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ACTIONS.

1. *Limitation of actions brought under § 7 of the act of July* 2, 1890.

The five year limitation in § 1047, Rev. Stat., does not apply to suits brought under § 7 of the act of July 2, 1890, but by the silence of that act the matter is left under § 721, Rev. Stat., to the local law. *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 390.

2. *Limitation of actions for injuries to property under Tennessee Code.*

The three year limitation in § 2773, Tennessee Code, for actions for injuries to personal or real property, applies to injuries falling upon some object more definite than the plaintiff's total wealth, and the general ten year limitation in § 2776 for all actions not expressly provided for controls actions of this nature brought under § 7 of the act of July 2, 1890. *Ib.*

3. *Right of city to maintain action under Sherman Anti-trust Law.*

By express provision of the act of July 2, 1890, 26 Stat. 209, a city is a person within the meaning of section 7 of that act, and can maintain an action against a party to a combination unlawful under the act by reason of which it has been forced to pay a price for an article above what it is reasonably worth. *Ib.*

See Constitutional Law, 26;
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Cattle Contagious Disease Act of February 2, 1903, 33 Stat. 1264 (see Commerce, 7, 8, 9): *Illinois Central R. R.* v. *McKendree*, 514.

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APPEAL AND ERROR.

1. *Habeas corpus—Appeal from Federal court whose jurisdiction improperly invoked.*

Although, regularly, one seeking relief by *habeas corpus* in the state courts should prosecute his appeal to, or writ of error from, the highest state court, before invoking the jurisdiction of the Circuit Court on *habeas corpus*, where the case is one of which the public interest demands a speedy determination, and the ends of justice will be promoted thereby, this court may proceed to final judgment on appeal from the order of the Circuit Court denying the relief. *Appleyard* v. *Massachusetts*, 222.

2. *Habeas corpus—Review of final order of Supreme Court of Philippine Islands.*

A proceeding in *habeas corpus* is a civil, and not a criminal, proceeding, and as final orders of Circuit or District Courts of the United States in such a proceeding can only be reviewed in this court by appeal, under § 10 of the act of July 1, 1902, 32 Stat. 691, a final order of the Supreme Court of the Philippine Islands in *habeas corpus* is governed by the same rules and can be reviewed by appeal and not by writ of error. *Fisher* v. *Baker*, 175.

3. *Mode of review of judgment of adjudication in bankruptcy.*

A judgment of the bankruptcy court that a person against whom a petition has been filed is or is not a bankrupt, based upon the verdict of a jury demanded as of right under § 19 of the bankruptcy law, can only be reviewed by this court by writ of error and not by appeal. *Grant Shoe Co.* v. *Laird Co.*, 502.

4. *Mode of review of judgment of territorial court.*

The proper way to review judgments in actions at law of the Supreme Court of the Territory of Oklahoma where the case was tried without a jury is by writ of error, not by appeal. *National Live Stock Bank* v. *First Nat. Bank*, 296.

5. *Right of appeal from Circuit Court to Circuit Court of Appeals and thence to Supreme Court.*

Where complainant not only sets up diverse citizenship but also a con-

stitutional question he has the right to appeal from the judgment of the Circuit Court to the Circuit Court of Appeals, and from its decision an appeal or writ of error may be taken to this court. (*Field* v. *Barber Asphalt Co.*, 194 U. S. 618, distinguished.) *Mississippi R. R. Comm.* v. *Illinois Central R. R.*, 335.

See BANKRUPTCY, 1, 2, 3;
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See PRACTICE AND PROCEDURE, 3;
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See LOCAL LAW (KAN.);
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BANKRUPTCY.

1. *Appeals; time for taking.*

Congress having provided by section 25*b* of the Bankruptcy Act that appeals may be had under such rules and within such time as may be prescribed by this court, the thirty day limitations in General Order in Bankruptcy XXXVI has the same effect as if written in the statute and the allowance of an appeal taken thereafter on certificate by the Circuit Court of Appeals cannot operate as an adjudication that it is taken in time. *Conboy* v. *First National Bank*, 141.

2. *Appeals; running of limitations—Appeals do not lie from orders denying petitions for rehearing.*

The time within which an appeal should be taken under section 25*b* of the Bankruptcy Act and General Order in Bankruptcy XXXVI runs from the entry of the original judgment or decree and not of the order denying petition for rehearing. Appeals do not lie from orders denying petitions for rehearing which are addressed to the discretion of the court to afford it an opportunity to correct its own errors. *Ib.*

3. *Appeals; time not extended by petition for rehearing or arrested by order of court.*

The time for appeal cannot after it has expired be extended by an ap-

plication for rehearing or arrested by an order of the court, even though the application be made during the same term at which judgment was entered. *Ib.*

4. *Preference of taxes.*
The requirement of § 64*a* of the bankruptcy law of 1898 in regard to preference of taxes is a wide departure from the act of 1867 and prefers taxes due to any State and not only those due to the State in which proceedings are instituted. *New Jersey* v. *Anderson*, 483.

5. *Preference of taxes.*
Generally speaking, a tax is a pecuniary burden laid upon individuals or property to support the Government, and § 64*a* of the bankruptcy law is very broad and covers all taxes, including yearly license fees imposed by the State on corporations organized under its laws for the privilege of doing business, whether such business is carried on in that or in other States. *Ib.*

6. *Preference of taxes.*
Under the bankruptcy act taxes assessed on returns made prior to the adjudication are legally due and owing and entitled to the preference given by § 64*a*, although not collectible until after the adjudication. *Ib.*

See Appeal and Error, 3.

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See Taxes and Taxation, 1.

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See Practice and Procedure, 7.

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See Mortgages and Deeds of Trust, 1;
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BONDS.

1. *Obligation of sureties.*
The obligation of sureties upon bonds is *strictissimi juris* and not to be extended by implication or enlarged construction of the terms of the contract entered into. *Crane* v. *Buckley*, 441.

2. *Supersedeas; right of recovery on.*
Sureties on a supersedeas bond given by defendant to answer, in case of his failure to prosecute his appeal to effect, to plaintiff for loss in use and possession of premises, which, under decree of Circuit Court, plaintiff was entitled to reënter on a date therein specified in default of payment by defendant of balance of purchase price, *held* not liable on the bond where the Circuit Court affirmed the decree as to plaintiff's right to reënter in case of non-payment, but modified it by giving

defendant until a later date to make the final payment, thereby also extending his right of possession until that date. *Ib.*

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See Practice and Procedure, 2.

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See Federal Question, 2.

CARRIERS.

Power of State to augment or lessen carrier's liability.

In the absence of action by Congress a State may by statute determine, and either augment or lessen a carrier's liability, and such a statute limiting the right of recovery of certain classes of persons does not deprive a person injured thereafter of a vested right of property. (*Pennsylvania Railroad Co.* v. *Hughes*, 191 U. S. 477, followed.) *Martin* v. *Pittsburg & Lake Erie R. R. Co.*, 284.

See Commerce.

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Field v. *Barber Asphalt Co.*, 194 U. S. 618, distinguished in *Mississippi R. R. Comm.* v. *Illinois Central R. R.*, 335.

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Rhodes v. *Iowa*, 170 U. S. 412, explained in *Heyman* v. *Southern Ry. Co.*, 270.

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Allen v. *Riley*, 203 U. S. 347, followed in *John Woods & Sons* v. *Carl*, 358.

Illinois Central Railroad v. *McKendree*, 203 U. S. 514, followed in *Illinois Central Railroad* v. *Edwards*, 531.

Patapsco Guano Co. v. *North Carolina Board of Agriculture*, 171 U. S. 345, followed in *McLean* v. *Denver & Rio Grande R. R.*, 38.

Pennsylvania R. R. Co. v. *Hughes*, 191 U. S. 477, followed in *Martin* v. *Pittsburg & Lake Erie R. R. Co.*, 284.

Pettibone v. *Nichols*, 203 U. S. 192, followed in *Moyer* v. *Nichols*, 221.

West Chicago Railway v. *Chicago*, 201 U. S. 506, followed in *Fair Haven & Westville R. Co.* v. *New Haven*, 379.

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See Indians, 3, 6;
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See Federal Question, 4.

CLASSIFICATION FOR TAXATION.

See Taxes and Taxation, 1.

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See Actions, 3;
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COMMERCE.

1. *Interstate; when goods cease to be.*

In the absence of Congressional legislation goods moving in interstate commerce cease to be such commerce only after delivery and sale in the original package. *Heyman* v. *Southern Railway Co.*, 270.

2. *Word "arrival" in Wilson Act defined.*

The word "arrival" as used in the Wilson law means delivery of the goods to the consignee, and not merely reaching their destination, and expressions to that effect in *Rhodes* v. *Iowa*, 170 U. S. 412, are not *obiter. Ib.*

3. *Attachment of power of State over intoxicating liquors under the Wilson Act.*

The power of the State over intoxicating liquors from other States in original packages after delivery and before sale given by the Wilson law does not attach before notice and expiration of a reasonable time for the consignee to receive the goods from the carrier; and this rule is not affected by the fact that under the state law the carrier's liability as such may have ceased and become that of a warehouseman. *Ib.*

4. *Interst te; interference by municipal ordinance requiring license fee.*

Where orders are given for goods sold in a State by an agent of a person employed to solicit them in another State, and the purchaser is not bound to pay for the goods until delivery and unless according to sample, the goods sent specifically to the customer in fulfillment of such orders are, until actually delivered, within the protection of the commerce clause of the Constitution, and a municipal ordinance requiring a license fee for the solicitation of orders for delivering goods not of the parties' own manufacture is void as an interference with

interstate commerce against such an agent. *Rearick* v. *Pennsylvania*, 507.

