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ACTION.

1. *Ancillary action.*

All the parties to an action in the United States Circuit Court, to determine title to land, united in an agreement that judgment be entered in favor of two of the parties who were to convey the property to a purchaser and to deposit the purchase price in a bank to the credit of arbitrators, who were to determine the exact rights of all the parties and distribute the fund accordingly; judgment was entered and never appealed from or otherwise attacked. *Held*: that the parties in whose favor judgment is entered are not trustees of the court, nor is the purchase price received by them a fund of, or under the control of the court; and a suit brought against them to compel them to account for the purchase money is not ancillary, to the original action and the final judgment rendered therein, and jurisdiction of the Circuit Court cannot be maintained on that ground alone. *Stillman v. Combe*, 436.

2. *Nature, where statutory liability is contractual.*

Although a statutory liability may be contractual, or quasi-contractual in its nature, an action given by statute is not necessarily to be regarded as brought on simple contract, or breach of simple contract. *McClaine v. Rankin*, 154.

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The ten per cent increase over and above pay proper allowed to an officer of the United States Army for service in Porto Rico, Cuba, Philippine Islands, Hawaii and Alaska, under the act of May 26, 1900, 31 Stat. 211, and beyond the limits of the States comprising the Union and Territories contiguous thereto under the act of March 2, 1901, 31 Stat. 903, is to be computed upon the total amount to which the officer is entitled at the time of such service both for longevity pay and the pay provided for by § 1261, Rev. Stat. *United States v. Mills*, 223.

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BANKRUPTCY.

1. *Preference: surrender within meaning of act of 1898 may be either compelled or voluntary.*

The word "surrender," as generally defined, may denote either compelled or voluntary action. In § 57g of the Bankruptcy Act of 1898, providing that the claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences, it is unqualified and generic and hence embraces both meanings. A penalty is not to be readily implied and a person subjected thereto

unless the words of the statute plainly impose it, and courts will not construe the provision so as to cause the word "surrender," as used in § 57g of the Bankruptcy Act, to embrace only voluntary action and thus read into the statute a qualification conflicting with equality of creditors and also creating a penalty not expressly or by implication found in the statute. Such a construction would create a penalty by judicial action alone and would also necessitate judicial legislation in order to define the character and degree of compulsion essential to prevent the surrender in fact from being a surrender within the meaning of the section. *Keppel v. Tiffin Savings Bank*, 356.

2. *Proof of claim; effect upon, of retention of preference until compelled surrender.*

The creditor of a bankrupt, who has received a merely voidable preference, and who has in good faith retained such preference until deprived thereof by the judgment of a court upon a suit of the trustee, can thereafter prove the debt so voidably preferred. *Ib.*

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Where the bill of exceptions, after referring to the empanelling of the jury, contains recitals that the plaintiff produced witnesses, followed in each case by the testimony of the witness at the close of all of which there were further recitals that the parties rested, these statements are sufficient, even in the absence of a technical affirmative recital to that effect, to show that the bill of exceptions contains all the testimony, and defendant is not to be deprived of a full consideration of the question of his guilt by such omission; and even in the absence of a motion to instruct the jury to find for the defendant this court may examine the question where it is plain that error has been committed. *Clyatt v. United States*, 207.

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Northern Securities case, 193 U. S. 197. The decree of the Circuit Court in the *Northern Securities case*, affirmed by this court, 193 U. S. 197, did not determine the quality of the transfer as between the defendants, and the provisions therein as to return of shares of stock transferred to it by the railway stockholders were permissive only, and not

an adjudication that any of the vendors were entitled to a restitution of their original railway shares. The judgment of this court affirming the decree of the Circuit Court in the *Northern Securities* case went no further than the decree itself, and while it leaves the Circuit Court at liberty to proceed in the execution of its decree as circumstances may require, it does not operate to change the decree or import a power to do so not otherwise possessed. Nothing in the judgment or opinion of this court in the *Northern Securities* case, 193 U. S. 197, enlarged the scope of the decree of the Circuit Court so as to make it an adjudication that any of the vendors of railway stocks were entitled to judicial restitution of the stocks transferred by them to the Securities Company, or that the Securities Company could not distribute the shares of railway stock held by it *pro rata* between its own shareholders. *Harriman v. Northern Securities Co.*, 244.

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See JURISDICTION, A 3.

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CLAIMS AGAINST THE UNITED STATES.

District of Columbia Act of 1880 construed—Jurisdiction of Court of Claims.

The intent of the District of Columbia Act of June 16, 1880, 21 Stat. 284, was to enable parties to submit the justice of their claims against the United States for work done in the District prior to March 14, 1876, to adjudication in a competent court, and for that purpose the jurisdic-

tion conferred was equitable as well as legal; under the equitable jurisdiction so conferred the Court of Claims has power to reform a written contract between the District of Columbia and a claimant to supply therein what was omitted by mutual mistake of the parties, and to award money relief to the claimant on the contract as so reformed. It was also the intention of the act of June 16, 1880, to permit the Court of Claims to adjudicate claims for all work done by order and direction of the Commissioners and accepted by them for the use and benefit of the District of Columbia; for this purpose the statute is remedial, and a claimant, if the facts support his claim, can recover for work so done and accepted notwithstanding it was under verbal directions of the Commissioners and not under written contract as required by prior acts of Congress. The main purpose of the Court of Claims is to arrive at and adjudicate the justice of alleged claims against the United States, and the court is not bound by special rules of pleading. *District of Columbia v. Barnes*, 146.

COLLATERAL ATTACK.

See NAVY, 4;

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COMBINATIONS IN RESTRAINT OF TRADE.

1. *Compliance with decree in Northern Securities case.*

The Northern Pacific system taken in connection with the Burlington system is competitive with the Union Pacific system, and the entire record considered, to deliver to the complainants, the Northern Pacific stock claimed by them and distribute the balance of the stock ratably between the other Securities Company stockholders, would not only be inequitable but would tend to smother competition and thus contravene the object of the Sherman law and the purposes of the suit brought by the Government against the Northern Securities Company. It was the duty of the Securities Company under the decree in the Government suit to end a situation which had been adjudged unlawful, and as this could be effected by sale and distribution in cash, or by distribution in kind, the company was justified in adopting the latter method and avoiding the forced sale of several hundred million dollars of stock which would have involved disastrous results. *Harriman v. Northern Securities Co.*, 244.

2. *Monopoly defined.*

The idea of monopoly is not now confined to a grant of privileges but is understood to include a condition produced by the acts of individuals and the suppression of competition by unification of interest or management or through agreement and concert of action. It is the power to control prices which makes both the inducement to make such combinations and the concern of the law to prohibit them. *National Cotton Oil Co. v. Texas*, 115.

See CONSTITUTIONAL LAW, 3;
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See CONSTITUTIONAL LAW;
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CONSTITUTIONAL LAW.

1. *Contracts—Repudiation by municipality of contract debt held not an impairment of obligation.*

The wrongful repudiation of, and refusal to pay, a contract debt by a city may amount merely to a naked breach of contract, and in the absence of any legislative authority affecting the contract or on which the refusal to pay is based, the mere fact that the city is a municipal corporation does not give to its refusal the character of a law impairing the obligation of contracts or depriving a citizen of property without due process of law, and give rise to a suit under the Constitution of the United States within the jurisdiction of the Circuit Court. *Dawson v. Columbia Trust Co.*, 178.

See *post*, 3;
TAXATION, 3.

2. *Due process of law—Validity of arrest by state officer under Federal treaty.*

There is no constitutional or statutory provision of California prohibiting the arrest of a seaman on the request of a French consul under the treaty with France of 1853, and such arrest, being for temporary detention of a sailor whose contract is an exceptional one, does not deprive him of his liberty without due process of law, and if the chief of police voluntarily performs the request of the consul the arrest is not illegal on that ground. *Dallemagne v. Moisan*, 169.

3. *Due process of law—Validity of Texas anti-trust acts.*

The Anti-Trust Acts of Texas of 1889, 1895 and 1899, are all directed to the prohibitions of combinations to restrict trade, to in any way limit competition in the production or sale of articles, or to increase or reduce

prices in order to preclude free and unrestricted competition; and, as the legislature of a State may ordain that competition and not combination shall be the law of trade, and may prohibit combinations to control prices, the statutes as they now stand are not in conflict with the Fourteenth Amendment and do not, as against corporations dealing in cotton oil and combining to regulate the price of cotton seed, work a deprivation of property without due process of law, or impair their liberty of contract. *National Cotton Oil Co. v. Texas*, 115.

See ante, 1;

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4. *Equal protection of laws—Validity of assessment for grading street; benefits, how estimated.*

In determining whether an improvement does, or does not, benefit property within the assessment district, the land should be considered simply in its general relations and apart from its particular use at the time; and an assessment, otherwise legal, for grading, paving and curbing an adjoining street is not void under the Fourteenth Amendment because the lot is not benefited by the improvement owing to its present particular use. *Louisville & Nashville R. R. Co. v. Asphalt Co.*, 430.

See post, 12;

LOCAL LAW (TEX.);

TAXATION, 1, 2.

Extradition. See Extradition.

