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1. *Against state officers; when maintainable.*

Where a state officer receives money for a tax paid under duress with notice of its illegality, he has no right thereto and the name of the State does not protect him from suit. *Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor*, 280.

2. *Same.*

Where a state statute provides for refunding taxes erroneously paid to a state officer, it contemplates a suit against such officer to recover the taxes paid under protest and duress. *Ib.*

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- TERRITORIES.—Rev. Stat., § 1857 (see Mines and Mining, 2): *Clason v. Matko*, 646.

ADMIRALTY.

1. *Libel in; sufficiency of averments.*

Where the act of Congress, under which forfeiture is sought, does not apply to territorial waters, the libel must aver that the acts were done outside of the territorial limits of any State. *The Abby Dodge*, 166.

2. *Libel in; amendment of.*

Under the circumstances of this case it is proper to allow the Government to amend the libel to present a case within the statute as construed in this opinion. (*The Mary Ann*, 8 Wheat. 389.) *Ib.*

3. *Limitation of liability; exclusiveness of proceeding for.*

The limited liability proceedings under §§ 4283 *et seq.*, Rev. Stat., is in its nature exclusive of any separate suit against an owner on account of the ship. The monition which issued after surrender and stipulation for value requires every person to assert his claim in that case. *The San Pedro*, 365.

4. *Limitation of liability; exclusiveness of proceeding for.*

One having a claim for salvage against a vessel whose owners have in-

stituted proceedings under §§ 4283 *et seq.*, Rev. Stat., cannot proceed in admiralty in a separate suit, and must prove his claim in the limited liability proceeding. *Ib.*

5. *Limitation of liability proceeding; monition as injunction against proceedings in other courts on claims against vessel owners.*

The issuing of an injunction in the limited liability proceeding is not necessary to stop proceedings in other courts on claims against the vessel or its owners. Power to grant an injunction exists under § 4283, Rev. Stat., but when the procedure required by rule 54 has been followed, the monition itself has the effect of a statutory injunction. (*Providence & N. Y. Steamship Co. v. Hill Mfg. Co.*, 109 U. S. 578.) *Ib.*

6. *Limited liability proceedings; claims included in.*

Under §§ 4283, 4284, Rev. Stat., as amended by § 18 of the act of June 26, 1884, 23 Stat. 55, c. 12, any and all debts and liabilities of the owner incurred on account of the ship without his privity or fault are included in the limited liability proceeding, including claim for salvage after collision. (*Richardson v. Harmon*, 222 U. S. 96.) *Ib.*

7. *Fifty-fourth rule; object not to be defeated.*

The manifest object of the fifty-fourth rule in admiralty cannot be defeated solely because its enforcement might involve expense, delay or inconvenience. *Ib.*

8. *Collision; towage; analogy of claim for, to one for repairs.*

Quære: Whether liability for towage into port of a vessel after collision is a claim like one for repairs by reason of the collision for which the owners of the injured vessel may recover from guilty colliding vessel. *Ib.*

9. *Salvage service; preference of claims for, quære as to.*

Quære: Whether a highly meritorious salvage service, benefiting alike the owner and creditors of a vessel, is entitled to preference from the fund. *Ib.*

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APPEAL AND ERROR.

1. *From Court of Claims; rule governing.*

The general rule governing appeals is applicable to appeals from the Court of Claims. *United States v. Ellicott*, 524.

2. *From Court of Claims; second decree after passage of act of Congress appealable.*

As after a decree of the Court of Claims in favor of the petitioner an act of Congress was passed, and the court made another decree granting the same relief, the second decree was a decision upon the effect of the subsequent legislation, and an appeal lies therefrom if taken within the time prescribed by law. *Cherokee Nation v. Whitmire*, 108.

3. *From Court of Claims; timeliness of.*

Held, that under the circumstances of this case, and the proceedings taken thereon, appellants' appeal was taken in time. *Ib.*

4. *Writ of error to state court; scope of review.*

On writ of error to the state court this court may examine the entire record, including the evidence, to determine whether what purports to be a finding of fact is not so involved with, and dependent upon, questions of Federal law, as to be really a decision thereof. *Kansas City Southern Ry. Co. v. Albers Commission Co.*, 573.

5. *Same.*

In this case the finding of the state court as to a rate charged by an interstate carrier necessarily involved the interpretation and construction of the Interstate Commerce Act, and this court can examine the evidence and ascertain for itself the validity of the rate under the statute. *Ib.*

6. *Questions for review; to what extent finding of citizenship of party dismissed from suit reviewable.*

Errors assigned as to finding of citizenship of a party dismissed from the suit at instance of appellant are not here for review except as to the force and effect to be given to a decree *pro confesso* against other defendants before dismissal of the bill. *Cuebas v. Cuebas*, 376.

7. *Appeal from order dismissing bill for injunction; disposition where thing sought to be restrained accomplished.*

Where pending trial below and hearing of appeal the object unsuccessfully sought to be enjoined has been accomplished—in this case the erection of a building by a bank—the only ground left for further prosecution is costs, and the appeal will be dismissed. *Wingert v. First National Bank*, 670.

8. *Mandate; opinion as part of.*

A direction in the mandate that the court below proceed in accordance with the opinion operates to make the opinion a part of the mandate as completely as though set out at length. *Metropolitan Water Co. v. Kaw Valley District*, 519.

9. *To Circuit Court of Appeals from District Court in habeas corpus proceeding.*

Where the District Court takes jurisdiction and proceeds to determine the merits in a *habeas corpus* proceeding, the respondent can carry the case to the Circuit Court of Appeals. *Tang Tun v. Edsell*, 673.

10. *From interlocutory order; Court of Appeals may direct dismissal bill.*

On appeal from a mere interlocutory order the Circuit Court of Appeals may direct the bill to be dismissed if it appears that the complainant is not entitled to maintain his suit. *Metropolitan Water Co. v. Kaw Valley District*, 519.

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CARMACK AMENDMENT.

Constitutionality of.

The Carmack amendment to the Hepburn act of June 29, 1906, 34 Stat. 584, 595, c. 3591, is not unconstitutional. (*Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186.) *Galveston, H. & S. A. Ry. Co. v. Wallace*, 481.

See INTERSTATE COMMERCE, 1, 2, 3;

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- Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112, followed in *Quincy, O. & K. C. R. R. Co. v. Shohoney*, 705; *Baird v. Howison*, 712.
- Weir v. Rountree*, 216 U. S. 607, followed in *Sherman v. Goodwin*, 711.
- West Chicago R. R. Co. v. Chicago*, 201 U. S. 506, followed in *Gaar, Scott & Co. v. Shannon*, 468.

Wilson v. United States, 162 U. S. 613, followed in *Powers v. United States*, 303.

Wilson v. United States, 221 U. S. 361, followed in *Bornn Hat Co. v. United States*, 713.

CHARTERS.

See EMINENT DOMAIN, 4.

CHEROKEE INDIANS.

See INDIANS, 8-11.

CHINESE.

See IMMIGRATION, 1, 2, 3.

CHIPPEWA INDIANS.

See INDIANS, 3.

CHOSSES IN ACTION.

See EMINENT DOMAIN, 4.

CIRCUIT COURT OF APPEALS.

See APPEAL AND ERROR, 9, 10;

JURISDICTION, A 3; B;

MANDAMUS, 4, 5.

CITIZENSHIP.

See APPEAL AND ERROR, 6;

IMMIGRATION, 2, 3;

JURISDICTION, C.

CIVIL LAW.

See RIPARIAN RIGHTS, 7, 8.

CLASSIFICATION FOR REGULATION.

See CONSTITUTIONAL LAW, 14-17.

CLASSIFICATION OF IMPORTS.

See CUSTOMS LAW.

COLLISION OF VESSELS.

See ADMIRALTY, 8.

COMMERCE.

1. *Foreign; right to carry on; power of Congress over.*

The power of Congress over foreign commerce is complete; no one has a vested right to carry on foreign commerce with the United States. (*Buttfield v. Stranahan*, 192 U. S. 470.) *The Abby Dodge*, 166.

2. *Foreign; power of Congress to regulate.*

Congress can, by exertion of its power to regulate foreign commerce, forbid the importation of sponges gathered under conditions expressed in the act of June 20, 1906. *Ib.*

See CONGRESS, POWERS OF, 7.

COMMON CARRIERS.

<i>See</i> CONGRESS, POWERS OF, 4, 5, 6;	INTERSTATE COMMERCE;
EMINENT DOMAIN, 8;	INTERSTATE COMMERCE COM-
EMPLOYERS' LIABILITY ACT;	MISSION;
EQUITY, 1;	STATES, 4.

COMMON LAW.

Rules of; power of legislature to change.

A person has no property—no vested interest—in any rule of the common law. While rights of property created by the common law cannot be taken without due process, the law as a rule of conduct may, subject to constitutional limitations, be changed at will by the legislature. *Second Employers' Liability Cases*, 1.

See CONGRESS, POWERS OF, 5;

COPYRIGHT, 3, 4.

CONDEMNATION OF LAND.

See CONSTITUTIONAL LAW, 3.

CONFLICT OF LAWS.

<i>See</i> EMPLOYERS' LIABILITY ACT, 4;	MINES AND MINING, 2;
INDIANS, 1;	PHILIPPINE ISLANDS, 7;
LOCAL LAW (PORTO RICO, 2);	STATES, 3, 4.

CONGRESS, POWERS OF.

1. *Inaction of Congress; effect on power.*

The inaction of Congress on a subject within its power does not affect that power. *Second Employers' Liability Cases*, 1.

2. *Foreign commerce; burden of proving exemption from prohibition.*

When Congress, under its power to regulate foreign commerce, pro-

hibits the importation of certain merchandise, it may cast on the one seeking to bring merchandise in the burden of establishing that it is exempt from the operation of the statute. *The Abby Dodge*, 166.

3. *Indians; effect of decree of Court of Claims on power of Congress.*

Notwithstanding a decree of the Court of Claims determining the rights of Indians in a case over which Congress gave the court jurisdiction, it is competent for Congress to deal further with the subject. (*Stephens v. Cherokee Nation*, 174 U. S. 445; *Wallace v. Adams*, 204 U. S. 415.) *Lowe v. Fisher*, 95.

