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2. *Direct appeal from Circuit Court; when maintainable.*

The claim that the Secretary of the Treasury has exercised legislative power in promulgating, pursuant to § 251, Rev. Stat., regulations concerning the collection of duties under the tariff law does not constitute a real and substantial dispute or controversy concerning the construction or application of the Constitution upon which the result depends, and a direct appeal will not lie to this court under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, 828. *American Sugar Refining Co. v. United States*, 155.

3. *Taxpayer, complainant below, not entitled to writ of error to review action of lower court, where no personal injury shown.*

A writ of error will not lie to review a judgment of the Supreme Court of Hawaii, dismissing the bill in a suit brought by a taxpayer to enjoin the land commissioner from an alleged unauthorized use of public lands where it does not appear that complainant would be personally injured by the threatened use. *McCandless v. Pratt*, 437.

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Where the case in which counsel is employed on a contingent fee is so settled that the clients receive as much as though the contingency on which the fee depends were realized, and the settlement is achieved after a trial and by the services of the counsel, his contract is performed and he is entitled to the agreed compensation. *Ingersoll v. Coram*, 335.

See BANKRUPTCY, 11;
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BANKRUPTCY.

1. *Review, under § 709, Rev. Stat., of decision of state court relative to avoidance of preference by trustee.*

Where the state court decides that a trustee in bankruptcy can avoid a preference under the state law against the contention that the exertion of such power conflicts with the bankrupt law, and that if the preference is given by a member of a firm that the trustee need not establish that there were other individual creditors, Federal questions are involved and necessarily decided, and the judgment does not rest on non-Federal grounds broad enough to sustain it and may be reviewed by this court under § 709, Rev. Stat. *Miller v. New Orleans Fertilizer Co.*, 496.

2. *Review, under § 709, Rev. Stat., of decision of state court relative to avoidance of preference by trustee.*

Where no question is made below that the state court was not competent to authorize the trustee to prosecute, judgment in his favor will not be reversed when presumably the want of authority from the bankrupt court would have been supplied if challenged. *Ib.*

3. *Liens of pending actions—Effect of subd. f of § 67 of the bankruptcy law on rights under state law.*

The authority to preserve liens of pending actions under subd. f of § 67 of the bankrupt law extends to causes of action under state law and is cumulative, and not in abrogation of rights under the state law. *Ib.*

4. *Preference under state law—Application of Federal bankrupt law in distribution of recovered preferential payment.*

Where, as in Louisiana, copartnership creditors coequally share with

individual creditors in the individual estates of the members of the firm copartnership creditors are prejudiced by preferences made by a member to individual creditors, and, if the preference is illegal under state law, the trustee can succeed to a suit of the partnership creditor in the state court even if there be no other individual creditors; but the distribution of the preferential payment when paid in depends, as between the individual and copartnership creditors, on the provisions of § 5 of the bankrupt law. *Ib.*

5. *Preferences; when payment made by partner from individual estate deemed preferential payment by partnership.*

A partner cannot be considered as solvent individually as distinct from his firm which is insolvent, when he is practically the only partner, and his associate, although nominally a partner, is in fact only an employé; and a preferential payment made from his individual estate may, under such circumstances, be recovered for the benefit of all his creditors. *Page v. Rogers*, 575.

6. *Preferences; deed placed in escrow as.*

A deed unrecorded and placed in escrow more than four months before bankruptcy and delivered within that period *held*, under the circumstances of this case, to be a preferential payment within the meaning of the bankrupt law. *Ib.*

7. *Preferences; right of one surrendering, to prove claim—Setting off dividend against amount of surrender.*

One compelled to surrender a preferential payment is entitled to prove his claim and receive dividends equally with other creditors, *Keppel v. Tiffin Savings Bank*, 197 U. S. 356, and where the suit is in the bankruptcy court and it is practicable, as in this case, to ascertain the amount of the dividend to which he will be entitled, it can be fixed and deducted from the amount which he is compelled to surrender. *Ib.*

8. *Property in possession of receiver—Right of state court to interfere by writ of replevin.*

The seizure of goods in the possession of a receiver in bankruptcy, under a writ of replevin issued by a state court against the receiver, individually, *held* in this case to be an unlawful invasion of the possession of the bankruptcy court. *Murphy v. John Hojman Co.*, 562.

9. *Receiver's possession that of court.*

Where one who has no other connection with the property is appointed receiver his possession is that of the court and not that of an individual. *Ib.*

10. *Title to property in possession of bankruptcy court; jurisdiction to determine.*

Where the bankruptcy court has the actual possession of property, the title to which is in dispute, that property is withdrawn from the jurisdiction of other courts, and, independently of any jurisdiction conferred by statute, the bankruptcy court, as is the case with other Federal and state courts, has ancillary jurisdiction to hear and determine all questions respecting such title; and such jurisdiction cannot be disturbed by the process of any other court. (*Wabash Railroad v. Adelbert College*, 208 U. S. 38.) *Ib.*

11. *Counsel for trustee; determination of fees of.*

The amount of fees to which counsel for the trustee in bankruptcy is entitled is a matter for the bankruptcy court and in this case this court will not interfere with the amount fixed. *Page v. Rogers*, 575.

BONDS.

1. *Presumption of validity of issuance.*

The issuing of bonds in payment of a subscription to railroad stock by an officer, charged with the duty of ascertaining whether conditions precedent had been fulfilled, raises a presumption of their fulfillment and of the proper issuing of the bonds upon which a lawful holder of the bonds is entitled to rely until it is overcome by evidence to the contrary. In this case nothing in the findings overcome such presumption. *Green County v. Quinlan*, 582; *Green County v. Thomas' Executor*, 598.

2. *Presumption against conditions affecting negotiability.*

In the absence of clearest proof coupon bonds intended for the market will not be presumed to have been issued under such conditions as would destroy their salability. *Ib.*

3. *Issuance "upon condition" held merely a covenant or agreement and right of holder not affected by failure of condition.*

Although county bonds may have been authorized "upon condition" that the railroad company assisted expend the proceeds as specified, if the condition is in fact merely a covenant or agreement, as in this case, the subsequent failure of the corporation to perform cannot be pleaded by the county against a *bona fide* holder for value. *Ib.*

See CONTRACTS, 1;

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BOUNDARIES.

1. *State; power of Congress.*

Congress cannot change the boundary of a State without its consent. *Washington v. Oregon*, 127.

2. *State; channel of river as; effect of changes by accretion.*

In the absence of specific statement to that effect, the middle of a river, or the middle of the main channel of a river, is not necessarily the exact line when such river separates two States, and where the boundary is properly established in the center of a particular channel, it so remains, subject to changes by accretion, notwithstanding another channel may become more important and be regarded as the main channel of the river. *Ib.*

3. *State; boundary between States of Oregon and Washington.*

The fact that the south channel of the Columbia River has become more important than the north channel has not changed the boundary between the States of Oregon and Washington as fixed by the act of February 14, 1859, c. 33, 11 Stat. 383, admitting Oregon to the Union; and that boundary at Sand Island is the center of the north channel of the Columbia River, subject only to changes by accretion. *Ib.*

4. *Same.*

The boundary line between Oregon and Washington established as indicated on maps annexed to the opinion. *Ib.*

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Geer v. Connecticut, 161 U. S. 519, followed in *Silz v. Hesterberg*, 31.
Giles v. Harris, 189 U. S. 475, followed in *North American Storage Co. v. Chicago*, 306.
Hyde v. Shine, 199 U. S. 62, followed in *United States v. Keitel*, 370.
In re Moore, 209 U. S. 490, followed in *Ingersoll v. Coram*, 335.
Kawanakoa v. Polyblank, 205 U. S. 349, followed in *Reid v. United States*, 529.
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Lehigh Mining & Manuf. Co. v. Kelly, 160 U. S. 327, followed in *Miller & Lux v. East Side C. & I. Co.*, 293.
Maxwell v. Dow, 176 U. S. 606, followed in *Twining v. New Jersey*, 78.
Morris v. Gilmer, 129 U. S. 315, followed in *Miller & Lux v. East Side C. & I. Co.*, 293.
Plumley v. Massachusetts, 155 U. S. 461, followed in *Silz v. Hesterberg*, 31.
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Reduction Co. v. Sanitary Works, 199 U. S. 306, followed in *North American Storage Co. v. Chicago*, 306.
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Slaughter-House Cases, 16 Wall. 36, followed in *Twining v. New Jersey*, 78.
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United States v. Keitel, 211 U. S. 370, followed in *United States v. Forrester*, 399; *United States v. Herr et al.*, 404; *United States v. Biggs*, 507; *United States v. Sullenberger*, 522; *United States v. Freeman*, 525.
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- See JURISDICTION, B;
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There is a citizenship of the United States and a citizenship of the State which are distinct from each other, *Slaughter-House Cases*, 16 Wall. 36; and privileges and immunities, although fundamental, which do not arise out of the nature and character of the National Government, or are not specifically protected by the Federal Constitution, are attributes of state, and not of National, citizenship. *Twining v. New Jersey*, 78.

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1. *Duties of one engaging in business of.*

No one can be compelled to engage in the business of a common carrier, but if he does so, he becomes subject to the duties imposed on common carriers. *Missouri Pacific Ry. v. Larabee Mills*, 612.

2. *Performance of duty compellable by mandamus.*

Even in the absence of legislative enactment or special contract a common carrier is bound to treat all shippers alike and can be compelled to perform this common-law duty by mandamus or other proper writ. *Ib.*

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I. POWERS OF.

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CONSTITUTIONAL LAW.

1. *Arbitrariness of instrument.*

A constitution cannot be carried out with mathematical nicety to logical extremes. *Paddell v. City of New York*, 446.

2. *Commerce; validity of exercise of police power affecting interstate commerce.*

A police measure otherwise within the constitutional power of the State will not be held unconstitutional under the commerce clause of the Federal Constitution because it incidentally and remotely affects interstate commerce. (*Plumley v. Massachusetts*, 155 U. S. 461, followed; *Schollenberger v. Pennsylvania*, 171 U. S. 1, distinguished.) *Silz v. Hesterberg*, 31.

See *Infra*, 11.

3. *Contract impairment—Validity of statute affecting charter of educational institution in respect of coeducation of whites and negroes.*

A state statute which permits education of both white persons and negroes by the same corporation in different localities, although prohibiting their attendance in the same place, does not defeat the object of a grant to maintain a college for all persons, and is not violative of the contract clause of the Federal Constitution, the state law having reserved the right to repeal, alter and amend charters. *Berea College v. Kentucky*, 45.

4. *Contract impairment; due process and equal protection of laws—Validity of telephone rate ordinance of Los Angeles.*

The ordinances of the city of Los Angeles, fixing telephone rates, held not to be unconstitutional either as impairing the obligation of the contract contained in the franchise, as depriving the corporation affected of its property without due process of law or as denying it the equal protection of the law. *Home Telephone Co. v. Los Angeles*, 265.

5. *Contract liberty; power of State to restrict.*

Liberty of contract which is protected against hostile state legislation is not universal, but is subject to legislative restrictions in the exercise of the police power of the State. *McLean v. Arkansas*, 539.

6. *Due process of law; notice and opportunity to be heard, essentials.*

One who has acquired rights by an administrative or judicial proceed-

ing cannot be deprived of them without notice and opportunity to be heard; such deprivation would be without due process of law. *Garfield v. Goldsby*, 249; *Garfield v. Allison*, 264.

7. *Due process of law; notice and opportunity to be heard, essentials.*

After the Secretary of the Interior has approved a list containing the name of a person found by the Dawes Commission to be entitled to enrollment for distribution he cannot, without giving that person notice and opportunity to be heard, strike his name from the list. It would not be due process of law. *Ib.*

8. *Due process of law; notice and hearing—As to application of rule to rate regulation.*

Rate regulation is a legislative, and not a judicial, function, and *quare* whether notice and hearing are necessary to constitute due process of law in fixing rates. Where notice and hearing are indispensable to due process of law, even though the charter does not require it, an ordinance will not be declared unconstitutional at the instance of parties who actually had notice and an opportunity to be heard, as depriving them of property without due process of law within the meaning of the Fourteenth Amendment. *Home Telephone Co. v. Los Angeles*, 265.

