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2. *When writ of error actually brought.*

A writ of error is not actually brought until filed in the court which rendered the judgment, and the same rule is applicable to appeals. (*Credit Company v. Arkansas Central Railway*, 128 U. S. 261.) *Old Nick Williams Co. v. United States*, 541.

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5. *Scope of review on writ of error where rights depend upon validity of a deed under an act of Congress.*

On a writ of error where the rights of the parties depend upon the

validity of a deed under an act of Congress this court is confined to the question of validity under the statute and the effect of the deed, if valid, upon the later rights and acquisitions of the grantor is a matter of local law; and, in this case, the court will not disturb the assumption of the state court that a settler giving a valid deed before patent perfected the title and obtained the patent on behalf of his grantee or else that the patent enured to the benefit of the grantee. *Sylvester v. Washington*, 80.

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2. *Lien of bank on securities deposited with it for a particular purpose.* The fact that a bank has in its possession securities which were sent to it for a particular purpose and which it is its duty to return to the sender, does not justify its retaining them for any other purpose under a banker's agreement giving it a general lien on all securities deposited by the sender. *Ib.*

3. *Lien of bank on securities—Construction of agreement.*

A banker's agreement giving a general lien on securities deposited by its correspondent will not be construed so as to give it a broad meaning beyond its evident scope and in conflict with the precepts of duty, good faith and confidence necessary for commercial transactions; nor will a printed form prepared by the banker be so extended by the construction of any ambiguous language. *Ib.*

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5. *Right of bank to set off overdraft of bankrupt against paper sent it for discount and wrongfully retained.*

Where a bank, after refusing to discount paper sent to it by the insolvent for that purpose, has retained the paper, it cannot, as against general creditors, set off against that paper, or its proceeds, the bankrupt's overdraft although made after such refusal and pending the retention of the paper. *Hanover Bank v. Suddath* (No. 2), 122.

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Where the terminal charge is reasonable it cannot be condemned, or the carrier charging it required to change it because prior charges of connecting carriers make the total rate unreasonable. *Ib.*

3. *Reasonableness of charge; considerations in determining.*

In determining whether the charge of a terminal company is or is not reasonable the fact that connecting carriers own the stock of the terminal company is immaterial, nor does that fact make the lines of the terminal company part of the lines or property of such connecting carriers. *Ib.*

4. *Hepburn Act; charges embraced within § 15.*

The inquiry authorized by § 15 of the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 584, relates to all charges made by the carrier; and, on such an inquiry, the carrier is entitled to have a finding that a particular charge is unreasonable before he is required to change it. *Ib.*

5. *Charges of carriers; remedy of shipper for excessive charges.*

Where the charge of a terminal company is in itself reasonable the wrong of a shipper by excessive aggregate charges should be corrected by proceedings against the connecting carrier guilty of the wrong. *Ib.*

6. *Charges of carriers; when prohibition justified.*

The convenience of the commission or the court is not the measure

of justice, and will not justify striking down a terminal charge when the real overcharge is the fault of a prior carrier. *Ib.*

*See COURTS*, 13, 14, 15;      INTERSTATE COMMERCE COM-

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2. *As respects the jurisdiction of this court.*

Congress cannot extend the original jurisdiction of this court beyond that prescribed by the Constitution; and an act providing for certifying questions of law will not be construed as permitting certification of the entire case before any judgment has been rendered below. *Baltimore & Ohio R. R. Co. v. Interstate Cem. Com.*, 216.

*See EMPLOYERS' LIABILITY*      PUBLIC LANDS, 2;

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2. *Contract clause; impairment of charter contract obligation. Power of State to determine procedure for transfer of stock of corporation. Validity of Kansas law of 1899.*

The State creating a corporation may determine how transfers of its stock shall be made and evidenced, and a change in the law imposing no restraint upon the transfer, but only affecting the method of procedure, does not impair the obligation of the charter contract within the meaning of the contract clause of the Federal Constitution; and so held that the corporation law of Kansas of 1899 is not void as to stockholders who purchased stock prior thereto and sold it thereafter, because it required a statement of the transfer of stock to be filed in the office of the Secretary of State in order to relieve the transferor of stockholder's liability, the act not depriving him of any defense that might be made at the time the stock was acquired. *Henley v. Myers*, 373.

3. *Contract clause; impairment of obligation of stockholder's contract by State in changing methods of procedure in actions to enforce liability.*

Methods of procedure in actions on contract that do not affect substantial rights of parties are within the control of the State, and the obligation of a stockholder's contract is not impaired within the meaning of the contract clause of the Federal Constitution by substituting for individual actions for statutory liability a suit in equity by the receiver of the insolvent corporation; and so held as to the corporation law of Kansas of 1899 amending prior laws to that effect. *Ib.*

4. *Contract clause—Effect of Louisiana act of November 5, 1870, to impair obligation of contracts.*

Act of November 5, of 1870, of State of Louisiana, providing for regis-

tration and collection of judgments against the city of New Orleans so far as it delays the payment, or collection of taxes for the payment, of contract claims existing before the passage of the act is void as impairing the obligation of contracts within the meaning of the Federal Constitution. *Hubert v. New Orleans*, 170.

*See CORPORATIONS*, 3, 5;

*Intra*, 5.

*Criminal prosecution.* *See CRIMINAL LAW*, 1.

5. *Due process of law; deprivation of property without; effect of injunction against maintenance of expired charter rights.*

Following the construction given by the state court, *held* that where a charter for a toll-road provided that the privileges granted should continue fifty years subject to the right of the county to acquire it after twenty years, all privileges ceased on the expiration of the fifty years; and the owner of the franchise was not deprived of his property without due process of law, nor was the obligation of the contract in its charter impaired, by an injunction, from further maintaining toll-gates on such road. *Scott County Road Co. v. Hines*, 336.

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6. *Full faith and credit; judicial proceedings held entitled to.*

Where the fundamental fact in issue in a suit by a wife for separate maintenance is whether there was a marriage, and the court having jurisdiction finds that the wife's petition should not be granted but should be dismissed, the courts of another State must, under the full faith and credit clause of the Constitution, regard such decree as determining that there was no marriage even though the husband may have asserted other defenses; nor can the wife, in a suit depending solely on the issue of whether there was a marriage, prove by oral testimony, in the absence of a bill of exceptions, that the decree may have rested on any of the other defenses asserted by the husband. *Everett v. Everett*, 203.

7. *Full faith and credit clause; effect of judgment concerning land situated beyond jurisdiction of court rendering it.*

The full faith and credit clause of the Constitution does not extend the jurisdiction of the courts of one State to property situated in another State, but only makes the judgment conclusive on the merits of the claim or subject-matter of the suit; and the courts of the State in which land is situated do not deny full faith

and credit to a decree of courts of another State, or to a master's deed thereunder, by holding that it does not operate directly upon, and transfer the property. *Fall v. Eastin*, 1.

*See JUDGMENTS AND DECREES*, 1.

8. *Taxation; state interference with Federal power of, by imposing requirements on holders of Federal liquor licenses.*

A state statute requiring the holder of a Federal license to sell malt or liquor to perform duties in conflict with the requirement of the Federal statute is an exercise of power repugnant to the Constitution and cannot be enforced; and so held as to chap. 189, General Laws of North Dakota, requiring the holder of such a license to file and publish a copy thereof. *Flaherty v. Hanson*, 515.

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#### CONTRACTS.

1. *Impairment of obligation by withdrawal of power of taxation incident thereto.*

The power of taxation conferred by law enters into the obligation of a contract, and subsequent legislation withdrawing or lessening such power and which leaves the creditors without adequate means of satisfaction impairs the obligation of their contracts. *Hubert v. New Orleans*, 170.

2. *Continuance of incident of taxation.*

A power to tax to fulfill contract obligations continues until the obligation is discharged. *Ib.*

3. *Specific performance on ground of part performance only where damages inadequate relief.*

In order that specific performance may be decreed on the ground of part performance the acts done and relied on by the party seeking relief must be such that damages would not be adequate relief. *Haffner v. Dobrinski*, 446.

4. *Specific performance on ground of part performance; judicial discretion in decreeing.*

Specific performance rests in judicial discretion to be exercised according to settled principles of equity and with reference to the facts in the particular case, and it may be refused where, as in this case, the conditions do not appeal to equitable consideration, even in case of part performance. *Ib.*

5. *Specific performance on ground of part performance; sufficiency of grounds for refusal to decree.*

The Supreme Court of Oklahoma did not err in refusing to decree specific performance in a case where complainant had funds in his possession sufficient to cover his damages, if any, and where that court held that the alleged contract was unreasonable in its provisions, lacked mutuality, and the part performance did not take the contract out of the statute of frauds. *Ib.*

6. *Construction of decision in Lowrey v. Hawaii, 206 U. S. 206.*

The decision and opinion of this court in *Lowrey v. Hawaii*, 206 U. S. 206, construed and followed as to construction of contract involved and liability thereunder of the Hawaiian government. *Lowrey v. Hawaii*, 554.

7. *Condition to teach definite Christian doctrine; how not satisfied.*

A condition to teach a definite Christian doctrine is not satisfied by teaching merely a form of general evangelical Christianity. *Ib.*

8. *Breach of covenant—Election; right of, where alternative obligation—Running of statute of limitations.*

Where the breach of a covenant of use entails either forfeiture or payment of a specified sum, the grantee has the right of election until disavowal on his part and denial of the alternative obligation, and until then, notwithstanding a continuous breach, the statute of limitations does not run against the grantor. *Ib.*

9. *In this case the judgment of the Supreme Court of the Territory of Oklahoma, involving contract rights, is affirmed. Snyder v. Rosenbaum, 261.*

See BANKS AND BANKING, 2; CORPORATION, 1-6;  
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See PARTIES, 1.

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A deed of trust conveying all lands of grantor or in which it has any interest held in this case to include its right to a liquidated sum in lieu of right of reentry for a breach of covenant of use of lands theretofore conveyed by it. *Lowrey v. Hawaii*, 554.

*See* CONSTITUTIONAL LAW, 7; EQUITY, 2, 3, 5, 6, 7;  
COURTS, 10, 11; JUDGMENTS AND DECREES, 2, 3.

## COPYRIGHTS.

1. *Statutory and common-law rights distinguished.*

Statutory copyright is not to be confounded with the exclusive property of the author in his manuscript at common law. *Caliga v. Inter Ocean Newspaper Co.*, 182.

2. *Statutory copyright a new right.*

In enacting the copyright statute Congress did not sanction an existing right but created a new one dependent on compliance with the statute. *Ib.*

3. *Applications; amendments—Validity of copyright granted on second application.*

Under existing copyright law of the United States there is no provision for filing amendments to the first application; and, the matter being wholly subject to statutory regulation, copyright on a second application cannot be sustained. *Ib.*

4. *Limitation; extension of.*

The statutory limit of copyright cannot be extended by new applications. *Ib.*

## CORPORATIONS.

1. *Duration; effect of franchise granted subsequent to act of incorporation to extend life of charter.*

Where the corporate existence has been recognized after the expiration of the shorter period and the State has not moved in *quo warranto*, a franchise legally granted by municipal ordinance and legislative enactment for the life of the charter of a public service corporation cannot be impaired during the term specified in the charter filed before the grant was made, although such term be longer than that allowed by the act under which the corporation was organized. *Minneapolis v. Street Railway Co.*, 417.

2. *Franchise contract; effect of end of corporate life.*

A franchise contract may extend beyond the life of the corporation to which it is granted; at the end of the corporate life it is a divisible asset. *Ib.*

3. *Franchises; effect of waiver of privileges under, on constitutional protection.*

Waiver to a reasonable extent of certain privileges under a franchise does not withdraw the other privileges from the protection of the contract clause of the Constitution. *Ib.*

4. *Public service; limitation of franchises.*

Franchises to public service corporations will not be extended by implication, but whatever is plainly and legally granted is protected by the contract clause of the Constitution. *Ib.*

5. *Instrumentalities of; effect of change of motive power on contract rights of public service corporation.*

An ordinance enacted before electricity was used as motive power prohibiting any power that would be a public nuisance will not be construed as excluding electricity; and a public service corporation accepting an ordinance permitting change from horse to electric power does not abandon its rights under the original ordinance so that they are no longer protected by the contract clause of the Constitution. *Ib.*

6. *Stockholder's right as to procedure for enforcement of liability—Power of State to regulate procedure.*

In becoming a stockholder of a corporation one does not acquire as against the State a vested right in any particular mode of procedure for enforcement of liability, but it is assumed that parties make their contracts with reference to the existence of the power in the State to regulate such procedure. *Henley v. Myers*, 373.

*See CONSTITUTIONAL LAW*, 2, 3, 5; *PROCESS*;  
*PRACTICE AND PROCEDURE*, 13; *REMOVAL OF CAUSES*, 8;  
*STATUTES*, A 5, 7

## COURTS.

1. *Federal; equity jurisdiction and whence derived; restraint by state legislation.*

The equity jurisdiction of the Federal courts is derived from the Federal Constitution and statutes and is like unto that of the High Court of Chancery in England at the time of the adoption of the Judiciary Act of 1789; it is not subject to limitations or

restraints by state legislation giving jurisdiction to state courts over similar matters. *Waterman v. Canal-Louisiana Bank Co.*, 33.