5. *Validity of state or territorial inspection law affecting interstate commerce.*
A State or Territory has the right to legislate for the safety and welfare of its people, which is not taken from it because of the exclusive right of Congress to regulate interstate commerce; and an inspection law affecting interstate commerce is not for that reason invalid unless it is in conflict with an act of Congress or an attempt to regulate interstate commerce. (*Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 345); *McLean* v. *Denver & Rio Grande R. R.*, 38.

6. *Right of state railroad commission to order stoppage of interstate trains.*
While a state railroad commission may, in the absence of congressional legislation, order a railroad company to stop interstate trains at stations where there is only an incidental interference with interstate commerce, based on a legal exercise of the police power of the State exerted to secure proper facilities for the citizens of the State, where the railroad company has—as in this case—furnished all proper and reasonable facilities, such an order is an improper and illegal interference with interstate commerce and void as a violation of the commerce clause of the Constitution. *Mississippi R. R. Comm.* v. *Illinois Central R. R.*, 335.

7. *Intrastate; Federal interference with.*
As Order of the Secretary of Agriculture, No. 107, purporting to fix a quarantine line under the Cattle Contagious Disease act applies in terms to all shipments whether interstate or intrastate it is void as an attempt to regulate intrastate commerce, notwithstanding it is the same line as that fixed for a similar purpose as to intrastate shipments by the State through which it passes. *Illinois Central Railroad* v. *McKendree*, 514.

8. *Intrastate; Federal interference with.*
Without deciding whether the Cattle Contagious Disease act of February 2, 1903, 33 Stat. 1264, is or is not unconstitutional as delegating power solely vested in Congress to the Secretary of Agriculture, that act confers no power on such secretary to make any regulations concerning intrastate commerce over which Congress has no control. *Ib.*

9. *Intrastate; invalidity of order of Secretary of Agriculture affecting.*
While in a proper case Federal authorities may adopt a quarantine line adopted by a State, where the secretary makes regulations adopting it as applying to all commerce whether interstate or intrastate, and nothing on the face of the order indicates whether he would have made such an order if limited to interstate commerce, the order is not divisible and this court cannot declare that it relates solely to interstate commerce but must declare it void as an entirety. *Ib.*

See CARRIERS;
CONSTITUTIONAL LAW, 1, 6, 7, 8.

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See Commerce, 6;
Constitutional Law, 6, 7, 8, 26;
Courts, 5.

COMPULSORY SERVICE.

See Constitutional Law, 22.

CONDEMNATION OF PROPERTY.

See Constitutional Law, 20;
Federal Question, 2.

CONGRESS, POWERS OF.

To authorize recovery for acts done within State.

Where Congress has power to make acts illegal it can authorize a recovery for damage caused by those acts although suffered wholly within the boundaries of one State. *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 390.

See Commerce, 1, 5, 8, 9;
Constitutional Law, 11, 23;
Courts, 6, 7;
Indians, 2.

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See Jurisdiction, D 2.

CONSTITUTIONAL LAW.

1. *Commerce—Burdens on interstate commerce—Hide inspection law of New Mexico.*

The law of March 19, 1901, of the Territory of New Mexico, making it an offense for any railroad company to receive, for shipment beyond the limits of the Territory hides, which had not been inspected as required by the law, is not unconstitutional as an unwarranted regulation of, or burden on, interstate commerce. *McLean* v. *Denver & Rio Grande R. R.*, 38.

See Commerce, 4, 6;
Supra, 11.

2. *Due process of law; property rights of corporation entitled to protection of.*

The property of which a corporation cannot be deprived without due process of law under the Fourteenth Amendment does not include the mere right of a foreign corporation to extend its business and membership in a State which otherwise may exclude it from its boundaries. *National Council* v. *State Council*, 151.

3. *Due process and equal protection of laws not denied by state law relative to service of process on foreign corporations.*

A State has power to regulate its own creations and *a fortiori* foreign corporations permitted to transact business within its borders. The act of West Virginia, putting all non-resident domestic corporations having their places of business and works outside the State, and all foreign corporations coming into the State, on the same footing in respect to service

of process, and making the state auditor their attorney in fact to accept process, is a reasonable classification and not unconstitutional as denying equal protection of the laws, because that provision does not apply to all corporations; nor does it deprive such corporations, without due process of law, of their liberty of contract; nor does the requirement that they pay such auditor an annual fee of ten dollars for services as such attorney amount to a taking of property without due process of law. *St. Mary's Petroleum Co.* v. *West Virginia*, 183.

4. *Due process and equal protection of laws—Effect of state law restricting defenses by insurance companies.*

The provisions of §§ 7890, 7891, Revised Statutes of Missouri, which as construed by the highest court of that State cut off any defense by a life insurance company based upon false and fraudulent statements in the application, unless the matter represented actually contributed to the death of the insured, and which apply alike to domestic and foreign corporations, is not repugnant to the Fourteenth Amendment, and does not deprive a foreign corporation coming into the State of its liberty or property without due process of law, nor deny to it the equal protection of the laws. *Northwestern Life Ins. Co.* v. *Riggs*, 243.

5. *Due process of law; deprivation of liberty; application.*

The liberty referred to in the Fourteenth Amendment is the liberty of natural, not artificial, persons. *Ib.*

6. *Due process of law; deprivation of property; railroad rates.*

Where the state law provides that rates established by the railroad commission are to be taken in all courts as *prima facie* just and reasonable, and there is nothing in the record from which a reasonable deduction can be made as to the cost of transportation, or the amount transported of the single article in regard to which an intrastate rate has been established and complained of, or how that rate will affect the income of the railroad company, this court will not disturb the finding of the highest court of the State that the rate was reasonable, and hold that it amounted to a deprivation of the company's property without due process of law. *Atlantic Coast Line* v. *Florida*, 256.

7. *Due process of law; deprivation of property; railroad rates.*

Where the record does not disclose why an order of a state railroad commission was made applicable only to certain local and intrastate rates, but the state law provides that rates so fixed are to be considered in all courts as *prima facie* just and reasonable, and the effect of the order was to equalize rates, this court will not hold the judgment of the highest court of the State sustaining the rate, was erroneous. A State may insist upon equality of intrastate railroad rates, the conditions being the same, without depriving the railroad company of its property without due process of law. *Seaboard Air Line* v. *Florida*, 261.

8. *Due process of law; deprivation of property; railroad rates.*

It will be presumed that a state railroad commission acts in fixing an in-

trastate railroad rate with full knowledge of the situation, and where the record does not disclose all the evidence, a rate sustained by the highest court of the State will not be held by this court to be confiscatory and depriving the railroad company of its property without due process of law where it appears by the report of the company that the rate exceeds the average rate received by the company during the previous year. *Ib.*

9. *Due process of law—Validity of law requiring street railways to repair streets and assessing them therefor.*

A general law requiring street railways to keep a certain space between and outside their tracks paved and repaved and assessing them therefor amounts, in respect to companies whose charters contain other provisions, to an amendment thereof, and as such a purpose is consistent with the object of the grant it falls within the reserved power of the State to alter, amend or repeal the original charter, and if imposed in good faith and not in sheer oppression the act is not void either as depriving the company of its property without due process of law or as impairing the contract obligations of the original grant. So *held* as to law of 1899 of Connecticut. *Fair Haven & Westville R. R. Co.* v. *New Haven*, 379.

10. *Due process of law—Validity of Louisiana inheritance tax law.*

A State may exercise its power to impose an inheritance tax at any time during which it holds the property from the legatee; and the Louisiana inheritance tax law is not void as a deprivation of property without due process of law within the meaning of the Fourteenth Amendment as to legatees of decedents dying prior to its enactment but whose estates were still undistributed. *Cahen* v. *Brewster*, 543.

See Practice and Procedure, 2;
Taxes and Taxation, 2.
Supra.

11. *Equal protection and due process of law not violated by limitation of right of recovery against railroad.*

The Pennsylvania statute of April 4, 1868, P. L. 58, providing that any person, not a passenger, employed in and about a railroad but not an employé, shall in case of injury or loss of life have only the same right of recovery as though he were an employé, is not void, either because contrary to the power delegated to Congress to establish post offices and post roads; or because repugnant to the commerce clause of the Constitution; or in conflict with the due process or equal protection clauses of the Fourteenth Amendment; or because it abridges the privileges and immunities of citizens of the United States. *Martin* v. *Pittsburg & Lake Erie R. R.*, 284.

12. *Equal protection of laws—Validity of classification by State of users of railroads—Rights of citizens in respect of interstate travel.*

Although a citizen of the United States has a right to travel from one State

to another, in the absence of Congressional action, he does not possess as an incident of such travel the right to exert in a State in which he may be injured a right of recovery not given by the laws thereof, although that right may be given by the laws of other States including the one in which suit is brought. A classification with a railroad company's employés of all persons, including railway postal clerks, not passengers, but so employed in and about the railroad as to be subject to greater peril than passengers, is not so arbitrary as to deprive the railway postal clerk of the equal protection of the laws within the meaning of the Fourteenth Amendment. *Ib.*

13. *Equal protection of laws—Validity of succession tax law discriminating between estates closed and not closed.*

A statute imposing a succession tax is not void as against estates not closed, as denying equal protection of the laws, because it does not affect estates which had been actually closed at the time of its enactment. *Cahen* v. *Brewster*, 543.

14. *Equal protection of laws—Validity of Illinois inheritance tax law.*

The fact that, as construed by the highest court of that State, the exemptions in the inheritance tax law of Illinois of religious and educational institutions do not apply to corporations of other States, does not render the provisions of the law applicable to foreign religious and educational institutions void as discriminatory and counter to the equal protection clause of the Fourteenth Amendment. *Board of Education* v. *Illinois*, 553.

