

# INDEX.

## ACTIONS.

### 1. *Exclusiveness of special statutory remedy.*

While a general liability or right created by statute without a remedy may be enforced by an appropriate common-law action, when a special remedy is coupled therewith that remedy is exclusive. (*Pollard v. Bailey*, 20 Wall. 520). *Globe Newspaper Co. v. Walker*, 356.

### 2. *Courts cannot enlarge remedies given by statute.*

Although remedies given by a statute to protect property in copyright may be inadequate for the purpose intended, the courts cannot enlarge the remedy. Congress alone has power so to do by amending the statute. *Ib.*

See ADMIRALTY, 9;  
BANKRUPTCY, 2, 3;  
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## ACTS OF CONGRESS.

ADMIRALTY, Rev. Stat. §§ 4282, 4289 (see Admiralty, 3, 4, 7): *La Bourgogne*, 95. Rev. Stat. §§ 4405, 4488, 4489 (see Admiralty, 5): *Ib.* Act of August 7, 1882, c. 441: *Ib.*

BANKRUPTCY, act of July 1, 1898, § 60*d* (see Bankruptcy, 2): *In re Wood and Henderson*, 246.

COPYRIGHTS, Rev. Stat. § 4952 (see Copyrights, 5, 6): *Bobbs-Merrill Co. v. Straus*, 339; *Scribner v. Straus*, 352. Rev. Stat. §§ 4965-4970 (see Copyrights, 9): *Globe Newspaper Co. v. Walker*, 356.

COURT OF CLAIMS, Rev. Stat. § 1088 (see Court of Claims, 1, 3): *Sanderson v. United States*, 168. Rules regulating appeals from, 505.

HAWAII, Organic Act (see Local Law): *Keaoha v. Castle*, 149.

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JUDICIARY, act of March 3, 1891, § 5 (see Appeal and Error; Jurisdiction, A 2, 3; Removal of Causes): *Boston & Maine R. R. v. Gokey*, 155; *Pierce v. Creecy*, 387; *Kansas City N. W. R. R. Co. v. Zimmerman*, 336. Rev. Stat. § 709 (see Federal Question, 2; Jurisdiction, A 1): *St. Louis & Iron Mountain Ry. v. Taylor*, 281. Rev. Stat. § 914 (see Practice and Procedure, 4): *Western Loan Co. v. Butte & Boston Min. Co.*, 368. Rev. Stat. § 918 (see Practice and Procedure, 5): *Ib.*

PATENTS, Rev. Stat. § 4888 (see Patents, 2): *Paper Bag Patent Case*, 405.

PORTO RICO, Organic Act of March 2, 1901 (see Territories, 1): *Ponce v. Roman Catholic Church*, 296.

PUBLIC LANDS, act of August 5, 1892 (see Public Lands, 2): *St. Paul, Minn. & Man. Ry. Co. v. Donohue*, 21.

SAFETY APPLIANCE ACT of March 2, 1893 (see Constitutional Law, 13; Safety Appliance Act): *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

TERRITORIES, act of July 30, 1886 (see Territories, 4): *Ponce v. Roman Catholic Church*, 296.

#### ACT OF GOD.

See NEGLIGENCE.

#### ADMINISTRATION.

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#### ADMIRALTY.

##### 1. *Limitation of liability; law governing.*

In a proceeding to limit liability instituted by the owners of a foreign vessel lost on the high seas, the right to exemption must be determined by the law as administered in the courts of the United States. *La Bourgogne*, 95.

##### 2. *Same; practice on failure of petitioners to produce log books.*

In a proceeding for limitation of liability the remedy of claimants against the fund for the failure of the petitioners to produce log books ordered to be produced by the court is to offer secondary evidence or ask for dismissal of the proceeding; they cannot proceed and ask the court to decide the case, not according to the proof but on presumption of wrongdoing and suppression of evidence. *Ib.*

##### 3. *Same; privity of owner of vessel at fault in collision.*

Under the circumstances of this case the fault of the officers and crew of the steamship *La Bourgogne* resulting in collision and loss of the vessel and its passengers, crew and cargo, was not committed with the fault and privity of its owner, so as to deprive it of the right to a limitation of liability under §§ 4282, 4289, Rev. Stat. *Ib.*

##### 4. *Same; effect of negligence of officers and crew of vessel.*

Mere negligence of the officers and crew of a vessel, pure and simple and of itself, does not necessarily establish the existence on the part of the owner of the vessel of privity and knowledge within the meaning of the limited liability act of 1851 as reenacted in §§ 4282-4287, Rev. Stat. *The Main*, 152 U. S. 122, distinguished. *Ib.*

##### 5. *Same; effect of compliance with regulations of Treasury Department inconsistent with statute.*

Under § 4405, Rev. Stat., the regulations of the supervising inspectors and the supervising inspector general when approved by the Secretary of the Treasury in regard to carrying out the provisions of §§ 4488, 4489, Rev. Stat., have the force of law, and the owner of a foreign vessel is required to comply therewith by the act of August 7, 1882, c. 441, 22 Stat. 346, and, even if such regulations are inconsistent with



the statute, compliance therewith does not amount to a violation of the statute and deprive the owner of the right to a limitation of liability on account of privity with the negligence causing the loss. *Ib.*

6. *Same; freight to be surrendered.*

In the case of a foreign vessel making regular trans-oceanic trips the freight for the voyage to be surrendered by the owner in a proceeding for limitation of liability when the vessel is lost on the return trip is that for the distinct sailing between the regular termini and does not include the freight earned on the outward trip. *Ib.*

7. *Same.*

Notwithstanding that where a contract of transportation is unperformed and no freight is earned no freight is to be surrendered, such freight and passage money as are received under absolute agreement that they shall be retained by the carrier in any event must be surrendered by the owner of a vessel seeking to limit his liability under the provisions of §§ 4283-4287, Rev. Stat. *Ib.*

8. *Same; subsidy as freight to be surrendered.*

An annual subsidy contract made by a foreign government and a steamship company for carrying the mails was held under its conditions not to be divisible, and no part thereof constituted freight for the particular voyage on which the vessel was lost which should be surrendered by the owner in a proceeding for limitation of liability. *Ib.*

9. *Foreign law; enforcement in courts of United States.*

Where the law of the State to which a vessel belongs gives a right of action for wrongful death occurring on such vessel while on the high seas, such right of action is enforceable in the admiralty courts of the United States against the fund arising in a proceeding to limit liability, *The Hamilton*, 207 U. S. 398; and the law of France does give such right of action for wrongful death. *Ib.*

10. *Limitation of liability—Law governing question whether vessel in fault and fund liable.*

In determining whether claims for wrongful death are enforceable against the fund in a limited liability proceeding, notwithstanding the right to enforce such claims is based on the right of action given by the law of the country to which the vessel belongs, the question of whether the vessel was in fault and the fund liable must be determined by the law of the United States courts. The duty to enforce the cause of action given by the foreign law does not carry with it the obligation to give the proof the same effect as it would have in the courts of that country if the effect is different from that which such proof would have in the courts of the United States. *Ib.*

11. *Limitation of liability; effect of non-payment of freight adjudicated on right to.*

Where there is an honest controversy as what the pending freight for the

voyage includes, and in the absence of too contumacious conduct, a limitation of liability should not be refused because the petitioner has not, pending the determination of such controversy, actually paid over to the trustee the entire amount of the pending freight as finally adjudicated. *Ib.*

#### ADMIRALTY RULES.

*See ante*, p. 544.

For special index, *see* p. 456.

#### AMENDMENTS TO CONSTITUTION.

*Fourteenth.* *See* CONSTITUTIONAL LAW, 5;  
JURISDICTION, A 6.

#### APPEAL AND ERROR.

*Right of party to take whole case to Circuit Court of Appeals from Circuit Court where question of jurisdiction of latter court involved in proceedings therein.*

A defendant defeated on the merits after having specially assailed the jurisdiction of the Circuit Court because of defective writ and service is not bound to bring the jurisdictional question directly to this court on certificate under § 5 of the act of March 3, 1891; he may take the entire case to the Circuit Court of Appeals and on such appeal it is the duty of that court to decide all questions in the record; and, if jurisdiction was originally invoked for diversity of citizenship, the decision would be final except as subject to review by this court on certiorari. *Boston & Maine R. R. v. Gokey*, 155.

*See* JURISDICTION.

#### APPEARANCE.

*See* JURISDICTION, B 2, 3.

#### APPLIANCES.

*See* SAFETY APPLIANCE ACT.

#### APPROPRIATIONS OF PUBLIC MONEYS.

*See* INDIANS.

#### ARBITRATION AND AWARD.

*Effect of death of party.*

*Quære* as to the effect of the death of either party on an arbitration under a contract of submission made independently of judicial proceedings where the contract provides that the arbitration shall in such event continue and the award be binding upon the representatives of the deceased party. *Brown v. Fletcher's Estate*, 82.

