

INDEX.

ACTIONS.

1. *Suit in equity proper method to determine constitutionality of state railroad rate statute.*

While a common carrier sued at common law for penalties under, or on indictment for violation of, a state rate statute might interpose as a defense the unconstitutionality of the statute on account of the confiscatory character of the rates prescribed, a jury cannot intelligently pass upon such a matter; the proper method is to determine the constitutionality of the statute in a court of equity in which the opinions of experts may be taken and the matter referred to a master to make the needed computations and to find the necessary facts on which the court may act. *Ex parte Young*, 123.

2. *Suit by stockholders to enjoin corporation.*

In this case a suit by a stockholder against a corporation to enjoin the directors and officers from complying with the provisions of a state statute, alleged to be unconstitutional, was properly brought within Equity Rule 94 of this court. *Ex parte Young*, 123.

3. *Suit against State; what constitutes within meaning of act of Tennessee of 1873.*

A suit against state officers to enjoin them from enforcing a state statute which violates complainant's constitutional rights either by its terms or by the manner of its enforcement is not a suit against the State within the meaning of the statute of 1873 of Tennessee, denying jurisdiction to the courts of the State, of suits against the State. *General Oil Co. v. Crain*, 211.

4. *Effect of bill in equity to set aside agreement of adjustment of a community—Necessary parties to such bill.*

A bill in equity to set aside an agreement of adjustment of a community between the widow and children, brought after the death of the widow who had also left children by a second marriage, is a liquidation of the community and although the property was derived solely from the first husband the children of the second marriage are, as heirs of the mother, interested in her share and are necessary parties to the bill. *Garzot v. de Rubio*, 283.

See JURISDICTION, B 6, C;
PUBLIC LANDS, 2;
STATUTES, A 2, 3.

ACTS OF CONGRESS.

BANKRUPTCY, Act of July 1, 1898, § 60a (see Bankruptcy, 1): *Richardson v. Shaw*, 365.

CHINESE EXCLUSION, Acts of September 13, 1888, c. 1015, §13, and May 15, 1890, c. 60, § 3 (see Immigration, 1): *Liu Hop Fong v. United States*, 453.

CIVIL SERVICE, Act of January 16, 1883, § 12 (see Criminal Law, 4): *United States v. Thayer*, 39.

COPYRIGHT Act as amended March 3, 1891 (see Copyright, 1): *White-Smith Co. v. Apollo Co.*, 1. Amendment of § 4966, Rev. Stat. by the Act of January 6, 1897 (see Copyright, 3), *Ib.*

CRIMINAL LAW, Rev. Stat. §§ 711 and 5339 (see Jurisdiction, D 3): *Battle v. United States*, 36.

CUBA, Act of March 2, 1901, c. 803 and Platt Amendment (see Principal and Agent, 2): *O'Reilly de Camara v. Brooke*, 45.

GOVERNMENT CONTRACTS, Acts of February 24, 1905, c. 778, and August 13, 1894, c. 280 (see Statutes, A 2): *U. S. Fidelity Co. v. Struthers Wells Co.*, 306.

HABEAS CORPUS, Rev. Stat. § 753 (see Habeas Corpus): *Hunter v. Wood*, 205.

INJUNCTION BONDS, Rev. Stat. § 718 (see Injunction, 1): *Hutchins v. Munn*, 246.

INSPECTION OF CATTLE, Acts of February 2, 1903 and March 3, 1903 (see Interstate Commerce, 13): *Asbell v. Kansas*, 251.

INTERSTATE COMMERCE ACT (see Interstate Commerce, 3): *Armour Packing Co. v. United States*, 56 (see Interstate Commerce 5): *Interstate Commerce Comm. v. Chicago Great Western Ry. Co.*, 108. Sherman Law (see Restraint of Trade, 2): *Shawnee Compress Co. v. Anderson*, 423. Elkins Act of February 19, 1903 (see Criminal Law, 5): *Armour Packing Co. v. United States*, 56. Acts of March 2, 1889 and February 19, 1903 (see Interstate Commerce, 1): *Ib.*

JUDICIARY Act of March 3, 1891, § 6 (see Jurisdiction, A 8): *Hallowell v. United States*, 101; § 5 (see Practice and Procedure, 7): *Venner v. Great Northern Ry. Co.*, 24. Act of April 7, 1874, § 2 (see Jurisdiction, A 6): *Garzot v. de Rubio*, 283. Rev. Stat. § 909 (see Jurisdiction, A 3): *General Oil Co. v. Crain*, 211 (see Jurisdiction, A 4): *Thomas v. Iowa*, 258.

PORTO RICO, Act of May 1, 1900, § 33 (see Courts, 5): *Garzot v. de Rubio*, 283.

PUBLIC LANDS, Act of March 3, 1891, c. 561, § 8 (see Public Lands, 2): *United States v. Chandler-Dunbar Co.*, 447.

TARIFF Act of July 11, 1897, par. 296 (see Statutes, A 6): *United States v. Hermanos y Compañía*, 337.

ADMINISTRATION.

See JURISDICTION, C.

ADMISSION TO BAR.

See TREATIES, 1.

ALIGNMENT OF PARTIES.

See JURISDICTION, B 5.

AMBIGUITIES.

See PRACTICE AND PROCEDURE, 4.

AMENDMENTS TO CONSTITUTION.

Sixth. See CONSTITUTIONAL LAW, 2, 3.

Eleventh. See STATES, 4, 7, 8.

*Fourteenth. See CONSTITUTIONAL LAW, 5, 12;
STATES, 4.*

AMOUNT IN CONTROVERSY.

See JURISDICTION, A 2.

APPEAL AND ERROR.

*See JURISDICTION;
MANDAMUS, 1.*

ARGUMENT OF COUNSEL.

See CRIMINAL LAW, 2.

ASSESSMENT AND TAXATION.

*See CONSTITUTIONAL LAW, 7;
TAXATION.*

AUDITORS.

See PRACTICE AND PROCEDURE, 3.

BANKRUPTCY.

1. *Preferred creditors; customer of stock broker to whom is turned over stock carried on margin, as.*

A broker who turns over to a customer, upon demand and payment of advances, stock which he is carrying on margin for that customer, or certificates for an equal number of shares, does not make the customer a preferred creditor within the meaning of § 60a of the bankrupt law; in the absence of fraud or preferential transfer the broker has the right to continue to use his estate for the redemption of pledged stocks in order to comply with the valid demand of a customer for stocks carried for him on margin. *Richardson v. Shaw*, 365.

2. *Preferred creditors; payment by broker to customer on account of excess margins not a preference.*

A payment by the broker to a customer on account of excess margins to which the customer is entitled and which is taken into consideration when the account is finally closed, *held*, under the circumstances of this case, not to be a preferential payment within the meaning of § 60a of the bankrupt law. *Ib.*

3. *Trustee's title no better than that of bankrupt.*

If title to property is good as against the bankrupt or his creditors at the time the trustee's title accrues, title does not pass, and the owner of the property is entitled to have it restored to him, or, if it has been sold, the proceeds thereof. *Thomas v. Taggart*, 385.

4. *Shares of stock held by a broker as collateral for the account of a customer held property of customer as against trustee in bankruptcy; effect of hypothecation.*

Shares of stock held by a broker as collateral for the account of a customer, upon which the latter is not indebted to the broker, are the property of the customer, and, as the trustee has no better right thereto than the bankrupt, the customer is entitled to their possession; and this right is not affected by the fact that the broker had hypothecated the shares. In such case the customer is entitled to the shares, or their proceeds, when returned to the trustee if the loan has been paid by proceeds of other securities pledged therefor. *Ib.*

5. *Proof of claim of customer against bankrupt broker not a waiver of right to recover possession of specific stocks.*

Proof of claim of a customer against a broker, including value of securities deposited as collateral, does not amount to a waiver of his right to recover possession of the specific stocks, if found, where his claim specifically states that he does not waive such right of possession. *Ib.*

BERNE COPYRIGHT CONVENTION.

See COPYRIGHT, 1.

BONDED WAREHOUSES.

See STATES, 5.

BONDS.

See INJUNCTION, 1, 2.

BOUNDARIES.

See PROPERTY RIGHTS, 1;
PUBLIC LANDS, 1.

BROKERS.

1. *Stockbroker as pledgee of stock carried on margin.*

While a broker who carries stocks for a customer on margin may not be strictly a pledgee at common law, he is essentially a pledgee and not the owner of the stock. *Markham v. Jaudon*, 41 N. Y. 235, approved. *Richardson v. Shaw*, 365.

2. *Stockbrokers; relation to customer.*

Neither the right of the broker to repledge stock carried on margin for a customer, nor his right to sell such stock for his protection when the margin is exhausted, alters the relation of the parties, is inconsistent with the customer's ownership, or converts the broker into the owner of the stock. *Ib.*

3. *Stockbrokers; change of certificate as change in property right held by broker for customer.*

A certificate of stock is not the property itself but the evidence of the prop-

erty in the shares, and, as one share of stock is not different in kind or quality from every other share of the same issue and company, the return of a different certificate, or the right to substitute one certificate for another of the same number of shares, is not a material change in the property right held by the broker for his customer. *Ib.*

4. *Stockbroker as pledgee of stock carried on margin.*

Richardson v. Shaw, ante, p. 365, followed to the effect that as a general rule the broker is the pledgee and the customer the owner and pledgor of stocks carried on margin. *Thomas v. Taggart*, 385.

5. *Commissions of real estate brokers.*

A broker employed to sell land subject to a requirement of the purchaser which the vendor declares will be complied with is entitled to his commissions if the sale falls through solely because the vendor's representations are inaccurate. *Dotson v. Milliken*, 237.

6. *Same.*

The fact that the particular portion of a tract of land for which a broker finds a purchaser in accordance with the vendor's offer cannot be identified does not defeat the broker's claim for commissions if the sale falls through entirely for other reasons for which the vendor was exclusively responsible. *Ib.*

See BANKRUPTCY, 1, 2, 4, 5.

BURDEN OF PROOF.

See CRIMINAL LAW, 1.

CAMPAIGN CONTRIBUTIONS.

See CRIMINAL LAW, 4.

CANCELLATION OF DEEDS.

See DEEDS.

CARRIERS.

See ACTIONS, 1;
CONSTITUTIONAL LAW, 3;
INTERSTATE COMMERCE.

CASES APPROVED.

Markham v. Jaudon, 41 N. Y. 235, approved in *Richardson v. Shaw*, 365.

CASES DISTINGUISHED.

Lottery Case, 188 U. S. 321, distinguished in *Ware & Leland v. Mobile County*, 405.

Rearick v. Pennsylvania, 203 U. S. 507, distinguished in *Ib.*

CASES EXPLAINED.

Ex parte Wisner, 203 U. S. 449, explained in *In re Moore*, 490.

CASES FOLLOWED.

