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An action against the Secretary of State of a State to compel him in certifying nominees for Congress, to proceed under a former apportionment act on the ground that the present act is unconstitutional, is not a suit against the State, nor is it in this case one against a continuing board, but against the Secretary of State personally; and on the termination of his official authority his successor cannot be substituted. *Richardson v. McChesney*, 487.

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The right to contribution in the admiralty cannot be taken away because the claim is asserted against one of those causing the damage at common law and put into judgment. *Ib.*

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Where two vessels cause an injury to a third the fact that the injured party obtains judgment against the owners of one of the vessels in fault does not deprive the admiralty of jurisdiction of a suit brought by those against whom the judgment is entered against the other vessel to compel contribution. *Ib.*

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Where the trial court makes findings of fact and states conclusions of law thereon but certifies no rulings in respect of evidence, and the Supreme Court of the Territory enters a general judgment of affirmance, manifestly based upon the correctness of such findings of fact, they furnish a sufficient statement for the appeal; and, in this court, the question is whether they are sufficient to support the decree. (*Stringfellow v. Cain*, 99 U. S. 610.) *Montezuma Canal Co. v. Smithville Canal Co.*, 371.

2. *Appeal; sufficiency of statement of facts.*

Findings of the District Court when adopted by the Supreme Court of the Territory serve the purpose of the statement of facts required by the statute. *Eagle Mining Co. v. Hamilton*, 513.

3. *Appeal and petition for revision differentiated.*

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4. *Limitation of review on appeal under Criminal Appeals Act of 1907.*

Under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, when the indictment is quashed this court is confined to a consideration of the grounds of decision mentioned in such statute, *United States v. Keitel*, 211 U. S. 370, and there is a similar limit when the case comes up from a judgment sustaining a special plea in bar. *United States v. Kissel*, 601.

5. *Same.*

Whether the indictment in this case charges a continuing conspiracy with technical sufficiency is not before the court on the appeal taken under the Criminal Appeals Act of March 2, 1907, from a judgment sustaining special pleas of limitation in bar. *Ib.*

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conceded that there was any evidence at all. *Ling Su Fan v. United States*, 302.

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1. *Award; majority rule.*

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2. *Same; reasons for rule.*

The fact that public affairs are controlled by majorities is probably the basis of the above rule although the reason for the distinction therein contained is not altogether clear. *Ib.*

3. *Same; what amounts to matter of public concern.*

The purchase by a municipality, under authority and direction of the legislature of the State, of a water supply system, and the determination of the price to be paid for an existing plant are matters of public concern. *Ib.*

4. *Appraisal of value distinguished; right to take testimony.*

There is a distinction between an arbitration and an appraisal of value and although arbitrators may not independently take testimony as to disputed facts appraisers may, as in this case, properly examine books and papers relating to the property, in the absence of counsel, without being guilty of misconduct; and, in the absence of bad faith, such examination will not vitiate the award. *Ib.*

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Where the trustee in bankruptcy brings a bill in equity in the Circuit Court to set aside a transfer made by the bankrupt, the appeal is not governed by § 25 of the Bankruptcy Act but by the Court of Appeals Act of March 3, 1891, c. 517, § 6, 26 Stat. 828. (*Knapp v. Milwaukee Trust Co.*, 216 U. S. 545.) *Thomas v. Sugarman*, 129.

2. *Ratification of bankrupt's act and election of remedy by trustee; what amounts to.*

The fact that a trustee in bankruptcy obtained a money judgment against one to whom the bankrupt transferred certain assets to delay and defraud creditors, *held*, in this case, not to have amounted to ratification of the bankrupt's act or to an election not to pursue the assets transferred, but the bankrupt was entitled to also maintain a bill in equity to set aside the transfer. *Ib.*

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1. *Time for filing; application of common law rule 55 of Supreme Court, District of Columbia.*

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2. *Allowance; implication of consent.*

Grave matters of procedure such as the allowance of a bill of exceptions after close of the term should not rest on mere implication of consent. *Ib.*

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- Coffey v. United States*, 116 U. S. 436, followed in *Chantangco v. Abaroa*, 476.
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- Dent v. West Virginia*, 129 U. S. 114, followed in *Watson v. Maryland*, 173.
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- Knapp v. Milwaukee Trust Co.*, 216 U. S. 545, followed in *Thomas v. Sugarman*, 129.
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- Stone v. United States*, 167 U. S. 178, followed in *Chantangco v. Abaroa*, 476.
- Stringfellow v. Cain*, 99 U. S. 610, followed in *Montezuma Canal Co. v. Smithville Canal Co.*, 371.
- Telegraph Co. v. Texas*, 105 U. S. 460, followed in *Western Union Tel. Co. v. Commercial Milling Co.*, 406.
- Tullis v. Lake Erie & Western R. R. Co.*, 175 U. S. 348, followed in *Louisville & Nashville R. R. Co. v. Melton*, 36.
- United States v. Keitel*, 211 U. S. 370, followed in *United States v. Kissel*, 601.
- Western Union Tel. Co. v. Andrews*, 216 U. S. 165, followed in *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135, and *Swanger v. Atchison, T. & S. F. Ry. Co.*, 159.

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CLAIMS AGAINST THE UNITED STATES.

1. *Assignment of—What claims within prohibition of § 3477, Rev. Stat.*
The prohibition of § 3477, Rev. Stat., against assignment of claims against the United States which have not been allowed and warrant issued therefor is of universal application. It covers all unallowed claims and all voluntary assignments thereof, including assignments made in good faith, as security for advances in course of business, of undisputed claims on contracts being performed by the assignor; and *held*, that assignments of such claims so made by a bankrupt are null and void, not only as against the United States but also as against other creditors, and the claims pass by operation of law to the trustee in bankruptcy. *National Bank of Commerce v. Downie*, 345.
2. *Assignment of; claims not within prohibition of § 3477, Rev. Stat.*
Section 3477, Rev. Stat., does not embrace the transfer of unallowed claims against the United States when the transfer is by operation of law and not voluntary. *Ib.*
3. *Assignment of; effect of exempting certain claims from operation of § 3477, Rev. Stat.*
To hold that an act making all assignments of claims against the Government null and void does not embrace claims and assignments of the nature of those involved in this action would effect a repeal of the statute by judicial legislation in disregard of its plain intent. *Ib.*

4. *Right of executive officer to bind Government in excess of appropriation.*
 Heads of departments cannot by express or implied contract render the Government liable for an amount in excess of that expressly appropriated by Congress for the subject-matter of the contract.
Hooe v. United States, 322.

5. *Unauthorized claims not founded on Constitution.*

A claim against the United States for a specific amount of money which is not expressly or by necessary implication authorized by a valid enactment of Congress cannot be said to be founded on the Constitution. *Ib.*

6. *Liability of Government for use of private property made without authority of law.*

When an officer of the United States takes or uses private property without authority of law he creates no condition under which the Government is liable by reason of its constitutional duty to make compensation. If private property has been taken or used by an officer of the United States without authority of law the remedy is not with the courts but with Congress alone. *Ib.*

7. *Jurisdiction of Court of Claims of such claim.*

A claim for such compensation does not rest on the Constitution, and as an unauthorized act of the officer does not create a claim against the United States, the Court of Claims has no jurisdiction thereof under the Tucker Act of March 3, 1887, c. 359, 24 Stat. 505. *Ib.*

8. *Right of lessor of building to recover amount in excess of appropriation made for use thereof.*

One renting a building to a department of the Government and receiving the entire appropriation for rent for such department has no claim against the Government for any amount in excess of the appropriation, even though he demands more and though he expressly excepts a part of the building from the lease and the department actually occupies the part reserved, nor has the Court of Claims jurisdiction of such a claim as one arising under the provision of the Constitution that private property shall not be taken without compensation. *Ib.*

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See CONSTITUTIONAL LAW, 44, 45.

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1. *Embezzlement by; act of March 3, 1875, and §§ 5490, 5497, Rev. Stat., not applicable as respects fees of.*

Clerks of the Federal courts are not controlled in respect to their fees and emoluments and accounting therefor by the provisions of the act of March 3, 1875, c. 144, 18 Stat. 479, or of Rev. Stat., §§ 5490 and 5497, relating to embezzlement of moneys and property of the United States by officers and other persons charged with the safe-keeping thereof. *United States v. Mason*, 517.

2. *Fees of, as property of the United States; nature of fees.*

There is a separate system with respect to the fees and emoluments of clerks, and the amounts which the clerk receives are not moneys or property of the United States but a fund from which he receives his compensation and expenses, and as to the surplus for which he must account to the United States he is not trustee but debtor. *Ib.*

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Interstate; what constitutes.

Intercourse between the States by telegraph is interstate commerce. (*Telegraph Co. v. Texas*, 105 U. S. 460; *Western Un. Tel. Co. v. Pendleton*, 122 U. S. 347.) *Western Union Tel. Co. v. Commercial Milling Co.*, 406.

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The common law does not become a part of the law of a State of its own vigor but is adopted by constitutional provision, statute or decision; it expresses the policy of the State for the time being only and is subject to be changed by the power that adopted it.

It has no efficacy that the statute changing it does not possess.
Western Union Tel. Co. v. Commercial Milling Co., 406.

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Congress, proceeding under the Constitution, declares what amount shall be drawn from the Treasury in pursuance of an appropriation. *Hooe v. United States*, 322.

2. Coinage; delegation of power to Philippine Government.

The power to coin money and regulate its value is a prerogative of sovereignty exclusively vested in the Congress of the United States, from which is derived the power of the government of the Philippine Islands in respect to local coinage. *Ling Su Fan v. United States*, 302.

3. Delegation to Philippine Commission; scope of power to prohibit.

Where power is given by Congress to the Philippine Commission to prohibit an act, the power includes making violation of the prohibition a misdemeanor. *Ib.*

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CONSTITUTIONAL LAW.

1. *Commerce clause; inseparable incidents of interstate commerce within.*

The protection of the commerce clause of the Federal Constitution extends beyond the strict lines of contract, and inseparable incidents of a transaction of interstate commerce based on contract are also interstate commerce. *Dozier v. Alabama*, 124.

2. *Commerce clause; incident of contract within provision of.*

Where, under the contract to purchase a picture, the purchaser has the option to take at a specified price the frame in which the picture shall be delivered, and both picture and frame are manufactured in and delivered from another State and remain the property of the vendor until paid for, the sale of the frame is a part of the original transaction and protected by the commerce clause of the Constitution. *Ib.*

3. *Commerce clause; imposition of license tax as burden on interstate commerce; repugnancy of Alabama statute of March 7, 1907, § 17.*

The imposition of a license tax for soliciting orders for enlargements of photographs and frames on persons not having a permanent place of business in the State and keeping such articles as stock in trade is a regulation of commerce between the States and void under the commerce clause of the Federal Constitution, both as to the orders for the picture itself and as to an optional right to take, at a price specified in the contract, the frame in which the picture is delivered, and so held as to the license tax imposed under § 17 of the statute of March 7, 1907, of Alabama. *Ib.*

4. *Commerce clause; burden on interstate commerce; stoppage of trains constituting.*

Where a railroad company has already provided adequate accommodation at any point, a state regulation requiring interstate trains to stop at such point is an unreasonable burden on interstate commerce and void under the commerce clause of the Federal Constitution, and this rule equally applies to junction, as to other, points; and so held as to the act of March 19, 1907, amending

§ 1075, Rev. Stat., of Missouri. *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, Topeka & Santa Fe Ry. Co.*, 159.

Congress, Powers of. See CONGRESS, POWERS OF.

5. *Commerce clause; what constitutes burden on interstate commerce.*

While a state statute which imposes positive duties and regulates the performance of business of a telegraph company is void as a direct regulation of interstate commerce as decided in *Western Un. Tel. Co. v. Pendleton*, 122 U. S. 347, a statute which imposes no additional duty but gives sanction only to an inherent duty and declares, as to a public service, the public policy of the State, does not entail any burden on interstate commerce and is not void under the commerce clause of the Constitution of the United States. *Western Union Tel. Co. v. Commercial Milling Co.*, 406.

6. *Commerce clause; validity of prohibition affecting; materiality of source of prohibition.*

Whether a prohibition affecting interstate commerce as construed by the highest court of a State rests on the common-law liability or on a statute of that State makes no difference in determining its validity under the Constitution of the United States. *Ib.*

7. *Commerce clause—Validity of Michigan law of 1893 fixing liability of telegraph companies.*

The statute of Michigan of 1893, fixing the liability of telegraph companies for non-delivery of messages at the damages sustained by the sender, is not, as applied to interstate messages, unconstitutional as a burden on, or regulation of, interstate commerce, or as depriving telegraph companies of their property without due process of law or denying them the equal protection of the laws. *Ib.*

8. *Contract clause; contracts within.*

The contract clause of the Federal Constitution does not give validity to contracts that are properly prohibited by statute. *Griffith v. Connecticut*, 563.

9. *Contract impairment; effect of exemption from taxation on previous contract for taxation in aid of railroad.*

Even if the vote by a parish acting under a state statute in Louisiana to aid a railroad company by an annual tax constituted a contract and the company became entitled to its benefit, a provision in a subsequently enacted constitution exempting certain property

then taxable from all taxation does not impair the obligation of the original contract and the special tax cannot be imposed on the property so exempted. *Arkansas Southern Ry. Co. v. Louisiana & Arkansas Ry. Co.*, 431.

See post, 45, 46;

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Double jeopardy. See post, 14, 15.

10. *Due process of law as applied to criminal procedure; definition.*

As applied to criminal procedure, if the accused has been heard in a court of competent jurisdiction and proceeded against under the orderly processes of law, and only punished after inquiry and investigation on notice with opportunity to be heard, and judgment awarded within the authority of a constitutional law, he has not been denied due process of law. *Ong Chang Wing v. United States*, 272.

11. *Due process of law; effect of refusal of continuance as denial.*

The granting and denial of continuances are matters within the discretion of the trial court and are not ordinarily reviewable; in this case the refusal to grant a continuance did not amount to a denial of due process of law to the accused. *Franklin v. South Carolina*, 161.

12. *Due process of law; effect to deny, of refusal of peremptory instruction of dismissal in criminal prosecution for homicide committed in resisting arrest under statute violative of Thirteenth Amendment.*

Where one about to be arrested by an officer of the law under process issued under a law which is unconstitutional shoots the officer upon his entering the room, the question of right of resistance to arrest is for the jury and the accused is not entitled to a peremptory instruction of dismissal, nor is he denied due process of law under the Fourteenth Amendment by the refusal of the court to give such instruction because the process was issued under a statute violative of the Thirteenth Amendment, to wit, § 357 of the Criminal Code of South Carolina in regard to agricultural contracts. *Ib.*

13. *Due process of law; punishment without regard to intent.*

The mere fact that a state police power punishes an offense actually committed without regard to intent does not render the statute unconstitutional under the due process clause of the Fourteenth Amendment. *Sherlin-Carpenter Co. v. Minnesota*, 57.