*See* CONSTITUTIONAL LAW, 11, 12.

ASSESSMENT AND TAXATION.

*See* CONSTITUTIONAL LAW, 5, 6;  
STATES, 1.

ASSIGNMENTS.

*See* BANKRUPTCY, 5.

ATTORNEY AND CLIENT.

*See* BANKRUPTCY, 2, 3.

BANKRUPTCY.

1. *Courts of bankruptcy; powers of.*

Congress has the right to establish a uniform system of bankruptcy throughout the United States, and having given jurisdiction to a particular court to administer the property, that court may, in some proper way, call upon all parties interested to appear and assert their rights. *In re Wood and Henderson*, 246.

2. *Courts of bankruptcy; jurisdiction to reëxamine validity of payments or transfers by bankrupt to attorney.*

The bankruptcy court, or its referee, in which the bankruptcy proceedings are pending, has jurisdiction under § 60d of the bankruptcy act to reëxamine, on petition of the trustee, the validity of a payment or transfer made by the bankrupt in contemplation of bankruptcy to an attorney for legal services to be rendered by him, and to ascertain and adjudge what is a reasonable amount to be allowed for such services and to direct repayment of any excess to the trustee; and if the attorney is a non-resident of the district an order directing him to show cause or a citation or notice of the proposed hearing may be served without the district. Jurisdiction to reëxamine such a transfer was not conferred upon any state court. *Ib.*

3. *Trustee; suits by; service of process on non-resident defendant.*

The trustee may not maintain a plenary suit instituted in the District Court where the bankruptcy proceeding is pending against such attorney upon service of process made on such attorney, if he is a non-resident of that district, outside of the district. *Ib.*

4. *Leasehold rights of bankrupt; jurisdiction to determine lessor's claim of forfeiture, at suit of trustee.*

Where the trustee can only sell a lease subject to the claim of the lessors that the transfer of the bankrupt's interest in the lease gives a right of reëntry under a condition therein, the bankruptcy court has jurisdiction of a proceeding, initiated by the trustee and to which the lessors are parties, to determine the validity of the lessor's claim and remove the cloud caused by the lessor's claim. *Gazlay v. Williams*, 41.

5. *Trustee's title to leasehold interest of bankrupt, where lease provides for reëntry in case of assignment.*

The passage of a lease from the bankrupt to the trustee is by operation of



law and not by the act of the bankrupt nor by sale, and a sale by the trustee of the bankrupt's interest is not forbidden by, nor is it a breach of, a covenant for reëntry in case of assignment by the lessee or sale of his interest under execution or other legal process, where, as in this case, there is no covenant against transfer by operation of law. *Ib.*

#### BANKRUPTCY, FORMS IN.

For index to, *see ante*, p. 584.

#### BANKRUPTCY, GENERAL ORDERS IN.

*See ante*, p. 567.

For special index, *see* p. 466.

#### BURDEN OF PROOF.

*See* PUBLIC LANDS, 5.

#### CARRIERS.

*See* COMMON CARRIERS.

#### CASES APPLIED.

*Hibben v. Smith*, 191 U. S. 310, applied in *Cleveland & St. Louis Ry. v. Porter*, 177.

*Shæffer v. Werling*, 188 U. S. 516, applied in *Cleveland & St. Louis Ry. v. Porter*, 177.

#### CASES DISTINGUISHED.

*Beuttell v. Magone*, 157 U. S. 154, distinguished in *Empire State Cattle Co. v. Atchison &c. Ry. Co.*, 1.

*Ferguson v. McLaughlin*, 96 U. S. 174, distinguished in *St. Paul, Minn. & Man. Ry. Co. v. Donohue*, 21.

*Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217, distinguished in *Galveston, Harrisburg &c. Ry. Co. v. Texas*, 217.

*The Main*, 152 U. S. 122, distinguished in *La Bourgogne*, 95.

#### CASES FOLLOWED.

*American Railroad Co. v. Castro*, 204 U. S. 453, followed in *American Railroad Co. v. de Castro*, 440.

*Bobbs-Merrill Co. v. Straus*, 210 U. S. 339, followed in *Scribner v. Straus*, 352.

*Buttfield v. Stranahan*, 192 U. S. 470, followed in *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

*Moore, In re*, 209 U. S. 490, followed in *Western Loan Co. v. Butte & Boston Min. Co.*, 368.

*New Orleans Waterworks Co. v. Louisiana*, 185 U. S. 336, followed in *Delmar Jockey Club v. Missouri*, 324.

*Philadelphia & Southern Mail S. S. Co. v. Pennsylvania*, 122 U. S. 326, followed in *Galveston, Harrisburg &c. Ry. Co. v. Texas*, 217.

*Pollard v. Bailey*, 20 Wall. 520, followed in *Globe Newspaper Co. v. Walker*, 356.

*The Hamilton*, 207 U. S. 398, followed in *La Bourgogne*, 95.

*Voris v. Pittsburg Plate Glass Co.*, 163 Ind. 599, followed in *Cleveland & St. Louis Ry. v. Porter*, 177.

*Werlein v. New Orleans*, 177 U. S. 390, followed in *Ponce v. Roman Catholic Church*, 296.

*Wheaton v. Peters*, 8 Pet. 590, followed in *Globe Newspaper Co. v. Walker*, 356.

CASES OVERRULED.

*Wisner, Ex parte*, 203 U. S. 449, partially overruled by *In re Moore*, 209 U. S. 490, and *Western Loan Co. v. Butte & Boston Min. Co.*, 368.

CASES QUALIFIED.

*Lavignino v. Uhlig*, 198 U. S. 443, qualified in *Farrell v. Lockhart*, 142.

CERTIFICATE.

See APPEAL AND ERROR;  
JURISDICTION, A 3.

CERTIORARI.

*Costs where, on writ and cross-writ, judgment affirmed.*

Where on writ and cross-writ of certiorari the judgment is affirmed neither party prevails and each must pay his own costs in this court. *La Bourgogne*, 95.

Requirements on application for, 503.

See APPEAL AND ERROR.

CHARITABLE USES.

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See BANKRUPTCY, 4.

## COLLISION OF VESSELS

See ADMIRALTY.

## COMMERCE.

See CONSTITUTIONAL LAW, 1, 2.

## COMMON CARRIERS.

*Liability for damages resulting from change of route.*

The duty that may rest on a carrier under normal conditions to transport merchandise by a particular, and the most advantageous, route is restrained and limited by the right of the carrier, in case of necessity, to resort to such other reasonable direct route as may be available under the existing conditions to carry the freight to its destination, and if such necessity exists, in the absence of negligence in selecting the changed route, the carrier is not responsible for damages resulting from the change even if such change may be, in law, a concurring and proximate cause of such damages. *Empire State Cattle Co. v. Atchison &c. Ry. Co.*, 1.

## CONGRESS.

## I. ACTS OF.

See ACTS OF CONGRESS.

## II. POWERS OF.

See ACTIONS;

BANKRUPTCY, 1;

TERRITORIES, 1, 2.

## CONSTITUTIONAL LAW.

1. *Commerce clause; tax by State as burden on interstate commerce.*

The statute of Texas of April 17, 1905, c. 141, imposing a tax upon railroad companies equal to one per cent of their gross receipts is, as to those companies whose receipts include receipts from interstate business, a burden on interstate commerce and as such violative of the commerce clause of the Federal Constitution. *Philadelphia & Southern Mail S. S. Co. v. Pennsylvania*, 122 U. S. 326, followed; *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, distinguished, and held that latter case did not overrule the former. *Galveston, Harrisburg &c. Ry. Co. v. Texas*, 217.



2. *Commerce clause; effect on validity of state tax regulating commerce of name given it.*

Neither the state courts nor the legislatures, by giving a tax a particular name, or by the use of some form of words, can take away the duty of this court to consider the nature and effect of a tax, and if it bears upon interstate commerce so directly as to amount to a regulation it cannot be saved by name or form. *Ib.*

3. *Contract impairment; what amounts to contract with railway company for use of streets.*

The fact that a street railway company has agreed to pay for the use of the streets of a city for a given period does not, in the absence of unequivocal terms to that effect, create an inviolable contract within the meaning and protection of the contract clause of the Federal Constitution which will prevent the exaction of a license tax within the acknowledged power of the city. (*New Orleans City and Lake Railway Company v. New Orleans*, 143 U. S. 192.) *St. Louis v. United Railways Co.*, 266.

