZ [7,551], 1 Cranch, C. C. 135.
Jourdine, United States v. [See 15,499.]
JOY v. ALLEN [7,552], 2 Woodb. & M. 303.
Joy, Langdon v. [See 8,062.]
JOY v. WIRTZ [7,553], 1 Wash. C. C. 417.
JOY v. WIRTZ [7,554], 1 Wash. C. C. 517.
JOY v. WURTZ [7,555], 2 Wash. C. C. 266.
JOYCE, Ex parte [7,556], 23 Int. Rev. Rec. 297; 25 Pittsb. Leg. J. 17.
J. R. HOYLE, The [7,557], 4 Biss. 234.
JUANDO v. TAYLOR [7,558], 2 Paine, 652, 655; 3 Wheeler, Crim. Cas. 382.
Juanita, The, Wagner v. [See 17,039.]
Juares, United States v. [See 15,500.]
Judah, Eiseman v. [See 4,321.]
Judd, Middletown Tool Co. v. [See 9,536.]
JUDD LINSEED AND SPERM OIL CO. v. JAVA, The [7,559], Holmes, 15.
Judges, United States ex rel. White v. [See 15,501.]
JUDKINS, In re [7,560], 2 Hughes, 401.
JUDSON, Ex parte [7,561], 3 Blatchf. 89.
JUDSON, In re [7,562], 2 Ben. 210; 1 N. B. R. 364 (Quarto, 82); 35 How. Pr. 15; 1 Amer. Law T. Rep. Bankr. 120.
JUDSON, In re [7,563], 3 Blatchf. 148.
Judson v. Boston Belting Co. [See 1,674.]
JUDSON v. BRADFORD [7,564], 16 O. G. 171; 3 Ban. & A. 539; Merw. Pat. Inv. 462.
JUDSON v. COPE [7,565], 1 Bond, 327; 1 Fish. Pat. Cas. 615; Merw. Pat. Inv. 238.
JUDSON v. CORCORAN [18,304], 2 Hayw. & H. 146.
JUDSON v. DAY [7,566].
JUDSON v. KELTY [7,567], 5 Ben. 348; 6 N. B. R. 165.
JUDSON v. MACON COUNTY [7,568], 2 Dill. 213.
JUDSON v. MOORE [7,569], 1 Fish. Pat. Cas. 544; 1 Bond, 285; Merw. Pat. Inv. 237, 316.
JUDSON v. PLATTSBURG [7,570], 3 Dill. 181.
Judson v. Secretary of Treasury. [See 18,304.]
JUDY v. GERARD [7,571], 4 McLean, 360.
JUILLARD v. REMINGTON [7,572], 3 Wkly. Notes Cas. 372.
Juillette, The, Richardson v. [See 11,784.]
JULIA, The [7,573], 1 Gall. 43.
JULIA, The [7,574], 1 Gall. 233.
JULIA, The [7,575], 1 Gall. 594.
JULIA, The [7,576], 2 Spr. 164.
JULIA ANN, The [7,577], 1 Spr. 382; 21 Law Rep. 21.
JULIA BLAKE, The [7,578], 16 Blatchf. 472.
Julia Lawrence, The, United States v. [See 15,502.]
JULIA M. HALLOCK, The [7,579], 1 Spr. 539; 14 Law Rep. 555.
Julian, Thames Loan & Trust Co. v. [See 13,861.]
Julia Smith, The, Jackson v. [See 7,136.]
JULIET C. CLARK, The, v. WELSH [7,580], 9 Phila. 469; 29 Leg. Int. 28.
Jumel, Johnson v. [See 7,392.]
JUMP, Case of [7,581].
Junction R. Co., Lathrop v. [See 8,110.]
Junction Railroad, Works v. [See 18,046.]
JUNEAU BANK v. McSPEDAN [7,582], 5 Biss. 64.
JUNGBLUTH v. REDFIELD [7,583], 4 Blatchf. 219; 2 Wkly. Law Gaz. 316; 39 Hunt, Mer. Mag. 707.
JUNIATA PATON, The [7,584], 1 Biss. 15; 1 Amer. Law Reg. 262.
Juno, The, Savin v. [See 12,390.]
Juno, The, Williams v. [See 17,724.]
JUPITER, The [7,585], 1 Ben. 536.
JURGENSEN v. MAGNIN [7,586], 9 Blatchf. 294; 5 Fish. Pat. Cas. 237.
JURGENSON v. CATHARINA MARIA, The [17,351], 2 Pet. Adm. 424.
Jurgenson v. The Catharine Maria. [See 17,351.]
Jurors—Charge to Grand Jury in Relation to the Duty of Jurors. [See 18,257.]
JUSTICE v. JONES [7,588], 1 McA. Pat. Cas. 635.
Justices of the County Court of Lincoln County, United States v. [See 15,503.]
Justices of the Peace, Brent v. [See 1,840.]
JUSTI PON v. ARBUSTCI, The [7,589], 23 Betts, D. C. MS. 86; 6 Amer. Law Reg. 511; 38 Hunt, Mer. Mag. 712.
J. W. BROWN, The [7,590], 1 Biss. 76.
J. W. EVERMAN, The [7,591], 2 Hughes, 17.
J. W. WILDER, The [7,592], Blatchf. Pr. Cas. 181.
J. W. Woodruff, The. [See 5,770.]

K

Kablys, In re. [See 7,593, 7,594.]
Kabwreck, Schulenburg v. [See 12,487.]
KAHLEY, In re [7,593], 2 Biss. 383; 4 N. B. R. 378 (Quarto, 124); 3 Chi. Leg. News, 85; 2 Leg. Gaz. 405.
KAHLEY, In re [7,594], 3 Biss. 169; 6 N. B. R. 189; 4 Chi. Leg. News, 121; 5 Amer. Law T. Rep. 175.
KAIN v. GIBBONEY [7,595], 3 Hughes, 397.
Kain, Sprague v. [See 13,250.]
KAIN v. TEXAS PAC. R. CO. [7,596], 22 Int. Rev. Rec. 46; 3 Cent. Law J. 12.
KAINE, Ex parte [7,597], 3 Blatchf. 1.
KAINE, In re [7,597a].
KAINE, In re [7,598], 10 N. Y. Leg. Obs. 257.
Kaldenbach, United States v. [See 15,504.]
KALLISH, In re [7,599], Deady, 575.
KALLISTO, The [7,600], 2 Hughes, 128.
KALMAR, The [7,601], 10 Ben. 242.
KALOOLAH, The [7,602], 1 Brown's Adm. 55.
Kamm, Lamb v. [See 8,017.]
KAMM v. STARK [7,604].
KAMM v. STARK [7,604], 1 Sawy. 547; 3 Chi. Leg. News, 242; 13 Int. Rev. Rec. 134.
KAMPSHALL v. GOODMAN [7,605], 6 McLean, 189.
KANAWHA COAL CO. v. KANAWHA & O. COAL CO. [7,606], 7 Blatchf. 391; 5 Amer. Law Rev. 184.
Kane, Bartlett v. [See 1,077.]
KANE v. JENKINSON [7,607], 10 N. B. R. 316.
KANE v. LOVE [7,608], 2 Cranch, C. C. 429.
Kane, Mason v. [See 9,241.]
Kane, Paul v. [See 10,843.]
KANE v. RICE [7,609], 10 N. B. R. 469.
Kane, Tucker v. [See 14,220.]
Kane, Van Reimsdyk v. [See 16,871, 16,872.]
Kankakee County, Warrener v. [See 17,205.]
Kanouse, Martin v. [See 9,162.]
Kanowrs, Reutgen v. [See 11,710.]
Kansas City Pub. Co., Farmers' & Drovers' Sav. Bank v. [See 4,652.]
KANSAS CITY STONE, Etc., MFG. CO., In re [7,610], 9 N. B. R. 76.
Kansas City Times Co., Baker v. [See 773.]
Kansas Pac. Ry. Co., Arapahoe County v. [See 502.]
Kansas Pac. Ry. Co., Meier v. [See 9,394, 9,395.]
Kansas Pac. Ry. Co., Stevens v. [See 13,401.]
Kansas Pac. Ry. Co., United States v. [See 15,505, 15,506.]
Kansas Pac. Ry. Co., Washington Imp. Co. v. [See 17,242.]
KANSAS VAL. NAT. BANK v. ROWELL [7,611], 2 Dill. 371; 1 Thomp. Nat. Bank Cas. 264.
KAPPNER v. ST. LOUIS & ST. J. R. ASS'N [7,612], 3 Dill. 228.
Karper, Hood v. [See 6,664.]
KARR v. WHITTAKER [7,613], 5 N. B. R. 123.
KARRAHOO v. ADAMS [7,614], 1 Dill. 344.
Karthaus, Ardrey v. [See 511.]
KARTHAUS v. FRICK [7,615], Taney, 94.
Karthause, Hutz v. [See 6,963.]
KASSON, In re [7,616], 4 Law Rep. 489.
KASSON, In re [7,617], 18 N. B. R. 379.
KATE, The [7,618], Blatchf. Pr. Cas. 550.
KATE HERON, The [7,619], 6 Sawy. 106.
KATE HINCHMAN, The [7,620], 6 Biss. 367; 7 Chi. Leg. News, 387.
KATE HINCHMAN, The [7,621], 7 Biss. 238; 8 Chi. Leg. News, 388.
Kate L. Bruce, The, Chard v. [See 2,614.]
KATE TREMAINE, The [7,622], 5 Ben. 60; 4 Amer. Law T. Rep. U. S. Cts. 92; 3 Leg. Gaz. 226.

[Federal Case numbers are given in brackets.]

KATE WILLIAMS, The [7,623], 2 Flip. 50; 9 Chi. Leg. News, 426; 2 Cin. Law Bul. 214.
KATHLEEN, The [7,624], 2 Ben. 458.
KATHLEEN MARY, The [7,625], 8 Ben. 165.
Katie, The, Underwriters' Wrecking Co. v. [See 14,342.]
Katy Wise, The, Ellis v. [See 4,404.]
Kaub, United States v. [See 15,507.]
KAUFMAN, In re [7,626], 8 Ben. 394.
KAUFMAN, In re [7,627], 19 N. B. R. 283; 2 N. J. Law J. 231.
Kaufman, Hammer v. [See 5,997.]
Kaufman, Lee v. [See 8,191, 8,192.]
Kaufman, Oliver v. [See 10,497.]
KAUPE v. BARNEY [7,628].
Kazinski, United States v. [See 15,508.]
KEACH, In re [7,629], 1 Lowell, 335; 3 N. B. R. 13 (Quarto, 3); 2 Amer. Law T. 123; 1 Amer. Law T. Rep. Bankr. 167.
Keally, Hayman v. [See 6,265.]
KEAN, In re [7,630], 2 Hughes, 322; 8 N. B. R. 367; 2 South. Law Rev. 725; 2 Amer. Law Rec. 230.
Kean, Hagen v. [See 5,899.]
Kean, McMarren v. [See 8,901.]
KEANE v. FORT SCOTT [7,631], 1 Cent. Law J. 140.
KEANE v. GLOUCESTER, The [7,632], 2 Dall. 36; Bee, 399.
Keane, Meade v. [See 9,373.]
Kearnes, Milburne v. [See 9,543.]
Kearney, Nailor v. [See 10,004.]
KEARSAGE, The [7,762].
KEARSARGE, The [7,634], 1 Ware, 546.
KEATING v. KEEFER [7,635], 5 N. B. R. 133; 4 Amer. Law T. 162; 1 Amer. Law T. Rep. Bankr. 266.
Keating, Maissonnaire v. [See 8,978.]
Kedgeley, Wilson v. [See 17,815.]
Keefe, United States v. [See 15,509.]
KEEFER, In re [7,636], 4 N. B. R. 389 (Quarto, 126); 3 Chi. Leg. News, 125.
Keefer, Keating v. [See 7,635.]
KEELER, In re [7,637], Hempst. 306.
KEELER, In re [7,638], 10 N. B. R. 419; 20 Int. Rev. Rec. 82.
Keeling, The D. F. [See 3,873.]
KEEN v. AUDENRIED [7,639], 5 Ben. 535; 15 Int. Rev. Rec. 91; 6 Amer. Law Rev. 763.
Keen, United States v. [See 15,510, 15,511.]
KEENAN v. SHANNON [7,640], 9 N. B. R. 441; 10 Phila. 219; 31 Leg. Int. 85.
KEENAN v. UNITED STATES [18,305], 2 Hayw. & H. 341.
Keene, Centre v. [See 2,553.]
Keene v. Clark. [See 7,644.]
KEENE v. COOPER [7,641], 2 Cranch, C. C. 215.
Keene v. The David Reeves. [See 6,625.]
KEENE v. HARRIS [7,642], 3 Wash. C. C. 178.
KEENE v. JACKSON [7,643], 2 Cranch, C. C. 166.
Keene, United States v. [See 15,512.]
KEENE v. WHEATLEY [7,644], 9 Amer. Law Reg. 33; 4 Phila. 157; 5 Pa. Law J. Rep. 501; 17 Leg. Int. 349.
KEENE v. WHISTLER, The [7,645], 2 Sawy. 348.
Keffer, Newman v. [See 10,177.]
KEGAN v. AMARANTH, The [7,646].
Kehr, Smith v. [See 13,071.]
KEILER, In re [7,647], 18 N. B. R. 10.
KEILER, In re [7,648], 18 N. B. R. 36; 10 Chi. Leg. News, 299.
KEILER v. LESSFORD [7,649], 2 Cranch, C. C. 190.
KEIME v. GRAFF [7,650], 17 N. B. R. 319; 5 Reporter, 489; 25 Pittsb. Leg. J. 118.
KEIRLL v. McINTIRE [7,651], 2 Cranch, C. C. 670.
KEITH v. MURDOCH [7,652], 2 Wash. C. C. 297.
Keith, United Nickel Co. v. [See 14,408.]
Keith, Woodbury Patent Planing-Mach. Co. v. [See 17,970.]
KELBY'S WILL, In re [18,306], 2 Hayw. & H. 149.
Kell, Fanny v. [See 4,639.]
KELLEHER v. DARLING [7,653], 4 Cliff. 424; 14 O. G. 673; 3 Ban. & A. 438.
KELLER, In re [7,654], 18 N. B. R. 331.
Kellerman, United States v. [See 15,513.]
KELLEY, In re [7,655], 2 Lowell, 339; 9 Amer. Law Rev. 167.
KELLEY, In re [7,656], 19 N. B. R. 326.
KELLEY v. GREENLEAF [7,657], 3 Story, 93.
KELLEY v. HOME INS. CO. [7,658], 5 Ins. Law J. 134; 2 N. Y. Wkly. Dig. 479; 2 Cent. Law J. 478; 1 La. Law J. 153.
KELLEY ads. JACKSON [7,659], 2 Paine, 440.
Kelley, Price v. [See 11,413.]
KELLEY v. PROSPERITY, The [7,660], Bee, 38.
Kelley v. Thompson. [See 4,056.]
Kellogg, Atkinson v. [See 613.]
KELLOGG v. BARNARD [7,661], 6 Blatchf. 279.
KELLOGG v. HUGHES [7,662], 3 Dill. 357.
KELLOGG v. LA CROSSE, Etc., PACKET CO. [7,663], 3 Biss. 496.
Kellogg, McCauley v. [See 8,688.]
KELLOGG v. MILWAUKEE & ST. P. RY. CO. [7,664], 5 Dill. 537; 1 Cent. Law J. 278.
KELLOGG v. MORSE [7,665].
KELLOGG v. RUSSELL [7,666], 11 Blatchf. 519; 11 N. B. R. 121.
Kellogg, Sutherland v. [See 13,641.]
Kellogg, Union Mutual Life Ins. Co. v. [See 14,-373.]
KELLOGG v. WARMOUTH [7,667].
Kellogg, Weed v. [See 17,345.]
KELLOM v. EASLEY [7,668], 1 Dill. 281; 2 Abb. U. S. 559; 3 Amer. Law T. Rep. U. S. Cts. 119; 2 Chi. Leg. News, 304; 5 Amer. Law Rev. 181.
KELLUM v. EMERSON [7,669], 2 Curt. 79.
Kelly, Antrim v. [See 494.]
Kelly v. Atlantic & G. R. Co. [See 7,299.]
Kelly, Case v. [See 2,492.]
Kelly, Bloomer v. [See 18,242.]
KELLY v. HARDING [7,670], 5 Blatchf. 502.
Kelly v. Home Ins. Co. [See 7,658.]
Kelly, Howland v. [See 6,796.]
KELLY v. HUFFINGTON [7,671], 3 Cranch, C. C. 81.
KELLY v. JOHNSON [7,672], 3 Wash. C. C. 45.
Kelly, Lippincott v. [See 8,381.]
Kelly, Miller v. [See 9,577.]
KELLY v. PHELAN [7,673], 5 Dill. 228.
KELLY v. PITTSBURGH, The [7,674].
KELLY v. SMITH [7,675], 1 Blatchf. 290.
KELLY v. STRANGE [7,676], 3 N. B. R. 8 (Quarto, 2).
Kelly, Tong Duck Chung v. [See 14,093.]
Kelly, United States v. [See 15,514-15,516.]
Kelly, Van Rensselaer v. [See 16,873.]
KELLY v. VIRGINIA PROTECTION INS. CO. [7,-677], 3 Hughes, 449; 6 Reporter, 738.
Kelly, The Caroline E. [See 2,422.]
Kelsea, Lilley v. [See 8,349.]
KELSEY v. DALLON [7,678], 7 Int. Rev. Rec. 86
Kelsey v. The Kate Tremaine. [See 7,622.]
Kelsey, McKim v. [See 8,861.]
Kelsey, Mitchell v. [See 9,663, 9,664.]
KELSEY v. PENNSYLVANIA R. CO. [7,679], 14 Blatchf. 89.
KELSEY v. WILLIAM KALLAHAN, The [7,680], 27 Hunt, Mer. Mag. 77.
Kelton, Dewey v. [See 3,850.]
KELTY, Ex parte [7,681], 1 Lowell, 394.
Kelty, Judson v. [See 7,567.]
Kemball, How v. [See 6,748.]
KEMBALL v. STEWART [7,682], 1 McLean, 332.
KEMBLE v. LULL [7,683], 3 McLean, 272.
KEMBLE v. WILMINGTON & N. R. CO. [7,684], 13 Phila. 469; 35 Leg. Int. 165; 5 Wkly. Notes Cas. 172.
KEMMIL v. WILSON [7,685], 4 Wash. C. C. 308.
KEMP v. KENNEDY [7,686], Pet. C. C. 30.
Kemp, Stockwell v. [See 13,465.]
Kemp, The George T. [See 5,341.]
KEMPER, In re [7,687], Cranch, Pat. Dec. 89; 1 McA. Pat. Cas. 1.
KEMPER v. ADAMS [7,688], 5 McLean, 507.
Kemper, Jones v. [See 7,472.]
Kempf, Hus v. [See 6,943, 6,944.]
KEMPNER, In re [7,689], 6 N. B. R. 521.
Kempton, Parker v. [See 10,741.]
KENDALL v. ALMY [7,690], 2 Sumn. 278.
Kendall, Bowen v. [See 1,724.]
KENDALL v. BADGER [7,691], 1 McAll. 523.
KENDALL v. FREEMAN [7,692], 2 McLean, 189.
Kendall, Jarvis v. [See 7,227.]
Kendall, Stokes v. [See 13,479, 13,480.]

[Federal Case numbers are given in brackets.]

Kendall, United States v. [See 15,517, 15,518.]
Kendall, Winsor v. [See 17,886.]
Kendallville, Davis v. [See 3,638.]
KENDEPT v. THEODORE KORNER, The [7,693], 3 Amer. Law Reg. 47.
KENDRICK v. EMMONS [7,694], Holmes, 234; 4 O. G. 398; 6 Fish. Pat. Cas. 462.
KENDRICK v. EMMONS [7,695], 9 O. G. 201; 2 Ban. & A. 208.
KENDRICK v. EMMONS [7,696], 15 O. G. 966; 3 Ban. & A. 623.
Kendrick v. Nichols. [See 7,695.]
Kendrick, United States v. [See 15,519.]
Kenedy, United States v. [See 15,520.]
Kennan v. United States. [See 10,750.]
Kennan, United States v. [See 15,521.]
KENNARD v. CASS COUNTY [7,697], 3 Dill. 147; 1 Cent. Law J. 35.
Kenneally, United States v. [See 15,522.]
KENNEDY, Ex parte [7,698], 4 Cranch, C. C. 462.
KENNEDY, In re [7,699], 7 N. B. R. 337.
KENNEDY, In re [7,700], 20 Pittsb. Leg. J. 193.
Kennedy, Barclay v. [See 976.]
Kennedy, Bazil v. [See 1,151.]
Kennedy, Callan v. [See 2,319.]
KENNEDY v. DODGE [7,701], 1 Ben. 311.
KENNEDY v. FIRST NAT. BANK [7,701a], 5 Cin. Law. Bul. 219.
KENNEDY v. GORMAN [7,702], 4 Cranch, C. C. 347.
KENNEDY v. INDIANAPOLIS [7,703], 11 Biss. 13.
Kennedy, Kemp v. [See 7,686.]
Kennedy, McIver v. [See 8,830.]
KENNEDY v. PURNELL [7,704], 5 Cranch, C. C. 552.
KENNEDY v. RICKER [7,705], Smith (N. H.) 432.
Kennedy, Rose v. [See 12,049.]
KENNEDY v. ST. PAUL & P. R. CO. [7,706], 2 Dill. 448.
KENNEDY v. ST. PAUL & P. R. CO. [7,707], 5 Dill. 519.
Kennedy, Stover v. [See 13,510.]
Kennedy, United States v. [See 15,523-15,525.]
KENNEDY v. WASHINGTON [7,708], 3 Cranch, C. C. 595.
Kennedy Mfg. Co., Clark v. [See 2,826.]
KENNEWAY v. WICKFORD, The [7,709.]
Kenney, In re. [See 6,621.]
KENNICOTT v. WAYNE COUNTY [7,710], 6 Biss. 138; 7 Chi. Leg. News, 41.
KENNICOTT v. WAYNE COUNTY [7,711], 3 Chi. Leg. News, 253.
Kenny, Philadelphia & R. R. Co. v. [See 11,088.]
KENOSHA & R. R. CO. v. SPERRY [7,712], 16 Int. Rev. Rec. 148; 5 Chi. Leg News, 37; 3 Biss. 309.
KENRICK v. UNITED STATES [7,713], 1 Gall. 268.
Kensey, Bronson v. [See 1,927.]
Kensington, The, Harris v. [See 6,122.]
Kensington, The, Mariners v. [See 9,085.]
KENT v. DAWSON BANK [7,714], 13 Blatchf. 237.
KENT v. ROBERTS [7,715], 2 Story, 591.
Kenton, United States v. [See 15,526.]
KENTUCKY, The [7,716], 4 Blatchf. 325; 1 West. Law Month. 425; 41 Hunt, Mer. Mag. 75.
KENTUCKY, The [7,717], 4 Blatchf. 448.
KENTUCKY IMP. CO. v. SLACK, [7,718], 22 Int. Rev. Rec. 246.
Kentucky Marine & Fire Ins. Co. v. Nashville & C. R. Co. [See 5,940.]
KENTUCKY SILVER MIN. CO. v. DAY [7,719], 2 Sawy. 468; 6 Chi. Leg. News, 134.
KENYON, Ex parte [7,720], 5 Dill. 385.
KENYON & FENTON, In re [17,780, note], 6 N. B. R. 238.
KEOKUK, The [7,721], 1 Biss. 522.
Keokuk, Barney v. [See 1,032.]
Keokuk, Bronson v. [See 1,928.]
Kepp, Hawley v. [See 6,249.]
KEPPEL v. PETERSBURG R. CO. [7,722], Chase, 167; 3 Amer. Law Rev. 389; 26 Leg. Int. 36.
Ker, Hurst v. [See 6,935.]
Kercheval, Martin v. [See 9,163.]
Kerfoot, Reid v. [See 11,668.]
KEROSENE LAMP CO. v. LITTELL [7,723], 2 N. J. Law J. 150.
KEROSENE LAMP HEATER CO. v. LITTELL [7,724], 3 Ban. & A. 312; 1 N. J. Law J. 195; 13 O. G. 1009; Merw. Pat. Inv. 459.
KEROSENE OIL CO., In re [7,725], 3 Ben. 35; 2 N. B. R. 528 (Quarto, 164); 2 Amer. Law T. Rep. Bankr. 79.
KEROSENE OIL CO., In re [7,726], 6 Blatchf. 521; 3 N. B. R. 125 (Quarto, 31).
KERP v. MICHIGAN L. S. R. CO. [7,727], 6 Chi. Leg. News, 101.
KERR, In re [7,728], 2 N. B. R. 388 (Quarto, 124); 2 Amer. Law T. Rep. Bankr. 39.
KERR, In re [7,729], 9 N. B. R. 566.
KERR v. FORCE [7,730], 3 Cranch, C. C. 8.
Kerr, Gordon v. [See 5,611.]
KERR v. HAMILTON [7,731], 1 Cranch, C. C. 546.
KERR v. NORMAN, The [7,732], 1 Newb. 525.
KERR v. SOUTH PARK COMMISSIONERS [7,733], 8 Biss. 276; 6 Reporter, 548; 11 Chi. Leg. News, 17.
KERRISON v. STEWART [7,734], 1 Hughes, 67.
Kerrison, Stewart v. [See 13,431.]
Kershaw, North v. [See 10,311.]
Kershner, United States v. [See 15,527.]
Kessler, United States v. [See 15,528.]
KETCHUM v. DRIGGS [7,735], 6 McLean, 13.
KETCHUM v. FARMERS' LOAN & TRUST CO. [7,736], 4 McLean, 1.
Ketchum, Farmers' Trust & Canal Bank v. [See 4,670.]
KETCHUM v. MOBILE & O. R. CO. [7,737], 2 Woods, 532.
Ketchum v. Mobile & O. R. Co. [See 4,137-4,139.]
KETCHUM v. PACIFIC R. CO. [7,738], 4 Dill. 41, note; 22 Int. Rev. Rec. 383; 3 Cent. Law J. 725.
KETCHUM v. PACIFIC R. CO. [7,739], 4 Dill. 78; 3 Cent. Law J. 704.
KETCHUM v. PACIFIC R. CO. [7,740], 4 Dill. 87, note.
Ketchum, Shaefer v. [See 12,693.]
KETCHUM HARVESTING MACH. CO. v. JOHNSTON HARVESTER CO. [7,741], 3 Ban. & A. 139; 13 O. G. 178.
KETELTAS v. RAFT OF TIMBER [7,741a].
KETLAND v. BISSETT [7,742], 1 Wash. C. C. 144.
KETLAND v. CASSIUS, The [7,743], 2 Dall. 365.
KETLAND v. LEBERING [7,744], 2 Wash. C. C. 201.
Ketland, Stone v. [See 13,483.]
Kettell, Donahoe v. [See 3,980.]
Kettell, Sutton v. [See 13,647.]
KEUTGEN v. LAWRENCE [7,745], 1 Blatchf. 615.
KEY v. BANK OF THE UNITED STATES [7,746], 1 Hayw. & H. 74.
Key, Chesapeake & Ohio Canal Co. v. [See 2,649.]
Keyes, Burt v. [See 2,212.]
KEYS v. AMBASSADOR, The [7,747], 1 Bond, 237; 3 Wkly. Law Gaz. 309.
Keys, The Dick. [See 3,898.]
Keys, Ford v. [See 4,933.]
Keys, Miller v. [See 9,578.]
KEYSER, In re [7,748], 9 Ben. 224.
KEYSER v. ARTHUR [7,749].
KEYSER v. COE [7,750], 9 Blatchf. 32; 6 Amer. Law Rev. 366.
Keystone, The, Twibell v. [See 14,285.]
KEYSTONE BRIDGE CO. v. PHOENIX IRON CO. [7,751], 5 Fish. Pat. Cas. 468; 9 Phila. 374; 1 O. G. 471; 29 Leg. Int. 125.
Keystone Bridge Co., Reeves v. [See 11,660, 11,661.]
Keyworth, Greenhough v. [See 18,299.]
KEZIAH v. SLYE [7,752], 4 Cranch, C. C. 463.
KIBBE v. DUNN [7,753], 5 Biss. 233.
Kibbe, Hunter v. [See 6,907.]
KIBBE v. THOMPSON [7,754], 5 Biss. 226.
KIDD v. SPENCE [7,755], 4 Fish. Pat. Cas. 37.
KIDD v. SWARTWOUT [7,756], 10 Hunt, Mer. Mag. 81.
KIDWELL v. HOUSTON & G. N. RY. CO. [7,757], 3 Woods, 313.
KIDWELL v. MASTERSON [7,758], 3 Cranch, C. C. 52.
Kidwell, Masterson v. [See 9,269.]
KIEF v. LONDON, The [7,759], 6 McLean, 184; Newb. 6.
Kieley v. Belcher Silver Min. Co. [See 7,761.]
KIELLEY v. BELCHER SILVER MIN. CO. [7,760], 3 Sawy. 437; 2 Cent. Law J. 705.
KIELLEY v. BELCHER SILVER MIN. CO. [7,761], 3 Sawy. 500; 1 Law & Eq. Rep. 13; 1 N. Y. Wkly. Dig. 349.

[Federal Case numbers are given in brackets.]

Kierman, United States v. [See 15,529.]
KIERSAGE, The [7,762], 2 Curt. 421.
KIKINDAL v. MITCHELL [7,763], 2 McLean, 402.
Kilbourn Mfg. Co., Woodman v. [See 17,978.]
Kilbreth, Robinson v. [See 11,957.]
Kiley, The Thomas. [See 13,924, 13,925.]
KILGOUR v. NEW ORLEANS GASLIGHT CO. [7,764], 2 Woods, 144.
Kilgour v. New York Guaranty, Etc., Co. [See 18,125.]
KILLAM v. ERI, The [7,765], 3 Cliff. 456.
KILLINGLY v. TAYLOR [7,766], 1 Cranch, C. C. 99.
Killingworth, Lancashire v. [See 8,037.]
Kimball, The Nathaniel. [See 10,033.]
KIMBALL, In re [7,767], 2 Ben. 38; 1 N. B. R. 193; Bankr. Reg. Supp. 42; 1 Amer. Law T. Rep. Bankr. 2; 6 Int. Rev. Rec. 215.
KIMBALL, In re [7,768]; 2 Ben. 554; 2 N. B. R. 204 (Quarto, 74).
KIMBALL, In re [7,769], 6 Blatchf. 292; 2 Amer. Law T. Rep. Bankr. 52; 2 N. B. R. 354 (Quarto, 114); 1 Chi. Leg. News, 163.
KIMBALL, In re [7,770], 16 N. B. R. 188.
KIMBALL, In re [7,771], 1 N. J. Law J. 230.
KIMBALL v. ANNA KIMBALL, The [7,772], 2 Cliff. 4.
KIMBALL v. DISPATCH, The [7,773], 5 West. Law Month. 209.
Kimball, Lightner v. [See 8,345.]
KIMBALL v. MOBILE, County of [7,774], 3 Woods, 555.
Kimball v. The Sam Slick. [See 12,283.]
Kimball, Scammon v. [See 12,435.]
KIMBALL v. TAYLOR [7,775], 2 Woods, 37.
Kimball, United States v. [See 15,530, 15,531.]
KIMBALL v. WELD [7,776], 14 Int. Rev. Rec. 180.
Kimball, The Anna. [See 404.]
Kimball, The Iddo. [See 7,000.]
Kimbark, Hall v. [See 5,938].
Kimber, Little Gunnell Co. v. [See 8,402.]
KIMBERLY v. BUTLER [7,777], 16 Pittsb. Leg. J. 11; 3 Amer. Law Rev. 777; 1 Chi. Leg. News, 245; 2 Balt. Law Trans. 276.
KIMBRO v. COLGATE [7,778], 5 Blatchf. 229.
Kimmelstiel v. The Defiance. [See 3,740.]
Kincaid, Adams v. [See 58.]
Kincaid, Kingston v. [See 7,822.]
Kincheloe, Daniel v. [See 3,561.]
KING, In re [7,779], 5 Ben. 453; 7 N. B. R. 279.
KING, In re [7,780], 4 Biss. 319.
KING, In re [7,781], 3 Dill. 3; 1 Cent. Law J. 506; 10 N. B. R. 566; 7 Chi. Leg. News, 26; 10 Alb. Law J. 249.
KING, In re [7,782], 3 Dill. 364; 2 Cent. Law J. 92.
KING, In re [7,783], 10 N. B. R. 104.
KING, In re [7,784], 1 N. Y. Leg. Obs. 22; 5 Law Rep. 320.
KING, In re [7,785], 1 N. Y. Leg. Obs. 276.
KING v. ACKERMAN [7,786].
King, Allen v. [See 226.]
KING v. AMERICAN TRANSP. CO. [7,787], 1 Flip. 1; 1 West. Law Month. 186.
King, Bank of Columbia v. [See 871.]
King, Banks v. [See 960.]
KING v. DELAWARE INS. CO. [7,788], 2 Wash. C. C. 300.
KING v. FEARSON [7,789], 3 Cranch, C. C. 255.
KING v. FEARSON [7,790], 3 Cranch, C. C. 435.
KING v. FORCE [7,791], 2 Cranch, C. C. 208.
KING v. FOYLES [7,792], 2 Cranch, C. C. 303.
KING v. FRENCH [7,793], 2 Sawy. 441; 5 Chi. Leg. News, 470.
KING v. FROSTEL [7,794], 8 Biss. 510; 4 Ban. & A. 236; 8 Reporter, 490; 16 O. G. 956; Merw. Pat. Inv. 273; 11 Chi. Leg. News, 383.
KING v. GEDNEY [7,795], 1 McA. Pat. Cas. 443.
King, Gilman v. [See 5,444.]
KING v. GORSLINE [7,796], 4 Cranch, C. C. 150.
KING v. HAMMOND [7,797], 4 Fish. Pat. Cas. 488; Merw. Pat. Inv. 110.
KING v. LOUISVILLE CEMENT CO. [7,798], 6 Fish. Pat. Cas. 336; 4 O. G. 181.
KING v. MAUDELBAUM [7,799], 8 Blatchf. 468; 4 Fish. Pat. Cas. 577.
KING v. OHIO & M. RY. CO. [7,800], 7 Biss. 529; 9 Chi. Leg. News, 401; 16 Alb. Law J. 165; 23 Int. Rev. Rec. 286; 25 Pittsb. Leg. J. 10; 2 Cin. Law Bul. 199.
KING v. OHIO & M. RY. CO. [7,801], 26 Int. Rev. Rec. 325; 12 Chi. Leg. News, 421.
KING v. PHILLIPS [7,802], Pet. C. C. 350.
King v. Railroad Cos. [See 7,800, 7,801.]
King v. The R. E. Lee. [See 11,690, 11,691.]
King, Randolph v. [See 11,560.]
KING v. SHAW [7,803], 4 Cranch, C. C. 457.
KING v. SHEPHERD [7,804], 3 Story, 349; 7 Law Rep. 275; 2 West. Law J. 424.
King, Sherburne v. [See 12,759.]
KING v. SIMM [7,805], 2 Cranch, C. C. 234.
King, Small v. [See 12,960.]
KING v. SMITH [7,806], 4 Chi. Leg. News, 281; 7 Amer. Law Rev. 178.
King, Stevenson v. [See 13,417.]
King, Strider v. [See 13,534.]
KING v. THOMPSON [7,807], 3 Cranch, C. C. 146.
King, Thompson v. [See 13,962, 13,963.]
King v. Trostel. [See 7,794.]
KING v. TUSCUMBIA, C. & D. R. CO. [7,808], 7 Pa. Law J. 166.
King, United States v. [See 15,532-15,536.]
King, Vint v. [See 16,950.]
KING v. WERNER [7,809], 12 Blatchf. 270; 1 Ban. & A. 386; 8 O. G. 361.
King, Williams v. [See 17,725.]
KING v. WILSON [7,810], 1 Dill. 555; 13 Int. Rev. Rec. 36; 3 Chi. Leg. News, 137; 5 Amer. Law Rev. 562.
KING v. YOUNG MEN'S ASS'N [7,811], 1 Woods, 386; 11 Amer. Law Reg. (N. S.) 760.
King, The Francis. [See 5,042, 5,043.]
King, The Francis. [See 17,355.]
Kingman, The George. [See 5,335.]
KING OF SPAIN v. OLIVER [7,812], Pet. C. C. 217.
KING OF SPAIN v. OLIVER [7,813], Pet. C. C. 276.
KING OF SPAIN v. OLIVER [7,814], 2 Wash. C. C. 429.
KINGON, In re [7,815], 3 N. B. 446 (Quarto, 113); 38 How. Pr. 392.
KINGSBURY, In re [7,816], 3 N. B. R. 317 (Quarto, 84).
Kingsbury, Hamilton v. [See 5,984, 5,985.]
KINGSBURY v. KINGSBURY [7,817], 3 Biss. 60; 3 Chi. Leg. News, 330.
Kingsland, Patterson v. [See 10,827.]
KINGSLEY, In re [7,818], 6 Ben. 309; 7 N. B. R. 558.
KINGSLEY, In re [7,819], 1 Lowell, 216; 7 Amer. Law Reg. (N. S.) 423; 1 N. B. R. 329 (Quarto, 66); 1 N. B. R. 52; 15 Pittsb. Leg. J. 235, 277.
KINGSLEY, In re [7,820], 16 N. B. R. 301.
KINGSLEY'S ASSIGNEE v. HERRIET [1,722].
KINGSTON v. KINCAID [7,821], 1 Wash. C. C. 448.
KINGSTON v. KINCAID [7,822], 1 Wash. C. C. 454.
Kingston, Ross v. [See 12,076.]
KINGSTON v. WILSON [7,823], 4 Wash. C. C. 310.
King Wrought Iron Bridge Co., First Nat. Bank of Manhattan v. [See 4,803.]
KINKEAD, In re [7,824], 3 Biss. 405; 7 West. Jur. 110; 7 N. B. R. 439; 6 Amer. Law T. Rep. 45; 5 Chi. Leg. News, 217; 1 Amer. Law Rec. 533; 3 Bench & Bar (N. S.) 41.
KINNEY, Ex parte [7,825], 3 Hughes, 9; 7 Reporter, 712; 3 Va. Law J. 370.
Kinney v. The Alhambra. [See 192.]
KINNEY v. ALLEN [7,826], 1 Hughes, 106; 4 Amer. Law T. Rep. (N. S.) 258; Cox, Manual Trade-Mark Cas. 311; 23 Int. Rev. Rec. 224.
KINNEY v. CONSOLIDATED VA. MIN. CO. [7,827], 4 Sawy. 382.
Kinney, Jones v. [See 7,473.]
Kinney, Lewis v. [See 8,325.]
Kinnie, The, Jackson v. [See 7,137.]
KINSEY v. KINSEY [7,828], 3 Cranch, C. C. 85.
KINSEY v. LITTLE RIVER COUNTY [7,829], 4 Cent. Law J. 247.
KINSEY v. PULASKI COUNTY [7,830], 2 Dill. 253.
KINSING'S ASSIGNEE v. BARTHOLEW [7,831], 1 Dill. 156; 14 Int. Rev. Rec. 94; 5 West. Jur. 448.
Kinsinger, Pullan v. [See 11,463.]
Kinsley, Pendleton v. [See 10,922.]
KINSMAN, In re [7,832], 1 N. Y. Leg. Obs. 309.

[Federal Case numbers are given in brackets.]

Kinsman, Parkhurst v. [See 10,757-10,761.]
KINTZING, In re [7,833], 3 N. B. R. 217 (Quarto, 52).
Kintzing v. Bartholew. [See 7,831.]
KINTZING v. HUTCHINSON [7,834], 7 Wkly. Notes Cas. 226; 34 Leg. Int. 365.
KINZIE v. WINSTON [7,835], 4 N. B. R. 84 (Quarto, 21).
Kip, Jackson v. [See 7,138.]
Kip v. Kip. [See 7,138.]
KIPP, In re [7,836], 4 N. B. R. 593 (Quarto, 190); 4 Amer. Law T. 60; 1 Amer. Law T. Rep. Bankr. 246.
KIRBY v. BEARDSLEY [7,837], 5 Blatchf. 438; 3 Fish. Pat. Cas. 265; Merw. Pat. Inv. 211.
Kirby, Carrico v. [See 2,442.]
KIRBY v. DODGE & STEVENSON MFG. CO. [7,838], 10 Blatchf. 307; 3 O. G. 181; 6 Fish. Pat. Cas. 156.
Kirby, Wigle v. [See 17,631.]
Kirby Carpenter Co., Geekie v. [See 5,295.]
KIRK v. ARMSTRONG [7,838a], Hempst. 283.
Kirk v. The Osseo. [See 10,607, 10,608.]
KIRKBRIDE, In re [7,839], 5 Dill. 116.
KIRKBRIDE v. LAFAYETTE COUNTY [7,840], 9 Chi. Leg. News, 94.
KIRKENDALL v. MITCHELL [7,841], 3 McLean, 144.
KIRKLAND, In re [7,842], 12 Amer. Law Reg. (U. S.) 300; 6 Amer. Law T. Rep. 324.
KIRKLAND, In re [7,843], 2 Hughes, 208; 14 N. B. R. 139.
KIRKLAND, In re [7,844], 14 N. B. R. 157; 22 Int. Rev. Rec. 273; 8 Chi. Leg. News, 410; 23 Pittsb. Leg. J. 207.
KIRKLAND v. FAME, The [7,845].
KIRKPATRICK v. AMERICAN STEAMSHIP CO. [7,846], 2 Wkly. Notes Cas. 308.
KIRKPATRICK v. BALTIMORE & O. R. CO. [7,847], 24 Pittsb. Leg. J. 51; 9 Chi. Leg. News, 50; 1 Cin. Law Bul. 266.
Kirkpatrick, Campbell v. [See 2,363.]
KIRKPATRICK v. GIBSON [7,848], 2 Brock. 388.
KIRKPATRICK v. LANGPHIER [7,849], 1 Cranch, C. C. 85.
Kirkpatrick, Monteith v. [See 9,721.]
KIRKPATRICK v. WHITE [7,850], 4 Wash. C. C. 595.
KIRTLAND, In re [7,851], 10 Blatchf. 515.
KISSAM v. ALBERT, The [7,852], 21 Law Rep. 41.
KISSINGER v. BEAN [7,853], 7 Biss. 60.
Kissling, Murphy v. [See 9,950.]
Kitchen, Popleston v. [See 11,278.]
KITCHEN v. STRAWBRIDGE [7,854], 4 Wash. C. C. 84.
KITCHEN v. WOODFIN [7,855], 1 Hughes, 340.
Kittel, Atwood v. [See 641.]
KITTLE v. FROST [7,856], 9 Blatchf. 214; 5 Fish. Pat. Cas. 213.
KITTLE v. MERRIAM [7,857], 2 Curt. 475.
KITTLE v. SCHNEIDER [7,857a], 30 Fed. Rep. 690.
KITTREDGE v. CLAREMONT BANK [7,858], 3 Story, 590.
KITTREDGE v. CLAREMONT BANK [7,859], 1 Woodb. & M. 244.
Kittredge, Sparks v. [See 13,210.]
Kittredge, Wallamet Falls C. & L. Co. v. [See 17,104, 17,105.]
Kitty, The, Carey v. [See 2,401, 2,402.]
KITTY v. McPHERSON [7,860], 4 Cranch, C. C. 172.
Kitty, The, United States v. [See 15,537.]
Kitty Simpson, The, Bragdon v. [See 1,798.]
KITZINGER, In re [7,861], 19 N. B. R. 152.
KITZINGER, In re [7,862], 19 N. B. R. 238.
KITZINGER, In re [7,863], 19 N. B. R. 307.
KLAIBER v. ILLINOIS BENEVOLENT MASONIC SOC. [7,863a], 12 Ins. Law J. 125.
KLANCKE, In re [7,864], 4 Ben. 326; 4 N. B. R. 648.
KLEIN, In re [7,865], 1 How. (42 U. S.) 277, note.
KLEIN, In re [7,866], 2 N. Y. Leg. Obs. 185; 1 Pa. Law J. 344.
Klein, Bradshaw v. [See 1,790.]
Klein, Hammer v. [See 5,998.]
KLEIN v. KLOMAN [7,868].
Klein, Konold v. [See 7,925.]
Klein, McLean v. [See 8,884.]
KLEIN v. PARK [7,868], 3 Ban. & A. 145; 13 O. G. 5.
KLEINE v. CATARA [7,869], 2 Gall. 61.
KLEINE v. SHANKS [7,870], 3 Cent. Law J. 799; 15 Alb. Law J. 16.
Kleinknecht, Wicke v. [See 17,608.]
Klier, Sidener v. [See 12,843.]
Kline, Penn v. [See 10,934.]
Klingler, Greene v. [See 5,767.]
Klippell, Buford v. [See 2,114.]
Klorkgeter, Bucker v. [See 2,083.]
KLOTS v. RED JACKET, The [7,871].
Klyne, Penn v. [See 10,935, 10,936.]
KNAGG v. GOLDSMITH [7,872], Gilp. 207.
KNAP v. ELIZA AND SARAH, The [7,873], 1 Pet. Adm. 200.
Knapp, Beers v. [See 1,232.]
Knapp, Farrell v. [See 4,684.]
Knapp, Irish v. [See 7,063.]
Knapp, Rison v. [See 11,861.]
Knappel, In re. [See 7,891, 7,892.]
KNARESBOROUGH v. BELCHER SILVER MIN. CO. [7,874], 3 Sawy. 446; 1 N. Y. Wkly. Dig. 355; 23 Pittsb. Leg. J. (6 U. S.) 50; 2 Cent. Law J. 707; 1 Law & Eq. Rep. 15.
KNEASS v. SCHUYLKILL BANK [7,875], 4 Wash. C. C. 9; 1 Robb, Pat. Cas. 303; Merw. Pat. Inv. 234.
KNEASS v. SCHUYLKILL BANK [7,876], 4 Wash. C. C. 106; 1 Fish. Pat. Rep. 1.
KNEE v. AMERICAN STEAMSHIP CO. [7,877], 1 Wkly. Notes Cas. 15.
KNEVALS v. HYDE [7,878], 6 Fed. 651.
KNICKERBOCKER INS. CO. v. COMSTOCK [7,879], 9 N. B. R. 484; 6 Chi. Leg. News, 142.
Knickerbocker Life Ins. Co., Thompson v. [See 13,964.]
Knickerbocker Life Ins. Co., Trefz v. [See 14,166.]
KNIGHT, In re [7,880], 2 Biss. 518; 8 N. B. R. 436; 18 Int. Rev. Rec. 166; 30 Leg. Int. 338; 21 Pittsb. Leg. J. 43.
KNIGHT v. ATTILA, The [7,881], Crabbe, 326.
KNIGHT v. BALTIMORE & O. R. CO. [7,882], Taney, 106; 3 Fish. Pat. Cas. 1; Merw. Pat. Inv. 311.
Knight v. Cargo of the Salem. [See 12,248.]
KNIGHT v. CHENEY [7,883], 5 N. B. R. 305.
Knight, Crowell v. [See 3,445.]
KNIGHT v. GAVIT [7,884], Mirror, Pat. Off. 94, 131, 135; 43 Jour. Fr. Inst. 408.
KNIGHT v. OLD NATIONAL BANK [7,885], 3 Cliff. 429; 4 Amer. Law T. Rep. U. S. Cts. 240; 14 Int. Rev. Rec. 125; 6 Amer. Law Rev. 386.
KNIGHT v. PARSONS [7,886], 1 Spr. 279; 18 Law Rep. 96.
KNIGHT v. SCHELL [7,887], 19 How. Pr. 168.
KNIGHT v. STONE [7,888].
Knight, United States v. [See 15,539.]
Knights, The L. T. [See 8,585.]
KNOEDLER v. SCHELL [7,889], 4 Blatchf. 484; 20 How. Pr. 216.
KNOEDLER v. SCHELL [7,890], 17 Leg. Int. 373.
KNOEPFEL, In re [7,891], 1 Ben. 330; Bankr. Reg. Supp. 5; 1 N. B. R. 23; 6 Int. Rev. Rec. 53; 14 Pittsb. Leg. J. 547.
KNOEPFEL, In re [7,892], 1 Ben. 398; Bankr. Reg. Supp. 16; 1 N. B. R. 70.
KNOTT, In re [7,893], 1 Wkly. Notes Cas. 52.
KNOTT v. SOUTHERN LIFE INS. CO. [7,894], 2 Woods, 479.
KNOWLES, Ex parte [7,895], 2 Cranch, C. C. 576.
KNOWLES v. BEATY [7,896], 1 McLean, 41.
Knowles, Jones v. [See 7,474.]
Knowles, Logansport Gaslight & Coke Co. v. [See 8,466, 8,467.]
KNOWLES v. NICHOLS [7,897], 2 Curt. 571.
KNOWLES v. PARROTT [7,898], 2 Cranch, C. C. 93.
KNOWLES v. PITTSBURGH, FT. W. & C. R. CO. [7,899], 4 Biss. 466.
Knowles, Sharpless v. [See 12,712.]
KNOWLES v. STEWART [7,900], 2 Cranch, C. C. 457.
Knowles, United States v. [See 15,540.]
KNOWLTON v. BOSS [7,901], 1 Spr. 163; 12 Law Rep. 13.
KNOWLTON v. CONGRESS & EMPIRE SPRING CO. [7,902], 13 Blatchf. 170.

[Federal Case numbers are given in brackets.]

KNOWLTON v. CONGRESS & EMPIRE SPRING CO. [7,903], 14 Blatchf. 364; 17 Alb. Law J. 10; 5 N. Y. Wkly. Dig. 418; 5 Reporter, 166; 24 Int. Rev. Rec. 11.
KNOWLTON v. HOLLAND [7,904].
Knox, Alexander v. [See 170.]
Knox, Bradley v. [See 1,782.]
KNOX v. DALLAS, The [7,904a].
KNOX v. DEVENS [7,905], 5 Mason, 380.
KNOX v. GREAT WESTERN QUICKSILVER MIN. CO. [7,906], 3 Sawy. 422.
KNOX v. GREAT WESTERN QUICKSILVER MIN. CO. [7,907], 6 Sawy. 430; 14 O. G. 897; 7 Reporter, 325; 4 Ban. & A. 25.
KNOX v. GREENLEAF [7,908], 4 Dall. 360.
KNOX v. GREENLEAF [7,909], Wall. Sr. 108.
KNOX v. LOWEREE [7,910], 6 O. G. 802; 1 Ban. & A. 589; Merw. Pat. Inv. 710.
KNOX v. MURTHA [7,911], 9 Blatchf. 205; 5 Fish. Pat. Cas. 174; Merw. Pat. Inv. 104.
KNOX v. NINETTA, The [7,912], Crabbe, 534; 5 Pa. Law J. 33.
KNOX v. SUMMERS [7,913], 1 Cranch, C. C. 260.
KNOX v. SUMMERS [7,914], 2 Cranch, C. C. 12.
KNOX v. WALTON [7,915], 2 Wash. C. C. 507.
KOCH, In re [7,916], 1 N. B. R. 549 (Quarto, 153); 1 Amer. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531.
Koch, Duncan v. [See 4,136.]
KOCH v. OREGON STEAMSHIP CO. [10,572], 2 Amer. Law T. Rep. (N. S.) 381; 7 Chi. Leg. News, 347; 2 Cent. Law J. 473; 21 Int. Rev. Rec. 237.
Koch, Thurston v. [See 14,016.]
Kochersperger, United States v. [See 15,541.]
Koella, Barrett v. [See 1,048.]
KOHLSAAT, In re [7,918], 18 N. B. R. 570.
KOHLSAAT v. HOGUET [7,919], 4 Ben. 565; 5 N. B. R. 159.
KOHNE v. INSURANCE CO. OF NORTH AMERICA [7,920], 1 Wash. C. C. 93.
KOHNE v. INSURANCE CO. OF NORTH AMERICA [7,921], 1 Wash. C. C. 123.
KOHNE v. INSURANCE CO. OF NORTH AMERICA [7,922], 1 Wash. C. C. 158.
Kohnstamm, United States v. [See 15,542.]
Kollock, Gifford v. [See 5,409.]
KOLON, The [7,923], 9 Ben. 197.
Komp, Wilcox v. [See 17,641.]
KONING v. BAYARD [7,924], 2 Paine, 251; 2 U. S. Law Int. 34.
Konkapot, Graham v. [See 5,670.]
KONOLD v. KLEIN [7,925], 5 Reporter, 427; 3 Ban. & A. 226; 10 Chi. Leg. News, 240; 25 Pittsb. Leg. J. 113.
Konyng v. Bayard. [See 7,924.]
KOONES v. THOMEE [7,926], 1 Cranch, C. C. 290.
Koox, Seeley v. [See 12,630.]
Korn, United States v. [See 15,543.]
Kortright v. Bostwick. [See 2,481.]
Kosciusko, Armstrong v. [See 18,226.]
Kosciusko, The, Thomas v. [See 13,901.]
KOUNSALAER v. CLARKE [7,927], 4 Cranch, C. C. 98.
KOUNTZE v. OMAHA [7,928], 5 Dill. 443.
KRAFT v. STOTT [7,929], 1 Hayw. & H. 33.
KRAMME v. NEW ENGLAND, The [7,930], 1 Newb. 481.
KRAUSKOPP v. AMES [7,931], 7 Pa. Law J. 77; 4 Pa. Law J. Rep. 100.
KREBS v. CARLISLE BANK [7,932], 2 Wall. Jr. 33.
Kremer, Evans v. [See 4,565.]
Kremer, Walker v. [See 17,076, 17,077.]
Kreplin, The Elwin. [See 4,427.]
Kreplin, The Elwine. [See 4,426.]
Krieger, Randall v. [See 11,554.]
KRIESLER v. MORTON [7,933], 1 Curt. 413.
KRIESLER v. MORTON [7,934], 2 Curt. 239.
KRISTREL, The [7,935], 4 Adm. Rec. 175.
Krofft, Deale v. [See 3,698.]
KROGMAN, In re [7,936], 5 N. B. R. 116.
KROUSE v. DEBLOIS [7,937], 1 Cranch, C. C. 138.
KROUSE v. DEBLOIS [7,938], 1 Cranch, C. C. 156.
KROUSE v. ROSS [7,939], 1 Cranch, C. C. 368.
KROUSE v. SPROGELL [7,940], 1 Cranch, C. C. 78.
Krouse, United States v. [See 15,544.]
KRUEGER, In re [7,941], 2 Lowell, 66; 5 N. B. R. 439.
KRUEGER, In re [7,942], 2 Lowell, 182.
KRUM, In re [7,943], 7 Ben. 5.
KRUMBAAR v. BURT [7,944], 2 Wash. C. C. 406.
Krutz, Spalding v. [See 13,201.]
KUHN v. McMILLAN [7,945], 3 Dill. 372; 1 Cent. Law J. 46.
Kuhn, United States v. [See 15,545.]
Kuhns, Dike v. [See 3,907.]
KU KLUX TRIALS [7,946].
Kukuk, Bronson v. [See 1,929.]
Kunkall v. Deanes. [See 12,559.]
KURSHEEDT v. WERNER [7,947], 12 Blatchf. 530; 2 Ban. & A. 81; 8 O. G. 146.
KURTH, In re [7,948], 17 N. B. R. 573.
KURTZ v. BANK OF COLUMBIA [7,949], 2 Cranch, C. C. 701.
Kurtz, Bank of United States v. [See 920.]
Kurtz, Bank of Washington v. [See 950.]
KURTZ v. BEATTY [7,950], 2 Cranch, C. C. 699.
KURTZ v. BECKER [7,951], 5 Cranch, C. C. 671.
KURTZ v. HOLLINGSHEAD [7,952], 3 Cranch, C. C. 68.
KURTZ v. HOLLINGSHEAD [7,953], 4 Cranch, C. C. 180.
KURTZ v. JONES [7,954], 2 Cranch, C. C. 433.
Kurtz, United States v. [See 15,546, 15,547.]
KUTER v. MICHIGAN CENT. R. CO. [7,955], 1 Biss. 35; 10 West. Law J. 416; 1 Pittsb. Leg. J. 30.
KYLER, In re [7,956], 2 Ben. 414; 2 N. B. R. 649.
KYLER, In re [7,957], 6 Blatchf. 514; 3 N. B. R. 46 (Quarto, 11).
KYNOCH v. S. C. IVES, The [7,958], Newb. 205.

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LABAREE v. PEORIA, P. & J. R. CO. [7,959], 3 Ban. & A. 180; 10 Chi. Leg. News, 227.
LA BAW v. HAWKINS [7,960], 1 Ban. & A. 428; 6 O. G. 724.
LA BAW v. HAWKINS [7,961], 2 Ban. & A. 561.
La Belle Creole, Warder v. [See 17,165.]
Laber, Cooper v. [See 3,198.]
Labitut, Bank v. [See 842.]
LABITUT v. PREWETT [7,962], 1 Woods, 144.
LA BRUCE, The [7,963], 1 Adm. Rec. 84.
LABUAN, The [7,964], Blatchf. Pr. Cas. 165.
LACEY, In re [7,965], 12 Blatchf. 322; 10 N. B. R. 477.
Lacey, Conningham v. [See 3,116.]
Lacey, Lee v. [See 8,193.]
Lacey, Wolverton v. [See 17,932.]
LACHEMEYER, In re [7,966], 18 N. B. R. 270; 18 Alb. Law J. 242.
LACHENMEYER v. ANGELINA, The [7,967], 1 Wkly. Notes Cas. 22.
Lachenmeyer, Mercier v. [See 9,455.]
Lackland, Melvin v. [See 9,407.]
Lackmeyer v. Lackmeyer. [See 7,966.]
LAC LA BELLE, The [7,968], 3 Biss. 313; 11 Amer. Law Reg. (N. S.) 557; 16 Int. Rev. Rec. 86; 4 Chi. Leg. News, 461; 7 Amer. Law Rev. 384.
La Clede County, Darlington v. [See 3,577.]
La Coste, United States v. [See 15,548.]
La Crosse Railroad, Souter v. [See 13,180.]
LA CROSSE RAILROAD BRIDGE [7,969], 2 Dill. 465.
La Crosse & M. R. Co., Bronson v. [See 1,930.]
La Crosse & M. R. Co., Cleveland v. [See 2,887.]
La Crosse & M. R. Co., Howard v. [See 6,760.]
La Crosse, etc., Packet Co., Germania Ins. Co. v. [See 5,361.]
La Crosse, etc., Packet Co., Kellogg v. [See 7,663.]
LACY, In re [7,970], 4 N. B. R. 62 (Quarto, 15); 3 Amer. Law T. 215; 1 Amer. Law T. Rep. Bankr. 226.
Lacy, Orr v. [See 10,589.]

[Federal Case numbers are given in brackets.]

Lacy, Thompson v. [See 13,965.]
Ladd, Barker v. [See 990.]
Ladd, Barker v. [See 17,352.]
Ladd, Chandler v. [See 2,593.]
LADD v. DULANY [7,971], 1 Cranch, C. C. 583.
Ladd, Hoof v. [See 6,669.]
LADD v. LADD [7,972], 2 Cranch, C. C. 505.
LADD v. PATTEN [7,973], 1 Cranch, C. C. 263.
Ladd v. Reed. [See 2,593.]
Ladd, Rickards v. [See 11,804.]
Ladd, Sanderson v. [See 17,352.]
Ladd, Swain Turbine & Mfg. Co. v. [See 13,662.]
LADD v. TUCKER MFG. CO. [7,974], 4 Ban. & A. 344.
LADD v. TUDOR [7,975], 3 Woodb. & M. 325.
Ladd, Weeks v. [See 17,352.]
LADD v. WILSON [7,976], 1 Cranch, C. C. 293.
LADD v. WILSON [7,977], 1 Cranch, C. C. 305.
LADY BRYAN MIN. CO., In re [7,978], 2 Abb. U. S. 527; 1 Sawy. 349; 4 N. B. R. 394 (Quarto, 131); 4 N. B. R. 144 (Quarto, 36).
LADY BRYAN MIN. CO., In re [7,978].
LADY BRYAN MIN. CO., In re [7,980], 6 N. B. R. 252.
LADY ELLEN, The [7,981], 4 Ben. 340.
LADY FRANKLIN, The [7,982], 1 Biss. 557; 16 Pittsb. Leg. J. 30; 1 Chi. Leg. News, 273.
LADY FRANKLIN, The [7,983], 2 Biss. 121.
LADY FRANKLIN, The [7,984], 2 Lowell, 220.
Lady Franklin, The. [See 1,969.]
Lady Franklin, The. [See 9,322.]
Lady Horatia, The, Pritchard v. [See 11,438.]
Lady Maunsel, The, Sutherland v. [See 13,642.]
LADY PIKE, The [7,985], 2 Biss. 141; 8 Amer. Law Reg. (N. S.) 614.
LADY STIRLING, The [7,986], Blatchf. Pr. Cas. 614.
LAFAYETTE BANK v. BANK OF ILLINOIS [7,987], 4 McLean, 208.
Lafayette Bank, McLean v. [See 8,885-8889.]
Lafayette County, Kirkbride v. [See 7,840.]
Lafayette County, Sherrard v. [See 12,771.]
Lafayette County Court, United States v. [See 15,-549.]
Lafayette Ins. Co., French v. [See 5,102.]
Lafayette, Muncie & B. Ry. Co., Bayliss v. [See 1,140, 1,141.]
Laflin, Bean v. [See 1,172.]
Laflin, Johnson v. [See 7,393.]
Lafontaine, United States v. [See 15,550.]
L'Africaine, Soult v. [See 13,179.]
Lagowitz, Roemer v. [See 11,996.]
Lahens, Fielden v. [See 4,773.]
LAING v. G. L. BUCKMAN, The [7,988].
LAINS, In re [7,989], 16 N. B. R. 168; 1 N. W. Rep. (O. S.) 116; 6 Amer. Law Rec. 266; 21 Pittsb. Leg. J. 207.
Laird, Cushing v. [See 3,508-3,510.]
LAIRD v. DICK [7,990], 4 Cranch, C. C. 666.
Laird, Dick v. [See 3,891, 3,892.]
Laird, Wetmore v. [See 17,467.]
La Jeune Eugenie, United States v. [See 15,551.]
LAKE, Ex parte [7,991], 2 Lowell, 544; 16 N. B. R. 497.
LAKE, In re [7,992], 3 Biss. 204; 6 N. B. R. 542; 6 West. Jur. 360; 4 Chi. Leg. News, 281.
Lake, Bickham v. [See 1,386.]
Lake, Correy v. [See 3,253.]
LAKE v. FITZGERALD [7,993], 6 Fish. Pat. Cas. 420.
LAKE v. HEQUEMBOURG [7,994], 6 Biss. 325.
Lake, The, Vantine v. [See 16,878.]
Lakeman, United States v. [See 15,552.]
LAKE ERIE & B. STEAMBOAT CO. v. SON & HEIR, The [7,995], 5 West. Law Month. 98.
LAKE SHORE & M. S. R. CO. v. NEIL COCHRAN, The [7,996], 15 Int. Rev. Rec. 114; 4 Chi. Leg. News, 153; Brown, Adm. 162.
Lake Superior, The, St. Paul Fire & Marine Ins. Co. v. [See 12,244.]
LAKE SUPERIOR SHIP CANAL, RAILROAD & IRON CO., In re [7,997], 7 N. B. R. 376.
LAKE SUPERIOR SHIP CANAL, Etc., CO., In re [7,998], 10 N. B. R. 76.
Lake Superior Ship Canal, Railroad & Iron Co., Sutherland v. [See 13,643.]
LAKIN v. FIRST NAT. BANK OF JAMESTOWN [7,999], 13 Blatchf. 83.
LALLANDE v. C. D., Jr., The [8,000], Newb. 501.
LALOR, In re [8,001], 19 N. B. R. 253.
Lalor, Lyman Ventilating & Refrigerator Co. v. [See 8,632.]
LAMALERE v. CAZE [8,002], 1 Wash. C. C. 413.
LAMALERE v. CAZE [8,003], 1 Wash. C. C. 435.
LA MANCHE, The [8,004], 2 Spr. 207; 25 Law Rep. 585.
Lamar, Baldwin v. [See 800.]
Lamar, The, Bulloch v. [See 2,129.]
LAMAR v. DANA [8,005], 10 Blatchf. 34.
LAMAR v. DANA [8,006], 18 Int. Rev. Rec. 163.
LAMAR v. PENELOPE, The [8,007].
LAMB v. BOWSER [8,008], 7 Biss. 315.
LAMB v. BOWSER [8,009], 7 Biss. 372; 9 Chi. Leg. News, 300; 3 Law & Eq. Rep. 736; 6 Ins. Law J. 375.
LAMB v. BRIAND [8,010].
LAMB v. BRIARD [8,010], Abb. Adm. 367.
LAMB v. BROWN [8,011], 12 N. B. R. 522; 7 Chi. Leg. News, 363; 1 N. Y. Wkly. Dig. 176.
LAMB v. BURBANK [8,012], 1 Sawy. 227.
LAMB v. CARTER [8,013], 1 Sawy. 212.
LAMB v. DAMRON [8,014], 7 N. B. R. 509; 5 Chi. Leg. News, 290.
LAMB v. DAVENPORT [8,015], 1 Sawy. 609.
Lamb, Fields v. [See 4,775.]
LAMB v. GILLETT [8,016], 6 McLean, 365.
LAMB v. KAMM [8,017], 1 Sawy. 238; 2 Chi. Leg. News, 397.
LAMB v. LAMB [8,018], 6 Biss. 420; 13 N. B. R. 17; 7 Chi. Leg. News, 411; 21 Int. Rev. Rec. 317; 1 N. Y. Wkly. Dig. 318.
LAMB v. PARKMAN [8,019], 21 Law Rep. 589; 1 West. Law Month. 159.
LAMB v. PARKMAN [8,020], 1 Spr. 343; 20 Law Rep. 186.
LAMB v. STARR [8,021], Deady, 350.
LAMB v. STARR [8,022], Deady, 447.
LAMB v. VAUGHN [8,023], 2 Sawy. 161.
LAMB v. WAKEFIELD [8,024], 1 Sawy. 251.
Lambell, Nally v. [See 10,006.]
Lambell, United States v. [See 15,553.]
LAMBELL v. WASHINGTON [8,025], 1 Hayw. & H. 25.
LAMBERT, In re [8,026], 2 N. B. R. 426 (Quarto, 138); 1 Chi. Leg. News, 210.
LAMBERT v. SMITH [8,027], 1 Cranch, C. C. 347.
LAMBERT v. SMITH [8,028], 1 Cranch, C. C. 361.
Lambert, United States v. [See 15,554.]
LAMBSON, In re [8,029], 2 Hughes, 233.
LAMBSON v. BOILEAU [8,030].
LAMMER, In re [8,031], 7 Biss. 269; 14 N. B. R. 460; 8 Chi. Leg. News, 386; 3 Cent. Law J. 574.
Lamoille Val. R. Co., Mercantile Trust Co. v. [See 9,432.]
LA MOTHE v. FINK [8,032], 8 Biss. 493; 9 Reporter, 168; 12 Chi. Leg. News, 152.
LA MOTHE MFG. CO. v. NATIONAL TUBE WORKS CO. [8,033], 15 Blatchf. 432; 7 Reporter, 138.
Lampman, Pendergrast v. [See 10,919.]
LAMSON v. MIX [8,034], 6 Hunt, Mer. Mag. 72.
LAMSON v. WESTCOTT [8,035], 1 Sumn. 591.
LANAHAN v. PATTISON [8,036], 1 Flip. 410; 13 Int. Rev. Rec. 142; 3 Chi. Leg. News, 243.
LANCASHIRE v. KILLINGWORTH [8,037].
LANCASTER v. COUNTY AUDITOR [8,038], 2 Dill. 478.
Lancaster, United States v. [See 15,555-15,557.]
LANDER v. UNITED STATES [8,039].
LANDERS v. SEA FOWL, The [12,296a].
Landrum, United States v. [See 15,558.]
LANDSBERG, In re [8,041], 11 Int. Rev. Rec. 142, 150.
LANE, In re [8,042], 3 Ben. 98; 2 N. B. R. 309 (Quarto, 100); 1 Chi. Leg. News, 123.
LANE, In re [8,043], 2 Lowell, 305; 13 N. B. R. 43; 1 N. Y. Wkly. Dig. 296.
LANE, In re [8,044], 2 Lowell, 333; 10 N. B. R. 135.
LANE v. A. DENIKE, The [8,045], 3 Cliff. 117.
Lane, American Mfg. Co. v. [See 304.]
Lane, Bascom v. [See 1,089.]
LANE v. BEDFORD, The [8,046], 38 Hunt, Mer. Mag. 711.
LANE v. BELTZHOOVER [8,047], Taney, 110.
LANE v. BUCK, The [8,048].

[Federal Case numbers are given in brackets.]

Lane, Carter v. [See 2,477.]
Lane, Crosby v. [See 3,423.]
LANE v. DOLICK [8,049], 6 McLean, 200.
LANE v. DYER [8,050], 2 Cranch, C. C. 349.
LANE v. GOBBOLD [8,051], 39 Hunt, Mer. Mag. 332.
Lane v. The Henry Buck. [See 8,048.]
Lane, Hudgins v. [See 6,827.]
LANE v. LUDLOW [8,052], 2 Paine, 591.
Lane, Quackenbush v. [See 11,491.]
LANE v. RUSSELL [8,053], 4 Cliff. 122; 12 Int. Rev. Rec. 105.
Lane, Thomas v. [See 13,902.]
LANE v. TOWNSEND [8,054], 1 Ware (286) 289; 17 Amer. Jur. 51.
Lane, United States v. [See 15,559.]
Lane, The Robert L. [See 11,892.]
LANER, In re [8,055], 9 N. B. R. 494.
LANG, In re [8,056], 2 N. B. R. 480 (Quarto, 151).
LANG v. HOLBROOK [8,057], Crabbe, 179.
Lang, Pierce v. [See 11,144.]
LANGDON, In re [8,058], 2 Lowell, 387; 13 N. B. R. 60; 1 N. Y. Wkly. Dig. 365.
LANGDON v. DE GROOT [8,059], 1 Paine, 203; 1 Robb, Pat. Cas. 433; Merw. Pat. Inv. 263.
LANGDON v. GODDARD [8,060], 2 Story, 267.
LANGDON v. GODDARD [8,061], 3 Story, 13.
LANGDON v. JOY [8,062], 4 Dill. 391.
Langdon Cheeves, The. [See 8,064.]
LANGDON CHEVES, The [8,063], 2 Mason, 58.
LANGDON CHEEVES, The [8,064], 2 Mason, 85.
LANGE, Case of [18,307], 13 Blatchf. 546.
Langham, Victor Sewing Mach. Co. v. [See 16,935.]
Langhay v. Perry. [See 8,067.]
Langley, In re. [See 11,006.]
LANGLEY v. BRENT [8,066], 3 Cranch, C. C. 365.
LANGLEY v. PERRY [8,067], 2 N. B. R. 596 (Quarto, 180); 8 Amer. Law Reg. (N. S.) 427; 16 Pittsb. Leg. J. 117; 2 Balt. Law Trans. 521; 2 Amer. Law T. Rep. Bankr. 84.
Langley, Perry v. [See 11,006.]
LANGLEY v. SYRACUSE, The [8,068.]
Langphier, Kirkpatrick v. [See 7,849.]
Langton, United States v. [See 15,560.]
Langtree, Greenough v. [See 5,785.]
LANHAM v. PATTERSON [8,069], 13 Int. Rev. Rec. 142; 3 Chi. Leg. News, 243.
LANIER, In re [8,070], 2 N. B. R. 154 (Quarto, 59).
LANMON v. CLARK [8,071], 4 McLean, 18.
LANNING v. CASE [8,072], 4 Wash. C. C. 169.
LANNING v. DOLPH [8,073], 4 Wash. C. C. 624.
LANNING v. LONDON [8,074], 4 Wash. C. C. 159.
LANNING v. LONDON [8,075], 4 Wash. C. C. 332.
LANNING v. LONDON [8,076], 4 Wash. C. C. 513.
Lansdale, Laub v. [See 8,118.]
Lansing, Bailey v. [See 738.]
Lansing, Cook v. [See 3,162.]
LANSING v. MANTON [8,077], 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112.
Lansing v. Muscatine County. [See 16,538.]
Lansing, Stewart v. [See 13,432.]
LANSTRAAZ v. POWERS [8,078], 1 Cranch, C. C. 42.
LANZ, In re [8,079], 14 N. B. R. 159.
LANZ v. RANDALL [8,080], 4 Dill. 425; 3 N. Y. Wkly. Dig. 307; 3 Cent. Law J. 688; 14 Alb. Law J. 363; 24 Pittsb. Leg. J. 68.
Lapeer County, Lyell v. [See 8,618.]
LAPEYRE v. GALES [8,081], 2 Cranch, C. C. 291.
LAPHAM v. IVES [8,082], 8 Reporter, 6; 25 Int. Rev. Rec. 186; 13 West Jur. 357; 11 Chi. Leg. News, 297.
Lapouraille, Crosby v. [See 3,424.]
LAPSLEY, Ex parte [8,083], 1 Pa. Law J. 245.
Lapsley, La Vega v. [See 8,123.]
LARABEE v. CORTLAN [8,084], 3 Fish. Pat. Cas. 5; Taney, 180; Merw. Pat. Inv. 416.
LARCH, The [8,085], 2 Curt. 427.
LARCH, The [8,086], 3 Ware, 28.
LARCO v. MARTHA & ELIZABETH, The [8,087], 1 Sawy. 129.
Laredo, Waterbury v. [See 17,252.]
L'ARINA v. EXCHANGE, The [8,088], Bee, 198.
L'ARINA v. MANWARING [8,089], Bee, 199.
LARK, The [8,090], 1 Gall. 55.
LARKIN v. UNITED STATES [8,091], Hoff. Land Cas. 313.
Larkin, United States v. [See 15,561-15,564.]
LARNED v. ADAMS [8,092], 1 Hayw. & H. 384.
Larned, Dennison v. [See 3,798.]
Larned, Lowell Mfg. Co. v. [See 8,570.]
Larned, Sargent v. [See 12,364.]
Larned, United States v. [See 15,565, 15,566.]
LAROWE, Ex parte [8,093].
LARRA v. HENRY BUCK, The [8,094].
LARRABEE v. PIEDMONT, The [8,095].
Larrimore, Gray v. [See 5,721.]
LARRIVIERE v. MADEGAN [8,096], 1 Dill. 455.
Larsen, Singer Mfg. Co. v. [See 12,902.]
Larue, Minturn v. [See 9,646.]
Laselle, Parkinson v. [See 10,762.]
LASH v. HARDICK [8,097], 5 Dill. 505; 24 Int. Rev. Rec. 53; 5 Reporter, 552; 2 N. W. Rep. (O. S.) 150.
LASKI, In re [8,098], 13 Int. Rev. Rec. 142.
Lasky, Washington v. [See 17,230.]
LA SOCIETE ANONYME DES MINES v. BAXTER [8,099], 14 Blatchf. 261; 14 O. G. 679; Cox, Manual Trade-Mark Cas. 313.
La Societe De Credit Mobilier, Casey v. [See 2,496.]
Lassalle, Simpson v. [See 12,882.]
LASTRAPES v. BLANC [8,100], 3 Woods, 134.
LATAPEE v. PECHOLIER [8,101], 2 Wash. C. C. 180.
LATHAM v. BARNEY [8,102], 10 Chi. Leg. News, 11; 4 Law & Eq. Rep. 459; 5 N. Y. Wkly. Dig. 145; 1 N. W. Rep. (O. S.) 173; 23 Int. Rev. Rec. 320; 2 Cin. Law Bul. 232.
LATHROP, In re [8,103], 3 Ben. 490; 3 N. B. R. 410 (Quarto, 105).
LATHROP, In re [8,104], 5 Ben. 199; 5 N. B. R. 43.
LATHROP, In re [8,105], 3 N. B. R. 46 (Quarto, 11); 2 Amer. Law T. 124.
LATHROP, In re [8,106], 4 N. B. R. 93.
LATHROP, In re [8,106].
LATHROP v. BROWN [8,108], 1 Woods, 474; 10 Amer. Law Reg. (N. S.) 638; 6 Amer. Law Rev. 367.
Lathrop, Craft v. [See 3,318.]
LATHROP v. DRAKE [8,109], 30 Leg. Int. 141.
LATHROP v. JUNCTION R. CO. [8,110], 9 Wkly. Notes Cas. 277.
LATHROP v. NELSON [8,111], 4 Dill. 194.
Lathrop v. Steadman. [See 8,519.]
LATHROP v. STEWART [8,112], 6 McLean, 630.
LATHROP v. STUART [8,113], 5 McLean, 167.
Lathrop, Vogle v. [See 16,985.]
Lathy, Bayard v. [See 1,131.]
LATIMER v. MOORE [8,114], 4 McLean, 110.
Latorre, United States v. [See 15,567.]
LATSON v. STURM [8,115], 2 Ben. 327.
Latta v. The Hermitage. [See 6,410.]
LATTA v. SHAWK [8,116], 1 Bond, 259; 1 Fish. Pat. Cas. 465.
LATTIMER v. SMYTHE [8,523].
Latton v. Crawford. [See 18,296.]
Latton v. Rainey. [See 18,296.]
LAUB v. LANSDALE [8,118], 1 Hayw. & H. 45.
Laub, United States v. [See 15,568.]
LAUDERBACH v. J. M. B. KEHLOR, The [8,119].
Lauderbrun, Cowqua v. [See 3,299.]
Lauer, Rumford Chemical Works v. [See 12,135.]
Laughlin, Peck v. [See 10,890.]
Lauman, Troy City Bank v. [See 14,194.]
Laura, The, Neilson v. [See 10,092.]
LAURA RUSS, The [8,120].
Laurel, The, United States v. [See 15,569.]
LAURENS, The [8,121], 1 Abb. Adm. 302.
LAURENS, The [8,122], 1 Abb. Adm. 508; 7 N. Y. Leg. Obs. 174.
Laurie, In re. [See 4,704.]
Lauth, Savary v. [See 12,389.]
Laveaga v. Williams. [See 3,759.]
LA VEGA v. LAPSLEY [8,123], 1 Woods, 428.
LAVERTY v. SNELLING [8,124], 3 Cranch, C. C. 290.
LAVINIA, The, v. BARCLAY [8,125], 1 Wash. C. C. 49.
Lavinia, The, Howland v. [See 6,797.]
LAW, Ex parte [8,126], 35 Ga. 285; 6 Amer. Law Reg. (N. S.) 410, note.
LAW v. EWELL [8,127], 2 Cranch, C. C. 144.
Law, Foyles v. [See 5,024.]
LAW v. LAW [8,128], 3 Cranch, C. C. 324.

Law, Ray v. [See 11,591, 11,592.]
LAW v. SCOTT [8,129], 3 Cranch, C. C. 295.
Law, Scott v. [See 12,537.]
Law, Sloo v. [See 12,956-12,958.]
LAW v. STEWART [8,130], 3 Cranch, C. C. 411.
LAW v. UNITED STATES [8,131], Hempst. 338.
LAW v. WILGEES [8,132], 5 Biss. 13.
Law, The George. [See 5,336, 5,337.]
Lawhead, United States v. [See 15,570.]
Lawrason, Mason v. [See 9,242.]
LAWRENCE, In re [8,133], 10 Ben. 4; 18 N. B. R. 516; 26 Pittsb. Leg. J. 143.
Lawrence, Amory v. [See 336.]
Lawrence, Bank of Columbia v. [See 872.]
Lawrence, Belmont v. [See 1,280.]
Lawrence, Boving v. [See 1,711, 1,712.]
LAWRENCE v. BOWMAN [8,134], 1 McAll. 419.
Lawrence, Brissac v. [See 1,888.]
Lawrence, Clark v. [See 2,827.]
Lawrence, Coggill v. [See 2,957.]
Lawrence, Cornett v. [See 3,241.]
LAWRENCE v. CUPPLES [8,135], 9 O. G. 254.
LAWRENCE v. DANA [8,136], 4 Cliff. 1; 2 Amer. Law T. Rep. (N. S.) 402; 7 O. G. 81.
LAWRENCE v. DAVIS [8,137], 3 McLean, 177.
Lawrence, De Bruns v. [See 3,716.]
Lawrence, Durand v. [See 4,187.]
Lawrence, Fielden v. [See 4,774.]
Lawrence, Focke v. [See 4,894.]
LAWRENCE v. GRAVES [8,138], 5 N. B. R. 279.
Lawrence, Gray v. [See 5,722.]
Lawrence, Grinnell v. [See 5,831.]
Lawrence, Griswo'd v. [See 5,837.]
Lawrence, Keutgen v. [See 7,745.]
LAWRENCE v. LIEUTENANT ADMIRAL CALLOMBERG, The [8,139], 3 Wkly. Law Gaz. 248.
Lawrence v. The Lieutenant-Admiral Collinberg. [See 3,716.]
Lawrence, Lottimer v. [See 8,521.]
Lawrence, McCall v. [See 8,672.]
Lawrence, McCalmont v. [See 8,676.]
Lawrence, Maillard v. [See 8,971, 8,972.]
Lawrence, Morlot v. [See 9,815, 9,816.]
LAWRENCE v. NEW YORK [8,139a], 13 Reporter, 742.
LAWRENCE v. NEW BEDFORD COMMERCIAL INS. CO. [8,140], 2 Story, 471; 10 Hunt, Mer. Mag. 79.
Lawrence, City of, Parrot v. [See 10,772.]
Lawrence, Pierson v. [See 11,158.]
LAWRENCE v. REMINGTON [8,141], 6 Biss. 44.
Lawrence, Richardson v. [See 11,785.]
LAWRENCE v. ROANOKE, The [8,142].
Lawrence, Schneider v. [See 12,470.]
Lawrence, Schuchardt v. [See 12,484.]
LAWRENCE v. SCHUYLKILL NAV. CO. [8,143], 4 Wash. C. C. 562.
LAWRENCE v. SHERMAN [8,144], 2 McLean, 488.
Lawrence, Sill v. [See 12,850.]
Lawrence, Stone v. [See 13,484.]
Lawrence, Stoyel v. [See 13,517.]
Lawrence, Thorp v. [See [14,005.]
LAWRENCE v. UNITED STATES [8,145], 2 McLean, 581.
Lawrence, The, United States v. [See 15,571.]
Lawrence, United States v. [See 8,122, 15,572-15,577.]
LAWRENCE v. VERNON [8,146], 3 Sumn. 20.
Lawrence, Voce v. [See 16,979.]
Lawrence, Wallace v. [See 17,101.]
LAWRENCE v. WHITE [8,147], 5 McLean, 108.
LAWRENCE v. WICKWARE [8,148], 4 McLean, 56.
Lawrence, Wilbur v. [See 17,635.]
Lawrence, Wilson v. [See 17,816.]
Lawrence Co., Adams v. [See 59.]
Lawrence Co., Pollock v. [See 11,255.]
Lawry, Burrill v. [See 2,199.]
Lawry, Fogg v. [See 4,897.]
Laws, United States v. [See 15,579.]
LAWSON, In re [8,149], 2 N. B. R. 54 (Quarto, 19).
LAWSON, In re [8,150], 2 N. B. R. 113 (Quarto, 44).
LAWSON, In re [8,151], 2 N. B. R. 396 (Quarto, 125).
Lawson, Welch v. [See 17,369.]
Lawson, The Albert G. [See 7,364.]
Lay, McCoun v. [See 8,729.]
Lazarus, Murray v. [See 9,962.]
L. B. GOLDSMITH, The [8,152], Newb. 123.
LEA v. ALEXANDER, The [8,153], 2 Paine, 466.
LEA v. DEAKIN [8,154], 11 Biss. 23; 18 Amer. Law Reg. (N. S.) 322; 7 Reporter, 261; 11 Chi. Leg. News, 152.
Lea, Deakin v. [See 3,695, 3,696.]
Lea, Farlow v. [See 4,649.]
Lea v. Leeds. [See 2,862.]
LEACH, Ex parte [8,155], 3 App. Com'r Pat. 267.
LEACH v. COYLE [8,156].
Leach, Jones v. [See 7,475.]
LEACHMAN, In re [8,157], 1 N. B. R. 391 (Quarto, 91); 1 Amer. Law T. Rep. Bankr. 48.
LEADBETTER v. KENDALL [8,157a], Hempst. 302.
LEADVILLE CO. v. FITZGERALD [8,158], 4 Morr. Min. Rep. 380; Carp. Min. Code, 73.
LEAGUE v. SMITH [8,159].
Leah H. Miller, The, Elliott v. [See 4,393a.]
Leahy, White v. [See 17,551.]
LEAK v. ISAACSON [8,160], Abb. Adm. 41.
Leander, The, Flinn v. [See 4,870.]
LEANING v. STANDISH [8,161].
Leap, Virginia v. [See 16,964.]
Lear, The, Dennis v. [See 3,796.]
Lear, Jones v. [See 7,476.]
Lear, Wager v. [See 17,034.]
Learned v. Burlington. [See 14,687.]
Learned, United States v. [See 15,580.]
LEARS v. ONE CASK OIL [8,161a].
LEARY, In re [8,162], 10 Ben. 197.
Leary, Casey v. [See 2,497.]
Leary, Dodge v. [See 3,952b.]
LEATHERBERRY v. RADCLIFFE [8,163], 5 Cranch, C. C. 550.
Leathers, The, Carroll v. [See 2,455.]
LEATHERS v. SALVOR WRECKING, Etc., CO. [8,164], 2 Woods, 680.
Leathers, United States v. [See 15,581.]
Leathers, Werk v. [See 17,415.]
Leavenworth, Jewett v. [See 7,312.]
Leavenworth, Pacific Railroad Co. v. [See 10,649.]
Leavenworth, Ranlett v. [See 11,569.]
Leavenworth L. & G. R. Co., United States v. [See 15,582.]
LEAVENWORTH SAV. BANK, In re [8,165], 4 Dill. 363; 14 N. B. R. 92; 3 Cent. Law J. 207.
LEAVENWORTH SAV. BANK, In re [8,166], 14 N. B. R. 82; 23 Pittsb. Leg. J. 196.
LEAVIT v. SHAKESPEARE, The [8,167], 3 Chi. Leg. News, 156; 13 Int. Rev. Rec. 87.
LEAVITT, In re [8,168].
LEAVITT, In re [8,169], 1 Hask. 194.
LEAVITT v. CONNECTICUT PEAT CO. [8,170], 6 Blatchf. 139.
LEAVITT v. COWLES [8,171], 2 McLean, 491.
LEAVITT v. JEWETT [8,172], 11 Blatchf. 419.
LEAVITT v. LOGAN [8,173], 3 Wall. Jr. 184; 19 Leg. Int. 404.
LEAY v. WILSON [8,174], 1 Cranch, C. C. 191.
Lebering, Ketland v. [See 7,744.]
Leckie, Foye v. [See 5,023.]
Leckie, United States v. [See 15,583.]
Leclercq, Benn v. [See 1,308.]
LEDGERWOOD v. PICKETT'S HEIRS [8,175], 1 McLean, 143.
Ledley, Philips v. [See 11,096.]
LEE, Ex parte [8,176], 1 Cranch, C. C. 394.
LEE, Ex parte [8,177], 4 Cranch, C. C. 197.
LEE, Ex parte [8,178], 1 N. Y. Leg. Obs. 83; 4 Law Rep. 486.
LEE, In re [8,179], 14 N. B. R. 89; 23 Pittsb. Leg. J. 196.
LEE'S CASE [8,180], 6 Phila. 96; 22 Leg. Int. 284.
LEE v. AETNA INS. CO. [8,181], 3 West. Law Month. 404.
Lee, Bank of United States v. [See 921, 922.]
Lee, Barnes v. [See 1,017, 1,018.]
LEE v. BLANDY [8,182], 1 Bond, 361; 2 Fish. Pat. Cas. 89; Merw. Pat. Inv. 425.
LEE v. BOWEN [8,183], 5 Biss. 154.
Lee, Breeden v. [See 1,828.]
LEE v. CASSIN [8,184], 2 Cranch, C. C. 112.
Lee, Castle v. [See 2,506.]
Lee v. Chadwick. [See 2,570.]
LEE v. CHASE [8,185], 1 Hughes, 402.
LEE v. CHILLICOTHE BRANCH BANK [8,186], 1 Bond, 387; 2 Leg. & Ins. Rep. 10.
LEE v. CHILLICOTHE BRANCH OF STATE BANK [8,187], 1 Biss. 325.

[Federal Case numbers are given in brackets.]

Lee, Deakins v. [See 3,697.]
LEE v. FRANKLIN AVENUE GERMAN SAV. INST. [8,188], 1 Chi. Leg. News, 370; 3 N. B. R. 218 (Quarto, 53).
Lee, Gaither v. [See 5,182.]
LEE v. GAMBLE [8,189], 3 Cranch, C. C. 374.
LEE v. GUARDIAN LIFE INS. CO. [8,190], 5 Ins. Law J. 26; 2 Cent. Law J. 495; 5 Bigelow, Ins. Cas. 18.
Lee, Jelison v. [See 7,256.]
LEE v. KAUFMAN [8,191], 3 Hughes, 36; 24 Int. Rev. Rec. 90; 17 Alb. Law J. 237.
LEE v. KAUFMAN [8,192], 3 Hughes, 139.
LEE v. LACEY [8,193], 1 Cranch, C. C. 263.
LEE v. LEE [8,194], 4 Cranch, C. C. 643.
LEE v. LINCOLN [8,195], 1 Story, 610; 4 Law Rep. 301; 6 Hunt, Mer. Mag. 174.
LEE v. LUTHER [8,196], 3 Woodb. & M. 519.
LEE v. NEW HAVEN, M. & W. R. CO. [8,197].
Lee, Patons v [See 10,800.]
LEE v. PATTERSON [8,198], 2 Cranch, C. C. 199.
LEE v. PREUSS [8,199], 3 Cranch, C. C. 112.
LEE v. RAMSAY [8,200], 1 Cranch, C. C. 435.
LEE v. ROGERS [8,201], 2 Sawy. 549; 1 Amer. Law T. Rep. (N. S.) 218.
Lee, Semmes v. [See 12,652.]
Lee, Smoot v. [See 13,133.]
Lee, Somerville v. [See 13,172.]
LEE v. THOMPSON [8,202], 3 Woods, 167.
LEE v. THORNTON [8,203], 1 Cranch, C. C. 589.
Lee, Tucker v. [See 14,221.]
Lee, United States v. [See 15,584-15,588.]
LEE v. WELCH [8,204], 1 Cranch, C. C. 477.
Lee, The Edward. [See 4,292.]
Lee, The R. E. [See 11,690, 11,691.]
LEECH v. FRELIGH [8,204a].
Lee, Choi Chum, Spark, The v. [See 13,206.]
Lee County, United States v. [See 15,589.]
Lee County, Rogers v. [See 12,013.]
LEEDS, In re [8,205], 1 N. B. R. 521 (Quarto, 138); 25 Leg. Int. 140; 1 Amer. Law T. Rep. Bankr. 78; 7 Amer. Law Reg. (N. S.) 693; 6 Phila. 468; 15 Pittsb. Leg. J. 361.
LEEDS v. CAMERON [8,206], 3 Sumn. 488.
LEEF v. GOODWIN [8,207], Taney, 460.
Leese, United States v. [See 15,590.]
LE FAVOUR, In re [8,208], 8 Ben. 43.
Lefern, Hollister v. [See 6,622.]
Lefevre, United States v. [See 15,591.]
LE FRANC v. RICHMOND [8,209], 5 Sawy. 601.
Legal Process—Charge to Grand Jury in Relation to the Obstruction of Legal Process. [See 18,250.]
LEGER v. RICE [8,210], 28 Leg. Int. 309; 4 Chi. Leg. News, 7; 8 Phila. 167.
Legg, Dean v. [See 3,709.]
Legg, Simpson v. [See 12,883.]
LEGGETT v. STEELE [8,211], 4 Wash. C. C. 305.
Leggett, The Abraham. [See 4,450.]
Leginger v. The Wellington. [See 17,384.]
LEGIONARY PAYMASTER v. SPALDING [8,212], 1 Cranch, C. C. 387.
LEHIGH COAL & NAVIGATION CO. v. CENTRAL R. CO. [8,213], 4 Wkly. Notes Cas. 187.
Lehigh Zinc Co., Burrows v. [See 2,207.]
LEHMAIER v. MAXWELL [8,214].
LEHMAN v. BERDIN [8,215], 5 Dill. 340; 7 Cent. Law J. 269; 6 Reporter, 611; 7 Amer. Law Rec. 310.
LEHMAN v. STRASSBERGER [8,216], 2 Woods, 554; 3 Cent. Law J. 134.
LEHMER v. SMITH [8,217], 1 Cin. Law Bul. 45.
LEIBENSTEIN, In re [8,218], 4 Chi. Leg. News, 309.
LEIDERSDORF v. FLINT [8,219], 8 Biss. 327; 18 Amer. Law Reg. (N. S.) 37; 7 Cent. Law J. 405; 7 N. Y. Wkly. Dig. 360; 6 Reporter, 739; 18 Alb. Law J. 382, 429; 13 Amer. Law Rev. 390; Cox, Manual Trade-Mark Cas. 360; 11 Chi. Leg. News, 66; 24 Int. Rev. Rec. 373; 35 Leg. Int. 468.
LEIGH v. HOLT [8,220], 5 Biss. 338; 5 Chi. Leg. News, 528.
LEIGHTON, In re [8,221], 4 Ben. 457; 5 N. B. R. 95.
LEIPER v. BICKLEY [8,222], 1 Cranch, C. C. 29.
Leiper, Simpson v. [See 12,884.]
LEITCH v. GEORGE LAW, The [8,223], 6 Amer. Law Reg. 368.
LEITCH v. UNION R. TRANSP. CO. [8,224], 7 Chi. Leg. News, 291.
LEITENSDORFER v. CAMPBELL [8,225], 5 Dill. 419.
LEITER v. PAYSON [8,226], 9 N. B. R. 205; 6 Chi. Leg. News, 157.
LEITER v. REPUBLIC FIRE INS. CO. [8,227], 7 Biss. 26; 9 N. B. R. 205; 6 Chi. Leg. News, 157.
LELAND, In re [8,228], 5 Ben. 168; 5 N. B. R. 222; 4 Amer. Law T. 185; 1 Amer. Law T. Rep. Bankr. 284.
LELAND, In re [8,229], 6 Ben. 175.
LELAND, In re [8,230], 7 Ben. 156; 9 N. B. R. 209.
LELAND, In re [8,231], 7 Ben. 436.
LELAND, In re [8,232], 8 Ben. 204.
LELAND, In re [8,233], 8 Ben. 254.
LELAND, In re [8,234], 10 Blatchf. 503.
LELAND, In re [8,235], 14 Blatchf. 240; 16 N. B. R. 505.
LELAND v. AGNEW [8,236], 31 Hunt, Mer. Mag. 456.
Leland, Baxter v. [See 1,124, 1,125.]
LELAND v. MEDORA, The [8,237], 2 Woodb. & M. 92.
Leland, Merchants' Nat. Bank v. [See 9,452.]
LELAND v. PLATT [8,235], 16 N. B. R. 505.
Leland, Union Paper Collar Co. v. [See 14,394.]
Leland, The Annie. [See 421.]
Leming, Citizens' Nat. Bank v. [See 2,733.]
LEMIX v. HARMONY SOC. [8,239], 3 Wall. Jr. 87, note.
LEMMONS v. CHOTEAU [8,239a], Hempst. 85.
LEMMONS v. FLANAKIN [8,239b], Hempst. 32.
LEMOINE v. BANK OF NORTH AMERICA [8,240], 3 Dill. 44; 7 Chi. Leg. News, 18; 20 Int. Rev. Rec. 153; 1 Cent. Law J. 529; 22 Pittsb. Leg. J. 47.
LEMON v. BACON [8,241], 4 Cranch, C. C. 466.
LENG v. MURPHY [8,242].
Lenig, Childs v. [See 2,680.]
LENNIG v. MAXWELL [8,243], 3 Blatchf. 125.
LENOX v. ARGUELLES [8,244], 4 Cranch, C. C. 477.
LENOX v. GEORGETOWN [8,245], 1 Cranch, C. C. 608.
LENOX v. GORMAN [8,246], 5 Cranch, C. C. 531.
LENOX v. LENOX [8,246a], 1 Hayw. & H. 11.
LENOX v. NOTREBE [8,246b], Hempst. 225.
LENOX v. NOTREBE [8,246c], Hempst. 251.
Lenox, Scott v. [See 12,538.]
Lenox, United States v. [See 15,592.]
LENOX v. WILSON [8,247], 1 Cranch, C. C. 170.
LENOX v. WINISIMMET CO. [8,248], 1 Spr. 160; 11 Law Rep. 80.
LENOX v. WRIGHT [8,249], 2 Cranch, C. C. 45.
Lent, United States v. [See 15,593.]
LEO, The [8,250], 3 Ben. 569.
LEO, The [8,251], 5 Ben. 261.
LEO, The [8,252], 5 Ben. 486.
LEO, The [8,253], 8 Ben. 506.
LEO, The [8,254], 11 Blatchf. 225.
LEONARD, In re [8,255], 4 N. B. R. 562 (Quarto, 182).
LEONARD, The [8,256], 3 Ben. 263; 1 Chi. Leg. News, 313; 3 Amer. Law Rev. 779; 1 Leg. Gaz. 30.
LEONARD v. CASKIN [8,257], Bee, 146.
Leonard, Croudson v. [See 3,439.]
LEONARD v. LYCOMING FIRE INS. CO. [8,258], 10 Chi. Leg. News, 22; 6 Amer. Law Rec. 194.
LEONARD v. NEALE [8,259], 1 Cranch, C. C. 493.
Leonard, Tobey v. [See 14,067.]
Leonard, Townsend v. [See 14,117.]
LEONARD v. VOLUNTEER, The [8,260], 4 Chi. Leg. News, 156; 15 Int. Rev. Rec. 59.
LEONARD v. WHITWILL [8,261], 10 Ben. 638; 14 Amer. Law Rev. 164.
Leonard, Williams v. [See 17,726.]
Leonard v. The Volunteer. [See 16,990, 16,991.]
LEONIDAS, The [8,262], Olc. 12.
LEOPARD, The [8,263], 2 Lowell, 238.
LEOPARD, The [8,264], 2 Ware (Dav. 193) 197.
Leopard, The, Clark v. [See 2,828.]
LEPPEIN, In re [8,265], 1 Pa. Law J. Rep. 62; 1 Pa. Law J. 223.
Lerch, Miller v. [See 9,579.]
Le Roy, Baldwin v. [See 800a.]
Le Roy, Burton v. [See 2,217.]
LE ROY v. CARROLL [8,266], 3 Sawy. 66.
LE ROY v. CHABOLLA [8,267], 2 Abb. U. S. 448; 1 Sawy. 456.
LE ROY v. CLAYTON [8,268], 2 Sawy. 493.
LE ROY v. CROWNINSHIELD [8,269], 2 Mason, 151.

LE ROY v. DELAWARE INS. CO. [8,270], 2 Wash. C. C. 223.
LE ROY v. JAMISON [8,271], 3 Sawy. 369; 2 Cent. Law J. 685; 1 Law & Eq. Rep. 52.
LE ROY v. REEVES [8,272], 5 Sawy. 102.
Le Roy, Tatham v. [See 13,760-13,762.]
Leroy, Wilson v. [See 17,817.]
LE ROY v. WRIGHT [8,273], 4 Sawy. 530.
Le Rue, Ames v. [See 327.]
LESASSIER v. SOUTHWESTERN, The [8,274], 2 Woods, 35.
Leslie, Davis v. [See 3,639.]
LESLIE v. GLASS [8,275], Taney, 422.
Leslie v. Keyser. [See 8,275.]
LESLIE v. URBANA [8,276], 8 Biss. 435.
L'Espenasse, Schermehorn v. [See 12,454.]
L'Esperanza, Booth v. [See 1,647.]
L'Esperanza, Coulter v. [See 3,277.]
Lessford, Keller v. [See 7,649.]
LESSER v. SKLARZ [8,276a].
Lester, National Fire Ins. Co. v. [See 10,043.]
LESTER v. STANLEY [8,277], 3 Day, 287; Brunner, Col. Cas. 58.
LESZYNSKY, In re [8,278], 3 Ben. 487.
LESZYNSKY, In re [8,279], 16 Blatchf. 9; 25 Int. Rev. Rec. 71; 7 Reporter, 358.
LETCHER v. WOODSON [8,280], 1 Brock. 212.
Lethe, The, McColloch v. [See 8,738.]
Lethe, The, Shaw v. [See 12,721.]
LE TIGRE [8,281], 3 Wash. C. C. 567.
LETOURNO v. RINGGOLD [8,282], 3 Cranch, C. C. 103.
LETTS v. HACKETT [8,283], 6 Chi. Leg. News, 283; Brown's Adm. 480.
LETTY, Ex parte [8,284], 1 Cranch, C. C. 328.
LETTY v. LOWE [8,285], 2 Cranch, C. C. 634.
Letz v. Clark. [See 9,971.]
Levee Commissioners, Barclay v. [See 977.]
Levee Commissioners, Heine v. [See 6,325.]
Leveridge, Eubanks v. [See 4,544.]
LEVERING v. BANK OF COLUMBIA [8,286], 1 Cranch, C. C. 152.
LEVERING v. BANK OF COLUMBIA [8,287], 1 Cranch, C. C. 207.
Levering, Conner v. [See 3,114.]
Levering, Jacobs v. [See 7,162.]
LEVERINGE v. DAYTON [8,288], 4 Wash. C. C. 698.
Levett, Whipple v. [See 17,518.]
Levi, Foxall v. [See 5,015.]
Levi v. Home Mut. Ins. Co. [See 8,290.]
LEVI v. NATIONAL BANK OF MISSOURI [8,289], 5 Dill. 104; 7 Cent. Law J. 249; 7 Amer. Law Rec. 283.
LEVI v. NEW ORLEANS MUT. INS. ASS'N [8,290], 2 Woods, 63.
Levi v. Union Ins. Co. [See 8,290.]
Levi Dearborn, The, Woodruff v. [See 17,987.]
Levi Dearborne, The, Woodruff v. [See 17,988.]
LEVIN, In re [8,291], 7 Biss. 231; 14 N. B. R. 385.
LEVINSON v. OCEANIC STEAM NAV. CO. [8,292], 17 Alb. Law J. 285; 24 Int. Rev. Rec. 122.
LEVI ROWE, The [8,293], Blatchf. Pr. Cas. 323.
LEVI ROWE, The [8,294], Blatchf. Pr. Cas. 373; 20 Leg. Int. 229.
Levitt, United States v. [See 15,594.]
LEVY, In re [8,295], 1 Ben. 454; 1 N. B. R. 107; Bankr. Reg. Supp. 24; 6 Int. Rev. Rec. 134.
LEVY, In re [8,296], 1 Ben. 496; Bankr. Reg. Supp. 30; 1 N. B. R. 136; 6 Int. Rev. Rec. 163.
LEVY, In re [8,297], 2 Ben. 169; 1 N. B. R. 327 (Quarto, 66); 1 Amer. Law T. Rep. Bankr. 122.
LEVY, In re [8,298], 1 N. B. R. 105; Bankr. Reg. Supp. 23; 6 Int. Rev. Rec. 134.
LEVY, In re [8,299], 1 N. B. R. 184; Bankr. Reg. Supp. 40.
LEVY v. BURLEY [8,300], 2 Sumn. 355.
LEVY v. CAROLINE, The [8,301].
LEVY v. GREAT REPUBLIC, The [8,302], 2 Woods, 33.
LEVY v. JAMISON [8,303], 1 Law & Eq. Rep. 52.
Levy, Maxfield v. [See 9,321.]
LEVY v. VIRGINIA FIRE & MARINE INS. CO. [8,304], 9 Ins. Law J. 113.
LEVY COURT OF WASHINGTON COUNTY v. RINGGOLD [8,305], 2 Cranch, C. C. 659.
LEVY COURT OF WASHINGTON COUNTY v. WASHINGTON [8,306], 2 Cranch, C. C. 175.

Levy, The Edmund. [See 4,287, 4,288.]
LEWELLEN, The [8,307], 4 Biss. 156.
LEWELLEN, The [8,308], 4 Biss. 167.
LEWEY v. UNITED STATES [8,309], 15 Blatchf. 1.
LEWIS, Ex parte [8,310], 2 Gall. 483.
LEWIS, In re [8,311], 2 Ben. 96; 1 N. B. R. 239 (Quarto, 19).
LEWIS, In re [8,312], 4 Ben. 67; 3 N. B. R. 621 (Quarto, 153); 39 How. Pr. 155.
LEWIS, In re [8,313], 8 N. B. R. 546; 2 Hughes, 320; 21 Pittsb. Leg. J. 77.
LEWIS, In re [8,314], 14 N. B. R. 144.
Lewis, In re. [See 8,527, 8,528.]
Lewis, Bell v. [See 18,231.]
——— v. LEWIS [8,315], 2 Hayw. N. C. 346; Brunner, Col. Cas. 27.
Lewis, Adams v. [See 60.]
LEWIS v BAIRD [8,316], 3 McLean, 56.
LEWIS v BARKSDALE [8,317], 2 Brock. 436.
LEWIS v. BREWSTER [8,318], 2 McLean, 21.
LEWIS v. BROADWELL [8,319], 3 McLean, 568.
LEWIS v. CLARENDON [8,320], 5 Dill. 329; 7 Cent. Law J. 287; 6 Reporter, 609; 1 Md. Law Rec. 107.
Lewis, Crocker v. [See 3,399.]
Lewis, Davidson v [See 3,606.]
LEWIS v. ELIZABETH & JANE, The [8,321], 1 Ware (41) 33; 7 Amer. Jur. 30.
LEWIS v. ESTHER [8,322], 2 Cranch, C C. 423.
LEWIS v. FIRE INS. CO. [8,323], 2 Cranch, C. C. 500.
Lewis, Gaytes v. [See 5,288.]
Lewis, Gibson v. [See 5,398.]
Lewis, Gordon v [See 5,612-5,614.]
LEWIS v. GOULD [8,324], 13 Blatchf. 216.
LEWIS v HAMILTON [8,324a], Hempst. 21.
Lewis, Jenks v. [See 7,279, 7,280.]
LEWIS v KINNEY [8,325], 5 Dill. 159; 25 Int. Rev. Rec. 138; 7 Reporter, 551; 11 Chi. Leg. News. 223; 26 Pittsb. Leg. J. 191.
Lewis, Linder v. [See 8,362, 8,363.]
Lewis, Longfellow v. [See 8,487.]
Lewis, Lowell v. [See 8,568.]
LEWIS v. MANDEVILLE [8,326], 1 Cranch, C. C. 360.
LEWIS v. MARSHALL [8,327], 1 McLean, 16.
Lewis, Merchant v. [See 9,437.]
LEWIS v MEREDITH [8,328], 3 Wash. C. C. 81.
Lewis, Olshausen v. [See 10,507.]
LEWIS v. OREGON CENTRAL R. CO. [8,329], 8 Reporter, 358; 12 Chi. Leg. News, 1.
Lewis v. The Orpheus. [See 18,169.]
LEWIS v. ORPHEUS, The [8,330], 3 Ware, 143.
Lewis, Revens v. [See 11,711.]
Lewis, Ringgold v. [See 11,847.]
Lewis, Rogers v. [See 12,014.]
Lewis, Rogers' Locomotive Works v. [See 12,024.]
Lewis, Scott v. [See 12,539.]
LEWIS v. SHREVEPORT [8,331], 3 Woods, 205.
LEWIS v. SMITH [8,332], 2 Cranch, C. C. 571.
LEWIS v. SMYTHE [8,333], 2 Woods, 117.
LEWIS v. SPALDING [8,334], 2 Cranch, C. C. 68.
Lewis, Union Horeshoe Works v. [See 14,365.]
Lewis, United States v. [See 15,595.]
Lewis, Voight v. [See 16,989.]
Lewis, Westerwelt v. [See 17,446.]
LEWIS v. WHITE [8,335], 7 Chi. Leg. News, 116.
Lewis, The Henry. [See 6,377.]
Lewis, The Matilda A. [See 9,281.]
Lewiston, Phelps v. [See 11,076.]
LEXINGTON, The [8,336], 1 Adm. Rec. 167.
Lexington, The, House v. [See 6,767a.]
Libbey, Gilman v. [See 5,445.]
Libby, Harrington v. [See 6,107.]
Libby v. Platt. [See 8,235.]
Libby, United States v. [See 15,596, 15,597.]
Liberta, The Religione E. [See 11,694.]
LIDDERDALE v. ROBINSON [8,337], 2 Brock. 159.
LIDDLE v. CORY [8,338], 7 Blatchf. 1.
Liddle, United States v. [See 15,598.]
LIEB v. INTERNATIONAL INS. CO. [5,298], 3 Amer. Law T. Rep. U. S. Cts. 143.
LIEBART v. EMPEROR, The [8,340], Bee, 339; 3 Hopk. Rep. 163.
Lieman, Heyes v. [See 6,445a].
LIENOW v. PITCAIRN [8,341], 2 Paine, 517.

[Federal Case numbers are given in brackets.]

Lieutenant Admiral Callomberg, The, Lawrence v. [See 8,139.]
Life Ass'n of America, Stellwagen v. [See 13,359.]
Life Ass'n of America, Wilson v. [See 17,818.]
Life Ins. Co., Holloman v. [See 6,623.]
Life Ins. Co., Partridge v. [See 10,786.]
Life Ins. Co., Terry v. [See 13,839.]
LIGGETT v. MARSHALL [8,342].
LIGHTNER v. BOSTON & A. R. CO. [8,343], 1 Lowell, 338.
LIGHTNER v. BROOKS [8,344], 2 Cliff. 287.
LIGHTNER v. KIMBALL [8,345], 1 Lowell, 211.
LILIAN M. VIGUS, The [8,346], 10 Ben. 385.
Lilienthal, United States v. [See 16,105.]
LILIENTHAL'S TOBACCO v. UNITED STATES [8,347], 15 Int. Rev. Rec. 19.
Lill, Bradley v. [See 1,783.]
LILLA, The [8,348], 2 Spr. 177; 25 Law Rep. 81.
Lilla, The, United States v. [See 15,600.]
LILLEY v. KELSEA [8,349], 1 McA. Pat. Cas. 568.
LILLIBRIDGE v. ADIE [8,350], 1 Mason, 224.
LILLIE v. REDFIELD [8,351], 4 Blatchf. 41.
LILLIE MILLS, The [8,352], 1 Spr. 307; 18 Law Rep. 494.
Lillie Mills, The, Robinson v. [See 11,958.]
Limantour, United States v. [See 15,601.]
Limington, Barrell v. [See 1,040.]
Linck, Foote v. [See 4,913.]
LINCOLN, In re [8,353], 7 N. B. R. 334; 20 Pittsb. Leg. J. 1; 3 Pittsb. Rep. 440.
LINCOLN, The [8,354], 1 Lowell, 46.
Lincoln, Bailey Washing and Wringing Mach. Co. v. [See 750.]
Lincoln v. The Julia M. Hallock. [See 7,579.]
Lincoln, Lee v. [See 8,195.]
Lincoln, Purcell v. [See 11,471.]
LINCOLN v. TOWER [8,355], 2 McLean, 473.
LINCOLN v. VOLUSIA, The [16,992].
LINCOLN v. VOLUSIA, The [8,357], 6 Pa. Law J. 469; 4 Pa. Law J. Rep. 65.
Lincoln, The Albion. [See 144.]
Lincoln Bank, Suffolk Bank v. [See 13,590.]
Lincoln County, Union Pac. R. Co. v. [See 14,378-14,-380.]
Lincoln County, United States v. [See 15,503.]
Lind, The Jenny. [See 7,287.]
LINDAUER, In re [8,358], 7 Blatchf. 249.
LINDENBERGER v. BEALE [8,359].
LINDENBERGER v. MATLACK [8,360], 4 Wash. C. C. 278.
LINDENBERGER v. WILSON [8,361], 1 Cranch, C. C. 340.
LINDER v. LEWIS [8,362], 10 Ben. 49.
LINDER v. LEWIS [8,363], 4 Fed. Rep. 318.
LINDO, Ex parte [8,364], 1 Cranch, C. C. 445.
Lindo, Gardner v. [See 5,231, 5,232.]
Lindo, Gordon v. [See 5,231, 5,616.]
Lindo, Skyren v. [See 12,931.]
Lindo, Snowdon v. [See 13,152.]
Lindo, Welsh v. [See 17,408, 17,409.]
LINDROP v. DALL [8,365].
Lindsay, Foster v. [See 4,975, 4,976.]
Lindsay, Harris v. [See 6,123, 6,124.]
Lindsay, McCobb v. [See 8,704.]
LINDSAY v. RIGGS [8,366].
LINDSAY v. TWINING [8,367], 1 Cranch, C. C. 206.
Lindsay, United States v. [See 15,602.]
Lindsey, Harris v. [See 6,123, 6,124.]
Lindsey, Miller v. [See 9,580.]
LINDSEY v. SOUTH CAROLINA, The [8,368], Bee, 173.
Lindsey, United States v. [See 15,603.]
Lindsey, The Annie. [See 422.]
LINDSLEY, In re [18,308], 2 Hayw. & H. 430.
Lingan, Garretson v. [See 5,251.]
Linens, United States v. [See 15,604.]
LINFORTH, In re [8,369], 4 Sawy. 370; 16 N. B. R. 435; 1 San Fran. Law J. 199.
LINGAN v. BAYLEY [8,370], 1 Cranch, C. C. 112.
LINGAN v. MARBURY [8,371], 1 Cranch, C. C. 365.
LINGER v. WOOSTER [8,372].
Link, Thornhill v. [See 13,993.]
LINKER v. SMITH [8,373], 4 Wash. C. C. 224.
LINKMAN v. WILCOX [8,374], 1 Dill. 161.
Linn, Rogers v. [See 12,015.]
LINN v. SMITH [8,375], 4 N. B. R. 46 (Quarto, 12); 3 Amer. Law T. 218; 1 Amer. Law T. Rep. Bankr. 229; 2 Leg. Gaz. 299.
Linn, United States v. [See 15,605, 15,606.]
Linquist, McLoon v. [See 8,899.]
LINTHECUM v. JONES [8,376], 4 Cranch, C. C. 572.
Linthicum v. Offutt. [See 3,484.]
LINTHICUM v. REMINGTON [8,377], 5 Cranch, C. C. 546.
Linthicum, Remington v. [See 11,696.]
LINTON, Ex parte [8,378], 3 App. Com'r Pat. 351.
LION, The [2,786], 1 Spr. 40.
Lion, The, United States v. [See 15,607.]
LIPPETT v. HOPKINS [8,380], 1 Gall. 454.
LIPPINCOTT v. KELLY [8,381], 1 West. Law J. 513.
Lippincott, Mitchell v. [See 9,665.]
Lippincott, Player v. [See 11,223, 11,224.]
Lippincott, Rich v. [See 11,758.]
LIPPMAN, In re [8,382], 3 Ben. 95; 9 Int. Rev. Rec. 1.
Lippman, Young v. [See 18,160.]
Lippmann, Egbert v. [See 4,306.]
Liquidation, Board of, McComb v. [See 8,707.]
LISBERGER v. GARNETT [8,383], 1 Hughes, 620.
LISSBERGER, In re [6,632a], 18 N. B. R. 230.
Lissberger, Holmes v. [See 6,632a.]
LITCHFIELD, In re [8,385], 7 Ben. 259; 9 N. B. R. 506.
LITCHFIELD, In re [8,386], 18 N. B. R. 347; 26 Pittsb. Leg. J. 76.
LITCHFIELD v. JOHNSON [8,387], 4 Dill. 551.
Litchfield, Nunan v. [See 10,378.]
LITCHFIELD v. REGISTER, The [8,388], 1 Woolw. 299.
Litherberry, Sprague v. [See 13,251.]
LITLE v. OTT [8,389], 3 Cranch, C. C. 416.
Litle, United States v. [See 15,608.]
Littell, Beardsley v. [See 1,185.]
Littell, Kerosene Lamp Heater Co. v. [See 7,724.]
Littell, Kerosene Lamp Co. v. [See 7,723.]
LITTLE, In re [8,390], 2 Ben. 186; 1 N. B. R. 341 (Quarto, 74); 15 Pittsb. Leg. J. 268.
LITTLE, In re [8,391], 3 Ben. 25; 2 N. B. R. 294 (Quarto, 97); 1 Chi. Leg. News, 123.
LITTLE, In re [8,392], 19 N. B. R. 234; 2 N. J. Law J. 211.
LITTLE v. ALEXANDER [8,393], 1 Hughes, 177.
Little, Bangs v. [See 839.]
Little, Blunt v. [See 1,578.]
LITTLE v. GOULD [8,394], 2 Blatchf. 165.
LITTLE v. GOULD [8,395], 2 Blatchf. 362.
Little, Hall v. [See 5,939.]
Little, McDonald v. [See 8,760.]
Little, Park v. [See 10,715.]
Little, Patriotic Bank v. [See 10,809.]
Little, Smith v. [See 13,072.]
LITTLE v. UNITED STATES [8,396], Hoff. Land Cas. 325.
Little, United States v. [See 15,609, 15,610.]
Little, Yates v. [See 18,128.]
LITTLE ANN, The [8,397], 1 Paine, 40.
Little Ann, The, United States v. [See 15,611.]
Little, Charles, The, United States v. [See 15,612, 15,613.]
LITTLEFIELD, In re [8,398], 1 Lowell, 331; 3 N. B. R. 57 (Quarto, 13); 2 Amer. Law T. 122; 1 Amer. Law T. Rep. Bankr. 164.
LITTLEFIELD, In re [8,399], 1 McA. Pat. Cas. 574.
Littlefield, Orr v. [See 10,590.]
Littlefield, Perry v. [See 11,007, 11,008.]
LITTLEFIELD v. DELAWARE & H. CANAL CO. [8,400], 3 Cliff. 371; 4 N. B. R. 257 (Quarto, 77).
LITTLE GIANT, The [8,401], 2 Biss. 23; 4 Alb. Law J. 50.
LITTLE GUNNELL CO. v. KIMBER [8,402], Morr. Min. Rights (4th Ed.) 65; 1 Morr. Min. Rep. 536.
Littlejohn, Cornell v. [See 3,238.]
Littlejohn, The, Hart v. [See 6,153.]
Little River County, Kinsey v. [See 7,829.]
Little Rock, Gilchrist v. [See 5,421.]
Little Rock, Merchants' Nat. Bank v. [See 9,445.]
Little Rock & Ft. S. R. Co., Steacy v. [See 13,329.]
LIVELY, The [8,403], 1 Gall. 315.
Liverpool & L. & G. Ins. Co., Akin v. [See 121.]
LIVERMORE, In re [8,404], 5 Law Rep. 370.

LIVERPOOL HERO, The [8,405], 2 Gall. 184.
Liverpool & London & Globe Ins. Co., Thompson v. [See 13,966.]
LIVERPOOL PACKET, The [8,406], 1 Gall. 513.
LIVERPOOL PACKET, The [8,407], 2 Spr. 37.
Liverse, Hyde v. [See 6,972.]
LIVE-STOCK DEALERS' & BUTCHERS' ASS'N v. CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE CO. [8,408], 1 Abb. U. S. 388; 3 Chi. Leg. News, 17; 13 Int. Rev. Rec. 20; 5 Amer. Law Rev. 171; 1 Woods, 21.
LIVE YANKEE, The [8,409], Deady, 420.
Live Yankee, The, Adrian v. [See 88.]
Live Yankee, The, Goddefroy v. [See 5,496.]
LIVINGSTON v. BRUCE [8,410], 1 Blatchf. 318.
Livingston v. The Express. [See 4,596, 4,598.]
LIVINGSTON v. JEFFERSON [8,411], 1 Brock. 203; 4 Hall, Law J. 78; 4 Hughes, 606; 11 Myers' Fed. Dec. 721.
LIVINGSTON v. JEWESS, The [8,412], 1 Ben. 19, note.
LIVINGSTON v. JONES [8,413], 1 Fish. Pat. Cas. 521; 2 Pittsb. Rep. 68; 18 Leg. Int. 293; Merw. Pat. Inv. 658; 7 Pittsb. Leg. J. 169.
LIVINGSTON v. JONES [8,414], 3 Wall. Jr. 330; 2 Fish. Pat. Cas. 207; 18 Leg. Int. 340.
LIVINGSTON v. JORDAN [8,415], Chase, 454; 10 Amer. Law Reg. (N. S.) 53.
LIVINGSTON v. MOORE [8,416], Baldw. 424.
LIVINGSTON v. PRATT [8,417], 1 Brown's Adm. 66.
LIVINGSTON v. PROPRIETORS OF ORE BED [8,418]. 16 Blatchf. 549.
LIVINGSTON v. SWANWICK [8,419], 2 Dall. 300.
LIVINGSTON v. VAN INGEN [8,420], 1 Paine, 45; 4 Hall, Law J. 56.
Lizardi, Gaines v. [See 5,174, 5,175.]
LIZZIE, The [8,421], Blatchf. Pr. Cas. 243.
Lizzie, The, Meagher v. [See 9,377.]
Lizzie Hopkins, The, Myers v. [See 9,993.]
LIZZIE MAJOR, The [8,422], 8 Ben. 333.
LIZZIE MERRY, The [8,423], 10 Ben. 140.
LIZZIE WESTON, The [8,424], Blatchf. Pr. Cas. 144.
LIZZIE WESTON, The [8,425], Blatchf. Pr. Cas. 265.
L. J. FARWELL, The [8,426], 8 Biss. 61; 10 Chi. Leg. News, 9.
LLADO v. TRITONE, The [8,427], 8 Reporter, 165.
Llewellyn, Jones v. [See 7,477.]
LLEWELLYN v. TWO ANCHORS & CHAINS [8,428], 1 Ben. 80.
LLOYD, In re [8,429], 15 N. B. R. 257; 5 Amer. Law Rec. 679; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 113.
LLOYD, In re [8,430], 25 Pittsb. Leg. J. 69.
LLOYD, In re [8,431], 25 Pittsb. Leg. J. 123.
Lloyd, Farmers' Bank of Alexandria v. [See 4,661.]
LLOYD v. HOO SUE [8,432], 5 Sawy. 74; 17 N. B. R. 170; 1 San Fran. Law J. 392.
LLOYD v. LUND [8,433].
LLOYD v. SCOTT [8,434], 4 Cranch, C. C. 206.
Lloyd, Stevens v. [See 13,402, 13,403.]
LLOYD v. STROBRIDGE [8,435], 16 N. B. R. 197; 10 Chi. Leg. News, 1; 1 San Fran. Law J. 13.
LLOYD v. TURNER [8,436], 5 Sawy. 463.
Lloyd, United States v. [See 15,614-15,619.]
LLOYD v. YOST [8,437].
Lobdell, Burleigh Rock Drill Co. v. [See 2,166.]
Loch Goil, The, Curry v. [See 3,495.]
LOCK v. PENNSYLVANIA R. CO. [8,438], 1 N. J. Law J. 227.
LOCKE, In re [8,439], 1 Lowell, 293; 2 N. B. R. 382 (Quarto, 123).
Locke, Barron v. [See 1,054.]
LOCKE v. CANNON [8,440], 2 Cranch, C. C. 186.
Locke v. The Penelope. [See 16,946.]
LOCKE v. POSTMASTER GENERAL [8,441], 3 Mason, 446.
LOCKE v. UNITED STATES [8,442], 2 Cliff. 574.
LOCKETT v. HILL [8,443], 1 Woods, 552; 1 Cent. Law J. 149; 9 N. B. R. 167.
LOCKETT v. HOGE [8,444], 9 N. B. R. 167.
Lockhart, In re. [See 729.]
Lockhart, Atwood v. [See 642.]
LOCKHART v. HORN [8,445], 1 Woods, 628.
LOCKHART v. HORN [8,446], 3 Woods, 542.
LOCKHART v. ROSS [8,447].
LOCKINGTON v. SMITH [8,448], Pet. C. C. 466.
Lockman, United States v. [See 15,620.]
LOCKWOOD v. COMSTOCK [8,449], 4 McLean, 383.
Lockwood, De Mill v. [See 3,782.]
LOCKWOOD v. GRACE GIRDLER [8,450].
Lockwood, Richardson v. [See 11,786, 11,787.]
LOCKWOOD v. WALKER [8,451], 3 McLean, 431.
Locomotive Boiler, United States v. [See 15,621.]
LOCOMOTIVE ENGINE SAFETY TRUCK CO. v. ERIE RY. CO. [8,452], 10 Blatchf. 292; 6 Fish. Pat. Cas. 187; 3 O. G. 93; Merw. Pat. Inv. 440.
LOCOMOTIVE ENGINE SAFETY TRUCK CO. v. PENNSYLVANIA R. CO. [8,453], 10 Blatchf. 292; 1 Ban. & A. 470; 6 O. G. 927; 31 Leg. Int. 324; 1 Wkly. Notes Cas. 16; 6 Leg. Gaz. 324.
LOCOMOTIVE ENGINE SAFETY TRUCK CO. v. PENNSYLVANIA R. CO. [8,454].
Locust Mountain Coal & Iron Co., Brettaugh v. [See 1,846.]
Lodemia, The, Holmes v. [See 6,642.]
LODER, In re [8,455], 3 Ben. 211; 2 N. B. R. 517 (Quarto, 162); 2 Amer. Law T. 106; 1 Amer. Law T. Rep. Bankr. 159.
LODER, In re [8,456], 4 Ben. 125; 3 N. B. R. 655 (Quarto, 162).
LODER, In re [8,457], 4 Ben. 305; 4 N. B. R. 190 (Quarto, 50).
LODER, In re [8,458], 4 Ben. 328.
LODER, In re [8,459], 2 N. B. R. 515 (Quarto, 161); 2 Amer. Law T. Rep. Bankr. 87.
LODGE v. LODGE [8,460], 5 Mason, 407.
Lodge v. Stoddart. [See 12,561.]
Lodge, United States v. [See 15,622.]
LODI LAND & LUMBER CO., In re [8,461], 5 Sawy. 286.
Loeb, In re. [See 1,057.]
Loeb, Bailey v. [See 739.]
Loeb, Havemeyer v. [See 6,227.]
LOEWENSTEIN v. BIERNBAUM [8,461a], 8 Wkly. Notes Cas. 163; 9 Reporter, 402.
LOEWENSTEIN v. MAXWELL [8,462], 2 Blatchf. 401.
LOEWIG GUSTAVUS v. COLUMBUS, The [3,042].
Loft, Adams v. [See 61.]
Lofton, Tatum v. [See 13,766.]
LOGAN, In re [8,464].
LOGAN v. AEOLIAN, The [8,465], 1 Bond, 267.
Logan, Leavitt v. [See 8,173.]
Logan, Sanders v. [See 12,295.]
Logan, United States v. [See 15,623, 15,624.]
LOGANSPORT GASLIGHT & COKE CO. v. KNOWLES [8,466], 4 Chi. Leg. News, 75.
LOGANSPORT GASLIGHT & COKE CO. v. KNOWLES [8,467], 2 Dill. 421; 5 Chi. Leg. News, 230.
Logowitz, Roemer v. [See 11,996.]
LOLA, The [8,468], 6 Ben. 142.
Lomax, Frazier v. [See 5,072.]
Lombard American Whip Co. v. [See 319.]
LOMBARD v. BAYARD [8,469], 1 Wall. Jr. 196.
LOMBARD v. CHICAGO [8,470], 4 Biss. 460.
LOMBARD v. McLEAN [8,471], 4 Cranch, C. C. 623.
Lombard, School Dist. Tp. v. [See 12,478.]
LOMBARD v. STILLWELL [8,472].
LONAN v. C. H. NORTHRAM, The [8,473], 1 N. J. Law J. 99.
London, The, Kief v. [See 7,759.]
London, Lanning v. [See 8,074-8,076.]
London & L. Ins. Co., Bayly v. [See 1,145.]
LONDON PACKET, The [8,474], 1 Mason, 14.
LONERGAN v. FENLON [8,475], 2 Pittsb. Rep. 115; 7 Pittsb. Leg. J. 266.
LONG, In re [8,476], 7 Ben. 141; 9 N. B. R. 227.
LONG, In re [8,477], 3 N. B. R. 66; 7 Phila. 578; 26 Leg. Int. 349.
LONG, In re [8,478], 9 N. Y. Leg. Obs. 73; 3 Amer. Law J. (N. S.) 294; 8 Leg. Int. R. 10.
LONG v. CONNER [8,479], 17 N. B. 540.
LONG v. DICKERSON [8,480], 15 Blatchf. 459; 7 Reporter, 172; 19 Alb. Law J. 136.
Long, Fifth Nat. Bank v. [See 4,780.]
Long, Henderson v. [See 6,354.]
LONG v. ONEALE [8,481], 1 Cranch, C. C. 233.
LONG v. ROGERS [8,482], 6 Biss. 416.
LONG v. SOULE [8,483], 22 Int. Rev. Rec. 344; 9 Chi. Leg. News, 33; 1 Cin. Law Bul. 282.
Long, United States v. [See 15,625.]
LONG BRANCH, The [8,484], 9 Ben. 89.
LONGEST, In re [8,485], 7 Biss. 477.

[Federal Case numbers are given in brackets.]

LONGFELLOW, In re [8,486], 17 N. B. R. 27; 2 Hask. 221.
LONGFELLOW v. LEWIS [8,487], 2 Hask. 256.
LONGSTRETH v. PENNOCK [8,488], 9 Phila. 394; 30 Leg. Int. 29; 7 N. B. R. 449; 20 Pittsb. Leg. J. 107.
Longworth, Raymond v. [See 11,595.]
Longworth, Bank of the United States v. [See 923.]
LONGWORTH v. CLOSE [8,489], 1 McLean, 282.
LONGWORTH v. TAYLOR [8,490], 1 McLean, 395.
LONGWORTH v. TAYLOR [8,491], 1 McLean, 514.
LONSDALE v. BROWN [8,492], 3 Wash. C. C. 404.
LONSDALE v. BROWN [8,493], 4 Wash. C. C. 86.
LONSDALE v. BROWN [8,494], 4 Wash. C. C. 148.
LONSDALE v. BROWN [8,495].
LONSDALE CO. v. MOIES [8,496], Brunner, Col. Cas. 655; 21 Law Rep. 658.
LONSDALE CO. v. MOIES [8,497], 2 Cliff. 538.
LOOMIS v. WILBUR [8,498], 5 Mason, 13.
LOON, The [8,499], 7 Blatchf. 244.
Loper, The, Pickell v. [See 11,119.]
LORAINE v. CARTWRIGHT [8,500], 3 Wash. C. C. 151.
LORD, In re [8,501], 5 Law Rep. 258.
LORD, In re [8,502], 3 N. B. R. 243 (Quarto, 58).
LORD, In re [8,503], 5 N. B. R. 318.
LORD, The [8,504], Chase, 527.
LORD v. DOYLE [8,505], 1 Cliff. 453.
Lord, Fisher v. [See 4,821.]
Lord, Franklin Fire Ins. Co. v. [See 5,057.]
LORD v. GOODALL, Etc., STEAMSHIP CO. [8,506], 4 Sawy. 292; 5 Cent. Law J. 325; 1 San Fran. Law J. 52; 12 Amer. Law Rev. 391.
LORD v. MILWAUKEE & M. R. CO. [8,507], 17 Wis. 588 (570), note.
Lord, Miston v. [See 9,655.]
LORD WELLINGTON, The [8,508], 2 Gall. 103.
LORIE v. CONNECTICUT MUT. LIFE INS. CO. [8,509], 4 Ins. Law J. 632; 5 Bigelow, Ins. Cas. 233.
LORILLARD v. McDOWELL [8,510], 23 Int. Rev. Rec. 90; 11 O. G. 640; 13 Phila. 461; 2 Ban. & A. 531; 34 Leg. Int. 78; 24 Pittsb. Leg. J. 119.
LORILLARD v. RIDGWAY [8,511], 4 Ban. & A. 564; 16 O. G. 1231; Merw. Pat. Inv. 254; 14 Phila. 410; 36 Leg. Int. 444; 25 Int. Rev. Rec. 377.
Lorillard v. Sellers. [See 8,511.]
LORING, In re [8,512], Holmes, 483.
LORING v. DOWNER [8,513], 1 McAll. 360.
LORING v. MARSH [8,514], 2 Cliff. 311.
LORING v. MARSH [8,515], 2 Cliff. 469; 27 Law Rep. 377.
Loring, Paige v. [See 10,672.]
Loring, Seamans v. [See 12,583.]
Loring, Somboy v. [See 13,168.]
Loring, Tatham v. [See 13,763.]
Lorio, Bragg v. [See 1,800.]
LORMAN v. CLARKE [8,516], 2 McLean, 568.
LORWAY v. LOUSADA [8,517], 1 Lowell, 77; 1 Amer. Law Rev. 92.
LOTHROP, In re [8,518], 5 Law Rep. 456.
LOTHROP v. STEDMAN [8,519], 13 Blatchf. 134; 15 Amer. Law Reg. (N. S.) 346; 4 Ins. Law J. 829; 12 Alb. Law J. 354; 22 Int. Rev. Rec. 33.
Lothrop, The Grace. [See 5,653.]
Lot of Jewelry, United States v. [See 15,626.]
LOT OF LEAF TOBACCO [15,627], 2 Ben. 76.
Lot of Leaf Tobacco, United States v. [See 15,627.]
Lotridge, United States v. [See 15,628.]
LOTTIMER v. LAWRENCE [8,521], 1 Blatchf. 613.
LOTTIMER v. REDFIELD [8,522].
LOTTIMER v. SMYTHE [8,523], 17 Int. Rev. Rec. 12.
LOTTY, The [8,524], Olc. 329.
Loud v. Philadelphia & Reading R. Co. [See 8,422.]
Loud, The Georgia D. [See 5,353.]
Louder, United States v. [See 15,630.]
LOUDON v. FIRST NAT. BANK OF WILMINGTON [8,525], 2 Hughes, 420; 15 N. B. R. 476.
LOUDON v. SCOTT [8,526], 1 Cranch, C. C. 264.
Loughery, United States v. [See 15,631.]
LOUIS, In re [8,527], 3 Ben. 153; 2 N. B. R. 449 (Quarto, 145); 2 Amer. Law T. Rep. Bankr. 75; 16 Pittsb. Leg. J. (O. S.) 45.
LOUIS, In re [8,528], 7 Ben. 481.
Louis, The, Crossley v. [See 3,436.]
LOUISA, The [8,529], 3 Ware, 130.
Louisa, The, v. The Bella Donna. [See 11,292.]
Louisa, The, Packard v. [See 10,652.]
LOUISA A., The [8,530].
LOUISA AGNES, The [8,531], Blatchf. Pr. Cas. 107.
Louisa Barbara, The, United States v. [See 15,632.]
LOUISA JANE, The [8,532], 2 Lowell, 295.
LOUISA SIMPSON, The [8,533], 2 Sawy. 57; 14 Int. Rev. Rec. 165.
LOUIS DOLE, The [8,534], 5 Biss. 172.
LOUISETTA, The [8,535], 2 Gall. 307.
LOUISIANA, The [8,536], 1 Ben. 328.
LOUISIANA, The [8,537], 2 Ben. 371; 1 Amer. Law T. Rep. U. S. Cts. 72.
Louisiana, The, Black v. [See 1,461.]
LOUISIANA v. DUBUCLET [8,538], 10 Chi. Leg. News, 132; 5 Reporter, 201.
Louisiana, The, Haney v. [See 6,020.]
Louisiana, The, Mendelsohn v. [See 9,421.]
Louisiana, Northwestern Union Packet Co. v. [See 10,344.]
Louisiana v. United States. [See 3,097.]
Louisiana, Wood v. [See 17,948.]
LOUISIANA INS. CO. v. NICKERSON [8,539], 2 Lowell, 310.
LOUISIANA PAPER CO. v. WAPLES [8,540], 3 Woods, 34.
Louisiana State Lottery Co., Da Ponte v. [See 3,569.]
LOUISIANA STATE LOTTERY CO. v. FITZPATRICK [8,541], 3 Woods, 222.
Louisiana State Seminary, Featherman v. [See 4,713.]
Louisville, Bigelow v. [See 1,400.]
LOUISVILLE, The, v. STROUT [8,542], 19 Hunt, Mer. Mag. 186.
Louisville & P. Canal Co., United States v. [See 15,633.]
Louisville Cement Co., King v. [See 7,798.]
Lounsbury, Union Mfg. Co. v. [See 14,368.]
LOUNT, In re [8,543], 11 N. B. R. 315; 7 Chi. Leg. News, 155.
Lousada, Lorway v. [See 8,517.]
LOUTE v. ALLEGHENY COUNTY [8,544], 2 Pittsb. Rep. 411; 10 Pittsb. Leg. J. 241.
LOUTREL v. MELLOR [5,039], 1 O. G. 48.
LOVE v. BOYD [8,546], 2 Cranch, C. C. 156.
LOVE v. FENDALL'S TRUSTEES [8,547], 1 Cranch, C. C. 34.
Love, Grigsby v. [See 5,827.]
LOVE v. HINCKLEY [8,548], Abb. Adm. 436.
Love, Kane v. [See 7,608.]
LOVE v. LOVE [8,549], 21 Pittsb. Leg. J. 101.
Love, Mandeville v. [See 9,012.]
Love, Wheaton v. [See 17,484, 17,485.]
Lovejoy, Murray v. [See 9,963.]
Lovejoy, Shaw & Wilcox Co. v. [See 12,727.]
LOVEJOY v. WASHBURNE [8,550], 1 Biss. 416.
LOVEJOY v. WILSON [8,551], 1 Cranch, C. C. 102.
LOVELL v. ALLIANCE LIFE INS. CO. [8,552], 6 Ins. Law J. 239; 3 Cent. Law J. 699.
Lovell, Curry v. [See 3,496.]
Lovell, Edmondson v. [See 4,286.]
Lovell, Elgee v. [See 4,344.]
Lovell, Jones v. [See 7,478.]
Lovell, Macubbin v. [See 8,928.]
Lovering, Baysand v. [See 1,147.]
LOVERING v. DUTCHER [8,553], 2 Hayw. & H. 367.
LOVERING v. HEARD [8,554], 1 Cranch, C. C. 349.
Lovering, Mattocks v. [See 9,299.]
Lovett v. Bispham. [See 8,985.]
LOVETT PEACOCK, The [8,555], 1 Lowell, 143.
Lovett Peacock, The, Field v. [See 4,768.]
LOVING v. FAIRCHILD [8,556], 1 McLean, 333.
LOVREIN v. THOMPSON [8,557], 1 Spr. 355.
LOW, In re [8,558], 2 Lowell, 264.
LOW v. ANDREWS [8,559], 1 Story, 38.
LOW v. HAUEL [8,560], 1 Wall. Jr. 345.
Low, Hill v. [See 6,494.]
Low, Palmer v. [See 10,693.]
LOW v. UNDERHILL [8,561], 3 McLean, 376; 2 West. Law J. 360.
LOW v. WAYNE COUNTY SAV. BANK [8,562], 14 Blatchf. 449.
Lowber, Bangs v. [See 840.]
LOWBER v. SHAW [8,563], 5 Mason, 241.
Lowber, Tatham v. [See 13,764, 13,765.]
Lowdermilk, Manning v. [See 9,046.]
LOWE, In re [8,564], 11 N. B. R. 221.
LOWE v. BENJAMIN, The [8,565], 1 Wall. Jr. 187.

[Federal Case numbers are given in brackets.]

Lowe v. The Inconiun. [See 6,995.]
Lowe, Letty v. [See 8,285.]
LOWE v. McCLERY [8,566], 3 Cranch, C. C. 254.
LOWE v. STOCKTON [8,567], 4 Cranch, C. C. 537.
Lowe, United States v. [See 15,634, 15,635.]
Lowe, The John. [See 7,356.]
LOWELL v. LEWIS [8,568], 1 Mason, 182; 1 Robb, Pat. Cas. 131.
LOWELL MFG. CO. v. HARTFORD CARPET CO. [8,569], 2 Fish. Pat. Cas. 472.
LOWELL MFG. CO. v. LARNED [8,570], Codd. Dig. 341; Cox, Manual Trade-Mark Cas. 241.
Lowell Mfg. Co., Morris v. [See 9,833.]
LOWELL NAT. BANK v. TRAIN [8,571], 2 Mich. Lawy. 27.
LOWENSTEIN, In re [8,572], 3 Ben. 422; 3 N. B. R. 268 (Quarto, 65).
LOWENSTEIN, In re [8,573], 3 Dill. 145; 13 N. B. R. 479; 3 Cent. Law J. 82; 33 Leg. Int. 360.
LOWENSTEIN In re [8,574], 2 N. B. R. 306 (Quarto, 99); 1 Chi. Leg. News, 123.
Lowenstein v. Biernbaum. [See 8,461a.]
LOWENSTEIN v. GLIDEWELL [8,575], 5 Dill. 325; 7 Cent. Law J. 167; 6 Reporter, 454; 10 Chi. Leg. News, 404.
Lowenstein v. Maxwell. [See 8,462.]
Lowenstein, Pennington v. [See 10,938.]
LOWENSTONE, In re [8,576], 2 Cent. Law J. 349.
Loweree, Knox v. [See 7,910.]
LOWERRE, In re [8,577], 1 Ben. 406; 1 N. B. R. 74; Bankr. Reg. Supp. 16; 6 Int. Rev. Rec. 115.
Lowndes, Phillips v. [See 11,103.]
Lownsdale, Field v. [See 4,769.]
LOWNSDALE v. PORTLAND [8,578], 1 Or. 381; Deady, 1.
LOWNSDALE v. PORTLAND [8,579], 1 Or. 397; Deady, 39.
Lowrey, Wharton v. [See 17,481.]
Lowry, Blydenburgh v. [See 1,582.]
LOWRY v. CANAL BOAT [8,580].
LOWRY v. COMMERCIAL & FARMERS' BANK [8,581], Taney, 310; 3 Amer. Law J. (N. S.) 111; Brunner, Col. Cas. 331; 6 West. Law J. 121.
LOWRY v. E. BENJAMIN, The [8,582], 4 Pa. Law J. Rep. 25; 6 Pa. Law J. 277.
Lowry, Paul v. [See 10,844.]
LOWRY v. PORTLAND, The [8,583], 1 Law Rep. 313; 1 Hunt, Mer. Mag. 255.
Lowry, United States v. [See 15,636.]
LOWRY v. WEAVER [8,584], 4 McLean, 82.
Loyd, United States v. [See 15,637.]
Loyhed, Phelps v. [See 11,077.]
L. P. Dayton, The. [See 7,192.]
L. P. Smith, The. [See 13,191.]
L. T. KNIGHTS, The [8,585], 1 Lowell, 396.
LUBKER v. A. H. QUINBY, The [8,586], 8 Reporter, 806; 7 Wkly. Notes Cas. 509.
Lucas, Darby v. [See 3,572, 3,573.]
LUCAS v. MORRIS [8,587], 1 Paine, 396.
LUCAS v. THOMAS SWANN, The [8,588], 6 McLean, 282; Newb. 158; 3 Amer. Law Reg. 659.
LUCASEY v. UNITED STATES [8,588a], 2 Hayw. & H. 86.
Luce, Ex parte. [See 1,099.]
LUCE v. SPRINGFIELD FIRE & MARINE INS. CO. [8,589], 1 Flip. 281; 2 Ins. Law J. 443; 5 Chi. Leg. News, 303; 19 Myers' Fed. Dec. 636.
Lucerne, The, Chapman v. [See 2,605.]
LUCIA B. IVES, The [8,590], 10 Ben. 660.
Luciani, Murati v. [See 9,936.]
LUCINDA SNOW, The [8,591], Abb. Adm. 305; 11 N. Y. Leg. Obs. 97.
LUCIUS HART MFG. CO., In re [8,592], 17 N. B. R. 459.
LUCKETT v. WEST [8,593], 4 Cranch, C. C. 101.
LUCO v. UNITED STATES [8,594], Hoff. Land Cas. 345.
LUCY v. SLADE [8,595], 1 Cranch, C. C. 422.
Lucy A. Blossom, The, Fox v. [See 5,013.]
LUCY ANNE, The [8,596], 3 Ware, 253; 23 Law Rep. 545.
LUCY C. HOLMES, The [8,597], Blatchf. Pr. Cas. 196.
Luddington, Brigham v. [See 1,874.]
Ludeling, Jackson v. [See 7,139.]
LUDINGTON v. NUCLEUS, The [8,598], 2 Amer. Law J. (N. S.) 563.
LUDLOW, In re [8,599], 1 N. Y. Leg. Obs. 322.
LUDLOW v. CLINTON LINE R. CO. [8,600], 1 Flip. 25; 3 West. Law Month. 299.
Ludlow, Lane v. [See 8,052.]
Ludlow, McSorlay v. [See 8,927.]
Ludlow, Winter v. [See 17,891.]
LUDWIGSON, In re [8,601], 3 Woods, 13.
Luke, Voss v. [See 17,014.]
Lukins, United States v. [See 15,638, 15,639.]
LULIE D., The [8,602], 4 Biss. 249.
LULING v. RACINE [8,603], 1 Biss. 314; 8 Amer. Law Reg. 603.
Lull, Brown v. [See 2,018.]
Lull, Kemble v. [See 7,683.]
LULU, The [8,604], 1 Abb. U. S. 191; Chase, 162; 1 Amer. Law T. Rep. U. S. Cts. 103; 1 Balt. Law Trans. 52.
LUMA v. ATLANTIC MUT. INS. CO. [8,605], 13 Hunt, Mer. Mag. 557.
Lumberman, The, Wood v. [See 17,949.]
LUMPKIN, In re [8,606], 2 Hughes, 175.
Lumpkin, United States v. [See 15,640.]
Lumsden, United States v. [See 15,641.]
Lund, Lloyd v. [See 8,433.]
Lunt, Scott v. [See 12,540.]
Lunt, United States v. [See 15,642, 15,643.]
Lunt, The J. B. [See 7,246.]
LUPTON v. JANNEY [8,607], 5 Cranch, C. C. 474.
Lurty, Slocomb v. [See 12,949.]
LUSCOM v. OSGOOD [8,608], 1 Spr. 82; 7 Law Rep. 132; 11 Hunt, Mer. Mag. 364.
Luse, Bear v. [See 1,179.]
Luse, Wood v. [See 17,950.]
LUTEKEN, The [8,609], 6 Ben. 565.
Luther, Barnett v. [See 1,025.]
Luther, Heinrich v. [See 6,327.]
Luther, Lee v. [See 8,196.]
LUTHER v. MERRITT HUNT, The [8,610], Newb. 4.
Luther, Taylor v. [See 13,796.]
Lutz, United States v. [See 15,644.]
LUXOM v. OSGOOD [8,608].
L. W. EATON, The [8,612], 9 Ben. 289.
Lyall, Matthews v. [See 9,285.]
LYALL v. MILLER [8,613], 6 McLean, 482.
Lycoming Fire Ins. Co., Leonard v. [See 8,258.]
Lycoming Fire Ins. Co., Weeks v. [See 17,353.]
Lycoming Ins. Co., James v. [See 7,182.]
LYDIA, The [8,614], 4 Ben. 523.
LYDIA, The [8,615], 11 Blatchf. 415.
LYELL v. GOODWIN [8,616], 4 McLean, 29.
LYELL v. GOODWIN [8,617], 4 McLean, 44.
LYELL v. LAPEER COUNTY [8,618], 6 McLean, 446.
LYELL v. MAYNARD [8,619], 6 McLean, 15.
LYELL v. MILLER [8,620], 6 McLean, 422.
LYELL v. ST. CLAIR COUNTY [8,621], 3 McLean, 580.
LYLE v. CONESTOGA, The [8,622], 5 Pa. Law J. Rep. 95; 8 Leg. Int. 21, 154.
LYLE v. CONESTOGA, The [8,622a], 4 Amer. Law J. (N. S.) 183.
Lyle, Pickett v. [See 11,125.]
Lyle, Sims v. [See 12,891, 12,892.]
LYLES v. ALEXANDRIA [8,623], 1 Cranch, C. C. 473.
LYLES v. ALEXANDRIA [8,624], 1 Cranch, C. C. 361.
LYLES v. STYLES [8,625], 2 Wash. 224.
Lyles, United States v. [See 15,645, 15,646.]
Lyles, Vowell v. [See 17,020, 17,021.]
LYMAN v. ARNOLD [8,626], 5 Mason, 195.
Lyman, Bank of United States v. [See 924.]
Lyman, Baring v. [See 983.]
LYMAN v. BROWN [8,627], 2 Curt. 559.
LYMAN v. LYMAN [8,628], 2 Paine, 11.
LYMAN v. MYERS [8,629].
LYMAN v. NEVINS [8,629a].
Lyman, Parsons v. [See 10,779, 10,780.]
Lyman, United States v. [See 15,647.]
LYMAN PATENT REFRIGERATOR CO. v. OSWALD [8,630].
LYMAN VENTILATING & REFRIGERATOR CO. v. CHAMBERLAIN [8,631], 10 O. G. 588; 2 Ban. & A. 433; Merw. Pat. Inv. 141.
LYMAN VENTILATING & REFRIGERATOR CO. v. LALOR [8,632], 12 Blatchf. 303; 1 Ban. & A. 403; 6 O. G. 642; Merw. Pat. Inv. 139.
LYMAN VENTILATING & REFRIGERATOR CO. v. SOUTHARD [8,633], 12 Blatchf. 405; 1 Ban. & A. 627.
LYNCH, In re [8,634], 7 Ben. 26.

[Federal Case numbers are given in brackets.]

LYNCH, In re [8,635], 16 N. B. R. 38; 24 Pittsb. Leg. J. 205.
LYNCH v. ASHTON [8,636], 3 Cranch, C. C. 367.
LYNCH v. CROWDER [8,637], 12 Law Rep. 355.
Lynch, Sedgwick v. [See 12,614, 12,615.]
Lynch, United States v. [See 15,648.]
Lynch, Washington v. [See 17,231.]
LYNCHBURG, The [8,637a], Blatchf. Pr. Cas. 49.
LYNCHBURG, The [8,638], Blatchf. Pr. Cas. 57.
LYNCHBURG, The [8,639], Blatchf. Pr. Cas. 659.
Lynchburg, The. [See 6,451, 12,261.]
Lyndall, Roby v. [See 11,972.]
LYNDON v. GORHAM [8,640], 1 Gall. 367.
Lynn, Goodwin v. [See 5,553.]
LYNN v. HALL [8,641], 2 Cranch, C. C. 52.
Lynn, Mechanics' Bank v. [See 9,382.]
Lynn, Mechanics' Bank of Alexandria v. [See 9,384.]
Lynn, United States v. [See 15,649.]
LYNN v. YEATON [8,642], 3 Cranch, C. C. 182.
LYON, In re [8,643], 1 N. B. R. 111; Bankr. Reg. Supp. 24; 6 Int. Rev. Rec. 135.
LYON, In re [8,644], 7 N. B. R. 182; 4 Chi. Leg. News, 421.
LYON, The [8,645], 1 Brown's Adm. 59.
LYON'S CASE [8,646], Whart. St. Tr. 333.
Lyon, Bertram v. [See 1,362.]
LYON v. FIFTY-SIX THOUSAND FOUR HUNDRED AND TWELVE FEET OF LUMBER [8,647].
Lyon, Halsted v. [See 5,968.]
LYON v. NINE HUNDRED AND TWENTY-EIGHT BARRELS OF SALT [10,272].
Lyon, Peckham v. [See 10,899.]
Lyon, United States v. [See 15,650, 15,651.]
LYONS, In re [8,649], 2 Sawy. 524; 19 Int. Rev. Rec. 78; 1 Amer. Law T. Rep. (N. S.) 167; 1 Cent. Law J. 137.
Lyons, Allen v. [See 227.]
Lyons, Gay v. [See 5,281.]
Lyons v. The Lady Franklin. [See 7,982.]
Lyons, Munson v. [See 9,935.]
LYTLE, In re [8,650], 14 N. B. R. 457; 11 Phila. 522; 3 N. Y. Wkly. Dig. 303; 5 Amer. Law Rec. 306; 9 Chi. Leg. News, 18; 33 Leg. Int. 349; 1 Cin. Law Bul. 246; 24 Pittsb. Leg. J. 14.
LYTLE v. FENN [8,651], 3 McLean, 411.
Lytle, United States v. [See 15,652.]

M

MAAS v. PEDEE, The [8,652], 39 Hunt, Mer. Mag. 330.
Mabey, The R. L. [See 6,333, 6,334.]
MABIE v. HASKELL [8,653], 2 Cliff. 507.
McADAM, In re [8,654], 4 Sawy. 119.
M'AFEE v. CREOLE, The [8,655], 1 Phila. 190; 8 Leg. Int. 82.
McALISTER v. BARRY [8,656], Brunner, Col. Cas. 24; 2 Hayw. N. C. 290.
McALLISTER v. DOUGLAS [8,657], 1 Cranch, C. C. 241.
McAllister, Popino v. [See 11,277.]
McALLISTER v. SAM KIRKMAN, The, [8,658], 1 Bond, 369.
McAlpin, Boyd v. [See 1,748.]
McArdle, United States v. [See 15,653.]
McARTHUR v. ALLEN [8,659], 3 Cin. Law Bul. 471.
McArthur, Craigie v. [See 3,341.]
McArthur, Fallis v. [See 4,627.]
McArthur, Hobson v. [See 6,554.]
McARTHUR v. HOGAN [8,659a], Hempst. 286.
McAvoy, United States v. [See 15,654.]
MACKBEE v. GRIFFITH [8,660], 2 Cranch, C. C. 336.
McBRATNEY v. USHER [8,661], 1 Dill. 367.
McBratney, Usher v. [See 16,805.]
McBRIDE, In re [8,662], 19 N. B. R. 452.
McBRIDE, In re [8,663], 1 Wkly. Notes Cas. 16.
McBRIDE, In re [8,664], 1 Wkly. Notes Cas. 42.
McBride, Osborn v. [See 10,593.]
McBride, Procter v. [See 11,441.]
McBRIEN, In re [8,665], 2 Ben. 513; 2 N. B. R. 197 (Quarto, 73).
McBRIEN, In re [8,666], 3 Ben. 481; 3 N. B. R. 344 (Quarto, 90).
McBurney, Goodyear v. [See 5,574.]
McCabe, Daniels v. [See 3,567.]
McCABE v. McKINSTRY [8,667], 5 Dill. 509.
McCABE v. WINSHIP [8,668], 17 N. B. R. 113.
McCaffrey, Skinner v. [See 12,924.]
McCALL'S CASE [8,669], 5 Phila. 259; 20 Leg. Int. 108, 292.
McCALL v. EVE [8,670], 1 Cranch, C. C. 188.
McCALL v. HARRISON [8,671], 1 Brock. 126.
McCALL v. LAWRENCE [8,672], 3 Blatchf. 360.
McCALL v. McDOWELL [8,673], 1 Abb. U. S. 212; 1 Pac. Law Mag. 360; Deady, 233.
McCall, Phillips v. [See 11,104.]
M'CALL v. TOWERS [8,674], 1 Cranch, C. C. 41.
McCall, Veacock v. [See 16,904.]
McCALLON v. WATERMAN [8,675], 1 Flip. 651; 4 N. Y. Wkly. Dig. 382; 4 Cent. Law J. 413.
McCally, Clay v. [See 2,869.]
McCALMONT v. LAWRENCE [8,676], 1 Blatchf. 232; 5 N. Y. Leg. Obs. 205.
McCAN v. NORTON [8,677].
McCANDLESS v. McCORD [8,678], 4 Cranch, C. C. 533.
McCandless, The General William. [See 5,321, 5,322.]
McCANN, Ex parte [8,679], 5 Amer. Law Reg. (N. S.) 158, note.
McCann, United States v. [See 15,655.]
McCarter v. Lake Superior Ship, Etc. Co. [See 13,-643.]
McCartey v. The Senator. [See 8,686.]
McCARTHY, In re [8,680], 15 Alb. Law J. 293.
McCARTHY v. EGGERS [8,681], 10 Ben. 688.
McCarthy, Finley v. [See 4,794.]
McCARTHY v. TRAVELERS' INS. CO. [8,682], 8 Biss. 362; 8 Ins. Law J. 208; 7 Reporter, 486.
McCarthy, United States v. [See 15,656.]
McCartney, Abbott v. [See 12.]
McCartney, Blake v. [See 1,498.]
McCartney, Merchants' Ins. Co. v. [See 9,443.]
McCARTY, In re [8,683].
McCARTY, In re [8,684], 5 Law Rep. 322.
McCarty, McClanaghan v. [See 8,690.]
McCARTY v. MANN [8,685], 2 Dill. 441.
McCARTY v. SENATOR, The [8,686], 21 Fed. 191.
McCarty, United States v. [See 15,657, 15,658.]
McCASKEY v COAL BLUFF NO. 2, The [8,687], 26 Pittsb. Leg. J. 185.
McCauley v. Clinton. [See 8,688.]
McCAULEY v. KELLOGG [8,688], 2 Woods, 13; 1 Cent. Law J. 164.
McCAULEY v. McCAULEY [8,689], 1 Hayw. & H. 1.
McCauley, Odorless Excavating Apparatus Co. v. [See 10,436.]
McChesney, The E. M. [See 4,463, 4,464.]
M'CLANAGHAN v. M'CARTY [8,690].
McClare, United States v. [See 15,659.]
McClay, United States v. [See 15,660.]
M'CLEAN v. FOWLE [8,691], 2 Cranch, C. C. 118.
McClean, Huidekoper v. [See 6,852.]
McClean, Marsteller v. [See 9,138-9,140.]
McCLEAN v. MILLER [8,692], 2 Cranch, C. C. 620.
McCLEAN v PLUMSELL [8,693], 4 Cranch, C. C. 86.
McClean, Wilson v. [See 17,819.]
McCLELLAN, In re [8,694], 1 N. B. R. 389 (Quarto, 91); 1 Amer. Law T. Rep. Bankr. 48.
McCLELLAN v. FOSBENDER [8,695], 4 Chi. Leg. News, 406.
McCLELLAN v. WITHERS [8,696], 4 Cranch, C. C. 668.
McClelland, Black v. [See 1,462.]
McClelland, Pease v. [See 10,882.]
McCLEOD v GLOYD [8,697], 2 Cranch, C. C. 264.
M'Cleod, Smith v. [See 13,0~3.]
McClery, Lowe v. [See 8,566.]
McCLINTICK v. CUMMINS [8,698], 2 McLean, 98.
McCLINTICK v. CUMMINS [8,699], 3 McLean, 158.

[Federal Case numbers are given in brackets.]

McCLINTICK v. JOHNSTON [8,700], 1 McLean, 414.
McClish, Broadwell v. [See 1,911.]
McCLOSKEY v. ACHILLES, The [8,701], 13 Phila. 463; 5 N. Y. Wkly. Dig. 241; 4 Law & Eq. Rep. 676; 23 Int. Rev. Rec. 368; 34 Leg. Int. 384; 10 Chi. Leg. News, 73; 25 Pittsb. Leg. J. 49.
McCLOSKEY v. COBB [8,702], 2 Bond, 16.
McCLOUD v. COLTMAN [8,703].
McClure, Platt v. [See 11,218.]
McCOBB v. LINDSAY [8,704], 2 Cranch, C. C. 215.
McCOBB v. TYLER [8,705], 2 Cranch, C. C. 199.
McCOMB v. BEARD [8,706], 10 Blatchf. 350; 3 O. G. 33; 6 Fish. Pat. Cas. 254.
McCOMB v. BOARD OF LIQUIDATION [8,707], 2 Woods, 48; 7 Chi. Leg. News, 251.
McCOMB v. BRODIE [8,708], 1 Woods, 153; 5 Fish. Pat. Cas. 384; 2 O. G. 117.
McCOMB v. CREDIT MOBILIER [8,709], 13 Phila. 468; 5 Reporter, 390; 35 Leg. Int. 29; 5 Wkly. Notes Cas. 80; 24 Int. Rev. Rec. 223; 25 Pittsb. Leg. J. 188.
McComb, Chicago, St. L. & N. O. R. Co. [See 2,670.]
McCOMB v. ERNEST [3,155], 1 Woods, 195:
McCOMBER v. CLARKE [8,711], 3 Cranch, C. C. 6.
McCone, Coolidge v. [See 3,186.]
McConico, Hopkirk v. [See 6,696.]
McCONNELL, In re [8,712], 9 N. B. R. 387; 10 Phila. 287; 31 Leg. Int. 61; 21 Pittsb. Leg. J. 107.
McConnell, Davis v. [See 3,640.]
McConnell, Homas v. [See 6,656.]
McConnell, Spooner v. [See 13,245.]
McCOPPIN, In re [8,713], 5 Sawy. 630.
McCord, Copperthwait v. [See 3,216.]
McCord, McCandless v. [See 8,678.]
McCORD v. McNEIL [8,714], 4 Dill. 173; 17 Amer. Law Reg. (N. S.) 52.
McCord, Russell v. [See 12,157.]
McCORD v. TIBER, The [8,715], 6 Biss. 409; 7 Chi. Leg. News, 363.
McCORKER v. THOMAS WALKER, The [8,716].
McCormack, United States v. [See 15,661.]
McCORMICK v. ALLEGHENY CITY [8,717], 7 Leg. Int. 150.
McCormick, Bell v. [See 1,255.]
McCORMICK v. BUCKNER [8,718], 2 Wkly. Notes Cas. 480.
McCormick, Hance v. [See 6,009.]
McCORMICK v. HOWARD [8,719], 1 MacA. Pat. Cas. 238; 2 App. Com'r Pat. 217.
McCormick, Hussey v. [See 6,948.]
McCORMICK v. IVES [8,720], Abb. Adm. 418.
McCORMICK v. JEROME [8,721], 3 Blatchf. 486.
McCORMICK v. KETCHUM [8,719].
McCORMICK v. MAGRUDER [8,723], 2 Cranch, C. C. 227.
McCORMICK v. MANNY [8,724], 6 McLean, 539; 4 Amer. Law Reg. 277; 61 Jour. Fr. Inst. 176.
McCORMICK v. SEYMOUR [8,725].
McCORMICK v. SEYMOUR [8,726], 2 Blatchf. 240.
McCORMICK v. SEYMOUR [8,727], 3 Blatchf. 209; Merw. Pat. Inv. 657.
McCormick, United States v. [See 15,662, 15,663.]
McCORMICK v. WALKER [8,728], 1 Hayw. & H. 86.
McCormick, Wheeler v. [See 17,498, 17,499.]
McCormick, Wilder v. [See 17,650.]
McCOUN v. LAY [8,729], 5 Cranch, C. C. 548.
McCoy, Crane v. [See 3,354.]
McCOY v. CURRITUCK, The [8,730], 2 Hughes, 91.
McCOY v. LEMONS [8,730a], Hempst. 216.
McCOY v. MARIETTA & C. R. CO. [8,730b], 7 Cin. Law Bul. 93; 28 Int. Rev. Rec. 81.
McCOY v. WASHINGTON COUNTY [8,731], 7 Amer. Law Reg. 193; 3 Phila. 290; 3 Wall. Jr. 381; 15 Leg. Int. 388.
McCracken, United States v. [See 15,664.]
McCraken, Brooke v. [See 1,932.]
McCrea, Bank of Alexandria v. [See 849.]
McCREADY, Ex parte [8,732], 1 Hughes, 598.
McCready, American Cotton Tie Supply Co. v. [See 295.]
McCREADY v. BROTHER JONATHAN, The [8,732a].
McCREADY v HOLMES [8,733], 6 Amer. Law Reg. 229.
McCREADY v. ROBERT I. POULSON, The [8,734], 3 Hughes, 494.
McCUE v. WASHINGTON [8,735], 3 Cranch, C. C. 639.
McCULLOCH v. DEBUTTS [8,736], 1 Cranch, C. C. 285.
McCulloch, De Butts v. [See 3,718.]
McCULLOCH v. GIRARD [8,737], 4 Wash. C. C. 289
McCulloch, Jackson v. [See 7,140.]
McCULLOCH v. LETHE, The [8,738], Bee, 423.
McCULLOCH v. McLAIN [8,739], 1 Cranch, C. C. 304.
McCULLOCH v. TAYLOR [8,740], 1 Wkly. Notes Cas. 391.
McCulloh, Thatcher v. [See 13,862.]
McCullough, Bell v. [See 1,256.]
McCULLOUGH v. ECHO, The [8,740a].
McCullough, Guion v. [See 5,863.]
McCullough, Johnson v. [See 7,401.]
McCullough, Platt v. [See 11,113.]
McCullough, Pickering v. [See 11,121.]
McCULLOUGH v. STERLING SCHOOL FURNITURE CO. [8,741], 4 Dill. 563.
McCullough, United States v. [See 15,665.]
McCully v. Cunningham. [See 17,280.]
McCUTCHEN v. HILLEARY [8,742], 1 Cranch, C. C. 173.
McCUTCHEON v. RECEIVERS, The [8,742a], 3 Cent. Law J. 635.
McCUTCHIN v. JAMIESON [8,743], 1 Cranch, C. C. 348.
McDANIEL v. FISH [8,744], 2 Cranch, C. C. 160.
McDANIEL v. MILAM [8,744a], Hempst. 274.
McDANIEL v. RIGGS [8,745], 3 Cranch, C. C. 167.
McDaniel, United States v. [See 15,666.]
McDANIEL v. WAILES [8,746], 4 Cranch, C. C. 201.
McDermott, Howe v. [See 6,768.]
McDERMOTT v. NAYLOR [8,747], 4 Cranch, C. C. 527.
McDERMOTT v. S. G. OWENS, The [8,748], 1 Wall. Jr. 370.
McDERMOTT v. YEATMAN [8,749], 5 Pittsb. Leg. J. (O. S.) 29.
McDERMOTT PATENT BOLT MFG. CO., In re [8,750], 3 Ben. 369; 3 N. B. R. 128 (Quarto, 33).
McDivitt, Banks v. [See 961.]
McDONALD, In re [8,751], 9 Amer. Law Reg. 661.
McDONALD, In re [8,752], 1 Lowell, 100.
McDONALD, In re [8,753], 14 N. B. R. 477; 24 Pittsb. Leg. J. 42.
McDONALD, In re [5,073], 7 West. Jur. 505; 10 Phila. 273; 30 Leg. Int. 232.
McDONALD, The [8,755].
McDonald, The. [See 13,716.]
McDONALD, The [8,756], 4 Blatchf. 477.
Macdonald, Bank of the United States v. [See 925.]
McDonald, Birdsall v. [See 1,434.]
MACDONALD v. BLACKMER [8,757], 4 Ban. & A. 78.
McDONALD v. BLACKMER [8,758], 9 O. G. 746.
McDONALD v. CABOT, The [8,759], Newb. 348.
McDonald, Cissel v. [See 2,729.]
McDonald, Fowler v. [See 5,002.]
McDonald, Frazier v. [See 5,073.]
McDONALD v. LITTLE [8,760].
McDONALD v. MAGRUDER [8,761], 3 Cranch, C. C. 298.
McDonald, Maguder v. [See 8,965.]
McDonald, Mandeville v. [See 9,013.]
McDonald v. The Monadnock. [See 9,704.]
McDONALD v. MOORE [8,762].
MACDONALD v. MOORE [8,763], 8 Ben. 579; 1 Abb. N. C. 53; 23 Int. Rev. Rec. 25; 3 N. Y. Wkly. Dig. 461; 15 N. B. R. 26; 24 Pittsb. Leg. J. 83.
McDonald, North v. [See 10,312.]
McDONALD v. ORVIS [8,764], 5 Biss. 183.
McDonald, The, Page v. [See 11,239.]
McDonald, The, Poag v. [See 11,238, 11,239.]
McDonald, Pool v. [See 11,268.]
McDONALD v. RENNEL [8,765], 21 Law Rep. 157.
McDonald, Robbins v. [See 11,884.]
MacDONALD v. SAGINAW VAL. & ST. L. R. CO. [8,766], 2 Amer. Law T. Rep. (N. S.) 29.
MACDONALD v. SHEPARD [8,767], 4 Ban. & A. 343.
MACDONALD v. SIDENBERG [8,768], 4 Ban. & A. 586; 18 O. G. 193.

[Federal Case numbers are given in brackets.]

