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ACTIONS.

1. *Right to maintain action not dependent upon remedy for collection of judgment.*

Even if there is no remedy adequate to the collection of a claim against a governmental subdivision when reduced to judgment, a plaintiff having a valid claim is entitled to maintain an action thereon and reduce it to judgment. *Vilas* v. *Manila*, 345.

2. *Right of, for malicious interference with contract obligation; effect of invalidity of contract.*

An actionable wrong is committed by one who maliciously interferes with a contract between two parties and induces one of them to break the contract to the injury of the other, and in the absence of an adequate remedy at law equitable relief will be granted; but *held*, in this case, that plaintiffs were not entitled to relief as the contract under which they claimed was invalid. *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 373.

3. *Nature of action authorized by act of March 1, 1907; practice as to findings of Court of Claims.*

Under the act of March, 1907, c. 2290, 34 Stat. 1055, authorizing this suit, the action is analogous to one at law to recover money paid under mistake of law or fact, rather than one in equity, and this court follows the rule not to go behind the findings of the Court of Claims. *United States* v. *Old Settlers*, 148 U. S. 427, distinguished. *The Sac and Fox Indians*, 481.

4. *Joint or several; right of defendant to object to form.*

A defendant cannot say that an action shall be several if the plaintiff has a right, and so declares, to make it joint; and to make it joint

is not fraudulent if the right to do so exists, even if plaintiff does so to prevent removal. *Chicago, B. & Q. Ry. Co.* v. *Willard*, 413.

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1. *Bond on appeal; objections to; when to be taken.*

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2. *Bond on appeal; practice when bond attacked in appellate court.*

Although too late for an appeal to be dismissed on account of the form of bond, if the proper parties are before the court, leave can be given to file an additional bond if desired. *Ib.*

3. *Parties; appeal taken in open court presumed to be against all parties.*

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4. *Reviewable orders; when rule as to action of court on amendment of pleadings inapplicable.*

The rule that the allowance of amendments to pleadings is discretionary with the trial court and not to be reviewed on appeal except in case of gross abuse does not apply where such discretion is controlled by this court and the refusal to allow an amendment defeats the evident purpose of this court in remanding the case. *United States* v. *Lehigh Valley R. R. Co.*, 257.

5. *Same.*

Where the refusal of the Circuit Court to allow an amendment is in conflict with the opinion and mandate of this court there is an abuse of discretion which this court can and will correct on appeal, even if such abuse be the result of misconception of the opinion and of the scope of the mandate. *Ib.*

6. *Writ of error; to what court of State writ lies.*

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writ of error from this court lies to the highest state court to which the case could be carried. *Western Union Telegraph Co.* v. *Crovo*, 364.

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2. *Rates; right to fix, not justification of discrimination.*
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When certiorari is granted on the basis that the decision below involved principles of far-reaching effect and overthrew settled administrative construction, and it appears on the argument that the decision does not deal with such principles or have such effect, and that the action of the court below was not, either as to its character or importance, within the scope of the grant of power given by the Judiciary Act of 1891 to review by certiorari, the writ will be dismissed. *United States* v. *Rimer*, 547.

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CONGRESS, POWERS OF.

1. *Over Territories.*

While the territorial condition lasts the governmental power of Congress over a Territory and its inhabitants is exclusive and paramount, except as restricted by the Constitution. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 277.

2. *Delegation of legislative power; authority to make administrative rules not such delegation.*

Congress cannot delegate legislative power, *Field* v. *Clark*, 143 U. S. 692, but the authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation because violations thereof are punished as public offenses. *United States* v. *Grimaud*, 506; *Light* v. *United States*, 523.

3. *Delegation to executive officer of power to make regulations to carry out its expressed will; validity of forest reservation regulations.*

While it is difficult to define the line which separates legislative power to make laws and administrative authority to make regulations, Congress may delegate power to fill up details where it has indicated its will in the statute, and it may make violations of such regulations punishable as indicated in the statute; and so *held*, that regulations made by the Secretary of Agriculture as to grazing sheep on forest reserves have the force of law and that violations thereof are punishable, under act of June 4, 1897, c. 2, 30 Stat. 35, as prescribed in § 5388, Rev. Stat. *Ib.*

4. *To exclude elements of knowledge and diligence from offense.*

Congress has unquestioned power to declare an offense and to exclude the elements of knowledge and due diligence from the inquiry as to its commission. *Chicago, B. & Q. Ry. Co.* v. *United States*, 559.

See CONSTITUTIONAL LAW, 12, 13, 14, 20, 21, 25–29;
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TAXES AND TAXATION, 13, 14.

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CONSTITUTIONAL LAW.

1. *Contract impairment; taxation by municipality of its leased property.*

A lease of property belonging to a municipality in which the lessees have expressly agreed to pay taxes due the state or Federal Government is not impaired by an assessment made by the municipality under power to tax acquired subsequent to the making of the lease. *J. W. Perry Co.* v. *Norfolk*, 472.

2. *Contract impairment; taxation by municipality of its leased property under power subsequently acquired.*

Parties to a lease by a municipality not then possessing taxing powers are chargeable with notice that the power to tax may be subsequently conferred, and the conferring of such power does not impair the contract in the lease if there is no exemption expressly contained therein. *Ib.*

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Delegation of powers. See CONGRESS, POWERS OF, 2, 3; PUBLIC LANDS, 3.

3. *Double jeopardy; when two prosecutions for single act does not amount to.*

A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. (*Carter* v. *McClaughry*, 183 U. S. 367.) *Gavieres* v. *United States*, 338.

4. *Double jeopardy; conviction for one offense not bar to prosecution for separate offense growing out of single act.*

In this case *held* that one convicted and punished under an ordinance prohibiting drunkenness and rude and boisterous language was not put in second jeopardy by being subsequently tried under another ordinance for insulting a public officer although the latter charge was based on the same conduct and language as the former. They were separate offenses and required separate proof to convict. *Grafton* v. *United States*, 206 U. S. 333, distinguished. *Ib.*

Due process of law. See Infra, 6, 15, 16, 17, 20, 29.

5. *Equal protection of the law; application of Fourteenth Amendment to statutory changes.*

The Fourteenth Amendment does not forbid statutes and statutory

changes to have a beginning and thus to discriminate between rights of an earlier and later time. *Sperry & Hutchinson Co.* v. *Rhodes*, 502.

6. *Equal protection of the law; due process of law; validity of New York law limiting use of photographs.*

The Court of Appeals of that State having construed the statute of New York of 1903 limiting the use of photographs of persons to photographs taken after the statute went into effect, the statute is not unconstitutional as denying one owning photographs taken thereafter of his property without due process of law, or as denying equal protection of the law. *Ib.*

7. *Equal protection of the law; effect of future application of statute relative to use of photographs.*

In a statute relating to the use of photographs, the fact that it applies only to those taken after the enactment does not render it unconstitutional as denying the equal protection of the law because it does not relate to those taken prior to such enactment. *Ib.*

8. *Equal protection of the law; validity of classification for taxation.*

Joint stock companies and associations share many benefits of corporate organization and are properly classified with corporations in a tax measure such as the Corporation Tax. (*Spreckels Sugar Refining Co.* v. *McClain*, 192 U. S. 397.) *Flint* v. *Stone Tracy Co.*, 107.

9. *Equal protection of the law; reasonableness of classification; inequality not affecting.*

The equal protection clause of the Fourteenth Amendment admits of a wide exercise of discretion and only avoids a classification which is purely arbitrary being without reasonable basis; nor does a classification having some reasonable basis offend because not made with mathematical nicety or resulting in some inequality. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

10. *Equal protection of the law; justifiable classification by State; validity of New York Mineral Springs Act.*

A police statute may be confined to the occasion for its existence. If there is a substantial difference in point of harmful results between various methods of pumping gas and mineral water, that difference justifies a classification, and the burden is on the attacking party to prove the classification unreasonable; and so *held* that the classification in the New York Mineral Springs Act

does not appear to be arbitrary but to rest on a reasonable basis. *Ib.*

11. *Equal protection of the law; effect to deny of making proof of one fact prima facie proof of another.*

Where it is not an arbitrary discrimination, and there is a rational connection between two facts, a State may make evidence of one of such facts *prima facie* evidence of the other, so long as the right to make a full defense is not cut off, *Mobile &c. R. R. Co.* v. *Turnipseed*, 219 U. S. 35; and so *held* that the New York Mineral Springs Act is not rendered unconstitutional as denying equal protection of the law by the ruling of the Court of Appeals, read into the statute, that proof of certain designated facts amounts to *prima facie* proof establishing a reasonable presumption, but one that can be overcome, that other acts of defendants fall within the prohibition of the statute. *Ib.*

See Infra, 21, 22, 29;
EVIDENCE;
STATUTES, A 4.

12. *Legislative powers over property of the United States.*

While the full scope of § 3, Art. IV, of the Constitution has never been definitely settled it is primarily a grant of power to the United States of control over its property, *Kansas* v. *Colorado*, 206 U. S. 89; this control is exercised by Congress to the same extent that an individual can control his property. *Light* v. *United States*, 523.

13. *Legislative power of Federal Government to levy taxes; Corporation Tax of 1909 within.*

The Corporation Tax is not a direct tax within the enumeration provision of the Constitution, but is an impost or excise which Congress has power to impose under Art. I, § 8, cl. 1, of the Constitution. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429; 158 U. S. 601, distinguished. *Flint* v. *Stone Tracy Co.*, 107.

14. *Legislative power of Federal Government; Art. I, § 7, of Constitution; revenue bills; origin in House of Representatives; power of Senate to amend.*

The substitution of a tax on incomes of corporations for a tax on inheritance in a bill for raising revenue is an amendment germane to the subject-matter and not beyond the power of the Senate to propose under § 7, Art. I, of the Constitution, providing that such bills shall originate in the House of Representatives but that the Senate may propose or concur in amendments as in other bills.

The corporation tax provision of the Tariff Act of 1909 is not unconstitutional as being a revenue measure not originating in the House of Representatives under § 7, Art. I, of the Constitution; but so held without holding that the journals of the House or Senate may be examined to invalidate an act which has been passed and signed by the presiding officers of both branches of Congress, approved by the President and deposited with the State Department. *Ib.*

See Infra, 20.

15. *Property rights; effect of breach of contract as impairment of.*

The breach of a contract is neither confiscation of property nor the taking of property without due process of law. (*St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 145.) *Shawnee Sewerage & Drainage Co.* v. *Stearns*, 462.

16. *Property rights; due process; limitations on property subsequently acquired.*

Where property is not brought into existence until after a statute is passed, the owner is not deprived of his property without due process of law on account of limitations thereon imposed by such statute. *Sperry & Hutchinson Co.* v. *Rhodes*, 502.

17. *Property rights; deprivation without due process of law; right of State to prohibit depletion of subterranean water-supply.*

It is within the power of the State, consistently with due process of law, to prohibit the owner of the surface by pumping on his own land, water, gas and oil, to deplete the subterranean supply common to him and other owners to their injury; and so held that the statute of New York protecting mineral springs is not, as the same has been construed by the Court of Appeals of that State, unconstitutional as depriving owners of their property without due process of law. (*Ohio Oil Co.* v. *Indiana*, 177 U. S. 190.) *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

See Supra, 6;
Infra, 29.

18. *Searches and seizures; requirement as to tax returns not within prohibition as to.*

The unreasonable search and seizure provision of the Fourth Amendment does not prevent the Federal Government from requiring ordinary and reasonable tax returns such as those required by the Corporation Tax Law. *Flint* v. *Stone Tracy Co.*, 107.

Self-incrimination. See STATUTES, A 3.

19. *Supreme law of the land.*

Enactments of Congress levying taxes are, as are other laws of the Federal Government acting within constitutional authority, the supreme law of the land. *Flint* v. *Stone Tracy Co.*, 107.

