

INDEX.

ACCORD AND SATISFACTION.

See CONTRACTS.

ACTIONS.

In forma pauperis.

The Act of July 20, 1892, providing when a plaintiff may sue as a poor person, does not apply to appellate proceedings. Federal appellate courts have no power to permit prosecutions *in forma pauperis* in the absence of a statute. *Bradford v. Southern Ry. Co.*, 243.

See ADMIRALTY; EQUITY;
BANKRUPTCY, 3; JURISDICTION, A 3; C 3;
CONSTITUTIONAL LAW, 5; LACHES;
STATUTE OF LIMITATIONS.

ACTS OF CONGRESS.

- ARMY APPROPRIATIONS, Acts of May 26, 1900, and March 2, 1901 (see Navy Personnel Act): *United States v. Thomas*, 418.
- BANKRUPTCY, Act of 1898, section 17 (see Bankruptcy, 1, 2): *Bullis v. O'Beirne*, 606; *Birkett v. Columbia Bank*, 345. Act of 1898, section 17, par. 4, compared with section 33 of the act of 1867 (see Bankruptcy, 5): *Crawford v. Burke*, 176. Act of 1898, section 24b (see Jurisdiction, D): *Schweer v. Brown*, 171.
- IMPORTS, Rev. Stat. section 3082 (see Jurisdiction, A 4): *Amado v. United States*, 172.
- INDIAN DEPREDACTION ACT of March 3, 1891 (see Statute of Limitations): *United States v. Martinez*, 469.
- JUDICIARY ACT of March 3, 1891, section 5 (see Jurisdiction, A 1; D): *Schweer v. Brown*, 171.
- NATIONAL BANKS, Rev. Stat. sections 5197, 5198 (see National Banks): *Citizens' National Bank v. Donnell*, 369.
- NAVY, Rev. Stat. section 1571 (see Navy Personnel Act): *United States v. Thomas*, 418. Personnel Act of March 3, 1899. *Ib.*
- OLEOMARGARINE ACT of 1886, sections 2 and 8 as amended in 1902 (see Oleomargarine Act): *Cliff v. United States*, 159; section 11 as amended by act of 1902 (see Constitutional Law, 6): *Schick v. United States*, 65.
- PHILIPPINE ISLANDS, Act of July 1, 1902 (see Philippine Islands): *Kepner v. United States*, 100; *Dorr v. United States*, 138.
- PILOTAGE, Rev. Stat. sections 4237, 4444 (see Commerce): *Olsen v. Smith*, 332.
- PORTO RICO, Act of April 12, 1900, section 35 (see Jurisdiction, A 4): *Amado v. United States*, 172.

- PUBLIC LANDS, Acts of 1887, 24 Stat. 556, and 1896, 29 Stat. 42 (see Public Lands, 2): *United States v. Chicago, M. & St. P. Ry.*, 524. Act of March 3, 1891, 26 Stat. 1098 (see Public Lands, 1): *Hill v. McCord*, 395. Act of June 3, 1896, 29 Stat. 197 (see Public Lands): *Ib.* Act of July 1, 1898, 30 Stat. 597, 620, c. 546 (see Public Lands, 3): *Humbird v. Avery*, 480.
- SUITS IN FORMA PAUPERIS, Act of July 20, 1892 (see Action): *Bradford v. Southern Ry. Co.*, 243.
- TELEGRAPH COMPANIES, Act of July 24, 1866, 14 Stat. 221, Rev. Stat. sections 5263 *et seq* (see Congress, Powers of, 1; Eminent Domain): *Western Union Tel. Co. v. Penn. R. R. Co. et al.*, 540.
- TERRITORIES, Rev. Stat. section 1891 (see Philippine Islands, 1): *Dorr v. United States*, 138.

ADMIRALTY.

Jurisdiction of libel in rem for damages by vessel to buoy.

Admiralty has jurisdiction of a libel *in rem* against a vessel for the damages caused by its negligently running into a beacon in a channel, although the beacon is attached to the bottom. *The Blackheath*, 361.

AGENCY.

See CARRIERS.

APPEAL AND ERROR.

Writs of error from this court to the Supreme Court of Oklahoma in capital cases do not lie. *New v. Oklahoma*, 252.

See ACTION;

JURISDICTION.

ASSESSMENT.

See CONSTITUTIONAL LAW, 3;
TAXATION, 3.

BANKS.

See NATIONAL BANKS.

BANKRUPTCY.

1. *Discharge—Judgment within exception of section 17 of Bankruptcy Act.*
On writ of error to a state court reviewing its refusal to cancel a judgment after discharge of the debtor in bankruptcy on the ground that the judgment was in an action for fraud, the Federal question is not whether the complaint sufficiently charged fraud to warrant the judgment but whether the action was for fraud; and if there are facts charged and found to the effect that false and fraudulent representations were made and relied on, which in the state court were sufficient to warrant relief on the ground of fraud, the judgment comes within the exception of § 17 of the bankrupt act and will not be canceled although the suit may

originally have been brought in equity for specific performance instead of for money judgment. *Bullis v. O'Beirne*, 606.

2. *Actual knowledge contemplated by section 17 of Bankruptcy Act.*

Actual knowledge of the proceedings contemplated by section 17 of the Bankruptcy Act is a knowledge in time to avail a creditor of the benefits of the law and to give him an equal opportunity with other creditors, and not a knowledge that may come so late as to deprive him of participation in the administration of the affairs of the estate or to deprive him of dividends. *Birkett v. Columbia Bank*, 345.

3. *Preferential payment—Question for jury—Interest recoverable—Preferential payee entitled to set-off of amount subsequently loaned bankrupt.*

In an action by a trustee in bankruptcy to recover a preferential payment the insolvency of the bankrupt at the time of payment and whether the payee had reasonable cause to believe that a preference was intended are questions of fact determined by the verdict of the jury. The commencement of an action by a trustee in bankruptcy to recover a preferential payment is a demand and he is entitled to interest from that time. One who after receiving a preferential payment from the bankrupt, loans him money in good faith without security and which actually passes into the bankrupt's possession, is entitled to have the amount loaned set off from the amount recoverable by the trustee. *Kaufman v. Treadway*, 271.

4. *Provable debt—Form of action affecting character.*

A debt, originating or founded upon an open account or upon a contract express or implied, is provable against the bankrupt's estate, though the creditor may have elected to bring his action in trover as for a fraudulent conversion instead of in assumpsit upon an open account. *Crawford v. Burke*, 176.

5. *Provable debt—Claim against broker fraudulently selling stocks carried on margin.*

The language of paragraph 4 of section 17 of the Bankruptcy Act of 1898 is different from that of section 33 of the act of 1867 and the words "fiduciary capacity" extend back to and qualify the words "fraud, embezzlement and misappropriation," and an unliquidated claim of a principal against his broker for fraudulently selling stocks carried on margin is not within the exception of section 17 but is a provable debt and is barred by the discharge in bankruptcy. *Ib.*

6. *Status of commission merchant and factor who sells for others.*

A commission merchant and factor who sells for others is not indebted in a fiduciary capacity within the bankruptcy acts by withholding the money received for property sold by him and this rule applies to a broker carrying stocks on margin who sells the same and does not pay over the proceeds to his principal. *Ib.*

7. *Sale—Interest in land passed by trustee's deed.*

Where the trustee in bankruptcy sells the interest of the bankrupt in land

the purchaser acquires only the interest of the bankrupt on the day of adjudication and no interest therein subsequently acquired by him in the property passes by the trustee's deed. The fact that after the sale and before the subsequent acquirement of interest the bankrupt made an unsuccessful application to have the sale set aside for inadequacy of price is not an adjudication that the bankrupt had an interest in the property sold which passed to the purchaser. *Cramer v. Wilson*, 408.

See FEDERAL QUESTION, 2;
JURISDICTION, A 1; D.

BILL OF EXCEPTIONS.

See JURISDICTION, A 3.

BILL OF LADING.

See CARRIERS.

BILL OF RIGHTS.

In ascertaining the meaning of a phrase in the Constitution taken from the Bill of Rights, it must be construed with reference to the common law from which it was taken. *Kepner v. United States*, 100.

BILLS AND NOTES.

See CONSTITUTIONAL LAW, 5.

CARRIERS.

Connecting carriers—Agency—Responsibility of Receivers of initial carrier under contract for through carriage of goods via connecting carrier—Effect of printed provision in through bill of lading—Contract of carriage not affected by character of shipment as contraband of war.