McDonald, United States v. [See 15,667-15,670.]
McDONALD v. WHITE [8,769], 1 Cranch, C. C. 149.
McDOÑALD v. WOODRUFF [8,770], 2 Dill. 244.
McDonald, Zerega v. [See 18,212.]
MACDONNELL, In re [8,771], 11 Blatchf. 79.
MacDONNELL, In re [8,772], 11 Blatchf. 170; 18 Int. Rev. Rec. 11; 5 Leg. Gaz. 236; 5 Leg. Op. 105.
MACDONNELL, In re [8,773].
McDONNELL v. RAILROAD CO. [8,774].
McDonnell, Sacket v. [See 12,202.]
McDONOUGH, In re [8,775], 3 N. B. R. 221 (Quarto, 53); 1 Chi. Leg. News, 361; 16 Pittsb. Leg. J. (O. S.) 110.
M'Donough, The, Johnson v. [See 7,395.]
McDonough, White v. [See 17,552.]
McDOWELL, In re [8,776], 6 Biss. 193; 10 N. B. R. 459; 6 Chi. Leg. News, 413.
McDOWELL v. BLACKSTONE CANAL CO. [8,777], 5 Mason, 11.
McDowell, Donaldson v. [See 3,985.]
McDowell, Grisar v. [See 5,832.]
McDowell, Lorillard v. [See 8,510.]
McDowell, McCall v. [See 8,673.]
McDowell, United States v. [See 15,671.]
McDuel, Harrington v. [See 6,108.]
McDuell, United States v. [See 15,672.]
McDUFFEE, In re [8,778], 2 Hask. 76; 14 N. B. R. 336; 9 Chi. Leg. News, 40.
McELHENNY v. FIRST NAT. BANK OF ASHLAND [8,779], 7 Wkly. Notes Cas. 115.
McELRATH, In re [8,780], 2 Dill. 460.
McELRATH v. McINTOSH [8,781], 11 Law Rep. 399; Brunner, Col. Cas. 559; 1 Hayw. & H. 348.
McELROY v. ENGLISH [8,782], 2 Cranch, C. C. 528.
McElroy, Miller v. [See 9,581.]
McEntee, United States v. [See 15,673.]
McEWEN, In re [8,783], 6 Biss. 294; 12 N. B. R. 11; 7 Chi. Leg. News, 231; 2 Cent. Law J. 233.
McEwen, Burr v. [See 2,193.]
McFADDEN v. ILLINOIS, The [8,784.]
McFADEN, In re [8,785], 3 N. B. R. 104 (Quarto, 27).
M'FADEN v. EXCHANGE, The [8,786], 4 Hall, Law J. 233.
MACFARLAN, In re [8,787].
McFARLAND, In re [8,788], 10 N. B. R. 381; 3 Amer. Law Rec. 187.
McFarland, Augustine v. [See 648.]
McFARLAND v. GOODMAN [8,789], 6 Biss. 111; 11 N. B. R. 134; 13 Amer. Law Reg. (N. S.) 697.
McFarland, Richardson v. [See 8,788.]
McFarland, United States v. [See 15,674.]
McFARLANE v. GRIFFITH [8,790], 4 Wash. C. C. 585.
McFarlane, United States v. [See 15,675.]
McFEELY v. DRYER [8,791].
McFERRAN v. WHERRY [8,792], 5 Cranch, C. C. 677.
McGaughey, Preston v. [See 11,397.]
McGAW v. BRYAN [8,793], 1 U. S. Law J. 88.
McGee, Bryan v. [See 2,066.]
M'GEHEE v. HENTZ [8,794], 19 N. B. R. 136.
McGIE, In re [4,835], 2 Biss. 163.
McGie, Fitch v. [See 4,835.]
McGILL v. JORDAN [8,795a], 18 Reporter, 642.
McGILL v. SHEEHEE [8,796], 1 Cranch, C. C. 49.
McGILL v. SHEHEE [8,797], 1 Cranch, C. C. 62.
McGill, United States v. [See 15,676, 15,677.]
McGILTON, In re [8,798], 3 Biss. 144; 7 N. B. R. 294; 29 Leg. Int. 332; 5 Chi. Leg. News, 1; 20 Pittsb. Leg. J. 29.
McGINNIS v. CARLTON [8,799], Abb. Adm. 570.
McGINNIS v. GRAND TURK, The [8,800], 4 West. Law Month. 80; 9 Pittsb. Leg. J. 257; 2 Pittsb. Rep. 326.
McGINNIS v. PONTIAC, The [8,801], 5 McLean, 359; Newb. 130; 10 West. Law J. 174.
McGinnis, United States v. [See 15,678.]
McGINNITY v. WHITE [8,802], 3 Dill. 350; 1 Cent. Law J. 241.
McGLINCHY v. UNITED STATES [8,803], 4 Cliff. 312.
McGlue, United States v. [See 15,679.]
McGLYNN, In re [8,804], 2 Lowell, 127.
McGovern, Harris v. [See 6,125.]
McGOVERN v. HEISSENBUTTEL [8,805], 8 Ben. 46.
McGovern, Spaulding v. [See 13,217, 13,218.]
McGOWAN v. CALDWELL [8,806], 1 Cranch, C. C. 481.
McGOWAN v. CHARTER OAK LIFE INS. CO. [8,807], 4 Amer. Law Rec. 559.
McGRATH, In re [8,808], 5 Ben. 183; 5 N. B. R. 254.
McGRATH v. CANDALERO, The [8,809], Bee, 60.
McGRATH v. CANDALERO, The [8,810], Bee, 64.
McGREGOR v. INSURANCE CO. OF PENNSYLVANIA [8,811], 1 Wash. C. C. 39.
McGREW v. MELNOTTE, The [8,812], 1 Bond, 453.
McGUIRE, In re [8,813], 8 Ben. 452.
McGUIRE v. BRISCOE [8,813a], 2 Hayw. & H. 54.
McGUIRE v. EAMES [8,814], 15 Blatchf. 312; 3 Ban. & A. 499.
McGUIRE v. GOLDEN GATE, The [8,815], 1 McAll. 104.
McGuire, Nicholson v. [See 10,249.]
McGuire, Snowden v. [See 13,150.]
McGUNNEGLE v. RUTHERFORD [8,815a], Hempst. 45.
McGUNNIGLE v. BLAKE [8,816], 3 Cranch, C. C. 64.
McGUNNIGLE v. SIMMES [8,817], 1 Hayw. & H. 285.
McGUNNIGLE v. WASHINGTON [8,818], 2 Cranch, C. C. 460.
McGurk, United States v. [See 15,680.]
MACHADO, In re [8,819], 3 Ben. 131; 2 N. B. R. 352 (Quarto, 113); 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53.
McHenry, United States v. [See 15,681.]
McILLWEE, Ex parte [8,820], 3 Amer. Law T. 251.
MACINTIRE, In re [8,821], 1 Ben. 277; 1 N. B. R. 11; Bankr. Reg. Supp. 3.
McINTIRE, In re [8,822], 1 Ben. 543; 1 N. B. R. 151; Bankr. Reg. Supp. 33; 6 Int. Rev. Rec. 165.
McINTIRE, In re [8,823], 2 Ben. 345; 1 N. B. R. 436 (Quarto, 115); 1 Amer. Law T. Rep. Bankr. 120.
McINTIRE, In re [8,823a], 2 Hayw. & H. 339.
M'INTIRE'S CASE [8,824], 1 Cranch, C. C. 157.
McIntire, Keirll v. [See 7,651.]
McINTIRE v. WOOD [8,825].
McINTOSH, In re [8,826], 2 N. B. R. 506 (Quarto, 158).
McIntosh, McElrath v. [See 8,781.]
McIntosh, Sherwood v. [See 12,778.]
McINTOSH v. SUMMERS [8,827], 1 Cranch, C. C. 41.
McINTYRE, In re [8,822].
McINTYRE, In re [8,823].
McIntyre v. The Dubuque. [See 4,110.]
McIntyre, Miller v. [See 9,582.]
McIntyre, Richardson v. [See 11,789.]
McIver, Gulick's Ex'rs v. [See 5,865.]
McIver, Hartshorne v. [See 6,171.]
McIVER v. KENNEDY [8,830], 1 Cranch, C. C. 424.
McIVER v. MOORE [8,831], 1 Cranch, C. C. 90.
M'IVER v. REAGAN [8,832], 1 Cooke, 366; Brunner, Col. Cas. 240.
McIVER v. WILSON [8,833], 1 Cranch, C. C. 423.
MACK v. BAKER [8,834], 5 Reporter, 492; 5 Wkly. Notes Cas. 212.
Mack, Potter v. [See 11,331.]
Mack, Stevens v. [See 13,404.]
Mackall, Bank of Columbia v. [See 873.]
MACKALL v. GOSZLER [8,835], 2 Cranch, C. C. 240.
Mackall, Thomas v. [See 13,903.]
Mackall, Union Bank of Georgetown v. [See 14,359.)
MACKAY, Ex parte [8,836].
MACKAY, In re [8,837], 4 N. B. R. 66 (Quarto, 17); 2 Chi. Leg. News, 393.
MACKAY, In re [8,838], 4 N. B. R. 67 (Quarto, 17).
McKay, In re. [See 323.]
McKay, In re. [See 11,978.]
Mackay, Allen v. [See 228.]
McKAY v. CAMPBELL [8,839], 2 Abb. U. S. 120; Sawy. 374; 3 Amer. Law T. Rep. U. S. Cts. 186.
McKAY v. CAMPBELL [8,840], 2 Sawy. 118; 5 Amer. Law T. Rep. U. S. Cts. 407.
McKAY v. CARRINGTON [8,841], 1 McLean, 50.
MACKAY v. CENTRAL R. R. OF N. J. [8,842], 4 Fed. 617.
MACKAY v. EASTON [8,843], 2 Dill. 41; 16 Int. Rev. Rec. 173.
McKAY v. GARCIA [8,844], 6 Ben. 556.
McKAY v. HILL [8,845], 1 Hask. 276.
McKAY v. MORRILL [8,846].

[Federal Case numbers are given in brackets.]

McKAY v. WOOSTER [8,847], 2 Sawy. 373; 6 Amer. Law T. Rep. 169; 6 Fish. Pat. Cas. 375; 3 O. G. 441; 5 Pac. Law Rep. 105.
Mackbee v. Griffith. [See 8,660.]
McKEAN, Ex parte [8,848], 3 Hughes, 23.
McKean, Allen v. [See 229.]
McKean Railroad & Navigation Co., Winans v. [See 17,862.]
McKechnie, United States v. [See 15,682.]
McKee, Bradley v. [See 1,784.]
McKEE v. PEARL, The [8,849], Newb. 129.
McKEE v. UNITED STATES [8,850], Hoff. Land Cas. 173.
McKee, United States v. [See 15,683-15,689.]
McKEE v. VERNON CO. [8,851], 3 Dill. 210.
McKee v. Vernon County. [See 14,877.]
McKeen, Delancey v. [See 3,749, 3,750.]
McKeen, Denniston v. [See 3,803.]
McKenna, Bernard v. [See 1,348.]
McKENNA v. FISK [8,852], 1 Hayw. & H. 179.
McKENNEY v. BAKER [8,853], 2 Hask. 130.
McKenney, Foxall v. [See 5,016.]
McKenny, Bank of Columbia v. [See 874.]
McKenny, Bank of the United States v. [See 926.]
McKensie, Bank of the United States v. [See 927.]
McKENTY v. UNIVERSAL LIFE INS. CO. [8,854], 3 Dill. 448; 3 Ins. Law J. 385; 6 Chi. Leg. News, 199; 4 Bigelow, Ins. Cas. 153.
McKENZIE v. ANDERSON [8,855], 2 Woods, 357.
McKENZIE v. COWING [8,856], 4 Cranch, C. C. 479.
Mackenzie, Mandeville v. [See 9,014.]
McKENZIE v. OGLETHORPE [8,857].
McKenzie v. The Richmond. [See 11,796, 11,797.]
Mackenzie, United States v. [See 15,690, 15,691.]
MacKenzie, United States v. [See 18,313.]
McKenzie, Willis v. [See 17,771.]
McKEON, In re [8,858], 7 Ben. 513; 11 N. B. R. 182; 3 Amer. Law Rec. 611; 11 Alb. Law J. 7.
McKewan, United States v. [See 15,692.]
Mackey, Bullinger v. [See 2,126, 2,127.]
McKIBBEN, In re [8,859], 12 N. B. R. 97.
McKibbin, Mitchell v. [See 9,666.]
McKIBBIN v. C. VANDERBILT, The [8,860], 2 Int. Rev. Rec. 62.
McKim, Ashton v. [See 584.]
McKIM v. KELSEY [8,861], Taney, 502.
McKIM v. PHŒNIX INS. CO. [8,862], 2 Wash. C. C. 89.
McKim, Swatara R. Co. v. [See 13,681.]
McKim, United States v. [See 15,693.]
McKINDER v. DUNLAP [8,863], 1 Cranch, C. C. 584.
McKINLEY, In re [8,864], 7 Ben. 562.
McKinley, United States v. [See 15,694.]
McKinney, Dart v. [See 3,583.]
McKinney, Farmers' Loan & Trust Co. v. [See 4,667.]
McKinney, How v. [See 6,749.]
McKINNEY v. NEIL [8,865], 1 McLean, 540.
McKinsey, Calladay v. [See 2,318.]
McKINSEY v. HARDING [8,866], 4 N. B. R. 38 (Quarto, 10).
McKinstry, McCabe v. [See 8,667.]
MACKINTIRE, In re [8,867], 6 Int. Rev. Rec. 29.
McKnight, Gillespie v. [See 5,435.]
McKNIGHT v. McKNIGHT [8,867a], 2 Hayw. & H. 132.
McKNIGHT v. RAMSAY [8,868], 1 Cranch, C. C. 40.
McKnight, Semmes v. [See 12,653.]
McKnight, Shinn v. [See 12,789.]
McKnight, United States v. [See 15,695.]
Mackoy, United States v. [See 15,696.]
McLain, McCulloch v. [See 8,739.]
McLAIN v. RUTHERFORD [8,868a], Hempst. 47.
McLANAHAN v. ELLERY [8,869], 3 Mason, 269.
McLanahan, Nellis v. [See 10,099.]
McLane, Gwathney v. [See 5,882.]
McLane, Murray v. [See 9,964.]
McLaren, Harrison v. [See 6,139.]
McLARN'S CASE [8,870].
McLaughlin, Bank of the United States v. [See 928.]
McLAUGHLIN v. JOHNS [8,871], 1 Cranch, C. C. 372.
McLaughlin, Patterson v. [See 10,828.]
McLAUGHLIN v. RIGGS [8,872], 1 Cranch, C. C. 410.
McLAUGHLIN v. STELLE [8,873], 1 Cranch, C. C. 483.
McLAUGHLIN v. STEPHENS [8,874], 2 Cranch, C. C. 148.
McLAUGHLIN v. TURNER [8,875], 1 Cranch, C. C. 476.
McLaughlin, United States v. [See 15,697.]
McLAVE, In re [8,876], 8 Blatchf. 67; 3 Alb. Law J. 75.
McLEAN, In re [8,877], 2 Flip. 512; 9 Cent. Law J. 425; 25 Int. Rev. Rec. 384; 8 Reporter, 813.
McLEAN, In re [8,878], 2 N. B. R. 567 (Quarto, 173).
McLEAN, In re [8,879], 15 N. B. R. 333.
McLEAN v. BROWN [8,880], 4 N. B. R. 585 (Quarto, 188).
McLean v. Chicago, etc., Ry. Co. [See 8,892, 8,893.]
McLean, Dubois v. [See 4,107.]
McLEAN v. HAMILTON COUNTY [8,881], 4 Wkly. Law Gaz. 1.
McLean, Hoffman v. [See 13,665.]
McLEAN v. IHMSEN [8,882], 1 West. Law J. 189.
McLEAN v. JOHNSON [8,883], 3 McLean, 202; 1 West. Law J. 189.
McLEAN v. KLEIN [8,884], 3 Dill. 113.
McLEAN v. LAFAYETTE BANK [8,885], 3 McLean, 185; 1 West. Law J. 15.
McLEAN v. LAFAYETTE BANK [8,886], 3 McLean, 415.
McLEAN v. LAFAYETTE BANK [8,887], 3 McLean, 503; 2 West. Law J. 441.
McLEAN v. LAFAYETTE BANK [8,888], 3 McLean, 587.
McLEAN v. LAFAYETTE BANK [8,889], 4 McLean, 430.
McLean, Lombard v. [See 8,471.]
McLEAN v. MELINE [8,890], 3 McLean, 199; 1 West. Law J. 51.
McLean, Miner v. [See 9,630.]
McLEAN v. ROCKEY [8,891], 3 McLean, 235; 1 West. Law J. 300.
McLEAN v. ST. PAUL & C. RY. CO. [8,892], 16 Blatchf. 309; 25 Int. Rev. Rec. 249; 8 Reporter, 69; 20 Alb. Law J. 78.
McLEAN v. ST. PAUL & C. RY. CO. [8,893], 17 Blatchf. 363; 26 Int. Rev. Rec. 43; 21 Alb. Law J. 47; 14 Amer. Law Rev. 163.
McLean, Smith v. [See 13,074.]
McLear, Canby v. [See 2,378.]
McLELLAN, In re [17,887], 6 Law Rep. 440.
McLellan, Butler v. [See 2,242.]
McLellan, Russell v. [See 12,158.]
McLELLAN v. UNITED STATES [8,895], 1 Gall. 227.
McLellan, United States v. [See 15,698.]
McLellan, Weaver v. [See 17,309.]
McLellan, Winsor v. [See 17,887.]
McLELLAND v. ROBERT MORRIS, The [8,896], 3 Pa. Law J. 493; 1 Wall. Jr. 33; 2 Pa. Law J. Rep. 220.
McLennan, Parker v. [See 5,334.]
McLEOD v. CALLICOTT [8,897], Chase, 443; 10 Int. Rev. Rec. 94; 2 Amer. Law T. Rep. U. S. Cts. 113.
McLEOD v. DUNCAN [8,898], 5 McLean, 342.
McLOON v. LINQUIST [8,899], 2 Ben. 9.
McLure, Murgatroyd v. [See 9,943.]
McMAHON v. PRIMERA, The [8,900].
McMahon, United States v. [See 15,699.]
McMahon, The James. [See 7,197.]
McMann, Nelson v. [See 10,109.]
McManus, Campbell v. [See 2,364.]
McMARREN v. KEAN [7,004], 6 Chi. Leg. News, 398; 1 Cent. Law J. 454.
McMaster, Board of Foreign Missions of Presbyterian Church v. [See 1,586.]
McMechen, Ambler v. [See 273.]
McMillan, Gault v. [See 5,274.]
McMillan, Kuhn v. [See 7,945.]
McMillan v. Scott. [See 5,620.]
McMillan, Wright v. [See 18,083.]
McMILLIN v. BARCLAY [8,902], 4 Brewst. 275; 3 Pittsb. Rep. 377; 5 Fish. Pat. Cas. 189; 19 Pittsb. Leg. J. 149; Merw. Pat. Inv. 433.
McMunn, Curray v. [See 3,489.]
McMURDY v. CONNECTICUT GEN. LIFE INS. CO. [8,903], 6 Ins. Law J. 666; 4 Law & Eq. Rep. 69; 9 Chi. Leg. News, 324; 4 Wkly. Notes Cas. 18; 24 Pittsb. Leg. J. 154.
McMURRAN, In re [8,904], 2 Hughes, 207.
McMurray, Jones v. [See 7,479.]
McMURTRIE v. JONES [8,905], 3 Wash. C. C. 206.

[Federal Case numbers are given in brackets.]

McNab, In re. [See 10,292.]
McNAB & H. MFG. CO., In re [8,906], 18 N. B. R. 388; 21 Pittsb. Leg. J. 88.
McNabb, Caller v. [See 2,322.]
McNAIR, In re [8,907], 2 N. B. R. 219 (Quarto, 77).
McNAIR, In re [8,908], 2 N. B. R. 343 (Quarto, 109).
McNALLY v. MEYER [8,909], 5 Ben. 239; 14 Int. Rev. Rec. 38.
McNAMARA v. GAYLORD [8,910], 1 Bond, 302.
McNAUGHTER v. CASSALLY [8,911], 4 McLean, 530.
McNAUGHTON, In re [8,912], 8 N. B. R. 44.
McNeal, Howes v. [See 6,789.]
McNeal, United States v. [See 15,700.]
McNeil, Banta v. [See 966.]
McNEIL v. CANNON [8,913], 1 Cranch, C. C. 127.
McNEIL v. HILL [8, 914], Woolw. 96.
McNeil, Hurst v. [See 6,936.]
McNeil, McCord v. [See 8,714.]
McNEIL v. MAGEE [8,915], 5 Mason, 244.
McNeil, Walton v. [See 17,134.]
McNeil, The Alexander. [See 1,988, 3,312a, 13,186.]
McNeil, The J. G. [See 7,317.]
McNEILL, Ex parte [966], 15 Int. Rev. Rec. 144.
McNemara, United States v. [See 15,701.]
McNULTY, In re [8,917], 2 Lowell, 270.
Macomb, United States v. [See 15,702.]
MACOMBER v. CLARKE [8,918], 3 Cranch, C. C. 347.
MACOMBER v. THOMPSON [8,919], 1 Sumn. 384.
Macon, Garnett v. [See 5,245.]
Macon, Shortridge v. [See 12,812.]
Macon, White v. [See 17,553.]
Macon County, Judson v. [See 7,568.]
Macon & B. R. Co., Branch v. [See 1,808.]
Macon & B. R. Co., Cunningham v. [See 3,483.]
McPherson, Barrett v. [See 1,049.]
MACPHERSON v. BLYTHESWOOD, The [8,920], 1 Phila. 546; 12 Leg. Int. 58.
McPHERSON v. FOSTER [8,921], 4 Wash. C. C. 45.
McPHERSON v. GALLAGAN [8,922], 1 Hayw. & H. 394.
McPherson, Kitty v. [See 7,860.]
McPherson, Talbot v. [See 13,728.]
McPherson, United States v. [See 15,703, 15,704.]
McPorter, The. [See 6,288, note.]
McQUAIN v. MELINE [8,923], 4 Quart. Law J. 28.
McQueen, Curranee v. [See 3,488.]
McQuerry, Miller v. [See 9,583.]
McQuewan, Bloomer v. [See 18,242.]
McQUILLON, Ex parte [8,924], 3 West. Law Month. 440; 9 Pittsb. Leg. J. 27.
McQUIRK v. PENELOPE, The [8,925], 2 Pet. Adm. 276.
McRae, Hugh v. [See 6,840.]
McRae, The Mary. [See 9,221.]
McRea, Marstin v. [See 9,141.]
McRea, Prime v. [See 11,422, 11,423.]
McRoberts, Irwin v. [See 7,085.]
McSaul, Milward v. [See 9,624.]
McShane, Union Pac. R. Co. v. [See 14,381, 14,382.]
McSHERRY v. QUEEN [8,926], 2 Cranch, C. C. 406.
McSORLAY v. LUDLOW [8,927], 2 Paine, 600.
McSorly v. Ludlow. [See 8,052.]
McSpedan, Juneau Bank v. [See 7,582.]
MACUBBIN v. LOVELL [8,928], 1 Cranch, C. C. 184.
MACUMBER v. ST. LOUIS LIFE INS. CO. [8,929], 6 Ins. Law J. 591.
McVAUGHTER v. CASSILY [8,930], 4 McLean, 351.
McVEIGH v. MESSERSMITH [8,931], 5 Cranch, C. C. 316.
McVEIGHT v. McKNIGHT [8,931a], 2 Hayw. & H. 208.
McVEY, In re [8,932], 2 N. B. R. 257 (Quarto, 85); 1 Chi. Leg. News, 103.
McVicker, Grau v. [See 5,708.]
McVicker, Murphy v. [See 9,951.]
McWilliams, Goldsborough v. [See 5,518.]
MACY v. DE WOLF [8,933], 3 Woodb. & M. 193.
Madden, United States v. [See 15,705.]
Madden, Weld v. [See 17,373.]
MADDING v. PEYTON [8,933a], Hempst. 192.
Maddox, Ashley v. [See 18,227.]
Maddox, Holmead v. [See 6,629.]
Maddox, Nevitt v. [See 10,139.]
MADDOX v. STEWART [8,934], 2 Cranch, C. C. 523.
MADDOX v. THORNTON [8,935], 2 Cranch, C. C. 260.
MADDUX v. USHER [8,936], 2 Hask. 261.
Madegan, Larriviere v. [See 8,096.]
Madeira, The. [See 501.]
Madison, Nelson v. [See 10,110.]
MADISON MUT. INS. CO. v. ECKER [8,937], 3 Chi. Leg. News, 233; 13 Int. Rev. Rec. 135.
MADISON & P. R. CO. v. WISCONSIN [8,938].
Madre, The Veronica. [See 16,923.]
Mad River R. Co., Simpson v. [See 12,885.]
MAENHAUT v. NEW ORLEANS [8,939], 2 Woods, 108.
MAENHAUT v. NEW ORLEANS [8,940], 3 Woods, 1.
Maffet, Cambioso v. [See 2,330.]
Magauran, Cowan v. [See 3,292.]
McGavick, Pickett v. [See 11,126.]
Magdalene, The. [See 2,056.]
MAGEE, In re [8,941], 1 Wkly. Notes Cas. 21.
MAGEE v. CALLAN [8,942], 4 Cranch, C. C. 251.
MAGEE v. DENTON [8,943], 5 Blatchf. 130.
Magee, McNeil v. [See 8,915.]
MAGEE v. MOSS, The [8,944], Gilp. 219.
MAGEE v. UNION PAC. R. CO. [8,945], 2 Sawy. 447.
Magee, The Sally. [See 12,259-12,261.]
MAGENTA, The [8,946], 2 Abb. U. S. 495.
MAGGIE JONES, The [8,947], 1 Flip. 635; 5 Cent. Law J. 263.
MAGIC RUFFLE CO. v. DOUGLAS [8,948], 2 Fish. Pat. Cas. 330; Merw. Pat. Inv. 91.
MAGIC RUFFLE CO. v. ELM CITY CO. [8,949], 13 Blatchf. 151; 8 O. G. 773; 2 Ban. & A. 152.
MAGIC RUFFLE CO. v. ELM CITY CO. [8,950], 14 Blatchf. 109; 11 O. G. 501; 2 Ban. & A. 506.
MAGIE, In re [8,951], 2 Ben. 369; 1 N. B. R. 522 (Quarto, 138); 1 Amer. Law T. Rep. Bankr. 122.
MAGILL v. BROWN [8,952], Brightly, N. P. 346; 16 Haz. Reg. Pa. 305.
Magill, Bank of United States v. [See 929.]
Magill, United States v. [See 15,706.]
MAGNA CHARTA, The [8,953], 2 Lowell, 136.
MAGNER v. JOHNSTON [8,954], 3 Cranch, C. C. 249.
MAGNET, The [8,955], 1 Brown's Adm. 547.
MAGNIAC v. THOMPSON [8,956], Baldw. 344.
MAGNIAC v. THOMSON [8,957], 2 Wall. Jr. 209.
Magnin, Jurgensen v. [See 7,586.]
MAGNOLIA, The [8,958], 3 Amer. Law Reg. 465.
Magnolia, The, Thurston v. [See 14,017.]
Magoon, United States v. [See 15,707.]
Magoun, The, Furniss v. [See 5,163.]
MAGOUN v. FIFTEEN THOUSAND DOLLARS [8,959.]
MAGOUN v. NEW ENGLAND GLASS CO. [8,960], 3 Ban. & A. 114.
MAGOUN v. NEW ENGLAND MARINE INS. CO. [8,961], 1 Story, 157; 3 Law Rep. 127.
MAGRUDER'S CASE [8,962], 2 Cranch, C. C. 626.
Magruder, Allen v. [See 230.]
MAGRUDER v. BANK OF WASHINGTON [8,963.]
MAGRUDER v. BOWIE [8,964], 2 Cranch, C. C. 577.
Magruder, Hobbs v. [See 6,551.]
Magruder, McCormick v. [See 8,723.]
MAGRUDER v. McDONALD [8,965], 3 Cranch, C. C. 299.
Magruder, McDonald v. [See 8,761.]
Magruder, Riggs v. [See 11,828.]
Magruder, Thomas v. [See 13,904.]
Magruder, Union Bank of Georgetown v. [See 14,360.]
Maguire, Daly v. [See 3,551.]
Maguire v. Martinetti. [See 9,173.]
Maguire, Trask v. [See 14,145.]
Maguire, United States v. [See 15,708.]
Maher v. The Acorn. [See 10,252.]
Maher, Greenleaf v. [See 5,779, 5,780.]
MAHN v. HARWOOD [8,966], 3 Ban. & A. 515; 13 O. G. 859; Merw. Pat. Inv. 462.
MAHON v. GRACE'S EX'RS [8,967].
Mahoney, Stewart v. [See 13,434.]
Mahoney Min. Co., Anglo-Californian Bank v. [See 392.]
MAHONEY MIN. CO. v. BENNETT [8,968], 4 Sawy. 289; 1 San Fran. Law J. 33.
MAHONY MIN. CO. v. BENNETT [8,969], 5 Sawy. 141; 6 Reporter, 99.
MAHOON v. GLOCESTER, The [8,970], 2 Pet. Adm. 403; Bee, 395.
Maiden, The, Brower v. [See 1,970.]

[Federal Case numbers are given in brackets.]

MAILLARD v. LAWRENCE [8,971], 1 Blatchf. 504; 12 Law Rep. 354.
MAILLARD v. LAWRENCE [8,972], 3 Blatchf. 378.
Maillard, United States v. [See 15,709.]
MAIN v. GLEN [8,973], 7 Biss. 86.
MAIN v. MILLS [8,974], 6 Biss. 98.
MAIN v. MURRAY [8,975].
MAIN v. SECOND NAT. BANK [8,976], 6 Biss. 26; 1 Thomp. Nat. Bank Cas. 200; 6 Chi. Leg. News, 359; 10 Alb. Law J. 204; 1 Amer. Law T. Rep. 471; 20 Int. Rev. Rec. 122; 1 Cent. Law J. 232; 31 Leg. Int. 278; 21 Pittsb. Leg. J. 205.
Maine, Caldwell v. [See 2,304.]
MAINE v. HALEY [8,977], 2 Hask. 354.
Maine Steamship Co., Wells v. [See 17,401.]
MAISONNAIRE v. KEATING [8,978], 2 Gall. 325.
MAITLAND, The [8,979], 2 Biss. 201; 2 Chi. Leg. News, 113; 17 Pittsb. Leg. J. 18.
MAITLAND v. ATLANTIC, The [8,980], Newb. 514; 3 Amer. Law Reg. 477.
Maitland, The, Wolf v. [See 8,979.]
Majestic, The. [See 17,005, 17,006.]
MAJOR, In re [8,981], 2 Hughes, 215.
Major, In re. [See 2,061.]
MAJOR v. HANSEN [8,982], 2 Biss. 195.
MAJOR BARBOUR, The [8,983], Blatchf. Pr. Cas. 167.
MAJOR BARBOUR, The [8,984], Blatchf. Pr. Cas. 310.
Major, The Lizzie. [See 8,422.]
Makeever, Barth v. [See 1,069.]
Makins, United States v. [See 15,710.]
MALAGA, The [8,985], 2 Amer. Law J. (N. S.) 97; 4 Pa. Law J. Rep. 339.
MALCOM, In re [8,986], 4 Law Rep. 488.
Malebran, United States v. [See 15,711.]
M. A. LENNOX, The [8,987], 4 Ben. 190.
Maley, Shattuck v. [See 12,714.]
Mall, United States v. [See 15,712.]
Mallec, Goodyear v. [See 5,575.]
MALLETT v. DEXTER [8,988], 1 Curt. 178.
MALLETT v. FOXCROFT [8,989], 1 Story, 474.
MALLORY, In re [8,990], 4 N. B. R. 153 (Quarto, 38).
MALLORY, In re [8,991], 1 Sawy. 88; 6 N. B. R. 22.
Mallory, Cook v. [See 3,163.]
Mallory, Rafferty v. [See 11,526.]
MALLORY v. RAHMER [8,992], 8 Blatchf. 556, note.
Mallory, Russell & Erwin Mfg. Co. v. [See 12,166.]
Mallory, Tarleton v. [See 13,753.]
MALLORY v. WHITE [8,993], 8 Blatchf. 552; 4 Fish. Pat. Cas. 628.
Mallory, The Eliza. [See 4,365.]
MALONE v. BELL [8,994], 1 Pet. Adm. 139.
MALONE v. PEDRO, The [8,995].
Malone, United States v. [See 15,713.]
MALONE v. WESTERN TRANSP. CO. [8,996], 5 Biss. 315.
MALONEY v. BUTTERLY [8,997].
Maloney v. Sears. [See 7,494.]
MALTBY v. BOBO [8,998], 14 Blatchf. 53; 2 Ban. & A. 459.
MALTBY v. CONVERSE [8,999].
MALTBY v. STEAM DERRICK BOAT [9,000], 3 Hughes, 477.
MALTBY v. TOOL CO. [9,001].
MALTZ v. AMERICAN EXP. CO. [9,002], 1 Flip. 611; 3 Cent. Law J. 784.
MAN v. CHEESEMAN [9,002a], Bank. Mag. Jan. 1875.
MANAHAN, In re [9,003], 19 N. B. R. 65.
Manchester, Borden v. [See 1,656.]
Manchester, Ericsson v. [See 4,511.]
MANCHESTER v. HOTCHKISS [9,004], 13 Int. Rev. Rec. 125; 10 Amer. Law Reg. (N. S.) 379.
MANCHESTER v. HOUGH [9,005], 5 Mason, 67.
MANCHESTER v. MILNE [9,006], Abb. Adm. 115.
MANCHESTER v. MILNE [9,007], Abb. Adm. 158.
Manchester, Providence v. [See 11,450.]
Manchester Print Works, Aiken v. [See 113.]
Manciette, Norman v. [See 10,300.]
Mandelbaum, King v. [See 7,799.]
MANDELL v. PIERCE [9,008], 3 Cliff. 134; 1 Amer. Law T. Rep. U. S. Cts. 123; 7 Int.-Rev. Rec. 193; 2 Amer. Law Rev. 774.
Mandell, Robinson v. [See 11,959.]
Mandeville Alexandria v. [See 184.]
Mandeville, Auld v. [See 653.]
Mandeville, Bank of Alexandria v. [See 850, 851.]
Mandeville, Bayard v. [See 1,132.]
MANDEVILLE v. COOKENDERFER [9,009], 3 Cranch, C. C. 257.
MANDEVILLE v. COOKENDORFER [9,010], 3 Cranch, C. C. 397.
Mandeville, Dade v. [See 3,533.]
MANDEVILLE v. JAMESSON [9,011], 1 Cranch, C. C. 509.
Mandeville, Janney v. [See 7,213.]
Mandeville, Lewis v. [See 8,326.]
MANDEVILLE v. LOVE [9,012], 2 Cranch, C. C. 249.
MANDEVILLE v. McDONALD [9,013], 3 Cranch, C. C. 631.
MANDEVILLE v. MACKENZIE [9,014], 1 Cranch, C. C. 23.
Mandeville, Munroe v. [See 9,929.]
Mandeville, Olive v. [See 10,488.]
Mandeville, Riddle v. [See 11,807.]
MANDEVILLE v. RINGGOLD [9,015].
MANDEVILLE v. RUMNEY [9,016], 3 Cranch, C. C. 424.
Mandeville, Sheehy v. [See 12,740.]
Mandeville, Sutton v. [See 13,648-13,651.]
MANDEVILLE v. WASHINGTON [9,017], 1 Cranch, C. C. 4.
Mandeville, Welch v. [See 17,370, 17,371.]
Mandeville, Wilson v. [See 17,820, 17,821.]
Mandeville, Young v. [See 18,161.]
M. & M. NATIONAL BANK OF PITTSBURGH v. BRADY'S BEND IRON CO. [9,018], 5 N. B. R. 491; 19 Pittsb. Leg. J. 5; 3 Chi. Leg. News, 402; 28 Leg. Int. 317; 4 Amer. Law T. 168; 8 Phila. 171; 3 Pittsb. Rep. 326; 1 Leg. Op. 202; 1 Amer. Law T. Rep. Bankr. 272.
MANHASSET, The [9,019], 6 Ben. 301.
Manhasset, The, Edwards v. [See 4,295.]
MANHATTAN, The [9,020], 2 Ben. 88; 7 Int. Rev. Rec. 28; 1 Amer. Law T. Rep. Bankr. 11.
Manhattan, The, United States v. [See 15,714, 15,-715.]
Manhattan Brass Co., United Nickel Co. v. [See 14,409, 14,410.]
Manhattan Elevator & Grain Drying Co., Sykes v. [See 13,710.]
MANHATTAN FIRE INS. CO. v. C. L. BREED, The [9,021], 1 Flip. 655; 9 Chi. Leg. News, 385; 2 Cin. Law Bul. 190.
MANHATTAN FIRE INS. CO. v. WEILL [9,022], 1 Va. Law J. 290.
MANHATTAN GASLIGHT CO. v. MAXWELL [9,-023], 2 Blatchf. 405.
Manhattan Life Ins. Co., Ames v. [See 328.]
MANHATTAN LIFE INS. CO. v. FARMERS' & CITIZENS' NAT. BANK [9,024], 10 Blatchf. 344.
MANHATTAN LIFE INS. CO. v. HOELZLE [9,025], 7 Reporter, 484.
Manhattan Life Ins. Co., Rinker v. [See 11,851.]
Manhattan Life Ins. Co., Schumacher v. [See 12,-490.]
MANHATTAN MEDICINE CO. v. WOOD [9,026], 4 Cliff. 461; 14 O. G. 519; Cox, Manual Trade-Mark Cas. 359.
Manheim, In re. [See 9,038.]
MANIER v. TRUMBO [18,309], Monroe, C. C. (Ky. Dist.) 67.
Manierre, Mohr v. [See 9,695.]
Manin, Pomeroy v. [See 11,260.]
MANISTEE, The [9,027], 5 Biss. 381; 6 Chi. Leg. News, 126; 3 Ins. Law J. 153.
MANISTEE, The [9,028], 7 Biss. 35.
MANITOBA, The [9,029], 2 Flip. 241; 11 Chi. Leg. News, 25; 3 Cin. Law Bul. 809.
Manitowoc County, Goedgen v. [See 5,501.]
Manitowoc Dock Co. v. The Christopher North. [See 2,707.]
MANKIN v. CHANDLER [9,030], 2 Brock. 125.
MANLY, In re [9,031], 2 Bond, 261; 3 N. B. R. 291 (Quarto, 75); 2 Amer. Law T. Rep. Bankr. 89.
MANN, Ex parte [9,032].
MANN, In re [9,033], 13 Blatchf. 401; 14 N. B. R. 572.
MANN v. BAYLISS [9,034], 10 O. G. 113, 789; Merw. Pat. Inv. 356; 9 Chi. Leg. News, 18.
Mann, Flagg v. [See 4,847, 4,848.]
Mann, Hawes v. [See 6,239.]
Mann, McCarty v. [See 8,685.]

[Federal Case numbers are given in brackets.]

MANN v. SACKS [9,035], Bee, 202.
Mann, United States v. [See 15,716-15,718.]
MANN v. WILKINSON [9,036], 2 Sumn. 273.
Mann, Wood v. [See 17,951, 17,952, 17,954.]
MANNERING v. HOON [9,037].
MANNHEIM, In re [9,038], 6 Ben. 270; 7 West. Jur. 72; 7 N. B. R. 342; 5 Chi. Leg. News, 149; 5 Pac. Law Rep. 106; 4 Leg. Op. 529; 7 Alb. Law J. 13.
MANNIE v. EVERETT [9,039].
MANNING, In re [9,040], 5 Biss. 497.
Manning, Alston v. [See 266.]
MANNING v. CAPE ANN ISINGLASS & GLUE CO. [9,041], 4 Ban. & A. 612; 9 Reporter, 337.
MANNING v. COX [9,042], 4 Cranch, C. C. 693.
MANNING v. GRACE FEE, The [9,042a].
MANNING v. HAYDEN [9,043], 5 Sawy. 360; 7 Reporter, 423, 424; 13 West. Jur. 317, 318; 8 Amer. Law Rec. 38; 1 San Fran. Law J. 85.
MANNING v. HOOVER [9,044], Abb. Adm. 188; 12 Betts, D. C. MS. 5.
MANNING v. JAMESSON [9,045], 1 Cranch, C. C. 285.
MANNING v. LOWDERMILK [9,046], 1 Cranch, C. C. 282.
MANNY v. DUNLAP [9,047], Woolw. 372; 3 West. Jur. 329; 17 Pittsb. Leg. J. 11.
Manny, McCormick v. [See 8,724.]
Manro, Balderston v. [See 793.]
Mansanito, The, Smith v. [See 13,075.]
MANSFIELD, In re [9,048], 6 Ben. 284.
MANSFIELD, In re [9,049], 6 N. B. R. 388.
Mansfield, Mason v. [See 9,243.]
Mansfield, C. & L. M. R. Co., Scott v. [See 12,541.]
Manson, Clarkson v. [See 2,867.]
Manton, Lansing v. [See 8,077.]
Manton, The Herbert. [See 6,399, 7,319.]
Mantor, United States v. [See 15,719.]
MANUFACTURERS' & FARMERS' BANK v. BAYLESS [9,050], 1 West. Law Month. 356; Brunner, Col. Cas. 8.
Manufacturers' Ins. Co., Bilson v. [See 1,410.]
Manufacturers' Ins. Co., Clark v. [See 2,829.]
Manufacturers' Ins. Co., Glidden v. [See 5,482.]
MANUFACTURERS' NAT. BANK, In re [9,051], 5 Biss. 499; 19 Int. Rev. Rec. 20; 1 Thomp. Nat. Bank Cas. 192; 6 Chi. Leg. News, 118; 8 Amer. Law Rev. 614; 1 Cent. Law J. 19; 21 Pittsb. Leg. J. 80, 116; 6 Leg. Gaz. 21; 9 N. B. R. 122.
MANUFACTURERS' NAT. BANK v. BAACK [9,052], 2 Abb. U. S. 232; 8 Blatchf. 137; 4 Amer. Law T. Rep. U. S. Cts. 24; 13 Int. Rev. Rec. 35, 101; 40 How. Pr. 409; 1 Thomp. Nat. Bank Cas. 161; 3 Chi. Leg. News, 169; 5 Amer. Law Rev. 567.
Manufacturers' Nat. Bank, Irons v. [See 7,068.]
Manufacturers' Nat. Bank, Smith v. [See 9,051.]
Manufacturing Co., Blank v. [See 1,532.]
Manufacturing Co., Thompson v. [See 13,967.]
Manwaring, L'Arina v. [See 8,089.]
MANY, In re [9,053], 9 Ben. 160; 17 N. B. R. 429.
MANY, In re [9,054], 17 N. B. R. 514.
MANY v. JAGGER [9,055], 1 Blatchf. 372; Merw. Pat. Inv. 650; 1 Fish. Pat. Rep. 222.
MANY v. SIZER [9,056], 1 Fish. Pat. Cas. 17.
MANY v. SIZER [9,057], 1 Fish. Pat. Cas. 31.
Many, Woolcocks v. [See 18,024.]
Maquillan, Farmers' Loan & Trust Co. v. [See 4,-668.]
Mar, The Helen. [See 10,543.]
MARATHON, The [9,058].
MARBLE v. FULTON [9,059], 1 Hask. 462.
Marbury, Lingan v. [See 8,371.]
Marcella, The, Taylor v. [See 13,797.]
Marcellus, The, Camp v. [See 2,347.]
MARCER, In re [9,060], 6 N. B. R. 351; 29 Leg. Int. 76.
MARCH v. HEATON [9,061], 1 Lowell, 278; 2 N. B. R. 180 (Quarto, 66).
Marchant, Hawes v. [See 6,240].
MARCIA TRIBOU, The [9,062], 2 Spr. 17.
Marcuard v. United States. [See 3,097.]
MARCUS v. UNITED STATES [9,062a], 2 Hayw. & H. 347.
MARCY v. TROTTER [9,063].
Marcy v. Ohio. [See 9,457.]
Marcy, Sumner v. [See 13,609.]
Marean, Hinkley v. [See 6,523.]
MAREAN v. UNITED STATES INS. CO. [9,064], 3 Wash. C. C. 256.
MARENGO, The [9,065], 1 Lowell, 52; 1 Amer. Law Rev. 88.
MARENGO, The [9,066], 1 Spr. 506.
Marengo, The, Backus, v. [See 712, 713.]
MARET v. WOOD [9,067], 3 Cranch, C. C. 2.
MARGARET, The [9,068], 5 Biss. 353; 5 Chi. Leg. News, 565.
MARGARET, The [9,069], 6 Wkly. Notes Cas. 304; 26 Pittsb. Leg. J. 86.
MARGARET, The, v. CONNESTOGA, The [9,070], 2 Wall. Jr. 116.
MARGARET & JESSE, The [9,071], Blatchf. Pr. Cas. 581.
MARGARETTA, The [9,072], 2 Gall. 515.
Margaretta, The, Cornell v. [See 3,239.]
Margaret Yates, The, United States v. [See 15,720.]
MARIA, The [9,073], Blatchf. Pr. Cas. 283.
MARIA, The [9,074], 1 Blatchf. & H. 331.
MARIA, The [9,075], Deady, 89.
Maria, The, Relf v. [See 11,692.]
Maria, The, Sprague v. [See 13,253.]
MARIA v. WHITE [9,076], 3 Cranch, C. C. 663.
Maria, The Ann. [See 427.]
MARIA BISHOP, The [9,077], Blatchf. Pr. Cas. 552.
MARIA JOSEPHA, The [9,078], 2 Wheeler, Crim. Cas. 600; Brunner, Col. Cas. 500.
MARIA MARTIN, The [9,079], 2 Biss. 41; 1 Chi. Leg. News, 57.
MARIANNA FLORA, The [9,080], 3 Mason, 116.
MARIA PIKE, The [9,081].
MARIA THERESA, The [9,082].
MARIA WHITE, The [9,083], 1 Hask. 204.
MARIETTA TILTON, The, v. HARRISBURG, The [9,084], 36 Leg. Int. 66.
Marine & River Phosphate Min. & Mfg. Co. of South Carolina, Bradly v. [See 1,789.]
Marine Ins. Co., Barker v. [See 992.]
Marine Ins. Co., Carson v. [See 2,465.]
Marine Ins. Co., Church v. [See 2,711.]
Marine Ins. Co., Coles v. [See 2,988.]
Marine Ins. Co., Harper v. [See 6,088.]
Marine Ins. Co., Hodgson v. [See 6,566.]
Marine Ins. Co., Potter v. [See 11,332.]
Marine Ins. Co., Simmes v. [See 12,862.]
Marine Ins. Co., Straas v. [See 13,518.]
Marine Ins. Co. of Alexandria, Hodgson v. [See 6,567.]
Marine Ins. Co. of Alexandria, Howland v. [See 6,798.]
Marine Ins. Co. of Alexandria, Young v. [See 18,-162-18,164.]
Marine Nat. Bank, Dutcher v. [See 4,203.]
Mariner, Phillips v. [See 11,105.]
MARINERS v. KENSINGTON, The [9,085], 1 Pet. Adm. 239.
Mariners, Sims v. [See 12,893.]
MARINERS v. WASHINGTON, The [9,086], 1 Pet. Adm. 219.
MARION, The [9,087], 1 Story, 68; 3 Law Rep. 250.
Marion County, Moreland v. [See 9,794.]
MARIONNEAUX'S CASE [9,088], 1 Woods, 37; 13 N. B. R. 222.
MARIPOSA CO. v. BOWMAN [9,089], Deady, 228.
Mariposa Land & Mining Co., Donohoe v. [See 3,-989.]
Maris, Mott v. [See 9,880.]
MARKET BANK OF TROY v. SMITH [9,090], 7 Amer. Law Reg. 667; 4 Wkly. Law Gaz. 407.
MARKEY v. MUTUAL BEN. LIFE INS. CO. [9,091], 6 Ins. Law J. 537; 3 Law & Eq. Rep. 647.
Markley, Garrison v. [See 5,256.]
MARKOE v. COXE [9,092], 5 Cranch, C. C. 537.
MARKOE v. MAXCY [9,093], 5 Cranch, C. C. 306.
MARKS, In re [9,094].
MARKS, In re [9,095], 2 N. B. R. 575 (Quarto, 175); 16 Pittsb. Leg. J. 12; 1 Chi. Leg. News, 245.
MARKS v. BARKER [9,096], 1 Wash. C. C. 178.
Marks, Deposit Sav. Ass'n v. [See 3,812.]
Marks, District Sav. Ass'n v. [See 3,812.]
Marks, Gregory v. [See 5,802.]
Marks, United States v. [See 15,721.]
Marks, Walker v. [See 17,078.]
Marks, Wattson v. [See 17,296.]
Marks, Wooster v. [See 18,038.]

[Federal Case numbers are given in brackets.]

MARKSON v. FIRST NAT. BANK [9,097], 9 Chi. Leg. News, 108.
MARKSON v. HEANEY [9,098], 1 Dill. 497; 4 N. B. R. 510 (Quarto, 165); 3 Chi. Leg. News, 153.
MARKSON v. HOBSON [9,099], 2 Dill. 327; 4 Chi. Leg. News, 75.
Markson, Hobson v. [See 6,555.]
Mark's Sureties, United States v. [See 15,722.]
Marlboro, Hunter v. [See 6,908.]
Marney v. Sylvester Hale, The. [See 13,712.]
Maroney, Dinsmore v. [See 3,920.]
MARQUAND, Ex parte [9,100], 2 Gall. 552.
MARQUETTE, The [9,101], 1 Brown's Adm. 364; 4 Chi. Leg. News, 241; 6 Alb. Law J. 292.
MARRETT v. ATTERBURY [9,102], 3 Dill. 444; 11 N. B. R. 225; 2 Cent. Law J. 11.
MARRETT v. MURPHY [9,103], 11 N. B. R. 131; 1 Cent. Law J. 554.
MARRINER v. LUTING [9,104].
Marriott, Brune v. [See 2,052.]
MARS, The [9,105], Blatchf. Pr. Cas. 150.
MARS, The [9,106], 1 Gall. 192.
Mars, The, United States v. [See 15,723.]
Marselis, United States v. [See 15,724, 15,725.]
MARSH, Ex parte [9,107].
MARSH, In re [9,108], 6 Law Rep. 67.
MARSH, In re [9,109], 19 N. B. R. 297.
MARSH v. BENNETT [9,110], 5 McLean, 117.
MARSH v. BURROUGHS [9,111], 1 Cent. Law J. 125.
MARSH v. BURROUGHS [9,112], 1 Woods, 463; 10 Amer. Law Reg. (N. S.) 718.
MARSH v. CHARLESTON [9,113], 1 Hughes, 288.
MARSH v. COMMISSIONER OF PATENTS [9,119], 3 Biss. 321.
MARSH v. DODGE & STEVENSON MFG. CO. [9,115], 6 Fish. Pat. Cas. 562; 5 O. G. 398; Merw. Pat. Inv. 213.
Marsh, Dorsey Harvester Revolving Rake Co. v. [See 4,014.]
Marsh, Folsom v. [See 4,901.]
MARSH v. HULBERT [9,116], 4 McLean, 364.
Marsh, Loring v. [See 8,514, 8,515.]
MARSH v. MINNIE, The [9,117], 6 Amer. Law Reg. 328.
Marsh, Molyneaux v. [See 9,703.]
Marsh, Murray v. [See 9,965.]
MARSH v. N. W. NAT. INS. CO. [9,118], 3 Biss. 351.
MARSH v. SAYLES [9,119], 5 Fish. Pat. Cas. 610; 3 Biss. 321; 2 O. G. 340; 4 Chi. Leg. News, 461; 7 Amer. Law Rev. 355.
Marsh, Seymour v. [See 12,687.]
MARSH v. UNITED STATES [9,120], Hoff. Land Cas. 301.
MARSH v. WARREN [9,121], 14 Blatchf. 263; 13 O. G. 7; 14 O. G. 678; 24 Pittsb. Leg. J. 207; 9 Chi. Leg. News, 395; 4 Amer. Law T. 126; 23 Int. Rev. Rec. 282, 288; 2 Cin. Law Bul. 203.
MARSH v. WHITMORE [9,122], 1 Hask. 391.
Marshal, Ex parte. [See 14,174.]
MARSHALL, In re [9,123], 1 Lowell, 462; 4 N. B. R. 106 (Quarto, 27).
Marshall v. The Adriatic. [See 89.]
MARSHALL v. BALTIMORE & O. R. CO. [9,124], Taney, 204.
MARSHALL v. BAZIN [9,125], 7 N. Y. Leg. Obs. 342.
MARSHALL v. CRAWFORD [9,126], 4 Sawy. 37.
Marshall, Davis v. [See 3,641.]
MARSHALL v. DELAWARE INS. CO. [9,127], 2 Wash. C. C. 54.
MARSHALL v. DORSETT [9,128], 4 Cranch, C. C. 696.
Marshall, Dorsett v. [See 4,012.]
MARSHALL v. JEFFRIES [9,128a], Hempst. 299.
MARSHALL v. MARSHALL [9,128b].
Marshall, Lewis v. [See 8,327.]
Marshall, Liggett v. [See 8,342.]
MARSHALL v. MEE [9,129], 1 McA. Pat. Cas. 229.
Marshall, Patch v. [See 10,793.]
MARSHALL v. PIERREZ [9,130], 9 Ben. 39.
MARSHALL v. REDFIELD [9,131], 4 Blatchf. 221; 40 Hunt, Mer. Mag. 195; 2 Wkly. Law Gaz. 296.
Marshall, Slocum v. [See 12,953.]
Marshall, Smith v. [See 13,077.]
MARSHALL v. THURSTON [9,132].
MARSHALL v. UNION INS. CO. [9,133], 2 Wash. C. C. 357.
MARSHALL v. UNION INS. CO. [9,134], 2 Wash. C. C. 411.
MARSHALL v. UNION INS. CO. [9,135], 2 Wash. C. C. 452.
MARSHALL v. WILLIAMS [9,136], 2 Biss. 255; 3 Amer. Law T. Rep. U. S. Cts. 77; 18 Int. Rev. Rec. 165; 2 Chi. Leg. News, 201; 5 Leg. Gaz. 337.
Marshall County, Schenck v. [See 12,449.]
Marshal of District of Columbia, Riddle v. [See 11,808.]
Marshal of District of Columbia, Wilson v. [See 17,822.]
Marshal of District of North Carolina, United States v. [See 15,727.]
Marshal of United States, Arnold v. [See 560.]
Marshals' Fees in Bankruptcy Cases. [See 18,282.]
Marsteller, Arell v. [See 514.]
Marsteller, Dean v. [See 3,710.]
MARSTELLER v. FAW [9,137], 1 Cranch, C. C. 117.
Marsteller, Gorman v. [See 5,629.]
MARSTELLER v. M'CLEAN [9,138], 1 Cranch, C. C. 550.
MARSTELLER v. McCLEAN [9,139], 1 Cranch, C. C. 579.
MARSTELLER v. McCLEAN [9,140], 2 Cranch, C. C. 8.
Marsteller, Porter v. [See 11,287.]
Marsteller, Tucker v. [See 14,222.]
MARSTIN v. McREA [9,141], Hempst. 688.
MARSTON, In re [9,142], 5 Ben. 313.
Martens, Petters v. [See 11,031.]
MARTER, In re [9,143], 12 N. B. R. 185.
MARTHA, The [9,144], 1 Blatchf. & H. 151.
MARTHA, The [9,145], Olc. 140.
Martha & Elizabeth, The, Larco v. [See 8,087.]
MARTHA ANNE, The [9,146], Olc. 18.
MARTHA C. BURNITE, The [9,147], 10 Ben. 196.
Martha M. Heath, The. [See 7,113.]
MARTHA WASHINGTON, The [9,148], 3 Ware, 245.
Martha Washington, The. [See 1,513.]
Martha Washington, The, Blanchard v. [See 1,513.]
MARTIN, Ex parte [9,149], 5 Law Rep. 158; 1 Pa. Law J. 188.
MARTIN, In re [9,150], 6 Ben. 20.
MARTIN, In re [9,151], 5 Blatchf. 303.
MARTIN, In re [9,152], 2 Hughes, 418; 13 N. B. R. 397.
MARTIN, In re [9,153], 2 N. B. R. 548 (Quarto, 169).
MARTIN, In re [9,154], 2 Paine, 348.
MARTIN v. ACKER [9,155], 1 Blatchf. & H. 279.
MARTIN v. BANK OF THE UNITED STATES [9,156], 4 Wash. C. C. 253.
MARTIN v. BARTOW IRON WORKS [9,157], 35 Ga. 320.
MARTIN v. BURNS [9,158].
MARTIN v. CLARK [9,158a], Hempst. 259.
Martin, Coleman v. [See 2,985, 2,986.]
MARTIN v. CRISCUOLA [9,159], 10 Blatchf. 211.
MARTIN v. CURTIS [9,160].
MARTIN v. DELAWARE INS. CO. [9,161], 2 Wash. C. C. 254.
Martin, Elwell v. [See 4,425.]
Martin, Gibbons v. [See 5,381.]
Martin, Gilleland v. [See 5,433.]
Martin, Healey v. [See 6,295.]
MARTIN v. KANOUSE [9,162], 1 Blatchf. 149.
MARTIN v. KERCHEVAL [9,163], 4 McLean, 117.
MARTIN v. SMITH [9,164], 1 Dill. 85; 9 Amer. Law Reg. (N. S.) 694; 3 Amer. Law T. Rep. U. S. Cts. 199; 4 N. B. R. 274 (Quarto, 83).
MARTIN v. SOMERVILLE WATER-POWER CO. [9,165], 5 Amer. Law Reg. 400; 3 Wall. Jr. 206; 27 How. Pr. 161; 37 Hunt, Mer. Mag. 64; 13 Leg. Int. 332.
MARTIN v. TAYLOR [9,166], 1 Wash. C. C. 1.
Martin, Thurston v. [See 14,018.]
MARTIN v. TOOF [9,167], 1 Dill. 203; 4 N. B. R. 488 (Quarto, 158).
MARTIN v. UNITED STATES [9,168], Hoff. Land Cas. 146.
Martin, United States v. [See 15,728-15,732.]
MARTIN v. WADDELL [9,169].
MARTIN v. WALKER [9,170], Abb. Adm. 579.
MARTIN v. WILLIAM, The [9,171].
MARTIN v. WINSLOW [9,172], 2 Mason, 241.
Martin, The D. R. [See 1,030.]

[Federal Case numbers are given in brackets.]

MARTINETTI v. MAGUIRE [9,173], 1 Abb. U. S. 356; Deady, 216.
MARTINEZ v. ANGLO NORMAN, The [9,174], Newb. 492.
Martin, The John. [See 7,357, 7,358.]
Martin, The Maria. [See 9,079.]
MARTINS v. BALLARD [9,175], Bee, 51.
MARTINS v. BALLARD [9,176], Bee, 258.
Martin, The Thomas. [See 13,926.]
Martin White, The, Mendell v. [See 9,419.]
Martin, The William. [See 17,698.]
MARTIN WYNCOOP, The [9,177], 10 Blatchf. 167.
Martz, Cleary v. [See 2,873.]
MARVIN, In re [9,178], 1 Dill. 178; 3 Chi. Leg. News, 394.
MARVIN v. CHAMBERS [9,179], 12 Blatchf. 495; 13 N. B. R. 77; 1 N. Y. Wkly. Dig. 365.
MARVIN v. DENNISON [9,180], 1 Blatchf. 159; 20 Vt. 662.
MARWICK, In re [9,181], 2 Ware (Dav. 229) 233; 8 Law Rep. 169; 3 N. Y. Leg. Obs. 286.
Marx, Clark v. [See 2,830.]
MARY, The [9,182], Blatchf. Pr. Cas. 618.
MARY, The [9,183], 1 Gall. 206.
MARY, The [9,184], 1 Gall. 620.
MARY, The [9,185], 1 Mason, 365.
MARY, The [9,186], 1 Paine, 180.
MARY, The [9,187], 1 Paine, 671.
MARY, The [9,188], 1 Spr. 17; 5 Law Rep. 75.
MARY, The [9,189], 1 Spr. 51; 6 Law Rep. 73; 9 Hunt, Mer. Mag. 173.
MARY, The [9,190], 1 Spr. 204.
MARY, The [9,191], 1 Ware (454), 465; 1 Law Rep. 157; 20 Amer. Jur. 421.
Mary, The, Minors v. [See 9,644.]
Mary, The, O'Hara v. [See 10,467.]
MARY v. TALBURT [9,192], 4 Cranch, C. C. 187.
Mary, The, Tunno v. [See 14,237.]
Mary, The, Wilson v. [See 17,823.]
MARY A. HOWES, The [9,193].
MARY ANN, The [9,194], Abb. Adm. 270; 13 Betts, D. C. Ms. 12.
MARY ANNE, The [9,195], 1 Ware (104), 99.
MARY ANN GUEST, The [9,196], 1 Blatchf. 358.
MARY ANN GUEST, The [9,197], Olc. 498.
MARY A. RICH, The [9,198], 9 Ben. 187.
MARY BELL, The [9,199], 1 Sawy. 135.
MARY BELLE ROBERTS, The [9,200], 3 Sawy. 485.
Mary Belle Roberts, The, Speyer v. [See 13,240.]
MARY C., The [9,201], 1 Hask. 474.
MARY CELESTE, The [9,202], 2 Lowell, 354.
MARY CLINTON, The [9,203], Blatchf. Pr. Cas. 556; Bett's Pr. Cas.
MARY COE, The [9,204].
Mary C. Potter, The, Tucker v. [See 14,223.]
MARY DOANE, The [9,205], 2 Lowell, 428.
Mary Eddy, The, Mordecai v. [See 9,790.]
MARY ELIZABETH, The [9,206], 3 Sawy. 491.
MARY E. PEREW, The [9,207], 15 Blatchf. 58; 6 Reporter, 293; 8 Ins. Law J. 59; 10 Chi. Leg. News, 371.
MARY E. RIGGS, The [9,208].
MARY E. TABER, The [9,209], 1 Ben. 105.
MARY EVELINE, The [9,210].
MARY EVELINE, The [9,211], 3 Ben. 438.
MARY EVELINE, The [9,212], 14 Blatchf. 497.
MARY FORD, The [9,212a], 3 Dall. 190.
Mary Frost, The, Davey v. [See 3,591, 3,592.]
Mary Gratwick, The, Whitney v. [See 17,591.]
MARY HALE, The [9,213].
MARY JANE, The [9,214], Blatchf. Pr. Cas. 363.
MARY JANE, The [9,215], 1 Blatchf. & H. 390.
MARY JANE VAUGHAN, The [9,216].
MARY J. VAUGHAN, The [9,217], 2 Ben. 47; 7 Int. Rev. Rec. 12; 1 Amer. Law T. Rep. U. S. Cts. 9; 2 Amer. Law Rev. 577.
Mary J. Vaughan, The, and The Telegraph, Gordon v. [See 5,617.]
Mary, The Kathleen. [See 7,625.]
MARYLAND, The [9,218].
MARYLAND v. BALTIMORE & P. R. CO. [9,219], 1 Hughes, 337.
MARYLAND v. TODD [9,220], 1 Biss. 69.
Maryland Coal Co., Poland v. [See 11,244, 11,245.]
Maryland Fire Ins. Co., Bennett v. [See 1,321.]
MARY McRAE, The [9,221], Blatchf. Pr. Cas. 91.
Maryman, Reilly v. [See 11,672.]
MARY MERRITT, The [9,222], 2 Biss. 381.
Mary Merritt, The, United States v. [See 15,733.]
MARY PATTEN, The [9,223], 2 Lowell, 196.
MARY PAULINA, The [9,224], 1 Spr. 45.
MARY SANDFORD, The [9,225], 3 Ben. 100.
MARY STEELE, The [9,226], 2 Lowell, 370.
MARY STEWART, The [9,227], Blatchf. Pr. Cas. 210.
MARY TERESA, The [9,228], Blatchf. Pr. Cas. 286.
Mary Vaughan, The, Gordon v. [See 5,618.]
MARY WASHINGTON, The [9,229], 1 Abb. U. S. 1; Chase, 125; 5 Amer. Law Reg. (N. S.) 692.
Mary Washington, The, v. Ayres. [See 9,229.]
Mascoutah, Balcheller v. [See 792.]
Masi, Mason v. [See 9,244.]
Mason, Aborn v. [See 19.]
MASON v. BLAIREAU, The [9,230].
MASON v. BLAIREAU, The [9,231].
MASON v. BOOM CO. [9,232], 3 Wall. Jr. 252; 20 Leg. Int. 12.
Mason, Bloomer v. [See 18,242.]
Mason, Bronaugh v. [See 1,923.]
Mason, Chesapeake & O. Canal Co. v. [See 2,650.]
Mason, Chomqua v. [See 2,693.]
MASON v. CLAPP [9,233], Holmes, 417; 21 Int. Rev. Rec. 268; 7 Leg. Gaz. 277.
MASON v. CROSBY [9,234], 1 Woodb. & M. 342.
MASON v. CROSBY [9,235], 2 Ware (Dav. 303), 306.
MASON v. CROSBY [9,236], 3 Woodb. & M. 258.
MASON v. CUTTS [9,237], 5 Cranch, C. C. 465.
Mason, Dunnell v. [See 4,179.]
Mason, Gamble v. [See 5,209.]
Mason, Graham v. [See 5,671, 5,672.]
Mason, Grant v. [See 5,698, 5,701.]
MASON v. INGRAHAM [9,238], 5 Ben. 81.
Mason, Johnson v. [See 7,396.]
MASON v. JONES [9,239], 1 Hayw. & H. 323.
MASON v. JONES [9,240], 1 Hayw. & H. 329.
MASON v. KANE [9,241], Taney, 173; 24 Hunt, Mer. Mag. 717.
MASON v. LAWRASON [9,242], 1 Cranch, C. C. 190.
MASON v. MANSFIELD [9,243], 4 Cranch, C. C. 580.
MASON v. MASI [9,244], 5 Cranch, C. C. 397.
MASON v. MASON [9,245], 3 Cranch, C. C. 648.
MASON v. MASON [9,246], 4 Cranch, C. C. 401.
Mason, Matilda v. [See 9,280.]
Mason, Maury v. [See 9,314.]
MASON v. MUNCASTER [9,247], 2 Cranch, C. C. 274.
MASON v. MUNCASTER [9,248], 3 Cranch, C. C. 403.
Mason, Muncaster v. [See 9,920.]
Mason, Murray v. [See 9,966.]
MASON v. NEWELL [9,249], 2 Chi. Leg. News, 1.
MASON v. PEABODY [9,250], 13 Int. Rev. Rec. 142.
MASON v. RHINELANDER [9,251], 8 Ben. 163.
MASON v. ROLLINS [9,252], 2 Biss. 99.
MASON v. SARGENT [9,253], 23 Int. Rev. Rec. 155.
Mason, Saunders v. [See 12,376.]
Mason, Shortridge v. [See 12,812.]
Mason, Singer Mfg. Co. v. [See 12,903.]
Mason, Stone v. [See 13,485.]
MASON v. TALLMAN [9,254].
Mason, United States v. [See 15,734-15,738.]
MASON v. WALLACE [9,255], 3 McLean, 148.
MASON v. WALLACE [9,256], 4 McLean, 77.
MASON v. WILSON [9,257].
Mason & Hammond Organ Co., Hammond v. [See 6,004.]
Mason Lumber Co., Buchtel v. [See 2,077.]
MASSACHUSETTS, The [9,258], 10 Ben. 177.
Massachusetts, The, Jones v. [See 7,480.]
Massachusetts Arms Co., Colt v. [See 3,030.]
MASSACHUSETTS BRICK CO., In re [9,259], 2 Lowell, 58; 5 N. B. R. 408; 4 Amer. Law T. 220.
Massachusetts Fire & Marine Ins. Co., Bayard v. [See 1,133.]
Massachusetts Hospital Life Ins. Co., Ex parte. [See 9,327.]
Massachusetts Hospital Life Ins. Co., Durant v. [See 4,188.]
Massachusetts Mut. Life Ins. Co., Conover v. [See 3,121.]
Massachusetts Mut. Life Ins. Co., Davis v. [See 3,642.]
Massachusetts Nat. Bank, Fiske v. [See 9,857.]
Massachusetts Nat. Bank, Matthews v. [See 9,286.]

Massachusetts Nat. Bank, Morse v. [See 9,857.]
MASSASOIT, The [9,260], 1 Spr. 97; 7 Law Rep. 522; 12 Hunt, Mer. Mag. 367.
MASSETT v. MAXWELL [9,261].
Massey, Allen v. [See 231.]
MASSEY v. SCHOTT [9,262], Pet. C. C. 132.
Massey, Webster v. [See 17,336.]
MASSIE v. GRAHAM [9,263], 3 McLean, 41.
MASSOLETTI v. MILLER [9,264], 2 Cranch, C. C. 313.
Mast, Ingels v. [See 7,033, 7,034.]
MASTBAUM, In re [9,265], 2 Wkly. Notes Cas. 479.
MASTEN, The [9,266], 1 Brown's Adm. 436.
Masters, United States v. [See 15,739.]
MASTERS, The [9,267], 1 Brown's Adm. 342.
MASTERSON, In re [9,268], 4 N. B. R. 553 (Quarto, 180).
MASTERSON v. KIDWELL [9,269], 2 Cranch, C. C. 669.
Masterson, Kidwell v. [See 7,758.]
Mastick, Morgan v. [See 9,803.]
Mastin Bank, Rosenthal v. [See 12,063.]
MASURY v. ANDERSON [9,270], 11 Blatchf. 162; 4 O. G. 55; 6 Fish. Pat. Cas. 457; Merw. Pat. Inv. 114.
MASURY v. TIEMANN [9,271], 8 Blatchf. 426; 4 Fish. Pat. Cas. 524; Merw. Pat. Inv. 113.
MATCALM v. SMITH [9,272], 6 McLean, 416.
MATERN v. GIBBS [9,273], 1 Spr. 158; 17 Hunt, Mer. Mag. 287.
MATHERS, In re [9,274], 17 N. B. R. 225.
MATHEWS v. ABBOTT [9,275], 2 Hask. 289.
MATHEWS v. DOUGLASS [9,276], Cooke, 136; Brunner, Col. Cas. 196.
Mathews, Goodyear v. [See 5,576.]
MATHEWS v. SPRINGER [9,277], 2 Abb. U. S. 283.
Mathewson, Clarke v. [See 2,857.]
MATHEWSON v. SPRAGUE [9,278], 1 Curt. 457.
Matheys, Cooper v. [See 3,200.]
Mathiesson, Union Sugar Refinery v. [See 14,397.]
Mathoit, United States v. [See 15,740.]
MATHUSON v. CRAWFORD [9,279], 4 McLean, 540.
MATILDA v. MASON [9,280], 2 Cranch, C. C. 343.
Matilda, The, United States v. [See 15,741.]
MATILDA A. LEWIS, The [9,281], 5 Blatchf. 520.
Matlack, Lindenberger v. [See 8,360.]
Matlock, Charles v. [See 2,615.]
MATOT, In re [9,282], 16 N. B. R. 485; 5 N. Y. Wkly. Dig. 529.
Matson, Bloomer v. [See 18,242.]
Matt, The Richard. [See 11,766.]
MATTEAWAN, The [9,283], 4 Ben. 106.
Mattheson, Holiday v. [See 6,602.]
MATTHEW v. CHASE [9,283a].
MATTHEW v. RAE [9,284], 3 Cranch, C. C. 699.
Matthews, Bigelow v. [See 1,401.]
Matthews, Cadmus, The, v. [See 2,282.]
MATTHEWS v. LYALL [9,285], 6 McLean, 13.
MATTHEWS v. MASSACHUSETTS NAT. BANK [9,286], Holmes, 396; 10 Alb. Law J. 199; 14 Amer. Law Reg. (N. S.) 153; 1 Amer. Law Rep. (N. S.) 512; 20 Int. Rev. Rec. 110; 1 Cent. Law J. 469; 22 Pittsb. Leg. J. 38; 6 Leg. Gaz. 308.
MATTHEWS v. MATTHEWS [9,287].
MATTHEWS v. MATTHEWS [9,288], 2 Curt. 105.
MATTHEWS v. MENEDGER [9,289], 2 McLean, 145.
MATTHEWS v. OFFLEY [9,290], 3 Sumn. 115.
MATTHEWS v. SKATES [9,291], 1 Fish. Pat. Cas. 602; Merw. Pat. Inv. 663.
Matthews, United States v. [See 15,741a, 15,742.]
MATTHEWS v. WADE [9,292], 1 McA. Pat. Cas. 143.
Matthews, Wade v. [See 17,029.]
Matthews, Wood v. [See 17,955.]
Mattheys, Cooper v. [See 3,200.]
Matthias, The Pizarro v. [See 11,199.]
Matthiesson, Union Sugar Refinery v. [See 14,398, 14,399.]
MATTINGLY v. SMITH [9,293], 2 Cranch, C. C. 158.
MATTINGLY v. THREE HUNDRED AND FIFTY-SEVEN BALES OF COTTON [9,294], 2 Flip. 288; 8 Cent. Law J. 227; 7 Reporter, 485.
MATTINGLY v. UNITED STATES [9,295], 1 Hayw. & H. 195.
Mattingly, United States v. [See 15,743.]
MATTISON, Ex parte [9,296].
Mattison, Richardson v. [See 11,790.]
MATTISON v. WALKER [9,297], 1 Biss. 62.
Mattock, United States v. [See 15,744.]
MATTOCKS v. FARRINGTON [9,298], 2 Hask. 331.
MATTOCKS v. LOVERING [9,299], 1 Law & Eq. Rep. 401.
MATTOCKS v. ROGERS [9,300], 1 Hask. 547.
MATTOX v. CADY [9,301], 7 Amer. Law Rec. 613.
MAUD WEBSTER, The [9,302], 8 Ben. 547.
MAUD WEBSTER, The [9,303], 1 Hask. 325.
Maudelbaum, King v. [See 7,799.]
MAUER, In re [9,304], 5 Sawy. 66.
MAUGER v. HOLYOKE MUT. FIRE INS. CO. [9,305], Holmes, 287; 3 Ins. Law J. 55.
Mauk, United States v. [See 15,745.]
Maul, Eiseman v. [See 4,322.]
MAUL v. SCOTT [9,306], 2 Cranch, C. C. 367.
MAULDIN v. CARLL [9,307], 3 Hughes, 249.
MAULE, In re [9,308], 1 McA. Pat. Cas. 271.
Maumer, United States v. [See 15,746.]
MAUPIN v. PIC [9,309], 2 Cranch, C. C. 38.
Mauran v. The H. B. Foster. [See 6,290.]
MAURAN v. WARREN [9,310], 2 Lowell, 53.
Maurice, United States v. [See 15,747.]
MAURO v. BOTELOR [9,311], 2 Cranch, C. C. 372.
MAURO v. RITCHIE [9,312], 3 Cranch, C. C. 147.
MAURO v. ST. JOHN'S PARISH [9,313], 4 Cranch, C. C. 116.
Mauro, Varnum v. [See 16,889.]
MAURY v. MASON [9,314], 1 Hayw. & H. 400.
MAURY v. TALMADGE [9,315], 2 McLean, 157.
Mausseaux, Gaines v. [See 5,176.]
MAVERICK, The [9,316], 1 Spr. 23; 5 Law Rep. 106.
Mavurka, The, Beane v. [See 1,175.]
MAWSON, In re [9,317], 2 Ben. 122; 1 N. B. R. 265 (Quarto, 33).
MAWSON, In re [9,318], 2 Ben. 332; 1 N. B. R. 437 (Quarto, 115); 1 Amer. Law T. Rep. Bankr. 122.
MAWSON, In re [9,319], 2 Ben. 412; 1 N. B. R. 548 (Quarto, 153).
MAWSON, In re [9,320], 1 N. B. R. 271 (Quarto, 41); 1 Amer. Law T. Rep. Bankr. 46.
Maxcy, Markoe v. [See 9,093.]
MAXFIELD v. LEVY [9,321], 4 Dall. 330; 2 Dall. 381.
Maxon, United States v. [See 15,748.]
Maxwell, Aguirre v. [See 101.]
Maxwell, Alsop v. [See 263, 264.]
Maxwell, Bangs v. [See 841.]
Maxwell, Baxter v. [See 1,126.]
Maxwell, Bischoff v. [See 1,438.]
MAXWELL v. BROTHERS, The, and LADY FRANKLIN, The [9,322], 1 Chi. Leg. News, 73.
Maxwell v. The Brothers and The Lady Franklin. [See 1,969.]
MAXWELL v. CALL [9,323], 2 Brock. 119.
Maxwell, Carnes v. [See 2,417.]
Maxwell, Christ v. [See 2,698.]
Maxwell, Corkle v. [See 3,231.]
Maxwell, Craig v. [See 3,334.]
Maxwell, Crooke v. [See 3,413.]
Maxwell, Crookes v. [See 3,415.]
Maxwell, Crowley v. [See 3,448, 3,449.]
Maxwell, Dutilh v. [See 4,207, 4,208.]
Maxwell, Fielder v. [See 4,760.]
Maxwell, Goddard v. [See 5,492.]
Maxwell, Grant v. [See 5,699.]
Maxwell, Griswold v. [See 5,838.]
Maxwell, Harriman v. [See 6,105.]
Maxwell, Hertz v. [See 6,432.]
Maxwell, Howland v. [See 6,799.]
Maxwell v. The Lady Franklin. [See 7,982-7,984.]
Maxwell, Lennig v. [See 8,243.]
Maxwell v. Levy. [See 9,321.]
Maxwell, Loewenstein v. [See 8,462.]
Maxwell, Manhattan Gaslight Co. v. [See 9,023.]
Maxwell, Massett v. [See 9,261.]
Maxwell, Morris v. [See 9,834.]
Maxwell, Munsell v. [See 9,932.]
Maxwell, Ogden v. [See 10,458.]
Maxwell, Pierson v. [See 11,159.]
Maxwell, Ponsot v. [See 11,267.]
MAXWELL v. POWELL, The [9.324], 1 Woods, 99.
Maxwell, Reynolds v. [See 11,731.]
Maxwell, Rheimer v. [See 11,738.]
Maxwell, Rich v. [See 11,759.]
Maxwell, Riley v. [See 11,838.]
Maxwell, Rockville & Washington Turnpike Road v. [See 11,985.]
Maxwell, Roller v. [See 12,025.]

[Federal Case numbers are given in brackets.]

Maxwell, Roosevelt v. [See 12,034.]
Maxwell, Sadler v. [See 12,207.]
Maxwell, Schmaire v. [See 12,460.]
Maxwell, Stalker v. [See 13,283.]
Maxwell, Steegman v. [See 13,344.]
Maxwell, Thomson v. [See 13,983.]
Maxwell, Tucker v. [See 14,224.]
Maxwell, United States v. [See 15,749, 15,750.]
Maxwell, Vaccari v. [See 16,810.]
Maxwell, Van Zandt v. [See 16,884.]
Maxwell, Warburg v. [See 17,142.]
Maxwell, Weld v. [See 17,374.]
MAXWELL v. WILLIAMS [9,324a], Hempst. 172.
Maxwell, Wilson v. [See 17,824.]
Maxwell, Winslow v. [See 17,882.]
MAY, In re [9,325], 7 Ben. 238; 9 N. B. R. 419.
MAY, In re [9,326], 2 Cin. Law Bul. 152.
MAY, In re [9,327], 17 N. B. R. 192.
MAY, In re [9,328], 19 N. B. R. 101.
MAY, The [9,329], 5 Biss. 449.
MAY, The [9,330], 6 Biss. 243; 7 Chi. Leg. News, 137.
May, Albee v. [See 134.]
MAY v. BAYNE [9,331], 3 Cranch, C. C. 335.
MAY v. CHAFFEE [9,332], 5 Fish. Pat. Cas. 160; 2 Dill. 385; 4 Chi. Leg. News, 9.
MAY v. HARPER [9,333], 18 Pittsb. Leg. J. 105; 2 Leg. Gaz. 381; 4 N. B. R. 478 (Quarto, 156); 4 Brewst. 253.
May, Johnson v. [See 7,397.]
MAY v. JOHNSON COUNTY [9,334].
MAY v. SHEEHY [9,335], 4 Cranch, C. C. 135.
MAY v. SLACK [9,336], 16 Int. Rev. Rec. 134.
May, United States v. [See 15,751, 15,752.]
May, Wood v. [See 17,956.]
Mayberry, Fales v. [See 4,622.]
Maybey, The R. L. [See 6,333-6,335.]
Maybey, The R. L. [See 11,870, 11,871.]
MAYBIN, In re [9,337], 15 N. B. R. 468.
Maybin, Bourne v. [See 1,700.]
MAYBIN v. RAYMOND [9,338], 15 N. B. R. 353; 4 Amer. Law T. Rep. (N. S.) 21.
MAYE v. CARBERY [9,339], 2 Cranch, C. C. 336.
Mayer, Ex parte. [See 14,245, 14,246.]
MAYER v. CAHALIN [9,340], 5 Sawy. 355; 7 Reporter, 327; 11 Chi. Leg. News, 176.
Mayer, Deposit Savings Ass'n v. [See 3,813.]
MAYER v. FOULKROD [9,341], 4 Wash. C. C. 349.
MAYER v. FOULKROD [9,342], 4 Wash. C. C. 503.
MAYER v. GIMBEL [9,343], 30 Leg. Int. 5.
MAYER v. HERMANN [9,344], 10 Blatchf. 256.
Mayer, Jenkins v. [See 7,272.]
Mayer, United States v. [See 15,753.]
Mayer, Warner v. [See 17,185.]
Mayers, Farrell v. [See 4,685.]
Mayfield, Clarke v. [See 2,858.]
MAY FLOWER, The [9,345], 1 Brown's Adm. 376; 5 Amer. Law T. Rep. U. S. Cts. 367.
MAY FLOWER, The [9,346], 3 Ware, 300.
May Flower, The. [See 6,147.]
MAYHEW v. DAVIS [9,347], 4 McLean, 213; 5 West. Law J. 304.
MAY HOWLAND, The [9,348].
MAYNADIER v. DUFF [9,349], 4 Cranch, C. C. 4.
MAYNADIER v. TENNEY [9,350], 2 Ban. & A. 615.
MAYNADIER v. WROE [9,351], 1 Cranch, C. C. 442.
MAYNARD, In re [9,352], 1 McA. Pat. Cas. 536.
Maynard, Arnold v. [See 561.]
Maynard, Benedict v. [See 1,294-1,296.]
Maynard, Lyell v. [See 8,619.]
Mayne, Milligan v. [See 9,606.]
MAYO, In re [9,353], 4 Hughes, 382.
MAYO, In re [9,353a], 4 Hughes, 384.
MAYO v. BLAIR [9,354], 1 Hayw. & H. 96.
Mayo, Clinton v. [See 2,899.]
Mayo, Ransom v. [See 11,571, 11,571a.]
MAYO v. SMITH [9,355], 5 Cranch, C. C. 569.
MAYO v. SNOW [9,356], 2 Curt. 102; 17 Law Rep. 494.
MAYO v. TAYLOR [9,357], 8 Chi. Leg. News, 10.
Mayo, United States v. [See 15,754, 15,755.]
Mayo, Vose v. [See 17,009.]
MAYOR & COMMONALTY v. COOKE [9,358], 1 Cranch, C. C. 160.
MAYOR & COMMONALTY v. MOORE [9,359], 1 Cranch, C. C. 193.
MAY QUEEN, The [9,360], 1 Spr. 588; 23 Law Rep. 658; 44 Hunt, Mer. Mag. 626.
May Queen, The, Merriman v. [See 9,481.]
MAYSHEW v. TERRY [9,361], 1 Spr. 584.
Mayurka, The. [See 1,175.]
Mazange, Eslava v. [See 4,527.]
MAZE v. MILLER [9,362], 1 Wash. C. C. 328.
M. B. STETSON, The [9,363], 1 Lowell, 119.
Meacb, The. [See 10,755, 10,756.]
MEAD, In re [9,364], 28 Leg. Int. 277; 8 Phila. 174.
MEAD, In re [9,365], 19 N. B. R. 81; 2 N. J. Law J. 26.
Mead, Cummings v. [See 3,476.]
MEAD v. NATIONAL BANK OF FAYETTEVILLE [9,366], 6 Blatchf. 180; 2 N. B. R. 173 (Quarto, 65); 7 Amer. Law Reg. (N. S.) 818; 1 Amer. Law T. Rep. Bankr. 108; 15 Pittsb. Leg. J. 137.
MEAD v. PURDY [9,367].
MEAD v. SCOTT [9,368], 1 Cranch, C. C. 401.
Mead, Yaw v. [See 18,129.]
MEADE, In re. [See 9,372.]
MEADE, In re [9,370], 19 N. B. R. 335.
Meade, Balfour's Lessee v. [See 808.]
MEADE v. BEALE [9,371], Taney, 339.
Meade, Coombe v. [See 3,188.]
MEADE v. DEPUTY MARSHAL [9,372], 1 Brock. 324; 5 Hall, Law J. 536; 2 Car. Law Repos. 329.
Meade, Ingraham v. [See 7,045.]
MEADE v. KEANE [9,373], 3 Cranch, C. C. 51.
MEADE v. ROBERTS [9,374], 1 Cranch, C. C. 72.
Meade, Rotchford v. [See 12,083.]
Meade, The Gen. Geo. G. [See 5,312.]
Meader, Norton v. [See 10,351.]
MEADOR, In re [9,375], 1 Abb. U. S. 317; 2 Amer. Law T. Rep. U. S. Cts. 140, 153; 10 Int. Rev. Rec. 74; 5 Amer. Law Rev. 166; 3 West. Jur. 209; 2 Leg. Gaz. 193.
MEADOR v. EVERETT [9,376], 3 Dill. 214; 10 N. B. R. 421; 1 Cent. Law J. 453.
Meadow, In re. [See 9,375.]
MEAGHER v. LIZZIE, The [9,377], 2 Woods, 243.
MEALY, In re [9,378], 2 N. B. R. 128 (Quarto, 51).
MEANY v. HEAD [9,379], 1 Mason, 319.
Mears, Merchants' Nat. Bank v. [See 9,450.]
Mears, Twichell v. [See 14,286.]
MEBANE, In re [9,380], 3 N. B. R. 347 (Quarto, 91).
MECHANICS' & FARMERS' BANK v. TOWNSEND [9,381], 5 Blatchf. 315; 3 Int. Rev. Rec. 143.
Mechanics' and Merchants' Ins. Co. of Pottsville, Brown v. [See 2,019.]
MECHANICS' BANK v. LYNN [9,382], 2 Cranch, C. C. 217.
Mechanics' Bank, Nutt v. [See 10,382.]
MECHANICS' BANK v. TAYLOR [9,383], 2 Cranch, C. C. 217.
Mechanics' Bank, United States v. [See 15,756.]
Mechanics' Bank, Williams v. [See 17,727.]
Mechanics' Bank of Alexandria, Gray v. [See 5,723.]
MECHANICS' BANK OF ALEXANDRIA v. LYNN [9,384], 2 Cranch, C. C. 246.
MECHANICS' BANK OF ALEXANDRIA v. MINOR [9,385].
MECHANICS' BANK OF ALEXANDRIA v. TAYLOR [9,386], 2 Cranch, C. C. 507.
Mechanics' Bank of Michigan, Bissell v. [See 1,446.]
Mechanics' Ins. Co., Rogers v. [See 12,016, 12,017.]
Mechanics' Nat. Bank, Armstrong v. [See 545.]
Mecklenburg Female College, Ex parte. [See 2,954.]
MECKLIN v. CALDWELL [9,387], 1 Cranch, C. C. 372.
MECKLIN v. CALDWELL [9,388], 1 Cranch, C. C. 400.
Medbury, Campbell v. [See 2,365.]
Mede, In re. [See 9,372.]
MEDFORD v. DORSEY [9,389], 2 Wash. C. C. 433.
MEDFORD v. DORSEY [9,390], 2 Wash. C. C. 467.
MEDORA, The [9,391], 1 Spr. 138.
Medora, The, Deshon v. [See 3,820.]
Medora, The, Leland v. [See 8,237.]
Mee, Marshall v. [See 9,129.]
Meeker, United States v. [See 15,757.]
MEEKER v. WILSON [9,392], 1 Gall. 419.
MEEKS v. VASSAULT [9,393], 3 Sawy. 206.
MEERSE v. ALLEN [9,393a].
MEGRAW v. CARROLL [9,393b], 5 Ban. & A. 324.
MEIER v. KANSAS PAC. RY. [9,394], 4 Dill. 378.
MEIER v. KANSAS PAC. RY. CO. [9,395], 5 Dill. 476; 6 Reporter, 642; 11 Chi. Leg. News, 41.

MEIGS v. SUN MUT. INS. CO. [9,396], 17 Hunt, Mer. Mag. 183.
MEISSNER v. DEVOE MFG. CO. [9,397], 9 Blatchf. 363; 2 O. G. 545; 5 Fish. Pat. Cas. 285.
MEISTER v. BISSELL [9,398], 22 Pittsb. Leg. J. 85; 32 Leg. Int. 5.
Meister v. Moore. [See 9,398.]
Meldrun, Wells v. [See 17,402.]
MELICK, In re [9,399], 4 N. B. R. 97 (Quarto, 26).
Meline, McLean v. [See 8,890.]
Meline, McQuain v. [See 8,923.]
MELISSA, The [9,400], 1 Brown's Adm. 476; 6 Chi. Leg. News, 271.
Melita, The, Hatton v. [See 6,218.]
Mellinger v. First Nat. Bank of Mt. Pleasant. [See 4,135.]
MELLOR, In re [9,401], 10 Ben. 58; 17 N. B. R. 402; 26 Pittsb. Leg. J. 8.
MELLOR, In re [9,402], 1 Pa. Law J. 135; 1 Pa. Law J. Rep. 26.
Mellor, Francis v. [See 5,039.]
Mellor, Loutrel v. [See 5,039.]
MELLUS v. HOWARD [9,403], 2 Curt. 264.
MELLUS v. SILSBEE [9,404], 4 Mason, 108; 1 Robb, Pat. Cas. 506.
MELLUS v. THOMPSON [9,405], 1 Cliff. 125.
Melnotte, The, McGrew v. [See 8,812.]
MELVIN, In re [9,406], 17 N. B. R. 543.
Melvin, Farmers' & Mechanics' Bank v. [See 4,656.]
MELVIN v. LACKLAND [9,407], 2 Cranch, C. C. 636.
MEMORANDUM [9,408], 1 Cranch, C. C. 114.
MEMORANDUM [9,409], 1 Cranch, C. C. 159.
MEMODANDUM [9,410], 1 Cranch, C. C. 253.
MEMORANDUM [9,411], 4 Cranch, C. C. 337.
MEMPHIS, The [9,412], Blatchf. Pr. Cas. 202.
MEMPHIS, The [9,413], Blatchf. Pr. Cas. 260.
MEMPHIS, The [9,414], Blatchf. Pr. Cas. 656.
Memphis, Apperson v. [See 497.]
Memphis, Brooks v. [See 1,954.]
MEMPHIS v. BROWN [9,415], 1 Flip. 188; 6 West. Jur. 495; 5 Amer. Law T. Rep. 424; 11 Amer. Law Reg. (N. S.) 629.
MEMPHIS v. DAVIS [9,416].
Memphis, Wisdom v. [See 17,903.]
Memphis, E. P. & P. R. Co., Forbes v. [See 4,926.]
Memphis & C. R. Co., Copeland v. [See 3,209.]
Memphis & P. R. Co., Calhoun v. [See 2,309.]
Menck, Sedgwick v. [See 12,617.]
MENCKEN v. WILLIAMS [9,417].
MENDELL, Ex parte [9,418], 1 Lowell, 506; 4 N. B. R. 302 (Quarto, 91).
MENDELL v. MARTIN WHITE, The [9,419], Hoff. Op. 450.
MENDELSOHN, In re [9,420], 3 Sawy. 342; 12 N. B. R. 533.
MENDELSOHN v. LOUISIANA, The [9,421], 3 Woods, 46.
Mendelsohn, Thompson v. [See 13,968.]
MENDENHALL, In re [9,424].
MENDENHALL, In re [9,423], 9 N. B. R. 285.
MENDENHALL, In re [9,424], 9 N. B. R. 380; 19 Int. Rev. Rec. 86; 6 Chi. Leg. News, 192.
MENDENHALL, In re [9,425], 9 N. B. R. 497.
MENDENHALL v. CARTER [9,426], 7 N. B. R. 320.
Mendon Sav. Bank, Ex parte. [See 9,555.]
Menedger, Hopkins v: [See 9,289.]
Menedger, Matthews v. [See 9,289.]
MENTOR, The [9,427], 4 Mason, 84.
MENTOR, The [9,428], 4 Mason, 102.
MENZELL v. CHICAGO & N. W. RY. CO. [9,429], 1 Dill. 531; 4 Amer. Law T. Rep. U. S. Cts. 58; 5 West. Jur. 61.
MENZIES v. AGNES, The [9,430], 39 Hunt, Mer. Mag. 331.
Mepham, Bissell v. [See 1,450.]
Mercantile Mut. Ins. Co., Folsom v. [See 4,902, 4,903.]
MERCANTILE INS. CO. v. ORPHAN BOY, The [9,431], 3 Cin. Law Bul. 593.
MERCANTILE TRUST CO. v. LAMOILLE VAL. R. CO. [9,432], 16 Blatchf. 324.
Merced Mining Co., Fremont v. [See 5,095.]
Mercein, Barry v. [See 1,062.]
Mercer, Bartlett v. [See 1,078.]
MERCER v. FLORIDA, The [9,433], 3 Hughes, 488.
Mercer, Smith v. [See 13,078.]
Mercer, United States v. [See 15,758].
Mercer, The Robert J. [See 11,891.]
MERCHANT, The [9,434], Abb. Adm. 1; 5 N. Y. Leg. Obs. 363.
MERCHANT, The [9,435], 4 Adm. Rec. 544.
MERCHANT, The [9,436], 4 Blatchf. 105.
MERCHANT v. LEWIS [9,437], 1 Bond, 172.
Merchant, Rutter v. [See 12,179.]
MERCHANTS' & MANUFACTURERS' BANK v. STAFFORD NAT. BANK [9,438], 44 Conn. 564.
MERCHANTS' & MANUFACTURERS' NAT. BANK v. WHEELER [9,439], 13 Blatchf. 218; 3 Cent. Law J. 13; 22 Int. Rev. Rec. 42.
Merchants', Etc., Bank, Sandy River Bank v. [See 12,309.]
Merchants' Bank of New Orleans v. United States. [See 3,097.]
MERCHANT SERVICE [18,249], 1 Curt. 509; 2 Liv. Law Mag. 427.
Merchant Service—Charge to Grand Jury in Relation to the Merchant Service. [See 18,249.]
Merchants' Fire Ins. Co., Huchberger v. [See 6,822.]
MERCHANTS' INS. CO., In re [9,441], 3 Biss. 162; 6 N. B. R. 43; 4 Chi. Leg. News, 73; 20 Pittsb. Leg. J. 32.
MERCHANTS' INS. CO., In re [9,442], 6 Biss. 252.
MERCHANTS' INS. CO. v. McCARTNEY [9,443], 1 Lowell, 447; 12 Int. Rev. Rec. 122.
Merchants' Ins. Co., Peele v. [See 10,905.]
MERCHANTS' INS. CO. v. SELLER [9,444], 1 Hunt, Mer. Mag. 521.
Merchants' Louisville Ins. Co., Waters v. [See 17,266.]
Merchants' Mut. Life Ins. Co. v. The Richmond. [See 12,795.]
Merchants' Nat. Bank v. Chicago. [See 14,374.]
Merchants' Nat. Bank v. Jefferson County. [See 15,472.]
MERCHANTS' NAT. BANK v. LITTLE ROCK [9,445], 5 Dill. 299.
MERCHANTS' NAT. BANK v. NATIONAL BANK OF COMMERCE [9,446], 7 Amer. Law Rev. 572.
Merchants' Nat. Bank v. Papin. [See 12,239.]
MERCHANTS' NAT. BANK v. VALLEY BANK [9,447].
Merchants' Nat. Bank, Wright v. [See 18,084, 18,085.]
MERCHANTS' NAT. BANK OF BOSTON v. STATE NAT. BANK OF BOSTON [9,448], 3 Cliff. 201.
MERCHANTS' NAT. BANK OF BOSTON v. STATE NAT. BANK OF BOSTON [9,449], 3 Cliff. 205.
MERCHANTS' NAT. BANK OF CHICAGO v. MEARS [9,450], 8 Biss. 158; 24 Int. Rev. Rec. 103; 5 Reporter, 426; 10 Chi. Leg. News, 180; 1 Thomp. Nat. Bank Cas. 353; 6 N. Y. Wkly. Dig. 46.
MERCHANTS' NAT. BANK OF HASTINGS v. TRUAX [9,451], 1 N. B. R. 545 (Quarto, 146); 1 Amer. Law T. Rep. Bankr. 73.
MERCHANTS' NAT. BANK OF LOWELL v. LELAND [9,452], 38 How. Pr. 31.
Merchants' Nat. Bank of St. Louis v. Shaw. [See 843.]
MERCHANTS' NAT. BANK OF TOLEDO v. CUMMING [9,453], 5 Reporter, 680; 17 Alb. Law J. 297, 345; 24 Int. Rev. Rec. 150; 3 Cin. Law Bul. 211.
MERCHANTS' TRANSP. CO. v. NEW YORK, The [9,454].
MERCIER v. LACHENMEYER [9,455], 8 Phila. 152; 3 Leg. Gaz. 316; 1 Leg. Gaz. Rep. 279; 4 Amer. Law T. Rep. U. S. Cts. 226; 28 Leg. Int. 325.
MERCURY, The [9,456], Blatchf. Pr. Cas. 328.
MERCY v. OHIO [9,457], 5 Chi. Leg. News, 351.
Meredith, Bank of North America v. [See 893.]
Meredith, Choate v. [See 2,692.]
Meredith, Lewis v. [See 8,328.]
Meredith, Speigle v. [See 13,227.]
Meriden Britannia Co., Strong Mfg. Co. v. [See 13,546.]
MERKLE, In re [9,458], 5 Ben. 8.
MERMAID, The [9,459], 1 Brown's Adm. 51.
Mermaid, The, British Consul v. [See 1,897.]
MERRIAM v. CLINCH [9,460], 6 Blatchf. 5.
MERRIAM v. DRAKE [9,461], 9 Blatchf. 336; 5 Fish. Pat. Cas. 259.
Merriam, Kittle v. [See 7,857.]
Merriam, United States v. [See 15,759.]

[Federal Case numbers are given in brackets.]

MERRIAM v. VAN NEST [9,462], 3 Ban. & A. 209; 13 O. G. 597.
MERRICK, In re [9,463], 7 N. B. R. 459.
MERRICK v. BERNARD [9,464], 1 Wash. C. C. 479.
Merrick County, Union Pac. R. Co. v. [See 14,383.]
MERRIFIELD, In re [9,465], 3 N. B. R. 98 (Quarto, 25).
Merril, Sohier v. [See 13,158.]
MERRILL, In re [9,466], 9 Ben. 165; 16 N. B. R. 35; 24 Pittsb. Leg. J. 205.
MERRILL, In re [9,467], 12 Blatchf. 221; 13 N. B. R. 91; 1 N. Y. Wkly. Dig. 364.
Merrill, Airey v. [See 115.]
MERRILL v. AREY [9,468], 3 Ware, 215.
MERRILL v. DAWSON [9,469], Hempst. 563.
Merrill, Jones v. [See 7,481.]
Merrill, Orr v. [See 10,591.]
Merrill, Petty v. [See 11,049-11,051.]
MERRILL v. PORTLAND [9,470], 4 Cliff. 138.
MERRILL v. RINKER [9,471], Baldw. 528.
Merrill, Suffolk Bank v. [See 13,591, 13,592.]
Merrill, Waterman v. [See 17,258.]
MERRILL v. YEOMANS [9,472], Holmes, 331; 1 Ban. & A. 47; 5 O. G. 268.
MERRIMAC, The [9,473], 1 Ben. 201.
MERRIMAC, The [9,474], 1 Ben. 490.
MERRIMAC, The [9,475], Blatchf. Pr. Cas. 563.
MERRIMAC, The [9,476], Blatchf. Pr. Cas. 584; 6 Leg. & Ins. Rep. 59.
MERRIMAC, The [9,477], Blatchf. Pr. Cas. 585.
MERRIMAC, The [9,478], 2 Sawy. 586; 6 Chi. Leg. News, 248.
Merrimac, The, Forbes v. [See 4,927.]
Merrimac Hat Co., Sanford v. [See 12,313.]
Merrimack Mfg. Co., United States & Foreign Salamander Felting Co. v. [See 16,789.]
MERRIMAN, In re [9,479], 18 N. B. R. 411; 44 Conn. 587; 26 Pittsb. Leg. J. 120.
MERRIMAN v. BOURNE [9,480].
MERRIMAN v. MAY QUEEN, The [9,481], Newb. 464.
MERRITT, In re [9,482], 5 Hall, Law J. 497.
MERRITT v. BREWER [9,483], 4 Amer. Law J. (N. S.) 334; 14 Law Rep. 452; 25 Hunt, Mer. Mag. 594.
Merritt, Forsaith v. [See 4,946.]
Merritt v. The J. B. Lunt. [See 7,247.]
MERRITT v. SACKETT [9,484], 2 Amer. Law J. (N. S.) 341; 12 Law Rep. 511.
Merritt Hunt, The, Luther v. [See 8,610.]
Merritt, The Mary. [See 9,222.]
MERRIWETHER v. SALINE COUNTY [9,485], 5 Dill. 265.
Merry, Buffum v. [See 2,112.]
Merry, The Lizzie. [See 8,423.]
MERRYFIELD v. JONES [9,486], 2 Curt. 306.
MERRYMAN, Ex parte [9,487], Taney, 246; 9 Amer. Law Reg. 524; 24 Law Rep. 78; 3 West. Law Month. 461.
Mers, Conover v. [See 3,122, 3,123.]
MERSEROLE v. UNION PAPER COLLAR CO. [9,488], 6 Blatchf. 356; 3 Fish. Pat. Cas. 483.
MERSEY, The [9,489], Blatchf. Pr. Cas. 187.
MERSEY, The [9,490], Blatchf. Pr. Cas. 658.
Merwin, The F. [See 4,893, 10,369.]
MESA v. UNITED STATES [9,491], Hoff. Land Cas. 66.
MESA v. UNITED STATES [9,492], 4 Sawy. 551.
MESNER v. SUFFOLK BANK [9,493], 1 Law Rep. 249.
Mesritz, Chuck v. [See 2,710.]
Messena v. The A. B. Neilson. [See 9,493a.]
MESSENA v. NEILSON, The [9,493a].
Messenger, The, Small v. [See 12,961.]
Messer, Sanford v. [See 12,314.]
MESSEREAU v. SOPHIA, The [9,493b].
Messersmith, McVeigh v. [See 8,931.]
Messinger, Carter v. [See 2,478.]
Messmore, Trader v. [See 14,132.]
METAL STAMPING CO. v. CRANDALL [9,493c], 18 O. G. 1531.
METCALF, In re [9,494], 2 Ben. 78; Bankr. Reg. Supp. 43; 1 N. B. R. 201; 6 Int. Rev. Rec. 223; 1 Amer. Law T. Rep. Bankr. 46.
METCALF v. DAVIES SCREW CO. [9,495], 3 Cin. Law Bul. 456.
METCALF v. OFFICER [9,496], 5 Dill. 565.
METCALF v. ROBINSON [9,497], 2 McLean, 363.
METEOR, The [9,498], 1 Amer. Law Rev. 401.
Meteor, The, United States v. [See 15,760.]
METIS, The [9,499], 4 Ben. 120.
METIS, The [9,500], 5 Ben. 203.
METROPOLIS, The [9,501].
METROPOLIS, The [9,502], 8 Ben. 19.
METROPOLIS, The [9,503], 9 Ben. 83.
METROPOLIS, The [962].
Metropolis, The, Banks v. [See 962.]
METROPOLITAN LIFE INS. CO. v. HARPER [9,505], 3 Hughes, 260; 5 Reporter, 490.
Metropolitan Nat. Bank, Evansville Nat. Bank v. [See 4,573.]
METROPOLITAN R. CO. v. SLACK [9,506], Holmes, 375.
Metropolitan R. Co., Rubber Step Mfg. Co. v. [See 12,101.]
Metropolitan Washing-Mach. Co. v. Earle. [See 17,219.]
METROPOLITAN WASHING-MACH. CO. v. PROVIDENCE TOOL CO. [9,507], Holmes, 161.
METROPOLITAN WRINGING-MACH. CO. v. YOUNG [9,508], 14 Blatchf. 46; 2 Ban. & A. 460.
METZ, In re [9,509], 6 Ben. 571.
METZGER, In re [9,510], 2 N. B. R. 355 (Quarto, 114); 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53.
METZGER, In re [9,511], 5 N. Y. Leg. Obs. 83.
METZLER, In re [9,512], 1 Ben. 356; 1 N. B. R. 38; Bankr. Reg. Supp. 9; 6 Int. Rev. Rec. 74; 9 Leg. & Ins. Rep. 292.
MEWSTER v. SPALDING [9,513], 6 McLean, 24.
MEXICO SOUTH. BANK v. REED [9,514], 25 Int. Rev. Rec. 161; 8 Reporter, 7; 4 Cin. Law Bul. 391; 7 Amer. Law Rec. 650; 26 Pittsb. Leg. J. 191.
MEYER, In re [9,515], 2 N. B. R. 422 (Quarto, 137); 1 Chi. Leg. News, 210.
MEYER v. BAILEY [9,516], 2 Ban. & A. 73; 8 O. G. 437.
Meyer, Bragg v. [See 1,801.]
Meyer, Graham v. [See 5,673.]
Meyer, McNally v. [See 8,909.]
Meyer v. The Newport. [See 10,185.]
MEYER v. PRITCHARD [9,517], 12 Blatchf. 101; 1 Ban. & A. 261; 7 O. G. 1012.
Meyer, United States v. [See 15,761.]
MEYERS, In re [9,518], 2 Ben. 424; 1 N. B. R. 581 (Quarto, 162).
Meyers, Adams v. [See 62.]
MEYERS v. VALLEY NAT. BANK [9,519], 18 N. B. R. 34; 2 Browne, Nat. Bank Cas. 156.
Meyers, United States v. [See 15,762.]
MEZES v. GREER [9,520], 1 McAll. 401.
M. F. Winch, The. [See 4,485.]
Miami County, Peck v. [See 10,891.]
MIANTINOMI, The [9,521], 3 Wall. Jr. 46; 3 Pittsb. Leg. J. 20; 3 Liv. Law Mag. 598.
MICHAEL GROH, The [9,522], 1 Brown's Adm. 419.
MICHAELSON v. DENISON [9,523], 3 Day, 294; Brunner, Col. Cas. 63.
Michels v. James. [See 15,464.]
MICHENER v. PAYSON [9,524], 13 N. B. R. 49; 5 Ins. Law J. 116; 1 N. Y. Wkly. Dig. 272; 2 Wkly. Notes Cas. 339; 8 Chi. Leg. News, 17; 32 Leg. Int. 362; 23 Pittsb. Leg. J. 38; 1 Law & Eq. Rep. 338; 2 N. Y. Wkly. Dig. 193; 7 Leg. Gaz. 332.
MICHENER v. PAYSON [9,524].
Michenor v. Payson. [See 9,524.]
Michigan Air Line R. Co., Osborn v. [See 10,594.]
MICHIGAN CENTRAL R. CO. v. ANDES INS. CO. [9,526], 9 Chi. Leg. News, 34; 22 Int. Rev. Rec. 369.
Michigan Cent. R. Co., Kuter v. [See 7,955.]
Michigan Cent. R. Co., Myrick v. [See 10,001.]
Michigan Cent. R. Co., Northern Indiana R. Co. v. [See 10,321.]
MICHIGAN CENT. R. CO. v. SLACK [9,527], Holmes, 231.
MICHIGAN CENT. R. CO. v. SLACK [9,527a], 22 Int. Rev. Rec. 337.
MICHIGAN INS. BANK v. ELDRED [9,528], 6 Biss. 370; 7 Chi. Leg. News, 411; 21 Int. Rev. Rec. 315.
Michigan L. S. R. Co., Kerp v. [See 7,727.]
Michigan Mut. Life Ins. Co., Prather v. [See 11,368.]

Michigan Southern & Northern Indiana R. Co., Wood v. [See 17,957.]
Michigan Southern R. Co. v. The Hendrik Hudson. [See 6,358.]
Michigan Stove Co., Detroit Stove Works v. [See 3,834.]
MICKEL, In re [9,529], 6 Fed. 706.
MICKEY v. STRATTON [9,530], 5 Sawy. 475; 11 Chi. Leg. News, 314.
Mickey v. Willis. [See 9,530.]
Mickle, United States v. [See 15,763.]
MICKUM v. EDDS [9,531], 2 Cranch, C. C. 568.
MIDAS, The [9,532], 6 Ben. 173.
Middleboro Shovel Co., In re. [See 14,168.]
MIDDLESEX, The [9,533], 21 Law Rep. 14; Brunner, Col. Cas. 605.
Middlesex Co., Whipple v. [See 17,519, 17,520.]
Middleton, Shields v. [See 12,786.]
MIDDLETON v. SINCLAIR [9,534], 5 Cranch, C. C. 409.
Middleton, Smith v. [See 13,079.]
Middleton, The Henry. [See 6,378.]
MIDDLETOWN TOOL CO. v. FITCH [9,535].
MIDDLETOWN TOOL CO. v. JUDD [9,536], 3 Fish. Pat. Cas. 141.
Midland, The. [See 12,067, 12,068.]
MIFFLIN, Ex parte [9,537], 1 Pa. Law J. 146.
Mifflin, Vasse v. [See 16,895.]
MIGEL, In re [9,538], 2 N. B. R. 481 (Quarto, 153).
MILAN DISTILLING CO. v. TILLSON [9,539], 26 Int. Rev. Rec. 5.
MILBOURNE v. DANIEL AUGUSTA, The [9,540], 3 Hughes, 464.
MILBURN v. BURTON [9,541], 2 Cranch, C. C. 639.
Milburn, Cannell v. [See 2,384.]
Milburn, Thecker v. [See 13,876.]
Milburn, United States v. [See 15,764-15,768.]
MILBURNE v. BYRNE [9,542], 1 Cranch, C. C. 239.
MILBURNE v. KEARNES [9,543], 1 Cranch, C. C. 77.
Miles, Blagge v. [See 1,479.]
MILES v. JAMES [9,543a], Hempst. 98.
MILES v. RECEIVERS [9,544], 4 Hughes, 172.
MILES v. ROSE [7,544a], Hempst. 37.
Miles, Snow v. [See 13,146.]
Miles, Willink v. [See 17,768.]
MILETUS, The [9,545], 5 Blatchf. 335.
Miletus, The, Westray v. [See 17,461.]
Milford, Varnum v. [See 16,890, 16,891.]
MILLAR v. MILLAR [9,546], 2 Curt. 256.
Millard, Babcock v. [See 699.]
MILLARD v. CRAIG [9,547], 8 Leg. Int. 22.
MILLARD v. CRAIG [9,548].
Millard, United States v. [See 15,769.]
MILLEDOLLAR v. BELL [9,549], 2 Wall. Jr. 334.
MILLER, Ex parte [9,550], 1 N. Y. Leg. Obs. 38.
Miller, In re. [See 740.]
MILLER, In re [9,551], 6 Biss. 30.
MILLER, In re [9,552], 3 Cin. Law Bul. 967.
MILLER, In re [9,553], 1 N. B. R. 410 (Quarto, 105); 1 Amer. Law T. Rep. Bankr. 121.
MILLER, In re [9,401], 17 N. B. R. 402; 26 Pittsb. Leg. J. 8.
MILLER, In re [9,555], 19 N. B. R. 78; 19 Alb. Law J. 40; 26 Pittsb. Leg. J. 175.
MILLER, In re [9,556], 1 N. Y. Leg. Obs. 180.
MILLER'S APPLICATION [9,557].
MILLER'S CASE [9,558], 1 Brown's Adm. 156.
Miller, Adams v. [See 63.]
Miller v. The Alice Getty. [See 193.]
MILLER v. ANDROSCOGGIN PULP CO. [9,559], Holmes, 142; 1 O. G. 409; 5 Fish. Pat. Cas. 340.
Miller, Austen v. [See 661.]
MILLER v. BALTIMORE & O. R. CO. [9,560], 1 Cin. Law Bul. 276.
MILLER v. BALTIMORE & O. R. CO. [9,561], 3 Cin. Law Bul. 151.
Miller, Banks v. [See 963.]
Miller, Barger v. [See 979.]
Miller, Battles v. [See 1,110.]
MILLER v. BERLIN [9,562], 13 Blatchf. 245.
Miller, Bouysson v. [See 1,709, 1,710.]
MILLER v. BRIDGEPORT BRASS CO. [9,563], 14 Blatchf. 282; 12 O. G. 667; 3 Ban. & A. 20.
Miller, Brydie v. [See 2,071.]
MILLER v. BROOKLYN LIFE INS. CO. [9,564], 2 Bigelow, Ins. Rep. 35.
MILLER v. BUTLER [9,565], 1 Cranch, C. C. 470.
Miller, Buttner v. [See 2,254.]
MILLER v. DELAWARE, L. & W. R. CO. [9,566], 2 N. J. Law J. 50.
Miller, Dunbar v. [See 4,130.]
MILLER v. EASTERN RAILROAD, The [9,567], 7 Phila. 597; 27 Leg. Int. 188.
MILLER v. ELLIOT [9,568], 5 Cranch, C. C. 543.
MILLER v. EVANS [9,569], 2 Cranch, C. C. 72.
MILLER v. FALLS CO. [9,570].
Miller, Forman v. [See 4,940.]
Miller, Gadsby v. [See 5,167.]
MILLER v. GAGES [9,571], 4 McLean, 436.
MILLER v. HALSTED [9,572].
Miller, Halsted v. [See 5,969.]
Miller, Hollenback v. [See 6,609.]
MILLER v. HOOE [9,573], 2 Cranch, C. C. 622.
MILLER v. HUBBARD [9,574], 4 Cranch, C. C. 451.
Miller, Indiana v. [See 7,022.]
MILLER v. JONES [9,575].
Miller, Jones v. [See 7,482.]
MILLER v. JONES [9,576], 15 N. B. R. 150.
MILLER v. KELLY [9,577], 1 Abb. Adm. 564.
MILLER v. KEYS [9,578], 3 N. B. R. 224 (Quarto, 54).
MILLER v. LERCH [9,579], 1 Wall. Jr. 210.
MILLER v. LINDSEY [9,580], 1 McLean, 32.
MILLER v. LONG ISLAND R. CO. [9,580a], 10 Reporter, 197; 5 Cin. Law Bul. 634.
Miller, Lyall v. [See 8,613.]
Miller, Lyell v. [See 8,620.]
Miller, McClean v. [See 8,692.]
MILLER v. McELROY [9,581], 2 Pa. Law J. 305; 1 Amer. Law Reg. 198; 1 Pa. Law. J. Rep. 326.
MILLER v. McINTIRE [9,582], 1 McLean, 85.
MILLER v. McQUERRY [9,583], 5 McLean, 469; 10 West. Law J. 528.
Miller, Massoletti v. [See 9,264.]
Miller, Maze v. [See 9,362.]
MILLER v. MOORE [9,584], 1 Cranch, C. C. 471.
MILLER v. NEW YORK [9,585], 13 Blatchf. 469.
MILLER v. O'BRIEN [9,586], 9 Blatchf. 270; 9 N. B. R. 26; 21 Pittsb. Leg. J. 82.
Miller v. Proceeds of the Kate Hinchman. [See 7,620, 7,621.]
Miller v. Querry. [See 9,583.]
Miller, Read v. [See 11,610.]
Miller, Reardon v. [See 11,616.]
MILLER v. REBECCA, The [9,587], Bee, 151.
MILLER v. RESOLUTION, The [9,588], Bee, 404; 3 Hopk. W. 70.
Miller, Richardson v. [See 11,791.]
Miller, Robertson v. [See 11,926.]
Miller v. The St. Joseph. [See 12,229, 12,230.]
Miller, Sangster v. [See 12,320.]
Miller, Schrenkeisen v. [See 12,480.]
Miller v. Scott. [See 5,620.]
MILLER v. SMITH [9,589], 4 Ban. & A. 314; 16 O. G. 313.
MILLER v. SMITH [9,590], 1 Mason, 437.
Miller, Smith v. [See 13,080.]
MILLER v. STEWART [9,591], 4 Wash. C. C. 26.
MILLER v. SULLIVAN [9,592], 4 Dill. 340; 5 Reporter, 328; 5 Cent. Law J. 460; 26 Pittsb. Leg. J. 16.
Miller, Thames v. [See 13,860.]
MILLER v. TOWBOAT [9,593].
Miller, United States v. [See 15,770-15,775.]
Miller, Van Kleeck v. [See 16,860.]
Miller, Van Marter v. [See 16,863.]
Miller, Waterbury Brass Co. v. [See 17,254.]
Miller, Weed v. [See 17,346.]
Miller, Wellford v. [See 17,380, 17,381.]
MILLER v. WASHINGTON [9,593a], 2 Hayw. & H. 241.
MILLER v. W. G. HEWES, The [9,594], 1 Woods, 363.
MILLER v. WHEATON [9,595], 2 Cranch, C. C. 41.
MILLER v. YOUNG [9,596], 2 Cranch, C. C. 53.
Miller, Young v. [See 18,165.]
MILLER & PETERS MFG. CO. v. DU BRUL [9,597], 2 Ban. & A. 618; 12 O. G. 351; 5 Cent. Law J. 467.
Miller County, United States v. [See 15,776.]
Miller, The Minnie. [See 9,638.]
MILLER'S FALLS CO. v. BACKUS [9,598], 17 O. G. 852; 5 Ban. & A. 53.

MILLER'S FALLS CO. v. IVES [9,599], 14 Blatchf. 169; 2 Ban. & A. 574; 14 O. G. 203.
MILLETT v. SNOWDEN [9,600], 1 West. Law J. 240.
MILLICK v. PETERSON [9,601], 2 Wash. C. C. 31.
MILLIGAN v. B. F. BRUCE, The [9,602], 1 Newb. 539.
Milligan, Bloomer v. [See 18,242.]
Milligan, Crawford v. [See 3,370.]
MILLIGAN v. DICKSON [9,603], Pet. C. C. 433.
MILLIGAN v. DICKSON [9,604], 2 Wash. C. C. 258; Pet. C. C. 433, note.
MILLIGAN v. HOVEY [9,605], 14 Int. Rev. Rec. 20; 3 Chi. Leg. News, 321; 4 Amer. Law T. Rep. U. S. Cts. 136; 3 Biss. 13.
MILLIGAN v. MAYNE [9,606], 2 Cranch, C. C. 210.
Milligan, Thompson v. [See 13,969.]
MILLIGAN & HIGGINS GLUE CO. v. UPTON [9,607], 4 Cliff. 237; 6 O. G. 837; 1 Ban. & A. 497; Merw. Pat. Inv. 267.
MILLIKEN, In re [9,608], 2 Amer. Law Rev. 359.
Milliken, Goodenow v. [See 5,535.]
Millingar, Bloomer v. [See 18,242.]
MILLINOCKET, The [9,609], 4 Adm. Rec. 83.
MILLNER v. SCHOFIELD [9,609a], 4 Hughes, 258.
Mill River Woolen Mfg. Co., Harwood v. [See 6,187.]
MILLS, In re [9,610], 7 Ben. 452; 11 N. B. R. 117.
MILLS, In re [9,611], 11 N. B. R. 74.
MILLS, In re [9,612], 17 N. B. R. 472.
MILLS v. BAY STATE, The [1,148].
MILLS v. CHAPMAN [9,612b].
Mills, Ish v. [See 7,104.]
Mills, Main v. [See 8,974.]
Mills v. The Mary E. Perew. [See 9,207.]
MILLS v. NATHANIEL HOLMES, The [9,613], 1 Bond, 352.
MILLS v. RUSSELL [17,247], 18 Int. Rev. Rec. 203.
MILLS v. SMITH [9,615], 4 Biss. 442.
Mills, Stobaugh v. [See 13,461.]
Mills, United States v. [See 15,777.]
MILLS v. WILSON [9,616], 2 Cranch, C. C. 216.
Mills, The Aroma. [See 2,041.]
Mills, Belknap, Crompton v. [See 18,285.]
Mills County, Brooks v. [See 1,955.]
Mills, The Lillie. [See 8,352.]
Millward, Hodgson v. [See 6,568.]
Millward, Sedgwick v. [See 12,618.]
Miln, Smith v. [See 13,081.]
MILNE v. HUBER [9,617], 3 McLean, 212.
MILNE v. JOHN COOK, The [9,617a].
Milne, Manchester v. [See 9,006, 9,007.]
MILNE v. NEW YORK [9,618], 2 Paine, 429.
Milner, In re. [See 740.]
Milner, Bailey v. [See 740.]
MILNER v. PENSACOLA [9,619], 2 Woods, 632; 2 Amer. Law T. Rep. (N. S.) 186.
Milnor v. Newark Plank Road Co. [See 9,620.]
MILNOR v. NEW JERSEY R. CO. [9,620], 6 Amer. Law Reg. 6; 3 Wall. (70 U. S.) Append. 782; 16 Lawy. Ed. U. S. Sup. Ct. Rep. Append. 1.
MILTENBERGER v. PHILLIPS [9,621], 2 Woods, 115.
MILTON v. WILGUS [9,622].
MILWAIN, In re [9,623], 12 N. B. R. 358; 1 N. Y. Wkly. Dig. 76.
MILWARD v. McSAUL [9,624].
MILWAUKEE, The [9,625], 2 Biss. 509; 4 Amer. Law T. Rep. U. S. Cts. 147.
MILWAUKEE, The [9,626], 1 Brown's Adm. 313.
Milwaukee, Hunneman v. [See 6,878.]
Milwaukee & St. P. R. Co., Barnes v. [See 1,016.]
Milwaukee & St. P. R. Co., Bright v. [See 1,877.]
Milwaukee & St. P. R. Co., Drew v. [See 4,079.]
Milwaukee & St. P. R. Co., Howard v. [See 6,761.]
Milwaukee & St. P. R. Co., Kellogg v. [See 7,664.]
Milwaukee & St. P. R. Co., Minnett v. [See 9,636.]
Milwaukee & St. P. R. Co., United States v. [See 15,778, 15,779.]
Milwaukee & S. R. Co., Smith v. [See 13,082.]
MILWAUKEE BELLE, The [9,627], 2 Biss. 197; 9 Amer. Law Reg. (N. S.) 311; 3 Amer. Law T. Rep. U. S. Cts. 65; 2 Chi. Leg. News, 50; 17 Pittsb. Leg. J. 148.
Milwaukee R. Co., Secombe v. [See 12,601.]
MIMI, The [9,627a].
Mina, The, Townsend v. [See 14,121.]
MINCHIN v. DOCKER [9,628], 1 Cranch, C. C. 370.
MINER v. HARBECK [9,629], Abb. Adm. 546.
MINER v. McLEAN [9,630], 4 McLean, 138; 3 West. Law J. 4.
Miner, United States v. [See 15,780.]
MINGE v. GILMOUR [9,631], Brunner, Col. Cas. 383; 1 Car. Law Repos. 34.
Mingo, United States v. [See 15,781.]
Mingus, Victor Sewing-Mach. Co. v. [See 16,936.]
MINI v. ADAMS [2,673], 3 Wall. Jr. 20; 12 Leg. Int. 4.
MINIFIE v. DUCKWORTH [9,633], 2 Cranch, C. C. 39.
Minifie, Neale v. [See 10,070.]
Minifie, United States v. [See 15,782.]
MINNA, The [9,634], Blatchf. Pr. Cas. 333.
MINNESOTA LINSEED OIL CO. v. COLLIER WHITE-LEAD CO. [9,635], 4 Dill. 431; Syllabi, 74; 15 Alb. Law J. 39; 24 Pittsb. Leg. J. 96.
MINNETT v. MILWAUKEE & ST. P. RY. CO. [9,636], 3 Dill. 460; 3 Cent. Law J. 281; 13 Alb. Law J. 254; 8 Chi. Leg. News, 169; 22 Int. Rev. Rec. 67.
MINNIE, The [9,637].
Minnie, The, Marsh v. [See 9,117.]
MINNIE MILLER, The [9,638], 6 Ben. 117.
MINNIE R. CHILDS, The [9,639], 9 Ben. 200.
MINNIE R. CHILDS, The [9,640], 10 Ben. 553.
Minnie R. Childs, The, Hudson Coal Co. v. [See 6,836.]
MINON v. VAN NOSTRAND [9,641], Holmes, 251.
MINON v. VAN NOSTRAND [9,642], 1 Lowell, 458; 4 N. B. R. 108 (Quarto, 28).
MINOR, Ex parte [9,643], 2 Cranch, C. C. 404.
Minor, Gonzales v. [See 5,530.]
Minor, Mechanics' Bank of Alexandria v. [See 9,385.]
Minor, Reed v. [See 11,647.]
Minor, Slade v. [See 12,937.]
MINORS v. MARY, The [9,644], Bee, 119.
MINOT v. PHILADELPHIA, W. & B. R. CO. [9,645], 2 Abb. U. S. 323; 7 Phila. 555; 3 Amer. Law T. Rep. U. S. Cts. 193; 27 Leg. Int. 396; 5 Amer. Law Rev. 370; 2 Leg. Gaz. 385.
Minot, Wagener v. [See 17,033.]
Minot, Weston v. [See 17,453.]
Minturn, Brown v. [See 2,021.]
MINTURN v. LARUE [9,646], 1 McAll. 370.
MINTURN v. SMITH [9,647], 3 Sawy. 142; 1 Amer. Law T. Rep. 507.
Minturn, United States v. [See 15,783.]
Miranda, The, Foster v. [See 4,977.]
MIRICK v. HEMPHILL [9,647a], Hempst. 179.
MISPAH, The [9,648], 5 Reporter, 519.
MISSISQUOI, The [9,649], 8 Ben. 6.
MISSISSIPPI, The [9,650].
MISSISSIPPI, The [9,651].
Mississippi & M. R. Co., Muscatine v. [See 9,971.]
Mississippi & M. R. Co., Ward v. [See 17,156.]
Mississippi & Rum River Boom Co., Patterson v. [See 10,829.]
Mississippi, Etc., Boom Co., United States v. [See 15,784.]
Mississippi Cent. R. Co., Illinois Cent. R. Co. v. [See 7,008.]
Mississippi Val. & W. R. Co., Walker v. [See 17,079.]
MISSOURI, The [9,652], 3 Ben. 508; 10 Int. Rev. Rec. 179; 11 Int. Rev. Rec. 5; 2 Chi. Leg. News, 97.
MISSOURI, The [9,653], 4 Ben. 410; 12 Int. Rev. Rec. 209.
MISSOURI, The [9,654], 1 Spr. 260; 18 Law Rep. 38.
Misssouri, The, United States v. [See 15,785.]
Missouri, K. & T. R. Co., United States v. [See 15,786.]
Missouri, K. & T. R. Co., Williams v. [See 17,728.]
Missouri River, Ft. S. & G. R. Co., Armsworthy v. [See 550.]
Missouri River, Ft. S. & G. R. Co., Stroud v. [See 13,547.]
Missouri Val. Life Ins. Co., Clippinger v. [See 2,901.]
Missouri Val. Life Ins. Co., Smith v. [See 13,083.]
MISTON v. LORD [9,655], 1 Blatchf. 354.
Mitchel, Castor v. [See 2,507.]
Mitchel, Van Meter v. [See 16,864, 16,865.]

Mitchel, Veil v. [See 16,908.]
MITCHELL, In re [9,656], 3 N. B. R. 441 (Quarto, 111).
MITCHELL, In re [9,657], 8 N. B. R. 47; 5 Chi. Leg. News, 271.
MITCHELL, In re [9,658], 16 N. B. R. 535; 17 Alb. Law J. 26.
MITCHELL v. BARCLAY [9,659].
MITCHELL v. BUTLER [9,670], 25 Int. Rev. Rec. 185; 8 Reporter, 232; 4 Cin. Law Bul. 172.
Mitchell, Daniel v. [See 3,562, 3,563.]
MITCHELL v. DEGRAND [9,661], 1 Mason, 176.
Mitchell, Dennett v. [See 3,789.]
MITCHELL v. GREAT WORKS MILLING & MFG. CO. [9,662], 2 Story, 648.
Mitchell, Harmony v. [See 6,082.]
Mitchell, Hawley v. [See 6,250.]
MITCHELL v. KELSEY [9,663].
MITCHELL v. KELSEY [9,664].
Mitchell, Kikindal v. [See 7,763.]
Mitchell, Kirkendall v. [See 7,841.]
MITCHELL v. LIPPINCOTT [9,665], 2 Woods, 467; 1 Cent. Law J. 265.
MITCHELL v. McKIBBIN [9,666], 8 N. B. R. 548; 29 Leg. Int. 412; 21 Pittsb. Leg. J. 77.
Mitchell, Moore v. [See 9,770.]
Mitchell, Noell v. [See 10,287.]
MITCHELL v. OROZIMBO, The [9,667], 1 Pet. Adm. 250.
MITCHELL v. PRATT [9,668], Taney, 448.
Mitchell, Shaw v. [See 12,722.]
Mitchell, Sickels v. [See 12,835.]
Mitchell, Silverethain's Assignee v. [See 12,859.]
MITCHELL v. THOMPSON [9,669], 1 McLean, 96.
Mitchell, Tilghman v. [See 14,041-14,043.]
Mitchell, United States v. [See 15,787-15,792.]
Mitchell, Van Metre v. [See 16,864, 16,865.]
MITCHELL v. WALKER [9,670], 25 Int. Rev. Rec. 64, 185; 7 Reporter, 425; 26 Leg. Int. 74, 158; 2 Browne, Nat. Bank Cas. 180; 8 Reporter, 232; 4 Cin. Law Bul. 172; 19 Alb. Law J. 182; 26 Pittsb. Leg. J. 95.
MITCHELL v. WILSON [9,671], 3 Cranch, C. C. 92.
MITCHELL v. WILSON [9,672], 3 Cranch, C. C. 242.
MITCHELL v. WINSLOW [9,673], 2 Story, 630; 6 Law Rep. 347.
MITTELDORFER, In re [9,674], Chase, 276; 3 N. B. R. 39 (Quarto, 9).
MITTELDORFER, In re [9,675], Chase, 288; 3 N. B. R. 1 (Quarto, 1).
MITTLEBURGER v. STANTON [9,676], 3 West. Law Month. 246.
Mix, Baker v. [See 774, 775.]
Mix, Lamson v. [See 8,034.]
MIX v. PERKINS [9,677].
Mixter, Gorham v. [See 5,626.]
MIZNER v. VAUGHN [9,678], 2 Sawy. 269; 17 Int. Rev. Rec. 10.
M. K. RAWLEY, The [9,679], 2 Lowell, 447; 22 Int. Rev. Rec. 49; 3 Cent. Law J. 56.
M. M. CALEB, The [9,680], 4 Ben. 15.
M. M. CALEB, The [9,681], 5 Ben. 163.
M. M. CALEB, The [9,682], 9 Ben. 159.
M. M. CALEB, The [9,683], 10 Blatchf. 467.
M. M. CHASE, The [9,684], 2 Hask. 270.
M. M. HAMILTON, The [9,685], 1 Hask. 489.
MOAN v. WILMARTH [9,686], 3 Woodb. & M. 399.
Moberly, Jarrott v. [See 7,223.]
Mobile, Kimball v. [See 7,774.]
Mobile, Sibley v. [See 12,829.]
Mobile & O. R. Co., Duncan v. [See 4,137-4,139.]
Mobile & O. R. Co., Ketchum v. [See 7,737.]
Mobile Life Ins. Co., Berry v. [See 1,358.]
Mobile Sav. Bank, Williams v. [See 17,729.]
Mockbee, Goddard v. [See 5,493.]
MOCKBEE v. UPPERMAN [9,687], 5 Cranch, C. C. 535.
Moe, Anderson v. [See 359.]
Moffat, The, De Graff v. [See 3,748.]
MOFFAT v. SOLEY [9,688], 2 Paine, 103.
Moffat, The Frank. [See 5,060.]
MOFFIT v. VARDEN [9,689], 5 Cranch, C. C. 658.
MOFFITT v. GAAR [9,690], 1 Bond, 315; 1 Fish. Pat. Cas. 610; 7 Pittsb. Leg. J. 346.
MOFFITT v. ROGERS [9,691], 4 Ban. & A. 225.
MOHAWK, The [9,692].
MOHAWK, The [9,693], 7 Ben. 139.
Mohler, The Mollie. [See 9,701.]
MOHR v. COTZHAUSEN [9,694], 15 Alb. Law J. 392.
MOHR v. MANIERRE [9,695], 7 Biss. 419; 9 Chi. Leg. News, 270.
Moies, Lonsdale Co. v. [See 8,496, 8,497.]
MOIR v. DUBUQUE, The [9,696], 3 Chi. Leg. News, 145; 4 Amer. Law T. Rep. U. S. Cts. 84.
Moir v. The Du Saque. [See 9,696.]
MOITEZ v. SOUTH CAROLINA, The [9,697], Bee, 422.
MOKE v. BARNEY [9,698], 5 Blatchf. 274; 2 Int. Rev. Rec. 157.
MOLLER, In re [9,699], 8 Ben. 526.
MOLLER, In re [9,700], 14 Blatchf. 207.
Moller, Hicks v. [See 6,461.]
Moller, United States v. [See 15,793, 15,794.]
Mollie, The, United States v. [See 15,795.]
MOLLIE MOHLER, The [9,701], 2 Biss. 505; 4 Amer. Law T. Rep. U. S. Cts. 145.
MOLSON v. HAWLEY [9,702], 1 Blatchf. 409.
MOLYNEAUX v. MARSH [9,703], 1 Woods, 452.
MONADNOCK, The [9,704], 5 Ben. 357; 5 Amer. Law T. Rep. 89; 15 Int. Rev. Rec. 33.
MONCE v. ADAMS [9,705], 12 Blatchf. 1; 1 Ban. & A. 126; 7 O. G. 177.
MONCE v. WOODWORTH [9,706], 4 Ban. & A. 307; 19 O. G. 998.
MONCURE v. DERMOTT [9,707], 5 Cranch, C. C. 445.
Moncure v. Dubuclet. [See 8,538.]
Monell, Johnson v. [See 7,399.]
Monire v. The Thomas Morgan. [See 6,694.]
MONITOR, The [9,708], 9 Ben. 78.
MONITOR, The [9,709], 10 Ben. 188.
MONITOR, The [9,710], 4 Biss. 503.
MONITOR, The, and HILL, The [9,711], 3 Biss. 24; 3 Chi. Leg. News, 353; 14 Int. Rev. Rec. 70.
MONONGAHELA, The [9,712], 5 Biss. 131.
Monongahela Bridge Co., United States v. [See 15,796.]
MONROE v. BRADLEY [9,713], 1 Cranch, C. C. 158.
MONROE v. DOVER STAMPING CO. [9,714], Holmes, 413; 1 Ban. & A. 401; 6 O. G. 685.
MONROE v. HARKNESS [9,715], 1 Cranch, C. C. 157.
Monson Sav. Bank, Ex parte. [See 9,555.]
Monson & B. Mfg. Co., Ely v. [See 4,431.]
Monson & B. Mfg. Co., Powell v. [See 11,356, 11,357.]
MONSOON, The [9,716], 1 Spr. 37, 5 Law Rep. 416.
Montague, Jobbins v. [See 7,329, 7,330.]
Montague, The G. H. [See 5,377.]
MONTAUK, The [9,717], 10 Ben. 455.
MONTE CHRISTO, The [9,718].
MONTE CHRISTO, The [9,719], 6 Ben. 148.
MONTE CHRISTO, The [9,720], 6 Ben. 327; 17 Int. Rev. Rec. 31.
Monte Christo, The, United States v. [See 9,720.]
MONTEITH v. KIRKPATRICK [9,721], 3 Blatchf. 279.
MONTEJO v. OWEN [9,722], 14 Blatchf. 324.
MONTELL v. UNITED STATES [9,723], Taney, 24.
Montell, United States v. [See 15,798.]
MONTELL v. WILLIAM H. RUTAN, The [9,724], 1 Int. Rev. Rec. 125.
MONTFORD v. HUNT [9,725], 3 Wash. C. C. 28.
MONTGOMERY, In re [9,726], 3 Ben. 364; 3 N. B. R. 137 (Quarto, 35).
MONTGOMERY, In re [9,727], 3 Ben. 567; 3 N. B. R. 429 (Quarto, 109).
MONTGOMERY, In re [9,728], 3 Ben. 565; 3 N. B. R. 374 (Quarto, 97).
MONTGOMERY, In re [9,729], 3 Ben. 566; 3 N. B. R. 423 (Quarto, 108).
MONTGOMERY, In re [9,730], 3 Ben. 567; 3 N. B. R. 426 (Quarto, 108).
MONTGOMERY, In re [9,731], 3 N. B. R. 430 (Quarto, 109).
MONTGOMERY, In re [9,732], 12 N. B. R. 321; 2 Cent. Law J. 440.
MONTGOMERY, The [17,120].
MONTGOMERY, The, v. BETSEY, The [9,734], 1 Gall. 416.
MONTGOMERY v. BEVANS [9,735], 1 Sawy. 653; 4 Amer. Law T. Rep. U. S. Cts. 202.
Montgomery, Boudereau v. [See 1,694.]
Montgomery, Chisholm v. [See 2,686.]
Montgomery, Fay v. [See 4,709.]
Montgomery, Gresham v. [See 5,805.]

[Federal Case numbers are given in brackets.]

Montgomery, Rice v. [See 11,753.]
MONTGOMERY v. T. P. LEATHERS, The [9,736], 1 Newb. 421.
Montgomery v. Tyson. [See 484.]
Montgomery, United States v. [See 15,799, 15,800.]
Montgomery, The, Walter v. [See 17,120.]
MONTGOMERY v. WHARTON [9,737], 2 Pet. Adm. 397; Bee, 388.
Montgomery & E. R. Co., Otis v. [See 10,612.]
Montgomery & E. R. Co., Strang v. [See 13,523.]
Montgomery & E. R. Co., Young v. [See 18,166.]
Montgomery County, Thayer v. [See 13,870.]
MONTICELLO, The [3,971].
MONTICELLO, The [9,739], 1 Lowell, 184.
Monticello, The, Dolner v. [See 3,971.]
Montreal Ocean Steamship Co., Crerar v. [See 3,387.]
MONTSERAT, The [9,740], 6 Adm. Rec. 83.
Monyuka, The. [See 1,175.]
MOODIE v. AMITY, The [9,741], Bee, 89.
MOODIE v. BETTY CARTHCART, The [9,742], Bee, 292; 3 Dall. 288, note.
MOODIE v. BROTHERS, The [9,743], Bee, 76.
MOODIE v. HARRIET, The [9,744], Bee, 128.
MOODY v. FISKE [9,745], 2 Mason, 112; 1 Robb, Pat. Cas. 312.
MOODY v. FULLER [9,746], 5 Cranch, C. C. 303.
MOODY v. TABER [9,747], Holmes, 325, 1 Ban. & A. 41; 5 O. G. 273.
Moon, Nelson v. [See 10,111.]
Moon, Piper v. [See 11,182.]
Moonachie, The. [See 4,091.]
MOONEY, In re [9,748], 14 Blatchf. 204; 15 N. B. R. 456.
Moore, Ex parte. [See 8,981.]
MOORE, In re [9,749], 2 Ben. 325.
MOORE, In re [9,750], 5 Biss. 79.
Moore, In re. [See 10,041.]
MOORE, In re [9,751], 1 Hask. 134.
MOORE, In re [9,752], 7 Reporter, 199; 26 Pittsb. Leg. J. 81; 36 Leg. Int. 38.
Moore, Alexandria v. [See 185.]
Moore, Bank of Columbia v. [See 875, 876.]
Moore, Bank of Metropolis v. [See 901.]
Moore, Bank of United States v. [See 930.]
Moore, Bebee v. [See 1,202.]
MOORE v. BROWN [9,753], 4 McLean, 211.
MOORE v. CARIBON [9,753a].
MOORE v. CHARLES MORGAN, The [9,754], 3 Cin. Law Bul. 42.
MOORE v. CONNECTICUT MUT. LIFE INS. CO. [9,755], 1 Flip. 363; 1 Amer. Law. T. Rep. (N. S.) 319; 3 Ins. Law J. 444; 4 Bigelow, Ins. Cas. 138.
MOORE v. C. P. MOREY, The [9,756], 25 Int. Rev. Rec. 359; 8 Reporter, 583.
Moore, Devigny v. [See 3,838.]
MOORE v. DOVE [9,757], 1 Hayw. & H. 161.
Moore, Driggs v. [See 4,083.]
MOORE v. DULANY [9,758], 1 Cranch, C. C. 341.
MOORE v. DUNLOP [9,759], 1 Cranch, C. C. 180.
Moore v. The Fashion. [See 9,772.]
MOORE v. FOSTER [9,760], Chase, 222.
Moore, Foster v. [See 4,978.]
MOORE v. FOWLER [9,761], Hempst. 536.
MOORE v. GADSBY [9,762], 1 Cranch, C. C. 3.
Moore, Girardey v. [See 5,462.]
MOORE v. GREENE [9,763], 2 Curt. 202.
MOORE v. HARLEY [9,764], 4 N. B. R. 242 (Quarto, 71); 2 Balt. Law Trans. 666.
MOORE v. HOFFMAN [9,764a], 2 Hayw. & H. 173.
MOORE v. HOLLIDAY [9,765], 4 Dill. 52.
Moore, Homans v. [See 6,655.]
MOORE v. HOUGH [9,766], 2 Cranch, C. C. 561.
MOORE v. JACOBS [9,767], 4 Cranch, C. C. 312.
MOORE v. JONES [9,768], 23 Vt. 739.
MOORE v. JONES [9,769], 3 Woods, 53; 2 Browne, Nat. Bank Cas. 144.
Moore, Judson v. [See 7,569.]
Moore, Latimer v. [See 8,114.]
Moore, Livingston v. [See 8,416.]
Moore, McDonald v. [See 8,762, 8,763.]
Moore, McIver v. [See 8,831.]
Moore, Mayor & Commonalty v. [See 9,359.]
Moore, Meister v. [See 9,398.]
Moore, Miller v. [See 9,584.]
MOORE v. MITCHELL [9,770], 2 Woods, 483.
Moore, National Exch. Bank v. [See 10,041.]
MOORE v. NELSON [9,771], 3 McLean, 383.
MOORE v. NEWBURY [9,772], 6 McLean, 472; Newb. 49; 18 Law Rep. 50.
MOORE v. PAXTON [9,772a], Hempst. 51.
Moore, Plastic State-Roofing Joint-Stock Co. v. [See 11,209.]
Moore v. Reed. [See 9,860.]
MOORE v. RINGGOLD [9,773], 3 Cranch, C. C. 434.
Moore, Roberts v. [See 11,905.]
Moore, Robinson v. [See 11,960.]
MOORE v. ROSENBERGER [9,774], 7 Phila. 576; 4 West. Jur. 204; 27 Leg. Int. 148.
Moore, Rutherford v. [See 12,173, 12,174.]
MOORE v. SEARCY [9,774a], Hempst. 52.
MOORE v. SHIELDS [9,775], 2 Cranch, C. C. 529.
Moore, Shults v. [See 12,824.]
Moore, Shultz v. [See 12,825.]
Moore, Starr v. [See 13,315.]
Moore, Sumner v. [See 13,610.]
Moore, Taylor v. [See 13,798.]
MOORE v. THOMAS [9,776], 3 Ban. & A. 13; 14 O. G. 1.
MOORE v. UNION MUT. LIFE INS. CO. [9,777], 5 Ins. Law J. 517.
Moore, United States v. [See 15,801-15,805.]
MOORE v. VOSS [9,778], 1 Cranch, C. C. 179.
Moore, Walker v. [See 17,080.]
MOORE v. WALTON [9,779], 9 N. B. R. 402.
MOORE v. WATERS [9,780], 5 Cranch, C. C. 283.
MOORE v. WILMARTH [9,781], 4 Leg. Int. 195.
MOORE v. YOUNG [9,782], 4 Biss. 128.
Moore, The Enoch. [See 6,331.]
Moore, The John T. [See 7,430.]
Moorehouse, Brooks v. [See 1,956.]
MOORES v. CARTER [9,782a], Hempst. 64.
Moorhead, Scofield v. [See 12,510.]
MOORMAN v. HOGE [9,783], 2 Sawy. 78; 4 Amer. Law T. Rep. U. S. Cts. 217; 6 Amer. Law Rev. 365; Cox, Manual Trade-Mark Cas. 210; 14 Int. Rev. Rec. 155; 1 South. Law Rev. 127.
MORA v. FOSTER [9,784], 3 Sawy. 469.
Mora, Williams v. [See 17,730.]
Moraga, United States v. [See 15,806.]
MORAN v. BAUDIN [9,785], 2 Pet. Adm. 415.
MORAN v. SCHNUGG [9,786], 7 Ben. 399.
MORAN v. STRAUSS [9,787], 6 Ben. 249.
MORANCY v. QUARLES [9,788], 1 McLean, 194.
MORAVIAN, The [9,789], 2 Hask. 157.
MORDECAI v. MARY EDDY, The [9,790].
More, Sadler v. [See 12,208.]
MOREHEAD v. JONES [9,791], 3 Wall. Jr. 306.
MOREHEAD v. UNITED STATES [9,792], Hoff. Op. 404.
Morehouse, Archer v. [See 18,225.]
MOREHOUSE v. JEFFERSON, The [9,793], 1 Pet. Adm. 46.
Morel, United States v. [See 15,807.]
MORELAND v. MARION COUNTY [9,794], 1 N. Y. Wkly. Dig. 326; 8 Chi. Leg. News, 25.
Morewood, Ireguist v. [See 7,061.]
Morey, Fletcher v. [See 4,864.]
MOREY v. NEW YORK LIFE INS. CO. [9,795], 2 Woods, 663; 3 Ins. Law J. 493; 1 Amer. Law T. Rep. (N. S.) 160; 1 Cent. Law J. 139; 4 Bigelow, Ins. Cas. 158.
MORFORD, In re [9,796], 1 Ben. 264; 1 N. B. R. 211; Bankr. Reg. Supp. 46; 6 Int. Rev. Rec. 12; 24 Leg. Int. 220.
MORGAN, In re [9,797], 8 Ben. 186.
MORGAN, In re [9,798], 8 Ben. 232.
Morgan v. The Ben Flint. [See 1,299.]
Morgan, Cookingham v. [See 3,183.]
Morgan, Crofford v. [See 3,403.]
Morgan, Cross v. [See 3,433.]
MORGAN v. CURTENIUS [9,799], 4 McLean, 366.
Morgan, Dibble v. [See 3,881.]
MORGAN v. EVANS [9,800], 2 Cranch, C. C. 70.
MORGAN v. GRAHAM [9,801], 1 Woods, 124.
Morgan, Hampden Bank v. [See 6,008.]
Morgan, Hubbard v. [See 6,817.]
MORGAN v. ILLINOIS & ST. L. BRIDGE CO. [9,802], 5 Dill. 96; 7 Cent. Law J. 311; 6 Reporter, 707.
MORGAN v. MASTICK [9,803], 2 N. B. R. 521 (Quarto, 163).
MORGAN v. NEW ORLEANS, M. & T. R. CO. [9,804], 2 Woods, 244.

[Federal Case numbers are given in brackets.]

MORGAN v. PHILIP DE PEYSTER, The [9,805], 6 N. Y. Leg. Obs. 441.
MORGAN v. RAILROAD CO. [9,806], 1 Woods, 15.
Morgan, Reintzel v. [See 11,683.]
MORGAN v. ROWAN [9,807], 2 Cranch, C. C. 148.
Morgan, Santiago v. [See 12,331.]
MORGAN v. TAPSCOTT [9,808], 5 Ben. 252.
Morgan, Tardy v. [See 13,752.]
MORGAN v. TIPTON [9,809], 3 McLean, 339.
Morgan, United States v. [See 15,808, 15,809.]
MORGAN v. VAN DYCK [9,810], 7 Blatchf. 147; 11 Int. Rev. Rec. 45.
MORGAN v. VOSS [9,811], 1 Cranch, C. C. 109.
MORGAN v. VOSS [9,812], 1 Cranch, C. C. 134.
Morgan, Waterman v. [See 17,259.]
Morgan, The Charles. [See 2,618.]
Morgan Envelope Co., Cone v. [See 3,096.]
MORGANTHAL, In re [9,813], 1 N. B. R. 402 (Quarto, 98); 25 Leg. Int. 92; 6 Phila. 468.
Moriaty, Young v. [See 18,167.]
Morin, United States v. [See 15,810.]
MORITZ, In re [9,814], 5 Law Rep. 325.
MORLOT v. LAWRENCE [9,815], 1 Blatchf. 608.
MORLOT v. LAWRENCE [9,816], 3 Blatchf. 122.
Morning Glory, The, Scott v. [See 12,542.]
MORNING STAR, The [9,817], 4 Biss. 62.
MORNING STAR, The [9,818], 6 Blatchf. 154.
MORRELL v. CRAEFE [9,819], 2 Wash. C. C. 380.
Morren v. Keen. [See 7,004.]
MORRILL, In re [9,820], 1 Hask. 542.
MORRILL, In re [9,821], 2 Sawy. 356; 8 N. B. R. 117.
MORRILL v. ARMSTRONG [9,822], 4 Amer. Law Rev. 194.
Morrill, McKay v. [See 8,846.]
MORRIS, Ex parte [9,823], 2 Lowell, 424; 16 N. B. R. 572.
MORRIS, In re [9,824], 19 N. B. R. 111; 19 Alb. Law J. 281; 36 Leg. Int. 215; 26 Pittsb. Leg. J. 121.
Morris, In re [9,825], Crabbe, 70; 1 Law Rep. 354.
Morris, In re. [See 7,303.]
MORRIS v. BARNEY [9,826], 1 Cranch, C. C. 245.
MORRIS v. BARRETT [9,827], 1 Bond, 254; 1 Fish. Pat. Cas. 461.
Morris, Barron v. [See 9,828.]
Morris, Bowden v. [See 1,715.]
Morris, Bowerbank v. [See 1,726.]
MORRIS v. BRUSH [9,828], 2 Woods, 354; 14 N. B. R. 371.
Morris, Committee of West New Jersey Society v. [See 3,065.]
MORRIS v. BRUSH [9,828a], 14 N. B. R. 371.
MORRIS v. CORNELL [9,829], 1 Spr. 62; 6 Law Rep. 304.
MORRIS v. GARDNER [9,830], 1 Cranch, C. C. 213.
Morris, Harmer v. [See 6,076.]
MORRIS v. HUNTINGTON [9,831], 1 Paine, 348; 1 Robb, Pat. Cas. 448.
MORRIS v. HURST [9,832], 1 Wash. C. C. 433.
MORRIS v. LOWELL MFG. CO. [9,833], 3 Fish. Pat. Cas. 67.
Morris, Lucas v. [See 8,587.]
MORRIS v. MAXWELL [9,834], 3 Blatchf. 143.
Morris, New Orleans v. [See 10,182, 10,183.]
Morris, Price v. [See 11,414.]
MORRIS v. ROYER [9,835], 2 Bond, 66; 3 Fish. Pat. Cas. 176.
MORRIS v. SHELBOURNE [9,836], 8 Blatchf. 266; 4 Fish. Pat. Cas. 377.
MORRIS v. SUMMERL [9,837], 2 Wash. C. C. 203.
Morris, United States v. [See 15,812-15,816.]
MORRISANIA, The [9,838], 13 Blatchf. 512.
Morris Aqueduct, Haight v. [See 5,902.]
Morris, The David. [See 3,596.]
Morris, The Galloway C. [See 5,204.]
Morris, The Robert. [See 8,896.]
MORRISON, In re [9,839], 10 N. B. R. 105; 6 Chi. Leg. News, 110.
MORRISON v. ALEXANDER [9,840], 1 Hayw. & H. 68.
MORRISON v. AMERICAN POPULAR LIFE INS. CO. [9,841], 5 Ins. Law J. 752.
MORRISON v. ARTHUR [9,842], 13 Blatchf. 194; 22 Int. Rev. Rec. 10.
MORRISON v. BENNET [9,843], 1 McLean, 330.
MORRISON v. BUCKNER [9,844], Hempst. 442.
MORRISON v. CASE [9,845], 9 Blatchf. 548; 2 O. G. 544; Cox, Manual Trade-Mark Cas. 220.
MORRISON v. CLIFFORD [9,846], 1 Cranch, C. C. 585.
Morrison, Crane v. [See 3,355.]
MORRISON v. JOHN L. STEPHENS, The [9,847], Hoff. Op. 473.
Morrison, Nettleton v. [See 10,127.]
Morrison, Patapsco Guano Co. v. [See 10,792.]
MORRISON v. PETALUMA, The [9,848], 1 Sawy. 126.
Morrison, Philadelphia & R. R. Co. v. [See 11,089.]
Morrison, State Nat. Bank of Minneapolis v. [See 13,325.]
MORRISON v. UNICORN, The [9,849], 5 Hughes, 79; 3 Quart. Law J. 333.
Morrison, United States v. [See 15,817, 15,818.]
Morrison, Woodward v. [See 18,008.]
MORROW, Ex parte [9,850], 1 Lowell, 386; 2 N. B. R. 665.
Morrow, United States v. [See 15,819.]
MORSE, In re [9,851], 17 Blatchf. 72.
MORSE, In re [9,852], 7 N. B. R. 56.
MORSE, In re [9,853], 11 N. B. R. 482.
MORSE, In re [9,854], 13 N. B. R. 376.
Morse, Bain v. [See 754.]
Morse v. Bain. [See 9,861.]
MORSE v. DAVIS [9,855], 5 Blatchf. 40.
Morse, Gassett v. [See 5,264.]
MORSE v. GODFREY [9,856], 3 Story, 364.
Morse, Kellogg v. [See 7,665.]
MORSE v. MASSACHUSETTS NAT. BANK [9,857], Holmes, 209.
MORSE v. O'REILLY [9,858], 4 Pa. Law J. Rep. 75; 6 Pa. Law J. 501.
MORSE v. O'REILLY [9,859], 6 West. Law J. 102.
Morse, O'Reilly v. [See 10,564.]
MORSE v. REED [9,860].
Morse, Tilghman v. [See 14,044.]
Morse, United States v. [See 15,820.]
MORSE & BAIN TEL. CASE [9,861], 9 West. Law J. 106.
MORSE FOUNTAIN-PEN CO. v. ESTERBROOK STEEL-PEN MFG. CO. [9,862], 3 Fish. Pat. Cas. 515.
Morte, Alice v. [See 198.]
Morte, Sawyer v. [See 12,401.]
Mortee, Powers v. [See 11,362.]
MORTIMER v. ROSSTEUSCHER [9,863], 1 West. Jur. 359.
Mortimer, United States v. [See 15,821.]
MORTON, The [9,864], 1 Brown's Adm. 137.
Morton, Athon v. [See 599.]
Morton, Barnard v. [See 1,005.]
Morton, Coots v. [See 3,205.]
Morton, Howe v. [See 6,769.]
Morton, Kriesler v. [See 7,933, 7,934.]
MORTON v. NEW YORK EYE INFIRMARY [9,865], 5 Blatchf. 116; 2 Fish. Pat. Cas. 320; 2 Amer. Law Reg. (N. S.) 672; Merw. Pat. Inv. 589.
MORTON v. ROOT [9,866], 2 Dill. 312.
MORTON v. SMITH [9,867], 2 Dill. 316.
Morton, Swanston v. [See 13,677.]
Morton, Taylor v. [See 13,799.]
Morton, United States v. [See 15,822.]
Morton, Wood v. [See 17,958.]
Morton, The Hamilton. [See 5,992.]
MOSELEY, In re [9,868], 8 N. B. R. 208.
Moseley, United States v. [See 15,823.]
MOSES, In re [9,869], 6 N. B. R. 181.
MOSES, In re [9,870], 19 N. B. R. 412.
MOSES v. BOYD [9,871], 5 Blatchf. 357.
MOSES v. DELAWARE INS. CO. [9,872], 1 Wash. C. C. 385.
MOSES v. DUNNAHO [9,873], 1 Cranch, C. C. 315.
Moses, United States v. [See 15,824, 15,825.]
MOSHER, The [9,874], 4 Biss. 274.
MOSLEM, The [9,875], Olc. 289.
MOSLEM, The [9,876], Olc. 374.
Mosorop, Ellzey v. [See 4,412.]
MOSS, In re [9,877], 19 N. B. R. 132.
Moss, The, Magee v. [See 8,944.]
Moss, Riddle v. [See 11,809.]
Mothershed, Healy v. [See 6,296.]
MOTT, In re [9,878].
MOTT, In re [9,878a].
MOTT, In re [9,878b].
MOTT, In re [9,879], 1 N. B. R. 223 (Quarto, 9).
MOTT v. MARIS [9,880], 2 Wash. C. C. 196.

[Federal Case numbers are given in brackets.]

Mott, Riddle v. [See 11,810.]
MOTT v. RUCKMAN [9,881], 3 Blatchf. 71; 16 Law Rep. 397.
Mott, Sherman v. [See 12,766, 12,767.]
MOTT v. SMITH [9,882], 2 Cranch, C. C. 33.
Mott, United States v. [See 15,826.]
MOTT v. WRIGHT [9,883], 4 Biss. 53.
MOTTE v. BENNETT [9,884], 2 Fish. Pat. Cas. 642.
Moulson, Field v. [See 4,770.]
MOULTON, In re [9,885], 4 Pac. Law Rep. 127.
Moulton, Bachelder v. [See 706.]
Moulton, United States v. [See 15,827.]
Mounger, Poe v. [See 11,240.]
MOUNT, In re [9,885a], 2 Hayw. & H. 44.
MOUNT DIABLO MILL & MINING CO. v. CALLISON [9,886], 5 Sawy. 439; 9 Morr. Min. Rep. 616.
Mountford, Wilmarth v. [See 17,774.]
Mountjoy, United States v. [See 15,828, 15,829.]
Mount Pleasant, Foote v. [See 4,914.]
MOUNT WASHINGTON, The [9,887], 4 Adm. Rec. 523.
MOUNT WASHINGTON, The [9,888], 4 Ben. 171.
Mountz, Hodgson v. [See 6,569.]
MOUNTZ v. JONES [9,889], 1 Cranch, C. C. 212.
MOWATT v. BROWN [9,889a].
Mowatt, Stokes v. [See 13,481.]
Mowbray, Atlantic Giant Powder Co. v. [See 624.]
MOWER v. BURDICK [9,890], 4 McLean, 7.
MOWREY v. INDIANAPOLIS & C. R. CO. [9,891], 4 Biss. 78.
MOWRY v. BARBER [9,892], 1 McA. Pat. Cas. 563.
Mowry, Dunlevy v. [See 4,165.]
MOWRY v. GRAND ST. & N. R. CO. [9,893], 10 Blatchf. 89; 5 Fish. Pat. Cas. 586.
Mowry, Whitney v. [See 17,592-17,594.]
MOXEY, The [9,894], Abb. Adm. 73.
Moxley, Hayman v. [See 6,266.]
Moxley, Nan v. [See 10,007.]
Moxley, United States v. [See 15,830.]
MOXON v. FANNY, The [9,895], 2 Pet. Adm. 309.
MOXY, The [9,896].
Moyer, Dixon v. [See 3,931.]
MOYNAHAN v. WILSON [9,897], 2 Flip. 130; 6 Cent. Law J. 28; 5 Reporter, 329; 26 Pittsb. Leg. J. 16.
M. P. Rich, The, Burke v. [See 2,161, 2,162.]
M. R. BRAZOS, The [9,898], 10 Ben. 435.
M. S. BACON, The, v. ERIE & W. TRANSP. CO. [9,898a], 5 Cin. Law Bul. 637; 26 Int. Rev. Rec. 316.
Muckey, Goodfellow v. [See 5,537.]
MUDD, Ex parte [9,899].
MUDD v. CLEMENTS [9,900], 3 Cranch, C. C. 3.
Mudd, Cripps v. [See 3,391.]
Mudd, Frere v. [See 5,107.]
Muggridge, Parker v. [See 10,743.]
Muhlenbrink, United States v. [See 15,831.]
Muir, In re. [See 13,196.]
MUIR v. BRISK, The [9,901], 4 Ben. 252.
MUIR v. GEIGER [9,902], 1 Cranch, C. C. 323.
MUIR v. JENKINS [9,903], 2 Cranch, C. C. 18.
MUIRHEAD v. ALDRIDGE [9,904], 14 N. B. R. 249; 2 N. Y. Wkly. Dig. 480; 33 Leg. Int. 213.
MULDAUR, In re [9,905], 8 Ben. 65.
MULDAUR, In re [9,906], 8 Ben. 127.
MULFORD v. PEARCE [9,907], 13 Blatchf. 173; 2 Ban. & A. 190; 9 O. G. 204.
MULFORD v. PEARCE [9,908], 14 Blatchf. 141; 2 Ban. & A. 542; 11 O. G. 741.
MULGRAVE, The [9,909].
MULHOUSE, The [9,910], 22 Law Rep. 276; 42 Hunt, Mer. Mag. 191.
Mullany, United States v. [See 15,832.]
MULLEE, In re [9,911], 7 Blatchf. 23; 1 Amer. Law T. Rep. U. S. Cts. 123; 8 Int. Rev. Rec. 89; 1 Chi. Leg. News, 129; 3 Amer. Law Rev. 386.
Mullee, Goodyear v. [See 5,577-5,579.]
MULLER, In re [9,912], Deady, 513; 3 N. B. R. 329 (Quarto, 86); 2 Amer. Law T. Rep. Bankr. 33.
MULLER'S CASE [9,913], 5 Phila. 289; 20 Leg. Int. 301; 5 Leg. & Ins. Rep. 146.
MULLER v. BOHLENS [9,914], 2 Wash. C. C. 378.
MULLER v. ERICH [9,915].
MULLER v. HENRY [9,916], 5 Sawy. 464; 7 Reporter, 772.
MULLER v. IGINIA, The [9,917].
Muller, Jennings v. [See 7,282.]
Muller, Potter v. [See 11,333, 11,334.]
Mulvaney, United States v. [See 15,833.]
MUMFORD v. MUMFORD [9,918], 1 Gall. 366.
MUMM v. OWENS [9,919], 2 Dill. 475.
MUNCASTER v. MASON [9,920], 2 Cranch, C. C. 521.
Muncaster, Mason v. [See 9,247, 9,248.]
MUNCH v. SUCKER STATE, The [9,921], 4 Chi. Leg. News, 201.
MUNCIE NAT. BANK v. BARNITS [1,026].
Muncie Nat. Bank, Barnett v. [See 1,026.]
Mundell, United States v. [See 15,834.]
Munford, Alston v. [See 267.]
Munford v. Balch. [See 790.]
MUNGER, In re [9,923], 4 N. B. R. 295 (Quarto, 90).
Munger, Curran v. [See 3,487.]
Munger, Postmaster General v. [See 11,309.]
MUNGOSAH v. STEINBROOK [9,924], 3 Dill. 418.
MUNN, In re [9,925], 3 Biss. 442; 7 N. B. R. 468; 7 Amer. Law Rev. 751.
MUNNS v. DE NEMOURS [9,926], 3 Wash. C. C. 31; 4 Hall, Law J. 102; 1 Amer. Lead Cas. 200.
Munns v. De Wemours. [See 9,926, 9,931.]
Munro, Page v. [See 10,665.]
MUNRO v. ROBERTSON [9,927], 2 Cranch, C. C. 262.
MUNROE v. COCKE [9,928], 2 Cranch, C. C. 465.
Munroe, Dexter v. [See 3,863.]
Munroe, Dunlop v. [See 4,167.]
Munroe, Gray v. [See 5,724.]
MUNROE v. MANDEVILLE [9,929], 2 Cranch, C. C. 187.
MUNROE v. TOWERS [9,930], 2 Cranch, C. C. 187.
Munroe, United States v. [See 15,835.]
MUNS v. DE NEMOURS [9,931], 2 Wash. C. C. 463.
MUNSELL v. MAXWELL [9,932], 3 Blatchf. 364.
MUNSON, Ex parte [9,933], 3 App. Com'r Pat. 253.
Munson, Black v. [See 1,463.]
MUNSON v. GILBERT & B. MFG. CO. [9,934], 3 Ban. & A. 595; 18 O. G. 194; Merw. Pat. Inv. 362.
MUNSON v. LYONS [9,935], 12 Blatchf. 539.
Munson, Tillotson v. [See 14,051.]
MURATI v. LUCIANI [9,936], Baldw. 49.
Murdaugh, Ex parte. [See 11,297, 11,298.]
Murdoch, Keith v. [See 7,652.]
Murdoch v. Shackelford. [See 9,937.]
Murdoch, United States v. [See 15,836.]
Murdoch, Whetmore v. [See 17,509.]
MURDOCK v. SHACKELFORD [9,937], 1 Brock. 131.
MURDOCK, In re [8,838].
MURDOCK, In re [9,939], 1 Lowell, 362; 3 N. B. R. 146 (Quarto, 36).
MURDOCK v. EMMA GRAHAM, The [9,940], 3 Cin. Law Bul. 1054.
MURDOCK v. HUNTER [9,941], 1 Brock. 135.
Murdock v. Shackelford. [See 9,937.]
Murdock, Whetmore v. [See 17,510.]
MURDOCK v. WOODSON [9,942], 2 Dill. 188.
Murgatroyd, Dusar v. [See 4,199.]
MURGATROYD v. McLURE [9,943], 4 Dall. 342.
MURIEL, The [9,944], 7 Wkly. Notes Cas. 147.
Murney v. The Sylvester Hale. [See 13,712.]
Murphey, Wilkings v. [See 17,663.]
MURPHREY v. OLD DOMINION INS. CO. [9,945], 5 Ins. Law J. 297.
MURPHY, In re [9,946], 10 N. B. R. 48.
MURPHY, In re [9,947], Woolw. 141.
Murphy, Bensusan v. [See 1,329.]
Murphy, Bruce v. [See 2,047.]
MURPHY v. BYRD [9,947a], Hempst. 211.
MURPHY v. BYRD [9,947b], Hempst. 221.
MURPHY v. CAMAC [9,948], 4 Wash. C. C. 307.
Murphy, Commonwealth v. [See 3,067.]
Murphy, Duden v. [See 4,113.]
MURPHY v. EASTHAM [9,949], Holmes, 113; 2 O. G. 61; 5 Fish. Pat. Cas. 306; Merw. Pat. Inv. 130.
Murphy, Gray v. [See 5,725.]
Murphy, Jaffray v. [See 7,172.]
MURPHY v. HOWARD [9,949a], Hempst. 205.
MURPHY v. KISSLING [9,950], Holmes, 432; 1 Ban. & A. 534; 7 O. G. 302.
Murphy, Leng v. [See 8,242.]
MURPHY v. LEWIS [9,950a], Hempst. 17.
MURPHY v. McVICKER [9,951], 4 McLean, 252.
Murphy, Marrett v. [See 9,103.]
MURPHY v. PAYNTER [9,952], 1 Dill. 333.

[Federal Case numbers are given in brackets.]

Murphy v. The Santiago De Cuba. [See 12,332, 12,-333.]
MURPHY v. TINDALL [9,952a], Hempst. 10.
Murphy, Ullman v. [See 14,325.]
Murphy, United States v. [See 15,837-15,841.]
MURRAY, In re [9,953], 14 Blatchf. 43.
MURRAY, In re [9,954], 1 Hask. 267; 3 N. B. R. 765 (Quarto, 187).
MURRAY v. ÆTNA INS. CO. [9,955], 4 Biss. 417.
Murray, American Button-Hole, Over-Seaming & Sewing-Machine Co. v. [See 292.]
MURRAY v. ARTHUR [9,956], 13 Blatchf. 429; 22 Int. Rev. Rec. 257.
MURRAY v. BECK [9,957], 2 Cranch, C. C. 677.
Murray, Cox v. [See 3,304.]
MURRAY v. DONNELLY [9,958], 3 Leg. Int. 41.
MURRAY v. DOWLING [9,959], 1 Cranch, C. C. 151.
MURRAY v. DULANY [9,960], 3 Cranch, C. C. 343.
Murray, Dustin v. [See 4,201.]
Murray, Forbes v. [See 4,928.]
Murray, Gallagher v. [See 5,193.]
Murray, Hill v. [See 6,495.]
MURRAY v. INSURANCE CO. OF PENNSYLVANIA [9,961], 2 Wash. C. C. 186.
MURRAY v. LAZARUS [9,962], 1 Paine, 572.
MURRAY v. LOVEJOY [9,963], 2 Cliff. 191; 26 Law Rep. 423.
MURRAY v. McLANE [9,964], Brunner, Col. Cas. 405; 2 Car. Law Repos. 186; 5 Hall, Law J. 514.
Murray, Main v. [See 8,975.]
MURRAY v. MARSH [9,965], 2 Hayw. N. C. 290; Brunner, Col. Cas. 22.
MURRAY v. MASON [9,966], 1 Hayw. & H. 120.
Murray, Nicholas v. [See 10,223.]
Murray, Ott v. [See 10,615.]
MURRAY v. PATRIE [9,967], 5 Blatchf. 343.
Murray, United States v. [See 15,842, 15,843.]
Murray, Woolfolk v. [See 18,028.]
MURRIN, In re [9,968], 2 Dill. 120; 2 Ins. Law J. 524; 4 Bigelow, Ins. Cas. 171; 8 N. B. R. 6.
Murrin v. Owen. [See 9,968.]
MURTAGH v. PHILADELPHIA [9,969], 1 Wkly. Notes Cas. 37.
Murtha, Knox v. [See 7,911.]
MUSCAN HAIR MFG. CO. v. AMERICAN HAIR MFG. CO. [9,970], 1 Fish. Pat. Cas. 320; 4 Blatchf. 174; Merw. Pat. Inv. 237.
MUSCATINE v. MISSISSIPPI & M. R. CO. [9,971], 1 Dill. 536.
Muscatine County, United States v. [See 16,538.]
Muse, Coates v. [See 2,916-2,918.]
Musgrove, Ingersoll v. [See 7,040.]
MUSSELWHITE v. RECEIVERS [9,972], 4 Hughes, 166.
MUSSER v. CURRY [9,973], 3 Wash. C. C. 481.
Mussy, Duponti v. [See 4,185.]
Mustin, Thruston v. [See 14,013.]
MUTTER v. HAMILTON [9,974], 2 Hayw. N. C. 346; Brunner, Col. Cas. 27.
MUTUAL BENEFIT LIFE INS. CO. v. CHARLES [9,975], 4 Ins. Law J. 265.
Mutual Benefit Life Ins. Co., Desmazes v. [See 3,-821.]
Mutual Benefit Life Ins. Co., Markey v. [See 9,091.]
Mutual Benefit Life Ins. Co., Newton v. [See 10,191.]
Mutual Benefit Life Ins. Co., Nimick v. [See 10,266.]
Mutual Benefit Life Ins. Co., Robinson v. [See 11,-961.]
Mutual Benefit Life Ins. Co., Sparrow v. [See 13,-214.]
Mutual Benefit Life Ins. Co., Tisdale v. [See 14,059.]
MUTUAL BUILDING FUND SOCIETY & DOLLAR SAV. BANK, In re [9,976], 2 Hughes, 374; 15 N. B. R. 44; 5 Amer. Law Rec. 571.
MUTUAL BUILDING FUND SOCIETY & DOLLAR SAV. BANK v. BOSSIEUX [9,977], 1 Hughes, 386.
Mutual Commercial Marine Ins. Co., Oliver v. [See 10,498.]
MUTUAL FIRE INS. CO. v. S. G. ANDREWS, The [9,978], 10 Chi. Leg. News, 149.
Mutual Ins. Co., Sherwood v. [See 12,776.]
Mutual Life Ins. Co., Anderson v. [See 362.]
Mutual Life Ins. Co., Battle v. [See 1,109.]
Mutual Life Ins. Co., Hamilton v. [See 5,986.]
Mutual Life Ins. Co., Jackson v. [See 7,141.]
Mutual Life Ins. Co., Newcomb v. [See 10,147.]
Mutual Life Ins. Co., Quigley v. [See 11,511.]
Mutual Life Ins. Co., Shattuck v. [See 12,715.]
Mutual Life Ins. Co., Snyder v. [See 13,154.]
Mutual Life Ins. Co., Waters v. [See 17,267.]
MUTUAL LIFE INS. CO. v. WILCOX [9,979], 8 Biss. 197; 6 Reporter, 8; 10 Chi. Leg. News, 268.
MUTUAL LIFE INS. CO. v. WILCOX [9,980], 8 Biss. 203; 17 Alb. Law J. 426; 8 Ins. Law J. 815; 7 N. Y. Wkly. Dig. 13; 5 Reporter, 681; 10 Chi. Leg. News, 269.
Mutual Life Ins. Co., Young v. [See 18,168.]
MUTUAL SAFETY INS. CO. v. GEORGE, Cargo of The [9,981], Olc. 89; 8 Law Rep. 361; 3 N. Y. Leg. Obs. 260.
MUTUAL SAFETY INS. CO. v. GEORGE, Cargo of The [9,982], Olc. 157; 8 Law Rep. 361.
Mutual Safety Insurance Co., Henshaw v. [See 6,-387.]
Muxlow, Wight v. [See 17,629.]
Muzzy Iron Works, Hutchings v. [See 6,952.]
M. W. WRIGHT, The [9,983], 1 Brown's Adm. 290; 3 Chi. Leg. News, 313.
Myer, Stettinius v. [See 13,385.]
MYERS, In re [9,984], 2 Hughes, 230.
Myers, Cooke v. [See 3,174, 3,175.]
MYERS v. COTTRILL [9,985], 5 Biss. 465.
Myers, Cutting v. [See 3,520.]
MYERS v. DAVIS [9,986], 6 Blatchf. 77.
MYERS v. D'MEZA [9,987], 2 Woods, 160.
MYERS v. DORR [9,988], 13 Blatchf. 22.
MYERS v. DUKER [9,989], 1 Ban. & A. 535.
MYERS v. DUNBAR [9,990], 12 Blatchf. 380; 1 Ban. & A. 565; 8 O. G. 321.
Myers v. Dunbar. [See 9,991.]
Myers v. Eunson. [See 9,991.]
MYERS v. FRAME [9,991], 8 Blatchf. 446; 4 Fish. Pat. Cas. 493.
MYERS v. HARRIET, The [9,992], 19 Hunt, Mer. Mag. 535.
Myers, Hill v. [See 6,496.]
MYERS v. LIZZIE HOPKINS, The [9,993], 1 Woods, 170.
Myers, Lyman v. [See 8,629.]
Myers, Pennsylvania Salt Mfg. Co. v. [See 10,955.]
Myers, Roberts v. [See 11,906.]
MYERS v. SEELEY [9,994], 10 N. B. R. 411; 1 Cent. Law J. 451.
Myers v. Swift. [See 9,991.]
MYERS v. TYSON [9 995], 13 Blatchf. 242.
MYERS v. UNITED STATES [9,996], 1 McLean, 493.
Myers, United States v. [See 15,844-15,848.]
Myers, Valley Nat. Bank v. [See 5,549.]
Myers, Wythe v. [See 18,119.]
MYERS v. YORK & C. R. CO. [9,997], 2 Curt. 28.
MYGATT v. GREEN BAY [9,998], 1 Biss. 292; 8 Amer. Law Reg. 271.
Mynderse, United States v. [See 15,850, 15,851.]
MYRICK, In re [9,999], 3 N. B. R. 153 (Quarto, 38).
MYRICK, In re [10,000], 3 N. B. R. 156 (Quarto, 38).
MYRICK v. MICHIGAN CENT. R. CO. [10,001], 9 Biss. 44; 7 Reporter, 229; 11 Chi. Leg. News, 151.
Myrick, Waterbury v. [See 17,253.]
Mytinger v. The Floating Zephyr. [See 7,462.]