20. *Taxation by Federal Government; due process of law; validity of Corporation Tax Law.*

Congress has power to impose the Corporation Tax and the act is not void as lacking in due process of law under the Fifth Amendment. *Ib.*

21. *Taxation by Federal Government; equal protection of the law; denial by exemptions.*

Congress has the right to select the objects of excise taxation, and this includes the right to make exemptions; exceptions in the Corporation Tax Law of labor, agricultural, religious and certain other organizations, do not invalidate the tax or render the law unconstitutional. *Ib.*

22. *Taxation by Federal Government; equal protection of the law; validity of classification in Corporation Tax Law of 1909.*

Even if the principles of the equal protection provision of the Fourteenth Amendment were applicable there is no such arbitrary and unreasonable classification of business activities enumerated in and subject to the Corporation Tax Law as would render that law invalid. There is a sufficiently substantial difference between business as carried on in the manner specified in the act and as carried on by partnerships and individuals to justify the classification. *Ib.*

23. *Taxation by Federal Government; uniformity required.*

The constitutional limitation of uniformity in excise taxes does not require equal application of the tax to all coming within its operation, but is limited to geographical uniformity throughout the United States. (*Knowlton* v. *Moore*, 178 U. S. 41.) *Ib.*

24. *Taxation by Federal Government; power to tax state agencies carrying on private business.*

The exemption from Federal taxation of the means and instrumentalities employed in carrying on the governmental operations of the States does not extend to state agencies and instrumentalities used for carrying on business of a private character. (*South Carolina* v. *United States*, 199 U. S. 437.) *Ib.*

25. *Taxation by Federal Government; power to levy taxes on business activities enfranchised by State.*

The power of Congress to raise revenue is essential to national existence and cannot be impaired or limited by individuals incorporating and acting under state authority. The mere fact that business is transacted pursuant to state authority creating private corporations does not exempt it from the power of Congress to levy excise laws upon the privilege of so doing. *Ib.*

26. *Taxation by Federal Government; power to levy taxes on business activities enfranchised by State.*

Business activities such as those enumerated in the Corporation Tax Law are not beyond the excise taxing power of Congress because executed under franchises created by the States. *Ib.*

27. *Taxation by Federal Government; effect of sovereignty of State over subject-matter.*

The revenues of the United States must be obtained from the same territory, and the same people, and its excise taxes collected from the same activities, as are also reached by the States to support their local governments; and this fact must be considered in determining whether there are any implied limitations on the Federal power to tax because of the sovereignty of the States over matters within their exclusive jurisdiction. *Ib.*

28. *Taxation by Federal Government; power of Congress to levy excise taxes; limitations of.*

The only limitations on the power of Congress to levy excise taxes are that they must be for the public welfare and must be uniform throughout the United States; they do not have to be apportioned. *Ib.*

29. *Taxation by Federal Government; direct taxes; apportionment of; Corporation Tax of 1909 as excise; power of Congress to enact it.*

The Corporation Tax, as imposed by Congress in the Tariff Act of 1909, is not a direct tax but an excise; it does not fall within the apportionment clause of the Constitution, but is within, and complies with, the provision for uniformity throughout the United States; it is an excise on the privilege of doing business in a corporate capacity and as such is within the power of Congress to impose; franchises of corporations are not governmental agencies of the State and the tax is not invalid as an attempt to tax state governmental instrumentalities; not being direct taxation, but an excise, the tax is properly measured by the entire income of the

parties subject to it notwithstanding a part of such income may be derived from non-taxable property; the tax does not take property without due process of law nor is it arbitrarily unequal in its operation either by differences in corporations or by reason of the classes exempted; the method of its enforcement is within the power of Congress and all corporations, not specially exempted by the act itself, carrying on any business are subject to the provisions of the law. *Ib.*

See TAXES AND TAXATION, 9.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTEMPT OF COURT.

See FEDERAL QUESTION, 1;
JURISDICTION, A 4, 5.

CONTRABAND OF LAW.

See PURE FOOD AND DRUG ACT, 4.

CONTRACTS.

1. *Breach by municipality as impairment.*

A simple breach of a contract by a municipality does not amount to an act impairing the obligation of the contract. *Shawnee Sewerage & Drainage Co.* v. *Stearns*, 462.

2. *Government; breach as to time of completion; effect of delay caused by Government.*

Where, except for the prohibition of the United States to allow the contractor to proceed, the work might have been finished within the specified period, the United States cannot claim a breach entitling it to annul the contract and hold the contractor responsible for difference in cost of completion. *United States* v. *O'Brien*, 321.

3. *Government; breach; evidence to establish.*

A government contract which makes the right of the contractor to continue work under the contract depend upon the approval of the engineer in charge will not in the absence of express terms be construed as making the dissatisfaction of such engineer with progress of the work conclusive of a breach. *Ib.*

4. *Impairment; effect of statute to impair contract made subsequently.*

A statute authorizing the issuing of bonds for the purpose of con-

structing a public utility cannot impair the obligation of a contract made subsequent to the enactment of such statute. *Shawnee Sewerage & Drainage Co.* v. *Stearns*, 462.

5. *Impairment by wrongful construction.*

A contract of exemption may be impaired by wrongful construction as well as by an unconstitutional statute attempting a direct appeal. *J. W. Perry Co.* v. *Norfolk*, 472.

See ACTIONS, 2;
CONSTITUTIONAL LAW, 1, 2, 15;
JURISDICTION, A 7, 8, 9; B;
PRACTICE AND PROCEDURE, 13;
RESTRAINT OF TRADE, 1, 2, 3;
STATES, 10–13;
TREATIES;
WORDS AND PHRASES.

CONTRIBUTORY NEGLIGENCE.

See INSTRUCTIONS TO JURY;
NEGLIGENCE;
SAFETY APPLIANCE ACTS, 5–8.

CONTROVERSIES BETWEEN STATES.

See JURISDICTION, A 1.

CONVEYANCES.

See LOCAL LAW (N. MEX.).

COPYRIGHTS.

1. *Remedies to which owner of copyright entitled.*

The copyright statutes of the United States afford all the relief to which a party is entitled, and no action outside of those provided therein will lie. (*Globe Newspaper Co.* v. *Walker*, 210 U. S. 356.) *Hills & Co.* v. *Hoover*, 329.

2. *Owner limited to one action for seizure and recovery of penalty.*

In a Circuit Court of the United States within the State of Pennsylvania the owner of a copyright for an engraving is restricted to a single action to find and seize the copies alleged to infringe and likewise to recover the money penalty therefor. *Ib.*

3. *Same.*

In a Circuit Court of the United States within the State of Pennsylvania the institution by the owner of a copyright for engravings of an action for replevin for recovery of the copies alleged to infringe, not prosecuted to judgment, precludes such copyright owner

from subsequently bringing and maintaining an action of assumpsit to recover the pecuniary penalty for the copies found and seized under the writ of replevin, and which were delivered to plaintiff. *Ib.*

CORPORATIONS.

See CRIMINAL LAW, 2;
INTERSTATE COMMERCE, 2, 3;
STATUTES, A 4, 5;
TAXES AND TAXATION, 1–14.

CORPORATION TAX LAW.

See CONSTITUTIONAL LAW, 8, 13, 14, 18–29;
STATUTES, A 3, 4, 5;
TAXES AND TAXATION, 2–14.

COSTS.

See PURE FOOD AND DRUG ACT, 6.

COUPLERS.

See SAFETY APPLIANCE ACTS, 9.

COURT OF CLAIMS.

1. *Duty in respect of findings where bad faith of Government official in question.*

It is the duty of the Court of Claims in dealing with the question of bad faith on the part of a government inspector to explicitly find the facts in regard to that subject. *Ripley* v. *United States*, 491.

2. *Duty as to findings of fact.*

The Court of Claims should find as a fact whether or not complaints were made to the proper officers as to improper conduct on the part of subordinates, and if made, when and what action was taken thereon. *Ib.*

See MANDAMUS, 4, 5;
PRACTICE AND PROCEDURE, 10.

COURTS.

1. *Federal; adoption of state practice; when not required by § 914, Rev. Stat.*

Section 914, Rev. Stat., was not intended to require the adoption of the state practice where it would be inconsistent with the terms or defeat the purposes of the legislation of Congress, and state statutes which defeat or encumber the administration of the law under Federal statutes are not required to be followed in the

Federal courts. (*Mexican Central R. R. Co.* v. *Pinkney*, 149 U. S. 207.) *Hills & Co.* v. *Hoover*, 329.

2. *Power to add extra-constitutional limitations on Congress.*
Courts may not add any limitations on the power of Congress to impose excise taxes to that of uniformity, which was deemed sufficient by those who framed and adopted the Constitution. *Flint* v. *Stone Tracy Co.*, 107.

3. *Conclusions of Interstate Commerce Commission not reviewable by.*
The conclusions of the Interstate Commerce Commission on questions of fact are not reviewable by the courts. (*Balt. & Ohio R. R. Co.* v. *Pitcairn*, 215 U. S. 481.) *Interstate Com. Comm.* v. *Delaware, L. & W. R. R. Co.*, 235.

4. *Same.*
The conclusion by the Interstate Commerce Commission that the enforcement of a rule by a carrier creates a discrimination is one of fact and not open to review by the courts. *Ib.*

5. *Same.*
In the absence of statutory authority to exclude forwarding agents from availing of published rates the courts cannot overrule a conclusion of the Interstate Commerce Commission that such exclusion would create a preference; and this although the business of forwarding agents be competitive with the carrier itself. *Ib.*

See APPEAL AND ERROR, 6; JURISDICTION; PRACTICE AND PROCEDURE; PROHIBITION, 1; PUBLIC LANDS, 1; TAXES AND TAXATION, 10, 14, 17.

CRIMINAL LAW.

1. *Nature of offense of violating regulation made by executive officer as prescribed by statute.*
Where the penalty for violations of regulations to be made by an executive officer is prescribed by statute, the violation is not made a crime by such officer but by Congress, and Congress and not such officer fixes the penalty, nor is the offense against such officer but against the United States. *United States* v. *Grimaud*, 506.

2. *Relation of penal statute to time and place; offenses by corporations.*
Every penal statute has relation to time and place; and corporations, whose operations are conducted over a large territory by many agents, may commit offenses at the same time in different places, or at the same place at different times. *Baltimore & Ohio S. W. R. R. Co.* v. *United States*, 94.

3. *Separate offenses within act of June 29, 1906, relative to cruelty to animals in transit.*

Under the act of June 29, 1906, to prevent cruelty to animals in transit, offenses are separately punishable for every failure to comply with its provisions by confining animals longer than the prescribed time; and there is a separate offense as to each lot of cattle shipped simultaneously as the period expires as to each lot, regardless of the number of shippers or of trains of cars. *Ib.*

See CONGRESS, POWERS OF, 4; PHILIPPINE ISLANDS, 2, 3; CONSTITUTIONAL LAW, 3, 4; PUBLIC LANDS, 2; SAFETY APPLIANCE ACTS, 2.

CRUELTY TO ANIMALS.

See CRIMINAL LAW, 3; STATUTES, A 6.

DEEDS.

See LOCAL LAW (N. MEX.).

DEFENSES.

See SAFETY APPLIANCE ACTS, 5, 6, 7.

DELEGATION OF POWER.

See CONGRESS, POWERS OF, 2, 3; PUBLIC LANDS, 3.

DEPARTMENTAL REGULATIONS.

See CRIMINAL LAW, 1.

DIRECT TAXES.

See CONSTITUTIONAL LAW, 13, 29; TAXES AND TAXATION, 1, 4.

DISTRICT COURTS.

See JURISDICTION.

DISTRICT OF COLUMBIA.

See APPEAL AND ERROR, 1.

DIVERSITY OF CITIZENSHIP.

See REMOVAL OF CAUSES.

DOUBLE JEOPARDY.

