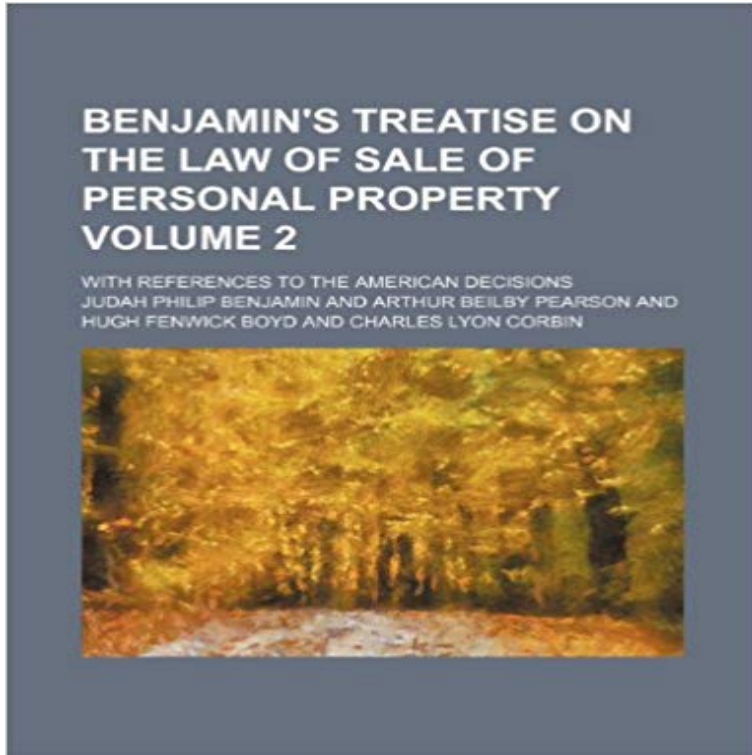


# Benjamins Treatise on the law of sale of personal property Volume 2; with references to the American decisions



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. 1884 Excerpt: ...application, however, is not affected by equities of which he has no notice between his debtor and a third person. And so where a surety on one note gave the debtor money to pay it, and the creditor, receiving it without notice of its origin and without application by the debtor, applied it to the unsecured note, it was held that this appropriation bound all parties, and the surety was held liable on the note secured by him. *Harding v. Tift*, 75 N. Y. 461. The application will be made to a sum due in preference to one not due. Although, of course, if both debtor and creditor assent, a payment may be credited on an obligation not yet due, yet in the absence of the debtors assent, neither the creditor nor the court can make such application. To do so would be to compel the debtor to pay a debt not yet due. *Brown v. Shirk*, 75 Ind. 266, 271; *Seymour v. Sexton*, 10 Watts 255. A payment will be applied to an absolute debt of the payer in preference to a contingent liability. *Snyder v. Robinson*, 35 Ind. 311. The application will be to the several debt of the payor in preference to a debt which he owes jointly with another *Hunt v. Brewer*, 68 Me. 262. The law will apply a payment to a legal and not an illegal debt. *Stover v. Haskell*, 50 Vt. 341. The application will be first to the interest in arrear and afterwards to the principal. *Moore v. Kiff*, 78 Penna. 96; *Merchants Bank v. Freeman*, 15 Hun 359; *Mills v. Saunders*, 4 Keb. 190; *Johnson v. Bobbins*, 20 La. Ann. 569. (n) *Re Clap*, 2 Low., at p. 230; *Hutchinson v. Olcott*, 4 t. 549; *Ward v. Bourne*, 56 Maine 161; *Hunt v. Boyd*, 2 Miller 109; *Camp v. Gullett*, 2 English 514; *Morris v. D. Smith*, 81 111. 221; *Mehlberg v. Tucker*, 24 Wis. 607; *Matasee v. Hughes*, 7 Oreg. 39. (o) Story

on Sales,? 219, (ed. 1871,) where the c...

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