N

NABOB, The [10,002], 1 Brown's Adm. 115.
Nabors v. Alexander. [See 2,064.]
NACHTRIEB v. HARMONY SETTLEMENT [10,003], 3 Wall. Jr. 66; 12 Leg. Int. 98.
Naesen, In re. [See 10,288.]
Nagle, Carey v. [See 2,403.]
Nagle, United States v. [See 15,852.]
NAILOR v. KEARNEY [10,004], 1 Cranch, C. C. 112.
Nailor, United States v. [See 15,853.]
Nairac, Echeveria v. [See 4,261.]
Nairn, Coumbe v. [See 3,278.]
Nalan, Coombs v. [See 3,189.]
NALL v. ILLINOIS, The [10,005], 6 McLean, 413.
NALLY v. LAMBELL [10,006], 1 Cranch, C. C. 365.
NAN v. MOXLEY [10,007], 1 Cranch, C. C. 523.
NANCY, The [10,008], 1 Gall. 66.
Nancy, The, Brice v. [See 1,855.]
Nancy, The, British Consul v. [See 1,898.]
Nancy, The, Schutz v. [See 12,493.]
Nancy, The, United States v. [See 15,854.]
Nanny, The, Thomson v. [See 13,984.]
Nantucket Steamboat Co., Citizens' Bank v. [See 2,730.]
NAPIER v. BARNEY [10,009], 5 Blatchf. 191.
NAPIER v. SERVER [10,010], 2 Wkly. Notes Cas. 400.
NAPOLEON, The [10,011], 7 Biss. 393; 4 N. Y. Wkly. Dig. 422; 9 Chi. Leg. News, 280.
NAPOLEON, The [10,012], Blatchf. Pr. Cas. 296.
NAPOLEON, The [10,013], Blatchf. Pr. Cas. 357.
NAPOLEON, The [10,014], 1 Brown's Adm. 32.
NAPOLEON, The [10,015], Olc. 208.
Napoleon, The. [See 4,500.]
Napoleon, The, Pease v. [See 10,883.]
NARRAGANSETT, The [10,016], 5 Ben. 255.
NARRAGANSETT, The [10,017], 1 Blatchf. 211; 1 Liv. Law Mag. 126.
NARRAGANSETT, The [10,018], 10 Blatchf. 475.
NARRAGANSETT, The [10,019], Olc. 246.
NARRAGANSETT, The [10,020], Olc. 388.
Narragansett Steamship Co. v. Connolly. [See 1,-891.]
Narragansett Steamship Co. v. Ponton. [See 1,890, 1,892.]
Narvaez, United States v. [See 15,855.]
Nasbaum v. Emery. [See 10,381.]
NASH v. LE CLERCQ [10,021], 2 Cin. Law Bul. 146.
NASH v. THEBES, The [10,022], 12 Hunt, Mer. Mag. 82.
Nash, United States v. [See 15,856.]
Nash, Weston v. [See 17,454.]
NASHVILLE, The [10,023], 4 Biss. 188.
Nashville & C. R. Co., Hall v. [See 5,940.]
NASON v. UNITED STATES [10,024], 1 Gall. 53.
NASSAU, The [10,025], Blatchf. Pr. Cas. 198.
NASSAU, The [10,026], Blatchf. Pr. Cas. 271.
NASSAU, The [10,027], Blatchf. Pr. Cas. 601.
NASSAU, The [10,028], Blatchf. Pr. Cas. 665.
Nassau, The, Harlan v. [See 6,066, 6,067.]
Natchez, The, Bates v. [See 1,102.]
Natchez, The, Fawcett v. [See 4,703.]
Nathan, United States v. [See 15,857.]
NATHAN HANNAN, The [10,029].
Nathaniel Holmes, The, Mills v. [See 9,613.]
NATHANIEL HOOPER, The [10,030], 1 Hunt, Mer. Mag. 331.
NATHANIEL HOOPER, The [10,032].
NATHANIEL HOOPER, The [10,032], 3 Sumn. 542; 2 Law Rep. 133, 165; 1 Hunt, Mer. Mag. 334.
NATHANIEL KIMBAL, The [10,033], 4 Adm. Rec. 679.
NATIONAL BANK v. COLTON [10,034].
NATIONAL BANK v. DODGE [10,053], 25 Int. Rev. Rec. 304.
National Bank-Note Co., Tappan v. [See 14,100.]
National Bank-Note Co., Toppan v. [See 14,100.]
National Bank of Cleveland v. Simmons. [See 3,-062.]
NATIONAL BANK OF COMMERCE v. BOOTH [10,-036], 5 Biss. 129.
National Bank of Commerce, Merchants' Nat. Bank v. [See 9,446.]
NATIONAL BANK OF COMMERCE v. NATIONAL BANK OF MISSOURI [18,310], The Public [N. Y.] Oct. 10, 1878, p. 229.
National Bank of Fayetteville, Mead v. [See 9,366.]
NATIONAL BANK OF FREDERICKSBURG v. CONWAY [10,037], 1 Hughes, 37; 14 N. B. R. 175, 513.
NATIONAL BANK OF MADISON v. DAVIS [10,038], 8 Biss. 100; 6 Cent. Law J. 106; 5 Reporter, 258; 1 Thomp. Nat. Bank Cas. 350; 10 Chi. Leg. News, 156.
National Bank of Missouri, National Bank of Commerce v. [See 18,310.]
National Bank of Missouri, Levi v. [See 8,289.]
National Bank of Missouri v. Papin. [See 12,239.]
NATIONAL BANK OF THE REPUBLIC v. BROOKLYN CITY & N. R. CO. [10,039], 14 Blatchf. 242.
NATIONAL BANK OF WESTERN ARK. v. SEBASTIAN COUNTY [10,040], 5 Dill. 414.
National Banks—Charge to Grand Jury in Relation to Frauds of Officers of National Banks. [See 18,246.]
NATIONAL EXCH. BANK v. MOORE [10,041], 2 Bond, 170; 1 N. B. R. 470 (Quarto, 123); 1 Amer. Law T. Rep. Bankr. 74.
National Exch. Bank of Columbus, Ex parte. [See 10,041.]
National Exp. & Transp. Co., Reynolds v. [See 11,-732.]
NATIONAL FILTERING OIL CO. v. ARCTIC OIL CO. [10,042], 8 Blatchf. 416; 4 Fish. Pat. Cas. 514; Merw. Pat. Inv. 325.
NATIONAL FIRE & MARINE INS. CO. v. LESTER [10,043].
NATIONAL HAY RAKE CO. v. HARBERT [10,044], 2 Wkly. Notes Cas. 100.
NATIONAL IRON CO., In re [10,045], 8 N. B. R. 422; 10 Phila. 274; 30 Leg. Int. 272; 20 Pittsb. Leg. J. 208.
NATIONAL LIFE INS. CO., In re [10,046], 6 Biss. 35.
National Loan Bank, Hamilton v. [See 5,987.]
National Mechanics' Bank, Shoemaker v. [See 12,-801.]
NATIONAL PARK BANK v. NICHOLS [10,047], 2 Biss. 146; 5 Amer. Law T. Rep. 335; 1 Chi. Leg. News, 361; 5 Leg. Gaz. 341.
NATIONAL PARK BANK v. NICHOLS [10,048], 4 Biss. 315.
NATIONAL PARK BANK v. PEOPLE'S BANK [10,-049], 25 Int. Rev. Rec. 169; 8 Reporter, 8; 14 Phila. 405; 36 Leg. Int. 204; 26 Pittsb. Leg. J. 178.
National Rubber Co., Cohn v. [See 2,968.]
NATIONAL SCHOOL FURNITURE CO. v. PATON [10,050], 16 Blatchf. 563; 4 Ban. & A. 432.
National Shoe-Toe Protector Co., American Shoe-Tip Co. v. [See 317.]
NATIONAL SPRING CO. v. UNION CAR SPRING MFG. CO. [10,051], 12 Blatchf. 80; 1 Ban. & A. 240; 6 O. G. 224; Merw. Pat. Inv. 451.
NATIONAL STATE BANK v. PIERCE [10,052], 18 Alb. Law J. 16; 5 Reporter, 682; 5 Wkly. Notes Cas. 344; 2 Browne, Nat. Bank Cas. 177; 24 Int. Rev. Rec. 212; 25 Pittsb. Leg. J. 177.
National Steam-Gauge Co., Farley v. [See 4,648.]
National Steam-Nav. Co., Dyer v. [See 4,225.]
National Steamship Co., Dyer v. [See 4,226.]
National Steamship Co., Gray v. [See 5,726.]
National Steamship Co., Nelson v. [See 10,112.]
National Tube Co., La Mothe Mfg. Co. v. [See 8,033.]
NATIONAL UNION BANK v. DODGE [10,053], 25 Int. Rev. Rec. 304; 2 N. J. Law J. 333.
National Union Bank of Maryland, Stewart v. [See 13,435.]
NATIVE, The [10,054], 14 Blatchf. 34.
Native, The, Beach v. [See 1,152a.]
NATTERSTROM v. HAZARD, The [10,055], Bee, 441; 2 Hall, Law J. 359.
Naugatuck Nav. Co., The Rhode Island v. [See 11,740a, 11,743, 11,745.]

[Federal Case numbers are given in brackets.]

NAUGATUCK TRANSP. CO. v. RHODE ISLAND, The [11,745].
Naugatuck Transp. Co. v. The Rhode Island. [See 11,740a, 11,743, 11,745.]
Naumkeag Steam Cotton Co., The Edwin v. [See 4,301.]
NAUNTON v. OREGON, The [10,057], 1 Pac. Law Mag. 242.
NAUTILUS, The [10,058], 1 Ware, 529.
NAVARRO, The [10,059], Olc. 127.
NAYADE, The [7,046].
Nayade, The, Ingraham v. [See 7,046.]
NAYLOR v. BALTZELL [10,061], Taney, 55.
Naylor, McDermott v. [See 8,747.]
Naylor, United States v. [See 15,858.]
NAZRO v. CRAGIN [10,062], 3 Dill. 474.
NEAFFIE, The [10,063], 1 Abb. U. S. 465.
NEAFIE v. CHEESEBROUGH [10,064], 14 Blatchf. 313.
Neafie, The Jacob G. [See 7,156.]
Neal, In re [See 1,406.]
Neal v. Beckwith. [See 1,406.]
NEAL v. GREEN [10,065], 1 McLean, 18.
Neal, Railroad Co. v. [See 11,534.]
NEALE, In re [10,066], 3 N. B. R. 177 (Quarto, 43); 1 Amer. Law T. Rep. Bankr. 295.
Neale, Bank of Washington v. [See 951.]
NEALE v. CONINGHAM [10,067], 1 Cranch, C. C. 76.
NEALE v. HILL [10,068], 1 Cranch, C. C. 3.
NEALE v. JANNEY [10,069], 2 Cranch, C. C. 188.
Neale, Jones v. [See 7,483.]
Neale, Leonard v. [See 8,259.]
NEALE v. MINIFIE [10,070], 2 Cranch, C. C. 16.
NEALE v. PEYTON [10,071], 2 Cranch, C. C. 313.
Neale, Queen v. [See 11,504.]
Neale, United States v. [See 15,859.]
NEALE v. WALKER [10,072], 1 Cranch, C. C. 57.
Neale's Adm'r, Duffy v. [See 4,119.]
NEBE, In re [10,073], 11 N. B. R. 289.
NEBENZAHL, In re [10,074], 9 Ben. 243; 17 N. B. R. 23.
NEBRASKA, The [10,075], 2 Ben. 500.
NEBRASKA, The [10,076], 3 Ben. 261.
NEBRASKA v. POLLOCK [10,077], 23 Int. Rev. Rec. 297.
NED, The [10,078], Blatchf. Pr. Cas. 119.
NEEDERER v. BARBER [10,079].
NEEDHAM, Ex parte [10,080], Pet. C. C. 487.
NEEDHAM, In re [10,081], 1 Lowell, 309; 2 N. B. R. 387 (Quarto, 124); 2 Amer. Law T. Rep. Bankr. 39; 16 Pittsb. Leg. J. 313.
NEEDHAM, In re [10,081a], 1 Chi. Leg. News, 171.
NEEDHAM v. WASHBURN [10,082], 4 Cliff. 254; 7 O. G. 649; 1 Ban. & A. 537; Merw. Pat. Inv. 247.
NEELY v. ROBINSON [10,082a], Hempst. 9.
Neff, Baylor v. [See 1,143.]
Neff, Crabtree v. [See 3,315.]
Neff, Harper v. [See 6,089.]
NEFF v. PENNOYER [10,083], 3 Sawy. 274; 15 Amer. Law Reg. (N. S.) 367.
NEFF v. PENNOYER [10,084], 3 Sawy. 335; 7 Chi. Leg. News, 276.
NEFF v. PENNOYER [10,085], 3 Sawy. 495.
Neid, United States v. [See 15,860.]
NEIDLINGER v. INSURANCE CO. OF NORTH AMERICA [10,086], 10 Ben. 254.
NEIL COCHRAN, The [7,996], 1 Brown's Adm. 162.
NEIL v. ABBOTT [10,088], 2 Cranch, C. C. 193.
Neil, McKinney v. [See 8,865.]
Neil, Peck v. [See 10,892, 10,893.]
NEILL, In re [10,089], 8 Blatchf. 156; 13 Int. Rev. Rec. 29; 5 Amer. Law Rev. 566; 4 Amer. Law T. Rep. U. S. Cts. 153.
NEILSON, In re [10,090], 7 N. B. R. 505.
NEILSON v. GARZA [10,091], 2 Woods, 287.
NEILSON v. LAURA, The [10,092], 2 Sawy. 242.
Neilson, The, Messena v. [See 9,493a.]
Neilson, The John. [See 4,241.]
NELLIE, The [10,093], 7 Ben. 497.
NELLIE, The [10,094], 8 Ben. 261.
NELLIE, The [10,095], Blatchf. Pr. Cas. 553.
NELLIE, The [10,096], 2 Lowell, 494.
Nellie, The Cora. [See 3,217.]
NELLIE D., The [10,097], 5 Blatchf. 245; 2 Int. Rev. Rec. 62.
NELLIE HUSTED, The [10,098], 9 Ben. 42.
NELLIS v. McLANAHAN [10,099], 6 Fish. Pat. Cas. 286.
NELSON, In re [10,100], 9 Ben. 238; 16 N. B. R. 312.
Nelson v. Bailey. [See 2,635.]
NELSON v. BARKER [10,101], 3 McLean, 379.
NELSON v. BELL [10,101a].
Nelson, Bell v. [See 1,257.]
NELSON v. BOWEN [10,102].
NELSON v. CARMAN [10,103], 5 Blatchf. 511; 6 Int. Rev. Rec. 181.
Nelson, Cropper v. [See 3,417.]
NELSON v. CUTTER [10,104], 3 McLean, 326; 1 West. Law J. 359.
Nelson, Dalton v. [See 3,549.]
Nelson, Dolton v. [See 3,976.]
NELSON v. FOSTER [10,105], 5 Biss. 44.
NELSON v. GOLIAH, The [10,106], Hoff. Op. 481; 2 Amer. Law Rep. 772, note.
NELSON v. HALL [10,107], 1 McLean, 518.
Nelson, Hauptman v. [See 6,225.]
NELSON v. HERCULES, The [10,108], 4 Law Rep. 22.
Nelson, Herring v. [See 6,424.]
Nelson, Lathrop v. [See 8,111.]
NELSON v. McMANN [10,109], 16 Blatchf. 139; 16 O. G. 761; 4 Ban. & A. 203.
NELSON v. MADISON [10,110], 3 Biss. 244; 4 Chi. Leg. News, 297.
NELSON v. MOON [10,111], 3 McLean, 319.
Nelson, Moore v. [See 9,771.]
NELSON v. NATIONAL STEAMSHIP CO. [10,112], 7 Ben. 340.
NELSON v. PHOENIX CHEMICAL WORKS [10,113], 7 Ben. 37.
Nelson, Reed v. [See 11,648.]
Nelson, Roberts v. [See 11,907.]
NELSON v. ROBINSON [10,114], Hempst. 464.
Nelson, Shuffleton v. [See 12,822.]
NELSON v. THOMAS SPARKS, The [10,115], 18 How. Prac. 20.
NELSON v. UNITED STATES [10,116], Pet. C. C. 235.
Nelson, United States v. [See 15,861-15,864.]
NELSON v. WOODRUFF [10,117], 16 Leg. Int. 325; 4 Wkly. Law Gaz. 188; 41 Hunt, Mer. Mag. 710.
NEPTUNE, The [10,118], 6 Blatchf. 193; 8 Int. Rev. Rec. 114.
NEPTUNE, The [10,119], Blatchf. Pr. Cas. 367.
NEPTUNE, The [10,120], Olc. 483; 16 Hunt, Mer. Mag. 603; 5 N. Y. Leg. Obs. 293.
Neptune, The, Brown v. [See 2,022.]
Neptune, The, Coulon v. [See 3,273.]
Neptune, The, Jolly v. [See 7,439.]
Neptune, The, Paine v. [See 10,120.]
Neptune, The, United States v. [See 15,865.]
Neptune, The, Walton v. [See 17,135.]
Neptune, The, Whiteman v. [See 17,569.]
Neptune Ins. Co., Bradstreet v. [See 1,793.]
Neptune's Car, The, Dooley v. [See 3,997.]
NEREUS, The [10,121], 3 Ben. 238.
Nesbit, Howe v. [See 6,770.]
N. E. SCREW CO. v. SLOAN [10,158].
NESMITH v. CALVERT [10,123], 1 Woodb. & M. 34; 2 Robb, Pat. Cas. 311; 17 Hunt, Mer. Mag. 508.
NESMITH v. DYEING, BLEACHING & CALENDERING CO. [10,124], 1 Curt. 130; 1 Amer. Law Reg. 82.
NESSMITH v. SHELDEN [10,125], 4 McLean, 375.
Nesmith, The Caroline. [See 2,423.]
NESTOR, The [10,126], 1 Sumn. 73.
Netcher, United States v. [See 15,866.]
Netnagle, Graighle v. [See 5,679.]
Nettleton v. The Fanny Fosdick. [See 4,641.]
NETTLETON v. MORRISON [10,127], 5 Dill. 503; 23 Int. Rev. Rec. 187; 1 Month. Jur. 155; 1 N. W. Rep. (O. S.) 22; 16 Alb. Law J. 62.
NETTLETON v. ST. LOUIS LIFE INS. CO. [10,128], 7 Biss. 293; 6 Ins. Law J. 426.
Neutrality Laws. [See 18,264-18,269.]
Neutrality Laws—Charge to Grand Jury in Relation to Neutrality Laws. [See 18,264-18,269.]
NEVADA, The [10,129].
NEVADA, The [10,130], 7 Ben. 386.
NEVADA, The [10,131], 17 Blatchf. 122.
Nevada, The, Griswold v. [See 5,839.]
Nevada, The, Sherman v. [See 5,839.]

[Federal Case numbers are given in brackets.]

Nevers, Prescott v. [See 11,390.]
NEVERSINK, The [12,079].
NEVERSINK, The [10,133], 5 Blatchf. 539.
Neversink, The, Ross v. [See 12,079.]
NEVES v. SCOTT [10,134], 9 Law Rep. 67.
NEVETT v. BERRY [10,135], 5 Cranch, C. C. 291.
Neville, Wells v. [See 17,403.]
NEVINS v. JOHNSON [10,136], 3 Blatchf. 80.
Nevins, Lyman v. [See 8,629a.]
NEVITT v. CLARK [10,137].
NEVITT v. CLARKE [10,138], Olc. 316.
NEVITT v. MADDOX [10,139], 4 Cranch, C. C. 107.
New Albany, Putnam v. [See 11,481.]
New Albany, etc., Ry. Co., Bill v. [See 1,407.]
New Albany, etc., R. Co., Williamson v. [See 17,-753.]
NEW AMSTERDAM FIRE INS. CO., In re [10,140], 6 Ben. 368.
NEWARK, The [10,141], 1 Blatchf. 203.
Newark, The, Faber v. [See 4,602.]
Newark India Rubber Mfg. Co., Day v. [See 3,685.]
NEWARK SAVINGS INST. v. PANHORST [10,142], 7 Biss. 99; 8 Chi. Leg. News, 211.
New Bedford Bridge, United States v. [See 15,867.]
New Bedford Commercial Ins. Co., Lawrence v. [See 8,140.]
New Bedford Copper Co., Richmond v. [See 11,800.]
Newberry, Barron v. [See 1,056.]
NEWBERRY v. FASHION, The [10,143], 1 Newb. 67.
Newberry, Welles v. [See 17,378.]
New Brig, Davis v. [See 3,643.]
New Brig, Harper v. [See 6,090.]
New Brunswick Carpet Co., Webster v. [See 17,337, 17,338.]
Newbury, Moore v. [See 9,772.]
NEWBY v. OREGON CENT. RY. CO. [10,144], Deady, 609; Cox, Manual Trade-Mark Cas. 180.
NEWBY v. OREGON CENT. RY. CO. [10,145], 1 Sawy. 63; 3 Amer. Law T. Rep. U. S. Cts. 127.
Newby, Tallahassee v. [See 13,737.]
NEW CHAMPION, The [10,146], Abb. Adm. 202.
Newcomb, Adler v. [See 83.]
NEWCOMB v. MUTUAL LIFE INS. CO. [10,147], 9 Ins. Law J. 124.
NEWCOMER, In re [10,148], 18 N. B. R. 85, 10 Chi. Leg. News, 347; 26 Pittsb. Leg. J. 3.
Newcomer, United States v. [See 15,868, 15,869.]
NEW EAGLE, The [10,149], Blatchf. Pr. Cas. 196.
Newell, Mason v. [See 9,249.]
Newell, Nichols v. [See 10,245.]
Newell, Spear v. [See 13,224.]
Newell, Union Paper-Bag Machine Co. v. [See 14,-389, 14,390.]
NEWELL v. WEST [10,150], 13 Blatchf. 114; 2 Ban. & A. 113; 8 O. G. 598; 9 O. G. 1110.
NEW ENGLAND, The [10,151], 3 Sumn. 495; 2 Law Rep. 71.
New England, The, v. Kennebec & B. Steam Nav. Co. [See 10,151.]
New England, The, Kramme v. [See 7,930.]
NEW ENGLAND BANK v. BANK OF THE METROPOLIS [10,152], 1 Hayw. & H. 203.
New England Car Co., Day v. [See 3,686.]
New England Car-Spring Co., Day v. [See 3,687, 3,688.]
NEW ENGLAND CAR-SPRING CO. v. UNION INDIA RUBBER CO. [10,153], 4 Blatchf. 1.
New England Glass Co., Magoun v. [See 8,960.]
New England Ins. Co., Baxter v. [See 1,127.]
NEW ENGLAND INS. CO. v. DETROIT & C. STEAM NAV. CO. [10,154], 13 Int. Rev. Rec. 94; 10 Amer. Law Reg. (N. S.) 383.
New England Ins. Co., Williams v. [See 17,731.]
New England Marine Ins. Co., Hazard's Adm'r v. [See 6,282.]
New England Marine Ins. Co., Magoun v. [See 8,961.]
New England Mut. Ins. Co., Dunham v. [See 4,152.]
New England Mut. Life Ins. Co., Arthur v. [See 565.]
New England Mut. Marine Ins. Co., Dole v. [See 3,966.]
NEW ENGLAND MUT. MARINE INS. CO. v. DUNHAM [10,155], 3 Cliff. 332, 371.
New England Mut. Marine Ins. Co., Hawes v. [See 6,241.]
New England Mut. Marine Ins. Co., Hearn v. [See 6,301, 6,302.]
NEW ENGLAND SCREW CO. v. BLIVEN [10,156], 3 Blatchf. 240.
New England Screw Co., Bliven v. [See 1,550.]
NEW ENGLAND SCREW CO. v. BLIVEN [10,157], 4 Blatchf. 97; 38 Hunt, Mer. Mag. 582.
NEW ENGLAND SCREW CO. v. SLOAN [10,158], 1 McA. Pat. Cas. 210.
New England Screw Co., Ward v. [See 17,157.]
New England Transfer Co., New York v. [See 10,-197.]
NEWHALL, Ex parte [10,159], 2 Story, 360; 5 Law Rep. 306.
Newhall v. The R. G. Winslow. [See 11,736.]
Newhall, The Harriet. [See 6,102.]
Newhall, The Sarah M. [See 12,351.]
NEW HAMPSHIRE, The [10,160], 23 Int. Rev. Rec. 311; 2 Cin. Law Bul. 225.
New Haven, The. [See 280.]
New Haven, The, The George M. Dallas v. [See 5,338.]
New Haven, The, Reed v. [See 11,649.]
New Haven Clock Co., Terry Clock Co. v. [See 13,-840, 13,841.]
New Haven M. & W. R. Co., Lee v. [See 8,197.]
NEW JERSEY, The [10,161], Olc. 415.
NEW JERSEY, The [10,162], Olc. 444.
NEW JERSEY v. BABCOCK [10,163], 4 Wash. C. C. 344.
New Jersey, The, Gardner v. [See 5,233.]
NEW JERSEY v. NOYES [10,164], 11 Chi. Leg. News, 9; 17 Alb. Law J. 407; 3 Cin. Law Bul. 680; 12 Amer. Law Rev. 819; 24 Int. Rev. Rec. 174, 334; 35 Leg. Int. 341.
NEW JERSEY MUT. INS. CO. v. BAKER [10,165], 94 U. S. 610.
New Jersey Mut. Life Ins. Co., De Camp v. [See 3,719.]
New Jersey R. Co., Milnor v. [See 9,620.]
NEW JERSEY STEAMBOAT CO. v. PLEASONTON [10,166], 8 Blatchf. 259.
New Jersey Steam Nav. Co., Clarke v. [See 2,859.]
NEW JERSEY ZINC CO. v. TROTTER [10,167], 17 Amer. Law Reg. (N. S.) 376; 23 Int. Rev. Rec. 410.
New Jersey Zinc Co., Wetherill v. [See 17,463, 17,-464.]
NEW LAMP CHIMNEY CO., In re [10,168], 2 Alb. Law J. 343.
NEWLAND, In re [10,169].
NEWLAND, In re [10,170], 6 Ben. 342; 7 N. B. R. 477.
NEWLAND, In re [10,171], 7 Ben. 63; 9 N. B. R. 62; 2 Ins. Law J. 860, 895; 4 Bigelow, Ins. Cas. 283.
NEWLIN v. GARWOOD [10,172], 1 Whart. Dig. 572.
NEWMAN, Ex parte [10,173], 3 App. Com'r Pat. 226.
NEWMAN, Ex parte [10,174], 2 Gall. 11.
NEWMAN, In re [10,175], 3 Ben. 20; 2 N. B. R. 302 (Quarto, 99); 1 Chi. Leg. News, 123.
NEWMAN v. DAVIS [10,176], 2 Cranch, C. C. 16.
Newman, Dubois v. [See 4,108.]
NEWMAN v. KEFFER [10,177], 33 Pa. St. 442, note; 1 Brun. Col. Cas. 502.
Newman, Turner v. [See 14,262.]
Newmark, United States v. [See 15,870.]
NEW ORLEANS, The [10,178].
NEW ORLEANS, The [10,179], 8 Ben. 101.
NEW ORLEANS, The [10,180], 9 Ben. 303.
NEW ORLEANS, The [10,181], 17 Blatchf. 216; 8 Reporter, 743.
New Orleans, Bonner v. [See 1,631.]
New Orleans, Gaines v. [See 5,177.]
New Orleans, Gravier v. [See 5,711.]
New Orleans, Insurance Co. v. [See 7,052.]
New Orleans, John Kyle Steamboat Co. v. [See 7,-354.]
New Orleans, Maenhaut v. [See 8,939, 8,940.]
NEW ORLEANS v. MORRIS [10,182], 3 Woods, 103.
NEW ORLEANS v. MORRIS [10,183], 3 Woods, 115.
New Orleans, Peterkin v. [See 11,026.]
New Orleans, Ranger v. [See 11,564.]
New Orleans, Sala v. [See 12,246.]
New Orleans, Union Bank v. [See 14,351.]
New Orleans, United States v. [See 15,871.]
New Orleans, The, Weeks v. [See 10,181, 17,353a.]
New Orleans & C. R. Co., Case v. [See 2,493.]
New Orleans, St. L. & C. R. Co., Bills v. [See 1,409.]
New Orleans, etc., R. Co., Ellerman v. [See 4,382.]

[Federal Case numbers are given in brackets.]

New Orleans Gaslight Co., Kilgour v. [See 7,764.]
NEW ORLEANS, M. & C. R. CO. v. NEW ORLEANS [10,183a], 14 Fed. 373.
New Orleans, M. & T. R. Co., Ames v. [See 329.]
New Orleans, M. & T. R. Co., Morgan v. [See 9,804.]
New Orleans, M. & T. R. Co., Southern & A. Tel. Co. v. [See 13,185.]
New Orleans Mut. Ins. Ass'n, Levi v. [See 8,290.]
NEW ORLEANS NAT. BANKING ASS'N v. ADAMS [10,184], 3 Woods, 21· 2 Browne, Nat. Bank Cas. 207.
New Philadelphia, The, Brady v. [See 1,797.]
NEWPORT, The [10,185], 5 Ben. 231; 14 Int. Rev. Rec. 37.
NEWPORT & C. BRIDGE CO. v. UNITED STATES [10,186], 3 Amer. Law Rec. 19.
Newsom, Jones v. [See 7,484.]
Newsome, Perry v. [See 11,009.]
NEWSOM v. WELLS [10,187], 5 McLean, 21.
NEWTON'S CASE [10,188], 2 Cranch, C. C. 467.
Newton, Beall v. [See 1,164.]
Newton, Cammeyer v. [See 2,344, 2,345.]
NEWTON v. CARBERY [10,189], 5 Cranch, C. C. 626.
NEWTON v. CARBERY [10,190], 5 Cranch, C. C. 632.
Newton, Hardon v. [See 6,054.]
Newton, Howe v. [See 6,771.]
NEWTON v. MUTUAL BEN. LIFE INS. CO. [10,191], 2 Dill. 154.
Newton, Norris v. [See 10,307.]
NEWTON v. REARDON [10,192], 2 Cranch, C. C. 49.
Newton, Schuyler Steam Tow Boat Line v. [See 12,-496.]
Newton, Thomas v. [See 13,905.]
NEWTON v. WEAVER [10,193], 2 Cranch, C. C. 685.
Newton, The Isaac. [See 7,089-7,092.]
NEW YORK, The [10,194], 1 Ben. 211.
NEW YORK, The [10,195], 6 Ben. 405.
New York, Allen v. [See 232.]
NEW YORK v. HIGHLAND [10,196], 6 Ben. 289.
New York, The, Merchants Transp. Co. of Norwich v. [See 9,454.]
New York, Miller v. [See 9,585.]
New York, Milne v. [See 9,618.]
NEW YORK v. NEW ENGLAND TRANSFER CO. [10,197], 14 Blatchf. 159; 15 Alb. Law J. 199.
New York, New York & N. H. R. Co. v. [See 10,199.]
New York, Ransom v. [See 11,573.]
New York, The, Schurtz v. [See 12,492.]
New York, The, Waldorf v. [See 17,057.]
New York, Youngs v. [See 18,185.]
New York & B. Brass Co., Waterbury Brass Co. v. [See 17,255, 17,256.]
New York & L. B. R. Co., Pennsylvania R. Co. v. [See 10,953.]
New York & E. Bank, Woolen v. [See 18,026.]
NEW YORK & E. R. R. v. SHEPARD [10,198], 5 McLean, 455.
New York & E. R. Co., Winans v. [See 17,863.]
New York & H. R. Co., Winans v. [See 17,864.]
NEW YORK & L. STEAMBOAT CO. v. WILSON [10,198a].
New York & L. B. R. Co., Easton v. [See 4,259.]
New York & N. H. R. Co., Anderson v. [See 360.]
New York & N. H. R. Co., Illius v. [See 7,010.]
NEW YORK & N. H. R. CO. v. NEW YORK [10,199], 4 Blatchf. 193.
New York & N. H. R. Co., Pomeroy v. [See 11,261.]
New York & O. M. R. Co., Hewitt v. [See 6,443.]
New York & O. M. R. Co., Stevens v. [See 13,405, 13,406.]
New York & Virginia Steamship Co., Hotchkiss v. [See 6,718a.]
NEW YORK & W. STEAMSHIP CO., In re [10,200], 9 Ben. 44.
NEW YORK BALANCE DRY-DOCK CO. v. HOWES [10,201].
NEW YORK BALANCE DRY-DOCK CO. v. HOWES [10,202], 9 Ben. 232.
New York Belting & Packing Co., Decker v. [See 3,727.]
NEW YORK CENT. & H. R. R. CO. v. BAILEY [10,-203], 20 Int. Rev. Rec. 25.
New York Cent. & H. R. R. Co., Cooke v. [See 3,176.]
New York Cent. & H. R. R. Co., Fraloff v. [See 5,025, 5,026.]
NEW YORK DRY DOCK v. HICKS [10,204], 5 McLean, 111.
New York Eye Infirmary, Morton v. [See 9,865.]
New York Guaranty & Indemnity Co., United States v. [See 15,872.]
New York Guaranty & Indemnity Co., Yardley v. [See 18,125.]
New York Gutta Percha, etc., Co., Goodyear v. [See 5,580.]
New York Gutta Percha Comb Co., Poppenhusen v. [See 11,281-11,283.]
NEW YORK HARBOR TUGBOAT CO. v. WYOMING, The [10,205], 2 N. J. Law J. 278.
NEW YORK KEROSENE OIL CO., In re [7,726], 3 N. B. R. 125 (Quarto, 31).
NEW YORK LIFE INS. & TRUST CO. v. COWPERTHWAITE [10,207].
New York Life Ins. & Trust Co., United States v. [See 15,873.]
New York Life Ins. Co., Davis v. [See 3,644.]
New York Life Ins. Co., Dutton v. [See 4,211.]
New York Life Ins. Co., Ensworth v. [See 4,496.]
New York Life Ins. Co., Hancock v. [See 6,011.]
New York Life Ins. Co., Morey v. [See 9,795.]
New York Life Ins. Co., Owen v. [See 10,631.]
New York Life Ins. Co., Tait v. [See 13,726.]
NEW YORK MAIL STEAMSHIP CO., In re [10,208], 7 Blatchf. 178; 3 N. B. R. 627 (Quarto, 155); 3 N. B. R. 756 (Quarto, 185).
NEW YORK MAIL STEAMSHIP CO., In re [10,209], 2 N. B. R. 74 (Quarto, 26).
NEW YORK MAIL STEAMSHIP CO., In re [10,210], 2 N. B. R. 423 (Quarto, 137); 1 Chi. Leg. News, 210.
NEW YORK MAIL STEAMSHIP CO., In re [10,211], 2 N. B. R. 554 (Quarto, 170).
NEW YORK MAIL STEAMSHIP CO., In re [10,212], 3 N. B. R. 280 (Quarto, 73).
NEW YORK MAIL STEAMSHIP CO. v. BALTIC, The [10,213], 5 Int. Rev. Rec. 3.
New York Mut. Ins. Co., Hernandez v. [See 6,414.]
New York, N. H. & H. R. Co., United States v. [See 15,874.]
NEW YORK RECTIFYING CO. v. UNITED STATES [10,214], 14 Blatchf. 549.
NEW YORK RUBBER CO. v. CHASKEL [10,215], 9 O. G. 923.
New York Savings Bank v. Stuyvesant Bank. [See 12,919.]
New York State Bank v. Townsend. [See 9,381.]
NEW YORK STATE MARINE INS. CO. v. PROTECTION INS. CO. [10,216], 1 Story, 458; 4 Law Rep. 233.
NEW YORK WIRE-RAILING CO. v. CAKE [10,217], 5 Leg. & Ins. Rep. 18.
NEW YORK WIRE-RAILING CO. v. WALKER [10,-218], 2 Fish. Pat. Cas. 179.
Neyhardt, Fourth Nat. Bank v. [See 4,991.]
N. H. Quinby, The, Lubker v. [See 8,586.]
NIAGARA, The [10,219], 6 Ben. 469.
NIAGARA, The [10,220], 3 Blatchf. 37; 29 Hunt, Mer. Mag. 719.
NIAGARA, The [10,221], 16 Blatchf. 516; 16 Alb. Law J. 156.
Niagara, The. [See 4,339.]
Niagara, The, Allegro v. [See 207a.]
NIAGARA, The, v. VAN PELT [10,220].
NICHOLAS v. MURRAY [10,223], 5 Sawy. 320; 18 N. B. R. 469.
NICHOLAS v. PENANG, The [10,915.]
Nicholas, Price v. [See 11,415.]
NICHOLL v. SAVANNAH STEAMSHIP CO. [10,225], 2 Cranch, C. C. 211.
Nicholls, Dix v. [See 3,926.]
Nicholls, Elliott v. [See 4,394.]
NICHOLLS v. FEARSON [10,226], 2 Cranch, C. C. 526.
NICHOLLS v. FEARSON [10,227], 2 Cranch, C. C. 703.
NICHOLLS v. GEORGETOWN [10,228], 4 Cranch, C. C. 576.
NICHOLLS v. HARRISON [10,229].
NICHOLLS v. HAZEL [10,230], 2 Cranch, C. C. 95.
NICHOLLS v. HODGE [10,231], 2 Cranch, C. C. 582.
NICHOLLS v. JOHNS [10,232], 2 Cranch, C. C. 66.
Nicholls, Ringgold v. [See 11,848.]
Nicholls, United States v. [See 15,875.]

[Federal Case numbers are given in brackets.]

NICHOLLS v. WARFIELD [10,233], 2 Cranch, C. C. 290.
NICHOLLS v. WARFIELD [10,234], 2 Cranch, C. C. 429.
NICHOLLS v. WHITE [10,235], 1 Cranch, C. C. 58.
Nicholls, White v. [See 17,554.]
NICHOLLS v. WRIGHT [10,236], 4 Cranch, C. C. 700.
NICHOLS, In re [10,237], 1 Fed. 842.
Nichols, Bailey v. [See 741.]
NICHOLS v. BRUNSWICK [10,238], 3 Cliff. 81.
NICHOLS v. BRUNSWICK [10,239], 3 Cliff. 88.
NICHOLS v. BURCH [10,240], 5 Cranch, C. C. 553.
Nichols, Cawood v. [See 2,531.]
NICHOLS v. EATON [10,241], 3 Cliff. 595.
Nichols, Edwards v. [See 4,296.]
NICHOLS v. FARMERS' MUT. INS. CO. [10,242], 9 Leg. & Ins. Rep. 124.
NICHOLS v. HARRIS [10,243], 1 McA. Pat. Cas. 302.
NICHOLS v. HARRIS [10,244], 1 McA. Pat. Cas. 362.
Nichols, Knowles v. [See 7,897.]
Nichols, National Park Bank v. [See 10,047, 10,048.]
NICHOLS v. NEWELL [10,245], 1 Fish. Pat. Cas. 647.
Nichols, Park Bank v. [See 10,718.]
NICHOLS v. PEARCE [10,246], 7 Blatchf. 5.
Nichols, Smith v. [See 13,084.]
NICHOLS v. TREMLETT [10,247], 1 Spr. 361; 20 Law Rep. 324.
Nichols, United States v. [See 15,876.]
Nicholson, Beataugh v. [See 1,194.]
NICHOLSON v. CHICAGO [10,248], 5 Biss. 89.
NICHOLSON v. McGUIRE [10,249], 4 Cranch, C. C. 194.
Nicholson, Osborn v. [See 10,595.]
NICHOLSON v. PATTON [10,250], 2 Cranch, C. C. 164.
Nicholson v. United States. [See 3,097.]
Nicholson, United States v. [See 15,877.]
NICHOLSON PAVEMENT CO. v. HATCH [10,251], 4 Sawy. 692; 3 Fish. Pat. Cas. 432.
Nickerson, Ex parte. [See 7,019.]
Nickerson, Collins v. [See 3,016.]
NICKERSON v. JOHN PERKINS, The [10,252], 3 Ware, 87; 19 Law Rep. 490.
Nickerson, Louisiana Ins. Co. v. [See 8,539.]
Nickerson v. The Monson. [See 9,716.]
Nickerson, Pope v. [See 11,274.]
Nickerson, United States v. [See 15,878.]
Nicklin, Wilkinson v. [See 17,673.]
NICKLIN v. WYTHE [10,253], 2 Sawy. 535.
Nicoll, United States v. [See 15,879.]
Nicolson Pavement Co., Jenkins v. [See 7,273.]
NICKODEMUS, In re [10,254], 3 N. B. R. 230 (Quarto, 55); 2 Chi. Leg. News, 49; 16 Pittsb. Leg. J. 233; 2 Amer. Law T. 168; 1 Amer. Law T. Rep. Bankr. 140.
NICKS v. MATHERS [10,254a], Hempst. 80.
NICOLAI FIRST, The [10,255], Blatchf. Pr. Cas. 354.
NICOLAS, In re [10,256], 8 Blatchf. 102; 13 Int. Rev. Rec. 78.
NICOLAY v. ST. CLAIR COUNTY [10,257], 3 Dill. 163.
NICOLL v. UNITED STATES (The Late Tea Case) [10,258], 1 U. S. Law Int. 24.
NICOLL v. AMERICAN INS. CO. [10,259], 3 Woodb. & M. 529.
NICOLLS v. RODGERS [10,260], 2 Paine, 437.
Niehoff, Golson v. [See 5,524.]
NIETO v. CLARK [10,261].
NIETO v. CLARK [10,262], 1 Cliff. 145; 16 Leg. Int. 358.
NIGHTINGALE, Ex parte [10,263], 1 N. Y. Leg. Obs. 8.
Nightingale v. Elliot. [See 10,264.]
NIGHTINGALE v. OREGON CENT. RY. CO. [10,264], 2 Sawy. 338; 17 Int. Rev. Rec. 61, 93; 5 Chi. Leg. News, 243; 4 Leg. Op. 622; 5 Leg. Gaz. 61.
NIGHTINGALE v. SHELDON [10,265], 5 Mason, 336.
Nihols, United States v. [See 15,880.]
Niles, Rose v. [See 12,050.]
NIMICK v. MUTUAL BEN. LIFE INS. CO. [10,266], 3 Brewst. 502; 3 Pittsb. Rep. 293; 18 Pittsb. Leg. J. 164; 10 Amer. Law Reg. (N. S.) 101; 1 Bigelow, Ins. Rep. 689.
Nimmo, Bell v. [See 1,258.]
Nimmon, Bell v. [See 1,259.]
NIMROD, The [10,267], 1 Ware (9) 1.
Nimrod, The, Wood v. [See 17,959.]
NIMS, In re [10,268], 10 Ben. 53; 18 N. B. R. 91; 26 Pittsb. Leg. J. 11.
NIMS, In re [10,269], 16 Blatchf. 439.
Nine Bales of Cotton, Sewell v. [See 12,683.]
Nine Cases, United States v. [See 15,880a.]
Nine Hundred and Five Packages of Tobacco, United States ex rel. Ames v. [See 15,881.]
NINE HUNDRED AND FORTY-EIGHT PIECES OF LUMBER [10,270], 7 Ben. 389.
NINE HUNDRED AND SEVENTY-NINE BOXES OF SUGAR [10,271], 7 Ben. 242.
Nine Hundred and Ten Bales of Cotton, United States v. [See 15,882.]
NINE HUNDRED AND TWENTY-EIGHT BARRELS OF SALT [10,272], 2 Biss. 319; 2 Chi. Leg. News, 317.
Nine Hundred Baskets of Champagne, United States v. [See 15,883.]
Nine Packages of Linen, United States v. [See 15,884.]
NINE THOUSAND SIX HUNDRED AND EIGHTY-ONE DRY OX HIDES [10,273], 6 Ben. 199; 7 Amer. Law Rev. 576; 16 Int. Rev. Rec. 166.
Nine Trunks, United States v. [See 15,885, 15,886.]
Ninetta, The, Knox v. [See 7,912.]
Ninety Demijohns Aguadiente, United States v. [See 15,887.]
NINETY-FIVE BALES OF PAPER v. UNITED STATES [10,274], 1 Paine, 149.
Ninety-Five Barrels of Distilled Spirits, United States v. [See 15,888-15,890.]
Ninety-Five Boxes, Etc., United States v. [See 15,891.]
Ninety-Two Barrels of Rectified Spirits, United States v. [See 15,892.]
NINETY-TWO BARRELS OF SPIRITS [10,275], 5 Ben. 323.
NINEVEH, The [10,276], 1 Lowell, 400.
NIPHON'S CREW, The [10,277], 13 Law Rep. 266; Brunner, Col. Cas. 577.
Nipoti Accame, The, Higbee v. [See 6,465.]
Nisen, Halverson v. [See 5,970.]
Nissley, United States v. [See 15,893.]
NISSON v. WESSELS [10,278], 5 Ben. 483.
NIVETO, The [10,279], 7 Ben. 69.
NIXDORFF v. WELLS [10,280], 4 Cranch, C. C. 350.
Nixon, Packer v. [See 10,653.]
Nixon, Parker v. [See 10,744.]
Nixon, Poole v. [See 11,270.]
Nixon, Union Paper-Bag Machine Co. v. [See 14,391.]
Nixon, Youqua v. [See 18,189, 18,190.]
Noah, United States v. [See 15,894.]
NOAKES, In re [10,281], 1 N. B. R. 592 (Quarto, 164); Bankr. Ct. Rep. 162.
NOBLE, In re [10,282], 3 Ben. 332; 3 N. B. R. 96 (Quarto, 25).
Noble, Pettilon v. [See 11,044.]
Noble, Strong v. [See 13,543.]
Noble, United States v. [See 15,895.]
Noble, Warford v. [See 17,175.]
Noble, The Robert. [See 11,894.]
Noble, The R. P. [See 9,639, 9,640.]
NOBLET v. OHIO & M. R. CO. [10,283], 1 Cin. Law Bul. 346.
Noblom, U. S. v. [See 15,896.]
NOE v. PRENTICE [10,284].
NOE v. PRENTICE [10,284a].
Noe, Prentice v. [See 11,382.]
NOE v. UNITED STATES [10,285], Hoff. Land Cas. 162.
NOE v. UNITED STATES [10,286], Hoff. Land Cas. 242.
NOELL v. MITCHELL [10,287], 4 Biss. 346.
NOESEN, In re [10,288], 6 Biss. 443; 12 N. B. R. 422; 7 Chi. Leg. News, 419; 1 N. Y. Wkly. Dig. 125; 2 Cent. Law J. 570; 7 Leg. Gaz. 297.
NOLAN, In re [10,289], 8 Ben. 559.
Nolan, Coombs v. [See 3,189.]
Nolan v. The Union. [See 14,345.]
Noland, Baugh v. [See 1,114.]
Noland, Foote v. [See 4,915.]
Nolton, United States v. [See 15,897.]
NONES v. EDSALL [10,290], 1 Wall. Jr. 189.
NOOMAN, In re [10,291], 3 N. B. R. 267 (Quarto, 63).
Noon, Sears v. [See 12,590.]

[Federal Case numbers are given in brackets.]

NOONAN, In re [10,292], 3 Biss. 491; 10 N. B. R. 330; 5 Chi. Leg. News, 557; 30 Leg. Int. 425; 21 Pittsb. Leg. J. 73.
NORCROSS, Ex parte [10,293], 1 N. Y. Leg. Obs. 100; 5 Law Rep. 124; 1 Pa. Law J. 135.
Norcross, Brooks v. [See 1,957.]
NORCROSS v. GREELY [10,294], 1 Curt. 114; 15 Law Rep. 149; 29 Hunt, Mer. Mag. 203.
NORDLINGER v. CATHERINA, The [10,295], 3 Wkly. Law Gaz. 366.
Nordlinger v. The Catherine. [See 2,512.]
NORDLINGER v. VAIDEN [10,296], 2 Amer. Law Rev. 188.
NORFOLK, The [10,297], 2 Hughes, 123.
Norfolk & P. R. Co., Gilbough v. [See 5,419.]
Norma, The, Bone v. [See 1,626.]
NORMAN v. HIGGINS [10,298].
NORMAN v. INSURANCE CO. OF NORTH AMERICA [10,299], 7 Chi. Leg. News, 173; 4 Ins. Law J. 827.
Norman, The, Kerr v. [See 7,732.]
NORMAN v. MANCIETTE [10,300], 1 Sawy. 484; 4 Amer. Law T. Rep. U. S. Cts. 60; 3 Leg. Gaz. 132.
NORMAN v. STORER [10,301], 1 Blatchf. 593.
Norment, The, United States v. [See 15,898.]
NORRIS, In re [10,302], 2 Hask. 19.
NORRIS, In re [10,303], 2 Hask. 74.
NORRIS' CASE [10,304], 1 Abb. U. S. 514; 4 N. B. R. 35 (Quarto, 10); 1 Amer. Law T. Rep. Bankr. 227; 3 Amer. Law T. 216.
NORRIS v. COOK [10,305], 1 Curt. 464.
Norris, Gale v. [See 5,190.]
Norris, Goodrich v. [See 5,545.]
NORRIS v. ISLAND CITY, The [10,306], 1 Cliff. 219.
NORRIS v. NEWTON [10,307], 5 McLean, 92; 7 West. Law J. 515.
Norris, United States v. [See 15,899.]
North, In re. [See 1,207.]
North, In re. [See 6,764.]
NORTH v. CLARK [10,308], 3 Cranch, C. C. 93.
NORTH v. EAGLE, The [10,309], Bee, 78.
NORTH v. HOUSE [10,310], 6 N. B. R. 365.
NORTH v. KERSHAW [10,311], 4 Blatchf. 70.
NORTH v. McDONALD [10,312], 1 Biss. 57.
North, Yale & Greenleaf Mfg. Co. v. [See 18,123.]
North, The Christopher. [See 2,707.]
Northam, The C. H. [See 2,689, 2,690.]
Northam, Philadelphia & R. R. Co. v. [See 11,090.]
Northam, Pratt v. [See 11,376.]
NORTH AMERICA, The [10,313].
NORTH AMERICA, The [10,314], 5 Ben. 486.
North America, The, Coverdale v. [See 3,289.]
North America, The, Hersey v. [See 6,429.]
North America, The, Peru v. [See 11,017a.]
North America, The, Thain v. [See 13,853.]
NORTH AMERICAN INS. CO v. WHIPPLE [10,315], 2 Biss. 418; 3 Chi. Leg. News, 141.
North American Land Co., Gilmore v. [See 5,448.]
North American Steamship Co. v. Lorillard. [See 12,333.]
Northampton Insurgents, Trial of. [See 5,126, 5,-127.]
North Bennington Boot & Shoe Co., Odorless Rubber Co. v. [See 10,438.]
North British, etc., Ins. Co., Johnson v. [See 7,-400.]
NORTH CAPE, The [10,316], 6 Biss. 505; 8 Chi. Leg. News, 121.
NORTH CAROLINA, The [10,316a], Blatchf. Pr. Cas. 44.
NORTH CAROLINA, The [10,317], Blatchf. Pr. Cas. 645.
North Carolina, The. [See 6,451.]
NORTH CAROLINA v. TRUSTEES OF UNIVERSITY [10,318], 1 Hughes, 133; 5 N. B. R. 466; 65 N. C. 714.
North Carolina, United States v. [See 15,727.]
North Carolina R. Co., Swasey v. [See 13,679.]
Northern Bank of Kentucky v. Labitut. [See 842.]
NORTHERN BELLE, The [10,319], 1 Biss. 529.
Northern Cent. Ry., Jackson v. [See 7,142.]
NORTHERN INDIANA, The [10,320], 3 Blatchf. 92; 16 Law Rep. 433, 449.
NORTHERN INDIANA R. CO. v. MICHIGAN CENT. R. CO. [10,321], 5 McLean, 444.
NORTHERN IRON CO., In re [10,322], 14 N. B. R. 356.
Northern R. Co., Hubbard v. [See 6,818.]
NORTHERN SHORE STATEN ISLAND FERRY CO. v. HUGUENOTS, The [10,323].
NORTHERN TRANSP. CO. v. CHICAGO [10,324], 7 Biss. 45.
Northern Transp. Co., Van Schaack v. [See 16,876.]
NORTHERN WARRIOR, The [10,325], 1 Hask. 314.
NORTHFIELD, The [10,326], 4 Ben. 112.
North Missouri Railroad, Hodge v. [See 6,561.]
Northop, Vaughan v. [See 16,899.]
NORTHROP v. GREGORY [10,327], 2 Abb. U. S. 503.
Northrop, The William H. [See 17,696.]
NORTHRUP v. ADAMS [10,328], 12 O. G. 430; 2 Ban. & A. 567; 2 Cin. Law Bul. 84; Fent. Pat. 28.
NORTHRUP v. SHOOK [10,329], 10 Blatchf. 243; 16 Int. Rev. Rec. 196; 7 Amer. Law Rev. 573.
NORTH SHORE STATEN ISLAND FERRY CO. v. HUGUENOTS, The [10,330].
NORTH STAR, The [10,331], 8 Blatchf. 209.
NORTH STAR, The [10,332], 15 Blatchf. 532.
North Star, The. [See 16,839.]
Northumberland, The, Hinckley v. [See 6,511.]
Northumberland Bank, Bank of the United States v. [See 931.]
NORTHWESTER, The [10,333], 10 Adm. Rec. 415.
NORTHWESTERN CAR CO. v. HOPKINS [10,334], 4 Biss. 51; 5 Amer. Law Reg. (N. S.) 44.
NORTHWESTERN DISTILLING CO. v. CORSE [10,335], 4 Biss. 514.
Northwestern Fertilizing Co., Gaughan v. [See 5,-272.]
NORTHWESTERN FERTILIZING CO. v. HYDE PARK [10,336], 3 Biss. 480; 5 Chi. Leg. News, 313.
NORTHWESTERN FIRE EXTINGUISHER CO. v. PHILADELPHIA FIRE EXTINGUISHER CO. [10,337], 6 O. G. 34; 10 Phila. 227; 1 Ban. & A. 177; 31 Leg. Int. 148; Merw. Pat. Inv. 346; 6 Leg. Gaz. 132.
Northwestern Nat. Ins. Co., Marsh v. See [9,118.]
Northwestern Ins. Co., Sayles v. [See 12,421, 12,-422.]
Northwestern Mut. Life Ins. Co., Gridley v. [See 5,808.]
NORTHWESTERN MUT. LIFE INS. CO. v. OVERHOLT [10,338], 6 Cent. Law J. 188; 4 Dill. 287.
NORTHWESTERN MUT. LIFE INS. CO. v. PERRILL [10,339], 4 Cin. Law Bul. 196.
Northwestern Nat. Ins. Co., Cashau v. [See 2,499.]
NORTHWESTERN RY. CO., In re [10,340], 20 Int. Rev. Rec. 18.
Northwestern Ry. Co. v. Chicago & P. Ry. Co. [See 2,665.]
NORTHWESTERN UNION PACKET CO. v. ATLEE [10,341], 2 Dill. 479; 12 Amer. Law Reg. (N. S.) 561; 7 Amer. Law Rev. 752; 18 Int. Rev. Rec. 157.
NORTHWESTERN UNION PACKET CO. v. CLARKSVILLE [10,342], 4 Dill. 18, note.
NORTHWESTERN UNION PACKET CO. v. HANNIBAL [10,343], 4 Dill. 18, note.
NORTHWESTERN UNION PACKET CO. v. LOUISIANA [10,344], 4 Dill. 17, note.
NORTHWESTERN UNION PACKET CO. v. ST. LOUIS [10,345], 4 Dill. 10; 23 Int. Rev. Rec. 33; 4 Cent. Law J. 58; 15 Alb. Law J. 107.
NORTHWESTERN UNION PACKET CO. v. ST. PAUL [10,346], 3 Dill. 454; 7 Chi. Leg. News, 331; 21 Int. Rev. Rec. 221.
NORTH WISCONSIN RY. CO. v. BARRON COUNTY [10,347], 8 Biss. 414.
NORTON, In re [10,348], 6 N. B. R. 297.
NORTON v. BARKER [10,349], 1 Wkly. Notes Cas. 29.
Norton, Bork v. [See 1,659.]
Norton, Chapin v. [See 2,599.]
NORTON v. DE LA VILLEBEUVE [10,350], 1 Woods, 163; 13 N. B. R. 304; 2 N. Y. Wkly. Dig. 4.
Norton, Hewett v. [See 6,441.]
Norton v. The Island City. [See 10,306.]
Norton, McCan v. [See 8,677.]
NORTON v. MEADER [10,351], 4 Sawy. 603.

[Federal Case numbers are given in brackets.]

NORTON v. RICH [10,352], 3 Mason, 443.
NORTON v. SHELBY CO. [10,353].
NORTON v. STEVENS [10,353a], 1 Hayw. & H. 94.
Norton, The Senator Mike. [See 12,666, 12,667.]
Norvell, Hill v. [See 6,497.]
Norvell, Postmaster General v. [See 11,310.]
Norwalk, The. [See 7,981.]
NORWALK BANK v. ADAMS EXP. CO. [10,354], 4 Blatchf. 455; 19 How. Pr. 462; 17 Leg. Int. 325; 43 Hunt, Mer. Mag. 710.
NORWALK LOCK CO. v. BERGER [10,355], 13 O. G. 47.
NORWAY, The [10,356].
NORWAY, The [10,357], 1 Ben. 493.
NORWAY, The [10,358], 2 Ben. 121.
NORWAY, The [10,359], 3 Ben. 163.
NORWICH & N. Y. TRANSP. CO., In re [10,360], 8 Ben. 312.
NORWICH & N. Y. TRANSP. CO., In re [10,361], 10 Ben. 193.
NORWICH & N. Y. TRANSP. CO., In re [10,362], 17 Blatchf. 221.
Norwich & N. Y. Transp. Co., Flint v. [See 4,873, 4,874.]
NORWICH & N. Y. TRANSP. CO. v. WESTERN MASSACHUSETTS INS. CO. [10,363], 6 Blatchf. 241, 34 Conn. 561.
Norwich & N. Y. Transp. Co., Wright v. [See 18,-086, 18,087.]
Norwich & W. R. Co., Barnard v. [See 1,007.]
Norwich & W. R. Co., Imlay v. [See 7,012.]
NORWOOD, Ex parte [10,364], 3 Biss. 504.
NORWOOD v. SUTTON [10,365], 1 Cranch, C. C. 327.
Norwood, Thompson v. [See 13,970.]
Nostra Signora Del Camino, The, Salderondo v. [See 12,247.]
Notnagle, Graighle v. [See 5,679.]
NOTT v. SABINE, The [10,366], 2 Woods, 211; 1 La. Law J. 175.
Nott, United States v. [See 15,900.]
Nougues, Trafton v. [See 14,134.]
NOURSE v. ALLEN [10,367], 4 Blatchf. 376; 3 Fish. Pat. Cas. 63.
Nourse, Greer v. [See 5,793.]
Nourse, United States v. [See 15,901.]
NOVELTY, The [10,368], 9 Ben. 195.
NOVELTY, The [10,369], 10 Ben. 349.
NOYES, In re [10,370], 2 Lowell, 352; 11 N. B. R. 111.
NOYES, In re [10,371], 6 N. B. R. 277.
Noyes, In re. [See 10,164.]
NOYES v. BRENT [10,372], 5 Cranch, C. C. 551.
NOYES v. BRENT [10,373], 5 Cranch, C. C. 656.
Noyes, Brown v. [See 2,023.]
Noyes, New Jersey v. [See 10,164.]
Noyes, Richardson v. [See 11,792.]
NOYES v. WILLARD [10,374], 1 Woods, 187.
Nucleus, The, Ludington v. [See 8,598.]
NUGENT, Ex parte [10,375], 1 Amer. Law J. (N. S.) 107; Brunner, Col. Cas. 296; 1 Hayw. & H. 287.
NUGENT v. BEALE [10,375], 1 Hayw. & H. 287.
Nugent, Harris v. [See 6,126.]
NUGENT v. PUTNAM COUNTY [10,377], 3 Biss. 105.
NUNAN v. LITCHFIELD [10,378].
Nunan, Ho Ah Kow v. [See 6,546.]
NUNEZ v. UNITED STATES [10,379], Hoff. Land Cas. 191.
Nunnemacher, United States v. [See 15,902, 15,903.]
Nurnberg, The, Beyer v. [See 1,380.]
NUSBAUM v. EMERY [10,380], 3 Biss. 469; 5 Chi. Leg. News, 549; 18 Int. Rev. Rec. 85.
NUSBAUM v. EMERY [10,381], 5 Biss. 393; 5 Chi. Leg. News, 542; 18 Int. Rev. Rec. 77.
Nute, Howes v. [See 6,790.]
Nutt, Brooks v. [See 1,958.]
NUTT v. MECHANICS' BANK [10,382], 4 Cranch, C. C. 102.
Nutt, United States v. [See 15,904, 15,905.]
NUTTER v. RODGERS [10,383].
NUTTER v. WHEELER [10,384], 2 Lowell, 346.
NUTTING, In re [10,385], 1 McA. Pat. Cas. 455.
N. W. THOMAS, The [10,386], 1 Biss. 210.
Nye, United States v. [See 15,906.]
NYMPH, The [10,387], Blatchf. Pr. Cas. 564.
NYMPH, The [10,388], 1 Sumn. 516.
NYMPH, The [10,389], 1 Ware (257) 259.
Nystrom, Haworth v. [See 6,251.]

O

OAKES v. RICHARDSON [10,390], 2 Lowell, 173.
OAK HILL, The [10,391].
Oakland, The, Thompson v. [See 13,971.]
Oakland Mfg. Co., Buffum v. [See 2,113.]
OAKLEY, In re [10,392], 5 Law Rep. 327.
OAKLEY v. BALLARD [10,393], Hempst. 475.
Oakley, Herwig v. [See 6,435.]
Oakman, Sawyer v. [See 12,402-12,404.]
Oakville Co., American Pin Co. v. [See 313.]
O'BANNON, In re [10,394], 2 N. B. R. 15 (Quarto, 6).
OBEAR, In re [10,395], 3 Dill. 37; 10 N. B. R. 151; 1 Cent. Law J. 362.
Ober, Citizens' Bank v. [See 2,731.]
OBERHOFFER, In re [10,396], 9 Ben. 485; 17 N. B. R. 546.
Obermeyer, United States v. [See 15,907.]
O'Brian, United States v. [See 15,908.]
O'BRIEN, In re [10,397], 1 N. B. R. 176; Bankr. Reg. Supp. 38; 6 Int. Rev. Rec. 182.
O'Brien, Bosseau v. [See 1,667.]
O'Brien, Cooke v. [See 3,177.]
O'Brien, Miller v. [See 9,586.]
O'Brien, United States v. [See 15,909.]
O'BRIEN v. WOODY [10,398], 4 McLean, 75.
O'BRIEN COUNTY v. BROWN [10,399], 1 Dill. 588.
O'Brien County, Phelps v. [See 11,078.]
O'Bryan, The Richard. [See 11,767.]
O'CALLAGHON v. RIGGS [7,361], 5 Amer. Law Reg. 139.
O'Callahan, United States v. [See 15,910.]
OCEAN, The [10,401], 1 Spr. 535; 18 Hunt, Mer. Mag. 295.
OCEAN BELLE, The [10,402], 6 Ben. 253.
Ocean Belle, The. [See 10,961.]
Ocean Belle, The, Pent v. [See 10,961.]
OCEAN BIRD, The [10,403], 2 Spr. 261.
OCEAN BRIDE, The [10,404], 1 Hask. 331.
Oceanic Steam Nav. Co., Jones v. [See 7,485.]
Oceanic Steam Nav. Co., Levinson v. [See 8,292.]
OCEANIC STEAMSHIP CO. v. TAPPAN [10,405], 16 Blatchf. 296; 25 Int. Rev. Rec. 177; 7 Reporter, 645.
OCEAN INS. CO. v. FIELDS [10,406], 2 Story, 59.
Ocean Ins. Co., Potter v. [See 11,335.]
OCEAN INS. CO. v. SUN MUT. INS. CO. [10,407], 8 Ben. 272.
OCEAN INS. CO. v. SUN. MUT. INS. CO. [10,408], 15 Blatchf. 249.
Ocean Mills, Pearl v. [See 10,876.]
Ocean Nat. Bank, Second Nat. Bank v. [See 12,602.]
OCEAN QUEEN, The [10,408a].
OCEAN QUEEN, The [10,409].
OCEAN QUEEN, The [10,410], 5 Blatchf. 493.
OCEAN QUEEN, The [10,411], 6 Blatchf. 24.
Ocean Queen, The Adams v. [See 64.]
OCEAN SPRAY, The [10,412], 4 Sawy. 105; 3 Cent. Law J. 773.
Ocean Spray, The, Erlandsen v. [See 4,518.]
Ocean Star, The, O'Connor v. [See 10,419.]
Ocean Star, The, Roberts v. [See 11,908.]
Ocean Steam-Nav. Co., English v. [See 4,490, 4,490a.]
OCEAN STEAM NAV. CO. v. REVENUE, The [10,413].
Ocean Tow Boat Co., Sonderburg v. [See 13,175.]
OCEANUS, The [10,414], 5 Ben. 545.
OCEANUS, The [10,415], 12 Blatchf. 430.
OCEAN WAVE, The [10,416], 3 Biss. 317; 4 Chi. Leg. News, 486; 6 Alb. Law J. 407.
OCEAN WAVE, The [10,417], 5 Biss. 378; 5 Chi. Leg. News, 565.
O'CONNELL v. TALLY HO, The [10,418], 28 Hunt, Mer. Mag. 462.

[Federal Case numbers are given in brackets.]

O'Connor v. The Empire State. [See 4,474.]
O'Connor v. Lang. [See 10,419.]
O'CONNOR v. OCEAN STAR, The [10,419], Holmes, 248.
O'CONNOR v. SARAH SANDS, The [3,115].
OCONTO, The [10,421], 5 Biss. 460.
Oconto, The. [See 9,330.]
OCTAVIA, The [10,422], 1 Gall. 488.
OCTAVIA, The [10,423], 1 Mason, 149.
OCTOROON CASE [1,691, 1,693].
ODDFELLOW, The [10,425], Blatchf. Pr. Cas. 372; 20 Leg. Int. 229.
ODELL, In re [10,426], 9 Ben. 209; 17 N. B. R. 73.
ODELL, In re [10,427], 9 Ben. 247; 16 N. B. R. 501.
ODELL v. FLOOD [10,428], 8 Ben. 543.
Odell v. The Washington Irving. [See 17,243.]
Odenheimer, Askew v. [See 586, 587.]
ODENHEIMER v. HANSON [10,429], 4 McLean, 437.
Oder, The, Woolf v. [See 18,027.]
ODIORNE v. AMESBURY NAIL FACTORY [10,430], 2 Mason, 28; 1 Robb, Pat. Cas. 300.
ODIORNE v. DENNEY [10,431], 1 N. J. Law J. 183; 3 Ban. & A. 287; 13 O. G. 965.
ODIORNE v. WINKLEY [10,432], 2 Gall. 51; 1 Robb, Pat. Cas. 52.
ODLIN v. INSURANCE CO. OF PENNSYLVANIA [10,433], 2 Wash. C. C. 312; 2 Hall. Law J. 221.
O'DONNELL, In re [10,434], 14 O. G. 379.
O'DONOHOE, In re [10,435], 3 N. B. R. 245 (Quarto, 59).
ODORLESS EXCAVATING APPARATUS CO. v. McCAULEY [10,436], 2 Ban. & A. 570.
ODORLESS EXCAVATING CO. v. CLEMENTS [10,437], 16 O. G. 854; 4 Ban. & A. 540.
ODORLESS RUBBER CO. v. NORTH BENNINGTON BOOT & SHOE CO. [10,438].
O'DOWD, In re [10,439], 8 N. B. R. 451.
OEBRICKE v. PITTSBURGH [10,442].
OEHNINGER, In re [10,441], 8 Ben. 487.
Oelrich v. Barney. [See 10,443.]
OELRICH v. PITTSBURGH [10,442], 1 Pittsb. Rep. 522; 6 Pittsb. Leg. J. 446; 7 Amer. Law Reg. 725; 5 Pa. Law J. Rep. 485.
Oelrich v. Pittsburgh. [See 10,444.]
OELRICH v. BARNEY [10,443].
OELRICH v. PITTSBURGH [10,444], 3 West. Law Month. 14; 17 Leg. Int. 4; 2 Pittsb. Rep. 93; 7 Pittsb. Leg. J. 81, 249.
Oelrichs, Tucker v. [See 14,225.]
O'FALLON, In re [10,445], 2 Dill. 548.
O'Fallon, United States v. [See 15,911.]
O'FARRELL, In re [10,446], 3 Ben. 191; 2 N. B. R. 484 (Quarto, 154); 2 Amer. Law T. 106; 1 Amer. Law T. Rep. Bankr. 159.
Officers—Charge to Grand Jury in Relation to Frauds of Officers of National Banks. [See 18,246.]
Officer, Metcalf v. [See 9,496.]
Officers and Crew of the Savannah, United States v. [See 16,226a.]
Offley, Matthews v. [See 9,290.]
OFFUT v. HALL [10,447], 2 Cranch, C. C. 363.
OFFUTT v. BEATTY [10,448], 1 Cranch, C. C. 213.
Offutt, Cunningham v. [See 3,484.]
OFFUTT v. HALL [10,449], 1 Cranch, C. C. 504.
OFFUTT v. HALL [10,450], 1 Cranch, C. C. 572.
OFFUTT v. HENDERSON [10,451], 2 Cranch. C. C. 553.
OFFUTT v. PARROTT [10,452], 1 Cranch, C. C. 139.
OFFUTT v. PARROTT [10,453], 1 Cranch, C. C. 154.
Ogden, Allen v. [See 233.]
OGDEN v. BARNEY [10,454], 5 Blatchf. 189.
Ogden, Coffin v. [See 2,950.]
OGDEN v. DAVIES COUNTY [10,455].
OGDEN v. GILLINGHAM [10,456], Baldw. 38.
OGDEN v. HARRINGTON [10,457], 6 McLean, 418.
Ogden, Haselden v. [See 6,190.]
OGDEN v. MAXWELL [10,458], 3 Blatchf. 319.
OGDEN v. PARSONS [10,781], 37 Hunt, Mer. Mag. 710; 38 Hunt, Mer. Mag. 710.
Ogden, Parsons v. [See 10,781.]
Ogden, Pierson v. [See 11,160.]
Ogden, Ridgeway v. [See 11,814.]
OGDEN v. STRONG [10,460], 2 Paine, 584.
Ogden, United States v. [See 15,912, 15,913.]
Ogden, Walker v. [See 17,081.]
Ogden, Wisner v. [See 17,914.]
OGDEN v. WITHERSPOON [10,461], 2 Hayw. N. C. 227.
Ogdensburgh, The, Ward v. [See 17,158.]
OGLE v. EGE [10,462], 4 Wash. C. C. 584; 1 Robb, Pat. Cas. 516.
Oglethorpe, The, McKenzie v. [See 8,857.]
O'Grady, Georgia v. [See 5,352.]
O'HALLORAN, In re [10,463], 8 Ben. 128.
O'HARA, Ex parte [10,464.]
O'HARA, In re [10,465], 8 Amer. Law Reg. (N. S.) 113; 1 Amer. Law T. Rep. Bankr. 123; 3 Pittsb. Rep. 111; 15 Pittsb. Leg. J. 134.
O'HARA v. HAWES [10,466].
O'HARA v. MARY, The [10,467], Bee, 100.
O'Harra, Ferguson v. [See 4,740.]
O'HARRA v. HALL [10,468], 4 Dall. 340.
OH CHOW v. HALLETT [10,469], 2 Sawy. 259; 5 Chi. Leg. News, 109.
Ohio, The. [See 13,716.]
Ohio, Mercy v. [See 9,457.]
Ohio, The, United States v. [See 15,914, 15,915.]
Ohio, The, Wilson v. [See 17,825.]
OHIO & M. RY. CO., In re [10,470].
Ohio & M. Ry. Co., Dimpfel v. [See 3,918.]
Ohio & M. R. Co., King v. [See 7,800, 7,801.]
OHIO CENT. R. CO., In re [10,471].
Ohio Life & Trust Co., Bell v. [See 1,260.]
Ohio Life Ins. Co., Bell v. [See 1,261.]
OHL v. EAGLE INS. CO. [10,472], 4 Mason, 172.
OHL v. EAGLE INS. CO. [10,473], 4 Mason, 390.
Okeley, Bank of Columbia v. [See 877.]
OKELL, In re [10,474], 2 Ben. 144; 1 N. B. R. 303 (Quarto, 52); 1 Amer. Law T. Rep. Bankr. 32; 3 Pittsb. Leg. J. (N. S.) 232.
OKELL, In re [10,475], 2 N. B. R. 105 (Quarto, 35).
OKELY v. BOYD [10,476], 2 Cranch, C. C. 176.
Okie, United States v. [See 15,916.]
OLBERS, The [10,477], 3 Ben. 148.
OLCOTT, In re [10,478], 2 Ben. 443.
OLCOTT v. FOND DU LAC COUNTY [10,479], 2 Biss. 368; 4 Amer. Law T. Rep. U. S. Cts. 47.
OLCOTT v. HAWKINS [10,480], 2 Amer. Law J. (N. S.) 317.
OLCOTT v. WING [10,481], 4 McLean, 15.
OLD CONCORD, The [10,482], 2 Abb. U. S. 20, note; 1 Brown's Adm. 270.
OLD DOMINION, The [10,483], 8 Ben. 221.
Old Dominion Ins. Co., Murphrey v. [See 9,945.]
Oldham, Holmes v. [See 6,643.]
Old Nat. Bank of Providence, Knight v. [See 7,885.]
OLDS, In re [10,484], 4 N. B. R. 146 (Quarto, 37).
OLER, The [10,485], 2 Hughes, 12; 14 Amer. Law Reg. (N. S.) 300.
OLIPHANT v. SALEM FLOURING MILLS CO. [10,486], 5 Sawy. 128; 3 Ban. & A. 256; 10 Chi. Leg. News, 276.
OLIVE, The [10,487], Blatchf. Pr. Cas. 185.
OLIVE v. MANDEVILLE [10,488], 1 Cranch, C. C. 33.
OLIVE BAKER, The [10,489], 4 Ben. 173.
OLIVE BRANCH, The [10,490], 1 Lowell, 286.
OLIVE CHAMBERLAIN, The [10,491], 1 Spr. 9.
OLIVER, In re [10,492], 19 N. B. R. 291.
Oliver, Cook v. [See 3,164.]
OLIVER v. CUNNINGHAM [10,493], 6 Fed. 60.
OLIVER v. DECATUR [10,494], 4 Cranch, C. C. 458.
OLIVER v. DECATUR [10,495], 4 Cranch, C. C. 461.
OLIVER v. DECATUR [10,496], 4 Cranch, C. C. 592.
Oliver, Hunt v. [See 6,894.]
OLIVER v. KAUFMAN [10,497].
OLIVER v. KAUFFMAN [10,497], Scr. Bk. 170; 1 Amer. Law Reg. 142; 9 Leg. Int. 152.
Oliver, King of Spain v. [See 7,812-7,814.]
OLIVER v. MUTUAL COMMERCIAL MARINE INS. CO. [10,498], 2 Curt. 277.
OLIVER v. OMAHA [10,499], 3 Dill. 368; 1 N. Y. Wkly. Dig. 385; 2 Cent. Law J. 772.
OLIVER v. PARISH [10,500], 2 Wash. C. C. 462.
Oliver, Piatt v. [See 11,114-11,116.]
Oliver, United States v. [See 15,917.]
OLIVER v. VERNON [10,501], 4 Mason, 275.
OLIVER v. WEAKLEY [10,502], 2 Wall. Jr. 324.
OLIVER JORDAN, The [10,503], 2 Curt. 414.
OLMSTEAD v. ACTIVE, The [10,503a], 5 Cranch (9 U. S.) 124-126.
Olmstead v. Rittenhouse. [See 10,503a.]
OLMSTEAD v. SANDUSKY, The [10,504].
OLMSTED, In re [10,505], 4 N. B. R. 240 (Quarto, 71).
Olney, Chappelle v. [See 2,613.]
Olney, Despan v. [See 3,822.]

[Federal Case numbers are given in brackets.]

OLNEY v. TANNER [10,506], 19 N. B. R. 178.
Olney, United States v. [See 15,918.]
Olney, Whitney v. [See 17,595.]
OLSHAUSEN v. LEWIS [10,507], 1 Biss. 419.
Oluf, The, Westhoff v. [See 17,449.]
Omaha, Kountze v. [See ·,928.]
Omaha, Oliver v. [See 10,499.]
Omaha City, Serrot v. [See 12,673.]
O'MALLEY, In re [10,507a].
Omally, Barns v. [See 1,035.]
OMALY v. SWAN [10,508], 3 Mason, 474.
O'MARA, In re [10,509], 4 Biss. 506.
Omeara, United States v. [See 15,919.]
Omega, The, The Cambridge v. [See 2,336.]
OMER, The [10,510], 2 Hughes, 96.
Onachita, The, United States v. [See 15,919a].
ONDERDONK v. FANNING [10,510a], 5 Ban. & A. 562.
O'NEAL v. BROWN [10,511], 1 Cranch, C. C. 69.
O'NEALE, In re [10,512], 6 N. B. R. 425.
O'Neale, Bank of the United States v. [See 932.]
ONEALE v. BEALL [10,513], 2 Cranch, C. C. 569.
O'NEALE v. BROWN [10,514], 1 Cranch, C. C. 79.
ONEALE v. CALDWELL [10,515], 3 Cranch, C. C. 312.
Oneale, Long v. [See 8,481.]
Oneale, Semmes v. [See 12,654.]
O'Neale, Thornton v. [See 13,999.]
O'Neale, United States v. [See 15,920.]
O'NEALE v. WILLIS [10,516], 2 Cranch, C. C. 108.
ONE ANCHOR AND CHAIN [10,517], 2 Lowell, 549; 11 Amer. Law Rev. 615.
One Barrel of Whiskey, United States v. [See 15,921.]
One Case, United States v. [See 15,922.]
ONE CASE CASHMERE SHAWLS v. UNITED STATES [15,923].
One Case of Cashmere Shawls, United States v. [See 15,923.]
One Case of Hair Pencils, United States v. [See 15,924.]
One Case of Silk, United States v. [See 15,925.]
One Case of Sparkling Wine, United States v. [See 14,614.]
One Case of Stereoscopic Slides, United States v. [See 15,927.]
One Cask Oil, Lears v. [See 8,161a.]
One Copper Still, United States v. [See 15,928.]
One Distillery, United States v. [See 15,929, 15,930.]
One Half Barrel Brandy, United States v. [See 15,931.]
One Horse, United States v. [See 15,932.]
ONE HUNDRED AND EIGHTEEN STICKS OF TIMBER [10,519], 10 Ben. 86.
ONE HUNDRED AND FIFTY-ONE TONS OF COAL [10,520], 4 Blatchf. 368; 15 Int. Rev. Rec. 34; 6 Amer. Law Rev. 759.
One Hundred and Fifty-One Tons of Coal, Gaughran v. [See 5,273.]
One Hundred and Fifty-Six Packages of Tea, United States v. [See 15,933.]
One Hundred and Fifty-Three Barrels of Distilled Spirits, United States v. [See 15,934.]
One Hundred and Forty Barrels of Flour, Sprague v. [See 13,253.]
One Hundred and Forty-Six Thousand, Six Hundred and Fifty Clapboards, United States v. [See 15,935.]
ONE HUNDRED AND NINETY-FOUR SHAWLS [10,521], Abb. Adm. 317; 6 N. Y. Leg. Obs. 369.
One Hundred and Ninety-Four Slaves, Jerby v. [See 7,288.]
One Hundred and Seventeen Packages Plug Tobacco, United States v. [See 15,936.]
ONE HUNDRED AND SEVENTY-FIVE TONS OF COAL [10,522], 9 Ben. 400.
One Hundred and Sixty-Three, Etc., Barrels of Whiskey, United States v. [See 15,937.]
One Hundred and Thirty Barrels of Whiskey, United States v. [See 15,938.]
ONE HUNDRED AND THIRTY-FOUR THOUSAND NINE HUNDRED AND ONE FEET OF PINE LUMBER [10,523], 4 Blatchf. 182.
One Hundred and Thirty-Seven Bales of Cotton, United States v. [See 15,939.]
One Hundred and Thirty-Three Casks of Distilled Spirits, United States v. [See 15,940.]
One Hundred and Three Casks of Rice. [See 10,535.]
ONE HUNDRED AND TWELVE STICKS OF TIMBER [10,524], 8 Ben. 214.
One Hundred and Twenty-Nine Packages, United States v. [See 15,941.]
One Hundred and Twenty-Six Bales of Padding, United States v. [See 15,942.]
One Hundred and Twenty-Three Casks of Distilled Spirits, United States v. [See 15,943.]
ONE HUNDRED AND TWENTY-THREE PACKAGES OF GLASS [10,525], 5 Hunt, Mer. Mag. 450.
One Hundred and Two Packages Distilled Spirits, United States v. [See 15,944.]
One Hundred Barrels of Cement, United States v. [See 15,945.]
One Hundred Barrels of Distilled Spirits, United States v. [See 15,946.]
One Hundred Barrels of High Wines, United States v. [See 15,947.]
One Hundred Barrels of Spirits, United States v. [See 15,948.]
ONE HUNDRED BARRELS OF WHISKEY [10,526], 2 Ben. 14; 6 Int. Rev. Rec. 179.
One Hundred Tons of Iron, Squire v. [See 13,270.]
O'NEIL, Ex parte [10,527], 1 Lowell, 163; 1 N. B. R. 677.
O'NEIL, In re [10,528], 2 Lowell, 470; 14 N. B. R. 210.
O'Neil, Burlew v. [See 2,167.]
O'Neil v. Fink. [See 12,250.]
ONEIL v. HOGAN [10,529], 2 Cranch, C. C. 524.
O'NEIL v. SEARS [10,530], 2 Spr. 52; 24 Law Rep. 731.
O'Neil, Strong v. [See 13,543a.]
O'NEIL v. WABASH AVE. BAPTIST CHURCH SOC. [10,531], 4 Biss. 482.
O'Neill, Gilpin v. [See 3,924.]
O'Neill, United States v. [See 15,949.]
ONE LARGE WATER TUB [10,532], 3 Ben. 436; 10 Int. Rev. Rec. 139.
ONEOTA, The [4,273], 11 N. Y. Leg. Obs. 353.
One Package of Ready-Made Clothing, United States v. [See 15,950.]
One Piece of Silk, United States v. [See 15,951.]
One Rectifying Establishment, United States v. [See 15,952.]
One Sorrel Horse, United States v. [See 15,953.]
ONE STILL [10,534], 1 Ben. 374; 6 Int. Rev. Rec. 59.
One Still, United States v. [See 15,954-15,956.]
One Thousand Five Hundred Bales of Cotton, United States v. [See 15,957, 15,958.]
One Thousand Four Hundred and Six Boxes of Sugar, United States v. [See 15,959.]
One Thousand Four Hundred and Twelve Gallons of Distilled Spirits, United States v. [See 15,960.]
One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock, United States v. [See 15,961.]
One Thousand Six Hundred and Twenty-Five Vitrified Pipes, Dunham v. [See 10,536.]
One Thousand Three Hundred and Eighty-Two Hogsheads of Sugar, United States v. [See 15,962, 15,963.]
One Thousand Three Hundred and Sixty-Three Bags of Merchandise, United States v. [See 15,964.]
ONE THOUSAND TWO HUNDRED AND FIFTY-THREE BAGS OF RICE [10,535], Blatchf. Pr. Cas. 211.
One Thousand Two Hundred and Ninety-One Bales of Tobacco, United States v. [See 15,965.]
One Thousand Two Hundred and Seventy-Seven Dollars and Five Cents, Cash v. [See 2,498.]
ONE THOUSAND TWO HUNDRED AND SIXTY-FIVE VITRIFIED PIPES [10,536], 14 Blatchf. 274; 5 N. Y. Wkly. Dig. 194.
One Thousand Two Hundred and Sixty-Five Vitrified Stoneware Sewer-Pipes, Dunham v. [See 14,280.]
ONE VAPORIZER [10,537], 2 Ben. 438.
One Water Cask, United States v. [See 15,966.]
Onion, Johnson v. [See 7,401.]
Onondaga Salt Co. v. The Portsmouth. [See 11,295.]
ONORE, The [10,538], 6 Ben. 564.
ONRUST, The [10,539], 1 Ben. 431.
ONRUST, The [10,540], 6 Blatchf. 533.
ONTARIO, The [10,541], 8 Ben. 500.
ONTARIO, The [8,283], 1 Brown's Adm. 480.
ONTARIO, The [10,543], 2 Lowell, 40; 7 Amer. Law Rev. 754.

[Federal Case numbers are given in brackets.]

Ontario, The, Flannery v. [See 4,856.]
Ontario, Smith v. [See 13,085, 13,086.]
ONYX, The [10,544].
OOLOGAARDT v. ANNA, The [10,545], 9 Amer. Law Reg. (N. S.) 475; 12 Int. Rev. Rec. 130.
OPDYKE v. PACIFIC R. R. [10,546], 3 Dill. 55; 8 West. Jur. 670.
OPELOUSA & G. W. R. CO., In re [10,547], 3 N. B. R. (Quarto) 31.
OPEN BOAT [10,548], 1 Ware (26) 18.
OPEN BOAT [10,549], 1 Ware (128) 124.
Open Boat, United States v. [See 15,967, 15,968.]
Ophir Silver Min. Co., Brodie v. [See 1,919.]
Oppenheimer, Bobyshall v. [See 1,589-1,592.]
ORCUTT, In re [10,550], 5 Ben. 19; 4 N. B. R. 538 (Quarto, 176).
ORDT v. OCEAN STEAM NAV. CO. [10,551].
ORDWAY, In re [10,552], 19 N. B. R. 171, 19 Alb. Law J. 482.
OREGON, The [10,553], Deady, 179.
Oregon, The, Naunton v. [See 10,057.]
Oregon, The, Sturgis v. [See 13,577.]
OREGON & W. TRUST INV. CO. v. RATHBURN [10,554], 4 Law & Eq. Rep. 254; 9 Chi. Leg. News, 377.
OREGON & W. TRUST INV. CO. v. RATHBURN [10,555], 5 Sawy. 32; 4 Law & Eq. Rep. 650; 10 Chi. Leg. News, 58; 6 Amer. Law Rec. 523; 1 Tex. Law J. 39; 23 Int. Rev. Rec. 377.
OREGON & W. TRUST INV. CO. v. SHAW [10,556], 5 Sawy. 336.
OREGON & W. TRUST INV. CO. v. SHAW [10,557], 6 Sawy. 52.
OREGON BULLETIN PRINTING & PUB. CO., In re [10,558], 13 N. B. R. 199; 10 Amer. Law Rev. 380; 8 Chi. Leg. News, 81.
OREGON BULLETIN PRINTING & PUB. CO., In re [10,559], 13 N. B. R. 503; 1 Cin. Law Bul. 87.
OREGON BULLETIN PRINTING & PUB. CO., In re [10,560], 3 Sawy. 529; 14 N. B. R. 394; 8 Chi. Leg. News, 143.
OREGON BULLETIN PRINTING & PUB. CO., In re [10,561], 3 Sawy. 614; 14 N. B. R. 405; 11 Amer. Law Rev. 181; 3 Cent. Law J. 515; 14 Alb. Law J. 130; 3 Amer. Law T. Rep. (N. S.) 469.
Oregon Cent. Military Road Co., Tilton v. [See 14,055.]
Oregon Cent. Ry. Co., Jones v. [See 7,486.]
Oregon Cent. R. Co., Lewis v. [See 8,329.]
Oregon Cent. R. Co., Newby v. [See 10,144, 10,145.]
Oregon Cent. Ry. Co., Nightingale v. [See 10,264.]
Oregon Cent. Ry. Co., Sayles v. [See 12,423.]
OREGON IRON WORKS, In re [10,562], 4 Sawy. 169; 17 N. B. R. 404; 26 Pittsb. Leg. J. 8.
Oregon S. N. Co., Wallamet R. T. Co. v. [See 17,106.]
Oregon Steamship Co., Koch v. [See 10,572.]
O'Reilly, Austin v. [See 664, 665.]
O'REILLY v. HOLT [10,563], 4 Woods, 645.
O'REILLY v. MORSE [10,564], 15 How. (56 U. S.) 126.
O'REILLY v. MORSE [9,859].
O'REILLY v. SMITH [10,566], 1 McA. Pat. Cas. 218.
OREM v. HARLEY [10,567], 3 N. B. R. 263 (Quarto, 62); 2 Balt. Law Trans. 943.
ORHANOVICH v. AMERICA, The [10,568], 25 Int. Rev. Rec. 306; 14 Phila. 515; 36 Leg. Int. 279; 26 Pittsb. Leg. J. 203.
Oriana, The. [See 1,148, 1,150.]
ORIENT, The [10,569], 10 Ben. 620; 14 Amer. Law Rev. 84.
ORIENTAL, The [10,569a], 2 Flip. 6; 23 Int. Rev. Rec. 26; 4 N. Y. Wkly. Dig. 70; 9 Chi. Leg. News, 134; 5 Amer. Law Rec. 628; 1 Cin. Law Bul. 373.
ORIENTAL, The [10,570], 2 Flip. 37; 23 Int. Rev. Rec. 216; 9 Chi. Leg. News, 321; 2 Cin. Law Bul. 140.
Oriental, The. [See 10,569a.]
Oriental, The, Crosby v. [See 3,424a.]
Oriental, The, Russell v. [See 10,569a.]
Orient Mut. Ins. Co. v. The Dolphin. [See 3,973, 3,974.]
ORIFLAMME, The [10,571], 1 Sawy. 176.
ORIFLAMME, The [10,572], 3 Sawy. 397; 2 Amer. Law T. Rep. (N. S.) 381; 7 Chi. Leg. News, 347; 2 Cent. Law J. 473; 2 Int. Rev. Rec. 237.
Oriflamme, The. [See 10,572.]
ORIOLE, The [10,573], Olc. 67.
ORIOLE, The [10,574], 1 Spr. 31.
ORION, The [10,575], 4 Wkly. Law Gaz. 327.
Orion Steam Nav. Co., English v. [See 4,490, 4,490a.]
ORIZABA, The [10,576], Deady, 196.
ORME v. CLARKE [10,577], 1 Hayw. & H. 114.
ORME v. PRATT [10,578], 4 Cranch, C. C. 124.
Orme, Reinhart v. [See 11,682.]
Orme, Stettinius v. [See 13,386.]
ORMSBEE v. WOOD [10,579], 3 Fish. Pat. Cas. 372.
ORMSBY v. TINGEY [10,580], 2 Cranch, C. C. 128.
Ormsby, United States v. [See 15,969.]
ORNE, In re [10,581], 1 Ben. 361; Bankr. Reg. Supp. 13; 1 N. B. R. 57; 6 Int. Rev. Rec. 84; 14 Pittsb. Leg. J. 613.
ORNE, In re [10,582], 1 Ben. 420; 1 N. B. R. 79; Bankr. Reg. Supp. 18; 6 Int. Rev. Rec. 116.
ORNE v. TOWNSEND [10,583], 4 Mason, 541.
ORNER v. SAUNDERS [10,584], 3 Dill. 284; 1 N. Y. Wkly. Dig. 383; 2 Cent. Law J. 772; 22 Int. Rev. Rec. 48.
ORONO, The [10,585], 1 Gall. 137.
Orozimbo, The, Mitchell v. [See 9,667.]
Orphan Boy, The, Mercantile Ins. Co. v. [See 9,431.]
Orpheus, The, Lewis v. [See 8,330.]
Orpheus, The, Young v. [See 18,169.]
ORR v. ACHSAH, The [10,586].
ORR v. BADGER [10,587], 7 Law Rep. 465; Brunner, Col. Cas. 536; 12 Hunt, Mer. Mag. 177.
Orr, Bassett v. [See 1,095.]
Orr, Beane v. [See 1,176.]
ORR v. INGLE [10,588], 2 Cranch, C. C. 193.
ORR v. LACY [10,589], 4 McLean, 243.
ORR v. LITTLEFIELD [10,590], 1 Woodb. & M. 13; 8 Law Rep. 314; 2 Robb, Pat. Cas. 323.
ORR v. MERRILL [10,591], 1 Woodb. & M. 376; 2 Robb, Pat. Cas. 331.
Orr, Rathbone v. [See 11,585.]
Orr, Thorp v. [See 14,006.]
Ortega, United States v. [See 15,970, 15,971.]
Orvis, McDonald v. [See 8,764.]
OSAGE VALLEY & S. K. R. CO., In re [10,592], 9 N. B. R. 281; 1 Cent. Law J. 33.
OSBORN v. McBRIDE [10,593], 3 Sawy. 590; 16 N. B. R. 22.
OSBORN v. MICHIGAN AIR-LINE R. CO. [10,594], 2 Flip. 503; 25 Int. Rev. Rec. 250; 8 Reporter, 296; 11 Chi. Leg. News, 367; 4 Cin. Law Bul. 553.
OSBORN v. NICHOLSON [10,595], 1 Dill. 219; 13 Int. Rev. Rec. 106; 6 Amer. Law Rev. 572.
Osborn v. Nicholson. [See 10,595.]
OSBORNE v. BENSON [10,596], 5 Mason, 157.
OSBORNE v. BROOKLYN CITY R. CO. [10,597], 5 Blatchf. 366.
Osborne, Seymour v. [See 12,688.]
OSBORNE v. SHRIEVE [10,598], 3 Mason, 391.
OSBORNE v. UNITED STATES [10,599], 16 Int. Rev. Rec. 141; 4 Leg. Gaz. 343.
OSCANYAN v. WINCHESTER REPEATING ARMS CO. [10,600], 15 Blatchf. 79; 17 Amer. Law Reg. (N. S.) 626; 13 Amer. Law Rev. 161.
OSCEOLA, The [10,601], Blatchf. Pr. Cas. 150.
OSCEOLA, The [10,602], Olc. 450.
OSGOOD v. ALLEN [10,603], Holmes, 185; 6 Amer. Law T. Rep. U. S. Cts. 20; 7 Amer. Law Rev. 568; 3 O. G. 124; 4 Cent. Law J. 282; Cox, Manual Trade-Mark Cas. 231.
OSGOOD v. CHICAGO, D. & V. R. CO. [10,604], 6 Biss. 330; 7 Chi. Leg. News, 241; 2 Cent. Law J. 275, 283; 14 Amer. Law Reg. (N. S.) 506; 2 Amer. Law T. Rep. (N. S.) 242; 21 Int. Rev. Rec. 149.
Osgood, Goodyear Dental Vulcanite Co. v. [See 5,594.]
Osgood, Jones v. [See 7,487.]
Osgood, Luscom v. [See 8,608.]
Osgood, Luxom v. [See 8,608.]
OSGOOD v. ROCKWOOD [10,605], 11 Blatchf. 310; Cox, Manual Trade-Mark Cas. 242.
Osio, United States v. [See 15,972.]
OSPREY, The [10,606], 1 Spr. 245; 17 Law Rep. 384.
Osprey, The, The Delaware v. [See 3,763.]
OSSEO, The [10,607], 8 Ben. 518.

[Federal Case numbers are given in brackets.]

OSSEO, The [10,608]; 16 Blatchf. 537; 8 Reporter, 328.
OSTEONTHE, The [10,608a], 6 Adm. Rec. 166.
OSTERHAUS, In re [10,609], 6 Amer. Law T. Rep. 519.
O'Sullivan, United States v. [See 15,973-15,975.]
Oswald, Lyman Patent Refrigerator Co. v. [See 8,-630.]
OSWEGO, The [10,610], 8 Ben. 129.
OTHELLO, The [10,611], 5 Blatchf. 342.
Othello, The, Cartwright v. [See 2,483.]
Otis, Balmear v. [See 819.]
Otis, Cunningham v. [See 3,485.]
Otis, The, Hart v. [See 6,154.]
OTIS v. MONTGOMERY & E. R. CO. [10,612], 8 Reporter, 263.
OTIS v. RIO GRANDE, The [10,613], 1 Woods, 279.
OTIS v. RIO GRANDE, The [10,614], 1 Woods, 593.
Otis, Scott v. [See 12,543.]
Otis v. The Whitaker. [See 17,524, 17,525.]
Otoe County, Chicago B. & Q. R. Co. v. [See 2,667.]
Ott, Bank of Columbia v. [See 878, 879.]
Ott, Litle v. [See 8,389.]
OTT v. MURRAY [10,615], 3 Cranch, C. C. 323.
OTTAWA, The [10,616], Brown's Adm. 356; 4 Chi. Leg. News, 153; 5 Amer. Law T. Rep. U. S. Cts. 147; 6 Amer. Law Rev. 575.
OTTAWA, The [10,617], 1 Lowell, 274.
Ottawa, Hackett v. [See 5,889.]
Ottawa, The, United States v. [See 15,976.]
OTTERIDGE v. THOMPSON [10,618], 2 Cranch, C. C. 108.
OTTS v. JONES [10,619], 2 Cranch, C. C. 351.
Ottman, United States v. [See 15,977.]
OUACHITA, The [10,620], Blatchf. Pr. Cas. 306.
OUACHITA, The [10,621], Blatchf. Pr. Cas. 652.
Ouachita, The, United States v. [See 15,919a.]
OUIMETTE, In re [10,622], 1 Sawy. 47; 3 N. B. R. 566 (Quarto, 140).
Ould, Hellrigle v. [See 6,344.]
Oulton, German Savings & Loan Soc. v. [See 5,-362.]
Outerbridge, United States v. [See 15,978.]
Overholt, Northwestern Mut. Life Ins. Co. v. [See 10,338.]
OVERMAN v. PARKER [10,623], Hempst. 692.
OVERMAN v. QUICK [10,624], 8 Biss. 134; 17 N. B. R. 235; 10 Chi. Leg. News, 210.
OVERTON, In re [10,625], 5 N. B. R. 366.
Overton, Brown v. [See 2,024.]
OVERTON v. GORHAM [10,626], 2 McLean, 509.
Overton, United States v. [See 15,979.]
OWEN, In re [9,968], 8 N. B. R. 6.
OWEN v. BLANCHARD [10,628], 2 Cranch, C. C. 418.
Owen, Farmers' Bank of Virginia v. [See 4,662.]
OWEN v. GLOVER [10,629], 2 Cranch, C. C. 522.
OWEN v. GLOVER [10,630], 2 Cranch, C. C. 578.
Owen, Montejo v. [See 9,722.]
OWEN v. NEW YORK LIFE INS. CO. [10,631], 1 Hughes, 322.
OWENS, In re [10,632], 6 Biss. 432; 12 N. B. R. 518; 7 Chi. Leg. News, 371; 1 N. Y. Wkly. Dig. 175.
OWENS v. ADAMS [10,633], 1 Brock. 72.
OWENS v. GOTZIAN [10,634], 4 Dill. 436; 16 Amer. Law Reg. (N. S.) 181; Syllabi, 86; 9 Chi. Leg. News, 124; 1 Cin. Law Bul. 367.
Owens, Johnson v. [See 7,402.]
Owens, Mumm v. [See 9,919.]
Owens, The Susan G. [See 13,634.]
OWNER v. WASHINGTON [10,635], 5 Cranch, C. C. 381.
Owners of the Francesca Curro, Wright v. [See 18,-088.]
OWSLEY v. COBIN [10,636], 2 Hughes, 433; 15 N. B. R. 489; 4 N. Y. Wkly. Dig. 431; 9 Chi. Leg. News, 323; 4 Law & Eq. Rep. 49; 23 Int. Rev. Rec. 210.
OXFORD IRON CO. v. SLAFTER [10,637], 13 Blatchf. 455; 14 N. B. R. 380.
Oxley, Gilpin v. [See 5,450.]
OXLEY v. TUCKER [10,638], 1 Cranch, C. C. 419.
OXLEY v. WILLIS [10,639], 1 Cranch, C. C. 436.

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PACE, In re [10,640], 1 Tex. Law J. 315.
PACHECO v. UNITED STATES [10,641], Hoff. Land Cas. 113.
Pacheco, United States v. [See 15,980-15,982.]
PACIFIC, The [10,642].
PACIFIC, The [10,643], 1 Blatchf. 569; 8 N. Y. Leg. Obs. 340; 36 Hunt, Mer. Mag. 575.
PACIFIC, The [10,644], Blatchf. & H. 187.
PACIFIC, The [10,645], Deady, 192.
Pacific, The. [See 12,644.]
Pacific, The, Blukeman v. [See 1,571.]
Pacific, The, Rider v. [See 11,812.]
Pacific, The, Rumball v. [See 10,643.]
Pacific, The, Seller v. [See 12,644.]
PACIFIC COAST WRECKING CO. v. EASTPORT, The [10,646].
Pacific Ins. Co., Catlett v. [See 2,517.]
PACIFIC INS. CO. v. CONARD [10,647], Baldw. 138.
Pacific Insurance Co., Hurlbert v. [See 6,919.]
Pacific Mail Steamship Co., Brown v. [See 2,025.]
Pacific Mail Steamship Co., Richardson v. [See 11,-793.]
PACIFIC MAIL STEAMSHIP CO. v. TEN BALES GUNNY BAGS [10,648], 3 Sawy. 187.
Pacific Mut. Ins. Co. v. The Belle. [See 1,269.]
Pacific Mut. Ins. Co., Simpson v. [See 12,886.]
Pacific Railroad, Opdyke v. [See 10,546.]
Pacific Railroad, United States v. [See 15,983, 15,-984.]
Pacific R. Co., Bailey v. [See 742.]
PACIFIC RAILROAD CO. v. LEAVENWORTH [10,-649], 1 Dill. 393; 3 Chi. Leg. News, 306; 5 West. Jur. 306.
Pacific R. Co., Ketchum v. [See 7,738-7,740.]
Pacific R. Co., Paul v. [See 10,845.]
Pack, Evans v. [See 4,566.]
Package of Lace, United States v. [See 15,985.]
Package of Wool, United States v. [See 15,986.]
PACKARD, Ex parte [10,650], 1 Lowell, 523.
Packard, Bachman v. [See 709.]
Packard, Dowson v. [See 4,049.]
PACKARD v. GILBERT [10,651].
PACKARD v. LOUISA, The [10,652], 2 Woodb. & M. 48; 9 Law Rep. 441.
Packard, Spring v. [See 13,260.]
PACKER v. NIXON [10,653], 9 Pet. 793, Append.
Packer, The E. A. [See 4,241.]
PACKET, The [10,654], 3 Mason, 255.
PACKET, The [10,655], 3 Mason, 334.
PACKWOOD v. CLARK [10,656], 2 Sawy. 546.
PADDOCK, In re [10,657], 6 N. B. R. 132.
PADDOCK, In re [10,658], 6 N. B. R. 396.
Paducah, City of, City National Bank v. [See 2,-743.]
PAGAN v. SPARKS [10,659], 2 Wash. C. C. 325.
PAGE, The [10,660], 5 Sawy. 299.
Page, Bargh v. [See 980.]
PAGE v. BRACKENRIDGE [10,661].
Page, Buckley v. [See 2,094.]
Page, Chicago, B. & Q. R. Co. v. [See 2,668.]
Page, Elastic Truss Co. v. [See 4,325.]
PAGE v. FERRY [10,662], 1 Fish. Pat. Cas. 298.
Page, Galpin v. [See 5,205, 5,206.]
Page, Hopkirk v. [See 6,697.]
PAGE v. HUBBARD [10,663], 1 Spr. 335; 19 Law Rep. 607.
Page, Hukill v. [See 6,854.]
PAGE v. McDONALD, The [10,664], 17 Leg. Int. 318.
PAGE v. MUNRO [10,665], Holmes, 232.
PAGE v. RIVES [10,666], 1 Hughes, 297.
PAGE v. SHEFFIELD [10,667], 2 Curt. 377; 18 Law Rep. 433.
Page, Sheffield v. [See 12,743.]
Page, Spaulding v. [See 13,219.]
Page, Stearns v. [See 13,339.]
Page, Thomas v. [See 13,906, 13,907.]

PAGE v. TRUTCH [10,668], 5 Amer. Law Rec. 155; 3 N. Y. Wkly. Dig. 167; 3 Cent. Law J. 559; 8 Chi. Leg. News, 385; 22 Int. Rev. Rec. 281; 1 Cin. Law Bul. 224; 24 Pittsb. Leg. J. 11.
Page, United States v. [See 15,986a-15,988.]
PAGE v. WRIGHT [10,669], 4 Wash. C. C. 194.
Page, The Blanche. [See 1,523-1,525.]
Page, The Blanche. [See 7,296.]
Page, The C. E. [See 13,540.]
PAGET, Ex parte [10,670], 1 Pa. Law J. 367.
PAIGE v. BANKS [10,671], 7 Blatchf. 152.
PAIGE v. LORING [10,672], 1 Holmes, 275.
PAINE, In re [10,673], 9 Ben. 144; 17 N. B. R. 37.
PAINE v. CALDWELL [10,674], 1 Hask. 452; 6 N. B. R. 558; 5 Amer. Law T. Rep. U. S. Cts. 311; 29 Leg. Int. 284; 6 Alb. Law J. 291.
Paine, Fox v. [See 5,014.]
PAINE v. NEPTUNE, The [10,120], 5 N. Y. Leg. Obs. 293.
Paine, Rudd v. [See 12,108.]
Paine, Simon v. [See 12,873.]
PAINE v. WRIGHT [10,676], 6 McLean, 395.
Paint, The J. G. [See 7,318.]
Paint, The John G. [See 7,346.]
Palestine, The. [See 2,563.]
PALLEDO, The [10,677], 3 Ware, 321.
PALMER, In re [10,678], 2 Hughes, 177; 14 N. B. R. 437.
PALMER, In re [10,679], 18 Int. Rev. Rec. 84; 5 Chi. Leg. News, 557.
PALMER, In re [10,680], 1 N. B. R. 213; Bankr. Reg. Supp. 46; 6 Int. Rev. Rec. 45.
PALMER, In re [10,681], 3 N. B. R. 233 (Quarto, 74); 2 Amer. Law T. 107; 1 Amer. Law T. Rep. Bankr. 139.
PALMER, In re [10,682], 3 N. B. R. 301 (Quarto, 77).
PALMER v. ANDREWS [10,683], 1 McAll. 491.
PALMER v. BLIGHT [10,684], 2 Wash. C. C. 96.
PALMER v. BURNSIDE [10,685], 1 Woods, 179.
PALMER v. CALL [10,686], 4 Dill. 566; 11 West. Jur. 696.
PALMER v. CASSIN [10,687], 2 Cranch, C. C. 66.
PALMER v. CUYAHOGA COUNTY [10,688], 3 McLean, 226.
PALMER v. DALLET [10,689], 3 Pa. Law J. 416.
Palmer, Daly v. [See 3,552.]
Palmer, Davis v. [See 3,645.]
Palmer, Denner v. [See 3,788.]
PALMER v. ELLIOT [10,690], 1 Cliff. 63.
PALMER v. FISKE [10,691], 2 Curt. 14.
Palmer, Gassett v. [See 5,265.]
PALMER v. GRACIE [10,692], 4 Wash. C. C. 110.
Palmer, Guidet v. [See 5,859.]
Palmer, Hasbrook v. [See 6,188.]
PALMER v. LOW [10,693], 2 Sawy. 248.
Palmer v. The Osprey. [See 3,763.]
PALMER v. PRIEST [10,694], 1 Spr. 512.
PALMER v. UNITED STATES [10,695], 1 Hoff. Land Cas. 216.
PALMER v. UNITED STATES [10,696], 1 Hoff. Land Cas. 227.
PALMER v. UNITED STATES [10,697], 1 Hoff. Land Cas. 249.
Palmer, United States v. [See 15,989.]
PALMER v. WARREN INS. CO. [10,698], 1 Story, 360; 4 Law Rep. 98.
Palmer, Warren Saving Bank v. [See 17,207.]
Palmer, Wilcocks v. [See 17,638.]
Palmer, Wythe v. [See 18,120.]
Palmer, Young v. [See 18,170.]
PALMETTO, The [10,699], 1 Biss. 140.
PALO ALTO, The [10,700], 2 Ware (Dav. 343) 344; 6 N. Y. Leg. Obs. 262; 18 Hunt, Mer. Mag. 189.
Palomares, United States v. [See 15,990.]
PALYART v. GOULDING [10,701], Brunner, Col. Cas. 2; 2 Mart. N. C. 78.
PANAMA, The [10,702], Deady, 27; 1 Ore 418.
PANAMA, The [10,703], Olc. 343.
PANAUD v. UNITED STATES [10,704], Hoff. Op. 469; Hoff. Dec. 18.
PANCOAST v. BARRY [10,705], 1 Cranch, C. C. 176.
Pancost, Ridgway v. [See 11,818.]
PANCOST v. WASHINGTON [10,706], 5 Cranch, C. C. 507.
Pandora, The, Emerson v. [See 4,442.]
Panhorst, Newark Sav. Inst. v. [See 10,142.]
PANNILL v. ELIASON [10,707], 3 Cranch, C. C. 358.
Papin, St. Louis Nat. Bank v. [See 12,239.]
Paquet Bot De Cayenne, The, Hall v. [See 5,941.]
PARAGON, The [10,708], 1 Ware (322) 326.
PARASSEL v. GAUTIER [10,709], 2 Dall. 330.
PARET v BRYSON [10,710], 2 West. Jur. 351.
PARET v. TICKNOR [10,711], 4 Dill. 111; 16 N. B. R. 315; 5 Cent. Law J. 328.
PARHAM, In re [10,712], 17 N. B. R. 300.
PARHAM v. AMERICAN BUTTONHOLE, OVER-SEAMING & SEWING-MACH. CO. [10,713], 4 Fish. Pat. Cas. 468; 3 Leg. Gaz. 121; 1 Leg. Gaz. Rep. 145; Merw. Pat. Inv. 671.
PARIS, Ex parte [10,714], 3 Woodb. & M. 227.
Parish, Dreskill v. [See 4,075, 4,076.]
Parish, Oliver v. [See 10,500.]
Park, Emma Silver Min. Co. v. [See 4,467.]
Park, Klein v. [See 7,868.]
PARK v. LITTLE [10,715], 3 Wash. C. C. 196; 1 Robb, Pat. Cas. 17; Merw. Pat. Inv. 310.
Park, United States v. [See 15,991.]
PARK v. WILLIS [10,716], 1 Cranch, C. C. 357.
PARK v. WILLIS [10,717], 2 Cranch, C. C. 83.
PARK BANK v. NICHOLS [10,047].
Parkenhorn, Barker v. [See 993.]
PARKER, In re [10,719], 6 Ben. 286.
PARKER, In re [10,720], 4 Biss. 501.
PARKER, In re [10,721], 11 Fed. 397.
PARKER, In re [10,722], 1 Pa. Law J. 370.
PARKER, In re [10,723], 1 Pa. Law J. 370.
PARKER, In re [10,724], 5 Sawy. 58; 18 N. B. R. 43.
Parker, Atlantic Giant Powder Co. v. [See 625.]
PARKER v. BAMKER [10,725], 6 McLean, 631.
PARKER v. BIGLER [10,726], 1 Fish. Pat. Cas. 285; 14 Leg. Int. 180.
PARKER v. BRANT [10,727], 1 Fish. Pat. Cas. 58.
Parker v The Brooklyn. [See 1,938.]
PARKER v. BYRNES [10,728], 1 Lowell, 539.
PARKER v. CALLIOPE, The [10,729], 2 Pet. Adm. 272.
PARKER v CARTZLER [10,730], 5 McLean, 4.
PARKER v. CORBIN [10,731], 4 McLean, 462; 2 Robb. Pat. Cas. 736.
Parker, Crease v. [See 3,376, 3,377.]
PARKER v CULVERTSON [10,732], 1 Wall. Jr. 149.
PARKER v. FERGUSON [10,733], 1 Blatchf. 407; 1 Fish Pat. Rep. 260; 1 Liv. Law Mag. 95.
Parker, Flower v. [See 4,891.]
PARKER v. HALLOCK [10,734].
PARKER v. HALLOCK [10,735], 2 Fish. Pat. Cas. 543, note.
PARKER v. HATFIELD [10,736], 4 McLean, 61; 1 Fish. Pat. Rep. 94; 42 Jour. Fr. Inst. 319.
PARKER v. HAWK [10,737], 2 Fish. Pat. Cas. 58.
PARKER v. HAWORTH [10,738], 4 McLean, 370; 2 Robb, Pat. Cas. 725.
PARKER v. HOTCHKISS [10,739], 1 Wall. Jr. 269.
PARKER v. HULME [10,740], 1 Fish. Pat. Cas. 44; 7 West. Law J. 417; Merw. Pat. Inv. 560.
PARKER v. KEMPTON [10,741], 1 Wall. Jr. 344.
PARKER v. LEWIS [10,741a], Hempst. 72.
PARKER v. McLENNAN [5,334], 2 Mich. Lawy. 12.
PARKER v. MUGGRIDGE [10,743], 2 Story, 334; 5 Law Rep. 351.
PARKER v. NIXON [10,744], Baldw. 291.
Parker, Overman v. [See 10,623.]
PARKER v. PERKINS [10,745].
Parker, Perry v. [See 11,010.]
PARKER v. PHETTEPLACE [10,746], 2 Cliff. 70.
Parker, Reiser v. [See 11,685.]
PARKER v. REMHOFF [10,747], 17 Blatchf. 206; 3 Ban. & A. 550; 14 O. G. 601.
Parker, Rogers v. [See 12,018.]
Parker, Rule v. [See 12,125.]
PARKER v. SEARS [10,748], 1 Fish. Pat. Cas. 93; 4 Pa. Law J. Rep. 443; 3 Amer. Law J. (N. S.) 82; 7 Leg. Int. 138.
Parker, Smith v. [See 13,087.]
PARKER v. STILES [10,749], 5 McLean, 44; 7 West. Law J. 168; 1 Fish. Pat. Rep. 319.
PARKER v. UNITED STATES [10,750], Pet. C. C. 262.
PARKER v. UNITED STATES [10,751], 2 Wash. C. C. 361.
Parker, United States v. [See 15,992, 15,993.]
Parker, Walker v. [See 17,082.]

[Federal Case numbers are given in brackets.]

Parker v. The Whitaker. [See 17,525.]
Parker, Wildes v. [See 17,652.]
PARKER v. WINNIPISEOGEE LAKE COTTON & WOOLEN MFG. CO. [10,752], 1 Cliff. 247.
Parker, Woodcock v. [See 17,971.]
Parker, The George H. [See 5,334.]
Parker, The James D. [See 7,193.]
PARKERSBURGH, The [10,753], 5 Blatchf. 247; 2 Int. Rev Rec. 63.
PARKES, In re [10,754], 10 N. B. R. 82.
PARKES v. ALDRIDGE [10,755], 2 N. J. Law J. 233; 27 Pittsb. Leg. J. 15.
PARKHILL, The [10,755a].
PARKHILL, The [10,756], 19 Leg. Int. 13.
Parkhill, United States v. [See 15,994.]
Parkhurst, Cundell v. [See 3,477.]
PARKHURST v. KINSMAN [10,757], 1 Blatchf. 488; 8 N. Y. Leg. Obs. 146; Merw. Pat. Inv. 654; 1 Fish. Pat. Rep. 161.
PARKHURST v. KINSMAN [10,758], 2 Blatchf. 72; 8 N. Y. Leg. Obs. 73; 1 Fish. Pat. Rep. 175.
PARKHURST v. KINSMAN [10,759], 2 Blatchf. 76; 1 Fish. Pat. Rep. 173.
PARKHURST v. KINSMAN [10,760], 2 Blatchf. 78; 1 Fish. Pat. Rep. 180.
PARKHURST v. KINSMAN [10,761], 3 Woodb. & M. 168.
PARKINSON v. LASELLE [10,762], 3 Sawy. 330; 2 Amer. Law T. Rep. (N. S.) 279; 7 Chi. Leg. News, 268; 21 Int. Rev. Rec. 163.
PARKMAN v. BOWDOIN [10,763], 1 Sumn. 359.
Parkman, Lamb v. [See 8,019, 8,020.]
PARKS, Ex parte [10,764], 1 Hughes, 604.
PARKS, In re [10,765], 9 N. B. R. 270.
Parks, Booth v. [See 1,648.]
Parks, United States v. [See 15,995, 15,996.]
Parmele, United States v. [See 15,997.]
Parmely v. Iron Mountain R. Co. [See 10,845.]
Parmenter, Crowell v. [See 3,446.]
PARMLEE v. CHARLES MEARS, The [10,766], Newb. 197.
PARMLEY v. ST. LOUIS, I. M. & S. R. CO. [10,767], 3 Dill. 13.
PARMLEY v. ST. LOUIS, I. M. & S. R. CO. [10,768], 3 Dill. 25.
Parr, Boggs v. [See 1,602.]
PARRISH, In re [10,769], 9 N. B. R. 573.
PARRISH v. DANFORD [10,770], 1 Bond, 345.
Parrish, Driskill v. [See 4,089.]
Parrish v. Skiddy. [See 12,922.]
PARROT v. HABERSHAM [10,771], 1 Cranch, C. C. 14.
PARROT v. LAWRENCE [10,772], 2 Dill. 332.
PARROTT v. BARNEY [10,773], 2 Abb. U. S. 197; 1 Sawy. 423.
PARROTT v. BARNEY [10,773a], Deady, 405.
Parrott, Knowles v. [See 7,898.]
Parrott, Offutt v. [See 10,452, 10,453.]
Parrott, Rich v. [See 11,760, 11,761.]
Parrott, Tibbs v. [See 14,022, 14,023.]
Parrott, Treadwell v. [See 14,158.]
Parrott, United States v. [See 15,998, 15,999.]
Parry, Bollmans v. [See 1,612.]
PARSONS, Ex parte [10,774], 1 Hughes, 282.
PARSONS v. CUMMING [10,775], 1 Woods, 461.
Parsons, Forbes v. [See 4,929.]
PARSONS v. GREENVILLE & C. R. CO. [10,776], 1 Hughes, 279.
PARSONS v. HOWARD [10,777], 2 Woods, 1.
PARSONS v. HUNTER [10,778], 2 Sumn. 419.
Parsons, Knight v. [See 7,886.]
PARSONS v. LYMAN [10,779], 4 Blatchf. 432.
PARSONS v. LYMAN [10,780], 5 Blatchf. 170; 32 Conn. 566.
PARSONS v. OGDEN [10,781], 4 Blatchf. 99; 37 Hunt, Mer. Mag. 710; 38 Hunt, Mer. Mag. 710.
Parsons, Southwestern Railroad Bank v. [See 13,193.]
PARSONS v. TERRY [10,782], 1 Lowell, 60.
Parsons, United States v. [See 16,000-16,002.]
PARTER v. FRIENDSHIP, The [10,783].
PARTON v. PRANG [10,784], 3 Cliff. 537; 2 O. G. 619; 6 Amer. Law T. Rep. 105; 7 Amer. Law Rev. 357.
PARTRIDGE v. DEARBORN [10,785], 2 Lowell, 286; 9 N. B. R. 474.
PARTRIDGE v. LIFE INS. CO. [10,786], 1 Dill. 139.
PARTRIDGE v. SMITH [10,787], 2 Biss. 183.
Paryntha Davis, The, United States v. [See 16,003, 16,004.]
PASQUALT, Ex parte [10,788], 1 Cranch, C. C. 243.
Passaic Bridge Cases, In re. [See 9,620.]
PASSAIC ZINC CO. v. SPEAR [10,789], 23 Pittsb. Leg. J. 34; 32 Leg. Int. 362.
Passaic Zinc Co., Wetherill v. [See 17,465.]
PASSAVANT v. COLLECTOR [10,790].
PASSENGER ACT OF MARCH 3, 1855 [10,791], 35 Hunt, Mer. Mag. 451.
Passenger Fare Enumerator, Etc., Co. v. Metropolitan R. Co. [See 11,535.]
Passmore, United States v. [See 16,005.]
Patapsco, The, Boyce v. [See 1,744.]
PATAPSCO GUANO CO. v. MORRISON [10,792], 2 Woods, 395.
PATCH v. MARSHALL [10,793], 1 Curt. 452.
PATCHIN v. A. D. PATCHIN, The [10,794], 12 Law Rep. 21.
PATE v. GRAY [10,794a], Hempst. 155.
Patent, Vowell v. [See 17,022.]
PATERSON, The [10,795], 3 Ben. 299.
PATERSON v. EVANS [10,796], 20 Leg. Int. 28; 3 Wall. Jr. 215.
PATHFINDER, The [10,797], 4 Wkly. Notes Cas. 528.
Pathfinder, The. [See 646, 647.]
PATLEN v. ILLINOIS, The [10,798].
Paton, Ex parte. [See 6,322.]
Paton, National School Furniture Co. v. [See 10,050.]
PATON v. RENNIE [10,799].
Paton, The Juniata. [See 7,584.]
PATONS v. LEE [10,800], 2 Cranch, C. C. 646.
PATRAS, The [10,801], Blatchf. Pr. Cas. 269.
PATRAS, The [10,802], Blatchf. Pr. Cas. 664.
PATRICK v. CENTRAL BANK [10,803], 1 Dill. 303.
PATRICK v. SHERWOOD [10,804], 4 Blatchf. 112.
Patrick, United States v. [See 16,006.]
PATRICK HENRY, The [10,805], 1 Ben. 292.
Patrie, Murray v. [See 9,967.]
Patriot, The. [See 13,985.]
PATRIOTIC BANK v. BANK OF WASHINGTON [10,806], 5 Cranch, C. C. 602.
PATRIOTIC BANK v. COOTE [10,807], 3 Cranch, C. C. 169.
PATRIOTIC BANK v. FRYE [10,808], 2 Cranch, C. C. 684.
PATRIOTIC BANK v. LITTLE [10,809], 2 Cranch, C. C. 627.
PATRIOTIC BANK v. WILSON [10,810], 4 Cranch, C. C. 253.
PATRIOTIC BANK OF WASHINGTON v. FARMERS' BANK OF ALEXANDRIA [10,811], 2 Cranch, C. C. 560.
PATRIOTIC BANK OF WASHINGTON v. WEBSTER [10,811a], 2 Hayw. & H. 47.
Patten, Alexander v. [See 171.]
Patten, Alexandria v. [See 186.]
Patten, Blunt v. [See 1,579, 1,580.]
PATTEN v. DARLING [10,812], 1 Cliff. 254.
Patten, Gill v. [See 5,427, 5,428.]
Patten, Ladd v. [See 7,973.]
Patten, United States v. [See 16,007.]
PATTEN v. WASHINGTON [10,813], 3 Cranch, C. C. 654.
Patten, The Mary. [See 9,223.]
PATTERSON, In re [10,814], 1 Ben. 448; 1 N. B. R. 100; Bankr. Reg. Supp. 22; 7 Amer. Law Reg. (N. S.) 26; 6 Int. Rev. Rec. 127.
PATTERSON, In re [10,815], 1 Ben. 508; 1 N. B. R. 125, 150; Bankr. Reg. Supp. 27, 33; 6 Int. Rev. Rec. 157.
PATTERSON, In re [10,816], 1 Ben. 544; 1 N. B. R. 152; Bankr. Reg. Supp. 33; 6 Int. Rev. Rec. 166.
PATTERSON, In re [10,817], 2 Ben. 155; 1 N. B. R. 307 (Quarto, 58); 15 Pittsb. Leg. J. 241.
PATTERSON, In re [10,818], 1 N. B. R. 147; Bankr. Reg. Supp. 32.
PATTERSON, In re [10,815].
PATTERSON, In re [10,820], 1 N. B. R. 161; Bankr. Reg. Supp. 35.
PATTERSON, The [10,795], 3 Ben. 299.
PATTERSON v. ATHERTON [10,822], 3 McLean, 147.
PATTERSON v. BALL [10,823], 1 Cranch, C. C. 571.
Patterson, Ball v. [See 813, 814.]
PATTERSON v. BELLE IDA, The [10,824].
Patterson, Bispham v. [See 1,441.]
PATTERSON v. BOWIE [10,825], 1 Cranch, C. C. 425.

PATTERSON v. CAMPBELL [10,826].
Patterson, Centennial Board of Finance v. [See 2,545.]
Patterson, Commercial & Farmers' Bank v. [See 3,056.]
Patterson, Ellis v. [See 4.405.]
Patterson, Johnson v. [See 7,403.]
PATTERSON v. KINGSLAND [10,827], 8 Blatchf. 278.
Patterson, Lanham v. [See 8,069.]
Patterson, Lee v. [See 8,198.]
PATTERSON v. McLAUGHLIN [10,828], 1 Cranch, C. C. 352.
PATTERSON v. MISSISSIPPI & R. R. BOOM CO. [10,829], 3 Dill. 465.
PATTERSON v. PHILLIPS [10,829a], Hempst. 69.
PATTERSON v. TATUM [10,830], 3 Sawy. 164.
Patterson, United States v. [See 16,008-16,011.]
Pattison, Lanahan v. [See 8,036.]
Patton, Atkinson v. [See 614.]
PATTON v. BLACKWELL [10,831], 2 Overt. 114; Brunner, Col. Cas. 125.
PATTON v. BROWN [10,832], Cooke, 126; Brunner, Col. Cas. 185.
PATTON v. CAROTHERS [10,833], Cooke, 148; Brunner, Col. Cas. 207.
PATTON v. COOPER [10,834], Cooke, 133; Brunner, Col. Cas. 193.
Patton, Gill v. [See 5,429, 5,430.]
PATTON v. HYNES [10,835], Cooke, 356; Brunner, Col. Cas. 231.
PATTON v. JANNEY [10,836], 2 Cranch, C. C. 71.
Patton, Nicholson v. [See 10,250.]
Patton, Pierce v. [See 11,145.]
PATTON v. RANDOLPH, The [10,837], Gilp. 457.
PATTON v. REILY [10,838], Cooke, 119; Brunner, Col. Cas. 180.
Patton, Sloat v. [See 12,947.]
Patton, Smith v. [See 13,088.]
Patton, Strodes v. [See 13,538.]
Patton v. Taylor. [See 10,836.]
PATTON v. VIOLETT [10,839], 1 Cranch, C. C. 463.
Patton, Violett v. [See 16,952.]
PATTY v. EDELIN [10,840], 1 Cranch, C. C. 60.
Paul, In re. [See 12,148.]
PAUL v. HULBERT [10,841], 24 Int. Rev. Rec. 53; 5 Reporter, 738; 1 N. W. Rep. (O. S.) 149.
PAUL v. ILEX, The [10,842], 2 Woods, 229.
PAUL v. KANE [10,843], 5 Cranch, C. C. 549.
PAUL v. LOWRY [10,844], 2 Cranch, C. C. 628.
Paul v. Pacific R. Co. [See 10,767, 10,768.]
PAUL v. PACIFIC R. CO. [10,845], 4 Dill. 35; 3 Cent. Law J. 306.
PAUL BOGGS, The [10,846], 1 Spr. 369.
Paulin, Hedges v. [See 6,319.]
PAULINA, The [9,224].
Paulina, The Mary. [See 9,224.]
PAULINE, The [10,848], 1 Biss. 390.
Paul Shearman, The, United States v. [See 16,012.]
PAULSON, In re [10,849].
Pautucket Haircloth Co., Stafford v. [See 13,275.]
PAVONIA, The [10,850], 5 Ben. 279.
PAWASHICK, The [10,851], 2 Lowell, 142; 7 Amer. Law Rev. 361.
PAWTUCKET INST. FOR SAVINGS v. BOWEN [10,852], 7 Biss. 358; 9 Chi. Leg. News, 161.
Paxton, United States v. [See 16,013.]
Payen, Britton v. [See 1,905, 1,906.]
PAYEN v. HODGSON [10,853], 1 Cranch, C. C. 508.
PAYNE v. ABLE [10,854], 13 Int. Rev. Rec. 31.
PAYNE v. ALLEN [10,855], 1 Spr. 304.
Payne, Bowerbank v. [See 1,727.]
Payne, Cottle v. [See 3,268.]
Payne, Powell v. [See 11,358.]
PAYNE v. SOLOMON [10,856], 14 N. B. R. 162.
Payne, United States v. [See 16,014.]
Paynter, Murphy v. [See 9,952.]
Payson, Bates v. [See 1,103.]
PAYSON v. BROOKE [10,857], 1 Wkly. Notes Cas. 89.
PAYSON v. COFFIN [10,858], 4 Dill. 386; 5 Cent. Law J. 220.
PAYSON v. COFFIN [10,859], 5 Dill. 473.
PAYSON v. COOLIDGE [10,860], 2 Gall. 233.
PAYSON v. DIETZ [10,861], 2 Dill. 504; 12 Amer. Law Reg. (N. S.) 511; 8 N. B. R. 193; 5 Chi. Leg. News, 434; 30 Leg. Int. 313.
PAYSON v. HADDUCK [10,862], 8 Biss. 293; 11 Chi. Leg. News, 57.
Payson, Leiter v. [See 8,227.]
Payson, Michener v. [See 9,524.]
PAYSON v. STOEVER [10,863], 2 Dill. 427; 2 Ins. Law. J. 733; 5 Chi. Leg. News, 477.
Payson, United States v. [See 16,015-16,017.]
PAYSON v. WITHERS [10,864], 5 Biss. 269; 2 Ins Law J. 599; 5 Chi. Leg. News, 445.
P. C. SCHULTZ, The [10,865], 10 Ben. 536.
PEABODY, In re [10,866], 16 N. B. R. 243; 9 Chi Leg. News, 409.
PEABODY v. DENTON [10,867], 2 Gall. 351.
PEABODY v. GILBERT [10,868], 5 Blatchf. 334, note.
Peabody, Mason v. [See 9,250.]
PEABODY v. PROCEEDS OF TWENTY-EIGHT BAGS OF COTTON [10,869], 2 Amer. Jur. 119.
PEABODY v. UNITED STATES [10,869].
Peabody, Van Amringe v. [See 16,825.]
Peaco, United States v. [See 16,018.]
Peacock, United States v. [See 16,019.]
Peacock, The Lovett. [See 8,555.]
PEACON v. AMAZON, The [10,871].
Peale, Perin & Gaff Mfg. Co. v. [See 10,981.]
PEA PATCH ISLAND, Case of [18,311].
PEA PATCH ISLAND, Case of [18,311], 1 Wall. Jr. Append. ix.
PEARCE, In re [10,873], 2 N. Y. Leg. Obs. 267; 6 Law Rep. 261; 21 Vt. 611.
Pearce, Eickemeyer Hat-Blocking Machine Co. v. [See 4,312.]
Pearce, Mulford v. [See 9,907, 9,908.]
Pearce, Nichols v. [See 10,246.]
Pearce, Smith v. [See 13,089.]
Pearce, United States v. [See 16,020, 16,021.]
PEARL, The [10,874].
PEARL v. COVENTRY CO. [10,875].
Pearl, Ellicott v. [See 4,386.]
Pearl, The, McKee v. [See 8,849.]
PEARL v. OCEAN MILLS [10,876], 11 O. G. 2; 2 Ban. & A. 469; Merw. Pat. Inv. 223.
Pearl, United States v. [See 16,022.]
PEARPOINT v. GRAHAM [10,877], 4 Wash. C. C. 232.
PEARSON, In re [10,878], 2 N. B. R. 477 (Quarto, 151); 2 Amer. Law T. Rep. Bankr. 66.
PEARSON v. JAMISON [10,879], 1 McLean, 197.
Pearson v. The Tangier. [See 12,265-12,267.]
Pearson, Spurr v. [See 13,268.]
PEASE, In re [10,880], 6 N. B. R. 173.
PEASE, In re [10,881], 13 N. B. R. 168.
Pease, Dwight v. [See 4,217.]
PEASE v. McCLELLAND [10,882], 2 Bond, 42.
PEASE v. NAPOLEON, The [10,883], 1 Newb. 37.
Pease, Peck v. [See 10,894.]
Peaslee, Atkins v. [See 603.]
Peaslee, Austin v. [See 666.]
Peaslee, Clark v. [See 2,831.]
Peaslee, Florio v. [See 4,890.]
Peaslee, Forman v. [See 4,941.]
Peaslee, Foster v. [See 4,979.]
Peaslee, Gant v. [See 5,212.]
PEASLEE v. HABERSTRO [10,884], 15 Blatchf. 472; 8 Reporter, 486.
Peaslee, Ross v. [See 12,077.]
Peaslee, Warren v. [See 17,198.]
Peaslee, Yznaga v. [See 18,196.]
Peay, Schenck v. [See 12,450, 12,451.]
Pecholier, Latapee v. [See 8,101.]
PECK, Ex parte [10,885], 3 Blatchf. 113.
PECK, In re [10,886], 9 Ben. 169; 16 N. B. R. 43.
PECK, In re [10,887], 3 N. B. R. 757 (Quarto, 186).
PECK'S TRIAL [10,888].
Peck, Arnold v. [See 561a.]
PECK v. BURNS [10,889], 5 Ben. 537.
Peck, Fletcher v. [See 4,865.]
Peck, Johnson v. [See 7,404.]
PECK v. LAUGHLIN [10,890], 14 Phila. 531; 37 Leg. Int. 18; 21 Alb. Law J. 94; 8 Wkly. Notes Cas. 188.
PECK v. MIAMI COUNTY [10,891], 4 Dill. 370.
PECK v. NEIL [10,892], 3 McLean, 22.
PECK v. NEIL [10,893], 3 McLean, 26.
PECK v. PEASE [10,894], 5 McLean, 486.
PECK v. SCHULTZE [10,895], 1 Holmes, 28.
PECK v. WILLIAMSON [10,896], 1 Car. Law Repos. 53; 1 Brunner, Col. Cas. 398.
Peck, Zane v. [See 18,200.]
Peckham, Barstow v. [See 1,064.]

[Federal Case numbers are given in brackets.]

Peckham, Boutour v. [See 1,707.]
PECKHAM v. BURROWS [10,897], 3 Story, 544.
PECKHAM v. DOYLE [10,898].
Peckham, Ferguson v. [See 4,741.]
PECKHAM v. LYON [10,899], 4 McLean, 45.
Peck, Stow & Wilcox Co., Grosjean v. [See 5,841.]
Pedee, The, Maas v. [See 8,652.]
PEDERSON, In re [10,899a].
Pedrick, Fellows v. [See 4,724.]
PEDRICK v. FISHER [10,900], 1 Spr. 565.
Pedrick, Shakerley v. [See 12,699.]
PEDRO v. ALLEN [10,901], 1 Lowell, 435.
Pedro, The, Englehart v. [See 4,489.]
Pedro, The, Malone v. [See 8,995.]
PEEBLES, In re [10,902], 2 Hughes, 394; 13 N. B. R. 149.
Peebles, Collins v. [See 3,017.]
PEEK v. FRAME [10,903], 9 Blatchf. 194; 5 Fish. Pat. Cas. 113.
PEEK v. FRAME [10,904], 5 Fish. Pat. Cas. 211.
PEELE v. MERCHANTS' INS. CO. [10,905], 3 Mason, 27.
Peerless, The, Ensign v. [See 4,494.]
Peesler v. Haberstro. [See 10,884.]
Peggy, The, Herron v. [See 6,427.]
PEGRAM v. UNITED STATES [10,906], 1 Brock. 261.
PEGUES, In re [10,907], 3 N. B. R. 80 (Quarto, 19); 2 Amer. Law T. 136.
PEIRCE v. REINTZEL [10,908], 2 Cranch, C. C. 101.
Peirce, Webb v. [See 17,320, 17,321.]
PEIRCE v. WEST [10,909], Pet. C. C. 351.
PEIRCE v. WEST [10,910], 3 Wash. C. C. 354.
Peirsoll, Elliott v. [See 4,395.]
Peirson, Bank of Washington v. [See 953.]
PEISCH v. DICKSON [10,911], 1 Mason, 9.
Pekin, The, Smith v. [See 13,090.]
PELHAM v. PACE [10,911a], Hempst. 223.
Pelletreau, United States v. [See 16,023.]
PELTASOHN, In re [10,912], 4 Dill. 107; 16 N. B. R. 265; 10 Chi. Leg. News, 10; 4 Law & Eq. Rep. 441; 5 Cent. Law J. 311.
PELTON v. WATERS [10,913], 1 Ban. & A. 599; 7 O. G. 425; 21 Int. Rev. Rec. 125; Merw. Pat. Inv. 674.
Peltz, Bank of Washington v. [See 952.]
PELTZ v. CLARKE [10,914], 2 Cranch, C. C. 703.
PENANG, The [10,915], 4 Sawy. 100.
PENARO v. FLOURNOY [10,916], 5 Pa. Law J. 555; 9 Law Rep. 269.
PENDALL v. RENCH [10,917], 4 McLean, 259.
PENDERGAST v. BANK OF STOCKTON [10,918], 2 Sawy. 108; 4 Amer. Law T. Rep. U. S. Cts. 247; 6 Amer. Law Rec. 574.
Pendergast, Davis v. [See 3,646, 3,647.]
Pendergast, Smith v. [See 13,090a.]
PENDERGRAST v. LAMPMAN [10,919], 1 Deady, 54.
Pendleton, Bennett v. [See 1,322.]
PENDLETON v. EVANS [10,920], 4 Wash. C. C. 336.
PENDLETON v. EVANS [10,921], 4 Wash. C. C. 391.
PENDLETON v. KINSLEY [10,922], 3 Cliff. 416.
PENDLETON v. PHELPS [10,923], 4 Day; 476; Brunner, Col. Cas. 95.
Pendleton, Ten Broeck v. [See 13,827.]
PENDLETON v. UNITED STATES [10,924], 2 Brock. 75.
Pendleton, Van Hook v. [See 16,851, 16,852.]
Penelope, The. [See 16,946.]
Penelope, The, Lamar v. [See 8,007.]
Penelope, The, Locke v. [See 16,946.]
Penelope, The, McQuirk v. [See 8,925.]
Penelope, The, United States v. [See 16,024.]
Penelope, The, Vincent v. [See 16,946.]
PENHALLOW v. DOANE [10,925], 3 Dall. (3 U. S.) 54.
PENN, In re [10,926], 4 Ben. 99, 3 N. B. R. 582 (Quarto, 145).
PENN, In re [10,927], 5 Ben. 89, 5 N. B. R. 30, 3 Chi. Leg. News, 225.
PENN, In re [10,928], 5 Ben. 500; 8 N. B. R. 93.
PENN, In re [10,929], 5 N. B. R. 288.
PENN v. BUTLER [10,930], 4 Dall. 354.
PENN v. BUTLER [10,931], Wall. Sr. 4.
Penn, Conn v. [See 3,104, 3,105.]
PENN v. GROFF [10,932], 1 Wash. C. C. 390.
PENN v. INGHAM [10,933], 3 Wash. C. C. 90.
PENN v. KLINE [10,934], 4 Wash. C. C. 64.
PENN v. KLYNE [10,935], 4 Dall. 402; 1 Wash. C. C. 207; Pet. C. C. 497.
PENN v. KLYNE [10,936], Pet. C. C. 446.
PENN v. KLYNE [10,935], Pet. C. C. 497.
Penn v. Penn. [See 10,930.]
Penn, United States v. [See 16,025.]
Penniman, De Brimont v. [See 3,715.]
Penniman, Weston v. [See 17,455.]
Pennington, Coxe v. [See 3,311.]
PENNINGTON v. LOWENSTEIN [10,938], 1 N. B. R. 570 (Quarto, 157).
PENNINGTON v. SALE [10,939], 1 N. B. R. 572 (Quarto, 157); 2 Amer. Law Rev. 776.
PENNINGTON v. THORNTON [10,939a], 1 Cranch, C. C. 101.
Pennington, United States v. [See 16,026.]
Penn Mut. Life Ins. Co., Bird v. [See 1,430.]
PENNOCK v. BEALE [10,940], 13 O. G. 125.
Pennock, Coe v. [See 2,942.]
PENNOCK v. DIALOGUE [10,941], 4 Wash. C. C. 538; 1 Robb, Pat. Cas. 466; Merw. Pat. Inv. 412.
PENNOCK v. GILLELAND [10,942], 1 Pittsb. Rep. 37; 1 Pittsb. Leg. J. 37.
Pennock, Longstreth v. [See 8,488.]
Pennoyer, Neff v. [See 10,083-10,085.]
PENNOYER v. SHELDEN [10,943], 4 Blatchf. 316.
PENNS v. INGRAHAM [10,944], 2 Wash. C. C. 487.
Penns v. Klyne. [See 10,935.]
PENNSYLVANIA, The [10,945], 13 Amer. Law Reg. (N. S.) 561; 10 Phila. 283; 1 Amer. Law T. Rep. (N. S.) 402; 31 Leg. Int. 237; 21 Pittsb. Leg. J. 197; 6 Leg. Gaz. 236.
PENNSYLVANIA, The [10,946], 3 Ben. 215.
PENNSYLVANIA, The [10,947], 4 Ben. 257.
PENNSYLVANIA, The [10,948], 5 Ben. 253.
PENNSYLVANIA, The [10,949], 9 Ben. 536.
PENNSYLVANIA, The [10,950], 9 Blatchf. 451.
PENNSYLVANIA, The [10,951], 12 Blatchf. 67.
PENNSYLVANIA v. ARTMAN [10,952], 20 Leg. Int. 364; 5 Phila. 304; 3 Grant, Cas. 436; 11 Pittsb. Leg. J. 123.
Pennsylvania, The, Schmidt v. [See 12,464, 12,465.]
Pennsylvania Canal Boat Nos. 68 and 69, The, United States v. [See 16,027.]
PENNSYLVANIA COAL CO. v. QUEEN VICTORIA, The [10,952a].
Pennsylvania Co., Pierce v. [See 11,146.]
Pennsylvania Ins. Co., Cruder v. [See 3,452.]
Pennsylvania Ins. Co., Graham v. [See 5,674.]
Pennsylvania Mut. Life Ins. Co., Bird v. [See 1,430.]
PENNSYLVANIA R. CO. v. NEW YORK & L. B. R. CO. [10,953], 18 Int. Rev. Rec. 142.
Pennsylvania R. Co., Dowdall v. [See 4,038.]
Pennsylvania R. Co., Kelsey v. [See 7,679.]
Pennsylvania R. Co., Lock v. [See 8,438.]
Pennsylvania R. Co., Locomotive Engine Safety Truck Co. v. [See 8,453.]
Pennsylvania R. Co., Sherman v. [See 12,769.]
Pennsylvania R. Co., Warner v. [See 17,186.]
Pennsylvania R. Co., Wright v. [See 18,089.]
PENNSYLVANIA SALT MFG. CO. v. GUGENHEIM [10,954], 3 Fish. Pat. Cas. 423; Merw. Pat. Inv. 265.
PENNSYLVANIA SALT MFG. CO. v. MYERS [10,955], 1 Wkly. Notes Cas. 377.
PENNSYLVANIA SALT MFG. CO. v. THOMAS [10,956], 8 Phila. 144; 5 Fish. Pat. Cas. 148; 28 Leg. Int. 317; 3 Leg. Gaz. 316; 1 Leg. Gaz. Rep. 275.
PENNY v. TAYLOR [10,957], 10 N. B. R. 200.
PENROSE v. PENROSE [10,958], 17 Blatchf. 332.
Penrose Ferry Bridge Co., Devoe v. [See 3,845.]
Pensacola, Jones v. [See 7,488.]
Pensacola, Milner v. [See 9,619.]
Pensacola & G. R. Co., United States v. [See 16,028.]
PENSACOLA LUMBER CO., In re [10,959], 8 Ben. 171.
PENSACOLA TEL. CO. v. WESTERN UNION TEL. CO. [10,960], 2 Woods, 643
Pent v. The Concordia. [See 3,092.]
PENT v. OCEAN BELLE, The [10,961].
PENT v. TWO THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS [10,961a].
PENTLARGE, In re [10,962], 17 Blatchf. 306; 4 Ban. & A. 607.

[Federal Case numbers are given in brackets.]

PENTLARGE v. BEESTON [10,963], 14 Blatchf. 352; 3 Ban. & A. 142.
PENTLARGE v. BEESTON [10,964], 15 Blatchf. 347; 4 Ban. & A. 23.
PENTLARGE v. NEW YORK, B. & B. CO. [10,964a], 5 Ban. & A. 594.
PENTLARGE v. PENTLARGE [10,965].
PENTLARGE v. PENTLARGE [10,965a], 14 Reporter, 579.
PENTLETON v. FORBES [10,966], 1 Cranch, C. C. 507.
Pentz, Dorgan v. [See 4,121.]
Pentz, Dugan v. [See 4,121.]
PEOPLE v. CANNON [10,967], 14 Int. Rev. Rec. 149; 3 Leg. Gaz. 336.
PEOPLE v. GRAY [10,968], 5 Pac. Law Rep. 240.
PEOPLE v. SMITH [16,342].
People's Bank, National Park Bank v. [See 10,049.]
People's Ins. Co., Robbins v. [See 11,885.]
PEOPLE'S MAIL STEAMSHIP CO., In re [10,970], 3 Ben. 226; 2 N. B. R. 552 (Quarto, 170).
PEOPLE'S SAFE-DEPOSIT & SAVINGS INST., In re [10,971], 10 Ben. 38; 18 N. B. R. 493; 26 Pittsb. Leg. J. 140.
Peoria Bridge Ass'n, Columbus Ins. Co. v. [See 3,046.]
Peoria, P. & J. R. Co., Labaree v. [See 7,959.]
Pepita, The, Stetson v. [See 13,382.]
PEPPER v. SALINE COUNTY [10,972], 5 Dill. 270, note.
Peragio, The, Dulany v. [See 4,123.]
Peralta, United States v. [See 16,029-16,032.]
PERDICARIES v. CHARLESTON GASLIGHT CO. [10,973], 1 Hughes, 69.
PERDICARIS v. CHARLESTON GASLIGHT CO. [10,974], Chase, 435; 2 Amer. Law T. Rep. U. S. Cts. 117; 10 Int. Rev. Rec. 110.
PERDUE, In re [10,975], 2 N. B. R. 183 (Quarto, 67); 2 West. Jur. 279.
Perego, Birdsall v. [See 1,435.]
PEREGO v. BONESTEEL [10,976], 5 Biss. 66.
PEREGO v. BONESTEEL [10,977], 5 Biss. 69.
PEREIRE, The [10,978].
PEREIRE, The [10,979], 8 Ben. 301.
PERELES v. WATERTOWN [10,980], 6 Biss. 79.
Perew, The Mary E. [See 9,207.]
Perez, Dodge v. [See 3,953.]
Perez, United States v. [See 16,033.]
PERIN & GAFF MFG. CO. v. PEALE [10,981], 17 N. B. R. 377.
Perine, Walter v. [See 17,121.]
PERKINS, Ex parte [10,982], 5 Biss. 254; 8 N. B. R. 56.
PERKINS, In re [10,983], 6 Biss. 185; 10 N. B. R. 529; 7 Chi. Leg. News, 9; 10 Alb. Law J. 247; 20 Int. Rev. Rec. 135; 1 Cent. Law J. 507; 22 Pittsb. Leg. J. 43.
PERKINS v. BECK [10,984], 4 Cranch, C. C. 68.
PERKINS v. CURRIER [10,985], 3 Woodb. & M. 69.
Perkins, Dodge v. [See 3,954.]
Perkins, Dunning v. [See 4,180.]
PERKINS v. HILL [10,986], 1 Spr. 123.
PERKINS v. HILL [10,987], 2 Woodb. & M. 158.
PERKINS v. INGERSOLL [10,988], 1 Dill. 417.
PERKINS v. PROSPECT, The [11,443].
Perkins, Russell v. [See 12,160.]
Perkins, Smith v. [See 13,091.]
Perkins, Thompson v. [See 13,972.]
PERKINS v. UNITED STATES [10,990], 4 Cliff. 321.
PERKINS v. WATERTOWN [10,991], 5 Biss. 320; 5 Chi. Leg. News, 472; 12 Amer. Law Reg. (N. S.) 777.
Perkins, Wicks v. [See 17,615.]
Perkins, The John. [See 7,360.]
Perkins, The John. [See 10,252.]
PERLEY, In re [10,992], 4 N. Y. Leg. Obs. 254.
Perot, Freeman v. [See 5,087.]
PEROTS v. UNITED STATES [10,993], Pet. C. C. 256.
Perott, Hall v. [See 5,942.]
Perotto, The Vincenzo. [See 16,947.]
PERRIGO v. SPAULDING [10,994], 13 Blatchf. 389; 12 O. G. 352; 2 Ban. & A. 348.
Perrill, Northwestern Mut. Life Ins. Co. v. [See 10,339.]
PERRIN, In re [10,995], 7 N. B. R. 283.
PERRIN v. EPPING [10,996], Chase, 430.
Perrin, White v. [See 17,555.]
PERRINE v. THOMPSON [10,997], 17 Blatchf. 18; 8 Reporter, 329.
Perrot, Taber v. [See 13,721.]
PERRY, In re [10,998], 1 N. B. R. 220 (Quarto, 2); 1 Amer. Law T. Rep. Bankr. 4.
PERRY, In re [10,999], 7 West. Jur. 379; 20 Pittsb. Leg. J. 184.
Perry v. Barney. [See 11,013.]
PERRY v. BARRY [11,000], 1 Cranch, C. C. 204.
Perry, Carroll v. [See 2,456.]
PERRY v. CORNELL [11,001], 1 McA. Pat. Cas. 66; Cranch, Pat. Dec. 130.
PERRY v. CORNELL [11,002], 1 McA. Pat. Cas. 68; Cranch, Pat. Dec. 132.
PERRY v. CORNING [11,003], 6 Blatchf. 134.
PERRY v. CORNING [11,004], 7 Blatchf. 195.
PERRY v. CRAMMOND [11,005], 1 Wash. C. C. 100.
Perry, Detroit Stove Works v [See 3,835.]
Perry, Haden v. [See 5,893.]
PERRY v. LANGLEY [11,006], 1 Amer. Law T. Rep. Bankr. 34; 7 Amer. Law Reg. (N. S.) 429; 1 N. B. R. 559 (Quarto, 155).
Perry, Langley v. [See 8,067.]
PERRY v. LITTLEFIELD [11,007].
PERRY v. LITTLEFIELD [11,008], 17 Blatchf. 272; 17 O. G. 51; 4 Ban. & A. 624.
PERRY v. NEWSOME [11,009], 10 Int. Rev. Rec. 20.
PERRY v. PARKER [11,010], 1 Woodb. & M. 280.
PERRY v. RHODES [11,011], 2 Cranch, C. C. 37.
PERRY v. STARRETT [11,012], 14 O. G. 599; 3 Ban. & A. 485; Fent. Pat. 93.
Perry, Stove-Works v. [See 13,511.]
Perry, Thomas v. [See 13,908.]
PERRY v. BANGS [11,013].
Perry, The Charles F. [See 2,616.]
Perry, The Hiram. [See 9,019.]
PERRY MFG. CO. v. BROWN [11,014], 9 Law Rep. 542; Brunner, Col. Cas. 547.
PERRY MFG. CO. v. BROWN [11,015], 2 Woodb. & M. 449; 10 Law Rep. 264; 17 Hunt, Mer. Mag. 596.
Perry, The Theodore. [See 13,879, 13,880.]
PERSEE v. CLARENCE, The [11,016], 4 Amer. Law J. (N. S.) 335; 14 Law Rep. 453.
PERSEVERANCE, The [11,017], 1 Blatchf. & H. 385.
PERU v. NORTH AMERICA, The [11,017a].
Peruvian, The, Woolly v. [See 18,031.]
PESHTIGO, The [11,018], 2 Flip. 466; 9 Cent. Law J. 285; 25 Int. Rev. Rec. 361; 20 Alb. Law J. 378.
Petaluma, The, Morrison v. [See 9,848.]
Peter, Bank of the United States v. [See 933.]
Peter, Breckenridge v. [See 1,825.]
PETER v. CURETON [11,019], 2 Cranch, C. C. 561.
Peter, Dunlop v. [See 4,168.]
PETER v. SMITH [11,020], 5 Cranch, C. C. 383
PETER v. SUTER [11,021], 1 Cranch, C. C. 311.
Peter, United States v. [See 16,034.]
PETERHOFF, The [11,022], Blatchf. Pr. Cas. 345.
PETERHOFF, The [11,023], Blatchf. Pr. Cas. 381.
PETERHOFF, The [11,024], Blatchf. Pr. Cas. 463; Bett's Pr. Cas.
PETERHOFF, The [11,025], Blatchf. Pr. Cas. 620.
PETERKIN v. NEW ORLEANS [11,026], 2 Woods, 100; 22 Int. Rev. Rec. 11; 23 Pittsb. Leg. J. 90.
PETERS, Ex parte [11,027], 4 Dill. 169; 4 Law & Eq. Rep. 232.
PETERS v. BOWMAN [11,028].
PETERS v. BOWMAN [11,029].
PETERS v. BRECKENRIDGE [11,030], 2 Cranch, C. C. 518.
PETERS v. MARTENS [11,031], 2 Wkly. Notes Cas. 603.
PETERS v. PREVOST [11,032], 1 Paine, 64.
PETERS v. ROGERS [11,033], 5 Mason, 555.
Peters, United States v. [See 16,035.]
PETERS v. WARREN INS. CO. [11,034], 1 Story, 463.
PETERS v. WARREN INS. CO. [11,035], 1 Law Rep. 281; 3 Sumn. 389; 1 Hunt, Mer. Mag. 67.
Peters, Wheaton v. [See 17,486.]
Petersburg Judges of Election, United States v. [See 16,036.]
Petersburg R. Co., Atkins v. [See 604.]
Petersburg R. Co., Keppel v. [See 7,722.]

[Federal Case numbers are given in brackets.]

Peterson, Baker v. [See 776.]
Peterson v. The Java. [See 7,232-7,234.]
Peterson, Millick v. [See 9,601.]
PETERSON v. UNITED STATES [11,036], 2 Wash. C. C. 36.
Peterson, United States v. [See 16,037.]
PETERSON v. WATSON [11,037], 1 Blatchf. & H. 487.
Peterson, Wonson v. [See 17,934.]
PETERSON v. WOODEN [11,038], 3 McLean, 248; 2 Robb, Pat. Cas. 116.
Petillon v. Noble. [See 11,044.]
PETREL, The [2,261], 18 Law Rep. 185; Brunner, Col. Cas. 589.
PETRIE, In re [11,040], 5 Ben. 110; 7 N. B. R. 332.
PETRIE v. PENNSYLVANIA R. CO. [11,040a], 3 N. J. Law J. 204.
PETROCOKINO v. STUART [11,041], 37 Leg. Int. 30; 14 Phila. 412; 9 Reporter, 167; 26 Int. Rev. Rec. 30; 1 Wkly. Jur. 701; 9 N. Y. Wkly. Dig. 371.
Petry, Frink v. [See 5,128.]
PETTERSON v. CHAPMAN [11,042], 13 Blatchf. 395.
Pettibone, Babcock v. [See 700.]
PETTIBONE v. DERRINGER [11,043], 4 Wash. C. C. 215; 1 Robb, Pat. Cas. 152.
Pettibone, Hamlin v. [See 5,995.]
PETTILON v. NOBLE [11,044], 7 Biss. 449; 23 Int. Rev. Rec. 209; 2 Browne, Nat. Bank Cas. 120; 9 Chi. Leg. News, 314.
PETTINGILL v. DINSMORE [11,045], 2 Ware (Dav. 208) 212; 2 N. Y. Leg. Obs. 119; 6 Law Rep. 255.
PETTIS, In re [11,046], 7 Amer. Law Reg. (N. S.) 695; 2 N. B. R. 44 (Quarto, 17).
Pettis, United States v. [See 16,038.]
PETTIT, Case of [11,047].
Pettit, Beale v. [See 1,158.]
PETTIT v. CHARLES HEMJE, The [11,047a], 5 Hughes, 359.
Pettitt v. The Kallisto. [See 7,600.]
PETTUS v. GEORGIA RAILROAD & BANKING CO. [11,048], 3 Woods, 620.
PETTY v. MERRILL [11,049].
PETTY v. MERRILL [11,050], 9 Blatchf. 447.
PETTY v. MERRILL [11,051], 12 Blatchf. 11.
PETUNIA, The [11,052], 8 Ben. 349.
PEVEAR, In re [11,053], 17 N. B. R. 461.
PEVENSEY, The [11,054], Blatchf. Pr. Cas. 628.
PEYATTE v. ENGLISH [11,054a], Hempst. 24.
PEYTON v. BLISS [11,055], Woolw. 170.
PEYTON v. BRENT [11,056], 3 Cranch, C. C. 424.
Peyton, Auld v. [See 654.]
Peyton, Brooke v. [See 1,933, 1,934.]
Peyton, Gardner v. [See 5,234.]
Peyton, Hutchinson v. [See 6,958.]
Peyton, Neale v. [See 10,071.]
Peyton, Richardson v. [See 11,794.]
PEYTON v. VEITCH [11,057], 2 Cranch, C. C. 123.
PEYTONA, The [11,058], 2 Curt. 21.
PEYTONA, The [11,059], 1 Ware, 541.
Peytona, The, Brooks v. [See 1,959.]
PFAFF, In re [11,060], 7 Ben. 61.
PFROMM, In re [11,061], 8 N. B. R. 357.
PHARO v. SMITH [11,062], 18 How. Pr. 47.
PHARO v. SMITH [11,063], 17 Leg. Int. 381.
Pharo, The Walter W. [See 17,124.]
PHEBE, The [11,064], 1 Ware (263) 265.
PHEBE, The [11,065], 1 Ware (354) 360.
PHEBE, The [11,066], 1 Ware (362) 368.
PHELAN v. ALVARADO, The [11,067], 4 Amer. Law J. (N. S.) 352; 14 Law Rep. 451.
PHELAN v. HAZARD [11,068], 5 Dill. 45; 6 Cent. Law J. 109; 5 Reporter, 363; 24 Int. Rev. Rec. 70; 25 Pittsb. Leg. J. 143.
PHELAN v. IRON MOUNTAIN BANK [11,069], 4 Dill. 88; 16 N. B. R. 308; 5 Cent. Law J. 351.
Phelan, Kelly v. [See 7,673.]
PHELPS, In re [11,070], 9 Ben. 286; 17 N. B. R. 144.
PHELPS, In re [11,071], 1 N. B. R. 525 (Quarto, 139); 2 Amer. Law T. Rep. Bankr. 25.
Phelps, Bentley v. [See 1,331, 1,332.]
PHELPS v. BROWN [11,072], 4 Blatchf. 362; 1 Fish. Pat. Cas. 479; Merw. Pat. Inv. 701; 4 Wkly. Law Gaz. 183.
PHELPS v. CAMILLA, The [11,073], Taney, 400.
PHELPS v. CLASEN [11,074], Woolw. 204; 3 N. B. R. 87 (Quarto, 22); 2 West. Jur. 221.
Phelps, Cohen v. [See 2,964.]
PHELPS v. COMSTOCK [11,075], 4 McLean, 353; 1 Fish. Pat. Rep. 215.
Phelps, Day v. [See 3,689.]
Phelps v. Dudley. [See 11,080.]
Phelps v. Farrington. [See 11,077.]
Phelps, Goodyear v. [See 5,531.]
Phelps, India Rubber Comb Co. v. [See 7,025.]
PHELPS v. LEWISTON [11,076], 15 Blatchf. 131.
PHELPS v. LOYHED [11,077], 1 Dill. 512.
PHELPS v. O'BRIEN COUNTY [11,078], 2 Dill. 518.
Phelps, Pendleton v. [See 10,923.]
Phelps, Rawle v. [See 11,588.]
PHELPS v. SELLICK [11,079], 8 N. B. R. 390.
PHELPS v. STERNS [11,080], 4 N. B. R. 34 (Quarto, 7).
Phelps, Teese v. [See 13,818, 13,819.]
Phelps, United States v. [See 16,039-16,041.]
PHELPS v. YATES [11,081].
PHELPS v. YATES [11,082], 16 Blatchf. 192; 8 Reporter, 676.
PHENIX INS. CO. v. FRANK G. FOWLER, The [11,082a], 17 Fed. 653.
Phetteplace, Parker v. [See 10,746.]
PHETTIPLACE v. SAYLES [11,083], 4 Mason, 312.
PHILADELPHIA, The [11,084], Olc. 216.
Philadelphia, Girard v. [See 5,459.]
Philadelphia, Murtagh v. [See 9,969.]
Philadelphia, Sumner v. [See 13,611.]
Philadelphia, The, Thompson v. [See 13,973.]
Philadelphia, Vidal v. [See 16,939.]
Philadelphia & A. Steam Nav. Co. v. The Delaware. [See 3,763.]
PHILADELPHIA & HAVRE DE GRACE STEAM TOW-BOAT CO. v. PHILADELPHIA, W. & B. R. CO. [11,085], 5 Amer. Law Reg. 280.
PHILADELPHIA & R. R. CO., In re [11,085a], 12 Reporter, 644.
PHILADELPHIA & R. R. CO. v. BARNARD [11,086], 3 Ben. 39.
PHILADELPHIA & R. R. CO. v. BARNES [11,087], 3 Amer. Law T. Rep. U. S. Cts. 170; 12 Int. Rev. Rec. 112; 7 Phila. 543; 27 Leg. Int. 308; 3 Chi. Leg. News, 1; 5 Amer. Law Rev. 383; 2 Leg. Gaz. 300.
Philadelphia & R. R. Co., Camblos v. [See 2,331.]
Philadelphia & R. R. Co., Dinsmore v. [See 3,921.]
Philadelphia & R. R. Co., Jehner v. [See 7,255.]
Philadelphia & R. R. Co. v. The J. H. Gautier. [See 7,319.]
PHILADELPHIA & R. R. CO. v. KENNEY [11,088], 9 Phila. 403; 18 Int. Rev. Rec. 92; 30 Leg. Int. 281; 5 Leg. Op. 137.
PHILADELPHIA & R. R. CO. v. MORRISON [11,089], 5 Phila. 515; 21 Leg. Int. 372; 6 Leg. & Ins. Rep. 178; 12 Pittsb. Leg. J. 186.
PHILADELPHIA & R. R. CO. v. NORTHAM [11,090], 2 Ben. 1.
Philadelphia & T. R. Co., Atkinson v. [See 615.]
PHILADELPHIA AXLE WORKS, In re [11,091], 1 Wkly. Notes Cas. 126.
Philadelphia Butchers' Ice Co., Sheppard v. [See 12,757.]
Philadelphia Fire Extinguisher Co., Northwestern Fire Extinguisher Co. v. [See 10,337.]
Philadelphia Ins. Co., Cruder v. [See 3,453.]
Philadelphia Mut. Ins. Co., Howell v. [See 6,781.]
Philadelphia Saving Fund Soc., Allen v. [See 234.]
Philadelphia Steam Nav. Co. v. The Delaware. [See 3,763.]
Philadelphia Trust, Safe Deposit & Ins. Co., Corn Exchange Nat. Bank, Etc., v. [See 3,244.]
Philadelphia, W. & B. R. Co., Minot v. [See 9,645.]
Philadelphia, W. & B. R. Co., Philadelphia & Havre de Grace Steam Tow-Boat Co. v. [See 11,085.]
Philadelphia, W. & B. R. Co., Dubois v. [See 4,109.]
PHILAH, The [11,091a], 5 Adm. Rec. 693.
Philbrook, Vose v. [See 17,010.]
Philip De Peyster, The, Morgan v. [See 9,805.]
PHILIPS v. CRAMMOND [11,092], 2 Wash. C. C. 441.
PHILIPS v. ERWIN [11,093], 1 Overt. 235.
PHILIPS v. HATCH [11,094], 1 Dill. 571; 3 Amer. Law T. Rep. U. S. Cts. 191; 4 West. Jur. 399.
PHILIPS v. JANNEY [11,095], 1 Cranch, C. C. 502.
PHILIPS v. LEDLEY [11,096], 1 Wash. C. C. 226.
Philips, Pote v. [See 11,316.]

[Federal Case numbers are given in brackets.]