A shipper in New York, after stating that he was about to make a contract of sale of lead in Japan during the Chinese-Japanese War, and that time of delivery was of vital importance, made a written contract with the general eastern agent of the Northern Pacific Railroad, then being operated under order of the court by receivers, for shipment of 200 tons of lead at a given rate, to be shipped from Newark before a certain date to Tacoma and thence by Northern Pacific steamer sailing on a specified date. The receivers had a contract with the steamship company authorizing it to make through rates to Asiatic ports. The lead was shipped by the required date and after shipment the clerk of the shipper was given a bill of lading of the railroad company which he did not read and which contained a provision that the railroad company was not liable beyond its own line and which the shipper hypothecated with his bank as collateral. The lead reached Tacoma and was loaded on the steamer sailing on the day specified but the subcollector refused a clearance on the ground that the lead was contraband of war. The master thereupon unloaded the lead, obtained the clearance and sailed. The collector in answer to inquiries of the subcollector notified him not to withhold the clearance, but the vessel had sailed

and the shipment was delayed so that it did not reach Japan until six weeks after the vessel specified in the contract, and after hostilities between China and Japan had ceased. Meanwhile the price of lead had fallen and the lead was sold at a loss. In an action by the shipper against the Northern Pacific Railway Company, which had acquired the road subject to all liabilities of the receivers. *Held:*

- (a) That the agent of the receivers was not the agent of the steamship company, but the contract made by him was on behalf of the receivers who assumed responsibility beyond the line of their own road; that under the order appointing them and directing them to operate the road, the receivers had power to make a contract of this nature and that it was within the scope of the powers of a general agent to make the contract on their behalf.
- (b) That a special written contract to transport by more than one line and to deliver within a specified time is not affected by a provision in the printed part of a through bill of lading, delivered as this was after the shipment of the goods, to the effect that the responsibility of the carrier issuing the bill of lading ceases at the terminus of its own line.
- (c) That as it is not illegal to export articles which are contraband of war although the articles and the ship which carries them are subject to the risk of capture and forfeiture, neither any law of the United States nor any provision of international law was violated by the making of the contract notwithstanding the lead was contraband and was to be delivered in the port of a belligerent.
- (d) That a collector cannot legally refuse a clearance to a vessel bound to a port of a belligerent because it has on board articles contraband of war.
- (e) That the mistaken act of a subordinate official not justified by law in refusing a clearance to a vessel entitled to sail is not sufficient as an excuse for the nonperformance of the contract similar to that involved in this case and is not a "restraint of princes, rulers or people" within that clause of the bill of lading. *Northern Pac. Ry. Co. v. Amer. Trading Co.*, 439.

CASES EXPLAINED.

Colombia v. Cauca Co., 190 U. S. 524, explained in *Ex parte Republic of Colombia*, 604.

CASES FOLLOWED.

Bradley v. Lightcap, No. 1, 195 U. S. 1, followed in *Bradley v. Lightcap*, No. 2, 24.

Dobbins v. Los Angeles, 195 U. S. 207, followed in *Daly v. Elton*, 242.

Kepner v. United States, 195 U. S. 100, followed in *Mendezona v. United States*, 158.

Louisville Trust Co. v. Comingor, 184 U. S. 18, followed in *Schweer v. Brown*, 171.

McCray v. United States, 195 U. S. 27, followed in *Schick v. United States*, 65.

Mueller v. Nugent, 184 U. S. 1, followed in *Schweer v. Brown*, 171.

- Pensacola Telegraph Co. v. Western Union Tel. Co.*, 96 U. S. 1, followed in *Western Union Tel. Co. v. Penn. R. R. Co.*, 540.
- Western Union Tel. Co. v. Ann Arbor Railroad Co.*, 178 U. S. 239, followed in *Western Union Tel. Co. v. Penn. R. R. Co. et al.*, 540.
- Western Union Tel. Co. v. Penn. R. R. Co. et al.*, 195 U. S. 540, followed in *Western Union Tel. Co. v. Penn. R. R. Co.*, 594.
- Yick Wo v. Hopkins*, 118 U. S. 356, followed in *Dobbins v. Los Angeles*, 223.

CITIZENSHIP.

Of members of local corporation, for purposes of suit in Federal court.

For the purpose of suing and being sued in the Circuit Court of the United States the members of a local corporation are conclusively presumed to be citizens of the State by whose law it was created and in which alone the corporate body has a legal existence. *Thomas v. Board of Trustees*, 207.

See JURISDICTION, C.

COLLATERAL ATTACK.

See CONSTITUTIONAL LAW, 5.

COMBINATIONS.

See CONSTITUTIONAL LAW, 4.

COMMERCE.

1. *Pilotage—Effect of Rev. Stat. §§ 4237, 4444, upon state laws.*

The effect of Rev. Stat. §§ 4237, 4444, is not to interfere with or abrogate state laws regulating pilotage, but to withdraw coastwise steam vessels from the pilotage charges imposed by such state laws. *Olsen v. Smith*, 332.

2. *Pilotage—Treaty with Great Britain not affected by state law.*

A state pilotage law subjecting all vessels, domestic and foreign, engaged in foreign trade to pilotage regulations, but which exempts pursuant to law coastwise steam vessels of the United States, is not in conflict with provisions in the treaty between the United States and Great Britain to the effect that British vessels shall not be subject to any higher or other charges than vessels of the United States. *Ib.*

3. *Pilotage—Constitutionality of Texas law.*

Pilotage regulations being under the control of the State, a state pilotage law, otherwise unobjectionable, is not violative of the Fourteenth Amendment because it prevents an unlicensed person from rendering services as a pilot or because it creates a monopoly in favor of the pilots who are licensed under the act. *Ib.*

4. *Pilotage—Power of State to regulate.*

State laws regulating pilotage, although regulations of commerce, fall within that class of powers which may be exercised by the States until Congress has seen fit to act upon the subject. *Ib.*

See CONGRESS, POWERS OF, 1.

COMMON CARRIERS.

See CARRIERS.

CONDEMNATION.

See EMINENT DOMAIN;
JURISDICTION, A 3.

CONGRESS, POWERS OF.

1. *Granting right of way to telegraph companies—Regulation of postal service.*

The act of Congress of July 24, 1866, 14 Stat. 221, Rev. Stat. §§ 5263 *et seq.*, giving telegraph companies the right to construct and operate their lines through, along and over the public domain, military or post roads and navigable waters of the United States, was a legitimate regulation of commercial intercourse by telegraph among the States and appropriate legislation to carry into execution the power of Congress over the postal service; it was merely an exercise of National power to withdraw such intercourse from state control and interference. *Western Union Tel. Co. v. Penn. R. R. Co.*, 540.

2. *Right to make laws for government of Territories.*

Congress has the right to make laws for the government of Territories, without being subject to all the restrictions which are imposed upon it when passing laws for the United States, considered as a political body of States in union, and, until territory ceded by treaty has been incorporated into the United States, it is to be governed under Congress subject only to such constitutional restrictions upon its powers as are applicable to the situation. *Dorr v. United States*, 138.

3. *Power to authorize temporary government of Territory.*

The power of Congress to authorize the temporary government, such as that established under the Spooner Resolution of March 2, 1901, for the Philippine Islands, has been frequently exercised and is not now open to question, and the Philippine Commission established under that act had power to enact the libel law involved in this case. *Ib.*

See CONSTITUTIONAL LAW, 7, 8; NAVY PERSONNEL ACT;
COURTS; OLEOMARGARINE ACT, 2;

TREATIES.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONSPIRACY.

See CONSTITUTIONAL LAW, 4.

CONSTITUTIONAL LAW.

1. *Contracts—Impairment of obligation of mortgage by statute passed subsequently.*

When by a statute passed subsequently to a mortgage, and going into effect after the mortgagee has taken possession as such, on condition

broken, it is enacted that if the mortgagee, being in possession, bids in the mortgaged premises at sale on foreclosure at less than the amount found due on the mortgage, and the mortgagor does not redeem, the legal title of the mortgagee and his right of possession shall be forfeited by failure to obtain a deed within the time prescribed to the mortgagor, who has not redeemed or in fact paid anything in extinguishment of the mortgage, such statute impairs the obligation of the prior mortgage contract and operates to deprive the mortgagee of property rights without due process. *Bradley v. Lightcap*, 1.

2. *Contracts—Implied contract that municipality will not erect its own water-works not raised by grant of franchise to private corporation.*

Nothing is to be taken against the public by implication; under the constitution and laws of Montana a grant by a municipality to a waterworks company of the right to erect and maintain waterworks, which expressly declares that it is not exclusive, does not raise an implied contract that the grantor will not provide its own water supply during the term of the franchise even though by accepting the terms of the franchise the grantee expressly agrees to furnish water to all the inhabitants of the city who may desire to contract for the same during that period, and the erection of its own plant by the city does not, by reason of the depreciation in value which would result therefrom to the grantee's property, violate a contract obligation or amount to a taking of property without just compensation or due process of law within the meaning of the Federal Constitution. *Helena Water Works Co. v. Helena*, 383.