C., B. & Q. Ry. Co. v. Williams, 205 U. S. 444, followed in *Hallowell v. United States*, 101.
Doctor v. Harrington, 196 U. S. 579, followed in *Venner v. Great Northern Ry. Co.*, 24.
Georgia v. Tennessee Copper Co., 206 U. S. 230, followed in *Hudson Water Co. v. McCarter*, 349.
In re Palliser, 136 U. S. 257, followed in *United States v. Thayer*, 39.
Kansas v. Colorado, 185 U. S. 125, followed in *Hudson Water Co. v. McCarter*, 349.
New Haven Railroad Co. v. Interstate Commerce Commission, 200 U. S. 361, followed in *Armour Packing Co. v. United States*, 56.
Paul v. Virginia, 8 Wall. 168, followed in *Ware & Leland v. Mobile County*, 405.
Reid v. Colorado, 187 U. S. 137, followed in *Asbell v. Kansas*, 251.
Richardson v. Shaw, 209 U. S. 365, followed in *Thomas v. Taggart*, 385.
Robertson v. Downing, 127 U. S. 607, followed in *United States v. Hermanos y Compañía*, 337.
The Paquette Habana, 189 U. S. 453, followed in *O'Reilly de Camara v. Brooke*, 45.
United States v. Falk, 204 U. S. 143, followed in *United States v. Hermanos y Compañía*, 337.
United States v. Healy, 160 U. S. 136, followed in *Ib.*

CATTLE INSPECTION.

See INTERSTATE COMMERCE, 11, 13;
STATES, 3.

CERTIFICATE.

See JURISDICTION, A 8;
PRACTICE AND PROCEDURE, 5, 6, 7.

CERTIFICATE OF STOCK.

See BROKERS.

CHALLENGES TO JURORS.

See CONSTITUTIONAL LAW, 9, 10.

CHINESE.

See IMMIGRATION.

CITIZENSHIP.

See JURISDICTION, A 7;
TREATIES, 1.

CIVIL SERVICE ACT.

See CRIMINAL LAW, 4.

CLASSIFICATION FOR TAXATION.

See CONSTITUTIONAL LAW, 12.

COMMERCE.

See INTERSTATE COMMERCE.

COMMISSIONS.

See BROKERS.

COMPACT BETWEEN NEW YORK AND NEW JERSEY.

See CONSTITUTIONAL LAW, 6.

COMPACT BETWEEN STATES.

See PRACTICE AND PROCEDURE, 8.

COMPETITION

See INTERSTATE COMMERCE, 5.

COMMUNITIES

See ACTIONS, 4;
JURISDICTION, C.

CONGRESS.

I. ACTS OF.

See ACTS OF CONGRESS.

II. POWERS OF.

To purchase land for post-offices and courts.

Under Article I, § 8, cl. 17, of the Federal Constitution, Congress has power to purchase land within a State for post offices and courts by consent of the legislature of the State and to exercise exclusive legislation over the same. *Battle v. United States*, 36.

See INTERSTATE COMMERCE, 11;
JURISDICTION, B 7.

CONSTITUTIONAL LAW.

Commerce clause, see Infra, 8; INTERSTATE COMMERCE.

1. *Contract clause; contract to remove rights from state restriction, not within.*
One whose rights are subject to state restriction cannot remove them from the power of the State by making a contract about them, and a contract illegal when made, such as the diversion of water from the State, is not within the protection of the contract clause of the Constitution. *Hudson Water Co. v. McCarter*, 349.

See Infra, 8;
CORPORATIONS, 1.

2. *Criminal trials; place of.*

The requirements of § 2 of Art. III of, and of the Sixth Amendment to, the Federal Constitution relate to the locality of the offense and not to the

personal presence of the offender. *Armour Packing Co. v. United States*, 56.

3. *Criminal trials; place of.*

Transportation of merchandise by a carrier for less than the published rate is, under the Elkins Act, a single continuing offense, continuously committed in each district through which the transportation is conducted at the prohibited rate, and is not a series of separate offenses, and the provision in the law making such an offense triable in any of those districts, confers jurisdiction on the court therein, and does not violate § 2 of Art. III of, or the Sixth Amendment to, the Federal Constitution, providing that the accused shall be tried in the State and district where the crime was committed. *Ib.*

4. *Due process; one acting under statute not assured that interpretation given thereto by executive officers will be sustained by the courts.*

Due process of law does not assure to taxpayers that the court will sustain the interpretation given to a statute by executive officers or relief from the consequences of misinterpretation by either such officers or the court; one acting under a statute must take his chances that such action will be in accord with the final decision as to its proper interpretation; this is a hazard under every law from which there is no security. *Thompson v. Kentucky*, 340.

5. *Due process of law; deprivation of property; requiring warehouseman to pay interest on taxes on spirits in bond on which taxes had previously been paid by him, and the spirits withdrawn.*

The fact that a warehouseman paid taxes without interest on spirits in bond under a mistaken interpretation of the statute by the state officers and subsequently permitted the spirits to be withdrawn does not estop the State to recover from the warehouseman interest due on such taxes under the statute, and a judgment therefor does not deprive the warehouseman of his property without due process of law within the meaning of the Fourteenth Amendment, and so *held* as to the tax statutes of Kentucky. *Ib.*

6. *Due process of law; property rights—Construction of compact between New York and New Jersey of 1833.*

Under the agreement of 1833 between the States of New York and New Jersey, 4 Stats. 708, while exclusive jurisdiction is given to New York over the waters of the Hudson River west of the boundary line fixed by the agreement, the land under such waters remained subject to the sovereignty of New Jersey and the jurisdiction given to New York over the waters does not exclude the sovereign power of New Jersey to tax such land, — nor does an exercise of that power deprive the owner of the land of his property without due process of law. *Central R. R. Co. v. Jersey City*, 473.

7. *Due process of law—Tax sales; sufficiency of notice by publication.*

An owner of property must be held to knowledge that failure to pay duly assessed taxes will be followed by sale; and if the statute gives him full

opportunity to be heard as to the assessment on definite days, and definitely fixes the time for payment and the time for sale in case of default, so that he cannot fail, if duly diligent, to learn of the pendency of the sale, he is not denied due process of law because the notice of sale is by publication and not by personal service; and the validity of a tax sale under the law of Michigan sustained. *Longyear v. Toolan*, 414.

8. *Due process of law; impairment of contract obligation; commerce; equal privileges and immunities*—Validity of c. 238, *Laws of New Jersey of 1905, prohibiting diversion of waters*.

Chap. 238, *Laws of New Jersey of 1905*, prohibiting the transportation of water of the State into any other State is not unconstitutional either as depriving riparian owners of their property without due process of law, as impairing the obligation of contracts made by them for furnishing such water to persons without the State, as an interference with interstate commerce, or as denying equal privileges and immunities to citizens of other States. *Hudson Water Co. v. McCarter*, 349.

See JURISDICTION, B 4;
STATES, 5.

9. *Equal protection of laws; classification of accused persons*.

It is within the power of the State to divide accused persons into two classes, those who are, and those who may be, accused, and, if there is no discrimination within the classes, a person in one of the classes is not denied the equal protection of the laws because he does not have the same right of challenge of a grand juror as persons in the other class. *Lang v. New Jersey*, 467.

10. *Equal protection of laws; validity of New Jersey statute discriminating against accused persons as respects challenges to grand jurors*.

As construed by the highest court of that State, the statute of New Jersey providing that challenges to grand jurors cannot be made after the juror has been sworn does not deprive a person accused after the grand jury has been impanelled and sworn of the equal protection of the law because one accused prior thereto would have the right of challenge. *Ib.*

11. *Equal protection of the laws; deprivation by state statute imposing penalties affecting right of recourse to courts*.

While there is no rule permitting a person to disobey a statute with impunity at least once for the purpose of testing its validity, where such validity can only be determined by judicial investigation and construction, a provision in the statute which imposes such severe penalties for disobedience of its provisions as to intimidate the parties affected thereby from resorting to the courts to test its validity practically prohibits those parties from seeking such judicial construction and denies them the equal protection of the law. *Ex parte Young*, 123.

12. *Equal protection of laws; classification of distilled spirits in bond not a denial of*.

A classification of distilled spirits in bond, as distinct from other property

in regard to payment of interest on taxes does not constitute a discrimination amounting to a denial of equal protection of the laws within the meaning of the Fourteenth Amendment. *Thompson v. Kentucky*, 340.

See JURISDICTION, B 3, 4.

13. *Export and preference clause; burdens and preferences contemplated by.* The export and preference clause of the Constitution prohibits burdens only by way of actual taxation and duty, or legislation intending to give, and actually giving, the prohibited preference, and does not prohibit the merely incidental effect of regulations of interstate commerce wholly within the power of Congress; and the fact that such regulations in the Interstate Commerce Act may affect the ports of one State having natural advantages more than those of another State not possessing such advantages does not render the act unconstitutional as violating that provision. *Armour Packing Co. v. United States*, 56.

Post offices and post roads. *See JURISDICTION*, D 4.

14. *Privileges and immunities; effect of state statute forbidding diversion of waters.*

Citizens of other States are not denied equal privileges within the meaning of the immunity clause of the Constitution by a statute forbidding the diversion of waters of the State if they are as free as the citizens of the State to purchase water within the boundaries of the State, nor can such a question be raised by a citizen of the State itself. *Hudson Water Co. v. McCarter*, 349.

See Supra, 8.

Suits against States. *See STATES*, 7, 8.

CONSTRUCTION OF STATUTES.

See INTERSTATE COMMERCE, 2;
STATUTES, A.

CONTEMPT OF COURT.

1. *Discharge of one held for violation of decree entered without jurisdiction.* An order of the Circuit Court committing one for contempt for violation of a decree entered in a suit of which it did not have jurisdiction is unlawful; and, in such case, upon proper application, this court will discharge the person so held. *Ex parte Young*, 123.

2. *Propriety of action by Circuit Court of United States in punishing Attorney General of State for disobedience of its decree enjoining prosecution of state rate statute.*

The Circuit Court of the United States having, in an action brought by a stockholder of the Northern Pacific Railway Company against the officers of the road, certain shippers and the Attorney General certain other officials of the State of Minnesota, held that a railroad rate statute of Minnesota was unconstitutional and enjoined all the defendants from

enforcing such statute, and the Attorney General having refused to comply with such order, the Circuit Court fined and committed him for contempt, and this court refused to discharge him on *habeas corpus*. *Ib.*

CONTRACTS.

Weight of written portion of partly printed and partly written contract.

When there is a repugnancy between the printed and written provisions of a contract, the writing is presumed to express the specific intention of the parties and will prevail. In this case the written portion on the receipt given for stocks, deposited with the broker as collateral on account, was held as specially applicable thereto and that the broker's right to rehypothecate stocks under the printed portion of the contract was confined to the stocks purchased and carried on margin. *Thomas v. Taggart*, 385.

See ACTIONS, 4; ESTOPPEL, 2;
CONSTITUTIONAL LAW, 1; INSURANCE;
CORPORATIONS, 1; INTERSTATE COMMERCE, 4, 5, 9;
JURISDICTION, C.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CONTROVERSY BETWEEN STATES.

See STATES, 9, 10.

COPYRIGHT.

1. *Construction of copyright act as amended in 1891; effect of Berne Convention.*

While the United States is not a party to the Berne Copyright Convention of 1886, this court will hesitate to construe the copyright act as amended March 3, 1891, in such manner that foreign authors and composers can obtain advantages in this country which, according to that convention, are denied to our citizens abroad. *White-Smith Company v. Apollo Company*, 1.

