# INDEX.

## ACCRETION.

*See* BOUNDARIES.

## ACTION.

*Suit involving controversy to which judicial power of United States extends.*

A proceeding brought by a Kentucky railroad company in the county court under §§ 835–839, Kentucky Statutes, to condemn lands for a public use, valued at over $2,000, belonging to a corporation which is a citizen of another State, is a suit involving a controversy to which the judicial power of the United States extends within the meaning of the judiciary clauses of the Constitution and of which the Circuit Court has original cognizance under § 1 of the judiciary act of 1887 and may be removed to the Circuit Court of the United States. *Traction Company* v. *Mining Company*, 239.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
CONTRACTS, 3;
DAMAGES;
EMINENT DOMAIN, 2;
EXTRADITION, 3;
JURISDICTION, B 2;
NATIONAL BANKS;
PARTIES;
PROCESS;
STATES, 3;
TAXATION, 7.

## ACTS OF CONGRESS.

ACTIONS, Act of March 3, 1875, 18 Stat. 470 (see Jurisdiction, B 1): *McDaniel* v. *Traylor*, 415. Act of February 8, 1899 (see Parties): *Caledonian Coal Co.* v. *Baker*, 432.

ADMIRALTY, Harter Act, sections 1, 3 (see Maritime Law): *The Germanic*, 589.

ANTI-TRUST ACT of July 2, 1890 (see Combinations in Restraint of Trade): *Swift and Company* v. *United States*, 375.

ARMY, Rev. Stat. sections 1229, 1342 (see Army): *Hartigan* v. *United States*, 169. Rev. Stat. section 1261 (see Navy Personnel Act): *United States* v. *Crosley*, 327.

AUTOMATIC COUPLERS, Act of March 2, 1903, 32 Stat. 943, c. 976 (see Automatic Couplers, 3): *Johnson* v. *Southern Pacific Co.*, 1. Act of March 2, 1893, 27 Stat. 531, c. 196 (see Automatic Couplers, 2): *Ib.*

BANKRUPTCY, Act of 1898 (see Bankruptcy, 4): *Western Tie and Timber Co.* v. *Brown*, 502. Amendment of February 5, 1903 (see Bankruptcy, 7): *Wetmore* v. *Markoe*, 68.

JUDICIARY, Rev. Stat. section 709 (see Bankruptcy, 2): *Smalley* v. *Laugenour*, 93; (see Federal Question, 1): *Allen* v. *Alleghany Co.*, 458. Rev.

Stat. section 720, Act of 1887, 1888 (see Removal of Causes, 1): *Traction Co.* v. *Mining Co.*, 239.

JUDICIARY, Act of 1887, section 1 (see Action): *Traction Co.* v. *Mining Co.*, 239. Act of 1887, 1888 (see Jurisdiction, B 1): *McDaniel* v. *Traylor*, 415. Act of March 3, 1891 (see Jurisdiction, A 1, 2): *Courtney* v. *Pradt*, 89; *Lucius* v. *Cawthon-Coleman Co.*, 149.

LOCUS CRIMINIS, Rev. Stat. section 731 (see Criminal Law, 2): *Burton* v. *United States*, 283.

MISSOURI, Acts of 1820 and 1836 (see Boundaries, 2): *Missouri* v. *Nebraska*, 23.

NATIONAL BANKS, Rev. Stat. section 5198 (see National Banks): *First National Bank* v. *Lasater*, 115.

NAVY, Rev. Stat. sections 1556, 1571 (see Naval Officers): *United States* v. *Engard*, 511.

NAVY PERSONNEL ACT (see Navy Personnel Act): *United States* v. *Crosley*, 327.

NEBRASKA, Act admitting to statehood (see Boundaries, 2): *Missouri* v. *Nebraska*, 23.

OKLAHOMA, Act of 1889; Town site act of May 14, 1890 (see Public Lands, 4): *Oklahoma City* v. *McMaster*, 529. Act of May 2, 1890, 26 Stat. 81, 85, sec. 9 (see Appeal and Error): *Oklahoma City* v. *McMaster*, 529; (see Jurisdiction, A 4): *Comstock* v. *Eagleton*, 99.

PUBLIC LANDS, Act of July 2, 1864, grant to Northern Pacific R. R. Co. (see Public Lands, 6): *United States* v. *Montana Lumber Mfg. Co.*, 573. Act of March 3, 1887, 24 Stat. 557 (see Public Lands, 7): *Ramsey* v. *Tacoma Land Co.*, 360.

PUBLIC OFFICERS, Rev. Stat. section 1782 (see Criminal Law, 1): *Burton* v. *United States*, 283.

STATES, Act of June 28, 1834, 4 Stat. 708, confirming agreement between New York and New Jersey (see Waters, 1): *Hamburg American Steamship Co.* v. *Grube*, 407.

TERRITORIAL COURTS, Act of 1874 (see Appeal and Error): *Oklahoma City* v. *McMaster*, 529.

WAR REVENUE ACT of 1898 and amendatory, refunding and repealing acts of 1901 and 1902 (see War Revenue Act): *Vanderbilt* v. *Eidman*, 480.

ADMIRALTY.

*See* MARITIME LAW.

AGENCY.

*See* BANKS AND BANKING;
CORPORATIONS, 2;
MAILS, 3.

ALIMONY.

*See* BANKRUPTCY, 7.

AMOUNT IN CONTROVERSY.

*See* JURISDICTION, B 1.

ANTI-TRUST ACT.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 8.

APPEAL AND ERROR.

*Review of judgment of Supreme Court of Oklahoma.*

The review by this court of final judgments in civil cases of the Supreme Court of the Territory of Oklahoma is not controlled by the act of 1874 in regard to territorial courts but by § 9 of the act of May 2, 1890, 26 Stat. 81, 85, providing the territorial government for Oklahoma, and in an action at law where a jury has been waived the review is by writ of error as in the case of a similar judgment of a Circuit Court, and not by appeal. *Oklahoma City* v. *McMaster*, 529.

*See* FEDERAL QUESTION;
JURISDICTION.

ARMY.

*Status of cadet at military academy.*

A cadet at the West Point Military Academy is not an officer of the United States Army within the meaning of §§ 1229, 1342, Rev. Stat., and, if delinquent, may be dismissed by the President without trial and conviction by court-martial. *Hartigan* v. *United States*, 169.

ARMY REGULATIONS.

*See* NAVY PERSONNEL ACT.

ARREST.

*See* JURISDICTION, A 6.

ATTESTATION.

*See* WILLS, 2.

AUTOMATIC COUPLERS.

1. *Equipment amounting to non-compliance with law.*

The equipment of cars with automatic couplers which will not automatically couple with each other so as to render it unnecessary for men to go between the cars to couple and uncouple is not a compliance with the law. *Johnson* v. *Southern Pacific Co.*, 1.

2. *Scope of words "any car" in act of March* 2, 1893.

Locomotive engines are included by the words "any car" contained in the second section of the act of March 2, 1893, 27 Stat. 531, c. 196, requiring cars engaged in interstate commerce to be equipped with automatic couplers. And although they were also required by the first section of the act to be equipped with power driving wheel brakes, the rule that the expression of one thing includes others does not apply, inasmuch as there was a special reason for that requirement and in

addition the same necessity for automatic couplers existed as to them as in respect to other cars. A dining car regularly engaged in interstate traffic does not cease to be so when waiting for the train to make the next trip. *Ib.*

3. *Act of March* 2, 1903, *construed.*
The act of March 2, 1903, 32 Stat. 943, c. 976, reiterates the view herein expressed and is declaratory thereof. *Ib.*

AVULSION.

*See* BOUNDARIES.

BANKRUPTCY.

1. *Exemptions: right of bankrupt dependent upon laws of State.*
The rights of a bankrupt to exempt property are those given by the statutes of the State, and if such exempt property is not subject to levy and sale under those statutes, it cannot be made to respond under the Federal bankrupt act. *Smalley* v. *Laugenour*, 93.

2. *Exemptions: right of creditor to contest bankrupt's claim—Appeals.*
A creditor may contest the bankrupt's claim to exemption in the bankruptcy court, or may invoke the supervision and revision of the Circuit Court of Appeals, but, failing to do that, cannot, unless the order setting the bankrupt's exemption apart be absolutely void, question its validity in another proceeding in the state court. Nor can the judgment of the state court following the order of the bankruptcy court and giving effect to the exemption be reviewed by this court on writ of error under § 709, Rev. Stat., on the ground that plaintiff in error was denied a title, right, privilege or immunity, under the Constitution or authority of the United States specially set up or claimed in the state court. *Ib.*

3. *Jurisdiction of bankruptcy court—Appeals.*
The bankruptcy court has jurisdiction to determine on a claim asserted by the bankrupt whether property in the hands of the trustee is exempt; and while an erroneous decision against the asserted right may be corrected in the appropriate mode for the correction of errors, the jurisdiction of the court is not in issue within the meaning of the act of March 3, 1891, and a direct appeal to this court will not lie. *Lucius* v. *Cawthon-Coleman Co.*, 149.

4. *Preference—Sums collected for bankrupt and withheld by creditor not a voidable preference—Creditor acting as trustee not entitled to set off sums collected.*
The bankrupt was largely indebted to a corporation whose laborers purchased supplies from him; periodically he rendered the corporation a statement of amounts due from its laborers which it deducted from their wages and remitted to him in a lump sum. Prior to, and within four months of, the filing of the petition, the corporation several times

deducted from its pay roll, amounts aggregating over $2,000, so due by its laborers but did not pay them over, and on filing its claim it embodied as an integral part thereof the amounts so deducted and retained as a proper credit or offset. The Circuit Court of Appeals found that the corporation retained the amounts with the knowledge of the bankrupt's insolvency and with the intention to secure a preference to that extent thereby, but that the bankrupt had no such intention, and ordered that the entire claim be expunged unless the corporation paid the amount so retained to the trustee. On appeal objections were taken to the jurisdiction of this court. *Held*, that as the claim to set off is controlled by and is necessarily based on the provisions of § 68 of the Bankrupt Act and its construction is necessarily involved, and the question is one which might have been taken to this court on appeal or writ of error from the highest court of a State, this court has jurisdiction of the appeal. Under the facts as found below the deductions from pay roll did not give rise to a voidable preference nor was the corporation entitled to credit them as a set-off as they were not mutual debts and credits within the set-off clause of the bankrupt act, but were collections made independently of other transactions and as trustee for the bankrupt. The corporation was entitled to prove its gross debt with the alleged set-off eliminated and was a debtor to the bankrupt for the amount of such deductions, and the court below has power to protect the bankrupt's estate in respect to dividends to the corporation in case it should not discharge its obligations. *Western Tie and Timber Co.* v. *Brown*, 502.

5. *Preference not constituted by mortgagor consenting to mortgagee's possession of mortgaged property within statutory period.*

The enforcement of a lien by the mortgagee taking possession, with the consent of the mortgagor, of after acquired property covered by a valid mortgage made and recorded prior to the passage of the act, is not a conveyance or transfer under the bankrupt act; and, where it does not appear that it was done to hinder, delay or defraud creditors, it does not constitute a preference under the act although at the time of the enforcement the mortgagee may have known that the mortgagor was insolvent and considering going into bankruptcy and the petition was filed within four months thereafter. *Thompson* v. *Fairbanks*, 516.