Philips v. Wilson. [See 11,109.]
Phillibaum, Holtzapple v. [See 6,648.]
Phillip Best Brewing Co., Gottfried v. [See 5,633.]
PHILLIPS, In re [11,097], 2 Amer. Law T. Rep. U. S. Cts. 154; 10 Int. Rev. Rec. 107; 1 Chi. Leg. News, 449; 16 Pittsb. Leg. J. 189.
PHILLIPS, In re [11,098], 14 N. B. R. 219; 3 Month. Jur. 457; 8 Chi. Leg. News, 409; 22 Int. Rev. Rec. 306.
Phillips v. The Blanche Page. [See 1,523.]
Phillips, Borland v. [See 1,661.]
Phillips, Burrill v. [See 2,200.]
PHILLIPS v. COMBSTOCK [11,099], 4 McLean, 525; 2 Robb, Pat. Cas. 724.
PHILLIPS v. DETROIT [11,100], 4 Ban. & A. 347; 17 O. G. 191; Merw. Pat. Inv. 206; 4 Cin. Law Bul. 385.
PHILLIPS v. DETROIT [11,101], 2 Flip. 92; 3 Ban. & A. 150; 16 O. G. 627.
Phillips v. Hatch. [See 11,094.]
PHILLIPS v. INSURANCE CO. OF PENNSYLVANIA [11,102], 1 Jour. Jur. 250.
Phillips, King v. [See 7,802.]
PHILLIPS v. LOWNDES [11,103], 1 Cranch, C. C. 283.
PHILLIPS v. McCALL [11,104], 4 Wash. C. C. 141.
PHILLIPS v. MARINER [11,105], 5 Biss. 26.
Phillips, Miltenberger v. [See 9,621.]
Phillips, Pickering v. [See 11,122.]
Phillips, Randall v. [See 11,555.]
Phillips, Ridyard v. [See 11,820.]
PHILLIPS v. RUSSELL [11,105a], Hempst. 62.
PHILLIPS v. THOMAS SCATTERGOOD, The [11,106], Gilp. 1.
Phillips, Thompson v. [See 13,974.]
PHILLIPS v. UNITED STATES [11,107], 33 Hunt, Mer. Mag. 456.
PHILLIPS v. UNITED STATES [11,107].
Phillips, Wilcocks v. [See 17,639.]
Phillips, Willett v. [See 17,683.]
PHILLIPS v. WILSON [11,109], 1 Wash. C. C. 470.
Phillips & Colby Const. Co., Seymour v. [See 12,689.]
Phillips County, Boro v. [See 1,663.]
Philpot, Grunninger v. [See 5,852, 5,853.]
PHOEBE, The, v. DIGNUM [11,110]. 1 Wash. C. C. 48.
PHOENIX, The [11,111], 3 Blatchf. 273.
Phoenix, The, Jones v. [See 7,489.]
Phoenix Chemical Works, Nelson v. [See 10,113.]
Phoenix Fire Ins. Co., Cady v. [See 2,284.]
Phoenix Ins. Co., Allison v. [See 252.]
Phoenix Ins. Co., v. The Atlas. [See 634.]
Phoenix Ins. Co., Blagg v. [See 1,477, 1,478.]
Phoenix Ins. Co., Clement v. [See 2,881, 2,882.]
Phoenix Ins. Co., Copeland v. [See 3,210.]
Phoenix Ins. Co., Coster v. [See 3,264.]
Phoenix Ins. Co., Davidson v. [See 3,607.]
PHOENIX INS. CO. v. ERIE & W. TRANSP. CO. [11,112], 10 Biss. 18; 12 Chi. Leg. News, 89.
Phoenix Ins. Co., Hallet v. [See 5,958.]
Phoenix Ins. Co., Hurtin v. [See 6,941.]
Phoenix Ins. Co., Hyde v. [See 6,973.]
Phoenix Ins. Co., Ide v. [See 7,001.]
Phoenix Ins. Co., Johnson v. [See 7,405.]
Phoenix Ins. Co., McKim v. [See 8,862.]
Phoenix Ins. Co., Schollenberger v. [See 12,476.]
Phoenix Ins. Co., Vale v. [See 16,811.]
Phoenix Ins. Co., Van Avery v. [See 16,829.]
Phoenix Iron Co., Keystone Bridge Co. v. [See 7,751.]
Phoenix Mut. Life Ins. Co., Brooks v. [See 1,960.]
Phoenix Mut. Life Ins. Co., Conver v. [See 3,143.]
Phoenix Mut. Life Ins. Co., Sinclair v. [See 12,896.]
Phoenix Mut. Life Ins. Co., Watts v. [See 17,294.]
Phoenix Mut. Life Ins. Co., Whitcomb v. [See 17,530.]
Piatt, Brown v. [See 2,026.]
PIATT v. McCULLOUGH [11,113], 1 McLean, 69.
PIATT v. OLIVER [11,114], 1 McLean, 295.
PIATT v. OLIVER [11,115], 2 McLean, 267.
PIATT v. OLIVER [11,116], 3 McLean, 27.
PIATT v. VATTIER [11,117], 1 McLean, 146.
PIC, Ex parte [11,118], 1 Cranch, C. C. 372.
Pic, Beeding v. [See 1,227.]
Pic, Maupin v. [See 9,309.]
PICKELL v. LOPER, The [11,119], Taney, 500.
PICKERING, In re [11,120], 10 N. B. R. 208; 1 Cent. Law J. 371.
PICKERING v. McCULLOUGH [11,121], 13 O. G. 818; 3 Ban. & A. 279; Merw. Pat. Inv. 677; 6 Reporter, 101; 25 Pittsb. Leg. J. 157.
PICKERING v. PHILLIPS [11,122], 4 Cliff. 383; 10 O. G. 420; 2 Ban. & A. 417.
Pickering, United States v. [See 16,042.]
PICKERSGILL v. WILLIAMS [11,123], 30 Hunt, Mer. Mag. 710.
PICKERT v. INDEPENDENCE, The [11,124], 9 Ben. 395; 55 How. Pr. 205.
PICKETT v. LYLE [11,125], 1 Cranch, C. C. 49.
PICKETT v. McGAVICK [11,126], 14 N. B. R. 236; 3 Cent. Law J. 303; 13 Alb. Law J. 218, 400; 2 N. Y. Wkly. Dig. 378.
Pickett, United States v. [See 16,043.]
Pickett's Heirs, Ledgerwood v. [See 8,175.]
Pico, Sparks v. [See 13,211.]
PICO v. UNITED STATES [11,127], Hoff. Land Cas. 116.
PICO v. UNITED STATES [11,128], Hoff. Land Cas. 142.
PICO v. UNITED STATES [11,129], Hoff. Land Cas. 188.
PICO v. UNITED STATES [11,130], Hoff. Land Cas. 279.
Pico, United States v. [See 16,044-16,048.]
PICQUET v. CURTIS [11,131], 1 Sumn. 478.
PICQUET v. SWAN [11,132], 3 Mason, 469.
PICQUET v. SWAN [11,133], 4 Mason, 443.
PICQUET v. SWAN [11,134], 5 Mason, 35.
PICQUET v. SWAN [11,135], 5 Mason, 561.
PICTON, In re [11,136], 2 Dill. 548; 11 N. B. R. 420.
Piece, Insdeth v. [See 7,026.]
Piedmont, The, Larrabee v. [See 8,095.]
PIEHL v. BALCHEN [11,137], Olc. 24.
PIEK v. CHICAGO & N. W. RY. CO. [11,138], 6 Biss. 177; 6 Chi. Leg. News, 333.
PIERCE, In re [11,139], 7 Biss. 426; 15 N. B. R. 449; 9 Chi. Leg. News, 300; 15 Alb. Law J. 517.
PIERCE, In re [11,140], 2 Lowell, 343.
PIERCE, In re [11,141], 3 N. B. R. 258 (Quarto, 61); 26 Leg. Int. 332; 16 Pittsb. Leg. J. 204.
PIERCE v. ALBERTO, The [11,142], Hoff. Op. 441.
Pierce, Brooklyn White Lead Co. v. [See 1,940.]
PIERCE v. BROWN [11,143], 8 Biss. 534.
Pierce, Gillet v. [See 5,437.]
Pierce, Indseth v. [See 7,026.]
Pierce, Jennings v. [See 7,283.]
PIERCE v. LANG [11,144], 1 Lowell, 65.
Pierce, Mandell v. [See 9,008.]
Pierce, National State Bank v. [See 10,052.]
PIERCE v. PATTON [11,145], Gilp. 435.
PIERCE v. PENNSYLVANIA CO. [11,146], 3 Cin. Law Bul. 925.
PIERCE v. STRICKLAND [11,147], 2 Story, 292.
PIERCE v. TURNER [11,148], 1 Cranch, C. C. 433.
PIERCE v. TURNER [11,149], 1 Cranch, C. C. 462.
Pierce, Union Iron Co. v. [See 14,367.]
PIERCE v. VICTORY, The [11,149a].
Pierce, Wilson v. [See 17,826.]
PIERCE v. WINSOR [11,150], 2 Cliff. 18; 2 Amer. Law Reg. (N. S.) 139.
PIERCE v. WINSOR [11,151], 2 Spr. 35.
Pierce, The Helen M. [See 6,332.]
PIERPONT v. FOWLE [11,152], 2 Woodb. & M. 23.
Pierrez, Marshall v. [See 9,130.]
PIERSON, In re [11,153], 10 N. B. R. 107.
PIERSON, In re [11,154], 10 N. B. R. 193.
PIERSON v. BANK OF WASHINGTON [11,155], 3 Cranch, C. C. 363.
Pierson, Bank of Washington v. [See 953.]
PIERSON v. EAGLE SCREW CO. [11,156], 3 Story, 402; 2 Robb, Pat. Cas. 268.
PIERSON v. ELGAR [11,157], 4 Cranch, C. C. 454.
PIERSON v. LAWRENCE [11,158], 2 Blatchf. 495.
PIERSON v. MAXWELL [11,159], 2 Blatchf. 507.
PIERSON v. OGDEN [11,160], 31 Hunt, Mer. Mag. 328; 2 Liv. Law Mag. 703.
Pierson v. Richardson. [See 13,743.]
Pignel, United States v. [See 16,049.]
PIGOU v. FRENCH [11,161], 1 Wash. C. C. 278.
PIKE v. POTTER [11,162], 3 Fish. Pat. Cas. 55.
PIKE v. PROVIDENCE & W. R. CO. [11,163], Holmes, 445; 1 Ban. & A. 560; 6 O. G. 575.
PIKE v. WASSELL [11,164], 2 Dill. 555.

[Federal Case numbers are given in brackets.]

Pike, The Maria. [See 9,081.]
PILES v. PLUM [11,165], 2 Cranch, C. C. 32.
PILGRIM, The [11,166].
PILLOW v. ROBERTS [11,167], Hempst. 624.
Pillsbury, Whithed v. [See 17,572.]
PILOT, The [11,168], 1 Biss. 159.
Pilot, The, Gallatin v. [See 5,199.]
Pilot No. 2, The, Foster v. [See 4,980.]
Pinckney, The General C. C. [See 5,308, 5,309.]
Pine, West v. [See 17,423.]
Pingree, United States v. [See 16,050.]
PINNES v. ELY [11,169], 4 McLean, 173.
PINTARD, In re [11,170].
PINTARD v. GOODLOE [11,171], Hempst. 502.
Pintard, Sessions v. [See 12,674.]
PIONEER, The [11,171a], Blatchf. Pr. Cas. 22.
PIONEER, The [11,172], Blatchf. Pr. Cas. 61; 18 Leg. Int. 349.
PIONEER, The [11,173], Blatchf. Pr. Cas. 163.
PIONEER, The [11,174], Blatchf. Pr. Cas. 649.
PIONEER, The [11,175], Blatchf. Pr. Cas. 666.
PIONEER, The [11,176], Deady, 58.
PIONEER, The [11,177], Deady, 72.
Pioneer, The. [See 6,451.]
PIONEER PAPER CO., In re [11,178], 7 N. B. R. 250.
Pioneer Tow Line, Bowas v. [See 1,713.]
PIPER v. BALDY [11,179], 10 N. B. R. 517; 10 Phila. 247; 31 Leg. Int. 316; 22 Pittsb. Leg. J. 29.
PIPER v. BROWN [11,180], Holmes, 20; 4 Fish. Pat. Cas. 175.
PIPER v. BROWN [11,181], Holmes, 196; 6 Fish. Pat. Cas. 240; 3 O. G. 97.
PIPER v. MOON [11,182], 10 Blatchf. 264; 6 Fish. Pat. Cas. 180; 3 O. G. 4.
PIPSICO v. BONTZ [11,183], 3 Cranch, C. C. 425.
Pitcairn, Lienow v. [See 8,341.]
Piracy—Charge to Grand Jury in Relation to Piracy. [See 18,256, 18,277.]
PITMAN, In re [11,184], 1 Curt. 186.
PITMAN v. DAVIS [11,184a], Hempst. 29.
PITMAN v. HOOPER [11,185], 3 Sumn. 50.
PITMAN v. HOOPER [11,186], 3 Sumn. 286; 1 Law Rep. 226; 20 Amer. Jur. 428.
PITMAN v. PARAGUAY, The [11,187].
Pitman, United States v. [See 16,051.]
PITT, In re [11,188], 8 Ben. 389; 14 N. B. R. 59; 23 Pittsb. Leg. J. 196.
Pitt, Sprague v. [See 13,254.]
Pitt, The, United States v. [See 16,052.]
Pittman, United States v. [See 16,053.]
PITTOCK, In re [11,189], 2 Sawy. 416; 8 N. B. R. 78.
PITTS, In re [11,190], 19 N. B. R. 63.
PITTS v. EDMONDS [11,191], 1 Biss. 168, 2 Fish. Pat. Cas. 52.
PITTS v. HALL [11,192], 2 Blatchf. 229; 1 Fish. Pat. Rep. 441.
PITTS v. HALL [11,193], 3 Blatchf. 201.
PITTS v. WEMPLE [11,194], 1 Biss. 87; 5 Fish. Pat. Cas. 10.
PITTS v. WEMPLE [11,195], 6 McLean, 558.
PITTS v. WHITMAN [11,196], 2 Story, 609; 2 Robb, Pat. Cas. 189; Merw. Pat. Inv. 313.
PITTSBURG, C. & ST. L. RY. CO. v. COLUMBUS, C. & I. C. RY. CO. [11,197], 8 Biss. 456.
Pittsburg, Evans v. [See 4,567, 4,568.]
Pittsburg, Ft. W. & C. R. Co., Knowles v. [See 7,899.]
Pittsburgh, & C. R. Co., Baltimore v. [See 827.]
Pittsburgh, The, Kelly v. [See 7,674.]
Pittsburgh, Oebricke v. [See 10,442.]
Pittsburgh, Oelrich v. [See 10,442.]
Pittsburgh, Rockmulh v. [See 11,982.]
Pittsburgh, C. & St. L. R. Co., Hume v. [See 6,865.]
Pittsburgh, Ft. W. & C. R. Co., Emigh v. [See 4,449.]
Pittsburgh, Ft. W. & C. R. Co., Haight v. [See 5,903.]
PITTSBURGH LOCOMOTIVE & CAR WORKS v. STATE NAT. BANK OF KEOKUK [11,198], 8 Chi. Leg. News, 41; 2 Cent. Law J. 692; 1 Thomp. Nat. Bank. Cas. 315; 1 N. Y. Wkly. Dig. 332; 21 Int. Rev. Rec. 349; 1 Law & Eq. Rep. 56; 12 Alb. Law J. 280.
PIZARRO, The, v. MATTHIAS [11,199], 10 N. Y. Leg. Obs. 97.
PLACE, In re [11,200], 8 Blatchf. 302; 4 N. B. R. 541 (Quarto, 178); 3 Chi. Leg. News, 218.
PLACE, In re [11,201], 9 Blatchf. 369.
Place, Beers v. [See 1,233.]
PLACE v. CITY OF NORWICH, The [11,202], 1 Ben. 89.
Place, Russell v. [See 12,161.]
Place, Sedgwick v. [See 12,619-12,623.]
Plainfield, The, Brush v. [See 2,058.]
PLANET, The [11,203], 1 Brown's Adm. 124.
PLANET, The [11,204], 1 Spr. 11; 4 Law Rep. 353.
PLANT v. GUNN [11,205], 2 Woods, 372.
Plant, Gody v. [See 5,499.]
PLANT v. HOLTZMAN [11,206], 4 Cranch, C. C. 441.
PLANTER, The [11,207], 32 U. S. (7 Pet.) 324.
PLANTER, The [11,207a], 2 Woods, 490.
Planter, The, United States v. [See 16,054.]
PLANTERS' BANK v. ST. JOHN [11,208], 1 Woods, 585.
PLASTIC SLATE-ROOFING JOINT-STOCK CO. v. MOORE [11,209], Holmes, 167.
PLATINA, The [11,210], 3 Ware, 180; 21 Law Rep. 397.
PLATT, In re [11,211], 1 Ben. 534; 1 Thomp. Nat. Bank. Cas. 181.
PLATT, In re [11,212], 7 Ben. 261; 19 Int. Rev. Rec. 132.
PLATT v. ARCHER [11,213], 9 Blatchf. 559; 6 N. B. R. 465.
PLATT v. ARCHER [11,214], 13 Blatchf. 351.
PLATT v. BEACH [11,215], 2 Ben. 303; 1 Thomp. Nat. Bank. Cas. 182.
Platt v. Boyd. [See 11,212.]
PLATT v. BROACH [11,216], 36 How. Pr. 188.
PLATT v. DICKENSON [11,216a].
PLATT v. JEROME [11,217], 2 Blatchf. 186.
Platt, Leland v. [See 8,235.]
PLATT v. McCLURE [11,218], 3 Woodb. & M. 151.
PLATT v. MATTHEWS [11,218a], 13 Reporter, 581.
PLATT v. PRESTON [11,219], 19 N. B. R. 241.
PLATT v. STEWART [11,220], 13 Blatchf. 481.
PLATT v. STEWART [11,221], 11 N. B. R. 191.
Platt, United States v. [See 16,054a.]
PLATT v. UNITED STATES PATENT BUTTON, RIVET, NEEDLE & MACHINE MFG. CO. [11,222], 9 Blatchf. 342; 1 O. G. 524; 5 Fish. Pat. Cas. 265; Merw. Pat. Inv. 132.
Platt, The James. [See 7,199.]
Platte City, Britton v. [See 1,907.]
Plattsburg, Judson v. [See 7,570.]
PLAYER v. LIPPINCOTT [11,223]; 4 Dill. 124; 5 Cent. Law J. 323; 25 Pittsb. Leg. J. 48.
PLAYER v. LIPPINCOTT [11,224], 4 Dill. 125, note; 16 N. B. R. 208; 5 Cent. Law J. 260.
Pleasant Hill, Pollard v. [See 11,253.]
PLEASANTS, Ex parte [11,225], 4 Cranch, C. C. 314.
Pleasants, Goyon v. [See 5,647.]
Pleasants, Wood v. [See 17,961.]
PLEASANT VALLEY, The [11,226], 7 Ben. 72.
Pleasonton, New Jersey Steamboat Co. v. [See 10,166.]
Pleasonton, Underhill v. [See 14,337.]
PLIMPTON, In re [11,227], 4 Law Rep. 488.
PLITT, Ex parte [11,228], 2 Wall. Jr. 453.
PLOUGHBOY, The [11,229], 1 Brown, Adm. 48.
PLOUGHBOY, The [11,230], 1 Gall. 41.
Plum, Piles v. [See 7,378.]
PLUMB, In re [11,231], 9 Ben. 279; 17 N. B. R. 76; 6 N. Y. Wkly. Dig. 70.
Plumer, United States v. [See 16,055, 16,056.]
PLUMMER v. CONNECTICUT MUT. LIFE INS. CO. [11,232], Holmes, 267.
Plummer, Connecticut Mut. Life Ins. Co. v. [See 3,106.]
Plummer, Gilpin v. [See 5,451.]
PLUMMER v. WEBB [11,233], 4 Mason, 380.
PLUMMER v. WEBB [11,234], 1 Ware (75) 69.
Plumsel, Holtzman v. [See 6,650.]
Plumsell, McClean v. [See 8,693.]
Plunkett, Wolf v. [See 17,926.]
Pluto, The, Fagan v. [See 4,605.]
Plymouth, The, Fisher v. [See 4,822.]
Plymouth, The, Scott v. [See 12,544.]
PLYMOUTH ROCK, The [11,235], 7 Ben. 448.

[Federal Case numbers are given in brackets.]

PLYMOUTH ROCK, The [11,236], 9 Ben. 79; 23 Int. Rev. Rec. 129.
PLYMOUTH ROCK, The [11,237], 13 Blatchf. 505.
Plymton, Sloat v. [See 12,948.]
Plymton, United States v. [See 16,057, 16,058.]
POAG v. McDONALD, The [11,238].
POAG v. McDONALD, The [11,239], 17 Leg. Int. 318.
Poage, United States v. [See 16,059.]
Pocklington, United States v. [See 16,060.]
POE v. MOUNGER [11,240], 1 Cranch, C. C. 145.
Poillion, Grant v. [See 5,700.]
POILLON v. SCHMIDT [11,241], 6 Blatchf. 299; 3 Fish. Pat. Cas. 476; 37 How. Pr. 77; Merw. Pat. Inv. 321.
POLACK v. UNITED STATES [16,061].
POLAND, The [11,242], 2 Mich. Lawy. 16.
POLAND v. GLYN [11,243].
POLAND v. MARYLAND COAL CO. [11,244], 8 Ben. 347.
POLAND v. MARYLAND COAL CO. [11,245], 14 Blatchf. 519.
POLAND v. SPARTAN, The [11,246], 1 Ware (134) 130.
Polar Star, The. [See 4,281.]
POLEMAN, In re [11,247], 5 Biss. 526; 9 N. B. R. 376; 19 Int. Rev. Rec. 94; 6 Chi. Leg. News, 181.
Polhamus, United States v. [See 16,062.]
POLK v. COSGROVE [11,248], 4 Biss. 437.
POLK v. HILL [11,249], 2 Overt. 118; Brunner, Col. Cas. 126.
POLK v. ROBERTSON [11,250], 1 Overt. 456; Brunner, Col. Cas. 103.
POLK v. WINDEL [11,251], 2 Overt. 433; Brunner, Col. Cas. 168.
POLLARD, Ex parte [11,252], 2 Lowell, 411; 17 N. B. R. 228.
POLLARD v. PLEASANT HILL, City of [11,253], 3 Dill. 195; 1 Cent. Law J. 155.
Pollock, Bispham v. [See 1,442.]
Pollock, Craig v. [See 3,335].
POLLOCK v. DONALDSON [11,254], 3 Dall. 510.
POLLOCK v. LAWRENCE COUNTY [11,255], 7 Pittsb. Leg. J. 373; 3 West. Law Month. 68; 2 Pittsb. Rep. 137.
Pollock, Nebraska v. [See 10,077.]
POLLOCK v. PRATT [11,256], 2 Wash. C. C. 490.
Polly, The, Putnam v. [See 11,482.]
Polly, The, Skidmore v. [See 12,923.]
Polly and Jane, The, United States v. [See 16,063.]
Polly and Kitty, The, Rice v. [See 11,754.]
Polly and Nancy, The, United States v. [See 16,064.]
POLYDORE v. PRINCE [11,257], 1 Ware (402) 411.
POMEROY, In re [11,258], 2 N. B. R. 14 (Quarto, 3).
Pomeroy, Bell v. [See 1,263.]
POMEROY v. CONNISON [11,259], Cranch, Pat. Dec. 112; 1 McA. Pat. Cas. 40.
POMEROY v. MANIN [11,260], 2 Paine, 476.
POMEROY v. NEW YORK & N. H. R. CO. [11,261], 4 Blatchf. 120.
Pomeroy, Smith v. [See 13,092.]
Pomeroy, United States v. [See 16,065.]
Pomeroy, Wilkinson v. [See 17,674, 17,675.]
POMERY v. SLACUM [11,262], 1 Cranch, C. C. 578.
POMROY v. HARTER [11,263], 1 McLean, 448.
Pompey, United States v. [See 16,066.]
Pond, Renwick v. [See 11,702.]
Pond, Stimpson v. [See 13,455.]
Pond, United States v. [See 16,067.]
POND v. VERMONT VAL. R. Co. [11,264].
POND v. VERMONT VAL. R. CO. [11,265], 12 Blatchf. 280.
PONSFORD v. JOHNSON [11,266], 2 Blatchf. 51.
Ponsonby, Sherrard v. [See 12,772.]
PONSOT v. MAXWELL [11,267], 4 Blatchf. 43.
Pontiac, The, McGinnis v. [See 8,801.]
Pooke, Hunt v. [See 6,895, 6,896.]
Pool, Fleeger v. [See 4,860.]
POOL v. McDONALD [11,268], 15 N. B. R. 560; 9 Chi. Leg. News, 322; 4 Law & Eq. Rep. 27; 2 Cin. Law Bul. 151.
POOL v. WELSH [11,269], Gilp. 193.
POOLE v. NIXON [11,270], 9 Pet. Append. 770.
POOLE v. WASHINGTON, The [11,271], 9 N. Y. Leg. Obs. 321.
Poor, Archer v. [See 509.]
POOR v. CARLETON [11,272], 3 Sumn. 70.
Poor, Chesapeake & O. Canal Co. v. [See 2,651.]
Poor, Smith v. [See 13,093.]
Poor, Williams v. [See 17,732.]
POPE v. BARRETT [11,273], 1 Mason, 117.
Pope, Drew v. [See 4,080.]
POPE v. NICKERSON [11,274], 3 Story, 465; 7 Law Rep. 471; 12 Hunt, Mer. Mag. 179.
POPE v. R. B. FORBES, The [11,275], 1 Cliff. 331.
POPE v. SAPPHIRE, The [11,276], Hoff. Op. 504.
Pope, United States v. [See 16,068, 16,069.]
Pope, Whitaker v. [See 17,528.]
POPINO v. McALLISTER [11,277], 4 Wash. C. C. 393.
POPLESTON v. KITCHEN [11,278], 3 Wash. C. C. 138.
Poppe, Zerega v. [See 18,213.]
POPPENHUSEN v. FALKE [11,279], 4 Blatchf. 493; 2 Fish. Pat. Cas. 181.
POPPENHUSEN v. FALKE [11,280], 5 Blatchf. 46; 2 Fish. Pat. Cas. 213.
POPPENHUSEN v. NEW YORK GUTTA PERCHA COMB CO. [11,281], 4 Blatchf. 184; 2 Fish. Pat. Cas. 74.
POPPENHUSEN v. NEW YORK GUTTA PERCHA COMB CO. [11,282], 4 Blatchf. 253; 2 Fish. Pat. Cas. 80.
POPPENHUSEN v. NEW YORK GUTTA PERCHA COMB CO. [11,283], 2 Fish. Pat. Cas. 62.
PORPOISE, The [11,284], 2 Curt. 307.
Portage County, Preble v. [See 11,380.]
Porte, United States v. [See 16,070.]
PORTER, The [11,285], 2 Dill. 146.
PORTER v. AETNA INS. CO. [11,286], 2 Flip. 100; 6 Ins. Law J. 928.
Porter, Centennial Catalogue Co. v. [See 2,546.]
Porter v. The Friendship. [See 10,783.]
Porter, Georgetown v. [See 5,346.]
Porter, Hoffman v. [See 6,577.]
Porter, Jackson v. [See 7,143.]
Porter, Jasper v. [See 7,229.]
Porter, Jenkins v. [See 7,274.]
PORTER v. MARSTELLER [11,287], 1 Cranch, C. C. 129.
PORTER v. RAPINE [11,288], 2 Cranch, C. C. 47.
PORTER v. SEA WITCH, The [11,289], 3 Woods, 75.
PORTER v. UNITED STATES [11,290], 2 Paine, 313.
Porter, United States v. [See 16,071-16,074.]
PORTER v. VIETS [11,291], 1 Biss. 177.
Porter, Wilson v. [See 17,827.]
Porter, Young v. [See 18,171.]
Porter, The Clara M. [See 2,792.]
PORTEVANT v. BELLA DONNA, The [11,292], 4 Newb. 510.
PORT HURON DRY-DOCK CO., In re [11,293], 14 N. B. R. 253.
PORTINGTON, In re [11,294], 8 Ben. 175.
Portland, Baker v. [See 777.]
Portland, Bragg v. [See 1,802.]
Portland, Coulson v. [See 3,275.]
Portland, Lownsdale v. [See 8,578, 8,579.]
Portland, The, Lowry v. [See 8,583.]
Portland, Merrill v. [See 9,470.]
Portland & K. R. Co., Sullivan v. [See 13,596.]
Portland Mfg. Co., Webb v. [See 17,322.]
PORTSMOUTH, The [11,295], 2 Biss. 56; 1 Chi. Leg. News, 65.
Portsmouth, Sanford v. [See 12,315.]
PORTSMOUTH SAV. BANK v. YELLOW HEAD [11,296], 3 Biss. 474; 5 Chi. Leg. News, 374; 7 Amer. Law Rev. 751.
PORTSMOUTH SAV. FUND SOC., In re [11,297], 2 Hughes, 238.
PORTSMOUTH SAV. FUND SOC., In re [11,298], 2 Hughes, 239; 11 N. B. R. 303.
POST v. CORBIN [11,299], 5 N. B. R. 11.
Post v. Hughes. [See 3,609.]
POST v. ROUSE [11,300], 1 Wkly. Notes Cas. 39.
POST v. SARMIENTO [11,301], 2 Wash. C. C. 198.
POST v. TAYLOR COUNTY [11,302], 2 Flip. 518.
Postal Laws—Charge to Grand Jury in Relation to Offenses against Postal Laws. [See 18,248.]
Postal Laws—Charge to Grand Jury in Relation to Violation of Postal Laws. [See 18,251.]
POSTBOY, The [11,303], 10 N. Y. Leg. Obs. 65.
POSTLEY v. HIGGENS [11,304], 2 McLean, 493.
POSTMASTER GENERAL v. APPLEBACK [11,312], 16 Haz. Reg. Pa. 18.

[Federal Case numbers are given in brackets.]

POSTMASTER GENERAL v. CROSS [11,306], 4 Wash. C. C. 326.
POSTMASTER GENERAL v. FENNELL [11,307], 1 McLean, 217.
POSTMASTER GENERAL v. FURBER [11,308], 4 Mason, 333.
Postmaster General v. Lathrop. [See 11,308.]
Postmaster General, Locke v. [See 8,441.]
POSTMASTER GENERAL v. MUNGER [11,309], 2 Paine, 189.
POSTMASTER GENERAL v. NORVELL [11,310], Gilp. 106.
POSTMASTER GENERAL v. REEDER [11,311], 4 Wash. C. C. 678.
POSTMASTER GENERAL v. RICE [11,312], Gilp. 554; 16 Haz. Reg. Pa. 8.
POSTMASTER GENERAL v. RIDGWAY [11,313], Gilp. 135.
POSTMASTER GENERAL v. ROBBINS [11,314], 1 Ware (165) 163.
POSTMASTER GENERAL v. USTICK [11,315], 4 Wash. C. C. 347.
POTE v. PHILIPS [11,316], 5 Cranch, C. C. 154.
Potomac, The, Baker v. [See 778.]
Potomac, The, Bedell v. [See 1,215.]
Potomac, The, Cannon v. [See 2,386.]
Potomac Bldg. Ass'n, Johnson v. [See 7,406.]
Potomac Bldg. Ass'n, Johnston v. [See 18,303.]
POTOMAC CO. v. GILMAN [11,317], 2 Cranch, C. C. 243.
POTOMAC CO. v. UNION BANK [11,318], 3 Cranch, C. C. 101.
Potomska Mills Corp., Draper v. [See 4,072.]
Potowmack Co., Brooke v. [See 1,935.]
POTT v. ARTHUR [11,319], 15 Blatchf. 314.
Pott, Young v. [See 18,172.]
Pottawattamie County, Union Pac. R. Co. v. [See 14,384.]
POTTEIGER, In re [11,320], 5 Reporter, 137.
Potter, Atlee v. [See 636.]
POTTER v. BRAUNSDORF [11,321], 7 Blatchf. 97.
POTTER v. COGGESHALL [11,322], 4 N. B. R. 73 (Quarto, 19).
Potter, Coggeshall v. [See 2,955.]
POTTER v. CROWELL [11,323], 1 Abb. U. S. 89; 3 Fish. Pat. Cas. 112.
POTTER v. DAVIS SEWING-MACH CO. [11,324], 3 Fish. Pat. Cas. 472.
POTTER v. DIXON [11,325], 5 Blatchf. 160, 2 Fish. Pat. Cas. 381.
POTTER v. EMPIRE SEWING-MACH CO. [11,326], 3 Fish. Pat. Cas. 474.
Potter, Evans v. [See 4,569.]
POTTER v. FULLER [11,327], 2 Fish. Pat. Cas. 251.
Potter v. Gibbs. [See 11,342.]
POTTER v. HICKS [11,328].
POTTER v. HOLLAND [11,329], 4 Blatchf. 206; 1 Fish. Pat. Cas. 327.
POTTER v. HOLLAND [11,330], 4 Blatchf. 238; 1 Fish. Pat. Cas. 382; Merw. Pat. Inv. 424.
POTTER v. MACK [11,331], 3 Fish. Pat. Cas. 428.
POTTER v. MARINE INS. CO. [11,332], 2 Mason, 475.
Potter v. The Monticello. [See 3,971.]
POTTER v. MULLER [11,333], 1 Bond, 601; 2 Fish. Pat. Cas. 631.
POTTER v. MULLER [11,334], 2 Fish. Pat. Cas. 465.
POTTER v. OCEAN INS. CO. [11,335], 3 Sumn. 27; 1 Law Rep. 17; 1 Hunt, Mer. Mag. 68.
Potter, Pike v. [See 11,162.]
POTTER v. PROVIDENCE WASHINGTON INS. CO. [11,336], 4 Mason, 298.
Potter, Riddle v. [See 11,811.]
POTTER v. SCHENCK [11,337], 1 Biss. 515; 3 Fish. Pat. Cas. 82.
Potter, Skolfield v. [See 12,925.]
Potter v. Sloat. [See 11,342.]
POTTER v. STEVENS [11,338], 2 Fish. Pat. Cas. 163.
POTTER v. SUFFOLK INS. CO. [11,339], 2 Sumn. 197.
POTTER v. THAYER [11,340], Holmes, 293; 2 O. G. 32; 6 Fish. Pat. Cas. 603.
Potter, United States v. [See 16,075-16,078.]
Potter, Watt v. [See 17,291.]
POTTER v. WHITNEY [11,341], 1 Lowell, 87; 3 Fish. Pat. Cas. 77.
POTTER v. WILSON [11,342], 2 Fish. Pat. Cas. 102; 17 Leg. Int. 333.
POTTER v. WRIGHT [11,343], 1 Wkly. Notes Cas. 637; 1 N. Y. Wkly. Dig. 245.
POTTS, Ex parte [11,344], Crabbe, 469; 1 Pa. Law J. 159.
Potts, Ex parte. [See 5,258.]
POTTS v. FINDLAY [11,345], 1 Cranch, C. C. 514.
POTTS v. GHEQUIERE [11,346].
POTTS v. GILBERT [11,347], 3 Wash. C. C. 475.
POTTS v. SKINNER [11,348], 1 Cranch, C. C. 57.
Potts, Smith v. [See 13,094.]
POTTS v. WM. A. BURDEN, The [11,349.]
POULSON, Ex parte [11,350], 15 Haz. Reg. Pa. 380.
Poulson, The, McCready v. [See 8,734.]
POUNDER v. CAROLINE V. CASEY, The [2,421a].
Pounder v. Proceeds of the Caroline Casey. [See 2,421a.]
POUSOT v. LAWRENCE [11,352.]
POWDEN v. JOHNSON [11,353], 2 N. J. Law J. 48; 7 Reporter, 294.
POWELL, In re [11,354], 2 N. B. R. 45 (Quarto, 17).
Powell, Abbott v. [See 13.]
POWELL v. BETSY, The [11,355], 2 Browne (Pa.) 335.
Powell, The, Maxwell v. [See 9,324.]
POWELL v. MONSON & BRIMFIELD MFG. CO [11,356], 3 Mason, 347.
POWELL v. MONSON & BRIMFIELD MFG. CO. [11,357], 3 Mason, 459.
POWELL v. PAYNE [11,358].
POWELL v. REDFIELD [11,359], 4 Blatchf. 45.
Powell, United States v. [See 16,079.]
POWER v. SEMMES [11,360], 1 Cranch, C. C. 247.
Power, United States v. [See 16,080.]
POWERS v. BARNEY [11,361], 5 Blatchf. 202.
Powers, Lanstraaz v. [See 8,078.]
POWERS v. MORTEE [11,362], 4 Amer. Law Reg. 427.
Powers, Webb v. [See 17,323.]
POWHATTAN STEAMBOAT CO. v. APPOMATTOX R. CO. [11,363], 4 Quart. Law J. 100.
POWLING v. VARNUM [11,364], 2 Cranch, C. C. 423.
Poyllon, United States v. [See 16,081.]
PRAIRIE BIRD, The [11,365].
Prang, Parton v. [See 10,784.]
PRANKARD, In re [11,366], 1 N. B. R. 297 (Quarto, 51).
PRATHER v. BURGESS, [11,367], 5 Cranch, C. C. 376.
PRATHER v. MICHIGAN MUT. LIFE INS. CO. [11,368], 7 Ins. Law J. 897; 7 Reporter, 293.
PRATT, In re [11,369], 6 Ben. 165; 9 N. B. R. 47; 21 Pittsb. Leg. J. 82.
PRATT, In re [11,370], 1 Flip. 353; 1 Cent. Law J. 290.
PRATT, In re [11,371], 2 Lowell, 96; 6 N. B. R. 276.
Pratt, Bentaloe v. [See 1,330.]
PRATT v. BURR [11,372], 5 Biss. 36.
PRATT v. BURR [11,373], 5 Biss. 50.
PRATT v. CAMPBELL [11,374].
PRATT v. CURTIS [11,375], 2 Lowell, 87; 6 N. B. R. 139.
Pratt, Fogerty v. [See 4,896.]
Pratt v. The Heroine. [See 6,417.]
Pratt v. The Kentucky. [See 7,717.]
Pratt, Livingston v. [See 8,417.]
Pratt, Mitchell v. [See 9,668.]
PRATT v. NORTHAM [11,376], 5 Mason, 95.
Pratt, Orme v. [See 10,578.]
Pratt, Pollock v. [See 11,256.]
PRATT v. THOMAS [11,377], 1 Ware (427) 437.
Pratt, United States v. [See 16,082.]
PRATT v. WILLARD [11,378], 6 McLean, 27
Pratt, The Ann C. [See 409.]
Pratt, The David. [See 3,597.]
PRAY v. RECOVERY, The [11,379], Bee, 393.
Preary, Tunno v. [See 14,238.]
PREBLE v. PORTAGE COUNTY [11,380], 8 Biss. 358.
PRENTICE v. BETTELEY [11,381], 2 Lowell, 289.
Prentice v. Lane. [See 11,383.]
PRENTICE v. NOE [10,284].
Prentice, United States v. [See 16,083.]
PRENTICE v. ZANE [11,383], 11 Law Rep. 204.
PRENTISS v. BARTON [11,384], 1 Brock. 389.
PRENTISS v. BRENNAN [11,385], 2 Blatchf. 162.
PRENTISS v. ELSWORTH [11,386], Mirror, Pat. Off. 35.
PRENTISS v. ELLSWORTH [11,386].

[Federal Case numbers are given in brackets.]

Prentiss, Ross v. [See 12,078.]
Prentiss, St. John v. [See 2,194.]
Presbyterian Church, Board of Foreign Missions of the, v. McMaster. [See 1,586.]
PRESCOTT, Ex parte [11,388], 2 Gall. 146.
PRESCOTT, In re [11,389], 5 Biss. 523; 9 N. B. R. 385; 6 Chi. Leg. News, 151.
PRESCOTT v. NEVERS [11,390], 4 Mason, 326.
Prescott, United States v. [See 16,084, 16,085.]
Prescott, The George. [See 5,339.]
President, The, Zane v. [See 18,201.]
PRESIDENT'S PROCLAMATION DECLARED ILLEGAL [11,391], 2 Nile, Reg. 216.
Pressy, United States v. [See 16,086.]
PRESTON, In re [11,392], 3 N. B. R. 103 (Quarto, 27).
PRESTON, In re [11,393], 5 N. B. R. 293.
PRESTON, In re [11,394], 6 N. B. R. 545.
PRESTON v. COOPER [11,395], 1 Dill. 589.
PRESTON v. GIBBONEY [11,396].
Preston, Hatch v. [See 6,208.]
PRESTON v. McGAUGHEY [11,397], 1 Cooke, 113; Brunner, Col. Cas. 174.
Preston, Platt v. [See 11,219.]
PRESTON v. STUART [11,398].
Preston, United States v. [See 16,087.]
Preston, Worthington v. [See 18,055.]
PRESTON v. YOUNG [11,399], 1 Cranch, C. C. 357.
Preston, The A. B. [See 3,524.]
Preterre, Goodyear Dental Vulcanite Co. v. [See 5,595, 5,596.]
Prettyman, Delaware R. Co. v. [See 3,767.]
Preuss, Lee v. [See 8.199.]
PREVOST v. GORRELL [11,400], 6 Amer. Law Rec. 743; 7 Amer. Law Rec. 236; 5 Wkly. Notes Cas. 151; 12 West. Jur. 369; 5 Reporter, 616; 10 Chi. Leg. News, 228; 24 Int. Rev. Rec. 122; 25 Pittsb. Leg. J. 125; 2 Month. Jur. 40.
PREVOST v. GORRELL [11,400, 11,402].
PREVOST v. GORRELL [11,402], 5 Reporter, 617; 12 West. Jur. 372; 6 Amer. Law Rec. 744; 7 Amer. Law Rec. 239; 5 Wkly. Notes Cas. 152; 13 Phila. 468; 35 Leg. Int. 147; 3 Cin. Law Bul. 212; 25 Pittsb. Leg. J. 125; 10 Chi. Leg. News, 229; 2 Month. Jur. 40.
PREVOST v. GORRELL [11,403], 3 Wkly. Notes Cas. 548; 24 Pittsb. Leg. J. 143.
PREVOST v. GORRELL [11,404], 5 Wkly. Notes Cas. 149.
PREVOST v. GORRELL [11,405], 7 Wkly. Notes Cas. 261; 7 Reporter, 296.
PREVOST v. GORRELL [11,405a], 7 Wkly. Notes Cas. 264.
PREVOST v. GRATZ [11,406], 1 Pet. C. C. 364.
PREVOST v. GRATZ [11,407], 3 Wash. C. C. 434.
PREVOST v. HEALY [11,408], 7 Wkly. Notes Cas. 263.
Prevost, Healy v. [See 6,297.]
Prevost, Peters v. [See 11,032.]
Prewett, Labitut v. [See 7,962.]
Prewett, Wilson v. [See 17,828.]
PRICE, In re [11,408a], 3 Dill. 514, note.
PRICE, In re [11,409], 4 N. B. R. 406 (Quarto, 137).
PRICE, In re [11,410], 6 N. B. R. 400; 1 Md. Law Rec. 236.
PRICE, In re [11,411], 8 N. B. R. 514.
PRICE, In re [11,412], 1 N. J. Law J. 228; 26 Pittsb. Leg. J. 11.
Price v. The Highland Light. [See 6,477.]
Price, Isaac v. [See 7,097.]
Price, Johnson v. [See 7,407.]
PRICE v. KELLEY [11,413], 2 Ban. & A. 534; 11 O. G. 639; Syllabi, 175.
PRICE v. MORRIS [11,414], 5 McLean, 4.
PRICE v. NICHOLAS [11,415], 4 Hughes, 616.
PRICE v. SEARS [11,416], 2 Lowell, 553; 15 Alb. Law J. 273.
PRICE v. TEAL [11,417], 4 McLean, 201.
Price, United States v. [See 16,088-16,090.]
PRICE v. YATES [11,418], 19 Alb. Law J. 295; 25 Int. Rev. Rec. 113; 7 Wkly. Notes Cas. 51; 2 Browne, Nat. Bank Cas. 204; 7 Reporter, 582.
Priest, Gilbert v. [See 5,413.]
PRIDE OF THE OCEAN, The [11,419], 10 Ben. 610.
Priest, Palmer v. [See 10,694.]
PRIETO v. WELLS [11,420].
PRIME v. BRANDON MFG. CO. [11,421], 16 Blatchf. 453; 4 Ban. & A. 379.
Prime, Brandon Mfg. Co. v. [See 1,810.]
PRIME v. McREA [11,422], 1 Cranch, C. C. 201.
PRIME v. McREA [11,423], 1 Cranch, C. C. 294.
Primrose, United States v. [See 16,091.]
PRINCE, The [12,219].
Prince, Golden v. [See 5,509.]
Prince, Howard v. [See 6,762.]
Prince, Polydore v. [See 11,257.]
Prince, Sabbich v. [See 12,192.]
PRINCE v. UNITED STATES [11,425], 2 Gall. 204.
PRINCE ALBERT, The [11,426], 5 Ben. 386; 15 Int. Rev. Rec. 35.
Prince Albert, The, Benary v. [See 11,426.]
PRINCE EDWARD, The [11,427], 4 Woods, 17.
PRINCE LEOPOLD, The [11,428], Blatchf. Pr. Cas. 89.
PRINCE LEOPOLD, The [11,429], Blatchf. Pr. Cas. 647.
PRINCESS ALEXANDRA, The [11,430], 8 Ben. 209.
PRINCESS OF ORANGE, Jewels Stolen from The [11,431].
PRINCESS ROYAL, The [11,432].
PRINCETON, In re [11,433], 2 Biss. 116; 1 N. B. R. 618 (Quarto, 178); 1 Amer. Law T. Rep. Bankr. 125.
PRINCETON, The [11,433a], 18 Betts, D. C. MS. 126.
PRINCETON, The [11,434], 3 Blatchf. 54; 12 N. Y. Leg. Obs. 5.
PRINDIVILLE, The [11,435], 1 Brown's Adm. 485; 6 Chi. Leg. News, 291.
Prindeville v. The Monitor. [See 9,708-9,710.]
Prior, Tyson v. [See 14,319.]
Prior, United States v. [See 16,092.]
Priscilla, The, Hindry v. [See 6,515.]
PRITCHARD v. CHANDLER [11,436], 2 Curt. 488.
PRITCHARD v. GEORGETOWN [11,437], 2 Cranch, C. C. 191.
PRITCHARD v. LADY HORATIA, The [11,438], Bee, 167.
Pritchard, Meyer v. [See 9,517.]
Pritchard, Stevens v. [See 13,407.]
Prize Cases, Costs and Fees in. [See 18,283.]
Prize Cases—Costs, Fees, and Compensation in Prize Cases. [See 18,283.]
PROBY, In re [11,439], 17 N. B. R. 175; 12 Amer. Law Rev. 598; 17 Alb. Law J. 167.
PROCEEDS OF PRIZES OF WAR [11,440], 1 Abb. Adm. 495.
Process—Charge to Grand Jury in Relation to the Obstruction of Legal Process. [See 18,250.]
PROCTER v. McBRIDE [11,441], Cox, Manual Trade-Mark Cas. 382.
PROMETHEUS, The [11,442], 1 Lowell, 491.
Prometheus, The, Harris v. [See 6,127.]
Proofs of Debts in Bankruptcy. [See 18,295.]
Proprietors of Ore Bed, Livingston v. [See 8,418.]
PROSPECT, The [11,443], 3 Blatchf. 526.
Prospect, The, Perkins v. [See 11,443.]
Prosperity, The, Kelley v. [See 7,660.]
Protection Ins. Co., Bulkley v. [See 2,118.]
Protection Ins. Co., Clark v. [See 2,832.]
Protection Ins. Co., Clarke v. [See 2,860.]
Protection Ins. Co., New York State Marine Ins. Co. v. [See 10,216.]
PROTECTION LIFE INS. CO., In re [11,444], 9 Biss. 188; 9 Ins. Law J. 145; 9 Reporter, 199; 12 Chi. Leg. News, 144.
Proud, Crisp v. [See 3,392.]
PROUT v. GIBSON [11,445], 1 Cranch, C. C. 389.
Prout, United States v. [See 16,093, 16,094.]
PROUTY v. DRAPER [11,446], 1 Story, 568; 2 Robb, Pat. Cas. 75.
PROUTY v. DRAPER [11,447], 2 Story, 199; 5 Law Rep. 161.
PROUTY v. RUGGLES [11,447].
PROVIDENCE, The [11,449], 9 Ben. 188.
PROVIDENCE v. MANCHESTER [11,450], 5 Mason, 59.
Providence, Wightman v. [See 17,630.]
Providence, Etc., R. R. Co., Hike v. [See 11,163.]
PROVIDENCE & N. Y. STEAMSHIP CO., In re [11,451], 6 Ben. 124; 15 Int. Rev. Rec. 194.
PROVIDENCE & N. Y. STEAMSHIP CO., In re [11,452], 6 Ben. 258.
Providence & W. R. Co., Pike v. [See 11,163.]
Providence Aqueduct Co., Dexter v. [See 3,864.]

[Federal Case numbers are given in brackets.]

PROVIDENCE COUNTY SAV. BANK v. FROST [11,453], 8 Ben. 293; 13 N. B. R. 356.
PROVIDENCE COUNTY SAV. BANK v. FROST [11,454], 14 Blatchf. 233.
Providence Rubber Co., Goodyear v. [See 5,583.]
Providence Tool Co., Henry v. [See 6,384.]
Providence Tool Co., Metropolitan Washing Mach. Co. v. [See 9,507.]
Providence Washington Ins. Co., Breed v. [See 1,-826.]
Providence Washington Ins. Co., Huchberger v. [See 6,823.]
Providence Washington Ins. Co., Potter v. [See 11,-336.]
PROVOST v. SELKIRK, The [11,455], 7 Amer. Law Rec. 366; 3 Cin. Law Bul. 988; 11 Chi. Leg. News, 82.
PRUSEUX v. WELCH [11,456], 2 West. Law Month. 209.
Prussing, United States v. [See 16,095.]
PRYOR, In re [11,457], 4 Biss. 262.
PRYOR v. DUNKLE [11,458], 2 Wash. C. C. 416.
Pryor, United States v. [See 16,096.]
Public Offenses—Charge to Grand Jury in Relation to Investigation of Public Offenses. [See 18,255.]
PUFFER, In re [11,459], 2 N. B. R. 43 (Quarto, 17); 15 Pittsb. Leg. J. 534.
Puffer, Blaisdell v. [See 1,490.]
PUGH v. DURFEE [11,460], 1 Blatchf. 412.
Pugsley, Sterrick v. [See 13,379.]
Puig, Sleeper v. [See 12,940, 12,941.]
Pulaski County, Kinsey v. [See 7,830.]
Pulaski County, Shirk v. [See 12,794.]
Pulaski County, Whitwell v. [See 17,605.]
PULLAN v. CINCINNATI & C. AIR-LINE R. CO. [11,461], 4 Biss. 35.
PULLAN v. CINCINNATI & C. AIR-LINE R. CO. [11,462], 5 Biss. 237.
PULLAN v. KINSINGER [11,463], 2 Abb. U. S. 94; 9 Amer. Law Reg. (N. S.) 557; 11 Int. Rev. Rec. 197; 5 Amer. Law Rev. 184.
PULLIAM v. PULLIAM [11,463a], 10 Fed. Rep. 23.
PULLING v. TUCKER [11,464].
PULTE v. DERBY [11,465], 5 McLean, 328.
Pultz & Walkley Co., Union Paper Bag Machine Co. v. [See 14,392, 14,393.]
PULVER, In re [11,466], 1 Ben. 381; 1 N. B. R. 46; Bankr. Reg. Supp. 11; 14 Pittsb. Leg. J. 589; 6 Int. Rev. Rec. 76; 24 Leg. Int. 292.
PULVER, In re [11,467], 3 Ben. 65; 2 N. B. R. 313 (Quarto, 101); 1 Chi. Leg. News, 139.
Pumphrey, Rebecca v. [See 11,620.]
Pumphreys, United States v. [See 16,097.]
PUPKE, In re [11,468], 1 Ben. 342.
PURCELL, In re [11,469], 2 Ben. 485; 2 N. B. R. 22 (Quarto, 10); 36 How. Pr. 42.
PURCELL, In re [11,470], 18 N. B. R. 447.
Purcell, In re. [See 14,174.]
PURCELL v. LINCOLN [11,471], 1 Spr. 230; 17 Law Rep. 217.
Purcell, Schnertzel v. [See 12,472.]
Purdy, Atkinson v. [See 616.]
Purdy, Mead v. [See 9,367.]
Purdy, Swope v. [See 13,704.]
PURINTON v. HULL OF A NEW SHIP [11,472], 2 Curt. 416.
PURINTON v. HULL OF A NEW SHIP [11,473], 1 Ware, 556.
PURITAN, The [11,474], 7 Ben. 571.
Purnell, Kennedy v. [See 7,704.]
PURVIANCE v. UNION NAT. BANK [11,475], 8 N. B. R. 447; 30 Leg. Int. 352; 21 Pittsb. Leg. J. 33.
PURVIS, In re [11,476], 1 N. B. R. 163; Bankr. Reg. Supp. 35; 6 Int. Rev. Rec. 173; 1 Amer. Law T. Rep. Bankr. 19.
PUSEY, In re [11,477], 6 N. B. R. 40.
PUSEY, In re [11,478], 7 N. B. R. 45.
Pusey, United States v. [See 16,098.]
Putnam, Baring v. [See 984.]
PUTNAM v. HAMMER [11,479].
PUTNAM v. HICKEY [11,480], 3 Biss. 157; 2 O. G. 225; 5 Fish. Pat. Cas. 334.
PUTNAM v. NEW ALBANY [11,481], 4 Biss. 365.
PUTNAM v. POLLY, The [11,482], Bee, 157.
PUTNAM v. SUDHOFF [11,483], 1 Ban. & A. 198; 3 Amer. Law Rec. 103.
PUTNAM v. UNITED STATES [11,484], Hempst. 332.
PUTNAM v. WEATHERBEE [11,485], Holmes, 497; 2 Ban. & A. 78; 8 O. G. 320.
PUTNAM v. YERRINGTON [11,486], 2 Ban. & A. 237; 9 O. G. 689; Merw. Pat. Inv. 518.
Putnam, Yerrington v. [See 18,137.]
Putnam County, Burlington & S. Ry. Co. v. [See 2,169.]
Putnam County, Nugent v. [See 10,377.]
Putney v. The Celestine. [See 2,541.]
Puttman, Blanchard v. [See 1,514.]
PYE v. JENKINS [11,487], 4 Cranch, C. C. 541.
Pye, Reeves v. [See 11,662.]
PYE v. UNITED STATES [11,488], 1 Hayw. & H. 90.
Pyfer, Calder v. [See 2,299.]
Pyle, Dunlap v. [See 4,163.]

Q

QUACKENBOSS, Ex parte [11,489], 1 N. Y. Leg. Obs. 146.
QUACKENBOSS, In re [11,490].
QUACKENBUSH v. LANE [11,491], 2 Mich. Lawy. 27.
QUANDO v. CLAGETT [11,492], 4 Cranch, C. C. 17.
Quantity of Cotton, Clifton v. [See 2,895.]
QUANTITY OF DISTILLED SPIRITS [11,493], 2 Ben. 101; 7 Int. Rev. Rec. 29.
QUANTITY OF DISTILLED SPIRITS [11,494], 3 Ben. 70; 2 Amer. Law T. Rep. U. S. Cts. 23; 9 Int. Rev. Rec. 9.
QUANTITY OF DISTILLED SPIRITS [11,495], 3 Ben. 552; 3 Amer. Law T. Rep. U. S. Cts. 10; 11 Int. Rev. Rec. 3; 10 Int. Rev. Rec. 206; 17 Pittsb. Leg. J. 17.
Quantity of Distilled Spirits, United States v. [See 16,099, 16,100.]
Quantity of Distilled Spirits at No. 133 Mott St., United States v. [See 11,495.]
QUANTITY OF IRON [11,496], 2 Spr. 51; 24 Law Rep. 546.
QUANTITY OF MANUFACTURED TOBACCO [11,-497].
QUANTITY OF MANUFACTURED TOBACCO [16,-106a].
QUANTITY OF MANUFACTURED TOBACCO [11,-499], 10 Ben. 447.
Quantity of Manufactured Tobacco, United States v. [See 16,102.]
Quantity of Rags, United States v. [See 16,103.]
QUANTITY OF TOBACCO [11,500], 5 Ben. 407.
Quantity of Tobacco, United States v. [See 16,104, 16,106a.]
Quantity of Wearing Apparel, Curtis v. [See 3,504.]
Quantrill, Sangster v. [See 12,321.]
Quarles, Petition of. [See 7,946.]
Quarles, Morancy v. [See 9,788.]
QUEEN, The [11,501], 2 Ben. 533.
QUEEN, The [11,502], 8 Blatchf. 234.
Queen, Boone v. [See 1,643.]
Queen, Denny v. [See 3,807.]
QUEEN v. HEPBURN [11,503], 2 Cranch, C. C. 3.
Queen, McSherry v. [See 8,926.]
QUEEN v. NEALE [11,504], 2 Cranch, C. C. 3.
Queen, Smith v. [See 13,096.]
QUEEN v. UNION INSURANCE CO. [11,505], 2 Wash. C. C. 331.
Queen, The, United States v. [See 16,107-16,109.]
Queen, Weightman v. [See 17,359.]
QUEEN OF THE EAST, The [11,506], 4 Ben. 103.
QUEENS COUNTY, The [11,507], 6 Ben. 146.
Queen Victoria, The, Pennsylvania Coal Co. v. [See 10,952a.]
Querry, Miller v. [See 9,583.]
Quick, Clinton v. [See 11,518.]

[Federal Case numbers are given in brackets.]

Quick, Overman v. [See 10,624.]
QUICKSILVER MINING CO. v. HICKS [11,508], 4 Sawy. 688.
QUICKSTEP, The [11,509], 2 Biss. 291; 2 Chi. Leg. News, 295.
QUIGLEY v. CENTRAL PAC. R. CO. [11,510], 5 Sawy. 107; 27 Pittsb. Leg. J. 154.
QUIGLEY v. MUTUAL LIFE INS. CO. [11,511], 4 Amer. Law Rec. 561.
QUIMBY v. EUPHEMIA, The [11,512], 9 Hunt, Mer. Mag. 369.
Quimby, St. Louis Stamping Co. v. [See 12,240.]
QUINEBAUG BANK v. JEROLMAN [11,513].
QUINIKE, In re [11,514], 2 Biss. 354.
Quinlan, Fry v. [See 5,140.]
QUINN, In re [16,110], 3 Amer. Law T. Rep. U. S. Cts. 180.
QUINN v. TRANSPORT, The [11,516], 1 Ben. 86.
Quinn, United States v. [See 16,110.]
Quintard, Heaton v. [See 6,311.]
Quintard, Webb v. [See 17,324.]
QUINTERO, The [11,517], 1 Lowell, 38.
QUIRK v. CLINTON [11,518].
Quitman, United States v. [See 16,111.]

R

Raab, The Charlotte. [See 2,622.]
RABAUD v. D'WOLF [11,519], 1 Paine, 580.
RACE v. NINE THOUSAND SIX HUNDRED AND EIGHTY-ONE DRY OX HIDES [10,273], 7 Amer. Law Rev. 576; 16 Int. Rev. Rec. 166.
Racine, Beckwith v. [See 1,213.]
Racine, Luling v. See 8,603.]
Racine, Selling v. [See 8,603.]
RADAMA, The [11,521], 3 Ware, 307.
Radama, The, Crowel v. [See 3,442.]
Radcliffe, Leatherberry v. [See 8,163.]
RADO, In re [11,522], 6 Ben. 230.
Radowitz, United States v. [See 16,112.]
RADWAY, In re [11,523], 3 Hughes, 609.
Rae, Matthew v. [See 9,234.]
RAE v. NEW YORK, The [11,524].
Rafael Arroyo, The, Wiener v. [See 17,621.]
RAFFAUF, In re [11,525], 6 Biss. 150; 1 Cent. Law J. 364; 10 N. B. R. 69; 6 Chi. Leg. News, 341; 21 Pittsb. Leg. J. 206.
RAFFERTY v. MALLORY [11,526], 3 Biss. 362.
RAFT OF CYPRESS LOGS [11,527], 1 Flip. 543; 9 Chi. Leg. News, 26; 14 Alb. Law J. 319; 1 Cin. Law Bul. 258; 24 Pittsb. Leg. J. 50.
RAFT OF SPARS [11,528], Abb. Adm. 291.
RAFT OF SPARS [11,529], Abb. Adm. 485.
RAGSDALE, In re [11,530], 7 Biss. 154.
Ragsdale, United States v. [See 16,113.]
RAHILLY v. WILSON [11,531], 5 Chi. Leg. News, 217; 17 Int. Rev. Rec. 46.
RAHILLY v. WILSON [11,532], 3 Dill. 420; 1 Cent. Law J. 80.
Rahmer, Mallory v. [See 8,992.]
Railroad Bridge Co., United States v. [See 16,114.]
Railroad Com'rs, Bondholders v. [See 1,625.]
RAILROAD CO., Ex parte [11,533], 23 Int. Rev. Rec. 382.
Railroad Co., Campbell v. [See 2,366.]
Railroad Co., Cowdrey v. [See 3,293.]
Railroad Co., Davis v. [See 3,648.]
Railroad Co., Fallon v. [See 4,629.]
Railroad Co., McDonnell v. [See 8,774.]
Railroad Co., Morgan v. [See 9,806.]
RAILROAD CO. v. NEAL [11,534], 1 Woods, 353.
Railroad Co., Wilson v. [See 17,856.]
Railroad Co., Wilton v. [See 17,856.]
Railroads, The, Stimpson v. [See 13,456.]
Railroads, The, Wilton v. [See 17,857.]
Railway Co., Beale v. [See 1,159.]
Railway Pass. Assur. Co., Ripley v. [See 11,854.]
Railway Pass. Assur. Co., Sawtelle v. [See 12,392.]
Railway Pass. Assur. Co., Southard v. [See 13,-182.]
Railway Pass. Assur. Co., Tooley v. [See 14,098.]
RAILWAY REGISTER MFG. CO. v. HIGHLAND ST. RY. CO. [11,535], 4 Ban. & A. 116.
Rainbow, The, Acker v. [See 26.]
Rainbow, The, Bulgin v. [See 2,116.]
Rainbow, The, Treat v. [See 14,161.]
RAINER v. HAYNES [11,536], Hempst. 689.
Rainey, Fields v. [See 18,296.]
Rainey, Latton v. [See 18,296.]
RAINSFORD, In re [11,537], 5 N. B. R. 381.
RAJAH, The [11,538], 1 Spr. 199; 15 Law Rep. 208.
RALEIGH, The [11,539], 2 Hughes, 44.
Ralph Post, The, Warner v. [See 17,187.]
RALSTON v. STATE RIGHTS, The [11,540], Crabbe, 22.
RAMBLER, The [11,541], Blatchf. Pr. Cas. 302.
RAMBLER v. CHOAT [11,542], 1 Cranch, C. C. 167.
Rambler, The, Teasdale v. [See 13,815.]
RAMDULOLLDAY v. DARIEUX [11,543], 4 Wash. C. C. 61.
Ramsay, Dixon v. [See 3,932, 3,933.]
Ramsay, Lee v. [See 8,200.]
Ramsay, McKnight v. [See 8,868.]
RAMSAY v. RIDDLE [11,544], 1 Cranch, C. C. 399.
Ramsay, Travers v. [See 14,152.]
Ramsay, United States v. [See 16,115.]
RAMSAY v. WILSON [11,545], 1 Cranch, C. C. 304.
Ramsdell, Cox v. [See 3,305.]
RAMSEY v. HERNDON [11,546], 1 McLean, 450.
RAMSEY v. JAILER OF WARREN COUNTY [11,-547], 2 Flip. 451.
Rand, Atlantic Giant Powder Co. v. [See 626.]
RAND v. HERCULES, The [11,548], 6 Hall, Law J. 21; 1 U. S. Law J. 145.
Rand, United States v. [See 16,116.]
RAND v. WINSLOW [11,549].
RANDALL, Ex parte [11,550], 1 N. Y. Leg. Obs. 199; 5 Law Rep. 115; 1 Pa. Law J. 133.
RANDALL, In re [11,551], Deady, 557; 2 Amer. Law T. Rep. Bankr. 69; 3 N. B. R. 18 (Quarto, 4); 1 Chi. Leg. News, 209.
RANDALL, In re [11,552], 1 Sawy. 56.
Randall, Audenreid v. [See 644.]
RANDALL v. JAQUES [11,553], 4 Quart. Law J. 218.
RANDALL v. KREIGER [11,554], 2 Dill. 444; 7 West. Jur. 625; 5 Chi. Leg. News, 465.
Randall, Lanz v. [See 8,080.]
RANDALL v. PHILLIPS [11,555], 3 Mason, 378.
RANDALL v. RHODES [11,556], 1 Curt. 90.
Randall, United States v. [See 16,117-16,119.]
Randall, West v. [See 17,424.]
RANDALL v. ZEBRA, The [11,557].
RANDOLPH, Ex parte [11,558], 2 Brock. 447.
RANDOLPH v. CANBY [11,559], 11 N. B. R. 296.
Randolph, Hopkirk v. [See 6,698.]
RANDOLPH v. KING [11,560], 2 Bond, 104.
Randolph, The, Patton v. [See 10,837.]
Randolph, Richards v. [See 11,772.]
RANDOLPH v. ROBINSON [11,561], 2 N. J. Law J. 171.
Randolph, Robinson v. [See 11,962, 11,963.]
RANDOLPH v. UNITED STATES [11,562], Newb. 497.
Randolph, United States v. [See 16,120.]
RANDOLPH v. WILMINGTON & R. R. CO. [11,-563], 11 Phila. 502; 33 Leg. Int. 221.
Randon, Toby v. [See 14,071.]
Rangeley, Burnham v. [See 2,176, 2,177.]
Rangeley, Sharpley v. [See 12,707.]
Rangely, Durham v. [See 2,177.]
Rangely, Shepley v. [See 12,756.]
Ranger The, Drysdale v. [See 4,097.]
RANGER v. NEW ORLEANS [11,564], 2 Woods, 128.
Ranger v. New Orleans. [See 15,871.]
RANIER, The [11,565], Deady, 438.
RANK, Ex parte [11,566], Crabbe, 493.
Rankin v. Beard. [See 14,320.]
Rankin, Coe v. [See 2,943.]
Rankin, Dawson v. [See 3,671.]
Rankin, The, Drain v. [See 2,294.]
RANKIN v. FLORIDA, A. & G. C. R. CO. [11,567], 1 Amer. Law T. Rep. Bankr. 85; 1 N. B. R. 647 (Quarto, 196).
Rankin, Jolly v. [See 7,440.]

[Federal Case numbers are given in brackets.]

Rankin, Shook v. [See 12,804, 12,805.]
RANKIN v. THIRD NAT. BANK [11,568], 14 N. B. R. 4; 3 Cent. Law J. 156.
Rankin, Tompkins v. [See 14,090.]
Rankin, Tyson v. [See 14,320.]
RANLETT v. LEAVENWORTH [11,569].
RANSDALE v. GROVE [11,570], 4 McLean, 282.
RANSOM v. MAYO [11,571], 3 Blatchf. 70; 6 Law Rep. 397.
RANSOM v. MAYO [11,571a].
RANSOM v. NEW YORK [11,572], 4 Blatchf. 157.
RANSOM v. NEW YORK [11,573], 1 Fish. Pat. Cas. 252.
RANSOM v. UNITED STATES [11,574], 8 Reporter, 164.
RAPID, The [11,575].
RAPID, The [11,576], 1 Gall. 295.
Rapine, Porter v. [See 11,288.]
Raplee, Baldwin v. [See 801.]
RAPP v. BARD [11,577], 1 Fish. Pat. Cas. 196.
Rapp, Conover v. [See 3,124.]
Rapplee, Baldwin v. [See 802.]
Rarbaugh, In re. [See 6,045.]
Rasch, Taylor v. [See 13,800, 13,801.]
Ratcliff, Johnston v. [See 18,303.]
RATCLIFFE, In re [11,578], 25 Leg. Int. 92; 1 N. B. R. 400 (Quarto, 98); 6 Phila. 466; 1 Amer. Law T. Rep. Bankr. 47; 15 Pittsb. Leg. J. 343.
RATEAU v. BERNARD [11,579], 3 Blatchf. 244.
RATHBONE, In re [11,580], 2 Ben. 138; 15 Pittsb. Law J. 233; 1 N. B. R. 294 (Quarto, 50); 25 Leg. Int. 60; 1 Amer. Law T. Rep. Bankr. 44.
RATHBONE, In re [11,581], 3 Ben. 50; 2 N. B. R. 260 (Quarto, 89); 1 Amer. Law T. Rep. Bankr. 114; 1 Chi. Leg. News, 107.
RATHBONE, In re [11,580].
RATHBONE, In re [11,583], 1 N. B. R. 536 (Quarto, 145); 1 Amer. Law T. Rep. Bankr. 70.
RATHBONE v. FOWLER [11,584], 6 Blatchf. 294.
Rathbone, Hooper v. [See 6,676.]
RATHBONE v. ORR [11,585], 5 McLean, 131; 1 Fish. Pat. Rep. 355.
Rathbone, United States v. [See 16,121.]
Rathburn, Oregon & W. Trust Investment Co. v. [See 10,554, 10,555.]
Ratler, The, Jones v. [See 7,490.]
Ravara, United States v. [See 16,122.]
RAVERTY v. FRIDGE [11,586], 3 McLean, 230.
RAVERTY v. FRIDGE [11,587], 3 McLean, 245.
RAWLE v. PHELPS [11,588], 2 Flip. 471; 9 Cent. Law J. 46; 8 Reporter, 356; 8 N. Y. Wkly. Dig. 551.
Rawley, The M. K. [See 9,679.]
Rawlings, Heinecke v. [See 6,326.]
Rawlings, Rhea v. [See 11,737.]
Rawlins, The. [See 8,007.]
Rawlinson, United States v. [See 16,123.]
Rawson, In re. [See 4,837.]
Rawson, Blake v. [See 1,499.]
Rawson, Walker v. [See 17,083.]
RAY, In re [11,589], 2 Ben. 53; 7 Amer. Law Reg. (N. S.) 283; Bankr. Reg. Supp. 44; 1 N. B. R. 203; 6 Int. Rev Rec. 223; 1 Amer. Law T. Rep. Bankr. 46.
RAY v. DONNELL [11,590], 4 McLean, 504; 6 West. Law J. 529.
RAY v. LAW [11,591], 1 Cranch, C. C. 349.
RAY v. LAW [11,592], Pet. C. C. 207.
Ray v. The Milwaukee Belle. [See 9,627.]
Ray, United States v. [See 16,124.]
RAYMOND, Ex parte [11,592a], 3 App. Com'r Pat. 445.
RAYMOND v. DANBURY & N. R. CO. [11,593], 14 Blatchf. 133; 43 Conn. 596.
Raymond, Earl v. [See 4,243.]
RAYMOND v. ELLEN STEWART, The [11,594], 5 McLean, 269.
Raymond v. The George Prescott. [See 5,339.]
Raymond v. Harris. [See 9,338.]
RAYMOND v. LONGWORTH [11,595], 4 McLean, 481.
Raymond, Maybin v. [See 9,338.]
RAYMOND v. UNITED STATES [11,596], 14 Blatchf. 51.
Raynolds, De Florez v. [See 3,742, 3,743.]
RAYNOR, In re [11,597], 11 Blatchf. 43; 7 N. B. R. 527; 1 Amer. Law Rec. 736.
Raynor, The. [See 9,267.]
Raynor, Williams Mower & Reaper Co. [See 17,748.]
R. B. FORBES, The [11,598], 1 Spr. 328; 19 Law Rep. 544.
R. B. Forbes, The, Pope v. [See 11,275.]
REA v. CUTLER [11,599], 1 Spr. 135.
READ, In re [11,600], 5 Fed. 721.
READ v. BERTRAND [11,601], 4 Wash. C. C. 514.
READ v. BERTRAND [11,602], 4 Wash. C. C. 556.
READ v. BERTRAND [11,603], 4 Wash. C. C. 558.
READ v. CARBERY [11,604], 2 Cranch, C. C. 417.
READ v. CHAPMAN [11,605], Pet. C. C. 404.
READ v. CONSEQUA [11,606], 4 Wash. C. C. 174.
READ v. CONSEQUA [11,607], 4 Wash. C. C. 335.
READ v. HAYNIE [11,608], Hempst. 700.
READ v. HULL OF A NEW BRIG [11,609], 1 Story, 244.
READ v. MILLER [11,610], 2 Biss. 12; 3 Fish. Pat. Cas. 310.
Read, Simms v. [See 12,870.]
Read, Stevelie v. [See 13,389.]
Read, Stoddard v. [See 13,470.]
Read, United States v. [See 16,125, 16,126.]
READ v. WILKINSON [11,611], 2 Wash. C. C. 514.
Reade, Greigg v. [See 5,804.]
READING v. BLACKWELL [11,612], Baldw. 166.
Reading, Shankwiker v. [See 12,704.]
Reading, United States v. [See 16,127.]
READY ROOFING CO. v. TAYLOR [11,613], 15 Blatchf. 94; 3 Ban. & A. 368.
Reagan, M'Iver v. [See 8,832.]
Reagan, United States v. [See 16,128.]
REAKIRT, In re [11,614], 7 N. B. R. 329.
REARDON, Ex parte [11,615], 2 Cranch, C. C. 639.
Reardon, Gray v. [See 5,727.]
REARDON v. MILLER [11,616], 3 Cranch, C. C. 344.
Reardon, Newton v. [See 10,192.]
REASON v. BRIDGES [11,617], 1 Cranch, C. C. 477.
REBECCA, The [11,618], 1 Blatchf. & H. 347.
REBECCA, The [11,619], 1 Ware (188) 187; 6 Amer. Jur. 5.
REBECCA, The, v. AMERICA, The [11,619a], 8 Wkly. Notes Cas. 328.
REBECCA, The, v. AMERICA, The [11,619b], 4 Fed. 337.
Rebecca, The, Miller v. [See 9,587.]
REBECCA v. PUMPHREY [11,620], 2 Cranch, C. C. 514.
REBECCA CLYDE, The [11,621], 5 Ben. 98.
REBECCA CLYDE, The [11,622], 12 Blatchf. 403.
Rebecca Fogg, The, Brookman v. [See 1,941.]
REBMEISTER, In re [11,623], 15 Blatchf. 467.
RECEIVER OF OCEAN NAT. BANK v. WILD, Estate of [17,645], 10 N. B. R. 568.
Receivers, Campbell v. [See 2,367.]
Receivers, Dalton v. [See 3,550.]
Receivers, Miles v. [See 9,544.]
Receivers, Musselwhite v. [See 9,972.]
RECKENDORFER v. FABER [11,625], 12 Blatchf. 68; 1 Ban. & A. 229; 5 O. G. 697.
Recorder, The, United States v. [See 16,129, 16,130.]
Recovery, The, Pray v. [See 11,379.]
Rectifying Establishment, United States v. [See 16,131.]
Rector, Greenwood v. [See 5,792.]
Rector, United States v. [See 16,132.]
RED BANK CO. v. JOHN W. GANDY, The [11,626], 41 Hunt, Mer. Mag. 577; 7 Amer. Law Reg. 606; 1 Phila. 149; 8 Leg. Int. 26; 5 Pa. Law J. Rep. 482.
Red Chief, White v. [See 17,556.]
Reddy, Bingham v. [See 1,414.]
Reddy v. Ludlow. [See 8,052.]
REDFERN v. RUMNEY [11,627], 1 Cranch, C. C. 300.
REDFIELD, In re [11,628], 1 Ben. 535.
REDFIELD, In re [11,629], 2 Ben. 71.
Redfield, Andrae v. [See 367.]
Redfield, Andreae v. [See 368.]
Redfield, Baker v. [See 779.]
Redfield, Bannendahl v. [See 964.]
Redfield, Bliss v. [See 1,549.]
Redfield, Case v. [See 2,494.]
Redfield, Chouteau v. [See 2,696.]
Redfield, Crocker v. [See 3,400.]
Redfield, De Forest v. [See 3,746.]
Redfield, Drake v. [See 4,065.]
Redfield, Fowler v. [See 5,003.]

[Federal Case numbers are given in brackets.]

Redfield, Jungbluth v. [See 7,583.]
Redfield, Lillie v. [See 8,351.]
Redfield, Lottimer v. [See 8,522.]
Redfield, Marshall v. [See 9,131.]
Redfield, Powell v. [See 11,359.]
Redfield, Riess v. [See 11,821.]
Redfield, Strange v. [See 13,524.]
Redfield, Sullivan v. [See 13,597.]
Redfield, Tomes v. [See 14,085.]
Redfield, Yznaga v. [See 18,197.]
Redfield, The W. C. [See 17,305.]
REDICK v. FROST [11,630].
REDING v. TEXAS & P. R. CO. [11,630a], 10 Reporter, 136.
Redington, Wintermute v. [See 17,896.]
Red Jacket, The, Klots v. [See 7,871.]
Redman, Hardy v. [See 6,061.]
REDMAN v. UNITED STATES [11,631], 1 Hoff. Land Cas. 305.
REDMOND, In re [11,632], 9 N. B. R. 408.
Redy, United States v. [See 16,133.]
REECE, In re [11,633], 2 Bond, 359.
REECE v. JOHNSON [11,633a], Hempst. 82.
REED, Ex parte [11,634], 4 Cranch, C. C. 582.
REED, In re [11,635], 6 Biss. 250; 11 N. B. R. 94; 7 Chi. Leg. News, 76.
REED, In re [11,636], 26 Int. Rev. Rec. 35.
REED, In re [11,637], 1 N. B. R. 1; Bankr. Reg. Supp. 1; 24 Leg. Int. 196; 6 Int. Rev. Rec. 21.
REED, In re [11,638], 2 N. B. R. 9 (Quarto, 2).
REED, In re [11,639], 12 N. B. R. 390; 1 N. Y. Wkly. Dig. 100.
REED, In re [11,640], 3 N. Y. Leg. Obs. 262; 21 Vt. 635.
Reed, In re. [See 7,017, 7,018.]
Reed, Bradley v. [See 1,785.]
REED v. CAMPBELL [11,640a], 2 Hayw. & H. 417.
REED v. CANFIELD [11,641], 1 Sumn. 195.
Reed, Canfield v. [See 2,381.]
REED v. CARUSI [11,642], Taney, 72; 8 Law Rep. 410.
REED v. CLARK [11,643], 3 McLean, 480.
Reed, Cleveland Ins. Co. v. [See 2,889.]
REED v. COWLEY [11,644], 1 Amer. Law T. Rep. Bankr. 79; 1 N. B. R. 516 (Quarto, 137).
REED v. CUTTER [11,645], 1 Story, 590; 2 Robb, Pat. Cas. 81; 4 Law Rep. 342.
REED v. FANNY, The [11,645a].
Reed, Gillespie v. [See 5,436.]
REED v. HUSSEY [11,646], 1 Blatchf. & H. 525.
Reed v. Independent Ins. Co. [See 7,017, 7,018.]
Reed, Mexico South. Bank v. [See 9,514.]
REED v. MINOR [11,647], 3 Cranch, C. C. 82.
Reed, Morse v. [See 9,860.]
REED v. NELSON [11,648].
REED v. NEW HAVEN, The [11,649], 18 How. Pr. 482.
REED v. REED [11,650], 12 Blatchf. 366; 1 Ban. & A. 515; 8 O. G. 193; Merw. Pat. Inv. 269.
REED v. ROBINSON [11,645], 4 Law Rep. 342.
REED v. ROSS [11,652], Baldw. 36.
Reed, Sellon v. [See 12,646.]
REED v. TELOS, The [11,653].
Reed, United States v. [See 16,134-16,136.]
Reed, Vose v. [See 17,011.]
Reed, Williams v. [See 17,733.]
Reeder, Crane v. [See 3,356.]
REEDER v. GEORGE'S CREEK, The [11,654], 3 Hughes, 584; 3 Amer. Law Reg. 232.
Reeder, Postmaster General v. [See 11,311.]
Reed Torpedo Co., Roberts v. [See 11,910.]
REELER v. ROBINSON [11,655], 2 Cranch, C. C. 220.
Rees v. The Planet. [See 11,204.]
Rees, Hooe v. [See 6,668.]
Reese, United States v. [See 16,137, 16,138.]
REESIDE, Ex parte [11,656], 11 Law Rep. 448; Brunner, Col. Cas. 571; 1 Hayw. & H. 363.
REESIDE, The [11,657], 2 Sumn. 567.
REESIDE v. WALKER [11,656].
Reeves, Blanchard v. [See 1,515.]
REEVES v. CONSTITUTION, The [11,659], Gilp. 579.
Reeves, Detmold v. [See 3,831.]
REEVES v. KEYSTONE BRIDGE CO. [11,660], 5 Fish. Pat. Cas. 456; 1 O. G. 466; 9 Phila. 368; 5 Amer. Law T. Rep. U. S. Cts. 150; 29 Leg. Int. 124; Merw. Pat. Inv. 117.
REEVES v. KEYSTONE BRIDGE CO. [11,661], 1[illegible] Phila. 498; 2 Ban. & A. 256; 2 Wkly. Notes Cas. 523; 9 O. G. 885; 33 Leg. Int. 149; 22 Int. Rev. Rec. 137.
Reeves, Le Roy v. [See 8,272.]
REEVES v. PYE [11,662], 1 Cranch, C. C. 219.
Reeves, United States v. [See 16,139.]
REEVES v. VINACKE [11,663], 1 McCrary, 213.
REGAN v. AMARANTH, The [11,664], 30 Hunt, Mer. Mag. 713.
Register, The, Litchfield v. [See 8,388.]
Register's Fees in Bankruptcy Cases. [See 18,282.]
Register's Fees in Bankruptcy Cases. [See 18,295.]
Registering, Fees for. [See 18,295.]
REGULATOR, The [11,665], 1 Hask. 17.
Regulus, The, Jameson v. [See 7,198.]
REICHE v. SMYTHE [11,666], 7 Blatchf. 235.
REID v. HODGSON [11,667], 1 Cranch, C. C. 491.
REID v. KERFOOT [11,668], Chase, 349.
REID v. ROCHEREAU [11,669], 2 Woods, 151; 1 La. Law J. 90.
Reid, United States v. [See 16,140, 16,142.]
REID v. VERE, The [11,670], Bee, 66.
Reid, Walker v. [See 17,084.]
Reiley, Channing v. [See 2,596.]
REILING v. BOLIER [11,671], 3 Cranch, C. C. 212.
Reilly, Caze v. [See 2,538.]
Reilly, Hoover v. [See 6,677.]
REILLY v. MARYMAN [11,672], 1 Hayw. & H. 9.
Reilly, Schwabacker v. [See 12,501.]
Reily, Harper v. [See 6,091.]
Reily, Patton v. [See 10,838.]
Reily, Wray v. [See 18,059.]
REIMAN, In re [11,673], 7 Ben. 455; 11 N. B. R. 21.
REIMAN, In re [11,674], 7 Ben. 505.
REIMAN, In re [11,675], 12 Blatchf. 562; 13 N. B. R. 128.
REIMER v. SCHELL [11,676], 4 Blatchf. 328.
REIN, In re [11,677], 8 Ben. 188.
REIN, In re [11,678], 8 Ben. 384; 13 N. B. R. 551.
REINACH v. ATLANTIC & GREAT WEST. R. CO. [11,678a].
REINDEER, The [16,145].
REINDEER, The [11,680], Blatchf. Pr. Cas. 241.
REINDEER, The [11,681], Blatchf. Pr. Cas. 330.
Reindeer, The, United States v. [See 16,144, 16,145.]
REINHART v. ORME [11,682], 1 Cranch, C. C. 244.
Reintzel, Craig v. [See 3,336.]
REINTZEL v. MORGAN [11,683], 2 Cranch, C. C. 20.
Reintzel, Peirce v. [See 10,908.]
Reintzell, Roberts v. [See 11,911.]
REIS, In re [11,684], 3 Woods, 18.
REISER v. PARKER [11,685], 1 Lowell, 262.
REISSNER v. ANNESS [11,686], 12 O. G. 842; 3 Ban. & A. 148.
REISSNER v. ANNESS [11,687], 13 O. G. 7.
REISSNER v. ANNESS [11,688], 13 O. G. 870; 3 Ban. & A. 176.
REISSNER v. SHARP [11,689], 16 Blatchf. 383; 16 O. G. 355; 4 Ban. & A. 366.
Reiter, United States v. [See 16,146.]
Relampago, The, Stone v. [See 13,486.]
R. E. LEE, The [11,690], 2 Abb. U. S. 49; 2 Chi. Leg. News, 397; 3 Amer. Law T. Rep. U. S. Cts. 168; 5 Amer. Law Rev. 181; 2 Leg. Gaz. 298.
R. E. LEE, The [11,691], 1 Lowell, 36.
RELF v. MARIA, The [11,692], 1 Pet. Adm. 186.
Reliance, The, Dowling v. [See 4,042.]
Reliance, The, Rogers v. [See 12,019.]
RELIEF, The [11,693], Olc. 104.
Relief, The. [See 6,454.]
RELIGIONE E. LIBERTA, The [11,694], 5 Reporter, 646; 5 Wkly. Notes Cas. 211.
Remer, Fitch v. [See 4,836.]
Remhoff, Parker v. [See 10,747.]
Remick, In re. [See 4,959.]
REMINGTON v. ATLANTIC ROYAL MAIL STEAM NAV. CO. [11,695], 6 Blatchf. 153.
Remington, Berdan Fire Arms Mfg. Co. v. [See 1,336.]
Remington, Goodrich v. [See 5,546.]
Remington, Juillard v. [See 7,572.]
Remington, Lawrence v. [See 8,141.]
REMINGTON v. LINTHICUM [11,696], 5 Cranch, C. C. 345.
Remington, Linthicum v. [See 8,377.]
REMNANTS IN COURT [11,697], Olc. 382.

[Federal Case numbers are given in brackets.]

Remnants of the Jeremiah. [See 7,289, 7,290.]
Remnants of the Caithneshire. [See 2,294.]
REMSEN, In re [11,698], 9 Ben. 260.
Renauld, Endicott v. [See 4,482.]
Rench, Burritt v. [See 2,201.]
Rench, Pendall v. [See 10,917.]
Rendell, United States v. [See 16,147.]
Renkin, Coe v. [See 2,943.]
Rennel, McDonald v. [See 8,765.]
Rennell, Shorey v. [See 12,806, 12,807.]
RENNER v. BANK OF COLUMBIA [11,699], 2 Cranch, C. C. 310.
RENNER v. HOWLAND [11,700], 2 Cranch, C. C. 441.
Renner, Ringgold v. [See 11,849.]
Rennie, Paton v. [See 10,799.]
RENO v. WILSON [11,700a], Hempst. 91.
Renton, Whipple v. [See 17,521.]
RENWICK v. COOPER [11,701], 10 Blatchf. 201; 6 Fish. Pat. Cas. 31.
RENWICK v. POND [11,702], 10 Blatchf. 39; 2 O. G. 392; 5 Fish. Pat. Cas. 569; Merw. Pat. Inv. 128.
REPPERT v. ROBINSON [11,703], Taney, 492.
Republican Banner Officers, United States v. [See 16,148.]
Republic Fire Ins. Co., Cardwell v. [See 2,396.]
Republic Fire Ins. Co., Leiter v. [See 8,227.]
REPUBLIC INS. CO., In re [11,704], 3 Biss. 452.
REPUBLIC INS. CO., In re [11,705], 8 N. B. R. 197; 3 Ins. Law J. 390; 5 Chi. Leg. News, 385.
REPUBLIC INS. CO., In re [11,706], 8 N. B. R. 317.
REPUBLIC INS. CO. v. WILLIAMS [11,707], 3 Biss. 370; 5 Chi. Leg. News, 97; 16 Int. Rev. Rec. 174.
Republic Life Ins. Co., Chapman v. [See 2,606.]
RESCUE, The [11,708], 2 Spr. 16.
Resler, Sheehee v. [See 12,739.]
Resler, Wise v. [See 17,911.]
RESOLUTION, The [11,709], 2 Gall. 47.
Resolution, The, Miller v. [See 9,588.]
Ressler, Wise v. [See 17,912.]
Restless, The. [See 2,775.]
Rettew, Barnes v. [See 1,019.]
Ruehle, In re. [See 12,113.]
REUTGEN v. KANOWRS [11,710], 1 Wash. C. C. 168; 1 Robb, Pat. Cas. 1.
Revenge, The, Dias v. [See 3,877.]
REVENS v. LEWIS [11,711], 2 Paine, 202.
Revenue—Charge to Grand Jury in Relation to Frauds on Revenue. [See 18,247, 18,251.]
Revenue—Charge to Grand Jury in Relation to Internal Revenue Laws. [See 18,248.]
REVENUE CUTTER, The [11,712], 4 Sawy. 136; 9 Chi. Leg. News, 115.
REVENUE CUTTER No. 1, The [11,713], Brown's Adm. 76; 8 Amer. Law Reg. 459; 21 Law Rep. 281; 2 West. Law Month. 235; 6 Pittsb. Leg. J. 89.
REVENUE CUTTER NO. 2, The [11,714], 4 Sawy. 143.
REVERE, The [11,715], Blatchf. Pr. Cas. 276.
REVERE, The [11,716], 2 Spr. 107; 24 Law Rep. 276.
Revere, The. [See 402.]
REVEREZ v. CAMELLOS [11,717], 1 Cranch, C. C. 50.
Reverez, Camellos v. [See 2,339.]
REYLEY v. CARRIE BROOKS, The [11,718], 26 Pittsb. Leg. J. 29.
Reymert, United States v. [See 16,149.]
REYNOLDS, Ex parte [11,719], 5 Dill. 394; 18 Alb. Law J. 8.
REYNOLDS, Ex parte [11,720], 3 Hughes, 559.
REYNOLDS, In re [11,721].
REYNOLDS, In re [11,722], 6 Parker, Crim. Rep. 276.
REYNOLDS, In re [11,723], 9 N. B. R. 50.
REYNOLDS, In re [11,724], 16 N. B. R. 158.
REYNOLDS, In re [11,725], 16 N. B. R. 176; 5 N. Y. Wkly. Dig. 51.
REYNOLDS v. BADGER [11,726].
REYNOLDS v. BAKER [11,727], 4 Cranch, C. C. 104.
Reynolds, Bank of Washington v. [See 954.]
REYNOLDS v. CALVERT [11,728], 3 Cranch, C. C. 211.
REYNOLDS v. CORDERY [11,729], 4 McLean, 159.
REYNOLDS v. JOSEPH, The [11,730], 2 Hughes, 58.
REYNOLDS v. MAXWELL [11,731], 2 Blatchf. 555.
REYNOLDS v. NATIONAL EXP. & TRANSP. CO. [11,732].
REYNOLDS v. SIMOON, The [11,733].
Reynolds, Smith v. [See 13,097, 13,099.]
Reynolds, Stapleton v. [See 13,303.]
Reynolds, Thielman v. [See 13,883.]
Reynolds, Valentine v. [See 16,813.]
Reynolds, Vanderbilt v. [See 16,839.]
REYNOLDS v. WILLIAMS [11,734], 4 Biss. 108.
R. F. CAHILL, The [11,735], 9 Ben. 352.
R. G. WINSLOW, The [11,736], 4 Biss. 13; 3 West. Law Month. 78.
Rhawn, United States v. [See 16,150.]
RHEA v. RAWLINGS [11,737], 3 Cranch, C. C. 256.
RHEIMER v. MAXWELL [11,738], 3 Blatchf. 124.
Rhinelander, Mason v. [See 9,251.]
RHINELANDER v. SANFORD [11,739], 3 Day, 279; 1 Brunner, Col. Cas. 51.
RHOADES v. SELIN [11,740], 4 Wash. C. C. 715.
RHODE ISLAND, The [11,740a], Abb. Adm. 100; 6 N. Y. Leg. Obs. 103.
RHODE ISLAND, The [11,741], 8 Ben. 38.
RHODE ISLAND, The [11,742], 8 Ben. 50.
RHODE ISLAND, The [11,743], 1 Blatchf. 363; 7 N. Y. Leg. Obs. 38.
RHODE ISLAND, The [11,744], 2 Blatchf. 113; Abb. Adm. 106, note.
RHODE ISLAND, The [11,745], Olc. 505; 6 N. Y. Leg. Obs. 12.
Rhode Island, The, Naugatuck Transportation Co. v. [See 11,745.]
RHODES, In re [11,746], 6 West. Jur. 123; 19 Pittsb. Leg. J. 99; 3 Pittsb. Rep. 340.
Rhodes, Bell v. [See 1,264.]
RHODES v. BROOKE [11,747], 1 Cranch, C. C. 206.
Rhodes, Foster v. [See 4,981.]
RHODES v. HADFIELD [11,748], 2 Cranch, C. C. 566.
Rhodes, Holy v. [See 6,651.]
Rhodes, Perry v. [See 11,011.]
Rhodes, Randall v. [See 11,556.]
RHODES v. RIGG [11,749], 1 Cranch, C. C. 87.
Rhodes, United States v. [See 16,151, 16,152.]
Ribbans, Sperry v. [See 13,238.]
RICE, In re [11,750], 9 N. B. R. 373; 21 Pittsb. Leg. J. 159.
RICE v. BALDWIN [11,750a], 27 Int. Rev. Rec. 130; 11 Reporter, 627.
RICE v. BARRY [11,751], 2 Cranch, C. C. 447.
Rice, Carr v. [See 2,439, 2,440.]
Rice, Choteau v. [See 2,694.]
RICE v. HEALD [11,752], 13 Pac. Law Rep. 33.
Rice, Kane v. [See 7,609.]
Rice, Leger v. [See 8,210.]
RICE v. MONTGOMERY [11,753], 4 Biss. 75.
RICE v. POLLY & KITTY, The [11,754], 2 Pet. Adm. 420.
Rice, Postmaster General v. [See 11,312.]
RICE v. TAYLOR [11,755], Bee, 386.
Rice, United States v. [See 16,153.]
Rice, Wetmore v. [See 17,468.]
Rice, The William D. [See 17,691.]
Rich v. Campbell. [See 14,837.]
Rich, The. [See 18,221.]
RICH v. CHERUB, The [11,756].
RICH v. CLOSE [11,757], 8 Blatchf. 41; 4 Fish. Pat. Cas. 279.
RICH v. LIPPINCOTT [11,758], 2 Fish. Pat. Cas. 1; 1 Pittsb. Rep. 31; 1 Pittsb. Leg. J. p. 21, No. 7; 26 Jour. Fr. Inst. (3d S.) 10; 1 Pittsb. Leg. J. 9.
RICH v. MAXWELL [11,759], 3 Blatchf. 127.
Rich, Norton v. [See 10,352.]
RICH v. PARROTT [11,760], 1 Cliff. 55.
RICH v. PARROTT [11,761], 1 Spr. 358; 37 Hunt, Mer. Mag. 448; 20 Law Rep. 135.
RICH v. RICKETTS [11,762], 7 Blatchf. 230.
Rich, The Mary A. [See 9,198.]
Richard, United States v. [See 16,154.]
RICHARD v. VAN METER [11,763], 3 Cranch, C. C. 214.
RICHARD BUSTEED, The [11,764], 1 Spr. 441; 21 Law Rep. 601; 40 Hunt, Mer. Mag. 196.
RICHARD DOANE, The [11,765], 2 Ben. 111; 7 Int. Rev. Rec. 77.
RICHARD MATT, The [11,766], 1 Biss. 440.
RICHARD O'BRYAN, The [11,767], 2 Spr. 197.
RICHARD R. HIGGINS, The [11,768], 1 Lowell, 290.
RICHARDS, In re [11,769], 4 Ben. 303; 4 N. B. R. 93 (Quarto, 25).

[Federal Case numbers are given in brackets.]

RICHARDS, In re [11,770], 17 N. B. R. 562; 10 Chi. Leg. News, 275.
RICHARDS v. CHESAPEAKE & O. R. CO. [11,771], 1 Hughes, 28; 4 Amer. Law Rec. 469; 1 Law & Eq. Rep. 104.
Richards, Craig v. [See 3,337.]
Richards, Doyle v. [See 4,054.]
Richards, Gibson v. [See 5,399.]
Richards, Harvey v. [See 6,182-6,184.]
RICHARDS v. RANDOLPH [11,772], 5 Mason, 115.
Richards, Sparhawk v. [See 13,205.]
Richards, Steele v. [See 13,347.]
Richards v. The Stranger. [See 13,525.]
RICHARDS v. SWIMLEY [11,773].
Richards, Venable v. [See 16,913.]
Richards, The John. [See 7,361.]
RICHARDSON, In re [11,774], 2 Ben. 517; 2 N. B. R. 202 (Quarto, 74); 2 Amer. Law T. Rep. Bankr. 20.
RICHARDSON, In re [11,775], 7 Ben. 155.
RICHARDSON, In re [11,776], 11 N. B. R. 114; 7 Chi. Leg. News, 62.
RICHARDSON, In re [11,777], 2 Story, 571; 6 Law Rep. 392.
RICHARDSON'S CASE [11,778], 5 Cranch, C. C. 338.
RICHARDSON v. ASHCROFT, [11,779].
RICHARDSON v. BOSTON [11,780], 1 Curt. 250.
Richardson, Bradley v. [See 1,786.]
RICHARDSON v. CAMERON [11,780a], 2 Hayw. & H. 155.
RICHARDSON v. CURTIS [11,781], 3 Blatchf. 385.
RICHARDSON v. ELDRIDGE [11,781a].
RICHARDSON v. GOLDEN [11,782], 3 Wash. C. C. 109.
RICHARDSON v. HICKS [11,783], 1 McA. Pat. Cas. 335.
RICHARDSON v. JUILLETTE, The [11,784], 2 N. Y. Leg. Obs. 23.
Richardson, Hough v. [See 6,722.]
RICHARDSON v. LAWRENCE [11,785], 1 Blatchf. 501.
RICHARDSON v. LOCKWOOD [11,786], 4 Cliff. 128.
RICHARDSON v. LOCKWOOD [11,787], 4 O. G. 398; 6 Fish. Pat. Cas. 454.
RICHARDSON v. McFARLAND [8,788], 3 Amer. Law Rec. 187.
RICHARDSON v. McINTYRE [11,789], 4 Wash. C. C. 412.
RICHARDSON v. MATTISON [11,790], 5 Biss. 31.
RICHARDSON v. MILLER [11,791], 12 O. G. 3; 15 Alb. Law J. 340; 3 Law & Eq. Rep. 614.
RICHARDSON v. NOYES [11,792], 10 O. G. 507; 2 Ban. & A. 398.
Richardson, Oakes v. [See 10,390.]
RICHARDSON v. PACIFIC MAIL STEAMSHIP CO. [11,793], 5 Sawy. 252.
RICHARDSON v. PEYTON [11,794], 1 Cranch, C. C. 418.
Richardson, United States v. [See 16,155-16,157.]
Richardson, Williamson v. [See 17,754.]
Richardson, Wing v. [See 17,869.]
RICHARDSON v. WINSOR [11,795], 3 Cliff. 395.
Richardson, The Ann D. [See 410, 411.]
Richey, Eppinger v. [See 4,505.]
RICHMOND, The [11,795a], 29 Hunt, Mer. Mag. 77.
RICHMOND, The [11,796], 1 Biss. 49.
RICHMOND, The [11,797], 4 Blatchf. 84.
RICHMOND, In re [11,798], 18 N. B. R. 362.
Richmond, Bingham v. [See 1,415.]
Richmond, The, Dexter v. [See 3,865.]
RICHMOND v. DREYFOUS [11,799], 1 Sumn. 131.
Richmond, Evans v. [See 4,570.]
Richmond, Hull v. [See 6,861.]
Richmond, The, Jones v. [See 7,491, 7,492.]
Richmond, Le Franc v. [See 8,209.]
RICHMOND v. NEW BEDFORD COPPER CO. [11,-800], 2 Lowell, 315.
RICHMOND v. RICHMOND [11,801], 4 Chi. Leg. News, 41.
Richmond, The, Shirley v. [See 12,795.]
Richmond, The, Writer v. [See 18,104.]
Richmond, The Dean. [See 3,713.]
Richmond Consolidated Min. Co., Eureka Consolidated Min. Co. v. [See 4,548, 4,549.]
Richmond, F. & P. R. Co., Sayles v. [See 12,424.]
RICHMOND MFG. CO. v. STARKS [11,802], 4 Mason, 296.
RICHTER'S ESTATE [11,803], 1 Dill. 544; 4 N. B. R. 221 (Quarto, 67); 3 Chi. Leg. News, 33; 2 Leg. Gaz. 362.
RICKARDS v. LADD [11,804], 6 Sawy. 40; 8 Reporter, 518; 12 Chi. Leg. News, 1; 8 Amer. Law Rec. 264; 20 Alb. Law J. 335.
Ricker, Kennedy v. [See 7,705.]
Rickers, The Elizabeth v. [See 4,353.]
RICKETSON v. WRIGHT [11,805], 3 Sumn. 335.
RICKETTS v. HENDERSON [11,806], 2 Cranch, C. C. 157.
Ricketts, Henry v. [See 6,385, 6,386.]
Ricketts, Rich v. [See 11,762.]
Ricketts, United States v. [See 16,158, 16,159.]
Rickey, Armstrong v. [See 546.]
Rico, United States v. [See 16,160, 16,161.]
Riddick, Whitely v. [See 17,567.]
Riddle, Copley v. [See 3,214.]
Riddle, Gordon v. [See 5,619.]
RIDDLE v. MANDEVILLE [11,807], 1 Cranch, C. C. 95.
RIDDLE v. MARSHAL OF THE DISTRICT OF COLUMBIA [11,808], 1 Cranch, C. C. 96.
Riddle, Ramsay v. [See 11,544.]
Riddle, United States v. [See 16,162.]
RIDDLE v. MOSS [11,809].
RIDDLE v. MOTT [11,810], 2 Cranch, C. C. 73.
RIDDLE v. POTTER [11,811], 1 Cranch, C. C. 288.
Ridenbaugh, Young v. [See 18,173.]
Rideout v. Hartford. [See 2,748, 2,752.]
Rider, Dennis v. [See 3,797.]
RIDER v. PACIFIC, The [11,812].
RIDGEWAY v. GHEQUIER [11,813], 1 Cranch, C. C. 4.
RIDGEWAY v. OGDEN [11,814], 4 Wash. C. C. 139.
RIDGEWAY v. UNDERWOOD [11,815], 4 Wash. C. C. 129.
Ridgway, Bettinger v. [See 1,369.]
RIDGWAY v. GHEQUIER [11,816], 1 Cranch, C. C. 87.
RIDGWAY v. HAYS [11,817], 5 Cranch, C. C. 23.
Ridgway, Lorillard v. [See 8,511.]
RIDGWAY v. PANCOST [11,818], 1 Cranch, C. C. 88.
Ridgway, Postmaster General v. [See 11,313.]
Ridgway, The Jacob E. [See 7,155.]
RIDGWAY TP. v. GRISWOLD [11,819], 1 McCrary, 151.
RIDYARD v. PHILLIPS [11,820], 4 Blatchf. 443; 2 Leg. & Ins. Rep. 27.
RIESS v. REDFIELD [11,821], 4 Blatchf. 381; 18 How. Pr. 87.
Rigg, Rhodes v. [See 11,749.]
Riggs v. Barron. [See 7,385.]
RIGGS v. BOYLAN [11,822], 4 Biss. 445.
RIGGS v. CHESTER [11,823], 2 Cranch, C. C. 637.
RIGGS v. COLLINS [11,824], 2 Biss. 268; 2 Chi. Leg. News, 234.
RIGGS v. FRICK [11,825], Taney, 100; 3 Haz. Reg. U. S. 8.
RIGGS v. GRAEFF [11,826], 2 Cranch, C. C. 298.
RIGGS v. JOHN RICHARDS, The [11,827], Newb. 73.
Riggs v. Johnson County. [See 4,191.]
Riggs, Lindsay v. [See 8,366.]
Riggs, McDaniel v. [See 8,745.]
Riggs, McLaughlin v. [See 8,872.]
RIGGS v. MAGRUDER [11,828], 2 Cranch, C. C. 143.
Riggs, O'Callaghon v. [See 7,361.]
RIGGS v. ST. CLAIR [11,829], 1 Cranch, C. C. 606.
RIGGS v. STEWART [11,830], 2 Cranch, C. C. 171.
RIGGS v. SWANN [11,831], 3 Cranch, C. C. 183.
RIGGS v. TAYLOE [11,832], 2 Cranch, C. C. 687.
Riggs, Union Bank of Georgetown v. [See 14,361.]
Riggs, The Mary E. [See 9,208.]
Rigsby, United States v. [See 16,163.]
Rikeman, Finch v. [See 4,788.]
RIKER, In re [11,833], 18 N. B. R. 393.
RILEY, In re [11,834], 1 Ben. 408; 39 How. Pr. 103.
RILEY v. ANDERSON [11,835], 2 McLean, 589.
RILEY v. COOPER [11,836], 1 Cranch, C. C. 166.
RILEY v. DANIELS [11,837].
Riley, Dunham v. [See 4,155.]
RILEY v. MAXWELL [11,838], 4 Blatchf. 237.
RILEY v. OBELL MITCHELL, The [11,839].
Riley, United States v. [See 16,164.]
Riley, Wells v. [See 17,404.]
Riley, Wray v. [See 18,060.]
Riley v. The Yorktown No. 2. [See 12,528.]

[Federal Case numbers are given in brackets.]

Rind, Duane v. [See 4,106.]
Rindskopf, United States v. [See 16,165, 16,166.]
RINEHART v. HARRISON [11,840], Baldw. 177.
Rines, Smith v. [See 13,100.]
Ring, Cahoon v. [See 2,292.]
Ring v. The R. E. Lee. [See 11,690, 11,691.]
Ring, The C. W. [See 3,525.]
RINGGOLD, Ex parte [11,841], 3 Cranch, C. C. 86.
RINGGOLD v. BACON [11,842], 3 Cranch, C. C. 257.
Ringgold, Blagrove v. [See 1,480.]
Ringgold, Burford v. [See 2,152.]
RINGGOLD v. CROCKER [11,843], 1 Abb. Adm. 344.
RINGGOLD v. ELLIOT [11,844], 2 Cranch, C. C. 462.
RINGGOLD v. GLOVER [11,845], 2 Cranch, C. C. 427.
Ringgold, Gustine v. [See 5,877.]
RINGGOLD v. HOFFMAN [11,846], 4 Cranch, C. C. 201.
Ringgold, Letourno v. [See 8,282.]
Ringgold, Levy Court of Washington County v. [See 8,305.]
RINGGOLD v. LEWIS [11,847], 3 Cranch, C. C. 367.
Ringgold, Manderville v. [See 9,015.]
Ringgold, Moore v. [See 9,773.]
RINGGOLD v. NICHOLLS [11,848].
RINGGOLD v. RENNER [11,849], 2 Cranch, C. C. 263.
Ringgold, Ryan v. [See 12,187.]
Ringgold, Smith v. [See 13,101.]
Ringgold, Swann v. [See 13,674.]
Ringgold, United States v. [See 16,167.]
Ringgold, Williamson v. [See 17,755.]
RINGLEADER, The [11,850], 6 Ben. 400.
Ringold v. Crocker. [See 11,843.]
RINKER v. MANHATTAN LIFE INS. CO. [11,851], 1 Tex. Law J. 337.
Rinker, Merrill v. [See 9,471.]
Rio Grande, The, Otis v. [See 10,613, 10,614.]
RIORDEN, In re [11,852], 14 N. B. R. 332.
RIPLEY v. HARRIS [11,853], 3 Biss. 199; 16 Int. Rev. Rec. 118; 5 Chi. Leg. News, 13.
RIPLEY v. RAILWAY PASSENGERS' ASSUR. CO. [11,854], 2 Bigelow, Ins. Cas. 738; 1 Leg. Op. 49.
Ripley, Stearns v. [See 13,340.]
RISCH v. FISKE [11,855].
RISHER v. FROLIC, The [11,856], 1 Woods, 92.
RISING DAWN, The [11,857], Blatchf. Pr. Cas. 368; 20 Leg. Int. 229.
Rising Fawn Iron Co., Warner v. [See 17,188.]
RISING SUN, The [11,858], 1 Ware (378) 385.
RISLEY v. INDIANAPOLIS, B. & W. RY. CO. [11,-859], 7 Biss. 408.
RISON v. CRIBBS [11,860], 1 Dill. 181.
RISON v. KNAPP [11,861], 1 Dill. 187; 4 N. B. R. 349 (Quarto, 114).
Rist, Clarke v. [See 2,861.]
RISTON v. CONTENT [11,862], 4 Wash. C. C. 476.
Ritchey, Williams v. [See 17,734.]
RITCHIE v. BANK OF THE UNITED STATES [11,-863], 5 Cranch, C. C. 605.
Ritchie v. Litle. [See 15,608.]
Ritchie, Durant v. [See 4,190.]
Ritchie, Mauro v. [See 9,312.]
RITCHIE v. STONE [11,864], 2 Cranch, C. C. 258.
Ritchie, United States v. [See 16,168.]
RITCHIE v. WOODS [11,865], 1 Wash. C. C. 11.
Ritten, Spofford v. [See 13,244.]
RITTEN v. UNION PAC. RY. CO. [11,865a], 16 Reporter, 199.
Ritter, Courcier v. [See 3,282.]
RITTER v. SERRELL [11,866], 2 Blatchf. 379.
Ritter, United States v. [See 16,169.]
RIVAL, The [11,867], 1 Spr. 128; 9 Law Rep. 28; 4 West. Law J. 89.
RIVER QUEEN, The [11,868].
Rivers, Virginia v. [See 16,958.]
Rives, Page v. [See 10,666.]
RIX v. CAPITOL BANK [11,869], 2 Dill. 367.
R. L. MAYBEY, The [11,870], 4 Blatchf. 88.
R. L. MAYBEY, The [11,871], 4 Blatchf. 439.
R. L. Mabey, The. [See 6,333-6,335.]
R. L. STEVENS, The [11,872].
ROACH v. BURGESS [11,873], 4 Cranch, C. C. 449.
Roach, Conover v. [See 3,125.]
Roach, Hathaway v. [See 6,213.]
ROACH v. HULINGS [11,874], 5 Cranch, C. C. 637.
ROANOKE, The [11,875], 3 Blatchf. 390.
Roanoke, The, Lawrence v. [See 8,142.]
ROARER, The [11,876], 1 Blatchf. 1.
ROBACK v. TAYLOR [11,877], 2 Bond, 36; 14 Pittsb. Leg. J. 137; 4 Int. Rev. Rec. 170.
Robb, Comegyss v. [See 3,049.]
Robb, Davis v. [See 3,649.]
Robb, Didlake v. [See 3,899.]
ROBBINS, Case of [16,175].
Robbins' Case. [See 16,175.]
ROBBINS, Ex parte [11,879], 2 Gall. 320.
Robbins, Atkinson v. [See 617.]
Robbins, Brush v. [See 2,059.]
Robbins, Claflin v. [See 2,776.]
ROBBINS v. DAVIS [11,880], 1 Blatchf. 238; 5 N. Y. Leg. Obs. 245.
Robbins, Farmers' Bank v. [See 4,660.]
ROBBINS v. FIREMEN'S FUND INS. CO. [11,881], 16 Blatchf. 122.
ROBBINS v. FIREMEN'S FUND INS. CO. [11,882], 16 Blatchf. 232.
ROBBINS v. FREELAND [11,883], 14 Int. Rev. Rec. 28.
ROBBINS v. McDONALD [11,884], 2 Lowell, 140.
ROBBINS v. PEOPLE'S INS. CO. [11,885], 2 N. J. Law J. 213.
Robbins, Postmaster General v. [See 11,314.]
Robbins, United States v. [See 16,170, 16,171.]
ROBBINS v. UPTON [11,886], 5 Cranch, C. C. 498.
ROBBINS v. WELSH [11,887], 9 Phila. 409; 30 Leg. Int. 329.
ROBERDEAU v. ROBERDEAU [11,888], 1 Cranch, C. C. 305.
Robert v. The Galatea. [See 5,184, 5,185.]
Robert v. The Yuba. [See 18,192, 18,193.]
ROBERT BRUCE, The [11,889], Blatchf. Pr. Cas. 275.
Robert Center, The, Atlantic & P. Guano Co. v. [See 630.]
Robert F. Stockton, The, Edwards v. [See 4,297.]
ROBERT FULTON, The [11,890], 1 Paine, 620.
Robert G. Shaw, The, Folger v. [See 4,899.]
ROBERT J. MERCER, The [11,891], 1 Spr. 284.
ROBERT L. LANE, The [11,892], 1 Lowell, 388.
Robert L. Stevens, The, Abbey v. [See 8.]
ROBERT MORRIS, The [11,893], 5 Adm. Rec. 96.
Robert Morris, The. [See 8,896.]
Robert Morris, The, McLelland v. [See 8,896.]
ROBERT NOBLE, The [11,894], 1 Lowell, 57.
ROBERT RITSON, The [11,895].
ROBERTS, In re [11,896], 8 Biss. 426.
Roberts, Bank of United States v. [See 934.]
Roberts v. Blake. [See 11,897.]
Roberts, Boyer v. [See 1,754.]
ROBERTS v. BUCK [11,897], Holmes, 224; 6 Fish. Pat. Cas. 325; 3 O. G. 268.
Roberts, Cooper v. [See 3,201.]
ROBERTS v. DALLAS [11,898], Bee, 239.
ROBERTS v. DICKEY [11,899], 4 Fish. Pat. Cas. 532; 1 O. G. 4; 4 Brewst. 260; 3 Pittsb. Rep. 352; 19 Pittsb. Leg. J. 137; Merw. Pat. Inv. 328.
ROBERTS v. DODGE [11,900].
ROBERTS v. ELDRIDGE [11,901], 1 Spr. 54.
Roberts, Flint v. [See 4,875.]
ROBERTS v. GALLAGHER [11,902], 1 Wash. C. C. 156.
Roberts, Gallagher v. [See 5,194, 5,195.]
Roberts, Greenway v. [See 5,790.]
ROBERTS v. HARNDEN [11,903], 2 Cliff. 500.
ROBERTS v. HUNTSVILLE, The [11,904], 3 Woods, 386.
Roberts v. Jailer. [See 15,463.]
Roberts, Kent v. [See 7,715.]
Roberts, Meade v. [See 9,374.]
ROBERTS v. MOORE [11,905], 3 Wall. Jr. 292; 9 Amer. Law Reg. 25.
Roberts v. Meyers. [See 11,906.]
ROBERTS v. MYERS [11,906], Brunner, Col. Cas. 698; 23 Law Rep. 396; 17 Leg. Int. 405.
ROBERTS v. NELSON [11,907], 8 Blatchf. 74; 10 Amer. Law Reg. (N. S.) 115; 40 How. Pr. 387.
ROBERTS v. OCEAN STAR, The [11,908].
ROBERTS v. PILLOW [11,909], Hempst. 624.
ROBERTS v. REED TORPEDO CO. [11,910], 3 Fish. Pat. Cas. 629; 3 Brewst. 558.
ROBERTS v. REINTZELL [11,911], 2 Cranch, C. C. 235.
Roberts v. The Rockland. [See 11,981.]

[Federal Case numbers are given in brackets.]

ROBERTS v. ROTER [11,912], 5 Fish. Pat. Cas. 295.
ROBERTS v. RYER [11,913], 11 Blatchf. 11; 6 Fish. Pat. Cas. 293; 3 O. G. 551.
ROBERTS v. ST. JAMES, The [11,914].
ROBERTS v. SCHUYLER [11,915], 12 Blatchf. 444; 2 Ban. & A. 5.
ROBERTS v. SHELDON [11,916], 8 Biss. 398; 18 O. G. 1277.
ROBERTS v. SKOLFIELD [11,917], 3 Ware, 184; 8 Amer. Law Reg. 156.
Roberts, Stump v. [See 13,561.]
Roberts, United States v. [See 16,172, 16,173.]
ROBERTS v. WARD [11,918], 4 McLean, 565; 2 Robb, Pat. Cas. 746.
ROBERTS v. YATES [11,919], 16 Law Rep. 49.
ROBERTS v. YUBA, The [11,920], 38 Hunt, Mer. Mag. 710.
Roberts v. The Yuba. [See 18,192, 18,193.]
Roberts, The Mary Belle. [See 9,200.]
ROBERTSON, Ex parte [11,921], 1 N. Y. Leg. Obs. 20; 5 Law Rep. 321.
ROBERTSON, In re [11,921], 1 N. Y. Leg. Obs. 20; 5 Law Rep. 321.
ROBERTSON, The [11,923], 8 Biss. 180; 10 Chi. Leg. News, 220.
Robertson, Blake v. [See 1,500, 1,501.]
Robertson, Brown v. [See 2,027.]
Robertson, Carson v. [See 2,466.]
Robertson, Chesapeake & O. Canal Co. v. [See 2,652.]
Robertson, Dibble v. [See 3,882.]
Robertson, Ellithorp v. [See 4,408-4,410.]
ROBERTSON v. GARRETT [11,924], 10 Blatchf. 490; 6 Fish. Pat. Cas. 278.
ROBERTSON v. HILL [11,925], 6 Fish. Pat. Cas. 465; 4 O. G. 132.
ROBERTSON v. MILLER [11,926], 1 Brock. 466.
Robertson, Munro v. [See 9,927.]
Robertson, Polk v. [See 11,250.]
ROBERTSON v. ROE [11,927], 5 McLean, 459.
ROBERTSON v. SECOMBE MFG. CO. [11,928], 10 Blatchf. 481; 6 Fish. Pat. Cas. 268; 3 O. G. 412; Merw. Pat. Inv. 137.
ROBERTSON v. SELBY [11,929], 1 Cranch, C. C. 211.
Robertson, United States v. [See 16,174.]
Robertson, Warner v. [See 17,189.]
ROBERTSON v. WELLSVILLE [11,930], 1 Bond, 81.
Robertson, Wilson v. [See 17,830.]
Robertson, The, Young v. [See 11,923.]
ROBIN v. CACIQUE, The [11,931], 24 Nile's Reg. 255.
ROBINS v. POPE [11,931a], Hempst. 219.
Robins, United States v. [See 16,175.]
ROBINSON, Ex parte [11,932], 2 Biss. 309; 4 Fish. Pat. Cas. 186; 4 West. Jur. 252; 2 Chi. Leg. News, 297; 3 Amer. Law T. Rep. U. S. Cts. 112; 5 Amer. Law Rev. 169.
ROBINSON, Ex parte [11,933], 7 Biss. 125.
ROBINSON, Ex parte [11,934], 1 Bond, 39; 4 Amer. Law Reg. 617.
ROBINSON, Ex parte [11,935], 6 McLean, 355; 3 Liv. Law Mag. 386.
ROBINSON, In re [11,936], 1 Ben. 270; 1 N. B. R. 8; Bankr. Reg. Supp. 2; 6 Int. Rev. Rec. 29.
ROBINSON, In re [11,937], 2 Ben. 145; 1 N. B. R. 285 (Quarto, 49); 1 Amer. Law T. Rep. Bankr. 25.
ROBINSON, In re [11,938], 8 Ben. 406; 14 N. B. R. 130.
ROBINSON, In re [11,939], 6 Blatchf. 253; 36 How. Pr. 176; 2 Amer. Law T. Rep. Bankr. 18; 2 N. B. R. 341 (Quarto, 108).
ROBINSON, In re [11,940], 43 How. Pr. 25.
ROBINSON, In re [11,941], 2 Lowell, 326.
ROBINSON, In re [11,942], 2 N. B. R. 516 (Quarto, 162); 2 Amer. Law T. Rep. Bankr. 87.
ROBINSON, In re [11,943], 3 N. B. R. 70 (Quarto, 17).
ROBINSON, In re [11,944], 1 Tex. Law J. 89.
ROBINSON, The [6,128].
Robinson, Allin v. [See 249.]
Robinson, Carpenter v. [See 2,431.]
ROBINSON v. CATHCART [11,946], 2 Cranch, C. C. 590.
ROBINSON v. CATHCART [11,947], 3 Cranch, C. C. 377.
ROBINSON v. CLIFFORD [11,948], 2 Wash. C. C. 1.
ROBINSON v. COMMONWEALTH INS. CO. [11,949], 3 Sumn. 220.
Robinson, Corps v. [See 3,252.]
Robinson, Crowninshield v. [See 3,451.]
ROBINSON v. DOW [11,950], 1 Hayw. & H. 239.
Robinson, Evans v. [See 4,571.]
ROBINSON v. GALLIER [11,951], 2 Woods, 178.
ROBINSON v. GIFFORD [11,951a].
ROBINSON v. HALL [11,952], 8 Ben. 61.
ROBINSON v. HANWAY [11,953], 19 N. B. R. 289; 27 Pittsb. Leg. J. 21.
Robinson, The, Harris v. [See 6,128.]
Robinson, Hazard v. [See 6,281.]
ROBINSON v. HINCKLEY [11,954], 2 Paine, 457.
ROBINSON v. HOLT [11,955], Hempst. 426.
ROBINSON v. HOOK [11,956], 4 Mason, 139.
Robinson v. The Huntress. [See 11,971.]
Robinson, Jackson v. [See 7,144.]
ROBINSON v. KILBRETH [11,957], 1 Bond, 592.
Robinson, Lidderdale v. [See 8,337.]
ROBINSON v. LILLIE MILLS, The [11,958], 40 Hunt, Mer. Mag. 323.
ROBINSON v. MANDELL [11,959], 3 Cliff. 169; 3 Amer. Law Rev. 377.
Robinson, Metcalf v. [See 9,497.]
ROBINSON v. MEDORA, The [11,959a].
ROBINSON v. MOORE [11,960], 4 McLean, 279.
ROBINSON v. MUTUAL BEN. LIFE INS. CO. [11,961], 16 Blatchf. 194; 9 Ins. Law J. 73; 8 Reporter, 613.
Robinson, Nelson v. [See 10,114.]
ROBINSON v. RANDOLPH [11,962], 4 Ban. & A. 163; 2 N. J. Law J. 170.
ROBINSON v. RANDOLPH [11,963], 4 Ban. & A. 317.
Robinson, Randolph v. [See 11,561.]
Robinson, Reed v. [See 11,645.]
Robinson, Reeler v. [See 11,655.]
Robinson, Reppert v. [See 11,703.]
ROBINSON v. ST. LOUIS MUT. LIFE INS. CO. [11,964], 8 Ins. Law J. 159; 7 Reporter, 358.
ROBINSON v. SATTERLEE [11,965].
ROBINSON v. SATTERLEE [11,966].
ROBINSON v. SATTERLEE [11,967], 3 Sawy. 134.
Robinson, Sharpless v. [See 12,713.]
ROBINSON v. TUTTLE [11,968], 2 Hask. 76.
Robinson, United States v. [See 16,176-16,178.]
ROBINSON v. WILEY [11,968a], Hempst. 38.
ROBINSON v. WISCONSIN, M. & F. INS. CO. BANK [11,969], 9 Biss. 117; 18 N. B. R. 243.
ROBISON v. CODMAN [11,970], 1 Sumn. 121.
Rob Roy, The, United States v. [See 16,179.]
ROBSON v. HUNTRESS, The [11,971], 2 Wall. Jr. 59; 4 Amer. Law J. (N. S.) 140; 25 Hunt, Mer. Mag. 336.
ROBY v. LYNDALL [11,972], 4 Cranch, C. C. 351.
ROCHAMBEAU, The [11,973], 3 Ware, 304; 26 Law Rep. 564.
Rochambeau, The, Trecartin v. [See 14,163.]
ROCHE v. FOX [11,974], 16 N. B. R. 461.
Roche, United States v. [See 16,180.]
ROCHELL v. PHILLIPS [11,974a], Hempst. 22.
Rochereau, Reid v. [See 11,669.]
Rockaway, The, Byrnes v. [See 2,274.]
Rockefeller, Taylor v. [See 13,802.]
ROCKET, The [11,975], 1 Biss. 354; 3 West. Law Month. 7.
ROCKET v. SOUTH AMERICA, The [11,976].
ROCKETT, Ex parte [11,977], 2 Lowell, 522; 15 N. B. R. 95.
Rockey, McLean v. [See 8,891.]
ROCKFORD, R. I. & ST. L. R. CO., In re [11,978], 1 Lowell, 345; 3 N. B. R. 50 (Quarto, 12); 2 Amer. Law T. 105; 1 Chi. Leg. News, 337; 1 Amer. Law T. Rep. Bankr. 133.
Rockford, R. I. & St. L. R. Co. v. McKay. [See 11,978.]
Rockford, R. I. & St. L. R. Co., Union Trust Co. v. [See 14,401.]
ROCKHILL v. HANNA [11,979], 4 McLean, 200.
ROCKHILL v. HANNA [11,980], 4 McLean, 554.
ROCKIE E. YATES, The [11,980a], 2 Hask. 430.
Rock Island, Ruch v. [See 12,105.]
Rock Island County, Downs v. [See 4,047.]
ROCKLAND, The [11,981], 6 Adm. Rec. 76.
ROCKMULH v. PITTSBURGH [11,982]; 8 Pittsb. Leg. J. 146.
ROCKSELL v. ALLEN [11,983], 3 McLean, 357.

[Federal Case numbers are given in brackets.]

ROCKVILLE & W. TURNPIKE ROAD v. ANDREWS [11,984], 2 Cranch, C. C. 451.
ROCKVILLE & W. TURNPIKE ROAD v. MAXWELL [11,985], 2 Cranch, C. C. 451.
ROCKVILLE & W. TURNPIKE ROAD v. VAN NESS [11,986], 2 Cranch, C. C. 449.
ROCKWELL, In re [11,987], 4 N. B. R. 243 (Quarto, 74).
Rockwood, Osgood v. [See 10,605.]
RODBIRD v. RODBIRD [11,988], 5 Cranch, C. C. 125.
RODDIN, In re [11,989], 6 Biss. 377.
RODDY v. UNITED STATES [11,990], 10 Pittsb. Leg. J. 161; 2 Pittsb. Rep. 374; 3 Wall. Jr. 358.
RODGER, In re [11,991], 18 N. B. R. 252.
RODGER, In re [11,992], 18 N. B. R. 381.
Rodgers, Nicolls v. [See 10,260.]
Rodgers, Nutter v. [See 10,383.]
Rodman, Sickels v. [See 12,836.]
RODNEY, The [11,993], 1 Blatchf. & H. 226.
Rodney, Hurst v. [See 6,938.]
Rodocanachi v. The Oregon. [See 13,178.]
Rodocanachi, Soule v. [See 13,178.]
Rodriguez, Alexander v. [See 172.]
RODRIGUEZ v. UNITED STATES [16,181], Hoff. Land Cas. 175.
Rodriguez, United States v. [See 16,181-16,185.]
Roe, Dussert v. [See 4,200.]
Roe, Robertson v. [See 11,927.]
ROELKER, Ex parte [11,995], 1 Spr. 276.
Roelle, United States v. [See 16,186.]
Roemer, Crouch v. [See 3,437.]
ROEMER v. LOGOWITZ [11,996].
ROEMER v. SIMON [11,997], 1 Ban. & A. 138; 5 O. G. 555.
ROEMER v. SIMON [11,998], 2 Ban. & A. 72.
ROFF v. WASS [11,999], 2 Sawy. 389.
ROFF v. WASS [12,000], 2 Sawy. 538; 19 Int. Rev. Rec. 94; 6 Chi. Leg. News, 186.
ROGERS, In re [12,001], 1 Lowell, 423; 3 N. B. R. 564 (Quarto, 139).
ROGERS, In re [12,002], 2 N. B. R. 397 (Quarto, 129); 1 Chi. Leg. News, 195.
ROGERS, In re [12,003], 10 N. B. R. 444; 1 Cent. Law J. 470.
ROGERS v. ABBOT [12,004], 4 Wash. C. C. 514; 1 Robb, Pat. Cas. 465.
ROGERS v. AMADO, The [12,005], Newb. 400.
ROGERS v. ARTHUR [12,006], 2 Amer. Law Rev. 188.
ROGERS v. ARTHUR [12,006].
Rogers, Bartlett v. [See 1,079.]
ROGERS v. CINCINNATI [12,008], 5 McLean, 337; 9 West. Law J. 510.
Rogers, Commonwealth v. [See 3,068.]
ROGERS v. CROMMELIN [12,009], 1 Cranch, C. C. 536.
ROGERS v. ENNIS [12,010], 15 Blatchf. 47; 14 O. G. 601; 3 Ban. & A. 366; Merw. Pat. Inv. 467.
ROGERS v. FENWICK [12,011], 1 Cranch, C. C. 136.
Rogers, French v. [See 5,103.]
Rogers, The Harriet [See 6,103.]
Rogers, Heard v. [See 6,298.]
Rogers v. Hurney. [See 2,159.]
ROGERS v. JEWETT [12,012], 22 Law Rep. 339; Brunner, Col. Cas. 683.
Rogers, Johnson v. [See 7,408.]
Rogers, Lee v. [See 8,201.]
ROGERS v. LEE COUNTY [12,013], 1 Dill. 529.
ROGERS v. LEWIS [12,014], 1 Lowell, 297.
ROGERS v. LINN [12,015], 2 McLean, 126.
Rogers, Long v. [See 8,482.]
ROGERS v. MARSHALL [12,015a], 13 Fed. 59.
ROGERS v. MAY [12,015b], 2 Hayw. & H. 185.
ROGERS v. MECHANICS' INS. CO. [12,016], 1 Story, 603; 4 Law Rep. 297.
ROGERS v. MECHANICS' INS. CO. [12,017], 2 Story, 173; 5 Law Rep. 206.
Rogers, Moffitt v. [See 9,691.]
ROGERS v. PARKER [12,018], 1 Hughes, 148.
Rogers, Peters v. [See 11,033.]
ROGERS v. RELIANCE, The [12,019], 1 Woods, 274.
Rogers v. The Rival. [See 11,867.]
ROGERS v. SARGENT [12,020], 7 Blatchf. 507.
ROGERS v. S. B. WHEELER, The [12,021], 4 Cliff. 189.
Rogers, Stimpson v. [See 13,457.]
Rogers, United States v. [See 16,187-16,189.]
ROGERS v. WELLER [12,022], 5 Biss. 166.
ROGERS v. WINSOR [12,023], 6 N. B. R. 246.
Rogers, Woodworth v. [See 18,018.]
Rogers, Wright v. [See 18,090.]
ROGERS' LOCOMOTIVE WORKS v. LEWIS [12,024], 4 Dill. 158; 9 Chi. Leg. News, 84; 3 Cent. Law J. 784.
Roger Williams Ins. Co., Bullard v. [See 2,122.]
Roland, United States v. [See 16,190.]
ROLLER v. MAXWELL [12,025], 3 Blatchf. 142.
ROLLHAUS v. McPHERSON [12,026].
Rolling Wave, The, Cohan v. [See 2,959a.]
Rollins, Hamilton v. [See 5,988.]
Rollins, Mason v. [See 9,252.]
ROLLINS v. TWITCHELL [12,027], 2 Hask. 66; 5 Amer. Law Rec. 247; 14 N. B. R. 201.
Rollinson, United States v. [See 16,191.]
Rollo, Drake v. [See 4,066.]
Rollo, Hitchcock v. [See 6,535, 6,536.]
Rollstone Mach. Works, Whitney v. [See 17,596.]
ROMAYNE v. DUANE [12,028], 3 Wash. C. C. 246.
ROMERO v. UNITED STATES [12,029], Hoff. Land Cas. 219.
Rome, W. & R. Co., Williams v. [See 17,735.]
Romeyn, Westbrooke v. [See 17,428.]
Romeyne, Cope v. [See 3,207.]
ROMP, The [12,030], Olc. 196.
RONALD v. BARKLEY [12,031], 1 Brock, 356.
RONEDE v. JERSEY CITY [12,031a], 17 Reporter, 263.
Ronzone, United States v. [See 16,192.]
Rood, Abbe v. [See 6.]
Rood, Colt v. [See 3,031.]
ROONEY, In re [12,032], 6 N. B. R. 163.
ROOSEVELT v. C. H. FROST, The [12,033].
ROOSEVELT v. MAXWELL [12,034], 3 Blatchf. 391.
Root, Baker v. [See 780.]
ROOT v. BALL [12,035], 4 McLean, 177; 2 Robb, Pat. Cas. 513; Fent. Pat. 73.
ROOT v. BROTHERSON [12,036], 4 McLean, 230.
ROOT v. GODARD [12,037], 3 McLean, 102.
Root, Goodyear Dental Vulcanite Co. v. [See 5,597.]
Root v. Hilliard. [See 539.]
Root, Johnson v. [See 7,409-7,411.]
Root, Morton v. [See 9,866.]
ROOT v. SHIELDS [12,038], Woolw. 340.
ROOT v. WALLACE [12,039], 4 McLean, 8.
ROOTS v. HYNDMAN [12,040], 6 Fish. Pat. Cas. 439; 4 O. G. 29.
Ropes, Bearse v. [See 1,192.]
ROPES v. CLINCH [12,041], 8 Blatchf. 304; 13 Int. Rev. Rec. 124, 132.
ROSCIUS, The [12,042], 1 Brown's Adm. 442.
ROSE, In re [12,043], 3 N. B. R. 265 (Quarto, 63); 1 Balt. Law Trans. 625.
ROSE, The [12,044], 1 Gall. 211.
Rose, Bias v. [See 1,382.]
Rose, Follett v. [See 4,900.]
ROSE v. HIMELY [12,045], Bee, 313.
ROSE v. HIMELY [12,046], Bee, 316; 4 Cranch, C. C. 509, Append.
ROSE v. HIMILI [12,047], Bee, 300.
ROSE v. HIMILI [12,048], Bee, 308.
ROSE v. KENNEDY [12,049], 1 Cranch, C. C. 29.
ROSE v. NILES [12,050], Abb. Adm. 411.
Rose, Scott v. [See 12,545.]
ROSE v. SIBLEY MACH. CO. [12,051].
Rose, United States v. [See 16,193-16,195.]
Rose, The, Watson v. [See 17,288.]
Rose, Wilson v. [See 17,831.]
ROSEBERRY, In re [12,052], 8 Biss. 112; 16 N. B. R. 340.
Rosedale, The, Gardner v. [See 5,235.]
ROSENBAUM v. GARNETT [12,053], 3 Hughes, 662; 19 N. B. R. 379.
ROSENBERG, In re [12,054], 3 Ben. 14; 2 N. B. R. 236 (Quarto, 81); 1 Chi. Leg. News, 103.
ROSENBERG, In re [12,055], 3 Ben. 366; 3 N. B. R. 130 (Quarto, 33).
ROSENBERG, In re [12,056], 3 N. B. R. 73 (Quarto, 18).
Rosenberger, Moore v. [See 9,774.]
ROSENFELD, In re [12,057], 1 Amer. Law T. Rep. Bankr. 100; 8 Amer. Law Reg. (N. S.) 44; 2 N. B. R. 116 (Quarto, 49).

ROSENFIELD, In re [12,058], 1 N. B. R. 575 (Quarto, 161); 7 Amer. Law Reg. (N. S.) 618; 1 Amer. Law T. Rep. Bankr. 81.
ROSENFIELD, In re [12,059], 15 Pittsb. Leg. J. 245; 1 N. B. R. 319 (Quarto, 60); 1 Amer. Law T. Rep. Bankr. 47.
ROSENFIELD v. EXPRESS CO. [12,060], 1 Woods, 131.
ROSENFIELDS, In re [12,061], 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 583.
ROSENTHAL, In re [12,062], 10 N. B. R. 191; 1 Cent. Law J. 364, note; 6 Chi. Leg. News, 342; 31 Leg. Int. 254.
ROSENTHAL v. MASTIN BANK [12,063], 17 Blatchf. 318; 9 Reporter, 272; 21 Alb. Law J. 28; 26 Int. Rev. Rec. 13; 27 Pittsb. Leg. J. 160.
ROSETTA, Case of [12,064].
ROSEY, In re [12,065], 6 Ben. 137.
ROSEY, In re [12,066], 6 Ben. 507; 8 N. B. R. 509.
ROSHELL v. MAXWELL [12,066a], Hempst. 25.
ROSLYN, The [12,067], 8 Ben. 455.
ROSLYN, The [12,068], 9 Ben. 119; 23 Int. Rev. Rec. 176.
Roslyn, The, Cobanks v. [See 12,068.]
ROSS, Ex parte [12,069], 2 Bond, 252.
ROSS v. ACTIVE, The [12,070].
ROSS v. ACTIVE, The [12,071], 2 Wash. C. C. 226.
Ross, Anderson v. [See 361.]
Ross, Bloomer v. [See 18,242.]
Ross, Bond v. [See 1,623.]
ROSS v. CARPENTER [12,072], 6 McLean, 382.
Ross, Champion v. [See 2,585.]
ROSS v. DAVY [12,073].
ROSS v. GIBSON [12,074].
Ross, The Hattie. [See 2,598.]
Ross, Holbrook v. [See 6,592.]
ROSS v. HOLTZMAN [12,075], 3 Cranch, C. C. 391.
ROSS v. KINGSTON [12,076], 1 Cranch, C. C. 140.
Ross, Krouse v. [See 7,939.]
Ross, Lockhart v. [See 8,447.]
Ross v. The Neversink. [See 12,079.]
ROSS v. PEASLEE [12,077], 2 Curt. 499.
ROSS v. PRENTISS [12,078], 4 McLean, 106.
ROSS v. NEVERSINK, The [12,079].
Ross, Reed v. [See 11,652.]
ROSS v. UNION PAC. RY. CO. [12,080], Woolw. 26.
Ross, United States v. [See 16,196.]
Ross, Wakefield v. [See 17,050.]
Ross, Walter v. [See 17,122.]
ROSS v. WOLFINGER [12,081], 5 O. G. 117; Merw. Pat. Inv. 448.
Rosseau, Baldwin v. [See 803.]
ROSSITER v. HALL [12,082], 5 Blatchf. 362.
Rossteuscher, Mortimer v. [See 9,863.]
Rossvally, United States v. [See 16,197.]
Rotan, The Samuel. [See 11,226.]
ROTCHFORD v. MEADE [12,083], 3 Cranch, C. C. 650.
Roter, Roberts v. [See 11,912.]
ROTH v. CITY INS. CO. [12,084], 6 McLean, 324.
Roth, Darst v. [See 3,582.]
Rothwell, Hayman's Adm'rs v. [See 6,267.]
Roudenbush, United States v. [See 16,198.]
Roulstone, Curry v. [See 3,497.]
ROUNDTREE v. McLAIN [12,084a], Hempst. 245.
ROUNSAVEL v. SCHOLFIELD [12,085], 2 Cranch, C. C. 139.
Rounsavel, United States v. [See 16,199.]
Rountree, Tyrell's Heirs v. [See 14,313.]
Rourke, Denike v. [See 3,787.]
ROUSE, In re [12,086], 1 McA. Pat. Cas. 286.
ROUSE v. FLETCHER [12,087], 9 O. G. 838.
ROUSE v. HAMPTON [12,088], 4 Amer. Law T. Rep. U. S. Cts. 195.
ROUSE v. INSURANCE CO. [12,089], 25 Law Rep. 523; 3 Wall. Jr. 367; 19 Leg. Int. 396.
Rouse,. Post v. [See 11,300.]
Rousmanier, Hunt v. [See 6,897.]
Rousmaniere, Hunt v. [See 6,898.]
Rousmaniere's Adm'rs, United States v. [See 16,200.]
Rousseau, Fry v. [See 5,141.]
Rousseau, Wilson v. [See 17,832.]
ROVENA, The [12,090], 1 Ware (309) 313.
ROVER, The [12,091], 2 Gall. 240.
Rowan, Beard v. [See 1,181.]
Rowan, Harrison v. [See 6,140-6,143.]
Rowan, Morgan v. [See 9,807.]
ROWE, In re [12,092], 18 N. B. R. 429.
ROWE v. BRIG, The [12,093], 1 Mason, 372.
ROWE v. CITY OF DUBLIN, The [12,094], 1 Ben. 46.
Rowe, The Levi. [See 8,293, 8,294.]
ROWELL, In re [12,095], 21 Vt. 620; 2 N. Y. Leg. Obs. 285; 6 Law Rep. 298.
Rowell, Hanson v. [See 6,043.]
Rowell, Kansas Val. Nat. Bank v. [See 7,611.]
Rowland, Ex parte. [See 9,675.]
ROWLAND, In re [12,096], 2 Hughes, 210.
ROWLAND v. EMPIRE STATE LIFE INS. CO. [12,097], 2 Cin. Law Bul. 56.
Roy, The James. [See 7,200, 7,201.]
Royal Canadian Ins. Co., Hunter v. [See 6,909.]
Royal George, The, Smith v. [See 13,102.]
ROYAL SAXON, The [12,098].
Royal Saxon, The, Taylor v. [See 13,803.]
Royal Saxon, The, Wall v. [See 17,093.]
Royall, United States v. [See 16,201, 16,202.]
Royer, Morris v. [See 9,835.]
R. P. CHASE, The [12,099], 3 Ware, 294.
R. P. Noble, The. [See 9,639, 9,640.]
R. R. Kirkland, The, Dunstan v. [See 4,181.]
RUAN v. GARDNER [12,100], 1 Wash. C. C. 145.
Rubber Coated Harness Trimming Co., Welling v. [See 17,382, 17,383.]
Rubber Step Mfg. Co., Brown v. [See 2,028.]
RUBBER STEP MFG. CO. v. METROPOLITAN R. CO. [12,101], 13 O. G. 549; 3 Ban. & A. 252; Merw. Pat. Inv. 356.
Rubber Tip Pencil Co. v. Hovey. [See 12,102.]
RUBBER TIP PENCIL CO. v. HOWARD [12,102], 9 Blatchf. 490; 1 O. G. 407; 5 Fish. Pat. Cas. 377.
RUBY, The [12,103], 5 Mason, 451.
RUBY, The [12,104], 5 Mason, 534.
RUCH v. ROCK ISLAND [12,105], 5 Biss. 95.
RUCHER v. CONYNGHAM [12,106], 2 Pet. Adm. 295.
Rucker, United States v. [See 16,203.]
RUCKMAN v. FIVE BOYS, The [12,107].
Ruckman, Mott v. [See 9,881.]
RUDD v. PAINE [12,108], 2 Cranch, C. C. 9.
RUDDELL, In re [12,109], 2 Lowell, 124.
Ruddell, Blakely v. [See 18,241.]
RUDDICK v. BILLINGS [12,110], Woolw. 330; 3 N. B. R. 61 (Quarto, 14); 2 West. Jur. 275.
RUDDY v. GOLDEN STATE, The [12,111], Hoff. Op. 477.
RUE v. DECKER [12,112], 3 McLean, 575.
RUEHLE, In re [12,113], 2 N. B. R. 577 (Quarto, 175); 2 Amer. Law T. Rep. Bankr. 59; 16 Pittsb. Leg. J. (O. S.) 5; 1 Chi. Leg. News, 186.
Ruffner, Dausman & Drummond Tobacco Co. v. [See 3,585.]
RUGG v. HAINES [12,114], 1 McA. Pat. Cas. 420.
RUGGLES v. BUCKNOR [12,115], 1 Paine, 358.
RUGGLES v. EDDY [12,116], 2 Ban. & A. 627; 12 O. G. 716.
RUGGLES v. EDDY [12,117], 10 Blatchf. 52; 5 Fish. Pat. Cas. 581.
RUGGLES v. EDDY [12,118], 11 Blatchf. 524; 1 Ban. & A. 92.
RUGGLES v. GENERAL INTEREST INS. CO. [12,119], 4 Mason, 74.
Ruggles, The, Hardy v. [See 6,062.]
Ruggles, Prouty v. [See 11,447.]
RUGGLES v. SIMONTON [12,120], 3 Biss. 325; 7 West. Jur. 131.
RUGGLES v. SOUTHERN MINN. R. CO. [12,121], 5 Chi. Leg. News, 110; 17 Int. Rev. Rec. 29.
Ruggles, Stevens v. [See 13,408.]
Ruggles, United States v. [See 16,204, 16,205.]
RUGGLES v. YOUNG [12,122], 1 McA. Pat. Cas. 160.
RUGSDALE, In re [12,123], 16 N. B. R. 215; 25 Pittsb. Leg. J. 64.
RUHL, In re [12,124], 5 Sawy. 186.
RULF v. PARKER [12,125], 1 Cooke, 365; Brunner, Col. Cas. 239.
RULE OF COURT, In re [12,126], 3 Woods, 502.
Rulon, The Virginia. [See 16,974.]
RUMACH v. QUEEN OF THE SOUTH, The [657a].
RUMBALL v. PACIFIC, The [10,643].
RUMER v. SCHELL [11,676].
RUMFORD CHEMICAL WORKS v. FINNIE [12,130], 2 Flip. 459; 25 Int. Rev. Rec. 209; 7 Reporter, 742; 20 Alb. Law J. 18.
RUMFORD CHEMICAL WORKS v. HECKER [12,131], 1 Ban. & A. 135.

[Federal Case numbers are given in brackets.]

RUMFORD CHEMICAL WORKS v. HECKER [12,-132], 11 Blatchf. 552; 5 O. G. 644; 1 Ban. & A. 120; 1 Amer. Law T. Rep. (N. S.) 519.
RUMFORD CHEMICAL WORKS v. HECKER [12,-133], 10 O. G. 289; 2 Ban. & A. 351.
RUMFORD CHEMICAL WORKS v. HECKER [12,-134], 11 O. G. 330; 2 Ban. & A. 386.
RUMFORD CHEMICAL WORKS v. LAUER [12,135], 10 Blatchf. 122; 3 O. G. 349; 5 Fish. Pat. Cas. 615; Merw. Pat. Inv. 133.
RUMFORD CHEMICAL WORKS v. VICE [12,136], 14 Blatchf. 179; 2 Ban. & A. 584; 11 O. G. 600.
Rumney, Mandeville v. [See 9,016.]
Rumney, Redfern v. [See 11,627.]
Rum River & M. Boom Co., United States v. [See 3 Fed. 552.]
Rumsey, Burrall v. [See 2,197.]
Rumsey, Christman v. [See 2,704.]
Rumsey, Cowing v. [See 3,296.]
Rumsey, United States v. [See 16,207.]
RUNAWAYS & PETITIONERS FOR FREEDOM [12,137], 4 Cranch, C. C. 489.
RUNDLE, In re [12,138], 2 N. B. R. 113 (Quarto, 49); 1 Chi. Leg. News, 30.
RUNDLE v. DELAWARE & R. CANAL [12,139], 1 Wall. Jr. 275.
Rundle v. Jones. [See 12,138.]
Rundlet, Jackson v. [See 7,145.]
Rundlett, United States v. [See 16,208.]
Runion, Varnum v. [See 16,892.]
Runkle, Herron v. [See 6,428.]
RUNZI, In re [12,139a], 3 Fed. Rep. 790.
RUPEE, The [12,140], 1 Haz. Reg. U. S. 202.
RUPP, In re [12,141], 4 N. B. R. 95 (Quarto, 25).
RUSCH v. DES MOINES COUNTY [12,142], Woolw. 313.
Rusk v. The Charles Morgan. [See 2,618.]
RUSK v. FREESTONE, The [12,143], 2 Bond, 234.
Russ, The Laura. [See 8,120.]
RUSSEL v. ASA R. SWIFT, The [12,144], Newb. 553.
Russel, Bank of Commerce v. [See 884.]
RUSSEL v. EMPIRE STATE, The [12,145], Newb. 541.
RUSSEL v. UNION INS. CO. [12,146], 1 Wash. C. C. 409; 4 Dall. 421.
RUSSEL v. UNION INS. CO. [12,147], 1 Wash. C. C. 440.
RUSSELL, Ex parte, [12,148], 16 N. B. R. 476.
RUSSELL v. ALLEN [12,149], 5 Dill. 235; 8 Cent. Law J. 314; 7 Reporter, 614.
RUSSELL v. ASHLEY [12,150], Hempst. 546.
RUSSELL v. BARKMAN [12,151].
Russell, Barbour v. [See 971.]
RUSSELL v. BARNEY [12,152], 6 McLean, 577.
Russell, Bartlett v. [See 1,080.]
RUSSELL v. BEEBE [12,153], Hempst. 704.
Russell, Blue v. [See 1,568.]
Russell, Butler v. [See 2,243.]
Russell, Driggs v. [See 4,084.]
Russell, English v. [See 4,491.]
Russell, Faxon v. [See 4,707.]
Russell, Flint v. [See 4,876.]
RUSSELL v. FORTY BALES COTTON, Proceeds of [12,154].
Russell, Frayser v. [See 5,067.]
Russell, Gray v. [See 5,728.]
RUSSELL v. GREGORY [12,155.]
Russell, Hall v. [See 5,943.]
Russell, Hamilton v. [See 5,989.]
RUSSELL v. HOWARD [12,156], 2 McLean, 489.
Russell, Kellogg v. [See 7,666.]
Russell, Lane v. [See 8,053.]
RUSSELL v. LUCAS [12,156a], Hempst. 91.
RUSSELL v. McCORD [12,157], 2 Flip. 139; 17 N. B. R. 508; 3 Cin. Law Bul. 594.
RUSSELL v. McLELLAN [12,158], 3 Woodb. & M. 157.
Russell, Mills v. [See 17,247.]
RUSSELL v. ORIENTAL, The [10,569a].
RUSSELL v. PERKINS [12,160], 1 Mason, 368.
RUSSELL v. PLACE [12,161], 9 Blatchf. 173; 5 Fish. Pat. Cas. 134.
Russell, Saxonville Mills v. [See 12,413.]
Russell, Scott v. [See 12,546.]
Russell, Spring v. [See 13,261.]
RUSSELL v. THOMAS [12,162], 10 N. B. R. 14; 10 Phila. 239; 31 Leg. Int. 189.
RUSSELL v. TOPPING [12,163], 5 McLean, 194.
RUSSELL v. UNITED STATES [12,164], 15 Blatchf. 26.
Russell, United States v. [See 16,209.]
Russell, Washington Mills v. [See 17,247.]
RUSSELL v. WHEELER [12,164a], Hempst. 3.
RUSSELL v. WIGGIN [12,165], 2 Story, 213; 5 Law Rep. 533.
Russell, Wills v. [See 17,773.]
Russell, Wyman v. [See 18,115.]
Russell, The Jessie. [See 7,298.]
RUSSELL & ERWIN MFG. CO. v. MALLORY [12,-166], 10 Blatchf. 140; 5 Fish. Pat. Cas. 632; 2 O. G. 495; Merw. Pat. Inv. 439.
RUSSELL & ERWIN MFG. CO. v. P. & F. CORBIN MFG. CO. [12,167], 12 Blatchf. 36; 1 Ban. & A. 159; 7 O. G. 383.
RUSSIA, The [12,168], 3 Ben. 471.
RUSSIA, The [12,169], 4 Ben. 572.
RUSSIA, The [12,170], 5 Ben. 84.
RUST, In re [12,171], 1 N. Y. Leg. Obs. 326.
Rust, Goodyear v. [See 5,584.]
RUTH, In re [12,172], 7 Amer. Law Reg. (N. S.) 157; 6 Int. Rev. Rec. 166; Bankr. Reg. Supp. 33; 1 N. B. R. 154; 6 Phila. 438; 24 Leg. Int. 356; 15 Pittsb. Leg. J. 62.
Rutherford, Fisher v. [See 4,823.]
RUTHERFORD v. MOORE [12,173], 1 Cranch, C. C. 388.
RUTHERFORD v. MOORE [12,174], 1 Cranch, C. C. 404.
Rutherford, United States v. [See 16,210.]
Rutherglen, Ex parte. [See 9,674.]
RUTHERGLEN v. WOLF [12,175], 1 Hughes, 78.
Rutland & B. R. Co., Boody v. [See 1,635.]
RUTLAND & B. R. CO. v. CROCKER [12,176], 4 Blatchf. 179; 29 Vt. 540; 21 Law Rep. 201.
RUTLEDGE v. BUCHANAN [12,177], Cooke, 363; Brunner, Col. Cas. 237.
RUTTER v. FERRIS, The [12,178], 4 Phila. 38; 17 Leg. Int. 116.
RUTTER v. MERCHANT [12,179], 1 Cranch, C. C. 36.
R. W. BURROWES, The [12,180], 7 Blatchf. 374.
R. W. SKILLINGER, The [12,181], 1 Flip. 436; 6 Amer. Law Rec. 352; 2 Cin. Law Bul. 257.
RYAN, In re [12,182], 6 N. B. R. 235.
RYAN, In re [12,183], 2 Sawy. 411; 5 Leg. Gaz. 263.
RYAN v. CATO, The [12,184], Bee, 241.
RYAN v. CENTRAL PAC. R. CO. [12,185], 5 Sawy. 260; 6 Reporter, 641.
Ryan, Cushman v. [See 3,515.]
RYAN v. GOODWIN [12,186], 3 Sumn. 514; 3 Law Rep. 220; 1 Robb, Pat. Cas. 725; Merw. Pat. Inv. 413.
RYAN v. GREEN [12,186a].
RYAN v. RINGGOLD [12,187], 3 Cranch, C. C. 5.
RYAN v. YOUNG [12,188], 9 Biss. 63; 8 Reporter, 229; 11 Chi. Leg. News, 353; 20 Alb. Law J. 79.
Ryan, The Ann. [See 428.]
RYBERG v. SNELL [12,189], 2 Wash. C. C. 294.
RYBERG v. SNELL [12,190], 2 Wash. C. C. 403.
Rycraft, United States v. [See 16,211.]
Ryder, Barnes v. [See 1,020.]
Ryer, Roberts v. [See 11,913.]
Ryerson, Allen v. [See 235.]
RYNAUD v. RICHARD COBDEN, The [12,191].

S

SABBICH v. PRINCE [12,192].
SABIN, In re [12,193], 9 N. B. R. 383.
SABIN, In re [12,194], 12 N. B. R. 142; 1 N. Y. Wkly. Dig. 101.
SABIN, In re [12,195], 18 N. B. R. 151; 10 Chi. Leg. News, 364; 3 Cin. Law Bul. 625.
Sabin, Chase v. [See 2,627.]
SABIN v. CONNOR [12,196].
SABIN v. CONNOR [12,197].
Sabine, Aetna Ins. Co. v. [See 97.]
Sabine, The, Nott v. [See 10,366.]
SABIONCELLO, The [12,198], 7 Ben. 357.
SABIONCELLO, The [12,199], 8 Ben. 90.
SACCHI, In re [12,200], 10 Blatchf. 29; 4 Chi. Leg. News, 289; 6 N. B. R. 497; 43 How. Pr. 252.
SACCHI, In re [12,201], 6 N. B. R. 398; 43 How. Pr. 250.
Sachs, Webb v. [See 17,325.]
SACKET v. McDONNELL [12,202], 8 Biss. 394.
SACKETT v. DAVIS [12,203], 3 McLean, 101.
Sackett, Merritt v. [See 9,484.]
SACKETT'S HARBOR BANK v. BARRY [12,204], 1 Bond, 154.
Sacks, Mann v. [See 9,035.]
Sa-coo-da-cot, United States v. [See 16,212.]
SACRIDER v. BROWN [12,205], 3 McLean, 481.
SADDLER v. HUDSON [12,206], 2 Curt. 6.
SADLER v. MAXWELL [12,207], 3 Blatchf. 134.
SADLER v. MORE [12,208], 1 Cranch, C. C. 212.
SADLIER v. FALLEN [12,209], 2 Curt. 190.
SADLIER v. FALLEN [12,210], 2 Curt. 579.
SAFE DEPOSIT & SAVINGS INST., In re [12,211], 7 N. B. R. 392.
SAFFORD, Ex parte [12,212], 2 Lowell, 563; 15 N. B. R. 564; 15 Alb. Law J. 328; 24 Pittsb. Leg. J. 159.
SAFFORD v. BURGESS [12,213], 16 N. B. R. 402.
SAGE v. TAUSZKY [12,214], 6 Cent. Law J. 7; 24 Int. Rev. Rec. 12; 2 Cin. Law Bul. 330.
SAGE v. WYNKOOP [12,215], 16 N. B. R. 363.
SAGEMAN v. BRANDYWINE, The [12,216], Newb. 5.
Saginaw Valley & St. L. R. Co., MacDonald v. [See 8,766.]
SAGORY v. WISSMAN [12,217], 2 Ben. 240; 1 Amer. Law T. Rep. U. S. Cts. 41.
SAILOR PRINCE, The [12,218], 1 Ben. 234.
SAILOR PRINCE, The [12,219], 1 Ben. 461.
SAILOR'S BRIDE, The [12,220], 1 Brown's Adm. 68; 17 Leg. Int. 245.
Saine, Swope v. [See 13,705.]
St. Ander. The. [See 2,568.]
St. Clair, Riggs v. [See 11,829.]
St. Clair County, Lyell v. [See 8,621.]
St. Clair County, Nicolay v. [See 10,257.]
Ste. Genevieve, Welch v. [See 17,372.]
ST. GEORGE, The [12,221], Blatchf. Pr. Cas. 551.
ST. HELEN MILL CO., In re [12,222], 3 Sawy. 88; 10 N. B. R. 414; 8 West. Jur. 597.
St. James, The, Roberts v. [See 11,914.]
ST. JOHN, The [12,223], 2 Ben. 192.
ST. JOHN, The [12,224], 7 Blatchf. 220.
ST. JOHN, The [12,225], 2 Spr. 266.
ST. JOHN v. ERIE RY. CO. [12,226], 10 Blatchf. 271.
St. John v. Missouri, K. & T. Ry. Co. [See 10,767, 10,768.]
St. John, Planters' Bank v. [See 11,208.]
ST. JOHN v. PRENTISS [12,194].
ST. JOHN v. SOUTHERN EXP. CO. [12,228], 1 Woods, 612; 10 Amer. Law Reg. (N. S.) 777.
St. John's Parish, Mauro v. [See 9,313.]
ST. JOSEPH, The [12,229], 1 Brown's Adm. 202; 1 Chi. Leg. News, 321; 4 Amer. Law Rev. 186; 1 Leg. Gaz. 22.
ST. JOSEPH, The [12,230], 7 N. Y. Wkly. Dig. 35; 10 Chi. Leg. News, 269.
St. Joseph, The, Dike v. [See 3,908.]
St. Joseph & D. C. R. Co., Farmers' Loan & Trust Co. v. [See 4,669.]
ST. LAURENT, The [12,231], 7 Ben. 7.
ST. LAWRENCE, The [12,232], 1 Gall. 467.
ST. LAWRENCE, The [12,233], 2 Gall. 19.
ST. LAWRENCE, The [12,234], 3 Ware, 211.
St. Lawrence, The, Tupper v. [See 14,240.]
St. Louis, Chaffin v. [See 2,572, 2,573.]
St. Louis, Illinois & St. L. Railroad & Canal Co. v. [See 7,007.]
ST. LOUIS v. JOHNSON [12,235], 5 Dill. 241; 9 Cent. Law J. 91.
St. Louis, Northwestern Union Packet Co. v. [See 10,345.]
ST. LOUIS, A. & T. H. R. CO. v. INDIANAPOLIS & ST. L. R. CO. [12,236], 9 Biss. 99.
ST. LOUIS, A. & T. H. R. CO. v. INDIANAPOLIS & ST. L. R. CO. [12,237], 9 Biss. 144; 9 Reporter, 103; 12 Chi. Leg. News, 73; 4 Cin. Law Bul. 922.
St. Louis & St. J. R. Ass'n, Kappner v. [See 7,612.]
St. Louis, I. M. & S. R. Co., Parmley v. [See 10,767, 10,768.]
St. Louis, I. M. & S. R. Co., Union Trust Co. v. [See 14,402, 14,403.]
ST. LOUIS INS. CO. v. ST. LOUIS, V. & T. H. R. CO. [12,238], 7 Ins. Law J. 343; 6 Reporter, 231; 1 Month. Jur. 750; 24 Int. Rev. Rec. 236; 26 Pittsb. Leg. J. 11.
St. Louis, K. C. & N. R. Co., Eakin v. [See 4,236.]
St. Louis Life Ins. Co., Macumber v. [See 8,929.]
St. Louis Life Ins. Co., Nettleton v. [See 10,128.]
St. Louis Mut. Life Ins. Co., Anderson v. [See 362.]
St. Louis Mut. Life Ins. Co., Jarman v. [See 7,221.]
St. Louis Mut. Life Ins. Co., Robinson v. [See 11,964.]
ST. LOUIS NAT. BANK v. PAPIN [12,239], 4 Dill. 29; 22 Int. Rev. Rec. 343; 3 Cent. Law J. 669; 1 Thomp. Nat. Bank Cas. 326.
ST. LOUIS SMELTING & REFINING CO. v. KEMP [12,239a], King, Laws & Pr. Colo. 197.
ST. LOUIS SMELTING & REFINING CO. v. RAY [12,239b], King, Laws & Pr. Colo. 202.
ST. LOUIS STAMPING CO. v. QUINBY [12,240], 16 O. G. 135; 4 Ban. & A. 192.
ST. LOUIS STAMPING CO. v. QUINBY [12,240a], 18 O. G. 571; 5 Ban. & A. 275.
St. Louis, V. & T. H. R. Co., St. Louis Ins. Co. v. [See 12,238.]
St. Louis Wire-Goods Co., Adams & W. Mfg. Co. v. [See 72.]
ST. LUKE'S HOSPITAL v. BARCLAY [12,241], 3 Blatchf. 259.
ST. MARY, The [12,242], 2 Blatchf. 329.
St. Oloff, The, Weiberg v. [See 17,357.]
ST. PAUL, The [12,243], 3 Cin. Law Bul. 321; 10 Chi. Leg. News, 252.
St. Paul, Northwestern Union Packet Co. v. [See 10,346.]
St. Paul, Warren v. [See 17,199.]
St. Paul & C. Ry. Co., McLean v. [See 8,892, 8,893.]
St. Paul & P. R. Co., Hopkins v. [See 6,690.]
St. Paul & P. R. Co., Kennedy v. [See 7,706, 7,707.]
St. Paul & P. R. Co., Wetmore v. [See 3 Fed. 177.]
St. Paul & S. C. R. Co., Chamberlain v. [See 2,578.]
ST. PAUL FIRE & MARINE INS. CO v. LAKE SUPERIOR, The [12,244], 5 Ins. Law J. 73; 7 Chi. Leg. News, 259.
St. Paul Fire & Marine Ins. Co., Sibley v. [See 12,830.]
St. Paul Water Co., Ware v. [See 17,172.]
ST. THOMAS, The [12,245].
SALA v. NEW ORLEANS [12,246], 2 Woods, 188.
SALDERONDO v. NOSTRA SIGNORA DEL CAMINO, The [12,247], Bee, 43.
Sale, Pennington v. [See 10,939.]
Salem, Wythe v. [See 18,121.]
Salem Flouring Mills Co., Oliphant v. [See 10,486.]
SALEM'S CARGO, The [12,248], 1 Spr. 389; 20 Law Rep. 669.
SALEM & L. R. CO. v. BOSTON & L. R. CO. [12,249], 21 Law Rep. 210.

[Federal Case numbers are given in brackets.]

SALENTINE v. FINK [12,250], 8 Biss. 503; 8 Reporter, 489; 11 Chi. Leg. News, 384; 20 Alb. Law J. 335.
Salentine, United States v. [See 16,213.]
Saline County, Merriwether v. [See 9,485.]
Saline County, Pepper v. [See 10,972.]
SALISBURY v. SANDS [12,251], 2 Dill. 270.
Salisbury, Stephens v. [See 13,369.]
Salisbury, United States v. [See 16,214.]
Salisbury, The D. C. [See 3,694.]
SALKEY, In re [12,252], 5 Biss. 486; 9 N. B. R. 107; 6 Chi. Leg. News, 69; 2 Am. Law Rec. 502; 21 Pittsb. Leg. J. 56.
SALKEY, In re [12,253], 6 Biss. 269; 11 N. B. R. 423; 7 Chi. Leg. News, 178.
SALKEY, In re [12,254], 6 Biss. 280; 11 N. B. R. 516; 7 Chi. Leg. News, 195.
SALLEE, Ex parte [12,256].
SALLEE, In re [12,256], 2 N. B. R. 228 (Quarto, 78); 2 Amer. Law T. Rep. Bankr. 7; 1 Gaz. 78.
Sallie C. Morton, The, Wood v. [See 17,962.]
SALLY, The [12,257], 1 Gall. 58.
SALLY, The [12,258], 1 Gall. 401.
Sally, United States v. [See 16,215.]
SALLY MAGEE, The [12,259], Blatchf. Pr. Cas. 379.
SALLY MAGEE, The [12,260], Blatchf. Pr. Cas. 382; Bett's Pr. Cas.
SALLY MAGEE, The [12,261], Blatchf. Pr. Cas. 596.
Sally, Magee, The, United States v. [See 16,216.]
SALMON v. BURGESS [12,262], 1 Hughes, 356; 21 Int. Rev. Rec. 333.
SALMON FALLS MFG. CO. v. GODDARD [12,263], 25 Hunt, Mer. Mag. 715; 26 Hunt, Mer. Mag. 588.
SALMON FALLS MFG. CO. v. GODDARD [12,263.]
SALMON FALLS MFG. CO. v. TANGIER, The [12,265], 6 Amer. Law Reg. 504; 21 Law Rep. 6; 42 Hunt, Mer. Mag. 453.
SALMON FALLS MFG. CO. v. TANGIER, The [12,266], 1 Cliff. 396.
SALMON FALLS MFG. CO. v. TANGIER, The [12,267], 3 Ware, 110.
SALMONS, In re [12,268], 2 N. B. R. 56 (Quarto, 19); 15 Pittsb. Leg. J. (O. S.) 541.
SALT COMPANY OF ONONDAGA v. WILKINSON [12,269], 8 Blatchf. 30.
Salter, Burton v. [See 2,218.]
Salter, Sampayo v. [See 12,277.]
SALT MFG. CO. v. THOMAS [10,956], 3 Leg. Gaz. 316; 1 Leg. Gaz. Rep. 275.
SALTONSTALL v. STOCKTON [12,271], Taney, 11.
Saluda, The, The Washington v. [See 17,232.]
SALVOR, The [12,272], 4 Phila. 409; 18 Leg. Int. 357.
Salvor Wrecking, Etc., Co., Leathers v. [See 8,164.]
SALVOR WRECKING CO. v. SECTIONAL DOCK CO. [12,273], 3 Cent. Law J. 640; 12 Pac. Law Rep. 74.
SALZOBEL v. ROLLING WAVE, The [12,274].
SAM v. GREEN [12,275], 2 Cranch, C. C. 165.
SAM GATY, The [12,276], 5 Biss. 190.
Sam Kirkman, The, McAllister v. [See 8,658.]
SAMPAYO v. SALTER [12,277], 1 Mason, 43.
SAMPLES v. BANK [12,278], 1 Woods, 523.
SAMPSON, The [12,279], 4 Blatchf. 28.
SAMPSON, The [12,280], 3 Wall. Jr. 14; 3 Amer. Law Reg. 337.
Sampson, The. [See 7,057.]
SAMPSON v. JOHNSON [12,281], 2 Cranch, C. C. 107.
Sampson, Foster v. [See 4,982.]
Sampson, Winsor v. [See 17,888.]
SAM SLICK, The [12,282], 2 Curt. 480.
SAM SLICK, The [12,283], 1 Spr. 289; 18 Law Rep. 162.
SAMSON v. BLAKE [12,284], 6 N. B. R. 401.
Samson v. Blake. [See 2,802.]
SAMSON v. BURTON [12,285], 5 Ben. 325; 4 N. B. R. 1 (Quarto, 1).
SAMSON v. BURTON [12,286], 5 Ben. 343; 5 N. B. R. 459.
Samson v. Clark. [See 2,802.]
SAMUEL v. CHILDS [12,287], 4 Cranch, C. C. 189.
SAMUEL v. HOLLADAY [12,288], Woolw. 400; McCahon, 214; 1 Kan. 612.
Samuel Rotan, The. [See 11,226.]
SAMUELS v. EVANS [12,289], 1 McLean, 473.
Samuels v. Holliday. [See 12,288.]
Samuel Strong, The, Wick v. [See 17,607.]
SAM WELLER, The [12,290], 5 Ben. 293.
Sanborn, Chase v. [See 2,628.]
SANBORN v. STETSON [12,291], 2 Story, 481.
Sanborn, Swann v. [See 13,675.]
Sanchez, United States v. [See 16,217, 16,218.]
SANCHO v. ATWOOD [12,291a].
S. & B. SMALL, The [12,291b], 8 Ben. 523.
Sander, United States v. [See 16,219.]
SANDERS, Ex parte [12,292].
SANDERS v. ELLEN HARDY, The [12,293], 1 Chi. Leg. News, 285; 1 Leg. Gaz. 22.
SANDERS v. HAMILTON [12,294], Brunner, Col. Cas. 20; 2 Hayw. N. C. 226, 282.
SANDERS v. LOGAN [12,295], 2 Fish. Pat. Cas. 167; 9 Amer. Law Reg. 475; 2 Pittsb. Rep. 241; 8 Pittsb. Leg. J. 361.
SANDERS v. PARSONS [12,296].
SANDERS v. SEA FOWL, The [12,296a].
Sanders, Seymour v. [See 12,690.]
Sanders, United States v. [See 16,220.]
SANDERSON'S CASE [12,297], 3 Cranch, C. C. 638.
SANDERSON v. ANN JOHNSON, The [12,297a], 3 Adm. Rec. 159; 4 Adm. Rec. 527.
SANDERSON v. COLUMBIAN INS. CO. [12,298], 2 Cranch, C. C. 218.
SANDERSON v. COLUMBUS, The [12,299], 4 Pa. Law J. Rep. 493; 3 Amer. Law J. (N. S.) 268; 8 Leg. Int. 31.
Sanderson v. Ladd. [See 17,352.]
SANDERSON v. SERAT [12,300], 5 Cranch, C. C. 485.
Sanderson, United States Annunciator, Etc., Co. v. [See 16,790.]
Sanderson, The John. [See 7,364.]
Sandford, The Mary. [See 9,225.]
Sandford, United States v. [See 16,221.]
SANDS, In re [12,301], 7 Ben. 19.
SANDS' CASE [12,302], 1 U. S. Law J. 15.
SANDS v. CHAMPLIN [12,303], 1 Story, 376.
SANDS v. DELAFIELD [12,304], 2 Paine, 409.
Sands, Salisbury v. [See 12,251.]
SANDS v. SMITH [12,305], 1 Abb. U. S. 368; 1 Dill. 290; 4 West. Jur. 189.
SANDS v. WARDWELL [12,306], 3 Cliff. 277.
Sands, Wood v. [See 17,963.]
SANDS ALE BREWING CO., In re [12,307], 3 Biss. 175; 6 N. B. R. 101; 4 Chi. Leg. News, 137; 1 Bench & Bar (N. S.) 98; 6 Amer. Law Rev. 574.
SANDUSKY, In re [12,308], 17 N. B. R. 452; 10 Chi. Leg. News, 204.
Sandusky, The, Olmstead v. [See 10,504.]
Sandusky Seat Co., Comstock v. [See 13,409.]
Sandwich, The, Stevens v. [See 13,409.]
Sandy Hook, The. [See 10,607, 10,608.]
SANDY RIVER BANK v. MERCHANTS', Etc., BANK [12,309], 1 Biss. 146.
SANFORD, In re [12,310], 7 N. B. R. 351.
SANFORD v. BOYD [12,311], 2 Cranch, C. C. 78.
Sanford, Bristol v. [See 1,893.]
SANFORD v. LACKLAND [12,312], 2 Dill. 6.
SANFORD v. MERRIMACK HAT CO. [12,313], 4 Cliff. 404; 2 Ban. & A. 408; 10 O. G. 466; 15 Alb. Law J. 12.
SANFORD v. MESSER [12,314], Holmes, 149; 5 Fish. Pat. Cas. 411; 2 O. G. 470.
SANFORD v. PORTSMOUTH [12,315], 2 Flip. 105; 6 Cent. Law J. 147; 2 Month. Jur. 14; 6 N. Y. Wkly. Dig. 335.
Sanford, Rhinelander v. [See 11,739.]
San Francisco, Bayerque v. [See 1,137.]
San Francisco, Hoadley v. [See 6,544.]
SAN FRANCISCO v. UNITED STATES [12,316], 4 Sawy. 553.
SAN FRANCISCO SAVINGS & LOAN SOC. v. CARY [12,317], 2 Sawy. 333; 17 Int. Rev. Rec. 109.
Sanger, Ex parte. [See 4,835.]
SANGER, In re [12,318], 5 N. B. R. 54.
Sanger, Ferson v. [See 4,751, 4,752.]
SANGER v. SARGENT [12,319], 8 Sawy. 93.
SANGSTER v. MILLER [12,320], 5 Blatchf. 243; 2 Fish. Pat. Cas. 563; Merw. Pat. Inv. 92.
SANGSTER v. QUANTRILL [12,321], 1 Hayw. & H. 18.
SAN JOSE INDIANO, The [12,322], 2 Gall. 268.
San Jose, Bragg v. [See 1,803.]

[Federal Case numbers are given in brackets.]