2. *Protection afforded wholly statutory.*

What is included within the protection of the copyright statute depends upon the construction of the statute itself, as the protection given to copyright in this country is wholly statutory. *Ib.*

3. *Effect of act of January 6, 1897 to enlarge sections of Revised Statutes.*

The amendment of § 4966, Rev. Stat., by the act of January 6, 1897, 29 Stat. 481, providing penalties for infringements of copyrighted dramatic or musical compositions, did not enlarge the meaning of previous and unamended sections. *Ib.*

4. *Musical compositions; what constitutes copy.*

A "copy" of a musical composition within the meaning of the copyright statute is a written or printed record of it in intelligible notation and this does not include perforated rolls which when duly applied and properly

operated in connection with musical instruments to which they are adapted produce the same musical tones as are represented by the signs and figures on the copy in staff notation of the composition filed by the composer for copyright. *Ib.*

5. *Remedy of those not protected.*

Considerations of the hardships of those whose published productions are not protected by the copyright properly addressed themselves to Congress and not to the courts. *Ib.*

6. *Intellectual conception not provided for in existing statute.*

The existing copyright statute has not provided for the intellectual conception, even though meritorious, apart from the thing produced; but has provided for the making and filing of a tangible thing against the duplication whereof it has protected the composer. *Ib.*

See PRACTICE AND PROCEDURE, 2.

CORPORATE NAME.

See COURTS, 2.

CORPORATIONS.

1. *Consolidation; application of laws affecting constituent company.*

A corporation formed by the consolidation of several existing corporations is subject to the constitution and laws existing at the time of the consolidation in the same manner as all other corporations formed under the organic law of the State; and where the formation of the consolidated corporation is not imposed upon it, the constitution and laws in force become the law of its corporate being and if they prohibit the exemption of property of corporations from taxation such an exemption existing in favor of one of the constituent companies cannot be transferred to the consolidated corporation, and under such circumstances the exemption is not within the protection of the contract clause of the Constitution of the United States. *Yazoo & Miss. R. R. Co. v. Vicksburg*, 358.

2. *Consolidation; exemption in favor of constituent company not inuring to benefit of.*

An exemption in favor of a Mississippi corporation granted by ordinance prior to 1890, *held*, not to inure to the benefit of a consolidated corporation, of which the exempted corporation was one of the constituent companies, organized after the adoption of the state constitution of 1890. *Ib.*

See ACTIONS, 2;
JURISDICTION, B 5, 6.

COURTS

1. *Interference with executive department.*

Even if the power to review the determination of an executive department exists, where the complainant is merely appealing from the discretion of the department to the discretion of the court, the court should not

interfere by injunction where the complainant has no clear legal right to the relief sought. *National Life Insurance Co. v. National Life Insurance Co.*, 317.

2. *Same.*

Where a corporation has taken the same name as that of an older corporation the fact that it has a greater quantity of mail matter does not justify the court in interfering with a special order of the Post Office Department directing the delivery of matter not addressed by street and number in accordance with Par. 4 of § 645 of the General Regulations of 1902 to the one first adopting the name in the place of address. *Ib.*

3. *Interference with executive officers.*

While the courts cannot control the exercise of the discretion of an executive officer, an injunction preventing such officer from enforcing an unconstitutional statute is not an interference with his discretion. *Ex parte Young*, 123.

4. *Right of recourse to protect railroad interests.*

The railroad interests of this country are of great magnitude, and the thousands of persons interested therein are entitled to protection from the laws and from the courts equally with the owners of all other kinds of property, and the courts having jurisdiction, whether Federal or state, should at all times be open to them, and where there is no adequate remedy at law the proper course to protect their rights is by suit in equity in which all interested parties are made defendants. *Ib.*

5. *Effect of act of Congress of May 1, 1900 on local courts of Porto Rico and their jurisdiction.*

In establishing a civil government for Porto Rico Congress by § 33 of the act of May 1, 1900, in scrupulous regard for local institutions and laws, preserved the local courts and recognized their jurisdiction over local affairs, including matters of probate jurisdiction. *Garzot v. de Rubio*, 283.

See COPYRIGHT, 5; JURISDICTION;
INTERNATIONAL LAW; STATES, 8.

COURT HOUSES.

See CONGRESS, POWERS OF.

CRIMINAL LAW.

1. *Presumption of sanity of one accused of crime.*

Even if the burden of proof be on the Government to prove the fact of the prisoner's sanity, until evidence is given on the other side, the burden is satisfied by the presumption arising from the fact that most men are sane, and the trial judge is not bound to go further than to instruct the jury that the Government is bound to prove the fact beyond reasonable doubt, and that the jury consider all the evidence including the bearing of the prisoner, and the manner of his own testimony. *Battle v. United States*, 36.

2. *Trial; argument of counsel.*

An interruption of the court asking defendant's counsel to make a proper argument held in this case to be justified and not a ground for exception. *Ib.*

3. *Liability for consequences brought to pass, without personal presence.*

A man may sometimes be punished in person where he has brought consequences to pass, although he was not there in person. (*In re Palliser*, 136 U. S. 257.) *United States v. Thayer*, 39.

4. *Solicitation of campaign contributions prohibited by § 12 of act of January 16, 1883.*

A solicitation for funds for campaign purposes made by letter in violation of § 12 of the Civil Service Act of January 16, 1883, c. 27, 22 Stat. 403, is not complete until the letter is delivered to the person from whom the contribution is solicited, and if the letter is received by one within a building or room described in § 12 of the act the solicitation is in that place and the sender of the letter commits the prohibited offense in the prohibited place. *Ib.*

5. *Sufficiency of indictment for accepting rebates prohibited by Elkins Act.*

An indictment which clearly and distinctly charges each and every element of the offense intended to be charged, and which distinctly advises the defendant of what he is to meet at the trial is sufficient; and so *held* in this case as to an indictment for accepting rebates prohibited by the Elkins Act, although the details of the device by which the rebates were received were not set out. *Armour Packing Co. v. United States*, 56.

6. *Intent as essential.*

While intent is to some extent essential in the commission of crime, and without determining whether a shipper honestly paying a reduced rate in the belief that it is the published rate is liable under the statute, *held* that shippers who pay such a rate with full knowledge of the published rates, and contend that they have a right so to do, commit the offense prohibited by the Elkins Act, and are subject to the penalties provided therein, even though their contention be a mistake of law. *Ib.*

See CONSTITUTIONAL LAW, 2, 3, 9, 10;
JURISDICTION, D 2, 3.

CUBA.

See OFFICES;
PRINCIPAL AND AGENT, 2.

DAMAGES.

See INJUNCTION, 2.

DECLARATIONS.

See WILLS, 3.

DEEDS.

Cancellation on abandonment of object for which given.

A decree of the Supreme Court of Oklahoma cancelling a deed given to defendant below in furtherance of a scheme of development of property which had been abandoned, affirmed on the facts. *Bogard v. Sweet*, 464.

DEFENSES.

See ACTIONS, 1.

DEPORTATION.

See IMMIGRATION.

DEVICES.

See INTERSTATE COMMERCE, 1.

DISCRIMINATION.

See INTERSTATE COMMERCE.

DIVERSE CITIZENSHIP.

See JURISDICTION, B 5.

DIVERSION OF WATERS.

See CONSTITUTIONAL LAW, 1, 8, 14;
STATES, 2.

DRAMATIC COMPOSITIONS.

See COPYRIGHT, 3.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 4, 5, 6, 7, 8;
JURISDICTION, B 4;
STATES, 5.

ELEVENTH AMENDMENT.

See STATES, 4, 7, 8.

ELKINS ACT.

See CONSTITUTIONAL LAW, 3;
INTERSTATE COMMERCE, 4.

EMINENT DOMAIN.

See PROPERTY RIGHTS, 1.

EMPLOYER AND EMPLOYÉ.

See MASTER AND SERVANT.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 9, 10, 11, 12;
JURISDICTION, B 3, 4.

EQUITY.

See ACTIONS, 1;
COURTS, 4;
JURISDICTION, D 8, E.

EQUITABLE ESTOPPEL.

See ESTOPPEL, 2.

ESTATES OF DECEDENTS.

See JURISDICTION, C.

ESTOPPEL.

1. *In pais; application of principles to municipal corporations.*

The principles of right and justice upon which the doctrine of estoppel *in pais* rests, are applicable to municipal corporations. *Beadles v. Smyser*, 393.

2. *In pais; effect of contract by municipality to pay judgments.*

Where public property of a municipality cannot be seized on execution and the municipality enters into a valid agreement with judgment creditors to apply the judgment fund to judgments in order of entry and complies therewith, it cannot, after the expiration of the statutory period when a judgment becomes dormant for failure to issue execution, plead the statute of limitations as a bar to those judgments not yet reached for payment under the agreement. The municipality is estopped both on the contract and on the ground of equitable estoppel, and so held as to judgments against a city in Oklahoma. *Ib.*

See CONSTITUTIONAL LAW, 5.

EVIDENCE.

Burden of proving state rate statute invalid.

A state rate statute is to be regarded as *prima facie* valid, and the *onus* rests on the carrier to prove the contrary. *Ex parte Young*, 123.

See CRIMINAL LAW, 1;
STATES, 9, 10;
WILLS, 3.

EXCEPTIONS.

See INSTRUCTIONS TO JURY.

EXECUTIVE DEPARTMENTS.

See COURTS, 1, 2, 3.

EXEMPTION FROM TAXATION.

See CORPORATIONS, 1, 2.

EXPORTS.

See CONSTITUTIONAL LAW, 13.

FEDERAL QUESTION.

1. *Method of proving existence of law of State.*

A ruling by the highest court of the State sustaining the method of proving the existence of a law of that State presents no Federal question. *Stickney v. Kelsey*, 419.

2. *Frivolous question; question involving application of state statute to interstate commerce not frivolous.*

Whether the state railroad rate statute involved in this case, although on its face relating only to intrastate rates, was an interference with interstate commerce held to raise a Federal question which could not be considered frivolous. *Ex parte Young*, 123.

See JURISDICTION, A 4; B 2, 4;
PRACTICE AND PROCEDURE, 4, 9.

FELLOW-SERVANTS.

Who are.

One employed as a fireman on an engine of a construction train held, under the circumstances of this case, not to be the fellow-servant of the foreman of the gang constructing the bridge which fell and caused the accident. *McCabe & Steen Co. v. Wilson*, 275.

FOREIGN COMMERCE.

See INTERSTATE COMMERCE, 3.

FOREIGNERS.

See TREATIES.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 5, 12;
STATES, 4.

FREIGHT RATES.

See INTERSTATE COMMERCE, 7.

GOVERNMENT CONTRACTS.

See STATUTES, A 2.

GOVERNMENTAL POWERS.

See COURTS, 1.

GRAND JURY.

See CONSTITUTIONAL LAW, 9, 10.

GRANTS.

See PUBLIC LANDS, 1.

HABEAS CORPUS.

Power of Circuit Judge to discharge one convicted in state court for act done in conformity with conditions prescribed by Federal court.

