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ANTI-TRUST ACT.

A. CONSTRUCTION OF—OPINION OF HARLAN, J., CONCURRED IN BY BROWN, MCKENNA AND DAY, JJ.

1. *Combination within.*

The combination of the stockholders of the Great Northern and Northern Pacific railway companies—competing and substantially parallel lines—into a corporation which should hold the shares of stock of the constituent companies, whereby such stockholders, in lieu of their shares in those companies, receive, upon an agreed basis of value, shares in the holding corporation, is, within the meaning of the act of Congress of July 2, 1890, known as the Anti-Trust Act, a "trust;" but if not, it is a combination in restraint of interstate and international commerce, and that is enough to bring it under the act. *Northern Securities Co.* v. *United States*, 197.

2. *Reasonableness of combination.*

From prior cases in this court, the following propositions are deducible and embrace this case: (*a*) Although the act of Congress known as the Anti-Trust Act has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it embraces and declares to be illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations; (*b*) The act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy or monopoly upon such trade or commerce. *Ib.*

3. *Railroad and other combinations within.*

Railroad carriers engaged in interstate or international trade or commerce are embraced by the act. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the act. Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act. *Ib.*

4. *Competition—Prevention of, a restraint of commerce.*

The natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce. *Ib.*

5. *Complete monopoly not essential to illegality of combination.*

To vitiate a combination, such as the act of Congress condemns, it need not be shown that such combination, in fact, results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential

to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition. *Ib.*

6. *Powers of Congress to enact.*

Congress has the power to establish rules by which interstate and international commerce shall be governed, and by the Anti-Trust Act has prescribed the rule of free competition among those engaged in such commerce. The constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. Under its power to regulate commerce among the several States and with foreign nations, Congress had authority to enact the statute in question. Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution. If in the judgment of Congress the public convenience or the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men. When Congress declared contracts, combinations and conspiracies in restraint of trade or commerce to be illegal, it did nothing more than apply to interstate commerce a rule that had been long applied by the several States when dealing with combinations that were in restraint of their domestic commerce. Subject to such restrictions as are imposed by the Constitution upon the exercise of all power, the power of Congress over interstate and international commerce is as full and complete as is the power of any State over its domestic commerce. *Ib.*

7. *Power of State creating corporation.*

No State can, by merely creating a corporation, or in any other mode, project its authority into other States, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce; nor can any State give a corporation created under its laws authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the supreme law of the land. Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority, so far as to compel it to respect the rules for such commerce lawfully established by Congress. *Ib.*

B. Construction of—Opinion by Brewer, J.

1. *Unreasonable restraints only, within—Corporate rights compared with those of individuals.*

(*a*) The act of July 2, 1890, was leveled, as appears by its title, at only unlawful restraints and monopolies. Congress did not intend to reach

and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld.

(*b*) The general language of the act is limited by the power which each individual has to manage his own property and determine the place and manner of its investment. Freedom of action in these respects is among the inalienable rights of every citizen.

(*c*) A corporation, while by fiction of law recognized for some purposes as a person and for purposes of jurisdiction as a citizen, is not endowed with the inalienable rights of a natural person, but it is an artificial person, created and existing only for the convenient transaction of business.

(*d*) Where, however, no individual investment is involved, but there is a combination by several individuals separately owning stock in two competing railroad companies engaged in interstate commerce, to place the control of both in a single corporation, which is organized for that purpose expressly and as a mere instrumentality by which the competing railroad can be combined, the resulting combination is a direct restraint of trade by destroying competition and is illegal within the meaning of the act of July 2, 1890. *Ib.*

2. *State control of corporation not interfered with by Federal action to declare combination illegal.*

A suit brought by the Attorney General of the United States to declare this combination illegal under the act of July 2, 1890, is not an interference with the control of the States under which the railroad companies and the holding company were, respectively, organized. *Ib.*

See COMBINATIONS IN RESTRAINT OF TRADE.

APPEAL AND WRIT OF ERROR.

See JURISDICTION;
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BANKRUPTCY.

1. *Discharge of bankrupt does not release judgment obtained by husband for criminal conversation with wife.*

The personal and exclusive rights of a husband with regard to the person of his wife are interfered with and invaded by criminal conversation with her, and such an act constitutes an assault even when the wife consents to the act, as such consent cannot affect the rights of the husband against

the wrongdoer; and the assault constitutes an injury to the husband's rights and property which is both malicious and willful within the meaning of subdivision 2 of section 17 of the Bankruptcy Act of 1898, and a judgment obtained by the husband on such a cause of action is not released by the judgment debtor's discharge in bankruptcy. *Tinker* v. *Colwell*, 473.

2. *Preference not constituted by part payment on open account prior to adjudication in bankruptcy.*

Where a creditor has a claim for a balance due against an insolvent debtor afterwards adjudicated a bankrupt, upon an open account for goods sold and delivered four months before the adjudication in bankruptcy, and during said period makes a number of sales of merchandise on credit to the insolvent debtor, which becomes a part of the debtor's estate, and during the same period receives payments of sums on account, from time to time, which payments are received in good faith without knowledge of the debtor's insolvency on the part of the creditor, the sales exceeding in amount during said period the payments made during the same time, he has not received a preference which he is obliged to surrender before his claim shall be allowed (*Jaquith* v. *Alden*, 189 U. S. 78). *Yaple* v. *Dahl-Millikan Grocery Co.*, 526.

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See EVIDENCE, 2.

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See PUBLIC LANDS, 1.

BURDEN OF PROOF.
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CARRIERS.

Pass—Knowledge of conditions of acceptance—Carrier not bound to see that conditions are made known—Settlement by verdict of question of fact.

Where in an action for personal injuries the trial court submits to the jury the question whether a person riding on a pass is or is not a free passenger, and there is a general verdict for the defendant, that question of fact is settled in favor of the defendant. A person may not through the intermediary of an agent obtain a privilege—a mere license—and then plead ignorance of the conditions upon which it was granted. The duty of ascertaining the conditions on which a free pass is given and accepted, when the same are plainly printed on the pass, rests upon the person accepting and availing of the pass, and the carrier is not bound at its peril to see that the conditions are made known. *Boering* v. *Chesapeake Beach Ry. Co.*, 442.

See ANTI-TRUST ACT;
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CASES FOLLOWED.

Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211, followed in *Montague* v. *Lowry*, 38, and in *Northern Securities Co.* v. *United States*, 197.

Anderson v. *United States*, 171 U. S. 604, followed in *Northern Securities Co.* v. *United States*, 197.

Barney v. *City of New York*, 193 U. S. 430, followed in *Huntington* v. *City of New York*, 441.

Burgess v. *Seligman*, 107 U. S. 20, followed in *Great Southern Hotel Co.* v. *Jones*, 532.

Cherokee Fund Cases, 117 U. S. 288, followed in *Delaware Indians* v. *Cherokee Nation*, 127.