SAN JOSE INDIANO, The [12,323], 2 Gall. 311.
SAN JOSE INDIANO, The [12,324], 1 Mason, 38.
SANTA ANNA, The [12,325], 1 Blatchf. & H. 79.
SANTA CLAUS, The [12,326], 1 Blatchf. 370.
SANTA CLAUS, The [12,327], Olc. 428.
SANTEE, The [12,328], 2 Ben. 519.
SANTEE, The [12,329], 6 Blatchf. 1.
SANTEE, The [12,330], 7 Blatchf. 186.
SANTIAGO v. MORGAN [12,331], Hoff. Op. 447.
SANTIAGO DE CUBA, The [12,332], 4 Ben. 264.
SANTIAGO DE CUBA, The [12,333], 10 Blatchf. 444.
Santissima Trinidad, The. [See 2,568.]
Santissima Trinidad, The, Canizares v. [See 2,383.]
Santos, Bowden v. [See 1,716.]
Santos, United States v. [See 16,222.]
Sapphire, The, Pope v. [See 11,276.]
SARAGOSSA, The [12,334], 1 Ben. 551.
SARAGOSSA, The [12,335], 1 Ben. 553.
SARAGOSSA, The [12,336], 2 Ben. 544.
Saragossa, The, Hussey v. [See 6,949.]
SARAH, The [12,337], Blatchf. Pr. Cas. 195.
SARAH, The [12,338], 2 Spr. 31.
SARAH v. TAYLOR [12,339], 2 Cranch, C. C. 155.
Sarah A. Boice, The, James v. [See 7,183.]
SARAH AND CAROLINE, The [12,340], Blatchf. Pr. Cas. 123.
SARAH AND CAROLINE, The [12,341], Blatchf. Pr. Cas. 214.
SARAH ANN, The [12,342], 2 Sumn. 206.
SARAH BERNICE, The [12,343], 1 Hask. 78.
SARAH B. HARRIS, The [12,344], 1 Hask. 52.
Sarah B. Harris, The, United States v. [See 16,-223.]
Sarah E. Brown, The, Hovey v. [See 6,744.]
SARAH HARRIS, The [12,345], 7 Ben. 28.
SARAH HARRIS, The [12,346], 7 Ben. 177.
SARAH HARRIS, The [12,347], 13 Blatchf. 503.
SARAH JANE, The [12,348], 1 Blatchf. & H. 401.
SARAH JANE, The [12,349], 1 Lowell, 203; 2 Amer. Law Rev. 455.
SARAH J. WEED, The [12,350], 2 Lowell, 555.
SARAH M. NEWHALL, The [12,351], Blatchf. Pr. Cas. 629.
Sarah Sands, The, O'Connor v. [See 3,115.]
SARAH STARR, The [12,352], Blatchf. Pr. Cas. 69.
SARAH STARR, The [12,353], Blatchf. Pr. Cas. 650.
SARAH STARR, The [12,354], 1 Spr. 453.
Sarah Starr, The. [See 105, 106.]
SARATOGA, The [12,355], 2 Gall. 164; 6 Hall, Law J. 12.
SARATOGA, The, v. FOUR HUNDRED AND THIRTY-EIGHT BALES OF COTTON [12,356], 1 Woods, 75.
SARCHET v. GENERAL ISAAC DAVIS, The [12,-357], Crabbe, 185; 1 Liv. Law Mag. 594.
Sarchet, United States v. [See 16,224.]
Sardo, Bestor v. [See 1,363.]
SARDO v. FONGERES [12,358], 3 Cranch, C. C. 655.
SARGEANT v. FIRST NAT. BANK [12,359], 7 Reporter, 231; 6 Wkly. Notes Cas. 370; 26 Pittsb. Leg. J. 191.
Sargeant, Hart, B. & M. Mfg. Co. v. [See 6,156.]
SARGEANT v. STATE BANK OF INDIANA [12,-360], 4 McLean, 339.
Sargeant, The D. [See 4,098.]
SARGENT, In re [12,361], 13 N. B. R. 144; 1 N. Y. Wkly. Dig. 435.
SARGENT v. CARTER [12,362], 1 Fish. Pat. Cas. 277; 21 Law Rep. 651; 11 Month. Law Rep. 651.
SARGENT v. INHABITANTS OF BRISTOL [12,363], 2 Hask. 112.
SARGENT v. LARNED [12,364], 2 Curt. 340.
Sargent, Mason v. [See 9,253.]
Sargent, Rogers v. [See 12,020.]
Sargent, Sanger v. [See 12,319.]
SARGENT v. SEAGRAVE [12,365], 2 Curt. 553.
Sargent, Stanley Works v. [See 13,289.]
SARGENT v. YALE LOCK MFG. CO. [12,366], 17 Blatchf. 244; 4 Ban. & A. 574; 17 O. G. 105.
SARGENT v. YALE LOCK MFG. CO. [12,367], 17 Blatchf. 249; 17 O. G. 106; 4 Ban. & A. 579.
SARGENT MFG. CO. v. WOODRUFF [12,368], 5 Biss. 444.
Sarmiento, Green v. [See 5,760.]
Sarmiento, Post v. [See 11,301.]
SARVEN v. HALL [12,369], 9 Blatchf. 524; 5 Fish. Pat. Cas. 415; 1 O. G. 437; Merw. Pat. Inv. 435.
SARVEN v. HALL [12,370], 11 Blatchf. 295; 4 O. G. 666; 6 Fish. Pat. Cas. 495.
Satterfield, Findley v. [See 4,792.]
Satterlee, Robinson v. [See 11,965-11,967.]
Sauerwein, Gale v. [See 5,191.]
Saule, Howell v. [See 6,782.]
Saulsbury, The Willard. [See 17,681.]
SAUNDERS, In re [12,371], 2 Lowell, 444; 13 N. B. R. 164.
SAUNDERS, The [12,372], 2 Gall. 210.
Saunders, Bank of Alexandria v. [See 852.]
SAUNDERS v. BUCKUP [12,373], 1 Blatchf. & H. 264.
SAUNDERS v. HANOVER, The [12,374], 2 Quart. Law J. 1.
SAUNDERS v. HOWARD [12,375].
SAUNDERS v. MASON [12,376], 5 Cranch, C. C. 470.
Saunders, Orner v. [See 10,584.]
SAUNDERS v. VICTORIA, The [12,377], 11 Leg. Int. 70.
SAUNDERSON, Ex parte [12,378], 1 Cranch, C. C. 219.
Sautbrink v. The Plymouth Rock. [See 11,235-11,-237.]
SAUTHOFF, In re [12,379], 7 Biss. 167; 14 N. B. R. 364; 5 Amer. Law Rec. 173; 8 Chi. Leg. News, 370; 3 Cent. Law J. 544; 3 N. Y. Wkly. Dig. 96.
SAUTHOFF, In re [12,380], 8 Biss. 65; 16 N. B. R. 181; 5 Cent. Law J. 364.
SAVAGE, In re [12,381], 16 N. B. R. 368.
SAVAGE v. BUFFALO, The [12,382].
SAVAGE v. D'WOLF [12,383], 1 Blatchf. 343.
Savage, Hall v. [See 5,944.]
Savage, United States v. [See 16,225.]
Savage, Wildes v. [See 17,653.]
Savage Min. Co., Thornburgh v. [See 13,986.]
Savaloff, United States v. [See 16,226.]
SAVANNAH, The [12,384].
SAVANNAH v. ATLANTIC & G. R. CO. [12,385], 3 Woods, 432.
Savannah, The, United States v. [See 16,226a.]
SAVANNAH PRIVATEERS, The [12,386].
Savannah Steamship Co., Nicholl v. [See 10,225.]
SAVARY v. GERMANIA BANK [12,387], 7 Reporter, 615; 19 Alb. Law J. 521.
SAVARY v. GOE [12,388], 3 Wash. C. C. 140.
SAVARY v. LAUTH [12,389], 1 McA. Pat. Cas. 691.
SAVIN v. JUNO, The [12,390], 1 Woods, 300.
SAWIN v. GUILD [12,391], 1 Gall. 485; 1 Robb, Pat. Cas. 47.
SAWTELLE v. RAILWAY PASS. ASSUR. CO. [12,-392], 15 Blatchf. 216.
SAWYER, In re [12,393], 2 Hask. 153.
SAWYER, In re [12,394], 2 Hask. 337.
SAWYER, In re [12,395], 2 Lowell, 475; 14 N. B. R. 241; 3 N. Y. Wkly. Dig. 143.
SAWYER, In re [12,396], 2 Lowell, 551; 16 N. B. R. 460; 15 Alb. Law J. 280.
SAWYER v. AULTMAN & T. MFG. CO. [12,397], 5 Biss. 165.
Sawyer, Bailey v. [See 744.]
Sawyer, Bartholomew v. [See 1,070.]
SAWYER v. BIXBY [12,398], 9 Blatchf. 361; 1 O. G. 165; 5 Fish. Pat. Cas. 283; Merw. Pat. Inv. 326.
Sawyer, Cornier v. [See 3,245.]
Sawyer, Earle v. [See 4,247.]
SAWYER v. GILL [12,399], 3 Woodb. & M. 97.
SAWYER v. HOAG [12,400], 3 Biss. 293.
Sawyer, Jordan v. [See 7,521.]
SAWYER v. MORTE [12,401], 3 Cranch, C. C. 331.
SAWYER v. OAKMAN [12,402], 7 Blatchf. 290; 5 Amer. Law Rev. 381.
SAWYER v. OAKMAN [12,403], 11 Blatchf. 65.
SAWYER v. OAKMAN [12,404], 1 Lowell, 134.
Sawyer, Schedda v. [See 12,443.]
SAWYER v. SHANNON [12,405], 1 Overt. 465; Brunner, Col. Cas. 111.
SAWYER v. STEELE [12,406], 3 Wash. C. C. 464.
SAWYER v. STEELE [12,407], 4 Wash. C. C. 227.
SAWYER v. SWITZERLAND MAR. INS. CO. [12,-408], 14 Blatchf. 451.
SAWYER v. TURPIN [12,409], Holmes, 226.
SAWYER v. TURPIN [12,410], 2 Lowell, 29; 5 N. B. R. 339.
Sawyer, United States v. [See 16,227.]
SAXE v. HAMMOND [12,411], Holmes, 456; 1 Ban. & A. 629; 7 O. G. 781.

[Federal Case numbers are given in brackets.]

SAXON, The [12,412], 4 Ben. 18.
SAXONVILLE MILLS v. RUSSELL [12,413], 1 Lowell, 450; 11 Int. Rev. Rec. 207.
SAYLES v. CHICAGO & N. W. R. CO. [12,414], 1 Biss. 468; 2 Fish. Pat. Cas. 523.
SAYLES v. CHICAGO & N. W. R. CO. [12,415], 3 Biss. 52; 4 Fish. Pat. Cas. 584; 3 Chi. Leg. News, 329.
SAYLES v. CHICAGO, B. & Q. R. CO. [12,416].
SAYLES v. DUBUQUE & S. C. R. CO. [12,417], 5 Dill. 561; 3 Ban. & A. 219.
SAYLES v. ERIE RY. CO. [12,418], 2 N. J. Law J. 212.
SAYLES v. GRAND TRUNK RY. CO. [12,419].
SAYLES v. HAPGOOD [12,420], 2 Biss. 189; 3 Fish. Pat. Cas. 632; Merw. Pat. Inv. 707; 2 Chi. Leg. News, 9.
SAYLES v. LAKE SHORE & M. S. RY. CO. [12,-420a], 9 Fed. 515.
Sayles, Marsh v. [See 9,119.]
SAYLES v. NORTHWESTERN INS. CO. [12,421], 2 Curt. 212.
SAYLES v. NORTHWESTERN INS. CO. [12,422], 2 Curt. 610.
SAYLES v. OREGON CENT. RY. CO. [12,423], 6 Sawy. 31; 8 Reporter, 424; 4 Ban. & A. 429; 11 Chi. Leg. News, 383.
Sayles, Phettiplace v. [See 11,083.]
SAYLES v. RICHMOND, F. & P. R. CO. [12,424], 3 Hughes, 172; 25 Int. Rev. Rec. 209; 16 O. G. 43; 7 Reporter, 743; 4 Ban. & A. 239; 11 Chi. Leg. News, 281; 4 Cin. Law Bul. 313.
SAYLES v. SOUTH CAROLINA R. CO. [12,425].
S. B. Wheeler, The, Rogers v. [See 12,021.]
SCAIFE v. FULTON [12,426], 2 Ban. & A. 235; 9 O. G. 1164.
SCAIFE v. MAGENS [12,426a], 19 O. G. 791.
Scaife v. Sherriffs. [See 12,426.]
SCAMMON, In re [12,427], 6 Biss. 130; 6 Chi. Leg. News, 328; 10 Alb. Law J. 29; 1 Amer. Law T. Rep. (N. S.) 372; 21 Pittsb. Leg. J. 207; 6 Leg. Gaz. 229.
SCAMMON, In re [12,428], 6 Biss. 145.
SCAMMON, In re [12,429], 6 Biss. 195; 11 N. B. R. 280; 7 Chi. Leg. News, 42; 9 West. Jur. 175.
SCAMMON, In re [12,430], 10 N. B. R. 66; 1 Cent. Law J. 328; 20 Int. Rev. Rec. 33.
SCAMMON v. BOWERS [12,431], 1 Hask. 496.
SCAMMON v. COLE [12,432], 3 Cliff. 472; 5 N. B. R. 257.
SCAMMON v. COLE [12,433], 1 Hask. 214; 3 N. B. R. 393 (Quarto, 100).
SCAMMON v. HOBSON [12,434], 1 Hask. 406.
SCAMMON v. KIMBALL [12,435], 5 Biss. 431; 6 Amer. Law T. Rep. 424; 8 N. B. R. 337; 18 Int. Rev. Rec. 118; 4 Chi. Leg. News, 284; 2 Ins. Law J. 775; 5 Leg. Gaz. 321.
SCANLON v. UNION FIRE INS. CO. [12,436], 4 Biss. 511.
Scannell, Ex parte. [See 5,787.]
SCARLETT v. VAN INWAGEN [12,437], 9 Biss. 157; 8 Reporter, 673; 12 Chi. Leg. News, 49.
SCHAPTER, In re [12,438], 9 N. B. R. 324.
SCHARLOCK v. GLOBE, The [12,439], Crabbe, 278.
Schatz, Schiltz v. [See 12,459.]
SCHAUM v. BAKER [12,440], 2 Amer. Law T. (N. S.) 15.
SCHAUMBURG, Ex parte [12,441], 1 Hayw. & H. 249.
SCHAUMBURG v. UNITED STATES [12,442], 35 Leg. Int. 29; 25 Pittsb. Leg. J. 99; 13 Phila. 466; 5 Reporter, 551; 17 Alb. Law J. 172; 24 Int. Rev. Rec. 76.
SCHEDDA v. SAWYER [12,443], 4 McLean, 181.
SCHEERDT v. SCHELL [12,444].
SCHEIFFER, In re [12,445], 2 N. B. R. 591 (Quarto, 179); 1 Chi. Leg. News, 261; 1 Leg. Gaz. 30.
Schell, Abranches v. [See 21.]
Schell, Bailey v. [See 745.]
Schell, Benkard v. [See 1,307.]
Schell, Christ v. [See 2,699.]
Schell, Field v. [See 4,771, 4,772.]
Schell, Greenleaf v. [See 5,781, 5,782.]
Schell, Hutton v. [See 6,961, 6,962.]
Schell, Irvin v. [See 7,072.]
Schell, Jones v. [See 7,493.]
Schell, Knight v. [See 7,887.]
Schell, Knoedler v. [See 7,889, 7,890.]
Schell, Reimer v. [See 11,676.]
Schell, Wetter v. [See 17,470.]
SCHELTER v. YORK [12,446], Crabbe, 449.
SCHENCK, In re [12,447], 5 N. B. R. 93.
SCHENCK v. FREMONT, The [12,448], 1 Bond, 57.
SCHENCK v. MARSHALL COUNTY [12,449], 1 Biss. 533.
SCHENCK v. PEAY [12,450], Woolw. 175; 2 Amer. Law T. Rep. U. S. Cts. 111; 10 Int. Rev. Rec. 54; 1 Chi. Leg. News, 363; 11 Int. Rev. Rec. 12.
SCHENCK v. PEAY [12,451], 1 Dill. 267; 10 Int. Rev. Rec. 54; 2 Amer. Law T. Rep. U. S. Cts. 112; 1 Chi. Leg. News, 363; 11 Int. Rev. Rec. 22.
Schenck, Potter v. [See 11,337.]
Schenectady & Troy R. Co., Winans v. [See 17,865.]
SCHEPELER, In re [12,452], 3 Ben. 346; 3 N. B. R. 170 (Quarto, 42).
SCHEPELER, In re [12,453], 4 Ben. 68.
SCHERMEHORN v. L'ESPENASSE [12,454], 2 Dall. 360.
SCHICK, In re [12,455], 2 Ben. 5; Bankr. Reg. Supp. 38; 1 N. B. R. 177; 6 Int. Rev. Rec. 183; 1 Amer. Law T. Rep. Bankr. 28.
SCHILLINGER v. GUNTHER [12,456], 14 Blatchf. 152; 2 Ban. & A. 544; 11 O. G. 831; Merw. Pat. Inv. 165.
SCHILLINGER v. GUNTHER [12,457], 15 Blatchf. 303; 3 Ban. & A. 491; 14 O. G. 713.
SCHILLINGER v. GUNTHER [12,458], 17 Blatchf. 66; 16 O. G. 905; 4 Ban. & A. 479; Merw. Pat. Inv. 166.
Schillinger, United States v. [See 16,228.]
Schimer, United States v. [See 16,229.]
SCHLITZ v. SCHATZ [12,459], 2 Biss. 248.
Schloener, Stringham v. [See 13,536.]
SCHMAIRE v. MAXWELL [12,460], 3 Blatchf. 408.
SCHMEID, Ex parte [12,461], 1 Dill. 587; 2 Chi. Leg. News, 186.
SCHMEIDER v. BARNEY [12,462], 13 Blatchf. 37.
SCHMIDT v. GEORGE NICHOLAUS, The [12,463].
SCHMIDT v. PENNSYLVANIA, The [12,464], 7 Wkly. Notes Cas. 98.
SCHMIDT v. PENNSYLVANIA, The [12,465], 4 Fed. 548.
Schmidt, Poillon v. [See 11,241.]
SCHMIDT v. SMITH [12,466], 7 Ben. 361.
SCHMIDT v. SUPERB, The [12,467].
SCHMITT v. TROWBRIDGE [12,468], 24 Int. Rev. Rec. 381; 3 Cin. Law Bul. 1029.
SCHNEIDER v. JACKSON [12,469].
SCHNEIDER v. LAWRENCE [12,470], 3 Blatchf. 115.
SCHNEIDER v. THILL [12,470a], 5 Ban. & A. 565.
SCHNEIDER v. THILL [12,470b], 5 Ban. & A. 595.
SCHNEPF, In re [12,471], 2 Ben. 72; Bankr. Reg. Supp. 41; 1 N. B. R. 190; 7 Amer. Law Reg. (N. S.) 204; 6 Int. Rev. Rec. 214; 1 Amer. Law T. Rep. Bankr. 46.
SCHNERTZEL v. PURCELL [12,472], 1 Cranch, C. C. 246.
Schnugg, Moran v. [See 9,786.]
SCHOENENBERGER, In re [12,473], 15 N. B. R. 305.
Schofield, Densmore v. [See 3,809.]
SCHOLFIELD v. FITZHUGH [12,474], 1 Cranch, C. C. 108.
Scholfield, Rounsavel v. [See 12,085.]
Scholfield, Swann v. [See 13,676.]
Scholfield, Taylor v. [See 13,804.]
SCHOLFIELD v. UNION BANK [12,475], 2 Cranch, C. C. 115.
Scholfield, United States v. [See 16,230, 16,231.]
SCHOLLENBERGER v. FORTY-FIVE FOREIGN INS. COS. [12,475a], 5 Wkly. Notes Cas. 405.
SCHOLLENBERGER v. PHŒNIX INS. CO. [12,476], 7 Ins. Law J. 697; 6 Reporter, 43; 5 Wkly. Notes Cas. 366.
SCHONBERG, In re [12,477], 7 Ben. 211.
School Dist., Chapman v. [See 2,607, 2,608.]
SCHOOL DISTRICT TP. v. LOMBARD [12,478], 2 Dill. 493.
Schoonmaker, Wing v. [See 17,870.]
SCHOTT v. BENSON [12,479], 1 Blatchf. 564; 8 N. Y. Leg. Obs. 294.
Schott, Massey v. [See 9,262.]
Schoyer, United States v. [See 16,232, 16,232a.]
SCHRENKEISEN v. MILLER [12,480], 9 Ben. 55.
SCHRIEFER v. WOOD [12,481], 5 Blatchf. 215.

[Federal Case numbers are given in brackets.]

Schroeder, Smith v. [See 13,103.]
Schroeder, United States v. [See 16,233.]
Schroeder, Wright v. [See 18,091.]
SCHUBERTH v. SHAW [12,482]. 19 Amer. Law Reg. (N. S.) 248.
SCHUCHARDT, In re [12,483], 8 Ben. 585; 15 N. B. R. 161.
Schuchardt, Allen v. [See 236.]
SCHUCHARDT v. ANGELEQUE, The [12,483a], 23 Betts, D. C. MS. 44.
SCHUCHARDT v. ANGELIQUE, The [12,483b], 22 Betts, D. C. MS. 2.
SCHUCHARDT v. ANGELIQUE, The [12,483c], N. Y. Times, Oct. 3, 1855.
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SCHUCHARDT v. LAWRENCE [12,484], 3 Blatchf. 397.
SCHUESSLER v. DAVIS [12,485], 13 O. G. 1011.
SCHULENBURG v. HARRIMAN [12,486], 2 Dill. 398.
SCHULENBURG v. KABURECK [12,487], 2 Dill. 132.
Schuler, United States v. [See 16,234.]
Schultz, Baldwin v. [See 804.]
SCHULTZ v. BOSMAN [12,488], 5 Hughes, 97.
Schultze, Peck v. [See 10,895.]
Schultz, The P. C. [See 10,865.]
SCHULZE v. BOLTING [12,489], 8 Biss. 174; 17 N. B. R. 167.
SCHUMACHER v. MANHATTAN LIFE INS. CO. [12,490], 3 Ins. Law J. 455.
Schuman v. Fleckenstein. [See 12,826.]
Schumann, United States v. [See 16,235.]
Schumenant, United States v. [See 16,236.]
SCHUMPERT, In re [12,491], 8 N. B. R. 415.
SCHURTZ v. NEW YORK, The [12,492].
Schurz, The Carl. [See 2,414.]
Schutte v. Florida Cent. R. Co. [See 17,433, 17,434.]
SCHUTTE v. JACKSONVILLE, P. & M. R. CO. [17,-434].
SCHUTZ v. NANCY, The [12,493], Bee, 139.
SCHUYLER, In re [12,494], 3 Ben. 200; 2 N. B. R. 549 (Quarto, 169); 16 Pittsb. Leg. J. 94; 2 Amer. Law T. Rep. Bankr. 85.
SCHUYLER v. CORSICA, The [12,495], 37 How. Pr. 262.
Schuyler, Roberts v. [See 11,915.]
SCHUYLER STEAM TOWBOAT LINE v. NEWTON [12,496], 9 Reporter, 233; 21 Alb. Law J. 82.
Schuylkill Bank, Kneass v. [See 7,875, 7,876.]
SCHUYLKILL NAV. CO. v. ELLIOTT [12,497], 21 Int. Rev. Rec. 342; 1 N. Y. Wkly. Dig. 282; 8 Chi. Leg. News, 26; 32 Leg. Int. 362.
Schuylkill Nav. Co., Lawrence v. [See 8,143.]
SCHWAB, In re [12,498], 3 Ben. 231; 2 N. B. R. 488 (Quarto, 155); 3 Balt. Law Trans. No. 9; 16 Pittsb. Leg. J. 123.
SCHWAB, In re [12,499], 8 Ben. 353.
SCHWAB v. HOLLOWELL [12,500].
Schwab, Hudson v. [See 6,835.]
SCHWABACKER v. REILLY [12,501], 2 Dill. 127.
SCHWARTZ, In re [12,502], 14 Blatchf. 196; 15 N. B. R. 330; 52 How. Pr. 513; 15 Alb. Law J. 350.
SCHWARTZ, In re [12,503], 4 N. B. R. 588 (Quarto, 189).
SCHWARTZ v. INSURANCE CO. OF NORTH AMERICA [12,504], 3 Wash. C. C. 117.
Schwartz, United States v. [See 16,237.]
SCHWARTZ v. UNITED STATES INS. CO. [12,505], 3 Wash. C. C. 170.
SCHWARZEL v. HOLENSHADE [12,506], 2 Bond, 29; 3 Fish. Pat. Cas. 116.
Schwedler, Struve v. [See 13,551.]
Science, The, United States v. [See 16,238, 16,239.]
SCIOTA, The [16,240].
SCIOTO, The [12,508], 2 Ware (Dav. 359) 360; 5 N. Y. Leg. Obs. 442; 11 Law Rep. 16.
S. C. Ives, The, Kynoch v. [See 7,958.]
SCOFIELD, In re [12,509], 3 N. B. R. 551 (Quarto, 137).
SCOFIELD v. MOORHEAD [12,510], 2 N. B. R. 1 (Quarto, 1).
SCOGGIN, In re [12,511], 5 Sawy. 549; 8 Reporter, 330; 19 N. B. R. 197; 11 Chi. Leg. News, 367.
Scoggins, Brooke v. [See 1,936.]
Scotia, The. [See 390, 391.]
SCOTIA, The [12,512], 5 Blatchf. 227.
SCOTIA, The [12,513], 7 Blatchf. 308; 3 Chi. Leg. News, 10; 2 Amer. Law T. Rep. U. S. Cts. 60; 3 Amer. Law Rev. 582; 5 Amer. Law Rev. 382.
SCOTIA, The [12,514], Blatchf. Pr. Cas. 299.
Scotia, The, Sears v. [See 12,513.]
Scotland, The. [See 6,232, 6,233.]
Scotland County, Thomas v. [See 13,909.]
SCOTSMAN, The [12,515].
SCOTT, In re [7,070].
SCOTT, In re [12,517], 3 N. B. R. 742 (Quarto, 181); 9 Amer. Law Reg. (N. S.) 349; 18 Pittsb. Leg. J. 53; 1 Abb. U. S. 336; 12 Int. Rev. Rec. 129; 2 Chi. Leg. News, 398.
SCOTT, In re [12,518], 4 N. B. R. 414 (Quarto, 139).
SCOTT, In re [12,519], 15 N. B. R. 73; 4 Cent. Law J. 29.
SCOTT, In re [12,520], 1 Wkly. Notes Cas. 21.
SCOTT, In re [12,521], 1 Wkly. Notes Cas. 30.
SCOTT'S CASE [12,517].
SCOTT v. AULD [12,523], 3 Cranch, C. C. 647.
Scott, Bank of Columbia v. [See 880.]
SCOTT v. BARTLEMAN [12,524], 2 Cranch, C. C. 313.
Scott, Ben v. [See 1,286-1,288.]
Scott, Bennett v. [See 1,323.]
Scott, Black v. [See 1,464.]
SCOTT v. BLAINE [12,525], Baldw. 287.
Scott v. Burroughs. [See 9,111, 9,112.]
Scott, Chapman v. [See 2,609.]
SCOTT v. CHICAGO [12,526], 1 Biss. 510.
SCOTT v. CLARA E. BERGEN, The [12,526a].
Scott, Clark v. [See 2,833.]
SCOTT v. CLINTON & S. R. CO. [12,527], 6 Biss. 529; 8 Chi. Leg. News, 210.
Scott, Connor v. [See 3,119.]
Scott, Delano v. [See 3,753.]
SCOTT v. DICK KEYES, The [12,528], 1 Bond, 164.
SCOTT v. DOE [12,528a], Hempst. 275.
SCOTT v. EVANS [12,529], 1 McLean, 486.
SCOTT v. FAILES [12,530], 5 Ben. 82.
Scott, Frye v. [See 5,144.]
Scott, Gordon v. [See 5,620.]
Scott, Greeley v. [See 5,746.]
SCOTT v. GREENWICH, The [12,531], 1 Pet. Adm. 155.
SCOTT v. HAWSMAN [12,532], 2 McLean, 180.
Scott, Hill v. [See 6,498.]
SCOTT v. HOME INS. CO. [12,533], 1 Dill. 105; 2 Leg. Op. 27; 5 West. Jur. 499; 1 Ins. Law J. 750.
SCOTT v. HOME INS. CO. [12,534], 1 Ins. Law J. 750.
SCOTT v. HORE [12,535], 1 Hughes, 163.
SCOTT v. JONES [12,536], 1 Brock. 244.
SCOTT v. LAW [12,537], 2 Cranch, C. C. 530.
Scott, Law v. [See 8,129.]
SCOTT v. LENOX [12,538], 2 Brock. 57.
SCOTT v. LEWIS [12,539], 2 Cranch, C. C. 203.
Scott, Lloyd v. [See 8,434.]
Scott, Loudon v. [See 8,526.]
SCOTT v. LUNT [12,540], 3 Cranch, C. C. 285.
SCOTT v. MANSFIELD, C. & L. M. R. CO. [12,541], 2 Flip. 15; 5 Amer. Law Rec. 436; 9 Chi. Leg. News, 92.
Scott, Maul v. [See 9,306.]
Scott, Mead v. [See 9,368.]
SCOTT v. MORNING GLORY, The [12,542], Hoff. Op. 448.
Scott, The M. W. Wright. [See 9,983.]
Scott, Neves v. [See 10,134.]
SCOTT v. OTIS [12,543], 23 Int. Rev. Rec. 367; 4 Law & Eq. Rep. 598; 5 N. Y. Wkly. Dig. 264; 10 Chi. Leg. News, 41.
SCOTT v. PLYMOUTH, The [12,544], 6 McLean, 463; Newb. 56.
SCOTT v. ROSE [12,545], 2 Lowell, 381.
SCOTT v. RUSSELL [12,546], Abb. Adm. 258.
Scott, Simms v. [See 12,871.]
Scott, Thomas v. [See 13,910.]
Scott, Thompson v. [See 13,975.]
Scott, Tracy v. [See 14,126.]
Scott, United States v. [See 16,241, 16,242.]
SCOTT v. WIDDINGTON [12,547], 1 McLean, 193.
SCOTT v. WISE [12,548], 1 Cranch, C. C. 473.
Scott, Wright v. [See 18,092.]
SCOTT v. YOUNG AMERICA, The [12,549], Newb. 101.

[Federal Case numbers are given in brackets.]

SCOTT v. YOUNG AMERICA, The [12,550], Newb. 107.
Scott, The Thomas A. [See 13,920, 13,921.]
SCOTTISH BRIDE, The, v. ANTHONY KELLY, The [12,551], 4 Amer. Law T. Rep. U. S. Cts. 225; 8 Phila. 151; 1 Leg. Gaz. Rep. 289; 3 Leg. Gaz. 334; 28 Leg. Int. 325.
Scottish Commercial Ins. Co., Shaw v. [See 12,723.]
Scovel, Hall v. [See 5,945.]
SCOVILL v. SHAW [12,552], 4 Cliff. 549.
SCOVILLE v. TOLAND [12,553], 6 West. Law J. 84; Cox, Manual Trade-Mark Cas. 51.
Scow Number Four, The. [See 7,192.]
SCOW, without a name [12,554], 7 Ben. 384.
SCOW, without a name [12,555], 8 Ben. 181.
SCRAFFORD, In re [12,556], 4 Dill. 376; 15 N. B. R. 104; 3 Month. Jur. 614; 3 N. Y. Wkly. Dig. 552.
SCRAFFORD, In re [12,557], 14 N. B. R. 184; 3 Cent. Law J. 252.
SCRANTON, The [12,558], 5 Blatchf. 400.
Scranton, The E. C. [See 4,270-4,273.]
SCRIBA v. DEANE [12,559], 1 Brock. 166.
SCRIBA v. INSURANCE CO. OF NORTH AMERICA [12,560], 2 Wash. C. C. 107; 1 Hall, Law J. 36.
SCRIBNER v. STODDART [12,561], 19 Amer. Law Reg. (N. S.) 433; 8 Wkly. Notes Cas. 61; 9 Reporter, 137.
SCRIPPS v. CAMPBELL [12,562], 22 Int. Rev. Rec. 250; 1 Mich. Lawy. 10; 3 Cent. Law J. 521.
Scroggins, United States v. [See 16,243, 16,244.]
SCUDDER, In re [12,563], 1 N. Y. Leg. Obs. 325.
SCUDDER v. ANDREWS [12,564], 2 McLean, 464.
SCUDDER v. CALAIS STEAMBOAT CO. [12,565], 1 Cliff. 370.
SCUDDER v. CALAIS STEAMBOAT CO. [12,566], 20 Law Rep. 498.
SCUDDER v. THOMAS [12,567], 35 Ga. 364.
Scudder, Van Hook v. [See 16,853.]
SCULL, In re [12,568], 7 Ben. 371; 10 N. B. R. 165; 10 Alb. Law J. 214; 1 Amer. Law T. Rep. 416; 20 Int. Rev. Rec. 80; 22 Pittsb. Leg. J. 34.
SCULL v. BRIDDLE [12,569], 2 Wash. C. C. 150.
SCULL v. BRIDDLE [12,570], 2 Wash. C. C. 200.
SCULL v. HIGGINS [12,570a], Hempst. 90.
SCULL v. KUYKENDALL [12,570b], Hempst. 9.
SCULL v. ROANE [12,570c], Hempst. 103.
SCULLY v. GREAT REPUBLIC, The [12,571], 1 Sawy. 31.
Scupps v. Campbell. [See 12,562.]
SEA BIRD, The [12,572].
SEA BREEZE, The [12,572a], 2 Hask. 510.
Seabring, Ward v. [See 17,160.]
Seabry, Ward v. [See 17,161.]
SEABURY, In re [12,573], 10 N. B. R. 90.
Seabury, Bates v. [See 1,104.]
Seabury, Cutting v. [See 3,521.]
SEABURY v. FIELD [12,574], 1 McAll. 1.
SEABURY v. FIELD [12,575], 1 McAll. 60.
SEABURY v. GROSVENOR [12,576], 14 Blatchf. 262; 14 O. G. 679; Cox, Manual Trade-Mark Cas. 316; 53 How. Pr. 192.
Seabury, Sisson v. [See 12,913.]
SEA FLOWER, The [12,577], 1 Blatchf. 361.
Sea Flower, The, Davenport v. [See 3,589.]
Seagrave, Sargent v. [See 12,365.]
Seagraves, Comstock v. [See 6,593.]
Seagraves, Holbrook v. [See 6,593.]
Seagrist, United States v. [See 16,245.]
SEA GULL, The [12,578], Chase, 145; 2 Amer. Law T. Rep. U. S. Cts. 15; 2 Balt. Law Trans. 955.
SEA GULL, The [12,578a], 16 Pittsb. Leg. J. (O. S.) 194.
Sea Gull, The, Williams v. [See 17,736.]
SEA LARK, The [12,579], 1 Spr. 571.
Seal-Skins, Davison v. [See 3,661.]
SEAMAN, In re [12,580], 19 N. B. R. 332.
SEAMAN v. CRESCENT CITY, The [12,581], 1 Bond, 105.
SEAMAN v. ERIE RY. CO. [12,582], 2 Ben. 128.
SEAMANS v. LORING [12,583], 1 Mason, 127.
SEARCY v. PANNELL [12,584], Cooke, 110; Brunner, Col. Cas. 172.
SEARCY v. HOGAN [12,584a], Hempst. 20.
SEARIGHT v. CALBRAITH [12,585], 4 Dall. 325.
SEARLES v. JACKSONVILLE, P. & M. R. CO. [12,586], 2 Woods, 621.
SEARLES v. VAN NEST [12,587], 3 Ban. & A. 121; 13 O. G. 772.
SEARLES v. VAN NEST [12,587a], 5 Ban. & A. 456.
SEARLE W. JACOBS, The [12,588], Olc. 502.
SEARS v. FOUR THOUSAND EIGHT HUNDRED AND EIGHTY-FIVE BAGS OF LINSEED [12,589], 1 Cliff. 68.
Sears, Furbish v. [See 5,160.]
Sears, Jones v. [See 7,494.]
SEARS v. NOON [12,590], 2 Cranch, C. C. 220.
Sears, O'Neil v. [See 10,530.]
Sears, Parker v. [See 10,748.]
Sears, Price v. [See 11,416.]
SEARS v. SCOTIA, The [12,513], 2 Amer. Law T. Rep. U. S. Cts. 60; 3 Amer. Law Rev. 582; 5 Amer. Law Rev. 382.
SEARS v. UNITED STATES [12,592], 1 Gall. 257.
Sears, United States v. [See 16,246, 16,247.]
Seaton, Bedilian v. [See 1,218.]
SEAVER v. CARRONI, The [12,593], 40 Hunt, Mer. Mag. 319.
SEAVER v. THALES, The [12,594], 40 Hunt, Mer. Mag. 707.
SEAVERNS v. GERKE [12,595], 3 Sawy. 353.
SEAVEY v. SEYMOUR [12,596], 3 Cliff. 439.
Sea Witch, The, Porter v. [See 11,289.]
SEAY, In re [12,597], 4 N. B. R. 271 (Quarto, 82); 4 Amer. Law T. 16; 1 Amer. Law T. Rep. Bankr. 244.
Sebastian County, National Bank of Western Arkansas v. [See 10,040.]
SEBRING v. WARD [12,598], 4 Wash. C. C. 546.
SECKEL v. BACKHAUS [12,599], 7 Biss. 354; 4 N. Y. Wkly. Dig. 49; 9 Chi. Leg. News, 161; 4 Cent. Law J. 125; 15 Alb. Law J. 311.
SECKENDORF, In re [12,600], 2 Ben. 462; 1 N. B. R. 626 (Quarto, 185); 15 Pittsb. Leg. J. 450; 1 Amer. Law T. Rep. Bankr. 122.
SECOMBE v. MILWAUKEE R. CO. [12,601], 2 Dill. 469.
Secombe Mfg. Co., Robertson v. [See 11,928.]
Second Nat. Bank v. Hughes. [See 4,811.]
Second Nat. Bank, Main v. [See 8,976.]
SECOND NAT. BANK v. NEW YORK SILK MFG. CO. [12,601a], 13 Reporter, 355.
SECOND NAT. BANK v. OCEAN NAT. BANK [12,602], 11 Blatchf. 362; 30 Leg. Int. 433.
Second Nat. Bank of New Jersey, United States v. [See 16,248.]
SECOND NAT. BANK OF ST. LOUIS v. GRAND LODGE OF FREE & ACCEPTED MASONS [12,603].
SECOR v. HIGHLANDER, The [12,604], 19 How. Pr. 334.
SECOR v. TOLEDO, P. & W. R. CO. [12,605], 7 Biss. 513; 4 Law & Eq. Rep. 283; 9 Chi. Leg. News, 393, 409; 2 Cin. Law Bul. 223; 25 Pittsb. Leg. J. 14.
SECRET, The [12,605a], 15 Fed. Rep. 480.
Secretary of Treasury, Bell v. [See 18,231.]
Secretary of Treasury, Clarke v. [See 18,280.]
Secretary of Treasury, Judson v. [See 18,304.]
SECTIONAL DOCK CO., In re [3,536], 3 Dill. 83.
Sectional Dock Co., Salvor Wrecking Co. v. [See 12,273.]
Security Ins. Co. v. The Milwaukee. [See 9,625.]
SECURITY INS. CO. v. TAYLOR [12,607], 2 Biss. 446.
SEDAM v. TAYLOR [12,608], 3 McLean, 547.
SEDAM v. WILLIAMS [12,609], 4 McLean, 51.
SEDGWICK v. CASEY [12,610], 4 Ben. 562; 4 N. B. R. 496 (Quarto, 161); 3 Chi. Leg. News, 177.
SEDGWICK v. FRIDENBERG [12,611], 11 Blatchf. 77.
SEDGWICK v. GRINNELL [12,612], 9 Ben. 429.
SEDGWICK v. GRINNELL [12,613], 10 Ben. 6.
SEDGWICK v. HUYGENS [12,613a].
SEDGWICK v. LYNCH [12,614].
SEDGWICK v. LYNCH [12,615], 5 Ben. 489; 8 N. B. R. 289.
SEDGWICK v. MENCK [12,616], 6 Blatchf. 156; 1 N. B. R. 675 (Quarto, 204).
SEDGWICK v. MENCK [12,617], 1 N. B. R. 425 (Quarto, 108).
SEDGWICK v. MILLWARD [12,618], 5 N. B. R. 347.

SEDGWICK v. PLACE [12,619], 3 Ben. 360; 3 N. B. R. 139 (Quarto, 35).
SEDGWICK v. PLACE [12,620], 5 Ben. 184; 5 N. B. R. 168; 3 Chi. Leg. News, 409; 4 Amer. Law T. Rep. U. S. Cts. 179; 6 Amer. Law Rev. 181.
SEDGWICK v. PLACE [12,621], 12 Blatchf. 163; 10 N. B. R. 28.
SEDGWICK v. PLACE [12,622], 1 N. B. R. 673 (Quarto, 204); 1 Amer. Law T. Rep. Bankr. 97; 34 Conn. 552.
SEDGWICK v. PLACE [12,623], 3 N. B. R. 302 (Quarto, 78).
SEDGWICK v. SHEFFIELD [12,624], 6 Ben. 21.
SEDGWICK v. STEWART [12,625], 9 Ben. 433.
SEDGWICK v. WORMSER [12,626], 7 N. B. R. 186.
SEELEY, Ex parte [12,627].
SEELEY, In re [12,628], 19 N. B. R. 1.
SEELEY v. BEAN [12,629].
SEELEY v. KOOX [12,630], 2 Woods, 368.
Seeley, Myers v. [See 9,994.]
Seeley, United States v. [See 16,248a.]
SEELING v. RACINE [8,603].
SEELY, In re [12,632], 1 McA. Pat. Cas. 248.
Segars, United States v. [See 16,249.]
SEGEE v. THOMAS [12,633], 3 Blatchf. 11.
SEGOURNEY v. INGRAHAM [12,634], 2 Wash. C. C. 336.
SEIDENBACH v. HOLLOWELL [12,635], 5 Dill. 382.
Seifert, In re. [See 16,439.]
Seigel, Walker v. [See 17,085.]
SELAH, The [12,636], 4 Sawy. 40.
Selby, Brown v. [See 2,030.]
Selby v. The Elizabeth English. [See 4,359, 4,360.]
Selby, Robertson v. [See 11,929.]
Selby, Talbot v. [See 13,729.]
Selby, Way v. [See 17,302.]
SELDEN, Ex parte [12,638].
SELDEN, Ex parte [12,638], 6 Pittsb. Leg. J. 18.
Selden, Alexander's Adm'r v. [See 173.]
Selden, Fletcher v. [See 4,866.]
SELDEN v. HENDRICKSON [12,639], 1 Brock. 396.
Selden, Smith v. [See 13,104.]
Seldon, Equitable Trust Co. v. [See 4,508.]
SELF v. JENKINS [12,640], 1 Hughes, 23; 1 Amer. Law T. Rep. (N. S.) 368; 71 N. C. 578; 6 Chi. Leg. News, 397.
SELIG, In re [12,641], 1 N. B. R. 186; Bankr. Reg. Supp. 40; 6 Int. Rev. Rec. 206.
SELIGMAN v. CHARLOTTESVILLE NAT. BANK [12,642], 3 Hughes, 647; 25 Int. Rev. Rec. 385; 9 Reporter, 72; 2 Browne, Nat. Bank. Cas. 195; 1 Wkly. Jur. 584; 21 Alb. Law J. 196.
SELIGMAN v. DAY [12,643], 14 Blatchf. 72; 2 Ban. & A. 467; Merw. Pat. Inv. 271.
Selin, Rhoades v. [See 11,740.]
Selkirk, The, Provost v. [See 11,455.]
Seller, Merchants' Ins. Co. v. [See 9,444.]
SELLER v. PACIFIC, The [12,644], 1 Ore. 409; Deady, 17.
SELLERS v. PANAMA R. CO., The [12,645].
Sellick, Phelps v. [See 11,079.]
SELLON v. REED [12,646], 5 Biss. 125.
SELMA, The [12,647], 1 Lowell, 30; 1 Amer. Law Rev. 84.
SELMAN v. DUN [12,648], 10 West. Law J. 459; 1 Quart. Law J. 251; 29 Hunt, Mer. Mag. 586; 13 Leg. Int. 321.
Selma, M. & M. R. Co., Blackburn v. [See 1,467.]
SELT, The [12,649], 3 Biss. 344; 17 Int. Rev. Rec. 22; 5 Chi. Leg. News, 109.
Selt, The, Wolf v. [See 12,649.]
Seltinius v. United States. [See 13,387.]
SELZ v. UNNA [12,650], 1 Biss. 521.
Semmes, Burns v. [See 2,183.]
SEMMES v. CITY FIRE INS. CO. [12,651], 6 Blatchf. 445; 8 Amer. Law Reg. (N. S.) 673; 36 Conn. 543; 2 Amer. Law T. Rep. U. S. Cts. 179; 2 Chi. Leg. News, 17.
SEMMES v. LEE [12,652], 3 Cranch, C. C. 439.
SEMMES v. McKNIGHT [12,653], 5 Cranch, C. C. 539.
SEMMES v. ONEALE [12,654], 1 Cranch, C. C. 246.
Semmes, Power v. [See 11,360.]
SEMMES v. SHERBURNE [12,655], 2 Cranch, C. C. 534.
SEMMES v. SHERBURNE [12,656], 2 Cranch, C. C. 637.
Semmes, Sherburne v. [See 12,760.]
SEMMES v. SPRIGG [12,657], 4 Cranch, C. C. 292.
SEMMES v. WILSON [12,658], 5 Cranch, C. C. 285.
SEMPLE v. BANK OF BRITISH COLUMBIA [12,-659], 6 Reporter, 9; 5 Sawy. 88.
SEMPLE v. BANK OF BRITISH COLUMBIA [12,-660], 5 Sawy. 394.
Semple, Home v. [See 6,658.]
SEMPLE v. UNITED STATES [12,661], Chase, 259.
SEMPLE v. UNITED STATES [12,662], Hoff. Land Cas. 37.
Semple, United States v. [See 16,250.]
Semple, Vogler v. [See 16,987.]
SENAB v. JOSEPHINE, The [12,663], 4 Cent. Law J. 262.
SENATOR, The [12,664], 1 Brown's Adm. 372.
SENATOR, The [12,665], 1 Brown's Adm. 544; 7 Chi. Leg. News, 162.
Senator, The, McCarty v. [See 8,686.]
SENATOR MIKE NORTON, The [12,666].
SENATOR MIKE NORTON, The [12,667], 10 Ben. 440.
SENECA, The [12,668], 8 Ben. 509.
SENECA, The [16,251].
SENECA, The [12,670], 3 Wall. Jr. 395; 6 Pa. Law J. 213; 18 Amer. Jur. 46; 4 Haz. Reg. Pa. 248.
Seneca, The, Davis v. [See 3,650, 3,651.]
Seneca, The, United States v. [See 16,251.]
Serat, Sanderson v. [See 12,300.]
Serpent, The, French v. [See 5,103a.]
SERRELL v. COLLINS [12,671], 4 Blatchf. 61.
SERRELL v. COLLINS [12,672], 1 Fish. Pat. Cas. 289.
Serrell, Guyon v. [See 5,881.]
Serrell, Ritter v. [See 11,866.]
SERROT v. OMAHA CITY [12,673], 1 Dill. 313.
Server, Napier v. [See 10,010.]
SESSIONS v. PINTARD [12,674], Hempst. 678.
SETON v. DELAWARE INS. CO. [12,675], 2 Wash. C. C. 175.
SETZER v. SYLVIA DE GRASSE, The [12,676].
Seveloff, United States v. [See 16,252.]
Seven Barrels Distilled Oil, United States v. [See 16,253.]
SEVEN COAL BARGES [12,677], 2 Biss. 297; 3 Amer. Law T. Rep. U. S. Cts. 109; 2 Chi. Leg. News, 277.
Seven Coal Barges, Huber v. [See 12,677.]
Seven Large Fermenting Tubs, United States v. [See 16,254.]
Seventeen Empty Barrels, United States v. [See 16,-255.]
Seventeen Packages, etc., United States v. [See 16,-256.]
Seven Thousand Eight Hundred Bushels of Oats, Chubb v. [See 2,709.]
SEVENTH WARD BANK v. HANRICK [12,678], 2 Story, 416.
SEVENTY-EIGHT BALES OF COTTON [12,679], 1 Lowell, 11; 27 Law Rep. 251.
Seventy-Eight Barrels, United States v. [See 16,-257.]
Seventy-Eight Cases of Books, United States v. [See 16,258.]
Seventy-Eight Casks of White Wine, United States v. [See 16,259.]
Seventy Hogsheads and Nine Barrels of Sugar, Sheaff v. [See 12,730.]
SEVERANCE v. CONTINENTAL INS. CO. [12,680], 5 Biss. 156.
Sevier, Bentley v. [See 18,233.]
SEVIER v. HOLLIDAY [12,680a], Hempst. 160.
SEVIER v. WHITE [12,681], 4 Amer. Law T. 218.
SEWALL v. HULL OF A NEW SHIP [12,682], 1 Ware, 565.
Sewall, Jones v. [See 7,495.]
SEWELL v. NINE BALES OF COTTON [12,683], 5 Phila. 508; 21 Leg. Int. 244.
Sexton v. The Troy. [See 4,115.]
SEYMOUR, In re [12,684], 1 Ben. 348; Bankr. Reg. Supp. 7; 1 N. B. R. 29; 6 Int. Rev. Rec. 60.
SEYMOUR v. CHICAGO, B. & Q. RY. CO. [12,685], 3 Biss. 43; 4 Amer. Law T. Rep. U. S. Cts. 134.
SEYMOUR v. GREGORY [12,686], 10 Biss. 13.
Seymour, McCormick v. [See 8,725-8,727.]

[Federal Case numbers are given in brackets.]

SEYMOUR v. MARSH [12,687], 6 Fish. Pat. Cas. 115; 2 O. G. 675; 9 Phila. 380; 29 Leg. Int. 357; 4 Leg. Gaz. 346.
SEYMOUR v. OSBORNE [12,688], 3 Fish. Pat. Cas. 555.
SEYMOUR v. PHILLIPS & COLBY CONST. CO. [12,689], 7 Biss. 460; 22 Int. Rev. Rec. 234; 8 Chi. News, 329.
SEYMOUR v. SANDERS [12,690], 3 Dill. 437.
Seymour, Seavey v. [See 12,596.]
Seymour, Stanton v. [See 13,298.]
Seymour, Swiggett v. [See 13,701.]
Seymour, The Wesley. [See 17,420.]
S. G. Andrews, The, Mutual Fire Ins. Co. v. [See 9,978.]
S. G. Owens, The, McDermott v. [See 8,748.]
S. G. Owens, The, Weaver v. [See 17,310.]
Shackelford, United States v. [See 16,260, 16,261.]
Shackelford, Murdock v. [See 9,937.]
Shackford, United States v. [See 16,262, 16,263.]
SHADY SIDE, The [12,691], 8 Ben. 424.
SHADY SIDE, The [12,692], 17 Blatchf. 132.
SHAEFER v. KETCHUM [12,693], 6 Int. Rev. Rec. 4.
SHAFER, In re [12,694], 2 N. B. R. 586 (Quarto, 178); 1 Chi. Leg. News, 326.
SHAFER, In re [12,695], 17 N. B. R. 116; 1 N. J. Law J. 66.
SHAFFENBURG, Ex parte [12,696], 4 Dill. 271.
SHAFFER v. FRITCHERY [12,697], 4 N. B. R. 548 (Quarto, 179).
SHAKELEY v. TAYLOR [12,698], 1 Bond, 142.
SHAKERLEY v. PEDRICK [12,699], Crabbe, 63.
Shakespeare, The, Leavit v. [See 8,167.]
SHAKSPEARE, The [12,700], 4 Ben. 128.
Shaler, Bramhall v. [See 1,805a.]
SHANAHAN, In re [12,701], 6 Biss. 39.
Shane, Smith v. [See 13,105.]
SHAND, The [12,702], 10 Ben. 294.
SHANKLAND v. WASHINGTON [12,703], 3 Cranch, C. C. 328.
Shanks, Kleine v. [See 7,870.]
SHANKWIKER v. READING [12,704], 4 McLean, 240.
SHANNON v. ANGELIQUE, The [12,705].
SHANNON v. FOX [12,706], 1 Cranch, C. C. 133.
Shannon, Keenan v. [See 7,640.]
Shannon, Sawyer v. [See 12,405.]
Shantz, Stuart v. [See 13,556.]
SHAPLEY v. RANGELEY [12,707], 1 Woodb. & M. 213.
Shardlow v. Newark Plank-Road Co. [See 9,620.]
Shardlow v. New Jersey R. Co. [See 9,620.]
SHARK, The [12,708], Blatchf. Pr. Cas. 215.
SHARP v. DITTENTHALER [12,709], 25 Int. Rev. Rec. 313; 8 Reporter, 456; 11 Chi. Leg. News, 415.
Sharp, Gardner v. [See 5,236.]
SHARP v. PHILADELPHIA WAREHOUSE CO. [12,709a], 19 N. B. R. 378; 9 Reporter, 572.
Sharp, Reissner v. [See 11,689.]
SHARP v. STEPHENS [12,710], 6 Sawy. 48; 25 Int. Rev. Rec. 313; 8 Reporter, 456; 11 Chi. Leg. News, 415.
Sharp, Stevens v. [See 13,410.]
Sharp, United States v. [See 16,264, 16,265.]
SHARPLEIGH v. SURDAM [12,711], 1 Flip. 472; 11 West. Jur. 203.
SHARPLESS v. KNOWLES [12,712], 2 Cranch, C. C. 129.
SHARPLESS v. ROBINSON [12,713], 1 Cranch, C. C. 147.
Sharp's Rifle Mfg. Co., Smith v. [See 13,106.]
Shattuck, Hiller v. [See 6,504.]
SHATTUCK v. MALEY [12,714], 1 Wash. C. C. 245.
SHATTUCK v. MUTUAL LIFE INS. CO. [12,715], 4 Cliff. 598; 7 Ins. Law J. 937; 7 Reporter, 171; 19 Alb. Law J. 138.
SHAW, In re [12,716], 9 Fed. 495.
Shaw, Bank v. [See 843.]
SHAW v. BRIDGEPORT, The [12,717], 1 Ben. 65.
Shaw, Coffin v. [See 2,951, 2,952.]
SHAW v. COLLYER [12,718], 4 Blatchf. 370; 18 How. Pr. 238; 42 Hunt, Mer. Mag. 69.
SHAW v. GRINNELL [12,719], 9 Blatchf. 471.
SHAW v. HART [12,720], 1 Spr. 567.
Shaw, Hart v. [See 6,155.]
Shaw, Hindman v. [See 6,514.]
Shaw, King v. [See 7,803.]
SHAW v. LETHE, The [12,721], Bee, 424.
Shaw, Lowber v. [See 8,563.]
SHAW v. MITCHELL [12,722], 2 Ware (Dav. 216) 220; 5 Law Rep. 453.
Shaw, Oregon & W. T. Inv. Co. v. [See 10,556, 10,557.]
Shaw, Schuberth v. [See 12,482.]
SHAW v. SCOTTISH COMMERCIAL INS. CO. [12,723], 2 Hask. 246.
Shaw, Scovill v. [See 12,552.]
SHAW v. SHAW [12,724], 4 Cranch, C. C. 715.
Shaw, Smith v. [See 13,107.]
SHAW v. THOMAS COLLIER, The [12,718].
SHAW v. THOMPSON [12,726], Olc. 144.
Shaw, Union Ins. Co. v. [See 14,366.]
Shaw, United States v. [See 16,266, 16,267.]
SHAW & WILCOX CO. v. LOVEJOY [12,727], 7 Blatchf. 232.
SHAWHAN v. WHERRITT [12,728].
Shawk, Latta v. [See 8,116.]
Shaw-Mux, United States v. [See 16,268.]
Shawnee County Bank, West St. Louis Sav. Bank v. [See 17,462.]
SHEA, In re [12,729], 2 Biss. 156; 3 N. B. R. 187 (Quarto, 46); 2 Amer. Law T. 107; 1 Chi. Leg. News, 345; 16 Pittsb. Leg. J. 85; 1 Leg. Gaz. 46.
Shea, Heinsheimer v. [See 12,729.]
Shea, United States v. [See 16,269.]
SHEAFE v. KIMBALL [12,729a].
SHEAFF v. SEVENTY HOGSHEADS AND NINE BARRELS OF SUGAR [12,730], Bee, 163.
SHEAN v. TOWERS [12,731], 1 Cranch, C. C. 5.
SHEARMAN v. BINGHAM [12,732], Holmes, 272.
SHEARMAN v. BINGHAM [12,733], 1 Lowell, 575; 5 N. B. R. 34; 3 Chi. Leg. News, 258.
Shearman v. Bingham. [See 12,732, 12,733.]
She At v. Hallett. [See 10,469.]
SHEAZLE, In re [12,734], 1 Woodb. & M. 66.
SHECKLER v. GENEVA BOXER, The [12,735].
Shedd, Cheever v. [See 2,634.]
SHEDDEN v. CUSTIS [12,736], 1 Hughes, 246; 6 Call, 241.
SHEEHAN, In re [12,737], 8 N. B. R. 345.
SHEEHAN, In re [12,738], 8 N. B. R. 353.
Sheehee, McGill v. [See 8,796.]
SHEEHEE v. RESLER [12,739], 1 Cranch, C. C. 42.
SHEEHY v. MANDEVILLE [12,740], 2 Cranch, C. C. 15.
Sheehy, May v. [See 9,335.]
SHEEPSHANKS v. BOYER [12,741], Baldw. 462.
SHEFFER, In re [12,742], 4 Sawy. 363; 17 N. B. R. 369; 1 San Fran. Law J. 117.
Sheffey v. Vint. [See 16,950.]
Sheffield v. Foster. [See 12,743.]
SHEFFIELD v. PAGE [12,743], 1 Spr. 285; 18 Law Rep. 99.
Sheffield, Page v. [See 10,667.]
Sheffield, Sedgwick v. [See 12,624.]
Shehee, McGill v. [See 8,797.]
SHEIRBURN v. HUNTER [12,744], 3 Woods, 281; 1 Tex. Law J. 319.
Sheken, Graham v. [See 5,675.]
SHELBOURNE, In re [12,745], 19 N. B. R. 359.
Shelbourne, Morris v. [See 9,836.]
Shelby Co., Norton v. [See 10,353.]
SHELBY v. YANCY [12,746], 1 Overt. 236.
Shelby County, Amy v. [See 345.]
Shelden, Nessmith v. [See 10,125.]
Shelden, Pennoyer v. [See 10,943.]
SHELDON, In re [12,747], 8 Ben. 67; 12 N. B. R. 63.
Sheldon, American Diamond Rock Boring Co. v [See 296, 297.]
Sheldon, Dibblee v. [See 3,889.]
SHELDON v. HOUGHTON [12,748], 5 Blatchf. 285; 23 Leg. Int. 12.
Sheldon, Nightingale v. [See 10,265.]
Sheldon, Roberts v. [See 11,916.]
Sheldon, Steam Cutter Co. v. [See 13,331.]
SHELDON v. SWARTOUT [12,749], 47 Nile, Reg. 189.
Sheldon, United States v. [See 16,270.]
Sheldon v. The Water Witch. [See 1,971, 2,895.]
SHELLEY v. ELLISTON [12,750], 18 N. B. R. 375; 26 Pittsb. Leg. J. 92.
Shellmire, United States v. [See 16,271.]
SHELLY v. BRANNAN [12,751], 2 Biss. 315; 4 Fish. Pat. Cas. 198.

[Federal Case numbers are given in brackets.]

SHELTON v. AUSTIN [12,752], 1 Cliff. 388.
Shelton, Church v. [See 2,714.]
Shelton v. The Mary. [See 9,182-9,191.]
Shelton, United States v. [See 16,272.]
SHEPARD, In re [12,753], 7 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; 1 N. B. R. 439 (Quarto, 115).
SHEPARD, In re [12,754], 3 Ben. 347; 3 N. B. R. 172 (Quarto, 42).
Shepard, MacDonald v. [See 8,767.]
Shepard, New York & E. R. R. v. [See 10,198.]
Shepard, United States v. [See 16,273.]
SHEPHERD v. BAILY [12,755], Cooke, 369; Brunner, Col. Cas. 242.
Shepherd, King v. [See 7,804.]
Shepherd, United States v. [See 16,274.]
Shepherd, The Elmira. [See 4,418.]
SHEPLEY v. RANGELY [12,756], 2 Ware (Dav. 242) 246; 5 N. Y. Leg. Obs. 5.
Sheppard, In re. [See 12,753, 12,754.]
Sheppard, Howe v. [See 6,772, 6,773.]
SHEPPARD v. PHILADELPHIA BUTCHERS' ICE CO. [12,757], 3 Wkly. Notes Cas. 565.
Sheppard, The B. S. [See 2,072.]
SHERBURNE, In re [12,758], 1 N. B. R. 558 (Quarto, 155).
SHERBURNE v. KING [12,759], 2 Cranch, C. C. 205.
SHERBURNE v. SEMMES [12,760], 2 Cranch, C. C. 446.
Sherburne, Semmes v. [See 12,655, 12,656.]
Sherburne, Taylor v. [See 13,805.]
Sherebeck, United States v. [See 16,275.]
SHERIDAN v. FURBUR [12,761], 1 Blatchf. & H. 423.
Sheridan, Holmes v. [See 6,644.]
Sheridan, Whalen v. [See 17,476.]
Sheriff, Daly v. [See 3,553.]
Sheriff of Charleston, United States v. [See 16,276.]
Sherlock, United States v. [See 16,277.]
Sherman, Bennett v. [See 1,324.]
SHERMAN v. BINGHAM [12,762], 3 Cliff. 552; 7 N. B. R. 490.
SHERMAN v. CLARK [12,763], 3 McLean, 91.
SHERMAN v. COMSTOCK [12,764], 2 McLean, 19.
Sherman, Doubleday v. [See 4,019-4,022.]
Sherman, Edwards v. [See 4,298.]
Sherman, The, The Gary. [See 5,259.]
SHERMAN v. INTERNATIONAL BANK [12,765], 8 Biss. 371.
Sherman, Lawrence v. [See 8,144.]
SHERMAN v. MOTT [12,766].
SHERMAN v. MOTT [12,767], 5 Ben. 372; 15 Int. Rev. Rec. 56; 11 Amer. Law Reg. (N. S.) 716; 7 Amer. Law Rev. 574.
SHERMAN v. NEVADA, The [5,839].
SHERMAN v. PENNSYLVANIA R. CO. [12,769], 8 Wkly. Notes Cas. 269.
SHERMAN v. TRADERS' NAT. BANK [12,770], 9 Biss. 216.
Sherman, Wilson v. [See 17,833.]
Sherman, Woodworth v. [See 18,019.]
SHERRARD v. LAFAYETTE COUNTY [12,771], 3 Dill. 236; 2 Cent. Law J. 347.
SHERRARD v. PONSONBY [12,772], 1 Cranch, C. C. 131.
Sherron, Conway v. [See 3,147.]
Sherron, Davis v. [See 3,652.]
Sherwin, Ex parte. [See 9,658.]
SHERWOOD, In re [12,773], 9 Ben. 66; 17 N. B. R. 112.
SHERWOOD, In re [12,774], 25 Leg. Int. 76; 1 N. B. R. 344 (Quarto, 74); 1 Amer. Law T. Rep. Bankr. 47; 6 Phila. 461.
SHERWOOD v. BURGESS [12,775], 1 Hayw. & H. 132.
SHERWOOD v. GENERAL MUT. INS. CO. [12,776], 1 Blatchf. 251; 5 N. Y. Leg. Obs. 406; 18 Hunt, Mer. Mag. 186.
SHERWOOD v. HALL [12,777], 3 Sumn. 127.
SHERWOOD v. McINTOSH [12,778], 1 Ware (109) 104.
SHERWOOD v. MUTUAL INS. CO. [12,776], 5 N. Y. Leg. Obs. 406; 18 Hunt, Mer. Mag. 186.
Sherwood, Patrick v. [See 10,804.]
SHERWOOD v. SHERMAN [12,780].
SHERWOOD v. SUTTON [12,781], 5 Mason, 1.
SHERWOOD v. SUTTON [12,782], 5 Mason, 143.
Shick, In re. [See 12,455.]
SHIEFFELIN v. WHEATON [12,783], 1 Gall. 441.
SHIELDS, In re [12,784], 4 Dill. 588; 15 N. B. R. 532; 4 Cent. Law J. 557; 24 Pittsb. Leg. J. 190.
SHIELDS, In re [12,785], 1 N. B. R. 603 (Quarto, 170); 15 Pittsb. Leg. J. (O. S.) 391.
SHIELDS v. MIDDLETON [12,786], 2 Cranch, C. C. 205.
Shields, Moore v. [See 9,775.]
Shields, Root v. [See 12,038.]
SHIMER v. HUBER [12,787], 19 N. B. R. 414; 14 Phila. 402; 36 Leg. Int. 339; 8 Reporter, 393.
SHINE, In re [12,788], 15 Alb. Law J. 293.
SHINN v. McKNIGHT [12,789], 4 Cranch, C. C. 134.
SHIPLEY v. THOMPSON [12,790], 2 Balt. Law Trans. 244.
SHIPMAN, In re [12,791], 2 Hughes, 227; 14 N. B. R. 570.
SHIPPING COM'R OF PORT OF NEW YORK, In re [12,792], 13 Blatchf. 339.
SHIPPING COM'R OF PORT OF NEW YORK, In re, Accounts of the [12,793], 16 Blatchf. 92.
SHIRK v. PULASKI COUNTY [12,794], 4 Dill. 209; 4 Cent. Law J. 390.
SHIRLEY v. RICHMOND, The [12,795], 2 Woods, 58.
SHIRLEY v. TITUS [12,796], 1 Sumn. 447.
SHIRLEY v. TRIPLETT [12,797], 12 Pittsb. Leg. J. (O. S.) 337.
SHIRLY v. HARRIS [12,798], 3 McLean, 330.
Shive, United States v. [See 16,278.]
Shivers, Fairchild v. [See 4,611.]
Shoe Mach. Mfg. Co., Haskell v. [See 6,194.]
Shoe Mach. Mfg. Co., Thomas v. [See 13,911.]
SHOEMAKER, In re [12,799], 4 Biss. 245.
Shoemaker, Childs v. [See 2,681.]
SHOEMAKER v. FRENCH [12,800], Chase, 267.
SHOEMAKER v. NATIONAL MECHANICS' BANK [12,801], 2 Abb. U. S. 416; 1 Hughes, 101; 1 Thomp. Nat. Bank Cas. 169; 1 Balt. Law Trans. 195.
Shoemaker v. National Union Bank. [See 12,801.]
Shoemaker, United States v. [See 16,279.]
SHOENBERGER, In re [12,802], 4 Cin. Law Bul. 965.
SHOMERS' CASE [12,803].
Shonniger Melodeon Co., Hitchcock v. [See 6,537.]
Shook, Carillo v. [See 2,407.]
Shook, Northrup v. [See 10,329.]
SHOOK v. RANKIN [12,804], 6 Biss. 477; 2 Law & Eq. Rep. 236; 8 Chi. Leg. News, 345; 3 Cent. Law J. 569; 22 Int. Rev. Rec. 239.
SHOOK v. RANKIN [12,805], 3 Cent. Law J. 210.
Shook, Westfall v. [See 17,448.]
Shore v. Jones. [See 15,492.]
Shore Line Ry. Co., Baird v. [See 758, 759.]
SHOREY v. RENNELL [12,806], 1 Spr. 407.
SHOREY v. RENNELL [12,807], 1 Spr. 418.
Shorey, United States v. [See 16,280, 16,282.]
SHORNER'S CASE [12,808], 1 Car. Law Repos. 55.
SHORT v. SKIPWITH [12,809], 1 Brock. 103.
Short, Webster Loom Co. v. [See 17,343.]
SHORT v. WILKINSON [12,810], 2 Cranch, C. C. 22.
SHORTER, In re [12,811].
Shorter, United States v. [See 16,283, 16,284.]
SHORTRIDGE v. MACON [12,812], 1 Abb. U. S. 58; Chase, 136; 2 Amer. Law Rev. 95; Phil. Law, N. C. 392; 5 Int. Rev. Rec. 206; 1 Amer. Law T. Rep. U. S. Cts. 35.
Shortridge v. Mason. [See 12,812.]
Shortsleeves, Steam Stone Cutter Co. v. [See 13,334.]
SHORT STAPLE, The [12,813], 1 Gall. 104.
SHOUP v. HENRICI [12,814], 11 Phila. 514; 22 Int. Rev. Rec. 114; 2 Ban. & A. 249; 9 O. G. 1162; 23 Pittsb. Leg. J. 123; Merw. Pat. Inv. 673; 33 Leg. Int. 120.
SHOUSE, Ex parte [12,815], Crabbe, 482; 1 Pa. Law J. 227.
SHOWER, In re [12,816], 6 N. B. R. 586; 4 Chi. Leg. News, 299.
Shreve, Butts v. [See 2,258.]
SHREVE v. DULANY [12,817], 1 Cranch, C. C. 499.
SHREW v. JONES [12,818], 2 McLean, 78.
SHREWSBURY v. TWO FRIENDS, The [12,819], Bee, 433.
Shrieve, Osborne v. [See 10,598.]
Shriver, Smith v. [See 13,108.]
SHRYOCK v. BASHORE [12,820].

[Federal Case numbers are given in brackets.]

Shuck, United States v. [See 16,285.]
SHUEY, In re [12,821], 9 N. B. R. 526; 6 Chi. Leg. News, 248.
SHUFFLETON v. NELSON [12,822], 2 Sawy. 540.
SHUFORD v. CAIN [12,823], 1 Abb. U. S. 302; 16 Pittsb. Leg. J. 194; 2 Amer. Law T. Rep. U. S. Cts. 187; 3 West. Jur. 294; 1 Leg. Gaz. 154.
Shulman, In re. [See 739.]
SHULTS v. MOORE [12,824], 1 McLean, 520.
Shultz, Josse v. [See 7,551.]
SHULTZ v. MOORE [12,825], 1 McLean, 334.
Shultz, United States v. [See 16,286.]
SHUMAN v. FLECKENSTEIN [12,826], 4 Sawy. 174; 15 N. B. R. 224; 9 Chi. Leg. News, 174.
Shumate v. Hawthorne. [See 5,654.]
Shumaway, Howe v. [See 6,774.]
Shumway, Wright v. [See 18,093.]
SHURLDS v. TILSON [12,827], 2 McLean, 458.
Shuster, United States v. [See 16,287.]
SHUTE v. DAVIS [12,828], Pet. C. C. 431.
Shute v. Goslee. [See 8,958.]
Sibley, Baldwin v. [See 805.]
Sibley, Dibble v. [See 3,883.]
SIBLEY v. MOBILE [12,829], 3 Woods, 535; 4 Amer. Law T. Rep. (N. S.) 226.
SIBLEY v. ST. PAUL FIRE & MARINE INS. CO. [12,830], 9 Biss. 31; 7 Reporter, 169; 8 Ins. Law J. 461; 11 Chi. Leg. News, 115; 8 Reporter, 808.
Sibley Mach. Co., Rose v. [See 12,051.]
Sibline v. Hercules Mut. Life Assur. Soc. [See 6,402.]
SICARD v. BUFFALO, N. Y. & P. R. CO. [12,831], 15 Blatchf. 525; 8 Reporter, 550.
Sickel, Clark v. [See 2,862.]
SICKELS v. BORDEN [12,832], 3 Blatchf. 535.
SICKELS v. BORDEN [12,833], 4 Blatchf. 14.
SICKELS v. FALLS CO. [12,834], 4 Blatchf. 508; 2 Fish. Pat. Cas. 202; 9 Pittsb. Leg. J. 89.
SICKELS v. MITCHELL [12,835], 3 Blatchf. 548.
SICKELS v. RODMAN [12,836], 1 West. Law J. 381.
SICKELS v. TILESTON [12,837], 4 Blatchf. 109.
SICKELS v. YOUNGS [12,838], 3 Blatchf. 293.
SICKLES v. EVANS [12,839], 2 Cliff. 203; 2 Fish. Pat. Cas. 417.
SICKLES v. GLOUCESTER CO. [12,840], 3 Wall. Jr. 186; 13 Leg. Int. 292.
SICKLES v. GLOUCESTER MFG. CO. [12,841], 1 Fish. Pat. Cas. 222; 13 Leg. Int. 388; 4 Blatchf. 229.
Sickles v. Pacific Mail Steamship Co. [See 12,842.]
SICLES v. PACIFIC MAIL STEAMSHIP CO. [12,842].
Siddle, Chandler v. [See 2,594.]
Sidenberg, MacDonald v. [See 8,768.]
Sidenberg, Wooster v. [See 18,039.]
SIDENER v. KLIER [12,843], 4 Biss. 391.
SIDLE, In re [12,844], 2 N. B. R. 220 (Quarto, 77).
SIEBERT v. GARRATT [12,845], 8 O. G. 600.
SIERRA NEVADA, The [12,846].
SIEVERS v. NORTH [12,847], 15 Alb. Law J. 332.
SIFFORD, Ex parte [12,848], 5 Amer. Law Reg. 659.
Sigel, Freedman v. [See 5,080.]
Sigel, The Franz. [See 5,062.]
Sigel, The General Franz. [See 5,311.]
Siger, Chapin v. [See 2,600.]
Signaigo, Gaffney's Assignee v. [See 5,169.]
SIGSBY v. WILLIS [12,849], 3 Ben. 371; 3 N. B. R. 207 (Quarto, 51); 1 Amer. Law T. Rep. Bankr. 171; 2 Amer. Law T. 169.
SILL v. LAWRENCE [12,850], 1 Blatchf. 605.
Silliman, Batten v. [See 1,106.]
SILLIMAN v. HUDSON RIVER BRIDGE CO. [12,851], 4 Blatchf. 74.
SILLIMAN v. HUDSON RIVER BRIDGE CO. [12,852], 4 Blatchf. 395.
Silliman v. Hudson River Bridge Co. [See 2,983.]
SILLIMAN v. TROY & W. T. BRIDGE CO. [12,853], 11 Blatchf. 274.
Silsbee, Mellus v. [See 9,404.]
Silsby, Foote v. [See 4,916-4,920.]
Silver, Dunlop v. [See 4,169.]
SILVER v. HENDERSON [12,854], 3 McLean, 165.
SILVERMAN'S CASE [12,855], 2 Abb. U. S. 243; 1 Sawy. 410; 4 N. B. R. 522 (Quarto, 173); 13 Int. Rev. Rec. 52.
Silverman, In re. [See 12,855.]
Silverman, United States v. [See 16,288.]
SILVER MOON, The [12,856], 1 Hask. 262; 11 Int. Rev. Rec. 118.
SILVER SPRAY, The [12,857], 1 Brown's Adm. 349.
SILVER SPRING, The [12,858], 1 Spr. 551; 17 Law Rep. 264.
Silver Spring, The, Whalen v. [See 17,477.]
SILVERTHAIN'S ASSIGNEE v. MITCHELL [12,859].
Silver Wire & Skirt Mfg. Co., West v. [See 17,425.]
Sim, Burns v. [See 2,184.]
SIME, In re [12,860], 2 Sawy. 320; 7 N. B. R. 407; 5 Pac. Law Rep. 217.
SIME, In re [12,861], 3 Sawy. 305; 12 N. B. R. 315.
Simm, Emerson v. [See 4,443.]
Simm, King v. [See 7,805.]
Simmes, McGunnigle v. [See 8,817.]
SIMMES v. MARINE INS. CO [12,862], 2 Cranch, C. C. 618.
SIMMONS, Ex parte [12,863], 4 Wash. C. C. 396.
SIMMONS, In re [12,864], 10 N. B. R. 253; 1 Cent. Law J. 440.
SIMMONS' CASE [12,865], 1 Brown's Adm. 128.
Simmons, American Cotton Tie Co. v. [See 293.]
SIMMONS v. BLACKINTON [12,866], 3 Ban. & A. 481.
Simmons, Commercial Nat. Bank v. [See 3,062.]
Simmons, Foster v. [See 4,983.]
SIMMONS v. GIRD [12,867], 2 Cranch, C. C. 100.
Simmons, Hopkins v. [See 6,691.]
Simmons, Thorpe v. [See 14,007.]
Simmons, United States v. [See 16,289.]
Simmons, Valk v. [See 16,815.]
SIMMS v. BAKER [12,868], Cooke, 146; Brunner, Col. Cas. 205.
Simms, Birch v. [See 1,427.]
Simms, Cox v. [See 3,306.]
SIMMS v. DICKSON [12,869], Cooke, 137; Brunner, Col. Cas. 196.
Simms, Hamilton v. [See 5,990.]
SIMMS v. PULLMAN SOUTH. CAR CO. [12,869a].
SIMMS v. READ [12,870], Cooke, 345; Brunner, Col. Cas. 219.
SIMMS v. SCOTT [12,871], 5 Cranch, C. C. 644.
Simms, Slacum v. [See 12,935.]
SIMMS v. TEMPLEMAN [12,872], 5 Cranch, C. C. 163.
Simms, United States v. [See 16,290.]
SIMON v. PAINE [12,873], 4 Cranch, C. C. 99.
Simon, Roemer v. [See 11,997.]
SIMONDS v. BLACK RIVER INS. CO. [12,874].
SIMONDS v. UNION INS. CO. [12,875], 1 Wash. C. C. 382; 4 Dall. 417.
SIMONDS v. UNION INS. CO. [12,876], 1 Wash. C. C. 443.
Simons, Allen v. [See 237.]
Simons, Hamilton v. [See 5,991.]
Simons, United States v. [See 16,291.]
Simonton, Barrell v. [See 1,041, 1,042.]
SIMONTON v. BOUCHER [12,877], 2 Wash. C. C. 473.
Simonton, Jackson v. [See 7,146, 7,147.]
Simonton, Ruggles v. [See 12,120.]
Simonton, Winter v. [See 17,892-17,894.]
Simoon, The, Reynolds v. [See 11,733.]
SIMPSON, Ex parte [12,878].
SIMPSON, In re [12,879], 2 N. B. R. 47 (Quarto, 17).
Simpson, Barr v. [See 1,038.]
SIMPSON v. CAULKINS [12,880], Abb. Adm. 539.
SIMPSON v. CERES, The [12,881], 36 Leg. Int. 339; 7 Wkly. Notes Cas. 576; 10 Cent. Law J. 113; 14 Phila. 523.
Simpson, Gardner v. [See 5,237.]
SIMPSON v. LASSALLE [12,882], 4 McLean, 352.
SIMPSON v. LEGG [12,883], 2 Cranch, C. C. 132.
SIMPSON v. LEIPER [12,884], 2 Whart. Dig. 414.
SIMPSON v. MAD RIVER R. CO. [12,885], 6 McLean, 603.
SIMPSON v. PACIFIC MUT. INS. CO. [12,886], Holmes, 136.
Simpson, Talbot v. [See 13,730.]
Simpson, Wheeler v. [See 17,500.]
SIMPSON v. WIGGIN [12,887], 3 Woodb. & M. 413.
Simpson, Wilson v. [See 17,834.]
Simpson, The Louisa. [See 8,533.]
SIMS, In re [12,888], 16 N. B. R. 251.
SIMS, In re [12,889], 19 N. B. R. 57.
Sims, Gray v. [See 5,729.]

[Federal Case numbers are given in brackets.]

SIMS v. JACKSON [12,890], 1 Pet. Adm. 157; 1 Wash. C. C. 414.
Sims, Johnson v. [See 7,413.]
SIMS v. LYLE [12,891], 4 Wash. C. C. 301.
SIMS v. LYLE [12,892], 4 Wash. C. C. 320.
SIMS v. MARINERS [12,893], 2 Pet. Adm. 393.
SIMS v. SIMS [12,894], 17 Blatchf. 369.
Sims, United States v. [See 16,290.]
SINCLAIR, In re [12,895], 8 Amer. Law Reg. 206.
SINCLAIR v. McELMURRY [12,895a], Hempst. 28.
Sinclair, Middleton v. [See 9,534.]
SINCLAIR v. PHOENIX MUT. LIFE INS. CO. [12,896], 9 Ins. Law J. 523.
Sinclair, Williams v. [See 17,737.]
SINGER v. BRAUNSDORF [12,897], 7 Blatchf. 521.
Singer, Hall v. [See 5,946.]
SINGER v. SLOAN [12,898], 3 Dill. 110; 12 N. B. R. 208; 7 Chi. Leg. News, 231; 2 Cent. Law J. 218.
SINGER v. SLOAN [12,899], 11 N. B. R. 433; 2 Cent. Law J. 141.
Singer, United States v. [See 16,292.]
SINGER v. WALMSLEY [12,900], 1 Fish. Pat. Cas. 558.
Singer, Wickersham v. [See 17,610.]
SINGER v. WILSON [12,901].
SINGER v. WOOSTER [12,901a].
Singer Mfg. Co., Florence Sewing-Mach. Co. v. [See 4,884, 4,885.]
SINGER MFG. CO. v. LARSEN [12,902], 8 Biss. 151; 3 Ban. & A. 246; 13 Chi. Leg. News, 59.
SINGER MFG. CO. v. MASON [12,903], 5 Dill. 488.
SINGER SEWING-MACH. CO. v. UNION BUTTON-HOLE & EMBROIDERY CO. [12,904], Holmes, 253; 4 O. G. 553; 6 Fish. Pat. Cas. 480.
SINGSTROM v. HAZARD, The [12,905], 2 Pet. Adm. 384.
SINN v. UNITED STATES [12,906], 14 Blatchf. 550.
SINNETT, In re [12,907], 4 Sawy. 250.
SINNOTT v. DRESDEN, The [12,908], Newb. 474.
Sioux City & P. R. Co., Stout v. [See 13,503, 13,504.]
SIOUX CITY & P. R. CO. v. UNION PAC. R. CO. [12,909], 4 Dill. 307.
Sioux County, Gross v. [See 5,842.]
SIREN, The [12,910], 9 Ben. 194.
SIREN, The [12,911], 1 Lowell, 280.
SISSON v. GILBERT [12,912], 9 Blatchf. 185; 5 Fish. Pat. Cas. 109.
Sisson, Greene v. [See 5,768.]
SISSON v. SEABURY [12,913], 1 Sumn. 235.
Six Barrels of Distilled Spirits, United States v. [See 16,294.]
Six Boxes of Arms, United States v. [See 16,295.]
SIX CASES OF SILK RIBBONS, [12,914], 3 Ben. 536; 11 Int. Rev. Rec. 13.
Six Fermenting Tubs, United States v. [See 16,296.]
SIX HUNDRED AND EIGHTY PIECES OF MERCHANDISE [12,915], 2 Spr. 233.
SIX HUNDRED AND FIFTY-ONE CHESTS OF TEA v. UNITED STATES [12,916], 1 Paine, 499.
SIX HUNDRED AND FOUR TONS OF COAL [12,917], 7 Ben. 525.
Six Hundred and Sixty-one Bales of Tobacco, United States v. [See 16,297.]
SIX HUNDRED AND THIRTY CASKS OF SHERRY [12,918], 14 Blatchf. 517.
Six Hundred and Thirty Casks of Sherry Wine, Vaughan v. [See 16,900.]
Six Lots of Ground, United States v. [See 16,299.]
SIXPENNY SAV. BANK v. ESTATE OF STUYVESANT BANK [12,919], 10 N. B. R. 399; 12 Blatchf. 179; 9 N. B. R. 318; 1 Cent. Law J. 83.
Sixteen Barrels of Distilled Spirits, United States v. [See 16,300.]
Sixteen Cases of Silk Ribbons, United States v. [See 16,301.]
Sixteen Hogsheads of Tobacco, United States v. [See 16,302.]
Sixteen Packages, United States v. [See 16,303.]
Six Thousand Two Hundred and Fifty Cigars, United States v. [See 16,304.]
Sixty Five-Eighths Carats Brilliants, United States v. [See 16,305.]
Sixty-Four Barrels Distilled Spirits, United States v. [See 16,306.]
Sixty-Nine Barrels, United States v. [See 16,307.]
SIZE v. CURTIS [12,920], 1 Lowell, 110.
Sizer, Many v. [See 9,056, 9,057.]
Skam, United States v. [See 16,308.]
Skates, Matthews v. [See 9,291.]
SKELLEY, In re [12,921], 3 Biss. 260; 5 N. B. R. 214.
Skelton, City Bank of New York v. [See 2,739, 2,740.]
SKIDDY v. ATLANTIC, M. & O. R. CO. [12,922], 3 Hughes, 320.
SKIDMORE v. POLLY, The [12,923], Anth. N. P. 200.
Skillinger, The R. W. [See 12,181.]
Skilton, Ex parte. [See 1,459.]
Skilton, Clark v. [See 2,834.]
Skinner, Gammell v. [See 5,210.]
Skinner v. The Lulu. [See 8,604.]
SKINNER v. McCAFFREY [12,924], 2 Cranch, C. C. 193.
Skinner, Potts v. [See 11,348.]
Skinner, United States v. [See 16,309.]
Skipwith, Short v. [See 12,809.]
S. K. Kirby, The, United States v. [See 16,310.]
SKOLFIELD v. POTTER [12,925], 2 Ware (Dav. 392) 394; 7 N. Y. Leg. Obs. 238; 12 Law Rep. 115; 7 West. Law J. 346; 2 Amer. Law J. (N. S.) 385.
Skolfield, Roberts v. [See 11,917.]
SKOLL, In re [12,926], 16 N. B. R. 175; 1 Month. Jur. 350; 1 N. W. Rep. (O. S.) 108; 9 Chi. Leg. News, 377; 6 Amer. Law Rec. 15; 1 Tex. Law J. 42; 4 Law & Eq. Rep. 196; 24 Pittsb. Leg. J. 207.
Skook, Northrup v. [See 10,329.]
Skook, Wells, Fargo & Co. v. [See 17,406.]
SKRINE v. HOPE, The [12,927], Bee, 2.
SKYLARK, The [12,928], 2 Biss. 251; 3 Bench & Bar (N. S.) 38; 18 Int. Rev. Rec. 164, note; 5 Leg. Gaz. 336.
SKYLARK, The [12,929], 4 Biss. 388; 6 Chi. Leg. News, 239.
SKYLARK, The [12,930], 1 Brown's Adm. 36.
SKYREN v. LINDO [12,931].
Slack, Francis v. [See 5,041.]
Slack, Johns v. [See 7,363.]
Slack, May v. [See 9,336.]
Slack, Metropolitan R. Co. v. [See 9,506.]
Slack, Michigan Cent. R. Co. v. [See 9,527.]
Slack, Tucker v. [See 14,226.]
SLACK v. WALCOTT [12,932], 3 Mason, 508.
SLACOM v. WISHART [12,933], 3 McLean, 517.
SLACUM v. BROWN [12,934], 5 Cranch, C. C. 315.
Slacum, Pomery v. [See 11,262.]
SLACUM v. SIMMS [12,935], 1 Cranch, C. C. 242.
SLACUM v. SMITH [12,936], 2 Cranch, C. C. 149.
Slacum, United States v. [See 16,311.]
Sladdin, Emmons v. [See 4,470.]
Slade, Lucy v. [See 8,595.]
SLADE v. MINOR [12,937], 2 Cranch, C. C. 139.
Slade, Suckley v. [See 13,587, 13,588.]
Slade, United States v. [See 16,312.]
Slafter, Oxford Iron Co. v. [See 10,637.]
Slater, Alricks v. [See 259.]
Slater, Calvert v. [See 2,326.]
Slater Mut. Fire Ins. Co., Hidden v. [See 6,463.]
SLAUGHTER HOUSE CASE, The [8,408].
Slaughter House Co., Butchers' Ass'n v. [See 2,234.]
Slaymaker, United States v. [See 16,313.]
S. L. DAVIS, The [12,939], 6 Blatchf. 138; 2 N. B. R. 3.
Sleeper, Jones v. [See 7,496.]
Sleeper v. Ping. [See 12,940, 12,941.]
SLEEPER v. PUIG [12,940], 10 Ben. 181.
SLEEPER v. PUIG [12,941], 17 Blatchf. 36; 8 Reporter, 357.
SLEVIN, In re [12,942], 4 Dill. 131.
SLICHTER, In re [12,943], 2 N. B. R. 336 (Quarto, 107).
Slick, The Sam. [See 12,282, 12,283.]
SLOAN, Ex parte [12,944], 4 Sawy. 330; 23 Int. Rev Rec. 354; 10 Chi. Leg. News, 26.
SLOAN, In re [12,945], 13 Blatchf. 67; 12 N. B. R. 59.
SLOAN v. A. E. I., The [12,946], Bee, 250.
Sloan, New England Screw Co. v. [See 10,158.]
Sloan, Singer v. [See 12,898, 12,899.]
Sloane, Gibbons v. [See 5,382.]
Sloane, Weimer v. [See 17,363.]

[Federal Case numbers are given in brackets.]

Sloat, Grover & Baker Sewing Mach. Co. v. [See 5,846.]
SLOAT v. PATTON [12,947], 1 Fish. Pat. Cas. 154; 24 Jour. Fr. Inst. (3d S.) 23; 9 West. Law J. 550.
SLOAT v. PLYMTON [12,948], 2 Whart. Dig. 415.
SLOAT v. SPRING [12,948a].
SLOCOMB v. LURTY [12,949], Hempst. 431.
SLOCUM, In re [12,950].
SLOCUM, In re [12,951].
SLOCUM v. HATHAWAY [12,952], 1 Paine, 290.
SLOCUM v. MARSHALL [12,953], 2 Wash. C. C. 397.
SLOCUM v. SWIFT [12,954], 2 Lowell, 212.
SLOGA, The [12,955], 10 Ben. 315.
SLOMAN v. WYSSMAN [12,955a].
SLOO v. LAW [12,956], 1 Blatchf. 512; 7 West. Law J. 310.
SLOO v. LAW [12,957], 3 Blatchf. 459.
SLOO v. LAW [12,958], 4 Blatchf. 268.
Slough v. Hatch. [See 13,499.]
SLOUGHTON v. HILL [13,501].
Slye, Crawford v. [See 3,371.]
Slye, Keziah v. [See 7,752.]
Smale, Forsyth v. [See 4,950.]
SMALL v. KING [12,960], 5 McLean, 147.
Small, Boone v. [See 1,644.]
Small, Duer v. [See 4,116.]
Small, Holbrook v. [See 6,594-6,596.]
Small v. King. [See 12,960.]
SMALL v. MESSENGER, The [12,961], 2 Pet. Adm. 284.
Small, United States v. [See 16,314.]
Small, The S. & B. [See 12,291b.]
Smallwood, Bean v. [See 1,173.]
Smallwood, United States v. [See 16,315, 16,316.]
SMALLWOOD v. VIOLET [12,962], 1 Cranch, C. C. 516.
SMALLWOOD v. WORTHINGTON [12,963], 2 Cranch, C. C. 431.
Smarr, Bartleman v. [See 1,074.]
SMEDBERG v. BENTLEY [12,964], 21 Int. Rev. Rec. 38.
SMEDLEY v. YEATON [12,965], 3 Cranch, C. C. 181.
Smilax, The, Wilmer v. [See 17,777.]
Smiley, United States v. [See 16,317.]
SMITH, Ex parte [12,966].
SMITH, Ex parte [12,967], 2 Cranch, C. C. 693.
SMITH, Ex parte [12,967a], Hempst. 201.
SMITH, Ex parte [12,968], 3 McLean, 121; 6 Law Rep. 57.
SMITH, Ex parte [12,969], 3 Wkly. Law Gaz. 237.
Smith, Ex parte. [See 2,784.]
Smith, Ex parte. [See 12,993.]
Smith, In re. [See 1,868.]
SMITH, In re [12,970].
SMITH, In re [12,971], 2 Ben. 113; 1 N. B. R. 243 (Quarto, 25).
SMITH, In re [12,972], 2 Ben. 122.
SMITH, In re [12,973], 2 Ben. 432; 1 N. B. R. 599 (Quarto, 169); 1 Amer. Law T. Rep. Bankr. 112.
SMITH, In re [12,974], 4 Ben. 1; 3 N. B. R. 377 (Quarto, 98); 3 Amer. Law T. 7; 1 Amer. Law T. Rep. Bankr. 147.
SMITH, In re [12,975], 6 Ben. 187.
SMITH, In re [12,976], 9 Ben. 494; 18 N. B. R. 24.
SMITH, In re [12,977], 8 Blatchf. 461.
SMITH, In re [12,978], 2 Hughes, 284.
SMITH, In re [12,979], 2 Hughes, 307.
SMITH, In re [12,980], 11 Int. Rev. Rec. 78.
SMITH, In re [12,981], 2 Lowell, 69.
SMITH, In re [12,982], 1 McA. Pat. Cas. 255.
SMITH, In re [12,983], 1 N. B. R. 214; Bankr. Reg. Supp. 46.
SMITH, In re [12,984], 2 N. B. R. 297 (Quarto, 98); 1 Chi. Leg. News, 123.
SMITH, In re [12,985], 5 N. B. R. 20.
SMITH, In re [12,986], 8 N. B. R. 401; 6 Chi. Leg. News, 33; 18 Int. Rev. Rec. 167; 5 Leg. Gaz. 350.
SMITH, In re [12,987], 13 N. B. R. 500.
SMITH, In re [12,988], 14 N. B. R. 432.
SMITH, In re [12,989], 15 N. B. R. 97; 1 Tex. Law J. 42.
SMITH, In re [12,990], 15 N. B. R. 459; 2 Cin. Law Bul. 119.
SMITH, In re [12,991], 16 N. B. R. 113.
SMITH, In re [12,992], 16 N. B. R. 399; 10 Chi. Leg. News, 86; 5 N. Y. Wkly. Dig. 322.
SMITH, In re [12,993], 1 N. Y. Leg. Obs. 249; 5 Law Rep. 372.
SMITH, In re [12,994], 1 N. Y. Leg. Obs. 291.
SMITH, In re [12,995], 1 Woods, 478; 13 N. B. R. 256.
SMITH, In re [12,996], 2 Woods, 458; 2 N. Y. Wkly. Dig. 532; 14 N. B. R. 295; 8 Chi. Leg. News, 315; 3 Cent. Law J. 386; 3 Amer. Law T. Rep. (N. S.) 335.
Smith, In re. [See 11,746.]
SMITH, Case of [12,997], 1 Pa. Law J. 149.
SMITH v. ADDISON [12,998], 5 Cranch, C. C. 623.
SMITH v. ALABAMA, The [12,998a].
SMITH v. ALLEN [12,999], 2 Fish. Pat. Cas. 572.
SMITH v. ALLYN [13,064].
SMITH v. ALLYN [13,065].
SMITH v. AMERICAN BRIDGE CO. [13,002], 8 Biss. 312; 3 Ban. & A. 565.
Smith, Appleton v. [See 498.]
SMITH v. ARDEN [13,003], 5 Cranch, C. C. 485.
SMITH v. ARNOLD [13,004], 5 Mason, 414.
Smith, Askew v. [See 588.]
SMITH v. ATLANTIC MUT. FIRE INS. CO. [13,005], 12 Law Rep. 408; Brunner, Col. Cas. 573.
SMITH v. ATWOOD [13,006], 3 McLean, 545.
SMITH v. AVERILL [13,007], 7 Blatchf. 29; 9 Amer. Law Reg. (N. S.) 47; 3 Amer. Law T. Rep. U. S. Cts. 1; 10 Int. Rev. Rec. 139, 156; 2 Chi. Leg. News, 57.
Smith, Aylward v. [See 687, 688.]
SMITH v. BABCOCK [13,008], 3 Sumn. 583.
SMITH v. BABCOCK [13,009], 2 Woodb. & M. 246.
SMITH v. BAKER [13,010], 5 O. G. 496; 19 Int. Rev. Rec. 149; 10 Phila. 221; 1 Ban. & A. 117; 31 Leg. Int. 126; 21 Pittsb. Leg. J. 141.
Smith, Baker v. [See 781.]
SMITH v. BANK OF COLUMBIA [13,011], 4 Cranch, C. C. 143.
Smith, Bank of the United States v. [See 935, 936.]
SMITH v. BARKER [13,012], 3 Day, 280; Brunner, Col. Cas. 52.
SMITH v. BARKER [13,013], 3 Day, 312; Brunner, Col. Cas. 78.
Smith, Bean v. [See 1,174.]
Smith, Belden v. [See 1,242.]
Smith, Berry v. [See 1,359.]
SMITH v. BILLING [13,014], 3 Cranch, C. C. 355.
Smith, Blake v. [See 1,502.]
Smith v. The Blossom. [See 1,564.]
Smith, Blossom v. [See 1,565, 1,566.]
SMITH v. BOHN [13,015], 4 Wash. C. C. 127.
Smith, Booth v. [See 1,649.]
Smith, Bourne v. [See 1,701.]
Smith, Brent v. [See 1,841.]
Smith, Brest v. [See 1,843.]
Smith, Bromley v. [See 1,922.]
Smith, Brune v. [See 2,053.]
SMITH v. BUCHANAN [13,016], 8 Blatchf. 153; 4 N. B. R. 397 (Quarto, 133); 3 Alb. Law J. 97.
SMITH v. BURLINGAME [13,017], 4 Mason, 121.
SMITH v. BURNHAM [13,018], 2 Sumn. 612.
SMITH v. BURNHAM [13,019], 3 Sumn. 435.
Smith, Burr v. [See 2,196.]
Smith, Burton v. [See 2,219.]
Smith, Cardinel v. [See 2,395.]
SMITH v. CAROLIN [13,020], 1 Cranch, C. C. 99.
SMITH v. CATLETT [13,021], 1 Cranch, C. C. 56.
Smith, Chambers v. [See 2,582.]
SMITH v. CHASE [13,022], 3 Cranch, C. C. 348.
SMITH v. CHASE [13,023], 2 Hask. 106.
Smith, Chase v. [See 2,629.]
SMITH v. CHESAPEAKE & O. CANAL CO. [13,024], 5 Cranch, C. C. 563.
SMITH v. CINCINNATI, H. & D. R. CO. [13,025], 2 Cin. Law Bul. 243.
SMITH v. CLAFLIN [13,026], 19 N. B. R. 523.
SMITH v. CLARK [13,027], 3 Amer. Law J. (N. S.) 155; Brunner, Col. Cas. 345.
SMITH v. CLARKE [13,028], 4 Cranch, C. C. 293.
Smith, Clason v. [See 2,868.]
Smith, Cleaveland v. [See 2,874.]
SMITH v. COLEMAN [13,029], 2 Cranch, C. C. 237.
Smith, Craig v. [See 3,338, 3,339.]
SMITH v. CRAWFORD [13,030], 6 Ben. 497; 9 N. B. R. 38.
SMITH v. CREASE [13,031], 2 Cranch, C. C. 481.
SMITH v. CREOLE, The [13,032], 4 Amer. Law J. (N. S.) 558; 5 Pa. Law J. Rep. 186; 9 Leg. Int. 74.
SMITH v. CREOLE, The [13,033], 2 Wall. Jr. 485.

[Federal Case numbers are given in brackets.]

SMITH v. CUMMINGS [13,034], 1 Fish. Pat. Cas. 152; 9 Leg. Int. 82.
Smith, Curtis v. [See 3,505.]
Smith, Cushing v. [See 3,511.]
Smith, Davidson v. [See 3,608.]
SMITH v. DELAWARE INS. CO. [13,035], 3 Wash. C. C. 127.
Smith, Dexter v. [See 3,866.]
SMITH v. DOWNING [13,036], 1 Fish. Pat. Cas. 64.
SMITH v. DRAPER [13,037], 5 Blatchf. 238; 2 Int. Rev. Rec. 6.
SMITH v. DREW [13,038], 10 Ben. 614.
SMITH v. EASTERN RAILROAD, The [13,039], 1 Curt. 253; 16 Law Rep. 401.
Smith, Ellicott v. [See 4,387.]
SMITH v. ELLIOT [13,040], 4 Cranch, C. C. 710.
SMITH v. ELLIOTT [13,041], 9 Blatchf. 400; 5 Fish. Pat. Cas. 315; 1 O. G. 331; Merw. Pat. Inv. 193.
SMITH v. ELWOOD [13,042], 4 Cranch, C. C. 670.
SMITH v. ELY [13,043], 5 McLean, 76; 1 Fish. Pat. Rep. 339.
SMITH v. ELY [13,044], 10 N. B. R. 553.
SMITH v. FAY [13,045], 6 Fish. Pat. Cas. 446.
SMITH v. FENNER [13,046], 1 Gall. 170.
SMITH v. FLICKENGER [13,047], Cranch, Pat. Dec. 116; 1 McA. Pat. Cas. 46.
SMITH v. FRAZER [13,048], 29 Leg. Int. 196; 3 Pittsb. Rep. 397; 5 Fish. Pat. Cas. 543; 2 O. G. 175; Merw. Pat. Inv. 121; 19 Pittsb. Leg. J. 154.
Smith, Freeman's Nat. Bank v. [See 5,089.]
SMITH v. FRYE [13,049], 5 Cranch, C. C. 515.
Smith, Garden City Mfg. Co. v. [See 5,217.]
Smith, Gayes v. [See 5,286.]
Smith, Georgetown v. [See 5,347.]
Smith, Giveen v. [See 5,466, 5,467.]
SMITH v. GLENDALE ELASTIC FABRICS CO. [13,050], Holmes, 340; 5 O. G. 429; 1 Ban. & A. 58.
SMITH v. GLOVER [13,051], 2 Cranch, C. C. 334.
Smith, Goodyear Dental Vulcanite Co. v. [See 5,-598.]
SMITH v. GORDON [13,052], 2 N. Y. Leg. Obs. 325; 6 Law Rep. 313.
Smith, Gormley v. [See 18,298.]
Smith, Greeley v. [See 5,747, 5,748.]
Smith, Greely v. [See 5,749, 5,750.]
SMITH v. HAMMOND [13,053], Hoff. Op. 532.
Smith, Hanover Nat. Bank v. [See 6,035.]
Smith, Harper v. [See 6,092.]
SMITH v. HARTWELL [13,054], 4 McLean, 206.
SMITH v. HAZEL [13,055], 3 Cranch, C. C. 55.
SMITH v. HEISKELL [13,056], 1 Cranch, C. C. 99.
SMITH v. HIGGINS [13,057].
SMITH v. HIGGINS [13,058].
SMITH v. HIGGINS [13,059], 1 Fish. Pat. Cas. 537.
SMITH v. HIGGINS [13,060], 2 Fish. Pat. Cas. 97.
Smith, Hill v. [See 6,499.]
SMITH v. HOFFMAN [13,061], 2 Cranch, C. C. 651.
Smith, Holmead v. [See 6,630.]
Smith, Horton v. [See 6,709.]
SMITH v. HOUTZ [13,062], 15 Pittsb. Leg. J. 409; 25 Leg. Int. 244.
Smith, Hunt v. [See 6,899.]
SMITH v. HUNTER [13,063], 5 Cranch, C. C. 467.
Smith, Hurley v. [See 6,920.]
Smith, Hyer v. [See 6,978, 6,979.]
SMITH v. JACKSON [13,064], 1 Paine, 453.
SMITH v. JACKSON [13,065], 1 Paine, 486.
Smith, Janney v. [See 7,214.]
Smith, Janvrin v. [See 7,220.]
SMITH v. JOHNSON [13,066], 4 Blatchf. 252.
SMITH v. JOHNSON [13,067], 2 Cranch, C. C. 645.
Smith, Jones v. [See 7,497.]
SMITH v. JORDAN [13,068], 21 Law Rep. 204; Brunner, Col. Cas. 627.
SMITH v. JOSEPHINE, The [13,069].
SMITH v. JOSEPH STEWART, The [13,070], Crabbe, 218; 1 Liv. Law Mag. 606.
SMITH v. KEHR [13,071], 2 Dill. 50; 7 N. B. R. 97; 6 West. Jur. 451.
Smith, Kelly v. [See 7,675.]
Smith, King v. [See 7,806.]
Smith, Lambert v. [See 8,027, 8,028.]
Smith, League v. [See 8,159.]
Smith, Lewis v. [See 8,332.]
Smith, Linker v. [See 8,373.]
Smith, Linn v. [See 8,375.]
SMITH v. LITTLE [13,072], 5 Biss. 490; 9 N. B. R. 111; 6 Chi. Leg. News, 86.
Smith, Lockington v. [See 8,448.]
Smith, Long v. [See 8,478.]
SMITH v. M'CLEOD [13,073], 1 Cranch, C. C. 43.
SMITH v. McLEAN [13,074], 10 N. B. R. 260.
SMITH v. MANSANITO, The [13,075].
SMITH v. MANUFACTURERS' NAT. BANK [See 9,051.]
Smith, Market Bank of Troy v. [See 9,090.]
SMITH v. MARSHALL [13,077], 10 O. G. 375; 2 Ban. & A. 371.
Smith, Martin v. [See 9,164.]
Smith, Matcalm v. [See 9,272.]
Smith, Mattingly v. [See 9,293.]
Smith, Mayo v. [See 9,355.]
SMITH v. MERCER [13,078], 5 Pa. Law J. 529; 4 West. Law J. 49; 3 Pa. Law J. Rep. 444.
SMITH v. MIDDLETON [13,079], 2 Cranch, C. C. 233.
SMITH v. MILES [13,079a], Hempst. 34.
SMITH v. MILLER [13,080], 5 Mason, 191.
Smith, Miller v. [See 9,589, 9,590.]
Smith, Mills v. [See 9,615.]
SMITH v. MILN [13,081], Abb. Adm. 373.
SMITH v. MILWAUKEE & S. R. Co. [13,082], 9 Amer. Law Reg. 655; 3 West. Law Month. 355.
Smith, Minturn v. [See 9,647.]
SMITH v. MISSOURI VAL. LIFE INS. CO. [13,083], 4 Dill. 353; 3 Cent. Law J. 386.
Smith v. The Monitor. [See 9,708-9,710.]
Smith, Morton v. [See 9,867.]
Smith, Mott v. [See 9,882.]
Smith v. The Nellie D. [See 10,097.]
SMITH v. NICHOLS [13,084], Holmes, 172; 6 Fish. Pat. Cas. 61; 2 O. G. 649.
SMITH v. ONTARIO [13,085], 15 Blatchf. 267.
SMITH v. ONTARIO [13,086], 17 Blatchf. 240.
Smith, O'Reilly v. [See 10,566.]
SMITH v. PARKER [13,087], 3 Cranch, C. C. 654.
Smith, Partridge v. [See 10,787.]
SMITH v. PATTON [13,088], 6 Pa. Law J. 189; 3 Pa. Law J. Rep. 508.
Smith v. Patton. [See 13,078.]
SMITH v. PEARCE [13,089], 2 McLean, 176; 2 Robb, Pat. Cas. 13.
SMITH v. PEKIN, The [13,090], Gilp. 203.
SMITH v. PENDERGAST [13,090a].
Smith, People v. [See 16,342.]
SMITH v. PERKINS [13,091], 8 Biss. 73; 10 Chi. Leg. News, 49; 4 Law & Eq. Rep. 659.
Smith, Peter v. [See 11,020.]
Smith, Pharo v. [See 11,062, 11,063.]
Smith v. Plympton. [See 13,078.]
SMITH v. POMEROY [13,092], 2 Dill. 414; 5 Chi. Leg. News, 158.
SMITH v. POOR [13,093], 3 Ware, 148.
SMITH v. POTTS [13,094], 1 Cranch, C. C. 123.
SMITH v. PRIOR [13,095], 2 Sawy. 461; 4 Fish. Pat. Cas. 469; 4 O. G. 633.
SMITH v. QUEEN [13,096], 1 Cranch, C. C. 483.
SMITH v. REYNOLDS [13,097], 10 Blatchf. 85; 3 O. G. 213; Cox, Manual Trade-Mark Cas. 225; 6 Amer. Law T. 38.
SMITH v. REYNOLDS [13,098], 10 Blatchf. 100; 3 O. G. 214; 6 Amer. Law T. 41; Cox, Manual Trade-Mark Cas. 225.
SMITH v. REYNOLDS [13,099], 13 Blatchf. 458; Cox, Manual Trade-Mark Cas. 285.
SMITH v. RINES [13,100], 2 Sumn. 338.
SMITH v. RINGGOLD [13,101], 4 Cranch, C. C. 124.
SMITH v. ROYAL GEORGE, The [13,102], 1 Woods, 290.
Smith, Sands v. [See 12,305.]
Smith, Schmidt v. [See 12,466.]
SMITH v. SCHROEDER [13,103], 21 Law Rep. 739; Brunner, Col. Cas. 672.
SMITH v. SELDEN [13,104], 1 Blatchf. 475; 1 Fish. Pat. Rep. 298.
SMITH v. SHANE [13,105], 1 McLean, 22.
SMITH v. SHARP'S RIFLE MFG. CO. [13,106], 3 Blatchf. 545.
SMITH v. SHAW [13,107], 2 Wash. C. C. 167.
SMITH v. SHRIVER [13,108], 14 Leg. Int. 172; 3 Wall. Jr. 219.
Smith, Slacum v. [See 12,936.]

[Federal Case numbers are given in brackets.]

SMITH v. SMITH [13,109].
Smith v. The Southwest. [See 13,191.]
Smith, Speed v. [See 13,226.]
Smith, Stewart v. [See 13,436.]
Smith, Stokely v. [See 13,473.]
SMITH v. STOOPS [13,110], 1 Cranch, C. C. 238.
Smith, Strong v. [See 13,544.]
SMITH v. STURGIS [13,111], 3 Ben. 330.
SMITH v. SWORMSTEDT [13,112], 5 McLean, 369.
SMITH v. TALLAPOOSA COUNTY [13,113], 2 Woods, 574.
SMITH v. TALLAPOOSA COUNTY [13,114], 2 Woods, 596.
Smith, Tappan v. [See 13,748.]
Smith, Taylor v. [See 13,806.]
SMITH v. TEUTONIA INS. CO. [13,115], 4 Chi. Leg. News, 130; 6 Amer. Law Rev. 584.
Smith, Thelusson v. [See 13,878.]
Smith, Thompson v. [See 13,976, 13,977.]
Smith, Towne v. [See 14,115.]
SMITH v. TRABUE [13,116], 1 McLean, 87.
SMITH v. TREAT [13,117], 2 Ware (Dav. 266) 270; 4 N. Y. Leg. Obs. 13; 14 Hunt, Mer. Mag. 69.
SMITH v. TRIBUNE CO. [13,118], 4 Biss. 477.
SMITH v. TURNER [13,119], 1 Hughes, 373.
SMITH v. TUTTLE [13,120], 5 Biss. 159.
Smith, Union Bank v. [See 14,352.]
Smith, Union Bank of Georgetown v. [See 14,362.]
SMITH v. UNION PAC. R. CO. [13,121], 2 Dill. 278.
SMITH v. UNITED STATES [13,122], 1 Gall. 261.
Smith, United States v. [See 16,318-16,346.]
SMITH v. UTICA, The [13,123].
Smith, Vasse v. [See 16,896.]
Smith, Virginia v. [See 16,965-16,967.]
SMITH v. WALKER [13,123a], Hempst. 289.
Smith, Walker v. [See 17,086, 17,087.]
SMITH v. WASHINGTON [13,123b], 2 Hayw. & H. 220.
SMITH v. WATSON [13,124], 1 Cranch, C. C. 311.
SMITH v. WELSH [13,126].
SMITH v. WELSH [13,126], 4 Wkly. Notes Cas. 383; 25 Pittsb. Leg. J. 46; 23 Int. Rev. Rec. 378.
Smith, Whiston v. [See 17,523.]
SMITH v. WILLIAMS [13,127].
SMITH v. WILSON [13,128], 31 How. Pr. 272; 13 Pittsb. Leg. J. 538.
Smith, Wintermute v. [See 17,897.]
SMITH v. WOODRUFF [13,128a], 6 Fish. Pat. Cas. 476.
SMITH v. WOODWARD [13,129], 2 Cranch, C. C. 226.
SMITH v. WOODWORTH [13,130], 4 Dill. 584.
Smith, Wylie v. [See 18,110.]
Smith, Wythe v. [See 18,122.]
SMITH v. YATES [13,131], 15 Blatchf. 89.
Smith, The Annie H. [See 420.]
Smith, The L. P. [See 13,191.]
Smith, The Wiley. [See 17,657.]
Smithers, United States v. [See 16,347.]
Smock, United States v. [See 16,348.]
SMOOT v. BELL [13,132], 3 Cranch, C. C. 343.
Smoot, Hough v. [See 6,723.]
Smoot, Jones v. [See 7,498.]
SMOOT v. LEE [13,133], 2 Cranch, C. C. 459.
SMOOT v. WASHINGTON [13,133a], 2 Hayw. & H. 122.
Smull, The Annie M. [See 423.]
SMYTHE v. BANKS [13,134], 4 Dall. 329.
Smythe, Chapon v. [See 2,611.]
SMYTHE v. CHICAGO & S. R. CO. [13,135], 8 Reporter, 709; 11 Chi. Leg. News, 407.
Smythe, Dallet v. [See 3,545.]
Smythe, Davidson v. [See 3,604.]
Smythe, Fiske v. [See 4,833.]
Smythe, Hallett v. [See 5,959.]
Smythe, Lattimer v. [See 8,523.]
Smythe, Lewis v. [See 8,333.]
Smythe, Lottimer v. [See 8,523.]
Smythe, Reiche v. [See 11,666.]
Smythe, Wolf v. [See 17,928.]
Smyzer v. The Minnie. [See 9,117.]
SNEED v. HANLY [13,136], Hempst. 659.
Snell, Brooks v. [See 1,961.]
SNELL v. DELAWARE INS. CO. [13,137], 1 Wash. C. C. 509; 4 Dall. 430.
SNELL v. FAUSSATT [13,138], 1 Wash. C. C. 271.
SNELL v. INDEPENDENCE, The [13,139], Gilp. 140.
Snell, Ryberg v. [See 12,190.]
SNELLING, In re [13,140], 19 N. B. R. 120.
Snelling, Laverty v. [See 8,124.]
SNOW, In re [13,141], 2 Curt. 485.
SNOW, In re [13,142], 1 N. Y. Leg. Obs. 264; 5 Law Rep. 369.
SNOW, Case of [13,143], 3 Woodb. & M. 430; 10 Law Rep. 344.
SNOW v. CARRUTH [13,144], 1 Spr. 324; 19 Law Rep. 198.
SNOW v. EDWARDS [13,145], 2 Lowell, 273; 7 Amer. Law Rev. 362.
Snow, Elfeldt v. [See 4,342.]
SNOW v. INCA, The [13,145a].
Snow, The Lucinda. [See 8,591.]
Snow, Mayo v. [See 9,356.]
SNOW v. MILES [13,146], 3 Cliff. 608.
SNOW v. TAPLEY [13,147], 13 O. G. 548; 3 Ban. & A. 228.
SNOW v. TAYLOR [13,148], 4 Ban. & A. 5; 14 O. G. 861.
Snow, United States v. [See 16,349, 16,350.]
Snow, Weed v. [See 17,347.]
SNOW v. WOPE [13,149], 2 Curt. 301.
SNOWDEN v. McGUIRE [13,150], 2 Cranch, C. C. 6.
Snowden, Millett v. [See 9,600.]
SNOWDEN v. PIERCE [13,151], 2 Hayw. & H. 386.
SNOWDON v. LINDO [13,152], 1 Cranch, C. C. 569.
SNYDER v. BRACHEN [13,153], 5 Biss. 60.
SNYDER v. MUTUAL LIFE INS. CO. [13,154], 3 Ins. Law J. 579; 4 Bigelow, Ins. Cas. 424.
Snyder, United States v. [See 16,351.]
Societe La Anonyme Des Mines v. Baxter. [See 8,099.]
SOCIETY FOR THE PROPAGATION OF THE GOSPEL v. HARTLAND [13,155], 2 Paine, 536.
Society for the Propagation of the Gospel, Vermont v. [See 16,919, 16,920.]
SOCIETY FOR THE PROPAGATION OF THE GOSPEL v. WHEELER [13,156], 2 Gall. 105.
SOFIELD v. SOMMERS [13,157], 9 Ben. 526.
Sohier, Clark v. [See 2,835.]
SOHIER v. MERRIL [13,158], 3 Woodb. & M. 179.
SOHIER v. WILLIAMS [13,159], 1 Curt. 479.
SOHIER v. WILLIAMS [13,160], 2 Curt. 195.
SOHN v. WATERSON [13,161], 1 Dill. 358.
SOHOO, In re [13,162], 3 N. B. R. 215 (Quarto, 52).
Solaris v. Ramsay. [See 7,099.]
SOLDIERS' BUSINESS MESSENGER & DISPATCH CO., In re [13,163], 3 Ben. 204; 2 N. B. R. 519 (Quarto, 162); 2 Amer. Law T. Rep. Bankr. 87.
Soley, Moffat v. [See 9,688.]
SOLIDAD COS, The [13,164], Blatchf. Pr. Cas. 94.
SOLIS, In re [13,165], 4 Ben. 143; 3 N. B. R. 761 (Quarto, 186); 4 N. B. R. 68 (Quarto, 18).
SOLOMON, In re [13,166], 2 Hughes, 164; 10 N. B. R. 9; 3 Amer. Law Rec. 226; 1 Amer. Law T. Rep. (N. S.) 351.
SOLOMON, In re [13,167], 2 N. B. R. 285 (Quarto, 94); 6 Phila. 481; 25 Leg. Int. 364; 1 Chi. Leg. News, 77, 107.
Solomon, Andrews v. [See 378.]
Solomon, Payne v. [See 10,856.]
Solon, The, Anderson v. [See 363.]
Somborn, Apollinaris Brunnen v. [See 496.]
SOMBOY v. LORING [13,168], 2 Cranch, C. C. 318.
Somers, Brice v. [See 1,856.]
SOMERS v. JERSEY BLUE, The [13,169], 2 N. J. Law J. 359.
SOMERS v. TAYLOE [13,170], 2 Cranch, C. C. 138.
Somerset & K. R. Co., Childs v. [See 2,682.]
SOMERVILLE v. FRANCISCO, The [13,171], 1 Sawy. 390.
SOMERVILLE v. LEE [13,172], 1 Hayw. & H. 30.
SOMMERVILLE v. FRENCH [13,173], 1 Cranch, C. C. 474.
Somerville Water-Power Co., Martin v. [See 9,165.]
Sommers, Sofield v. [See 13,157.]
SON, In re [13,174], 2 Ben. 153; 15 Pittsb. Leg. J. 242. 1 N. B. R. 310 (Quarto, 58).
Sonachall, United States v. [See 16,352.]
Son and Heir, The, Lake Erie & B. Steamboat Co. v. [See 7,995.]
SONDERBURG v. OCEAN TOWBOAT CO. [13,175], 3 Woods, 146.
SONNEBORN v. STEWART [13,176], 2 Woods, 599.
Sonora, The, Bailey v. [See 746.]
Sonora, The, Sparks v. [See 13,212.]

Sontag, Hyde v. [See 6,974.]
Soper, United States v. [See 16,353.]
Sophia, The, Adams v. [See 65.]
Sophia, The Annie. [See 424.]
SORTWELL v. HUGHES [13,177], 1 Curt. 244.
Soto, United States v. [See 16,354-16,357.]
Souders, United States v. [See 16,358.]
Souder, The Emily B. [See 4,454-4,458.]
Soule, Hendy v. [See 6,359.]
Soule, Howland v. [See 6,800.]
Soule, Long v. [See 8,483.]
SOULE v. RODOCANACHI [13,178], Newb. 504.
SOULT v. L'AFRICAINE [13,179], Bee, 204.
Souter v. La Crosse & M. R. Co. [See 6,760.]
SOUTER v. LA CROSSE R. R. [13,180], Woolw. 80.
South America, The, Tyler v. [See 14,311.]
South America, The, Warner v. [See 17,190.]
SOUTH AMERICA, The, v. WARRAN [13,180a].
SOUTH AMERICAN, The [14,311].
South & North Alabama R. Co., Vaughan v. [See 16,901.]
Southard, Lyman Ventilating & Refrigerator Co. v. [See 8,633.]
SOUTHARD v. RAILWAY PASSENGERS' ASSUR. CO. [13,182], 34 Conn. 574; 1 Bigelow, Ins. Cas. 70.
SOUTH BOSTON IRON CO., In re [13,183], 4 Cliff. 343.
South Branch Distilling Co., United States v. [See 16,359.]
South Carolina, The, Lindsey v. [See 8,368.]
South Carolina, The, Moitez v. [See 9,697.]
South Carolina, The, United States v. [See 16,360.]
South Carolina Phosphate & Phosphatic River Min. Co., Bradley v. [See 1,787.]
South Carolina R. Co., Sayles v. [See 12,425.]
SOUTHER, In re [13,184], 2 Lowell, 320; 9 N. B. R. 502.
SOUTHERN & A. TEL. CO. v. NEW ORLEANS, M. & T. R. CO. [13,185], 2 Cent. Law J. 88.
SOUTHERN BANK v. ALEXANDER McNEIL, The [13,186], 20 Int. Rev. Rec. 176.
Southern Belle, The, Culbertson v. [See 3,462.]
Southern Exp. Co., Bland v. [See 1,526.]
Southern Express Co., Caldwell v. [See 2,303.]
Southern Express Co., St. John v. [See 12,228.]
SOUTHERN HOME, The [13,187], 16 Blatchf. 447; 8 Reporter, 389.
Southern Home, The, Brauer v. [See 13,187.]
Southern Life Ins. Co., Knott v. [See 7,894.]
SOUTHERN MINN. R. CO., In re [13,188], 10 N. B. R. 86.
Southern Minn. R. Co., Ruggles v. [See 12,121.]
SOUTHERN PAC. R. CO. v. ORTON [13,188a], 32 Fed. 457.
Southern Pullman Palace Car Co., Blum v. [See 1,574.]
Southfield, Bull v. [See 2,120.]
SOUTH FORK CANAL CO. v. GORDON [13,189], 2 Abb. U. S. 479; 8 Amer. Law. Reg. (N. S.) 279.
South Fork Canal Co., Gordon v. [See 5,621.]
Southmayd, United States v. [See 16,361.]
South Park Commissioners, Kerr v. [See 7,733.]
SOUTH SIDE R. CO., In re [13,190], 7 Ben. 391; 10 N. B. R. 274.
SOUTHWEST, The [13,191], 2 Flip. 79; 9 Chi. Leg. News, 385; 16 Alb. Law J. 167.
Southwestern, The, Lesassier v. [See 8,274.]
SOUTHWESTERN CAR CO, In re [13,192], 9 Biss. 76; 19 N. B. R. 404.
SOUTHWESTERN R. BANK v. PARSONS [13,193].
Southwick, Ex parte. [See 18,063.]
Southwick, Clarke v. [See 2,863.]
SOUTHWORTH v. ADAMS [13,194], 11 Biss. 256.
SOUTHWORTH v. A. E. DOUGLASS, The [13,195].
Southworth, Strong v. [See 13,545.]
Sowers, United States v. [See 16,362, 16,363.]
Spader, De Casse v. [See 3,720.]
SPADES, In re [13,196], 6 Biss. 448; 13 N. B. R. 72; 8 Chi. Leg. News, 33.
Spaeth, Turrell v. [See 14,267-14,269.]
SPAFFORD v. GOODELL [13,197], 3 McLean, 97.
Spafford, Wilkens v. [See 17,659.]
SPAFFORD v. WOODRUFF [13,198], 2 McLean, 191.
Spafford, Woodworth v. [See 18,020.]
Spain, Consul of, v. The Conception. [See 3,137.]
Spain, Consul of, v. Consul of Great Britain. [See 3,138.]
SPAIN v. GAMBLE [13,199], 1 McA. Pat. Cas. 358.
SPALDING v. BATON ROUGE [13,200], 10 West. Law J. 461.
SPALDING v. KRUTZ [13,201], 1 Dill. 414.
Spalding, Legionary Paymaster v. [See 8,212.]
Spalding, Lewis v. [See 8,334.]
Spalding, Mewster v. [See 9,513.]
Spalding, United States v. [See 16,364, 16,365.]
SPANISH CONSUL'S PETITION [13,202], 1 Ben. 225.
Spann, Gaines v. [See 5,178.]
Sparhawk, Clark v. [See 2,836.]
SPARHAWK v. COCHRAN [13,203], 30 Leg. Int. 233; 5 Leg. Op. 101.
SPARHAWK v. DREXEL [13,204], 12 N. B. R. 450; 1 Wkly. Notes Cas. 560.
SPARHAWK v. RICHARDS [13,205], 12 N. B. R. 74; 1 Wkly. Notes Cas. 510.
SPARK, The, v. LEE CHOI CHUM [13,206], 1 Sawy. 713.
SPARKLE, The [13,207], 7 Ben. 528.
SPARKMAN v. HIGGINS [13,208], 1 Blatchf. 205; 5 N. Y. Leg. Obs. 122; 6 Pa. Law J. 344; Fent. Pat. 122; Merw. Pat. Inv. 701; 1 Fish. Pat. Rep. 110.
SPARKMAN v. HIGGINS [13,209], 2 Blatchf. 29; 1 Fish. Pat. Rep. 135.
Sparkman v. Porter. [See 7,143.]
SPARKS v. KITTREDGE [13,210], 9 Law Rep. 318.
Sparks, Pagan v. [See 10,659.]
SPARKS v. PICO [13,211], 1 McAll. 497.
SPARKS v. SONORA, The [13,212], Hoff. Op. 452.
SPARKS v. WEST [13,213], 1 Wash. C. C. 238.
SPARROW v. MUTUAL BEN. LIFE INS. CO. [13,214].
Spartan, The, Drinkwater v. [See 4,085.]
Spartan, The, Poland v. [See 11,246.]
Spaugh, Vogler v. [See 16,988.]
SPAULDING, The [13,215], 1 Brown's Adm. 310.
Spaulding, Burch v. [See 2,140.]
Spaulding v. Duff. [See 13,219.]
SPAULDING v. EVANS [13,216], 2 McLean, 139.
SPAULDING v. McGOVERN [13,217], 10 N. B. R. 188.
SPAULDING v. McGOVERN [13,218], 1 N. J. Law J. 259.
SPAULDING v. PAGE [13,219], 1 Sawy. 702; 4 Fish. Pat. Cas. 641; 4 Amer. Law T. Rep. U. S. Cts. 166.
Spaulding, Perrigo v. [See 10,994.]
SPAULDING v. TUCKER [13,220], Deady, 649.
SPAULDING v. TUCKER [13,221], 2 Sawy. 50; 4 Amer. Law T. Rep. U. S. Cts. 208; 4 Fish. Pat. Cas. 633; 6 Amer. Law Rev. 161.
Spear, In re. [See 4,043.]
SPEAR v. ABBOTT [13,222].
Spear, Andrews v. [See 379, 380.]
SPEAR v. BELSON [13,223], 1 McA. Pat. Cas. 699.
Spear, Dexter v. [See 3,867.]
Spear, Fowle v. [See 4,996.]
SPEAR v. NEWELL [13,224], 2 Paine, 267.
Spear, Passaic Zinc Co. v. [See 10,789.]
SPEAR v. STUART [13,223].
SPEED v. SMITH [13,226], 2 Amer. Law T. Rep U. S. Cts. 149; 10 Int. Rev. Rec. 157; 3 Amer. Law Rev. 779; 16 Pittsb. Leg. J. 219.
Speeden, United States v. [See 16,366.]
Speedwell, The. [See 30.]
Speedwell, The. [See 10,252.]
Speer, Crouch v. [See 3,438.]
Speer, Hall v. [See 5,947.]
SPEIGLE v. MEREDITH [13,227], 4 Biss. 120.
SPENCE, Ex parte [13,228].
Spence, Kidd v. [See 7,755.]
SPENCER, In re [13,229], 18 N. B. R. 199.
SPENCER, In re [13,234].
SPENCER v. ALIDA, The [13,231], 13 Leg. Int. 369.
SPENCER v. CHARLES AVERY, The [13,232], 1 Bond, 117.
Spencer, Hood v. [See 6,665.]
SPENCER v. SPENCER [13,233], 1 Gall. 622.
Spencer, United States v. [See 16,367, 16,368.]
Spencer, The J. F. [See 7,315, 7,316.]
Spencer Optical Mfg. Co., Wren v. [See 18,062.]

[Federal Case numbers are given in brackets.]

SPENSER, In re [13,234], 5 Sawy. 195; 18 Alb. Law J. 83, 153; 6 Reporter, 294; 1 N. J. Law J. 248; 2 Tex. Law J. 42, 116; 13 Amer. Law. Rev. 167; 3 Cin. Law Bul. 1003; 10 Chi. Leg. News 355; 7 N. Y. Wkly. Dig. 29; 24 Int. Rev. Rec. 331; 7 Cent. Law J. 84.
Spenser, Hastings v. [See 6,201.]
Spenser, Stewart v. [See 13,437.]
SPERRING v. TAYLOR [13,235], 2 McLean, 362.
Sperry, Blake v. [See 1,503.]
SPERRY v. DELAWARE INS. CO. [13,236], 2 Wash. C. C. 243.
SPERRY v. ERIE RY. CO. [13,237], 6 Blatchf. 425.
Sperry, Kenosha & R. R. Co. v. [See 7,712.]
Sperry v. Logan. [See 13,238.]
SPERRY v. RIBBANS [13,238], 1 N. J. Law J. 115; 3 Ban. & A. 260.
Sperry, United States v. [See 16,369.]
SPES, The [13,238a].
SPEYER, In re [13,239], 6 N. B. R. 255; 42 How. Pr. 397.
SPEYER v. MARY BELLE ROBERTS, The [13,240], 2 Sawy. 1.
SPICER v. WARD [13,241], 3 N. B. R. 512 (Quarto, 127).
SPILLMAN, In re [13,242], 13 N. B. R. 214; 8 Chi. Leg. News, 140; 23 Pittsb. Leg. J. 87.
Splendid, The. [See 5,485.]
SPLENDID, The, v. GLOBE, The [5,485], 35 Hunt, Mer. Mag. 447.
SPOFFORD v. RITTEN [13,244], 4 McLean, 253.
SPOONER v. DANIELS [13,244a].
SPOONER v. McCONNELL [13,245], 1 McLean, 337.
SPRAGGINS v. HUMPHRIES, County Court of [13,-246], Cooke, 160; Brunner, Col. Cas. 218.
SPRAGUE, Ex parte [13,247].
SPRAGUE v. ADRIANCE [13,248], 14 O. G. 308; 3 Ban. & A. 124.
Sprague, Allen v. [See 238.]
Sprague, Blanchard v. [See 1,516-1,518.]
SPRAGUE v. COCHECO MFG. CO. [13,249], 10 Blatchf. 173.
Sprague, Hoyt v. [See 6,810.]
Sprague, Jackson v. [See 7,148.]
SPRAGUE v. KAIN [13,250], Bee, 184.
SPRAGUE v. LITHERBERRY [13,251], 4 McLean, 442.
SPRAGUE v. MARIA, The [13,253].
Sprague, Mathewson v. [See 9,278.]
SPRAGUE v. ONE HUNDRED AND FORTY BARRELS OF FLOUR [13,253], 2 Story, 195; 6 Law Rep. 14.
SPRAGUE v. PITT [13,254], McCahon, 212; 1 Kan. 610.
Sprague, Stone v. [See 13,487.]
Sprague, Toland v. [See 14,076.]
SPRAGUE v. WEST [13,255], Abb. Adm. 548; 8 N. Y. Leg. Obs. 241; 3 Amer. Law J. (N. S.) 202.
SPRATLEY v. HARTFORD INS. CO. [13,256], 1 Dill. 392.
SPRIGG v. BANK OF MOUNT PLEASANT [13,-257], 1 McLean, 384.
Sprigg, Bank of Mount Pleasant v. [See 891.]
Sprigg, Good v. [See 5,532.]
Sprigg, Semmes v. [See 12,657.]
SPRING v. DOMESTIC SEWING-MACH. CO [13,-258], 2 N. J. Law J. 274; 16 O. G. 721; 4 Ban. & A. 427.
SPRING v. GRAY [13,259], 5 Mason, 305.
Spring v. Howard. [See 13,260.]
SPRING v. PACKARD [13,260], 1 Ban. & A. 531; 7 O. G. 341.
SPRING v. RUSSELL [13,261], 1 Lowell, 258; 8 Int. Rev. Rec. 193.
Spring, Tripp v. [See 14,180.]
SPRINGBOK, The [13,262], Blatchf. Pr. Cas. 349.
SPRINGBOK, The [13,263], Blatchf. Pr. Cas. 380.
SPRINGBOK, The [13,264], Blatchf. Pr. Cas. 434; Betts' Pr. Cas.
SPRINGER v. FOSTER [13,265], 1 Story, 601.
SPRINGER v. FOSTER [13,266], 2 Story, 383; 6 Law Rep. 107.
Springer, Mathews v. [See 9,277.]
Springfield Fire & Marine Ins. Co., Luce v. [See 8,589.]
Springfield Fire Ins. Co., Catlin v. [See 2,522.]
Springport, Avery v. [See 676.]
Sprogell, Krouse v. [See 7,940.]
SPROUT, Ex parte [13,267], 1 Cranch, C. C. 424.
SPURR v. PEARSON [13,268], 1 Mason, 104.
Squankum & Freehold Marl Co., Horton v. [See 6,710.]
Squaugh, United States v. [See 16,370.]
SQUIRE, In re [13,269], 12 O. G. 1025; 3 Ban. & A. 133.
SQUIRE v. ONE HUNDRED TONS OF IRON [13,-270], 2 Ben. 21.
SQUIRES v. CHARLOTTE VANDERBILT, The [13,271], 3 Wkly. Law Gaz. 343.
Squires, Fields v. [See 4,776.]
Squires, Hankin v. [See 6,025.]
Squires, Hulburt v. [See 6,855.]
SRODES v. COLLIER, The [13,272], 2 Pittsb. Rep. 304; 9 Pittsb. Leg. J. 73; 3 West. Law Month. 521.
SRODES v. COLLIER, THE [13,272a], 9 Pittsb. Leg. J. 193; 2 Pittsb. Rep. 318; 4 West. Law Month. 120.
Srodes v. Vulcan, The. [See 13,272.]
STACK, In re [13,272b].
Stadacona, United States v. [See 16,371.]
STAFF, In re [13,273], 5 Ben. 574; 43 How. Pr. 110.
STAFFORD, In re [13,274], 13 N. B. R. 378.
Stafford, Blake v. [See 1,504.]
Stafford, Crescent City Ice Co. v. [See 3,387.]
Stafford, Goff v. [See 5,504.]
STAFFORD v. PAWTUCKET HAIRCLOTH CO. [13,275], 2 Cliff. 82.
Stafford, United States v. [See 16,372.]
STAFFORD v. WATSON [13,276], 1 Biss. 437; 2 Chi. Leg. News, 385.
Stafford Justices, The, Strode v. [See 13,537.]
Stafford Nat. Bank, Merchants' & Manufacturers' Bank v. [See 9,438.]
STAG, The [13,277], Blatchf. Pr. Cas. 625.
Stahl, United States v. [See 16,373.]
STAINTHORP v. ELKINTON [13,278], 1 Fish. Pat. Cas. 349.
STAINTHORP v. HUMISTON [13,279], 1 Fish. Pat. Cas. 475.
STAINTHORP v. HUMISTON [13,280], 2 Fish. Pat. Cas. 311.
STAINTHORP v. HUMISTON [13,281], 4 Fish. Pat. Cas. 107.
STALKER v. HENRY KNEELAND, The [13,282].
STALKER v. MAXWELL [13,283], 3 Blatchf. 138.
Staly, United States v. [See 16,374.]
Stanard, Wright v. [See 18,094.]
STANBACK v. WATERS [13,284], 4 Cranch, C. C. 2.
Stanbery, Taggart v. [See 13,724.]
Stanchfield, Home Ins. Co. v. [See 6,660.]
Standard Sugar Refinery, Greenish v. [See 5,776.]
STANDEFER v. DOWLIN [13,284a], Hempst. 209.
Standing Bear v. Crook. [See 14,891.]
Stange, United States v. [See 16,375.]
Stanhope, Heydock v. [See 6,445.]
STANLEY v. HEWITT [13,285], 21 Jour. Fr. Inst. 165.
Stanley, Lester v. [See 8,277.]
Stanley, United States v. [See 16,376.]
STANLEY v. WHIPPLE [13,286], 2 McLean, 35; 2 Robb, Pat. Cas. 1.
STANLEY RULE & LEVEL CO v. BAILEY [13,-287], 14 Blatchf. 510; 3 Ban. & A. 297.
STANLEY RULE & LEVEL CO. v. DAVIS [13,288].
STANLEY WORKS v. SARGENT [13,289], 8 Blatchf. 344; 4 Fish. Pat. Cas. 443; Merw. Pat. Inv. 116.
Stannard, Blackburn v. [See 1,468.]
STANNARD v. JOHN HART, The [13,290].
STANNICK v. FRIENDSHIP, The [13,291], Bee, 40.
Stansbury's Case. [See 17,709.]
STANSBURY v. TAGGART [13,292], 3 McLean, 457.
STANSELL, In re [13,293], 6 N. B. R. 183.
STANSFIELD, In re [13,294], 4 Sawy. 334; 16 N. B. R. 268.
STANTON, In re [13,295], 14 Hunt, Mer. Mag. 73; 6 Cush. (Miss.) 447.
STANTON v. ALABAMA & C. R. CO. [13,296], 2 Woods, 506.
STANTON v. ALABAMA & C. R. CO. [13,297], 2 Woods, 523.
Stanton, Chamberlain v. [See 2,579.]
Stanton, Mittleburger v. [See 9,676.]
STANTON v. SEYMOUR [13,298], 5 McLean, 267.

[Federal Case numbers are given in brackets.]

STANTON v. WILKESON [13,299], 8 Ben. 357; 2 Browne, Nat. Bank Cas. 162; 2 N. Y. Wkly. Dig. 91.
STANWOOD v. FORDYCE [15,130].
STANWOOD v. GREEN [13,301], 2 Abb. U. S. 184; 11 Int. Rev. Rec. 134; 3 Amer. Law T. Rep. U. S. Cts. 133; 17 Pittsb. Leg. J. 153; 2 Leg. Gaz. 302.
Stanwood, United States v. [See 16,377.]
Staples, Arcularius v. [See 509b.]
STAPLES v. HARTFORD CITY GASLIGHT CO. [13,302].
Staples, Treat v. [See 14,162.]
STAPLETON v. REYNOLDS [13,303], 16 Amer. Law Reg. (N. S.) 48; 9 Chi. Leg. News, 33; 22 Int. Rev. Rec. 345.
STAPLIN, In re [13,304], 9 N. B. R. 142; 5 Chi. Leg. News, 528; 5 Leg. Op. 171.
STAPP v. SWALLOW, The [13,305], 1 Bond, 189.
STAR v. WHITE CLOUD, The [13,306].
Starbuck, The G. H. [See 5,378.]
Starin, The C. F. [See 2,565.]
Starin, The J. H. [See 7,320.]
Starin, The John H. [See 7,351.]
Star Ins. Co., Charter Oak Fire Ins. Co. v. [See 2,623.]
Stark, Bacon v. [See 715.]
Stark, Failing v. [See 13,317.]
Stark, Graham v. [See 5,676.]
Stark, Kamm v. [See 7,604.]
STARK v. STARR [13,307], 1 Sawy. 15.
Stark, Starr v. [See 13,316, 13,317.]
Stark, United States v. [See 16,378.]
Starke, Head v. [See 6,293.]
Starke v. The Napoleon. [See 10,011-10,015.]
Starks, Richmond Mfg. Co. v. [See 11,802.]
STARKWEATHER v. CLEVELAND INS. CO. [13,308], 2 Abb. U. S. 67; 4 N. B. R. 341 (Quarto, 110); 3 Chi. Leg. News, 77; 28 Leg. Int. 36; 10 Amer. Law Reg. (N. S.) 333; 5 Amer. Law Rev. 568.
STARKWEATHER v. CLEVELAND INS. CO. [13,309], 15 Int. Rev. Rec. 59; 4 Chi. Leg. News, 175.
STARLIGHT, The [13,310], 1 Hask. 517.
STARLING v. HAWKS [13,311], 5 McLean, 318.
STAR OF HOPE, The [13,312], 1 Hask. 36.
STAR OF HOPE, The [13,313], 2 Sawy. 15.
Star of Hope, The, Annan v. [See 405.]
Star of the East, The. [See 9,223.]
STARR v. HAMILTON [13,314], 1 Deady, 268.
Starr, Lamb v. [See 8,021, 8,022.]
STARR v. MOORE [13,315], 3 McLean, 354.
STARR v. STARK [13,316], 1 Sawy. 270.
STARR v. STARK [13,317], 2 Sawy. 603, 642; 1 Amer. Law T. Rep. 444.
STARR v. STARK [13,318], 2 Sawy. 641.
Starr, Stark v. [See 13,307.]
STARR v. TAYLOR [13,319], 3 McLean, 542.
Starr, United States v. [See 16,379.]
Starr, The Sarah. [See 12,352-12,354.]
Starr, The Sarah. [See 105, 106.]
Starrett, Perry v. [See 11,012.]
STAR SALT CASTER CO. v. CROSSMAN [13,320], 4 Ban. & A. 566.
STAR SALT CASTER CO. v. CROSSMAN [13,321], 4 Cliff. 568; 3 Ban. & A. 281.
STATE v. BREWER [13,322], 31 Nile, Reg. 110.
STATE v. GRAHAM [13,323], 25 Int. Rev. Rec. 145.
STATE v. MILLER [13,323a], 7 Cin. Law Bul. 219.
State Bank of Indiana, Sargeant v. [See 12,360.]
State Bank of Ohio, Chillicothe Branch of the, v. Fox. [See 2,683.]
State Bank of Virginia, Alderdice v. [See 154.]
State Inv. Ins. Co., Brugger v. [See 2,051.]
STATE NAT. BANK v. FREEDMEN'S SAVINGS & TRUST CO. [13,324], 2 Dill. 11; 10 Amer. Law Reg. (N. S.) 786.
State Nat. Bank of Boston, Merchants' Nat. Bank of Boston v. [See 9,448, 9,449.]
State Nat. Bank of Keokuk, Pittsburg Locomotive & Car Works v. [See 11,198.]
State Nat. Bank of Minneapolis, Canfield v. [See 2,382.]
STATE NAT. BANK OF MINNEAPOLIS v. MORRISON [13,325], 1 McCRARY, 204.
State Nat. Bank of Minneapolis, United States v. [See 16,380, 16,381.]
STATEN ISLAND & N. Y. FERRY CO. v. THOMAS HUNT, The [13,326].
State of Maine, The, Jarvies v. [See 7,224.]
STATE OF NEW YORK, The [13,327], 3 Ben. 253.
STATE OF NEW YORK, The [13,328], 7 Ben. 450.
State Rights, The, Ralston v. [See 11,540.]
Staton, United States v. [See 16,382.]
Steacy, Atkins v. [See 605.]
STEACY v. LITTLE ROCK & FT. S. R. CO. [13,329], 5 Dill. 348.
STEADMAN, In re [13,330], 8 N. B. R. 319.
STEADMAN v. CASWELL [13,330a], 2 Hask. 375.
STEAM CUTTER CO. v. SHELDON [13,331], 10 Blatchf. 1; 5 Fish. Pat. Cas. 477.
STEAM CUTTER CO. v. WINDSOR MFG. CO. [13,332].
Steam Derrick Boat, Maltby v. [See 9,000.]
STEAM PACKET CO. v. BRADLEY [13,333], 5 Cranch, C. C. 393.
Steamship Co., Barnes v. [See 1,021.]
Steamship Co., Bazin v. [See 1,152.]
STEAM STONECUTTER CO. v. SHORTSLEEVES [13,334], 16 Blatchf. 381; 4 Ban. & A. 364.
STEAM STONECUTTER CO. v. WINDSOR MFG. CO. [13,335], 17 Blatchf. 24; 4 Ban. & A. 445.
STEAM STONECUTTER CO. v. WINDSOR MFG. CO. [13,336], 18 Blatchf. 47; 5 Ban. & A. 335.
Steam Vessels—Charge to Grand Jury in Relation to the Act of Congress of July 7, 1838. [See 18,253.]
STEARNS v. BARRETT [13,337], 1 Mason, 153; 1 Robb, Pat. Cas. 97.
STEARNS v. DAVIS [13,338], 1 McA. Pat. Cas. 696.
STEARNS v. PAGE [13,339], 1 Story, 204.
STEARNS v. RIPLEY [13,340].
STEARNS v. UNITED STATES [13,341], 2 Paine, 300.
STEBBINS v. EDDY [13,342], 4 Mason, 414.
Stebbins, Gill v. [See 5,431, 5,432.]
STEDMAN v. HAMILTON [13,343], 4 McLean, 538.
Stedman, Lothrop v. [See 8,519.]
STEEGMAN v. MAXWELL [13,344], 3 Blatchf. 365.
STEELE, In re [13,345], 7 Biss. 504; 16 N. B. R. 105.
STEELE, In re [13,346], 2 Flip. 324; 19 N. B. R. 41; 8 Cent. Law J. 86.
Steele, Bas v. [See 1,087, 1,088.]
Steele, Leggett v. [See 8,211.]
STEELE v. RICHARDS [13,347].
Steele, Sawyer v. [See 12,406, 12,407.]
STEELE v. THACHER [13,348], 1 Ware (91 Davies) 85.
Steele, The Mary. [See 9,226.]
STEELMAN v. TAYLOR [13,349], 3 Ware, 52; 19 Law Rep. 36.
Steen & Cwergius' Factory, etc., United States v. [See 16,383.]
Steere, Ashby v. [See 576.]
STEERE v. FIELD [13,350], 2 Mason, 486.
Steffens, United States v. [See 16,384.]
STEGALL v. STEGALL [13,351], 2 Brock. 256.
STEIN, In re [13,352], 16 N. B. R. 569.
STEIN v. GODDARD [13,353], 1 McAll. 82.
Steinberg, Claflin v. [See 2,777.]
Steinbrook, Mungosah v. [See 9,924.]
STEINER, Ex parte [13,354], 1 Pa. Law J. 368.
STEINHAM v. UNITED STATES [13,355], 2 Paine, 168.
STEINKUHL v. YORK [13,356], 2 Flip. 376.
STEINMAN, In re [13,357], 6 Biss. 166; 10 N. B. R. 214; 6 Chi. Leg. News, 338; 31 Leg. Int. 269; 21 Pittsb. Leg. J. 200.
Steinman v. The Circassian. [See 2,724.]
STELL, Ex parte [13,358], 4 Hughes, 157.
Stelle, McLaughlin v. [See 8,873.]
Stellman, Day v. [See 3,690.]
STELLWAGEN v. LIFE ASS'N OF AMERICA [13,359], 14 Blatchf. 349.
STENCHFIELD v. ROBINSON [13,359a], 2 Hask. 381.
STEPANOVIT v. GILLIBRAND AND FOUR THOUSAND NINE HUNDRED AND TWENTY-TWO BUSHELS OF WHEAT [13,360].
STEPHEN ALLEN, The [13,361], 1 Blatchf. & H. 175.
STEPHEN CROWELL, The [13,362].
STEPHEN HART, The [13,363], Blatchf. Pr. Cas. 379.
STEPHEN HART, The [13,364], Blatchf. Pr. Cas. 387; Betts Pr. Cas.
Stephen Hart, The, United States v. [See 16,385.]

[Federal Case numbers are given in brackets.]

STEPHENS, In re [13,365], 3 Biss. 187; 6 N. B. R. 533.
STEPHENS v. BALES OF COTTON [13,366], Bee, 170.
Stephens, Briggs v. [See 1,873.]
STEPHENS v. CALDWELL [13,367].
STEPHENS v. FELT [13,368], 2 Blatchf. 37; 1 Fish. Pat. Rep. 144.
STEPHENS v. FELT [13,368a], 11 Hunt, Mer. Mag. 266.
Stephens, McLaughlin v. [See 8,874.]
STEPHENS v. SALISBURY [13,369], 1 McA. Pat. Cas. 379.
Stephens, Sharp v. [See 12,710.]
STEPHENS v. SHERMAN [13,369a].
STEPHENS & C. TRANSP. CO. v. WESTERN UNION TEL. CO. [13,370].
STEPHENS & C. TRANSP. CO. v. WESTERN UNION TEL. CO. [13,371], 8 Ben. 502.
Stephenson's Executors, United States v. [See 16,386.]
STEPHENSON v. GIBERSON [13,372], 1 Cranch, C. C. 319.
STEPHENSON v. HOYT [13,373], 1 McA. Pat. Cas. 292.
STEPHENSON v. JACKSON [13,374], 2 Hughes, 204; 9 N. B. R. 255.
Sterland, United States v. [See 16,387.]
Sterling, Humphreyville Cooper Co. v. [See 6,872.]
STERLING v. JENNIE CUSHMAN, The [13,375], 2 Cliff. 636.
Sterling, United States v. [See 16,388.]
Sterling Furniture Co., McCullough v. [See 8,741.]
STERN, Case of [13,376], 6 Int. Rev. Rec. 87.
Stern v. Clinton. [See 8,688.]
STERN v. SCHONFIELD [13,377], 3 Cin. Law Bul. 500.
Stern, United States v. [See 16,389.]
STERN v. WISCONSIN CENT. R. CO. [13,378], 8 Reporter, 488; 11 Chi. Leg. News, 384; 27 Pittsb. Leg. J. 40.
Sterns, Phelps v. [See 11,080.]
STERRICK v. PUGSLEY [13,379], 1 Flip. 350; 1 Cent. Law J. 106.
Sterry, Harrison v. [See 6,144.]
STETLER'S CASE [13,380], 1 Phila. 302; 9 Leg. Int. 38; 1 Whart. Am. Cr. Law, 407.
Stetson, Ex parte. [See 13,390.]
STETSON, In re [13,381], 4 Ben. 147; 3 N. B. R. 726 (Quarto, 179).
Stetson, Dunlap v. [See 4,164.]
STETSON v. PEPITA, The [13,382], 3 Hughes, 483.
Stetson, Sanborn v. [See 12,291.]
Stetson, Sturges v. [See 13,568, 13,569.]
Stetson, United States v. [See 16,390.]
Stetson, The D. S. [See 4,104.]
Stetson, The M. B. [See 9,363.]
STETTIN, The [13,383], Blatchf. Pr. Cas. 272.
STETTIN, The [13,384], Blatchf. Pr. Cas. 665.
STETTINIUS v. MYER [13,385], 4 Cranch, C. C. 349.
STETTINIUS v. ORME [13,386], 4 Cranch, C. C. 342.
STETTINIUS v. UNITED STATES [13,387], 5 Cranch, C. C. 573; 2 Liv. Law Mag. 538.
Stettinius, Violett v. [See 16,953.]
STEUBENVILLE & I. R. CO. v. TUSCARAWASS COUNTY [13,388], 6 Pittsb. Leg. J. 68.
STEVELIE v. READ [13,389], 2 Wash. C. C. 274.
STEVENS, In re [13,390], 15 Alb. Law J. 351.
STEVENS, In re [13,391], 4 Ben. 513; 4 N. B. R. 367 (Quarto, 122).
STEVENS, In re [13,392], 2 Biss. 373; 10 Amer. Law Reg. (N. S.) 523; 5 N. B. R. 298.
STEVENS, In re [13,393], 1 Sawy. 397; 5 N. B. R. 112; 1 Pac. Law Rep. 45.
Stevens, In re. [See 6,346.]
STEVENS v. APPLETON [13,394], 4 Cliff. 265.
Stevens, Bryan v. [See 2,066a.]
STEVENS v. CADY [13,395], 2 Curt. 200.
Stevens, Davis v. [See 3,653.]
STEVENS v. ELDRIDGE [13,396], 4 Cliff. 348.
STEVENS v. FELT [13,397].
Stevens, Gibson v. [See 5,401.]
STEVENS v. GILL [13,398], 1 Morr. Min. Rep. 576.
STEVENS v. GLADDING [13,399], 2 Curt. 608.
STEVENS v. GLADDING [13,400], 8 N. Y. Leg. Obs. 297.
Stevens, Hacker v. [See 5,887, 5,888.]
Stevens, Hovey v. [See 6,745, 6,746.]
STEVENS v. KANSAS PAC. RY. CO. [13,401], 5 Dill. 486.
STEVENS v. LLOYD [13,402], 1 Cranch, C. C. 124.
STEVENS v. LLOYD [13,403], 1 Cranch, C. C. 141.
STEVENS v. MACK [13,404], 5 Blatchf. 514; 6 Int. Rev. Rec. 181.
STEVENS v. NEW YORK & O. M. R. CO. [13,405], 13 Blatchf. 104.
STEVENS v. NEW YORK & O. M. R. CO. [13,406], 13 Blatchf. 412.
Stevens v. New York & O. M. R. Co. [See 6,443.]
Stevens, Potter v. [See 11,338.]
STEVENS v. PRITCHARD [13,407], 4 Cliff. 417; 10 O. G. 505; 2 Ban. & A. 390.
STEVENS v. RUGGLES [13,408], 5 Mason, 221.
STEVENS v. SANDWICH, The [13,409], 1 Pet. Adm. 233.
STEVENS v. SHARP [13,410], 6 Sawy. 113.
STEVENS v. S. W. DOWNS, The [13,411], Newb. 458.
Stevens, United States v. [See 16,391-16,394.]
STEVENS v. VANCLEVE [13,412], 4 Wash. C. C. 262.
Stevens, Wicks v. [See 17,616.]
STEVENS v. WILLIAMS [13,413], 1 McCrary, 480; 19 Amer. Law Reg. (N. S.) 295; 1 Morr. Min. Rep. 566.
STEVENS v. WILLIAMS [13,414], 1 Morr. Min. Rep. 557; Corp. Min. Code, 65.
Stevens, The R. L. [See 11,872.]
STEVENSON v. HAMILTON [13,415].
STEVENSON v. HARE [13,416], 2 Sawy. 583.
STEVENSON v. KING [13,417], 2 Cliff. 1.
Stevenson, United States v. [See 16,395-16,398.]
STEWART, In re [13,418], 1 N. B. R. 278 (Quarto, 42); 1 Amer. Law T. Rep. Bankr. 16; 15 Pittsb. Leg. J. 222.
STEWART, In re [13,419], 3 N. B. R. 108 (Quarto, 28).
STEWART, In re [13,420], 13 N. B. R. 295; 2 N. Y. Wkly. Dig. 3.
STEWART v. ANDERSON [13,421], 1 Cranch, C. C. 586.
STEWART v. BARCROFT [13,422], 1 Hayw. & H. 41.
STEWART v. CALLAGHAN [13,423], 4 Cranch, C. C. 594.
Stewart, Calvert v. [See 2,327.]
STEWART v. DRASHA [13,424], 4 McLean, 563.
STEWART v. DUFFEY [13,425], 1 Cranch, C. C. 551.
STEWART v. FAGAN [13,426], 2 Woods, 215.
Stewart, Freeman v. [See 5,088.]
STEWART v. FRENCH [13,427], 2 Cranch, C. C. 300.
STEWART v. GORGOZA [13,428], 3 Hughes, 459.
STEWART v. GRAY [13,428a], Hempst. 94.
STEWART v. HAMILTON [13,429], 4 McLean, 534.
Stewart, Harrison v. [See 6,145.]
STEWART v. HINKLE [13,430], 1 Bond, 506.
Stewart, Jackson Ins. Co. v. [See 7,152.]
Stewart, Kemball v. [See 7,682.]
STEWART v. KERRISON [13,431].
Stewart, Knowles v. [See 7,900.]
STEWART v. LANSING [13,432], 15 Blatchf. 281.
Stewart v. Lansing. [See 738.]
Stewart, Lathrop v. [See 8,112.]
Stewart, Law v. [See 8,130.]
STEWART v. LOOMIS [13,433].
Stewart, Maddox v. [See 8,934.]
STEWART v. MAHONEY [13,434], 5 Fed. 302.
Stewart, Miller v. [See 9,591.]
STEWART v. NATIONAL UNION BANK OF MARYLAND [13,435], 2 Abb. U. S. 424; 2 Balt. Law Trans. 951; 1 Thomp. Nat. Bank Cas. 175; 4 Amer. Law Rev. 397; 10 Int. Rev. Rec. 132.
Stewart, Platt v. [See 11,220, 11,221.]
Stewart, Riggs v. [See 11,830.]
Stewart, Sedgwick v. [See 12,625.]
STEWART v. SMITH [13,436], 2 Cranch, C. C. 615.
Stewart, Sonneborn v. [See 13,176.]
STEWART v. SPENSER [13,437], 1 Curt. 157; 1 Amer. Law Reg. 520.
Stewart, United States v. [See 16,399-16,402.]
Stewart, Waller v. [See 17,109.]
STEWART v. WESTERN UNION R. CO. [13,438], 4 Biss. 362.
Stewart, Wilson v. [See 17,837.]
Stewart, The Mary. [See 9,227.]
STICKNEY, In re [13,439], 5 Dill. 91; 17 N. B. R. 305; 5 Reporter, 586; 6 Cent. Law J. 265.

[Federal Case numbers are given in brackets.]

STICKNEY v. BANK OF ILLINOIS [13,440], 3 McLean, 181.
Stickney, Farmers' & Mechanics' Bank v. [See 4,657.]
Stickney, Fogg v. [See 4,898.]
Stickney, Wilt v. [See 17,854.]
STIEBER v. HOYE [13,441], 1 Cranch, C. C. 40.
Stiefel, Hoffman v. [See 6,578.]
Stien, United States v. [See 16,403.]
STIGER v. EDWARD BECK, The [13,442].
Stiles, Huidekoper v. [See 6,853.]
STILES v. JOHN STEVENS, The [13,443], 4 Pa. Law J. 281; 1 Amer. Law J. (N. S.) 385.
Stiles, Parker v. [See 10,749.]
STILLE v. TRAVERSE [13,444], 3 Wash. C. C. 43.
Stillinger, Culbertson v. [See 3,463.]
STILLMAN v. BUCKEYE STATE, The [13,445], Newb. 111.
Stillwell, Lombard v. [See 8,472.]
STILLMAN v. WHITE ROCK MFG. CO. [13,446], 3 Woodb. & M. 538.
STILLWELL, In re [13,447], 2 N. B. R. 526 (Quarto, 164).
STILLWELL, In re [13,448], 7 N. B. R. 226; 11 Amer. Law Reg. (N. S.) 706.
STILLWELL v. EMPIRE FIRE INS. CO. [13,449], 4 Cent. Law J. 463.
STILLWELL v. HOME INS. CO [13,450], 3 Dill. 80.
STILLWELL v. WALKER [13,451], 17 N. B. R. 569; 6 Cent. Law J. 406.
Stillwell, In re. [See 13,447, 13,448.]
STILWELL v. MAJ. ANDERSON, The [13,452].
STILWELL & BIERCE MFG. CO. v. CINCINNATI GASLIGHT & COKE CO. [13,453], 1 Ban. & A. 610; 7 O. G. 829; Merw. Pat. Inv. 455.
STIMPSON v. BROOKS [13,454], 3 Blatchf. 456.
Stimpson, Hale v. [See 5,915.]
STIMPSON v. POND [13,455], 2 Curt. 502.
STIMPSON v. RAILROADS, The [13,456], 1 Wall. Jr. 164; 2 Robb. Pat. Cas. 595.
STIMPSON v. ROGERS [13,457], 4 Blatchf. 333.
Stimpson, Woodman v. [See 17,979.]
Stimson, Carrington v. [See 2,450.]
Stiner, United States v. [See 16,404.]
Stinger, Butt v. [See 2,246.]
STINGLE'S CASE [13,458].
Stinson, Gass v. [See 5,260-5,262.]
STINSON v. HILDRUP [13,459], 8 Biss. 376.
STINSON v. WYMAN [13,460], 2 Ware (Dav. 172) 176.
Stitzer, Davis v. [See 3,654.]
STOBAUGH v. MILLS [13,461], 8 N. B. R. 361; 5 Chi. Leg. News, 526; 2 Amer. Law. Rec. 666; 5 Leg. Op. 139.
STOCKDALE v. ATLANTIC INS. CO. [13,462], 20 Wall. (87 U. S.) 323.
Stockdale, Bornio v. [See 1,662.]
Stockdale, Home Mut. Ins. Co. v. [See 6,662.]
Stockdale, Walker v. [See 17,088.]
Stockholders, Wilbur v. [See 17,636.]
Stockton, Beltzhoover v. [See 1,283.]
Stockton, Bishop v. [See 1,440.]
Stockton, Goodyear Dental Vulcanite Co. v. [See 5,599.]
Stockton v. Kendall. [See 15,518.]
Stockton, Lowe v. [See 8,567.]
Stockton, Saltonstall v. [See 12,271.]
STOCKTON v. THROGMORTON [13,463], Baldw. 148.
STOCKWELL, In re [13,464], 9 Ben. 265; 18 N. B. R. 144.
STOCKWELL v. KEMP [13,465], 4 McLean, 80.
STOCKWELL v. UNITED STATES [13,466], 3 Cliff. 284; 12 Int. Rev. Rec. 88.
STOCKWELL v. UNITED STATES [13,466].
Stockwell, United States v. [See 16,405, 16,406.]
Stoddard, Bunnel v. [See 2,135.]
STODDARD v. GIBBS [13,468], 1 Sumn. 263.
STODDARD v. PEDRO, The [4,489].
STODDARD v. READ [13,470], 2 Dall. 40.
Stoddard, Wilson v. [See 17,838.]
STODDART v. WARREN [13,471], 7 Reporter, 517.
Stoddert, Thornton v. [See 14,000.]
STODDERT v. WATERS [13,472], 1 Cranch, C. C. 483.
Stoever, Payson v. [See 10,863.]
STOKELY v. SMITH [13,473], 2 Ben. 407.
STOKES, In re [13,474], 1 Ben. 341.
STOKES, In re [13,475], 1 N. B. R. 489 (Quarto, 130); 1 Amer. Law T. Rep. Bankr. 122.
STOKES, In re [13,476], 2 N. B. R. 212 (Quarto, 76).
STOKES v. DAWES [13,477], 4 Mason, 268.
STOKES v. FINDLAY [13,478], 4 McCrary, 205.
STOKES v. KENDALL [13,479], 1 Hayw. & H. 3.
STOKES v. KENDALL [13,480], 1 Hayw. & H. 70.
Stokes v. Kendall. [See 15,517.]
STOKES v. MOWATT [13,481], 1 U. S. Law J. 305.
Stoller, Ernest v. [See 4,520.]
Stolley, Bloomer v. [See 1,559.]
Stolley, Brooks v. [See 1,962, 1,963.]
Stolley, Wilson v. [See 17,839, 17,840.]
Stone, Babcock v. [See 701.]
STONE v. BISHOP [13,482], 4 Cliff. 593; 6 Reporter, 706; 2 Month. Jur. 549.
Stone, Clayton v. [See 2,872.]
Stone, Everett v. [See 4,577.]
Stone, Hard v. [See 6,046.]
STONE v. KETLAND [13,483], 1 Wash. C. C. 142.
Stone, Knight v. [See 7,888.]
STONE v. LAWRENCE [13,484], 4 Cranch, C. C. 11.
STONE v. MASON [13,485], 2 Cranch, C. C. 431.
STONE v. RELAMPAGO, The [13,486], 2 U. S. Law Mag. 42.
Stone, Ritchie v. [See 11,864.]
STONE v. SPRAGUE [13,487], 1 Story, 270; 2 Robb. Pat. Cas. 10.
STONE v. STONE [13,488], 2 Cranch, C. C. 119.
Stone, United States v. [See 16,407.]
Stone, Woodworth v. [See 18,021.]
Stone, Wyeth v. [See 18,107.]
Stone, The Charles R. [See 2,619, 2,620.]
Stookey, James v. [See 7,184, 7,185.]
Stoops, Smith v. [See 13,110.]
STORAGE CO. v. THOMAS, The [3,769], 9 Phila. 364; 29 Leg. Int. 116; 4 Chi. Leg. News, 218.
STORER, Ex parte [13,490], 2 Ware (Dav. 294) 298.
Storer, Norman v. [See 10,301.]
Storey, Adams v. [See 66.]
STORM KING, The [13,491].
Storms, In re. [See 7,681.]
STORRS v. ENGEL [13,492].
STORRS v. ENGEL [12,053].
STORRS v. ENGEL [13,494], 3 Hughes, 414; 19 N. B. R. 90.
STORRS v. HOWE [13,495], 4 Cliff. 388; 10 O. G. 421; 2 Ban. & A. 420.
STORY v. DERBY [13,496], 4 McLean, 160; 4 Leg. Int. 39.
STORY v. HOLCOMBE [13,497], 4 McLean, 306; 5 West. Law J. 145.
STOTESBURY v. CADWALLADER [13,498], 10 Phila. 281; 31 Leg. Int. 229.
Stott, Kraft v. [See 7,929.]
Stott, United States v. [See 16,408.]
STOUGH v. HATCH [13,499], 16 Blatchf. 233; 8 Reporter, 7; 20 Alb. Law J. 78.
STOUGHTON v. DIMICK [13,500], 3 Blatchf. 356; 18 Law Rep. 557; 29 Vt. 535.
STOUGHTON v. HILL [13,501], 3 Woods, 404.
STOUGHTON v. TAYLOR [7,558].
STOUT v. SIOUX CITY & P. R. CO. [13,503], 11 Amer. Law Reg. (N. S.) 226; 6 Amer. Law Rev. 759.
STOUT v. SIOUX CITY & P. R. CO. [13,504], 2 Dill. 294.
STOUTZ v. BROWN [13,505], 5 Dill. 445.
STOVER, In re [13,506], 1 Curt. 93.
STOVER, In re [13,507], 1 Curt. 201.
STOVER v. DENSLEY [13,508], 1 Cranch, C. C. 267.
STOVER v. HALSTED [13,509], 13 Blatchf. 95; 2 Ban. & A. 98; 8 O. G. 558.
STOVER v. KENNEDY [13,510], 5 Reporter, 136.
STOVE WORKS v. PERRY [13,511].
STOW v. CHICAGO [13,512], 8 Biss. 47; 3 Ban. & A. 83; 9 Chi. Leg. News, 425.
STOWE, In re [13,513], 6 N. B. R. 429.
Stowe, Barker v. [See 994, 995.]
STOWE v. THOMAS [13,514], 2 Wall. Jr. 547; 2 Amer. Law Reg. 210; 1 Pittsb. Rep. 82; 1 Pittsb. Leg. J. 129; 11 Leg. Int. 2; 2 Liv. Law Mag. 417.
Stowell, Allis v. [See 250.]
Stowell, United States v. [See 16,409.]
STOWELL v. WILLIAMS [13,515], 17 Int. Rev. Rec. 38.

[Federal Case numbers are given in brackets.]

STOWERS, In re [13,516], 1 Lowell, 528.
STOYEL v. LAWRENCE [13,517], 3 Day, 1; Brunner, Col. Cas. 31.
STRAAS v. MARINE INS. CO. [13,518], 1 Cranch, C. C. 343.
STRACHAN, In re [13,519], 3 Biss. 181; 4 Chi. Leg. News, 145.
STRACHEN v. CLYBURN [13,520], 3 McLean, 174.
STRAIN v. GOURDIN [13,521], 2 Woods, 380; 11 N. B. R. 156.
STRANAHAN v. GREGORY [13,522], 4 N. B. R. 427 (Quarto, 142).
STRANG v. MONTGOMERY & E. R. CO. [13,523], 3 Woods, 613.
Strange, Kelly v. [See 7,676.]
STRANGE v. REDFIELD [13,524].
STRANGER, The [13,525], 1 Brown's Adm. 281; 3 Chi. Leg. News, 217; 4 Amer. Law T. Rep. U. S. Cts. 161; 13 Int. Rev. Rec. 150.
Strassberger, Lehman v. [See 8,216.]
STRASSBURGER, In re [13,526], 4 Woods, 557.
Strassburger, Anderson v. [See 364.]
STRATTON v. BABBAGE [13,527], 3 Liv. Law Mag. 586; 18 Law Rep. 94.
Stratton, Mickey v. [See 9,530.]
STRATTON v. YOUNG [13,528], 1 Hayw. & H. 229.
STRATTON AUDLEY, The [13,529], 3 Ben. 241.
STRATTON AUDLEY, The [13,530], 8 Blatchf. 264.
Straus, Barnes v. [See 1,022.]
STRAUSE v. WESTERN UNION TEL. CO. [13,531], 8 Biss. 104.
STRAUSS, In re [13,532], 2 N. B. R. 48 (Quarto, 18).
Strauss, Moran v. [See 9,787.]
Straw, Sutherland v. [See 13,644.]
Strawbridge, Kitchen v. [See 7,854.]
Street, Buckner v. [See 2,098.]
STREET v. DAWSON [13,533], 4 N. B. R. 207 (Quarto, 60); 2 Balt. Law Trans. 369.
Stricker, United States v. [See 16,410.]
Strickland, Clarke v. [See 2,864.]
Strickland, Pierce v. [See 11,147.]
STRIDER v. KING [13,534], 3 Cranch, C. C. 67.
STRING v. HILL [13,535], Crabbe, 454.
STRINGHAM v. SCHLOENER [13,536], 4 Ben. 16.
Strobridge, Lloyd v. [See 8,435.]
STRODE v. STAFFORD JUSTICES, The [13,537], 1 Brock. 162.
Strodes v. The Collier. [See 13,272.]
STRODES v. PATTON [13,538], 1 Brock. 228.
STROHM v. UNITED STATES [13,539], Taney, 413.
STROMLESS, The [13,540], 1 Lowell, 153.
STRONG v. CERTAIN QUANTITY OF WHEAT [13,541], 2 Amer. Law Reg. (N. S.) 287; 4 West. Law Month. 82.
Strong, Consolidated Fruit-Jar Co. v. [See 3,130.]
STRONG v. GOLDMAN [13,542], 8 Biss. 552.
STRONG v. NOBLE [13,543], 6 Blatchf. 477; 3 Fish. Pat. Cas. 586; Merw. Pat. Inv. 324.
Strong, Ogden v. [See 10,460.]
STRONG v. O'NEILL [13,543a].
STRONG v. SMITH [13,544], 3 McLean, 362.
STRONG v. SOUTHWORTH [13,545], 8 Ben. 331; 2 Browne, Nat. Bank Cas. 172.
Strong, United States v. [See 16,411.]
STRONG v. WIGGINS [13,545a], 13 Fed. 418.
STRONG MFG. CO. v. MERIDAN BRITANNIA CO. [13,546].
Strother, Crittenden v. [See 3,394.]
Strother, United States v. [See 16,412.]
Strother, Washington v. [See 17,233.]
STROUD v. HARRINGTON [13,546a], 1 Hempst. 117.
STROUD v. MISSOURI RIVER, FT. S. & G. R. CO. [13,547], 4 Dill. 396.
STROUSE, In re [13,548], 1 Sawy. 605; 11 Int. Rev. Rec. 182.
STROUT v. CUBA, The [13,549].
Strout, Louisville, The v. [See 8,542.]
STRUGGLE, The [13,550], 1 Gall. 476.
STRUVE v. SCHWEDLER [13,551], 4 Blatchf. 23.
STRUVER v. RODERICK DHU, The [13,552].
STUART v. BOYER [13,553], 41 Hunt, Mer. Mag. 74.
STUART v. COLUMBIAN INS. CO. [13,554], 2 Cranch, C. C. 442.
STUART v. GREENLEAF [13,555], 3 Day, 311; Brunner, Col. Cas. 77.
Stuart, Lathrop v. [See 8,113.]
Stuart, Petrocokino v. [See 11,041.]
Stuart, Preston v. [See 11,398.]
STUART v. SHANTZ [13,556], 29 Leg. Int. 332; 6 Fish. Pat. Cas. 35; 2 O. G. 524; 9 Phila. 376; Merw. Pat. Inv. 125.
Stuart, The John. [See 7,427.]
STUBBS, In re [13,557], 4 N. B. R. 376 (Quarto, 124).
Stucken, Graham v. [See 5,677.]
STUDER v. GLENN [13,558], 3 Cranch, C. C. 650.
STUDLEY v. BAKER [13,559], 2 Lowell, 205.
Studwell v. The E. H. Coffin. [See 4,309, 4,310.]
Stump, Burkholder v. [See 2,165.]
STUMP v. DENEALE [13,560], 2 Cranch, C. C. 640.
STUMP v. ROBERTS [13,561], Cooke, 350; Brunner, Col. Cas. 224.
STUPP, In re [13,562], 11 Blatchf. 124; 18 Int. Rev. Rec. 18.
STUPP, In re [13,563], 12 Blatchf. 501.
STURGEON, In re [13,564], 1 N. B. R. 498 (Quarto, 131); 2 Amer. Law T. Rep. Bankr. 7.
Sturgeon, United States v. [See 16,413.]
STURGES, In re [13,565], 8 Biss. 79; 16 N. B. R. 304; 10 Chi. Leg. News, 33.
Sturges, Bank of Cleveland v. [See 861.]
STURGES v. COLBY [13,566], 2 Flip. 163; 10 Chi. Leg. News. 395; 7 Amer. Law Rec. 48; 3 Cin. Law Bul. 643: 18 N. B. R. 168.
Sturges v. Denison University. [See 13,566.]
Sturges, Fosdick v. [See 4,956.]
STURGES v. MARY STAPLES, The [13,566a].
STURGES v. MAXWELL [13,567].
Sturges v. The Mazeppa. [See 11,271.]
STURGES v. STETSON [13,568], 1 Biss. 246; 3 Phila. 304; 15 Leg. Int. 404; 2 Wkly. Law Gaz. 342; 1 West. Law Month. 179.
STURGES v. STETSON [13,568].
Sturges, United States v. [See 16,414.]
STURGES v. VAN HAGEN [13,570], 6 Fish. Pat. Cas. 572; 4 O. G. 579.
STURGESS v. BANK OF CLEVELAND [13,571], 3 McLean, 140; 1 West. Law J. 207.
STURGESS v. CARY [13,572], 2 Curt. 59.
Sturgis, In re. [See 13,565.]
STURGIS v. CARY [13,573], 2 Curt. 382; 18 Law Rep. 387.
STURGIS v. COLBY [13,566], 18 N. B. R. 168.
STURGIS v. EDWARD, The [13,575].
STURGIS v. JOSEPH JOHNSON, The [13,576], 19 How. Pr. 229.
STURGIS v. JOSEPH JOHNSON, The [13,576a], 26 Betts, D. C. Ms. 74.
STURGIS v. OREGON, The [13,576b].
STURGIS v. OREGON, The [13,577].
Sturgis, Smith v. [See 13,111.]
STURGIS v. VICKERY, The [13,577a].
Sturm, Latson v. [See 8,115.]
STURTEVANT v. GEORGE NICHOLAUS, The [13,578], Newb. 449.
STURTEVANT v. GREENOUGH [13,579], 3 App. Com'r Pat. 319.
STURTEVANTS v. ALTON [13,580], 3 McLean, 393.
Stutson v. Jordan. [See 6,959.]
STUYVESANT BANK, In re [13,581], 5 Ben. 566; 6 N. B. R. 272.
STUYVESANT BANK, In re [13,582], 6 Ben. 33; 7 N. B. R. 445.
STUYVESANT BANK, In re [12,919].
Stuyvesant Bank, Sixpenny Sav. Bank v. [See 12,919.]
Stuyvesant, The Gerard. [See 5,356.]
Styles, Lyles v. [See 8,625.]
SUAREZ v. GEORGE WASHINGTON, The [13,585], 1 Woods, 96.
SUCCESS, The [13,586], 7 Blatchf. 551.
Suckley, Hitner v. [See 6,543.]
SUCKLEY v. SLADE [13,587], 5 Cranch, C. C. 123.
SUCKLEY v. SLADE [13,588], 5 Cranch, C. C. 617.
Sudhoff, Putnam v. [See 11,483.]
SUE, The [13,589], Blatchf. Pr. Cas. 361.
SUFFOLK BANK v. LINCOLN BANK [13,590], 3 Mason, 1.
SUFFOLK BANK v. MERRILL [13,591].
SUFFOLK BANK v. MERRILL [13,592].
Suffolk Bank, Mesner v. [See 9,493.]
Suffolk Ins. Co., Potter v. [See 11,339.]
Suffolk Ins. Co., Williams v. [See 17,738, 17,739.]
Suffolk Mfg. Co., Hayden v. [See 6,261.]

