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ACTION.

Continuation.

A proceeding for the appointment of a receiver, based upon a judgment obtained against an insurance company by service of process on the insurance commissioner, as provided by statute, is not a new and independent suit, but a mere continuation of the action already passed into judgment, and in aid of the execution thereof, and can be initiated by the filing of an amended or supplementary petition. When such an amended petition is filed the action cannot be removed to the Federal courts, as the time prescribed therefor by the statute has already passed. Nor has the Federal court jurisdiction in an equity action to enjoin proceedings under the supplementary petition, as it is a mere continuation of an action at law. Where a proceeding is not warranted by the law of a State, relief must be sought by review in the appellate court of the State and not by collateral attack in the Federal courts. *Mutual Reserve Fund Life Association* v. *Phelps*, 147.

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ARBITRATION AND AWARD.

1. *Defeat of operation of submission precluded.*

In an arbitration between a sovereign State and a railroad company and

affecting public concerns, whatever might be the technical rules for arbitrators dealing with a private dispute, neither party can defeat the operation of the submission after receiving benefits thereunder, by withdrawing, or by adopting the withdrawal of its nominee, after the discussions have been closed. *Colombia* v. *Cauca Company*, 524.

2. *Sufficiency of award by majority.*

Where the parties to a controversy have submitted the matter to a commission of three who have the power to, and do resolve that all decisions shall be by majority vote, an award by a majority is sufficient and effective. *Ib.*

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BANKRUPTCY.

1. *Claim on judgment revived by action of trustee.*

A creditor obtained attachments against one who within four months thereafter was adjudged a bankrupt and attached debts which upon entry of judgments were paid over to the attaching creditor who thereupon satisfied the judgments guaranteeing the garnishees against loss. The trustee in bankruptcy demanded payment of the debts from the garnishees and under its guarantee the creditor who had collected them paid the amount over. *Held*, that the action of the trustee undid the satisfaction of record of the judgments and they were not a bar which would prevent the creditor from proving its claim against the estate in the hands of the trustee. *Hutchinson* v. *Otis*, 552.

2. *Discharge—Contract not affected by.*

After obtaining a divorce on the ground of his wife's desertion, she not opposing the decree, the husband executed and delivered a written contract by which he agreed to pay the wife a specified sum annually for her own support during her life or so long as she remained unmarried, and also to pay her a specified sum annually for the support of their minor children whose custody was awarded by the decree to the wife. Subsequently the husband was adjudged a bankrupt and discharged. The wife sued for amounts accrued prior to the discharge both for her own support and for that of her children. *Held*, that as to the amount payable for her own support it was not a contingent liability provable under the bankruptcy act, and the contract was not of such a nature as would permit the obligor to be discharged from the obligations thereunder by a discharge in bankruptcy; and, that as to the amount payable for the minor children, the contract was a recognition of liability on the part of the father to support them and, as it does not appear that the amount was unreasonable, the contract to do so could not be affected by a discharge in bankruptcy; and the fact that the money was

payable to the mother did not affect the situation. *Dunbar* v. *Dunbar*, 340.

3. *Preferred claim for professional services.*

(*a*) A claim for professional services rendered to a bankrupt in the preparation of a general assignment, valid under the law of the State where made, is not entitled to be paid as a preferential claim out of the estate in the hands of a trustee in bankruptcy when the adjudication in involuntary bankruptcy was made within four months after the making of the assignment and the assignment was set aside as in contravention of the bankrupt law. *Randolph* v. *Scruggs*, 533.

(*b*) A claim for professional advice and legal services rendered such an assignee prior to the adjudication of bankruptcy against the assignor, the assignment providing that the costs and expenses of administering the trust should be first paid, is not entitled under the deed to be proven as a preferential claim against the bankrupt estate, but so far as the assignee would be allowed for payment of the claim, it may be preferred in the right of the assignee. *Ib.*

(*c*) On the facts in this case a claim against such an assignee for legal services rendered at his employment in resisting an adjudication of involuntary bankruptcy against the assignor is not allowable as a preferential claim, when the necessary effect of the adjudication would be to set aside the assignment under which the assignee was acting. *Ib.*

(*d*) The claim for services to the assignor for the preparation of the deed of trust to the assignee may be proved in the bankruptcy proceedings as an unsecured claim. *Ib.*

4. *Exemptions—Effect of waiver under state law.*

Under the bankruptcy act of 1898, the title to property of a bankrupt which is generally exempted by the law of the State in which the bankrupt resides, remains in the bankrupt and does not pass to the trustee, and the bankrupt court has no power to administer such property even if the bankrupt has, under a law of the State, waived his exemption in favor of certain of his creditors. The fact that the act confers upon the bankruptcy court authority to control exempt property in order to set it aside does not mean that the court can administer and distribute it as an asset of the estate. The two provisions of the statute must be construed together and both be given effect. The discharge of the bankrupt, however, can be withheld until a reasonable time has elapsed to enable creditors to assert in a state court their rights to subject exempt property in satisfaction of their claims under waivers given as security therefor by the bankrupt. *Lockwood* v. *Exchange Bank*, 294.

See COURTS, 1;
JURISDICTION, C.

BONDS.

1. *County—Issued in aid of railroad—Subscription to.*

The North Carolina ordinance of March 8, 1868, has been declared by the Supreme Court of that State and by this court, (180 U. S. 532,) to have

been the law of North Carolina when bonds were issued by Wilkes County for subscription to stock of the Northwestern North Carolina Railroad Company. All the conditions of the ordinance as to the route of the railroad and the approval of a majority of the qualified electors of the county having been met, the county had power to subscribe to the stock of the road and to issue its bonds therefor, and it cannot now contend that the bonds are invalid for want of power on its part to issue them. *Wilkes County* v. *Coler*, 107.

2. *County—Issued in aid of railroad—Validity of.*

County bonds issued under statutes and sections of the Code of North Carolina which permit bonds to be issued to enable counties to subscribe to stock when necessary to aid in the completion of any railroad in which citizens of the county may have an interest, *held* to be valid notwithstanding that the Supreme Court of the State had decided in another action that such bonds were invalid. *Stanly County* v. *Coler*, 437.

3. *County—Presumption accompanying and guaranteeing.*

A presumption that the duty devolving upon the officers of a county of ascertaining the conditions upon which bonds of the county may be issued was properly exercised should and does accompany and guarantee such bonds. *Ib.*

BOUNDARIES.

Tennessee and Virginia.

