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2. *Division of damages—Separable claims—Bar of former recovery.*

The right of division of damages to vessels when both are in fault and the contingent claim to partial indemnity for payment of damage to cargo are separable, and the decree of division in the original suit,

the pleadings in which do not set up such claim for indemnity, is not a bar to a subsequent suit brought to enforce it. *Ib.*

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1. *Right to acquire citizenship—Extension of effect of naturalization to minor children.*

An alien's right to acquire citizenship is purely statutory, and an extension of the effect of naturalization to minor children of the person naturalized not included in the statute must come from Congressional legislation and not judicial decision. *Zatarian v. Billings*, 170.

2. *Status of minor children born and remaining abroad until after parent's naturalization.*

Section 2172, Rev. Stat., and the naturalization laws of the United States, do not confer citizenship on the minor children of a naturalized alien who were born abroad and remain abroad until after their parent's naturalization; such children are aliens, subject as to their entrance to the United States to the provisions of the Alien Immigration Act of March 3, 1903, 32 Stat. 1213, and may be excluded if afflicted with contagious disease. *Ib.*

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An order punishing for contempt made in the progress of the case, when not in the nature of an order in a criminal proceeding is an interlocutory order and to be reviewed only upon appeal from a final decree in the case. *Doyle v. London Guarantee Co.*, 599.

2. *Party excepting to rulings of court must show prejudicial error.*

The excepting party should make it manifest that an error prejudicial to him has occurred in the trial in order to justify an appellate court in disturbing the verdict. *Cunningham v. Springer*, 647.

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ARMY AND NAVY.

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Under the act of March 3, 1889, 30 Stat. 1228, the two months' pay to which an officer of the Navy is entitled, who was detached from his vessel and ordered home to be honorably discharged after creditable service during the war with Spain, is to be computed at the rate of pay he was receiving for sea service when detached, and not at the rate of his pay for shore service when he was actually discharged. *United States v. Hite*, 343.

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BANKRUPTCY.

1. *Actions by and against assignee; bar of statute of limitations—Presumption of abandonment by assignee.*

Where an incorporeal interest of the bankrupt in a contingent remainder passed to the assignee in bankruptcy under a petition filed in 1878, and no notice to the trustees was necessary, the fact that the assignee

brought no suit to establish his right to the bankrupt's interest in the fund for more than two years does not bar his claim thereto under § 5057, Rev. Stat.; but under that section all persons who had not brought suits within two years against the assignee to assert their rights to the property are barred. Nor will the assignee be presumed to have abandoned the property simply because he did not sell it; when, as in this case, he brings an action to protect his interest therein. *Hammond v. Whittredge*, 538.

2. *Preferences; voidable—Mortgage within four months of petition.*

Where the bankrupt, within four months of the petition, mortgages his property to a creditor having knowledge of his insolvency and thereafter conveys it to a third party subject to the mortgages and the creditor forecloses and as a result of the transaction obtains a greater percentage on his claim than other creditors of the same class, the transaction amounts to a voidable preference and the trustee can recover from the creditor the value of the property so transferred. *Eau Claire National Bank v. Jackman*, 522.

3. *Preferences; rights of preferred creditor in suit by trustee to recover value thereof.*

Where there is a voidable preference the creditor receiving it cannot, in a suit of the trustee in the state court to recover the value thereof, litigate the validity of other claims against the bankrupt and whether other creditors have received, and not been required to surrender, preferences. *Ib.*

4. *Preferences; voidable; right of trustee to maintain action to recover.*

A trustee in bankruptcy can maintain a suit to recover the value of a voidable preference without first electing to avoid such preference by notice to the creditor receiving the preference and demand for its return. A demand is not necessary where it is to be presumed that it would have been unavailing. *Ib.*

5. *Trustee's right to recover property obtained in fraud of bankruptcy act.*

The right of the trustee in bankruptcy to recover property obtained in fraud of the bankruptcy act is not varied by how the property would be administered and distributed between the different classes of creditors; all creditors, whether general or preferred, are represented by the trustee. *Ib.*

6. *Preferences; priority of claim for wages.*

An assignee of a claim of less than \$300 for wages earned within three months before the commencement of proceedings in bankruptcy against the bankrupt is entitled to priority under § 64a when the assignment occurred prior to the commencement of the proceedings. *Shropshire, Woodliff & Co. v. Bush*, 186.

7. *Proof of claim; sufficiency of filing.*

A trustee in bankruptcy cannot file with himself proof of his own claim

against the bankrupt, nor can the delivery of such proof to his own attorney for filing with the referee stand, in case of failure of his attorney so to do, in place of delivery to the referee. *J. B. Orcutt Co. v. Green*, 96.

8. *Proof of claim; sufficiency of filing.*

The neglect of a trustee in bankruptcy to deliver to the referee claims left with him for filing is the neglect of an officer of the court and not the failure of the creditor to file his claim. *Ib.*

9. *Proof of claim; sufficiency of filing.*

Presentation and delivery to the trustee, within a year after the adjudication, for filing with the referee, of proof of claim is a filing within § 57 of the Bankruptcy Act as construed in connection with General Order in Bankruptcy, No. 21. *Ib.*

BILL OF EXCEPTIONS.

See PRACTICE AND PROCEDURE, 6.

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BILLS AND NOTES.

Collateral security; estoppel of holder of note crediting collateral thereon to deny ownership of such collateral.

Where the strict compliance with the terms of a note as to sale of the collateral pledged therewith is waived by the maker, the holder who accepts the collateral at an agreed price and credits it on the note is estopped from claiming that he does not become the owner of the collateral because there was no actual sale thereof as required by the note. This principle applied when pledgee was a national bank. *Ohio Valley Nat. Bank v. Hulitt*, 162.

BONDS.

See CONTRACTS;
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BROKERS.

Commissions; when entitled to.

A broker is not entitled to commissions unless he actually completes the

sale by finding a purchaser ready and willing to complete the purchase on the terms agreed on; his authority to sell on commission terminates on the death of his principal and is not a power coupled with an interest; and, in the absence of bad faith, he is not entitled to commissions on a sale made by his principal's administrator, without any services rendered by him, even though negotiations conducted by him with the purchaser, prior to owner's death, may have contributed to the accomplishment of the sale. *Crowe v. Trickey*, 228.

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CARRIERS.

1. *Liability of carrier for loss to cotton left in hands of compress company—Relation of latter as agent of carrier.*

Where a railway company has no other place for delivery of cotton than the stores and platform of a compress company, where all cotton transported by it is compressed at its expense and by its order, its acceptance of, and exchange of its own bills of lading for, receipts of the compress company passes to it the constructive possession and absolute control of the cotton represented thereby, and constitutes a complete delivery to it thereof; nor can the railway company thereafter divest itself of responsibility for due care by leaving the cotton in the hands of the compress company as that company becomes its agent. *Arthur v. Texas & Pacific Ry. Co.*, 505.

2. *Limitation of liability.*

Cau v. Texas & Pacific Ry. Co., 194 U. S. 427, followed as to binding effect of agreements in bills of lading exempting carrier from fire loss claimed to have been forced on the shipper under duress and without consideration. *Ib.*

3. *Negligence of custodian of shipment.*

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See COMMERCE;
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Matter of Christensen Engineering Co., 194 U. S. 458, distinguished from *Doyle v. London Guarantee Co.*, 599.

CASES FOLLOWED.

Bachtel v. Wilson, 204 U. S. 36, followed in *Bachtel v. Wilson*, 42.

Bacon v. Walker, 204 U. S. 311, followed in *Bown v. Walling*, 320.

Bessette v. W. B. Conkey Co., 194 U. S. 324, followed in *Doyle v. London Guarantee Co.*, 599.
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Cleveland v. City Railway Co., 194 U. S. 517, followed in *Cleveland Electric Ry. Co. v. Cleveland*, 116.
Cleveland v. Electric Railway Co., 201 U. S. 529, followed in *Cleveland Electric Ry. Co. v. Cleveland*, 116.
Crowe v. Trickey, 204 U. S. 228, followed in *Crowe v. Harmon*, 241.
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Texas & Pacific Railway v. Abilene Cotton Oil Co., 204 U. S. 426, followed in *Texas & Pacific Ry. Co. v. Cisco Oil Mill*, 449.

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Where several persons are indicted under one indictment an order of the court granting separate trials makes separate independent causes and entitles the clerk to separate docket fees under par. 10 of § 828, Rev. Stat. Clerk's fee for recording abstract of judgment allowed on folio basis under par. 8 of § 828, Rev. Stat., in addition to the docket allowed by pars. 10, 11, 12 of that section. *United States v. Keatley*, 562.

See REAL PROPERTY, 4.

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See ADMIRALTY, 1.

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See JURISDICTION, C 2.

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COMMERCE.

1. *Power of Congress to compel removal of bridge constituting obstruction to navigation.*

Commerce comprehends navigation; and to free navigation from unreasonable obstructions by compelling the removal of bridges which are such obstructions is a legitimate exercise by Congress of its power to regulate commerce. *Union Bridge Co. v. United States*, 364.

2. *Bridges over navigable waterways; effect of silence of Congress at time of erection, on power to compel alteration for purpose of commerce.*

The silence or inaction of Congress when individuals, acting under state authority, place unreasonable obstructions in waterways of the United States, does not cast upon the Government any obligation not to exercise its constitutional power to regulate commerce without compensating such parties. *Ib.*

3. *Bridges over navigable waterways; power of Congress to require alteration when they become an obstruction.*

Although a bridge erected over a navigable water of the United States

under the authority of a state charter may have been lawful when erected and not an obstruction to commerce as then carried on, the owners erected it with knowledge of the paramount authority of Congress over navigation and subject to the power of Congress to exercise its authority to protect navigation by forbidding maintenance when it became an obstruction thereto. *Ib.*

4. *Abrogation by Interstate Commerce Act of common-law remedy for recovery of unreasonable charges.*

Texas & Pacific Railway v. Abilene Cotton Oil Co., ante, p. 426, followed as to abrogation by passage of Interstate Commerce Act of common-law remedy for recovery of unreasonable freight charges on interstate shipment where rates charged were those duly fixed by the carrier according to the act and which had not been found unreasonable by Interstate Commerce Commission. *Texas & Pacific Ry. Co. v. Cisco Oil Mill*, 449.

5. *Right of shipper to maintain action in state court for unreasonable freight rates where rates had been fixed in conformity with Interstate Commerce Act and found not unreasonable by Commerce Commission.*

The Interstate Commerce Act was intended to afford an effective and comprehensive means for redressing wrongs resulting from unjust discriminations and undue preference, and to that end placed upon carriers the duty of publishing schedules of reasonable and uniform rates; and, consistently with the provisions of that law, a shipper cannot maintain an action at common law in a state court for excessive and unreasonable freight rates exacted on interstate shipments where the rates charged were those which had been duly fixed by the carrier according to the act and had not been found to be unreasonable by the Interstate Commerce Commission. *Ib.*

6. *Rates; when tariff in force; effect of not posting.*

A tariff of rates of which schedules have been filed by a carrier with the Interstate Commerce Commission and also with its freight agents is in force and operative although the copies thereof may not have been posted in the carrier's depots as required by the act. Such posting is not a condition precedent to the establishment of the rates, but a provision for affording facilities to the public for ascertaining the rates actually in force. *Ib.*

7. *When a shipment ceases to be interstate commerce.*

An interstate shipment—in this case of car-load lots—on reaching the point specified in the original contract of transportation ceases to be an interstate shipment, and its further transportation to another point within the same State, on the order of the consignee, is controlled by the law of the State and not by the Interstate Commerce Act. *Gulf, C. & S. F. Ry. Co. v. Texas*, 403.

See CONGRESS, POWERS OF, 1; JURISDICTION, A 2;
CONSTITUTIONAL LAW, 1, 12; PRACTICE AND PROCEDURE, 2;
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CONDEMNATION.

1. *Nature of proceeding as suit.*

A condemnation proceeding is a suit even though the condemning corporation may be free to decline to take the property after the valuation, it being charged with costs in case it elects not to take. *Mason City R. R. Co. v. Boynton*, 570.

