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Section 70e of the Bankruptcy Act provides for avoiding transfer of the bankrupt's property which his creditors might have avoided, and for recovery of such property, or its value from persons not *bona fide* holders for value. It does not, either with or without consent of defendant, give the bankruptcy court jurisdiction of a suit to recover property held by defendant but which, if the allegations of the complaint are true, belonged to the bankrupt and passed to the trustee. *Harris v. First National Bank*, 382.

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“Manufacturing,” as used in the Bankrupt Act of 1898, has no meaning from adjudication as used in former laws, nor has it any technical meaning. In construing the act the intention of Congress to include corporations engaged in manufacturing will be regarded by giving the term a liberal, rather than a narrow, meaning. *Friday v. Hall & Kaul Co.*, 449.

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13. *Fraudulent transfers; mortgages void as to creditors.*

Under the law of Wisconsin, as construed by the highest court of that State, a mortgage of personal property is not valid as against

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14. *Trustee's status; right to attack pledge so void as to make property subject to levy and judicial sale at time of adjudication.*

Although the trustee stands in the shoes of the bankrupt, and takes the property subject to equities impressed on it while in the bankrupt's hands, he can attack a pledge which is so void as against creditors that the property could have been levied on and sold under judicial powers against the bankrupt at the time of the adjudication. *Ib.*

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Corporate records and stock-books of a corporation adjudicated a bankrupt pass to the trustee and, where there is no adverse holding, the bankruptcy court can compel their delivery by summary proceeding. *Babbitt v. Dutcher*, 102.

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Compromises of disputed claims are favored by the courts, *Hennessey v. Baker*, 137 U. S. 78, and the consideration on which a compromise is based will be sustained unless there is an express or implied statutory prohibition against the transaction. *Williams v. First National Bank*, 582.

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CONGRESS, POWERS OF.

1. *Navigable waters; removal of obstructions to navigation.*

The erection of a bridge over navigable waters of the United States within a State by authority of the State is subject to the paramount authority of Congress to regulate commerce among the States and its right to remove unreasonable obstructions to navigation. *Monongahela Bridge Co. v. United States*, 177.

2. *Navigable waters; exclusive power of Congress to regulate navigation.*
It is for Congress, under the Constitution, to regulate the right of

navigation and to declare what must be done to clear navigation from obstructions; and where this has been done in the manner required by Congress it is not the province of the jury, on the trial of one refusing to remove obstructions, to determine whether the removal was necessary. *Ib.*

3. *Navigable waters; effect of silence by Congress on power to require removal of obstruction.*

The mere silence of Congress, and its failure to interfere to prevent the construction under state authority of an obstruction to navigation does not prevent it from subsequently requiring the removal of the obstruction or impose upon the United States a constitutional obligation to make compensation therefor. *Ib.*

See CONSTITUTIONAL LAW, 1, 16, 17;
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CONSTITUTIONAL LAW.

1. *Commerce clause; power of Congress; power of State to impose conditions on foreign corporations—Validity of Bush Act of Kansas.*

A statute of Kansas provided among other things, that before a corporation of another State, even one engaged in interstate business, should have authority to do local business in Kansas, it should pay "to the State Treasurer, for the benefit of the permanent school fund, a charter fee of one-tenth of one per cent of its authorized capital, upon the first \$100,000 of its capital stock, or any part thereof; and upon the next four hundred thousand dollars or any part thereof, one-twentieth of one per cent; and for each million or major part thereof over and above the sum of five hundred thousand dollars, \$200." The Western Union Telegraph Company, a New York corporation, engaged in commerce among the States and with foreign countries, and seeking to do local business in Kansas, had a capital stock of \$100,000,000. The fee demanded of it as a condition of its right to do local business in Kansas, was \$20,100. It refused to pay the required fee, and continued, as it had done for many years before to do local or intrastate business in Kansas. Thereupon, the State brought a suit in one of its own courts against the Telegraph Company and sought a decree ousting and restraining the company from doing any local business in Kansas. The state court gave the relief asked. *Held that:*

- a. The right to carry on interstate commerce is not a privilege granted by the States, but a constitutional right of every citizen of the United States and Congress alone can limit the right of corporations to engage therein. (*Crutcher v. Kentucky*, 141 U. S. 47.)
- b. The power of Congress over interstate commerce is as absolute as it is over foreign commerce.
- c. The rule that a State may exclude foreign corporations from its limits or impose such terms and conditions on their doing business therein as it deems consistent with its public policy does not apply to foreign corporations engaged in interstate commerce; and the requirement that the Telegraph Company pay a given per cent of all its capital, representing all its business, interests and property everywhere, within and outside of the State, operated as a burden and tax on the interstate business of the company in violation of the commerce clause of the Constitution, as well as a tax on its property beyond the limits of the State, which it could not tax consistently with the due process of law enjoined by the Fourteenth Amendment.
- d. Such a requirement imposed a condition on the Telegraph Company forbidden by the Constitution of the United States and violative of the constitutional rights of the company.
- e. The Telegraph Company was no more bound to assent to the condition required of it in order that it might do local business in Kansas, than to a condition requiring it to waive its right to invoke the benefit of the constitutional provision forbidding the denial of the equal protection of the laws or the provision forbidding the deprivation of property without due process of law.
- f. The disavowal by a State enacting a regulation of intent to burden or regulate interstate commerce cannot conclude the question of fact of whether a burden is actually imposed thereby; and whatever the purpose of a statute it is unconstitutional if, when reasonably interpreted, it does, directly or by necessary operation, burden interstate commerce.
- g. A court could not give the relief asked by the State without recognizing or giving effect to a condition that was in violation of the Federal Constitution. *Western Union Tel. Co. v. Kansas*, 1.

2. *Commerce clause—State taxation of foreign corporation doing interstate business—Regulations State may enforce.*

A corporation organized in one State and doing an interstate business is not bound to obtain the permission of another State to

transact interstate business within its limits, but can go into the latter, for the purposes of that business, without liability to taxation there with respect to such business, although subject to reasonable local regulations for the safety, comfort and convenience of the people which do not, in a real, substantial sense, burden or regulate its interstate business nor subject its property interests outside of that State to taxation. *Pullman Co. v. Kansas*, 56.

3. *Commerce clause—What constitutes burden on interstate commerce—State taxation of foreign corporation.*

The requirement that such a company, as a condition of its right to do intrastate business, shall, in the form of a fee, pay to the State a specified per cent of its authorized capital, is a violation of the Constitution of the United States, in that such a single fee, based on all the property, interests and business of the company, within and out of that State, is, in effect, a tax both on the interstate business of that company, and on its property outside of that State, and compels the company, in order that it may do local business in connection with its interstate business, to waive its constitutional exemption from state taxation on its interstate business and on its property outside of the State. *Ib.*

4. *Commerce clause—Power of State to exact waiver of foreign corporation's right to exemption from taxation on interstate business.*

A State can no more exact such a waiver than it can prescribe as a condition of the company's right to do local business that it agree to waive the constitutional guaranty of the equal protection of the laws, or the guaranty against being deprived of its property otherwise than by due process of law. *Ib.*

5. *Commerce clause—Aid of court to enforce unconstitutional act of State affecting interstate commerce, refused.*

A decree ousting and prohibiting a company from doing intrastate business within a State for refusing to pay such a tax should not be granted, but the aid of the court should be refused because a decree would, in effect, recognize the validity of a condition which the State could not constitutionally prescribe under the guise of a fee for permission to do intrastate business. *Ib.*

6. *Commerce clause; validity of state legislation affecting interstate commerce.*

A state statute that requires a carrier to settle, within a specified time, claims for loss of or damage to freight while in its possession

within that State, is not, in the absence of legislation by Congress on the subject, an unwarrantable interference with interstate commerce; and so held that Act No. 50 of South Carolina of February 23, 1903, to that effect is not unconstitutional under the commerce law as to goods shipped from without the State but which actually are in the possession of the carrier within the State. *Atlantic Coast Line R. R. Co. v. Mazursky*, 122.

7. *Commerce clause—Obstruction to interstate commerce by state statute; what amounts to.*

A state statute in aid of the performance of the duty of an interstate carrier which would exist in the absence of the statute, which does not obstruct the carrier, and which relates to the delivery of goods actually in the carrier's possession within the State, is not void as a regulation or obstruction to interstate commerce, in the absence of congressional legislation on the subject. *Ib.*

8. *Commerce clause—State interference with interstate commerce by imposition of license tax on foreign corporation—Validity of Wingo law of Arkansas.*

A state statute which requires a foreign corporation engaged in interstate commerce to pay, as a license tax or fee for doing intrastate business, a given amount on its entire capital stock whether employed within the State or elsewhere, directly burdens the interstate business of such corporation and its property outside the jurisdiction of the taxing State and is unconstitutional and void; and so held as to the Wingo law of Arkansas of May 13, 1907. *Ludwig v. Western Union Telegraph Co.*, 146.

9. *Commerce clause; burden on interstate commerce; state regulation of foreign railroad.*

The fact that a railroad company is chartered by another State and has projected its lines through several States does not make all of its business interstate commerce and render unconstitutional, as an interference with, and burden upon interstate commerce, reasonable regulations of a State Railroad Commission applicable to a portion of the lines wholly within, and which are valid under, the laws of that State. *Missouri Pacific Ry. Co. v. Kansas*, 262.

10. *Commerce clause; burden upon interstate commerce; effect of order as to running of train; convenience of railroad not important.*

An order of the railroad commission of a State requiring a train to be run from a point within the State to the state line is not invalid

if otherwise legal, as an interference with, or burden upon, interstate commerce because there are no present terminal facilities at the state line and it is more convenient to the corporation to run the train to a further point in the adjoining State. *Ib.*

See CONGRESS, POWERS OF, 2.

11. *Contract clause. Effect of reserved power in charter contract to validate subsequent regulation of corporation.*

Where a contract is held subject to the reserved power to alter, amend or repeal, the right conferred, whatever be its extent, is subject to such reserved power; and so held that a charter privilege to regulate train service is subject to the reasonable and otherwise legal order of a commission created by the legislature, and such an order is not invalid under the contract clause of the Federal Constitution. *Ib.*

12. *Contract clause; what amounts to derogation of tax exemption contract.*

A law which imposes a tax upon the franchise of a railroad company whose property is exempt from taxation is a law in derogation of the exemption contract. *Wright v. Georgia R. R. & Banking Co.*, 420.

13. *Contract clause; taxation of corporation amounting to impairment of obligation of charter contract.*

An act of a state legislature attempting to tax the whole or any part of the capital or franchise of a corporation, whose charter contains an express limitation and method of taxation such as in this case, by any method other than that specified therein, impairs the obligation of the charter and is unconstitutional under the contract clause of the Federal Constitution. *Ib.*

See TAXES AND TAXATION, 4, 5, 10.

14. *Criminal provisions; place of trial; right of accused as to.*

Notwithstanding the hardship necessarily entailed upon the accused in being tried in a district other than that in which he resides, there is no principle of constitutional law that entitles him to be tried in the place of his residence. *Haas v. Henkel*, 462.

15. *Criminal provisions; place of trial; right of accused to object to place other than that of his residence.*

Art. III, § 2 of, and the Sixth Amendment to, the Constitution secure to the accused the right to a trial in the district where the crime is committed, and one committing a crime in a district where he does not reside cannot object to his removal thereto for trial. *Ib.*

16. *Delegation of power—Power of Congress in respect of executive officers.* Congress may, in order to enforce its enactments, clothe an executive officer with power to ascertain whether certain specified conditions exist and thereupon to act in a prescribed manner, without delegating, in a constitutional sense, legislative or judicial power to such officer. *Monongahela Bridge Co. v. United States*, 177.