Report of commissioners appointed to ascertain, retrace, remark, and reestablish the real, certain and true boundary line between the States of Tennessee and Virginia from White Top Mountain to Cumberland Gap confirmed. A compact having been entered into by the States of Tennessee and Virginia expressed in concurrent laws of said States which received the consent of Congress, this court modifies the line delineated in the report of the commissioners as to so much thereof as is affected thereby, and that portion of the line is determined, fixed and established in accordance with such compact. The commissioners having ascertained and recommended the straight line from the end of the "diamond-marked" compact line of 1801–1803 to the corner of the States of North Carolina and Tennessee as the true boundary line between the States of Virginia and Tennessee between those two points, this court approves and adopts such recommendation. *Tennessee* v. *Virginia*, 64.

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See INTERSTATE COMMERCE.

CASES DISTINGUISHED.

Oregon & Cal. R. R. Co. v. *United States*, 189 U. S. 103, 116, distinguished from *Oregon & Cal. R. R. Co.* v. *United States*, 186.

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1. *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406, followed in *Geer* v. *Mathieson Alkali Works*, 428.
2. *Cummings* v. *City of Chicago*, 188 U. S. 410, followed in *Montgomery* v. *Portland*, 89.
3. *Goldey* v. *Morning News*, 156 U. S. 518, followed in *Conley* v. *Mathieson Alkali Works*, 406.
4. *Grand Trunk R. Co.* v. *Richardson*, 91 U. S. 454, followed in *Texas & Pacific Ry. Co.* v. *Watson*, 287.
5. *Hardin* v. *Jordan*, 140 U. S. 371, followed in *Kean* v. *Calumet Canal and Improvement Co.*, 452, and *Hardin* v. *Shedd*, 508.
6. *Holmes* v. *Hurst*, 174 U. S. 82, followed in *Mifflin* v. *R. H. White Company*, 260.
7. *Mifflin* v. *R. H. White Company*, 190 U. S. 260, followed in *Mifflin* v. *Dutton*, 265.
8. *Mitchell* v. *Smale*, 140 U. S. 406, followed in *Kean* v. *Calumet Canal and Improvement Co.*, 452.
9. *Robbins* v. *Shelby Taxing District*, 120 U. S. 439, 492, followed in *Atlantic & Pacific Telegraph Co.* v. *Philadelphia*, 160.
10. *Smythe* v. *Fisk*, 23 Wall. 374, followed in *Hawaii* v. *Mankichi*, 197.
11. *Williamette Bridge Co.* v. *Hatch*, 125 U. S. 1, followed in *Montgomery* v. *Portland*, 89.

CITIZENSHIP.

Diverse—Foreign corporation affected by local law.

Although a statute of North Carolina provides that a foreign railroad company desiring to own property or carry on business, or exercise any corporate franchise within the State, must comply with certain specified provisions of the statute, and on complying therewith shall become a domestic corporation, such fact does not affect the character of the original corporation, and it does not thereby become a citizen of North Carolina so far as to affect the jurisdiction of the Federal courts upon a question of diverse citizenship. *Southern Railway Co.* v. *Allison*, 326.

See CONGRESS, POWERS OF, 2;
STATUTES, A, 2;
WRIT AND PROCESS.

CLAIMS.

French Spoliation Claims—Distribution of appropriation.

An administratrix of one who in 1818 became a member of a firm which had in 1798 sustained losses, resulting in what are known as French Spoliation Claims, presented the claims under the act of 1885 to the Court of Claims and obtained awards therefor. The findings clearly showed that the Court of Claims proceeded on the assumption that her intestate was a member of the firm when the losses were sustained. In 1899, Congress appropriated money to pay certain claims which had been favorably passed on by the Court of Claims including those awarded to

this administratrix as such and as representing such firm. After collecting the amounts she applied to a state court of competent jurisdiction for instructions as to distribution of the fund. Next of kin of the partners of 1798 denied that her intestate could share in the fund under the provisions of the act of 1885, which limited payments thereunder to next of kin of the original sufferers; she contended that the awards of the Court of Claims and the appropriation by Congress to her as administratrix were conclusive as to the right of her intestate to participate in the awards; that it was not the duty of the Court of Claims under the act of 1885 to investigate and determine the rights of each individual of a class, but only to determine the validity and amount of a claim with a specification of ownership sufficient to identify the claim itself for the payment of which an appropriation might thereafter be made, and the particular individuals of the class would be matter for subsequent investigation by some other tribunal; that it was not within the intention of Congress to conclusively determine by the appropriation act of 1899 what persons were entitled thereto, but the payments were intended to be for the next of kin of the original sufferers; that as it was clear in this case that the party named in the appropriation act was not entitled absolutely to the money as her own, and as she had submitted the question of distribution to a court of equity, that court had jurisdiction to determine the real meaning and proper construction of the act of Congress and who were entitled to the funds in her hands; and that on the facts in this case, there was no error in holding that the next of kin of the members of the firm in 1798 were entitled to the fund to the exclusion of the next of kin of one who subsequently became a member thereof. *Buchanan* v. *Patterson*, 353.

COMITY.

See COURTS, 1.

COMMERCE.

See CONGRESS, POWERS OF, 1, 2, 5; CORPORATIONS; INTERSTATE COMMERCE; TAXATION, 1, 2, 3.

CONCESSION BY FOREIGN STATE.

Cancellation of—Liability of State under agreement.

Where a foreign State grants a concession to build a railroad to an individual who assigns it and other contracts connected therewith to a corporation and thereafter the State forfeits and cancels the concession but agrees, as a compromise, to take over the road as far as built and pay the actual expense of construction, it is proper in estimating such expenses to allow the office and traveling expenses and salaries of the officers, but not the cash paid by the corporation for the contract and concession or the amounts paid to the officers of the corporation for securing the agreement to submit the matter to arbitration. *Colombia* v. *Cauca Company*, 524.

CONGRESS.

ACTS OF.

See BANKRUPTCY;
CLAIMS;
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REVENUE LAWS;
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INTENTION OF.

1. *Navigable waters.*

While section 12 of the act of Congress of September 19, 1890, forbade the construction or extension of piers, wharves, bulkheads, or other works, beyond the harbor lines established under the direction of the secretary of war, in navigable waters of the United States, "except under such regulations as may be prescribed from time to time by him," it does not follow that Congress intended in such matters to disregard altogether the wishes of the local authorities. *Montgomery* v. *Portland*, 89.

2. *Resolution annexing Hawaii—Intent to impose provisions of Constitution.*

In inserting in the Resolution of July 7, 1898, annexing Hawaii, a provision that municipal legislation not inconsistent with the Constitution of the United States should remain in force until Congress otherwise determined, Congress did not intend to impose upon the islands every clause of the Constitution, and to nullify convictions and verdicts which might, before the legislature could act, be rendered in accordance with existing legislation of the islands but not in accordance with the provisions of the Constitution, nor was such the intention of Hawaii in surrendering its autonomy. *Hawaii* v. *Mankichi*, 197.