2. *Parties to condemnation proceedings as respects removal of cause.*

In condemnation proceedings the words plaintiff and defendant can only be used in an uncommon and liberal sense, and although a state statute may describe the landowner and the condemning corporation as plaintiff and defendant respectively, and the state court may hold them to be such, this court is not bound by that construction in construing the act of Congress regarding removal of causes and may determine the relation of the parties and who is entitled to remove the suit. *Ib.*

3. *Removal of proceeding into Federal court; effect of state statute aligning parties.*

Under the Iowa statute, in a condemnation proceeding, the landowner is the defendant within the meaning of the act of Congress regarding removal of causes, and may remove the proceeding to the proper United States Circuit Court, notwithstanding the state statute provides that he is the plaintiff in such proceedings. *Ib.*

CONGRESS, POWERS OF.

1. *Power to create canals.*

Under the commerce clause of the Constitution, Congress has power to create interstate highways, including canals, and also those wholly within the Territories and outside of state lines. *Wilson v. Shaw*, 24.

2. *Power to construct interstate or territorial highways—Effect of former declarations of this court.*

The previous declarations of this court upholding the power of Congress to construct interstate or territorial highways are not *obiter dicta*; and to announce a different doctrine would amount to overruling decisions on which rest a vast volume of rights and in reliance on which Congress has acted in many ways. *Ib.*

3. *Power of Congress to impose duty upon executive officers; unlawful delegation of legislative or judicial power.*

Congress when enacting that navigation be freed from unreasonable obstructions arising from bridges which are of insufficient height, or width of span, or are otherwise defective, may, without violating the constitutional prohibition against delegation of legislative or judicial power, impose upon an executive officer the duty of ascertaining what particular cases come within the prescribed rule. *Union Bridge Co. v. United States*, 364.

See ALIENS, 1; CONSTITUTIONAL LAW, 12;
COMMERCE, 1, 3; COURTS, 7;
INDIANS, 2, 3, 4.

CONSTITUTIONAL LAW.

1. *Commerce clause; equal protection and due process of law—Validity of New York stock transfer law.*

The tax of two cents a share imposed on transfers of stock, made within that State, by the tax law of New York of 1905, does not violate the equal protection clause of the Fourteenth Amendment as an arbitrary discrimination because only imposed on transfers of stock, or because based on par, and not market, value; nor does it deprive non-resident owners of stock transferring, in New York, shares of stock of non-resident corporations of their property without due process of law; nor is it as to such transfers of stock an interference with interstate commerce. *Hatch v. Reardon*, 152.

See CONGRESS, POWERS OF;
TAXES AND TAXATION, 3.

2. *Contracts; impairment of obligation of contract with foreign corporation by imposition of tax—Colorado statutes of 1897, 1902.*

Although a State may impose different liabilities on foreign corporations than those imposed on domestic corporations, a statute that foreign corporations pay a fee based on their capital stock for the privilege of entering the State and doing business therein and thereupon shall be subjected to all liabilities and restrictions of domestic corporations amounts to a contract with foreign corporations complying therewith that they will not be subjected during the period for which they are admitted to greater liabilities than those imposed on domestic corporations, and a subsequent statute imposing higher annual license fees on foreign, than on domestic, corporations for the privilege of continuing to do business, is void as impairing the obligation of such contract

as to those corporations which have paid the entrance tax and receive permits to do business; nor can such a tax be justified under the power to alter, amend and repeal reserved by the state constitution. So held as to Colorado Statutes of 1897 and 1902. *American Smelting Co. v. Colorado*, 103.

3. *Contracts, impairment of obligation—Validity of ordinance of city of Cleveland affecting franchise of street railroad company.*

The action of the city council of Cleveland, and the acceptance by the Cleveland Electric Railway Company of the various ordinances adopted by the council did not amount to a contract between the city and the company extending the time of the franchise involved in this action; and a later ordinance affecting that franchise after its expiration as originally granted is not void under the impairment clause of the Federal Constitution. *Cleveland Electric Ry. Co. v. Cleveland*, 116.

4. *Due process of law defined.*

Due process of law has never been precisely defined; while its fundamental requirement is opportunity for hearing and defense, the procedure may be adapted to the case, and proceedings in court are not always essential. *Ballard v. Hunter*, 241.

5. *Due process of law; deprivation of property without opportunity to be heard.*

Even though a statute providing for forfeiture and sale of buildings erected on National lands of the Choctaw Nation may be valid, the title to the buildings is not forfeited by the mere act of building, but the forfeiture must be enforced by valid action; and to deny to those erecting the buildings an opportunity to be heard would deprive them of their property without due process of law. *Walker v. McLoud*, 302.

6. *Due process of law; deprivation of property—Validity of law of Nebraska fixing penalty and mode of execution for embezzlement of public money.*

The statute of Nebraska, providing that one embezzling public money shall be imprisoned and pay a fine equal to double the amount embezzled, which shall operate as a judgment for the use of the persons whose money was embezzled, is not unconstitutional as depriving the person convicted of embezzlement of his property without due process of law because it provides for such judgment irrespective of whether restitution has been made or not. In such a case the fine is a part of the punishment and it is immaterial whether it is called a penalty or a civil judgment, and the only question on which defendant can be heard is as to the fact and amount of the embezzlement, and if he has an opportunity to be heard as to that he is not denied due process of law. *Coffey v. Harlan County*, 659.

7. *Due process of law; deprivation of property—Validity of Idaho sheep grazing law.*

Sections 1210, 1211, Revised Statutes of Idaho, prohibiting the herding and grazing of sheep on, or within two miles of, land or possessory

claims of persons other than the owner of the sheep, having been construed by the highest court of that State as not affecting the right of the owner of sheep to graze them on his own lands but only on the public domain, is not unconstitutional as depriving the owner of sheep of his property without due process of law because he cannot pasture them on public domain, or as an arbitrary and unreasonable discrimination against the owners of sheep, as distinguished from other cattle, and is a proper and reasonable exercise of the police power of the State. *Bacon v. Walker*, 311.

8. *Due process of law; deprivation of property—Validity of state statute requiring admission to places of amusement on terms of equality.*

A State may in the exercise of its police power regulate the admission of persons to places of amusement, and, upon terms of equal and exact justice, provide that persons holding tickets thereto shall be admitted if not under the influence of liquor, boisterous, or of lewd character, and such a statute does not deprive the owners of such places of their property without due process of law; so held as to California statute. *Western Turf Assn. v. Greenberg*, 359.

9. *Due process of law; deprivation of property—Right of municipality to grant to a new company property of railroad company whose franchise has expired.*

In the absence of any provision to that effect in the original franchise, the city granting a franchise to a street railway company cannot on the expiration of the franchise take possession of the rails, poles and operating appliances; they are property belonging to the original owner, and an ordinance granting that property to another company on payment to the owner of a sum to be adjudicated as its value is void as depriving the owner of its property without due process of law. *Cleveland Electric Ry. Co. v. Cleveland*, 116.

10. *Due process of law—Validity of personal judgment against corporation rendered without notice or appearance.*

If a personal judgment be rendered in one State against a corporation of another State, bringing such corporation into court, that is, without any legal notice to the latter of the suit, and without its having appeared therein in person or by attorney or agent, it is void for want of due process of law. *Old Wayne Life Assn. v. McDonough*, 8.

11. *Due process and equal protection of laws—Validity of St. Francis Basin Levee Act of 1893.*

The St. Francis Basin Levee Act of Arkansas of 1893 does not deprive non-resident owners of property assessed and sold pursuant to the statute of their property without due process of law or deny such owners the equal protection of the laws. *Ballard v. Hunter*, 241.

See Ante, 1;

TAXES AND TAXATION, 1.

12. *Eminent domain; requiring alteration of bridge to secure navigation; liability of Government for cost thereof.*

Requiring alterations to secure navigation against unreasonable obstructions is not taking private property for public use within the meaning of the Constitution; the cost of such alterations are incidental to the exercise of an undoubted function of the United States, exerting through Congress its power to regulate commerce between the States. *Union Bridge Co. v. United States*, 364.

13. *Eminent domain; exercise of right without compensation—Unlawful delegation of power—Validity of § 18 of River and Harbor Act of 1899.*

The provisions in § 18 of the River and Harbor Act of 1899, 30 Stat. 1121, 1153, providing for the removal or alteration of bridges which are unreasonable obstructions to navigation, after the Secretary of War has, pursuant to the procedure prescribed in the act, ascertained that they are such obstructions, are not unconstitutional either as a delegation of legislative or judicial power to an executive officer or as taking of property for public use without compensation. *Ib.*

14. *Equal protection of laws; when denied.*

While a state legislature may not arbitrarily select certain individuals for the operation of its statutes, the selection in order to be obnoxious to the equal protection clause of the Fourteenth Amendment must be clearly and actually arbitrary and unreasonable and not merely possibly so. *Bachtel v. Wilson*, 36.

15. *Equal protection of laws—Classification in regulating use of public lands.*

A classification in grazing countries of sheep, as distinguished from other cattle, is not unreasonable and arbitrary in a regulation regarding the use of public lands within the meaning of the equal protection clause of the Fourteenth Amendment. *Bacon v. Walker*, 311.

See Ante, 11.

16. *Fourteenth Amendment; application to state laws.*

The laws of a State come under the prohibition of the Fourteenth Amendment only when they infringe fundamental rights. *Ballard v. Hunter*, 241.

17. *Fourteenth Amendment—Application to stamp taxes of rule that general expressions not allowed to upset long established methods.*

The rule that the general expressions of the Fourteenth Amendment must not be allowed to upset familiar and long established methods is applicable to stamp taxes which are necessarily confined to certain classes of transactions, which in some points of view are similar to classes that escape. *Hatch v. Reardon*, 152.

See Ante.

18. *Full faith and credit; judicial proceedings wanting in due process of law not entitled to.*

The constitutional requirement that full faith and credit be given in each

State to the public acts, records and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no State can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law. *Old Wayne Life Assn. v. McDonough*, 8.

See JUDGMENTS AND DECREES.

Original jurisdiction of Supreme Court. *See JURISDICTION, A 1.*

19. *Privileges and immunities of citizens; impairment by State—Deprivation of liberty without due process of law—Status of corporations.*

A corporation is not deemed a citizen within the clause of the Constitution of the United States protecting the privileges and immunities of citizens of the United States from being abridged or impaired by the law of a State; and the liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is that of natural, not artificial, persons. *Western Turf Assn. v. Greenberg*, 359.

States; discrimination between resident and non-residents as to service of process. *See STATES, 3.*

Who may set up unconstitutionality of state statute. *See TAXES AND TAXATION, 4.*

CONSTRUCTION.

OF BONDS. *See Contracts; Mines and Mining, 3.*

OF GRANTS. *See Grants, 1.*

OF STATUTES. *See Statutes, A.*

CONSTRUCTIVE POSSESSION.

See CARRIERS, 1.

CONTAGIOUS DISEASES.

See ALIENS, 2.

CONTEMPT OF COURT.

See APPEAL AND ERROR, 1;
JURISDICTION, B 1.

CONTRACTS.

1. *Bonds to secure sales; accrual of right of action on; sufficiency of declaration.*
A bond to secure sales made on a credit for a specified period means that the purchasers shall not be called on for payment until after the expiration of that period, and if the declaration shows that such period has actually elapsed since the sales sued for were made, it is sufficient although it may not allege that the sales were made on the specified terms. *McGuire v. Gerstley*, 489.

2. *Bonds to secure sales; liability of parties not affected by alterations of prices of articles sold.*

Where a bond given to secure payment for goods sold to the principals on a specified credit is complete on its face it is a clear and separate contract between the sellers and the signers of the bond, and the liability of the sureties is not, in the absence of any separate agreement in writing, affected by any future alterations of the prices of merchandise sold provided the specified credit is allowed; and parol evidence to show the existence of any other agreement as to prices between the principals of the bond is not admissible. *Ib.*

3. *Bonds to secure sales; effect of want of notice of non-payment or extension of credit on liability of sureties.*

The liability of sureties on the bond in this case given to secure payment for goods sold on a specified credit was not affected by failure of the sellers to notify the sureties of non-payment at the expiration of the credit, or by their giving an extension of credit, there being no definite term of such extension. *Ib.*

4. *Bonds to secure sales; pleading in action on.*

Pleas in defense to a suit on such a bond alleging damages for failure to sell on the terms and for prices agreed must be distinct and set forth the details. In order to found a cause of action on the shortcomings of another they must be so plainly set up as to show that they were the proximate and natural cause of actual damages sustained. *Ib.*

See CARRIERS, 2;
CONSTITUTIONAL LAW, 2, 3;
MINES AND MINING, 1.