9. *Due process of law; notice and hearing; discretion of legislature in respect of, in exercise of police power.*

Where, under the police power of the State, the legislature may enact laws for the destruction of articles prejudicial to public health, it is, to a great extent, within its discretion as to whether any notice and hearing shall be given; and the fact that the articles might be kept for a period does not give the owners a right to notice and hearing. *North American Storage Co. v. Chicago*, 306.

10. *Due process of law; notice and hearing not required before exercise by State of its police power in respect of seizure and destruction of unwholesome food.*

Under its police power the State has the right to seize and destroy food which is unwholesome and unfit to use, and, in exercising such a power, due process of law, within the meaning of the Fourteenth Amendment, does not require previous notice and opportunity to be heard; the party whose property is destroyed has a right of action after the act which is not affected by the *ex parte* condemnation of the state officers. *Ib.*

11. *Due process of law; deprivation of property without—Validity of New York Forest, Fish and Game Law.*

The sections of the Forest, Fish and Game Law of the State of New

York which prohibit possession of game during the closed season, are a valid exercise of the police power of the State and are not in conflict with the Constitution of the United States, either as depriving persons importing game of their property without due process of law, or as an interference with, or a regulation of, interstate commerce. (*Geer v. Connecticut*, 161 U. S. 519.) *Silz v. Hesterberg*, 31.

12. *Due process and equal protection; regulation of sales of stocks in trade in bulk, not denial of.*

It is within the police power of the State to regulate sales of entire stocks in trade of merchants so as to prevent fraud on innocent creditors; and a state statute prohibiting such sales except under reasonable conditions as to previous notice is not unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment; and so held as to §§ 4868 and 4869, General Laws of Connecticut, as amended by chap. 72 of the Public Acts of 1903. *Lemieux v. Young*, 489.

13. *Due process and equal protection of laws—Classification for taxation not violative of.*

So far as the Federal Constitution is concerned, the power of the State in respect to taxation is very broad, and includes exemption of certain classes of property from taxation to which other property is subjected, and different classes may be taxed by different methods of procedure without violating the due process and equal protection provisions of the Fourteenth Amendment. *Beers v. Glynn*, 477.

14. *Due process and equal protection of laws—Validity of New York Inheritance Tax Law of 1887.*

The provisions in the New York Inheritance Tax Law, chap. 713 of Laws of 1887, amending chap. 483 of the Laws of 1887, for taxing personalty of non-resident decedents who had owned realty in that State, are not unconstitutional as denying to those interested in estates of that class of decedents due process or equal protection of the laws, because no provision is made for taxing personalty of non-resident decedents who had not owned any realty in New York. *Ib.*

15. *Due process and equal protection of laws—Validity of Arkansas coal miners' wages act.*

In the light of conditions surrounding their enactment this court will not hold that the legislative acts requiring coal to be measured for payment of miners' wages before screening are not reasonable police regulations and within the police power of the State; and so held

that the Arkansas act so providing is not unconstitutional under the due process or the equal protection clauses of the Fourteenth Amendment. *McLean v. Arkansas*, 539.

16. *Due process of law; statutory redemption of title to property.*

Where title is taken subject to statutory provisions for redemption, the exercise of the right of redemption so reserved does not deprive the owner of his property without due process of law. *Rusch v. John Duncan Co.*, 526.

17. *Due process of law; deprivation of property; validity of ordinances of Chicago for destruction of unsafe food-stuff.*

The provisions in the cold storage ordinances of Chicago for destruction of unsafe and unwholesome food, are not unconstitutional as depriving persons of property without due process of law because it does not provide for notice and opportunity to be heard before such destruction, or because the food destroyed might have some value for other purposes than food. *North American Storage Co. v. Chicago*, 306.

18. *Due process of law; property rights—Considerations in determining validity of railroad rates.*

Whether a railroad rate is confiscatory so as to deprive the company of its property without due process of law within the meaning of the Fourteenth Amendment depends upon the valuation of the property, the income derivable from the rate, and the proportion between the two, which are matters of fact which the company cannot be prevented from trying before a competent tribunal of its own choosing. *Prentis v. Atlantic Coast Line*, 210.

19. *Due process of law; exemption from self-incrimination as element of.*

The fact that exemption from compulsory self-incrimination is specifically enumerated in the guarantees of the Fifth Amendment tends to show that it was, and is to be, regarded as a separate right and not as an element of due process of law. *Twining v. New Jersey*, 78.

20. *Due process of law—Exemption from compulsory self-incrimination in courts of States.*

The words "due process of law" as used in the Fourteenth Amendment are intended to secure the individual from the arbitrary exercise of powers of government unrestrained by the established principles of private right and distributive justice, *Bank v. Okely*, 4 Wheat. 235, but that does not require that he be exempted from compulsory self-incrimination in the courts of a State that has not adopted the policy of such exemption. *Ib.*

21. *Due process of law; long continuance of system of taxation affecting its validity—Validity of New York system of taxation.*

Long settled habits of the community play an important part in determining questions of constitutional law and the fact that a method of taxation was in force for many years from a time antedating the adoption of the Fourteenth Amendment is a reason for not considering that it was overthrown thereby; and *held* that the system of taxation in force for many years in New York by which the property is taxed on its entire assessed value, without any deduction for the owner's debts secured by mortgage thereon, is not unconstitutional as depriving the owner of his property without due process of law. *Paddell v. City of New York*, 446.

See Supra, 4;

Infra, 26.

22. *Equal protection of laws; validity of classification by State in exercise of police power.*

It is not an unreasonable classification to divide coal mines into those where less than ten miners are employed and those where more than that number are employed, and a state police regulation is not unconstitutional under the equal protection clause of the Fourteenth Amendment because only applicable to mines where more than ten miners are employed. *McLean v. Arkansas*, 539.

23. *Equal protection of laws—Classification in rate regulation.*

The rule that every presumption is in favor of the validity of legislation applies to a city ordinance and it will not be held to be unconstitutional within the meaning of the Fourteenth Amendment, as denying the equal protection of the laws, where the party attacking it as imposing unequal rates upon it does not clearly show an improper classification. *Home Telephone Co. v. Los Angeles*, 265.

See Supra, 4, 12, 13, 14, 15.

Governmental Powers. See RAILROADS, 1.

24. *Involuntary servitude—Quære as to Alabama statutes.*

Quære and not decided, whether the statutes of Alabama involved in this case establish a system of peonage in violation of the Constitution and laws of the United States. *Bailey v. Alabama*, 452.

25. *Privileges and immunities—Self-incrimination.*

Exemption from compulsory self-incrimination in the state courts is not secured by any part of the Federal Constitution. *Twining v. New Jersey*, 78.

26. *Privileges and immunities—Self-incrimination; exemption from, not secured by Constitution.*

Exemption from compulsory self-incrimination did not form part of the "law of the land" prior to the separation of the colonies from the mother-country, nor is it one of the fundamental rights, immunities and privileges of citizens of the United States, or an element of due process of law, within the meaning of the Federal Constitution or the Fourteenth Amendment thereto. *Ib.*

See CORPORATIONS, 1, 2.

27. *States; limitation of powers—Effect of first eight Amendments.*

The first eight Amendments are restrictive only of National action, and while the Fourteenth Amendment restrained and limited state action it did not take up and protect citizens of the States from action by the States as to all matters enumerated in the first eight Amendments. *Ib.*

28. *States; police power; limitation of.*

The police power of the State is not unlimited and is subject to judicial review, and laws arbitrarily and oppressively exercising it may be annulled as violative of constitutional rights. *McLean v. Arkansas*, 539.

See STATES, 10.

CONSTRUCTION.

I. OF WRITTEN INSTRUMENTS.

Entire instrument considered—Intention paramount.

In construing written instruments the entire instrument will be considered and not single words or phrases, and the intent reached even if technical meanings be disregarded; and so "on condition" interpreted as meaning a covenant or agreement. *Green County v. Quinlan*, 582; *Green County v. Thomas' Executor*, 598.

II. OF STATUTES.

See EXTRADITION, 3;
FEDERAL QUESTION;
STATUTES, A.

CONTRACTS.

1. *Government; liability of surety on contractor's bond—Who is subcontractor within meaning of act of August 13, 1894.*

One who furnishes money and superintends the completion of work under a government contract is not a subcontractor within the

meaning of the act of August 13, 1894, c. 280, 28 Stat. 278, and is not entitled to recover a deficit from the surety; and where there is no liability of the contractor there can be no recovery against the surety on the contractor's bond. *Hardaway v. National Surety Co.*, 552.

2. *Government; right of surety on contractor's bond to subrogation to rights of latter.*

The right of the surety on a bond for performance of a contract given under the act of August 13, 1894, c. 280, 28 Stat. 278, to be subrogated to the contractor's claim for balances due from the Government, is superior to that of one advancing money to the contractor on assignment of such claim. (*Prairie State Bank v. United States*, 164 U. S. 227.) *Ib.*

3. *Supplementary contracts; application of construction given original contract.*

After the Government has, against the contractor's protest, affixed a meaning to terms used in a contract, the contractor cannot reassert the same claim in regard to a supplementary contract for additional work of the same nature even if the original contract were susceptible of the construction claimed by him. *Bowers Dredging Co. v. United States*, 176.

4. *Interpretation—Admissibility of evidence to destroy plain and obvious intendment.*

Where words used in a contract are plain and unambiguous, expert testimony, as to their commercial signification, is not admissible for the purpose of destroying the plain and obvious intendment of a contract; and so held that where a Government dredging contract by its terms expressly excluded material which slid into the excavation from the slope outside of the stakes, expert testimony to show that the trade meaning of the words "measured in place" includes such sliding material if dredged was properly excluded. *Ib.*

5. *Construction of contract with Government for reconstruction of draw-span bridge—Recovery of extra cost resulting from variation.*

In a contract with the Government for the reconstruction of a draw-span bridge which provides for completion before opening of navigation, permission to use false work during construction does not permit such use after the opening of navigation; and where the completion is delayed through negligence of the contractor until after opening of navigation and he is obliged by reason of destruction of the false work to substitute a lift span, he cannot recover the extra cost occasioned thereby. *Phœnix Bridge Co. v. United States*, 188.

6. *Receipt for final payment on Government contract as accord and satisfaction.*

Quere and not decided whether a receipt for final payment on a Government contract, given without protest, amounts to an accord and satisfaction so as to be a bar to a claim for extra work in connection with the subject-matter of the contract but not specified therein. *Ib.*

See ATTORNEY AND CLIENT; LIENS;
CONSTITUTIONAL LAW, 3, 4, 5; STATES, 7, 8, 9.

CORPORATIONS.

1. *Privileges and powers; power of State to withhold.*

A corporation is not entitled to all the immunities to which individuals are entitled, and a State may withhold from its corporations privileges and powers of which it cannot constitutionally deprive individuals. *Berea College v. Kentucky*, 45.

2. *Distinction between corporations and individuals in respect of limitation of powers.*

A state statute limiting the powers of corporations and individuals may be constitutional as to the former although unconstitutional as to the latter; and, if separable, it will not be held unconstitutional at the instance of a corporation unless it clearly appears that the legislature would not have enacted it as to corporations separately. *Ib.*

3. *Charters; extent of reserved power to alter or amend.*

While the reserved power to alter or amend charters is subject to reasonable limitations, it includes any alteration or amendment which does not defeat or substantially impair the object of the grant or vested rights. *Ib.*

See CONSTITUTIONAL LAW, 3; STATES, 8;
COURTS, 7; STATUTES, 2;
JURISDICTION, B 2, 4; TAXES AND TAXATION, 1;
MUNICIPAL CORPORATIONS, 2; TRUSTS, 6.

