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A suit brought by the holder of some of a series of bonds, the complaint in which alleges that the suit is brought on complainant's behalf and also on behalf of all others of like interest joining therein and contributing to the expenses, and of which no other notice of its pendency is given to the other bondholders, is not a representative or class suit the judgment in which binds those not joining therein or not privies to those who do. (*Compton v. Jesup*, 68 Fed. Rep. 263, concurred in.) *Wabash Railroad v. Adelbert College*, 38.

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The admiralty does not have jurisdiction of a claim for damages caused by a vessel to a bridge or dock which, although in navigable waters, is so connected with the shore that it immediately concerns commerce upon land. *The Plymouth*, 3 Wall. 20, followed, and *The Blackheath*, 195 U. S. 361, distinguished. *Cleveland Terminal R. R. v. Steamship Co.*, 316; *The Troy*, 321.

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The prohibition in the alien immigration act of February 20, 1907, c. 1134, 34 Stat. 898, against the importation of alien women and girls for the purpose of prostitution or any other immoral purpose includes the importation of an alien woman or girl to live as a concubine with the person importing her. *United States v. Bilty*, 393.

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ANTI-TRUST ACT.

1. *Application of—Combinations prohibited by.*

The Anti-Trust Act of July 2, 1890, 26 Stat. 209, has a broader application

than the prohibition of restraints of trade unlawful at common law. It prohibits any combination which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business; and this includes restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes. *Loewe v. Lawlor*, 274.

2. *Combinations in restraint of trade within meaning of.*

A combination may be in restraint of interstate trade and within the meaning of the Anti-Trust Act although the persons exercising the restraint may not themselves be engaged in intrastate trade, and some of the means employed may be acts within a State and individually beyond the scope of Federal authority, and operate to destroy intrastate trade as interstate trade, but the acts must be considered as a whole, and if the purposes are to prevent interstate transportation the plan is open to condemnation under the Anti-Trust Act of July 2, 1890. (*Swift v. United States*, 196 U. S. 375.) *Ib.*

3. *Labor organizations as combinations within meaning of—Right of one injured by boycott to maintain action under § 7 of act.*

A combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other States, to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in States other than his own until such time as the resulting damage forces him to comply with their demands, is, under the conditions of this case, a combination in restraint of interstate trade or commerce within the meaning of the Anti-Trust Act of July 2, 1890, and the manufacturer may maintain an action for threefold damages under § 7 of that act. *Ib.*

4. *Organizations of farmers and laborers not exempted.*

The Anti-Trust Act of July 2, 1890, makes no distinction between classes. Organizations of farmers and laborers were not exempted from its operation, notwithstanding the efforts which the records of Congress show were made in that direction. *Ib.*

APPEAL AND ERROR.

1. *Writ of error; sufficiency of signing under § 999, Rev. Stat.—Presiding justice in absence of chief justice.*

Where a judge of the highest court of a State, in allowing a writ of error, adds to his signature "Presiding Judge, etc., in the absence of the chief judge from the State;" that recital is *prima facie* evidence that the chief judge is absent and the judge signing is presiding, and, if not controverted, the writ of error is properly allowed and the requirement of § 999, Rev. Stat., that it must be allowed either by the Chief Justice of the state court or a justice of this court, is complied with. *Missouri Valley Land Co. v. Wiese*, 234; *Missouri Valley Land Co. v. Wrich*, 250.

2. *Who may be heard on appeal.*

An appellee, who has not himself appealed, cannot be heard in this court to assail the judgment below. *Southern Pine Co. v. Ward*, 126.

3. *Record; docketing of.*

Although the record was not docketed until more than thirty days after the appeal was allowed, as it was accomplished soon afterwards and meanwhile no motion was made to docket and dismiss under Rule 9, a motion subsequently made was denied. *Ib.*

4. *Record; sufficiency of incorporation of papers and documents.*

On appeal or writ of error to this court, papers or documents used in the court below cannot in strictness be examined here unless by bill of exceptions or other proper mode they are made part of the record. *Bassing v. Cady*, 386.

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ARMY AND NAVY.

1. *As to status of army officer as civil officer of Philippine Government.*

The fact that an officer of the United States Army, entrusted with money by the Philippine Government to be expended in connection with his military command, signs his account "Disbursing Officer" instead of by his military title, does not make him a civil officer of the Philippine Government; and *quære* whether he could become such a civil officer in view of the act of March 3, 1883, 22 Stat. 567, prohibiting the appointment of officers of the United States Army to civil offices. *Carlington v. United States*, 1.

2. *Criminal liability of army officer in Philippine Islands for falsification of accounts.*

A money contribution by the Philippine Government to the performance of certain military functions, and entrusting the funds to an officer of the United States Army, who is held to military responsibility therefor by court-martial, does not make that officer a civil officer of the Philippine Government and amenable to trial in the civil courts for falsification of his accounts as a public official. *Ib.*

3. *Navy—Additional pay to aids—Who is an aid within meaning of §§ 1098, 1261, Rev. Stat., and opening clause of Personnel Act of 1899.*

Under §§ 1098, and 1261, Rev. Stat., and the opening clause of the Navy Personnel Act of March 13, 1899, 30 Stat. 1004, a naval officer assigned to duty on the personal staff of an admiral as flag lieutenant, without any other designation, is an aid to such admiral and entitled to the additional pay of \$200 allowed to an aid of a major general in the Army. *United States v. Miller*, 32.

4. *Navy—Longevity pay of aid to admiral; calculation of.*

Under § 1262, Rev. Stat., and the act of June 30, 1882, 22 Stat. 118, an

aid to an admiral is not entitled to have his longevity pay calculated upon the additional pay which he receives as aid, that being under § 1261, Rev. Stat., an allowance in addition to, and not a part of, the pay of his rank. *Ib.*

ATTACHMENT.

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BANKRUPTCY.

1. *Discharge, effect of refusal of—Necessity for proof of refusal of discharge in subsequent proceeding.*

While an adjudication in bankruptcy, refusing a discharge, finally determines for all time and in all courts, as between the parties and their privies, the facts upon which the refusal is based, it must be proved in a second proceeding brought by the bankrupt in another district, and of which the creditor has notice, in order to bar the bankrupt's discharge therefrom, if the debt is provable under the statute as amended at the time of the second proceeding although it may not have been such under the statute at the time of the first proceeding. *Bluthenthal v. Jones*, 64.

2. *Amendments; power of bankruptcy court as to.*

The power of the bankruptcy court over amendments is undoubted and rests in the discretion of the court. In this case that discretion was not abused in allowing amendments adding the name of the place to the jurat of the justice of the peace taking the verification, and an averment that the person proceeded against in bankruptcy did not come within the excepted classes of persons who may not be declared bankrupts. *Armstrong v. Fernandez*, 324.

3. *Adjudication of bankruptcy; when general finding covers particular facts.*

Where the record of a proceeding to have a person declared a bankrupt shows that detailed findings of the commission of acts of bankruptcy could have been supported by the evidence, the presumption is that such findings would have been made had appellant so requested; and, in the absence of such a request, the general finding that the party could be declared, and was adjudged, a bankrupt is sufficiently broad to cover any question involved upon the evidence as to the bankrupt's occupation and the commission of acts of bankruptcy. *Ib.*

BANKS AND BANKING.

Transaction where bank discounting personal note of president of another bank, accompanied by agreement of his bank, held relieved from liability at suit of receiver of latter bank.

In a transaction between two banks the president of one gave his personal

note to the other, accompanied by an agreement of his bank, signed by himself as president, that the proceeds of the note should be placed to the credit of his bank by, and remain with, the discounting bank until the note was paid; while there were certain transfers of checks between him and his own bank the record did not show that the maker of the note personally received the proceeds thereof, and no contention was made that the agreement was illegal. *Held*, that under the circumstances of this case, the discounting bank was entitled to hold the proceeds of the note, as represented by the credit given on its books therefor, as collateral security for the payment of the note and to charge the note against such credit, and relieve itself from further responsibility therefor. *Rankin v. City National Bank*, 541.

See RECEIVERS, 1.

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Delivery of check not equivalent to payment.

The delivery of a check is not the equivalent of payment of the money ordered by the check to be paid, and in this case, the check not having been cashed until after receivers had been appointed, the payee, who had knowledge of their appointment and the issuing of an injunction order, was required to repay the amount. *Bien v. Robinson*, 423.

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- Hovey v. Elliott*, 167 U. S. 409, distinguished in *Bennett v. Bennett*, 505.
Russell v. Farley, 105 U. S. 433, distinguished in *Houghton v. Meyer*, 149.
United States v. Ju Toy, 198 U. S. 253, distinguished in *Chin Yow v. United States*, 8.
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- Brown v. Maryland*, 12 Wheat. 419, followed in *Burke v. Wells*, 14.
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Donnell v. Herring-Hall-Marvin Safe Co., 208 U. S. 267, followed in *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 554.
Dreyer v. Illinois, 187 U. S. 71, followed in *Ughbanks v. Armstrong*, 481.
Halsell v. Renfrow, 202 U. S. 287, followed in *Southern Pine Co. v. Ward*, 126.
Harrison v. Magoon, 205 U. S. 501, followed in *Notley v. Brown*, 429.
Jamestown & Northern Railway Co. v. Jones, 177 U. S. 125, explained and followed in *Minneapolis, St. Paul & c. Ry. Co. v. Doughty*, 251.
Kinhead v. United States, 150 U. S. 433, followed in *Blacklock v. United States*, 75.
Mansfield v. Excelsior Refining Co., 135 U. S. 326, followed in *Blacklock v. United States*, 75.
May v. New Orleans, 178 U. S. 496, followed in *Burke v. Wells*, 14.
Missouri Valley Land Co. v. Wiese, 208 U. S. 234, followed in *Missouri Valley Land Co. v. Wrich*, 250.
National Live Stock Bank v. First Nat. Bank, 203 U. S. 296, followed in *Southern Pine Co. v. Ward*, 126.
Plymouth, The, 3 Wall. 20, followed in *Cleveland Terminal R. R. v. Steamship Co.*, 316.
Smith, Auditor, v. Indiana, 191 U. S. 138, followed in *Braxton County Court v. West Virginia*, 192.
Swift v. United States, 196 U. S. 375, followed in *Loewe v. Lawlor*, 274.

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II. POWERS OF.

1. *Interstate commerce; limitation of powers as to.*

The power to regulate interstate commerce, while great and paramount, cannot be exerted in violation of any fundamental right secured by other provisions of the National Constitution. *Adair v. United States*, 161.

2. *Interstate commerce; power to prescribe rules to govern. Power to enact § 10 of the act of June 1, 1898.*

The power to regulate interstate commerce is the power to prescribe rules by which such commerce must be governed, but the rules prescribed must have a real and substantial relation to, or connection with, the commerce regulated, and as that relation does not exist between the membership of an employé in a labor organization and the interstate commerce with which he is connected, the provision above referred to in § 10 of the act of June 1, 1898, cannot be sustained as a regulation of interstate commerce and as such within the competency of Congress. *Ib.*

3. *Interstate commerce; interference with relation of master and servant engaged in.*

Quære, and not decided, whether it is within the power of Congress to make it a criminal offense against the United States for either an employer engaged in interstate commerce, or his employé, to disregard, without sufficient notice or excuse, the terms of a valid labor contract. *Ib.*

4. *Indians—Control by Congress over allotted lands, the Indian title to which has been extinguished.*

It is within the power of Congress to retain control, for police purposes, for a reasonable and limited period, over lands, the Indian title to which is extinguished, and which are allotted in severalty, notwithstanding that the Indians may be citizens and the land may be within the limits of a State; and twenty-five years is not an unreasonable period. *Dick v. United States*, 340.

5. *Indians; power of Congress to regulate commerce with, paramount to authority of State.*

While a State, upon its admission to the Union, is on an equal footing with every other State and, except as restrained by the Constitution, has full and complete jurisdiction over all persons and things within its limits, Congress has power to regulate commerce with the Indian tribes, and such power is superior and paramount to the authority of the State within whose limits are Indian tribes. *Ib.*

See CONSTITUTIONAL LAW, 15, 16.

CONSTITUTIONAL LAW.

1. *Commerce clause; state burdens on interstate commerce—Invalidity of ch. 258 of acts of Tennessee of 1903.*

The exemption from taxation in ch. 258 of the acts of Tennessee of 1903,

of growing crops and manufactured articles from the produce of the State, in the hands of the manufacturer, is a discrimination against similar property, the product of the soil of other States, brought into that State, and is therefore a direct burden upon interstate commerce and repugnant to the commerce clause of the Constitution of the United States. *Darnell & Son v. Memphis*, 113.