5. *Fourteenth Amendment; due process of law; deprivation of property rights by decree against one not a party.*

No person can be deprived of property rights by any decree in a case wherein he is not a party. Where a corporation is not itself made a party to the suit, complainant alleging that its corporate existence had ended, its rights cannot be adjudged even though certain persons are made defendants on the ground that they are using the name of the corporation as a cover for their alleged wrongful acts and they answer, denying any personal interest, and claiming that the corporation is a going concern and justify their acts as its agent; and a decree of a state court in such an action cannot be reviewed in this court at the instance of one of such defendants on the ground that the corporation has been deprived of its property without due process of law. *Iron Cliffs Co. v. Negaunee Iron Co.*, 463.

6. *Fourteenth Amendment—Requiring removal of gas pipes in exercise of police power not an unconstitutional deprivation of property.*

Uncompensated obedience to a regulation enacted for the public safety under the police power of the State is not a taking of property without due compensation. Under the facts of this case, the changing of the location of gas pipes at the expense of the gas company to accommodate a system of drainage, which has been upheld by the state court as

an execution of the police power of the State, does not amount to a deprivation of property without due process of law. *New Orleans Gas Co. v. Drainage Commission*, 453.

7. *Fourteenth Amendment; construction relative to methods of taxation.*

A system of delusive exactness should not be extracted from the very general language of the Fourteenth Amendment in order to destroy methods of taxation which were well known when the Amendment was adopted, and which no one then supposed would be disturbed. *Louisville & Nashville R. R. Co. v. Asphalt Co.*, 430.

Indians. See INDIANS, 1.

8. *Involuntary servitude; power of Congress to enforce prohibition.*

While the ordinary relations of individuals to individuals are subject to the control of the States and not to that of the General Government the Thirteenth Amendment grants to Congress power to enforce the prohibition against involuntary servitude, including peonage, and to punish persons holding another in peonage; and §§ 1990, 5526 Rev. Stat. are valid legislation under such power and operate directly on every person violating their provisions whether in State or Territory and whether there be or not any municipal ordinance or state law sanctioning such holding. *Clyatt v. United States*, 207.

9. *Involuntary servitude—Peonage within prohibition.*

Peonage is a status or condition of compulsory service based upon the indebtedness of the peon to the master. The service is enforced unless the debt be paid, and however created, it is involuntary servitude within the prohibition of the Thirteenth Amendment to the Federal Constitution. *Ib.*

10. *Jury trial; invalidity of provision of Alaska Code.*

Under the treaty with Russia ceding Alaska and the subsequent legislation of Congress, Alaska has been incorporated into the United States and the Constitution is applicable to that Territory, and under the Fifth and Sixth Amendments Congress cannot deprive one there accused of a misdemeanor of trial by a common law jury, and that § 171 of the Alaska Code, 31 Stat. 358, in so far as it provides that in trials for misdemeanors six persons shall constitute a legal jury, is unconstitutional and void. *Rasmussen v. United States*, 516.

Property rights. See STREETS AND HIGHWAYS.

11. *Scope of words—Word "charged" in Art. IV, sec. 2, subd. 2, defined.*

Words in the Constitution of the United States do not ordinarily receive a narrow and contracted meaning, but are presumed to have been used in a broad sense with a view of covering all contingencies. The word "charged" in Art. IV, § 2, Subd. 2, was used in its broad signification to cover any proceeding which a State might see fit to adopt for a formal accusation against an alleged criminal. *Matter of Strauss*, 324.

States. See POLICE POWER, 2;
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12. *Validity of Massachusetts compulsory vaccination law.*

(a.) *Preamble as source of Federal power.*

The United States does not derive any of its substantive powers from the Preamble of the Constitution. It cannot exert any power to secure the declared objects of the Constitution unless, apart from the Preamble, such power be found in, or can properly be implied from, some express delegation in the instrument. *Jacobson v. Massachusetts*, 11.

(b) *Spirit of Constitution.*

While the spirit of the Constitution is to be respected not less than its letter, the spirit is to be collected chiefly from its words. *Ib.*

(c) *Exclusion of evidence in state court considered.*

While the exclusion of evidence in the state court in a case involving the constitutionality of a state statute may not strictly present a Federal question, this court may consider the rejection of such evidence upon the ground of incompetency or immateriality under the statute as showing its scope and meaning in the opinion of the state court. *Ib.*

(d) *Police power of State.*

The police power of a State embraces such reasonable regulations relating to matters completely within its territory, and not affecting the people of other States, established directly by legislative enactment, as will protect the public health and safety. *Ib.*

(e) *Police power of State; bounds of exercise.*

While a local regulation, even if based on the acknowledged police power of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, the mode or manner of exercising its police power is wholly within the discretion of the State so long as the Constitution of the United States is not contravened, or any right granted or secured thereby is not infringed, or not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression. *Ib.*

(f) *Liberty of individual defined.*

The liberty secured by the Constitution of the United States does not import an absolute right in each person to be at all times and in all circumstances wholly freed from restraint, nor is it an element in such liberty that one person, or a minority of persons residing in any community and enjoying the benefits of its local government, should have power to dominate the majority when supported in their action by the authority of the State. *Ib.*

(g) *Statute within police power of State.*

It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine

in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health. *Ib.*

(h) *Equal protection of laws; right not denied.*

There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law does not deny the equal protection of the laws to adults if the statute is applicable equally to all adults in like condition. *Ib.*

(i) *Statute not in derogation of Constitutional rights.*

The highest court of Massachusetts not having held that the compulsory vaccination law of that State establishes the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time or that vaccination would seriously injure his health or cause his death, this court holds that as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such person under the Fourteenth Amendment. *Ib.*

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CONTRACTS.

Rights of parties in pari delicto to recover property delivered under illegal contract—Transaction between stockholders of competing railroads held to be one of sale and not of bailment or trust—Estoppel.

After affirmance of the decree in the *Northern Securities case*, 193 U. S. 197, adjudging the combination illegal under the Anti-Trust Act the corporation adopted a resolution reducing its capital stock and distributing the surplus of assets created by the reduction and consisting of shares of the Northern Pacific and Great Northern Railway Companies ratably among its stockholders. Complainants objected to the *pro rata* distribution and insisted that the Northern Pacific stock they had delivered to the Securities Company was not so delivered in pursuance of an absolute sale but to be held in trust; that they were entitled to have their stock returned to them; that the decree in the Government suit practically so adjudicated and that as they acted in good faith, believing that the original contract was not within the prohibitions of the Anti-Trust Act, the doctrine of *in pari delicto* did not apply. The Circuit Court granted a temporary injunction against *pro rata* distribution and the Circuit Court of Appeals reversed the order and practically disposed of the entire case adversely to complainants. This court granted a writ of certiorari. *Held*, that: The transaction between complainants and the Northern Securities Company was one of purchase and sale of Northern Pacific Railway Company stock for shares of stock of the Securities Company and cash and not a bailment or trust. When a vendor testifies that the transaction was an unconditional sale and that he attached to his negotiations no other conditions than that of price he is estopped from afterwards

denying that this is a statement of fact and claiming that he only swore to a conclusion of law. Property delivered under an executed illegal contract cannot be recovered back by any party *in pari delicto*, and the courts cannot relax the rigor of this rule where the record discloses no special considerations of equity, justice or public policy. The fact that the complainants in this case acted in good faith and without intention to violate the law does not exempt them from the doctrine of *in pari delicto*. All the parties having supposed the statute would not be held applicable to the transaction neither can plead ignorance of the law as against the other and the defendant secured no unfair advantage in retaining the consideration voluntarily delivered for the price agreed. Where a vendor after transferring shares of railway stock to a corporation in exchange for its shares becomes a director of the purchasing corporation and participates in acts consistent only with absolute ownership by it of the railway stocks, and does so after an action has been brought to declare the transaction illegal, his right to rescind the contract and compel restitution of his original railway shares, if it ever existed, is lost by acquiescence and laches. *Harriman v. Northern Securities Co.*, 244.

See CLAIMS AGAINST UNITED JURISDICTION, B 2;
STATES;
STREETS AND HIGHWAYS;
CONSTITUTIONAL LAW, 1, 3; TAXATION, 3.

CORPORATIONS.

See CONTRACTS;
JURISDICTION, B 2;
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COURTS.

1. *Judge and court—Power of Hawaiian judges at chambers—Construction of Organic Act.*

The statutes of 1892 of the Territory of Hawaii purporting to confer upon the judges of the several courts, at chambers, within their respective jurisdictions, judicial power not incident or ancillary to some cause pending before a court, are not in conflict with § 81 of the Organic Act of the Territory, approved April 30, 1900, 31 Stat. 141, 157, and the power of the judges to act at chambers was expressly saved by the provision in § 81 continuing the law of Hawaii theretofore in force concerning courts and their jurisdiction until the legislature otherwise ordered, except as otherwise provided in the Organic Act. In construing the organic act of a Territory the whole act must be considered in order to obtain a comprehensive view of the intention of Congress, and no single section should be segregated and given undue prominence where other sections bear upon the same subject. Whether a petition in a probate proceeding to a court acting as a probate court shall be addressed to, and passed upon by the judge, while sitting in court or at chambers is more a matter of form than of substance. *Carter v. Gear*, 348.