COSTS.

In boundary cases.

In boundary cases where both parties are alike interested the costs are equally divided between them. *Washington v. Oregon*, 127.

COURTS.

1. *Duty to limit jurisdiction.*

Courts must take notice of the limits of their jurisdiction, and the Government should not consent to allow a suit against it to proceed if the court has not jurisdiction. *Reid v. United States*, 529.

2. *Interference with State in exercise of police power.*

The legislature of a State is primarily the judge of the necessity of exercising the police power and courts will only interfere in case the act exceeds legislative authority; the fact that the court doubts its wisdom or propriety affords no ground for declaring a state law unconstitutional or invalid. *McLean v. Arkansas*, 539.

3. *Federal Supreme Court may not require state court to release accused persons on ground that evidence fails to show probable cause.*

This court cannot require the state court to release persons held for trial because the evidence fails to show probable cause, and in this case the judgment of the highest court of the State dismissing a writ of *habeas corpus* is affirmed without consideration of the questions on the merit and the constitutionality of the state statutes under which the accused was held although such questions were discussed by the state court. *Bailey v. Alabama*, 452.

4. *Federal interference with state court.*

A decree in a suit in the Circuit Court between citizens of different States is not violative of § 720, Rev. Stat., because it determines liens on distributive shares in an estate under administration in a state probate court and enjoins transmission of that share to the original administrator until satisfaction of the lien. *Ingersoll v. Coram*, 335.

5. *State court's interference with Federal court in respect of estate of decedent.*

Quere, whether it is within the power of a state court to order property on which there is an asserted lien to be sent out of the district, thereby defeating the jurisdiction of the Circuit Court to enforce the lien under the act of March 3, 1875, 18 Stat. 470, 472. *Ib.*

6. *Power to restore status of parties aggrieved by public official.*

There is no place in our constitutional system for the exercise of arbitrary power, and the courts have power to restore the status of parties aggrieved by the unwarranted action of a public official. *Garfield v. Goldsby*, 249; *Garfield v. Allison*, 264.

7. *State; determination of powers of corporations.*

The state court determines the extent and limitations of powers conferred by the State on its corporations. *Berea College v. Kentucky*, 45.

See BANKRUPTCY, 2, 8, 10;

HABEAS CORPUS;

JUDICIAL AND LEGISLATIVE

FUNCTIONS, 4;

JURISDICTIONS;

MANDAMUS;

RAILROADS, 2;

REMEDIES;

STATES, 11;

TRUSTS, 8.

COURT AND JURY.

See MASTER AND SERVANT, 3.

CRIMINAL LAW.

1. *Appeal by Government.*

Where an indictment is quashed because the facts charged are not within the statute the Government has an appeal under the act of March 2, 1907, c. 2546, 34 Stat. 1246. *United States v. Keitel*, 370.

2. *Conspiracy under § 5440, Rev. Stats.; acts constituting.*

A charge of conspiracy to defraud the United States under § 5440, Rev. Stat., can be predicated on acts made criminal after the enactment of the statute. (*Hyde v. Shine*, 199 U. S. 62.) *United States v. Keitel*, 370.

3. *Conspiracy under § 5440, Rev. Stat.; what constitutes.*

An indictment for conspiracy to defraud the United States by improperly obtaining title to public lands will not lie under § 5440, Rev. Stat., where the only acts charged were permissible under the land laws. *United States v. Biggs*, 507; *United States v. Sullenberger*, 522; *United States v. Freeman*, 525.

4. *Conspiracy; agreement to unlawfully obtain public lands constituting.*

Under §§ 2347-2350, Rev. Stat., a person who is qualified to enter coal lands in his own behalf is prohibited from making an entry ostensibly for himself but in fact as agent for another who is disqualified; and an agreement to obtain land for a disqualified person through entries made by qualified persons constitutes the offense of conspiracy against the United States under § 5440, Rev. Stat. *United States v. Keitel*, 370; *United States v. Herr et al.*, 404; *United States v. Herr*, 406.

5. *Effect of disqualification of grand jurors on jurisdiction of court in which indictment presented.*

Disqualifications of grand jurors do not destroy jurisdiction if it otherwise exists, and the indictment though voidable is not void; and objections seasonably taken in the trial court if erroneously overruled must be corrected by writ of error and not by proceedings in *habeas corpus*. *Kaizo v. Henry*, 146.

6. *Self-incrimination; quære as to what amounts to compelling.*

Quære and not decided whether an instruction that the jury may draw an unfavorable inference from the failure of the accused to testify in denial of evidence tending to criminate him amounts to a viola-

tion of the privilege of immunity from self-incrimination. *Twining v. New Jersey*, 78.

See CONSTITUTIONAL LAW, 19, 26;	JURISDICTION, A 11;
COURTS, 3;	LIBEL, 1;
EXTRADITION;	PRACTICE, 17;
HABEAS CORPUS;	STATUTES, A 4, 7.

CUSTOM.

See CONSTITUTIONAL LAW, 21.

CUSTOMS DUTIES.

Validity of Treasury regulation of 1897 relative to polariscopic tests of sugar.

The regulations of 1897, promulgated by the Secretary of the Treasury, in regard to polariscopic tests of sugar to determine the duty payable thereon, as provided in § 1, Schedule E, par. 209, of the Tariff Act of July 24, 1897, c. 11, 30 Stat. 168, could have been enacted in terms by Congress without violating any provision of the Constitution of the United States, and prior decisions have determined that the Secretary properly construed the statute. *American Sugar Refining Co. v. United States*, 155.

See APPEAL AND ERROR, 2.

DAMAGES.

See MASTER AND SERVANT, 4.

DAWES COMMISSION.

See CONSTITUTIONAL LAW, 7.

DEEDS.

See BANKRUPTCY, 6.

DELEGATION OF POWER.

See CONGRESS, POWERS OF;
RAILROADS, 2.

DEPARTMENTAL REGULATIONS.

See APPEAL AND ERROR;
CUSTOMS DUTIES.

DESCENT AND DISTRIBUTION.

See TRUSTS, 7.

DIVERSE CITIZENSHIP.

See JURISDICTION, B 5, 6.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW.

DUTIES ON IMPORTS.

See CUSTOMS DUTIES.

EMPLOYER AND EMPLOYÉ.

See MASTER AND SERVANT.

ESTATES OF DECEDENTS.

See CONSTITUTIONAL LAW, 14; JURISDICTION, B 13;
COURTS, 4; TRUSTS, 7.

ESTOPPEL.

See PUBLIC LANDS, 6.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 4, 12, 13, 14, 15, 22, 23.

EQUITABLE LIEN.

See LIENS.

EQUITY.

See RAILROAD RATES, 1.

EQUITY OF REDEMPTION.

See CONSTITUTIONAL LAW, 16.

EVIDENCE.

See CONGRESS, POWERS OF; COURTS, 3;
CONSTITUTIONAL LAW, 19; INTERSTATE COMMERCE COM-
MISSION;
CONTRACTS, 4; LIBEL, 1.

EXECUTIVE POWER.

See ARMY.

EXECUTORS AND ADMINISTRATORS.

See JURISDICTION, B 12;
PRACTICE, 7;
RES JUDICATA.

EXEMPTION FROM SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 19, 20, 25, 26.

EXEMPTION FROM TAXATION.

See CONSTITUTIONAL LAW, 13;
TAXES AND TAXATION, 1.

EXPERT TESTIMONY.

See CONTRACTS, 4.

EXTRADITION.

1. *Territorial power the same as that of States.*

While subd. 2, § 2, Art. IV, Const. U. S., refers in terms only to the States, Congress, by the act of February 12, 1793, c. 7, 1 Stat. 302, now § 5278, Rev. Stat., has provided for the demand and surrender of fugitive criminals by governors of Territories as well as of States, and the power to do so is as complete with Territories as with States. (*Ex parte Reggel*, 114 U. S. 642.) *Kopel v. Bingham*, 468.

2. *Status of Porto Rico in respect of.*

Under § 17 of the act of April 12, 1900, c. 191, 31 Stat. 77, 81, the governor of Porto Rico has the same power that the governor of any organized Territory has to issue requisitions for the return of fugitive criminals under § 5278, Rev. Stat. *Ib.*

3. *Section 5278, Rev. Stat., applicable to Porto Rico.*

Section 5278, Rev. Stat., will not be construed so as to make territory of the United States an asylum for criminals, and that section is not locally inapplicable to Porto Rico within the meaning of § 14 of the act of April 12, 1900, c. 191, 31 Stat. 77, 80. *Ib.*

FACTS.

See PRACTICE AND PROCEDURE, 14, 15.

FEDERAL QUESTION.

What constitutes.

The mere construction of a state statute does not of itself present a Federal question. *Knop v. Monongahela Coal Co.*, 485.

See BANKRUPTCY, 1; PRACTICE, 3, 4, 10;
JURISDICTION, A 3; STATUTES, A 8.

FEES OF COUNSEL.

See BANKRUPTCY, 11.

FEDERAL AND STATE COURTS.

See COURTS, 4, 5.

FOOD-STUFF.

See CONSTITUTIONAL LAW, 10;
STATES, 4.

FOURTH AMENDMENT.

See EXTRADITION, 1.

FOURTEENTH AMENDMENT.

See EXTRADITION, 1;
CONSTITUTIONAL LAW;
STATES, 5.

FRANCHISES.

See STATES, 8;
TAXES AND TAXATION, 1.

FRAUDULENT CONVEYANCES.

See CONSTITUTIONAL LAW, 12.

FUGITIVES FROM JUSTICE.

See EXTRADITION, 1, 2.

GAME LAWS.

See CONSTITUTIONAL LAW, 11;
STATES, 1, 2.

GOVERNMENT CONTRACTS.

See CONTRACTS.

GOVERNMENTAL POWERS.

See CONSTITUTIONAL LAW, 20; RAILROADS, 1, 2;
JUDICIAL AND LEGISLATIVE STATES.
FUNCTIONS;

GRAND JURY.

See CRIMINAL LAW, 5.

HABEAS CORPUS.

1. *Ground for release by one court of prisoner convicted and sentenced by another court.*

No court may properly release a prisoner under conviction and sentence of another court unless for want of jurisdiction of cause or person or some matter rendering the proceeding void. *Kazio v. Henry*, 146.

2. *Correction of errors on.*

Where a court has jurisdiction mere errors cannot be corrected upon *habeas corpus*. *Ib.*

See COURTS, 3;
CRIMINAL LAW, 5;
REMEDIES.

HAWAII.

See ACTIONS, 2;
APPEAL AND ERROR, 3;
STATUTES, A 8.

HOMESTEADS.

See PUBLIC LANDS, 1, 2, 3, 6.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 4.

IMPORT DUTIES.

See APPEAL AND ERROR, 2;
CUSTOMS DUTIES.

INDIANS.

See CONSTITUTIONAL LAW, 7.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 1, 3, 5.

INHERITANCE TAX.

See CONSTITUTIONAL LAW, 14.

INJUNCTION.

See ACTIONS, 2;
APPEAL AND ERROR, 3;
RAILROAD RATES, 1.

INSOLVENCY.

See BANKRUPTCY;
JURISDICTION, B 7.

INSTRUCTED VERDICT.

See MASTER AND SERVANT, 3.

INTERLOCUTORY JUDGMENTS.

See JURISDICTION, A 8.

INTERPRETATION AND CONSTRUCTION.

See STATUTES, A 5.

INTERSTATE COMMERCE.

1. *State regulation of local matters affecting.*

Notwithstanding the creation of the Interstate Commerce Commission, and the delegation to it by Congress of the control of certain matters, a State may, in the absence of express action by Congress or by such commission, regulate for the benefit of its citizens local matters indirectly affecting interstate commerce. *Missouri Pacific Ry. v. Larabee Mills*, 612.