4. *Interstate commerce; regulation of relations of common carriers and employés engaged in.*

Congress, in the exertion of its power over interstate commerce, and subject to the limitations prescribed in the Constitution, may regulate those relations of common carriers by railroad and their employés which have a substantial connection with interstate commerce and while both carrier and employé are engaged therein. *Second Employers' Liability Cases*, 1.

5. *Interstate commerce; power to change rules of common law.*

Under the power to regulate relations of employers and employés while engaged in interstate commerce, Congress may establish new rules of law in place of common-law rules including those in regard to fellow-servants, assumption of risk, contributory negligence, and right of action by personal representatives for death caused by wrongful neglect of another. *Ib.*

6. *Interstate commerce; regulation of relations of employers and employes.*

In regulating the relations of employers and employés engaged in interstate commerce, Congress may regulate the liability of employers to employés for injuries caused by other employés even though the latter be engaged in intrastate commerce. *Ib.*

7. *Over navigation.*

Commerce includes navigation; *Gilman v. Philadelphia*, 3 Wall. 713; and the power of Congress over navigation has no limits except those prescribed in the Constitution. (*Gibbons v. Ogden*, 9 Wheat. 1, 196.) *Philadelphia Co. v. Stimson*, 605.

8. *Over navigation.*

The authority of Congress is not limited to water as it flowed at any preceding time. Alterations in the course of a stream do not affect the power of Congress. *Ib.*

9. *Over navigation.*

It is for Congress to decide what shall or shall not be deemed in judgment of law an obstruction to navigation. (*Pennsylvania v. Wheeling Bridge Co.*, 18 How. 421.) *Ib.*

See COMMERCE;

CONSTITUTIONAL LAW, 6, 21-25,
27;

EMPLOYERS' LIABILITY ACT, 2, 3;

INDIANS, 1;

NAVIGABLE WATERS, 2;

STATES, 3, 4;

WATERS, 2.

CONSTITUTIONAL LAW.

Commerce. See INTERSTATE COMMERCE, 19, 23, 25.

1. *Contract impairment; contract of sale; effect of subsequent statute making certain evidence prima facie.*

A contract of sale of state lands, on which periodic payments are to be made, with forfeiture in case of non-payment is not impaired by a subsequent state statute making the official entries in public records *prima facie*, but not conclusive, evidence, of the validity of proceedings for forfeiture. *Reitler v. Harris*, 437.

2. *Contract impairment; deprivation of property without due process of law; evidence; validity of Kansas law of 1907, ch. 373.*

The statute of Kansas of 1907, c. 373, making entries of default and proceedings for forfeiture made in usual course of business in the records of sales of school lands *prima facie*, but not conclusive, evidence of the validity of forfeiture proceedings, is not unconstitutional either as depriving one who had previously purchased lands under the act of 1879, c. 161, § 2, of his property without due process of law, or as impairing the obligation of the contract under the act of 1879. *Ib.*

3. *Contract impairment; validity of Ohio act of 1908, § 3283; eminent domain.*

The act of the Ohio legislature of 1908, § 3283, and the ordinance of the city of Cincinnati thereunder, condemning a right of way across the public landing at Cincinnati, are not unconstitutional as impairing the obligation of the contract dedicating the landing as a common for the use and benefit of the town forever. *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.

4. *Contract within protection of Constitution.*

A dedication of land as a common for use and benefits of the town forever as shown on a plan, and the acceptance by the town and the sale of lots under the plan constitutes a contract the obliga-

tion whereof is protected by the contract clause of the Federal Constitution. *Ib.*

See Infra, 6;

EMINENT DOMAIN, 5.

5. *Criminal law; right of accused to be present at trial; effect of voluntary absence.*

One not in custody cannot avail of the right to be heard so as to defeat the right of the Government to try him by absenting himself voluntarily and claiming that under the right to be present provisions of the Sixth Amendment the trial cannot proceed. *Diaz v. United States*, 442.

See PHILIPPINE ISLANDS, 5, 6.

6. *Due process of law; liberty of contract; effect to deny, of prohibition of agreements in contravention of act of Congress.*

The power of Congress to insure the efficiency of regulations ordained by it is equal to the power to impose the regulations; and prohibiting the making of agreements by those engaged in interstate commerce which in any way limit a liability imposed by Congress on interstate carriers does not deprive any person of property without due process of law, or abridge liberty of contract in violation of the Fifth Amendment. *Second Employers' Liability Cases*, 1.

7. *Due process and equal protection of the law; quære as to.*

Quære: Whether an element of the due process provisions of the Fifth Amendment is the equivalent of the equal protection provision of the Fourteenth Amendment. *Ib.*

8. *Due process of law; notice required.*

While an essential element of due process of law is opportunity to be heard, a necessary condition of which is notice, *Simon v. Craft*, 182 U. S. 427, personal notice is not always necessary. (*Ballard v. Hunter*, 204 U. S. 241.) *Jacob v. Roberts*, 261.

9. *Due process of law; effect of service of process by publication.*

In this case, *held*, that the proceedings for service by publication show sufficient inquiry was made to ascertain the whereabouts of the persons to be served and who were served by publication under provisions of § 412 of the Code of Civil Procedure of California, and that due process of law was not denied by service in that manner. *Ib.*

10. *Due process and equal protection of the law; validity of Texas statute of 1907 regulating practice of osteopathy.*

The Texas statute of 1907, establishing a Board of Medical Examiners,

and conditions under which persons will be licensed to practise osteopathy, does not deprive one who refuses to apply for a license thereunder of his property without due process of law, or deny him the equal protection of the law. *Collins v. Texas*, 288.

11. *Due process of law; effect to deprive, of statute relative to evidence.*

One is not deprived of his property without due process of law by a statute making entries in public records *prima facie*, but not conclusive, evidence, of the validity of the proceedings referred to. *Reitler v. Harris*, 437.

12. *Due process of law; effect of omission of state court as denial of.*

The refusal of the courts of the State to consider as essential to proceedings to foreclose tax liens certain ministerial duties, the omission of which can in no way affect the rights of the property holder, does not amount to denial of due process of law. *Ontario Land Co. v. Wilfong*, 543.

13. *Due process of law; effect of judgment in proceeding to foreclose tax lien under laws of Washington.*

The tax laws of the State of Washington involved in this case are clear and simple in their requirements; and the judgment of the Supreme Court of that State attacked in this suit did not deprive plaintiff in error of his property without due process of law, either because of lack of compliance with the statute or of sufficiency of notice to the owner or description of the property. (*Ontario Land Co. v. Yordy*, 212 U. S. 152.) *Ib.*

See Supra, 2;

EXECUTIVE OFFICERS, 2.

14. *Equal protection of the law; due process; classification of railroad employés not denial of.*

A classification of railroad employés, even if including all employés, whether subjected to peculiar hazards incident to operation of trains or not, is not so arbitrary or unequal as to amount to denial of equal protection of the laws. Such a classification does not violate the due process clause of the Fifth Amendment even if equal protection is an element of due process. *Second Employers' Liability Cases*, 1.

15. *Equal protection of the law; effect of state revenue laws to deny.*

A State does not deny equal protection of the laws by adjusting its revenue laws to favor certain industries. *Quong Wing v. Kirkendall*, 59.

16. *Equal protection of the law; discrimination by State in carrying out policy.*

In carrying out its policy, a State may make discriminations so long as they are not unreasonable or purely arbitrary. *Ib.*

17. *Equal protection of the law; effect to deny, of discrimination by State in licensing laundries.*

On the record as presented in this case, and without prejudice to determining the question, if raised in a different way, the statute of Montana imposing a license fee on hand laundries does not appear to be an unconstitutional denial of equal protection of the laws because it does not apply to steam laundries and because it exempts from its operation laundries not employing more than two women. *Ib.*

18. *Equal protection of the law; effect of Fourteenth Amendment on state legislation.*

The Fourteenth Amendment does not interfere with state legislation by creating a fictitious equality where there is a real difference. *Ib.*

19. *Equal protection of the law; quære as to effect of state statute.*

Quære: Whether this statute is aimed directly at the Chinese, in which case it might be a discrimination denying equal protection. *Ib.*

See Supra, 7, 10.

20. *Full faith and credit clause; application of judgments of foreign nations not within.*

The full faith and credit clause of the Constitution does not extend to judgments of foreign states or nations, and unless there is a treaty relative thereto this court has no jurisdiction under § 709, Rev. Stat., to review a judgment of a state court on the ground that it failed to give full faith and credit to a judgment of a court of a foreign country. *Ætna Life Ins. Co. v. Tremblay*, 185.

Judicial power of the United States. See Infra, 27.

Self-incrimination. See EVIDENCE, 1, 2.

21. *States; guarantee of republican form of government; political character of.*

The enforcement of the provision in § 4 of Art. IV of the Constitution that the United States shall guarantee to every State a republican form of government is of a political character and exclusively committed to Congress, and as such is beyond the jurisdiction of the courts. *Pacific States Telephone Co. v. Oregon*, 118.

22. *States; same.*

The provisions of § 4 of Art. IV of the Constitution do not authorize

the judiciary to substitute its judgment as to a matter purely political for the judgment of Congress on a subject committed to Congress. *Ib.*

23. *States; guarantee of republican form of government; question of character of government a political one.*

Pacific States Telephone Co. v. Oregon, ante, p. 118, followed to the effect that the determination of whether the government of a State is republican in form within the meaning of § 4 of Art. IV of the Constitution is a political question within the jurisdiction of Congress and over which the courts have no jurisdiction. *Kiernan v. Portland*, 151.

24. *States; guarantee of republican form of government; duty of Congress and not of courts.*

Under § 4 of Art. IV of the Constitution, it rests with Congress to decide what government is the established one in a State, and its decision is binding on every other department of the Government, and cannot be questioned by the judiciary. (*Luther v. Borden*, 7 How. 1.) *Pacific States Telephone Co. v. Oregon*, 118.