4. *Contract impairment clause; effect of city ordinance imposing license or taxes on railroad granted use of streets.*

The ordinances of the city of St. Louis, granting rights of construction and operation to street railways involved in this case, do not contain any clearly expressed obligation on the part of the city to surrender its right to impose further license or taxes upon street railway cars which is within the meaning and protection of the contract clause of the Federal Constitution. *Ib.*

*Copyrights. See COPYRIGHTS, 3.*

5. *Due process of law; hearing and notice to which taxpayer entitled.*

There are few constitutional restrictions on the power of the States to assess, apportion and collect taxes, and in the enforcement of such restrictions this court has regard to substance and not form, but where the legislature commits the determination of the tax to a subordinate body, due process of law requires that the taxpayer be afforded a hearing of which he must have notice, and this requirement is not satisfied by the mere right to file objections; and where, as in Colorado, the taxpayer has no right to object to an assessment in court, due process of law as guaranteed by the Fourteenth Amendment requires that he have the opportunity to support his objections by argument and proof at some time and place. *Londoner v. Denver*, 373.

6. *Due process of law; municipal authorization of public improvement without a hearing.*

The legislature of a State may authorize municipal improvements without any petition of landowners to be assessed therefor, and proceedings of a municipality in accordance with charter provisions and without hearings authorizing an improvement do not deny due process of law to landowners who are afforded a hearing upon the assessment itself. *Ib.*

7. *Due process of law; denial by municipal officers as denial by State.*

The denial of due process of law by municipal authorities while acting as a board of equalization amounts to a denial by the State. *Ib.*

See FEDERAL QUESTION, 5;

LOCAL LAW (IND.);

STATES, 1.

*Equal protection of laws.* See STATES, 1.

8. *Extradition; constitutional essentials.*

While no person may be lawfully extradited from one State to another under Article IV, § 2, par. 2, of the Federal Constitution, unless he has been charged with crime in the latter State, there is no constitutional requirement that there should be anything more than a charge of crime, and an indictment which clearly describes the crime charged is sufficient even though it may possibly be bad as a pleading. *Pierce v. Creedy*, 387.

9. *Full faith and credit; right of court of one State to inquire into jurisdiction of court of other State in which judgment rendered.*

The full faith and credit clause of the Federal Constitution does not preclude the courts of a State in which the judgment of a sister State is presented from inquiry as to jurisdiction of the court by which the judgment is rendered, nor is this inquiry precluded by a recital in the record of jurisdictional facts. *Brown v. Fletcher's Estate*, 82.

10. *Full faith and credit—Privity between executor and administrator c. t. a. appointed in another State.*

There is no privity between the executor and an administrator with the will annexed appointed in another State which makes a decree in a court of such State against the latter binding under the full faith and credit clause of the Federal Constitution upon the former in the courts of the State in which such executor is appointed. *Ib.*

11. *Full faith and credit; judgments entitled to; effect of judgment against administrator c. t. a. on executor in another State.*

Where a party dies pending a suit which is subsequently revived against an administrator with the will annexed, appointed in the State in the courts of which the suit is pending, the judgment is binding only upon the parties against which it is revived and who are within the jurisdiction of the court, and the courts of another State are not bound under the full faith and credit clause of the Federal Constitution to give effect to such judgment against the executors of such deceased party; and this applies to a judgment entered on an arbitration had in pursuance of a stipulation that it should be conducted under control of the court and that it should continue notwithstanding the decease of either party. *Ib.*

12. *Full faith and credit; effect of judgment in one State on award of arbitration of claim not enforceable in State where judgment sought to be enforced.*

A judgment of a court of a State in which the cause of action did not arise,



but based on an award of arbitration had in the State in which the cause did arise, is conclusive, and, under the full faith and credit clause of the Federal Constitution, must be given effect in the latter State, notwithstanding the award was for a claim which could not, under the laws of that State, have been enforced in any of its courts. *Fauntleroy v. Lum*, 230.

*Judiciary.* See JURISDICTION, A 1.

13. *Legislative power; delegation of; validity of § 5 of Safety Appliance Act.* The provision in § 5 of the Safety Appliance Act of March 2, 1893, 27 Stat. 531, referring it to the American Railway Association and the Interstate Commerce Commission to designate and promulgate the standard height and maximum variation of draw bars for freight cars is not unconstitutional as a delegation of legislative power. (*Buttfield v. Stranahan*, 192 U. S. 470.) *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

See TERRITORIES, 2.

*Religious freedom.* See INDIANS, 3.

*States.* See FEDERAL QUESTION, 3.

#### CONSTRUCTION OF STATUTES.

See STATUTES.

#### CONTRACTS.

See CONSTITUTIONAL LAW, 3, 4;  
STATES, 3.

#### CONTRIBUTORY INFRINGEMENT OF COPYRIGHT.

See PRACTICE AND PROCEDURE, 3.

#### COPYRIGHTS.

1. *Patent and copyright statutes distinguished.*

There are differences between the patent, and the copyright, statutes in the extent of the protection granted by them, and the rights of a patentee are not necessarily to be applied by analogy to those claiming under copyright. *Bobbs-Merrill Co. v. Straus*, 339.

2. *Common-law right of author.*

At common law an author had a property in his manuscript and might have redress against anyone undertaking to publish it without his authority. *Ib.*

3. *Extent of copyright property under Federal law.*

Copyright property under the Federal law is wholly statutory and depends upon the rights created under acts of Congress passed in pursuance of authority conferred by § 8 of Art. I of the Federal Constitution. *Ib.*



4. *Rule of construction of statute relating to.*

The copyright statutes are to be reasonably construed. They will not by judicial construction either be unduly extended to include privileges not intended to be conferred, nor so narrowed as to exclude those benefits that Congress did intend to confer. *Ib.*

5. *Right of owner of copyright to qualify or restrict sales by vendee.*

The sole right to vend granted by § 4952, Rev. Stat., does not secure to the owner of the copyright the right to qualify future sales by his vendee or to limit or restrict such future sales at a specified price, and a notice in the book that a sale at a different price will be treated as an infringement is ineffectual as against one not bound by contract or license agreement. *Ib.*

6. *Right to vend copyrighted article.*

*Bobbs-Merrill Co. v. Straus*, ante, p. 339, followed as to construction of § 4952, Rev. Stat., and the extent of the exclusive right to vend thereby granted to the owner of a statutory copyright. *Scribner v. Straus*, 352.

7. *Jurisdiction of Circuit Court; limitations concerning questions of contract.*

Where the jurisdiction of the Circuit Court is invoked for the protection of rights under the copyright statute that court cannot consider questions of contract right not dependent on the statute where diverse citizenship does not exist, or if it does exist, where the statutory amount is not involved. *Ib.*

8. *Right of author to multiply copies of his works.*

The right of an author in the United States to multiply copies of his works after publication is the creation of a new right by Federal statute under constitutional authority and not a continuation of a common-law right. (*Wheaton v. Peters*, 8 Pet. 590.) *Globe Newspaper Co. v. Walker*, 356.

9. *Remedy for infringement.*

Congress having by §§ 4965-4970, Rev. Stat., provided a remedy for those whose copyrights in maps are infringed, a civil action at common law for money damages cannot be maintained against the infringers. *Ib.*

See ACTIONS;

PRACTICE AND PROCEDURE, 3.

## CORPORATIONS.

1. *Effect on identity, of changes in members and increase of capital stock.*

A corporation remains unchanged and unaffected in its identity by changes in its members, nor does it change its identity by increasing its capital stock; and its legal action is equally binding on itself after such an increase as it was prior thereto. *Old Dominion Co. v. Lewisohn*, 206.

2. *Disregard of previous assent to transaction.*

A corporation should not be allowed to disregard its assent previously given

in order to charge a single member with the whole results of a transaction to which the greater part—in this case thirteen-fifteenths—of its stock were parties for the benefit of the guilty and innocent alike. *Ib.*

See FEDERAL QUESTION, 5;  
LOCAL LAW (VT.);  
STATUTES, A 2.

COSTS.

See CERTIORARI.

COURTS.

1. *Duty of Federal court to protect interest of State.*  
A Federal court should not, unless plainly required so to do by the Constitution, assume a duty the exercise of which might lead to a miscarriage of justice prejudicial to the interests of a State. *Pierce v. Creecy*, 387.
2. *Duty as to construction of statutes.*  
The courts have no responsibility for the justice or wisdom of legislation. They must enforce the statute, unless clearly unconstitutional, as it is written, and when Congress has prescribed by statute a duty upon a carrier the courts cannot avoid a true construction thereof simply because such construction is a harsh one. *St. Louis & Iron Mountain Ry. v. Taylor*, 281.
3. *Judicial notice of Spanish law affecting insular possessions.*  
As to our insular possessions the Spanish law is no longer foreign law, and the courts will take judicial notice thereof so far as it affects those possessions. *Ponce v. Roman Catholic Church*, 296.
4. *Porto Rican; legislative power to enact law respecting jurisdiction of claims by Roman Catholic Church.*  
The act of legislative assembly of Porto Rico of March 10, 1904, conferring jurisdiction on the Supreme Court of Porto Rico for the trial and adjudication of property claimed by the Roman Catholic Church was within its legislative power. *Ib.*
5. *Rules.* See SPECIAL INDEX TO APPENDIX, p. 443.  
See ACTIONS;  
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COURT OF CLAIMS.