14. *Due process of law; validity of Minnesota law punishing cutting of timber on state lands.*

The statute of Minnesota punishing the cutting and removal of timber on state lands and imposing double or triple damages and fine and imprisonment for violation, whether the offense be wilful or not, is not unconstitutional under the due process clause of the Fourteenth Amendment either as putting one violating it in second jeopardy or because inflicting the penalties upon him regardless of his intent. *Ib.*

15. *Due process of law; quære as to double jeopardy.*

Quære, whether a state statute which inflicts two punishments in separate proceedings for the same act is unconstitutional under the Fourteenth Amendment. *Ib.*

16. *Due process of law; right of appeal as essential of; effect of Criminal Appeals Act of 1907 to deny.*

A right of appeal is not essential to due process of law, *Reetz v. Michigan*, 188 U. S. 505, and neither due process of law nor equal protection of the law is denied to the accused by the act of March 2, 1907, c. 2564, 34 Stat. 1246, giving the Government an appeal to this court under certain conditions from judgments sustaining demurrers to, or motions to quash, indictments because the same appeal is not allowed to the accused in case the demurrer or motion to quash is overruled. *United States v. Heinze*, 532.

17. *Due process and equal protection of the law; effect of assessment by memoranda to deny.*

The fact that the assessment is made by memoranda on the assessment envelope or jacket, does not render it ineffectual as lacking in due process of law because not recorded in a permanent book, and where the state court has held that an assessment so made is good under the law of the State, this court will not hold that it denied the party assessed due process of law or equal protection of the law. *Illinois Central R. R. Co. v. Kentucky*, 551.

18. *Due process of law; effect of construction by state court that assessment cannot enter into arrangement with parties contemplating non-payment of tax.*

A construction by the state court that an assessment made by the board of assessors cannot enter into an arrangement with the parties assessed contemplating the non-payment of the tax based thereon does not deprive those parties of any constitutional rights where no ground is shown for impugning the assessment so made. *Ib.*

19. *Due process of law; deprivation of property; right of State to require other than owner of franchise to pay tax thereon.*

The Federal Constitution does not preclude a State from requiring a corporation actually controlling and exercising a franchise to pay the tax legally assessed thereon, although not the actual owner of the franchise. *Ib.*

20. *Due process of law; deprivation of property; effect of state law against limitation of liability by public service corporation.*

Public service corporations are subject to police regulation, and while the police power is not unlimited it does include provisions, in pursuance of the public policy of the State, against such a corporation limiting its liability for its own negligence, and a statute to that effect does not deprive the public service corporation affected thereby of its property without due process of law. *Western Union Tel. Co. v. Commercial Milling Co.*, 406.

21. *Due process of law; effect to deny to railroad, by non-compensation for structure made necessary by street opening through its right of way.*

A railway company is not deprived of its property without due process of law either under the Fifth or the Fourteenth Amendment because in a street opening proceeding it is not awarded, in addition to the value of the land taken, the cost of the new structure which must necessarily be erected to carry its right of way over the street, as required for the safety and convenience of the public. *Cincinnati, I. & W. Ry. Co. v. Connersville*, 336.

22. *Due process of law; deprivation of property without; regulation of coinage as.*

The quality of legal tender of coin is an attribute of law aside from its bullion value and renders such coin as the Government has made legal tender subject to such reasonable regulations by the police power as public policy may require including prohibition against exportation, and the exercise of such power does not deprive the owner of his property without due process of law even if the bullion value in a foreign country exceeds the legal tender value in the country of coinage. *Ling Su Fan v. United States*, 302.

See ante, 7; *post*, 45, 46;

DUE PROCESS OF LAW;

PRACTICE AND PROCEDURE, 17.

23. *Equal protection of the laws; power of State to fix basis of classification.*

A State does not offend the equality clause of the Fourteenth Amendment by taking as a basis of classification the ways by which a law may be defeated. (*St. John v. New York*, 201 U. S. 633.) *Shevlin-Carpenter Co. v. Minnesota*, 57.

24. *Equal protection of the law; power of States to classify.*

The equal protection provision of the Fourteenth Amendment did not deprive the States of the power to classify, but only of the abuse of such power; nor is the clause offended against because some inequality may be occasioned by a classification in legislation properly enacted under the police power. *Louisville & Nashville R. R. Co. v. Melton*, 36.

25. *Equal protection of the law; validity of classification by State.*

A classification in a state police statute proper as to a general class is not unconstitutional under the equal protection clause of the Fourteenth Amendment because it ignores inequalities as to some persons embraced within the general class. *Ib*

26. *Equal protection of the law; validity of Employers' Liability Statute of Indiana of 1893.*

The Employers' Liability Statute of Indiana of 1893 is not unconstitutional under the equal protection clause of the Fourteenth Amendment because it subjects railroad employ es to a special rule as to the doctrine of fellow servant, *Tullis v. Lake Erie & Western R. R. Co.*, 175 U. S. 348; *Pittsburg Ry. Co. v. Martin*, 212 U. S. 560; nor is it unconstitutional under that clause as to such employ es of railroads, such as bridge carpenters, as are not subject to the hazards peculiarly resulting from the operation of a railroad. *Ib*.

27. *Equal protection of the law; validity of classification by State under police power.*

Classification will not render a state police statute unconstitutional as denying equal protection of the law so long as there is a reasonable basis for such classification; nor will exceptions of specified classes render the law unconstitutional unless there is no fair reason for the law that would not equally require its extension to the excepted class. (*Williams v. Arkansas*, 217 U. S. 79.) *Watson v. Maryland*, 173.

28. *Equal protection of the law; classification under police power; validity of Maryland medical registration law.*

The medical registration law of Maryland (art. 43, § 83, Code of 1904) is not unconstitutional as denying equal protection of the law because its provisions do not apply to those who practiced prior to a specified date and treated at least twelve persons within a year prior thereto, or because it does not apply to gratuitous services, or to physicians in hospitals, none of the exceptions being unreasonable. *Ib*.

29. *Equal protection of the law; classification within police power of State.*

Classification, on a reasonable basis of subjects, within the police power, is within legislative discretion and a reasonable selection which is not merely arbitrary and without real difference does not deny equal protection of the laws within the meaning of the Fourteenth Amendment. *Griffith v. Connecticut*, 563.

30. *Equal protection of the law; classification of carriers for regulation.*

A classification of telegraph companies in a statute prohibiting limitation of liability is reasonable and does not deny equal protection of the law to telegraph companies because it does not apply to common carriers. *Western Union Tel. Co. v. Commercial Milling Co.*, 406.

31. *Equal protection of the law—Validity of Connecticut statute of 1907, limiting interest on loans.*

The statute of Connecticut of 1907, limiting interest on loans, is not unconstitutional as denying equal protection of the laws because it excepts loans made by national and state banks and trust companies and *bona fide* mortgages, on real and personal property; the classification is a reasonable one. *Griffith v. Connecticut*, 563.

32. *Equal protection of the laws; exclusion of negroes from grand jury.*

Where the state court has held that under the state jury law the commissioners are only required to select men of good moral character and that competent negroes are equally eligible with others, this court cannot hold that a negro is denied equal protection of the law by reason of the statute because the commissioners have not selected any negroes for the grand jury which indicted him; and so held as to the jury law of 1902 of South Carolina. *Franklin v. South Carolina*, 161.

33. *Equal protection of the law; taxation.*

When the record does not show that others similarly situated escaped the taxation imposed on the plaintiff in error, and the state court has declared that if any escaped they are still liable, this court regards the contention of denial of equal protection of the law as without merit. *Illinois Central R. R. Co. v. Kentucky*, 551.

34. *Equal protection of the law; quære as to application of provision to United States—Power of Congress to classify.*

Even if, and not now decided, the equal protection provision of the Fourteenth Amendment apply to the United States, it can have no broader meaning when so applied than when applied to the

States; and even if Congress may not discriminate in legislation, it has the power to classify and the classification in the act of March 2, 1907, is well within such power. *United States v. Heinze*, 532.

See ante, 7, 16, 17; *post*, 45, 46.

35. *Full faith and credit clause; past due installments of judgment for future alimony within.*

Past due installments of a judgment for future alimony rendered in one State are within the protection of the full faith and credit clause of the Federal Constitution unless the right to receive the alimony is so discretionary with the court rendering the decree that, even in the absence of application to modify the decree, no vested right exists. *Sistare v. Sistare*, 1.

36. *Full faith and credit clause; when judgment for alimony not within.*

Unless a decision of this court in terms overrules a former decision, it will, if possible, be so construed as to harmonize with, and not overrule such prior decision; and so held that *Barber v. Barber*, 21 How. 582, establishing the general rule that a judgment for alimony as to past installments was within the full faith and credit clause was not overruled by *Lynde v. Lynde*, 181 U. S. 187, but the latter case established the exception as to such judgments where the alimony is so discretionary with the court that a vested right to receive the same does not exist. *Ib.*

37. *Full faith and credit clause; when judgment for alimony absolute and therefore within.*

The settled doctrine in New York in 1899 was that no power existed to modify a judgment for alimony absolute in terms unless conferred by statute, and a judgment for future alimony entered in 1899 under §§ 1762-1773, Code of Civil Procedure, is absolute until modified by the court rendering it; such a judgment, therefore, as to past due installments, falls under the general rule that it is entitled to full faith and credit in the courts of another State. *Barber v. Barber*, 21 How. 582, followed; *Lynde v. Lynde*, 181 U. S. 187, distinguished. *Ib.*

38. *Full faith and credit clause; effect of difference in modes of procedure to enforce judgment.*

Although the full faith and credit clause may not extend to mere modes of procedure, a judgment absolute in terms and enforceable in the State where rendered must, under the full faith and credit clause of the Federal Constitution, be enforced by the courts of another

State, even though the modes of procedure to enforce its collection may not be the same in both States. *Ib*

39. *Full faith and credit clause; judgment against corporation after withdrawal from State in which rendered, not entitled to.*

A power of attorney to a state officer to accept process required by statute to be given by a foreign corporation as a condition for doing business in the State although irrevocable in form, may be revocable, on the withdrawal of such corporation from the State, as to matters not connected with business transacted in such State or with residents thereof; and the courts of one State are not required to give full faith and credit, under the Federal Constitution, to a judgment of another State against a corporation based on service on a state officer of that State, in which said corporation had done business but from which it had in good faith withdrawn after revoking the power of attorney which it had given to such officer as a condition for doing business in the State, and where the cause of action did not arise in, or was not connected with a transaction arising in such State, or in favor of a citizen thereof. *Hunter v. Mutual Reserve Life Ins. Co.*, 573.

See FEDERAL QUESTION, 2.

40. *Judicial power of the United States; action against State; suit to enjoin state officers not within prohibition.*

Ex parte Young, 209 U. S. 1, and *West. Un. Tel. Co. v. Andrews*, 216 U. S. 165, followed, to effect that an action brought to enjoin state officers charged with the execution of a state statute from enforcing the same on the ground that such statute violates the Federal Constitution is not an action against the State within the prohibition of the Eleventh Amendment. *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, Topeka & Santa Fe Ry. Co.*, 159.

41. *Judicial power of the United States; right of resort to courts; invalidity of state statute abridging right.*

While the right to do local business within a State may not be derived from the Federal Constitution, the right to resort to Federal courts is one created by that Constitution; and, as against a foreign corporation already established within its borders, a State cannot forfeit the right to do business because of the bringing of an action in the Federal court, and so *held* that the act of March 13, 1907, of Missouri, imposing such a penalty, is unconstitutional and void as to a foreign corporation already in the State at that time. *Ib.*

Property rights. See CLAIMS AGAINST THE UNITED STATES, 5-8.

42. *Public welfare; exclusiveness of declared principle.*

The Constitution declares the principle upon which the public welfare is to be promoted and opposing ones cannot be substituted. (*Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 558.) *Shevlin-Carpenter Co. v. Minnesota*, 57.

43. *Self-incrimination—Prohibition of Fifth Amendment defined; body of accused as evidence.*

The prohibition of the Fifth Amendment against compelling a man to give evidence against himself is a prohibition of the use of physical or moral compulsion to extort communications from him and not an exclusion of his body as evidence when it is material; and so held that testimony of a witness that the accused put on a garment and it fitted him is admissible, whether the accused had put on the garment voluntarily or under duress. *Holt v. United States*, 245.

44. *States; power to select and classify subjects for taxation.*

The Constitution of the United States does not, as a general rule, control the power of the States to select and classify subjects for taxation; and vested rights which cannot be impaired by subsequent legislation may still be classified for, and subjected to, taxation. *Moffitt v. Kelly*, 400.

45. *States; taxation of community property on death of husband, not denial to surviving wife of constitutional right.*

A State may classify for taxation estates passing by will or intestacy and include therein property held as community property by husband and wife at the time of the death of the husband and becoming completely vested in the wife, without violating either the contract, due process, or equal protection provision of the Constitution; the mere fact that the wife had a preëxisting right of property creates no exemption from taxation if the selection of that class of estates is legal. *Ib.*

46. *States; validity of California inheritance tax law of 1905.*

The law of California of 1905, taxing all property passing by will or intestacy, having been construed by the highest court of that State as applying to the surviving wife's share of the community property, this court holds that such tax is not in conflict with either the contract, due process or equal protection clause of the Constitution of the United States. *Ib.*

CONSTRUCTION OF DECISIONS.

See CONSTITUTIONAL LAW, 36.

CONSTRUCTION OF STATUTES.

See FEDERAL QUESTION, 2;
STATUTES, A.

CONTINUANCE.

See CONSTITUTIONAL LAW, 11.

CONTINUING OFFENSES.

See CRIMINAL LAW, 1-4.

CONTRACTS.

1. *Government; effect of stipulations made by District Attorney on rights of United States.*

Stipulations entered into by the United States district attorney to obtain possession of vessels in course of construction and seized by judicial proceedings under state law should not, under §§ 3753, 3754, Rev. Stat., be construed as depriving the United States of any rights asserted under the contracts for constructing such vessels. *United States v. Ansonia Brass & Copper Co.*, 452.

2. *Government; construction as to vesting of title to uncompleted vessels.*

Construing the three contracts for construction of vessels involved in this case, the court construes one contract as vesting title in the United States as the work progressed and the others as not giving the United States a superior lien on the uncompleted vessel as work progressed; in regard to the one contract, the state lien law does not, and in regard to the other contract such law does, apply. *Ib.*

3. *Performance; duty of contractor for water supply to maintain ability to perform.*

One contracting to furnish a municipality with an ample supply of pure water must at all times maintain his ability to meet the requirements of the contract, and a continuous supply of water is a vital part of the contract. *Columbus v. Mercantile Trust Co.*, 645.