Sukeley, Johnson v. [See 7,414.]
SULIVAN v. BROWNE [13,593], 2 Wash. C. C. 204.
Sulivan v. Browne. [See 13,593.]
Sullivan, Dexter v. [See 3,868.]
SULLIVAN v. HIESKILL [13,594], Crabbe, 525; 4 Pa. Law J. 171; 2 Pa. Law J. Rep. 383.
SULLIVAN v. INGRAHAM [13,595], Bee, 182.
Sullivan, Miller v. [See 9,592.]
SULLIVAN v. PORTLAND & K. R. CO. [13,596], 4 Cliff. 212.
SULLIVAN v. REDFIELD [13,597], 1 Paine, 441; 1 Robb, Pat. Cas. 477.
SULLIVAN v. SULLIVAN [13,598], 21 Law Rep. 531; Brunner, Col. Cas. 642; 3 Wkly. Gaz. 126.
SULLIVAN v. UNION PAC. R. CO. [13,599], 3 Dill. 334; 9 West. Jur. 32; 1 Cent. Law J. 595; 9 Amer. Law Rev. 365.
SULLIVAN v. WINTHROP [13,600], 1 Sumn. 1.
Sullivan Machine Co., American Diamond Rock-Boring Co. v. [See 298.]
Sullivan Railroad Co., Hall v. [See 5,948.]
Sulsor, Hays v. [See 6,271.]
SULTAN, The [13,601], 6 Adm. Rec. 112.
SULTANA, The [13,602], 1 Brown's Adm. 13.
SULTANA, The [13,603], 1 Brown's Adm. 35.
Sulzberger, United States v. [See 16,415.]
Summerl, Morris v. [See 9,837.]
Summerl, Vanderwick v. [See 16,845.]
SUMMERS, In re [13,604], 3 N. B. R. 84 (Quarto, 21).
Summers, Knox v. [See 7,913, 7,914.]
Summers, McIntosh v. [See 8,827.]
Summers, Thomas v. [See 13,912.]
Summers, United States v. [See 16,416.]
SUMMERS v. WATSON [13,605], 1 Cranch, C. C. 254.
Summers, Watson v. [See 17,289.]
SUMMIT, The [13,606], 2 Curt. 150.
SUMNER, In re [13,607], 10 Ben. 34.
SUMNER, The [13,608], 1 Brown's Adm. 52.
SUMNER v. MARCY [13,609], 3 Woodb. & M. 105.
SUMNER v. MOORE [13,610], 2 McLean, 59.
SUMNER v. PHILADELPHIA [13,611], 6 Amer. Law T. Rep. 476; 18 Int. Rev. Rec. 143; 9 Phila. 408; 30 Leg. Int. 329; 5 Leg. Gaz. 332.
Sumner, Wheeler v. [See 17,501.]
Sumner, The W. A. [See 4,288.]
SUN, The [13,612], 1 Biss. 373; 1 Amer. Law Reg. (N. S.) 277; 4 West. Law Month. 75; 9 Pittsb. Leg. J. 308.
SUNBEAM, The [13,613], Blatchf. Pr. Cas. 316.
SUNBEAM, The [13,614], Blatchf. Pr. Cas. 638.
SUNBEAM, The [13,615], Blatchf. Pr. Cas. 656.
Sunbeam, The, Ulrich v. [See 14,329.]
Sunberg, United States v. [See 16,417.]
SUNDAY v. GORDON [13,616], 1 Blatchf. & H. 569.
SUNDERLAND v. BAKER [13,617].
Sundry Boxes of Havana Sugar, United States v. [See 16,418.]
Sundry Material Men v. Pioneer Transportation Co. [See 11,539.]
Sunlight, The, Campbell v. [See 2,368.]
Sunlight, The, Wylie v. [See 2,368.]
Sun Mutual Ins. Co., Hernandez v. [See 6,415.]
SUN MUTUAL INS. CO. v. McDOUGAL [13,618].
Sun Mut. Ins. Co., Meigs v. [See 9,396.]
Sun Mut. Ins. Co., Ocean Ins. Co. v. [See 10,407, 10,408.]
Sun Mut. Ins. Co., Wright v. [See 18,095.]
SUNNYSIDE, The [13,619], 5 Ben. 162.
SUNNYSIDE, The [13,620], 1 Brown's Adm. 227; 6 Amer. Law T. Rep. 277; 14 Int. Rev. Rec. 103; 3 Chi. Leg. News, 330.
SUNNYSIDE, The [13,621], 1 Brown's Adm. 415.
SUNNYSIDE, The [13,620].
Sunol, United States v. [See 16,419-16,421.]
SUNSHINE, The [13,623], 1 Brown's Adm. 75.
Sunshine, The, Crosby v. [See 3,425.]
SUNSWICK, The [13,624], 6 Ben. 112; 15 Int. Rev. Rec. 154.
SUNSWICK, The [13,625], 5 Blatchf. 280.
Sunwick, The, United States v. [See 13,624.]
Superb, The, Bond v. [See 1,624.]
SUPERIOR, The [13,626], 5 Sawy. 83.
SUPERIOR, The [13,627], 5 Sawy. 346.
Superior, The. [See 14,344.]
Superior, The, Dudley v. [See 4,115.]
Superior, The, Trainer v. [See 14,136.]
Superior, The, Vanderslice v. [See 16,843.]
Supervisors, Baltimore & Ohio R. Co. v. [See 829.]
SUPERVISORS OF ELECTION, In re [13,628], 2 Flip. 228; 3 Cin. Law Bul. 714.
Surdam, Sharpleigh v. [See 12,711.]
Surette, In re. [See 3,037.]
SURGET v. BYERS [13,629], Hempst. 715.
Surratt, United States v. [See 16,423.]
SUSAN, The [13,630], 1 Spr. 499; 22 Law Rep. 531.
SUSAN, The [13,631], 3 Ware, 222.
SUSAN, In re [13,632], 2 Wheeler, Crim. Cas. 594.
Susan, The, Edwards v. [See 4,299.]
SUSAN E. VOORHIS, The [13,633], 10 Ben. 380.
SUSAN G. OWENS, The [13,634], 2 Amer. Law J. (N. S.) 179.
Susan Ludwig, The, Harrison v. [See 6,145a.]
SUSQUEHANNA BRIDGE & BANK CO. v. EVANS [13,635], 4 Wash. C. C. 480.
Suter, Peter v. [See 11,021.]
SUTHERLAND, In re [13,636], 2 Biss. 405; 3 Chi. Leg. News, 73; 12 Int. Rev. Rec. 211.
SUTHERLAND, In re [13,637], 6 Biss. 526.
SUTHERLAND, In re [13,638], Deady, 344; 1 N. B. R. 531 (Quarto, 140).
SUTHERLAND, In re [13,639], Deady, 416; 3 N. B. R. 314 (Quarto, 83); 8 Amer. Law Reg. (N. S.) 39.
SUTHERLAND, In re [13,640], Deady, 573.
SUTHERLAND v. KELLOGG [13,636], 3 Chi. Leg. News, 73; 12 Int. Rev. Rec. 211.
SUTHERLAND v. LADY MAUNSEL, The [13,642], 44 Hunt, Mer. Mag. 624.
SUTHERLAND v. LAKE SUPERIOR SHIP CANAL RAILROAD & IRON CO. [13,643], 9 N. B. R. 298; 1 Cent. Law J. 127.
SUTHERLAND v. STRAW [13,644], 2 Hask. 323.
Sutter, United States v. [See 16,424.]
SUTTON v. ALBATROSS, The [13,645], 2 Wall. Jr. 327; 1 Amer. Law Reg. 87; 1 Phila. 423; 10 Leg. Int. 10; 10 West. Law J. 197.
Sutton, Bailey v. [See 747.]
SUTTON v. HENNELL [13,646].
Sutton, Irving v. [See 7,077, 7,078.]
SUTTON v. KETTELL [13,647], 1 Spr. 309; 18 Law Rep. 550.
SUTTON v. MANDEVILLE [13,648], 1 Cranch, C. C. 2.
SUTTON v. MANDEVILLE [13,649], 1 Cranch, C. C. 32.
SUTTON v. MANDEVILLE [13,650], 1 Cranch, C. C. 115.
SUTTON v. MANDEVILLE [13,651], 1 Cranch, C. C. 187.
Sutton, Norwood v. [See 10,365.]
Sutton, Sherwood v. [See 12,781, 12,782.]
Sutton, Woodward v. [See 18,009.]
SUYDAM v. ALDRICH [13,652], 3 McLean, 383.
SUYDAM v. BEALS [13,653], 4 McLean, 12.
SUYDAM v. DAY [13,654], 2 Blatchf. 20; 1 Fish. Pat. Rep. 88.
SUYDAM v. EWING [13,655], 2 Blatchf. 359.
SUYDAM v. TRUESDALE [13,656], 6 McLean, 459.
SUYDAM v. VANCE [13,657], 2 McLean, 99.
SUYDAM v. WATTS [13,658], 4 McLean, 162.
Suydam, Williamson v. [See 17,756.]
SVEND, The [13,658a], 1 Fed. Rep. 54.
SVENSON, In re [13,659], 9 Biss. 69; 19 N. B. R. 229; 11 Chi. Leg. News, 367; 8 Reporter, 261; 25 Int. Rev. Rec. 274.
SWAIM v. FRANKLIN, The [13,660], Crabbe, 210.
SWAIN v. HOWLAND [13,661], 1 Spr. 424.
SWAIN TURBINE & MFG. CO. v. LADD [13,662], 2 Ban. & A. 488; 11 O. G. 153.
SWALLOW, The [13,663], 8 Ben. 223.
SWALLOW, The [13,664], Olc. 4.
SWALLOW, The [13,665], Olc. 334.
SWALLOW, The [13,666], 1 Ware (21) 13.
Swallow, The, Stapp v. [See 13,305.]
SWAN, The [13,667], 3 Blatchf. 285.
SWAN v. BANK OF THE UNITED STATES [13,-668], 2 Brock. 293.
SWAN v. HUGHES [13,669], 1 Wash. C. C. 216.
Swan, Omaly v. [See 10,508.]
Swan, Picquet v. [See 11,132, 11,133.]
SWAN v. WRIGHT [13,670], 3 Woods, 587.
Swan, The Thomas. [See 13,931.]
SWANN v. ALEXANDRIA CANAL CO. [13,671], 1 Hayw. & H. 163.
Swann, Bank of Alexandria v. [See 853.]

[Federal Case numbers are given in brackets.]

Swann, Bank of Metropolis v. [See 902.]
Swann, Bank of United States v. [See 937.]
Swann, Beardsley v. [See 1,187.]
SWANN v. BOWIE [13,672], 2 Cranch, C. C. 221.
SWANN v. BROWN [13,673], 4 Cranch, C. C. 247.
Swann, Common Council v. [See 3,066.]
Swann, Riggs v. [See 11,831.]
SWANN v. RINGGOLD [13,674], 4 Cranch, C. C. 238.
SWANN v. SANBORN [13,675], 4 Woods, 625.
SWANN v. SCHOLFIELD [13,676], 2 Cranch, C. C. 140.
Swann, United States v. [See 16,425.]
SWANSON v. BALL [13,676a], Hempst. 39.
SWANSTON v. MORTON [13,677], 1 Curt. 294.
Swanwick, Livingston v. [See 8,419.]
Swart, Granger v. [See 5,685.]
Swartwout, Dorr v. [See 4,010.]
Swartwout, Kidd v. [See 7,756.]
SWARTZ v. FUNK [13,678], 9 West. Jur. 412.
Swasey, Foster v. [See 4,984, 4,985.]
SWASEY v. NORTH CAROLINA R. CO. [13,679], 1 Hughes, 17; 1 Amer. Law T. Rep. (N. S.) 359; 71 N. C. 571.
SWAT v. UNITED STATES [13,680], Hoff. Land Cas. 230.
SWATARA R. Co. v. McKIM [13,681], 2 West. Law J. 138; 11 Hunt, Mer. Mag. 363.
SWATZEL v. ARNOLD [13,682], Woolw. 383.
Swayne, Whitely v. [See 17,568.]
S. W. Downs, The, Stevens v. [See 13,411.]
SWEARINGER, In re [13,683], 5 Sawy. 52; 17 N. B. R. 138.
SWEATT v. BOSTON, H. & E. R. CO. [13,684], 3 Cliff. 339; 5 N. B. R. 234; 1 Amer. Law T. Rep. Bankr. 273; 4 Amer. Law T. 174; 6 Amer. Law Rev. 168.
SWEENEY v. CLOUTMAN [13,685], 2 Cliff. 85.
SWEENEY v. COFFIN [13,686], 1 Dill. 73; 3 Amer. Law T. Rep. U. S. Cts. 18; 3 West. Jur. 333.
Sweeney, United States v. [See 16,426.]
Sweeny, Bank of Columbia v. [See 881, 882.]
Sweeny, Cherry v. [See 2,641.]
SWEEPSTAKES, The [13,687], 1 Brown's Adm. 509.
SWEET, In re [13,688], 9 N. B. R. 48; 21 Pittsb. Leg. J. 82.
Sweet, Graydon v. [See 5,733.]
SWEETSER v. HELMS [13,689], 2 Ban. & A. 263; 10 O. G. 4.
SWETT v. BLACK [13,690], 1 Spr. 574.
SWETT v. BLACK [13,691], 2 Spr. 49.
Swett, United States v. [See 16,427.]
SWICK v. HOME INS. CO. [13,692], 2 Dill. 160; 2 Ins. Law J. 415; 4 Bigelow, Ins. Cas. 176.
SWIFT, In re [13,693], 6 Ben. 324; 7 N. B. R. 591.
SWIFT v. ALBUS, The [13,694].
SWIFT v. BROWNELL [13,695], Holmes, 467.
Swift, Carter v. [See 2,479.]
SWIFT v. GIFFORD [13,696], 2 Lowell, 110.
SWIFT v. HAPPY RETURN, The [13,697], 1 Pet. Adm. 253.
SWIFT v. HATHAWAY [13,698], 1 Gall. 417.
Swift v. Humphreys. [See 5,480.]
Swift, Slocum v. [See 12,954.]
SWIFT v. WADY [13,699].
SWIFT v. WHISEN [13,700], 3 Fish. Pat. Cas. 343; 2 Bond, 115; Merw. Pat. Inv. 426.
Swift, White v. [See 17,557.]
SWIGGETT v. SEYMOUR [13,701], 4 Biss. 220.
Swimley, Richards v. [See 11,773.]
Switzerland Mar. Ins. Co., Sawyer v. [See 12,408.]
SWOPE v. ARNOLD [13,702], 5 N. B. R. 148.
SWOPE v. COURTNEY [13,703], 1 Cranch, C. C. 33.
SWOPE v. PURDY [13,704], 1 Dill. 349; 2 West. Jur. 167.
SWOPE v. SAINE [13,705], 1 Dill. 416.
Swormstedt, Smith v. [See 13,112.]
SYBIL, The [13,706], Blatchf. Pr. Cas. 615.
Sybil, The, Fisher v. [See 4,824.]
SYKES, In re [13,707], 10 Ben. 162; 24 Int. Rev. Rec. 414 (391); 26 Pittsb. Leg. J. 64; 18 Alb. Law J. 416; 7 Amer. Law Rec. 370.
SYKES, In re [13,708], 5 Biss. 113.
SYKES v. HAYES [13,709], 5 Biss. 529; 6 Chi. Leg. News, 197.
SYKES v. MANHATTAN ELEVATOR & GRAIN-DRYING CO. [13,710], 6 Blatchf. 496.
SYLPH, The [13,711], 4 Blatchf. 24.
Sylph, The, Bradshaw v. [See 1,791.]
Sylph, The, Williams v. [See 17,740.]
Sylvan Shore, The, Concklin v. [See 3,090.]
SYLVESTER HALE, The [13,712], 6 Ben. 523; 17 Int. Rev. Rec. 196.
SYLVIA v. CORYELL [13,713], 1 Cranch, C. C. 32.
Sylvia De Grasse, The, Setzer v. [See 12,676.]
SYMES v. IRVINE [13,714], 2 Dall. 383.
Symmes, Boudinot v. [See 1,695.]
SYMONDS v. UNION INS. CO. [12,875].
SYRACUSE, The [13,716], 9 Ben. 348.
SYRACUSE, The [13,717], 6 Blatchf. 2.
SYRACUSE, The [13,718], 6 Blatchf. 238.
Syracuse, The, Langley v. [See 8,068.]

T

TABB v. GIST [13,719], 6 Call. 279; 1 Brock. 33.
Taber, Brunent v. [See 2,054.]
Taber, Hunnewell v. [See 6,880.]
TABER v. JENNY [13,720], 1 Spr. 315; 19 Law Rep. 27.
Taber, Moody v. [See 9,747.]
TABER v. PERROT [13,721], 2 Gall. 565.
TABER v. UNITED STATES [13,722], 1 Story, 1; 2 Law Rep. 298; Brunner, Col. Cas. 523.
Taber, The Mary E. [See 9,209.]
Taber, The William. [See 17,757.]
TABOR v. DEXLER [13,723], 9 Morr. Min. Rep. 614; Carp. Min. Code, 71.
TAGGART v. STANBERY [13,724], 2 McLean, 543.
Taggart, Stansbury v. [See 13,292.]
TAGGERT, In re [13,725], 16 N. B. R. 351.
Taggert, Batten v. [See 1,107.]
Tainter, The Alice. [See 194-196.]
Taintor, United States v. [See 16,428.]
TAIT v. NEW YORK LIFE INS. CO. [13,726], 1 Flip. 288; 19 Int. Rev. Rec. 14; 2 Ins. Law J. 863; 4 Bigelow, Ins. Cas. 479.
TALBOT, In re [13,727], 2 N. B. R. 280 (Quarto, 93); 2 Amer. Law T. Rep. Bankr. 15; 1 Chi. Leg. News, 107.
Talbot, Beard v. [See 1,182.]
Talbot, Bowie v. [See 1,732.]
Talbot, Darnall v. [See 3,578.]
TALBOT v. McPHERSON [13,728], 2 Cranch, C. C. 281.
TALBOT v. SELBY [13,729], 1 Cranch, C. C. 181.
TALBOT v. SIMPSON [13,730], Pet. C. C. 188.
TALBOT v. WAKEMAN [13,731], 19 How. Pr. 36.
TALBOT v. WAKEMAN [13,731a].
TALBOTT v. HARTLEY [13,732], 1 Cranch, C. C. 31.
TALBOTT v. WRIGHT [13,733], 2 Cin. Law Bul. 78.
Talburt, Foy v. [See 5,020.]
Talburt, Mary v. [See 9,192.]
Talcott, Ex parte. [See 13,184.]
TALCOTT v. DELAWARE INS. CO. [13,734], 2 Wash. C. C. 449.
TALCOTT v. PINE GROVE [13,735], 1 Flip. 120; 1 Bench & Bar (N. S.) 50.
Talent, The, Ferrara v. [See 4,745.]
TALIAFERO, In re [13,736], 3 Hughes, 422.
TALLAHASSEE v. NEWBY [13,737], 3 N. Y. Leg. Obs. 110.
Tallapoosa Co., Smith v. [See 13,113, 13,114.]
Talley, Head v. [See 6,293.]
TALLMADGE, In re [13,738].
TALLMAN, In re [13,739], 2 Ben. 348; 1 N. B. R. 462 (Quarto, 122); 1 Amer. Law T. Rep. Bankr. 122.
TALLMAN, In re [13,740], 2 Ben. 404; 1 N. B. R. 540 (Quarto, 145).
Tallman, Mason v. [See 9,254.]
Tallman, United States v. [See 16,429.]
Tally Ho, The. [See 16,803.]
Tally Ho, The, O'Connell v. [See 10,418.]
Talmadge, Maury v. [See 9,315.]
Talman, West v. [See 17,426.]

[Federal Case numbers are given in brackets.]

Taminend, The, Bergen v. [See 1,339.]
TAMPICO, The [13,741], Blatchf. Pr. Cas. 554.
TAN BARK CASE, The [13,742], 1 Brown's Adm. 151.
TANGIER, The [13,743], 1 Cliff. 383.
TANGIER, The [13,744], 2 Lowell, 7.
Tangier, The, Goddard v. [See 5,494.]
Tangier, The, Salmon Falls Mfg. Co. v. [See 12,-265-12,267.]
TANNER, In re [13,745], 1 Lowell, 215; 15 Pittsb. Leg. J. 244; 2 Ben. 211; 1 N. B. R. 316 (Quarto, 59); 35 How. Pr. 20; 1 Amer. Law T. Rep. Bankr. 121.
Tanner, Olney v. [See 10,506.]
Tanner, United States v. [See 16,430.]
Tapley, Snow v. [See 13,147.]
Tappan, Beardsley v. [See 1,188, 1,189.]
Tappan, Carlock v. [See 2,412.]
TAPPAN v. DARLING [13,746], 3 Mason, 101.
TAPPAN v. NATIONAL BANK-NOTE CO. [14,100].
Tappan, Oceanic Steamship Co. v. [See 10,405.]
TAPPAN v. SMITH [13,748], 5 Biss. 73.
TAPPAN v. UNITED STATES [13,749], 2 Mason, 393.
Tappan, United States v. [See 16,431.]
TAPPAN v. WHITTEMORE [13,750], 15 Blatchf. 440; 18 Amer. Law Reg. (N. S.) 191; 7 Reporter, 173.
Tapscot, Watson v. [See 17,290.]
Tapscott, Morgan v. [See 9,808.]
TARANTO, The [13,751], 1 Spr. 170; 12 Law Rep. 5; 6 West. Law J. 418.
Tarbell, Ex parte. [See 2,783.]
Tarbell, Cramton v. [See 3,349.]
Tarbox, Daniels v. [See 3,568.]
TARDY v. MORGAN [13,752], 3 McLean, 358.
Tardy, United States v. [See 16,432.]
TARLETON v. MALLORY [13,753], 10 Ben. 46.
TARLTON v. TIPPETT [13,754], 2 Cranch, C. C. 463.
Tarlton, United States v. [See 16,433.]
TARQUIN, The [13,755], 2 Lowell, 358.
TARR v. FOLSOM [13,756], Holmes, 312; 5 O. G. 92; 1 Ban. & A. 24.
Tarr, United States v. [See 16,434.]
TARR v. WEBB [13,757], 10 Blatchf. 96; 5 Fish. Pat. Cas. 593; 2 O. G. 568.
TARROW v. BROWN [13,758].
TATEM, Ex parte [13,759], 1 Hughes, 588.
TATHAM v. LE ROY [13,760], 2 Blatchf. 474.
TATHAM v. LE ROY [13,761].
TATHAM v. LE ROY [13,762], 7 West. Law J. 431.
TATHAM v. LORING [13,763], 5 N. Y. Leg. Obs. 207.
TATHAM v. LOWBER [13,764], 2 Blatchf. 49; 1 Fish. Pat. Rep. 149; 44 Jour. Fr. Just. 188; Betts' Sci. Bk. 118.
TATHAM v. LOWBER [13,765], 4 Blatchf. 86.
TATUM v. LOFTON [13,766], Cooke, 115; Brunner, Col. Cas. 175.
Tatum, Patterson v. [See 10,830.]
Tauszky, Sage v. [See 12,214.]
Tavel, Young v. [See 18,175.]
TAVENNER v. HUNTER [13,767], 1 Hayw. & H. 81.
Ta-Wan-Ga-Ca, United States v. [See 16,435.]
TAWS, Ex parte [13,768], 2 Wash. C. C. 353.
Tayloe, Barnard v. [See 1,008.]
Tayloe, Central Bank v. [See 2,548.]
TAYLOE v. DAVIDSON [13,769], 2 Cranch, C. C. 434.
Tayloe, Riggs v. [See 11,832.]
Tayloe, Somers v. [See 13,170.]
TAYLOE v. TURNER [13,770], 2 Cranch, C. C. 203.
TAYLOE v. VARDEN [13,771], 2 Cranch, C. C. 37.
TAYLOE v. WHARFIELD [13,772], 2 Cranch, C. C. 248.
TAYLOR, Ex parte [13,773], 1 Hughes, 617; 16 N. B. R. 40; 24 Pittsb. Leg. J. 205.
TAYLOR, In re [13,774], 12 Chi. Leg. News, 17; 13 West. Jur. 505; 25 Int. Rev. Rec. 321; 8 N. Y. Wkly. Dig. 554.
TAYLOR, In re [13,775], 3 N. B. R. 157 (Quarto, 38).
TAYLOR, In re [13,776], 1 Wkly. Notes Cas. 16.
Taylor, In re. [See 11,977.]
TAYLOR v. ANN D. RICHARDSON, The [410].
TAYLOR v. ARCHER [13,778], 8 Blatchf. 315; 4 Fish. Pat. Cas. 449.
Taylor, Baker v. [See 782.]
Taylor, Bank of Alexandria v. [See 854.]
Taylor v. Battle Creek. [See 13,735.]
TAYLOR v. BEMIS [13,779], 4 Biss. 406; Cox, Manual Trade-Mark Cas. 132.
Taylor, Bispham v. [See 1,443, 1,444.]
TAYLOR v. BOTHIN [13,780], 5 Sawy. 584; 8 Reporter, 516; Cox, Manual Trade-Mark Cas. 387.
TAYLOR v. BRIGHAM [13,781], 3 Woods, 377.
TAYLOR v. BUCKNER [13,782], 4 Cranch, C. C. 540.
TAYLOR v. BURLINGTON, C. R. & M. RY. CO. [13,783], 4 Dill. 570; 4 Law & Eq. Rep. 74, 101; 11 West. Jur. 337; 9 Chi. Leg. News, 329; 4 Cent. Law J. 535, 536.
TAYLOR v. CARPENTER [13,784], 3 Story, 458; 7 Law Rep. 437; 2 West. Law J. 187; Cox, Manual Trade-Mark Cas. 14, 41; Cox, Amer. Trade-Mark Cas. 14.
TAYLOR v. CARPENTER [13,785], 2 Woodb. & M. 1; 10 Law Rep. 35; Cox, Amer. Trade-Mark Cas. 32; Cox, Manual Trade-Mark Cas. 44; 9 Law T. (Eng.) 514.
TAYLOR v. CATO, The [13,786], 1 Pet. Adm. 48.
TAYLOR v. COMMONWEALTH, The [13,787], 14 Amer. Law Reg. (N. S.) 86.
TAYLOR v. COMMONWEALTH, The [13,788], 6 Chi. Leg. News, 334; 13 Amer. Law Reg. (N. S.) 502; 20 Int. Rev. Rec. 64.
TAYLOR v. COOK [13,789], 2 McLean, 516.
TAYLOR v. DEBLOIS [13,790], 4 Mason, 131.
Taylor, Drake v. [See 4,067.]
Taylor, Fields v. [See 4,777.]
TAYLOR v. GARDNER [13,791], 2 Wash. C. C. 488.
TAYLOR v. GARRETSON [13,792], 9 Blatchf. 156; 5 Fish. Pat. Cas. 116.
TAYLOR v. GERMANIA INS. CO. [13,793], 2 Dill. 282.
Taylor, Green v. [See 5,761.]
TAYLOR v. HARWOOD [13,794], Taney, 437.
Taylor v. The Hasbrouck. [See 7,324.]
TAYLOR v. HOGAN [13,794a]. Hempst. 16.
Taylor, Hutchins v. [See 6,953.]
TAYLOR v. JOSEPH WALKER, The, [13,795], 17 Leg. Int. 255.
Taylor, Juando v. [See 7,558.]
Taylor, Killingly v. [See 7,766.]
Taylor, Kimball v. [See 7,775.]
Taylor, Longworth v. [See 8,490, 8,491.]
TAYLOR v. LUTHER [13,796], 2 Sumn. 228.
Taylor, McCulloch v. [See 8,740.]
TAYLOR v. MARCELLA, The [13,797], 1 Woods, 302.
Taylor, Martin v. [See 9,166.]
Taylor, Mayo v. [See 9,357.]
Taylor, Mechanics' Bank v. [See 9,383.]
Taylor, Mechanics' Bank of Alexandria v. [See 9,386.]
TAYLOR v. MOORE [13,798], 5 Cranch, C. C. 317.
TAYLOR v. MORTON [13,799], 2 Curt. 454.
Taylor, Penny v. [See 10,957.]
TAYLOR v. RASCH [13,800], 1 Flip. 385; 11 N. B. R. 91; 1 Cent. Law J. 555; 31 Leg. Int. 365.
TAYLOR v. RASCH [13,801], 5 N. B. R. 399; 4 Amer. Law T. 201.
Taylor, Ready Roofing Co. v. [See 11,613.]
Taylor, Rice v. [See 11,755.]
Taylor, Roback v. [See 11,877.]
TAYLOR v. ROCKEFELLER [13,802], 18 Amer. Law Reg. (N. S.) 298; 7 Cent. Law J. 349; 7 N. Y. Wkly. Dig. 3; 6 Reporter, 226; 35 Leg. Int. 284; 6 Wkly. Notes Cas. 283; 25 Pittsb. Leg. J. 182; 24 Int. Rev. Rec. 245.
TAYLOR v. ROYAL SAXON, The [13,803], 1 Wall. Jr. 311.
Taylor, Sarah v. [See 12,339.]
TAYLOR v. SCHOLFIELD [13,804], 2 Cranch, C. C. 315.
Taylor, Security Ins. Co. v. [See 12,607.]
Taylor, Sedam v. [See 12,608.]
Taylor, Shakeley v. [See 12,698.]
TAYLOR v. SHERBURNE [13,805], 1 Hayw. & H. 106.
TAYLOR v. SMITH [13,806], 3 Cranch, C. C. 241.
Taylor, Snow v. [See 13,148.]
Taylor, Sperring v. [See 13,235.]
Taylor, Starr v. [See 13,319.]
Taylor, Steelman v. [See 13,349.]
Taylor, Stoughton v. [See 13,502.]
TAYLOR v. TWENTY-FIVE THOUSAND DOLLARS [13,807], Bee, 175.
Taylor, United States v. [See 16,436-16,442.]
Taylor, Wallace v. [See 17,103.]
Taylor, Wildman v. [See 17,654.]

[Federal Case numbers are given in brackets.]

TAYLOR v. WOOD [13,808], 12 Blatchf. 110; 1 Ban. & A. 270; 8 O. G. 90.
TAYLOR v. WOODS [13,809], 3 Woods, 146.
Taylor, Wooster v. [See 18,040, 18,041.]
Taylor, Wright v. [See 18,096.]
Taylor, The Abner. [See 5,705.]
Taylor, The John. [See 7,428, 7,429.]
Taylor County, Post v. [See 11,302.]
TAZAYMON v. TWOMBLEY [13,810], 5 Sawy. 79.
T. B. Abeel, The, Dubois v. [See 4,109a.]
TEAKLE v. BAILEY [13,811], 2 Brock. 43.
Teal, Collinson v. [See 3,020.]
Teal, Elliot v. [See 4,389.]
Teal, Elliott v. [See 4,396.]
Teal, Price v. [See 11,417.]
TEAL v. WALKER [13,812], 5 Reporter, 202; 10 Chi. Leg. News, 131.
Tearrin v. Crawford. [See 4,686.]
TEASDALE v. BRANTON [13,813], 2 Hayw. N. C. 377; Brunner, Col. Cas. 28.
TEASDALE v. JORDAN [13,814], 2 Hayw. N. C. 281; Brunner, Col. Cas. 19.
TEASDALE v. RAMBLER, The [13,815], Bee, 9.
TEBBETS, Ex parte [13,816], 5 Law Rep. 503.
TEBBETTS, In re [13,817], 5 Law Rep. 259.
Teel, Hulsecamp v. [See 6,862.]
TEESE v. PHELPS [13,818], 1 McAll. 17.
TEESE v. PHELPS [13,819], 1 McAll. 48.
Teffry, United States v. [See 16,443.]
Teft, Hurst v. [See 6,939.]
TELAMON, The [13,820], 4 Adm. Rec. 570.
TELEGRAPH, The [13,821].
Telegraph, The. [See 9,217.]
Telegraph Co., Dorgan v. [See 4,004.]
TELLER, The [13,822].
TELLUMAH, The [13,823].
Telos, The, Reed v. [See 11,653.]
TEMPEST, The [13,824].
TEMPLE, In re [13,825], 4 Sawy. 92; 17 N. B. R. 345.
TEMPLE, In re [13,826], 6 Sawy. 77.
Templeman, Simms v. [See 12,872.]
Ten Bales of Gunny Bags, Pacific Mail S. S. Co. v. [See 10,648.]
Ten Barrels and Three Kegs, United States v. [See 16,444.]
Ten Barrels of Distilled Spirits, United States v. [See 16,445.]
TEN BROECK v. PENDLETON [13,827], 5 Cranch, C. C. 464.
Tenbroek, United States v. [See 16,446.]
Ten Cases of Merchandise, United States v. [See 16,447.]
TEN CASES OF OPIUM [13,828], Deady, 62.
Ten Cases of Shawls, United States v. [See 16,448.]
Tench, Humphries v. [See 6,873.]
TEN EYCK, In re [13,829], 7 N. B. R. 26.
Ten Eyk, United States v. [See 16,449.]
TEN HOGSHEADS OF RUM [13,830], 1 Gall. 187.
TENNESSEE, The [13,831].
Tenney, Maynadier v. [See 9,350.]
TENNEY v. TOWNSEND [13,832], 9 Blatchf. 274.
Tennison, Gardner v. [See 5,238.]
TENNY v. COLLINS [13,833], 4 N. B. R. 477 (Quarto, 156).
TENNY v. DENSLEY [13,834], 1 Cranch, C. C. 314.
Tenth Nat. Bank, Warren v. [See 17,200-17,202.]
Ten Thousand Cigars, United States v. [See 16,450, 16,451.]
Teresa, The Mary. [See 9,228.]
Terre Haute Draw-Bridge Co., Jolly v. [See 7,441.]
Terrel, United States v. [See 16,452, 16,453.]
Terrell, Brock v. [See 1,914.]
TERRY, In re [13,835], 2 Biss. 356; 4 N. B. R. 126 (Quarto, 33); 3 Chi. Leg. News, 106.
TERRY, In re [13,836], 5 Biss. 110.
Terry, Babcock v. [See 702.]
TERRY v. BAMBERGER [13,837], 14 Blatchf. 234; 44 Conn. 558.
TERRY v. IMPERIAL FIRE INS. CO. [13,838], 3 Dill. 408; 4 Ins. Law J. 824; 9 West. Jur. 551; 2 Cent. Law J. 459; 21 Int. Rev. Rec. 236; 22 Pittsb. Leg. J. 194.
TERRY v. LIFE INSURANCE CO. [13,839], 1 Dill. 403; 2 Leg. Op. 27; 6 Amer. Law Rev. 369; 5 West. Jur. 496; 1 Ins. Law J. 132; 2 Bigelow, Ins. Cas. 31.
Terry, Mayshew v. [See 9,361.]
Terry, Parsons v. [See 10,782.]
Terry, United States v. [See 16,454.]
Terry, The Ellen S. [See 4,378.]
TERRY CLOCK CO. v. NEW HAVEN CLOCK CO. [13,840], 4 Ban. & A. 121; 17 O. G. 909.
TERRY CLOCK CO. v. NEW HAVEN CLOCK CO. [13,841], 17 O. G. 908; 3 Ban. & A. 332.
TERTELLING, In re [13,842], 2 Dill. 339.
TESCHEMACHER v. UNITED STATES [13,843], Hoff. Land Cas. 28.
Teschemacher, United States v. [See 16,455.]
TESSON, In re [13,844], 9 N. B. R. 378.
TETLOW, Ex parte [16,456], 14 Int. Rev. Rec. 205; 6 Amer. Law Rev. 575.
Tetlow, United States v. [See 16,456.]
TEUSCHER, In re [13,846], 23 Int. Rev. Rec. 202.
Teutonia Ins. Co., Smith v. [See 13,115.]
Teven, United States v. [See 16,457.]
TEXAS v. GAINES [13,847], 2 Woods, 342.
Texas, The, Gibbs v. [See 5,385.]
TEXAS v. TEXAS & P. R. CO. [13,848], 3 Woods, 308.
Texas & N. O. R. Co., Campbell v. [See 2,369.]
Texas & P. R. Co., Harkey v. [See 6,065.]
Texas & P. R. Co., Haugh v. [See 6,221.]
Texas & P. R. Co., Texas v. [See 13,848.]
Texas Pac. R. Co., Gohen v. [See 5,506, 5,507.]
Texas Pac. R. Co., Kain v. [See 7,596.]
Texas Ry. Co., Goheen v. [See 5,507.]
T. F. WHITON, The [13,849], 10 Ben. 369.
Thacher, Ayer v. [See 684.]
THACHER v. BOSTON GASLIGHT CO. [13,850], 2 Lowell, 361.
Thacher, Steele v. [See 13,348.]
THACHER v. UNITED STATES [13,851], 15 Blatchf. 15.
THACKAREY v. FARMER OF SALEM, The [13,852], Gilp. 524.
THAIN v. NORTH AMERICA, The [13,853], 2 N. Y. Leg. Obs. 67.
THALES, The [13,854].
THALES, The [13,855], 3 Ben. 327.
THALES, The [13,856], 10 Blatchf. 203.
Thales, The, Seaver v. [See 12,594.]
Thales, The, Whitlock v. [See 17,578.]
THALIA, The [13,857].
THAMES, The [13,858], 3 Ben. 279.
THAMES, The [13,859], 7 Blatchf. 226.
THAMES v. MILLER [13,860], 2 Woods, 564.
THAMES LOAN & TRUST CO. v. JULIAN [13,861], 7 Biss. 446; 4 Cent. Law J. 534.
Tharp, Tilley v. [See 14,047.]
Tharp, United States v. [See 16,458.]
Thatcher, Everett v. [See 4,578.]
THATCHER v. McCULLOH [13,862], Olc. 365.
THATCHER v. WINSLOW [13,863], 5 Mason, 58.
THATCHER HEATING CO. v. CARBON STOVE CO. [13,864], 15 O. G. 1051; 2 N. J. Law J. 25; 7 Reporter, 199; 4 Ban. & A. 68; Merw. Pat. Inv. 201.
THATCHER HEATING CO. v. DRUMMOND [13,865], 3 Ban. & A. 138.
THAXTER v. HATCH [13,866], 6 McLean, 68.
THAYER, In re [13,867], 7 Amer. Law Rev. 177.
Thayer, In re. [See 5,305.]
Thayer, Bancroft v. [See 835.]
Thayer, Barclay v. [See 978.]
THAYER v. HERRICK [13,868].
THAYER v. JOHNSON COUNTY [13,869], 3 Dill. 392, note; 1 Cent. Law J. 365, note.
THAYER v. MONTGOMERY COUNTY [13,870], 3 Dill. 389; 1 Cent. Law J. 365.
Thayer, Potter v. [See 11,340.]
THAYER v. WALES [13,871], 9 Blatchf. 170; 5 Fish. Pat. Cas. 130.
THAYER v. WALES [13,872], 5 Fish. Pat. Cas. 448.
THAYER v. WENDELL [13,873], 1 Gall. 37.
THEBES, The [10,022].
Thebes, The, Nash v. [See 10,022.]
THEBO v. CAIN [13,875], 1 Tex. Law J. 92.
THECKER v. MILBURN [13,876], 1 Hayw. & H. 271.
THELASSON v. CRAMMOND [13,877], 1 Wash. C. C. 319.
THELLUSON v. SMITH [13,878], Pet. C. C. 195.
Theodore Korner, The, Kendept v. [See 7,693.]

THEODORE PERRY, The [13,879], 8 Cent. Law J. 191.
THEODORE PERRY, The [13,880], 24 Int. Rev. Rec. 54.
Theodor Heinrich, The, Jansen v. [See 7,215.]
Theus, Ex parte. [See 5,420.]
THIBAULT v. DE BASAVILBASO [13,881], Baldw. 9.
THIELL, In re [13,882], 4 Biss. 241.
THIELMAN v. REYNOLDS [13,883], Syllabi, 4.
Third Nat. Bank, First Nat. Bank v. [See 4,801.]
Third Nat. Bank, German American Bank v. [See 5,359.]
Third Nat. Bank v. Papin. [See 12,239.]
Third Nat. Bank, Rankin v. [See 11,568.]
Thirteen Bales, etc., Johnson v. [See 7,415.]
Thirty-Five Barrels of High Wines, United States v. [See 16,460.]
Thirty-Four Barrels of Distilled Spirits, United States v. [See 16,461.]
Thirty-Four Barrels of Whiskey, United States v. [See 16,462.]
Thirty-Nine Barrels of Spirits, United States v. [See 16,463.]
Thirty-Nine Thousand One Hundred and Fifty Cigars, United States v. [See 16,464.]
Thirty-Nine Trunks, United States v. [See 16,465.]
Thirty-Seven Barrels of Apple Brandy, United States v. [See 16,466.]
Thirty-Seven Barrels of Rum, United States v. [See 16,467.]
Thirty-Six Barrels of High Wines, United States v. [See 16,468, 16,469.]
Thirty Three Barrels of Spirits, United States v. [See 16,470.]
THISTLE v. HAMILTON [13,884], 4 Dill. 162.
Thoma, United States v. [See 16,471.]
THOMAS, Ex parte [13,885], 3 App. Com'r Pat. 346.
THOMAS, In re [13,886], 8 Biss. 139; 6 Cent. Law J. 151; 17 N. B. R. 54.
THOMAS, In re [13,887], 12 Blatchf. 370.
THOMAS, In re [13,888], 1 Chi. Leg. News, 245; 10 Int. Rev. Rec. 53; 3 Amer. Law Rev. 779.
THOMAS, In re [13,889], 1 Dill. 420.
THOMAS, In re [13,890], 3 N. B. R. 38 (Quarto, 7).
THOMAS, In re [13,891], 11 N. B. R. 330; 7 Chi. Leg. News, 187.
Thomas, In re. [See 10,395.]
THOMAS, The [3,769].
Thomas, Alexander v. [See 174.]
Thomas, Allen v. [See 239.]
THOMAS v. BRENT [13,893], 1 Cranch, C. C. 161.
THOMAS v. CLARK [13,894], 2 McLean, 194.
Thomas, Consolidated Fruit-Jar Co. v. [See 3,131.]
THOMAS v. CRUTTENDEN [13,895], 4 Cranch, C. C. 71.
Thomas, Delaware River Co. v. [See 3,769.]
Thomas, The, Delaware River Storage Co. v. [See 3,769.]
THOMAS v. ELLIOT [13,896], 2 Cranch, C. C. 432.
THOMAS v. GITTINGS [13,897], Taney, 472.
THOMAS v. GRAY [13,898], 1 Blatchf. & H. 493.
Thomas, Grey v. [See 5,806.]
THOMAS v. HATCH [13,899], 3 Sumn. 170.
THOMAS v. JAMESSON [13,900], 1 Cranch, C. C. 91.
THOMAS v. KOSCIUSKO, The [13,901], 11 N. Y. Leg. Obs. 38.
THOMAS v. LANE [13,902], 2 Sumn. 1.
THOMAS v. MACKALL [13,903], 5 Cranch, C. C. 536.
THOMAS v. MAGRUDER [13,904], 4 Cranch, C. C. 446.
Thomas, Moore v. [See 9,776.]
THOMAS v. NEWTON [13,905], Pet. C. C. 444.
THOMAS v. PAGE [13,906], 3 McLean, 167.
THOMAS v. PAGE [13,907], 3 McLean, 369.
Thomas, Pennsylvania Salt Mfg. Co. v. [See 10,956.]
THOMAS v. PERRY [13,908], Pet. C. C. 49.
Thomas, Pratt v. [See 11,377.]
Thomas, Russell v. [See 12,162.]
Thomas, Salt Mfg. Co. v. [See 10,956.]
Thomas v. Schuyler County. [See 13,909.]
THOMAS v. SCOTLAND COUNTY [13,909], 3 Dill. 7; 1 Cent. Law J. 216.
THOMAS v. SCOTT [13,910], 2 Cranch, C. C. 2.
Thomas, Scudder v. [See 12,567.]
Thomas, Segee v. [See 12,633.]
THOMAS v. SHOE MACHINERY MFG. CO. [13,911], 3 Ban. & A. 557; 16 O. G. 541.
Thomas, The, Storage Co. v. [See 3,769.]
Thomas, Stowe v. [See 13,514.]
THOMAS v. SUMMERS [13,912], 5 Cranch, C. C. 434.
Thomas, The, Trump v. [See 14,206.]
Thomas, Turnbull v. [See 14,243.]
Thomas, United States v. [See 16,472-16,477.]
THOMAS v. WATSON [13,913], Taney, 297.
THOMAS v. WEEKS [13,914], 2 Paine, 92; 1 Fish. Pat. Rep. 5.
THOMAS v. WOLCOTT [13,915], 4 McLean, 365.
THOMAS v. WOODBURY [13,916], 1 Hask. 559.
THOMAS v. WOODHOUSE [13,917], 1 Cranch, C. C. 341.
THOMAS v. WOOLDRIDGE [13,918], 2 Woods, 667.
Thomas, Wooldridge v. [See 18,025.]
THOMAS AND HENRY, The, v. UNITED STATES [13,919], 1 Brock. 367.
THOMAS A. SCOTT, The [13,920].
THOMAS A. SCOTT, The [13,921], 1 Brown's Adm. 503; 7 Chi. Leg. News, 19.
Thomas Ewing, The, Van Syckel v. [See 16,877.]
THOMAS GIBBONS, The [13,922].
THOMAS JEFFERSON, The [13,923], 3 Ben. 302.
THOMAS KILEY, The [13,924], 3 Ben. 228.
THOMAS KILEY, The [13,925], 5 Ben. 301.
THOMAS MARTIN, The [13,926], 3 Blatchf. 517; 19 Law Rep. 379; 35 Hunt, Mer. Mag. 446.
Thomas, The N. W. [See 10,386.]
THOMAS P. THORN, The [13,927], 8 Ben. 3.
Thomas Scattergood, The, Phillips v. [See 11,106.]
THOMASSEN v. WHITWELL [13,928], 9 Ben. 113; 23 Int. Rev. Rec. 146.
THOMASSEN v. WHITWELL [13,929], 9 Ben. 403; 24 Int. Rev. Rec. 123.
THOMASSEN v. WHITWELL [13,930], 9 Ben. 458; 24 Int. Rev. Rec. 123.
Thomasson, United States v. [See 16,478, 16,479.]
Thomas Sparks, The, Nelson v. [See 10,115.]
THOMAS SWAN, The [13,931], 6 Ben. 42.
Thomas Swan, The, United States v. [See 16,480.]
Thomas Swann, The, Lucas v. [See 8,588.]
Thomaston Mut. Fire Ins. Co., Babson v. [See 704.]
THOMAS TURRALL, The [13,932], 6 Ben. 404.
Thomas Walker, The, McCorker v. [See 8,716.]
THOMAS WATSON, The [13,933], Blatchf. Pr. Cas. 120.
Thomee, Koones v. [See 7,926.]
Thomes, United States v. [See 16,481, 16,482.]
Thompkins, United States v. [See 16,483.]
THOMPSON, Ex parte [13,934], 1 Flip. 507; 15 Amer. Law Reg. (N. S.) 522; 9 Chi. Leg. News, 19; 1 Cin. Law Bul. 235; 24 Pittsb. Leg. J. 47.
THOMPSON, In re [13,935], 2 Ben. 166; 1 N. B. R. 323 (Quarto, 65).
THOMPSON, In re [13,936], 2 Biss. 166; 3 N. B. R. 184 (Quarto, 45); 16 Pittsb. Leg. J. 85; 2 Amer. Law T. 107; 1 Chi. Leg. News, 345; 1 Amer. Law T. Rep. Bankr. 137; 1 Leg. Gaz. 46.
THOMPSON, In re [13,937], 2 Biss. 481.
THOMPSON, In re [13,938], 13 N. B. R. 300; 2 N. Y. Wkly. Dig. 4.
THOMPSON v. AFFLICK [13,939], 2 Cranch, C. C. 46.
THOMPSON v. AFFLICK [13,940], 2 Cranch, C. C. 67.
THOMPSON v. BALTIMORE PASS. R. CO. [13,941].
THOMPSON v. BARRY [13,942], 2 Wkly. Notes Cas. 100.
THOMPSON v. BERRY [13,943], 1 Cranch, C. C. 45.
Thompson v Board of Sup'rs of Lee County. [See 15,589.]
Thompson, British Consul v. [See 1,899.]
THOMPSON v. BUSCH [13,944], 4 Wash. C. C. 338.
THOMPSON v. CAMPBELL [13,944a], Hempst. 8.
THOMPSON v. CARBERY [13,945], 2 Cranch, C. C. 35.
THOMPSON v. CARBERY [13,946], 2 Cranch, C. C. 39.
THOMPSON v. CARENOUGH [13,947], 1 Cranch, C. C. 267.
THOMPSON v. CARSON [13,948].
THOMPSON v. CATHARINA, The [13,949], 1 Pet. Adm. 104.
Thompson, Central Ohio R. R. v. [See 2,550.]
THOMPSON v. CINCINNATI, W. & Z. R. CO. [13,950], 1 Bond, 152.

[Federal Case numbers are given in brackets.]

THOMPSON v. CLARKE [13,951], 2 Cranch, C. C. 145.
THOMPSON v. COOK [13,952], 2 McLean, 122.
Thompson, Cooper v. [See 3,202.]
Thompson, Cragin v. [See 3,320.]
THOMPSON v. EMMERT [13,953], 4 McLean, 96.
Thompson, England v. [See 4,487.]
THOMPSON v. FAUSSAT [13,954], Pet. C. C. 182.
Thompson, Flanders v. [See 4,853.]
THOMPSON v. GEORGETOWN [13,955], 1 Hayw. & H. 226.
THOMPSON v. HAIGHT [13,956], 1 U. S. Law J. 85, 563, 575.
THOMPSON v. HAIGHT [13,957], 1 U. S. Law J. 563.
Thompson, City of Hastings v. [See 6,202.]
Thompson, Hawkins v. [See 6,246.]
THOMPSON v. HOLTON [13,958], 6 McLean, 386.
THOMPSON v. JACHIN, The [13,959].
THOMPSON v. JAMESSON [13,960], 1 Cranch, C. C. 295.
THOMPSON v. JEWETT [13,961], 4 Leg. Gaz. 50.
Thompson, Kibbe v. [See ι,754.]
THOMPSON v. KING [13,962], 3 Cranch, C. C. 662.
THOMPSON v. KING [13,963], 5 Cranch, C. C. 93.
Thompson, King v. [See 7,807.]
THOMPSON v. KNICKERBOCKER LIFE INS. CO. [13,964], 2 Woods, 547; 5 Ins. Law J. 817; 5 Bigelow Ins. Cas. 8; 3 Cent. Law J. 561; 3 Amer. Law T. Rep. (N. S.) 370; 1 Cin. Law Bul. 210.
THOMPSON v. LACY [13,965], 1 Cranch, C. C. 79.
Thompson, Lee v. [See 8,202.]
THOMPSON v. LIVERPOOL & LONDON & GLOBE INS. CO. [13,966], 2 Hask. 363.
Thompson, Lovrein v. [See 8,557.]
Thompson, Macomber v. [See 8,919.]
Thompson, Magniac v. [See 8,956.]
THOMPSON v. MANUFACTURING CO. [13,967].
Thompson, Mellus v. [See 9,405.]
THOMPSON v. MENDELSOHN [13,968], 5 Fish. Pat. Cas. 187; 28 Leg. Int. 388; 8 Phila. 166; 19 Pittsb. Leg. J. 83.
THOMPSON v. MILLIGAN [13,969], 2 Cranch, C. C. 207.
Thompson, Mitchell v. [See 9,669.]
THOMPSON v. NORWOOD [13,970], Cooke, 346; Brunner, Col. Cas. 221.
THOMPSON v. OAKLAND, The [13,971], 4 Law Rep. 349.
Thompson, Otteridge v. [See 10,618.]
THOMPSON v. PERKINS [13,972], 3 Mason, 232.
Thompson, Perrine v. [See 10,997.]
THOMPSON v. PHILADELPHIA, The [13,973], 1 Pet. Adm. 210.
THOMPSON v. PHILLIPS [13,974], Baldw. 246.
THOMPSON v. SCOTT [13,975], 4 Dill. 508; 22 Int. Rev. Rec. 376; 3 Cent. Law J. 737; 14 Alb. Law J. 400.
Thompson, Shaw v. [See 12,726.]
Thompson, Shipley v. [See 12,790.]
THOMPSON v. SMITH [13,976], 2 Bond, 320.
THOMPSON v. SMITH [13,977], 1 Dill. 458.
THOMPSON v. TOD [13,978], Pet. C. C. 380.
Thompson, Tolmie v. [See 14,080.]
Thompson, Tooker v. [See 14,097.]
Thompson, United States v. [See 16,484-16,492.]
Thompson, Valarino v. [See 16,810a.]
Thompson, Valerino v. [See 16,813a.]
THOMPSON v. VOSS [13,979], 1 Cranch, C. C. 108.
Thompson, Vowell v. [See 17,023.]
Thompson, Ward v. [See 17,162.]
THOMPSON v. WELLS [13,980], 3 Cranch, C. C. 5.
Thompson, The Isabella. [See 7,102.]
THOMSON v. BRADFORD [13,981], 7 Biss. 351.
Thomson, Butler v. [See 2,244.]
THOMSON v. JACOBS [13,982], 12 O. G. 890.
Thomson, Magniac v. [See 8,957.]
THOMSON v. MAXWELL [13,983], 2 Blatchf. 385.
THOMSON v. NANNY, The [13,984], Bee, 217.
Thomson, Waterman v. [See 17,260.]
Thomson, Weaver v. [See 17,311.]
THOMSON v. UNITED STATES [13,985], 1 Brock. 407.
Thorn, United States v. [See 16,493.]
THORN v. VICTORIA, The [13,985a].
THORNBURGH v. SAVAGE MIN. CO. [13,986], 1 Pac. Law Mag. 267; 7 Morr. Min. Rep. 667.
THORNDIKE v. UNITED STATES [13,987], 2 Mason, 1.
THORNE v. VICTORIA, The [13,988].
Thorne, Black v. [See 1,465, 1,466.]
THORNE v. WHITE [13,989], 1 Pet. Adm. 168.
Thorner, Ahl v. [See 103.]
Thornhill v. Bank of Lee. [See 13,990-13,992.]
THORNHILL v. BANK OF LOUISIANA [13,990], 3 N. B. R. 435 (Quarto, 110); 3 Amer. Law T. 38; 2 Chi. Leg. News, 157; 1 Amer. Law T. Rep. Bankr. 156.
THORNHILL v. BANK OF LOUISIANA [13,991], 5 N. B. R. 377; 4 Amer. Law T. Rep. U. S. Cts. 245; 1 Amer. Law T. Rep. Bankr. 287.
THORNHILL v. BANK OF LOUISIANA [13,992], 1 Woods, 1; 5 N. B. R. 367.
THORNHILL v. LINK [13,993], 8 N. B. R. 521.
Thorn, The Thomas P. [See 13,927.]
THORNTON, In re [13,994], 8 Amer. Law Reg. (N. S.) 42; 2 N. B. R. 189 (Quarto, 68).
THORNTON, The [13,995], 2 Ben. 429.
Thornton, Beeding v. [See 1,228.]
Thornton, Blodget v. [See 1,554.]
THORNTON v. CALDWELL [13,996], 1 Cranch, C. C. 524.
THORNTON v. CHAPMAN [13,997], 2 Cranch, C. C. 244.
THORNTON v. DAVIS [13,998], 4 Cranch, C. C. 500.
Thornton, Lee v. [See 8,203.]
Thornton, Maddox v. [See 8,935.]
THORNTON v. O'NEALE [13,999], 1 Cranch, C. C. 269.
THORNTON v. STODDERT [14,000], 1 Cranch, C. C. 534.
Thornton, Wallis v. [See 17,111.]
THORNTON v. WASHINGTON [14,001], 3 Cranch, C. C. 212.
Thornton, Withers v. [See 17,918.]
THORP, In re [14,002], 2 Ware (Dav. 290) 294; 4 N. Y. Leg. Obs. 377.
THORP v. DEFENDER, The [14,003], 1 Bond, 397.
THORP v. HAMMOND [14,004].
THORP v. LAWRENCE [14,005], 1 Blatchf. 351.
THORP v. ORR [14,006], 2 Cranch, C. C. 335.
THORPE v. SIMMONS [14,007], 2 Cranch, C. C. 195.
Thorpe, United States v. [See 16,494.]
THRALL v. CRAMPTON [14,008], 9 Ben. 218; 16 N. B. R. 261.
Three Bales of Cloth, United States v. [See 16,495.]
THREE BROTHERS, The [14,009], 1 Gall. 142.
Three Cases, United States v. [See 16,496.]
Three Cases of Toys, United States v. [See 16,499.]
Three Horses, United States v. [See 16,500.]
Three Hundred and Eight Caddies of Tobacco, United States v. [See 16,501.]
THREE HUNDRED AND EIGHTEEN AND ONE-HALF TONS OF COAL [14,010], 14 Blatchf. 453; 4 Law & Eq. Rep. 105, 44 Conn. 548.
Three Hundred and Fifty-Seven Bales of Cotton, Mattingly v. [See 9,294.]
Three Hundred and Forty Pigs of Copper, Bearse v. [See 1,193.]
Three Hundred and Ninety-Six Barrels Distilled Spirits, United States v. [See 16,502-16,504.]
THREE HUNDRED AND NINETY-THREE TONS OF GUANO [14,011], 6 Ben. 533.
Three Hundred and Seventy-Two Pipes Distilled Spirits, United States v. [See 16,505.]
Three Hundred and Thirty-Seven Cases of Wine, United States v. [See 16,506.]
Three Hundred Bales of Wool, United States v. [See 16,508.]
Three Hundred Barrels of Alcohol, United States v. [See 16,509.]
Three Hundred Barrels of Whiskey, United States v. [See 16,510.]
Three Hundred Casks of Juniper Cordial, United States v. [See 16,511.]
Three Parcels of Embroidery, United States v. [See 16,512.]
Three Puncheons of Rum. [See 10,548.]
Three Railroad Cars, United States v. [See 16,513.]
Three Thousand Baskets of Champagne, United States v. [See 16,514.]
THREE THOUSAND ONE HUNDRED AND NINE CASES OF CHAMPAGNE [14,012], 1 Ben. 241.

Three Tons of Coal, United States v. [See 16,515.]
Threlkeld, Clarke v. [See 2,865.]
Threlkeld, Williams v. [See 17,741.]
Throckmorton, United States v. [See 16,516.]
Throgmorton, Stockton v. [See 13,463.]
THRUSTON v. MUSTIN [14,013], 3 Cranch, C. C. 335.
THURBER v. FANNIE, The [14,014], 8 Ben. 429.
Thule, The, Bodin v. [See 1,595.]
Thurber, Van Kleeck v. [See 16,861.]
Thurber, The F. B. [See 17,355.]
THURN v. UNITED STATES [14,015], Hoff. Land Cas. 298.
Thurston, James v. [See 7,186.]
THURSTON v. KOCH [14,016], 4 Dall. 348, Append. xxxii.
THURSTON v. MAGNOLIA, The [14,017], 1 Bond, 92.
Thurston, Marshall v. [See 9,132.]
THURSTON v. MARTIN [14,018], 5 Mason, 497.
THURSTON v. UNION PAC. R. CO. [14,019], 4 Dill. 321; 22 Int. Rev. Rec. 251; 8 Chi. Leg. News, 323; 13 Alb. Law J. 393.
THWING v. DUNCAN [14,019a].
Thwing, Great Western Ins. Co., v. [See 5,738.]
TIBBATTS v. TIBBATTS [14,020], 6 McLean, 80.
TIBBETTS v. ARCTURUS, The [14,021].
TIBBS v. PARROTT [14,022], 1 Cranch, C. C. 177.
TIBBS v. PARROTT [14,023], 1 Cranch, C. C. 313.
Tiber, The, McCord v. [See 8,715.]
Ticknor, Paret v. [See 10,711.]
Tiddeman, Jelly v. [See 7,256a.]
TIDMARSH v. WASHINGTON FIRE & MARINE INS. CO. [14,024], 4 Mason, 439.
Tiemann, Masury v. [See 9,271.]
TIERNAN v. ANDREWS [14,025], 4 Wash. C. C. 474.
TIERNAN v. ANDREWS [14,026], 4 Wash. C. C. 564.
TIERNAN v. WOODRUFF [14,027], 5 McLean, 135.
TIERNAN v. WOODRUFF [14,028], 5 McLean, 350.
Tierney, United States v. [See 16,517.]
TIFFT, In re [14,029], 17 N. B. R. 502.
TIFFT, In re [14,030], 17 N. B. R. 550.
TIFFT, In re [14,031], 18 N. B. R. 78.
TIFFT, In re [14,032], 18 N. B. R. 177.
TIFFT, In re [14,033], 18 N. B. R. 227.
TIFFT, In re [14,034], 19 N. B. R. 201.
TIFFT v. IRON CLAD MFG. CO. [14,035], 16 Blatchf. 48; 7 Reporter, 456.
TIFT, In re [14,036], 17 N. B. R. 421.
TIGHLMAN v. WERK [14,037].
TIGRIS, The [14,038], 3 Law Rep. 428.
Tilden, United States v. [See 16,518-16,523.]
Tileston, Sickels v. [See 12,837.]
TILFORD v. OAKLEY [14,038a], Hempst. 197.
TILGHMAN v. HARTELL [14,039], 11 Phila. 500; 2 Ban. & A. 260; 9 O. G. 886; 33 Leg. Int. 149; 22 Int. Rev. Rec. 138.
TILGHMAN v. HARTELL [14,040], 1 Wkly. Notes Cas. 52.
TILGHMAN v. MITCHELL [14,041], 9 Blatchf. 1; 4 Fish. Pat. Cas. 599.
TILGHMAN v. MITCHELL [14,042], 9 Blatchf. 18; 4 Fish. Pat. Cas. 615.
TILGHMAN v. MITCHELL [14,043], 2 Fish. Pat. Cas. 518.
TILGHMAN v. MORSE [14,044], 9 Blatchf. 421; 1 O. G. 574; 5 Fish. Pat. Cas. 323; Merw. Pat. Inv. 122.
TILGHMAN v. TILGHMAN [14,045], Baldw. 464.
Tilghman, Vandever v. [See 16,846.]
TILGHMAN v. WERK [14,046], 1 Bond, 511; 2 Fish. Pat. Cas. 229.
Tilley, Champlin v. [See 2,586.]
TILLEY v. THARP [14,047], 3 Cranch, C. C. 290.
TILLIE, The [14,048], 7 Ben. 382.
TILLIE, The [14,049], 13 Blatchf. 514.
TILLMAN, Ex parte [14,050], 3 App. Com'r Pat. 282.
Tillman, Benjamin v. [See 1,304.]
TILLOTSON v. MUNSON [14,051], 5 Biss. 426; Merw. Pat. Inv. 138.
Tillotson, United States v. [See 16,524.]
TILLS, In re [14,052], 11 N. B. R. 214.
Tillson, Milan Distilling Co. v. [See 9,539.]
TILLY v. BROWN [14,053], 1 Hayw. & H. 148.
Tilson, Shurlds v. [See 12,827.]
TILTON, The [14,054], 5 Mason, 465.
TILTON v. OREGON CENT. MILITARY ROAD CO. [14,055], 3 Sawy. 22; 1 Cent. Law J. 267.
Tilton, United States v. [See 16,525.]
Tilton, The Marietta. [See 9,084.]
TINDALL v. MURPHY [14,055a], Hempst. 21.
TINGEY v. CARROLL [14,056], 3 Cranch, C. C. 693.
Tingey, Ormsby v. [See 10,580.]
TINGLE v. TUCKER [14,057], Abb. Adm. 519.
TINKER v. VAN DYKE [14,058], 1 Flip. 521; 14 N. B. R. 112; 8 Chi. Leg. News, 235.
Tinker, Van Dyke v. [See 16,849.]
Tinklepaugh, United States v. [See 16,526.]
Tinstman, First Nat. Bank of Mt. Pleasant v. [See 4,805.]
Tioga R. Co., Blossburg & C. R. Co. v. [See 1,563.]
Tippett, Tarlton v. [See 13,754.]
Tipton, Morgan v. [See 9,809.]
Tirrell, Gilbert & B. Mfg. Co. v. [See 5,417.]
TISDALE v. MUTUAL BEN. LIFE INS. CO. [14,059], 3 Ins. Law J. 58; 4 Bigelow, Ins. Cas. 58.
TISDALL v. HERO, The [14,059a].
TITAN, The [14,060], 8 Ben. 7.
Titan, The. [See 12,666, 12,667.]
Titan, The, Hotaling v. [See 6,714a.]
TITIAN, The [14,061], 6 Ben. 346.
TITUS, In re [14,062], 8 Ben. 411; 8 Chi. Leg. News, 284.
TITUS v. HOBART [14,063], 5 Mason, 378.
Titus, Shirley v. [See 12,796.]
TIVOLI BREWING CO., In re [14,064], 11 N. B. R. 470.
Tobacco, United States v. [See 16,527.]
Tobacco Factory, United States v. [See 16,528.]
TOBEY v. BRISTOL, County of [14,065], 3 Story, 800.
TOBEY v. CLAFLIN [14,066], 3 Sumn. 379.
TOBEY v. LEONARD [14,067], 2 Cliff. 40.
TOBIN v. WALKINSHAW [14,068], McAll. 26; 5 Amer. Law Reg. 106.
TOBIN v. WALKINSHAW [14,069], McAll. 151.
TOBIN v. WALKINSHAW [14,070], McAll. 186.
Tobin, The Ellen. [See 4,379.]
Toby, Goodyear v. [See 5,585.]
TOBY v. RANDON [14,071], 6 West. Law J. 218.
TOCHMAN, Ex parte [14,072], 1 Hayw. & H. 268.
Tochman, Bradley v. [See 1,788.]
Tochman, Fendall v. [See 4,726.]
Tod, Thompson v. [See 13,978.]
Todd, Alexander v. [See 175.]
Todd, Bicknell v. [See 1,389.]
TODD v. CRUMB [14,073], 5 McLean, 172.
TODD v. EUPHRATES, The [14,074].
Todd, Howell v. [See 6,783.]
TODD v. JAMES ADGER, The [14,074a].
Todd, Maryland v. [See 9,220.]
TODD v. TOWNSEND [14,075], 9 Amer. Law Rev. 150.
Todd, Townsend v. [See 14,118.]
Toland, Scoville v. [See 12,553.]
TOLAND v. SPRAGUE [14,076], 14 Amer. Jur. 302.
Tolbee, United States v. [See 16,529.]
TOLEDO, The [14,077], 1 Brown's Adm. 445.
Toledo, P. & W. R. Co., Secor v. [See 12,605.]
TOLER v. ARMSTRONG [14,078], 4 Wash. C. C. 297.
TOLER v. WHITE [14,079], 1 Ware (277) 280; 19 Amer. Jur. 206.
TOLMIE v. THOMPSON [14,080], 3 Cranch, C. C. 123.
Tolson, United States v. [See 16,530.]
Tom, United States v. [See 16,531.]
TOMBECKBEE BANK v. DUMELL [14,081], 5 Mason, 56.
TOMBECKBEE BANK OF MOBILE v. —— [14,082], 1 U. S. Law Int. 244.
TOME v. FOUR CRIBS OF LUMBER [14,083], Taney, 533.
TOMES, In re [14,084], 19 N. B. R. 36.
TOMES v. REDFIELD [14,085], 7 Blatchf. 139.
TOMLINSON v. BATTEL [14,086].
TOMLINSON v. HEWETT [14,087], 2 Sawy. 278.
Tompkins, Anderson v. [See 365.]
TOMPKINS v. DUTCHESS OF ULSTER, The [14,087a].
TOMPKINS v. GAGE [14,088], 5 Blatchf. 268; 2 Fish. Pat. Cas. 577.
TOMPKINS v. HOWARD [14,089], 1 Spr. 167.
Tompkins, Johnson v. [See 7,416.]
TOMPKINS v. RANKIN [14,090], 3 Cent. Law J. 443.
TOMPKINS v. TOMPKINS [14,091], 1 Story, 547.
Toms, United States v. [See 16,532.]
TONAWANDA, The [14,092], 11 Phila. 516; 32 Leg. Int. 229; 1 Wkly. Notes Cas. 497; 7 Leg. Gaz. 201.
Tonawanda, The. [See 14,109.]

[Federal Case numbers are given in brackets.]

TONG DUCK CHUNG v. KELLY [14,093], 25 Int. Rev. Rec. 159; 7 Reporter, 741; 11 Chi. Leg. News, 273.
TONKIN, In re [14,094], 4 N. B. R. 52 (Quarto, 13); 3 Amer. Law T. 221; 1 Amer. Law T. Rep. Bankr. 232.
Tonkin, Brown v. [See 2,031.]
TONNE, In re [14,095], 13 N. B. R. 170; 1 N. Y. Wkly. Dig. 437.
Toof, Martin v. [See 9,167.]
TOOKER, In re [14,096], 8 Ben. 390; 14 N. B. R. 35; 23 Pittsb. Leg. J. 185, 196.
Tooker, Fenwick v. [See 4,735.]
TOOKER v. THOMPSON [14,097], 3 McLean, 92.
Tool Co., Maltby v. [See 9,001.]
TOOLE v. WASHINGTON [14,097a].
Tooley v. Passenger Ry. Assur. Co. [See 14,098.]
TOOLEY v. RAILWAY PASS. ASSUR. CO. [14,098], 3 Biss. 399; 2 Ins. Law J. 275; 4 Chi. Leg. News, 311; 4 Bigelow, Ins. Cas. 34.
Toone, The Joseph H. [See 7,540-7,543.]
Topeka, Citizens' Sav. Ass'n v. [See 2,734.]
Topliff, Concord R. Corp. v. [See 3,093.]
TOPPAN v. CLEVELAND, C. & C. R. CO. [14,099], 1 Flip. 74; 9 Pittsb. Leg. J. 313; 4 West. Law Month. 67.
TOPPAN v. NATIONAL BANK-NOTE CO. [14,100], 4 Blatchf. 509; 2 Fish. Pat. Cas. 195.
Topping, Russell v. [See 12,163.]
TOPPING v. WARREN, The [14,101], 34 Hunt, Mer. Mag. 453.
Torge, United States v. [See 16,533.]
TORICES v. WINGED RACER, The [14,102], 39 Hunt, Mer. Mag. 458.
TORRANCE v. AMSDEN [14,103], 3 McLean, 509.
TORREY v. BEARDSLY [14,104], 4 Wash. C. C. 242.
Torrey, Beardsely v. [See 1,190.]
TORREY v. GRANT LOCOMOTIVE WORKS [14,-105], 14 Blatchf. 269.
Torrey, Tracy v. [See 14,127.]
TOTTEN v. PLUTO, The [14,106].
TOUCEY v. BOWEN [14,107], 1 Biss. 81.
TOUCHMAN, Ex parte [14,108], 1 Hughes, 601.
TOWANDA, The [14,109], 34 Leg. Int. 394; 23 Int. Rev. Rec. 384; 5 Cent. Law J. 418; 13 Phila. 464; 12 Amer. Law Rev. 401; 25 Pittsb. Leg. J. 59.
Tower, Ex parte. [See 1,085.]
Tower, Barton v. [See 1,085.]
Tower, Lincoln v. [See 8,355.]
Towers, McCall v. [See 8,674.]
Towers, Munroe v. [See 9,930.]
Towers, Shean v. [See 12,731.]
Towle, Cleveland v. [See 2,888.]
TOWLE v. GREAT EASTERN, The [14,110].
TOWN, In re [14,111], 8 N. B. R. 38.
TOWN, In re [14,112], 8 N. B. R. 40.
TOWN v. AMERICAN BANNER, The [14,112a].
TOWN v. DE HAVEN [14,113], 5 Sawy. 146.
TOWN v. WESTERN METROPOLIS, The [14,114], 28 How. Pr. 283.
TOWNE v. SMITH [14,115], 1 Woodb. & M. 115; 9 Law Rep. 12.
Towner, Walker v. [See 17,089.]
Towns, United States v. [See 16,534.]
TOWNSEND, In re [14,116], 2 Ben. 62; 1 N. B. R. 217 (Quarto, 1); 1 Amer. Law T. Rep. Bankr. 2.
Townsend v. The Eagle. [See 11,626.]
Townsend, Lane v. [See 8,054.]
TOWNSEND v. LEONARD [14,117], 3 Dill. 370; 1 Cent. Law J. 69.
Townsend, Mechanics' & Farmers' Bank v. [See 9,381.]
Townsend, Orne v. [See 10,583.]
Townsend, Tenney v. [See 13,832.]
TOWNSEND v. TODD [14,118].
TOWNSEND v. UNITED STATES [14,119], 1 U. S. Law J. 534, b.
Townsend, Washington v. [See 17,234.]
TOWNSEND SAV. BANK v. EPPING [14,120], 3 Woods, 390.
TOWNSHEND v. MINA, The [14,121], 6 Phila. 482; 25 Leg. Int. 380.
Township of Pine Grove, Talcott v. [See 13,735.]
Town Treasurer of Cranston, Holland v. [See 6,606.]
TOWSEND v. ORNE [10,583].
Toy Long, Chapman v. [See 2,610.]
TOY WILLIAM v. HALLETT [14,123], 2 Sawy. 261.
T. P. Leathers, The, Montgomery v. [See 9,736.]
Trabue, Smith v. [See 13,116.]
Tract of Land, United States v. [See 16,535.]
TRACY, In re [14,124], 2 N. B. R. 298 (Quarto, 98); 1 Chi. Leg. News, 123.
Tracy, Cadle v. [See 2,279.]
Tracy, Fanshawe v. [See 4,643.]
TRACY v. JANISCH [14,125].
TRACY v. SCOTT [14,126], 4 Cranch, C. C. 250.
TRACY v. TORREY [14,127], 2 Blatchf. 275.
TRACY v. TRACY [14,128], 5 McLean, 456.
Tracy, United States v. [See 16,536.]
Tracy v. Waler. [See 14,129.]
TRACY v. WALKER [14,129], 1 Flip. 41; 3 West. Law Month. 574.
TRACY v. WOOD [14,130], 3 Mason, 132.
TRACY J. BRONSON, The [14,131], 3 Ben. 341.
Trader, The, v. The James Adger. [See 7,188.]
TRADER v. MESSMORE [14,132], 7 O. G. 385; 1 Ban. & A. 639.
Traders' Bank, Downing v. [See 4,046.]
Traders' Ins. Co. v. The Manistee. [See 9,027.]
Traders' Nat. Bank, Campbell v. [See 2,370.]
Traders' Nat. Bank, Sherman v. [See 12,770.]
Tradesmen's Nat. Bank, Hotchkiss v. [See 6,719.]
TRAFTON, Ex parte [14,133], 2 Lowell, 505; 14 N. B. R. 507.
TRAFTON v. NOUGUES [14,134], 4 Sawy. 178; 4 Cent. Law J. 228; 13 Pac. Law Rep. 49.
TRAFTON v. UNITED STATES [14,135], 3 Story, 646.
Train, Lowell Nat. Bank v. [See 8,571.]
Train, Weston v. [See 17,456.]
TRAINER v. SUPERIOR, The [14,136], Gilp. 514.
TRANSIT, The [14,137], 3 Ben. 192.
TRANSIT, The [14,138] 4 Ben. 138.
TRANSIT, The [14,139], 4 Ben. 567.
Transport, The, Quinn v. [See 11,516.]
TRAPHAGEN, Ex parte [14,140], 1 N. Y. Leg. Obs. 98.
TRASK, In re [14,141], 7 Ben. 60.
TRASK v. DIDO, The [14,142], 1 Haz. Reg. Pa. 9.
TRASK v. DUVAL [14,143], 4 Wash. C. C. 97.
TRASK v. DUVALL [14,144], 4 Wash. C. C. 181.
TRASK v. MAGUIRE [14,145], 2 Dill. 183, note.
TRASK v. PELLETIER [14,146].
Travelers' Ins. Co., Bayless v. [See 1,138.]
Travelers' Ins. Co., McCarthy v. [See 8,682.]
Travelers' Ins. Co., Unthank v. [See 16,795.]
Travelers' Ins. Co., Whitehouse v. [See 17,566.]
TRAVELLER, The [14,147], 6 Ben. 280; 16 Int. Rev. Rec. 198.
TRAVERS v. APPLER [14,148], 2 Cranch, C. C. 234.
Travers, Bank of Danville v. [See 886.]
TRAVERS v. BELL [14,149], 2 Cranch, C. C. 160.
TRAVERS v. DYER [14,150], 16 Blatchf. 178.
TRAVERS v. HIGHT [14,151], 2 Cranch, C. C. 41.
TRAVERS v. RAMSAY [14,152], 3 Cranch, C. C. 354.
Travers, United States v. [See 16,537.]
TRAVERSE v. BEALL [14,153], 2 Cranch, C. C. 113.
Traverse, Stille v. [See 13,444.]
Travis, Gaines v. [See 5,179, 5,180.]
TREADWELL v. BLADEN [14,154], 4 Wash. C. C. 703; 1 Robb, Pat. Cas. 531.
Treadwell, Carter v. [See 2,480.]
TREADWELL v. CLEAVELAND [14,155], 3 McLean, 283.
TREADWELL v. FOX [14,156], 3 App. Com'r Pat. 201.
TREADWELL v. JOSEPH [14,157], 1 Sumn. 390.
TREADWELL v. PARROTT [14,158], 5 Blatchf. 369; 3 Fish. Pat. Cas. 124; 23 Leg. Int. 404; Merw. Pat. Inv. 319.
Treason—Charge to Grand Jury in Relation to Law of Treason. [See 18,269-18,277.]
TREASURER, The [14,159], 1 Spr. 473.
Treasurer of Leavenworth County, Jewett v. [See 7,312.]
Treasurer of Muscatine County, United States v. [See 16,538.]
Treasurer of State of Wisconsin, Madison & P. R. Co. v. [See 8,938.]
TREAT, In re [14,160], 10 N. B. R. 310.
TREAT v. RAINBOW, The [14,161], 1 Ben. 40.
Treat, Smith v. [See 13,117.]
TREAT v. STAPLES [14,162], Holmes, 1.

[Federal Case numbers are given in brackets.]

TRECARTIN v. ROCHAMBEAU, The [14,163], 2 Cliff. 465.
Trecartin v. The Rochambeau. [See 11,973.]
TRECOTHICK v. AUSTIN [14,164], 4 Mason, 16.
TREE v. INDIANA, The [14,165], Crabbe, 479.
TREFZ v. KNICKERBOCKER LIFE INS. CO. [14,166], 6 Ins. Law J. 850.
TREMAIN v. AMORY [14,167].
Tremaine, Hitchcock v. [See 6,538, 6,540.]
Tremaine, The Kate. [See 7,622.]
Tremlett, Nichols v. [See 10,247.]
TREMONT NAIL CO., Ex parte [14,168], 16 N. B. R. 448; 16 Alb. Law J. 417; 5 Cent. Law J. 482.
TREMONT NAT. BANK, Ex parte [14,169], 2 Lowell, 409; 16 N. B. R. 397; 25 Pittsb. Leg. J. 84.
Trenton Nat. Bank, Ex parte. [See 14,169.]
Trevitt, Burke v. [See 2,163.]
TRIAL, The [14,170], 1 Blatchf. & H. 94.
Triblecock, Waite v. [See 17,046.]
Tribou, The Marcia. [See 9,062.]
TRIBUNE, The [14,171], 3 Sumn. 144.
Tribune Ass'n, Cook v. [See 3,165.]
Tribune Co., Smith v. [See 13,118.]
Trigg, Ex parte. [See 2,348.]
TRIGG v. CONWAY [14,172], Hempst. 538.
TRIGG v. CONWAY [14,173], Hempst. 711.
TRIM, In re [14,174], 2 Hughes, 355; 5 N. B. R. 23.
TRIMOUNTAIN, The [14,175], 5 Ben. 246.
Trinity M. E. Church, Capelle v. [See 2,392.]
TRIPLET v. VAN NAME [14,176], 2 Cranch, C. C. 332.
TRIPLET v. WARFIELD [14,177], 2 Cranch, C. C. 237.
TRIPLETT v. BANK OF WASHINGTON [14,178], 3 Cranch, C. C. 646.
TRIPLETT v. HANLEY [14,179], 1 Dill. 217.
Triplett, Shirley v. [See 12,797.]
Triplett, United States v. [See 16,539.]
Tripp, Flanders v. [See 4,854.]
Tripp, Hartshorn v. [See 6,168.]
TRIPP v. SPRING [14,180], 5 Sawy. 209.
Tristram Shandy, The, Hainey v. [See 5,906.]
Tritch, Hallack v. [See 5,956.]
TRITON, The [14,181], 1 Blatchf. & H. 282.
Tritone, The Llado v. [See 8,427.]
TRIUMPH, The [14,182], 2 Blatchf. 433, note; 15 Law Rep. 427, note.
TRIUMPH, The [14,183], 1 Spr. 428; 21 Law Rep. 612.
Triumph, The, Hill v. [See 6,500.]
Troax, United States v. [See 16,540.]
Trobe, United States v. [See 16,541.]
TROJAN, The [14,184], 8 Ben. 498.
TROOST v. BARNEY [14,185], 5 Blatchf. 196.
TROPIC WIND, The [14,186], Blatchf. Pr. Cas. 64.
TROPIC WIND, The [16,541a], 24 Law Rep. 144.
Tros, The, Baker v. [See 783.]
TROTH, In re [14,188], 19 N. B. R. 253; 2 N. J. Law J. 147; 36 Leg. Int. 158.
TROTT v. CITY INS. CO. [14,189], 1 Cliff. 439.
TROTT v. WOOD [14,190], 1 Gall. 443.
Trotter, Buchanan v. [See 2,075.]
Trotter, New Jersey Zinc Co. v. [See 10,167.]
Trout, Holmes v. [See 6,645.]
Trout, United States v. [See 16,542.]
TROWBRIDGE, In re [14,191], 9 N. B. R. 274.
Trowbridge, Schmidt v. [See 12,468.]
Trowbridge, The Henry. [See 6,379.]
TROY, The [14,192], 4 Blatchf. 355.
TROY, The [14,193], Blatchf. Pr. Cas. 246.
Troy v. The Speedwell. [See 10,252.]
Troy & W. T. Bridge Co., Silliman v. [See 12,853.]
TROY CITY BANK v. LAUMAN [14,194].
Troy Ins. Co., Fitzpatrick v. [See 4,844.]
TROY IRON & NAIL FACTORY v. CORNING [14,195], 1 Blatchf. 467; 1 Fish. Pat. Rep. 290.
TROY IRON & NAIL FACTORY v. CORNING [14,196], 6 Blatchf. 328; 3 Fish. Pat. Cas. 497.
TROY IRON & NAIL FACTORY v. CORNING [14,197], 7 Blatchf. 16.
TROY IRON & NAIL FACTORY v. CORNING [14,198], 10 Blatchf. 223; 6 Fish. Pat. Cas. 85.
TROY IRON & NAIL FACTORY v. WINSLOW [14,199], 11 Blatchf. 513; 1 Ban. & A. 98.
TROY WOOLEN CO., In re [14,200], 5 Ben. 413; 6 N. B. R. 16.
TROY WOOLEN CO., In re [14,201], 8 Blatchf. 465; 4 N. B. R. 629.
TROY WOOLEN CO., In re [14,202], 9 Blatchf. 191.
TROY WOOLEN CO., In re [14,203], 8 N. B. R. 412.
Truax, Merchants' Nat. Bank of Hastings v. [See 9,451.]
Truax, Tuttle v. [See 14,277.]
Truesdale, Suydam v. [See 13,656.]
Truesdell, United States v. [See 16,543.]
TRUESDALE v. YOUNG [14,204], Abb. Adm. 391.
TRUMAN v. HARDIN [14,205], 5 Sawy. 115.
Truman, Worcester v. [See 18,043.]
Trumbo, Manier v. [See 18,309.]
TRUMP v. THOMAS, The [14,206], Bee, 86.
TRUNDLE v. HEISE [14,207], 2 Cranch, C. C. 44.
TRUST CO. v. WEED [14,207a], 26 Int. Rev. Rec. 132; 14 Phila. 422; 37 Leg. Int. 166.
Trustees of University, North Carolina v. [See 10,318.]
Trusty, The, Ashbahs v. [See 573a.]
Trutch, Page v. [See 10,668.]
TRYON v. WHITE [14,208], Pet. C. C. 96; 1 Robb, Pat. Cas. 64.
TRYPHENIA v. HARRISON [14,209], 1 Wash. C. C. 522.
TSCHEIDER v. BIDDLE [14,210], 4 Dill. 58; 5 Amer. Law Rec. 689; 4 Cent. Law J. 323.
TUBAL CAIN, The [14,211], Blatchf. Pr. Cas. 240.
TUBAL CAIN, The [14,212], Blatchf. Pr. Cas. 347.
TUCK v. BRAMHILL [14,213], 6 Blatchf. 95; 3 Fish. Pat. Cas. 400; Merw. Pat. Inv. 428.
TUCKER, Ex parte [14,214], 1 Cranch, C. C. 89.
Tucker, Ex parte. [See 10,547.]
TUCKER, In re [14,215], 2 Tex. Law J. 171.
Tucker, Averill v. [See 670.]
TUCKER v. BURDITT [14,216], 4 Ban. & A. 569.
TUCKER v. CARPENTER [14,217], Hempst. 440.
Tucker, Dean v. [See 3,711.]
Tucker, Dermott v. [See 3,818.]
TUCKER v. FAIRBANKS [14,218].
TUCKER v. FOWLER [14,219], 1 Hayw. & H. 67.
Tucker, Gullat v. [See 5,866.]
Tucker, Henop v. [See 6,368.]
TUCKER v. KANE [14,220], Taney, 146.
TUCKER v. LEE [14,221], 3 Cranch, C. C. 684.
TUCKER v. MARSTELLER [14,222], 1 Cranch, C. C. 254.
TUCKER v. MARY C. POTTER, The [14,223].
TUCKER v. MAXWELL [14,224], 2 Blatchf. 517.
TUCKER v. OELRICHS [14,225], 36 Hunt, Mer. Mag. 325.
Tucker, Oxley v. [See 10,638.]
Tucker, Pulling v. [See 11,464.]
TUCKER v. SLACK [14,226], Holmes, 485; 19 Int. Rev. Rec. 149.
Tucker, Spaulding v. [See 13,220, 13,221.]
Tucker, Tingle v. [See 14,057.]
TUCKER v. TUCKER MFG. CO. [14,227], 4 Cliff. 397; 10 O. G. 464; 2 Ban. & A. 401.
Tucker, The John. [See 7,431.]
TUCKERMAN v. BIGELOW [14,228], 21 Law Rep. 208; Brunner, Col. Cas. 631; 3 Quart. Law J. 369.
TUCKER MFG. CO. v. BOYINGTON [14,229], 9 O. G. 455.
Tucker Mfg. Co., Ladd v. [See 7,974.]
Tucker Mfg. Co., Tucker v. [See 14,227.]
TUDOR v. EAGLE, The [14,230], 5 Hunt, Mer. Mag. 262.
Tudor, Ladd v. [See 7,975.]
Tuel, Voss v. [See 17,015.]
Tufts, Blaisdell v. [See 1,491.]
TUFTS v. BOSTON MACH. CO. [14,231], Holmes, 459; 1 Ban. & A. 633; 8 O. G. 239.
TUFTS v. TUFTS [14,232], 3 Woodb. & M. 426.
TUFTS v. TUFTS [14,233], 3 Woodb. & M. 456.
Tulam, Couscher v. [See 3,287.]
Tuley, Buel v. [See 2,101.]
TULIP, The [14,234], 3 Wash. C. C. 181; Fish. Pr. Cas. 1.
Tulip, The, United States v. [See 14,234.]
Tull v. The Washington Irving. [See 17,244.]
TULLEY, In re [14,235], 3 N. B. R. 82 (Quarto, 19); 2 Amer. Law T. 137.
Tully, United States v. [See 16,545.]
Tumlin, French v. [See 5,104.]
Tunckhouser, Griffith v. [See 5,823.]
Tunison, Cloutman v. [See 2,907.]
TUNNO v. BETSINA, The [14,236], 5 Amer. Law Reg. 406.

[Federal Case numbers are given in brackets.]

TUNNO v. MARY, The [14,237], Bee, 120.
TUNNO v. PREARY [14,238], Bee, 6.
Tunstall, Gray v. [See 5,730.]
TUNSTALL v. ROBINSON [14,238a], Hempst. 229.
TUNSTALL v. WORTHINGTON [14,239], Hempst. 662.
Tupper v. The Isabella. [See 7,099-7,101.]
TUPPER v. ST. LAWRENCE, The [14,240], 16 Leg. Int. 317.
Turberville, Wilson v. [See 17,842-17,844.]
TURBETT v. DUNLEVY [14,241].
Turley, United States v. [See 16,546.]
TURNBULL v. ENTERPRIZE, The [14,242], Bee, 345.
TURNBULL v. THOMAS [14,243], 1 Hughes, 172.
TURNBULL v. WEIR PLOW CO. [14,244], 6 Biss. 225; 1 Ban. & A. 544; 7 O. G. 173; 7 Chi. Leg. News, 41.
TURNER, Ex parte [14,245], 3 Wall. Jr. 258; 20 Leg. Int. 4.
TURNER, Ex parte [14,246], 3 Woods, 603.
TURNER, In re [14,247], 1 Abb. U. S. 84; Chase, 157; 6 Int. Rev. Rec. 147; 1 Amer. Law T. Rep. U. S. Cts. 7.
TURNER'S CASE [14,248], 1 Ware (83) 77; 2 Wheeler, Crim. Cas. 615.
Turner's Case. [See 16,778.]
TURNER v. ALDRIDGE [14,249], 1 McAll. 229.
Turner, Alexander v. [See 176.]
TURNER v. ALTON [14,250].
TURNER v. AMERICAN BAPTIST MISSIONARY UNION [14,251], 5 McLean, 344.
Turner, Baptist Missionary Union v. [See 968.]
TURNER v. BEACHAM [14,252], Taney, 583.
Turner, Belding v. [See 1,243.]
TURNER v. BLACK WARRIOR, The [14,253], 1 McAll. 181.
TURNER v. EDWARDS [14,254], 2 Woods, 435.
Turner, Fendall v. [See 4,727.]
Turner, Fletcher v. [See 4,867.]
TURNER v. FOXALL [14,255], 2 Cranch, C. C. 324.
TURNER v. GREEN [14,256], 2 Cranch, C. C. 202.
TURNER v. HAND [14,257], 3 Wall. Jr. 88.
Turner, Hodgson v. [See 6,570.]
Turner, Hubbard v. [See 6,819.]
TURNER v. INDIANAPOLIS, B. & W. RY. CO. [14,-258], 8 Biss. 315.
TURNER v. INDIANAPOLIS, B. & W. RY. CO. [14,-259], 8 Biss. 380.
TURNER v. INDIANAPOLIS, B. & W. RY. CO. [14,-260], 8 Biss. 527; 8 Reporter, 453; 4 Cin. Law Bul. 569; 11 Chi. Leg. News, 375.
Turner, Ingersoll v. [See 7 Fed. 859.]
TURNER v. JOHNSON [14,261], 2 Cranch, C. C. 287; 1 Fish. Pat. Rep. 4.
Turner, Lloyd v. [See 8,436.]
Turner, McLaughlin v. [See 8,875.]
TURNER v. NEWMAN [14,262], 3 Biss. 307; 4 Chi. Leg. News, 361.
Turner, Pierce v. [See 11,148, 11,149.]
Turner v. The Skylark. [See 12,929.]
Turner, Smith v. [See 13,119.]
Turner, Tayloe v. [See 13,770.]
TURNER v. UNITED STATES [14,262a], 2 Hayw. & H. 343.
Turner, United States v. [See 16,547-16,549.]
Turner, Virginia v. [See 16,970, 16,971.]
TURNER v. WADDINGTON [14,263], 3 Wash. C. C. 126.
TURNER v. WHITE [14,264], 4 Cranch, C. C. 465.
TURNER v. WILLIAMS [14,265], 18 Int. Rev. Rec. 6.
Turner, Wilson v. [See 17,845.]
Turner v. Wright. [See 16,778.]
Turpin, Sawyer v. [See 12,409, 12,410.]
Turrall, The Thomas. [See 13,932.]
TURRELL v. CAMMERRER [14,266], 3 Fish. Pat. Cas. 462.
Turrell v. Snyder. [See 14,269.]
TURRELL v. SPAETH [14,267], 2 Ban. & A. 185; 8 O. G. 986.
TURRELL v. SPAETH [14,268], 2 Ban. & A. 315; 9 O. G. 1163.
TURRELL v. SPAETH [14,269], 3 Ban. & A. 458; 14 O. G. 377; Merw. Pat. Inv. 252.
TURRILL v. ILLINOIS CENT. R. CO. [14,270], 3 Biss. 66; 3 Fish. Pat. Cas. 330.
TURRILL v. ILLINIOS CENT. R. CO. [14,271], 3 Biss. 72; 3 Chi. Leg. News, 337.
TURRILL v. ILLINOIS CENT. R. CO. [14,272], 5 Biss. 344; 6 Chi. Leg. News, 49.
TURTON v. UNION PAC. R. CO. [14,273], 3 Dill. 366.
Tuscarawas County, Steubenville & I. R. Co. v. [See 13,388.]
Tuscumbia, Courtland & Decatur R. Co., King v. [See 7,808.]
Tuska, United States v. [See 16,550.]
TUSKER, The [14,274], 1 Spr. 71.
TUTHILL v. BABCOCK [14,275], 2 Woodb. & M. 298.
Tuthill, Hoe v. [See 6,573.]
TUTT v. IDE [14,275a], 3 Blatchf. 255, note.
TUTT v. IDE [14,275b], 3 Blatchf. 249.
TUTTLE v. ALBANY & R. IRON & STEEL CO. [14,276], 10 Ben. 449.
Tuttle, Goodall v. [See 5,533.]
Tuttle, Robinson v. [See 11,968.]
Tuttle, Smith v. [See 13,120.]
TUTTLE v. TRUAX [14,277], 1 N. B. R. 601 (Quarto, 169).
T. V. Arrowsmith, The. [See 5,337.]
TWEED, The [14,278].
Twelve Barrels of Distilled Spirits, United States v. [See 16,551.]
Twelve Barrels of Paraffine Oil, United States v. [See 16,552.]
Twelve Casks of Cudbear, United States v. [See 16,-553.]
TWELVE HUNDRED AND NINE QUARTER CASKS, Etc., OF WINE [14,279], 2 Ben. 249; 7 Int. Rev. Rec. 114.
Twelve Hundred and Nine Quarter Casks of Sherry, United States v. [See 14,279.]
TWELVE HUNDRED AND SIXTY-FIVE VITRIFIED STONEWARE SEWER PIPES [14,280], 5 Ben. 402; 15 Int. Rev. Rec. 26.
Twelve Thousand Three Hundred and Forty-Seven Bags of Sugar, United States v. [See 16,555, 16,-556.]
Twenty Barrels of Distilled Spirits, United States v. [See 16,557, 16,558.]
Twenty Cases of Matches, United States v. [See 16,-559.]
Twenty-Eight Bags of Cotton, Proceeds of, Peabody v. [See 10,869.]
TWENTY-EIGHT CASES OF WINE [14,281], 2 Ben. 63; 7 Int. Rev. Rec. 4; 1 Amer. Law T. Rep. U. S. Cts. 15.
Twenty-Eight Casks of Wine, United States v. [See 14,281.]
Twenty-Eight Packages of Pins, United States v. [See 16,561.]
Twenty-Five Barrels of Alcohol, United States v. [See 16,562.]
Twenty-Five Cases of Cloths, United States v. [See 16,563.]
Twenty-Five Cases of Silks, Hartshorn v. [See 6,-168a.]
Twenty-Five Thousand Dollars, Taylor v. [See 13,-807.]
TWENTY-FIVE THOUSAND GALLONS OF DISTILLED SPIRITS [14,282], 1 Ben. 367.
Twenty-Five Thousand Gallons of Spirits, United States v. [See 16,564.]
Twenty-five Thousand Segars, United States v. [See 16,565.]
Twenty-four Coils of Cordage, United States v. [See 16,566.]
Twenty-one Bales, etc., Johnson v. [See 7,417.]
Twenty-one Barrels of High Wines, United States v. [See 16,567.]
Twenty-one Barrels of Whiskey, United States v. [See 16,568.]
Twenty Packages of Distilled Spirits, United States v. [See 16,569.]
Twenty-six Bales of Rubber Boots, United States v. [See 16,570.]
TWENTY-SIX BARRELS AND SEVENTEEN TIERCES OF DISTILLED SPIRITS [14,283], 11 Int. Rev. Rec. 78.
Twenty-six Cases of Rubber Boots, United States v. [See 16,571.]
Twenty-six Diamond Rings, United States v. [See 16,572.]

[Federal Case numbers are given in brackets.]

TWENTY-THREE BALES OF COTTON [14,284], 9 Ben. 48.
Twenty-three Coils of Cordage, United States v. [See 16,573.]
Twenty-three Gallons of Distilled Spirits, United States v. [See 16,574.]
Twenty-two Pipes & Ten Hogsheads of Wine, British Consul v. [See 1,900.]
TWIBELL v. KEYSTONE, The [14,285], 9 N. Y. Leg. Obs. 289; 4 Amer. Law J. (N. S.) 103.
Twichell, Ex parte. [See 17,211.]
TWICHELL v. MEARS [14,286], 8 Biss. 211; 6 N. Y. Wkly. Dig. 400; 6 Reporter, 40; 10 Chi. Leg. News, 296.
TWILIGHT, The [14,287].
Twining, Lindsay v. [See 8,367.]
Twitchell, Rollins v. [See 12,027.]
Two Anchors & Chains, Llewellyn v. [See 8,428.]
Two Barrels, United States v. [See 16,575.]
Two Cases of Woolens, United States v. [See 16,576.]
TWO CATHERINES, The [14,288], 2 Mason, 319.
Two Ferryboats, The Cheeseman v. [See 2,633.]
TWO FRIENDS, The [14,289], 1 Gall. 118.
Two Friends, The, Gibbs v. [See 5,386.]
Two Friends, The, Shrewsbury v. [See 12,819.]
Two Friends, The, United States v. [See 16,577.]
Two Horses, United States v. [See 16,578.]
TWO HUNDRED AND EIGHTY-TWO BALES OF COTTON [14,290].
TWO HUNDRED AND EIGHTY-TWO BALES OF COTTON [14,291], Blatchf. Pr. Cas. 302.
TWO HUNDRED AND EIGHTY-TWO BALES OF COTTON [14,292], Blatchf. Pr. Cas. 610.
Two Hundred and Fifty-Six Barrels of Beer, United States v. [See 16,579.]
TWO HUNDRED AND FIFTY BARRELS OF MOLASSES v. UNITED STATES [14,293], Chase, 502; 3 Amer. Law T. Rep. U. S. Cts. 21; 11 Int. Rev. Rec. 92.
Two Hundred and Five Boxes of Sugar, Wilkie v. [See 17,662.]
TWO HUNDRED AND NINETY BARRELS OF OIL [14,294], 1 Spr. 475.
Two Hundred and Seventy-Eight Barrels of Distilled Spirits, United States v. [See 16,580, 16,581.]
Two Hundred and Seventy-Five Caddies of Tobacco, United States ex rel. Ames v. [See 15,881.]
Two Hundred and Six Barrels, United States v. [See 16,582.]
TWO HUNDRED AND SIXTY-EIGHT LOGS OF CEDAR [14,295], 2 Lowell, 378.
TWO HUNDRED AND SIXTY HOGSHEADS OF MOLASSES [14,296], 1 Hask. 24.
Two Hundred and Sixty-Nine and One-Half Bales of Cotton, United States v. [See 16,583.]
TWO HUNDRED AND TEN BARRELS OF OIL [14,297], 1 Spr. 91.
TWO HUNDRED AND THIRTEEN TONS OF COAL [14,298], 7 Ben. 15.
Two Hundred and Thirty-Six Dozen Boxes of Cosmetics, United States v. [See 16,584.]
TWO HUNDRED AND TWO TONS OF COAL [14,299], 7 Ben. 343.
Two Hundred Bushels of Corn, United States v. [See 16,586.]
Two Hundred Barrels of Whiskey, United States v. [See 16,585.]
TWO MARYS, The [14,300], 10 Ben. 558.
Twombley, Tazaymon v. [See 13,810.]
TWO STEAM BOILERS, Case of [14,301].
Two Steam Boilers, United States v. [See 16,588.]
TWO THOUSAND BOTTLES OF LIQUORS [14,302], 5 Ben. 265.
Two Thousand Bushels of Wheat, United States v. [See 16,589.]
TWO THOUSAND TIN CANS [14,303], 7 Ben. 34.
Two Tons of Coal, United States v. [See 16,590.]
Two Trunks, United States v. [See 16,591, 16,592.]
TYBEE, The [14,304], 1 Woods, 358.
TYLER, In re [14,305], 4 N. B. R. 104 (Quarto, 27).
TYLER v. ANGEVINE [14,306], 15 Blatchf. 536; 8 Reporter, 643.
Tyler, Connecticut Mut. Life Ins. Co. v. [See 3,109.]
TYLER v. DEVAL [14,307], 1 Code Rep. 30; 1 Amer. Law J. (N. S.) 248; 6 West. Law J. 47.
Tyler, The, Gilman v. [See 5,446.]
TYLER v. HAGERTY [14,308], 2 Flip. 257; 5 Reporter, 300; 10 Chi. Leg. News, 100; 6 Amer. Law Rec. 385; 2 Cin. Law Bul. 301.
TYLER v. HYDE [14,309], 2 Blatchf. 308.
TYLER v. HYDE [14,310], 2 Blatchf. 399.
Tyler, McCobb v. [See 8,705.]
TYLER v. SOUTH AMERICA, The [14,311].
Tyler, Violette v. [See 16,955.]
Tyler, Wadsworth v. [See 17,032.]
TYLER v. WALKER [14,311a], 2 Hayw. & H. 35.
TYLER v. WILKINSON [14,312], 4 Mason, 397.
TYRELL'S HEIRS v. ROUNTREE [14,313], 1 McLean, 95.
TYRREL, In re [14,314], 2 N. B. R. 200 (Quarto, 73).
TYSEN v. WABASH RY. CO. [14,315], 8 Biss. 247.
TYSON v. BELMONT [14,315a].
TYSON v. BELMONT [14,316], 28 Hunt, Mer. Mag. 583.
Tyson, Belmont v. [See 1,281.]
Tyson, Butcher v. [See 2,233.]
TYSON v. JASON, The [14,317].
Tyson, Myers v. [See 9,995.]
TYSON v. PANAMA, The [14,318].
TYSON v. PRIOR [14,319], 1 Gall. 133.
TYSON v. RANKIN [14,320], 1 McA. Pat. Cas. 262.
TYSON v. VIRGINIA & T. R. CO. [14,321], 1 Hughes, 80; 4 Amer. Law T. 223.

U

UDELL v. OHIO, The [14,321a].
UDELL v. OHIO, The [14,322], 29 Hunt, Mer. Mag. 717.
ULARY v. WASHINGTON, The [14,323], Crabbe, 204.
ULLAGE BOX OF SUGAR, An [14,324], 1 Ware (350), 355.
ULLMAN v. MURPHY [14,325], 11 Blatchf. 354; 18 Int. Rev. Rec. 156.
Ullman, United States v. [See 16,593.]
ULPIANO, The [14,326], 1 Mason, 91.
ULRICH, In re [14,327], 3 Ben. 355; 3 N. B. R. 133 (Quarto, 34).
ULRICH, In re [14,328], 6 Ben. 483; 8 N. B. R. 15.
ULRICH v. SUNBEAM, The [14,329], 1 N. Y. Law J. 141.
Ulrici, United States v. [See 16,594.]
ULYSSES, The [14,330], Brunner, Col. Cas. 529; 5 Law Rep. 241.
UNA, The [14,331], 5 Ben. 198; 14 Int. Rev. Rec. 6.
UNADILLA, The [14,332], 8 Ben. 478.
UNADILLA, The [14,333], 2 Mich. Lawy. 441; 9 Chi. Leg. News, 427.
UNCLE ABE, The [14,334], 9 Ben. 502.
Uncle Sam, The, Campbell v. [See 2,371, 2,372.]
Uncle Sam, The, West v. [See 17,427.]
UNCLE TOM, The [14,335], 10 Ben. 234.
UNDAUNTED, The [14,336], 2 Spr. 194.
Underhill, The. [See 2,332.]
Underhill, Catlin v. [See 2,523, 2,524.]
Underhill, Low v. [See 8,561.]
UNDERHILL v. PLEASONTON [14,337], 8 Blatchf. 260.
UNDERTAKER'S CARGO [14,338].
Underwood, Howe v. [See 6,775.]
UNDERWOOD v. HUDDLESTONE [14,339], 2 Cranch, C. C. 76.
UNDERWOOD v. HUDDLESTONE [14,340], 2 Cranch, C. C. 93.
Underwood, Jacobs v. [See 7,163.]
Underwood, Ridgeway v. [See 11,815.]
UNDERWRITER, The [14,341], 4 Blatchf. 94.
UNDERWRITERS' WRECKING CO. v. KATIE, The [14,342], 3 Woods, 182.
Unger, Hall v. [See 5,949.]
Unger, United States v. [See 16,595.]
UNGEWITTER v. VON SACHS [14,343], 4 Ben. 167; 3 N. B. R. 723 (Quarto, 178); 1 Amer. Law T. Rep. Bankr. 224; 3 Amer. Law T. Rep. Bankr. 195.

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Union, The. [See 10,297.]
UNION, The [14,344], 7 Ben. 296.
UNION, The [14,345], 2 Biss. 18; 2 Chi. Leg. News, 121.
UNION, The [14,346], 4 Blatchf. 90.
UNION, The [14,347], Blatchf. & H. 545.
Union, The, Dearborn v. [See 3,714.]
UNION, The, v. JANSEN [14,348], 2 Paine, 277.
Union Bank, Chesapeake & O. Canal Co. v. [See 2,653, 2,654.]
UNION BANK v. COOK [14,349], 2 Cranch, C. C. 218.
UNION BANK v. ELIASON [14,350], 2 Cranch, C. C. 629.
Union Bank, Garey v. [See 5,241.]
UNION BANK v. NEW ORLEANS [14,351], 5 Amer. Law Reg. (N. S.) 555.
Union Bank, Potomac Co. v. [See 11,318.]
Union Bank, Scholfield v. [See 12,475.]
UNION BANK v. SMITH [14,352], 4 Cranch, C. C. 509.
Union Bank of Georgetown, Armat v. [See 535.]
UNION BANK OF GEORGETOWN v. CORCORAN [14,353], 5 Cranch, C. C. 513.
UNION BANK OF GEORGETOWN v. CRITTENDEN [14,354], 2 Cranch, C. C. 238.
UNION BANK OF GEORGETOWN v. ELIASON [14,355], 2 Cranch, C. C. 667.
UNION BANK OF GEORGETOWN v. FORREST [14,356], 3 Cranch, C. C. 218.
UNION BANK OF GEORGETOWN v. GEARY [5,241a].
UNION BANK OF GEORGETOWN v. GOZLER [14,358], 2 Cranch, C. C. 349.
UNION BANK OF GEORGETOWN v. MACKALL [14,359], 2 Cranch, C. C. 695.
UNION BANK OF GEORGETOWN v. MAGRUDER [14,360], 2 Cranch, C. C. 687.
UNION BANK OF GEORGETOWN v. RIGGS [14,361], 2 Cranch, C. C. 204.
UNION BANK OF GEORGETOWN v. SMITH [14,362], 4 Cranch, C. C. 21.
Union Bank of Louisiana, Bank of Tennessee v. [See 899.]
Union Button-Hole & Embroidery Co., Singer Sewing Mach. Co. v. [See 12,904.]
Union Car Spring Mfg. Co., National Spring Co. v. [See 10,051.]
Union City, Holly v. [See 6,624.]
UNION EXPRESS, The [14,363], 1 Brown, Adm. 516.
UNION EXPRESS, The [14,364], 1 Brown, Adm. 537.
Union Fire Ins. Co., Scanlon v. [See 12,436.]
UNION HORSE SHOE WORKS v. LEWIS [14,365], 1 Abb. U. S. 518.
Union India-Rubber Co., Day v. [See 3,691.]
Union India-Rubber Co., Goodyear v. [See 5,586.]
Union India-Rubber Co., New England Car-Spring Co. v. [See 10,153.]
Union Ins. Co., Bauduy v. [See 1,112.]
Union Ins. Co., Blays v. [See 1,383.]
Union Ins. Co., Howe v. [See 42 Cal. 529.]
Union Ins. Co., Humphreys v. [See 6,871.]
Union Ins. Co., Hurtin v. [See 6,942.]
Union Ins. Co., Marshall v. [See 9,133-9,135.]
Union Ins. Co., Queen v. [See 11,505.]
Union Ins. Co., Russel v. [See 12,146, 12,147.]
UNION INS. CO. v. SHAW [14,366], 2 Dill. 14.
Union Ins. Co., Simonds v. [See 12,875, 12,876.]
Union Ins. Co., Symonds v. [See 12,875.]
Union Ins. Co., Winthrop v. [See 17,901.]
UNION IRON CO. v. PIERCE [14,367], 4 Biss. 327.
UNION MFG. CO. v. LOUNSBURY [14,368], 2 Fish. Pat. Cas. 389.
UNION METALLIC CARTRIDGE CO. v. UNITED STATES CARTRIDGE CO. [14,369], 11 O. G. 1113; 2 Ban. & A. 593.
UNION MILL & MIN. CO. v. DANGBERG [14,370], 2 Sawy. 450.
UNION MILL & MIN. CO. v. FERRIS [14,371], 2 Sawy. 176; 16 Int. Rev. Rec. 114.
UNION MUT. INS. CO. v. COMMERCIAL MUT. MARINE INS. CO. [14,372], 2 Curt. 524; 18 Law Rep. 610.
Union Mut. Ins. Co., Griswold v. [See 5,840.]
Union Mut. Fire Ins. Co., Jordan v. [See 7,522.]
Union Mut. Life Ins. Co., Chance v. [See 2,588.]
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UNION MUT. LIFE INS. CO. v. KELLOGG [14,373], 5 Reporter, 682; 5 Wkly. Notes Cas. 477.
Union Mut. Life Ins. Co., Moore v. [See 9,777.]
Union Mut. Life Ins. Co., Wilkinson v. [See 17,676.]
UNION NAT. BANK v. CHICAGO [14,374], 3 Biss. 82; 28 Leg. Int. 300; 3 Chi. Leg. News, 369; 14 Int. Rev. Rec. 77; 5 Amer. Law T. 107; 6 Amer. Law Rev. 166.
UNION NAT. BANK v. DOUGLASS [14,375], 1 McCrary, 86.
Union Nat. Bank, Purviance v. [See 11,475.]
Union Nat. Bank v. Third Nat. Bank. [See 4,801.]
Union Nat. Bank, United States v. [See 16,596, 16,597.]
Union Nat. Bank, Wilder v. [See 17,651.]
UNION PAC. R. CO., In re [14,376], 10 N. B. R. 178; 6 Chi. Leg. News, 355; 8 Amer. Law Rev. 779; 31 Leg. Int. 261.
Union Pac. R. Co., Bauman v. [See 1,117.]
Union Pac. R. Co., Dillon v. [See 3,916.]
UNION PAC. R. CO. v. DURANT [14,377], 3 Dill. 343; 1 Cent. Law J. 581.
Union Pac. R. Co., Fisk v. [See 4,827-4,830.]
Union Pac. R. Co., Fort v. [See 4,952.]
Union Pac. R. Co., Frost v. [See 4,952.]
Union Pac. R. Co., Hall v. [See 5,950.]
Union Pac. R. Co., Hines v. [See 6,521.]
UNION PAC. R. CO. v. LINCOLN COUNTY [14,378], 1 Dill. 314; 10 Amer. Law Reg. (U. S.) 458.
UNION PAC. R. CO. v. LINCOLN COUNTY [14,379], 2 Dill. 279.
UNION PAC. R. CO. v. LINCOLN COUNTY [14,380], 3 Dill. 300; 1 Cent. Law J. 106.
UNION PAC. R. CO. v. McSHANE [14,381], 5 Chi. Leg. News, 526; 21 Pittsb. Leg. J. 1.
UNION PAC. R. CO. v. McSHANE [14,382], 3 Dill. 303.
Union Pac. R. Co., Magee v. [See 8,945.]
UNION PAC. R. CO. v. MERRICK COUNTY [14,383], 3 Dill. 359; 6 Chi. Leg. News, 342.
UNION PAC. R. CO. v. POTTAWATTAMIE COUNTY [14,384], 4 Dill. 497.
Union Pac. R. Co., Sioux City & P. R. Co. v. [See 12,909.]
Union Pac. R. Co., Smith v. [See 13,121.]
Union Pac. R. Co., Sullivan v. [See 13,599.]
Union Pac. R. Co., Thurston v. [See 14,019.]
Union Pac. R. Co., Turton v. [See 14,273.]
Union Pac. R. Co., United States v. [See 16,598-16,601.]
Union Pac. R. Co., Wardell v. [See 17,164.]
UNION PAC. R. CO. v. WATTS [14,385], 2 Dill. 310.
Union Pac. R. Co., Ross v. [See 12,080.]
UNION PAPER-BAG CO. v. NIXON [14,386], 4 O. G. 31; 6 Fish. Pat. Cas. 402.
UNION PAPER-BAG MACH. CO. v. BINNEY [14,387], 5 Fish. Pat. Cas. 166.
UNION PAPER-BAG MACH. CO. v. CRANE [14,388], Holmes, 429; 1 Ban. & A. 494; 6 O. G. 801.
UNION PAPER-BAG. MACH. CO. v. NEWELL [14,389], 11 Blatchf. 549; 5 O. G. 459; 1 Ban. & A. 113.
UNION PAPER-BAG MACH. CO. v. NEWELL [14,390], 6 Fish. Pat. Cas. 582; 5 O. G. 173; 11 Blatchf. 379.
UNION PAPER-BAG MACH. CO. v. NIXON [14,391], 1 Flip. 491; 9 O. G. 691; 2 Ban. & A. 244; 3 Cent. Law J. 223; 1 Cin. Law Bul. 58.
UNION PAPER-BAG MACH. CO. v. PULTZ & WALKLEY CO. [14,392], 15 Blatchf. 160; 15 O. G. 423; 3 Ban. & A. 403; Merw. Pat. Inv. 678.
UNION PAPER-BAG MACH. CO. v. PULTZ & WALKLEY CO. [14,393], 16 Blatchf. 76; 4 Ban. & A. 181.
UNION PAPER-COLLAR CO. v. LELAND [14,394], Holmes, 427; 1 Ban. & A. 491; 7 O. G. 221; Merw. Pat. Inv. 339.
Union Paper-Collar Co., Merserole v. [See 9,488.]
UNION PAPER-COLLAR CO. v. VAN DEUSEN [14,395], 10 Blatchf. 109; 2 O. G. 361; 5 Fish. Pat. Cas. 597; Merw. Pat. Inv. 335.

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Union Rolling Mill Co., In re. [See 13,783.]
Union R. Transp. Co., Leitch v. [See 8,224.]
UNION SUGAR REFINERY v. MATHIESSON [14,397], 2 Cliff. 304.
UNION SUGAR REFINERY v. MATHIESSON [14,398], 3 Cliff. 146.
UNION SUGAR REFINERY v. MATTHIESSON [14,399], 3 Cliff. 639; 2 Fish. Pat. Cas. 600.
UNION TOW-BOAT CO. v. DELPHOS, The [14,400], Newb. 412.
UNION TRUST CO. v. ROCKFORD, R. I. & ST. L. R. CO. [14,401], 6 Biss. 197; 7 Chi. Leg. News, 33.
UNION TRUST CO. v. ST. LOUIS, I. M. & S. R. CO. [14,402], 4 Dill. 114; 4 Cent. Law J. 585.
UNION TRUST CO. v. ST. LOUIS, I. M. & S. RY. CO. [14,403], 5 Dill. 1.
Unit, The. [See 2,748, 2,752, 2,753.]
UNITED HYDRAULIC COTTON-PRESS CO. v. ALEXANDER McNEIL, The [14,404], 20 Int. Rev. Rec. 175.
UNITED NICKEL CO. v. AMERICAN NICKEL-PLATING WORKS [14,405], 4 Ban. & A. 74.
UNITED NICKEL CO. v. ANTHES [14,406], Holmes, 155; 1 O. G. 578; 5 Fish. Pat. Cas. 517; Merw. Pat. Inv. 672.
UNITED NICKEL CO. v. HARRIS [14,407], 15 Blatchf. 319; 3 Ban. & A. 627; 17 O. G. 325.
United Nickel Co. v. Jackson. [See 14,409, 14,410.]
UNITED NICKEL CO. v. KEITH [14,408], Holmes, 328; 1 Ban. & A. 44; 5 O. G. 272.
UNITED NICKEL CO. v. MANHATTAN BRASS CO. [14,409].
UNITED NICKEL CO. v. MANHATTAN BRASS CO. [14,410], 16 Blatchf. 68; 4 Ban. & A. 173.
United Power Press Co., Boomer v. [See 1,638.]
UNITED STATES, Ex parte [14,411], 1 Gall. 338.
UNITED STATES ex rel. Weeden [14,412], 2 Flip. 76; 4 Law & Eq. Rep. 149.
UNITED STATES v. ——— [14,413], 1 Brock, 195.
UNITED STATES v. ——— [14,414], 12 Law Rep. 90.
UNITED STATES v. ABBOTT [14,415].
UNITED STATES v. ABBOTT [14,416], 9 Int. Rev. Rec. 186.
UNITED STATES v. ABLE [14,417] 15 Int. Rev. Rec. 41, 50.
UNITED STATES v. ABORN [14,418], 3 Mason, 126.
UNITED STATES v. A BOX OF DRY GOODS [14,419].
United States v. The Acorn. [See 29.]
UNITED STATES v. ACTIVE, The [14,420], 5 Hall, Law J. 543; 2 Car. Law Repos. 192; 3 Wheeler, Crim. Cas. 264.
UNITED STATES v. ADAMS [14,421], 1 West. Law J. 315; 10 Hunt, Mer. Mag. 80.
UNITED STATES v. ADDATTE [14,422], 6 Blatchf. 76.
UNITED STATES v. ADDATTE [14,423], 6 Blatchf. 132.
UNITED STATES v. ADLER [14,424], 15 Amer. Law Reg. (N. S.) 45; 21 Int. Rev. Rec. 316; 1 N. Y. Wkly. Dig. 182; 8 Chi. Leg. News, 11.
United States v. The Admiral. [See 35.]
UNITED STATES v. ADVANCE, The [14,425].
UNITED STATES v. ALBERTY [14,426], Hempst. 444.
UNITED STATES v. ALDEN [14,427], 1 Spr. 95; 7 Law Rep. 469.
UNITED STATES v. ALEXANDER [14,428], 4 Cranch, C. C. 311.
United States, Alfonso v. [See 188.]
UNITED STATES v. ALLEGHENY, The [14,429], 10 Pittsb. Leg. J. 276; 2 Pittsb. Rep. 437.
UNITED STATES v. ALLEN [14,430], 9 Ben. 154; 9 Chi. Leg. News, 330; 23 Int. Rev. Rec. 192.
UNITED STATES v. ALLEN [14,431], 4 Day, 474; Brunner, Col. Cas. 94.
UNITED STATES v. ALLEN, [14,432], 7 Int. Rev. Rec. 163.
United States, Allen v. [See 240.]
United States v. Allen. [See 14,820.]
United States v. The Alliance. [See 245.]
United States v. All the Distilled Spirits, etc., at 307-9 Ave. A, New York. [See 3,923.]
UNITED STATES v. ALMEIDA [14,433], 2 Whart. Prec. Ind. § 1061, note; 4 Leg. Int. No. 5.
UNITED STATES v. ALVISO [14,434].
UNITED STATES v. ALVISU [14,435], Cal. Law J. & Lit. Rev. 55.
UNITED STATES v. ALVISU [14,436], Hoff. Land Cas. 176.
United States, Alvord v. [See 269.]
UNITED STATES v. AMADOR [14,437], Hoff. Land Cas. 76.
UNITED STATES v. AMANN [14,438], 1 Cin. Law Bul. 13.
UNITED STATES v. AMERICAN GOLD COIN [14,439], Woolw. 217.
UNITED STATES v. AMES [14,440].
UNITED STATES v. AMES [14,441], 1 Woodb. & M. 76; 9 Law Rep. 295.
UNITED STATES v. AMINHISOR [14,442], 2 Wheeler, Crim. Cas. xliv.
UNITED STATES v. AMORY [14,443], 5 Mason, 455.
UNITED STATES v. AMPHITRITE, The [14,444].
United States, The Amphitrite v. [See 10,585.]
UNITED STATES v. AMY [14,445], 4 Quart. Law J. 163.
UNITED STATES v. ANDERSON [14,446], 1 Blatchf. 330.
UNITED STATES v. ANDERSON [14,447], 10 Blatchf. 226.
UNITED STATES v. ANDERSON [14,448], 17 Blatchf. 238; 8 Reporter, 677.
UNITED STATES v. ANDERSON [14,449], Cooke, 143; Brunner, Col. Cas. 202.
UNITED STATES v. ANDERSON [14,450], 2 Cranch, C. C. 157.
UNITED STATES v. ANDERSON [14,451], 3 Cranch, C. C. 205.
UNITED STATES v. ANDERSON [14,452], 4 Cranch, C. C. 476.
United States v. Anderson. [See 14,672.]
UNITED STATES v. ANDREWS [14,453].
UNITED STATES v. ANDREWS [14,454], 5 City H. Rec. 120; Brunner, Col. Cas. 422.
UNITED STATES v. ANDREWS [14,455], 2 Paine, 451.
United States, Andrews v. [See 381.]
UNITED STATES v. ANN, The [14,456].
UNITED STATES v. ANNA, The [14,457], 2 Amer. Law Reg. 421.
UNITED STATES v. ANNA, The [14,458], Taney, 549.
UNITED STATES v. ANTHONY [14,459], 11 Blatchf. 200; 5 Chi. Leg. News, 462, 493; 17 Int. Rev. Rec. 197; 30 Leg. Int. 266; 5 Leg. Op. 63; 20 Pittsb. Leg. J. 199.
UNITED STATES v. ANTHONY [14,460], 14 Blatchf. 92.
UNITED STATES v. ANTHONY MANGIN, The [14,461], 2 Pet. Adm. 452.
UNITED STATES v. APPEL [14,462], 22 Int. Rev. Rec. 169.
UNITED STATES v. APPLETON [14,463], 1 Sumn. 492.
UNITED STATES v. ARCHER [14,464], 1 Wall. Jr. 173.
UNITED STATES v. ARCOLA, The [14,464a].
UNITED STATES v. ARIADNE, The [14,465], Fish. Pr. Cas. 32.
UNITED STATES v. ARMIJO [14,466], 1 Cal. Law J. 229.
United States, Armijo v. [See 536.]
UNITED STATES v. ARMS AND AMMUNITIONS [14,466a].
UNITED STATES v. ARMSTRONG [14,467], 2 Curt. 446; 19 Law Rep. 90.
UNITED STATES v. ARMSTRONG [14,468], 5 Phila. 273; 20 Leg. Int. 212.
United States, Armstrong v. [See 548, 549.]
UNITED STATES v. ARNOLD [14,469], 1 Gall. 348.
UNITED STATES v. ASHTON [14,470], 2 Sumn. 13.
UNITED STATES v. ASKINS [14,471], 4 Cranch, C. C. 98.
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UNITED STATES v. AUBREY [14,476], 1 Cranch, C. C. 185.
UNITED STATES v. AUGUSTA, The [14,477].
UNITED STATES v. AUJA [14,478], 10 Int. Rev. Rec. 52.
UNITED STATES v. AUSTIN, The [14,479], 9 Ben. 350.
UNITED STATES v. AUSTIN [14,480], 2 Cliff. 325.
UNITED STATES ex rel. Bigler v. AVERY [14,481], Deady, 204; 1 Pac. Law Mag. 241.
UNITED STATES v. AYLWARD [14,482], 24 How. Pr. 142.
UNITED STATES v. AYMAR [14,483], 13 Int. Rev. Rec. 151.
UNITED STATES v. BABCOCK [14,484], 3 Dill. 566; 3 Cent. Law J. 101.
UNITED STATES v. BABCOCK [14,485], 3 Dill. 571.
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UNITED STATES v. BABCOCK [14,487], 3 Dill. 581; 3 Cent. Law J. 143; 1 Cin. Law Bul. 52.
UNITED STATES v. BABCOCK [14,488], 4 McLean, 113.
UNITED STATES v. BABSON [14,489], 1 Ware (450) 462.
UNITED STATES v. BACHELDER [14,490], 2 Gall. 15.
UNITED STATES v. BACKUS [14,491], 6 McLean, 443.
UNITED STATES v. BACON [14,492], 14 Blatchf. 279.
UNITED STATES v. BADGER [14,493], 6 Biss. 308.
UNITED STATES v. BAGWELL [14,494], 20 Int. Rev. Rec. 121.
UNITED STATES v. BAILEY [14,495], 1 McLean, 234.
UNITED STATES v. BAIN [14,496], 3 Hughes, 593.
UNITED STATES v. BAINBRIDGE [14,497], 1 Mason, 71; 2 Wheeler, Crim. Cas. 521.
United States, Bajorques v. [See 761.]
UNITED STATES v. BAKER [14,501].
UNITED STATES v. BAKER [14,499], 3 Ben. 68.
UNITED STATES v. BAKER [14,500], 5 Ben. 251; 13 Int. Rev. Rec. 85.
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UNITED STATES v. BALE [14,504], Hoff. Land Cas. 92.
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UNITED STATES v. BALLARD [14,506], 13 Int. Rev. Rec. 195.
UNITED STATES v. BALLARD [14,507], 3 McLean, 469.
UNITED STATES v. BALTIC, The [821], 7 Int. Rev. Rec. 77.
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UNITED STATES v. BALTIMORE & O. R. CO. [14,-510], 1 Hughes, 138.
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UNITED STATES v. BANCROFT [14,512].
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UNITED STATES v. BANK OF ALEXANDRIA [14,-514], 1 Cranch, C. C. 7.
UNITED STATES v. BANK OF ARKANSAS [14,-515], Hempst. 460.
United States, Bargie v. [See 18,229.]
UNITED STATES v. BARKER [14,516], 5 Mason, 404.
UNITED STATES v. BARKER [14,517], 1 Paine, 156.
UNITED STATES v. BARKER [14,518], 2 Paine, 340.
UNITED STATES v. BARKER [14,519], 1 U. S. Law J. 1.
UNITED STATES v. BARKER [14,520], 4 Wash. C. C. 464.
UNITED STATES v. BARLOW [14,521], 1 Cranch, C. C. 94.
UNITED STATES v. BARNABO [14,522], 14 Blatchf. 74.
UNITED STATES v. BARNES [14,523], 6 Ben. 183.
United States, Barnes v. [See 16,929.]
UNITED STATES v. BARNEY [14,524], 5 Blatchf. 294; 3 Int. Rev. Rec. 46.
UNITED STATES v. BARNEY [14,525], 3 Hughes, 545; 3 Hall, Law J. 128; 2 Wheeler, Crim. Cas. 513.
UNITED STATES v. BARNHARDT [14,526], 20 Int. Rev. Rec. 137.
UNITED STATES v. BARR [14,527], 4 Sawy. 254; 9 Chi. Leg. News, 308; 15 Alb. Law J. 472; 23 Int. Rev. Rec. 193.
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UNITED STATES v. BARTON [14,534], Gilp. 439.
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UNITED STATES v. BASSETT [14,539], 2 Story, 389; 6 Law Rep. 201.
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UNITED STATES v. BEARD [14,551], 5 McLean, 441.
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UNITED STATES v. BEVANS [14,589].
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UNITED STATES v. BIRCH [14,595], 1 Cranch, C. C. 571.
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UNITED STATES v. BLACK [14,601], 2 Cranch, C. C. 195.
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UNITED STATES v. BLADEN [14,605], 1 Cranch, C. C. 548.
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UNITED STATES v. BLAIR [14,607], 3 Int. Rev. Rec. 67.
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United States, Bly v. [See 1,581.]
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UNITED STATES v. BOYDEN [14,632], 1 Lowell, 266.
UNITED STATES v. BOYER [14,633], 3 Haz. Reg. Pa. 289.
UNITED STATES v. BOYLAN [14,634], 6 Int. Rev. Rec. 132.
United States, Brackett v. [See 1,763.]
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UNITED STATES v. BRAMHAM [14,636], 3 Hughes, 557.
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UNITED STATES v. BREED [14,638], 1 Sumn. 159.
United States v. Brenneman. [See 16,008.]
UNITED STATES v. BRENT [14,639], 1 Cranch, C. C. 525.
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UNITED STATES v. BREWERY UTENSILS [14,641], 13 Int. Rev. Rec. 95.
UNITED STATES v. BRICKER [14,642], 3 Phila. 426; 16 Leg. Int. 190.
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United States v. Bristow. [See 3,393.]
UNITED STATES v. BRITTON [14,650], 2 Mason, 464.
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United States v. Brodnax. [See 15,239.]
United States v. Brooke. [See 16,615, 16,616.]
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UNITED STATES v. BROWN [14,663], Gilp. 155.
UNITED STATES v. BROWN [14,664], Hoff. Op. 74; Hoff. Dec. 16.
UNITED STATES v. BROWN [14,665], 2 Lowell, 267.
UNITED STATES v. BROWN [14,666], 3 McLean, 233.
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UNITED STATES v. BROWN [14,668], 4 McLean, 378.
UNITED STATES v. BROWN [14,669], 1 Mason, 151.
UNITED STATES v. BROWN [14,670], 1 Paine, 422.
UNITED STATES v. BROWN [14,671], 1 Sawy. 531; 13 Int. Rev. Rec. 126.
UNITED STATES v. BROWN [14,672], 3 Sawy. 602; 8 Chi. Leg. News, 291.
United States, Brown v. [See 2,032.]
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UNITED STATES v. BROWNING [14,673], 1 Cranch, C. C. 330.
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UNITED STATES v. BRUAN [14,675].
UNITED STATES v. BRUCE [14,676], 2 Cranch, C. C. 95.
UNITED STATES v. BRUNE [14,677], 2 Wall. Jr. 264.
UNITED STATES v. BRUSH [14,677a], 19 Nile, Reg. 251.
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UNITED STATES ex rel. Huidekoper v. BUCHANAN COUNTY [14,679], 5 Dill. 285.
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UNITED STATES v. BUETE [14,680a], 2 Hayw. & H. 49.
UNITED STATES v. BUFFALO PARK [14,681], 16 Blatchf. 189; 25 Int. Rev. Rec. 359; 8 Reporter, 582.
United States, Bullitt v. [See 2,128.]
UNITED STATES v. BURCH [14,682], 1 Cranch, C. C. 36.
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UNITED STATES v. BURR [14,692b], Coombs' Trial of Aaron Burr, 22.
UNITED STATES v. BURR [14,692c], Coombs' Trial of Aaron Burr, 29.
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UNITED STATES v. BURR [14,692e], Coombs' Trial of Aaron Burr, 67.
UNITED STATES v. BURR [14,692f], Coombs' Trial of Aaron Burr, 72.
UNITED STATES v. BURR [14,692g], Coombs' Trial of Aaron Burr, 127.
UNITED STATES v. BURR [14,692h], Coombs' Trial of Aaron Burr, 146.
UNITED STATES v. BURR [14,693], Coombs' Trial of Aaron Burr, 1.
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UNITED STATES v. BURR [14,694a], Coombs' Trial of Aaron Burr, 377.
UNITED STATES v. BURROUGHS [14,695], 3 McLean, 405; 2 West. Law J. 63, 119.
United States, Burroughs v. [See 2,202.]
UNITED STATES v. BUTLER [14,696], 2 Blatchf. 201.
UNITED STATES v. BUTLER [14,697], 1 Cranch, C. C. 373.
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UNITED STATES v. BUTLER [14,701], 4 Hughes, 512.
UNITED STATES v. BUTLER [14,702], 18 Int. Rev. Rec. 164.
UNITED STATES v. BUTTERFIELD [14,703], 7 Ben. 412.
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UNITED STATES v. BYERS [14,705], 4 Cranch, C. C. 171.
UNITED STATES v. CADWALADER [14,706], Gilp. 563.
UNITED STATES v. CALDWELL [14,707], 8 Blatchf. 131.
UNITED STATES v. CALDWELL [14,708], 2 Dall. 333.
UNITED STATES v. CALLENDER [14,709], Whart. St. Tr. 688; Chase's Trial, Append. 65.
United States, Callender v. [See 2,321.]
UNITED STATES v. CALLICOTT [14,710], 7 Int. Rev. Rec. 177.
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UNITED STATES v. CAMBUSTON [14,712], Hoff. Land Cas. 86.
UNITED STATES v. CAMBUSTON [14,713], 7 Sawy. 575.
UNITED STATES v. CAMPBELL [14,714], 4 Cranch, C. C. 658.
United States, Campbell v. [See 2,373.]
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UNITED STATES v. CANAL BOAT NO. 68 [16,027].
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UNITED STATES v. CANTER [14,719], 2 Bond, 389.
UNITED STATES v. CARBERY [14,720], 2 Cranch, C. C. 358.
UNITED STATES v. CARD [14,720a], 2 Hask. 469.
UNITED STATES v. CARGO OF SUGAR [14,721], 3 Sawy. 27.
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United States v. Carillo. [See 14,736.]
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UNITED STATES v. CARNOT [14,726], 2 Cranch, C. C. 469.
United States v. The Caroline. [See 15,854.]
UNITED STATES v. CARPENTER [14,727], 20 Int. Rev. Rec. 137.
United States v. Carpenter. [See 15,121.]
UNITED STATES v. CARPENTIER [14,728], Hoff. Dec. 81.
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UNITED STATES v. CARTER [14,739], 2 Cranch, C. C. 243.
UNITED STATES v. CARTER [14,740], 3 Cranch, C. C. 423.
UNITED STATES v. CARTER [14,741], 4 Cranch, C. C. 732.
UNITED STATES v. CASE [14,742], 8 Blatchf. 250.
UNITED STATES v. CASE [14,743], 25 Int. Rev. Rec. 56.
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UNITED STATES v. CASTRO [14,754], 5 Sawy. 625.
United States, Castro v. [See 2,508, 2,509.]
UNITED STATES v. CATHARINE, The [14,755], 2 Paine, 721; 3 Law Rep. 255.
UNITED STATES v. CATHCART [14,756], 1 Bond, 556.
UNITED STATES v. CATHERINE, The [14,755].
UNITED STATES v. CATON [14,758], 1 Cranch, C. C. 150.
UNITED STATES v. CAUSIN [14,759], 1 Hayw. & H. 37.
UNITED STATES v. CAVE [14,760], 3 Hall, Law J. 176.
UNITED STATES v. CAZARES [14,761], Hoff. Land Cas. 90.
UNITED STATES v. C. B. CHURCH, The [14,762], 1 Woods, 275.
UNITED STATES v. CENTRAL PAC. R. CO. [14,-763], 4 Sawy. 341.
UNITED STATES v. CERTAIN CASKS OF GLASS-WARE [14,764], 4 Law Rep. 36.
UNITED STATES v. CERTAIN CIGARS [14,765], 1 Woods, 306.
United States v. Certain Distilled Spirits. [See 11,-493-11,495.]
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UNITED STATES v. CERTAIN PIECE OF LAND [14,767], 1 Sawy. 84; 11 Int. Rev. Rec. 126; 17 Pittsb. Leg. J. 128.
UNITED STATES v. CERVANTES [14,768], Hoff. Land Cas. 9.
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UNITED STATES v. CHAFFEE [14,774], 17 Pittsb. Leg. J. 116; 11 Int. Rev. Rec. 110.
UNITED STATES v. CHAFLIN [14,798].
UNITED STATES v. CHAIN CABLE [14,776], 2 Sumn. 362.
UNITED STATES v. CHALONER [14,777], 1 Ware, 214.
UNITED STATES v. CHAMBERLAIN [14,778], 12 Blatchf. 390.
UNITED STATES v. CHAMPION [14,779].
UNITED STATES v. CHANA [14,780], Hoff. Land Cas. 155.
UNITED STATES v. CHAPEL [14,781], 26 Law Rep. 22.
UNITED STATES v. CHAPELS [14,782], Brunner, Col. Cas. 444; 2 Wheeler, Crim. Cas. 205.
UNITED STATES v. CHAPMAN [14,783], 4 Am. Law J. (N. S.) 440.
UNITED STATES v. CHAPMAN [14,784], 3 McLean, 390.
UNITED STATES v. CHAPMAN [14,785], 5 Sawy. 528; 25 Int. Rev. Rec. 281; 9 Reporter, 134; 11 Chi. Leg. News, 391.
UNITED STATES v. CHARLES [14,786], 2 Cranch, C. C. 76.
UNITED STATES v. CHASE [14,787], 25 Int. Rev. Rec. 161.
UNITED STATES v. CHASE [14,788], 1 Law & Eq. Rep. 35; 8 Chi. Leg. News, 123; 22 Int. Rev. Rec. 10.
UNITED STATES v. CHASSELL [14,789], 6 Blatchf. 421; 9 Int. Rev. Rec. 177; 1 Chi. Leg. News, 314.
UNITED STATES v. CHA-TO-KAH-NA-PE-SHA [14,789a], Hempst. 27.
UNITED STATES v. CHEESEMAN [14,790], 3 Sawy. 424; 21 Int. Rev. Rec. 340.
UNITED STATES v. CHENAULT [14,791], 2 Cranch, C. C. 70.
UNITED STATES v. CHENOWETH [14,792], 6 McLean, 139; 4 West. Law Month. 165.
United States v. Choate. [See 14,627.]
UNITED STATES v. CHOTEAU [14,793], 32 Hunt, Mer. Mag. 715.
UNITED STATES v. CIGARS [14,793a], 37 Leg. Int. 237; 14 Phila. 554.
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United States v. The Circassian. [See 2,720.]
UNITED STATES v. CISNA [14,795], 1 McLean, 254.
UNITED STATES v. CITY BANK [14,796], 6 McLean, 130.
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UNITED STATES v. CLAFLIN [14,798], 13 Blatchf. 178.
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UNITED STATES v. CLANCEY [14,800], 1 Cranch, C. C. 13.
UNITED STATES v. CLARK [14,801], Crabbe, 584.
UNITED STATES v. CLARK [14,802], 2 Cranch, C. C. 620.
UNITED STATES v. CLARK [14,803], 4 Cranch, C. C. 506.
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UNITED STATES v. CLARK [14,805], 23 Int. Rev. Rec. 306; 13 Phila. 476; 6 Am. Law Rec. 129; 34 Leg. Int. 312; 9 Chi. Leg. News, 427; 16 Alb. Law J. 224; 2 Cin. Law Bul. 220; 25 Pittsb. Leg. J. 17.
UNITED STATES v. CLARK [14,806], 1 Lowell, 402; 4 N. B. R. 59 (Quarto, 14); 1 Am. Law T. Rep. Bankr. 237; 3 Am. Law T. 226; 2 Leg. Gaz. 294.
UNITED STATES v. CLARK [14,807], 1 Paine, 629.
UNITED STATES v. CLARK [14,808], 2 Spr. 55; 25 Law Rep. 345.
United States, Clark v. [See 2,837, 2,838.]
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UNITED STATES v. COFFIN [14,823], Bee, 140.
UNITED STATES v. COFFIN [14,824], 1 Sumn. 394.
UNITED STATES v. COGSWELL [14,825], 3 Sumn. 204.
UNITED STATES v. COHEN [14,826].
UNITED STATES v. COHN [14,827], 7 Int. Rev. Rec. 69.
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UNITED STATES v. COLBY [14,830], 1 Spr. 119; 8 Law Rep. 496.
UNITED STATES v. COLCHESTER [14,831], 2 Int. Rev. Rec. 70.
UNITED STATES v. COLE [14,832], 5 McLean, 513.
UNITED STATES v. COLLIER [14,833], 3 Blatchf. 325.
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UNITED STATES v. COLLINS [14,835], 1 Cranch, C. C. 592.
UNITED STATES v. COLLINS [14,836], 2 Curt. 194.
UNITED STATES v. COLLINS [14,837], 1 Woods, 499; 18 Int. Rev. Rec. 69; 5 Chi. Leg. News, 525; 5 Leg. Op. 93.
UNITED STATES v. COLLYER [14,838], Whart. Hom. 483.
UNITED STATES v. COLT [14,839], Pet. C. C. 145.
UNITED STATES v. COLUMBIAN INS. CO. [14,-840], 2 Cranch, C. C. 266.
UNITED STATES v. COLUMBUS [14,841], 5 Cranch, C. C. 304.
UNITED STATES v. COMMANDANT OF FORT DELAWARE [14,842], 1 Amer. Law Rev. 576.
UNITED STATES v. CONANT [14,843].
UNITED STATES v. CONANT [14,844], 9 Reporter, 36; 9 Cent. Law J. 129; 2 Browne, Nat. Bank Cas. 148.
UNITED STATES v. CONKLIN [14,845], 17 Int. Rev. Rec. 76.
UNITED STATES v. CONNER [14,846], 1 Cranch, C. C. 102.
UNITED STATES v. CONNER [14,847], 3 McLean, 573.
UNITED STATES v. CONVERSE [14,848], 21 Law Rep. 593.
UNITED STATES v. CONWAY [14,849], Hempst. 313.
UNITED STATES v. CONYNGHAM [14,850], Wall. Sr. 178; 4 Dall. 358.
UNITED STATES v. COOK [14,851], 2 Mason, 22.
UNITED STATES v. COOK [14,852], 1 Spr. 213.
UNITED STATES v. COOK COUNTY NAT. BANK [14,853], 9 Biss. 55; 8 Reporter, 198; 25 Int. Rev. Rec. 266; 2 Browne, Nat. Bank Cas. 128; 11 Chi. Leg. News, 344.
UNITED STATES v. COOKE [14,854], 4 Ben. 376; 13 Int. Rev. Rec. 4.
UNITED STATES v. COOKE [14,855], 16 Int. Rev. Rec. 143; 29 Leg. Int. 221; 9 Phila. 468; 5 Amer. Law T. 166.
United States, Cooke v. [See 3,178.]
UNITED STATES v. COOKENDORFER [14,856], 5 Cranch, C. C. 113.
UNITED STATES v. COOLIDGE [14,857], 1 Gall. 488.
UNITED STATES v. COOLIDGE [14,858], 2 Gall. 364.
UNITED STATES v. COOLY [14,859], 4 Cranch, C. C. 707.
UNITED STATES v. COONS [14,860], 1 Bond, 1.
UNITED STATES v. COOPER [14,861], 4 Dall. 341.
UNITED STATES v. COOPER [14,862], Hoff. Land Cas. 101.
UNITED STATES v. COOPER [14,863], 12 Int. Rev. Rec. 145.
UNITED STATES v. COOPER [14,864], 3 Quart. Law J. 42.
UNITED STATES v. COOPER [14,865], Whart. St. Tr. 659.
UNITED STATES v. COPELAND [14,865a], 2 Hayw. & H. 402.
UNITED STATES v. COPPER STILL [15,928].
UNITED STATES v. CORNELL [14,867], 2 Mason, 60.
UNITED STATES v. CORNELL [14,868], 2 Mason, 91.
United States, Corporation of Georgetown v. [See 18,281.]
UNITED STATES v. CORRIE [14,869], 23 Law Rep. 145; Brunner, Col. Cas. 686.
UNITED STATES v. CORWIN [14,870], 1 Bond, 149.
UNITED STATES v. CORWINE [14,871], 1 Bond. 339; 4 Wkly. Law Gaz. 413.
UNITED STATES v. COTTINGHAM [14,872], 2 Blatchf. 470.
UNITED STATES v. COTTOM [14,873], 1 Cranch, C. C. 55.
UNITED STATES v. COUCH [14,874], 5 Hunt, Mer. Mag. 168.
UNITED STATES v. COULTER [14,875], 1 Cranch, C. C. 203.
UNITED STATES ex rel. Sisters of Charity of St. Joseph v. COUNTY COURT OF OUACHITA COUNTY [14,876].
UNITED STATES ex rel. McKee v. COUNTY COURT OF VERNON COUNTY [14,877], 3 Dill. 281; 2 Cent. Law J. 771; 1 N. Y. Wkly. Dig. 378.
UNITED STATES v. COURT [14,874].
UNITED STATES v. COUSINERY [14,878], 7 Ben. 251; 19 Int. Rev. Rec. 125.
UNITED STATES v. COVILLAND [14,879], Hoff. Dec. 52.
UNITED STATES v. COWING [14,880], 4 Cranch, C. C. 613.
UNITED STATES v. CRAFTON [14,881], 4 Dill. 145; 17 Amer. Law Reg. (N. S.) 127; 23 Int. Rev. Rec. 186; 4 Cent. Law J. 441.
UNITED STATES v. CRAIG [14,882], 2 Cranch, C. C. 36.
UNITED STATES v. CRAIG [14,883], 4 Wash. C. C. 729.
UNITED STATES v. CRANDELL [14,884], 2 Cranch, C. C. 373.
UNITED STATES v. CRANDELL [14,885], 4 Cranch, C. C. 683.
UNITED STATES v. CRANE [14,886].
UNITED STATES v. CRANE [14,887], 3 Cliff. 211.
UNITED STATES v. CRANE [14,888], 4 McLean, 317.
UNITED STATES v. CRANSTON [14,889], 3 Cranch, C. C. 289.
UNITED STATES v. CRAWFORD [14,890], 1 N. Y. Leg. Obs. 388.
UNITED STATES v. CRITTENDEN [14,890a], Hempst. 61.
UNITED STATES ex rel. Standing Bear v. CROOK [14,891], 5 Dill. 453.
UNITED STATES v. CROPLEY [14,892], 4 Cranch, C. C. 517.
UNITED STATES v. CROSBY [14,893], 1 Hughes, 448.
UNITED STATES v. CROSBY [14.781].
UNITED STATES v. CROSS [14,894], 4 Cranch, C. C. 603.
United States, Cross v. [See 18,286.]
United States, Cross v. [See 3,434.]
UNITED STATES v. CROW [14,895], 1 Bond, 51.
United States, Crowell v. [See 3,447.]
UNITED STATES v. CROZIER [14,896].
UNITED STATES v. CRUIKSHANK [14,897], 1 Woods, 308; 13 Amer. Law Reg. (N. S.) 630.
UNITED STATES v. CUBA, The [14,898], 2 Hughes, 489; 2 Amer. Law T. Rep. (U. S. Cts.) 121; 10 Int. Rev. Rec. 115; 2 Balt. Law Trans. 743.
UNITED STATES v. CULLERTON [14,899], 8 Biss. 166; 24 Int. Rev. Rec. 68.
UNITED STATES v. CUMMINGS [14,900], 3 Pittsb. Leg. J. 29.
UNITED STATES v. CUMMINGS [14,901], 3 Pittsb. Leg. J. 405.
UNITED STATES v. CUMMINGS [14,901a], 3 Pittsb. Leg. J. 45.
UNITED STATES v. CUMMINGS [14,901b], 3 Pittsb. Leg. J. 210.
UNITED STATES v. CUMPTON [14,902], 3 McLean, 163.
UNITED STATES v. CUNNINGHAM [14,903].

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UNITED STATES v. CURTIS [14,905], 4 Mason, 232.
UNITED STATES v. CUSHMAN [14,906], 1 Lowell, 414.
UNITED STATES v. CUSHMAN [14,907], 2 Sumn. 310.
UNITED STATES v. CUSHMAN [14,908], 2 Sumn. 426.
UNITED STATES v. CUSTIS [14,909], 1 Cranch, C. C. 417.
UNITED STATES v. CUTLER [14,910], 1 Curt. 501.
UNITED STATES v. CUTTER [14,911], 2 Curt. 617.
UNITED STATES v. CUTTS [14,912], 1 Sumn. 133.
United States, Cutts v. [See 3,522.]
UNITED STATES v. DAIR [14,913], 4 Biss. 280.
United States, Daley v. [See 3,542.]
UNITED STATES v. DAMIANI [14,915], 11 Int. Rev. Rec. 5.
United States, Dana v. [See 3,555.]
UNITED STATES v. DANIELS [14,916], 20 Int. Rev. Rec. 136.
UNITED STATES v. DANTZLER [14,917], 3 Woods, 719.
UNITED STATES v. DARNAUD [14,918], 3 Wall. Jr. 143.
UNITED STATES v. DARTON [14,919], 6 McLean, 46.
UNITED STATES v. DASHIELL [14,919a], 50 Nile, Reg. 240.
UNITED STATES v. DAVENPORT [14,920], Deady, 264.
UNITED STATES ex rel. De Loyne v. DAVIDSON [14,921], 1 Biss. 433; 2 Chi. Leg. News, 385.
UNITED STATES v. DAVIDSON [14,922], 4 Cranch, C. C. 576.
UNITED STATES v. DAVIS [14,923], 6 Blatchf. 464.
UNITED STATES v. DAVIS [14,924], 4 Cranch, C. C. 333.
UNITED STATES v. DAVIS [14,925], 4 Cranch, C. C. 606.
UNITED STATES v. DAVIS [14,926], 5 Cranch, C. C. 622.
UNITED STATES v. DAVIS [14,927], Deady, 294.
UNITED STATES v. DAVIS [14,928], 15 Int. Rev. Rec. 10.
UNITED STATES v. DAVIS [14,929], 3 McLean, 483.
UNITED STATES v. DAVIS [14,930], 5 Mason, 356.
UNITED STATES v. DAVIS [14,931], 2 N. Y. Leg. Obs. 35.
UNITED STATES v. DAVIS [14,932], 2 Sumn. 482.
United States v. Davis. [See 3,621a, 14,820.]
UNITED STATES v. DAWSON [14,933], Hempst. 643.
UNITED STATES v. DAY [14,934], 6 Amer. Law Reg. 632.
United States v. Day. [See 1,581.]
UNITED STATES v. DE BARE [14,935], 6 Biss. 358; 7 Chi. Leg. News, 321; 21 Int. Rev. Rec. 213; 7 Leg. Gaz. 210.
United States, De Fitch v. [See 3,741.]
UNITED STATES v. DE GRIEFF [14,935a], 10 Reporter, 258.
UNITED STATES v. DE GRIEFF [14,936], 16 Blatchf. 20.
UNITED STATES v. DE HARO [14,937], 1 Cal. Law J. 195.
UNITED STATES v. DE HARO [14,938], 1 Cal. Law J. 199.
UNITED STATES v. DE HARO [14,939], Hoff. Dec. 53.
UNITED STATES v. DE HARO [14,940], Hoff. Dec. 75.
UNITED STATES v. DE HARO [14,941], Hoff. Dec. 77.
UNITED STATES v. DELAWARE INS. CO. [14,942], 4 Wash. C. C. 418.
UNITED STATES v. DELVALLE [14,943].
UNITED STATES v. DEMARCHI [14,944], 5 Blatchf. 84.
UNITED STATES v. DEMING [14,945], 4 McLean, 3.
UNITED STATES v. DENEALE [14,946], 1 Cranch, C. C. 34.
UNITED STATES v. DENNEE [14,947], 3 Woods, 39.
UNITED STATES v. DENNEE [14,948], 3 Woods, 47.
UNITED STATES v. DENNIS [14,949], 1 Bond, 103.
UNITED STATES v. DE RODRIGUEZ [14,950], 7 Sawy. 617.
UNITED STATES v. DERRINGER [14,950a], 2 Hayw. & H. 72.
UNITED STATES v. DESMOND [14,951], 39 Hunt, Mer. Mag. 332.
United States v. De Swatz. [See 13,680.]
UNITED STATES v. DEVAUGHAN [14,952], 3 Cranch, C. C. 84.
United States, De Villemont's Heirs v. [See 3,839.]
UNITED STATES v. DEVLIN [14,953], 6 Blatchf. 71; 7 Int. Rev. Rec. 94; 1 Amer. Law T. Rep. U. S. Cts. 38; 15 Pittsb. Leg. J. 398.
UNITED STATES v. DEVLIN [14,954], 5 Int. Rev. Rec. 182.
UNITED STATES v. DEVLIN [14,955], 7 Int. Rev. Rec. 44.
UNITED STATES v. DEWEY [14,956], 6 Biss. 501.
United States, Dexter v. [See 3,869.]
United States, De Zaldo v. [See 3,872.]
United States, Diaz v. [See 3,878.]
UNITED STATES v. DICK [14,957], 2 Cranch, C. C. 409.
UNITED STATES v. DICKINSON [14,957a], Hempst. 1.
UNITED STATES v. DICKINSON [14,958], 2 McLean, 325.
United States, Dillingham v. [See 3,913.]
UNITED STATES v. DISTILLED SPIRITS [15,960].
UNITED STATES v. DISTILLERY [14,960], 23 Int. Rev. Rec. 147.
UNITED STATES v. DISTILLERY AT PETERSBURG [14,961], 1 Hughes, 533; 22 Int. Rev. Rec. 195; 8 Chi. Leg. News, 314.
UNITED STATES v. DISTILLERY AT SPRING VALLEY [14,962], 8 Ben. 473; 22 Int. Rev. Rec. 218.
UNITED STATES v. DISTILLERY AT SPRING VALLEY [14,963], 11 Blatchf. 255; 18 Int. Rev. Rec. 59.
UNITED STATES v. DISTILLERY, Etc., OF J. C. McCOY [14,964], 21 Int. Rev. Rec. 165.
UNITED STATES v. DISTILLERY IN WEST FRONT STREET [14,965], 2 Abb. U. S. 192; 11 Int. Rev. Rec. 174; 18 Pittsb. Leg. J. 61; 4 Brewst. 246.
UNITED STATES v. DISTILLERY NO. 28 [14,966], 6 Biss. 483; 21 Int. Rev. Rec. 366; 8 Chi. Leg. News, 57; 2 Cent. Law J. 749.
UNITED STATES v. DIXEY [14,967], 3 Wash. C. C. 15.
UNITED STATES v. DIXON [14,968], 1 Cranch, C. C. 414.
UNITED STATES v. DIXON [14,969], 2 Cranch, C. C. 92.
UNITED STATES v. DIXON [14,970], 4 Cranch, C. C. 107.
United States, Dixon v. [See 3,934.]
UNITED STATES v. DOBBINS [14,971], 1 Pa. Law J. Rep. 5; 5 Law Rep. 81; 1 Pa. Law J. 9.
UNITED STATES v. DOBBS [14,972], 15 Int. Rev. Rec. 9.
UNITED STATES v. DODGE [14,973], Deady, 124.
UNITED STATES v. DODGE [14,974], Deady, 186.
UNITED STATES v. DODGE [14,975], 2 Gall. 313.
UNITED STATES v. DODGE [14,976], 1 Tex. Law J. 47.
UNITED STATES v. DOEBLER [14,977], Baldw. 519.
UNITED STATES v. DOLAN [14,978], 5 Blatchf. 284.
UNITED STATES v. DOLLAR SAV. BANK [14,979], 4 Chi. Leg. News, 341; 29 Leg. Int. 238; 15 Int. Rev. Rec. 193; 3 Pittsb. Rep. 408; 19 Pittsb. Leg. J. 181.
UNITED STATES v. DOLPHIN, The [3,975].
United States, The Dolphin v. [See 3,975.]
UNITED STATES v. DOMAN [14,983].
UNITED STATES v. DOMINGO [16,032].
UNITED STATES v. DONAHOO [14,982], 1 Cranch, C. C. 474.
UNITED STATES v. DONAU [14,983], 11 Blatchf. 168; 17 Int. Rev. Rec. 181.
United States v. Donlan. [See 14,978.]
United States, Donovan v. [See 3,994.]
UNITED STATES v. DOOLEY [14,984], 21 Int. Rev. Rec. 115.
UNITED STATES v. DOSS [14,985], 11 Amer. Law Reg. (N. S.) 320.
UNITED STATES ex rel. West v. DOUGHTY [14,986], 7 Blatchf. 424.

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UNITED STATES v. DOUGHTY [14,987], 1 Quart. Law J. 69.
UNITED STATES v. DOUGLASS [14,988], 2 Cranch, C. C. 94.
UNITED STATES v. DOUGLASS [14,989], 2 Blatchf. 207.
UNITED STATES v. DOW [14,990], Taney, 34.
UNITED STATES v. DOWDEN [14,990a], Hayw. & H. 145.
UNITED STATES v. DOWNING [14,991], 3 Cent. Law J. 383.
United States, Drayton v. [See 4,074.]
UNITED STATES v. DRENNEN [14,992], Hempst. 320.
UNITED STATES v. DREW [14,993], 5 Mason, 28.
UNITED STATES v. DRISCOLL [14,994], 1 Lowell, 303.
UNITED STATES v. DRY OX AND COW HIDES [14,995], 2 Int. Rev. Rec. 34.
UNITED STATES v. DUANE [14,996], Wall. Sr. 5.
UNITED STATES v. DUANE [14,997], Wall. Sr. 102.
UNITED STATES v. DUFFY [14,998], 1 Cranch, C. C. 164.
UNITED STATES v. DULANY [14,999], 1 Cranch, C. C. 510.
UNITED STATES v. DULANY [15,000], 1 Cranch, C. C. 571.
UNITED STATES v. DULUTH [15,001], 1 Dill. 469; 10 Amer. Law Reg. (N. S.) 449.
UNITED STATES v. DUNCAN [15,002], 4 McLean, 99.
UNITED STATES v. DUNCAN [15,003], 4 McLean, 607.
UNITED STATES v. DUNCAN [15,004], 4 West. Law Month. 425; 10 Pittsb. Leg. J. 41; 2 Pittsb. Rep. 328.
UNITED STATES v. DUNCAN [15,005], 4 McLean, 207.
UNITED STATES v. DUNHAM [15,006], 21 Law Rep. 591; Brunner, Col. Cas. 653; 1 West. Law Month. 161.
UNITED STATES v. DUNN [15,007], 1 Cranch, C. C. 165.
UNITED STATES v. DURKEE [15,008], Hoff. Op. 535.
UNITED STATES v. DURKEE [15,009], 1 McAll. 196.
UNITED STATES v. DURLING [15,010], 4 Biss. 509.
UNITED STATES v. DUSTIN [15,011], 2 Bond, 332.
UNITED STATES v. DUSTIN [15,012], 15 Int. Rev. Rec. 30.
UNITED STATES v. DUTCHER [15,013], 1 Amer. Law T. Rep. U. S. Cts. 60; 7 Int. Rev. Rec. 122.
UNITED STATES v. DUTCHER [15,014], 2 Biss. 51; 8 Int. Rev. Rec. 161; 1 Chi. Leg. News, 57.
UNITED STATES v. DUVAL [15,015], Gilp. 356.
UNITED STATES v. DUVALL [15,016], 2 Cranch, C. C. 42.
UNITED STATES v. DUVIVIER [15,017], 12 Blatchf. 449.
United States, Eaken v. [See 4,235.]
UNITED STATES v. EARHART [15,018], 4 Sawy. 245; 1 Pac. Law Rep. 257; 9 Chi. Leg. News, 304.
UNITED STATES v. EBERT [15,019], 1 Cent. Law J. 205.
UNITED STATES v. EBNER [15,020], 4 Biss. 117.
UNITED STATES v. ECHO, The [15,021], 4 Blatchf. 446; 20 How. Pr. 517.
UNITED STATES v. ECKEL [15,022].
UNITED STATES v. ECLIPSE, The [4,269].
UNITED STATES v. EDDY [15,024], 1 Biss. 227.
UNITED STATES v. EDWARDS [15,025], 17 Int. Rev. Rec. 126.
UNITED STATES v. EDWARDS [15,026], 1 McLean, 467.
UNITED STATES v. EGGLESTON [15,027], 4 Sawy. 199; 23 Int. Rev. Rec. 113; 9 Chi. Leg. News, 218; 15 Alb. Law J. 493.
UNITED STATES v. EIGHT BARRELS OF WHISKEY [15,028], 15 Pittsb. Leg. J. 4; 6 Int. Rev. Rec. 124.
UNITED STATES v. EIGHT CASES OF LAMPS [15,029], 1 Hunt, Mer. Mag. 252.
UNITED STATES v. EIGHT CASKS OF WHISKEY [15,030], 7 Int. Rev. Rec. 4; 14 Pittsb. Leg. J. 11.
UNITED STATES v. EIGHT CASKS OF WHISKEY [15,030].
UNITED STATES v. EIGHTEEN BALES OF BLANKETS [15,032], 7 Int. Rev. Rec. 69.
UNITED STATES v. EIGHTEEN BARRELS HIGH WINES [15,033], 8 Blatchf. 475.
UNITED STATES v. EIGHTEEN PIPES DISTILLED SPIRITS [15,033a], 20 Nile, Reg. 346.
UNITED STATES v. EIGHT HUNDRED AND FIFTY-FIVE BOXES OF SUGAR [15,034], 11 Int. Rev. Rec. 63.
UNITED STATES v. EIGHT HUNDRED BARRELS OF SPIRITS [15,035], 10 Int. Rev. Rec. 126.
UNITED STATES v. EIGHT HUNDRED CADDIES OF TOBACCO [15,036], 2 Bond, 305.
UNITED STATES v. EIGHTY-FIVE HOGSHEADS OF SUGAR [15,037], 2 Paine, 54.
UNITED STATES v. EIGHTY-TWO PACKAGES OF GLASS [15,038], 37 Hunt, Mer. Mag. 322.
UNITED STATES v. ELDER [15,039], 4 Cranch, C. C. 507.
UNITED STATES v. ELIASON [15,040], 1 Hayw. & H. 21.
UNITED STATES v. ELIZA, The [15,041].
UNITED STATES v. ELIZABETH [15,041a], 3 N. J. Law J. 49; 9 Reporter, 232.
United States, Elizabethport & N. Y. Ferry Co. v. [See 4,362.]
UNITED STATES v. ELLICK [15,042], 2 Cranch, C. C. 412.
UNITED STATES v. ELLIOT [15,043], 25 Int. Rev. Rec. 319; 8 Reporter, 675; 14 Amer. Law Rev. 247.
UNITED STATES v. ELLIOT [15,044], 3 Mason, 156.
UNITED STATES v. ELLIOTT [15,045], 3 West. Law J. 183; 1 Hayw. & H. 232.
UNITED STATES v. ELLIS [15,046], 1 Cranch, C. C. 125.
UNITED STATES v. ELLIS [15,047], 4 Sawy. 590.
UNITED STATES v. ELM [15,048], 2 Cin. Law Bul. 307; 23 Int. Rev. Rec. 419.
UNITED STATES v. EL TELEGRAFO [15,049], Newb. 383.
UNITED STATES v. EMERSON [15,050], 4 Cranch, C. C. 188.
UNITED STATES v. EMERSON [15,051], 6 McLean, 406.
UNITED STATES v. EMERY [15,052], 4 Cranch, C. C. 270.
UNITED STATES v. ENRIGHT [15,053], Hoff. Land Cas. 239.
United States, The Enterprise v. [See 4,499.]
UNITED STATES v. ENWRIGHT [15,054], 1 Cal. Law J. 254.
UNITED STATES v. ERIE R. CO. [15,055].
UNITED STATES v. ERIE RY. CO. [15,056], 9 Ben. 67; 24 Int. Rev. Rec. 76.
UNITED STATES v. ERSKINE [15,057], 4 Cranch, C. C. 299.
United States, Esline v. [See 4,528.]
United States, Espinosa v. [See 4,529.]
UNITED STATES v. ESTUDILLO [15,058], Hoff. Land Cas. 204.
UNITED STATES v. ETHAN ALLEN, The [15,059], 3 Amer. Law Rev. 372.
UNITED STATES v. ETTA, The [15,060], 4 Amer. Law Reg. (N. S.) 28.
UNITED STATES v. EVANS [15,061], 19 Int. Rev. Rec. 118.
UNITED STATES v. EVANS [15,062], Crabbe, 60.
UNITED STATES v. EVANS [15,063], 1 Cranch, C. C. 55.
UNITED STATES v. EVANS [15,064], 1 Cranch, C. C. 149.
UNITED STATES v. EVANS [15,065], 4 Cranch, C. C. 105.
UNITED STATES v. EXPRESS, The [15,066], 21 Law Rep. 41.
UNITED STATES v. FAIRCHILDS [15,067], 1 Abb. U. S. 74; 1 Amer. Law T. Rep. U. S. Cts. 58; 7 Amer. Law Reg. (N. S.) 306; 7 Int. Rev. Rec. 101; 15 Pittsb. Leg. J. 343.
UNITED STATES v. FAIRCLOUGH [15,068], 4 Wash. C. C. 398.
UNITED STATES v. FANJUL [15,069], 1 Lowell, 117.
UNITED STATES v. FARMERS' LOAN & TRUST CO. [15,070], 3 Int. Rev. Rec. 62.