17. *Delegation of power; effect of action of Congress in charging executive officer with certain duties.* Under its paramount power to regulate commerce, Congress can require navigable waters of the United States within a State to be freed from unreasonable obstructions, and it is not a delegation of legislative or judicial power to charge the Secretary of War with the duty of ascertaining, under a general rule applicable to all navigable waters and upon notice to the parties in interest, whether obstructions are unreasonable. *Ib.*

18. *Delegation of power; effect of act of Congress investing Secretary of War with power to require removal of obstructions to navigation.* An act of Congress which invests the Secretary of War with power to require the removal of obstructions to navigation after notice to parties in interest and opportunity to be heard and reasonable time to make alterations in the obstruction, as § 18 of the River and Harbor Act of March 3, 1899, 30 Stat. 1151, does not invest the Secretary with arbitrary power beyond constitutional limitations. *Ib.*

19. *Delegation of power; quære as to.* *Quære* and not decided by this court whether the provision in the act of June 4, 1897, c. 2, 30 Stat. 30, 35, empowering the Secretary of Agriculture to make regulations in regard to grazing sheep on a forest reserve is unconstitutional in delegating legislative power to an executive officer and empowering such officer to create a criminal offense. *United States v. Grimaud*, 614.

20. *Due process of law; state taxation.* Consistently with the due process clause of the Fourteenth Amendment a State cannot tax property located or existing permanently beyond its limits. *Western Union Tel. Co. v. Kansas*, 1.

21. *Due process of law—Effect of modification by state court of its decree.* The construction and effect of, and rights acquired by, a decree of the state court are matters of state procedure. Nothing in the Federal Constitution prevents a state court from modifying a

decree while the case remains in the court; nor is a beneficiary of a decree deprived of his property without due process of law, within the meaning of the Fourteenth Amendment, by the subsequent action of the court modifying or reversing the decree while the case is still pending therein. *King v. West Virginia*, 92.

22. *Due process of law; deprivation of property by abolition of office.*

The abolition of a perpetual and salable office, established under the Spanish law in Porto Rico prior to its cession to the United States, does not violate any provision of the Constitution or infringe any right of property which the holder of the office can assert against the United States. (*O'Reilly v. Brooke*, 209 U. S. 45.) *Sanchez v. United States*, 167.

See Supra, 1; ASSESSMENT AND TAXATION;
Infra, 32, 34; PRACTICE AND PROCEDURE, 9;
TAXES AND TAXATION, 8, 11.

23. *Equal protection of the laws defined.*

Equal protection of the laws means subjection to equal laws applying alike to all in the same situation. *Southern Ry. Co. v. Greene*, 400.

24. *Equal protection of the laws; corporation as person.*

A corporation is a person within the meaning of the equal protection provision of the Fourteenth Amendment. *Ib.*

25. *Equal protection of the laws; foreign corporation entitled to.*

A corporation which comes into a State other than that in which it is created, pays taxes thereto and acquires property and carries on business therein, is within the jurisdiction of that State, and, under the Fourteenth Amendment, entitled to protection against any statute of that State that denies to it the equal protection of the laws. *Ib.*

26. *Equal protection of the laws; validity of classification for taxation.*

Arbitrary selection cannot be justified by calling it classification in the absence of real distinction on a substantial basis; and a classification for taxation that divides corporations doing exactly the same business with the same kind of property into foreign and domestic is arbitrary and a denial of equal protection of the laws. *Ib.*

27. *Equal protection of the laws; validity of Alabama franchise tax on foreign corporations.*

Whatever power a State may have to exclude or determine the terms of the admission of foreign corporations not already within its

borders, it cannot subject a foreign corporation which has already come into the State in compliance with its laws and has acquired property of a fixed and permanent nature to a new and additional franchise tax for the privilege of doing business which is not imposed upon domestic corporations. It would be an unconstitutional denial of equal protection of the laws under the Fourteenth Amendment; and so held as to the franchise tax on foreign corporations of Alabama of 1907. *Ib.*

See PRACTICE AND PROCEDURE, 9.

28. *Full faith and credit; efficacy of decree or statute to affect title to real estate situated in another State.*

The law of a State in which land is situated controls and governs its descent, alienation and transfer, and neither a decree of a court, or a statute, of another State can have any efficacy as to title of real estate beyond the jurisdiction of that State. *Olmsted v. Olmsted*, 386.

29. *Full faith and credit; statute of one State affecting real property rights in another State not entitled.*

The full faith and credit clause of the Federal Constitution does not require the courts of a State to give effect to a statute legitimizing children born before wedlock after marriage of their parents so as to affect interests which, under the law of the State where the property is located, had been so vested that it cannot be affected by subsequent legislation; and so held that the courts of New York are not required to give effect to a statute of Michigan so as to vest in children of the testator legitimatized by such statute property, the title to which had already vested in his other legitimate children. *Ib.*

30. *Judicial power of United States; actions against State; suit to enjoin state officers not within prohibition of Eleventh Amendment.*

Individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or a criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action; and such an action is not prohibited by the Eleventh Amendment of the Constitution of the United States. (*Ex parte Young*, 209 U. S. 123.) *Western Union Telegraph Co. v. Andrews*, 165.

31. *Judicial power of United States; suit against State; what amounts to.*

An action brought by a corporation against a state officer to obtain

such an injunction is not an action against the State within the meaning of the Eleventh Amendment. (*Western Union Telegraph Company v. Andrews*, *ante*, p. 165.) *Ludwig v. Western Union Telegraph Co.*, 146.

32. *Property rights; deprivation of property without just compensation* —*Effect of state regulation compelling railroad to perform duty in running trains.*

There is a difference between the exertion of the legislative power to establish rates in such a manner as to confiscate the property of a public service corporation by fixing them below a remunerative standard and one compelling the corporation to render a service which it is essentially its duty to perform; and an order directing a railroad company to run a regular passenger train over its line, instead of a mixed passenger and freight train, is not, even if such train is run at a loss, a deprivation of property without due process of law, or a taking of private property for public use without compensation; nor is such an order an unreasonable exercise of governmental control. Such an order if made by the railroad commission of a State is not an interference with, or burden upon, interstate commerce if it relates to a portion of the line wholly within that State. *Missouri Pacific Ry. Co. v. Kansas*, 262.

33. *Property rights; effect of reasonable governmental regulation of railroad property.*

While railway property is susceptible of private ownership and protected by constitutional guarantees, these rights are not abridged by being subjected to governmental power of reasonable regulation. *Ib.*

34. *Property rights; deprivation without due process of law.*

An order cannot be said to be such an unreasonable exertion of authority as to amount to deprivation of property without due process of law, because made operative only to the limit of the right to do so. *Ib.*

35. *Property rights; deprivation without compensation; removal of obstructions to navigation.*

To require, after notice and hearing, alterations to be made within a reasonable time and in a bridge over navigable waters of the United States so as to prevent its being an obstruction to navigation, is not a taking of private property for public use which, under the Constitution, must be preceded by compensation to

the owners of the bridge. *Monongahela Bridge Co. v. United States*, 177.

See CONGRESS, POWERS OF, 3.

Self-incrimination. *See EVIDENCE, 2.*

CONSTRUCTION OF CONTRACTS.

See CONTRACTS.

CONSTRUCTION OF STATUTES.

See BANKRUPTCY, 9;

STATUTES, A.

CONTINUANCE.

See TRIAL.

CONTRACTS.

1. *Construction; application of rule of ejusdem generis to insurance contract.*

The rule of *ejusdem generis* is a rule of interpretation, and even if it should be applied more liberally to contracts of insurance than to contracts of other kinds, it cannot be so applied as to exclude "blasting powder" from a prohibition to keep or allow on insured premises certain specified explosives and "other explosives." *Penman v. St. Paul F. & M. Ins. Co.*, 311.

2. *Admissibility of parol testimony to alter written contract.*

Where the policy furnishes the only way by which its terms can be waived and expressly provides against modification by customs of trade or manufacture or by agents, and are unambiguous, courts cannot admit parol testimony to alter the written words of the contract. (*Northern Assurance Company v. Grand View Building Association*, 183 U. S. 308.) *Ib.*

3. *Government; power of Secretary of Navy under acts of June 10, 1896, and August 3, 1886, in respect of release to be given.*

The Secretary of the Navy had power under the acts of June 10, 1896, c. 361, 29 Stat. 378, authorizing the building of the "Alabama," and of August 3, 1886, c. 849, 24 Stat. 215, to make a change in the terms of the contract requiring a final release to be given so that such release should not include claims arising under the contract which he did not have jurisdiction to entertain, and under a proviso in the release to that effect the contractors are

not barred from prosecuting their claim before the Court of Claims for unliquidated damages. *Wm. Cramp & Sons v. United States*, 494.

4. *Same.*

In this case a provision in a government contract having been treated by both parties as impracticable and therefore waived, the Secretary had power to change the terms of the release required by the contract, and leave the claims of the contractor to be presented to the Court of Claims. *Cramp & Sons v. United States*, 206 U. S. 118, distinguished. *Ib.*

5. *Reformation; effect of, to create new lien.*

Where a contract is reformed to correct a mutual mistake and make it conform to the intent of the parties a new lien is not created, but the original lien is adjudicated and determined. *Zartman v. First Nat. Bank*, 134.

6. *Ultra vires; avoidance by national bank of liability on guaranty on ground of.*

A national bank which guarantees a loan made by another bank in pursuance of an agreement that it be paid the amount due it by the borrower out of the proceeds of the loan, cannot avoid its liability on the guaranty as to the amount actually received by it pursuant to the arrangement on the ground of *ultra vires*; it is liable for money had and received. *Citizens' Nat. Bank v. Appleton*, 196.

7. *Corporations; ultra vires; implied contracts.*

Although a contract made by a corporation may be illegal as *ultra vires*, an implied contract may exist compelling it to account for the benefits actually received. *Ib.*

See CONSTITUTIONAL LAW, 11, *JURISDICTION*, G;

12, 13;

TAXES AND TAXATION, 1, 3,

EQUITY, 1;

4, 10.

CONVEYANCES.

See INDIANS, 6.

CORPORATE RECORDS.

See BANKRUPTCY, 17.

CORPORATIONS.

1. *Character as entity distinct from stockholders and officers—Knowledge of officers as to fraud imputed to corporation.*

The presumption that a corporation is, in law, an entity distinct from

its stockholders and officers cannot be carried so far as to enable the corporation to become a means of fraud; and knowledge of fraud on the part of the officers, who are also the principal stockholders and whose interests are identical, is properly to be imputed to the corporation itself. *J. J. McCaskill Co. v. United States*, 504.

2. *Railroad; exemption from taxation; construction of charter.*

A special charter to a railroad corporation contained a provision of exemption from taxation as follows: "The stock of the said company and its branches shall be exempt from taxation for and during the term of seven years from and after the completion of the said railroads, or any of them; and after that, shall be subject to a tax not exceeding one-half of one per cent, per annum, on the net proceeds of their investments," in construing this provision held that: The words "after that" are equivalent to the word "thereafter" and relate to the entire period of time after the expiration of the seven years of total exemption, and are not to be construed as limited by another provision in the charter for a definite period during which the corporation should have exclusive rights. *Wright v. Georgia R. R. & Banking Co.*, 420.

3. *Tax exemption; capital stock and not shares exempted.*

The stock exempted in this case was the capital or property of the corporation and not the shares of stock in the hands of the stockholders. *Ib.*

4. *Tax exemption limited to original corporation and does not pass to successor.*

A state statute authorizing or directing the grant or transfer of the privileges of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity in the grant or transfer. (*Rochester Railway Co. v. Rochester*, 205 U. S. 236, 252.) *Ib.*

5. *Tax exemption not extended to subsequently acquired property nor passed to successor.*

While an exemption from taxation enjoyed by a corporation which acquires the franchises and property of another corporation may not be affected as to property which it already possesses, such exemption does not apply to additional property so acquired, nor do the exemptions enjoyed by the corporation whose property and franchise are acquired pass to the purchasing corporation. *Ib.*

6. *Tax exemption; extension to accretions.*

Where the capital of a corporation is exempted from taxation, except as specified, the exemption continues even if the property appreciates in value; and where, as in this case, it is evident that the legislature intended that the taxation of the corporation should be measured by the income, the exemption will not be construed as limited to the then value of the property so that natural increases in value will be subject to any other method of taxation than that stipulated in the charter. *Ib.*

7. *Capital stock and shares distinguished.*

The capital stock of a corporation is the capital upon which the business is to be undertaken and is represented by property of every kind acquired by the company, while the shares are mere certificates representing a subscriber's contribution to the capital stock and measuring his interest in the company. This distinction is obvious, although the words "stock" and "shares" are sometimes used synonymously. *Ib.*

See BANKRUPTCY, 6, 8, 9, 10, 17; CONTRACTS, 6, 7; CONSTITUTIONAL LAW, 1-4, TAXES AND TAXATION, 2, 8-10, 13, 24-27, 32, 33; 3, 4.