4. *Abrogation on breach; considerations in determining right to annul.*

Where the breach justifies the abrogation of a contract otherwise protected by the contract clause of the Federal Constitution, considerations of hardship, and the interests of creditors cannot pre-

vail to set up and enforce that contract against the party having the right to treat the contract as ended. *Ib.*

See CLAIMS AGAINST THE UNITED STATES, 4;
 CONSTITUTIONAL LAW, 1, 8,
 9, 45, 46;
 CORPORATIONS, 1;
 EQUITY, 3, 5;
 INJUNCTION, 1;
 JURISDICTION, A 9, 10;
 STATES, 6.

CONTRIBUTION.

See ADMIRALTY, 1, 2, 3.

CONVEYANCES.

See CORPORATIONS, 4;
 COURTS, 4;
 NATIONAL BANKS, 3.

CORPORATIONS.

1. *Contracts; charter limitations on power to contract.*

A corporation contracts subject, and not paramount, to reservations in its charter and cannot, by making contracts or incurring obligations, remove or affect such reservations. *Calder v. Michigan*, 591.

2. *Existence; effect of mortgage of franchise on power to repeal charter.*

A franchise given by a city to a public service corporation does not enlarge the right of the corporation to exist as against an expressly reserved power to repeal the charter, even if the corporation has mortgaged such franchise. *Ib.*

3. *Doing business within State; what constitutes—Right to revoke power of attorney to accept process.*

A few separate and disconnected transactions by a foreign corporation after its withdrawal from a State, all relating to matters existing before such withdrawal do not constitute doing business in that State so as to preclude such a corporation from revoking the power of attorney to accept process given by it to a state officer as required by statute of the State to enable it to enter and do business in the State. *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602; *Mutual Reserve Fund Life Association v. Phelps*, 190 U. S. 147; *Mutual Reserve Ins. Co. v. Birch*, 200 U. S. 612; *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, distinguished. *Hunter v. Mutual Reserve Life Ins. Co.*, 573.

4. *Ultra vires; conveyance to corporation held not void, but voidable.*

In the absence of clear expression of legislative intention to the con-

trary, a conveyance of real estate to a corporation for a purpose not authorized by its charter is not void, but voidable. The sovereign alone can object; the conveyance cannot be impugned by the grantor, his heirs or third parties. *Kerfoot v. Farmers' & Merchants' Bank*, 281.

See CONSTITUTIONAL LAW, 19, 20, NOTICE;
30, 39, 41; PRACTICE AND PROCEDURE, 9;
JURISDICTION, C 2; RAILROADS, 5.

COSTS.

See COURTS, 5.

COURT AND JURY.

Facts and conclusions therefrom; jury to determine.

The extent of the knowledge of a defendant employer as to the use made of appliances by an employé by whose act another employé is injured and the conclusions to be drawn therefrom are questions for the jury and cannot be reviewed here. *Standard Oil Co. v. Brown*, 78.

COURT OF CLAIMS.

See CLAIMS AGAINST THE UNITED STATES, 7, 8.

COURT OF PRIVATE LAND CLAIMS.

See PUBLIC LANDS, 6, 7.

COURTS.

1. *Duty to deal with whole matter in litigation where law of different jurisdictions involved.*

One court ought to deal with the whole matter in litigation even where the law of different jurisdictions is involved; foreign law may be ascertained and acted upon and rights depending thereon protected. *Rickey Land & Cattle Co. v. Miller & Lux*, 258.

2. *Concurrent jurisdiction; duty and right of court first seized.*

Where riparian rights of several parcels of land in different States but on the same river are involved, the courts of both States have concurrent jurisdiction, and the court first seized should proceed to determination without interference. *Ib.*

3. *Power to set aside legislation.*

Courts cannot set aside legislation simply because it is harsh. *Shetlin-Carpenter Co. v. Minnesota*, 57.

4. *Power to modify deed to effectuate transaction of great magnitude, such as municipal purchase of water supply system.*

A transaction of great magnitude such as the purchase by a city of a water supply system will not be defeated because of minor obstacles; and if the deed tendered includes a few properties to which title is not perfect or if there are incumbrances on the properties, the court can bring the proper parties in and the deed can be modified and interests protected so as to carry out, and not defeat, the transaction. *Omaha v. Omaha Water Co.*, 180.

5. *Power to appoint commissioner to carry judgment into execution.*

As the laws of Arizona authorize the Supreme Court to cause its judgments to be carried into execution, that court does not transcend its authority in appointing a commissioner to supervise the taking of water from a stream by the various appropriators to whom its common use is awarded and in apportioning the expense *pro rata* between them. *Montezuma Canal Co. v. Smithville Canal Co.*, 371.

See CLAIMS AGAINST THE UNITED STATES, 6;	INTERSTATE COMMERCE COMMISSION, 6;
CLERKS OF COURT;	JUDGMENTS AND DECREES, 1, 2,
CONSTITUTIONAL LAW, 41;	3, 7;
EQUITY;	LOCAL LAW;
FEDERAL QUESTION, 2;	STARE DECISIS, 1;
HABEAS CORPUS, 2;	STATES, 2;
	TERMS OF COURT.

CREDIBILITY OF WITNESSES.

See EVIDENCE, 5.

CRIMINAL APPEALS ACT.

See APPEAL AND ERROR, 4, 5;
CONSTITUTIONAL LAW, 34.

CRIMINAL LAW.

1. *Conspiracy as continuing offense.*

Although mere continuance of result of a crime does not continue the crime itself, if such continuance of result depends upon continuous coöperation of the conspirators, the conspiracy continues until the time of its abandonment or success. *United States v. Kissel*, 601.

2. *Conspiracy in restraint of trade; continuance of.*

A conspiracy in restraint of trade is more than a contract in restraint of trade; the latter is instantaneous, but the former is a partnership in criminal purposes and as such may have continuance in

time; and so held in regard to a conspiracy made criminal by the Anti-trust Act of July 2, 1890. *Ib.*

3. *Pleading to indictment; denial of allegations as to continuance of conspiracy; how made.*

Allegations in the indictment consistent with other facts alleged that a conspiracy continued until the date of filing must be denied under the general issue and cannot be met by special plea in bar. *Ib.*

4. *Defenses; limitations; effect on availability, of reversal of judgment sustaining pleas in bar to an indictment.*

This court, having on an appeal under the Criminal Appeals Act of March 2, 1907, held that allegations as to continuance of a conspiracy cannot be met by special plea in bar, all defenses, including that of limitations by the ending of the conspiracy more than three years before the finding of the indictment, will be open under the general issue and unaffected by this decision. *Ib.*

See APPEAL AND ERROR, 5, 6; DUE PROCESS OF LAW;
 CLERKS OF COURT; EVIDENCE, 1, 2;
 CONGRESS, POWERS OF, 3; HABEAS CORPUS;
 CONSTITUTIONAL LAW, 10, 11; INDICTMENT AND INFORMATION;
 DEFENSES; JURISDICTION, A 15;
 PRACTICE AND PROCEDURE, 10.

CROSS BILL.

See EQUITY, 2;
 JURISDICTION, K.

DAMAGES.

See HUSBAND AND WIFE, 3;
 LOCAL LAW (P. I.).

DEBTOR AND CREDITOR.

See CLERKS OF COURT, 2.

DEEDS.

See COURTS, 4.

DEFENSES.

1. *Ignorance of the law.*

Innocence cannot be asserted as to an action which violates existing law, and ignorance of law will not excuse. *Shevlin-Carpenter Co. v. Minnesota*, 57.

2. *Second jeopardy; when defense of, available.*

There must be a first jeopardy before there can be a second and on the first the defense of second jeopardy cannot be raised in anticipation of deprivation of the constitutional immunity on a subsequent trial. *Ib.*

See CRIMINAL LAW, 4;
PRACTICE AND PROCEDURE, 14.

DISTRICT OF COLUMBIA.

See BILL OF EXCEPTIONS;
JURISDICTION, E.

DIVERSITY OF CITIZENSHIP.

See JURISDICTION, B 1.

DIVORCE.

See CONSTITUTIONAL LAW, 35, 36, 37.

DOMESTIC RELATIONS.

See HUSBAND AND WIFE.

DOUBLE JEOPARDY.

See CONSTITUTIONAL LAW, 14;
DEFENSES, 2.

DUE FAITH AND CREDIT.

See CONSTITUTIONAL LAW;
PRACTICE AND PROCEDURE, 2.

DUE PROCESS OF LAW.

1. *Philippine Islands; provision of act of July 1, 1902; effect of repeal of act defining offense on punishment for act committed before repeal.*

The lawmaking power in the Philippine Islands has power to preserve by statutory enactment the right to prosecute and punish offenses committed prior to the repeal of an act defining and punishing the offense; and a decision of the Supreme Court of the Philippine Islands holding that one who committed the offense before the repeal of the act can be punished after the repeal, does not amount to a denial of due process of law within the meaning of the due process clause of the act of July 1, 1902. *Ong Chang Wing v. United States*, 272.

2. *Philippine Islands; what constitutes due process under organic act of 1902—Validity of act prohibiting exportation of silver coin.*

Sections 1 and 2 of law No. 1411 of the Philippine Commission, prohibiting exportation of Philippine silver coin from the Philippine Islands, is not void as depriving the owner of such coin of his property therein without due process of law within the meaning of the due process provision of the organic act of 1902. Congress, by the act of March 2, 1903, c. 980, 32 Stat. 952, authorized the government of the Philippine Islands to adopt such measures as it deemed proper and not inconsistent with the organic act to maintain parity of gold and silver coinage. *Ling Su Fan v. United States*, 302.

See CONSTITUTIONAL LAW, 7, 10-22, 45, 46;
PRACTICE AND PROCEDURE, 17.

ELECTION.

Operation in rem; application of rule.

The rule that an act of election directed toward a third person may operate *in rem* and establish title as to all concerned, does not apply, where, as in this case, the title is in the person enforcing the remedies, and there was no element of election. *Thomas v. Sugarman*, 129.

See BANKRUPTCY, 2.

ELECTIONS.

See JUDICIAL NOTICE, 1.

ELECTORS.

See FEDERAL QUESTION, 3.

ELEVENTH AMENDMENT.

See CONSTITUTIONAL LAW, 40.

EMBEZZLEMENT.

See CLERKS OF COURT.

EMPLOYER AND EMPLOYÉ.

See COURT AND JURY.

EQUAL PROTECTION OF THE LAWS.

See CONSTITUTIONAL LAW, 7, 16, 17, 23-34, 45, 46.

EQUITY.

1. *Powers of court of equity over infants.*

The inherent power of a court of equity of general jurisdiction over the persons and estates of infants is very wide. Its errors in regard to a sale of real estate of infants are reversible by appellate procedure, but until so corrected its judgment is not a nullity. *Hine v. Morse*, 493.

2. *Power of court of equity to require conditions, including giving of bond, on suspending decree after filing of cross bill.*

Where the filing of a cross bill would tie up property pending the determination of title, the court does not err in requiring the party filing it, to apply for an injunction and give a bond as required by the rules of the court; nor will this court assume that the amount of the bond was too large when such party did not invoke further action, but took an appeal before the expiration of the time allowed for complying with the provisions of the decree. *Moore Printing Co. v. National Sav. & Trust Co.*, 422.

3. *Rescission of contract for breach—Enforced.*

Where the contractor under a municipal water supply contract wholly fails to furnish an adequate supply of pure water according to the contract, the municipality has no adequate remedy at law; it may treat the contract as ended and a court of equity may enforce such rescission. *Columbus v. Mercantile Trust Co.*, 645.

4. *Application of maxim that he who seeks equity must do equity.*

The maxim that he who seeks equity must do equity applies to one affirmatively seeking relief. It does not vest a court of equity with power to impose on a defendant terms as a condition for dismissing the bill where plaintiff wholly fails to prove his case, even if defendant has filed a cross bill for defensive relief. *Ib.*

5. *Power to compel municipality seeking to erect own water supply plant, to purchase part of plant of defaulting contractor for water supply.*

Where a water company has wholly failed to live up to its contract and the municipality has determined by ordinance to erect its own plant, a court of equity cannot, in a suit brought by the water company to restrain the municipality on the ground of impairment of contract, require the municipality to purchase any part of the plaintiff's plant as a condition for dismissing the bill. *Ib.*

See BANKRUPTCY, 2;

HUSBAND AND WIFE, 4.

ESTATES OF INFANTS.

See EQUITY, 1;

JUDGMENTS AND DECREES, 5.

ESTOPPEL.

Of voluntary surety to attack validity of bond and appointment of principal.

The voluntary surety on the bond of a trustee in a proceeding to sell real estate is estopped to attack the validity of the decree appointing the trustee or of the bond. *Morse v. Hine*, 493.

See CORPORATIONS, 4;

NATIONAL BANKS, 3.

EVIDENCE.

1. *Admissibility in civil action of judgment in criminal proceeding.*

The general rule of the common law is that a judgment in a criminal proceeding cannot be read in evidence in a civil action to establish any fact there determined. The parties are not the same and different rules of evidence are applicable. *Chantangco v. Abaroa*, 476.

2. *Same.*

Identity of parties will not always operate to make a judgment in a criminal action admissible in a civil action; there must be identity of issue, *Stone v. United States*, 167 U. S. 178, although as held in *Coffey v. United States*, 116 U. S. 436, when the facts are ascertained in a criminal case as between the United States and the defendant they cannot be again litigated as between him and the United States as the basis of any statutory punishment denounced as a consequence of the existence of the facts. *Ib.*

3. *Same—Considerations in case coming from Philippine Islands.*

In a case coming from the Philippine Islands, however, this court will not apply the common-law rule as to effect to be given in a subsequent civil case to a judgment in a criminal case, but will consider only whether the local law of the Philippine Islands has been rightly applied. *Ib.*

4. *Identification of military reservation; competency of evidence.*

In this case the objections to evidence identifying the military reservation on which a capital crime was alleged to have been committed, including introduction of deeds and condemnation proceedings, were properly overruled, and *quære* whether the United States is called on to try title to a reservation where it is in *de facto* exercise of exclusive jurisdiction. *Holt v. United States*, 245.

5. *Credibility of witnesses; interest.*

In this case there was no reversible error because the court did not impress upon the jurors the fact that interest may affect credibility of witnesses; and, *quære* whether a party testifying exercises a privilege which may be emphasized as affecting his credibility. *Standard Oil Co. v. Brown*, 78.

See APPEAL AND ERROR, 6; HABEAS CORPUS, 2, 5;
ARBITRATION AND AWARD, 4; INDICTMENT AND INFORMATION, 2;
CONSTITUTIONAL LAW, 43; JURY AND JURORS, 1;
PRACTICE AND PROCEDURE, 15, 22.

EXCEPTIONS.

See BILL OF EXCEPTIONS.

EXECUTION.

See COURTS, 5;
JUDGMENTS AND DECREES, 7.

EXECUTIVE OFFICERS.

See CLAIMS AGAINST THE UNITED STATES, 4, 6, 7.

EXEMPTIONS.

See CONSTITUTIONAL LAW, 9.