25. *States; guarantee of republican form of government; state statute repugnant to, not subject to attack in courts.*

A statute, otherwise constitutional cannot be attacked in the courts on the ground that it was adopted in pursuance of provisions in the constitution of the State which render the form of government of the State unrepublican in form within the meaning of § 4 of Art. IV of the Constitution. The courts have no jurisdiction of the question; it is for Congress to determine. *Ib.*

26. *States; republican form of government; question of invalidity of statute as one enacted by government unrepublican in form, not for courts.*

Where the claim that one taxed under a state statute is deprived of property without due process of law is not based on any inherent defect in the law, or infirmity of power of State to levy it, but on the ground that the government of the State is not republican in form, the question is not within the jurisdiction of the courts. *Ib.*

27. *States; republican form of government; non-interference by judiciary with political department.*

The judicial power of the United States will not be extended so as to interfere with the authority of Congress or of the Executive so as to make the guarantee contained in § 4 of Art. IV of the Constitution one of anarchy instead of order. (*Luther v. Borden*, 7 How. 1.) *Ib.*

28. *States; republican form of government; question of character of government a political one.*

Whether the adoption of provisions for the initiative and referendum in the constitution of a State, such as those adopted in Oregon in 1902, so alter the form of government of the State as to make it no longer republican within the meaning of § 4 of Art. IV of the Constitution, is a purely political question over which this court has no jurisdiction. *Ib.*

See EMINENT DOMAIN, 3.

Generally. See CARMACK AMENDMENT;
EMPLOYERS' LIABILITY ACT, 1.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONSTRUCTION OF TREATIES.

See TREATIES.

CONSULS.

1. *Administration of effects of deceased citizens of United States; construction of instructions of Secretary of State as to.*

Instructions of the head of a Department must be read in light of the statute directly bearing on the subject; and so *held* that instructions of the Secretary of State to consuls in regard to administering effects of citizens of the United States dying in foreign lands must be read in the light of § 1709, Rev. Stat. *Rocca v. Thompson*, 317.

2. *Administration of effects of deceased nationals; rights given by Argentine Treaty of 1853.*

"Intervene in the possession and administration of the deceased" as the expression is used in the Argentine Treaty of 1853, is to be construed as permitting the consul of either contracting nation to temporarily possess the estate of his national for the purpose of protecting it, before it comes under the jurisdiction of the laws of the country, or to protect the interests of his national in an administration already instituted otherwise than by him. *Ib.*

3. *Same.*

Under the Argentine Treaty of 1853 a consul has not the right to the original administration of the estate of a deceased national to the exclusion of one authorized by local law to administer the estate. *Ib.*

4. *Same; right under law of Argentine Republic.*

The law of the Argentine Republic, as brought to the attention of this court, does not give to consuls of foreign countries the right to administer the estates of deceased nationals, but only to appoint an executor, which appointment is to be communicated to the testamentary judge. *Ib.*

5. *Same; effect of most favored nation clause in treaty; quære as to.*

Quære: Whether the most favored nation clause included in the treaty with Italy of 1878 carries the provisions of the Argentine Treaty of 1853 in regard to the administration by consuls of the estates of deceased nationals. *Ib.*

6. *Same; treaties construed; right of state officer upheld.*

In California, the public administrator is entitled to administer the estate of an Italian citizen dying and leaving an estate in California, in preference to the Consul-General of the Kingdom of Italy; and *so held* after construing the provisions of the treaty of 1878 with Italy, and that of 1853 with the Argentine Republic. *Ib.*

See TREATIES, 2.

CONTEMPT OF COURT.

1. *Criminal; when order punitive in character for purposes of review.*

Where the Circuit Court enters an order requiring a party violating an injunction order to pay a fine of which three-fourths is to go to the complainant as compensation for expenses incurred in prosecuting the contempt proceedings, and one-fourth to the United States, the punitive feature of the order is dominant and fixes its character for purposes of review. *In re Merchants' Stock & Grain Co.*, 639.

2. *Criminal and civil contempt differentiated.*

An order adjudging a party in contempt for violating an injunction is remedial when its purpose is to indemnify the injured suitor, or coercively to secure obedience to a mandate in his behalf, and is punitive when its purpose is to vindicate the authority of the court. (*Gompers v. Bucks Store & Range Co.*, 221 U. S. 418.) *Ib.*

See JURISDICTION, B;

MANDAMUS, 4, 5.

CONTRACTS.

1. *Law governing.*

The obligation of a contract depends upon the law of the State where made. *Northwestern Mut. Life Ins. Co. v. McCue*, 234.

2. *Building; conflicting specifications; effect on validity.*

When there is an irreconcilable conflict between essential provisions of a contract for building and the specifications, and the latter cannot be ignored, the contract is void for uncertainty and unenforceable. *United States v. Ellicott*, 524.

3. *Government; abrogation because of variance between contract and specifications; right of recovery for.*

Where a bid has been accepted for government work after the advertisement necessary to give it validity, and the final contract contains specifications materially lessening the work and at variance with the terms of the contract as advertised, the contractor cannot recover damages because the Government abrogates the contract; if the specifications are not binding on the Government, the contractor has no basis for recovery, and if they are binding the contract varies from the one advertised for and has no validity; and so held as to a bid for barges for the Panama Canal Commission. *Ib.*

4. *Government; right of contractor to recover damages accruing by reason of gross mistake and bad faith of Government agent.*

Where the power of the Government over the contract is complete and its agent's decision is conclusive, a corresponding duty exists that the agent's judgment should be exercised reasonably, and with due regard to the rights of both contracting parties; and in this case, as the Court of Claims has found that the agent's decision was a gross mistake and in bad faith, the contractor is entitled to recover the damages actually sustained by him by reason thereof. *Ripley v. United States*, 695.

5. *Government; decisions of agent in charge of work; necessity of appeal therefrom.*

Where there is no provision in the contract for an appeal from the decision of the agent in charge, the contractor does not have to appeal to a higher officer from the decision of the agent whose judgment and decision is expressly made final by the contract. *Ib.*

6. *Government; burden of proof in action to recover damages caused by improper decision of agent in charge.*

For the contractor to recover damages caused by an improper decision of the Government's agent in charge, the burden is on him and this court must base its decision on the record. *Ib.*

7. *Government; effect of absence of fraud or gross mistake on finality of decision of engineer in charge.*

Where the contract provides that the decisions of the engineer in charge

are final, they are so in the absence of fraud or gross mistake implying fraud; and, in the absence of a finding to the effect that there was fraud, the contractor cannot recover damages on the ground that such decisions were erroneous. *Ib.*

See CONSTITUTIONAL LAW, 1-4, 6; INSURANCE, 1, 2;
DISTRICT OF COLUMBIA, 2, 3; INTERSTATE COMMERCE, 1, 2, 10;
EMINENT DOMAIN, 1, 4, 5, 6, 9; MUNICIPAL CORPORATIONS;
IMMIGRATION, 5; NATIONAL BANKS, 2, 4, 5.

CONTRIBUTORY NEGLIGENCE.

See CONGRESS, POWERS OF, 5.

COPYRIGHT.

1. *Publication; performance of play as; effect in England; territorial bounds of British statute.*

Under the law as it existed in 1894, after a play had been performed in England, the rights of the owner to protection against the unauthorized production in England is only that given by the statutes; but the deprivation of common-law rights by force of the statutes was limited by territorial bounds within which the statute was operative. *Ferris v. Frohman*, 424.

2. *Publication; performance of play as; effect on common-law right.*

Public representation in this, or in another, country of a dramatic composition, not printed and published, does not deprive the owner of his common-law right save by operation of statute. *Ib.*

3. *Publication; effect of performance of play at common law.*

At common law the public performance of a play is not an abandonment to public use. *Ib.*

4. *Production of unprinted and unpublished play; right of copyist and producer of such play.*

The purpose and effect of the copyright law is not to render fruits of piracy secure; and a copyright does not protect one producing a play which is substantially a copy of an unprinted and unpublished play, the common-law property right whereof is in another. *Ib.*

See JURISDICTION, A 1.

CORPORATIONS.

See INTERSTATE COMMERCE, 22, 26;
PUBLIC SERVICE CORPORATIONS.

COTTON FEATHERSTITCH BRAIDS.

See CUSTOMS LAW, 6.

COURT OF CLAIMS.

1. *Decisions by; when further opinion in case part of decision.*

Where the Court of Claims has kept control of a case referred to it by act of Congress giving it jurisdiction as to all questions, its reply made to the request of the officer of the Government charged with execution of its judgment for further opinion is to be regarded as part of the decision. *Lowe v. Fisher*, 95.

2. *Roll of citizenship of Indian tribe; quære as to status as judicial decree.*

Quære: Whether a roll of citizenship of an Indian tribe, made under direction of the Court of Claims, has the conclusive effect of a judicial decree. *Ib.*

See APPEAL AND ERROR, 1, 2, 3;

CONGRESS, POWERS OF, 3.

COURTS.

1. *Duty where jurisdiction exists.*

Existence of jurisdiction in a court implies the duty to exercise it notwithstanding such duty may be onerous. *Second Employers' Liability Cases*, 1.

2. *State; when rights under act of Congress enforceable in.*

Rights arising under an act of Congress may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion. *Ib.*

3. *State; right to refuse to enforce act of Congress.*

When Congress, in the exertion of a power confided to it by the Constitution, adopts an act, it speaks for all the people and all the States, and thereby establishes a policy for all, and the courts of a State cannot refuse to enforce the act on ground that it is not in harmony with the policy of that State. (*Clafin v. Houseman*, 93 U. S. 130). *Ib.*

4. *State; right to refuse to enforce act of Congress.*

A state court cannot refuse to enforce the remedy given by an act of Congress in regard to a subject within the domain of Congress on the ground of inconvenience or confusion. *Ib.*

5. *Judicial notice of own decisions.*

This court will take notice of its own decision in determining the

rights of surety and principal on a supersedeas bond given to secure a judgment which was subsequently affirmed by this court. *United States Fidelity Co. v. Sandoval*, 227.

6. *Enforcement of invalid laws by.*

Courts sometimes enforce laws which would be declared invalid if attacked in a different manner. *Quong Wing v. Kirkendall*, 59.

See CONSTITUTIONAL LAW, 21-28;	JURISDICTION;
CUSTOMS LAW, 2;	PUBLIC LANDS, 7;
EMPLOYERS' LIABILITY ACT, 5;	STATES, 7;
IMMIGRATION, 2, 3;	STATUTES, A 2, 10;
INTERSTATE COMMERCE COM-	TAXES AND TAXATION,
MISSION, 1, 2;	1.

CRIMES.

See EQUITY, 2.

CRIMINAL LAW.

1. *Grand jury proceedings; identity of defendant and offense.*

The specification of the identity of a defendant and precise nature of his offense is the end, and not the beginning, of a grand jury proceeding. (*Hale v. Henkel*, 201 U. S. 43.) *Hendricks v. United States*, 178.