COSTS.

1. *Award on modification and affirmance of decree.*

Where the decree is affirmed but modified as to a substantial contention the costs of the appeal will be divided. *Wright v. Georgia R. R. & Banking Co.*, 420.

2. *Taxation on dismissal of bill.*

In view of the circumstances of this case it is proper to dismiss the bill without costs under the provisions of the act of March 3, 1875, c. 137, § 5. *Conley v. Ballinger*, 84.

COURT OF CLAIMS.

See CONTRACTS, 3, 4; JURISDICTION, G.

COURTS.

1. *Federal; effect given to judgment of state court.*

The Federal courts accord to a judgment of the state court only that effect given to it by the courts of the State in which it was rendered; and where the highest court of a State has held that a judgment in a tax suit is not *res judicata* in a suit for taxes subsequently assessed for another year, even though it must be

decided on the same questions, this court will regard such a decision only as an authority and determine the question on its merits. *Wright v. Georgia R. R. & Banking Co.*, 420.

2. *Interference with executive departments—When duty to interfere.*

However reluctant the courts may be to interfere with the executive department, they must prevent attempted deprivation of lawfully acquired property and it is their duty to see that rights which have become vested pursuant to legislation of Congress are not disturbed by any action of an executive officer. *Ballinger v. Frost*, 240.

3. *Scope of rule as to reviewing decisions of Land Department—Setting aside patent for fraud.*

The rule that courts will not review decisions of the Land Department on questions of fact or reverse discretion properly exercised does not prevent the courts from setting aside a patent obtained by fraud upon the Department. *J. J. McCaskill Co. v. United States*, 504.

4. *State; finality of decision.*

The decision of the state court that the only portion of a statute which is unconstitutional is separable and inapplicable to the case is final. *King v. West Virginia*, 92.

See ARMY AND NAVY;

JURISDICTION;

BANKRUPTCY, 1, 2, 3;

MAILS, 3;

CRIMINAL LAW, 7;

PRACTICE AND PROCED-

INTERSTATE COMMERCE COM-

URE;

MISSION, 1;

STATUTES, A 2, 3, 5.

COURTS—MARTIAL.

See ARMY AND NAVY.

CRIMINAL LAW.

1. *Application, in Federal courts, of laws of State ceding territory to United States.*

The effect of § 3 of the acts of March 3, 1825, c. 65, 4 Stat. 115; April 5, 1866, c. 24, 14 Stat. 13, carried forward in § 5391, Rev. Stat.; and July 7, 1898, c. 576, 30 Stat. 717, providing that the punishment of offenses in places ceded by the State to the United States not specially provided for by any law of the United States shall be the same as that provided for by the law of the State ceding the place where the offense was committed, is limited to the criminal laws in force in the several States at the time of the enactment

of the legislation, and those statutes do not delegate to such States authority to in any way change the criminal law of the United States. (*United States v. Paul*, 6 Pet. 141.) *Franklin v. United States*, 559.

2. *Bribery of public officer punishable under § 5451, Rev. Stat.*

Regulations of a department of the Government promulgated under § 161, Rev. Stat., have the force of law; and bribery of an officer of the United States to violate such regulations is included under § 5451, Rev. Stat., making it a crime to bribe such officer to violate his lawful duty. *Haas v. Henkel*, 462.

3. *Conspiracy under § 5440, Rev. Stat.; acts constituting.*

A conspiracy to defraud the United States under § 5440, Rev. Stat., does not necessarily involve a direct pecuniary loss to the United States. The statute includes any conspiracy to impair, obstruct or defeat the lawful function of any department of the Government, e. g., the promulgation of officially acquired information in regard to the cotton crop. *Ib.*

4. *Trial; right of accused to object to removal to district where crime committed where indictment in district of residence also pending.*

Where one has been indicted for the same offense in two or more districts, in one of which he resides, it is the duty of the prosecuting officer to bring the case to trial in the district to which the facts most strongly point; and if the court first obtaining jurisdiction of the person of the accused does not object, the accused cannot object to his being removed under § 1014, Rev. Stat., from the district of his residence to the district in which the Government elects to first bring the case to trial. *Ib.*

5. *Trial; removal for; sufficiency of indictment to make prima facie case before commissioner.*

Introduction before the commissioner of an indictment found in the district to which removal is sought makes a *prima facie* case for removal which is not overcome by an indictment found in another district, although the *locus* is differently stated in each indictment. *Ib.*

6. *Trial; removal for; effect of accused being under bond to appear in other removal proceedings.*

The fact that the person whose removal is sought, is under bond to appear in other removal proceedings on prior indictments, does not prevent the removal order being issued. The effect could only be to exonerate the sureties. *Peckham v. Henkel*, 483.

7. *Trial; removal for; effect of rule of comity between Federal courts.*

The rule that the jurisdiction over the person by one Federal court must be respected until exhausted is one of comity only, and has a limited application in criminal cases. It will not prevent removal under § 1014, Rev. Stat., where the cases are not the same. *Ib.*

8. *Trial; removal for; jurisdiction of commissioner.*

Even if a second removal proceeding does amount to an election by the Government to abandon the first complaint, that fact does not affect the jurisdiction of the commissioner. *Ib.*

9. *Trial; removal for; sufficiency of one good count in indictment to support.*

One good count in an indictment, under which a trial may be had in the district to which removal is sought, is enough to support an order of removal in *habeas corpus* proceedings, *Horner v. United States*, 143 U. S. 207, even though accused may be held to bail in the district from which removal is sought on an indictment of which some of the counts are similar. *Price v. Henkel*, 488.

10. *Trial; removal for; evidence; effect of indictment alleging commission of offense in district other than that to which removal sought—Habeas corpus to review decision of commissioner.*

But an indictment which alleges that the offense was committed in the district where found, does not conclusively destroy the *prima facie* case made in a removal proceeding by the indictment found in the district to which removal is sought and which alleges that the offense was committed therein, and if the commissioner also heard evidence upon which he based his decision, that decision is not open to review in *habeas corpus* proceedings. *Ib.*

11. *Trial; removal for; sufficiency of evidence to overcome effect of indictment.*

In this case the independent evidence which was offered to show that accused was not in the district where the indictment was found was not conclusive. *Ib.*

12. *Trial; removal for; duty of commissioner under § 1014, Rev. Stat.*

Under § 1014, Rev. Stat., the duty of the commissioner is to determine whether a *prima facie* case is made out that a crime has been committed, indictable and triable in the district to which removal is sought, and if so determined there is no discretion; nor is the fact that the accused is under bail in the district where he

resides a bar to the removal. *Haas v. Henkel*, 462; *Peckham v. Henkel*, 483; *Price v. Henkel*, 488.

See APPEAL AND ERROR, 1, CONSTITUTIONAL LAW, 14, 15;
ASSIGNMENTS OF ERROR, 3; STATUTES, A 5;
TERRITORIES.

CUSTOM.

See PRACTICE AND PROCEDURE, 10.

CUSTOMS DUTIES.

See JURISDICTION, A 6.

DAMAGES.

See CONTRACTS, 3;
JURISDICTION, G.

DEFENSES.

See APPEAL AND ERROR, 3.

DELEGATION OF POWER.

See CONSTITUTIONAL LAW, 16-19.

DELIVERY OF MAIL.

See MAILS.

DEPARTMENTAL REGULATIONS.

See CRIMINAL LAW, 2;
MAILS.

DESCENT AND DISTRIBUTION.

See LOCAL LAW (PORTO RICO).

DUE FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 28, 29.

DUE PROCESS OF LAW.

See ASSESSMENT AND TAXATION; PRACTICE AND PROCEDURE,
CONSTITUTIONAL LAW, 1, 20, 9;
21, 22, 32, 34; TAXES AND TAXATION, 8, 11.

DUTIES ON IMPORTS.

See JURISDICTION, A 6.

EJECTMENT.

See PUBLIC LANDS, 1, 3.

EJUSDEM GENERIS.

See CONTRACTS, 1.

ELECTION.

See CRIMINAL LAW, 4, 8.

ELEVENTH AMENDMENT.

See CONSTITUTIONAL LAW, 30, 31.

EMOLUMENTS OF OFFICE.

See OFFICE.

EQUAL PROTECTION OF THE LAWS.

See CONSTITUTIONAL LAW, 23-27;

PRACTICE AND PROCEDURE, 9.

EQUITY.

1. *Jurisdiction to reform contract; effect of bankruptcy law to suspend.* The jurisdiction which equity has to decree correction of errors in written contracts caused by mutual mistake is not suspended by the bankruptcy law; and the trustee takes property as the debtor had it at the time of the petition subject to all valid claims, liens and equities, including the power of a court of equity to correct a manifest error by mutual mistake in an agreement made prior to the petition. *Zartman v. First Nat. Bank*, 134.

2. *Jurisdiction to enjoin state officers from action which would cause irreparable injury to corporation engaged in interstate commerce.* Publication by proclamation by a state officer in his official capacity that a foreign corporation engaged in interstate and local business is not authorized, but is forbidden from continuing, to do local business would produce irreparable injury to such corporation; and, in order to prevent such contemplated or threatened injury a court of equity may enjoin the state officers from issuing such proclamation, if the state statute on which the contemplated action is based is unconstitutional. *Ludwig v. Western Union Telegraph Co.*, 146.

3. *Fraud; sufficiency of averments for purposes of jurisdiction of suit to cancel patent.*

In this case it was held that the averments set forth in the bill of

fraud and perjury in *ex parte* proceedings before the land office were sufficient to give a court of equity jurisdiction of a suit brought by the United States to cancel a patent. *J. J. McCaskill Co. v. United States*, 504.

4. *Fraud; evidence to sustain averments of.*

In this case the testimony sustained the averments of the bill that the patent was obtained by fraud. *Ib.*

5. *Trustees; when co-tenant purchasing at public sale not deemed trustee for benefit of other co-tenants.*

The rule that equity may convert into a trustee a co-tenant who attempts to buy an outstanding hostile title does not apply where the common property is sold at *bona fide* public sale under legal process or power in a trust deed. At such a sale, and in the absence of fraud or deceit, any one of the co-tenants is as free to buy as any of the general public, and several of the co-tenants may combine without notice to the others to purchase for themselves. *Starkweather v. Jenner*, 524.

6. *Laches; delay in electing to avoid judicial sale for inadequacy of price.*

A judicial sale for inadequate price resulting from combination of bidders is voidable, not void, and one who would complain must after discovery seasonably elect whether he will avoid it or not. A delay of four years where the property is of speculative character and has largely increased in value meanwhile is unreasonable. *Ib.*

See APPEAL AND ERROR, 2.

ESTATES OF DECEDENTS.

See LOCAL LAW (PORTO RICO).

EVIDENCE.

1. *Admissibility, in suit to cancel patent, of testimony of agent of Land Office as to conversations and admissions made by entryman.*

In this case the testimony of an agent of the General Land Office as to conversations and admissions made by the entryman, with knowledge that he was a government officer seeking the facts as to the settlement of the land, was properly admitted, as was also the report made by such officer who testified as to the facts recited therein. *J. J. McCaskill Co. v. United States*, 504.

2. *Self-incrimination—What amounts to compelling accused to be witness against self.*

The retention by the prosecuting authorities, without using it on the

trial, of a statement made by the accused does not amount to compelling him to be a witness against himself within the provisions of Chap. 5 of the Philippine Act of Congress of July 1, 1902, 32 Stat. 691. *Pendleton v. United States*, 305.

See BANKRUPTCY, 2; EQUITY, 4;
CONTRACTS, 2; FRAUD;
CRIMINAL LAW, 5, 9, 10, PRACTICE AND PROCED-
11; URE, 12.

EXECUTIVE DEPARTMENTS.

See COURTS, 2;
PRACTICE AND PROCEDURE, 7.

EXECUTIVE OFFICERS.

Duty in respect of congressional legislation.