3. *Due process of law—Assessment for public improvements.*

An assessment on lands for the entire expense of opening a street levied under a front-foot assessment authorized by statute is not necessarily void under the Fourteenth Amendment because levied after the work was completed, or because at the time the work was ordered the municipality had power, under statutes repealed after the completion of the work and before the assessment was made, to include a portion of the expense in the general taxes and to levy the assessment on a valuation basis under which a smaller amount would have been assessed against these lands. *Seattle v. Kelleher*, 351.

See CONSTITUTIONAL LAW, 1, 5, 7;
POLICE POWER.

4. *Fourteenth Amendment—Validity of Wisconsin Anti-combination and conspiracy law.*

Malicious mischief is a familiar and proper subject for legislative repression as are also combinations for the purpose of inflicting it, and liberty to combine to inflict such mischief, even upon such intangibles as business or reputation, is not among the rights which the Fourteenth Amendment was intended to protect. Section 4466a, Wisconsin Statutes of 1898, prohibiting combinations for the purpose of willfully or maliciously injuring another in his reputation, trade, business or profession,

is not in conflict with the Fourteenth Amendment so far as the section applies to such a combination made from solely malevolent motives. *Aikens v. Wisconsin*, 194.

See COMMERCE, 3.

Former Jeopardy. See CRIMINAL LAW.

5. *Full faith and credit*—Judgment entered in proceeding wanting in due process of law may be collaterally attacked.

A warrant of attorney executed by the maker of a note and authorizing, in case of nonpayment, an attorney to appear, waive process, confess judgment, waive error and right of appeal in favor of the "holder" of the note must be construed strictly in favor of the maker, and does not, in the absence of express terms, authorize the confession of judgment in favor of the original payee after it ceases to be the owner of the note even though he may have the note in his possession. A judgment so entered would be a personal judgment without service of process or appearance, and the court would have no authority or jurisdiction to enter it, and the proceedings would be wanting in due process of law. Such a judgment can be attacked collaterally without violating the full faith and credit clause of the Federal Constitution in an action thereon in a State, other than that in which it was entered, on the ground that the party in whose favor it was rendered was not in fact the holder because not the owner of the note and that, therefore, the court entering the judgment was without jurisdiction. *National Exchange Bank v. Wiley*, 257.

6. *Jury trial*—Waiver by defendant affecting judgment.

A written waiver of a jury by a defendant in an action brought by the United States to recover a penalty of fifty dollars under § 11 of the act of 1886 as amended by the act of May 9, 1902, is not in conflict with the laws and Constitution of the United States, and does not invalidate the judgment. *Schick v. United States*, 65.

Powers of Congress. See CONGRESS, POWERS OF.

7. *Taxation*—Powers of Congress to tax not taken away by Fifth and Tenth Amendments—Constitutionality of Oleomargarine Act.

While both the Fifth and Tenth Amendments qualify, in so far as they are applicable, all the provisions of the Constitution, nothing in either of them operates to take away the grant of power to tax conferred by the Constitution upon Congress, and that power being unrestrained except as limited by the Constitution, Congress may select the objects upon which the tax shall be levied, and in exerting the power no want of due process of law can possibly result, and the judiciary cannot usurp the functions of the legislature in order to control that branch of the Government in exercising its lawful functions. The Oleomargarine Act of 1886, 24 Stat. 209, as amended by the act of 1902, 32 Stat. 93, imposing a tax of one quarter of one per cent on oleomargarine not

artificially colored any shade of yellow so as to look like butter, and ten cents a pound if so colored, levies an excise tax and is not unconstitutional as outside of the powers of Congress, and interferes with the powers reserved to the State, nor can the judiciary declare the tax void because it is too high nor because it amounts to a destruction of the business of manufacturing oleomargarine, nor because it discriminates against oleomargarine and in favor of butter. *McCray v. United States*, 27; *Schick v. United States*, 65.

8. *Territories—Power of Congress to govern—Right to jury trial dependent upon legislation.*

The power to govern territory implied in the right to acquire it, and given to Congress in Article IV, § 3 of the Constitution, to whatever other limitations it may be subject, does not require Congress to exact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and the Constitution does not, without legislation and of its own force, carry such right to territory so situated. *Dorr v. United States*, 138.

9. *Treaty-making power of United States; acquisition of territory under.*

While it is settled that the Constitution of the United States is the only source of power authorizing action by any branch of the Federal Government, it is equally well settled that the United States may acquire territory in the exercise of the treaty-making power by direct cession as the result of war, and in making effective terms of peace and for that purpose has the powers of other sovereign nations. *Dorr v. United States*, 138.

10. *Construction of Constitution. See BILL OF RIGHTS.*

CONSTRUCTION OF STATUTES.

<i>See</i> ACTION;	NAVY PERSONNEL ACT;
BANKRUPTCY;	OLEOMARGARINE ACT;
LACHES;	PHILIPPINE ISLANDS;
LOCAL LAW;	STATUTES, A;
STATUTE OF LIMITATIONS.	

CONTRABAND OF WAR.

See CARRIERS.

CONTRACTS.

Performance—Character of money constituting medium of payment—Satisfaction of larger amount by payment of smaller amount.

Under both the common and the civil law, in the absence of a stipulation to the contrary, the character of the money current at the time fixed for performance of, and not at the time of making, a contract is the medium in which payment may be made. Where there has been a *bona fide* dispute as to the medium of payment under a contract and an agreement is finally reached that a payment in one medium shall extinguish a larger amount in another medium, the payment is a com-

plete accord and satisfaction and the rule that a less sum, although accepted in full satisfaction of a larger liquidated amount, is not binding as to the excess for want of consideration is inapplicable. *City of San Juan v. St. Johns Gas Co.*, 510.

See CARRIERS;

CONSTITUTIONAL LAW, 1, 2.

CONVEYANCES.

See BANKRUPTCY, 7;

FEDERAL QUESTION, 2.

CORPORATIONS.

See CARRIERS; EMINENT DOMAIN, 3;

CITIZENSHIP; JURISDICTION, C 2, 3.

LOCAL LAW (GA.).

COURTS.

Want of authority to avoid act of Congress and to inquire into motive or purpose of exercise of constitutional power.

The judiciary is without authority to avoid an act of Congress lawfully exerting the taxing power, even in a case where to the judicial mind it seems that Congress had, in putting such power in motion, abused its lawful authority by levying a tax which was unwise or oppressive, or the result of the enforcement of which might be to indirectly affect subjects not within the powers delegated to Congress, nor can the judiciary inquire into the motive or purpose of Congress in adopting a statute levying an excise tax within its constitutional power. *McCray v. United States*, 27.

See ACTION;

APPEAL AND ERROR;

CONSTITUTIONAL LAW, 7;

FEDERAL QUESTION;

JURISDICTION;

POLICE POWER;

PRACTICE;

PUBLIC LANDS, 3.

COURT AND JURY.

See BANKRUPTCY, 3.

CRIMINAL LAW.

Former jeopardy defined.

At common law protection from second jeopardy for the same offense clearly included immunity from second prosecution where the court having jurisdiction had acquitted the accused of the offense; and it is the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment. The second jeopardy is not against the peril of second judgment, but against being again tried for the same offense. *Kepner v. United States*, 100.

See APPEAL AND ERROR;

JURISDICTION, A 4;

LIBEL;

PHILIPPINE ISLANDS, 2.

DELEGATION OF POWERS.

See EMINENT DOMAIN, 3.

DISTRICT OF COLUMBIA.

See JURISDICTION, A 3 (*Met. R. R. Co. v. District of Columbia*, 323).

DIVERSE CITIZENSHIP.

See JURISDICTION, C;

PLEADING, 4.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 2, 3, 5, 7.

POLICE POWER, 4.

EMINENT DOMAIN.

1. *Telegraph companies not granted right, by act of July 24, 1866.*

This court has already held in *Pensacola Telegraph Co. v. Western Union Tel. Co.*, 96 U. S. 1, and *Western Union Tel. Co. v. Ann Arbor Railroad Co.*, 178 U. S. 239, and now follows those decisions that the act of July 24, 1866, does not confer upon telegraph companies the right to enter upon private property without the consent of the owner or grant them the right of eminent domain. *Western Union Tel. Co. v. Penn. R. R. Co.*, 540, 594.

2. *Railroad's right of way private property to be taken only under power of eminent domain—Condition precedent to exercise of power.*

A railroad's right of way is property devoted to a public use and has often been called a highway, and as such is subject, to a certain extent, to state and Federal control but it is so far private property as to be entitled to the protection of the Constitution so that it can only be taken under the power of eminent domain; and a condition precedent to the exercise of the power of eminent domain is that the statute conferring it make provision for compensating the owner. *Ib.*

3. *Power cannot be delegated.*

Eminent domain cannot be delegated, and the lessee of a corporation cannot exercise the power of condemnation conferred by legislature on the lessor. *Western Union Tel. Co. v. Penn. R. R. Co.*, 594.

