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ACTIONS.

1. *Against United States—Right of action for destruction or taking of property under Tucker Act.*

No action can be maintained against the United States for the destruction or taking of property under the Tucker Act of March 3, 1887, c. 359, 24 Stat. 505, unless the United States is bound by express or implied contract to compensate the owner therefor or unless the case be one not sounding in tort. *Juragua Iron Co. v. United States*, 297.

2. *Application of § 10, act of March 11, 1902.*

The application of § 10 of the act of March 11, 1902, 32 Stat. 68, c. 183, is not limited to local actions described in § 8 of the act of March 3, 1875, c. 137, 18 Stat. 470. *Matter of Dunn*, 374.

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- Jurors, 4): *Crawford v. United States*, 183. Rev. Stat. §§ 5508, 5509 (see Criminal Law, 4): *United States v. Powell*, 564.
- DESERT LAND ACT of March 3, 1877 (see Jurisdiction, A 13): *Spokane Val. Land & Water Co. v. Madson*, 565.
- INDICTMENTS, Rev. Stat. § 1025 (see Criminal Law, 5): *New York Central R. R. Co. v. United States*, 481.
- INTERSTATE COMMERCE, Act of February 4, 1889 (see Interstate Commerce, 2): *American Express Co. v. United States*, 522. Elkins Act of February 19, 1903 (see Interstate Commerce): *New York Central R. R. v. United States*, 481, 500; *American Express Co. v. United States*, 522. Hepburn Act of June 29, 1903 (see Interstate Commerce): *American Express Co. v. United States*, 522.
- JUDICIAL DISTRICTS, Act of March 11, 1902, § 10 (see Actions, 2): *Matter of Dunn*, 374.
- JUDICIARY, Act of March 3, 1891 (see Judgments and Decrees, 2): *Bagley v. General Fire Extinguisher Co.*, 477. Secs. 4, 5 (see Jurisdiction, A 19): *F. L. Grant Shoe Co. v. Laird*, 445. Sec. 5, c. 3, as amended by act of July 20, 1897 (see Jurisdiction, A 17, 18): *Rakes v. United States*, 55. Act of March 3, 1905, c. 1465 (see Jurisdiction, A 29): *Notley v. Brown*, 570. Act of March 3, 1905, § 12 (see Appeal and Error, 2): *Laurel Oil Co. v. Morrison*, 291. Act of March 10, 1908 (see Certificate of Probable Cause; Jurisdiction, A 16): *Bilik v. Strassheim*, 551; *Ex parte Patrick*, 555. Rev. Stat. § 629 (see Jurisdiction, C 2): *Moyer v. Peabody*, 78. Rev. Stat. § 709 (see Jurisdiction, A 3): *North Shore Boom Co. v. Nicomen Boom Co.*, 406; (see Jurisdiction, A 4): *American Express Co. v. Mullins*, 311; (see Jurisdiction, A 5): *Thomas v. Texas*, 278; (see Jurisdiction, A 6): *Waters-Pierce Oil Co. v. Texas*, 86; (see Jurisdiction, A 8): *Thornton v. Natchez*, 559.
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- REMOVAL OF CAUSES, Act of March 3, 1875, § 8 (see Actions, 2): *Matter of Dunn*, 374.
- RIVER AND HARBOR ACTS of March 3, 1899, § 10, and Sept. 19, 1890, § 7 (see Jurisdiction, A 3): *North Shore Boom Co. v. Nicomen Boom Co.*, 406.
- SUITS AGAINST UNITED STATES, Tucker Act of March 3, 1887 (see Actions, 1): *Juragua Iron Co. v. United States*, 297.
- TRADE-MARK ACT of February 20, 1905 (see Jurisdiction, A 22): *Atkins v. Moore*, 285.

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ANTI-TRUST ACT.

1. *Illegal combination within meaning of.*

Where a number of manufacturers situated in different States engaged in manufacturing an article sold in different States, organize a selling company through which their entire output is sold, in accordance with an agreement between themselves, to such persons only as enter into a purchasing agreement by which their sales are restricted, the effect is to restrain and monopolize interstate and foreign trade and commerce and is illegal under the Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209; and so held in regard to a combination of wall paper manufacturers. *Continental Wall Paper Co. v. Voight & Sons Co.*, 227.

2. *Determination of whether contract within prohibition of.*

In determining whether a contract amounts to a combination in restraint of interstate trade in violation of the act of July 2, 1890, all the facts and circumstances will be considered. (*Addyston Pipe Co. v. United States*, 175 U. S. 211, 247.) *Ib.*

ANTI-TRUST LAWS.

See CONSTITUTIONAL LAW, 4, 5, 11, 12;
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APPEAL AND ERROR.

1. *Office of writ of error and of appeal.*

Writ of error is the general, and appeal the exceptional, method of bringing cases to this court. The latter method is in the main confined to equity cases and the former is proper to bring up a judgment of the Supreme Court of the Philippine Islands affirming a judgment of the Court of Land Registration dismissing an application for registration of land. *Cariño v. Insular Government*, 449.

2. *Right to appeal or writ of error to this court in cases originating in United States courts in Indian Territory.*

The provisions in § 12 of the act of March 3, 1905, c. 1479, 33 Stat. 1081, for appeals and writs of error from the United States courts in Indian Territory to the United States Court of Appeals in the Indian Territory, and from that court to the United States Circuit Court of Appeals for the Eighth Circuit are exclusive; and there is now no appeal or writ of error in such cases from the Circuit Court of Appeals of the Eighth Circuit to this court. *Laurel Oil Co. v. Morrison*, 291.

3. *Right of appeal from decisions of Court of Appeals for Indian Territory.*

Decisions of the Court of Appeals of the United States for the Indian Territory are final except as made subject to review by some express statutory provision. *Ib.*

See COURTS, 10; JURISDICTION;
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An attorney must be the agent of all to bind all; and a plaintiff charging a conspiracy between certain claimants and an administrator cannot satisfy the burden of proof which is on him to show that all conspired, by showing that the same person was attorney for several of the defendants, as no presumption exists that he was attorney for all from the fact that, as attorney for the administrator, he advised the payment of all the claims. *McDaniel v. Traylor*, 428.

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BANKRUPTCY.

1. *Provable claims on which petition for adjudication of bankruptcy can be based.*

Provable claims, on which a petition to have the debtor adjudicated a bankrupt under § 59b of the Bankruptcy Act can be based, are claims that can be proved in the proceedings, and a liquidation may be ordered on the filing of the petition to ascertain whether the petition is based on a provable claim. *F. L. Grant Shoe Co. v. Laird*, 445.

2. *Same.*

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See DEBTS DUE UNITED STATES;
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BONDS.

1. *Recitals, right of purchaser to rely upon; estoppel of obligor to assert contrary.*

Where the officers having statutory authority to issue bonds have also the statutory authority to determine whether conditions precedent have been performed, certify by recitals therein that the bonds are issued in virtue of the statute, such recitals import compliance with the statute upon which a *bona fide* purchaser can rely, and the obligor cannot against such a purchaser assert the contrary. (*Evansville v. Dennett*, 161 U. S. 434.) *Presidio County v. Noel-Young Bond Co.*, 58.

2. *Presumption of bona fides of purchaser.*

In the absence of evidence to the contrary the presumption is that a third party producing a genuine negotiable instrument is a *bona fide* purchaser for value. *Ib.*

3. *Interest coupons; suit on, not a suit on the bond.*

Although a coupon is for interest to become due on the bond the promises to pay are as distinct as though expressed in different instruments, and, as the bond and the coupons are capable of separate ownership, a suit on the bonds and a suit on the coupons are based on different causes of action. *Ib.*

4. *Right of holder to sue on bond not affected by judgment in suit on coupons to which he was not a party.*

A *bona fide* purchaser for value before maturity of bonds is not precluded or affected by an adverse judgment in a suit on the coupons of those bonds to which suit he is not a party and of which he had no notice. *Ib.*

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The party having the burden of proof is not entitled to a reversal because the jury was charged to find against him unless satisfied that he had clearly proved his case even though the word "clearly" be slightly overemphasized. (*Ward v. Cochran*, 150 U. S. 597.) *Spreckels v. Brown*, 208.

See ATTORNEY AND CLIENT; RATE REGULATION, 15, 16;
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1. *Writ of error to review judgment of the Supreme Court of the Canal Zone dismissed for want of jurisdiction.* *Coulson v. Government of the Canal Zone*, 553.
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See JURISDICTION, A 17.

CARRIERS.

1. *Duty to resist judicial process in respect of goods carried.*

The duty of the carrier to safely carry and promptly deliver to the consignee the goods entrusted to it does not require it to forcibly resist judicial proceedings in the courts of the State into or through which the goods are carried. *American Express Co. v. Mullins*, 311.

2. *Same.*

While the carrier may appear and contest the validity of a seizure under judicial process of goods in its custody, if it seasonably notify the owner and call upon him to defend, it is relieved from further responsibility; and, in absence of fraud or connivance on its part, it may plead the judgment rendered against it as a bar in an action brought by the owner. *Ib.*

3. *Vessels—Damage to goods—Liability of carrier—Burden of proof as to cause of damage.*

When goods which were received in good order on board a vessel under a bill of lading agreeing to deliver them, at termination of the voyage, in like good order and condition are damaged on the voyage, the burden is on the carrier to show that the damage was occasioned by a peril for which he was not responsible. (*Clark v. Barnwell*, 12 How. 272.) *The Folmina*, 354.

4. *Vessels—Proof that damage to cargo caused by peril of the sea.*

Merely proving that damage to cargo was by sea water does not establish that such damage was caused by peril of the sea within the exception of the bill of lading; in such a case conjecture cannot take the place of proof. (*The G. R. Booth*, 171 U. S. 450.) *Ib.*

5. *Vessels—Peril of the sea within meaning of bill of lading; admission of sea water as.*

The question "whether damage to the cargo of an apparently seaworthy ship, through the unexplained admission of sea water, in the absence of any proof of fault on the part of the officers or crew of the ship, is

of itself a sea peril within the meaning of an exception in a bill of lading exempting the carrier from the act of God . . . loss or damage from . . . explosion, heat or fire on board . . . risk of craft or hulk or transshipment, and all and every the dangers and accidents of the seas, rivers and canals and of navigation of whatever nature and kind" answered in the negative. *Ib.*

See CONSTITUTIONAL LAW, 7, 8;
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CASES APPROVED.

- Gaines v. Knecht & Son*, 27 App. D. C. 530, approved in *Atkins v. Moore*, 285.
Owen v. United States, 41 Ct. Cl. 69, approved in *United States v. Marvin*, 275.

CASES DISTINGUISHED.

- American Smelting Co. v. Colorado*, 204 U. S. 403, distinguished in *Hammond Packing Co. v. Arkansas*, 322.
Black v. Elkhorn, 163 U. S. 445, distinguished in *Bradford v. Morrison*, 389.
Cotton v. Hawaii, 211 U. S. 162, distinguished in *Spreckels v. Brown*, 208.
Hovey v. Elliott, 167 U. S. 409, distinguished in *Hammond Packing Co. v. Arkansas*, 322.
In re Heff, 197 U. S. 488, as explained in *In re Lincoln*, 202 U. S. 178, distinguished in *Toy Toy v. Hopkins*, 542.
Northern Pacific Railroad v. Egeland, 163 U. S. 93, distinguished in *Texas & Pacific Ry. Co. v. Bourman*, 536.
Shields v. Coleman, 157 U. S. 168, distinguished in *Palmer v. Texas*, 118.

CASES FOLLOWED.

- Addyston Pipe Co. v. United States*, 175 U. S. 211, followed in *Continental Wall Paper Co. v. Voight & Sons Co.*, 227.
Allen v. Southern Pacific Co., 173 U. S. 479, followed in *F. L. Grant Shoe Co. v. Laird*, 445.
American Sugar Refining Co. v. United States, 211 U. S. 155, followed in *Shaw v. United States*, 559.
Berea College v. Kentucky, 211 U. S. 45, followed in *New York Central R. R. v. United States*, 481.
Bernheimer v. Converse, 206 U. S. 516, followed in *Bernheimer v. Minnesota Thresher Mfg. Co.*, 567.
Brown v. United States, 171 U. S. 631, followed in *Laurel Oil Co. v. Morrison*, 291.

- Central Loan & Trust Co. v. Campbell*, 173 U. S. 84, followed in *Hammond Packing Co. v. Arkansas*, 322.
- Chapman v. Bowen*, 207 U. S. 89, followed in *Clevenger v. Chaney*, 562.
- Chicago, B. & Q. R. R. v. Williams*, 205 U. S. 444, followed in *The Folmina*, 354.
- C. H. Nichols Lumber Co. v. Franson*, 203 U. S. 278, followed in *F. L. Grant Shoe Co. v. Laird*, 445.
- Clark v. Barnwell*, 12 How. 272, followed in *The Folmina*, 354.
- Cochran v. Montgomery County*, 199 U. S. 260, followed in *Matter of Dunn*, 374.
- Cohens v. Virginia*, 6 Wheat. 264, followed in *Willcox v. Consolidated Gas Co.*, 19.
- Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, followed in *Continental Wall Paper Co. v. Voight & Sons Co.*, 227.
- Connors v. United States*, 158 U. S. 408, followed in *New York Central R. R. v. United States*, 500.
- Consolidated Rendering Co. v. Vermont*, 207 U. S. 541, followed in *Hammond Packing Co. v. Arkansas*, 322.
- Cummings v. Chicago*, 188 U. S. 410, followed in *North Shore Boom Co. v. Nicomen Boom Co.*, 406.
- Evansville v. Dennett*, 161 U. S. 434, followed in *Presidio County v. Noel-Young Bond Co.*, 58.
- Ex parte Young*, 209 U. S. 123, followed in *Willcox v. Consolidated Gas Co.*, 19.
- Farmers' Loan & Trust Co. v. Lake St. Elec. Ry. Co.*, 177 U. S. 59, followed in *Palmer v. Texas*, 118.
- Fauntleroy v. Lum*, 210 U. S. 230, followed in *American Express Co. v. Mullins*, 311.
- Frasch v. Moore*, 211 U. S. 1, followed in *Johnson v. Mueser*, 283; *Atkins v. Moore*, 285; *Gaines v. Knecht*, 561.
- Hale v. Henkel*, 201 U. S. 43, followed in *Hammond Packing Co. v. Arkansas*, 322.
- Hodges v. United States*, 203 U. S. 1, followed in *United States v. Powell*, 564.
- Kansas City Northwestern R. R. Co. v. Zimmerman*, 210 U. S. 336, followed in *Abrams v. White*, 558.
- Knoxville v. Knoxville Water Co.*, 212 U. S. 1, followed in *Willcox v. Consolidated Gas Co.*, 19.
- Lake Shore & Michigan Southern R. R. v. Prentice*, 147 U. S. 101, followed in *New York Central R. R. v. United States*, 481.
- Lowber v. Bangs*, 2 Wall. 728, followed in *Harten v. Löffler*, 397.
- New York Central R. R. Co. v. United States*, 212 U. S. 481, followed in *Same v. Same*, 500.