1. *New trials in; application of § 1088, Rev. Stat.*  
The provisions of § 1088, Rev. Stat., relative to new trials in Court of Claims cases are applicable to cases brought under the Indian Depredations Act of March 3, 1891, 26 Stat. 851. *Sanderson v. United States*, 168.

2. *New trial in; right of United States to apply for after term.*

While ordinarily a court has no power to grant a new trial after the adjournment of the term if no application was made previous to the adjournment, the power so to do can be given by statute, and where a government consents to be sued, as the United States has in the Court of Claims, it may attach whatever conditions it sees fit to the consent and give to itself distinct advantages, such as right to apply for new trial after the term, although such right is not given to claimants. *Ib.*

3. *New trials in; timeliness of motion for.*

The motion for new trial on behalf of the United States in Court of Claims cases under the provisions of § 1088, Rev. Stat., may be made any time within two years after final disposition of the claim, and, if so made, the motion may be decided by the court after the expiration of the two years' period. *Ib.*

4. *Rules regulating appeals from, see p. 505.*

COURT AND JURY.

*See TRIAL, 1, 2.*

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*See CONSTITUTIONAL LAW, 5, 6, 7;      LOCAL LAW (IND.);  
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*See ante*, p. 508 (special index, p. 448).

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*See* PATENTS, 3;  
PRACTICE AND PROCEDURE.

FEDERAL COURTS.

*Rules of.* *See* special index to appendix, 443.  
*See* COURTS;  
JURISDICTION.

FEDERAL QUESTION.

1. *Whether state statute creates a contract and is valid under state constitution are non-Federal questions.*

How a state statute should be construed, whether a contract is created thereby, and whether the statute is constitutional under the state constitution, are not, in the absence of any claim that the contract, if any, has been impaired by subsequent state action, Federal questions. *Mobile, Jackson &c. R. R. Co. v. Mississippi*, 187.

2. *What amounts to denial of right or immunity under laws of United States.*

The denial by the state court to give to a Federal statute the construction insisted upon by a party which would lead to a judgment in his favor is a denial of a right or immunity under the laws of the United States and presents a Federal question reviewable by this court under § 709, Rev. Stat. *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

3. *A decision by the highest court of a State sustaining jurisdiction of an action, the cause of which arose outside the State, does not present a Federal question.*

Each State may, subject to restrictions of the Federal Constitution, determine the limit of the jurisdiction of its courts, and the decision of the highest court sustaining jurisdiction, although the cause of action arose outside the border of the State, is final and does not present a Federal question. *Ib.*

4. *Groundless contention that judgment of state court affected Federal immunities does not create Federal question.*

The mere assertion by plaintiff in error that the judgment of the state court deprived him of his property by unequal enforcement of the law in violation of Federal immunities specially set up does not create a Federal question where there is no ground for such a contention, and the state court followed its conception of the rules of pleading as expounded in its previous decisions. *Delmar Jockey Club v. Missouri*, 324.

5. *Question of forfeiture of charter of corporation by nonuser or misuser under law of State not Federal.*

Whether a Missouri corporation has forfeited its charter by nonuser and misuser under the law of the State does not involve a Federal question, and a proceeding regularly brought by the Attorney General in the nature of *quo warranto* constitutes due process of law. (*New Orleans Waterworks v. Louisiana*, 185 U. S. 336.) *Ib.*

6. *Decision of state court that subordinate municipal body acted within its jurisdiction does not involve Federal question.*

The decision of a state court that a city council properly determined that the board of public works had acted within its jurisdiction under the city charter does not involve a Federal question reviewable by this court. *Londoner v. Denver*, 373.

See PRACTICE AND PROCEDURE, 1.

#### FINDINGS OF FACT.

See PATENTS, 3;

PRACTICE AND PROCEDURE.

#### FOREIGN VESSELS.

See ADMIRALTY.

## FORMS IN BANKRUPTCY.

For index to, *see ante*, p. 584.

## FOURTEENTH AMENDMENT.

*See* JURISDICTION, A 6.

## FRANCE.

*See* ADMIRALTY, 9.

## FREIGHT.

*See* ADMIRALTY, 6, 7, 8, 11;  
COMMON CARRIERS.

## FRIVOLOUS QUESTIONS.

*See* PRACTICE AND PROCEDURE, 1.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 9, 10, 11, 12.

## GENERAL ORDERS IN BANKRUPTCY.

*See ante*, p. 567.

For special index, *see* p. 466.

## GRANTS.

*Dedication to public or charitable use.*

A dedication to a public or charitable use may exist, even where there is no specific corporate entity to take as grantee. (*Werlein v. New Orleans*, 177 U. S. 390.) *Ponce v. Roman Catholic Church*, 296.

*See* STATES, 3.

## HABEAS CORPUS.

*Scope of inquiry by Federal courts.*

The Federal courts cannot, on *habeas corpus*, inquire into the truth of an allegation presenting mixed questions of law and fact in the indictment on which the demand for petitioner's interstate extradition is based; and *quære* whether it may inquire whether such indictment was or was not found in good faith. *Pierce v. Creecy*, 387.

## HAWAII.

*See* LOCAL LAW.

## HOMESTEADS.

*See* PUBLIC LANDS, 1, 2.

## IMPAIRMENT OF CONTRACT OBLIGATION.

*See* CONSTITUTIONAL LAW, 3, 4.



## INDEMNITY LANDS.

See PUBLIC LANDS, 2.

## INDIANS.

1. *Treaty and trust funds; effect on, of statutory limitations as to expenditures of public funds.*

A statutory limitation on expenditures of the public funds does not, in the absence of special provision to that effect, relate to expenditures of treaty and trust funds administered by the government for the Indians. *Quick Bear v. Leupp*, 50.

2. *Treaty and trust funds; application to sectarian schools.*

The provisions in the Indian Appropriation Acts of 1895, 1896, 1897, 1898 and 1899 limiting and forbidding contracts for education of Indians in sectarian schools relate only to appropriations of public moneys raised by general taxation from persons of all creeds and faith and gratuitously appropriated and do not relate to the disposition of the tribal and trust funds which belong to the Indians—in this case the Sioux Tribe—their selves, and the officers of the Government will not be enjoined from carrying out contracts with sectarian schools entered into on the petition of Indians and to the pro rata extent that the petitioning Indians are interested in the fund. *Ib.*

3. *Treaty and trust funds; appropriations of, for sectarian schools, not within religion clauses of Constitution.*

A declaration by Congress that the Government shall not make appropriations for sectarian schools does not apply to Indian treaty and trust funds on the ground that such a declaration should be extended thereto under the religion clauses of the Federal Constitution. *Ib.*

## INDIAN DEPREDATIONS ACT.

See COURT OF CLAIMS, 1.

## INDICTMENT.

See CONSTITUTIONAL LAW, 8.

## INFRINGEMENT OF COPYRIGHT.

See COPYRIGHT, 5;

PRACTICE AND PROCEDURE, 3.

## INFRINGEMENT OF PATENT.

See PATENTS.

## INJUNCTION.

See INDIANS, 2;

PATENTS, 5.

## INSPECTION OF VESSELS.

See ADMIRALTY, 5.

INSTRUCTED VERDICT.

*See* TRIAL, 2.

INSTRUCTIONS TO JURY.

*See* SAFETY APPLIANCE ACT, 2;  
TRIAL, 1, 2.

INSULAR POSSESSIONS.

*See* COURTS, 3.

INTERLOCUTORY DECREES.

*See* JURISDICTION, B 1.

INTERSTATE COMMERCE.

*State interference; regulating construction of railroad within State.*

A decree of a state court requiring a railroad company which does an interstate business to construct its lines within the State in accordance with the provisions of its charter and the directions of the state railroad commission is not an interference with interstate commerce because compliance therewith entails expense or requires the exercise of eminent domain. *Mobile, Jackson &c. R. R. Co. v. Mississippi*, 187.

*See* CONSTITUTIONAL LAW, 1, 2;  
SAFETY APPLIANCE ACT.

INVENTION.

*See* PATENTS.

JUDGMENTS AND DECREES.

*Conclusiveness of judgment.*

A judgment is conclusive as to all the *media concludendi*, and it cannot be impeached either in or out of the State, by showing that it was based on a mistake of law. *Fauntleroy v. Lum*, 230.

*See* CONSTITUTIONAL LAW, 9, 10, 11, 12;  
JURISDICTION, B 1;  
RES JUDICATA.

JUDICIAL NOTICE.

*See* COURTS, 3;  
TERRITORIES, 3.

JURISDICTION.