Extradition of fugitives from justice. See EXTRADITION.

15. *Fifth Amendment—Organization of grand jury.*

The Fifth Amendment requiring the presentment or indictment of a grand jury does not take up unto itself the local law as to how the grand jury shall be made up, and raise the latter to a constitutional requirement. *Matter of Moran*, 96.

16. *Fourteenth and Fifteenth Amendments—Remedy for wrongs committed on persons of African descent.*

The Fourteenth and Fifteenth Amendments operate solely on state action and not on individual action. Unless the Thirteenth Amendment vests jurisdiction in the National Government, the remedy for wrongs committed by individuals on persons of African descent is through state action and state tribunals, subject to supervision of this court by writ of error in proper cases. *Hodges* v. *United States*, 1.

17. *Full faith and credit—Decree in equity reforming policy of insurance not a denial as to judgment at law against recovery on policy rendered in another State.*

An adjudication in an action at law on a policy of insurance that the insured cannot recover on the policy as it then stood is not an adjudi-

cation that the contract cannot be reformed; and a court of another State does not fail to give full faith and credit to such a judgment because in an equity action it reforms the policy and gives judgment to the insured thereon as reformed. *Northern Assur. Co.* v. *Grand View Bldg. Assn.*, 106.

18. *Governmental powers.*

Notwithstanding the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments, the National Government still remains one of enumerated powers, and the Tenth Amendment is not shorn of its vitality. *Hodges* v. *United States*, 1.

19. *Impairment of contract obligation; existence of contract.*

A benefit association incorporated under a state law and styling itself a National Council granted charters to various voluntary organizations in other States, styled State Councils, for similar purposes under conditions expressed in the charters. A dominant portion of the members of a State Council procured a charter from the state legislature granting the corporation so formed under the same name powers, in some respects exclusive in that State, to carry on a similar work, but saving any rights of property possessed by the National Council. In a suit, brought by the latter, *held* that whatever relations may have existed between the National Council and the voluntary State Council there was no contract between the former and the incorporated State Council which was impaired, and the act of incorporation was not void within the impairment clause of the Federal Constitution. *National Council* v. *State Council*, 151.

20. *Impairment of contract obligation—Validity of condemnation under state law of minority shares of stock in railroad.*

It is within the power of a State to provide for condemnation of minority shares of stock in railroad and other corporations where the majority of the shares are held by another railroad corporation if public interest demands; and the improvement of the railroad owning the majority of stock of another corporation may be a public use if the state courts so declare, and the condemnation under §§ 3694, 3695, Public Laws of Connecticut, of such minority shares of a corporation is not void under the impairment clause of the Constitution either because it impairs the obligation of a lease made by the corporation to the corporation obtaining the shares by condemnation, or because it impairs the contract rights of the stockholder. *Offield* v. *New York, N. H. & H. Railroad Co.*, 372.

See Federal Question, 3;
Ante, 9.

21. *Judiciary; Federal courts; power under Seventh Amendment to examine judgment based on verdict of jury.*

Whether in view of the Seventh Amendment a Federal court sitting in equity may inquire into whether a judgment based on a verdict was

obtained by fraud and if so found set the verdict aside argued, but not decided. *Fidelity Mutual Life Ins. Co.* v. *Clark*, 64.

See JURISDICTION, A 3.

Self incrimination. *See* JURISDICTION, F 1.

22. *Slavery and involuntary servitude defined.*

Slavery and involuntary servitude as denounced by the Thirteenth Amendment mean a condition of enforced compulsory service of one to another; and while the cause inciting it was the emancipation of the colored race, that amendment reaches every race and every individual. *Hodges* v. *United States*, 1.

23. *Slavery and involuntary servitude; effect of amendments.*

The result of the amendments to the Constitution adopted after the Civil War was to abolish slavery, and to make the emancipated slaves citizens and not wards of the Nation over whom Congress retained jurisdiction. This decision of the people is binding upon the courts. and they cannot attempt to determine whether it was the wiser course. *Ib.*

24. *State contravention of sec.* 10, *Art. I, of Constitution relative to imposts, etc.*

The provision in Section 10, Article I, of the Constitution of the United States, that States shall not lay imposts and duties on imports and exports is not contravened by a state inspection law applicable only to goods shipped to other States, and not to goods directly shipped to foreign countries. *McLean* v. *Denver & Rio Grande R. R.*, 38.

25. *States; power to compel equality of railroad rates.*

A State may insist upon equality of rates, and although a State may not compel a railroad company to do business at a loss, and even though the company may, against the power of the State, establish rates which afford reasonable compensation, if it voluntarily establishes local rates for some shippers—even though under the guise of a rebilling rate on interstate shipments—it cannot resist the power of the State to enforce the same rate for all shippers—or claim that the rate so fixed by the commission acting under authority of the State deprives it of its property without due process of law. *Alabama & Vicksburg Ry. Co.* v. *Mississippi R. R. Comm.*, 496.

26. *States; suits against state railroad commission not a suit against State.*

A commission created by the law of a State for the purpose of supervising and controlling the acts of railroad companies operating within the State is subject to suit, and a suit brought by a company of another State in the Circuit Court of the United States against the members of the commission is not a suit against the State within the prohibitions of the Eleventh Amendment. *Mississippi R. R. Comm.* v. *Illinois Central R. R.*, 335.

CONSTRUCTION.

Of Contracts. *See* Contracts.
Of Statutes. *See* Customs Duties;
Statutes, A.
Of Wills. *See* Wills.

CONTEMPT OF COURT.

1. *Court as party.*

In contempt proceedings the court is not a party, there is nothing that affects the judges in their own persons and their concern is that the law should be obeyed and enforced. *United States* v. *Shipp*, 563.

2. *Disregard of order of this court staying proceedings below constitute contempt.*

After an appeal has been allowed by one of the justices of this court, and an order entered that all proceedings against appellant be stayed and his custody retained pending appeal, the acts of persons having knowledge of such order, in creating a mob and taking appellant from his place of confinement and hanging him, constitutes contempt of this court, and it is immaterial whether appellant's custodian be regarded as a mere state officer or as bailee of the United States under the order. *Ib.*

3. *Disregard of orders of this court, pending decision as to its jurisdiction, constitute contempt, irrespective of whether or not the court has jurisdiction of the cause.*

Even if the Circuit Court of the United States has no jurisdiction to entertain the petition for *habeas corpus* of one convicted in the state court, and this court has no jurisdiction of an appeal from the order of the Circuit Court denying the petition, this court, and this court alone, has jurisdiction to decide whether the case is properly before it, and, until its judgment declining jurisdiction is announced, it has authority to make orders to preserve existing conditions, and a willful disregard of those orders constitutes contempt. *Ib.*

4. *Purgation by disavowal of intent under oath.*

Where the contempt consists of personal presence and overt acts those charged therewith cannot be purged by their mere disavowal of intent under oath. *Ib.*

CONTRACTS.

1. *Effect on title of word "sell" in agreement affecting real estate.*

The word "sell" in an agreement affecting, but not in terms granting or conveying, real estate, will not be given any more effect upon the title than is necessary to accomplish the purpose of the transaction stated in the agreement; and under the circumstances of this case, the agreement held not to be a conveyance, but a power of attorney to sell at the specified price and subject to revocation, not being coupled with an interest. *Taylor* v. *Burns*, 120.

2. *Phrase "coupled with an interest" in power of attorney, defined.*

The phrase "coupled with an interest," in connection with a power of attorney, does not mean an interest in the exercise of the power, but an interest in the property on which the power is to operate. (*Hunt* v. *Rousmanier's Administrator*, 8 Wheat. 174, followed.) *Ib.*

See BONDS; CONSTITUTIONAL LAW, 3, 9, 19, 20; COURTS, 2; JURISDICTION, B 4; D 2.

CONVEYANCES.

See CONTRACTS, 1; TREATIES.

CORPORATIONS.

See BANKRUPTCY, 5; CONSTITUTIONAL LAW, 2, 3, 9, 20; STATES, 1, 2.

COURTS.

1. *Judicial notice.*

This court will take judicial notice of the fact that cattle run at large in the great stretches of country in the West, identified only as to ownership by brands, and of the necessity for, and use of, branding of such cattle, and will not strike down state or territorial legislation, essential for prevention of crime, requiring the inspection of hides to be shipped without the State, although the act does not require such inspection of hides not to be so shipped. *McLean* v. *Denver & Rio Grande R. R.*, 38.

2. *When Federal Supreme Court will ignore state court's decision as to effect of state statute.*

It is only where an irrepealable contract exists that it is the duty of this court to decide for itself irrespective of the decisions of the state court whether a subsequent act impairs the obligation of such contract. *Wicomico County* v. *Bancroft*, 112.

3. *Interference by Federal court on habeas corpus by party held by State for crime.*

The duty of a Federal court, to interfere, on *habeas corpus*, for the protection of one alleged to be restrained of his liberty in violation of the Constitution or laws of the United States must often be controlled by the special circumstances of the case, and except in an emergency demanding prompt action, the party held in custody by a State, charged with crime against its laws, will be left to stand his trial in the state court, which, it will be assumed, will enforce, as it has the power to do equally with a Federal court, any right asserted under and secured by the supreme law of the land. *Pettibone* v. *Nichols*, 192.