- Orleans v. Platt*, 99 U. S. 676, followed in *Presidio County v. Noel-Young Bond Co.*, 58.
- Osborn v. Bank of United States*, 9 Wheat. 738, followed in *Matter of Dunn*, 374.
- People's Bank v. Calhoun*, 102 U. S. 256, followed in *Palmer v. Texas*, 118.
- Ponce v. Roman Catholic Church*, 210 U. S. 296, followed in *Santos v. Roman Catholic Church*, 463.
- Potter v. Hall*, 189 U. S. 292, followed in *Greenameyer v. Coate*, 434.
- Powers v. Chesapeake & Ohio Ry. Co.*, 169 U. S. 92, followed in *Fritzlen v. Boatmen's Bank*, 364.
- Re Metropolitan Receivership*, 208 U. S. 90, followed in *Willcox v. Consolidated Gas Co.*, 19.
- San Diego Land and Town Co. Cases*, 174 U. S. 739, 189 U. S. 439, followed in *Willcox v. Consolidated Gas Co.*, 19.
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- Spreckels Sugar Refining Co. v. McClain*, 192 U. S. 397, followed in *Bagley v. General Fire Extinguisher Co.*, 477.
- Sturgis v. Boyer*, 24 How. 110, followed in *The Eugene F. Moran*, 466.
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- Tullis v. Lake Erie & Western R. R. Co.*, 175 U. S. 348, followed in *Pittsburg, Cinn., C. & St. Louis Ry. Co. v. Lightheiser*, 560.
- United States v. Finnell*, 185 U. S. 236, followed in *United States v. Marvin*, 275.
- Vance v. Burbank*, 101 U. S. 514, followed in *Greenameyer v. Coate*, 434.
- Wabash Railroad v. Adelbert College*, 208 U. S. 38, followed in *Palmer v. Texas*, 118.
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- Washington Gas Light Co. v. Lansden*, 172 U. S. 334, followed in *New York Central R. R. v. United States*, 481.
- Water, Light & Gas Co. v. Hutchinson*, 207 U. S. 385, followed in *Same v. Same*, 555.
- Wedding v. Meyler*, 192 U. S. 573, followed in *Nielson v. Oregon*, 315.
- Western Loan Co. v. Butte & Boston Mining Co.*, 210 U. S. 368, followed in *Western Loan Co. v. Colorado Smelting & Mining Co.*, 556.
- Wiborg v. United States*, 163 U. S. 632, followed in *Crawford v. United States*, 183.
- Williamette Iron Bridge Co. v. Hatch*, 125 U. S. 1, followed in *North Shore Boom Co. v. Nicomen Boom Co.*, 406.

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- Ball, Hutchings & Co. v. Presidio County*, 88 Texas, 60, not followed in *Presidio County v. Noel-Young Bond Co.*, 58.

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CLERK OF COURT.

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The bankruptcy court of the United States is always open for the transaction of business whether the judge be personally present or not; and, under §§ 574, 638, 828, Rev. Stat., and chap. II, § 2 of the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, 545, clerks of the United States courts are entitled to the *per diem* compensation for those days on which voluntary petitions in bankruptcy are referred to the referee during the absence of the judge. (*United States v. Finnell*, 185 U. S. 236, followed; *Owen v. United States* 41 C. Cl. 69, approved.) *United States v. Marvin*, 275.

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CONSTITUTIONAL LAW.

1. *Contract impairment—Revocation of permit to foreign corporation to do business within State.*

Where the state court has decided that the penal provisions of a statute relate to both domestic and foreign corporations, a foreign corporation cannot claim that the contract between it and the State admitting it, on payment of the franchise tax, to do business on the same terms as a domestic corporation has been impaired by the revocation of its permit for violation of such statute. *Am. Smelting Co. v. Colorado*, 204 U. S. 403, distinguished. *Hammond Packing Co. v. Arkansas*, 322.

2. *Due process of law; circumstances determinative of.*

What is due process of law depends on circumstances, and varies with the subject-matter and necessities of the situation. *Moyer v. Peabody*, 78.

3. *Due process of law—Conviction for acts tending or reasonably calculated to bring about thing prohibited, not denial of.*

Where defendant has had a fair trial and the question of liability has been submitted to a jury and the judgment reviewed and sustained by an appellate court, this court will not hold that there has been a deprivation of due process of law because the state statute permitted, and the court charged, that conviction could be had not only for acts accomplishing, but also for those tending or reasonably calculated to bring about, the things prohibited. *Waters-Pierce Oil Co. v. Texas (No. 1)*, 86.

4. *Due process of law; validity of Texas anti-trust laws.*

The anti-trust laws of Texas involved in this case are not unconstitutional as depriving anyone of due process of law because vague and indefinite as prohibiting acts which "tend" or are "reasonably calculated" to restrain trade and prevent competition. *Ib.*

5. *Due process of law; excessiveness of fine amounting to deprivation of property without.*

Where a state anti-trust law fixed penalties at \$5,000 a day, and, after verdict of guilty for over 300 days, a defendant corporation was fined over \$1,600,000, this court will not hold that the fine is so excessive as to amount to deprivation of property without due process of law where it appears that the business was extensive and profitable during the period of violation, and that the corporation has over \$40,000,000 of assets and has declared dividends amounting to several hundred per cent. *Ib.*

6. *Due process of law; appointment, by state court, of receiver, on testimony taken in another suit.*

Procedure in matters under its jurisdiction is for the State and its courts to determine; and nothing in the Federal Constitution prevents a state court from acting in a proceeding for receivership of a corporation brought by the State on testimony taken in the suit by the State against the same corporation and on the judgment in which suit the receivership proceeding is based. *Waters-Pierce Oil Co. v. Texas (No. 2)*, 112.

7. *Due process of law; deprivation of property—Validity of requirement as to use of cars by connecting carriers.*

A provision in the constitution of a State that a carrier must deliver its cars to connecting carriers without providing adequate protection for their return, or compensation for their use, amounts to a taking of property without due process of law within the meaning of the Fourteenth Amendment; and so held as to §§ 213, 214 of the constitution of Kentucky. *Louisville &c. R. R. Co. v. Stockyards Co.*, 132.

8. *Due process of law; deprivation of property—Validity of law respecting use of carrier's property by competing roads.*

The duty of a carrier to accept goods tendered at its station does not require it to accept cars offered by competing roads at arbitrary points near its terminus for the purpose of using its terminal station. A law requiring the carrier so to do is unconstitutional as taking property without due process of law. *Ib.*

9. *Due process of law—Sufficiency of description of property to sustain tax sale.*

Although a description may not be technically correct, if it identifies the land it will sustain a conveyance, or, as in this case, an assessment for taxes, and notice of sale therefor when delinquent; and, if the owner knows that the property so described is his, he is not,

by reason of the deficient description, deprived of his property without due process of law. *Ontario Land Co. v. Yordy*, 152.

10. *Due process of law; deprivation of property; effect of tax sale where property assessed to unknown or other persons.*

Where, as in the State of Washington, tax proceedings are *in rem*, owners are bound to take notice thereof and to pay taxes on their property, even if assessed to unknown or other persons; and, if an owner stands by and sees the property sold for delinquent taxes, he is not thereby deprived of his property without due process of law. *Ib.*

11. *Due process of law—Validity of state statute requiring corporations to produce books and papers—Arkansas anti-trust law.*

A state statute requiring corporations to produce books and papers which has been construed by the highest court of the State to the effect that its requirements are satisfied by a *bona fide* effort to comply with its provisions or a reasonable showing of inability to comply therewith is not an arbitrary and unjust exercise of authority repugnant to the due process clause of the Fourteenth Amendment, and so held as to such provisions in the Arkansas anti-trust law. *Hammond Packing Co. v. Arkansas*, 322.

12. *Due process of law—Effect of order requiring corporation to produce books and papers in suit under state anti-trust law.*

An order made pursuant to statute in a suit for penalties for violations of a state anti-trust law requiring a corporation to produce books and papers does not deny due process of law because thereunder the State may elicit proof not only as to the liability of the corporation but also proof in its possession relevant to its defense. (*Consolidated Rendering Co. v. Vermont*, 207 U. S. 541; *Hale v. Henkel*, 201 U. S. 43.) *Ib.*

13. *Due process of law; materiality of motive of State in acting under valid statute.*

If a state statute requiring the production of papers is constitutional the motive of the State for acting thereunder is immaterial. *Ib.*

14. *Due process of law—Effect to deny, of order striking out answer of corporation for refusal to produce evidence.*

A state statute requiring corporations to produce, and creating a presumption of fact as to bad faith and untruth of a defense by reason of suppression of material evidence, does not deny due process of law; nor does an order of the court based on such a statute striking out the answer of a defendant corporation which has refused to produce material evidence deny due process and condemn him

unheard. *Hovey v. Elliott*, 167 U. S. 409, in which the order striking the answer from the files was in the nature of a punishment for contempt, distinguished. *Ib.*

See *Infra*, 24, 25; IMMIGRATION;
COURTS, 7; RATE REGULATION, 6;
STATES, 1.

15. *Equal protection of laws—Classification by State of corporations and individuals in respect of doing of business within its borders.*

The difference between the extent of the power which the State may exert over the doing of business within its borders by an individual, and that which it can exercise as to corporations, furnishes a distinction authorizing a classification between the two which does not violate the equal protection clause of the Fourteenth Amendment. *Ib.*

16. *Equal protection of laws—Classification of corporations and individuals—Separability of provisions of state statute as to individuals affecting constitutionality as to corporations.*

Where, as in this case, penal provisions as to individuals are separable, and the state court has so construed the statute, any lack of constitutional authority to enact the statute as to individuals would not render the statute unconstitutional as to corporations. *Ib.*

17. *Equal protection of laws; effect of statutory regulations dealing exclusively with persons or property outside of State.*

Statutory regulations dealing exclusively with persons or property not within the borders of the State, if otherwise valid, are not unconstitutional as denying equal protection of the law. (*Central Loan & Trust Co. v. Campbell*, 173 U. S. 84.) *Ib.*

18. *Equal protection of laws—Power of State to classify corporations and individuals.*

The wider scope of the power of the State over corporations than over individuals affords a basis for separate classification as to the production of books and papers. *Ib.*

19. *Equal protection of laws; deprivation by state statute imposing overwhelming penalties.*

Ex parte Young, 209 U. S. 123, followed as to the unconstitutionality of provisions in a state statute for penalties for violations so enormous as to be overwhelming. *Willcox v. Consolidated Gas Co.*, 19.

20. *Equal protection of laws; reasonableness of classification in respect of gas rates.*

Provision in a gas rate act establishing one rate for the municipality

and another for individual consumers is not an unreasonable classification and does not render the act unconstitutional under the equal protection clause of the Fourteenth Amendment. *Ib.*

21. *Equal protection of laws; right to complain of classification in respect of gas rates.*

Where none of the different classes of consumers complain of different rates the corporation cannot complain of such differences provided the total receipts are sufficient to yield an adequate return. *Ib.*

22. *Full faith and credit clause; judgment against stranger not within.*

The full faith and credit clause of the Constitution does not give any force to a judgment against a stranger; and a decision that a defendant is not estopped by a judgment by reason of notice given to him to defend does not amount, even if wrong, to a refusal to give effect to the judgment within the meaning of the full faith and credit clause of the Constitution. *Bagley v. General Fire Extinguisher Co.*, 477.

See JUDGMENTS AND DECREES, 3;
JURISDICTION, A 4.

23. *Property rights; deprivation without just compensation.*

A provision in a state statute, requiring a public service corporation to perform its service in such a manner that its entire plant would have to be rebuilt at a cost on which no return could be obtained at the rate fixed, deprives the company of its ability to secure such return and is unconstitutional and void. *Willcox v. Consolidated Gas Co.*, 19.

24. *Searches and seizures—Validity of state statute requiring production by corporation of its books and papers.*

Under the visitorial powers of a State over corporations doing business within its borders it is competent for it to compel such corporations to produce their books and papers for investigation and to require the testimony of their officers and employes to ascertain whether its laws have been complied with, and this power extends to the production of books and papers kept outside of the State, and a statute requiring such production does not amount to an unreasonable search or seizure or a denial of due process of law. (*Consolidated Rendering Co. v. Vermont*, 207 U. S. 541.) *Hammond Packing Co. v. Arkansas*, 322.

25. *Searches and seizures; effect of Fourteenth Amendment to prohibit, unreasonable.*

Quere and not decided whether the due process clause of the Fourteenth

Amendment embraces in its general terms a prohibition of unreasonable searches or seizures. *Ib.*

Generally. See INTERSTATE COMMERCE, 7.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACTS.

1. *Construction where meaning not clear.*

Where its meaning is not clear, a contract is to be construed in the light of circumstances surrounding the parties when the contract was made and a practical interpretation given thereto. (*Lowber v. Bangs*, 2 Wall. 728.) *Harten v. Löffler*, 397.

2. *Admissibility of oral evidence to identify property described as "about."*

"About" is a relative, and frequently ambiguous, term, the precise meaning of which is affected by circumstances; and oral evidence is not inconsistent with, or contradictory of, a written contract which simply identifies property as shown on a diagram annexed thereto, and is admissible to show the intent of the parties in the light of the surrounding circumstances. *Ib.*

3. *Damages; measure of, for breach of contract to sell real estate.*

Where the vendee sues for breach of a contract to sell real estate and the benefit of the business and goodwill as well, the measure of damages is the differences between the purchase price and the market value at the time of the contract and evidence as to the value of each item is admissible. *Ib.*

4. *Admissibility of hypothetical question as to value of property in action for breach of contract to sell.*

A hypothetical question of value of property is not admissible when there is no evidence to support the hypothesis on which it is based. *Ib.*

5. *Duty of courts to deny aid to carry out illegal contracts.*

The court cannot lend its aid in any way to a party seeking to realize the fruits of an illegal contract, and, while this may at times result in relieving a purchaser from paying for what he has had, public policy demands that the court deny its aid to carry out illegal contracts without regard to individual interests, or knowledge of the parties. *Continental Wall Paper Co. v. Voight & Sons Co.*, 227.

6. *Illegal; effect of refusal to enforce.*

The refusal of judicial aid to enforce illegal contracts tends to reduce such transactions. *Ib.*

See ANTI-TRUST ACT; CRIMINAL LAW, 2, 6;
 BONDS, 3; JURISDICTION, A 10;
 CONSTITUTIONAL LAW, 1; STATES, 1;
 VENDOR AND VENDEE, 3.

CONVEYANCES.

See CONSTITUTIONAL LAW, 9;
 LOCAL LAW (HAW.).

CONVICTS.

See EVIDENCE, 3.

CORPORATIONS.

1. *Locus of Federal corporation for purposes of suit.*

Notwithstanding that it maintains an office in another State, the defendant corporation which was organized under an act of Congress is suable in the district designated by it as where its office is located and in which its agent resides and its directors meet to affirm their acts adopted in the other State. *Matter of Dunn*, 374.

2. *Liability for acts of agent.*

In actions for tort a corporation may be held responsible for damages for the acts of its agent within the scope of his employment, *Lake Shore & Michigan Southern R. R. v. Prentice*, 147 U. S. 101, even if done wantonly, recklessly or against the express orders of the principal. *New York Central R. R. v. United States*, 481.

3. *Liability for acts of agent.*

A corporation is responsible for acts not within its agent's powers strictly construed but assumed to be done by him when employing authorized powers, and in such a case no written authority under seal is necessary. (*Washington Gas Light Co. v. Lansden*, 172 U. S. 534.) *Ib.*

4. *Liability for acts of agent in respect of rates for transportation.*

The act of an agent exercising the authority of a corporation which is a common carrier to make rates for transportation may be controlled, in the interest of public policy, by imputing his act to the carrier itself and imposing penalties therefor upon the carrier. *Ib.*

5. *Criminal capacity.*

While corporations cannot commit some crimes, they can commit

crimes which consist in purposely doing things prohibited by statute, and in such case they can be charged with knowledge of acts of their agents who act within the authority conferred upon them. *Ib.*

6. *Stockholders' liability; enforcement of.*

A judgment of the highest court of Connecticut, involving the liability of stockholders under provisions in the constitution of Minnesota, reversed on the authority of *Bernheimer v. Converse*, 206 U. S. 516. *Converse v. Minnesota Thresher Mfg. Co.*, 567.