2. *Mandamus issuable by state court to compel performance of local duty by carrier engaged in interstate commerce.*

Where there has been no action by Congress or the Interstate Commerce Commission a state court may by mandamus compel a railroad company doing interstate business to afford equal local switching service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. (*McNeill v. Southern Railway Co.*, 202 U. S. 543, distinguished.) *Ib.*

See CONSTITUTIONAL LAW, 2, 11;

INTERSTATE COMMERCE COMMISSION.

STATES, 1.

INTERSTATE COMMERCE COMMISSION.

Power to require testimony limited to investigations concerning specific breaches of existing law.

The primary purpose of the Interstate Commerce Act is to regulate interstate business of carriers, and the secondary purpose, that for which the commission was established, to enforce the regulations enacted by it, and the power to require testimony is limited, as is usual in English-speaking countries, to investigations concerning a specific breach of the existing law; this power is not extended to mere investigations by provisions in any of the amendatory acts in regard to annual reports of interstate carriers, or of the commission, or for the purpose of recommending legislation. *Harriman v. Interstate Commerce Commission*, 407.

INVOLUNTARY SERVITUDE.

See CONSTITUTIONAL LAW, 24.

JUDGMENTS AND DECREES.

Impeachment of judgment—Necessary parties to suit—Principal and surety.

A judgment against a surety cannot be impeached so long as the judgment against the principal on which it is based stands, and in a suit brought by the surety to set both judgments aside, the principal is a necessary party plaintiff. *Steele v. Culver*, 26.

See JURISDICTION, A 7, 8;

PUBLIC LANDS, 6, 7;

RES JUDICATA.

JUDICIAL AND LEGISLATIVE FUNCTIONS.

1. *Definition of.*

A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under existing laws, while legislation looks to the future and changes conditions, making new rules to be thereafter applied. *Prentis v. Atlantic Coast Line*, 210.

2. *What are judicial proceedings.*

Proceedings legislative in nature are not proceedings in a court within the meaning of Rev. Stat., § 720, no matter what may be the character of the body in which they take place. *Ib.*

3. *Legislative action not res judicata in subsequent litigation.*

The making of a rate by a legislative body, after hearing the interested parties, is not *res judicata* upon the validity of the rate when questioned by those parties in a suit in a court. Litigation does not arise until after legislation; nor can a State make such legislative action *res judicata* in subsequent litigation. *Ib.*

4. *Interference by courts with legislative power in regulation of railroads.*

By §§ 833–871 of chap. 66 of the Rev. Laws of Hawaii, the legislature having vested the regulation of the railway company thereby incorporated in certain administrative officers, it is beyond the power of the courts to independently regulate the schedule of running cars by decree in a suit; and so held without deciding as to the power of the courts to review the action of the administrative officers charged by the legislature with establishing regulations. *Honolulu Rapid Transit Co. v. Hawaii*, 282.

5. *Observance of boundaries.*

The boundaries between the legislative and judicial fields should be carefully observed. *Ib.*

See CONSTITUTIONAL LAW, 8;

RAILROADS, 2;

STATES, 10.

JUDICIAL NOTICE.

See COURTS, 1;
PRACTICE AND PROCEDURE, 12.

JURISDICTION.

A. OF THIS COURT.

1. *Who may invoke.*

The jurisdiction of this court can only be invoked by a party having a personal interest in the litigation. (*Smith v. Indiana*, 191 U. S. 138.) *McCandless v. Pratt*, 437.

2. *To review judgments of District Court sitting as court of claims—Act of March 3, 1891, construed.*

The act of March 3, 1891, 26 Stat. 826, deals with general, and not special, jurisdiction, and nothing in §§ 5, 6 or 14 extended the right of review of judgments of the District Court sitting as a court of claims under the act of March 3, 1887, c. 539, 24 Stat. 505, and a writ of error will not lie to review a judgment in favor of the Government on a claim of less than \$3,000. *Reid v. United States*, 529.

3. *Of direct appeal from Circuit Court—Sufficiency of Federal question involved.*

Where the constitutionality of a state statute, as construed by the highest court of the State, is admitted, and only its applicability to the facts is denied, no question as to the construction or application of the Federal Constitution is involved, and a direct appeal to this court from the Circuit Court will not lie under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826. *Knop v. Monongahela Coal Co.*, 485.

4. *To review judgments of territorial courts.*

The power of this court to review the judgments of courts of the Territories depends upon acts of Congress and cannot be extended by territorial legislation. *Cotton v. Hawaii*, 162.

5. *Appeal from territorial court—Finality of judgment.*

An appeal from a judgment of the Supreme Court of Hawaii dismissed because not final. (*Cotton v. Hawaii*, ante, p. 162.) *Hutchins v. Bierce*, 429.

6. *Of appeals from Supreme Court of Hawaii under acts of 1900 and 1905.*

The elementary rule, that the power of this court to review judgments under § 709, Rev. Stat., and under statutes relating to review of judgments from territorial courts extends only to final judgments, also governs appeals from the Supreme Court of Hawaii under § 86

of the act of April 30, 1900, c. 339, 31 Stat. 141, 158, and the amendatory act of March 3, 1905, c. 1465, 33 Stat. 1035. *Cotton v. Hawaii*, 162.

7. *To review judgments of Supreme Court of Hawaii—Sufficiency of record—Finality of judgments.*

The decisions of the Supreme Court of Hawaii in this case, overruling exceptions and reversing order for new trial, were based on bill of exception, which did not bring up the whole record, were not under the practice of Hawaii final judgments, and are not reviewable by this court. *Ib.*

8. *Finality of judgment—Judgment of Court of Appeals, D. C., in patent case held interlocutory.*

A decision of the Court of Appeals of the District of Columbia in an appeal from the Commissioner of Patents under Rev. Stat. §§ 4914, 4915, § 9 of the act of February 9, 1893, c. 74, 27 Stat. 434, and § 780, Rev. Stat., District of Columbia, is interlocutory and not final and is not reviewable by this court under § 8 of the act of February 9, 1893, either by appeal or writ of error. (*Rousseau v. Browne*, 21 App. D. C. 73, approved.) *Frasch v. Moore*, 1.

9. *Jurisdictional amount—Interest of less than \$5,000 in estate amounting to more, not sufficient.*

Although the estate may amount to more than \$5,000, if the aggregate interest of plaintiffs in error is less than that amount, and the balance of the estate goes to defendants in error, the necessary amount in controversy does not exist to give this court jurisdiction of an appeal from a judgment of the Court of Appeals of the District of Columbia setting aside a will. (*Overby v. Gordon*, 177 U. S. 214, distinguished.) *Morgan v. Adams*, 627.

10. *Original—Action by State against Secretary of Interior where United States, a necessary party, omitted.*

This court has no jurisdiction of an action brought by a State against the Secretary of the Interior to establish title to, and prevent other disposition of, lands claimed under swamp land grants where questions of law and fact exist as to whether the United States still owns the lands. The United States is a necessary party, and the action cannot be tried without it. *Louisiana v. Garfield*, 70.

11. *Of criminal appeals under act of 1907.*

United States v. Keitel, ante, p. 370, followed as to the power of this court to review judgments in criminal cases at the instance of the Government under the act of March 2, 1907, c. 2546, 34 Stat. 1246.

United States v. Biggs, 507; *United States v. Sullenberger*, 522;
United States v. Freeman, 525.

12. *Criminal appeals; scope of review.*

Under the act of March 2, 1907, c. 2564, 34 Stat. 1246, this court on direct writ of error only has jurisdiction to review the particular questions decided by the court below for which the statute provides, and the whole case is not open to review. *United States v. Keitel*, 370.

See BANKRUPTCY, 1;
PRACTICE, 3, 4.

B. OF CIRCUIT COURT.

1. *Citizenship for purpose of.*

While jurisdiction of the Circuit Court exists even if complainant's motive in acquiring citizenship was to invoke that jurisdiction, the citizenship must be real and actually acquired with the purpose of establishing a permanent domicile. (*Morris v. Gilmer*, 129 U. S. 315.) *Miller & Lux v. East Side C. & I. Co.*, 293.

2. *Citizenship of corporation collusively acquired for purpose of.*

Where the complainant corporation was organized for the sole purpose of invoking the jurisdiction of the Circuit Court, and any decree in its favor would be really under the control, and for the benefit, of another corporation of the same State as defendant, the suit should be dismissed as one in which the complainant was collusively so organized for the purpose of creating a case cognizable in the Circuit Court within the meaning of § 5 of the act of March 3, 1875, c. 137, 18 Stat. 460, 472. (*Lehigh Mining & Manufacturing Co. v. Kelly*, 160 U. S. 327.) *Ib.*

3. *Citizenship for purpose of, in suit to enforce lien for professional services.*

In this case the Circuit Court had jurisdiction under the provision of the act of March 3, 1875, 18 Stat. 470, 472, to enforce a lien for professional services, on property within the district, although some of the defendants did not reside therein. *Ingersoll v. Coram*, 335.

4. *Bona fides of citizenship of corporation for purpose of.*

A corporation organized by citizens of one State in another State simply for the purpose of bringing suits on causes of action against citizens of the former State in the Federal courts where jurisdiction would not otherwise exist, is a sham and, under § 5 of the act of March 3, 1875, c. 137, 18 Stat. 470, a suit brought by such a corporation does not really and substantially involve a dispute within the jurisdic-

tion of the Circuit Court and should be dismissed, as soon as such facts have been ascertained. *Southern Realty Co. v. Walker*, 603.

5. *Diversity of citizenship—Alignment of parties.*

Where jurisdiction of the Circuit Court depends on diversity of citizenship, the parties may be rearranged according to their real interests. *Steele v. Culver*, 26.

6. *Same.*

Where a party defendant should be aligned as a party plaintiff, is a necessary party, and is a citizen of the State of which the other defendants are citizens, the Circuit Court has not jurisdiction. *Ib.*

7. *Diversity of citizenship—Necessity of joinder of party not affected by insolvency.*

In order to confer jurisdiction on the Circuit Court, one who is a necessary party cannot be omitted merely on account of his insolvency. *Ib.*

8. *Jurisdictional amount—Right of defendant to complain of division of verdict.*

If the defendant obligor owed the amount to the plaintiff at the commencement of the action it is not interested in the division of the verdict. *Green County v. Thomas' Executor*, 598.

9. *Jurisdictional amount; aggregate interest of joint owners of bonds.*

A finding that the plaintiffs below are *bona fide* holders of bonds and entitled to sue in the Circuit Court amounts to a finding that the plaintiffs are joint owners, and is sufficient to support jurisdiction if the aggregate amount exceeds \$2,000. *Ib.*

10. *When suit arises under Constitution and laws of United States for purposes of.*

A suit arises under the Constitution and laws of the United States, so as to give the Circuit Court jurisdiction on that ground, only when plaintiff's statement of his own cause is based thereon; that jurisdiction cannot be based on an alleged anticipated defense which may be set up and which is invalid under some law, or provision, of the Constitution of the United States. *Louisville & Nashville R. R. v. Mottley*, 149.

11. *Same.*

The Circuit Court has no jurisdiction, in the absence of diverse citizenship, of a suit brought against a railroad corporation to enforce an alleged contract for an annual pass because, as stated in the bill, the refusal is based solely on the anti-pass provisions of the Hep-

burn Interstate Commerce Act of June 29, 1906, 34 Stat. 584.
Ib.

12. *Of suit against administrator to enforce lien against distributive share of heir whose residence is same as that of defendant.*

Section 629, Rev. Stat., does not deprive the Circuit Court of jurisdiction of an action brought by a citizen of another State against an administrator to enforce a lien on the distributive share of an heir of defendant's intestate because that heir being of the same State as the defendant could not sue him in the Circuit Court. *Ingersoll v. Coram*, 335.