A. OF THIS COURT.

1. *Extent limited by § 709, Rev. Stat.*

Although the constitutional grant of power to this court to review judgments of the state courts may be wider than the statutory grant in § 709, Rev. Stat., the jurisdiction of the court extends only to the

cases enumerated in that section. *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

2. *Direct appeal from Circuit Court—Involution of construction of Federal Constitution.*

Whether or not the indictment on which the demand for petitioner's surrender for interstate extradition is based charges him with crime within the requirements of Article IV, § 2, par. 2, of the Federal Constitution, involves the construction of that instrument, and a direct appeal lies to this court from the Circuit Court under § 5 of the Judiciary Act of 1891. *Pierce v. Creecy*, 387.

3. *Direct appeal from Circuit Court; involution of question of jurisdiction.*

It is not open to a defendant who has secured a removal and successfully resisted a motion to remand to raise the question that the removal was improper on a certificate of jurisdiction to this court under § 5 of the Judiciary Act of 1891. *Kansas City N. W. R. R. Co. v. Zimmerman*, 336.

4. *To review judgment of state court.*

Even if the state court erred in a proceeding over which it has exclusive jurisdiction such error would not afford a basis for reviewing its judgment in this court. *Delmar Jockey Club v. Missouri*, 324.

5. *Right to review judgment of state court where Federal question disposed of on ground of estoppel.*

Where the contention of plaintiff in error that a charter right has been impaired by subsequent state action was disposed of by the state court on the non-Federal ground that if any such right ever existed plaintiff in error was estopped by its own conduct from asserting it, this court cannot review the judgment on the alleged Federal ground of impairment of the contract. *Mobile, Jackson &c. R. R. Co. v. Mississippi*, 187.

6. *Under Fourteenth Amendment; exercise by state court of legislative power.*

Where the state court has construed a state statute so as to bring it into harmony with the Federal and state constitutions, nothing in the Fourteenth Amendment gives this court power to review the decision on the ground that the state court exercised legislative power in construing the statute in that manner and thereby violated that Amendment. *Londoner v. Denver*, 373.

See FEDERAL QUESTION;  
REMOVAL OF CAUSES.

B. OF CIRCUIT COURTS.

1. *Interlocutory nature of decree of District Court, from which appeal will not lie.*

The decree of the District Court in a proceeding for limitation of liability adjudging that the petitioner is entitled to the limitation and declaring that one class of claims cannot be proved against the fund and remitting



all questions concerning other claims for proof prior to final decree, is interlocutory, and an appeal to the Circuit Court does not lie therefrom, but from the subsequent decree adjudicating all the claims filed against the fund. *La Bourgogne*, 95.

2. *Waiver of objection to.*

Where diversity of citizenship exists so that the suit is cognizable in some Circuit Court the objection to the jurisdiction of the particular court in which the suit is brought may be waived by appearing and pleading to the merits. *In re Moore*, 209 U. S. 490, overruling anything to the contrary in *Ex parte Wisner*, 203 U. S. 449. *Western Loan Co. v. Butte & Boston Min. Co.*, 368.

3. *Waiver of objection to.*

In a State where objection that the court has not jurisdiction of the person must—as in Montana under code § 1820—be taken by special appearance and motion aimed at the jurisdiction, the interposition by defendant of a demurrer going to the merits as well as to the jurisdiction amounts to a waiver of the objection that the particular Circuit Court in which he is sued is without jurisdiction. *Ib.*

*See* COPYRIGHT, 7;  
REMOVAL OF CAUSES.

C. OF BANKRUPTCY COURTS.

*See* BANKRUPTCY, 1, 2, 4.

D. OF ADMIRALTY COURTS.

*See* ADMIRALTY, 9.

E. OF FEDERAL COURTS GENERALLY.

*See* HABEAS CORPUS.

F. OF TERRITORIAL COURTS.

*See* COURTS;  
TERRITORIES, 1, 2.

G. OF STATE COURTS.

*See* BANKRUPTCY, 2;  
FEDERAL QUESTION;  
STATES, 2.

H. OF STATES.

*See* STATES, 4.

KANSAS CITY FLOOD.

*See* NEGLIGENCE.

## LAND GRANTS.

See PUBLIC LANDS.

## LAW GOVERNING.

See ADMIRALTY, 1, 10.

## LEASEHOLDS.

See BANKRUPTCY, 4, 5.

## LEGISLATIVE POWER.

See COURTS, 4;

TERRITORIES, 1.

## LEGITIMATION OF CHILDREN.

See LOCAL LAWS (HAWAII);

STATUTES, A 3.

## LICENSE TAXES.

See CONSTITUTIONAL LAW, 3, 4.

## LIMITATION OF LIABILITY.

See ADMIRALTY;

JURISDICTION, B 1.

## LOCAL LAW.

*Colorado.* Assessment for taxation (see Constitutional Law, 5). *Londoner v. Denver*, 373.

*France.* Right of action for death by wrongful act at sea (see Admiralty, 9). *La Bourgogne*, 95.

*Hawaii.* Application of act of May 24, 1866, legitimating children. The courts of Hawaii having prior to the annexation construed the statute of May 24, 1866, legitimatizing children born out of wedlock by the subsequent marriage of the parents as not applicable to the offspring of adulterous intercourse, and the organizing act of the Hawaii territory having continued the laws of Hawaii not inconsistent with the Constitution or laws of the United States, this court adopts the construction of the Hawaiian statute given by the courts of that country. *Keaoha v. Castle*, 149.

*Indiana.* Constitutionality of Barrett paving law. The Barrett paving law of Indiana, the constitutionality of which was sustained by this court as to abutting property owners in *Shæffer v. Werling*, 188 U. S. 516; *Hibben v. Smith*, 191 U. S. 310, sustained also as to back lying property owners following *Voris v. Pittsburg Plate Glass Co.*, 163 Indiana, 599. *Cleveland & St. Louis Ry. v. Porter*, 177.

*Montana.* Code, § 1820. Objection to jurisdiction of person (see Jurisdiction, B 3). *Western Loan Co. v. Butte & Boston Min. Co.*, 368.

*Porto Rico.* Act of legislative assembly of March 10, 1904, relative to trial and adjudication of property claimed by Roman Catholic Church (see Courts, 4). *Ponce v. Roman Catholic Church*, 296.

*Texas.* Act of April 17, 1905, c. 141, imposing tax upon railroad companies (see Constitutional Law, 1). *Galveston, Harrisburg &c. Ry. Co. v. Texas*, 217.

*Vermont.* *Service of process on corporation.* Under §§ 1109, 3948, 3949, Vermont Statutes, the service of process on a division superintendent in charge of the property attached belonging to a defendant railroad corporation held to be sufficient. *Boston & Maine R. R. v. Gokey*, 155.

MAPS.

See COPYRIGHTS, 9.

MARITIME LAW.

See ADMIRALTY.

MARRIAGE.

See LOCAL LAW (HAWAII);  
STATUTES, A 3.

MASTER AND SERVANT.

See SAFETY APPLIANCE ACT, 3.

MINES AND MINING.

See PUBLIC LANDS, 3, 4, 5.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 3, 4, 6, 7;  
STATES, 3.

MUNICIPAL IMPROVEMENTS.

See CONSTITUTIONAL LAW, 6.

NEGLIGENCE.

*Act of God—Kansas City flood of 1903—Liability of railroad for loss of cattle.*  
The Kansas City flood of 1903 was so unexpected and of such an unprecedented character that a railroad company was not, under the circumstances of this case, chargeable with negligence in sending cattle trains via Kansas City or for failing to move the cattle from the stock yards before the climax of the flood. *Empire State Cattle Co. v. Atchison &c. Ry. Co.*, 1.

See ADMIRALTY, 4;  
SAFETY APPLIANCE ACT, 2.



## NEW TRIAL.

*See* COURT OF CLAIMS.

## NON-RESIDENTS.

*See* BANKRUPTCY, 2, 3.

## NON-USER OF PATENT.

*See* PATENTS, 5.

## NOTICE.

*See* CONSTITUTIONAL LAW, 5, 6.

## PATENTS.

1. *Range of equivalents dependent upon degree of invention.*

The previous decisions of this court are not to be construed as holding that only pioneer patents are entitled to invoke the doctrine of equivalents, but that the range of equivalents depends upon the degree of invention; and infringement of a patent not primary is therefore not averted merely because defendant's machine may be differentiated. *Paper Bag Patent Case*, 405.

2. *Invention; measurement of.*

Under § 4888, Rev. Stat., the claims measure the invention, and while the inventor must describe the best mode of applying the principle of his invention the description does not necessarily measure the invention. *Ib.*

3. *Infringement; force of findings of lower courts.*

Where both of the lower courts find that complainant did with his machine what had never been done before and that defendant's machine infringed, this court will not disturb those findings unless they appear to be clearly wrong. *Ib.*

4. *Property in.*

Patents are property and entitled to the same rights and sanctions as other property. *Ib.*

5. *Right of exclusive use; effect of non-user.*

An inventor receives from a patent the right to exclude others from its use for the time prescribed in the statute, and this right is not dependent on his using the device or affected by his non-use thereof, and, except in a case where the public interest is involved, the remedy of injunction to prevent infringement of his patent will not be denied merely on the ground of non-user of the invention. *Ib.*

## PLEADING.

*See* JURISDICTION, B 2, 3;  
RES JUDICATA.