EQUITY.

Remedy against parties wrongfully in possession of mine.

Where the defendants are in possession of a mine, having obtained title thereto from the Government through fraud and connivance with one who was legally bound to take the title for the plaintiff, and the plaintiff cannot maintain ejectment, never having had the legal title, his remedy is by action in equity to have the defendants declared trustees *ex maleficio* for his benefit, and if it also appears that some of them are insolvent the defendants will be restrained from further mining *pendente lite*. *Lockhart v. Leeds*, 427.

See LACHES;

PLEADING 3;

POLICE POWER, 5;

PUBLIC LANDS, 3.

EQUITY OF REDEMPTION.

See MORTGAGE.

ESTATES.

See TAXATION, 1.

EVIDENCE.

See RES JUDICATA.

EXEMPTIONS.

See COMMERCE, 2.
LOCAL LAW (Ga.).

EXPORTS.

See CARRIERS.

FACTOR.

See BANKRUPTCY.

FEDERAL QUESTION.

1. *Federal question not involved in refusal of state court to cancel judgment after discharge of bankrupt.*

On writ of error to a state court reviewing its refusal to cancel a judgment after discharge of the debtor in bankruptcy on the ground that the judgment was in an action for fraud, the Federal question is not whether the complaint sufficiently charged fraud to warrant the judgment but whether the action was for fraud. *Bullis v. O'Beirne*, 606.

2. *State and not Federal—Question as to nature of deed given by bankrupt a year prior to adjudication.*

Whether a deed given by a bankrupt a year prior to the adjudication is fraudulent, or whether it was absolute or merely by way of mortgage, leaving him an equity of redemption, are not Federal questions and the decision of the state court is conclusive and cannot be reviewed by this court. *Cramer v. Wilson*, 408.

3. *State and not Federal—Separability of legal and illegal portions of state statute.*

Whether illegal provisions in a pilotage statute granting discriminatory exemptions to vessels of that State can be eliminated without destroying the other provisions of the statute, is a State and not a Federal question. *Olsen v. Smith*, 332.

See JURISDICTION.

FIDUCIARIES.

See BANKRUPTCY, 5, 6.

FRAUD.

See BANKRUPTCY, 1.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 5.

GOVERNMENT PROPERTY.

See TAXATION, 2.

GRANTS.

See PUBLIC LANDS.

HIGHWAYS.

See EMINENT DOMAIN;
LOCAL LAW (N. J.).

IMPAIRMENT OF CONTRACT.

See CONSTITUTIONAL LAW, 1.

INDIANS.

See STATUTE OF LIMITATIONS.

INDIAN DEPREDATION ACT.

See STATUTE OF LIMITATIONS.

INJUNCTION.

See EQUITY.

INTEREST.

See BANKRUPTCY, 3;
JUDGMENTS AND DECREES;
NATIONAL BANKS.

JEOPARDY.

See CRIMINAL LAW;
PHILIPPINE ISLANDS, 2.

JUDGMENT AND DECREES.

Decree in Colombia v. Cauca Co., 190 U. S. 524, construed.

Nothing in the decree of this court in *Colombia v. Cauca Co.*, 190 U. S. 524, prohibits the Circuit Court from allowing interest on the amount of the items allowed. *Ex parte Republic of Colombia*, 604.

See BANKRUPTCY, 1;
CONSTITUTIONAL LAW, 5;
RES JUDICATA.

JURISDICTION.

A. OF THIS COURT.

1. *Direct appeal from District Court sitting in bankruptcy.*

Where the question is whether a District Court sitting in bankruptcy could proceed in a summary way in the particular instance the jurisdiction of

the United States court as such is not in question and section 5 of the judiciary act of March 3, 1891, has no application. *Schweer v. Brown*, 171.

2. *Direct appeal from Circuit Court—Application of Constitution held involved.*

Where the appellant's contention is that the Circuit Court, by giving unwarranted effect to a judgment of a state court and accepting that judgment, which contained no finding of one of the fundamental facts as a conclusive determination of that fact, deprived him of his property without due process of law, and that contention is made in good faith, and under the circumstances, upon reasonable grounds, the application of the Constitution is involved and this court has jurisdiction of a direct appeal from the Circuit Court. *Fayerweather v. Ritch*, 276.

3. *Review of judgment of Court of Appeals of D. C. in condemnation proceedings—Bill of exceptions necessary.*

A condemnation proceeding initiated before a court in the District of Columbia, conducted under its supervision, with power to review and set aside the verdict of a jury, and with the right of review in an appellate tribunal is in its nature an action at law. The jurisdiction of this court in reviewing the judgment of the Court of Appeals of the District in such a proceeding is not by appeal, but only by writ of error, and this court cannot pass upon errors assigned unless the record contains a bill of exceptions allowed and authenticated by the judge. Parties cannot by affidavits or agreements cause that to become a bill of exceptions which is not such in a legal sense. *Met. R. R. Co. v. District of Columbia*, 323.

4. *Review of final judgment of District Court of United States for Porto Rico.*

The review of the final judgment of the District Court of the United States for Porto Rico by this court is not restricted to cases in which the Constitution or a treaty of the United States or an act of Congress is brought in question and the right claimed under it is denied. There may be cases, certainly civil cases, which if determined in a supreme court of one of the Territories of the United States could be reviewed although not involving any right of a distinctly Federal nature. But a criminal case like this one arising under § 3082 R. S., could not be reviewed by this court in virtue of the words, in § 35 of the Porto Rico act of April 12, 1900, "in the same cases as from the Supreme Courts of the Territories of the United States." Nor will the words in the same act, "in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied," authorize this court to review a judgment of conviction in a criminal case in the court below under § 3082 R. S., when the only claim at the trial was that the indictment did not charge "an offense under the statutes of the United States." Such an objection was too indefinite. Unless a judgment in the United States District Court for Porto Rico can be reviewed here, then it is final; for

no case determined in that court can be carried to a Circuit Court of Appeals. *Amado v. United States*, 172.

5. *Writ of error affecting nature of case.*

A case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the state court. *Bradley v. Lightcap*, 25.

B. OF CIRCUIT COURT OF APPEALS.

1. *Finality of decree.*

The Circuit Courts do not possess original jurisdiction over controversies between citizens of different States claiming lands under grants of different States by reason of the subject matter, and the decree of a Circuit Court of Appeals in such a case is final and an appeal to this court does not lie. *Stevenson v. Fain*, 165.

C. OF CIRCUIT COURT.

1. *Jurisdiction must appear affirmatively—Consent of parties insufficient—Defect in showing of diverse citizenship cannot be waived.*

Jurisdiction of a Circuit Court of the United States must appear affirmatively from distinct allegations, or facts clearly proven, and is not to be established argumentatively or by mere inference and when jurisdiction depends upon diverse citizenship, absence of sufficient averments, or of facts in the record, showing such diversity is fatal and the defect cannot be waived by the parties, nor can consent confer jurisdiction. *Thomas v. Board of Trustees*, 207.

2. *Diverse citizenship—Sufficiency of allegations.*

An averment that a Board of Trustees of a state institution was created by and exists under the laws of a State, other than that of complainant, and is a citizen of that State, without alleging that it is a corporation of the State, or that each individual member of the Board is a citizen of that State, and where the highest court of the State has decided that the Board, although possessing some of the attributes of a corporation is not a corporation of such State, and held, insufficient to sustain the jurisdiction of the Circuit Court on the ground of diverse citizenship.

3. Where a Board of Trustees of an institution can by the legislative act creating it, sue and be sued collectively and is bound by the judgment, a citizen of another State can sue it as such Board collectively, without bringing in all the members thereof, in a Circuit Court of the United States provided it affirmatively appears that each member of the Board is a citizen of a state other than that of complainant. *Ib.*

D. OF DISTRICT COURT.

1. *As a bankruptcy court—Summary proceeding.*

Mueller v. Nugent, 184 U. S. 1; *Louisville Trust Company v. Comingor*, 184

U. S. 18, approved on the point that the bankruptcy court has jurisdiction to determine in the first instance whether a summary proceeding can be maintained. If it errs in so proceeding the remedy is under section 24*b* of the bankruptcy law. *Schweer v. Brown*, 171.

See JURISDICTION, A 1.

E. ADMIRALTY.

Admiralty has jurisdiction of a libel *in rem* against a vessel for the damages caused by its negligently running into a beacon in a channel, although the beacon is attached to the bottom. *The Blackheath*, 361.

F. GENERALLY.

See FEDERAL QUESTION.

JURY TRIAL.

See CONSTITUTIONAL LAW, 6, 8.

LACHES.

In action in equity to enforce claims to mining property.