See CONSTITUTIONAL LAW, 3, 4;
PHILIPPINE ISLANDS, 2, 3.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 6, 15, 16, 17, 20, 29.

ELECTION.

See ACTIONS, 4.

EMPLOYER AND EMPLOYÉ.

See NEGLIGENCE; SAFETY APPLIANCE ACTS;
RAILROADS, 1, 2; STATUTES, A 2.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 5–11, 21, 22, 29;
EVIDENCE;
STATUTES, A 4.

EQUITY.

See ACTIONS, 2;
JURISDICTION, A 7, 8, 9;
PUBLIC LANDS, 5.

ESTOPPEL.

See CONTRACTS, 2.

EVIDENCE.

Burden of proof as to unreasonableness of classification by State.

The burden of showing that a classification in a state statute denies equal protection of the law as not resting on a reasonable basis is on the party assailing it. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

See CONSTITUTIONAL LAW, 10, 11; PATENTS, 2, 3, 4, 7;
CONTRACTS, 3; STATES, 13.

EXCISES.

See CONSTITUTIONAL LAW, 13, 21, 23, 25–29;
COURTS, 2;
TAXES AND TAXATION, 4, 8, 9, 10, 14.

EXECUTIVE REGULATIONS.

See PUBLIC LANDS, 3.

EXECUTORS AND ADMINISTRATORS.

See PHILIPPINE ISLANDS, 1.

EXEMPTIONS.

See CONSTITUTIONAL LAW, 21, 24, 29; CONTRACTS, 5; RAILROADS, 4; TAXES AND TAXATION, 12, 15.

FACTS.

See COURT OF CLAIMS;
COURTS, 3, 4, 5;
PRACTICE AND PROCEDURE, 6, 7, 8, 10.

FEDERAL QUESTION.

1. *Constitutional question in order of court; effect to raise Federal question in order committing for contempt for disobedience.*

The fact that a question under the Constitution is involved in an order requiring production of books and papers, does not establish that a constitutional question is involved in the order committing for contempt for refusing to comply with the order to produce. *Nelson* v. *United States*, 201 U. S. 92, distinguished, and *Alexander* v. *United States*, 201 U. S. 117, followed. *Wise* v. *Mills*, 549.

2. *Right of municipality to tax own property not a Federal question.*

Whether a municipality may list and tax its own property is a matter of state practice and, except as it may affect a right previously acquired and protected by the Federal Constitution, presents no Federal question. *J. W. Perry Co.* v. *Norfolk*, 472.

3. *When question of rights under act of Congress an abstract one.*

The operative effect of the act of Congress of March 2, 1887, c. 319, 24 Stat. 446, regulating charges of a railway in Oklahoma Territory having ceased by its own terms on Oklahoma becoming a State, the question of what rights the State had in that respect under the Enabling Act is merely an abstract one. *Oklahoma* v. *Chicago, R. I. & Pac. Ry. Co.*, 302.

See JURISDICTION, A 4, 5; B;
PRACTICE AND PROCEDURE, 15, 16.

FENCE LAWS.

See TRESPASS.

FIFTH AMENDMENT.
See CONSTITUTIONAL LAW, 20;
STATUTES, A 3.

FINALITY OF JUDGMENT.
See JURISDICTION, A 15.

FOREIGN CORPORATIONS.
See STATUTES, A 3, 4.

FOREST RESERVES.
See CONGRESS, POWERS OF, 3;
PUBLIC LANDS, 2–5.

FOURTEENTH AMENDMENT.
See CONSTITUTIONAL LAW.

FOURTH AMENDMENT.
See CONSTITUTIONAL LAW, 18.

FRANCHISES.
See CONSTITUTIONAL LAW, 24, 25, 26, 29;
TAXES AND TAXATION, 2, 4, 8.

FRAUD.
See ACTIONS, 4.

GOVERNMENTAL AGENCIES.
See CONSTITUIONAL LAW, 24, 25, 26, 29.

GOVERNMENTAL FUNCTIONS.
See MUNICIPAL CORPORATIONS, 2;
TAXES AND TAXATION, 11, 12.

GRAZING OF CATTLE.
See PUBLIC LANDS, 2–7;
TRESPASS.

HABEAS CORPUS.

Functions of writ.
The writ of *habeas corpus* cannot be made to perform the functions of a writ of error. *Wise* v. *Henkel*, 556.
See JURISDICTION, A 4.

HEPBURN ACT.

See INTERSTATE COMMERCE, 2, 3;
PRACTICE AND PROCEDURE, 18.

HOURS OF SERVICE.

See RAILROADS, 1, 2;
STATUTES, A 2.

HUSBAND AND WIFE.

See LOCAL LAW (N. MEX.);
PHILIPPINE ISLANDS, 1.

IMPAIRMENT OF CONTRACT OBLIGATIONS.

See CONSTITUTIONAL LAW, 1, 2;
CONTRACTS, 1, 4, 5;
PRACTICE AND PROCEDURE, 13.

IMPOSTS AND EXCISES.

See CONSTITUTIONAL LAW, 13.

INDIANS.

1. *Annuities; payment; effect of provision of act of August 30, 1882.*
The provision in the act of August 30, 1882, c. 103, § 3, 10 Stat. 41, 56, forbidding payment of Indian annuities to any attorney or agent and requiring the same to be paid to the Indians or to the tribe did not give any vested rights to the Indians but was a direction to agents of the United States. *The Sac and Fox Indians*, 481.

2. *Treaties construed.*
In the Indian treaties under consideration in this case, the Government dealt with the tribes and not with individuals, and the treaties gave rights only to the tribes and not to the members. *Ib.*

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

INFRINGEMENT OF PATENT.

See PATENTS, 10, 11.

INJUNCTION.

See JURISDICTION, A 3; D 1, 2;
MANDAMUS, 3;
PATENTS, 11;
PROHIBITION, 2;
PUBLIC LANDS, 5.

INSTRUCTIONS TO JURY.

On question of contributory negligence.

Where the court instructs the jury to the effect that they must find for plaintiff, in case they believe he acted as a reasonably prudent man with his experience would have acted, but that they must find for defendant if they believe the plaintiff acted in a manner a reasonably prudent man would not have acted, the question of contributory negligence is fairly submitted. *Delk* v. *St. Louis & San Francisco R. R. Co.*, 580.

INTEREST.

See STATES, 8.

INTERNAL REVENUE.

See CONSTITUTIONAL LAW, 8, 13, 14;
TAXES AND TAXATION.

INTERNATIONAL LAW.

See STATES, 9;
TERRITORY.

INTERSTATE COMMERCE.

1. *Telegraph messages as.*

Telegraph companies whose lines extend from one State to another are engaged in interstate commerce, and messages passing from one State to another constitute such commerce, and companies and messages both fall under the regulating power of Congress. *Western Union Telegraph Co.* v. *Crovo*, 364.

2. *Hepburn Act; commodities clause; prohibition of transportation of commodities owned by corporation controlled by carrier.*

While the decision of this court in this and other commodities clause cases, 213 U. S. 366, expressly held that under the commodities clause stock ownership by a railroad company in a *bona fide* corporation, irrespective of the extent of such ownership, does not preclude the railroad company from transporting the commodities manufactured, produced or owned by such corporation, it is still open to the Government to question the right of the railroad company to transport commodities of a corporation in which the company owns stock and uses its power as a stockholder to obliterate all distinctions between the two corporations; and an amendment to the original bill in one of the commodities cases alleging such facts as show the absolute control by the defendant

railroad company, through stock ownership, over the corporation whose commodities are being transported, is germane to the original bill and should have been allowed by the trial court. *United States* v. *Lehigh Valley R. R. Co.*, 257.

3. *Hepburn Act; commodities clause; duty of carrier as to corporations in which it is stockholder and whose commodities it carries.*

By the operation and effect of the commodities clause a duty has been cast upon an interstate carrier not to abuse its power as a stockholder of a corporation whose commodities it transports in interstate commerce by so commingling the affairs of that corporation with its own as to cause the two corporations to become one and inseparable. *Ib.*

4. *Rates; ownership of goods as ground for discrimination in respect of carload rates.*

Under the act to regulate commerce a carrier cannot refuse to transport carload lots at carload rates because the goods do not actually belong to one shipper or are shipped by a forwarding agency for account of others. *Interstate Com. Comm.* v. *Delaware, L. & W. R. R. Co.*, 235.

5. *State interference with; regulation of telegraphs within power of State.*

While a state statute which amounts to a regulation of interstate commerce is void, one which simply imposes a penalty on a telegraph company for failure to perform a clear common-law duty, such as transmitting messages without unreasonable delay, is, in the absence of legislation by Congress on that subject, a valid exercise of the power of the State, if it relates to delay within the State even though the message be to a point without the State. Such a statute is neither a regulation of, nor hindrance to, interstate commerce, but is in aid thereof; and so *held* as to the statute of Virginia to that effect. *Western Union Telegraph Co.* v. *Crovo*, 364.

See PURE FOOD AND DRUG ACT, 1, 4, 5;
RESTRAINT OF TRADE;
RAILROADS, 1, 2;
SAFETY APPLIANCE ACTS;
STATUTES, A 6.

INTERSTATE COMMERCE ACT.

Section 2; origin in § 90 of English Railway Clauses Consolidation Act of 1845.

The provisions of § 2 of the act to regulate commerce, were substantially taken from § 90, the equality clause of the English Railway Clauses Consolidated Act of 1845, and had been construed by the courts

prior to the enactment of § 2 as forbidding a higher charge to forwarding agents than to others. *Interstate Com. Comm.* v. *Delaware, L. & W. R. R. Co.*, 235.

INTERSTATE COMMERCE COMMISSION.
See COURTS, 3, 4, 5.

INTOXICATING LIQUORS.
See JURISDICTION, A 3.

INVENTION.
See PATENTS.

JEOPARDY.
See CONSTITUTIONAL LAW, 3, 4;
PHILIPPINE ISLANDS, 2, 3.

JOINT STOCK COMPANIES.
See CONSTITUTIONAL LAW, 8.

JUDGMENTS AND DECREES.
See ACTIONS, 1; MANDAMUS, 4, 5;
JURISDICTION, A 15; PURE FOOD AND DRUG ACT, 6;
STATES, 3.

JUDICIAL DISCRETION.
See APPEAL AND ERROR, 4, 5;
PROHIBITION, 1.

JURISDICTION.
A. OF THIS COURT.

1. *Original; controversies between States.*

A suit brought by one State against another, formed by its consent from its territory, to determine what proportion the latter should pay of indebtedness of the former at the time of separation, is a quasi-international controversy and should be considered in an untechnical spirit. In such a controversy there is no municipal code governing the matter and this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone. *Virginia* v. *West Virginia*, 1.

2. *Original; action by State; extent of right to invoke.*

The original jurisdiction conferred by the Constitution on this court does not include every cause in which the State elects to make itself a party to vindicate the rights of its people or to enforce its own laws or public policy against wrong done generally. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 277.

3. *Original; action by State to enjoin carriers from introducing liquor into its territory, not within.*

A suit by a State, to enjoin carriers from conveying intoxicating liquors into its territory or an Indian reservation therein, is one to enforce by injunction regulations prescribed by the State for violations of its own penal statutes and is not within the original jurisdiction of this court, and so *held* as to a suit brought by the State of Oklahoma to enjoin railway and express companies from introducing liquor into its territory. *Oklahoma* v. *Gulf, Colorado & S. F. Ry. Co.*, 290.

4. *Of direct appeal from Circuit Court denying habeas corpus sued out by one committed for contempt.*

Where the court below had authority to make an order directing the performance of an act, irrespective of a constitutional question raised, the denial of a writ of *habeas corpus* on behalf of one committed for contempt for refusing to obey such order does not necessarily involve the construction or application of the Constitution and a direct appeal from the judgment denying the writ does not lie to this court under § 5 of the Judiciary Act of 1891. *Wise* v. *Henkel*, 556.