6. *Property rights of bankrupt after discharge—Effect of secretion from trustee.*

If a claim owned by a bankrupt is of value his creditors are entitled to it, and he cannot, by withholding knowledge of its existence from the trustee, after obtaining a discharge of his debts, immediately assert title to and collect the claim for his own benefit. *First National Bank* v. *Lasater*, 115.

7. *Provable debt—Arrears of alimony not provable debt barred by discharge.*

A husband owes the duty of supporting his wife and children not because of contractual relations with the wife but because of the policy of the

law which will enforce the duty if necessary and the bankruptcy act was not intended to be a means of avoiding this obligation. Arrears of alimony awarded to a wife against her husband for the support of herself and their minor children, under a final decree of absolute divorce, is not a provable debt barred by a discharge in bankruptcy, nor does the fact that there is no reservation in the decree of the right to alter or modify it deprive the debt of its character of being for the support of the bankrupt's wife and children. The amendment of February 5, 1903, excepting decrees of alimony from the discharge in bankruptcy was not new legislation creating a presumption that such decrees were not excepted prior thereto, but was merely declaratory of the true meaning and sense of the statute as originally enacted. *Wetmore* v. *Markoe*, 68.

8. *Trustee's right of election as to bankrupt's property.*

While a trustee in bankruptcy is not bound to accept property of an onerous or unprofitable character, and in case he declines to take it the bankrupt may assert title thereto, he is entitled to be informed of the property and have a reasonable time to elect whether he will accept it or not. *First National Bank* v. *Lasater*, 115.

BANKS AND BANKING.

*Relation of bank to customer in the matter of checks deposited.*

The deposit of checks in a bank and drawing against them by a customer constitutes the relation of debtor and creditor and the bank becomes the absolute owner of the checks so deposited, and not the agent of the customer to collect them; this relation is not, in the absence of any special agreement, affected by the right of the bank against the customer, and his liability therefor, in case the checks are not paid. *Burton* v. *United States*, 283.

*See* NATIONAL BANKS;
CRIMINAL LAW, 2.

BILL OF LADING.

*See* MARITIME LAW.

BONDS.

*See* LOCAL LAW (S. C.);
TAXATION, 6, 8, 10.

BOUNDARIES.

1. *Rivers—Accretion and avulsion defined—Change of boundary not affected by avulsion.*

Accretion is the gradual accumulation by alluvial formation and where a boundary river changes its course gradually the parties on either side hold by the same boundary—the center of the channel. Avulsion is the sudden and rapid change in the course and channel of a boundary river. It does not work any change in the boundary, which remains

as it was in the center of the old channel although no water may be flowing therein. These principles apply alike whether the rivers be boundaries between private property or between States and Nations. *Missouri* v. *Nebraska*, 23.

2. *Missouri River as boundary not affected by avulsion of* 1867.
The boundary line between Missouri and Nebraska in the vicinity of Island Precinct is the center line of the original channel of the Missouri River as it was before the avulsion of 1867 and not the center line of the channel since that time, although no water is now flowing through the original channel. Nothing in the acts of 1820 and 1836 relating to Missouri or the act admitting Nebraska into the Union indicates an intent on the part of Congress to alter the recognized rules of law fixing the rights of parties where a river changes its course by accretion or by avulsion. *Ib.*

BURDEN OF PROOF.

*See* FEDERAL QUESTION, 4;
WILLS, 3.

CARRIERS.

*See* CONSTITUTIONAL LAW, 1;
PRACTICE, 2.

CASES DISTINGUISHED.

*Richmond & Alleghany R. R. Co.* v. *Tobacco Co.*, 169 U. S. 311, distinguished from *Central of Georgia Ry. Co.* v. *Murphey*, 194.

CASES FOLLOWED.

*American Express Co.* v. *Iowa*, 196 U. S. 133, followed in *Adams Express Co.* v. *Iowa*, 147.

*Austin* v. *Tennessee*, 179 U. S. 343, followed in *Cook* v. *Marshall County*, 261.

*Flanigan* v. *Sierra County*, 196 U. S. 553, followed in *Wheeler* v. *Plumas County*, 562.

*Slavens* v. *United States*, 196 U. S. 229, followed in *Travis* v. *United States*, 239.

CASES EXPLAINED.

1. *O'Neil* v. *Vermont*, 144 U. S. 344. The writ of error in this case was dismissed because it did not appear that the commerce clause of the Constitution was relied on in, was called to the attention of, or passed on by, the state court, and the case is inapposite where it appears that the protection of commerce clause was properly set up, relied upon in, and denied by, the state court. *American Express Co.* v. *Iowa*, 133.

2. *Bowman* v. *Chicago*, 125 U. S. 465, *Leisy* v. *Hardin*, 135 U. S. 100, *Rhodes* v. *Iowa*, 170 U. S. 412, *Vance* v. *Vandercook Co., No. 1*, 170 U. S. 438, rest on the broad principle of the freedom of commerce between the States, of the right of citizens of one State to freely contract to receive

and send merchandise from and to another State, and on the want of power of one State to destroy contracts concerning interstate commerce valid in the State where made. *Ib.*

CERTIFICATE.

*See* JURISDICTION, A 1.

CHATTEL MORTGAGE.

*See* MORTGAGE.

CHECKS.

*See* BANKS AND BANKING.
NATIONAL BANKS;
CRIMINAL LAW, 2.

CITIZENSHIP.

*See* JURISDICTION, B 2.

CLOUD ON TITLE.

*See* JURISDICTION, B 1.

COLLATERAL ATTACK.

*See* BANKRUPTCY, 2.

COMBINATIONS IN RESTRAINT OF TRADE.

1. *Combination of dealers to regulate prices, etc., held illegal.*

A combination of a dominant proportion of the dealers in fresh meat throughout the United States, not to bid against, or only in conjunction with, each other in order to regulate prices in and induce shipments to the live stock markets in other states, to restrict shipments, establish uniform rules of credit, make uniform and improper rules of cartage, and to get less than lawful rates from railroads to the exclusion of competitors with intent to monopolize commerce among the States, is an illegal combination within the meaning and prohibition of the act of July 2, 1890, 26 Stat. 209, and can be restrained and enjoined in an action by the United States. *Swift and Company* v. *United States*, 375.

2. *Immateriality of monopoly within single State where combination directed against interstate commerce.*

It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States. Moreover the effect of such a combination upon interstate commerce is direct and not accidental, secondary or remote as in *United States* v. *E. C. Knight Co.*, 156 U. S. 1. *Ib.*

3. *Unlawfulness of otherwise lawful separate elements of scheme when bound together by a common intent.*

Even if the separate elements of such a scheme are lawful when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful. *Ib.*

4. *Shipment of cattle constituting interstate commerce.*
When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a constantly recurring course, it constitutes interstate commerce and the purchase of the cattle is an incident of such commerce. *Ib.*

*See* CONSTITUTIONAL LAW, 8;
STATES, 2.

COMITY.

*See* FEDERAL QUESTION, 1.

COMMERCE.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 1, 6;
INTERSTATE COMMERCE.

COMMERCIAL PAPER.

*See* BANKS AND BANKING;
CRIMINAL LAW, 2.

COMMON CARRIER.

*See* CONSTITUTIONAL LAW, 1;
PRACTICE, 2.

COMPETITION.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 8;
STATES, 2.

CONDEMNATION OF LAND.

*See* ACTION;
COURTS, 1;
EMINENT DOMAIN.

CONGRESS.

ACTS OF. *See* Acts of Congress.
POWERS OF. *See* Public Lands, 3.
SENATORS IN. *See* Criminal Law;
Jurisdiction, A 6.

## CONSPIRACIES.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

## CONSTITUTIONAL LAW.

1. *Commerce clause—Unconstitutionality of sections* 2317, 2318, *Code of Georgia.*

The imposition, by a state statute, upon the initial or any connecting carrier, of the duty of tracing the freight and informing the shipper, in writing, when, where, how and by which carrier the freight was lost, damaged or destroyed, and of giving the names of the parties and their official position, if any, by whom the truth of the facts set out in the information can be established, is, when applied to interstate commerce, a violation of the commerce clause of the Federal Constitution; and §§ 2317, 2318 of the Code of Georgia of 1895, imposing such a duty on common carriers is void as to shipments made from points in Georgia to other States (*Richmond & Alleghany R. R. Co.* v. *Tobacco Company*, 169 U. S. 311 distinguished). *Central of Georgia Ry. Co.* v. *Murphey*, 194.

*See* CASES EXPLAINED, 2;
INTERSTATE COMMERCE.

2. *Contracts, impairment of—Validity of chapter* 578, *Laws of Massachusetts of* 1898.

Chapter 578, Laws of Massachusetts of 1898, providing for taxation of street railway companies is not void, as violating the impairment of obligation clause of the Federal Constitution, so far as this case is concerned, because it relieved a railroad company from the obligation to pave and repair streets under the terms and conditions of certain municipal ordinances which the company had duly accepted. *Worcester* v. *Street Railway Co.*, 539.

3. *Due process of law—Failure of taxpayer to avail himself of opportunity to test validity of tax.*

If the taxpayer be given an opportunity to test the validity of a tax at any time before it is made final, either before a board having *quasi* judicial character, or a tribunal provided by the State for that purpose, due process is not denied, and if he does not avail himself of the opportunity to present his defense to such board or tribunal, it is not for this court to determine whether such defense is valid. *Hodge* v. *Muscatine County*, 276.

4. *Due process of law—Validity of section* 5007, *Iowa Code.*

Section 5007, Iowa Code, imposing a tax against every person and upon the real property and the owner thereof whereon cigarettes are sold does not give a license to sell cigarettes, nor is it invalid as depriving the owner of the property of his property without due process of law, because it does not provide for giving him notice of the tax, §§ 2441,

2442, Iowa Code, providing for review with power to remit by the board of supervisors. *Ib.*

*See* CORPORATIONS, 2;
EXTRADITION, 1;
TAXATION, 9.

5. *Ex post facto laws—Alteration of state criminal statute subsequent to commission of crime, held not within prohibition.*

By chapter 99, March 9, 1903, Laws of North Dakota, the statutes in force when plaintiff in error committed the crime for which he was tried, and when the verdict of guilty was pronounced were altered to the following effect: Close confinement in the penitentiary for not less than six or more than nine months after judgment and before execution was substituted for confinement in the county jail for not less than three nor more than six months after judgment and before execution, and hanging within an inclosure at the penitentiary by the warden or his deputy was substituted for hanging by the sheriff in the yard of the jail of the county in which the conviction occurred. *Held* that the changes looked at in the light of reason and common sense are to be taken as favorable to the plaintiff in error, and that a statute which mitigates the rigor of the law in force at the time the crime was committed cannot be regarded as *ex post facto* with reference to that crime. *Held* that close confinement does not necessarily mean solitary confinement and the difference in phraseology between close confinement and confinement is immaterial, each only meaning such custody as will insure the production of the criminal at the time set for execution. *Held* that the place of punishment by death within the limits of the States is not of practical consequence to the criminal. *Rooney* v. *North Dakota*, 319.

6. *Equal protection of laws not denied by state taxation of retail dealers and not of others doing an interstate business.*

A classification in a state taxation statute in which a distinction is made between retail and wholesale dealers is not unreasonable and § 5007, Iowa Code, imposing a tax on cigarette dealers is not invalid as denying equal protection of the laws to retail dealers, because it does not apply to jobbers and wholesalers doing an interstate business with customers outside of the State. *Cook* v. *Marshall County*, 261.