The owners of a mining claim in New Mexico transferred their interests to one of their number as trustee, who was to retransfer to each one contributing his share of development expenses for a year, a one-eighth interest. Plaintiff, one of the parties, contributed his share and demanded a deed which the trustee refused to give. Plaintiff made no further demand and did not contribute any more to the expenses, but the trustee and some of the other owners continued to develop the claim, and finally succeeded in finding a valuable body of ore. Eight years after the former demand plaintiff commenced an action in equity to enforce the original trust. There is a statute in New Mexico to the effect that no action for the recovery of lands shall be commenced after a lapse of ten years, etc. *Held:*

- (a) That persons having claims to mining property in the course of development are bound to the utmost diligence in enforcing them, and in such cases the doctrine of laches is relentlessly enforced.
- (b) That while in actions at law, courts are bound by the literalism of statutes, in equity the question of unreasonable delay within the statutory limitation is still open, and that even where a statute of limitations exists and has been made applicable in general terms to suits in equity, defendant may avail of the laches of complainant, notwithstanding the time fixed by the statute has not expired.
- (c) That the refusal by a trustee of a demand to execute a deed in alleged pursuance of a trust agreement is a repudiation of the trust and opens the door to the defense of laches.
- (d) That a delay of eight years during which large sums of money have been spent in developing a mining property is inexcusable laches. *Patterson v. Hewitt*, 309.

LAND DEPARTMENT.

See PUBLIC LANDS, 3.

LAND GRANTS.

See PUBLIC LANDS, 2, 3.

LIBEL.

Libel law enacted by Philippine Commission.

Under §§ 7 and 8 of the libel law enacted by the Philippine Commission, permitting a fair and true report of judicial, legislative and public official proceedings as privileged communications but excluding libelous remarks or comments from the privilege, the headlines "Traitor, Seducer, Perjurer—Wife would have killed him," over the report of a trial, although in quotation marks, are not within the privilege given by the act, and, if proved to be without basis, are libelous. *Dorr v. United States*, 138.

See ADMIRALTY.

LIMITATIONS.

See STATUTE OF LIMITATIONS.

LOCAL LAW.

Georgia. Taxation of shares of stock of foreign corporation held by domestic corporation. The constitution and laws of Georgia do not exempt from taxation shares of stock of a railroad corporation of another State held by a Georgia railroad corporation. *Wright v. Louisville & Nashville R. R. Co.*, 219.

Illinois. Mortgages (see Mortgage). *Bradley v. Lightcap*, 1.

Missouri. Usury (see National Banks). *Citizens' National Bank v. Donnell*, 369.

Montana. Contracts (see Constitutional Law, 2). *Helena Water Works Co. v. Helena*, 383.

New Jersey. Highways—Railroad right of way. No statute of New Jersey makes railroad property subject to occupation by telegraph companies under the act of Congress of 1866. *Western Union Tel. Co. v. Penn. R. R. Co.*, 540.

New Mexico. Statute of limitations (see Laches). *Patterson v. Hewitt*, 309.

Philippine Islands. Libel (see Libel). *Dorr v. United States*, 138.

Texas. Pilotage (see Commerce). *Olsen v. Smith*, 332.

Wisconsin. Anti-Combination and Conspiracy Law (see Constitutional Law, 4). *Aikens v. Wisconsin*, 194.

MALICIOUS MISCHIEF.

See CONSTITUTIONAL LAW, 4.

MINES AND MINING.

See EQUITY.

LACHES.

MONEY.

See CONTRACTS.

MONOPOLY.

See COMMERCE, 3.

MORTGAGE.

Rights of mortgagee under Illinois law.

1. By the law of Illinois in respect of mortgages the legal title passes to the mortgagee, who is entitled to possession, at least after condition broken. The mortgagor has an equity of redemption, and, in case of foreclosure by sale, has by statute twelve months within which to redeem by payment. *Bradley v. Lightcap*, 1.
2. Where a mortgagee has rightfully taken possession of the mortgaged premises on condition broken, the filing of a bill to foreclose is in aid of the legal title, and not inconsistent with it. *Ib.*
3. Prior to the passage of a certain statute, where at the sale on foreclosure, the mortgagee bid in the property conveyed by the mortgage at less than the amount due, and the mortgagor did not redeem, failure by the mortgagee to take out a deed had no effect so far as the mortgagor was concerned on the original title of the mortgagee as against the mortgagor, though it might let in the right of redemption. *Ib.*

See CONSTITUTIONAL LAW, 1.

MUNICIPAL REGULATIONS.

See POLICE POWER.

NATIONAL BANKS.

Effect of compounding interest, under Missouri law.

Under §§ 5197, 5198, U. S. Rev. Stat., a national bank which compounds interest in a manner prohibited by the State forfeits all interest even though the total interest amounts to less than the maximum rate permitted by the State. A national bank, met in an action by the plea of usury, may not avoid the forfeiture of all interest by then declaring an election to remit the excessive interest. *Citizens' National Bank v. Donnell*, 369.

NAVY PERSONNEL ACT.

Construction, as to rank and pay of Naval officers—Right to additional pay for services in foreign waters—Service not considered sea duty.

While the intention of Congress in the Navy Personnel Act of March 3, 1899, was to put officers of corresponding rank in the Army and Navy on the same general footing with respect to their general pay, and to make the act prospective in its application to any future legislation by which the general pay of army officers might be increased, Congress may increase the pay of army officers for services in particular places and under special circumstances without thereby intending such in-

crease to apply to naval officers. A captain in the Navy is not entitled to the ten per cent additional pay given to army officers under the acts of May 26, 1900, and March 2, 1901, for services in Philippine and Chinese waters or for service beyond the limits of the States comprising the Union. The term "vessel employed by authority of law" within the meaning of § 1571, Rev. Stat., is restricted to vessels owned or chartered by, or otherwise engaged in the service of, the Government and while an officer is traveling on land or on a vessel other than one so employed by authority of law he is not entitled to pay for sea duty. *United States v. Thomas*, 418.

NEGOTIABLE INSTRUMENTS.

See CONSTITUTIONAL LAW, 5.

NEW PARTY.

See STATUTE OF LIMITATIONS.

NORTHERN PACIFIC RAILROAD.

See PUBLIC LANDS, 3.

NOTICE.

See BANKRUPTCY;
PUBLIC LANDS, 2.

OKLAHOMA.

See APPEAL AND ERROR.

OLEOMARGARINE ACT.

1. *Construction of law of 1902—Artificial coloration.*

In enumerating the ingredients of oleomargarine in section 2 of the act of 1886, as amended in 1902, Congress included not only those substances which, entering into its composition make it suitable to food and form its body, but also other ingredients used only for coloring, the purpose being to prevent excluding from the operation of the statute anything in its nature oleomargarine by reason of the addition of a substance not really an ingredient, but serving substantially only for coloring the product yellow. Under sections 2 and 8 of the act as amended, oleomargarine colored yellow by a small amount of palm oil serving no purpose other than coloration is artificially colored and is subject to the tax of ten cents a pound and does not come within the proviso to section 8 making the tax a quarter of a cent a pound when the oleomargarine is free from artificial coloration that causes it to look like butter of any shade of yellow. One claiming that his oleomargarine is not subject to the higher tax prescribed by section 8 of the Oleomargarine Act must make it clear that his product is clearly within the scope of the exception stated in the proviso. *Cliff v. United States*, 159.

2. *Governmental right of prohibition—Arbitrariness of legislative act—Constitutional powers of Congress to enact—Artificial coloration.*

The manufacture of artificially colored oleomargarine may be prohibited by a free government without a violation of fundamental rights. There is such a distinction between natural butter artificially colored, and oleomargarine artificially colored so as to cause it to look like butter that the taxing of the latter and not the former cannot be avoided as an arbitrary exertion of the taxing power of Congress without any basis of classification, taxing one article and excluding another of the same class. The Oleomargarine Act of 1886, 24 Stat. 209, as amended by the act of 1902, 32 Stat. 93, imposing a tax of one quarter of one per cent on oleomargarine not artificially colored any shade of yellow so as to look like butter and ten cents a pound if so colored, levies an excise tax and is not unconstitutional as outside of the powers of Congress, and interferes with the powers reserved to the States, nor can the judiciary declare the tax void because it is too high nor because it amounts to a destruction of the business of manufacturing oleomargarine, nor because it discriminates against oleomargarine and in favor of butter. Where a manufacturer of oleomargarine uses as an ingredient butter artificially colored he thereby gives to the manufactured product artificial coloration within the meaning of the Oleomargarine Act as amended in 1902 and the product is subject to taxation at the rate of ten cents per pound. *McCray v. United States*, 27.

See CONSTITUTIONAL LAW, 6, 7.

PARTIES.

See JURISDICTION, C 2, 3;
STATUTE OF LIMITATIONS.

PAYMENT.

