INDEX.

ACCOUNTING.

See ATTORNEYS.

ACTIONS.

See ADMIRALTY, 2;
ATTORNEYS, 2;
CONSTITUTIONAL LAW, 41, 42;
COPYRIGHT, 6;
EQUITY, 3;
FEDERAL QUESTION, 1;
MINES AND MINING, 1;
PRACTICE, 11;
RAILROADS, 2.

ACTS OF CONGRESS.

ADMIRALTY, Harter Act (see Admiralty, 2): *The Hamilton*, 398.

ALIENS, Immigration Act of March 3, 1903, § 18 (see Aliens, 1): *Taylor* v. *United States*, 120.

BANKRUPTCY, act of 1898 (see Bankruptcy): *Ex parte First Nat. Bank of Chicago*, 61. Sec. 25*b*, pars. 1, 2 (see Bankruptcy, 3): *Chapman* v. *Bowen*, 89.

CONSPIRACY, Rev. Stat. § 5440 (see Criminal Law, 2): *Williamson* v. *United States*, 425.

CONTRACTS WITH UNITED STATES, Rev. Stat. § 3744 (see Contracts, 4): *United States* v. *Andrews*, 229.

COPYRIGHT, Rev. Stat. § 4962 (see Copyright, 3): *American Tobacco Co.* v. *Werckmeister*, 284. Rev. Stat. § 4965, as amended by the act of March 2, 1895 (see Copyright, 6): *Werckmeister* v. *American Tobacco Co.*, 375.

CRIMINAL APPEALS, act of March 2, 1907 (see Constitutional Law, 12): *Taylor* v. *United States*, 120.

EMPLOYERS' LIABILITY ACT of June 11, 1906 (see Constitutional Law, 4): *Employers' Liability Cases*, 463.

INDIANS, act of May 1, 1888 (see Indians, 2): *Winters* v. *United States*, 564.

INTERSTATE COMMERCE, act of February 4, 1887, § 22 (see Railroads, 1): *Bitterman* v. *Louisville & Nashville R. R.*, 205.

JUDICIARY, Rev. Stat. § 709 (see Jurisdiction, A 16, 17): *Chambers* v. *Balto. & Ohio R. R. Co.*, 142; *Sullivan* v. *Texas*, 416. Rev. Stat. § 724 (see Jurisdiction, B 1): *Webster Coal & Coke Co.* v. *Cassatt*, 181.

MONTANA, act of February 22, 1889 (see Indians, 2): *Winters* v. *United States*, 564.

PHILIPPINE ISLANDS, act of July 1, 1902, § 10 (see Appeal and Error, 4): *Paraiso* v. *United States*, 368.

PORTO RICO, act of April 12, 1900, §§ 33, 35 (see Jurisdiction, A 11): *Kent* v. *Porto Rico*, 113.

TARIFF, act of October 1, 1890, § 25 (see Customs Duties): *Anheuser-Busch Assn.* v. *United States*, 556.

TIMBER AND STONE ACT of June 3, 1878 (see Criminal Law; Public Lands, 3): *Williamson* v. *United States*, 425.

See STATUTES, A.

ADMIRALTY.

1. *Recognition of claims not denied by the admiralty.*

Where a fund is being distributed in a proceeding to limit the liability of the owners of a vessel, all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not. *The Hamilton*, 398.

2. *Right of seaman to recover for tort, in action brought under state statute—Damages recoverable.*

Where both vessels in collision are in fault the representatives of a seaman on one of the vessels, killed without contributory negligence on his part, may, where a state statute gives an action against the owner of the other vessel, recover full damages, and are not limited to damages recoverable under the maritime law against the seaman's own vessel for death or injury caused by negligence of the master thereof or his fellow servants thereon. Neither the seaman's contract with the owners of the vessel he is on, nor the negligence of his own vessel, nor any provision of the Harter Act affects the claim against the other vessel. *Ib.*

3. *Enforcement in admiralty of state statute.*

The statute of Delaware giving damages for death caused by tort is a valid exercise of the legislative power of the State, and extends to the case of a citizen of that State wrongfully killed while on the high seas in a vessel belonging to a Delaware corporation by the negligence of another vessel also belonging to a Delaware corporation. A claim against the owner of one of the vessels in fault can be enforced in a proceeding in admiralty brought by such owner to limit its liability. *Ib.*

ADVICE OF COUNSEL.

See CRIMINAL LAW, 1.

AGENCY.

See CONTRACTS, 2.

ALIENS.

1. *Immigration Act; application of* § 18; *deserting sailors.*

Even though one who makes it possible for an alien to land by omitting due precautions to prevent it, may permit him to land within the meaning of the penal clause of § 18 of the Immigration Act of March 3, 1903,

12 Stat. 1217, that section does not apply to the ordinary case of a sailor deserting while on shore leave. *Taylor* v. *United States*, 120.

2. *Immigration Act; effect of* § 18 *on sailors' shore leave.*
This construction is reached both by the literal meaning of the expressions "bringing to the United States" and "landing from such vessel" and by a reasonable interpretation of the statute which will not be construed as intending to altogether prohibit sailors from going ashore while the vessel is in port. *Ib.*

3. *Immigration Act; right of master of vessel to employ as sailor one ordered to be deported.*
The fact that an alien has been refused leave to land in the United States and has been ordered to be deported does not make it impossible for the master of a foreign vessel, bound to an American port, subsequently to accept him as a sailor on the high seas. *Ib.*

AMENDMENT.

See PRACTICE, 12.

AMENDMENTS TO CONSTITUTION.

Fifth. *See* CONSTITUTIONAL LAW, 12, 13, 15, 35, 44, 45; JURISDICTION, A 2.
Fourth. *See* CONSTITUTIONAL LAW, 44, 45.
Fourteenth. *See* CONSTITUTIONAL LAW.

AMOUNT IN CONTROVERSY.

See JURISDICTION, C 1, 2.

APPEAL AND ERROR.

1. *Application of rule as to joinder of parties.*
The rule that all the parties must join in an appeal or writ of error unless properly detached from the right so to do applies only to joint judgments and decrees. This court has jurisdiction of an appeal taken or writ of error sued out by one of several defendants if his interest is separate from that of the other defendants. *Winters* v. *United States*, 564.

2. *Right of one of several defendant trespassers to maintain separate appeal.*
In a suit against several defendants as trespassers in which some of them defaulted and others answered, *held*, that each defendant was a separate trespasser and that while those who defaulted were precluded from questioning the correctness of the decree entered against them, the answering defendants had nothing in common with the others and could maintain an appeal without them. *Ib.*

3. *Record; evidence not disclosed by, will not affect decision of court.*
On writ of error to review a final judgment in *habeas corpus* proceedings this court must determine by the record whether the state court erred and its decision cannot be controlled or affected by an apparent admission of defendant in error that certain affidavits annexed to the

petition were used without objection as evidence. *McNichols* v. *Pease*, 100.

4. *Record; necessity for showing that constitutional question was raised below. Application of rule to cases brought from Philippine Islands.*

Where a case is brought up from the Circuit Court on the ground that the construction or application of the Constitution of the United States is involved, the record must show that the question was raised for the consideration of the court below; and, under § 10 of the act of July 1, 1902, 32 Stat. 695, this rule applies to writs of error to review judgments of the Supreme Court of the Philippine Islands. *Paraiso* v. *United States*, 368.

5. *When writ of error from this court will run to inferior state court.*

Where the highest court of the State dismisses an application for writ of error for want of jurisdiction, the judgment of the lower court becomes the judgment of the highest court of the State to which the case can be taken, and the writ of error will properly run to it from this court. *Sullivan* v. *Texas*, 416.

6. *Writ of error; parties; effect of failure of district judge to sue out or join in writ allowed by Circuit Court of Appeals after mandamus issued.*

Where the Circuit Court of Appeals after issuing mandamus to the district judge requiring him to modify a decree so as to conform to the decision of this court, allows the party in interest a writ of error and the district judge declines to sue out or join in the writ, the writ will not be dismissed because the district judge is not a party and the fact that he has obeyed the order will not prejudice the position of the plaintiff in error. *Ex parte First Nat. Bank of Chicago*, 61.

See BANKRUPTCY, 2, 3, 4; JURISDICTION; CONSTITUTIONAL LAW, 12; PRACTICE, 4, 5, 12.

ARREST.

See CONSTITUTIONAL LAW, 39; JURISDICTION, A 9.

ASSESSMENT AND TAXATION.

See CONSTITUTIONAL LAW, 22, 23, 24; STATES, 4.

ASSIGNMENT.

See COPYRIGHT, 5.

ATTORNEYS.

1. *Laches in suing for fees excused when payment awaits an appropriation by Congress.*

Where one interested in attorney fees for collection of government claims can expect nothing until the amount adjudged has been appropriated, laches will not be charged against him if he bring the suit for an account-

ing within a reasonable period after the passage of the appropriation act. In this case two years was not unreasonable. *Earle* v. *Myers*, 244.

2. *Right of administrator, completing business of his intestate, to allowance for his and his intestate's services and expenses.*

Where an administrator of an attorney performs services and incurs expenses in completing the business in which his intestate and another attorney were interested he should be allowed therefor and those services and expenses as well as those rendered and incurred by the intestate can be settled in one suit where the account has been treated by both parties as one account. *Ib.*

ATTORNEY AND CLIENT.

See CRIMINAL LAW, 1.

BANKRUPTCY.

1. *As to authority of District Court to control litigation by trustee.*

The decision of this court in *First National Bank* v. *Chicago Title & Trust Co.*, 198 U. S. 280, merely gave directions in general form to be carried out by the District Court and it was not intended to supersede the authority given to that court by the bankruptcy law to control litigation by the trustee. *Ex parte First Nat. Bank of Chicago*, 61.

2. *Appeals; application of general order XXXVI, clause* 3.

Clause 3 of general order in bankruptcy XXXVI applies to appealable cases and must be complied with. *Chapman* v. *Bowen*, 89.

3. *Appeals; when maintainable.*

This appeal cannot be maintained because it does not come within either paragraph 1 or paragraph 2 of § 25*b* of the bankruptcy act. *Ib.*

4. *Writ of error from state court; when not maintainable.*

Where the decision below proceeds on principles of general law broad enough to sustain it without reference to provisions of the bankruptcy act, the question involved is not one which would justify a writ of error from the highest court of a State to this court. *Ib.*

BANKS.

See STATES, 4.

BILLS AND NOTES.

See CONSTITUTIONAL LAW, 28.

BONDS.

See STARE DECISIS, 2.

BOOKS, PRODUCTION OF.

See CONSTITUTIONAL LAW, 17, 18, 19, 29, 43, 44, 46; CONTEMPT OF COURT; FEDERAL QUESTION, 2; JURISDICTION, B, 1.

CARRIERS.

See NEGLIGENCE, 1;
RAILROADS.

CASES DISTINGUISHED.

Barney v. *City of New York*, 193 N. Y. 430, distinguished in *Raymond* v. *Chicago Traction Co.*, 20.

Boston &c. Mining Co. v. *Montana Ore Co.*, 188 U. S. 632, distinguished in *Lawson* v. *United States Mining Co.*, 1.