See CONGRESS, POWERS OF, 1.

2. *Contracts; liberty to contract; state restriction of.*

While the general liberty to contract in regard to one's business and the sale of one's labor is protected by the Fourteenth Amendment, that liberty is subject to proper restrictions under the police power of the State. *Muller v. Oregon*, 412.

See *Infra*, 6.

3. *Contract impairment—Charter exemption from taxation not extended to lessees of corporation exempted.*

A charter exemption from taxation of land and buildings to be erected thereon so long as they belong to the educational institution exempted does not exempt from taxation the separate interests of parties to whom the institution leases portions of the property, and who erect buildings thereon; and a subsequent act of the legislature taxing such separate leasehold interest does not amount to taxing the property owned by the institution, and is not unconstitutional under the contract clause of the Constitution of the United States as impairing the obligation of the exemption provision in the charter. So held as to the act of Tennessee of 1903. *Jetton v. University of the South*, 489.

4. *Contract impairment clause; municipal legislation within prohibition of.*

Municipal legislation passed under supposed legislative authority from the State is within the prohibition of the Federal Constitution and void if it impairs the obligation of a contract. *Northern Pacific Railway v. Duluth*, 583.

5. *Contract impairment clause—Impairment of contract by municipal ordinance.*

While an ordinance merely denying liability under an existing contract does not necessarily amount to an impairment of the obligation of that contract within the meaning of the Federal Constitution, where the ordinance requires expenditure of money by one relieved therefrom by a contract, a valid contract claim is impaired and this court has jurisdiction. *Ib.*

See *Infra*, 18;

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Double jeopardy. See *Infra*, 19.

6. *Due process of law; limitation of right to; governmental interference with relations of master and servant. Liberty of contract.*

While the rights of liberty and property guaranteed by the Constitution

against deprivation without due process of law, are subject to such reasonable restrictions as the common good or general welfare may require, it is not within the functions of government—at least in the absence of contract—to compel any person in the course of his business, and against his will, either to employ, or be employed by, another. An employer has the same right to prescribe terms on which he will employ one to labor as an employé has to prescribe those on which he will sell his labor, and any legislation which disturbs this equality is an arbitrary and unjustifiable interference with liberty of contract. *Adair v. United States*, 161.

7. *Due process and equal protection of laws—Refusal of State to permit removal of fund to foreign jurisdiction and thereby impair rights of local creditors not a deprivation of right to foreign creditor.*

The refusal by a State to exercise comity in such manner as would impair the rights of local creditors by removing a fund to a foreign jurisdiction for administration, does not deprive a foreign creditor of his property without due process of law or deny to him the equal protection of the law; and so held as to a judgment of the highest court of Wisconsin holding the attachment of a citizen of that State superior to an earlier attachment of a foreign creditor. *Disconto Gesellschaft v. Umbreit*, 570.

8. *Due process and equal protection of the laws—Validity of Michigan indeterminate sentence law.*

The provision in the indeterminate law of Michigan of 1903, excepting prisoners twice sentenced before from the privilege of parole, extended in the discretion of the Executive to prisoners after the expiration of their minimum sentence, does not deprive convicts of the excepted class of their liberty without due process of law, or deny to them the equal protection of the laws. *Ughbanks v. Armstrong*, 481.

9. *Due process of law; right of convict to hearing on application for grant of favors which is discretionary with executive officer.*

The granting of favors by a State to criminals in its prisons is entirely a matter of policy to be determined by the legislature, which may attach thereto such conditions as it sees fit, and where it places the granting of such favors in the discretion of an executive officer it is not bound to give the convict applying therefor a hearing. *Ib.*

10. *Due process of law—Validity of indeterminate sentence law of Michigan.*

The indeterminate sentence law of Michigan of 1903, as construed and sustained according to its own constitution, by the highest court of that State, does not violate any provision of the Federal Constitution. It is of a character similar to the Illinois act, sustained by this court in *Dreyer v. Illinois*, 187 U. S. 71. *Ib.*

See Infra, 11, 12, 16, 17, 18;

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Eminent domain. See Infra, 17.

11. *Equal protection and due process of law—Regulation of hours of labor of women.*

As healthy mothers are essential to vigorous offspring, the physical well-being of woman is an object of public interest. The regulation of her hours of labor falls within the police power of the State, and a statute directed exclusively to such regulation does not conflict with the due process or equal protection clauses of the Fourteenth Amendment. *Muller v. Oregon*, 412.

12. *Equal protection and due process of law—Validity of Oregon act of 1903, regulating work hours of women.*

The statute of Oregon of 1903 providing that no female shall work in certain establishments more than ten hours a day is not unconstitutional so far as respects laundries. *Ib.*

13. *Equal protection of laws; exemption from taxation.*

Quære, and not decided, whether the provision of exemption in ch. 258 of the acts of Tennessee of 1903, is valid under the equal protection clause of the Fourteenth Amendment. *Darnell & Son v. Memphis*, 113.

See Supra, 7, 8;

Infra, 15, 21;

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14. *Extradition of fugitives from justice—What constitutes fugitive.*

One charged with crime and who was in the place where, and at the time when, the crime was committed, and who thereafter leaves the State, no matter for what reason, is a fugitive from justice within the meaning of the interstate rendition provisions of the Constitution, and of § 5278, Rev. Stat., and this none the less if he leaves the State with the knowledge and without the objection of its authorities. *Bassing v. Cady*, 386.

15. *Judiciary; power of Congress in respect of appellate jurisdiction of Supreme Court—Constitutionality of act of 1907 permitting United States to prosecute writs of error in criminal cases.*

It is within the power of Congress to determine the regulations and exceptions under which this court shall exercise appellate jurisdiction in cases other than those in which this court has original jurisdiction and to which the judicial power of the United States extends; and the act of March 2, 1907, c. 2564, 34 Stat. 1246, permitting the United States to prosecute a writ of error directly from this court to the District or Circuit Courts in criminal cases in which an indictment may be quashed or demurmer thereto sustained where the decision is based on the invalidity or construction of the statute on which the indictment is based, is not unconstitutional because it authorizes the United States to bring the case directly to this court and does not allow the accused so to do when a demurmer to the indictment is overruled. *United States v. Bitty*, 393.

16. *Legislative power under Fifth Amendment—Power of Congress to make it a criminal act for interstate carriers to discharge employé for membership in labor organization—Validity of § 10 of act of 1898.*

It is not within the power of Congress to make it a criminal offense against the United States for a carrier engaged in interstate commerce, or an agent or officer thereof, to discharge an employé simply because of his membership in a labor organization; and the provision to that effect in § 10 of the act of June 1, 1898, 30 Stat. 424, concerning interstate carriers is an invasion of personal liberty, as well as of the right of property, guaranteed by the Fifth Amendment to the Constitution of the United States, and is therefore unenforceable as repugnant to the declaration of that amendment that no person shall be deprived of liberty or property without due process of law. *Adair v. United States*, 161.

See CONGRESS, POWERS OF.

17. *Property rights—Eminent domain; what constitutes public use.*

The use for which property may be required by a railroad company for increased trackage facilities is none the less a public use because the motive which dictates its location is to reach a private industry, or because the proprietors of that industry contribute to the cost; and so held that a condemnation upheld by the highest court of Virginia as being in conformity with the law of that State did not deprive the owner of the property condemned of his property without due process of law. *Hairston v. Danville & Western Railway*, 598.

18. *Property rights; uncompensated obedience to municipal ordinance passed in exercise of police power not violative of.*

The exercise of the police power in the interest of public health and safety is to be maintained unhampered by contracts in private interests, and uncompensated obedience to an ordinance passed in its exercise is not violative of property rights protected by the Federal Constitution; held, that an ordinance of a municipality of that State, valid under the law of that State as construed by its highest court, compelling a railroad to repair a viaduct constructed, after the opening of the railroad, by the city in pursuance of a contract relieving the railroad, for a substantial consideration, from making any repairs thereon for a term of years was not void under the contract, or the due process, clause of the Constitution. *Northern Pacific Railway v. Duluth*, 583.

19. *Second jeopardy—Indictment for same offense for which party not formerly tried.*

The mere arraignment and pleading to an indictment does not put the accused in judicial jeopardy, nor does the second surrender of the same person by one State to another amount to putting that person in second jeopardy because the requisition of the demanding State is based on an indictment for the same offense for which the accused had been formerly indicted and surrendered but for which he had never been tried. *Bassing v. Cady*, 386.

20. *States; application of Sixth and Eighth Amendments.*

The Sixth and Eighth Amendments to the Federal Constitution do not limit the power of the State. *Ughbanks v. Armstrong*, 481.

21. *States; effect of Fourteenth Amendment to limit power of State in dealing with crime.*

The Fourteenth Amendment to the Federal Constitution does not limit the power of the State in dealing with crime committed within its own borders or with the punishment thereof. But a State must not deprive particular persons or classes of persons of equal and impartial justice. *Ib*

See CONGRESS, POWERS OF, 5;
TAXES AND TAXATION, 15.

22. *Conflict of provisions of Constitution.*

Where fundamental principles of the Constitution are of equal dignity, neither must be so enforced as to nullify or substantially impair the other. *Dick v. United States*, 340.

23. *Construction of Constitution; consideration to be given widespread and long continued belief concerning a fact affecting a limitation of.*

The peculiar value of a written constitution is that it places, in unchanging form, limitations upon legislative action, questions relating to which are not settled by even a consensus of public opinion; but when the extent of one of those limitations is affected by a question of fact which is debatable and debated, a widespread and long continued belief concerning that fact is worthy of consideration. *Muller v. Oregon*, 412.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTEMPT OF COURT.

See HABEAS CORPUS.

CONTRACTS.

Construction of contract relating to distribution of estate of decedent.

An agreement made between the owners of a half interest in property in Manilla, who were ultimate heirs of the deceased owner of the other half interest, and the widow of such decedent, who was his usufructuary heiress, provided for the sale of the property at a specified price, and that after certain payments the "remainder" should be paid to the widow, on her giving the usual usufructuary security. *Held*, that the agreement concerned a settlement of the rights of the parties to the property left by decedent and did not contemplate transferring any interest in the property from the other owners to the widow, and that the word "remainder" referred only to the remainder of the half

interest of her testator and not to the balance remaining of the proceeds of the share of the other owners. *Calvo v. De Gutierrez*, 443.

See CONGRESS, POWERS OF, 3; EQUITY, 2;
 CONSTITUTIONAL LAW, 2-6, 18; PRACTICE AND PROCEDURE, 4, 8;
 CORPORATIONS, 2; STATES, 2;
 TRADE-NAME, 2.

CONVERSION OF PROPERTY.

See LOCAL LAW (OKLA., 2).

COPYRIGHT.

Notice of copyright—Foreign publications.

The requirement of the Copyright Act of June 18, 1874, c. 301, § 1, 18 Stat. 78 (Rev. Stat. § 4962), that notice shall be inserted in the several copies of every edition, does not extend to publications abroad and sold only for use there. *United Dictionary Co. v. Merriam Co.*, 260.

CORPORATIONS.

1. *Forfeiture of charter by state action not violative of Federal Constitution.*

The judgment of a court of competent jurisdiction of Virginia, made after a hearing that a corporation of that State had violated the liquor laws of the State, and that in pursuance of statutory provisions the charter rights and franchises of the club ceased without further proceedings, *held*, in this case not to have violated any right belonging to the club under the contract or due process clauses of the Constitution of the United States. *Cosmopolitan Club v. Virginia*, 378.

2. *Forfeiture of charter—Impairment of charter contract by enforcement of police regulation.*

The charter of a private corporation may be forfeited or annulled for the misuse of its corporate privileges and franchises, and its forfeiture or annulment, by appropriate judicial proceedings, for such a reason would not impair the obligation of the contract, if any, arising between the State and the corporation out of the mere granting of the charter. The charter granted to a club, *held*, in this case, not to amount to such a contract that the club could disregard the valid laws subsequently enacted by the State, regulating the sale of liquor. *Ib.*

See EQUITY, 1;

TRADE-NAME, 1, 2.

COURTS.

1. *Federal and state—Presumption that Federal court respected decisions of state courts in determining property rights.*

It will be presumed that the Circuit Court, in determining the validity of liens affecting property in its possession, will consider the decisions of the courts of the State in which the property is situated with that respect which the decisions of this court require. *Wabash Railroad v. Adelbert College*, 38.

2. *Invasion of court's possession of property.*

Where property is in possession and under the control of the Federal court, the declaration of a lien upon that property is a step toward the invasion of the court's possession thereof and is equally beyond the jurisdiction of the state court as an order for the sale of the property to satisfy the lien would be. *Wabash Railroad v. Adelbert College*, 609.