7. *Equal protection of laws—State taxation of franchise of corporation at different rates from tangible property.*

A railroad company in Kentucky claimed as its only ground of Federal jurisdiction in an action in the Circuit Court of the United States against members of the state board of valuation and assessment that under the tax laws of the State it was deprived of equal protection of the laws contrary to the Fourteenth Amendment, because while the law of the State required all property to be taxed at its fair cash value there was a uniform and general undervaluation of other property but the company's property was taxed at its full value. There was conflicting testimony as to the valuations, most of the members of the board

testifying that they tried in good faith to reach fair cash values. *Held*, that the court will not intervene merely on the ground of a mistake in judgment on the part of the officer to whom the duty of assessment was entrusted by the law. It is not beyond the power of a State, so far as the Federal Constitution is concerned, to tax the franchise of a corporation at a different rate from the tangible property in the State. *Coulter* v. *Louisville & Nashville R. R. Co.*, 599.

8. *Fourteenth Amendment—Validity of Kansas Anti-Trust Act.*
The act of the legislature of Kansas of March 8, 1897, defining and prohibiting trusts, is not in conflict with the Fourteenth Amendment to the Federal Constitution as to a person convicted thereunder of combining with others to pool and fix the price, divide the net earnings and prevent competition in the purchase and sale of grain. *Smiley* v. *Kansas*, 447.

*Judiciary clauses.* *See* ACTION.
*States.* *See* STATES, 1.

## CONSTRUCTION.

OF PLEADING. *See* Pleading.
OF POLICY OF INSURANCE. *See* Insurance.
OF STATUTES. *See* Statutes, A.
OF WILLS. *See* Wills.

## CONTRACTS.

1. *Effect of words "more or less" in contract to furnish goods.*
In engagements to furnish goods to a certain amount the quantity specified governs. Words like "about" and "more or less" are only for the purpose of providing against accidental and not material variations. Under the contract in this case for delivery of "about" 5,000 tons of coal the United States cannot refuse to accept more than 4,634 tons but is liable for the difference in value on 366 tons tendered and acceptance refused. *Moore* v. *United States*, 157.

2. *Custom and usage affecting—Demurrage.*
Usage may be resorted to in order to make definite what is uncertain, clear up what is doubtful, or annex incidents, but not to vary or contradict the terms of a contract. Under contracts between a San Francisco coal dealer and the United States for the delivery of coal at Honolulu "at wharf" or "on wharf as customary," the customs referred to held to be those of Honolulu and not of San Francisco, and that the United States, in the absence of any provision to the contrary, could not be held liable for the demurrage paid by the shipper to the owners of vessels carrying the coal for delay in discharging their cargoes on account of the crowded condition of the harbor. *Ib.*

3. *Construction of contract by United States for use of patented process—Denial, by United States, of validity of patent not available defense in action on.*
The United States made a contract with the steel company for the use of

a process described as patented. The contract provided that in case it should at any time be judicially decided "that the company was not legally entitled under the patent to the process and the product the payment of royalties should cease. In a suit by the company for royalties the United States attempted to deny the validity of the patent while admitting there was no outstanding decision against it. *Held*, that this defense was not open. *Held further*, that under the circumstances of this case, the contract, properly construed, extended to the process actually used even if it varied somewhat from that described in the patent. *United States* v. *Harvey Steel Co.*, 310.

*See* CONSTITUTIONAL LAW, 2; INSURANCE; INTERSTATE COMMERCE, 1; MAILS; WATERS, 1; WILLS, 3.

## CONTRIBUTION.

*See* DAMAGES.

## CONVEYANCE.

*See* BANKRUPTCY, 5; MORTGAGE.

## CORPORATIONS.

1. *Right of creating power to impose regulations concerning ownership of stock.* The sovereign that creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein and it is not an unreasonable regulation to establish the situs of stock for purposes of taxation, at the principal office of the corporation whether owned by residents or non-residents, and to compel the corporation to pay the tax for the stockholders giving it a right of recovery therefor against the stockholders and a lien on the stock. *Corry* v. *Mayor and Council of Baltimore*, 466.

2. *Validity of regulation establishing situs of stock for purposes of taxation.* Where valid according to the laws of the State such a regulation does not deprive the stockholder of his property without due process of law either because it is an exercise of the taxing power of the State over persons and things not within its jurisdiction, or because notice of the assessment is not given to each stockholder, provided notice is given to the corporation and the statute either in terms, or as construed by the state court, constitutes the corporation the agent of the stockholders to receive notice and to represent them in proceedings for the correction of the assessment. *Ib.*

3. *Provisions of constitution and general laws of State as part of charter.* While the liability of non-resident stockholders for taxes on his stock may not be expressed in the charter of the company if it existed in the general laws of the State at the time of the creation of the corporation or the extension of its charter, and the constitution of the State also contained at such times the reserved right to alter, amend and repeal,

those provisions of the constitution and general laws of the State are as much a part of the charter as if expressly embodied therein. *Ib.*

*See* CONSTITUTIONAL LAW, 7; JURISDICTION, B 2; MUNICIPAL CORPORATIONS; PROCESS; PUBLIC LANDS, 7; TAXATION, 8.

## COSTS.

*See* PARTIES.

## COUPLERS.

*See* AUTOMATIC COUPLERS.

## COURTS.

1. *Federal Circuit Court as court of the State in which it sits—Controlling force of state law.*

In the exercise of the jurisdiction conferred upon it of controversies between citizens of different States, a Circuit Court of the United States is for every practical purpose a court of the State in which it sits and will enforce the rights of the parties according to the law of that State taking care, as a state court must, not to infringe any right secured by the Constitution and the laws of the United States. And in a case of condemnation it would proceed under the sanction of, and enforce, the state law so far as it was not unconstitutional. *Traction Company* v. *Mining Company*, 239.

2. *Rule as to interference by Federal court with State's administration of its taxes.*

Where the only constitutional ground on which the complainant can come into the Circuit Court obviously fails the court should be very cautious in interfering with the State's administration of its taxes upon other considerations which would not have given it jurisdiction. *Coulter* v. *Louisville & Nashville R. R. Co.*, 599.

3. *State—Power to prescribe extent of state statute.*

The power in the state court to determine the meaning of a state statute carries with it the power to prescribe its extent and limitations as well as the method by which they shall be determined. *Smiley* v. *Kansas*, 447.

*See* FEDERAL QUESTION; JURISDICTION; PRACTICE, 2; PROCESS; PUBLIC LANDS, 3; REMOVAL OF CAUSES; STATES, 3.

## COURT AND JURY.

*See* CRIMINAL LAW, 2; INSTRUCTIONS TO JURY; MASTER AND SERVANT.

## COURT-MARTIAL.

*See* ARMY.

## CRIMINAL LAW.

1. *Case arising under section* 1782, *Rev. Stat., relative to taking by United States Senator of compensation in matters to which United States is a party.*

A Senator of the United States was indicted and tried in the Eastern District of Missouri for a violation of § 1782, Rev. Stat., the indictment averring that he had rendered services for a certain corporation before the Post Office Department in matters in which the United States was interested, that is whether a "fraud order" should issue against such corporation, and that he had received payment at St. Louis therefor. The defendant denied that the United States was interested in the matters referred to in the indictment within the meaning of § 1782, Rev. Stat., or that he had rendered any service in violation thereof and alleged that the service which he had rendered to, and had been paid for by, the corporation, were those of general counsel, and not connected with the "fraud order." It was proved without contradiction that the compensation he received under certain counts was sent to him from St. Louis and received by him in Washington in the form of checks on a St. Louis bank which he deposited in his bank in Washington, receiving credit therefor at once, and which checks were subsequently paid in due course. On the trial the jurisdiction of the court was denied, the offense, if any there was, having been committed at Washington and not at St. Louis, and the defendant also asserted his privilege from arrest under § 16, Art. I of the Constitution. The court held that the privilege from arrest was waived and submitted to the jury whether there was any agreement by which the place of payment of the checks was St. Louis and not Washington. *Held*, that the facts alleged in the indictment showed a case that is covered by the provisions of § 1782, Rev. Stat. *Burton* v. *United States*, 283.

2. *Locus criminis where payment by check.*

The payment of the checks to defendant in this manner was a payment at Washington, and if any crime was committed it was not at St. Louis, and, in view of the evidence, it was error to submit to the jury any question as to where the payment was made, and those counts in the indictment which were based on allegations of payments in St. Louis should have been dismissed as the court had no jurisdiction thereover. This is not the case of the commencement of a crime in one district and its completion in another so that the court in either district would have jurisdiction under § 731, Rev. Stat. *Ib.*

*See* CONSTITUTIONAL LAW, 5;
EXTRADITION.

## CUSTOM.

*See* CONTRACTS, 2.

## DAMAGES.

*Contribution; rule as to, held inapplicable.*

A railroad company delivered a car with imperfect brakes to a terminal

company; both companies failed to discover the defect which could have been done by proper inspection; an employé of the terminal company, who was injured as a direct result of the defective brake, sued the terminal company alone and recovered. In an action brought by the terminal company against the railroad company for the amount paid under the judgment: *Held*, that as both companies were wrongdoers, and were guilty of a like neglect of duty in failing to properly inspect the car before putting it in use, the fact that such duty was first required of the railroad company did not bring the case within the exceptional rule which permits one wrongdoer, who has been mulcted in damages, to recover indemnity or contribution from another, on the ground that the latter was primarily responsible. *Union Stock Yards Co.* v. *Chicago &c. R. R. Co.*, 217.

DEED OF TRUST.

*See* MORTGAGE.

DEFENSES.

*See* CONTRACTS, 3;
TAXATION, 7.

DELEGATION OF POWERS.

*See* PUBLIC LANDS, 3.

DEMURRAGE.

*See* CONTRACTS, 2.

DEVISE.

*See* WILLS, 1.

DISTRICT OF COLUMBIA.

*See* INSURANCE (*Hunt* v. *Springfield F. & M. Ins. Co.*, 47).
MORTGAGE (*Ib*).
STREETS AND HIGHWAYS (*Wolff* v. *District of Columbia*, 152).
WILLS (*McCaffrey* v. *Manogue*, 563; *Keely* v. *Moore*, 38).

DIVERSE CITIZENSHIP.

*See* ACTION; EMINENT DOMAIN, 2;
COURTS, 1; JURISDICTION, B 2;
REMOVAL OF CAUSES, 2.

DIVORCE.

*See* BANKRUPTCY, 7.

DOMICIL.

*See* JURISDICTION, B 2.

DUE PROCESS OF LAW.

*See* CONSTITUTIONAL LAW, 3, 4.

EMINENT DOMAIN.

1. *Taking must be for public purposes.*

It is fundamental in American jurisprudence that private property cannot be taken by the Government, National or state, except for purposes which are of a public character, although such taking be accompanied by compensation to the owner. *Traction Company* v. *Mining Company*, 239.

2. *State laws governing exercise, jurisdiction of Federal court not to be excluded by.*

It is for the State, primarily and exclusively, to declare for what local public purposes private property, within its limits, may be taken upon compensation to the owner, as well as to prescribe a mode in which it may be condemned and taken. But the State may not prescribe any mode of taking private property for a public purpose and of ascertaining the compensation to be made therefor, which would exclude from the jurisdiction of a Circuit Court of the United States a condemnation proceeding which in its essential features is a suit involving a controversy between citizens of different States. *Ib.*

*See* ACTION.