Southern Railway v. *Allison*, 190 U. S. 326, distinguished in *Patch* v. *Wabash R. R. Co.*, 277.

Vicksburg v. *Waterworks*, 206 U. S. 496, distinguished in *Water, Light & Gas Co.* v. *Hutchinson*, 385.

CASES EXPLAINED.

First National Bank v. *Chicago Title & Trust Co.*, 198 U. S. 280, explained in *Ex parte First Nat. Bank of Chicago*, 61.

CASES FOLLOWED.

Adams v. *New York*, 192 U. S. 585, followed in *American Tobacco Co.* v. *Werckmeister*, 284; *Consolidated Rendering Co.* v. *Vermont*, 541.

Allen v. *Riley*, 203 U. S. 347, followed in *Ozan Lumber Co.* v. *Union County Bank*, 251.

Amado v. *United States*, 195 U. S. 172, followed in *Kent* v. *Porto Rico*, 113.

Angle v. *Chicago & St. Paul Ry. Co.*, 151 U. S. 1, followed in *Bitterman* v. *Louisville & Nashville R. R.*, 205.

Appleyard v. *Massachusetts*, 203 U. S. 222, followed in *McNichols* v. *Pease*, 100.

Burton v. *United States*, 196 U. S. 283, followed in *Williamson* v. *United States*, 425.

Citizens' Street Railway v. *Detroit*, 171 U. S. 48, followed in *Water, Light & Gas Co.* v. *Hutchinson*, 385.

Hale v. *Allinson*, 188 U. S. 57, 77, followed in *Bitterman* v. *Louisville & Nashville R. R.*, 205.

Hale v. *Henkel*, 201 U. S. 43, followed in *American Tobacco Co.* v. *Werckmeister*, 284; *Consolidated Rendering Co.* v. *Vermont*, 541.

Heath & Milligan Mfg. Co. v. *Worst*, 207 U. S. 338, followed in *Ozan Lumber Co.* v. *Union County Bank*, 251.

Holland v. *Challen*, 110 U. S. 15, followed in *Lawson* v. *United States Mining Co.*, 1.

Holmes v. *Goldsmith*, 147 U. S. 164, followed in *Williamson* v. *United States*, 425.

Hunt v. *New York Cotton Exchange*, 205 U. S. 322, followed in *Bitterman* v. *Louisville & Nashville R. R.*, 205.

Jos. Schlitz Brewing Co. v. *United States*, 181 U. S. 584, followed in *Anheuser-Busch Assn.* v. *United States*, 556.

McMillan v. *Ferrum Mining Co.*, 197 U. S. 343, followed in *Paraiso* v. *United States*, 368.

Mosher v. *Railroad Co.*, 127 U. S. 390, followed in *Bitterman* v. *Louisville & Nashville R. R.*, 205.
Murphy v. *Utter*, 186 U. S. 95, followed in *Vail* v. *Arizona*, 201.
O'Neil v. *Vermont*, 144 U. S. 323, followed in *Paraiso* v. *United States*, 368.
Ozan Lumber Co. v. *Union County Bank*, 207 U. S. 251, followed in *Heath & Milligan Co.* v. *Worst*, 338.
Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20, followed in *Same* v. *Chicago Edison Co.*, 42.
St. Louis Hay Co. v. *United States*, 191 U. S. 159, followed in *United States* v. *Andrews*, 229.
Trono v. *United States*, 199 U. S. 521, followed in *Flemister* v. *United States*, 372.
Utter v. *Franklin*, 172 U. S. 416, followed in *Vail* v. *Arizona*, 201.
Woods & Sons v. *Carl*, 203 U. S. 358, followed in *Ozan Lumber Co.* v. *Union County Bank*, 251.
Wright v. *Minnesota Mut. Life Ins. Co.*, 193 U. S. 657, followed in *Polk* v. *Mutual Reserve Fund Asso.*, 310.

CITIZENSHIP.

See REMOVAL OF CAUSES, 1.

CLAIMS AGAINST THE UNITED STATES.

See ATTORNEYS, 1;
CONTRACTS, 1.

CLASSIFICATION FOR GOVERNMENTAL PURPOSES.

See CONSTITUTIONAL LAW, 26–30, 34.

COMITY.

See CONSTITUTIONAL LAW, 41.

COMMERCE.

Interstate; power of Congress.
One engaging in interstate commerce does not thereby submit all his business to the regulating power of Congress. *Employers' Liability Cases*, 463.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 1–4;
RAILROADS, 1, 5.

COMMON CARRIERS.

See CONSTITUTIONAL LAW, 31.
RAILROADS.

CONFESSIONS.

See JURISDICTION, A 2.

CONGRESS.

I. ACTS OF.

See ACTS OF CONGRESS.

II. MEMBERS OF.

See CONSTITUTIONAL LAW, 39, 40;
JURISDICTION, A 9.

III. POWERS OF.

1. *Power over District of Columbia and the Territories.*

The legislative power of Congress over the District of Columbia and the Territories is plenary and does not depend upon the special grants of power, such as the commerce clause of the Constitution. *Employers' Liability Cases*, 463.

2. *Power over District of Columbia and the Territories as to regulation of common carriers within.*

To restrict a general act of Congress relating to common carriers, by interpretation to interstate commerce so as to validate it as to the carriers in the several States, would unduly restrict it as to carriers in the District of Columbia and the Territories. *Ib.*

See COMMERCE;
CONSTITUTIONAL LAW, 2, 3, 4.

CONSIGNOR AND CONSIGNEE.

See CONTRACTS, 3.

CONSPIRACY.

See CRIMINAL LAW, 2, 3, 4.

CONSTITUTIONAL LAW.

1. *Commerce clause; repugnancy of state order as to stoppage of interstate trains.*

Any exercise of state authority, whether made directly or through the instrumentality of a commission, which directly regulates interstate commerce is repugnant to the commerce clause of the Federal Constitution; and so held as to the stopping of interstate trains at stations within the State already adequately supplied with transportation facilities. *Atlantic Coast Line* v. *Wharton*, 328.

2. *Commerce clause; power of Congress to regulate relations of master and servant.*

Under the grant given by the Constitution to regulate interstate commerce and the authority given to use all means appropriate to the exercise of the powers conferred, Congress has power to regulate the relation of master and servant to the extent that such regulations are confined solely to interstate commerce. *Employers' Liability Cases*, 463.

3. *Commerce clause; power of Congress to impose liability upon common carriers in favor of their employés.*

An act addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employés, without qualification or restriction as to the nature of the business at the time of the injury, of necessity includes subjects wholly outside of the power of Congress under the commerce clause of the Constitution. *Ib.*

4. *Commerce clause—Validity of Employers' Liability Act of June* 11, 1906.

While the act of Congress of June 11, 1906, 34 Stat. 232, known as the Employers' Liability Act, embraces subjects within the authority of Congress to regulate commerce, it also includes subjects not within its constitutional power, and the two are so interblended in the statute that they are incapable of separation and the statute is therefore repugnant to the Constitution of the United States and non-enforcible. *Ib.*

5. *Contract impairment clause; what amounts to contract within.*

A state statute confirming a grant of the former sovereign and specifying the area and providing for a survey to ascertain metes and bounds and for filing the field notes does not amount to a contract within the impairment clause of the Constitution that the State will abide by the survey even though it includes more than the original grant. *Sullivan* v. *Texas*, 416.

6. *Contract impairment clause; what constitutes contract within.*

There is no contract, within the meaning of the contract clause of the Federal Constitution, between a municipality and its citizens and taxpayers that the latter shall be taxed only for the uses of that corporation and not for the uses of any like corporation with which it may be consolidated. *Hunter* v. *Pittsburgh*, 161.

7. *Contract impairment clause; charters of municipal corporations not contracts with State.*

Municipal corporations are political subdivisions of the State, created by it and at all times wholly under its legislative control; their charters, and the laws conferring powers on them, do not constitute contracts with the State within the contract clause of the Federal Constitution; nor are a municipality and its citizens or taxpayers deprived of its or their property without due process of law, nor is such property taken without compensation, by reason of any legislative action of the State in regard to the property held by such municipality for governmental purposes, or as to the territorial area of such municipality, or the consolidation thereof with another city, or the repeal or alteration of its charter. *Ib.*

8. *Contract impairment; due process of law; taking property without just compensation; validity of Pennsylvania statute of* 1906 *for union of Pittsburgh and Allegheny.*

The act of February 7, 1906, of Pennsylvania, providing for the union of

contiguous municipalities, under which the cities of Pittsburgh and Allegheny were consolidated, is not unconstitutional as depriving the City of Allegheny or the citizens and taxpayers thereof of their property without due process of law, or because it takes property without compensation or because it impairs any contract between the City of Allegheny and the State or the City of Allegheny and its citizens and taxpayers. *Ib.*

9. *Contract impairment by exercise of reserved legislative power to alter, amend or repeal charters—Due process of law.*

Where there is a reserved power in the legislature to alter, amend or repeal charters, a law permitting mutual life associations to reincorporate as regular life insurance companies is not unconstitutional as impairing the obligation of the contracts existing between such associations and their policyholders, or as depriving such policyholders of their property without due process of law. (*Wright* v. *Minnesota Mutual Life Insurance Co.*, 193 U. S. 657.) *Polk* v. *Mutual Reserve Fund Asso.*, 310.

10. *Contract impairment—Due process of law—Validity of ch.* 722, *Laws of* 1901 *of New York.*

Under the power to alter, amend and repeal charters reserved in the constitution of 1846 of New York, Chapter 722 of the Laws of 1901 does not impair the obligation of contracts existing between mutual life associations and their policyholders, nor in this case did the reincorporation of such an association as a regular life insurance company deprive its policyholders of their property without due process of law. *Ib.*

11. *Contract impairment—Texas act of* 1852, *confirming Mexican grants, not a contract impaired by the act of September* 3, 1901.

The act of February 10, 1852, of Texas, confirming Mexican grants, did not amount to a legislative contract to abide by the surveys to be made of such grants; nor is the act of September 3, 1901, directing actions to be brought to recover land wrongfully in possession of grantees in excess of the amount of the original Mexican grant, but included in the survey made under the act of 1852, unconstitutional as impairing the obligation of a contract. *Sullivan* v. *Texas*, 416.

12. *Double jeopardy; effect of act of March* 2, 1907, *allowing to United States writ of error in criminal case.*

Under the act of March 2, 1907, 34 Stat. 1246, the United States can be allowed a writ of error to the District Court quashing an indictment in a criminal case. The act is directed to judgments rendered before the moment of jeopardy is reached and is not violative of the double jeopardy provisions of the Fifth Amendment to the Constitution of the United States. *Taylor* v. *United States*, 120.

13. *Double jeopardy; effect of trial under fatally defective indictment.*

One is not put in jeopardy if the indictment under which he is tried is so radically defective that it would not support a judgment of conviction,

and a judgment thereon would be arrested on motion. *Shoener* v. *Pennsylvania*, 188.

