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## ACTIONS.

### 1. *Right to maintain.*

Where the action is based on counts upon a contract and also upon *quantum meruit* and the evidence to sustain the latter is ruled out, the action rests solely on the contract and the right to maintain it is determined as though brought solely on the contract. *West Side R. R. Co. v. Pittsburgh Construction Co.*, 92.

### 2. *Debt; when maintainable.*

Whether an action for debt is maintainable depends not upon who is plaintiff, or how the obligation was incurred, but the action lies wherever there is due a sum either certain or readily reduced to certainty. (*Stockwell v. United States*, 13 Wall. 542.) *United States v. Chamberlin*, 250.

### 3. *On bond of government contractor; prerequisites to bringing.*

Although plaintiff may not have applied for copy of the bond and filed an affidavit that the labor and materials had been supplied, the defect was formal and not vital as the intervenors had complied with the statute in that respect. *Title Guar. & Trust Co. v. Crane Co.*, 24.

### 4. *On bond of government contractor; who entitled to maintain.*

Objections to allowing claimants the benefit of the bond given by the contractor under the act of 1894 as amended by the act of 1905, either because they had a lien or because the service was too remote, if carried to extremes, would defeat purpose of the act. *Ib.*

### 5. *On bond of government contractor; effect of assignment of claims of materialmen.*

Assignments of claims of materialmen on a public work held in this case not to have affected the remedy of enforcing the same against the surety on the contractor's bond. *Ib.*

### 6. *On bond of government contractor; right of claimants to docket fee.*

In a suit to enforce claims of materialmen against surety on a contractor's bond, each claimant is entitled to a docket fee of \$10.00. Although the claims are consolidated in a single suit the causes of action are distinct. *Ib.*

7. *Parties to; United States as necessary party.*

*Held*, in this case, that the suit had been properly brought, and that the United States was not necessarily a party, the suit being begun in the name of the United States to the real plaintiff's use. *Ib.*

<i>See</i> BONDS;	PUBLIC WORKS, 1;
CONSTITUTIONAL LAW, 21,	TAXES AND TAXATION, 1;
56-61;	UNITED STATES;
INTERSTATE COMMERCE, 2, 5;	WAR REVENUE ACT.

## ACTS OF CONGRESS.

ARMY.—Act of Oct. 1, 1890, 26 Stat. 582 (see Army and Navy, 1, 3): *Reaves v. Ainsworth*, 296.

BANKRUPTCY.—Act of July 1, 1898 (see Bankruptcy, 1): *Sexton v. Dreyfus*, 339.

COMMERCE.—Carmack Amendment of Jany. 29, 1906 (see Constitutional Law, 24): *Atlantic Coast Line v. Riverside Mills*, 186.

CRIMINAL LAW.—Act of July 7, 1898, § 2, 30 Stat. 717 (see Criminal Law, 4, 5, 6): *United States v. Press Publishing Co.*, 1. Act of March 2, 1907, 34 Stat. 1246 (see Practice and Procedure, 10): *United States v. Barber*, 72. Rev. Stat., § 5440 (see Criminal Law, 3): *Ib.*

DISTRICT OF COLUMBIA.—Rev. Stat. D. C., § 1176 (see Local Law, D. C., 1): *Matter of Gregory*, 210. Section 1177 (see Habeas Corpus, 3; Local Law, D. C., 2): *Ib.*

INDIANS.—Act of March 1, 1907, 34 Stat. 1028 (see Constitutional Law, 61): *Muskrat v. United States*, 346.

INTERSTATE COMMERCE.—Act of Feby. 4, 1887, § 2, 24 Stat. 379 (see Interstate Commerce, 4, 6): *Louisville & Nashville R. R. Co. v. Mottley*, 467. Section 8 (see Interstate Commerce Act): *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 186. Act of June 29, 1906, 34 Stat. 584 (see Interstate Commerce, 3, 4, 5, 6): *Louisville & Nashville R. R. Co. v. Mottley*, 467.

JUDICIARY.—Act of March 3, 1891, 26 Stat. 826 (see Jurisdiction, A 3): *Fore River Shipbuilding Co. v. Hagg*, 175. Act of June 28, 1898, 30 Stat. 511 (see Jurisdiction, F 2; Removal of Causes, 1): *Hendrix v. United States*, 79. Act of March 3, 1905 (see Appeal and Error): *William W. Bierce, Ltd., v. Waterhouse*, 320. Act of March 2, 1907 (see Jurisdiction, A 4): *United States v. Barber*, 72.

OKLAHOMA.—Enabling Act of June 16, 1906, 34 Stat. 267, as amended March 4, 1907, 34 Stat. 1287 (see Jurisdiction, F 2): *Hendrix v. United States*, 79.

PEONAGE.—Act of March 2, 1867, and §§ 1990, 5526, Rev. Stat. (see Constitutional Law, 54): *Bailey v. Alabama*, 219.

PUBLIC LANDS.—Act of June 2, 1864, 13 Stat. 365, and joint resolution

of May 31, 1870, 16 Stat. 378 (see Public Lands, 6): *Weyerhaeuser v. Hoyt*, 380. Forest reserve provision of act of June 4, 1897, 30 Stat. 36 (see Public Lands, 1, 3): *Roughton v. Knight*, 537. Act of June 4, 1898, 30 Stat. 430 (see Public Lands, 5): *Spokane & B. C. Ry. Co. v. Washington & G. N. Ry. Co.*, 166. Sundry Civil Act of July 1, 1898, 30 Stat. 597 (see Public Lands, 11): *Weyerhaeuser v. Hoyt*, 380. Act of March 3, 1905, 33 Stat. 1264 (see Public Lands, 3); *Roughton v. Knight*, 537.

PUBLIC WORKS.—Act of August 13, 1894, 28 Stat. 278, as amended by act of February 24, 1905, 33 Stat. 811 (see Actions, 4; Public Works, 1; United States): *Tille Guaranty & Trust Co. v. Crane Co.*, 24.

WAR REVENUE.—Act of June 13, 1898, 30 Stat. 448 (see War Revenue Act): *United States v. Chamberlin*, 250.

#### AGENCY.

See CARRIERS, 4.

#### AMENDMENT.

See BILL OF EXCEPTIONS;

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#### AMENDMENTS TO CONSTITUTION.

*Fifth.* See CONSTITUTIONAL LAW, 7, 24.

*Fourteenth.* See CONSTITUTIONAL LAW, 5, 13, 17, 18, 25, 28, 34, 35, 36, 37, 63, 71, 72, 75, 82.

*Thirteenth.* See CONSTITUTIONAL LAW, 50–55.

*Generally.* See CONSTITUTIONAL LAW, 31, 32.

#### APPEAL AND ERROR.

*Finality of judgment below; effect of petition for rehearing—Law applicable.*

The effect of a petition for rehearing, if duly filed and entertained by the court, is to prevent the judgment from becoming final and reviewable until disposed of, and when disposed of, an appeal from the judgment is regulated by the statutes then in force, even if enacted after the original decision; and so held as to an appeal from the Supreme Court of Hawaii under the act of March 3, 1905. *William W. Bierce, Ltd., v. Waterhouse*, 320.

See ARMY AND NAVY, 3;	HABEAS CORPUS;
BILL OF EXCEPTIONS;	INJUNCTION, 1, 2, 3;
BONDS, 3;	JURISDICTION;
CONTEMPT OF COURT;	MOOT CASE, 2.

## ARMY AND NAVY.

1. *Army; examinations; finality of order of board of examiners.*

Under the act of October 1, 1890, c. 1241, 26 Stat. 562, regulating examinations and promotions in the army, the board of examiners may make a provisional order giving the officer a reasonable period for reëxamination and such an order is not final but provisional, and does not deprive the board of jurisdiction to subsequently determine the fitness of officer for duty. *Reaves v. Ainsworth*, 296.

2. *Military law as due process of law; power of courts over decisions of military tribunals.*

What is due process of law depends upon circumstances. To those in the military or naval service of the United States military law is due process; and the decision of a military tribunal acting within scope of its lawful powers cannot be reviewed or set aside by the courts. *Ib.*

3. *Review of order of military board; purpose of act of October 1, 1890.*

The purpose of the act of October 1, 1890, is to secure efficiency and the only relief from error or injustice in the order of the board is by review of the President. The courts have no power of review. *Ib.*

4. *Efficiency of army paramount to individual rights of officers.*

Courts are not the only instrumentalities of government; they cannot command or regulate the army, and the welfare and safety of the country, through the efficiency of officers of the army, is greater than the value of his commission, or the right of promotion of any officer of the army. *Ib.*

5. *Militia differentiated from regular army as to discipline required.*

There is a difference between the regular army of the Nation and the militia of a State when not in service of the Nation, and more rigid rules and a higher state of discipline are required in the former than in the latter. *Ib.*

## ASSESSMENT AND TAXATION.

See CONSTITUTIONAL LAW, 19, 46, 66;

TAXES AND TAXATION; WAR REVENUE ACT.

## ASSIGNMENT.

See ACTIONS, 5.

## ASSIMILATIVE CRIMES ACT.

See CRIMINAL LAW, 4, 5, 6.

## ATTORNEY GENERAL.

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## ATTORNEYS' FEES.

See INTERSTATE COMMERCE ACT.

## BAILMENT.

See BANKS AND BANKING.

## BANK GUARANTY.

See CONSTITUTIONAL LAW, 30, 44, 65, 66, 67, 68.

## BANKRUPTCY.

1. *Secured creditors; application of proceeds of security.*

Under the Bankruptcy Act of 1898, a secured creditor selling his securities after the filing of the petition must apply the proceeds, other than interest and dividends accrued since the date of the petition, first to the liquidation of the debt with interest to the date of the petition; he cannot first apply such proceeds to interest accrued since the petition. *Sexton v. Dreyfus*, 339.

2. *Same.*

A secured creditor of a bankrupt can apply interest and dividends accruing after the date of the petition to interest on the debt accruing after such date. *Ib.*

3. *English rule approved.*

The English rule and authorities discussed and approved. *Ib.*

## BANKS AND BANKING.

*Status of bank as depositary.*

The receipt of money by a bank where the depositor can withdraw it as he pleases, although creating a debt, is, in a popular sense, the receipt of money for safe-keeping. *Engel v. O'Malley*, 128.

See CONSTITUTIONAL LAW, 3, 18, 30, 44, 63, 65-69;

COURTS, 10;

STATES, 5.

## BILL OF EXCEPTIONS.

*Amendment of.*

An amendment to a bill of exceptions, after bond on appeal had been

given and approved, so to make the record conform to the fact as to the conditions under which certain testimony introduced by plaintiff in error on the trial was given, *held* not error, as not unjustified or objected to and the exception related only to including the testimony in the record. *Herencia v. Guzman*, 44.

#### BILLS OF LADING.

*See* CARRIERS, 1.

#### BONDS.

1. *Consideration; seal imports.—Simultaneous transactions.*

Where a bond is under seal consideration is presumed; in this case, although the bond was not executed until ten days after execution of the contract it was given to secure, the transactions may be regarded as simultaneous. *Title Guar. & Trust Co. v. Crane Co.*, 24.

2. *Judicial; liability of surety.*

The surety on a bond given in course of a judicial proceeding is represented in that proceeding by his principal, and becomes responsible, to the amount of the penalty, for amendments allowed by the court that do not introduce new causes of action. *William W. Bierce, Ltd., v. Waterhouse*, 320.

3. *Judicial; rights of parties not denied by exercise of sovereign power as to appeal pending litigation.*

Litigants and their sureties are subject to the power of the sovereign to extend the right of review and appeal pending litigation, and no fundamental rights are denied or contractual rights of the parties affected by the exercise of that power. *Ib.*

4. *Replevin; liability of surety.*

A plaintiff suing in replevin is not estopped from showing that he mistakenly undervalued the property sought to be recovered; and one becoming surety for performance of a judgment of the court in a pending suit is bound by the judgment against his principal to the limit of his obligation. *Ib.*

5. *Replevin; suits on; value of property res judicata.*

In absence of fraud and collusion the question of value of property taken under replevin as found in the replevin suit cannot be relitigated in a suit against sureties on redelivery bond. *Ib.*

6. *Replevin; subject to changes in procedure not affecting contract.*

A redelivery bond is executed subject to such possible changes in the procedure as do not affect the contract, and under the law of

Hawaii, as amended during the pendency of this litigation, the action against the sureties was properly brought. *Ib.*

7. *Replevin; suits on; when question of redelivery for jury.*

In this case, as the evidence of tender of delivery was not unequivocal, the question of whether the property was actually restored was for the jury, and the charge being full and fair, there was no error. *Ib.*

*See* ACTIONS, 3-6;

PUBLIC WORKS, 1;

LOCAL LAW (HAWAII);

UNITED STATES.

BOUNDARIES.

*See* REAL PROPERTY.

BROKERS.

*See* CONSTITUTIONAL LAW, 38.

BUCKET SHOPS.

*See* CONSTITUTIONAL LAW, 26, 38.

BURDEN OF PROOF.

*See* REAL PROPERTY.

CARMACK AMENDMENT.

*See* CARRIERS, 4;

CONSTITUTIONAL LAW, 24.

CARRIERS.

1. *Limitation of liability; common-law effect of.*

A provision in a bill of lading issued by the initial carrier, that it should not be liable for loss or damage not occurring on its portion of the route, is not a contract of exemption from its own liability as a carrier, but a provision of non-assumption of the liabilities of others and at common law relieves it of such liabilities. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 186.

2. *Liability of initial carrier; rule of this court; when liability extends over entire route.*

The general rule adopted by this court is that, in the absence of legislation, a carrier, unless there be a special contract, is only bound to carry over its own line and then deliver to a connecting carrier; it may, however, contract to carry beyond its line, and if it does so its common-law carrier liability extends over entire route. *Ib.*

3. *Duties and liabilities of interstate carriers; intent and purpose of congressional legislation.*

It was not only the legal elements of the situation, but also the fact

that the business prosperity of the country largely depends on through rates and routes of transportation, that induced Congress to enact such regulations in regard to the duties and liabilities of interstate carriers as would relieve shippers whose goods were damaged from the burden of proving where the loss occurred. *Ib.*

4. *Liability under Carmack amendment to Interstate Commerce Act.*

Under the Carmack amendment, the initial carrier is, as principal, liable not only for its own negligence, but that of any agency which it may use, although as between themselves the carrier actually causing the loss may be primarily liable. *Ib.*

5. *Quære as to duty respecting through transportation and joint rates.*

*Quære*, and not decided, whether a carrier can be compelled to accept goods for transportation beyond its own lines or be required to make a through or joint rate over independent lines. *Ib.*

*See* CONSTITUTIONAL LAW, 24;

INTERSTATE COMMERCE;

INTERSTATE COMMERCE COMMISSION.

CASE OR CONTROVERSY.

*See* CONSTITUTIONAL LAW, 57, 59, 60.

CASES APPLIED.

*Ex parte Hoard*, 105 U. S. 578, applied in *Ex parte Harding*, 363.

CASES DISTINGUISHED.

*Sjoli v. Dreschel*, 199 U. S. 569, distinguished in *Weyerhaeuser v. Hoyt*, 380.

*Virginia v. Rives*, 100 U. S. 313, distinguished in *Ex parte Harding*, 363.

CASES FOLLOWED.

*Atlantic Coast Line R. R. Co. v. Riverside Mills*, 219 U. S. 186, followed in *Louisville & Nashville R. R. Co. v. Scott*, 209.

*Bache v. Hunt*, 193 U. S. 523, followed in *Fore River Shipbuilding Co. v. Hagg*, 175.

*Calder v. Bull*, 3 Dall. 386, followed in *Kentucky Union Co. v. Kentucky*, 140.