13. *Effect of pendency of proceeding in state probate court on jurisdiction to determine existence of lien on distributive shares of estate.*

The fact that proceedings for the administration of an estate are pending in the probate court does not deprive the Circuit Court of the United States of jurisdiction to determine whether a lien exists in favor of citizens of another State on some of the distributive shares, the lien only to be enforced after the probate court shall have finished its functions. *Ib.*

14. *Waiver of objection to, based on residence of defendant.*

An objection to the jurisdiction of the Circuit Court based on the residence of defendant, although diverse citizenship exists, may be waived, and is waived if not seasonably made. (*In re Moore*, 209 U. S. 490.) *Ib.*

See COURTS, 5;
PRACTICE, 2.

C. OF BANKRUPTCY COURT. *See* BANKRUPTCY, 10.

D. GENERALLY.
See COURTS, 1;
CRIMINAL LAW, 5.

JURY AND JURORS. *See* CRIMINAL LAW, 5.

"LAW OF THE LAND."
See CONSTITUTIONAL LAW, 26.

LEGISLATION.

1. *Local legislation under authority of Congress; effect of ratification by Congress.*

In determining rights and liabilities, local legislation under authority of

Congress previously granted is treated as emanating from the local legislature and not from Congress. A general ratification by Congress of charters does not amount to making the charters ratified acts of Congress. *Honolulu Transit Co. v. Wilder*, 137.

2. *Same.*

A ratification of legislation between certain specified dates does not exclude legislation enacted on those dates. (*Taylor v. Brown*, 147 U. S. 640.) *Ib.*

See CONSTITUTIONAL LAW, 23.

LEGISLATIVE POWER.

See COURTS, 2.

LEGISLATIVE AND JUDICIAL FUNCTIONS.

See JUDICIAL AND LEGISLATIVE FUNCTIONS;
STATES.

LIBEL.

1. *Admissibility, in action for libel, of evidence of want of good faith of plaintiff, a public prosecutor, on which libelous publication based.*

Crime and credulity are not the same and mere neglect on the part of a prosecuting officer to investigate the character of witnesses on whose testimony an indictment is based is not tantamount to deliberate design; and in a suit for libel brought by such an officer against the owner of a journal charging him with blackmail, evidence as to whether he had made such investigation was properly excluded as irrelevant, the court not having excluded evidence as to the plaintiff's character. *Pickford v. Talbot*, 199.

2. *Definition approved.*

In this case the court below rightly held the defendant responsible for the publication of the libel. The syllabus in the report, 28 App. D. C. 498, on the question of responsibility, is as follows: "A charge to the jury in a libel case is correct which in effect states that one who procures the publication of a newspaper article libelous *per se*, or the circulation of copies of a newspaper containing such an article, is liable to the person defamed, no matter who wrote the article; and that a principal is responsible for a libelous newspaper article written by his agent, if the agent's authority was such as fairly carried with it the authority to express in the principal's behalf what the article contains." *Ib.*

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 5.

LIENS.

Equitable; creation of attorney's lien for contingent fee.

An express executory agreement in writing whereby the contracting party sufficiently indicates an intent to make some identified property security for a debt or other obligation, creates an equitable lien on such property; and in this case an agreement by contestants to pay counsel a contingent fee if the propounding of a will is prevented, created a lien on the distributive shares in the estate to which those contestants became entitled on a settlement of the matter effected by the successful services of the counsel so employed. *Ingersoll v. Coram*, 335.

See BANKRUPTCY, 3;

COURTS, 4, 5;

JURISDICTION, B 3, 12, 13.

LOCAL LAW.

Arkansas. Coal Miners' Wages Act (see Constitutional Law, 15). *McLean v. Arkansas*, 539.

Connecticut. Fraudulent conveyances. Sections 4868, 4869, Gen. Laws, as amended by ch. 72 of Pub. Acts, 1903 (see Constitutional Law, 12). *Lemieux v. Young*, 489.

District of Columbia. Rule as to assumption of risk (see Master and Servant, 1). *Butler v. Frazee*, 459.

Hawaii. Laws of Hawaii, § 2118, attachment of seamen's wages (see Maritime Law, 1). *Wilder v. Inter-Island Navigation Co.*, 239. Testamentary trusts (see Trusts, 2). *Fitchie v. Brown*, 321. Final judgments (see Jurisdiction, A 7). *Cotton v. Hawaii*, 162. Rev. Laws of Hawaii, ch. 66, §§ 833-871, railroad regulation (see Judicial and Legislative Functions, 4). *Honolulu Rapid Transit Co. v. Hawaii*, 282.

Kentucky. Statutes of 1904, § 1, prohibiting coeducation of whites and negroes (see Statutes, 2). *Berea College v. Kentucky*, 45.

Louisiana. Preference given by member of copartnership (see Bankruptcy, 4). *Miller v. New Orleans Fertilizer Co.*, 496.

New York. Forest, Fish and Game Law (see Constitutional Law, 11). *Silz v. Hesterberg*, 31; (see States, 1) *Ib.* Taxation (see Constitutional Law, 21). *Paddell v. City of New York*, 446. Inheritance tax law of 1887, Laws of 1887, ch. 713 (see Constitutional Law, 14). *Beers v. Glynn*, 477.

Generally. See LEGISLATION.

MANDAMUS.

Acts of public officials reviewable by.

While acts of public officials which require the exercise of discretion may not be subject to review in the courts, if such acts are purely ministerial or are undertaken without authority the courts have jurisdiction, and mandamus is the proper remedy. *Garfield v. Goldsby*, 249; *Garfield v. Allison*, 264.

See COMMON CARRIERS, 2;

INTERSTATE COMMERCE, 2.

MARITIME LAW.

1. *Seamen's wages; attachment or arrestment*—Section 4536, Rev. Stat., and § 2118, Laws of Hawaii, construed.

Section 4536, Rev. Stat., providing that seamen's wages shall not be subject to attachment or arrestment, is to be construed in the light of other provisions of the same title and is to be liberally interpreted with a view to protect the seamen; and, as so construed, that section prevents the seizure of wages not only by attachment before, but execution after, judgment, and such wages cannot be seized under § 2118 of the Laws of Hawaii. *Wilder v. Inter-Island Navigation Co.*, 239.

2. *As to effect of act of 1874 to repeal § 4536, Rev. Stat.*

Quære and not decided whether the act of June 9, 1874, c. 259, 18 Stat. 64, repealed § 4536, Rev. Stat., so far as vessels engaged in the coastwise trade are concerned. *Ib.*

MASTER AND SERVANT.

1. *Assumption of risk*—Common-law rule in force in District of Columbia.

The common-law rule of assumption of known risk by the employé has never been modified by statute in the District of Columbia, and even if hardship results the court must enforce the rule. *Butler v. Frazee*, 459.

2. *Assumption of risk by employé.*

One understanding the condition of machinery and dangers arising therefrom, or who is capable of so doing, and voluntarily, in the course of employment, exposes himself thereto, assumes the risk thereof and if injury results cannot recover against his employer. *Ib.*

3. *Assumption of risk; when question of law for court.*

Although the plaintiff, if of full age and understanding, may testify to the contrary, where the elements and combination out of which the

danger arises are so visible and have been of such long standing that the dangers are obvious to all, the question is one of law for the court and the judge should instruct the jury that a verdict for plaintiff cannot be sustained. *Ib.*

4. *Assumption of risk—Knowledge of imperfections in machinery.*

In this case, held that an employé in a laundry, who had been employed in laundries for two years and was familiar with the machinery used therein, could not recover for injuries received by a machine on which she had been working for three months, and the imperfections, if any, of which she did not at any time report to her employer. *Ib.*

5. *Duty of master and servant in respect of safety and care.*

In this case held that the court below correctly charged the jury as to the law governing the duty of the master to furnish a safe place, machinery and tools, and the duty of the employé to take reasonable care of himself, and the judgment in favor of the employé affirmed. *El Paso R. R. Co. v. Vizard*, 608.

MINES AND MINING.

See PUBLIC LANDS, 11.

MUNICIPAL CORPORATIONS.

1. *Rate regulation; qualification of city council in respect of.*

A city council is not disqualified from acting in rate regulation because the city is a heavy ratepayer, or because the members might be politically affected by their action. *Home Telephone Co. v. Los Angeles*, 265.

2. *Regulation of public service corporations.*

In this case objections to a municipal ordinance requiring a telephone company to report expenditures and receipts are untenable. *Ib.*

See STATES, 5, 6, 9.

NEGROES.

See CONSTITUTIONAL LAW, 3;

STATUTES, 2.

NOTICE.

See CONSTITUTIONAL LAW, 6, 7, 8;

COURTS, 1;

PRACTICE, 16.

INDEX.

ORDINANCES.

See CONSTITUTIONAL LAW, 17;
STATES, 5.

OREGON.

See BOUNDARIES, 3, 4.

PARTIES.

See JUDGMENTS AND DECREES;
JURISDICTION, A 10; B 5, 6, 7;
PRACTICE, 7.

PASS.

See JURISDICTION, B 11.

PATENTS.

See JURISDICTION, A 8.

PATENTS FOR LAND.

See PUBLIC LANDS, 5, 6, 7.

PARTNERSHIP.

See BANKRUPTCY, 4, 5.

PENSIONS.

See STATUTES, A 6.

PEONAGE.

See CONSTITUTIONAL LAW, 24.

PERPETUITIES.

See TRUSTS, 2, 6.

PLEADING.

See BONDS, 3.

POLARISCOPIC TESTS FOR SUGAR.

See CUSTOMS DUTIES.

POLICE POWER.

See CONSTITUTIONAL LAW, 2, 5, COURTS, 2;
9, 10, 11, 12, 15, 22, 28; STATES, 1, 2, 3.

PORTO RICO.

Status as Territory.

Porto Rico, although not a Territory incorporated into the United States, is a completely organized Territory. *Kopel v. Bingham*, 468.

See EXTRADITION, 2, 3.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Where Circuit Court was without jurisdiction of case appealed.*

On appeal from the Circuit Court where that court was without jurisdiction of the suit either on the ground of diversity of citizenship or that it was one arising under the Constitution and laws of the United States, the practice is to reverse the judgment and remit the case to the Circuit Court with instructions to dismiss the suit for want of jurisdiction. *Louisville & Nashville R. R. v. Mottley*, 149.

2. *Raising question of jurisdiction of Circuit Courts.*

The jurisdiction of the Circuit Court is defined and limited by statute; and, even if not questioned by either party, this court will, of its own motion, see to it that such jurisdiction is not exceeded. *Ib.*

3. *Assertion of Federal right for purpose of review of judgment by this court.*

The claim that a charter granted by the Republic of Hawaii has become a statute of the United States because ratified by act of Congress, must be asserted before assignment of error in this court in order to give this court jurisdiction to review on the ground that the construction of, or a right claimed under, a law of the United States is involved. *Honolulu Transit Co. v. Wilder*, 144.

4. *Record in this court; sufficiency for purpose of review of judgment.*

Where the record does not show that any Federal question was raised or suggested before the assignment of error in this court, a judgment of the Supreme Court of Hawaii cannot be reviewed by this court under § 86 of the act of April 30, 1900, c. 339, 31 Stat. 141. *Ib.*

5. *Judgment of state court, resting on sufficient non-Federal grounds, not disturbed.*

This court will not disturb the judgment of a state court resting on

Federal and non-Federal grounds if the latter are sufficient to sustain the decision. *Berea College v. Kentucky*, 45.

6. *Arguments; when not considered.*

When a question is no longer open in this court, adverse arguments, although weighty, will not be considered, and, under the doctrine of *stare decisis*, *Slaughter-House Cases*, 16 Wall. 36, and *Maxwell v. Dow*, 176 U. S. 606, approved and followed. *Twining v. New Jersey*, 78.

7. *Parties not appealing not entitled to be heard on the appeal.*

Executors, parties to the action but who have not appealed, cannot be heard against a decree construing the will and determining the validity of trusts on an appeal taken by other parties. *Fitchie v. Brown*, 321.