Gloucester Water Co. v. *Gloucester*, 193 U. S. 580, followed in *Newburyport Water Co.* v. *Newburyport*, 561.

Hopkins v. *United States*, 171 U. S. 578, followed in *Northern Securities Co.* v. *United States*, 197.

Jaquith v. *Alden*, 189 U. S. 78, followed in *Yaple* v. *Dahl-Millikan Grocery Co.*, 526.

Jones v. *Great Southern Hotel Co.*, 86 Fed. Rep. 370, followed in *Great Southern Hotel Co.* v. *Jones*, 533.

Louisville Trust Co. v. *Knott*, 191 U. S. 225, followed in *Bache* v. *Hunt*, 523.

Mallett v. *North Carolina*, 181 U. S. 589, followed in *Leigh* v. *Green*, 79.

Minor v. *Happersett*, 21 Wall. 162, followed in *Pope* v. *Williams*, 621.

Montague v. *Lowry*, 193 U. S. 38, followed in *Northern Securities Co.* v. *United States*, 197.

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United States v. *Trans-Missouri Freight Association*, 166 U. S. 290, followed in *Northern Securities Co.* v. *United States*, 197.

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CHINESE.

Deportation of—Merchants within meaning of act of May 5, 1892.

Chinese persons who were in this country prior to May 5, 1892, and who

from 1891 to 1894, carried on a mercantile business under a corporate title, although the business was not conducted in their individual names, and who had books of account and articles of partnership, were merchants within the meaning of section 6 of the act of May 5, 1892, as amended by the act of November 3, 1893, and were not required to register under the terms of that act, and cannot be deported for failing so to do, when arrested found without registration certificates. When the Government allows many years to elapse before commencing prosecutions, allowances may be made which will excuse the failure to procure the books of accounts and articles of partnership. *Tom Hong* v. *United States*, 517.

See EVIDENCE, 1;
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CITIZENSHIP.

See EVIDENCE, 1.

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CLERKS OF COURT.

Charges by, allowed and disallowed.

The making of the oath and attaching the same to the accounts of clerks of the Circuit and District Courts of the United States as required by the act of February 22, 1875, is a part of the formality of presenting the accounts and is not to be allowed against the Government in favor of the clerk. An order of the court requiring a service to be performed is sufficient authority as between the clerk and the Government for the performance of the service and the allowance of the proper fee therefor. Where no direction of the court can be shown charges cannot be allowed for certificates to copies of orders. Clause 4 of § 828, Rev. Stat., does not justify charges for administering oaths on the *voir dire* of grand and petit jurors. *United States* v. *Jones*, 528.

COLLATERAL ATTACK.

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COMBINATIONS IN RESTRAINT OF TRADE.

1. *Association of manufacturers and dealers in tiles to control prices—Discrimination against non-members—Participation of manufacturers in other State constituting interstate trade—Recovery under Anti-Trust Act of* 1890.

An association was formed in California by manufacturers of, and dealers in, tiles, mantels and grates; the dealers agreed not to purchase materials from manufacturers who were not members and not to sell unset tile to any one other than members for less than list prices which were fifty per cent higher than the prices to members; the manufacturers, who were residents of States other than California agreed not to sell

to any one other than members; violations of the agreement rendered the member subject to forfeiture of membership. Membership in the association was prescribed by rules and dependent on conditions, one of which was the carrying of at least $3,000 worth of stock, and whether applicants were admitted was a matter for the arbitrary decision of the association. In an action by a firm of dealers in tiles, mantels and grates, in San Francisco, whose members had never been asked to join the association and who had never applied for admission therein, and which did not always carry $3,000 worth of stock, to recover damages under § 7 of the Anti-Trust Act of July 2, 1890: *Held*, that although the sales of unset tiles were within the State of California and although such sales constituted a very small portion of the trade involved, agreement of manufacturers without the State not to sell to any one but members was part of a scheme which included the enhancement of the price of unset tiles by the dealers within the State and that the whole thing was so bound together that the transactions within the State were inseparable and became a part of a purpose which when carried out amounted to, and was, a combination in restraint of interstate trade and commerce (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, followed; *Hopkins* v. *United States*, 171 U. S. 578; *Anderson* v. *United States*, 171 U. S. 604, distinguished). *Held* that the association constituted and amounted to an agreement or combination in restraint of trade within the meaning of the act of July 2, 1890, and that the parties aggrieved were entitled to recover threefold the damages found by the jury. *Held* that the amount of attorney's fees allowed as costs under the act is within the discretion of the trial court and as such discretion is reasonably exercised this court will not disturb the amount awarded. *Montague* v. *Lowry*, 38.

2. *Merger of railroads to prevent competition—Power of Federal courts to enjoin acts of—Application to railway companies of Anti-Trust Act of* 1890.

Stockholders of the Great Northern and Northern Pacific Railway companies —corporations having competing and substantially parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean and Puget Sound—combined and conceived the scheme of organizing a corporation, under the laws of New Jersey, which should hold the shares of the stock of the constituent companies, such shareholders, in lieu of their shares in those companies, to receive, upon an agreed basis of value, shares in the holding corporation. Pursuant to such combination the Northern Securities Company was organized as the holding corporation through which that scheme should be executed; and under that scheme such holding corporation became the holder—more properly speaking, the custodian—of more than nine-tenths of the stock of the Northern Pacific, and more than three-fourths of the stock of the Great Northern, the stockholders of the companies, who delivered their stock, receiving, upon the agreed basis, shares of stock in the holding corporation. *Held*, that, necessarily, the constituent companies ceased, under this arrangement, to be in active competition for

trade and commerce along their respective lines, and became, practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. *Held*, that the arrangement was an illegal combination in restraint of interstate commerce and fell within the prohibitions and provisions of the act of July 2, 1890, and it was within the power of the Circuit Court, in an action, brought by the Attorney General of the United States after the completion of the transfer of such stock to it, to enjoin the holding company from voting such stock and from exercising any control whatever over the acts and doings of the railroad companies, and also to enjoin the railroad companies from paying any dividends to the holding corporation on any of their stock held by it. *Held*, that, although cases should not be brought within a statute containing criminal provisions that are not clearly embraced by it, the court should not by narrow, technical or forced construction of words exclude cases from it that are obviously within its provisions and while the act of July 2, 1890, contains criminal provisions, the Federal court has power under § 4 of the act in a suit in equity to prevent and restrain violations of the act, and may mould its decree so as to accomplish practical results such as law and justice demand. *Northern Securities Co.* v. *United States*, 197.

See ANTI-TRUST ACT.

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See ANTI-TRUST ACT;
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CONSPIRACIES.

See ANTI-TRUST ACT;
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CONSTITUTIONAL LAW.

1. *Contracts within impairment clause—Provisions of state railway law.* Provisions in the railway law of Michigan of 1873, for the creation of a new

corporation upon the reorganization of a railroad by the purchaser at a foreclosure sale, did not constitute a contract within the impairment clause of the Constitution of the United States (*New York* v. *Cook*, 148 U. S. 397). *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, 17.