14. *Double jeopardy; effect of trial under fatally defective indictment.*
Where a conviction for embezzlement has been reversed on the ground that the money had not and could not be rightfully demanded when the indictment was found the accused is not put in second jeopardy by the trial on another indictment for embezzlement after demand rightfully made. *Ib.*

15. *Double jeopardy; effect of trial under fatally defective indictment.*
Where the defense is that the accused is put in jeopardy for the same offense by his trial under a former indictment, if it appears from the record of that trial that the accused had not then or previously committed, and could not possibly have committed, any such crime as the one charged, and therefore that the court was without jurisdiction to have rendered any valid judgment against him—the accused is not, by such trial, put in second jeopardy for the offense specified in the last or new indictment. *Ib.*

16. *Double jeopardy; what constitutes under Philippine bill of rights.*
One is not placed in second jeopardy within the meaning of the Philippine bill of rights by being tried for an assault on an officer because he has already been convicted for a breach of the peace and assault upon another person at the same time and place, and where it appears that the assault on the officer was not relied on or proved as part of the offense for which he was first convicted. *Flemister* v. *United States*, 372.

17. *Due process of law; what constitutes, in proceeding to enforce production of books and papers.*
So long as an opportunity to be heard is given to the party objecting to a notice to produce books and papers, before the proceeding to enforce such production is closed, due process of law is afforded, and if the state court has construed the statute providing for such production to the effect that objections raised before a grand jury must be reported to the court for action, there is opportunity to be heard. *Consolidated Rendering Co.* v. *Vermont*, 541.

18. *Due process of law; compelling corporation to produce books and papers which are without the State not a denial of.*
It is within the power of the State, and due process of law is not denied thereby, to require a corporation doing business in the State to produce before tribunals of the State books and papers kept by it in the State, although at the time the books may be outside of the State. *Ib.*

19. *Due process of law, etc.—Validity of statute of Vermont providing for the production of books and papers by corporations.*
The statute of Vermont of October 9, 1906, providing for the production of their books and papers by corporations before courts, grand juries and other tribunals, and punishing corporations failing to comply there-

with as for contempt, is not unconstitutional as depriving corporations of their property without due process of law, or as denying them the equal protection of the laws, or as conferring judicial functions on non-judicial bodies, or as taking private property for public use without compensation, or as constituting unreasonable searches and seizures or requiring corporations to incriminate themselves. *Ib.*

20. *Due process and equal protection of laws; application of provisions to action of state board of equalization.*

The provisions of the Fourteenth Amendment are not confined to the action of the State through its legislative, executive or judicial authority, but relate to all instrumentalities through which the State acts; and so *held* that the action of a state board of equalization, the decisions whereof are conclusive, except as proceedings for relief may be taken in the courts, is reviewable in the Federal courts at the instance of one claiming to be thereby deprived of his property without due process of law and denied the equal protection of the law. *Raymond* v. *Chicago Traction Co.*, 20.

21. *Due process and equal protection of laws; action by state board of equalization reviewable by Federal courts.*

Action of a board of equalization resulting in illegal discrimination held in this case not to be action forbidden by the state legislature and therefore beyond review by the Federal courts under the Fourteenth Amendment. *Barney* v. *City of New York*, 193 N. Y. 430, distinguished. *Ib.*

22. *Due process of law; what constitutes in taxation and assessment.*

Due process of law requires that opportunity to be heard as to the validity of the tax and the amount of the assessment be given to a taxpayer, who, without fraudulent intent and in the honest belief that it is not taxable, withholds property from tax returns; and this requirement is not satisfied where the taxpayer is allowed to attack the assessment only for fraud and corruption. *Central of Georgia Ry.* v. *Wright*, 127.

23. *Due process of law not afforded by* §§ 804, 879, *Political Code of Georgia, relative to taxation and assessment.*

The system provided by the Political Code of Georgia, §§ 804, 879, as construed by the highest court of that State, not allowing the taxpayer any opportunity to be heard as to the valuation of property not returned by him and honestly withheld, except as to fraud and corruption, does not afford due process of law, which adjudges upon notice and opportunity to be heard, within the meaning of the due process clause of the Fourteenth Amendment to the Constitution of the United States. *Ib.*

24. *Due process of law; duty of Supreme Court to determine that taxpayer has been afforded.*

The assessment of a tax is action judicial in its nature requiring for the legal exertion of the power such opportunity to appear as the circumstances of the case require, and this court, as the ultimate arbiter of rights

secured by the Federal Constitution, is charged with the duty of determining whether the taxpayer has been afforded due process of law. *Ib.*

See Supra, 7–10;
Infra, 32, 33;
RAILROADS, 4.

25. *Effect of possible construction of statute to render it unconstitutional.*
Where it appears that a conviction under the New Jersey statute for the protection of the oyster industry depended both in the charge and in the testimony upon the actual illegal use of oyster dredges, and the possible construction of the statute which made it a crime to merely navigate interstate waters was not essential to the case, no valid constitutional objection can be raised for want of power to pass or enforce the statute. *Lee* v. *State of New Jersey,* 67.

26. *Equal protection of laws; classification for governmental purposes.*
There cannot be an exact exclusion or inclusion of persons and things in a classification for governmental purposes, and a general classification, otherwise proper, will not be rendered invalid because certain imaginary and unforeseen cases have been overlooked. In such a case there is no substantial denial of the equal protection of the laws within the meaning of the Fourteenth Amendment. *Ozan Lumber Co.* v. *Union County Bank,* 251.

27. *Equal protection of laws; classification for governmental purposes.*
State legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary and unreasonable. (See *Heath & Milligan Mfg. Co.* v. *Worst,* 207 U. S. 338.) *Ib.*

28. *Equal protection of laws—Validity of Arkansas law relative to notes given for payment of patented articles.*
The purpose of the statute of Arkansas providing that all notes given for payment of patented articles must show that they were so given, and permitting defenses to be made to such notes in the hands of third parties, is to create and enforce a police regulation, aimed principally at itinerant vendors of patented articles, and the distinction in § 4 that it shall not apply to merchants and dealers who sell patented articles in the usual course of business is founded upon fair reasoning and is not such a discrimination as violates the equal protection provisions of the Fourteenth Amendment. *Ib.*

29. *Equal protection of laws—Validity of classification in respect of the production of books and papers.*
A state statute providing for the production of books and papers by corporations does not deny to corporations the equal protection of the laws; such a classification is a proper one. *Consolidated Rendering Co.* v. *Vermont,* 541.

30. *Equal protection of laws—Classification for regulation.*
A state statute may, without violating the equal protection clause of the

Fourteenth Amendment, put into one class all engaged in business of a special and public character, and require them to perform a duty which they can do better and more quickly than others and impose a not exorbitant penalty for the non-performance thereof. *Seaboard Air Line* v. *Seegers*, 73.

31. *Equal protection of laws—Validity of statute of South Carolina of* 1903, *limiting time for adjustment of claims by carriers and imposing penalty.*

The statute of South Carolina of 1903 imposing a penalty of fifty dollars on all common carriers for failure to adjust damage claims within forty days is not as to intrastate shipments unconstitutional as violative of the Fourteenth Amendment, neither the classification, the amount of the penalty nor the time of adjustment being beyond the power of the State to determine. And so held in regard to a claim of $1.75, as small shipments are the ones which especially need the protection of penal statutes of this nature. *Ib.*

32. *Equal protection and due process clauses; when state legislation repugnant to.*

This court will not limit the power of the State by declaring that because the judgment exercised by the legislature is unwise it amounts to a denial of the equal protection of the laws or deprivation of property or liberty without due process of law. *Heath & Milligan Co.* v. *Worst*, 338.

33. *Equal protection and due process of law—Validity of North Dakota mixed-paint law.*

The statute of North Dakota requiring the manufacturers and vendors of mixed paints to label the ingredients composing them is not unconstitutional as depriving such manufacturers of their property or liberty without due process of law or as denying them the equal protection of the law because the requirements of the statute may not apply to paste paints. *Ib.*

34. *Equal protection of laws—State regulation of business.*

Legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary, unreasonable, or in conflict with the equal protection provisions of the Fourteenth Amendment to the Federal Constitution. (See *Ozan Lumber Co.* v. *Union County Bank*, 207 U. S. 251.) *Ib.*

See Supra, 19;
Infra, 50.

Extradition of fugitives from justice. *See* EXTRADITION.

35. *Fifth Amendment; application of.*

The Fifth Amendment to the Federal Constitution is not restrictive of state, but only of national, action. *Hunter* v. *Pittsburgh*, 161.

36. *Full faith and credit clause—What amounts to assertion of right under Constitution.*

Where judicial proceedings in one State are relied upon as a defense to an

assessment by the authorities of another State a right under the Constitution of the United States is specially set up and claimed though it was not in terms stated to be such a right. *Tilt* v. *Kelsey*, 43.

37. *Full faith and credit clause; conclusiveness of adjudication by probate court as to domicil of decedent.*

An adjudication by the probate court that a testator was a resident of the State though essential to the assumption of jurisdiction to grant letters testamentary is not necessarily conclusive on the question of domicil nor even evidence of it in a collateral proceeding, and, under the full faith and credit clause of the Federal Constitution, is not binding upon the courts of another State. *Ib.*

38. *Full faith and credit; when decree of probate court entitled to.*

Where the decree of the probate court is final and bars all persons having claims against the estate, the courts of another State must, under the full faith and credit clause of the Federal Constitution, give similar force and effect to such a decree, when rendered by a court having jurisdiction to probate the will and administer the estate, and *held* that such a final decree in New Jersey was a bar in the courts of another State against the taxing authorities of the latter State attempting to enforce a claim for inheritance tax on the ground that the testator was at the time of his death domiciled therein. *Ib.*

39. *Parliamentary privilege—Construction of words "treason, felony and breach of the peace."*

The words "treason, felony and breach of the peace" were used by the framers of the Constitution in § 6, Art. I, and should be construed in the same sense as those words were commonly used and understood in England as applied to the parliamentary privilege, and as excluding from the privilege all arrests and prosecutions for criminal offenses, and confining the privilege alone to arrests in civil cases. *Williamson* v. *United States*, 425.

40. *Parliamentary privilege from arrest—Effect of expiration of term of office on sentence illegally imposed.*

If a sentence on a member of Congress is illegal when pronounced because in conflict with his constitutional privilege it would not become valid by the expiration of the term for which he was elected. *Ib.*

41. *Privileges and immunities comprehended by § 2, Art. IV of Constitution; right to sue and defend in state court.*

The right to sue and defend in the courts of the States is one of the privileges and immunities comprehended by § 2 of Art. IV of the Constitution of the United States, and equality of treatment in regard thereto does not depend upon comity between the States, but is granted and protected by that provision in the Constitution; subject, however, to the restrictions of that instrument that the limitations imposed by a State must operate in the same way on its own citizens and on those of other States. The State's own policy may determine the jurisdiction of its

courts and the character of the controversies which shall be heard therein. *Chambers* v. *Balto. & Ohio R. R. Co.*, 142.