The head of a department of the Government is bound by the provisions of congressional legislation which he cannot violate, however laudable may be his motives. *Ballinger v. Frost*, 240.

See CLAIMS AGAINST THE UNITED STATES; CONTRACTS, 3, 4;
CONSTITUTIONAL LAW, 16, 17, 18; MANDAMUS.

EXEMPTIONS.

See CONSTITUTIONAL LAW, 12;
CORPORATIONS, 2-6;
TAXES AND TAXATION.

FACTS.

See PRACTICE AND PROCEDURE, 1, 6, 7.

FEDERAL QUESTION.

1. *Timeliness of raising.*

Where no Federal question is raised in the state court it is too late to attempt to do so in the assignment of error in this court. *Mallers v. Commercial Loan & Trust Co.*, 613.

2. *Timeliness of raising.*

After a case has been decided below without reference to any Federal question parties may not for purpose of review by this court inject a Federal question by the suggestion that a Federal right was relied on. *Fraenkl v. Cerecedo*, 295.

3. *Timeliness of raising.*

An attempt to introduce a Federal question into the record for the first time by petition for rehearing is too late unless the state

court entertains and in fact passes upon it. *Forbes v. State Council*, 396.

4. *Sufficiency of showing that Federal question considered or passed on by state court.*

A denial of a petition for rehearing by the state court "after mature consideration" does not amount to any more than a denial of the motion, and does not show that the Federal question was considered or passed on. It affords no basis for jurisdiction of this court on writ of error. *Ib.*

5. *What constitutes—Question as to right, under Federal statute, to remove cause.*

A question of a Federal nature is raised by the contention, if denied by the state court, that a right or privilege exists under a Federal statute to remove the case into the Federal court. *Williams v. First National Bank*, 582.

6. *What constitutes case arising under Constitution or laws of United States.*

Where plaintiff's right to recover is not predicated on any Federal right, the fact that the defense is that the transaction was prohibited by Federal law does not make the case one arising under the Constitution or laws of the United States. (*Arkansas v. Kansas & Texas Coal Co.*, 183 U. S. 185.) *Ib.*

See JURISDICTION, A 5.

FORAKER ACT.

*See PORTO RICO;
TREATIES, 2.*

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 1, 2, 3, 8, 9, 25, 26, 27.

FOREST RESERVES.

See CONSTITUTIONAL LAW, 19.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW.

FRANCHISES.

*See CONSTITUTIONAL LAW, 12, 13;
CORPORATIONS, 4, 5;
TAXES AND TAXATION.*

FRAUD.

Evidence to support charge.

In this case the charges of fraud and collusion on the part of the defendants are wholly unsupported. *Starkweather v. Jenner*, 524.

*See CORPORATIONS, 1; CRIMINAL LAW, 3;
COURTS, 3; EQUITY, 3, 4, 5, 6.*

FRAUDULENT CONVEYANCES.

See BANKRUPTCY, 4, 13, 14, 15, 16.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 28, 29.

GOVERNMENT CONTRACTS.

See CONTRACTS, 3, 4.

GOVERNMENTAL POWERS.

*See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 16-19, 32-34.*

GRANTS.

See CORPORATIONS, 4, 5.

GUARANTY.

See CONTRACTS, 6.

HABEAS CORPUS.

Not available to attack decision of commissioner in proceeding for removal for trial of an accused.

Disregard of comity between Federal courts at the instance of the Government is not an invasion of constitutional rights of the accused. It does not affect the jurisdiction of the commissioner, and even if his decision is erroneous it cannot be attacked on *habeas corpus*. *Habeas corpus* is not writ of error. *Peckham v. Henkel*, 483.

*See CRIMINAL LAW, 9, 10;
JURISDICTION, A 8.*

HEALTH REGULATIONS.

*See PRACTICE AND PROCEDURE, 8, 9;
STATES.*

HOMESTEADS.

See PUBLIC LANDS, 2-6.

HOTELS.

See BANKRUPTCY, 6, 8.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 11, 12, 13

IMPORTS.

See JURISDICTION, A 6.

INDIANS.

1. *Allotments; when title becomes absolute—Duty of Secretary of the Interior in respect to.*

After all the requirements of the act of Congress providing for distribution of Indian lands have been complied with, and the statutory period has elapsed without contest, the title of the allottee becomes fixed and absolute and only the ministerial duty of execution and delivery of the patent remains for the Secretary of the Interior. *Ballinger v. Frost*, 240.

2. *Allotments; scope of power of Secretary of the Interior in respect of.*
The power of supervision and correction vested in the Secretary of the Interior over Indian allotments is not unlimited and arbitrary; it cannot be exercised to deprive any person of land the title to which has lawfully vested. *Ib.*

3. *Lands; legislative power of United States over.*

There is no question as to the complete legislative power of the United States over the land of the Wyandotte Indians while it remained in their occupation, and parcels excepted from the general distribution under the treaty of 1855 continued under such legislative control for the benefit of the tribe. *Conley v. Ballinger*, 84.

4. *Lands; extent to which United States bound to protect Indian use of.*
While the United States maintains and protects Indian use of land and its occupation against others it is bound itself only by honor and not by law, and it will not be presumed to have abandoned at any time its attitude of protection towards its wards. Nor is its good faith broken by any change in disposition of property believed by Congress to be for the welfare of the Indians. *Ib.*

5. *Lands; right to enjoin disposition under act of Congress.*

Even if a suit to enjoin disposition of property reserved by the treaty of 1855 with the Wyandottes for cemetery use is not a suit against the United States, a descendant of an Indian buried in such

cemetery cannot maintain such an action to enjoin the disposition of the reserved property in accordance with an act of Congress.
Ib.

6. *Choctaw and Chickasaw; rights in respect of tribal lands.*

There is no statutory prohibition against a member of either the Choctaw or Chickasaw tribe, not holding any excess of lands subject to allotment, selling his improvements upon tribal land or abandoning his right of possession thereof to another Indian. *Thomason v. McLaughlin*, 103 S. W. Rep. 595, approved. *Williams v. First National Bank*, 582.

See MANDAMUS.

INDICTMENT AND INFORMATION

See ASSIGNMENTS OF ERROR, 3.

CRIMINAL LAW.

INHERITANCE.

See LOCAL LAW (PORTO RICO).

INJUNCTION.

See CONSTITUTIONAL LAW, 30;
EQUITY, 2;
INDIANS, 5.

INN-KEEPERS.

See BANKRUPTCY, 6, 8.

INSURANCE.

See CONTRACTS, 1, 2;
TAXES AND TAXATION, 7, 8.

INTERSTATE COMMERCE.

See CONGRESS, POWERS OF, 1, 2, 3; INTERSTATE COMMERCE COM-
CONSTITUTIONAL LAW, 1-3, MISSION;
6-10, 32; STATUTES, A 7.

INTERSTATE COMMERCE COMMISSION.

1. *Establishment of through routes and joint rates; inquiry by courts after finding by commission.*

Under § 4 of the act of June 29, 1906, c. 3591, 34 Stat. 589, giving the Interstate Commerce Commission power to establish through routes and joint rates where no reasonable or satisfactory through

route exists, the existence of such route may be inquired into by the courts, notwithstanding a finding by the commission. *Interstate Com. Comm. v. Northern Pacific Ry. Co.*, 538.

2. *Establishment of through route; public preference of no importance where reasonable route exists.*

When one through route exists which is reasonable and satisfactory, the fact that the public would prefer a second which is no shorter or better cannot overcome the natural interpretation of a provision in the statute to the effect that jurisdiction exclusively depends upon the fact that no reasonable or satisfactory route exists. *Ib.*

3. *Establishment of through route—Commission without jurisdiction.*

As the Northern Pacific route from the points named to points between Portland and Seattle is reasonable and satisfactory, the fact that there are certain advantages in the Union Pacific or Southern route does not give the Interstate Commerce Commission jurisdiction to establish the latter as a through route against the objection of the Northern Pacific Railway Company. *Ib.*

4. *Power to compel switch connections—Sec. 1 of act of March 4, 1887, as amended by § 1 of act of June 29, 1906, construed.*

Where a statute creates a new right and a commission is given power to extend relief in regard thereto at the instance of a specified class, its power is limited thereto; and so held that the Interstate Commerce Commission has power to compel switch connections with lateral branch roads under § 1 of the act of March 4, 1887, c. 104, 24 Stat. 379, as amended by § 1 of the act of June 29, 1906, c. 3591, 34 Stat. 584, only at the instance, as stated therein, of shippers; it has no power to do so on the application of a branch railroad. *Interstate Com. Comm. v. Delaware, Lackawanna & Western R. R. Co.*, 531.

5. *Quære as to what constitutes lateral branch road within meaning of statute.*

Quære and not decided, whether the railroad on whose behalf the application in this case was made was a lateral branch road within the meaning of the statute. *Ib.*

JOINDER OF PARTIES.

See APPEAL AND ERROR, 2.

JUDGMENTS AND DECREES.

Conclusiveness of judgment in quo warranto proceeding.

Quære whether a judgment of ouster in quo warranto is conclusive

between the same parties in a suit brought by the *de jure* relator against the *de facto* incumbent. *Albright v. Sandoval*, 331.

See CONSTITUTIONAL LAW, 21, 28;
COURTS, 1, 4;
JURISDICTION, A 1, 3.

JUDICIAL POWER OF THE UNITED STATES.

See CONSTITUTIONAL LAW, 30, 31.

JUDICIAL SALES.

See EQUITY, 4, 6.

JUDICIARY.

See COURTS;
JURISDICTION.

JURISDICTION.

A. OF THIS COURT.

1. *Of appeal from Circuit Court of Appeals; decision of that court final.*
Where the Circuit Court would not have had jurisdiction had the allegations of diverse citizenship been stricken from the bill the decision of the Circuit Court of Appeals is final. *Weir v. Rountree*, 607.

2. *On appeal from Circuit Court of Appeals—When provision of Bankruptcy Law not involved.*

The judgment in this case that the vendor of goods sold to the bankrupt had a right to, and did, rescind the contract of sale on the ground that the goods were obtained by the bankrupt's fraud, and that the rescission was seasonably made on that ground, involves no provision of the bankruptcy law, but depends on principles of general law, and an appeal will not lie to this court from the judgment of the Circuit Court of Appeals. (*Chapman v. Bowen*, 207 U. S. 89.) *Blake v. Openhym*, 322.

3. *Judgment of Circuit Court of Appeals not a final one.*

Appeal from the Circuit Court of Appeals from a judgment reversing and remanding for further proceedings dismissed for want of final judgment. *Singer Mfg. Co. v. Adams*, 617.

4. *Of direct appeal from Circuit Court; where constitutional points unfounded.*

Jurisdiction of this court under the act of 1891 of a direct appeal

from the Circuit Court cannot be based on constitutional points that are absolutely unfounded in substance as in this case. *Franklin v. United States*, 559.

5. *On direct appeal from Circuit Court; sufficiency of Federal question involved.*

To give this court jurisdiction on a direct appeal from, or writ of error to, a Circuit Court on the ground of a constitutional question, such question must be real and substantial, and not a mere claim in words. *Kaufman & Sons Co. v. Smith*, 610.

6. *Same.*

The questions involved in this case as to the right of the Government to collect duties on merchandise coming into the United States from the Canal Zone, Isthmus of Panama, under the act of March 2, 1905, c. 1311, 33 Stat. 843, have already been settled by the case of *Downes v. Bidwell*, 182 U. S. 244, and the writ of error is dismissed for want of jurisdiction. *Ib.*

7. *Of direct appeal from Circuit Court.*

A direct appeal from the Circuit Court dismissed without opinion for want of jurisdiction. *Shine v. Fox Bros. Mfg. Co.*, 609.

8. *Direct appeal from District Court; when question of jurisdiction of lower court involved.*

Where *habeas corpus* proceedings are based on the want of jurisdiction in the trial court, and the question is whether under the statute that court had jurisdiction, the jurisdiction of the court in which the *habeas corpus* proceeding is brought is not in issue, and if the constitutionality of the statute giving the trial court jurisdiction is not involved, but only its construction, a direct appeal does not lie to this court from the final order remanding the relator. *Childers v. McClaughry*, 139.