2. *Homicide and assault differentiated.*

A charge of homicide made after death of the person assaulted is not the same as a charge of the assault before the death of that person. *Diaz v. United States*, 442.

3. *Homicide; when one in jeopardy for.*

One cannot be put in jeopardy for the offense of homicide prior to the death of the person upon whom the crime is committed. *Ib.*

4. *Indictment; sufficiency of one good count to sustain.*

Where the conviction is a general one, one good count is sufficient to warrant affirmance. (*Dunton v. United States*, 156 U. S. 185.) *Powers v. United States*, 303.

5. *Jeopardy extends to what offenses.*

Jeopardy cannot extend to an offense beyond the jurisdiction of the court in which the accused is tried. *Diaz v. United States*, 442.

6. *Subornation of perjury; indictment for; sufficiency of.*

An indictment for subornation of perjury committed before a grand

jury inquiry into certain criminal violations of the law of the United States relating to the public lands, disposal of the same, and the unlawful fencing thereof, is not insufficient, as failing to set forth the nature and cause of the accusation, because it does not state the particular matter brought under inquiry. (*Markham v. United States*, 160 U. S. 319.) *Hendricks v. United States*, 178.

See CONSTITUTIONAL LAW, 5; IMMIGRATION, 5, 6;
EVIDENCE, 1-4; PHILIPPINE ISLANDS, 1-4, 5.

CUSTOMS LAW.

1. *Radical departure from policy of former tariff acts not presumed.*

Congress will not be presumed in framing a tariff act to have contemplated a radical departure from the policy of former tariff legislation when it will also be necessary to presume that Congress in doing so also disregarded facts of the trade. *United States v. Citroen*, 407.

2. *Reason for distinction in tariff act not concern of court.*

The court is not concerned with reasons for a distinction in the tariff act,—it is enough that Congress made it. *Ib.*

3. *Use of words in tariff act; presumption as to.*

Congress, in framing a tariff law, will be presumed to use words of a former tariff law as having the same meaning which this court has already given to them. *Latimer v. United States*, 501.

4. *"Unmanufactured tobacco" as used in tariff act of 1897; meaning of.*

This court, having held that "unmanufactured tobacco" as used in the Tariff Act of 1883, included sweepings of factories and warehouses used after importation in manufacturing cigarettes and stogies, the same meaning will be given to the same words as used in the Tariff Act of 1897. (*Seeberger v. Castro*, 153 U. S. 32.) *Ib.*

5. *"Waste" and "scrap" as used in tariff act; meaning of.*

"Waste" as used in a tariff act generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material. "Scrap" does retain the name and quality. (*Patton v. United States*, 159 U. S. 503.) *Ib.*

6. *Classification of cotton featherstitch braids.*

Cotton featherstitch braids are properly assessed at sixty per centum

as braids under the trimming schedule, par. 339, and not at forty-five per centum as tapes or bindings under notions schedule, par. 320 of the Tariff Act of July 24, 1897. *United States v. Baruch*, 191.

7. *Classification of articles; presumption as to use of terms.*

Where a conflict which had existed under prior tariff acts as to the classification of articles had been settled, Congress will not be presumed in enacting a new tariff to renew the conflict by not adhering to the commercial and tariff meaning of the terms as it had been settled. *Ib.*

8. *Classification; examination of article as imported.*

In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself in the condition in which it is imported. *United States v. Citroen*, 407.

9. *Classification; manufacture for purpose of importation at lower rate.*

A prescribed rate of duty cannot be escaped by disguise or artifice; but if the article imported is not the article described as dutiable at a specified rate, it does not become dutiable under the description because it has been manufactured for the purpose of being imported at a lower rate. *Ib.*

10. *Pearls capable of or intended for stringing; how dutiable.*

Pearls, unset and unstrung, are dutiable under par. 436 of the tariff act of 1897 at ten per centum and not under par. 434 at sixty per centum, because capable of, or intended for, being strung as a necklace. *Ib.*

11. *Pearls; how dutiable; effect of drilling.*

The fact that a pearl has been drilled—as is the case with more than seventy-five per cent. of all large pearls when they come from the wholesale dealers—does not take it out of par. 436 and make it dutiable under par. 434 at sixty per centum. *Ib.*

12. *Pearls capable of or intended for stringing; how dutiable.*

After reviewing provisions of former tariff acts and prior decisions in regard to pearls and the duties to be levied upon them, *held*, that pearls, not strung or set, although suitable for being strung as a necklace are not to be classed by similitude under par. 434 and subjected to the higher duty of sixty per centum. *Ib.*

13. *Pearls; classification by similitude; presumption against.*

Where a tariff act, as that of 1897, provides for pearls set or strung, and for pearls not strung or set, it will not be presumed that Congress intended to leave an unenumerated class of pearls to be classed by similitude. *Ib.*

DAMAGES.

See CONTRACTS, 3, 4, 5;

INJUNCTION, 1, 2;

JURISDICTION, E 4.

DEFENSES.

See NATIONAL BANKS, 2.

DEPARTMENTAL INSTRUCTIONS.

See CONSULS, 1.

DISTRICT COURT.

See JURISDICTION, C.

DISTRICT OF COLUMBIA.

1. *Union Station acts of 1901 and 1903 construed.*

The Union Station Act of February 28, 1903, 32 Stat. 909, c. 856, imposed larger liabilities on the railroad company for necessary changes than did the earlier act of February 22, 1901, 31 Stat. 767, c. 353, and provided for the payment of a sum of money to the railroad company. The work contemplated by the later act included material changes whether within or outside of the right of way. *New York Continental Filtration Co. v. District of Columbia*, 253.

2. *Contracts with; construction of contract relating to certain work made necessary by Union Station Act.*

Under the contract made by the plaintiff in this case with the District of Columbia for the latter to make the necessary changes, the District is entitled to be paid for all the work outside of, as well as within, the railroad's right of way. *Ib.*

3. *Same.*

Independently of the statute, and on the evidence as to the intention of the parties, the contract is properly construed as including work outside of as well as within the right of way. *Ib.*

DOUBLE JEOPARDY.

See PHILIPPINE ISLANDS, 1, 2.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 2, 6-13, 14;
EXECUTIVE OFFICERS, 2.

DURESS.

See ACTIONS, 1, 2;
PRINCIPAL AND SURETY, 1;
TAXES AND TAXATION, 1-4.

DUTIES ON IMPORTS.

See CUSTOMS LAW.

EJECTMENT.

See PUBLIC LANDS, 8.

EMINENT DOMAIN.

1. *Northwest Ordinance; effect of Article 2 on right of States to exercise.*

Article 2 of the Northwest Ordinance did not forbid the appropriation by eminent domain of a contract dedicating land to the common use and benefit of a town. *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.

2. *State power of.*

The right of every State to exercise the power of eminent domain as to every description of property is an inherent power without which it cannot perform its functions. *Ib.*

3. *State power of; limitation on exercise.*

The power of eminent domain was not surrendered by the States to the United States or affected by the Federal Constitution except that it must be exercised with due process of law and on compensation being made. *Ib.*

4. *Subjects of.*

The power of eminent domain extends to tangibles and intangibles, including choses in action, contracts and charters. *Ib.*

5. *Subjects of; taking of contract; effect on obligation.*

An appropriation under eminent domain with compensation of a contract neither challenges its validity nor impairs the obligation. It is a taking, not an impairment, of its obligation. *Ib.*

6. *Subjects of; contract subject to appropriation.*

Every contract, whether between the State and an individual or between individuals only, is subject to the law of eminent domain, for there enters into every engagement the unwritten condition that it is subject to appropriation for public use. *Ib.*

7. *Northwest Territory Ordinance; construction of in respect to powers of eminent domain.*

The right to appropriate property being a necessary incident to sovereignty, Art. 2 of the Northwest Ordinance giving power only to take property in a public exigency for compensation, will be broadly construed as simply limiting the general right of eminent domain by the requirement that compensation be made. *Ib.*

8. *Public exigency; when deemed to exist.*

A public exigency exists for the common preservation when the legislature declares that for a *bona fide* public purpose there should be a right of way for a common carrier across a particular piece of property, and in such a case the propriety of the appropriation cannot be questioned by any other authority. (*United States v. Jones*, 109 U. S. 519.) *Ib.*

9. *Contract as subject of; quære as to.*

Quære: Whether the only power of eminent domain to which a contract is subordinate is the power as it existed at the time that the contract was made or at the time of appropriation. *Ib.*

See CONSTITUTIONAL LAW, 3;
LOCAL LAW (OHIO).

EMPLOYER AND EMPLOYÉ.

See CONGRESS, POWERS OF, 4, 5, 6.

EMPLOYERS' LIABILITY ACT.

1. *Constitutionality of act of 1908.*

The Employers' Liability Act of April 22, 1908, 35 Stat. 65, c. 149, as amended April 5, 1910, 36 Stat. 291, c. 143, regulating the liability of common carriers by railroad to their employés is constitutional. *Second Employers' Liability Cases*, 1.

2. *Power of Congress to regulate relations of common carriers and employés.*

Congress may, in the execution of its power over interstate commerce, regulate the relations of common carriers by railroad and their employés while both are engaged in such commerce. *Ib.*

3. *Act of 1908 within powers of Congress.*

Congress has not exceeded its power in that regard by prescribing the regulations embodied in the Employers' Liability Act. *Ib.*

4. *Effect of regulations on laws of States.*

Those regulations have superseded the laws of the several States in so far as the latter cover the same field. *Ib.*

5. *Enforcement of rights under, in state courts.*

Rights arising under the regulations prescribed by the act may be enforced, as of right, in the courts of the States, when their jurisdiction, as fixed by local laws, is adequate to the occasion. *Ib.*

ENROLLMENT OF INDIANS.

See INDIANS, 8, 9, 10.

EQUAL PROTECTION OF THE LAWS.

See CONSTITUTIONAL LAW, 7, 10, 14-19.

EQUITY.

1. *Relief against ruinous abjuration of duties by common carrier.*

Where a common carrier threatens to abjure its functions and duties as such in regard to a commodity, equity can grant relief to a dealer in such commodity whose business would be ruined by such continual action by the common carrier. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

2. *Jurisdiction to enjoin institution of criminal actions.*

While the general rule is that equity has no jurisdiction over the prosecution of crimes, it may, when it is essential to the protection of property rights, as to which the protection of a court of equity has already been invoked, enjoin the institution of criminal actions involving the same legal questions. *Philadelphia Co. v. Stimson*, 605.