EQUAL PROTECTION OF LAWS.

*See* CONSTITUTIONAL LAW, 6, 7.

EQUITY.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
PLEADING;
TAXATION, 7.

ESTATES.

*See* WILLS, 1.

ESTATES OF DECEDENTS.

*See* JURISDICTION, B 1;
LOCAL LAW (P. R.);
WILLS.

EVIDENCE.

*See* EXTRADITION, 1;
FEDERAL QUESTION, 4;
PUBLIC LANDS, 6;
WILLS, 3.

EXEMPTIONS.

*See* BANKRUPTCY, 1, 2, 3.

EX POST FACTO LAWS.

*See* CONSTITUTIONAL LAW, 5.

EXTRADITION.

1. *Interstate rendition—Right to a hearing—Sufficiency of Governor's warrant.*

Proceedings in interstate rendition are summary; strict common law evidence is not necessary, and the person demanded has no constitutional right to a hearing. The governor's warrant for removal is sufficient until the presumption of its legality is overthrown by contrary proof in a legal proceeding to review his action. *Munsey* v. *Clough*, 364.

2. *Presumption, on habeas corpus, as to validity of indictment.*

The indictment found in the demanding State will not be presumed to be void on *habeas corpus* proceedings in the State on which the demand is made if it substantially charges an offense for which the person demanded may be returned for trial. *Ib.*

3. *Discharge, on habeas corpus, where demand of other State is made on ground of constructive presence.*

Where there is no doubt that the person demanded was not in the demanding State when the crime was committed and the demand is made on the ground of constructive presence only he will be discharged on *habeas corpus*, but he will not be discharged when there is merely contradictory evidence as to his presence or absence, for *habeas corpus* is not the proper proceeding to try the question of alibi or any question as to the guilt or innocence of the accused. *Ib.*

FEDERAL QUESTION.

1. *Not involved in construction by courts of one State of statute of another, where no denial of validity—Exclusive jurisdiction of state court as to comity.*

The mere construction by a state court of a statute of another State and its operation elsewhere, without questioning its validity, does not necessarily involve a Federal question, or deny to the statute the full faith and credit demanded by § 709, Rev. Stat., in order to give this court jurisdiction to review. The statutes of New York and Pennsylvania prohibit foreign corporations from doing business in those States respectively unless certain specified conditions are complied with. In an action in New Jersey the state court held that contracts made in New York and Pennsylvania by a corporation which had not complied with the statutes of either State were not *ipso facto* void and might be enforced in New Jersey. On writ of error *held*, that the writ must be dismissed as the validity of the New York and Pennsylvania statutes was not denied but the case turned only upon their construction and the effect to be given them in another State. Whether, aside from a Federal question, the courts of one State should have sustained the action upon principles of comity between the States is a matter within the exclusive jurisdiction of the state court. *Allen* v. *Allegheny Co.*, 458.

2. *Question of validity of chattel mortgage not Federal.*

Whether, and to what extent, a chattel mortgage, which includes after acquired property, is valid, is a local and not a Federal question, and in such a case this court will follow the decisions of the state court. *Thompson* v. *Fairbanks*, 516.

3. *State and not Federal—Validity of state statute under state constitution.*
Whether or not a state statute violates the state constitution in not stating distinctly the tax and the object to which it is to be applied is a local and not a Federal question. *Hodge* v. *Muscatine County*, 276.

4. *Setting up of Federal question in state court.*
Where certain facts from which a Federal question might arise were argued in the state court, but their Federal character was not indicated, they cannot be made the basis of a writ of error. Where a petition to transfer the case to the Supreme Court of the State, which contains a mere suggestion of the violation of a Federal right without any reference to the Constitution of the United States, is denied without opinion, this court may infer that the petition was denied because the constitutional point was not made in the courts below, and if it was considered, the burden to show it is on the plaintiff in error. It is too late to set up a Federal question for the first time in the petition for writ of error to this court. Because plaintiff in error relied solely for title upon a decree of foreclosure and sale in a Federal court it does not necessarily follow that a Federal question was set up and decided adversely, no statute, state or Federal, or authority thereunder, being called in question. *Chicago, Indianapolis &c. Ry. Co.* v. *McGuire*, 128.

5. It is too late to raise a Federal question by petition for rehearing in the Supreme Court of a State after that court has pronounced its final decision unless it appears that the court entertained the petition and disposed of the question. The certificate of the presiding judge of the Supreme Court of the State, made after the decision, to the effect that a Federal question was considered and decided adversely to plaintiff in error, cannot in itself confer jurisdiction on this court; and on the face of this record and from the opinions the reasonable inference is that the application for rehearing may have been denied in the mere exercise of discretion, or the alleged constitutional question was not passed on in terms because not suggested until too late. *Fullerton* v. *Texas*, 192.

*See* CASES EXPLAINED, 1;
JURISDICTION.

FRAUD.

*See* INTERSTATE COMMERCE, 5.

GOVERNMENT BONDS.

*See* TAXATION, 6, 10.

GOVERNMENT CONTRACTS.

*See* MAILS.

HABEAS CORPUS.

*See* EXTRADITION, 2, 3.

HARTER ACT.
*See* MARITIME LAW.

HIGHWAYS.
*See* CONSTITUTIONAL LAW, 2;
STREETS AND HIGHWAYS.

HOMESTEAD CLAIMS.
*See* PUBLIC LANDS, 5, 8.

HUSBAND AND WIFE.
*See* BANKRUPTCY, 7.

INHERITANCE TAX.
*See* WAR REVENUE ACT.

INJUNCTION.
*See* COMBINATIONS IN RESTRAINT OF TRADE; JURISDICTION, B 1; REMOVAL OF CAUSES, 1; TAXATION, 7.

INSANITY.
*See* WILLS, 3.

INSTRUCTIONS TO JURY.
1. *Instruction on failure to agree; impropriety of inquiry as to proportion of division.*
When a jury is brought before the court because unable to agree, it is not material for the court in order to instruct it as to its duty and the propriety of agreeing to understand the proportion of division of opinion, and the proper administration of the law does not require or permit such a question on the part of the presiding judge. *Burton* v. *United States*, 283.

2. *Rights of defendant as to statement of prayers granted.*
Certain of defendant's requests to charge which were allowed were referred to as mere abstract propositions of law and not otherwise specifically charged; after having been out thirty-eight hours the jurors returned and were instructed by the court in relation to their duty as jurors, and the foreman having stated in answer to questions of the court that they stood eleven to one, the court charged that it was their duty to agree if possible. Counsel then asked the court to instruct that defendant's requests to charge which had been allowed were as much a part of the charge as that which emanated from the court. This was refused. *Held* error, and, under the circumstances of this case, it was a matter of right, and not of discretion, that the jury should be charged as to the character of the requests. *Ib.*
*See* WILLS, 3.

## INSURANCE.

*Construction of policy—Contract of insurance a personal one.*

A policy of insurance provided that it should be void if the interest of the insured was other than the unconditional and sole ownership or if the property were encumbered by a chattel mortgage. It was in fact subject to certain trust deeds which the insured claimed after loss were different instruments in law. *Held*, that a deed of trust and a chattel mortgage with power of sale are practically one and the same instruments as understood in the District of Columbia. The rule that in case of attempted forfeiture if the policy be fairly susceptible of two constructions the one will be adopted which is more favorable to the insured was inapplicable to this case. The contract of an insurance company is a personal one with the assured and it is not bound to accept any other person to whom the latter may transfer the property. *Hunt* v. *Springfield F. & M. Ins. Co.*, 47.

## INTEREST.

*See* NATIONAL BANKS.

## INTERSTATE COMMERCE.

1. *Freedom of contract concerning.*

*Bowman* v. *Chicago*, 125 U. S. 465, *Leisy* v. *Hardin*, 135 U. S. 100, *Rhodes* v. *Iowa*, 170 U. S. 412, *Vance* v. *Vandercook Co. No.* 1, 170 U. S. 438, rest on the broad principle of the freedom of commerce between the States, or the right of citizens of one State to freely contract to receive and send merchandise from and to another State, and on the want of power of one State to destroy contracts concerning interstate commerce valid in the States where made. The right of the parties thereto to make a contract, valid in the State where made, for the sale and purchase of merchandise and in so doing to fix the time when, and conditions on which, completed title shall pass is beyond question. *American Express Co.* v. *Iowa*, 133.

2. *Original package; term defined.*

The term original package is not defined by statute and while it may be impossible to judicially determine its size or shape, under the principle upon which its exemption while an article of interstate commerce is founded, the term does not include packages which cannot be commercially transported from one State to another. *Cook* v. *Marshall County*, 261.

3. *Original package; cigarette boxes held not to be.*

This court adheres to its decision in *Austin* v. *Tennessee*, 179 U. S. 343, that small pasteboard boxes each containing ten cigarettes, and sealed and stamped with the revenue stamp, whether shipped in a basket or loosely, not boxed, baled or attached together, and not separately or otherwise addressed but for which the express company has given a receipt and agreement to deliver them to a person named therein in another State, are not original packages and are not protected under the commerce

clause of the Federal Constitution from regulation by the police power of the State. *Ib.*

4. *Shipment of intoxicating liquors C. O. D.; seizure under state laws prior to delivery.*

Without passing on the questions whether the property in a C. O. D. shipment is at the risk of buyer or seller and when the sale is completed, a package of intoxicating liquor received by an express company in one State to be carried to another State, and there delivered to the consignee C. O. D. for price of the package and the expressage, is interstate commerce and is under the protection of the commerce clause of the Federal Constitution and cannot, prior to its actual delivery to the consignee, be confiscated under prohibitory liquor laws of the State. *American Express Co.* v. *Iowa*, 133; *Adams Express Co.* v. *Iowa*, 147.

5. *Unusual method of transportation for evasion of police laws of State—Commerce clause of Constitution not invokable as a cover for fraudulent dealing.*

While a perfectly lawful act may not be impugned by the fact that the person doing it was impelled thereto by a bad motive, where the lawfulness or unlawfulness of the act is made an issue, the intent of the actor may be material in characterizing the transaction, and where a party, in transporting goods from one State to another, selects an unusual method for the express purpose of evading or defying the police laws of the latter State the commerce clause of the Federal Constitution cannot be invoked as a cover for fraudulent dealing. *Cook* v. *Marshall County*, 261.

*See* Automatic Couplers, 2;
Combinations in Restraint of Trade;
Constitutional Law, 1, 6.

INTERSTATE RENDITION.

*See* Extradition.

INTOXICATING LIQUORS.

*See* Interstate Commerce, 4.

JUDGMENTS AND DECREES.

*See* Bankruptcy, 7;
Res Judicata.

JURISDICTION.

A. Of This Court.

1. *Certificate from Circuit Court—Question of jurisdiction to be certified.*

Under § 5 of the judiciary act of March 3, 1891, the question of jurisdiction to be certified is the jurisdiction of the Circuit Court as a court of the United States and not in respect of its general authority as a judicial

tribunal. The certificate of the lower court is an absolute prerequisite to the exercise of power here unless the record clearly and unequivocally shows that the court sends up for consideration the single and definite question of its jurisdiction as a court of the United States. *Courtney* v. *Pradt*, 89.