2. *Federal; equity jurisdiction to establish claims of and have execution of trust as to creditors, legatees and heirs of decedent.*

While Federal courts cannot seize and control property which is in the possession of the state courts and have no jurisdiction of a purely probate character, they can, as courts of chancery, exercise jurisdiction, where proper diversity of citizenship exists, in favor of creditors, legatees, and heirs, to establish their claims and have a proper execution of the trust as to them. *Ib.*

3. *Federal; equity jurisdiction of—Possess no probate jurisdiction.*

Although complainant in this case asks in some of her prayers for relief which is beyond the jurisdiction of the court as being of a purely probate character if the allegations of the bill support them the court may grant other prayers for relief which are within its jurisdiction, and, as a court of equity, shape its decree according to the equity of the case. *Ib.*

4. *Federal; jurisdiction to determine interests of parties in estate of decedent; binding effect of decree.*

Where the bill does not seek to set aside the probate of a will or interfere with the possession of the probate court, the Federal court of equity, in a case where diverse citizenship exists, may determine as between the parties before the court their interests in the estate and such decree will be binding upon, and may be enforced against, the executor. *Ib.*

5. *Federal; respect of decree of, by state court, assumed—Federal question presented by failure to so respect.*

It will be assumed that the state probate court will respect the decree of the Federal court having jurisdiction settling the rights of parties in an estate, and the denial of effect of such a decree presents a claim of Federal right which can be protected by this court. *Ib.*

6. *Federal; equity jurisdiction; effect of absence of parties.*

While a Federal court of equity cannot, either under the forty-seventh rule in equity or general principles of equity, proceed to adjudication in the absence of indispensable parties, if it can do justice to the parties before it without injury to absent persons it will do so and shape the decree so as to preserve the rights of those actually before the court, without prejudice to the rights of the absentees. *Ib.*

*7. Federal; equity jurisdiction; effect of absence of parties.*

In this case the absent party was not of the same State as complainant and had no interest in common with complainant and while a proper, was not an indispensable party, as his interests were separate and could be protected by retention of his legacy by the executors subject to adjudication in another suit. *Ib.*

*8. Federal and state; when decisions of latter courts binding upon former.*

Rules of law relating to real estate, so established by state decisions rendered before the rights of the parties accrued, as to have become rules of property and action, are accepted by the Federal court; but where the law has not thus been settled it is the right and duty of the Federal court to exercise its own judgment, as it always does in cases depending on doctrines of commercial law and general jurisprudence. *Kuhn v. Fairmont Coal Co.*, 349.

*9. Federal and state; comity.*

Even in questions in which the Federal court exercises its own judgment, the Federal court should, for the sake of comity and to avoid confusion, lean to agreement with the state court if the question is balanced with doubt. *Ib.*

*10. Federal and state; when former should exercise independent judgment on questions concerning real estate.*

When determining the effect of conveyances or written instruments between private parties, citizens of different States, it is the right and duty of the Federal court to exercise its own independent judgment where no authoritative state decision had been rendered by the state court before the rights of the parties had accrued and become final. *Ib.*

*11. Federal and state; when former not bound by decision of latter in construction of deed of real estate.*

The Federal court is not bound by a decision of the state court, rendered after the deed involved in the case in the Federal court was made and after the injury was sustained, holding that there is no implied reservation in a deed conveying subsurface coal and the right to mine it to leave enough coal to support the surface in its original position. *Ib.*

*12. Federal; conclusiveness of state decisions and statutes on.*

Notwithstanding the conformity act, § 914, Rev. Stat., decisions and statutes of States are not conclusive upon the Federal courts in determining questions of jurisdiction. *Mechanical Appliance Co. v. Castleman*, 437.

13. *Conflict with Interstate Commerce Commission—Paramount power of commission in respect of regulation of interstate commerce.*

Regulations which are primarily within the competency of the Interstate Commerce Commission are not subject to judicial supervision or enforcement until that body has been properly afforded an opportunity to exert its administrative functions. *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, applied, and *Southern Railway Co. v. Tift*, 206 U. S. 428, distinguished. *Balto. & Ohio R. R. Co. v. Pitcairn Coal Co.*, 481.

14. *Interference in matters within competency of Interstate Commerce Commission—Regulation of distribution of coal cars.*

The distribution to shippers of coal cars including those owned by the shippers and those used by the carrier for its own fuel is a matter involving preference and discrimination and within the competency of the Interstate Commerce Commission, and the courts cannot interfere with regulations in regard to such distribution until after action thereon by the commission. *Ib.*

15. *Limitations on, under court review provisions of § 15 of act to regulate commerce as amended in 1906.*

Under the court review provisions of § 15 of the act to regulate commerce as amended in 1906, the courts are limited to the question of power of the commission to make the order and cannot consider the wisdom or expediency of the order itself. (*Interstate Commerce Commission v. Illinois Central Railroad*, *ante*, p. 452.) *Ib.*

*See CONSTITUTIONAL LAW*, 6; *JURISDICTION*;  
*CUSTOMS LAW*, 2; *PHILIPPINE ISLANDS*, 4;  
*INTERSTATE COMMERCE COM- PRACTICE AND PROCEDURE*;  
*MISSION*, 1; *REMOVAL OF CAUSES*;  
*STATUTES*, A 12.

#### CRIMINAL APPEALS ACT.

*See JURISDICTION*, A 1, 2.

#### CRIMINAL LAW.

1. *Right of defendant as to production of witnesses against him—Direction of verdict against accused.*

When the Government prosecutes by indictment for a penalty that it might sue for in a civil action the person proceeded against is entitled to all constitutional protection as to production of witnesses against him and a verdict cannot be directed against him as might be the case in a civil action. *United States v. Stevenson*, 190.

2. *Conspiracy to commit offense against United States within meaning of § 5440, Rev. Stat.*

Where Congress has made an act a crime and indictable it follows that if two or more conspire to commit the act they conspire to commit an offense against the United States within the meaning of § 5440, Rev. Stat.; and so held in regard to conspiring to assist immigration of contract laborers in violation of § 4 of the Immigration Act of February 20, 1907, c. 1134, 34 Stat. 898. *United States v. Stevenson* (No. 2), 200.

3. *Intent; how charged; when its existence is and is not question for jury.*

Where intent is an essential ingredient of a crime it may be charged in general terms and its existence becomes a question for the jury, excepting only where the criminal intent could not as a matter of law have existed under any possible circumstances. *United States v. Corbett*, 233.

4. *Intent to injure national bank as incident of offense defined by § 5209, Rev. Stat.*

Under Rev. Stat., § 5209, false entries as to the condition of a national bank may be made with intent to injure the bank even though they show the bank to be in a more favorable condition than it actually is, and the question of intent to injure is one for the jury. *Ib.*

See CONGRESS, POWERS OF, 1; EXTRADITION;  
CUSTOMS LAW, 1; INDIANS, 2, 3, 5;  
STATUTES, A 2-7, 9.

#### CUSTOMS LAW.

1. *Administrative act of 1890 construed—Weigher within provisions of § 9.*

Under § 9 of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 131, 135, providing punishment for making and aiding in false entries, the words "owner, importer, consignee, agent or other person" include a weigher representing the Government, and his acts come within the letter and purpose of the statute. *United States v. Mescall*, 26.

2. *Departmental construction entitled to great weight—Similitude classification of sake.*

The construction given by the Department charged with executing a tariff act is entitled to great weight; and where for a number of years a manufactured article has been classified under the similitude section this court will lean in the same direction; and

so held that the Japanese beverage, sake, is properly dutiable under § 297 of the tariff act of July 24, 1897, c. 11, 30 Stat. 151, 205, as similar to still wine and not as similar to beer. *Komada v. United States*, 392.

3. *Departmental classification of article; effect on, of subsequent legislation of Congress.*

After a departmental classification of an article under the similitude section of a tariff law, the reënactment, by Congress, of a tariff law without specially classifying that article may be regarded as a qualified approval by Congress of such classification. *Ib.*

## DAMAGES.

*See CONTRACTS, 3, 5;  
EQUITY, 4.*

## DECREES.

*See JUDGMENTS AND DECREES.*

## DEEDS.

See CONVEYANCES; COURTS, 10, 11;  
CONSTITUTIONAL LAW, EQUITY, 2, 3, 5, 6, 7;  
7; JUDGMENTS AND DECREES, 2, 3.

## DEEDS OF TRUST.

*See CONVEYANCES.*

## DEFENSES.

*See MANDAMUS, 2.*

## DEPARTMENTAL CONSTRUCTION.

*See CUSTOMS LAW, 2, 3.*

## DIRECTED VERDICT.

See CRIMINAL LAW, 1.

## DISTINGUISHED CASES.

*See Cases Distinguished.*

## DISTRICT OF COLUMBIA.

See EMPLOYERS' LIABILITY ACT;  
STATUTES, A 8;  
TERRITORIES, 1.

## DIVERSITY OF CITIZENSHIP.

*See REMOVAL OF CAUSES.*

## DRY-DOCKS.

*See ADMIRALTY.*

## DUE PROCESS OF LAW.

*See CONSTITUTIONAL LAW, 4, 5.*

## DURESS.

*See INSTRUCTIONS TO JURY;  
LOCAL LAW (OKLA.).*

## EJUSDEM GENERIS.

*See STATUTES, A 11.*

## ELECTION.

*See CONTRACTS, 8.*

## EMPLOYERS' LIABILITY ACT.

1. *Effect of decision in 207 U. S. at p. 463 on validity as to District of Columbia and Territories.*

This court did not in its decision of the *Employers' Liability Cases*, 207 U. S. 463, hold the act of June 11, 1906, c. 3073, 34 Stat. 232, unconstitutional so far as it related to the District of Columbia and the Territories, and expressly refused to interpret the act as applying only to such employés of carriers in the District and Territories as were engaged in interstate commerce. *El Paso & Northeastern Ry. Co. v. Gutierrez*, 87.

2. *Intent of Congress as respects District of Columbia and Territories  
—Act constitutional when applied to District and Territories.*

The evident intent of Congress in enacting the Employers' Liability Act of June 11, 1906, was to enact the curative provisions of the law as applicable to the District of Columbia and the Territories under its plenary power irrespective of the interstate commerce feature of the act, and although unconstitutional as to the latter as held in 207 U. S. 463, it is constitutional and paramount as to commerce wholly in the District and Territories. *Ib.*

3. *Effect to supersede prior territorial legislation.*

The Employers' Liability Act of June 11, 1906, being a constitutional regulation of commerce in the District of Columbia and the

Territories necessarily supersedes prior territorial legislation on the same subject and non-compliance by the plaintiff employé with a provision of a territorial statute (in this case of New Mexico) cannot be pleaded by the defendant employer as a bar to an action for personal injuries. *Ib.*

#### ENTRYMEN.

*See PUBLIC LANDS, 2.*

#### EQUITY.

1. *Interference by injunction to enforce policy of State as to conservation of natural resources.*

Where the remedy at law is of doubtful adequacy and the policy of the State is clearly indicated for the protection of an important industry, equity may interfere, although under different circumstances an injunction might be denied; and so held as to an injunction against cutting or boxing timber on pine lands in Georgia. *Graves v. Ashburn*, 331.

2. *Of suit to remove cloud on title to land in absence of allegation of possession.*

Possession of unenclosed woodland in natural condition is a fiction of law rather than a possible fact, and can reasonably be assumed to follow the title; and, in this case, *held* that a suit in equity could be maintained to remove cloud on title and cancel a fraudulent deed of timber lands in Georgia notwithstanding there was no allegation of possession. *Ib.*

3. *Jurisdiction of suit to cancel deed valid on its face.*

A suit in equity may be maintained to cancel a deed improperly given where the invalidity does not appear on its face, and under which by the state law, as in Georgia, possession might give a title. *Ib.*

4. *Jurisdiction of suit to cancel deed; effect of commission of waste by defendant.*

The fact that the defendant has, during the pendency of an equity action to set aside a deed, continued to waste the property does not destroy the jurisdiction of the court; the bill may be retained and damages assessed. *Ib.*

5. *Reformation of instruments; scope of inquiry.*

In a suit in equity to have a deed declared a mortgage and in which fraud, oppression and undue influence are charged, the court is

not concluded by what appears on the face of the papers but may inquire into the real facts of the transactions. (*Russell v. Southard*, 12 How. 139.) *Wagg v. Herbert*, 546.

6. *Reformation of instruments; effect on status of parties.*

A court of equity may decree that a deed given in settlement of a mortgage debt, no new consideration moving, was, by reason of fraud, oppression and undue influence, merely a new mortgage, and by such decree no new contract is created by the court, and the relation of mortgagor and mortgagee originally existing is not disturbed. *Ib.*

7. *Laches barring recovery; analogy to statute of limitations.*

Though laches may be the equitable equivalent of the legal statute of limitations, there is no fixed time that makes it a bar, and in this case a delay of a little over two years (the statutory period) in bringing an action to have a deed declared an equitable mortgage did not amount to laches. *Ib.*

8. *Specific enforcement of right to apply for patent to lands.*

A right to an instrument that will confer a title in a thing is a right to the thing itself, and a statutory right to apply for a patent to mining lands is a right that equity will specifically enforce. *Reavis v. Fianza*, 16.

*See* CONTRACTS, 3, 4, 5; JUDGMENTS AND DECREES, 1, 2;  
COURTS, 1-5; PLEADING, 1.

EQUIVALENTS.

*See* PATENTS, 3.

ESTATES OF DECEDENTS.

*See* COURTS, 2-7.

ESTOPPEL.

*See* CONSTITUTIONAL LAW, 6.