*Camfield v. United States*, 167 U. S. 518, followed in *Noble State Bank v. Haskell*, 104.

*Chisholm v. Georgia*, 2 Dall. 431, followed in *Muskrat v. United States*, 346.

*Citizens' National Bank v. Kentucky*, 217 U. S. 443, followed in *Kentucky Union Co. v. Kentucky*, 140.

- Clark v. Nash*, 198 U. S. 361, followed in *Noble State Bank v. Haskell*, 575.
- Clyatt v. United States*, 197 U. S. 207, followed in *Bailey v. Alabama*, 219.
- Coe v. Errol*, 116 U. S. 577, followed in *Southern Pac. Terminal Co. v. Interstate Com. Comm.*, 498.
- Cosmos Co. v. Gray Eagle Oil Co.*, 190 U. S. 301, followed in *Roughton v. Knight*, 537.
- Farrell v. O'Brien*, 199 U. S. 100, followed in *Hunter v. South Carolina*, 582, and *Venner v. Denver Union Water Co.*, 583.
- Florida R. R. Co. v. Reynolds*, 183 U. S. 471, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Franklin v. United States*, 216 U. S. 559, followed in *United States v. Press Publishing Co.*, 1.
- Goodrich v. Ferris*, 214 U. S. 79, followed in *Loeb v. Jennings*, 582.
- Green v. Biddle*, 8 Wheat. 1, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Griffith v. Connecticut*, 218 U. S. 563, followed in *Loeb v. Jennings*, 582; *Hunter v. South Carolina*, 582, and *Venner v. Denver Water Co.*, 583.
- Harlan v. McGowin*, 218 U. S. 442, followed in *Matter of Gregory*, 210.
- Hatch v. Reardon*, 204 U. S. 502, followed in *Brodnax v. Missouri*, 285.
- Hawkins v. Barney*, 5 Pet. 457, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Heath & Milligan Co. v. Worst*, 207 U. S. 338, followed in *Engel v. O'Malley*, 128.
- Heyburn's Case*, 2 Dall. 409, followed in *Muskrat v. United States*, 346.
- House v. Mayes*, 219 U. S. 270, followed in *Brodnax v. Missouri*, 285.
- Humbird v. Avery*, 195 U. S. 485, followed in *Weyerhaeuser v. Hoyt*, 380.
- Kelly v. Jackson*, 6 Pet. 632, followed in *Bailey v. Alabama*, 219.
- King v. West Virginia*, 216 U. S. 92, followed in *Hunter v. South Carolina*, 582, and *Venner v. Denver Union Water Co.*, 583.
- League v. Texas*, 184 U. S. 156, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Logan v. United States*, 144 U. S. 263, followed in *Hendrix v. United States*, 79.
- Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467, followed in *Chicago, Ind. & Louisville Ry. Co. v. United States*, 486.
- Louisville Trust Co. v. Knott*, 191 U. S. 275, followed in *Fore River Shipbuilding Co. v. Hagg*, 175.
- Mansfield &c. Ry. Co. v. Swan*, 111 U. S. 379, followed in *Fore River Shipbuilding Co. v. Hagg*, 175.
- Marbury v. Madison*, 1 Cranch, 137, followed in *Muskrat v. United States*, 346.
- Mattox v. United States*, 146 U. S. 140, followed in *Hendrix v. United States*, 79.

- Michigan Central R. R. Co. v. Powers*, 201 U. S. 245, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Noble State Bank v. Haskell*, 219 U. S. 104, followed in *Shallenberger v. First State Bank*, 114; *Assaria State Bank v. Dolley*, 121, and *Engel v. O'Malley*, 128.
- Orr v. Gilman*, 183 U. S. 278, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Schulenberg v. Harriman*, 21 Wall. 44, followed in *Spokane & B. C. Ry. Co. v. Washington & G. N. Ry. Co.*, 166.
- Stockwell v. United States*, 13 Wall. 542, followed in *United States v. Chamberlin*, 250.
- Strickley v. Highland Boy Mining Co.*, 200 U. S. 527, followed in *Noble State Bank v. Haskell*, 575.
- Terry v. Anderson*, 95 U. S. 628, followed in *Kentucky Union Co. v. Kentucky*, 140.
- Twining v. New Jersey*, 211 U. S. 78, followed in *American Land Co. v. Zeiss*, 47.
- United States v. Ansonia Brass & Copper Co.*, 218 U. S. 452, followed in *Title Guaranty & Trust Co. v. Crane Co.*, 24.
- United States v. Kissel*, 218 U. S. 601, followed in *United States v. Barber*, 72.
- United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, followed in *Southern Pac. Terminal Co. v. Interstate Com. Comm.*, 498.
- Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112, followed in *Loeb v. Jennings*, 582; *Hunter v. South Carolina*, 582, and *Venmer v. Denver Union Water Co.*, 583.
- Weyerhaeuser v. Hoyt*, 219 U. S. 380, followed in *Campbell v. Weyerhaeuser*, 424, and *Northern Pacific Ry. Co. v. Wass*, 426.

#### CASES QUALIFIED.

- Ex parte Wisner*, 203 U. S. 449, disapproved in part and qualified in *Ex parte Harding*, 363.
- In re Moore*, 209 U. S. 490, disapproved in part and qualified in *Ex parte Harding*, 363.
- In re Winn*, 213 U. S. 458, disapproved in part and qualified in *Ex parte Harding*, 363.

#### CLASSIFICATION.

- See CONSTITUTIONAL LAW, 18, 34, 35, 36, 37, 38, 40, 41, 42.  
STATES, 1.

#### COLLATERAL ATTACK.

- See MANDAMUS, 1.

## COMMERCE.

See CONSTITUTIONAL LAW, 1, 2, 3, 26;  
 INTERSTATE COMMERCE;  
 INTERSTATE COMMERCE COMMISSION.

## COMMON CARRIERS.

See CARRIERS.

## COMMON LAW.

See CARRIERS, 1, 2;  
 CONSTITUTIONAL LAW, 63.

## CONDEMNATION OF LAND.

See CONSTITUTIONAL LAW, 31, 32, 33.

## CONFLICT OF LAWS.

See CONGRESS, POWERS OF, 2;  
 CRIMINAL LAW, 4, 5;  
 INTERSTATE COMMERCE, 6.

## CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

## CONGRESS, POWERS OF.

1. *Exercise of powers not hampered by contracts which would be rendered invalid.*

The power of Congress to act in regard to matters delegated to it is not hampered by contracts made in regard to such matters by individuals; but contracts of that nature are made subject to the possibility that even if valid when made Congress may by exercising its power render them invalid. *Louisville & Nashville R. R. Co. v. Mottley*, 467.

2. *Conflict between state and Federal statutes; latter will prevail.*

No state enactment can avail when the subject has been covered by an act of Congress acting within its constitutional powers. In such a case the act of Congress is paramount and the state law must give way. *Chicago, Ind. & L. Ry. Co. v. United States*, 486.

See CONSTITUTIONAL LAW, 1, 24, 54, 60, 61;  
 INTERSTATE COMMERCE, 2.

## CONSPIRACY.

See CRIMINAL LAW, 3.

## CONSTITUTIONAL LAW.

1. *Commerce clause; power of United States under.*

The United States is a Government of limited and delegated powers but in respect to the powers delegated, including that to regulate commerce between the States, the power is absolute except as limited by other provisions of the Constitution. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 186.

2. *Commerce clause; conflict of state regulation of sales of commodities moving in interstate commerce.*

The fact that commodities in course of transportation in interstate commerce are dealt in at certain places does not render a state police statute regulating sales, and imposing stamp tax on records of transactions thereat, which is otherwise valid, an unconstitutional regulation of interstate commerce. (*Hatch v. Reardon*, 204 U. S. 502.) *Brodnax v. Missouri*, 285.

3. *Commerce; burden on; effect of state statute regulating receipt of deposits of money which may move to other States or foreign countries.*

A state statute regulating the receipt of deposits of money is not a burden on, or regulation of, interstate or foreign commerce simply because such deposits are likely to be transmitted to other States or foreign countries; the deposit is an independent transaction preceding the transmission. *Engel v. O'Malley*, 128.

*See Supra*, 26;

INTERSTATE COMMERCE, 8, 9.

4. *Contracts; freedom of contract defined.*

Freedom of contract is a qualified and not an absolute right. There is no absolute freedom to contract as one chooses. Liberty implies the absence of arbitrary restraint—not immunity from reasonable regulations. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

5. *Contract; liberty of; effect to impair, of state statute prohibiting limitation of liability for torts.*

A State has power to prohibit contracts limiting liability for injuries made in advance of the injury received, and to provide that the subsequent acceptance of benefits under such contracts shall not constitute satisfaction of the claim for injuries received after the contract. Such a statute does not impair the liberty of contract guaranteed by the Fourteenth Amendment; and so held as to the Iowa statute relative to employes of railway companies. *Ib.*

6. *Contracts; legislative power to prohibit.*

Where the legislature has power to establish a regulation, it has also power to prohibit contracts in derogation of such regulation. *Ib.*

7. *Contract impairment; effect of act of Congress rendering contracts invalid.*

An act of Congress rendering contracts in regard to interstate commerce invalid does not infringe the constitutional liberty of the citizen to make contracts; and an act, otherwise constitutional, is not unconstitutional under the Fifth Amendment, as taking private property without compensation, because it invalidates contracts between individuals which conflict with the public policy declared in the act. *Louisville & N. R. R. Co. v. Mottley*, 467.

8. *Contract impairment; corporate charter subject to reserved powers of alteration and repeal; when impaired.*

The charter of a corporation which is subject to the usual reserved powers to alter or repeal is not impaired unless the subsequent statute deprives it of property without due process of law. *Noble State Bank v. Haskell*, 104. See *Infra*, 66, 67, 81, 82, 83.

9. *Due process of law; elements of.*

Due process of law requires that there shall be jurisdiction of, and notice to, the parties, and opportunity to be heard; and, subject to these conditions, the State has power to regulate procedure. (*Twining v. New Jersey*, 211 U. S. 78.) *Am. Land Co. v. Zeiss*, 47.

10. *Due process of law; considerations in determining validity of state statute under the clause.*

In determining the constitutionality of a state statute under the due process clause, the criterion is not whether any injury to an individual is possible, but whether the requirements as to notice and opportunity to protect property rights affected are just and reasonable. *Ib.*

11. *Due process of law; sufficiency of procedure to establish title to real estate as against unknown claimants.*

A state statute, passed after such a catastrophe as visited San Francisco in 1906 for the purpose of reestablishing titles to real estate, which permits an action for that purpose to be brought by parties who are themselves or by those holding under them, in actual and peaceable possession of the property described in the summons, and which requires the plaintiff to make affidavit before the sum-

mons is issued that he does not know and has never been informed of any adverse claimants not named in the summons, and also requires summons to be published at least once a week for two months, posted on each parcel of the property, and to be recorded and properly indexed in the recorder's office, and served upon all claimants whose names and whereabouts could be ascertained, gives an adequate opportunity to all persons interested in the property to establish their rights and does not deprive unknown claimants of their property without due process of law. *Ib.*

12. *Due process of law; effect on undisclosed claimants of real estate of requirement as to establishing title after notice by publication.*

Undisclosed and unknown claimants are as dangerous to the stability of titles to real estate as other classes, and they are not deprived of their property without due process of law if compelled to establish their titles by judicial proceeding before a properly constituted tribunal on adequate published notice, if given an opportunity to be heard and properly protected in case of fraud. *Ib.*

13. *Due process of law; validity of California statute of June 16, 1906, for establishment of titles to real estate.*

The California statute, c. 59, of June 16, 1906, to establish titles in case of loss of public records, passed after the earthquake and fire of April, 1906, as construed by the highest state court, is within the legislative power of the State, provides adequate notice and protection to unknown claimants, affords opportunity to be heard and is not unconstitutional under the Fourteenth Amendment as depriving unknown claimants of their property without due process of law. *Ib.*

14. *Due process of law; equal protection of the law; validity of legislation changing rules of evidence.*

Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact is within the general power of government to enact rules of evidence; and neither due process of law nor equal protection of the law is denied if there is a rational connection between the fact and the ultimate fact presumed, and the party affected is afforded reasonable opportunity to submit to the jury all the facts on the issue. *Mobile R. R. v. Turnipseed*, 35.

15. *Due process of law; equal protection of the law; validity of law of Mississippi relative to prima facie evidence of negligence by railroad.*

It is not an unreasonable inference that a derailment of railway cars is due to negligence in construction, maintenance or operation of the track or of the train, and the provisions of § 1985 of the Mississippi

Code of 1906, making proof of injury inflicted by the running of cars or locomotives of a railway company *prima facie* evidence of negligence on the part of servants of the company, does not deprive the companies of their property without due process of law or deny to them the equal protection of the law. Such a statute in its operation only supplies an inference of liability in the absence of other evidence contradicting such inference. *Ib.*

16. *Due process of law; when statutory presumption raised by prima facie evidence affords.*

While States may, without denying due process of law, enact that proof of one fact shall be *prima facie* evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue. *Bailey v. Alabama*, 219.

17. *Due process of law; Fourteenth Amendment and police power of States.*

The broad words of the Fourteenth Amendment are not to be pushed to a drily logical extreme, and the courts will be slow to strike down an unconstitutional legislation of the States enacted under the police power. *Noble State Bank v. Haskell*, 104.

18. *Due process and equal protection of the law; state regulation of banking business; classification within police power.*

Protection of banking business, especially that transacted in small amounts (*Noble State Bank v. Haskell*, *ante*, p. 104), and with poor and ignorant immigrants on first arrival in this country is within the police power of the State; and a state statute imposing special and proper restrictions on those engaging in that class of banking is not unconstitutional under the due process or equal protection clause of the Fourteenth Amendment because it excepts other banks and bankers engaged in other classes of banking business or conducting them under other conditions. *Engel v. O'Malley*, 128.

19. *Due process of law; summary procedure not necessarily denial of.*

Summary procedure in the assessment and collection of taxes, if not arbitrary or unequal, and which allows opportunity to be heard does not deny the property owner due process of law simply because it is summary. *Kentucky Union Co. v. Kentucky*, 140.

20. *Due process of law; forfeiture of land for non-compliance with statute relative to taxation, not denial of.*

A state statute requiring owners to register lands and pay taxes thereon

but which only forfeits them for non-compliance therewith after judicial proceeding and opportunity to be heard, does not deny the property owner due process of law. *Ib.*

21. *Due process of law; limitation of actions not denial of; right of State to limit period for registration of land.*

A time not unreasonably short for beginning actions, fixed, in view of particular conditions, by the legislature, does not deny due process of law, *Terry v. Anderson*, 95 U. S. 628; and a state statute of limitations as to actions between individuals cannot affect the right of the State to determine by statute a reasonable period within which property owners must register their land, provisions being made for notice and opportunity to be heard. *Ib.*

22. *Due process of law; opportunity to be heard; sufficiency of.*

Where the state court has held that although a sale may be ordered of an entire tract there is opportunity, if less than the whole is to be sold, to be heard, and have an ascertainment of the parts to be sold, the property owner is not deprived of his property without due process of law. *Ib.*

23. *Due process of law; effect to deny, as to purchaser of real estate after delinquency, of exercise by State of power of taxation.*

The doctrine of innocent purchasers does not apply against the power of the State to assess and collect back taxes and provide for registration of titles in favor of one purchasing after delinquencies; such a purchaser is not deprived of his property without due process of law, because the State exercises its rights in a constitutional manner. (*Citizens' National Bank v. Kentucky*, 217 U. S. 443.) *Ib.*

24. *Due process of law; legislation fixing liability of carriers; effect of Carmack amendment to Interstate Commerce Act to deny.*

Congress has power to prohibit a carrier engaged in interstate commerce from limiting by contract its liability beyond its own line, and the Carmack amendment of January 29, 1906, c. 3591, 34 Stat. 584, 595, to § 20 of the Interstate Commerce Act, making such carriers liable for loss or damage to merchandise received for interstate transportation beyond their own lines, notwithstanding any contract of exemption in the bill of lading, is a valid exercise of such power, not in conflict with the due process provision of the Fifth Amendment. *Atlantic Coast Line v. Riverside Mills*, 186.