CONTRIBUTION.

See ADMIRALTY, 1.

CONVEYANCES.

See LOCAL LAW (MONT.); PANAMA CANAL;
MINES AND MINING, 1, 2, 3; PRACTICE AND PROCEDURE, 4.

CORPORATIONS.

Foreign; implied assent to law of State in which it is doing business relative to service of process.

Where an insurance company or corporation of one State goes into another State to transact business in defiance of its statute as to service of process, it will, in an action against it in such State, be held to have assented to the terms prescribed by the local statute for service of process in respect to business done in that State, but its assent in that regard will not be implied as to business not transacted in that State. *Old Wayne Life Assn. v. McDonough*, 8.

See CONDEMNATION, 1; JURISDICTION, C 2; E 1;
CONSTITUTIONAL LAW, 2, 10, 19; NATIONAL BANKS.

COTTON.

See CARRIERS, 1.

COUNSEL FEES.

See DOMESTIC RELATIONS.

COUNTERCLAIM.

*See JURISDICTION, E 1;**UNITED STATES COMMISSIONERS, 3.*

COURTS.

1. *Protection of citizens against wrongful acts of Government.*

While the courts may protect a citizen against wrongful acts of the Government affecting him or his property, the remedy is not necessarily by injunction, suit for which is an equitable proceeding, in which the interests of the defendant as well as those of the plaintiff will be considered. *Wilson v. Shaw*, 24.

2. *Judicial notice.*

Where the bill is solely to restrain the Secretary of the Treasury from paying specific sums to a specific party this court may take judicial notice of the fact that such payments have actually been made and in that event whether rightfully made or not is a moot question. *Ib.*

3. *Control over political branch of Government.*

The courts have no supervising control over the political branch of the Government in its action within the limits of the Constitution. *Ib.*

4. *Conclusiveness of concurrent action of Congress and the Executive in acquisition of territory.*

Subsequent ratification is equivalent to original authority; and where Congress authorizes the acquisition of territory in a specific manner from a specific party, and it is otherwise acquired, the subsequent action of Congress in enacting laws for the acquired territory amounts to a full ratification of the acquisition, and the action of the Executive in regard thereto; and the concurrent action of Congress and the Executive in this respect is conclusive upon the courts. *Ib.*

5. *Right to interfere with legislative act.*

Fixing in a police regulation, otherwise valid, the distance from habitations within which an occupation cannot be carried on is a legislative act with which the courts can only interfere in a case clearly of abuse of power. *Bacon v. Walker*, 311.

6. *Motive of party litigant in preferring Federal tribunal immaterial.*

When a citizen of one State has a cause of action against a citizen of another State which he may lawfully prosecute in a Federal court, his motive in preferring a Federal tribunal, in the absence of fraud and collusion, is immaterial. *Chicago v. Mills*, 321.

7. *Cognizance of controversies involving determination of title and right to possession of Indian allotments.*

The United States has retained such control over the allotments to Indians that, except as provided by acts of Congress, controversies involving the determination of title to, and right to possession of, Indian allotments while the same are held in trust by the United States are not primarily cognizable by any court, state or Federal. *McKay v. Kayton*, 458.

8. *Terms of United States District Court for Porto Rico.*

Under § 34 of the act of April 12, 1900, 31 Stat. 85, regular terms of the United States District Court are to be held at Ponce and San Juan at the time fixed by the act and the same character of terms at Mayaguez at times specially designated by the court. The terms held at Mayaguez are not special terms at which jury cases cannot be tried as distinguished from regular terms, and § 670, Rev. Stat., does not apply to such terms of that court. *American R. R. Co. v. Castro*, 453.

9. *Power of Supreme Court of Philippine Islands on appeals.*

While the Supreme Court of the Philippine Islands hears an appeal as a *trial de novo* and has power to re-examine the law and the facts it does so entirely on the record. *Serra v. Mortiga*, 470.

10. *State courts; construction of state statutes.*

The highest court of a State is, except in the matter of contracts, the ultimate tribunal to determine the meaning of its statutes. *Bachtel v. Wilson*, 36.

11. *State; question of compliance with state statute determinable by.*

Whether provisions as to notice and service in a state statute have been complied with is wholly for the state court to determine. *Ballard v. Hunter*, 241.

12. *State; power to determine questions relative to lands of allottee Indians.*

The act of August 15, 1894, 28 Stat. 286, delegating to Federal courts the power to determine questions involving the rights of Indians to allotments did not confer upon state courts authority to pass upon any questions over which they did not have jurisdiction prior to the passage of such act, either as to title to the allotment, or the mere possession thereof which is of necessity dependent upon the title. *McKay v. Kayton*, 458.

See ADMIRALTY, 1; COMMERCE, 5;
ALIENS, 1; CONDEMNATION, 2;
APPEAL AND ERROR; INDIANS, 2, 4;
CLERK OF COURT; JURISDICTION;
PUBLIC LANDS, 4.

COURT AND JURY.

See CARRIERS, 3;
INSTRUCTIONS TO JURY.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, 6;
STATES, 2.

CUSTOMS DUTIES.

1. *Application of proviso in § 20 of Customs Administrative Act.*

The proviso in § 20 of the Customs Administrative Act only refers to cases in which a change in the rate of duty has been made while the merchandise is in bonded warehouse and not to difference in weight. *United States v. G. Falk & Brother*, 143.

2. *Construction of § 33 of Tariff Act of 1897.*

The Attorney General having construed the proviso of § 50 of the Tariff Act of 1890 as not restricted to the matter immediately preceding it, but as of general application, and this construction having been followed by the executive officers charged with the administration of the law, Congress will be held to have adopted that construction in the enactment of § 33 of the Tariff Act of 1897 and to have made no other change except to require as the basis of duty the weight of merchandise at the time of entry instead of its weight at the time of its withdrawal from warehouse. *Ib.*

DAMAGES.

See ADMIRALTY, 2, 3;
CONTRACTS, 4;
PARTNERSHIP.

DECREES.

See JUDGMENTS AND DECREES.

DELEGATION OF POWER.

See CONGRESS, POWERS OF, 3;
CONSTITUTIONAL LAW, 13.

DELIVERY.

See CARRIERS, 1.

DISEASE,

See ALIENS, 2.

DISTRICT OF COLUMBIA.

See STATUTES, A 1;
TRUSTS AND TRUSTEES.

DIVORCE.

See DOMESTIC RELATIONS.

DOCKET FEES.

See CLERKS OF COURT.

DOCUMENTS.

See JURISDICTION, B 1.

DOMESTIC RELATIONS.

1. *Community property; right of divorced wife under Porto Rican law.*

Under the law of community property in Porto Rico, the wife does not, as a consequence of a judgment of divorce against her, forfeit her interest in the community. *Garrozi v. Dastas*, 64.

2. If there is any amount due a wife, against whom a judgment of divorce has been rendered, on account of her interest in the community, she is entitled to provoke a liquidation, and to a decree against the husband for the amount so due and for alimony and expenses actually awarded to her in the divorce suit, but not for additional sums for services of counsel in the suit for liquidation. *Ib.*
3. In liquidating the community the husband is not chargeable with an obligation to return to the community sums spent by him on the ground that the expenditures were unreasonable or extravagant. *Ib.*

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW;
JURISDICTION, A 5;
TAXES AND TAXATION, 1.

DURESS.

See COMMERCE, 2;
TAXES AND TAXATION, 1.

DUTIES ON IMPORTS.

See CUSTOMS DUTIES.

EJECTMENT.

See REAL PROPERTY, 3.

ELECTIVE FRANCHISE.

See UNITED STATES COMMISSIONERS.

EMBEZZLEMENT.

See CONSTITUTIONAL LAW, 6.

EMINENT DOMAIN.

See CONDEMNATION, 1;
CONSTITUTIONAL LAW, 12, 13.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 1, 11, 14, 15.

EQUITY.

See LANDLORD AND TENANT.

EQUITABLE LIENS.

See REAL PROPERTY, 3.

ESTOPPEL.

See BILLS AND NOTES; JURISDICTION, E 2;
COMMERCE, 2; PATENT FOR INVENTION, 2.

EVIDENCE.

Cure by verdict of error in admission of evidence.

Where defendants deny liability for services rendered by plaintiff on the ground that the amount was fixed by contract and paid, and the jury after instructions to find only for plaintiff in case there was no contract and the value of services exceeded the amount paid, find a verdict for defendant, all expert testimony as to the value of plaintiff's services, based on the assumption that there was no contract, becomes immaterial; and as, in view of the verdict, adverse rulings in regard to its admission were not prejudicial to the plaintiff, and, even if error, they become immaterial and do not afford grounds for reversal. *Cunningham v. Springer*, 647.

See CARRIERS, 3; INSTRUCTIONS TO JURY, 2;
CONTRACTS, 2; PRACTICE AND PROCEDURE, 6.

EXCEPTIONS.

See APPEAL AND ERROR, 2.

EXCLUSION OF ALIENS.

See ALIENS, 2.

EXECUTIVE OFFICERS.

See CONGRESS, POWERS OF, 3.

EXPERT TESTIMONY.

See EVIDENCE;
INSTRUCTIONS TO JURY, 2.

FACTS.

See JURISDICTION, A 15;
PRACTICE AND PROCEDURE.

FEDERAL GOVERNMENT.

See ACTIONS; JURISDICTION, C 3;
COMMERCE, 2; PANAMA CANAL.

FEDERAL QUESTION.

1. *No Federal question presented by mere contest over state office.*

A mere contest over a state office dependent for its solution exclusively upon the application of the constitution of the State or upon a mere construction of a provision of a state law, involves no Federal question. (*Taylor v. Beckham*, 178 U. S. 548.) *Elder v. Colorado*, 85.

2. *Effect of consideration by state court of Federal question where controversy is incapable of presenting such a question.*

The fact that a state court has considered a Federal question may serve to elucidate whether a Federal issue properly arises, but that doctrine has no application where the controversy is inherently not Federal and is incapable of presenting a Federal question. *Ib.*

See JURISDICTION.

FEES.

See CLERK OF COURT;
UNITED STATES COMMISSIONERS.

FINDINGS OF FACT.

See PRACTICE AND PROCEDURE.

FINES AND PENALTIES.

See CONSTITUTIONAL LAW, 6.

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 2;
CORPORATIONS;
JURISDICTION, D; E 1.

FORFEITURES.

See CONSTITUTIONAL LAW, 5;
LANDLORD AND TENANT;
PROPERTY RIGHTS.

FORMER ADJUDICATION.

See ADMIRALTY, 2.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;
JURISDICTION, A 5.

FRANCHISES.

See CONSTITUTIONAL LAW, 3, 9;
GRANTS;
TAXES AND TAXATION, 1.

FRAUD.

1. *Imputation of knowledge.*

Where the direct issue of fraud is involved, knowledge may be imputed to one wilfully closing his eyes to information within reach. *Wecker v. National Enameling Co.*, 176.

2. *Imputation of knowledge; effect of fraud of parties whose knowledge imputed.*
Knowledge of the president of a local board of directors and of the local attorney of a building and loan association in regard to a matter coming within the sphere of their duty and acquired while acting in regard to the same is knowledge of the association, and the fact that they have committed a fraud does not alter the legal effect of their knowledge as against third parties who have no connection with, or knowledge of, the fraud perpetrated. *Armstrong v. Ashley*, 272.

See JURISDICTION, C 4;

LANDLORD AND TENANT, 1;

TAXES AND TAXATION, 1.

FREIGHT RATES.

See COMMERCE.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 18;

JUDGMENTS AND DECREES.

GENERAL ORDERS IN BANKRUPTCY.

See BANKRUPTCY.

GOVERNMENT CONTRACTS.

See JURISDICTION, C 3.

GOVERNMENT INSTRUMENTALITIES.

See TAXES AND TAXATION, 1.

GRANTS.