See CONGRESS, POWERS OF;	JUDICIAL NOTICE, 1;
CONSTITUTIONAL LAW, 1, 6,	LOCAL LAW (KAN.);
11, 12, 15, 16, 18, 23, 24;	MANDAMUS, 2;
COURTS, 2, 4;	REMOVAL OF CAUSES, 4;
INTERSTATE COMMERCE, 5,	RATE REGULATION;
6, 7, 8, 14;	STATES, 7, 8, 9.

COSTS.

See RECEIVERS.

COUPONS.

See BONDS, 3, 4.

COURTS.

1. *Refusal to enforce legislation.*

While courts may refuse to enforce legislation on constitutional grounds the power should only be exercised in the clearest cases. *Knoxville v. Knoxville Water Co.*, 1.

2. *Federal interference with enforcement of state regulation fixing rates for public service corporation.*

Federal courts should not declare an ordinance fixing rates for a public service corporation unconstitutional and suspend its operation before it goes into effect unless the rate is clearly confiscatory; and unless complainant furnishes substantial evidence to that effect, the bill should be dismissed without prejudice to a further application to the courts if the rate after going into effect is actually confiscatory. *Ib.*

3. *Duty to take jurisdiction—Right of party to choose tribunal.*

It is not a question of discretion or comity for the Federal court to take jurisdiction of a case; it is the duty of that court to take jurisdiction when properly appealed to; and it should not be criticised for so doing even though the case be one of local interest. *Cohens v.*

Virginia, 6 Wheat. 264, 404. The right of a party plaintiff to choose the Federal court cannot be properly denied. (*Re Metropolitan Receivership*, 208 U. S. 90, 110.) *Willcox v. Consolidated Gas Co.*, 19.

4. *Interference with legislative act fixing rates.*

Rates, when fixed by legislative authority, for public service corporations, should allow a fair return upon the reasonable value of the property at the time it is being used, but the legislative act will not be declared invalid by the courts unless the rates are so unreasonably low that their enforcement would amount to taking the property for public use without compensation. (*San Diego Land and Town Co. Cases*, 174 U. S. 739; 189 U. S. 439.) *Ib.*

5. *Same.*

Except in very clear cases, courts should not interfere with state rate legislation before the legislation goes into effect. (*Knoxville v. Knoxville Water Co.*, *ante*, p. 1.) *Ib.*

6. *Same.*

Value of the property employed being an essential element in determining whether a rate is or is not confiscatory, and being also largely a matter of opinion, where the determination of the question depends upon such value, a court of equity should hesitate to interfere by injunction to suspend the rate before it goes into operation and a fair trial has been made. *Ib.*

7. *Powers of this court to interfere with state legislation in fixing, and judicial action in imposing, fines.*

The fixing of punishment for crimes and penalties for unlawful acts is within the police power of the State, and this court cannot interfere with state legislation in fixing fines, or judicial action in imposing them, unless so grossly excessive as to amount to deprivation of property without due process of law. *Waters-Pierce Oil Co. v. Texas* (No. 1), 86.

8. *Federal and state; duty to respect jurisdiction of each other.*

As the Federal and the state court exercise jurisdiction within the same territory, derived from and controlled by separate authority, each must respect the jurisdiction acquired over property by the other. *Palmer v. Texas*, 118.

9. *Exclusiveness of jurisdiction over property.*

When either a Federal, or a state, court of competent jurisdiction takes possession of, or acquires jurisdiction over, property, that property is as effectually withdrawn from the jurisdiction of the other court

as though removed to the territory of another sovereignty. (*Wabash Railroad v. Adelbert College*, 208 U. S. 38, 54.) *Ib.*

10. *Jurisdiction over property; effect of the giving of a supersedeas pending appeal from order appointing receiver.*

Jurisdiction over property, properly acquired by the state court on the qualification of the receiver, is not lost by the giving of a *supersedeas* pending appeal which, as in this case, merely suspends the order of appointment. *Ib.*

11. *Jurisdiction over property; right to limit interference by other courts.*

When a state court has acquired jurisdiction over property before any application is made to the Federal court it has the right while lawfully exercising that jurisdiction to determine how far it will permit any other court to interfere therewith. (*People's Bank v. Calhoun*, 102 U. S. 256.) *Ib.*

12. *Jurisdiction over property; accrual on appointment and qualification of receiver.*

Jurisdiction over property by a state court so as to withdraw it from the jurisdiction of Federal courts in the same territory, does not necessarily depend on possession, but is acquired as soon as the receiver has been appointed and has qualified. *Farmers' Loan & Trust Co. v. Lake St. Electric Railway Co.*, 177 U. S. 59, followed; *Shields v. Coleman*, 157 U. S. 168, distinguished. *Ib.*

13. *Federal courts bound by state court's construction of state statutes.*

The courts of a State construe its statutes and their judgment is conclusive in the Federal courts. *Ib.*

14. *Discretionary power to determine rights.*

The law must save the rights of parties and not leave them to the discretion of the courts as such. *Louisville & C. R. R. Co. v. Stockyards Co.*, 132.

15. *Power to cure defect in provision of state constitution.*

Where a general provision in the constitution of a State is void as taking property without due process or compensation, and compensation has not been provided by statute, the defect cannot be cured by the courts inserting provisions for compensation in judgments under such constitutional provision. *Ib.*

16. *Wisdom of legislation no concern of.*

Where the subject is within the power of the State it is not within the province of the judiciary to disregard statutory standards on the

ground that the legislature did not act wisely in enacting them. *Waters-Pierce Oil Co. v. Deselms*, 159.

17. *Power of this court to relieve from effects of mistake of law.*

Relief cannot be afforded by this court to one who violates the provisions of a state statute from an erroneous conception of what the statute requires. *Hammond Packing Co. v. Arkansas*, 322.

18. *Federal; practice in respect of doctrines of commercial law and general jurisprudence.*

In respect to the doctrines of commercial law and general jurisprudence, while courts of the United States, in questions balanced with doubt, will, for the sake of harmony, lean towards an agreement with the state courts, as a general rule they will exercise their independent judgment uncontrolled by decisions based on local statutes and usage; and so in this instance as the state court proceeded in part on grounds inconsistent with the decisions of this court in such cases, its decision should not be followed. *Ball, Hutchings & Co. v. Presidio County*, 88 Texas, 60, not followed. *Presidio County v. Noel-Young Bond Co.*, 58.

See CLERKS OF COURT;	INTERSTATE COMMERCE, 6;
CONSTITUTIONAL LAW, 6;	JUDICIAL AND LEGISLATIVE
CONTRACTS, 5;	FUNCTIONS;
COURTS-MARTIAL, 3;	JURISDICTION;
EVIDENCE, 3;	MANDAMUS, 1.

COURTS-MARTIAL.

1. *Waiver of rights by officer of Navy—Use as evidence of proceedings of court of inquiry.*

A commissioned officer in the Navy can waive the provisions of art. 60 of § 1624, Rev. Stat., and allow proceedings of a court of inquiry to be evidence on a court-martial the sentence of which may extend to his dismissal; *Schick v. United States*, 195 U. S. 65; and, where, at the request of such an officer, the Secretary of the Navy convenes a court-martial to try him on matter which had already been the subject of a court of inquiry, on condition that the proceedings of such court of inquiry be evidence, each party having the privilege, however, of introducing other evidence, the accused is not deprived of any substantial right so that the sentence of the court-martial is invalidated. *Mullan v. United States*, 516.

2. *Sentence; reduction by President constituting mitigation within meaning of § 1624, Rev. Stat.*

Reduction by the President of the United States of the dismissal of an officer of the Navy from the service to reduction to one-half sea pay

for five years is a mitigation of the sentence within the meaning of art. 54 of § 1624, Rev. Stat. *Quære*, whether art. 54 of § 1624 applies to the action of the President. *Ib.*

3. *Review of sentence by civil courts.*

Civil courts are not courts of error to review sentences of legally organized courts-martial having jurisdiction of the person of the accused and of the offense. *Ib.*

COURT OF CLAIMS.

Appeal from judgment of Court of Claims fixing amounts to be paid from an Indian fund dismissed for want of jurisdiction. United States v. Hemphill and Murchison, 552.

See WAR, 2.

COURT OF INQUIRY.

See COURTS-MARTIAL, 1.

CRIMINAL APPEALS.

See JURISDICTION, A 17.

CRIMINAL LAW.

1. *Practice in respect of errors in trial.*

In criminal cases courts are not as exacting in regard to the character of objections as in civil cases, and will notice error in the trial of a criminal case although the question may not have been raised in exactly the proper manner at the trial. (*Wiborg v. United States*, 163 U. S. 632.) *Crawford v. United States*, 183.

2. *Conspiracy under § 5440, Rev. Stat.; sufficiency of indictment for.*

An indictment which sets forth the details of a corrupt contract between defendant and a government official by which, from its nature, the Government would be defrauded, is sufficient to sustain a charge of conspiracy under § 5440, Rev. Stat., even if it does not allege in what particular manner the conspirators intended to defraud the United States. *Ib.*

3. *Conspiracy to defraud Government within meaning of § 5440, Rev. Stat.*

An agreement by an official of the United States under which he secretly receives any portion of what is paid for supplies furnished on his requisition is one to defraud the United States within § 5440, Rev. Stat. *Ib.*

4. *Sufficiency of indictment for conspiracy under §§ 5508, 5509, Rev. Stat.*

Judgment of the Circuit Court sustaining demurrer to indictment for

conspiracy in alleged violation of §§ 5508, 5509, Rev. Stat., affirmed, without opinion, on the authority of *Hodges v. United States*, 203 U. S. 1. *United States v. Powell*, 564.

5. *Indictment; rule as to sufficiency.*

An indictment is sufficient if it specifically states the elements of the offense charged with sufficient particularity to fully advise the defendant thereof and so as to be pleaded in bar of any subsequent prosecution for the same offense. Sec. 1025, Rev. Stat. *New York Central R. R. v. United States*, 481.

6. *Liability under statute of one becoming party to and carrying out illegal agreement executed prior to its passage.*

Even though it would be giving a penal statute a retroactive effect to make it apply to an unlawful agreement executed prior to the passage of the act by defendant's predecessor in interest, defendant is subject to conviction for violating the act after its enactment by making itself a party to and carrying out its illegal provisions. *Waters-Pierce Oil Co. v. Texas* (No. 1), 86.

See CONGRESS, POWERS OF; INTERSTATE COMMERCE, 8,
COURTS, 7; 9, 10, 12;
CORPORATIONS, 5; JURY AND JURORS;
EVIDENCE; PRACTICE AND PROCEDURE, 12;
STATES.

CRIMINAL STATUTES.

See STATUTES, A 2.

CUBA.

See WAR, 1, 2, 3.

CUSTOM.

See JUDICIAL NOTICE, 2.

DAMAGES.

See ACTIONS, 1; CORPORATIONS, 2;
CARRIERS, 3, 4; NEW TRIAL;
CONTRACTS, 3; MARITIME LAW, 1, 2, 4;
VERDICT, 2.

DEBTS DUE UNITED STATES.

Claim on bond of depositary for receiver in bankruptcy as debt due United States entitling surety to preference.

Judgment of the state court to effect that surety on bond of the deposi-

tary of a receiver in bankruptcy which ran, as required by law, to the United States, was not entitled to priority in distribution of assets of the depository, affirmed without opinion. *American Surety Co. v. Akron Savings Bank*, 557.

DEEDS.

1. *Description of property*—Land embraced by words "sea beach" in Hawaiian deed.

While the words "sea beach" taken in a strict sense might not include a small strip outside of the metes and bounds specified in an Hawaiian deed, where by natural interpretation the grant conveyed all the upland to low water mark, and with it all accretions, this court will not reverse a ruling of the lower court to that effect. *Spreckels v. Brown*, 208.

2. *Description of property; effect of monuments in diagram.*

In a deed to property in Hawaii monuments shown in a diagram held to prevail, in case of discrepancy, over metes and bounds. *Ib.*

DEFENSES.

See VENDOR AND VENDEE.

DEPORTATION OF CHINESE.

See IMMIGRATION.

DISTRICT OF COLUMBIA.

See JURY AND JURORS, 1.

DIVERSITY OF CITIZENSHIP.

See REMOVAL OF CAUSES, 1

DOWER.

See MINES AND MINING, 3.

DUE PROCESS OF LAW.

<i>See</i> CONSTITUTIONAL LAW, 2-	IMMIGRATION;
14, 24, 25;	RATE REGULATION, 6;
COURTS, 7;	STATES, 1.

ELKINS ACT.

See INTERSTATE COMMERCE.

EMPLOYER AND EMPLOYÉ.

See JURY AND JURORS, 3, 4, 5;
MASTER AND SERVANT.

ENEMY COUNTRY.

See WAR, 1.

ENEMY PROPERTY.

See WAR, 3.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 15-21

EQUITY.

See APPEAL AND ERROR, 1;
COURTS, 6;
PRACTICE AND PROCEDURE, 5.

ESTOPPEL.

See BONDS, 1.

EVIDENCE.

1. *Admissibility to show moral character of defendant in criminal case.*

Where a letter written to defendant is admitted in evidence for the purpose of showing the moral character of defendant and that he had endeavored to destroy evidence in the writer's hands so as to prevent its being used against him on the trial, the answer immediately written should also be admitted, whether written by defendant or his counsel under his direction; and defendant's own evidence in regard to the matter alleged is admissible so as to disclose the whole transaction. *Crawford v. United States*, 183.

2. *Presumption of harm in errors as to admission or exclusion.*

There is a presumption of harm caused by errors in regard to the admission or exclusion of evidence in a jury trial which requires the reversal of the judgment unless the record clearly shows the absence of harm. *Ib.*

3. *Convicts; caution and suspicion with which testimony of, to be received.*

The extent to which the law officers of the Government will use evidence of persons already convicted of the crime of conspiracy for which defendant is also indicted, is within their discretion, and their action will not be reviewed by the courts; but the evidence

of such witnesses is to be received with caution and suspicion, and is not entitled to the same credence as that given to ordinary witnesses. *Ib.*

4. *Exclusion constituting reversible error.*

In considering whether error in excluding defendant's evidence in a criminal trial is reversible it is not enough that inferences favorable to defendant might have been drawn from some of the admitted testimony; he is entitled to state directly on oath facts that are relevant. *Ib.*

5. *Admissibility of books of accounts.*

While a book of accounts may be inadmissible as evidence so far as it relates to accounts between the parties it may be admissible as written corroborative evidence, and as part of a transaction, to be submitted to the jury for what it is worth. *Ib.*

See ATTORNEY AND CLIENT; CONTRACTS, 2, 3, 4;
 BURDEN OF PROOF; COURTS-MARTIAL, 1;
 CARRIERS, 3, 4; INSTRUCTIONS TO JURY;
 CONSTITUTIONAL LAW, 12; JURISDICTION, A 2, 14;
 RATE REGULATION, 15, 16.

EXCESSIVE PENALTIES.

See CONSTITUTIONAL LAW, 4, 19.

EXECUTIVE POWERS.

When judicial yields to executive process.

Public danger warrants the substitution of executive for judicial process; and the ordinary rights of individuals must yield to what the executive honestly deems the necessities of a critical moment. *Moyer v. Peabody*, 78.

See COURTS-MARTIAL, 2.

EXPRESS COMPANIES.

See INTERSTATE COMMERCE, 2, 3, 4.

FACTS.

See PRACTICE AND PROCEDURE, 4, 5;
 PUBLIC LANDS, 1.

FEDERAL QUESTION.

See JUDGMENTS AND DECREES, 3; NAVIGABLE WATERS, 1;
 JURISDICTION; PRACTICE AND PROCEDURE, 2.

FEDERAL AND STATE COURTS.

See COURTS, 8, 9, 11, 12, 13, 18.

FEES.

See CLERK OF COURT.

FELLOW SERVANTS.

See MASTER AND SERVANT, 2, 3.

FICTION.

See PROPERTY RIGHTS, 1.

FINAL JUDGMENTS.