8. *Scope of review on direct appeal from Circuit Court where certificate has also issued therefrom.*

Where the Circuit Court has sustained the demurrer to the complaint because the case does not involve the construction or application of the Constitution of the United States and has given a certificate to that effect, and complainant has also appealed directly to this court under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, if this court finds that jurisdiction exists, the appeal can be heard without resort to the certificate and decided on the merits. (*Giles v. Harris*, 189 U. S. 475.) *North American Storage Co. v. Chicago*, 306.

9. *As to consideration of legality of provision of city charter as to referendum of ordinances, in case involving validity of rate regulation.*

This court will not consider the legality or effect of a provision in a city charter for submission of ordinances adopted by the common council to the people on the petition of a specified number of voters, when the ordinance involved was not so submitted. *Home Telephone Co. v. Los Angeles*, 265.

10. *Timeliness of raising of Federal question for purpose of writ of error.*

It is too late to raise the Federal question for the first time in petition for rehearing in the state court of last resort, unless, and it must so appear, that court actually entertains the motion and passes upon the Federal question; where the order is merely a denial of the motion the writ of error will be dismissed. *McCorquodale v. Texas*, 432.

11. *Limiting decision to questions properly presented.*

This court will not open the way to the raising of technical questions, and a plaintiff in error is only entitled to a decision on questions

properly brought to its attention. *Green County v. Thomas' Executor*, 598.

12. *Questions not properly brought before court not noticed.*

Looseness of practice should not be encouraged, and while an appellate court should not enter final judgment for appellant without protecting the rights of the appellee, it is not bound to take notice of questions not set forth in the record, nor raised in the assignments of error, or where the appellant did not save his rights in the court below. *Ib.*

13. *Amendment of petition for writ of error.*

Where a technical mistake in the petition for writ of error is the result of accident the court is justified in allowing an amendment and denying a motion to dismiss. *Ib.*

14. *Entering judgment on findings of fact by Circuit Court accompanying questions certified by Circuit Court of Appeals.*

Findings of fact made by the Circuit Court which were not objected to and which accompanied the questions certified by the Circuit Court of Appeals, held in this case to be sufficient to justify entering judgment thereon after this court had responded to the questions certified. *Green County v. Quinlan*, 582.

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

Where two courts have concurred in findings of fact in a suit in equity, this court will accept those findings unless clear error is shown. (*Dun v. Lumbermen's Credit Association*, 209 U. S. 20.) *Page v. Rogers*, 575.

16. *Following state court's construction of state statute.*

The decision of the highest court of the State that a statutory notice complies with the statute is determinative. *Rusch v. John Duncan Co.*, 526.

17. *Questions, made irrelevant by decision on broad ground, not considered.*

When this court in affirming a judgment in a criminal case under the act of March 2, 1907, c. 2546, 34 Stat. 1246, has decided on a broad ground that the Government cannot prosecute the case, it is not necessary for it to decide the other questions involved which thereby become irrelevant. *United States v. Biggs*, 507.

See BANKRUPTCY, 2;

COSTS;

COURTS, 3.

PREFERENCES.

See BANKRUPTCY, 1, 4, 5, 6, 7.

PRESIDENT OF THE UNITED STATES.

See ARMY

PRESUMPTIONS.

See BONDS, 1, 2;

CONSTITUTIONAL LAW, 23.

PRINCIPAL AND AGENT.

See CRIMINAL LAW, 4; PUBLIC LANDS, 8, 9;

LIBEL, 2; STATUTES, A 7.

PRINCIPAL AND SURETY.

See CONTRACTS, 1, 2;

JUDGMENTS AND DECREES.

PRIVILEGES AND IMMUNITIES.

See CITIZENSHIP;

CORPORATIONS, 1, 2;

CONSTITUTIONAL LAW, 25, 26;

CRIMINAL LAW, 6.

PUBLIC HEALTH.

See CONSTITUTIONAL LAW, 9, 10.

PUBLIC LANDS.

1. *Policy of Government toward settlers.*

The policy of the Federal Government toward *bona fide* settlers upon the public lands is liberal and the law deals tenderly with them.

Brandon v. Ard, 11.

2. *Homesteads; effect of error of public official.*

A homesteader who has done all that the law requires will not lose his rights on account of error of, or unauthorized action by, a public official. (*Ard v. Brandon*, 156 U. S. 537.) *Ib.*

3. *Homesteads—Lands open for settlement—Effect of error of public official on rights of settlers.*

Lands within indemnity limits of a railroad grant are not open for settlement under homestead laws until the map of definite location has been filed and their selection to supply deficiencies in place limits has been approved by the Secretary of the Interior; and their prior withdrawal by the Secretary from sale and settlement is unauthorized and does not affect the rights of *bona fide* settlers. So held as to grants under the act of March 3, 1863, c. 98, 12 Stat. 772. *Ib.*

4. *Lands granted by act of March 3, 1863.*

The act of March 3, 1863, c. 98, 12 Stat. 772, did not actually grant

lands to which any claim of a *bona fide* settler had attached prior to definite location of the road. (*Sjoli v. Dreschel*, 199 U. S. 564.) *Ib.*

5. *Suits concerning, brought by Attorney General; who represented.*

In a suit brought by the Attorney General of the United States against a railroad company to cancel patents under the act of March 3, 1887, c. 376, 24 Stat. 556, the Attorney General represents only the United States; he cannot represent merely private parties. *Ib.*

6. *Suits concerning, brought by Attorney General—Who bound by adverse judgment.*

A *bona fide* homesteader, not a party to an action brought by the Attorney General of the United States under the act of March 3, 1887, c. 376, 24 Stat. 556, against a railroad company to cancel the patent issued to the company for the land entered by him is not a privy to or bound by the judgment against the United States; nor can the adjudication in such a case estop him from setting up his rights in the land for which the patent was issued. (*United States v. M., K. & T. Ry. Co.*, 141 U. S. 358; *Ard v. Brandon*, 156 U. S. 537.) *Ib.*

7. *Same.*

One not a party to an action brought by the United States to cancel patents and who is not otherwise a privy to, or bound by the judgment against the United States, is not made a privy thereto, or become bound thereby because he is a member of an association which urged the Government to bring the action. *Ib.*

8. *Coal lands; acquisition by agent of disqualified party forbidden.*

The provisions of the Revised Statutes in regard to coal lands limit the amount of land to be taken by each person entering; and while there may be no statutory limitation on the right of the entryman to sell after acquisition, the statute, according to its plain meaning, will be enforced as not permitting a person to acquire land as agent for a disqualified person and so defeat the purpose of the statute. *United States v. Keitel*, 370.

9. *Same.*

A person cannot enter land through an agent, even though the agency be undisclosed, if he is disqualified to enter the land himself. *Ib.*

10. *Coal lands; entries; nature of preferential right.*

The preferential right under §§ 2348, 2349, Rev. Stat., is not in and itself the equivalent of an entry uncontrolled by the prohibitions expressed in the statutes relating to entries of coal lands, but is simply a privilege to make the statutory entry of a particular tract in preference to others. *United States v. Forrester*, 399.

11. *Coal lands; fraudulent entries under preferential rights.*

United States v. Keitel, ante, p. 370, followed; the rule therein stated as to fraudulent entries of coal lands under §§ 2347-2350, Rev. Stat., by qualified persons for the benefit, and as agents of, disqualified persons, applies not only to cash entries, but also to entries under preferential rights by persons opening and developing mines on the lands entered. *Ib.*; *United States v. Herr et al.*, 404.

12. *Timber and stone act; rights of entrymen under.*

The timber and stone act of June 3, 1878, c. 151, 20 Stat. 89, as amended by the act of August 4, 1892, c. 375, § 2, 27 Stat. 348, while prohibiting the entryman from entering ostensibly for himself but in reality for another, does not prohibit him from selling his claim to another after application and before final action. (*Williamson v. United States*, 207 U. S. 425.) *United States v. Biggs*, 507; *United States v. Sullenberger*, 522; *United States v. Freeman*, 525.

See ACTIONS, 2; CRIMINAL LAW, 3, 4;
 APPEAL AND ERROR, 3; JURISDICTION, A 10;
 STATUTES, A 4.

PUBLIC OFFICERS.

See COURTS, 6;
 MANDAMUS;
 PUBLIC LANDS, 2, 3.

RAILROADS.

1. *Public character of business—Governmental power of regulation.*

The business of a transportation company operating under a franchise is not purely private, but is so affected by public interest that it is subject, within constitutional limits, to the governmental power of regulation. *Honolulu Rapid Transit Co. v. Hawaii*, 282.

2. *Governmental regulation—Delegation of power—Schedule for running trains.*

The power to regulate the operation of railroads includes regulation of the schedule for running trains; such power is legislative in character, and the legislature itself may exercise it or may delegate its execution in detail to an administrative body, and where the legislature has so delegated such regulation the power of regulation cannot be exercised by the courts. *Ib.*

See BONDS, 1, 3; JUDICIAL AND LEGISLATIVE
 INTERSTATE COMMERCE, 2; FUNCTIONS, 4;
 JURISDICTION, B 11.

RAILROAD LAND GRANTS.

See PUBLIC LANDS, 3, 4, 5, 6.

RAILROAD RATES.

1. *Remedy against enforcement by state railroad commission of confiscatory rates.*

Where a state railroad commission, which is granted power by the state constitution to make and enforce rates, enacts and attempts to enforce rates which are so low as to be confiscatory, the proper remedy is by bill in equity to enjoin such enforcement, and such a suit against the members of the commission will not be bad as one against the State, but it should not be commenced until the rate has been fixed by the body having the last word. *Prentis v. Atlantic Coast Line*, 210.

2. *Remedies—Exercise of right of appeal to highest court of State should precede resort to Federal court.*

While a party does not lose his right to complain of action under an unconstitutional law by not using diligence to prevent its enactment, on a question of railroad rates, when an appeal to the Supreme Court of the State from an order of the State Corporation Commission fixing such rates is given by the state constitution, it is proper that dissatisfied railroads should take this matter to the Supreme Court of their State before bringing a bill in the Circuit Court of the United States. Under the circumstances of this case action on a bill was suspended to await the result of such an appeal. *Ib.*

See CONSTITUTIONAL LAW, 18;

JUDICIAL AND LEGISLATIVE FUNCTIONS, 3.

RATE REGULATION.

See CONSTITUTIONAL LAW, 8;

MUNICIPAL CORPORATIONS, 1.

RATES.

See CONSTITUTIONAL LAW, 4, 18, 23; RAILROAD RATES;

JUDICIAL AND LEGISLATIVE FUNCTIONS, 3; STATES, 6, 7, 8, 9.

RECEIVERS.

See BANKRUPTCY, 8, 9.

REMEDIES.

Habeas corpus or writ of error as proper remedy of one convicted by court exceeding its jurisdiction.

While a court of competent jurisdiction may discharge a prisoner held

by another court which has exceeded its jurisdiction, even in such a case the prisoner may be remitted to his remedy by writ of error. *Kaizo v. Henry*, 146.

See MANDAMUS;

RAILROAD RATES, 1, 2.

REPLEVIN.

See BANKRUPTCY, 8.

RES JUDICATA.

Effect of judgment against one ancillary administrator on suit against another in another jurisdiction.

An ancillary administrator in one jurisdiction is not in privity with an ancillary administrator in another jurisdiction, and a judgment against the one is not *res judicata* and a bar to a suit by the other. (*Brown v. Fletcher's Estate*, 210 U. S. 82.) *Ingersoll v. Coram*, 335.

See JUDICIAL AND LEGISLATIVE FUNCTIONS, 3.

RIVERS.

See BOUNDARIES, 2.

SALES.

See CONSTITUTIONAL LAW, 12.

SEAMEN.

See MARITIME LAW, 1.

SECRETARY OF THE INTERIOR.

See CONSTITUTIONAL LAW, 7;

JURISDICTION, A 10;

PUBLIC LANDS, 3.