EVIDENCE.

*See* CONSTITUTIONAL LAW, 6; PHILIPPINE ISLANDS, 4;  
EXTRADITION; PRACTICE AND PROCEDURE, 12;  
INTOXICATING LIQUORS; REMOVAL OF CAUSES, 7.

EXECUTIVE FUNCTIONS.

*See* EXTRADITION, 1, 2.

## EXECUTORS AND ADMINISTRATORS.

*See COURTS, 4, 7.*

## EXPLAINED CASES.

*See CASES EXPLAINED.*

## EXTRADITION.

1. *Rights of accused—Not entitled to notice of executive consideration of requisition.*

The executive of a State upon whom a demand is made for the surrender of a fugitive from justice may act on the papers in the absence of, and without notice to, the accused, and it is for that executive to determine whether he will regard the requisition papers as sufficient proof that the accused has been charged with crime in, and is a fugitive from justice from, the demanding State, or whether he will demand, as he may if he sees fit so to do, further proof in regard to such facts. *Marbles v. Creecy*, 63.

2. *Surrender of fugitive; effect on legality, of notice in requisition that demanding State not responsible for expenses of extradition.*

A notice in the requisition papers that the demanding State will not be responsible for any expenses attending the arrest and delivery of the fugitive does not affect the legality of the surrender so far as the rights of the accused under the Constitution and laws of the United States are concerned. *Ib.*

3. *Considerations not affecting judgment of executive of surrendering State.*

The executive of the surrendering State need not be controlled in the discharge of his duty by considerations of race or color, or, in the absence of proof, by suggestions that the alleged fugitive will not be fairly dealt with by the demanding State. *Ib.*

4. *Requisition; assumption of fairness and good faith in making.*

On *habeas corpus* the court can assume that a requisition made by an executive of a State is solely for the purpose of enforcing its laws and that the person surrendered will be legally tried and adequately protected from illegal violence. *Ib.*

5. *Foreign; sufficiency of complaint.*

In foreign extradition proceedings the complaint is sufficient to authorize the commissioner to act if it so clearly and explicitly states a treaty crime that the accused knows exactly what the charge is; nor need the record and depositions from the demand-

ing country be actually fastened to the complaint. *Yordi v. Nolte*, 227.

6. *Foreign—Hearing before commissioner; admissibility of depositions.*

In this case held that depositions in the possession of the officer of the demanding country making the complaint, which showed actual grounds for the prosecution and of which the commissioner had knowledge, from their use in a former proceeding, were admissible on the hearing before the commissioner and were also admissible for the purpose of vesting jurisdiction in him to issue the warrant. *Ib.*

7. *Foreign; sufficiency of evidence to establish extraditable crime of forgery under treaty with Mexico, for purpose of holding accused for extradition.*

In this case this court, reviewing the evidence, reverses the territorial court and finds that there is evidence to show, with sufficient certainty, that an extraditable crime was committed by the person benefited thereby, and thus to satisfy the extradition procedure statute and justify the order of the commissioner committing the accused to await the action of the Executive Department on a requisition made for forgery under the treaty of —— with Mexico. *Elias v. Ramirez*, 398.

8. *Foreign; admissibility of evidence before commissioner.*

Although the statements of certain witnesses were unsworn to and therefore might not, under the state law, be admissible before a committing magistrate, under the extradition statute they are receivable by the commissioner to create a probability of the commission of the crime by the accused. *Ib.*

#### FACTS.

*See PRACTICE AND PROCEDURE*, 6, 10, 12;

*REMOVAL OF CAUSES*, 5.

#### FALSE ENTRIES.

*See STATUTES*, A 2.

#### FEDERAL QUESTION.

*Absence of Federal question in case involving title derived under Federal authority, where decision based on general law.*

The determination by a state court that a purchaser *pendente lite* from the trustee of a bankrupt is bound by the decree against the trustee in the action of which he has notice gives effect to such

decree under the principles of general law; and if, as in this case, it does not involve passing on the nature and character of the rights of the parties arising from the transaction of purchase and sale, no Federal question is involved. *Kenney v. Craven*, 125.

*See JURISDICTION;*  
*PRACTICE AND PROCEDURE*, 15.

#### FIRE DAMAGE.

*See ADMIRALTY*, 1.

#### FOLLOWED CASES.

*See CASES FOLLOWED.*

#### FOREIGN CORPORATIONS.

*See PROCESS.*

#### FOREIGN EXTRADITION.

*See EXTRADITION*, 5-8.

#### FORGERY.

*See EXTRADITION*, 7.

#### FRANCHISES.

*Delay in completing work under statutory permission; effect of injunction as excuse.*

The fact that for a time work was enjoined at the instance of the Government does not excuse the delay in completing work under statutory permission within the time prescribed where the delay exceeds the limit after deducting all the time for which the injunction was in force. *Rio Grande Dam &c. Co. v. United States*, 266.

*See CONSTITUTIONAL LAW*, 5;  
*CORPORATIONS*, 1-4.

#### FRAUD.

*See REMOVAL OF CAUSES*, 3, 4.

#### FRAUDULENT CONVEYANCES.

*See EQUITY*, 2-6.

#### FUGITIVE FROM JUSTICE.

*See EXTRADITION*, 1-3.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 6, 7;  
JUDGMENTS AND DECREES, 1.

## GRANTS.

*See* LAND GRANTS;  
PUBLIC LANDS, 3, 4, 5.

## HABEAS CORPUS.

*See* EXTRADITION, 4.

## HAWAII.

*See* CONTRACTS, 6.

## HEPBURN ACT.

*See* COMMERCE, 4.

## HOMESTEADS.

*See* PUBLIC LANDS, 2, 4.

## HUSBAND AND WIFE.

*See* CONSTITUTIONAL LAW, 6.

## IGNORANCE OF LAW.

*See* LAND GRANTS, 2.

## IMMIGRATION.

*See* CRIMINAL LAW, 2;  
STATUTES, A 4.

## IMPAIRMENT OF CONTRACT OBLIGATION.

*See* CONSTITUTIONAL LAW, 2, 3, 4;  
CONTRACTS, 1;  
CORPORATIONS, 1.

## IMPERTINENT MATTER.

*See* PRACTICE AND PROCEDURE, 18.

## IMPORTS.

*See* CUSTOMS DUTIES, 2, 3.

## INDIANS.

1. *Choctaw*—*Effect of patent issued in pursuance of Treaty of Dancing Rabbit Creek of September 27, 1830—Individual rights.*

The grant in letters patent, issued in pursuance of the treaty of Dancing

Rabbit Creek of September 27, 1830, 7 Stat. 333, conveying the tract described to the Choctaw Indians in fee simple to them and their descendants to inure to them while they should exist as a nation and live thereon, was a grant to the Choctaw Nation, to be administered by it as such; it did not create a trust for the individuals then comprising the nation and their respective descendants in whom as tenants in common the legal title would merge with the equitable title on dissolution of the nation. *Fleming v. McCurtain*, 56.

2. *Allottee; jurisdiction of United States over.*

Although an Indian may be made a citizen of the United States and of the State in which the reservation for his tribe is located, the United States may still retain jurisdiction over him for offenses committed within the limits of the reservation; and so held as to a crime committed by an Indian against another Indian on the Tulalip Indian Reservation in Washington, notwithstanding the Indians had received allotments under the treaties with the Omahas of March 16, 1834, and of Point Elliott of January 22, 1835. *Matter of Heff*, 197 U. S. 488, distinguished, the Indian in that case being an allottee under the general allotment act of February 8, 1887, c. 119, 24 Stat. 388. *United States v. Celestine*, 278.

3. *Jurisdiction of United States over—Interest of Indians considered in construction of Federal statutes.*

Legislation of Congress is to be construed in the interest of the Indians; and, in the absence of a subjection in terms of the individual Indian to state laws and denial of further jurisdiction over him by the United States, a statute will not be construed as a renunciation of jurisdiction by the United States of crimes committed by Indians against Indians on Indian reservations. *Ib.*

4. *Citizenship; suggestion by Congress in act of May 8, 1906.*

The act of May 8, 1906, c. 2348, 34 Stat. 182, extending the trust period of allottees under the act of 1887, suggests that Congress believed it had been hasty in its prior action in granting citizenship to Indians. *Ib.*

5. *Jurisdiction over offenses committed on reservations.*

*United States v. Celestine*, ante, p. 278, followed, as to continuance of jurisdiction of United States over offenses committed within the limits of an Indian reservation. *United States v. Sutton*, 291.

6. *Introduction of liquor in Indian country; power of Congress to prohibit and punish.*

The Indians, as wards of the Government, are the beneficiaries of

the prohibition against the introduction of liquor into Indian country; and, under the Washington enabling act, jurisdiction and control over Indian lands remains in the United States, and Congress has power to prohibit and punish the introduction of liquor therein. *Ib.*

**7. Reservations; limits not affected by allotments in severalty.**

The limits of an Indian reservation are not changed by allotments in severalty during the trust period, and, where the lands allotted are subject to restrictions against alienation and to defeasance, the prohibition against liquor continues to be effective. *Ib.*

**INJUNCTION.**

*See* CONSTITUTIONAL LAW, 5;

EQUITY, 1;

FRANCHISES.

**INSOLVENCY.**

*See* NATIONAL BANKS.

**INSTRUCTIONS TO JURY.**

*Omission in statutory definition of duress held not reversible error.*

Stating only part of a statutory definition of duress in the charge to the jury held not reversible error, it not appearing that the defendant was hurt thereby. *Snyder v. Rosenbaum*, 261.

**INTENT IN CRIMINAL LAW.**

*See* CRIMINAL LAW, 3, 4.

**INTERSTATE COMMERCE.**

*See* COURTS, 13-15;

INTERSTATE COMMERCE COM-

EMPLOYERS' LIABILITY ACT;

MISSION;

MANDAMUS, 6, 7.

**INTERSTATE COMMERCE COMMISSION.**

**1. Order of Commission; setting aside; power to make and not wisdom the test of validity.**

In determining whether an order of the Interstate Commerce Commission shall be suspended or set aside, power to make—and not the wisdom of—the order is the test and this court must consider all relevant questions of constitutional power or right, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it pur-

ports to be made, and also whether even if in form it is within such delegated authority it is not so in substance because so arbitrary and unreasonable as to render it invalid. *Interstate Com. Com. v. Illinois Cent. R. Co.*, 452.

2. *Instruments of interstate commerce under control of.*

The equipment of an interstate railroad, including cars for transportation of its own fuel are instruments of interstate commerce and subject to control of the Interstate Commerce Commission. *Ib.*

3. *Power to consider question of distribution of coal cars.*

The act to regulate commerce has delegated to the Interstate Commerce Commission authority to consider, where complaint is made on that subject, the question of distribution of coal cars, including the carrier's own fuel cars, in times of car shortage, as a means of prohibiting unjust preference or undue discrimination. *Ib.*

4. *Power to make arrangements for distribution of coal cars to shippers.*

*Interstate Commerce Commission v. Illinois Central Railroad Company*, ante, p. 452, followed as to power under the act to regulate commerce of the Commission to make reasonable arrangements for the distribution of coal cars to shippers, including cars for transportation of fuel purchased by the railroad company for its own use. *Interstate Com. Com. v. Chicago & Alton R. R. Co.*, 479.

5. *Power to require railroad to take into account its own fuel cars in making distribution.*

It is not beyond the power of the Interstate Commerce Commission to require a railroad in distributing its coal cars to take into account its own fuel cars in order not to create a preference of the mine to which such cars are assigned over other mines. *Interstate Com. Com. v. Illinois Cent. R. Co.*, 452.

6. *Power to deal with preferential and discriminatory regulations of carriers.*

Under § 15 of the act to regulate commerce as amended June 29, 1906, c. 3591, 34 Stat. 585, the Interstate Commerce Commission has power to deal with preferential and discriminatory regulations of carriers as well as with rates. *Ib.*

7. *Instrumentalities of commerce within control of.*

Even if commerce in regard to the purchase of coal at a mine on a railroad line by the railroad company which supplies its own

cars may end there, the power to use the equipment of the railroad to move the coal is subject to the control of the Interstate Commerce Commission in order to prevent discrimination against, or undue preference of, other miners and shippers of coal. *Ib.*

*See COURTS*, 13-15;

*PRACTICE AND PROCEDURE*, 3, 7.

#### INTERSTATE RENDITION.

*See EXTRADITION*, 1-4.

#### INTOXICATING LIQUORS.

*Presumption as to dealing in; effect of payment of Federal tax.*

*Quare*, whether the payment to the United States of the special liquor tax and taking a receipt therefor creates a *prima facie* presumption that the person holding the receipt is engaged in the liquor business. *Flaherty v. Hanson*, 515.

*See CONSTITUTIONAL LAW*, 8;

*INDIANS*, 6, 7.

#### INVENTION.

*See PATENTS.*

#### JOINDER OF PARTIES.

*See REMOVAL OF CAUSES*, 1-4.

#### JUDGMENTS AND DECREES.

1. *Efficacy of decree for conveyance of land situated outside of jurisdiction of court.*

While a court of equity acting upon the person of the defendant may decree a conveyance of land in another jurisdiction and enforce the execution of the decree by process against the defendant, neither the decree, nor any conveyance under it except by the party in whom title is vested, is of any efficacy beyond the jurisdiction of the court. (*Corbett v. Nutt*, 10 Wall. 464.) *Fall v. Eastin*, 1.