Where the Circuit Court of the United States has, in an action within its jurisdiction, issued an interlocutory injunction against the enforcement of a state railroad rate statute, and in such order directed the conditions under which tickets shall be sold at rates higher than those prescribed under the state statute, a ticket agent who sells tickets in conformity with such conditions, and who is proceeded against, convicted, and sentenced therefor by the state authorities, is in custody for an act done pursuant to an order, process or decree of a court or judge of the United States within the meaning of § 753, Rev. Stat., and may apply for a writ of *habeas corpus* to the United States Circuit Judge who has the power and right under such section to discharge him. *Hunter v. Wood*, 205.

See CONTEMPT OF COURT, 2.

HUDSON RIVER.

See CONSTITUTIONAL LAW, 6.

ILLITERACY.

See WILLS, 1.

IMMIGRATION.

1. *Deportation of Chinese; right of one, ordered by commissioner to be deported, to trial before district judge.*

Under the provisions of § 13 of the act of September 13, 1888, c. 1015, 25 Stat. 476 and § 3 of the act of May 15, 1890, c. 60, 27 Stat. 25, the appeal given to a Chinaman from an order of deportation made by a commissioner is a trial *de novo* before the district judge to which he is entitled before he can be ordered to be deported, and the order cannot be made on a transcript of proceedings before the commissioner. *Liu Hop Fong v. United States*, 453.

2. *Same; authority of commissioner.*

After a commissioner has made and filed a certified transcript in the case of a Chinaman ordered by him to be deported his authority over the matter ends. There is no statutory right to make up and file additional findings. *Ib.*

3. *Effect of certificate made in conformity with treaty on rights of Chinaman sought to be deported.*

While a certificate issued as provided by § 3 of the Treaty of December, 1894 between the United States and China to entitle Chinese subjects to enter the United States may be overcome by proper evidence, and may not have the effect of a judicial determination, when a Chinaman has been admitted to the United States on a certificate made in conformity with the treaty, he cannot be deported for having fraudulently

entered the United States unless there is competent evidence to overcome the legal effect of the certificate. *Ib.*

INDICTMENTS.

See CRIMINAL LAW, 5.

INFANTS.

See JURISDICTION, D 5.

INFRINGEMENT OF COPYRIGHT.

*See COPYRIGHT;
PRACTICE AND PROCEDURE, 2.*

INJUNCTION.

1. *Bond; measure of protection given by.*

The measure of protection to be given by the undertaking required on issuing a restraining order under § 718, Rev. Stat., is to make good the injuries inflicted upon a party observing the order until it is dissolved, and such undertaking inures to the benefit of a defendant suffering injuries irrespective of the exact time when that party has knowledge of the pendency of the action or appears therein; nor is this protection denied because the only defendant sustaining injuries is a woman and the undertaking is to make good "to the defendant all damages by him suffered." *Hutchins v. Munn*, 246.

2. *Bond; right of recovery for damages sustained through restraining order preventing completion of dwelling.*

The owner of a house in Washington, D. C., who was prevented by a restraining order from completing alterations during the winter months, the house meanwhile being only partially habitable, was held, in this case, to have lost the entire use of the house and to be entitled to recover on the undertaking the reasonable rental value of the house for the season. *Ib.*

*See ACTIONS, 2; JURISDICTION, B 3; D 2, 6, 7, 8;
COURTS, 1, 3; PRACTICE AND PROCEDURE, 2;
HABEAS CORPUS; STATES, 8.*

INSOLVENCY.

See INSURANCE.

INSPECTION OF CATTLE.

*See INTERSTATE COMMERCE, 11, 13;
STATES, 3.*

INSTRUCTIONS TO JURY.

Exceptions to prayers.

Where several instructions are asked and refused, exceptions must be taken separately and not as an entirety. *McCabe & Steen Co. v. Wilson*, 275.

See CRIMINAL LAW, 1.

INSURANCE.

Reinsurance compact construed.

Reinsurance has a well known meaning, and, as the usual compact of reinsurance has been understood in the commercial world for many years, the liability of the reinsurer is not affected by the insolvency of the re-insured company or by the inability of the latter to fulfill its own contracts with the original insured; and in this case the compact, notwithstanding it refers to losses paid, will be construed to cover losses payable by the reinsured company; and, in a suit by the receiver of that company on the compact, the fact of its insolvency and non-payment of the risk reinsured does not constitute a defense. *Allemannia Insurance Co. v. Firemen's Insurance Co.*, 326.

INTEREST.

See CONSTITUTIONAL LAW, 5, 12.

INTERNATIONAL LAW.

Adoption of act by governmental powers affecting its character as a tort.

The courts will not declare an act to be a tort in violation of the law of nations or of a treaty of the United States when the Executive, Congress and the treaty-making power have all adopted it. *O'Reilly de Camara v. Brooke*, 45.

INTERSTATE COMMERCE.

1. *Discrimination in rates; term "device" defined.*

A device to obtain rebates to be within the prohibition of the Interstate Commerce Act of March 2, 1889, 25 Stat. 857, and the Elkins Act of February 19, 1903, 32 Stat. 847, need not necessarily be fraudulent. The term "device" as used in those statutes includes any plan or contrivance whereby merchandise is transported for less than the published rate, or any other advantage is given to, or discrimination practiced in favor of, the shipper. *Armour Packing Co. v. United States*, 56.

2. *Discrimination in rates; construction of Elkins Act.*

In construing the Elkins Act it will be read not only in the light of the previous legislation on the same subject, but also of the purpose which Congress had in mind in enacting it—to require all shippers to be treated alike and to pay one rate as established, published and posted. (*New Haven Railroad Co. v. Interstate Commerce Commission*, 200 U. S. 361, 391.) *Ib.*

3. *Scope of Interstate Commerce Act; transportation embraced by.*

The Interstate Commerce Act embraces the whole field of interstate commerce; it does not exempt such foreign commerce as is carried on a through bill of lading, but in terms applies to the transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of transhipment. *Ib.*

4. *Contracts for carriage at published rates subject to change in rates.*

There is no provision in the Elkins Act exempting special contracts from its

operation, nor is there any provision for filing and publishing such contracts, and the fact that a contract was at the published rate when made does not legalize it after the carrier has advanced the published rate. The provisions as to rates, being in force in a constitutional act of Congress when the contract is made, are read into the contract and become a part thereof, and the shipper, who is a party to such a contract, takes it subject to any change thereafter made in the rate to which he must conform or suffer the penalty fixed by law. *Ib.*

5. *Rates; competition may be considered in fixing—Relation of public to railroads.*

Railroads are the private property of their owners, and while the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, the public is in no proper sense a general manager. The companies may, subject to change of rates provided for in the Interstate Commerce Act, contract with shippers for single and successive transportations and in fixing their own rates may take into account competition, provided it is genuine and not a mere pretense. *Interstate Commerce Commission v. Chicago Great Western Ry. Co.*, 108.

6. *Rates; presumption of good faith of carrier in changing.*

There is no presumption of wrong arising from a change of rate made by a carrier. The presumption of good faith and integrity attends the action of carriers as it does the action of other corporations and individuals and those presumptions have not been overthrown by any legislation in respect to carriers. *Ib.*

7. *Rates; unreasonable discrimination; difference in rates for packing-house products and livestock not unreasonable.*

A rate on the manufactured article resulting from genuine competition and natural conditions is not necessarily an undue and unreasonable discrimination against a manufacturing community because it is lower than the rate on the raw material; and, under the circumstances of this case, there was no undue and unreasonable discrimination against the Chicago packing-house industries on the part of the railroads in making, as the result of actual competition and conditions, a lower rate for manufactured packing-house products than for livestock from Missouri River points to Chicago. *Ib.*

8. *When merchandise ceases to be, and becomes subject to taxing and police powers of State.*

Merchandise may cease to be interstate commerce at an intermediate point between the place of shipment and ultimate destination; and if kept at such point for the use and profit of the owners and under the protection of the laws of the State it becomes subject to the taxing and police power of the State. The act of 1899 of Tennessee providing for the inspection of oil is not an unconstitutional burden on interstate commerce as applied to oil coming from other States and ultimately intended for sale and distribution in other States but meanwhile stored in Tennessee for

convenience of distribution and for reshipping from tank cars and barreling. *General Oil Co. v. Crain*, 211.

9. *What constitutes; right of State to tax persons engaged in buying and selling cotton for future delivery where such delivery made by means of interstate carriage.*
 Contracts for sales of cotton for future delivery, which do not oblige interstate shipments, are not subjects of interstate commerce, nor does the fact that a delivery may be made by means of interstate carriage make them so; and a state tax on persons engaged in buying and selling cotton for future delivery held in this case not to be a regulation of interstate commerce and as such beyond the power of the State. *Paul v. Virginia* (insurance policy case), 8 Wall. 168, followed; *Lottery Case*, 188 U. S. 321; *Rearick v. Pennsylvania*, 203 U. S. 507, distinguished. *Ware & Leland v. Mobile County*, 405.

10. *Constitutionality of police regulation of State interfering with.*
 While the State may not legislate for the direct control of interstate commerce, a proper police regulation which does not conflict with congressional legislation on the subject involved is not necessarily unconstitutional because it may have an indirect effect upon interstate commerce. *Asbell v. Kansas*, 251.

11. *State inspection of cattle moving in.*
 Until Congress acts on the subject a State may, in the exercise of its police power, enact laws for the inspection of cattle coming from other States. (*Reid v. Colorado*, 187 U. S. 137.) *Ib.*

12. *As to whether exclusion by State of products of other States is an exercise of police power or regulation of interstate commerce.*
 A State may not under pretense of protecting the public health exclude the products or merchandise of other States, and this court will determine for itself whether it is a genuine exercise of the police power or really and substantially a regulation of interstate commerce. *Ib.*

13. *State regulation; validity of § 27, c. 495 of laws of Kansas of 1905, regulating importation of cattle.*
 Section 27 of Chap. 495 of the laws of Kansas of 1905, prohibiting the transportation of cattle from any point south of the State into the State except for immediate slaughter which have not been passed as healthy by the proper state officials or by the National Bureau of Animal Industry is a proper police regulation within the power of the State, is not in conflict with the act of February 2, 1903, 32 Stat. 791, or the act of March 3, 1905, 33 Stat. 1204, in regard to inspection of cattle, and is not unconstitutional as a direct regulation of interstate commerce. *Ib.*

See CONSTITUTIONAL LAW, 3, 13; FEDERAL QUESTION, 2;
 CRIMINAL LAW; PROPERTY RIGHTS, 3.

INTOXICATING LIQUORS.

See STATES, 5.

JURISDICTION.

A. OF THIS COURT.

1. *Avoidance of.*

While this court will not take jurisdiction if it should not, it must take jurisdiction if it should. It cannot, as the legislature may, avoid meeting a measure because it desires so to do. *Ex parte Young*, 123.

2. *Amount in controversy; where judgment involves validity of other judgments, latter considered.*

While this court cannot review judgments of the Supreme Court of the Territory of Oklahoma unless the amount involved exceeds \$5,000, where the judgment also directly involves the validity of other judgments the amount in controversy may be measured by the aggregate of such judgments. *Beadles v. Smyser*, 393.