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

The bankruptcy court has jurisdiction to determine on a claim asserted by the bankrupt whether property in the hands of the trustee is exempt; and while an erroneous decision against the asserted right may be corrected in the appropriate mode for the correction of errors, the jurisdiction of the court is not in issue within the meaning of the act of March 3, 1891, and a direct appeal to this court will not lie. *Lucius* v. *Cawthon-Coleman Co.*, 149.

3. *To review decisions of state courts—Proper reservation of Federal question.*

This court has no general power to review or correct the decisions of the highest state court and in cases of this kind exercises a statutory jurisdiction to protect alleged violations, in state decisions, of certain rights arising under Federal authority; and if the question is not properly reserved in the state court the deficiency cannot be supplied in either the petition for rehearing after judgment or the assignment of errors in this court, or by the certification of the briefs which are not a part of the record by the clerk of the state Supreme Court. This court will not reverse the judgment of a state court holding an alleged Federal constitutional objection waived, where the record discloses that no authority was cited or argument advanced in its support and it is clear that the decision was based upon other than Federal grounds and the constitutional question was not decided. *Harding* v. *Illinois*, 78.

4. *Review of final judgment of Supreme Court of Oklahoma.*

Under § 9, act of May 2, 1890, 26 Stat. 81, c. 182, final judgments of the Supreme Court of the Territory of Oklahoma in actions at law can only be revised by this court as are judgments of the Circuit Courts of the United States in similar actions—by writ of error and not by appeal. *Comstock* v. *Eagleton*, 99.

5. *Where Federal question properly invoked, although verdict and judgment below rendered according to law.*

Although when the charge of the state court is not before this court, and the record contains no exception to any part of it, the verdict and judgment must be held to have been rendered according to law, nevertheless, if a provision of the Federal Constitution was properly invoked the motion to dismiss may be denied. *Hamburg American Steamship Co.* v. *Grube*, 407.

6. *Writ of error to District Court—Review not restricted to constitutional question.*

Whether a Senator of the United States has waived his privilege from

arrest and whether such privilege is personal only or given for the purpose of always securing a representation of his State in the Senate are not frivolous questions; and, if properly raised in the court below and denied, this court has jurisdiction to issue the writ of error directly to the District Court, and then to decide the case without being restricted to the constitutional question. It is not the habit of this court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case. *Burton* v. *United States*, 283.

*See* APPEAL AND ERROR; CASES EXPLAINED, 1; BANKRUPTCY, 2, 4; FEDERAL QUESTION.

OF CIRCUIT COURT OF APPEALS (see Bankruptcy, 2).

B. OF CIRCUIT COURTS.

1. *Amount in controversy—Jurisdiction in action to remove cloud on title.* Complainants, who were heirs at law of an intestate leaving real estate the undivided interest of each being valued at over $2,000, and situated within the jurisdiction of the court, filed their bill in the proper Circuit Court of the United States against proper parties, citizens of other States, alleging that defendants had combined to procure and had fraudulently procured orders of the probate court allowing their claims against one of the heirs at law as claims against the intestate whereby such claims became liens upon the intestate's real estate; the claim of each defendant was less that $2,000 but the aggregate amount exceeded $2,000. So far as the allegations of the bill were concerned if any one of the claims was good all were good and the prosecution of one could not be enjoined unless all were enjoined. The bill prayed that the cloud on title of the intestate's real estate be removed by declaring the claims invalid and enjoining proceedings under the judgments of the probate court. The defendants were proceeded against under the act of March 3, 1875, 18 Stat. 470. The Circuit Court dismissed the bill for want of jurisdiction. *Held* error and that it was competent for the Circuit Court upon the case made by the bill to deprive defendants acting in combination of the benefit of the orders made in the probate court allowing their respective claims. In this case the jurisdiction of the Circuit Court does not depend, within the judiciary act of 1887, 1888, on the value of complainants' interest in the real estate from which the cloud is sought to be removed but on the aggregate amount of the liens of all of the defendants' claims which had been allowed by the probate court against the intestate's estate pursuant to the alleged combination. *McDaniel* v. *Traylor*, 415.

2. *Of suit by stockholder against corporation.* The presumption of law that stockholders are deemed to be citizens of the State of the corporation's domicil must give way to the actual fact proved that complainant is a citizen of a different State from the corporation, and in such a case the stockholder, if other conditions of jurisdiction exist can bring his suit against the corporation in the Circuit court of the United States. The ninety-fourth rule contemplates that

there may be and provides for a suit brought by a stockholder against the corporation and other parties on rights which may be properly asserted by the corporation, and when such a suit is between citizens of different States and is not collusive, but the corporation is controlled by interests antagonistic to complainant, it involves a controversy which is cognizable in a Circuit Court of the United States, and the defendant corporation is not to be classed on the same side of the controversy as complainant for the purpose of determining the diversity of citizenship on which the jurisdiction of the Circuit Court must rest. *Doctor* v. *Harrington*, 579.

3. *Scope of power in case removed on ground of diversity of citizenship.* When a case has been removed into the Circuit Court of the United States on the ground of diversity of citizenship, that court is entitled to pass on all questions arising, including the question of jurisdiction over the subject matter in the state courts or the sufficiency of mesne process to authorize the recovery of personal judgment. The right to remove for diversity of citizenship, as given by a constitutional act of Congress, cannot be taken away or abridged by state statutes and the case being removed the Circuit Court has power to so deal with the controversy that the party will lose nothing by his choice of tribunals. *Courtney* v. *Pradt*, 89.

*See* ACTION; COURTS, 1, 2; EMINENT DOMAIN, 2; REMOVAL OF CAUSES, 1.

OF DISTRICT COURT. *See* Criminal Law, 2.

OF STATE COURTS. *See* Federal Question, 1; Removal of Causes, 1.

OF BANKRUPTCY COURT. *See* Jurisdiction, A 2.

GENERALLY. *See* Process; Waters.

## JURY.

*See* INSTRUCTIONS TO JURY.

## LAND DEPARTMENT.

*See* PUBLIC LANDS, 7.

## LAND GRANTS.

*See* PUBLIC LANDS.

## LEGACIES.

*See* WAR REVENUE ACT, 1.

## LICENSE.

*See* STATUTES, A 1.

## LIENS.

*See* JURISDICTION, B 1; TAXATION, 4.

LIVE STOCK.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

LOCAL LAW.

*California.* County ordinance imposing license (see Statutes, A 1). *Flanigan* v. *Sierra County*, 553.

*District of Columbia.* See District of Columbia.

*Georgia.* Carriers, sections 2317, 2318, Code of 1895 (see Constitutional Law, 1). *Central of Georgia Ry. Co.* v. *Murphey*, 194.

*Iowa.* Taxation, sections 5007, 2441, 2442, Code (see Taxation, 3). *Hodge* v. *Muscatine County*, 276 (see Constitutional Law, 4). *Ib.* Section 5007 (see Constitutional Law, 6). *Cook* v. *Marshall County*, 261.

*Kansas.* Anti-trust act of March 8, 1897 (see Constitutional Law, 8). *Smiley* v. *Kansas*, 447.

*Kentucky.* Condemnation of lands (see Action). *Traction Company* v. *Mining Company*, 239.

*Massachusetts.* Chapter 578, Laws of 1898 (see Constitutional Law, 2). *Worcester* v. *Street Railway Co.*, 539.

*Montana.* Code, section 3612 (see Public Lands, 3). *Butte City Water Co.* v. *Baker*, 119.

*New Mexico.* Service of process, Compiled Laws of 1897 (see Process). *Caledonian Coal Co.* v. *Baker*, 432.

*New York.* Foreign corporations (see Federal Question, 1). *Allen* v. *Alleghany Co.*, 458.

*North Dakota.* Criminal law, chapter 99, March 9, 1903 (see Constitutional Law, 5). *Rooney* v. *North Dakota*, 319.

*Ohio.* Taxation (see Taxation, 8). *Scottish Union & Nat. Ins. Co.* v. *Bowland*, 611.

*Pennsylvania.* Foreign corporations (see Federal Question, 1). *Allen* v. *Alleghany Co.*, 458.

*Porto Rico. Estates of decedents—Rights of heir ab intestato—Payment by debtor to designated heir during pendency of proceedings by other heirs.* Under the law of Porto Rico while an heir to an intestate may assert his rights against one already designated heir *ab intestato* any time within five years after the decree of designation, the heir so designated may within the five-year period collect debts due to the intestate's estate and, where the payment is made in good faith and under the order of the court into which the money was paid by the debtor, and without notice of existence and claims of other heirs, discharge the debtor from liability, notwithstanding such other heirs subsequently assert their claims and are also designated as joint heirs *ab intestato.* Where, however, the debtor has legal notice from the court where the matter is pending that one not originally designated has asserted and is prosecuting a claim to recognition as an heir *ab intestato*, any pay-

ments he makes to the one first designated are at his own peril and liability to account to the other heir after his claim has been established for his proportionate share, and the debtor is not protected by a decree and order of the court directing payment to the assignee of the heir originally designated in a proceeding to which such asserting heir was not a party. Where the payment to the heir originally designated is made before the debt is due and after the other heir has asserted his claim, and under circumstances indicating collusion, it is for the jury to determine whether the payment was made in good faith and without knowledge of the rights of the asserting heir. *Sixto* v. *Sarria*, 175.

*South Carolina. Issuance of evidences of state indebtedness forbidden by constitution.* Article IX, § 10, of the constitution of South Carolina of 1868, forbidding, except as specially authorized in the constitution, the issue of scrip or other evidence of state indebtedness except for the redemption of existing indebtedness of the State, forbade the issue of scrip under an act passed in 1872 to take up the State's guaranty of railroad bonds under an act passed in 1868 subsequent to the ratification of the constitution, notwithstanding that acts had been passed in 1852 and 1854 authorizing such guaranty. it appearing that the guaranty had not actually been endorsed on the bonds prior to the ratification of the constitution and that the act of 1868 was not an adjustment of an old debt but the granting of new aid to the railroad and the authorizing of an original issue of bonds. *Lee* v. *Robinson*, 64.

*See* COURTS, 1.

LOCUS CRIMINIS.

*See* CRIMINAL LAW, 2.

MAILS.

1. *Contract for carriage; power of Postmaster General to terminate.*

Under the mail contract in this case, which was made in pursuance of the Postal Laws and Regulations, and after the service had materially decreased by changed methods of transporting mail and the Postmaster General had offered the contractor, who had refused to accept it, the remaining work at a lower compensation, it was within the power of the Postmaster General to put an end to the contract by order of discontinuance, allowing one month's pay as indemnity, and to relet the remaining service; the power to terminate the contract on allowing a month's pay as indemnity was not predicated on an abandonment of the entire service. *Slavens* v. *United States*, 229.