4. *Right of one wrongfully arrested and deported into demanding State to resort to Federal court for release on habeas corpus.*

Even if the arrest and deportation of one alleged to be a fugitive from

justice may have been effected by fraud and connivance arranged between the executive authorities of the demanding and surrendering States so as to deprive him of any opportunity to apply before deportation to a court in the surrendering State for his discharge, and even if on such application to any court, state or Federal, he would have been discharged, he cannot, so far as the Constitution or the laws of the United States are concerned—when actually in the demanding State, in the custody of its authorities for trial, and subject to the jurisdiction thereof—be discharged on *habeas corpus* by the Federal court. It would be improper and inappropriate in the Circuit Court to inquire as to the motives guiding or controlling the action of the Governors of the demanding and surrendering States. *Ib.*

5. *Status of state railroad commission as a court, within prohibition of* § 720, *Rev. Stat., relative to interference by Federal courts.*

The Railroad Commission of Mississippi is not, as has been determined by the highest court of that State, a court, but a mere administrative agency of the State, and the prohibitions of § 720, Rev. Stat., against injunctions from United States courts to stay proceedings in state courts are not applicable thereto; and even though the Commission might, under the state law, resort to the state courts to aid it in enforcing its orders the proceeding cannot be regarded as one in the state courts within the meaning of § 720, Rev. Stat. *Mississippi R. R. Comm.* v. *Illinois Central R. R.*, 335.

6. *Province of courts distinguished from that of Congress.*

It is the province of the courts to enforce, not to make, laws; and if a law works inequality the redress, if any, must be had from Congress, and arguments directed, not to the construction of the act, but as to the justice of a method of distribution of assets under the bankruptcy law, and the hardship resulting therefrom, cannot influence judicial determination. *New Jersey* v. *Anderson*, 483.

7. *Usurpation of legislative power.*

While under former decisions of this court the nature of inheritance taxes has been defined, those decisions do not prescribe the time of its imposition. To have done so would have been to usurp a legislative power not possessed by this court. *Cahen* v. *Brewster*, 543.

See APPEAL AND ERROR;
BANKRUPTCY, 2, 3;
CONSTITUTIONAL LAW, 16, 21, 23;
CONTEMPT OF COURT;
EXTRADITION, 1;
FEDERAL QUESTION;
JURISDICTION;
MASTER AND SERVANT, 4;
PRACTICE AND PROCEDURE;
REMEDIES;
TAXES AND TAXATION, 2.

CRIMINAL LAW.

Place of trial.

Under § 10 of the Organic Act of Oklahoma of May 2, 1890, 26 Stat. 85, the place of trial of a crime committed in territory not embraced in

any organized county is in the county to which such territory shall be attached at the time of trial, although it might have been attached to another county when the crime was committed. *Matter of Moran*, 96.

See Constitutional Law, 15; Courts, 3, 4; Contempt of Court; Extradition; Jurisdiction, E; F 1.

CUSTODY OF CHILDREN.

See Jurisdiction, A 4.

CUSTOMS DUTIES.

Construction of par. 313 of Tariff Act of 1897.

Under par. 313, as construed in connection with pars. 306, 307 of the Tariff Act of July 24, 1897, figured cotton cloth is subject not only to the specific duties imposed by par. 313, but also to the *ad valorem* duty imposed by pars. 306, 307. The evident purpose of these paragraphs precludes the application of the rule that any doubt as to the construction of a tariff statute should be resolved in favor of the importer. *United States* v. *Riggs*, 136.

DEFENSES.

See Constitutional Law, 4.

DELEGATION OF POWER.

See Commerce, 8;
Jurisdiction, A 2.

DEPARTMENTAL PRACTICE.

See Practice and Procedure, 14.

DIVERSE CITIZENSHIP.

See Jurisdiction, B.

DUE PROCESS OF LAW.

See Constitutional Law;
Practice and Procedure, 2;
Taxes and Taxation, 2.

DUTIES.

See Customs Duties.

ELEVENTH AMENDMENT.

See Constitutional Law, 26.

EMINENT DOMAIN.

See Condemnation of Property.

EQUAL PROTECTION OF LAWS.
See Constitutional Law.

EQUITY.
See Constitutional Law, 21.

ESTATES.
See Wills.

EVIDENCE.
See Federal Question, 2;
Master and Servant, 4.

EXCEPTIONS.
See Master and Servant, 3.

EXECUTIVE ORDERS.
See Commerce, 7, 9;
Indians, 4.

EXEMPTIONS.
See Indians, 2, 3;
Practice and Procedure, 3;
Statutes, A 3;
Taxes and Taxation, 1.

EXPERT TESTIMONY.
See Master and Servant, 4.

EXTRADITION.

1. *Nature of Constitutional provision—Duty and obligation of Federal courts.*
The constitutional provision relating to fugitives from justice is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States and its faithful and vigorous enforcement is vital to their harmony and welfare; and while a State should protect its people against illegal action, Federal courts should be equally careful that the provision be not so narrowly interpreted as to enable those who have offended the laws of one State to find a permanent asylum in another. *Appleyard* v. *Massachusetts*, 222.

2. *Fugitive from justice defined.*
A person charged by indictment, or affidavit before a magistrate, within a State with the commission of a crime covered by its laws and who leaves the State, no matter for what purpose nor under what belief, becomes from the time of such leaving and within the meaning of the Constitution and laws of the United States, a fugitive from justice; and in the absence of preponderating or conceded evidence of absence from the demanding State when the crime was committed it is the

duty of the other State to surrender the fugitive on the production of the indictment or affidavit properly authenticated. *Ib.*

3. *Right of accused to opportunity to test liability to removal.*
No obligation is imposed by the Constitution or laws of the United States on the agent of a demanding State to so time the arrest of one alleged to be a fugitive from justice and so conduct his deportation from the surrendering State as to afford him a convenient opportunity, before some judicial tribunal, sitting in the latter State, upon *habeas corpus* or otherwise, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to the demanding State for trial there. *Pettibone* v. *Nichols*, 192.

See Courts, 4.

FEDERAL QUESTION.

1. *Status and rights of postal clerk.*
Whether a railway postal clerk is a passenger or whether his right of recovery is limited by such statute is not a Federal question. *Martin* v. *Pittsburg & Lake Erie R. R.*, 284.

2. *Question of burden of proof as to validity of state tax.*
Whether under the constitution and laws of the State the burden of showing the invalidity of a tax is on the taxpayer, is not a Federal question. *Security Trust Co.* v. *Lexington*, 323.

3. *Contentions that a condemnation is unnecessary and not for public use and that proceedings violate due process clause of Constitution.*
Where plaintiff in error contends that the purpose for which his property has been condemned is not a public use; that the condemnation is unnecessary in order to obtain the desired end; and that the proceedings and state statute on which they are based violate the due process clause of the Fourteenth Amendment and impair contract rights, Federal questions are involved and, if not frivolous, the writ of error will not be dismissed. *Offield* v. *New York, N. H. & H. R. R. Co.*, 372.

4. *Contention that rules and regulations of Civil service not observed does not involve Federal question.*
Where a government employé does not deny the authority of the President or his representative to dismiss him, but only contends that his dismissal is illegal because certain rules and regulations of the civil service were not observed, the validity of an authority exercised under the United States is not drawn in question, and under § 233 of the Code of the District of Columbia, 31 Stat. 1189, this court has no jurisdiction to review the judgment of the Court of Appeals of the District of Columbia. *Taylor* v. *Taft*, 461.

5. *Question of what is a tax within meaning of Federal statute.*
While the state court may construe a statute and define its meaning it cannot conclusively determine that which is not a tax to be a tax

within the meaning of a Federal statute; that is a Federal question of ultimate decision in this court. *New Jersey* v. *Anderson*, 483.

6. *Involution of Federal question giving this court jurisdiction to review judgment of state court.*

Where plaintiff bases his claim, not on common-law principles, but solely on violation of an order of a department of the Federal Government and the certificate of the court below clearly shows that defendant by answer and on the trial asserted the unconstitutionality of the statute on which the order was based, and also the illegality of the order, a verdict for the plaintiff necessarily decides that the statute and order were constitutional and legal, and the defendant has raised a Federal question which was decided against him, and which was not imported into the record merely by the certificate, and this court has jurisdiction under § 709, Rev. Stat., to review the judgment of the state court. *Illinois Central Railroad* v. *McKendree*, 514.

See PRACTICE AND PROCEDURE, 5;
JURISDICTION.

FELLOW SERVANTS.

See MASTER AND SERVANT, 2, 3.

FIFTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 16, 18.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 15;
JURISDICTION, F 1.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;
FEDERAL QUESTION, 3;
PRACTICE AND PROCEDURE, 2.

FUGITIVE FROM JUSTICE.

See COURTS, 4;
EXTRADITION.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 17.

GENERAL ORDERS IN BANKRUPTCY.

See BANKRUPTCY, 1, 2.

GOVERNMENTAL POWERS.

See CONSTITUTIONAL LAW, 18.

GOVERNMENT OF THE UNITED STATES.

See CONSTITUTIONAL LAW, 18.

GRAND JURY.

See CONSTITUTIONAL LAW, 15.

HABEAS CORPUS.

See APPEAL AND ERROR, 1, 2; EXTRADITION;
COURTS, 3, 4; JURISDICTION, A 4;
TERRITORIES.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 19, 20;
COURTS, 2;
JURISDICTION, B 4.

IMPORTS AND EXPORTS.

See CONSTITUTIONAL LAW, 24;
CUSTOMS DUTIES.

IMPOSTS.

See CONSTITUTIONAL LAW, 24.

INDIANS.

1. *Alienation of allotted lands; removal of restrictions.*

Where a State by statute makes the allotted lands of Indians alienable the same as lands of citizens, and Congress by statute postpones the operation of the state statute for a definite period, when that period has expired all restriction upon alienation both voluntary and involuntary by operation of law, such as taxation and levy and sale thereunder, ceases. *Goudy* v. *Meath*, 146.