3. *State and Federal; questions for state court in respect of property in possession of Federal court.*

In a proceeding in the state court, the ascertainment of the amount due, whether judgment can be rendered, and the issuing of execution against a corporation, whose property is under the control of the Federal court, are questions exclusively for the state court and may be regarded as independent of the proceedings for the enforcement of the lien. *Ib.*

See BANKRUPTCY, 2;	JURISDICTION;
IMMIGRATION, 1, 2;	LOCAL LAW (OKLA., 1);
JUDGMENTS AND DECREES;	PRACTICE AND PROCEDURE;
JUDICIAL NOTICE;	RECEIVERS, 2;
TAXES AND TAXATION, 11.	

COURT OF CLAIMS.

Power of Court of Claims under act of May, 1902, 32 Stat. 207.

The Court of Claims was not precluded by the recitals in the act of May, 1902, 32 Stat. 207, 243, referring this case to it, from examining into the facts and determining whether the claimant's lien referred to in the act as a prior lien was or was not a prior lien and basing its decision upon the actual facts found. *Blacklock v. United States*, 75.

CRIMINAL LAW.

See CONGRESS, POWERS OF, 3;	HABEAS CORPUS;
CONSTITUTIONAL LAW, 9, 10,	STATUTES, A 7, 9.
14, 16, 19, 21;	

DAMAGES.

See ANTI-TRUST ACT, 3;
LOCAL LAW (OKLA., 2).

DEEDS.

See PRACTICE AND PROCEDURE, 12.

DIVERSITY OF CITIZENSHIP.

See JURISDICTION.

DIVORCE.

See LOCAL LAW (OKLA., 1).

DOCUMENTS.

See APPEAL AND ERROR, 4.

DOUBLE JEOPARDY.

See CONSTITUTIONAL LAW, 19.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW;
IMMIGRATION, 2.

EIGHTH AMENDMENT.

See CONSTITUTIONAL LAW, 20.

EJECTMENT.

See PUBLIC LANDS, 5.

EJUSDEM GENERIS.

See STATUTES, A 1.

ELKINS LAW.

See STATUTES, A 9.

EMINENT DOMAIN.

Right of owner of land condemned to complain after acceptance of award.

The objection, taken by a property owner in a condemnation proceeding for a part of his property, that, under the statute, his entire property must be condemned, is waived and cannot be maintained on appeal, if he accepts the award made by the commissioners in the condemnation proceeding and paid in by the condemnors for the parcel actually condemned. After an award has been made and accepted the proceeding is *functus officio*. *Winslow v. Baltimore & Ohio R. R. Co.*, 59.

See CONSTITUTIONAL LAW, 17;

PRACTICE AND PROCEDURE, 2, 10, 11, 17.

EMPLOYER AND EMPLOYÉ.

See CONGRESS, POWERS OF, 2, 3;
CONSTITUTIONAL LAW, 6;
STATUTES, A 7.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW;
TAXES AND TAXATION, 8.

EQUITY.

1. *Power, by summary process, to compel repayment to receiver of assets of corporation wrongfully taken.*

A court of equity has power by summary process, after due notice and

opportunity to be heard, to compel one who, in violation of an injunction order of which he had knowledge, has taken assets of a corporation in payment of indebtedness to repay the same to the receiver. *Bien v. Robinson*, 423.

2. *Subrogation—Superiority of equity of surety on contractor's bond given under act of August 13, 1894, over that of assignee of contractor.*

The equity of the surety on a bond given by a contractor under the act of August 13, 1894, 28 Stat. 278, who by reason of the contractor's default has been obliged to pay material-men and laborers, is superior to that of a bank loaning money to the contractor, secured by assignments of amounts to become due. In such a case the surety is subrogated to the rights of the contractor, but the bank is not. *Henningesen v. U. S. Fidelity & Guaranty Co.*, 404.

3. *Waiver of defenses.*

The defense in an equity suit that the complainant has not exhausted his remedy at law, or is not a judgment creditor, may be waived by defendant, and when waived—as it may be by consenting to the appointment of receivers—the case stands as though the objection never existed. *Re Metropolitan Railway Receivership*, 90.

See PUBLIC LANDS, 2;

TAXES AND TAXATION, 1, 14.

ESTATES OF DECEDENTS.

See CONTRACTS.

ESTOPPEL.

1. *Right to assert; want of knowledge essential.*

One claiming to have been influenced by the declarations or conduct of another in regard to expending money on real estate must, in order to assert estoppel against that person, not only be destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring knowledge in regard thereto; where the condition of the title to real property is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel. *Crary v. Dye*, 515.

2. *Assertion of title by one whose mining property has been sold under void attachment.*

One whose mining property was sold under a void attachment held in this case not to have been estopped from asserting his title to the property as against the vendee from the purchaser at the sheriff's sale by reason of statements made by him to such vendee prior to the final payment. Held also in this case that the actions and declarations of the owner of a mining claim sold under a void attachment did not amount to an abandonment of his claim so that he could not reassert his title to the property as against the purchaser at the sale of his vendee. *Ib.*

See TAXES AND TAXATION, 5.

EVIDENCE.

1. *Sufficiency of evidence to support findings of lower court.*

In this case this court holds that the Supreme Court of the Territory did not err in finding that there was evidence to support the findings made by the trial court and that those findings sustained the judgment. *Southern Pine Co. v. Ward*, 126.

2. *When appellate court not justified in reversing verdict of jury.*

In this case this court finds that the evidence was so far conflicting as to remove the verdict of the jury from reversal by an appellate tribunal. *Drumm-Flato Commission Co. v. Edmisson*, 534.

See APPEAL AND ERROR, 1;
LOCAL LAW (OKLA., 4).

EXECUTION SALES.

See ESTOPPEL;
LOCAL LAW (NEW MEX.).

EXECUTIVE POWERS.

See INDIANS, 1.

EXEMPTIONS FROM TAXATION.

See CONSTITUTIONAL LAW, 3;
TAXES AND TAXATION, 6, 7.

EXTRADITION.

See CONSTITUTIONAL LAW, 14, 19.

FEDERAL QUESTION.

See JURISDICTION;
PRACTICE AND PROCEDURE, 14.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 16.

FOREIGN PUBLICATIONS.

See COPYRIGHT.

FORFEITURES.

See CORPORATIONS, 2;
JURISDICTION, A 6.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;
PRACTICE AND PROCEDURE, 11, 17;
TAXES AND TAXATION, 8.

FREIGHT RATES.

See INTERSTATE COMMERCE, 1, 2.

FUGITIVE FROM JUSTICE.

See CONSTITUTIONAL LAW, 14.

FUNCTUS OFFICIO.

See EMINENT DOMAIN.

GENERAL LAND OFFICE.

See PUBLIC LANDS, 4.

GERMAN EMPIRE.

See TREATIES.

GOVERNMENT CONTRACTS.

See EQUITY, 2.

GOVERNMENTAL POWERS.

See CONGRESS, POWERS OF.

GRANTS.

See PUBLIC LANDS, 5.

HABEAS CORPUS.

When not allowed to interfere with regular procedure—Application of rule in case of commitment for contempt.

The usual rule is that a prisoner cannot anticipate the regular course of proceedings having for their end to determine whether he shall be held or released by alleging want of jurisdiction and petitioning for a *habeas corpus*; and the same rule is applicable in the case of one committed for contempt until a small fine shall be paid for disobeying an injunction order of the Circuit Court, and who petitions for a *habeas* on the ground that the order disobeyed was void because issued in a suit which was *coram non judice*. *Ex parte Simon*, 144.

See IMMIGRATION, 2;

JURISDICTION, C 1.

HEPBURN LAW.

See STATUTES, A 9.

HOMESTEADS.

See PUBLIC LANDS, 6.

HOURS OF LABOR.

See CONSTITUTIONAL LAW, 11, 12;

STATES, 5.

IMMIGRATION.

1. *As to conclusiveness of decision of Commissioner of Immigration denying right of entry.*

The conclusiveness of the decision of the Commissioner of Immigration, denying a person the right to enter the United States under the immigration laws, must give way to the right of a citizen to enter and also to the right of a person seeking to enter, and alleging that he is a citizen, to prove his citizenship, and it is for the courts to finally determine the rights of such person. *Chin Yow v. United States*, 8.

2. *Right of one claiming to be citizen—Denial of due process of law—Jurisdiction of Federal court.*

A Chinese person seeking to enter the United States and alleging citizenship is entitled to a fair hearing, and if, without a fair hearing or being allowed to call his witnesses, he is denied admission and delivered to the steamship company for deportation, he is imprisoned without the process of law to which he is entitled; and although he has not established his right to enter the country, the Federal court has jurisdiction to determine on *habeas corpus* whether he was denied a proper hearing and if so, to determine the merits; but unless and until it is proved that a proper hearing was denied the merits are not open. *United States v. Ju Toy*, 198 U. S. 253, distinguished. Denial of a hearing by due process cannot be established merely by proving that the decision on the hearing that was had was wrong. *Ib.*

See ALIENS.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 3, 4, 5;
CORPORATIONS, 2.

IMPORTATION OF ALIEN WOMEN.

See ALIENS.

IMPORTS.

See TAXES AND TAXATION, 15, 16.

INDETERMINATE SENTENCES.

See CONSTITUTIONAL LAW, 10;
PRACTICE AND PROCEDURE, 7.

INDIANS.

1. *Allotted lands; alienation of; extension of control by President to cutting of timber, and disposition of proceeds thereof.*

The restrictions on the right of alienation of lands to be allotted in severalty under the Chippewa Treaty of 1854 extends to the disposition of timber on the land as well as to the land itself; and the consent of the President

to a contract for cutting timber does not end his control over the matter; he may put conditions upon the disposition of the proceeds. (*United States v. Paine Lumber Co.*, 206 U. S. 467, distinguished.) *Starr v. Campbell*, 527.

2. *Annuities; payments chargeable against.*

While there are no general rules of law determining what payments are chargeable against Indian annuities, when annuities which have been confiscated on account of an outbreak of the annuitant Indians are restored, sums paid by the Government for the support of the annuitants on account of their destitution must be taken into account, and in this case the restored annuities are also chargeable with the amount of depredations during the outbreak for which the Indians were liable under a treaty made subsequently to that granting the annuity and before the outbreak. *The Sisseton and Wahpeton Indians*, 561.

3. *Annuities; adjustment of claim of Sisseton and Wahpeton Bands.*

This court affirms the judgment of the Court of Claims adjusting the claim of the Sisseton and Wahpeton Bands of Sioux Indians for their confiscated annuities restored under acts of Congress and in regard to which jurisdiction was conferred by the act of June 21, 1906, c. 3504, 34 Stat. 372. *Ib.*

4. *Intoxicating liquors—Construction of § 2139, Rev. Stat.—Territory embraced within prohibition of.*

While the prohibition of § 2139, Rev. Stat., as amended in 1892, against introducing intoxicating liquors into Indian country does not embrace any body of territory in which the Indian title has been unconditionally extinguished, that statute must be interpreted in connection with whatever special agreement may have been made between the United States and the Indians in regard to the extinguishment of the title and the extension of control over the land ceded by the United States. *Dick v. United States*, 340.

5. *Intoxicating liquors—Construction of agreement of May 1, 1893, with Nez Perce Indians.*

Under the agreement of May 1, 1893, ratified, 28 Stat. 286, 326, between the United States and the Nez Perce Indians, the United States retained control over the lands ceded for the purpose of controlling the use of liquor therein for twenty-five years, and during that period § 2139, Rev. Stat., remains in force, notwithstanding such lands are within the State of Idaho. *Ib.*

See CONGRESS, POWERS OF, 4, 5.

INJUNCTION.

1. *Restraining order authorized by § 718, Rev. Stat.*

While the restraining order authorized by § 718, Rev. Stat., is a species of temporary injunction it is only authorized until a pending motion for a temporary injunction can be disposed of. *Houghton v. Meyer*, 149.