2. *Power of courts to overrule judgment of Congress.*

In construing a statute affecting the relationship of the Government and the Indians it is not within the power of the courts to overrule the judgment of Congress. While there may be a presumption that no radical change of policy is intended, and courts may insist that a supposed purpose of Congress to change be made clear by its legislation, when that purpose is made clear the question is at an end. *Matter of Heff*, 488.

<i>See</i> ACTION, 1;	JURISDICTION;
CRIMINAL LAW, 2;	LOCAL LAW (OHIO);
EXTRADITION;	STREETS AND HIGHWAYS;
IMMIGRATION, 2;	TREATIES.

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See CLAIMS AGAINST UNITED STATES;
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See NAVY.

CRIMINAL LAW.

1. *Peonage—Sufficiency of evidence to support indictment.*

Conviction cannot be had under an indictment charging defendants with returning certain persons to a condition of peonage unless there is proof that the persons so returned had actually been in such condition prior to the alleged act of returning them thereto. *Clyatt v. United States*, 207.

2. *Duty of court as to sufficiency of evidence.*

No matter how severe may be the condemnation due to the conduct of a party charged with crime, it is the duty of the court to see that all the elements of the crime are proved or that testimony is offered which justifies a jury in finding those elements. *Ib.*

3. *Section 939 of District of Columbia Code construed and held not to affect the general statute of limitations in force there.*

Section 939 of the District of Columbia Code, providing that if any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury, and the grand jury does not act within nine months the prosecution on the charge shall be deemed to be abandoned and the accused set free or his bail discharged, is not a statute of limitations, and does not repeal or affect the general statute of limitations in force in the District, § 1044 Rev. Stat., and a person, who in this case had not made any application under § 939 to be released from bail, may be held to answer upon an indictment found more than nine months after he was arrested and held to bail. It would require clear and specific language to indicate a legislative intent to bar the prosecution of all offenses for the failure of the grand

jury to act within nine months of the arrest of the accused when the latter is at large under bail. *United States v. Cadarr*, 475.

See CONSTITUTIONAL LAW, 10, 11;
EXTRADITION.

CUSTOMS DUTIES.

1. *Power of Secretary of Treasury to order reliquidation at exchange value of rupees instead of bullion value.*

Under the proviso of § 25 of the act of Congress of August 27, 1898, 28 Stat. 509, 552, the Secretary of the Treasury is authorized, when he has satisfactory evidence that the rupee price of imported goods stated in the invoice does not mean rupees at bullion value, but as a certain fraction of a pound sterling, to order a reliquidation so as to make the value in United States currency correspond with the actual value of the goods. *United States v. Whitridge*, 135.

2. *Public facts considered in determining power of Secretary.*

In determining when the Secretary of the Treasury exceeded his powers under a statute, this court may consider public facts that were known to Congress when enacting the statute and must have been before the Secretary's mind when acting thereunder, even though such facts were not proved on the trial. *Ib.*

See PHILIPPINE ISLANDS;
PUBLIC OFFICERS.

DEFENSES.

Ignorance of law no defense.

Mere ignorance of the law standing alone does not constitute any defense against its enforcement, and a mistake of law, pure and simple, without the addition of any circumstances of fraud or misrepresentation constitutes no basis for relief at law or in equity and forms no excuse in favor of the party asserting that he made the mistake. *Utermehle v. Norment*, 40.

See CONTRACTS;
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DIVERSE CITIZENSHIP.

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See CONSTITUTIONAL LAW;
POLICE POWER, 1.

EASEMENTS.

See STREETS AND HIGHWAYS.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 4, 12;
LOCAL LAW (TEX.);
TAXATION, 1, 2.

EQUITY.

See PUBLIC LANDS, 1.

ESTOPPEL.

To deny validity of will, not affected by ignorance of law.

The rule of law is that a party taking a benefit of a provision in his favor under a will is estopped from attacking the validity of the instrument; and where an heir at law has taken a benefit under the will, acquiesced in its validity for many years, permitted the legatees and devisees to act upon such consent and acquiescence, has so changed his position on that account that he cannot be restored to it, and meanwhile witnesses have died, this estoppel is not affected because he was at the time ignorant of this rule of law. *Utermehle v. Norment*, 40.

See CONTRACTS.

EVIDENCE.

See CONSTITUTIONAL LAW, 12; IMMIGRATION, 2;
CRIMINAL LAW, 1; PUBLIC LANDS, 1.

EXECUTIVE ORDER.

See PHILIPPINE ISLANDS, 2, 3.

EXTRADITION.

1. *Definition*—Duty of courts to prevent wrong to person sought to be extradited.

Extradition, or rendition, is but one step in securing the presence of the accused in the court in which he may be tried and in no manner determines the question of guilt, and while courts will always endeavor to prevent any wrong in the extradition of a person to answer a charge of crime ignorantly or wantonly made, the possibility cannot always be guarded against and the process of extradition must not be so burdened as to make it practically valueless. *Matter of Strauss*, 324.

2. *Case within constitutional provision.*

The extradition of an alleged fugitive from justice against whom a charge of the crime of securing property by false pretenses has been made and is pending before a justice of the peace of Ohio, having jurisdiction conferred upon him by the laws of that State to examine and bind over for trial in a superior court, is authorized by Art. IV, § 2, Subd. 2 of the Constitution of the United States, and section 5278, Rev. Stat. *Id.*

FACT.

See IMMIGRATION, 2;
PRACTICE, 2.

FEDERAL QUESTION.

See CONSTITUTIONAL LAW, 5, 12;
JURISDICTION, A.

FEDERAL POWERS.

See CONSTITUTIONAL LAW, 12;
POLICE POWER.

FRAUD.

See PUBLIC LANDS, 1.

GRAND JURY.

See CRIMINAL LAW, 3.

GUARDIAN AND WARD.

See INDIANS.

HABEAS CORPUS.

See TREATIES, 1.

HAWAII.

See COURTS, 1.

HEALTH REGULATIONS.

See CONSTITUTIONAL LAW, 12;
POLICE POWER, 1.

IMMIGRATION.

1. *Construction of section 10 of act of March 3, 1891—Duty of shipowner relative to excluded immigrants.*

Section 10 of the act of March 3, 1891, 26 Stat. 1084, which imposes upon one who has brought immigrants into the United States not permitted to land here, the duty of returning them to the place from whence they came, with a penalty in case the duty is neglected, is a highly penal statute and must be strictly construed; the word "neglect" cannot be

construed so as to make the shipowner or master an insurer of the absolute return of the immigrant at all hazards, but it does require him to take every precaution to prevent the immigrant from escaping and holds him to the care and diligence required by the circumstances. *Hackfeld & Co. v. United States*, 442.

2. *Action under section 10 of act of March 3, 1891—Effect of stipulation as to facts.*

Where in an action under § 10 of the act of March 3, 1891, the Attorney General and the other party have stipulated the facts as to the escape of immigrants and that the escape did not occur by reason of any negligence or want of proper care on the part of the master or officers of the vessel, the court cannot regard the stipulation as to lack of negligence a mere conclusion of law and find that there was negligence on the evidentiary facts as stipulated. It will presume that the Attorney General has done his duty and not stipulated away any of the rights of the prosecution, and the defendant is entitled to have the case tried upon the assumption that the ultimate fact of lack of negligence stipulated into the record was established as well as the specific facts recited. *Ib.*

INDIANS.

1. *Relation of Government to.*

The recognized relation between the Government and the Indians is that of a superior and an inferior, whereby the latter is placed under the care of the former. The Government, however, is under no constitutional obligation to continue the relationship of guardian and ward and may, at any time and in the manner that Congress shall determine, abandon the guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*. *Matter of Heff*, 488.

2. *Effect of receiving land under act of February 8, 1887.*

Under the act of February 8, 1887, 24 Stat. 388, an Indian who has received an allotment and patent for land is no longer a ward of the Government but a citizen of the United States and of the State in which he resides, and, as such, is not within the reach of Indian police regulations on the part of Congress, and this emancipation from Federal control cannot be set aside without the consent of the Indian or the State, nor is it affected by the provisions in the act subjecting the land allotted to conditions against alienation and encumbrance and guaranteeing him an interest in tribal or other property. *Ib.*

3. *Allottee under act of February 8, 1887, not within prohibition of act of January 30, 1897.*

The act of January 30, 1897, 29 Stat. 506 prohibiting sales of liquors to Indians, is a police regulation and does not apply to an allottee Indian who has become a citizen under the act of February 8, 1887. *Ib.*

See COURTS, 2.

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INDICTMENT.

See CRIMINAL LAW.

IMPAIRMENT OF CONTRACT.

CONSTITUTIONAL LAW.

See STREETS AND HIGHWAYS.

IMPORTS.

See PHILIPPINE ISLANDS.

INJUNCTION.

See CERTIORARI;

CONTRACTS;

JURISDICTION, A 3.

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See CONTRACTS.

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See JURISDICTION, B 2.

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See POLICE POWER, 2.

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TAXATION, 1.

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INTOXICATING LIQUORS.