3. *Under § 709, Rev. Stat.; denial of constitutional right.*

Where complainant is entitled to equitable relief against the enforcement by state officers of an unconstitutional state statute, the judgment of the state court dismissing the bill for lack of jurisdiction on the ground that the suit is one against the State gives effect to the statute, denies complainant a constitutional right and is reviewable by this court under § 709, Rev. Stat. *General Oil Co. v. Crain*, 211.

4. *Under § 709, Rev. Stat.; sufficiency of Federal question.*

In order to give this court jurisdiction under § 709, Rev. Stat., to review the judgment of a state court, the Federal question must be distinctly raised in the state court, and a mere claim, which amounts to no more than a vague and inferential suggestion that a right under the Constitution of the United States had been denied, is not sufficient—and so held as to an exception taken as to certain parts of the charge to the jury because in effect they deprived the accused of his liberty without due process of law. *Thomas v. Iowa*, 258.

5. *Limitation of review of judgment of reversal of Supreme Court of Territory.*

Where the Supreme Court of the Territory of Oklahoma reverses the judgment of the trial court, the reviewing power of this court is limited to determining whether there was evidence supporting the findings and whether the facts found were adequate to sustain the legal conclusions. *Shawnee Compress Co. v. Anderson*, 423.

6. *To review judgments of District Court for Porto Rico.*

The power of this court to review judgments of the District Court of the United States for Porto Rico given by § 35 of the act of April 12, 1900, 31 Stat. 85, is the same as that to review judgments of the Supreme Courts of the Territories and is controlled by § 2 of the act of April 7, 1874, 18 Stat. 27; on writ of error, therefore, this court is confined to such legal questions as necessarily arise on the face of the record, such as exceptions to rulings on the rejection and admission of testimony and

the sufficiency of the findings to sustain the decree based thereon. *Garzot v. de Rubio*, 283.

7. *Same.*

In this case the facts sustained the plaintiff's contention that she was a citizen of Spain and as to that point there was no ground for dismissal for want of jurisdiction. *Ib.*

8. *Certificate from Circuit Court of Appeals; defective certificate.*

The authority given by § 6 of the Judiciary Act of March 3, 1891, 26 Stat. 826, to the Circuit Court of Appeals, to certify propositions of law to this court, cannot be used for the purpose of sending to this court the whole case for its consideration and decision. A certificate which does not set forth the propositions of law, clearly stated, which may be answered without reference to all the facts, but which sets forth mixed questions of law and fact requiring this court to construe acts of Congress, and, in the light of all the testimony, to determine what should be the judgment of the lower court, is defective and must be dismissed. (*C., B. & Q. Ry. Co. v. Williams*, 205 U. S. 444, 454.) *Hallowell v. United States*, 101.

B. OF CIRCUIT COURTS.

1. *Effect of State being party plaintiff in state court, on jurisdiction of Circuit Court on removal.*

The mere presence on the record of a State as a party plaintiff will not defeat the jurisdiction of the Federal court when it appears that the State has no real interest in the controversy; and it is the duty of the Circuit Court to ascertain whether the State is an actual party by consideration of the nature of the suit and not by reference to the nominal parties. *Ex parte Nebraska*, 436.

2. *To determine sufficiency of railroad rate prescribed by state statute.*

Although the determination of whether a railway rate prescribed by a state statute is so slow as to be confiscatory involves a question of fact, its solution raises a Federal question, and the sufficiency of rates is a judicial question over which the proper Circuit Court has jurisdiction, as one arising under the Constitution of the United States. *Ex parte Young*, 123. *Hunter v. Wood*, 205.

3. *To inquire whether railroad rates prescribed by state statute are confiscatory, and enjoin enforcement thereof.*

A state railroad rate statute which imposes such excessive penalties that parties affected are deterred from testing its validity in the courts denies the carrier the equal protection of the law without regard to the question of insufficiency of the rates prescribed; it is within the jurisdiction, and is the duty, of the Circuit Court to inquire whether such rates are so low as to be confiscatory, and if so to permanently enjoin the railroad company, at the suit of one of its stockholders, from putting them in force, and it has power pending such inquiry to grant a temporary injunction to the same effect. *Ib.*

4. *To determine whether state statute unconstitutional as preventing person affected from resorting to courts.*

Whether a state statute is unconstitutional because the penalties for its violation are so enormous that persons affected thereby are prevented from resorting to the courts for the purpose of determining the validity of the statute and are thereby denied the equal protection of the law and their property rendered liable to be taken without due process of law, is a Federal question and gives the Circuit Court jurisdiction.

Ib.

5. *Diversity of citizenship; alignment of parties by court; proper alignment of corporation and others in suit by stockholder.*

While the court, in determining whether diverse citizenship exists, may disregard the pleader's arrangement of parties and align them according to actual interest, if the plaintiff's controversy is actually with all the parties named as defendants, all of whom are necessary parties, none of them can for jurisdictional purposes be regarded otherwise than as defendants; and so *held*, in an action against a corporation and others by one of the stockholders, that where the complaint alleges joint fraudulent conduct on the part of the corporation and the other defendants with whom it jointly resists that charge, the corporation cannot be realigned as a party plaintiff even if it might be to its financial interest to have the plaintiff prevail. (*Doctor v. Harrington*, 196 U. S. 579.) *Vener v. Great Northern Ry. Co.*, 24.

6. *Distinction between right to sue and right to prosecute particular bill. Action by stockholder against corporation.*

The right to bring a suit is distinguishable from the right to prosecute the particular bill; and, where the other jurisdictional essentials exist, the Circuit Court has jurisdiction of an action against a corporation by one of its stockholders although the bill does not comply with Equity Rule 94 and for that reason must be dismissed. *Ib.*

7. *Legislative prescription; power of this court to regulate manner of exercise of jurisdiction.*

The jurisdiction of the Circuit Court is prescribed by laws enacted by Congress in pursuance of the Constitution and while this court may, by rules not inconsistent with law, regulate the manner in which that jurisdiction shall be exercised, that jurisdiction cannot by such rules be enlarged or diminished. *Ib.*

8. *Acceptance of jurisdiction on removal to.*

In either case, the filing by the defendant of a petition for removal, the filing by the plaintiff after removal of an amended complaint or the giving of a stipulation for continuance, amounts to the acceptance of the jurisdiction of the Circuit Court. *In re Moore*, 490.

See CONTEMPT OF COURT, 2;

MANDAMUS, 2.

C. OF DISTRICT COURTS.

Jurisdiction of District Court for Porto Rico of action to set aside agreement of liquidation of community.

By art. 62, par. 5, of the Porto Rican Code, power to administer estates is exclusively vested in the judge of the last place of residence of the deceased, and this includes all actions incidental to the liquidation of a community existing between husband and wife, and the District Court of the United States for Porto Rico has not jurisdiction of an action to set aside an agreement of liquidation of a community where the estates are still open in, and subject to the power and authority of, the local court. *Garzot v. de Rubio*, 283.

D. OF THE FEDERAL COURTS GENERALLY.

1. *Exclusive jurisdiction to decide constitutionality of state statute.*

When the question of the validity of a state statute with reference to the Federal Constitution has been first raised in a Federal court that court has the right to decide it to the exclusion of all other courts. *Ex parte Young*, 123.

2. *Interference with criminal case pending in state court.*

While a Federal court cannot interfere in a criminal case already pending in a state court, and while, as a general rule, a court of equity cannot enjoin criminal proceedings, those rules do not apply when such proceedings are brought to enforce an alleged unconstitutional state statute, after the unconstitutionality thereof has become the subject of inquiry in a suit pending in a Federal court which has first obtained jurisdiction thereover; and under such circumstances the Federal court has the right in both civil and criminal cases to hold and maintain such jurisdiction to the exclusion of all other courts. *Ib.*

3. *Of offenses committed in post offices.*

Under §§ 711 and 5339, Rev. Stat., the United States courts have exclusive jurisdiction of all offenses enumerated in § 5339, committed in a post office owned by the United States over which the State has ceded jurisdiction. *Battle v. United States*, 36.

4. *Of offenses committed in post offices.*

The language of the Constitution, being wide enough to authorize the purchase of land for post offices and the acceptance of a grant of jurisdiction, the language of the statute based thereon will not be taken in any narrower sense as excluding post offices. *Ib.*

5. *Right of next friend of infant to elect to accept.*

A next friend may select one of several tribunals in which the infant's case shall be tried, and may elect to accept the jurisdiction of the Federal court to which the case may be removed. *In re Moore*, 490.

6. *Restraint of instrumentalities of State.*

Under such conditions as are involved in this case the Federal court may

enjoin an individual or a state officer from enforcing a state statute on account of its unconstitutionality, but it may not restrain the state court from acting in any case brought before it either of a civil or criminal nature, or prevent any investigation or action by a grand jury. *Ex parte Young*, 123.

7. *Restraint of instrumentalities of State.*

An injunction by a Federal court against a state court would violate the whole scheme of this Government, and it does not follow that because an individual may be enjoined from doing certain things a court may be similarly enjoined. *Ib.*

8. *Injunction against enforcement of state rate statute.*

While injunctions against the enforcement of a state rate statute should not be granted by a Federal court except in a case reasonably free from doubt, the equity jurisdiction of the Federal court has been constantly exercised for such purpose. *Ib.*

9. *Waiver of objection to.*

While consent cannot confer on a Federal court jurisdiction of a case of which no Federal court would have jurisdiction, either party may waive the objections that the case was not brought in, or removed to, the particular Federal court provided by the statute. *In re Moore*, 490.

10. *Same.*

Nothing in *Ex parte Wisner*, 203 U. S. 449, changes the rule that a party may waive the objection to the jurisdiction in respect to a particular court where diversity of citizenship actually exists. *Ib.*

See STATES, 8.

E. EQUITY.

Adequate remedy at law to prevent jurisdiction.

No adequate remedy at law, sufficient to prevent a court of equity from acting, exists in a case where the enforcement of an unconstitutional state rate statute would require the complainant to carry merchandise at confiscatory rates if it complied with the statute and subject it to excessive penalties in case it did not comply therewith and its validity was finally sustained. *Ex parte Young*, 123.

See COURTS, 4;
JURISDICTION, D 8;
CONSTITUTIONAL LAW, 3, 6.

LAND GRANTS.

See PUBLIC LANDS, 1.

LEASE.

See RESTRAINT OF TRADE.

LIENS.

See PARTNERSHIP.

LIMITATION OF ACTIONS.

See PUBLIC LANDS, 2.

LIQUIDATION OF COMMUNITY.

See ACTIONS, 4;
JURISDICTION, C.

LOCALITY OF CRIME.

See CONSTITUTIONAL LAW, 3.

LOCAL LAW.