SECRETARY OF THE TREASURY.

See APPEAL AND ERROR;

CUSTOMS DUTIES.

SEIZURES.

See MARITIME LAW, 1.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 19, 20, 25, 26;

CRIMINAL LAW, 6.

SET-OFF.

See BANKRUPTCY, 7.

SOVEREIGNTY.

See ACTIONS, 1.

STARE DECISIS.

See PRACTICE AND PROCEDURE, 6.

STATES.

1. *Police power; validity of New York Forest, Fish and Game Law—Effect of Lacey Act of 1900.*

Independently of the Lacey Act of May 25, 1900, c. 553, 31 Stat. 187, relating to transportation of game in interstate commerce, the provisions of the New York Forest, Fish and Game Law prohibiting possession of game in closed season is a valid exercise of the police power of the State; and *quære*, but not decided, whether the New York law is not also validated by such act of Congress. *Silz v. Hesterberg*, 31.

2. *Police power in respect of game.*

It is within the police power of a State to prohibit possession of game during the closed season even if brought from without the State. *Ib.*

3. *Police power of legislature.*

Subject to constitutional limitations, the legislature of a State may pass measures for the protection of the people in the exercise of the police power and is the judge of their necessity and expediency. *Ib.*

4. *Police power to destroy unwholesome food-stuff.*

The right of the State under the police power to destroy food that is unfit for human consumption is not taken away because some value may remain in it for other purposes, when it is kept to be sold at some time as food. (*Reduction Company v. Sanitary Works*, 199 U. S. 306; *Gardner v. Michigan*, 199 U. S. 325.) *North American Storage Co. v. Chicago*, 306.

5. *Municipal ordinance as act of State.*

A municipal ordinance properly adopted under a power granted by the state legislature is to be regarded as an act of the State within the Fourteenth Amendment. *Ib.*

6. *Limitation of power of municipality, under grant from State, to fix and determine rates.*

A power given by the State to one of its municipalities to "fix and determine rates," does not authorize that municipality to abandon the power, and to irrevocably establish rates for the entire period of a franchise. *Home Telephone Co. v. Los Angeles*, 265.

7. *Suspension of governmental powers as to rates—Determination of existence of contract.*

Whether an inviolable contract for rates exists must be determined in each case on the particular facts involved; even slight differences may turn the balance. *Ib.*

8. *Suspension of governmental powers by grant of franchise—Construction of franchises.*

To grant a corporation the right to charge a specified rate for a specified time suspends for such period the governmental power of fixing and regulating rates, and in construing a franchise all doubts, both as to existence of contract and authority to make it, must be resolved against such suspension of power. *Ib.*

9. *Surrender of governmental powers.*

Only the legislature of a State, or a municipality specifically authorized thereto by the legislature, can surrender by contract a governmental power such as fixing rates. *Ib.*

10. *Right to unite legislative and judicial powers in same body.*

So far as the Federal Constitution is concerned, a State may, by constitutional provision, unite legislative and judicial powers in the same body. *Prentiss v. Atlantic Coast Line*, 211.

11. *Judicial acts of.*

The judicial act of the highest court of a State in authoritatively construing and enforcing its laws is the act of the State. *Twining v. New Jersey*, 78.

See BOUNDARIES, 1, 2;

CITIZENSHIP;

CONSTITUTIONAL LAW, 2, 5, 9,
10, 11, 12, 13, 20, 25, 27, 28;

CORPORATIONS, 1, 3;

EXTRADITION, 1;

INTERSTATE COMMERCE, 1, 2;

JUDICIAL AND LEGISLATIVE

FUNCTIONS, 3;

JURISDICTION, A 10;

RAILROAD RATES, 1;

STATUTES, A 2.

FEDERAL AND STATE COURTS.

See JUDICIAL AND LEGISLATIVE FUNCTIONS, 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Construction of statutes altering or amending charter.*

A general statute which in effect alters or amends a charter is to be construed as an amendment thereof even if not in terms so designated. *Berea College v. Kentucky*, 45.

2. *Separable provisions—Validity of § 1 of Kentucky statute of 1904 prohibiting coeducation of white persons and negroes.*

The prohibition in § 1 of the Kentucky statute of 1904, against persons and corporations maintaining schools for both white persons and negroes is separable, and even if an unconstitutional restraint as to individuals it is not unconstitutional as to corporations, it being within the power of the State to determine the powers conferred upon its corporations. *Ib.*

3. *Separable provisions; extent of rule as to partial validity.*

The same rule that permits separable sections of a statute to be declared unconstitutional without rendering the entire statute void, applies to separable provisions of a section of a statute. *Ib.*

4. *Meaning of word "defraud" in § 5440, Rev. Stat.*

Even though a word may have a common-law significance which should control if the word stood alone, in the construction of a statute the word must be given the broader meaning resulting from the words with which it is accompanied; and so held that the word "defraud," in § 5440, Rev. Stat., when construed in connection with the accompanying words "in any manner or for any purpose" includes obtaining public lands in violation of the statutes as to quantities to be taken by, and qualifications of, entrymen, notwithstanding the United States be paid the price of the lands. (*Hyde v. Shine*, 199 U. S. 62.) *United States v. Keitel*, 370.

5. *Meaning of word "construction" in act of March 2, 1907.*

While abstractly there may be a difference between "interpretation" and "construction," in common usage the words have the same significance; and "construction" as employed in the act of March 2, 1907, c. 2546, 34 Stat. 1246, includes interpretation. *Ib.*

6. *Amendment to statute; relation of—Act of July 7, 1898, amending § 4746, Rev. Stat., construed.*

An amendment to a statute will be construed to relate to the present subject thereof and not to be new legislation in regard to other subjects; and the act of July 7, 1898, c. 578, 30 Stat. 718, amending § 4746, Rev. Stat., related solely to the subject of pensions and bounty land claims, and simply extended the statute to the use of fraudulent papers in regard to such claims, and a violation of its provisions as amended cannot arise from acts in connection with entries other than those on pensions and bounty claims. *Ib.*

7. *Application in criminal case of construction of statute in prior civil case.*

The authoritative construction of a statute in a civil case may be applied in a criminal case subsequently arising; although *United States*

v. *Trinidad Coal Co.*, 137 U. S. 160, was a suit to annul patents to coal lands the decision in that case that qualified persons cannot enter coal lands under §§ 2347-2350, Rev. Stat., as agents, or on behalf of, disqualified persons, will be followed as to the construction of those statutes in sustaining indictments under § 5440 for conspiracy to defraud the United States by obtaining coal lands by entries in violation of the statutes as so construed. *Ib.*

8. *Land laws of Hawaii as Federal statutes.*

Quære and not decided, whether the land laws of Hawaii are Federal statutes within the meaning, and by virtue of § 83 of the organic act of April 30, 1900, 31 Stat. 41, c. 339, so that their construction involves a Federal question. *McCandless v. Pratt*, 437.

See APPEAL AND ERROR, 1; EXTRADITION, 3;
CORPORATIONS, 2; FEDERAL QUESTION;
CUSTOMS DUTIES; MARITIME LAW, 1.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

SUBROGATION.

See CONTRACTS, 2.

SUIT AGAINST STATE.

See RAILROAD RATES, 1.

SUIT AGAINST UNITED STATES.

See RAILROAD RATES, 1.

SURETIES.

See CONTRACTS, 2.

SWAMP LAND GRANTS.

See JURISDICTION, A 10.

TARIFF.

See APPEAL AND ERROR, 2;
CUSTOMS DUTIES.

TAXES AND TAXATION.

1. *Corporations—Effect of provision of charter as exemption from taxation of franchise.*

A provision in a charter that certain payments shall be made out of in-

come and after dividends up to a specified percentage have been paid, the balance shall be divided between the government and the stockholders, does not, in the absence of any exemption in express terms, exempt the corporation from taxation on its franchise. *Honolulu Transit Co. v. Wilder*, 137.

2. *Remedy of one disputing.*

Quære and not decided, whether one disputing only the amount of a tax has any remedy except proceedings for an abatement. *Paddell v. City of New York*, 446.

See CONSTITUTIONAL LAW, 13, 14, 21.

TELEPHONE COMPANIES.

See CONSTITUTIONAL LAW, 4;
MUNICIPAL CORPORATIONS, 2.

TERRITORIES.

See EXTRADITION;
JURISDICTION, A 4;
PORTO RICO.

TERRITORIAL COURTS.

See JURISDICTION, A 4, 6.

TESTAMENTARY TRUSTS.

See TRUSTS, 2.

TIMBER AND STONE ACT.

See PUBLIC LANDS, 12.

TITLE.

See BANKRUPTCY, 10;
CONSTITUTIONAL LAW, 16.

TRANSPORTATION COMPANIES.

See RAILROADS, 1.

TREASURY REGULATIONS.

See APPEAL AND ERROR, 2;
CUSTOMS DUTIES.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY, 1, 2.

TRUSTS.

1. *Testamentary; validity under law of Hawaii.*

A testamentary trust to continue as long as possible "under the statute" is not void, because in Hawaii there is no statute and the common law is applicable; the testator's intent being evident that the trust was to continue as long as legally possible. *Fitchie v. Brown*, 321.

2. *Testamentary; limitation under law of Hawaii; common law applicable.*

The common law having been made applicable by statute in Hawaii, and there being no other statute regulating the subject, trusts must be valid as at common law; and the utmost extent of a testamentary trust is limited by ascertained lives in being at the time of its creation, selected by the testator but not necessarily having an interest in the property, and for twenty-one years after the death of the last survivor which must be ascertainable by reasonable evidence. *Ib.*

3. *Testamentary; limitation of; force and effect of testator's intent.*

The testator's intent is to be sought and carried out if not illegal; and although the persons whose lives are to limit a trust may not actually be so designated in the will it is sufficient if a class or number of lives are referred to so as to plainly indicate that they were selected for that purpose. *Ib.*

4. *Testamentary; limitation; effect on validity of size of class determining limitation.*

The fact that the class limiting the duration of a common-law trust is large—in this case over forty—does not render it void if it is otherwise legal. *Ib.*

5. *Testamentary; limitation; validity of trust created for as long a period as possible under the statute.*

A trust created for as long a period under the statute as possible held legal at common law and to be limited by the lives of annuitants mentioned in the will and evidently intended, although not so specified, by the testator as being the lives selected for the duration of the trust and twenty-one years after the death of the last survivor. *Ib.*

6. *Testamentary; limitation; effect of corporation among class.*

Where there are a number of annuitants constituting a class selected to determine the duration of a common-law trust, the fact that there is a corporation among them will not render the trust illegal, as creating a perpetuity; the annuity to the corporation will cease on

the expiration of the trust twenty-one years after the death of the last surviving individual annuitant. *Ib.*

7. *Testamentary; disposition of surplus income.*

In this case, surplus income, after paying specified annuities, should be accumulated until the termination of the trust and then distributed as part of the estate to those entitled thereto under the will. *Ib.*

8. *Failure of trustee; effect on validity of will.*

Whether or not a trustee named in a will can act as such does not affect the validity of the will; in case he cannot act the court can appoint a trustee to carry out the provisions of the trust. *Ib.*

See PRACTICE, 7.

UNITED STATES.

See CITIZENSHIP;

COURTS, 1;

JURISDICTION, A 10, 11.

UNSAFE APPLIANCES.

See MASTER AND SERVANT, 4.

UNWHOLESOME FOOD.

See CONSTITUTIONAL LAW, 10, 17.

VERDICT.

See JURISDICTION, B 8.

WAGES OF SEAMEN.

See MARITIME LAW, 1.

WAIVER.

See JURISDICTION, B 14.

WASHINGTON STATE.

See BOUNDARIES.

WILLS.

See TRUSTS, 3, 7, 8.

WILL CONTESTS.

See JURISDICTION, A 9.

WRIT OF ERROR.

See PRACTICE, 13.