1. *Of franchises; rule as to construction.*

Grants of franchises are usually prepared by those interested in them and submitted to the legislatures with a view to obtain the most liberal grant obtainable, and for this and other reasons such grants should be in plain language, certain, definite in nature, and contain no ambiguity in their terms, and will be strictly construed against the grantee. (*Blair v. Chicago*, 200 U. S. 400, 471.) *Cleveland Electric Ry. Co. v. Cleveland*, 116.

2. *Of franchises; power of city of Cleveland to grant to street railroad companies.*

The Ohio legislature has granted the city of Cleveland comprehensive power to contract with street railroad companies with regard to the use of its streets and length of time, not exceeding twenty-five years, for

which such franchise may be granted. (*Cleveland v. City Railway Co.*, 194 U. S. 517; *Cleveland v. Electric Railway Co.*, 201 U. S. 529.) *Ib.*

See MINES AND MINING;
PUBLIC LANDS, 1, 2.

HIGHWAYS.

See CONGRESS, POWERS OF, 2.

HUSBAND AND WIFE.

See DOMESTIC RELATIONS.

IMMIGRATION.

See ALIENS.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 2, 3.

IMPORTS.

See CUSTOMS DUTIES.

IMPROVEMENTS.

See REAL PROPERTY, 2, 3.

IMPUTED KNOWLEDGE.

See FRAUD.

INDEXING.

See REAL PROPERTY, 4.

INDIANS.

1. *As to ratification of illegal sale by sheriff of Choctaw Nation.*

The illegal sale by a sheriff of the Choctaw Nation is not ratified by instructions from the chief of the Nation to employ attorneys to sustain his act, or by the subsequent statutory appropriation by the General Council of the Nation for the employment of counsel to defend all suits against the Nation involving confiscation of buildings improperly erected on National lands. *Walker v. McLoud*, 302.

2. *Power of Congress in ascertainment of who are citizens of Nation—Functions of territorial court.*

The power of Congress over citizenship in Indian tribes is plenary; it may adopt any reasonable method to ascertain who are citizens, and if one method is unsatisfactory it can try another; nor is its power exhausted because the first plan is by inquiry in a territorial court. The functions of a territorial court in such a case are those of a commission rather than of a court. *Wallace v. Adams*, 415.

3. *Power of Congress to provide for bringing suit in regard to citizenship in Indian tribes.*

Congress has power to provide for the bringing of a suit in regard to citizenship in Indian tribes in a court of equity in which every class to be affected shall be represented, and that those not actually made parties but who belong to the classes represented shall be bound by the decree. *Ib.*

4. *Validity of act creating Choctaw and Chickasaw Citizenship Court.*

The act of July 1, 1902, 32 Stat. 641, creating the Choctaw and Chickasaw Citizenship Court and giving it power to examine, and in case of error found, to annul judgments of courts of Indian Territory determining citizenship in the Choctaw and Chickasaw Nations, was a valid exercise of power. *Ib.*

*See CONSTITUTIONAL LAW, 5;
COURTS, 7, 12.*

INFANTS.

See ALIENS, 1.

INFRINGEMENT OF PATENT.

See PATENT FOR INVENTION.

INJUNCTION.

See COURTS, 1.

INSTRUCTIONS TO JURY.

1. *A charge need not be in exact words of instruction as prayed.*

A judge is not bound to charge the jury in the exact words proposed to him by counsel, and there is no error if he instructs the jury correctly and in substance covers the relevant rules of law proposed by counsel. *Cunningham v. Springer, 647.*

2. *Objections to; effect on appeal of failure to object.*

Where plaintiff did not object below to instructions of the judge limiting expert evidence, he cannot claim on appeal that it was admissible for a broader purpose. *Ib.*

3. *New Mexico law as to; presumption of compliance therewith.*

While §§ 2922, 3022 of the Statutes of New Mexico provide that all instructions to the jury must be in writing and that the jury may take the instructions with them, this court will not presume, in the absence of the record affirmatively disclosing such a fact, that the jury did not take with it the written instructions as finally corrected by the court. *Ib.*

INSURANCE.

*See CORPORATIONS;
JURISDICTION, D.*

INTERSTATE COMMERCE.

See COMMERCE; JURISDICTION, A 2;
CONSTITUTIONAL LAW, 1, 12; PRACTICE AND PROCEDURE, 2;
TAXES AND TAXATION, 3, 5.

INTERSTATE COMMERCE COMMISSION.

See COMMERCE, 4, 5, 6.

INTERSTATE HIGHWAYS.

See CONGRESS, POWERS OF, 2.

INVENTION.

See PATENT FOR INVENTION.

ISTHMIAN CANAL.

See CONGRESS, POWERS OF, 2;
PANAMA CANAL.

JOINDER OF PARTIES.

See JURISDICTION, C 4.

JUDGMENTS AND DECREES.

Jurisdiction of court rendering judgment when set up in another jurisdiction, open to inquiry.

If the conclusiveness of a judgment or decree in a court of one State is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it. *Old Wayne Life Assn. v. McDonough*, 8.

See CLERKS OF COURT;
CONSTITUTIONAL LAW, 10, 18;
JURISDICTION, A 4; D.

JURISDICTION.

A. OF THIS COURT.

1. *Original; when maintainable.*

Where the name of a State is used simply for the prosecution of a private claim the original jurisdiction of this court cannot be maintained. *Kansas v. United States*, 331.

2. *Under § 709, Rev. Stat.—Sufficiency of involution of Federal question.*

If a party relies upon a Federal right he must specially set it up. The mere denial of a carrier sued for damages to merchandise that it was bound by contracts of the initial carrier, or that it was the connecting and ultimate carrier of the merchandise and bound "by the law" to receive and forward the merchandise does not, in the absence of any other reference thereto, raise a Federal question under the Interstate Com-

merce Act which gives this court jurisdiction to review the judgment under § 709, Rev. Stat. *Louisville & Nashville R. R. v. Smith*, 551.

3. *Under § 709, Rev. Stat.—Review of judgment of state court; involution of Federal question.*

Where defendant in the state court contends that consistently with the Interstate Commerce Act the state court has no power to grant the relief, and such contention is essentially, involved and expressly, and, in order to support the judgment, necessarily, decided adversely to the defendant, a Federal question exists and this court can review the judgment on writ of error under § 709, Rev. Stat. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 426.

4. *Under § 709, Rev. Stat.—Of case dismissed by highest court of State because of defect of parties.*

Where the highest court of the State does not pass on the merits of the case but dismisses the appeal because of defect of parties the case stands as though no appeal had been taken; and as this court, under § 709, Rev. Stat., can only review judgments or decrees of a state court when a Federal question is actually or constructively decided by the highest court of the State in which a decision in the suit can be had, no judgment or decree has been rendered reviewable by this court and the writ of error must be dismissed. *Newman v. Gates*, 89.

5. *Under § 709, Rev. Stat.—To review judgment on writ of error where lower court sustains statute attacked as violative of Federal Constitution.*

Where defendant corporation in the court below questions the constitutionality of a state statute as an abridgment of its rights and immunities and as depriving it of its property without due process of law in violation of the Fourteenth Amendment, and the judgment sustains the validity of the statute, this court has jurisdiction to review the judgment on writ of error under § 709, Rev. Stat. *Western Turf Assn. v. Greenberg*, 359.

6. *Under § 709, Rev. Stat.—When Federal question raised too late.*

The fact that a state statute which was assailed in the state court as invalid under the constitution of the State might have been assailed on similar grounds as also invalid under the Constitution of the United States does not give this court jurisdiction to review under § 709, Rev. Stat., on writ of error where the objections to the decision under the Constitution of the United States were suggested for the first time on taking the writ of error. *Osborne v. Clark*, 565.

7. *Under § 709, Rev. Stat.—Where Federal right raised in state court in petition for rehearing.*

Although the Federal right was first claimed in the state court in the petition for rehearing, if the question was raised, was necessarily involved, and was considered and decided adversely by the state court, this court has jurisdiction under § 709, Rev. Stat. *McKay v. Kalyton*, 458.

8. *Under § 709, Rev. Stat.—To review judgment of state court.*

Where the state court expressly decides, adversely to contention of plaintiff in error, that a statute of the United States does not preclude others from asserting rights against him, but does preclude him from asserting rights against them, a Federal question exists giving this court jurisdiction to review the judgment under § 709, Rev. Stat. *Hammond v. Whittredge*, 538.

9. *Under § 709, Rev. Stat.—Effect of certificate of judge of state court.*

While the certificate of the presiding judge of a state court can make more certain and specific what is too general and indefinite in the record it cannot give jurisdiction to this court under § 709, Rev. Stat., where there is nothing in the record in the way of a Federal question to specialize and make definite and certain. *Louisville & Nashville R. R. v. Smith*, 551.

10. *As to review of order of Circuit Court dismissing case for want of jurisdictional amount.*

When the Circuit Court dismisses a case under the provisions of § 1 of the act of March 3, 1875, 18 Stat. 470, as amended by § 1 of the act of August 13, 1888, 25 Stat. 434, because not substantially involving the requisite amount in controversy to confer jurisdiction, the order of the court, in this case without a jury, is subject to review in this court in respect to the rulings of law and findings of fact upon the evidence. Whatever plaintiff's motive in bringing his suit in the Federal court rather than in the state court may be, he has the right to act upon it. *Smithers v. Smith*, 632.

11. *Where Federal right asserted is frivolous and without color of merit.*

The mere assertion of a Federal right and its denial do not justify this court in assuming jurisdiction where it indubitably appears that the Federal right is frivolous and without color of merit, and this rule applies to cases brought to this court under the act of April 12, 1900, 31 Stat. 85, from the District Court of the United States for Porto Rico. *American R. R. Co. v. Castro*, 453.

12. *Sufficiency of involution of Federal question.*

Although a Federal right may not have been specially set up in the original petition or earlier proceedings if it clearly and unmistakably appears from the opinion of the state court under review that a Federal question was assumed by the highest court of the State to be in issue, and was actually decided against the Federal claim, and such decision was essential to the judgment rendered this court has jurisdiction to re-examine that question on writ of error. *Haire v. Rice*, 291.

13. *Certificate of question of jurisdiction of Circuit Court.*

Where the Circuit Court refuses to remand, and on the plaintiff declining to recognize its jurisdiction or proceed, dismisses the case and renders judgment that plaintiff take nothing thereby and defendant go hence

without day and recover his costs, the judgment is final, so far as that suit is concerned, and the question of jurisdiction can be certified to this court under § 5 of the act of March 3, 1891, 26 Stat. 827. *Wecker v. National Enameling Co.*, 176.

14. *Review on certiorari of judgment of Circuit Court in case involving question of jurisdiction of that court.*

Where there is a question whether the jurisdiction of the Circuit Court depended entirely on diverse citizenship making the judgment of the Circuit Court of Appeals final, but a petition for writ of certiorari is pending, and the writ of error had been allowed prior to the filing of the record in the first instance, and the case is of such importance as to demand examination by this court, the question of jurisdiction of the Circuit Court need not be determined but the case reviewed on certiorari. *Montana Mining Co. v. St. Louis Mining Co.*, 204.

15. *On appeal from territorial court; sufficiency of statement of facts by such court.*

The statement of facts which the Supreme Court of a Territory is called on to make is in the nature of a special verdict, and the jurisdiction of this court is limited to the consideration of exceptions and to determining whether the findings of fact support the judgment. The statement of facts should present clearly and precisely the ultimate facts, but an objection that it does not comply with the rule because it is confused and gives unnecessary details will not be sustained if a sufficient statement emerges therefrom. *Crowe v. Trickey*, 228.

16. *Of appeals from District Court for Porto Rico.*

Royal Insurance Co. v. Martin, 192 U. S. 194, followed as to the jurisdiction of this court over appeals from the District Court of the United States for the District of Porto Rico. *Garrozi v. Dastas*, 64.

17. *When Federal question raised too late.*

Where the claim that the construction given to a state statute by the highest court of the State impairs the obligation of a contract appears for the first time in the petition for writ of error from this court, it comes too late to give this court jurisdiction of that question even though another Federal question has been properly raised and brought here by the same writ of error. *Haire v. Rice*, 291.