EXPORTATIONS.

See CONSTITUTIONAL LAW, 22;
DUE PROCESS OF LAW, 2.

FACTS.

See APPEAL AND ERROR, 1, 2;
COURT AND JURY;
PRACTICE AND PROCEDURE, 11, 16.

FEDERAL QUESTION.

1. *Inference as to reliance on, in lower court.*

The reiterated assertion in the lower court of Federal right based solely on one provision of the Federal Constitution is basis for the inference that no other provision was relied upon. *Louisville & Nashville R. R. Co. v. Melton*, 36.

2. *When construction by state court of statute of another State raises.*

A question under the Federal Constitution does not necessarily arise in every case in which the courts of one State are called upon to

construe the statute of another State; the general rule in the absence of statutory provision, is that a settled construction of a statute relied upon to control the court of another State must be pleaded and proved, and, if not pleaded and proved, the court construing the statute is not deprived of its independent judgment in regard thereto. *Ib.*

3. *When question as to whether State has violated act of 1868 relative to qualifications of jurors and electors, considered at instance of one convicted of crime.*

Whether provisions as to qualifications of jurors and electors in subsequently adopted constitution and subsequently enacted laws of one of the States enumerated in the act of Congress of June 25, 1868, c. 70, 15 Stat. 73, providing that the constitution of such States should never be amended so as to deprive citizens of the United States of their rights as electors, violate such act will not be determined at the instance of a person convicted of crime unless it appears that persons qualified under the Federal act were disqualified and thereby prevented from serving on the jury by the constitution and laws the validity whereof is attacked. *Franklin v. South Carolina*, 161.

4. *Objection to grand jury on ground of racial discrimination; necessity of averment and proof.*

Where the real objection is that a grand jury is so made up as to exclude persons of the race of accused the facts establishing the contention must be averred and proved. (*Martin v. Texas*, 200 U. S. 316.) *Ib.*

See JURISDICTION, A 4;

PRACTICE AND PROCEDURE, 2, 3, 6, 7, 21.

FEES.

See CLERKS OF COURT.

FELLOW SERVANT.

See CONSTITUTIONAL LAW, 26.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 21, 43.

FOREIGN CORPORATIONS.

See CORPORATIONS, 3.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 12-15, 21, 24-26, 29, 34.

FRANCHISES.

See CONSTITUTIONAL LAW, 19;
CORPORATIONS, 2;
RAILROADS, 5.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 35-39;
PRACTICE AND PROCEDURE, 2.

GADSDEN PURCHASE.

See PUBLIC LANDS, 6, 7.

GRAND JURY.

See CONSTITUTIONAL LAW, 32; HABEAS CORPUS, 4;
FEDERAL QUESTION, 4; PRACTICE AND PROCEDURE, 15.

GRANTOR AND GRANTEE.

See CORPORATIONS, 4;
NOTICE.

GRANTS.

See PUBLIC LANDS.

HABEAS CORPUS.

1. *Jurisdiction under writ; scope of determination.*

The writ of *habeas corpus* cannot be used for purposes of proceedings in error; the jurisdiction under the writ is confined to determining from the record whether the petitioner is deprived of his liberty without authority of law. *Harlan v. McGourin*, 442.

2. *Attack on judgment under which petitioner detained; when permitted.*

A collateral attack on the judgment under which petitioner in *habeas corpus* proceedings is detained is only permitted where the objections if sustained would render the judgment not erroneous but void. *Ib.*

3. *Objection as to impanelling of grand jury not available on.*

Objections to the order impanelling the grand jury on the ground that the judge was not in the district at the time, although within his circuit, must be raised by proper pleas in the court of original jurisdiction; they cannot be raised on *habeas corpus* after conviction. *Ib.*

4. *Objections as to regularity in finding of indictment not available on.*
 Objections that competent testimony was not presented to, or that the indictment under which petitioner was convicted was not regularly found by, the grand jury, cannot be made for the first time in a *habeas corpus* proceeding. *Ib.*
5. *Legal part of excessive sentence not subject to attack.*
 Where the sentence exceeds the authority of the court at most only the excess will be void; the legal portion of the sentence cannot be attacked on that ground in *habeas corpus* proceedings. *Ib.*

HEALTH REGULATIONS.

See STATES, 2.

HUSBAND AND WIFE.

1. *Common-law relation.*
 At common law husband and wife were regarded as one, the legal existence of the latter during coverture being merged in that of the former. *Thompson v. Thompson*, 611.
2. *Relation of; effect of provision of District of Columbia Code on.*
 While by § 1155 and other sections of the Code of the District of Columbia the common law was changed by conferring additional rights on married women and the right to sue separately for redress of wrongs concerning the same, it was not the intention of Congress to revolutionize the law governing the relation of husband and wife between themselves. *Ib.*
3. *Action by wife against husband to recover damages for assault, not maintainable in District of Columbia.*
 Under the existing statutes, a wife cannot maintain an action in the District of Columbia against the husband to recover damages for an assault and battery by him upon her person. *Ib.*
4. *Action by wife against husband; quere as to right in respect of separate property.*
 While the wife may resort to the Chancery Court to protect her separate property rights, *quere*, and not decided, whether she alone may bring an action against the husband to protect such rights. *Ib.*

See CONSTITUTIONAL LAW, 45;
 JURISDICTION, A 13;
 STATUTES, A 5.

IGNORANCE OF THE LAW.

See DEFENSES, 1.

IMMUNITIES.

See PRACTICE AND PROCEDURE, 18.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW;

INJUNCTION, 1, 2;

JURISDICTION, A 9, 10.

INDICTMENT AND INFORMATION.

1. *Assault; sufficiency of indictment for.*

Where the acts constituting the assault are alleged to have been made feloniously and with malice aforethought, it is not necessary to make such allegations in the preliminary averment of assault. *Holt v. United States*, 245.

2. *Evidence before grand jury; effect of consideration of incompetent.*

Indictments should not be upset because some evidence, in its nature competent, but rendered incompetent by circumstances, was considered along with other evidence. *Ib.*

3. *Sufficiency of indictment under § 5209, Rev. Stat.*

Where the indictment charges an officer of a national bank with willful misapplication of funds of the bank, induced by, and resulting in, his advantage, with the illegal intent to injure and defraud the bank by receiving and discounting with its moneys an absolutely unsecured promissory note of a named party whereby the proceeds of the discount of the note were wholly lost to the bank, it sufficiently charges a violation of § 5209, Rev. Stat. It is not necessary to allege conversion by the officer of the bank and also by the recipient of the proceeds of the discount. *United States v. Heinze*, 532, 547.

4. *Same—Equivalent of allegation that loss was caused by discounting of note.*

A charge that a note for an amount was received for discount which was wholly unsecured and which sum was lost to the bank amounts to a direct allegation that the loss was caused by the discounting. *Ib.*

See APPEAL AND ERROR, 4, 5; CRIMINAL LAW, 3, 4;

CONSTITUTIONAL LAW, 16; HABEAS CORPUS, 5;

JURISDICTION, A 7, 8.

INFANTS.

See EQUITY, 1;
JUDGMENTS AND DECREES, 5.

INHERITANCE TAX.

See CONSTITUTIONAL LAW, 45, 46;
TAXES AND TAXATION, 1, 3.

INJUNCTION.

1. *To prevent impairment of contract by municipality—When contractor not entitled.*

The enforcement of a municipal ordinance will not be enjoined as impairing the obligations of an existing contract at the instance of a complainant who fails to show that the contract has been complied with. *Columbus v. Mercantile Trust Co.*, 645.

2. *Right of mortgagee of contract rights to restrain enforcement of impairing ordinance.*

A mortgagee of contract rights has no greater right to restrain the enforcement of an ordinance on the ground that it impairs the obligation of the contract than has the contracting party himself. *Ib.*

See CONSTITUTIONAL LAW, 40;
EQUITY, 2.

INSTRUCTIONS TO JURY.

1. *Presumption of innocence and reasonable doubt.*

In this case, the charge and instructions of the trial court as to legal presumptions of innocence and what constitutes a reasonable doubt held to be correct. *Holt v. United States*, 245.

2. *Effect of substitution of words.*

The substitution of "would" for "could" in an instruction to the jury in this case held not to have affected the minds of the jurors. *Standard Oil Co. v. Brown*, 78.

See CONSTITUTIONAL LAW, 12;
EVIDENCE, 5.

INSTRUMENTALITIES OF GOVERNMENT.

See UNITED STATES.

INTENT IN CRIME.

See CONSTITUTIONAL LAW, 13, 14.

INTEREST.

See CONSTITUTIONAL LAW, 31;
STATES, 1.

INTERPLEADER.

See ACTIONS, 1.

INTERSTATE COMMERCE.

See COMMERCE;
CONSTITUTIONAL LAW, 1-7;
RAILROADS, 1, 2, 3.

INTERSTATE COMMERCE COMMISSION.

1. *Rate regulation; intent of order reducing rates between Mississippi River points and Missouri River cities.*

The Interstate Commerce Commission having made an order reducing rates between Mississippi River points and Missouri River cities, the railroad companies brought suit to enjoin the enforcement of the order, claiming that it was made not for the mere purpose of fixing just rates but for the purpose of artificially apportioning the country into zones tributary to trade centers, which was beyond the power of the Commission. The claim was made that the rates as reduced were confiscatory within the meaning of the Fifth Amendment. The Circuit Court so held and enjoined the rate. On appeal to this court *held* that the Interstate Commerce Commission did not base its order on an effort to apportion the country into zones tributary to trade centers and to build up new trade centers. *Interstate Commerce Comm. v. Chicago, R. I. & Pac. Ry. Co.*, 88; *Same v. Chicago, B. & Q. R. R. Co.*, 113.

2. *Comprehensiveness of powers.*

The outlook of the Interstate Commerce Commission and its powers are greater than the interests of the railroads, and are as comprehensive as the interests of the entire country. *Ib.*

3. *Purpose of; powers as to rates.*

The Interstate Commerce Commission was instituted to prevent discrimination between persons and places. Rates may not only be investigated and pronounced unreasonable or discriminatory but other rates may be prescribed. *Ib.*

4. *Power to regulate rates.*

The power of the Interstate Commerce Commission extends to the regulation of rates whether the same be old or new, notwithstand-

ing that interests attached to the rates may have to be changed in case the Commission exercises its power. *Ib.*

5. *Orders of; ground on which railroads may complain of rate reduction.*

Railroad companies may complain of an order of the Commission reducing rates so far as it affects their revenue. They cannot complain of it simply because it affects shippers or places. *Ib.*

6. *Rate regulation; jurisdiction of Commission and of reviewing court.*

The primary jurisdiction as to fixing rates under the Interstate Commerce Act is with the Commission and the power of the court is confined to a review of questions of constitutional power exercised by the Commission. *Ib.*

7. *Court review of orders of.*

In this case the only question being as to power and the rates not being confiscatory and the Commission having acted within its power, the case is remanded with instructions to dismiss the bill. *Ib.*

JOINDER OF PARTIES.

See PRACTICE AND PROCEDURE, 4.

JOINT RESOLUTIONS OF CONGRESS.

See LIENS.

JUDGMENTS AND DECREES.

1. *Power of court after end of term at which decree was entered.*

A court cannot deal with a decree other than for correction of clerical error or inadvertance after the termination of the term at which it was entered. *In re Metropolitan Trust Co., 312.*

2. *Vacation of judgment after term at which entered.*

After the Circuit Court has refused to remand, has tried the issues and entered judgment dismissing the complaint as to certain defendants, it cannot, after the Circuit Court of Appeals has, on an appeal to which such defendants were not made parties, reversed the order refusing to remand, vacate the judgment dismissing the complaint as to the defendants not parties after the expiration of the term at which such judgment was entered. *Ib.*

3. *Nullification of reversed judgment as to parties not appealing; want of power in Circuit Court.*

A decree of the Circuit Court refusing to remand a cause cannot, even if error and subsequently reversed on appeal by the Circuit Court

of Appeals, be treated as a nullity; and proceedings of the Circuit Court while it retained jurisdiction as to defendants not parties to such appeal remain in full force. *Ib.*

4. *Parties bound by.*

All parties to the record who appear to have any interest in the challenged ruling must be given an opportunity to be heard on an appeal, and the decision of the Circuit Court of Appeals reversing a decree of the Circuit Court applies only to the parties brought before that court. *Ib.*

5. *Collateral attack on decree where bill does not clearly state case within jurisdiction of court.*

Even if the bill seeking a sale of infant's property for reinvestment does not clearly state a case within the authority of the court, the decree of sale, appointment of trustee and execution of his bond are not mere nullities subject to collateral attack. *Hine v. Morse*, 493.

6. *Res judicata of judgment determining rights of appropriators of water.*

Notwithstanding there may have been a prior appropriation of water, if the rights of appropriators were adjudicated in a suit of which the parties had notice, the judgment in that suit may be pleaded as *res judicata* in a subsequent suit to determine the rights of appropriators, and the amount awarded to an appropriator by judgment in the first suit cannot be reduced. *Montezuma Canal Co. v. Smithville Canal Co.*, 371.

7. *Validity of decree not affected by provision for machinery to enforce it.*

The fact that it is within the legislative power to provide administrative machinery to supervise the common use of water, does not render invalid the decree of a court providing such machinery to carry out a particular decree if the court deems it necessary and proper so to do. *Ib.*

See ADMIRALTY, 3, 4;

BANKRUPTCY, 2;

CONSTITUTIONAL LAW, 35-39;

COURTS, 5;

EQUITY, 1, 2;

ESTOPPEL;

EVIDENCE, 1, 2, 3;

HABEAS CORPUS, 3, 6;

JURISDICTION, A 1, 2;

MANDAMUS, 1;

PRACTICE AND PROCEDURE, 1;

STARE DECISIS.

JUDICIAL DISCRETION.

See CONSTITUTIONAL LAW, 11;

JURISDICTION, A 8;

JURY AND JURORS, 1;

PRACTICE AND PROCEDURE, 10, 15;

STARE DECISIS, 1.

JUDICIAL NOTICE.

1. *Of congressional elections.*

This court judicially knows that the members of Congress elected at the regular congressional election of November, 1908, have taken their seats, served their terms, and that their successors have been elected. *Richardson v. McChesney*, 487.

2. *Of terms of state officers.*

This court also judicially knows when the term of a Secretary of State of a State expires and whether his successor has been inducted into his office. *Ib.*

JUDICIAL POWER OF THE UNITED STATES.

See CONSTITUTIONAL LAW, 40, 41.

JURISDICTION.

A. OF THIS COURT.

1. *Appeals from Circuit Court of Appeals under Bankruptcy Law; finality of decision.*

Section 25*b* of the Bankruptcy Law only gives a right of appeal to this court from a decision of the Circuit Court of Appeals affirming or reversing the order of the District Court, allowing or rejecting a claim when the decision is final, whether there is a certificate under § 25*b*, 2 or not. A decision simply allowing or disallowing a claim for voting purposes without prejudice to its subsequent presentation is not final but provisional. *Duryea Power Co. v. Sternbergh*, 299.