5. *To review judgment of Circuit Court for contempt for failure to obey order involving constitutional question.*

This court has no jurisdiction to review a judgment of the Circuit Court committing for contempt for failure to produce simply because the interlocutory order which appellant refused to obey involved a constitutional question; and, where it does not appear that the order disobeyed was so far *dehors* the authority of the court as to be void, the appeal from the order of commitment will be dismissed. *Wise* v. *Mills*, 549.

6. *To review judgment of Circuit Court on questions of trade-mark and unfair competition.*

While the Circuit Court cannot take cognizance of the question of unfair competition by use of plaintiff's trade-name where diverse citizenship does not exist, and in a case where jurisdiction is based

on trade-mark alone the judgment of that court is final, if diverse citizenship does exist and the requisite amount is in controversy, the judgment can be reviewed in this court on the question of unfair competition independently of the questions involving validity of the trade-mark. *Standard Paint Co.* v. *Trinidad Asphalt Co.*, 446.

7. *To determine what is just and equitable under contract between States.*
What is just and equitable under a contract between States is a judicial question within the competence of this tribunal to decide. *Virginia* v. *West Virginia*, 1.

8. *To enforce contract between States.*
A State may, by suit in this court, enforce against another State a contract in the performance of which the honor and credit of the plaintiff State is concerned. *New Hampshire* v. *Louisiana*, 108 U. S. 76, distinguished. *Ib.*

9. *To enforce contract between States; right of Virginia to maintain suit to enforce liability assumed by West Virginia.*
The liability assumed by West Virginia to bear a fair proportion of the debt of Virginia is a deep-seated equity not discharged by the fact that the creditors of Virginia may have released that State from the obligation of the portion to be assumed by West Virginia as ultimately determined; and Virginia may maintain a suit in this court to determine the liability of West Virginia even if the proceeds are to be applied to those holding certificates on which Virginia is no longer liable. *Ib.*

10. *Amount in controversy as test.*
The value of the matter in dispute in this court is the test of jurisdiction. (*Hilton* v. *Dickinson*, 108 U. S. 165.) *Martinez* v. *International Banking Corporation*, 214.

11. *Amount in controversy; by what tested; effect of counterclaim.*
Where the only question is the amount of indebtedness, which the security was sold to satisfy, that is the measure of the amount in controversy, and the counterclaim for return of the property sold cannot be added to the amount of the debt to determine the amount in controversy and give this court jurisdiction. *Harten* v. *Loffler*, 212 U. S. 397, distinguished. *Ib.*

12. *Amount in controversy; consolidation of causes; what amounts to, for purpose of.*
The mere fact that suits are tried together for convenience does not

amount to a consolidation, and where the understanding of the trial judge was that there was no consolidation this court will not unite the action so that the aggregate amount will give jurisdiction. *Ib.*

13. *Amount in controversy; aggregate of possible penalties in cases properly consolidated.*

Where cases are properly consolidated below, as these and others were, the aggregate amount of possible penalties in all the actions consolidated is the measure of the amount in controversy to give jurisdiction to this court. *Baltimore & Ohio S. W. R. R. Co.* v. *United States*, 94.

14. *Of appeal from Supreme Court of Philippine Islands.*

Where the case turned below on the consequence of a change in sovereignty by reason of the cession of the Philippine Islands, the construction of the treaty with Spain of 1898 is involved, and this court has jurisdiction of an appeal from the Supreme Court of the Philippine Islands under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 691, 695. *Vilas* v. *Manila*, 345.

15. *Finality of judgment below.*

A judgment of the intermediate appellate court reversing and remanding with instructions to enter judgment for plaintiff in accordance with its decision without fixing a definite amount is not such a final judgment as will give jurisdiction to this court. *Martinez* v. *International Banking Corporation*, 214.

See STATES, 1, 2, 3.

B. OF CIRCUIT COURTS.

Of claim based on simple breach of contract by municipality.

Where diversity of citizenship does not exist and plaintiff's claim is based on a simple breach of contract by a municipality, the case is not one arising under the contract or due process clause of the Constitution, and the Circuit Court has not jurisdiction. *Shawnee Sewerage & Drainage Co.* v. *Stearns*, 462.

C. OF DISTRICT COURTS.

1. *To award relief against non-resident defendants; right of absent defendants to reopen case.*

Where the District Court of the United States for Porto Rico has general jurisdiction under the act of March 2, 1901, c. 812, § 3, 31 Stat. 953, its power to award relief because of the situation of the property involved against non-resident defendants not found

within the District depends on § 8 of the act of March 3, 1875, c. 137, 18 Stat. 472; and the right of absent parties defendant not actually personally notified to have the suit reopened and to make defense depends on the proviso to that section. *Perez* v. *Fernandez*, 224.

2. *Porto Rican court without power to impose terms on defendants improperly notified as condition of reopening case.*

Where a defendant has not been actually personally notified as proided in § 8 of the act of 1875, but publication has been resorted to, he has a right to appear and make defense within a year, independently of whether he has had knowledge or notice of the pendency of the action by any methods other than those specified in the statute; and the court has no power to impose terms except as to costs. *Ib.*

3. *Porto Rican court beyond powers in imposing terms upon improperly served defendants as condition of reopening case.*

The District Court of the United States for Porto Rico having permitted certain defendants not personally notified to come in and defend to do so but only on condition of showing they had not received the published notice, had no knowledge of the pendency of the suit and had no meritorious defense to the bill, the order is reversed, as the defendants have the right to have the case reopened without terms other than payment of costs. *Ib.*

4. *Porto Rican court's action in dismissing bill to enjoin execution sale after conditioning right of improperly served defendants to reopen original case, reversed.*

A demurrer in this case having been sustained, and the bill which sought to enjoin the defendant sheriff from selling under execution issued in *Perez* v. *Fernandez*, *ante*, p. 224, dismissed, on the same grounds on which the same court refused to allow defendants in that suit, who were grantors of the plaintiffs in this suit, to come in and defend, and this court having reversed the judgment in *Perez* v. *Fernandez*, and it appearing that the two cases were so inseparably united in the mind of the court below that the error in the one controlled its action in the other, *held* that the judgment in this case be also reversed. *Blanco* v. *Hubbard*, 233.

D. Generally.

1. *Enjoining enforcement of state statute; single judge without jurisdiction. Act of June 18, 1910.*

The provisions of § 17 of the act of June 18, 1910, c. 309, 36 Stat. 557,

in regard to interlocutory injunctions to restrain the enforcement of state statutes on the ground of unconstitutionality, relate to the hearing of the application, and a single judge has no jurisdiction to hear and deny such an application. He must, prior to the hearing, call to his assistance two other judges, as required by the act. *Ex parte Metropolitan Water Co.*, 539.

2. *Same; order denying application void.*

A single justice or judge who, without calling to his assistance two other judges as required by § 17 of the act of June 18, 1910, c. 309, 36 Stat. 557, denies an application for injunction in a case specified in said act, on the ground that the state statute involved is constitutional, acts without jurisdiction, and the order is void. *Ib.*

See PRACTICE AND PROCEDURE, 3, 4;
PROHIBITION, 1;
PURE FOOD AND DRUG ACT, 4, 6.

LACHES.

See APPEAL AND ERROR, 1, 2;
MANDAMUS, 4, 5.

LEASE.

See CONSTITUTIONAL LAW, 1, 2;
RAILROADS, 4;
REMOVAL OF CAUSES, 1.

LEGISLATION.

See CONGRESS, POWERS OF;
TAXES AND TAXATION, 16.

LEGISLATIVE POWERS.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 12, 13, 14, 20, 21, 25–29.

LICENSE.

See PUBLIC LANDS, 2, 6.

LIENS.

See MUNICIPAL CORPORATIONS, 1.

LIQUORS.

See JURISDICTION, A 3.

LOCAL LAW.

Illinois. Railroads; liability of lessor (see Removal of Causes, 1). *Chicago, B. & Q. Ry. Co.* v. *Willard*, 413.

New Mexico. Conveyance of real estate by husband and wife. Under the law of New Mexico of 1901, providing that both husband and wife must join in conveyances of real estate acquired during coverture, a deed of the husband in which the wife does not join is ineffectual to convey community property even though acquired prior to the passage of the act. *Arnett* v. *Reade*, 311.

New York. Act of 1903 relative to the use of photographs (see Constitutional Law, 6). *Sperry & Hutchinson Co.* v. *Rhodes*, 502.
Mineral Springs Act of May 20, 1908 (see Constitutional Law, 10, 11, 17). *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

Philippine Islands. Act of July 1, 1902. Protection against double jeopardy (see Philippine Islands, 2, 3). *Gavieres* v. *United States*, 338.
Community property (see Philippine Islands, 1). *Enriquez* v. *Go-Tiongco*, 307.

Porto Rico. Right of non-resident defendant not properly notified to reopen suit (see Jurisdiction, C). *Perez* v. *Fernandez*, 224.

Virginia. Act relating to telegraph messages (see Interstate Commerce, 5). *Western Union Telegraph Co.* v. *Crovo*, 364.

Generally. See Public Lands, 7.

MANDAMUS.

1. *Writ will issue when; functions of writ.*

Mandamus cannot perform the office of an appeal or writ of error and is only granted as a general rule where there is no other adequate remedy. (*Re Atlantic City R. R. Co.*, 164 U. S. 633.) *Ex parte Oklahoma*, 191.

2. *Adequacy of remedy to bar right to.*

There is an identity of the principles which govern mandamus and prohibition and the latter writ is also refused in this case as there is a remedy by review in this court after final judgment. (*Ex parte Nebraska*, 209 U. S. 436.) *Ib.*

3. *As remedy against action of single judge in denying injunction against enforcement of state statute under act of June 18, 1910.*

Where no appeal is given by statute, mandamus is the proper remedy,

Ex parte Harding, 219 U. S. 363; and so held as to an order made by a single judge denying a motion for injunction in a case specified in § 17 of the act of June 18, 1910, c. 309, 36 Stat. 557, the statute only providing for appeals from orders made after hearing by three judges. *Ex parte Metropolitan Water Co.*, 539.

4. *Laches; right to writ defeated by.*

Mandamus to Court of Claims to require it to modify its decree to conform to a decree of this court and make a distribution *per stirpes* instead of *per capita* refused on the ground of laches. *Matter of Eastern Cherokees*, 83.

5. *Same.*

Where the Court of Claims decrees a distribution *per capita*, parties who feel aggrieved thereby, and claim that the distribution should be *per stirpes* in order to conform to the decree of this court, are not obliged to await the completion of the rolls on which the distribution is to be made. They can apply at once to this court for mandamus, *Re Sandford Fork & Tool Co.*, 160 U. S. 247, and are chargeable with laches if they wait and permit all the steps to be taken at great expense and the fund disbursed, so that in case of their success the Government might be required to pay twice; and so *held* in this case. *Ib.*

MASTER AND SERVANT.

See NEGLIGENCE; RAILROADS, 1, 2; SAFETY APPLIANCE ACTS; STATUTES, A 2.

MILITARY OCCUPATION.

See MUNICIPAL CORPORATIONS, 2, 3.

MINERAL WATERS.

See CONSTITUTIONAL LAW, 9, 17.

MISTAKE.

See ACTIONS, 3.

MUNICIPAL CORPORATIONS.

1. *Remedy of one supplying goods to; right of vendor to lien on special funds.*

One supplying goods to a municipality does so, in the absence of specific provision, on its general faith and credit, and not as against special funds in its possession; and even if such goods are

supplied for a purpose for which the special funds are held no specific lien is created thereon. *Vilas* v. *Manila*, 345.