42. *Privileges and immunities; validity of Ohio law limiting right of action for wrongful death.*

The statute of Ohio of 1902 providing that no action can be maintained in the courts of that State for wrongful death occurring in another State except where the deceased was a citizen of Ohio, the restriction operating equally upon representatives of the deceased whether they are citizens of Ohio or of other States, does not violate the privilege and immunity provision of the Federal Constitution. *Ib.*

43. *Property rights; taking private property without compensation; compensation to corporation for time, trouble and expense in producing books.*

If the person producing the books and papers is entitled, under the general law of the State, to compensation as a witness, the failure of the statute requiring the production of the books and papers of corporations to provide compensation to the corporation itself for the time, trouble and expense of such production does not amount to taking private property without compensation. *Consolidated Rendering Co.* v. *Vermont*, 541.

See Supra, 19.

44. *Searches and seizures; what constitutes unreasonable.*

In this case, the notice, given under a state statute, to produce books and papers did not amount to an unreasonable search or seizure. *Adams* v. *New York*, 192 U. S. 585. *Quære* and not decided, whether the Fourteenth Amendment has made the provisions of the Fourth and Fifth Amendments immunities and privileges of citizens of the United States of which they cannot be deprived by state action. *Ib.*

45. *Searches and seizures—Use in evidence of articles seized—Infringement of rights under Fourth and Fifth Amendments.*

Adams v. *New York*, 192 U. S. 585, and *Hale* v. *Henkel*, 201 U. S. 43, followed to effect that defendant's rights under the Fourth and Fifth Amendments were not violated by the seizure of infringing copies of copyrighted articles or by the use thereof as evidence. *American Tobacco Co.* v. *Werckmeister*, 284.

See Supra, 19.

46. *Self-incrimination; right of corporation to refuse to produce books on ground of.*

A corporation required to produce books and papers cannot refuse to produce any of them on the ground that they might incriminate it. It is for the court, after an inspection, to determine the sufficiency of the objection and what portion, if any, of the books and papers produced should be excluded. *Consolidated Rendering Co.* v. *Vermont*, 541.

See Supra, 19.

47. *States; power to confer judicial functions on non-judicial bodies.*
Nothing in the Federal Constitution prohibits a State from conferring judicial functions upon non-judicial bodies. *Ib.*

48. *Who may attack constitutionality of state statute.*
Although a state statute may be unconstitutional as against a class to which the party complaining does not belong, that fact does not authorize the reversal of a judgment not enforcing the statute so as to deprive that party of any right protected by the Federal Constitution. *Lee* v. *State of New Jersey*, 67.

49. *Who may complain of unconstitutionality of statute—Incorporation in charter by reference.*
Requirements contained in another statute or document may be incorporated in a charter by generic or specific reference and, if clearly identified, the charter has the same effect as if it itself contained the restrictive words, and the question of the constitutionality of the statute referred to is immaterial. *Interstate Ry. Co.* v. *Massachusetts*, 79.

50. *Who may complain of unconstitutionality of statute; right of railway to complain of statute to which, by its charter, it was made subject.*
A street railway corporation taking a legislative charter subject to all duties and restrictions set forth in all general laws relating to corporations of that class cannot complain of the unconstitutionality of a prior enacted statute compelling them to transport children attending public schools at half price. *Ib.*

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTEMPT OF COURT.

Refusal to produce books; when notice to produce too broad.
An objection that a notice to produce books and papers is too broad cannot be urged against the validity of the order adjudging the party refusing to comply guilty of contempt. *Hale* v. *Henkel*, 201 U. S. 43. Nor is a notice to produce too broad if, as in this case, it is limited to books and papers relating to dealings with certain specified parties between certain specified dates. *Consolidated Rendering Co.* v. *Vermont*, 541.

See CONSTITUTIONAL LAW, 19.

CONTRACTS.

1. *Liability of United States on contract for supplies furnished Philippine Islands.*
Whether the Philippine Islands are a distinct governmental entity for whose contracts the United States is bound, not decided; but *held* in this case that the purchase having been made by the Secretary of War through the Division of Insular Affairs, the contract was on behalf of the United States, notwithstanding the statement that the price was to be paid from Philippine funds. *United States* v. *Andrews*, 229.

2. *Delivery by consignor; what constitutes.*

Delivery of goods by a consignor to a common carrier for account of a consignee amounts to a delivery and where a purchaser directs delivery of the goods for his account to a designated carrier the latter becomes his agent. Delivery by the consignor, and acceptance by the consignee or his agent, of bills of lading issued by a common carrier for goods, constitutes a delivery. *Ib.*

3. *Delivery by consignor; what sufficient to rebut presumption of.*

While the presumption of delivery of goods to the consignee by delivery to a common carrier designated by him may be overcome by express contract that the goods are to remain at consignor's risk until arrival at ultimate destination, the mere statement in a government proposal that goods are to be "F. O. B. port of destination," without designating the carrier, is not sufficient to rebut that presumption where it appears that subsequently the government directed the goods to be delivered "F. O. B. port of shipment" to a designated common carrier. *Ib.*

4. *Contracts with United States; non-compliance with* § 3744, *Rev. Stat. immaterial after performance.*

The invalidity of a contract with the United States because not reduced to writing and signed by the parties with their names at the end thereof as required by § 3744, Rev. Stat., is immaterial after the contract has been performed. (*St. Louis Hay Co.* v. *United States*, 191 U. S. 159.) *Ib.*

See CONSTITUTIONAL LAW, 5–11; FEDERAL QUESTION, 1; INDIANS; PRACTICE, 6; RAILROADS, 1, 2.

CONTRIBUTORY INFRINGEMENT OF PATENT.

See PATENTS, 1.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

COPYRIGHT.

1. *Construction of copyright act; objects and purpose of constitutional provision controlling.*

In the United States, property in copyright is the creation of Federal statute passed in the exercise of the power vested in Congress by Article I, § 8, of the Federal Constitution, to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, and the statute should be given fair and reasonable construction to effect such purpose. *American Tobacco Co.* v. *Werckmeister*, 284.

2. *Purpose of copyright act—Rule of construction.*

The purpose of the copyright statute is not so much to protect the physical thing created as to protect the right of publication and reproduction,

and the statute should be construed in view of the character of the property intended to be protected. *Ib.*

3. *Notice of copyright in the case of paintings, maps, drawings, etc.*

In the case of a painting, map, drawing, etc., the copyright notice required by § 4962, Rev. Stat., need not be inscribed upon the original article itself; the statute is complied with, if the notice is inscribed upon the published copies thereof which it is desired to protect. *Ib.*

4. *Publication; what amounts to.*

The property of an author or painter in his intellectual creation is absolute until he voluntarily parts therewith. While the public exhibition of a painting or statue where all can see and copy it might amount to a publication, where the exhibition is made subject to reservation of copyright and to restrictions rigidly enforced against copying, it does not amount to a publication. *Ib.*

5. *Right of assigns of original owner to take out copyright independently of the ownership of the article itself.*

The Federal copyright statute recognizes the separate ownership of the right of copying from that which inheres in the physical control of the thing itself and gives to the assigns of the original owner of the right to copyright the right to take out copyright independently of the ownership of the article itself. *Ib.*

6. *Construction of* § 4965, *Rev. Stat., as amended March* 2, 1895—*Action contemplated by.*

Section 4965, Rev. Stat., as amended by the act of March 2, 1895, 28 Stat. 965, is penal in nature and cannot be extended by construction; it contemplates a single action for the recovery of plates and copies infringing a copyright, and for the money penalty for the copies found. Such an action is wholly statutory and all the remedies given by the statutes must be exhausted therein, and after the owner of the copyright has recovered judgment for possession of the plates and copies he cannot maintain a separate action to recover the money penalty. *Werckmeister* v. *American Tobacco Co.*, 375.

7. *Same—United States not a necessary party to action under.*

There is no requirement in § 4965, Rev. Stat., that the United States shall be a party to the action provided for the recovery of plates and copies found and for penalties; the evident purpose of that section is that the proprietor of the copyright shall account to the United States for one-half the money penalty recovered. *Ib.*

See CONSTITUTIONAL LAW, 45;
PRACTICE, 11.

CORPORATIONS.

Legislative power to alter, amend and repeal charters.

The legislative power to alter, amend and repeal charters is equally effectual

whether it be reserved in the original act of incorporation, the articles of association under a general law, or in the constitution of the State in force when the incorporation under a general law is made. *Polk* v. *Mutual Reserve Fund Asso.*, 310.

See CONSTITUTIONAL LAW, 9, 18, 19, 29, 43, 46, 49, 50; JURISDICTION, B, 1; PATENTS, 2; REMOVAL OF CAUSES, 1.

COURTS.

1. *Federal and State; questions exclusively for state courts.*

The policy, wisdom, justice and fairness of a state statute, and its conformity to the state constitution are wholly for the legislature and the courts of the State to determine, and with those matters this court has nothing to do. *Hunter* v. *Pittsburgh*, 161.

2. *Power of Supreme Court of Philippines to increase sentence.*

Trono v. *United States*, 199 U. S. 521, followed as to the power of the Supreme Court of the Philippine Islands to increase the sentence of one convicted in the court of first instance and appealing to the Supreme Court. *Flemister* v. *United States*, 372.

See CONSTITUTIONAL LAW, 20, 21, 24, 37, 38, 41; CONTEMPT OF COURT; JURISDICTION; JUDICIAL NOTICE; STATES, 6.

CRIMINAL LAW.

1. *Advice of counsel as justification for crime.*

While one honestly following advice of counsel, which he believes to be correct, cannot be convicted of crime which involves willful and unlawful intent even if such advice were an inaccurate construction of the law, no man can willfully and knowingly violate the law and excuse himself from the consequences thereof by pleading that he followed advice of counsel. *Williamson* v. *United States*, 425.

2. *Conspiracy under* § 5440, *Rev. Stat., defined.*

Under § 5440, Rev. Stat., the conspiracy to commit a crime against the United States is itself the offense without reference to whether the crime which the conspirators have conspired to commit is consummated, or agreed upon by the conspirators in all its details. And an indictment charging the accused with a conspiracy to commit the crime of subornation of perjury in proceedings for the purchase of public lands was held in this case to be sufficient, although the precise persons to be suborned, and the time and place of such suborning were not particularized. *Ib.*

3. *Conspiracy under* § 5440, *Rev. Stat.—Admissibility of evidence in prosecution for.*

On the trial of one charged with conspiracy to commit a crime against the United States in connection with the purchase of public lands, testimony showing the character of the lands and an attempt by the ac-

cused to acquire state lands is competent as tending to establish guilty intent, purpose, design or knowledge, and is admissible if the trial judge so limits its application as to prevent it from improperly prejudicing the accused by showing the commission of other crimes. (*Holmes* v. *Goldsmith*, 147 U. S. 164.) *Ib.*

4. *Conspiracy under* § 5440, *Rev. Stat.; construction of indictment for.*
In a criminal case doubt must be resolved in favor of the accused and in this case, *held*, that an indictment for conspiracy to suborn perjury related to statements under § 2 of the Timber and Stone Act and not in respect to making of final proofs. *Ib.*

5. *Sufficiency of complaint to afford due process of law under Philippine bill of rights.*
A complaint, sufficiently clear to the mind of a person of rudimentary intelligence as to what it charges the defendant with, informs the accused of the nature and cause of the accusation against him, and a conviction thereunder is not in that respect without due process of law under the Philippine bill of rights. *Paraiso* v. *United States*, 368.