2. *Appeals from Circuit Courts of Appeals in bankruptcy matters.*

No appeal lies to this court from a decision of the Circuit Court of Appeals in the exercise of supervisory jurisdiction in bankruptcy matters. Nor can a petition for revision to that court be turned into an appeal. *Ib.*

3. *On certificate from Circuit Court of Appeals; sufficiency of certificate.*

Where, as in this case, the certificate sufficiently states both the question and the desire of the Circuit Court of Appeals for instructions so that it may make a proper decision, it conforms in substance to the provisions of § 6 of the act of March 3, 1891, c. 517, 26 Stat. 826. *Hertz v. Woodman*, 205.

4. *Of direct appeal from Circuit Court.*

The right of the Circuit Court to take jurisdiction of a case as one arising under the Constitution and laws of the United States must

distinctly appear in the allegations of the bill; but this court may take jurisdiction of direct appeal from the Circuit Court under § 5 of the Court of Appeals Act if it properly appears that a right under the Constitution and laws of the United States was duly claimed during the case. (*Loeb v. Columbia Township*, 179 U. S. 472.) *Memphis v. Cumberland Telephone Co.*, 624.

5. *Of direct appeal from Circuit Court; what constitutes case arising under Constitution and laws of United States.*

Where diverse citizenship exists and the bill alleges, and the Circuit Court holds, that the defendant municipality had no authority to pass the ordinance complained of, the case is not one arising under the Constitution and laws of the United States; and, although the judge may have declared in his opinion that the ordinance violated complainant's Federal rights, this court has not jurisdiction on a direct appeal under § 5 of the Court of Appeals Act. *Ib.*

6. *Under § 709, Rev. Stat.; what amounts to assertion of Federal right.*

Where the United States claimed in an action in the state court to determine liens on vessels in course of construction, that, under the contract, title had vested in the United States, or that liens had been specially reserved thereon, and also claimed that the rights of the United States were superior to all others and could not be retarded or impeded by the state lien law, assertions are made of rights and immunities which are the creation of Federal authority, and, if denied by the state court, this court has jurisdiction under § 709, Rev. Stat., to review the judgment. *United States v. Ansonia Brass & Copper Co.*, 452.

7. *Under act of March 2, 1907, Criminal Appeals Act.*

Where the Circuit Court held the indictment insufficient because the facts alleged did not constitute a crime under the statute as it held that the latter should be construed, this court has jurisdiction of an appeal by the Government under the act of March 2 1907, c. 2564, 34 Stat. 1246. *United States v. Heinze*, 532.

8. *Under Criminal Appeals Act of 1907 where quashing of indictment an exercise of judicial discretion.*

If the decision of the Circuit Court quashing an indictment is based upon invalidity or construction of the statute upon which the indictment is founded, an appeal lies to this court under the act of March 2, 1907, even if the motion to quash be granted as an exercise of the discretion of the court. *United States v. Heinze, No. 2*, 547.

9. *Under contract clause of Constitution.*

The jurisdiction of this court, under the contract clause of the Federal Constitution, extends to doing away with the interference of a later law impairing the contract,—but not to remedying erroneous construction of the original contract or to seeing that it is carried out according to the interpretation of this court, apart from it. There is nothing in this case that takes it out of the general rule above stated. *Fisher v. New Orleans*, 438.

10. *Where facts as to existence of constitutional question must be ascertained.*

This court must satisfy itself whether or not the party claiming the benefit of a contract which it claims was impaired by subsequent legislation had acquired rights under the original contract and therefore has jurisdiction. *Arkansas Southern Ry. Co. v. Louisiana & Arkansas Ry. Co.*, 431.

11. *Under Territorial Practice Act of 1874.*

Under the Territorial Practice Act of April 7, 1874, c. 80, 18 Stat. 27, the jurisdiction of this court on appeals is limited to the inquiry whether the findings of fact support the judgment and to a review of duly taken exceptions and rulings on admission or rejection of evidence. *Eagle Mining Co. v. Hamilton*, 513.

12. *Where jurisdiction of Admiralty Court denied.*

Where the decree of the lower court is founded on denial of jurisdiction of the Admiralty Court, this court has jurisdiction of the appeal. *The Ira M. Hedges*, 264.

13. *To review decision of state court on local question.*

The nature and character of the right of a wife in community property for the purpose of taxation is a peculiarly local question, and the determination of the state court in regard thereto is not reviewable by this court. *Moffitt v. Kelly*, 400.

14. *Amount in controversy; ascertainment of.*

Jurisdiction as to amount in controversy sustained on the facts disclosed in affidavits filed in this court, there being none filed in rebuttal. *Roura v. Philippine Islands*, 386.

15. *Errors within the power of this court to notice.*

On writ of error to review a judgment of conviction of the state court this court has no jurisdiction to notice errors other than those which involve alleged violations of Federal rights. The States

have the right to administer their own laws for the prosecution of crime so long as fundamental rights secured by Federal law are not denied. *Franklin v. South Carolina*, 161.

B. OF CIRCUIT COURT.

1. *Diversity of citizenship to confer. Effect of want of residence by any of the parties in district where suit brought.*

Plaintiffs, citizens of States other than that of the defendant, brought suit against the defendants in the Circuit Court of the United States for a district of which neither plaintiff nor this defendant were inhabitants to compel defendants to abate a nuisance carried on in the district in which the court was located and which was causing damage to property of the plaintiffs in another State and in which they nor the defendant resided; the Circuit Court dismissed as to this defendant for want of jurisdiction, neither it nor the plaintiff being inhabitant of that district. In affirming judgment held that diversity of citizenship—nothing more appearing—will not give the Circuit Court jurisdiction to render judgment *in personam* where neither plaintiff nor defendant is an inhabitant of the district in which the suit is brought and the defendant appears specially and objects to the jurisdiction. *Ladew v. Tennessee Copper Co.*, 357; *Wetmore v. Tennessee Copper Co.*, 369.

2. *Under act of March 3, 1875. Suit to abate nuisance maintained on real property not within jurisdiction.*

The jurisdiction given to the Circuit Court by § 8 of the act of March 3, 1875, c. 137, 18 Stat. 470, of suits to enforce legal or equitable claims to real or personal property within the district, even if the parties are not inhabitants of the district, does not extend to suits to compel the owner of real estate in the district to abate a nuisance maintained thereon. Such a cause of action is not a claim or lien upon the property. *Ib.*

3. *Congressional action necessary to confer jurisdiction.*

The jurisdiction of the Circuit Courts is determined by acts of Congress enacted in pursuance of the Constitution, and even if the jurisdiction already granted can be extended by Congress, those courts cannot, until such legislation is enacted, exercise jurisdiction not yet conferred upon them. *Ib.*

See ante, A 4.

C. OF FEDERAL COURTS GENERALLY.

1. *Amount in controversy; transfer of stock for purpose of.*

Jurisdiction does not depend on motive. Although shares of stock

may have been transferred to a non-resident to enable him to bring suit in the Federal court, if it appears from the record that he is the absolute owner of properly issued shares, exceeding \$2,000 in value, jurisdiction exists. *In re Cleland*, 120.

2. *Defeat of jurisdiction; denials as to jurisdictional facts in ex parte affidavits impotent to effect.*

Jurisdiction of a suit to wind up a corporation having once properly attached, a receiver appointed, and creditors, as between whom and the corporation diverse citizenship exists and the requisite amount is involved, joined as parties, the jurisdiction cannot be subsequently defeated by denials in *ex parte* affidavits of the jurisdictional facts. *Ib.*

3. *Unauthorized municipal legislation as foundation of—When reference in pleading deemed to be to state, and not Federal, constitution.*

Municipal legislation passed without authority of the State does not lay the foundation of Federal jurisdiction; and statements in the bill to the effect that the ordinances complained of were unauthorized and illegal will be held to refer to the state, rather than to the Federal, constitution, in the absence of distinct references to the latter. *Memphis v. Cumberland Telephone Co.*, 624.

D. OF TERRITORIAL COURTS.

Of District Court of Arizona of action by grantee of Mexican Government to quiet title.

Notwithstanding the contention of appellant in this case, the decision of this court in *Ainsa v. New Mexico & Arizona R. R. Co.*, No. 2, 175 U. S. 91, that the District Court of Arizona had jurisdiction of an action to quiet title brought by a grantee of the Mexican Government of land in the territory included in the Gadsden Purchase, did not proceed upon a mistake in fact and is not inconsistent with the reasoning of the decision of *Ainsa v. New Mexico & Arizona R. R. Co.*, No. 1, 175 U. S. 76. *Richardson v. Ainsa*, 289.

E. SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Jurisdiction defined.

The Supreme Court of the District of Columbia is one of general jurisdiction possessing all powers conferred on Circuit and District Courts of the United States—in fact, the usual powers incident to a court of equity at the date of the Revolution, not incompatible with the changed forms and principles of government or affected by subsequent legislation. (*Clark v. Mathewson*, 7 App. D. C. 382.) *Hine v. Morse*, 493.

F. ADMIRALTY.

See ADMIRALTY, 3.

G. EQUITY.

See EQUITY;

JUDGMENTS AND DECREES, 5.

H. OF COURT OF CLAIMS.

See CLAIMS AGAINST THE UNITED STATES, 7, 8.

I. OF INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

J. OF STATE COURTS.

See *ante*, A 13.

K. GENERALLY.

Of cross bill follows that over principal bill.

Where, as in this case, cross bills are maintainable, jurisdiction in respect to them follows that over the principal bill. *Rickey Land & Cattle Co. v. Miller & Lux*, 258.

See COURTS, 2;

HABEAS CORPUS, 1;

INTERSTATE COMMERCE COMMISSION, 6.

JURY AND JURORS.

1. *Exclusion during discussion of admissibility of confession; discretion of court.*

Although the more conservative course is to exclude the jury during discussions of admissibility of confessions, in the absence of statutory provision it is within the discretion of the trial judge to allow the jury to remain; and where, as in this case, he cautions the jury that the preliminary evidence has no bearing on the question to be decided, it is not error to do so. *Holt v. United States*, 245.

2. *Challenge for cause; refusal to sustain; when reversible error.*

Unless the error is manifest the reviewing court should not set aside the finding of the trial court refusing to sustain a challenge of a jurymen for cause on the ground of partiality or expressed opinions. *Ib.*

See CONSTITUTIONAL LAW, 32;

FEDERAL QUESTION, 3, 4;

COURT AND JURY;

INSTRUCTIONS TO JURY;

PRACTICE AND PROCEDURE, 10.

LACHES.

See LOCAL LAW (GEN.).

LAND GRANTS.

See PUBLIC LANDS.

LEASE.

See CLAIMS AGAINST THE UNITED STATES, 8.

LEGACIES.

See TAXES AND TAXATION, 1, 2, 3.

LEGAL TENDER.

See CONSTITUTIONAL LAW, 22.

LEGISLATION.

See COURTS, 3;

PRACTICE AND PROCEDURE, 9.

LEGISLATIVE DISCRETION.

See STATES, 1.

LICENSE TAX.

See CONSTITUTIONAL LAW, 2.

LIENS.

Statutory; effect of joint resolution of Congress to give Government superior lien on vessel being constructed for it.

Quære, whether a joint resolution has the effect of an act of Congress; but *held* that the resolution of May 5, 1894, No. 24, 28 Stat. 582, permitting partial payments on vessels under construction for the Treasury Department, did not give the Government an express statutory lien on such vessels superior to those given to materialmen by the state lien law. *United States v. Ansonia Brass & Copper Co.*, 452.

See CONTRACTS, 2;

JURISDICTION, B. 2;

UNITED STATES.

LIMITATION OF LIABILITY.

See CONSTITUTIONAL LAW, 20, 30.

LIMITATIONS.

See CRIMINAL LAW, 4.

LOANS.

See CONSTITUTIONAL LAW, 31.

LOCAL LAW.

- Alabama.* License tax. Act of March 7, 1907, § 17 (see Constitutional Law, 3). *Dozier v. Alabama*, 124.
- Arizona.* Execution of judgments and decrees (see Courts, 5). *Montezuma Canal Co. v. Smithville Canal Co.*, 371.
- California.* Inheritance tax law of 1905 (see Constitutional Law, 46). *Moffitt v. Kelly*, 400.
- Connecticut.* Regulating interest on loans. Act of 1907 (see Constitutional Law, 31). *Griffith v. Connecticut*, 563.
- District of Columbia.* Husband and wife. Code, § 1155 (see Husband and Wife, 2, 3). *Thompson v. Thompson*, 611.
- Indiana.* Employers' liability statute of 1893 (see Constitutional Law, 26). *Louisville & Nashville R. R. Co. v. Melton*, 36.
- Maryland.* Medical registration law. Art. 43, § 83, Code, 1904 (see Constitutional Law, 28). *Watson v. Maryland*, 173.
- Michigan.* Regulation of telegraph companies (see Constitutional Law, 7). *Western Union Tel. Co. v. Commercial Milling Co.*, 406.
- Minnesota.* Depredations on timber lands (see Constitutional Law, 14). *Shelin-Carpenter Co. v. Minnesota*, 57.
- Missouri.* Foreign corporations. Act of March 3, 1907 (see Constitutional Law, 41). *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, T. & S. F. Ry. Co.*, 159.
Railroad regulation. Act of March 19, 1907, amending § 1075, Rev. Stat. (see Constitutional Law, 4). *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, T. & S. F. Ry. Co.*, 159.
- New York.* Alimony. Code of Civil Procedure, §§ 1762-1773 (see Constitutional Law, 37). *Sistare v. Sistare*, 1.

Philippine Islands. Indemnity for damages in penal cases. The local law in the Philippine Islands, which is still in force, not having been suspended by legislation, is that indemnity for damages in penal cases is a consequence of the commission of the crime and a verdict of acquittal carries with it exemption from civil liability. This rule applies even against one who in the criminal action attempted to reserve his rights to bring a civil action. *Chantangco v. Abaroa*, 476.

Sections 1 and 2 of Law No. 1411 of Philippine Commission, prohibiting exportation of silver coin (see Due Process of Law, 2). *Ling Su Fan v. United States*, 302.

Due process of law under organic act of July 1, 1902 (see Due Process of Law). *Ong Chang Wing v. United States*, 272; *Ling Su Fan v. United States*, 302.

South Carolina. Criminal Code, § 357 (see Constitutional Law, 12).

Franklin v. South Carolina, 161.

Jury law of 1902 (see Constitutional Law, 32). *Ib.*

Generally. Laches. Whether or not delay constitutes laches is for the state court to decide. *Fisher v. New Orleans*, 438.

See JURISDICTION, A 13.

MAJORITY RULE.

See ARBITRATION AND AWARD, 2.

MANDAMUS.