See CLAIMS;
LAND DEPARTMENT, 3;
STATUTES.

POWERS OF.

1. *Commerce—Regulation of—Enforcement of seamen's contracts.*

Contracts for seamen's wages are exceptional in character and may be subjected to special restrictions, and whenever they relate to commerce not wholly within a State, legislation enforcing such restrictions comes within the domain of Congress under the commerce clause of the Constitution, and such legislation is not contrary to the Fourteenth or Thirteenth Amendment. *Patterson* v. *Bark Eudora*, 169.

2. *Commerce—Protection of seamen.*

When Congress prescribes such restrictions, no one within the jurisdiction of the United States can escape liability for a violation thereof on a

plea that he is a foreign citizen or an officer of a foreign merchant vessel. The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which such vessels belong respectively may be withdrawn, and it is within the power of Congress to protect all sailors shipping within our ports on vessels engaged in foreign or interstate commerce, whether foreign or belonging to citizens of this country. *Ib.*

3. *Elections—Legislation to control.*

Although section 5507, Rev. Stat., which provides for the punishment of individuals who hinder, control or intimidate others from exercising the right of suffrage guaranteed by the Fifteenth Amendment, purports on its face to be an exercise of the power granted to Congress by the Fifteenth Amendment, it cannot be sustained as an appropriate exercise of such power. That amendment relates solely to action by the United States or by any State and does not contemplate wrongful individual acts. While Congress has ample power in respect to elections of Representatives to Congress, § 5507 cannot be sustained under such general power because Congress did not act in the exercise of such power. On its face the section is clearly an attempt to exercise power supposed to be conferred by the Fifteenth Amendment in respect to all elections, State and Federal, and not in pursuance of the general control by Congress over particular elections. It would be judicial legislation for this court to change a statute enacted to prevent bribery of persons named in the Fifteenth Amendment at all elections, to one punishing bribery of any voter at certain elections. Congress has the power to punish bribery at Federal elections, but it is all important that a criminal statute should define clearly the offence which it purports to punish, and that when so defined it should be within the limits of the power of the legislative body enacting it. *James* v. *Bowman*, 127.

4. *Indians—Jurisdiction of courts over.*

The moral obligations of the government towards the Indians are for Congress alone to recognize, and the courts can exercise only such jurisdiction over the subject as Congress may confer upon them. *Blackfeather* v. *United States*, 368.

5. *Interstate commerce—Exclusive power to regulate.*

The Constitution of the United States having given to Congress the power to regulate commerce, not only with foreign nations, but among the several States, that power is necessarily exclusive whenever the subjects are national in their character, or admit only of one uniform system or plan of regulation. (*Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 492.) *Atlantic and Pacific Telegraph Co.* v. *Philadelphia*, 160.

6. *Taxation on right to succession.*

This court has determined that Congress has power to tax successions; that the States have the same power, and that such power of the States extends to bequests to the United States; it follows that Congress has the same power to tax the transmission of property by legacy to States or to their municipalities. The exercise of that power in neither case

conflicts with the proposition that neither the Federal nor a state government can tax the property or agencies of the other, as the taxes are not imposed upon the property itself but upon the right to succeed thereto. *Snyder* v. *Bettman*, 249.

CONSTITUTIONAL LAW.

Trial by jury—Application of provision to Hawaii.

The conviction of one who, between August 12, 1898, and June 14, 1900, was tried on information and convicted by a jury not unanimous, in accordance with legislation of the Republic of Hawaii existing at the time of the annexation, is legal notwithstanding it is not in compliance with the provisions of the Fifth and Sixth Amendments of the Constitution. *Hawaii* v. *Mankichi*, 197.

See CONGRESS, INTENTION OF, 2;
CONGRESS, POWERS OF, 1, 3.

CONSTRUCTION OF STATUTES.

See BANKRUPTCY, 4;
CONGRESS, INTENTION OF, 2;
CONGRESS, POWERS OF, 3;
COURTS, 2;
FEDERAL QUESTION;
STATUTES.

CONTEMPT OF COURT.

Error of judgment—Good faith.

The preservation of the independence of the bar is vital to the due administration of justice, and its members cannot be imprisoned for contempt for error in judgment when advising in good faith and in the honest belief that their advice is well founded. Members of the bar cannot be properly held to have intended to obstruct the administration of justice and to bring the authority of a court of the United States into contempt when it is the orders of a state court appearing to have been entered of record of its own motion that are complained of, and counsel in that court acted in good faith and in the honest discharge of their duty. *In re Watts and Sachs*, 1.

See JURISDICTION, A, 2; 3.

CONTRACTS.

1. *Measure of damages for breach.*

In case of a breach of contract a person can only be held responsible for such consequences as may be reasonably supposed to be in contemplation of the parties at the time of making the contract, and mere notice to a seller of some interest or probable action of the buyer is not enough necessarily and as matter of law to charge the seller with special damage on that account if he fails to deliver the goods. *Globe Refining Co.* v. *Landa Cotton Oil Co.*, 540.

2. *Privity—Stipulations not binding upon one not in privity.*

In an action to recover the value of cotton burned while stored on a platform near a railroad track, *held*, that the plaintiff was not bound by stipulations in the lease of the platform from the railroad company

to the lessee, it appearing that the plaintiff was not in privity with the lessee and had no knowledge of such stipulations. *Texas and Pacific Ry. Co.* v. *Watson*, 287.

See BANKRUPTCY, 2; CONGRESS, POWERS OF, 1, 2; CONCESSIONS; MARITIME LAW; PRACTICE, 2.

CONVEYANCES.

See LOCAL LAW (ILLINOIS); PUBLIC LANDS, 1.

COPYRIGHT.

1. *Statutory notice—Magazine publication affecting previous copyright.*

Mifflin v. *R. H. White Co.*, p. 260, followed, and *held*, that under the copyright act of 1831 the authorized appearance of an author's work in a magazine without the statutory notice of copyright specially applicable thereto makes it public property and vitiates the copyright previously taken out by the author; and that the copyright of the magazine under its own title by the publisher is not a compliance, so far as the authors are concerned, with the statutory requirements as to notice of copyright in the several copies of each and every edition published. *Mifflin* v. *Dutton*, 265.

2. *Publication—Magazine articles.*

The serial publication of an author's work in a magazine with his consent and before any steps are taken to secure a copyright is such a publication as vitiates, under § 4 of the act of 1831, the copyright afterwards attempted to be taken out. *Holmes* v. *Hurst*, 174 U. S. 82. Where there is no evidence that the publishers were the assignee or acted as the agent of the author for the purpose of taking out copyright, the copyright entry of a magazine, made by them under the act of 1831, and under the title of the magazine, will not validate the copyright entry subsequently made under a different title by the author of a portion of the contents of the magazine. And see *Mifflin* v. *Dutton*, *post*, p. 265. *Mifflin* v. *R. H. White Company*, 260.