See CONSTITUTIONAL LAW, 12–16, 39, 40; COURTS, 2; EXTRADITION; JURISDICTION, A 15; PRACTICE, 9.

CUSTOMS DUTIES.

Drawbacks; right of importer of corks to drawbacks on corks exported in bottles.
To entitle a manufacturer to drawbacks under § 25 of the Tariff Act of October 1, 1890, 26 Stat. 567, 617, on imported raw material used in the manufacture or production of articles in the United States, there must be some transformation, so that a new and different article emerges having a distinctive name, character and use. The mere subjection of imported articles, such as corks, to a cleansing and coating process to adapt them to a special use does not amount to manufacturing them within the meaning of the statute, and the exporter is not entitled to drawback thereon. *Jos. Schlitz Brewing Co.* v. *United States*, 181 U. S. 584. *Semble:* an exportation of bottled beer is an exportation of the beer and not of the corks in the bottles, and therefore such corks are not exported articles within the meaning of § 25 of the Tariff Act of October 1, 1890. *Anheuser-Busch Assn.* v. *United States*, 556.

DAMAGES.

See ADMIRALTY, 2.

DELIVERY.

See CONTRACTS, 2, 3.

DESCENT AND DISTRIBUTION.

See STATES, 6.

DESERTERS.
See ALIENS, 1.

DISCOVERY.
See MINES AND MINING, 3, 5.

DISTANCES.
See JUDICIAL NOTICE.

DISTRICT OF COLUMBIA.
See CONGRESS, POWERS OF.

DOMICIL.
See CONSTITUTIONAL LAW, 37.

DOUBLE JEOPARDY.
See CONSTITUTIONAL LAW, 12–16.

DRAWBACKS.
See CUSTOMS DUTIES.

DUE PROCESS OF LAW.
See CONSTITUTIONAL LAW, 7–10, 17–24, 32, 33; CRIMINAL LAW, 5; RAILROADS, 4.

EMBEZZLEMENT.
See CONSTITUTIONAL LAW, 14.

EMPLOYERS' LIABILITY ACT.
See CONSTITUTIONAL LAW, 3, 4.

EQUAL PROTECTION OF LAWS.
See CONSTITUTIONAL LAW, 19–21, 26, 28–34, 50.

EQUITY.
1. *As to restraint of collection of tax illegally assessed.*
Where a corporation has paid the full amount of its tax as based upon the same rate as that levied upon other property of the same class, equity will restrain the collection of the excess illegally assessed, there being no adequate remedy at law, when it appears that it would require a multiplicity of suits against the various taxing authorities to recover the tax and that a portion of it would go to the State against which no action would lie, and where the amount is so great that its payment would cause insolvency, and a levy upon the property—in this case a street car system—would embarrass and injure the public. *Raymond* v. *Chicago Traction Co.*, 20.

2. *Jurisdiction; adequacy of remedy at law.*

No adequate remedy at law exists to redress the wrong done to a railroad company by wrongfully dealing in vast numbers of its non-transferable reduced rate excursion tickets which will deprive the company of its right to resort to equity to restrain such wrong dealings. *Bitterman* v. *Louisville & Nashville R. R.*, 205.

3. *When action against a number of defendants not open to objection of multifariousness and misjoinder of parties.*

An action against a number of defendants is not open to the objections of multifariousness and of misjoinder of parties if the defendants' acts are of a like character, the operation and effect whereof upon the rights of complainants are identical and in which the same relief is sought against all defendants, and the defenses to be interposed are necessarily common to all defendants and involve the same legal questions. (*Hale* v. *Allinson*, 188 U. S. 56, 77.) *Ib.*

See MINES AND MINING, 1;
RAILROADS, 3, 4.

ESTATES OF DECEDENTS.

See CONSTITUTIONAL LAW, 38.

EVIDENCE.

See CONSTITUTIONAL LAW, 19, 37, 45, 46;
CONTRACTS, 3;
CRIMINAL LAW, 3;
MINES AND MINING, 4, 5.

EXCLUSION OF ALIENS.

See ALIENS, 1.

EXECUTORS AND ADMINISTRATORS.

See ATTORNEYS, 2;
REMOVAL OF CAUSES, 2.

EXPORTS.

See CUSTOMS DUTIES.

EXTRADITION.

1. *Habeas corpus proper proceeding to determine whether one is a fugitive from justice.*

Habeas corpus is an appropriate proceeding for determining whether one held under an extradition warrant is a fugitive from justice; and he should be discharged if he shows by competent evidence, overcoming the presumption of a properly issued warrant, that he is not a fugitive from the demanding State. *McNichols* v. *Pease*, 100.

2. *Interpretation of provisions of Constitution bearing upon.*

A faithful, vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and

welfare of the States; and provisions of the Constitution should not be so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State. (*Appleyard* v. *Massachusetts*, 203 U. S. 222.) *Ib.*

3. *Sufficiency of requisition in respect of the time of commission of crime.*

Where the requisition is based on an indictment for a crime committed on a certain day, without specifying any hour, the accused does not overcome the *prima facie* case by proof that he was not at the place of the crime for a part of that day, the record not disclosing the hour of the crime, and it appearing that the accused might have been at the place named during a part of that day. *Ib.*

4. *Discharge; when person held for extradition entitled to.*

A person, held in custody as a fugitive from justice under an extradition warrant in proper form which shows upon its face all that is required by law to be shown as a prerequisite to its being issued, should not be discharged unless it clearly and satisfactorily appears that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States. *Ib.*

FEDERAL QUESTION.

1. *Construction of pleading, etc., held local and not Federal questions.*

The construction of a pleading, the meaning to be given to its various allegations, the determination of the validity of a contract in reference to real estate within the State, and whether the form of remedy sought is proper, are, as a general rule, local questions. *Vandalia R. R. Co.* v. *South Bend*, 359.

2. *Non-Federal question.*

Whether a notice to produce books and papers is broader than the state statute provides for is not a Federal question. *Consolidated Rendering Co.* v. *Vermont*, 541.

See APPEAL AND ERROR, 4; COURTS, 1; JURISDICTION; PRACTICE, 10; RAILROADS, 5.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 12, 13, 15, 35, 44, 45; JURISDICTION, A 2.

FOURTH AMENDMENT.

See CONSTITUTIONAL LAW, 44, 45.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 20, 21, 23, 26, 28, 30, 31, 34, 44.

FRANCHISES.

See LOCAL LAW (KAN.).

FRAUD.
See PATENTS, 3.

FUGITIVES FROM JUSTICE.
See EXTRADITION.

FULL FAITH AND CREDIT.
See CONSTITUTIONAL LAW, 36–38.

GENERAL ORDERS IN BANKRUPTCY.
See BANKRUPTCY, 2.

GOVERNMENTAL POWERS.
See RAILROADS, 4.

GRANTS.

1. *Construction of grants to municipal corporations.*

Grants by the State to municipal corporations, like grants to private corporations, are to be strictly construed, and the power to grant an exclusive privilege must be expressly given, or, if inferred from other powers, must be indispensable, and not merely convenient, to them. (*Citizens' Street Railway* v. *Detroit*, 171 U. S. 48.) *Water, Light & Gas Co.* v. *Hutchinson*, 385.

2. *Of privilege; not necessarily exclusive.*

A grant conferring a privilege is not necessarily a grant making that privilege exclusive. *Ib.*

See CONSTITUTIONAL LAW, 11;
LOCAL LAW (KAN.).

GROS VENTRE INDIANS.
See INDIANS, 2.

HABEAS CORPUS.
See APPEAL AND ERROR, 3;
EXTRADITION, 1.

IMMIGRATION.
See ALIENS.

IMPAIRMENT OF CONTRACT OBLIGATION.
See CONSTITUTIONAL LAW, 5–11.

IMPORTS AND EXPORTS.
See CUSTOMS DUTIES.

INDIANS.

1. *Indians favored in resolving ambiguities in agreements and treaties.*

In a conflict of implications, the instruments must be construed according to the implication having the greater force; and, in the interpretation of agreements and treaties with Indians, ambiguities should be resolved from the standpoint of the Indians. *Winters* v. *United States*, 564.

2. *Gros Ventre Indians—Construction of agreement of May* 1, 1888—*Reservation of water rights.*

In view of all the circumstances of the transaction this court holds that there was an implied reservation in the agreement of May 1, 1888, 25 Stat. 124, with the Gros Ventre and other Indians establishing the Fort Belknap Reservation, of a sufficient amount of water from the Milk River for irrigation purposes, which was not affected by the subsequent act of February 22, 1889, 25 Stat. 676, admitting Montana to the Union, and that the water of that river cannot be diverted, so as to prejudice this right of the Indians, by settlers on the public lands or those claiming riparian rights on that river. *Ib.*

INDICTMENT.

See CONSTITUTIONAL LAW, 12, 13;
CRIMINAL LAW, 2, 4, 5.

INFRINGEMENT OF COPYRIGHT.

See COPYRIGHT.

INFRINGEMENT OF PATENT.

See PATENTS, 1.

INHERITANCE TAXES.

See CONSTITUTIONAL LAW, 38.

INJUNCTION.

See EQUITY, 1;
MINES AND MINING, 1;
RAILROADS, 3, 4.

INSURANCE COMPANIES.

See CONSTITUTIONAL LAW, 9, 10.

INTERSTATE COMMERCE.

See COMMERCE;
CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 2, 34;
PRACTICE, 8;
RAILROADS, 1, 5.

INTERSTATE RENDITION.

See EXTRADITION.

INTERSTATE WATERS.

See CONSTITUTIONAL LAW, 25.

JEOPARDY.

See CONSTITUTIONAL LAW, 13–16.

JUDGMENTS AND DECREES.

See CONSTITUTIONAL LAW, 36–38;
JURISDICTION, A 12;
LOCAL LAW (KY.);
MUNICIPAL CORPORATIONS;
RES JUDICATA;
STARE DECISIS, 2.

JUDICIAL NOTICE.

Distance between cities; time of transit.

This court takes judicial knowledge of facts known to every one as to the distance between two neighboring cities and the time necessary to travel from one to the other. *McNichols* v. *Pease*, 100.

JUDICIAL POWER.

See JURISDICTION;
RAILROADS, 4.

JURISDICTION.

A. OF THIS COURT.

1. *Federal question; existence of for purposes of review by this court.*

Although the state court may refer to and uphold the statute, the constitutionality of which is attacked, if it does so after stating the rule at common law and that the statute is merely declaratory thereof the judgment is based on the common law rule and no Federal question exists that this court can review. *Arkansas Southern R. R. Co.* v. *German Bank*, 270.

2. *What constitutes Federal question to give jurisdiction.*

Where, at the request of the accused, the question of the voluntary nature of a written confession has been submitted to the jury no constitutional right under the Fifth Amendment has been asserted and denied and errors assigned on that subject do not present any Federal question or furnish any basis for the jurisdiction of this court. *Kent* v. *Porto Rico*, 113.

3. *Federal question; determination of existence of—Avoidance of Federal issue by state court.*

While this court is not concluded by the judgment of the state court and must determine for itself whether a Federal question is really involved, and may take jurisdiction if the state court has in an unreasonable manner avoided the Federal issue, the writ of error will be dismissed where no intent to so avoid the Federal question is apparent. *Vandalia R. R. Co.* v. *South Bend*, 359.