1. *To compel reinstatement of erroneously vacated decree.*

Where the Circuit Court vacates a decree without jurisdiction and refuses to reinstate it, mandamus is the proper remedy to compel it to do so. *In re Metropolitan Trust Co.*, 312.

2. *To compel Circuit Judge to dismiss case for want of jurisdiction.*

Where the circuit judge certifies that he is satisfied that the suit involves a controversy within the jurisdiction of the Circuit Court mandamus will not issue to compel him to dismiss the case even if this court differs with him in his conclusions of law. *In re Cleland*, 120.

MARITIME LAW.

See ADMIRALTY.

MARRIED WOMEN.

See HUSBAND AND WIFE;
STATUTES, A 5.

MATERIALMEN.

See LIENS.

MAXIMS.

See EQUITY, 4.

MEDICAL PRACTITIONERS.

See STATES, 2.

MEDICAL REGISTRATION LAWS.

See CONSTITUTIONAL LAW, 28.

MEMBERS OF CONGRESS.

See JUDICIAL NOTICE, 1.

MEXICAN GRANTS.

See JURISDICTION, D.

MEXICAN TITLES.

See PUBLIC LANDS, 6, 7.

MILITARY RESERVATIONS.

See EVIDENCE, 4.

MOOT CASE.

In this case, as the thing sought to be prevented has been done and cannot be undone by judicial action, it is now only a moot case. *Richardson v. McChesney*, 487.

MORTGAGES AND DEEDS OF TRUST.

See CORPORATIONS, 2;
INJUNCTION, 2.

MULTIFARIOUSNESS.

See PRACTICE AND PROCEDURE, 4.

MUNICIPAL CORPORATIONS.

1. *Duty as to water supply.*

To furnish an ample supply of pure and wholesome water is the highest police duty resting on a municipality. *Columbus v. Mercantile Trust Co.*, 645.

2. *Authority to purchase water system extending beyond city limits.*

The legislature of a State may authorize a municipality to purchase a water system which extends beyond the city limits and to supply water to adjacent sections; and so held that the city of Omaha has such right, and that an appraisal of a water system is not bad, and hence not binding on the city, because it includes the entire system, parts of which are beyond the city limits. *Omaha v. Omaha Water Co.*, 180.

See ARBITRATION AND AWARD, 3; INJUNCTION, 1, 2;
 CONTRACTS, 3; RAILROADS, 5;
 EQUITY, 3, 5; STATES, 6;
 STATUTES, A 4.

NATIONAL BANKS.

1. *Ultra vires acts of; restitution of property obtained under illegal contract.*

Although restitution of property obtained under a contract which is illegal because *ultra vires*, cannot be adjudged by force of the illegal contract, the courts will compel restitution of property of another obtained without authority of law; and, although the contract under which a national bank obtains money from an innocent third party may be *ultra vires* under Rev. Stat., §§ 5133-5136, the bank may be required to return the money so received to the party entitled thereto. (*Citizens' National Bank v. Appleton, Receiver*, 216 U. S. 196.) *Rankin v. Emigh*, 27.

2. *Same.*

In this case, even if the purchase and carrying on of a mercantile company by a national bank was illegal, the persons dealing with the mercantile company were entitled to receive the money paid into the bank for their account. *Ib.*

3. *Ultra vires; conveyance of real estate to, not subject to attack by heir of grantor.*

Although the conveyance of real estate in this case to a national bank was not one permitted by § 5137, Rev. Stat., title to the property passed to the grantee for the purposes expressed in the conveyance and that instrument cannot be attacked as void by an heir of the grantor. *Kerfoot v. Farmers' & Merchants' Bank*, 281.

See CORPORATIONS, 4;
 INDICTMENT AND INFORMATION, 3.

NEGLIGENCE.

See CONSTITUTIONAL LAW, 20.

NEGROES.

See CONSTITUTIONAL LAW, 32;
RAILROADS, 1-4.

NEW TRIAL.

See PRACTICE AND PROCEDURE, 10.

NOTICE.

Quære as to whether notice to one does not bind his corporate successor in title.

Quære, whether notice to an individual in regard to his property is not notice to a corporation organized by him after such notice and to which he conveys his property. *Rickey Land & Cattle Co. v. Miller & Lux*, 258.

See JUDICIAL NOTICE.

NUISANCE.

See JURISDICTION, B 1, 2.

OBJECTIONS.

See PRACTICE AND PROCEDURE, 4, 5.

OFFENSES.

See CRIMINAL LAW;
DUE PROCESS OF LAW.

PARTIES.

<i>See</i> ACTIONS, 2;	FEDERAL QUESTION, 3;
COURTS, 4;	JUDGMENTS AND DECREES, 4;
EVIDENCE, 2;	PRACTICE AND PROCEDURE, 4, 23.

PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 14, 15;
STATUTES, A 1, 2.

PETITION FOR REVISION.

See APPEAL AND ERROR, 3;
JURISDICTION, A 2.

PHILIPPINE ISLANDS.

<i>See</i> CONGRESS, POWERS OF, 2, 3;	EVIDENCE, 3;
DUE PROCESS OF LAW;	LOCAL LAW;
TITLE.	

PHYSICIANS.

See CONSTITUTIONAL LAW, 28;
STATES, 2.

PLEADING.

Effect of reversal of judgment and sustaining demurrer to one plea of answer, on other pleas.

Where the demurrer to one plea of the answer was overruled and plaintiff did not plead further, reversal of the judgment and sustaining the demurrer to that plea leaves the other pleas open to be dealt with by the court below. *Hine v. Morse*, 493.

See CRIMINAL LAW, 3, 4; HABEAS CORPUS, 4;
FEDERAL QUESTION, 2, 4; JURISDICTION, A 4;
PRACTICE AND PROCEDURE, 4, 6.

PLEADING AND PROOF.

1. *Variance; when material.*

While the pleadings and proofs should correspond, a rigid exactitude is not required, and no variance should be regarded as material where the allegation and proof substantially correspond. *Standard Oil Co. v. Brown*, 78.

2. *Same.*

Even if there is a variance between declaration and proof, if, as in this case, defendant is not misled, makes no objection to plaintiff's proof but replies to it by testimony of like kind, is familiar with the facts, does not indicate the variance and does not move for continuance, the variance cannot be regarded as fatal. *Ib.*

POLICE POWER.

See CONSTITUTIONAL LAW, 13, 20, MUNICIPAL CORPORATIONS, 1;
22, 24, 25, 27, 28, 29; STATES, 1, 2;
STATUTES, A 3.

POWER OF ATTORNEY.

See CONSTITUTIONAL LAW, 39;
CORPORATIONS, 3.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Duty of this court as to abstract questions.*

The duty of this court is limited to actual pending controversies. It

should not pronounce judgment on abstract questions, even if its opinion might influence future action under like circumstances. *Richardson v. McChesney*, 487.

2. *Raising Federal question; must be asserted in lower court.*

Whether a state court failed to give the full faith and credit required by the Federal Constitution to a statute of another State because it did not construe it as construed by the courts of the latter State is not open in this court unless the question is properly asserted in the state court. *Louisville & Nashville R. R. Co. v. Melton*, 36.

3. *Disposition of case where Federal question, necessitating analysis of former decisions, exists.*

When a Federal question does exist the writ of error will not be dismissed as frivolous or as foreclosed by former decisions when analysis of those decisions is necessary, where there has been division of opinion in the court below, as in this case, and conflict of opinion in prior decisions as to the point involved. *Ib.*

4. *Objections to bill for multifariousness and improper joinder of parties; timeliness; effect of failure to properly raise.*

Objections to a bill for multifariousness and improper joinder of parties must be promptly made, and properly by special demurrer specifically directed to the objection; and so held that in the absence of specific objection properly raised at the outset the court can determine in the same action, as against the prosecuting attorney of a State, whether a statute is enforceable under the Constitution of the United States, and, as against the secretary of state, whether the bringing of the action in the Federal court will, under another statute, forfeit complainant's right to do business in the State. *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, Topeka & Santa Fe Ry. Co.*, 159.

5. *Objections; effect of want of, to raise implication of consent to proceeding.*

A proceeding at the instance of one party to the record cannot be regarded as by consent simply because the other party has notice and does not object; the latter, if he does nothing to prejudice the rights of others, may sit silent and still object that the proceeding is *coram non judice*. *Jennings v. Phila., Balto. & Wash. Ry. Co.*, 255.

6. *Scope of review in determining Federal question on writ of error.*

In determining on writ of error a Federal question, this court cannot

predicate error as to matters which should be, and are not, pleaded or proved. *Louisville & Nashville R. R. Co. v. Melton*, 36.

7. *Scope of review; concern with state court's construction of statute of another State.*

This court is not concerned with the construction given by a state court to the statute of another State unless such construction offends a properly asserted Federal right. *Ib.*

8. *Scope of review; effect of construction of statute by highest court of State enacting it on duty of this court in reviewing decision of court of another State construing it.*

The fact that since the decision of a state court under review construing a police statute of another State as including certain elements of a class, the highest court of the enacting State has construed the statute as excluding such elements does not necessarily enlarge the duty of this court in determining the validity of the decision under review. *Ib.*

9. *Scope of inquiry as to power to repeal charter of corporation.*

This court does not inquire into the knowledge, negligence, methods or motives of the legislation if, as in this case, the statute is passed in due form; and where the statute repeals the charter of a corporation under the reserved power of repeal, the only question here is whether the statute goes beyond the power expressly reserved. *Calder v. Michigan*, 591.

10. *Scope of review; denial of motion for new trial not reviewed.*

In considering a motion for new trial in a capital case on the ground that the jury was allowed to separate during the trial and that during the separation they saw newspaper articles bearing on the case, the court may, if it is going to deny the motion, assume that the jurors did read the articles, and the discretion of the trial court in denying the motion will not be reviewed in the absence of any conclusive ground that he was wrong, notwithstanding the more conservative course is not to allow the jury to separate in such cases. *Holt v. United States*, 245.

11. *Scope of review; findings of fact by state court not reviewable.*

On writ of error to review the judgment of a state court holding that a deed to a national bank was not void under the Federal statute, this court will not review findings of the state court of fact as to the acceptance of the deed. *Kerfoot v. Farmers' & Merchants' Bank*, 281.

12. *Scope of inquiry in determining validity of law of Philippine Commission.*

In determining whether a law of the Philippine Commission is invalid as inconsistent with the organic act this court puts aside all questions of the wisdom of the law, even if enacted in the face of axioms of commerce, and considers only whether power exists to enact under, and whether the enactment is inconsistent with, the organic act. *Ling Su Fan v. United States*, 302.

13. *Scope of review in determining constitutionality of state tax.*

In determining whether a tax imposed by a State is constitutional, this court is not concerned with the designation of the tax or whether the thing taxed may, or may not, have been mistakenly brought within the law; it is confined solely to determining whether the State has power to levy a tax on the subject taxed. *Moffitt v. Kelly*, 400.

14. *Scope of review; pleas to answer other than one demurred to and made subject of appeal not considered.*

Where all that this court has before it is the demurrer on one plea to the answer which was overruled below, it reverses the judgment and sustains the demurrer, and other pleas in defense remain at issue and this court will not consider them on this appeal. *Hine v. Morse*, 493.

15. *Scope of inquiry as to validity of an indictment.*

Quære, and not necessary to be decided in this case, how far, if at all, the court is warranted in inquiring into the nature of the evidence on which the grand jury acts, and how far in case of such inquiry the discretion of the trial court is subject to review. *Holt v. United States*, 245.

16. *Facts; binding effect of finding of state court.*

On error to a state court of last resort in a case involving the liability of a national bank under a contract, the findings of fact of the state court are binding on this court, and only the Federal question as to the effect of the facts found can be passed on. *Rankin v. Emigh*, 27.

17. *Conclusiveness of state court's construction of state statute.*

The decision of the state court that an offense under a statute did not depend on conditions as to notice contained in another statute is conclusive on this court; and one convicted in a state court is not denied due process of law by reason of such construction. *Watson v. Maryland*, 173.

18. *Following state court's construction of state constitution.*

This court follows the state court in determining the extent of a special immunity from taxation granted by the constitution of the State. *Arkansas Southern Ry. Co. v. Louisiana & Arkansas Ry. Co.*, 431.

19. *Affirmance without opinion, when.*

It is the practice of this court to affirm without opinion where the judgment under review is not decided to be erroneous by a majority of the court sitting in the cause. *Hertz v. Woodman*, 205.

20. *Motions to dismiss or affirm. Frivolous questions. When motion to affirm prevails.*

If the validity of the particular subject of classification assailed has not been so foreclosed by prior decisions as to render discussion frivolous the motion to dismiss will be denied, but if, as in this case, it is manifest that the contention is, in view of prior decisions, without merit, the motion to affirm will prevail. *Griffith v. Connecticut*, 563.

21. *Reference to opinion of Circuit Court; for what purpose permitted.*

While the opinion of the Circuit Court may not be examined to ascertain what should, under proper practice, appear in the pleadings or bill of exceptions, it may be looked to, when annexed and forming part of the record, to ascertain whether either party claimed, and was denied, a Federal right. *Memphis v. Cumberland Telephone Co.*, 624.

22. *Rulings on questions of evidence; when not considered.*

Rulings on questions of evidence are not properly before this court when the exceptions thereto do not appear in the record, and, even though objections to testimony may have been noted, if it does not appear what the rulings were and whether the testimony was or was not excluded, this court is confined to determining whether the findings support the judgment; and in this case the facts found by the court below unquestionably support the judgment. *Eagle Mining Co. v. Hamilton*, 513.

23. *Parties; question of, not open.*

In this case, *held* that the question of parties is not open in this court. *Calder v. Michigan*, 591.

24. *Quere as to construction of bill within jurisdiction of Circuit Court.*

Quere, whether a bill within the jurisdiction of the Circuit Court can be construed as charging that the action of a municipality was without authority from the State and also that such action denied

plaintiff his constitutional rights under the Fourteenth Amendment. *Memphis v. Cumberland Telephone Co.*, 624.

See APPEAL AND ERROR, 4, CONSTITUTIONAL LAW, 10, 17,
6;
BILL OF EXCEPTIONS, 2; HABEAS CORPUS;
JURISDICTION, A 11.

PRACTITIONERS OF MEDICINE.

See STATES, 2.

PRESUMPTIONS.

See FEDERAL QUESTION, 1;
INSTRUCTIONS TO JURY, 1;
STATUTES, A 4.

PRINCIPAL AND SURETY.

See ESTOPPEL.

PROCESS.

See CONSTITUTIONAL LAW, 12, 39;
CORPORATIONS, 3.

PROPERTY RIGHTS.

Consideration on taking; determination of value of water system as going concern.

Cost of duplication, less depreciation, of a water system, is less than the commercial value of the system as a going concern; and, even though the value of the unexpired franchise be expressly excluded from the appraisal, where the parties contemplate the purchase of a complete water system in operation, a reasonable amount should be included in the appraisal for the "going value" over the value of the physical properties. *Omaha v. Omaha Water Co.*, 180.