9. *On appeal from territorial court where construction of territorial statute but not jurisdictional amount involved.*

Where the decision of the Supreme Court of a Territory is based upon the construction of the territorial statute involved, and not upon the power of the legislature to pass it, an appeal does not lie to this court, if the amount in controversy is less than \$5,000. *Albright v. Sandoval (No. 2)*, 342.

10. *Same.*

A decision of the territorial court as to who had the right to an office which depends on whether the office was or was not vacant, and

whether or not an appointment was made before the statute involved took effect, depends upon the construction of, and not the power of the legislature to pass, such statute; such a case does not involve the validity of an authority exercised under the United States and an appeal does not lie to this court if the amount in controversy is less than \$5,000. *Ib.*

11. *On writ of error to Court of Appeals of District of Columbia.*

A writ of error to the Court of Appeals of the District of Columbia dismissed for want of jurisdiction without opinion on the authority of *Frasch v. Moore*, 211 U. S. 1, and other cases cited. *Moore v. Newcomb Motor Co.*, 608.

12. *To review cases removed from United States courts under provisions of Oklahoma Enabling Act.*

The power of this court to review cases removed from the United States courts for Indian Territory to the state courts of Oklahoma under the provisions of the Enabling Act as amended by act of March 4, 1907, c. 2911, 34 Stat. 1287, is controlled by § 709, Rev. Stat. *Williams v. First National Bank*, 582.

13. *On writ of error to state court—When Federal statute not involved; in this case the Bankruptcy Law.*

Where, after writ of replevin, the state court turns the goods over to the receiver, who so receives them, on the express condition that he assume the liabilities incurred in that court which has held that the liability under the re-delivery bond was incurred for benefit of the estate, no provision of the bankruptcy act is involved that would make the decision reviewable in this court on writ of error. *Blake v. Openhym*, 322.

14. *To review decision of state court—When judgment rests on sufficient non-Federal ground.*

Where the state court decides that, under the law of the State the constitutionality whereof is not attacked, the action of defendant in giving replevy bond and answering amounted to a general appearance and waiver of objection to jurisdiction based on a Federal ground, the ruling of general appearance rests on a non-Federal ground sufficient to sustain it and cannot be reviewed by this court. *Cincinnati, N. O. & T. P. Ry. Co. v. Slade*, 78.

15. *To review decision of state court—When Federal question properly set up.*

Where plaintiff in error did not set up in the state court the contention that the contract of interstate shipment should be construed ac-

cording to the act of Congress regulating interstate shipments instead of by the law of the State where made, but on the contrary, contended that it should be construed by the law of the State of destination and trial of the case, the record presents no Federal question properly set up in the court below that can be considered by this court. *Ib.*

16. *Of writ of error to review judgment of state court.*

Writs of error to review judgments of the state courts in actions for personal injuries dismissed, without opinion, for want of jurisdiction. *Missouri, Kansas & Texas Ry. Co. v. Hollan*, 615; *Missouri, Kansas & Texas Ry. Co. v. Wise*, 616.

17. *When Federal question foreclosed by previous decision.*

When this court has determined the constitutionality of a state statute that question is not open, and cannot be made the basis of jurisdiction for a writ of error; and so held as to the statute of West Virginia involved in this case and sustained as constitutional in *King v. Mullins*, 171 U. S. 404. *King v. West Virginia*, 92.

18. *When Federal question asserted has become a moot one, writ of error dismissed.*

Where the indictment has been dismissed and no new indictment has been returned for the same offense and the statutory period of limitations has elapsed, the question whether accused was entitled under the Constitution to a speedy trial becomes a moot one, and a writ of error to review an order dismissing the indictment under such circumstances will be dismissed. *Lewis v. United States*, 611.

19. *When provision of Federal statute involved.*

Where, after replevin, the paramount authority of the bankruptcy court is conceded and the replevin suit is considered only as evidence of rescission and identification of goods, no provision of the bankruptcy law or jurisdiction of the bankruptcy court is involved on which a writ of error from, or an appeal to, this court can be based. *Blake v. Openhym*, 322.

20. *Writ of error to review 201 Massachusetts, 444, dismissed, without opinion, for the want of jurisdiction. Chase v. Phillips*, 616.

See FEDERAL QUESTION;

TAXES AND TAXATION, 11.

B. OF CIRCUIT COURTS.

Amount in controversy not sufficient when plaintiff merely assignee and not owner of separate claims.

Where a plaintiff sues as assignee of several claims, but is not in fact

the owner of all the claims sued upon, and none of the claims is sufficient in amount to confer jurisdiction on the Federal court, that court has no jurisdiction and should dismiss the case for that reason although the assigned claims may in the aggregate exceed the jurisdictional amount. *Woodside v. Beckham*, 117.

C. OF DISTRICT COURTS.

See BANKRUPTCY, 3.

D. ADMIRALTY.

See ADMIRALTY.

E. BANKRUPTCY.

See BANKRUPTCY, 1-5, 11, 17.

F. EQUITY.

See EQUITY, 1, 2, 3.

G. COURT OF CLAIMS.

Of claim for unliquidated damages under contract for building war vessel.
Under the Tucker Act the Court of Claims has jurisdiction of a claim for unliquidated damages under a contract for building a war vessel, where a release had been given by the Secretary of the Navy with a proviso that it does not include claims arising under the contract other than those of which the Secretary has jurisdiction.
Wm. Cramp & Sons v. United States, 494.

H. OF INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

I. OF COURTS—MARTIAL.

See ARMY AND NAVY.

J. GENERALLY.

Time at which existence of jurisdiction determined.

Jurisdiction is determined as of the time of commencement of the suit, and even though the jurisdiction of the court be enlarged by a subsequent statute so as to include the parties, the court cannot acquire jurisdiction against objection. *Fraenkl v. Cerecedo*, 295.

See CRIMINAL LAW, 7, 8; *STATUTES*, A 5;
HABEAS CORPUS; *TERRITORIES*.

LACHES.

See EQUITY, 6.

LAND DEPARTMENT.

*See COURTS, 3;
PUBLIC LANDS.*

LAND GRANTS.

*See COURTS;
PUBLIC LANDS.*

LEGISLATIVE POWER.

*See CONGRESS, POWERS OF; STATES;
INDIANS, 3, 4; TAXES AND TAXATION.*

LEX LOCI.

*See CONSTITUTIONAL LAW, 28;
LOCAL LAW.*

LIBEL.

See ADMIRALTY.

LICENSE FEES.

See CONSTITUTIONAL LAW, 1, 2, 3, 8.

LIENS.

See CONTRACTS, 5.

LIMITATION OF POWERS.

See TAXES AND TAXATION, 1, 6.

LIMITATIONS.

See PLEADING.

LOANS AND CREDITS.

See TAXES AND TAXATION, 7, 8.

LOCAL LAW.

Alabama. Law of 1907 imposing franchise tax on foreign corporations (see Constitutional Law, 27). *Southern Ry. Co. v. Greene*, 400.

Arkansas. Wingo law, requiring foreign corporations to pay license fee (see Constitutional Law, 8). *Ludwig v. Western Union Tel. Co.*, 146.

California. Burial law of San Francisco (see States). *Laurel Hill Cemetery v. San Francisco*, 358.

Kansas. Bush act imposing tax on foreign corporations (see Constitutional Law, 1). *Western Union Tel. Co. v. Kansas*, 1.

Liability of railroads (see Railroads). *Missouri Pacific Ry. Co. v. Kansas*, 262.

Louisiana. Taxation (see Taxes and Taxation, 9). *Board of Assessors v. New York Life Ins. Co.*, 517.

Michigan. Legitimacy of children (see Constitutional Law, 29). *Olmsted v. Olmsted*, 386.

Minnesota. Act of 1903 taxing railroad companies (see Taxes and Taxation, 5). *Chicago Great Western Ry. Co. v. Minnesota*, 234.

New Mexico. Eligibility to office (see Practice and Procedure, 5). *Albright v. Sandoval*, 331.

Philippine Islands. Scope of review by Supreme Court of Territory (see Practice and Procedure, 15). *Pendleton v. United States*, 305.

Porto Rico—Inheritance; quare as to effect of Article 811, Civil Code.

Quare, as to the effect of Article 811 of the Civil Code of Porto Rico, requiring an ascendant inheriting property under certain conditions to reserve the property in favor of relatives belonging to the line from which the property originally came as to property inherited before the adoption of Article by one dying after its adoption still possessed of the property. *Garcia v. Vela*, 598.

South Carolina. Act No. 50, of February 23, 1903, relative to settlement of claims by carriers (see Constitutional Law, 6). *Atlantic Coast Line R. R. Co. v. Mazursky*, 122.

Wisconsin. Chattel mortgages (see Bankruptcy, 13). *Knapp v. Milwaukee Trust Co.*, 545.

Generally. See Practice and Procedure, 2, 8, 9.

MAILS.

1. *Delivery where two or more addressees of same name.*

The management of the post office business has been placed by Congress in the hands of the Postmaster General and his assistants, and the Postal Laws and Regulations provide for the delivery of mail where two or more persons of the same name receive mail at the same post office. *Central Trust Co. v. Central Trust Co.*, 251.

2. *Delivery; scope of consideration in determining who entitled.*

While the benefit of one's legal name belongs to every party, in-

dividual or corporation, it may at times be necessary and proper to look beyond the exact legal name to the name by which a party is customarily known and addressed in order to properly deliver mail to the person to whom it is addressed. *Ib.*

3. *Delivery; to whom to be made; interference by court with determination of postal authorities.*

In this case the First Assistant Postmaster General having made an order directing delivery of mail addressed to Central Trust Company, Chicago, to the Central Trust Company of Illinois instead of to a South Dakota corporation having the name Central Trust Company, held that there was not enough clear right shown by the latter company to justify the setting aside of the order by the court. *Ib.*

MANDAMUS.

To compel executive officers to perform ministerial duty.

The performance of a ministerial duty by an executive officer can be compelled by mandamus; and so held as to the delivery of patent to land selected by a Cherokee Indian allottee after all requirements of the acts of Congress under which the selection was made had been complied with. *Ballinger v. Frost*, 240.

“MANUFACTURING.”

See BANKRUPTCY, 9, 10.

MERCANTILE PURSUITS.

See BANKRUPTCY, 6, 7, 8.

MINERAL LANDS.

See PUBLIC LANDS, 7.

MISTAKE.

See CONTRACTS, 5;
EQUITY, 1.

MORTGAGES AND DEEDS OF TRUST.

See BANKRUPTCY, 13, 14, 15.
EQUITY, 5.

NAMES.

See MAILS, 2;
TRADE-NAMES.

NATIONAL BANKS.

See CONTRACTS, 6.

NAVIGABLE WATERS.

*See CONGRESS, POWERS OF, 1, 2, 3;
CONSTITUTIONAL LAW, 17, 18, 35.*

NEW TRIAL.

See ASSIGNMENTS OF ERROR, 1.

NOTICE.

See CORPORATIONS, 1.

OBSTRUCTIONS TO NAVIGATION.

*See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 17, 18, 35.*

OFFENSES.

*See ARMY AND NAVY;
CRIMINAL LAW.*

OFFICE.

*Emoluments; right of recovery by *de jure* officer, after judgment of ouster in quo warranto.*

After judgment of ouster in *quo warranto* a *de jure* officer may recover the emoluments of the office, less the reasonable expenses incurred in earning the same, where, as in this case, the *de facto* officer entered the office in good faith and under color of title. *Albright v. Sandoval*, 331.

*See CONSTITUTIONAL LAW, 22; PORTO RICO;
JUDGMENTS AND DECREES; TREATIES, 1.*

OLEOMARGARINE ACT.

1. *Construction of act of 1902—Artificial coloration; use of natural ingredient.*

Where the function of a natural ingredient, such as palm oil, used in manufacturing oleomargarine is so slight that it probably would not be used except for its effect in coloring the product so as to look like butter, the product is artificially colored and subject to the tax of ten cents a pound under par. 8 of the act of May 9, 1902, chap. 784, 32 Stat. 193. *Moxley v. Hertz*, 344.