4. *Federal question not properly raised.*

A motion for rehearing in the lower court on grounds set out in the assignment of error, but which was denied, cannot be relied on as properly raising the Federal question necessary to give this court jurisdiction. (*McMillan* v. *Ferrum Mining Co.*, 197 U. S. 343.) *Paraiso* v. *United States*, 368.

5. *Case from state court not reviewable, where judgment based on other than Federal grounds.*

In a case coming from a state court this court can consider only Federal questions decided adversely to the plaintiff in error and upon which a decision was necessary to the decision of the case, and if the judgment complained of is supported also upon other and independent grounds it must be affirmed or the writ of error dismissed. *Leathe* v. *Thomas*, 93.

6. *As to review of judgment of state court based on sufficient non-Federal ground.*

If the judgment of the state court is based on a decision placed upon a sufficient non-Federal ground this court has no jurisdiction to review it. *Vandalia R. R. Co.* v. *South Bend*, 359.

7. *A judgment of a state court supported upon a non-Federal ground not reviewable.*

Even when an erroneous decision upon a Federal question is made a ground of the judgment of a state court, if the judgment is also supported upon another ground adequate in itself and containing no Federal question the writ of error must be dismissed. *Arkansas Southern R. R. Co.* v. *German Bank*, 270.

8. *Where decision of Federal question not necessary to judgment, writ of error dismissed.*

Unless the decision upon a Federal question was necessary to the judgment of the state court, or in fact made the ground of it, the writ of error must be dismissed. *Ib.*

9. *Frivolous objections—Claim by member of Congress of immunity from arrest not frivolous, but sufficient to give jurisdiction.*

An objection taken by a member of Congress that he cannot be sentenced during his term of office on the ground that it would interfere with his constitutional privilege from arrest is not frivolous even though taken during recess of Congress, and such a claim involves a constitutional question sufficient to give this court jurisdiction to review the judgment by writ of error. (*Burton* v. *United States*, 196 U. S. 283.) *Williamson* v. *United States*, 425.

10. *As to review of judgment of Supreme Court of Territory when Federal right asserted is frivolous.*

Where the jurisdiction of this court to review a judgment of the Supreme Court of a Territory depends on the presence of a Federal question the mere assertion of a Federal right indubitably frivolous and without

color of merit is not sufficient to confer jurisdiction, nor in such a case has this court jurisdiction to pass upon other questions non-Federal in nature, and the judgment will not be affirmed but the writ of error dismissed. *Kent* v. *Porto Rico*, 113.

11. *When Federal question so frivolous as to defeat jurisdiction.*

While the contention that a local law of Porto Rico passed in 1904, changing the boundaries of the judicial districts, was void because in conflict with § 33 of the act of April 12, 1900, so that no district courts have existed since that time, presents a formal Federal question, it is frivolous and without color of merit and therefore insufficient to confer jurisdiction on this court to review a judgment of the Supreme Court of Porto Rico under § 35 of that act. *Ib.*

12. *Finality of decree of Court of Appeals, D. C., from which appeal will lie.*

A decree of the Court of Appeals of the District of Columbia reversing the Supreme Court of the District as to some of the findings of fact and conclusions of law and directing a new decree to be entered in accordance with the opinion is not a final decree and an appeal will not lie therefrom to this court. *Earle* v. *Myers*, 244.

13. *Review of whole case where writ of error based on constitutional grounds.*

Where the writ of error is prosecuted directly from this court on constitutional grounds, but there are errors assigned as to other subjects, this court has jurisdiction to review the whole case if any constitutional question is adequate to the exercise of jurisdiction. (*Burton* v. *United States*, 196 U. S. 283.) *Williamson* v. *United States*, 425.

14. *To review on direct writ of error dependent upon existence of constitutional question at time writ sued out.*

The jurisdiction of this court to review on direct writ of error depends on the existence of a constitutional question at the time when the writ of error is sued out, and even if that question subsequently and before the case is reached becomes an abstract one, jurisdiction remains and this court must review the whole case. *Ib.*

15. *Review in criminal cases.*

Amado v. *United States*, 195 U. S. 172, followed as to when this court cannot review the final judgment of the Supreme Court of Porto Rico in a criminal case. *Kent* v. *Porto Rico*, 113.

16. *Under* § 709, *Rev. Stat.; review of judgment of state court.*

This court has jurisdiction to review the judgment on writ of error under § 709, Rev. Stat., if the opinion of the highest court of the State clearly shows that the Federal question was assumed to be in issue, was decided adversely, and the decision was essential to the judgment rendered. *Chambers* v. *Balto. & Ohio R. R. Co.*, 142.

17. *Review of judgment of state court, under* § 709, *Rev. Stat.—Timeliness of raising Federal question on motion for rehearing.*

If the constitutional question is distinctly presented to the state court on

motion for rehearing, and is considered and decided adversely, it is properly presented in time and this court has jurisdiction to review the judgment under § 709, Rev. Stat. *Sullivan* v. *Texas*, 416.

See APPEAL AND ERROR; BANKRUPTCY, 4;
COURTS, 1; FEDERAL QUESTION.

B. OF CIRCUIT COURT OF APPEALS.

1. *Finality of order of Circuit Court; order for production of books and papers of corporation, interlocutory.*

An order of the Circuit Court under § 724, Rev. Stat., adjudging and decreeing that certain officers of the defendant corporation produce books and papers, held to be an interlocutory order in the suit and not a final order as against the individuals, and, therefore, not reviewable at their instance, on writ of error, by the Circuit Court of Appeals. *Webster Coal & Coke Co.* v. *Cassatt*, 181.

2. *Power to compel District Court to alter its decree to conform to decision of Supreme Court.*

This court customarily issues a single mandate, and if in a case originating in the District Court it is addressed to the Circuit Court of Appeals the directions are simply to be communicated to the District Court to be followed by it on the authority of this court and not of the Circuit Court of Appeals, and that court has no jurisdiction to compel the District Court to alter its decree. *Ex parte First Nat. Bank of Chicago*, 61.

C. GENERALLY.

1. *Amount in controversy how determined.*

Whether the jurisdictional amount is involved is to be determined not by the mere pecuniary damage resulting from the acts complained of, but also by the value of the business to be protected and the rights of property which complainants seek to have recognized and enforced. (*Hunt* v. *New York Cotton Exchange*, 205 U. S. 322.) *Bitterman* v. *Louisville & Nashville R. R.*, 205.

2. *Amount in controversy; when proof of, not necessary.*

Where defendants do not formally plead to the jurisdiction it is not incumbent upon complainant to offer proof in support of the averment that the amount involved exceeds the jurisdictional amount as to each defendant. *Ib.*

See CONSTITUTIONAL LAW, 20, 21.

D. OF DISTRICT COURT.

See BANKRUPTCY, 1.

E. EQUITABLE.

See EQUITY, 2;
RAILROADS, 3.

LACHES.

See ATTORNEYS, 1.

LAND GRANTS.

See CONSTITUTIONAL LAW, 11;
PUBLIC LANDS.

LAND OFFICE.

See PUBLIC LANDS, 4.

LEGISLATIVE POWER.

See CONSTITUTIONAL LAW; CONGRESS, POWERS OF;
CORPORATIONS; RAILROADS, 4;
STATES, 4.

LICENSES.

See PATENTS, 1.

LIENS.

See STATES, 4.

LOBBYING SERVICES.

See PRACTICE, 3.

LOCAL LAW.

Arkansas. Sale of patented articles (see Constitutional Law, 28). *Ozan Lumber Co.* v. *Union County Bank*, 251.

Delaware. Right of action for wrongful death of citizen on the high seas (see Admiralty, 3). *The Hamilton*, 398.

Georgia. Political Code, §§ 804, 879 (see Constitutional Law, 23). *Central of Georgia Ry.* v. *Wright*, 127.

Kansas. Power of cities of second class to grant exclusive franchises. The Kansas statutes for the government of cities, as construed by the highest court of that State, do not confer on cities of the second class the power to grant exclusive franchises and, in the absence of such power expressly conferred, the exclusive features of an ordinance of such a city granting an exclusive franchise are invalid. (*Vicksburg* v. *Waterworks Co.*, 206 U. S. 496, distinguished.) *Water, Light & Gas Co.* v. *Hutchinson*, 385.

Kentucky. Relation of state instrumentalities. In Kentucky, neither a sheriff, nor assessor, nor the board of valuation has control of the fiscal affairs of the county, and a judgment against them does not bind the county. *Bank of Kentucky* v. *Kentucky*, 258.

Effect of judgment against some of the instrumentalities of the State as *res judicata* against others (see Res Judicata). *Ib.*

New Jersey. Oyster Law (see Constitutional Law, 25). *Lee* v. *New Jersey*, 67.

New York. Laws of 1901, ch. 722, relative to life insurance companies (see Constitutional Law, 10). *Polk* v. *Mutual Reserve Fund Asso.*, 310.

North Dakota. Adulteration of mixed paints (see Constitutional Law, 33). *Heath & Milligan Co.* v. *Worst*, 338.

Ohio. Limiting right of action for death by wrongful act (see Constitutional Law, 42). *Chambers* v. *Balto. & Ohio R. R. Co.*, 142.

Pennsylvania. Act of February 7, 1906, providing for union of Pittsburgh and Allegheny (see Constitutional Law, 8). *Hunter* v. *Pittsburgh*, 161.

Porto Rico. See Jurisdiction, A 11.

South Carolina. Statute of 1903, relative to adjustment of claims by carriers (see Constitutional Law, 31). *Seaboard Air Line* v. *Seegers*, 73.

Texas. Acts of February 10, 1852, and September 3, 1901, relative to Mexican grants (see Constitutional Law, 11). *Sullivan* v. *Texas*, 416.

Utah. Rev. Stat. § 3511, relative to quieting titles to mining claims (see Mines and Mining, 1). *Lawson* v. *United States Mining Co.*, 1.

Vermont. Production of books and papers by corporations (see Constitutional Law, 19). *Consolidated Rendering Co.* v. *Vermont*, 541.

LOCAL QUESTIONS.

See FEDERAL QUESTION.

MANDAMUS.

See APPEAL AND ERROR, 6;
JURISDICTION, A 2;
PRACTICE, 4, 5.

MANUFACTURED ARTICLES.

See CUSTOMS DUTIES.

MARITIME LAW.

See ADMIRALTY;
STATES, 3.

MASTER AND SERVANT.

See CONSTITUTIONAL LAW, 2.

MEXICAN GRANTS.

See CONSTITUTIONAL LAW, 11.

MINES AND MINING.

1. *Right of action under* § 3511, *Rev. Stat., Utah, to quiet title and for injunction.*

One in possession of the surface of a mining claim under a patent from

the United States is presumably in possession of all beneath the surface, and, under § 3511, Rev. Stat., Utah, may maintain an action in equity to quiet title to a vein beneath the surface and to enjoin the removal of ore therefrom. (*Holland* v. *Challen*, 110 U. S. 15, followed; *Boston &c. Mining Co.* v. *Montana Ore Co.*, 188 U. S. 632, distinguished.) *Lawson* v. *United States Mining Co.*, 1.