2. *Same.*

A court not having jurisdiction of the *res* cannot affect it by its decree nor by a deed made by a master in accordance with the decree. *Ib.*

3. *Application of local legislation as to effect of decree.*

Local legislation of a State as to effect of a decree, or a conveyance made by a master pursuant thereto, on the *res* does not apply to the operation of the decree on property situated in another State. *Ib.*

4. *Res judicata; extent of application of rule.*

While the bar of a judgment in another action for the same claim or

demand between the same parties extends to not only what was, but what might have been, pleaded or litigated in the first action, if the second action is upon a different claim or demand the bar of the first judgment is limited to that which was actually litigated. *Virginia-Carolina Chemical Co. v. Kirven*, 252.

5. *Decree; scope should be limited to necessities of case.*

Where all that is necessary is to determine whether a right under a state charter is now in existence, the decree should be confined thereto, and should not attempt to determine the further duration of the charter under state statutes. *Minneapolis v. Street Railway Co.*, 417.

6. *Privy to decree establishing right entitled to have right recognized in subsequent suit involving same subject and defended by him for another.*

Where a decree to which he is privy has established the right of a manufacturer to sell an article, there is force in the argument that such right should be recognized in another suit against his customer and defended by him. (*Kessler v. Eldred*, 206 U. S. 285.) *Brill v. Washington Ry. & Electric Co.*, 527.

*See* CONSTITUTIONAL LAW, 4, 6, 7; COURTS, 3-6; FEDERAL QUESTION; MANDAMUS, 2, 3; PARTIES, 2; TRIAL.

JUDICIAL DISCRETION.

*See* CONTRACTS, 4; PLEADING, 2.

JURISDICTION.

A. OF THIS COURT.

1. *Under Criminal Appeals Act of 1907—Indictment for violation of § 5209, Rev. Stat.*

Whether the person deceived by false entries is the person intended by the statute, and whether the averments as to the deceit are sufficient to sustain the indictment, are questions which involve the construction of the statute on which an indictment for making false entries in violation of § 5209, Rev. Stat., is based, and this court has jurisdiction to review under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246. *United States v. Corbett*, 233.

2. *Under Criminal Appeals Act of 1907—Scope of review.*

On writ of error taken by the United States under the Criminal Ap-

peals Act of March 2, 1907, c. 2564, 34 Stat. 1246, where the indictment was dismissed as not sustained by the statute and also as bad on principles of general law, this court can only review the decision so far as it is based on the invalidity or construction of the statute, it cannot consider questions of general law. (*United States v. Keitel*, 211 U. S. 370.) *United States v. Stevenson*, 190.

3. *On certificate under § 1 of act of February 11, 1903—When case may not be certified.*

Under § 1 of the expediting act of February 11, 1903, c. 544, 32 Stat. 823, the case, although turning only on a point of law cannot be certified to this court, in absence of any judgment, opinion, decision, or order determinative of the case below. *Baltimore & Ohio R. R. Co. v. Interstate Com. Com.*, 216; *Southern Pacific Co. v. Interstate Com. Com.*, 226.

4. *Direct review under § 5, Court of Appeals Act of 1897.*

Whether defendant was subject to service of process at the place where served is one of the jurisdictional questions which may be brought directly to this court under § 5 of the Court of Appeals Act as amended January 20, 1897, c. 68, 29 Stat. 492. (*Remington v. Central Pacific Railroad Co.*, 198 U. S. 95.) *Mechanical Appliance Co. v. Castleman*, 437.

5. *Under § 5 of the act of 1891—When jurisdiction of court as Federal court involved.*

Where the case is dismissed because the character of the action is one cognizable exclusively by a court of admiralty and the jurisdiction is challenged because the situation of the vessel and the character of the services rendered afforded no jurisdiction in admiralty, the jurisdiction of the court as a Federal court is involved and the case is one cognizable by this court under § 5 of the act of 1891. *The Steamship Jefferson*, 130.

6. *On appeal from District Court sitting in admiralty—Sufficiency of certificate.*

Where the District Court has allowed an appeal, but has not certified that the question of jurisdiction alone was involved, as required by § 5 of the act of March 3, 1891, c. 517, 26 Stat. 826, if it appears from the face of the record, irrespective of recitals in the order, that the cause was dismissed for want of jurisdiction, the question of jurisdiction, if it is of such a character as to sustain the appeal, is sufficiently certified. (*United States v. Larkin*, 208 U. S. 333.) *Ib.*

7. *Under § 709, Rev. Stat.—Involution of Federal question.*

Where the effect of the judgment of the state court is to deny the defense that a statute of a Territory is a bar to the action, a claim of Federal right is denied and this court has jurisdiction under § 709, Rev. Stat., to review the judgment. (*Atchison, Topeka & Santa Fe Ry. v. Sowers*, 213 U. S. 55.) *El Paso & Northeastern Ry. Co. v. Gutierrez*, 87.

8. *Under § 709, Rev. Stat.—Involution of Federal question.*

Where in the state court plaintiff in error set up the invalidity of a deed under the provisions of an act of Congress and judgment could not be rendered against him without sustaining the deed this court has jurisdiction under § 709, Rev. Stat. (*Anderson v. Carkins*, 135 U. S. 483; *Nutt v. Knut*, 200 U. S. 12.) *Sylvester v. Washington*, 80.

9. *Under § 709, Rev. Stat.—Involution of Federal right—Objection to assessment of national bank shares.*

Where the validity of the local statute under which national bank shares are assessed was not drawn in question, but the only objection in the state court was that the assessment was in excess of actual value, exorbitant, unjust and not in proportion with other like property, no Federal right was set up or denied and this court has no jurisdiction to review the judgment under § 709, Rev. Stat. *First National Bank v. Estherville*, 341.

10. *Involution of Federal question; construction of Federal statute.*

This court has jurisdiction of this case; for, even if the requisite amount is not involved, the meaning and effect of a provision of the Philippine Organic Act of July 1, 1902, c. 1369, 32 Stats. 691, is involved. *Reavis v. Fianza*, 16.

11. *Under § 709, Rev. Stat.—When construction of law of United States involved.*

Where plaintiff bases his bill on the contention that under the town-site law, § 2387, Rev. Stat., the ascertainment of boundaries by official survey is a condition subsequent upon which the vesting of the equitable rights of the occupant depends, the construction of a law of the United States is involved, and, if passed on adversely by the state court, this court has jurisdiction under § 709, Rev. Stat., to review the judgment. *Scully v. Squier*, 144.

12. *Federal question involved by claim of want of full credit by state court of judgment of Federal court.*

The claim of plaintiff in error that proper and full credit was not

given to a judgment in the Federal court, if seasonably made, raises a Federal question and if the decision of the state court is in effect against such claim this court has jurisdiction. *Virginia-Carolina Chemical Co. v. Kirven*, 252.

13. *Under § 709, Rev. Stat.—Judgment resting on non-Federal grounds.* Where the judgment of the state court rests on non-Federal grounds broad enough to sustain it this court cannot review it under § 709, Rev. Stat. *Kansas City Star Co. v. Julian*, 589.
14. *Appeal from Circuit Court of Appeals dismissed for want of jurisdiction.* *North Carolina Mining Co. v. Westfeldt*, 586.
15. *Writ of error to Circuit Court of Appeals dismissed for want of jurisdiction.* *Helvetia-Swiss Fire Ins. Co. v. Brandenstein*, 588.
16. *Writs of error to Circuit Courts of the United States dismissed for want of final judgment.* *Pfaelzer v. Bach Fur Co.*, 584; *Remick & Co. v. Stern*, 585.
17. *Appeal from Circuit Court of the United States dismissed for want of jurisdiction.* *Guaranty Trust Co. v. Metropolitan St. Ry. Co.*, 587.
18. *Writs of error to highest courts of States dismissed for want of jurisdiction.* *Mackenzie v. Mackenzie*, 582; *Strong v. Gassert*, 583; *Barker v. Butte Consolidated Mining Co.*, 584; *Thomas v. Iowa*, 591; *Huston v. Haskell*, 592; *Berger v. Tracy*, 594.
19. *To review judgment of state court based on contract clause of Constitution.*  
This court has not jurisdiction to review the judgment of a state court based on the contract clause of the Constitution unless the alleged impairment was by subsequent legislation which has been upheld or given effect by the judgment sought to be reviewed. (*Bacon v. Texas*, 163 U. S. 207.) *Hubert v. New Orleans*, 170.
20. *Writ of error to review judgment of a state court dismissed for want of jurisdiction without opinion on authority of previous decisions.* *Mills v. Johnson*, 590.
21. *On certificate.*  
A certificate in which there was no opinion, judgment or order of the court below dismissed on authority of *Baltimore & Ohio R. R.*

*Co. v. Interstate Com. Com.*, *ante*, p. 216. *United States v. Terminal Railroad Assn.*, 595.

*See CONGRESS, POWERS OF, 2;*  
*COURTS.*

**B. OF CIRCUIT COURTS OF THE UNITED STATES.**

1. *Of suit by shippers to enjoin railroad from putting tariff schedule into effect.*

A suit brought by shippers to enjoin a railroad company from putting a tariff schedule into effect on the ground that it violates rights secured by the act to regulate commerce is a case arising under the Constitution and laws of the United States, and the jurisdiction of the Circuit Court over the person of the defendant must be determined accordingly. *Macon Grocery Co. v. Atlantic Coast Line R. R. Co.*, 501.

2. *Of case arising under Constitution and laws of United States; residence of defendant in district essential.*

Under the jurisdictional act of March 3, 1875, c. 137, 18 Stat. 470, as amended by the act of March 3, 1887, c. 373, 24 Stat. 552, corrected by the act of August 13, 1888, c. 866, 25 Stat. 433, the Circuit Court in the district of which the defendant is not an inhabitant has not jurisdiction of a case arising under the Constitution and laws of the United States, even though diverse citizenship exist, the plaintiff resides in the district, and the cause be one alone cognizable in a Federal court. *Ib.*

3. *Status of case as one arising under laws of United States.*

While the construction of the act of Congress under which a patent issued and what rights passed under the patent present Federal questions which give the Circuit Court jurisdiction of the case as one arising under the laws of the United States, if prior decisions have so defined such rights that they are removed from controversy, jurisdiction does not exist in the absence of diverse citizenship. *McGilvra v. Ross*, 70.

**C. OF FEDERAL COURTS GENERALLY.**

*In administration of state laws.*

When administering state laws and determining rights accruing thereunder, the jurisdiction of the Federal court is an independent one, coördinate and concurrent with, and not subordinate to, the jurisdiction of the state courts. *Kuhn v. Fairmont Coal Co.*, 349.

*See COURTS, 1-5, 12.*

## D. EQUITY.

*See COURTS, 1, 2, 3, 4, 6;  
EQUITY;  
JUDGMENTS AND DECREES, 1, 2, 3.*

## E. ADMIRALTY.

*See ADMIRALTY.*

## F. PROBATE.

*See COURTS, 2, 3, 4.*

## G. STATE COURTS.

*See CONSTITUTIONAL LAW, 7.*

## H. OVER INDIANS.

*See INDIANS, 2, 3, 5, 6.*

## I. GENERALLY.

*Appellate; determination of case by inferior court implied—What amounts to original jurisdiction.*

Appellate jurisdiction implies the determination of the case by an inferior court, and the transfer of the case to the appellate court without such determination amounts to giving the appellate court original jurisdiction. *Baltimore & Ohio R. R. Co. v. Interstate Com. Com.*, 216.

## LABOR AND MATERIAL LAW.

*See PUBLIC WORKS.*

## LACHES.

*See APPEAL AND ERROR, 4;  
EQUITY, 7;  
FRANCHISES.*

## LAND GRANTS.

1. *Philippine Islands; validity of grant of public land.*

In this case the grant involved was made without authority by subordinate officials, was void *ab initio*, and conveyed no title to the original grantee or those holding under him. *Tiglao v. Insular Government*, 410.

2. *Prescription—Notice of imperfections in title chargeable to grantee.*

A man cannot take advantage of his ignorance of the law, and where

all that is done to give him a title is insufficient on its face, the grantee is chargeable with knowledge, does not hold in good faith, and in such a case prescription does not run from the date of the instrument under which he claims. *Ib.*

*See* EQUITY, 8;  
INDIANS, 1;  
PUBLIC LANDS, 3, 4, 5.

#### LEASE.

*See* RAILROADS;  
REMOVAL OF CAUSES, 4;  
TERRITORIES, 2.

#### LICENSES.

*See* CONSTITUTIONAL LAW, 8.

#### LIENS.

*See* BANKS AND BANKING, 1-3.

#### LIMITATIONS.

*See* CONTRACTS, 8;  
EQUITY, 7.

#### LIQUORS.

*See* CONSTITUTIONAL LAW, 8; INDIANS, 6, 7;  
CUSTOMS LAW, 2; INTOXICATING LIQUORS.

#### LOCAL LAW.

*Georgia.* Possession as evidence of title (see Equity, 3). *Graves v. Ashburn*, 331.

*Kansas.* Corporation law of 1899 (see Constitutional Law, 2, 3). *Henley v. Myers*, 373.

*Louisiana.* Act of November 5, 1870, for collection of judgments against city of New Orleans (see Constitutional Law, 4). *Hubert v. New Orleans*, 170.