Kansas. Laws of 1905, c. 495, § 27. Cattle inspection (see Interstate Commerce, 13). *Asbell v. Kansas*, 251.*Kentucky.* Taxation of spirits in bond (see Constitutional Law, 5). *Thompson v. Kentucky*, 340.*Michigan.* Water boundaries (see Public Lands, 1). *United States v. Chandler-Dunbar Co.*, 447. Tax sales (see Constitutional Law, 7). *Longyear v. Toolan*, 414.*New Jersey.* Laws of 1905, c. 238, relative to diversion of waters (see Constitutional Law, 8). *Hudson Water Co. v. McCarter*, 349. Right of challenge to grand jurors (see Constitutional Law, 10). *Lang v. New Jersey*, 46.*Oklahoma.* *Case within stat.* 146, art. 8, c. 66, *Wilson's Ann. Stat., relating to harmless defects in pleadings, etc.* Where the cause of action is against the members of a copartnership who afterwards incorporate their business, themselves taking practically all the stock and continuing without changing their relations with employés, the fact that the suit is commenced against the corporation was held under the circumstances of this case, and in view of the fact that no testimony was offered, to be within the provisions of the Oklahoma statute, 146, art. 8, c. 66, *Wilson's Ann. Stat.*, requiring the court to disregard, and not reverse for, defects of pleading or proceedings not affecting the substantial rights of the parties. *McCabe & Steen Co. v. Wilson*, 275.*Porto Rico.* Code, art. 62, par. 5, administration of estates of decedents (see Jurisdiction, C). *Garzot v. de Rubio*, 283. Probate jurisdiction of courts (see Courts, 5). *Garzot v. de Rubio*, 283.*Tennessee.* Statute of 1873 relative to suits against States (see Actions, 3). *General Oil Co. v. Crain*, 211. Act of 1899 providing for inspection of oil (see Interstate Commerce, 8). *General Oil Co. v. Crain*, 211.

MAIL MATTER.

See COURTS, 2.

MANDAMUS.

1. *To correct decision of Circuit Court as to parties to suit.*

Mandamus will not lie to correct the decision of the Circuit Court that a party to the record—in this case a State—is not an indispensable party to the suit, and that a separable and removable controversy exists. Such a decision is within the jurisdiction and judicial discretion of the court and can be reviewed by appeal after final judgment in the case. *Ex parte Nebraska*, 436.

2. *To compel Circuit Court to remand cause where State a party to suit removed.*

The Circuit Court having held that the State of Nebraska was not an actual and necessary party plaintiff to a suit, brought in its name by the Attorney General against a non-resident railroad company to enjoin it from charging more than the rates fixed in a statute of the State and from disobeying orders of the State Railway Commission, refused to remand the case; as such decision may clearly have been correct, was within the jurisdiction of the Circuit Court, and involved no abuse of judicial discretion, this court will not review the decision on petition for mandamus. *Ib.*

MASTER AND SERVANT.

Duty of master to provide safe place of employment.

It is the duty of the employer to provide a suitable and safe place for the employés to work and they are not charged with any responsibility in regard thereto, and while the employer is relieved if he does everything that prudence requires in that respect, it is largely a question of fact and this court will not, in the absence of convincing testimony, set aside the verdict of a jury approved as was the verdict in this case by the trial and Supreme courts of the Territory, especially where the accident was the result of recurring conditions. *McCabe & Steen Co. v. Wilson*, 275.

See PRINCIPAL AND AGENT, 1.

MICHIGAN.

See STATES, 11.

MONOPOLY.

See RESTRAINT OF TRADE.

MUNICIPAL CORPORATIONS.

See ESTOPPEL.

MUSICAL COMPOSITIONS.

See COPYRIGHT, 3, 4.

NATIONALITY.

See TREATIES 1.

NEGLIGENCE.

*Contributory; effect of failure of one injured to avail himself of permission to occupy a safer place than that where injured.*A fireman, who, under the circumstances of this case, remains at his regular post where his ordinary duty calls him, is not guilty of contributory negligence because he does not avail himself of permission to occupy a different and, perhaps, safer place. *McCabe & Steen Co. v. Wilson*, 275.

NEXT FRIEND.

See JURISDICTION, D 5.

NOTICE.

See CONSTITUTIONAL LAW, 7.

OFFICERS OF THE UNITED STATES.

See PRINCIPAL AND AGENT, 2.

OFFICES.

*Effect of extinction of sovereignty creating office on property rights therein.*The holder of a heritable office in Cuba which had been abolished prior to the extinction of Spanish sovereignty, but who, pending compensation for its condemnation, was receiving the emoluments of one of the grants of the office, *held* in this case to have no property rights that survived the extinction of such sovereignty. *O'Reilly de Camara v. Brooke*, 45.

PARTIES.

*1. Attorney General of State a proper party defendant to suit to prevent enforcement of state statute.*The Attorney General of the State of Minnesota, under his common law power and the state statutes, has the general authority imposed upon him of enforcing constitutional statutes of the State and is a proper party defendant to a suit brought to prevent the enforcement of a state statute on the ground of its unconstitutionality. *Ex parte Young*, 123.*2. State officer as party defendant to suit to prevent enforcement of state statute.*
It is not necessary that the duty of a state officer to enforce a statute be declared in that statute itself in order to permit his being joined as a party defendant from enforcing it; if by virtue of his office he has some connection with the enforcement of the act it is immaterial whether it arises by common general law or by statute. *Ib.**See ACTIONS, 4;**JURISDICTION, B 1, 5;**LOCAL LAW (Oklahoma);**MANDAMUS, 1, 2.*

PARTNERSHIP.

Lien of partner for advances to firm.

A partner has a lien on the firm's assets for the repayment of his advances to the firm, and in this case *held*, that the articles of copartnership, construed as a whole, provided that the partner in a land venture advancing the amount needed for the venture should have a lien on the land regarded as assets. *Smith v. Rainey*, 53.

PATENTS FOR LAND.

See PUBLIC LANDS, 1, 2.

PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 11;
JURISDICTION, B 3.

PHILIPPINE ISLANDS.

See TREATIES, 1.

PLEADING.

See LOCAL LAW (Oklahoma).

PLEDGE.

See BANKRUPTCY;
BROKERS.

POLICE POWER.

See INTERSTATE COMMERCE, 8, 10, 11, 12, 13;
PROPERTY RIGHTS, 1.

PORTO RICO.

See COURTS, 5;
JURISDICTION, A 6, C;
CONSTITUTIONAL LAW, 13.

POST OFFICES.

See CONGRESS, POWERS OF;
JURISDICTION, D 3, 4.

PRACTICE OF LAW.

See TREATIES.

PRACTICE AND PROCEDURE.

1. *Force of findings of fact by two lower courts.*

Findings of fact in a suit in equity made by both the Circuit Court and the

Circuit Court of Appeals will not be reversed by this court unless shown to be clearly erroneous. *Dun v. Lumbermen's Credit Association*, 20.

2. *Findings of fact by lower courts concurred in and injunction against infringement of copyright refused.*

Where the lower courts have both found that the proportion of copyrighted matter issued in a later publication, in this case a trade rating journal, is insignificant compared with the volume of independently acquired information, an injunction should be refused and the owner of the copyright remitted to a court of law to recover the damages actually sustained. *Ib.*

3. *As to setting aside findings of auditors.*

Findings of an auditor assessing damages on an undertaking should not be set aside by the court unless there has been an error of law or a conclusion of fact unwarranted by the evidence. *Hutchins v. Munn*, 246.

4. *Ambiguities in decision sought to be reviewed, as to existence of Federal question, resolved against plaintiff in error.*

Where the language of the appellate court is ambiguous, if it may be taken as a declination to pass upon a question not necessary to the decision, this court will not, in order to aid a technical and non-meritorious defense, spell out a Federal question; but it will resolve the ambiguity against the plaintiff in error who is bound, in order to give this court jurisdiction, to clearly show that a Federal right has been impaired. *Stickney v. Kelsey*, 419.

5. *As to assumption of inconsistency between opinion and certificate of Circuit Court.*

This court will not assume an inconsistency to exist between the opinion of the Circuit Court and its certificate. *Scully v. Bird*, 481.

6. *As to scope of determination on certificate from Circuit Court.*

On certificate that the bill was dismissed solely because the suit was against the State within the meaning of the Eleventh Amendment and therefore not within the jurisdiction of the Federal court as such, this court cannot determine whether the bill should have been dismissed because not presenting a case for equitable relief. *Scully v. Bird*, 481.

7. *Scope of review where question of jurisdiction certified under § 5 of act of 1891.*

Where the question of jurisdiction is certified to this court under § 5 of the judiciary act of 1891, nothing but that question can be considered here. In this case the question is considered both as to parties and subject-matter. *Venner v. Great Northern Ry. Co.*, 24.

8. *In construing compacts between States.*

This court in construing a compact between States will hesitate to reach a conclusion different from that reached by the highest courts of both States. *Central R. R. Co. v. Jersey City*, 473.

9. *Time for raising Federal question.*

It is too late to raise the Federal question for the first time in the petition for writ of error from this court or in the assignment of errors here. *Thomas v. Iowa*, 258.

10. *Effect of introduction of testimony by defendant after demurrer to plaintiff's evidence overruled.*

Defendant who introduces testimony after the demurrer to plaintiff's evidence has been overruled waives any error to the ruling. *McCabe & Steen Co. v. Wilson*, 275.

See COPYRIGHT, 1;
MANDAMUS, 2;
MASTER AND SERVANT;
STARE DECISIS.

PREFERENCES.

See BANKRUPTCY, 1, 2.

PREFERENCE TO PORTS.

See CONSTITUTIONAL LAW, 13.

PRESUMPTIONS.

See CONTRACTS; INTERSTATE COMMERCE, 6;
CRIMINAL LAW, 1; STATUTES, 1;
WILLS, 1, 2.

PRINCIPAL AND AGENT.

1. *Ratification of tort by principal exonerating agent.*

A tort can be ratified so as to make an act done in the course of the principal's business and purporting to be done in his name, his tort; and the rule of exonerating the servant when the master assumes liability is still applicable to a greater or less extent when the master is the sovereign. (*The Paquette Habana*, 189 U. S. 453, 469.) *O'Reilly de Camara v. Brooke*, 45.

2. *Ratification by United States of acts of officers committed during military occupation of Cuba.*

By virtue of an order of the Secretary of War and also by the Platt amendment of the act of March 2, 1901, c. 803, 31 Stat. 897, and the treaty with Cuba of May 22, 1903, 33 Stat. 2249, the acts of the officers of the United States, during the military occupation of Cuba, complained of in this action, were ratified by the United States, and those officers relieved of liability therefor. *Ib.*

PRIVILEGES AND IMMUNITIES.

See CONSTITUTIONAL LAW, 8, 14.

PROBATE LAW.

See COURTS, 5;
JURISDICTION, C.

PROOF OF CLAIM.

See BANKRUPTCY, 5.

PROPERTY RIGHTS.

1. *Determination of boundary line between private rights of property.*

The boundary line between private rights of property which can only be limited on compensation by the exercise of eminent domain, and the police power of the State which can limit such rights for the public interest, cannot be determined by any formula in advance, but points in that line helping to establish it have been fixed by decisions of the court that concrete cases fall on the nearer or farther side thereof. *Hudson Water Co. v. McCarter*, 349.

2. *Subserviency of rights of riparian owners to public interest.*

The public interest is omnipresent wherever there is a State, and grows more pressing as population grows, and is paramount to private property of riparian proprietors whose rights of appropriation are subject not only to rights of lower owners but also to the limitations that great foundations of public health and welfare shall not be diminished. *Ib.*

3. *Acquisition; effect of use in interstate commerce.*

One cannot acquire a right to property by his desire to use it in commerce among the States. *Ib.*

See OFFICES;
STATES, 1;
TREATIES, 3.