2. *Contract for carriage; changed service within.*

While the provisions in a similar contract that the contractor should perform without additional compensation all new or changed service that the Postmaster General should order, might not be construed as extending to services of different character and not within the terms of the contract, where the changed service is to take the mail to and from street cars, met at crossings, instead of landings and stations, it comes

within the power reserved to the Postmaster General and the contractor is not entitled to additional compensation therefor. *Ib.*

3. *Contract by local postmaster not binding on Government.*

In the absence of authority shown, a local postmaster has no power or authority to contract in respect to mail messenger service, and is not the agent of nor can he bind the Government for that purpose, and if a contractor performs services which he protests against as not being within his contract, solely on the postmaster's order, he is not entitled to extra compensation therefor after his protest has been sustained and the service let to others. *Ib.*

## MARITIME LAW.

*Liability, under Harter Act, for damages due to negligence in unloading cargo —Application of act to foreign vessels.*

A foreign vessel from Liverpool arrived at its destination, New York, and made fast to the wharf. Owing to unusual gales and weather she was heavily weighted with snow and ice and made top heavy. While the cargo was being unloaded she suddenly rolled over and sank, damaging the cargo remaining in her, some of which had been shipped from points east of Liverpool on bills of lading to Liverpool, thence to be forwarded to New York, and containing certain exemptions of the carrier from liability. The owners and insurers of cargo libelled the vessel; it was found by the District Court and the Circuit Court of Appeals that the damage was due to negligence in unloading cargo and ruled that the negligence fell within section one of the Harter Act and not within section three of the same as negligence in the navigation or management of the vessel. *Held,* that this court will not go behind the findings of the two courts as to negligence and that the rule was correct. When a case may fall under section one and section three of the Harter Act the question which section is to govern must be determined by the primary nature and object of the acts which cause the loss. *Semble.* The standard of conduct is external and not merely co-extensive with the judgment of the individual. The Harter Act will be applied to foreign vessels in suits brought in the United States, and where claimants set up and rely upon the act they must take the burden with the benefits and cannot claim a greater limitation of liability under provisions of bills of lading. *The Germanic,* 589.

## MASTER AND SERVANT.

*Safe appliances—Increased hazard—Knowledge of employé.*

An employé is entitled to assume that his employer has used due care to provide reasonably safe appliances for the doing of his work. Knowledge of the increased hazard resulting from the negligent location in dangerous proximity to a railroad track of a structure will not be imputed to an employé, using ordinary diligence to avoid it if properly located, because he was aware of its existence and general location. It is for the jury to determine from all the evidence whether he had

actual knowledge of the danger. *Texas & Pacific Ry. Co.* v. *Swearingen*, 51.

MINING CLAIMS.

*Adverse proceeding by owner of tunnel against patentee of lode claim held not necessary.*

As between the Government and the locator, it is not a vital fact that there was a discovery of mineral in a lode claim before the commencement of any of the steps required to perfect a location, and by accepting the entry, and confirming it by a patent, the Government does not determine as to the order of proceedings prior to the entry but only that all required by law had been taken. Adverse proceedings, are called for only when one mineral claimant contests the right of another mineral claimant, and, as a tunnel is not a mining claim but only a means of exploration, the owner, prior to discovery of a lode or vein within the tunnel, is not bound to adverse the application for the patent of a lode claim, the lode of which was discovered on the surface; and his omission to do so does not preclude him from asserting a right prior to the date of discovery named in the certificate of location on which the patent for the surface lode claim is based. *Mining Company* v. *Tunnel Company*, 337.

MINES AND MINING.

*See* MINING CLAIMS;
PUBLIC LANDS, 3.

MONOPOLIES.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

MORTGAGE.

*Analogous nature of chattel mortgage and deed of trust.*

A deed of trust and a chattel mortgage with power of sale are practically one and the same instrument as understood in the District of Columbia. *Hunt* v. *Springfield F. & M. Ins. Co.*, 47.

*See* BANKRUPTCY, 5;
FEDERAL QUESTION, 2.

MUNICIPAL CORPORATIONS.

1. *Defined as creature of the State.*

The city is the creature of the State. A municipal corporation is simply a political subdivision of the State existing by virtue of the exercise of the power of the State through its legislative department. *Worcester* v. *Street Ry. Co.*, 539.

2. *Property rights of—Obligation of street railways to repair streets.*

While a municipal corporation may own property not of a public or governmental nature which is entitled to constitutional protection, the obligation of a railroad company to pave and repair streets occupied by

it based on accepted conditions of a municipal ordinance granting rights of location is not private property beyond legislative control. *Ib.*

*See* STREETS AND HIGHWAYS.

NATIONAL BANKS.

*Usurious interest—Payment within meaning of section* 5198, *Rev. Stat.*

The payment referred to in § 5198, Rev. Stat., is an actual payment and not a further promise to pay and the mere discharge of the maker of a note by his giving his own note in renewal thereof will not uphold a recovery against the bank on account of usurious interest in the former note. *First National Bank* v. *Lasater*, 115.

NAVAL OFFICERS.

*Sea duty and shore duty—Construction of sections* 1556, 1571, *Rev. Stat., and naval regulations.*

The Navy Department has no power to disregard the provisions of Rev. Stat. §§ 1556, 1571, and Pars. 1154, 1168 naval regulations, and either deprive an officer of sea pay by assigning him to a duty mistakenly qualified as shore duty but which is in law sea duty, or to entitle him to receive sea pay by assigning him to duty which is essentially shore duty and mistakenly qualifying it as sea duty. Where, however, the assignment of an officer to duty by the Navy Department expressly imposes upon him the continued discharge of his sea duties and qualifies the shore duty as merely temporary and ancillary to the regular sea duty, the presumption is that the shore duty is temporary and does not operate to interfere with or discharge the officer from the responsibilities of the sea duties to which he is regularly assigned and he is entitled to sea pay during the time of such temporary shore duty. *United States* v. *Engard*, 511.

NAVY PERSONNEL ACT.

*Pay for services peculiar to army not within operation of—Pay to which lieutenant, acting as aid to rear-admiral, is entitled.*

The Navy Personnel Act undertook to equalize the pay of naval officers with those officers of the Army of equal rank as to duties properly required of a naval officer, and it has no operation to provide pay for services peculiar to the Army. A lieutenant in the Navy serving as aid to a rear-admiral is entitled to the additional two hundred dollars allowed to a lieutenant serving as aid to a major-general under § 1261, Rev. Stat., but he is not entitled to the mounted pay allowed to the army lieutenant serving as such aid under § 1301, Army Regulations. *United States* v. *Crosley*, 327.

NEGLIGENCE.

*See* DAMAGES; MASTER AND SERVANT; MARITIME LAW; STREETS AND HIGHWAYS.

NINETY-FOURTH RULE.

*See* JURISDICTION, B 2.

NORTHERN PACIFIC RAILROAD.
*See* PUBLIC LANDS.

NOTARY PUBLIC.
*See* WILLS, 2.

NOTICE.
*See* CORPORATIONS, 2;
MASTER AND SERVANT.

OKLAHOMA.
*See* APPEAL AND ERROR;
JURISDICTION, A 4;
PUBLIC LANDS, 4.

ORIGINAL PACKAGES.
*See* INTERSTATE COMMERCE, 2, 3.

PARTIES.
*Substitution.*
In an action for mandamus against a judge of a territorial court in New Mexico, who, after the appeal, ceased to be judge and whose successor has consented that the action be revived against him, this court may, under the act of Congress of February 8, 1899, if in its judgment necessity exists for such action in order to obtain a settlement of the legal questions involved, substitute the name of the successor in place of the original appellee. In this case this court orders the substitution, the party substituted not to be liable for any costs prior hereto. *Caledonian Coal Co.* v. *Baker*, 432.

PAYMENT.
*See* LOCAL LAW (P. R.);
NATIONAL BANKS.

PLEADINGS.
*Construction of bill in equity.*
A bill in equity, and the demurrer thereto, are neither of them to be read and construed strictly as an indictment but are to be taken to mean what they fairly convey to a dispassionate reader by a fairly exact use of English speech. *Swift and Company* v. *United States*, 375.
*See* REMOVAL OF CAUSES, 1.

POLICE POWER.
*See* INTERSTATE COMMERCE, 5;
STATES, 1, 2, 4.

PORTO RICO.
*See* LOCAL LAW (P. R.).

POSTAL LAWS.

*See* MAILS.

POWERS OF CONGRESS.

*See* PUBLIC LANDS, 3.

PRACTICE.

1. *Acceptance by this court of state court's construction of state statute.*

Where the highest court of a State has held that the acts of a person convicted of violating a state statute defining and prohibiting trusts were clearly within both the statute and the police power of the State, and that the statute can be sustained as a prohibition of those acts irrespective of the question whether its language was broad enough to include acts beyond legislative control, this court will accept such construction although the state court may have ascertained the meaning, scope and validity of the statute by pursuing a rule of construction different from that recognized by this court. *Smiley* v. *Kansas*, 447.

2. *Following state court's construction of statute.*

Where the highest court of the State holds that a statute fixing the liability of common carriers applies to shipments made to points without the State, this court must accept that construction of statute. *Central of Georgia Ry. Co.* v. *Murphey*, 194.

3. *As to decision of constitutional questions.*

It is not the habit of this court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case. *Burton* v. *United States*, 283.

4. *Facts taken as found by jury.*

This court will not inquire whether the finding of the jury in the state court is against the evidence; it will take the facts as found and consider only whether the state statute involved is violative of the Federal Constitution. *Smiley* v. *Kansas*, 447.

*See* CONSTITUTIONAL LAW, 7; JURISDICTION, A 1, 3, 5; MARITIME LAW; PARTIES; REMOVAL OF CAUSES, 1; STATES, 4; STATUTES, A 1.

PREFERENCE.

*See* BANKRUPTCY, 4, 5.

PRESUMPTION.

*See* BANKRUPTCY, 7; EXTRADITION, 1; JURISDICTION, B 2; PUBLIC LANDS, 1; TAXATION, 4; WILLS, 3.

## PROCESS.

*What service necessary—Service on officer of corporation while passing through jurisdiction.*

A court cannot acquire jurisdiction over the person of a defendant except by actual service of notice upon him within the jurisdiction or upon some one authorized to accept service in his behalf, or by his waiver, by general appearance or otherwise, of the want of due service. Service of a summons in an action in a territorial court of New Mexico on the president of a railway corporation, while passing through New Mexico as a passenger on a railroad train, held insufficient as a personal service of a corporation organized under an act of Congress, having offices in New York, Kansas and Illinois, and none in New Mexico; the mere ownership of lands, the bringing of suits to protect such lands, in New Mexico does not locate the corporation in New Mexico for the purposes of a personal action against it based on such a service of the summons. Nor was such service authorized by the Compiled Laws of New Mexico, 1897. Although the state of the statute law in respect of suits like this may operate injuriously at times the situation cannot be changed by the courts—that can only be done by legislation. *Caledonian Coal Co.* v. *Baker*, 432.

## PROPERTY RIGHTS.

*See* MUNICIPAL CORPORATIONS, 2.

## PUBLIC LANDS.

1. *Appropriation; effect of subsequent grant on.*

Unless an intent to the contrary is clearly manifest by its terms, a statute providing generally for the disposal of public lands is inapplicable to lands taken possession of and occupied by the Government for a special purpose. A prior appropriation is always presumed to except land from the scope of a subsequent grant although no reference may be made in the latter to the former. *Scott* v. *Carew*, 100.