2. *Artificial coloration; use of natural ingredient.*

As the record in this case shows that the use of palm oil produced only a slight effect other than coloration on the product, it falls under the rule adopted in *Cliff v. United States*, 195 U. S. 159, that the use of a natural ingredient must be for something more substantial than coloration in order to relieve the oleomargarine of the tax of ten cents a pound. *Ib.*

PAROL EVIDENCE.

See CONTRACTS, 2.

PARTIES.

See APPEAL AND ERROR, 2.

PATENTS FOR LAND.

See COURTS, 3; INDIANS, 1, 2; EQUITY, 3, 4; MANDAMUS.

PENALTIES AND FORFEITURES.

See CRIMINAL LAW, 1.

PERJURY.

See EQUITY, 3.

PERSONS.

See CONSTITUTIONAL LAW, 24.

PLACE OF TRIAL.

See CRIMINAL LAW, 4.

PLEADING.

Bill of review; time for filing; limitations.

Where a bill of review is presented for filing within the period allowed, and the court delays passing upon the application until after that period has elapsed, the time between tendering the bill for filing and permission given to file is not counted in applying the limitation. (*Ensminger v. Powers*, 108 U. S. 292.) *Fraenkl v. Cerecedo*, 295.

See ASSIGNMENTS OF ERROR; EQUITY, 3.

PLEDGE.

See BANKRUPTCY, 14.

POLICE POWER.

See PRACTICE AND PROCEDURE, 10;
STATES.

PORTO RICO.

Office of procurador; effect of Foraker Act to abolish.

Congress recognized the action of the military authorities in Porto Rico in 1898 in abolishing the officer of procurador and validated it by the provision in the Foraker Act of 1900 continuing the laws and ordinances then in force except as altered and modified by the military orders in force. *Sanchez v. United States*, 167.

See CONSTITUTIONAL LAW, 22;
LOCAL LAW.

POSTAL LAWS AND REGULATIONS.

See MAILS.

POSTMASTER GENERAL.

See MAILS, 1.

POWER OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Facts not dealt with on writ of error.*

On writ of error this court cannot deal with facts, and whether the land involved is within or without certain boundaries is for the state court to determine. *King v. West Virginia*, 92.

2. *Deference to assumptions of trial court in respect of matters of local law.*

In a suit coming from a Territory this court is not inclined to overthrow the assumptions of the trial court in regard to matters controlled by the local law; and so held in affirming a judgment in a case coming from Porto Rico involving questions of inheritance and prescription. *Garcia v. Vela*, 598.

3. *Deference to decisions of state court.*

In this case this court accepts the view of the state court as to the scope of its own decisions. *Great Northern Ry. Co. v. Minnesota*, 206.

4. Deference to state court's construction of state statute.

This court will not usurp the functions of a state court of last resort in order to distort if not destroy for infirmity of state power a state statute expressly upheld as valid by the state court. *Hannis Distilling Co. v. Baltimore*, 285.

5. Following territorial court's construction of local statute.

Where the final judgment of the Supreme Court of a Territory is not based on the power of the legislature to enact the statute involved but on the construction thereof, this court is not disposed to disturb that construction; and so held, following the decisions of the territorial court, that a statute of New Mexico carving a new county out of an existing one did not create a vacancy in an office of the original county because the incumbent did not reside in that portion of the county which remained. *Albright v. Sandoval*, 331.

6. Quare as to binding effect of finding by state court.

Quare whether on writ of error where the constitutional question is whether a rate or duty prescribed by a state commission amounts to deprivation of property without due process of law, this court is bound by a finding of the state court that a rate or duty is not actually confiscatory. *Missouri Pacific Ry. Co. v. Kansas*, 262.

7. Conclusiveness of findings of fact by executive officers.

The findings of fact by officers in charge of the several departments of the Government are conclusive unless palpable error appears. *Central Trust Co. v. Central Trust Co.*, 251.

8. Caution to be exercised in dealing with local decisions involving health of neighborhood.

Great caution must be exercised by any tribunal in overruling, or allowing to be overruled, the decision of the local authorities on questions involving the health of the neighborhood; and this court is doubly reluctant to interfere with deliberate decisions of the highest court of a State confirming a specific determination on such a question previously reached by the body making the law. *Laurel Hill Cemetery v. San Francisco*, 358.

9. Same.

Where opinion is divided as to whether a practice prohibited by a police ordinance is dangerous, and if the ordinance be valid if the danger be real, this court will not overthrow the ordinance as an unconstitutional deprivation of property without due

process of law or a denial of equal protection of the law merely because of adherence to the other belief. (*Jacobson v. Massachusetts*, 197 U. S. 11.) *Ib.*

10. *Considerations in determining constitutionality of exercise of police power.*

Tradition and habits of the community count for more than logic in determining constitutionality of laws enacted for the public welfare under the police power. *Ib.*

11. *Who may raise constitutional question on behalf of a class.*

One not belonging to a class, cannot raise the question of constitutionality of a statute as it affects that class. *Ib.*

12. *Presumption that lower court attributed no probative strength to uncorroborated testimony.*

When testimony is admitted, but is not followed up by other testimony necessary to give it effect, this court will assume that the court below attributed to it no probative strength. *J. J. McCaskill Co. v. United States*, 504.

13. *Writ of error dismissed where Federal question foreclosed by previous decisions.*

Where the unsoundness of a Federal question so clearly appears from previous decisions of this court as to foreclose the subject and leave no room for controversy, the writ of error will be dismissed. *Hanns Distilling Co. v. Baltimore*, 285.

14. *Disposition of case where asserted Federal questions devoid of merit.*

Where the asserted Federal questions are not frivolous, but are so devoid of substance as to be without merit the writ will not be dismissed but the judgment will be affirmed. *Williams v. First National Bank*, 582.

15. *Action by this court in case where error committed by Court of First Instance avoided on trial de novo by appellate court.*

The Supreme Court of the Philippine Islands tries a criminal case on the record *de novo*, and if it avoids an error which may have been committed by the Court of First Instance, the judgment will not be reversed by this court on account of such error; and so held in this case in which the Court of First Instance took into consideration the fact that accused did not offer to testify on his own behalf, but the Supreme Court, on the accused's own appeal, declared that it did not take that fact into consideration but

rendered its decision on the proofs. *Pendleton v. United States*, 305.

See APPEAL AND ERROR, 3; FEDERAL QUESTION, 1, 2, 3;
ASSIGNMENTS OF ERROR; RATE REGULATION.

PRESUMPTIONS.

See CORPORATIONS, 1; TAXES AND TAXATION, 6;
PRACTICE AND PROCEDURE, 12; WORDS AND PHRASES.

PRINCIPAL AND SURETY.

See CRIMINAL LAW, 6.

PROCESS.

See BANKRUPTCY, 3.

PUBLIC HEALTH.

See PRACTICE AND PROCEDURE, 8, 9;
STATES.

PUBLIC LANDS.

1. *Ejectment; rule governing right of recovery by railroad claiming lieu lands as against homesteader.*

In an action of ejectment by a railroad company claiming lieu lands under its grant, against a homesteader, the rule applies that the plaintiff must recover on his legal title and not upon defects in defendant's entry; the question is whether the entry was properly initiated before the selection and not whether it had actually ripened into legal title. *Osborn v. Froyseth*, 571.

2. *Homesteads; effect on entry of unauthorized withdrawal of land from settlement.*

A rejection of a homestead entry on the ground that the land was not open for settlement does not defeat the entry if the Secretary had no authority to withdraw the land from settlement. (*Sjoli v. Dreschel*, 199 U. S. 564.) *Ib.*

3. *Homesteads; relative value of claims.*

In a contest between a *bona fide* homesteader and one claiming under selection of lieu land the former has the better claim. *Ib.*

4. *Homesteads; time from which right relates.*

The right of a homesteader settling in good faith relates back to the date of settlement. *Ib.*

5. *Homestead claim; priority over claim of selection of lieu lands.*

Where a railroad company fails to comply with the statutory re-

quirements in order to authorize selection of lieu lands in the indemnity limits, and its selection is rejected, a subsequent selection does not relate back, but preëmption or homestead rights duly initiated before the second selection have priority. *Ib.*

6. *Public character of land ceases, when—What subject to selection as lieu land.*

Land that is actually occupied by a qualified entryman with intent to claim it as a homestead, ceases to be public and subject to selection as lieu land, even though there be no record evidence at the time the selection is made. *Ib.*

7. *Timber cutting; mineral lands open to.*

The authority for cutting timber from the public domain under the act of June 3, 1878, c. 150, 20 Stat. 88, extends only to lands valuable for minerals and not to lands adjacent thereto and not actually valuable for minerals. *United States v. Plowman*, 372.

PUBLIC OFFICERS.

See CONSTITUTIONAL LAW, 2;
MANDAMUS.

QUO WARRANTO.

See JUDGMENTS AND DECREES;
OFFICE.

RAILROAD REGULATION.

See CONSTITUTIONAL LAW, 32, 33, 34.

RAILROADS.

Distinction in train service between passenger and freight; effect of state statute to create.

A state statute making provisions for passengers riding on the caboose of freight trains will not be construed as a declaration of the State that there is no distinction between passenger train service and mixed train service, especially where, as in Kansas, the liability of the railroad is limited as to persons riding in cabooses. *Missouri Pacific Ry. Co. v. Kansas*, 262.

See CONSTITUTIONAL LAW, 6, 7; INTERSTATE COMMERCE COM-9, 10, 11, 12, 32, 33, 34; MISSION; CORPORATIONS, 2, 3; PUBLIC LANDS, 5; TAXES AND TAXATION, 3, 4, 5.

RATE REGULATION.

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

Willcox v. Consolidated Gas Company, 212 U. S. 19, followed to effect that where the state court has found the rate fixed by a state commission on a single commodity to be not confiscatory and has refused an injunction, the decree will be affirmed without prejudice to the right of the carrier to reopen the case if, after adequate trial of the rate, it can prove that it is actually confiscatory and amounts to a deprivation of property without due process of law. *Northern Pacific Ry. Co. v. North Dakota*, 579.

See CONSTITUTIONAL LAW, 32.

REAL PROPERTY.

See CONSTITUTIONAL LAW, 28, 29.

RECEIVERS.

See ADMIRALTY.

RECORDS OF CORPORATIONS.

See BANKRUPTCY, 17.

REFORMATION OF INSTRUMENTS.

See CONTRACTS, 5;
EQUITY, 1.

REHEARINGS.

Rehearings granted in cases in which judgments were affirmed by divided court and cases restored to docket. United States v. Grimaud, 614; *United States v. Inda*, 614; *Baltimore & Ohio Southwestern R. R. Co. v. United States*, 617.

RELATION.

See PUBLIC LANDS, 4, 5.

REMEDIES.

See APPEAL AND ERROR, 1.

REMOVAL FOR TRIAL.

See CONSTITUTIONAL LAW, 14, 15;
CRIMINAL LAW, 4-12.

RES JUDICATA.

See COURTS, 1, 4;
CRIMINAL LAW, 10;
JUDGMENTS AND DECREES.

RIVERS.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 17, 18.

ROUTES.

See INTERSTATE COMMERCE COMMISSION, 1, 2, 3.

SALES.

See EQUITY, 4, 6;
INDIANS, 6.

SECRETARY OF AGRICULTURE.

See CONSTITUTIONAL LAW, 19.

SECRETARY OF THE INTERIOR.

See INDIANS, 1, 2.

SECRETARY OF THE NAVY.

See CONTRACTS, 3, 4.

SECRETARY OF WAR.

See CONSTITUTIONAL LAW, 17, 18.

SELF-INCRIMINATION.

See EVIDENCE, 2.

SIXTH AMENDMENT.

See CONSTITUTIONAL LAW, 15.

SOVEREIGNTY.

See TREATIES, 1.

SPANISH-AMERICAN TREATY.

See TREATIES.

SPECIAL ASSESSMENTS.

See ASSESSMENT AND TAXATION.

STARE DECISIS.

See JURISDICTION, A 17;
PRACTICE AND PROCEDURE, 13;
TAXES AND TAXATION, 11.

STATES.

Police power; constitutionality of exercise in interest of public health—
San Francisco burial ordinance.