CORPORATIONS.

Liability for property taken by.

No corporation, even though engaged in interstate commerce, can appropriate to its own use property public or private, without liability to a charge therefor. *Atlantic and Pacific Telegraph Co.* v. *Philadelphia*, 160.

See CITIZENSHIP; REMOVAL OF CAUSES, 1; TAXATION, 2, 3.

COURTS.

1. *Federal and state—Comity.*

The general rule as between courts of concurrent jurisdiction is that property already in possession of the receiver of one court cannot right-

fully be taken from him without the court's consent by the receiver of another court appointed in a subsequent suit, and although that rule has only a qualified application when winding up proceedings in a state court are superseded by proceedings in bankruptcy, it obtains as a rule of comity, and its considerate observance is adequate to avert collisions between Federal and state courts. *In re Watts and Sachs*, 1.

2. *Federal and state—Binding effect of state court's interpretation of state laws.*

While as a general rule Federal courts will accept the interpretation put by the courts of a State upon its own constitution and statutes, yet where the law has not been definitely settled, it is the right and duty of Federal courts to exercise their own judgment. *Stanly County* v. *Coler*, 437.

3. *Judicial notice by.*

The courts will take judicial notice of rules and regulations made by the Land Department regarding the sale or exchange of public lands. *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 301.

4. *Power over Land Department.*

The courts have no general supervisory power over the officers of the Land Department by which they can control the decisions of such officers upon questions within their jurisdiction. *United States ex rel. Riverside Oil Co.* v. *Hitchcock*, 316.

5, *Relief from, in cases pending before Land Department.*

The courts cannot be called upon, in advance of, and without reference to, the action of the Land Department to determine the right and title of a person, who has surrendered lands under the act of June 4, 1897, and selected others, in the land so selected, or to render a final decree determining the interest of the parties to the action in such lands, while the questions in relation to the title are still properly before the Land Department and have not yet been decided. *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 301.

See ACTION;
BANKRUPTCY, 4;
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JURISDICTION;
LAND DEPARTMENT, 2, 3, 4;
PRACTICE, 2;
REMOVAL OF CAUSES.

COURT OF CLAIMS.

See CLAIMS;
JURISDICTION, D;
STATUTES, 6.

COURT AND JURY.

1. *Question for jury—Reasonableness of tax.*

The reasonableness of charges to which a municipality has subjected a telegraph company engaged in interstate commerce, for the expense

of necessary police supervision, will depend upon all the circumstances involved in the particular case, and, if in a case tried before a jury the evidence in regard thereto is not such as to exclude every conclusion except one, the question of reasonableness should be submitted to the jury. *Atlantic and Pacific Telegraph Co.* v. *Philadelphia*, 160.

2. ——— *Quality of spark arrester—Contributory negligence.*

In an action to recover the value of cotton burned while stored on a platform near a railroad track, *held:* That on the evidence as it appeared on the record, it was properly left to the jury to determine if the company used the best spark arrester and the plaintiff was free from contributory negligence, the jury being also instructed that the verdict must be for the company if it did use the best spark arrester, at the time in good condition, and operated the locomotive with ordinary prudence. *Texas and Pacific Ry. Co.* v. *Watson*, 287.

See INSTRUCTIONS TO JURY.

CRIMINAL LAW.

See CONSTITUTIONAL LAW; EXTRADITION; EVIDENCE, 2; TRIAL.

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See PRACTICE, 1.

DRAWBACKS.

See REVENUE LAWS.

ELECTIONS.

See CONGRESS, POWERS OF, 3.

EQUITY.

See ACTION.

EVIDENCE.

1. *Admissibility—Opinions—Reading depositions of present witness.*

In an action to recover value of cotton burned while stored on a platform near a railroad track *held*, there was no error in admitting evidence: (*a*) That about the time of the fire and the passing of the locomotive which it was charged occasioned the fire, other fires were observed near the track and the cotton. (*Grand Trunk R. Co.* v. *Richardson*, 91 U. S. 454.) (*b*) In view of the condition of the record, that certain witnesses did not know of, and saw no opportunity for the cotton to have caught fire except from the locomotive in question. (*c*) In an-

swer to a hypothetical question to a witness duly qualified as an expert, as to whether the number of fires indicated the condition of the locomotive and the spark arresters. (*d*) By reading the deposition of a witness who was in court, but who it appeared was afterwards called by the defendant and testified as to the evidence in the deposition, the error if any not being sufficiently grave to require a reversal of the case. *Texas and Pacific Ry. Co.* v. *Watson*, 287.

2. ————*Criminal trial—Opinion of non-expert witness as to mental condition.*

A witness for the defence in a murder trial, who is not an expert, but who knew the prisoner before the killing, may state the opinion he formed at the time as to the mental condition of the prisoner, sum up his impressions received at the time he saw the prisoner before the killing, but, except under special circumstances, he may not state an opinion formed since the killing. *Queenan* v. *Oklahoma*, 548.

EXPORTS.

See REVENUE LAWS.

EXTRADITION.

1. *Nature of extraditable offense.*

(*a*) The general principle of international law in cases of extradition is that the act on account of which extradition is demanded must be a crime in both countries. (*b*) As to the offense charged in the case, the applicable treaty embodies that principle in terms by requiring it to be "made criminal by the laws of both countries." (*c*) If the offense charged is criminal by the laws of the demanding country and by the laws of the State of the United States in which the alleged fugitive is found, it comes within the treaty and is extraditable. *Wright* v. *Henkel*, 40.

2. *Bail.*

Bail cannot ordinarily be granted in extradition cases, but it is not held that the Circuit Courts may not in any case, and whatever the special circumstances, extend that relief. *Ib.*

FEDERAL QUESTION.

State and not Federal.

Whether one assuming to act for a State or Territory in selecting school lands in lieu of sections specified by law had the authority to do so is a state and not a Federal question. *Johanson* v. *Washington*, 179.

FOREIGN COMMERCE.

See CONGRESS, POWERS OF, 1, 2.

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See ARBITRATION AND AWARD, 1;
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See CONGRESS, INTENTION OF, 2;
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See CONGRESS, POWERS OF, 4;
JURISDICTION, D.

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See CONGRESS, POWERS OF, 6.

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See LAND DEPARTMENT, 3.

INSTRUCTIONS TO JURY.

1. *Sufficiency—Mental capacity to commit homicide.*

It is not error to instruct the jury that under § 1852 of the Oklahoma Statutes of 1893 they should acquit if they found the accused was not able to know that the act of taking his victim's life was wrongful, and was not able to comprehend and understand the consequences of such error there is no error, if the jury also was instructed that in order to find him guilty they must find that he knew and understood that it was wrong to take the life and was able to comprehend and understand the consequences of such act. *Queenan* v. *Oklahoma*, 548.