25. *Due process of law; liberty of contract secured by.*

Although the due process clause of the Fourteenth Amendment se-

cures liberty of contract, it does not confer liberty to disregard lawful police regulations of the State established by the State for all within its jurisdiction. *Brodnax v. Missouri*, 285.

26. *Due process, equal protection and commerce clauses; validity of Missouri statute of 1907, regulating sales of commodities.*

It is not a violation of the due process, or equal protection, clause of the Fourteenth Amendment, or an unconstitutional regulation of interstate commerce, for a State to prohibit the keeping of a place where purchases or sales are made of stocks, bonds, petroleum, grain, cotton, etc., on margins or otherwise, not paid for or delivered at the time, without record of sale and stamp tax, by a statute applicable to all persons keeping such places, and so held as to the Missouri statute to that effect of March 8, 1907. *Ib.*

27. *Due process of law; effect to deny, of state statute regulating fire insurance business so as to prevent monopoly.*

The business of fire insurance is of an extensive and peculiar character, concerning a large number of people; and it is within the police power of the State to adopt such regulations as will protect the public against the evils arising from combinations of those engaged in such business, and to substitute competition for monopoly; and regulations which have a real substantial relation to that end and are not essentially arbitrary do not deprive the insurance companies of their property without due process of law. *German Alliance Ins. Co. v. Hale*, 307.

28. *Due process and equal protection clauses; validity under, of Iowa statute prohibiting contracts between railways and employes limiting liability for injuries.*

Whether the relief scheme of a railroad company involving contracts with its employes and contributions from both employes and the company, such as the one involved in this case, is a wise and proper scheme which should be approved, or an unwise scheme which should be disapproved by the public policy of the State is under the control of the legislative power of the State; and the statute of Iowa prohibiting contracts between the railway companies and their employes limiting the right to recover damages at common law, is within the police power of the State, has a reasonable relation to the matter regulated, and is not unconstitutional under the due process or equal protection clause of Fourteenth Amendment. *C., B. & Q. R. R. Co. v. McQuire*, 549.

See ARMY AND NAVY, 2;

*Infra*, 30, 66, 67, 68, 69, 70, 71, 72, 75, 81, 82.

29. *Eminent domain; uses for which property may be taken.*

Among the public uses for which private property may be taken are some which, if looked at only in their immediate aspect according to the approximate effect of the taking, may seem to be private. (*Clark v. Nash*, 198 U. S. 361; *Strickley v. Highland Boy Mining Co.*, 200 U. S. 527.) *Noble State Bank v. Haskell*, 575.

30. *Eminent domain; what amounts to a taking without compensation and due process of law—Oklahoma Bank Guarantee statute sustained.* Payments required by a bank guarantee statute which can be avoided by going out of the banking business, and are required only as a condition for keeping on in such business from corporations created by the State, do not amount to a taking of private property without compensation or a deprivation of property without due process of law; and so held as to the Oklahoma Guarantee statute heretofore sustained as to its constitutionality, *ante*, p. 104. *Ib.*

31. *Eminent domain; compensation for taking of property within contemplation of Fifth Amendment.*

The compensation to be awarded under the Fifth Amendment for an actual physical taking of a part of a distinct tract of land includes not only the market value of the part appropriated, but the damage to the remainder resulting from such taking, embracing injury due to the use to which the part appropriated is to be devoted. *United States v. Grizzard*, 180.

32. *Eminent domain—Same.*

In determining the total amount of damages for land appropriated and for damages to remainder, the trial court may divide the total award and specify the amounts for each element of damage, and it is not error if the total award represents the difference between the value of the entire tract before the taking and that of the remainder after the taking. A less sum would not be the just compensation which the Fifth Amendment prescribes. *Ib.*

33. *Eminent domain—Same.*

In this case held that such damage to the unappropriated portion of the tract included that caused by cutting off access therefrom to the public road by flooding the land actually taken. *Ib.*

34. *Equal protection of the law; classification resting on principles of public policy; validity of.*

A general classification in a state statute resting upon obvious prin-

ciples of public policy does not offend the equal protection provision of the Fourteenth Amendment because it includes persons not subject to a uniform degree of danger. *Mobile, J. & K. C. R. R. Co. v. Turnipseed*, 35.

35. *Equal protection of the law; validity of Mississippi statute abrogating fellow-servant rule as to railroad employes.*

A state statute abrogating the fellow-servant rule as to employes of railway companies is not unconstitutional under the equal protection provision of the Fourteenth Amendment because it applies to all employes and not only to those engaged in the actual operation of trains; and so held as to § 3559 of the Mississippi constitution of 1890. *Ib.*

36. *Equal protection of the law; size of business, when index of evil to be prevented, as basis for distinctions.*

Legislation which regulates business may well make distinctions depend upon the degree of evil; *Heath & Milligan Co. v. Worst*, 207 U. S. 338; and, although where size is not an index, a law may not discriminate between the great and the small, proper regulations based thereon where size is an index of the evil to be prevented, do not offend the equal protection clause of the Fourteenth Amendment. *Engel v. O'Malley*, 128.

37. *Equal protection of the law; effect to deny, of state statute applicable only to certain counties.*

A state taxing statute applicable to certain counties is not unconstitutional under the equal protection clause of the Fourteenth Amendment because confined to those counties. (*Florida R. R. Co. v. Reynolds*, 183 U. S. 471.) *Kentucky Union Co. v. Kentucky*, 140.

38. *Equal protection of the law; effect to deny of classification by State.*

A classification of persons keeping places where stocks, bonds and such commodities as grain, petroleum and cotton are dealt in for future and not actual delivery, is a reasonable one and not a denial of equal protection of the laws. *Brodnax v. Missouri*, 285.

39. *Equal protection of the law; classification in statute as denial.*

A statute which applies equally to all of the same class and under like conditions does not deny equal protection of the law. *German Alliance Ins. Co. v. Hale*, 307.

40. *Equal protection of the law; reasonableness of classification.*

A statute that applies to all insurance companies which unite with

others in fixing rates to be charged by each constituent member of the combination does not deny equal protection of the law to the companies so uniting. The classification is neither unreasonable nor arbitrary, but has a reasonable and just relation to the evil which the legislation seeks to prevent. *Ib.*

41. *Equal protection of the law; validity of state regulation of railroads; reasonableness of classification.*

A state regulation that is uniform on all railroads of the class to which it is applicable is not unconstitutional as denying equal protection of the law because it does not apply to railroads less than fifty miles in length. The classification is a reasonable one. *Chicago, R. I. & Pac. Ry. Co. v. Arkansas*, 453.

42. *Equal protection of the law; validity of classification.*

A statute does not necessarily deny equal protection of the law because limited to railway employes of a certain class. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

43. *Equal protection of the law; validity of classification.*

The classification of the original statute having been sustained by this court, and there being no criticism of the amendment thereto involved in this case that would not equally apply to the original statute, the amendment will not be declared unconstitutional as denying equal protection of the law. *Ib.*

44. *Equal protection of the law; validity of Kansas Bank Depositors' Guaranty Fund Act of 1907.*

The Bank Depositors' Guaranty Fund of 1907, of Kansas, is not unconstitutional as denying equal protection of the law because it applies only to banks which contribute to the fund, or on account of preferences between classes of depositors, or because incorporated banks with a surplus of ten per cent have privileges over unincorporated banks. *Assaria State Bank v. Dolley*, 121.

*See Supra*, 14, 15, 18, 26, 28;

*Infra*, 66-72, 83;

STATES, 1.

45. *Ex post facto laws; prohibited laws defined.*

*Ex post facto* laws prohibited by the Federal Constitution are those relating to criminal punishment and not retrospective laws of a different nature. (*Calder v. Bull*, 3 Dall. 386; *Orr v. Gilman*, 183 U. S. 278.) *Kentucky Union Co. v. Kentucky*, 140.

46. *Ex post facto laws; retroactive laws not within prohibition as to.*

Laws of a retroactive nature imposing taxes or providing remedies for

their assessment and collection and not impairing vested rights are not forbidden by the Federal Constitution. (*League v. Texas*, 184 U. S. 156.) *Ib.*

47. *Ex post facto laws; law held not ex post facto.*

As the Kentucky statute involved in this case, as construed by the highest court of that State, does not impose penalties or punishments of a criminal nature, it is not an *ex post facto* law within the meaning of the Federal Constitution. *Ib.*

48. *Federal Government; limitation of powers of.*

The Government created by the Federal Constitution is one of enumerated powers, and cannot by any of its agencies exercise an authority not granted by that instrument either expressly or by necessary implication. *House v. Mayes*, 270.

49. *Full faith and credit; effect of judgment of state court entered after curative statute to deny credit to prior judgment of Federal court based on statute subsequently changed by curative legislation.*

Where the State by statute gives a person the right to avoid a contract for a purpose of its own and not because of the merits of the obligation, it may, so long as the matter remains *in fieri*, take that right away; and so held that a curative statute allowing foreign corporations who had not complied with the registration statute to sue, on complying therewith, on contracts made before registration, is within the power of the State, and a judgment entered in an action on a contract in the state court brought after the curative statute does not deny full faith and credit to a judgment of the Federal court entered in an action between the same parties dismissing the complaint on same cause of action solely on the ground that plaintiff had not complied with the registration laws. *West Side R. R. Co. v. Pittsburgh Construction Co.*, 92.

50. *Involuntary servitude; scope of prohibition of Thirteenth Amendment.*

While its immediate concern was African slavery, the Thirteenth Amendment was a charter of universal civil freedom for all persons of whatever race, color, or estate, under the flag. *Bailey v. Alabama*, 219.

51. *Involuntary servitude; meaning of words as used in Thirteenth Amendment.*

The words "involuntary servitude" have a larger meaning than slavery, and the Thirteenth Amendment prohibited all control by coercion of the personal service of one man for the benefit of another. *Ib.*

52. *Involuntary servitude; validity of statute ostensibly to punish fraud but having effect to impose.*

Although a state statute in terms be to punish fraud, if its natural and inevitable purpose is to punish for crime for failing to perform contracts of labor, thus compelling such performance, it violates the Thirteenth Amendment and is unconstitutional. *Ib.*

53. *Involuntary servitude; power of State to compel by creating presumption of fraud on failure to perform contract.*

A constitutional prohibition cannot be transgressed indirectly by creating a statutory presumption any more than by direct enactment; and a State cannot compel involuntary servitude in carrying out contracts of personal service by creating a presumption that the person committing the breach is guilty of intent to defraud merely because he fails to perform the contract. *Ib.*

54. *Involuntary servitude; power of Congress under Thirteenth Amendment; act of March 2, 1867, and §§ 1990, 5526, Rev. Stat., as valid exercise of.*

While the Thirteenth Amendment is self-executing, Congress has power to secure its complete enforcement by appropriate legislation and the peonage act of March 2, 1867, and §§ 1990 and 5526, Rev. Stat., are valid exercises of this authority. (*Clyatt v. United States*, 197 U. S. 207.) *Ib.*

55. *Involuntary servitude; § 4730, Code of Alabama, as amended in 1907, invalid under Thirteenth Amendment.*

Section 4730 of the Code of Alabama as amended in 1907, in so far as it makes the refusal or failure to perform labor contracted for without refunding the money or paying for property received *prima facie* evidence of the commission of the crime defined by such section, and when read in connection with the rule of evidence of that State, that the accused cannot testify in regard to uncommunicated motives, is unconstitutional as in conflict with the Thirteenth Amendment and of the legislation authorized by it and enacted by Congress. *Ib.*

56. *Judicial power; limitation of.*

Under the Constitution of the United States the exercise of judicial power is limited to cases and controversies. *Muskrat v. United States*, 346.

57. *Judicial power; case or controversy defined.*

A case or controversy, in order that the judicial power of the United

States may be exercised thereon, implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication. (*Chisholm v. Georgia*, 2 Dall. 431.) *Ib.*

58. *Judicial power; when this court may declare act of Congress unconstitutional.*

This court has no veto power on legislation enacted by Congress; and its right to declare an act of Congress unconstitutional can only be exercised when a proper case between opposing parties is submitted for determination. (*Marbury v. Madison*, 1 Cranch, 137.) *Ib.*

59. *Judicial power; appellate jurisdiction of this court; case or controversy defined.*

The determination by the Court of Claims, and on appeal by this court, of the constitutional validity of an act of Congress in a suit brought by authority of a subsequent act of Congress clothing such courts with jurisdiction for the avowed purpose of settling such question with provision for payment of expenses of the suit in certain contingencies out of funds in the Treasury of the United States, is not within the appellate jurisdiction conferred by the Constitution upon this court; such a suit is not a case or controversy to which the judicial power extends, nor would such a judgment conclude private parties in actual litigation. *Ib.*

60. *Legislative power; Congress may not assign to Federal courts duties not properly judicial.*

The rule laid down in *Heyburn's Case*, 2 Dall. 409, that neither the legislative nor the executive branch of the Government of the United States can assign to the judicial branch any duties other than those that are properly judicial, to be performed in a judicial manner, applied; and *held*, that it is beyond the power of Congress to provide for a suit of this nature to be brought in the Court of Claims with an appeal to this court to test the constitutionality of prior acts of Congress, such a suit not being a case or controversy within the meaning of the Constitution. *Ib.*

61. *Legislative power; assignment to judiciary of non-judicial duties not within.*

That part of the act of March 1, 1907, c. 2285, 34 Stat. 1015, 1028, which requires of this court action in its nature not judicial within the meaning of the Constitution, exceeds the limitation of legislative authority and is unconstitutional, and the suits brought thereunder are dismissed for want of jurisdiction. *Ib.*

62. *Legislative power; same.*

This court cannot be required to decide cases over which it has not jurisdiction because other cases are pending involving the same point of law; to do so would require it to give opinions in the nature of advice concerning legislative action. *Ib.*

See INTERSTATE COMMERCE, 2.

63. *Privileges and immunities—Effect of provision of Fourteenth Amendment on power of States to subserve public interests.*

The Fourteenth Amendment does not prohibit States from forbidding a man to do things simply because he might do them at common law, and so held, that, where public interests so demand, that amendment does not prohibit a State placing the banking business under legislative control and prohibiting it except under prescribed conditions. *Noble State Bank v. Haskell*, 104.

64. *Property rights; when private property may be taken for private use.*

Where the mutual advantage is a sufficient compensation, an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purpose is a private use. *Ib.*

65. *Property rights; police power of State; validity of bank guarantee legislation.*

The dividing line between what is, and what is not, constitutional under the police power of the State is pricked out by gradual approach and contact of decisions on opposing sides; and while the use of public credit to aid individuals on a large scale is unconstitutional, a statute compelling banks to contribute to a guarantee fund to protect deposits, such as that of Oklahoma, under consideration in this case, is constitutional. *Ib.*

66. *Property rights; due process and equal protection of the law; contract impairment; validity of Oklahoma Bank Guarantee Act.*

The acts of December 17, 1907, and March 11, 1909, of Oklahoma, subjecting state banks to assessments for a Depositors' Guaranty Fund are within the police power of the State and do not deprive banks assessed of their property without due process of law or deny to them the equal protection of the law, nor do they impair the obligation of the charter contracts. *Ib.*

67. *Property rights; due process and equal protection of the law; contract impairment; validity of Nebraska Bank Depositors' Guaranty Fund Act.*

Following, and on the authority of, *Noble State Bank v. Haskell*, ante, p. 104, sustaining the Bank Depositors' Guaranty Fund Acts of

Oklahoma, held that a similar act of Nebraska, providing for a guaranty fund and prohibiting banking except by corporations formed under the act, is not unconstitutional. *Shallenberger v. First State Bank*, 114.