*New Mexico.* *Supplemental pleadings.* Under the provisions of the Code of New Mexico allowing supplemental pleadings alleging facts material to the issue, the fact that the defendant corporation has, since the suit was brought by the Government to enjoin it from so building a dam as to interfere with the navigability

of an international river, failed to exercise its franchise in accordance with the statute, is germane to the object of the suit and may be pleaded by supplemental complaint. *Rio Grande Dam &c. Co. v. United States*, 266.

Practice (see Practice and Procedure, 4). *Santa Fé County v. Coler*, 296.

*North Dakota*. Regulation of sale of liquor (see Constitutional Law, 8). *Flaherty v. Hanson*, 515.

*Oklahoma*. *Duress invalidating contract*. The opinion of the Supreme Court of the Territory followed to the effect that the facts stated constituted duress within the meaning of the territorial statute. *Snyder v. Rosenbaum*, 261.

*Philippine Islands*. Organic Act of July 1, 1902 (see Jurisdiction, A 10). *Reavis v. Fianza*, 16. See *Philippine Islands*.

*South Carolina*. Code of Procedure, §§ 170, 171 (see Practice and Procedure, 5). *Virginia-Carolina Chemical Co. v. Kirven*, 252.

*Generally*. See Appeal and Error, 5; Employers' Liability Act, 3; Judgments and Decrees, 3; Public Lands, 5.

#### MANDAMUS.

1. *As remedy of creditors of municipality to compel exercise of power of taxation.*

Where a municipality has power to contract and tax to meet the obligation, the proper remedy of the creditor is by mandamus to the authorities of the municipality either to pay over taxes already collected for their debt or to levy and collect therefor. *Hubert v. New Orleans*, 170.

2. *To enforce judgment; availability of defense to original action.*

Although a defense to the merits if pleaded in the original action might have prevented rendition of the judgment, it cannot be urged to prevent mandamus from issuing to enforce the judgment. *Santa Fé County v. Coler*, 296.

3. *To enforce judgment; when authorized.*

Under the laws of New Mexico, where there is no possible excuse for a board of county commissioners not to comply with a judgment, a peremptory writ of mandamus in the first instance is authorized. *Ib.*

4. *Demand for enforcement of duty not necessary prerequisite.*

Where the bill shows it is clearly the purpose of defendant officers not to perform a duty imposed upon them, demand is not necessary before suit for mandamus. *Ib.*

5. *Reasonableness of tax levy required by writ.*

In this case it was held that the facts justified the amount of the tax levy required by the writ of mandamus as modified by the Supreme Court of the Territory. *Ib.*

6. *Limitation of remedy as provided in § 23 of the act to regulate commerce.*

Section 23 of the act to regulate commerce, although added thereto in 1889, will now be construed in the light of § 15, as amended in 1906; and the remedy of mandamus is limited to compelling the performance of duties which are either so plain as not to require a prerequisite exertion of power by the Interstate Commerce Commission or which plainly arise from the obligatory force given by the statute to existing orders rendered by the commission within the lawful scope of its authority. *Balto. & Ohio R. R. Co. v. Pitcairn Coal Co.*, 481.

7. *Under act to regulate commerce; submission of complaint to Interstate Commerce Commission as prerequisite to issuance of writ.*

Petition in mandamus by a shipper averring discrimination in distribution of coal cars by the Baltimore and Ohio Railroad dismissed because the matter had not been first submitted to the Interstate Commerce Commission. *Ib.*

8. *Motion for leave to file petition for a writ of mandamus or certiorari denied. Ex parte United States Con. Seeded Raisin Co.*, 591.

*See PRACTICE AND PROCEDURE, 4.*

## MARITIME LAW.

*See ADMIRALTY.*

## MARRIAGE.

*See CONSTITUTIONAL LAW, 6.*

## MASTER AND SERVANT.

*See EMPLOYERS' LIABILITY ACT.*

## MATERIALMEN.

*See PUBLIC WORKS.*

## MINES AND MINING.

*See* EQUITY, 8;  
INTERSTATE COMMERCE COMMISSION, 5, 7;  
PHILIPPINE ISLANDS, 1, 2, 3.

## MISDEMEANORS.

*See* STATUTES, A 9.

## MORTGAGES AND DEEDS OF TRUST.

*See* EQUITY, 5, 6, 7.

## MULTIFARIOUSNESS.

*See* PLEADING, 1.

## MUNICIPAL CORPORATIONS.

*See* MANDAMUS, 1;  
STATES, 3.

## NATIONAL BANKS.

*Assessment of stock on insolvency.*

Judgment of the Circuit Court of Appeals affirming a judgment of the District Court for an assessment of stock of an insolvent national bank made by the Comptroller, affirmed without opinion. *Kenyon v. Fowler*, 593.

*See* BANKS AND BANKING;  
CRIMINAL LAW, 4;  
STATUTES, A 2.

## NAVAL OFFICERS.

*See* TAXES AND TAXATION.

## NAVIGABILITY.

*See* PUBLIC LANDS, 7.

## NOTICE.

*See* ATTORNEYS;  
EXTRADITION, 1;  
LAND GRANTS, 2.

## NOVELTY.

*See* PATENTS, 1, 2.

## NUISANCES.

*See* CORPORATIONS, 5.

## OBJECTIONS.

*See PRACTICE AND PROCEDURE, 9.*

## OBLIGATIONS OF CONTRACTS.

*See CONSTITUTIONAL LAW;  
CONTRACTS, 1, 2.*

## OLEOMARGARINE ACT.

*See STATUTES, A 7.*

## ORDINANCES.

*See CONSTITUTIONAL LAW, 1;  
CORPORATIONS, 5.*

## OREGON DONATION ACT.

*See PUBLIC LANDS, 6.*

## PARTIES.

1. *Necessary—Detached portions of county not necessary parties to suit to recover obligations of original county—Contribution.*

Where parts of a county have been detached by statute which provides for the detached portions bearing their proportion of indebtedness, the counties to which those portions are attached are not necessary parties to a suit to recover obligations of the original county. After judgment the original county which is primarily liable may enforce contribution through the proper officers for the proportionate share of the detached portions. *Santa Fé County v. Coler*, 296.

2. *Privies; who bound as.*

Although one not a party may have contributed to the expenses of a former suit by reason of business or indirect interest, if it is not shown he had any right to participate in the conduct of the case he is not bound as a privy. *Rumford Chemical Works v. Hygienic Chemical Co.*, 156.

*See COURTS, 6, 7.*

## PATENTS.

1. *Validity; novelty of invention; definiteness and timeliness of description—Tip for acetylene burner.*

The patent for a tip for acetylene gas burners, and for the process of burning acetylene gas, held to be void by the court below and by this court because the tip was not new, the description too

indefinite, the amended specifications, which were unverified, brought in new matter and the claims for processes so called were only claims for the functions of the described tip. *Steward v. American Lava Co.*, 161.

2. *Patentability; novelty.*

Devices used in connection with steam railway cars are not patentable as new inventions when applied to street railway cars, even though a long time may have elapsed between their first use and their application to street cars. *Brill v. Washington Ry. & Electric Co.*, 527.

3. *Doctrine of equivalents.*

Where the claim is very narrow, as in this case, there is little room for the doctrine of equivalents. *Ib.*

4. *Validity; introduction of theory and method.*

A patent cannot be sustained when the theory and method are introduced for the first time in unverified amended specifications. *Steward v. American Lava Co.*, 161.

*See PUBLIC LANDS, 4.*

PENAL STATUTES.

*See STATUTES, A 2-7.*

PENALTIES AND FORFEITURES.

*For judgment of court against Shipp, Sheriff, et al. for contempt of court (214 U. S. 403), see United States v. Shipp, 580.*

*See CONGRESS, POWERS OF, 1;*  
*STATUTES, A 4-7.*

PETITIONS FOR CERTIORARI.

*See p. 596.*

PHILIPPINE ISLANDS.

1. *Mines; § 22 of Organic Act construed.*

The limitation of size of mining claims in § 22 of the Philippine Organic Act applies only to claims located after the passage of that act. *Reavis v. Fianza*, 16.

2. *Mines; location under § 28 of Organic Act; adverse claim under § 45.*

Under § 28 of the Philippine Organic Act a valid location could not be made if the land was occupied by one who was already in possession before the United States came into power, and the

claim of one locating under those conditions does not constitute an adverse claim under § 45 of that act. *Ib.*

3. *Mines; § 45 of Organic Act construed.*

The provision of § 45 of the Organic Act of the Philippine Islands relating to title to mines by prescription refers to conditions as they were before the United States came into power and had in view the natives of the islands and intention to do them liberal justice. *Ib.*

4. *Natives to be liberally dealt with by courts.*

Courts are justified in dealing liberally with natives of the Philippines in dealing with evidence of possession. (*Cariño v. Insular Government*, 212 U. S. 449.) *Ib.*

*See APPEAL AND ERROR, 1;*  
*LAND GRANTS, 1.*

PLEADING.

1. *Equity; multifariousness; availability of objection of.*

The objection of multifariousness is one of inconvenience, and, after trial, where the objection was not sustained by the lower court and defendants did not stand upon their demurrer setting it up, it will not prevail in this court in a case where the bill charged a conspiracy between several trespassers whose trespasses extended over contiguous lots treated as one. *Graves v. Ashburn*, 331.

2. *Supplemental pleadings; discretion of court as to allowance of.*

The allowance of amendments of supplemental pleadings must at every stage of the cause rest with the discretion of the court, which discretion must depend largely on the special circumstances of each case, nor will the exercise of this discretion be reviewed in the absence of gross abuse. *Rio Grande Dam &c. Co. v. United States*, 266.

*See CRIMINAL LAW, 3;*

*MANDAMUS, 2;*

*EMPLOYERS' LIABILITY ACT, 3;*

*PATENTS, 1, 4;*

*EQUITY, 2;*

*PRACTICE AND PROCEDURE, 1, 5;*

*LOCAL LAW (N. MEX.);*

*TRIAL.*

POLICE POWER.

*See STATES, 2.*

POSSESSION.

*See EQUITY, 2, 3;*  
*PHILIPPINE ISLANDS, 4.*

## POWERS OF CONGRESS.

*See CONGRESS, POWERS OF.*

## PRACTICE AND PROCEDURE.

1. *Amendment of complaint on reopening case for further evidence.*

Where a case is opened that further evidence may be produced, it is also open for the amendment of the original pleadings or for additional pleadings appropriate to the issue; and permission by the lower court to file such supplemental complaint is not inconsistent with the mandate of this court remanding the case with directions to grant leave to both sides to adduce further evidence. *Rio Grande Dam &c. Co. v. United States*, 266.

2. *Assignment of errors; court may notice error not assigned.*

Assignment of errors is not a jurisdictional requirement; and, although by the rule errors not assigned are disregarded, the court at its option may notice a plain error not assigned or specified. *Old Nick Williams Co. v. United States*, 541.

3. *Jurisdictional question considered although not assigned as error.*

Even if not assigned as error, this court will consider the jurisdictional question of whether there is power in the court, in view of the provisions of the act to regulate commerce, to grant the relief prayed for in regard to matters within the competency of the Interstate Commerce Commission. *Balto. & Ohio R. R. Co. v. Pitcairn Coal Co.*, 481.

4. *Following decisions of territorial courts on questions of local practice.*

Practice of the courts in a Territory is based upon local statutes and procedure and this court is not disposed to review the decisions of the Supreme Court of the Territory in such cases, and, following the Supreme Court of the Territory of New Mexico, this court holds that the power of that court to affirm or reverse and remand includes the power to modify, and extends to proceedings in mandamus. *Santa Fé County v. Coler*, 296.

5. *Conformity in Federal courts with practice in state courts.*

Under § 914, Rev. Stat., requiring the practice in the Federal courts to conform as near as may be to the practice in the state courts, the defendant in an action in the United States Circuit Court in South Carolina is not required to plead all counterclaims and offsets as the state courts have not so construed the provisions of §§ 170, 171 of the Code of Procedure of that State. *Virginia-Carolina Chemical Co. v. Kirven*, 252.

*6. Scope of review; when disputed fact not considered.*

Where the case is submitted on bill and answer, a fact, alleged in the complaint and denied in the answer and for which proof is demanded, cannot be considered, especially where, as in this case, there is a contrary finding of a body such as the Interstate Commerce Commission. *Interstate Com. Com. v. Chicago & Alton R. R. Co.*, 479.

*7. Scope of review on appeal alone by Interstate Commerce Commission where order of commission sustained in part.*

Where an order of the Interstate Commerce Commission is sustained by the court below in part and only the commission appeals, the conclusions of the court below as to those portions of the order sustained are not open to inquiry in this court. *Interstate Com. Com. v. Illinois Cent. R. R. Co.*, 452.

*8. Scope of review; concern of this court with modified view of state court in case other than the one at bar.*

When the question is the effect which should have been given by the state court to a judgment of the United States Circuit Court, this court is not concerned with the extent to which the state court may have subsequently modified its view if it has not questioned the correctness of its decision in the case at bar. *Virginia-Carolina Chemical Co. v. Kirven*, 252.

*9. Objection to form of remedy; when taken too late.*

Although, if seasonably taken, an objection to the form of remedy might be sustained, after trial on the merits it comes too late. *Reavis v. Fianza*, 16.

*10. Findings of fact concurred in by lower courts followed.*

Where the Circuit Court and Circuit Court of Appeals of the same circuit agree on certain facts this court will not reverse the finding in a case coming from that circuit notwithstanding the same fact may not have been found by the courts of another circuit. *Rumford Chemical Works v. Hygienic Chemical Co.*, 156.