2. *Prerequisite to recognition of extralateral title of vein.*
The ownership of the apex of a vein must be established before any extralateral title of the vein can be recognized. *Ib.*

3. *Discovery—Extralateral right of discoverer.*
Discovery is the all-important fact upon which title to mines depends, and where there is a single broad vein whose apex or outcroppings extend into two adjoining mining claims the discoverer has an extralateral right to the entire vein on its dip. *Ib.*

4. *Acceptance by Government of location proceedings as evidence of regularity.*
Acceptance by the Government of location proceedings had before the statute of 1866, and issue of a patent thereon, is evidence that such proceedings were in accordance with the rules and customs of the local mining district. *Ib.*

5. *Discovery; determination of priority of.*
Priority of right to a single broad vein in the discoverer is not determined by the dates of the entries or patents of the respective claims, and priority of discovery may be shown by testimony other than the entries and patents. *Ib.*

6. *Scope of determination of rights.*
In the absence from the record of an adverse suit there is no presumption that anything was considered or determined except the question of the right to the surface. *Ib.*

MISJOINDER OF PARTIES.

See EQUITY, 3.

MULTIFARIOUSNESS.

See EQUITY, 3.

MUNICIPAL CORPORATIONS.

Effect of decree against one to bind another.
A municipal corporation is not necessarily bound by the decree in a suit against another municipality because officers of the State were parties thereto. *Bank of Kentucky* v. *Kentucky*, 258.

See CONSTITUTIONAL LAW, 6–8;
GRANTS, 1;
LOCAL LAW (KAN.).

NAVIGABLE WATERS.

See CONSTITUTIONAL LAW, 25.

NEGLIGENCE.

1. *Duty of carrier to intending passenger.*

An intending passenger coming to a place where passengers habitually board the cars of a trolley company, and which, in itself, is safe unless made otherwise by the manner in which the cars are operated, is not a trespasser nor a mere traveler upon the highway, but one to whom the company owes an affirmative duty and it is for the jury to determine whether the car injuring such person was operated with the vigilance required by the circumstances. *Chunn* v. *City & Suburban Ry.*, 302.

2. *Contributory negligence; question for jury—Right of passenger of trolley car to assume care on part of carrier.*

Where a trolley car platform is so narrow that its width cannot fairly be considered without taking into consideration the dangers on both sides of it, one taking a car on one side of it has a right to assume that he will not be put in peril by a car running rapidly in the opposite direction, and he cannot, as a matter of law, be held guilty of contributory negligence in taking the car at that place. That issue is for the jury. *Ib.*

3. *Contributory negligence excused.*

Even if the plaintiff carelessly places himself in a position of danger, if the defendant discovers the danger in time to avoid the injury by using reasonable care, the failure so to do, and not the plaintiff's carelessness, may be the sole cause of the resulting injury. *Ib.*

See ADMIRALTY, 2.

NEW JERSEY OYSTER LAW.

See CONSTITUTIONAL LAW, 25.

NOTICE.

See PATENTS, 1, 2;
COPYRIGHT, 3.

PAINTINGS.

See COPYRIGHT.

PARLIAMENTARY PRIVILEGE.

See CONSTITUTIONAL LAW, 39, 40;
JURISDICTION, A 9.

PATENTS.

1. *Infringement, contributory; notice to charge vendee of patented article with notice of license restriction.*

In this case this court follows the unaminous opinion of the Circuit Court of Appeals that defendant did not have sufficient notice of the license restriction to be charged with contributory infringement, even if that doctrine exists, for selling ink to the vendee of a patented printing machine, sold under a license restriction that it should be used only with ink made by the patentee. *Cortelyou* v. *Johnson & Co.*, 196.

2. *Same.*

Where none of the executive officers of a manufacturing corporation knew of the license restriction under which a patented machine was sold, notice to a salesman, who was not an officer or general agent of the corporation, was held insufficient to charge the corporation with notice as to future sales of the article manufactured by it to the licensee and used by the latter in violation of the license restriction. *Ib.*

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

Woods & Sons v. *Carl*, 203 U. S. 358, and *Allen* v. *Riley*, 203 U. S. 347, followed as to the power of a State, until Congress legislates, to make such reasonable regulations in regard to the transfer of patent rights as will protect its citizens from fraud. *Ozan Lumber Co.* v. *Union County Bank*, 251.

See CONSTITUTIONAL LAW, 28;
MINES AND MINING, 4;
PUBLIC LANDS, 2.

PARTIES.

See APPEAL AND ERROR, 1, 6;
EQUITY, 3.

PENALTIES AND FORFEITURES.

See COPYRIGHT, 7.

PERJURY.

See CRIMINAL LAW, 2.

PHILIPPINE ISLANDS.

See APPEAL AND ERROR, 4; CONTRACTS, 1;
CONSTITUTIONAL LAW, 16; COURTS, 2;
CRIMINAL LAW, 5.

PLEADING.

See EQUITY, 3;
FEDERAL QUESTION, 1;
REMOVAL OF CAUSES, 2.

PLEADING AND PROOF.

See JURISDICTION, C 2.

POLICE POWER.

See CONSTITUTIONAL LAW, 28;
STATES, 1.

PORTO RICO.

See JURISDICTION, A 15.

PRACTICE.

1. *Assignment of errors.*
This court is not called upon to consider errors argued but not assigned. (*O'Neil* v. *Vermont*, 144 U. S. 323.) *Paraiso* v. *United States*, 368.

2. *As to following findings of lower courts.*
It is the duty of this court to accept the findings of the Circuit Court of Appeals unless clearly and manifestly wrong. *Lawson* v. *United States Mining Co.*, 1.

3. *As to following findings of fact concurred in by lower courts.*
In an accounting for attorneys' fees for collection of claims against the Government this court followed the general rule of affirming a finding of fact made and confirmed by both the courts below unless the same is clearly erroneous and held that certain services were of the character generally designated as lobbying services and could not be allowed. *Earle* v. *Myers*, 244.

4. *As to issuance of mandate in case originating in District Court and reaching this court via Circuit Court of Appeals.*
This court customarily issues a single mandate, and if in case originating in the District Court it is addressed to the Circuit Court of Appeals the directions are simply to be communicated to the District Court to be followed by it on the authority of this court and not of the Circuit Court of Appeals. *Ex parte First Nat. Bank of Chicago*, 61.

5. *Procedure where Circuit Court of Appeals has issued mandamus to District Court in such case.*
Where the Circuit Court of Appeals has improperly issued mandamus to the district judge to modify a decree to conform to the decision of this court, this court will reverse the judgment and issue mandamus to the District Court to set aside the decree entered in pursuance thereof. *Ib.*

6. *Determination of existence of Federal question.*
This court determines for itself whether an act of the legislature of a State amounts to a contract within the impairment of obligation clause of the Federal Constitution. *Sullivan* v. *Texas*, 416.

7. *Limitation of scope of inquiry.*
This court, ordinarily, will not inquire whether the decision upon matter not subject to its revision was right or wrong. *Arkansas Southern R. R. Co.* v. *German Bank*, 270.

8. *When validity of state statute applying to both intrastate and interstate shipments not considered.*
Where a state statute applies to both intrastate and interstate shipments, but the shipment involved is wholly intrastate, this court will not consider the validity of the statute when applied to interstate shipments. *Seaboard Air Line* v. *Seegers*, 73.

9. *As to setting aside sentence in criminal case; sufficiency of bill of exceptions to justify.*

The rule that where it plainly appears in a criminal case that there is no evidence justifying conviction this court will so hold, despite a failure to request an instruction for acquittal, does not apply to a case where it is not certified, and this court is not otherwise satisfied, that the bill of exceptions contains the entire evidence, or where the bill of exceptions recites that the plaintiff offered evidence to go to the jury on every material allegation in the indictment. *Williamson* v. *United States*, 425.

10. *Disposition of case decided below solely on inapplicable constitutional grounds.*

Where the case was decided below solely upon constitutional grounds upon which the decision cannot rest, it must be remanded and if there are any other facts they can be presented upon another trial. *Ozan Lumber Co.* v. *Union County Bank*, 251.

11. *When objection to form of remedy made too late.*

In a suit brought in replevin under the New York Code to recover infringing copies of the plaintiff's copyrighted article it is too late to object to the form of remedy on the motion for new trial. *American Tobacco Co.* v. *Werckmeister*, 284.

12. *Whether certificate can be corrected after end of term.*

The certificate of a judge of the Circuit Court that the judgment is based solely on jurisdictional grounds is an act of record and *quære* whether it stands on any different ground from judgments and the like when the term has passed, and whether it can then be amended so as to show that it was signed inadvertently and by mistake and to certify that the question of jurisdiction was not passed on and that the decision was based on another ground. Such a mistake is not clerical. *Patch* v. *Wabash R. R. Co.*, 277.

13. *Where record discloses adequate grounds for judgment other than Federal.*

When the record discloses other and completely adequate grounds on which to support the judgment of a state court, this court does not commonly inquire whether the decision upon them was correct or reach a Federal question by determining that they ought not to have been held to warrant the result. *Leathe* v. *Thomas*, 93.

See APPEAL AND ERROR, 3; JURISDICTION, A 4, 10; C 2; MINES AND MINING, 6; STATUTES, A 1.

PREFERENCES.

See RAILROADS, 1.

PRESUMPTIONS.

See CONTRACTS, 3; MINES AND MINING, 6.

PRINCIPAL AND AGENT.

See CONTRACTS, 2;
PATENTS, 2.

PRIVILEGES AND IMMUNITIES.

See CONSTITUTIONAL LAW, 39–42, 44;
JURISDICTION, A 9.

PROBATE COURTS.

See CONSTITUTIONAL LAW, 38.

PRODUCTION OF BOOKS.

See CONSTITUTIONAL LAW, 17–19, 29, 43, 44, 46; FEDERAL QUESTION, 2; JURISDICTION, B 1.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 8, 19, 43.

PUBLICATION.

See COPYRIGHT, 4.

PUBLIC LANDS.

1. *Entry; effect to segregate land from public domain.*

Under the general rule of law that an entry segregates the tract entered from the public domain subject to be entered until that entry is disposed of, this court sustains the rule of the Land Department that no subsequent entry can be received after the Land Commissioner has held the entry for cancellation until the time allowed for appeal has expired or the rights of the original entryman have been finally determined. *Holt* v. *Murphy*, 407.

2. *Entry; waiver of; effect on rights of patentee in whose favor filed.*

Where the successful party in a land contest does not enforce his preference rights or take any action looking to an entry within the prescribed period, but files a waiver of his right of entry, in the absence of any findings sustaining charges of fraud as to the delivery of the waiver, this court will not, in an action commenced four years thereafter, set aside a patent issued to one who had entered the land and in whose favor the waiver was filed. *Ib.*

3. *Timber and Stone Act of* 1878 *construed—Sufficiency of sworn statement by applicant.*

Under the Timber and Stone Act of June 3, 1878, 20 Stat. 89, an applicant is not required, after he has made his preliminary sworn statement concerning the *bona fides* of his application and the absence of any contract or agreement in respect to the title, to additionally swear to such facts on final proof, and a regulation of the Land Commissioner exacting such

additional statement at the time of final hearing is invalid. *Williamson* v. *United States*, 425.