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INVOLUNTARY SERVITUDE.

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JUDGE AND COURT.

See COURTS, 1.

JUDGMENTS AND DECREES.

Final Decree entered in accordance with opinion delivered December 19, 1904, reported in 196 U. S. 23 and stipulation of the parties. *Missouri v. Nebraska*, 577.

See CASES EXPLAINED;

CONSTITUTIONAL LAW, 5;

RAILROADS.

JURISDICTION.

A. OF THIS COURT.

1. *Appeals from Court of Claims.*

Findings of fact made by the Court of Claims are conclusive here, and the jurisdiction of this court is limited to determination of questions of law. *District of Columbia v. Barnes*, 146.

2. *Direct appeal from Circuit Court not affected by appeal of one party to Circuit Court of Appeals.*

The appeal to this court on the ground that the Circuit Court had no jurisdiction by a defendant who had not appeared generally is not affected by the fact that one of the defendants has appealed to the Circuit Court of Appeals. *Stillman v. Combe*, 436.

3. *Original—Restraint of justices of Supreme Court of District of Columbia—Direct review of judgment of Supreme Court, D. C.*

In a proceeding brought by a State on petition for writs of prohibition, mandamus or certiorari, to restrain the justices of the Supreme Court of the District of Columbia from proceeding further in an action brought by a citizen of the District of Columbia against the Secretary of the Treasury to enjoin him from issuing to the Governor of the petitioning State a duplicate warrant, *held*, that this court has no original jurisdiction and as the controversy was not one between a State and citizens of another State, and under the act of February 9, 1893, 27 Stat. 434, establishing the Court of Appeals of the District of Columbia, this court has no appellate jurisdiction as it cannot review judgments and decrees of the Supreme Court of the District directly by appeal or writ of error. In cases over which this court has no original or appellate jurisdiction it cannot grant prohibition, mandamus or certiorari as ancillary thereto. *Massachusetts, Petitioner*, 482.

4. *Federal question raised too late when.*

A foreign corporation sued in a state court appeared specially and objected to the jurisdiction on the sole ground that the person served was not its agent within the meaning of the state statute; the lower court sustained the objection, but on plaintiff's appeal the highest court of the State held the service good; defendant then demurred on the ground that the statute as to service on foreign corporations was violative of the Federal Constitution; on second appeal after the demurrer had been overruled and there had been judgment for plaintiff on the merits, the highest court of the State declined to consider the constitutionality of the statute on the ground that the question of jurisdiction had been settled on the first appeal. *Held*, that the writ of error must be dismissed. Had the objection been raised in the first instance and disposed of on plaintiff's appeal, the adherence by the state court on defendant's appeal to its prior adjudication might not have cut off consideration of the Federal question, but as it was not so raised, and as the state court could in its discretion consider it as coming too late

and refuse to pass upon it, the jurisdiction of this court cannot be maintained. *Supply Company v. Light & Power Co.*, 299.

5. Where the Federal question is not raised until the petition for rehearing to the highest court of the State, it is too late to give this court jurisdiction under Rev. Stat. § 709, to review a writ of error unless the court grants the rehearing and then proceeds to pass upon the question. *McMillen v. Ferrum Mining Co.*, 343.

6. *Federal question not necessarily raised in case brought under Federal statute.*

Where in all the state courts the question was treated as one of local law, the fact that the suit was brought under Rev. Stat. § 2326, to try adverse rights to a mining claim, does not necessarily involve a Federal question so as to authorize a writ of error from this court. *Ib.*

7. *Sufficiency of questions raised to give jurisdiction under section 709, Rev. Stat.*

Where the record discloses no title, right, privilege or immunity, specially set up or claimed under the Constitution, or any law of the United States, which was denied by the decision, nor any assertion of an infraction of any provision of the Constitution, and the right of review by this court is based on the contention that the validity under the Constitution of a state statute is necessarily drawn in question and sustained, the writ will be dismissed unless a definite issue as to the validity of such statute is distinctly deducible from the record and it appears that the judgment could not have rested on grounds not involving its validity. *Caro v. Davidson*, 197.

See BILL OF EXCEPTIONS;

CERTIORARI;

CONSTITUTIONAL LAW, 5, 12.

B. OF CIRCUIT COURTS.

1. *Diversity of citizenship by contrivance of parties.*

An arrangement of parties which is merely a contrivance between friends to found jurisdiction on diverse citizenship in the Circuit Court will not avail, and when it is obvious that a party who is really on complainant's side has been made a defendant for jurisdictional reasons, and for the purpose of reopening in the United States courts a controversy already decided in the state courts, the court will look beyond the pleadings and arrange the parties according to their actual sides in the dispute. *Dawson v. Columbia Trust Co.*, 178.

2. *Foreign corporations—Prerequisites to jurisdiction in New York—Local law governing service of process—On whom process may be served—What amounts to doing business in State.*

- (a) In order that a Federal court may obtain jurisdiction over a foreign corporation, the corporation must, among other things, be doing business within the State.
- (b) To obtain such jurisdiction in New York, personal service of the sum-

mons upon, and a delivery to, the defendant must be made in the manner designated by § 432 of the Code of Civil Procedure of that State, and if the corporation has no property in the State and service cannot be made on the president, treasurer or secretary, and no person has been designated, such service can only be made on a director or person specified in subdivision 3 of that section, in case the cause of action arose within the State.

- (c) A fire insurance company which issues its policies upon property in another State, is engaged in its business in that State when its agents are there, under its authority, adjusting the losses covered by its policies.
- (d) Where an insurance company, after loss has occurred on property insured by it in another State, fails to make the payment, or to build or repair, as required by the policy involved in this action, it fails to comply with the terms of the contract, and out of that failure the cause of action arises in the State where the loss occurs.
- (e) In this case as the company was doing business in New York and the cause of action arose in New York, service under subdivision 3 of § 432 of the Code of Civil Procedure, on a director of the company residing in New York was sufficient to give the Circuit Court of the United States, in New York, jurisdiction of a Pennsylvania corporation.
Lumbermen's Insurance Co. v. Meyer, 407.

3. *Of original proceeding seeking relief by mandamus.*

The Circuit Court of the United States has no original jurisdiction to issue a writ of mandamus at the instance of the Interstate Commerce Commission against a railroad company to compel it to make a report of the matters and things specified in § 20 of the act of Congress to regulate commerce. *Knapp v. Lake Shore & Michigan South. Ry. Co.*, 536.

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CONSTITUTIONAL LAW, 1;

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LOCAL LAW.

- Alaska.* Jury trial, sec. 171 of Code, 31 Stat. 358 (see Constitutional Law, 10). *Rasmussen v. United States*, 516.
- California.* Taxation (see Taxation, 4). *San Francisco National Bank v. Dodge*, 70.
- District of Columbia.* Code, section 939 (see Criminal Law, 3). *United States v. Cadarr*, 475.
- Hawaii.* Judiciary statutes of 1892 and Organic Act of 1900 (see Courts, 1). *Carter v. Gear*, 348.
- Massachusetts.* Compulsory vaccination law (see Constitutional Law, 12). *Jacobson v. Massachusetts*, 11.
- Nebraska.* Riparian rights (see Public Lands, 4). *Whitaker v. McBride*, 510.
- New York.* (See Streets and Highways). *Muhlker v. New York & Harlem R. Co.*, 544. Foreign corporations (see Jurisdiction, B 2). *Lumbermen's Ins. Co. v. Meyer*, 407.
- Ohio.* *Constitutional provision relative to individual liability of stockholders.* Article XIII, § 3, of the constitution of Ohio of 1851, providing that dues from corporations be secured by individual liability of the stockholders as may be prescribed by law to a further sum over and above their stock at least equal to the amount of such stock, is not so far self-executing that it may be enforced outside of the jurisdiction of that State without compliance with the requirements of the state statute fixing the amount of the liability and the method of enforcing it. *Middletown National Bank v. Railway Co.*, 394.
- Corporations; remedy against stockholders under section 3260 Rev. Stat., Ohio.* Under § 3260, Rev. Stat., Ohio, the remedy must be pursued in the courts of that State and a creditor, who has not commenced any action in the Ohio courts, cannot obtain the relief given by the statute, in the Circuit Court of the United States in another State, against stockholders resident therein. *Ib.*
- Texas.* *Anti-trust act of 1895.* The Supreme Court of Texas having construed the act of 1895 as invalid, so far as it was discriminatory by exempting from its operation combinations of agriculturists and organized laborers and fell within the terms of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, and sustained the act in other respects, and having also held that the act of 1899 although cumulative did not continue the invalid discriminatory provisions of the act of 1895, this court follows the state court in holding that under the laws of Texas, as they now exist, combinations described in the Anti-trust Laws are

forbidden and penalized whether by agriculturists, organized laborers or others, and there is therefore no discrimination against oil companies, and the latter are not deprived of the equal protection of the laws. *National Cotton Oil Co. v. Texas*, 115.

Anti-trust acts of 1889, 1895 and 1899 (see Constitutional Law, 3).
National Cotton Oil Co. v. Texas, 115.

Washington. Limitation of actions (see Statute of Limitations, 3).
McClaine v. Rankin, 154.

MANDAMUS.