2. ——— *Particular charge not necessary where subject deducible from other instruction.*

In an action to recover the value of cotton burned while stored on a platform near a railroad track it was not necessary to charge the jury that in placing the cotton on the platform the plaintiff assumed risks which were to be anticipated from engines properly equipped and operated, as that was to be deduced from the charge as made. *Texas and Pacific Ry. Co.* v. *Watson*, 287.

See COURT AND JURY, 2.

INTENTION OF CONGRESS.

See CLAIMS;
CONGRESS, INTENTION OF;
LAND DEPARTMENT.

INTERSTATE COMMERCE.

Rates—Competition—Long and short haul—Unreasonableness.

1. When competition which controls rates prevails at a given point a dissimilarity of circumstances and conditions is created justifying a carrier in charging a lesser rate to such point, it being the longer distance than it exacts to a shorter distance and non-competitive point on the same line. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 273.
2. A nearer and non-competitive point on the same line is not entitled to lower rates prevailing at a longer distance and competitive place on the theory that it could also be made a competitive point if designated lines of railway carriers by combinations between themselves agreed to that end. The competition necessary to produce a dissimilarity of conditions must be real and controlling and not merely conjectural or possible. *Ib.*
3. Where a charge of a lesser rate for a longer than a shorter haul over the same line is lawful because of the existence of controlling competition at the longer distance place the mere fact that the less charge is made for the longer distance does not alone suffice to cause the lesser rate for the longer distance to be unduly discriminatory. *Ib.*
4. The Commission having found a rate to be unreasonable solely because it was violative of the act which forbids a greater charge for a lesser than for a longer distance under stated conditions and which prohibits undue discrimination, *held* that as the grounds upon which such holding was based resulted from an error of law it was proper not to conclude the question of the inherent unreasonableness of the rates, but to leave it open for further action by the Commission to be considered free from the errors of law which had previously influenced the Commission. *Ib.*
5. A carrier, in order to give particular places the benefit of their proximity to a competitive point and thereby afford them a lower rate than they would otherwise enjoy, may take into consideration the rate to the point of competition and make it the basis of rates to the points in question. To give a lower rate as the result of competition does not violate the provisions of the act to regulate commerce. *Ib.*
6. *Held*, that where a rate was based on an error of fact, which was not complained of before, or acted on by, the Commission, and had been corrected by the carriers long before the decision below, and the corrected rate had been in force for a long period, it was not necessary to revise the decree of the court below, which was in all other respects correct, so as to secure a continuance of the corrected rate. *Ib.*

See CONGRESS, POWERS OF, 1, 5;
CORPORATIONS;
TAXATION, 1, 2, 3.

JUDGMENT.

Of board of equalization not subject to collateral attack.

Proceedings before a board of equalization are *quasi*-judicial, and if an

order made by it is within its jurisdiction, it is not void and cannot be resisted in an action at law; nor can overvaluation be made a ground of defence at law. The action of the tax officers being in the nature of a judgment must be yielded to until set aside. And this can only be done in a direct proceeding. *Western Union Telegraph Co.* v. *Missouri ex rel. Gottlieb*, 412.

See ACTION; JURISDICTION, A, 2, 3; BANKRUPTCY, 1; LOCAL LAW (KENTUCKY); PRACTICE, 1.

JUDICIAL NOTICE.

See COURTS, 3; LAND DEPARTMENT, 4.

JURISDICTION.

A. OF THE SUPREME COURT.

1. *Decision of state court constituting an interpretation of state law.*

Where the highest court of a State has decided that the board of equalization has acted according to the methods prescribed and authorized by the laws of the State and that an order made by it is legal under the state constitution and statutes, the decision constitutes an interpretation of the law of the State and is not open to dispute in this court. *Western Union Telegraph Co.* v. *Missouri ex rel. Gottlieb*, 412.

2. *Jurisdiction of court in issue—Judiciary act of March* 3, 1891.

A judgment imposing imprisonment for contempt, entered by a District Court of the United States, cannot be reviewed on writ of error to that court, as the contention being addressed to the merits of the case and not to the jurisdiction of the court, the case did not come within the class of cases specified in section 5 of the judiciary act of March 3, 1891, in which the jurisdiction of the court is in issue; and as such judgment was in effect a judgment in a criminal case, the Supreme Court had no jurisdiction to revise it on error. *O'Neal* v. *United States*, 36.

3. *Review of criminal judgment.*

This court has no jurisdiction to revise on error a judgment in contempt which is in effect a judgment in a criminal case. *Ib.*

See PRACTICE, 2.

B. OF STATE COURTS.

Residence necessary in case of corporations.

Granting the existence of a cause of action, it is not every service upon an officer of a corporation which will give a state court jurisdiction of a foreign corporation. The residence of an officer of a corporation does not necessarily give the corporation a domicil in the State. He must be there officially, representing the corporation in its business. (*Goldey* v. *Morning News*, 156 U. S. 518.) *Conley* v. *Mathieson Alkali Works*, 406.

See REMOVAL OF CAUSES.

C. COURTS IN BANKRUPTCY.

Exclusive.

The jurisdiction of the courts in bankruptcy in the administration of the affairs of insolvent persons and corporations is essentially exclusive. *In re Watts and Sachs*, 1.

See BANKRUPTCY, 4.

D. OF COURT OF CLAIMS.

Indians—Tribes, not individuals.

Under the act of October 1, 1890, 26 Stat. 636, jurisdiction was conferred upon the Court of Claims to hear and determine the rights in law or equity of the tribes of the Shawnee and Delaware Indians arising out of the subject matter referred to in the act, and there is no grant of jurisdiction to hear or determine the rights of individual members of those tribes. The claims of the Shawnee Indians which under the act of July 1, 1892, were to be presented to the Court of Claims are those of a tribe or band of Indians and not of individual members thereof. *Blackfeather* v. *United States*, 368.

See STATUTES, 6.

E. OF LAND DEPARTMENT.

See LAND DEPARTMENT.

F. GENERALLY.

See ACTION; CLAIMS; CITIZENSHIP; COURTS, 1.

JURY.

See CONSTITUTIONAL LAW; INSTRUCTIONS TO JURY; COURT AND JURY; TRIAL.

LAND DEPARTMENT.

1. *Jurisdiction—Forest Reserve Act.*

The general administration of the Forest Reserve Act, and also the determination of the various questions which may arise thereunder before the issuing of any patent for lands selected under the provisions of the act, are vested in the Land Department. *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 301.