An ordinance prohibiting burial of the dead within the limits of a populous city based on a determination of the city authorities that the practice is dangerous to life and detrimental to public health, and which has been sustained by the highest court of the State, will not be overthrown by this court as an unconstitutional exertion of the police power of the State; and so held as to such an ordinance of San Francisco, California. *Laurel Hill Cemetery v. San Francisco*, 358.

See CONSTITUTIONAL LAW, 1, 2, *CRIMINAL LAW, 1;*
3, 4, 6, 7, 8, 9, 10, 20, 21, *TAXES AND TAXATION.*
27, 30, 31;

STATUTE OF LIMITATIONS.

See PLEADING.

STATUTES.

A. CONSTRUCTION.

1. *Binding force of unambiguous words.*

Although the purpose of a statute may be defeated by its qualifications, courts, in construing it, are bound by words that are explicit and unmistakable in meaning. *United States v. Plowman*, 372.

2. *Constitutionality; scope of consideration in determining.*

An act will not be declared unconstitutional merely because an executive officer might, in another case, act arbitrarily or recklessly under it. If such a case arises the courts can protect the rights of the government or persons which are based on fundamental principles for the protection of rights of property. *Monongahela Bridge Co. v. United States*, 177.

3. *Exception in application; power of court to make.*

Where the statute is plain, and Congress has made no exception in its application, the court cannot make one. *Haas v. Henkel*, 462.

4. *Object not to be defeated by yielding to what is non-essential.*

A statute may not be evaded, nor its purpose made to yield to what is

non-essential and thus render it a means to accomplish the deception it was meant to prevent. *Moxley v. Hertz*, 344.

5. *Avoidance of judicial chasm.*

A statute creating a court to take jurisdiction of crimes will not be construed, if another construction is admissible, so as to leave a judicial chasm; and so held that under the Oklahoma enabling act the Federal court had jurisdiction of certain specified crimes committed after the enabling act was passed and before the State was admitted. *Pickett v. United States*, 456.

6. *Relative weight of reason and letter of law.*

The reason of a law as indicated by its general terms should prevail over its letter when strict adherence to the latter will defeat the plain purpose of the law. *Ib.*

7. *When substance and not form considered.*

In determining whether a statute does or does not burden interstate commerce the court will look beyond mere form and consider the substance of things. *Western Union Tel. Co. v. Kansas*, 1.

See BANKRUPTCY, 9;

PRACTICE AND PROCEDURE, 4, 5;

CONSTITUTIONAL LAW, 1*f*,
28, 29;

TAXES AND TAXATION, 9;
WORDS AND PHRASES.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK BOOKS.

See BANKRUPTCY, 17.

STOCK AND STOCKHOLDERS.

See CORPORATIONS, 1, 2, 3, 7.

STREETS.

See ASSESSMENT AND TAXATION.

SUBROGATION.

See TAXES AND TAXATION, 4.

SUIT AGAINST STATE.

See CONSTITUTIONAL LAW, 30, 31.

SUIT AGAINST UNITED STATES.

See INDIANS, 5.

SWITCH CONNECTIONS.

See INTERSTATE COMMERCE COMMISSION, 4.

TAXES AND TAXATION.

1. *Legislative limitation of power of.*

A state legislature, unless restrained by the constitution of the State, may contract to limit its power of taxation; but, as taxation is essential to the existence and operation of government, an exemption therefrom will not be presumed from doubtful language, but must be expressed beyond reasonable doubt. *Great Northern Ry. Co. v. Minnesota*, 206.

2. *Exemption from taxation; power of State as to corporation; effect of forme: exemption.*

When a State becomes the owner by purchase of the entire property and franchises of a corporation created by itself, it can only convey the same pursuant to the provisions of the then existing constitution and it cannot reinvest either a purchaser or the original owner with any exemption from taxation prohibited by the existing constitution even if such exemption had been lawfully granted to the original owner of the franchise. *Ib.*

3. *Exemptions of corporation's earnings and real estate differentiated.*

There is a difference between a contract for a commuted system of taxation on earnings of a railroad corporation and a specific exemption from taxation of lands granted to the corporation, for a defined period; the former is personal and not assignable while the latter is attached to and follows the land. *Ib.*

4. *Exemption from taxation; effect to pass to successor of exempted corporation.*

A legislative contract of exemption from taxation in favor of a railroad company does not pass to another corporation acquiring the franchises of the former, and constitute such an irrepealable, unchangeable contract within the protection of the contract clause of the Federal Constitution that the rate of taxation cannot be subsequently altered by legislative enactment. *Chicago Great Western Ry. Co. v. Minnesota*, 234.

5. *Effect of Minnesota act of 1903, taxing railroads, as impairment of contract obligation.*

As against the plaintiff in error, the act of Minnesota of 1903, requir-

ing all railroad companies to pay a tax equal to four per cent of their gross earnings, is not an unconstitutional impairment of a legislative contract created by an act passed in 1856 imposing a tax of two per cent on a railroad company whose franchise was transferred to plaintiff in error. *Ib.*

6. *Power of taxation; presumption against surrender.*

The power of taxation is never to be regarded as surrendered or bargained away if there is room for rational doubt as to the purpose. *Wright v. Georgia R. R. & Banking Co.*, 420.

7. *Taxable property; what constitutes loan or credit.*

Where a policy-holder simply withdraws a portion of the reserve on his policy for which the life insurance company is bound, and there is no personal liability, it is not a loan or credit on which the company can be taxed as such, and this is not affected by the fact that the policy-holder gives a note on which interest is necessarily charged to adjust the account. *Board of Assessors v. New York Life Ins. Co.*, 517.

8. *Deprivation of property without due process of law.*

To tax such accounts as credits in a State where the company has made the advances would be to deprive the company of its property without due process of law. *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395, distinguished. *Ib.*

9. *Bank deposit temporarily within State not covered by statute purporting to tax all property.*

Even if a State can tax a bank deposit that is created only to leave the State at once, a statute purporting to levy a tax upon all property within the State should not be construed, in the absence of express terms or a direct decision to that effect by the state court, as intending to include such a deposit; and so held as to the statute of Louisiana involved in this case. *Ib.*

10. *Validity of taxation; effect of agreement by State as to method of taxation, not in conformity to state constitution, to create contract within contract clause of Federal Constitution.*

Where the constitution of the State requires equal and uniform taxation of all real and personal property in the State upon a cash basis and specifies the property that can be exempted, the legislature cannot thereafter agree that the payment of a given per cent. of the earnings of a corporation from property of a class not included among the properties that can be exempted shall be in lieu of all other taxation; and such a contract would not be pro-

tected by the impairment of obligation clause of the Constitution of the United States. *Great Northern Ry. Co. v. Minnesota*, 206.

11. *Question of right of State to tax tangible property therein, irrespective of residence of owner, foreclosed by prior decisions.*

This court having decided in *Carstairs v. Cochran*, 193 U. S. 10, that the State of Maryland can, as an exertion of its taxing power, without denial of due process of law, tax tangible property having a situs within its borders, irrespective of the residence of the owner, and can if necessary impose the obligation to pay such tax upon the custodian or possessor of such property, giving a lien thereon to secure reimbursement, the only Federal question involved and which would give this court jurisdiction in this case is so foreclosed that the writ of error is dismissed for want of jurisdiction. *Hanns Distilling Co. v. Baltimore*, 285.

See ASSESSMENT AND TAXATION; CORPORATIONS, 2-6;

CONSTITUTIONAL LAW, 1, 2; COURTS, 1;

3, 8, 12, 13, 20, 26, 27; JURISDICTION, A 6;

OLEOMARGARINE ACT.

TELEGRAPH COMPANIES.

See CONSTITUTIONAL LAW, 1, 8.

TENANTS IN COMMON.

See EQUITY, 5.

TERRITORIES.

Criminal jurisdiction; power of Congress, on organization into State, to transfer to Federal courts.

On the organization of a Territory into a State, Congress may—as it did by the Oklahoma enabling act—transfer the jurisdiction of general crimes committed in districts over which the United States retains exclusive jurisdiction from territorial to Federal courts, and may extend such jurisdiction to crimes committed before and after the enabling act. See *United States v. Brown*, 74 Fed. Rep. 43. *Pickett v. United States*, 456.

See PRACTICE AND PROCEDURE, 2.

TESTIMONY.

See BANKRUPTCY, 2;

CONTRACTS, 2;

EVIDENCE.

THROUGH RATES.

See INTERSTATE COMMERCE COMMISSION, 1, 2, 3.

TIMBER.

See PUBLIC LANDS, 7.

TITLE.

See CONSTITUTIONAL LAW, 28, 29;

INDIANS, 1, 2;

PUBLIC LANDS, 3.

TRADE-NAMES.

1. *Individual appropriation.*

The right to individual appropriation once lost is gone forever. *Sax-lehner v. Wagner, 375.*

2. *Imitation of article bearing geographic or family name.*

Where a geographic or family name becomes the name for a natural water coming from a more or less extensive district, all are free to try to imitate it, and the owners of one of such natural springs cannot prevent the sale of an artificial water as being similar to that of the natural spring, where there is no attempt to deceive the public as to its being artificial. *Ib.*

3. *Right of owner of springs bearing geographic name to prevent sale of artificial water.*

Hunyadi is now in effect a geographical expression and the owners of the Hunyadi Janos Springs cannot prevent the sale of artificial Hunyadi water where there is no deception of the public as to its being an imitation. *Ib.*

TRADING PURSUITS.

See BANKRUPTCY, 6, 7, 8.

TRAIN SERVICE.

See CONSTITUTIONAL LAW, 32.

TRANSFERS.

See CORPORATIONS, 4, 5;

INDIANS, 6.

TREATIES.

1. *Spanish-American treaty of 1898; rights of individuals protected by; salability of official positions not within.*

The rights of private individuals recognized and protected by the Treaty of 1898 with Spain did not include the salability of official

positions, such as procurador; nor did the United States intend to so restrict its own sovereign authority that it could not abolish the system of perpetual and salable offices which is entirely foreign to the conceptions of this people. *Sanchez v. United States*, 167.

2. *Spanish-American treaty of 1898; effect of Foraker Act to modify.*
 Even if Congress did not intend to modify the treaty of 1898 by the Foraker Act of April 12, 1900, 31 Stat. 77, if that act is inconsistent with the treaty it must prevail, and be enforced despite any provision in the treaty. (*Hijo v. United States*, 194 U. S. 315.) *Ib.*

See INDIANS, 5.

TRIAL.

Continuances; discretion of court.

Continuances are within the discretion of the trial court, and, in the absence of gross abuse, the action of the lower court will not be disturbed. *Pickett v. United States*, 456.

See CONSTITUTIONAL LAW, 14, 15;
CRIMINAL LAW, 4-12.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY, 14-17;
EQUITY, 1.

TRUSTS AND TRUSTEES.

See EQUITY, 5.

ULTRA VIRES.

See CONTRACTS, 6, 7.

UNITED STATES.

See INDIANS, 3, 4.

UNITED STATES COMMISSIONERS.

See CRIMINAL LAW, 8, 10, 11;
HABEAS CORPUS.

WAIVER.

See CONSTITUTIONAL LAW, 3, 4.

WATERS.

See CONGRESS, POWERS OF, 1, 2, 3;
CONSTITUTIONAL LAW, 17, 18.

WILLS.

1. *Construction; when widow entitled to income under provision of will.*
A provision that a definite amount of net income be paid by trustees to the widow does not entitle her to income from the death of the testator, but only from after the executors have been discharged and the property turned over to the trustees. *Hawaiian Trust Co. v. Von Holt*, 367.

2. *Same—Considerations in determining relative advantages of election.*
In considering whether a provision in a will is as advantageous as dower interest, the fact that the widow is an executor and receives commissions may be considered. *Ib.*

3. *Same—Effect of failure to elect to take dower.*

This rule applies even if, after acceptance by the widow, of the provision in lieu of dower, it appears that the provision is not as advantageous to her as though she elected to take her dower. *Ib.*

WITNESSES.

See BANKRUPTCY, 2.

WORDS AND PHRASES.

Presumption as to intention of Congress in use of word.