68. *Property rights; due process and equal protection of the law; contract impairment; validity of Kansas Bank Guaranty Law.*

*Noble State Bank v. Haskell*, ante, p. 104, followed to effect that a state statute establishing a Bank Depositors' Guaranty Fund and requiring banks to contribute thereto is not unconstitutional as depriving the banks of their property without due process of law or denying them the equal protection of the law. *Assaria State Bank v. Dolley*, 121.

69. *Property rights; due process and equal protection of the law; validity of New York private banking act of 1910.*

The provisions of the private banking act of New York of 1910, considered in this case, are not unconstitutional as depriving persons engaged in the receiving and transmitting of small sums of money of their property without due process of law or denying them the equal protection of the law either on account of the regulations to which such persons are subjected or by reason of the exception of other classes of banks and bankers therefrom. *Engel v. O'Malley*, 128.

70. *Property rights; due process and equal protection of the law; validity of Revenue and Taxation Act of Kentucky of 1906.*

The provisions of the Revenue and Taxation Act of Kentucky of March 5, 1906, involved in this action, are not unconstitutional as depriving landowners affected thereby of their property without due process of law, or denying them equal protection of the law, nor do such provisions violate the provisions of the Virginia-Kentucky compact of 1789. *Kentucky Union Co. v. Kentucky*, 140.

71. *Property rights; due process and equal protection of the law; quere as to conflict of § 4730, Code of Alabama.*

*Quere*, and not necessary now to decide, whether such section is, under the Fourteenth Amendment, an unconstitutional deprivation of property without due process of law or denial of equal protection of the laws. *Bailey v. Alabama*, 219.

72. *Property rights; due process and equal protection of the law; validity of §§ 2619, 2620, Alabama Code, 1896, as amended, imposing liability on insurance companies.*

Sections 2619, 2620 of the Code of Alabama, 1896, as amended,

§§ 4954, 4955, Code 1907, imposing on all insurance companies who are connected with a tariff association a liability to be recovered by the insured of twenty-five per cent in excess of the amount of the policy, are not unconstitutional under the Fourteenth Amendment as depriving such companies of their property without due process of law or denying them the equal protection of the laws. *German Alliance Ins. Co. v. Hale*, 307.

*See Supra*, 27;

*Infra*, 83.

73. *States; right as to soil within own confines; constitutional validity of requirement as to quieting of titles to.*

A State, in the exercise of its inherent power to legislate in regard to title to the soil within its confines, may, without violating the Federal Constitution, require parties owning and in possession of land to establish title by judicial proceedings before properly constituted tribunals, and this power extends to non-resident owners of land who may be brought before such tribunals by publication. *American Land Co. v. Zeiss*, 47.

74. *States; right to require establishment of titles to real estate within confines of.*

A State possesses, and, after such a disaster to a community as befell San Francisco, California, by fire and earthquake in 1906, in which nearly all the public records of registered titles to real estate were destroyed, may exercise, the power to remedy the confusion and uncertainty arising from the catastrophe. *Ib.*

75. *States; effect of Fourteenth Amendment on power of.*

The Fourteenth Amendment does not operate to deprive the States of their lawful power; the due process clause of that Amendment only restrains such exertions of power as are so unreasonable and unjust as to impair or destroy fundamental rights and, therefore, not really within lawful power of the State. *Ib.*

76. *States; constitutional powers of, how determined.*

There are always difficulties in drawing the dividing line between that which is within, and that which is without, the constitutional power of the States, and the question in each specific case must be answered by the pertinent facts therein. *Engel v. O'Malley*, 128.

77. *States; governmental authority of.*

While the Constitution of the United States and the laws enacted in pursuance thereof, together with treaties made under the au-

thority of the United States, constitute the supreme law of the land, a State may exercise all such governmental authority as is consistent with its own, and not in conflict with the Federal, Constitution. *House v. Mayes*, 270.

78. *States; police power, derivation of.*

The police power of the State, never having been surrendered by it to the Federal Government, is not granted by or derived from, but exists independently of, the Federal Constitution. *Ib.*

79. *States; reserved power of.*

One of the powers never surrendered by, and therefore remaining with, the State is to so regulate the relative rights and duties of all within its jurisdiction as to guard the public morals, safety and health, as well as to promote the public convenience and the common good. *Ib.*

80. *States; extent of powers reserved.*

It is within the power of the State to devise the means to be employed to the above ends provided they do not go beyond the necessities of the case, have some real and substantial relation to the object to be accomplished, and do not conflict with the Constitution of the United States. *Ib.*

81. *States; power, under contract and due process clauses, to regulate sale and delivery of commodities.*

A State may enact a regulation as to sale and delivery of a commodity by actual weight and prohibit arbitrary deductions under rules of associations, without depriving the members of such associations of their liberty of contract or of their property without due process of law. *Ib.*

82. *States; power, under contract and due process clauses, to regulate conduct of boards of trade or exchanges.*

The State may, without violating the due process clause of the Fourteenth Amendment, regulate the conduct of boards of trade or exchanges which have close and constant relations with the general public, by such means as are not arbitrary or unreasonable. Such regulations are not interferences with liberty of contract beyond the police power of the State to protect the public and promote the general welfare. *Ib.*

83. *States; police power; validity of Missouri statute of 1909 to prevent fraud in purchase and sale of commodities.*

The statute of Missouri of June 8, 1909, to prevent fraud in the pur-

chase and sale of grain and other commodities and which prohibits arbitrary deductions from actual weight or measure thereof under custom or rules of boards of trade, is a valid exercise of the police power of the State and is not unconstitutional as a deprivation of property, interference with liberty of contract, or denial of equal protection of the law. *Ib.*

*See Supra*, 63, 65, 66, 73-83;

STATES.

### CONSTRUCTION OF STATUTES.

*See* STATUTES, A.

### CONTEMPT OF COURT.

*Appeal; pendency of; acts constituting contempt; commission after decision but before mandate.*

An appeal to this court must be regarded as pending and undisposed of until the mandate issues, even though a decision may have been announced. Defendants under order to show cause why they should not be punished for contempt for having, after decision in their favor but before mandate, destroyed the subject-matter of the litigation, are adjudged in technical contempt; but having under oath denied any intent of contempt and satisfied the court of their good faith, the vindication of the court is satisfied by discharging the rule on payment of costs. *Merrimack River Sav. Bank v. Clay Center*, 527.

*See* INJUNCTION, 2, 3.

### CONTRACTS.

1. *Freedom of contract not absolute.*

There is no absolute freedom of contract. The Government may deny liberty of contract by regulating or forbidding every contract reasonably calculated to injuriously affect public interests. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 186.

2. *Government; construction as to liability for damage resulting to work in course of erection.*

A Government contract for building a bulkhead in Manila provided that the contractor would be responsible for damages arising from wave action or pressure of the revetment against the timber structure, but that the Government would be responsible for break caused by pressure of the mud fill. There was a break owing to pressure of the mud fill and before it could be repaired there was a further damage caused by a typhoon but which would not have happened had the original break not existed. *Held*, as

held by the courts below, that the contractor must bear the loss caused by the typhoon. *Atlantic, Gulf & Pacific Co. v. Philippine Islands*, 17.

See ACTIONS, 1, 3, 4, 5, 6;

BONDS, 1;

CARRIERS, 2;

CONGRESS, POWERS OF, 1;

CONSTITUTIONAL LAW, 4-8, 24, 25,

49, 52, 53, 55, 66, 67, 81-83;

COURTS, 9;

INTERSTATE COMMERCE, 2,

3, 5;

LOCAL LAW (PA.);

PEONAGE, 1;

PUBLIC LANDS, 3.

#### CORPORATIONS.

See CONSTITUTIONAL LAW, 8;

LOCAL LAW (PA.).

#### COURT AND JURY.

See BONDS, 7.

#### COURT OF CLAIMS.

See STATUTES, A 3.

#### COURTS.

##### 1. *Functions of this court.*

From its earliest history this court has consistently declined to exercise any powers other than those which are strictly judicial in their nature. *Muskrat v. United States*, 346.

##### 2. *This court; duty to reconcile decisions.*

It is the duty of this court to reconcile decisions and, in order to enforce the correct doctrine, to determine which rest upon the right principle and to overrule or qualify those conflicting therewith. *Ex parte Harding*, 363.

##### 3. *Province of; determination of wisdom of legislation not within.*

Where the subject is within the police protection of the State, it is not for the court to determine whether the enactment is wise or not; that is within legislative discretion. *Engel v. O'Malley*, 128.

##### 4. *Power to review legislative discretion in police legislation.*

Where police legislation has a reasonable relation to an object within governmental authority the legislative discretion is not subject to judicial review. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

##### 5. *Scope of inquiry as to validity of statute.*

The scope of judicial inquiry as to a statute is limited to the question

of power to enact, while the scope of legislative consideration includes the matter of policy. *Ib.*

6. *Federal; not concerned with means adopted by State for enforcement of its police regulations.*

Although the means devised by the state legislature for the enforcement of its police regulations may not be the best that can be devised, this court cannot declare them illegal if the enactment is within the power of the State. *German Ins. Co. v. Hale*, 307.

7. *Federal; not concerned with wisdom or expediency of state police legislation.*

While it is the duty of the Federal courts to protect Federal rights from infringement, they should not strike down a police regulation of a State that does not clearly violate the Federal Constitution; they cannot overthrow police legislation because they consider it unwise or inexpedient. (*House v. Mayes*, ante, p. 270.) *Brodnax v. Missouri*, 285.

8. *Federal; attitude as to state regulation shown on its face to be necessary.*

In this case, as the statute shows on its face that the subject regulated needed to be regulated for the protection of the public against fraudulent practices to its injury, this court is not prepared to declare that the State has acted beyond its power or the necessities of the case. *Ib.*

9. *Legislative control in determining validity of contract under public policy.*

While the court may, in the absence of legislation and in the light of the common law, uphold or condemn contracts in the light of what is conceived to be public policy, that determination must yield to the legislative will when constitutionally expressed thereafter. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

10. *Presumption as to method of transmission of money.*

Courts will presume from general knowledge of business affairs that transmission of money through bankers is made by drafts and not by sending the identical currency. *Engel v. O'Malley*, 128.

See ARMY AND NAVY, 2; INJUNCTION, 1, 2, 3;  
 CONSTITUTIONAL LAW, 17, INTERSTATE COMMERCE COM-  
 56-59; MISSION, 5;  
 CONTEMPT OF COURT; MANDAMUS, 1;  
 HABEAS CORPUS, 2, 3; REMOVAL OF CAUSES, 1;  
 STATUTES, A 4, 5, 6,

## CRIMINAL LAW.

1. *Presumption of innocence; evidence to outweigh.*

*Prima facie* evidence is sufficient to outweigh the presumption of innocence, and, if not met by opposing evidence, to support a verdict. (*Kelly v. Jackson*, 6 Pet. 632.) *Bailey v. Alabama*, 219.

2. *Evidence; validity of statute authorizing conviction on prima facie evidence.*

The validity of a statute that authorizes a jury to convict on *prima facie* evidence must be judged by the fact that the jury may convict even if it is not made the duty of the jury to do so. *Ib.*

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

*United States v. Kissel*, 218 U. S. 601, followed to effect that a special plea in bar, based on the statute of limitations, to an indictment for conspiracy under § 5440, Rev. Stat., containing allegations of continuance of conspiracy to the date of filing, is not permissible; that defense must be made under the general issue. *United States v. Barber*, 72.

4. *Assimilative crimes act of 1898; effect to interfere with authority of States.*

The effect of § 2 of the act of July 7, 1898, c. 576, 30 Stat. 717, was to incorporate the criminal laws of the several States in force July 1, 1898, into the statute and make such criminal laws, to the extent of such incorporation, laws of the United States and applicable to the United States reservations within the States (*Franklin v. United States*, 216 U. S. 559), but the history of the act demonstrates that in its adoption, Congress sedulously considered the two-fold character of our constitutional government with the purpose of interfering as little as might be with the authority of the States, as to the subject-matter of the statute, over territory situated, except for the existence of a United States reservation, within state jurisdiction. *United States v. Press Publishing Co.*, 1.

5. *Assimilative crimes act of 1898; jurisdiction of Federal courts under.*

The assimilative crimes act of 1898 cannot be used as a means for frustrating the laws of the State, within which a reservation of the United States is situated; and one accused of a crime consisting of several elements treated as a unit by the state law so that there can be but one trial and conviction thereunder cannot be indicted and tried in the United States court for a single separate element committed on such reservation, the other elements of the crime being committed in other portions of the State. *Ib.*

6. *Assimilative crimes act of 1898; jurisdiction of Federal courts under.*

As the law of New York results in the unity as one criminal act of the publication of a libel and its circulation, allows but a single conviction for the combined act, and affords adequate means for punishing such circulation on a reservation of the United States within that State, resort cannot be had to the United States court, under § 2 of the act of July 7, 1898, to punish the act of such circulation on the basis that it is a separate and distinct offense from the publication. *Ib.*

*See* CONSTITUTIONAL LAW, 45, 47;      HABEAS CORPUS, 1, 2;  
EVIDENCE;                                      JURISDICTION, F. 2;

NEW TRIAL.

DAMAGES.

*See* CONSTITUTIONAL LAW, 31, 32, 33;  
CONTRACTS, 2.

DEBT.

*See* ACTIONS, 2;  
BANKS AND BANKING.

DEBTOR AND CREDITOR.

*See* PEONAGE.

DECISIONS OF COURT.

*See* COURTS, 2.

DEFENSES.

*See* CRIMINAL LAW, 3.

DELEGATED POWERS.

*See* CONSTITUTIONAL LAW, 1.

DICTUM.

*See* OPINIONS, 1.

DISCRIMINATION IN RATES.

*See* INTERSTATE COMMERCE, 3;  
INTERSTATE COMMERCE COMMISSION, 4.

DISTRICT OF COLUMBIA.

*See* HABEAS CORPUS, 3;  
LOCAL LAW.

## DIVERSITY OF CITIZENSHIP.

*See* JURISDICTION, A 2.

## DOCKET FEE.

*See* ACTIONS, 6.

## DUE FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 49;  
FEDERAL QUESTION, 4.

## DUE PROCESS OF LAW.

*See* ARMY AND NAVY, 2;  
CONSTITUTIONAL LAW, 9-28, 30, 66-72, 75, 81, 82.

## EMINENT DOMAIN.

*See* CONSTITUTIONAL LAW, 29-33.

## EQUAL PROTECTION OF THE LAWS.

*See* CONSTITUTIONAL LAW, 14, 15, 18, 26, 28, 34-44, 66-72, 83;  
STATUTES, A '8, 9.

## EQUITY.

*See* STATUTES, A 6.

## ESTOPPEL.

*See* BONDS, 4, 5; INTERSTATE COMMERCE COM-  
FEDERAL QUESTION, 3; MISSION, 6, 7, 8;  
STATUTES, A 8, 9.

## EVIDENCE.

*Witnesses; husband and wife as.*

In this case *held* that it was not error for the trial court to refuse to allow the wife of one accused of murder to testify. (*Logan v. United States*, 144 U. S. 263.) *Hendrix v. United States*, 79.