PORTO RICO.

See COURTS, 4;  
TERRITORIES;  
TITLE.

POWER OF CONGRESS.

See ACTIONS;  
BANKRUPTCY, 1;  
TERRITORIES, 1, 2.

PRACTICE AND PROCEDURE.

1. *Dismissal where Federal question frivolous.*

Where the asserted Federal questions are so plainly devoid of merit as not to constitute a basis for the writ of error the writ will be dismissed.  
*Delmar Jockey Club v. Missouri*, 324.

2. *Following findings of fact concurred in by lower courts.*

This court will not disturb the concurrent findings of fact of both the courts below unless so unwarranted by the evidence as to be clearly erroneous, and a finding that the rate of speed of a vessel on the high seas during a fog was immoderate under the international rules, will not be disturbed because based on the conceptions of immoderate speed prevailing in the United States courts and not on those prevailing in the courts of the country to which the vessel belonged. *La Bourgogne*, 95.

3. *Following findings of fact concurred in by lower courts.*

Both the courts below having found that there was no satisfactory proof to support complainants' claim against defendants for contributory infringement by inducing others to violate contracts of conditional sale this court applies the usual rule and will not disturb such findings.  
*Scribner v. Straus*, 352.

4. *Limitation of rule as to conformity by Federal courts with rules of state courts.*

While, under § 194, Rev. Stat., practice in civil causes other than those in equity or admiralty in United States courts must conform to the state practice, where the jurisdiction of the Federal courts is involved this court alone is the ultimate arbiter of questions arising in regard thereto.  
*Western Loan Co. v. Butte & Boston Min. Co.*, 368.

5. *Circuit Court need not alter rule so as to conform to altered state practice.*

Where under §§ 914, 918, Rev. Stat., the Circuit Court has adopted a rule of practice as to form and service of process in conformity with the state practice, it is not bound to alter the rule so as to conform to subsequent alterations made in the state practice. *Boston & Maine R. R. v. Gokey*, 155.

6. *On refusal of Circuit Court of Appeals to decide a question.*

Where the Circuit Court of Appeals has refused to decide a question, this court may either remand with instructions, or it may render such judg-

ment as the Circuit Court of Appeals should have rendered, and where the new trial would, as in this case, involve a hardship on the successful party, it will adopt the latter course. *Ib.*

See PATENTS, 3.

#### PRIVITY.

See ADMIRALTY;

CONSTITUTIONAL LAW, 10.

#### PROCESS.

See BANKRUPTCY, 2, 3;

LOCAL LAW (VT.);

PRACTICE AND PROCEDURE, 5.

#### PUBLIC IMPROVEMENT.

See STATES, 1.

#### PUBLIC LANDS.

1. *Homestead entries—Right of homesteader to embrace in claim contiguous quarter-sections.*

A homesteader who initiates a right to either surveyed or unsurveyed land and complies with the legal requirements may, when he enters the land, embrace in his claim land in contiguous quarter-sections if he does not exceed the quantity allowed by law and provided that his improvements are upon some portion of the tract, and that he does such acts as put the public upon notice as to the extent of his claim. (*Ferguson v. McLaughlin*, 96 U. S. 174, distinguished.) *St. Paul, Minn. & Man. Ry. Co. v. Donohue*, 21.

2. *Homestead entries; right of railway, under act of August 5, 1892, in respect of.*

Under the land grant act of August 5, 1892, 27 Stat. 390, chap. 382, the right of the railway company to select indemnity lands, non-mineral and not reserved and to which no adverse right or claim had attached or been initiated, does not include land which had been entered in good faith by a homesteader at the time of the supplementary selection, and on a relinquishment being properly filed by the homesteader the land becomes open to settlement and the railway company is not entitled to the land under a selection filed prior to such relinquishment. *Ib.*

3. *Mining locations; reversion to public domain.*

Ground embraced in a mining location may become part of the public domain so as to be subject to another location before the expiration of the statutory period for performing annual labor if, at the time when the second location is made, there has been an actual abandonment of the claim by the first locator. *Farrell v. Lockhart*, 142.



4. *Mining locations; right of subsequent locator to test lawfulness of prior location.*

*Lavignino v. Uhlig*, 198 U. S. 443, qualified so as not to exclude the right of a subsequent locator on an adverse claim to test the lawfulness of a prior location of the same ground upon the contention that at the time such prior location was made the ground embraced therein was covered by a valid and subsisting mining claim. *Ib.*

5. *Mining locations; burden of proving invalidity of former location.*

Where three mining locations cover the same ground and the senior locator after forfeiture does not adverse, the burden of proof is on the third locator to establish the invalidity of the second location. *Ib.*

QUO WARRANTO.

See FEDERAL QUESTION, 5.

RAILROADS.

See COMMON CARRIERS;	NEGLIGENCE;
CONSTITUTIONAL LAW, 1,	PUBLIC LANDS, 2;
3, 4, 13;	SAFETY APPLIANCE ACT;
INTERSTATE COMMERCE;	STATES, 2.

RAILROAD COMMISSIONS.

See STATES, 2.

RANGE OF EQUIVALENTS.

See PATENTS, 1.

RELIGION.

See INDIANS, 3.

RELIGIOUS USES.

See TITLE.

REMEDIES.

See ACTIONS;  
ADMIRALTY, 2;  
COPYRIGHTS, 9.

REMOVAL OF CAUSES.

*One procuring removal to Circuit Court precluded from disputing propriety thereof on certificate of jurisdiction to Supreme Court.*

Where the ground on which the jurisdiction of the Circuit Court was denied did not go to its jurisdiction as a Federal court as such, but its jurisdiction was denied on the ground that the state court where the proceedings started had no jurisdiction, a direct appeal on the jurisdictional

question will not lie to this court under § 5 of the Judiciary Act of 1891.  
*Kansas City N. W. R. R. Co. v. Zimmerman*, 336.

See JURISDICTION, A 3.

### RES JUDICATA.

*Ex parte proceeding construing statute as.*

An *ex parte* and uncontested proceeding construing a statute and directing payments in accordance with such construction cannot be pleaded as *res judicata* in a subsequent contested proceeding. *Keaoha v. Castle*, 149.

### ROMAN CATHOLIC CHURCH.

See COURTS;

TITLE;

TREATIES.

### RULES OF COURT.

See APPENDIX, pp. 441-602;

SPECIAL INDEX, p. 443.

### SAFETY APPLIANCE ACT.

#### 1. *Draw bars; variation of.*

Under the Safety Appliance Act of 1893, 27 Stat. 531, the center of the draw bars of freight cars used on standard gauges shall be, when the cars are empty, thirty-four and a half inches above the rails, and the statute permits when a car is loaded or partly loaded a maximum variation in the height downwards of three inches. The statute does not require that the variation shall be proportioned to the load or that a fully loaded car shall exhaust the entire variation. *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

#### 2. *Same.*

An instruction that under the statute the draw bars of fully loaded freight cars must be of a uniform height of thirty-one and a half inches and that a variation between two loaded cars constitutes negligence under the statute, is prejudicial error. *Ib.*

#### 3. *Effect to supplant common-law rule as to duty of master to furnish safe appliances.*

The Safety Appliance Act of March 2, 1893, 27 Stat. 531, supplants the common-law rule of reasonable care on the part of the employer as to providing the appliances defined and specified therein, and imposes upon interstate carriers an absolute duty; and the common-law rule of reasonable care is not a defense where in point of fact the cars used were not equipped with appliances complying with the standards established by the act. *Ib.*

See CONSTITUTIONAL LAW, 13.

SECTARIAN SCHOOLS.

*See* INDIANS.

SERVICE OF PROCESS.

*See* PRACTICE AND PROCEDURE, 5.

SIOUX INDIANS.

*See* INDIANS.

SPAIN.

*See* TREATIES.

SPANISH LAW.

*See* COURTS, 3.

SPECIAL LAWS.

*See* STATUTES, A 2;  
TERRITORIES, 4.

STATES.

1. *Power to create special taxing districts and classify property-owners for purposes of taxation.*

It is within the legislative power of a State to create special taxing districts and to charge the cost of local improvements, in whole or in part, upon the property in said district either according to valuation or area, and the legislature may also classify the owners of property abutting on the improvement made and those whose property lies a certain distance back of it, and if all property-owners have an equal opportunity to be heard when the assessment is made the owners of the "back lying" property are not deprived of their property without due process of law or denied the equal protection of the laws. *Cleveland & St. Louis Ry. v. Porter*, 177.