3. *Where jurisdiction of person of defendant obtains court may restrain injury to rights of property outside its jurisdiction.*

A court of equity having control of the person of defendant has jurisdiction of an action to restrain him from violating the rights of the complainant in regard to property not within its jurisdiction and may compel obedience to its decree. (*Phelps v. McDonald*, 99 U. S. 298.) *Ib.*

4. *Intervention to restrain officer of United States transcending limits of authority.*

An officer transcending the limits of his authority under a constitutional statute may inflict similar injuries on property or individuals as though he were proceeding under an unconstitutional statute, and in either event, equity may intervene to restrain unfounded prosecutions. *Ib.*

5. *Restraining public officers from interfering with lawful use of property.*

While the establishment of a general system of harbor lines for the protection of navigation is not of itself an injury to property and cannot be restrained, equity may enjoin an officer from taking measures to maintain the limits against an individual proprietor and so prevent him from enjoying what he asserts to be a lawful use of his own property. *Ib.*

See JUDGMENTS AND DECREES, 4; PRACTICE AND PROCEDURE, 4, 15;
LOCAL LAW (PORTO RICO); TAXES AND TAXATION, 6.

ESTATES OF DECEDENTS.

Foreigners; law governing administration.

There is no Federal probate law, but right to administer property left by a foreigner within the jurisdiction of a State is primarily committed to state law. *Rocca v. Thompson*, 317.

See CONSULS, 1-6;
TREATIES, 2.

EVIDENCE.

1. *Criminal; statements by accused; necessity for warning.*

Where the accused voluntarily becomes a witness in his own behalf before a commission, it is not essential to the admissibility of his testimony that he be first warned that what he says may be used against him. (*Wilson v. United States*, 162 U. S. 613.) *Powers v. United States*, 303.

2. *Criminal; voluntary testimony by accused; use on subsequent trial.*

Where the record does not show that the accused on the preliminary hearing claimed his privilege under the Fifth Amendment or was ignorant of it but does show that he testified voluntarily and understandingly, his testimony cannot be excluded when subsequently offered at his trial. *Ib.*

3. *Criminal; voluntary testimony by accused; right of cross-examination.*

A defendant testifying voluntarily, thereby waiving his privilege, may be fully cross-examined as to the testimony given, and in this

case *held* that the cross-examination did not exceed the proper limits. *Ib.*

4. *Criminal; voluntary testimony by accused; application of § 860, Rev. Stat.*

Section 860, Rev. Stat., has no bearing on the introduction in the same criminal proceeding of testimony of accused given voluntarily. (*Tucker v. United States*, 151 U. S. 164.) *Ib.*

5. *Hearsay; when evidence not subject to objection as.*

When evidence taken elsewhere is admitted generally and without restriction by consent of the accused, it is not subject to the objection that it is hearsay. *Diaz v. United States*, 442.

6. *Public records; special entries in; effect of state statute making such entries prima facie, but not conclusive, evidence.*

A state statute which makes special entries in public records *prima facie*, but not conclusive, evidence, of the validity of the proceedings referred to, deals with rules of evidence and not with substantive rights. *Reitler v. Harris*, 437.

7. *Secondary; not to be disregarded.*

Although the testimony offered may not be the best evidence, it cannot be disregarded if offered and admitted without objection. (*Diaz v. United States*, *ante*, p. 442.) *Kansas City Southern Ry. Co. v. Albers Commission Co.*, 573.

See APPEAL AND ERROR, 4, 5;	PHILIPPINE ISLANDS, 3;
CONSTITUTIONAL LAW, 1,	PRACTICE AND PROCEDURE, 4,
2, 11;	5, 8;
JURISDICTION, A 2;	PUBLIC LANDS, 8;
STIPULATION OF PARTIES, 1.	

EXCLUSION OF ALIENS.

See IMMIGRATION, 1, 2, 3.

EXECUTIVE OFFICERS.

1. *Act of subordinate as that of head of Department.*

The decision of an appeal is none the less that of the Secretary of Commerce and Labor because communicated by the Assistant Secretary, *Hannibal Bridge Co. v. United States*, 221 U. S. 194, by telegram, and later verified by letter. *Tang Tun v. Edsell*, 673.

2. *Decisions of; promptness as basis of attack.*

The fact that a case is quickly decided, in this case two days after

its submission, is not a basis for attack on ground of abuse of discretion or denial of due process. *Ib.*

See IMMIGRATION, 2;
MANDAMUS, 1, 2.

EXEMPTIONS.

See CONGRESS, POWERS OF, 2;
UNITED STATES, 2, 4.

EXPRESS COMPANIES.

See INTERSTATE COMMERCE, 23, 25.

EXTRATERRITORIALITY.

See IMMIGRATION, 5;
JURISDICTION, E 5.

FACTS.

See PRACTICE AND PROCEDURE, 8, 9, 11.

FEDERAL QUESTION.

When judgment of state court rests upon ground of general law broad enough to sustain it.

Where the state court decides that a corporation which claims that it only does an interstate business but paid a state tax levied only upon corporations doing an intrastate business made the payment not under duress, and the record shows that the question was fairly in the case, the judgment rests upon a ground of general law broad enough to sustain it. *Gaar, Scott & Co. v. Shannon*, 468.

See APPEAL AND ERROR, 4, 5;
JURISDICTION, A 1-6;
PRACTICE AND PROCEDURE, 7.

FELLOW-SERVANTS.

See CONGRESS, POWERS OF, 5.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 6, 14;
EVIDENCE, 2.

FINAL JUDGMENTS.

See JUDGMENTS AND DECREES, 1, 2, 7.

FINDINGS OF FACT.

See PRACTICE AND PROCEDURE, 8, 11.

FORAKER ACT.

See JURISDICTION, C.

FOREIGN COMMERCE.

See COMMERCE;

CONGRESS, POWERS OF, 1, 2;

WATERS, 3.

FOREIGNERS.

See ESTATES OF DECEDENTS;

TREATIES, 2.

FOREIGN JUDGMENTS.

See CONSTITUTIONAL LAW, 20.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 7, 18;

PUBLIC SERVICE CORPORATIONS, 7.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 20.

GOVERNMENT CONTRACTS.

See CONTRACTS, 3-7.

GRAND JURY.

See CRIMINAL LAW, 1;

JURY AND JURORS, 1, 2.

HABEAS CORPUS.

See APPEAL AND ERROR, 9;

PRACTICE AND PROCEDURE, 6.

HARBOR LINES.

See EQUITY, 5;

NAVIGABLE WATERS, 1, 2.

HEPBURN ACT.

See CARMACK AMENDMENT.

HOMICIDE.

See CRIMINAL LAW, 2, 3.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 1-4;

EMINENT DOMAIN, 5.

IMMIGRATION.

1. *Chinese; application to, of Alien Immigration act of 1907.*

The Alien Immigration Act of February 20, 1907, c. 1134, § 36, 34 Stat. 898, 908, applies to Chinese laborers illegally coming to this country notwithstanding the special acts relating to the exclusion of Chinese. *United States v. Wong You*, 67.

2. *Chinese; finality of decision of question of citizenship.*

Under the acts of August 18, 1894, c. 301, 28 Stat. 372, 390, and of February 14, 1903, c. 552, 32 Stat. 825, the decision of the question of citizenship of a Chinese person seeking to enter the United States is final unless reversed on appeal by the Secretary of Commerce and Labor; and unless it affirmatively appears that the executive officers acted unlawfully or improperly, or abused their discretion, their finding is conclusive and not subject to review by the courts. *Tang Tun v. Edsell*, 673.

3. *Chinese; when courts will not interfere with decision as to citizenship.*

In this case it appears that the requirements of the law were satisfied and there is no ground for judicial intervention. *Ib.*

4. *Return of aliens by vessels which bring them over; object of § 19 of act of 1907.*

The object of § 19 of the Immigration Act of 1907, prohibiting the owners of vessels from making any charge or receiving any security for return passage of aliens brought to this country, was to carry out a policy of preventing the transportation of aliens within the excluded class by rendering it unprofitable instead of profitable for the vessel-owner. *United States v. Nord Deutscher Lloyd*, 512.

5. *Criminal liability of vessel owner for acts done in pursuance of contract made in foreign country.*

While a statute has no extra-territorial force, and one cannot be indicted here for what he does in a foreign country, the making of a contract in a foreign country may, as in this case, create a condi-

tion operative in this country, under which acts of omission or commission can be punished here. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, distinguished. *Ib.*

6. *Vessel-owner's liability under § 19 of act of 1907 for retention of money for return passage.*

A vessel-owner taking security in a foreign country for the return passage of aliens brought to a port of the United States violates § 19 of the Immigration Act of 1907, and the retention of the money in the United States for the return passage is an offense at the place where it is retained. *Ib.*

IMPORTS.

See COMMERCE, 2;

CONGRESS, POWERS OF, 2;

CUSTOMS LAW;

WATERS, 3.

INDEMNITY GRANTS.

See PUBLIC LANDS, 3, 4.

INDIANS.

1. *Allotments; alienation; power of Congress to determine conditions of.*

In allotting Indian lands, Congress can determine the conditions under which they shall be alienated by the allottees, and titles resting on deeds of Commissioners and consents of the allottees required by the statute under which the lands were allotted are to be determined by the Federal statutes, and not by the laws of the States. *Jacobs v. Prichard*, 200.

2. *Allotments; alienation; life of consents given as required by acts of 1893 and 1897.*

Under the act of March 3, 1893, 27 Stat. 612, c. 209, and the amendatory act of June 7, 1897, 30 Stat. 62, c. 3, carrying out the treaty with the Omaha Indians of 1854, the consent required to be given to the Commissioner for sale of land of allottee Indians in the Puyallup Reservation in Washington was not a mere power to sell which terminated with the death of the giver, but an agreement which continued in force after death. *Ib.*

3. *Allotments of land of Chippewa Indians; Steenerson and Nelson Acts construed.*

The Nelson Act of January 14, 1889, 25 Stat. 642, c. 24, providing for allotment of lands of Chippewa Indians in the White Earth Reservation was still effective as to those Indians who had not received allotments thereunder when the Steenerson Act of

April 24, 1904, 33 Stat. 589, c. 1786, was enacted and such Indians were not required to await proceedings under the Steenerson Act to obtain their original allotments under the Nelson Act. *Fairbanks v. United States*, 215.