2. *Determination of liability of givers of undertaking.*

The givers of an undertaking cannot be held for any period not covered thereby on the conjecture that they would have given a new undertaking had one been required. Their liability must be determined on the one actually given. *Ib.*

3. *As to construction of undertaking to be given to obtain restraining order under § 718, Rev. Stat.*

The undertaking given to obtain a restraining order under § 718, Rev. Stat., must be construed in the light of that section and it necessarily is superseded by an order or decree granting an injunction and thereupon expires by its own limitation, notwithstanding such order or decree may subsequently be reversed. *Ib.*

4. *Liability on bond given by those for whose benefit the restraining order authorized by § 718, Rev. Stat., was issued against the Postmaster General.*

In this case the obligors on the undertaking obtained an order restraining the Postmaster General from refusing to transmit their matter at second class rates. The motion on the order was not brought on but on the hearing on the merits the trial court, by decree, granted a permanent injunction. This decree was reversed. In an action brought by the Postmaster General, on the undertaking, claiming damages for entire period until final reversal of decree *held* that the liability on the undertaking was limited to the difference in postage on matter mailed between the date of the restraining order and the entry of the decree of the trial court which superseded the restraining order. This was not a case in which the parties should be relieved from the obligation of the undertaking for damages during the period for which it was in force. *Russell v. Farley*, 105 U. S. 433, distinguished. *Ib.*

See EQUITY, 1; PRACTICE AND PROCEDURE, 1;
JURISDICTION, C 1; TAXES AND TAXATION, 14;
TRADE-NAME, 4.

INTEREST.

See LOCAL LAW (OKLA., 2).

INTERNAL REVENUE.

See STATUTES, A 3;
TAXES AND TAXATION.

INTERSTATE COMMERCE.

1. *Rates, discrimination in. Rates for tank car and barrel shipments.*

An order of the Interstate Commerce Commission, that carriers not charging for tanks on tank-oil shipments desist from charging for the barrel on barrel shipments, or else furnish tank cars to all shippers applying therefor, *held*, in this case, to be equivalent to a holding that the charge for the barrel, is not in itself excessive, and therefore, also *held*, that barrel-oil shippers who had not demanded tank cars had not been dis-

criminated against, and were not entitled to reparation for the amounts paid by them on the barrels. *Penn Refining Co. v. Western New York & Pa. R. R. Co.*, 208.

2. *Rates; liability of connecting carrier for discrimination by initial carrier.*

It is the duty of a connecting carrier on a joint through rate to accept the cars delivered to it by the initial carrier, and it is not thereby rendered liable for any wrongful discrimination of the initial carrier merely because of the adoption of a joint through rate, which in itself is reasonable; nor is such connecting carrier rendered liable for any such wrongful act of the initial carrier by section eight of the Interstate Commerce Act. *Ib.*

See ANTI-TRUST ACT, 1;	JURISDICTION, C 4;
CONGRESS, POWERS OF, 1, 2, 3;	STATES, 4;
CONSTITUTIONAL LAW, 1, 16;	STATUTES, A 7;
TAXES AND TAXATION, 9.	

INTERSTATE RENDITION.

See CONSTITUTIONAL LAW, 14, 19.

INTOXICATING LIQUORS.

See INDIANS, 4, 5;
STATES, 3, 4.

JEOPARDY.

See CONSTITUTIONAL LAW, 19.

JUDGMENTS AND DECREES.

Duty of courts as to judgments of other courts.

Courts are not bound to search the records of other courts and give effect to their judgments, and one who relies upon a former adjudication in another court must properly present it to the court in which he seeks to enforce it. *Bluthenthal v. Jones*, 64.

See ACTIONS;
LOCAL LAW (OKLA., 1).

JUDICIAL DISCRETION.

See LOCAL LAW (OKLA., 1).

JUDICIAL NOTICE.

General knowledge; woman's physical disadvantage.

This court takes judicial cognizance of all matters of general knowledge—such as the fact that woman's physical structure and the performance of maternal functions place her at a disadvantage which justifies a difference in legislation in regard to some of the burdens which rest upon her. *Muller v. Oregon*, 412.

JUDICIARY.

See COURTS;

CONSTITUTIONAL LAW, 15;

JURISDICTION.

JURISDICTION.

A. OF THIS COURT.

1. *Attachment of—Bringing in representative of deceased appellee.*

Jurisdiction of this court attaches upon allowance of the appeal and proceedings are to be taken here to bring in the representative of an appellee who dies after the acceptance of service of citation. *Southern Pine Co. v. Ward*, 126.

2. *Appeal or writ of error to review judgment of territorial court.*

Nat. Live Stock Bank v. First Nat. Bank, 203 U. S. 296, 305, followed, as to when jurisdiction of this court to review judgments of the Supreme Court of the Territory of Oklahoma is by appeal and not by writ of error. *Ib.*

3. *Appeal from Circuit Court of Appeals.*

Although diversity of citizenship is alleged in the bill, if the grounds of the suit and relief are also based on statutes of the United States, which, as in this case, are necessarily elements of the decision of the Circuit Court of Appeals, an appeal lies from the judgment of that court to this court. *Henningsen v. U. S. Fidelity & Guaranty Co.*, 404.

4. *Review of judgment of District or Circuit Court on jurisdictional ground after affirmance by Circuit Court of Appeals.*

Where the Circuit Court of Appeals has already affirmed the judgment of the District or Circuit Court, a writ of error from this court to the District or Circuit Court to review the judgment on the jurisdictional ground, cannot be maintained unless the proceedings in the Circuit Court of Appeals were absolutely void. *United States v. Larkin*, 333.

5. *Review of judgment of District or Circuit Court on jurisdictional grounds; when question sufficiently certified.*

Ordinarily a formal certificate is essential and it must be made at the same term at which the judgment is rendered; but where the record shows that the only matter tried and decided, and sought to be reviewed, was one of the jurisdiction of the court, the question of jurisdiction is sufficiently certified. *Ib.*

6. *Review of judgment of District Court on jurisdictional ground—Sufficiency of involution of jurisdictional question.*

District Courts of the United States are the proper courts to adjudicate forfeitures, and where the plea to the jurisdiction is simply whether the particular court has jurisdiction, by reason of the locality in which the goods were seized, the question involved is not the jurisdiction of

the United States court as such, and the question cannot be certified to this court under § 5 of the Judiciary Act of 1891; but the case is appealable to the Circuit Court of Appeals. *Ib.*

7. *Review of judgment of District or Circuit Court on jurisdictional ground—Question of jurisdiction alone considered—Section 5 of act of 1891 construed.*

When the question of the jurisdiction of the District or Circuit Court as a court of the United States is in issue, and is certified to this court under § 5 of the Judiciary Act of 1891, no other question can be considered and the jurisdiction of this court is exclusive; as to the other classes of cases enumerated in § 5 the act of 1891 does not contemplate separate appeals or writs of error on the merits in the same case and at the same time to two appellate courts. *Ib.*

8. *Review of judgment of Circuit Court on jurisdictional grounds; when jurisdictional question involved.*

Where the jurisdiction of the Circuit Court is questioned merely in respect to its general authority as a judicial tribunal to entertain a summary proceeding to compel repayment of assets wrongfully withheld from a receiver appointed by it, its power as a court of the United States as such is not questioned and the case cannot be certified directly to this court under the jurisdiction clause of § 5 of the Judiciary Act of 1891. *Bien v. Robinson*, 423.

9. *Of appeal or writ of error from territorial court under act of March 3, 1905.*

Harrison v. Magoon, 205 U. S. 501, followed to effect that the act of March 3, 1905, c. 1465, 33 Stat. 1035, did not operate retroactively and that this court has no authority to review judgments of the Supreme Court of Hawaii, rendered prior to that date, which could not be reviewed under the previous act. In this case it was held that the writ of error could not be sustained as to the judgment referred to therein because entered prior to March 3, 1905, and also that it could not be sustained as to a judgment in the same suit entered after the writ of error had been sued out. *Notley v. Brown*, 429.

10. *Writ of error to state court—Sufficiency of involution of Federal questions.*

Where the Federal questions are clearly presented by the answer in the state court, and the decree rendered could not have been made without adversely deciding them, and, as in this case, they are substantial as involving the jurisdiction of the Circuit Court over property in its possession and the effect to be given to its decree, this court has jurisdiction and the writ of error will not be dismissed. *Wabash Railroad v. Adelbert College*, 38.

11. *Review of action of state court sustaining state statute—Who entitled to raise constitutional question involved.*

Notwithstanding that plaintiff in error's charge of unconstitutionality of a state statute may not be frivolous, in order to give this court jurisdiction to review the action of the state court sustaining the statute the

question must be raised in this court by one adversely affected by the decision and whose interest is personal and not of an official nature. (*Smith, Auditor, v. Indiana*, 191 U. S. 138.) *Braxton County Court v. Tax Commissioners*, 192.

12. *Review of decision of state court; personal interest to entitle one to such review.*

A county court of West Virginia has no personal interest in the amount of tax levy made by it which will give this court jurisdiction to review at its instance the decision of the highest court of that State determining that the levy is excessive, even though the basis of request for review is the ground that the reduction of the assessment leaves the county unable for lack of funds to fulfill the obligations of its contracts. *Ib.*

13. *Under § 709, Rev. Stat.—Denial of Federal right set up—Mining claims.*

The determination by the trial court that the locators of a mining claim had resumed work on the claim after a failure to do the annual assessment work, required by § 2324, Rev. Stat., and before a new location had been made, and the finding by the highest court of the State that such determination is conclusive, do not amount to the denial of a Federal right set up by the party claiming the right to relocate the claim, and this court cannot review the judgment under § 709, Rev. Stat. *Yosemite Mining Co. v. Emerson*, 25.

14. *Under § 709, Rev. Stat. Adequacy of non-Federal grounds to support judgment of state court and make it not subject to review here.*

Where the Federal question below was whether a tax sale deprived the owner of his property without due process of law because the notice, being published on Sunday, was insufficient, and the state court did not pass on that question but sustained the tax title under the state statutes making tax deeds *prima facie* evidence and of limitations, the non-Federal grounds are adequate to support the judgment and this court is without jurisdiction to review it on writ of error under § 709, Rev. Stat. *Elder v. Wood*, 226.

15. *Under § 709. Involution of Federal question.*

The contention in the state court that plaintiff in error's title rested on a patent to his grantor and that prior to the issuing thereof the legal title had remained in the United States, so that adverse possession could not be obtained, involves a Federal question, and as in this case it was not frivolous, and was necessarily decided by the state court, and such decision was adverse to the title set up under the United States, this court has jurisdiction under § 709, Rev. Stat., to review the judgment. *Missouri Valley Land Co. v. Wiese*, 234; *Missouri Valley Land Co. v. Wrich*, 250.

See CONSTITUTIONAL LAW, 5;
JURISDICTION, C 1;
TAXES AND TAXATION, 11.

B. OF THE CIRCUIT COURT OF APPEALS.

See JURISDICTION, A 6.

C. OF CIRCUIT COURTS.

1. *Enjoining proceedings in state court.*

Notwithstanding the prohibitive provisions of § 720, Rev. Stat., the Circuit Court of the United States may have jurisdiction of a suit brought by a citizen of one State against citizens of another State to enjoin the execution of a judgment fraudulently entered against him in a state court which had no jurisdiction by reason of non-service of the summons, and this court will not determine the merits of such a case on *habeas corpus* proceedings brought by one of the defendants committed for contempt for disobeying a preliminary injunction order issued by the Circuit Court. *Ex parte Simon*, 144.

2. *Collusion of purposes of jurisdiction—Preference of parties as to tribunal—Effect of motive for bringing suit.*

Where the averments of the bill are true, and there is no question as to the diversity of citizenship, or any evidence that a case was fraudulently created to give jurisdiction to the Federal court, the case will not be regarded as collusive merely because the parties preferred to resort to the Federal court instead of to a state court; in the absence of any improper act, the motive for bringing the suit is unimportant. *Re Metropolitan Railway Receivership*, 90.

3. *When order permitting intervention and extending receivership not of jurisdictional nature.*

After the Federal court has properly obtained jurisdiction over a corporation and has appointed receivers thereof, an order permitting other parties closely identified therewith to intervene and extending their receivership over them is not of a jurisdictional nature, and in this case the discretion was, in view of all the facts, properly exercised. *Ib.*

4. *Diversity of citizenship and not that defendants were engaged in interstate commerce determines jurisdiction in appointment of receivers.*

The mere fact that the defendant is engaged in interstate commerce does not give the Circuit Court jurisdiction; in cases in which this court has sustained the jurisdiction of the Circuit Court in the appointment of receivers, jurisdiction existed by reason of diversity of citizenship and not merely because the defendants were engaged in interstate commerce. *Ib.*

5. *Where no diversity of citizenship but constitutional question involved.*

Although all the parties to this action are citizens of the same State the Circuit Court of the United States had jurisdiction because the case arises under the Constitution of the United States, as complainant insists that the tax sought to be restrained is imposed under a state statute that impairs the obligation of a legislative contract for exemption from taxation. *Jetton v. University of the South*, 489.