2. *Military occupation; territorial cession; effect on governmental functions.*

While military occupation or territorial cession may work a suspension of the governmental functions of municipal corporations, such occupation or cession does not result in their dissolution. *Ib.*

3. *Military occupation; territorial cession; effect on legal entity of municipality.*

The legal entity of the city of Manila survived both its military occupation by, and its cession to, the United States; and, as in law, the present city as the successor of the former city, is entitled to the property rights of its predecessor, it is also subject to its liabilities. *Ib.*

See CONSTITUTIONAL LAW, 1, 2; JURISDICTION, B;
CONTRACTS, 1; TERRITORY, 1·
FEDERAL QUESTION, 2; TREATIES.

NEGLIGENCE.

Assumption of risk and contributory negligence distinguished.

There is a practical and clear distinction between assumption of risk and contributory negligence. By the former, the employé assumes the risk of ordinary dangers of occupation and those dangers that are plainly observable; the latter is the omission of the employé to use those precautions for his own safety which ordinary prudence requires. *Schlemmer* v. *Buffalo, R. & P. Ry. Co.*, 590.

See INSTRUCTIONS TO JURY;
SAFETY APPLIANCE ACTS, 5–8.

NEW MEXICO.

See LOCAL LAW.

NOTICE.

See APPEAL AND ERROR, 3;
CONSTITUTIONAL LAW, 2;
JURISDICTION, C.

OBJECTIONS.

See APPEAL AND ERROR, 1.

OFFENSES.

See CONSTITUTIONAL LAW, 3, 4; CRIMINAL LAW, 1; PHILIPPINE ISLANDS, 3; PUBLIC LANDS, 2.

OKLAHOMA.

See FEDERAL QUESTION, 3.

ONUS PROBANDI.

See CONSTITUTIONAL LAW, 10; EVIDENCE.

ORIGINAL JURISDICTION.

See JURISDICTION, A 1, 2, 3.

PARTIES.

See APPEAL AND ERROR, 3; PRACTICE AND PROCEDURE, 1; STATES, 1, 2, 3.

PATENTS.

1. *Rights of patentees; whence derived and consideration for; who not entitled.*

The rights enjoyed by a patentee are derived from statutory grant under authority conferred by the Constitution, and are the reward received in exchange for advantages derived by the public after the period of protection has expired; and the rights of one not disclosing his secret process so as to secure a patent are outside of the policy of the patent laws, and must be determined by the legal principles applicable to the ownership of such process. *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 373.

2. *Utility of device; how attested.*

Utility of a device may be attested by litigation over it showing and measuring the existence of public demand for its use. *Diamond Rubber Co.* v. *Consolidated Tire Co.*, 428.

3. *Utility of device; exclusive use as evidence of.*

While extensive use of an article beyond that of its rivals may be induced by advertising, where the use becomes practically exclusive a presumption of law will attribute that result to its essential excellence and its superiority over other forms in use. *Ib.*

4. *Novelty; what constitutes and evidence of.*

The law regards a change as a novelty, and the acceptance and utility

of the change as further evidence, even as a demonstration, of novelty. *Ib.*

5. *Combinations; use of old elements.*
Elements of a combination may all be old, for in making a combination the inventor has the whole field of mechanics to draw from. (*Leeds & Catlin Co.* v. *Victor Talking Machine Co.*, 213 U. S. 318.) *Ib.*

6. *Invention; utility; advance on prior art.*
The rubber carriage tire involved in this case and patented to Grant attained a degree of utility not reached by any prior patent, and, although only a step beyond the prior art, is entitled to be patented as an invention. *Ib.*

7. *Invention; evidence to establish.*
On the evidence this court finds that the improvement on rubber tires involved in this case possesses the power ascribed to it by the inventor and denied by those using it without authority, and holds that this power was not the result of chance but was achieved by careful study of scientific and mechanical problems necessary to overcome defects in all other existing articles of that class. *Ib.*

8. *Invention; presumption of.*
Where a device possesses such amount of change from the prior art as to receive approval of the Patent Office, it is entitled to the presumption of invention which attaches to a patent. *Ib.*

9. *Effect of latent capacity of device on rights of patentee.*
An inventor is entitled to all that his patent fairly covers, even though its complete capacity is not recited in the specifications and was unknown to the inventor prior to the patent issuing. *Ib.*

10. *Infringement.*
In the courts below defendants relied on invalidity of complainant's patent, did not press the defense of non-infringement, and patent, and conceded that infringement existed in prior litigation, and this court holds that infringement exists. *Ib.*

11. *Infringement; scope of injunction against.*
Quære whether under *Kessler* v. *Eldred*, 206 U. S. 285, the injunction can extend to sale of articles in other circuits in which complainant's patent has been held invalid. *Ib.*

PAYMENT.

See INDIANS, 1.

PENALTIES AND FORFEITURES.

See CONGRESS, POWERS OF, 3; COPYRIGHTS, 2, 3; CRIMINAL LAW, 1; INTERSTATE COMMERCE, 5; JURISDICTION, A 13; PUBLIC LANDS, 2; SAFETY APPLIANCE ACTS, 1, 2; STATES, 3; STATUTES, A 1, 3.

PHILIPPINE ISLANDS.

1. *Community property; liability for services rendered in respect thereof.*

The Supreme Court of the Philippine Islands having held that on the death of the wife the husband, if surviving, is entitled to settle the affairs of the community, and on his subsequent death his executor is the proper administrator of the same; and on the facts as found by both courts below, *held* that in this case the community estate is liable for services rendered with knowledge and consent of all parties in interest in connection with sale of property belonging to it after both husband and wife had died, and that the proper method of collection was by suit against the husband's representative in his capacities of executor and administrator. *Enriquez* v. *Go-Tiongco*, 307.

2. *Double jeopardy; protection against afforded by act of July 1, 1902.*

Protection against double jeopardy was by § 5 of the act of July 1, 1902, c. 1369, 32 Stat. 691, carried to the Philippine Islands in the sense and in the meaning which it had obtained under the Constitution and laws of the United States. (*Kepner* v. *United States*, 195 U. S. 100.) *Gavieres* v. *United States*, 338.

3. *Double jeopardy within meaning of § 5 of act of July 1, 1902.*

The protection intended and specifically given is against second jeopardy for the same offense, and where separate offenses arise from the same transaction the protection does not apply. *Ib.*

See JURISDICTION, A 14; MUNICIPAL CORPORATIONS; TERRITORY; TREATIES.

PHOTOGRAPHS.

See CONSTITUTIONAL LAW, 6, 7.

PLEADING.

See APPEAL AND ERROR, 4; INTERSTATE COMMERCE, 2; PRACTICE AND PROCEDURE, 18.

POLICE POWER.

See CONSTITUTIONAL LAW, 10.

PORTO RICO.

See JURISDICTION, C.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Who may attack constitutional validity of state statute.*

If the facts alleged by one contesting the constitutionality of a state statute take him out of the operation of the statute, as construed by the highest court of the State, he is not harmed by the statute and cannot draw in question or test its validity. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

2. *Answers to questions on certificate.*

Questions of the character propounded in this case must be answered in reference to the actual case. (*Columbus Watch Co.* v. *Robbins*, 148 U. S. 266.) *Hills & Co.* v. *Hoover*, 329.

3. *Determination of questions of jurisdiction when not suggested by counsel.*

On every writ of error or appeal the first and fundamental question is that of jurisdiction; first of this court and then of the court below. This question must be asked and answered by the court itself, even when not otherwise suggested and without respect to the relation of the parties to it. (*M. C. & L. M. Ry. Co.* v. *Swan*, 111 U. S. 379.) *Chicago, B. & Q. Ry. Co.* v. *Willard*, 413.

4. *Power of this court to prevent Circuit Court from wrongfully exercising jurisdiction.*

Consent of parties can never confer jurisdiction upon a Federal court, and this court can of its own motion prevent the Circuit Court from exercising jurisdiction not conferred upon it by statute. (*Minnesota* v. *Northern Securities Co.*, 194 U. S. 48.) *Ib.*

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

Courts of the United States must accept the construction put upon a state statute by the highest court of the State; and, in determining the constitutionality of a state statute, this court is not concerned with provisions thereof which the highest court of the State has declared invalid. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

6. *Following findings of lower courts on questions of fact.*

In an action of ejectment in New Mexico, the trial court was of opinion that the boundaries under which plaintiff claimed did not include the land in dispute, and the Supreme Court of the Territory affirmed on the ground of defect in plaintiff's grant and that the evidence as to possession was too vague to raise a presumption in place of proof; and this court affirms the judgment. *Sena* v. *American Turquoise Co.*, 497.

7. *Following lower court's findings of fact when motions for ruling amount to request by both parties.*

Where both parties move for a ruling, and there is no question of fact sufficient to prevent a ruling being made, the motions together amount to a request that the court find any facts necessary to make the ruling; and, if the court directs a verdict, both parties are concluded as to the facts found, and unless the ruling is wrong as matter of law the judgment must stand. (*Beuttell* v. *Magone*, 157 U. S. 154.) *Ib.*

8. *Assumption of state of facts to support constitutionality of classification by State.*

This court will assume the existence at the time the statute was enacted of any state of facts that can reasonably be conceived and which will support a classification in a state statute attacked as denying equal protection of the law. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

9. *As to overruling decisions of local courts on questions of local practice.*

Although generally slow to overrule decisions of courts other than those of the United States on questions of local practice, this court will do so where, as in this case, the court below yields a consideration of the merits to form and takes too strict a view of its own powers. *Taylor* v. *Leesnitzer*, 90.

10. *Remanding case to Court of Claims for sufficient findings of fact.*

Where proper findings are not made by the Court of Claims on specific matters to enable this court to properly review the judgment, the record will be remanded to that court for additional findings as to such matters, *United States* v. *Adams*, 9 Wall. 661; and so ordered in this case, with instructions to return to this court with all convenient speed. *Ripley* v. *United States*, 491.

11. *Mandate where Circuit Court of Appeals reversed and trial court affirmed.*

Where the Circuit Court rightly construed the law involved and there

was no error in the admission of evidence, and the Circuit Court of Appeals reverses the judgment on a mistaken view of the law, there is no reason to disturb the verdict of the trial court and the judgment of the Circuit Court of Appeals will be reversed and that of the trial court affirmed. *Delk* v. *St. Louis & San Francisco R. R. Co.*, 580.

12. *Mandate where Circuit Court dismissed bill on merits when without jurisdiction.*

Where the Circuit Court dismisses a bill on the merits, but it appears that jurisdiction did not exist, the decree must be reversed and the cause remanded with instructions to dismiss for want of jurisdiction. (*McGilvra* v. *Ross*, 215 U. S. 70.) *Shawnee Sewerage & Drainage Co.* v. *Stearns*, 462.

13. *Construction of contract in determining question of impairment.*

This court in order to determine whether a contract has been impaired within the meaning of the Federal Constitution has power to decide for itself what the true construction of the contract is. *J. W. Perry Co.* v. *Norfolk*, 472.

14. *Effect not given to statements in briefs of counsel which are unsupported by record.*

This court cannot give effect to statements not supported by the record and contrary to the situation as it appears to have been regarded by the highest court of the State, and which is not inconsistent with the allegations of the bill. *Lindsley* v. *Natural Carbonic Gas Co.*, 61.

15. *Duty of state court on reversal of its judgment on Federal question and remand of case for further proceedings in conformity with opinion.*

Where on writ of error the case is reversed on the Federal question and remanded to the highest state court for further proceedings in conformity with the opinion of this court, the state court should, in its remittitur require the further proceedings by the lower court to be in conformity with the opinion of this court, as the matter involved is a Federal right within the protection of this court. *Schlemmer* v. *Buffalo, R. & P. Ry. Co.*, 590.

16. *Effect of failure of state court to observe and conform to mandate of this court.*

If, however, the trial court on the second trial of a case reversed by this court on the Federal question does give to the statute involved the construction and effect given by this court, the judg-

ment will not be reversed because the remittitur from the highest court to which the mandate of this court was sent, did not specifically direct that further proceedings be had in conformity with the opinion of this court. *Ib.*

17. *Inference of bad faith of Government official; when justified.*
This court may not draw an inference of bad faith on the part of a government inspector unless the findings are so clear on the subject as to take the inference beyond controversy. *Ripley* v. *United States*, 491.

