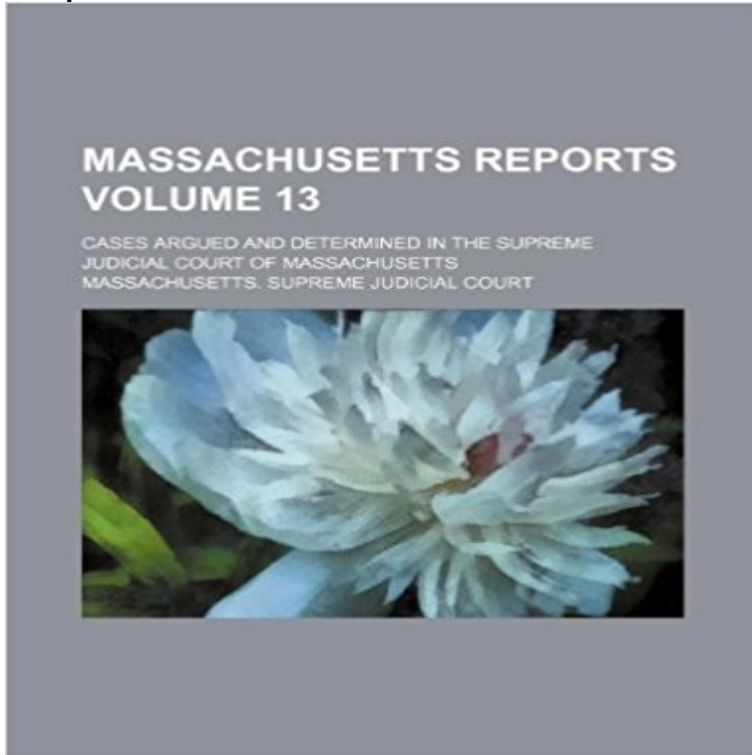


Massachusetts reports Volume 13 ; cases argued and determined in the Supreme Judicial Court of Massachusetts



This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1864 Excerpt: ... an action could not be maintained by the plaintiff in his own name. But this objection was overruled, and the question saved for the opinion of the whole Court. If the Court should be of opinion, that the said shares, or parts of shares, were legally assigned to the plaintiff, so that he could maintain this action for the proceeds in his own name, judgment 291 was to be rendered on the verdict, which was found for him; otherwise the verdict was to be set aside, and the plaintiff to become nonsuit. Holmes, for the plaintiff, contended, that the proceeds of these shares were not choses in action, and, so, liable to the legal objection that they are not assignable. They are not like wages, which are a tight of action against the owner or the master of the ship. The property in the specific articles captured during the cruise vested in the captors, according to their respective interests or shares, from the time of the capture. They became tenants in common of every prize, and their interest was assignable, as any other chattel in possession. (1) Tillinghast and F. Baylies, for the defendants, contended, that these claims of the seamen were merely choses in action, and as such were not assignable, so as to give to the assignee an action in his own name. Indeed, at the time of the assignment of these shares, which was previous to the capture, there was nothing to assign but a bare possibility. By the act of Congress relating to prizes and prize goods, (2) al. prizes of vessels and other property, captured by private armed ships, are to be sold by the marshal of the district, and the proceeds of such sales, after certain deductions, are to be paid over to the owners and agents of the officers and crew,

to be distributed according to law. The interest of the se...

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