PUBLIC HEALTH.

See INTERSTATE COMMERCE, 12.

PUBLIC LANDS.

1. *Boundary of patent to land bordering on Sault Ste. Marie; right of patentee to islands therein.*

By the law of Michigan a grant of land bounded by a stream whether navigable in fact or not, carries with it the bed of the stream to the center of the thread thereof, and under this rule the patentee of government land bordering on the Sault Ste. Marie, takes to the center line, including small unsurveyed islands between the main land and the center line; nor are the rights of riparian owners to the center affected by the fact that the stream is a boundary. *United States v. Chandler-Dunbar Co.*, 447.

2. *Limitation of action to vacate and annul patent; application to void patent.*

Statutes of limitations with regard to land affect the right even if in terms

only directed against the remedy. The act of March 3, 1891, c. 561, § 8, 26 Stat. 1099, providing that suits to vacate and annul patents theretofore issued shall only be brought within five years after the passage of the act, applies to a void patent, and where suit has not been brought within the prescribed period a patent of public lands, whether reserved or not, must be held good and to have the same effect as though valid in the first place. *Ib.*

PUBLIC OFFICERS.

See ACTIONS, 3; PARTIES, 2;
JURISDICTION, D 6; STATES, 6.

PUBLIC POLICY.

See RESTRAINT OF TRADE.

PUBLICATION OF NOTICE.

See CONSTITUTIONAL LAW, 7.

RAILROADS.

See COURTS, 4; INTERSTATE COMMERCE, 5;
FEDERAL QUESTION, 2; JURISDICTION, B 2, 3.

RAILROAD RATES.

See INTERSTATE COMMERCE, 1.

RATES.

See ACTIONS, 1; FEDERAL QUESTION, 2;
CONSTITUTIONAL LAW, 3; INTERSTATE COMMERCE;
JURISDICTION, B 2, 3.

RATIFICATION.

See INTERNATIONAL LAW;
PRINCIPAL AND AGENT, 2.

REBATES.

See CRIMINAL LAW, 5;
INTERSTATE COMMERCE, 1.

REFERENCE TO MASTER.

See STATES, 9, 10.

REINSURANCE

See INSURANCE.

REMEDIES.

See ACTIONS, 1;
COURTS, 4;
PRACTICE AND PROCEDURE, 2.

REMOVAL OF CAUSES.

When cause removable to Circuit Court.

A cause is removable to the Circuit Court if it is one of which the court is given jurisdiction. *Venner v. Great Northern Ry. Co.*, 24.

See JURISDICTION, D 8, 9, 10;
MANDAMUS, 1, 2.

RESTRAINING ORDERS.

See INJUNCTION, 1.

RESTRAINT OF TRADE.

1. *Invalidity of lease as in furtherance of monopoly.*

In this case, the Supreme Court of the Territory having found that a lease, being made to further an unlawful enterprise, was void as an unreasonable restraint of trade and as against public policy, this court sustains the judgment, there being proof supporting the conclusions to the effect that the lessor company agreed to go out of the field of competition, not to enter that field again, and to render every assistance to prevent others from entering it—other acts in aid of a scheme of monopoly also being proved. *Shawnee Compress Co. v. Anderson*, 423.

2. *Same.*

It is not necessary to determine whether the Supreme Court of the Territory based its judgment declaring such a lease void on the common law, the Sherman law, or the statutes of the Territory; the restraint placed upon the lessor was greater than the protection of the lessee required. *Ib.*

RIPARIAN RIGHTS.

See CONSTITUTIONAL LAW, 8;
PROPERTY RIGHTS, 2;
PUBLIC LANDS, 1.

SANITY OF ACCUSED.

See CRIMINAL LAW, 1.

SAULT STE. MARIE.

See PUBLIC LANDS, 1;
STATES, 11.

SIXTH AMENDMENT.

See CONSTITUTIONAL LAW, 2, 3.

SOVEREIGNTY.

See CONSTITUTIONAL LAW, 6; PRINCIPAL AND AGENT, 1; OFFICES; STATES, 1, 6.

SPAIN.

See TREATIES, 1.

SPIRITS IN BOND.

See CONSTITUTIONAL LAW, 5, 12; STATES, 5.

STARE DECISIS.

Effect of decisions of lower Federal courts as to construction of Federal statute. While this court is not bound under the doctrine of *stare decisis* by the decisions of lower Federal courts which have not been reviewed by this court, as to the construction of a Federal statute, or by the decisions of the highest courts of foreign countries construing similar statutes of those countries, where all of such decisions express the same views on the subject involved, the omission of Congress, when subsequently amending the statute, to specifically legislate concerning that subject may be regarded by this court as an acquiescence by Congress in the judicial construction so given to the statute. *White-Smith Company v. Apollo Company*, 1.

STATES.

1. *Power to conserve natural wealth.*

The State, as quasi-sovereign and representative of the interests of the public, has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners immediately concerned. (*Kansas v. Colorado*, 185 U. S. 125; *Georgia v. Tennessee Copper Co.*, 206 U. S. 230.) *Hudson Water Co. v. McCarter*, 349.

2. *Power to conserve natural advantages; prevention of diversion of waters.*

A State has a constitutional power to insist that its natural advantages remain unimpaired by its citizens and is not dependent upon any reason for its will so to do. In the exercise of this power it may prohibit the diversion of the waters of its important streams to points outside of its boundaries. *Ib.*

3. *Power to provide for cattle inspection not affected by Federal legislation.*

Congress has not enacted any legislation destroying the right of a State to provide for the inspection of cattle and prohibiting the bringing within its borders of diseased cattle not inspected and passed as healthy either by the proper state or national officials. *Asbell v. Kansas*, 251.

4. *Power to prohibit suits in state courts against state officers to prevent their enforcing unconstitutional statutes.*

Provisions of the Federal Constitution and of the Fourteenth Amendment

cannot be nullified by the State prohibiting suits in its own courts against state officers to prevent their enforcing unconstitutional statutes and contending that the National tribunals are also precluded from entertaining such suits under the Eleventh Amendment. *General Oil Co. v. Crain*, 211.

5. *Power to tax spirits in bonded warehouse.*

It is within the power of the State to tax spirits in bonded warehouses and require the warehouseman to pay the same with interest after the taxes due to the United States Government have been paid; and if the warehouseman is given a lien on the spirits for the taxes and interest paid by him he is not deprived of his property without due process of law. *Thompson v. Kentucky*, 340.

6. *Personal liability of officers in enforcing unconstitutional statute.*

The attempt of a state officer to enforce an unconstitutional statute is a proceeding without authority of, and does not affect, the State in its sovereign or governmental capacity, and is an illegal act and the officer is stripped of his official character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to its officer immunity from responsibility to the supreme authority of the United States. *Ex parte Young*, 123.

7. *Suit against within meaning of Eleventh Amendment.*

A suit by a citizen of another State to restrain a state officer from improperly enforcing a state statute, where no criminal prosecution has been commenced, *held*, in this case, not to be an action against the State within the meaning of the Eleventh Amendment. *Scully v. Bird*, 481.

8. *Suit against State within meaning of Eleventh Amendment; enjoining state officer from enforcing unconstitutional state statute.*

While making a state officer who has no connection with the enforcement of an act alleged to be unconstitutional a party defendant is merely making him a party as a representative of the State, and thereby amounts to making the State a party within the prohibition of the Eleventh Amendment, individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence an action, either civil or criminal, to enforce an unconstitutional state statute may be enjoined from so doing by a Federal court. *Ex parte Young*, 123.

9. *Suit between; reference to master.*

Order referring cause to master and directing conditions under which testimony shall be taken and master shall report to this court. *Virginia v. West Virginia*, 514.

10. *Same.*

Defendant's demurrer having been overruled, 206 U. S. 290, 322, and defendant having answered, both complainant and defendant submitted

and sustained by argument forms of decree referring the cause to a master. *Ib.*

11. *Title of Michigan to bed of Sault Ste. Marie and islands therein.*

On the admission of Michigan to the Union the bed of the Sault Ste. Marie, whether strait or river, passed to the State, and small unsurveyed islands therein became subject to the law of the State. *United States v. Chandler-Dunbar Co.*, 447.

See ACTIONS, 3; INTERSTATE COMMERCE, 8, 9, 10,
CONGRESS, POWERS OF; 11, 12, 13;
CONSTITUTIONAL LAW, JURISDICTION, B 1, D 7;
6, 9; PRACTICE AND PROCEDURE, 8;
PROPERTY RIGHTS, 2.

STATE OFFICERS.

See PARTIES;
STATES.

STATUTES.

A. CONSTRUCTION OF.

1. *Presumption against retrospective effect.*

There is always a strong presumption that a statute was not meant to act retrospectively, and it should never receive such a construction if susceptible of any other, nor unless the words are so clear, strong and imperative as to have no other meaning. *U. S. Fidelity Co. v. Struthers Wells Co.*, 306.

2. *Prospective effect of act of February 24, 1905, c. 778.*

The act of February 24, 1905, c. 778, 33 Stat. 811, amending the act of August 13, 1894, c. 280, 28 Stat. 278, is prospective and does not relate to or affect actions based on rights of material-men which had accrued prior to its passage, and such actions are properly brought under the act of 1894. *Ib.*

3. *Act of February 24, 1905, construed to be not retrospective.*

The absolute taking away of a present right to sue and suspending it until after certain events have happened, and the giving of preferences between creditors, are not mere matters of procedure, but affect substantial rights, and as the act of February 24, 1905 consists of but a single section and deals with such subjects and only incidentally applies to procedure, the entire statute must be construed under the general rule that it is not retrospective in any respect. *Ib.*

4. *Weight of departmental construction.*

When the meaning of a statute is doubtful the construction given by the department charged with its execution should be given great weight. (*Robertson v. Downing*, 127 U. S. 607; *United States v. Healy*, 160 U. S. 136.) *United States v. Hermanos y Compañía*, 337.

5. *Departmental construction; adoption by Congress.*

The reënactment by Congress, without change, of a statute which had previously received long continued executive construction, is an adoption by Congress of such construction. (*United States v. Falk*, 204 U. S. 143.) *Ib.*

6. *Departmental construction followed.*

Par. 296 of the Tariff Act of July 11, 1897, construed in accordance with Treasury decisions. *Ib.*

See CONSTITUTIONAL LAW, 4;

COPYRIGHT, 1, 3;

EVIDENCE;

INTERSTATE COMMERCE, 2;

JURISDICTION, D 4;

STARE DECISIS.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STATUTE OF LIMITATIONS.

See PUBLIC LANDS, 2.

STOCK.

See BANKRUPTCY, 1, 4;

BROKERS, 3, 4.

STOCKBROKERS.

See BANKRUPTCY;

BROKERS;

CONTRACTS.

STOCKHOLDERS.

See ACTIONS, 2;

JURISDICTION, B 3.

SUIT AGAINST STATE.

See ACTIONS, 3;

STATES, 4, 7, 8.

TAXATION.

See CONSTITUTIONAL LAW, 4, CORPORATIONS, 1, 2;

5, 6, 7, 12, 13; INTERSTATE COMMERCE, 8, 9;

STATES, 5.