*See* BONDS, 7; INTERSTATE COMMERCE COM-  
CONSTITUTIONAL LAW, 14, MISSION, 3;  
15, 16, 53, 55; PRACTICE AND PROCEDURE, 7;  
CRIMINAL LAW, 1, 2; PUBLIC LANDS, 12;

## REAL PROPERTY.

## EXCEPTIONS.

*See* BILL OF EXCEPTIONS.

## EXCHANGE OF LANDS.

See PUBLIC LANDS, 1, 2, 3.

## EXECUTIVE DEPARTMENTS.

See OPINIONS, 2.

## EXECUTIVE POWERS.

See CONSTITUTIONAL LAW, 60.

## EXPERT TESTIMONY.

See PRACTICE AND PROCEDURE, 7.

## EXPORTS.

See INTERSTATE COMMERCE, 1.

## EX POST FACTO LAWS.

*Retroactive laws differentiated.*

An *ex post facto* law and a retroactive law are different things. *Kentucky Union Co. v. Kentucky*, 140.

See CONSTITUTIONAL LAW, 45, 46, 47.

## FEDERAL QUESTION.

1. *What constitutes.*

Whether lands are properly described in a petition for sale thereof under a statute presents no Federal question unless the ruling sustaining it is so arbitrary and baseless as to deny due process of law. *Kentucky Union Co. v. Kentucky*, 140.

2. *What constitutes; effect to be given to judgment of Federal court in subsequent action in state court.*

Where an action was dismissed by the Circuit Court of the United States on the sole ground that plaintiff, a foreign corporation, could not sue owing to non-compliance with a state statute, the effect to be given to that judgment in a subsequent action between the same parties in the state court after a curative statute has been enacted raises a Federal question. *West Side R. R. Co. v. Pittsburgh Construction Co.*, 92.

3. *What constitutes; questions of abandonment of grant of public land and estoppel of grantee, not Federal.*

Whether a granted right of way to a railroad under act of Congress has been abandoned by the grantee or whether the grantee is estopped to make claim thereunder, are not Federal questions

and the decision of the state court is not reviewable here. *Spokane & B. C. Ry. Co. v. Washington & G. N. Ry. Co.*, 166.

4. *What amounts to assertion of right under full faith and credit clause of Constitution.*

When plaintiff in error asserts that the state court has not given due faith and credit to a prior judgment of a Federal court between the same parties, he asserts a right under the Constitution of the United States and a Federal question is raised, and, unless manifestly frivolous, the writ of error will not be dismissed. *West Side R. R. Co. v. Pittsburgh Construction Co.*, 92.

5. *Frivolous; when question not.*

In this case the consideration given to the Federal question by the state court demonstrates that it is not so far frivolous as to sustain a motion to dismiss. *Ib.*

#### FEES.

*See* ACTIONS, 6;  
INTERSTATE COMMERCE ACT.

#### FELLOW SERVANT.

*See* CONSTITUTIONAL LAW, 35.

#### FIFTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 7, 24, 31, 32.

#### FIRE INSURANCE.

*See* CONSTITUTIONAL LAW, 27.

#### FOREIGN COMMERCE.

*See* CONSTITUTIONAL LAW, 3.

#### FOREIGN CORPORATIONS.

*See* LOCAL LAW (PA.).

#### FOREST RESERVE ACT.

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

#### FORFEITURES.

*See* PUBLIC LANDS, 4, 5.

#### FOURTEENTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 5, 13, 17, 18, 25, 28, 34, 35, 36, 37, 63, 71, 72, 75, 82.

## FRAUD.

See CONSTITUTIONAL LAW, 83.

## FREEDOM OF CONTRACT.

See CONSTITUTIONAL LAW, 4, 5, 7, 81, 82, 83;  
CONTRACTS, 1.

## FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 49;  
FEDERAL QUESTION, 4.

## GIFT ENTERPRISES.

See HABEAS CORPUS, 3;  
LOCAL LAW (DIST. OF COL.).

## GOVERNMENT CONTRACTS.

See ACTIONS, 3-6;  
CONTRACTS, 2.

## GOVERNMENT RESERVATIONS.

See CRIMINAL LAW, 4, 5.

## GOVERNMENTAL POWERS.

*Implied when.*

A power may be implied when necessary to give effect to a power expressly granted. *House v. Mayes*, 270.

See CONSTITUTIONAL LAW, 48, 60, 77;  
CONTRACTS, 1.

## HABEAS CORPUS.

1. *Functions of writ; questions before this court on.*

*Habeas corpus* cannot be made to perform the functions of a writ of error, and this court is concerned only with the questions of whether the information is sufficient, or whether the committing court properly applied the law if that court had jurisdiction to try the issues and render the judgment. (*Harlan v. McGourin*, 218 U. U. 442.) *Matter of Gregory*, 210.

2. *Functions of writ; action of court having jurisdiction, in construing valid statute, not reviewable on.*

Where the statute defining the crime is valid, it is within the range of judicial consideration to determine whether the acts of the ac-

cused are within the definition, and if the court has jurisdiction its judgment cannot be reviewed on *habeas corpus*. *Ib.*

3. *Functions of writ; not available to review action of police court having jurisdiction of offense.*

The police court of the District of Columbia has jurisdiction to try persons charged on information of violating § 1177 of the Revised Statutes relating to the District of Columbia prohibiting engaging in gift enterprises, and the judgment of that court determining that the acts of accused fell within the definition of gift enterprise is not reviewable on *habeas corpus* proceedings. *Ib.*

#### HAWAII.

*See* APPEAL AND ERROR;

BONDS, 6;

LOCAL LAW.

#### HEALTH.

*See* CONSTITUTIONAL LAW, 79, 80.

#### HOMICIDE.

*See* EVIDENCE.

#### HUSBAND AND WIFE.

*See* EVIDENCE.

#### IMMIGRANTS.

*See* CONSTITUTIONAL LAW, 18.

#### IMPAIRMENT OF CONTRACT OBLIGATION.

*See* CONSTITUTIONAL LAW, 7, 8, 66, 67.

#### INJUNCTION.

1. *Appeals; effect on continuance of injunction.*

The force and effect of a decree dismissing a bill and discharging an injunction is neither suspended nor annulled as a mere consequence of an appeal to this court, even if supersedeas is allowed; but the Circuit Court has power to continue an injunction during such an appeal by virtue of its inherent equity power. Equity Rule 93. *Merrimack River Savings Bank v. Clay Center*, 527.

2. *Appeals; effect of violation of injunction pending appeal as contempt of court.*

While the Circuit Court has not only the power to continue an in-

junction in order to preserve the *status quo* pending an appeal but to take cognizance of violations of such injunction, it does not follow that violating the injunction is not also contempt of appellate jurisdiction of this court; that question not now decided. *Ib.*

3. *Same.*

Irrespective of an actual injunction order, the willful destruction or removal beyond the reach of this court of the subject-matter of litigation pending an appeal to this court is a contempt of the appellate jurisdiction of this court; and this is so even though it may also be a violation of the injunction below. *Ib.*

*See* INTERSTATE COMMERCE COMMISSION, 5.

INNOCENT PURCHASER.

*See* CONSTITUTIONAL LAW, 23.

INSTRUMENTALITIES OF GOVERNMENT.

*See* ARMY AND NAVY, 4.

INSURANCE.

*See* CONSTITUTIONAL LAW, 27, 40, 72.

INTEREST.

*See* BANKRUPTCY, 1, 2.

INTERSTATE COMMERCE.

1. *What constitutes.*

Goods actually destined for export are necessarily in interstate, as well as in foreign, commerce, when they actually start in the course of transportation to another State or are delivered to a carrier for transportation, *Coe v. Errol*, 116 U. S. 577; this is the same whether the goods are shipped on through bills of lading or on an initial bill only to the terminal within the same State where they are to be delivered to a carrier for the foreign destination. *Southern Pacific Terminal Co. v. Interstate Com. Comm.*, 498.

2. *Congress; power to regulate; impairment of contract obligation.*

The power of Congress to regulate commerce among the States and with foreign nations is complete and unrestricted except by limitations in the Constitution itself, and extends to rendering impossible the enforcement by suit of contracts between carriers and shippers although valid when made. *Louisville & Nashville R. R. Co. v. Mottley*, 467.

3. *Act of June 29, 1906; intent of Congress; contracts within application of.*

The purpose of Congress in enacting the amendatory act of June 29,

1906, was to cut up by the roots every form of discrimination in rates, not specially excepted, and the act applied to existing contracts and rendered those which were discriminatory illegal. *Ib.*

4. *Compensation which carrier may receive for transportation.*

The prohibition of the act of February 4, 1887, c. 104, § 2, 24 Stat. 379, as amended by the act of June 29, 1906, c. 3591, 34 Stat. 584, against a carrier charging a different compensation from that specified in its published tariff extends to the granting of interstate transportation by carriers as compensation for injuries, services, advertising or property; the statute means that transportation shall be paid for by all alike and only in cash. *Ib.*

5. *Compensation prescribed by act of June 29, 1906. Transportation under contract, valid when made, invalid under act.*

After the enactment of the act of June 29, 1906, it was unlawful for a carrier to issue interstate transportation in pursuance of a prior existing contract to do so as compensation for injuries received, and, even though valid when made, such a contract cannot now be enforced against the carrier by suit. *Ib.*

6. *Compensation prescribed by act of June 29, 1906; exchange of transportation for advertising prohibited.*

*Louisville & Nashville Railroad Company v. Mottley*, ante, p. 467, followed to effect that under the act of June 29, 1906, c. 3591, 34 Stat. 584, amending the act of February 4, 1887, c. 104, § 2, 24 Stat. 379, a carrier cannot accept any compensation other than cash for interstate transportation, and the delivery of such transportation in exchange for advertising is a violation of the act; and it is no defense that such a transaction is permitted by a state statute. *Chicago, Ind. & L. Ry. Co. v. United States*, 486.

7. *Interstate passengers' right to protection of local laws.*

A State is under an obligation to establish necessary and reasonable regulations for the safety of all engaged in business or domiciled within its limits, and passengers on trains of interstate carriers are entitled while within a State to the same protection of valid local laws as are citizens of the State. *Chicago, R. I. & Pac. Ry. Co. v. Arkansas*, 453.

8. *State regulation of railroads; validity of Arkansas "full crew" law.*

A state statute prescribing a not unreasonable number for the crews of freight trains is not an obstruction to, or burden on, interstate commerce, but an aid thereto; and so held that the "full crew"

act of Arkansas is not unconstitutional under the commerce clause of the Federal Constitution, Congress not having acted in regard thereto. *Ib.*

9. *State's right to regulate in absence of action by Congress.*

While Congress may in its discretion take under its charge the subject of equipment of interstate trains, until it does so the States may prescribe proper police regulations in regard thereto without violating the commerce clause of the Federal Constitution. *Ib.*

See CARRIERS, 3;

CONSTITUTIONAL LAW, 2, 7, 24, 26;

INTERSTATE COMMERCE COMMISSION, 1.

### INTERSTATE COMMERCE ACT.

*Attorney's fee authorized by § 8; application of provision.*

Section 8 of the act to regulate commerce of February 4, 1887, c. 104, 24 Stat. 379, 382, does not authorize the taxing of an attorney's fee in an action to recover damages for loss to goods which does not result from a violation of the act. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 186.

See CARRIERS, 4;

CONSTITUTIONAL LAW, 24.

### INTERSTATE COMMERCE COMMISSION.

1. *Preferences; traffic within jurisdiction of.*

Where a means of interstate transportation is used to give one shipper an undue preference, the traffic comes under the jurisdiction of the Interstate Commerce Commission. *Southern Pac. Terminal Co. v. Interstate Com. Com.*, 498.

2. *Powers of; regulation of charges of terminal company.*

The Interstate Commerce Commission has jurisdiction to regulate charges of a terminal company which is part of a railroad and steamship system and operates terminals such as those of the Southern Pacific Terminal at Galveston, Texas. *Ib.*

3. *Same; when terminal company deemed engaged in interstate commerce.*

Verbal declarations cannot alter facts; and although the different parts of a system may be separate as regards their charters, each forms a link in the chain of transportation. One of the separate links in a system controlled by a holding company such as the Southern Pacific Company cannot escape regulation by the Commission, because designated as a wharfage company; its property

is necessarily employed in the transportation of interstate commerce. *Ib.*

4. *Same; links in interstate commerce; arrangement amounting to discrimination.*

All shippers must be treated alike; and, under the facts in this case, an arrangement, involving the lease of a wharf at a stipulated rental, between the shipper and a corporation whose wharves and terminal facilities thereon form links in a chain of interstate transportation, amounts to an unlawful or undue preference under the Interstate Commerce Act, the Commission having found the facilities amounted to an absolute advantage to the favored shipper, and that similar facilities could not be given to other shippers. *Ib.*

5. *Validity of order; enforcement of void order enjoined.*

An order of the Interstate Commerce Commission, made in consequence of assumption of powers not possessed by it, is void, and its enforcement should be restrained by the courts. *Southern Pacific Co. v. Interstate Com. Comm.*, 433.

6. *Powers of; rate regulation; considerations governing.*

The powers of the Interstate Commerce Commission do not extend to regulating and controlling the policy of the owners of railroads in fixing rates, and it cannot substitute for a just and reasonable rate, a lower rate, either on the ground of policy or on the ground that the railroad was by its former conduct estopped from charging a reasonable rate. *Ib.*

7. *Powers of; rate regulation; considerations governing.*

Where the shippers do not complain of a new and higher rate because it is intrinsically an unreasonable one, but because, although reasonable, the railroads are estopped to advance it on account of having maintained the lower rate for a considerable period, it is beyond the power of the Commission to direct a restoration of the old rate; and so held in regard to the Willamette Valley lumber rates. *Ib.*

8. *Order restoring rate; presumption as to reasons for.*

Where the Commission makes an order restoring a rate that shows on its face it was made on the ground that the railroad was estopped to increase it, the order will not be presumed to have been made for the purpose of establishing a reasonable rate, if it excludes a section from the benefit of the restored rate which amounts to a discrimination against that section. *Ib.*

9. *Rate regulation; effect of expiration of period to render question of validity moot.*

Questions arising on the validity of an order of the Interstate Commerce Commission fixing a rate do not become moot merely because the period for which the rate is prescribed has expired, where an element of liability for reparation remains. See *Southern Pacific Terminal Company v. Interstate Commerce Commission*, *post*, p. 498. *Ib.*

See MOOT CASE, 2.

#### INVOLUNTARY SERVITUDE.

See CONSTITUTIONAL LAW, 50-55;

PEONAGE.

#### JUDGMENTS AND DECREES.

*Order refusing to remand case not different from other orders concerning jurisdiction.*

There is nothing peculiar in an order of the Circuit Court refusing to remand which differentiates it from any other order or judgment of a Federal court concerning its jurisdiction. *Ex parte Harding*, 363.

See APPEAL AND ERROR;

BONDS, 4;

CONSTITUTIONAL LAW, 49, 59;

FEDERAL QUESTION, 2, 3, 4;

JURISDICTION, A 2, 3;

MANDAMUS, 1.

#### JUDICIAL BONDS.

See BONDS.

#### JUDICIAL DISCRETION.

See MANDAMUS, 2.

#### JUDICIAL NOTICE.

See JURISDICTION, A 1.

#### JUDICIAL POWER.

See CONSTITUTIONAL LAW, 56-59.

#### JURISDICTION.

##### A. OF THIS COURT.

1. *Duty to inquire as to, irrespective of action of counsel.*

This court takes notice of, and inquires as to, its own jurisdiction, whether the question is raised by counsel or not. (*Mansfield &c. Ry. Co. v. Swan*, 111 U. S. 379.) *Fore River Shipbuilding Co. v. Hagg*, 175.