*11. Reasoning of lower court not considered.*

In determining whether the action of the court below was or was not correct, this court does so irrespective of the reasoning by which such action was induced. *Interstate Com. Com. v. Illinois Cent. R. R. Co.*, 452.

*12. Evidence considered by this court.*

Although in subsequent cases a party may have proved his facts, the question when here must be decided on the evidence below in the

particular case. *Rumford Chemical Works v. Hygienic Chemical Co.*, 156.

13. *To what extent nature of corporation of State considered.*

This court will consider the nature of a corporation organized under a state law only so far as may be necessary to determine Federal rights. *Minneapolis v. Street Railway Co.*, 417.

14. *Certificate on division of opinion; what may be certified.*

Only distinct points of law that can be distinctly answered without regard to other issues can be certified to this court on division of opinion: the whole case cannot be certified even when its decision turns upon matter of law only. *Baltimore & Ohio R. R. Co. v. Interstate Com. Com.*, 216.

15. *Time for raising Federal question.*

Where the Federal question is first raised in the petition to the highest court of the State for rehearing it is too late. (*Loeber v. Schroeder*, 149 U. S. 580.) *Kansas City Star Co. v. Julian*, 589.

16. *Disposition of case by Circuit Court without jurisdiction because Federal questions foreclosed.*

Where the Circuit Court is without jurisdiction because the Federal questions presented by the bill are no longer open to discussion it should dismiss the bill and not decide it on the merits in order that the plaintiff's rights, if any, may be litigated in the state courts. *McGilvra v. Ross*, 70.

17. *Decree of Circuit Court of Appeals affirmed without opinion as to merits of reasoning on which it was based.*

Where pleas to the jurisdiction which should have been sustained on one ground were overruled but subsequently the Circuit Court of Appeals reversed and remanded with instructions to dismiss without prejudice for want of jurisdiction on a different ground, this court may reach the result which should have been originally arrived at by affirming the decree of the Circuit Court of Appeals without expressing any opinion as to the merits of the reasoning on which it was based. *Macon Grocery Co. v. Atlantic Coast Line R. R. Co.*, 501.

18. *Impertinent matter; striking petition from files for.*

In denying a petition for a writ of certiorari ordered, that parts of the petition and brief of petitioner be stricken from the files on account of impertinent and improper matter. *Yellow Poplar Lumber Co. v. Chapman*, 601.

See APPEAL AND ERROR, 5;

INTERSTATE COMMERCE COMMISSION, 1.

## PRESCRIPTION.

*See* LAND GRANTS, 2;  
PHILIPPINE ISLANDS, 3.

## PRESUMPTIONS.

*See* CORPORATIONS, 6; EXTRADITION, 4;  
EQUITY, 2; INTOXICATING LIQUORS;  
STATUTES, A 1.

## PRINCIPAL AND AGENT.

*See* STATUTES, A 2.

## PRIVIES.

*See* PARTIES, 2.

## PROBATE JURISDICTION.

*See* COURTS, 2, 3, 4.

## PROCESS.

*Service of foreign corporation in Federal jurisdiction.*

In Federal jurisdiction a foreign corporation can be served with process under a state statute only when it is doing business therein, and such service must be upon an agent representing the corporation in its business. (*Goldey v. Morning News Co.*, 156 U. S. 518.) *Mechanical Appliance Co. v. Castleman*, 437.

*See* JURISDICTION, A 4;  
REMOVAL OF CAUSES, 6, 7, 8.

## PUBLIC BUILDINGS.

*See* TERRITORIES, 2.

## PUBLIC LANDS.

1. *Meaning of "public lands" as used in legislation.*

The words "public lands" in legislation refer to such lands as are subject to sale or other disposal under general laws, and no other meaning will be attributed to them unless apparent from the context of or circumstances attending the legislation. *Union Pacific R. R. Co. v. Harris*, 386.

2. *Rights of entryman in possession—Power of Congress.*

While the power of Congress continues over lands sought to be acquired under preemption and homestead laws until final payment, an entryman in actual possession cannot be dispossessed of his priority at the instance of an individual. *Ib.*

3. *Railroad right of way; grant effective, when.*

While a grant of right of way may take effect as of the date of the grant that date must be found in the act prescribing the finally adopted route. *Ib.*

4. *Settler's rights; superiority over those of railroad's right of way.*

In this case the rights of a *bona fide* settler holding a patent under preëmption law and his grantee *held* superior to those of the railroad company under the act of July 1, 1862, 12 Stat. 489, 494, granting public lands for a railway right of way. *Ib.*

5. *Townsites—Object of local legislation authorized by § 2387, Rev. Stat.*

The object of local legislation authorized by the townsite law, § 2387, Rev. Stat., is to consummate the grant of the Government to the townsite occupants—not to alter or diminish it—and in this case the construction by the state court of the territorial statute followed to the effect that the trustee and surveyor had no power to alter or diminish the holdings of *bona fide* occupants by laying out or widening streets. *Scully v. Squier*, 144.

6. *Sale by settler before patent; validity under Oregon Donation Act of 1850.*

Under the Oregon Donation Act of September 27, 1850, c. 76, 9 Stat. 496, as amended July 17, 1854, c. 84, § 2, 10 Stat. 305, no condition except residence for four years was necessary to validate a sale by a settler before a patent. *Sylvester v. Washington*, 80.

7. *Water-bound lands; relative rights of patentee of United States and patentee of State.*

The decision in *Shively v. Bowlby*, 152 U. S. 1, which determined the relative rights of a patentee of the United States and one holding under a conveyance from the State of land below high watermark applies equally to lands bordering on navigable waters, whether tidal or inland, and the test of navigability is one of fact. *McGilvra v. Ross*, 70.

*See APPEAL AND ERROR*, 5;

*EQUITY*, 8.

## PUBLIC NUISANCES.

*See CORPORATIONS*, 5.

## PUBLIC OFFICERS.

*See TAXES AND TAXATION.*

## PUBLIC SERVICE CORPORATIONS.

*See CORPORATIONS*, 4.

## PUBLIC WORKS.

1. *Labor and material law of 1905; application to persons furnishing labor and materials to subcontractor.*

Under the labor and material law of February 24, 1905, c. 778, 33 Stat. 811, amending the act of August 13, 1894, c. 280, 28 Stat. 278, indemnity is provided for persons furnishing labor and materials to a subcontractor as well as to the contractor in chief for the construction of a public building. *Mankin v. Ludowici-Celadon Co.*, 533.

2. *Labor and material law of 1905; extent of application of indemnity provided.*

The indemnity extends to the full amount furnished notwithstanding the contract may have already paid the subcontractor in full or in part. Provisions in state statutes, limiting recovery against contractor to amount remaining unpaid to subcontractor, do not affect suits under the Federal statute which contains no such provisions. *Ib.*

3. *Subcontractors' status under act of 1905.*

The decision in *Hill v. American Surety Co.*, 200 U. S. 197, in regard to claims against subcontractors under the act of 1894, followed as to such claims under the statute as amended in 1905. *Ib.*

## RAILROAD LAND GRANTS.

*See* PUBLIC LANDS, 3, 4.

## RAILROADS.

*Lessor company's responsibility to public.*

A lessor railroad company remains responsible, so far as its duty to the public is concerned, notwithstanding it may lease its road, unless relieved by a statute of the State. *Illinois Central R. R. Co. v. Sheegog*, 308.

|                                     |                       |
|-------------------------------------|-----------------------|
| <i>See</i> COMMERCE, 1, 2, 3, 4, 6; | MISSION, 2-7;         |
| EMPLOYERS' LIABILITY ACT;           | MANDAMUS, 7;          |
| INTERSTATE COMMERCE COM-            | REMOVAL OF CAUSES, 4. |

## RAILWAY RATES.

*See* CONSTITUTIONAL LAW, 1.

## RATES.

*See* CONSTITUTIONAL LAW, 1.

## REAL PROPERTY.

*See COURTS, 8;*  
*EQUITY, 2, 3;*  
*JUDGMENTS AND DECREES, 1, 3.*

## REFORMATION OF INSTRUMENTS.

*See EQUITY, 5, 6, 7.*

## REGULATION OF INTERSTATE COMMERCE.

*See COURTS, 13, 14, 15.*

## REMEDIES.

*See COMMERCE, 5;*      *EQUITY;*  
*CONTRACTS, 3;*      *PRACTICE AND PROCEDURE, 9;*  
*MANDAMUS;*      *STATUTES, A 1.*

## REMOVAL OF CAUSES.

1. *Joint liability—Effect of dismissal of case as to defendants, residents of plaintiff's State, on right of non-residents to remove.*

Where plaintiff in good faith insists on the joint liability of all the defendants until the close of the trial, the dismissal of the complaint on the merits as to the defendants who are citizens of plaintiff's State does not operate to make the cause then removable as to non-resident defendants and to prevent the plaintiff from taking a verdict against the defendants who might have removed the cause had they been sued alone, or if there had originally been a separable controversy as to them. *Lathrop, Shea & Henwood Co. v. Interior Construction Co.*, 246.

2. *Joinder of parties; bona fides affecting right of removal.*

Where the joinder of the resident and the non-resident defendants prevents removal to the Federal court, the fact that on the trial the jury finds against the non-resident defendant only has no bearing on the question of removal if the joinder was not fraudulent. *Illinois Central R. R. Co. v. Sheegog*, 308.

3. *Joinder of parties; sufficiency of allegation of fraud.*

A plaintiff may sue the tort-feasors jointly if he sees fit, regardless of motive, and an allegation that resident and non-resident tort-feasors are sued for the purpose of preventing removal to the Federal court is not a sufficient allegation that the joinder was fraudulent. *Ib.*

4. *Joinder of parties; joinder of lessor and lessee railroads as tort-feasors held not fraudulent.*

Whether defendants can be sued jointly as tort-feasors is for the state court to decide; and so held that, where the state court

decides that a lessor road in that State is responsible for keeping its roadbed in order the joinder of both lessor and lessee roads, in a suit for damages caused by imperfect roadbed and management is not fraudulent and the lessee road, although non-resident, cannot remove if the lessor road is resident. *Ib.*

5. *Fact; allegations of; where tried.*

Allegations of fact, so far as material in a petition to remove, if controverted, must be tried in the Federal court, and therefore must be taken to be true when the state court fails to consider them. *Ib.*

6. *Right of party removing into Federal court to opinion of that court.*

After removal from the state to the Federal court, the moving party has a right to the opinion of the Federal court not only on the merits, but also as to the validity of the service of process. *Mechanical Appliance Co. v. Castleman*, 437.

7. *Determination by Federal court as to validity of service of process by state officer.*

In such case, and on such a question, it is proper for the court to consider affidavits, it not appearing in the record that any objection was taken thereto. *Ib.*

8. *Sheriff's return as to service of process not conclusive on Federal court after removal of case thereto.*

Even if by the law of the State the sheriff's return is conclusive and cannot be attacked, after removal into the Federal court, that court can determine whether a defendant was properly served; and if, as in this case, it appears that the corporation was not doing business in the State, the court should dismiss the bill for want of jurisdiction by proper service. *Ib.*

RESERVATIONS.

*See INDIANS.*

RES JUDICATA.

*See JUDGMENTS AND DECREES, 4, 6.*

RIPARIAN RIGHTS.

*See PUBLIC LANDS, 7.*

RIVERS.

*See STATES, 1.*

RULES OF COURT.

*For amendment to § 7 of Rule 24, of the rules of this court, see p. xiv.*

## SALES.

*See PUBLIC LANDS*, 6.

## SALVAGE.

*See ADMIRALTY*, 1.

## SERVICE OF PROCESS.

*See JURISDICTION*, A 4;  
PROCESS;  
REMOVAL OF CAUSES, 5, 7, 8.

## SET-OFF.

*See BANKS AND BANKING*, 5.

## SPECIFIC PERFORMANCE.

*See CONTRACTS*, 3, 4, 5;  
EQUITY, 8.

## STARE DECISIS.

*See COURTS*, 8, 10, 11, 12;  
STATUTES, A 10.

## STATES.

1. *Jurisdiction over beds of streams and other waters.*

Each State has full jurisdiction over the lands within its borders including the beds of streams and other waters, *Kansas v. Colorado*, 206 U. S. 46, 93, subject to the rights granted by the Constitution of the United States. *McGilvra v. Ross*, 70.

2. *Police power; exercise not to conflict with Federal authority.*

A State cannot so exert its police power as to directly hamper or destroy a lawful authority of the United States. *Flaherty v. Hanson*, 515.

3. *Power in respect of rights created by former legislation for security of debts of municipality.*

The legislature of a State cannot take away rights created by former legislation for the security of debts owing by a municipality of the State or postpone indefinitely the payment of lawful claims until such time as the municipality is ready to pay them. *Hubert v. New Orleans*, 170.

4. *Taxing power of United States may not be burdened by.*

A State cannot place a burden on a lawful taxing power of the United

States; nor can it place a burden upon the person paying a tax to the United States solely because of such payment and without reference to the doing by such person of any act within the State and subject to its regulating authority. *Flaherty v. Hanson*, 515.

*See* CONSTITUTIONAL LAW, 2, 3; PUBLIC LANDS, 7;  
CORPORATIONS, 6; PUBLIC WORKS, 2;  
COURTS, 1, 2; TAXES AND TAXATION.

#### STATUTE OF FRAUDS.

*See* CONTRACTS, 5.