4. *Allotments; effect of Steenerson Act of 1904.*

The Steenerson Act is part of a plan of legislation in regard to Indian allotments and modified and changed the prior general allotment acts of February 8, 1887, and February 28, 1891, by superseding certain of their provisions and enlarging the quantity of land to be allotted, and the scheme of legislation which is a part is to have existence and continuity of action until its purpose shall have been fulfilled. (*Oakes v. United States*, 172 Fed. Rep. 304.) *Ib.*

5. *Allotments; who entitled under acts relating to White Earth Reservation.*

Under the Nelson Act and the other acts relating to Indian allotments in the White Earth Reservation, in force August 8, 1904, children born on the reservation subsequent to the final order and who had not had allotments were entitled to allotments of eighty acres. *Ib.*

6. *Allotments; selections of additional land under Steenerson Act; who entitled.*

Indians who had already received allotments under the Nelson Act were not entitled prior to August 8, 1904, to make selections of additional land under the Steenerson Act to the exclusion of one who had not received any allotment under the Nelson Act. *Ib.*

7. *Allotments; proceedings in Land Department; imputation of notice.*

In a continuous proceeding in the Land Department under the Indian Allotment Acts all parties are chargeable with notice of the different steps taken. *Ib.*

8. *Enrollment; power of Secretary of Interior in respect of.*

Lowe v. Fisher, ante, p. 95, followed as to the construction of the Cherokee Treaty of August 11, 1866, and as to the freedmen of the Cherokees and their descendants entitled to be enrolled as citizens and the power of Congress thereover, and that the Secretary of the Interior had the power, after notice and opportunity to be heard, to strike from the rolls names which had been improperly placed thereon through mistake or fraud. *Cherokee Nation v. Whitmire*, 108.

9. *Enrollment of freedmen of Cherokee tribe; who included.*

Under the acts of Congress of 1902 and 1906 in regard thereto, the enrollment of freedmen of the Cherokee tribe was to be made in

strict conformity with the decree of the Court of Claims, and should include only such persons of African descent, either free colored or the slaves of Cherokee citizens and their descendants, who were actual personal *bona fide* residents of the Cherokee Nation, August 11, 1866, or who actually returned and established such residence within six months thereafter. *Lowe v. Fisher*, 95.

10. *Enrollment; power of Secretary of Interior in respect of.*

While the Secretary of the Interior did not have power to strike names from the roll of Cherokee citizens without notice and opportunity to be heard, he did have power, after such notice and opportunity had been given, to strike from the roll names which had been placed thereon through fraud or mistake. (*Garfield v. Goldsby*, 211 U. S. 249.) *Ib.*

11. *Return to tribe; application of limitation in Art. IX, Cherokee Treaty of 1866.*

The limitations on the right to return to the tribe in Art. IX of the Cherokee Treaty of August 11, 1866, refer to both freedmen and free colored persons; and freedmen and descendants of freedmen who did not return within six months are excluded from the benefit of the treaty. *Ib.*

See CONGRESS, POWERS OF, 3; JUDGMENTS AND DECREES, 8;
COURT OF CLAIMS, 2; STATUTES, A 9.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 4, 6;
JURY AND JURORS, 2.

INITIATIVE AND REFERENDUM.

See CONSTITUTIONAL LAW, 28.

INJUNCTION.

1. *Effect of filing bill for; disposition of bill where no preliminary injunction issued.*

After filing of a bill for injunction, defendants proceed at their peril, and even if no preliminary injunction is issued, if they inflict actionable wrong upon the plaintiff, the bill can be retained for assessment of damages; but if the only ground left for further prosecution is costs, the appeal will be dismissed. *Wingert v. First National Bank*, 670.

2. *Action for, not transmutable into action for damages for doing thing sought to be restrained.*

An action by a stockholder for injunction against a national bank and

its directors to restrain them from materially altering the bank building will not be transmuted into an action for damages against the directors for so doing; such an action will not lie. *Ib.*

See ADMIRALTY, 5; JURISDICTION, E 3;
 APPEAL AND ERROR, 7; PUBLIC SERVICE CORPORATIONS, 6;
 CONTEMPT OF COURT; TAXES AND TAXATION, 6;
 EQUITY, 2, 3, 4, 5; UNITED STATES, 4.

INSURANCE.

1. *Life insurance policy; law governing construction.*

A life insurance policy which by its terms does not become a completed contract until its delivery on payment of the first premium is to be construed as a contract made in the State where the first premium is paid and the policy delivered, notwithstanding a recital that it is to be construed as though made in another State. *Northwestern Mut. Life Ins. Co. v. McCue*, 234.

2. *Life insurance policy; law governing construction.*

In this case, *held*, that a policy issued by a Wisconsin life insurance company on the life of a resident of Virginia, to whom it was delivered in that State on payment of the first premium, is a Virginia contract. *Ib.*

3. *Life policies; death by hand of law not covered by.*

A policy of life insurance, silent on the point, does not cover death by the hand of the law. This is consonant with the rulings of the Virginia courts. *Ib.*

4. *Life; quære as to policy of State.*

Quære: What the public policy of the State of Wisconsin is on the liability of an insurance company for death of the insured by the hand of the law. *Ib.*

5. *Mutual companies; rights of policyholders.*

Even though a policy in a mutual life insurance company be a property right, it is the measure of rights of every one thereunder, and if the owner thereof cannot recover because it would be against public policy to permit a recovery, neither can the innocent heirs of that person recover. *Ib.*

INTEREST.

See NATIONAL BANKS.

INTERLOCUTORY ORDERS.

See APPEAL AND ERROR, 10.

INTERSTATE COMMERCE.

1. *Carmack amendment; effect on initial carrier; quære as to.*

Quære: and not determinable in this action, as the carrier failed to plead or prove the cause of non-delivery, whether the Carmack amendment makes the initial carrier an insurer, or deprives it of the right to contract with the shipper against liability for damages not caused by its own or the connecting carrier's negligence. *Galveston, H. & S. A. Ry. Co. v. Wallace*, 481.

2. *Carmack amendment; connecting carriers; through contracts; loss of goods.*

Under the Carmack amendment, wherever the carrier voluntarily accepts goods for shipment to a point on another line in another State, it is conclusively treated as having made a through contract, *Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186; it thereby elects to treat connecting carriers as its agents and the presumptions are that if goods are lost the loss results from the negligence of itself or of its agents. *Ib.*

3. *Carmack amendment; connecting carriers; burden of proof in case of loss of goods.*

Under the Carmack amendment, when a carrier accepts goods for shipment to a point on another line in another State, the burden of proof falls on it as the initial carrier to prove that the loss has not resulted from some cause for which it is in law or by contract responsible. *Ib.*

4. *Intoxicating liquors as subject of.*

Beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

5. *Intoxicating liquors; when subject to state regulation.*

Until transportation of intoxicating liquor from one State to another is concluded by delivery to the consignee, the article transported does not become subject to state regulation. *Ib.*

6. *Intoxicating liquors; application of Wilson Act.*

The Wilson Act of August 8, 1890, c. 728, 26 Stat. 313, does not apply to interstate shipments of liquor until delivery to the consignee. *Ib.*

7. *Rates; effect of sanction by connecting carrier of through rates.*

The sanction by connecting carriers of through rates published by

another carrier is only essential as to their application to the haul from common points; rates from other points are individual and not joint. *Kansas City Southern Ry. Co. v. Albers Commission Co.*, 573.

8. *Rates; schedule of joint rates; presumption as to application.*

Where a schedule of joint rates is not restricted to particular lines designated, it will be presumed, where there is testimony to that effect, as applying to shipments received from any connecting line of goods originating at the designated points. *Ib.*

9. *Rates; through rates not established; application of local rates.*

Where there is no applicable through rate established, shipments, even if moving on through bills of lading, must take the local rates unless displaced by a lawful special agreement. *Ib.*

10. *Rates; agreement violative of § 6 of Interstate Commerce Act.*

A special rate agreement which departs from the established local rate for the benefit of a single shipper, no schedule of which is filed with the Interstate Commerce Commission, violates § 6 of the Interstate Commerce Act. *Ib.*

11. *Rates; liability of carrier to action for refund.*

A carrier is not liable to action to refund the excess over an illegal special rate if the rate actually collected is the applicable legal published rate. *Ib.*

12. *Rates; posting schedule not essential to make rates legally operative.*

Posting the schedules of rates of interstate carriers as required by § 6 of the Interstate Commerce Act is a means of affording special facilities to the public for ascertaining the rates actually in force but is not essential to make the rates legally operative. *Ib.*

13. *Rates; posting schedule not condition to make tariff legally operative.*

Posting of rates as required by § 6 of the Interstate Commerce Act is not a condition of making the tariff legally operative or keeping it in operation. *United States v. Miller*, 599.

14. *Rates; publication and posting differentiated.*

Publication and posting, in the sense in which those terms are used in the Interstate Commerce Act, are essentially different. *Ib.*

15. *Rates; effect of non-posting or removal of schedule to disestablish published rate.*

One provision of an act will not be so construed as to defeat the object

of the act; and the non-posting, or removal of, schedules of rates, will not disestablish a published rate. *Ib.*

16. *Same.*

Congress will not be presumed to have intended that the mere non-posting of schedules of rates in the depots of carriers, or the removal thereof after posting, should disestablish or suspend a rate, which the act provides shall only be changed in the mode prescribed. (*Kansas City Southern Ry. Co. v. Albers Commission Co.*, ante, p. 573.) *Ib.*

17. *Rebates; liability for accepting; effect of non-posting of rates.*

The non-posting of rates by an interstate carrier will not relieve a shipper from the penalty for violating the Interstate Commerce Act by accepting rebates. *Ib.*

18. *State interference with transportation of intoxicating liquors.*

A State cannot forbid a common carrier to transport intoxicating liquors from a consignor in one State to a consignee in another State. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

19. *State interference with; effect of Kentucky statute of 1906 prohibiting transportation of intoxicating liquors.*

The Kentucky statute of 1906, prohibiting common carriers from transporting intoxicating liquors to "dry" points in Kentucky, while a valid enactment as to intrastate shipments, was not effective as to interstate shipments; in that respect it was an unconstitutional interference with interstate commerce. *Ib.*

20. *State interference with; effect of state statute on carrier engaged in.*

A state statute regulating shipments of common carriers, although legal as to intrastate shipments, if illegal as to interstate shipments imposes no obligation upon the carrier in regard thereto, nor affords any excuse for refusal to perform its duties as a carrier. *Ib.*

21. *State taxation of property used in.*

A State may tax property within the State although it is used in interstate commerce. *United States Express Co. v. Minnesota*, 335.