See CLAIMS AGAINST THE UNITED STATES, 5-8;
CONSTITUTIONAL LAW, 7, 20, 21, 22;
HUSBAND AND WIFE, 4.

PUBLIC HEALTH.

See STATES, 2.

PUBLIC LANDS.

1. *Character of lands; conclusiveness of decision of Commissioner of Land Office as to.*

A decision of the Commissioner of the Land Office, on notice to all

parties and after hearing, that lands claimed as swamp or overflowed under the Swamp Land Act of 1850, are not swamp or overflowed, or of a character embraced by the act, and which has never been appealed from, modified or reversed, but has been relied on by purchasers for value and in good faith, should not, after a lapse of twenty-five years, be disturbed by the courts where it does not appear that the lands were actually swamp or overflowed, when the decision was made. *United States v. Chicago, M. & St. P. Ry. Co.*, 233.

2. *Railway grants; when effective.*

The grant made by the act of May 12, 1864, c. 84, 13 Stat. 72, was one *in præsentî*. *Ib.*

3. *Railway grants; rights of beneficiary of grant in præsentî.*

Where a railway land grant is one *in præsentî* the beneficiary is entitled to all the lands granted within place limits which had not been appropriated or reserved by the United States for any purpose, or to which a homestead or preëmption right had not attached, prior to the definite location of the road proposed to be aided. *Ib.*

4. *State appropriation of swamp or overflowed lands; what amounts to.*

A claim by a State that it is entitled to lands as swamp or overflowed under the Swamp Land Act of September 28, 1850, c. 84, 9 Stat. 519, is not an appropriation or reservation if the land is not in fact swamp or overflowed and the claim sustained by a decision or ruling to that effect of competent authority. *Ib.*

5. *Swamp lands; identification of; in whom duty reposed.*

Under the Swamp Land Act power to identify lands as swamp or overflowed within the meaning of the act is conferred solely on the Secretary of the Interior. (*French v. Fyan*, 93 U. S. 169.) *Ib.*

6. *Mexican titles; effect of Gadsden Purchase Treaty; rights and duty of claimant.*

Under the Gadsden Purchase Treaty with Mexico of December 30, 1853, 10 Stat. 1031, the good faith of the United States was pleaded to respect Mexican titles, and one whose title was absolutely perfected prior to the treaty was not bound to present his title for confirmation to the Court of Private Land Claims under the act of March 3, 1891; nor did the fact that he prayed for confirmation, in a suit brought by the United States against him in that court to declare the patent void or to determine boundaries if valid, limit

his claim to the recovery of the price specified in the act for land included within the grant but patented to others by the United States. *Richardson v. Ainsa*, 289.

7. *Mexican titles; effect on claimant of appearance in Court of Private Land Claims.*

While under § 14 of the act of March 3, 1891, where the claimant of a Mexican land grant himself presented his claim to a Mexican grant in the Gadsden Purchase to the Court of Private Land Claims he might be limited to recovery in the case of lands within his grant sold by the United States to the price specified in the act, where he is brought into the court by the United States in a suit attempting to set aside a grant title to which was perfected before the treaty, he is not so limited and patents issued by the United States to lands within the boundaries of his grant are mere usurpations and void. *Ib.*

PUBLIC OFFICERS.

See CLAIMS AGAINST THE UNITED STATES, 4, 6, 7;
CLERKS OF COURT;
JUDICIAL NOTICE, 2.

PUBLIC POLICY.

See UNITED STATES.

PUBLIC SERVICE CORPORATIONS.

See CONSTITUTIONAL LAW, 20;
CORPORATIONS, 2.

PUBLIC WELFARE.

See CONSTITUTIONAL LAW, 42.

QUALIFICATIONS FOR SUFFRAGE

See STATES, 3.

QUIETING TITLE.

See JURISDICTION, D.

RACIAL DISCRIMINATION.

See FEDERAL QUESTION, 4;
RAILROADS.

RAILROADS.

1. *Segregation of races; right to make rules and regulations as to.*

As held by the Court of Appeals of Kentucky, a railroad company has the right, in that State, to establish rules and regulations which require white and colored passengers, even though they be interstate, to occupy separate apartments upon the train provided there is no discrimination in the accommodations. *Chiles v. Chesapeake & Ohio Ry. Co.*, 71.

2. *Same.*

In this case held that an interstate colored passenger was not compelled to occupy a separate apartment on a train in Kentucky from that occupied by white passengers under a state statute but under rules and regulations of the railroad company. *Ib.*

3. *Same.*

Whether interstate passengers of different races must have different apartments or share the same apartment is a question of interstate commerce to be determined by Congress alone, *Louisville & Nashville R. R. Co. v. Mississippi*, 133 U. S. 587, and the inaction of Congress in that regard is equivalent to the declaration that carriers can by reasonable regulations separate colored and white passengers. *Ib.*

4. *Reasonableness of regulations based on sentiment of community.*

Regulations which are induced by the general sentiment of the community for whom they are made and upon whom they operate cannot be said to be unreasonable. *Ib.*

5. *Acceptance of franchise; conditions imposed thereby.*

A railway corporation accepts its franchise from the State subject to the condition that it will conform at its own expense to any regulations as to the opening or use of streets which are reasonable and proper and have for their object public safety and convenience and which may, from time to time, be established by the municipality, within whose limits the company operates, proceeding under legislative authority. *Cincinnati, I. & W. Ry. Co. v. Connersville*, 336.

See CONSTITUTIONAL LAW, 4, 21, 26;

INTERSTATE COMMERCE COMMISSION, 1, 2, 5;

STATUTES, A 3.

RAILWAY LAND GRANTS.

See PUBLIC LANDS, 2, 3.

RATE REGULATION.

See INTERSTATE COMMERCE COMMISSION.

RATES OF INTEREST.

See STATES, 1.

REAL PROPERTY.

See EQUITY, 1;

NATIONAL BANKS, 3.

REASONABLE DOUBT.

See INSTRUCTIONS TO JURY, 1.

REFORMATION OF INSTRUMENTS.

See COURTS, 4.

REGISTRATION OF TITLE.

See TITLE.

REMEDIES.

See EQUITY, 3;

MANDAMUS;

INJUNCTION.

REMOVAL OF CAUSES.

See JUDGMENTS AND DECREES, 3.

REPEALS.

See PRACTICE AND PROCEDURE, 9;

STATUTES, A 1.

RESCISSION OF CONTRACT.

See CONTRACTS, 4;

EQUITY, 3.

RESISTING ARREST.

See ARREST;

CONSTITUTIONAL LAW, 12.

RES JUDICATA.

See EVIDENCE, 2;

JUDGMENTS AND DECREES, 6.

RESTITUTION.

See NATIONAL BANKS, 1, 2.

RESTRAINT OF TRADE.

See CRIMINAL LAW, 2.

REVOCAION OF POWERS.

See CORPORATIONS, 3.

RIPARIAN RIGHTS.

See COURTS, 2.

RULES OF COURT.

See BILL OF EXCEPTIONS, 1.

SALES.

See EQUITY, 1;

JUDGMENTS AND DECREES, 5.

SECOND JEOPARDY.

See CONSTITUTIONAL LAW, 14;

DEFENSES, 2.

SECRETARY OF THE INTERIOR.

See PUBLIC LANDS, 5.

SEGREGATION OF RACES.

See RAILROADS, 1-4.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 43.

SENTENCE.

See HABEAS CORPUS, 6.

SERVICE OF PROCESS.

See CONSTITUTIONAL LAW, 39.

SOVEREIGNTY.

See CONGRESS, POWERS OF, 2.

STARE DECISIS.

1. *Flexibility of rule.*

The rule of *stare decisis* tends to uniformity and consistency of decision but it is not inflexible, and it is within the discretion of a court to follow or depart from its prior decisions. *Hertz v. Woodman*, 205.

2. *Effect of affirmance by divided court.*

While the affirmance of a judgment by this court by a divided court is a conclusive adjudication between the parties, it is not an authority on the principles of law involved for the determination of other cases in this or in inferior courts; and this, although a different rule has been sanctioned in England. *Ib.*

See CONSTITUTIONAL LAW, 36;
PUBLIC LANDS, 1.

STATES.

1. *Police power to fix rates of interest on money loaned.*

Fixing maximum rates of interest on money loaned within the State by persons subject to its jurisdiction is clearly within the police power of the State, and the details are within legislative discretion if not unreasonably and arbitrarily exercised. *Griffith v. Connecticut*, 563.

2. *Police power to regulate trades and callings concerning public health.*

The police power of the State particularly extends to regulating trades and callings concerning public health, and practitioners of medicine are properly subject to police regulation, the details of which are primarily with the legislature and are not to be interfered with by the Federal courts so long as fundamental constitutional rights are not violated. (*Dent v. West Virginia*, 129 U. S. 114.) *Watson v. Maryland*, 173.

3. *Restrictions upon; effect of act of June 25, 1868.*

Quere, whether the act of June 25, 1868, c. 70, 15 Stat. 73, does restrict the States enumerated therein in fixing the qualifications for suffrage within such States respectively. *Franklin v. South Carolina*, 161.

4. *Power to regulate the relative rights and duties of persons and corporations within jurisdiction.*

The power, whether called police, governmental or legislative, exists in each State, by appropriate legislation not forbidden by its own, or the Federal, constitution to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and, there-

fore, to provide for the public good and convenience. (*Lake Shore & Michigan Southern Ry. Co. v. Ohio*, 173 U. S. 285, 298.)
Cincinnati, I. & W. Ry. Co. v. Connersville, 336.

5. *Taxation; limitation by State of power to determine property taxable by municipality.*

A State by authorizing a municipality to levy taxes in the future on taxable property within its jurisdiction does not thereby limit its own power to determine what property shall be taxable when the levy shall be made. *Arkansas Southern Ry. Co. v. Louisiana & Arkansas Ry. Co.*, 431.

6. *Subserviency of subordinate body in making contracts.*

A subordinate body of the State, in the absence of the State distinctly limiting its control thereover, contracts subject, and not paramount, to the power of the State. *Ib.*

See ACTIONS, 2;

COMMON LAW;

CONSTITUTIONAL LAW, 19,
23, 24, 40, 44-46;

FEDERAL QUESTION, 3;

JURISDICTION, A 15;

PUBLIC LANDS, 4;

PRACTICE AND PROCEDURE, 13.

STATUTE OF LIMITATIONS.

See CRIMINAL LAW, 4.

STATUTES.

A. CONSTRUCTION OF.

1. *Repeals; effect of—Effect of § 13, Rev. Stat., as general saving clause.*

While an unqualified repeal of a law operates to destroy inchoate rights as a release of imperfect obligations and as a remission of penalties and forfeitures dependent upon the destroyed statute, § 13, Rev. Stat., based on § 4 of the act of February 25, 1871, c. 71, 16 Stat. 431, operates, unless the repealing act does not expressly or by implication exclude such operation, as a general saving clause for all repealing statutes and extends not only to penalties and forfeitures but to liabilities under the repealed statute. (*Great Northern Railway Co. v. United States*, 208 U. S. 452.) *Hertz v. Woodman*, 205.

2. *Separable provisions; when provisions construed as independent.*

Where the purpose of a state statute does not depend upon the inseparableness of its punishments the fact that a statute provides both double damages and fine and imprisonment does not necessarily prevent a construction that the provisions are independent. *Sherlin-Carpenter Co. v. Minnesota*, 57.

3. *When state statute construed as regulation of commerce and not police measure.*

A statute requiring interstate trains to stop at junction points for the convenience of passengers should be construed as a regulation of commerce and not as a police statute for the protection of life and limb. *Herndon v. Chicago, R. I. & Pac. Ry. Co.*, 135; *Roach v. Atchison, Topeka & Santa Fe Ry. Co.*, 159.

4. *Presumption against intent to dismember water system.*

There is a presumption against an intent to dismember a complete waterworks system, and an ordinance to purchase such a system will not be construed as requiring such dismemberment, even if the city had no power to use certain portions of the system. *Omaha v. Omaha Water Co.*, 180.

5. *Of statutes affecting relation of husband and wife.*

Statutes passed in pursuance of a more liberal and general policy of emancipation of the wife from the husband's control differ in terms and each must be construed with a view to effectuate the legislative intent leading to its enactment. *Thompson v. Thompson*, 611.

6. *Influence of old law in construing one effecting change therein.*

In construing a statute the courts must have in mind the old law and the change intended to be effected by the passage of the new. *Ib.*

See FEDERAL QUESTION, 2;

PRACTICE AND PROCEDURE, 2, 7, 8, 9, 12, 17, 18;

TAXES AND TAXATION, 2.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STATUTORY LIENS.

See LIENS.

STREETS AND HIGHWAYS.

See CONSTITUTIONAL LAW, 21;

RAILROADS, 5.

SUBSTITUTION OF PARTIES.

See ACTIONS, 2.

SUCCESSIONS.

See TAXES AND TAXATION, 1-3.

SUFFRAGE.

See STATES, 3.

SUIT AGAINST STATE.

See ACTIONS, 2;

CONSTITUTIONAL LAW, 40.

SURETIES.

See ESTOPPEL.

SWAMP LANDS.

See PUBLIC LANDS, 1, 4, 5.

TAXES AND TAXATION.

1. *Inheritance tax; liability under War Revenue Act of 1898.*

Upon the passing by death of a vested right to the immediate possession or enjoyment of a legacy or distributive share there was imposed by the inheritance tax provisions of the War Revenue Act of 1898 the tax or duty exacted upon every such right of succession which was saved by the saving clause of the repealing act of April 12, 1902. *Mason v. Sargent*, 104 U. S. 689, distinguished. *Hertz v. Woodman*, 205.

2. *Same.*

The fact that the testator died within one year immediately prior to the taking effect of the repealing act of April 12, 1902, c. 500, 32 Stat. 96, does not relieve from taxation legacies otherwise taxable under §§ 29 and 30 of the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 448, as amended by the act of March 2, 1901, c. 803, 31 Stat. 895. *Ib.*

3. *Inheritance tax; application of limitation as to payment.*

Although in the statute a time limit as to payment of a tax upon distributive shares and legacies may refer to the death of the testator, it may be construed as applying to shares in intestate estates as well as to legacies from testators, the omission being supplied by necessary implication. *Ib.*

4. *Effect of delay on validity of assessment.*

If the law of the State permits it, the fact that the making of an assess-

ment is delayed does not detract from the authority or the duty of the assessing power to make it. *Illinois Central R. R. Co. v. Kentucky*, 551.

See CONSTITUTIONAL LAW, 3, 9, JURISDICTION, A 13;
17, 18, 19, 33, 44, 45, 46; PRACTICE AND PROCEDURE, 13, 18;
STATES, 5.

TELEGRAPHS.

See COMMERCE;
CONSTITUTIONAL LAW, 5, 7, 30.