2. *Alienation of allotted lands; exemptions.*

Although Congress may by statute give Indians a right of voluntary alienation of allotted lands but exempt such lands from levy, sale and forfeiture such an exemption cannot exist by implication but must be clearly manifested. *Ib.*

3. *Taxation of property.*

By the act of February 8, 1887, allottee Indians became citizens and their property, unless clearly exempted by statute, is subject to taxation in the same manner as that of other citizens. *Ib.*

4. *Effect of patent of land to—Power of President to impose restrictions against alienation.*

A patent to an Indian of land reserved to him by a treaty simply locates the land, the title to which passed under the treaty, and in the absence of any provision of the treaty, or any act of Congress, a restriction in

the patent against alienation without the consent of the President is ineffectual, the President having no authority by virtue of his office to impose such a restriction. *Francis* v. *Francis*, 233.

5. *Acquisition by prescription of title to lands conveyed to.*

Title to lands conveyed to an Indian in fee and which the Indian has power to alienate may be acquired by prescription. *Ib.*

6. *Rights of white persons intermarrying with Cherokee Indians.*

Judgment of the Court of Claims affirmed to effect that all those white persons who married Cherokee Indians by blood subsequently to the enactment of the Cherokee law, which became effective November 1, 1875, and which declared that such persons by intermarriage acquired no rights of soil or interest in the vested funds of the Nation, had due notice of the limitations set upon their rights and privileges as citizens; and that those white persons who married Cherokee citizens by blood prior to said date did acquire rights as citizens in the lands belonging to the Nation, and held and owned as national lands, except such of them as lost their rights as Cherokee citizens by abandoning their Cherokee wives or by marrying other white or nontribal men or women having no rights of citizenship by blood in said Cherokee Nation. *Cherokee Intermarriage Cases*, 76.

See Statutes, A 1, 2;
Treaties.

INDICTMENT.

See Constitutional Law, 15.

INFRINGEMENT.

See Trade-Marks.

INHERITANCE TAX.

See Constitutional Law, 10, 13, 14;
Courts, 7;
Taxes and Taxation, 1.

INJUNCTION.

See Courts, 5.

INSPECTION LAWS.

Grounds for objection to fee prescribed.

A state or territorial inspection law being otherwise valid, the amount of the inspection fee is not a judicial question; it rests with the legislature to fix the amount, and will only present a valid objection if it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law. *McLean* v. *Denver & Rio Grande R. R. Co.*, 38.

See Commerce, 5;
Constitutional Law, 1, 2, 4;
Courts, 1.

INSURANCE.

Right of insurer to recover from distributees of money paid into court in satisfaction of judgment, after discovery of fraud—Effect of notice by virtue of insurer's defense to action on policy.

A man and his sister conspired to defraud an insurance company; the former having insured his life disappeared and the latter as beneficiary filed proof of death, brought suit, and recovered judgment after verdict by a jury; the company defended on ground that insured was alive and claim was fraudulent. The judgment was affirmed and the company paid the money into court; in order to have the suit prosecuted the beneficiary had made contingent fee contracts with attorneys which had been filed and the money was distributed from the registry of the court to her and the various parties holding assignments of interests therein. The insurance company, having afterwards found the insured was alive, sued in equity the beneficiary and also her counsel and their assignees to recover the money received by them respectively. No charge of fraud was made against anyone except the beneficiary, but notice of the fraud was charged against all by virtue of the company's defense. The defendants claimed that under the Seventh Amendment the question of death of person insured could not again be litigated. The bill was dismissed as to all except the beneficiary. *Held*, as to the defendants other than the beneficiary, that as the action was prosecuted in good faith whatever notice they may have had by virtue of the company's defense was purged by the verdict, and although they had received their respective shares from the proceeds paid into court it was same in law as though they had been paid in money directly by the judgment creditor and it could not be recovered. *Fidelity Mutual Life Ins. Co.* v. *Clark*, 64.

See CONSTITUTIONAL LAW, 4, 17.

INSTRUCTIONS TO JURY.

See MASTER AND SERVANT, 3.

INTERSTATE COMMERCE.

See CARRIERS; CONSTITUTIONAL LAW, 1, 12;
COMMERCE; COURTS, 1;
INSPECTION LAWS.

INTERSTATE RENDITION.

See COURTS, 4;
EXTRADITION.

INTOXICATING LIQUORS.

See COMMERCE, 3.

INTRASTATE COMMERCE.

See COMMERCE, 7, 8, 9;
CONSTITUTIONAL LAW, 6, 7, 8.

INVOLUNTARY SERVITUDE.

See CONSTITUTIONAL LAW, 22.

JUDGMENTS AND DECREES.

See APPEAL AND ERROR;
CONSTITUTIONAL LAW, 17, 21;
JURISDICTION, D 3; F 2, 3.

JUDICIAL NOTICE.

See COURTS, 1.

JUDICIAL POWERS.

See CONSTITUTIONAL LAW, 26;
COURTS, 6, 7;
MASTER AND SERVANT, 4.

JURISDICTION.

A. OF THIS COURT.

1. *Amount in controversy—Right measurable in money.*

The right of a shipper to have his goods transported by a common carrier is a valuable right measurable in money, and an appeal involving such a right of which this court otherwise has jurisdiction under § 2 of the act of March 3, 1885, will not be dismissed because no sum or value is involved. *McLean* v. *Denver & Rio Grande R. R.*, 38.

2. *Appeal from Supreme Court of Territory under* § 2 *of act of March* 3, 1885.

The right to legislate in the Territories being conferred under constitutional authority, by Congress, the passage of a territorial law is the exertion of an authority exercised under the United States, and the validity of such authority is involved where the right of the legislature to pass an act is challenged; and, in such a case, if any sum or value is in dispute an appeal lies to this court from the Supreme Court of a Territory under § 2 of the act of March 3, 1885, 23 Stat. 443, even though the sum or value be less than $5,000. *Ib.*

3. *Derivation of jurisdiction of this court and Circuit Court.*

The Supreme Court of the United States alone possesses jurisdiction derived immediately from the Constitution and of which the legislative power cannot deprive it; that of the Circuit Court depends on some act of Congress. *Ex parte Wisner*, 449.

4. *Of appeal from order of territorial court awarding custody of child.*

A *habeas corpus* proceeding involving the care and custody of a child of tender years is not decided on the legal rights of the petitioner, but upon the court's view, exercising its jurisdiction as *parens patriæ*, of the best interest and welfare of the child; such a proceeding does not involve the question of personal freedom, and an appeal will not lie to this court, under § 1909, Rev. Stat., from the order of the Supreme Court

of a Territory awarding the custody of a child of three years of age to one of several rival claimants therefor. *New York Foundling Hospital* v. *Gatti*, 429.

5. *Of appeals from adverse decisions of District Court in cases to establish land titles in Florida.*

Section 6 of the act of March 3, 1891, 26 Stat. 826, recognizes that there are exceptions other than those enumerated therein in which appeals to this court at that time provided for by law were saved; and this applies to the appeal by the United States under § 11 of the act of June 22, 1860, 12 Stat. 87, from adverse decisions of the District Court of the United States in cases to establish land titles in Florida. *United States* v. *Dalcour*, 408.

6. *Sufficiency of involution of findings of fact by lower court.*

The objection that the Supreme Court of Oklahoma found no facts upon which a review can be had by this court is untenable, where it appears that the case was before that court a second time and that in its opinion it referred to and adopted its former opinion in which it had made a full statement and findings of fact. *National Live Stock Bank* v. *First Nat. Bank*, 296.

See FEDERAL QUESTION.

B. OF CIRCUIT COURTS.

1. *Of action to wind up affairs of a national bank.*

An action for rent of premises for unexpired term of a lease brought by the lessor against the stockholders' agent to whom the comptroller has released the assets of a national bank is a suit to wind up the affairs of the bank of which the Circuit Court of the United States has jurisdiction. *International Trust Co.* v. *Weeks*, 364.

2. *Test of jurisdiction of cause sought to be removed.*

No suit which could not have been originally brought in the Circuit Court of the United States can be removed therein from the state court. *Ex parte Wisner*, 449.

3. *Of case sought to be removed from state court where parties are non-residents of that State and citizens of different States.*

Under §§ 1, 2, 3, of the act of March 3, 1875, 18 Stat. 470, as amended by the act of March 1, 1887, 24 Stat. 552, corrected by the act of August 13, 1888, 25 Stat. 433, an action commenced in a state court, by a citizen of another State, against a non-resident defendant who is a citizen of a State other than that of the plaintiff cannot be removed by the defendant into the Circuit Court of the United States. *Ib.*

4. *Sufficiency of involution of Federal question.*

Where the bill of the trustee of bondholders of a water company, claiming an exclusive contract with a municipality, shows that an act of the legislature and an ordinance of the city have been passed under which

the city shall construct its own water works, and that during the life of the contract the source of the ability of the water company to pay interest on, and principal of, its bonds will be cut off, a case is presented involving a constitutional question, and irrespective of diverse citizenship, the Circuit Court of the United States has jurisdiction to determine the nature and validity of the original contract, and whether the subsequent legislation and ordinance impaired its obligations within the meaning of the Federal Constitution. *Mercantile Trust Co.* v. *Columbus*, 311.

5. *Sufficiency of showing of diverse citizenship—Citizen and subject.*

A declaration that plaintiff is a resident of a State of the Union and a citizen of a foreign country under a monarchical form of government is sufficient to show the meaning of the pleader and the nationality of the plaintiff, and there is no merit in an objection to the jurisdiction of the Circuit Court, diverse citizenship existing, because plaintiff was not a citizen but a subject of the foreign power. *Nichols Lumber Co.* v. *Franson*, 278.