2. *Jurisdiction—Questions determinable.*

Whether it is necessary under the Forest Reserve Act for the selector, at the time of making his selection, to file in addition to his non-mineral affidavit, an affidavit that the land is not occupied in fact, is a question of law for the Land Department to determine, although such decision might not be binding on the court if such question properly arose in future litigation. It is also for the Land Department to determine whether, if the land were not known to be mineral at the time of the selection, the fact that mineral in paying quantities was found thereafter would vitiate the selection. *Ib.*

3. *Jurisdiction—Powers conferred by Congress—Control by courts.*

Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions to which is confided the execution of the laws which regulate the purchase, selling and care and disposition of the public lands; and neither an injunction nor mandamus will lie against an officer of the Land Department to control him in discharging an official duty which requires the exercise of his judgment and discretion. The Secretary having jurisdiction to decide at all, has necessarily jurisdiction to decide as he thinks the law is, and it is his duty so to do, and the courts have no power under those circumstances to review his determination by mandamus or injunction. The courts have no general supervisory power over the officers of the Land Department by which they can control the decisions of such officers upon questions within their jurisdiction. *United States ex rel. Riverside Oil Co.* v. *Hitchcock*, 316.

4. *Right to make rules and regulations.*

The Land Department has the statutory right to make rules and regulations, and the courts will take judicial knowledge of such rules and regulations as shall be made by it regarding the sale or exchange of public lands. *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 301.

5. *Supervision of affairs of, vested in Secretary of Interior.*

The general supervision of the affairs of the Land Department is now vested in the Secretary of the Interior, and, unless Congress clearly designates some other officer to act in respect to such matters, it will be assumed that he is the officer to represent the Government. His approval of a selection made by one claiming to represent a State or Territory of lands in lieu of school sections 16 and 36 under the acts of 1853 and 1859, is, at least, a withdrawal of the selected land from private entry which continues until the selection is set aside, and if such person was authorized to act, the approval of the selection so made is, unless some direction of Congress was violated, conclusive upon the transfer of title of the selected lands. *Johanson* v. *Washington*, 179.

See COURTS, 3, 4, 5;
PUBLIC LANDS, 5.

LAND GRANTS.

See FEDERAL QUESTION; PUBLIC LANDS, 2, 4;
LAND DEPARTMENT, 5; STATUTES, 1, 3.

LAND PATENTS.

See LAND DEPARTMENT, 1.

LEASE.

See CONTRACTS, 2.

LOCAL LAW.

Hawaii. *See* CONGRESS, INTENTION OF, 2;
CONSTITUTIONAL LAW.

Illinois.

Since *Hardin* v. *Jordan*, 140 U. S. 371, the law of Illinois has been settled that *conveyances of the upland on non-navigable lakes* do not carry the adjoining lands below the water line. *Hardin* v. *Shedd*, 508.

The common law as understood by this court and the local law of Illinois with regard to *grants bounded by navigable waters* are the same. *Ib.*

Indiana.

The common law, as understood by this court, and the local law of Indiana as to the effect of *conveyances of land on non-navigable waters* are the same. *Kean* v. *Calumet Canal and Improvement Co.*, 452.

See PUBLIC LANDS, 2.

Kentucky.

Under the statutes of a Kentucky *service of a summons upon the insurance commissioner* in an action against an insurance company doing business in the State is sufficient to bring the company into court. This applies to a company whose license has been cancelled by the commissioner but which after such cancellation has continued to collect premiums and assessments on policies remaining in force. A judgment based upon such service is, in the absence of anything else to impeach it, valid. *Mutual Reserve Fund Life Association* v. *Phelps*, 147.

North Carolina.

See BONDS, 1, 2;
CITIZENSHIP.

See also COURTS, 2;
PUBLIC LANDS.

MANDAMUS.

See LAND DEPARTMENT, 3.

MARITIME LAW.

Seamen—Recovery of wages advanced.

Under the act of Congress of December 21, 1898, prohibiting the payment of seamen's wages in advance, seamen shipped on a foreign vessel from an American port to a foreign port and return to an American port who have received a part of their wages in advance may, after the completion of the voyage, recover by libel filed against the vessel the full amount of their wages including the advance payments, although such payments are not due either under the terms of the contract or under the law of the country to which the vessel belongs. *Patterson* v. *Bark Eudora*, 169.

See CONGRESS, POWERS OF, 1, 2.

MEASURE OF DAMAGES.

See CONTRACTS.

NAVIGABLE WATERS.

Powers of Federal and state governments over—Erection of wharves.

While section 12 of the act of Congress of September 19, 1890, forbade the construction or extension of piers, wharves, bulkheads, or other works,

beyond the harbor lines established under the direction of the Secretary of War, in navigable waters of the United States, "except under such regulations as may be prescribed from time to time by him" it does not follow that Congress intended in such matters to disregard altogether the wishes of the local authorities. Under existing enactments the right of private persons to erect structures in a navigable water of the United States that is entirely within the limits of a State is not complete and absolute without the concurrent or joint assent of both the Federal government and the state government. *Cummings* v. *City of Chicago*, 188 U. S. 410, and *Willamette Bridge Co.* v. *Hatch*, 125 U. S. 1, followed. *Montgomery* v. *Portland*, 89.

See WATERS.

NEGLIGENCE.

See COURT AND JURY, 2;
EVIDENCE, 1.

NORTHERN PACIFIC RAILROAD.

See PUBLIC LANDS, 6.

OKLAHOMA.

See STATUTES, 5.

OREGON DONATION ACTS.

See PUBLIC LANDS, 4.

PARTIES.

See REMOVAL OF CAUSES, 2.

PATENT FOR LAND.

See PUBLIC LANDS, 2.

PLEADING.

See ACTION;
CONGRESS, POWERS OF, 2.

POLICE POWER.

See PUBLIC LANDS, 6.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE.

1. *Setting aside final judgment.*

The general rule is that a final judgment cannot be set aside by the court which rendered it, on application made after the close of the term at which it was entered; and as this case comes within that rule the judgment is affirmed. The Court of Appeals dismissed the appeal, but inasmuch as if it had entertained it, that court would have been compelled to affirm the order appealed from, this court is not obliged, in

the circumstances disclosed by the record, to modify or reverse even if that court might have maintained jurisdiction of the appeal. *Tubman* v. *Baltimore & Ohio R. R. Co.*, 38.

2. *Separate trial of question of jurisdiction.*

Where the amount of damages for breach of contract is made to appear to be more than $2000, the judge of the Circuit Court may, on exceptions properly taken, try the question of jurisdiction separately and if the damages have been purposely and fraudulently magnified he may dismiss the cause. The grounds upon which he bases his decision are reviewable in this court. *Globe Refining Co.* v. *Landa Cotton Oil Co.*, 540.

See ACTION;
INTERSTATE COMMERCE, 6;
TRIAL.