See JUDGMENTS AND DECREES, 2, 3;

JURISDICTION, A 25;

STATES, 4.

FINDINGS OF FACT.

See PRACTICE AND PROCEDURE, 4, 5.

FINES AND PENALTIES.

See CONSTITUTIONAL LAW, 5;

COURTS, 7.

FISHERIES.

See STATES, 5, 6.

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 1;

STATES, 7, 8.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW.

FRANCHISES.

See LOCAL LAW (KAN.);

RATE REGULATION, 7, 11;

STATES, 9.

FRANKS.

See INTERSTATE COMMERCE, 2, 3, 4.

FRAUD.

See PRACTICE AND PROCEDURE, 10;
PUBLIC LANDS, 2.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 22;
JUDGMENTS AND DECREES, 3;
JURISDICTION, A 4.

GENERAL ORDERS IN BANKRUPTCY.

See JURISDICTION, A 19.

GRANTS.

See LOCAL LAW (KAN.);
STATES, 3.

HABEAS CORPUS.

1. *Appeals from judgments of Circuit Court, denying petitions for writ of habeas corpus made by persons held under process of state court, denied, there being no certificate of probable cause as provided by act of March 10, 1908, c. 76, 35 Stat. 40. Bilik v. Strassheim, 551; Ex parte Patrick, 555.*
2. *Persons sentenced by Supreme Court of Canal Zone denied leave to file petition for. Matter of Coulson, 553.*
3. *One confined under Michigan indeterminate sentence act denied leave to file petition for. Matter of Hardrat, 554.*

See JUDGMENTS AND DECREES, 5;
JURISDICTION, A 16.

HAWAII.

See DEEDS, 1, 2;
JURISDICTION, A 25, 29;
LOCAL LAW (HAW.).

HEPBURN ACT.

See INTERSTATE COMMERCE, 2, 3.

HYPOTHETICAL QUESTIONS.

See CONTRACTS, 4.

IMMIGRATION.

Deportation of Chinese—Due process of law.

A judgment of the District Court of the United States, affirming an order of deportation of a Chinese person, affirmed without opinion. Plaintiff in error claimed to be entitled to trial by jury and that he had been denied due process of law. *Goon Shung v. United States*, 566.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 1.

IMPEACHMENT OF JUDGMENT.

See JUDGMENTS AND DECREES, 1, 4, 5.

INCORPORATION.

See JUDICIAL NOTICE, 1.

INDIANS.

See COURT OF CLAIMS.

INDIAN TERRITORY.

See APPEAL AND ERROR, 2, 3.

INDICTMENT.

See CRIMINAL LAW, 2, 4, 5;

INTERSTATE COMMERCE, 8;

PRACTICE AND PROCEDURE, 12.

INFANTS.

See VERDICT, 2.

INJUNCTION.

See COURTS, 6;

INTERSTATE COMMERCE, 2.

INSTRUCTIONS TO JURY.

1. *Propriety of permitting jury to consider non-appearance of witness and non-production of books.*

An instruction which simply amounts to permitting the jury to consider circumstances connected with the non-appearance of a witness and the non-production of books *held*, in this case, not to have been prejudicial error. *New York Central R. R. v. United States*, 481.

2. *Duty of counsel in respect of ambiguity in.*

If an ambiguity exists in the charge counsel should at the time ask the court to remove it. *Waters-Pierce Oil Co. v. Deselms*, 159.

See VERDICT, 1, 2.

INTERIOR DEPARTMENT.

See PUBLIC LANDS, 1.

INTERSTATE COMMERCE.

1. *Power of Congress over—Intention in Elkins act.*

The power of Congress over interstate transportation embraces all manner of carriage whether gratuitous or otherwise; and, in the absence of express exceptions, the intention of Congress in enacting the Elkins act was to prevent any departure whatever from published rates. *American Express Co. v. United States*, 522.

2. *Hepburn act—Obligation of express companies to file and publish rates.*

Whether or not the issuing of express franks to officers and employés of express companies and their families is prohibited by § 2 of the Interstate Commerce Act of February 4, 1889, c. 104, 24 Stat. 379, an injunction is authorized under § 3 of the Elkins act of February 19, 1903, c. 708, 32 Stat. 846, wherever a common carrier is engaged in the carriage of passengers or freight at less than the published rate, and by the Hepburn act of June 29, 1906, c. 3591, 34 Stat. 584, express companies are brought within the act, and obliged to file and publish their rates. *Ib.*

3. *Hepburn act—Exceptions in § 1 not applicable to transportation of merchandise by express companies.*

The exceptions contained in the provision in § 1 of the Hepburn act of June 29, 1906, c. 3591, 34 Stat. 584, allowing a common carrier to issue passes for free transportation of passengers to certain classes of persons cannot be extended to give express companies the right to issue passes to the same classes of persons for transportation of merchandise. *Ib.*

4. *Elkins act; issuance of express franks within prohibition of.*

The purpose of the Elkins act is to require publication of tariff and to prevent and prohibit all discrimination, and the issuing of express franks falls within such prohibition. *Ib.*

5. *Constitutionality of Elkins act.*

Congress has power to so regulate interstate commerce as to secure equal rights to all engaged therein, and the act of February 19,

1903, c. 708, 32 Stat. 847, known as the Elkins act, is not unconstitutional because it imputes to the corporation, and makes it criminally responsible for, acts violative of the Interstate Commerce Act done by its agent. *New York Central R. R. v. United States*, 481, 500.

6. *Instrumentalities of—Judicial notice of predominance of corporations.*

The court will recognize that the greater part of interstate commerce is conducted by corporations, and it will not relieve them from punishment because at one time there was a doctrine that corporations could not commit crimes. *New York Central R. R. v. United States*, 481.

7. *Elkins act; validity as to corporations.*

Even if a statute relating both to individuals and corporations deprived an individual of the presumption of innocence and made him responsible for the acts of another, the question of the constitutionality of such statute on that ground cannot be raised by a corporation; and where, as in the case of the Elkins act, there is no doubt that Congress would have enacted the statute as to corporations, even if it could not as to individuals, it is valid as to corporations. (*Berea College v. Kentucky*, 211 U. S. 45.) *Ib.*

8. *Elkins act; effect of inclusion of agent and corporation in one indictment.*

The purpose of the Elkins act being to make the act of the agent the act of the corporation, and to include both within its restrictions, there is no misjoinder in including both the agent and the corporation in one indictment. *Ib.*

9. *Rebates; payments constituting separate offenses.*

Under the Interstate Commerce Act where a shipper pays the legal rate on numerous shipments and at intervals receives a rebate from the carrier there is a separate and complete offense on each payment and not one continuous offense, although all the payments were made under one agreement. *New York Central R. R. v. United States*, 481, 500.

10. *Same.*

Quære, and not decided, what constitute separate offenses where numerous shipments are made and paid for at less than the published rate. *New York Central R. R. v. United States*, 481.

11. *Elkins act; application to rebates.*

The Elkins act applies to rebates paid after it went into effect although paid in pursuance of an agreement, and on shipments, made prior

to that date, the agreement being illegal when made. *New York Central R. R. v. United States*, 500.

12. *Elkins act; rebating; party to joint rate liable.*

Under the Elkins Law of February 19, 1903, c. 708, 32 Stat. 847, a carrier can be prosecuted for the offense of rebating where it is a party to a joint rate although it has not filed or published the same. *United States v. New York Central R. R. Co.*, 509.

13. *Elkins act—Rebates, what amounts to giving.*

This court by a divided court and without opinion affirms the judgment of the lower court holding a common carrier guilty of violating § 1 of the Elkins act of February 19, 1903, c. 708, 32 Stat. 847. The contention of the carrier was that the amount paid to the shipper was for use of tracks owned by the shipper, although there was no reference thereto in the published rate. *Chicago & Alton Ry. Co. v. United States*, 563.

14. *State interference with; appointment of receiver as.*

Where the state courts have sustained a receivership of a foreign corporation on a statute in force before the corporation entered the State, and such statute provides for the appointment of a receiver in case of dissolution, forfeiture, insolvency or imminent danger thereof, the fact that the receivership was also sustained under provisions of an anti-trust law passed after the corporation entered the State, does not amount to an unlawful interference of the rights of such corporation to transact interstate commerce business. *Palmer v. Texas*, 118.

See ANTI-TRUST ACT.

JOINDER OF PARTIES.

See REMOVAL OF CAUSES, 1, 2.

JUDGMENTS AND DECREES.

1. *Conclusiveness of judgment—Mistake of law as ground for impeachment.*
A judgment is conclusive as to all *media concludendi* and cannot be impeached in or out of the State by showing it was based on mistake of law. (*Fauntleroy v. Lum*, 210 U. S. 230.) *American Express Co. v. Mullins*, 311.

2. *Finality of judgment of Circuit Court of Appeals where constitutional question involved.*

While the judgment of the Circuit Court of Appeals is not final under act of March 3, 1891, c. 517, 26 Stat. 826, 828, where diverse citizen-

ship exists, if the application of the Constitution of the United States is also invoked in the complaint, *Spreckels Sugar Refining Co. v. McClain*, 192 U. S. 397, the judgment is final if the constitutional right is raised for the first time on the trial. *Bagley v. General Fire Extinguisher Co.*, 477.

3. *Finality of judgment of Circuit Court of Appeals—What amounts to assertion of constitutional right under full faith and credit clause.*

In a suit where the jurisdiction of the Circuit Court is based on diversity of citizenship a recital in the petition that a judgment was rendered in another State does not amount to asserting the constitutional right that full faith and credit be given thereto so as to deprive the judgment of the Circuit Court of Appeals of its finality. *Ib.*

4. *Judgment of Circuit Court based on evidence affecting its jurisdiction open to review but not to collateral attack.*

After the Circuit Court of the United States has heard and passed on evidence affecting its jurisdiction, its judgment is open to review in the appellate court by writ of error, but the judgment cannot be attacked collaterally as absolutely void. *Toy Toy v. Hopkins*, 542.

5. *Effect of judgment of Circuit Court in criminal case over which it erroneously retained jurisdiction.*

Even though the Circuit Court erroneously retains jurisdiction of a criminal case against an allottee Indian, its judgment is not void but should be corrected on appeal or by writ of error and cannot be attacked in *habeas corpus* proceedings. *Ib.*

See APPEAL AND ERROR, 3; COURTS, 13, 15;
 BONDS, 4; JURISDICTION, A 25;
 CONSTITUTIONAL LAW, 22; LOCAL LAW (ARIZ.);
 STATES, 4.

JUDICIAL AND EXECUTIVE POWERS.

See EXECUTIVE POWERS.

JUDICIAL AND LEGISLATIVE FUNCTIONS.

When remedy for defective law rests with Congress and not with the courts.

Where Congress has used plain and explicit language the only province of the courts is to give effect to the act as plainly expressed in its terms, and if the law is defective in not extending to one class of common carriers privileges extended to another, the remedy is in the hands of Congress and not of the courts. *American Express Co. v. United States*, 522.

See COURTS, 15, 16.

JUDICIAL NOTICE.

1. *Of Federal origin of corporation.*

This court will judicially notice that a defendant corporation was incorporated by an act of Congress even though the petition fails so to do. *Matter of Dunn*, 374.

2. *Of custom as to use of oil.*

Under the circumstances of this case, this court will not hold that the Supreme Court of Oklahoma erred in judicially noticing a custom in the Territory to use coal oil in kindling fires. *Waters-Pierce Oil Co. v. Deselms*, 159.

See INTERSTATE COMMERCE, 6.

JUDICIAL PROCESS.

See APPEAL AND ERROR;
CARRIERS, 1, 2.

JURISDICTION.

A. OF THIS COURT.

1. *Amount in controversy—Review of judgment of Court of Appeals, D. C.*

In an action by the vendee for damages, although the amount recovered is less than \$5,000, if the vendor not only disputes the judgment but claims more than \$5,000 as balance of purchase money this court has jurisdiction to review the judgment of the Court of Appeals of the District of Columbia. *Harten v. Löffler*, 397.

2. *Amount in controversy—Conclusiveness of tax returns to fix value of property.*

Tax returns are not conclusive as to values. Where it sufficiently appears by affidavits in the record and in this court that the value of the land involved exceeds the jurisdictional amount, the case will not be dismissed on a motion based on lower valuations in tax returns. *Spreckels v. Brown*, 208.

3. *Under § 709, Rev. Stat.—Existence of Federal question. Question whether State has assented to obstructions in navigable waters, non-Federal.*

Section 10 of the River and Harbor Act of March 3, 1899, c. 425, 30 Stat. 1151, alters § 7 of the River and Harbor Act of September 19, 1890, c. 907, 26 Stat. 454, and prohibits obstructions in navigable waters of the United States not affirmatively authorized by Congress, and whether the State has assented to such obstructions remains with the State alone and is not a Federal question

reviewable by this court under § 709, Rev. Stat. *North Shore Boom Co. v. Nicomen Boom Co.*, 406.

4. Under § 709, Rev. Stat.—When constitutional question raised and denied.

Where in the state court defendant distinctly claimed that a recovery would be prevented if full faith and credit were given to a judgment of the courts of another State, and this claim is expressly denied, this court has jurisdiction to review under § 709, Rev. Stat. *American Express Co. v. Mullins*, 311.

5. Under § 709, Rev. Stat.—When question of exclusion of negroes from jury not reviewable.

Where neither the constitutionality of the state statute, nor the interpretation thereof by the state court, is assailed, but the contention is that negroes were excluded from the jury because of their race or color, the question, in the absence of such gross abuse as to amount to denial of due process of law, is one of fact, and the decision of the state court is not reviewable by this court under § 709, Rev. Stat. *Thomas v. Texas*, 278.

6. Under § 709, Rev. Stat.—Want of jurisdiction where judgment of state court rests on sufficient non-Federal ground.

Although the state court may incorrectly charge as to certain provisions of a statute if the jury finds that defendant has violated those provisions and also other provisions not involving any Federal question, and only one penalty is assessed, the judgment rests on a non-Federal ground sufficient to sustain it, and this court has not jurisdiction to review it under § 709, Rev. Stat. *Waters-Pierce Oil Co. v. Texas* (No. 1), 86.

7. Under § 709, Rev. Stat.; limitation of.

The jurisdiction of this court, under § 709, Rev. Stat., to review the proceedings of state courts is limited to specific instances of denials of Federal rights specially set up in and denied by the state court. *Ib.*

8. Writ of error to review judgment of state court dismissed for want of jurisdiction under § 709, Rev. Stat., without opinion. *Thornton v. Natchez*, 559.

9. Of direct appeal from Circuit Court.

American Sugar Refining Co. v. United States, 211 U. S. 155, followed, and a direct appeal from the Circuit Court in a case where the only real substantial point was whether an officer of the United States had misconstrued the tariff act of 1897, dismissed. *Shaw v. United States*, 559.

10. *Review of judgment of state court—Denial of constitutional right—Exercise of reserved power to repeal, alter or amend charter.*

The claim of an irrevocable contract cannot be predicated upon a contract which is repealable; and, where the reserved power to repeal, alter and amend charters is only to be exercised without injustice, it is within the province of the state court to determine whether it has been so exercised, and its decision cannot be reviewed by this court unless a contract has been impaired or some other and fundamental right within the protection of the Federal Constitution has been denied. *Hammond Packing Co. v. Arkansas*, 322.

11. *Where judgment of state court based on sufficient non-Federal grounds.*

When a state court decides a case upon a non-Federal ground which is sufficient to maintain the decision this court will not review the judgment. *Waters-Pierce Oil Co. v. Texas (No. 2)*, 112.

12. *Federal question raised too late for purposes of.*

Writ of error to review a judgment of the state court dismissed, the Federal question having been raised for the first time on petition for rehearing in the Supreme Court of the State, and that court having declined to pass on it as having come too late. *Electric Light & Power Co. v. Clay Center*, 564.