2. *Power to regulate railroads of own creation.*

The creation of a board of railroad commissioners and the extent of its powers; what the route of railroad companies created by the State may be; and whether parallel and competing lines may consolidate, are all matters which a State may regulate by its statutes and the state courts are the absolute interpreters of such statutes. *Mobile, Jackson &c. R. R. Co. v. Mississippi*, 187.

3. *Power to contract away power; exemption from taxation.*

While a State, or a municipal corporation acting under the authority of the State, may deprive itself by contract of its lawful power to impose certain taxes or license fees, such deprivation only follows the use of clear and unambiguous terms; any doubt in the interpretation of the alleged contract is fatal to the exemption. *St. Louis v. United Railways Co.*, 266.



4. *Jurisdiction over property within borders.*

Every State has exclusive jurisdiction over property within its borders, and where testator has property in more than one State each State has jurisdiction over the property within its limits and can, in its own courts, provide for the disposition thereof in conformity with its laws. *Brown v. Fletcher's Estate*, 82.

See CONSTITUTIONAL LAW, 5, 6, 7;      FEDERAL QUESTIONS, 3;  
COURTS;      INTERSTATE COMMERCE.

## STATUTES.

## A. CONSTRUCTION OF.

1. *Uniformity of construction of Federal statutes.*

It is only by reviewing in this court the construction given by the state courts to Federal statutes that a uniform construction of such statutes throughout all the States can be secured. *St. Louis & Iron Mountain Ry. v. Taylor*, 281.

2. *Special laws; what constitute.*

Because it gives a certain corporation a right to maintain an action, a law cannot be regarded as a special law granting an exclusive privilege where it confers equal rights upon the people and the municipalities affected by the right and interested in matters affected. *Ponce v. Roman Catholic Church*, 296.

3. *Effect on construction of statute of Territory of interpretation given by local court.*

While in different jurisdictions statutes legitimatizing children born out of wedlock by the subsequent marriage of the parents have been differently construed as to the application thereof to the offspring of adulterous intercourse, in construing such a statute of a Territory this court will lean towards the interpretation of the local court. *Keaoha v. Castle*, 149.

4. *Construction as part of law.*

The construction of a statute affixed thereto for many years before territory is acquired by the United States should be considered as written into the law itself. *Ib.*

See COPYRIGHTS, 1, 4;      LOCAL LAW (HAWAII);  
COURTS, 2;      SAFETY APPLIANCE ACT;  
FEDERAL QUESTION;      STATES, 2.

## B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

## C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

## STREET RAILWAYS.

See CONSTITUTIONAL LAW, 3, 4.

## SUBSIDIES.

See ADMIRALTY, 8.

## TAXES AND TAXATION.

See CONSTITUTIONAL LAW, 1, 2, 3, 4, 5;

LOCAL LAW (IND.);

STATES, 1.

## TERRITORIES.

1. *Porto Rico; power of legislative assembly to legislate as to jurisdiction and procedure of courts.*

Under the organic act of Porto Rico, March 2, 1901, 31 Stat. 77, the legislative assembly has express authority to legislate regarding the jurisdiction and procedure of its courts, and it has been usual for Congress to give such power to the legislatures of the Territories. *Ponce v. Roman Catholic Church*, 296.

2. *Constitutionality of delegation of such power by Congress.*

Such legislation was not contrary to the Constitution and was in conformity with the power conferred by Congress upon the legislative assembly to regulate the jurisdiction of the courts. *Ib.*

3. *Porto Rico; status as American territory.*

Since April 11, 1899, Porto Rico has been *de facto* and *de jure* American territory, and its history and its legal and political institutions up to the time of its annexation will be recognized by this court. *Ib.*

4. *Application of prohibition against enactment of special laws.*

The general prohibition in the act of July 30, 1886, 24 Stat. 170, against territorial legislatures passing special laws does not apply where specific permission is granted by the organic act of a particular Territory. *Ib.*

## TITLE.

*Effect on title of Roman Catholic Church in Porto Rico to church property, of donations by municipality.*

The fact that a municipality in Porto Rico furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic Church, to whom such funds were thus irrevocably donated and by whom these temples were erected and dedicated to religious uses. *Ponce v. Roman Catholic Church*, 296.

## TREATIES.

*Treaty of Paris with Spain of 1898; effect on church property in Porto Rico.*

The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris with Spain of 1898 and its property rights solemnly safeguarded. In so doing the treaty followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. The

juristic personality of the Roman Catholic Church and its ownership of property was formally recognized by the concordats between Spain and the papacy and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era. *Ponce v. Roman Catholic Church*, 296.

*See* INDIANS.

#### TRIAL.

1. *Effect of request by each party for instructed verdict on right to go to jury.* The fact that each party asks for a peremptory instruction to find in his favor does not submit the issues of fact to the court so as to deprive either party of the right to ask other instructions and to except to the refusal to give them, or to deprive him of the right to have questions of fact submitted to the jury where the evidence on the issues joined is conflicting or divergent inferences may be drawn therefrom. (*Beuttell v. Magone*, 157 U. S. 154, distinguished.) *Empire State Cattle Co. v. Atchison &c. Ry. Co.*, 1.

2. *Same.*

Although a peremptory instruction of the trial court cannot be sustained on the ground that both parties having asked a peremptory instruction the case was taken from the jury notwithstanding special instructions had been asked by the defeated party, the verdict will be sustained if the evidence was of such a conclusive character that it would have been the duty of the court to set aside the verdict had it been for the other party. *Ib.*

#### UNITED STATES.

*See* COURT OF CLAIMS.

#### USES AND TRUSTS.

*See* GRANTS.

#### VENDOR AND VENDEE.

*See* COPYRIGHTS, 5, 6.

#### VERDICT.

*See* TRIAL.

#### VESSELS.

*See* ADMIRALTY.