2. *Contract clause—Acts of railway which do not constitute contract with State.* The mere filing of a map and profile, and the payment of the regular incorporation tax, by a company, organized under the general railroad law of 1850 of New York, but which did not obtain the consents of municipal authorities or of abutting property owners or substituted consent of the Supreme Court, or acquire any property by condemnation, did not create a contract with the State for the exclusive use of the space included in the map and profile, and a subsequent act of the State authorizing the construction of a railroad partly over the same route, does not violate the impairment of contract clause of the Constitution of the United States. *Underground Railroad* v. *City of New York*, 416.

3. *Contract clause—Change of decision in state court not sufficient to invoke.* The impairment of contract clause of the Federal Constitution cannot be invoked against what is merely a change of decision in the state court, but only by reason of a statute enacted subsequent to the alleged contract and which has been upheld or effect given it by the state court. *National Mutual B. & L. Assn.* v. *Brahan*, 635.

4. *Contract clause—Effect of state statute permitting insurance company to change its plan of business.* An insurance association organized on the assessment plan, with the consent of a majority of the policy holders and the approval of the state superintendent of insurance changed its business from the assessment to the regular premium basis under a state law permitting the change, and providing that nothing in it should impair the obligation of any contract; the original articles provided for their amendment except as to one article which was not altered or affected by the change. In an action brought by two dissatisfied holders of policies issued on the assessment basis to have the company wound up and its assets distributed on the ground that their original contract was impaired by reason of the change permitted by the state statute. *Held*, that it is not every change in the charter of a corporation that will work such a departure from the purposes of its creation as to forfeit obligations incurred to it, or prevent its carrying on the modified business. *Held*, that there was no vested right in a policy holder to have the original plan continued, that constituted a contract, nor did the state statute impair or operate to impair the obligation of any contract, within the meaning of the impairment clause of the constitution. *Wright* v. *Minnesota Mutual Life Ins. Co.*, 657.

5. *Due process of law—State statute requiring erection of stations by railroads not a denial of right.* Chapter 270, April 13, 1901, General Laws of Minnesota, requiring the erec-

tion and maintenance of depots by railroad companies on the order of the Railroad and Warehouse Commission under the conditions therein stated in that act, does not deny a railroad company the right to reasonably manage or control property or arbitrarily take its property without its consent, or without compensation or due process of law, and is not repugnant to the Constitution of the United States. *Minn. & St. Louis R. R. Co.* v. *Minnesota*, 53.

6. *Due process of law—Proceedings by State to enforce lien for taxes.*

Where the State seeks directly or by authorization to others to sell land for taxes upon proceedings to enforce a lien for the payment thereof, and the owner is unknown, it may proceed directly against the land within the jurisdiction of the court, and a notice which permits all interested, who are "so minded," to ascertain that it is to be subjected to sale to answer for taxes, and to appear and be heard, whether to be found within the jurisdiction or not, is due process of law within the Fourteenth Amendment to the Constitution. The statute of Nebraska, Laws, 1875, February 19, p. 107, for the enforcement of liens for taxes by sale of the property is not repugnant to the due process clause of the Constitution because in certain cases it permits, under the provisions prescribed in the statute, a proceeding *in rem* against the land. *Leigh* v. *Green*, 79.

7. *Due process of law—Liberty of contract—Ohio mechanics' lien law not repugnant to Constitutional provisions.*

For the reasons stated in the opinion of the Circuit Court of Appeals, 86 Fed. Rep. 371, §§ 3184, 3185, of the Revised Statutes of Ohio relating to the filing and enforcement of mechanics' liens, do not deprive the owner of his property without due process of law nor unreasonably interfere with his liberty of contract and are not in these or other respects repugnant to the constitution of that State or the Constitution of the United States. *Great Southern Hotel Co.* v. *Jones*, 532.

8. *Due process of law—Contracts—Private waterworks company affected by legislation empowering city to own.*

Where the charter of a water company is not exclusive, and is subject to repeal, alteration or amendment at the will of the legislature no deprivation of property without due process of law or impairment of the obligation of a contract can arise from an act of the legislature empowering the city to erect its own waterworks. Where the legislature of a State authorizes a city to erect its own waterworks but on the condition that it purchase the plant of a company then supplying it, at a valuation to be fixed by judicial proceedings as provided in the act, and the water company institutes proceedings under the act, it cannot thereafter claim that because certain incorporeal rights, franchises and possible future profits were not allowed for in fixing the valuation, that its property was taken without due process of law, and, changing its position, cause its voluntary acceptance to become an involuntary one in order to assail the constitutionality of the legislation in question. *Newburyport Water Co.* v. *Newburyport*, 561.

9. *Elections—Right to vote—Qualifications of electors—Validity of Maryland election law.*

While the privilege to vote may not be abridged by a State on account of race, color and previous condition of servitude, the privilege is not given by the Federal Constitution or by any of its amendments nor is it a privilege springing from citizenship of the United States (*Minor* v. *Happersett*, 21 Wall. 162). While the right to vote for members of Congress is not derived exclusively from the law of the State in which they are chosen but has its foundation in the Constitution and laws of the United States, the elector must be one entitled to vote under the state statute. An act of the legislature of a State providing that all persons who shall thereafter remove into the State from any other State, District or Territory, shall make declaration of their intent to become citizens and residents of the State a year before they have the right to be registered as voters, is not violative of the Federal Constitution as against a citizen of another State moving into the enacting State after the passage of the act. *Pope* v. *Williams*, 621.

10. *Equal protection of law—Right not denied by state law relative to change of venue in case of certain corporations.*

The Fourteenth Amendment safeguards fundamental rights and not the mere form which a State may see proper to designate for their enforcement and protection; and where such rights are equally protected and preserved they cannot be said to be denied because of the forum in which the State deems it best to provide for a trial. The mere direction of a state law that the venue of a cause under given circumstances shall be transferred does not violate the equal protection of the laws where the laws are equally administered in both forums. Section 5030, Revised Statutes of Ohio, providing for a change of venue under certain conditions, where a corporation having more than fifty stockholders is a party, is not repugnant to the provisions of the Fourteenth Amendment. *Cincinnati Street Ry. Co.* v. *Snell*, 30.

11. *Full faith and credit clause—Violation not effected by instruction to find according to local law on contract providing for construction according to laws of another State.*

Where a corporation has become localized in a State and accepted the laws of the State as a condition for doing business there, it cannot abrogate those laws by attempting to make contract stipulations, and there is no violation of the full faith and credit clause in instructing the jury to find according to the local law and not according to the laws of another State, notwithstanding a clause in the contract that it should be construed according to the laws of the latter. *National Mutual B. & L. Assn.* v. *Brahan*, 635.

12. *State statute not unconstitutional because of discrimination in favor of vote for prohibition.*

The provisions in articles 3384–3394, Revised Statutes, and articles 402–407, Penal Code of Texas, as to the submission to the people of the question of prohibiting or allowing the sale of liquor in different sections of the

State, are not contrary to any of the provisions of the Fourteenth Amendment of the Constitution of the United States, because they discriminate in favor of a vote for prohibition. *Rippey* v. *Texas*, 504.