6. *Controversy within meaning of statutes defining jurisdiction of Circuit Courts.*

An unsatisfied, justiciable claim of some right involving the jurisdictional amount made by a citizen of one State against a citizen of another State is a controversy or dispute between the parties within the meaning of the statutes defining the jurisdiction of the Circuit Court (acts of March 3, 1875, c. 137, § 1, 18 Stat. 470; March 3, 1887, c. 373, § 1, 24 Stat. 552; August 13, 1888, c. 866, § 1, 25 Stat. 433), and such jurisdiction does not depend upon the denial by the defendant of the existence of the claim or of its amount or validity. *Re Metropolitan Railway Receivership*, 90.

7. *Same.*

In this case there being such a claim, and the requisite diversity of citizenship, the Circuit Court had jurisdiction although the defendant admitted the facts and the liability, waived the objection that the complainants were not entitled to equitable relief, and joined in the request for appointment of receivers. *Ib.*

8. *Possession of property; exclusiveness of jurisdiction resulting from; effect of sale of property.*

The possession of property in the Circuit Court carries with it the exclusive jurisdiction to determine all judicial questions concerning it, and that jurisdiction continues after the property has passed out of its possession by a sale under its decree to the extent of ascertaining the rights of, and extent of liens asserted by, parties to the suit and which are expressly reserved by the decree and subject to which the purchaser takes title; and any one asserting any of such reserved matters as against the property must pursue his remedy in that Circuit Court and the state court is without jurisdiction. *Wabash Railroad v. Adelbert College*, 38.

D. OF THE FEDERAL COURTS GENERALLY.

See IMMIGRATION, 2.

E. OF STATE COURTS.

See COURTS, 2.

F. ADMIRALTY.

See ADMIRALTY.

G. GENERALLY.

Priority and exclusiveness of jurisdiction of court having possession of property.
The taking possession by a court of competent jurisdiction of property through its officers withdraws that property from the jurisdiction of all other courts, and the latter, though of concurrent jurisdiction, cannot disturb that possession, during the continuance whereof the court originally acquiring jurisdiction is competent to hear and determine

all questions respecting the title, possession and control of the property. Under this general rule ancillary jurisdiction of the Federal courts exists over subordinate suits affecting property in their possession although the diversity of citizenship necessary to confer jurisdiction in an independent suit does not exist. *Wabash Railroad v. Adelbert College*, 38.

See LOCAL LAW (NEW MEX.).

LABOR ORGANIZATIONS.

See ANTI-TRUST ACT;
CONSTITUTIONAL LAW, 16;
STATUTES, A 7.

LAND DEPARTMENT.

See PUBLIC LANDS, 2.

LEASEHOLDS.

See CONSTITUTIONAL LAW, 3;
TAXES AND TAXATION, 6, 7, 13.

LEGISLATIVE POWERS.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 23.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 2, 6.

LIBERTY OF TRADE.

See ANTI-TRUST ACT, 1.

LICENSES.

See STATES, 3, 4;
TAXES AND TAXATION, 8, 16.

LIENS.

See COURTS, 1, 2;
COURT OF CLAIMS;
TAXES AND TAXATION, 1, 2.

LIQUORS.

See CORPORATIONS, 2;
INDIANS, 4, 5;
TAXES AND TAXATION, 3.

LOCAL LAW.

Arizona. Rev. Stat. of 1901, par. 725; acknowledgment of deeds (see Practice and Procedure, 12). *Lewis v. Herrera*, 309.

Colorado. Secs. 340, 341 of Laws of Colorado of 1881; taxing interests in unpatented mining claims, etc. (see Taxes and Taxation, 10). *Elder v. Wood*, 226.

Michigan. Indeterminate sentence law of 1903 (see Constitutional Law, 8, 10). *Ughbanks v. Armstrong*, 481.

New Mexico. *Attachment; title acquired by purchaser through sale under alias writ.* This court holds, following the construction of the Supreme Court of New Mexico of the statutes of that Territory, that there is no authority in New Mexico for the issuing of an alias writ of attachment, and that levying upon property under such a writ gives the court no jurisdiction thereover, and the purchaser acquires no title through sale under such a levy. *Crary v. Dye*, 515.

Oklahoma. 1. *Discretionary power of court to impose terms upon a defendant as condition to permitting him to answer after entry of judgment by default.* Under pars. 3983, 3984, §§ 105, 106, Code of Civil Procedure of Oklahoma Territory, of 1893, providing for the entry of judgment by default and giving the court power in opening the default to impose such terms as may be just, the court may, without abusing its discretion, in an action for divorce in which the husband defendant is flagrantly in default, impose as terms in granting him leave to answer that he pay within a specified period to the plaintiff a reasonable sum for alimony and counsel fees which had already been allowed, and in case of his failure so to do judgment for the relief demanded in the complaint may properly be entered against him. (*Hovey v. Elliott*, 167 U. S. 409, distinguished.) *Bennett v. Bennett*, 505.

2. *Measure of damages for wrongful conversion of personal property.* While there may be a general rule that in actions for torts an allowance for interest is not an absolute right, under par. 2640, § 23 of the Oklahoma Code of 1893, the detriment caused by, and recoverable for, the wrongful conversion of personal property is the value of the property at the time of the conversion with interest from that time. *Drumm-Flato Commission Co. v. Edmisson*, 534.

3. *Direction of verdict—Setting aside verdict for want of answer to interrogatory improvidently submitted.* Where the local statute provides, as does par. 4176, § 298 of the Oklahoma Code of 1893, that on request the court may direct the jury to find upon particular questions of fact, the verdict will not be set aside because the jury fails to answer an interrogatory improvidently submitted in regard to a fact which was only incidental to the issue. *Ib.*

4. *Evidence; production of books of entry.* Under par. 4277, § 399 of the Code of Civil Procedure of Oklahoma of 1893, the original books of entry must be produced on the trial; their production before the notary taking the deposition of the witness who kept the books is not

sufficient, and copies made by the notary cannot be used where the objecting party gives notice that the production of the books themselves will be insisted upon. *Ib.*

Oregon. Hours of labor for women (see Constitutional Law, 12). *Muller v. Oregon*, 412.

Tennessee. Assessment law of 1903 (see Constitutional Law, 3). *Jetton v. University of the South*, 489. Taxation; act of 1903, ch. 258 (see Constitutional Law, 1, 13). *Darnell & Son v. Memphis*, 113.

Virginia. Condemnation of land (see Practice and Procedure, 2). *Hairston v. Danville & Western Railway*, 598.

MAILS.

See INJUNCTION, 4.

MASTER AND SERVANT.

See CONGRESS, POWERS OF, 2, 3;
CONSTITUTIONAL LAW, 6, 16;
STATUTES, A 7.

MEASURE OF DAMAGES.

See LOCAL LAW (OKLA., 2).

MINES AND MINING.

1. *Notice; object of preliminary notice of claim—Right of one having knowledge of prior location to relocate claim for himself.*

The object of requiring the posting of the preliminary notice of mining-claims is to make known the purpose of the discoverer and to warn others of the prior appropriation; and one having actual knowledge of a prior location and the extent of its boundaries, the outlines of which have been marked, cannot relocate it for himself and claim a forfeiture of the original location for want of strict compliance with all the statutory requirements of preliminary notice. *Yosemite Mining Co. v. Emerson*, 25.

2. *Forfeiture of claim; effect of violation of miners' rule.*

Quære, and not decided, whether a forfeiture arises simply from a violation of a mining rule established by miners of a district which does not expressly make non-compliance therewith work a forfeiture. *Ib.*

See ESTOPPEL, 2;

JURISDICTION, A 13;

TAXES AND TAXATION, 10-12.

MORALITY.

See STATUTES, A 4.

MORTGAGES.

See TAXES AND TAXATION, 2.

MUNICIPAL CORPORATIONS.

State regulation of; limitation on power as to.

Speaking generally, and subject to the rule that no State can set at naught the provisions of the National Constitution, the regulation of municipal corporations is peculiarly within state control, the legislature determining the taxing body, the taxing districts, and the limits of taxation. *Braxton County Court v Tax Commissioners*, 192.

See STATES, 2.

MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, 4, 5, 18.

NAMES.

See TRADE-NAME.

NATIONAL BANKS.

See TAXES AND TAXATION, 14.

NATIONAL COMITY.

See TREATIES.

NAVIGABLE WATERS.

See ADMIRALTY.

NAVY.

See ARMY AND NAVY, 3.

NEZ PERCE INDIANS.

See INDIANS, 5.

NOTICE.

See COPYRIGHT;

MINES AND MINING, 1.

OFFICES.

Creation of.

An office commonly requires something more than a single transitory act to call it into being. *Carrington v. United States*, 1.

See ARMY AND NAVY, 2.

OPINIONS.

Citations in; limitation of approval.

In citing approvingly, as to the particular point involved in this case, cases

recently decided in the lower Federal courts, this court expresses no opinion upon any other subjects involved in such cases, and does not even indirectly leave room for any implication that any opinion has been expressed as to such other issues which may hereafter come before it for decision. *Great Northern Ry. Co. v. United States*, 452.

ORIGINAL PACKAGES.

See STATES, 4.

PARTIES.

•*See* APPEAL AND ERROR, 2;
JURISDICTION, A 1, 11, 12.

PATENTS FOR LAND.

See PUBLIC LANDS, 1.

PAYMENT.

See BILLS AND NOTES;
TAXES AND TAXATION, 5.

PENAL STATUTES.

See STATUTES, A 2.

PENALTIES AND FORFEITURES.

See JURISDICTION, A 6;
STATUTES, A 8;
TAXES AND TAXATION, 3.

PERSONAL LIBERTY.

See CONSTITUTIONAL LAW, 6, 16.

PHILIPPINE ISLANDS.

See ARMY AND NAVY, 1, 2.

POLICE POWER.

See CONGRESS, POWERS OF, 4; CORPORATIONS. 2;
CONSTITUTIONAL LAW, 2, 11, 18; STATES, 2-5.

POSTAL RATES.

See INJUNCTION, 4.

POSTMASTER GENERAL.

See INJUNCTION, 4.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 16.

PRACTICE AND PROCEDURE.

1. *Assumption that lower court acted rightfully in appointing receivers and issuing injunction.*

Where no sufficient reason is stated warranting the court in deciding that the Circuit Court acted without jurisdiction, this court will assume that the Circuit Court acted rightfully in appointing receivers and issuing an injunction against disposition of assets. *Bien v. Robinson*, 423.

2. *Assumption that general judgment of condemnation of land by state court conformed to state law.*

Where the state law, as is the case with the law of Virginia, permits no exercise of the right of eminent domain except for public uses, a general judgment of condemnation by the state court will be assumed to have been held to be for a public use even if there was no specific finding of that fact. *Hairston v. Danville & Western Railway*, 598.

3. *Certificate from and certiorari to Circuit Court of Appeals; scope of review.*

After the Circuit Court of Appeals has certified questions to this court and this court has issued its writ of certiorari requiring the whole record to be sent up, it devolves upon this court under § 6 of the Judiciary Act of 1891, to decide the whole matter in controversy in the same manner as if it had been brought here for review by writ of error or appeal. *Loewe v. Lawlor*, 274.

4. *Determination by this court as to existence of contract within impairment clause of Constitution.*

In cases arising under the contract clause of the Federal Constitution this court determines for itself, irrespective of the decision of the state court, whether a contract exists and whether its obligation has been impaired, and if plaintiff in error substantially sets up a claim of contract with allegations of its impairment by state or municipal legislation, the judgment of the state court is reviewable by this court under § 709, Rev. Stat. *Northern Pacific Railway v. Duluth*, 583.

5. *Effect of local court's construction of local statute.*

The views of the territorial courts are very persuasive on this court as to the construction of local statutes. *Crary v. Dye*, 515.

6. *Following construction by state court of state statute.*

When a subsequently enacted criminal law is more drastic than the existing law which in terms is repealed thereby, the claim that it is *ex post facto* as to one imprisoned under the former law and therefore void, and that the earlier law being repealed he cannot be held thereunder, has no force in this court where the state court has held that the later law does not repeal the earlier law as to those sentenced thereunder. In such a case this court follows the construction of the state court. *Ughbanks v. Armstrong*, 481.

7. *Following construction by state court of state statute.*

This court follows the construction of an indeterminate sentence law by

the highest court of the State, to the effect that where the maximum term of imprisonment for a crime has been fixed by statute a minimum term fixed by the court of a shorter period is simply void. *Ib.*

8. *Following construction by state court of state statute; when question of existence of contract involved.*

This court while not bound by the construction placed on a state statute by the state court, as to whether a contract was created thereby, and if so how it should be construed, gives to such construction respectful consideration, and unless plainly erroneous generally follows it; a decision of the state court, however, that a leasehold interest in exempted property cannot, during the exemption, be taxed against the owner of the fee, is not authority to be followed by this court, on the proposition that the leasehold interest cannot be taxed without impairing the obligation of the contract of exemption against the lessee in his own name and against his particular interest in the land. *Jetton v. University of the South*, 489.