Where Congress has not expressly declared a word to have a particular meaning, it will be presumed to have used the word in its well-understood public and judicial meaning, and cases based on a declaration made by Parliament that the word has a certain meaning are not in point in determining the intent of Congress in using the word. *Toxaway Hotel Co. v. Smathers*, 439.

“Manufacturing,” as used in Bankruptcy Act of 1898 (see Bankruptcy, 9). *Friday v. Hall & Kaul Co.*, 449.

“Stock” and “shares” (see Corporations, 7). *Wright v. Georgia R. R. & Banking Co.*, 420.

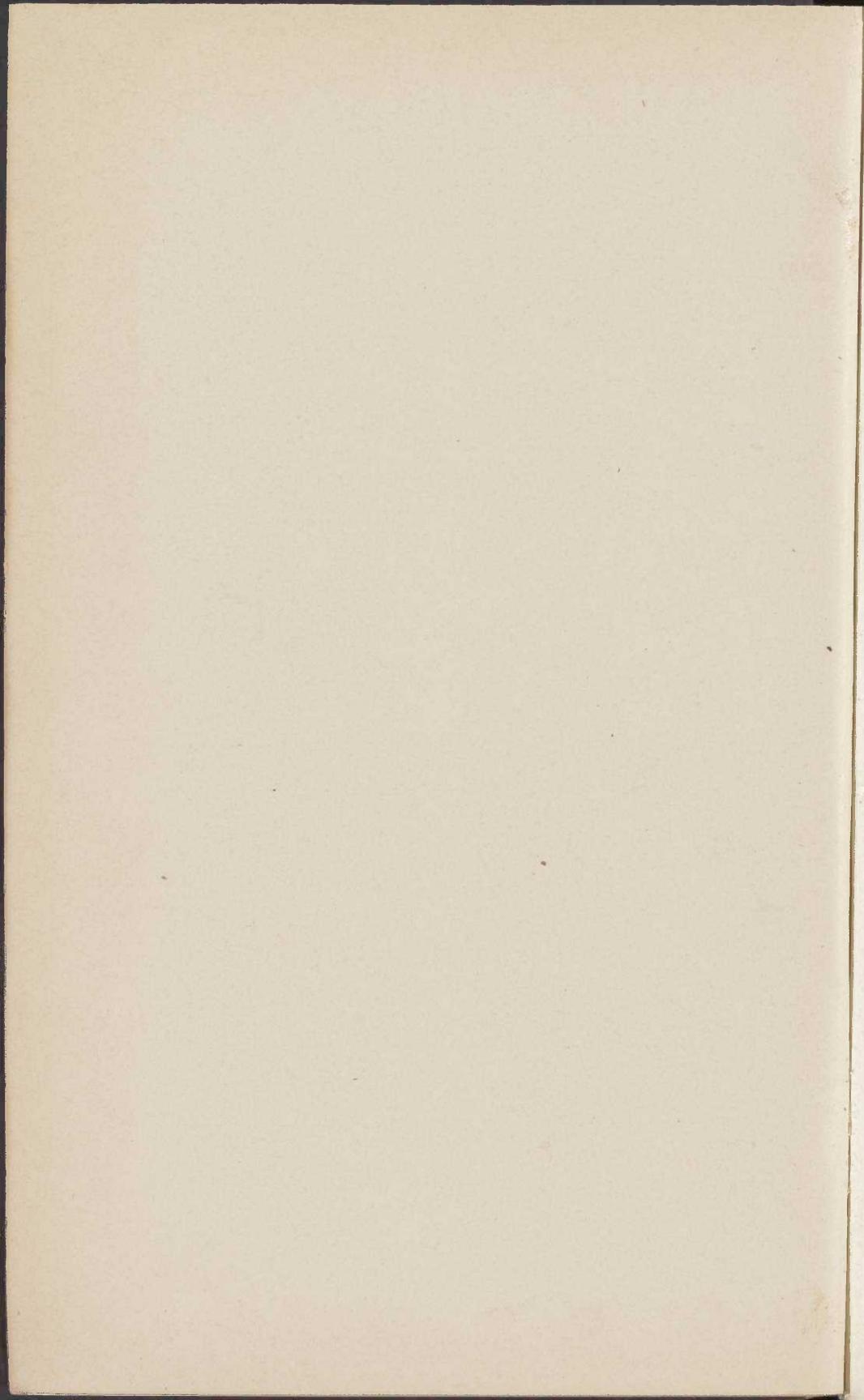
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STATUTES, A 1.*

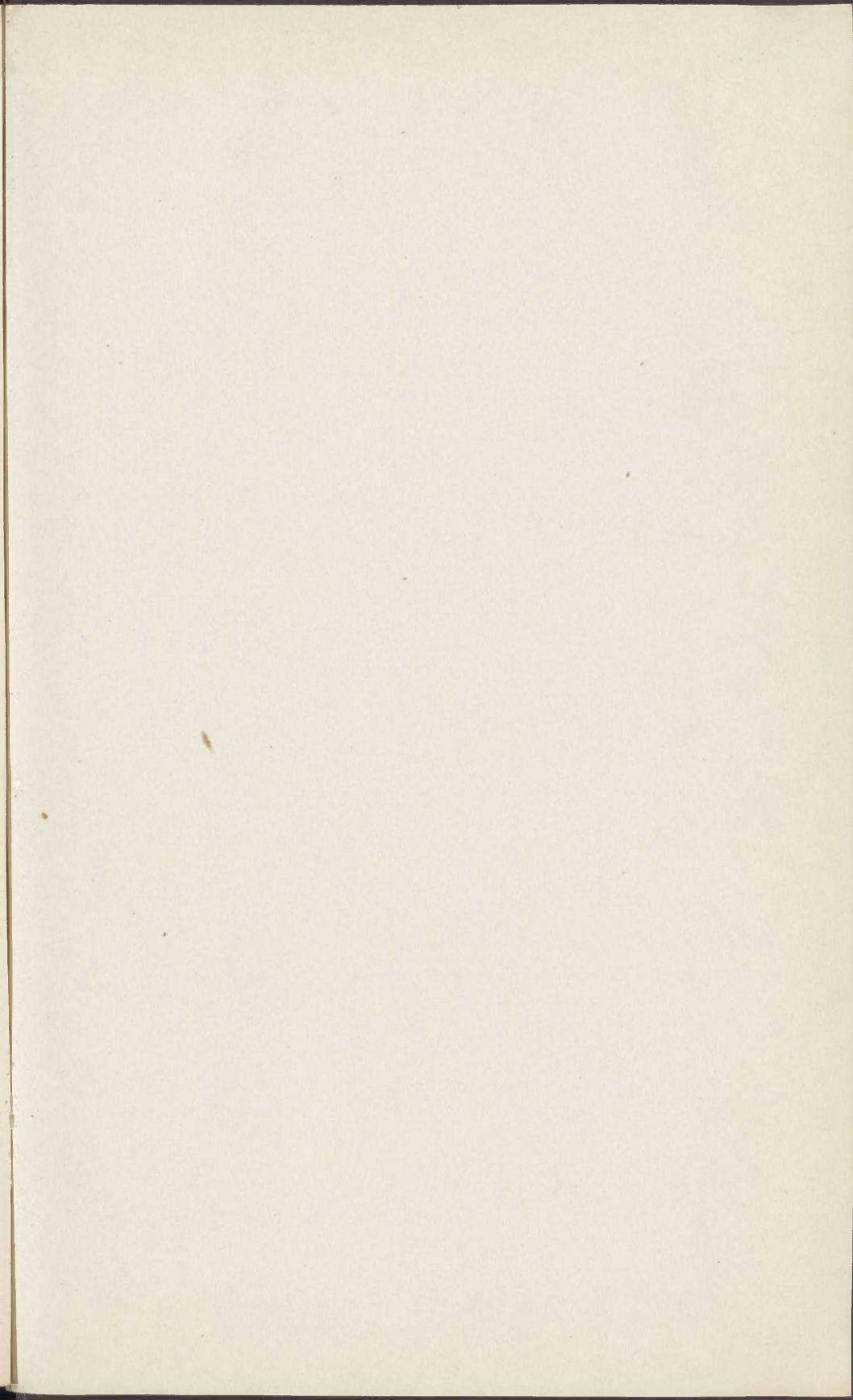
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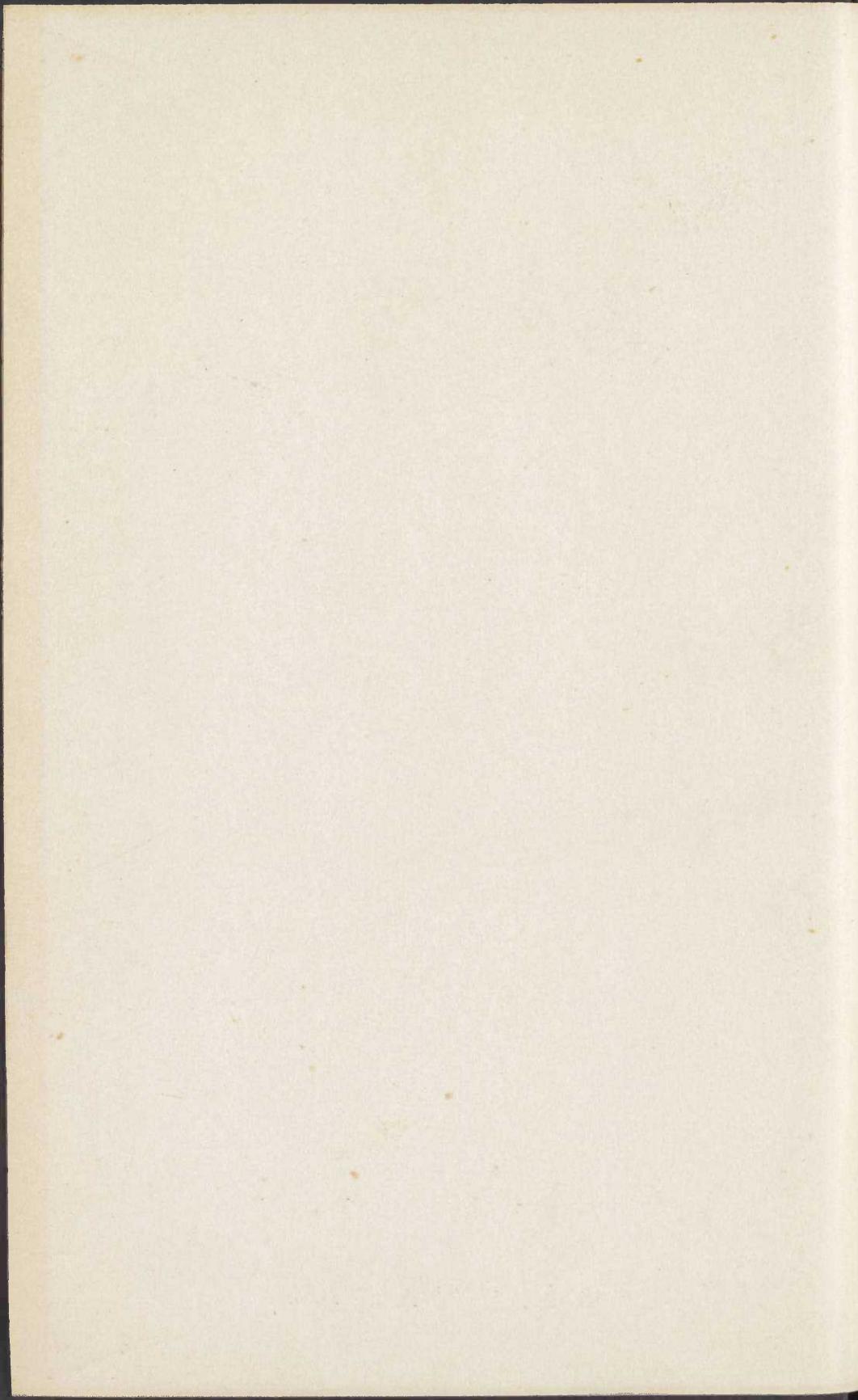
*See ASSIGNMENTS OF ERROR, 3;
HABEAS CORPUS;
JURISDICTION.*

WYANDOTTE INDIANS.

See INDIANS, 3, 4, 5.







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