See ANTI-TRUST ACT, A 6; COMBINATIONS IN RESTRAINT OF TRADE; FEDERAL QUESTION, 4; JURISDICTION, C 4.

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CONTRACTS.

Insurance contract—Lex loci contractus—Extra-territorial effect of state law—Incorporation of state law in contract; waiver of provisions of.

The following propositions have been established by prior decisions of this court in regard to the construction of policies of life insurance issued in other States by New York companies:

1. The State where the application is made, the first premium paid by and the policy delivered to the assured, is the place of contract.

2. The statutory provision of the State of New York in reference to forfeiture has no extra-territorial effect, and does not of itself apply to contracts made by a New York company outside of the State.

3. Parties contracting outside of a State may by agreement incorporate into the contract the laws of that State and make its provisions controlling on both parties, provided such provisions do not conflict with the law or public policy of the State in which the contract is made.

Where a contract contains a stipulation that it shall be construed to have been made in New York without referring to the law of that State requiring notice, and also contains another stipulation by which the assured expressly waives all further notice required by any statute, the latter stipulation is paramount and to that extent limits the applicability of the New York law in reference to notice to policy holders. *Mutual Life Insurance Co.* v. *Hill*, 551.

See ANTI-TRUST ACT; COMBINATIONS IN RESTRAINT OF TRADE; CONSTITUTIONAL LAW, 1, 2, 3, 4, 7, 8, 11; EVIDENCE, 2; FEDERAL QUESTION, 4; INDIANS, 2; JURISDICTION, C 4.

CORPORATIONS.

Estoppel to repudiate burdens imposed by statute under which created.

Purchasers of a railroad, not having any right to demand to be incorporated under the laws of a State, but voluntarily accepting the privileges and benefits of an incorporation law, are bound by the provisions of existing laws regulating rates of fare and are, as well as the corporation formed, estopped from repudiating the burdens attached by the statute to the privilege of becoming an incorporation. *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, 17.

See ANTI-TRUST ACT; COMBINATIONS IN RESTRAINT OF TRADE, 2; CONSTITUTIONAL LAW, 1, 4, 10, 11; FEDERAL QUESTION, 3; LOCAL LAW (N. Y.), (N. C.).

COURTS.

1. *Federal—Action in, to restrain holders of judgments of state courts.*

A purchaser of property sold under a decree of foreclosure in a Federal court, in cases where the Federal court by its decree retains jurisdiction to settle all liens and claims upon the property and who is in possession of the property under an order confirming the sale, can maintain an action in the same court to restrain the holders of judgments obtained in the state courts against the former owner, in actions to which the purchaser was not a party, from levying upon and selling the property described in the decree of foreclosure and the order confirming the sale thereunder. *Julian* v. *Central Trust Co.*, 93.

2. *Federal—Jurisdiction to administer laws of State independent of state court's decisions.*

The object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different States was to institute independent tribunals which would be unaffected by local prejudices and sectional views, and it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication (*Burgess* v. *Seligman*, 107 U. S. 20). Without qualifying the principles that, in all cases, it is the duty of the Federal court to lean to an agreement with the state court, where the issue relates to matters depending upon the construction of the Constitution or laws of the State, and that the Federal court is bound to accept decisions of the state courts construing state statutes rendered prior to the making of the contract on which the cause of action is based, such duty does not exist in regard to decisions of the state court rendered after the cause of action has arisen, although before the action itself was commenced, when the Federal court in the exercise of its independent judgment reaches a different conclusion from the state court. *Great Southern Hotel Co.* v. *Jones*, 532.

3. *Federal—May restrain proceedings in state court affecting its jurisdiction.*

Where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding § 720, Rev. Stat., restrain

all proceedings in a state court which have the effect of defeating or impairing its jurisdiction. *Julian* v. *Central Trust Co.*, 93.

4. *State court's decision not conclusive on this court in determining rights under decree of Federal court.*

While the decision of the highest court of a State is entitled to the highest respect and consideration from, it is not conclusive upon, this court in determining rights secured by a purchaser under a decree of foreclosure in a Federal court at a sale made prior to the rendition of such decision. *Ib.*

5. *Power to amend or correct record.*

The inherent power which exists in a court to amend its records, and correct mistakes and supply defects and omissions therein, is not a power to create a new record but presupposes an existing record susceptible of correction or amendment. *Gagnon* v. *United States*, 451.

See COMBINATIONS IN RESTRAINT OF TRADE; JURISDICTION; PRACTICE; PUBLIC LANDS, 1; WILLS.

DEFENCES.

See PUBLIC LANDS, 1.

DISTILLED SPIRITS.

See TAXATION, 3.

DISTRICT OF COLUMBIA.

See CARRIERS (*Boering* v. *Chesapeake Beach Ry. Co.*, 442); WILLS (*Eaton* v. *Brown*, 411).

DIVIDED COURT.

See PRACTICE, 2.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 5, 6, 7, 8; JURISDICTION, C 3.

EJECTMENT.

See PUBLIC LANDS, 1.

ELECTIONS.

See CONSTITUTIONAL LAW, 9.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 10.

EQUITY.

See COMBINATIONS IN RESTRAINT OF TRADE, 2; PUBLIC LANDS, 1.

ESTOPPEL.

See CONSTITUTIONAL LAW, 8;
CORPORATIONS.

EVIDENCE.

1. *Of judgment—Statement by United States commissioner.*

A written statement by a United States Commissioner that a Chinese person of a certain name was brought before him and was adjudged to have the right to remain in the United States by reason of being a citizen is not evidence of a judgment. *Ah How* v. *United States*, 65.

2. *Official reports and certificates as—Sufficiency to make prima facie case in action on bond for non-performance of contract to carry mails.*

Official reports and certificates made contemporaneously with the facts stated, and in the regular course of official duty, by an officer having personal knowledge of them, are admissible for the purpose of proving such facts. On the trial of an action brought by the United States against the sureti s on a bond to secure the performance of a contract to carry mail, the Government makes a *prima facie* case on producing a certified copy from the books of the Auditor for the Post Office Department of the contractor as a failing contractor, and showing the amount of his indebtedness, telegrams from the local postmaster to the Postmaster General to the effect that the contractor had abandoned the service, and the finding of the Postmaster General that the contractor was a failing contractor. *United States* v. *McCoy*, 593.

See STATUTES, A 1.

FEES.

See CLERKS OF COURT.

FEDERAL QUESTION.

1. *Determination on merits—Effect of raising Federal question in answer.*

Where the constitutionality of a state statute is directly attacked in the answer, the Federal question has been so raised in the court below that it will be considered on the merits and the motion to dismiss denied. *Minn. & St. Louis R. R. Co.* v. *Minnesota*, 53.