#### STATUTE OF LIMITATIONS.

*See* CONTRACTS, 8;  
EQUITY, 7.

#### STATUTES.

##### A. CONSTRUCTION OF.

1. *History of legislation considered in determining intention of Congress.* In determining whether a special remedy created by a statute for enforcing a prescribed penalty excludes all other remedies, the intention of Congress may be found in the history of the legislation, and, in the absence of clear and specific language, Congress will not be presumed to have excluded the Government from a well-recognized method of enforcing its statutes. *United States v. Stevenson*, 190.

2. *Penal; rule of strict construction—Section 5209, Rev. Stat., held to include attempt to deceive Comptroller of the Currency.*

Notwithstanding the rule of strict construction the offense of deceiving an agent by doing a specified act may include deception of the officer appointing the agent where the statute is clearly aimed at the deception; and under § 5209, Rev. Stat., the making of false entries with the intent to deceive any agent appointed to examine the affairs of a national bank, includes an attempt to deceive the Comptroller of the Currency by false entries made in a report directly to him under § 5311, Rev. Stat. *United States v. Corbett*, 233.

3. *Penal; application of rule of strict construction.*

The rule of strict construction of penal statutes does not require a narrow technical meaning to be given to words in disregard of their context and so as to frustrate the obvious legislative intent. *Ib.*

4. *Penal statutes; enforcement by civil suit and by indictment—Immigration Act of 1907, §§ 4 and 5, construed.*

The fact that a penal statute provides for enforcing the prescribed penalty of fine and forfeiture by civil suit does not necessarily exclude enforcing by indictment; and so held in regard to penalty for assisting the immigration of contract laborers prescribed by §§ 4 and 5 of the Immigration Act of February 20, 1907, c. 1134, 34 Stat. 898. *United States v. Stevenson*, 190.

5. *Penal statutes; inclusion of corporations.*

Where corporations are as much within the mischief aimed at by a penal statute and as capable of willful breaches of the law as individuals the statute will not, if it can be reasonably interpreted as including corporations, be interpreted as excluding them. *United States v. Union Supply Co.*, 50.

6. *Penal statutes; effect of impossibility of imposition of one of two penalties.*

Where a penal statute prescribes two independent penalties, it will be construed as meaning to inflict them so far as possible, and, if one is impossible, the guilty defendant is not to escape the other which is possible. *Ib.*

7. *Penal; application of § 6 of Oleomargarine Act of 1902 to corporations.*

Section 6 of the act of May 9, 1902, c. 784, 32 Stat. 193, imposing certain duties on wholesale dealers in oleomargarine and imposing penalties of fine and imprisonment for violations applies to corporations, notwithstanding the penalty of imprisonment cannot be inflicted on a corporation. *Ib.*

8. *Separability—Validity of statute as measured by different powers of Congress.*

An act of Congress may be unconstitutional as measured by the commerce clause, and constitutional as measured by the power to govern the District of Columbia and the Territories, and the test of separability is whether Congress would have enacted the legislation exclusively for the District and the Territories. *El Paso & Northeastern Ry. Co. v. Gutierrez*, 87.

9. *Use of terms in prior statutes not conclusive.*

Although the term misdemeanor has at times been used in the statutes of the United States without strict regard to its common-law meaning, a misdemeanor at all times has been a crime, and a change in a statute by which that which before was merely unlawful is made a misdemeanor will not be presumed to be meaningless. *United States v. Stevenson*, 190.

10. *Effect of prior construction as stare decisis.*

The construction of a statute in a particular, in regard to which no question was raised, will not prevent the determination as an original question of how the statute should be construed in that particular when controverted in a subsequent case. *United States v. Corbett*, 233.

11. *Eiusdem generis; application of rule.*

The rule of *eiusdem generis*, that where the particular words of description are followed by general terms the latter will be regarded as referring to things of a like class with those particularly described, is only a rule of construction to aid in arriving at the real legislative intent and does not override all other rules. When the particular words exhaust the genus the general words must refer to words outside of those particularized. *United States v. Mescall*, 26.

12. *Validity—Duty of courts to sustain constitutionality.*

The rule that the court must sustain an act of Congress as constitutional unless there is no doubt as to its unconstitutionality also requires the court to sustain the act in so far as it is possible to sustain it. *El Paso & Northeastern Ry. Co. v. Gutierrez*, 87.

*See* CONGRESS, POWERS OF, 2; INDIANS, 3;  
CUSTOMS LAW, 1, 2; MANDAMUS, 6.

## B. STATUTES OF THE UNITED STATES.

*See* ACTS OF CONGRESS.

## C. STATUTES OF THE STATES AND TERRITORIES.

*See* LOCAL LAW.

## STOCK AND STOCKHOLDERS.

*See* CONSTITUTIONAL LAW, 2;  
CORPORATIONS, 6.

## STREET RAILWAYS.

*See* CONSTITUTIONAL LAW, 1.

## TARIFF.

*See* CUSTOMS LAW.

## TAXES AND TAXATION.

*State taxation of property of Federal officer.*

A judgment of the state court sustaining a tax on property of an

officer of the United States Navy affirmed on the authority of previous cases. *Dyer v. City of Melrose*, 594.

*See* CONSTITUTIONAL LAW, 4, 8; INTOXICATING LIQUORS; CONTRACTS, 1, 2; MANDAMUS, 1, 5; STATES, 4.

#### TERRITORIES.

1. *Commerce in; power of Congress to regulate.*

The power of Congress to regulate commerce in the District of Columbia and Territories is plenary and does not depend on the commerce clause, and a statute regulating such commerce necessarily supersedes a territorial statute on the same subject. *El Paso & Northeastern Ry. Co. v. Gutierrez*, 87.

2. *Public buildings; control of land on which erected under appropriation by Congress.*

Where Congress appropriates for a Territory to erect buildings the implication is that the Territory must control the land on which the buildings are to be erected, and where land is cheap the implied authority will not be limited to merely leasing the land. *Quære whether an organized Territory has not power to purchase land for a seat of government.* *Sylvester v. Washington*, 80.

*See* EMPLOYERS' LIABILITY ACT; STATUTES, A 8.

#### TIMBER.

*See* EQUITY, 1.

#### TITLE.

*See* APPEAL AND ERROR, 1, 5; EQUITY, 2; LAND GRANTS, 1, 2.

#### TOWNSITES.

*See* PUBLIC LANDS, 5.

#### TRANSFER OF STOCK.

*See* CONSTITUTIONAL LAW, 2.

#### TREATIES.

*See* INDIANS, 1.

#### TRIAL.

*Judgment pro confesso in absence of pleadings.*

In this case the action of the trial court in taking a supplemental

complaint for confessed in the absence of any pleading after the time therefor had elapsed, sustained, there appearing to be no excuse for the default and no irregularity appearing in the order permitting the filing of the complaint or in the service thereof.  
*Rio Grande Dam &c. Co. v. United States*, 266.

*See* CRIMINAL LAW, 3, 4;  
INSTRUCTIONS TO JURY;  
REMOVAL OF CAUSES, 5.

#### TRUSTS AND TRUSTEES.

*See* COURTS, 2;  
INDIANS, 1, 4.

#### UNITED STATES.

*See* INDIANS, 2, 3, 5, 6;  
STATES, 2, 4.

#### VERDICT.

*See* CRIMINAL LAW, 1.

#### VESSELS.

*See* ADMIRALTY, 1.

#### WAIVER.

*See* CORPORATIONS, 3.

#### WASTE.

*See* EQUITY, 4.

#### WATERS.

*See* PUBLIC LANDS, 7;  
STATES, 1.

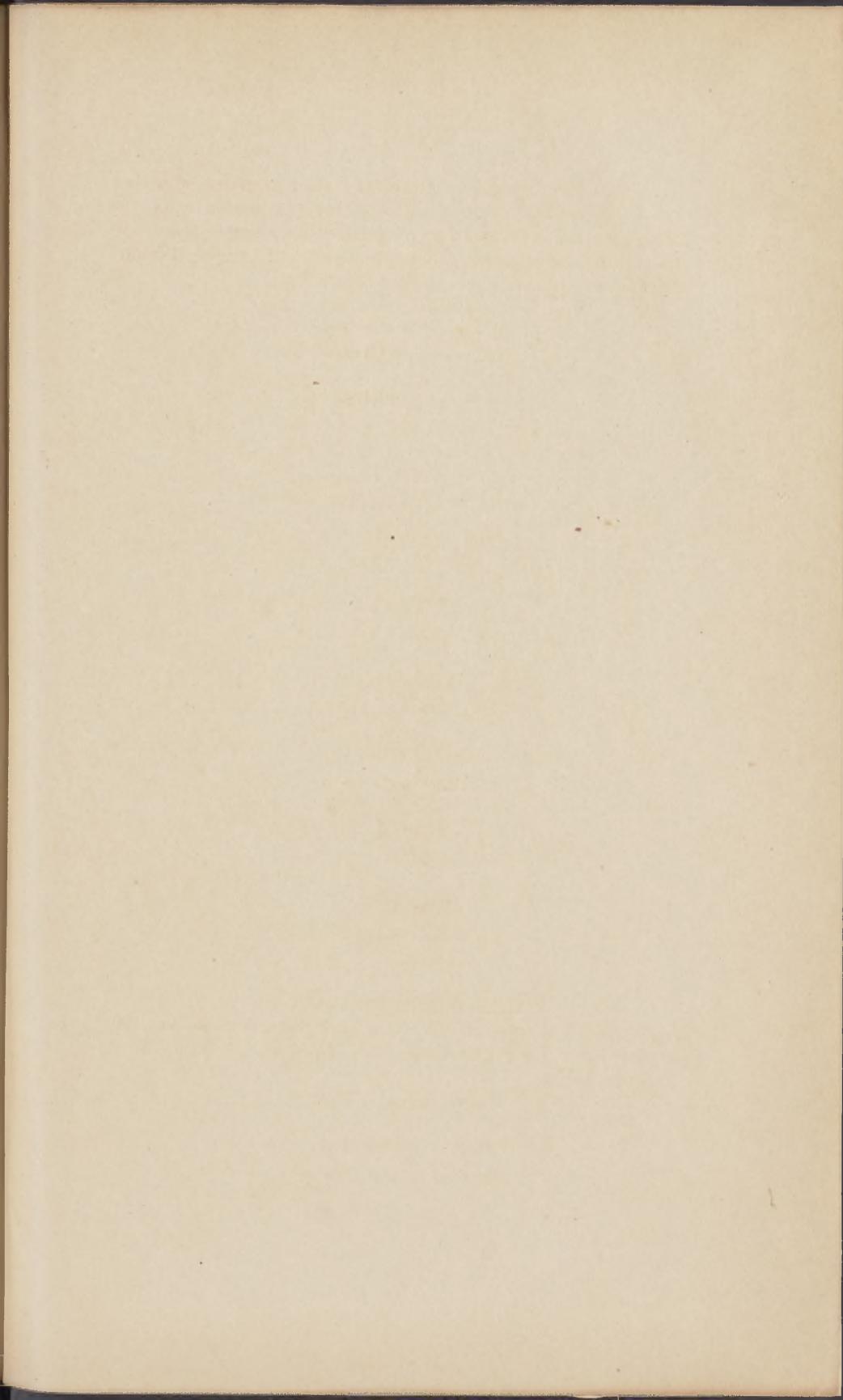
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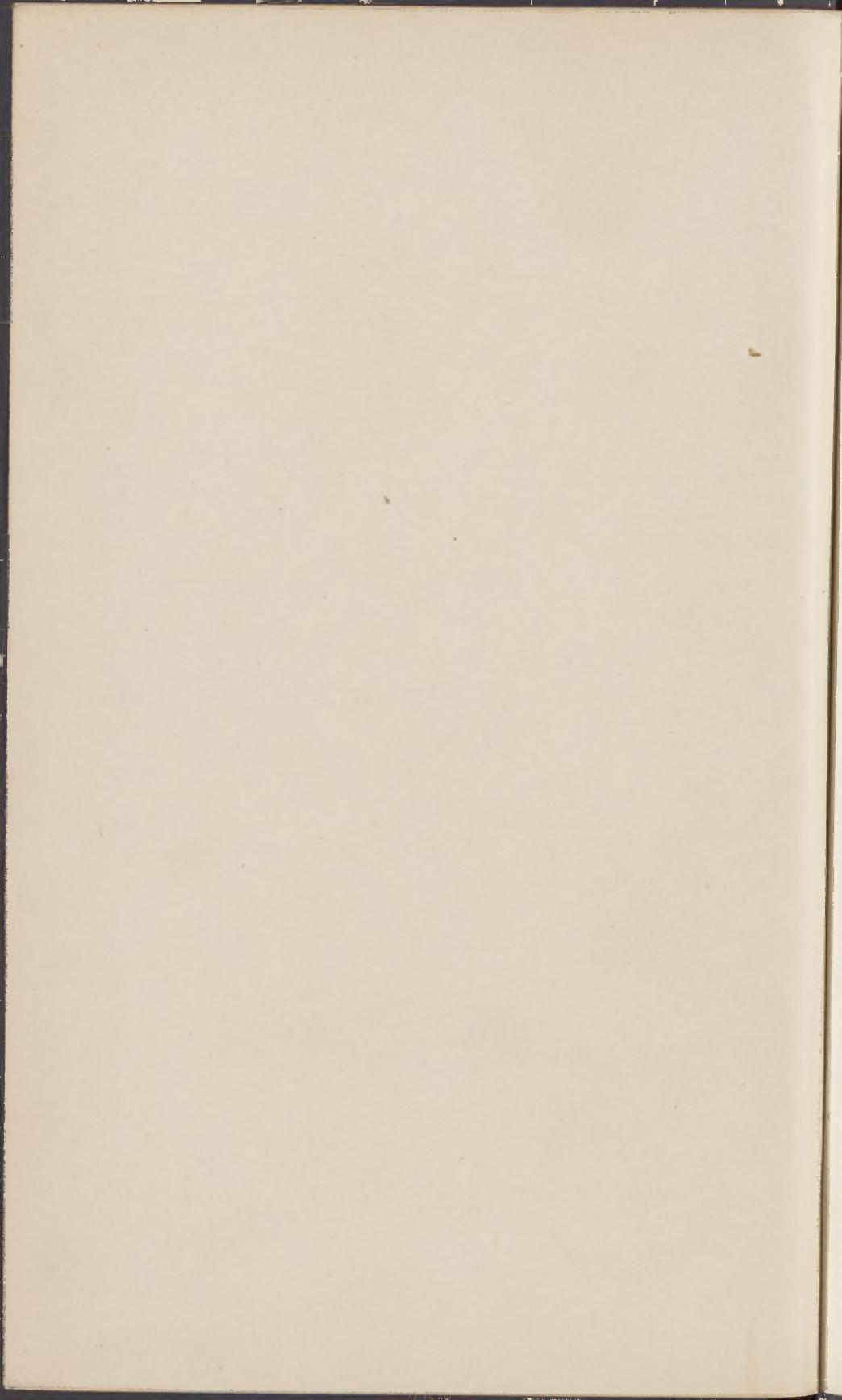
“*Misdemeanor*” (see Statutes, A 9). *United States v. Stevenson*, 190.  
“*Public Lands*” (see Public Lands, 1). *Union Pacific R. R. Co. v. Harris*, 386.