WRITTEN INSTRUMENTS.

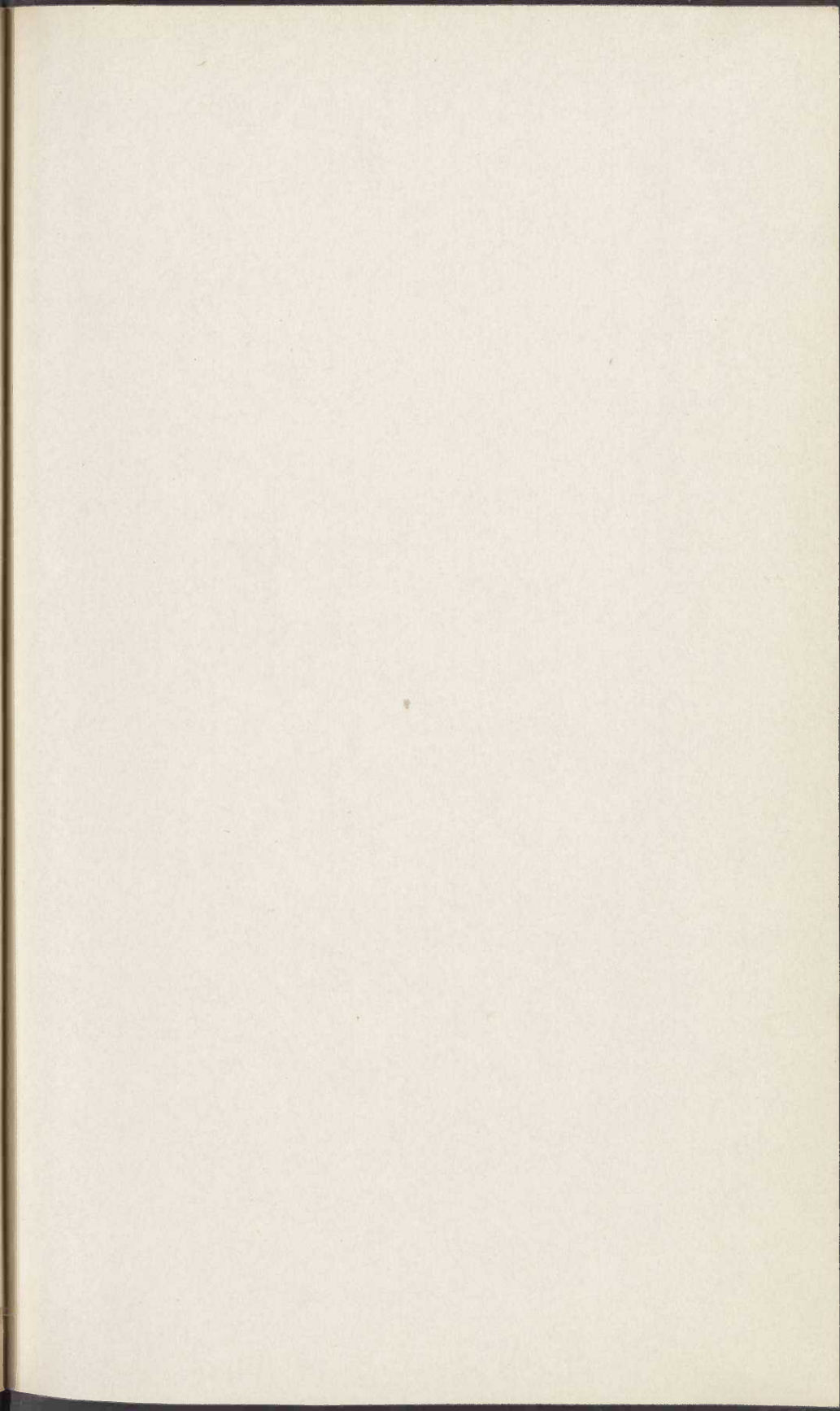
See CONSTRUCTION, I.

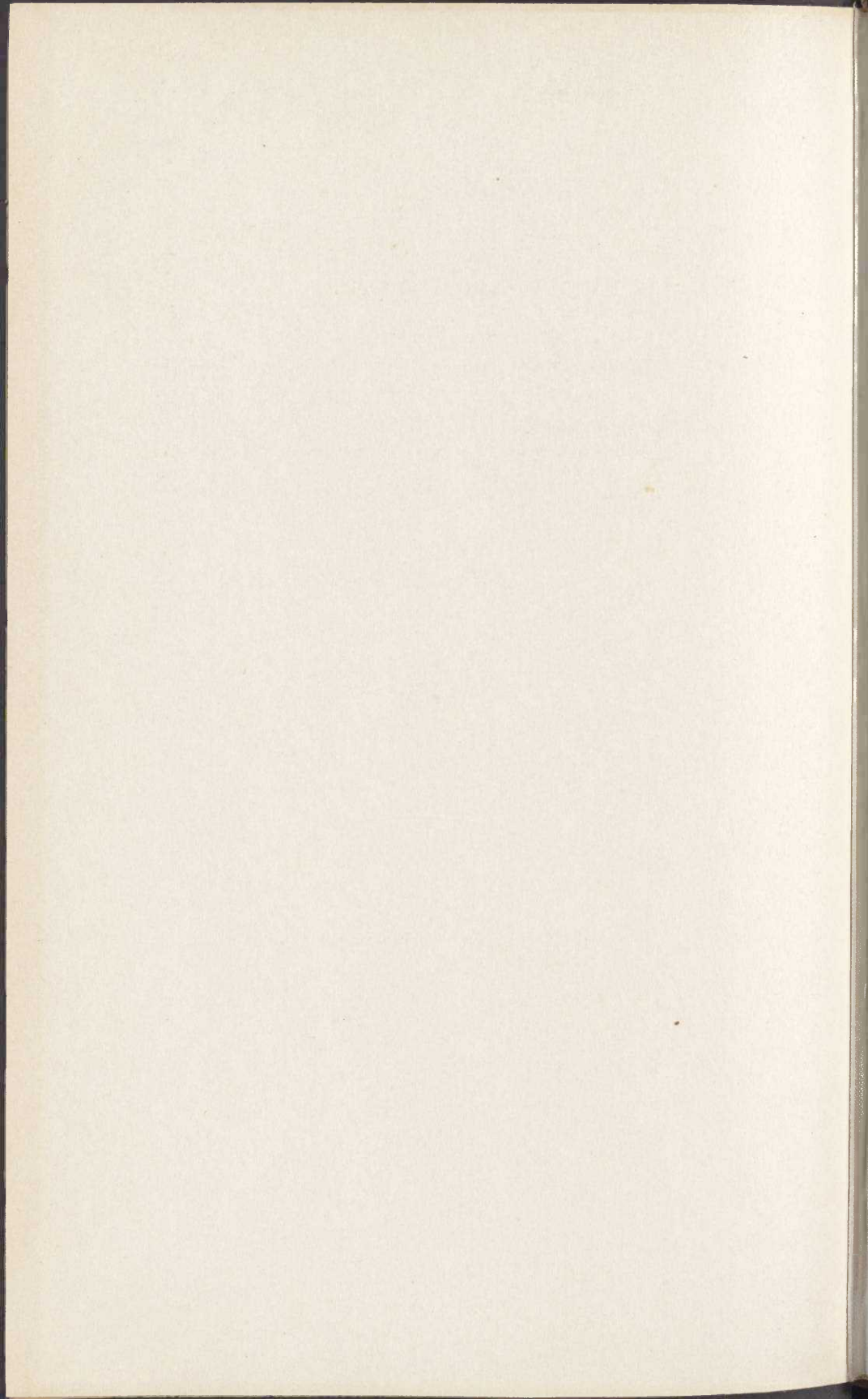
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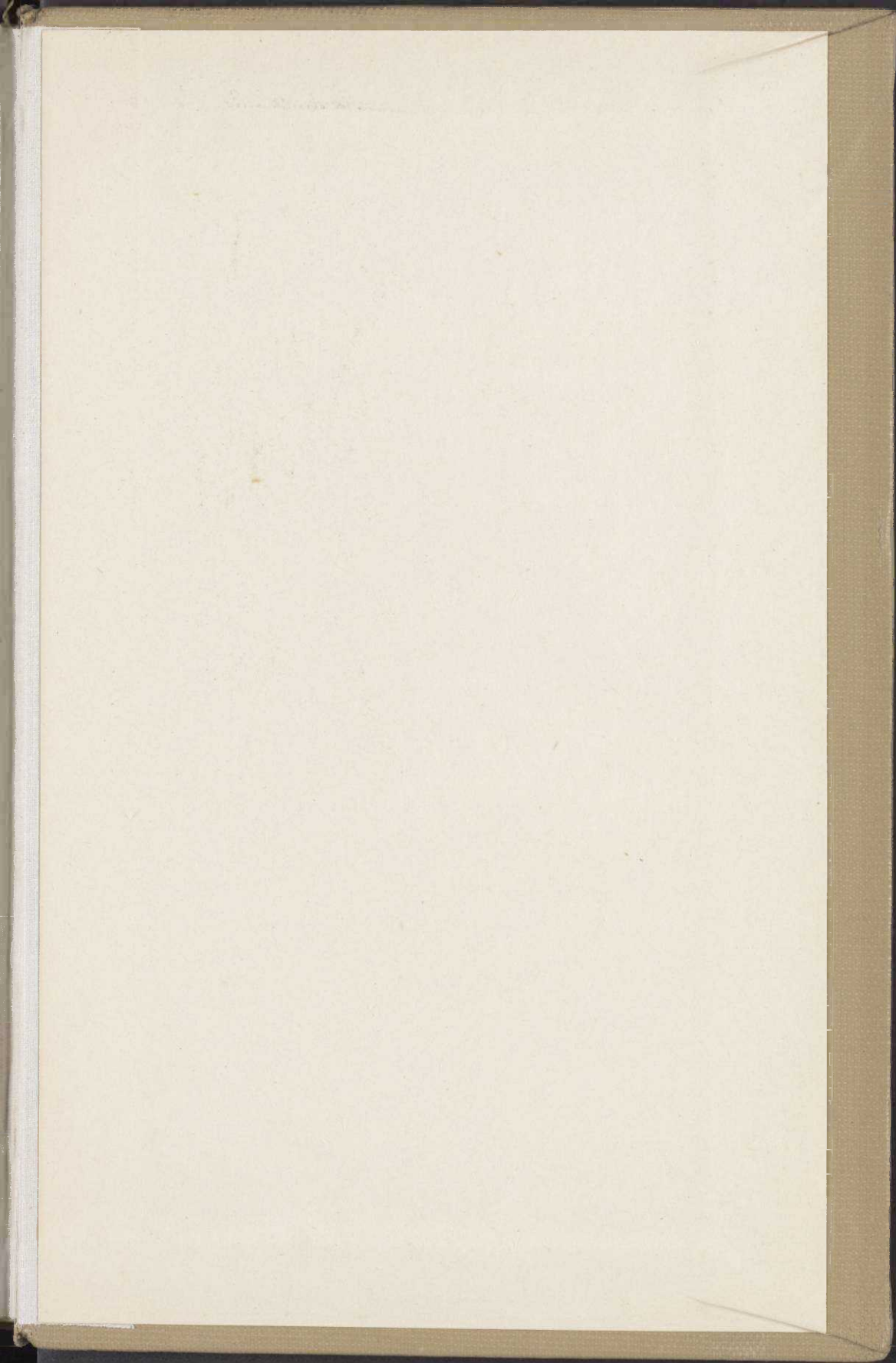
"*Defraud*" as used in § 5440, Rev. Stat. (see Statutes, A 4). *United States v. Keitel*, 370.

"*Interpretation*" and "*Construction*" as employed in act of March 2, 1907 (see Statutes, A 5). *United States v. Keitel*, 370.

"*On condition.*" *See Green County v. Quinlan*, 582.







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