9. *Following construction by state court of state statute.*

This court will not construe a state statute assessing leaseholds and making the tax a lien upon the fee as creating a lien on property exempted from taxation, and thereby violating the contract clause of the Constitution when the state court has not so construed the statute and the taxing officers of the State disclaim any intention of so construing it or levying any tax on exempted property. *Ib.*

10. *Conclusiveness of state court's decision.*

Where the condemnation of land has been held by the state court to be authorized by the constitution and laws of that State this court cannot review that aspect of the decision. *Hairston v. Danville & Western Railway*, 598.

11. *As to following state court's decision that taking of property was for public use.*

While cases may arise in which this court will not follow the decision of the state court, up to the present time it has not condemned as a violation of the Fourteenth Amendment any taking of property upheld by the state court as one for a public use in conformity with its laws. *Ib.*

12. *As to following territorial court's construction of local statutes.*

The construction of the statute of a Territory by the local courts is of great, if not of controlling, weight; and in this case this court follows the construction given by the Supreme Court of Arizona to par. 725, Rev. Stat. of Arizona of 1901, to the effect that a deed or conveyance of real property to be valid as against third parties must be signed and acknowledged by the grantor and that until acknowledged it is ineffectual to convey title. *Lewis v. Herrera*, 309.

13. *Following territorial court's finding of fact.*

Halsell v. Renfrow, 202 U. S. 287, followed, as to when this court, in re-

viewing a judgment of the Supreme Court of the Territory of Oklahoma, is confined to determining whether that court erred in holding that there was evidence tending to support the findings made by the trial court in a case submitted to it by stipulation, without a jury, and whether such findings sustained the judgment. *Southern Pine Co. v. Ward*, 126.

14. *When Federal question raised too late.*

It is too late to raise the Federal question on motion for rehearing in the state court, unless that court entertains the motion and expressly passes on the Federal question. *Disconto Gesellschaft v. Umbreit*, 570.

15. *When objection to remarks of trial court to be taken.*

Objections to remarks of the trial court which counsel consider prejudicial must be taken at the time so that if the court does not then correct what is misleading its action is subject to review. *Drumm-Flato Commission Co. v. Edmisson*, 534.

16. *When contention embraced in ground for demurrer to indictment not considered on review of judgment.*

Although a ground for demurrer to indictment may be sufficiently broad to embrace a contention raised before this court, if it appears that such contention was disclaimed, and was not urged, in the trial court and in the Circuit Court of Appeals, and was not referred to in any of the opinions below or in the petition for certiorari or the brief in support thereof, this court will, without intimating any opinion in regard to its merits, decline to consider it. *Great Northern Ry. Co. v. United States*, 452.

17. *Consideration of local conditions in determining constitutionality of state court's decision in respect of exercise of eminent domain.*

While it is beyond the legislative power of a State to take, against his will, the property of one and give it to another for a private use, even if compensation be required, it is ultimately a judicial question whether the use is public or private; and, in deciding whether the state court has determined that question within the limits of the Fourteenth Amendment, this court will take into consideration the diversity of local conditions. *Hairston v. Danville & Western Railway*, 598.

18. *Where conflict of decisions of state and Federal courts as to rights of parties to property in possession of Circuit Court.*

Where claims are presented for adjudication to the Circuit Court against property in its possession and there are conflicting decisions of the state and Federal courts as to the rights of the parties, the Circuit Court must first determine which decision it will follow. This court cannot pass upon that question until it is properly before it. *Wabash Railroad Co. v. Adelbert College*, 609.

See JUDGMENTS AND DECREES;
JURISDICTION, A 7.

PRESUMPTIONS.

See BANKRUPTCY, 3;
COURTS, 1.

PRINCIPAL AND SURETY.

See EQUITY, 2.

PRIORITY OF LIEN.

See TAXES AND TAXATION, 2.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 6, 16, 17, 18.

PROSTITUTION.

See STATUTES, A 1.

PUBLIC LANDS.

1. *Adverse occupancy under joint patent.*

Where lands are within the overlap of place limits of two grants, both of which are *in presenti*, and for which eventually a joint patent is issued to both companies, the occupancy of a portion thereof, under a deed given by one of the companies after definite location, and before the issuing of the joint patent, is adverse to the other company, and not that of a co-tenant; nor, under the circumstances of this case, do the acts of such occupant in acquiring title from the United States, under the remedial act of March 3, 1887, 24 Stat. 556, interfere with his title thereto which had already been established by adverse possession. *Missouri Valley Land Co. v. Wiese*, 234; *Missouri Valley Land Co. v. Wrich*, 250.

2. *Entrys—Equitable relief from error of Land Department.*

If an entryman's entry is good when made and the Land Department, by error of law, adjudges the land to belong to another, a court of equity will convert the latter into a trustee for the former and compel him to convey the legal title. *Prosser v. Finn*, 67.

3. *Entrys—Determination of entryman's rights.*

Continued occupation of public land by one not entitled to enter after the disability has been removed is not equivalent to a new entry. The entryman's rights are determined by the validity of the original entry when made. *Ib.*

4. *Special agents of Land Department within prohibition of § 452, Rev. Stat.*
—*Effect of good faith of agent and construction of statute by commissioner.*

Congress having said without qualification, by § 452, Rev. Stat., that employés in the General Land Office shall not, while in the service of that office, purchase, or become interested directly or indirectly in the purchase of, public lands, this prohibition applies to special agents of that office and renders an entry made by a special agent under the Timber Culture Act void, leaving the land open to entry, notwithstanding that

such agent made the same in good faith when there was a ruling of the Commissioner that § 452 did not apply to special agents, and that he complied with the requirements of the act and continued in occupation after he had ceased to be a special agent. *Ib.*

5. *Railway land grants. Rulings as to Union Pacific main line grant held applicable to lands within grant for construction of Sioux City branch road.*
The rulings of this court that the Union Pacific Railroad main line grant, within place limits, made by the act of July 1, 1862, 12 Stat. 489, and the amendatory act of July 2, 1864, 13 Stat. 356, was *in presenti*, and that after definite location of its road the grantee company could maintain ejectment and that title could be acquired against it by adverse possession, held in this case to apply to lands embraced within the grant for construction of the Sioux City branch road, notwithstanding such branch was to be constructed by a company to be thereafter incorporated. *Missouri Valley Land Co. v. Wiese*, 234; *Missouri Valley Land Co. v. Wrich*, 250.

6. *Railway right of way; when grant effective—Superiority of homestead entry.*
Under the act of March 3, 1875, c. 152, 18 Stat. 482, granting to railroads the right of way through public lands of the United States, such grant takes effect either on the actual construction of the road, or on the approval of the Secretary of the Interior, after the definite location and the filing of a profile of the road in the local land office, as provided in § 4 of the act; and a valid homestead entry made after final survey but before either the construction of the road or the approval by the Secretary of the profile, is superior to the rights of the company. (*James-town & Northern Railway Co. v. Jones*, 177 U. S. 125, explained and followed.) *Minneapolis, St. Paul & c. Ry. Co. v. Doughty*, 251.

See TAXES AND TAXATION, 12.

PUBLIC OFFICERS.

See ARMY AND NAVY;
PUBLIC LANDS, 4.

PUBLIC SAFETY.

See CONSTITUTIONAL LAW, 18.

PUBLIC USE.

See CONSTITUTIONAL LAW, 17;
PRACTICE AND PROCEDURE, 2, 11, 17.

RAILROADS.

See CONSTITUTIONAL LAW, 17, 18;
PUBLIC LANDS, 5, 6;
RECEIVERS, 3.

RAILWAY LAND GRANTS.

See PUBLIC LANDS, 5.

RATES, FREIGHT.

See INTERSTATE COMMERCE, 1, 2.

RATES OF POSTAGE

See INJUNCTION, 4.

RECEIVERS.

1. *Rights of receiver of bank.*

The receiver of a bank stands in no better position than the bank stood as a going concern. *Rankin v. City National Bank*, 541.

2. *Charge of liabilities incurred by.*

A receiver, as soon as he is appointed and qualifies, comes under the sole direction of the court and his engagements are those of the court, and the liabilities he incurs are chargeable upon the property and not against the parties at whose instance he was appointed and who have no authority over him and cannot control his actions. *Atlantic Trust Co. v. Chapman*, 360.

3. *Same.*

While cases may arise in which it may be equitable to charge the parties at whose instance a receiver is appointed with the expenses of the receivership, in the absence of special circumstances the general rule, which is applicable in this case, is that such expenses are a charge upon the property or fund without any personal liability therefor on the part of those parties; and the mere inadequacy of the fund to meet such expenses does not render a plaintiff who has not been guilty of any irregularity liable therefor. *Ib.*

4. *Termination of receivership of railroad.*

A receivership of a railroad as a going concern, although at times necessary and proper—as in this case, where the refusal to appoint a receiver would have led to sacrifice of property, confusion among the creditors, and great inconvenience to the travelling public—should not be unnecessarily prolonged, and in case of unnecessary delay the court should listen to the application of any creditor upon due notice to the receiver for the prompt termination of the trust or vacation of the order appointing receivers. *Re Metropolitan Railway Receivership*, 90.

See BILLS AND NOTES;

JURISDICTION, C 3, 4;

EQUITY, 1, 3;

PRACTICE AND PROCEDURE, 1.

RECORD ON APPEAL.

See APPEAL AND ERROR, 3, 4.

REMEDIES.

See TAXES AND TAXATION, 1.

REHEARING.

Petition for rehearing and motion to modify judgment, denied. *Wabash Railroad v. Adelbert College*, 609.

REPRESENTATIVE OR CLASS SUIT.

See ACTIONS.

RES JUDICATA.

See BANKRUPTCY, 1;

JUDGMENTS AND DECREES.

RESTITUTION.

See EQUITY, 1.

RESTRAINING ORDER.

See INJUNCTION, 1.

RESTRAINT OF TRADE.

See ANTI-TRUST ACT, 1.

REVISED STATUTES.

See ACTS OF CONGRESS.

SECOND JEOPARDY.

See CONSTITUTIONAL LAW, 19.

SEIZURES.

See TAXES AND TAXATION, 3.

SISSETON AND WAHPETON INDIANS.

See INDIANS, 3.

SIXTH AMENDMENT.

See CONSTITUTIONAL LAW, 20.

STATES.

1. *Comity; removal of property to another jurisdiction for adjustment of claims against alien.*

While aliens are ordinarily permitted to resort to our courts for redress of wrongs and protection of rights, the removal of property to another jurisdiction for adjustment of claims against it is a matter of comity and not of absolute right, and, in the absence of treaty stipulations, it is within the power of a State to determine its policy in regard thereto. *Disconto Gesellschaft v. Umbreit*, 570.

2. *Police power; right of State or municipality to limit, contract away or destroy.*
The right to exercise the police power is a continuing one that cannot be limited or contracted away by the State or its municipality, nor can it be destroyed by compromise as it is immaterial upon what consideration the attempted contract is based. *Northern Pacific Railway v. Duluth*, 583.

3. *Police power; incidental revenue does not affect character of regulation.*

The police power of the State is very extensive and is frequently exercised where it also results in raising revenue, and in this case an ordinance imposing a license tax on a class of dealers in intoxicating liquor was held to be a police regulation notwithstanding it also produced a revenue. *Phillips v. Mobile*, 472; *Richard v. Mobile*, 480.

4. *Police power; licensing sale of intoxicating liquors introduced into State in original packages.*

An ordinance imposing a license on persons selling beer by the barrel is an exercise of the police power of the State, and as such is authorized by the Wilson Act, 26 Stat. 313, notwithstanding such liquors were introduced into the State in original packages. *Ib.*

5. *Police power; regulation of working hours of women.*

The right of a State to regulate the working hours of women rests on the police power and the right to preserve the health of the women of the State, and is not affected by other laws of the State granting or denying to women the same rights as to contract and the elective franchise as are enjoyed by men. *Muller v. Oregon*, 412.

See CONGRESS, POWERS OF, 5;
CONSTITUTIONAL LAW, 2, 7,
9, 11, 20, 21;
CORPORATIONS, 2;

INDIANS 5;
MUNICIPAL CORPORATIONS;
PRACTICE AND PROCEDURE, 17;
TAXES AND TAXATION, 8, 9, 12,
15, 16.

STATE AND FEDERAL COURTS.

See PRACTICE AND PROCEDURE, 18.

STATUTES.