2. *Appropriation—Establishment of military post.*

The establishment of a military post under proper orders on public lands amounts to an appropriation of the land for military purposes and withdraws the property occupied from the effect of general laws subsequently passed for the disposal of public lands, and no right of an individual settler attaches to or hangs over the land to interfere with the action of the Government in regard thereto. *Ib.*

3. *Delegation of powers by Congress to local legislatures.*

While the disposal of the public lands is made through the exercise of legislative power entrusted to Congress by the Constitution, yet Congress prescribing the main and substantial conditions thereof may rightfully entrust to local legislatures the determination of those minor matters as to such disposal which amount to mere regulations. Regulations made by the local legislatures in regard to the location of mining claims which are not in conflict with the Constitution and

laws of the United States are not invalid as an exercise of a power which cannot be delegated by Congress and such regulations must be complied with in order to perfect title and ownership under the mining laws of the United States. Even if doubts exist were the matter wholly *res integra*, and although consequences may not determine a decision this court will pause before declaring invalid legislation long since enacted, and the validity whereof has been upheld by state courts and recognized by this court, and on the faith of which property rights have been built up and countless titles rest which would be unsettled by an adverse decision. The regulations contained in § 3612 of the Montana Code are not invalid as being too stringent and therefore in conflict with the liberal purpose manifested by Congress in its legislation respecting mining claims. *Butte City Water Co.* v. *Baker*, 119.

4. *Entries for town sites in Oklahoma.*

There was no permit for entry of lands in Oklahoma for town sites under the act of 1889 or until the town site act was passed May 14, 1890, and an agreement among a portion of the people who on April 22, 1889, chose lots upon a projected town site did not and could not vest an absolute title in persons selecting lots or make a plat or map of town final or conclusive; but the selectors took their lots subject to changes and conditions that might obtain—in this case as to location of streets —when the township patent was issued to, and a map finally approved by, the township trustees under the act of May 14, 1890. *Oklahoma City* v. *McMaster*, 529.

5. *Homestead claim; effect of voting in another precinct—Controlling effect of findings of fact by Secretary of Interior.*

A homestead claimant in a contest in the Land Department admitted he voted in a precinct in Montana other than that in which the land was situated, and that he returned there only often enough to keep up a good showing. The Secretary of the Interior, after reviewing some of the facts, "without passing upon any other question" laid down that a residence for voting purposes elsewhere precluded claiming residence at the same time on the land and decided against the claimant. *Held* that the Secretary found as a fact, by implication, that the plaintiff not only voted elsewhere, but resided elsewhere for voting, that as the case presented no exceptional circumstances, this court was not warranted in going behind these findings of fact and that the words "without passing on any other question" could not be taken absolutely to limit the ground of decision to the proposition of law but merely emphasized one aspect of the facts dominant in the Secretary's mind. *Small* v. *Rakestraw*, 403.

6. *Northern Pacific Railroad grant, act of July 2, 1864 — Reservation to Government as to survey, etc.—Right of recovery for timber removed.*

While the grant to the Northern Pacific Railroad Company under the act of July 2, 1864, was *in præsenti*, and took effect upon the sections granted when the road was definitely located, by relation as to the

date of the grant, the survey of the land and the identification of the sections—whether odd or even—is reserved to the Government, and the equitable title of the railroad company and its assigns becomes a legal title only upon the identification of the granted sections. Until the identification of the sections by a government survey the United States retains a special interest in the timber growing in the township sufficient to recover the value of timber cut and removed therefrom. In a suit brought by the United States for that purpose private surveys made by the railroad company cannot be introduced as evidence to show that the land from which the timber was cut were odd sections within the grant and included in a conveyance from the railroad company to the defendants. *United States* v. *Montana Lumber Mfg. Co.*, 573.

7. *Railroad grants—Purchase from railroad—Construction of act of March* 3, 1887.

In a remedial statute such as § 5, act of March 3, 1887, 24 Stat. 557, enabling *bona fide* purchasers from railroad companies to perfect their titles by purchase from the Government in case the land purchased was not included in the grant the term "citizens," in the absence of anything to indicate the contrary, includes state corporations. Whether a *bona fide* purchaser from a railroad company acts with reasonable promptness in availing of the provisions of the act of March 3, 1887, is a question primarily for the Land Department and one attempting to enter the land is charged with knowledge of the act, the railroad's title and, if the deeds have been properly recorded, of the claims of the railroad's grantee and subsequent assigns; and, under the circumstances of this case, this court will not set aside the decision of the Land Department allowing a *bona fide* purchaser to avail of the privilege of the act within ten months after the lands had been stricken from the company's list as the result of a decision affecting that and other lands rendered ten years after the purchase from the railroad company, and during which period all parties had considered the full equitable title to be in the railroad company and its grantees. *Ramsey* v. *Tacoma Land Co.*, 360.

8. *Rights acquired by wrongful settlement.*

One who wrongfully settled on public land and was dispossessed by proper authority so that the land might be used for a military post acquired by such settlement no priority of right in the matter of purchase or homestead entry when the post was abandoned and the land opened to private purchase. *Scott* v. *Carew*, 100.

*See* MINING CLAIMS;
STATUTES, A 4.

PUBLIC OFFICERS.

*See* CRIMINAL LAW, 1.

RAILROADS.

*See* ACTION;
AUTOMATIC COUPLERS;
COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 2;
DAMAGES;
LOCAL LAW (S. C.);
MUNICIPAL CORPORATIONS;
PUBLIC LANDS, 6, 7.

RAILROAD LAND GRANTS.

*See* PUBLIC LANDS, 6, 7.

RATES.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

REMOVAL OF CAUSES.

1. *Case removed when—Restraint of further proceedings in state court—Power of state court where record does not show case removable.*

In regard to the removal of cases the following principles have been settled: If the case be a removable one, that is, if the suit, in its nature, be one of which the Circuit Court could rightfully take jurisdiction, then upon the filing of a petition for removal, in due time, with a sufficient bond, the case is, in law, removed, and the state court in which it is pending will lose jurisdiction to proceed further, and all subsequent proceedings in that court will be void. After the presentation of a sufficient petition and bond to the state court in a removable case, it is competent for the Circuit Court, by a proceeding ancillary in its nature—without violating § 720, Rev. Stat., forbidding a court of the United States from enjoining proceedings in a state court—to restrain the *party* against whom a cause has been legally removed from taking further steps in the state court. If upon the face of the record, including the petition for removal, a suit does not appear to be a removable one, then the state court is not bound to surrender its jurisdiction, and may proceed as if no application for removal had been made. Under the judiciary act of 1887, 1888, a suit cannot be removed from a state court unless it could originally have been brought in the Circuit Court of the United States. *Traction Company* v. *Mining Company*, 239.

2. *Power of Circuit Court to pass on all questions arising.*

When a case has been removed into the Circuit Court of the United States on the ground of diversity of citizenship, that court is entitled to pass on all questions arising, including the question of jurisdiction over the subject matter in the state courts or the sufficiency of mesne process to authorize the recovery of personal judgment. *Courtney* v. *Pradt*, 89.

3. *Right of removal for diversity of citizenship; not abrogable by state statute.*

The right to remove for diversity of citizenship, as given by a constitutional act of Congress, cannot be taken away or abridged by state statutes and the case being removed the Circuit Court has power to

so deal with the controversy that the party will lose nothing by his choice of tribunals. *Ib.*

*See* JURISDICTION, B 3.

REPEAL.

*See* STATUTES, A 2.

RESIDENCE.

*See* PUBLIC LANDS, 5.

RES JUDICATA.

*No foundation for plea where no formal judgment entered.*

Where no formal judgment has been entered the plea of *res judicata* has no foundation; neither the verdict of a jury nor the findings of a court even though in a prior action, upon the precise point involved in a subsequent action and between the same parties constitutes a bar. *Oklahoma City* v. *McMaster*, 529.

RESTRAINT OF TRADE.

*See* COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 8;
STATES, 2.

RULES OF COURT.

*See* JURISDICTION, B 2.

SEA DUTY.

*See* NAVAL OFFICERS.

SENATORS OF THE UNITED STATES.

*See* CRIMINAL LAW;
JURISDICTION, A 6.

SERVICE OF PROCESS.

*See* PROCESS.

SET-OFF.

*See* BANKRUPTCY, 4.

SHERMAN ACT.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

SHIPPING.

*See* CONTRACTS, 2;
MARITIME LAW.

STANDARD OF CONDUCT.

*See* MARITIME LAW.

## STATES.

1. *Police power under Constitution.*

The police power of the State does not give it the right to violate any provision of the Federal Constitution. *Central of Georgia Ry. Co.* v. *Murphey*, 194.

2. *Police power; extent of, where freedom of contract involved.*

While there is a certain freedom of contract which the State cannot destroy by legislative enactment, in pursuance whereof parties may seek to further their business interests, the police power of the State extends to, and may prohibit a secret arrangement by which, under penalties, and without any merging of interests through partnership or incorporation an apparently existing competition among all the dealers in a community in one of the necessaries of life is substantially destroyed. *Smiley* v. *Kansas*, 447.

3. *Power to withdraw suit from cognizance of Federal court.*

A State cannot by any statutory provisions withdraw a suit in which there is a controversy between citizens of different States from the cognizance of the Federal courts. *Traction Company* v. *Mining Company*, 239.

4. *Right to tax or prohibit sale of cigarettes.*

A State may reserve to itself the right to tax or prohibit the sale of cigarettes, and while this court is not bound by the construction given to a statute by the highest court of the State as to whether a tax is or is not a license to sell it will accept it unless clearly of the opinion that it is wrong. *Hodge* v. *Muscatine County*, 276.

*See* Cases Explained, 2; Constitutional Law, 1, 7; Corporations, 2; Eminent Domain, 2; Interstate Commerce, 1, 4, 5; Jurisdiction, A 3; Local Law; Removal of Causes, 3; Waters, 1.

## STATUTES.

### A. Construction of.

1. *Application of state court's construction of state statutes—California license ordinance held a revenue measure.*

Whether a statute of a State is or is not a revenue measure and how rights thereunder are affected by a repealing statute depends upon the construction of the statutes, and where no Federal question exists this court will lean to an agreement with the state court. Under the California cases the county ordinance imposing licenses involved in this case was a revenue and not a police measure. *Flanigan* v. *Sierra County*, 553.

2. *Repeal extinguishing power derived from statute—Doctrine applied to other than penal statutes.*

While the doctrine that powers derived wholly from a statute are extin-

guished by its repeal and no proceedings can be pursued under the repealed statute, although begun before the repeal, unless authorized under a special clause in the repealing act has been oftenest illustrated in regard to penal statutes, it has been applied by the California courts to the repeal of the power of counties to enact revenue ordinances and will therefore in such a case be applied by this court. *Ib.*

3. *Legislative intent, the main purpose of construction.*

While the court may not add to or take from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration. *United States* v. *Crosley*, 327.

4. *Act of June* 3, 1878, *relative to use of timber on public lands.*

In the act of June 3, 1878, 20 Stat. 88, c. 150, permitting the use of timber on the public lands for "building, agricultural, mining and other domestic purposes," the word "domestic" is not to be construed as relating solely to household purposes omitting "other" altogether but it applies to the locality to which the statute is directed and gives permission to industries there practiced to use the public timber. To enlarge or abridge a permission given by Congress to certain specified industries to use the public timber would not be regulation but legislation and under the provisions of the statute of June 3, 1878, 20 Stat. 88, the power given by the Secretary of the Interior to make regulations cannot deprive a domestic industry from using the timber. *United States* v. *United Verde Copper Co.*, 207.