18. *Effect of failure of Government to save rights in cases brought under commodities clause of Hepburn Act.*
Under the decision of this court in these and other commodities clause cases, 213 U. S. 364, there was no error in the Circuit Court dismissing the bill absolutely, the Government not having asked leave to amend, the stipulation to submit on bill and answer not having been withdrawn, and no violation of the law having been shown on the admitted facts. *United States* v. *Erie R. R. Co.*, 275.

19. *Affirmance of order of dismissal; effect of stipulation in lower court.*
Under such circumstances the decree must be affirmed whatever may be its scope and effect as *res judicata* in view of stipulations made in the court below. *Ib.*

20. *Avoidance of constitutional question where possible.*
This court will, so far as it can, decide cases before it without reference to questions arising under the Federal Constitution. (*Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175.) *Light* v. *United States*, 523.

See APPEAL AND ERROR, 1, 2; COURTS, 1; MANDAMUS, 5; SAFETY APPLIANCE ACTS, 3, 4; STATES, 8; STATUTES, A 3.

PREFERENCES.

See COURTS, 5.

PRESUMPTIONS.

See APPEAL AND ERROR, 3; PATENTS, 3, 8; PRACTICE AND PROCEDURE, 8, 17; PUBLIC PROPERTY; TERRITORY, 1.

PRODUCTION OF BOOKS.

See FEDERAL QUESTION, 1.

PROHIBITION.

1. *Writ will issue when; discretion of court.*

Prohibition is an extraordinary writ which will issue against a court which is acting clearly without any jurisdiction whatever, and where there is no other remedy; but where there is another legal remedy, by appeal or otherwise, or where the question of jurisdiction is doubtful or depends on matters outside the record, the granting or refusal of the writ is discretionary. (*In re Rice*, 155 U. S. 396.) *Ex parte Oklahoma*, 191, 210.

2. *Adequacy of remedy to bar right to.*

Where in an action to enjoin state officers from enforcing a state statute against articles in interstate commerce, the interlocutory injunction can be corrected in the Circuit Court of Appeals, and there is an appeal on the question of jurisdiction to this court after final decree, an adequate remedy is provided and the writ of prohibition could only be granted on the ground of absolute right and this court in this case declines to allow it to issue. *Ib.*

See MANDAMUS, 2.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 6, 12, 15, 16, 17, 29;
MUNICIPAL CORPORATIONS, 3;
TREATIES.

PROPRIETARY MEDICINES.

See RESTRAINT OF TRADE, 3;
SALES, 2.

PUBLIC LANDS.

1. *Administration a legislative, not judicial, question.*

It is for Congress and not for the courts to determine how the public lands shall be administered. *Light* v. *United States*, 523.

2. *Forest reserves; revocation of implied license to graze, by statute authorizing the making of regulations which prohibit.*

Even if there is no express act of Congress making it unlawful to graze sheep or cattle on a forest reserve, when Congress expressly provides that such reserves can only be used for lawful purposes subject to regulations and makes a violation of such regulations an offense, any existing implied license to graze is curtailed and qualified by Congress; and one violating the regulations when promulgated makes an unlawful use of the Government's prop-

erty and becomes subject to the penalty imposed. *United States* v. *Grimaud*, 506.

3. *Forest reserves; validity of act of Congress conferring upon Secretary of Agriculture power to make regulations.*

Under the acts establishing forest reservations, their use for grazing or other lawful purposes is subject to rules and regulations established by the Secretary of Agriculture; and it being impracticable for Congress to provide general regulations, that body acted within its constitutional power in conferring power on the Secretary to establish such rules; the power so conferred being administrative and not legislative, is not an unconstitutional delegation. *United States* v. *Grimaud*, 506; *Light* v. *United States*, 523.

4. *Forest reserves; power of Congress to establish and regulate.*

Congress has power to set apart portions of the public domain and establish them as forest reserves and to prohibit the grazing of cattle thereon or to permit it subject to rules and regulations. *Light* v. *United States*, 523.

5. *Forest reserves; trespasses upon; equity jurisdiction to restrain.*

Where cattle are turned loose under circumstances showing that the owner expects and intends that they shall go upon a reserve to graze thereon, for which he has no permit and he declines to apply for one, and threatens to resist efforts to have the cattle removed and contends that he has a right to have his cattle go on the reservation, equity has jurisdiction, and such owner can be enjoined at the instance of the Government, whether the land has been fenced or not. *Ib.*

6. *Implied license to graze cattle; rights conferred by.*

At common law the owner was responsible for damage done by his live stock on land of third parties, but the United States has tacitly suffered its public domain to be used for cattle so long as such tacit consent was not cancelled, but no vested rights have been conferred on any person, nor has the United States been deprived of the power of recalling such implied license. *Ib.*

7. *Quære as to amenability of United States to state fence laws.*

Quære, and not decided, whether the United States is required to fence property under laws of the State in which the property is located. *Ib.*

See CONGRESS, POWERS OF, 3;
CONSTITUTIONAL LAW, 12.

PUBLIC OFFICERS.

See COURT OF CLAIMS;
INDIANS, 1;
PRACTICE AND PROCEDURE, 17.

PUBLIC POLICY.

See RESTRAINT OF TRADE, 4.

PUBLIC PROPERTY.

Charge for use implied by statute providing for application of moneys received therefrom.

A provision in an act of Congress as to the use made of moneys received from government property clearly indicates an authority to the executive officer authorized by statute to make regulations regarding the property to impose a charge for its use. *United States* v. *Grimaud*, 506.

See TREATIES.

PUBLIC SERVICE CORPORATIONS.

See TAXES AND TAXATION, 11.

PURE FOOD AND DRUG ACT.

1. *Articles included in act of June 30, 1906.*

The object of the Pure Food and Drug Act of June 30, 1906, c. 3915, 34 Stat. 768, is to keep adulterated articles out of the channels of interstate commerce, or if they enter such commerce to condemn them while in transit, or in original or unbroken packages after reaching destination; and the provisions of § 10 of the act apply to articles shipped, not only to articles for sale but to articles to be used as raw material in the manufacture of some other product. *Hipolite Egg Co.* v. *United States*, 45.

2. *Articles regarded as designed for sale.*

In construing the Pure Food and Drug Act, all articles, compound or single, not intended for consumption by the producer are regarded as designed for sale, and for that reason it is the concern of the law to have them pure. *Ib.*

3. *Remedies not inconsistent.*

The remedies given by the statute *in personam* and by condemnation are not inconsistent and they are not dependent. (*The Three Friends*, 166 U. S. 1.) *Ib.*

4. *Articles subject to seizure; evidence; effect of presence within State on jurisdiction of Federal Government.*

By the Pure Food and Drug Act adulterated articles are, while in interstate commerce, made culpable as well as their shipper; while in original unbroken packages they can be seized and they carry their own identification as contraband of law; they are subject to the power of Congress to regulate interstate commerce, and they are not beyond the jurisdiction of the National Government because within the borders of a State. *Quære*, how far such articles can be pursued beyond the original package. *Ib.*

5. *Appropriateness of means employed by Congress to execute power to regulate commerce.*

Congress can use appropriate means to execute the power conferred upon it by the Constitution and the seizure and condemnation of prohibited articles in interstate commerce at their point of destination in original unbroken packages is an appropriate means. (*McCulloch* v. *Maryland*, 4 Wheat. 316; *Lottery Case*, 188 U. S. 321, 355.) *Ib.*

6. *Proceedings in rem under; award of costs in.*

In a proceeding *in rem* under § 10 of the Pure Food and Drug Act the court has jurisdiction to enter personal judgment for costs against the claimant. *Quære*, whether the certificate in this case presents the question of jurisdiction to award costs. *Ib.*

RAILROADS.

1. *Employés' hours of service; when office continuously operated.*

In determining whether an office is one continuously operated, a trifling interruption will not be considered; and *quære*, whether a railway station shut for two periods of three hours each day and open the rest of the time is not a station continuously operated night and day within the meaning of §§ 2 and 3 of the act of March 4, 1907, c. 2939, 34 Stat. 1415. *United States* v. *Atchison, T. & S. F. Ry. Co.*, 37.

2. *Same; what constitutes period prescribed by act of March 4, 1907.*

Under §§ 2 and 3 of the act of March 4, 1907, c. 2939, 34 Stat. 1415, a telegraph operator employed for six hours and then, after an interval, for three hours, is not employed for a longer period than nine consecutive hours. *Ib.*

3. *Rate regulation; law governing.*

Whether rates of a railway within the territory of a new State are illegal depends upon the law of the State, subject to the con-

stitutional protection of the railway company against undue exactions without due process of law, and not upon acts of Congress affecting such rates passed prior to the formation of the State and which by their own terms expressly cease to be operative after the formation of the State. *Oklahoma* v. *Chicago, R. I. & Pac. Ry. Co.*, 302.

4. *Charter obligations; effect on, of statutory permission to lease road.*

In the absence of express exemptions in the statute, a statutory permission to a railroad to lease its road does not relieve the lessor from its charter obligations. *Chicago, B. & Q. Ry. Co.* v. *Willard*, 413.

See CARRIERS;
COURTS, 4, 5;
CRIMINAL LAW, 3;
FEDERAL QUESTION, 3;
INTERSTATE COMMERCE, 2, 3, 4;
INTERSTATE COMMERCE ACT;
JURISDICTION, A 3;
REMOVAL OF CAUSES, 1;
SAFETY APPLIANCE ACTS;
STATES, 1, 4, 5;
STATUTES, A 2, 6.

RAILWAY EMPLOYÉS' ACT.

See RAILROADS, 1, 2;
STATUTES, A 2.

RATES.

See CARRIERS;
COURTS, 4, 5;
FEDERAL QUESTION, 3;
INTERSTATE COMMERCE, 4;
INTERSTATE COMMERCE ACT;
RAILROADS, 3;
STATES, 1, 4, 5.

REAL PROPERTY.

See LOCAL LAW (N. MEX.).

REMEDIES.

See ACTIONS;
COPYRIGHTS;
HABEAS CORPUS;
MANDAMUS;
PHILIPPINE ISLANDS, 1;
PROHIBITION;
PURE FOOD AND DRUG ACT, 3;
TAXES AND TAXATION, 17.

REMOVAL OF CAUSES.

1. *Diversity of citizenship; effect of joint action against lessor and lessee, one of whom a resident of plaintiff's State.*

Where, as in Illinois, the lessor railroad company remains liable with the lessee company for torts arising from operation, a plaintiff sustaining injuries may bring an action either separately or

against both jointly and in the latter case neither defendant can remove on the ground of diverse citizenship if either is a resident of the plaintiff's State. *Chicago, B. & Q. Ry. Co.* v. *Willard*, 413.

2. *Removability; upon what dependent.*

Removability of an action depends upon the state of the pleadings and the record at the time of the application. *Ib.*

See ACTIONS, 4.

RES JUDICATA.

See PRACTICE AND PROCEDURE, 7.

RESTRAINT OF TRADE.

1. *Agreements within prohibition as to.*

Agreements or combinations between dealers, having for their sole purpose the destruction of competition and fixing of prices, are injurious to the public interest and void; nor are they saved by advantages which the participants expect to derive from the enhanced price to the consumer. *Dr. Miles Medical Co.* v. *Parks & Sons Co.*, 373.