B. OF CIRCUIT COURT OF APPEALS.

1. *Of writ of error from order of Circuit Court adjudging party guilty of contempt.*

The Circuit Court of Appeals has no jurisdiction upon writ of error sued out by defendants from an order of the Circuit Court adjudging them guilty of contempt in disobeying an order for production of books and papers, and also adjudging that they produce same and pay costs within a specified period or that in default thereof they pay a fine and be committed. *Doyle v. London Guarantee Co.*, 599.

C. OF CIRCUIT COURTS.

1. *How determined.*

The jurisdiction of the Circuit Court must be determined with reference to the attitude of the case at the date of the filing of the bill. *Chicago v. Mills*, 321.

2. *Collusion to confer jurisdiction.*

If it does not appear that there was any collusion within the meaning of the ninety-fourth rule in equity for the purpose of conferring jurisdiction, not otherwise existing, on the Circuit Court of the United States, that court does not lose its jurisdiction of a suit brought by a non-resident stockholder, after request to and refusal by the corporation, to enjoin the enforcement of an ordinance against the corporation, and of which the court would not have had jurisdiction had the corporation been complainant, because subsequent events make it to the interest of the corporation and its officers to make common cause with the complainant stockholder. An admission by complainant that he expected the action to be brought in the United States court does not necessarily show collusion to confer jurisdiction. In this case *held* on the facts that no collusion between the stockholder bringing the suit and the corporation refusing to bring it was shown that deprived the Circuit Court of jurisdiction thereover. *Ib.*

3. *Of actions brought in name of United States for benefit of materialmen under acts of 1894 and 1905.*

Under the act of August 13, 1894, 28 Stat. 278, as construed in the light of the act passed the same day, 28 Stat. 282, and of the act amending the latter passed January 24, 1905, 33 Stat. 811, in suits brought in the name of the United States for the benefit of materialmen and laborers on bonds given in pursuance of the act, the United States is a real litigant, and not a mere nominal party, and the Circuit Court of the United States has jurisdiction of such suits without regard to the value of the matter in dispute. *United States Fidelity Co. v. Kenyon*, 349.

4. *On removal from state court; effect of fraudulent joinder as defendant of resident of same State as plaintiff.*

The right of a non-resident defendant, sued in the state court by an employé for damages, to remove the case to the Federal court cannot be defeated by the fraudulent joinder as co-defendant of another employé, resident of plaintiff's State, who has no relation to the plaintiff, rendering him liable for the injuries, and the Circuit Court can determine the question of fraudulent joinder on affidavits annexed to the non-resident defendant's petition for removal to the consideration whereof plaintiff does not object but submits affidavits counter thereto. (*Alabama Great Southern Railway Co. v. Thompson*, 200 U. S. 206, distinguished.) *Wecker v. National Enameling Co.*, 176.

5. *Amount in controversy where claim is against several defendants.*

Where a plaintiff in good faith asserts a claim against several defendants

that acting together they have taken land from him of over \$2,000 in value and inflicted upon him damages of over \$2,000, and requisite diverse citizenship exists, the Circuit Court has jurisdiction and the case does not fall within the dismissal provision of § 1 of the act of March 3, 1875, because it appears to the trial judge that each of the defendants claims that the part of plaintiffs' land which he has taken and the damages recoverable against him amount in value to less than \$2,000. A determination by the judge that the defendants did not act jointly is not a determination of a jurisdictional fact but of an essential element of the merits. *Smithers v. Smith*, 632.

D. OF STATE COURTS.

Sufficiency of service of process on foreign corporation.

A statute of Pennsylvania provides: "No insurance company not of this State, nor its agents, shall do business in this State until it has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State so designated such process may thereafter be served on the Insurance Commissioner." An insurance company of Indiana issued a policy of insurance upon the life of a citizen of Pennsylvania, the beneficiaries being also citizens of that Commonwealth. The contract of insurance was made in Indiana without the insurance company having filed the stipulation required by the local statute as to service of process upon the Insurance Commissioner of Pennsylvania. A suit was brought on the contract in a Pennsylvania court, process was served on the state Insurance Commissioner alone, a personal judgment taken against the insurance company, and suit brought on that judgment in an Indiana court. The company did some business in Pennsylvania which had no relation to the contract made in Indiana. *Held*, that if the defendant had no such actual legal notice of the Pennsylvania suit as would bring it into court, or if it did not voluntarily appear therein by an authorized representative, then the Pennsylvania court was without jurisdiction to render a personal judgment against the company. *Old Wayne Life Assn. v. McDonough*, 8.

See COMMERCE, 5;
PUBLIC LANDS, 4.

E. GENERALLY.

1. *Submission to jurisdiction—Waiver of objection by setting up counterclaim.* While a non-resident defendant corporation may not lose its right of objecting to the jurisdiction of the court on the ground of insufficient service of process by pleading to the merits pursuant to order of the court after objections overruled, it does waive its objections and sub-

mits to the jurisdiction if it also sets up a counterclaim even though it be one arising wholly out of the transaction sued upon by plaintiff and in the nature of recoupment rather than set-off. *Merchants' Heat & L. Co. v. Clow & Sons*, 286.

2. *Estoppel of party removing into Federal court to assert lack of jurisdiction of that court on ground that removal was erroneous.*

The party causing the removal from the local court of Porto Rico to the United States courts of a case, over which the latter would have had original jurisdiction as to all parties impleaded had it been brought there originally, cannot, after judgment against him, assert lack of jurisdiction of the United States court solely on the ground that the removal was erroneous. *Garrozi v. Dastas*, 64.

*See FEDERAL QUESTION;
JUDGMENTS AND DECREES.*

F. OF ADMIRALTY COURTS.

See ADMIRALTY, 1.

JURY.

See CARRIERS, 3;
INSTRUCTIONS TO JURY.

JURY TRIALS.

See COURTS, 8.

JUDICIAL NOTICE.

See COURTS, 2.

LANDLORD AND TENANT.

1. *Rights of landlord on breach by tenant of covenant of lease.*

Where a tenant is in default and his lease subject to forfeiture for non-payment of taxes for which the property has been sold, and before the landlord determines to avail of the forfeiture, he offers to condone it provided the tenant commence proceedings to have the outstanding tax title declared invalid and secure him from loss in case it be sustained and the tenant refuses so to do, no principle of equity prevents the landlord, or renders his action fraudulent, in taking any course most conducive to his own interest and not forbidden by law to regain possession of the premises and to obviate the danger of a contest as to the validity of the tax sale. *Kann v. King*, 43.

2. *Effect of landlord occasionally performing acts covenanted to be done by tenant.*

Where a lease contains a covenant to pay taxes, the fact that the owner has on some occasions collected the amount from the tenant and himself paid the taxes does not relieve the tenant from the obligation to pay the taxes according to the lease, or, where it appears that his failure

to do so was not the result of the owner's conduct, relieve him from the forfeiture resulting from his breach of the covenant to pay them. *Ib.*

3. *Power of court of equity to relieve from forfeiture of lease.*

Whatever power a court of equity may have to relieve a tenant from forfeiture for breach of covenant to pay taxes, it cannot require the owner to risk the loss of his property by compelling him to contest the validity of an irredeemable tax title, based on taxes not paid by the tenant, so that if the title be invalid the tenant may pay the taxes and be relieved of the forfeiture, nor is this rule affected by the fact that the tax title is held by a third party. *Ib.*

4. *Power of court of equity to relieve from forfeiture of lease.*

Even if default in complying with a covenant has been brought about by accident or mistake, in the absence of culpability of the other party a court of equity will not relieve the party in default from forfeiture unless it can be done with justice to the innocent party. *Ib.*

5. *Accident or mistake as ground for relief from forfeiture of lease.*

Where the forfeiture from which relief is sought has been occasioned by gross negligence of the person seeking relief the default is not one brought about by accident or mistake. *Ib.*

LAND OFFICE.

See MINES AND MINING, 7.

LEASE.

See LANDLORD AND TENANT.

LEGISLATION.

Citizens are bound to take notice of the legislation of Congress. *Wallace v. Adams, 415.*

LEX LOCI.

See TAXES AND TAXATION, 5.

LIBERTY.

See CONSTITUTIONAL LAW, 19.

LICENSE FEES.

See CONSTITUTIONAL LAW, 2.

LIENS.

See REAL PROPERTY, 3;
STATES, 3.

LIMITATION OF ACTIONS.

See BANKRUPTCY, 1;
MANDAMUS.

LIQUIDATION.

See DOMESTIC RELATIONS.

LOANS.

See REAL PROPERTY, 4.

LOCAL LAW.

Arkansas. St. Francis Basin Levee Act of 1893 (see Constitutional Law, 11). *Ballard v. Hunter*, 241.

California. Regulation of places of public amusement (see Constitutional Law, 8). *Western Turf Assn. v. Greenberg*, 359.

Colorado. Foreign corporations, statutes of 1897 and 1902 (see Constitutional Law, 2). *American Smelting Co. v. Colorado*, 103.

District of Columbia. Sections 669 and 1023 of Code (see Statutes, A 1; Trusts and Trustees, 1). *Iglehart v. Iglehart*, 478.

Idaho. Sheep grazing law, Rev. Stat. of Idaho, §§ 1210, 1211 (see Constitutional Law, 7). *Bacon v. Walker*, 311.

Iowa. Condemnation proceedings (see Condemnation, 3). *Mason City R. R. Co. v. Boynton*, 570.

Montana. Property rights in realty; force and effect of common law. *Montana Mining Co. v. St. Louis Mining Co.*, 204.

Nebraska. Embezzlement of public moneys (see Constitutional Law, 6). *Coffey v. Harlan County*, 659.

New Mexico. Instructions to jury, §§ 2922, 3022, Stat. N. Mex. (see Instructions to Jury, 3). *Cunningham v. Springer*, 647.

New York. Taxation of transfers of stock, law of 1905 (see Constitutional Law, 1). *Hatch v. Reardon*, 152.

Ohio. Street railway franchises (see Grants, 2). *Cleveland Electric Ry. Co. v. Cleveland*, 116.

Oklahoma. Statute of limitations; mandamus (see Mandamus). *Duke v. Turner*, 623.

Pennsylvania. Regulation of insurance companies (see Jurisdiction D). *Old Wayne Life Assn. v. McDonough*, 8.

Philippine Islands. (See Pleading and Practice.) *Serra v. Mortiga*, 470.

Porto Rico. Liquidation of community property (see Domestic Relations). *Garrozi v. Dastas*, 64.

MANDAMUS.

Application, under Oklahoma law, of statute of limitations.

While the authorities are in conflict as to whether a statute of limitations, without express words to that effect governs a proceeding in mandamus, such a proceeding is not, under the Oklahoma Code, a civil action and, therefore, not within the terms of the three-year statute of limitations applicable to contracts created by statute; and in that Territory if the

relator is otherwise entitled to the writ it should not be denied unless he has so slept upon his rights for such an unreasonable time that the delay has been prejudicial to the defendant or the rights of other interested parties. *Duke v. Turner*, 623.

MARITIME LAW.

See ADMIRALTY.

MATERIALMEN.

See JURISDICTION, C 3.

MINES AND MINING.

1. *Contract and conveyance of mineral land construed.*

A contract and conveyance of lands and subsurface minerals made in settlement of a dispute will be construed in the light of facts known at the time to the parties rather than of possibilities of future discoveries. *Montana Mining Co. v. St. Louis Mining Co.*, 204.

2. *Conveyance of mineral land construed.*

A conveyance of mineral land adjoining land of the grantor which grants all the mineral beneath the surface will not be construed as not granting the mineral in a vein apexing in the grantor's unconveyed land because such vein may extend across the conveyed land to other land belonging to the grantor. *Ib.*

3. *Construction of bond to convey and conveyance of mineral lands.*

In this case a bond to convey, and a conveyance, made thereafter in pursuance thereof, conveying mining lands in Montana, the title to which was in dispute between the grantor and grantee (owners of adjoining claims), together with all the mineral therein and all the dips, spurs, angles, etc., were construed as not simply locating a boundary between the two claims, leaving all surface rights to be determined by the ordinary rules recognized in mining districts of Montana and enforced by statutes of Congress, but as conveying all mineral below the surface, including that in a vein therein which apexed in the unconveyed land of the grantor. *Ib.*

4. *Construction of § 3 of act of May 10, 1872.*

Section 3 of the act of May 10, 1872, is to be construed broadly in favor of the right of a claimant who had located prior thereto to follow all veins apexing within the surface of his claim in view of the provisions of §§ 12 and 16 that the act should not impair rights or interests acquired under the existing laws. *East Cent. Eureka M. Co. v. Central Eureka M. Co.*, 266.