5. *Meaning of words—Association of words.*

An apt and sensible meaning must be given to words as they are used in a statute and the association of words must be regarded as designed and not as accidental, nor will a word be considered an intruder if the statute can be construed reasonably without eliminating that word. *Ib.*

6. *Of statutes in derogation of common law and penal statutes; strictness of construction.*

Statutes in derogation of the common law and penal statutes are not to be construed so strictly as to defeat the obvious intention of Congress as found in the language actually used according to its true and obvious meaning. *Johnson* v. *Southern Pacific Co.*, 1.

*See* AUTOMATIC COUPLERS;
BANKRUPTCY;
COMBINATIONS IN RESTRAINT OF TRADE;
FEDERAL QUESTION, 1;
NAVY PERSONNEL ACT;
PRACTICE, 1, 2;
PUBLIC LANDS;
TAXATION, 9;
WAR REVENUE ACT;
WATERS, 2.

B. OF THE UNITED STATES.

*See* ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

*See* LOCAL LAW.

STOCKHOLDERS.

*See* CORPORATIONS;
JURISDICTION, B 2.

STREETS AND HIGHWAYS.

*Obstructions; stepping-stones as—Duty of municipality as to illumination.*

An object which subserves the use of streets need not necessarily be considered an obstruction although it may occupy some part of the space of the street. The duty of a city to specially illuminate and guard the place where an object is depends upon whether such object is an unlawful obstruction. Under §§ 222 and 233, Rev. Stat., District of Columbia, the District is not prohibited from permitting a stepping-stone on any part of the street because it is an obstruction *per se* nor is the District required to specially illuminate and guard the place where such stepping-stone is located. *Wolff* v. *District of Columbia*, 152.

*See* CONSTITUTIONAL LAW, 2;
MUNICIPAL CORPORATIONS, 2.

STREET RAILWAYS.

*See* CONSTITUTIONAL LAW, 2;
MUNICIPAL CORPORATIONS.

SUBSTITUTION OF PARTIES.

*See* PARTIES.

SUMMONS.

*See* PROCESS.

SURVEYS.

*See* PUBLIC LANDS, 6.

TAXATION.

1. *Effect of failure, by taxpayer, to present defense.*

If the taxpayer be given an opportunity to test the validity of a tax at any time before it is made final, either before a board having *quasi* judicial character, or a tribunal provided by the State for that purpose, due process is not denied, and if he does not avail himself of the opportunity to present his defense to such board or tribunal, it is not for this court to determine whether such defense is valid. *Hodge* v. *Muscatine County*, 276.

2. *State's right to tax cigarettes.*

A State may reserve to itself the right to tax or prohibit the sale of cigarettes, and while this court is not bound by the construction given to a statute by the highest court of the State as to whether a tax is or is not a license to sell it will accept it unless clearly of the opinion that it is wrong. *Ib.*

3. *Validity of section 5007, Iowa Code.*

Section 5007, Iowa Code, imposing a tax against every person and upon the

real property and the owner thereof whereon cigarettes are sold does not give a license to sell cigarettes, nor is it invalid as depriving the owner of the property of his property without due process of law, because it does not provide for giving him notice of the tax, §§ 2441, 2442, Iowa Code, providing for review with power to remit by the board of supervisors. *Ib.*

4. *Question of validity of state statute not a Federal one.*
Whether or not a state statute violates the state constitution in not stating distinctly the tax and the object to which it is to be applied is a local and not a Federal question. *Ib.*

5. *Lien on realty for tax on business conducted thereon.*
A tax to carry on a business may be made a lien on the property whereon the business is carried and the owner is presumed to know the business there carried on and to have let the property with knowledge that it might be encumbered by a tax on such business. *Ib.*

6. *Government bonds subject to seizure for taxes due.*
There is nothing in the exemption of Government bonds from taxation which prevents them from being seized for taxes due upon unexempt property. *Scottish Union & Nat. Ins. Co.* v. *Bowland,* 611.

7. *Enjoining suit for collection of taxes.*
Where there is no personal liability for taxes the defense can be set up in an action at law and there is no necessity to resort to equity to enjoin prosecution of suits therefor. It will be presumed that if the claim of the party taxed is right no personal judgment will be entered. *Ib.*

8. *Ohio tax law construed—Municipal bonds owned and deposited by foreign insurance company as prerequisite to conducting business in State, subject to taxation.*
While technically municipal bonds deposited with the insurance commissioner under the laws of Ohio regulating the right of foreign companies to do business within the State are investments in bonds, they are also a part of the capital stock of the company invested in Ohio and required to be so invested for the security of domestic policy holders, and for the purposes of taxation to be considered as part of the capital stock of the company and included within the statutory definition of personal property required to be returned by foreign and domestic corporations for taxation. *Ib.*

9. *Ohio tax law construed—Constitutionality of law.*
While no tax can be levied without express authority of law statutes are to receive a reasonable construction with a view to carrying out their purpose and intent, and the collection by distraint of goods to satisfy taxes lawfully levied is one of the most ancient methods known to the law and in this case the law of Ohio authorizing it does not violate

the constitutional right of a foreign insurance company and deprive it of its property without due process of law. *Ib.*

10. *Ohio tax law construed—Effect of substitution of Government bonds for others withdrawn from deposit.*

The laws of the State of Ohio as construed by the Supreme Court of that State have conferred the right to tax bonds deposited by a foreign insurance company with the insurance commissioner under the laws regulating the right to do business in the State. Where municipal bonds so deposited are withdrawn before the return day and Government bonds substituted therefor as provided by law the company is not liable for taxation on the bonds so withdrawn. *Ib.*

*See* CONSTITUTIONAL LAW, 2, 6, 7; STATES, 4;
CORPORATIONS; WAR REVENUE ACT.

TERRITORIES.

*See* APPEAL AND ERROR.

TERRITORIAL COURTS.

*See* JURISDICTION, A 4.

TESTAMENTARY CAPACITY.

*See* WILLS, 3.

TIMBER LANDS.

*See* STATUTES, A 4.

TITLE.

*See* BANKRUPTCY, 6; JURISDICTION, B 1;
INTERSTATE COMMERCE, 1; PUBLIC LANDS, 3, 4, 6, 7.

TRIAL.

*See* ARMY.

TRUSTS.

*See* CONSTITUTIONAL LAW, 8;
STATES, 2.

TRUSTEES.

*See* BANKRUPTCY, 8.

UNITED STATES SENATORS.

*See* CRIMINAL LAW;
JURISDICTION, A 6.

UNLAWFUL COMBINATIONS.

*See* COMBINATIONS IN RESTRAINT OF TRADE.

USAGE.

*See* CONTRACTS, 2.

USURY.

*See* NATIONAL BANKS.

VESSELS.

*See* MARITIME LAW.

WAIVER.

*See* PROCESS.

WAR REVENUE ACT.

1. *Construction of—Legacies not subject to taxation under, prior to actual enjoyment and possession.*

Where a legacy under the will of one dying in September, 1899, was to be held in trust by the executors, the legatee only to receive the income until he reached a specified age, which would be subsequent to 1902, when he was to receive the principal, §§ 29 and 30 of the war revenue act of June 13, 1898, 30 Stat. 464, did not authorize the assessment or collection, prior to the time when, if ever, such rights or interests should become absolutely vested in possession and enjoyment, of any tax with respect to any of the rights or interests of the legatee with the exception of his present right to receive the income until the age specified. *Vanderbilt* v. *Eidman*, 480.

2. *Effect of amending and repealing acts of* 1901 *and* 1902.

The amendatory act of March 2, 1901, 31 Stat. 946, as to the questions involved in this suit reënacted §§ 29 and 30 of the act of 1898 and did not enlarge them so as to embrace subjects of taxation not originally included therein, and did not justify the new construction thereafter placed upon the act by the Government, that death duties should become due within one year as to legacies and distributive shares not capable of being immediately possessed and enjoyed and therefore not subject to taxation under the original act. The refunding act of June 27, 1902, 32 Stat. 406, passed after §§ 29 and 30 of the act of 1898 had been repealed by the act of April 12, 1902, 32 Stat. 96, was in a sense declaratory of the construction now given by this court to those sections of the act of 1898 and was a legislative affirmance of such construction of the act as it had been adopted by the Government prior to the amendatory act of March 2, 1901, and a repudiation of the opposite construction adopted thereafter. *Ib.*

WATERS.

1. *Rights of Federal Government under agreement of September* 16, 1833, *between New York and New Jersey.*

The agreement of September 16, 1833, between New York and New Jersey, confirmed by act of Congress of June 28, 1834, 4 Stat. 708, did not

vest exclusive jurisdiction in the Federal Government over the sea adjoining those States, neither of which abdicated any rights to the United States. *Hamburg American Steamship Co.* v. *Grube*, 407.

2. *Effect on jurisdiction over littoral waters of New Jersey of act of* 1846.

The act of the legislature of New Jersey of March 12, 1846, under which the jurisdiction of the United States over Sandy Hook is derived is merely one of cession and does not purport to transfer jurisdiction over the littoral waters beyond low water mark. *Ib.*

*See* BOUNDARIES.

WILLS.

1. *Intention of testator—Effect of devise of land without words of limitation or description.*

The policy of the law in favor of the heir yields to the intention of the testator if clearly expressed or manifested. The rule of law that a devise of lands without words of limitation or description gives a life estate only, does not apply, and devises will be held to be of the fee, where it is plain that the testator's intention was to dispose of his whole estate equally between his heirs, and there is no residuary clause indicating that he intended passing less than all of his estate, and all of his heirs at law are devisees under the will. *McCaffrey* v. *Manogue*, 563.

2. *Attesting witness; vice consul certifying as to acknowledgment held to be.*

The signature of a resident of the District of Columbia to a will executed abroad was witnessed on the day of execution by two witnesses; on the day following an American vice consul signed, as such and under seal, a certificate that the testator had appeared before him and acknowledged the will and his signature thereto. It did not state that the testator signed in his presence. The law in the District of Columbia required three witnesses in testator's presence, but did not require the testator to sign in presence of witnesses. The will was attacked also on grounds of testator's insanity and undue influence on the testator who had, previous to the will, been for a short time in an insane asylum. In an action affecting title to real estate there were issues sent to a jury and the title under the will sustained. *Held*, that under the circumstances in this case the jury might properly draw the inference that the vice consul executed the certificates in the ordinary course of business and in presence of the testator. Although a notary taking an acknowledgment as required by law is not, in the absence of separate signature as such, to be regarded as a witness, inasmuch as the certificate in this case was not required by law and was unnecessary, it was, together with the description appended to the vice consul's name, immaterial and could be disregarded as surplusage and the vice consul's signature regarded as that of a witness in his unofficial capacity. *Keely* v. *Moore*, 38.

3. *Testamentary capacity—Evidence of insanity—Insanity and mental capacity.*

The application of a relative, and the certificates of physicians, for the ad-

mission of testator to an insane asylum, from which he had been released apparently in sound condition prior to the execution of the will, were properly excluded both because not sworn and given in a different proceeding and on a different issue. There was no error in submitting the question of testator's insanity to the jury with the instruction that if they found that the insanity was permanent in its nature and character the presumptions were that it would continue and the burden was on those holding under the will to satisfy the jury that he was of sound mind when it was executed. A man may be insane to the extent of being dangerous if set at liberty and yet have sufficient mental capacity to make a will, enter into contracts, transact business and be a witness. *Ib.*

WITNESS.

*See* WILLS, 2, 3.

WORDS AND PHRASES.

*See* CONTRACTS, 1;
STATUTES, A 5;
PUBLIC LANDS, 7.