See CONTRACTS.

PHILIPPINE ISLANDS.

1. *Section 1891, Rev. Stat., not applicable.*

Congress has not up to the present time incorporated the Philippine Islands into the United States, and by an express provision of the act of July 1, 1902, § 1891, Rev. Stat., by which force and effect is given to the Constitution and laws of the United States in the Territories, does not apply to the Philippine Islands. *Dorr v. United States*, 138.

2. *Extension of principles of Government by Military Order No. 58.*

The expressed declarations of the President in Military Order, No. 58, of April 23, 1900, and in the act of July 1, 1902, establishing a civil government in the Philippine Islands, both adopting with little alteration the provisions of the Bill of Rights, show that it was intended to carry to the Philippine Islands those principles of our Government which the President declared to be established as rules of law for the maintenance of individual freedom, and those expressions were used in the sense

which has been placed upon them in construing the instrument from which they were taken. Although a right of appeal was given to the Government by Military Order, No. 58, in criminal cases in the Philippine Islands, § 5 of the act of July 1, 1902, establishing a civil government in the Islands, specifically provided that no person should be put twice in jeopardy for the same offense, thereby repealing the provision in the military order and nothing in § 9 of the act of 1902 can be construed as intending to prevail over the specific guaranty contained in § 5. *Kepner v. United States*, 100.

See CONGRESS, POWERS OF, 3; LIBEL;
CONSTITUTIONAL LAW, 9; TREATIES.

PILOTAGE.

See COMMERCE.

PLEADING.

1. *Plea puis darrien continuance.*

A plea *puis darrien continuance* waives all prior pleas and amounts to an admission of the plaintiff's cause of action. *Crawford v. Burke*, 176.

2. *Construction should be reasonable and natural—Sufficiency of averments.*

Pleadings must be construed reasonably and not with such strictness as to refuse to adopt the natural construction of the pleading because a particular fact might have been more distinctly alleged, although its existence is fairly, naturally and reasonably to be presumed from the averments actually made. *Lockhart v. Leeds*, 427.

3. *Equity—Prayers, general and special.*

There is nothing in the intricacy of equity pleading that prevents plaintiff from obtaining the relief under the general prayer to which he may be entitled upon the facts plainly stated in the bill; and the court will not deny the relief if plaintiff is otherwise entitled thereto because it is asked under the general relief prayer on a different theory from that which is advanced under one of the special prayers. *Ib.*

4. *Sufficiency of averment of diverse citizenship.*

An averment that a Board of Trustees of a state institution was created by and exists under the laws of a State, other than that of complainant, and is a citizen of that State, without alleging that it is a corporation of the State, or that each individual member of the Board is a citizen of that State, and where the highest court of the State has decided that the Board although possessing some of the attributes of a corporation is not a corporation of such State, and held, insufficient to sustain the jurisdiction of the Circuit Court on the ground of diverse citizenship. *Thomas v. Board of Trustees*, 207.

See JURISDICTION, A 3; C 1;
OLEOMARGARINE ACT, 1;
STATUTE OF LIMITATIONS.

POLICE POWER.

*Judicial review—Power of courts to determine the lawfulness of exercise—
Void exercise of power—Control by court of equity of unlawful exercise
affecting property rights.*

1. While every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health, municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether under the guise of enforcing police regulations, there has been an unwarranted and arbitrary interference with constitutional rights to carry on a lawful business, make contracts, or use and enjoy property. *Dobbins v. Los Angeles*, 223.
2. While the right to exercise the police power is a continuing one and a business lawful today may in the future become a menace to the public welfare and be required to yield to the public good, the exercise of the police power is subject to judicial review, and property rights cannot be wrongfully destroyed by arbitrary enactment. *Ib.*
3. Although an ordinance may be lawful on its face and apparently fair in its terms, yet if it is enforced in such a manner as to work a discrimination against a part of a community for no lawful reason, such exercise of power will be invalidated by the courts. (*Yick Wo v. Hopkins*, 118 U. S. 356.) *Ib.*
4. A municipal ordinance was adopted in September fixing the limits within which gasworks might be erected. Thereafter a permit was granted for the erection of a plant; in November another ordinance was adopted amending the September ordinance and by which ordinance the territory on which the works were in course of erection and purchased in reliance upon the September ordinance was excluded. There had been no change in the neighborhood or conditions. *Held* to be void as against the holder of the permit as an arbitrary and discriminatory exercise of the police power which amounted to a taking of property without due process of law and an impairment of property rights protected by the Fourteenth Amendment. *Ib.*
5. Where property rights will be destroyed unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a court of equity. *Ib.*

PORTO RICO.

See JURISDICTION, A 4.

POSTAL SERVICE.

See CONGRESS, POWERS OF, 1.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE.

1. *Conclusiveness on appeal of finding of lower court on question of fact.*

The finding of a court upon a question of fact is as conclusive as the verdict of a jury and when supported by testimony admitted without objection will not be disturbed by this court. *Cliff v. United States*, 159.

2. *Binding effect on Federal Supreme Court, of decision of state court.*

While this court is not conclusively bound by the judgment of the highest court of a State as to what is and is not a corporation of that State within the jurisdictional rule, it will accept such judgment unless a contrary view is demanded by most cogent reasons. *Thomas v. Board of Trustees*, 207.

3. *Following state court's interpretation of state statute.*

For the purpose of determining the validity of state statutes in their Federal aspect this court accepts the interpretation given to the statute by the state court and tests their validity accordingly. *Olsen v. Smith*, 332.

See JURISDICTION, A 3; C 1;
STATUTE OF LIMITATIONS.

PREFERENCES.

See BANKRUPTCY, 3.

PRESUMPTION.

See CITIZENSHIP;
STATUTES, A 2, 4.

PUBLIC IMPROVEMENTS.

See CONSTITUTIONAL LAW, 3;
TAXATION, 3.

PUBLIC LANDS.

1. *Entry—Confirmation of premature commutation entry.*

Where a commutation entry made in good faith after the passage of the act of March 3, 1891, 26 Stat, 1098, was rightful, save for the fact that it was premature, the act of June 3, 1896, 29 Stat, 197, does away with that objection and confirms the entry, and the right to such confirmation is not destroyed by anything that the entryman may have done in subsequent efforts to protect his title. *Hill v. McCord*, 395.

2. *Entry held insufficient—Bona fide purchaser not affected by constructive notice of grantor's defective title—Unappropriated land.*

Where it does not appear that one claiming to have entered land prior to its withdrawal under a land grant act had done all that was possible to perfect his entry and had either taken possession or otherwise not acquiesced in the decision, the attempted entry is not sufficient to take the land from jurisdiction of the Secretary of the Interior so as to prevent him from certifying it under the grant as unappropriated lands of the United States. Under the acts of 1887, 24 Stat. 556, and

1896, 29 Stat. 42, the title of one who holds under the railway company as a *bona fide* purchaser and is in actual ignorance of any defect in the company's title, will not be affected by any constructive notice of such defect with which a purchaser might be chargeable. Where an entry had been abandoned prior to certification of indemnity lands by the Secretary of the Interior to a State for the benefit of a railroad company under a land grant, the land is unappropriated land of the United States and can be certified under the grant, and the certification will not be set aside in favor of one who attempts to enter the land as a homesteader after the lands have been selected by the railroad company to make up a deficiency in place lands. *United States v. Chicago, M. & St. P. Ry.*, 524.

3. *Northern Pacific land grant act of July 1, 1898, construed.*

The act of Congress of July 1, 1898, 30 Stat. 597, 620, c. 546, relating to the land grant to the Northern Pacific Railroad Company, construed: *Held*,

- (a) That the act embraces land patented as well as unpatented, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, and which has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department.
- (b) The words in that act providing that the railroad grantee or its successor in interest "shall not be bound to relinquish lands sold or contracted by it or lands it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal,"—do not apply to any lands sold or contracted by the railroad grantee or its successor in interest after the acceptance of the provisions of the act by the Northern Pacific Railway Company; no sale or contracting away of any of the lands embraced by the act, and in dispute, after the acceptance of the grant could withdraw such lands from the operation of the act.
- (c) Whatever vested rights were acquired by the railroad company in virtue of the definite location of its route, as to any lands in dispute and embraced by the act of 1898, became subject to the power conferred upon the Land Department by that act.
- (d) The general doctrine reaffirmed that the courts will not interfere with the discharge of their duties by the officers of the Land Department by mandamus or injunction in reference to any lands, so long as the title thereto remains in the United States.
- (e) The selection of lands in indemnity limits, after definite location, to supply deficiencies in place of granted limits, does not invest any title in the railroad grantee to such lands until the selections are approved by the Secretary of the Interior. The railroad grantee does not become entitled, by reason of such unapproved selections, to ask a court of equity to intervene as between it or its successors in interest and individual claimants, so as to have the court declare that the latter could not, by any entry or purchase, acquire an interest in the lands so selected after the acceptance of the railroad's map of definite location. *Humbird v. Avery*, 480.