2. *Under Circuit Court of Appeals Act of 1891; direct review of judgment of Circuit Court; when jurisdiction of that court involved.*

Where jurisdiction by diversity of citizenship exists, the question of whether the Circuit Court has jurisdiction to enforce the decree of another sovereignty is a question of general law and not a question peculiar to the jurisdiction of the Federal court as such, and a direct appeal will not lie to this court from the judgment of the Circuit Court. *Ib.*

3. *Under Court of Appeals Act of 1891; direct review of judgment of Circuit Court; nature of jurisdiction involved.*

Section 5 of the Court of Appeals Act of March 3, 1891, c. 577, 26 Stat. 826, gives a direct review of the judgment of the Circuit Court as to its jurisdiction, not upon general grounds of law or procedure but of the jurisdiction of the court as a Federal court. (*Louisville Trust Co. v. Knott*, 191 U. S. 275; *Bache v. Hunt*, 193 U. S. 523.) *Ib.*

4. *Under Criminal Appeals Act of 1907.*

Even if this court has not jurisdiction under the act of March 2, 1907, of an appeal by the United States from a judgment sustaining a plea in abatement, it has jurisdiction if the plea sustained was in fact one in bar and based solely on the statute of limitations. *United States v. Barber*, 72.

*See* CONSTITUTIONAL LAW, 59, 61, 62.

#### B. OF CIRCUIT COURTS.

*See Supra*, A 2;

INJUNCTION, 1, 2.

#### C. OF DISTRICT COURTS.

*See* REMOVAL OF CAUSES, 1, 2.

#### D. OF COURT OF CLAIMS.

*See* STATUTES, A 3.

#### E. OF INTERSTATE COMMERCE COMMISSION.

*See* INTERSTATE COMMERCE COMMISSION, 1, 2, 5, 7.

#### F. GENERALLY.

1. *Effect on, of new legislation obviating future application of earlier statute conferring jurisdiction.*

While the repeal of a statute giving special jurisdiction to a court may operate to deprive that court of the jurisdiction so conferred, the



## LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 4, 5, 7, 25, 81, 82, 83;  
CONTRACTS, 1.

## LIENS.

See UNITED STATES.

## LIMITATION OF ACTIONS.

See CONSTITUTIONAL LAW, 21;  
CRIMINAL LAW, 3.

## LIMITATION OF LIABILITY.

See CARRIERS, 1;  
CONSTITUTIONAL LAW, 5, 24, 28.

## LOCAL LAW.

*Alabama.* Code of 1896, §§ 2619, 2620, as amended, §§ 4954, 4955, Code 1907, relative to insurance companies (see Constitutional Law, 72). *German Alliance Ins. Co. v. Hale*, 307.

Section 4730 of Code as amended in 1907, relative to labor contracts (see Constitutional Law, 55, 71). *Bailey v. Alabama*, 219.

*Arkansas.* Railroad regulation; "full crew" act (see Interstate Commerce, 8). *Chicago, R. I. & Pac. Ry. Co. v. Arkansas*, 453.

*California.* Title to real estate (see Constitutional Law, 11, 13). *American Land Co. v. Zeiss*, 47.

*District of Columbia.* 1. *Gift enterprises; scope of provisions of § 1176, Rev. Stat. D. C.* The provisions and prohibitions of § 1176 of the Revised Statutes relating to the District of Columbia are not limited to transactions previously licensed by the act of August 23, 1871, but expressly include gift enterprises conducted in any manner, whether defined in said act or otherwise. *Matter of Gregory*, 210.

2. *Gift-enterprises; offenses within § 1177, Rev. Stat. D. C.; effect of definition of crime in previous statute.* Section 1177 of the Revised Statutes relating to the District of Columbia punishes a recognized category of offenses within the power of Congress to punish, and is not controlled or rendered invalid by a definition of the prohibited crime in an earlier statute which has been repealed. *Ib.*

*Hawaii.* *Pleading in replevin; amendment by increasing ad damnum.* Increasing the *ad damnum* of a suit in replevin to an amount within

the penalty of the bond by amendments to make the declaration conform to the evidence as to value is not, under the laws or practice of Hawaii, illegal, nor does it have the effect of discharging the sureties. *William W. Bierce, Ltd., v. Waterhouse*, 320.

*Iowa.* Railroad regulation in respect of contracts limiting liability (see Constitutional Law, 5, 28). *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

*Kansas.* Bank guaranty statute of 1907 (see Constitutional Law, 44, 68). *Assaria State Bank v. Dolley*, 121.

*Kentucky.* Revenue and taxation act of March 5, 1906 (see Constitutional Law, 70). *Kentucky Union Co. v. Kentucky*, 140.

*Mississippi.* Const. of 1890, § 3559, abrogating fellow-servant rule as to railway employé's (see Constitutional Law, 35). *Mobile, J. & K. C. R. R. Co. v. Turnipseed*, 35.

Code of 1906, § 1985; regulation of railroads (see Constitutional Law, 15). *Mobile, J. & K. C. R. R. Co. v. Turnipseed*, 35.

*Missouri.* Anti-bucket-shop law of 1907 (see Constitutional Law, 26). *Brodnax v. Missouri*, 285.

Statute of June 8, 1909, relative to sales of grain and other commodities (see Constitutional Law, 83). *House v. Mayes*, 270.

*Nebraska.* Bank guaranty act (see Constitutional Law, 67). *Shallenberger v. First State Bank*, 114.

*New York.* Libel (see Criminal Law, 6). *United States v. Press Publishing Co.*, 1.

Private banking act of 1910 (see Constitutional Law, 69). *Engel v. O'Malley*, 128.

*Pennsylvania.* *Foreign corporations; validation of contracts made by.* The act of Pennsylvania of May 23, 1907, P. L. 205, validating contracts made by foreign corporations which had not complied with registration laws, was within the power of the State and in this case was held to apply to a contract which the courts theretofore had refused to enforce on account of the non-compliance with such registration laws. *West Side R. R. Co. v. Pittsburgh Construction Co.*, 92.

#### MANDAMUS.

##### 1. *To compel Circuit Court to remand case, denied.*

The general rule that a court, having jurisdiction over the subject-matter and the parties, is competent to decide questions arising as to its jurisdiction and that its decisions on such questions are

not open to collateral attack, applied in this case; and mandamus refused to compel the Circuit Court to remand a case in which it decided that it had jurisdiction on the issues of citizenship and severable controversy. *Ex parte Harding*, 363.

2. *To correct abuse of judicial discretion in retaining case without jurisdiction.*

In this case the exceptional rule that mandamus will lie to the Circuit Court to correct an abuse of judicial discretion in retaining a case over which it has not jurisdiction does not apply. *Ib.*

3. *Same—Cases reviewed and harmonized.*

Conflicting decisions regarding issuing mandamus to the Circuit Court to correct its decisions in regard to jurisdiction over cases removed from the state court reviewed and harmonized. *Ib.*

4. *Same.*

In this case, *Ex parte Hoard*, 105 U. S. 578, and cases following it applied, as expressing the general principle involved; *Virginia v. Rives*, 100 U. S. 313, and cases following it distinguished, as applicable only to exceptional instances not involved in this case; *Ex parte Wisner*, 203 U. S. 449; *In re Moore*, 209 U. S. 490, and *In re Winn*, 213 U. S. 458, disapproved in part and qualified. *Ib.*

#### MANDATE.

See CONTEMPT OF COURT.

#### MATERIALMEN.

See ACTIONS, 5, 6;  
PUBLIC WORKS, 1;  
UNITED STATES.

#### MECHANICS' LIENS.

See UNITED STATES.

#### MILITARY LAW.

See ARMY AND NAVY.

#### MILITIA.

See ARMY AND NAVY, 5.

#### MOOT CASE.

1. *When case not moot; repetition of conditions likely.*

The case is not moot where interests of a public character are asserted

by the Government under conditions that may be immediately repeated, merely because the particular order involved has expired. (*United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 308.) *Southern Terminal Co. v. Interstate Com. Comm.*, 498.

2. *When case not moot; actual controversies; appeal involving order of Interstate Commerce Commission.*

The rule that this court will only determine actual controversies, and will dismiss if events have transpired pending appeal which render it impossible to grant the appellant effectual relief, does not apply to an appeal involving an order of the Interstate Commerce Commission merely because that order has expired. Such orders are usually continuing and capable of repetition, and their consideration, and the determination of the right of the Government and the carriers to redress, should not be defeated on account of the shortness of their term. *Ib.*

3. *Settlement of controversy by parties before hearing.*

Appeals dismissed without costs to either party, it having developed from statements of counsel for both parties that the cases had become purely moot because of the settlement between the parties of every material controversy which the record presented. *Bucks Store & Range Co. v. American Federation of Labor*, 581.

See INTERSTATE COMMERCE COMMISSION, 9.

NAVY.

See ARMY AND NAVY, 2.

NEGLIGENCE.

See CARRIERS, 4;

CONSTITUTIONAL LAW, 15.

NEW TRIAL.

*Grounds for; finding of verdict based on understanding among jurors that punishment would be less than that imposed.*

There was no error on the part of the trial court in denying a motion for a new trial based on affidavits of some of the jurors that they agreed to the verdict on the understanding between themselves and other jurors that the punishment of the degree found would be less than that imposed by the court. (*Mattox v. United States*, 146 U. S. 140.) *Hendrix v. United States*, 79.

NORTHERN PACIFIC LAND GRANTS.

See PUBLIC LANDS, 6-11.

## NOTICE.

See CONSTITUTIONAL LAW, 11, 13, 21.

## OBITER DICTA.

See OPINIONS, 1.

## OFFENSES.

See CRIMINAL LAW, 6.

## OFFICERS OF THE ARMY.

See ARMY AND NAVY.

## OKLAHOMA.

See JURISDICTION, F 2.

## ONUS PROBANDI.

See REAL PROPERTY.

## OPINIONS.

1. *Controlling effect of general expressions in.*

General expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but they are not controlling when the very point is presented in a subsequent case. *Weyerhaeuser v. Hoyt*, 380.

2. *Effect of general expressions on uniform rule of executive department.*

General expressions in an opinion such as those in *Sjoli v. Dreschel*, 199 U. S. 564, will not be made the basis for overthrowing a uniform rule of the Land Department, involving destructive effects upon property rights existing under different conditions. *Ib.*

See CONSTITUTIONAL LAW, 62;  
STATUTES, A 7.

## PARTIES.

See ACTIONS, 7.

## PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 20; TAXES AND TAXATION, 3, 4;  
PUBLIC LANDS, 4; WAR REVENUE ACT.

## PEONAGE.

1. *Peon defined.*

A peon is one who is compelled to work for his creditor until his debt

is paid, and the fact that he contracted to perform the labor which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the peonage acts. *Bailey v. Alabama*, 219.

2. *State legislation violative of Federal acts prohibiting.*

The Federal anti-peonage acts are necessarily violated by any state legislation which seeks to compel service or labor by making it a crime to fail or refuse to perform it. *Ib.*

See CONSTITUTIONAL LAW, 54, 55.

### PLEADING.

*Nature of plea not determined by its designation.*

The designation of a plea does not change its essential nature, and the fact that the statute of limitations is designated as a plea in abatement and not a plea in bar, is untenable. *United States v. Barber*, 72.

See BILL OF EXCEPTIONS; LOCAL LAW (HAWAII);  
CRIMINAL LAW, 3; PRACTICE AND PROCEDURE, 11;  
REMOVAL OF CAUSES, 2.

### POLICE LEGISLATION.

See COURTS, 4, 6, 7;  
STATES, 8.

### POLICE POWER.

See CONSTITUTIONAL LAW, 2, 17, 18, 25, 27, 28, 65, 66, 78, 83;  
INTERSTATE COMMERCE, 9;  
STATES, 3-8.

### POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

### PRACTICE AND PROCEDURE.

1. *Construction of state statute as to constitutionality; questions open.*

Neither the excellence nor the defects of a legislative scheme may be permitted to determine the constitutionality of a state statute; in this court the only question is whether the statute transcends the limits of power defined by the Federal Constitution. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

2. *Construction of state statutes; duty of court in considering constitutionality.*

Although this court may not impute to a State an actual motive to

oppress by a statute which that State enacts, it must consider the natural operation of such statute and strike it down if it becomes an instrument of coercion forbidden by the Federal Constitution. *Bailey v. Alabama*, 219.

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

This court in determining the constitutionality of a state statute is bound by the construction given to it by the highest court of the State and will treat it as exacting whatever the state court has declared that it exacts either expressly or by implication. *American Land Co. v. Zeiss*, 47.

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

Where the highest court of the State has held that provisions that might render an act unconstitutional are imperative, and the elimination of those provisions do not affect the remainder of the act, this court is bound by such construction and will construe the act as though stripped of such provisions. *Kentucky Union Co. v. Kentucky*, 140.

5. *Scope of review; wisdom of legislation not considered.*

Even where powerful arguments can be made against the wisdom of legislation this court can say nothing, as it is not concerned therewith. *Noble State Bank v. Haskell*, 575.

6. *Scope of inquiry on writ of error; questions as to evidence and damages not considered.*

It is not the province of this court on writ of error to reverse if dissatisfied with the verdict of the jury; if there was evidence proper for the consideration of the jury, objection that the verdict was against the weight of evidence or that excessive damages were allowed cannot be considered. *Herencia v. Guzman*, 44.

7. *Record; sufficiency of, to justify reversal of judgment for exclusion of evidence.*

A judgment cannot be set aside on an exception to the refusal of the trial court to allow an expert to testify where the record does not show what testimony the witness was expected to give or that he was qualified to give any. *Ib.*

8. *Assumption as to proof of facts on which decision of Secretary of Interior based.*

Where a matter regarding selection of lieu land is wholly within the jurisdiction of the Secretary deciding it, this court will assume that the facts on which the decision rested were properly proved. *Weyerhaeuser v. Hoyt*, 380.

9. *Decision below on one of several assigned errors condemned.*

This court disapproves of the practice, followed by an intermediate appellate court in this case, of reversing a judgment on one of a number of assigned errors without passing on the others; it is likely to involve duplicate appeals. *William W. Bierce, Ltd., v. Waterhouse*, 320.

10. *On appeal under Criminal Appeals Act of 1907; stipulation of counsel not considered.*

On an appeal under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, this court can only look to the judgment which was actually entered to determine what the action of the court below was, and not to any stipulation between the parties. *United States v. Barber*, 72.

11. *Waiver of objection; when court justified in assuming.*

Where defendant takes no exception to action of the trial court in sustaining demurrer to one of his pleas, but goes to trial on the merits, introduces evidence on other issues, and does not offer evidence on those raised by that plea, this court may fairly assume that he has waived or abandoned it on the trial even if he has assigned as error the action of the court in sustaining the demurrer. *German Alliance Ins. Co. v. Hale*, 307.

See BILL OF EXCEPTIONS; LOCAL LAW (HAWAII);  
HABEAS CORPUS, 1; MOOT CASE, 2.

PREFERENCES.

See INTERSTATE COMMERCE COMMISSION, 1, 4.

PRESIDENT.

See ARMY AND NAVY, 3.

PRESUMPTIONS.

See BONDS, 1; CRIMINAL LAW, 1;  
CONSTITUTIONAL LAW, 15, INTERSTATE COMMERCE COM-  
16, 53; MISSION, 8;  
COURTS, 10; TAXES AND TAXATION, 3.

PRINCIPAL AND AGENT.

See CARRIERS, 4.

PRINCIPAL AND SURETY.

See BONDS, 2, 3, 4.

## PRIVILEGES AND IMMUNITIES.

See CONSTITUTIONAL LAW, 63.

## PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 7, 11, 12, 13, 15, 22, 23, 27, 30-33, 64-72, 83;  
OPINIONS, 2;  
PUBLIC LANDS.

## PUBLIC HEALTH.

See CONSTITUTIONAL LAW, 79, 80.

## PUBLIC LANDS.

1. *Forest Reserve Act; exchange of lands; competency of Secretary of Interior to adopt rules and regulations.*

As the Forest Reserve provision of the Sundry Civil Act of June 4, 1897, c. 2, 30 Stat. 36, did not prescribe the method which those entitled to avail of its provision should pursue, it was competent for the Secretary of the Interior to adopt the rules and regulations, which this court has already held to be reasonable and valid, and entitled to respect and obedience. (*Cosmos Co. v. Gray Eagle Oil Co.*, 190 U. S. 301.) *Roughton v. Knight*, 537.

2. *Same; effect of non-compliance with rules of Land Department.*

One not following the rules and regulations adopted by the Land Department for exchange of lands under the Forest Reserve Act and not accompanying his relinquishment deed with a proper selection in lieu of the land relinquished, and whose relinquishment was returned to him by the Department, did not become entitled to a selection and exchange after the repeal of the act. *Ib.*

3. *Same; effect of repealing act of 1905 to save rights initiated but not perfected.*

Where one attempting to avail of the statutory provision to exchange under the Forest Reserve Act of 1897 failed to comply with the rules and regulations of the Land Department, and his relinquishment deed was returned to him, no contract was created with the Government which saved him any rights under the repealing act of March 3, 1905, c. 1495, 33 Stat. 1264. *Ib.*

4. *Forfeiture for non-performance of condition subsequent; who may take advantage of; procedure on part of United States.*

No one can take advantage of the forfeiture provided for non-performance of a condition subsequent in a land grant *in præsenti*, except the Government, *Schulenberg v. Harriman*, 21 Wall. 44; nor

can there be any forfeiture on the part of the United States without appropriate judicial proceeding equivalent to office found or legislative assertion of ownership. *Spokane & B. C. Ry. Co. v. Washington & G. N. Ry. Co.*, 166.

5. *Forfeiture of grant made by act of June 4, 1898; necessity for action by Government.*

Although the grant of right of way involved in this action made by the act of June 4, 1898, c. 377, 30 Stat. 430, provided for grading and completion of a specified number of miles of track, failure to do so did not operate as a forfeiture without action by the Government or render the grant null or void leaving the land open for settlement or location by another railroad. *Ib.*

6. *Northern Pacific Land Grant Act of 1864 and joint resolution of May 31, 1870, construed as to right of company to lieu lands.*

It was the purpose of Congress, as evidenced by the original Northern Pacific Land Grant Act of July 2, 1864, c. 217, 13 Stat. 365, and the joint resolution of May 31, 1870, 16 Stat. 378, extending the indemnity limits, to confer substantial rights to the lands within the indemnity limits in lieu of those lost within place limits. *Weyerhaeuser v. Hoyt*, 380.

7. *Lieu lands; pending selections; effect to exclude rights of others.*

The right of the company to lieu lands lawfully embraced in selections filed with the Secretary of the Interior excluded lands to which rights of others had attached before the selection and also excluded the right of others to appropriate lands so embraced in such selections pending action by the Secretary. *Ib.*

8. *Lieu lands; selections; approval by Secretary of the Interior; relation.*

The power of the Secretary to approve selections is judicial in its nature, and implies the duty to determine as of the time of filing the selection and the doctrine of relation applies to decisions as to validity of such selections. *Ib.*

9. *Lieu lands; selections; rights accruing prior to approval by Secretary.*

In this case *held*, that the company's rights to lieu lands embraced in a selection were superior to those of a purchaser under the Timber and Stone Act who filed pending final decision by the Secretary and between the time of decision of the Secretary holding that the selections were unlawful and the subsequent reversal of that decision; and that the final decision related back to the date of the original selection. *Sjoli v. Dreschel*, 199 U. S. 569, distinguished. *Ib.*

10. *Lieu lands; location of.*

The contention in this case, overruled by the Secretary, that the company was not entitled to lieu lands within indemnity limits because not on the same side of railroad as the place lands lost, held to be without merit. *Ib.*

11. *Humbird v. Avery*, 195 U. S. 485, followed as to construction of *Sundry Civil Act of 1898*.

*Humbird v. Avery*, 195 U. S. 485, followed as to construction of provisions of Sundry Civil Act of July 1, 1898, c. 546, 30 Stat. 597, 620, and decision of Secretary in this case sustained; but *quære* and not decided, as to effect of such provisions on purchasers under the Timber and Stone Act. *Ib.*

12. *Proof of want of title in grantor of alleged trustee not proof of right of one claiming as cestui que trust.*

Where the object of the bill is to charge the defendant as trustee of land included in lieu limits of a railway grant for the complainant, if it appears that a valid selection was made, proof that defendant's grantor never acquired title to the land would not establish complainant's right to it. *Ib.*

*See* FEDERAL QUESTION, 3;

OPINIONS, 2;

PRACTICE AND PROCEDURE, 8.

## PUBLIC MORALS.

*See* CONSTITUTIONAL LAW, 79, 80.

## PUBLIC POLICY.

*See* CONSTITUTIONAL LAW, 7, 34; COURTS, 9;

CONTRACTS, 1; STATES, 2.

## PUBLIC RESERVATIONS.

*See* CRIMINAL LAW, 4, 5.

## PUBLIC SAFETY.

*See* CONSTITUTIONAL LAW, 79, 80;

INTERSTATE COMMERCE, 7;

STATES, 6.

## PUBLIC WORKS.

1. *Vessel as public work within meaning of acts of August 13, 1894, and February 24, 1905.*

A vessel being constructed under contract for the United States is a public work within the meaning of the act of August 13, 1894,

c. 280, 28 Stat. 278, as amended by the act of February 24, 1905, c. 778, 33 Stat. 811, and materialmen can maintain an action on the bond given pursuant to such statute by the contractor. *Title Guaranty & Trust Co. v. Crane Co.*, 24.

*See* ACTIONS, 3-6;

UNITED STATES.

#### QUANTUM MERUIT.

*See* ACTIONS, 1.

#### QUIETING TITLE.

*See* CONSTITUTIONAL LAW, 73, 74.

#### RAILROAD LAND GRANTS.

*See* FEDERAL QUESTION, 3;

PUBLIC LANDS, 5-12.

#### RAILROADS.

*See* CARRIERS;

INTERSTATE COMMERCE;

CONSTITUTIONAL LAW, 15,

INTERSTATE COMMERCE COM-

24, 28, 35, 41, 42;

MISSION.

#### RATE REGULATION.

*See* INTERSTATE COMMERCE, 3, 6, 7, 8, 9.

#### REAL PROPERTY.

*See* CONSTITUTIONAL LAW, 11, 12, 13, 21;

STATES, 7, 10, 11.

#### REGISTRATION OF TITLES.

*See* STATES, 10.

#### REHEARING.

*See* APPEAL AND ERROR.

#### RELATION.

*See* PUBLIC LANDS, 8, 9.

#### REMANDING CASE.

*See* MANDAMUS, 1, 3.

#### REMEDIES.

*See* TAXES AND TAXATION, 1, 3, 4;

WAR REVENUE ACT.

## REMOVAL OF CAUSES.

1. *Sufficiency of designation of court.*

The United States court at a particular place named is a sufficient designation of the only court of the United States held at that place, which has jurisdiction of the case; and an order transmitting a case under the act of June 28, 1898, c. 517, 30 Stat. 511, to the United States court at Paris, Texas, is sufficient to transfer the case to the District Court of the United States for the Eastern District of Texas and to give that court jurisdiction. *Hendrix v. United States*, 79.

2. *Petition; failure to comply with statutory requirements; when not fatal to jurisdiction of court.*

Where the record is not here, and the jurisdictional facts are admitted, and the order recited that the court was well advised in the premises, this court will not hold that the court to which the case was removed on petition of plaintiff in error himself did not acquire jurisdiction because the petition did not state all the jurisdictional facts required by the statute authorizing the removal. *Ib.*

*See* MANDAMUS.

## REPLEVIN.

*See* BONDS, 4, 5, 6, 7;  
LOCAL LAW (HAWAII).

## RESERVATIONS.

*See* CRIMINAL LAW, 4, 5.

## RES JUDICATA.

*See* BONDS, 5.

## RETROACTIVE LAWS.

*See* CONSTITUTIONAL LAW, 45, 46, 47;  
EX POST FACTO LAWS.

## SALES.

*See* CONSTITUTIONAL LAW, 2, 81, 83.

## SEALED INSTRUMENTS.

*See* BONDS, 1.

## SECRETARY OF THE INTERIOR.

*See* PRACTICE AND PROCEDURE, 8;  
PUBLIC LANDS, 1, 8, 9.

## SERVITUDE.

See CONSTITUTIONAL LAW, 50-55.

## SIMULTANEOUS TRANSACTIONS.

See BONDS, 1.

## STAMP TAX.

See CONSTITUTIONAL LAW, 2;  
TAXES AND TAXATION, 3, 4;  
WAR REVENUE ACT.

## STATES.

1. *Power to classify subjects.*

A State may classify subjects so long as all persons similarly situated are treated alike. (*Michigan Central R. R. Co. v. Powers*, 201 U. S. 245.) *Kentucky Union Co. v. Kentucky*, 140.

2. *Legislative power to enlarge scope of state statute.*

The legislature, provided it acts within constitutional limitations, is the arbiter of the public policy of the State; and it may by amendment enlarge the scope of a statute beyond the limits set upon the previous statute by the courts. *Chicago, B. & Q. R. R. Co. v. McGuire*, 549.

3. *Police power; extent of exercise.*

A State is not bound to go to the full extent of its power in legislating against an evil from which it seeks to protect the public. *German Alliance Ins. Co. v. Hale*, 307.

4. *Police power to regulate in respect of relative rights and duties and prescribe means of enforcing regulations.*

All corporations, associations and individuals, within its jurisdiction, are subject to such regulations in respect of their relative rights and duties as the State may, in the exercise of its police power and in harmony with its own and the Federal Constitution, prescribe for the public convenience and the general good; and the State may also prescribe, within such limits, the particular means of enforcing such regulations. *Ib.*

5. *Police power; public needs within; protection of bank deposits.*

The police power extends to all the great public needs, *Camfield v. United States*, 167 U. S. 518, and includes the enforcement of commercial conditions such as the protection of bank deposits and checks drawn against them by compelling cooperation so as to prevent failure and panic. *Noble State Bank v. Haskell*, 104.

6. *Police power; public safety; exercise of power not questionable in Federal courts.*

The States have never surrendered the power to care for the public safety; and the validity of police statutes enacted to that end which are not purely arbitrary or in conflict with a power granted to the general government cannot be questioned in Federal courts. *Chicago, R. I. & Pac. Ry. Co. v. Arkansas*, 453.

7. *Police power; security of real estate titles within.*

The general welfare of society is involved in the security and registry of titles to real estate, and those subjects are within the police power of the State. *American Land Co. v. Zeiss*, 47.

8. *Police power; regulations within.*

A state law which affects the needed changes to cure an existing evil by creating motives for voluntary action instead of by compulsion, may still be a police regulation. *Assaria State Bank v. Dolley*, 121.

9. *Taxation; powers as to.*

A State may choose its own methods of taxation and form and method of enforcing payment so far as Federal power is concerned, subject only to the restrictions of the Federal Constitution. *Kentucky Union Co. v. Kentucky*, 140.

10. *Taxation and registration of lands; effect on Kentucky of Virginia-Kentucky compact of 1789.*

While the Virginia-Kentucky compact of 1789 protects the holders of grants under Virginia from acts by Kentucky, cutting down substantial rights, *Green v. Biddle*, 8 Wheat. 1, it does not render them immune from constitutional enactments of Kentucky in regard to the taxation or registration of their property. (*Hawkins v. Barney*, 5 Pet. 457.) *Ib.*

11. *Competency to determine procedure for establishment of title to real estate.*

It being within the power of the State to determine how title to real estate shall be proved, it is also within the legislative competency of that State to establish the method of procedure. *American Land Co. v. Zeiss*, 47.

See CONGRESS, POWERS OF, 2;

CONSTITUTIONAL LAW, 2, 5,  
6, 9, 13, 16, 17, 18, 21, 23,  
25, 26, 27, 49, 53, 63, 65, 66;

COURTS, 3, 6, 8;

CRIMINAL LAW, 4, 5;

INTERSTATE COMMERCE, 7, 8, 9;

LOCAL LAW (PA.);

PEONAGE, 2;

PRACTICE AND PROCEDURE, 2, 3, 4.

## STATUTE OF LIMITATIONS.

See CRIMINAL LAW, 3;

CONSTITUTIONAL LAW, 21.

## STATUTES.

## A. CONSTRUCTION OF.

1. *Looking to purpose and intent of superseded act.*

The purpose and intent leading to the adoption of an act affords a means for discerning the intent of a subsequent act relating to the same subject and superseding the earlier act. *United States v. Press Publishing Co.*, 1.

2. *Proceedings in Congress considered.*

Proceedings in Congress in the course of adoption of a statute and amending its form as originally proposed considered, in this case, in determining the purpose and scope of the act and the intent of Congress in adopting it. *Ib.*

3. *Legislative intent—Act of March 1, 1907, construed as not investing Court of Claims with jurisdiction.*

An act of Congress, conferring jurisdiction on the Court of Claims and on this court on appeal, testing the constitutionality of prior acts of Congress will not be sustained as to the jurisdiction of the Court of Claims alone if it cannot be also sustained as to this court. *Muskrat v. United States*, 346.

4. *Intent of Congress; how ascertained; power of court circumscribed.*

The intent of Congress is to be gathered from the words of the act according to their ordinary acceptation, and the act should be construed in the light of circumstances existing at the time it was passed. Personal hardships cannot be considered, nor can the court mold the statute to meet its views of justice in a particular case. *Louisville & Nashville R. R. Co. v. Mottley*, 467.

5. *Words used; introduction of new word as indicating intent to cure defect in former law.*

The court must have regard to all the words used by Congress in a statute and give effect to them as far as possible; and the introduction of a new word into a statute indicates an intent to cure a defect in, and suppress an evil not covered by, the former law. *Ib.*

6. *Judicial modification on equitable grounds.*

The court cannot on equitable grounds add an exception to the classes to which a statute clearly applies if Congress forbears to do so. *Ib.*

7. *Effect of opinion of Attorney General.*

The court will, in the absence of clear and established construction, reach its own conclusion in construing a statute, notwithstanding opinions of the Attorney General looking in the opposite direction. *Tille Guaranty & Trust Co. v. Crane Co.*, 24.

8. *Who may attack constitutionality.*

One who can avail of benefits given by a state statute cannot object to the statute as denying him equal protection of the law because he does not choose to put himself in the class obtaining such benefits. *Assaria State Bank v. Dolley*, 121.

9. *Who may attack constitutionality.*

The rule, that one not within the class cannot raise objections to the constitutionality of a statute on the ground of discrimination against that class, applied to effect that one who for more than five years has resided in the United States cannot object that a state statute denies equal protection of the law because it excludes those who have not so resided for that period. *Engel v. O'Malley*, 128.

See CONGRESS, POWERS OF, 2; JURISDICTION, F 1, 2;  
COURTS, 5; LOCAL LAW (DIST. OF COL.);  
CRIMINAL LAW, 2; PRACTICE AND PROCEDURE, 1-4.

## B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

## C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

## STIPULATIONS.

See PRACTICE AND PROCEDURE, 10.

## SUPREME LAW OF THE LAND.

See CONSTITUTIONAL LAW, 77.

## SURETIES.

See BONDS;  
LOCAL LAW (HAWAII).