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UNITED STATES v. FARNSWORTH [15,072], 1 Mason, 1.
UNITED STATES v. FARRELL [15,073], 8 Biss. 259; 24 Int. Rev. Rec. 231.
UNITED STATES v. FARRELL [15,074], 5 Cranch, C. C. 311.
UNITED STATES v. FARRING [15,075], 4 Cranch, C. C. 465.
UNITED STATES v. FAULBREE [3,393].
UNITED STATES v. FAW [15,077], 1 Cranch, C. C. 456.
UNITED STATES v. FAW [15,078], 1 Cranch, C. C. 486.
UNITED STATES v. FAW [15,079], 1 Cranch, C. C. 487.
United States v. Faxon. [See 16,324.]
UNITED STATES v. FEARS [15,080], 3 Woods, 510.
UNITED STATES v. FEARSON [15,081], 5 Cranch, C. C. 95.
United States, Fearson v. [See 4,712.]
UNITED STATES v. FEELY [15,082], 1 Brock. 255.
UNITED STATES v. FEHRENBACK [15,083], 2 Woods, 175.
UNITED STATES v. FEIGELSTOCK [15,084], 14 Blatchf. 321.
United States, Feliz v. [See 4,720.]
UNITED STATES v. FENELON [15,085], 14 Int. Rev. Rec. 182.
UNITED STATES v. FENWICK [15,086], 4 Cranch, C. C. 675.
UNITED STATES v. FENWICK [15,087], 5 Cranch, C. C. 562.
UNITED STATES v. FIDELITER, The [15,088], 14 Int. Rev. Rec. 142.
UNITED STATES v. FIELDS [15,089], 4 Blatchf. 326.
UNITED STATES v. FIFTEEN HOGSHEADS OF BRANDY [15,090], 5 Blatchf. 106.
United States v. Fifty Barrels of Distilled Spirits. [See 15,946.]
UNITED STATES v. FIFTY BARRELS OF WHISKEY [15,091], 11 Int. Rev. Rec. 94; 3 Amer. Law T. Rep. U. S. Cts. 59.
UNITED STATES v. FIFTY-EIGHT THOUSAND EIGHT HUNDRED AND FIFTY CIGARS [15,092], 21 Law Rep. 267.
UNITED STATES v. FIFTY-FOUR BARRELS OF DISTILLED SPIRITS [15,093], 9 Int. Rev. Rec. 121.
UNITED STATES v. FIFTY-ONE DOZEN PIECES OF MERCHANDISE [15,094], 2 Spr. 100.
UNITED STATES v. FIFTY-SIX BARRELS OF WHISKEY [15,095], 1 Abb. U. S. 93; 6 Amer. Law Reg. (N. S.) 32; 4 Int. Rev. Rec. 106.
UNITED STATES v. FIFTY THOUSAND CIGARS [4,782].
UNITED STATES v. FIFTY-THREE BALES OF RAGS [15,097], 19 Alb. Law J. 60.
UNITED STATES v. FIFTY-THREE BOXES OF HAVANA SUGAR [15,098], 2 Bond, 346.
UNITED STATES v. FINLAY [15,099], 1 Abb. U. S. 364; 3 Pittsb. Rep. 126; 9 Int. Rev. Rec. 99; 16 Pittsb. Leg. J. 254; 26 Leg. Int. 92.
UNITED STATES v. FISHER [15,100].
UNITED STATES v. FISHER [15,101], 1 Cranch, C. C. 244.
UNITED STATES v. FISHER [15,102], 5 McLean, 23.
UNITED STATES v. FISHER [15,103], 1 Wash. C. C. 4.
UNITED STATES v. FISK [15,104], 13 Pittsb. Leg. J. 110; 2 Int. Rev. Rec. 10.
UNITED STATES v. FISLER [15,105], 4 Biss. 59.
UNITED STATES v. FITTON [15,106], 4 Cranch, C. C. 658.
UNITED STATES v. FITZGERALD [15,107], 4 Cranch, C. C. 203.
UNITED STATES v. FIVE BARRELS OF WHISKEY [15,108], 11 Int. Rev. Rec. 11.
UNITED STATES v. FIVE CASES OF CIGARS [15,109], 41 Hunt, Mer. Mag. 74.
UNITED STATES v. FIVE CASES OF CLOTH [15,110], 2 N. Y. Leg. Obs. 84.
UNITED STATES v. FIVE CASES OF LINEN TABLECLOTHS [15,111].
UNITED STATES v. FIVE CASKS OF FILES [15,112], 3 Hunt, Mer. Mag. 439.
UNITED STATES v. FIVE HUNDRED AND EIGHT BARRELS DISTILLED SPIRITS [15,113], 5 Blatchf. 407; 5 Int. Rev. Rec. 190.
UNITED STATES v. FIVE HUNDRED AND EIGHT BARRELS OF SPIRITS [15,114], 5 Int. Rev. Rec. 166.
UNITED STATES v. FIVE HUNDRED BARRELS OF WHISKEY [15,115], 2 Bond, 7.
UNITED STATES v. FIVE HUNDRED BOXES OF PIPES [15,116], 2 Abb. U. S. 500.
UNITED STATES v. FIVE JUGS OF BRANDY [15,-118].
UNITED STATES v. FIVE JUGS OF BRANDY [15,-118], 11 Int. Rev. Rec. 5.
UNITED STATES v. FIVE THOUSAND ONE HUNDRED DOLLARS IN SPECIE [15,119], 1 Woods, 14.
UNITED STATES v. FLANAKIN [15,119a], Hempst. 30.
UNITED STATES v. FLECKE [15,120], 2 Ben. 456; 7 Int. Rev. Rec. 206.
United States, Fletcher v. [See 4,868, 4,869.]
UNITED STATES v. FLINT [15,121], 4 Sawy. 42.
UNITED STATES v. FLOWERY [15,122], 1 Spr. 109; 8 Law Rep. 258.
UNITED STATES v. FLYNN [15,123], 15 Blatchf. 302.
UNITED STATES v. FLYNN [15,124], 1 Dill. 451.
UNITED STATES v. FOLSOM [15,125], Hoff. Dec. 42.
UNITED STATES v. FOLSOM [15,126], Hoff. Dec. 44.
UNITED STATES v. FOLSOM [15,127], 7 Sawy. 602.
UNITED STATES v. FOOTE [15,128], 13 Blatchf. 418.
UNITED STATES v. FORBES [15,129], Crabbe, 558.
UNITED STATES v. FORDYCE [15,130], 13 Int. Rev. Rec. 77.
UNITED STATES v. FORREST [15,131], 3 Cranch, C. C. 56.
UNITED STATES v. FORRESTER, The [15,132], Newb. 81.
UNITED STATES v. FORSYTHE [15,133], 6 McLean, 584.
UNITED STATES v. FORTY-EIGHT HUNDRED GALLONS DISTILLED SPIRITS [15,153].
United States, Forty-Eight Hundred Gallons Distilled Spirits v. [See 15,153.]
UNITED STATES v. FORTY-SIX CASKS OF CALIFORNIA GRAPE BRANDY [15,135], 5 Int. Rev. Rec. 161.
UNITED STATES v. FORTY-THREE GALLONS OF WHISKEY [15,136], 19 Int. Rev. Rec. 158.
UNITED STATES v. FOSSAT [15,137], Hoff. Land Cas. 211.
UNITED STATES v. FOSSAT [15,138], Hoff. Land Cas. 373.
UNITED STATES v. FOSSAT [15,139], Hoff. Land Cas. 376.
UNITED STATES v. FOSSATT [15,140], 1 Cal. Law J. 315.
UNITED STATES v. FOSTER [15,141], 2 Biss. 377; 3 Chi. Leg. News, 113.
UNITED STATES v. FOSTER [15,142], 2 Biss. 453; 19 Int. Rev. Rec. 5.
UNITED STATES v. FOULKE [15,143], 6 McLean, 349.
UNITED STATES v. FOUR CASES CUTLERY [15,-144], 1 Hunt, Mer. Mag. 166.
United States v. Four Cases Silk Ribbons. [See 4,-986.]
UNITED STATES v. FOUR CASES OF LASTINGS [15,145], 10 Ben. 371.
UNITED STATES v. FOUR CASES PRINTED MERINOES [15,146], 2 Paine, 200.
United States v. Four Cutting Machines. [See 4,987.]
UNITED STATES v. FOUR HUNDRED AND SIXTY BARRELS OF FERMENTED LIQUORS [15,-147], 11 Int. Rev. Rec. 11.
UNITED STATES v. FOUR HUNDRED AND SIXTY-NINE BARRELS OF SPIRITS [15,148], 10 Int. Rev. Rec. 205.
UNITED STATES v. FOUR HUNDRED BASKETS OF CHAMPAGNE [15,149].
UNITED STATES v. FOUR PART PIECES OF WOOLEN CLOTH [15,150], 1 Paine, 435.

[Federal Case numbers are given in brackets.]

UNITED STATES v. FOURTEEN PACKAGES OF PINS [15,151], Gilp. 235.
UNITED STATES v. FOUR THOUSAND AMERICAN GOLD COIN [14,439].
UNITED STATES v. FORTY-EIGHT HUNDRED GALLONS OF SPIRITS [15,153], 4 Ben. 471; 13 Int. Rev. Rec. 52; 3 Chi. Leg. News, 130.
UNITED STATES v. FOUR THOUSAND ONE HUNDRED SEVENTY-FIVE CIGARS [15,154], 25 Int. Rev. Rec. 132.
UNITED STATES v. FOX [15,155], Deady, 579; 11 Int. Rev. Rec. 36.
UNITED STATES v. FOX [15,156], 1 Lowell, 199.
UNITED STATES v. FOYE [15,157], 1 Curt. 364.
UNITED STATES v. FRANCIS F. JOHNSON, The [15,157a], 20 Nile, Reg. 137.
UNITED STATES v. FRANCIS HATCH, The [15,158], 4 Amer. Law Reg. (N. S.) 289.
UNITED STATES v. FRANK [15,159], 2 Biss. 263; 3 N. B. R. 175 (Quarto); 17 Pittsb. Law J. 140; 2 Chi. Leg. News, 236.
UNITED STATES v. FRANKLIN, The [15,160].
UNITED STATES v. FRAZER [15,161], 10 Ben. 347.
United States v. Freel. [See 15,624.]
UNITED STATES v. FREEMAN [15,162], 4 Mason, 505.
UNITED STATES v. FREEMAN [15,163], 1 Woodb. & M. 45.
UNITED STATES v. FREMONT [15,164], Hoff. Land Cas. 20.
UNITED STATES v. FRENCH [15,165], 1 Gall. 1.
UNITED STATES v. FRERICHS [15,166], 16 Blatchf. 547; 8 Reporter, 391; 25 Int. Rev. Rec. 319.
UNITED STATES v. FRICTION MATCH MACHINERY [15,167], 1 Hask. 32.
UNITED STATES v. FRIDENBERG [15,168].
UNITED STATES v. FRIDENBERG [15,168].
United States, Fridenberg v. [See 15,168.]
UNITED STATES v. FRIES [5,126].
United States, Fries v. [See 5,126.]
UNITED STATES v. FRINK [15,171], 4 Day, 471; Brunner, Col. Cas. 90.
UNITED STATES v. FROST [15,172], 9 Int. Rev. Rec. 41; 16 Pittsb. Leg. J. 196; 1 Chi. Leg. News, 129.
UNITED STATES v. FRYE [15,173], 4 Cranch, C. C. 539.
UNITED STATES v. FUERS [15,174], 12 Int. Rev. Rec. 43.
UNITED STATES v. FULLERTON [15,175], 6 Blatchf. 275; 9 Int. Rev. Rec. 3.
UNITED STATES v. FULLERTON [15,176], 7 Blatchf. 177.
UNITED STATES v. FUNKHOUSER [15,177], 4 Biss. 176.
UNITED STATES v. FURLONG [15,178], 2 Biss. 97; 9 Int. Rev. Rec. 35; 16 Pittsb. Leg. J. 213, 243.
UNITED STATES v. F. W. JOHNSON, The [15,179], 18 Leg. Int. 334.
UNITED STATES v. GADSBY [15,180], 1 Cranch, C. C. 55.
UNITED STATES v. GALACAR [15,181], 1 Spr. 545.
UNITED STATES v. GALBRAITH [15,182], Hoff. Op. 77; Hoff. Dec. 20.
UNITED STATES v. GALINDO [15,183], 1 Cal. Law J. 233.
UNITED STATES v. GALLAGHER [3,393].
UNITED STATES v. GALLAGHER [15,185], 2 Paine, 447.
United States, Gallego v. [See 5,201.]
United States v. Gansevoort. [See 18,313.]
UNITED STATES v. GARCIA [15,186], 1 Sawy. 383.
United States, Garcia v. [See 5,215.]
UNITED STATES v. GARDINER [15,186a], 2 Hayw. & H. 89.
UNITED STATES v. GARDNER [15,187], 5 Chi. Leg. News, 501; 18 Int. Rev. Rec. 46; 5 Leg. Op. 95.
UNITED STATES v. GARDNER [15,188], 5 Mason, 402.
UNITED STATES v. GARLINGHOUSE [15,189], 4 Ben. 194; 11 Int. Rev. Rec. 11; 2 Chi. Leg. News, 131, 139.
UNITED STATES v. GASSAWAY [15,190], 1 Hayw. & H. 174.
UNITED STATES v. GATES [15,191], 4 N. Y. Leg. Obs. 8; 8 Law Rep. 465.
UNITED STATES v. GAUSSEN [15,192], 2 Woods, 92.
UNITED STATES v. GAY [15,193], 2 Gall. 359.
UNITED STATES v. GAY'S GOLD [15,194], 1 Woods, 55.
UNITED STATES v. GEAR [15,195], 3 McLean, 571.
UNITED STATES v. GEARY [15,195a], 4 N. B. R. 534 (Quarto, 175).
UNITED STATES v. GEE [15,196], 2 Cranch, C. C. 163.
UNITED STATES v. GEORGE [15,197], 6 Blatchf. 37; 7 Int. Rev. Rec. 51; 1 Amer. Law T. Rep. (U. S. Cts.) 53.
UNITED STATES v. GEORGE [15,198], 6 Blatchf. 406.
UNITED STATES v. GEORGE [15,199], 3 Dill. 431; 2 Cent. Law J. 77; 22 Pittsb. Leg. J. 103.
UNITED STATES v. GEORGE DARBY, The [15,200], 26 Law Rep. 566.
UNITED STATES v. GEORGE M. BAIN, JR., The [14,496].
UNITED STATES v. GEORGETOWN BRIDGE CO. [15,202], 3 Cranch, C. C. 369.
UNITED STATES v. GERTRUDE, The [5,369].
UNITED STATES v. GIBERT [15,204], 2 Sumn. 19.
UNITED STATES v. GILBERT [15,205], 17 Int. Rev. Rec. 54.
UNITED STATES v. GILLIAM [15,205a], 1 Hayw. & H. 109.
UNITED STATES v. GILLIES [15,206], Pet. C. C. 159; 3 Wheeler, Crim. Cas. 308.
UNITED STATES v. GILLIS [15,207], 2 Cranch, C. C. 44.
UNITED STATES v. GILMOUR [15,208].
UNITED STATES v. GITMA [15,209], 3 Hughes, 549; 7 Reporter, 361.
UNITED STATES v. GIVEN [15,210], 17 Int. Rev. Rec. 189.
UNITED STATES v. GIVEN [15,211], 17 Int. Rev. Rec. 195.
UNITED STATES v. GIVINGS [15,212], 1 Spr. 75.
UNITED STATES v. GLAB [15,213], 1 McCrary, 166.
UNITED STATES v. GLAMORGAN, The [15,214], 2 Curt. 236.
UNITED STATES v. GLEASON [15,215], Woolw. 75.
UNITED STATES v. GLEASON [15,216], Woolw. 128.
UNITED STATES v. GLENN [15,217], 1 Woods, 400.
United States, Glenn v. [See 5,481.]
UNITED STATES v. GLOVER [15,218], 4 Cranch, C. C. 190.
UNITED STATES v. GODBOLD [15,219], 3 Woods, 550; 5 Reporter, 168; 10 Chi. Leg. News, 140.
UNITED STATES v. GODDARD [15,220], 4 Cranch, C. C. 444.
UNITED STATES v. GODLEY [15,221], 2 Cranch, C. C. 153.
UNITED STATES v. GOLDBACK [15,222], 1 Hughes, 529; 23 Int. Rev. Rec. 129; 9 Chi. Leg. News, 256.
UNITED STATES v. GOLDBERG [15,223], 7 Biss. 175.
UNITED STATES v. GOLDING [15,224], 2 Cranch, C. C. 212.
UNITED STATES v. GOLDMAN [15,225], 3 Woods, 187.
United States, Goldsborough v. [See 5,519.]
UNITED STATES v. GOLDSTEIN'S SURETIES, [15,226], 1 Dill. 413.
UNITED STATES v. GOOD FRIENDS, The [15,227], 4 Hall, Law J. 488.
UNITED STATES v. GOODRICH TRANSP. CO. [15,228], 8 Biss. 224.
UNITED STATES v. GOODWIN [15,229], 4 Mason, 128.
United States, Goodwin v. [See 5,554.]
UNITED STATES v. GOOSELEY [15,230], 1 Burr's Trial, 222.
UNITED STATES v. GORDON [15,231], 5 Blatchf. 18.
UNITED STATES v. GORDON [15,232], 1 Brock. 190.
UNITED STATES v. GORDON [15,233], 1 Cranch, C. C. 58.
UNITED STATES v. GORDON [15,234], 1 Cranch, C. C. 81.
UNITED STATES v. GORDON, The [15,234a].
UNITED STATES v. GORHAM [15,235], 6 Blatchf. 530.

UNITED STATES v. GORMAN [15,236], 4 Cranch, C. C. 550.
UNITED STATES v. GORMAN [15,237], 4 Cranch, C. C. 574.
UNITED STATES v. GOUGHNOUR [15,238], 4 West. Law Month. 561; 10 Pittsb. Leg. J. 130; 2 Pittsb. Rep. 369.
UNITED STATES v. GOULD [15,239], 8 Amer. Law Reg. 525.
UNITED STATES v. GOURE [15,240], 4 Cranch, C. C. 488.
UNITED STATES v. GOURLAY [15,241], 2 Wheeler, Crim. Cas. 102.
UNITED STATES v. GOVERNOR CUSHMAN, The [5,646].
UNITED STATES v. GRACE MEADE, The [15,243], 2 Hughes, 83; 22 Int. Rev. Rec. 91.
UNITED STATES v. GRAFF [15,244], 14 Blatchf. 381.
UNITED STATES v. GRAFTON [15,245], 9 Hunt, Mer. Mag. 369.
UNITED STATES v. GRAHAM [15,246], Hoff. Op. 60; Hoff. Dec. 67.
UNITED STATES v. GRANT [15,247], 7 Chi. Leg. News, 116.
UNITED STATES v. GRASSIN [15,248], 3 Wash. C. C. 65.
UNITED STATES v. GRATIOT [15,249], 1 McLean, 454.
UNITED STATES v. GRAVES [15,250], 2 Brock. 379.
UNITED STATES v. GRAY [15,251], 2 Cranch, C. C. 675.
UNITED STATES v. GRAY [15,252], 3 Cranch, C. C. 681.
UNITED STATES v. GRAY [15,253], 3 Haz. Reg. U. S. 227.
UNITED STATES v. GREATHOUSE [15,254], 4 Sawy. 457; 2 Abb. U. S. 364.
UNITED STATES v. GREEN [15,255], 2 Cranch, C. C. 520.
UNITED STATES v. GREEN [15,256], 3 Mason, 482.
UNITED STATES v. GREEN [15,257], 9 Reporter, 235.
UNITED STATES v. GREENE [15,258], 4 Mason, 427.
UNITED STATES ex rel. DAVIS v. GREENE COUNTY COURT [15,259], 5 Dill. 288, note.
UNITED STATES v. GREENWOOD [15,260], 1 Cranch. C. C. 186.
UNITED STATES v. GREER [15,261], Hoff. Land Cas. 72.
United States, Gregory v. [See 5,803.]
UNITED STATES v. GREINER [15,262], 24 Law Rep. 91; 18 Leg. Int. 149; 3 West. Law Month. 430; 4 Phila. 396.
UNITED STATES v. GRIFFITH [15,263], 2 Cranch, C. C. 366.
UNITED STATES v. GRIMES [3,393].
United States, Grimes v. [See 5,828.]
UNITED STATES v. GRIMES [15,265], Hoff. Land Cas. 137.
UNITED STATES v. GRISWOLD [15,266], 5 Sawy. 25; 10 Chi. Leg. News, 50.
UNITED STATES v. GROTENKEMPER [15,267], 2 Bond, 140.
UNITED STATES v. GRUSH [15,268], 5 Mason, 290; 1 U. S. Law Int. 214.
UNITED STATES v. GUERRERO [15,269], Hoff. Land Cas. 94.
UNITED STATES v. GUINET [15,270], 2 Dall. 321; Whart. St. Tr. 93.
UNITED STATES v. GURNEY [15,271], 1 Wash. C. C. 446.
UNITED STATES ex rel. GOODRICH v. GUTHRIE [15,271a], 2 Hayw. & H. 140.
UNITED STATES v. GWYNNE [15,272], 1 McLean, 270.
UNITED STATES v. HADE [15,274].
UNITED STATES v. HADE [15,274], 10 Chi. Leg. News, 22.
UNITED STATES v. HAINES [15,275], 5 Mason, 272.
UNITED STATES v. HALBERSTADT [15,276], Gilp. 262.
UNITED STATES v. HALBERSTADT [15,277], Gilp. 352.
UNITED STATES v. HALBERSTADT [15,278], 15 Haz. Pa. Reg. 314.
UNITED STATES v. HALE [15,279], 4 Cranch, C. C. 83.
UNITED STATES v. HALF BARREL, Etc. [15,280], 6 Sawy. 63; 25 Int. Rev. Rec. 335; 5 Sawy. 594.
UNITED STATES v. HALL [15,281], 9 Amer. Law Reg. 232.
UNITED STATES v. HALL [15,282], 3 Chi. Leg. News, 260; 13 Int. Rev. Rec. 181.
UNITED STATES v. HALL [15,283], 4 Cranch, C. C. 229.
UNITED STATES v. HALL [15,284], 2 Dill. 426.
UNITED STATES v. HALL [15,285], 2 Wash. C. C. 366.
UNITED STATES v. HALLORAN [15,286], 14 Blatchf. 1; 22 Int. Rev. Rec. 321; 14 Alb. Law J. 279; 11 Amer. Law Rev. 379; 24 Pittsb. Leg. J. 39.
UNITED STATES v. HALSTED [15,287], 6 Ben. 205.
UNITED STATES v. HAMILTON [15,288], 8 Chi. Leg. News, 211; 22 Int. Rev. Rec. 106; 1 Cin. Law Bul. 27.
UNITED STATES v. HAMILTON [15,289], 25 Int. Rev. Rec. 217; 8 Reporter, 166; 11 Chi. Leg. News, 336.
UNITED STATES v. HAMILTON [15,290], 1 Mason, 152.
UNITED STATES v. HAMILTON [15,291], 1 Mason, 443.
UNITED STATES v. HAMMOND [15,292], 4 Biss. 283.
UNITED STATES v. HAMMOND [15,293], 1 Cranch, C. C. 15.
UNITED STATES v. HAMMOND [15,294], 2 Woods, 197.
UNITED STATES v. HANCOCK [15,295], 3 Cranch, C. C. 81.
UNITED STATES v. HAND [15,296], 6 McLean, 274.
UNITED STATES v. HAND [15,297], 2 Wash. C. C. 435.
UNITED STATES v. HANNIBAL, The [15,298].
UNITED STATES v. HANWAY [15,299], 2 Wall. Jr. 139; 9 Leg. Int. 22; 4 Amer. Law J. (N. S.) 458; 9 West. Law J. 103.
UNITED STATES v. HARBISON [15,300], 13 Int. Rev. Rec. 118.
UNITED STATES v. HARDING [15,301], 1 Wall. Jr. 127; 6 Pa. Law J. 14; 3 Pa. Law J. Rep. 473; 3 Leg. Int. 41.
UNITED STATES v. HARE [15,302], 1 Cranch, C. C. 82.
UNITED STATES v. HARE [15,303], 4 Sawy. 653.
UNITED STATES v. HARE [15,304], 2 Wheeler, Crim. Cas. 283; Brunner, Col. Cas. 449.
UNITED STATES v. HARE [15,304].
UNITED STATES v. HARGRAVE [15,306], 17 Int. Rev. Rec. 39; 5 Chi. Leg. News, 208.
UNITED STATES v. HARKER [15,307], 3 Sawy. 237.
UNITED STATES v. HARMISON [15,308], 3 Sawy. 556.
UNITED STATES v. HARRIES [15,309], 2 Bond, 311.
UNITED STATES v. HARRILL [15,310], 1 McAll. 243.
UNITED STATES v. HARRIMAN [15,311], 1 Hughes, 525.
UNITED STATES v. HARRIS [15,312], 1 Abb. U. S. 110; 5 Int. Rev. Rec. 21.
UNITED STATES v. HARRIS [15,313].
UNITED STATES v. HARRIS [15,314], 12 Blatchf. 434.
UNITED STATES v. HARRIS [15,315], 1 Sumn. 21.
UNITED STATES v. HART [15,316], Pet. C. C. 390; 3 Wheeler, Crim. Cas. 304.
UNITED STATES v. HARTNELL [15,317], Hoff. Land Cas. 207.
UNITED STATES v. HARTWELL [15,318], 3 Cliff. 221; 12 Int. Rev. Rec. 72.
UNITED STATES v. HARTWELL [15,319], 12 Int. Rev. Rec. 50.
UNITED STATES v. HARVEY [15,320], 8 Law Rep. 77; Brunner, Col. Cas. 540.
UNITED STATES v. HASKELL [15,321], 4 Wash. C. C. 402; 2 Wheeler, Crim. Cas. 101.
UNITED STATES v. HASKINS [15,322], 3 Sawy. 262.
UNITED STATES v. HASTINGS [15,323], 5 Cranch, C. C. 115.
UNITED STATES v. HASWELL [15,324], Whart. St. Tr. 684.
UNITED STATES v. HATCH [15,325], 1 Paine, 336.

[Federal Case numbers are given in brackets.]

UNITED STATES v. HATHAWAY [15,326], 3 Mason, 324.
UNITED STATES v. HATTIE JACKSON, The [15,327], 18 Leg. Int. 348.
UNITED STATES v. HAUKEY [15,328], 2 Cranch, C. C. 65.
UNITED STATES v. HAUN [15,329], 8 Amer. Law Reg. 663.
UNITED STATES v. HAVEN [16,788].
UNITED STATES v. HAWKE, The [15,331], Bee, 34.
UNITED STATES v. HAWTHORNE [15,332], 1 Dill. 422.
UNITED STATES v. HAYDEN. [15,333], 52 How. Pr. 471.
UNITED STATES v. HAYNES [15,334], 9 Ben. 22.
UNITED STATES v. HAYNES [15,335], 2 McLean, 155.
UNITED STATES v. HAYWARD [15,336], 2 Gall. 485.
UNITED STATES v. HAZARD [15,337], 22 Int. Rev. Rec. 309; 3 Cent. Law J. 653; 14 Alb. Law J. 236, 264; 9 Chi. Leg. News, 20.
UNITED STATES v. HECKSCHER [15,338], 3 Hunt, Mer. Mag. 71.
UNITED STATES v. HEDGES [15,339], 2 Cranch, C. C. 43.
UNITED STATES v. HEINEGAN [15,340], 1 Cranch, C. C. 50.
UNITED STATES v. HELENA, The [15,341], 24 Hunt, Mer. Mag. 71.
UNITED STATES v. HELENA, The [15,342], 5 McLean, 273.
UNITED STATES v. HELLMAN [15,343], 23 Int. Rev. Rec. 387.
United States, Hellman v. [See 6,341.]
UNITED STATES v. HELRIGGLE [15,344], 3 Cranch, C. C. 179.
UNITED STATES v. HEMMER [15,345], 4 Mason, 105.
UNITED STATES v. HENDRIC [15,346], 2 Sawy. 476; 6 Chi. Leg. News, 224.
UNITED STATES v. HENDRIC [15,347], 2 Sawy. 479.
UNITED STATES ex rel. Castro v. HENDRICKS [15,347a], 2 Hayw. & H. 293.
UNITED STATES v. HENNING [15,348], 4 Cranch, C. C. 608.
UNITED STATES v. HENNING [15,349], 4 Cranch, C. C. 645.
UNITED STATES v. HENRY [15,350], 3 Ben. 29.
UNITED STATES v. HENRY [15,351], 4 Wash. C. C. 428.
UNITED STATES v. HENRY, The [15,352], 4 Blatchf. 359; 16 Leg. Int. 316; 4 Wkly. Law Gaz. 175; 41 Hunt, Mer. Mag. 708.
UNITED STATES v. HENRY C. HOMEYER, The [15,353], 2 Bond, 217.
UNITED STATES v. HERBERT [15,354], 5 Cranch, C. C. 87.
UNITED STATES v. HERBERT [15,354a], 2 Hayw. & H. 210.
UNITED STATES v. HERMANCE [15,355], 15 Blatchf. 6.
UNITED STATES v. HERMANCE [15,356], 24 Int. Rev. Rec. 111.
UNITED STATES v. HERTZ [15,357], 3 Pittsb. Leg. J. 194; Whart. Prec. Ind. § 1123, note.
UNITED STATES v. HESS [15,358], 5 Sawy. 533; 25 Int. Rev. Rec. 201, 240; 8 Reporter, 102; 11 Chi. Leg. News, 320.
UNITED STATES v. HEWES [15,359], Crabbe, 307; 2 Law Rep. 329; 1 Liv. Law Mag. 545; 4 Pa. Law J. Rep. 353; 2 Amer. Law J. (N. S.) 204.
UNITED STATES v. HEWSON [15,360], 7 Law Rep. 361; Brunner, Col. Cas. 532.
United States v. Hiawatha, The. [See 6,452.]
United States, Hickerson v. [See 18,301.]
UNITED STATES v. HICKS [15,360a].
UNITED STATES v. HIGHLEYMAN [15,361], 22 Int. Rev. Rec. 138; 8 Chi. Leg. News, 244.
UNITED STATES v. HIGNERA [15,362], 1 Cal. Law J. 372.
UNITED STATES v. HIGNERA [15,363], 1 Cal. Law J. 387.
UNITED STATES v. HILL [15,364], 1 Brock. 156.
UNITED STATES v. HILL [15,365], 1 Cranch, C. C. 521.
UNITED STATES v. HILLEGAS [15,366], 3 Wash. C. C. 70.
UNITED STATES v. HILLIARD [15,367], 4 Cranch, C. C. 644.
UNITED STATES v. HILLIARD [15,368], 3 McLean, 324.
UNITED STATES v. HILLS [15,369], 4 Cliff. 618; 6 Reporter, 771.
UNITED STATES v. HINMAN [15,370], Baldw. 292.
UNITED STATES v. HIPKIN [15,371], 2 Hall, Law J. 80.
UNITED STATES v. HIRSCHFIELD [15,372], 13 Blatchf. 330.
UNITED STATES v. HOAR [15,373], 2 Mason, 311.
UNITED STATES v. HODGES [15,374], 2 Wheeler, Crim. Cas. 477; Brunner, Col. Cas. 465.
UNITED STATES v. HODGKIN [15,375], 1 Cranch, C. C. 510.
UNITED STATES v. HODSON [15,376], 14 Int. Rev. Rec. 100.
UNITED STATES v. HOLLAND [15,377], 3 Cranch, C. C. 254.
UNITED STATES v. HOLLAND [15,378], 2 N. Y. Leg. Obs. 55.
UNITED STATES v. HOLLEY [15,379], 14 Int. Rev. Rec. 87.
UNITED STATES v. HOLLINSBERRY [15,380], 3 Cranch, C. C. 645.
UNITED STATES v. HOLLY [15,381], 3 Cranch, C. C. 656.
UNITED STATES v. HOLMES [15,382], 1 Cliff. 98.
UNITED STATES v. HOLMES [15,383], 1 Wall. Jr. 1.
UNITED STATES v. HOLTSCLAW [15,384], 2 Hayw. N. C. 379; Brunner, Col. Cas. 31.
UNITED STATES v. HOOD [15,385], 2 Cranch, C. C. 133.
UNITED STATES v. HOOE [15,386], 1 Cranch, C. C. 116.
UNITED STATES v. HOOK [15,387], 3 Pittsb. Rep. 54; 14 Pittsb. Leg. J. 361.
UNITED STATES v. HOPKINS [15,387a], 38 Nile, Reg. 256.
UNITED STATES v. HOPPE [15,388], Hoff. Dec. 4.
UNITED STATES v. HORN [15,389], 5 Blatchf. 102.
United States v. Hornet, The. [See 6,705.]
UNITED STATES v. HORNIBROOK [15,390], 2 Dill. 229.
UNITED STATES v. HORRELL [15,391], Hoff. Land Cas. 78.
UNITED STATES v. HORTON [15,392].
UNITED STATES v. HORTON [15,393], 2 Dill. 94; 18 Int. Rev. Rec. 31, 63; 5 Chi. Leg. News, 471; 21 Pittsb. Leg. J. 17; 5 Leg. Gaz. 255.
UNITED STATES v. HOSMER [15,394], 17 Int. Rev. Rec. 38; 7 Chi. Leg. News, 116.
UNITED STATES v. HOSSACK [15,395].
UNITED STATES v. HOUGHTON [15,396], 14 Int. Rev. Rec. 126.
UNITED STATES v. HOUSE AND LOT NO. 3 ABATTOIR PLACE [15,166], 8 Reporter, 391; 25 Int. Rev. Rec. 319.
UNITED STATES v. HOUSTON [15,398], 4 Cranch, C. C. 261.
UNITED STATES v. HOWARD [15,399].
UNITED STATES v. HOWARD [3,393].
UNITED STATES v. HOWARD [15,400], 7 Biss. 56.
UNITED STATES v. HOWARD [15,401], 11 Int. Rev. Rec. 119.
UNITED STATES v. HOWARD [15,402], 1 Sawy. 507; 13 Int. Rev. Rec. 118.
UNITED STATES v. HOWARD [15,403], 3 Sumn. 12.
UNITED STATES v. HOWARD [15,404], 3 Wash. C. C. 340.
United States, Howard v. [See 6,763.]
UNITED STATES v. HOWE [15,404a], 12 Cent. Law J. 193.
UNITED STATES v. HOWELL [15,405], 4 Wash. C. C. 620; 2 Amer. Lead. Cas. (5th Ed.) 419.
UNITED STATES v. HOWLAND [15,406], 2 Cranch, C. C. 508.
UNITED STATES v. HOXIE [15,407], 1 Paine, 265.
UNITED STATES v. HOYM [15,408], 7 Int. Rev. Rec. 69.
UNITED STATES v. HOYT [15,409], 1 Blatchf. 326.
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UNITED STATES v. HUMASON [15,420], 5 Sawy. 537; 8 Reporter, 70; 25 Int. Rev. Rec. 208; 11 Chi. Leg. News, 328.
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UNITED STATES v. HUMPHREYS [15,422], 3 Hughes, 201; 7 Reporter, 330.
UNITED STATES v. HUNT [15,423], 2 Story, 120; 4 Law Rep. 371.
United States, Hunt v. [See 6,900.]
UNITED STATES v. HUNTER [15,424], 1 Cranch, C. C. 317.
UNITED STATES v. HUNTER [15,425], 1 Cranch, C. C. 446.
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UNITED STATES v. HUTCHINGS [15,429], 2 Wheeler, Crim. Cas. 543; Brunner, Col. Cas. 489.
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UNITED STATES v. IRMA, The [15,444], 12 Int. Rev. Rec. 42.
UNITED STATES v. IRWIN [15,445], 5 McLean, 178; 4 Amer. Law J. (N. S.) 214; 9 West. Law J. 145.
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United States v. The Jane Campbell. [See 7,205, 7,206.]
UNITED STATES v. JARVIS [15,468], 2 Ware (Dav. 274) 278; 4 N. Y. Leg. Obs. 298.
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UNITED STATES v. JOHNSON [15,487], 1 N. J. Law J. 162.
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UNITED STATES v. JONES [15,495], 3 Wash. C. C. 224.
UNITED STATES v. JONES [15,496], 3 Wash. C. C. 228.
United States, Jones v. [See 7,499.]
UNITED STATES v. JONNSON [15,482a].
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United States v. The Joshua Leviness. [See 7,549.]
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United States v. Judges of the Superior Court. [See 1,417.]
UNITED STATES v. JULIA LAWRENCE, The [15,502], 6 Amer. Law Rev. 383.
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UNITED STATES v. KALDENBACH [15,504], 1 Cranch, C. C. 132.
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UNITED STATES v. KEEFE [15,509], 3 Mason, 475.
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United States, Keenan v. [See 18,305.]
UNITED STATES v. KEENE [15,512], 5 McLean, 509.
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UNITED STATES v. KENNEDY [15,523], 1 Cranch, C. C. 312.
UNITED STATES v. KENNEDY [15,524], 3 McLean, 175.
UNITED STATES v. KENNEDY [15,525], 4 Wash. C. C. 91.
UNITED STATES v. KENTON [15,526], 2 Bond, 97.
UNITED STATES v. KERSHNER [15,527], 1 Bond, 432.
UNITED STATES v. KESSLER [15,528], Baldw. 15.
UNITED STATES v. KIE [15,528a], 7 West. Coast Rep. 6.
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UNITED STATES v. KIERMAN [15,529], 3 Cranch, C. C. 435.
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UNITED STATES v. KING [15,532].
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UNITED STATES v. KING [15,534], 1 Cranch, C. C. 444.
UNITED STATES v. KING [15,535], 5 McLean, 208.
UNITED STATES v. KING [15,536], Wall. Sr. 13.
UNITED STATES v. KITTY, The [15,537], Bee, 252.
UNITED STATES v. KNAPP [15,538].
UNITED STATES v. KNIGHT [15,539], 3 Sumn. 358; 1 Law Rep. 257.
UNITED STATES v. KNOWLES [15,540], 4 Sawy. 517.
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UNITED STATES v. KORN [15,543], Gilp. 49.
UNITED STATES v. KROUSE [15,544], 2 Cranch, C. C. 252.
UNITED STATES v. KUHN [15,545], 4 Cranch, C. C. 401.
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United States v. The Lac La Belle. [See 7,968.]
UNITED STATES v. LA COSTE [15,548], 2 Mason, 129.
UNITED STATES ex rel. Crooke v. LAFAYETTE COUNTY COURT [15,549], 5 Dill. 288, note.
UNITED STATES v. LAFONTAINE [15,550], 4 Cranch, C. C. 173.
UNITED STATES v. LA JEUNE EUGENIE [15,551], 2 Mason, 409.
UNITED STATES v. LAKEMAN [15,552], 2 Mason, 229.
UNITED STATES v. LAMBELL [15,553], 1 Cranch, C. C. 312.
UNITED STATES v. LAMBERT [15,554], 2 Cranch, C. C. 137.
UNITED STATES v. LANCASTER [15,555], 7 Biss. 440; 9 Chi. Leg. News, 307.
UNITED STATES v. LANCASTER [15,556], 2 McLean, 431.
UNITED STATES v. LANCASTER [15,557], 4 Wash. C. C. 64.
United States, Lander v. [See 8,039.]
UNITED STATES v. LANDRUM [3,393].
UNITED STATES v. LANE [15,559], 3 McLean, 365.
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UNITED STATES v. LARKIN [15,561], 4 Cranch, C. C. 617.
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United States, Larkin v. [See 8,091.]
UNITED STATES v. LARNED [15,565], 4 Cranch, C. C. 312.
UNITED STATES v. LARNED [15,566], 4 Cranch, C. C. 335.
UNITED STATES v. LATORRE [15,567], 8 Blatchf. 134.
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UNITED STATES v. LAVERTY [15,569a], 3 Mart. (O. S.) 733.
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UNITED STATES v. LAWHEAD [15,570], 10 Chi. Leg. News, 60; 2 Cin. Law Bul. 263, 268.
UNITED STATES v. LAWRENCE, The [15,571].
UNITED STATES v. LAWRENCE [15,572], 13 Blatchf. 211.
UNITED STATES v. LAWRENCE [15,573], 13 Blatchf. 295.
UNITED STATES v. LAWRENCE [15,574], 14 Blatchf. 229.
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UNITED STATES v. LEAVENWORTH, L. & G. R. CO. [15,582], 1 McCrary, 610; 1 Cent. Law J. 425.
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UNITED STATES v. LEE [15,586], 4 Cranch, C. C. 446.
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UNITED STATES v. LEE [15,588], 4 McLean, 103.
United States v. Lee. [See 922.]
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UNITED STATES v. LEESE [15,590], Hoff. Land Cas. 124.
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UNITED STATES v. LEMMONS [15,591a], Hempst. 62.
UNITED STATES v. LENOX [15,592], 2 Paine, 180.
UNITED STATES v. LENT [15,593], 1 Paine, 417.
United States v. The Levi Rowe. [See 8,293, 8,294.]
UNITED STATES v. LEVITT [15,594], 1 N. Y. Leg. Obs. 92.
United States, Lewey v. [See 8,309.]
UNITED STATES v. LEWIS [15,595], 13 N. B. R. 33; 2 Wkly. Notes Cas. 31; 22 Int. Rev. Rec. 39; 32 Leg. Int. 371; 23 Pittsb. Leg. J. 34; 7 Leg. Gaz. 324.
UNITED STATES v. LIBBY [15,596], 1 Hask. 271.
UNITED STATES v. LIBBY [15,597], 1 Woodb. & M. 221.
UNITED STATES v. LIDDLE [15,598], 2 Wash. C. C. 205.
UNITED STATES v. LILIENTHAL [15,599].
United States, Lilienthal's Tobacco v. [See 16,106a.]
UNITED STATES v. LILLA, The [15,600], 2 Cliff. 169.
UNITED STATES v. LIMANTOUR [15,601], Hoff. Land Cas. 389.
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UNITED STATES v. LINDSAY [15,602], 1 Cranch, C. C. 245.
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UNITED STATES v. LINN [15,606], 2 McLean, 501.
UNITED STATES v. LION, The [15,607], 1 Spr. 399.
UNITED STATES ex rel. Ritchie v. LITLE [15,608], 3 Cranch, C. C. 251.
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UNITED STATES v. LITTLE ANN, The [15,611], 2 Hall, Law J. 457.
UNITED STATES v. LITTLE CHARLES, The [15,612], 1 Brock. 347.
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UNITED STATES v. LLOYD [15,619], 4 Cranch, C. C. 472.
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UNITED STATES v. LOGAN [15,624], 12 Int. Rev. Rec. 146.
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UNITED STATES v. LOT OF JEWELRY [15,626], 13 Blatchf. 60.
UNITED STATES v. LOT OF LEAF TOBACCO [15,627], 2 Ben. 76; 6 Int. Rev. Rec. 222.
UNITED STATES v. LOTRIDGE [15,628], 1 McLean, 246.
UNITED STATES v. LOTS AND STORES NOS. 50 & 52 PEARL ST., CINCINNATI [15,629].
UNITED STATES v. LOUDER [15,630], 1 Cranch, C. C. 103.
UNITED STATES v. LOUGHERY [15,631], 13 Blatchf. 267.
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United States v. Low. [See 15,634.]
UNITED STATES v. LOW [15,634], 10 Amer. Law Reg. (N. S.) 455; 13 Int. Rev. Rec. 124.
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UNITED STATES v. LYTLE [15,652], 5 McLean, 9.
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UNITED STATES v. McAVOY [15,654], 4 Blatchf. 418; 18 How. Pr. 380.
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UNITED STATES v. McCARTY [15,657], 1 McLean, 306.
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UNITED STATES v. McCLARE [15,659], 17 Law Rep. 439.
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UNITED STATES v. McCORMICH [15,660a], 2 Hayw. & H. 156.
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UNITED STATES v. McENTEE [15,673], 2 N. W. Rep. (O. S.) 13; 23 Int. Rev. Rec. 368; 10 Chi. Leg. News, 41.
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UNITED STATES v. McFARLANE [15,675], 1 Cranch, C. C. 163.
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UNITED STATES v. McGILL [15,677], 1 Hayw. & H. 59.
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United States, McGlinchy v. [See 8,803.]
UNITED STATES v. McGLUE [15,679], 1 Curt. 1; 2 Liv. Law Mag. 395.
UNITED STATES v. McGURK [15,680], 1 Cranch, C. C. 71.
UNITED STATES v. McHENRY [15,681], 6 Blatchf. 503; 10 Int. Rev. Rec. 42.
UNITED STATES v. McKEAN [15,681a].
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UNITED STATES v. McKEE [15,683], 22 Int. Rev. Rec. 135; 3 Cent. Law J. 258; 1 Cin. Law Bul. 107.
UNITED STATES v. McKEE [15,683].
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UNITED STATES v. McKEE [15,687], 4 Dill. 1; 3 Cent. Law J. 292.
UNITED STATES v. McKEE [15,688], 4 Dill. 128; 5 Reporter. 7; 10 Chi. Leg. News, 18; 6 Amer. Law Rec. 196; 23 Int. Rev. Rec. 338; 25 Pittsb. Leg. J. 29.
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UNITED STATES v. McKNIGHT [15,695], 1 Cranch, C. C. 84.
UNITED STATES v. MACKOY [15,696], 2 Dill. 299.
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UNITED STATES v. McLELLAN [15,698], 3 Sumn. 345.
United States, McLellan v. [See 8,895.]
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UNITED STATES v. MACOMB [15,702], 5 McLean, 286.
UNITED STATES v. McPHERSON [15,703], 1 Cranch, C. C. 517.
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UNITED STATES v. MADDEN [15,705], 1 Cranch, C. C. 45.
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UNITED STATES v. MANHATTAN, The [15,715], 8 Int. Rev. Rec. 114.
United States v. The Manhattan. [See 9,020.]
UNITED STATES v. MANK [15,715a], 21 Int. Rev. Rec. 235.
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UNITED STATES v. MANN [15,717], 1 Gall. 3.
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United States v. Manning. [See 14,672.]
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United States v. Marchant. [See 16,682.]
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UNITED STATES v. MARK'S SURETIES [11,990].
UNITED STATES v. MARS, The [15,723], 1 Gall. 237.
UNITED STATES v. MARSELIS [15,724], 2 Blatchf. 108.
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UNITED STATES v. MARSHALL [15,726], 1 Cin. Law Bul. 36.
UNITED STATES ex rel. Herbert v. MARSHAL OF THE DISTRICT OF COLUMBIA [15,726a], 2 Hayw. & H. 205.
UNITED STATES ex rel. Kiehler v. MARSHAL OF THE DISTRICT OF COLUMBIA [15,726b], 2 Hayw. & H. 392.
UNITED STATES v. MARSHAL OF DISTRICT OF NORTH CAROLINA [15,727], 2 Brock. 488.
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UNITED STATES v. MARTIN [15,729], 1 Hask. 166.
UNITED STATES v. MARTIN [15,730], 13 Int. Rev. Rec. 19.
UNITED STATES v. MARTIN [15,731], 2 McLean, 256.
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UNITED STATES v. MASON [15,734].
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UNITED STATES v. MASON [15,736], 12 Blatchf. 497.
UNITED STATES v. MASON [15,737], 2 Bond, 183.
UNITED STATES v. MASON [15,738], 2 Cranch, C. C. 410.
UNITED STATES v. MASTERS [15,739], 4 Cranch, C. C. 479.
UNITED STATES v. MATHOIT [15,740], 1 Sawy. 142; 11 Int. Rev. Rec. 158.
UNITED STATES v. MATILDA, The [15,741], 5 Hughes, 44; 4 Hall, Law J. 478; Brunner, Col. Cas. 258.
UNITED STATES v. MATTHEWS [15,741a].
UNITED STATES v. MATTHEWS [15,741b].
UNITED STATES v. MATTHEWS [15,742], 2 Sumn. 470.
UNITED STATES v. MATTINGLY [15,743], 6 Int. Rev. Rec. 19.
United States, Mattingly v. [See 9,295.]
UNITED STATES v. MATTOCK [15,744], 2 Sawy. 148.
UNITED STATES v. MAUK [15,715a].
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UNITED STATES v. MAY [15,751], 2 Cranch, C. C. 507.
UNITED STATES v. MAY [15,752], 3 Mason, 98.
United States v. The May. [See 9,330.]
UNITED STATES v. MAYER [15,753], Deady, 127.
UNITED STATES v. MAYO [15,754], 1 Curt. 433; 2 Liv. Law Mag. 326.
UNITED STATES v. MAYO [15,755], 1 Gall. 396.
UNITED STATES v. MECHANICS' BANK [15,756], Gilp. 51.
UNITED STATES v. MEEKER [15,757], 30 Leg. Int. 344; 9 Phila. 470; 6 Chi. Leg. News, 70; 18 Int. Rev. Rec. 166; 21 Pittsb. Leg. J. 37.
UNITED STATES v. MERCER [15,758], Deady, 502.
UNITED STATES v. MERRIAM [15,759], 3 Chi. Leg. News, 113; 13 Int. Rev. Rec. 11.
United States v. The Merrimac. [See 9,476.]
UNITED STATES v. MERRYMAN [15,759a], 2 Hayw. & H. 337.
United States, Mesa v. [See 9,492.]
UNITED STATES v. METEOR, The [15,760], 3 Amer. Law Rev. 173.
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UNITED STATES v. MEYER [15,761], Whart. Prec. Ind. § 905, note.
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UNITED STATES v. MILBURN [15,765], 4 Cranch, C. C. 478.
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UNITED STATES v. MILLER [15,771], 14 Blatchf. 93.
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UNITED STATES v. MILLER [15,774], 3 Hughes, 553.
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UNITED STATES ex rel. Carhart v. MILLER COUNTY [15,776], 4 Dill. 233.
UNITED STATES v. MILLS [15,777], 15 Int. Rev. Rec. 18.
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UNITED STATES v. MINER [15,780], 11 Blatchf. 511; 19 Int. Rev. Rec. 101.
UNITED STATES v. MINGO [15,781], 2 Curt. 1; 17 Law Rep. 435; 3 Liv. Law Mag. 275.
UNITED STATES v. MINIFIE [15,782], 2 Cranch, C. C. 109.
UNITED STATES v. MINTURN [15,783], 21 Int. Rev. Rec. 182.
UNITED STATES v. MISSISSIPPI, Etc., BOOM CO. [15,784], 3 Fed. 552.
UNITED STATES v. MISSOURI, The [15,785], 9 Blatchf. 433; 15 Int. Rev. Rec. 74.
United States v. The Missouri. [See 9,652.]
UNITED STATES v. MISSOURI, K. & T. RY. CO. [15,786], 1 McCrary, 624; 1 Cent. Law J. 428.
UNITED STATES v. MITCHELL [15,787], Baldw. 366.
UNITED STATES v. MITCHELL [15,788], 2 Dall. 348; Whart. St. Tr. 176.
UNITED STATES v. MITCHELL [15,789], 2 Dall. 357.
UNITED STATES v. MITCHELL [15,790], 1 Hughes, 439.
UNITED STATES v. MITCHELL [15,791], 2 Wash. C. C. 478.
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UNITED STATES v. MOLLER [15,793], 10 Ben. 189.
UNITED STATES v. MOLLER [15,794], 16 Blatchf. 65; 7 Reporter, 390.
UNITED STATES v. MOLLIE, The [15,795], 2 Woods, 318.
UNITED STATES v. MONONGAHELA BRIDGE CO. [15,796], 26 Law Rep. 107; 11 Pittsb. Leg. J. 169; 2 Pittsb. Rep. 475.
UNITED STATES v. MONTE CHRISTO, The [9,-720], 17 Int. Rev. Rec. 31.
UNITED STATES v. MONTELL [15,798], Taney, 47.
United States, Montell v. [See 9,723.]
UNITED STATES v. MONTGOMERY [15,799], 2 Dall. 335.
UNITED STATES v. MONTGOMERY [15,800], 3 Sawy. 544.
UNITED STATES v. MOONEY [15,800a], 14 Phila. 564; 37 Leg. Int. 317; 26 Int. Rev. Rec. 267.
UNITED STATES v. MOORE [15,801], 2 Bond. 34.
UNITED STATES v. MOORE [15,802], 2 Brock. 317.
UNITED STATES v. MOORE [15,803], 2 Lowell, 232.
UNITED STATES v. MOORE [15,804], 7 Reporter, 198; 11 Chi. Leg. News, 140.
UNITED STATES v. MOORE [15,805], Wall. Sr. 23.
UNITED STATES v. MORAGA [15,806], Hoff. Land Cas. 103.
United States, Morehead v. [See 9,792.]
UNITED STATES v. MOREL [15,807], 13 Amer. Jur. 279; Brunner, Col. Cas. 373.
UNITED STATES v. MORGAN [15,808], 1 Cranch, C. C. 278.
UNITED STATES v. MORGAN [15,809], 3 Wash. C. C. 10.
UNITED STATES v. MORIN [15,810], 4 Biss. 93.
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UNITED STATES v. MORRIS [15,812], 1 Balt. Law Trans. 117.
UNITED STATES v. MORRIS [15,813], 16 Blatchf. 133; 7 Reporter, 581; 19 Alb. Law J. 403.
UNITED STATES v. MORRIS [15,814], 2 Bond, 23; 3 Fish. Pat. Cas. 72.
UNITED STATES v. MORRIS [15,815], 1 Curt. 23; 9 West. Law J. 151; 2 Liv. Law Mag. 277; 4 Amer. Law J. (N. S.) 241.
UNITED STATES v. MORRIS [15,816], 1 Paine, 209.
UNITED STATES v. MORRISON [15,817], Chase, 521.
UNITED STATES v. MORRISON [15,818], 1 Sumn. 448.
UNITED STATES v. MORROW [15,819], 4 Wash. C. C. 733.
UNITED STATES v. MORSE [15,820], 3 Story, 87.
UNITED STATES v. MORTIMER [15,821], 1 Hayw. & H. 215.
UNITED STATES v. MORTON [15,822], 1 Lowell, 179.
UNITED STATES v. MOSELY [15,823], 15 Int. Rev. Rec. 8.
UNITED STATES v. MOSES [15,824], 1 Cranch, C. C. 170.
UNITED STATES v. MOSES [15,825], 4 Wash. C. C. 726.
UNITED STATES v. MOTT [15,826], 1 Paine, 188.
UNITED STATES v. MOULTON [15,827], 5 Mason, 537.
UNITED STATES v. MOUNTJOY [15,678].
UNITED STATES v. MOUNTJOY [15,829], 4 Int. Rev. Rec. 9.
UNITED STATES v. MOXLEY [15,830], 2 Cranch, C. C. 64.
UNITED STATES v. MUHLENBRINK [15,831], 1 Woods, 569.
UNITED STATES v. MULLANY [15,832], 1 Cranch, C. C. 517.
UNITED STATES v. MULVANEY [15,833], 4 Parker, Crim. Cas. 164.
United States v. Mulvaney. [See 15,624.]
UNITED STATES v. MUNDELL [15,834], 1 Hughes, 415; 6 Call, 245.
UNITED STATES v. MUNROE [15,835], 5 Mason, 572.
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UNITED STATES v. MURRAY [15,842], 1 Cranch, C. C. 141.
UNITED STATES v. MURRAY, [15,843], 5 McLean, 207.
UNITED STATES v. MYERS [15,844], 2 Brock. 516.
UNITED STATES v. MYERS [15,845], 1 Cranch, C. C. 310.
UNITED STATES v. MYERS [15,846], 3 Hughes, 239; 5 Reporter, 364; 24 Int. Rev. Rec. 44; 25 Pittsb. Leg. J. 143.
UNITED STATES v. MYERS [15,847], 14 Int. Rev. Rec. 14.
UNITED STATES v. MYERS [15,848], 16 N. B. R. 387.
United States, Myers v. [See 9,996.]
UNITED STATES v. MYLER [15,849], 7 Leg. Int. 162.
UNITED STATES v. MYNDERSE [15,850], 7 Blatchf. 483.
UNITED STATES v. MYNDERSE [15,850a], 12 Int. Rev. Rec. 94.
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United States v. Mynderse. [See 14,562.]
UNITED STATES v. NAGLE [15,852], 17 Blatchf. 258; 8 Reporter, 772.
UNITED STATES v. NAILOR [15,853], 4 Cranch, C. C. 372.
UNITED STATES v. NANCY, The [15,854], 3 Wash. C. C. 281.
UNITED STATES v. NARVAEZ [15,855], 1 Cal. Law J. 341.
UNITED STATES v. NASH [15,856], 4 Cliff. 107.
United States v. Nash. [See 16,175.]
United States, Nason v. [See 10,024.]
UNITED STATES v. NATHAN [15,857], 4 Cranch, C. C. 470.
UNITED STATES v. NAYLOR [15,858], 19 Law Rep. 449.
UNITED STATES v. NEALE [15,859], 2 Cranch, C. C. 241.
UNITED STATES v. NEID [15,860], 8 Phila. 169; 13 Int. Rev. Rec. 28; 28 Leg. Int. 36.
UNITED STATES v. NELSON [15,861], 1 Abb. U. S. 135.
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UNITED STATES v. NELSON [15,864], 5 Sawy. 68; 1 San Fran. Law J. 398.
United States, Nelson v. [See 10,116.]
UNITED STATES v. NEPTUNE, The [15,865], 3 Amer. Law Reg. 48.
UNITED STATES v. NETCHER [15,866], 1 Story, 307.
UNITED STATES v. NEW [15,866a].
UNITED STATES v. NEW BEDFORD BRIDGE [15,867], 1 Woodb. & M. 401; 10 Law Rep. 127.
United States v. Newcomb. [See 15,868, 15,869.]
UNITED STATES v. NEWCOMER [15,868], 22 Int. Rev. Rec. 115; 11 Phila. 519; 33 Leg. Int. 94; 1 Cin. Law Bul. 69; 23 Pittsb. Law J. 221; 13 Alb. Law J. 221.
UNITED STATES v. NEWCOMER [15,869], 12 Pittsb. Leg. J. 140.
UNITED STATES v. NEWMARK [15,870], 3 Sawy. 584; 22 Int. Rev. Rec. 114.
UNITED STATES ex rel. Ranger v. NEW ORLEANS [15,871], 2 Woods, 230.
United States, Newport & C. Bridge Co. v. [See 10,186.]
UNITED STATES v. NEW YORK GUARANTY & INDEMNITY CO. [15,872], 8 Ben. 269.
UNITED STATES v. NEW YORK LIFE INS. & TRUST CO. [15,873], 9 Ben. 413; 24 Int. Rev. Rec. 118.
UNITED STATES v. NEW YORK, N. H. & H. R. CO. [15,874], 10 Ben. 144; 24 Int. Rev. Rec. 341.
United States, New York Rectifying Co. v. [See 10,214.]
UNITED STATES v. NICHOLLS [15,875], 4 Cranch, C. C. 191.
UNITED STATES v. NICHOLS [15,876], 4 Cranch, C. C. 290.
UNITED STATES v. NICHOLSON [15,877], 3 Woods, 215.
UNITED STATES v. NICKERSON [15,878], 1 Spr. 232; 17 Law Rep. 266.
UNITED STATES v. NICOLL [15,879], 1 Paine, 646.
UNITED STATES v. NIHOLS [15,880], 4 McLean, 23.
UNITED STATES v. NINE CASES [15,880a].
UNITED STATES ex rel. Ames v. NINE HUNDRED AND FIVE PACKAGES OF TOBACCO [15,881], 10 Int. Rev. Rec. 124.
UNITED STATES v. NINE HUNDRED AND TEN BALES OF COTTON [15,882], Int. Rev. Cas. 66.
UNITED STATES v. NINE HUNDRED BASKETS OF CHAMPAGNE [15,883].
UNITED STATES v. NINE PACKAGES OF LINEN [15,884], 1 Paine, 129.
UNITED STATES v. NINE TRUNKS [15,885], 22 Int. Rev. Rec. 317.
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UNITED STATES v. NINETY DEMIJOHNS AQUADIENTE [15,887].
United States, Ninety-Five Bales of Paper v. [See 10,274.]
UNITED STATES v. NINETY-FIVE BARRELS OF DISTILLED SPIRITS [15,888], 8 Int. Rev. Rec. 105.
UNITED STATES v. NINETY-FIVE BARRELS OF DISTILLED SPIRITS [15,889], 12 Int. Rev. Rec. 123.
UNITED STATES v. NINETY-FIVE BARRELS OF DISTILLED SPIRITS [15,890], 14 Int. Rev. Rec. 6.
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UNITED STATES v. NINETY-TWO BARRELS OF RECTIFIED SPIRITS [15,892], 8 Blatchf. 480.
UNITED STATES v. NISSLEY [15,893], 1 Dill. 586; 13 Int. Rev. Rec. 174.
UNITED STATES v. NOAH [15,894], 1 Paine, 368.
UNITED STATES v. NOBLE [15,895], 5 Cranch, C. C. 371.
UNITED STATES v. NOBLOM [15,896].
United States, Noe v. [See 10,285, 10,286.]
UNITED STATES v. NOLTON [15,897], 5 Blatchf. 427.
UNITED STATES v. NORMENT, The [15,898].
UNITED STATES v. NORRIS [15,899], 1 Cranch, C. C. 411.
UNITED STATES v. NOTT [15,900], 1 McLean, 499.
UNITED STATES v. NOURSE [15,901], 4 Cranch, C. C. 151.
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United States, Nunez v. [See 10,379.]
UNITED STATES v. NUNNEMACHER [15,902], 7 Biss. 111.
UNITED STATES v. NUNNEMACHER [15,903], 7 Biss. 129.
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UNITED STATES v. OBERMEYER [15,907], 5 Ben. 541; 15 Int. Rev. Rec. 83.
UNITED STATES v. O'BRIAN [15,908], 3 Dill. 381; 19 Int. Rev. Rec. 18; 1 Cent. Law J. 11; 21 Pittsb. Leg. J. 81.
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UNITED STATES v. OLNEY [15,918], 1 Abb. U. S. 275; 1 Amer. Law T. Rep. U. S. Cts. 119; Deady, 461; 8 Int. Rev. Rec. 177.
UNITED STATES v. OMEARA [15,919], 1 Cranch, C. C. 165.
UNITED STATES v. ONACHITA, The [15,919a].
UNITED STATES v. O'NEALE [15,920], 2 Cranch, C. C. 183.
UNITED STATES v. ONE BARREL OF WHISKEY [15,921], 4 Int. Rev. Rec. 146.
UNITED STATES v. ONE CASE [15,922], 6 Ben. 493; 17 Int. Rev. Rec. 181.
UNITED STATES v. ONE CASE OF CASHMERE SHAWLS [15,923], 5 N. Y. Leg. Obs. 247.
UNITED STATES v. ONE CASE OF HAIR PENCILS [15,924], 1 Paine, 400.
UNITED STATES v. ONE CASE OF SILK [15,925], 4 Ben. 526; 13 Int. Rev. Rec. 58.
UNITED STATES v. ONE PIECE OF SILK [15,925].
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UNITED STATES v. ONE CASE OF STEREOSCOPIC SLIDES [15,927], 1 Spr. 467; 22 Law Rep. 79.
UNITED STATES v. ONE CASE OF WATCHES, Marked U. H. B. D. [15,927a].
UNITED STATES v. ONE COPPER STILL [15,928], 8 Biss. 270; 11 Chi. Leg. News, 9; 24 Int. Rev. Rec. 317.
UNITED STATES v. ONE DISTILLERY [15,929], 4 Biss. 26.
UNITED STATES v. ONE DISTILLERY [15,930], 2 Bond, 399.
UNITED STATES v. ONE HALF BARREL BRANDY [15,931].
UNITED STATES v. ONE HEMPEN CABLE AND ONE HEMPEN HAWSER [15,931a], 41 Nile, Reg. 273.
UNITED STATES v. ONE HORSE [15,932], 7 Ben. 405; 20 Int. Rev. Rec. 63; 22 Pittsb. Leg. J. 9.
UNITED STATES v. ONE HUNDRED FIFTY BALES UNWASHED WOOL [15,932a].
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UNITED STATES v. ONE HUNDRED AND FIFTY SIX PACKAGES OF TEA [15,933], 2 Int. Rev. Rec. 22.
UNITED STATES v. ONE HUNDRED AND FIFTY-THREE BARRELS OF DISTILLED SPIRITS [15,934], 6 Int. Rev. Rec. 203.
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UNITED STATES v. ONE HUNDRED AND NINETY-ONE CASKS OF GLASSWARE [15,935a].
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UNITED STATES v. ONE HUNDRED AND THIRTY BARRELS OF WHISKEY [15,938], 1 Bond. 587.
UNITED STATES v. ONE HUNDRED AND THIRTY-SEVEN BALES OF COTTON [15,689].
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UNITED STATES v. ONE HUNDRED AND TWENTY-NINE PACKAGES [15,941], 2 Amer. Law Reg. (N. S.) 419.
UNITED STATES v. ONE HUNDRED AND TWENTY-SIX BALES OF PADDING [15,942], 43 Hunt, Mer. Mag. 585.
UNITED STATES v. ONE HUNDRED AND TWENTY-THREE CASKS OF DISTILLED SPIRITS [15,943], 1 Abb. U. S. 573.
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UNITED STATES v. ONE HUNDRED BARRELS OF CEMENT [15,945], 3 Amer. Law Reg. (N. S.) 735.
UNITED STATES v. ONE HUNDRED BARRELS OF DISTILLED SPIRITS [15,946], 1 Lowell, 244; 8 Int. Rev. Rec. 20.
UNITED STATES v. ONE HUNDRED BARRELS OF HIGH WINES [15,947], 23 Int. Rev. Rec. 10.
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United States v. One Hundred Barrels of Whiskey. [See 10,526.]
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United States v. One Large Water Tub. [See 10,532.]
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UNITED STATES v. ONE PIECE OF SILK [15,925].
UNITED STATES v. ONE RECTIFYING ESTABLISHMENT [15,952], 11 Int. Rev. Rec. 45.
UNITED STATES v. ONE SORREL HORSE [15,953], 22 Vt. 655.
UNITED STATES v. ONE STILL [15,954], 5 Blatchf. 403; 5 Int. Rev. Rec. 189.
UNITED STATES v. ONE STILL [15,955], 6 Int. Rev. Rec. 67.
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United States v. One Still. [See 10,534.]
UNITED STATES v. ONE THOUSAND FIVE HUNDRED BALES OF COTTON [15,957], 10 Int. Rev. Rec. 52; 16 Pittsb. Leg. J. 130.
UNITED STATES v. ONE THOUSAND FIVE HUNDRED BALES OF COTTON [15,958], 15 Int. Rev. Rec. 137; 1 Amer. Law Rec. 93; 4 Chi. Leg. News, 245; 6 Amer. Law Rev. 766.
UNITED STATES v. ONE THOUSAND FOUR HUNDRED AND SIX BOXES OF SUGAR [15,959].
UNITED STATES v. ONE THOUSAND FOUR HUNDRED AND TWELVE GALLONS OF DISTILLED SPIRITS [15,960], 10 Blatchf. 428; 17 Int. Rev. Rec. 86.
UNITED STATES v. ONE THOUSAND SEVEN HUNDRED AND FIFTY-SIX SHARES [15,960a].
UNITED STATES v. ONE THOUSAND SEVEN HUNDRED AND FIFTY-SIX SHARES [15,960b].
UNITED STATES v. ONE THOUSAND SEVEN HUNDRED AND FIFTY-SIX SHARES OF CAPITAL STOCK [15,961], 5 Blatchf. 231.
UNITED STATES v. ONE THOUSAND THREE HUNDRED AND EIGHTY-TWO HOGSHEADS OF SUGAR [15,962].
UNITED STATES v. ONE THOUSAND THREE HUNDRED AND EIGHTY-TWO HOGSHEADS OF SUGAR [15,963].
UNITED STATES v. ONE THOUSAND THREE HUNDRED AND SIXTY-THREE BAGS OF MERCHANDISE [15,964], 2 Spr. 85; 25 Law Rep. 600.
UNITED STATES v. ONE THOUSAND TWO HUNDRED AND NINETY-ONE BALES OF TOBACCO [15,965], 2 Lowell, 107; 14 Int. Rev. Rec. 172.
UNITED STATES v. ONE WATER CASK [15,966], 10 Int. Rev. Rec. 93.
UNITED STATES v. OPEN BOAT [15,967], 5 Mason, 120.
UNITED STATES v. OPEN BOAT [15,968], 5 Mason, 232.
United States v. The Orion. [See 10,575.]
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UNITED STATES v. ORTEGA [15,970], Hoff. Land Cas. 135.
UNITED STATES v. ORTEGA [15,971], 4 Wash. C. C. 531.
United States, Osborne v. [See 10,599.]
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UNITED STATES v. OVERTON [15,979], 2 Cranch, C. C. 42.
UNITED STATES v. OWNERS OF THE UNICORN [15,979a], 3 Amer. Law J. 188.
UNITED STATES v. PACHECO [15,980], Hoff. Dec. 62.
UNITED STATES v. PACHECO [15,981], Hoff. Land Cas. 79.
UNITED STATES v. PACHECO [15,982], Hoff. Land Cas. 150.
United States, Pacheco v. [See 10,641.]
UNITED STATES v. PACIFIC RAILROAD [15,983], 4 Dill. 66.
UNITED STATES v. PACIFIC RAILROAD [15,984], 4 Dill. 71; 23 Int. Rev. Rec. 384.
UNITED STATES v. PACKAGE OF LACE [15,985], Gilp. 338.
UNITED STATES v. PACKAGE OF WOOL [15,986], Gilp. 349.
UNITED STATES v. PAGE [15,986a].
UNITED STATES v. PAGE [15,987], Hoff. Land Cas. 80.
UNITED STATES v. PAGE [15,988], 2 Sawy. 353; 17 Int. Rev. Rec. 158; 5 Chi. Leg. News, 363; 20 Pittsb. Leg. J. 158.
UNITED STATES v. PALMER [15,989], 2 Cranch, C. C. 11.
United States, Palmer v. [See 10,695-10,697.]
United States v. The Palo Alto. [See 10,700.]
UNITED STATES v. PALOMARES [15,990], Hoff. Land Cas. 97.
United States, Panaud v. [See 10,704.]
UNITED STATES v. PARK [15,991], 2 Chi. Leg. News, 385.
UNITED STATES v. PARKER [15,992], 2 Dall. 373.
UNITED STATES v. PARKER [15,735].
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UNITED STATES v. PARKHILL [15,994], 2 Wkly. Notes Cas. 604, note.
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UNITED STATES v. PARMELE [15,997], 1 Paine, 252.
United States v. Parmenter. [See 14,756.]
UNITED STATES v. PARROTT [15,998], 1 McAll. 271; 7 Morr. Min. Rep. 335; Hoff. Op. 234.
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UNITED STATES v. PARSONS [16,000], 2 Blatchf. 104.
UNITED STATES v. PARSONS [16,001], 4 Cranch, C. C. 726.
UNITED STATES v. PARSONS [16,002], 1 Lowell, 107.
UNITED STATES v. PARYNTHA DAVIS, The [16,-003], 1 Cliff. 532.
UNITED STATES v. PARYNTHA DAVIS, The [16,-004], 3 Ware, 159.
UNITED STATES v. PASSMORE [16,005], 4 Dall. 372.
UNITED STATES v. PATRICK [16,006], 2 Cranch, C. C. 66.
UNITED STATES v. PATTEN [16,007], Holmes, 421.
UNITED STATES v. PATTERSON [16,008], Gilp. 44.
UNITED STATES v. PATTERSON [16,009], 3 McLean, 53.
UNITED STATES v. PATTERSON [16,010], 3 McLean, 299.
UNITED STATES v. PATTERSON [16,011], 6 McLean, 466.
UNITED STATES v. PAUL SHEARMAN, The [16,-012], Pet. C. C. 98.
UNITED STATES v. PAXTON [16,013], 1 Cranch, C. C. 44.
UNITED STATES v. PAYNE [16,014], 4 Dill. 387.
UNITED STATES v. PAYSON [16,015], 1 Cal. Law J. 235.
UNITED STATES v. PAYSON [16,016], 1 Cal. Law J. 325.
UNITED STATES v. PAYSON [16,017], Hoff. Land Cas. 138.
United States, Peabody v. [See 10,870.]
UNITED STATES v. PEACO [16,018], 4 Cranch, C. C. 601.
UNITED STATES v. PEACOCK [16,019], 1 Cranch, C. C. 215.
UNITED STATES v. PEARCE [16,020], 2 McLean, 14.
UNITED STATES v. PEARCE [16,021], 2 Sumn. 575.
UNITED STATES v. PEARL [16,022], 5 Cranch, C. C. 392.
United States, Pegram v. [See 10,906.]
UNITED STATES v. PELLETREAU [16,023], 14 Blatchf. 126.
United States, Pendleton v. [See 10,924.]
UNITED STATES v. PENELOPE, The [16,024], 2 Pet. Adm. 438.
UNITED STATES v. PENN [16,025], 13 N. B. R. 464.
UNITED STATES v. PENNINGTON [16,026], Pet. C. C. 113.
UNITED STATES v. PENNSYLVANIA CANAL BOAT NOS. 68 AND 69, The [16,027], 30 Leg. Int. 249; 18 Int. Rev. Rec. 56; 8 Amer. Law Rev. 162.
UNITED STATES v. PENSACOLA & G. R. CO. [16,028], 11 Int. Rev. Rec. 78.
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UNITED STATES v. PERALTA [16,031], Hoff. Land Cas. 89.
UNITED STATES v. PERALTA [16,032], Hoff. Op. 63; Hoff. Dec. 6.
UNITED STATES v. PEREZ [16,033], 2 Wheeler, Crim. Cas. 96.
United States, Perkins v. [See 10,990.]
United States, Perots v. [See 10,993.]
UNITED STATES v. PETER [16,034], 2 Cranch, C. C. 98.
UNITED STATES v. PETERS [16,035], 2 Abb. U. S. 494.
UNITED STATES v. PETERSBURG JUDGES OF ELECTION [16,036], 1 Hughes, 493; 14 Amer. Law Reg. (N. S.) 105, 238; 9 Amer. Law Rev. 370.
United States v. Petersburg Registrars of Election. [See 16,036.]
UNITED STATES v. PETERSON [16,037], 1 Woodb. & M. 305.
United States, Peterson v. [See 11,036.]
UNITED STATES v. PETTIS [16,038], 4 Cranch, C. C. 186.
UNITED STATES v. PHELPS [16,039], 17 Blatchf. 312.
UNITED STATES v. PHELPS [16,040], 20 Blatchf. 129.
UNITED STATES v. PHELPS [16,041], 4 Day, 469; Brunner, Col. Cas. 89.
United States, Phillips v. [See 11,107.]
UNITED STATES v. PICAYUNE, The [16,041a].
UNITED STATES v. PICKERING [16,042], 2 Cranch, C. C. 117.
UNITED STATES v. PICKETT [16,043], 1 Bond, 123.
UNITED STATES v. PICO [16,044], Cal. Law J. & Lit. Rev. 78.
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UNITED STATES v. PICO [16,046], Hoff. Land Cas. 172.
UNITED STATES v. PICO [16,047], Hoff. Op. 412.
UNITED STATES v. PICO [16,048], 1 Sawy. 347.
United States, Pico v. [See 11,127-11,130.]
United States v. Pierce. [See 16,016.]
UNITED STATES v. PIGNEL [16,049], 1 Cranch, C. C. 310.
United States v. Pike. [See 16,429.]
UNITED STATES v. PINGREE [16,050], 1 Spr. 339; 19 Law Rep. 667.
UNITED STATES v. PITMAN [16,051], 1 Spr. 196; 15 Law Rep. 36.
UNITED STATES v. PITT, The [16,052], 2 Wheeler, Crim. Cas. 602.
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UNITED STATES v. POAGE [16,059], 6 McLean, 89.
UNITED STATES v. POCKLINGTON [16,060], 2 Cranch, C. C. 293.
United States v. Poillon. [See 16,081.]
UNITED STATES v. POLACK [16,061], Hoff. Land Cas. 284; Hoff. Op. 32.
United States v. Poler. [See 16,075.]
UNITED STATES v. POLHAMUS [16,062], 13 Blatchf. 200.
UNITED STATES v. POLLY AND JANE, The [16,063], 2 Hall, Law J. 458.
UNITED STATES v. POLLY AND NANCY, The [16,064], 1 Hall, Law J. 483.
UNITED STATES v. POMEROY [16,065], 3 N. Y. Leg. Obs. 143.
UNITED STATES v. POMPEY [16,066], 2 Cranch, C. C. 246.
UNITED STATES v. POND [16,067], 2 Curt. 265.
UNITED STATES v. POPE [16,068], Hoff. Land Cas. 141.
UNITED STATES v. POPE [16,069], 24 Int. Rev. Rec. 29; 3 Cin. Law Bul. 30.
UNITED STATES v. PORTE [16,070], 1 Cranch, C. C. 369.
UNITED STATES v. PORTER [16,071].
UNITED STATES v. PORTER [16,072], 2 Cranch, C. C. 60.
UNITED STATES v. PORTER [16,073], 2 Dall. 345; Whart. St. Tr. 174.
UNITED STATES v. PORTER [16,074], 3 Day, 283; Brunner, Col. Cas. 54.
UNITED STATES ex rel. Murphy v. PORTER [16,074a], 2 Hayw. & H. 394.
United States, Porter v. [See 11,290.]
United States v. Porter. [See 14,820.]
UNITED STATES v. POTTER [16,075], Boyce, U. S. Pr. 98.
UNITED STATES v. POTTER [16,076], 25 Int. Rev. Rec. 138, 186; 7 Reporter, 675; 11 Chi. Leg. News, 256.
UNITED STATES v. POTTER [16,077], 6 McLean, 182.
UNITED STATES v. POTTER [16,078], 6 McLean, 186.
UNITED STATES v. POWELL [16,079], 65 N. C. 709.
UNITED STATES v. POWER [16,080], 14 Blatchf. 223.
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UNITED STATES v. PRATT [16,082], 2 Amer. Law T. Rep. (N. S.) 238.
UNITED STATES v. PRENTICE [16,083], 6 McLean, 65.
UNITED STATES v. PRESCOTT [16,084], 2 Abb. U. S. 169; 2 Biss. 325; 9 Amer. Law Reg. (N. S.) 481; 4 N. B. R. 112 (Quarto, 29); 18 Pittsb. Leg. J. 21.
UNITED STATES v. PRESCOTT [16,085], 2 Dill. 405.
UNITED STATES v. PRESSY [16,086], 1 Lowell, 319.
UNITED STATES v. PRESTON [16,087], 4 Wash. C. C. 446.
UNITED STATES v. PRICE [16,088], 3 Hall, Law J. 121.
UNITED STATES v. PRICE [16,089], 2 Wash. C. C. 356.
UNITED STATES v. PRICE [16,090], 2 Wash. C. C. 460.
UNITED STATES v. PRIMROSE [16,091], Gilp. 58.
United States, Prince v. [See 11,425.]
UNITED STATES v. PRIOR [16,092], 5 Cranch, C. C. 37.
UNITED STATES v. PROUT [16,093], 1 Cranch, C. C. 203.
UNITED STATES v. PROUT [16,094], 4 Cranch, C. C. 301.
UNITED STATES v. PRUSSING [16,095], 2 Biss. 344; 12 Int. Rev. Rec. 34; 2 Chi. Leg. News, 385.
UNITED STATES v. PRYOR [16,096], 3 Wash. C. C. 234.
UNITED STATES v. PUMPHREYS [16,097], 1 Cranch, C. C. 74.
UNITED STATES v. PUSEY [16,098], 6 N. B. R. 284.
United States, Putnam v. [See 11,484.]
United States, Pye v. [See 11,488.]
UNITED STATES v. QUANTITY OF DISTILLED SPIRITS [16,099], 4 Ben. 349.
UNITED STATES v. QUANTITY OF DISTILLED SPIRITS [16,100], 6 Int. Rev. Rec. 188.
United States v. Quantity of Distilled Spirits. [See 11,493-11,495.]
United States v. Quantity of Distilled Spirits at No. 133 Mott St. [See 11,495.]
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United States v. Quantity of Manufactured Tobacco. [See 11,499, 16,104, 16,106a.]
UNITED STATES v. QUANTITY OF RAGS [16,103], 7 Amer. Law Reg. (N. S.) 369; 7 Int. Rev. Rec. 123.
UNITED STATES v. QUANTITY OF TOBACCO [16,104].
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UNITED STATES v. QUANTITY OF TOBACCO [16,106], 6 Ben. 68.
UNITED STATES v. QUANTITY OF TOBACCO [16,106a], 16 Int. Rev. Rec. 132; 15 Int. Rev. Rec. 19; 5 Ben. 457.
UNITED STATES v. QUEEN, The [16,107], 4 Ben. 237; 12 Int. Rev. Rec. 42.
UNITED STATES v. QUEEN, The [16,108], 11 Blatchf. 416; 19 Int. Rev. Rec. 14.
UNITED STATES v. QUEEN [16,109], 3 Cranch, C. C. 420.
UNITED STATES v. QUINN [16,110], 8 Blatchf. 48; 3 Amer. Law T. Rep. U. S. Cts. 180; 12 Int. Rev. Rec. 151.
UNITED STATES v. QUITMAN [16,111], 2 Amer. Law Reg. 645.
UNITED STATES v. RADOWITZ [16,112], 8 Reporter, 263.
UNITED STATES v. RAGSDALE [16,113], Hempst. 479.
UNITED STATES v. RAILROAD BRIDGE CO. [16,114], 6 McLean, 517; 3 Liv. Law Mag. 568.
UNITED STATES v. RAMSAY [16,115], Hempst. 481.
UNITED STATES v. RAND [16,116], 4 Sawy. 272.
United States v. Rand, [See 15,008.]
UNITED STATES v. RANDALL [16,117], 2 Cranch, C. C. 412.
UNITED STATES v. RANDALL [16,118], Deady, 524.
UNITED STATES v. RANDALL [16,119], 1 Spr. 546.
UNITED STATES v. RANDOLPH [16,120], 1 Pittsb. Rep. 24; 1 Pittsb. Leg. J. 21.
United States, Randolph v. [See 11,562.]
United States, Ransom v. [See 11,574.]
UNITED STATES v. RATHBONE [16,121], 2 Paine, 578.
UNITED STATES v. RAVARA [16,122], 2 Dall. 297; Whart. St. Tr. 90.
UNITED STATES v. RAVARA [16,122a], 2 Dall. 299, note.
UNITED STATES v. RAWLINSON [16,123], 1 Cranch, C. C. 83.
UNITED STATES v. RAY [16,124], 2 Cranch, C. C. 141.
United States, Raymond v. [See 11,596.]
UNITED STATES v. READ [16,125], 2 Cranch, C. C. 159.
UNITED STATES v. READ [16,126], 2 Cranch, C. C. 198.
UNITED STATES v. READING [16,127], Hoff. Land Cas. 18.
UNITED STATES v. REAGAN [16,128], 15 Int. Rev. Rec. 8.
UNITED STATES v. RECORDER, The [16,129], 1 Blatchf. 218; 5 N. Y. Leg. Obs. 286; 17 Hunt, Mer. Mag. 394.
UNITED STATES v. RECORDER, The [16,130], 2 Blatchf. 119.
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UNITED STATES v. RECTOR [16,132], 5 McLean, 174.
United States, Redman v. [See 11,631.]

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UNITED STATES v. REED [16,135], 13 Int. Rev. Rec. 148.
UNITED STATES v. REED [16,136], 1 Lowell, 232.
UNITED STATES v. REESE [16,137], 5 Dill. 405; 8 Cent. Law J. 453.
UNITED STATES v. REESE [16,138], 4 Sawy. 629.
UNITED STATES v. REEVES [16,139], 3 Woods, 199.
UNITED STATES v. REID [16,140], Hoff. Land Cas. 74.
UNITED STATES v. REID [16,141], Hoff. Land Cas. 129.
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UNITED STATES v. REINDEER, The [16,144], 2 Cliff. 57.
UNITED STATES v. REINDEER, The [16,145], 14 Law Rep. 235.
UNITED STATES v. REITER [16,146], 4 Amer. Law Reg. (N. S.) 534.
UNITED STATES v. RENDELL [16,147], 1 Curt. 369.
UNITED STATES v. REPUBLICAN BANNER OFFICERS [16,148], 11 Pittsb. Leg. J. 153.
UNITED STATES v. REYMERT [16,149], 1 Int. Rev. Rec. 63.
UNITED STATES v. RHAWN [16,150], 11 Phila. 521; 22 Int. Rev. Rec. 235; 33 Leg. Int. 258; 1 Thomp. Nat. Bank Cas. 358; 2 Wkly. Notes Cas. 604; 8 Chi. Leg. News, 372; 23 Pittsb. Leg. J. 199.
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UNITED STATES v. RHODES [16,152], 1 Cranch, C. C. 447.
UNITED STATES v. RICE [16,153], 1 Hughes, 560.
UNITED STATES v. RICHARD [16,154], 2 Cranch, C. C. 439.
UNITED STATES v. RICHARDSON [16,155], 5 Cranch, C. C. 348.
UNITED STATES v. RICHARDSON [16,156], Hoff. Dec. 69.
UNITED STATES v. RICHARDSON [16,156].
UNITED STATES v. RICKETTS [16,158], 1 Cranch, C. C. 164.
UNITED STATES v. RICKETTS [16,159], 2 Cranch, C. C. 553.
UNITED STATES v. RICO [16,160], Hoff. Dec. 48.
UNITED STATES v. RICO [16,161], Hoff. Land Cas. 161.
UNITED STATES v. RIDDLE [16,162], 4 Wash. C. C. 644.
UNITED STATES v. RIGSBY [16,163], 2 Cranch, C. C. 364.
UNITED STATES v. RILEY [16,164], 5 Blatchf. 204.
UNITED STATES v. RINDSKOPF [16,165], 6 Biss. 259; 1 N. Y. Wkly. Dig. 223; 21 Int. Rev. Rec. 326; 8 Chi. Leg. News, 9.
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UNITED STATES v. RINGGOLD [16,167], 5 Cranch, C. C. 378.
United States v. The Rising Dawn. [See 11,857.]
UNITED STATES v. RITCHIE [16,168], 4 Chi. Leg. News, 139; 15 Int. Rev. Rec. 43; 6 Amer. Law Rev. 575.
UNITED STATES v. RITTER [16,169], 3 Cranch, C. C. 61.
UNITED STATES v. ROBBINS [16,170], 11 Int. Rev. Rec. 157.
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United States v. Robbins. [See 16,171.]
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UNITED STATES v. ROBERTSON [16,174], 5 Cranch, C. C. 38.
UNITED STATES v. ROBINS [16,175], Bee, 266; 1 Jour. Jur. (7 Amer. Law J.) 18; Whart. St. Tr. 392.
UNITED STATES v. ROBINSON [16,176], 4 Mason, 307.
UNITED STATES v. ROBINSON [16,177], 1 Sawy. 219.
UNITED STATES v. ROBINSON [16,178], 1 Wall. Jr. 161.
UNITED STATES v. ROB ROY, The [16,179], 1 Woods, 42; 13 N. B. R. 235.
UNITED STATES v. ROCHE [16,180], 1 McCrary, 385.
United States, Roddy v. [See 11,990.]
UNITED STATES v. RODRIGUEZ [16,181], Hoff. Land Cas. 175.
UNITED STATES v. RODRIGUEZ [16,181a], 1 Cal. Law J. 358.
UNITED STATES v. RODRIGUEZ [16,182], 1 Cal. Law J. 361.
UNITED STATES v. RODRIGUEZ [16,183], 1 Cal. Law J. 363.
UNITED STATES v. RODRIGUEZ [16,184], Hoff. Land Cas. 82.
UNITED STATES v. RODRIGUEZ [16,185], Hoff. Land Cas. 170.
United States, Rodriguez v. [See 16,181.]
UNITED STATES v. ROELLE [16,186], 6 Reporter, 550; 24 Int. Rev. Rec. 332; 11 Chi. Leg. News, 18.
UNITED STATES v. ROGERS [16,187], Hempst. 450.
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UNITED STATES v. ROGERS [16,189], 3 Sumn. 342.
UNITED STATES v. ROLAND [16,190], 1 Cal. Law J. 298.
UNITED STATES v. ROLIGER [16,190a], 28 Int. Rev. Rec. 314.
UNITED STATES v. ROLLINSON [16,191], 2 Cranch. C. C. 13.
United States, Romero v. [See 12,029.]
UNITED STATES v. RONZONE [16,192], 14 Blatchf. 69.
UNITED STATES v. ROSE [16,193], 2 Cranch, C. C. 567.
UNITED STATES v. ROSE [16,194], 3 Cranch, C. C. 174.
UNITED STATES v. ROSE [16,195], Hoff. Land Cas. 197.
United States v. Rose. [See 10,285, 10,286.]
UNITED STATES v. ROSS [16,196], 1 Gall. 624.
UNITED STATES v. ROSSVALLY [16,197], 3 Ben. 157.
UNITED STATES v. ROUDENBUSH [16,198], Baldw. 514.
UNITED STATES v. ROUNSAVEL [16,199], 2 Cranch, C. C. 133.
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UNITED STATES v. RUCKER [16,203], 1 Amer. Law Rev. 217.
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UNITED STATES v. RUM RIVER & M. BOOM CO. [16,206], 3 Fed. 552.
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UNITED STATES v. RUSSEL [16,209], 4 Dall. 414, note.
United States, Russell v. [See 12,164.]
UNITED STATES v. RUTHERFORD [16,210], 2 Cranch, C. C. 528.
UNITED STATES v. RYCRAFT [16,211].
UNITED STATES v. SA-COO-DA-COT [16,212], 1 Abb. U. S. 377; 1 Dill. 271; 3 Amer. Law T. Rep. U. S. Cts. 113.
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UNITED STATES v. SALISBURY [16,214], 2 N. Y. Leg. Obs. 53.
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United States v. Sanchez. [See 16,015.]
UNITED STATES v. SANDER [16,219], 6 McLean, 598.
UNITED STATES v. SANDERS [16,220], Hempst. 483.
UNITED STATES v. SANDFORD [16,221], 1 Cranch, C. C. 323.
United States, San Francisco v. [See 12,316.]
UNITED STATES v. SANTOS [16,222], 5 Blatchf. 104.
UNITED STATES v. SARAH B. HARRIS, The [16,-223], 4 Cliff. 147; 12 Int. Rev. Rec. 54.
UNITED STATES v. SARCHET [16,224], Gilp. 273.
UNITED STATES v. SAVAGE [16,225], 5 Mason, 460.
UNITED STATES v. SAVALOFF [16,252].
UNITED STATES v. SAVANNAH, The [16,226a].
UNITED STATES v. SAWYER [16,227], 1 Gall. 86.
United States, Schaumburg v. [See 12,442.]
UNITED STATES v. SCHILLINGER [16,228], 14 Blatchf. 71.
UNITED STATES v. SCHIMER [16,229], 5 Biss. 195.
UNITED STATES v. SCHMIDT [16,316a].
United States, Schmidt v. [See 16,316a.]
UNITED STATES v. SCHOLFIELD [16,230], 1 Cranch, C. C. 130.
UNITED STATES v. SCHOLFIELD [16,231], 1 Cranch, C. C. 255.
UNITED STATES v. SCHOYER [16,232], 2 Blatchf. 59.
UNITED STATES v. SCHOYER [16,232a].
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UNITED STATES v. SCHULER [16,234], 6 McLean, 28.
UNITED STATES v. SCHUMANN [16,235], 2 Abb. U. S. 523; 7 Sawy. 439.
UNITED STATES v. SCHUMENANT [16,236].
UNITED STATES v. SCHWARTZ [16,237], 4 Cranch, C. C. 160.
UNITED STATES v. SCIENCE, The [16,239].
UNITED STATES v. SCIENCE, The [16,239], 2 Pittsb. Rep. 446; 11 Pittsb. Leg. J. 3, 9; 5 Phila. 257; 20 Leg. Int. 68; 10 Pittsb. Leg. J. 203.
UNITED STATES v. SCIOTA, The [16,240], 5 West. Law Month. 29.
UNITED STATES v. SCOTT [16,240b].
UNITED STATES v. SCOTT [16,241], 4 Biss. 29.
UNITED STATES v. SCOTT [16,242], 3 Woods, 334.
UNITED STATES v. SCROGGINS [16,243], Hempst. 478.
UNITED STATES v. SCROGGINS [16,244], 3 Woods, 529.
UNITED STATES v. SEAGRIST [16,245], 4 Blatchf. 420.
UNITED STATES v. SEAMAN [16,245a], 2 Hayw. & H. 151.
UNITED STATES v. SEARS [16,246], 1 Code Rep. 128; 1 West. Leg. Obs. 80.
UNITED STATES v. SEARS [16,247], 1 Gall. 215.
United States, Sears v. [See 12,592.]
UNITED STATES v. SECOND NAT. BANK OF NEW JERSEY [16,248].
UNITED STATES v. SEELEY [16,248a].
UNITED STATES v. SEGARS [16,249], 3 Phila. 517; 16 Leg. Int. 388.
UNITED STATES ex rel. Jones v. SELDON [16,-249a], 2 Hayw. & H. 332.
UNITED STATES v. SEMPLE [16,250], Hoff. Dec. 14.
United States, Semple v. [See 12,661, 12,662.]
UNITED STATES v. SENECA, The [16,251], 1 Amer. Law Reg. (N. S.) 281; 4 West. Law Month. 78; 1 Biss. 371.
UNITED STATES v. SEVELOFF [16,252], 2 Sawy. 311; 17 Int. Rev. Rec. 20.
UNITED STATES v. SEVEN BARRELS DISTILLED OIL [16,253], 6 Blatchf. 174.
UNITED STATES v. SEVEN BARRELS DISTILLED OIL [16,253a], 8 Int. Rev. Rec. 162.
UNITED STATES v. SEVEN HUNDRED AND THREE CASKS OF RICE [16,253b].
UNITED STATES v. SEVEN LARGE FERMENTING TUBS [16,254].
UNITED STATES v. SEVENTEEN EMPTY BARRELS [16,255], 3 Dill. 285; 8 Chi. Legal News, 74; 21 Int. Rev. Rec. 391.
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UNITED STATES v. SEVENTY-EIGHT BARRELS [16,257], 7 Int. Rev. Rec. 4.
UNITED STATES v. SEVENTY-EIGHT CASES OF BOOKS [16,258], 2 Bond, 271.
UNITED STATES v. SEVENTY-EIGHT CASES OF BOOKS [16,258a], 2 Bond, 281.
UNITED STATES v. SEVENTY-EIGHT CASES OF BOOKS [16,258b], 2 Bond, 285.
UNITED STATES v. SEVENTY-EIGHT CASKS OF WHITE WINE [16,259], 9 Int. Rev. Rec. 105.
UNITED STATES v. SHACKELFORD [16,260], 3 Cranch, C. C. 178.
UNITED STATES v. SHACKELFORD [16,261], 3 Cranch, C. C. 287.
UNITED STATES v. SHACKFORD [16,262], 5 Mason, 445.
UNITED STATES v. SHACKFORD [16,263], 1 Ware (171) 169.
UNITED STATES v. SHARP [16,264], Pet. C. C. 118.
UNITED STATES v. SHARP [16,265], Pet. C. C. 131.
UNITED STATES v. SHAW [16,266], 1 Cliff. 317.
UNITED STATES v. SHAW [16,267], 4 Cranch, C. C. 593.
UNITED STATES v. SHAW-MUX [16,268], 2 Sawy. 364; 5 Chi. Leg. News, 352.
UNITED STATES v. SHEA [16,269], 5 Blatchf. 546; 1 Amer. Law T. Rep. U. S. Cts. 14; 6 Int. Rev. Rec. 198.
UNITED STATES v. SHELDON [16,270], Hoff. Land Cas. 171.
UNITED STATES v. SHELLMIRE [16,271], Baldw. 370.
UNITED STATES v. SHELTON [16,272], 1 Brock. 517.
UNITED STATES v. SHEPARD [16,273], 1 Abb. U. S. 431; 2 Chi. Leg. News, 317; 12 Int. Rev. Rec. 10.
United States v. Shephard. [See 16,273.]
UNITED STATES v. SHEPHERD [16,274], 1 Hughes, 520.
UNITED STATES v. SHEREBECK [16,275], Hoff. Dec. 11.
UNITED STATES v. SHERIFF OF CHARLESTON [16,276], Bee, 196.
UNITED STATES v. SHERLOCK [16,277], 18 Int. Rev. Rec. 5.
UNITED STATES v. SHIVE [16,278], Baldw. 510.
UNITED STATES v. SHOEMAKER [16,279], 2 McLean, 114.
UNITED STATES v. SHOREY [16,280], 9 Int. Rev. Rec. 201.
UNITED STATES v. SHOREY [16,281], 9 Int. Rev. Rec. 202.
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UNITED STATES v. SHORTER [16,284], 1 Cranch, C. C. 371.
UNITED STATES v. SHUCK [16,285], 1 Cranch, C. C. 56.
UNITED STATES v. SHULTS [16,286], 6 McLean, 121.
UNITED STATES v. SHUSTER [16,287].
UNITED STATES v. SICKLES [16,287a], 2 Hayw. & H. 319.
UNITED STATES ex rel. Hewett v. SILVERMAN [16,288], 4 Dill. 224.
UNITED STATES v. SIMMONS [16,289], 14 Blatchf. 473.
UNITED STATES v. SIMS [16,290], 4 Cranch, C. C. 618.
UNITED STATES v. SIMONS [16,291], 1 Abb. (U. S.) 470; 12 Int. Rev. Rec. 10; 7 Phila. 607; 3 Pittsb. Rep. 261; 18 Pittsb. Leg. J. 60; 27 Leg. Int. 236; 5 Amer. Law Rev. 187.
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UNITED STATES v. SIX BOXES OF ARMS [16,295], 1 Bond, 446.
UNITED STATES v. SIX FERMENTING TUBS [16,296], 1 Abb. U. S. 268; 8 Int. Rev. Rec. 9; 1 Amer. Law T. Rep. U. S. Cts. 126; 7 Amer. Law Reg. (N. S.) 751.
United States, Six Hundred and Fifty-One Chests of Tea v. [See 12,916.]
UNITED STATES v. SIX HUNDRED AND SIXTY-ONE BALES OF TOBACCO [16,297], 24 Int. Rev. Rec. 77.
UNITED STATES v. SIX IRON BOXES, Etc. [16,465a].
UNITED STATES v. SIX LOTS OF GROUND [16,299], 1 Woods, 234.
UNITED STATES v. SIXTEEN BARRELS OF DISTILLED SPIRITS [16,300], 10 Ben. 484.
UNITED STATES v. SIXTEEN CASES OF SILK RIBBONS [16,301], 12 Int. Rev. Rec. 175.
UNITED STATES v. SIXTEEN HOGSHEADS OF TOBACCO [16,302], 2 Bond, 137.
UNITED STATES v. SIXTEEN PACKAGES [16,303], 2 Mason, 48.
UNITED STATES v. SIX THOUSAND TWO HUNDRED AND FIFTY CIGARS [16,304], 11 Int. Rev. Rec. 11.
UNITED STATES v. SIXTY 5-8 CARATS BRILLIANTS [16,305], 10 Blatchf. 221.
UNITED STATES v. SIXTY-FIVE PACKAGES OF GLASS [16,305a].
UNITED STATES v. SIXTY-FOUR BARRELS DISTILLED SPIRITS [16,306], 3 Cliff. 308.
UNITED STATES v. SIXTY-NINE BARRELS OF RUM [16,307], 2 Int. Rev. Rec. 45.
UNITED STATES v. SKAM [16,308], 5 Cranch, C. C. 367.
UNITED STATES v. SKINNER [16,309], 2 Wheeler, Crim. Cas. 232; Brunner, Col. Cas. 446.
UNITED STATES v. S. K. KIRBY, The [16,310].
UNITED STATES v. SLACUM [16,311], 1 Cranch, C. C. 485.
UNITED STATES v. SLADE [16,312], 2 Mason, 71.
UNITED STATES v. SLAYMAKER [16,313], 4 Wash. C. C. 169.
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UNITED STATES ex rel. Reed v. SMALLWOOD [16,315], 1 Chi. Leg. News, 321; 2 Amer. Law T. Rep. U. S. Cts. 109; 1 Leg. Gaz. 47.
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UNITED STATES v. SMIDTH [16,316a].
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UNITED STATES v. SMITH [16,319], 2 Blatchf. 127.
UNITED STATES v. SMITH [16,320], 3 Blatchf. 255.
UNITED STATES v. SMITH [16,321], 1 Bond, 68; 5 Amer. Law Reg. 268.
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UNITED STATES v. SMITH [16,323], Brunner, Col. Cas. 430; 6 Dane, Abr. 718.
UNITED STATES v. SMITH [16,324], 1 Cranch, C. C. 127.
UNITED STATES v. SMITH [16,325], 1 Cranch, C. C. 475.
UNITED STATES v. SMITH [16,326], 2 Cranch, C. C. 111.
UNITED STATES v. SMITH [16,327], 3 Cranch, C. C. 66.
UNITED STATES v. SMITH [16,328], 4 Cranch, C. C. 629.
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UNITED STATES v. SMITH [16,330], 4 Cranch, C. C. 727.
UNITED STATES v. SMITH [16,331], 5 Cranch, C. C. 484.
UNITED STATES v. SMITH [16,332], 4 Day, 121; Brunner, Col. Cas. 82; N. C. Cas. 81.
UNITED STATES v. SMITH [16,333], 1 Dill. 212.
UNITED STATES v. SMITH [16,334], 2 Hall, Law J. 456.
UNITED STATES v. SMITH [16,335], 1 Hughes, 347.
UNITED STATES v. SMITH [16,336], 19 Law Rep. 91.
UNITED STATES v. SMITH [16,337], 1 Mason, 147.
UNITED STATES v. SMITH [16,338], 2 Mason, 143.
UNITED STATES v. SMITH [16,339], 13 N. B. R. 61.
UNITED STATES v. SMITH [16,339a], 19 Niles, Reg. 319.
UNITED STATES v. SMITH [16,340], 1 Sawy. 192.
UNITED STATES v. SMITH [16,341], 1 Sawy. 277; 12 Int. Rev. Rec. 135.
UNITED STATES v. SMITH [16,341a], 3 Wheeler, Cr. Cas. 100.
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UNITED STATES v. SMITH [16,342a].
UNITED STATES v. SMITH [16,342b].
UNITED STATES v. SMITH [16,343], 2 Wash. C. C. 310.
UNITED STATES v. SMITH [16,344], 3 Wash. C. C. 78.
UNITED STATES v. SMITH [16,345], 3 Wash. C. C. 525.
UNITED STATES v. SMITH [16,346], 1 Woodb. & M. 184.
United States, Smith v. [See 13,122.]
UNITED STATES v. SMITHERS [16,347], 2 Cranch, C. C. 38.
UNITED STATES v. SMOCK [16,348], 4 Int. Rev. Rec. 202.
UNITED STATES v. SNOW [16,349], 1 Cranch, C. C. 123.
UNITED STATES v. SNOW [16,350], 2 Flip. 1; 23 Int. Rev. Rec. 78; 15 Alb. Law J. 219; 2 Cin. Law Bul. 47.
UNITED STATES v. SNYDER [16,351], 4 Wash. C. C. 559.
UNITED STATES v. SONACHALL [16,352], 4 Biss. 425.
UNITED STATES v. SOPER [16,353], 4 Cranch, C. C. 623.
UNITED STATES v. SOTO [16,354], 1 Cal. Law J. 328.
UNITED STATES v. SOTO [16,355], Hoff. Land Cas. 8.
UNITED STATES v. SOTO [16,356], Hoff. Land Cas. 77.
UNITED STATES v. SOTO [16,357], Hoff. Land Cas. 182.
United States v. Soto. [See 16,156.]
UNITED STATES v. SOUDERS [16,358], 2 Abb. U. S. 456.
UNITED STATES v. SOUTH BRANCH DISTILLING CO. [16,359], 8 Biss. 162.
UNITED STATES v. SOUTH CAROLINA, The [16,360], Fish. Pr. Cas. 63.
UNITED STATES v. SOUTHMAYD [16,361], 6 Biss. 321; 1 N. Y. Wkly. Dig. 155; 8 Chi. Leg. News, 1; 21 Int. Rev. Rec. 164; 22 Pittsb. Leg. J. 150; 7 Leg. Gaz. 316.
UNITED STATES v. SOWERS [16,363].
UNITED STATES v. SOWERS [16,363], 14 Phila. 525; 36 Leg. Int. 488; 25 Int. Rev. Rec. 405.
UNITED STATES v. SPALDING [16,364], 4 Cranch, C. C. 616.
UNITED STATES v. SPALDING [16,365], 2 Mason, 478.
UNITED STATES v. SPEDDEN, The [2,394].
UNITED STATES v. SPEEDEN [16,366], 1 Cranch, C. C. 535.
UNITED STATES v. SPENCER [16,367], 2 McLean, 265.
UNITED STATES v. SPENCER [16,368], 2 McLean, 405.
UNITED STATES v. SPERRY [16,369], 10 Int. Rev. Rec. 205.
UNITED STATES v. SQUAUGH [16,370], 1 Cranch, C. C. 174.
UNITED STATES v. STADACONA, The [16,371], 14 Int. Rev. Rec. 147; 4 Amer. Law T. Rep. U. S. Cts. 213; 1 Leg. Gaz. Rep. 282; 8 Phila. 155; 28 Leg. Int. 333; 6 Amer. Law Rev. 386; 3 Leg. Gaz. 317.
UNITED STATES v. STAFFORD [16,372], 2 Paine, 525.
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[Federal Case numbers are given in brackets.]

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UNITED STATES v. STARR [16,379], Hempst. 469.
UNITED STATES v. STATE NAT. BANK OF MINNEAPOLIS [16,380], 2 Cent. Law J. 107.
UNITED STATES v. STATE NAT. BANK OF MINNEAPOLIS [16,381], 1 McCrary, 133.
UNITED STATES v. STATON [16,382], 2 Flip. 319; 25 Int. Rev. Rec. 10; 11 Chi. Leg. News, 191; 3 Cin. Law Bul. 1126.
United States, Stearns v. [See 13,341.]
UNITED STATES v. STEEN & CWERGIUS' FACTORY, Etc. [16,383], 6 Ben. 172.
UNITED STATES v. STEFFENS [16,384], 24 Int. Rev. Rec. 14.
United States, Steinham v. [See 13,355.]
UNITED STATES v. STEPHEN HART, The [16,385].
UNITED STATES v. STEPHENSON'S EX'RS [16,386], 1 McLean, 462.
UNITED STATES v. STERLAND [16,387], 3 Quart. Law J. 244; 6 Pittsb. Leg. J. 50.
UNITED STATES ex rel. Van Northwick v. STERLING [16,388], 2 Biss. 408; 3 Chi. Leg. News, 187; 13 Int. Rev. Rec. 100.
UNITED STATES v. STERN [16,389], 5 Blatchf. 512; 6 Int. Rev. Rec. 169.
UNITED STATES v. STETSON [16,390], 3 Woodb. & M. 164.
United States, Stettinius v. [See 13,387.]
UNITED STATES v. STEVENS [16,391], 4 Cranch, C. C. 341.
UNITED STATES v. STEVENS [16,392], 2 Hask. 164.
UNITED STATES v. STEVENS [16,393], 2 Int. Rev. Rec. 54.
UNITED STATES v. STEVENS [16,393a].
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UNITED STATES v. STEVENSON [16,395], 1 Abb. U. S. 495.
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UNITED STATES v. STEVENSON [16,397], Hoff. Land Cas. 156.
UNITED STATES v. STEVENSON [16,398], 6 Int. Rev. Rec. 221.
UNITED STATES v. STEWART [16,399], 2 Biss. 412.
UNITED STATES v. STEWART [16,400], Crabbe, 265.
UNITED STATES v. STEWART [16,401], 2 Dall. 343; Whart. St. Tr. 172.
UNITED STATES v. STEWART [16,401a], 2 Hayw. & H. 280.
UNITED STATES v. STEWART [16,402], 4 Wash. C. C. 226.
UNITED STATES v. STIEN [16,403], 13 Blatchf. 127.
UNITED STATES v. STINER [16,404], 8 Blatchf. 544.
UNITED STATES v. STOCKWELL [16,405], 4 Cranch, C. C. 671.
UNITED STATES v. STOCKWELL [16,406], 1 Hask. 447.
United States, Stockwell v. [See 13,466, 13,467.]
UNITED STATES v. STONE [16,407].
UNITED STATES v. STOTT [16,408], 2 Cranch, C. C. 552.
UNITED STATES v. STOWELL [16,409], 2 Curt. 153; 18 Law Rep. 76.
UNITED STATES v. STRICKER [16,410], 12 Blatchf. 389.
United States, Strohm v. [See 13,539.]
UNITED STATES v. STRONG [16,411], 2 Cranch, C. C. 251.
UNITED STATES v. STROTHER [16,412], 3 Cranch, C. C. 432.
UNITED STATES v. STURGEON [16,413], 6 Sawy. 29.
UNITED STATES v. STURGES [16,414], 1 Paine, 525.
United States v. O'Sullivan. [See 15,975.]
UNITED STATES v. SULZBERGER [16,415], 7 Int. Rev. Rec. 201.
UNITED STATES v. SUMMERS [16,416], 4 Cranch, C. C. 334.
United States v. Summers. [See 14,820.]
United States v. The Sun. [See 13,612.]
UNITED STATES v. SUNBERG [16,417].
UNITED STATES v. SUNDRY BOXES OF HAVANA SUGAR [16,418], 2 Bond, 342.
UNITED STATES v. SUNOL [16,419], 1 Cal. Law J. 252.
UNITED STATES v. SUNOL [16,420], Hoff. Land Cas. 74.
UNITED STATES v. SUNOL [16,421], Hoff. Land Cas. 110.
UNITED STATES v. SUNSWICK, The [13,624].
UNITED STATES v. SURRATT [16,423].
UNITED STATES v. SUTTER [16,424], Hoff. Dec. 27.
UNITED STATES v. SWANN [16,425], 1 Cranch, C. C. 148.
United States v. Swanson. [See 16,156.]
United States, Swat v. [See 13,680.]
UNITED STATES v. SWEENEY [16,426], 1 Biss. 309.
UNITED STATES v. SWETT [16,427], 2 Hask. 310.
United States, Taber v. [See 13,722.]
UNITED STATES v. TAINTOR [16,428], 11 Blatchf. 374; 19 Int. Rev. Rec. 4; 1 Thomp. Nat. Bank Cas. 256.
UNITED STATES v. TALLMAN [16,429], 10 Blatchf. 21.
UNITED STATES v. TANNER [16,430], 6 McLean, 128.
UNITED STATES v. TAPPAN [16,431], 10 Ben. 284.
United States, Tappan v. [See 13,749.]
UNITED STATES v. TARDY [16,432], Pet. C. C. 458.
UNITED STATES v. TARLTON [16,433], 4 Cranch, C. C. 682.
UNITED STATES v. TARR [16,434], 4 Phila. 405; 18 Leg. Int. 214.
UNITED STATES v. TA-WAN-GA-CA [16,435], Hempst. 304.
UNITED STATES v. TAYLOR [16,436], 4 Cranch, C. C. 338.
UNITED STATES v. TAYLOR [16,437], 4 Cranch, C. C. 731.
UNITED STATES v. TAYLOR [16,438], 1 Hughes, 514.
UNITED STATES v. TAYLOR [16,439], 20 Leg. Int. 284.
UNITED STATES v. TAYLOR [16,440], 3 McLean, 539.
UNITED STATES v. TAYLOR [16,441], 5 McLean, 242; 8 West. Law J. 481.
UNITED STATES v. TAYLOR [16,442], 2 Sumn. 584.
United States v. Taylor. [See 15,878.]
UNITED STATES v. TEFFRY [16,443], 3 Int. Rev. Rec. 67.
UNITED STATES v. TEN BARRELS AND THREE KEGS [16,444], 11 Int. Rev. Rec. 5.
UNITED STATES v. TEN BARRELS DISTILLED SPIRITS, Etc., 294 CHERRY ST. [16,445], 6 Int. Rev. Rec. 203.
UNITED STATES v. TENBROEK [16,446], Pet. C. C. 180.
UNITED STATES v. TEN CASES OF MERCHANDISE [16,447], 2 Hunt, Mer. Mag. 259.
UNITED STATES v. TEN CASES SHAWLS [16,448], 2 Paine, 162; 4 Hunt, Mer. Mag. 264.
UNITED STATES v. TEN EYK [16,449], 4 McLean, 119.
UNITED STATES v. TEN THOUSAND CIGARS [16,450], 2 Curt. 436.
UNITED STATES v. TEN THOUSAND CIGARS [16,451], Woolw. 123.
UNITED STATES v. TERREL [16,452], Hempst. 411; 1 West. Law J. 245.
UNITED STATES v. TERREL [16,453], Hempst. 422.
UNITED STATES v. TERRY [16,454], 1 Cranch, C. C. 318.
UNITED STATES v. TESCHEMACHER [16,455], Hoff. Dec. 84.
United States, Teschemacher v. [See 13,843.]
UNITED STATES v. TETLOW [16,456], 2 Lowell, 159; 14 Int. Rev. Rec. 205; 6 Amer. Law Rev. 575.
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United States, Thacher v. [See 13,851.]

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United States v. Thirty Barrels of Distilled Spirits. [See 15,946.]
UNITED STATES v. THIRTY-FIVE BARRELS OF HIGH WINES [16,460], 2 Biss. 88; 9 Int. Rev. Rec. 67.
UNITED STATES v. THIRTY-FOUR BARRELS OF DISTILLED SPIRITS [16,461], 13 Int. Rev. Rec. 188.
UNITED STATES v. THIRTY-FOUR BARRELS OF WHISKEY [16,462], 9 Int. Rev. Rec. 169; 16 Pittsb. Leg. J. 54.
UNITED STATES v. THIRTY-NINE BARRELS OF SPIRITS [16,463], 7 Int. Rev. Rec. 38.
UNITED STATES v. THIRTY-NINE THOUSAND ONE HUNDRED AND FIFTY CIGARS [16,464], 3 Ware, 324.
UNITED STATES v. THIRTY-NINE TRUNKS [15,-885].
UNITED STATES v. THIRTY-ONE BOXES, Etc. [16,465a].
UNITED STATES v. THIRTY-SEVEN BARRELS OF APPLE BRANDY [16,466], 11 Int. Rev. Rec. 125.
UNITED STATES v. THIRTY-SEVEN BARRELS OF RUM [16,467], 1 Woods, 19.
UNITED STATES v. THIRTY-SIX BARRELS OF HIGH WINES [16,468], 7 Blatchf. 459; 12 Int. Rev. Rec. 40.
UNITED STATES v. THIRTY-SIX BARRELS OF HIGH WINES [16,469], 7 Blatchf. 469; 12 Int. Rev. Rec. 41.
UNITED STATES v. THIRTY-THREE BARRELS OF SPIRITS [16,470], 1 Lowell, 239; 1 Abb. U. S. 311; 7 Amer. Law Reg. (N. S.) 365; 7 Int. Rev. Rec. 75; 1 Amer. Law T. Rep. U. S. Cts. 47.
UNITED STATES v. THOMA [16,471], 2 N. J. Law J. 181; 25 Int. Rev. Rec. 171; 26 Pittsb. Leg. J. 180.
UNITED STATES v. THOMAS [16,472], Whart. St. Tr. 682.
UNITED STATES v. THOMAS [16,473], 2 Abb. U. S. 114; 12 Int. Rev. Rec. 161; 4 Ben. 370.
UNITED STATES v. THOMAS [16,474], 2 Cranch, C. C. 36.
UNITED STATES v. THOMAS [16,475], 3 Cranch, C. C. 293.
UNITED STATES v. THOMAS [16,476], 1 Hayw. & H. 243.
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United States, The Thomas and Henry v. [See 13,-919.]
UNITED STATES v. THOMASSON [16,478], 4 Biss. 99.
UNITED STATES v. THOMASSON [16,479], 4 Biss. 336.
UNITED STATES v. THOMAS SWAN, The [16,480], 19 Law Rep. 201.
UNITED STATES v. THOMES [16,481], Hoff. Land Cas. 82.
UNITED STATES v. THOMES [16,482], Hoff. Land Cas. 83.
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UNITED STATES v. THOMPSON [16,485], 4 Cranch, C. C. 335.
UNITED STATES v. THOMPSON [16,486], 1 Gall. 388.
UNITED STATES v. THOMPSON [16,487], Gilp. 614.
UNITED STATES v. THOMPSON [16,488], Hoff. Land Cas. 79.
UNITED STATES v. THOMPSON [16,489], 9 Law Rep. 451.
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UNITED STATES v. THOMPSON [16,491], 2 Spr. 103; 27 Law Rep. 24.
UNITED STATES v. THOMPSON [16,492], 1 Sumn. 168.
United States v. Thompson. [See 14,820.]
United States, Thomson v. [See 13,985.]
UNITED STATES v. THORN [16,493], 2 Amer. Law T. Rep. U. S. Cts. 43; 9 Int. Rev. Rec. 65.
United States, Thorndike v. [See 13,987.]
UNITED STATES v. THORPE [16,494], 2 Bond, 340.
UNITED STATES v. THREE BALES CLOTH [16,-495].
UNITED STATES v. THREE CASES [15,014].
UNITED STATES v. THREE CASES, Etc. [16,497].
UNITED STATES v. THREE CASES MARKED A. D. 1, 2, AND 3 [16,498], 6 Ben. 558; 18 Int. Rev. Rec. 173.
UNITED STATES v. THREE CASES OF TOYS [16,-499], 9 Hunt, Mer. Mag. 462.
UNITED STATES v. THREE HORSES [16,500], 1 Abb. U. S. 426.
UNITED STATES v. THREE HUNDRED AND EIGHT CADDIES OF TOBACCO [16,501], 10 Int. Rev. Rec. 126.
UNITED STATES v. THREE HUNDRED AND NINETY-SIX BARRELS DISTILLED SPIRITS [16,502], 3 Int. Rev. Rec. 114.
UNITED STATES v. THREE HUNDRED AND NINETY-SIX BARRELS DISTILLED SPIRITS [16,503], 3 Int. Rev. Rec. 123.
UNITED STATES v. THREE HUNDRED AND NINETY-SIX BARRELS OF DISTILLED SPIRITS [16,504], 3 Int. Rev. Rec. 135.
UNITED STATES v. THREE HUNDRED AND SEVENTY-TWO PIPES DISTILLED SPIRITS [16,505], 5 Sawy. 421.
UNITED STATES v. THREE HUNDRED AND THIRTY-SEVEN CASES OF WINE [16,506], 1 Woods, 47.
UNITED STATES v. THREE HUNDRED AND TWENTY-SIX CASES OF HOSIERY, MARKED H. & V. & T. S. [16,507].
UNITED STATES v. THREE HUNDRED BALES OF WOOL [16,508], 2 Int. Rev. Rec. 139.
UNITED STATES v. THREE HUNDRED BARRELS OF ALCOHOL [16,509], 1 Ben. 72; 8 Int. Rev. Rec. 105.
United States v. Three Hundred Barrels of Distilled Spirits. [See 16,580, 16,581.]
UNITED STATES v. THREE HUNDRED BARRELS OF WHISKEY [16,510], 1 Ben. 15; 2 Int. Rev. Rec. 165.
UNITED STATES v. THREE HUNDRED CASKS OF JUNIPER CORDIAL [16,511], Hoff. Op. 467.
UNITED STATES v. THREE PARCELS OF EMBROIDERY [16,512], 3 Ware, 75; 19 Law Rep. 140.
UNITED STATES v. THREE RAILROAD CARS [16,513], 1 Abb. U. S. 196; 1 Amer. Law T. Rep. U. S. Cts. 114; 7 Int. Rev. Rec. 189.
UNITED STATES v. THREE THOUSAND BASKETS OF CHAMPAGNE [16,514], 10 Int. Rev. Rec. 206.
UNITED STATES v. THREE TONS OF COAL [16,-515], 6 Biss. 379; 21 Int. Rev. Rec. 251.
UNITED STATES v. THROCKMORTON [16,516], 8 N. B. R. 309; 18 Int. Rev. Rec. 54.
United States v. Throckmorton. [See 15,121.]
United States, Thurn v. [See 14,015.]
UNITED STATES v. TIERNEY [16,517], 1 Bond, 571.
UNITED STATES v. TILDEN [13,707], 18 Alb. Law J. 416; 7 Amer. Law Rec. 370; 26 Pittsb. Leg. J. 64; 24 Int. Rev. Rec. 391, 414.
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UNITED STATES v. TILDEN [16,520], 10 Ben. 170.
UNITED STATES v. TILDEN [16,521], 10 Ben. 547.
UNITED STATES v. TILDEN [16,522], 10 Ben. 566; 25 Int. Rev. Rec. 352.
UNITED STATES v. TILDEN [16,523], 21 Law Rep. 598; 1 West. Law Month. 163.
UNITED STATES v. TILLOTSON [16,524], 1 Paine, 305.
UNITED STATES v. TILTON [16,525], 7 Ben. 306.
UNITED STATES v. TINKLEPAUGH [16,526], 3 Blatchf. 425.
UNITED STATES v. TOBACCO [16,106a].
UNITED STATES v. TOBACCO FACTORY [16,523], 1 Dill. 264; 13 Int. Rev. Rec. 91.
UNITED STATES v. TOLBEE [3,393].
UNITED STATES v. TOLSON [16,530], 1 Cranch, C. C. 269.

UNITED STATES v. TOM [16,531], 2 Cranch, C. C. 114.
United States v. Tompkins. [See 16,483.]
UNITED STATES v. TOMS [16,532], 1 Cranch, C. C. 607.
UNITED STATES v. TORGE [16,533], 15 Int. Rev. Rec. 11.
UNITED STATES v. TOWN-MAKER [16,533a], Hempst. 299.
UNITED STATES ex rel. Hill v. TOWNS [16,534], 7 Ben. 444.
United States, Townsend v. [See 14,119.]
UNITED STATES v. TRACT OF LAND [16,535], 1 Woods, 475.
UNITED STATES v. TRACY [16,536], 8 Ben. 1.
United States, Trafton v. [See 14,135.]
UNITED STATES v. TRAVERS [16,537], 2 Wheeler, Crim. Cas. 490; Brunner, Col. Cas. 467.
UNITED STATES v. TREASURER OF MUSCATINE COUNTY [16,538], 2 Abb. U. S. 53; 9 Amer. Law Reg. (N. S.) 415; 1 Dill. 522; 12 Int. Rev. Rec. 56.
UNITED STATES v. TRIPLETT [16,539], 22 Int. Rev. Rec. 207; 3 Cent. Law J. 399; 23 Pittsb. Leg. J. 185.
UNITED STATES v. TROAX [16,540], 3 McLean, 224.
UNITED STATES v. TROBE [16,541], 3 Pittsb. Rep. 6; 2 Int. Rev. Rec. 133; 13 Pittsb. Leg. J. 88.
UNITED STATES v. TROPIC WIND, The [16,541a], 2 Hayw. & H. 374; 24 Law Rep. 144.
UNITED STATES v. TROUT [16,542], 4 Biss. 105.
UNITED STATES v. TRUESDELL [16,543], 2 Bond, 78; 5 Int. Rev. Rec. 102.
UNITED STATES v. TUCKER [16,543a], Hayw. & H. 269.
UNITED STATES v. TULIP, The [14,234].
UNITED STATES v. TULLY [16,545], 1 Gall. 247.
UNITED STATES v. TURLEY [16,546], 4 Cranch, C. C. 334.
UNITED STATES v. TURNER [16,547], 2 Bond, 379.
UNITED STATES v. TURNER [16,548], 18 Int. Rev. Rec. 5.
UNITED STATES v. TURNER [16,549], 2 N. Y. Leg. Obs. 256.
United States v. Turner. [See 14,248.]
UNITED STATES v. TUSKA [16,550], 14 Blatchf. 5.
United States v. Tuttle. [See 15,326.]
UNITED STATES v. TWELVE BARRELS OF DISTILLED SPIRITS [16,551], 11 Int. Rev. Rec. 11.
UNITED STATES v. TWELVE BARRELS OF PARAFFINE OIL [16,552], 6 Int. Rev. Rec. 203.
UNITED STATES v. TWELVE CASKS OF CUDBEAR [16,553], Gilp. 507.
UNITED STATES v. TWELVE HUNDRED AND NINE QUARTER CASKS OF SHERRY [14,279], 7 Int. Rev. Rec. 114.
UNITED STATES v. TWELVE THOUSAND THREE HUNDRED AND FORTY-SEVEN BAGS OF SUGAR [16,555], 1 Abb. U. S. 407; 1 Amer. Law T. Rep. U. S. Cts. 110; 8 Int. Rev. Rec. 129.
UNITED STATES v. TWELVE THOUSAND THREE HUNDRED AND FORTY-SEVEN BAGS OF SUGAR [16,556].
UNITED STATES v. TWENTY BARRELS OF DISTILLED SPIRITS [16,557], 6 Int. Rev. Rec. 141.
United States v. Twenty Barrels of Distilled Spirits. [See 15,946.]
UNITED STATES v. TWENTY BARRELS OF DISTILLED SPIRITS [16,558], 9 Int. Rev. Rec. 4.
UNITED STATES v. TWENTY CASES OF MATCHES [16,559], 2 Biss. 47; 10 Int. Rev. Rec. 95; 2 Amer. Law T. Rep. U. S. Cts. 48; 1 Chi. Leg. News, 145.
United States v. Twenty-Eight Casks, Etc. [See 14,281.]
UNITED STATES v. TWENTY-EIGHT CASKS OF WINE [14,281].
UNITED STATES v. TWENTY-EIGHT PACKAGES OF PINS [16,561], Gilp. 306.
UNITED STATES v. TWENTY-FIVE BARRELS OF ALCOHOL [16,562], 3 West. Jur. 15; 10 Int. Rev. Rec. 17.
UNITED STATES v. TWENTY-FIVE CASES OF CLOTHS [16,563], Crabbe, 356.
UNITED STATES v. TWENTY-FIVE CASES OF CLOTH [16,563a], 2 Haz. Reg. U. S. 374.
UNITED STATES v. TWENTY-FIVE THOUSAND GALLONS OF DISTILLED SPIRITS [16,564], 7 Int. Rev. Rec. 206.
UNITED STATES v. TWENTY-FIVE THOUSAND SEGARS [16,565], 5 Blatchf. 500.
UNITED STATES v. TWENTY-FOUR COILS OF CORDAGE [16,566], Baldw. 502.
United States v. Twenty-Nine and One-Half Boxes of Sugar. [See 15,098.]
UNITED STATES v. TWENTY-ONE BARRELS OF HIGH WINES [16,567], 6 Int. Rev. Rec. 213.
UNITED STATES v. TWENTY-ONE BARRELS OF WHISKEY [16,568].
UNITED STATES v. TWENTY PACKAGES DISTILLED SPIRITS [16,569], 24 Int. Rev. Rec. 54.
UNITED STATES v. TWENTY-SIX BALES OF RUBBER BOOTS [16,570], 3 Ware, 205; 20 Law Rep. 444.
UNITED STATES v. TWENTY-SIX CASES OF RUBBER BOOTS [16,571], 1 Cliff. 580.
UNITED STATES v. TWENTY-SIX DIAMOND RINGS [16,572], 1 Spr. 294; 18 Law Rep. 250.
UNITED STATES v. TWENTY-THREE COILS OF CORDAGE [16,573], Gilp. 299.
UNITED STATES v. TWENTY-THREE GALLONS OF DISTILLED SPIRITS [15,280].
UNITED STATES v. TWO BARRELS [16,575], 6 Int. Rev. Rec. 44; 14 Pittsb. Leg. J. 529.
UNITED STATES v. TWO CASES OF WOOLENS [16,576], 5 Hunt, Mer. Mag. 171.
UNITED STATES v. TWO FRIENDS, The [16,577], 1 Hall, Law J. 483.
UNITED STATES v. TWO HORSES [16,578], 9 Ben. 529.
United States v. Two Hundred and Fifty Barrels of Molasses. [See 14,293.]
UNITED STATES v. TWO HUNDRED AND FIFTY-SIX BARRELS OF BEER [16,579], 2 Bond, 395.
United States v. Two Hundred and Forty Bundles of Cigars. [See 15,066.]
UNITED STATES v. TWO HUNDRED AND SEVENTY-EIGHT BARRELS OF DISTILLED SPIRITS [16,580], 3 Cliff. 261; 10 Int. Rev. Rec. 164; 16 Pittsb. Leg. J. 250.
UNITED STATES v. TWO HUNDRED AND SEVENTY-EIGHT BARRELS OF DISTILLED SPIRTS [16,581], 4 Law & Eq. Rep. 237.
United States ex rel. Ames v. Two Hundred and Seventy-Five Caddies of Tobacco. [See 15,881.]
UNITED STATES v. TWO HUNDRED AND SIX BARRELS [16,503].
UNITED STATES v. TWO HUNDRED AND SIXTY-NINE AND ONE-HALF BALES OF COTTON [16,583], Woolw. 236; 25 Law Rep. 451; Rev. Cas. 1.
UNITED STATES v. TWO HUNDRED AND THIRTY-SIX DOZEN BOXES OF COSMETICS [16,584], 6 Ben. 543.
UNITED STATES v. TWO HUNDRED BARRELS OF WHISKEY [16,585], 2 Woods, 54.
UNITED STATES v. TWO HUNDRED BUSHELS OF CORN [16,586], 9 Ben. 186.
UNITED STATES v. TWO HUNDRED QUARTER BOXES OF CIGARS [16,587].
United States v. Two Packages of Distilled Spirits. [See 15,940.]
UNITED STATES v. TWO STEAM BOILERS [16,588].
UNITED STATES v. TWO THOUSAND BUSHELS OF WHEAT [16,589].
UNITED STATES v. TWO THOUSAND FOUR HUNDRED AND NINETEEN SHEEPSKINS [16,589a], 2 Hask. 394.
UNITED STATES v. TWO TONS OF COAL [16,590], 5 Blatchf. 386.
UNITED STATES v. TWO TRUNKS [16,591], 6 Ben. 218.
UNITED STATES v. TWO TRUNKS [16,592], 10 Ben. 374.
UNITED STATES v. ULLMAN [16,593], 4 Ben. 547; 13 Int. Rev. Rec. 68.
UNITED STATES v. ULRICI, [16,594], 3 Dill. 532.
UNITED STATES v. UNGER [16,595], 18 Int. Rev. Rec. 164.
UNITED STATES v. UNION NAT. BANK [16,596].

UNITED STATES v. UNION NAT. BANK [16,597], 10 Ben. 408.
UNITED STATES v. UNION PAC. R. CO. [16,598], 11 Blatchf. 385; 8 Amer. Law Rev. 356.
UNITED STATES ex rel. Hall v. UNION PAC. R. CO. [16,599], 2 Dill. 527.
UNITED STATES ex rel. Hall v. UNION PAC. R. CO. [16,600], 3 Dill. 524; 1 Cent. Law J. 566.
UNITED STATES ex rel. Hall v. UNION PAC. R. CO. [16,601], 4 Dill. 479; 9 West. Jur. 356; 7 Chi. Leg. News, 282.
UNITED STATES v. UNITED STATES EXP. CO. [16,602], 5 Biss. 91.
UNITED STATES v. UNITED STATES TEL. CO. [16,603], 2 Ben. 362; 1 Amer. Law T. Rep. U. S. Cts. 69; 7 Int. Rev. Rec. 141.
UNITED STATES v. VACA [16,604], Hoff. Dec. 22.
UNITED STATES v. VALLEJO [16,605], Hoff. Dec. 51.
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United States, Vallejo v. [See 16,818, 16,819.]
United States, Valliere v. [See 16,822.]
UNITED STATES v. VAN FOSSEN [16,607], 1 Dill. 406.
United States, Van Ness v. [See 16,868.]
UNITED STATES v. VANRANST [16,608], 3 Wash. C. C. 146.
UNITED STATES v. VANSICKLE [16,609], 2 McLean, 219.
UNITED STATES v. VAN SLYKE [16,610], 8 Biss. 227.
UNITED STATES v. VANZANDT [16,611], 2 Cranch, C. C. 338.
UNITED STATES v. VAPORISOR [10,537], 7 Int. Rev. Rec. 205.
UNITED STATES v. VEITCH [16,613], 1 Cranch, C. C. 81.
UNITED STATES v. VEITCH [16,614], 1 Cranch, C. C. 115.
UNITED STATES v. VENABLE [16,615], 1 Cranch, C. C. 416.
UNITED STATES v. VENABLE [16,616], 1 Cranch, C. C. 417.
UNITED STATES v. VENUS, The [16,914].
UNITED STATES v. VERMILYE [16,618], 10 Blatchf. 280; 6 Amer. Law T. Rep. 78.
UNITED STATES v. VERMONT, The [16,618a].
UNITED STATES v. VICKERY [16,619], 1 Har. & J. 427.
UNITED STATES v. VICTORIA PEREZ, The [16,620], 8 Ben. 109.
UNITED STATES v. VIGOL [16,621], 2 Dall. 346; Whart. St. Tr. 175.
UNITED STATES v. VILLATO [16,622], 2 Dall. 370; Whart. St. Tr. 185.
UNITED STATES v. VINSENT [16,623], 5 Cranch, C. C. 38.
UNITED STATES v. VINTON [16,624], 2 Sumn. 299.
UNITED STATES v. VIRGIN, The [16,625], 1 Pet. C. C. 7.
United States, Virginia and Maryland Steam Nav. Co. v. [See 16,973.]
UNITED STATES v. VIRGINIA BONDS [16,626], 9 Pittsb. Leg. J. 377.
UNITED STATES v. VOLZ [16,627], 14 Blatchf. 15.
UNITED STATES v. VOSS [16,628], 1 Cranch, C. C. 101.
UNITED STATES v. WADE [16,629], 2 Cranch, C. C. 680.
UNITED STATES v. WAGNER [16,630], 1 Cranch, C. C. 314.
United States, Waight v. [See 17,042.]
UNITED STATES v. WAITZ [16,631], 3 Sawy. 473; 2 Law & Eq. Rep. 42; 8 Chi. Leg. News, 313.
UNITED STATES v. WALKER [16,632], 1 Cranch, C. C. 402.
UNITED STATES v. WALKINSHAW [16,633], Cal. Law. J. & Lit. Rev. 126.
UNITED STATES v. WALLER [16,634], 1 Sawy. 701.
UNITED STATES v. WALSH [16,635], 1 Abb. U. S. 66; 1 Amer. Law T. Rep. U. S. Cts. 45; 6 Int. Rev. Rec. 212; Deady, 281.
UNITED STATES v. WALSH [16,636], 5 Dill. 58.
United States, Walsh v. [See 17,116.]
UNITED STATES v. WANGEREIN [17,141].
UNITED STATES v. WANN [16,638], 3 McLean, 179.
UNITED STATES v. WARD [16,639], Woolw. 17; McCahon, 199; 1 Kan. 601.
UNITED STATES v. WARDWELL [16,640], 5 Mason, 82.
UNITED STATES v. WARE [16,641], 2 Cranch, C. C. 477.
UNITED STATES v. WARNER [16,642], 4 Cranch, C. C. 342.
UNITED STATES v. WARNER [16,643], 4 McLean, 463; 6 West. Law J. 255.
UNITED STATES v. WARR [16,644], 3 N. Y. Leg. Obs. 346.
UNITED STATES v. WARY [16,645], 1 Cranch, C. C. 312.
UNITED STATES v. WASHINGTON [16,646], 2 Cranch, C. C. 174.
UNITED STATES v. WASHINGTON MILLS [16,647], 2 Cliff. 601; 6 Int. Rev. Rec. 146.
UNITED STATES v. WATERBOROUGH [16,648], 2 Ware (Dav. 154) 158.
UNITED STATES v. WATKINS [16,649], 3 Cranch, C. C. 441.
UNITED STATES v. WATKINS [16,650], 4 Cranch, C. C. 271.
UNITED STATES ex rel. Rush v. WATSON [16,650a], 2 Hayw. & H. 226.
UNITED STATES v. WATSON [16,651], 3 Ben. 1; 1 Amer. Law T. Rep. U. S. Cts. 131; 8 Int. Rev. Rec. 170.
UNITED STATES v. WATSON [16,652], 7 Blatchf. 60.
United States, Watt v. [See 17,292.]
UNITED STATES v. WATTS [16,653], 1 Bond, 580; 1 Int. Rev. Rec. 17.
UNITED STATES v. WAYNE [16,654], Wall. Sr. 134.
UNITED STATES v. WEBB [16,655], 8 Ben. 343.
UNITED STATES v. WEBBER [16,656], 1 Gall. 392.
UNITED STATES v. WEBER [16,657], Hoff. Land Cas. 126.
United States v. Weber. [See 17,327-17,329.]
UNITED STATES v. WEBSTER [16,658], 2 Ware (Dav. 38) 46.
UNITED STATES v. WEISE [16,659], 2 Wall. Jr. 72; 14 Law Rep. 260; 4 Amer. Law J. (N. S.) 88.
UNITED STATES v. WELD [16,660], 1 Kan. 597.
UNITED STATES v. WELLS [16,661], 2 Cranch, C. C. 43.
UNITED STATES v. WELLS [16,662], 2 Cranch, C. C. 45.
UNITED STATES v. WELLS [16,663], 2 Wash. C. C. 161.
UNITED STATES v. WELLS [16,664], 3 Wash. C. C. 245.
UNITED STATES v. WELLS [16,665], 15 Int. Rev. Rec. 56; 11 Amer. Law Reg. (N. S.) 424; 4 Chi. Leg. News, 113; 7 Am. Law Rev. 366.
UNITED STATES v. WENDELL [16,666], 2 Cliff. 340.
United States, Wentworth v. [See 17,414.]
UNITED STATES v. WEST [16,667], 5 Cranch, C. C. 35.
UNITED STATES v. WESTERVELT [16,668], 5 Blatchf. 30.
United States, Weston v. [See 17,457.]
UNITED STATES v. WHALAN [16,669], 7 Int. Rev. Rec. 161; 1 Amer. Law T. Rep. U. S. Cts. 63.
United States, Wheaton v. [See 17,487.]
UNITED STATES v. WHIDDEN [16,670], 3 Ware, 269.
UNITED STATES v. WHISKEY [16,671], 7 Phila. 603; 27 Leg. Int. 84; 11 Int. Rev. Rec. 109; 17 Pittsb. Leg. J. 91.
UNITED STATES v. WHITAKER [16,672], 6 McLean, 342.
UNITED STATES v. WHITE [16,673], 1 Cal. Law J. 275.
UNITED STATES v. WHITE [16,674], 2 Cin. Law Bul. 27.
UNITED STATES v. WHITE [16,675], 5 Cranch, C. C. 38.
UNITED STATES v. WHITE [16,676], 5 Cranch, C. C. 73.
UNITED STATES v. WHITE [16,677], 5 Cranch, C. C. 116.
UNITED STATES v. WHITE [16,678], 5 Cranch, C. C. 368.
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UNITED STATES v. WHITE [16,682], 4 Mason, 158.
UNITED STATES v. WHITE [16,683], 6 N. Y. Leg. Obs. 230.
UNITED STATES v. WHITE [16,684], Taney, 152.
UNITED STATES v. WHITE [16,685], 2 Wash. C. C. 29.
UNITED STATES v. WHITE [16,686], 4 Wash. C. C. 414.
United States, White v. [See 17,558.]
United States v. Whitehead. [See 14,626.]
UNITED STATES v. WHITTAKER [16,688].
UNITED STATES v. WHITTIER [16,688], 5 Dill 35; 18 Alb. Law J. 110; 6 Reporter, 260; 10 Chi. Leg. News, 229; 24 Int. Rev. Rec. 126, 234; 7 Cent. Law J. 51; 2 Tex. Law J. 166.
UNITED STATES v. WICKHAM [16,689], 1 Wash. C. C. 316.
UNITED STATES v. WIGGLESWORTH [16,690], 2 Story, 369.
UNITED STATES v. WILCOX [16,691], 4 Blatchf. 385.
UNITED STATES v. WILCOX [16,692], 4 Blatchf. 391.
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UNITED STATES v. WILDER [16,694], 3 Sumn. 308; 1 Law Rep. 189.
UNITED STATES v. WILKINSON [16,695], 5 Dill. 275.
UNITED STATES v. WILKINSON [16,696], 12 How. (53 U. S.) 246.
UNITED STATES v. WILL [16,697], 5 Phila. 293; 2 Pittsb. Rep. 467; 11 Pittsb. Leg. J. 73; 20 Leg. Int. 341.
UNITED STATES v. WILLARD [16,698], 1 Paine, 539.
UNITED STATES v. WILLETTS [16,699], 5 Ben. 220.
UNITED STATES v. WILLIAM, The [16,700], 2 Hall, Law J. 255.
UNITED STATES v. WILLIAM & SAMUEL, The [16,701], 1 Hall, Law J. 482.
UNITED STATES v. WILLIAM ARTHUR, The [16,-702], 3 Ware, 276.
UNITED STATES v. WILLIAM POPE, The [16,703], 1 Newb. 256.
UNITED STATES v. WILLIAMS [17,708].
UNITED STATES v. WILLIAMS [16,705], 4 Amer. Law J. (N. S.) 486.
UNITED STATES v. WILLIAMS [16,706], 4 Biss. 302.
UNITED STATES v. WILLIAMS [16,707], 1 Cliff. 5.
UNITED STATES v. WILLIAMS [16,708], 1 Cranch, C. C. 174.
UNITED STATES v. WILLIAMS [16,709], 1 Cranch, C. C. 178.
UNITED STATES v. WILLIAMS [16,710], 2 Cranch, C. C. 438.
UNITED STATES v. WILLIAMS [16,711], 3 Cranch, C. C. 65.
UNITED STATES v. WILLIAMS [16,712], 4 Cranch, C. C. 372.
UNITED STATES v. WILLIAMS [16,713], 5 Cranch, C. C. 62.
UNITED STATES v. WILLIAMS [16,714], 5 Cranch, C. C. 400.
UNITED STATES v. WILLIAMS [16,715], 5 Cranch, C. C. 619.
UNITED STATES v. WILLIAMS [16,716], 1 Dill. 485.
UNITED STATES v. WILLIAMS [16,717], 15 Int. Rev. Rec. 199.
UNITED STATES v. WILLIAMS [13,515].
UNITED STATES v. WILLIAMS [16,719], 4 McLean, 236.
UNITED STATES v. WILLIAMS [16,720], 4 McLean, 567.
UNITED STATES v. WILLIAMS [16,721], 5 McLean, 133.
UNITED STATES v. WILLIAMS [16,722].
UNITED STATES v. WILLIAMS [16,723], 1 Paine, 261.
UNITED STATES v. WILLIAMS [16,724], 1 Ware (175) 173.
UNITED STATES ex rel. Wheeler v. WILLIAMSON [16,725], 3 Amer. Law Reg. 729; 3 Liv. Law Mag. 595; 5 Pa. Law J. Rep. 365; 12 Leg. Int. 198, 199; 1 Quart. Law J. 70.
UNITED STATES ex rel. Wheeler v. WILLIAMSON [16,726], 4 Amer. Law Reg. 5; 5 Pa. Law J. Rep. 377.
UNITED STATES v. WILLING [16,727], 4 Dall. 376, note.
United States, Willing v. [See 17,764.]
UNITED STATES v. WILLIS [16,728], 1 Cranch, C. C. 511.
UNITED STATES v. WILSON [16,729].
UNITED STATES v. WILSON [16,730], Baldw. 78.
UNITED STATES v. WILSON [16,731], 3 Blatchf. 435.
UNITED STATES v. WILSON [16,732], 6 Chi. Leg. News, 304.
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UNITED STATES v. WILSON [16,736], 1 Hunt, Mer. Mag. 167.
UNITED STATES v. WILSON [16,737], 6 McLean, 604.
United States, Wilson v. [See 17,846.]
UNITED STATES v. WILTBERGER [16,738], 3 Wash. C. C. 515.
UNITED STATES v. WINCHESTER [16,739], 2 McLean, 135.
UNITED STATES v. WINN [16,739a], Brunner, Col. Cas. 519; 1 Law Rep. 63.
UNITED STATES v. WINN [16,740], 3 Sumn. 209.
UNITED STATES v. WINSLOW [16,741], 2 Cranch, C. C. 47.
UNITED STATES v. WINSLOW [16,742], 3 Sawy. 337; 7 Chi. Leg. News, 298.
UNITED STATES v. WINTER [16,743], 13 Blatchf. 276.
UNITED STATES v. WINTER [16,744], 13 Blatchf. 333.
United States, Winter v. [See 17,895.]
UNITED STATES v. WIRT [16,745], 3 Sawy. 161; 20 Int. Rev. Rec. 122; 7 Chi. Leg. News, 26.
UNITED STATES v. WISE [16,746], 1 Cranch, C. C. 546.
UNITED STATES v. WISE [16,746a], 1 Hayw. & H. 82.
UNITED STATES v. WITHENBURY [16,747].
UNITED STATES v. WITTIG [16,748], 22 Int. Rev. Rec. 98; 2 Lowell, 466; 3 Cent. Law J. 270; 13 Alb. Law J. 240; 23 Pittsb. Leg. J. 151.
UNITED STATES v. W. K. MUIR, The, and DAVIDSON, The [16,749].
UNITED STATES v. WONSON [16,750], 1 Gall. 5.
UNITED STATES v. WOOD [16,751].
UNITED STATES v. WOOD [16,752], 13 Blatchf. 252.
UNITED STATES v. WOOD [16,753], 2 Cranch, C. C. 164.
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UNITED STATES v. WOODRUFF [16,758], 4 McLean, 105.
UNITED STATES v. WOODS [16,759], 3 Cin. Law Bul. 59; 24 Int. Rev. Rec. 150.
UNITED STATES v. WOODS [16,760], 4 Cranch, C. C. 484.
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UNITED STATES v. WOOLHEIM [16,761], 11 Int. Rev. Rec. 78.
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UNITED STATES v. WRIGHT [16,771], 1 Cranch, C. C. 123.
UNITED STATES v. WRIGHT [16,772], 2 Cranch, C. C. 68.
UNITED STATES v. WRIGHT [16,773], 2 Cranch, C. C. 296.
UNITED STATES v. WRIGHT [16,774], 15 Int. Rev. Rec. 9.
UNITED STATES v. WRIGHT [16,775], 1 McLean, 509.
UNITED STATES v. WRIGHT [16,776], 1 N. J. Law J. 4.
UNITED STATES ex rel. Henderson v. WRIGHT [16,777], 5 Phila. 299; 2 Pittsb. Rep. 440; 20 Leg. Int. 181; 25 Law Rep. 459; 10 Pittsb. Leg. J. 305.
UNITED STATES ex rel. Turner v. WRIGHT [16,-778], 5 Phila. 296; 2 Pittsb. Rep. 370; 20 Leg. Int. 21; 5 Leg. & Ins. Rep. 10; 10 Pittsb. Leg. J. 154.
United States v. Wright. [See 16,401.]
United States, Wright v. [See 18,097-18,099.]
UNITED STATES v. YEATON [16,779], 2 Cranch, C. C. 73.
UNITED STATES v. YELLOW SUN [16,212].
UNITED STATES v. YORK STREET FLAX SPINNING CO. [16,781], 17 Blatchf. 138; 8 Reporter, 551.
UNITED STATES v. YOUNG [16,782].
UNITED STATES v. YOUNGS [16,783], 10 Ben. 264.
UNITED STATES v. YOUNT [16,784], Hoff. Land Cas. 49.
United States, Yount v. [See 18,187, 18,188.]
United States, Yturbide v. [See 18,191.]
UNITED STATES v. ZANTZINGER [16,785], 1 Hayw. & H. 136.
UNITED STATES v. ZEREGA [16,786].
UNITED STATES & FOREIGN SALAMANDER FELTING CO. v. ASBESTOS FELTING CO. [16,-787], 10 O. G. 828.
UNITED STATES & FOREIGN SALAMANDER FELTING CO. v. ASBESTOS FELTING CO. [16,787a], 18 Blatchf. 310, 5 Ban. & A. 622.
United States & Foreign Salamander Felting Co., Asbestos Felting Co. v. [See 570.]
UNITED STATES & FOREIGN SALAMANDER FELTING CO. v. HAVEN [16,788], 2 Ban. & A. 164; 1 Law & Eq. Rep. 16; 9 O. G. 253; 2 Cent. Law J. 758; 23 Pittsb. Leg. J. 58; 3 Dill. 131.
UNITED STATES & FOREIGN SALAMANDER FELTING CO. v. MERRIMACK MFG. CO. [16,-789], 2 Ban. & A. 167; 9 O. G. 202.
UNITED STATES ANNUNCIATOR & BELL TELEGRAPH MFG. CO. v. SANDERSON [16,790], 3 Blatchf. 184.
UNITED STATES BANK v. BINNEY [16,791], 5 Mason, 176.
United States Cartridge Co., Union Metallic Cartridge Co. v. [See 14,369.]
United States Corset Co., Carstaedt v. [See 2,467, 2,468.]
United States Corset Co., Cohn v. [See 2,969.]
United States Disintegrating Ore Co., Gold & Silver Ore Separating Co. v. [See 5,508.]
United States Express Co., United States v. [See 16,602.]
United States Ins. Co., Craig v. [See 3,340.]
United States Ins. Co., Henning v. [See 6,366.]
United States Ins. Co., Marean v. [See 9,064.]
United States Ins. Co., Schwartz v. [See 12,505.]
UNITED STATES LIFE INS. CO. v. ADAMS [16,-792], 7 Biss. 30.
United States Mail S. S. Co., Higgins v. [See 6,469.]
UNITED STATES MAIL STEAMSHIP CO. v. JOHN POTTER, The [16,792a].
United States Patent Button Rivet, Needle & Machine Mfg. Co., Platt v. [See 11,222.]
UNITED STATES RIFLE, Etc., CO. v. WHITNEY ARMS CO. [16,793], 14 Blatchf. 94; 11 O. G. 373; 2 Ban. & A. 493.
UNITED STATES STAMPING CO. v. KING [16,-793a], 7 Fed. 860.
UNITED STATES STEAM-GAUGE CO. v. AMERICAN STEAM-GAUGE CO. [16,794], Holmes, 309; 1 Ban. & A. 30; 5 O. G. 208.
United States Tel. Co., United States v. [See 16,603.]
United States Wind-Engine & Pump Co., In re. [See 13,783.]
Universal Life Ins. Co., McKenty v. [See 8,854.]
Unna, Selz v. [See 12,650.]
UNTHANK v. TRAVELERS' INS. CO. [16,795], 4 Biss. 357; 5 Bigelow, Ins. Cas. 114.
UPHAM v. BROOKS [16,796], 2 Story, 623.
UPHAM v. BROOKS [16,797], 2 Woodb. & M. 407.
Upperman, Mockbee v. [See 9,687.]
UPTON v. BURNHAM [16,798], 3 Biss. 431; 8 N. B. R. 221.
UPTON v. BURNHAM [16,799], 3 Biss. 520; 5 Chi. Leg. News, 485.
Upton, Elliott v. [See 6,547, 6,548.]
UPTON v. ENGLEHART [16,800], 3 Dill. 496; 3 Ins. Law J. 743; 8 West. Jur. 345.
UPTON v. HANSBROUGH [16,801], 3 Biss. 417; 10 N. B. R. 368; 5 Chi. Leg. News, 242; 7 West. Jur. 238; 5 Leg. Gaz. 60.
Upton, Hobart v. [See 6,547, 6,548.]
UPTON v. JACKSON [16,802], 1 Flip. 413; 4 Ins. Law J. 189.
Upton, Milligan & H. Glue Co. v. [See 9,607.]
Upton, Robbins v. [See 11,886.]
Upton v. Triblecock. [See 5,541, note.]
Urann, Harrison v. [See 6,146.]
Urbana, Town of, Leslie v. [See 8,276.]
Urquhart, Boyd v. [See 1,750.]
U. S. GRANT, The [16,803], 7 Ben. 195.
U. S. GRANT, The [16,804], 7 Ben. 337.
Usher, Gibbs v. [See 5,387.]
USHER v. McBRATNEY [16,805], 3 Dill. 385.
Usher, McBratney v. [See 8,661.]
Usher, Maddux v. [See 8,936.]
Ustick, Postmaster General v. [See 11,315.]
Utice, The, Smith v. [See 13,123.]
UTILITY, The [16,806], 1 Blatchf. & H. 218.
UTLEY v. DONALDSON [16,807].
UTPADEL v. FEARS [16,808], 1 Spr. 559; 21 Law Rep. 478.
UTTERBACH v. BINNS [16,809], 1 McLean, 242.

V

Vaca, United States v. [See 16,604.]
VACCARI v. MAXWELL [16,810], 3 Blatchf. 368.
Valden, Nordlinger v. [See 10,296.]
Vail, American Middlings Purifier Co. v. [See 308.]
VALARINO v. THOMPSON [16,810a].
VALE v. PHŒNIX INS. CO. [16,811], 1 Wash. C. C. 283.
VALENTINE, In re [16,812], 4 Biss. 317; 12 N. B. R. 389; 1 N. Y. Wkly. Dig. 101.
Valentine, Betton v. [See 1,370.]
Valentine, Buerk v. [See 2,109.]
Valentine, Hazleton v. [See 6,287.]
VALENTINE v. MARSHAL [16,812a], 4 Betts, C. C. MS. 52.
VALENTINE v. REYNOLDS [16,813].
VALERINO v. THOMPSON [16,813a].
VALK, In re [16,814], 3 Ben. 431; 3 N. B. R. 278 (Quarto, 73).
VALK v. SIMMONS [16,815], 4 Mason, 113.
VALLANDIGHAM, Ex parte [16,816], 5 West. Law Month. 37.
VALLANDIGHAM, Ex parte [16,816].
Valle, Wickham v. [See 17,613.]
VALLEJO v. UNITED STATES [16,818], Hoff. Dec. 66.
VALLEJO v. UNITED STATES [16,819], Hoff. Land Cas. 174.
Vallejo, United States v. [See 16,605, 16,606.]

VALLETTE v. WHITEWATER VALLEY CANAL CO. [16,820], 4 McLean, 192; 5 West. Law J. 80.
Valley Bank, Merchants' Nat. Bank v. [See 9,447.]
VALLEY NAT. BANK v. MYERS [5,549], 17 N. B. R. 257.
Valley Nat. Bank v. Papin. [See 12,239.]
VALLIERE v. UNITED STATES [16,822], Hempst. 335.
VALLIQUETTE, In re, [16,823], 4 N. B. R. 307 (Quarto, 92).
VAN AERMAN, Ex parte [16,824], 3 Blatchf. 160.
VAN AMRINGE v. PEABODY [16,825], 1 Mason, 440.
Van Antwerp, Goodyear Dental Vulcanite Co. v. [See 5,600.]
VAN ANTWERP v. HULBURD [16,826], 7 Blatchf. 426; Thomp. Nat. Bank Cas. 208.
VAN ANTWERP v. HULBURD [16,827], 8 Blatchf. 282; 1 Thomp. Nat. Bank Cas. 219.
Van Arman, Gilbert v. [See 5,414.]
VAN AUKEN, In re [16,828], 14 N. B. R. 425.
VAN AVERY v. PHŒNIX INS. CO. [16,829], 5 Biss. 193.
Van Bergen v. Stuart. [See 11,041.]
VAN BOKELEN v. BROOKLYN CITY R. CO. [16,830], 5 Blatchf. 379.
VAN BOKKELEN v. COOK [16,831], 5 Sawy. 587; 9 Reporter, 502.
VAN BRUNT v. CORBIN [16,832], 14 Blatchf. 496.
VAN BUREN, In re [16,833], 19 N. B. R. 149.
Van Buren v. The E. M. McChesney. [See 4,463, 4,464.]
VAN CAMPBUSH v. CRAWFORD [2,224], 6 Alb. Law J. 358, note; 4 Leg. Op. 453.
VAN CAMPEN, In re [16,835], 2 Ben. 419; 1 Amer. Law T. Rep. U. S. Cts. 67; 1 Thomp. Nat. Bank Cas. 185.
VANCE v. CAMPBELL [16,836].
VANCE v. CAMPBELL [16,837], 1 Fish. Pat. Cas. 483.
Vance, Suydam v. [See 13,657.]
Vance, The A. D. [See 92.]
Vancleve, Stevens v. [See 13,412.]
VANCOUVER, The [16,838], 2 Sawy. 381; 18 Int. Rev. Rec. 103.
Vanderbilt, McKibbin v. [See 8,860.]
VANDERBILT v. REYNOLDS [16,839], 16 Blatchf. 80; 7 Reporter, 523.
Vanderbilt v. Reynolds. [See 10,331.]
Vanderbilt, The C. [See 3,524.]
Vanderbilt, The Cornelius C. [See 3,235.]
VANDERHOEF, In re [16,840], 18 Alb. Law J. 220.
VANDERHOEF, In re [16,841], 18 N. B. R. 543.
VANDERHOOF v. CITY BANK OF ST. PAUL [16,842], 1 Dill. 476; 5 N. B. R. 270; 3 Chi. Leg. News, 338, 355; 3 Leg. Gaz. 268.
VANDERSLICE v. SUPERIOR, The [16,843], 2 Amer. Law J. (N. S.) 347; 4 Pa. Law J. Rep. 388; 13 Law Rep. 399.
VANDERVELPEN, In re [16,844], 14 Blatchf. 137.
VANDERWICK v. SUMMERL [16,845], 2 Wash. C. C. 41.
Van Deusen, Union Paper-Collar Co. v. [See 14,395.]
VANDEVEER v. TILGHMAN [16,846], Crabbe, 66.
VANDEWATER v. WESTERVELT [16,846a].
VANDEWATER v. YANKEE BLADE, The [16,847], 1 McAll. 9.
VANDOVER v. WILMOT [16,848], 10 Ben. 223.
Van Dresar, Gibson v. [See 5,402.]
Van Dyck, Morgan v. [See 9,810.]
Vandyke, Johnston v. [See 7,426.]
VAN DYKE v. TINKER [16,849], 11 N. B. R. 308.
Van Dyke, Tinker v. [See 14,058.]
VAN EPPS v. WALSH [16,850], 1 Woods, 598.
Van Fossen, United States v. [See 16,607.]
Van Hagen, Sturges v. [See 13,570.]
Van Haven, Ex parte. [See 16,858.]
VAN HOOK v. PENDLETON [16,851], 1 Blatchf. 187; 1 Fish. Pat. Rep. 120.
VAN HOOK v. PENDLETON [16,852], 2 Blatchf. 85; 1 Fish. Pat. Rep. 205.
VAN HOOK v. SCUDDER [16,853].
VAN HOOK v. WOOD [16,854].
VAN HOOK v. WOOD [16,855].
VANHORN v. CHESTNUT [16,856], 2 Wash. C. C. 160.
VANHORNE v. DORRANCE [16,857], 2 Dall. 304.
VAN HOVEN, Ex parte [16,858], 4 Dill. 411; 22 Int. Rev. Rec. 217; 3 Cent. Law J. 366; 1 Cin. Law Bul. 178.
VAN HOVEN, Ex parte [16,859], 4 Dill. 415.
Van Ingen, Livingston v. [See 8,420.]
Van Inwagen, Scarlett v. [See 12,437.]
Van Kirk, Jones v. [See 7,500.]
VAN KLEECK v. MILLER [16,860], 19 N. B. R. 484.
VAN KLEECK v. THURBER [16,861], 1 Pa. Law J. 402.
Van Lear, Dodge v. [See 3,956.]
VAN LIER v. DORD [16,862].
VAN MARTER v. MILLER [16,863], 15 Blatchf. 562; 4 Ban. & A. 124.
Van Meter v. Mitchel. [See 16,865, 16,865a.]
Van Meter, Richard v. [See 11,763.]
VAN METRE v. MITCHELL [16,865].
VAN METRE v. MITCHELL [16,865], 2 Wall. Jr. 311; 4 Pa. Law J. 111; 7 Pa. Law J. 115.
VAN METRE v. MITCHELL [16,865a], 1 Pittsb. Leg. J. 122; 2 Amer. Law Reg. 279.
Van Metter v. Mitchell. [See 16,865.]
Van Name, Triplet v. [See 14,176.]
Van Ness, Baltimore & O. R. Co. v. [See 830.]
Van Ness, Bank of United States v. [See 938.]
Van Ness, Beatty v. [See 1,198.]
Van Ness, Brohawn v. [See 1,920.]
Van Ness, Crampton v. [See 3,348.]
Van Ness, Gillis v. [See 5,440.]
VAN NESS v. HEINEKE [16,866], 2 Cranch, C. C. 259.
VAN NESS v. HYATT [16,867], 5 Cranch, C. C. 127.
Van Ness, Rockville & W. Turnpike Road v. [See 11,986.]
VAN NESS v. UNITED STATES [16,868], 2 Cranch, C. C. 376.
VAN NESS v. VAN NESS [16,869], 1 Hayw. & H. 251.
Van Nest, Merriam v. [See 9,462.]
Van Nest, Searles v. [See 12,587.]
Van Norman v. Holman. [See 291.]
Van Northwick v. Sterling. [See 16,388.]
Van Nostrand, Minon v. [See 9,641.]
VAN ORDEN, Ex parte [16,870], 3 Blatchf. 166; 12 N. Y. Leg. Obs. 161.
Van Pelt, Bullock v. [See 2,131.]
VAN PELT v. OHIO, The [16,870a].
Vanranst, United States v. [See 16,608.]
VAN REIMSDYK v. KANE [16,871], 1 Gall. 371.
VAN REIMSDYK v. KANE [16,872], 1 Gall. 630.
VAN RENSSELLAER v. KELLY [16,873], 2 Hask. 87.
VAN RIPER, In re [16,874], 6 N. B. R. 573.
Van Sands, Davis v. [See 3,655.]
VAN SANTWOOD v. JOHN B. COLE, The [16,875], 4 N. Y. Leg. Obs. 373.
VAN SCHAACK v. NORTHERN TRANSP. CO. [16,876], 3 Biss. 394; 5 Chi. Leg. News, 181; 4 Leg. Op. 537; 7 Amer. Law Rev. 565.
Vansickle, United States v. [See 16,609.]
Van Slyke, United States v. [See 16,610.]
VAN STRATTON v. BORBOCK [16,876a].
VAN SYCKEL v. THOMAS EWING, The [16,877], Crabbe, 405; 3 Law Rep. 449; 5 Pa. Law J. 231; 3 Pa. Law J. Rep. 301.
Vansyckle v. The Thomas Ewing. [See 16,877.]
VANTINE v. LAKE, The [16,878], 2 Wall. Jr. 52; 14 Law Rep. 669; 1 Phila. 327; 9 Leg. Int. 47.
VAN TUYL, In re [16,879], 3 Ben. 237; 2 N. B. R. 579 (Quarto, 177); 1 Chi. Leg. News, 326.
VAN TUYL, In re [16,880], 1 N. B. R. 636 (Quarto, 193); 1 Amer. Law T. Rep. Bankr. 123.
VAN TUYL, In re [16,881], 2 N. B. R. 70 (Quarto, 25).
Van Voorst, Elliot v. [See 4,390.]
VAN WINKLE v. HENRY MORRISON, The [16,882], 23 How. Pr. 371.
VAN WINKLE v. JARVIS [16,883], 3 Ben. 573.
Van Winkle v. The Jenny Lind. [See 7,287.]
Van Wormer, Hailes v. [See 5,904.]
Van Zandt, Davis v. [See 3,656.]
Van Zandt, Jones v. [See 7,501-7,505.]
VAN ZANDT v. MAXWELL [16,884], 2 Blatchf. 421.
Van Zandt, United States v. [See 16,611.]
Van Zandt, William v. [See 17,685.]
Vaporisor, United States v. [See 10,537.]
Varden, Moffit v. [See 9,689.]
Varden, Tayloe v. [See 13,771.]

[Federal Case numbers are given in brackets.]

Varden, Voss v. [See 17,016.]
Varn, Gooding v. [See 5,539.]
VARNER v. WEST [16,885], 1 Woods, 493.
VARNUM v. BELLAMY [16,886], 4 McLean, 87.
Varnum, Burton v. [See 2,220.]
VARNUM v. CAMPBELL [16,887], 1 McLean, 313.
VARNUM v. DANFORD [16,888].
VARNUM v. MAURO [16,889], 2 Cranch, C. C. 425.
VARNUM v. MILFORD [16,890], 2 McLean, 74.
VARNUM v. MILFORD [16,891], 4 McLean, 93.
Varnum, Powling v. [See 11,364.]
VARNUM v. RUNION [16,892], 1 McLean, 413.
Varrene, Von Glahn v. [See 16,994.]
Vassault, Meeks v. [See 9,393.]
Vasse, Baker v. [See 784.]
VASSE v. COMEGYS [16,893], 4 Wash. C. C. 570.
VASSE v. COMEGYSS [16,894], 2 Cranch, C. C. 564.
VASSE v. MIFFLIN [16,895], 4 Wash. C. C. 519.
VASSE v. SMITH [16,896], 2 Cranch, C. C. 31.
Vattier, Hinde v. [See 6,512.]
Vattier, Piatt v. [See 11,117.]
VAUGHAN v. CENTRAL PAC. R. CO. [16,897], 4 Sawy. 280; 3 Ban. & A. 27; 14 Pac. Law Rep. 274.
VAUGHAN v. EAST TENNESSEE, V. & G. R. CO. [16,898], 1 Flip. 621; 11 O. G. 789; 2 Ban. & A. 537; 9 Chi. Leg. News, 255; 2 Cin. Law Bul. 39.
VAUGHAN v. NORTHROP [16,899], 5 Cranch, C. C. 496.
VAUGHAN v. SIX HUNDRED AND THIRTY CASKS OF SHERRY WINE [16,900], 7 Ben. 506.
VAUGHAN v. SOUTH & NORTH ALABAMA R. CO. [16,901].
VAUGHAN v. WALLACE [16,902].
VAUGHAN v. WILLIAMS [16,903], 3 McLean, 530; 3 West. Law J. 65; 8 Law Rep. 375.
Vaughan, The D. W. [See 4,222.]
Vaughan, The Mary J. [See 9,217.]
Vaughan, The Mary Jane. [See 9,216.]
Vaughn, Lamb v. [See 8,023.]
Vaughn, Mizner v. [See 9,678.]
Vaught, Bloomer v. [See 1,560.]
Vaux, Brudenell v. [See 2,049.]
VEACOCK v. McCALL [16,904], Gilp. 329.
VEATCH v. HARBAUGH [16,905], 1 Cranch, C. C. 402.
Veazie, Wadleigh v. [See 17,031.]
VEAZIE v. WILLIAMS [16,906], 3 Story, 54.
VEAZIE v. WILLIAMS [16,907], 3 Story, 611; 13 Hunt, Mer. Mag. 356.
Vechio, Calhoun v. [See 2,310.]
VEIL v. MITCHEL [16,908], 4 Wash. C. C. 105.
VEITCH v. BASYE [16,909], 2 Cranch, C. C. 6.
VEITCH v. FARMERS' BANK [16,910], 3 Cranch, C. C. 81.
Veitch, Peyton v. [See 11,057.]
Veitch, United States v. [See 16,613, 16,614.]
VELASCO, The [16,910a], Blatchf. Pr. Cas. 54.
VELOCITY, The [16,911], 13 Law Rep. 61.
VELONA, The [16,912], 3 Ware, 139.
Venable, Brent v. [See 1,842.]
Venable, French v. [See 5,105.]
VENABLE v. RICHARDS [16,913], 1 Hughes, 326; 22 Int. Rev. Rec. 299.
Venable, United States v. [See 16,615, 16,616.]
Venture, The. [See 2,544.]
VENUS, The [16,914], Blatchf. Pr. Cas. 129.
Venus, The, Breed v. [See 1,827.]
Vere, The, Reid v. [See 11,670.]
VEREMAITRE, In re [16,915], 9 N. Y. Leg. Obs. (129) 137; 3 Amer. Law J. (N. S.) 438; 13 Law Rep. 608.
VERMEULE, In re [16,916], 10 Ben. 1.
Vermilye, United States v. [See 16,618.]
VERMONT, The [16,917], 6 Ben. 115.
VERMONT & C. R. CO. v. VERMONT CENT. R. CO. [16,918].
VERMONT v. SOCIETY FOR THE PROPAGATION OF THE GOSPEL [16,919], 1 Paine, 652.
VERMONT v. SOCIETY FOR THE PROPAGATION OF THE GOSPEL [16,920], 2 Paine, 545.
Vermont & C. R. Co., Codman v. [See 2,935, 2,936.]
Vermont & C. R. Co. v. Vermont Cent. R. Co. [See 16,918.]
Vermont & M. R. Co., White v. [See 17,559.]
Vermont Cent. R. Co., Brooks v. [See 1,964.]
Vermont Cent. R. Co., Vermont & C. R. Co. v. [See 16,918.]
Vermont Val. R. Co., Pond v. [See 11,264, 11,265.]
VERNARD v. HUDSON [16,921], 3 Sumn. 405.
Vernon, Cassels v. [See 2,503.]
VERNON v. D'WOLF [16,922], 4 Mason, 123.
Vernon, Lawrence v. [See 8,146.]
Vernon, Oliver v. [See 10,501.]
Vernon County, McKee v. [See 8,851.]
Vernon County Court, United States ex rel. McKee v. [See 14,877.]
VERONICA MADRE, The [16,923], 10 Ben. 24.
VERSAILLES, The [6,365].
Versailles, The, Hennessey v. [See 6,365.]
VERSELIUS v. VERSELIUS [16,925], 9 Blatchf. 189.
Vessel Owners' Towing Ass'n, Bothwell v. [See 1,687.]
VETTERLEIN, In re [16,926], 5 Ben. 7; 4 N. B. R. 599 (Quarto, 194).
VETTERLEIN, In re [16,927], 5 Ben. 311.
VETTERLEIN, In re [16,928], 5 Ben. 571; 6 N. B. R. 518.
VETTERLEIN, In re [16,929], 13 Blatchf. 44; 12 N. B. R. 526; 21 Int. Rev. Rec. 212; 1 N. Y. Wkly. Dig. 177.
Vice, Rumford Chemical Works v. [See 12,136.]
Vickers v. The Daniel Augusta. [See 9,540.]
VICKERY, In re [16,930], 3 N. B. R. 696 (Quarto, 171).
Vickery, United States v. [See 16,619.]
VICKSBURG, The [16,931], 3 Ben. 298.
VICKSBURG, The [16,932], 7 Blatchf. 216.
Vicksburg, etc., R. Co., Jackson v. [See 7,150.]
VICTOR, The [16,933], Brown, Adm. 449.
VICTOR v. CISCO [16,934], 5 Blatchf. 128.
VICTOR SEWING-MACH. CO. v. LANGHAM [16,935], 9 Biss. 183.
VICTOR SEWING-MACH. CO. v. MINGUS [16,936], 25 Pittsb. Leg. J. 125; 5 Reporter, 518.
Victoria, The, French v. [See 5,106.]
Victoria, The, Saunders v. [See 12,377.]
Victoria, The, Thorne v. [See 13,988.]
Victoria Perez, The, United States v. [See 16,620.]
VICTORY, The [16,937], 1 Blatchf. & H. 443.
VICTORY, The [16,938], 2 Spr. 226.
VIDAL v. PHILADELPHIA [16,939].
VIESCA v. WYCHE [16,940], 3 Woods, 336.
Vietor v. Cisco. [See 16,934.]
Viets, Porter v. [See 11,291.]
View, The A. J. [See 118.]
Vigol, United States v. [See 16,621.]
Vigus, The Lilian M. [See 8,346.]
VILA, In re [16,941], 5 Law Rep. 17.
Vilas, Akerly v. [See 119.]
Villato, United States v. [See 16,622.]
VILLE DE PARIS, The [16,942], 3 Ben. 276.
VILLE DU HAVRE, The [16,943], 7 Ben. 328.
Vinacke, Reeves v. [See 11,663.]
VINCENNES, The [16,944].
VINCENNES, The [16,945], 3 Ware, 171; 21 Law Rep. 616.
VINCENT v. PENELOPE, The [16,946.]
VINCENZO PEROTTO, The [16,947], 8 Ben. 483.
VINCENZO T., The [16,948], 10 Ben. 228.
Viney, Hartell v. [See 6,158.]
VINING v. WOOTEN [16,949], 1 Cooke, 127; Brunner, Col. Cas. 187.
Vinsent, United States v. [See 16,623.]
VINT v. KING [16,950], 2 Amer. Law Reg. 712.
VINTON, In re [16,951], 7 N. B. R. 138.
Vinton, United States v. [See 16,624.]
Viola, The Bartlette v. [See 1,083.]
Violet, Smallwood v. [See 12,962.]
VIOLETT v. PATTON [10,839].
VIOLETT v. STETTINIUS [16,953], 5 Cranch, C. C. 559.
VIOLETTE v. BALL [16,954], 2 Cranch, C. C. 102.
VIOLETTE v. TYLER [16,955], 2 Cranch, C. C. 200.
VIRDEN v. CAROLINE, The [16,956], 6 Amer. Law Reg. 222.
Virgin, The, United States v. [See 16,625.]
VIRGINIA, The [16,957], 3 Biss. 48; 3 Chi. Leg. News, 329.
VIRGINIA v. RIVERS [16,958].
Virginia, The, Alberti v. [See 141.]
Virginia, The, Binford v. [See 1,412.]
VIRGINIA v. DULANY [16,959], 1 Cranch, C. C. 82.
VIRGINIA v. EAKIN [16,960], 1 Cranch, C. C. 83.
Virginia v. Evans. [See 16,969.]
VIRGINIA v. GORDON [16,961], 1 Cranch, C. C. 48.