PUNCTUATION.

See STATUTES, A 3.

RAILROADS.

See CARRIERS; LOCAL LAW (Ga.). (N. J.);
EMINENT DOMAIN, 2; PUBLIC LANDS, 3.

REMEDIES.

See EQUITY.

RES JUDICATA.

Conclusiveness upon parties of adjudication of question put in issue—Scope of judgment entered without special findings—Testimony on plea of res judicata.

Where it appears that a question was distinctly put in issue and the parties presented, or had an opportunity to present, their evidence, and the question was decided by a court of competent jurisdiction, private right and public welfare both demand that the question so adjudicated shall, except in direct proceedings for review be considered as finally settled and conclusive upon the parties. The ordinary rule in cases tried by the court without a jury is that a judgment entered without any special findings is, like a general verdict in a jury case, tantamount to a finding in favor of the successful party of all the facts necessary to sustain the judgment. While in some cases on a plea of *res judicata* evidence *aliunde* the record is proper to show what particular questions were tried and determined in the former case, it is not competent to introduce the testimony of the trial judge as to the matters then considered and passed on by him. Where in an action in a court of competent jurisdiction the validity of certain releases is put in issue by the pleadings and no judgment can properly be rendered without determining that question, and judgment is rendered against the parties executing the releases and who were before the trial court, the judgment in effect determines that the releases are valid and the question of their validity is *res judicata* notwithstanding no special findings in regard thereto were made by the trial judge. *Fayerweather v. Ritch*, 276.

SEA DUTY.

See NAVY PERSONNEL ACT.

SET-OFF.

See BANKRUPTCY, 3.

SHIPPING.

See CARRIERS:
COMMERCE.

STATES.

See COMMERCE;
POLICE POWER;
TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Controlling force of specific terms.*

It is a well settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling. *Kepner v. United States*, 100.

2. *Effect of change in phraseology of statute reënacted.*

A change in phraseology of a statute reënacted creates a presumption of change of intent of the legislative body from that expressed in the former statute. *Crawford v. Burke*, 176.

3. *Punctuation affecting construction.*

While punctuation may shed some light on the construction of statutes, so little is it a part thereof that courts will read the statute with such stops as will give effect to the whole. *Ib.*

4. *Presumption as to sense in which language is used by legislature.*

It is a well settled rule of construction that language used in a statute which has a settled and well known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body. *Kepner v. United States*, 100.

See ACTION;	OLEOMARGARINE ACT;
BANKRUPTCY;	PHILIPPINE ISLANDS, 2;
LACHES;	PRACTICE, 3;
NAVY PERSONNEL ACT;	STATUTE OF LIMITATIONS.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STATUTE OF LIMITATIONS.

Period within which new party can be brought into action under Indian Depredation Act.

In an action brought under the Indian Depredation Act of March 3, 1891, 26 Stat. 851, a tribe of Indians not originally named in the petition cannot be brought into the action by amended petition after the expiration of three years from the filing of the original petition in the Court of Claims. *United States v. Martinez*, 469.

See LACHES.

TAXATION.

1. *Power of State to tax different estates in land.*
A State may tax different estates in land to the different parties thereto and sell only the interest of the party making default. *Baltimore Shipbuilding Co. v. Baltimore*, 375.
2. *State taxation of property in which United States has conditional reversionary interest and right to use.*
A State may tax the interest of a company owning a dry dock in land conveyed to it by the United States notwithstanding there is a condition subsequent, the nonfulfillment whereof would result in forfeiture and reversion to the United States, and the United States has a continuing right to use the dry dock for certain purposes. *Ib.*

3. *For public improvement—Enforcement against purchaser after improvement made—Duty of purchaser.*
Taxation, whether general or special, is not subject to the rules applicable to a vendor's lien and its enforcement against a *bona fide* purchaser for value, and it is for one purchasing lands after a public improvement has been completed to inquire whether it has been paid for, and the same rules as to the enforcement of the assessment applicable to the former owners are applicable to him. *Seattle v. Kelleher*, 351.

See COMMERCE; COURTS;
CONSTITUTIONAL LAW, 3, 7; LOCAL LAW (GA.);
OLEOMARGARINE ACT.

TELEGRAPH COMPANIES.

See CONGRESS, POWERS OF, 1;
EMINENT DOMAIN;
LOCAL LAW (N. J.).

TERRITORIAL COURTS.

See APPEAL AND ERROR.

TERRITORIES.

See APPEAL AND ERROR; CONSTITUTIONAL LAW, 8, 9.
CONGRESS, POWERS OF, 2, 3; JURISDICTION, A 4;
PHILIPPINE ISLANDS.

TITLE.

See BANKRUPTCY, 7;
PUBLIC LANDS, 1, 2.

TREATIES.

Treaty with Spain—Intention as to powers of Congress over Philippine Islands.
It is evident, from Article IX of the treaty with Spain, ceding the Philippine Islands, that the intention of the framers of the treaty was to reserve to Congress, so far as it could constitutionally be done, a free hand in

dealing with the territory ceded by the treaty. *Dorr v. United States*, 138.

See COMMERCE, 2;
CONSTITUTIONAL LAW, 9.

TRIAL BY JURY.

See CONSTITUTIONAL LAW, 6, 8.

TRUSTS AND TRUSTEES.

See BANKRUPTCY, 7;
EQUITY;
LACHES.

UNAPPROPRIATED LANDS.

See PUBLIC LANDS, 2.

UNLAWFUL COMBINATIONS.

See CONSTITUTIONAL LAW, 4.

USURY.

See NATIONAL BANKS.

VESSELS.

See ADMIRALTY;
COMMERCE;
NAVY PERSONNEL ACT.

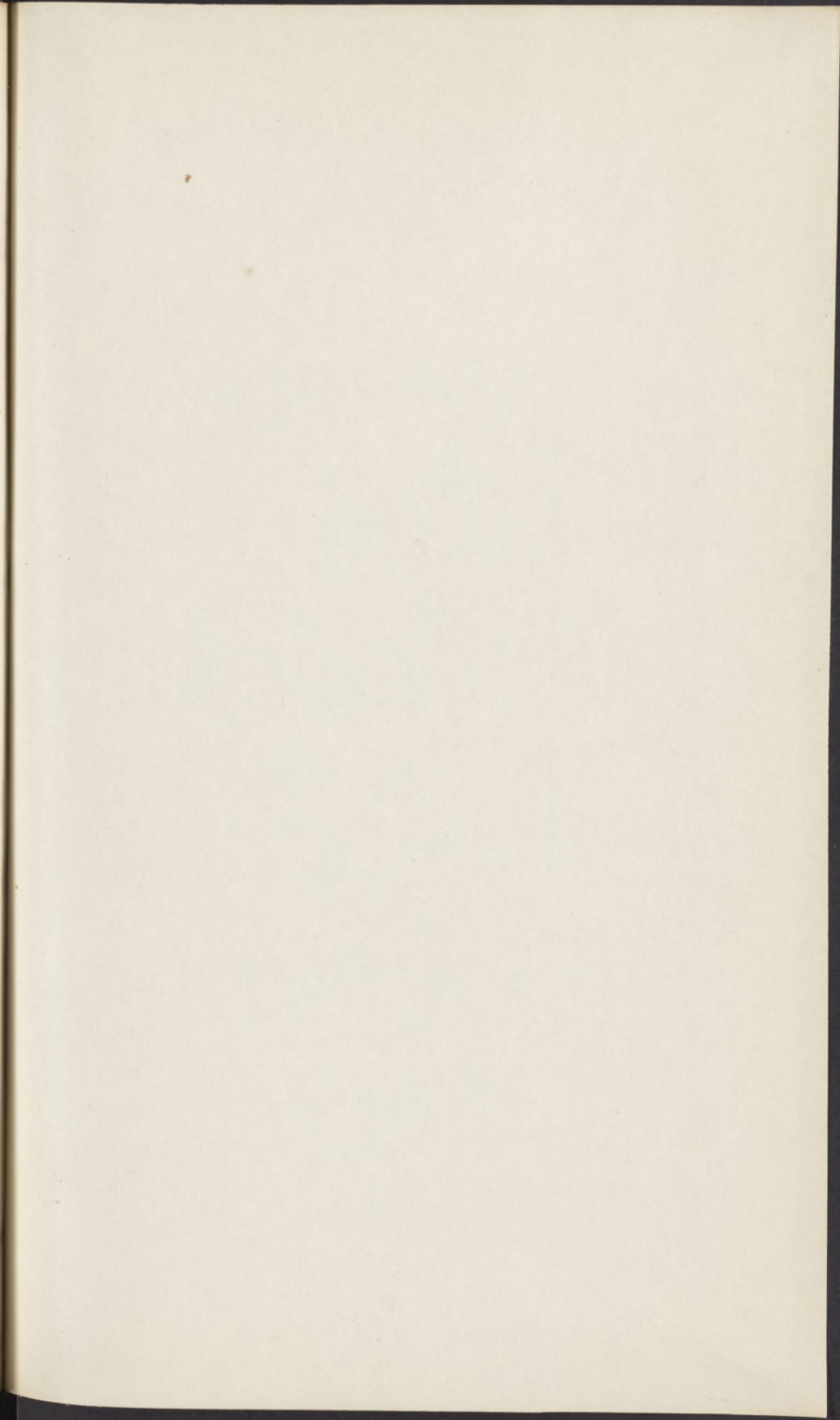
WAIVER.