13. *Lack of Federal question.*

Writs of error to review judgment of the Supreme Court of the State of Washington, 40 Washington, 414; *S. C.*, 91 Pac. Rep. 1, involving the right of a patentee of the United States to construct a dam across an arm of a lake in the State of Washington, dismissed for want of jurisdiction; plaintiff in error claiming such right under the Desert Land Act of March 3, 1877, c. 107, 19 Stat. 377, and defendant in error claiming that there was no Federal question, or if any existed, it was raised too late. *Spokane Val. Land & Water Co. v. Madson*, 565.

14. *Lack of Federal question.*

Writ of error to review a judgment of conviction for liquor selling without having first paid the special Federal tax therefor, dismissed for want of jurisdiction. Plaintiff in error contended that the indictment was found on evidence improperly obtained. *Freshman v. United States*, 566.

15. *Where judgment based on sufficient non-Federal ground.*

Writ of error to review 99 Texas, 491, dismissed for want of jurisdiction, there being a non-Federal ground on which the judgment rested sufficient to sustain it without regard to the Federal question, if any, involved. *St. Louis Southwestern Ry. Co. v. Tyler*, 552.

16. *Of appeal from judgment denying habeas corpus—Lack of certificate of probable cause fatal.*

Appeal from judgment of Circuit Court, denying petition for writ of *habeas corpus* where petitioner was held under process of the state court, dismissed for want of jurisdiction. There was no certificate of probable cause for allowing the appeal in conformity with the act of March 10, 1908, c. 76, 35 Stat. 40. *Bilik v. Strassheim*, 551; *Ex parte Patrick*, 555.

17. *Review of judgments of conviction in criminal cases, under act of March 3, 1891.*

Jurisdiction of this court to review judgments of conviction in criminal cases under clause 3 of § 5 of the act of March 3, 1891, c. 517, 26 Stat. 827, as amended by the act of July 20, 1897, c. 68, 29 Stat. 492, depends on the sentence which can be imposed, and not on the crime charged in the indictment; and where the Federal statute prescribes that the punishment shall be the same as that prescribed by the state law and under the state law the punishment is less than capital a writ of error will not lie. *Rakes v. United States*, 55.

18. *Same—Sufficiency of raising of issue involving construction or application of Constitution.*

The suggestion in the brief of counsel of the unconstitutionality of the statute under which plaintiff in error was convicted, does not raise an issue involving the construction or application of the Constitution giving this court jurisdiction to review under § 5 of the act of March 3, 1891, c. 517, 26 Stat. 827, when the contention presented has been heretofore adversely disposed of; nor does the assertion of errors of construction furnish a basis for jurisdiction under that statute. *Ib.*

19. *Time within which writ of error to review adjudication of bankruptcy of District Court may be brought.*

The time within which a writ of error may be brought to review an adjudication of bankruptcy of the District Court is two years as regulated by §§ 4, 5, of the act of March 3, 1891, c. 517, 26 Stat. 826, 827, and not thirty days, the time fixed for appeals by general order of this court in bankruptcy, No. 36. (*Allen v. Southern Pacific Co.*, 173 U. S. 479.) *F. L. Grant Shoe Co. v. Laird*, 445.

20. *To review adjudication of District Court in bankruptcy; effect of revisory proceeding in Circuit Court of Appeals.*

The objections to a double resort to review decisions of the lower courts to both the Circuit Court of Appeals and this court do not apply where the proceeding in the Circuit Court of Appeals is merely revisory as it is under § 24b of the Bankruptcy Act; and a merely

interlocutory decision in such a proceeding cannot prevent a case otherwise proper to be brought here, from being taken to this court after final judgment. *Ib.*

21. *Appeal from the Circuit Court of Appeals affirming orders and decrees of the bankruptcy court dismissed for want of jurisdiction on authority of Chapman v. Bowen, 207 U. S. 89. Clevenger v. Chaney, 562.*

22. *To review decisions of Court of Appeals, D. C., in trade-mark cases appealed from Commissioner of Patents.*

Proceedings under the Trade-Mark Act of February 20, 1905, c. 592, 33 Stat. 724, and the specific provisions of § 9 thereof, are governed by the same rules of practice and procedure as in the instance of patents; and decisions of the Court of Appeals of the District of Columbia on appeals from the Commissioner of Patents are not reviewable by the court. *Frasch v. Moore, 211 U. S. 1, followed; Gaines v. Knecht & Son, 27 App. D. C. 530, approved. Atkins v. Moore, 285.*

23. *Of appeals in patent cases.*

Frasch v. Moore, 211 U. S. 1, followed to effect that decisions of the Court of Appeals of the District of Columbia in appeals from the Commissioner of Patents are not reviewable by this court. Johnson v. Mueser, 283.

24. *Writ of error to review decision of Court of Appeals of the District of Columbia on appeal from Commissioner of Patents dismissed on authority of Frasch v. Moore, 211 U. S. 1. Gaines v. Knecht, 561.*

25. *To review judgment of Supreme Court of Hawaii.*

Although the Supreme Court of Hawaii has no authority to enter a final judgment which is reviewable by this court when the case is before it on bill of exceptions it may do so when a writ of error has brought up the judgment. *Cotton v. Hawaii, 211 U. S. 162, distinguished. Spreckels v. Brown, 208.*

26. *Writ of error to review judgment of District Court for Porto Rico—Jurisdictional amount.*

Writs of error to the District Court of the United States for Porto Rico, dismissed for want of jurisdiction because the judgments sought to be reversed were each less than \$5,000. Plaintiffs below were citizens of the United States and Porto Rico, and the defendant a citizen of Spain who filed pleas to the jurisdiction and claimed that by the overruling of such pleas he had been denied rights under the treaty of Paris and laws of the United States. *Valdes v. Munich, 568.*

27. *Writ of error to review judgment of the Supreme Court of the Canal*

- Zone dismissed for want of jurisdiction. Coulson v. Government of the Canal Zone, 553.*
28. *Writ of error to review judgment of Supreme Court of Philippine Islands dismissed for want of jurisdiction. Enriquez v. Watson & Co., 557.*
 29. *Writ of error dismissed for want of jurisdiction, it appearing that the merits of the case had been finally determined by the Supreme Court of Hawaii before the passage of the act of March 3, 1905, c. 1465, 33 Stat. 1035, extending the jurisdiction here to review of cases from that court involving over five thousand dollars. Notley v. Brown, 570.*
 30. *Appeal dismissed for want of jurisdiction on authority of Kansas City Northwestern Railroad Co. v. Zimmerman, 210 U. S. 336. Abrams v. White, 558.*
 31. *Appeal from judgment of Court of Claims fixing amounts to be paid from an Indian fund dismissed for want of jurisdiction. United States v. Hemphill and Murchison, 552.*
 32. *Writs of error to review judgments of Supreme Court of State of Indiana, 168 Indiana, 438, 467, and 80 N. E. Rep. 845, in suits involving the constitutionality of the Employers' Liability Act of that State dismissed for want of jurisdiction without opinion. Tullis v. Lake Erie & Western R. R. Co., 175 U. S. 348, followed. Pittsburg &c. Ry. Co. v. Lightheiser, 560.*

See APPEAL AND ERROR, 2;
NEW TRIAL.

B. OF CIRCUIT COURT OF APPEALS.

See APPEAL AND ERROR, 2;
JURISDICTION, A 20.

C. OF CIRCUIT COURT.

1. *Amount in controversy; when aggregate amount of claims the test of jurisdiction.*

Where a number of claims are so tied together by combination or conspiracy as to make the relief sought in regard thereto one claim, the aggregate amount of such claims will be the test of jurisdiction of the Circuit Court; but if the plaintiff fails to prove such combination or conspiracy each claim must be regarded as separate, and, as to those which are less than \$2,000, the Circuit Court has not jurisdiction. *McDaniel v. Traylor, 428.*

2. *What constitutes deprivation of constitutional right for which suit maintainable under §§ 629, 1979, Rev. Stat.*

Without deciding other questions as to the jurisdiction of the Circuit

Court, *held* that the declaration of plaintiff in error in this case against the former governor of Colorado for arrest and detention during a period of insurrection does not give the Circuit Court jurisdiction thereof under § 629 or § 1979, Rev. Stat., as a suit authorized by law brought to redress the deprivation of a constitutional right. *Moyer v. Peabody*, 78.

3. *Mandamus to compel retention.*

Leave to file petition for mandamus to compel Circuit Court to retain jurisdiction of a condemnation proceeding as to parties whose interest was less than the jurisdictional amount refused. *Matter of Chesapeake & Ohio Ry. Co.*, 554.

See RATE REGULATION, 15.

D. ADMIRALTY.

See ADMIRALTY.

E. OF STATE COURTS.

See COURTS, 10, 11, 12.

F. OF SECRETARY OF INTERIOR.

See PUBLIC LANDS, 1.

G. GENERALLY.

See COURTS, 3, 8, 9;

NAVIGABLE WATERS, 2;

STATES, 1, 3, 4.

JURISDICTIONAL AMOUNT.

See JURISDICTION, A 1, 2, 26; C 1, 3;

MANDAMUS, 1.

JURY AND JURORS.

1. *Qualifications of jurors in District of Columbia.*

In the District of Columbia jurors must, at least, have the qualifications stated in § 215, and are exempt under § 217 of the Code, but these sections are not inconsistent with, or exclusive of, the common-law rule that one in relation with either party is incompetent. *Crawford v. United States*, 183.

2. *Qualifications of juror at common law.*

Under the common law one is not a competent juror who is master, servant, steward, counsellor or attorney of either party, and

statutory provisions of qualifications, not inconsistent with this rule, do not strike it down. *Ib.*

3. *Qualifications of jurors in criminal case; relation with Government disqualifying.*

Where defendant was on trial for conspiracy under § 5440, Rev. Stat., an objection to a juror on the ground that he was a salaried official of the United States held in this case to reach to the qualifications of the juror by reason of his relations with the Government although he was not a salaried officer thereof. *Ib.*

4. *Employé of United States incompetent as juror in prosecution by Government.*

An employé of the United States is not competent as a juror where defendant is on trial for conspiracy against the United States under § 5440, Rev. Stat. *Ib.*

5. *Bias implied from relation of employer and employé.*

Bias disqualifies a juror, and bias is implied in the relation between employer and employé and actual evidence thereof is unnecessary. *Ib.*

6. *Exclusion of negroes—Ground for presumption of discrimination.*

Discrimination against the accused in the selection of the grand or petit jury cannot be presumed from the mere fact that none of the jurors were negroes or of African descent, and if it appears that a negro was on the grand jury finding the indictment and negroes were on the venire from which the trial jury was drawn, discrimination will not be presumed. *Thomas v. Texas*, 278.

See JURISDICTION, A 5;
VERDICT, 3, 4.

JURY TRIAL.

See IMMIGRATION.

LAND DEPARTMENT.

See PUBLIC LANDS, 2.

LAND REGISTRATION.

See APPEAL AND ERROR, 1.

LEGISLATION.

See COURTS, 1, 16.

LEGISLATIVE FUNCTIONS.

See JUDICIAL AND LEGISLATIVE FUNCTIONS;
RATE REGULATION, 20.

LIBEL IN ADMIRALTY.

See ADMIRALTY.

LIENS.

See LOCAL LAW (ARIZ.).

LIS PENDENS.

Application.

The doctrine of *lis pendens* has no application to commercial securities. (*Orleans v. Platt*, 99 U. S. 676, 682.) *Presidio County v. Noel-Young Bond Co.*, 58.

LOCAL LAW.

Arizona. *Lien of judgment.* Under the laws of Arizona, in force at the time, real property upon which a judgment was a lien included mining claims. *Bradford v. Morrison*, 389.

Arkansas. Anti-trust law (see Constitutional Law, 11). *Hammond Packing Co. v. Arkansas*, 322.

District of Columbia. *Common law in force.* The common law in force in Maryland on February 27, 1801, remains in force in the District of Columbia except as inconsistent with statutes subsequently enacted. *Crawford v. United States*, 183.

Qualifications of jurors. Code, §§ 215, 217 (see Jury and Jurors, 1). *Ib.*

Hawaii. *Conveyance by disseisee.* In Hawaii a disseisee may convey to a stranger, and a deed purporting to remise, release and forever quit claim amounts to a conveyance of all the grantor's interest in the property at the time. *Spreckels v. Brown*, 208.

Indiana. Employers' Liability Act (see Jurisdiction, A 32). *Pittsburg &c. Ry. Co. v. Lightheiser*, 560.

Kansas. *Power of cities of second class to grant exclusive franchises.* *Water, Light & Gas Co. v. Hutchinson*, 207 U. S. 385, in which it was held that an exclusive franchise cannot, under the statutes of Kansas, be granted by ordinance by a city of the second class, followed. *Water, Light & Gas Co. v. Hutchinson*, 555.

- Kentucky.* Constitution, §§ 213, 214. Carriers (see Constitutional Law, 7). *Louisville &c. R. R. Co. v. Stock Yards Co.*, 132.
- Oklahoma.* Oil inspection law (see Statutes, A 5). *Waters-Pierce Oil Co. v. Deselms*, 159.
- Philippine Islands.* Acts 496 and 926 of Philippine Commission relative to registration of land titles (see Philippine Islands, 3). *Cariño v. Insular Government*, 449.
- Texas.* Anti-trust laws (see Constitutional Law, 4, 5). *Waters-Pierce Oil Co. v. Texas*, 86.
- Washington.* Tax proceedings (see Constitutional Law, 10). *Ontario Land Co. v. Yordy*, 152.

MANDAMUS.

1. *Leave to file petition for mandamus to compel Circuit Court to retain jurisdiction of a condemnation proceeding as to parties whose interest was less than the jurisdictional amount, refused.* *Matter of Chesapeake & Ohio Ry. Co.*, 554.
2. *Leave to file petition for mandamus to direct suit against a corporation incorporated under act of Congress to be remanded to the state court, refused.* *In re Jones*, 561.
3. *Leave to file petition for mandamus to Circuit Court of Appeals to compel reinstatement of appeal from Circuit Court, denied.* *In re Dowagiac Mfg. Co.*, 569.

MARITIME LAW.

1. *Liability of vessels in collision—Apportionment of liability.*

Where two tugs and two scows in tow of one of the tugs are all in fault for a collision, each of the four vessels is liable for an equal share of the damages, and the liability is to be so apportioned even if more than one of the vessels are owned by the same person. *The Eugene F. Moran*, 466.

2. *Liability of tug and tow for damages caused by tug.*

Sturgis v. Boyer, 24 How. 110, followed to the effect that a tug having control of a vessel in tow is solely responsible for damages to the other vessel caused by the tug alone. *Ib.*

3. *Flotilla as a unit.*

The fact that vessels are tied together in a flotilla does not make the flotilla a unit in proceedings *in rem*. *Ib.*

4. *Apportionment of damages in proceeding in rem.*

In a proceeding *in rem* where several vessels are found in fault each bears its share regardless of ownership, and notwithstanding this rule results in charging one who owns more than one of the vessels with a larger proportion than he would be charged in a personal suit against himself and the owners of the other vessels. *Ib.*

See ADMIRALTY;

CARRIERS, 3, 4, 5.

MASTER AND SERVANT.

1. *Transfer of servant to third party so as to make latter liable for his acts.*

One in the general service of another may be so transferred to the service of a third person as to become the latter's servant with all the legal consequences of the new relation; but to change the relation and relieve the master requires more than the mere fact that the servant is sent to do work pointed out by such third party who has made a bargain with the master for his services. *Standard Oil Co. v. Anderson*, 215.