2. *Insufficiency of—Setting up, below, provision of Constitution which has no application.*

Federal questions cannot be raised in this court which did not arise below, and where no Federal question is otherwise raised, and the only provision of the Constitution referred to in the assignment of errors in the state court has no application, an averment of its violation creates no real Federal question and the writ of error will be dismissed. *Winous Point Shooting Club* v. *Caspersen*, 189.

3. *No constitutional question involved in contention based on state law relative to service of process on foreign corporation.*

The contention that under the laws of a State it was essential to the legality

of service upon an alleged agent of a corporation that the corporation should have been doing business within the State and the agent residing within the county named as his place of residence in the appointment does not require the construction of the Constitution of the United States but simply calls for the construction of the constitution and laws of the State or the application of the principles of general law. *Cosmopolitan Mining Co.* v. *Walsh*, 460.

4. *State court determination involving consideration of contract right.*
Where the determination by the state court of an alleged ground of estoppel embodied in the ground of demurrer to an answer necessarily involves a consideration of the claim set up in the answer of a contract protected by the Constitution of the United States, a Federal question arises on the record which gives this court jurisdiction. *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, 17.

5. *Time for raising in trial court.*
Where the plaintiff in error, defendant below, after filing a general issue moves to amend, claiming rights under the Fourteenth Amendment, and on the trial asks an instruction based on his rights thereunder, he is entitled to the instruction if the rights asserted actually exist, and the Federal question is raised in time, and the writ of error will not be dismissed. *National Mutual B. & L. Assn.* v. *Brahan*, 635.

See JURISDICTION.

FOREIGN CORPORATIONS.
See LOCAL LAW (N. Y.).

FULL FAITH AND CREDIT.
See CONSTITUTIONAL LAW, 11.

HOMESTEADS.
See PUBLIC LANDS, 2.

IMMIGRATION.
See CHINESE.

IMPAIRMENT OF CONTRACTS.
See CONSTITUTIONAL LAW, 1, 2, 3, 4, 7, 8.

INDIANS.

1. *Rights of Chickasaw Freedmen in lands and funds under treaty of* 1866.
The provisions of the treaty of July 10, 1866, between the United States and the Chickasaw and Choctaw Indians in regard to the Chickasaw freedmen were not complied with, either by the Indians who did not confer any rights on the freedmen, or by the United States which did not remove any of the freedmen from the territory of the Indians. The freedmen were never adopted into the Chickasaw nation, or acquired any rights dependent on such adoption, and are not entitled to

allotments in Choctaw and Chickasaw lands as members thereof; and not having removed from the territory are not entitled to any beneficial interest in the $300,000 fund referred to in the treaty, which in case they were not adopted into the Chickasaw nation was to be held in trust for such of the freedmen, and only such, as removed from the territory. Under the subsequent agreement of 1902, and not independently thereof, the freedmen became entitled to land equal to forty acres of the average land of the Choctaws and Chickasaws, the Indians to be compensated therefor by the United States, Congress having by the agreement of 1902 provided for them in this manner in case it should be, as it is, determined in this case that they are not entitled otherwise to allotments in the Choctaw and Chickasaw lands. *The Chickasaw Freedmen*, 115.

2. *Rights of Delaware Indians in Cherokee lands and funds under agreement of April* 8, 1867.

In a suit brought under § 25 of the act of June 28, 1898, 30 Stat. 495, by the Delaware Indians residing in the Cherokee Nation for the purpose of determining their rights in and to the lands and funds of the Cherokee Nation under their contract and agreement with the Cherokee Nation of April 8, 1867.

Held that the registered Delawares acquired in the 157,000 acres set off to them east of the ninety-sixth meridian only the right of occupancy during life with a right upon allotment of the lands to not less than 160 acres together with their improvements, and their children and descendants took only the rights of other citizens of the Cherokee Nation as the same are regulated by law.

Held that the Cherokee Nation has been recognized as a distinct political community, *Cherokee Fund Cases*, 117 U. S. 288, having its ow constitution and laws and power to administer the same, and it was not the purpose of the enabling act under which this suit was brought to revise the political action of the administration of the Nation in admitting persons to citizenship therein under authority of provisions of its constitution which were in force when the Delawares were consolidated with the Cherokee Nation.

Held that the enabling act contemplated a judgment of the court, determining the rights of the Delawares and Cherokees in the lands and funds of the Cherokee Nation, in such wise as to enable a division to be made conformable to the rights of the parties as judicially determined.

Held that the bill should not be dismissed because the Delawares have not proved their asserted claims but a decree should be entered finding the registered Delawares entitled to participate equally with Cherokee citizens of Cherokee blood in the allotment of lands. *Delaware Indians* v. *Cherokee Nation*, 127.

INJUNCTION.

See COMBINATIONS IN RESTRAINT OF TRADE, 2;
COURTS, 1, 3;
TAXATION, 1.

INSTRUCTION TO JURY.

See FEDERAL QUESTION, 5.

INTERSTATE COMMERCE.

See ANTI-TRUST ACT;
COMBINATIONS IN RESTRAINT OF TRADE;
TAXATION, 2.

INSURANCE.

See CONSTITUTIONAL LAW, 4;
CONTRACTS.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 12;
STATES.

JUDGMENTS AND DECREES.

1. *Collateral attack of order entered nunc pro tunc where no record exists.*

An order, entered *nunc pro tunc* thirty-three years after an unrecorded judgment naturalizing an alien is alleged to have been rendered, may be attacked collaterally on the ground that the court had no jurisdiction to enter such an order, when no entry or memorandum appears in the record or files at the time alleged for the original entry of the judgment. In the absence of jurisdiction to make such an order, the fact that notice of the application therefor was given to the Attorney General does not give the court jurisdiction. *Gagnon* v. *United States*, 451.

2. *Reversal by appellate court—Scope of adjudication by.*

A judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided. *Mutual Life Insurance Co.* v. *Hill*, 551.

See BANKRUPTCY, 1; EVIDENCE, 1;
COURTS, 1; PRACTICE, 1, 2.

JURISDICTION.

A. OF THIS COURT.

1. *Direct appeal from Circuit Court—What constitutes a suit arising under Constitution and laws of United States.*

Where a suit does not really and substantially involve a dispute or controversy as to effect or construction of the Constitution and laws of the United States upon the determination whereof the result depends, it is not a suit under such Constitution and laws within the meaning of the fifth section of the act of March 3, 1891, 26 Stat. 827, and the jurisdiction of this court cannot be maintained of a direct appeal from the Circuit Court. Actions brought against the United States in the Circuit Court under the act of August 7, 1882, 22 Stat. 342, for allotments of land in which both the complainants and the United States rely upon the construction of the act of 1882, and the construction of various treaties between the United States and Indian tribes is not sub-

stantially or in any other than a merely incidental or remote manner drawn in question, do not involve the construction of such treaties within the meaning of section 5 of the act of 1891, and direct appeals to this court will be dismissed. *Sloan* v. *United States*, 614.