A. CONSTRUCTION OF.

1. *Ejusdem generis*—Scope of words "or other immoral purposes" in act aimed principally at prostitution.

While under the rule of *ejusdem generis* the words "or other immoral purpose" would only include a purpose of the same nature as the principal subject to which they were added they do include purposes of the same nature, such as concubinage, when the principal subject is prostitution and the importation of women therefor. *United States v. Bitty*, 393.

2. *Of penal laws.*

While penal laws are to be strictly construed they are not to be construed so strictly as to defeat the obvious intent of the legislature. *Ib.*

3. *Penal Statutes.*

A revenue statute containing provisions of a highly penal nature should be construed in a fair and reasonable manner, and, notwithstanding plain and unambiguous language, provisions for the prevention of evasion of taxation, which naturally are applicable to taxable articles only, will not be held applicable to articles not taxable, wholly harmless, and not used

for an illegal purpose, in an improper manner, or in any way affording opportunities to defraud the revenue. *United States v. Graj Distilling Co.*, 198.

4. *When views of public to be regarded—Construction of act prohibiting importation of alien women for immoral purposes.*

In construing an act of Congress prohibiting the importation of alien women for prostitution or other immoral purposes regard must be had to the views commonly entertained among the people of the United States as to what is moral and immoral in the relations between man and woman and concubinage is generally regarded in this country as immoral. *United States v. Bitty*, 393.

5. *Effect of erroneous construction of statute, by public officer, to confer rights.*

An erroneous interpretation of a statute by the Commissioner of the Department to which it applies, does not confer any legal rights on one acting in conformity with such interpretation, in opposition to the express terms of the statute. *Prosser v. Finn*, 67.

6. *Conclusiveness of recitals in act.*

A mere recital in an act, whether of fact or of law, is not conclusive unless it be clear that the legislature intended that it be accepted as a fact in the case. (*Kinkead v. United States*, 150 U. S. 433); *Blacklock v. United States*, 75.

7. *Effect on statute of partial unconstitutionality—Severable provision.*

The provision in § 10 of the act of June 1, 1898, making it a criminal offense against the United States for a carrier engaged in interstate commerce, or an agent or officer thereof, to discharge an employé simply because of his membership in a labor organization, is severable, and its unconstitutionality may not affect other provisions of the act or provisions of that section thereof. *Adair v. United States*, 161.

8. *Section 13, Rev. Stat., saving penalties incurred under statutes repealed; effect on subsequent statutes.*

The provisions of § 13, Rev. Stat., that the repeal of any statute shall not have the effect to release or extinguish any penalty incurred under the statute repealed, are to be treated as if incorporated in, and as a part of, subsequent enactments of Congress, and, under the general principle of construction requiring effect to be given to all parts of a law, that section must be enforced as forming part of such subsequent enactments except in those instances where, either by express declaration or necessary implication such enforcement would nullify the legislative intent. *Great Northern Ry Co. v. United States*, 452.

9. *Elkins law of February 19, 1903, not repealed by Hepburn law of June 29, 1906, so as to deprive Government of right to prosecute for violations of former committed prior to enactment of latter.*

The act of Congress of June 29, 1906, c. 359, 34 Stat. 584, known as the Hepburn law, as construed in the light of § 13, Rev. Stat., as it must be con-

strued, did not repeal the act of February 19, 1903, c. 708, 32 Stat. 847, known as the Elkins law, so as to deprive the Government of the right to prosecute for violations of the Elkins law committed prior to the enactment of the Hepburn law; nor when so construed does the Hepburn law under the doctrine of *inclusio unius exclusio alterius* exclude the right of the Government to prosecute for past offenses not then pending in the courts because pending causes are enumerated in, and saved by, § 10 of the Hepburn law. *Ib.*

See INDIANS, 4;
PRACTICE AND PROCEDURE, 9, 12;
TAXES AND TAXATION, 1, 10.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

SUBROGATION.

See EQUITY, 2.

SUBSTITUTION OF PARTIES.

See JURISDICTION, A 1.

TAX DEEDS.

See TAXES AND TAXATION, 11.

TAXES AND TAXATION.

1. *Internal revenue; enforcement of lien for—Construction of § 106 of act of July 20, 1868, and act of July 13, 1866.*

Section 106 of the act of July 20, 1868, 15 Stat. 125, 167, providing for an action in equity by the collector of internal revenue to enforce a lien of the United States for unpaid revenue taxes, did not supersede the provisions of the act of July 13, 1866, 14 Stat. 107, giving the remedy of distraint so that such lien could only be enforced by suit in equity, but it gave another and cumulative remedy in cases where, as expressed in the act, the collector deemed it expedient. (*Mansfield v. Excelsior Refining Co.*, 135 U. S. 326.) *Blacklock v. United States*, 75.

2. *Internal revenue; priority of lien for, over that of mortgagee. Mode of enforcement of lien.*

In this case, *held*, that the lien of the Government for unpaid revenue taxes on land of the delinquent was prior to that of the mortgagee bringing this action, and that the sale of the land by distraint proceedings, and not by foreclosure suit in equity, was in conformity with the act of July 13, 1866, then in force, and vested the title in the purchasers at the sale and their grantees, subject to the right of redemption given by the statute to the owners of the land and of holders of liens thereon. *Ib.*

3. *Internal revenue—Seizure and forfeiture under § 3455, Rev. Stat.*

The sale of a barrel of whiskey, stamped, branded and marked so as to show that the contents have been duly inspected, and the tax thereon paid, into which a non-taxable substance has been introduced after such stamping, branding and marking by an officer of the revenue, does not authorize a seizure and forfeiture thereof to the United States under the provisions of § 3455, Rev. Stat. *United States v. Graf Distilling Co.*, 198.

4. *Internal revenue—Substances comprehended by § 3455, Rev. Stat.*

The phrase "anything else," as employed in § 3455, Rev. Stat., does not include substances that are not in themselves taxable under the law of the United States. *Ib.*

5. *Effect of acceptance of amount tendered as estoppel to demand more.*

A county treasurer accepting that part of the tax which a party assessed admits to be due is not thereby estopped to demand more. *First Nat. Bank v. Albright*, 548.

6. *Exemption of real property; as to extension to leasehold interest therein.*

An exemption of real property from taxation will not be construed as extending to the interest of the lessee therein, because a forced sale of the lessee's interest might put the property in the hands of parties to whom the exempted owner objects. Under the terms of the lease the owner can prevent such contingency by reëntering for non-payment of taxes. *Jetton v. University of the South*, 489.

7. *Charter exemption from taxation; extension of, to lessees of corporation.*

A charter exemption from taxation cannot be extended simply because it would, as so construed, add value to the exemption; and an exemption from taxation of property belonging to an institution, so long as it belongs thereto, will not be extended to also exempt the leasehold interest of parties to whom the owner leases the same. *Ib.*

8. *State; discrimination within meaning of Fourteenth Amendment.*

Where a license tax on dealers in a particular article is exacted without reference as to whether the article was manufactured within or without the State, the ordinance imposing it creates no discrimination against manufacturers outside of the State within the meaning of the equal protection clause of the Fourteenth Amendment. *Phillips v. Mobile*, 472; *Richards v. Mobile*, 480.

9. *State; power to tax property which has moved in channels of interstate commerce.*

While a State may tax property which has moved in the channels of interstate commerce after it is at rest within the State and has become commingled with the mass of property therein, it may not discriminate against such property by imposing upon it a burden of taxation greater than that imposed upon similar domestic property. *Darnell & Son v. Memphis*, 113.

10. *State taxation of interest in unpatented mining claim not a taxation of lands or property of the United States.*

Sections 340, 341 of the laws of Colorado of 1881, taxing interests in unpatented mining claims and making the right of possession the subject of levy and sale, are not in conflict with § 4 of the Colorado enabling act of March 3, 1875, 18 Stat. 474, providing that no tax shall be imposed on lands or property of the United States. *Elder v. Wood*, 226.

11. *State taxation of interests in mining location; interest of United States not affected by tax deed.*

When the collection of a tax on such an interest is enforced by sale, the tax deed conveys merely the right of possession and does not affect any interest of the United States, and the construction of the state statutes, and the conformity thereto of the tax levy and sale, are matters exclusively for the state court to determine, and this court is without jurisdiction to review its decision. *Ib.*

12. *State taxation of mining location or interest therein.*

A valid subsisting mining location, such as the Comstock lode, or an interest therein, is property distinct from the land itself, vendible, inheritable and taxable as such, by the State, notwithstanding the land may be unpatented by the United States. *Ib.*

13. *Taxation of leasehold interest in land; materiality of ownership of building thereon.*

The fact that the lessee does not own the buildings erected by him on leased property does not affect the right to tax his leasehold interest; it is material only on the question of value of his interest. *Jetton v. University of the South*, 489.

14. *When equity will interfere with assessing officer.*

Equity will not interfere to stop an assessing officer from performing his statutory duty for fear he may perform it wrongfully; the earliest moment is when an assessment has actually been made, and in this case held that the court would not, at the instance of a national bank, enjoin assessors in advance from making an assessment on a basis alleged to be threatened and which if made would be invalid under § 5219, Rev. Stat. *First Nat. Bank v. Albright*, 548.

15. *When proceeds of sale of imported articles are subject to taxation by State.*

When a foreign manufacturer establishes a permanent place of business in this country for the sale of imported articles, although the bulk of the proceeds may be sent abroad, such proceeds as are retained here as cash in bank and notes receivable, and are used in connection with the business, lose the distinctive character which protects them under the Federal Constitution and become capital invested in business in the State and carried on under its protection and are subject to taxation by the laws of that State. Whether this rule applies to open

accounts for goods sold, not decided, the state court not having passed on that question. *Burke v. Wells*, 14.

16. *Imported articles may be taxed by State, when.*

While the State may not directly tax imported goods or the right to sell them, or impose license fees upon importers for the privilege of selling, so long as the goods remain in the original packages and are unincorporated into the general property, *Brown v. Maryland*, 12 Wheat. 419, when the article has lost its distinctive character as an import and been mingled with other property, it becomes subject to the taxing power of the State. (*May v. New Orleans*, 178 U. S. 496.) *Ib.*
See CONSTITUTIONAL LAW, 1, 3, 13; MUNICIPAL CORPORATIONS;
 JURISDICTION, A 12; STATUTES, A 3.

TIMBER.

See INDIANS, 1.

TITLE.

<i>See</i> ESTOPPEL, 1, 2;	PRACTICE AND PROCEDURE, 12;
INDIANS, 4;	PUBLIC LANDS, 5;
LOCAL LAW (NEW MEX.);	TAXES AND TAXATION, 2.

TRADE-NAME.

1. *Family name; effect of sale of good will, trade-name, etc., on use of.*
 A stockholder, even though also an officer, of a corporation bearing his family name does not necessarily lose his right to carry on the business of manufacturing the same commodity under his own name because that corporation sold its good will, trade-name, etc., and as a stockholder and officer he participated in the sale. He is not entitled, however, to use, and may be enjoined by the purchaser from using, any name, mark or advertisement indicating that he is the successor of the original corporation or that his goods are the product of that corporation or of its successor, nor can he interfere in any manner with the good will so purchased. *Donnell v. Herring-Hall-Marvin Safe Co.*, 267.
2. *Family name; right to use of.*
Donnell v. Herring-Hall-Marvin Safe Co., ante, p. 267, followed as to construction of the contract involved in that case and this, and as to the rights of stockholders to carry on business under their own name. *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 554.
3. *When sale of business comprehends.*
 Although the trade-name may not be mentioned in the sale of a business taken over as a going concern, a deed conveying trade-marks, patent-rights, trade-rights, good will, property and assets of every name and nature is broad enough to include the trade-name under which the vendor corporation and its predecessors had achieved a reputation. *Ib.*

4. *Name of person or town; restriction of use.*

The name of a person or town may become so associated with a particular product that the mere attaching of that name to a similar product without more would have all the effect of a falsehood, and while the use of that name cannot be absolutely prohibited, it can be restrained except when accompanied with a sufficient explanation to prevent confusion with the product of the original manufacturer or original place of production. *Ib.*

TREATIES.

National comity—Treaty of 1828 with Prussia—Relative rights of local and foreign creditors to administer fund.

While the treaty of 1828 with Prussia has been recognized as being still in force by both the United States and the German Empire, there is nothing therein undertaking to change the rule of national comity that permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of its jurisdiction for administration in favor of creditors beyond its borders. *Disconto Gesellschaft v. Umbreit*, 570.

Chippewa treaty of 1854. See INDIANS, 1.

TRIAL.

See PRACTICE AND PROCEDURE, 15.