See JURISDICTION, A 3; B 3.

MINES AND MINING.

1. *Relinquishment of rights of location; subsequent rights of party relinquishing.*

Where an attempted mineral location is a failure by reason of a lack of discovery and all rights have been conveyed to a third party who formally relinquishes them, the land is again open to location and the party so relinquishing may locate it and become entitled thereto by subsequent discovery, and otherwise complying with the law, without waiting until the relinquished location lapsed by failure to do the annual work required by statute. *Chrisman v. Miller*, 313.

2. *Sufficiency of discovery.*

In controversies between two mineral claimants the rule as to sufficiency of discovery is more liberal than it is in controversies between a mineral claimant and an agricultural entryman, as in the latter the land is sought to be withdrawn from the category of agricultural lands, while in the former the question is merely one of priority. While the statute does not prescribe what is necessary to constitute a discovery under the mining laws of the United States, it is essential that it gives reasonable evidence of the fact either that there is a vein or lode carrying precious minerals, or if it be claimed as placer ground that it is valuable for such mining; and where there is not enough in what a locator claims to have seen to justify a prudent person in the expenditure of money and labor in exploitation this court will not overthrow a finding of the lower court that there was no discovery. *Ib.*

MISTAKE.

See DEFENSES.

MONOPOLY.

See COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 3.

MORTGAGE.

See RAILROADS.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 1.

NATIONAL BANKS.

See STATUTE OF LIMITATIONS, 1, 2;
TAXATION, 4.

NAVY.

1. *Regulations of 1865, paragraph 1205 construed as to what constitutes bar to further proceedings.*

An officer in the Navy failing to report at the time ordered, while his vessel was in Japanese waters, in 1865, was placed under arrest for drunkenness and neglect of duty; later, on the same day he was, by order of the rear admiral, restored to duty to await an opportunity to investigate the case. Subsequently the rear admiral convened a court-martial consisting of seven officers all of equal or superior rank to accused who was served with charges and arrested, arraigned and tried, found guilty and dismissed. Accused stated he had no objections to any of the court and knew of no reason why it should not proceed with his trial. Subsequently in a suit for salary on ground of illegal dismissal he claimed the first arrest was an expiation of the offense and bar; that the court was invalid and incompetent and the sentence invalid not having been approved by the rear admiral or the President. *Held*, that par. 1205, Naval Regulations of 1865, providing that the arrest and discharge of a person in the Navy for an offense shall be a bar to further martial proceedings against him for that offense, does not apply to an arrest and temporary confinement not intended as a punishment but as a reasonable precaution for the maintenance of good order and discipline aboard. *Bishop v. United States*, 334.

2. *Service of charges—Arrest within meaning of law of 1800 and Naval Regulations of 1865.*

Under Article 38 of the law of April 23, 1800, 2 Stat. 50, and Par. 1202, Naval Regulations of 1865, the provision as to service of charges upon the accused at the time that he is put under arrest refers not to the temporary arrest necessary for order and discipline at the time of the commission of the offense but to the subsequent arrest for trial by court-martial. *Ib.*

3. *Service of charges—Arrest within meaning of Article 43 of Section 1624, Rev. Stat.*

The word "arrest" as employed in Article 43 of § 1624, Rev. Stat., requiring service of the charge on which the accused is to be tried by court-martial, does not relate to the preliminary arrest or detention of an accused person awaiting the action of higher authority to frame charges and specifications and order a court-martial, but to the arrest resulting from preferring the charges by the proper authority, and the convening of a court-martial. *United States v. Smith*, 386.

4. *Court-martial—Personnel of court; waiver of objection to.*

It is a question for the officer convening the court to determine whether more officers could be convened without injury to the service and his action in this respect cannot be attacked collaterally, and if the accused expresses satisfaction with the court-martial as constituted, it is a clear waiver of any objection to its personnel. *Bishop v. United States*, 334.

5. *Court-martial—Confirmation of sentence by officer convening court.*

Under Articles 19 and 20 of the act of July 17, 1862, 12 Stat. 605, the rear admiral convening the court-martial was not obliged to confirm the sentence of dismissal. *Ib.*

6. *Court-martial—Sentence; approval by President; sufficiency of showing.*

The approval by the President sufficiently appears where the record shows that the sentence was submitted to the President and his approval appears at the foot of a brief in the case and the Secretary of the Navy writes to the accused that the President has approved the sentence. *Ib.*

7. *Court-martial; power to convene—Article 38 of section 1624, Rev. Stat., applicable where.*

The provision in Article 38 of § 1624, Rev. Stat., that no commander of a fleet or squadron shall convene a general court-martial without express authority from the President was enacted in 1862 and will be construed as intending to apply to waters within the continental limits of the United States, and not to waters in the territory beyond the seas acquired since the passage of that act, and the acquisition whereof was not contemplated at that time. *United States v. Smith*, 386.

NORTHERN PACIFIC RAILWAY.

See PUBLIC LANDS, 2.

NORTHERN SECURITIES CASE.

See CASES EXPLAINED;
COMBINATIONS IN RESTRAINT OF TRADE;
CONTRACTS.

PARTIES.

See CONSTITUTIONAL LAW, 5;
JURISDICTION, B 1.

PATENT FOR LAND.

See PUBLIC LANDS, 1.

PEONAGE.

See CONSTITUTIONAL LAW, 8, 9;
CRIMINAL LAW.

PHILIPPINE ISLANDS.

1. *Insurrection after treaty of peace; effect upon status of islands.*

After the title to the Philippine Islands passed to the United States by the

exchange of ratifications of the treaty of peace, there was nothing in the Philippine insurrection of sufficient gravity to give to the islands the character of foreign countries within the meaning of a tariff act (*Fourteen Diamond Rings*, 183 U. S. 176). *Lincoln v. United States*, 419.

2. *Executive order of July 12, 1898, relative to duties on imports.*

The order of the President of July 12, 1898, directing the levying of duties on goods landed in the Philippine Islands, was a regulation for and during the then existing war with Spain, referred to as definitely as if it had been named, and was not a power for any other military occasion. The right to levy duties thereunder on goods brought from the United States ceased on the termination of the war by the exchange of ratifications of the treaty of peace with Spain on April 11, 1899 (*Dooley v. United States*, 182 U. S. 222). *Ib.*

3. *Ratification by Congress of Executive order; scope of, as to collection of duties.*

Under the act of Congress of July 1, 1902, 32 Stat. 691, ratifying the action of the President and the authorities of the government of the Philippine Islands, the ratification is confined to those acts which were in accordance with the provisions of the order of July 12, 1898, and not to the collection of duties after April 11, 1899, which were within such provisions. *Ib.*

PLEADING.

See CLAIMS AGAINST UNITED STATES;
BILL OF EXCEPTIONS.

POLICE POWER.

1. *Public health regulations—Constitutionality of execution of police power.*

The drainage of a city in the interest of the public health and welfare is one of the most important purposes for which the police power can be exercised. Every reason of public policy requires that grants in the sub-surface of streets shall be held subject to such regulation as the public health and safety may require. Uncompensated obedience to a regulation enacted for the public safety under the police power of the State is not a taking of property without due compensation. Under the facts of this case, the changing of the location of gas pipes at the expense of the Gas Company to accommodate a system of drainage, which has been upheld by the state court as an execution of the police power of the State, does not amount to a deprivation of property without due process of law. *New Orleans Gas Co. v. Drainage Commission*, 453.

2. *Relation of state to Federal Government—Regulation of sale of intoxicants—Federal license not an attempted exercise of police power.*

In the United States there is a dual system of government, National and

state, each of which is supreme within its own domain and it is one of the chief functions of this court to preserve the balance between them. The general police power is reserved to the States subject to the limitation that it may not trespass on the rights and powers vested in the National Government. The regulation of the sale of intoxicating liquors is within the power of the State and the license enacted by the National Government is solely for revenue and is not an attempted exercise of the police power. *Matter of Heff*, 488.

See CONSTITUTIONAL LAW, 6, 12;
INDIANS, 3.

POWERS OF CONGRESS.

See CONSTITUTIONAL LAW, 8;
INDIANS, 1;
STATE OFFICERS.

PRACTICE.

1. *Following Land Department's construction of statute.*

It is the duty of this court in the absence of cogent reasons therefor, not to overrule the construction of a statute upon which the Land Department has uniformly proceeded in its administration of the public lands. *McMichael v. Murphy*, 304.

2. *Following state court's conclusions as to facts.*

This court does not review questions of fact in cases coming from a state court but accepts the conclusions of the state tribunal as final. *Chrisman v. Miller*, 313.

See CUSTOMS DUTIES, 2;
PUBLIC LANDS, 2;
TAXATION, 4.

PREAMBLE.

See CONSTITUTIONAL LAW, 12.

PREFERENCE.

See BANKRUPTCY.

PRESUMPTIONS.

See IMMIGRATION, 2;
PUBLIC LANDS, 1.

PROCESS.

See INJUNCTION;
JURISDICTION, B 2;
NAVY, 2, 3.

PROHIBITION.

See JURISDICTION, A 3.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW;
STREETS AND HIGHWAYS.

PUBLIC HEALTH.