5. *Parallelism; application of requirement of.*

The requirement of parallelism of the end lines of a mining claim in § 2 of the act of May 10, 1872, 17 Stat. 91, Rev. Stat., par. 2320, does not

apply to a patent issued on an application made prior to the passage of that act. *Ib.*

6. *Quare* whether there would not be a reserved right in the grantor to pass through the conveyed land to reach the further portion of such a vein. *Ib.*

7. *Weight of construction of act of Congress by Land Office.*

Where the construction by the Land Office of an act of Congress in regard to mining claims agrees with the decisions of the Circuit Court and the state courts, unless the meaning of the act is plainly the other way, this consensus of opinion and practice must be accorded considerable weight. *Ib.*

MINORS.

See ALIÉNS, 1.

MISTAKE.

See LANDLORD AND TENANT.

MONTANA ENABLING ACT.

See PUBLIC LANDS, 3.

MORTGAGE AND DEED OF TRUST.

*See BANKRUPTCY;
REAL PROPERTY, 3.*

MUNICIPAL CORPORATIONS.

*See CONSTITUTIONAL LAW, 9;
GRANTS, 2.*

MUNICIPAL ORDINANCES.

*See CONSTITUTIONAL LAW, 3, 9;
JURISDICTION, C 2.*

NATIONAL BANKS.

1. *Pledge of national bank stock; liability of pledgee to assessment thereon.*
Where the pledgee of national bank stock has by consent credited the agreed value of the stock belonging to the pledgor, but registered in the name of a third party who is the agent of the pledgee, on the note, and then proved his claim for the balance against the estate of the pledgor the title to the stock has so vested in the pledgee that, notwithstanding the stock has not been transferred, he is liable to assessment thereon as the owner thereof. This principle applied where pledgee was a national bank. *Ohio Valley Nat. Bank v. Hulitt*, 162.

2. *Liability of pledgee or real owner of shares when shares not registered in his name.*

While the mere pledgee of national bank stock cannot be held for double

liability as a shareholder so long as the shares are not registered in his name, although an irresponsible person may have been selected as the registered shareholder, the real owner of the shares may be held responsible although the shares may not be registered in his name. *Ib.*

3. *Reduction of stock; rights of stockholders as to assets set free.*

Where the stock of a national bank is reduced pursuant to § 5143, Rev. Stat., but beyond the amount required to meet an impairment of capital, and the reduction is made by charging off doubtful assets to the amount of the reduction, the stockholders of record on the day of the reduction are entitled to the assets thereby set free, which, and their proceeds, may be set apart as a trust fund for such stockholders. And transfers of stock made after the reduction do not carry the interest of the original stockholders in that fund. *Jerome v. Cogswell*, 1.

NATURALIZATION.

See ALIENS.

NAVIGATION.

*See COMMERCE, 1, 3;
CONGRESS, POWERS OF, 3;
CONSTITUTIONAL LAW, 12.*

NAVIGABLE WATERS.

*See COMMERCE, 2, 3;
CONSTITUTIONAL LAW, 12, 13.*

NAVY.

See ARMY AND NAVY.

NEGLIGENCE.

*See CARRIERS, 3;
LANDLORD AND TENANT.*

NEGOTIABLE INSTRUMENTS.

See BILLS AND NOTES.

NORTHERN PACIFIC RAILROAD COMPANY.

See PUBLIC LANDS, 2.

NOTICE.

*See CONSTITUTIONAL LAW, 10; FRAUD;
CONTRACTS, 3; LEGISLATION;
REAL PROPERTY, 1.*

OBITER DICTA.

See CONGRESS, POWERS OF, 2.

OBSTRUCTIONS.

See COMMERCE, 1, 3;
CONGRESS, POWERS OF, 3;
CONSTITUTIONAL LAW, 12, 13.

OKLAHOMA.

See MANDAMUS.

ORDINANCES.

See CONSTITUTIONAL LAW, 3, 9;
PROPERTY RIGHTS.

PANAMA CANAL.

Title of United States to Canal Zone—Sufficiency of identification of territory.
The title of the United States to the Canal Zone in Panama is not imperfect either because the treaty with Panama does not contain technical terms used in ordinary conveyances of real estate or because the boundaries are not sufficient for identification, the ceded territory having been practically identified by the concurrent action of the two interested nations. *Wilson v. Shaw*, 24.

See CONGRESS, POWERS OF, 2.

PARTIES.

See CONDEMNATION, 2, 3;
JURISDICTION, A 1; C 3, 4;
TAXES AND TAXATION, 4.

PARTNERSHIP.

Damages not recoverable for breaking up a partnership at will.

A plea alleging damages for breaking up a partnership is insufficient in the absence of an allegation as to duration of the partnership as no action lies for terminating, or inducing the termination of, a partnership at will. *McGuire v. Gerstley*, 489.

PATENT FOR INVENTION.

1. *Combination constituting patentable invention.*

While a combination of old elements producing a new and useful result may be patentable, if the combination is merely the assembling of old elements producing no new and useful result, invention is not shown. *Computing Scale Co. v. Automatic Scale Co.*, 609.

2. *Claims of inventor; effect of rejection and substitution.*

Where an inventor seeking a broad claim which is rejected, acquiesces in the rejection and substitutes therefor a narrower claim, he cannot afterwards insist that the claim allowed shall be construed to cover that which was previously rejected; and in this case the contention of the inventor is not sustained that after striking out his broad claim he presented and obtained another claim equally broad and is entitled to relief thereunder. *Ib.*

3. *Infringement—Range of equivalents.*

Complainant's patent for improvements in computing scales is of the narrow character of invention which does not, as a pioneer patent would, entitle the patentee to any considerable range of equivalents; but it must be limited to the means shown by the inventor, and in this case the defendant's construction does not amount to an infringement. *Ib.*

PATENTS FOR LAND.

See MINES AND MINING, 5.

PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 6;
LANDLORD AND TENANT.

PERPETUITIES.

See TRUSTS AND TRUSTEES, 1.

PHILIPPINE ISLANDS.

Interpretation of guarantees extended by Congress.

The guarantees extended by Congress to the Philippine Islands are to be interpreted as meaning what the like provisions meant when Congress made them applicable to those islands. *Serra v. Mortiga, 470.*

See COURTS, 9;
PLEADING AND PRACTICE.

PLEADING AND PRACTICE.

Sufficiency of complaint on charge of adultery under Penal Code of Philippine Islands.

While a complaint on a charge of adultery under the Penal Code of the Philippine Islands may be fatally defective for lack of essential averments as to place and knowledge on the part of the man that the woman was married, objections of that nature must be taken at the trial, and if not taken, and the omitted averments are supplied by competent proof, it is not error for the Supreme Court of the Philippine Islands to refuse to sustain such objections on appeal. *Serra v. Mortiga, 470.*

See CONTRACTS, 1, 4; *PARTNERSHIP;*
JURISDICTION, E 1; *REAL PROPERTY, 4.*

PLEDGE.

See NATIONAL BANKS, 1, 2.

POLICE POWER.

See CONSTITUTIONAL LAW, 7, 8;
STATES, 1.

POLICE REGULATIONS.

See COURTS, 5.

PORTO RICO.

See COURTS, 8;
DOMESTIC RELATIONS;
JURISDICTION, A 11.

POWERS.

See BROKERS.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Ascertainment by this court as to how certified jurisdictional question arose.*
Although the certificate of the Circuit Court may not state exactly how the jurisdictional question certified arose, this court can ascertain it from the record, together with the opinion of the court below made a part thereof. *Chicago v. Mills*, 321.

2. *Conclusiveness of finding of fact by state court.*

Where the state court determined a case involving railroad rates on the hypothesis conceded by counsel on both sides that the rate was one of a lawful schedule duly filed and published in accordance with the Interstate Commerce Act, the contention that the rate was not so filed and published and, therefore, was not a legal rate is not open in this court. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 426.

3. *Special findings of fact by state court conclusive here.*

Where the facts are settled in the state court by special findings, those findings are conclusive upon this court. *Gulf, C. & S. F. Ry. Co. v. Texas*, 403.

4. *As to following state court.*

In the construction and effect of a conveyance between private parties this court follows the state court. *East Cent. Eureka M. Co. v. Central Eureka M. Co.*, 266.

5. *Necessity for showing that state court rested its decision as to validity of state statute on Federal question.*

Where the highest court of a State has, without opinion, sustained the validity of a state statute and there were at least two questions of construction before it, one of which excluded all Federal objections on which its decision can rest, until it is shown which construction the state court accepted, this court cannot hold the statute to be unconstitutional. *Bachtel v. Wilson*, 36.

6. *Bill of exceptions; sufficiency of.*

Where the Supreme Court of a Territory proceeds on the bill of exceptions before it as containing all the evidence in the case below, and the record in this court shows that all the evidence was contained in the bill of

exceptions, that is sufficient, even though the bill of exceptions may have failed to state that it contained all the evidence given in the case. *Crowe v. Trickey*, 228.

See INSTRUCTIONS TO JURY, 2, 3;
JURISDICTION, A 2, 17; C 4;
STATES, 2.

PREFERENCES.

See BANKRUPTCY.

PRESUMPTIONS.

See BANKRUPTCY, 1;
INSTRUCTIONS TO JURY, 3;
STATUTES, A 2.

PRINCIPAL AND AGENT.

See BROKERS;
CARRIERS, 1.

PRINCIPAL AND SURETY.

See CONTRACTS, 3.

PRIVILEGES AND IMMUNITIES.

See CONSTITUTIONAL LAW, 19.

PROCESS.

See CONSTITUTIONAL LAW, 10; JURISDICTION, D; E 1;
CORPORATIONS; STATES, 3.

PRODUCTION OF DOCUMENTS.

See JURISDICTION, B 1.

PROMISSORY NOTES.

See BILLS AND NOTES.

PROOF OF CLAIM.

See BANKRUPTCY, 7.

PROPERTY RIGHTS.

Who may insist on forfeiture—Right to defend title to property sought to be forfeited.

The person insisting on the forfeiture of property by another must show some legal right to insist on it; one who has violated an ordinance does not become an outcast thereby and lose his right to defend his title to the property claimed to have been forfeited. *Walker v. McLoud*, 302.

See CONSTITUTIONAL LAW;
LOCAL LAW (MONT.);
REAL PROPERTY.

PUBLIC LANDS.

1. *Withdrawn lands; disposition of.*

When a withdrawal order properly made ceases to be in force the lands withdrawn thereunder do not pass under a grant of unreserved, unsold or otherwise unappropriated lands, but becomes part of the public domain to be disposed of under the general land laws or acts of Congress specially describing them. *Northern Lumber Co. v. O'Brien*, 190.

2. *Grant to Northern Pacific Railroad Company construed.*

The grant to the Northern Pacific Railroad Company by the act of July 2, 1864, 13 Stat. 365, was *in praesenti*, although title did not attach to specific sections until they were identified, and the grant only included lands which, on that date, were not reserved, sold, granted, or otherwise appropriated; it did not include land then included within an existing and lawful withdrawal made in aid of an earlier grant for another road, although prior to the selection by the Northern Pacific it may have appeared that those lands were not within the place limits of the grant for such other road. *Ib.*

3. *Construction of Montana Enabling Act relative to administration of lands granted for educational purposes.*

In granting lands for educational purposes to Montana by § 17 of the Enabling Act of February 22, 1889, 25 Stat. 676, to be held, appropriated, etc., in such manner as the legislature of the State should provide, Congress intended to designate, and the act will be so construed, such legislature as should be established by the constitution to be adopted, and which should act as a parliamentary body in subordination to that constitution; and it did not give the management and disposal of such lands to the legislature or its members independently of the methods and limitations prescribed by the constitution of the State. *Haire v. Rice*, 291.