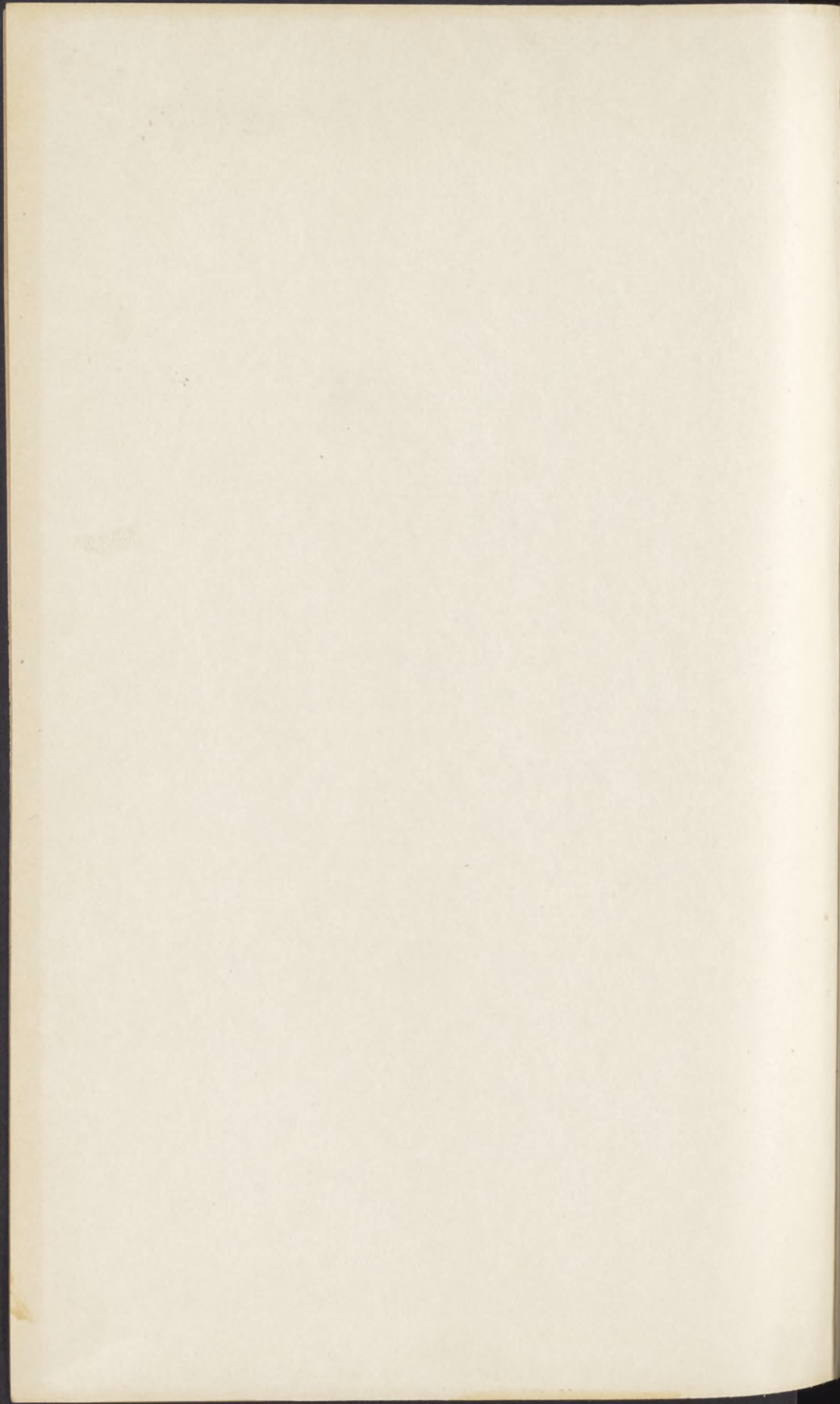
See CONSTITUTIONAL LAW, 6;
JURISDICTION, C 1.

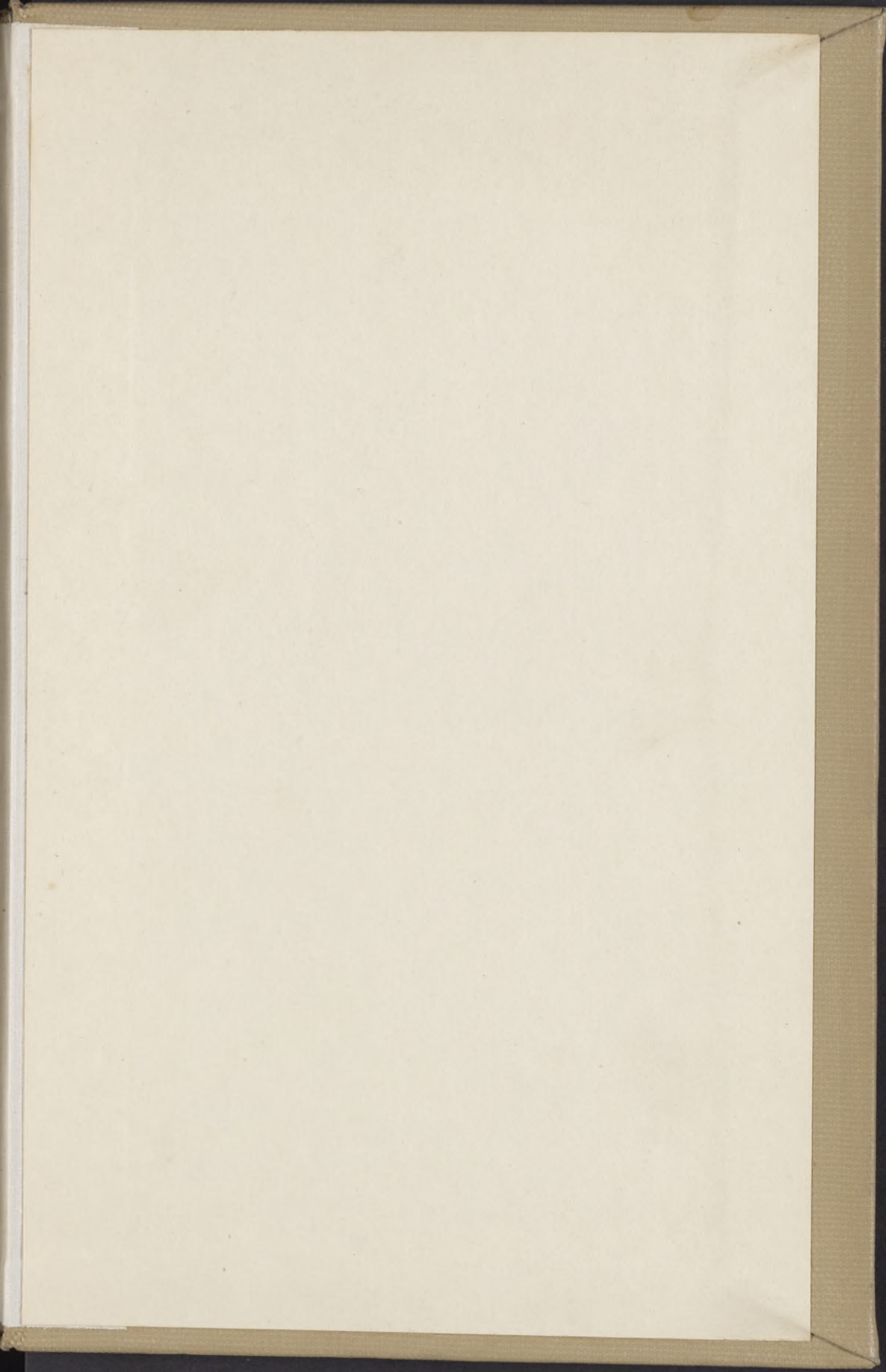
WARRANT OF ATTORNEY.

See CONSTITUTIONAL LAW, 5.









UNIVERSITY OF TORONTO LIBRARY

OCT 19 1964

SENIOR