22. *Same.*

A State may not burden interstate commerce by taxing its commerce, but it may measure the value of property of a corporation engaged in interstate commerce within the State by the gross receipts,

- and impose a tax thereon if the same is in lieu of all taxes upon the property of such corporation. *Oklahoma v. Wells, Fargo & Co.*, ante, p. 298, distinguished. *Ib.*
23. *State taxation as burden on; validity of Minnesota statutes of 1905, ch. 11, taxing express companies.*
- The Minnesota statutes, Revised Laws, 1905, Chapter 11, taxing express companies on their property employed within the State six per cent. of the gross receipts in lieu of all other taxes, is an exercise in good faith of legitimate taxing power, and is not an unconstitutional burden upon interstate commerce. *Ib.*
24. *Taxation by State of instrumentality of; basis of.*
- In estimating for taxation the proportion of income of a corporation doing interstate business, a State cannot include income from investments in bonds and lands outside of the State. (*Fargo v. Hart*, 193 U. S. 490.) *Oklahoma v. Wells, Fargo & Co.*, 298.
25. *Taxation by State as burden on.*
- The Oklahoma tax on gross revenue of corporations of 1910, as far as it affects express companies, is not a property tax but a tax on all revenue, including that received from interstate commerce, and as such is an unconstitutional burden on interstate commerce. (*Galveston, Harrisburg & San Antonio Ry. Co. v. Texas*, 210 U. S. 217.) *Ib.*
26. *Taxation by State of instrumentality of; statute not possible of construction so as to exclude application.*
- Where a state statute requires that a corporation doing both interstate and intrastate business return its gross receipts from all sources, the taxing feature of the statute cannot be construed as relating only to receipts from intrastate commerce, and sustained separately in that respect. *Ib.*
- See APPEAL AND ERROR, 5; EMPLOYERS' LIABILITY ACT;
 CARMACK AMENDMENT; JURISDICTION, A 4; E 4;
 CONGRESS, POWERS OF, 4, PRACTICE AND PROCEDURE, 11;
 5, 6; STATES, 4;
 CONSTITUTIONAL LAW, 6; TAXES AND TAXATION, 6.

INTERSTATE COMMERCE COMMISSION.

1. *Jurisdiction; when question as to action of common carrier one for courts and not for commission.*
- Where the action of the common carrier is not discriminatory and the question is not an administrative one within the scope of the Inter-

state Commerce Commission, a question of general law as to the duties of the carrier arises which is one for a judicial tribunal, and not competent for the Commission; and the fact that the carrier may have filed notice with the Commission does not give it jurisdiction of the subject. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

2. *When finding of, not prerequisite to resort to courts to compel carrier to perform duty.*

Where reasonableness of, or discrimination in, rates, is not an element, but the common carrier bases a refusal to perform its duty as such on legislative enactments, a shipper can resort to the courts to compel him to do so without first obtaining a finding from the Interstate Commerce Commission. *Texas & Pacific Railway v. Abilene Cotton Oil Co.*, 204 U. S. 246, distinguished. *Ib.*

See JURISDICTION, E 4.

INTOXICATING LIQUORS.

See INTERSTATE COMMERCE, 4, 5, 6, 18, 19.

ITALY.

See CONSULS, 5, 6.

JEOPARDY.

See CRIMINAL LAW, 3, 5;

PHILIPPINE ISLANDS, 1, 2.

JUDGMENTS AND DECREES.

1. *Final judgments; when considered such, when motion for new trial or rehearing made.*

A judgment is not generally treated as final until a motion for new trial or rehearing, which has been entertained by the court, has been disposed of; in such a case the time for appeal runs from the date of such disposition. (*Kingman v. Western Manufacturing Co.*, 170 U. S. 675.) *United States v. Ellicott*, 524.

2. *Finality of judgment of Circuit Court of Appeals.*

Where the Circuit Court of Appeals has authority to make a ruling which finally disposes of the case, and the defeated party does not successfully prosecute either the certification of the question of jurisdiction to this court, or writ of certiorari from this court, the judgment of the Circuit Court remains conclusive upon the parties and binding upon the Circuit Court and any other court

to which the case can be taken. (*Brown v. Allon Water Company*, 222 U. S. 325.) *Metropolitan Water Co. v. Kaw Valley District*, 519.

3. *Nunc pro tunc decree presupposes what.*

A decree *nunc pro tunc* presupposes a decree allowed or ordered, but not entered through inadvertence of the court, or a decree under advisement when the death of a party occurs. (*Mitchell v. Overman*, 103 U. S. 62.) *Cuebas v. Cuebas*, 376.

4. *Nunc pro tunc decree not justified.*

No attempt at revision having been made at any time, there is no ground to enter a decree *nunc pro tunc* in this case on any known ground of equity procedure. (*Gray v. Brignardello*, 1 Wall. 627.) *Ib.*

5. *Pro confesso decree; effect of want of jurisdiction of court.*

If a bill is fatally defective, showing that the court had no jurisdiction, it is error to allow a *pro confesso*; the order should be vacated, and the defaulting defendant allowed to defend. *Ib.*

6. *Pro confesso; effect of amendment of bill so as to create new jurisdiction.*

Where an amendment is allowed that changes the character of the bill and creates a jurisdiction not theretofore existing, the court should set aside a default and give time to defend. *Ib.*

7. *Scope of final decree following pro confesso.*

The final decree following a *pro confesso* order is only such a decree as would be authorized by the state of the pleadings when the order was entered. *Ib.*

8. *Parties; sufficiency of, to warrant decree; quære as to.*

Quære: Whether a decree can be made in a suit against the United States by a party claiming a selection under Indian allotment acts which would affect the rights of other claimants to the same land who are not parties to the suit. *Fairbanks v. United States*, 215.

See APPEAL AND ERROR, 2, 6;	FEDERAL QUESTION;
CONSTITUTIONAL LAW, 20;	IMMIGRATION, 2;
COURT OF CLAIMS, 2;	NATIONAL BANKS, 7.

JUDICIAL NOTICE.

See COURTS, 5.

JUDICIARY.

See COURTS;

JURISDICTION.

JURISDICTION.

A. OF THIS COURT.

1. *Under § 709, Rev. Stat.; claim of copyright under Federal law.*

Although complainant may assert his own common-law copyright to his play, if he alleges that defendant has obtained a copyright for the play sought to be enjoined, and the defendant stands upon the copyright and is enjoined, a Federal right is set up and denied, and this court has jurisdiction to review the judgment, under § 709, Rev. Stat. *Ferris v. Frohman*, 424.

2. *Under § 709, Rev. Stat.; what constitutes Federal question for purpose of.*

Overruling objections to admission of evidence other than field notes of surveys is in effect passing on effect of the requirements of § 2396, Rev. Stat., and, in regard to surveys of public lands, involves a Federal question reviewable by this court under § 709, Rev. Stat. *Graham v. Gill*, 643.

3. *Of appeal from Circuit Court of Appeals.*

This court has jurisdiction of an appeal from the Circuit Court of Appeals in this case, as the jurisdiction of the Circuit Court did not depend only on diversity of citizenship, but the constitutionality of a state law and the construction of a Federal statute were also involved. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

4. *To review judgment in case where immunity claimed under Interstate Commerce Act.*

The insistence in the state court by an interstate carrier that a shipper cannot recover excess collected over a special contract rate because the rate collected conformed to the applicable provisions of the Interstate Commerce Act is an adequate assertion of a right or immunity under that act, and this court can review judgment in favor of the shipper. *Kansas City Southern Ry. Co. v. Albers Commission Co.*, 573.

5. *To consider Federal question where judgment of state court rests on matter of general law.*

Where the judgment of the state court rests on a matter of general law strong enough to sustain the judgment, this court cannot consider the Federal question involved; even if it were actually considered by the state court and determined adversely to plaintiff in error. (*Hale v. Akers*, 152 U. S. 554.) *Gaar, Scott & Co. v. Shannon*, 468.

6. *Where Federal question controls determination of case although determined below on matter of local law.*

Where a Federal question was properly presented and necessarily controls the determination of the case, this court has jurisdiction even if the decision is put by the state court upon some matter of local law. (*West Chicago R. R. Co. v. Chicago*, 201 U. S. 506.) *Ib.*

See CONSTITUTIONAL LAW, 20.

B. OF CIRCUIT COURT OF APPEALS.

Of appeal from order adjudging in contempt of court.

If an order of the Circuit Court, adjudging defendant in contempt and to pay a fine, is remedial, it is interlocutory, and only reviewable upon appeal from the final decree; if, however, the order is punitive, it is final and reviewable on writ of error and the Circuit Court of Appeals should take jurisdiction. (*Matter of Christensen Engineering Co.*, 194 U. S. 458.) *In re Merchants' Stock & Grain Co.*, 639.

See APPEAL AND ERROR, 9;

JUDGMENTS AND DECREES, 2;

MANDAMUS, 4, 5.

C. OF DISTRICT COURT.

1. *Of District Court of United States for Porto Rico under Foraker Act and act of 1901.*

Under the Foraker Act of April 12, 1900, 31 Stat. 85, c. 191, jurisdiction of the District Court of the United States was that of the District and Circuit Courts of the United States; the additional jurisdiction conferred by the act of March 2, 1901, 31 Stat. 953, c. 812, did not extend the jurisdiction so as to embrace all controversies in which any litigant on either side is a citizen of the United States or a subject of a foreign country. *Cuebas v. Cuebas*, 376.

2. *Of District Court for Porto Rico; citizenship of parties.*

The District Court of the United States for Porto Rico has not jurisdiction of a cause in which the sole plaintiff is a citizen of Porto Rico and any of the defendants are citizens of Porto Rico, notwithstanding one or more of the defendants may be citizens of the United States or of a foreign country. *Ib.*

3. *Of District Court for Porto Rico; effect of act of March 2, 1901, to extend.*

By the act of March 2, 1901, Congress did extend the jurisdiction of

the United States District Court for Porto Rico by cutting down the necessary jurisdictional amount and dispensing with diversity of state citizenship, by substituting United States citizenship therefor. *Ib.*

See ADMIRALTY, 5.