4. *Timber and Stone Act of 1878; powers of Land Commissioner under.*

While Congress has given the Land Commissioner power to prescribe regulations to give effect to the Timber and Stone Act, the rules prescribed must be for the enforcement of the statute and not destructive of the rights which Congress has conferred by the statute. *Ib.*

See CRIMINAL LAW, 2, 3;
INDIANS, 2.

QUIETING TITLE.

See MINES AND MINING, 1.

RAILROADS.

1. *Right and duty as to sale and use of non-transferable reduced rate excursion tickets.*

Railroad companies have the right to sell non-transferable reduced rate excursion tickets, *Mosher* v. *Railroad Co.*, 127 U. S. 390; and the non-transferability and forfeiture embodied in such tickets is not only binding upon the original purchaser and any one subsequently acquiring them but, under the provisions of § 22 of the act to regulate commerce, 24 Stat. 387, 25 Stat. 862, it is the duty of the railroad company to prevent the wrongful use of such tickets and the obtaining of a preference thereby by anyone other than the original purchaser. *Bitterman* v. *Louisville & Nashville R. R.*, 205.

2. *Right to maintain action against one dealing in non-transferable reduced rate tickets to injury of railroad.*

An actionable wrong is committed by one who maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other, *Angle* v. *Chicago & St. Paul Railway Co.*, 151 U. S. 1; and this principle applies to carrying on the business of purchasing and selling non-transferable reduced rate railroad tickets for profit to the injury of the railroad company issuing them, and this even though the ingredient of actual malice, in the sense of personal ill will, does not exist. *Ib.*

3. *Injunction will lie, at suit of railroad, to prevent speculators from dealing in non-transferable tickets.*

When, as in this case, the dealings of a class of speculators in non-transferable tickets have assumed great magnitude, involving large cost and risk to the railroad company in preventing the wrongful use of such tickets, and the parties so dealing in them have expressly declared their intention of continuing so to do, a court of equity has power to grant relief by injunction. *Ib.*

4. *Injunction against ticket-scalpers; extension to dealings in future issues of tickets; constitutionality of.*

Every injunction contemplates the enforcement, as against the party en-

joined, of a rule of conduct for the future as to the wrongs to which the injunction relates, and a court of equity may extend an injunction so as to restrain the defendants from dealing not only in non-transferable tickets already issued by complainant, but also in all tickets of a similar nature which shall be issued in the future; and the issuing of such an injunction does not amount to an exercise of legislative, as distinct from judicial, power and a denial of due process of law. *Ib.*

5. *State regulation of interstate trains; when order to stop a regulation of interstate commerce.*

Whether an order stopping interstate trains at specified stations is a direct regulation of interstate commerce depends on the local facilities at those stations, and while the sufficiency of such facilities is not in itself a Federal question, it may be considered by this court for the purpose of determining whether the order does or does not regulate interstate commerce, and if, as in this case, the local facilities are adequate, the order is void. *Atlantic Coast Line* v. *Wharton*, 328.

6. *State regulation of interstate trains; reasonableness of order to stop at given point.*

Inability of fast interstate trains to make schedule, loss of patronage and compensation for carrying the mails, and the inability of such trains to pay expenses if additional stops are required are all matters to be considered in determining whether adequate facilities have been furnished to the stations at which the company is ordered by state authorities to stop such trains. *Ib.*

See CONGRESS, POWERS OF; CONSTITUTIONAL LAW, 1, 3, 50; EQUITY, 2; NEGLIGENCE, 1.

RECORD ON APPEAL.

See APPEAL AND ERROR, 4.

RES JUDICATA.

Effect of judgment against some of the instrumentalities of a State as res judicata against another instrumentality.

A judgment against a county of Kentucky and the members of the state board of valuation restraining the collection of taxes of that county as impairing the obligation of a contract created by a law of the State and within the protection of the Federal Constitution is not, because such state officers were parties, *res judicata* as to the validity of taxes imposed by another county, nor is such other county privy to the judgment. *Bank of Kentucky* v. *Kentucky*, 258.

See MUNICIPAL CORPORATIONS; STARE DECISIS, 2.

RIPARIAN RIGHTS.

See INDIANS, 2.

REMOVAL OF CAUSES.

1. *Citizenship of corporation incorporated in several States—Right to remove to Federal court when sued in one of the States in which incorporated.*

A corporation incorporated simultaneously and freely in several States exists in each State by virtue of the laws of that State and when it incurs a liability under the laws of one of the States in which it is incorporated and is sued therein it cannot escape the jurisdiction thereof and remove to the Federal court on the ground that as it is also incorporated in the other States it is not a citizen of that State. *Southern Railway* v. *Allison*, 190 U. S. 326, and other cases, holding that where the corporation originally incorporated in one State was compelled to become a corporation of another State so as to exercise its powers therein, distinguished. *Patch* v. *Wabash R. R. Co.*, 277.

2. *Pleading; right of non-resident executor or administrator to file plea against removal where state statute provides against his appointment.*

The provision in a state statute that no non-resident shall be appointed or act as administrator or executor does not open the appointment of a non-resident to collateral attack in an action brought by him so as to deprive him of his right to file a plea that the case cannot be removed to the Federal court. *Ib.*

SEAMEN.

See ADMIRALTY, 2;
ALIENS, 1.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 19, 44, 45.

SECOND JEOPARDY.

See CONSTITUTIONAL LAW, 12–16.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 19, 46.

SOVEREIGNTY.

See STATES, 6.

STARE DECISIS.

1. *Application of doctrine to decisions affirming validity of securities authorized by statute.*

Stare decisis is a wholesome doctrine, and, while not of universal application, is especially applicable to decisions affirming the validity of securities authorized by statute. Such decisions should be regarded as conclusive even as to those not strictly parties so as to prevent wrong to innocent holders who purchased in reliance thereon. *Vail* v. *Arizona*, 201.

2. *Same.*
Where bonds of a county have been declared valid in a suit of which the county had knowledge, and was heard although not a party thereto, while the question may not be *res judicata* as against the county in a subsequent suit in which it is a party, under the doctrine of *stare decisis* the question should no longer be considered an open one. *Ib.*

3. *Decisions adhered to.*
The decisions of this court in *Utter* v. *Franklin*, 172 U. S. 416, and *Murphy* v. *Utter*, 186 U. S. 95, adhered to under the doctrine of *stare decisis*. *Ib.*

STATES.

1. *Power to regulate oyster industry.*
A State has power to regulate the oyster industry although carried on under tidal waters of the State. *Lee* v. *State of New Jersey*, 67.

2. *Power to prevent adulteration of articles of commerce.*
It is within the power of the State to prevent the adulteration of articles and to provide for the publication of their composition. *Heath & Milligan Co.* v. *Worst*, 338.

3. *Power over citizens on the high seas.*
Until Congress acts on the subject, a State may legislate in regard to the duties and liabilities of its citizens and corporations while on the high seas and not within the territory of any other sovereign. *The Hamilton*, 398.

4. *Power of State in assessing banks.*
It is competent for the legislature of a State to change the day that a bank shall report its property for assessment and to provide that the lien of the assessment shall follow the property in the hands of a vendee. *Bank of Kentucky* v. *Kentucky*, 258.

5. *As to regulation of relation of state instrumentalities.*
The relation of the state board of valuation to the counties and other municipalities is a matter of state regulation. *Ib.*

6. *Sovereignty in respect to the settlement of successions to property on death.*
In respect to the settlement of successions to property on death the States are sovereign and may give to their courts the authority to determine finally as against all the world all questions which arise therein, subject to applicable constitutional limitations. *Tilt* v. *Kelsey*, 43.

See CONSTITUTIONAL LAW, 1, 5, 7, 18, 27, 30–32, 35, 38, 41, 47; COURTS, 1; GRANTS, 1; LOCAL LAW; PATENTS, 3; RAILROADS, 6; RES JUDICATA; TERRITORIES.

STATE INSTRUMENTALITIES.

See CONSTITUTIONAL LAW, 20.

STATUTES.

A. Construction of.

1. *Considerations in testing constitutionality of act of Congress.*

In testing the constitutionality of an act of Congress this court confines itself to the power of Congress to pass the act and may not consider any real or imaginary evils arising from its execution. *Employers' Liability Cases*, 463.

2. *Limitation of rule in favor of constitutionality.*

While it is the duty of this court to so construe an act of Congress as to render it constitutional if it can be lawfully done, an ambiguous statute cannot be rewritten to accomplish this result. *Ib.*

3. *Statutes constitutional in part only; limitation of rule as to enforcement.*

Where a statute contains some provisions that are constitutional and some that are not, effect may be given to the former by separating them from the latter, but this rule does not apply where the provisions of the statute are dependent upon each other and are indivisible, or where it does not plainly appear that Congress would have enacted the constitutional legislation without the unconstitutional provisions. *Ib.*

4. *Objects, purposes and conditions of enactment considered in arriving at legislative intent.*

In construing a statute, while the court must gain the legislative intent primarily from the language used, it must remember the objects and purposes of the statute and the conditions of its enactment so as to effectuate rather than destroy the spirit of that intent. *American Tobacco Co.* v. *Werckmeister*, 284.

See Constitutional Law, 25, 49;
Copyright, 1, 2, 6;
Indians, 1.

B. Of the United States.

See Acts of Congress;
Congress, Powers of.

C. Of the States and Territories.

See Local Law.

STREET RAILWAYS.

See Constitutional Law, 50.

SUBORNATION OF PERJURY.

See Criminal Law, 2.

SUCCESSIONS.

See States, 6.

TARIFF.

See CUSTOMS DUTIES.

TAXES AND TAXATION.

See CONSTITUTIONAL LAW, 6, 21–24, 38; EQUITY, 1; RES JUDICATA; STATES, 4.

TERRITORIES.

Power of Government to reserve waters flowing through.

The Government of the United States has the power to reserve waters of a river flowing through a Territory and exempt them from appropriation under the laws of the State which the Territory afterwards becomes. *Winters* v. *United States*, 564.

See CONGRESS, POWERS OF.

TICKET BROKERS.

See RAILROADS, 2, 3, 4.

TIMBER AND STONE ACT.

See CRIMINAL LAW, 4; PUBLIC LANDS, 3.

TITLE.

See MINES AND MINING, 2.

TORT.

See ADMIRALTY, 3.

TREATIES.

See INDIANS, 1.

TRESPASS.

See APPEAL AND ERROR, 2.

UNITED STATES.

See CONSTITUTIONAL LAW, 12; CONTRACTS, 4; COPYRIGHT, 7; TERRITORIES.

UNREASONABLE SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 19, 44.

VENDOR AND VENDEE.

See STATES, 4.

WATERS.

See CONSTITUTIONAL LAW, 25; STATES, 1; INDIANS, 2; TERRITORIES.

WILLS.

See CONSTITUTIONAL LAW, 38.

WITNESSES.

See CONSTITUTIONAL LAW, 43.

WORDS AND PHRASES.

"Treason, felony and breach of the peace." *See* CONSTITUTIONAL LAW, 39.

WRITS OF ERROR.

See APPEAL AND ERROR, 6.