6. *Power to issue writs of mandamus.*

Circuit Courts of the United States, until Congress shall otherwise provide, have no power to issue a writ of mandamus in an original action for the purpose of securing relief by the writ, although the relief sought concerns an alleged right secured by the Constitution of the United States. *Covington Bridge Co.* v. *Hager*, 109.

C. Of District Courts.

Of claim for lands which had been rejected by public officers acting under authority of Congress.

The provision in § 3 of the act of June 22, 1860, that no claims for lands in Florida could be presented to the District Court of the United States that had been theretofore presented before any board of commissioners or other public officers acting under authority of Congress and rejected as being fraudulent, *held* to bar a claim which had been presented to a judge of the Superior Court of Florida under the act of May 23, 1828, 4 Stat. 284, and by him refused and rejected on the ground of an unwarranted alteration of the register of the grant in a particular material to its validity. *United States* v. *Dalcour*, 408.

D. Of Federal Courts Generally.

1. *Effect of designation of place of trial where there are no county or court buildings.*

Where the order of the court having authority to designate the place of trial for a newly organized county in Oklahoma is as precise as circumstances permit, the fact that it merely names the town, there being no county or court buildings at the time of trial, does not affect the jurisdiction of the court, where it does not appear that the party complaining lost any opportunities by reason of no building being named. *Matter of Moran*, 96.

2. *Of charge of conspiracy to prevent citizens of African descent, because of race and color, from carrying out contracts to labor.*

The United States court has no jurisdiction under the Thirteenth Amendment or §§ 1978, 1979, 5508, 5510, Revised Statutes, of a charge of conspiracy made and carried out in a State to prevent citizens of African descent, because of their race and color, from making or carrying out contracts and agreements to labor. *Hodges* v. *United States*, 1.

3. *Scope of jurisdiction on removal from state court—Sufficiency of service of process.*

After a case has been removed from the state court to the Federal court the latter has full control of the case as it was when the state court was deprived of its jurisdiction, and property properly attached in the state court is still held to answer any judgment rendered against the defendant, and publication of the summons in conformity with the state practice is sufficient as against the property attached. But a judgment entered on such service by publication can be enforced only against property attached. *Clark* v. *Wells*, 164.

E. Of Territorial Courts.

Jurisdiction of territorial court to try person for crime committed in part of Territory not open for settlement.

Courts of Oklahoma Territory have jurisdiction to try a person for crime although committed in a part of the Territory not then opened for settlement, it appearing from the acts of Congress that title had passed to the Territory, and Congress was only exercising control so far as settlement was concerned. *Matter of Moran*, 96.

See ante, D 1.

F. Generally.

1. *Effect on jurisdiction of trial court of compelling accused to walk before jury, and of observation by jury during recess.*

Whether a person on trial is compelled to be a witness against himself contrary to the Fifth Amendment because compelled to stand up and walk before the jury, or because the jury was stationed during a recess so as to observe his size and walk, not decided, but *held* that it did not affect the jurisdiction of the trial court, and render the judgment void. *Matter of Moran*, 96.

2. *Of court to enter judgment absolute on its face, which is collectible only from property attached.*

Where a judgment collectible only from property attached is absolute on its face, the court entering it exceeds its jurisdiction and the judgment will be modified and made collectible only from such property. *Clark* v. *Wells*, 164.

3. *Sufficiency of service of process and appearance.*

No valid judgment *in personam* can be rendered against a defendant without personal service or waiver of summons and voluntary appear-

ance; an appearance for the sole purpose of obtaining a removal to a Federal court of defendant, not personally served but whose property has been attached in a suit in a state court, does not submit the defendant to the general jurisdiction or deprive him of the right to object, after the removal of the case, to the manner of service. *Ib.*

See PRACTICE AND PROCEDURE, 6.

LABOR.

See JURISDICTION, D 2.

LANDLORD AND TENANT.

Duty of lessor, after reëntry for breach of covenant, to relet premises.

Under a provision in a lease that in case of reëntry for breach of covenant the lessors may relet the premises at the risk of lessee, who shall remain for the residue of the term responsible for the rent reserved and shall be credited with such amounts only as shall by the lessors be actually realized, as the same has been construed by the highest court of Massachusetts, the lessor has not the absolute discretion, after entry, to relet or not to relet the premises, but it is his duty to prevent unnecessary loss or diminution of rent, and, in the absence of a reasonable effort to relet the premises, cannot recover. *International Trust Co.* v. *Weeks*, 364.

LEASE.

See JURISDICTION, B 1;
LANDLORD AND TENANT.

LEGISLATIVE POWERS.

See CONGRESS, POWERS OF.

LEVY AND SALE.

See INDIANS, 2.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 3, 5.

LICENSE FEES.

See BANKRUPTCY, 5; CONSTITUTIONAL LAW, 3;
COMMERCE, 4; STATES, 2.

LIENS.

See MORTGAGES AND DEEDS OF TRUST.

LIFE INSURANCE.

See CONSTITUTIONAL LAW, 4.

LIMITATION OF ACTIONS.

See ACTIONS;
BANKRUPTCY, 1, 2.

LIQUORS.

See Commerce, 3.

LOCAL LAW.

Arkansas. Sale of patent rights (see Patents, 2); *John Wood & Sons* v. *Carl*, 358.

Cherokee Nation. Law of November 1, 1875; Rights of whites intermarrying with Indians (see Indians, 6); *Cherokee Intermarriage Cases*, 76.

Connecticut. Public Laws, §§ 3694, 3695 (see Constitutional Law, 20); *Offield* v. *New York, N. H. & H. R. Co.*, 372. Law of 1899, requiring street railways to repair streets (see Constitutional Law, 9); *Fair Haven & Westville R. R. Co.* v. *New Haven*, 379.

District of Columbia. Code, § 233 (see Federal Question, 4); *Taylor* v. *Taft*, 461.

Illinois. Inheritance tax law (see Constitutional Law, 14); *Board of Education* v. *Illinois*, 553.

Kansas. As to recording assignments of chattel mortgages. Under the law of Kansas there is no statute making it necessary to record or file the assignment of a chattel mortgage in order to protect the rights of the assignee thereof. *National Live Stock Bank* v. *First Nat. Bank*, 296. Transfer of patent rights (see Patents); *Allen* v. *Riley*, 347.

Louisiana. Inheritance tax law (see Constitutional Law, 10); *Cahen* v. *Brewster*, 543.

Michigan. Titles (see Treaties); *Francis* v. *Francis*, 233.

Missouri. Revised Statutes, §§ 7890, 7891, relative to life insurance companies (see Constitutional Law, 4); *Northwestern Life Ins. Co.* v. *Riggs*, 243.

New Mexico. Law of March 19, 1901, relative to inspection of hides (see Constitutional Law, 1); *McLean* v. *Denver & Rio Grande R. R.*, 38.

Oklahoma. Organic Act of May 2, 1890, § 10; place of trial of crime (see Criminal Law); *Matter of Moran*, 96.

Pennsylvania. Act of April 4, 1868, P. L. 58, relative to railroad liability for injuries to person (see Constitutional Law, 11); *Martin* v. *Pittsburg & Lake Erie R. R.*, 284.

Tennessee. Code §§ 2773, 2776, limitation of actions (see Actions, 2); *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 390.

West Virginia. Regulation of non-resident and foreign corporations (see Constitutional Law, 3); *St. Mary's Petroleum Co.* v. *West Virginia*, 183.

Generally. See Actions, 1; Constitutional Law, 15; Practice and Procedure, 1.

MANDAMUS.

See Jurisdiction, B 6;
Remedies.

MASTER AND SERVANT.

1. *Liability of master for torts of servant.*

While one carrying on private business may be answerable for the torts

of another to whom he entrusts part of the work, he is not answerable for the torts of one whom he cannot select, control or discharge. *Guy* v. *Donald*, 399.

2. *Liability of master where negligence of fellow servant contributes to accident.*

Where the negligence of the master in not supplying proper appliances has a share in causing injuries to an employé, the master is liable notwithstanding the negligence of a fellow servant may have contributed to the accident. *Gila Valley R. R.* v. *Lyon*, 465.

3. *Sufficiency and mode of raising objection to charge, in action against master, as to proximate cause of accident, where negligence of fellow servants contributes to accident.*

Defendant's objection to the charge on the ground that it should have been more specific as to the distinction between sole and proximate cause cannot be raised by a general exception nor should it be sustained if the jury had its attention drawn to the proximate cause and was charged that if the negligence of the fellow servant was the proximate cause plaintiff could not recover. *Ib.*

4. *Admissibility of expert testimony as to safety of appliances furnished servant.*

In an action for damages for personal injuries alleged to have been caused by unsafe appliances of a railroad company, the admissibility of expert testimony is within the reasonable discretion of the trial court, and that discretion is not abused by the admission of testimony of men who had had practical experience on railroads and were familiar with structures of the kind involved in the action. *Ib.*

MOOT QUESTION.

See Practice and Procedure, 9.

MORTGAGES AND DEEDS OF TRUST.

1. *Lien of mortgage not affected by failure to record assignment thereof.*

The endorsement and delivery before maturity of a note secured by a chattel mortgage by the payee transfers not only the note but by operation of law the ownership of the mortgage which has no separate existence; and such a chattel mortgage if recorded, although the assignment thereof was not recorded, remains a lien on the property, superior to that of subsequent mortgages even though the original payee may, without authority and after the transfer, have released the same, if the law of the State in which the mortgage was given does not require the assignment of chattel mortgages to be recorded. *National Live Stock Bank* v. *First Nat. Bank*, 296.