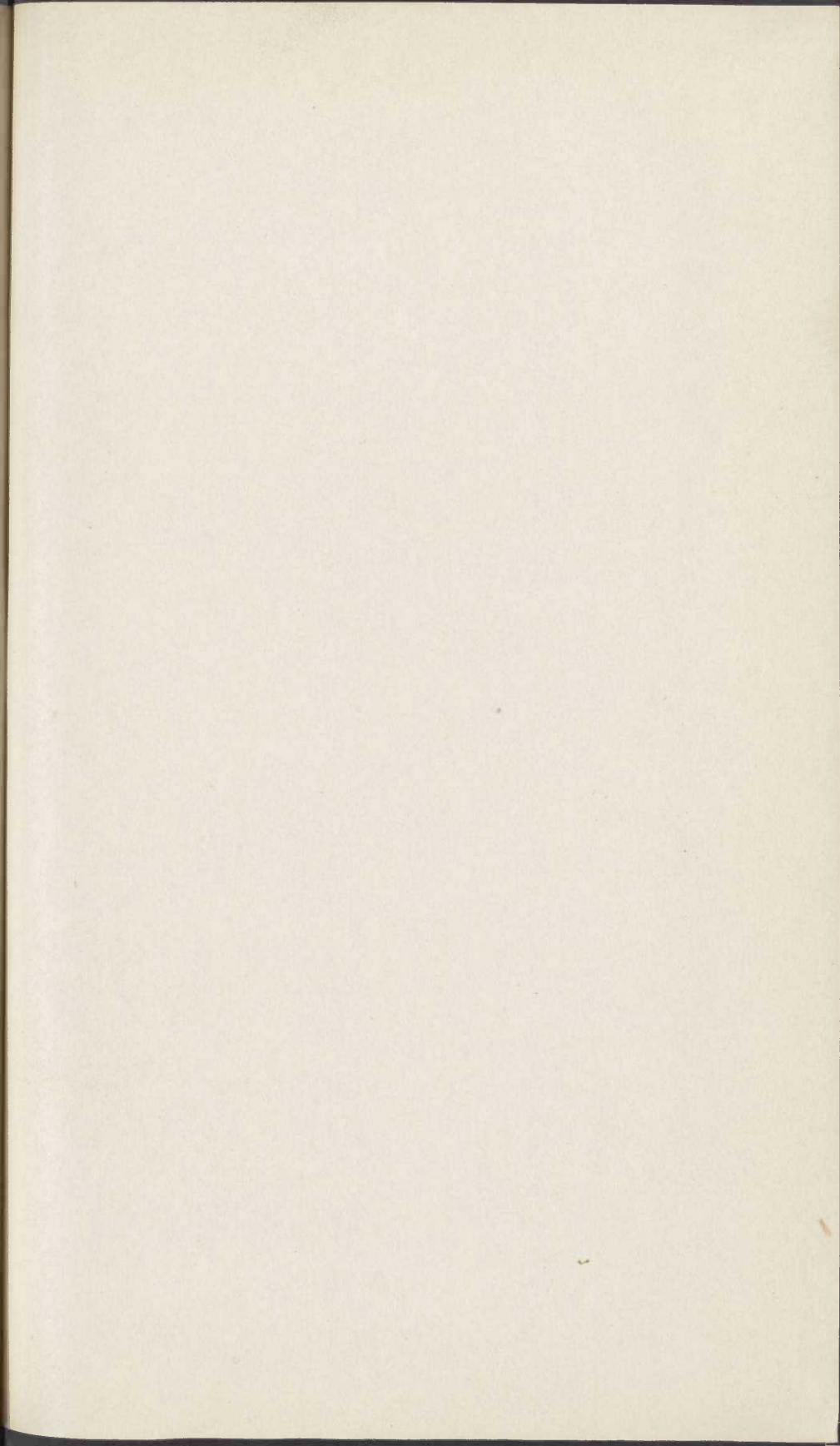
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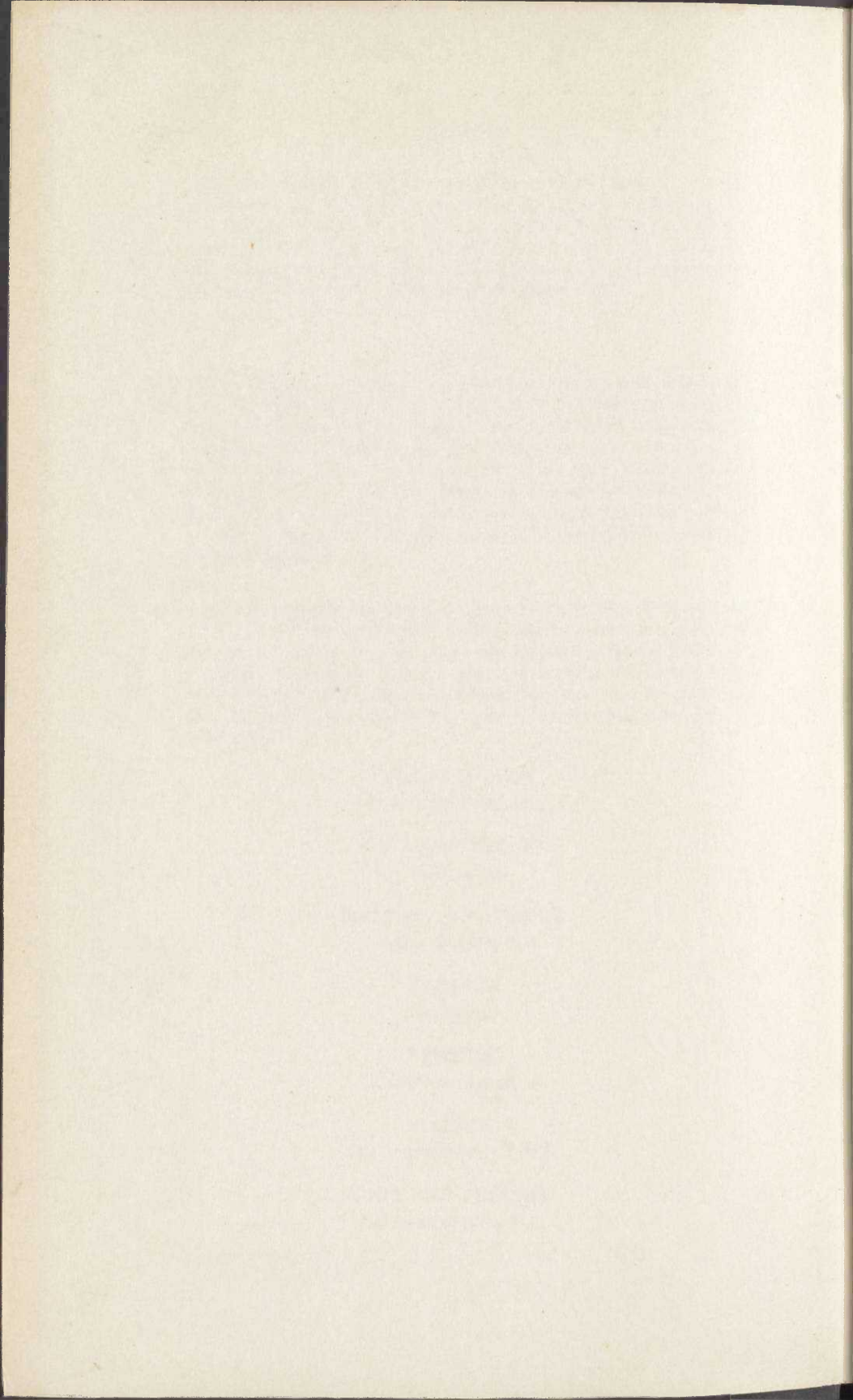
*See* JURISDICTION, B 2, 3.

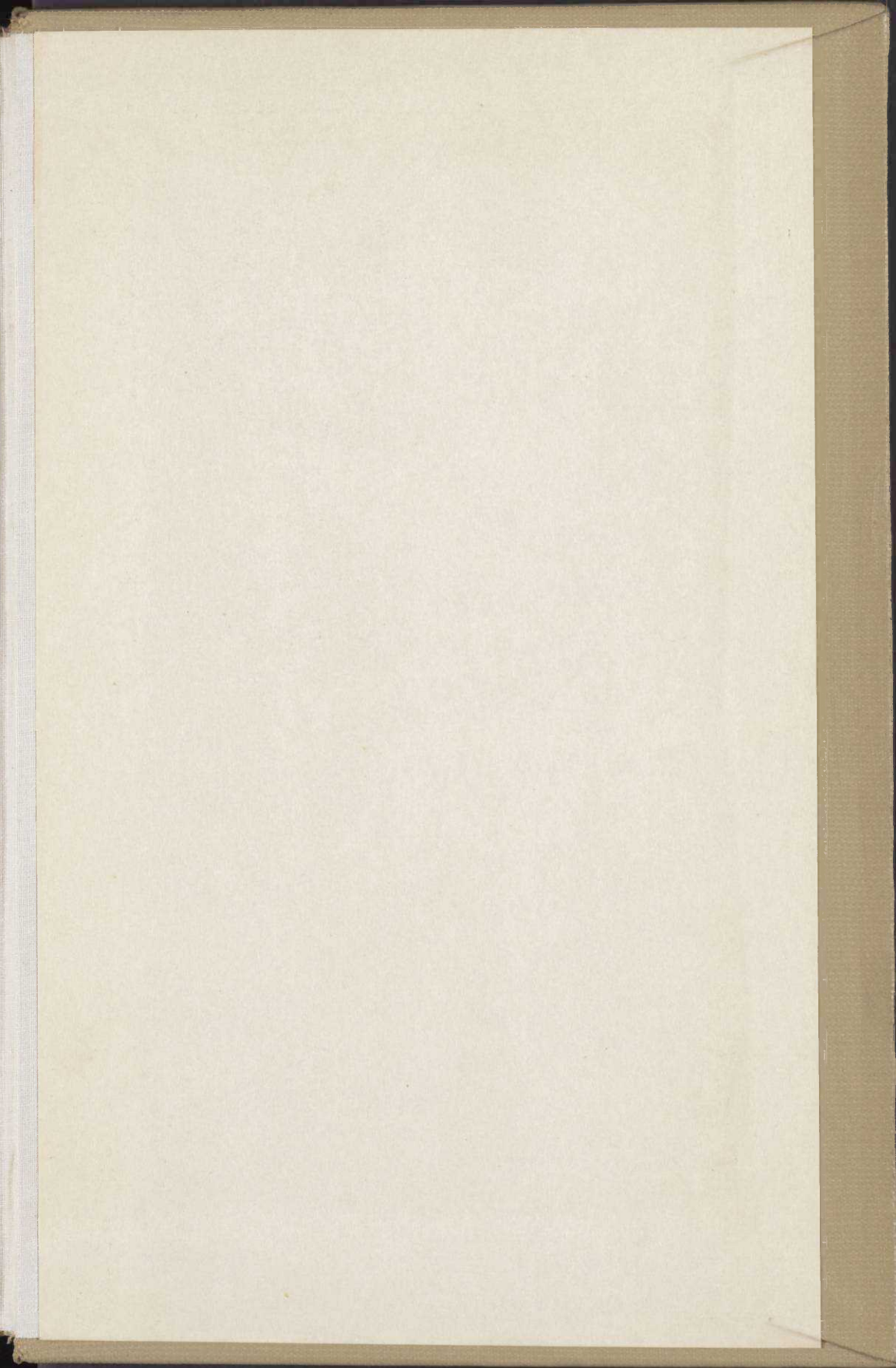
#### WRIT AND PROCESS.

*See* BANKRUPTCY, 2, 3.











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