See CONSTITUTIONAL LAW, 12;
POLICE POWER, 1.

PUBLIC LANDS.

1. *Action by Government to cancel patents.*

The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof. In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and it is a good defense that the title has passed to a *bona fide* purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government but will also protect the rights of innocent parties. *United States v. Stinson*, 200.

2. *Railway right of way—Adverse possession by individual.*

Northern Pacific Railway Company v. Townsend, 190 U. S. 267, affirmed as to the point that individuals cannot for private purposes acquire by adverse possession under a state statute of limitations any portion of the right of way granted to the Northern Pacific Railway Company. But by the act of April 28, 1904, that right of way was narrowed to two hundred feet in width and title acquired to land outside of a strip of that width was confirmed. As the decree in this case was rendered and a writ of error therefrom was pending in this court prior to April 28, 1904, the decree must be reversed and the case remanded to the state courts to be dealt with in view of the application of the act of April 28, 1904. *Northern Pacific Ry. Co. v. Ely*, 1.

3. *Rights of second entryman where first entry subsequently ascertained to be invalid.*

A settlement or entry on public land already covered of record by another entry, valid upon its face, does not give a second entryman any right in the land notwithstanding the first entry may subsequently be relinquished or ascertained to be invalid by reason of facts *dehors* the record of such entry; and one first entering after the relinquishment or cancellation has priority over one attempting to enter prior to such relinquishment or cancellation. *McMichael v. Murphy*, 304.

4. *Riparian rights of patentee—Rights to unsurveyed island as against one claiming it as homestead—Local law governing construction of grant.*

The question of the title of a riparian owner is one of local law, and unrestricted grants of the Government, bounded on streams and other waters, are to be construed according to the law of the State in which the lands lie. *Hardin v. Jordan*, 140 U. S. 371. Where the Government has surveyed and patented the lands up to the bank of a channel in which an unsurveyed island is situated, a patentee of the land on such bank, although his land may itself be an island surrounded by two channels of the river, has all the rights of a riparian owner in the channel lying opposite his banks, including the unsurveyed island if, as a riparian owner, he is entitled thereto by the laws of the State. By the law of Nebraska, as interpreted by its highest court, riparian proprietors own the bed of a stream to the center of the channel. The Government as original proprietor has the right to survey and sell any lands, including islands in a river or any other body of water, and if it omits to survey an island in a stream and refuses to do so when its attention is called to the matter, no citizen can overrule the Department, and assuming that the island should be surveyed, occupy it for homestead or preëmption entry. In such a case the rights of riparian owners are to be preferred to those of the settler. *Whitaker v. McBride*, 510.

5. *Surveys—Collateral attack.*

Government surveys of public lands are not open to collateral attack in an action at law between private parties. *Ib.*

6. *Surveys—Meander line defined.*

A meander line is not a line of boundary but a means of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser. *Ib.*

7. *Texas school grant—Greer County, Oklahoma, not entitled to lands granted to Greer County, Texas, prior to creation of former.*

The decision in *United States v. Texas*, 162 U. S. 1, that Greer County was not within the boundaries of Texas did not effect a cession of the territory included in the county from Texas to the United States or amount to a transfer of sovereignty, but was simply a revelation that such territory belonged to the United States. Greer County, Oklahoma, as created after that decision by the act of 1896, 29 Stat. 113, is a corporation created by a different sovereignty from that which purported to create Greer County, Texas, and as such is technically a different person, and does not succeed to land situated elsewhere in Texas granted by that State prior to such decision for school purposes to Greer County, Texas. *Greer County v. Texas*, 235.

See MINES AND MINING.

PUBLIC OFFICERS.

Power of Secretary of Treasury to appoint and allow compensation to dis-

bursing agent for funds appropriated for building post office at Washington.

The words "waters and shores" of a river as used in §§ 2550, 2551, Rev. Stat., are broad enough to include the whole of a city on those shores and within the limits named. The Collection District of Georgetown includes the whole of the city of Washington, D. C., and the Secretary of the Treasury has no power, general or statutory, under §§ 3657, 3658, Rev. Stat., to appoint, and allow compensation to, a disbursing agent for funds appropriated for building a post office in Washington. *Bartlett v. United States*, 230.

See CONSTITUTIONAL LAW, 2;
CUSTOMS DUTIES.

RAILROADS.

Receivership—Claims for supplies not entitled to precedence over prior mortgage lien—Receivers' certificates.

Claims for supplies furnished to a railroad company within six months before the appointment of a receiver are not entitled under any general rule to precedence over a lien expressly created by a mortgage recorded before the contracts for such supplies were made. Under the orders authorizing receivers' certificates involved in this case one furnishing ties within six months prior to the appointment of the receiver, and some of which were not used until after such appointment, *held* not entitled to payment therefor out of the proceeds of the certificates. *Gregg v. Metropolitan Trust Co.*, 183.

See CONTRACTS;
STREETS AND HIGHWAYS.

RAILROAD LAND GRANTS.

See PUBLIC LANDS, 2.

RECEIVERSHIP.

See RAILROADS.

RES JUDICATA.

See CASES EXPLAINED.

RESTRAINT OF TRADE.

See COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 3.

RIPARIAN RIGHTS.

See PUBLIC LANDS.

SALE.

See CONTRACTS.

SCHOOL GRANTS.

See PUBLIC LANDS, 7.

SEAMEN.

See CONSTITUTIONAL LAW, 2;
TREATIES.

SHERMAN ACT.

See COMBINATIONS IN RESTRAINT OF TRADE.

SPIRIT OF LAWS.

See CONSTITUTIONAL LAW, 12.

STARE DECISIS.

General expressions in an opinion which are not essential to dispose of a case are not permitted to control the judgment in subsequent suits.
Harriman v. Northern Securities Co., 244.

STATES.

See CONSTITUTIONAL LAW; POLICE POWER;
LOCAL LAW; TAXATION.

STATE OFFICERS.

Power to execute duty imposed by act of Congress.

Power may be conferred upon a state officer, as such, to execute a duty imposed under an act of Congress, and the officer may execute the same, unless its execution is prohibited by the constitution or legislation of the State. *Dallemagne v. Moisan*, 169.

See TREATIES, 1.

STATUTE OF LIMITATIONS.

1. *State statute applicable to suit under act of Congress.*

In the absence of any provision of the act of Congress creating the liability of stockholders of national banks, fixing a limitation of time for commencing actions to enforce it, the statute of limitations of the particular State is applicable. *McClaine v. Rankin*, 154.

2. *Against enforcement of statutory liability of stockholders in national banks, begins to run when.*

The liability of stockholders of national banks is conditional, and the right to sue does not obtain until the Comptroller of the Currency has acted; his order is the basis of the suit, and the statute of limitations does not commence to run until assessment made, and then it runs as against an action to enforce the statutory liability and not an action for breach of contract. *Ib.*

3. *Period of limitation of such action under laws of State of Washington.*

As the statute of limitations of Washington has been construed by the

courts of that State the time within which such an action must be brought is two years under § 4805, Ballinger's Code, and not within three years under subd. 3 of § 4800. *Ib.*

See CRIMINAL LAW, 3.

STATUTES.

A. CONSTRUCTION OF.

See CLAIMS AGAINST UNITED STATES; CRIMINAL LAW, 3;
COURTS; IMMIGRATION;

PRACTICE, 1.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STIPULATIONS.

See IMMIGRATION, 2.

STOCK AND STOCKHOLDERS.

See CASES EXPLAINED; LOCAL LAW (OHIO);
CONTRACTS; STATUTE OF LIMITATIONS, 1, 2.

STREETS AND HIGHWAYS.

Rights of owners of property abutting on streets—Easements of light and air as property to be compensated for in case of diminution.

The permission or command of the State can give no power to invade private property rights even for a public purpose without payment of compensation. An abutting owner cannot be deprived of his easements of light and air above the surface of the street without compensation because the structure interfering with those easements was formerly on the surface and the raising of it to an elevated structure gave him an increase in his easement of access.

The *Elevated Railroad cases*, decided by the Court of Appeals, established the law of the State of New York to be that the easement of light and air of abutting property owners in the streets of New York above the street to be property and within the protection of the Constitution for compensation in case of its diminution by an elevated railroad structure.

Such decisions assured to purchasers of property, abutting on a street the bed of which had deeded to the city of New York in trust for a street, that their easements of light and air were secured by contract and could not be taken from them without compensation; and the courts of that State cannot change or modify their decisions so as to take away rights which have been acquired by contract and are within the protection of the Federal Constitution.

This court determines for itself whether there is an existing contract and

where there is a diversity of state decisions the first may in time constitute the obligation of the contract and the measure of rights under it.

The raising, in pursuance of a state statute requiring it, of the New York and Harlem Railroad structure, in Park avenue, New York City, which was formerly on, or partially below, the surface of the street, to an elevated structure, deprived the abutting owner, who in this case had purchased after the decisions by the Court of Appeals in the *Elevated Railroad cases*, of property right in his easements of light and air and under the Constitution of the United States he was entitled to compensation therefor and cannot be deprived of it, either because the structure was erected under a state statute requiring it or because the access to his property was increased by the raising of the structure. *Muhler v. New York & Harlem R. R. Co.*, 544.