PRESUMPTION.

See BONDS, 3;
PUBLIC LANDS, 4.

PROCESS.

See WRIT AND PROCESS.

PUBLIC LANDS.

1. *Conveyance by United States of land on non-navigable water.*

When the United States conveys land bounded on a non-navigable lake it assumes the position, so far as such conveyances are concerned, of a private owner, subject to the general law of the State in which the land is situate. When land is conveyed by the United States on a non-navigable lake the rules of law affecting the conveyance are different from those affecting a conveyance of land bounded on navigable waters. *Hardin* v. *Shedd*, 508.

2. *Grant of fractional sections on non-navigable waters—Significance of meander lines.*

Where the State of Indiana acquired land from the United States under the Swamp Land Act of September 28, 1850, the patent describing the whole of certain fractional sections enumerated and bordering on non-navigable water between Indiana and Illinois, it acquired all the land under water up to the line of the State, such being the local law of Indiana. The making of a meander line has no certain significance and does not necessarily import that the tract on the other side of it is not surveyed or will not pass by a conveyance of the upland shown by the plat to border on the lake. *Hardin* v. *Jordan*, 140 U. S. 371; *Mitchell* v. *Smale*, 140 U. S. 406, followed. *Kean* v. *Calumet Canal and Improvement Co.*, 452.

3. *Grant of right of way for work of national importance—Trust, creation of by grant of right to sell and apply.*

The effect of the legislation of Congress granting a right of way through a military reservation and 750,000 acres of public lands to be sold by the State of Michigan and the proceeds applied, under the conditions

prescribed, to the construction of the St. Mary's River canal, and of the legislation of the State of Michigan in regard to the construction, maintenance and surrender of the canal to the United States, as the same are set forth in the complaint, was to create a trust, of which the State of Michigan was the trustee, to construct and maintain the canal as a work of national importance, and the State of Michigan acquired no individual beneficial interest therein. When the canal was surrendered to the United States by the State the Federal Government was entitled to whatever surplus remained in the hands of the State from the tolls collected over and above the expenses of maintenance and also to the value of the tools and materials connected with the canal at the time of the surrender. *United States* v. *Michigan*, 379.

4. *Oregon Donation Acts—Railway grants—Effect of abandonment of claims.*

While a railway grant does not attach to lands which, at the time of the definite location of the line, have been sold, preëmpted, reserved or otherwise disposed of by the United States, this rule does not apply to a claim which has been cancelled or abandoned before the attachment of the railroad grant, either by the definite location of the line or by the selection of the lands as lieu lands within the indemnity limits. Where, therefore, a notification had been filed under the Oregon Donation Acts of September 27, 1850, and February 14, 1853, to land within the indemnity limits of a railroad land grant, but the person filing the same did not comply with the conditions of the statutes, the land continued to be the property of the United States to which the railroad grant subsequently attached, and the grant was not defeated by the fact that the donation notification remained of record in the office of the surveyor general. If any presumption was created by the existence of the donation certificate to the effect that the land was reserved, the railroad may defeat the presumption by showing the actual facts in the same manner as an individual might who desired to enter the land on his own account. *Oregon & Cal. R. R.* v. *United States*, *No. 1*, 189 U. S. 103, and *Same* v. *Same*, *No. 2*, 189 U. S. 116, distinguished. *Oregon & California R. R. Co.* v. *United States*, 186.

5. *Right of way to railroad—Land not subject to preëmption and sale.*

Where the United States grants a right of way by statute to a railroad company which files a map of definite location, and the road is constructed, the land forming the right of way is taken out of the category of public land subject to preëmption and sale, and the land department is without authority to convey rights therein. Homesteaders filing entries thereafter can acquire no interest in land within the right of way on the ground that the grants to them were of full legal subdivisions the descriptions whereof include part of the right of way. *Northern Pacific Ry. Co.* v. *Townsend*, 267.

6. ———*State supervision—Adverse possession by individual.*

Although a right of way granted by the United States through public domain within a State may be amenable to the police power of that

State, an individual cannot for private purposes acquire by adverse possession under a statute of limitations of that State any portion of a right of way granted by the United States to a railroad company in the manner and under the conditions as the right of way was granted to the Northern Pacific Railroad Company. *Ib.*

See COURTS, 3, 5; FEDERAL QUESTION; LAND DEPARTMENT; STATUTES, 1, 3, 5.

RAILROADS.

See BONDS, 1, 2; CONCESSIONS; COURT AND JURY, 2; EVIDENCE, 1; INTERSTATE COMMERCE; PUBLIC LANDS, 4, 5.

RAILROAD LAND GRANTS.

See PUBLIC LANDS, 4, 5, 6.

RECEIVER.

See COURTS, 1.

REMOVAL OF CAUSES.

1. *Order of removal—Effect on jurisdiction of state court.*

Where a foreign corporation has complied with the provisions of a state statute which provides that on such compliance the corporation becomes a domestic one, and the corporation is sued in the state courts, an order of removal made by the Circuit Court of the United States operates to withdraw from the state court the right to hear and determine the case. *Southern Railway Co.* v. *Allison*, 326.

2. *Severable action.*

In an action brought in a state court by citizens of one State against two corporations, citizens of another State, and the directors thereof, some of whom are citizens of the same State as the plaintiff, for the purpose of setting aside a conveyance made by one defendant corporation to the other, the action may be severable as to the conveying corporation; and if it is so, and as to the cause of action alleged against it, its directors are not necessary parties, it may remove the action as to it into the Circuit Court of the United States. *Geer* v. *Mathieson Alkali Works*, 428.

See ACTION.

REVENUE LAWS.

Drawbacks.

The placing on board vessels in the United States and bound for foreign ports of lubricating oils manufactured from imported rape seed on which duty has been paid and which oils are for use in, and to be consumed by the vessels is not such an exportation of the oils as entitles the sellers to drawbacks under § 22 of the act of August 28, 1894, reenacted as § 30 of the act of July 27, 1897. This has been the uniform construction of the department charged with the execution of the

statute. Where the burden is placed upon the citizen, if there be a doubt it must be resolved in favor of the citizen; but as the right to drawbacks is a privilege granted by the government any doubt as to the construction of the statute must be resolved in favor of the government. *Swan and Finch Company* v. *United States*, 143.

See CONGRESS, POWERS OF, 6.

SCHOOL GRANTS.

See FEDERAL QUESTION;
LAND DEPARTMENT, 5;
STATUTES, 1, 3.

SEAMEN.

See CONGRESS, POWERS OF, 1, 2;
MARITIME LAW.

STATES.