2. *Review of Federal question first raised on motion for rehearing in highest court of State.*

Where the claim that a state statute is unconstitutional is first made on a motion for rehearing in the highest court of the State, and the motion is entertained, and the Federal question decided against the contention of the plaintiff in error, the question is reviewable in this court (*Mallett* v. *North Carolina*, 181 U. S. 589). *Leigh* v. *Green*, 79.

3. *Review on merits under Judiciary Act of* 1891, *precluded.*

If a case does not really involve the construction or application of the Constitution of the United States in the sense in which that phrase is employed in the Judiciary Act of 1891, this court is precluded from examining the merits on writ of error. Whether the case should go to the Circuit Court of Appeals or be brought directly to this court must be determined from the record and there is no authority for the trial judge making a certificate that the application and construction of the Constitution of the United States were involved in the action. *Cosmopolitan Mining Co.* v. *Walsh*, 460.

4. *State court's decision on other than Federal grounds not reviewable.*

The right of this court to review the decisions of the highest court of a State is, even in cases involving the gravity of statements charging violations by the provisions of a state constitution of the Fifteenth Amendment, circumscribed by the rules established by law, and in every case coming to the court on writ of error or appeal the question of jurisdiction must be answered, whether propounded by counsel or not. Where the state court decides the case for reasons independent of the Federal right claimed its action is not reviewable on writ of error by this court. A negro citizen of Alabama and who had previously enjoyed the right to vote, and who had complied with all reasonable requirements of the board of registrars, was refused the right to vote for, as he alleged, no reason other than his race and color, the members of the board having been appointed and having acted under the provisions of the state constitution of 1901. He sued the members of the board for damages for such refusal in an action, and applied for a writ of mandamus to compel them to register him, alleging in both proceedings the denial of his rights under the Federal Constitution and that the provisions of the state constitution were repugnant to the Fifteenth Amendment. The complaint was dismissed on demurrer and the writ refused, the highest court of the State holding that if the provisions of the state constitution were repugnant to the Fifteenth Amendment they were void and that the board of registrars appointed thereunder had no existence and no power to act and would not be liable for a refusal to register him, and could not be compelled by writ of mandamus to do so; that if the provisions were constitutional the registrars had acted properly thereunder and their

action was not reviewable by the courts. *Held* that the writs of error to this court should be dismissed as such decisions do not involve the adjudication against the plaintiff in error of a right claimed under the Federal Constitution but deny the relief demanded on grounds wholly independent thereof. *Giles* v. *Teasley*, 146.

See FEDERAL QUESTION;
JURISDICTION, C 2.

B. OF CIRCUIT COURTS OF APPEALS.

See JURISDICTION, A 3.

C. OF CIRCUIT COURTS.

1. *Mere averment of Federal question not sufficient.*

Jurisdiction of the Circuit Court does not arise simply because an averment is made that the case is one arising under the Constitution or laws of the United States if it plainly appears that such averment is not real or substantial but is without color of merit. *Newburyport Water Co.* v. *Newburyport*, 561.

2. *Question of, which may be certified direct to this court, defined.*

The question of jurisdiction which the act of March 3, 1891, provides may be certified direct to this court must be one involving the jurisdiction of the Circuit Court as a Federal Court and not in respect of its general authority as a judicial tribunal (*Louisville Trust Co.* v. *Knott*, 191 U. S. 225). *Bache* v. *Hunt*, 523.

3. *Want of jurisdiction where alleged unconstitutional deprivation of property is without authority of State.*

Where the jurisdiction of the Circuit Court is invoked on the ground of deprivation of property without due process of law in violation of the Fourteenth Amendment, it must appear at the outset that the alleged deprivation was by act of the State. And where it appeared on the face of plaintiff's own statement of his case that the act complained of was not only unauthorized, but was forbidden, by the state legislation in question, the Circuit Court rightly declined to proceed further and dismissed the suit. *Barney* v. *City of New York*, 430; *Huntington* v. *City of New York*, 441.

4. *Want of jurisdiction where sole ground is constitutional question not established by facts.*

Where the sole ground on which the jurisdiction of the Circuit Court is invoked is that the case arises under the impairment of contract clause of the Constitution of the United States, and the facts set up by complainant are, as matter of law, wholly inadequate to establish any contract rights as between them and the State, no dispute or controversy arises in respect to an unwarranted invasion of such rights and the bill should be dismissed for want of jurisdiction. *Underground Railroad* v. *City of New York*, 416.

See PRACTICE, 4.

D. Of State Courts.

Finality of decision.
That a statute does not conflict with the constitution of a State is settled by the decision of its highest court. *Carstairs* v. *Cochran*, 10.

E. Of Federal Courts Generally.

See Combinations in Restraint of Trade, 2; Courts, 1, 2, 3; Judgments and Decrees, 1.

LAND GRANTS.

See Public Lands, 1, 3.

LEX LOCI CONTRACTUS.

See Contracts.

LIENS.

See Constitutional Law, 6; National Banks.

LIMITATIONS.

See Local Law (N. Y.).

LIQUORS.

See Constitutional Law, 12. States; Taxation, 3.

LOCAL LAW.

Alabama. Constitution of 1901 (see Jurisdiction, A 4). *Giles* v. *Teasley*, 146.

Colorado. Service of process (see Federal Question, 3). *Cosmopolitan Mining Co.* v. *Walsh*, 460.

Maryland. Elections (see Constitutional Law, 9). *Pope* v. *Williams*, 621.

Michigan. Railway law of 1873 (see Constitutionol Law, 1). *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, 17.

Minnesota. Railroads, chap. 270, General Laws (see Constitutional Law, 5). *Minn. & St. Louis R. R. Co.* v. *Minnesota*, 53.

Nebraska. Enforcement of liens for taxes, Laws, 1875, February 19, p. 107 (see Constitutional Law, 6). *Leigh* v. *Green*, 79.

New York. Limitations of actions—Provisions of Code of Civil Procedure—Foreign corporations. The provisions of § 394 of the New York Code of Civil Procedure limiting the time within which an action may be brought against a director or stockholder of a moneyed corporation or banking association to recover a penalty or forfeiture imposed, or to enforce a liability created by the common law or by statute, extends to actions against directors and stockholders of foreign corporations. Whether a foreign corporation is or is not a moneyed corporation within the meaning of § 394 of the New York Code of Civil Procedure will be determined

for the purpose of construing the New York statute of limitations by reference to the meaning given to the term by the legislature and courts of New York rather than of the State under whose laws the corporation is organized. Although the double liability of a stockholder of a moneyed corporation may be contractual in its nature if it is statutory in origin it is a liability created by statute within the meaning of § 394 of the New York Code of Civil Procedure. *Platt* v. *Wilmot*, 602.

New York. Life insurance contracts (see Contracts). *Mutual Insurance Co.* v. *Hill*, 551.