2. *Effect of failure by assignee to record or file mortgage.*

An assignee does not lose his rights under a mortgage by not recording or filing it, unless there is a law which either in express terms or by implication provides therefor; where there is no such statute it is not

necessary, nor is it the duty of the assignee to record or file a mortgage. *Ib.*

3. *Law governing rights of holder of chattel mortgage.*
The rights of the holder of a chattel mortgage over the property after the same has been removed to another State are determined by the law of the State where the property was when the mortgage was given. *Ib.*

See LOCAL LAW (KAN.).

MUNICIPAL ORDINANCE.

See COMMERCE, 4.

NATIONAL BANKS.

See JURISDICTION, B 1.

NEGLIGENCE.

See MASTER AND SERVANT;
PILOTAGE.

NEGOTIABLE INSTRUMENTS.

See MORTGAGES AND DEEDS OF TRUST, 1;
PATENTS, 2.

NEGROES.

See CONSTITUTIONAL LAW, 16;
JURISDICTION, D 2.

NOTICE.

See INSURANCE.

OKLAHOMA.

See APPEAL AND ERROR, 4;
CRIMINAL LAW;
JURISDICTION, D 1; E.;
TERRITORIES.

PARTIES.

See CONTEMPT OF COURT, 1;
PRACTICE AND PROCEDURE, 7, 12.

PARTNERSHIP.

See PILOTAGE.

PATENTS.

1. *Power of State to regulate transfers of patent rights.*
While a State may not pass any law prohibiting the sale of patents for inventions or nullifying the laws of Congress regulating their transfer, it has the power, until Congress legislates on the subject, to make such reasonable regulations in regard to the transfer of patent rights as will protect its citizens from fraud; and a requirement in the laws of Kansas

that before sale or barter of patent rights, an authenticated copy of the letters patent and the authority of the vendor to sell the right patented shall be filed in the office of the clerk of the county within which the rights are sold is not an unreasonable regulation. *Allen* v. *Riley*, 347.

2. *Power of State to regulate transfer of patent rights.*

Allen v. *Riley*, *ante*, p. 347, followed as to power of a State to require one selling patent rights to record the letters patent and applied to a law of Arkansas, which also makes a note void if given for a patent right, if the note does not show on its face for what it was given. *John Woods & Sons* v. *Carl*, 358.

See Indians, 4;
Practice and Procedure, 4;
Public Lands, 2.

PATENT OFFICE.

See Practice and Procedure, 14.

PILOTAGE.

Liability of members of pilotage association as partners, to owners of piloted vessels for negligence of each other.

The members of a pilot association recognized by state statute and to which every pilot licensed by the State belongs, are not to be held liable as partners to owners of piloted vessels for the negligence of each other, because the association collects the fees for pilotage and after paying certain expenses distributes them to those on the active list according to the number of days they have been on duty. So *held* as to Virginia Pilot Association. *Guy* v. *Donald*, 399.

PLACE OF TRIAL.

See Criminal Law;
Jurisdiction, D 1.

PLEADING.

See Jurisdiction, B 5;
Practice and Procedure.

POLICE POWER.

Validity of exercise having the effect to levy tax on property.

The exercise of the police power may and should have reference to the peculiar situation and needs of the community and is not necessarily invalid because it may have the effect to levy a tax upon the property affected, if its main purpose is to protect the people against fraud and wrong. *McLean* v. *Denver & Rio Grande R. R.*, 38.

See Commerce, 6.

POST OFFICES AND POST ROADS.

See Constitutional Law, 11, 12.

POWER OF ATTORNEY.

See Contracts, 1, 2.

POWERS OF CONGRESS.

See Congress, Powers of;
Constitutional Law, 23.

PRACTICE AND PROCEDURE.

1. *Binding effect of state court's decision as to whether statutory exemption has been repealed.*
In the absence of a contract protected by the impairment clause of the Federal Constitution, whether a statutory exemption has been repealed by a subsequent statute is a question of state law in which the decisions of the highest court of the State are binding. *Wicomico County* v. *Bancroft*, 112.

2. *Binding effect of state court's decision as to whether statutory exemption has been repealed.*
Even though Federal courts might exercise independent judgment, in this case the decisions of the Supreme Court of Maryland are followed to the effect that an act directing a new assessment of property in the State and expressly declaring that property of every railroad in the State be valued and assessed, amounted to a repeal of prior exemptions from taxation where there was no irrepealable contract. *Ib.*

3. *Following construction by state court of state statute.*
In determining the constitutionality of a state statute this court must follow the construction given thereto by the highest court of the State, and a ruling by that court that provisions of statute prohibiting the purchasing of a commodity on margin, and the carrying on of "bucket shops" for dealing in such commodity are separable, is conclusive on this court, and refutes the contention of one convicted of carrying on a "bucket shop" that the law is void as to him because certain presumptions created by the statute in regard to the prohibitions of purchasing on margins may be repugnant to the Fourteenth Amendment; nor will this court determine that the creation of certain presumptions of guilt by a state statute is repugnant to the due process clause of the Fourteenth Amendment when the record does not show that the conviction sought to be reviewed was based on these presumptions and could not have been based on independent evidence. *Gatewood* v. *North Carolina*, 531.

4. *Binding force of state court's decision as to effect to be given to a patent.*
When the conclusions of the highest court of a State reversing the trial court are in harmony with the general rule as to the effect to be given to a patent of the United States, this court is not justified in setting the judgment aside upon a presumption of what might have been the testimony upon which the trial court made its findings. *Andrews* v. *Eastern Oregon Land Co.*, 127.

5. *Raising Federal question—Resort to opinion of state court to disclose Federal question.*

Although the opinion of the highest court of a State may be resorted to for the purpose of showing that the court actually dealt with a Federal question presented by the record, or that a right asserted in general terms was maintained and dealt with on Federal grounds, where the record discloses no Federal question until the assignment of errors in this court, it comes too late and the writ will be dismissed. *Burt* v. *Smith*, 129.

6. *As to showing of how question of jurisdiction was raised.*

While under the Judiciary Act of 1891, in case of direct review on question of jurisdiction, when the record does not otherwise show how the question was raised, the certificate of the Circuit Court may be considered for the purpose of supplying such deficiency, when the elements necessary to decide the question are in the record the better practice, in every case of direct review on question of jurisdiction, is to make apparent on the record by a bill of exceptions, or other appropriate mode, the fact that the question of jurisdiction was raised, and passed on, and also the elements upon which the question was decided. *Nichols Lumber Co.* v. *Franson*, 278.

7. *Timeliness of objection as to parties to bill of review.*

An objection that a person should have been made a party to a bill of review comes too late when the existence of that person does not appear of record. *Landram* v. *Jordan*, 56.

8. *Unavailability of objection not taken below.*

Whether the obligation of the contract was impaired by a statute as construed is not open in this court if that objection was not taken below. *Northern Assur. Co.* v. *Grand View Building Asso.*, 106.

9. *Moot question not considered.*

When an application on *habeas corpus* is denied because the writ had been suspended, and thereafter, and before appeal taken is allowed, the suspension is revoked, the question of power of the authorities to suspend the writ becomes a moot one not calling for determination by this court. *Fisher* v. *Baker*, 175.

10. *As to province of this court to pronounce contradictory and decisive one of two decisions of state court.*

When the state court which has delivered two decisions declares that the later does not overrule, but distinguishes, the earlier, which it states was decided on considerations having no application to the later one, both decisions must be considered as correct interpretations of the statute construed, and it is not the province of this court to pronounce them contradictory or one to be more decisive than the other. *Cahen* v. *Brewster*, 543.

11. *Effect of failure of record to disclose how facts on which state court's finding was based were brought to its knowledge.*

Although the record of a case here on writ of error may fail to show how the facts on which the highest court of a State set aside the findings of the trial court, were brought to its knowledge, this court cannot ignore the recitals of what it considered, if it appears that testimony was taken and preserved. *Andrews* v. *Eastern Oregon Land Co.*, 127.

12. *Right of one not appealing.*

One not appealing cannot, in this court, go beyond supporting the judgment and opposing every assignment of error. *Landram* v. *Jordan*, 56.

13. *When writ of error should be to trial court and not to higher court.*

Where the highest court of the State dismisses the writ of error to the trial court solely and expressly because of lack of jurisdiction, the result of the ruling is to determine that the trial court is the final court where the question could be decided, and the writ of error from this court should be directed to the trial court, and not to the highest court, although that court may be clothed with jurisdiction of questions of state and Federal constitutionality of state laws, and may have discussed, and found without merit, the constitutional question. *Western Union Telegraph Co.* v. *Hughes*, 505.

14. *Validity of rule of Patent Office as to appeals.*

Rule 124 of the Patent Office which provides that no appeal can be taken from a decision of a primary examiner affirming the patentability of the claim or the applicant's right to make the same, is not void as contrary to the provisions of §§ 482, 483, 4904, 4910, 4911, Rev. Stats., or § 9 of the act of February 9, 1893, 27 Stat. 436. Those statutes provide only for appeals upon the question of priority of invention, and appeals on other questions are left under the power given by § 483, Rev. Stat., to the regulation of the Patent Office. *Lowry* v. *Allen*, 474.

See APPEAL AND ERROR, 1.

PREFERENCES.

See BANKRUPTCY, 4, 5, 6.

PRESCRIPTION.

See INDIANS, 5.

PRESUMPTIONS.

See PRACTICE AND PROCEDURE, 2, 4.

PRIVILEGES AND IMMUNITIES.

See CONSTITUTIONAL LAW, 11, 12.

PROBABLE CAUSE.

See TRADE-MARK.

PROCESS.

See CONSTITUTIONAL LAW, 3;
JURISDICTION, D 3; F 3.