## TAXABLE FEES.

See INTERSTATE COMMERCE ACT.

## TAXES AND TAXATION.

1. *Nature of tax as debt; right to recover by suit.*

A tax may or may not be a debt under a particular statute according to the sense in which the word is found to be used. But whether the Government may recover a personal judgment for a tax depends upon the existence of the duty to pay for the enforcement of which another remedy has not been made exclusive. *United States v. Chamberlin*, 250.

2. *Tender of tax; what amounts to.*

An offer to compromise not in accord with the terms of the statute under which lands have been declared forfeited does not amount to an offer to pay the taxes properly assessed thereunder. *Kentucky Union Co. v. Kentucky*, 140.

3. *Stamp tax; penalties for non-payment not exclusive of right to sue to recover.*

Penalties may be provided to induce payment of the tax, and not as a substitute for such payment, and it will not be presumed that Congress intends by penalizing delinquency to deprive the Government of suitable means of enforcing the collection of revenue. *United States v. Chamberlin*, 250.

4. *Stamp tax; obligation to affix stamp; exclusiveness of penalties prescribed.*

Nothing in the nature of a stamp tax negatives *per se*, either the personal obligation to purchase and affix the stamps or the collection of the amount by action; nor do provisions for penalties necessarily exclude personal liability. *Ib.*

See CONSTITUTIONAL LAW, 2, 19, 20, 23, 37, 46;

STATES, 9, 10;

WAR REVENUE ACT.

## TENDER.

See BONDS, 7;

TAXES AND TAXATION, 2.

## TERMINAL CHARGES.

See INTERSTATE COMMERCE COMMISSION, 2, 3, 4.

## THIRTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 50-55.

## THROUGH RATES.

See CARRIERS, 3, 4, 5.

## TIMBER AND STONE ACT.

See PUBLIC LANDS, 9, 11.

## TITLE.

See CONSTITUTIONAL LAW, 11, 12, 13, 23, 73, 74;

PUBLIC LANDS;

STATES, 7, 10, 11.

## TRANSFER OF CAUSES.

See JURISDICTION, F 2;

REMOVAL OF CAUSES.

## TRANSPORTATION.

See CARRIERS, 3, 4, 5;

INTERSTATE COMMERCE;

CONSTITUTIONAL LAW, 2;

INTERSTATE COMMERCE COMMISSION.

## TREATIES.

See CONSTITUTIONAL LAW, 77.

## TRUSTS AND TRUSTEES.

See PUBLIC LANDS, 12.

## UNITED STATES.

*Property of; vessel as; immunity from state lien laws—Remedy of materialmen.*

Where title to the completed portion of a vessel being constructed for the United States passes to the United States as payments are made, laborers and materialmen cannot assert liens under the state law, but can maintain actions on the contractor's bond given under the act of 1894 as amended by the act of 1905. (*United States v. Ansonia Brass & Copper Co.*, 218 U. S. 452.) *Title Guaranty & Trust Co. v. Crane Co.*, 24.

See ACTIONS, 7;

CONSTITUTIONAL LAW, 1, 48;

PUBLIC LANDS, 3, 4.

## VALUATION.

See BONDS, 5.

## VESSELS.

See PUBLIC WORKS, 1,

UNITED STATES.

## VIRGINIA-KENTUCKY COMPACT.

See CONSTITUTIONAL LAW, 70;  
STATES, 10.

## WAIVER OF OBJECTION.

See PRACTICE AND PROCEDURE, 11.

## WAR REVENUE ACT.

*Recovery of tax at suit of United States; penalties not exclusive of suit.*

An action lies by the United States to recover the amount of a stamp tax upon execution of a conveyance, payable under the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 448, 470, and the penalties provided in such act for non-compliance therewith are not exclusive of collection of the amount by suit. *United States v. Chamberlin*, 250.

## WITNESSES.

See EVIDENCE.

## WORDS AND PHRASES.

"*Case or controversy*" (see Constitutional Law, 57). *Muskrat v. United States*, 346.

"*Involuntary servitude*" (see Constitutional Law, 51). *Bailey v. Alabama*, 219.

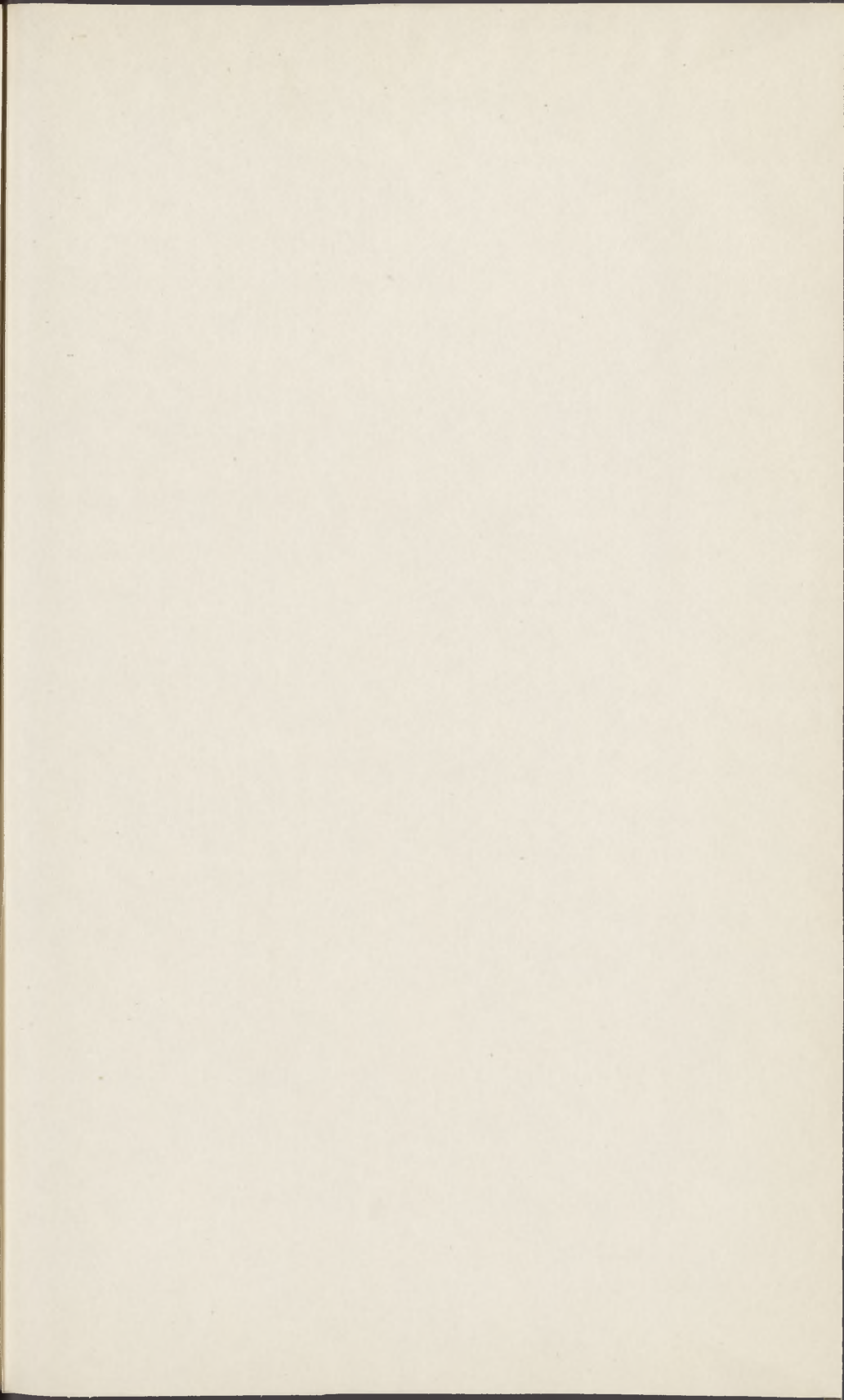
See STATUTES, A 4, 5.

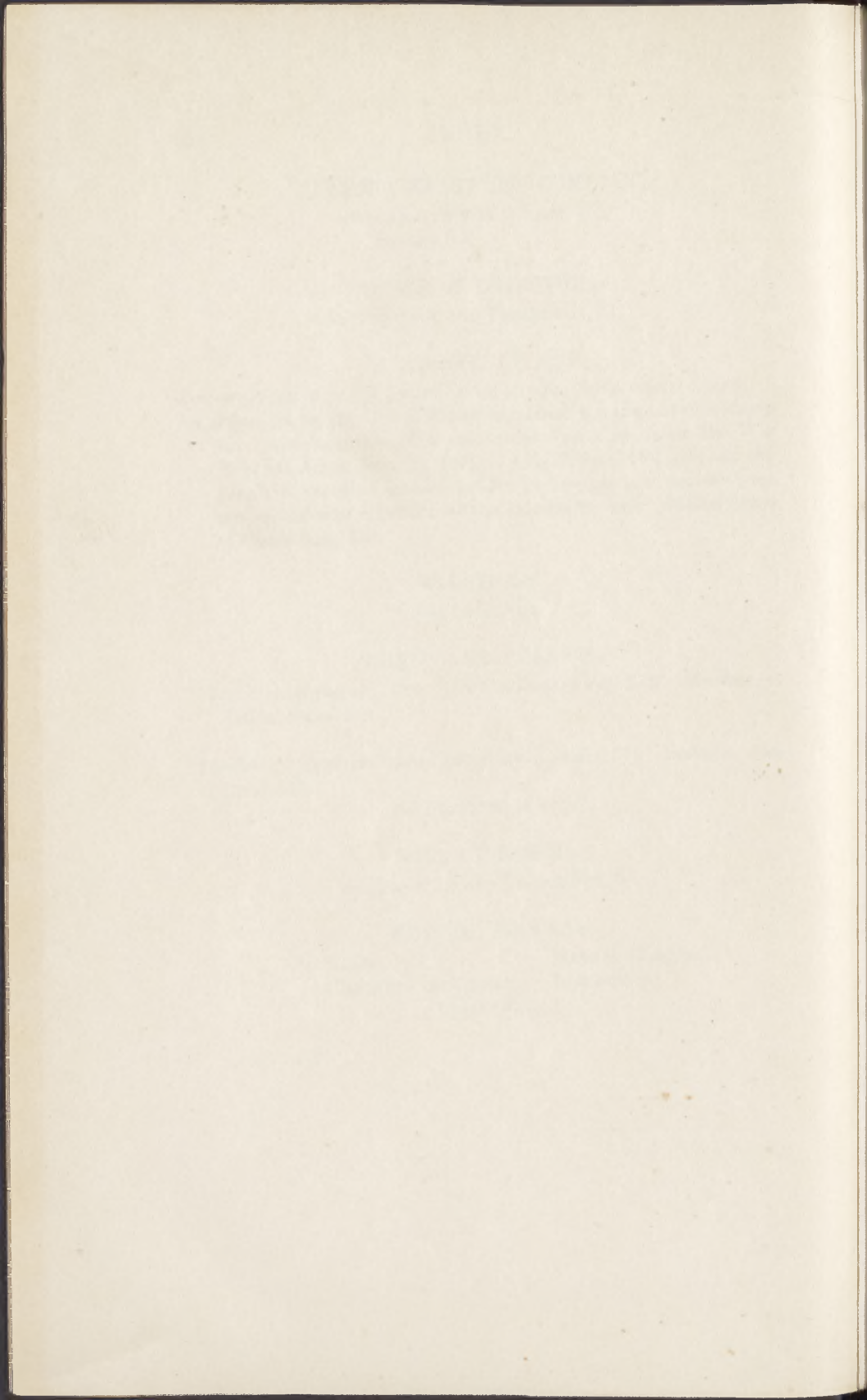
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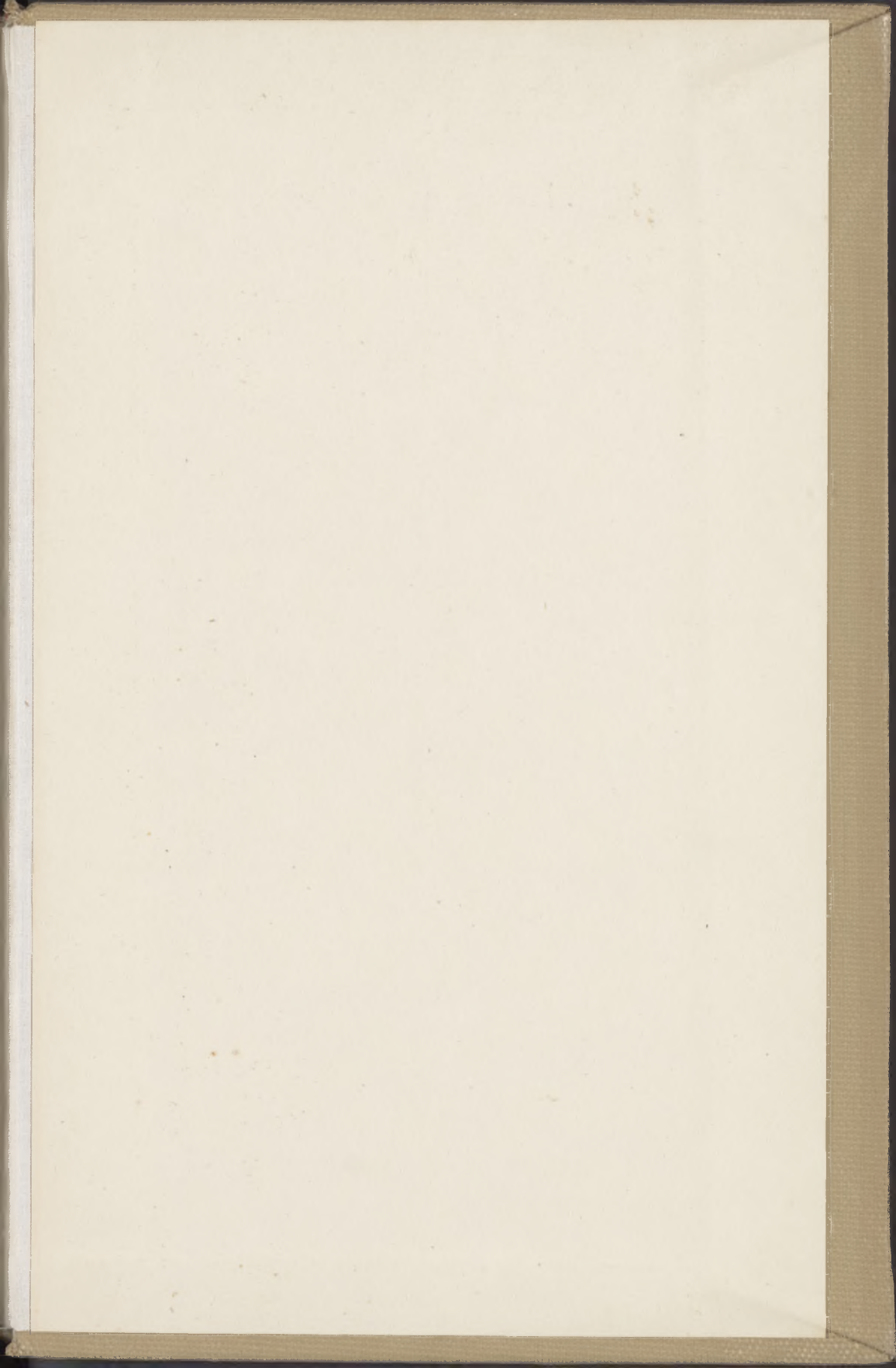
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## WRIT OF PROCESS.

See BONDS, 5, 6, 7;                   HABEAS CORPUS;  
CONTEMPT OF COURT;       INJUNCTION;  
MANDAMUS.







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