4. *Jurisdiction to try question of validity of state statute relative to lands granted.*

Whether a state statute relating to the disposition of such lands and their proceeds is or is not repugnant to the state constitution is for the state court to determine and its decision is conclusive here. *Ib.*

See CONSTITUTIONAL LAW, 7, 15.

PUBLIC RESORTS.

See CONSTITUTIONAL LAW, 8.

RAILROADS.

See CARRIERS; GRANTS, 2;
CONSTITUTIONAL LAW, 3, 9; TAXES AND TAXATION, 1.

RAILROAD LAND GRANTS.

See PUBLIC LANDS, 2.

RAILROAD RATES.

See COMMERCE;
PRACTICE AND PROCEDURE, 2.

RATIFICATION.

See COURTS, 4;
INDIANS, 1.

REAL PROPERTY.

1. *Accountability to demands of State.*

Land stands accountable to the demands of the State, and owners are charged with knowledge of laws affecting it, and the manner in which those demands may be enforced. *Ballard v. Hunter*, 241.

2. *Duty of claimant as respects the making of improvements by another.*

While one claiming to own real property cannot stand by in silence and see another expend money in improving it, he fulfills his duty by notifying the person spending the money and claiming ownership; and, in the absence of knowledge that such person is insolvent, he is not bound to ascertain whether he is making the improvements with money realized by mortgaging the premises and notify the mortgagee also. *Armstrong v. Ashley*, 272.

3. *Right of defendant in ejectment to equitable lien on property for moneys expended thereon.*

Where the title of one claiming ownership of real estate in bad faith is openly questioned and attacked in actions of ejectment, neither he nor his mortgagee are entitled to an equitable lien on the property for moneys expended thereon. *Ib.*

4. *As to risk of title assumed by lender on security of; and extent of imputed knowledge.*

One loaning money on real estate, the title to which has been, to his knowledge, attacked in an equity suit which has been dismissed without prejudice and not on the merits, takes the risk of the title and his knowledge extends to all property described, not only in the declaration but also in amended declarations, notwithstanding the failure of the clerk, without any fault of the party filing them, to properly index the amended declarations. *Ib.*

See LOCAL LAW (MONT.).

RECOUPMENT.

Nature of demand.

At common law, as the doctrine has been developed, a demand in recoupment is recognized as a cross demand as distinguished from a defense. *Merchants' Heat & L. Co. v. Clow & Sons*, 286.

See JURISDICTION, E 1.

REDUCTION OF CAPITALIZATION.

See NATIONAL BANKS, 3.

REMEDIES.

See COURTS, 1;
STATUTES, A 3.

REMOVAL OF CAUSES.

See CONDEMNATION, 2;
JURISDICTION, C 4; E 2.

REPEALS.

See STATUTES, A 3.

RES JUDICATA.

See ADMIRALTY, 2.

REVISED STATUTES.

See ACTS OF CONGRESS.

SALES.

Right of purchaser of property under a statutory sale to enforce demand therefor.
The purchaser at a sale of property forfeited and sold under a statute can only enforce his demand for the property against parties actually in possession under a *bona fide* claim of right by showing that the sale was in strict compliance with the terms of the statute; and a sale on credit is not such a compliance if the statute provides for a sale for cash. *Walker v. McCloud*, 302.

See BILLS AND NOTES; CONSTITUTIONAL LAW, 5;
BONDS, 2; CONTRACTS, 1, 4;
BROKERS; INDIANS, 1.

SCHOOL LANDS.

See PUBLIC LANDS, 3.

SERVICE OF PROCESS.

See CORPORATIONS;
JURISDICTION, D; E 1;
STATES, 3.

SET-OFF.

See UNITED STATES COMMISSIONERS, 3.

SHAREHOLDERS.

See NATIONAL BANKS, 2.

SHEEP GRAZING LAW.

See CONSTITUTIONAL LAW, 7, 15.

STAMP TAXES.

*See CONSTITUTIONAL LAW, 17;
TAXES AND TAXATION, 2, 3.*

STATES.

1. *Police power, extent of.*

The police power of a State embraces regulations designed to promote the public convenience or the general prosperity as well as those to promote public health, morals or safety; it is not confined to the suppression of what is offensive, disorderly or unsanitary, but extends to what is for the greatest welfare of the State. *Bacon v. Walker*, 311.

2. *Power of State to define crimes, regulate procedure and prescribe penalties.*

The power of the State to enact laws creating and defining crimes against its sovereignty, regulating procedure in the trial of those charged with committing them, and prescribing the character of the sentence of those found guilty is absolute and without limits other than those prescribed by the Constitution of the United States. *Coffey v. Harlan County*, 659.

3. *Power to discriminate between residents and non-residents in service of process.*

A State may make reasonable discriminations in regard to service of process for enforcement of liens for taxes and assessments on real estate between resident and non-resident owners, providing for personal service on the former and constructive service by publication on the latter. *Ballard v. Hunter*, 241.

See ACTIONS;

*CONSTITUTIONAL LAW, 2, 7, 8,
14, 16, 19;*

JURISDICTION, A 1;

REAL PROPERTY, 1;

TRUSTS AND TRUSTEES, 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Conflicting sections in a general code to be harmonized—Rule as to controlling effect of later provision not applicable.*

In a general code such as that of the District of Columbia a later section does not nullify an earlier one as being the later expression of legislative will; the whole code should, if possible, be harmonized and to that end the letter of a particular section may be disregarded in order to accomplish the plain intent of the legislature. *Iglehart v. Iglehart*, 478.

2. *Office of proviso; a presumption as to, must give way to a demonstrative test of legislative intent.*

While the primary purpose of a proviso is to qualify only the provision of the statute to which it is appended, a presumption of such purpose will not prevail against a demonstrative test that the legislative intent was that the proviso was of general application. *United States v. G. Falk & Brother*, 143.

3. *Repeals by implication*—When statute construed as abrogating common law remedy.

While repeals by implication are not favored and a statute will not be construed as abrogating an existing common law remedy, it will be so construed if such preexisting right is so repugnant to it as to deprive it of its efficacy and render its provisions nugatory. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 426.

See CUSTOMS DUTIES, 2; PHILIPPINE ISLANDS;
MINES AND MINING, 4, 7; PUBLIC LANDS, 3.

B. OF THE UNITED STATES. *See* Acts of Congress.

C. OF THE STATES AND TERRITORIES. *See* Local Law.

STATUTORY SALES.

See SALES.

STOCK AND STOCKHOLDERS.

See JURISDICTION, C 2;
NATIONAL BANKS, 1, 2, 3.

STOCK TRANSFERS.

See CONSTITUTIONAL LAW, 1;
TAXES AND TAXATION, 4, 5.

STREETS AND HIGHWAYS.

See GRANTS, 2.

STREET RAILWAYS.

See CONSTITUTIONAL LAW, 3, 9;
GRANTS, 2.

SURETIES.

See CONTRACTS, 2, 3.

TAXES AND TAXATION.

1. *Assessment for; fraud and duress in making*—Right to cross-examine members of assessing board—Taxation of franchises granted by United States. Railroad corporations attacked assessments made by a state assessing board and sought to enjoin the collection of taxes based thereon beyond a sum tendered, claiming that, induced by political clamor and fear, the board had arbitrarily fixed excessive valuations and had included property beyond the jurisdiction of the State, thus depriving the corporations of their property without due process. The bills charged political duress and a consequent scheme of fraud. The board, after declaring that it had taken into consideration the returns furnished by the corporations and their respective stocks, bonds, properties and earnings, fixed the total valuations and average mileage value of prop-

erty in the State and then fixed a lower value for assessment purposes, which the corporations claimed was arbitrary and excessive. Members of the assessing board were called as witnesses and cross-examined as to the operation of their minds in reaching the valuation. *Held*, that the charges of fraud and duress were not sustained. In an independent proceeding attacking the judgment of an assessing board it is improper to cross-examine the members in an attempt to exhibit confusion in their minds as to the method by which the result was reached. In a suit of this nature this court will not consider complaints as to results reached by a state board of assessors, except those based on fraud or the clear adoption of a fundamentally wrong principle. In this suit it does not appear that the present Union Pacific Railroad Company has any United States franchises which were taxed by the State of Nebraska or improperly considered in estimating the assessment for taxation of the company's property in that State. *Chicago, B. & Q. Ry. Co. v. Babcock*, 585.

2. *Stamp taxes; essentials to validity.*

There must be a fixed mode of ascertaining a stamp tax, and equality in the sense of actual value has to yield to practical considerations and usage. *Hatch v. Reardon*, 152.

3. *Stamp tax law of State; availability of commerce clause of Constitution to defeat.*

The protection of the commerce clause of the Federal Constitution is not available to defeat a state stamp tax law on transactions wholly within a State because they affect property without that State, or because one or both of the parties previously came from other States. *Ib.*

4. *Stock transfer tax; who may set up unconstitutionality of state law.*

Although a statute, unconstitutional as to one, is void as to all, of a class, the party setting up, in this court, the unconstitutionality of a state tax law must belong to the class for whose sake the constitutional protection is given, or the class primarily protected. *Ib.*

5. *Stock transfer law—Rights of parties engaged in interstate commerce; law governing.*

Whether a tax on transfers of stock is equivalent to a tax on the stock itself depends on the scope of the constitutional provision involved and, whatever may be the rights of parties engaged in interstate commerce, a sale depends in part on the laws of the State where made and that State may make the parties pay for the help of its laws. *Ib.*

*See CONSTITUTIONAL LAW, 1, 2, 17;
LANDLORD AND TENANT;
STATES, 3.*

TAX SALE.

See LANDLORD AND TENANT, 1.

TAX TITLE.

See LANDLORD AND TENANT.

TERMS OF COURT.

See COURTS, 8.

TERRITORIAL COURTS.

See INDIANS, 2;
JURISDICTION, A 15.

TERRITORIAL HIGHWAYS.

See CONGRESS, POWERS OF, 2.

TITLE.

See CONSTITUTIONAL LAW, 5; PANAMA CANAL;
COURTS, 7, 12; PROPERTY RIGHTS;
LANDLORD AND TENANT; PUBLIC LANDS, 2;
NATIONAL BANKS, 1; REAL PROPERTY, 3, 4.

TRANSFER OF STOCK.

See CONSTITUTIONAL LAW, 1;
NATIONAL BANKS;
TAXES AND TAXATION, 4, 5.

TREATIES.

See PANAMA CANAL.

TRIAL.

See INSTRUCTIONS TO JURY;
PLEADING AND PRACTICE;
STATES, 2.

TRUSTS AND TRUSTEES.

1. *Right of cemetery association to hold grants in trust under Code of District of Columbia.*

Section 669 of the Code of the District of Columbia making it lawful for cemetery associations incorporated under the laws of the District to hold grants in trust without time limitations is not nullified by § 1023 limiting trusts to one life in being and twenty-one years thereafter. *Iglehart v. Iglehart*, 478.

2. *Validity of trust to foreign cemetery association under local law.*

In pursuance of the general comity existing between States a trust permitted by the laws of the District of Columbia in favor of cemetery associations incorporated under the laws of the District will be sustained in favor of a cemetery association of a State which has power under the laws of that State to hold property under similar conditions. *Ib.*

See BANKRUPTCY, 7;
COURTS, 7;
NATIONAL BANKS, 3.

UNION PACIFIC RAILROAD.

See TAXES AND TAXATION, 1.

UNITED STATES.

*See ACTIONS; JURISDICTION;
COMMERCE; PANAMA CANAL.*

UNITED STATES COMMISSIONERS.

1. *Fees to which entitled.*

Under § 1986, Rev. Stat., a commissioner of the United States is not entitled to any fees for drawing complaints or jurats thereto charging offenses under ch. 7, Title 70, Rev. Stat., unless the complaints are served; there is no case within the meaning of § 1986 unless there be an arrest and examination. The fee provided by § 1986 covers all services and unless earned the commissioner gets no other and is not entitled to compensation under § 847, Rev. Stat., which as well as §§ 823 and 828 are supplanted in this class of cases by § 1986. *Allen v. United States*, 581.