2. *System of contracts between manufacturer and merchants within prohibition of act of July 2, 1890.*

A system of contracts between manufacturers and wholesale and retail merchants by which the manufacturers attempt to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail whether purchasers or subpurchasers, eliminating all competition and fixing the amount which the consumer shall pay, amounts to restraint of trade and is invalid both at common law, and, so far as it affects interstate commerce, under the Sherman Anti-trust Act of July 2, 1890; and so *held* as to the contracts involved in this case. *Ib.*

3. *Contracts; right of manufacturer to control prices by.*

Such agreements are not excepted from the general rule and rendered valid because they relate to proprietary medicines manufactured under a secret process but not under letters patent; nor is a manufacturer entitled to control prices on all sales of his own products in restraint of trade. *Ib.*

4. *Reasonable restraint; what constitutes.*

Although the earlier common-law doctrine in regard to restraint of trade has been substantially modified, the public interest is still

the first consideration; to sustain the restraint it must be reasonable as to the public and parties and limited to what is reasonably necessary, under the circumstances, for the covenantee; otherwise restraints are void as against public policy. *Ib.*

See SALES.

REVENUE BILLS.

See CONSTITUTIONAL LAW, 14.

SAFETY APPLIANCE ACTS.

1. *Exercise of reasonable care not compliance with.*

Under the Safety Appliance Acts of March 2, 1893, c. 196, 27 Stat. 531, April 1, 1896, c. 87, 29 Stat. 85, and March 2, 1903, c. 976, 32 Stat. 943, there is imposed an absolute duty on the carrier and the penalty cannot be escaped by exercise of reasonable care. *Chicago, B. & Q. Ry. Co.* v. *United States*, 559.

2. *Action for penalties; civil nature of.*

An action for penalties under the Safety Appliance Acts is a civil, and not a criminal one, and the enforcement of such penalties is not governed by considerations controlling prosecution of criminal offenses. *Ib.*

3. *Prior construction adhered to.*

For this court to give a construction to an act of Congress contrary to one previously given would cause uncertainty if not mischief in the administration of law in Federal courts, and, having placed an interpretation on the Safety Appliance Acts, this court will adhere thereto until Congress by amendment changes the rule announced in *St. Louis, I. M. & S. Railway Co.* v. *Taylor*, 210 U. S. 281.

4. *Construction of acts foreclosed.*

This court in *St. Louis, I. M. & S. Railway Co.* v. *Taylor*, 210 U. S. 281, considered and determined the scope and effect of the Safety Appliance Acts and the degree of care required by the carrier, and the question is not open to further discussion, as this court should not disturb a construction which has been widely accepted and acted upon by the courts. *Ib.*

5. *Assumption of risk; contributory negligence; effect of acts on defenses of.*

The Safety Appliance Acts of March 2, 1893, c. 196, 27 Stat. 531; April 1, 1896, c. 87, 29 Stat. 85; March 2, 1903, c. 976, 32 Stat. 943, took away from the carrier the defense of assumption of risk

by the employé but did not affect the defense of contributory negligence. *Schlemmer* v. *Buffalo, R. & P. Ry. Co.*, 590.

6. *Assumption of risk and contributory negligence; effect of acts on defenses of.*

Under the Safety Appliance Acts, an employé does not by reason of his knowledge of the fact, take upon himself the risk of injury from a car unequipped as required by the acts—but he is not absolved from duty to use ordinary care for his own protection merely because the carrier has failed to comply with the law; and, in the absence of legislation taking it away, the defense of contributory negligence is open. *Ib.*

7. *Contributory negligence as defense to action brought under.*

On the record in this case there appears to have been contributory negligence on the part of plaintiff's intestate, apart from the question of assumption of risk, and the state court denied plaintiff no Federal right under the Safety Appliance Acts in dismissing the complaint on the ground of contributory negligence. *Ib.*

8. *Contributory negligence as defense.*

Prior to the amendment by the act of April 22, 1908, c. 149, 35 Stat. 65, the carrier had a defense where contributory negligence on the part of the party injured was the proximate cause of the injury. (*Schlemmer* v. *Buffalo, Rochester & Pittsburg Railway Co., ante*, p. 590.) *Delk* v. *St. Louis & San Francisco R. R. Co.*, 580.

9. *Couplers; absolute duty of carrier as to.*

Chicago, Burlington & Quincy Railway v. *United States, ante*, p. 559, followed to effect that under the Safety Appliance Acts of March 2, 1893, c. 196, 27 Stat. 531; April 1, 1896, c. 87, 29 Stat. 85; March 2, 1903, c. 976, 32 Stat. 943, the carrier is not bound only to the extent of its best endeavors but is subject to an absolute duty to provide and keep proper couplers at all times and under all circumstances. *Ib.*

10. *Interstate commerce; when car deemed engaged in.*

A car containing an interstate shipment stopped for repairs before it reaches its destination and the cargo whereof is not ready for delivery to the consignees, is still engaged in interstate commerce and subject to the provisions of the Safety Appliance Acts. *Ib.*

SALES.

1. *Right of manufacturer of unpatented article to fix prices for future sales.*

A manufacturer of unpatented articles cannot, by rule or notice, in absence of statutory right, fix prices for future sales, even though

the restriction be known to purchasers. Whatever rights the manufacturer may have in that respect must be by agreements that are lawful. *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 373.

2. *Right of vendor to control sales of unpatented proprietary medicines.*
A manufacturer of unpatented proprietary medicines stands on the same footing as to right to control the sale of his product as the manufacturers of other articles, and the fact that the article may have curative properties does not justify restrictions which are unlawful as to articles designed for other purposes. *Ib.*

3. *Protection to which vendor of products of unpatented process entitled.*
The protection of an unpatented process of manufacture does not necessarily apply to the sale of articles manufactured under the process. *Ib.*

See PATENTS, 11;
UNFAIR COMPETITION.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 18;
PURE FOOD AND DRUG ACT, 4, 5.

SECOND JEOPARDY.

See CONSTITUTIONAL LAW, 3, 4;
PHILIPPINE ISLANDS, 2.

SECRETARY OF AGRICULTURE.

See CONGRESS, POWERS OF, 3;
PUBLIC LANDS, 3.

SELF-INCRIMINATION.

See STATUTES, A 3.

SENATE.

See CONSTITUTIONAL LAW, 14.

SOVEREIGNTY.

See TERRITORY.

SPAIN.

See TREATIES.

STARE DECISIS.

See SAFETY APPLIANCE ACTS, 3, 4.

STATES.

1. *Actions by; right to maintain original action in this court.*

A State in its corporate capacity has no such interest in the rights of shippers as to entitle it to maintain an original action in this court against the carrier to restrain it from charging unreasonable rates within its jurisdiction. (*Louisiana* v. *Texas*, 176 U. S. 1.) *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 277.

2. *Actions by; right to maintain original action in this court.*

Oklahoma v. *Atchison, Topeka & Santa Fe Ry. Co., ante*, p. 277, followed to effect that a State cannot invoke the original jurisdiction of this court by suit against individual defendants on its behalf where the primary purpose is to protect citizens generally against violation of its own laws by the defendants. *Oklahoma* v. *Gulf, Colorado & S. F. Ry. Co.*, 290.

3. *Actions by; when original jurisdiction of this court may be invoked.*

A State cannot invoke the original jurisdiction of this court to enforce a judgment rendered in its courts for a violation of its penal or criminal laws, *Wisconsin* v. *Pelican Insurance Company*, 127 U. S. 265, or to enforce a penal statute. *Ib.*

4. *Admission into Union; effect to abrogate act of Congress regulating railway charges in Territory.*

An act of Congress, regulating railway charges of a railway in a Territory until a state government is formed and providing that thereafter such State shall have authority to regulate the charges, ceases to be of force on the admission of such State into the Union; and thereafter the State can fix such charges, subject only to the constitutional rights of the railway; and so *held* as to §§ 1–4 of the act of July 4, 1884, c. 179, 23 Stat. 73. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 277.

5. *Admission into Union; effect to abrogate act of Congress regulating railway charges in Territory.*

Oklahoma v. *Atchison, Topeka & Santa Fe Railway Co., ante*, p. 277, followed to effect that an act of Congress granting rights of way to a railroad company through a Territory and reserving the right to regulate charges until organization of a state government, which should then be authorized to fix and regulate charges, ceased to be operative when the State was organized. *Oklahoma* v. *Chicago, R. I. & Pac. Ry. Co.*, 302.

6. *Debt; apportionment on separation of territory to form new State.*

Where all expenditures for which the debt of a State is created have

the ultimate good of the whole State in view, the whole State, and not the particular locality in which the improvements are made, should equally bear the burden; and so *held* in apportioning the debt of Virginia between that State and West Virginia, that the latter should bear its share of the debt so created. *Virginia* v. *West Virginia*, 1.

7. *Debts; ratio in apportionment of debt of Virginia between that State and West Virginia.*

In apportioning the debt of Virginia between that State and West Virginia, the court rejects other methods proposed and adopts the ratio determined by the master's estimated valuation of real and personal property of the two States at the date of separation. The value of slaves is properly excluded from such valuation. *Ib.*

8. *Debts; apportionment of, between newly created and parent State; allowance of interest.*

There are many elements to be considered in determining the liability for interest by a newly created State on its share of the debt of the parent State, and this court will, before passing on that question in a suit of this nature, afford the parties an opportunity to adjust it between themselves. *Ib.*

9. *Debts; apportionment between parent and new State; nature of suit for.*

A suit between States to apportion debt is a quasi-international controversy involving the honor and constitutional obligation of great States, which have a temper superior to that of private litigants; and, when this court has decided enough, patriotism, fraternity of the Union and mutual consideration should bring the controversy to an end. *Ib.*

10. *Contracts of; effect to create, of transactions looking to separation of part of territory to create new State.*

A State is superior to the forms that it may require of its citizens; and where a part of a State separates and is created into a new State, a contract can be created by the constitutive ordinance of the parent State followed by the creation of the contemplated State. *Ib.*

11. *Contracts of; effect of provision in constitution of new State to create contract with parent State.*

A provision of the constitution of a new State, which is not addressed solely to those who are to be subject to its provisions, but is intended to be understood by the parent State and by Congress as

embodying a just term which conditions the parent's consent, amounts to a contract. *Ib.*

12. *Contracts of; existence of contract between Virginia and West Virginia as to apportionment of debt.*

In this case, the ordinance of Virginia, the constitution of West Virginia, and the act of Congress admitting West Virginia into the Union, when taken together, establish a contract that West Virginia will pay her share of the debt of Virginia existing at the time of separation. *Ib.*

13. *Contracts between; guide to construction.*

Provisions in the constitution of one State which is a party to a contract with another State cannot be taken as the sole guide to determine obligations under the contract. *Ib.*

See CONSTITUTIONAL LAW, 11, 17, 24–29; INTERSTATE COMMERCE, 5; JURISDICTION, A 1, 2, 3, 7, 8, 9; RAILROADS, 3; TAXES AND TAXATION, 11, 12.

STATE STATUTES.

See JURISDICTION, D 1, 2; PRACTICE AND PROCEDURE, 1, 5.

STATUTES.

A. CONSTRUCTION OF.

1. *Controlling effect of construction of identical former act.*

The construction given to an identical former act prior to its reënactment by Congress, that penalties thereunder were not measured by number of cattle or number of cars, followed. (*United States* v. *Boston & Albany R. R. Co.*, 15 Fed. Rep. 209; *United States* v. *St. Louis R. R. Co.*, 107 Fed. Rep. 807.) *Baltimore & Ohio S. W. R. R. Co.* v. *United States*, 94.

2. *Effect of inclusion and omission of provision in different parts of statute—Act of March 4, 1907, relative to railroad employés.*

The presence of a provision in one part of a statute and its absence in another is an argument against reading it as implied where omitted; and so *held* that the word "consecutive" is not to be implied in connection with limiting the number of hours during the twenty-four that telegraph operators can be employed under the act of March 4, 1907. *United States* v. *Atchison, T. & S. F. Ry. Co.*, 37.