TERM OF OFFICE.

See JUDICIAL NOTICE, 2.

TERMS OF COURT.

Of Circuit Court; when properly held.

Under the statutes of the United States relative to the terms of the Circuit Court the term of court at which the petitioners were convicted was properly held. *Harlan v. McGourin*, 442.

See BILL OF EXCEPTIONS, 1;
JUDGMENTS AND DECREES, 1, 2.

TERRITORIAL COURTS.

See JURISDICTION, D.

TESTIMONY.

See CONSTITUTIONAL LAW, 43;
EVIDENCE.

THIRTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 12.

TITLE.

1. *Registration in Philippine Islands.*

The decree of the Supreme Court of the Philippine Islands denying a petition for registration of title to land on the ground that the petitioner had no legal title thereto under Spanish law, sustained. *Roura v. Philippine Islands*, 386.

2. *Registration in Philippine Islands.*

Issue in the courts below having been confined solely to the legality of deeds on which the petitioner sought to register and which those courts held to have been fraudulently obtained and illegal, the

title could not be registered on claim of quiet possession subsequent to the obtaining of those deeds and in regard to which there was no proof in the record. *Ib.*

See CONTRACTS, 2; EVIDENCE, 4;
ELECTION; NATIONAL BANKS, 3;
PUBLIC LANDS, 6, 7.

TRADE.

See CRIMINAL LAW, 2.

TRADES.

See STATES, 2.

TRANSFERS BY BANKRUPT.

See BANKRUPTCY, 1.

TRIAL.

Opening statements; misconduct in.

In this case the ruling of the trial court that the District Attorney was not guilty of misconduct in making statements in his opening as to voluntary confessions of the accused sustained. *Holt v. United States*, 245.

See CONSTITUTIONAL LAW, 11;
JURY AND JURORS, 1.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY;
CLAIMS AGAINST THE UNITED STATES, 1.

TRUSTS AND TRUSTEES.

See ACTIONS, 1; ESTOPPEL;
CLERKS OF COURT, 2; JUDGMENTS AND DECREES, 5.

ULTRA VIRES.

See CORPORATIONS, 4;
NATIONAL BANKS.

UNITED STATES.

Instrumentalities of; vessels in course of construction; immunity from state lien laws.

Vessels in course of construction for the United States, the title to which under the contract, vests in the Government as fast as

constructed, become instrumentalities of the Government and for reasons of public policy cannot be seized under state laws to answer private claims. *United States v. Ansonia Brass & Copper Co.*, 452.

See CLAIMS AGAINST THE UNITED STATES;
 CONSTITUTIONAL LAW, 34, 40, 41;
 PUBLIC LANDS, 6.
 CONTRACTS, 1, 2;
 EVIDENCE, 4;
 JURISDICTION, A 7;
 LIENS;

USURY.

See CONSTITUTIONAL LAW, 31.

VARIANCE.

See PLEADING AND PROOF.

VESSELS.

See ADMIRALTY;
 CONTRACTS, 1, 2;
 UNITED STATES.

WAR REVENUE ACT.

See TAXES AND TAXATION, 1, 2.

WITNESSES.

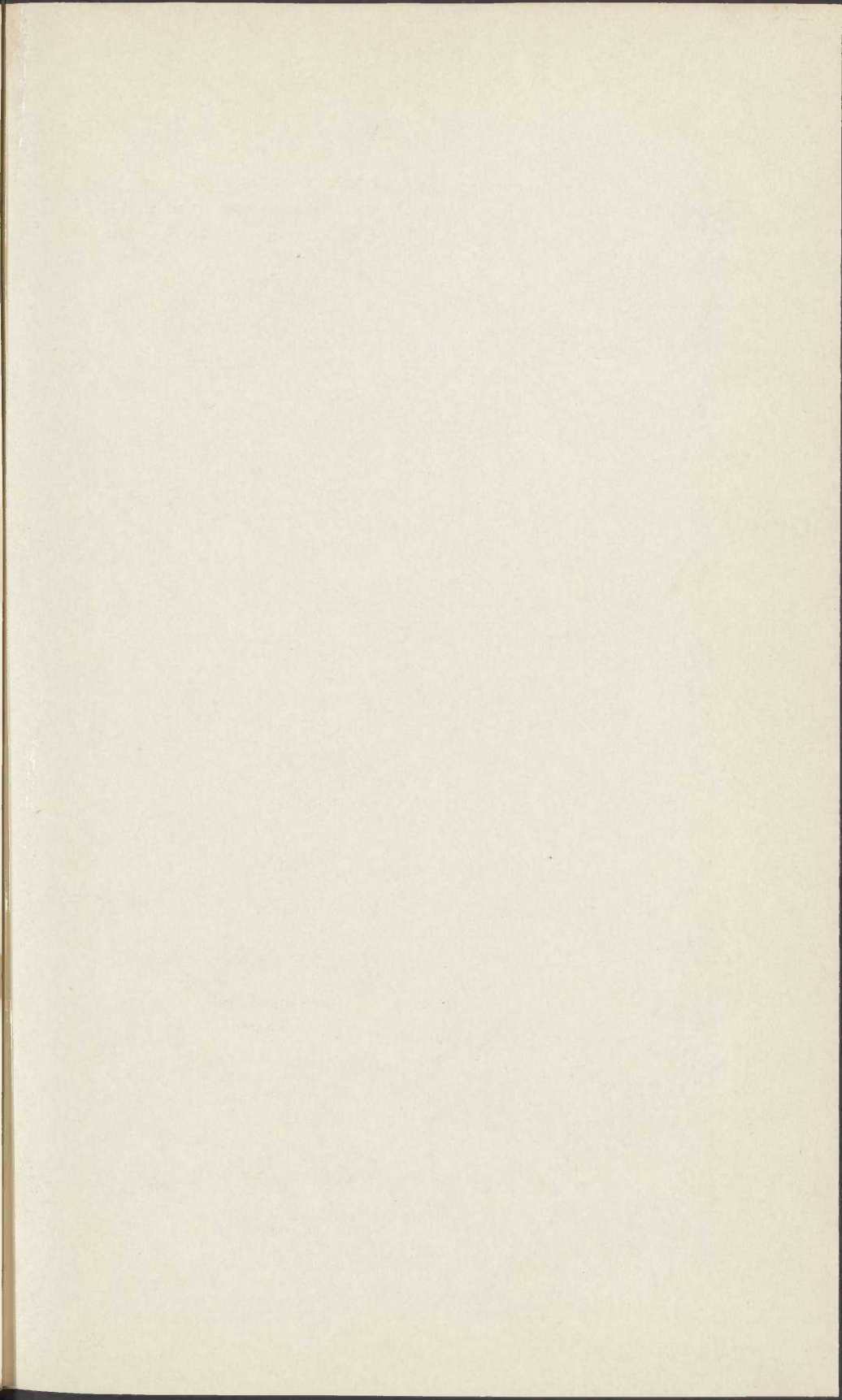
See CONSTITUTIONAL LAW, 43;
 EVIDENCE, 5.

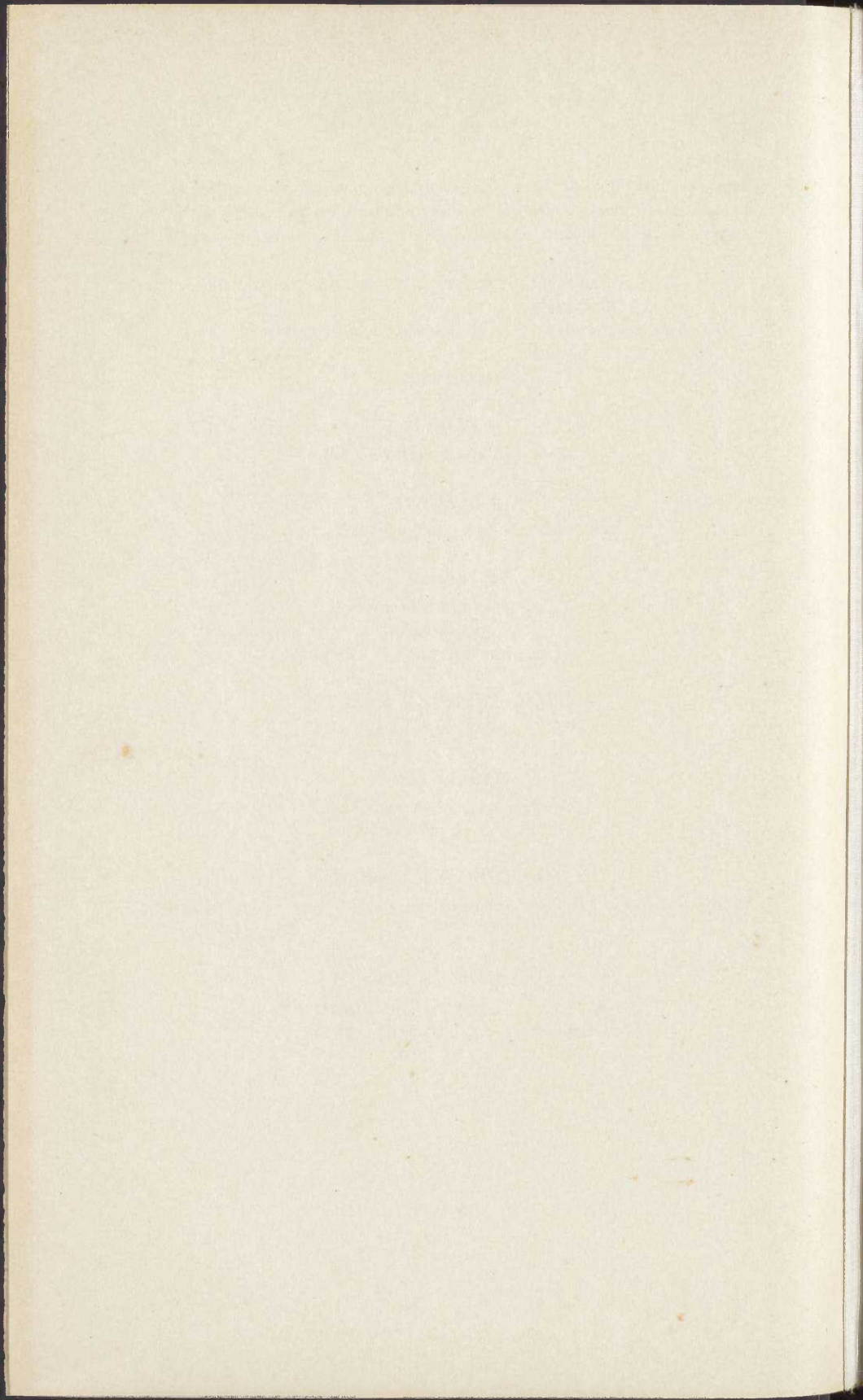
WORDS AND PHRASES.

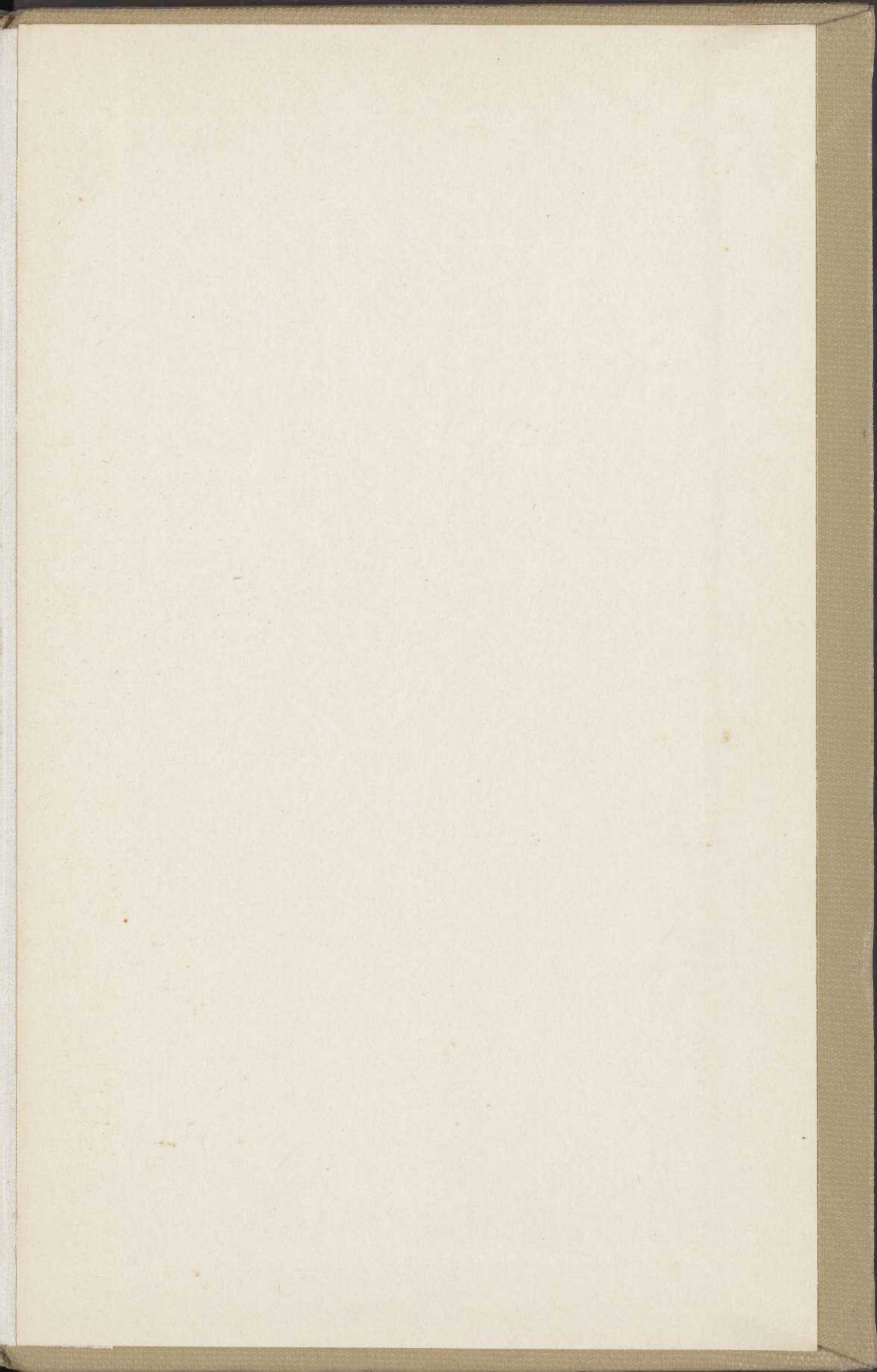
"*Would*" and "*could*" (see Instructions to Jury, 2). *Standard Oil Co. v. Brown*, 78.

WRIT OF PROCESS.

See APPEAL AND ERROR; INJUNCTION
 HABEAS CORPUS; MANDAMUS.







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