North Carolina. Railroad—Sale under foreclosure. Under the laws of North Carolina, and the decisions of the highest court of that State rendered prior to 1894, there was nothing to prevent property of a railroad company sold under foreclosure passing to the purchaser free from any obligation for debts of the former owner arising thereafter, notwithstanding the purchaser was not a domestic railroad corporation. *Julian* v. *Central Trust Co.*, 93.

Ohio. Change of venue, sec. 5030, Rev. Stat. (see Constitutional Law, 10). *Cincinnati Street Ry. Co.* v. *Snell*, 30. Mechanics' lien law of 1894, secs. 3184, 3185, Rev. Stat. (see Constitutional Law, 7). *Great Southern Hotel Co.* v. *Jones*, 532.

Texas. Local option. Secs. 3384–3394, Rev. Stat. and Arts. 402-407, Penal Code (see Constitutional Law, 12). *Rippey* v. *Texas*, 504.

MAILS.

See Evidence, 2.

MEANDER LINES.

See Public Lands, 1.

MECHANICS' LIENS.

See Constitutional Law, 7.

MERGER.

See Combinations in Restraint of Trade, 2.

MONOPOLIES.

See Anti-Trust Act;
Combinations in Restraint of Trade.

MONUMENTS.

See Public Lands, 1.

MORTGAGE.

See Courts, 1;
Local Law (N. C.);
Public Lands, 4.

NATIONAL BANKS.

Stock as security for loan where no delivery—Power of bank to withhold transfer of stock of debtor repealed—Notice of lien by bank not effected by void condition in certificate.

The mere statement by a borrower from a national bank, made to the president when the loan is obtained, that his stock in the bank is security for the loan, there being no delivery of the certificates, does not amount to a pledge of the stock, nor does it give the bank any lien thereon as against one subsequently loaning on the stock in good faith and receiving the certificates as collateral. The provisions of section 36 of the National Banking Act of 1863, empowering the withholding of transfer of the stock of a shareholder indebted to the bank, were not only omitted from the National Banking Act of 1864 but were expressly repealed thereby. A provision in the charter and by-laws, and a condition in a certificate of stock, of a national bank, forbidding the transfer of stock where the stockholder is indebted to the bank, is void as repugnant to the National Banking Act and in conflict with the public policy embodied in that act, and creates no lien which the bank can enforce by refusing to transfer the stock to a holder for value in good faith. A condition in a certificate of stock of a national bank which is void under the National Banking Act will not operate as a notice to one loaning on the stock as collateral, that it is subject to a lien of the bank which will affect the right of the pledgee of having the stock transferred to him. *Third National Bank* v. *Buffalo German Ins. Co.*, 581.

NATURAL MONUMENTS.

See PUBLIC LANDS, 1.

NEGROES.

See JURISDICTION, A 4.

NOTICE.

See NATIONAL BANKS.

OATHS.

See CLERKS OF COURT.

OFFICIAL RECORDS.

See EVIDENCE, 2.

PASS.

See CARRIERS.

PATENT FOR LAND.

See PUBLIC LANDS, 1, 3.

PLEADING.

See FEDERAL QUESTION, 1, 4;
INDIANS, 2.

PLEDGE.

See NATIONAL BANKS.

POLICE POWER.

See STATES.

POWERS OF CONGRESS.

See ANTI-TRUST ACT;
PUBLIC LANDS, 3.

PRACTICE.

1. *Actual and not moot controversies decided—Dismissal of appeal where judgment below complied with.*

It is the duty of this court to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions of law. When it appears either on the record, or by extrinsic evidence, that the judgment sought to be reviewed has, pending the appeal, and without fault of the defendant in error, been complied with, this court will not proceed to final judgment but will dismiss the appeal or writ of error. *American Book Co.* v. *Kansas*, 49.

2. *Affirmance, by division, by highest state court, conclusive as to facts as found by trial court.*

When the highest court of a State affirms a judgment although by a divided court it constitutes an affirmance of the finding of the trial court which then, like the verdict of a jury, is conclusive as to the facts upon this court. *Minn. & St. Louis R. R. Co.* v. *Minnesota*, 53.

3. *Finding of facts by state court binding.*

On writ of error the finding of facts in the Supreme Court of the State is binding upon, and will be the basis of, the decision of this court. *Adams* v. *Church*, 510.

4. *Reversal of decree of Circuit Court where dismissal sought for lack of constitutional questions.*

Where the contention as to want of jurisdiction of the Circuit Court, arising from the alleged absence of constitutional questions, is well founded, it is the duty of this court not simply to dismiss the appeal, but to reverse the decree at appellant's costs with instructions to the Circuit Court to dismiss the bill for want of jurisdiction. *Newburyport Water Co.* v. *Newburyport*, 561.

5. *Right of this court to review decisions of state courts.*

The right of this court to review the decisions of the highest court of a State

is, even in cases involving the gravity of statements charging violations by the provisions of a state constitution of the Fifteenth Amendment, circumscribed by the rules established by law, and in every case coming to the court on writ of error or appeal the question of jurisdiction must be answered, whether propounded by counsel or not. *Giles* v. *Teasley*, 146.

6. *State court followed as to validity of state statute.*

This court follows the state court as to the validity of a state statute under the constitution of the State, and the question here is whether the State constitution in authorizing the law encounters the Constitution of the United States. *Rippey* v. *Texas*, 504.

See CARRIERS; COURTS, 4; FEDERAL QUESTION, 1, 2, 5; JUDGMENTS AND DECREES, 2; TAXATION, 1.

PRESUMPTION.

See PUBLIC LANDS, 5.

PROCESS.

See FEDERAL QUESTION, 3.

PUBLIC LANDS.

1. *Boundaries—General rule as to natural monuments not absolute—Reformation of patent, aid of equity not necessary.*

The general rule that in matters of boundaries natural monuments or objects will control courses and distances is not absolute and inexorable. When the plat of a government survey is the result of, and founded upon a gross fraud, and there is actually no lake near the spot indicated thereon, and adopting the lake as it is actually located as a natural monument would increase the patentee's land fourfold, the false meander line can be regarded as a boundary, instead of a true meander line, and the patentee confined to the lots correctly described within the lines and distances of the plat of survey and of the field notes which he actually bought and paid for. Where the patentee has in fact received and is in possession of all the land actually described in the lines and distances and is seeking for more on the theory that his plat of survey carries him to a natural boundary, a denial of that right on the ground that the plat was fraudulent and that the natural boundary did not actually exist anywhere near the spot indicated, is a legal defence which can be set up by defendant in an action in ejectment, and it is not necessary to seek the aid of a court in equity to obtain a reformation of the patent. *Security Land & Exploration Co.* v. *Burns*, 167.

2. *Homestead entry—Effect of prima facie valid entry to withdraw lands from public domain.*

A homestead entry which is *prima facie* valid, although made by one in fact disqualified to make the entry, removes the land temporarily out of the

public domain, and one who attempts to enter the land on the ground that the original entry was void, acquires no rights against one who initiates a contest in the land office and obtains a relinquishment in his favor from the original entryman. *Hodges* v. *Colcord*, 192.