See BOUNDARIES; FOREIGN STATES;
CITIZENSHIP; NAVIGABLE WATERS;
CONGRESS, POWERS OF, 6; PUBLIC LANDS, 1, 3, 6;
TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Acts making grants for school purposes.*

The policy of the Government in respect to grants for school purposes has been a generous one, and acts making such grants are to be so construed as to carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instrument of private conveyance. *Johanson* v. *Washington*, 179.

2. *Finality of appeals from Circuit Court of Appeals.*

There is a distinction between foreign States and foreign citizens. Congress did not mean to exclude a sovereign power which sees fit to submit its case to our courts from the right to appeal to the court of last resort. Under section 6 of the act of 1891 the decree of the Circuit Court of Appeals is not made final where one of the parties is a foreign State. *Colombia* v. *Cauca Company*, 524.

3. *General statute affecting special one.*

While ordinarily a special law is not repealed by a subsequent general statute, unless the intent so to do is obvious, yet the latter act may apply to cases not provided for by the former. The general act of Congress of 1859 as to selection of school lands in lieu of sections 16 and 36 is applicable to Washington although a special statute was passed as to it in 1853. The act of 1902 confirming selections approved by the Secretary of the Interior referred to past as well as future approvals. *Johanson* v. *Washington*, 179.

4. *Intention of legislature.*

In interpreting a statute the intention of the lawmaking power will prevail even against the letter of the statute ; a thing may be within the letter of the statute and not within its meaning, and within its meaning, though not within its letter. (*Smythe* v. *Fisk*, 23 Wallace, 374.) *Hawaii* v. *Mankichi*, 197.

5. *Oklahoma Townsite Act.*

Until the title to lands within any townsite boundary has been finally disposed of as provided in the act of Oklahoma Townsite, May 14, 1890, no suit can be maintained against the Townsite trustees as such to divest them of the title held by them in trust for occupants under that act; although a townsite occupant, after receiving title under the act, may be sued by anyone claiming that he had acquired under the homestead laws a right as to the lands prior and superior to that held by the Townsite Trustees for the use and benefit of the townsite occupants. The Townsite Trustees do not hold and indefeasible title as of private right, with power to dispose of at will, but only as trustees for such occupants as may be ascertained, in the mode prescribed by the act of Congress, to be entitled to particular lots within the townsite boundary. The investiture of the Trustees with title is only a step towards the transmission, finally, to the occupants of the full interest of the United States in the land. *Bockfinger* v. *Foster*, 116.

6. *Strict construction of statutes conferring right to sue government—extending jurisdiction of Court of Claims.*

Statutes which extend the jurisdiction of the Court of Claims and permit the government to be sued will be strictly construed, and the grant of jurisdiction therein contained must be shown clearly to cover the case and if it do not it will not be implied. *Blackfeather* v. *United States*, 368.

7. *Title no part of statute.*

The title is no part of a statute. Where a statute declares that it shall apply to foreign vessels as well as vessels of the United States, the fact that its title states that it relates to American seamen cannot be used to set at naught the obvious meaning of the statute itself. *Patterson* v. *Bark Eudora*, 169.

See BANKRUPTCY, 4; CONGRESS, POWERS OF; CONGRESS, INTENTION OF; COURTS, 2; FEDERAL QUESTION.

B. OF THE UNITED STATES.

See BANKRUPTCY, 4; CLAIMS; CONGRESS; COPYRIGHT; COURTS; INTERSTATE COMMERCE; JURISDICTION, A, 2; D;. LAND DEPARTMENT, 1, 5; MARITIME LAW; PUBLIC LANDS, 2, 4; REVENUE LAWS; STATUTES, A; TAXATION, 1.

C. Of States and Territories.

Hawaii. *See* Congress, Intention of, 2; Constitutional Law.

Illinois. *See* Local Law.

Indiana. *See* Local Law. Public Lands, 2.

Kentucky. *See* Local Law.

North Carolina. *See* Bonds, 1, 2; Citizenship.

SUCCESSION TAX.

See Congress, Powers of, 6.

SURVEYS.

See Public Lands, 2.

TAXATION.

1. *State—Estimate of value of telegraph company—Power to tax not precluded by foreign creation of company.*

In estimating, for purposes of taxation, the value of the property of a telegraph company situate within a State, it may be regarded not abstractly or strictly locally, but as a part of a system operated in other States; and the taxing State is not precluded from taxing the property because it did not create the company or confer a franchise upon it, or because the company derived rights or privileges under the act of Congress of 1866, or because it is engaged in interstate commerce. *Western Union Telegraph Co.* v. *Missouri ex rel. Gottlieb*, 412.

2. *State—Property of corporation engaged in interstate commerce.*

No State can compel a party, individual or corporation, to pay for the privilege of engaging in interstate commerce. This immunity does not prevent a State from imposing ordinary property taxes upon property having a situs within its territory and employed in interstate commerce. The franchise of a corporation, although that franchise is the business of interstate commerce, is, as a part of its property, subject to state taxation, providing at least the franchise is not derived from the United States. *Atlantic and Pacific Telegraph Co.* v. *Philadelphia*, 160.

3. *Municipal—For police supervision—Property of corporation engaged in interstate commerce.*

Where telegraph companies, engaged in interstate commerce, carry on their business so as to justify police supervision, the municipality is not obliged to furnish such supervision for nothing, but it may, in addition to ordinary property taxation, subject the corporations to reasonable charges for the expense thereof. *Ib.*

See Congress, Powers of, 6; Judgment; Court and Jury, 1; Jurisdiction, A, 1.

TELEGRAPH COMPANIES.

See Taxation, 1, 3.

TREATIES.

See EXTRADITION.

TRIAL.

Waiver of objection to juror.

When, during the course of a murder trial in Oklahoma it transpires that a juror, contrary to his statements on the voir dire, is disqualified and the prisoner has an opportunity to have him excused and the trial begun anew and his counsel refrain from making any objection at that time, it is too late for him to complain after the verdict of guilty has been rendered. *Queenan* v. *Oklahoma*, 548.

See COURT AND JURY;
INSTRUCTIONS TO JURY.

TRUST.

See PUBLIC LANDS, 3.

TRUSTEES.

See STATUTES, 5.

UNITED STATES.

See PUBLIC LANDS, 1.

WATERS.

See LOCAL LAW (ILLINOIS); NAVIGABLE WATERS;
(INDIANA); PUBLIC LANDS, 2.

WHARVES.

See NAVIGABLE WATER.

WRIT AND PROCESS.

Foreign corporation—Service on officer not sufficient.

Service in New York of a summons upon a director of a foreign corporation who resides in New York is not sufficient to bring the corporation into court, where, at the time of service, the corporation was not doing business in the State of New York. *Conley* v. *Mathieson Alkali Works*, 406. *Geer* v. *Mathieson Alkali Works*, 428.

See JURISDICTION, B;
LOCAL LAW (KENTUCKY).