TRUSTS AND TRUSTEES.

See PUBLIC LANDS, 2.

UNION PACIFIC RAILROAD.

See PUBLIC LANDS, 5.

UNITED STATES.

See INDIANS, 4, 5;

TAXES AND TAXATION, 11.

UNLAWFUL CONVERSION.

See LOCAL LAW (OKLA., 2).

VENDOR AND VENDEE.

See ESTOPPEL, 2;

TRADE-NAME.

VERDICT.

See LOCAL LAW (OKLA., 3).

VESSELS.

See ADMIRALTY.

INDEX.

WAIVER.

See EMINENT DOMAIN;
EQUITY, 3.

WILSON ACT.

See STATES, 4.

WOMEN.

See CONSTITUTIONAL LAW, 11;
JUDICIAL NOTICE;
STATES, 5.

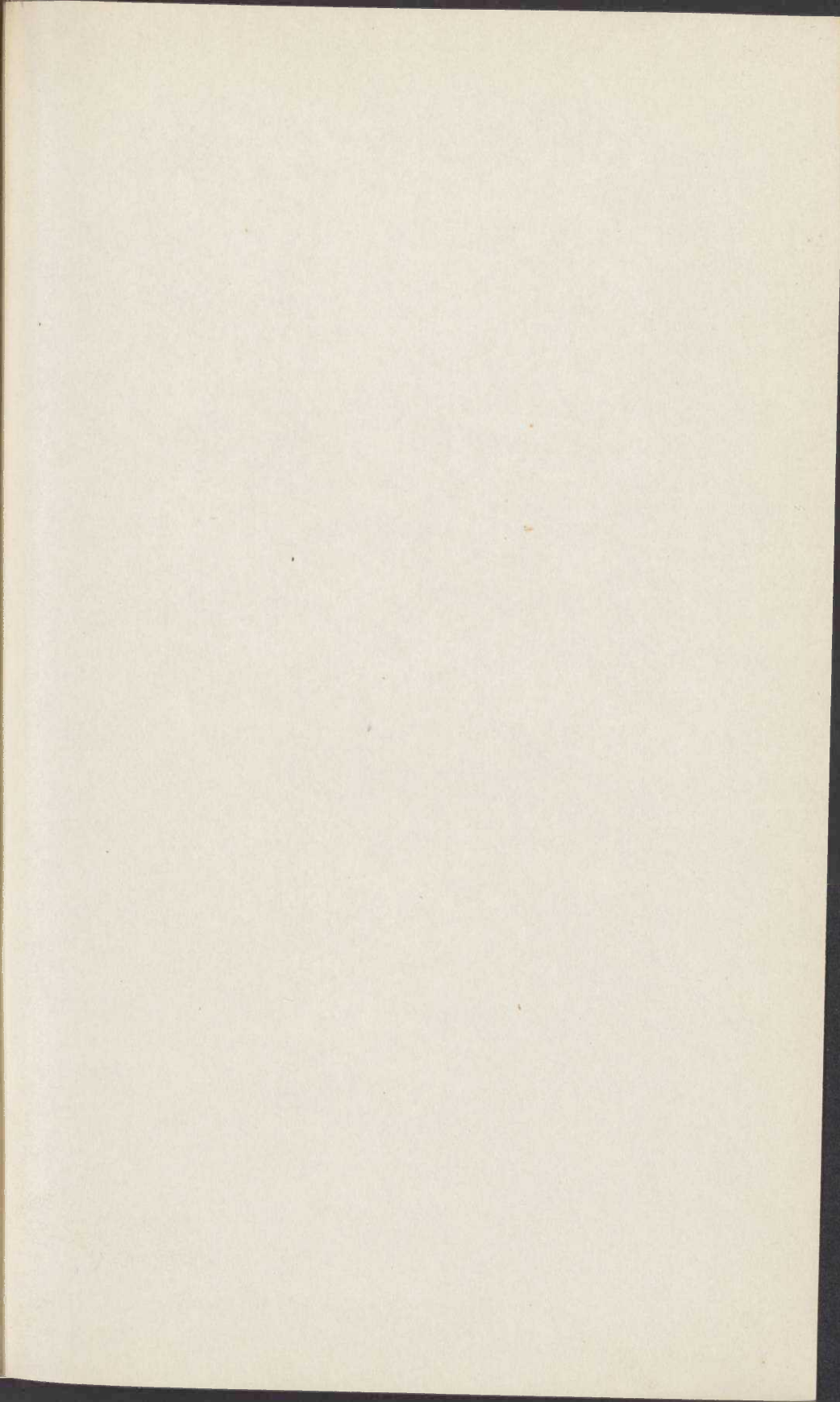
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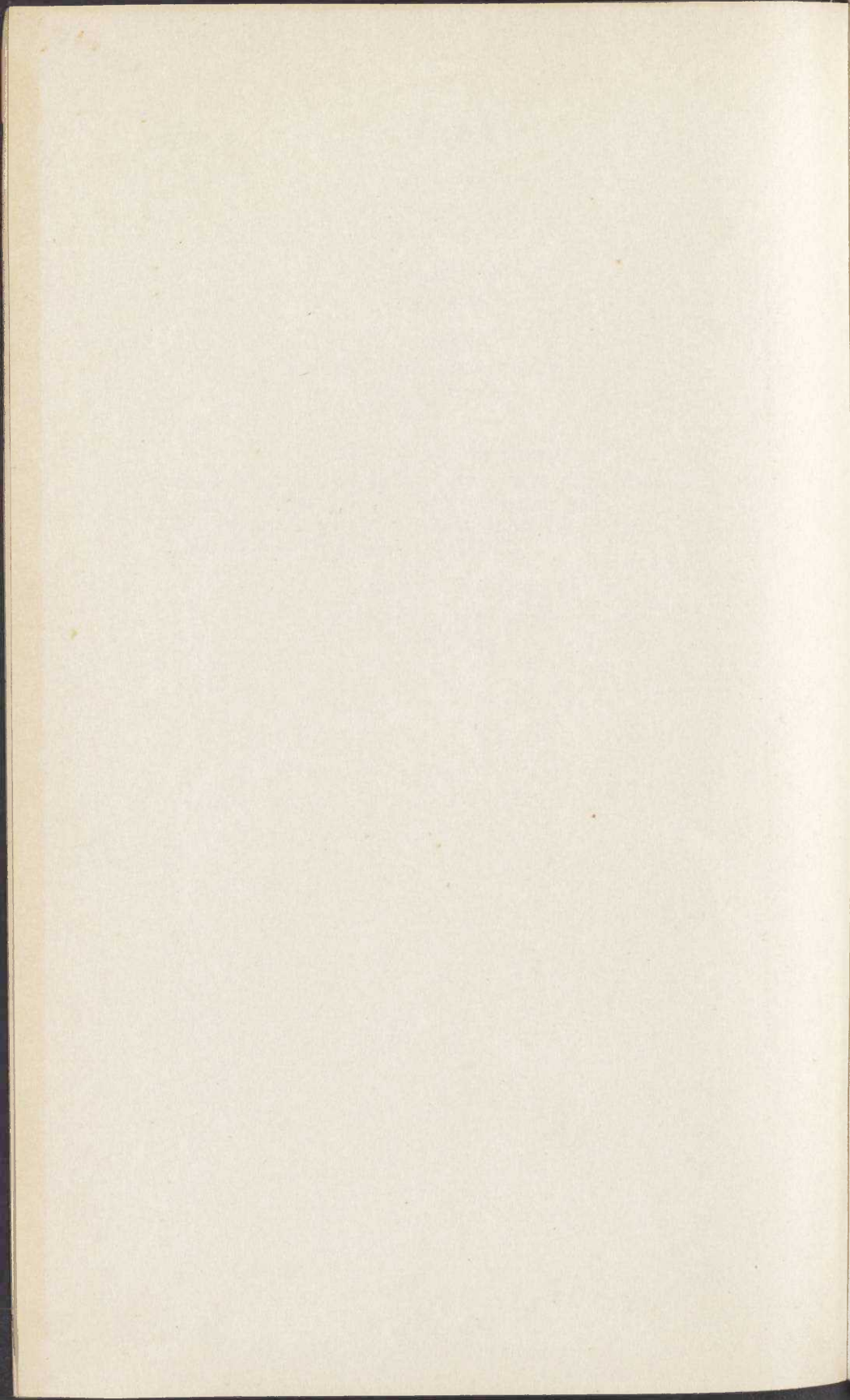
"Anything else" as employed in § 3455, Rev. Stat. (see Taxes and Taxation, 4). *United States v. Graf Distilling Co.*, 198.

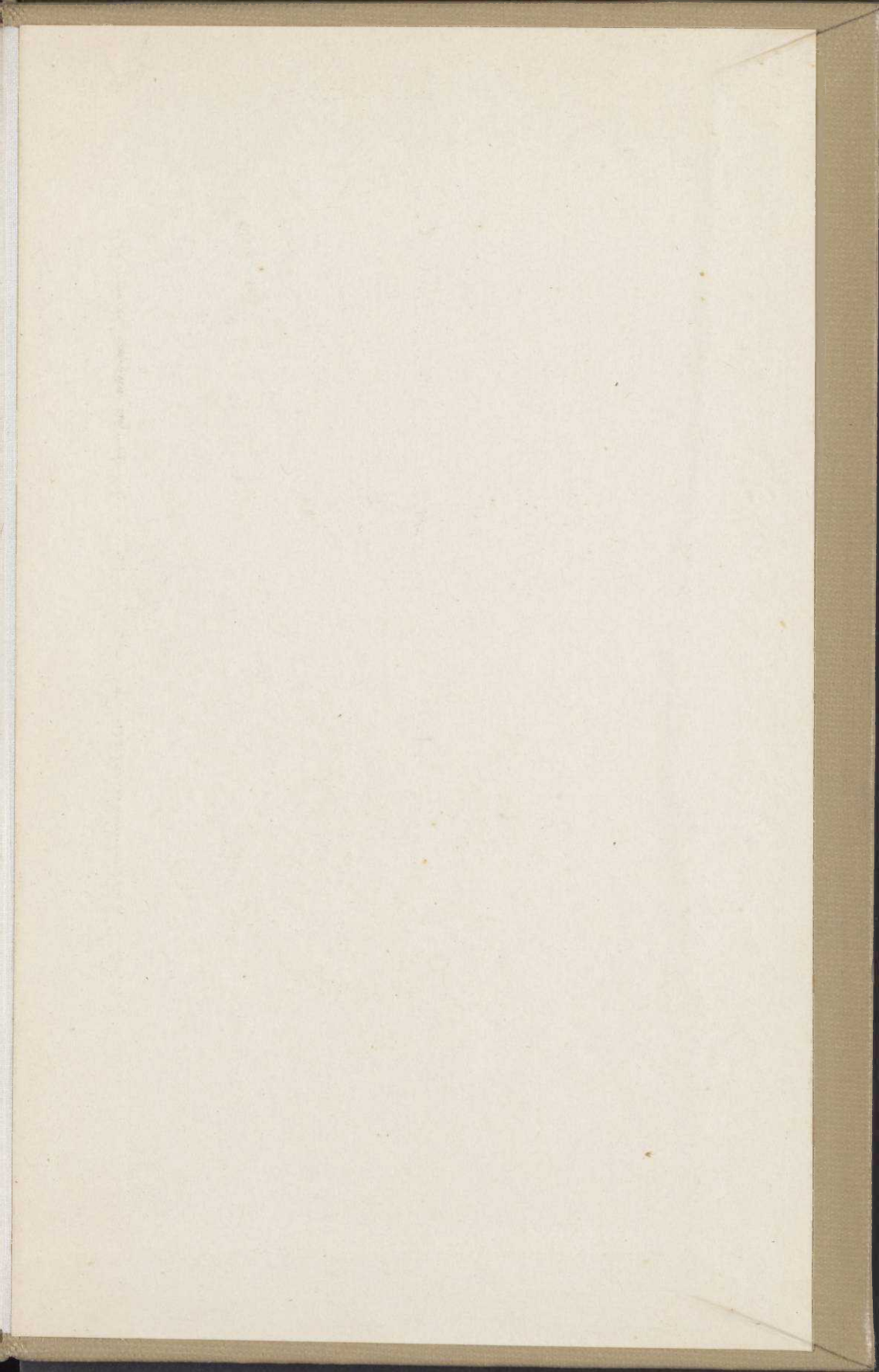
"Other immoral purposes" as used in act of Feb. 20, 1907, c. 1134 (see Statutes A 1), *United States v. Bitty*, 393.

WRIT OF ERROR.

See APPEAL AND ERROR;
JURISDICTION.







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