2. *Status of winchman employed by one furnishing hoisting power to master stevedore.*

A winchman employed by the person furnishing the hoisting power to a master stevedore for loading a vessel, held to remain that person's servant notwithstanding the hoisting signals were given by the stevedore's foreman and not to be a fellow servant of an employé of the stevedore who was injured by his negligence. *Ib.*

3. *Fellow servants on railroad; who are.*

The engineer of a train, and the section foreman, are fellow servants of a section hand, and the latter cannot recover against the employer for an injury occurring through the negligence of either of the former. *Northern Pacific Railroad v. Egeland*, 163 U. S. 93, distinguished. *Texas & Pacific Ry. Co. v. Bourman*, 536.

See JURY AND JURORS, 2, 3.

MEASURE OF DAMAGES.

See CONTRACTS, 3;

VERDICT, 2.

MINES AND MINING.

1. *Title of locator; power of disposition.*

The title of a locator to a mining claim located under § 2322, Rev. Stat., is not only property, but property which, in addition to being sold, transferred and mortgaged, is also capable of being inherited with-

out infringing the title of the United States. *Bradford v. Morrison*, 389.

2. *Forfeiture of title acquired by sale under lien of judgment.*

Title to a mining claim acquired by sale under lien of judgment is subject to forfeiture if conditions subsequent, such as the doing of necessary work, are not performed. *Ib.*

3. *Dower right in claim.*

Black v. Elkhorn, 163 U. S. 445, holding that widow's dower did not attach to the mining claim involved in that case, distinguished. *Ib.*

See LOCAL LAW (ARIZ.).

MISJOINDER OF PARTIES.

See INTERSTATE COMMERCE, 8.

MISTAKE OF LAW.

See COURTS, 17;

JUDGMENTS AND DECREES, 1.

MITIGATION OF SENTENCE.

See COURTS-MARTIAL, 2.

MONOPOLIES.

See ANTI-TRUST ACT.

MUNICIPAL CORPORATIONS.

See LOCAL LAW (KAN.).

NAVIGABLE WATERS.

1. *Power of State over navigable streams wholly within its boundaries.*

A State, in the absence of any statute by Congress, has plenary power in regard to navigable streams wholly within its boundaries; and obstructions in such streams, in the absence of statute, constitute no offense against the United States, and whether obstructions are unlawful under state law is not a Federal question. (*Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1.) *North Shore Boom Co. v. Nicomen Boom Co.*, 406.

2. *Jurisdiction of state and National governments over erection of obstructions.*

Where a Federal law is applicable requiring consent of the Federal Government there is concurrent or joint jurisdiction of the state and National governments over the erection of structures obstructing navigation of a navigable stream wholly within a State.

(*Cummings v. Chicago*, 188 U. S. 410; *Montgomery v. Portland*, 190 U. S. 89.) *Ib.*

See JURISDICTION, A 3.

NAVY.

See COURTS-MARTIAL, 1.

NEGLIGENCE.

See ADMIRALTY;
MARITIME LAW;
MASTER AND SERVANT.

NEGROES.

See JURISDICTION, A 5;
JURY AND JURORS, 6.

NEW TRIAL.

Power of this court to grant, on ground of excessive damages.

Held, in a case on error to the Supreme Court of the Territory of Oklahoma, that this court does not possess the power to grant a new trial solely on the ground that the jury awarded excessive damages. *Waters-Pierce Oil Co. v. Deselms*, 159.

See VERDICT, 3, 4.

NOTICE.

See CONSTITUTIONAL LAW, 9, 10;
JUDICIAL NOTICE.

OBSTRUCTIONS IN NAVIGABLE WATERS.

See JURISDICTION, A 3;
NAVIGABLE WATERS, 1, 2.

OFFICE.

See PUBLIC OFFICERS, 1.

OREGON.

See STATES, 3, 5.

PARTIES.

See INTERSTATE COMMERCE, 8;
REMOVAL OF CAUSES, 1, 2.

PASS.

See INTERSTATE COMMERCE, 3.

PATENT APPEALS.

See JURISDICTION, A 22, 23, 24.

PATENTS AND TRADE-MARKS.

See JURISDICTION, A 22, 23, 24.

PATENT FOR LAND.

See PUBLIC LANDS, 2.

PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 19;
COURTS, 7;
MINES AND MINING, 2.

PERIL OF THE SEA.

See CARRIERS, 4, 5.

PHILIPPINE ISLANDS.

1. *Real property; title by prescription; effect of Treaty of Paris.*

Title by prescription against the crown existed under Spanish law in force in the Philippine Islands prior to their acquisition by the United States, and one occupying land in the Province of Benguet for more than fifty years before the Treaty of Paris is entitled to the continued possession thereof. *Cariño v. Insular Government*, 449.

2. *Property rights of inhabitants—Deprivation of land by act of Philippine Commission.*

The acquisition of the Philippines was not for the purpose of acquiring the lands occupied by the inhabitants, and under the Organic Act of July 1, 1902, c. 1369; 32 Stat. 691, providing that property rights are to be administered for the benefit of the inhabitants, one who actually owned land for many years cannot be deprived of it for failure to comply with certain ceremonies prescribed either by the acts of the Philippine Commission or by Spanish law. *Ib.*

3. *Registration of land titles; who entitled.*

Although a province may be excepted from the operation of act No. 926 of 1903 of the Philippine Commission which provides for the registration and perfecting of new titles, one who actually owns property in such province is entitled to registration under act No. 496 of 1902, which applies to the whole archipelago. *Ib.*

4. *Organic Act as bill of rights.*

The Organic Act of the Philippines made a bill of rights embodying safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. *Ib.*

5. *Writ of error to review judgment of Supreme Court of Philippine Islands dismissed for want of jurisdiction. Enriquez v. Watson & Co., 557.*

See APPEAL AND ERROR, 1.

PLEADING.

See CARRIERS, 2;

VENDOR AND VENDEE, 3.

POLICE POWER.

See COURTS, 7;

STATES, 9.

PORTO RICO.

See JURISDICTION, A 26.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *When bill of exceptions not necessary.*

A bill of exceptions is not necessary when it adds nothing to the record. (*C. H. Nichols Lumber Co. v. Franson*, 203 U. S. 278.) *F. L. Grant Shoe Co. v. Laird*, 445.

2. *Raising of Federal question on petition for rehearing.*

An attempt to raise the Federal question in the petition for rehearing in the highest court of the State will not avail if the petition is overruled without specifically passing on the questions. *Waters-Pierce Oil Co. v. Texas* (No. 2), 112.

3. *Scope of review of judgment of state court—Bringing in new matter by assignments of error.*

The review of a judgment of a state court is confined to assignments of error made and passed upon in the judgment brought here for review; assignments of errors in this court cannot bring new matter into the record. *Ib.*

4. *Following findings of fact.*

This court does not review, but accepts as conclusive the findings of

facts made by the state court. *Waters-Pierce Oil Co. v. Texas* (No. 1), 86.

5. *Findings of master in chancery; when not conclusive.*

In ordinary equity suits findings of the master and the court below are conclusive here unless unsupported by the evidence or made under erroneous views of law; but where the constitutionality of a legislative act is involved, this court, from the respect due to legislative authority, will not regard such findings as conclusive. *Knoxville v. Knoxville Water Co.*, 1.

6. *Controlling effect on this court of decisions of state courts.*

When this court is called upon to exercise its own judgment, it will not be controlled by decisions of state courts. *Matter of Dunn*, 374.

7. *Certified question calling for decision of whole case, not answered.*

Where a certified question does not propound a distinct issue of law, but in effect calls for a decision of the whole case, this court need not, and in this case does not, answer it. (*Chicago, B. & Q. R. R. v. Williams*, 205 U. S. 444.) *The Folmina*, 354.

8. *Certified question not presenting distinct issue of law, not answered.*

The question "whether the ship is relieved from liability in consequence of said exception," not presenting a distinct issue of law, not answered. *Ib.*

9. *Determination of effect of grant of concurrent jurisdiction.*

In determining the effect of a grant of concurrent jurisdiction this court confines itself to the precise questions presented. *Nielsen v. Oregon*, 315.

10. *Determination from record as to existence of fraud, connivance or consent in respect of judgment rendered.*

Where the state court has sustained a demurrer to an answer which set forth a complete defense in the absence of fraud, connivance or consent on defendant's part, this court will determine for itself from the record whether the record shows any fraud, connivance or consent. *American Express Co. v. Mullins*, 311.

11. *Presumption as to sufficiency of reasons for refusal of lower court to grant new trial.*

Where the reasons of the Supreme Court of the Philippine Islands for refusing to grant a new trial on ground of newly discovered evidence do not appear, their sufficiency must be presumed and the question is not open in this court. *Santos v. Roman Catholic Church*, 463.

12. *When judgment reversed for defects in indictment.*

An indictment which definitely sets forth the elements of the offense of which it was intended to charge the accused is sufficient; and in this court only substantial defects in the indictment are available to reverse a judgment of conviction. (*Connors v. United States*, 158 U. S. 408.) *New York Central R. R. v. United States*, 500.

13. *Scope of review on error to Supreme Court of Philippine Islands.*

A finding by the Supreme Court of the Philippine Islands that the parties sued as defendants do not constitute a judicial entity such as a *cofradia*, is not open to reëxamination in this court. *Santos v. Roman Catholic Church*, 463.

<i>See</i> ANTI-TRUST ACT, 2;	INSTRUCTIONS TO JURY, 2;
COURTS, 2;	JURISDICTION, A 22;
CRIMINAL LAW, 1;	RATE REGULATION, 14, 19.

PREFERENCES.

See DEBTS DUE UNITED STATES.

PRESCRIPTION.

See PHILIPPINE ISLANDS, 1.

PRESIDENT OF THE UNITED STATES.

See COURTS-MARTIAL, 2.

PRESUMPTIONS.

<i>See</i> ATTORNEY AND CLIENT;	JURY AND JURORS, 5, 6;
BONDS, 2;	PRACTICE AND PROCEDURE, 11;
EVIDENCE, 2;	PROPERTY RIGHTS, 2.

PRINCIPAL AND AGENT.

See ATTORNEY AND CLIENT;
CORPORATIONS, 2, 3, 4, 5;
INTERSTATE COMMERCE, 5, 8.

PRINCIPAL AND SURETY.

See DEBTS DUE UNITED STATES.

PRIORITY.

See DEBTS DUE UNITED STATES.

PRIVILEGES AND IMMUNITIES.

See JUDICIAL AND LEGISLATIVE FUNCTIONS.

PROCESS.

See APPEAL AND ERROR, 1;

CARRIERS, 1, 2;

EXECUTIVE POWERS.

PRODUCTION OF BOOKS AND PAPERS.

See CONSTITUTIONAL LAW, 11, 12, 13, 14, 18, 24.

PROPERTY RIGHTS.

1. *Fiction as ground for deprivation of.*

Fiction, not being a satisfactory ground for taking one man's property to satisfy another man's wrong, should not be extended. *The Eugene F. Moran*, 466.

2. *Presumption of, as against deprivation through governmental regulation.*

Every presumption of ownership is in favor of one actually occupying land for many years, and against the Government which seeks to deprive him of it, for failure to comply with provisions of a subsequently enacted registration act. *Cariño v. Insular Government*, 449.

See CONSTITUTIONAL LAW, 23;

MINES AND MINING, 1;

PHILIPPINE ISLANDS, 1, 2;

RATE REGULATION, 6, 7;

TITLE.

PROVABLE CLAIMS IN BANKRUPTCY.

See BANKRUPTCY.

PROVISOS.

See STATUTES, A 3.

PROXIMATE CAUSE.

See VENDOR AND VENDEE, 2.

PUBLICATION.

See INTERSTATE COMMERCE, 4.

PUBLIC LANDS.

1. *Effect of decision of Secretary of the Interior to bind his successor and the courts.*

When the Secretary of the Interior has jurisdiction of a land contest and grants a rehearing he is not, nor is this court, bound by the facts found by his predecessor on the original hearing, *Potter v. Hall*, 189 U. S. 292; after such a rehearing and when, as in this

case, new testimony is allowed, the decision then made is the ultimate action of the department. *Greenameyer v. Coate*, 434.

2. *Fraud of holder of patent to justify declaring him to hold as trustee for another.*

The holder of a patent obtained by error of law of, or fraud or imposition on, the Land Department, may be declared to hold the same as trustee for another; but the fraud must have been so practiced as to have prevented the unsuccessful party from fully exhibiting his case, and if the case has been fully considered the decision of the proper officers is in the nature of a judicial determination. (*Vance v. Burbank*, 101 U. S. 514.) *Ib.*

PUBLIC OFFICERS.

1. *Office not a protection from personal liability.*

An officer of a State interfering with an individual's rights in an unconstitutional manner derives no protection from personal liability on account of his office. *Moyer v. Peabody*, 78.

2. *Governor of State; effect of declaration by.*

The declaration of the governor of a State that a state of insurrection exists is conclusive. *Ib.*

3. *Governor of State; personal liability for acts done under authority of constitution and laws of State.*

Where the constitution and laws of a State give the governor power to suppress insurrection by the National Guard, as is the case in Colorado, he may also seize and imprison those resisting, and is the final judge of the necessity for such action; and when such an arrest is made in good faith he cannot be subjected to an action therefor after he is out of office on the ground that he had not reasonable cause. *Ib.*

See CRIMINAL LAW, 2, 3;

JURY AND JURORS, 3, 4;

PUBLIC LANDS, 1.

PUBLIC SERVICE CORPORATIONS.

See RATE REGULATION.

QUALIFICATIONS OF JURORS.

See JURY AND JURORS.

RAILROADS.

See CARRIERS;

MASTER AND SERVANT, 3.

RATES.

See INTERSTATE COMMERCE, 1, 2, 4.

RATE REGULATION.

1. *Public service corporations; what to be considered in determining reasonableness of rate.*
In estimating for rate-fixing purposes the value of a plant, cost of production is not a fair measure of value unless a substantial allowance is made for depreciation. *Quære*, whether anything can be allowed in the case of the plant of a public service corporation for "going concern" above the value of the separate tangible elements. *Knoxville v. Knoxville Water Co.*, 1.
2. *Same.*
In valuing for rate-fixing the plant of a public service corporation, bonds and stocks issued for its purchase and construction in excess of its cost and by and to parties interested in and controlling the company, afford neither measure nor guide. *Ib.*
3. *Same.*
In determining whether a rate affords a fair return the amount must be considered as fixed by the ordinance and not as voluntarily reduced by the corporation, even if such reduction be in accordance with custom and for the purpose of obtaining prompt payment. *Ib.*
4. *Same.*
In determining whether a rate is confiscatory the court is not confined to evidence as to the income of the corporation affected for the fiscal year during, or preceding that in, which the rate was fixed; it may receive evidence as to such income in subsequent years. *Ib.*
5. *Same.*
A sufficient amount should be allowed from the earnings of a public service corporation for making good depreciation of plant and replacing deteriorated portions thereof; but amounts so expended cannot be considered as additional to the original cost in valuing the plant for purposes of ascertaining whether a rate is confiscatory. *Ib.*
6. *Quære as to constitutionality of regulation in respect of due process of law and just compensation.*
Quære, and not decided, whether, under the circumstances of this case, an ordinance fixing a rate yielding a return of four per cent after allowing two per cent for depreciation is confiscatory, and amounts to a deprivation of property without due process of law or a taking of property without compensation. *Ib.*

7. *Public service corporations; franchises as element for fixing rates.*

Franchises of public service corporations are property and cannot be taken or used by others without compensation, and, where a State has by legislative enactment permitted such corporations to capitalize such franchises, their value at the time of such capitalization should be included in the value of the property as an element for fixing rates; but no increased value of such franchises should be allowed. *Willcox v. Consolidated Gas Co.*, 19.