2. *Fees to which entitled.*

Where the United States commissioner is also supervisor of election he is not entitled to compensation for certifying the complaints from himself in one capacity to himself in another capacity under § 2027, Rev. Stat. *Ib.*

3. *Fees—Right of United States to counterclaim compensation improperly allowed against amount actually due.*

When a commissioner applies on an account for an additional sum for services in which he has already been improperly allowed certain amounts, the United States may counterclaim for the amount already so allowed as an off-set against the amount actually due the commissioner notwithstanding the approval of his account by the United States Circuit Court, "subject to revision by the accounting officers of the United States Treasury;" and, under § 1059, Rev. Stat., and § 1, cl. 2 of the act of March 3, 1887, c. 359, the counterclaim may include payments made after the filing of the commissioner's claim. *Ib.*

VERDICT.

See EVIDENCE.

VESSELS.

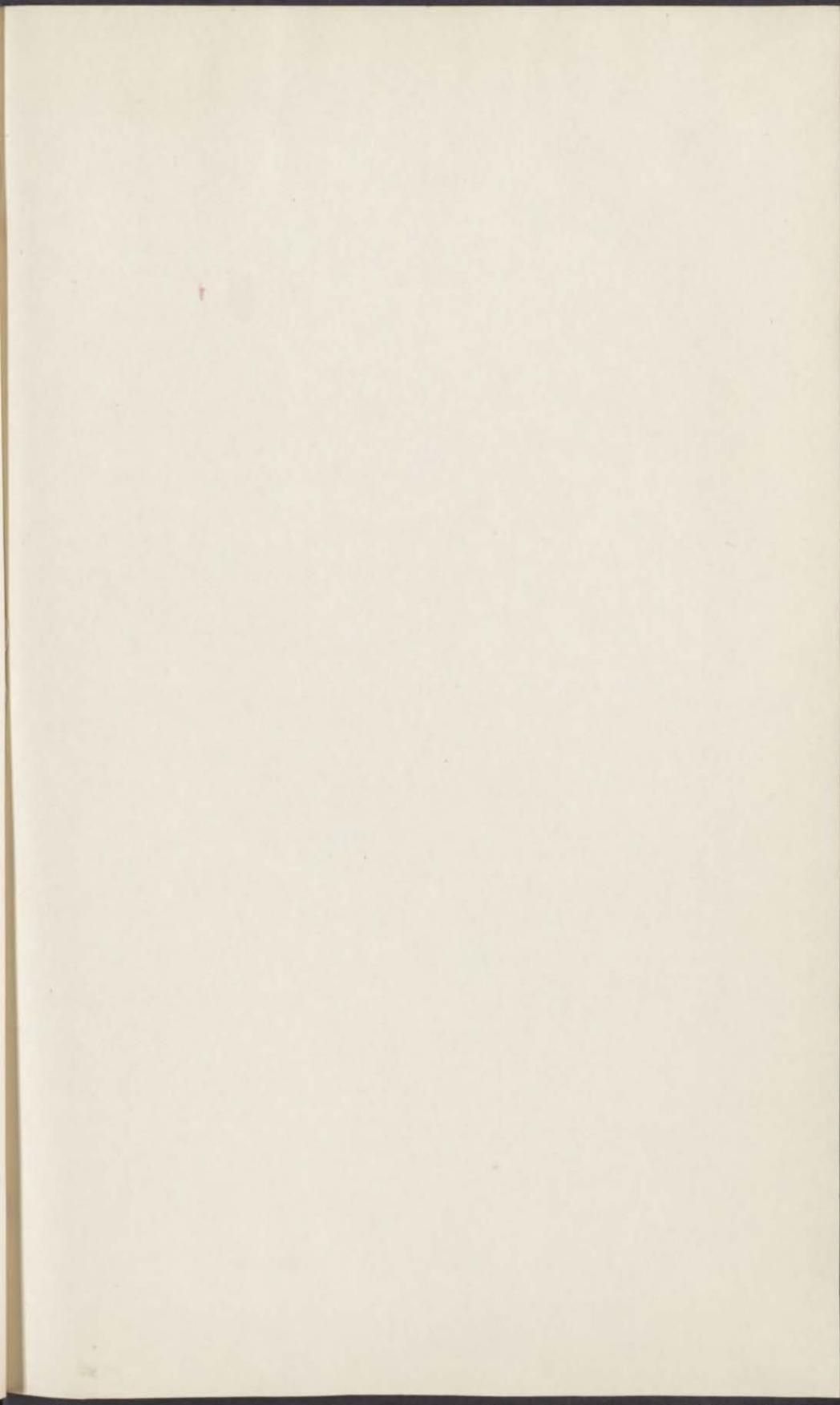
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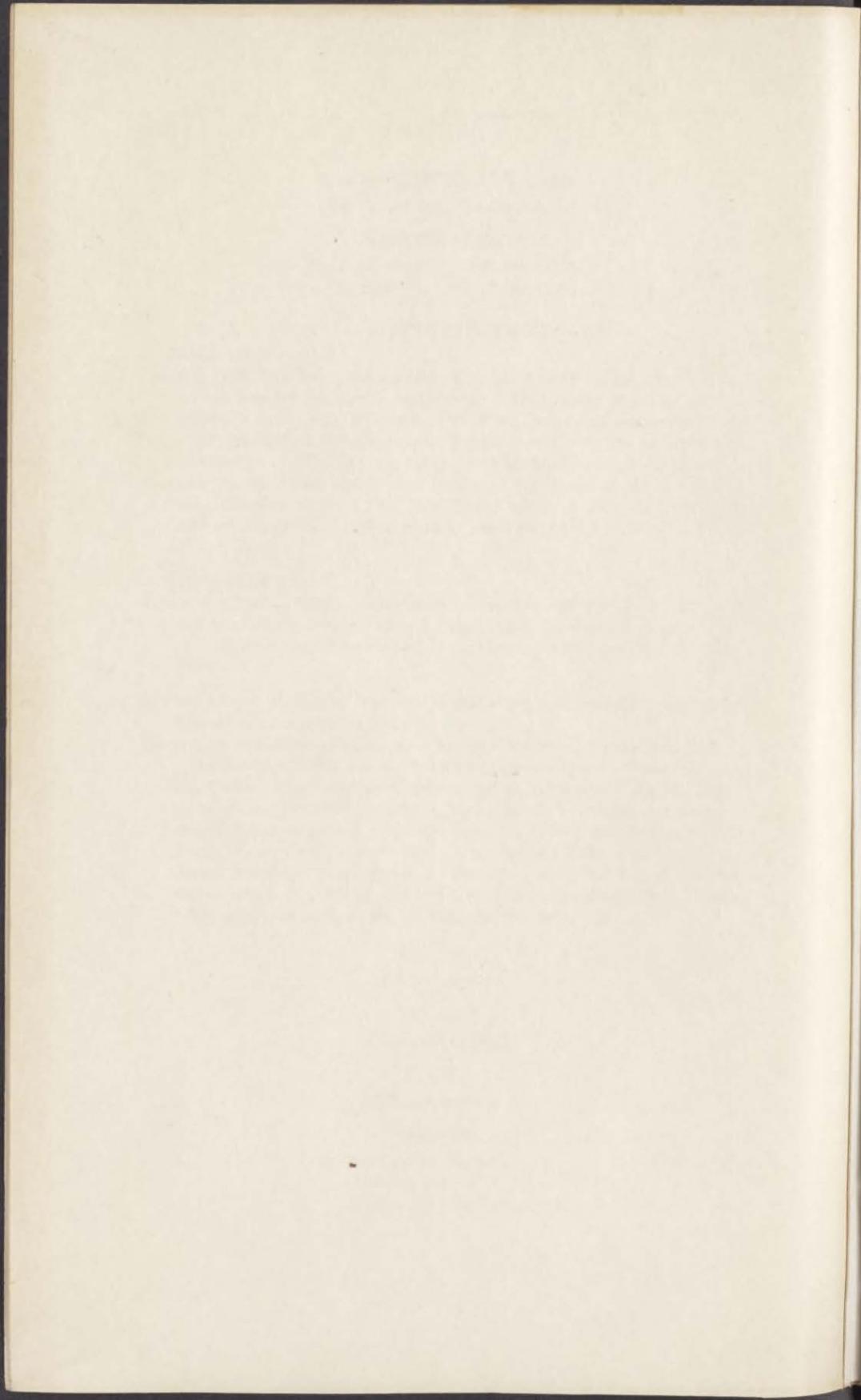
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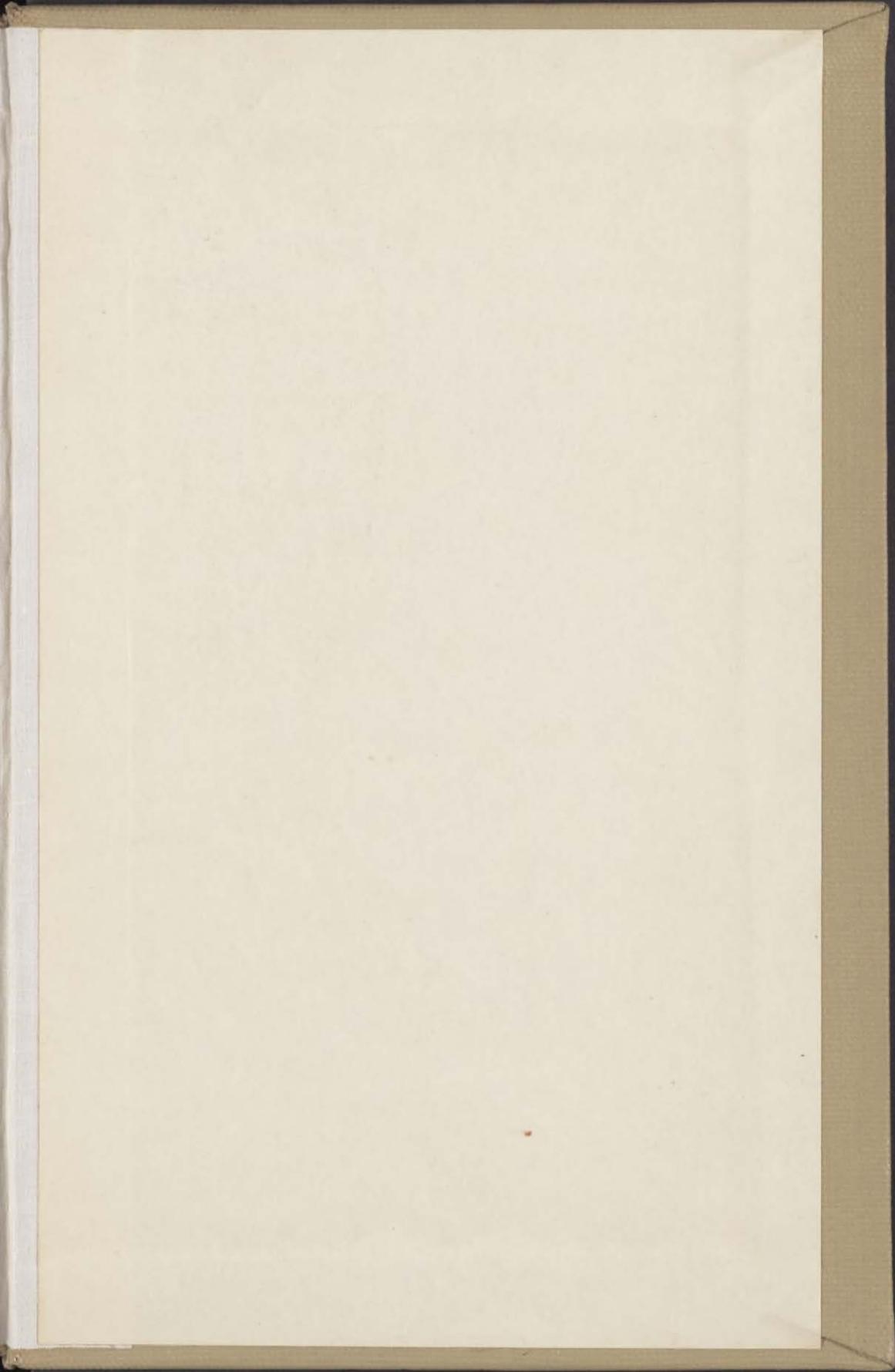
See BANKRUPTCY, 6.

WAIVER.

*See BILLS AND NOTES;
JURISDICTION, E 1;
LANDLORD AND TENANT, 2.*







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