3. *Northern Pacific Land Grant Acts; rights of railroad acquired under—Effect on power of disposition by Congress.*

The act of July 2, 1864, granting lands to the Northern Pacific Railroad Company did not take any lands out of the disposition of Congress until the line of the road was definitely located by maps duly required by the act, and it has been decided by this court that the Perham map of 1865 even if valid as a map of general route did not operate as a reservation. When Congress by resolution of May 31, 1870, made an additional grant to the Northern Pacific Railroad Company for a branch road to Puget Sound *via* the valley of the Columbia, the United States still had full title not reserved, granted, sold or otherwise appropriated to the lands of the new grant which fell within the lines of the former grant and on completion of the branch road the railroad company was entitled to a patent for such over-lap of said lands as it had earned. (*United States* v. *Oregon & Cal. R. R. Co.*, 176 U. S. 28, followed). *United States* v. *Northern Pacific R. R. Co.*, 1.

4. *Mortgagee as purchaser on foreclosure the assignee of owner within meaning of act of June* 16, 1880.

A mortgagee who has foreclosed his mortgage and purchased the property mortgaged at sheriff's sale under a decree of the court is an assignee of the owner of the land within section 2 of the act of June 16, 1880, 21 Stat. 287. *United States* v. *Commonwealth, etc., Trust Co.*, 651.

5. *Revesting of title in United States—Presumption of performance of duty by Secretary of the Interior.*

Where there is a finding by the Court of Claims that a relinquishment was made "as required by the rules and regulations of the Land Office," this Court will presume that the Secretary did his duty and received all receipts and whatever was necessary to revest title in the United States to the land cancelled. *Ib.*

See JURISDICTION, A 1;
STATUTES, A 2.

RAILROADS.

Duty to erect stations—Power of State to prescribe such duty.

To establish stations at proper places is the proper duty of a railroad company, and it is within the power of the States to make it *prima facie* a duty of the companies to establish them at all villages and boroughs on their respective lines. *Minn. & St. Louis R. R. Co.* v. *Minnesota*, 53.

See ANTI-TRUST ACT;
CARRIERS;
COMBINATIONS IN RESTRAINT OF TRADE, 2;
CONSTITUTIONAL LAW, 2, 5;
CORPORATIONS;
LOCAL LAW (N. C.);
PUBLIC LANDS, 3.

RECORDS.

See COURTS, 5;
EVIDENCE, 2;
JUDGMENTS AND DECREES, 1.

RESTRAINT OF TRADE.

See ANTI-TRUST ACT;
COMBINATIONS IN RESTRAINT OF TRADE.

SHERMAN ACT.

See ANTI-TRUST ACT;
COMBINATIONS IN RESTRAINT OF TRADE.

STATES.

Power over sale of intoxicating liquors.

A State has absolute power over the sale of intoxicating liquors and may prohibit it altogether, or conditionally, as it sees fit (*Mugler* v. *Kansas*, 123 U. S. 623). *Rippey* v. *Texas*, 504.

See ANTI-TRUST ACT, A 7; B 2;
CONSTITUTIONAL LAW, 2, 5, 10, 12;
LOCAL LAW;
RAILROADS;
TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Act of April* 29, 1902, c. 641, *relative to removal of Chinese.*

The act of April 29, 1902, c. 641, continuing all laws then in force "so far as the same are not inconsistent with treaty obligations," does not repeal § 3 of the act of May 5, 1892, putting the burden of proving their right to remain in this country, on Chinese arrested under the act. Neither does it repeal § 6 of the act requiring Chinese laborers who are entitled to remain in the United States to obtain a certificate of residence. *Ah How* v. *United States*, 65.

2. *Timber Culture Act of June* 14, 1878—*Alienation prior to final certificate.*

There is no prohibition in the Timber Culture Act of June 14, 1878, 20 Stat. 113, as there is in the Homestead Act, against an entryman who has in good faith acquired a holding under the act, alienating an interest in the lands prior to the issuing of the final certificate. *Adams* v. *Church*, 510.

See ANTI-TRUST ACT;
CHINESE;
COMBINATIONS IN RESTRAINT OF TRADE;
INDIANS, 2;
JURISDICTION, C 2;
PUBLIC LANDS, 3.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK.

See ANTI-TRUST ACT;
COMBINATIONS IN RESTRAINT OF TRADE;
NATIONAL BANKS.

STOCKHOLDERS.

See LOCAL LAW (N. Y.).

SURVEYS.

See PUBLIC LANDS, 1.

TAXATION.

1. *State assessment upon express companies of another State where valuation based on property located in other State.*

A state assessment upon an express company of another State proportioned to mileage is bad when it appears that the total valuation is made up principally from real and personal property, not necessarily used in the actual business of the company, and which is permanently located in the State where the company is incorporated. The transmission of such an assessment by a state board to the auditors of the several counties may be enjoined. Where the assessment is void as made, and a question is raised in the bill whether any assessment can be levied, an offer to give security to the satisfaction of the court for the payment of any sum ultimately found due is sufficient without a tender of any sum. *Fargo* v. *Hart*, 490.

2. *State may not tax privilege of carrying on interstate commerce, nor property outside of its jurisdiction.*

While a State can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce between the States, it cannot tax the privilege of carrying on such commerce, nor can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. *Ib.*

3. *State taxation of distilled spirits in bonded warehouses.*

Distilled spirits in bonded warehouses may be taxed and the warehouseman required to pay the tax notwithstanding the Federal statute under which they are stored permits them to remain in bond for several years and there is no provision in the state law for the recovery of interest on the taxes paid thereunder, and negotiable receipts have been issued for the goods. *Carstairs* v. *Cochran*, 10.

4. *State taxation of property having situs within.*

A State may tax private property having a *situs* within its territorial limits and may require the party in possession of the property to pay the taxes thereon. *Ib.*

See CONSTITUTIONAL LAW, 6.

TIMBER CULTURE ACT.

See STATUTES, A 2.

TRANSFER OF STOCK.
See NATIONAL BANKS.

TREATIES.
See INDIANS, 1.
JURISDICTION A, 1.

TRIAL.
See ANTI-TRUST ACT, A 1; COMBINATIONS IN RESTRAINT OF TRADE; CARRIERS; FEDERAL QUESTION, 5.

UNLAWFUL COMBINATIONS.
See ANTI-TRUST ACT;
COMBINATIONS IN RESTRAINT OF TRADE.

VENUE.
See CONSTITUTIONAL LAW, 10.

VERDICT.
See CARRIERS.

VOTERS.
See CONSTITUTIONAL LAW, 9.
JURISDICTION, A 4.

WAREHOUSEMEN.
See TAXATION, 3.

WILLS.
Conditional—Strict construction of language to express condition not favored. Courts do not incline to regard a will as conditional where it reasonably can be held that the testator was merely expressing his inducement to make it, although his language, if strictly construed, would express a condition. *Eaton* v. *Brown*, 411.