8. *Public service corporations; return to which entitled.*

Public service corporations, such as gas companies, are subject to the legislative right to fix rates which permit not more than a fair return on the property used. *Ib.*

9. *When rate confiscatory.*

Whether a rate yields such a fair return as not to be confiscatory depends upon circumstances, locality and risk, and no particular rate can be established for all cases. *Ib.*

10. *When rate not confiscatory.*

Under all the circumstances of this case this court concurs with the court below that six per cent is a fair return on the value of property employed in supplying gas in the city of New York, and a rate yielding that return is not confiscatory. *Ib.*

11. *Estimating value of franchises.*

In estimating value of franchises for the purpose of fixing rates, it is immaterial that the corporation is taxed on a greater value than that allowed if it charges its taxes as operating expenses in determining net income. *Ib.*

12. *Good-will as element of value of property.*

Where a public service corporation has a monopoly, such as of supplying gas in a large city, "good-will" cannot be considered as an element of value of the property employed. *Ib.*

13. *Time as of which property valued.*

For purpose of fixing rates the value of property employed should be determined as of the time when the inquiry is made, and, as a general rule, the corporation is entitled to the benefit of increased value since acquisition. *Ib.*

14. *Practice where complainant in bill to enjoin enforcement of rate fails to show that it is confiscatory.*

Where, as in this case, in an action brought before the rate takes effect, complainant fails to sustain the burden of clearly showing that a rate act is confiscatory, the bill should be dismissed without preju-

dice to right of the complainant to bring another action after the rate goes into effect if it then proves to be confiscatory. *Ib.*

15. *Right to assert, in Circuit Court of United States, that rates unreasonable—Burden of proof of unreasonableness.*

Where diverse citizenship exists complainant may assert in a suit in the Circuit Court of the United States that rates fixed by ordinance are so low as to be confiscatory under the Fourteenth Amendment or unreasonable or unjust under the provisions of state law. Rates fixed by the body having jurisdiction, after investigation based on reports of the corporation rendering the service, are *prima facie* fair and valid and the burden of proof is on the complainant attacking them to show that they are confiscatory or unreasonable. *Louisiana R. R. Comm. v. Cumberland Tel. Co.*, 414.

16. *Confiscatory rates—Considerations in determining reasonableness of rates—Burden of proof.*

Where a public service corporation raises more money in a particular year than required for actual depreciation it cannot carry the excess to capital for the purpose of estimating the amount on which it is entitled to pay dividends in determining whether a rate is unconstitutional as confiscatory, and the onus of showing that this has not been done is on complainant where the books show that such an excess has been collected. *Ib.*

17. *Same.*

Quere, and not decided, whether it would be entitled to dividends on such excess if invested in extensions and additions. *Ib.*

18. *Confiscatory rates—Rule as to increased profits from decreased rates not applicable to telephone companies.*

While in some businesses where increased demand does not involve a corresponding increase in expense, increased profits may result from decreased rates, this rule does not apply to a business, such as that of a telephone company, where expenses are proportionately increased with increased demand and service. *Ib.*

19. *Confiscatory rates—Practice in this court where actual effect of rates ascertainable.*

Although complainant failed to prove its case, the bill will not be dismissed but a new trial ordered, as the rates have been in force and the inquiry can be founded upon their actual effect. *Ib.*

20. *Rate-making a legislative function.*

Rate-making is a legislative function whether exercised by the legis-

lature or by a subordinate body to which power has been delegated, such as a municipality. *Knoxville v. Knoxville Water Co.*, 1.

See CONSTITUTIONAL LAW, 20, 21;
CORPORATIONS, 4;
COURTS, 2, 4, 5, 6.

REAL PROPERTY.

See LOCAL LAW (ARIZ.) (HAW.);
PHILIPPINE ISLANDS, 1, 2, 3;
PROPERTY RIGHTS, 2.

REBATES.

See INTERSTATE COMMERCE, 9, 10, 11, 12, 13.

RECEIVERS.

Liability for costs and expenses of receiver erroneously appointed.

Under the circumstances of this case it is not proper to charge the costs and expenses of the receiver erroneously appointed by the Federal court on complainant, but those expenses should be paid from the fund. *Palmer v. Texas*, 118.

See CONSTITUTIONAL LAW, 6; DEBTS DUE UNITED STATES;
COURTS, 10, 12; INTERSTATE COMMERCE, 14.

RECORD.

See PRACTICE AND PROCEDURE, 1.

REGISTRATION OF LAND TITLES.

See PHILIPPINE ISLANDS, 3.

REMOVAL OF CAUSES.

1. *Diversity of citizenship for purposes of—Arrangement of parties so as to create diversity of citizenship.*

In this case, *held* that in an action to foreclose, where the junior encumbrancer as plaintiff joined the senior encumbrancer as a defendant and attacked the validity of his lien, as did the owner of the property, also a defendant, a separable controversy existed between the senior encumbrancer on the one side and the owner and the junior encumbrancer on the other side, which was removable, as diverse citizenship existed when the parties were so arranged; and such removal could not be prevented either by the unnecessary joinder of the senior encumbrancer, or because prior to the filing of the reply showing the separable nature of the controversy a remanding order had been made. *Fritzlen v. Boatmen's Bank*, 364.

2. *Effect of joinder of other defendants, citizens of plaintiff's State, on right of Federal corporation defendant to remove.*

Where the Circuit Court has jurisdiction by reason of the fact that the defendant is a corporation created by an act of Congress, the joinder of other defendants, citizens of plaintiff's State does not prevent removal to the Circuit Court if there is no separable controversy and all the defendants unite in the petition: the Federal character permeates the entire case and affects all parties defendant. *Matter of Dunn*, 374.

3. *Right of resort to Federal court in first instance as prerequisite of right to remove.*

The right to remove depends upon whether the suit could have been brought originally in the Circuit Court of the United States. (*Cochran v. Montgomery County*, 199 U. S. 260.) *Ib.*

4. *When suit removable as one arising under Constitution and laws of United States.*

As a corporation created by act of Congress derives all its rights from the law creating it, suits brought against it, on account of its action, arise under the Constitution and laws of the United States and are removable into the Federal court. (*Osborn v. Bank of United States*, 9 Wheat. 738.) *Ib.*

5. *Effect of order to remand on right to make second application to remove.*

If, after an order to remand has been made, it results, from the subsequent pleadings or conduct of the parties, that the cause is removable, a second application to remove can be made, and the right to make it is not controlled by the previous remanding order; nor is the granting of the order to remove under such circumstances a refusal to give effect to such previous order to remand. *Fritzlen v. Boatmen's Bank*, 364.

6. *Timeliness of application for.*

Powers v. Chesapeake & Ohio Ry. Co., 169 U. S. 92, followed as to when an application for removal is made in time. *Ib.*

See ACTIONS, 2;

MANDAMUS, 2.

REPEALS BY IMPLICATION.

See STATUTES, A 7, 8.

RES JUDICATA.

See BONDS, 4.

RETROACTIVE LAWS.

See CRIMINAL LAW, 6.

RIPARIAN RIGHTS.

See DEEDS, 1.

RIVERS.

See STATES, 3, 4, 5, 6.

RIVER AND HARBOR ACTS.

See JURISDICTION, A 3.

ROMAN CATHOLIC CHURCH.

See TITLE.

SALES.

See ANTI-TRUST ACT;
CONTRACTS, 3;
VENDOR AND VENDEE, 3.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 24, 25.

SECRETARY OF THE INTERIOR.

See PUBLIC LANDS, 1.

SENTENCE.

See COURTS-MARTIAL.

SETTING ASIDE VERDICT.

See VERDICT, 3, 4.

SHIPPING.

See ADMIRALTY;
CARRIERS, 3, 4, 5;
MARITIME LAW.

SOVEREIGNTY.

Definition—Relations of subject to former sovereign.

While, in legal theory and as against foreign nations, sovereignty is absolute, practically it is a question of strength and of varying degree; and it is for a new sovereign to decide how far it will insist

upon theoretical relations of the subject to the former sovereign and how far it will recognize actual facts. *Cariño v. Insular Government*, 449.

SPAIN.

See WAR, 1.

STATES.

1. *Jurisdiction to punish violation of anti-trust law where agreement made out of State.*

Although an agreement to violate the anti-trust law of a State may be made outside of the State, if the parties thereto or their agents execute it, or attempt so to do, within the State, they are under the jurisdiction of the State and their conviction for such acts is not without due process of law. *Waters-Pierce Oil Co. v. Texas* (No. 1), 86.

2. *Power to prevent unlawful combinations in restraint of trade.*

States having power to prevent unlawful combinations in restraint of trade may provide the procedure for enforcing the same, subject only to the qualification that such procedure must not deny or conflict with fundamental or constitutional rights. *Ib.*

3. *Jurisdiction of Oregon and Washington over Columbia River.*

The concurrent jurisdiction given by Congress to the States of Oregon and Washington over the Columbia River, by the acts of March 2, 1853, c. 90, 10 Stat. 172, and of February 14, 1859, c. 33, 11 Stat. 383, extends to civil as well as criminal matters, and is broadly a grant of jurisdiction to each State. (*Wedding v. Meyler*, 192 U. S. 573.) *Nielsen v. Oregon*, 315.

4. *Concurrent jurisdiction—Right of State first acquiring jurisdiction—Finality of judgment rendered.*

Where two States have concurrent jurisdiction, the one first acquiring jurisdiction may prosecute and punish for an act which is *malum in se* and punishable by the laws of both States, and the judgment is a finality so that the person prosecuted cannot be again tried in either State. But this rule does not apply to those acts which are prohibited in only one of the States. *Ib.*

5. *Concurrent jurisdiction—Right of one State to prosecute for act malum prohibitum by its laws, but permitted in territory of other State wherein the act authorized.*

Where two States have concurrent jurisdiction over the same territory which is partly located in one State and partly in the other, one State cannot prosecute a person for an act *malum prohibitum* by

its own laws, and which was committed in territory within the other State by authority of the latter; and so held, that one holding a purse net license from the State of Washington cannot be prosecuted for using such net on the Washington side of the Columbia River in the courts of Oregon for violating the statutes of that State prohibiting the use of such nets. *Ib.*

6. *Concurrent jurisdiction; prosecutions in case of.*

Quære, whether such person could be prosecuted in the courts of Oregon for using such nets on the Oregon side of the river; and *quære* whether, where concurrent jurisdiction exists, prosecutions should be in the name of both States. *Ib.*

7. *Power to exclude foreign corporations.*

The right of a State to prevent foreign corporations from continuing to do business within its borders, is the correlative of its right to exclude them therefrom; and, as this power is plenary, the State, so long as no contract is impaired, may exert it from consideration of acts done in another jurisdiction. *Hammond Packing Co. v. Arkansas*, 322.

8. *Materiality of question of motive in exercise of power to revoke permit granted foreign corporation.*

If the power exists to revoke a permit, the question of motive is immaterial for the purpose of determining the constitutionality of the legislative action exerting the power. *Ib.*

9. *Police power; effect of chartered rights of corporation on.*

The chartered right of a corporation to do business does not operate to deprive the State of its police power, and the franchise to do business is qualified by the duty to do so conformably to lawful and proper police regulations thereafter enacted. *Ib.*

See CONSTITUTIONAL LAW, 6, INTERSTATE COMMERCE, 14;
15, 18, 24; JURISDICTION, A 3;
COURTS, 7; NAVIGABLE WATERS, 1, 2;

PUBLIC OFFICERS.

STATUTES.

A. CONSTRUCTION OF.

1. *Constitutionality maintained if possible.*

Every statute is to be construed so as to maintain its constitutionality if possible. *New York Central R. R. v. United States*, 481.

2. *Criminal statutes; rule of construction.*

While criminal statutes are not to be enlarged by construction, and a

crime must be clearly defined in its terms, they are to be reasonably construed with a view to effecting the purpose of their enactment. *United States v. New York Central R. R. Co.*, 509.

3. *Provisos; rule of construction of.*

While a proviso may sometimes be construed as extending rather than limiting legislation each statute must depend on its own terms, and a proviso will be construed consistently with the legislation under consideration. *American Express Co. v. United States*, 522.

4. *Superfluous negative may be omitted.*

In the construction of a statute a superfluous negative may be omitted where the meaning is apparent, as in this case. *Waters-Pierce Oil Co. v. Deselms*, 159.

5. *Separable provisions—Oklahoma Oil Inspection Law; provisions as to punishment.*

Provisions for unequal punishment of corporations and individuals for violations of the same statute, *held*, in regard to the Oklahoma Territory Oil Inspection Law, to be separable, and, even if unconstitutional, not to affect the prohibitions contained in the statute against the use of oil not conforming to the standards fixed thereby. *Ib.*

6. *Separability of provisions.*

Provisions in a gas rate bill for rate, pressure and penalties for violation, may be, as held in this case, separable and the unconstitutionality of the provisions as to pressure and penalties will not affect the provisions as to rate. *Willcox v. Consolidated Gas Co.*, 19.

7. *Repeals by implication—Right to appeal or writ of error.*

Where a statute provides for an appeal or a writ of error to a specific court it must be regarded as a repeal of any previous statute providing for an appeal or a writ of error to another court. (*Brown v. United States*, 171 U. S. 631.) *Laurel Oil Co. v. Morrison*, 291.

8. *Repeal or modification of statute by subsequent legislation.*

Quare, and not decided, whether the act of March 3, 1887, c. 359, 24 Stat. 505, supersedes or modifies § 1066, Rev. Stat., and § 9 of the act of March 3, 1863, c. 92, 12 Stat. 767, relating to claims against the United States growing out of, or dependent on, treaty stipulations. *Juragua Iron Co. v. United States*, 297.

See CONSTITUTIONAL LAW, 16;
INTERSTATE COMMERCE, 7;
JURISDICTION, A.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCKHOLDERS.

See CORPORATIONS, 6.

SUBROGATION.

See DEBTS DUE UNITED STATES.

SUITS AGAINST UNITED STATES.

See ACTIONS, 1.

TARIFF ACT.

See JURISDICTION, A 9.

TARIFF OF RATES.

See INTERSTATE COMMERCE, 4.

TAX SALES.

See CONSTITUTIONAL LAW, 9, 10.

TAXES AND TAXATION.

See CONSTITUTIONAL LAW, 9, 10;
JURISDICTION, A 2.

TELEPHONE COMPANIES.

See RATE REGULATION, 18.

TITLE.

Capacity of Roman Catholic Church to hold property in insular possessions.
The Roman Catholic Church has a legal personality and the capacity to hold property in the insular possessions of the United States, and this right is not affected by the fact that the property was acquired by gift or from the public funds. (*Ponce v. Roman Catholic Church*, 210 U. S. 296.) *Santos v. Roman Catholic Church*, 463.

See MINES AND MINING, 1, 2;

PHILIPPINE ISLANDS, 1, 3;

PROPERTY RIGHTS, 2.

TORTS.

Liability of one for tort of third person where observance of duty might have prevented the tort.

When a duty is imposed for the purpose of preventing a certain consequence its breach not leading to that consequence does not make a defendant liable for the tort of a third person merely because the observance of the duty might have prevented that tort. *The Eugene F. Moran*, 466.

See CORPORATIONS, 2;
VENDOR AND VENDEE, 1;
WAR, 2.

TRADE-MARK PROCEEDINGS.

See JURISDICTION, A 22.

TREATY OF PARIS.

See JURISDICTION, A 26.

TRIAL.

See CRIMINAL LAW, 1.

TRIAL BY JURY.

See IMMIGRATION.

TRUSTS AND TRUSTEES.

See PUBLIC LANDS, 2.

TUCKER ACT.

See ACTIONS, 1.

UNITED STATES.

See ACTIONS, 1;
MINES AND MINING, 1.

UNREASONABLE SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 24, 25.

VENDOR AND VENDEE.