See CONSTITUTIONAL LAW, 4;
POLICE POWER, 1.

SURVEYS.

See PUBLIC LANDS, 4, 5, 6.

TAXATION.

1. *State—Validity of tax as to domestic business of agent of one doing interstate business.*

As a tax upon the seller of goods is a tax upon the goods themselves, and a tax upon goods sold in one State delivered to a common carrier and consigned to the purchaser in another State is an illegal interference with interstate commerce, a State cannot impose a privilege tax on agents of packing houses as to meats shipped to him from another State merely for distribution to purchasers from his principal; but where the Supreme Court of the State has held that the tax is void as to interstate shipments and applies only to the domestic business of the agent in the ordinary course of trade, and all other such agents, whether of domestic or foreign packing houses, are subject to the tax, that construction will be accepted by this court as in reality a part of the statute itself, and the tax is within the power of the State and is not as to his domestic business an interference with interstate commerce even though all of the goods sold by an agent may be shipped to him from another State. Nor is such a tax void because it is laid upon the agents themselves and cannot be apportioned between the interstate and the domestic business carried on by the same person. While such a tax might not apply to an agent whose domestic business was purely nominal and strictly incidental to his interstate business, it does apply to one whose domestic business is a definite, although a minor, part of his business in the State as the application of the tax does not depend on the greater or less magnitude of the business. Where such a tax is imposed alike upon the managing agent both of domestic and foreign houses, it does not deny to the agent of a foreign house the equal protection of the laws. *Kehrer v. Stewart*, 60.

2. *State—Classification of occupations for purposes of taxation.*

A State has the right to classify occupations and impose different taxes upon different occupations. The necessity for, and the amount of, the tax are exclusively within the control of the state legislature, and, in the absence of discrimination against citizens of other States, its determination in regard thereto is not open to criticism in this court. *Ib.*

3. *State—Effect on contracts between principal and agent.*

Such a tax does not impair the obligation of, or affect, any contract previously made between the principal and the agent. The power of taxation overrides any agreement of an employé to serve for a specific sum. *Ib.*

4. *State—Taxation of shares of stock of national banks—Effect of different methods of taxation of state and national banks—Discrimination against national banks.*

(a) Section 5219, Rev. Stat., authorizes the taxation by the States of shares of stock of national banks but exacts that the tax when levied shall be at no greater rate than that imposed on other moneyed capital; no conflict necessarily arises between the Federal statute and a state law solely because the latter provides one method for taxation of state banks and another method for national banks if there is no actual discrimination against the shares of the national banks resulting from the difference in methods. If, however, irrespective of the face of the law, the system created by the state law in its practical execution produces an actual and material discrimination against national banks it does conflict with § 5219, Rev. Stat., and is void.

(b) Where the record contains an express admission that a specified instance of taxation showing an undervaluation of the property of a corporation is illustrative of the method by which all other similar institutions are assessed under a statute requiring full valuation, this court cannot disregard the admission and consider that such undervaluation is an isolated instance and that all the property of other similar institutions is assessed at full value in accordance with the provisions of the statute.

(c) As it appears from the agreed statement of facts in this case that under the laws of California, as construed by the highest court of that State, all the elements of value which are embraced in the assessment of shares of stock in national banks are not included in assessing the value of property of state banks and other moneyed corporations, there is a discrimination against the shares of national banks and the state law taxing such shares as so construed violates, and is void under, § 5219, Rev. Stat. *San Francisco National Bank v. Dodge*, 70.

See CONSTITUTIONAL LAW, 4, 7;
POLICE POWER, 2.

TERRITORIES.

See PHILIPPINE ISLANDS;
TREATIES, 2.

TITLE.

See PUBLIC LANDS, 1.

TRADE.

See COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 3.

TREATIES.

1. *Treaty with France of 1853—Method of enforcing provision as to arrest of seamen—Power of court to release seamen properly arrested.*

The only method of enforcing treaty provisions for arrest of seamen on requisition of foreign consuls is pursuant to the act of June 11, 1864, 13 Stat. 121, now §§ 4079, 4080, 4081, Rev. Stat., and thereunder the requisition must be made to the District Court or judge and the arrest made by the marshal, and an arrest by a local chief of police is not authorized; but if after a seaman so arrested has been produced before the District Court on *habeas corpus* and the courts find that his case comes under the treaty and he should be held, the mere fact that he was arrested by a person not authorized to do so does not entitle him to his discharge. After a seaman has been properly arrested on the request of the French consul under the treaty of 1853 with France, he can be held in prison at the disposal of the consul for sixty days, as provided for in § 4081, Rev. Stat., and the court cannot discharge him within that period against the protest of the consul because the vessel to which he belonged has left the port at which he was arrested. *Dallemagne v. Moisan*, 169.

2. *Treaty with Russia concerning Alaska; status of inhabitants under—Applicability of Constitution to that Territory—Jury trial.*

The treaty with Russia concerning Alaska, instead of exhibiting, as did the treaty with Spain respecting the Philippine Islands, the determination to reserve the question of the status of the acquired territory for ulterior action by Congress, manifested a contrary intention to admit the inhabitants of the ceded territory to the enjoyment of citizenship, and expressed the purpose to incorporate the territory into the United States. Under the treaty with Russia ceding Alaska and the subsequent legislation of Congress, Alaska has been incorporated into the United States and the Constitution is applicable to that Territory and under the Fifth and Sixth Amendments Congress cannot deprive one there accused of a misdemeanor of trial by a common law jury, and that § 171 of the Alaska Code, 31 Stat. 358, in so far as it provides that in trials for misdemeanors six persons shall constitute a legal jury, is unconstitutional and void. *Rasmussen v. United States*, 516.

See CONSTITUTIONAL LAW, 2;
PHILIPPINE ISLANDS.

TRIAL.

See CONSTITUTIONAL LAW, 10.

TRUSTS AND TRUSTEES.

See ACTION, 1;
CONTRACTS;
STREETS AND HIGHWAYS.

UNLAWFUL COMBINATIONS.

See COMBINATIONS IN RESTRAINT OF TRADE;
CONSTITUTIONAL LAW, 3.

VACCINATION.

See CONSTITUTIONAL LAW, 12.

VENUE.

See JURISDICTION, B 2.

WAIVER.

See NAVY, 4.

WATERS.

See NAVY;
PUBLIC LANDS, 4;
PUBLIC OFFICERS.

WILLS.