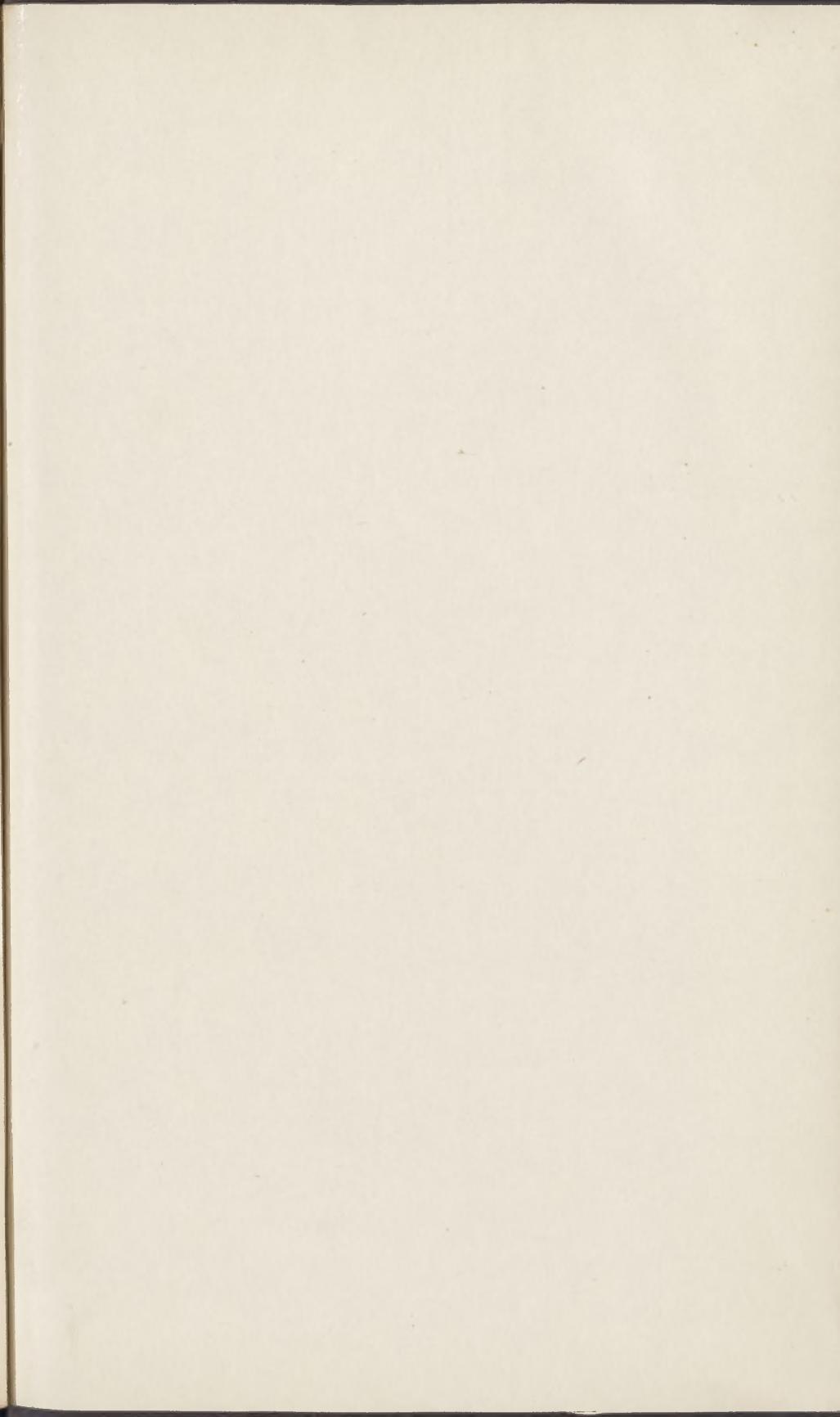
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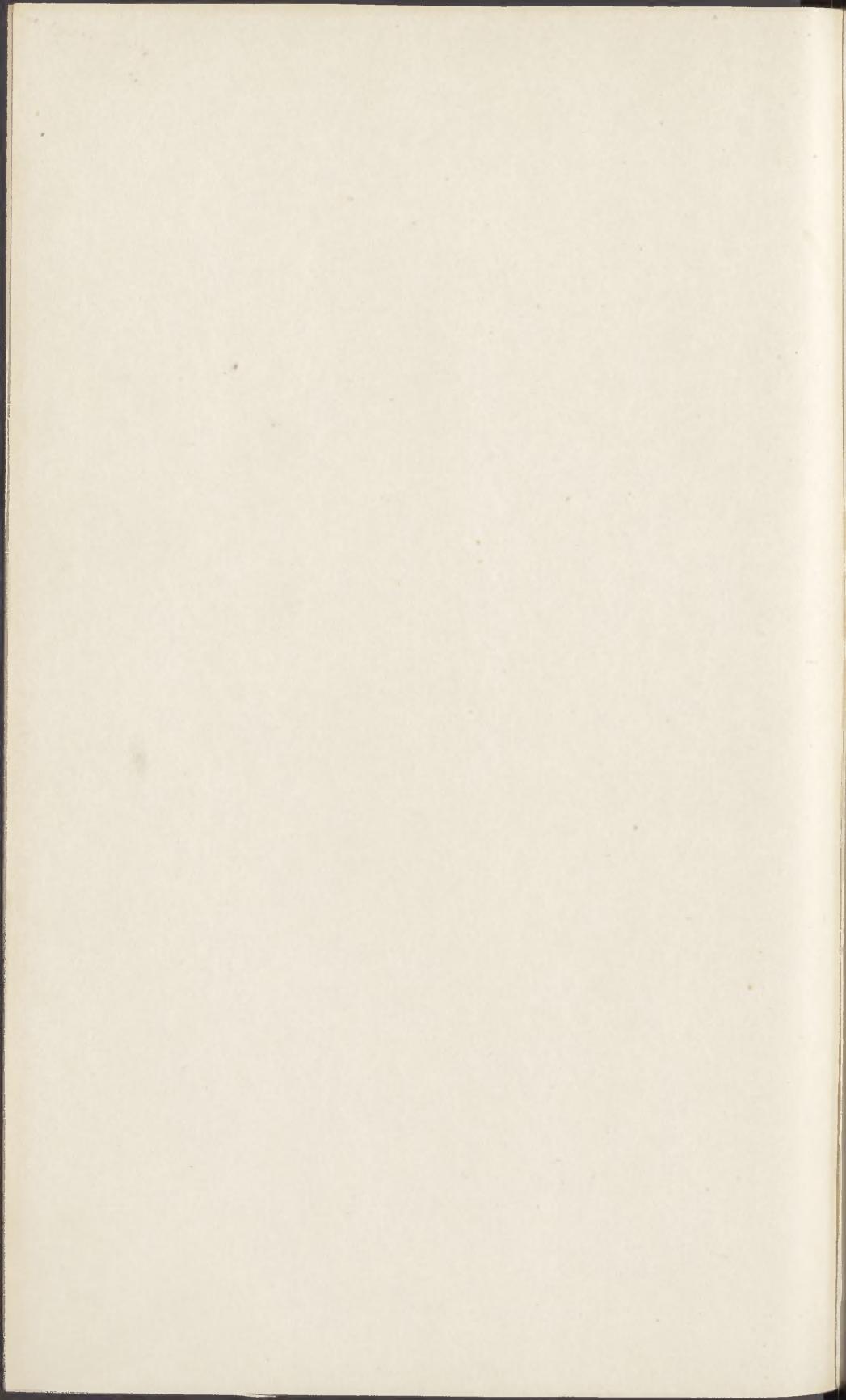
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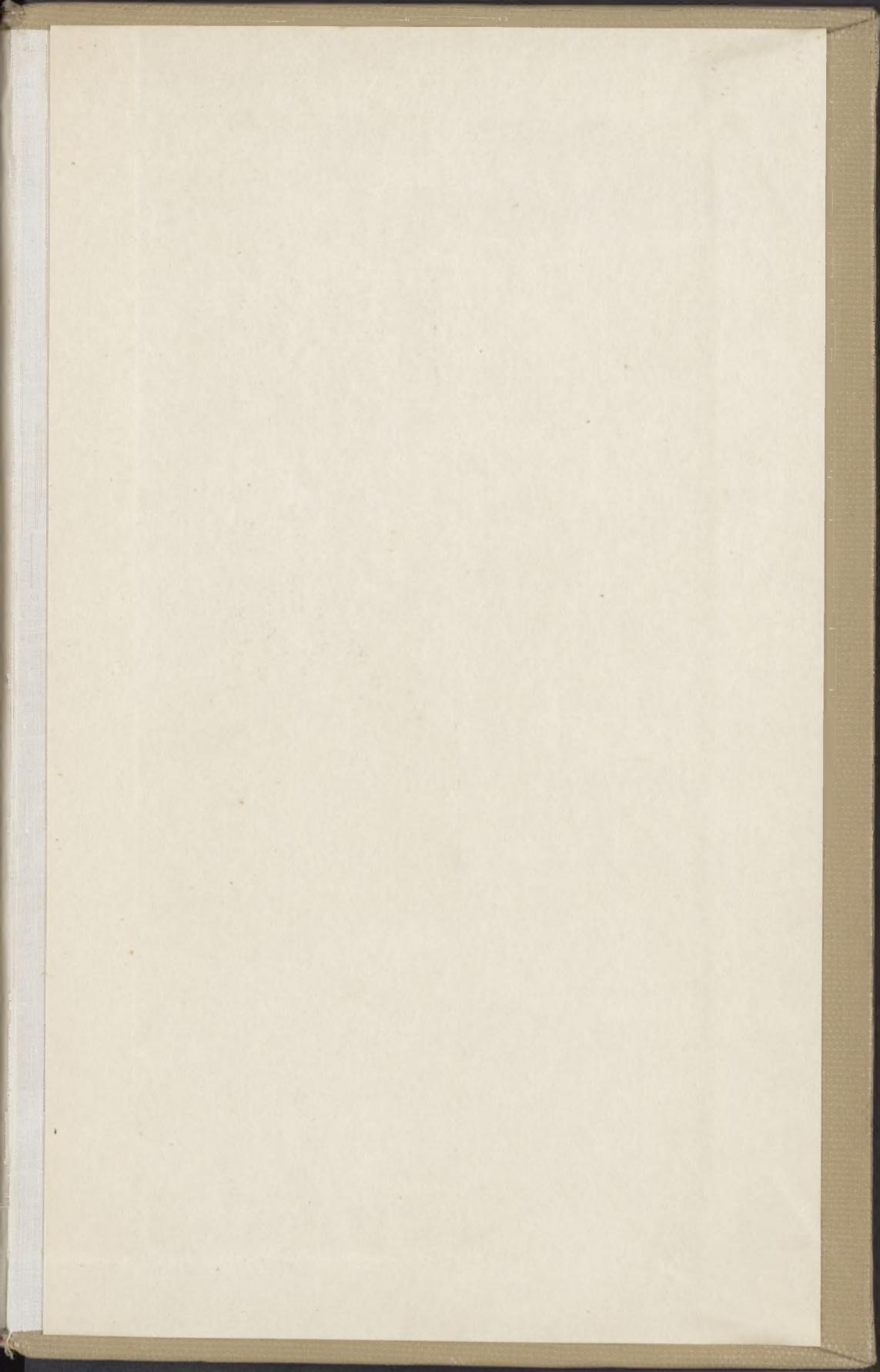
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