[Federal Case numbers are given in brackets.]

VIRGINIA v. HOOFF [16,962], 1 Cranch, C. C. 21.
VIRGINIA v. HOWARD [16,963], 1 Cranch, C. C. 61.
VIRGINIA v. LEAP [16,964], 1 Cranch, C. C. 1.
Virginia v. Rivers. [See 16,958.]
VIRGINIA v. SMITH [16,965], 1 Cranch, C. C. 22.
VIRGINIA v. SMITH [16,966], 1 Cranch, C. C. 46.
VIRGINIA v. SMITH [16,967], 1 Cranch, C. C. 47.
Virginia v. Turner. [See 16,970, 16,971.]
Virginia v. Wise. [See 16,972.]
VIRGINIA v. ZIMMERMAN [16,968], 1 Cranch, C. C. 47.
VIRGINIA v. EVANS [16,969], 1 Cranch, C. C. 581.
VIRGINIA v. TURNER [16,970], 1 Cranch, C. C. 261.
VIRGINIA v. TURNER [16,971], 1 Cranch C. C. 286.
VIRGINIA v. WISE [16,972], 1 Cranch, C. C. 142.
Virginia & G. H. Water Co., Cole Sil. Min. Co. v. [See 2,989, 2,990.]
VIRGINIA & M. STEAM NAV. CO. v. UNITED STATES [16,973], Taney, 418.
Virginia & T. R. Co., Tyson v. [See 14,321.]
Virginia Bonds, United States v. [See 16,626.]
Virginia Coal & Iron Co., Brandt v. [See 1,814.]
Virginia Fire & Marine Ins. Co., Cohn v. [See 2,970.]
Virginia Fire & Marine Ins. Co., Dooley v. [See 3,-998, 3,999.]
Virginia Fire & Marine Ins. Co., Levy v. [See 8,304.]
Virginia Gold Cases. [See 16,335.]
Virginia Protection Ins. Co., Kelly v. [See 7,677.]
VIRGINIA RULON, The [16,974], 13 Blatchf. 519.
VIRGO, The [16,975], 7 Ben. 495.
VIRGO, The [16,976], 13 Blatchf. 255.
Virgo, The, Brennan v. [See 1,831.]
Vivian, The Alice [See 197.]
VIVID, The [16,977], 3 Ben. 397.
VIVID, The [16,978], 4 Ben. 319; 14 Int. Rev. Rec. 163.
VOCE v. LAWRENCE [16,979], 4 McLean, 203.
VOCKE v. YAEGER [16,980], 3 Biss. 300.
VOGEL, In re [16,981], 9 Ben. 498; 8 N. B. R. 165.
VOGEL, In re [16,982], 7 Blatchf. 18; 3 N. B. R. 198 (Quarto, 49); 1 Amer. Law T. Rep. Bankr. 170; 2 Amer. Law T. 154.
VOGEL, In re [16,983], 2 N. B. R. 427 (Quarto, 138); 1 Chi. Leg. News, 210.
VOGEL, In re [16,984], 5 N. B. R. 393.
VOGLE v. LATHROP [16,985], 4 Brewst. 253; 4 N. B. R. 439 (Quarto, 146); 3 Pittsb. Rep. 268; 18 Pittsb. Leg. J. 106; 2 Leg. Gaz. 390.
VOGLER, In re [16,986], 2 Hughes, 297; 8 N. B. R. 132.
VOGLER v. SEMPLE [16,987], 7 Biss. 382; 11 O. G. 923; 23 Int. Rev. Rec. 112; 2 Ban. & A. 556; 9 Chi. Leg. News, 217; Merw. Pat. Inv. 249; 4 Law & Eq. Rep. 68.
VOGLER v. SPAUGH [16,988], 4 Biss. 288.
Vogt, In re [See 13,562, 13,563.]
VOIGHT v. LEWIS [16,989], 14 N. B. R. 543; 11 Phila. 511; 33 Leg. Int. 402; 9 Chi. Leg. News, 65; 11 Bankers' Mag. (3d S.) 481; 3 N. Y. Wkly. Dig. 421; 24 Pittsb. Leg. J. 54.
VOLUNTEER, The [16,990], 1 Brown's Adm. 159; 1 Chi. Leg. News, 185.
VOLUNTEER, The [16,991], 1 Sumn. 551.
Volunteer, The, Elliott v. [See 4,398.]
VOLUSIA, The [16,992], 3 Wall. Jr. 375; 19 Hunt. Mer. Mag. 80.
Volusia, The, Lincoln v. [See 8,357, 16,992.]
Volz, United States v. [See 16,627.]
VON BECK, In re [17,002].
VON COTZHAUSEN v. NAZRO [16,993a], 15 Fed 891.
VON GLAHN v. VARRENNE [16,994], 1 Dill. 515.
VON HOVEN, Ex parte [16,858].
VON HOVEN, Ex parte [16,859].
Von Lind v. The William Slater. [See 13,382.]
VON ROY v. BLACKMAN [16,997], 3 Woods, 98.
Van Sachs, Ungewitter v. [See 14,343.]
VON STADE v. ARTHUR [16,998], 13 Blatchf. 251; 22 Int. Rev. Rec. 267.
VOORHEES v. ALBRIGHT [16,999], 2 N. J. Law J. 57.
Voorhees, Bank of the United States v. [See 939.]
VOORHEES v. FRISBIE [17,000].
VOORHIES v. BONESTEEL [17,001], 7 Blatchf. 495.
Voorhis, The Susan E. [See 13,633.]
VORBECK, In re [17,002], 1 Pac. Law Rep. 100.
VORE v. FOWLER [17,003], 2 Bond, 294.
VORHIS v. FORSYTHE [17,004], 4 Biss. 409.
VOSE v. ALLEN [17,005], 2 Amer. Law Reg. 563; 12 N. Y. Leg. Obs. 100; 30 Hunt, Mer. Mag. 331.
VOSE v. ALLEN [17,006], 3 Blatchf. 289; 34 Hunt, Mer. Mag. 450.
Vose, Cannon v. [See 2,386a.]
Vose, Dedekam v. [See 3,732.]
VOSE v. FLORIDA R. CO. [17,007].
VOSE v. INTERNAL IMPROVEMENT FUND [17,-008], 2 Woods, 647.
VOSE v. MAYO [17,009], 3 Cliff. 484.
VOSE v. PHILBROOK [17,010], 3 Story, 335.
VOSE v. REED [17,011], 1 Woods, 647.
VOSS v. BAKER [17,012], 1 Cranch, C. C. 104.
Voss, Beale v. [See 1,160.]
Voss, Cooke v. [See 3,179.]
Voss, Fenwick v. [See 4,736.]
VOSS v. HOWARD [17,013], 1 Cranch, C. C. 251.
VOSS v. LUKE [17,014], 1 Cranch, C. C. 331.
Voss, Moore v. [See 9,778.]
Voss, Morgan v. [See 9,811, 9,812.]
Voss, Thompson v. [See 13,979.]
VOSS v. TUEL [17,015], 1 Cranch, C. C. 72.
Voss, United States v. [See 16,628.]
VOSS v. VARDEN [17,016], 1 Cranch, C. C. 410.
VOWELL v. ALEXANDER [17,017], 1 Cranch, C. C. 33.
VOWELL v. BACON [17,018], 4 Cranch, C. C. 97.
VOWELL v. COLUMBIAN INS. CO. [17,019], 3 Cranch, C. C. 83.
VOWELL v. LYLES [17,020], 1 Cranch, C. C. 329.
VOWELL v. LYLES [17,021], 1 Cranch, C. C. 428.
VOWELL v. PATTON [17,022], 2 Cranch, C. C. 312.
VOWELL v. THOMPSON [17,023], 3 Cranch, C. C. 428.
VOWELL v. WEST [17,024], 4 Cranch, C. C. 100.
Vowinkle, Hostetter v. [See 6,714.]
VOYAGEUR DE LA MER, The [17,025], 1 Spr. 372; 20 Law Rep. 331.
Vrow Christina Magdalena, The, Jansen v. [See 7,-216.]
VUYTON v. BRENELL [17,026], 1 Wash. C. C. 467.

W

Wabash Ave. Baptist Church Soc., O'Neil v. [See 10,531.]
Wabash Nav. Co., Culbertson v. [See 3,464.]
Wabash Ry. Co., Tysen v. [See 14,315.]
Wacousta, The, Barrett v. [See 1,050.]
WADDELL, Ex parte [17,027], 1 N. Y. Leg. Obs. 53.
Waddell, Cushman v. [See 3,516.]
Waddell, Martin v. [See 9,169.]
WADDINGTON v. BANKS [17,028], 1 Brock. 97.
Waddington, Turner v. [See 14,263.]
Waddle, Watts v. [See 17,295.]
Wade, Howe v. [See 6,777.]
WADE v. MATTHEWS [17,029].
Wade, Matthews v. [See 9,292.]
Wade, United States v. [See 16,629.]
WADE v. WADE [17,030], 1 Wash. C. C. 477.
WADLEIGH v. VEAZIE [17,031], 3 Sumn. 165.
Wadsworth, Ardrey v. [See 512.]
WADSWORTH v. TYLER [17,032], 2 N. B. R. 316 (Quarto, 101); 2 Amer. Law T. Rep. Bankr. 28; 1 Chi. Leg. News, 139.
Wady, Swift v. [See 13,699.]
WAGENER v. MINOT [17,033], Hask. 313.
Wager, Bussey v. [See 2,231.]
Wager, Hall v. [See 5,951.]
WAGER v. LEAR [17,034], 2 Cranch, C. C. 92.
WAGGENER v. CHEEK [17,035], 2 Dill. 560.
WAGGONER, Ex parte [17,037], 1 Gaz. 77.
WAGGONER, In re [17,037], 1 Ben. 532; 1 Gaz. 77.
Wagner, Ex parte. [See 14,174.]
WAGNER, In re [17,038], 1 McA. Pat. Cas. 510.
Wagner, Gardener v. [See 5,218.]

[Federal Case numbers are given in brackets.]

WAGNER v. JUANITA, The [17,039], Newb. 352.
Wagner, United States v. [See 16,630.]
WAGNER v. WATTS [17,040], 2 Cranch, C. C. 169.
Wagner, Woodhull v. [See 17,975.]
WAHL, In re [17,041], 15 Blatchf. 334.
Wahl, Hine v. [See 6,517.]
WAIGHT v. UNITED STATES [17,042], 1 Hayw. & H. 189.
Wailes, McDaniel v. [See 8,746.]
WAIT v. BULL'S HEAD BANK [17,043], 19 N. B. R. 500.
Wait, Goodyear v [See 5,587.]
WAITE, In re [17,044], 1 Lowell, 207; 1 N. B. R. 373 (Quarto, 84).
Waite, In re. [See 7,170.]
WAITE v. ANTELOPE, The [17,045], Bee, 233.
Waite, Campbell v. [See 2,374.]
WAITE v. TRIBLECOCK [17,046], 5 Dill. 547; 1 Cent. Law J. 570.
Waitz, United States v. [See 16,631.]
WAITZFELDER, In re [17,047], 8 Ben. 423.
WAITZFELDER, In re [17,048], 18 N. B. R. 260.
WAKEFIELD v. GOVERNOR, The [17,049], 1 Cliff. 93.
Wakefield, Lamb v [See 8,024.]
WAKEFIELD v. ROSS [17,050], 5 Mason, 16.
Wakeman, In re. [See 17,051.]
WAKEMAN v. HOYT [17,051], 5 Law Rep. 309; 1 N. Y. Leg. Obs. 132.
Wakemen, Talbot v. [See 13,731.]
Walbrun, Babbitt v. [See 694, 695.]
WALCOTT v. ALMY [17,052], 6 McLean, 23.
WALCOTT v. WILCUTT [17,053].
Walcott, Slack v. [See 12,932.]
WALD, In re [17,054], 12 N. B. R. 491; 7 Chi. Leg. News, 26; 1 N. Y. Wkly. Dig. 174; 1 Cent. Law J. 531.
Wald, Wehl v. [See 17,356.]
WALDEN v. CHAMBERLAIN [17,055], 3 Wash. 290.
WALDO, The [17,056], 2 Ware (Dav. 161) 165; 4 Law Rep. 382.
WALDORF v. NEW YORK, The [17,057], 1 Flip. 49; 3 West. Law Month. 249.
WALDRON v. CHASTENEY [17,058], 2 Blatchf. 62.
Wales, Thayer v. [See 13,871, 13,872.]
WALING v. CHRISTINA, The [17,059], Deady, 49; 1 Ore. 430.
WALKER, In re [17,060], 1 Lowell, 222; 1 N. B. R. 318 (Quarto, 60).
WALKER, In re [17,061], 1 Lowell, 237; 1 N. B. R. 386 (Quarto, 90); 1 Amer. Law T. Rep. Bankr. 38.
WALKER, In re [17,062], 1 N. B. R. 335 (Quarto, 67).
WALKER, In re [17,063], 18 N. B. R. 56.
Walker, In re. [See 4,081.]
WALKER v. ADAIR [17,064], 1 Bond, 158.
Walker, Bank of the Metropolis v. [See 903, 904.]
Walker, Bank of Washington v. [See 955, 956.]
Walker v. Barton. [See 12,043.]
WALKER v. BEAL [17,065], 3 Cliff. 155.
WALKER v. BYRNES [17,066], 14 Blatchf. 347.
Walker, Chase v. [See 2,630.]
WALKER v. CRANE [17,067], 13 Blatchf. 1.
WALKER v. DERBY [17,068], 5 Biss. 134.
Walker, Dixon v. [See 18,291.]
Walker, Farrar v. [See 4,679.]
WALKER v. FORBES [17,069], 3 App. Com'r Pat. 428.
Walker, Fourth Nat. Bank v. [See 4,992.]
WALKER v. GRAND TRUNK RY. CO. [17,070], 2 Hask. 96.
WALKER v. HAWXHURST [17,071], 5 Blatchf. 494.
WALKER v. HUNTER [17,072], 5 Cranch, C. C. 462.
Walker, Jenkins v. [See 7,275.]
WALKER v. JOHNSON [17,073], 2 Cranch, C. C. 203.
WALKER v. JOHNSON [17,074], 2 McLean, 92.
WALKER v. JOHNSON [17,075], 2 McLean, 255.
Walker, Jones v. [See 7,506, 7,507.]
WALKER v. KREMER [17,076], 5 Reporter, 389; 4 Wkly. Notes Cas. 544.
WALKER v. KREMER [17,077], 4 Wkly. Notes Cas. 432.
Walker, Lockwood v. [See 8,451.]
Walker, McCormick v. [See 8,728.]
WALKER v. MARKS [17,078], 2 Sawy. 152.
Walker, Martin v. [See 9,170.]
Walker, Mattison v. [See 9,297.]
WALKER v. MISSISSIPPI VAL. & W. RY. CO. [17,079], 2 Cent. Law J. 481.
Walker, Mitchell v. [See 9,670.]
WALKER v. MOORE [17,080], 2 Dill. 256.
Walker, Neale v. [See 10,072.]
Walker, New York Wire-Railing Co. v. [See 10,218.]
WALKER v. OGDEN [17,081], 1 Biss. 287.
WALKER v. PARKER [17,082], 5 Cranch, C. C. 639.
WALKER v. RAWSON [17,083], 4 Ban. & A. 128.
Walker, Reeside v. [See 11,656.]
WALKER v. REID [17,084], 2 Cin. Law Bul. 133.
WALKER v. SEIGEL [17,085], 12 N. B. R. 394; 2 Cent. Law J. 508.
WALKER v. SMITH [17,085a], 2 Hayw. & H. 230.
WALKER v. SMITH [17,086], 1 Wash. C. C. 152; 4 Dall. 389.
WALKER v. SMITH [17,087], 1 Wash. C. C. 202.
Walker, Stillwell v. [See 13,451.]
WALKER v. STOCKDALE [17,088], 11 Int. Rev. Rec. 63.
Walker, Teal v. [See 13,812.]
WALKER v. TOWNER [17,089], 4 Dill. 165; 16 N. B. R. 285; 5 Cent. Law J. 206.
Walker, Tracy v. [See 14,129.]
Walker, United States v. [See 16,632.]
WALKER v. WANTON [17,090], 1 Cranch, C. C. 397.
Walker, Washington v. [See 17,235.]
Walkinshaw, Tobin v. [See 14,068-14,070.]
Walkinshaw, United States v. [See 16,633.]
WALKYRIEN, The [17,091], 3 Ben. 394.
WALKYRIEN, The [17,092], 11 Blatchf. 241.
WALL v. ROYAL SAXON, The [17,093], 2 Amer. Law Reg. 324; 5 Pa. Law J. Rep. 290.
WALLACE, In re [17,094], Deady, 433; 2 N. B. R. 134 (Quarto, 52); 3 Amer. Law Rev. 174; 1 Chi. Leg. News, 30.
WALLACE, In re [17,095], 12 N. B. R. 191.
WALLACE v. AGRY [17,096], 4 Mason, 336.
WALLACE v. AGRY [17,097], 5 Mason, 118.
Wallace, Brownson v. [See 2,042.]
WALLACE v. CLARK [17,098], 3 Woodb. & M. 359.
Wallace, Davis v. [See 3,657.]
WALLACE v. DEWEY [17,099], 3 McLean, 548.
WALLACE v. HOLMES [17,100], 9 Blatchf. 65; 5 Fish. Pat. Cas. 37; 1 O. G. 117.
Wallace, Jordan v. [See 7,523.]
WALLACE v. LAWRENCE [17,101], 1 Wash. C. C. 503.
Wallace, Mason v. [See 9,255, 9,256.]
WALLACE v. MUMFORD [17,102].
Wallace, Root v. [See 12,039.]
WALLACE v. TAYLOR [17,103], 1 Cranch, C. C. 393.
Wallace, Vaughan v. [See 16,902.]
Wallace, Waterman v. [See 17,261.]
WALLAMET FALLS C. & L. CO. v. KITTREDGE [17,104], 5 Reporter, 425; 10 Chi. Leg. News, 122.
WALLAMET FALLS C. & L. CO. v. KITTRIDGE [17,105], 5 Sawy. 44; 5 Reporter, 104; 10 Chi. Leg. News, 113; 24 Int. Rev. Rec. 142; 1 San Fran. Law J. 259.
WALLAMET R. T. CO. v. OREGON S. N. CO. [17,106], 9 Chi. Leg. News, 73.
Wallar v. Stewart. [See 17,109.]
WALLER v. ADAMS [17,107], 1 Hayw. & H. 218.
Waller, Bigler v. [See 1,404.]
WALLER v. DYER [17,108], 5 Cranch; C. C. 571.
WALLER v. STEWART [17,109], 4 Cranch, C. C. 532.
Waller, United States v. [See 16,634.]
WALLIS v. CHESNEY [17,110], 4 Amer. Law Reg. 307.
WALLIS v. THORNTON [17,111], 2 Brock. 422.
Walls, Day v. [See 3,692.]
Walls, Jr., The John. [See 7,432.]
Walmsley, Singer v. [See 12,900.]
WALSH, In re [17,112], 1 McA. Pat. Cas. 530.
WALSH, In re [17,112a], 10 Reporter, 549.
WALSH v. CARL HAASTED, The [17,113], 3 N. J. Law J. 18.
WALSH v. CHINA, The [17,114].
Walsh, Hancock v. [See 6,012.]
WALSH v. H. M. WRIGHT, The [17,115], Newb. 494.
WALSH v. UNITED STATES [17,116], 3 Woodb. & M. 341.
Walsh, United States v. [See 16,635, 16,636.]
Walsh, Van Epps v. [See 16,850.]
WALSH v. WALSH [17,117], 3 Cranch, C. C. 651

[Federal Case numbers are given in brackets.]

Walsh, The W. J. [See 17,922.]
WALSHE, In re [17,118], 2 Woods, 225.
Walter v. The Cora Nellie. [See 3,217.]
WALTER v. KAMCHATKER, The [17,119].
WALTER v. MONTGOMERY, The [17,120], 3 Hunt, Mer. Mag. 153.
WALTER v. PERINE [17,121].
WALTER v. ROSS [17,122], 2 Wash. C. C. 283.
Walters, Caldwell v. [See 2,305.]
WALTERS v. RADIUS, The [17,123].
WALTER W. PHARO, The [17,124], 1 Lowell, 437.
WALTHAM, The [17,125], 9 Adm. Rec. 75.
WALTHER, In re [17,126], 14 N. B. R. 273.
WALTON, Ex parte [17,127], 1 Cranch, C. C. 186.
WALTON, In re [17,128], Deady, 442.
WALTON, In re [17,129], Deady, 510.
WALTON, In re [17,130], Deady, 598; 4 N. B. R. 466 (Quarto, 154); 2 Amer. Law T. 121; 1 Amer. Law T. Rep. Bankr. 162.
WALTON, In re [17,131], 1 N. B. R. 557 (Quarto, 154).
WALTON v. COULSON [17,132], 1 McLean, 120.
WALTON v. CROWLEY [17,133], 3 Blatchf. 440; Cox, Manual Trade-Mark Cas. 78; Cox, Amer. Trade-Mark Cas. 166.
Walton, Knox v. [See 7,915.]
WALTON v. McNEIL [17,134].
Walton, Moore v. [See 9,779].
WALTON v. NEPTUNE, The [17,135], 1 Pet. Adm. 142.
Walton, Weaver v. [See 5,488.]
Walworth, Ashcroft v. [See 580.]
WALWORTH v. COOK COUNTY [17,136], 5 Biss. 133.
Walworth Mfg. Co., Gilbert, etc., Mfg. Co. v. [See 5,418.]
WALZ v. BROOKVILLE NAT. BANK [17,137], 8 Reporter, 580; 11 Chi. Leg. News, 392.
Wampole, Dallam v. [See 3,543.]
WANATA, The [17,138], 4 Ben. 310.
Wanata, The, Avery v. [See 677.]
WANDERER, The [17,139], 1 Spr. 515; 23 Law Rep. 139; 17 Leg. Int. 260.
WANDO, The [17,140], 1 Lowell, 18; 2 Int. Rev. Rec. 117; 27 Law Rep. 391.
WANGERIEN, In re [17,141], 11 Int. Rev. Rec. 181.
Wangerien, United States v. [See 16,637.]
Wann, United States v. [See 16,638.]
Wanton, Walker v. [See 17,090.]
Wape v. Hemenway. [See 18,042.]
Waples, Louisiana Paper Co. v. [See 8,540.]
WARBURG v. MAXWELL [17,142], 3 Blatchf. 382.
WARBURTON v. AKEN [17,143], 1 McLean, 460.
WARD, In re [17,144], 2 Flip. 462; 25 Int. Rev. Rec. 289; 8 Reporter, 136.
WARD, In re [17,145], 9 N. B. R. 349.
WARD v. AMORY [17,146], 1 Curt. 419.
WARD v. A. ROSSITER, The [17,147], 6 McLean, 63; Newb. 225.
WARD v. ARREDONDO [17,148], 1 Paine, 410.
Ward, Baker v. [See 785.]
WARD v. BANNER, The [17,149], 14 Law Rep. 465.
WARD v. BARKER [17,150], 29 Nile, Reg. 290.
Ward, Blake Crusher Co. v. [See 1,505.]
WARD v. CHAMBERLAIN [17,151], 5 Amer. Law Reg. 330.
WARD v. CHAMBERLIN [17,152], 9 Amer. Law Reg. 171; 2 West. Law Month. 621.
Ward, Claggett v. [See 2,780.]
WARD v. DOUSMAN, The [17,153], 6 McLean, 231; Newb. 236.
WARD v. FASHION, The [17,154], Newb. 8; 6 McLean, 152.
WARD v. FASHION, The [17,155], Newb. 41; 6 McLean, 195.
Ward, Franklin v. [See 5,055.]
Ward, Gilbert v. [See 5,415.]
Ward, Herbert v. [See 6,398.]
Ward v. The M. Dousman. [See 17,153.]
WARD v. MISSISSIPPI & M. R. CO. [17,156].
WARD v. NEW ENGLAND SCREW CO. [17,157], 1 Cliff. 565.
WARD v. OGDENSBURGH, The [17,158], 5 McLean, 622; Newb. 139; 10 West. Law J. 433.
WARD v. PANAMA, Etc , The [10,703].
Ward, Roberts v. [See 11,918.]
WARD v. SEABRING [17,160], 4 Wash. C. C. 472.
WARD v. SEABRY [17,161], 4 Wash. C. C. 426.
Ward v. Sebring. [See 17,160.]
Ward, Sebring v. [See 12,598.]
Ward, Spicer v. [See 13,241.]
WARD v. THOMPSON [17,162], Newb. 95.
Ward, United States v. [See 16,639.]
WARD v. WASHINGTON [17,163], 4 Cranch, C. C. 232.
Ward, Wood v. [See 17,965, 17,966.]
Ward, The Agnes H. [See 99.]
Ward, The Joanna. [See 7,328.]
WARDELL v. UNION PACIFIC R. CO. [17,164], 4 Dill. 330; 5 Cent. Law J. 527.
WARDER v. LA BELLE CREOLE [17,165], 1 Pet. Adm. 31.
WARDROP v. DOBSON [17,166.]
Wardwell, Sands v. [See 12,306.]
Wardwell, United States v. [See 16,640.]
WARE v. BALTIMORE STEAM TOWING CO. [17,167].
WARE v. BRADBURY [17,168], 3 Sumn. 186.
WARE v. BRANDON, The [17,169].
WARE v. BROWN [17,170], 2 Bond, 267.
WARE v. BRUSH [17,171], 1 McLean, 533.
Ware, Girard v. [See 5,460.]
WARE v. ST. PAUL WATER CO. [17,172], 1 Dill. 465; 2 Abb. U. S. 261; 3 Chi. Leg. News, 41; 12 Int. Rev. Rec. 194.
Ware, United States v. [See 16,641.]
WAR EAGLE, The [17,173], 6 Biss. 364.
Warfield, Fowler v. [See 5,004.]
Warfield v. The H. J. May. [See 3,494.]
Warfield, Nicholls v. [See 10,233, 10,234.]
Warfield, Triplet v. [See 14,177.]
WARFIELD v. WIRT [17,174], 2 Cranch, C. C. 102.
WARFORD v. NOBLE [17,175], 19 Amer. Law Reg. (N. S.) 44; 4 Cin. Law Bul. 1003.
WARING v. BUCHANAN [17,176], 19 N. B. R. 502.
Warley, The Ella. [See 4,370-4,374.]
Warmouth, Kellogg v. [See 7,667.]
WARNER, In re [17,177], 5 N. B. R. 414.
WARNER, In re [17,178], 7 N. B. R. 47; 4 Pac. Law Rep. 123.
Warner, Blanchard's Gun-Stock Turning Factory v. [See 1,521.]
WARNER v. BRINTON [17,179], 15 Haz. Reg. Pa. 49.
WARNER v. CRONKHITE [17,180], 6 Biss. 453; 13 N. B. R. 52; 1 N. Y. Wkly. Dig. 291; 8 Chi. Leg. News, 17; 7 Leg. Gaz. 329.
WARNER v. DANIELS [17,181], 1 Woodb. & M. 90; 9 Law Rep. 160.
WARNER v. FOWLER [17,182], 4 Blatchf. 311; 3 Wkly. Law Gaz. 246.
WARNER v. GOODYEAR [17,183], Cranch, Pat. Dec. 125; 1 McA. Pat. Cas. 60.
WARNER v. HOWELL [17,184], 3 Wash. C. C. 12.
WARNER v. ILLINOIS, The [17,184a], 18 Reporter, 11.
WARNER v. MAYER [17,185], 23 Int. Rev. Rec. 234.
WARNER v. PENNSYLVANIA R. CO. [17,186], 13 Blatchf. 231.
WARNER v. RALPH POST, The [17,187].
WARNER v. RISING FAWN IRON CO. [17,188], 3 Woods, 514.
WARNER v. ROBERTSON [17,189].
WARNER v. ROEHR [17,189a].
WARNER v. SOUTH AMERICA, The [17,190].
Warner, United States v. [See 16,642, 16,643.]
Warr, United States v. [See 16,644.]
Warran, South America, The, v. [See 13,180a.]
WARREN, In re [17,191], 2 Ware (Dav. 320) 322; 5 N. Y. Leg. Obs. 327.
WARREN, The [17,192], 2 Ben. 498.
WARREN, The [17,193], 12 N. Y. Leg. Obs. 257.
Warren, Coggswell v. [See 2,958.]
WARREN v. DELAWARE, L. & W. RY. CO. [17,194], 5 Chi. Leg. News, 205; 7 N. B. R. 451; 4 Leg. Op. 533.
WARREN v. EMERSON [17,195], 1 Curt. 239.
WARREN v. GARBER [17,196], 1 Hughes, 365; 15 N. B. R. 409.
Warren, Goodenough v. [See 5,534.]
Warren, Hall v. [See 5,952.]
WARREN v. IVES [17,197], 1 Flip. 356; 1 Amer. Law T. Rep. (N. S.) 363; 1 Cent. Law J. 312.
Warren, Marsh v. [See 9,121.]
Warren, Mauran v. [See 9,310.]

[Federal Case numbers are given in brackets.]

WARREN v. PEASLEE [17,198], 2 Curt. 231.
WARREN v. ROBERTSON [17,198a].
WARREN v. ST. PAUL [17,199], 5 Dill. 498; 4 Law & Eq. Rep. 556; 1 N. W. Rep. (O. S.) 100.
Warren, Stoddart v. [See 13,471.]
WARREN v. TENTH NAT. BANK [17,200], 5 Ben. 395; 5 N. B. R. 479; 42 How. Pr. 169.
WARREN v. TENTH NAT. BANK [17,201], 9 Blatchf. 193.
WARREN v. TENTH NAT. BANK [17,202], 10 Blatchf. 493; 7 N. B. R. 481.
Warren, The, Topping v. [See 14,101.]
WARREN v. WEAVER [17,203], 1 Wkly. Notes Cas. 107.
Warren, Webster v. [See 17,339.]
Warren, Wing v. [See 17,871.]
WARREN v. WISCONSIN VAL. R. CO. [17,204], 6 Biss. 425; 7 Chi. Leg. News, 403; 2 Cent. Law J. 542; 21 Int. Rev. Rec. 300.
Warren County, Ramsey v. [See 11,547.]
WARRENER v. KANKAKEE COUNTY [17,205], 1 Month. West. Jur. 556.
Warren Ins. Co., Jordan v. [See 7,524.]
Warren Ins. Co., Palmer v. [See 10,698.]
Warren Ins. Co., Peters v. [See 11,034, 11,035.]
WARREN MFG. CO. v. ETNA INS. CO. [17,206], 2 Paine, 501.
WARREN SAV. BANK v. PALMER [17,207], 10 N. B. R. 239; 10 Phila. 286; 31 Leg. Int. 261; 6 Chi. Leg. News, 366; 21 Pittsb. Leg. J. 193.
WARRINGTON, The [17,208], 1 Blatchf. & H. 335.
WARSHING, In re [17,209], 5 N. B. R. 350.
WARTH v. BROWNING [17,209a], 17 O. G. 624; 5 Ban. & A. 341.
WARTMAN v. WARTMAN [17,210], Taney, 362.
Warwick, The Amy. [See 341-344.]
Wary, United States v. [See 16,645.]
WASHBURN, In re [17,211], 11 N. B. R. 66.
WASHBURN v. ARTISANS' INS. CO. [17,212], 27 Pittsb. Leg. J. (10 N. S.) 55; 12 Chi. Leg. News, 82; 9 Ins. Law J. 68; 14 Amer. Law Rev. 85; 25 Int. Rev. Rec. 378.
WASHBURN v. CASS COUNTY [17,213], 3 Dill. 251.
WASHBURN v. GOULD [17,214], 3 Story, 122; 2 Robb, Pat. Cas. 206; 1 West. Law J. 465; 7 Law Rep. 276.
Washburn, Needham v. [See 10,082.]
Washburn v. Pennsylvania Ins. Co. [See 17,212.]
WASHBURN v. UNION FIRE INS. CO. [17,215].
WASHBURN v. WESTERN INS. CO. [17,216], 9 Ins. Law J. 424.
WASHBURN & MOEN MFG. CO. v. HAISH [17,-217], 9 Biss. 141; 18 O. G. 465; 4 Ban. & A. 571.
WASHBURN & M. MFG. CO. v. HAWKEYE STEEL BAR FENCE CO. [17,218].
Washburne, Hawes v. [See 6,242.]
Washburne, Lovejoy v. [See 8,550.]
WASHING MACH. CO. v. EARLE [17,219], 3 Wall. Jr. 320; 2 Fish. Pat. Cas. 203; 18 Leg. Int. 348.
WASHINGTON, The [17,220], 3 Blatchf. 276.
WASHINGTON, The [17,221], 4 Blatchf. 101.
WASHINGTON, The [17,222], 17 Law Rep. 497.
WASHINGTON, The [17,223], 12 N. Y. Leg. Obs. 163.
Washington, Bank of the United States v. [See 940.]
WASHINGTON v. BARBER [17,224], 5 Cranch, C. C. 157.
Washington, Barney v. [See 1,033.]
Washington, Boswell v. [See 1,684.]
Washington, Botelor v. [See 1,685.]
Washington, Carey v. [See 2,404.]
WASHINGTON v. CASANAVE [17,225], 5 Cranch, C. C. 500.
Washington, Clark v. [See 2,839.]
WASHINGTON v. COOLY [17,226], 4 Cranch, C. C. 103.
Washington, Costin v. [See 3,266.]
WASHINGTON v. DAWSON [17,227], 1 Hayw. & H. 236.
Washington, Delany v. [See 3,755.]
Washington, Dixon v. [See 3,935.]
Washington, The, Douglass v. [See 4,033.]
WASHINGTON v. EATON [17,228], 4 Cranch, C. C. 352.
WASHINGTON v. FOWLER [17,229], 4 Cranch, C. C. 458.
Washington, France v. [See 5,028.]
Washington, Friend v. [See 5,121.]
Washington, Gibb v. [See 5,380.]
Washington, Hall v. [See 5,953.]
Washington, Hallihan v. [See 5,962.]
Washington, Hill v. [See 6,501.]
Washington, Jennings v. [See 7,284.]
Washington, Johnson v. [See 7,420.]
Washington, Kennedy v. [See 7,708.]
WASHINGTON v. LASKY [17,230], 5 Cranch, C. C. 381.
Washington, Levy Court of Washington County v. [See 8,306.]
WASHINGTON v. LYNCH [17,231], 5 Cranch, C. C. 498.
Washington, McCoy v. [See 8,731.]
Washington, McCue v. [See 8,735.]
Washington, McGunningle v. [See 8,818.]
Washington, Mandeville v. [See 9,017.]
Washington, The Mariners v. [See 9,086.]
Washington, Owner v. [See 10,635.]
Washington, Pancost v. [See 10,706.]
Washington, Patten v. [See 10,813.]
Washington, The, Poole v. [See 11,271.]
WASHINGTON, The, v. SALUDA, The [17,232], 3 U. S. Law Int. 249.
Washington, Shankland v. [See 12,703.]
WASHINGTON v. STROTHER [17,233], 2 Cranch, C. C. 542.
Washington, Thornton v. [See 14,001.]
Washington, Toole v. [See 14,097a.]
WASHINGTON v. TOWNSEND [17,234], 3 Cranch, C. C. 653.
Washington, The, Ulary v. [See 14,323.]
Washington, United States v. [See 16,646.]
WASHINGTON v. WALKER [17,235], 2 Cranch, C. C. 293.
Washington, Ward v. [See 17,163.]
WASHINGTON v. WASHINGTON [17,236], 3 Cranch, C. C. 77.
WASHINGTON v. WEBB [17,237].
WASHINGTON v. WHEAT [17,238], 1 Cranch, C. C. 410.
WASHINGTON v. WHEATON [17,239], 1 Cranch, C. C. 318.
Washington, Whelan v. [See 17,503.]
Washington, White v. [See 17,560.]
WASHINGTON v. WILSON [17,240], 2 Cranch, C. C. 153.
WASHINGTON v. YOUNG [17,241], 2 Cranch, C. C. 632.
Washington, The City of. [See 18,278.]
Washington, The George. [See 4,100.]
Washington, The Martha. [See 1,513, 9,148.]
Washington, The Mary. [See 9,229.]
Washington, The Mary, v. Ayres. [See 9,229.]
Washington County, Durant v. [See 4,191.]
Washington Fire & Marine Ins. Co., Tidmarsh v. [See 14,024.]
WASHINGTON IMP. CO. v. KANSAS PAC. RY. CO. [17,242], 5 Dill. 489.
Washington Ins. Co., Hale v. [See 5,916.]
WASHINGTON IRVING, The [17,242a].
WASHINGTON IRVING, The [17,243], Abb. Adm. 336; 7 N. Y. Leg. Obs. 4.
WASHINGTON IRVING, The [17,244], 2 Ben. 318; 7 Int. Rev. Rec. 109.
WASHINGTON IRVING, The [17,245], 2 Ben. 323; 8 Int. Rev. Rec. 3.
WASHINGTON MARINE INS. CO., In re [17,246], 2 Ben. 292; 2 N. B. R. 648.
WASHINGTON MEDALION PEN CO. v. ESTERBROOK [17,246a].
WASHINGTON MILLS v. RUSSELL [17,247], Holmes, 245; 18 Int. Rev. Rec. 203.
Washington Mills, United States v. [See 16,647.]
WASKERN v. DIAMOND [17,248], Hempst. 701.
WASP, The [17,249], 1 Gall. 140.
Wass v. The California. [See 2,312, 2,313.]
Wass, Roff v. [See 11,999, 12,000.]
Wassell, Dupas v. [See 4,182.]
Wassell, Pike v. [See 11,164.]
W. A. Sumner. [See 4,288.]
Wataga, The, Dennison v. [See 3,799.]
WATCHFUL, The [17,250], Brown's Adm. 469.
WATCHMAN, The [17,251], 1 Ware (232) 233.
Watchman, The, Benjamin v. [See 1,305.]
Waterborough, United States v. [See 16,648.]
WATERBURY v. LAREDO [17,252], 3 Woods, 371.

[Federal Case numbers are given in brackets.]

WATERBURY v. MYRICK [17,253], 1 Blatchf. & H. 34.
WATERBURY BRASS CO. v. MILLER [17,254], 9 Blatchf. 77; 5 Fish. Pat. Cas. 48; Merw. Pat. Inv. 106.
WATERBURY BRASS CO. v. NEW YORK & B. BRASS CO. [17,256].
WATERBURY BRASS CO. v. NEW YORK BRASS CO. [17,256], 3 Fish. Pat. Cas. 43.
Water Commissioners of Detroit, Farrington v. [See 4,687.]
WATERLOO, The [17,257], 1 Blatchf. & H. 114.
Waterman, Cochrane v. [See 2,929.]
Waterman, McCallon v. [See 8,675.]
WATERMAN v. MERRILL [17,258], 2 Abb. U. S. 478, note.
WATERMAN v. MORGAN [17,259].
WATERMAN v. THOMSON [17,260], 2 Fish. Pat. Cas. 461; Merw. Pat. Inv. 664.
WATERMAN v. WALLACE [17,261], 13 Blatchf. 128; 2 Ban. & A. 126.
Waterman, Williams v. [See 17,745.]
Waters, Bibbs v. [See 18,235.]
Waters, Bowen v. [See 1,725.]
WATERS v. BUSSARD [17,262], 2 Cranch, C. C. 226.
WATERS v. BUTLER [17,263], 4 Cranch, C. C. 371.
WATERS v. CAMPBELL [17,264], 4 Sawy. 121; 9 Chi. Leg. News, 99; 15 Alb. Law J. 16.
WATERS v. CAMPBELL [17,265], 5 Sawy. 17; 10 Chi. Leg. News, 68; 4 Law & Eq. Rep. 616.
Waters, Dixon v. [See 3,936.]
Waters, Edds v. [See 4,275.]
Waters, Hazel v. [See 6,283, 6,284.]
WATERS v. MERCHANTS' LOUISVILLE INS. CO. [17,266], 1 McLean, 275.
Waters, Moore v. [See 9,780.]
WATERS v. MUTUAL LIFE INS. CO. [17,267], 2 N. J. Law J. 81; 7 Reporter, 456; 8 Ins. Law J. 336.
Waters, Pelton v. [See 10,913.]
Waters, Stanback v. [See 13,284.]
Waters, Stoddert v. [See 13,472.]
Waters, Wright v. [See 18,100.]
Waterson, Sohn v. [See 13,161.]
Watertown, Pereles v. [See 10,980.]
Watertown, Perkins v. [See 10,991.]
WATER WITCH, The [17,268], Blatchf. Pr. Cas. 300.
Water Witch, The, Brower v. [See 1,971.]
Wathen, Bowman v. [See 1,740.]
WATKINS, Ex parte [16,650].
Watkins, Ex parte. [See 10,902.]
Watkins, Carroll v. [See 2,457.]
Watkins, Cox v. [See 3,307.]
Watkins, United States v. [See 16,649, 16,650.]
WATROUS, In re [17,270], 14 N. B. R. 258; 3 N. Y. Wkly. Dig. 180.
WATSON, In re [17,271], 2 N. B. R. 570 (Quarto, 174); 2 Amer. Law T. Rep. Bankr. 93.
WATSON, In re [17,272], 4 N. B. R. 613 (Quarto, 197).
WATSON, In re [17,273], 1 Wkly. Notes Cas. 86.
WATSON, In re [17,274], 1 Wkly. Notes Cas. 334.
WATSON, In re [17,275], 2 Wkly. Notes Cas. 356; 1 Law & Eq. Rep. 371.
Watson, The Angelina. [See 7,967.]
WATSON v. BAYLEY [17,276], 2 Cranch, C. C. 67.
WATSON v. BLADEN [17,277], 4 Wash. C. C. 580; 1 Robb, Pat. Cas. 510.
WATSON v. BONDURANT [17,278], 2 Woods, 166; 3 Cent. Law J. 398.
WATSON v. CITIZENS' SAV. BANK [17,279], 2 Hughes, 200; 11 N. B. R. 161.
WATSON v. CUNNINGHAM [17,280], 4 Fish. Pat. Cas. 528; 19 Pittsb. Leg. J. 142; Merw. Pat. Inv. 432; 3 Pittsb. Rep. 366.
WATSON v. DOBBINS [17,281], Cooke, 359; Brunner, Col. Cas. 233.
WATSON v. DUNLAP [17,282], 2 Cranch, C. C. 14.
WATSON v. HALL [17,283], 2 Cranch, C. C. 154.
Watson, Higgins v. [See 6,470.]
WATSON v. INSURANCE CO. OF NORTH AMERICA [17,284], 2 Wash. C. C. 152.
WATSON v. INSURANCE CO. OF NORTH AMERICA [17,285], 2 Wash. C. C. 480.
WATSON v. INSURANCE CO. OF NORTH AMERICA [17,286], 3 Wash. C. C. 1.
WATSON v. LEMAR [17,287].
Watson, Peterson v. [See 11,037.]
Watson v. Reynolds. [See 17,274, 17,275.]
WATSON v. ROSE, The [17,288], 1 Pet. Adm. 132.
Watson, Smith v. [See 13,124.]
Watson, Stafford v. [See 13,276.]
WATSON v. SUMMERS [17,289], 1 Cranch, C. C. 200.
Watson, Summers v. [See 13,605.]
WATSON v. TAPSCOT [17,290].
Watson, Thomas v. [See 13,913.]
Watson, United States v. [See 16,651, 16,652.]
Watson, Wilson v. [See 17,847.]
Watson, The Thomas. [See 13,933.]
WATT v. POTTER [17,291], 2 Mason, 77.
WATT v. UNITED STATES [17,292], 15 Blatchf. 29.
Watterston, Bank of United States v. [See 941.]
Wattles, Draper v. [See 4,073.]
WATTS, In re [17,293], 3 Ben. 166; 2 N. B. R. 447 (Quarto, 145); 2 Amer. Law T. Rep. Bankr. 74.
WATTS v. PHOENIX MUT. LIFE INS. CO. [17,294], 16 Blatchf. 228.
Watts, Suydam v. [See 13,658.]
Watts, Union Pac. R. Co. v. [See 14,385.]
Watts, United States v. [See 16,653.]
WATTS v. WADDLE [17,295], 1 McLean, 200.
Watts, Wagner v. [See 17,040.]
WATTSON v. MARKS [17,296], 2 Amer. Law Reg. 157; 5 Pa. Law J. Rep. 254.
WAVE, The [17,297], 1 Blatchf. & H. 235; 7 N. Y. Leg. Obs. 97.
WAVE, The [17,298], Blatchf. Pr. Cas. 148.
WAVE, The [17,299], Blatchf. Pr. Cas. 329.
WAVE, The, v. HYER [17,300], 2 Paine, 131.
WAVERLY, The [17,301], 7 Biss. 465; 9 Chi. Leg. News, 372.
Way, Bank of Washington v. [See 957.]
WAY v. SELBY [17,302], 2 Cranch, C. C. 44.
WAYNE v. HOLMES [17,303], 1 Bond, 27; 2 Fish. Pat. Cas. 20.
Wayne, United States v. [See 16,654.]
WAYNE v. WINTER [17,304], 6 McLean, 344.
Wayne County, Kennicott v. [See 7,710, 7,711.]
Wayne County Sav. Bank, Low v. [See 8,562.]
W. C. REDFIELD, The [17,305], 4 Ben. 227.
W. D. B., The [17,306], 1 Hask. 236.
Weakley, Oliver v. [See 10,502.]
Weamer, In re. [See 17,796.]
Weatherbee, Putnam v. [See 11,485.]
WEAVER, In re [17,307], 9 N. B. R. 132.
WEAVER v. ALTER [17,308], 3 Woods, 152.
Weaver, Bonnell v. [See 1,630.]
Weaver, Goddard v. [See 5,495.]
Weaver, Lowry v. [See 8,584.]
WEAVER v. McLELLAN [17,309], 5 Ben. 79.
Weaver, Newton v. [See 10,193.]
WEAVER v. S. G. OWENS, The [17,310], 1 Wall. Jr. 359.
WEAVER v. THOMSON [17,311], 1 Wall. Jr. 343.
WEAVER v. WALTON [5,488], 1 Flip. 441; 5 Chi. Leg. News, 125; 6 Alb. Law J. 422.
Weaver, Warren v. [See 17,203.]
WEBB, In re [17,313], 2 N. B. R. 614 (Quarto, 183); 2 Amer. Law T. Rep. Bankr. 87; 9 Int. Rev. Rec. 169; 16 Pittsb. Leg. J. 43.
WEBB, In re [17,314], 3 N. B. R. 720 (Quarto, 177); 2 Chi. Leg. News, 313.
WEBB, In re [17,315], 6 N. B. R. 302.
WEBB, In re [17,316], 10 Pittsb. Leg. J. 106.
WEBB, In re [17,317], 4 Sawy. 326; 16 N. B. R. 258; 10 Chi. Leg. News, 27; 5 N. Y. Wkly. Dig. 174.
WEBB v. ANDERSON [17,318], Taney, 504.
Webb, Arnott v. [See 562.]
WEBB v. BOWERS [17,319], 11 Law Rep. 84; Brunner, Col. Cas. 554.
Webb, Duryee v. [See 4,198.]
WEBB v. PEIRCE [17,320], 1 Curt. 104; 15 Law Rep. 9.
WEBB v. PEIRCE [17,321], 1 Spr. 192; 14 Law Rep. 200.
Webb, Plummer v. [See 11,233, 11,234.]
WEBB v. PORTLAND MFG. CO. [17,322], 3 Sumn. 189; 3 Law Rep. 374.
WEBB v. POWERS [17,323], 2 Woodb. & M. 497; 10 Law Rep. 152.
WEBB v. QUINTARD [17,324], 9 Blatchf. 352; 5 Fish. Pat. Cas. 276; 1 O. G. 525; Merw. Pat. Inv. 708.
WEBB v. SACHS [17,325], 4 Sawy. 158; 15 N. B. R. 168; 9 Chi. Leg. News, 156.

[Federal Case numbers are given in brackets.]

Webb, Tarr v. [See 13,757.]
Webb, United States v. [See 16,655.]
Webb, Washington v. [See 17,237.]
WEBBER v. HUMPHREYS [17,326], 5 Dill. 223; 8 Reporter, 66; 8 Cent. Law J. 417; 20 Alb. Law J. 78; 26 Pittsb. Leg. J. 204.
Webber, United States v. [See 16,656.]
WEBER v. UNITED STATES [17,329].
WEBER v. UNITED STATES [17,328], Hoff. Dec. 10.
WEBER v. UNITED STATES [17,329], Hoff. Op. 66; Hoff. Dec. 8.
Weber, United States v. [See 16,657.]
WEBER FURNITURE CO., In re [17,330], 13 N. B. R. 529.
WEBER FURNITURE CO., In re [17,331], 13 N. B. R. 559.
WEBER RANCH, Case of [17,328].
WEBSTER, In re [17,332], 9 Int. Rev. Rec. 137.
Webster, Burnham v. [See 2,178, 2,179.]
Webster, Caskie v. [See 2,500.]
WEBSTER v. COOPER [17,333].
WEBSTER v. CROTHERS [17,334], 1 Dill. 301.
WEBSTER v. GILMAN [17,335], 1 Story, 499.
WEBSTER v. MASSEY [17,336], 2 Wash. C. C. 157.
WEBSTER v. NEW BRUNSWICK CARPET CO. [17,337], 1 Ban. & A. 84; 5 O. G. 522.
WEBSTER v. NEW BRUNSWICK CARPET CO. [17,338], 9 O. G. 203; 2 Ban. & A. 67.
Webster, United States v. [See 16,658.]
WEBSTER v. WARREN [17,339], 2 Wash. C. C. 456.
WEBSTER v. WOOLBRIDGE [17,340], 3 Dill. 74.
Webster, The Maud. [See 9,302, 9,303.]
WEBSTER LOOM CO. v. HIGGINS [17,341], 13 Blatchf. 349; 9 O. G. 965.
WEBSTER LOOM CO. v. HIGGINS [17,342], 15 Blatchf. 446; 4 Ban. & A. 88; 16 O. G. 675.
WEBSTER LOOM CO. v. SHORT [17,343], 10 O. G. 1019.
W. E. CHENEY, The [17,344], 6 Ben. 178.
Weed, Davis v. [See 3,658.]
WEED v. KELLOGG [17,345], 6 McLean, 44.
WEED v. MILLER [17,346], 1 McLean, 423.
Weed v. Smallwood. [See 16,315.]
WEED v. SNOW [17,347], 3 McLean, 265.
Weed, Woodworth v. [See 18,022.]
Weed, The Sarah J. [See 12,350.]
WEED SEWING-MACH. CO. v. WICKS [17,348], 3 Dill. 261; 2 Cent. Law J. 475.
WEEKS, In re [17,349], 8 Ben. 265; 13 N. B. R. 263.
WEEKS, In re [17,350], 2 Biss. 259; 14 N. B. R. 364 (Quarto, 116).
WEEKS v. CATHARINA MARIA, The [17,351], 2 Pet. Adm. 424.
WEEKS v. LADD [17,352], 2 Sawy. 520.
WEEKS v. LYCOMING FIRE INS. CO. [17,353], 7 Ins. Law J. 552; 6 Reporter, 165; 26 Pittsb. Leg. J. 12.
WEEKS v. NEW ORLEANS, The [17,353a].
WEEKS v. NEW ORLEANS, The [10,181].
Weeks, Thomas v. [See 13,914.]
W. E. GLADWISH, The [17,355], 17 Blatchf. 77.
WEHL v. WALD [17,356], 17 Blatchf. 342.
WEIBERG v. ST. OLOFF, The [17,357], 2 Pet. Adm. 428.
WEIDE v. GERMANIA INS. CO. [17,358], 1 Dill. 441.
Weightman, Cooke v. [See 3,180.]
WEIGHTMAN v. QUEEN [17,359], 2 Cranch, C. C. 172.
Weightman, Zantzinger v. [See 18,202.]
WEIHENMYER v. ARTHUR [17,360], 22 Int. Rev. Rec. 368.
WEIKERT, In re [17,361], 3 N. B. R. 27 (Quarto, 5).
Weill, Manhattan Fire Ins. Co. v. [See 9,022.]
WEIMER, Ex parte [17,362], 8 Biss. 321; 7 Reporter, 38; 11 Chi. Leg. News, 65.
WEIMER v. SLOANE [17,363], 6 McLean, 259; 4 Amer. Law Reg. 174.
Weir Plow Co., Turnbull v. [See 14,244.]
Weise, United States v. [See 16,659.]
WEISER v. MAITLAND [17,364].
Weiss, Evans v. [See 4,572.]
WEITZEL, In re [17,365], 7 Biss. 289; 14 N. B. R. 466; 3 Cent. Law J. 557.
WELCH, In re [17,366], 5 Ben. 230; 5 N. B. R. 348.
Weitzel, Caldwell v. [See 2,306.]
WELCH, In re [17,367], 5 Ben. 278.
Welch, Doe v. [See 11,456.]
Welch v. Dunham. [See 4,143-4,146.]
WELCH v. HOOVER [17,368], 5 Cranch, C. C. 444.
WELCH v. LAWSON [17,369], 1 Balt. Law Trans. 67.
Welch, Lee v. [See 8,204.]
WELCH v. MANDEVILLE [17,370], 1 Cranch, C. C. 489.
WELCH v. MANDEVILLE [17,371], 2 Cranch, C. C. 82.
Welch, Pruseux v. [See 11,456.]
WELCH v. STE. GENEVIEVE [17,372], 1 Dill. 130; 10 Amer. Law Reg. (N. S.) 512; 14 Int. Rev. Rec. 93.
Welch, The John M. [See 7,359.]
Weld, Coffin v. [See 2,953.]
Weld, Kimball v. [See 7,776.]
WELD v. MADDEN [17,373], 2 Cliff. 584.
WELD v. MAXWELL [17,374], 4 Blatchf. 136.
Weld, United States v. [See 16,660.]
WELDDES v. EDSELL [17,375], 2 McLean, 366.
WELFORD v. GILHAM [17,376], 2 Cranch, C. C. 556.
Weller, Fraser v. [See 5,064.]
Weller, Rogers v. [See 12,022.]
Weller, The Sam. [See 12,290.]
WELLES, In re [17,377], 18 N. B. R. 525.
WELLES v. NEWBERRY [17,378], 4 McLean, 226.
Wellford, Chester v. [See 2,662.]
WELLFORD v. EAKIN [17,379], 1 Cranch, C. C. 264.
WELLFORD v. MILLER [17,380], 1 Cranch, C. C. 485.
WELLFORD v. MILLER [17,381], 1 Cranch, C. C. 514.
WELLING v. RUBBER-COATED HARNESS TRIMMING CO. [17,382], 1 Ban. & A. 282; 7 O. G. 606.
WELLING v. RUBBER-COATED HARNESS TRIMMING CO. [17,383], 2 Ban. & A. 1; 7 O. G. 608.
WELLINGTON, The [17,384], 1 Biss. 279; 2 West. Law Month. 523.
Wellington, The, Hindley v. [See 6,513.]
WELLMAN v. BLOOD [17,385], 1 McA. Pat. Cas. 432.
WELLS, Ex parte [17,386], 3 Woods, 128; 17 Alb. Law J. 111; 25 Pittsb. Leg. J. 107.
WELLS, In re [17,387], 7 Amer. Law Reg. (N. S.) 163; 1 Amer. Law T. Rep. Bankr. 20; Bankr. Reg. Supp. 37; 1 N. B. R. 171; 6 Int. Rev. Rec. 181.
WELLS, In re [17,387a], 2 Hayw. & H. 187.
WELLS, In re [17,388], 3 N. B. R. 371 (Quarto, 95); 2 Chi. Leg. News, 49.
Wells, In re. [See 13,783.]
WELLS v. ANN CAROLINE, The [17,389], 42 Hunt, Mer. Mag. 66.
WELLS v. ANN CAROLINE, The [17,389b].
WELLS v. ANNE CAROLINE, The [17,389a].
Wells v. The Bay State. [See 1,148, 1,150.]
WELLS v. CENTRAL VERMONT R. CO. [17,390], 14 Blatchf. 426.
WELLS v. CHAPMAN [17,391].
WELLS v. DALRYMPLE [17,392], 15 Int. Rev. Rec. 59; 4 Chi. Leg. News, 156, note.
WELLS v. GILL [17,393], 1 Ban. & A. 77.
WELLS v. GILL [17,394], 6 Fish. Pat. Cas. 89; 2 O. G. 590.
WELLS v. GILL [17,395], 6 Fish. Pat. Cas. 574; 4 O. G. 669.
WELLS v. HAGAMAN [17,396], 29 Leg. Int. 405.
WELLS v. HUBBARD [17,397], 2 Cranch, C. C. 292.
WELLS v. JACQUES [17,398], 1 Ban. & A. 60; 5 O. G. 364.
WELLS v. JACQUES [17,399], 5 Fish. Pat. Cas. 136.
WELLS v. JAQUES [17,400].
Wells, Jordan v. [See 7,525.]
WELLS v. MAINE STEAMSHIP CO. [17,401], 4 Cliff. 228.
WELLS v. MELDRUN [17,402], 1 Blatchf. & H. 342.
WELLS v. NEVILLE [17,403], 4 Wash. C. C. 209.
Wells, Newson v. [See 10,187.]
Wells, Nixdorff v. [See 10,280.]
Wells, Prieto v. [See 11,420.]
WELLS v. RILEY [17,404], 2 Dill. 566.
Wells v. Shook. [See 17,406.]
Wells, Thompson v. [See 13,980.]
Wells, United States v. [See 16,661-16,665.]
Wells, Wood v. [See 17,967.]

[Federal Case numbers are given in brackets.]

WELLS v. WRIGHT [17,405], 3 Wash. C. C. 250.
Wells, Wright v. [See 18,101.]
Wells v. Yates. [See 17,393, 17,394.]
WELLS v. SHOOK [17,406], 8 Blatchf. 254.
Wellsville, Robertson v. [See 11,930.]
WELMAN, In re [17,407], 20 Vt. 653; 7 Law Rep. 25.
Welsh, Ex parte. [See 351.]
Welsh, Blydenburgh v. [See 1,583.]
Welsh, Cafiero v. [See 2,286.]
Welsh, The Juliet C. Clark v. [See 7,580.]
WELSH v. LINDO [17,408], 1 Cranch, C. C. 497.
WELSH v. LINDO [17,409], 1 Cranch, C. C. 508.
Welsh, Pool v. [See 11,269.]
Welsh, Robbins v. [See 11,887.]
Welsh v. Sears. [See 7,494.]
Welsh, Smith v. [See 13,126.]
Welsh, The J. M. [See 7,327.]
Wemple, Pitts v. [See 11,194, 11,195.]
Wenberg, Atlantic Dock Co. v. [See 622.]
Wendell, Thayer v. [See 13,873.]
Wendell, United States v. [See 16,666.]
Wendlinger, Ex parte. [See 2,235.]
WENONA, The [17,410], 4 Ben. 207.
WENONA, The [17,411], 8 Blatchf. 499.
WENONAH, The [17,412], 1 Hask. 606; 22 Int. Rev. Rec. 49.
Wentworth, Fales v. [See 4,623.]
WENTWORTH v. NICKERSON [3,054].
WENTWORTH v. UNITED STATES [17,414], 2 Story, 452.
WERK v. LEATHERS [17,415], 1 Woods, 271.
Werk, Tighlman v. [See 14,037.]
Werk, Tilghman v. [See 14,046.]
WERNER, In re [17,416], 5 Dill. 119.
Werner, King v. [See 7,809.]
Werner, Kursheedt v. [See 7,947.]
WERNER v. WASHINGTON [17,416a], 2 Hayw. & H. 175.
WESCOTT v. COLE [17,417], 4 McLean, 79.
WESCOTT v. FAIRFIELD TP. [17,418], Pet. C. C. 45.
WESLEY v. BIAYS [17,419], 4 Amer. Law J. 275; Brunner, Col. Cas. 254.
Wesley, The John. [See 7,433.]
WESLEY SEYMOUR, The [17,420], 7 Ben. 539.
Wessels, Nissom v. [See 10,278.]
Wesson, Chase v. [See 2,631.]
West, Alexander v. [See 177.]
West, Bartholomew v. [See 1,071.]
WEST v. COLUMBIAN INS. CO. [17,421], 5 Cranch, C. C. 309.
WEST v. DAVIS [17,422], 4 McLean, 241.
West, Doughty v. [See 4,028, 4,029.]
West v. Doughty. [See 14,986.]
West, Dunlop v. [See 4,170.]
West, Harper v. [See 6,093.]
West, Luckett v. [See 8,593.]
West, Newell v. [See 10,150.]
West, Peirce v. [See 10,909, 10,910.]
WEST v. PINE [17,423], 4 Wash. C. C. 691.
WEST v. RANDALL [17,424], 2 Mason, 181.
WEST v. SILVER WIRE & SKIRT MFG. CO. [17,425], 5 Blatchf. 477; 3 Fish. Pat. Cas. 306; Merw. Pat. Inv. 320.
West, Sparks v. [See 13,213.]
West, Sprague v. [See 13,255.]
WEST v. TALMAN [17,426], 4 Wash. C. C. 200.
WEST v. UNCLE SAM, The [17,427], 1 McAll. 505.
West, United States v. [See 16,667.]
West, Varner v. [See 16,885.]
West, Vowell v. [See 17,024.]
West, Wright v. [See 18,102.]
West, Bradley & Cary Mfg. Co., Doughty v. [See 4,030.]
WESTBROOKE v. ROMEYN [17,428], Baldw. 196.
WESTCOT v. BRADFORD [17,429], 4 Wash. C. C. 492.
WESTCOTT, In re [17,430], 7 N. B. R. 285; 6 Ben. 135.
WESTCOTT v. ANN BARTON, The [17,431], 1 Wkly. Notes Cas. 10.
Westcott, Hanford v. [See 6,022.]
Westcott, Hopkins v. [See 6,692.]
Westcott, Lamson v. [See 8,035.]
WESTERMANN v. CAPE GIRARDEAU COUNTY [17,432], 5 Dill. 112; 7 Reporter, 101; 24 Int. Rev. Rec. 357; 7 Cent. Law J. 353.
WESTERN DIV. OF WESTERN N. C. R. CO. v. DREW [17,433], 3 Woods, 674.
WESTERN DIV. OF WESTERN N. C. R. CO. v. DREW [17,434], 3 Woods, 691; 36 Leg. Int. 328.
Western Female Seminary, Blair v. [See 1,486.]
WESTERN INS. CO., In re [17,435], 6 Ben. 159.
WESTERN INS. CO. v. GOODY FRIENDS, The [17,436], 1 Bond, 459.
WESTERN INSURGENTS' CASE [15,443].
Western Mass. Ins. Co., Norwich & N. Y. Transp. Co. v. [See 10,363.]
WESTERN METROPOLIS, The [17,438], 2 Ben. 212.
WESTERN METROPOLIS, The [17,439], 2 Ben. 399.
WESTERN METROPOLIS, The [17,440], 6 Blatchf. 210.
WESTERN METROPOLIS, The [17,441], 7 Blatchf. 214.
Western Metropolis, The, Town v. [See 14,114.]
Western R. Corp., Ayres v. [See 689.]
WESTERN SAV. & T. CO., In re [17,442], 4 Sawy. 190; 17 N. B. R. 413.
WESTERN TRANSP. CO. v. GREAT WESTERN, The [17,443], 4 West. Law Month. 281.
Western Transp. Co., Hough v. [See 6,724.]
Western Transp. Co., Malone v. [See 8,996.]
Western Union R. Co., Stewart v. [See 13,438.]
WESTERN UNION TEL. CO. v. AMERICAN UNION TEL. CO. [17,444], 9 Biss. 72; 19 Amer. Law Reg. (N. S.) 173.
WESTERN UNION TEL. CO. v. ATLANTIC & P. TEL. CO. [17,445], 7 Biss. 367.
Western Union Tel. Co., Behm v. [See 1,234.]
Western Union Tel. Co., Belun v. [See 1,234.]
Western Union Tel. Co., Colgate v. [See 2,994, 2,995.]
Western Union Tel. Co., Pensacola Tel. Co. v. [See 10,960.]
Western Union Tel. Co., Stephens & C. Transp. Co. v. [See 13,370, 13,371.]
Western Union Tel. Co., Strause v. [See 13,531.]
WESTERVELT, In re [17,445a], 3 N. J. Law J. 279.
Westervelt, United States v. [See 16,668.]
Westervelt, Vandewater v. [See 16,846a.]
WESTERWELT v. LEWIS [17,446], 2 McLean, 511.
WESTFALL v. BARNEY [17,448].
WESTFALL v. SHOOK [17,448], 5 Blatchf. 383; 5 Int. Rev. Rec. 54.
WESTHOFF v. OLUF, The [17,449], 3 Woods, 667.
WESTINGHOUSE v. GARDNER, Etc., AIR-BRAKE CO. [17,450], 9 O. G. 538; 2 Ban. & A. 55.
WESTLAKE v. CARTTER [17,451], 6 Fish. Pat. Cas. 519; 4 O. G. 636.
West New Jersey Soc., Committee of, v. Morris. [See 3,065.]
Weston, Babcock v. [See 703.]
WESTON v. FOSTER [17,452], 2 Curt. 119.
Weston, Gregg v. [See 5,800.]
WESTON v. MINOT [17,453], 3 Woodb. & M. 437; 10 Law Rep. 305.
WESTON v. NASH [17,454], Holmes, 488; 2 Ban. & A. 40; 7 O. G. 1096.
WESTON v. PENNIMAN [17,455], 1 Mason, 306.
WESTON v. TRAIN [17,456], 2 Curt. 49.
WESTON v. UNITED STATES [17,457], 5 Cranch, C. C. 492.
WESTON v. WHITE [17,458], 13 Blatchf. 364; 9 O. G. 1196; 2 Ban. & A. 321.
WESTON v. WHITE [17,459], 13 Blatchf. 447; 2 Ban. & A. 364.
WESTPHALIA, The [17,460], 4 Ben. 404.
WESTRAY v. MILETUS, The [17,461], 2 Int. Rev. Rec. 61.
West Roxbury, Adams v. [See 67.]
WEST ST. LOUIS SAV. BANK v. SHAWNEE COUNTY BANK [17,462], 3 Dill. 403; 2 Cent. Law J. 46.
West Side Elevated Patent Ry. Co., Currier v. [See 3,493.]
Wetherbee, Dental Vulcanite Co. v. [See 3,810.]
Wetherill, Burrows v. [2,208.]
Wetherill, Jones v. [See 7,508.]
WETHERILL v. NEW JERSEY ZINC CO. [17,463], 1 Ban. & A. 105; 5 O. G. 460.
WETHERILL v. NEW JERSEY ZINC CO. [17,464], 1 Ban. & A. 485.

[Federal Case numbers are given in brackets.]

WETHERILL v. PASSAIC ZINC CO. [17,465], 6 Fish. Pat. Cas. 50; 2 O. G. 471; 9 Phila. 385; 29 Leg. Int. 357; 16 Int. Rev. Rec. 156; 4 Leg. Gaz. 329.
WETMORE, In re [17,466], 16 N. B. R. 514.
WETMORE v. LAIRD [17,467], 5 Biss. 160.
WETMORE v. RICE [17,468], 1 Biss. 237.
WETMORE v. ST. PAUL & P. R. CO. [17,469], 3 Fed. 177.
Wetmore, The A. R. [See 569.]
WETTER v. SCHELL [17,470], 11 Blatchf. 193.
WETZELL v. BUSSARD [17,471], 2 Cranch, C. C. 252.
Wetzell, Young v. [See 18,176.]
WEXFORD, The [17,472], 6 Ben. 119.
WEYAUWEGAN v. AYLING [17,473], 25 Int. Rev. Rec. 289.
WEYHAUSEN, In re [17,474], 1 Ben. 397.
Weymouth, Crane v. [See 3,358.]
W. F. GARRISON, The [17,475], 1 Lowell, 139.
W. G. Hewes, The, Miller v. [See 9,594.]
Whalan, United States v. [See 16,669.]
WHALEN v. SHERIDAN [17,476], 17 Blatchf. 9; 8 Reporter, 422; 1 Wkly. Jur. 447.
WHALEN v. SILVER SPRING, The [17,477], 32 Hunt, Mer. Mag. 711.
Whaling, Cady v. [See 2,285.]
WHANN v. HALL [17,478], 2 Cranch, C. C. 4.
Wharfield, Tayloe v. [See 13,772.]
WHARTENBY v. DANIEL [17,479], 6 Amer. Law Rev. 164.
WHARTON'S HEIRS [17,480].
Wharton, James v. [See 7,187.]
WHARTON v. LOWREY [17,481], 2 Dall. 364.
Wharton, Montgomery v. [See 9,737.]
W. H. CLARK, The [17,482], 5 Biss. 295.
Wheat, Washington v. [See 17,238.]
WHEATLEY v. HOTCHKISS [17,483], 1 Spr. 225; 16 Law. Rep. 692.
Wheatley, Keene v. [See 7,644.]
Wheaton, Burke v. [See 2,164.]
Wheaton, Harding v. [See 6,051.]
WHEATON v. LOVE [17,484], 1 Cranch, C. C. 429.
WHEATON v. LOVE [17,485], 1 Cranch, C. C. 451.
Wheaton, Miller v. [See 9,595.]
WHEATON v. PETERS [17,486], 33 U. S. (8 Pet.) 725.
Wheaton, Shieffelin v. [See 12,783.]
WHEATON v. UNITED STATES [17,487], 8 Blatchf. 474.
Wheaton, Washington v. [See 17,239.]
WHEELER, In re [17,488], 2 Lowell, 252.
WHEELER, In re [17,489], 16 N. B. R. 277; 10 Chi. Leg. News, 18; 5 N. Y. Wkly. Dig. 202; 5 Cent. Law J. 368.
WHEELER, In re [17,490], 18 N. B. R. 385; 26 Pittsb. Leg. J. 84.
WHEELER, In re [17,491], 19 N. B. R. 258; 11 Chi. Leg. News, 407; 8 Reporter, 674; 4 Cin. Law Bul. 655.
WHEELER v. BATES [17,492], 6 Biss. 88; 6 Chi. Leg. News, 413.
WHEELER v. CLIPPER MOWER, Etc., CO. [17,-493], 10 Blatchf. 181; 6 Fish. Pat. Cas. 1; 2 O. G. 442; Merw. Pat. Inv. 242.
Wheeler, Collins v. [See 3,018.]
Wheeler, Comstock v. [See 3,071.]
WHEELER v. EASTERN STATE, The [17,494], 2 Curt. 141.
WHEELER v. FACTORS' & TRADERS' INS. CO. [17,495], 3 Woods, 43.
Wheeler, Harris v. [See 6,129.]
WHEELER v. HELMBOLD [17,496], 5 Blatchf. 503.
WHEELER v. KATE, The [17,497].
WHEELER v. McCORMICK [17,498], 8 Blatchf. 267; 4 Fish. Pat. Cas. 433.
WHEELER v. McCORMICK [17,499], 11 Blatchf. 334; 6 Fish. Pat. Cas. 551; 4 O. G. 692.
Wheeler, Merchants' & Manufacturers' Nat. Bank v. [See 9,439.]
Wheeler, Nutter v. [See 10,384.]
WHEELER v. SIMPSON [17,500], 1 Ban. & A. 420; 6 O. G. 435.
Wheeler, Society for the Propagation of the Gospel v. [See 13,156.]
WHEELER v. SUMNER [17,501], 4 Mason, 183.
Wheeler & Wilson Mfg. Co., Corliss v. [See 3,233.]
WHEELING v. BALTIMORE [17,502], 1 Hughes, 90.
Wheelright, Bowie v. [See 1,733.]
WHELAN v. WASHINGTON [17,503], 3 Cranch, C. C. 292.
WHELPLEY v. ERIE RY. CO. [17,504], 6 Blatchf. 271.
Wherritt, Shawhan v. [See 12,728.]
Wherry, McFerran v. [See 8,792.]
WHETCROFT v. BURFORD [17,505], 2 Cranch, C. C. 96.
WHETCROFT v. DUNLOP [17,506], 1 Cranch, C. C. 5.
WHETCROFT v. WHITE [17,507], 2 Cranch, C. C. 96.
WHETMORE, In re [17,508], Deady, 585; 2 Amer. Law T. 105; 1 Amer. Law T. Rep. Bankr. 136.
WHETMORE v. MURDOCK [17,509], 3 Woodb. & M. 380.
WHETMORE v. MURDOCK [17,510], 3 Woodb. & M. 390.
Whidden, United States v. [See 16,670.]
WHIP & MICHIGAN, The [17,511].
WHIPPLE, In re [17,512], 6 Biss. 516; 13 N. B. R. 373; 8 Chi. Leg. News, 134.
WHIPPLE, In re [17,513], 11 N. B. R. 524; 2 Lowell, 404.
WHIPPLE v. BALDWIN MFG. CO. [17,514], 4 Fish. Pat. Cas. 29.
WHIPPLE v. CUMBERLAND COTTON MFG. CO. [17,515], 3 Story, 84.
WHIPPLE v. CUMBERLAND MFG. CO. [17,516], 2 Story, 661.
WHIPPLE v. HUTCHINSON [17,517], 4 Blatchf. 190.
WHIPPLE v. LEVETT [17,518], 2 Mason, 89.
WHIPPLE v. MIDDLESEX CO. [17,520].
WHIPPLE v. MIDDLESEX CO. [17,520], 4 Fish. Pat. Cas. 41; Merw. Pat. Inv. 211.
Whipple, North American Ins. Co. v. [See 10,315.]
WHIPPLE v. RENTON [17,521], 1 McA. Pat. Cas. 332.
Whipple, Stanley v. [See 13,286.]
WHIPPLE FILE CO., In re [17,522], 1 Lowell, 477; 12 Int. Rev. Rec. 98.
Whisen, Swift v. [See 13,700.]
Whiskey, United States v. [See 16,671.]
Whistler, The, Keene v. [See 7,645.]
WHISTON v. SMITH [17,523], 2 Lowell, 101.
WHITAKER, The [17,524], 1 Spr. 229; 18 Law Rep. 496.
WHITAKER, The [17,525], 1 Spr. 282; 18 Law Rep. 497.
WHITAKER v. BRAMSON [17,526], 2 Paine, 209.
WHITAKER v. FRED LORENTS, The [17,527], 2 West. Law Month. 520.
WHITAKER v. FREEMAN [17,527a], 1 Dev. (N. C.) 271, 280.
WHITAKER v. POPE [17,528], 2 Woods, 463.
Whitaker, United States v. [See 16,672.]
WHITCOMB, Ex parte [17,529], 2 Lowell, 523; 15 N. B. R. 92.
Whitcomb, Hill v. [See 6,502.]
WHITCOMB v. PHŒNIX MUT. LIFE INS. CO. [17,530], 8 Reporter, 642; 11 Chi. Leg. News, 408; 8 Ins. Law J. 624.
Whitcroft, Carroll v. [See 2,458.]
White, Ex parte. [See 11,140.]
WHITE, In re [17,531], 2 Ben. 85; 1 N. B. R. 218 (Quarto, 1).
WHITE, In re [17,532], 2 N. B. R. 590 (Quarto, 179); 16 Pittsb. Leg. J. 110; 2 Amer. Law T. 105; 1 Amer. Law T. Rep. Bankr. 136; 1 Chi. Leg. News, 326.
WHITE, In re [17,533], 18 N. B. R. 106.
WHITE v. ADAMS [17,534], 5 Ben. 355.
White, Adams v. [See 68.]
WHITE v. ALLEN [17,535], 2 Cliff. 224; 2 Fish. Pat. Cas. 440; Merw. Pat. Inv. 705.
WHITE v. ARLETH [17,536], 1 Bond, 319.
White, Barker v. [See 996.]
WHITE v. BOKER [17,537], 3 Fish. Pat. Cas. 66.
White, Bolton v. [See 1,616.]
WHITE v. BROWN [17,538], 1 Wall. Jr. 217.
WHITE v. BURNS [17,539], 5 Cranch, C. C. 123.
WHITE v. CLARKE [17,540], 5 Cranch, C. C. 102.
WHITE v. CLARKE [17,541], 5 Cranch, C. C. 401.
WHITE v. CLARKE [17,542], 5 Cranch, C. C. 530

WHITE v. COLORADO CENT. R. CO. [17,543], 5 Dill. 428; 3 McCrary, 559; 17 Amer. Law Reg. (N. S.) 783.
WHITE v. COMMONWEALTH NAT. BANK [17,544], 4 Brewst. 234.
WHITE v. CONNECTICUT MUT. LIFE INS. CO. [17,545], 4 Dill. 177; 10 Chi. Leg. News, 83; 5 Reporter, 39; 7 Ins. Law J. 101; 5 Cent. Law J. 486.
WHITE v. CROSS [17,546], 2 Cranch, C. C. 17.
WHITE v. CYNTHIA, The [17,546a], 10 Reporter, 232.
White, Dyson v. [See 4,231.]
WHITE v. FENNER [17,547], 1 Mason, 520.
White, Goodyear Dental Vulcanite Co. v. [See 5,601, 5,602.]
White, Gorham Mfg. Co. v. [See 5,627.]
White, Hatch v. [See 6,209.]
WHITE v. HOW [17,548], 3 McLean, 111.
WHITE v. HOW [17,549], 3 McLean, 291.
White, Jackson v. [See 7,151.]
WHITE v. JONES [17,550], 6 N. B. R. 175; 29 Leg. Int. 325.
White v. Jones. [See 16,945.]
White v. Judges. [See 15,501.]
White, Kirkpatrick v. [See 7,850.]
White, Lawrence v. [See 8,147.]
WHITE v. LEAHY [17,551], 3 Dill. 378.
White, Lewis v. [See 8,335.]
White, McDonald v. [See 8,769.]
White v. McDonnell. [See 12,202.]
WHITE v. McDONOUGH [17,552], 3 Sawy. 311.
White, McGinnity v. [See 8,802.]
WHITE v. MACON [17,553], 3 Cranch, C. C. 250.
White, Mallory v. [See 8,993.]
White, Maria v. [See 9,076.]
WHITE v. NICHOLLS [17,554], 1 Hayw. & H. 123.
White, Nicholls v. [See 10,235.]
WHITE v. PERRIN [17,555], 1 Cranch, C. C. 50.
White v. Raftery. [See 8,775.]
WHITE v. RED CHIEF [17,556], 1 Woods, 40.
White, Sevier v. [See 12,681.]
WHITE v. SWIFT [17,557], 1 Cranch, C. C. 442.
White, Thorne v. [See 13,989.]
White, Toler v. [See 14,079.]
White, Tyron v. [See 14,208.]
White, Turner v. [See 14,264.]
White, Union Paper Collar Co. v. [See 14,396.]
WHITE v. UNITED STATES [17,558], 1 Hayw. & H. 127.
White, United States v. [See 16,673-16,686.]
WHITE v. VERMONT & M. R. CO. [17,559], 21 Law Rep. 469.
WHITE v. WASHINGTON [17,560], 2 Cranch, C. C. 337.
White, Weston v. [See 17,458, 17,459.]
White, Whetcroft v. [See 17,507.]
WHITE v. WHITMAN [17,561], 1 Curt. 494.
White, Wortendyke v. [See 18,050.]
White, The A. J. [See 7,005.]
White, The Caroline A. [See 2,421.]
White, The Maria. [See 9,083.]
WHITEHEAD, In re [17,562], 2 N. B. R. 599 (Quarto, 180); 1 Chi. Leg. News, 326.
WHITEHEAD v. JONES [17,563], 2 McLean, 28.
WHITEHEAD v. TEMPEST, The [17,563a].
WHITEHOUSE, In re [17,564], 1 Lowell, 429; 4 N. B. R. 63 (Quarto, 15).
WHITEHOUSE v. GRAND TRUNK RY. CO. [17,565], 2 Hask. 189.
WHITEHOUSE v. TRAVELERS' INS. CO. [17,566], 7 Ins. Law J. 23.
Whitely, Hussey v. [See 6,950.]
WHITELY v. RIDDICK [17,567], Chase, 540.
WHITELY v. SWAYNE [17,568], 4 Fish. Pat. Cas. 117.
WHITEMAN v. NEPTUNE, The [17,569], 1 Pet. Adm. 180.
White Rock Mfg. Co., Stillman v. [See 13,446.]
WHITE SQUALL, The [17,570], 4 Blatchf. 103.
White Squall, The, Gardner v. [See 5,239.]
White Water Valley Canal Co., Conwell v. [See 3,148.]
Whitewater Valley Canal Co., Vallette v. [See 16,820.]
WHITFIELD v. ALLISON [17,571], 2 Amer. Law Rev. 188.
Whitfield, Bailey v. [See 748.]
WHITHED v. PILLSBURY [762], 13 N. B. R. 241.
WHITING, Ex parte [17,573], 2 Lowell, 472; 14 N. B. R. 307.
WHITING, In re [17,574], 1 Wkly. Notes Cas. 30.
Whiting, In re. [See 7,991.]
Whiting, Adams v. [See 69.]
Whiting, Baker v. [See 786, 787.]
WHITING v. BANCROFT [17,575], 1 Story, 560.
WHITING v. BANK OF THE UNITED STATES [17,576], 1 McLean, 249.
WHITING v. GRAVES [17,577], 13 O. G. 455; 3 Ban. & A. 222.
Whiting, Windsor v. [See 17,868.]
Whiting, The Catharine. [See 9,069.]
WHITLOCK v. THALES, The [17,578], 20 How. Pr. 447.
WHITMAN v. BUTLER [17,579], 8 N. B. R. 487.
WHITMAN v. JAMES [17,579a], 5 Ban. & A. 575.
Whitman, Pitts v. [See 11,196.]
Whitman, White v. [See 17,561.]
Whitman, The Abby. [See 15.]
Whitmore, Marsh v. [See 9,122.]
WHITNEY, In re [17,580], 2 Lowell, 455; 14 N. B. R. 1; 8 Chi. Leg. News, 195.
WHITNEY, In re [17,581], 18 N. B. R. 563.
Whitney, In re. [See 4,672.]
Whitney, Albers v. [See 137.]
WHITNEY v. ARTHUR [17,582].
Whitney, Benton v. [See 1,335.]
Whitney, Blanchard v. [See 1,519.]
WHITNEY v. CARTER [17,583], Fess. Pat. 130.
Whitney, Consolidated Fruit-Jar Co. v. [See 3,132-3,134.]
Whitney, Cook v. [See 3,166.]
WHITNEY v. EAGER [17,584], Crabbe, 422.
WHITNEY v. EMMETT [17,585], Baldw. 303; 1 Robb. Pat. Cas. 567.
WHITNEY v. EMPIRE STATE, The [17,586], 1 Ben. 57.
WHITNEY v. FORT [17,587].
WHITNEY v. FORT [17,588].
Whitney, Harding v. [See 6,052.]
WHITNEY v. HUNTT [17,589], 5 Cranch, C. C. 120.
WHITNEY v. JANESVILLE GAZETTE [17,590], 5 Biss. 330; 5 Chi. Leg. News, 469.
WHITNEY v. MARY GRATWICK, The [17,591], 2 Sawy. 342.
WHITNEY v. MOWRY [17,592], 2 Bond, 45; 3 Fish. Pat. Cas. 157.
WHITNEY v. MOWRY [17,593], 4 Fish. Pat. Cas. 141.
WHITNEY v. MOWRY [17,594], 4 Fish. Pat. Cas. 207.
WHITNEY v. OLNEY [17,595], 3 Mason, 280.
Whitney, Potter v. [See 11,341.]
WHITNEY v. ROLLSTONE MACHINE WORKS [17,596], 8 O. G. 908; 2 Ban. & A. 170.
Whitney, The Eli. [See 4,345.]
Whitney Arms Co., United States Rifle, Etc., Co. v. [See 16,793.]
WHITON v. CHICAGO & N. W. R. CO. [17,597], 2 Biss. 282.
Whiton, The T. F. [See 13,849.]
WHITTAKER, In re [17,598], 4 N. B. R. 160 (Quarto, 41).
WHITTAKER v. J. A. TRAVIS, The [17,599], 7 Chi. Leg. News, 275.
Whittaker, Karr v. [See 7,613.]
Whittaker, United States v. [See 16,687.]
Whittemore, Allen v. [See 241.]
Whittemore, Brown v. [See 2,033.]
WHITTEMORE v. CUTTER [17,600], 1 Gall. 429; 1 Robb, Pat. Cas. 28.
WHITTEMORE v. CUTTER [17,601], 1 Gall. 478; 1 Robb, Pat. Cas. 40; Merw. Pat. Inv. 411.
WHITTEMORE v. HERBERT [17,602], 2 Cranch, C. C. 245.
Whittemore, Tappan v. [See 13,750.]
Whittier, United States v. [See 16,688.]
WHITTLE v. FARMVILLE INS. CO. [17,603], 3 Hughes, 421.
Whittlesey, Woven Wire Mattress Co. v. [See 18,058.]
WHITTON v. COMMERCE, The [17,604], 1 Pet. Adm. 160.
WHITWELL v. PULASKI COUNTY [17,605], 2 Dill. 249.
Whitwell, Thomassen v. [See 13,928-13,930.]

[Federal Case numbers are given in brackets.]

Whitwill, Leonard v. [See 8,261.]
WHYTE, In re [17,606], 9 N. B. R. 267.
Wiberg, Witherell v. [See 17,917.]
WICK v. SAMUEL STRONG, The [17,607], 6 McLean, 587; Newb. 187.
WICKE v. KLEINKNECHT [17,608], 7 O. G. 1098; 1 Ban. & A. 608.
Wicker, Hoppock v. [See 6,701.]
Wickerly, Hurst v. [See 6,940.]
WICKERSHAFF v. JONES [17,609], 2 Whart. Dig. 413.
WICKERSHAM v. SINGER [17,610], 1 McA. Pat. Cas. 645.
Wickes v. The Circassian. [See 2,720a, 2,726.]
WICKHAM v. BLIGHT [17,611], Gilp. 452.
WICKHAM v. DILLON [17,612], 2 West. Law Month. 511.
Wickham, United States v. [See 16,689.]
WICKHAM v. VALLE [17,613], 11 N. B. R. 83.
WICKS v. ELLIS [17,614], Abb. Adm. 444.
WICKS v. PERKINS [17,615], 1 Woods, 383; 13 N. B. R. 280.
WICKS v. STEVENS [17,616], 2 Woods, 310; 2 Ban. & A. 318.
Wicks, Weed Sewing Mach. Co. v. [See 17,348.]
Wickware, Lawrence v. [See 8,148.]
Widdington, Scott v. [See 12,547.]
Wiede v. Home Ins. Co. [See 17,617.]
WIEDE v. INSURANCE CO. OF NORTH AMERICA [17,617], 3 Chi. Leg. News, 353.
Wiede v. International Ins. Co. [See 17,617.]
WIEGAND, In re [17,618], 14 Blatchf. 370.
WIELARSKI, In re [17,619], 4 Ben. 468; 4 N. B. R. 390 (Quarto, 130).
WIENER, In re [17,620], 14 N. B. R. 218; 3 N. Y. Wkly. Dig. 95.
WIENER v. RAFAEL ARROYO, The [17,621], 5 Pa. Law J. Rep. 52; 4 Amer. Law J. (N. S.) 81; 26 Hunt, Mer. Mag. 337.
Wiester, Jeffries v. [See 7,254.]
WIGFIELD v. DYER [17,622], 1 Cranch, C. C. 403.
Wigg, Ex parte. [See 2,348.]
WIGGERS, In re [17,623], 2 Biss. 71; 2 Chi. Leg. News, 385.
Wiggin, Ex parte. [See 17,060.]
WIGGIN v. COFFIN [17,624], 3 Story, 1.
WIGGIN v. DORR [17,625], 3 Sumn. 410.
Wiggin, Russell v. [See 12,165.]
Wiggin, Simpson v. [See 12,887.]
WIGGINS v. EUROPEAN & N. A. RY. CO. [17,626], 1 Hask. 122.
WIGGINS v. WIGGINS [17,627], 1 Cranch, C. C. 299.
Wigglesworth, United States v. [See 16,690.]
WIGHT v. CURTIS [17,628], 11 Hunt, Mer. Mag. 553.
WIGHT v. MUXLOW [17,629], 8 Ben. 52.
WIGHTMAN v. PROVIDENCE [17,630], 1 Cliff. 524.
WIGLE v. KIRBY [17,631], 3 Cranch, C. C. 597.
Wigton v. Jersey City Window-Glass Co. [See 7,292.]
WILBER v. INGERSOLL [17,632], 2 McLean, 322.
WILBUR, In re [17,633], 1 Ben. 527; 3 N. B. R. 276 (Quarto, 71).
Wilbur, Adams v. [See 70.]
Wilbur, Almy v. [See 256.]
WILBUR v. BEECHER [17,634], 2 Blatchf. 132; Merw. Pat. Inv. 203; 1 Fish. Pat. Rep. 401.
WILBUR v. LAWRENCE [17,635], 2 Blatchf. 314.
Wilbur, Loomis v. [See 8,498.]
WILBUR v. STOCKHOLDERS [17,636], 18 N. B. R. 178; 13 Phila. 479; 35 Leg. Int. 346; 26 Pittsb. Leg. J. 15.
WILBUR v. WILSON [17,637], 2 Wkly. Notes Cas. 496.
Wilcocks, Bainbridge v. [See 755.]
WILCOCKS v. PALMER [17,638], 3 Wash. C. C. 248.
WILCOCKS v. PHILLIPS [17,639], 1 Wall. Jr. 47.
WILCOX v. COHN [17,640], 5 Blatchf. 346.
WILCOX v. KOMP [17,641], 7 Blatchf. 126.
Wilcox, Linkman v. [See 8,374.]
Wilcox, Mutual Life Ins. Co. v. [See 9,979, 9,980.]
Wilcox, United States v. [See 16,691-16,693.]
WILCOX & GIBBS SEWING-MACH. CO. v. FOLLETT [17,643].
WILCOX & GIBBS SEWING-MACH. CO. v. FOLLETT [17,643], 2 Flip. 263; 10 Chi. Leg. News, 99; 2 Cin. Law Bul. 301; 3 Cin. Law Bul. 49.
Wilcutt, Walcott v. [See 17,053.]
WILD, Ex parte [4,173], 12 Blatchf. 42.
WILD, In re [17,645], 11 Blatchf. 243; 1 Thomp. Nat. Bank Cas. 246; 8 Alb. Law J. 235; 10 N. B. R. 568.
WILD v. BANK OF PASSAMAQUODDY [17,646], 3 Mason, 505.
WILDER v. ADAMS [17,647], 2 Woodb. & M. 329.
Wilder, Baldwin v. [See 806.]
Wilder, The Mary T., Cohen v. [See 2,965.]
Wilder, Cox v. [See 3,308, 3,309.]
WILDER v. GAYLER [17,648], 1 Blatchf. 511; 1 Fish. Pat. Rep. 317.
WILDER v. GAYLER [17,649], 1 Blatchf. 597; 1 Fish. Pat. Rep. 387.
WILDER v. McCORMICK [17,650], 2 Blatchf. 31; 1 Fish. Pat. Rep. 128.
WILDER v. UNION NAT. BANK [17,651], 9 Biss. 178; 9 Reporter, 3; 12 Chi. Leg. News, 75; 9 Browne, Nat. Bank Cas. 124; 9 N. Y. Wkly. Dig. 220.
Wilder, United States v. [See 16,694.]
Wilder, The J. W. [See 7,592.]
WILDES v. PARKER [17,652], 3 Sumn. 593; 2 Law Rep. 239.
WILDES v. SAVAGE [17,653], 1 Story, 22; 3 Law Rep. 1.
Wild Hunter, The, Ellsworth v. [See 4,411.]
WILDMAN, Ex parte [17,653a].
Wildman, In re. [See 2,959b.]
WILDMAN v. TAYLOR [17,654], 4 Ben. 42.
Wiles, Hall v. [See 5,954.]
WILEY, In re [17,655], 4 Biss. 171.
WILEY, In re [17,656], 4 Biss. 214.
WILEY v. ROBINSON [17,656a], Hempst. 41.
WILEY SMITH, The [17,657], 6 Ben. 195.
Wilgees, Law v. [See 8,132.]
Wilgus, Milton v. [See 9,622.]
WILHELMINA, The [17,658], 3 Ben. 110.
WILKENS v. SPAFFORD [17,659], 13 O. G. 675; 3 Ban. & A. 274.
WILKES v. ELLIOT [17,660], 5 Cranch, C. C. 611.
WILKESBARRE COAL & IRON CO., 129, The [17,661], 5 Ben. 482.
Wilkeson, Stanton v. [See 13,299.]
WILKIE v. TWO HUNDRED AND FIVE BOXES OF SUGAR [17,662], Bee, 82.
WILKINGS v. MURPHEY [17,663], 2 Hayw. (N. C.) 282; Brunner, Col. Cas. 21.
Wilkins, Balfour v. [See 807.]
Wilkins, Bingham v. [See 1,416.]
WILKINS v. DAVIS [17,664], 2 Lowell, 511; 15 N. B. R. 60.
WILKINS v. JORDAN [17,665], 3 Wash. C. C. 226.
Wilkins, Jordan v. [See 7,526, 7,527.]
WILKINS v. WRIGHT [17,666], 6 McLean, 340.
WILKINSON, In re [17,667], 3 N. B. R. 286 (Quarto, 74); 2 West. Jur. 350; 16 Pittsb. Leg. J. 237.
WILKINSON v. BABBITT [17,668], 4 Dill. 207.
WILKINSON v. BARNARD [17,669], 9 Ben. 249.
WILKINSON v. DOBBIE [17,670], 12 Blatchf. 298.
WILKINSON v. GREELY [17,671], 1 Curt. 63.
WILKINSON v. GREELY [17,672], 1 Curt. 439.
Wilkinson, Hale v. [See 5,917.]
Wilkinson, Hayton v. [See 6,272.]
Wilkinson, Mann v. [See 9,036.]
WILKINSON v. NICKLIN [17,673], 2 Dall. 396.
WILKINSON v. POMEROY [17,674], 9 Blatchf. 513.
WILKINSON v. POMEROY [17,675], 10 Blatchf. 524.
Wilkinson, Read v. [See 11,611.]
Wilkinson, Salt Co. of Onondaga v. [See 12,269.]
Wilkinson, Short v. [See 12,810.]
Wilkinson, Tyler v. [See 14,312.]
WILKINSON v. UNION MUT. LIFE INS. CO. [17,676], 2 Dill. 570.
Wilkinson, United States v. [See 16,695, 16,696.]
WILKINSON v. WILKINSON [17,677], 2 Curt. 582.
WILKINSON v. WILLIAMS [17,677a], 2 Hayw. & H. 1.
WILKINSON v. YALE [17,678], 6 McLean, 16.
Will, The, Hartman v. [See 6,163.]
Will, United States v. [See 16,697.]
Willamet Falls, C. & L. Co. v. Kittredge. [See 17,105.]
Willard, Barbee v. [See 969.]
Willard, Boggs v. [See 1,603.]
Willard, Brattle v. [See 1,815.]
WILLARD v. DORR [17,679], 3 Mason, 91.

[Federal Case numbers are given in brackets.]

WILLARD v. DORR [17,680], 3 Mason, 161.
Willard, Noyes v. [See 10,374.]
Willard, Pratt v. [See 11,378.]
Willard, United States v. [See 16,698.]
Willard, The B. J. [See 1,454.]
WILLARD SAULSBURY, The [17,681], 1 Lowell, 194.
Willbank, Hawkins v. [See 6,247.]
Willett v. The Orient. [See 10,569.]
Willetts, United States v. [See 16,699.]
WILLENDSON v. FORSOKET, The [17,682], 1 Pet. Adm. 197.
WILLETT v. PHILLIPS [17,683], 8 Ben. 459.
WILLIAM, The [17,684], 13 Hunt, Mer. Mag. 81.
William, The, Findlay v. [See 4,790.]
William, The, Martin v. [See 9,171.]
William, The, United States v. [See 16,700.]
WILLIAM v. VAN ZANDT [17,685], 3 Cranch, C. C. 55.
WILLIAM A. HARRIS, The [17,686], 8 Ben. 210.
WILLIAM & EMMELINE, The [17,687], 1 Blatchf. & H. 66.
William & Samuel, The, United States v. [See 16,701.]
William Arthur, The, United States v. [See 16,702.]
WILLIAM CAREY, The [17,688].
WILLIAM CAREY, The [17,689], 3 Ware, 313.
WILLIAM CUMMINGS, The [17,690], 7 Phila. 598; 27 Leg. Int. 116.
William D., The, Bickner v. [See 1,390.]
WILLIAM D. RICE, The [17,691], 3 Ware, 134; 10 Law Rep. 501.
William F. Burden, The. [See 12,558.]
WILLIAM FLETCHER, The [17,692], 8 Ben. 537.
WILLIAM GILLUM, The [17,693], 2 Lowell, 154.
WILLIAM GRAY, The [17,694], 1 Paine, 16.
WILLIAM HARRIS, The [17,695], 1 Ware (367) 373; 1 Law Rep. 64; 1 Hunt, Mer. Mag. 62.
WILLIAM H. NORTHROP, The [17,696], Blatchf. Pr. Cas. 235.
William H. Rutan, The, Montell v. [See 9,724.]
WILLIAM JARVIS, The [17,697], 1 Spr. 485.
William Kallahan, The, Kelsey v. [See 7,680.]
WILLIAM MARTIN, The [17,698], 1 Spr. 564.
William M. Jones, The, Buckley v. [See 2,095.]
William Penn, The, Brooks v. [See 1,965.]
William Penn, The, Crawford v. [See 3,372, 3,373.]
William Pope, The, United States v. [See 16,703.]
WILLIAMS, Ex parte [17,699], 4 Cranch, C. C. 343.
WILLIAMS, In re [17,700], 6 Biss. 233; 11 N. B. R. 145; 7 Chi. Leg. News, 49.
WILLIAMS, In re [17,701], 5 Law Rep. 155; 1 Pa. Law J. 212.
WILLIAMS, In re [17,702], 5 Law Rep. 402.
WILLIAMS, In re [17,703], 1 Lowell, 406; 3 N. B. R. 286 (Quarto, 74).
WILLIAMS, In re [17,704], 2 N. B. R. 83 (Quarto, 28).
WILLIAMS, In re [17,705], 2 N. B. R. 229 (Quarto, 79); 3 Amer. Law Rev. 374; 1 Amer. Law T. Rep. Bankr. 107, 113.
WILLIAMS, In re [17,706], 14 N. B. R. 132.
WILLIAMS, In re [17,707], 3 Woods, 493.
WILLIAMS' CASE [17,708], 4 Hall, Law J. 461; 2 Cranch, 82, note; Nat. Mag. No. 3, p. 254; Whart. St. Tr. 652.
WILLIAMS, Case of [17,709], Crabbe, 243; 2 Law Rep. 104.
WILLIAMS, The [17,710], 1 Brown's Adm. 208; 7 Amer. Law Rev. 755.
WILLIAMS v. ADAMS [17,711], 8 Biss. 452; 7 Reporter, 613; Cox, Manual Trade-Mark Cas. 387; 11 Chi. Leg. News, 249.
WILLIAMS v. ADOLPHE, The [17,712], 19 Amer. Jur. 219.
Williams, Armroyd v. [See 538.]
Williams, Ash v. [See 573.]
Williams v. Bank of Lee. [See 13,990-13,992.]
Williams v. Bank of Louisiana. [See 13,990-13,992.]
Williams, Bank of United States v. [See 942.]
WILLIAMS v. BARNEY [17,713], 5 Blatchf. 219.
WILLIAMS v. BARRETT [17,714], 2 Cranch, C. C. 673.
Williams, Bartlett v. [See 1,081.]
WILLIAMS v. BAXTER [17,715], 3 McLean, 471.
Williams, Bergen v. [See 1,340.]
Williams, Berger v. [See 1,341.]
Williams, Binns v. [See 1,423.]
WILLIAMS v. BOSTON & A. R. CO. [17,716], 17 Blatchf. 21; 16 O. G. 906; 4 Ban. & A. 441; Merw. Pat. Inv. 468.
WILLIAMS v. BOX OF BULLION [17,717], 1 Spr. 57; 1 West. Law J. 355; 6 Law Rep. 363.
Williams, Brainard v. [See 1,804.]
Williams, Bush v. [See 2,225.]
WILLIAMS v. BYRNE [17,718], Hempst. 472.
Williams, Callon v. [See 2,324.]
Williams, Cassedy v. [See 2,501.]
Williams, Clementson v. [See 2,885.]
WILLIAMS v. CRAVEN [17,719], 2 Cranch, C. C. 60.
Williams, Creditors v. [See 3,379.]
Williams, De Laveaga v. [See 3,759.]
Williams, Dwight v. [See 4,218.]
WILLIAMS v. EMPIRE TRANSP. CO. [17,720], 6 Reporter, 673; 3 Ban. & A. 533; 17 Amer. Law Reg. (N. S.) 698; 14 O. G. 523; 1 N. J. Law J. 315; 18 Alb. Law J. 313; 24 Int. Rev. Rec. 330; 35 Leg. Int. 440; 1 Md. Law Rec. 115.
Williams, Ferris v. [See 4,749, 4,750.]
Williams, Gibson v. [See 5,403.]
Williams, Grover & Baker Sewing-Mach. Co. v. [See 5,847.]
Williams, Hoffman v. [See 6,579.]
WILLIAMS v. HOPE, The [17,721], 1 Pet. Adm. 134.
WILLIAMS v. HOPKINS [17,722], 2 Cranch, C. C. 98.
Williams, Howe v. [See 6,778.]
Williams, Hurd v. [See 6,918.]
WILLIAMS v. JENNY LIND, The [17,723], Newb. 443.
Williams, Jordan v. [See 7,528.]
WILLIAMS v. JUNO, The [17,724], 1 U. S. Law J. 154.
WILLIAMS v. KING [17,725], 13 Blatchf. 282; 43 Conn. 569.
WILLIAMS v. LEONARD [17,726], 9 Blatchf. 476; 5 Fish. Pat. Cas. 381.
WILLIAMS v. LIZZIE HENDERSON, The [17,726a].
Williams, Marshall v. [See 9,136.]
WILLIAMS v. MECHANICS' BANK [17,727], 5 Blatchf. 59; 10 Pittsb. Leg. J. 89.
WILLIAMS v. MISSOURI, K. & T. R. CO. [17,728], 3 Dill. 267.
WILLIAMS v. MOBILE SAV. BANK [17,729], 2 Woods, 501.
WILLIAMS v. MORA [17,730], 40 Hunt, Mer. Mag. 198; 2 Wkly. Law Gaz. 299.
WILLIAMS v. NEW ENGLAND INS. CO. [17,731], 3 Cliff. 244.
Williams, Pickersgill v. [See 11,123.]
WILLIAMS v. POOR [17,732], 3 Cranch, C. C. 251.
WILLIAMS v. REED [17,733], 3 Mason, 405.
Williams, Republic Ins. Co. v. [See 11,707.]
Williams, Reynolds v. [See 11,734.]
WILLIAMS v. RITCHEY [17,734], 3 Dill. 406.
WILLIAMS v. ROME, W. & O. R. CO. [17,735], 15 Blatchf. 200; 3 Ban. & A. 413; 15 O. G. 653.
WILLIAMS v. SEA GULL, The [17,736], 1 Cin. Law Bul. 37.
Williams, Sedam v. [See 12,609.]
Williams v. Shallcross. [See 9,944.]
WILLIAMS v. SINCLAIR [17,737], 3 McLean, 289.
Williams, Smith v. [See 13,127.]
Williams, Sohier v. [See 13,159, 13,160.]
Williams, Stevens v. [See 13,413, 13,414.]
Williams, Stowell v. [See 13,515.]
WILLIAMS v. SUFFOLK INS. CO. [17,738], 3 Sumn. 270; 1 Law Rep. 153; 1 Hunt, Mer. Mag. 159.
WILLIAMS v. SUFFOLK INS. CO. [17,739], 3 Sumn. 510; 2 Law Rep. 76.
WILLIAMS v. SYLPH, The [17,740].
WILLIAMS v. THRELKELD [17,741], 2 Cranch, C. C. 307.
Williams, Turner v. [See 14,265.]
Williams, United States v. [See 16,704-16,724.]
WILLIAMS v. VANDERBILT, The, and COLLINS, The [17,742].
WILLIAMS v. VANDERBILT, The, and COLLINS, The [17,743].
WILLIAMS v. VANDERBILT, The, and COLLINS, The [17,744].
Williams, Vaughan v. [See 16,903.]
Williams, Veazie v. [See 16,906, 16,907.]
WILLIAMS v. VIM, The [17,744a].
WILLIAMS v. WATERMAN [17,745].

[Federal Case numbers are given in brackets.]

WILLIAMS v. WELLS [17,746], 1 Hayw. & H. 116.
Williams, Wisdom v. [See 17,904.]
Williams, Wood v. [See 17,968.]
Williams, The Kate. [See 7,623.]
WILLIAMSBURG FERRY CO. v. CHELSEA, The [17,747], 29 Hunt, Mer. Mag. 74.
WILLIAMS MOWER & REAPER CO. v. RAYNOR [17,748], 7 Biss. 245.
WILLIAMSON v. ALPHONSO, The [17,749], 1 Curt. 376; 2 Liv. Law Mag. 364.
Williamson, Barrett v. [See 1,051.]
WILLIAMSON v. BETSY, The [17,750], Bee, 67.
WILLIAMSON v. BRYAN [17,751], 2 Cranch, C. C. 407.
WILLIAMSON v. BUZZARD [17,751a], Hempst. 243.
WILLIAMSON v. COLCORD [17,752], 1 Hask. 620; 13 N. B. R. 319.
WILLIAMSON v. NEW ALBANY, Etc., R. CO. [17,753], 1 Biss. 198; 2 Redf. Amer. Ry. Cas. 682.
Williamson, Peck v. [See 10,896.]
WILLIAMSON v. RICHARDSON [17,754].
WILLIAMSON v. RINGGOLD [17,755], 4 Cranch, C. C. 39.
WILLIAMSON v. SUYDAM [17,756], 4 Blatchf. 323.
Williamson, United States v. [See 16,725, 16,726.]
Williamson, Jr., The Jesse. [See 7,296, 7,297.]
WILLIAM TABER, The [17,757], 2 Ben. 329.
William Taber, The, Geiger v. [See 5,300.]
WILLIAM T. GRAVES, The [17,758], 8 Ben. 568; 9 Chi. Leg. News, 92; 14 Alb. Law J. 408.
WILLIAM T. GRAVES, The [17,759], 14 Blatchf. 189.
WILLIAM YOUNG, The [17,760], Olc. 38.
WILLIAR v. IRWIN [17,761], 11 Biss. 57.
WILLIE G., The [17,762], 1 Hask. 253; 11 Int. Rev. Rec. 117.
WILLIMANTIC LINEN CO. v. CLARK THREAD CO. [17,763], 4 Ban. & A. 133.
Willing, Barings v. [See 985.]
WILLING v. UNITED STATES [17,764], 1 Wash. C. C. 125; 4 Dall. 374.
Willing, United States v. [See 16,727.]
WILLINGS v. BLIGHT [17,765], 2 Pet. Adm. 288.
WILLINGS v. CONSEQUA [17,766], Pet. C. C. 172.
WILLINGS v. CONSEQUA [17,767], Pet. C. C. 301.
Willings, Consequa v. [See 3,128.]
WILLINK v. MILES [17,768], Pet. C. C. 429.
Willis, Bank of Cumberland v. [See 885.]
WILLIS v. BUCHER [17,769], 3 Wash. C. C. 369.
WILLIS v. CARPENTER [17,770], 14 N. B. R. 521.
Willis, Goodyear Dental Vulcanite Co. v. [See 5,603.]
Willis, Jamieson v. [See 7,204.]
WILLIS v. McKENZIE [17,771].
Willis, O'Neale v. [See 10,516.]
Willis, Oxley v. [See 10,639.]
Willis, Park v. [See 10,716, 10,717.]
Willis, Sigsby v. [See 12,849.]
Willis, United States v. [See 16,728.]
WILLISON v. HOYT [17,772], 4 Law Rep. 35.
Wills, Conant v. [See 3,087.]
WILLS v. RUSSELL [17,773], Holmes, 228.
Wills, Williams v. [See 17,746.]
Wilmarth, Moan v. [See 9,686.]
WILMARTH v. MOUNTFORD [17,774], 4 Wash. C. C. 79.
WILMER v. ATLANTA & R. AIR-LINE R. CO. [17,775], 2 Woods, 409; 3 Amer. Law T. Rep. (N. S.) 29.
WILMER v. ATLANTA & R. AIR-LINE R. CO. [17,776], 2 Woods, 447.
WILMER v. SMILAX, The [17,777], 2 Pet. Adm. 295.
Wilmington & N. R. Co., Kemble v. [See 7,684.]
Wilmington & R. R. Co., Hancock v. [See 18,300.]
Wilmington & R. R. Co., Randolph v. [See 11,563.]
Wilmot, Barstow v. [See 1,066.]
Wilmot, Vandover v. [See 16,848.]
WILMOTT, In re [17,778], 2 N. B. R. 214 (Quarto, 76); 1 Amer. Law T. Rep. Bankr. 121.
WILSON, Ex parte [17,779], 2 Cranch, C. C. 7.
Wilson, Ex parte. [See 894.]
WILSON, In re [17,780], 5 Biss. 387; 18 Int. Rev. Rec. 93; 8 N. B. R. 396; 5 Chi. Leg. News, 549; 5 Leg. Op. 153; 21 Pittsb. Leg. J. 22; 5 Leg. Gaz. 294.
WILSON, In re [17,781], 16 Blatchf. 112.
WILSON, In re [17,782], 2 Hughes, 228.
WILSON, In re [17,783], 6 Law Rep. 272.
WILSON, In re [17,784], 2 Lowell, 453; 13 N. B. R. 253.
WILSON, In re [17,785], 18 N. B. R. 300.
Wilson, Bank of Alexandria v. [See 855, 856.]
Wilson v. Bank of North Carolina. [See 894.]
Wilson, Bank of the United States v. [See 943.]
WILSON v. BARNUM [17,786], 1 Wall. Jr. 342.
WILSON v. BARNUM [17,787], 1 Wall. Jr. 347; 2 Robb, Pat. Cas. 749; 2 Fish. Pat. Cas. 635; 6 West. Law J. 464; 48 Jour. Fr. Inst. 208.
WILSON v. BASTABLE [17,788], 1 Cranch, C. C. 304.
WILSON v. BASTABLE [17,789], 1 Cranch, C. C. 394.
Wilson, Bastable v. [See 1,097.]
WILSON v. BELVIDERE, The [17,790], 1 Pet. Adm. 258.
Wilson, Bennett v. [See 1,326.]
WILSON v. BERRY [17,791], 2 Cranch, C. C. 707.
WILSON v. BLODGET [17,792], 4 McLean, 363.
WILSON v. BOYCE [17,793], 2 Dill. 539.
Wilson, Boyd v. [See 1,751.]
WILSON v. BRINKMAN [17,794], 2 N. B. R. 468 (Quarto, 149); 1 Chi. Leg. News, 193; 2 Amer. Law T. Rep. Bankr. 65.
WILSON v. CHANCELLOR LIVINGSTON, The [17,795].
WILSON v. CHILDS [17,796], 8 N. B. R. 527; 10 Phila. 275; 30 Leg. Int. 321; 6 Chi. Leg. News, 27; 5 Leg. Op. 182; 21 Pittsb. Leg. J. 17.
WILSON v. CITY BANK [17,797], 3 Sumn. 422.
Wilson v. City Bank of St. Paul. [See 16,842.]
Wilson, Clark v. [See 2,840, 2,841.]
WILSON v. COLMAN [17,798], 1 Cranch, C. C. 408.
WILSON v. CROMWELL [17,799], 1 Cranch, C. C. 214.
WILSON v. CURTIUS [17,800], 2 West. Law J. 511.
WILSON v. DANDRIDGE [17,801], 1 Cranch, C. C. 160.
WILSON v. EADS [17,801a], Hempst. 284.
WILSON v. ENVOY, The [17,802], 1 Phila. 138; 8 Leg. Int. 10.
Wilson, Fischer v. [See 4,812.]
WILSON v. FISHER [17,803], Baldw. 133.
Wilson, Glassell v. [See 5,477.]
WILSON v. GRAHAM [17,804], 4 Wash. C. C. 53.
WILSON v. GRAND TURK, The [17,805].
WILSON v. GRISWOLD [17,806], 9 Blatchf. 267; 15 Int. Rev. Rec. 27.
WILSON v. HARBAUGH [17,807], 1 Cranch, C. C. 315.
Wilson, Harmanson v. [See 6,074.]
Wilson, Heyer v. [See 6,446.]
Wilson, Hitchen v. [See 6,541.]
WILSON v. HURST [17,808], Pet. C. C. 140.
WILSON v. HURST [17,809], Pet. C. C. 441.
WILSON v. IZARD [17,810], 1 Paine, 68.
Wilson v. The James Roy. [See 7,201.]
WILSON v. JANES [17,811], 3 Blatchf. 227; Merw. Pat. Inv. 236.
WILSON v. JEWESS, The [17,812].
WILSON v. JOHNSTON [17,813], 1 Cranch, C. C. 198.
WILSON v. JORDAN [17,814], 3 Woods, 642.
WILSON v. KEDGELEY [17,815], 1 Cranch, C. C. 477.
Wilson, Kemmil v. [See 7,685.]
Wilson, King v. [See 7,810.]
Wilson, Kingston v. [See 7,823.]
Wilson, Ladd v. [See 7,976, 7,977.]
WILSON v. LAWRENCE [17,816], 2 Blatchf. 514.
Wilson, Leay v. [See 8,174.]
WILSON v. LEIBERMAN [17,816a], 2 Hayw. & H. 312.
Wilson, Lenox v. [See 8,247.]
WILSON v. LEROY [17,817], 1 Brock. 447.
WILSON v. LIFE ASS'N OF AMERICA [17,818], 6 Ins. Law J. 240; 3 Cent. Law J. 715, 765.
Wilson, Lindenberger v. [See 8,361.]
Wilson, Lovejoy v. [See 8,551.]
Wilson v. Ludlow. [See 8,052.]
WILSON v. McCLEAN [17,819], 1 Cranch, C. C. 465.
Wilson, McIver v. [See 8,833.]
WILSON v. MANDEVILLE [17,820], 1 Cranch, C. C. 433.
WILSON v. MANDEVILLE [17,821], 1 Cranch, C. C. 452.
WILSON v. MARSHAL OF DISTRICT OF COLUMBIA [17,822], 1 Cranch, C. C. 608.
WILSON v. MARY, The [17,823], Gilp. 31.

[Federal Case numbers are given in brackets.]

Wilson, Mason v. [See 9,257.]
WILSON v. MAXWELL [17,824], 2 Blatchf. 316.
Wilson, Meeker v. [See 9,392.]
Wilson, Mills v. [See 9,616.]
Wilson, Mitchell v. [See 9,671, 9,672.]
Wilson, Moynahan v. [See 9,897.]
Wilson, New York & L. S. Co. v. [See 10,198a.]
WILSON v. OHIO, The [17,825], Gilp. 505.
Wilson, Patriotic Bank v. [See 10,810.]
Wilson, Phillips v. [See 11,109.]
WILSON v. PIERCE [17,826], 15 Law Rep. 137.
WILSON v. PORTER [17,827], 2 Cranch, C. C. 458.
Wilson, Potter v. [See 11,342.]
WILSON v. PREWETT [17,828], 3 Woods, 631.
Wilson, Rahilly v. [See 11,531, 11,532.]
WILSON v. RAILROAD CO. [17,856].
Wilson, Ramsay v. [See 11,545.]
WILSON v. ROBERTSON [17,830], Brunner, Col. Cas. 109; 1 Overt. 464.
WILSON v. ROSE [17,831], 3 Cranch, C. C. 371.
WILSON v. ROUSSEAU [17,832], 1 Blatchf. 3.
WILSON v. SELIGMAN [17,832a], 10 Reporter, 651.
Wilson, Semmes v. [See 12,658.]
WILSON v. SHERMAN [17,833], 1 Blatchf. 536; 1 Fish. Pat. Rep. 361.
WILSON v. SIMPSON [17,834].
WILSON v. SINGER [17,835], 3 App. Com'r. Pat. 334.
WILSON v. SINGER MFG. CO. [17,836], 9 Biss. 173; 16 O. G. 1091; 4 Ban. & A. 637; 12 Chi. Leg. News, 65; 9 N. Y. Wkly. Dig. 338.
Wilson, Smith v. [See 13,128.]
WILSON v. STEWART [17,837], 1 Cranch, C. C. 128.
WILSON v. STODDARD [17,838], 4 N. B. R. 254 (Quarto, 76); 2 Chi. Leg. News, 161.
WILSON v. STOLLEY [17,839], 4 McLean, 272; 4 West. Law J. 371; 10 Law Rep. 81; 1 Fish. Pat. Rep. 146.
WILSON v. STOLLEY [17,840], 5 McLean, 1; 1 Fish. Pat. Rep. 261.
Wilson v. Stolley. [See 1,962, 1,963.]
WILSON v. TAYLOR [17,840a], 2 Hayw. & H. 334.
WILSON v. TRUXILLO, The [17,841].
WILSON v. TURBERVILLE [17,842], 1 Cranch, C. C. 492.
WILSON v. TURBERVILLE [17,843], 1 Cranch, C. C. 512.
WILSON v. TURBERVILLE [17,844], 2 Cranch, C. C. 27.
WILSON v. TURNER [17,845], Taney, 278; 7 Law Rep. 527; 1 Fish. Pat. Rep. 28.
WILSON, The, v. UNITED STATES [17,846], 1 Brock. 423.
Wilson, United States v. [See 16,729-16,737.]
Wilson, Washington v. [See 17,240.]
WILSON v. WATSON [17,847], Pet. C. C. 269.
Wilson, Wilbur v. [See 17,637.]
WILSON v. WILSON [17,848], 1 Cranch, C. C. 255.
Wilson, Woodworth v. [See 18,023.]
Wilson, Wynn v. [See 18,116.]
WILSON v. YOUNG [17,849], 2 Cranch, C. C. 33.
Wilson, The Frederick M. [See 5,078.]
WILSON PACKING CO. v. CLAPP [17,850], 8 Biss. 154; 3 Ban. & A. 243; 13 O. G. 368; Fent. Pat. 35.
WILSON PACKING CO. v. CLAPP [17,851], 8 Biss. 545; 8 Reporter, 262; 4 Ban. & A. 355; 11 Chi. Leg. News, 353.
WILSON PACKING CO. v. HUNTER [17,852], 8 Biss. 429; 8 Cent. Law J. 333; 25 Int. Rev. Rec. 137; 7 Reporter, 455; 4 Ban. & A. 184; 11 Chi. Leg. News, 207.
WILSON SEWING-MACH. CO. v. JACKSON [17,853], 1 Hughes, 295; 4 Cent. Law J. 225.
WILSON SEWING MACH. CO. v. MORENO [17,853a], 7 Fed. Rep. 806.
WILT v. STICKNEY [17,854], 15 N. B. R. 23; 5 Amer. Law Rec. 630.
WILTBANK, In re [17,855], 22 Int. Rev. Rec. 282.
Wiltberger, United States v. [See 16,738.]
WILTON v. RAILROAD CO. [17,856], 2 Whart. Dig. 408, 410.
WILTON v. RAILROADS, The [17,857], 1 Wall. Jr. 192; 2 Robb, Pat. Cas. 641.
Wiltsie, The John J. [See 7,353.]
WINANS v. BOSTON & P. R. CO. [17,858], 2 Story, 412; 2 Robb, Pat. Cas. 136; Merw. Pat. Inv. 313; 37 Jour. Fr. Inst. 63.
WINANS v. DANFORTH [17,859].
WINANS v. DENMEAD [17,860], 4 Amer. Law J. (N. S.) 498; 9 Leg. Int. 74.
WINANS v. EATON [17,861], 1 Fish. Pat. Cas. 181; Mer. Pat. Inv. 419.
WINANS v. McKEAN R. & N. CO. [17,862], 6 Blatchf. 215.
WINANS v. NEW YORK & E. R. CO. [17,863], 1 Fish. Pat. Cas. 213; Merw. Pat. Inv. 422.
WINANS v. NEW YORK & H. R. CO. [17,864], 4 Fish. Pat. Cas. 1; Merw. Pat. Inv. 421; 61 Jour. Fr. Inst. (3d S.) 316.
WINANS v. SCHENECTADY & T. R. CO. [17,865], 2 Blatchf. 279; Merw. Pat. Inv. 416; 53 Jour. Fr. Inst. 256.
Winch, The M. F. [See 4,485.]
WINCHELL v. JOHN HANCOCK MUT. LIFE INS. CO. [17,866], 8 Ins. Law J. 651; 8 Reporter, 549.
Winchester, United States v. [See 16,739.]
Winchester Repeating Arms Co., Oscanyan v. [See 10,600.]
Windel, Polk v. [See 11,251.]
WINDER, In re [17,867], 2 Cliff. 89.
Winder, Caldwell v. [See 18,245.]
Windham Provident Institution, Ex parte. [See 6,588.]
WINDSOR v. WHITING [17,868], 10 Hunt, Mer. Mag. 175.
Windsor Mfg. Co., Steam Cutter Co. v. [See 13,332.]
Windsor Mfg. Co., Steam Stone-Cutter Co. v. [See 13,335, 13,336.]
Wing, Dwight v. [See 4,219.]
Wing, Olcott v. [See 10,481.]
WING v. RICHARDSON [17,869], 2 Cliff. 449; 2 Fish. Pat. Cas. 535.
WING v. SCHOONMAKER [17,870], 3 Fish. Pat. Cas. 607.
WING v. WARREN [17,871], 5 Fish. Pat. Cas. 548; 2 O. G. 342.
Wingard, Brown v. [See 2,034.]
Winged Racer, The, Gilligan v. [See 5,439.]
Winged Racer, The, Torices v. [See 14,102.]
WINGS OF THE MORNING, The [17,872], 5 Blatchf. 15.
WINIFRED, The [17,873], Blatchf. Pr. Cas. 33.
Winifred, The. [See 6,451.]
Winifred, The. [See 12,261.]
WININDGER v. GLOBE MUT. LIFE INS. CO. [17,874], 3 Hughes, 257.
Winisimmet Co., Lenox v. [See 8,248.]
WINKENS, In re [17,875], 2 N. B. R. 349 (Quarto, 113); 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53.
Winkley, Odiorne v. [See 10,432.]
WINN, In re [17,876], 1 Amer. Law T. Rep. Bankr. 17; 1 N. B. R. 499 (Quarto, 131).
Winn, United States v. [See 16,740.]
WINNE v. CARROLL, The [17,876a].
Winne, Hill v. [See 6,503.]
WINNEBRENNER v. EDGERTON [17,877], 41 Hunt, Mer. Mag. 72.
Winnipiseogee Lake C. & W. Mfg. Co., Parker v. [See 10,752.]
Winooski Lumber Co., Gates v. [See 5,270.]
WINSHIP, In re [17,878], 7 Ben. 194.
Winship, McCabe v. [See 8,668.]
WINSLOW, In re [17,879], 1 McA. Pat. Cas. 123.
WINSLOW v. A FLOATING STEAM PUMP [17,880], 2 N. J. Law J. 124.
WINSLOW v. FOUR HUNDRED BARRELS OF SALT [17,881], 1 Biss. 459.
Winslow, Martin v. [See 9,172.]
WINSLOW v. MAXWELL [17,882].
Winslow, Mitchell v. [See 9,673.]
Winslow, Rand v. [See 11,549.]
Winslow, Thatcher v. [See 13,863.]
Winslow, Troy Iron & Nail Factory v. [See 14,199.]
Winslow, United States v. [See 16,741, 16,742.]
Winslow, The R. G. [See 11,736.]
WINSO v. CORNELIUS GRINNELL, The [17,883], 26 Law Rep. 677.
WINSOR, Ex parte [17,884], 3 Story, 411.
WINSOR, In re [17,885], 16 N. B. R. 152; 9 Chi. Leg. News, 402; 2 Cin. Law Bul. 212.
Winsor, Burnham v. [See 2,180.]
Winsor, Delano v. [See 3,754.]
Winsor, Jillson v. [See 7,321.]

[Federal Case numbers are given in brackets.]

WINSOR v. KENDALL [17,886], 3 Story, 507.
WINSOR v. McLELLAN [17,887], 2 Story, 492; 6 Law Rep. 440.
Winsor, Pierce v. [See 11,150, 11,151.]
Winsor, Richardson v. [See 11,795.]
Winsor, Rogers v. [See 12,023.]
WINSOR v. SAMPSON, The [17,888], 1 Spr. 548.
Winston, Bank of United States v. [See 944.]
Winston, Cape Girardeau & S. L. R. R. v. [See 2,390.]
Winston, Kinzie v. [See 7,835.]
Winter, In re. [See 1,057.]
Winter, Graves v. [See 5,710.]
WINTER v. HERCULES, The [17,889], Holmes, 465.
WINTER v. IOWA, M. & N. P. R. CO. [17,890], 2 Dill. 487; 7 N. B. R. 289; 6 West. Jur. 562; 5 Chi. Leg. News, 74; 6 Alb. Law J. 358.
WINTER v. LUDLOW [17,891], 3 Phila. 464; 16 Leg. Int. 332, 340, 348.
WINTER v. SIMONTON [17,892], 2 Cranch, C. C. 585.
WINTER v. SIMONTON [17,893], 3 Cranch, C. C. 62.
WINTER v. SIMONTON [17,894], 3 Cranch, C. C. 104.
WINTER v. UNITED STATES [17,895], Hempst. 344.
Winter, United States v. [See 16,743, 16,744.]
Winter, Wayne v. [See 17,304.]
WINTERMUTE v. REDINGTON [17,896], 1 Fish. Pat. Cas. 239.
WINTERMUTE v. SMITH [17,897], 1 Bond, 210.
WINTERPORT GRANITE & BRICK CO. v. JASPER, The [17,898], Holmes, 99.
WINTER'S BANK v. ARMSTRONG [17,899].
WINTHROP, In re [17,900], 5 Law Rep. 24.
Winthrop, Sullivan v. [See 13,600.]
WINTHROP v. UNION INS. CO. [17,901], 2 Wash. C. C. 7.
Wirt, United States v. [See 16,745.]
Wirt, Warfield v. [See 17,174.]
Wirtz, Joy v. [See 7,553, 7,554.]
Wisconsin, The. [See 6,317.]
Wisconsin, The Boyer v. [See 6,317.]
WISCONSIN v. DULUTH [17,902], 2 Dill. 406; 11 Amer. Law Reg. (N. S.) 709; 5 Amer. Law T. Rep. U. S. Cts. 299; 4 Chi. Leg. News, 405; 7 Amer. Law Rev. 369; 29 Leg. Int. 268.
Wisconsin, Madison & P. R. Co. v. [See 8,938.]
Wisconsin Cent. R. Co., Stern v. [See 13,378.]
Wisconsin M. & F. Ins. Co. Bank, Robinson v. [See 11,969.]
Wisconsin Valley R. Co., Warren v. [See 17,204.]
WISDOM v. MEMPHIS [17,903], 2 Flip. 285; 8 Cent. Law J. 109; 7 Reporter, 298; 11 Chi. Leg. News, 138.
WISDOM v. WILLIAMS [17,904], Hempst. 460.
Wise, Alexandria v. [See 187.]
WISE v. BOWEN [17,905], 2 Cranch, C. C. 239.
WISE v. DECKER [17,906], 1 Cranch, C. C. 171.
WISE v. DECKER [17,907], 1 Cranch, C. C. 190.
WISE v. GEIGER [17,908], 1 Cranch, C. C. 92.
WISE v. GETTY [17,909], 3 Cranch, C. C. 292.
WISE v. GROVERMAN [17,910], 1 Cranch, C. C. 418.
WISE v. RESLER [17,911], 2 Cranch, C. C. 182.
WISE v. RESSLER [17,912], 2 Cranch, C. C. 199.
Wise, Scott v. [See 12,548.]
Wise, United States v. [See 16,746.]
Wise, Virginia v. [See 16,972.]
WISE v. WITHERS [17,913], 1 Cranch, C. C. 262.
Wishart, Slacom v. [See 12,933.]
Wisner v. Barnett. [See 17,914.]
WISNER v. OGDEN [17,914], 4 Wash. C. C. 631.
Wissman, Sagory v. [See 12,217.]
Wistar, York v. [See 18,141.]
WITCH QUEEN, The [17,915], 3 Sawy. 17.
WITCH QUEEN, The [17,916], 3 Sawy. 201.
Witherbury, United States v. [See 16,747.]
WITHERELL v. WIBERG [17,917], 4 Sawy. 232; 9 Chi. Leg. News, 271; 15 Alb. Law J. 392.
Withers, Boyd v. [See 1,752.]
Withers, McClellan v. [See 8,696.]
Withers, Payson v. [See 10,864.]
WITHERS v. THORNTON [17.918], 3 Cranch, C. C. 116.
Withers, Wise v. [See 17,913.]
Witherspoon, Ogden v. [See 10,461.]
Withington, Ball v. [See 815.]
WITHROW v. FOWLER [17,919], 7 N. B. R. 339; Pac. Law Rep. 102; 6 Alb. Law J. 422.
WITKOWSKI, In re [17,920], 10 N. B. R. 209.
WITT v. HERETH [17,921], 6 Biss. 474; 13 N. B. R. 106; 8 Chi. Leg. News, 41; 1 N. Y. Wkly. Dig. 436.
Wittig, United States v. [See 16,748.]
W. J. WALSH, The [17,922], 5 Ben. 72.
W. K. Muir & Davidson, The, United States v. [See 16,749.]
Wolcott, Fraser v. [See 5,065.]
Wolcott, Thomas v. [See 13,915.]
WOLF, In re [17,923], 4 Sawy. 168; 17 N. B. R. 423.
WOLF v. CONNECTICUT MUT. LIFE INS. CO. [17,924], 1 Flip. 377; 1 Cent. Law J. 301.
WOLF v. MAITLAND, The [8,979].
WOLF v. MUTUAL BENEFIT LIFE INS. CO. [17,925a], 2 Cin. Law Bul. 304.
WOLF v. PLUNKETT [17,926], 1 Flip. 427.
Wolf, Rutherglen v. [See 12,175.]
WOLF v. SELT, The [12,649].
WOLF v. SMYTHE [17,928], 7 Biss. 365; 9 Chi. Leg. News, 175.
Wolf, The David E. [See 3,594.]
Wolfe, Baird v. [See 760.]
WOLFF v. CONNECTICUT MUT LIFE INS. CO. [17,929], 2 Flip. 355; 8 Ins. Law J. 97; 7 Reporter, 357.
Wolfinger, Ross v. [See 12,081.]
WOLFSKILL, In re [17,930], 5 Sawy. 385.
Wolga, The, Chatfield v. [See 2,632.]
WOLVERTON v. ALLEGHENY, The [205], 1 Chi. Leg. News, 81.
WOLVERTON v. LACEY [17,932], 18 Law Rep. 672.
WONSON v. GILMAN [17,933], 2 Ban. & A. 590; 11 O. G. 1011.
WONSON v. PETERSON [17,934], 13 O. G. 548; 3 Ban. & A. 249.
Wonson, United States v. [See 16,750.]
Wood, Ex parte. [See 6,825.]
WOOD, In re [17,935], 6 Ben. 339; 13 N. B. R. 96; 1 N. Y. Wkly. Dig. 366.
WOOD, In re [17,936], 8 Ben. 237.
WOOD, In re [17,937], 5 N. B. R. 421.
WOOD v. ABBOTT [17,938], 5 Blatchf. 325.
WOOD v. ALLEGHENY COUNTY [17,939], 20 Leg. Int. 228; 3 Wall. Jr. 267.
Wood, Arguelles v. [See 520.]
Wood, Boucicault v. [See 1,693.]
WOOD v. CARR [17,940], 3 Story, 366; 6 Law Rep. 156.
Wood, Caster v. [See 2,505.]
WOOD v. CLEVELAND ROLLING-MILL CO. [17,941], 4 Fish. Pat. Cas. 550.
Wood, Costigan v. [See 3,265.]
Wood, Davis v. [See 3,659.]
WOOD v. DENNY [17,942], 1 Biss. 73.
WOOD v. DIXON [17,943], 1 Cranch, C. C. 401.
WOOD v. DUMMER [17,944], 3 Mason, 308.
WOOD v. FORREST [17,945], 2 Cranch, C. C. 303.
WOOD v. FRANKLIN [17,946], 3 Cranch, C. C. 115.
WOOD v. GOLD [17,947], 4 McLean, 577.
Wood, Hopkins v. [See 6,693.]
WOOD v. INFANTA, The [7,030].
WOOD v. LOUISIANA [17,948], 5 Dill. 122.
WOOD v. LUMBERMAN, The [17,949], 3 Hughes, 542.
WOOD v. LUSE [17,950], 4 McLean, 254.
Wood, McIntire v. [See 8,825.]
Wood, Manhattan Medicine Co. v. [See 9,026.]
WOOD v. MANN [17,951], 1 Sumn. 506.
WOOD v. MANN [17,952], 1 Sumn. 578.
WOOD v. MANN [17,953], 2 Sumn. 316.
WOOD v. MANN [17,954], 3 Sumn. 318.
Wood, Maret v. [See 9,067.]
WOOD v. MATTHEWS [17,955], 2 Blatchf. 370; 23 Vt. 735.
WOOD v. MAY [17,956], 3 Cranch, C. C. 172.
WOOD v. MICHIGAN S. & N. I. R. CO. [17,957], 2 Biss. 62; 3 Fish. Pat. Cas. 464.
WOOD v. MORTON [17,962].
WOOD v. NIMROD, The [17,959], Gilp. 83.
WOOD v. NORTH, The [17,960].
Wood, Ormsbee v. [See 10,579.]
WOOD v. PLEASANTS [17,961], 3 Wash. C. C. 201.
WOOD v. SALLIE C. MORTON, The [17,962], 2 N. J. Law J. 301; 11 Chi. Leg. News, 377; 25 Int. Rev. Rec. 241.

WOODS v. SANDS [17,963], Codd. Trade-Marks, 50; Cox, Manual Trade-Mark Cas. 264.
Wood, Schriefer v. [See 12,481.]
Wood, Taylor v. [See 13,808.]
Wood, Tracy v. [See 14,130.]
Wood, Trott v. [See 14,190.]
Wood v. Union Iron Works Co. [See 17,941.]
Wood, United States v. [See 16,751-16,757.]
WOOD v. VAN HOOK [17,964].
Wood, Van Hook v. [See 16,854, 16,855.]
WOOD v. WARD [17,965], 6 Amer. Law Rec. 675; 24 Int. Rev. Rec. 180.
WOOD v. WARD [17,966], 2 Flip. 336; 8 Cent. Law J. 188; 25 Int. Rev. Rec. 64; 4 Cin. Law Bul. 42; 7 Reporter, 422.
WOOD v. WELLS [17,967], 6 Fish. Pat. Cas. 382.
WOOD v. WILLIAMS [17,968], Gilp. 517; 1 Robb, Pat. Cas. 717.
Woodbridge, Gault v. [See 5,275.]
WOODBURY, In re [17,968a], 7 Fed. Rep. 705.
WOODBURY v. CRUM [17,969], 1 Biss. 284; 1 West. Law Month. 522.
Woodbury, Thomas v. [See 13,916.]
WOODBURY PATENT PLANING-MACH. CO. v. KEITH [17,970], 4 Ban. & A. 100.
WOODCOCK v. PARKER [17,971], 1 Gall. 438; 1 Robb, Pat. Cas. 37; Merw. Pat. Inv. 218.
Wooden, Peterson v. [See 11,038.]
Woodfin, Kitchen v. [See 7,855.]
WOODFORD, In re [17,972], 13 N. B. R. 575; 1 Cin. Law Bul. 37.
Woodhouse, Hodgson v. [See 6,571.]
Woodhouse, Thomas v. [See 13,917.]
WOODHULL, Case of [17,973].
Woodhull, Beach v. [See 1,154.]
WOODHULL v. BEAVER COUNTY [17,974], 20 Leg. Int. 76; 3 Wall. Jr. 274.
Woodhull, Dutcher v. [See 4,204.]
WOODHULL v. WAGNER [17,975], Baldw. 296.
WOODLAND, The [17,976], 7 Ben. 110.
WOODLAND, The [17,977], 14 Blatchf. 499.
WOODMAN v. KILBOURN MFG. CO. [17,978], 1 Abb. U. S. 158; 1 Biss. 546; 6 Amer. Law Reg. (N. S.) 238.
WOODMAN v. STIMPSON [17,979], 3 Fish. Pat. Cas. 98; Merw. Pat. Inv. 665.
Woodman Pebbling-Machine Co. v. Guild. [See 17,981.]
WOOD M. & R. CO. v. BROOKE [17,980], 2 Sawy. 576; 9 N. B. R. 395.
WOODMAN PEBBLING-MACH. CO. v. GUILD [17,981], 4 Cliff. 185.
WOODROW v. COLEMAN [17,982], 1 Cranch, C. C. 171.
WOODROW v. COLEMAN [17,983], 1 Cranch, C. C. 192.
WOODROW v. COLEMAN [17,984], 1 Cranch, C. C. 199.
Woodrow, Cooke v. [See 3,181.]
Woodrow, Jones v. [See 7,509.]
WOODRUFF, Ex parte [17,985], 3 App. Com'r Pat. 233.
WOODRUFF v. BARNEY [17,986], 1 Bond, 528; 2 Fish. Pat. Cas. 244.
WOODRUFF v. BENTLEY [17,986a], Hempst. 111.
Woodruff, Binns v. [See 1,424.]
WOODRUFF v. LEVI DEARBORN, The [17,987], 4 Hall, Law J. 88.
WOODRUFF v. LEVI DEARBORNE, The [17,988], 4 Hall, Law J. 97.
Woodruff, McDonald v. [See 8,770.]
Woodruff, Nelson v. [See 10,117.]
Woodruff, Sargent Mfg. Co. v. [See 12,368.]
Woodruff, Spafford v. [See 13,198.]
Woodruff, Tiernan v. [See 14,027, 14,028.]
Woodruff, United States v. [See 16,758.]
WOODRUFF AND COBB, Ex parte [17,989], 3 App. Com'r Pat. 262.
Woodruff County, Culver v. [See 3,469.]
Woodruff, The F. [See 6,763.]
Woodruff, The J. W. [See 5,770.]
WOODS, In re [17,990], 7 N. B. R. 126; 29 Leg. Int. 236; 20 Pittsb. Leg. J. 21.
WOODS v. BUCKEWELL [17,991], 2 Dill. 38; 7 N. B. R. 405; 6 Alb. Law J. 291.
WOODS v. FORSYTH [17,992], 2 West. Jur. 348; 16 Pittsb. Leg. J. 234.
Woods, Hyde v. [See 6,975.]
WOODS v. JACKSON IRON MFG. CO. [17,993], Holmes, 379.
Woods v. Lawrence Co. [See 59.]
Woods v. Ocean Tow Boat Co. [See 13,175.]
Woods, Ritchie v. [See 11,865.]
Woods v. Sands. [See 17,963.]
Woods, Taylor v. [See 13,809.]
Woods, United States v. [See 16,759, 16,760.]
WOODS v. YOUNG [17,994], 1 Cranch, C. C. 346.
Woodside, Alleghany Fertilizer Co. v. [See 206.]
WOODSIDE v. BALDWIN [17,995], 4 Cranch, C. C. 174.
WOODSON v. FLECK [17,996], Chase, 305; 3 Amer. Law T. Rep. U. S. Cts. 97; 9 Amer. Law Reg. (N. S.) 435; 2 Leg. Gaz. 230; 2 Abb. U. S. 15.
WOODSON v. FLEET [17,996], 2 Abb. U. S. 15.
Woodson, Letcher v. [See 8,280.]
Woodson, Murdock v. [See 9,942.]
WOODSUM v. BRAY [17,998], 5 Sawy. 133.
WOODWARD, In re [17,999], 4 Ben. 102; 3 N. B. R. 719 (Quarto, 177).
WOODWARD, In re [18,000], 8 Ben. 112; 12 N. B. R. 297; 1 N. Y. Wkly. Dig. 33; 7 Chi. Leg. News, 387.
WOODWARD, In re [18,001], 8 Ben. 563.
WOODWARD v. CALHOUN COUNTY [18,002], 2 Cent. Law J. 396.
Woodward, Corbett v. [See 3,223.]
WOODWARD v. DINSMORE [18,003], 4 Fish. Pat. Cas. 163; Merw. Pat. Inv. 430.
Woodward, Garrett v. [See 5,253.]
WOODWARD v. GOULD [18,004].
Woodward, Griffin v. [See 5,818.]
WOODWARD v. HALL [18,005], 2 Cranch, C. C. 235.
Woodward, Hunt v. [See 6,901.]
WOODWARD v. ILLINOIS CENT. R. CO. [18,006], 1 Biss. 403.
WOODWARD v. ILLINOIS CENT R. CO. [18,007], 1 Biss. 447; 5 Leg. Op. 92.
WOODWARD v. MORRISON [18,008], Holmes, 124; 5 Fish. Pat. Cas. 357; 2 O. G. 120; Merw. Pat. Inv. 126.
Woodward, Smith v. [See 13,129.]
WOODWARD v. SUTTON [18,009], 1 Cranch, C. C. 351.
WOODWORTH v. BARBOUR [18,010].
Woodworth v. Cheever. [See 18,019.]
WOODWORTH v. COOK [18,011], 2 Blatchf. 151; 1 Fish. Pat. Rep. 423.
WOODWORTH v. CURTIS [18,012].
WOODWORTH v. CURTIS [18,013], 2 Woodb. & M. 524; 2 Robb, Pat. Cas. 603.
WOODWORTH v. EDWARDS [18,014], 3 Woodb. & M. 120; 2 Robb, Pat. Cas. 610.
WOODWORTH v. FENNELL [18,015].
WOODWORTH v. HALL [18,016], 1 Woodb. & M. 248; 2 Robb, Pat. Cas. 495.
WOODWORTH v. HALL [18,017], 1 Woodb. & M. 389; 6 Pa. Law J. 178; 2 Robb, Pat. Cas. 517; 16 Hunt, Mer. Mag. 66.
Woodworth, Monce v. [See 9,706.]
WOODWORTH v. ROGERS [18,018], 3 Woodb. & M. 135; 2 Robb, Pat. Cas. 625.
WOODWORTH v. SHERMAN [18,019], 3 Story, 171; 7 Law Rep. 279; 2 Robb, Pat. Cas. 257.
Woodworth, Smith v. [See 13,130.]
WOODWORTH v. SPAFFORD [18,020], 2 McLean, 168.
WOODWORTH v. STONE [18,021], 3 Story, 749; 2 Robb, Pat. Cas. 296.
Woodworth v. Stone. [See 18,017.]
WOODWORTH v. WEED [18,022], 1 Blatchf. 165; 1 Fish. Pat. Rep. 108.
WOODWORTH v. WILSON [18,023].
Wood & Light Machine Co., In re. [See 4,534.]
Woody, O'Brien v. [See 10,398.]
Woolbridge, Webster v. [See 17,340.]
WOOLCOCKS v. MANY [18,024], 9 Blatchf. 139; 5 Fish. Pat. Cas. 72.
WOOLDRIDGE v. THOMAS [18,025].
Wooldridge, Thomas v. [See 13,918.]
WOOLEN v. NEW YORK & ERIE BANK [18,026], 12 Blatchf. 359.
WOOLF v. ODER, The [18,027], 2 Pet. Adm. 261.
WOOLFOLK v. MURRAY [18,028], 10 N. B. R. 540.

[Federal Case numbers are given in brackets.]

WOOLFORD, In re [18,029], 4 Ben. 9; 3 N. B. R. 444 (Quarto, 113).
Woolheim, United States v. [See 16,761.]
WOOLLEN v. BANKER [18,030], 2 Flip. 33; 17 Alb. Law J. 72; 5 Reporter, 259.
WOOLLY v. PERUVIAN, The [18,031], 3 Ware, 154; 21 Law Rep. 153.
Woolman v. The Richard Doane. [See 11,765.]
WOOLSEY v. DODGE [18,032], 6 McLean, 142.
Woolsey, United States v. [See 16,762, 16,763.]
WOOLSTON v. JOHN A. WARNER, The [18,033].
WOOLUMS, In re [18,034], 1 N. B. R. 496 (Quarto, 131).
WOOSTER v. CALHOUN [18,035], 11 Blatchf. 215; 6 Fish. Pat. Cas. 514; Merw. Pat. Inv. 197.
WOOSTER v. CRANE [18,036], 5 Blatchf. 282; 2 Fish. Pat. Cas. 583; Fent. Pat. 19.
WOOSTER v. HOWE MACH. CO. [18,037], 16 O. G. 314; 4 Ban. & A. 319.
Wooster, McKay v. [See 8,847.]
WOOSTER v. MARKS [18,038], 17 Blatchf. 368; 9 Reporter, 201; 5 Ban. & A. 56.
WOOSTER v. SIDENBERG [18,039], 13 Blatchf. 88; 10 O. G. 244; 2 Ban. & A. 91.
WOOSTER v. SINGER MFG. CO. [18,039a], 23 O. G. 2513; 15 Reporter, 524.
WOOSTER v. TAYLOR [18,040], 12 Blatchf. 384; 1 Ban. & A. 594; 8 O. G. 644.
WOOSTER v. TAYLOR [18,041], 14 Blatchf. 403; 3 Ban. & A. 241.
Wooten, Vining v. [See 16,949.]
WOPE v. HEMENWAY [18,042], 1 Spr. 300; 18 Law Rep. 390.
Wope, Snow v. [See 13,149.]
Worcester, Dunkle v. [See 4,162.]
WORCESTER v. TRUMAN [18,043], 1 McLean, 483.
Worcester Bank, Holbrook v. [See 6,597.]
WORK, In re [18,044], 30 Leg. Int. 361.
Work v. Bailey. [See 2,814.]
WORKMAN, The [18,045], 1 Lowell, 504.
Workman, Durkee v. [See 4,195.]
Workman, United States v. [See 16,764.]
WORKS v. JUNCTION RAILROAD [18,046], 5 McLean, 425; 10 West. Law J. 370.
WORMELEY v. WORMELEY [18,047], 1 Brock. 330.
Worms, United States v. [See 16,765.]
WORMSER v. DAHLMAN [18,048], 16 Blatchf. 319; 57 How. Pr. 286; 7 Reporter, 740.
Wormser, Sedgwick v. [See 12,626.]
WORMSLEY v. BEEDLE [18,049], 2 Cranch, C. C. 331.
Worrall, United States v. [See 16,766.]
WORTENDYKE v. WHITE [18,050], 2 Ban. & A. 25.
Worth, Essler v. [See 4,533a.]
WORTHINGTON, In re [18,051], 7 Biss. 455; 16 N. B. R. 52; 1 N. W. Rep. (O. S.) 109; 9 Chi. Leg. News, 346; 4 Law & Eq. Rep. 78; 16 Alb. Law J. 63; 23 Int. Rev. Rec. 233; 2 Cin. Law Bul. 189.
WORTHINGTON, In re [18,052], 14 N. B. R. 388; 3 Cent. Law J. 526; 8 Chi. Leg. News, 362; 14 Alb. Law J. 153.
WORTHINGTON v. ETCHESON [18,053], 5 Cranch, C. C. 302.
WORTHINGTON v. JEROME [18,054], 5 Blatchf. 279.
WORTHINGTON v. PRESTON [18,055], 4 Wash. C. C. 461.
Worthington, Smallwood v. [See 12,963.]
Worthington, Tunstall v. [See 14,239.]
WORTMAN v. CONYNGHAM [18,056], Pet. C. C. 241.
WORTMAN v. GRIFFITH [18,057], 3 Blatchf. 528; 13 Leg. Int. 361; 19 Law Rep. 376.
Woulluise, Grutacap v. [See 5,854.]
WOVEN-WIRE MATTRESS CO. v. WHITTLESEY [18,058], 8 Biss. 23.
Wrape, United States v. [See 16,767.]
WRAY v. REILY [18,059], 1 Cranch, C. C. 513.
WRAY v. RILEY [18,060], 1 Cranch, C. C. 361.
WREATH, The [18,061], 9 Phila. 467; 29 Leg. Int. 284.
WREN v. SPENCER OPTICAL MFG. CO. [18,062], 5 Ban. & A. 61; 18 O. G. 857.
Wren, The, United States v. [See 16,768.]
WRENTHAM MFG. CO., In re [18,063], 2 Lowell, 119.
WRIGHT, Ex parte [18,064], 1 West. Law J. 143.
WRIGHT, In re [18,065], 2 Ben. 509; 2 N. B. R. 142 (Quarto, 57); 36 How. Pr. 167.
WRIGHT, In re [18,066], 10 Ben. 14.
WRIGHT, In re [18,067], 3 Biss. 359; 8 N. B. R. 430.
WRIGHT, In re [18,068], 6 Biss. 317.
WRIGHT, In re [18,069], 1 N. B. R. 393 (Quarto, 91).
WRIGHT, In re [18,070], 2 N. B. R. 41 (Quarto, 14); 15 Pittsb. Leg. J. 553.
WRIGHT, In re [18,071], 2 N. B. R. 490 (Quarto, 155).
WRIGHT, The [17,115].
Wright, Andrews v. [See 382.]
Wright, Bailey v. [See 749.]
Wright, Bank of Columbia v. [See 883.]
WRIGHT v. BLAKESLEE [18,073], 13 Blatchf. 421.
WRIGHT v. COGSWELL [18,074], 1 McLean, 471.
Wright, Consolidated Fruit Jar Co. v. [See 3,135.]
WRIGHT v. CURTIS [17,628].
Wright, Darby v. [See 3,574.]
Wright, Dayton v. [See 3,693.]
WRIGHT v. DEKLYNE [18,076], Pet. C. C. 199.
Wright, Duvall v. [See 4,212.]
WRIGHT v. FILLEY [18,077], 1 Dill. 171; 4 N. B. R. 610 (Quarto, 197); 5 West. Jur. 212; 3 Leg. Gaz. 230.
WRIGHT v. FIRST NAT. BANK [18,078], 8 Biss. 243; 18 N. B. R. 87; 6 N. Y. Wkly. Dig. 543; 18 Alb. Law J. 115; 2 Browne, Nat. Bank Cas. 138; 10 Chi. Leg. News, 348; 6 Reporter, 229; 26 Pittsb. Leg. J. 11.
WRIGHT v. FULLERTON [18,079], 2 Biss. 336; 3 Amer. Law T. Rep. U. S. Cts. 124; 2 Chi. Leg. News, 301.
WRIGHT v. GEORGETOWN [18,080], 4 Cranch, C. C. 534.
Wright v. Glick. [See 18,083.]
WRIGHT v. GREEN [18,081].
Wright, Hartshorn v. [See 6,169.]
Wright, Heath v. [See 6,310.]
Wright v. Hickey. [See 18,083.]
WRIGHT v. JOHNSON [18,082], 8 Blatchf. 150; 4 N. B. R. 626.
Wright, Lenox v. [See 8,249.]
Wright, Le Roy v. [See 8,273.]
WRIGHT v. McMILLAN [18,083], 13 O. G. 47.
WRIGHT v. MERCHANTS' NAT. BANK [18,084], 1 Flip. 568; 2 N. Y. Wkly. Dig. 539; 3 Cent. Law J. 351; 1 Thomp. Nat. Bank Cas. 321; 2 Law & Eq. Rep. 638; 1 Cin. Law Bul. 198; 22 Int. Rev. Rec. 248.
WRIGHT v. MERCHANTS' NAT. BANK [18,084].
Wright, Mott v. [See 9,883.]
Wright, Nicholls v. [See 10,236.]
WRIGHT v. NORWICH & N. Y. TRANSP. CO. [18,086], 1 Ben. 156.
WRIGHT v. NORWICH & N. Y. TRANSP. CO. [18,087], 8 Blatchf. 14.
Wright v. Orient Mut. Ins. Co. [See 18,095.]
WRIGHT v. OWNERS OF THE FRANCESCA CURRO [18,088], 5 Wkly. Notes Cas. 104.
Wright, Page v. [See 10,669.]
Wright, Paine v. [See 10,676.]
WRIGHT v. PENNSYLVANIA R. CO. [18,089], 3 Pittsb. Rep. 116; 16 Pittsb. Leg. J. 144.
Wright, Potter v. [See 11,343.]
Wright, Ricketson v. [See 11,805.]
WRIGHT v. ROGERS [18,090], 3 McLean, 229.
WRIGHT v. SCHROEDER [18,091], 2 Curt. 548.
WRIGHT v. SCOTT [18,092], 4 Wash. C. C. 16.
WRIGHT v. SHUMWAY [18,093], 1 Biss. 23; 2 Amer. Law Reg. 20.
Wright v. Smithpeter. [See 18,083.]
WRIGHT v. STANARD [18,094], 2 Brock. 311.
WRIGHT v. SUN MUT. INS. CO. [18,095], 6 Amer. Law Reg. 485.
Wright, Swan v. [See 13,670.]
WRIGHT v. TAYLOR [18,096], 2 Dill. 23.
WRIGHT v. UNITED STATES [18,097], 1 Hayw. & H. 201.
WRIGHT v. UNITED STATES [18,098], 1 Hayw. & H. 211.
WRIGHT v. UNITED STATES [18,099], 2 Paine, 184.
Wright, United States v. [See 16,769-16,776.]
Wright, United States ex rel. Henderson v. [See 16,777.]
Wright, United States ex rel. Turner v. [See 16,778.]
WRIGHT v. WATERS [18,100], 2 Cranch, C. C. 342.
WRIGHT v. WELLS [18,101], Pet. C. C. 220.
Wright, Wells v. [See 17,405.]
WRIGHT v. WEST [18,102], 1 Cranch, C. C. 303.

[Federal Case numbers are given in brackets.]

Wright, Wilkins v. [See 17,666.]
Wright, The Capt. Geo. W. [See 2,393.]
Wright, The Francis. [See 5,044.]
Wright, The George S. [See 5,340.]
Wright, The James A. [See 7,190, 7,191.]
Wright, The M. W. [See 9,983.]
WRISLEY, In re [18,103], 17 N. B. R. 259.
WRITER v. RICHMOND, The [18,104], 2 Pet. Adm. 263.
Wroe, Maynadier v. [See 9,351.]
WRONKOW, In re [18,105], 15 Blatchf. 38; 18 N. B. R. 81; 26 Pittsb. Leg. J. 2.
Wurts, The John. [See 7,434.]
Wurtz, Joy v. [See 7,555.]
Wyandot County, Coler v. [See 2,987.]
Wyandotte City, Eidemiller v. [See 4,313.]
WYATT, In re [18,106], 2 N. B. R. 288 (Quarto, 94); 1 Chi. Leg. News, 107.
WYATT v. HARDEN [18,106a], Hempst. 17.
Wyche, Viesca v. [See 16,940.]
WYCKOFF v. PAGE [18,106b], 11 Reporter, 526.
Wyer, Davis v. [See 3,660.]
WYETH v. STONE [18,107], 1 Story, 273; 4 Law Rep. 54; 2 Robb, Pat. Cas. 23; Merw. Pat. Inv. 85.
WYLIE, Ex parte [18,109], 1 Gaz. 123.
WYLIE, In re [18,109], 2 N. B. R. 137 (Quarto, 53); Bankr. Ct. Rep. 123; 1 Chi. Leg. News, 30; 1 Gaz. 123.
Wylie, Baldwin v. [See 18,228.]
WYLIE v. SMITH [18,110], 2 Woods, 673.
Wylie v. Sunlight, The. [See 2,368.]
WYLLIE, In re [18,112], 2 Hughes, 449; 5 Amer. Law T. Rep. U. S. Cts. 330.
WYMAN v. BABCOCK [18,113], 2 Curt. 386.
WYMAN v. FOWLER [18,114], 3 McLean, 467.
WYMAN v. RUSSELL [18,115], 4 Biss. 307.
Wyman, Stinson v. [See 13,460.]
Wyncoop, The Martin. [See 9,177.]
Wynkoop, Sage v. [See 12,215.]
WYNN v. WILSON [18,116], Hempst. 698.
WYNNE, In re [18,117], Chase, 227; 9 Amer. Law Reg. (N. S.) 627; 4 N. B. R. 23 (Quarto, 5); 2 Amer. Law T. Rep. Bankr. 116.
Wyoming, The, Adams v. [See 71.]
Wyoming, The, New York Harbor Tug-Boat Co. v. [See 10,205.]
Wyssman, Sloman v. [See 12,955a.]
Wythe v. Cook. [See 18,118.]
WYTHE v. HASKELL [18,118], 3 Sawy. 574.
WYTHE v. MYERS [18,119], 3 Sawy. 595; 8 Chi. Leg. News, 280.
Wythe, Nicklin v. [See 10,253.]
WYTHE v. PALMER [18,120], 3 Sawy. 412.
WYTHE v. SALEM [18,121], 4 Sawy. 88.
WYTHE v. SMITH [18,122], 4 Sawy. 17.

Y

Yaeger, Vocke v. [See 16,980.]
Yahoola Min. Co., Hand v. [See 6,016.]
Yahoola River Min. Co., Hall v. [See 5,955.]
Yale, Wilkinson v. [See 17,678.]
YALE & G. MFG. CO. v. NORTH [18,123], 5 Blatchf. 455; 3 Fish. Pat. Cas. 279.
Yale Lock Mfg. Co., Greenleaf v. [See 5,783.]
Yale Lock Mfg. Co., Sargent v. [See 12,366, 12,367.]
Yancy, Shelby v. [See 12,746.]
YANKEE, The, v. GALLAGHER [18,124], 1 McAll. 467.
Yankee, The, Gallagher v. [See 5,196.]
Yankee Blade, The, Vandewater v. [See 16,847.]
Yardley, Eastburn v. [See 4,252.]
YARDLEY v. NEW YORK GUARANTY & INDEMNITY CO. [18,125], 1 Flip. 551.
Yarrington, Hoffman v. [See 6,580.]
YATES v. ARDEN [18,126], 5 Cranch, C. C. 526.
Yates, Bagley v. [See 725.]
Yates, Bullen v. [See 2,123.]
YATES v. CURTIS [18,127], 5 Mason, 80.
YATES v. LITTLE [18,128], 6 McLean, 508.
Yates, Phelps v. [See 11,081, 11,082.]
Yates, Price v. [See 11,418.]
Yates, Roberts v. [See 11,919.]
Yates, Smith v. [See 13,131.]
YAW v. MEAD [18,129], 5 McLean, 272.
YEADON v. PLANTERS' & MECHANICS' BANK, The [18,130].
Yeager, Jones v. [See 7,510.]
YEARSLEY v. BROOKFIELD [18,131], 1 McA. Pat. Cas. 193.
YEATMAN v. HENDERSON [18,132], 1 Pittsb. Rep. 20; 1 Pittsb. Leg. J. 9.
Yeatman, McDermott v. [See 8,749.]
YEATON, In re [18,133], 1 Lowell, 420.
Yeaton, Fry v. [See 5,142.]
Yeaton, Lynn v. [See 8,642.]
Yeaton, Smedley v. [See 12,965.]
Yeaton, United States v. [See 16,779.]
Yellow Head, Portsmouth Sav. Bank v. [See 11,296.]
YELLOW JACKET SILVER MIN. CO. v. GAGE [18,134], 1 Sawy. 494; 13 Int. Rev. Rec. 116.
Yellow Sun, United States v. [See 16,780.]
YENAGA v. REDFIELD [18,197], 17 Leg. Int. 357.
Yentzer, Fuller v. [See 5,151.]
YEOMANS v. GIRARD FIRE & MARINE INS. CO. [18,136], 5 Ins. Law J. 858.
Yeomans, Merrill v. [See 9,472.]
YERRINGTON v. PUTNAM [18,137], 2 Ban. & A. 601.
Yerrington, Putnam v. [See 11,486.]
YORK, In re [18,138], 3 N. B. R. 661 (Quarto, 163).
YORK'S CASE [18,139], 1 Abb. U. S. 503; 4 N. B. R. 479 (Quarto, 156); 10 Amer. Law Reg. (N. S.) 36.
YORK, The [18,140], 3 Adm. Rec. 317.
York, Gray v. [See 5,731.]
York, Schelter v. [See 12,446.]
York, Steinkuhl v. [See 13,356.]
YORK v. WISTAR [18,141], 16 Haz. Reg. Pa. 153.
York & C. R. Co., Myers v. [See 9,997.]
YORK BANK v. ASBURY [18,142], 1 Biss. 230.
YORK MFG. CO. v. ILLINOIS CENT. R. CO. [18,143], 1 Biss. 377.
York River, The. [See 5,078.]
YORK RIVER STEAMBOAT CO., The [18,144].
York Street Flax Spinning Co., United States v. [See 16,781.]
Yost, Lloyd v. [See 8,437.]
YOUNG, Ex parte [18,145], 6 Biss. 53.
YOUNG, In re [18,146].
Young, In re. [See 9,850.]
YOUNG, In re [18,147], 5 Law Rep. 128.
YOUNG, In re [18,148], 3 N. B. R. 440 (Quarto, 111).
YOUNG, In re [18,149], 15 N. B. R. 205; 1 Tex. Law J. 7.
YOUNG'S CASE [18,150], 2 Cranch, C. C. 453.
Young, Alcott v. [See 149.]
YOUNG v. ANDES INS. CO. [18,151], 1 Flip. 599; 3 N. Y. Wkly. Dig. 363; 3 Cent. Law J. 719.
Young, Bailey Washing Mach. Co. v. [See 751.]
Young, Bank of Alexandria v. [See 857.]
YOUNG v. BELL [18,152], 1 Cranch, C. C. 342.
YOUNG v. BLACK [18,153], 1 Cranch, C. C. 432.
Young, Butler v. [See 2,245.]
YOUNG v. CHIPMAN [18,154].
Young, Clapp v. [See 2,786.]
YOUNG v. COLT [18,155], 2 Blatchf. 373.
Young, Colt v. [See 3,032.]
YOUNG v. CUSHING [18,156], 4 Biss. 456.
Young, Dade v. [See 3,534.]
YOUNG v. DAVIDSON [18,157], 5 Cranch, C. C. 515.
Young, Decatur v. [See 3,722.]
Young, Deneale v. [See 3,785, 3,786.]
Young, Grundy v. [See 5,850, 5,851.]
YOUNG v. HOOVER [18,158], 4 Cranch, C. C. 187.
Young, House v. [See 6,738.]
YOUNG v. JONES [18,159], 3 Hughes, 274.
YOUNG v. LIPPMAN [18,160], 9 Blatchf. 277; 2 O. G. 249, 342; 5 Fish. Pat. Cas. 230.
YOUNG v. MANDEVILLE [18,161], 2 Cranch, C. C. 444.

[Federal Case numbers are given in brackets.]

YOUNG v. MARINE INS. CO. [18,162], 1 Cranch, C. C. 238.
YOUNG v. MARINE INS. CO. [18,163], 1 Cranch, C. C. 452.
YOUNG v. MARINE INS. CO. [18,164], 1 Cranch, C. C. 566.
Young, Metropolitan Wringing Mach. Co. v. [See 9,508.]
YOUNG v. MILLER [18,165].
Young, Miller v. [See 9,596.]
YOUNG v. MONTGOMERY & E. R. CO. [18,166], 2 Woods, 606; 3 Amer. Law T. Rep. (N. S.) 91.
Young, Moore v. [See 9,782.]
YOUNG v. MORIATY [18,167], 2 Cranch, C. C. 42.
YOUNG v. MUTUAL LIFE INS. CO. [18,168], 2 Sawy. 325; 6 Amer. Law T. Rep. 28; 2 Ins. Law J. 289; 4 Bigelow, Ins. Cas. 1.
YOUNG v. ORPHEUS, The [18,169], 2 Cliff. 29.
Young v. The Orpheus. [See 8,330.]
YOUNG v. PALMER [18,170], 2 Cranch, C. C. 625.
YOUNG v. PORTER [18,171], 3 Woods, 342.
YOUNG v. POTT [18,172], 4 Wash. C. C. 521.
Young, Preston v. [See 11,399.]
YOUNG v. RIDENBAUGH [18,173], 3 Dill. 239; 11 N. B. R. 563; 7 Chi. Leg. News, 242.
YOUNG v. ROBERTSON, The [11,923].
Young, Ruggles v. [See 12,122.]
Young, Ryan v. [See 12,188.]
Young, Stratton v. [See 13,528.]
YOUNG v. TAVEL [18,175], Bee, 228.
Young, Truesdale v. [See 14,204.]
Young, United States v. [See 16,782.]
Young, Washington v. [See 17,241.]
YOUNG v. WETZELL [18,176], 3 Cranch, C. C. 359.
Young, Wilson v. [See 17,849.]
Young, Woods v. [See 17,994.]
YOUNG v. YOUNG [18,177], 4 Cranch, C. C. 499.
YOUNG AMERICA, The [18,178], 1 Brown's Adm. 462; 6 Chi. Leg. News, 197.
YOUNG AMERICA, The [18,179], 1 Brown's Adm. 549.
Young America, The, Scott v. [See 12,549, 12,550.]
Younger v. Gloucester Marine Ins. Co. [See 5,487.]
YOUNG MECHANIC, The [18,180], 2 Curt. 404.
YOUNG MECHANIC, The [18,181], 1 Ware, 535.
YOUNG MECHANIC, The [18,182], 3 Ware, 58.
Young Men's Ass'n, King v. [See 7,811.]
YOUNGER v. GLOUCESTER MARINE INS. CO. [5,487].
YOUNGFALL v. JAMES GUY, The [7,195], 5 Int. Rev. Rec. 68.
YOUNGS v. NEW YORK [4,758], 8 Reporter, 298.
Youngs, Sickels v. [See 12,838.]
Youngs, United States v. [See 16,783.]
YOUNG SAM, The [18,186], 2 Flip. 440; 20 Law Rep. 608; Brunner, Col. Cas. 600.
Young, The William. [See 17,760.]
YOUNT v. UNITED STATES [18,187], Hoff. Dec. 36.
YOUNT v. UNITED STATES [18,188], Hoff. Land Cas. 43.
Yount, United States v. [See 16,784.]
YOUQUA v. NIXON [18,189], Pet. C. C. 221.
YOUQUA v. NIXON [18,190], Pet. C. C. 224.
YTURBIDE v. UNITED STATES [18,191], Hoff. Land Cas. 273.
YUBA, The [18,192], 4 Batchf. 314.
YUBA, The [18,193], 4 Blatchf. 352; 16 Leg. Int. 317; 41 Hunt, Mer. Mag. 709.
YUCATAN, The [18,194], 4 Adm. Rec. 31.
YUENGLING v. JOHNSON [18,195], 1 Hughes, 607; 3 Ban. & A. 99.
YZNAGA v. PEASLEE [18,196], 1 Cliff. 493.
YZNAGA v. REDFIELD [18,197], 4 Blatchf. 469; 17 Leg. Int. 357.

Z

Zachrissen, Brett v. [See 1,845.]
ZAHM v. FRY [18,198], 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155.
ZANE v. D'ESTE [18,199].
ZANE v. PECK [18,200], 3 Ban. & A. 36; 12 O. G. 518.
Zane, Prentice v. [See 11,383.]
ZANE v. PRESIDENT, The [18,201], 4 Wash. C. C. 453.
Zane's Will Case. [See 8,952.]
Zantzinger, United States v. [See 16,785.]
ZANTZINGER v. WEIGHTMAN [18,202], 2 Cranch, C. C. 478.
ZARALLA, The [18,203], Blatchf. Pr. Cas. 173.
ZAREGA'S CASE [18,204], 1 N. Y. Leg. Obs. 40, note; 4 Law Rep. 480.
ZEALAND, The [18,205], 1 Lowell, 1.
Zeba, The, Hopkins v. [See 6,691.]
ZEIBER v. HILL [18,206], 1 Sawy. 268; 8 N. B. R. 239.
Zeigler v. Mobile & O. R. Co. [See 4,137-4,139.]
ZELLWEGER v. ROBERT COOPER, The [18,207].
ZENOBIA, The [18,208], Abb. Adm. 48.
ZENOBIA, The [18,209], Abb. Adm. 80.
ZEPHYR, The [18,210], 3 Mason, 341.
Zepp, Ferguson v. [See 4,742.]
ZEREGA v. GEE [18,211].
ZEREGA v. McDONALD [18,212], 1 Woods, 496.
ZEREGA v. POPPE [18,213], Abb. Adm. 397.
Zimmerman, Virginia v. [See 16,968.]
ZINKEISEN v. HUFSCHMIDT [18,214], 1 Cent. Law J. 144.
ZINN, In re [18,215], 4 Ben. 500; 4 N. B. R. 436 (Quarto, 145); 43 How. Pr. 64.
ZINN, In re [18,216], 4 N. B. R. 370 (Quarto, 123); 40 How. Pr. 461.
ZODIAC, The [18,217], 9 Ben. 171.
ZOLLINGER v. EMMA, The [18,218], 3 Cent. Law J. 285; 22 Int. Rev. Rec. 154.
ZOLLINGER v. EMMA, The [18,218].
ZONE, The [18,220], 2 Spr. 19; 22 Law Rep. 725.
ZOUAVE, The [18,221], 1 Brown's Adm. 110.
ZUG, In re [18,222], 16 N. B. R. 280; 23 Int. Rev. Rec. 392; 34 Leg. Int. 402; 25 Pittsb. Leg. J. 29.
Zusi, Abbett v.. [See 7.]

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