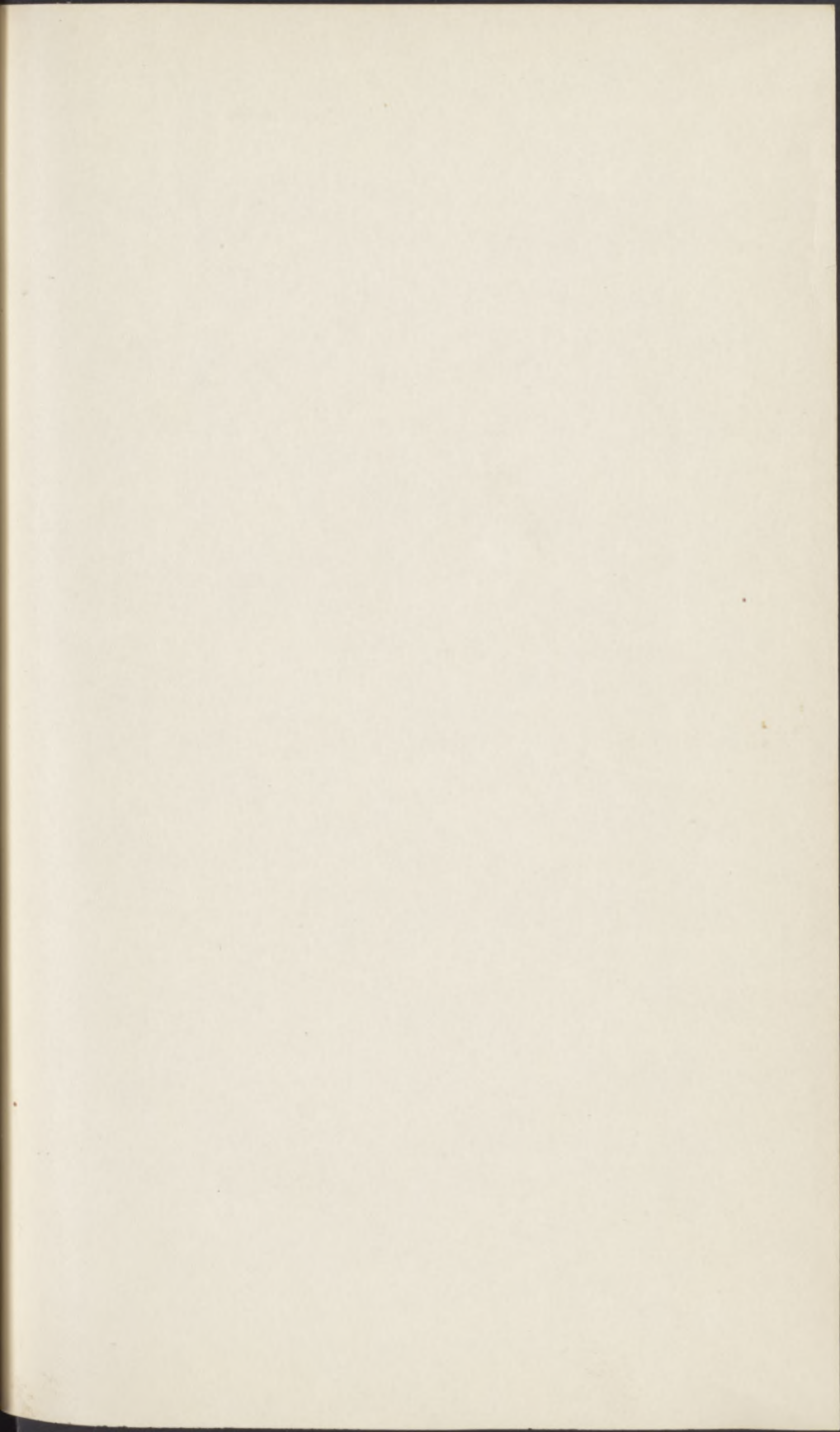
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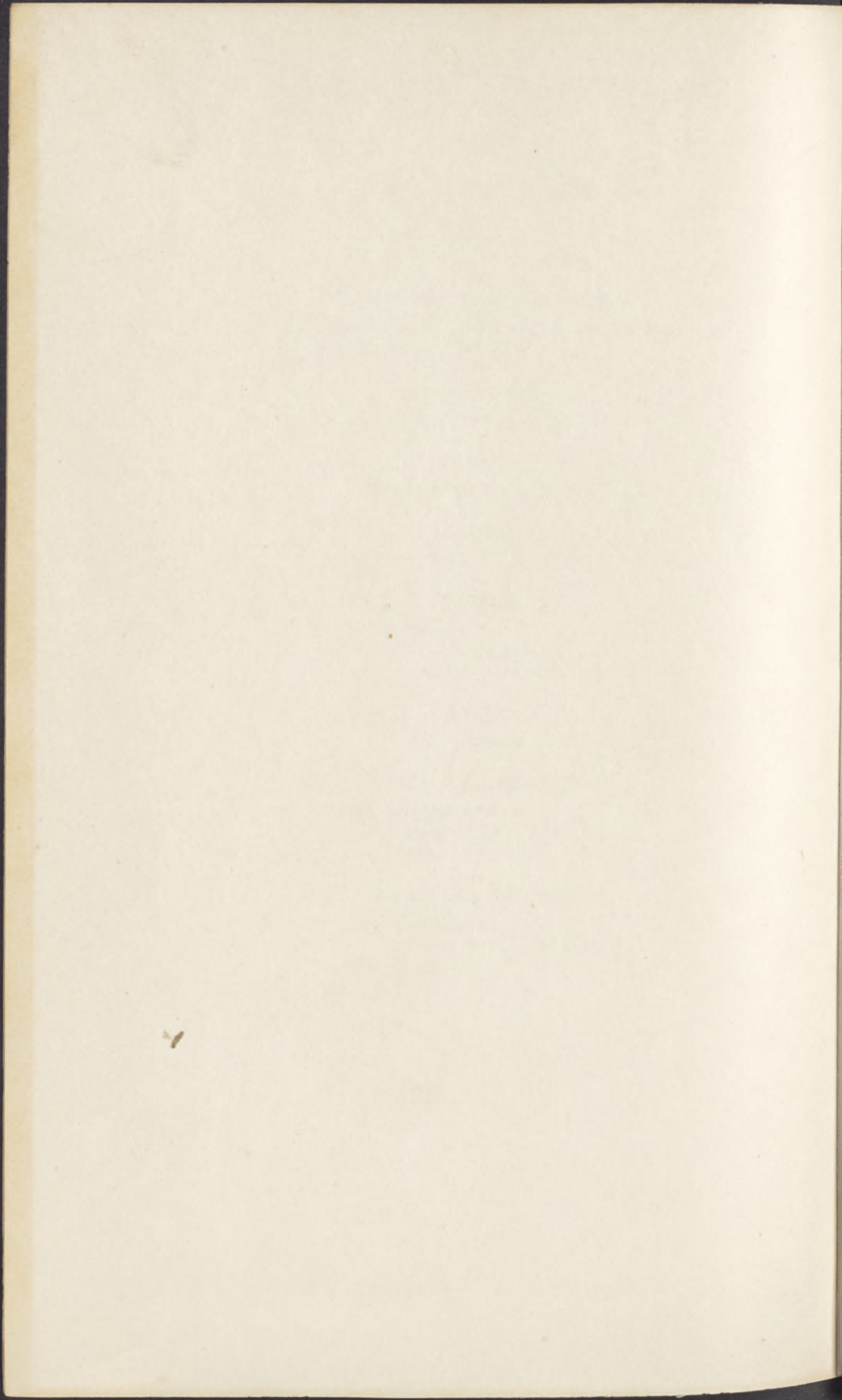
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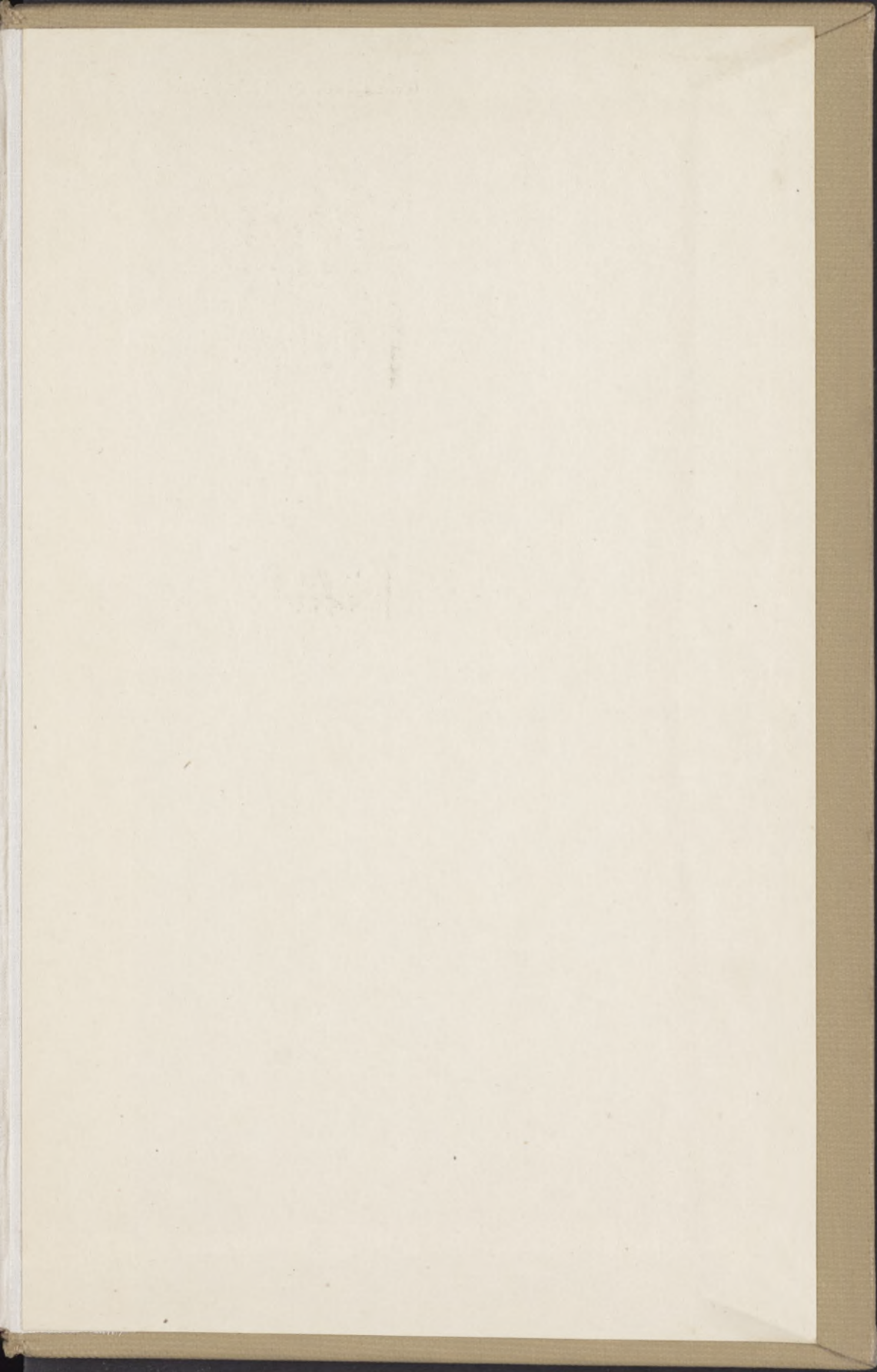
See BANKRUPTCY, 1;
CONSTITUTIONAL LAW, 11;
PUBLIC OFFICERS.

WRIT AND PROCESS.

See CERTIORARI;
JURISDICTION, A 3; B 2;
NAVY, 2, 3.







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