PROHIBITION.

See REMEDIES.

PROPERTY RIGHTS.

See CARRIERS;
CONSTITUTIONAL LAW.

PUBLICATION.

See JURISDICTION, D 3.

PUBLIC LANDS.

1. *Title to pueblo lands in California.*
In California, pueblo lands, which were simply ancillary to the execution of the public trust and in which the pueblo never had an indefeasible proprietary interest, and which were subject to the supreme political dominion of the former Mexican government, became, on the change of government, equally subject to the sovereignty of the State of California through its legislature, and the title to such lands did not pass to the United States. *City of Monterey* v. *Jacks*, 360.

2. *Title to pueblo lands in California.*
The title of one holding under a deed to pueblo lands from a city in California, ratified by the legislature, sustained as against the city claiming to hold under a subsequent patent from the United States. *Ib.*

PUEBLO LANDS.

See PUBLIC LANDS.

RAILROADS.

See COMMERCE;
CONSTITUTIONAL LAW, 1, 6, 7, 8, 9, 11, 12, 20, 25, 26;
FEDERAL QUESTION;
MASTER AND SERVANT, 4;
PRACTICE AND PROCEDURE, 3.

RAILROAD COMMISSIONS.

See COMMERCE, 6;
CONSTITUTIONAL LAW, 6, 7, 8, 26;
COURTS, 5.

RAILWAY POSTAL CLERKS.

See CONSTITUTIONAL LAW, 12;
FEDERAL QUESTION, 1.

RATES.

See CONSTITUTIONAL LAW, 6, 7, 8, 25.

RECORDATION.

See Local Law (Kan.);
Mortgages and Deeds of Trust, 1, 2;
Patents.

REMEDIES.

Mandamus to compel Circuit Court to remand case improperly removed.
Where the Circuit Court refuses to remand to the state court a case removed to it, but over which it has no jurisdiction, mandamus from this court is the proper remedy and not prohibition. *Ex parte Wisner*, 449.

See Actions, Appeal and Error, 2;
Constitutional Law, 16.

REMOVAL OF CAUSES.

See Jurisdiction, B 2, 3; D 3; F 3;
Remedies.

REVISED STATUTES.

See Acts of Congress.

SALES.

See Patents;
Torts, 1.

SELF-INCRIMINATION.

See Jurisdiction, F 1.

SERVICE OF PROCESS.

See Jurisdiction, D 3; F 3.

SEVENTH AMENDMENT.

See Constitutional Law, 21;
Insurance.

SHERMAN ANTI-TRUST ACT.

See Actions, 1, 2, 3.

SLAVERY.

See Constitutional Law, 22, 23.

STATES.

1. *Right to exclude and expel foreign corporations.*
A State has the right to exclude a foreign corporation and forbid it from constituting branches within its boundaries, and this power extends to a corporation already within its jurisdiction. A single foreign corporation may be expelled from a State by a special act if the act does not deprive it of property without due process of law. *National Council* v. *State Council*, 151.

2. *Power to fix sums payable by corporation during existence of franchise.*

A State creating a corporation may fix the terms of its existence and provide that for the continued existence of its franchise it must yearly pay the State certain sums fixed by the amount of its outstanding stock. *New Jersey* v. *Anderson*, 483.

3. *Rights as to highways.*

One of the public rights of great extent of the State is the establishment, maintenance and care of its highways. (*West Chicago Railway* v. *Chicago*, 201 U. S. 506.) *Fair Haven & Westville R. R. Co.* v. *New Haven*, 379.

See CARRIERS;
COMMERCE, 3, 5, 6;
CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 2, 3, 4, 7, 9, 10, 12, 16, 20, 24, 25, 26;
COURTS, 4;
EXTRADITION;
LOCAL LAW;
PATENTS;
POLICE POWER;
PUBLIC LANDS, 1;
TAXES AND TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Indians favored as against whites.*

It is a settled rule of construction that as between the whites and the Indians the laws are to be construed most favorably to the latter. *Cherokee Intermarriage Cases*, 76.

2. *Interpretation of language used—Qualification of words.*

The rule that the language of a statute is to be interpreted in the light of the particular matter in hand and the object sought to be accomplished as manifested by other parts of the act, and that the words used may be qualified by their surroundings and connections, applied to the construction of the acts of Congress relating to citizenship in, and distribution of tribal property of, the Cherokee Nation. *Ib.*

3. *Legislative intent.*

A proviso in a state statute taxing all property of railroads that no irrepealable contract of exemption shall be affected construed as expressing the legislative intent to repeal all exemptions not protected by binding contracts beyond legislative control. *Wicomico County* v. *Bancroft*, 112.

See PRACTICE AND PROCEDURE, 1, 2, 3, 10, 14.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STREETS AND HIGHWAYS.

See CONSTITUTIONAL LAW, 9;
STATES, 3.

STREET RAILWAYS.

See CONSTITUTIONAL LAW, 9.

SUIT AGAINST STATE.

See CONSTITUTIONAL LAW, 26.

SUPERSEDEAS BOND.

See BONDS, 2.

SURETIES.

See BONDS, 1, 2.

STOCK.

See CONSTITUTIONAL LAW, 20.

TAXES AND TAXATION.

1. *Classification for taxation—Reasonableness of exemptions from inheritance tax.*

It is not an unreasonable or arbitrary classification for a State to exempt from inheritance taxes only such property bequeathed for charity or educational purposes as shall be bestowed within its borders or exercised by persons or corporations under its control. *Board of Education* v. *Illinois*, 553.

2. *Right of taxpayer to be heard before enforcement of assessment—Assumption by court of legislative function.*

Before a special assessment, levied by legislative authority of a State—in this case providing for back taxes in Kentucky—can be actually enforced, or during the process of its enforcement, the taxpayer must have an opportunity to be heard as to its validity and extent; but this rule is met where the state court has afforded the taxpayer full opportunity to be heard on both of those questions, and after such opportunity has rendered a judgment providing for the enforcement of such amount of the tax as it finds actually due. In so determining the amount due and reducing the amount assessed the state court does not assume the legislative function of making an assessment, but merely, after hearing, judicially decides the amount of an assessment, made by the assessor under color of legislative authority. *Security Trust Co.* v. *Lexington*, 323.

See BANKRUPTCY, 4, 5, 6;
CONSTITUTIONAL LAW, 9, 10, 13, 14;
FEDERAL QUESTION, 2, 5;
INDIANS, 3;
POLICE POWER;
PRACTICE AND PROCEDURE, 3;
STATUTES, A 3.

TENTH AMENDMENT.

See CONSTITUTIONAL LAW, 18.

TERRITORIES.

Acts of, as laws of United States.

Acts of the legislature of Oklahoma are not laws of the United States within the meaning of § 753, Rev. Stat. *Matter of Moran*, 96.

See Commerce, 5; Criminal Law; Constitutional Law, 1; Jurisdiction, A 2; D 1; E.

TERRITORIAL COURTS.

See Appeal and Error; Jurisdiction, A 4.

THIRTEENTH AMENDMENT.

See Constitutional Law, 16, 18, 22; Jurisdiction, D 2.

TITLE TO PROPERTY.

See Contracts, 1; Jurisdiction, A 5; Indians; Public Lands, 1, 2; Treaties.

TORTS.

1. *Unlawful combination affecting a sale so as to constitute a wrong.*

Although a sale may not have been so connected with an unlawful combination as to be unlawful, the motives and inducements to make it may be so affected by the combination as to constitute a wrong. *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 390.

2. *Injuries to property.*

A person whose property is diminished by a payment of money wrongfully induced is injured in his property. *Ib.*

See Master and Servant.

TRADE-MARKS.

1. *Infringement—Probable cause.*

A mistaken view of the law may constitute probable cause in some instances—probable cause does mean sufficient cause—so *held* as to a suit for infringement of registered trade-mark. *Burt* v. *Smith*, 129.

TRANSFER OF PATENT RIGHTS.

See Patents.

TREATIES.

Conveyance of title by.

A title in fee may pass to an individual by a treaty without the aid of an act of Congress; and this rule having become a rule of property in the State of Michigan in regard to lands reserved for Indians specified in

the Chippewa treaty of 1819, will not be disturbed, it not appearing that the treaty has been misinterpreted. *Francis* v. *Francis*, 233.

See Indians, 4.

TRIAL.

See Criminal Law;
Jurisdiction, D 1.

TRUSTS AND TRUSTEES.

Effect of failure of general trust on validity of special trust.

Testator created a trust for his children including therein all of his property except one parcel, the income whereof was to go to a niece for life, the trustees to make such income up to a specified sum from the property in the general trust. The general trust was declared void as creating a perpetuity but not the trust for the niece. The children appealed claiming that the trust for the niece was also void. *Held* that the trust for the niece was not illegal, and was not so intimately connected with the failing trust as to fail with it; but the decree was modified so that the income could only be made up to the specified sum from income from property in the jurisdiction. *Landram* v. *Jordan*, 56.

See Wills.

UNLAWFUL COMBINATIONS.

See Actions, 3;
Torts, 1.

VERDICT.

See Constitutional Law, 21;
Insurance.

VESSELS.

See Pilotage.

VESTED RIGHTS.

See Carriers.

WILLS.

Intent of testator not to be defeated by rigid construction of word.

A trust in a will in favor of testator's four daughters and "from and after their death" for the "children of each of them," and in which the idea of provision for the grandchildren is especially prominent, will not be construed, by rigidly giving plurality to the pronoun "their," as creating a joint tenancy so that the last surviving daughter takes all the income to the exclusion of the children of her sisters previously deceased. *Cruit* v. *Owen*, 368.

See Trusts and Trustees.