TAX SALES.

See CONSTITUTIONAL LAW, 7.

TERRITORIAL COURTS.

See JURISDICTION, A 6.

TITLE.

See BANKRUPTCY, 3, 4;
STATES, 11.

TORTS.

See INTERNATIONAL LAW;
PRINCIPAL AND AGENT, 1.

TREATIES.

1. *Spain; treaty of Paris of 1898; citizenship of resident of Philippines; right to practice law.*

Under the Treaty of Paris of 1898, between the United States and Spain, a Spanish resident of the Philippine Islands, who left there in May, 1899, without making any declaration of intention to preserve his allegiance to Spain and remained away until after the expiration of eighteen months after the ratification of the treaty continued to be a Spaniard, and did not, even though he intended to return, become a citizen of the islands under the new sovereignty, and therefore is not eligible to admission to practice at the bar under the rules established by the military and civil authorities of the Philippine Islands. *Bosque v. United States*, 91.

2. *Same; laws referred to in Art XIX.*

The laws applicable to other foreigners referred to in Article XIX of the treaty referred not to Spanish laws but to the laws to be enacted by the new sovereignty. Spaniards only became foreigners after the cession.
Ib.

3. *Same; property within protection of Art. VII.*

The right to practice law is not property within the protection of Article VII of the treaty. *Ib.*

Treaty with China of December, 1894, § 3 (see Immigration, 3). Liu Hop Fong v. United States, 453.

Treaty with Cuba of May 22, 1903 (see Principal and Agent, 2). O'Reilly de Camara v. Brooke, 45.

TRIAL.

See CRIMINAL LAW, 2.

TRIAL FOR CRIME.

See CONSTITUTIONAL LAW, 2, 3.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY, 3, 4.

UNDERTAKINGS.

See INJUNCTION, 1, 2.

UNITED STATES COMMISSIONERS.

See IMMIGRATION.

UNREASONABLE RESTRAINT OF TRADE.

See RESTRAINT OF TRADE.

VACATION OF PATENTS.

See PUBLIC LANDS, 2.

VIRGINIA V. WEST VIRGINIA.

See STATES 9, 10.

WAIVER.

See BANKRUPTCY, 5;
JURISDICTION, D 9, 10;
PRACTICE AND PROCEDURE, 10.

WAREHOUSEMEN.

See CONSTITUTIONAL LAW, 5.

WATERS.

See CONSTITUTIONAL LAW, 6, 8, 14;
PUBLIC LANDS, 1;
STATES, 2, 11.

WILLS.

1. *Effect on validity of will of testator's inability to read.*

Inability to read does not create a presumption that a testator does not know the contents of a paper declared by him to be his last will and duly executed as such. *Lippard v. Humphrey*, 264.

2. *Presumption that testator knows contents of instrument.*

There is a presumption that the testator does know the contents of a will properly executed, which, while not conclusive, must prevail in the absence of proof of fraud, undue influence or want of testamentary capacity, even where testator's inability to read is proved. *Ib.*

3. *Evidence; admissibility of declarations of testator.*

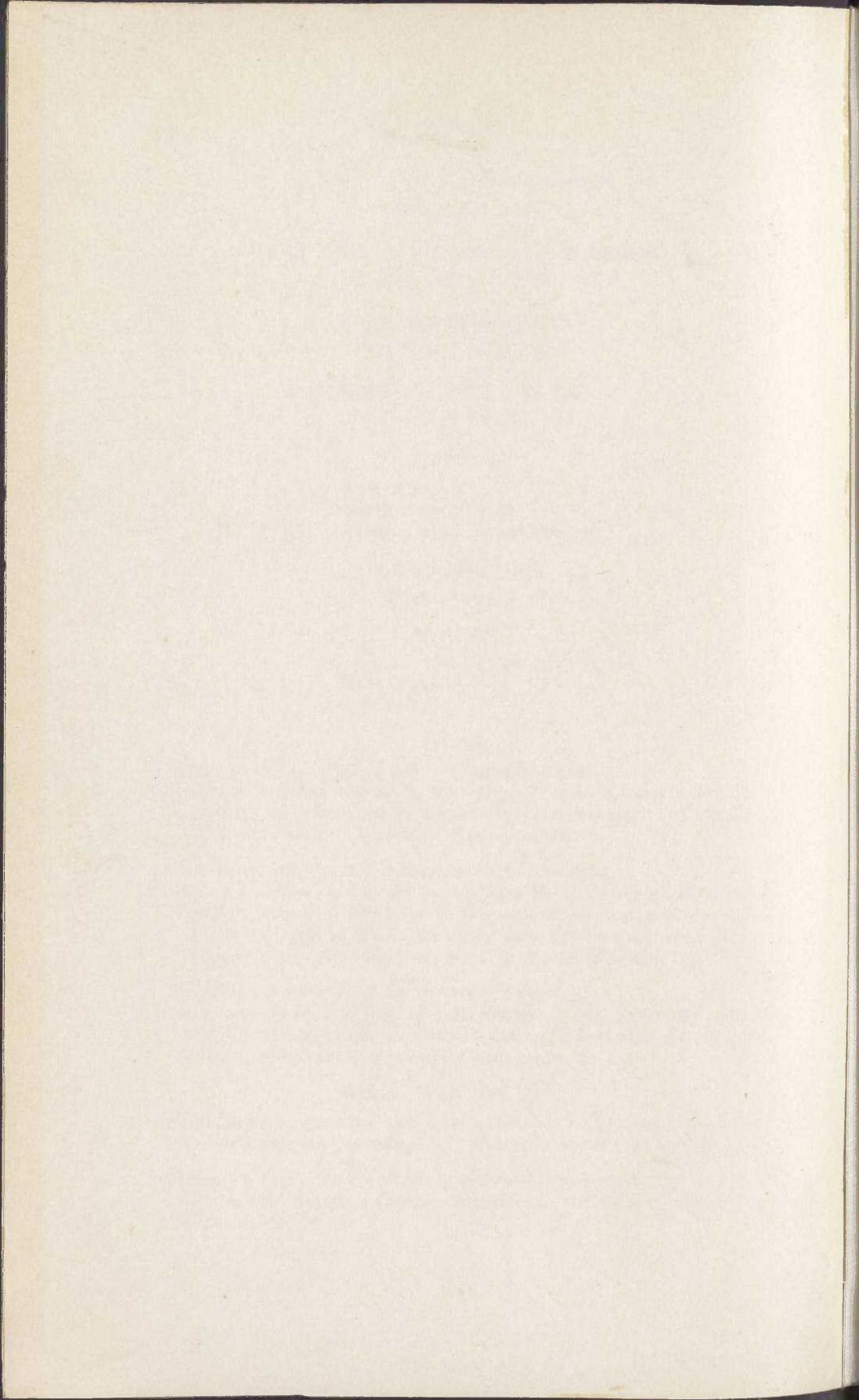
In the absence of proof of want of testamentary capacity at the date of the will, declarations of the testator as to the contents thereof are inadmissible to prove lack of knowledge of such contents. *Ib.*

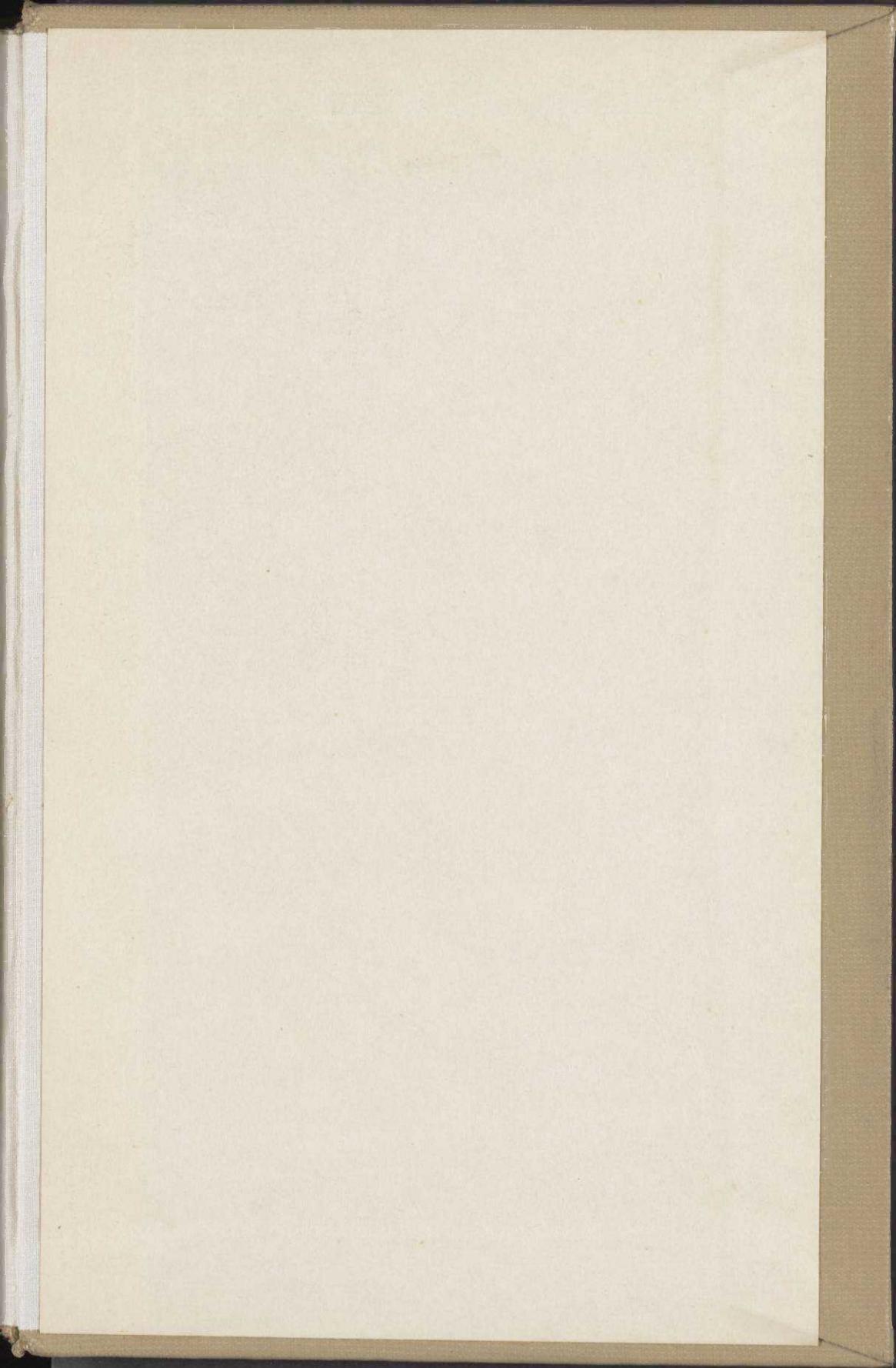
WORDS AND PHRASES.

“Jurisdiction” as generally used in compacts between States has a more limited sense than “sovereignty.” *Central R. R. Co. v. Jersey City*, 473.

“Device” as used in acts of March 2, 1889, and February 19, 1903, relating to freight rebates (see Interstate Commerce, 1). *Armour Packing Co. v. United States*, 56.







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