1. *Liability of original vendor to vendee of its vendee for damages produced by reason of unlawful nature of goods sold.*

Where the original vendor knowingly sells, as coal oil, a mixture of coal oil and gasoline, of such inflammable character as to be unlawful

under the local statute, to a vendee who in ignorance of its unlawful nature sells it to a third party in like ignorance, the original vendor is directly responsible to the final purchaser for the consequences of an explosion, produced solely by reason of such unlawful nature while the oil is being used in a legitimate manner. In such a case the responsibility of the original vendor rests not on contract but in tort. *Waters-Pierce Oil Co. v. Deselms*, 159.

2. *Same.*

On the facts in this case, and in view of the ignorance of both vendees in regard thereto, the unlawful character of the articles sold held to be the proximate cause of plaintiff's injuries; but *quære*, and undecided, whether the original vendor would have been relieved of responsibility if the first vendee had knowledge of the unlawful character of the article. *Ib.*

3. *Right of vendee to plead combination in restraint of trade in action for goods sold.*

While a voluntary purchaser of goods at stipulated prices under a collateral, independent contract cannot avoid payment merely on the ground that the vendor was an illegal combination, *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, a vendee of goods purchased from an illegal combination in pursuance of an illegal agreement can plead such illegality as a defense. *Continental Wall Paper Co. v. Voight & Sons Co.*, 227.

See BONDS, 1, 2;
CONTRACTS, 3;
JURISDICTION, A 1.

VERDICT.

1. *Peremptory instruction for defendant; when justified.*

While the burden on the plaintiff is not satisfied by showing an accident and an injury, where there was adequate proof to show that an explosion occurred which could only have occurred by the unlawful character of articles sold by defendant, a peremptory instruction for defendant is properly refused. *Waters-Pierce Oil Co. v. Deselms*, 159.

2. *Estimation of damages for tort; function of jury.*

When the court, at defendant's request, has charged as to the general rules of ascertaining plaintiff's damages, it is not error to add that the amount, as in this case for death of infant children, had not been fixed by the evidence, and that the verdict must be the result of the jury's own judgment. *Ib.*

3. *Setting aside; possible influence of jury by newspaper articles as ground for.*

Where articles indicating the judge's leanings appear in a newspaper, and one of the parties informs the judge that he need not give any instructions to the jury as to reading the paper, the verdict cannot be set aside because similar articles subsequently appeared in other papers which may have been read by members of the jury. *Spreckels v. Brown*, 208.

4. *Setting aside on ground that jury improperly influenced; effect of affidavits by jurymen.*

The admission of affidavits of jurymen to effect that they had not been influenced by newspaper articles held to be immaterial, the order overruling the motion for new trial being right on other grounds. *Ib.*

VESSELS.

See ADMIRALTY; MARITIME LAW;
CARRIERS, 3, 4, 5; MASTER AND SERVANT, 2.

WAIVER.

See COURTS-MARTIAL, 1.

WAR.

1. *Enemy country; status of Cuba as, during war with Spain—Citizens of United States as enemies thereof.*

Under the recognized rules of war Cuba, being a part of Spain, was during the war of 1898-9, enemy country; and all persons residing in Cuba pending the war were to be deemed enemies whatever their nationality, including citizens of the United States there domiciled and doing business. *Juragua Iron Co. v. United States*, 297.

2. *Right of citizen of United States, whose property in Cuba destroyed by army of United States, to maintain action against latter to recover therefor.*

A citizen of the United States domiciled in Cuba cannot maintain an action against the United States under the act of March 3, 1887, in the Court of Claims for the value of property destroyed during, and as the result of, military operations in Cuba by order of the commanding officer in the field as there is no obligation based on implied contract to compensate for the value of such property. If the order was not justified by the rules of war it would amount to a tort, and the action based thereon would be one sounding in tort, and the action cannot be maintained. *Ib.*

3. *Enemy property—Rights of citizens of United States domiciled in Cuba during war with Spain.*

Property of citizens of the United States in Cuba was during the war with Spain to be regarded as enemy property subject to the laws of war, and to be destroyed whenever military necessity so demanded; nor could a citizen of the United States invoke the protection of the Constitution pending the war for his property in Cuba any more than could a Spanish subject. *Ib.*

WASHINGTON STATE.

See STATES, 3, 5.

WATERS.

See JURISDICTION, A 3;
NAVIGABLE WATERS;
STATES, 3, 4, 5, 6.

WITNESSES.

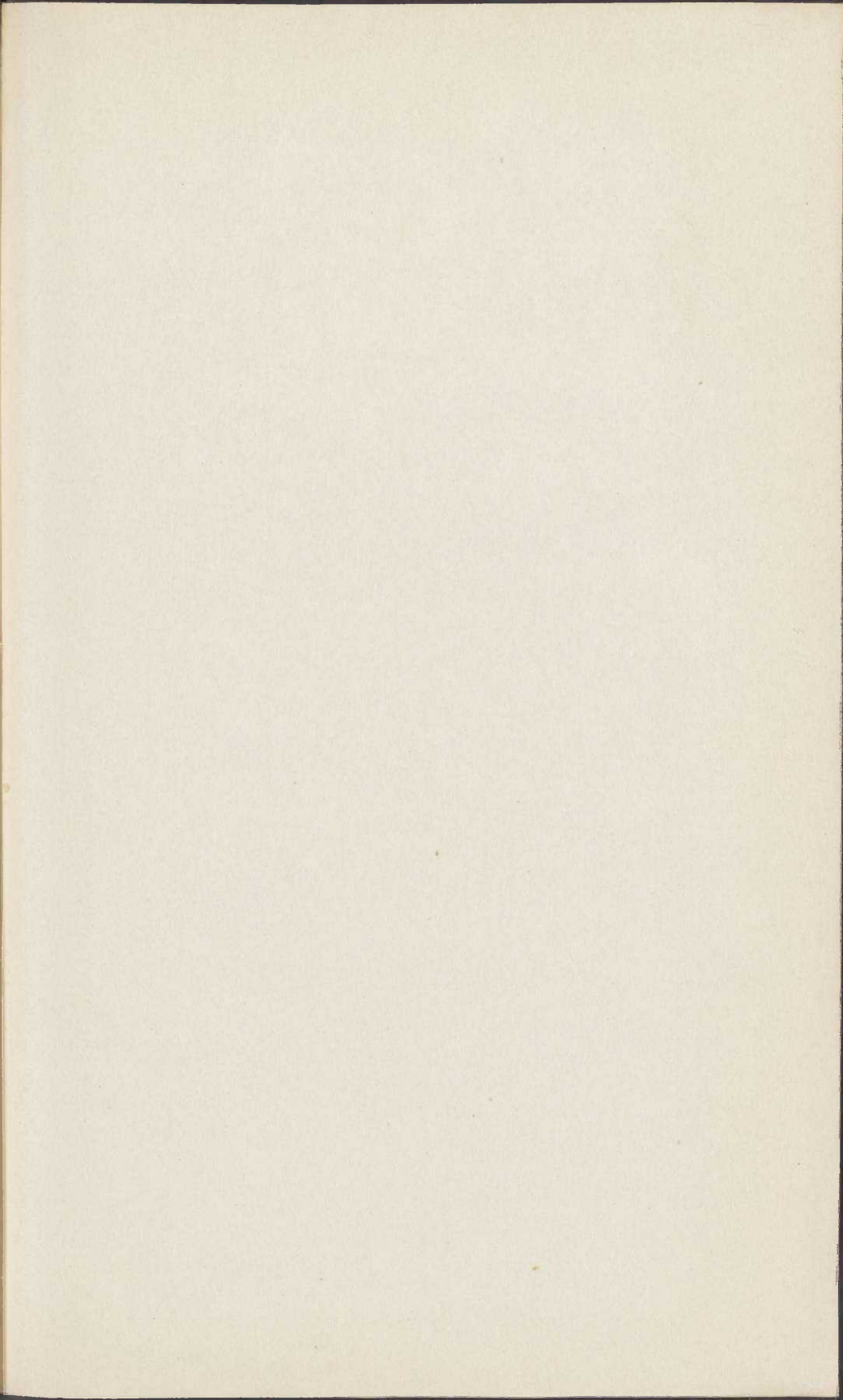
See EVIDENCE, 3.

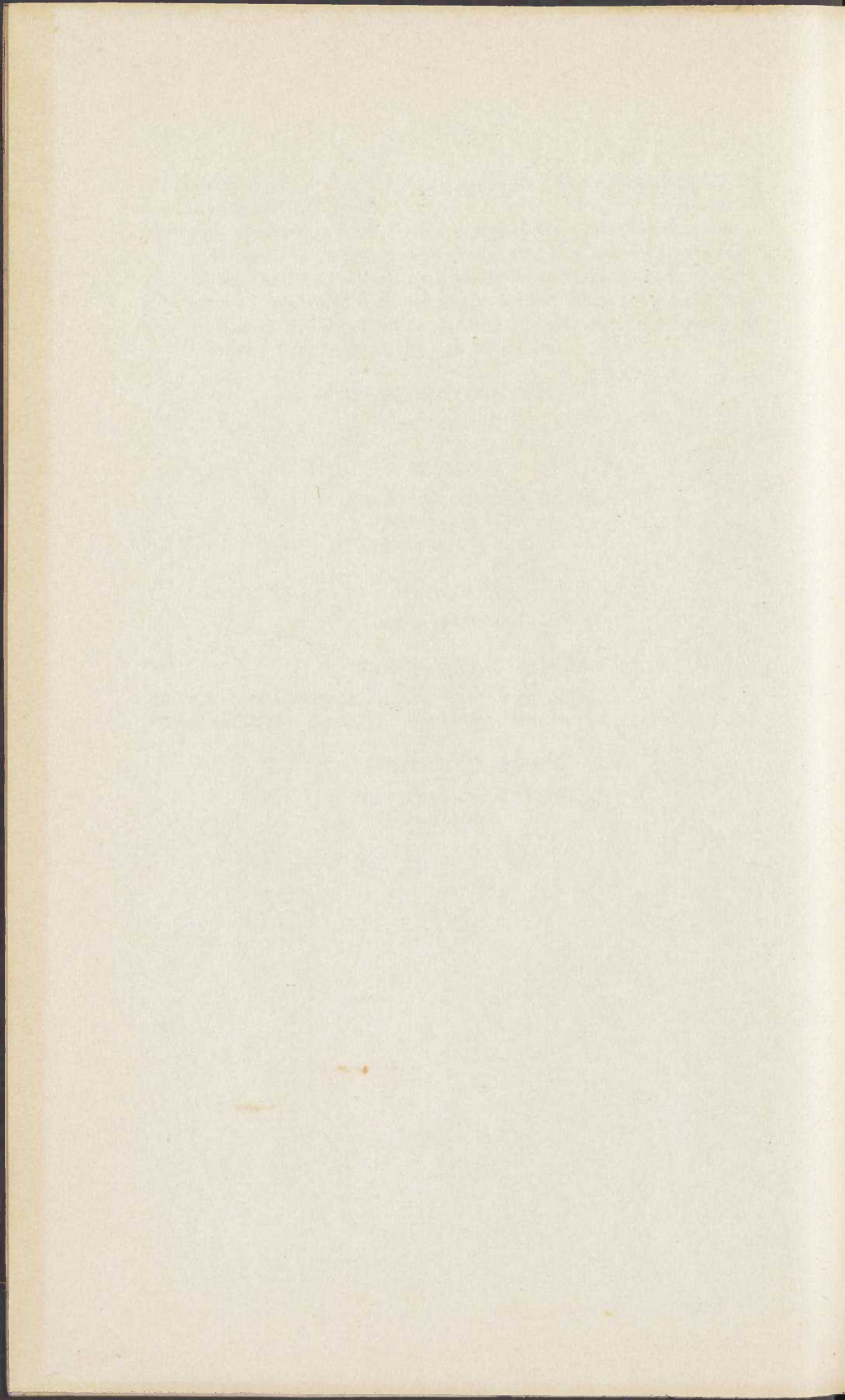
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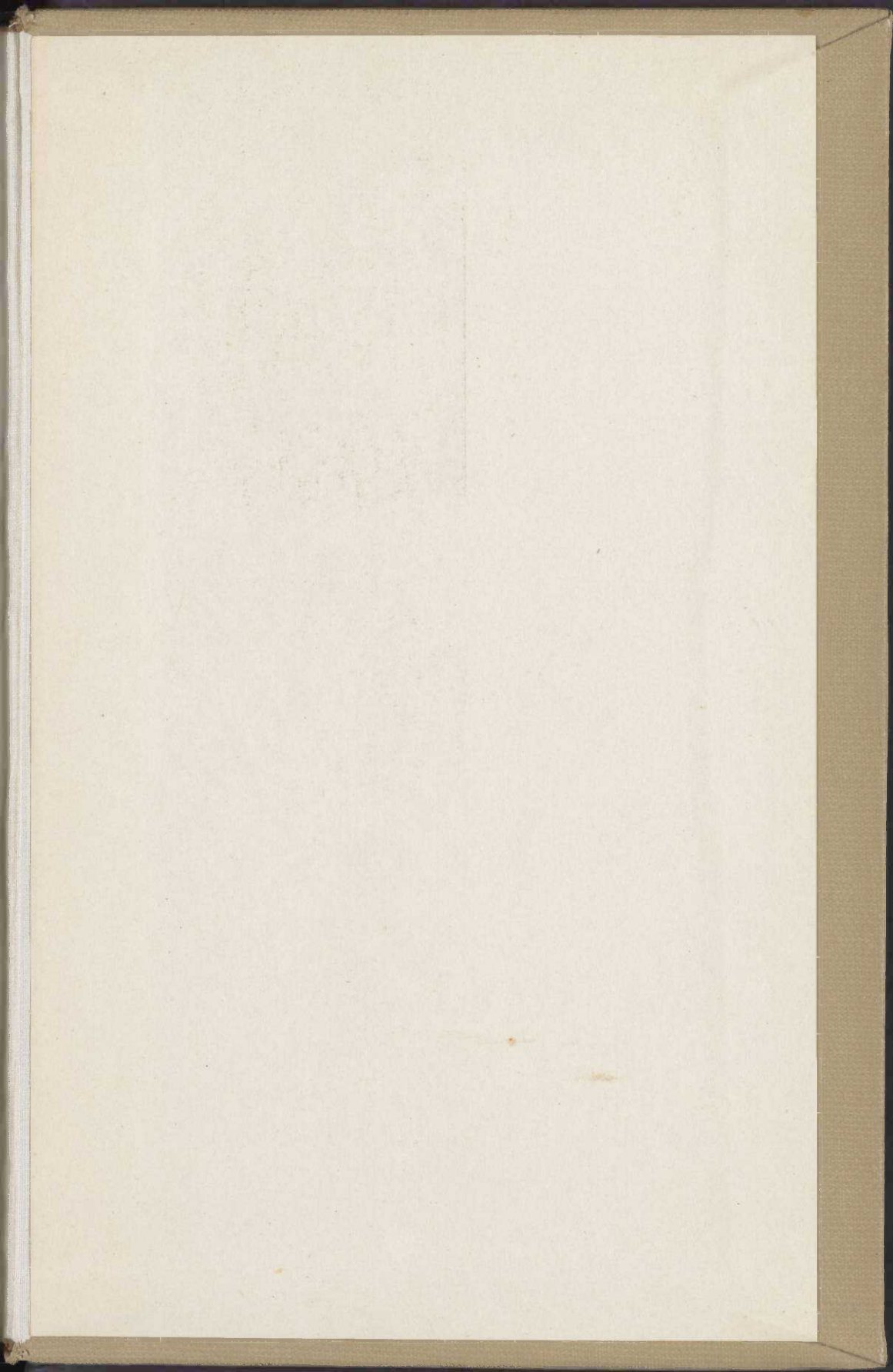
"About" (see Contracts, 2). *Harten v. Löfler*, 397.
"Sea beach" (see Deeds, 1). *Spreckels v. Brown*, 208.

WRIT OF ERROR.

See APPEAL AND ERROR;
JURISDICTION.







UNITED STATES

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OCTOBER

SENATE