3. *Scope of construction; questions of constitutionality of Corporation Tax Law not considered because not involved.*

This court will not pass on questions of constitutionality of a statute until they arise, and no question is now presented as to whether the provisions of the Corporation Tax Law offend the self-incrimination provisions of the Fifth Amendment or whether the penalties for non-compliance are so high as to violate the Constitution; the penalty provisions of the act are separable and their constitutionality can be determined if a proper case arises. *Flint* v. *Stone Tracy Co.*, 107.

4. *Scope of construction; Corporation Tax Law; constitutional questions not involved in case.*

No case is presented on this record involving the question of lack of power to tax foreign corporations doing local business in a State, or whether, if the tax on foreign corporations is unconstitutional it would not invalidate the tax on domestic corporations as working an inequality against the latter; nor is any case presented involving the invalidity of the act as a tax on exports. *Ib.*

5. *Corporation Tax Law; business within meaning of.*

Business is a comprehensive term and embraces everything about which a person can be employed; and corporations engaged in such activities as leasing and managing property, collecting rents, making investments for profit and leasing taxicabs, are engaged in business within the meaning of the Corporation Tax Law. *Ib.*

6. *General application of act of June 29, 1906, relative to shipment of animals.*

The act of June 29, 1906, c. 3594, 34 Stat. 607, to prevent cruelty to animals in transit, is general and applies to all shipments of cattle as made. The statute is not for the benefit of shippers but is restrictive of their rights, and violations are not to be measured by the number of shippers, but as to the time when the duty is to be performed. *Baltimore & Ohio S. W. R. R. Co.* v. *United States*, 94.

See CONTRACTS, 5;
INTERSTATE COMMERCE ACT;
PRACTICE AND PROCEDURE, 1, 5, 16;
PURE FOOD AND DRUG ACT;
SAFETY APPLIANCE ACTS;
STATES, 4, 5;
TAXES AND TAXATION.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.
See LOCAL LAW.

STOCK OWNERSHIP.
See INTERSTATE COMMERCE, 2, 3.

SUPREME LAW OF THE LAND.
See CONSTITUTIONAL LAW, 19.

TAXES AND TAXATION.

1. *Direct and indirect taxes differentiated.*
Indirect taxation includes a tax on business done in a corporate capacity; the difference between it and direct taxation imposed on property because of its ownership is substantial and not merely nominal. *Flint* v. *Stone Tracy Co.*, 107.

2. *Corporation Tax Law of 1909; nature of tax imposed by.*
A tax, such as the Corporation Tax imposed by the Tariff Act of 1909, on corporations, joint stock companies, associations organized for profit and having a capital stock represented by shares, and insurance companies, and measured by the income thereof, is not a tax on franchises of those paying it, but a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organization of the character described in the act. *Ib.*

3. *Corporation Tax Law; subject of tax.*
There are distinct advantages in carrying on business in the manner specified in the Corporation Tax Law over carrying it on by partnerships or individuals, and it is this privilege which is the subject of the tax and not the mere buying, selling or handling of goods. *Ib.*

4. *Corporation Tax Law; measure of excise tax; validity of inclusion of income from non-taxable property.*
While a direct tax may be void if it reaches non-taxable property, the measure of an excise tax on privilege may be the income from all property, although part of it may be from that which is non-taxable; and the Corporation Tax is not invalid because it is levied on total income including that derived from municipal bonds and other non-taxable property. *Ib.*

5. *Corporation Tax Law of 1909; corporations, etc., subject to.*
It was the intention of Congress to embrace within the corporation tax provisions of the Tariff Act of August 5, 1909, c. 6, 36 Stat. 11, 112,

only such corporations and joint stock associations as are organized under some statute, or derive from that source some quality or benefit not existing at the common law. *Eliot* v. *Freeman*, 178.

6. *Same.*

A trust formed in a State, where statutory joint stock companies are unknown, for the purpose of purchasing, improving, holding and selling land, and which does not have perpetual succession but ends with lives in being and twenty years thereafter, is not within the provisions of the Corporation Tax Law. *Ib.*

7. *Corporation Tax Law; what constitutes doing business within meaning of.*

A corporation, the sole purpose whereof is to hold title to a single parcel of real estate subject to a long lease and, for convenience of the stockholders, to receive and distribute the rentals arising from such lease and proceeds of disposition of the land, and which has disqualified itself from doing any other business, is not a corporation doing business within the meaning of the corporation tax provisions of the act of August 5, 1909, c. 6, 36 Stat. 11, 112, and is not subject to the tax. *Zonne* v. *Minneapolis Syndicate*, 187.

8. *Excises defined.*

Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of the privilege and if business is not done in the manner described no tax is payable. *Flint* v. *Stone Tracy Co.*, 107.

9. *Excise taxes; geographical uniformity.*

If an excise tax operates equally on the subject-matter wherever found its geographical uniformity is not affected by the fact that it may produce unequal results in different parts of the Union. *Ib.*

10. *Excise taxes; effect on validity, of deductions in estimating amount.*

Courts cannot substitute their judgment for that of the legislature; where details as to estimating the amount of an excise tax, such as the deductions for interest on bonded and other indebtedness provided by the Corporation Tax Law, are not purely arbitrary, they do not invalidate the tax. *Ib.*

11. *Federal taxation; instrumentalities of State subject to.*

It is no part of the essential governmental function of a State to pro-

vide means of transportation and to supply artificial light, water and the like; and although the people of the State may derive a benefit therefrom; the public service companies carrying on such enterprises are private, and are subject to legitimate Federal taxation, such as the Corporation Tax the same as other corporations are. *Ib.*

12. *Federal taxation; instrumentalities of State subject to.*

Corporations, acting as trustees or guardians under the authority of laws of a State and compensated by the interests served and not by the State, are not agents of the state government in a sense that exempts them from the operation of Federal taxation. *Ib.*

13. *Federal taxation; collection of, power of Congress as to.*

If it is within the power of Congress to impose the tax, it is also within its power to enact effectual means to collect the tax. (*McCulloch* v. *Maryland*, 4 Wheat. 316, 421.) *Ib.*

14. *Measurement of tax; reasonableness of excise; legislative and judicial functions.*

The measurement of the Corporation Tax by net income is not beyond the power of Congress as arbitrary and baseless. Selection of the measure and objects of taxation devolve upon Congress and not on the courts; it is not the function of the latter to inquire into the reasonableness of the excise either as to amount or property on which it is to be imposed. *Ib.*

15. *Exemptions; doubts resolved how.*

Doubts and ambiguities as to exemptions from taxation are resolved in favor of the public. (*St. Louis* v. *United Railways*, 210 U. S. 273.) *J. W. Perry Co.* v. *Norfolk*, 472.

16. *Nature of tax; considerations in determining.*

While the legislature cannot by a declaration change the real nature of a tax it imposes, its declaration is entitled to weight in construing the statute and determining what the actual nature of the tax is. *Flint* v. *Stone Tracy Co.*, 107.

17. *Remedy against taxation not judicial.*

Although the power to tax is the power to destroy, *McCulloch* v. *Maryland*, 4 Wheat. 316, the courts cannot prevent its lawful exercise because of the fear that it may lead to disastrous results. The

remedy is with the people by the election of their representatives. *Ib.*

See CONSTITUTIONAL LAW, 1, 2, 8, 13, 14, 18–29;
FEDERAL QUESTION, 2;
STATUTES, A 3, 4, 5.

TELEGRAPHS.

See INTERSTATE COMMERCE, 1, 5;
RAILROADS, 2;
STATUTES, A 2.

TERRITORIAL CESSION.

See MUNICIPAL CORPORATIONS, 2, 3.

TERRITORIES.

See CONGRESS, POWERS OF, 1;
FEDERAL QUESTION, 3;
STATES, 4, 5.

TERRITORY.

1. *Sovereign right to extinguish municipalities in ceded territory.*

Although the United States might have extinguished every municipality in the territory ceded by Spain under the treaty of 1898, it will not, in view of the practice of nations to the contrary, be presumed to have done so. *Vilas* v. *Manila*, 345.

2. *Sovereignty; effect of change on laws in force at time.*

While there is a total abrogation of the former political relations of inhabitants of ceded territory, and an abrogation of laws in conflict with the political character of the substituted sovereign, the great body of municipal law regulating private and domestic rights continues in force until abrogated or changed by the new ruler. *Ib.*

TORTS.

See ACTIONS, 2;
REMOVAL OF CAUSES, 1.

TRADE.

See RESTRAINT OF TRADE;
SALES.

TRADE-MARKS.

1. *What can be appropriated as.*

No sign or form of words can be appropriated as a valid trade-mark which, from the nature of the fact conveyed by its primary meaning, others may employ with equal right for the same purpose. (*Elgin National Watch Co.* v. *Illinois Watch Co.*, 179 U. S. 665.) *Standard Paint Co.* v. *Trinidad Asphalt Co.*, 446.

2. *Distinctiveness essential.*

A trade-mark must be distinctive in its original signification pointing to the origin of the article or it must become so by association. (*Canal Co.* v. *Clark*, 13 Wall. 311.) *Ib.*

3. *"Ruberoid" not appropriable as trade-mark.*

"Rubberoid" being a descriptive word, meaning like rubber, the word "Ruberoid" is also descriptive, and, even though mispelled, cannot be appropriated as a trade-mark. *Ib.*

See JURISDICTION, A 6;
UNFAIR COMPETITION.

TRADE-NAME.

See UNFAIR COMPETITION.

TREATIES.

Spain; effect of treaty of 1898 on property rights of municipalities in ceded territory.

The cession in the treaty of 1898 of all the public property of Spain in the Philippine Islands did not include property belonging to municipalities, and the agreement against impairment of property and private property rights in that treaty applied to the property of municipalities and claims against municipalities. *Vilas* v. *Manila*, 345.

See INDIANS, 2;
JURISDICTION, A 14;
TERRITORY, 1.

TRESPASS.

Fence laws; effect of non-compliance with, to condone trespass.

Fence laws may condone trespasses by straying cattle where the laws have not been complied with, but they do not authorize wanton or willful trespass, nor do they afford immunity to those willfully turning cattle loose under circumstances showing that they were

intended to graze upon the lands of another. *Light* v. *United States*, 523.

See PUBLIC LANDS, 5.

TRUSTS.

See TAXES AND TAXATION, 6.

UNFAIR COMPETITION.

Use of invalid trade-mark held not to constitute.

The essence of unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another, and this cannot be predicated solely on the use of a trade-name similar to that used by plaintiff if such trade-name is invalid as a trade-mark. To do so would be to give the plaintiff's trade-name the full effect of a trade-mark notwithstanding its invalidity as such. *Standard Paint Co.* v. *Trinidad Asphalt Co.*, 446.

See JURISDICTION, A 6.

UNIFORMITY OF TAXES.

See CONSTITUTIONAL LAW, 23, 29;
COURTS, 2;
TAXES AND TAXATION, 9.

UNITED STATES.

See CONSTITUTIONAL LAW, 12; PUBLIC LANDS, 6;
CONTRACTS, 2; TAXES AND TAXATION;
TERRITORY, 1.

UNREASONABLE SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 18.

VENDOR AND VENDEE.

See MUNICIPAL CORPORATIONS, 1;
SALES;
UNFAIR COMPETITION.

VIRGINIA.

See JURISDICTION, A 9;
STATES, 6–13.

WEST VIRGINIA.

See JURISDICTION, A 9;
STATES, 6–13.

WORDS AND PHRASES.

"Annul" in contract.

The word "annul" as used in the contract involved in this case construed as refusing to perform further, not to rescind or avoid. *United States* v. *O'Brien*, 321.

"Consecutive" as used in Railway Employés' Act of March 4, 1907 (see Statutes, A 2). *United States* v. *Atchison, T. & S. F. Ry. Co.*, 37.

"Doing business" as used in Corporation Tax Law (see Statutes, A 5). *Flint* v. *Stone Tracy Co.*, 107.

WRIT AND PROCESS.

See HABEAS CORPUS;
MANDAMUS;
PROHIBITION.