D. OF FEDERAL COURTS GENERALLY.

In matters relating to patents.

The Federal courts have exclusive jurisdiction of all cases arising under the patent laws, but not of all questions in which a patent may be the subject-matter of the controversy. *New Marshall Engine Co. v. Marshall Engine Co.*, 473.

See JURISDICTION, E 4.

E. OF STATE COURTS.

1. *In matters relating to patents.*

Courts of a State may try questions of title and construe and enforce contracts relating to patents. (*Wade v. Lawder*, 165 U. S. 624.) *New Marshall Engine Co. v. Marshall Engine Co.*, 473.

2. *Of suit to compel assignment of patent and enjoin manufacture and sale of articles covered thereby.*

A suit, to compel assignment of a patent and to enjoin manufacturing and sale of articles covered thereby, because the patent is an improvement on an earlier one and included in a covenant to convey all such improvements, is based on general principles of equity, and is within the jurisdiction of the state court. *Ib.*

3. *Same.*

Where the injunction granted against sale of articles manufactured under a patent is only an incident to a decree for specific performance of a contract to convey the patent as an improvement of an earlier one, the relief is appropriate, and, if it does not determine questions of infringement, is within the jurisdiction of the state courts. *Ib.*

4. *Of suit to recover damages caused by failure to deliver goods; effect of §§ 8, 9, Interstate Commerce Law.*

Damages caused by failure to deliver goods is not traceable to a violation of the Interstate Commerce Law, and is not within the provisions of §§ 8 and 9 of the act; the jurisdiction of the commission and the United States courts is not exclusive. *Texas & Pacific Railway v. Abilene Cotton Oil Co.*, 204 U. S. 426, distinguished. *Galveston, H. & S. A. Ry. Co. v. Wallace*, 481.

5. *Of civil and transitory actions created by foreign statute.*

While statutes have no extra-territorial operation and courts of one government cannot enforce the penal laws of another, state courts have jurisdiction of civil and transitory actions created by a foreign statute, provided it is not of a character opposed to the public policy of the State in which it is brought. *Ib.*

6. *Of causes of action created by Federal statute.*

Jurisdiction is not defeated by implication; and there is no presumption that Congress intends to prevent state courts from exercising jurisdiction already possessed by them, and under which they have power to hear and determine causes of action created by Federal statute. (*Robb v. Connolly*, 111 U. S. 637.) *Ib.*

7. *Same.*

When a Federal statute creating an action, such as the Carmack amendment, is silent on the subject of jurisdiction, the presumption is that the action may be asserted in a state, as well as in a Federal court. *Ib.*

See COURTS, 2;

PRACTICE AND PROCEDURE, 6.

F. OF INTERSTATE COMMERCE COMMISSION.

See Supra, E 4;

INTERSTATE COMMERCE COMMISSION, 1.

G. EQUITY.

See EQUITY.

H. GENERALLY. 1

See COURTS.

JURY AND JURORS.

1. *Grand jury; waiver of objection to.*

The objection that there was no *venire facias* summoning the grand jury is waived unless seasonably taken. *Powers v. United States*, 303.

2. *Grand jury; sufficiency of showing as to qualification.*

When the case gets to this court if the indictment shows that the grand jury was duly selected and sworn, it is enough to show the proper swearing of the grand jury. *Crain v. United States*, 162 U. S. 625, distinguished. *Ib.*

3. *Petit jury; sufficiency of showing of qualification.*

In this case the statements in the record as to the calling and impaneling of the petit jury sufficiently disclose, upon proceedings in error, that the petit jury was sworn. *Ib.*

LAND DEPARTMENT.

See INDIANS, 7;

PUBLIC LANDS, 1, 7.

LAUNDRIES.

See CONSTITUTIONAL LAW, 17.

LAW GOVERNING.

<i>See</i> EMPLOYERS' LIABILITY ACT, 4;	NAVIGABLE WATERS, 2;
INDIANS, 1;	PHILIPPINE ISLANDS, 7;
LOCAL LAW (PORTO RICO), 2);	RIPARIAN RIGHTS, 7;
MINES AND MINING, 2;	STATES, 4.

LAW OF THE LAND.

See STATES, 5.

LEGISLATIVE POWERS.

See COMMON LAW;

CONGRESS, POWERS OF;

LOCAL LAW (OHIO).

LIBEL IN ADMIRALTY.

See ADMIRALTY, 1, 2.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 6.

LICENSES.

See CONSTITUTIONAL LAW, 17.

LIENS.

See LOCAL LAW (PORTO RICO, 2).

LIFE INSURANCE.

See INSURANCE.

LIMITATION OF ACTIONS.

See NATIONAL BANKS, 1, 2, 4.

LIMITATION OF LIABILITY.

See ADMIRALTY, 3-9.

LIQUORS.

See INTERSTATE COMMERCE, 4, 5, 6, 18, 19.

LITTORAL RIGHTS.

See RIPARIAN RIGHTS, 4-7.

LOCAL LAW.

Argentine Republic. Right of consuls to administer estates of deceased nationals (see Consuls, 4). *Rocca v. Thompson*, 317.

Arizona. Abandonment and forfeiture of mining claims; § 3241, Rev. Stat. (see Mines and Mining, 1, 2). *Clason v. Matko*, 646.

California. Administration of estates of decedents (see Consuls, 6). *Rocca v. Thompson*, 317.
Code of Civil Procedure, relative to service by publication (see Constitutional Law, 9). *Jacob v. Roberts*, 261.

Kansas. Statutes of 1907, c. 273, relative to forfeiture of school lands (see Constitutional Law, 2). *Reiller v. Harris*, 437.

Kentucky. Statute of 1906, prohibiting transportation of intoxicating liquors (see Interstate Commerce, 19). *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

Minnesota. Rev. Laws, 1905, Chapter 11, taxing express companies (see Interstate Commerce, 23). *United States Express Co. v. Minnesota*, 335.

Montana. Licensing of laundries (see Constitutional Law, 17); *Quong Wing v. Kirkendall*, 59.

Ohio. *Power of eminent domain.* After its admission into the Union, the legislative power of the State of Ohio was not restricted in any way by the provisions of Article 2 of the Northwest Ordinance of 1787, except as limited by its own constitution, and that State has every power of eminent domain which pertains to the other States. *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.
Act of 1908, § 3283, relative to condemnation of right of way (see Constitutional Law, 3). *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.

Oklahoma. Tax on gross revenue of corporations of 1910 (see Interstate Commerce, 25). *Oklahoma v. Wells, Fargo & Co.*, 298.

Oregon. *National banks; right to sue in own name.* Under the law of Oregon, a national bank holding a chose in action as trustee to collect and distribute may sue in its own name. *Miller v. King*, 505.

Initiative and referendum provision of 1902 (see Constitutional Law, 28). *Pacific States Telephone Co. v. Oregon*, 118.

Philippine Islands. Spanish Law of Waters of 1866 (see Riparian Rights, 5). *Ker & Company v. Couden*, 268.

See PHILIPPINE ISLANDS.

Porto Rico. 1. *Rules of equity; application of.* A court of equity being a novelty in Porto Rico, it would be unjust to apply its doctrines to the conduct of parties during the period that was not governed by any rules peculiar to chancery courts. *Noble v. Gallardo*, 65.

2. *Law governing foreclosure of mortgage liens.* The right to foreclose liens on crops under a mortgage executed in 1865, which is contested on the ground of laches, should be determined according to Spanish law as it prevailed during the time when laches is claimed to have taken place, and not according to the doctrines of our equity courts. *Ib.*

Texas. Statute of 1907, establishing Board of Medical Examiners (see Constitutional Law, 10). *Collins v. Texas*, 288.

Washington. Foreclosure of tax liens (see Constitutional Law, 13). *Ontario Land Co. v. Wilfong*, 543.

Generally. "See Consuls, 3.

LOCUS PENITENTIÆ.

See NATIONAL BANKS, 5.

MANDAMUS.

1. *Will not lie to review decision of executive officer where exercise of judgment and discretion involved.*

A decision of an executive officer, made in the discharge of a duty imposed by statute law, and involving the exercise of judgment and discretion, may not be reviewed by mandamus, nor can he be compelled by that means to retract his decision so made and to

give effect to another not his own and having his approval. *Ness v. Fisher*, 683.

2. *Decision of executive officer involving exercise of judgment and discretion which will not be reviewed by mandamus.*

The Secretary of the Interior made a decision that under § 2 of the timber and stone act of June 3, 1878, 20 Stat. 89, c. 151, the statement that the land is unfit for cultivation, valuable chiefly for its timber, uninhabited, and contains no mining or other improvements, must be made upon the personal knowledge of the applicant, and not upon information and belief, and the Court of Appeals held that this decision was right, and on that ground refused mandamus to review it; this court affirms the judgment, but without examining the merits of the question, and solely on the ground that the decision of the Secretary is one involving the exercise of judgment and discretion of an executive officer which cannot be reviewed by mandamus. *Ib.*

3. *Absence of other method for review; effect on right to mandamus.*

That no writ of error or appeal lies in such a case by which the decision of the Secretary of the Interior can be reviewed, furnishes no ground for awarding mandamus. *Ib.*

4. *Scope of determination on application for writ to compel Circuit Court of Appeals to take jurisdiction of appeal from order of contempt of court.*

Whether contempt proceedings at the instance of the injured party, resulting in the offending party being adjudged to pay a fine, a part of which goes to the injured suitor and a part to the United States, is erroneous in its entirety or only as to the portion of the fine going to the United States, will not be determined on an application for mandamus to compel the Circuit Court of Appeals to take jurisdiction of an appeal; the court will only determine whether the order is reviewable. *In re Merchants' Stock & Grain Co.*, 639.

5. *As proper remedy to compel Circuit Court of Appeals to take jurisdiction of writ of error to review order of contempt of court.*

If the Circuit Court of Appeals refuses to take jurisdiction of a writ of error to review an order of contempt made by the Circuit Court, the punitive feature of which is dominant, the remedy is by writ of mandamus from this court to compel the Circuit Court of Appeals to take jurisdiction. *Ib.*

MANDATE.

See APPEAL AND ERROR, 8.

MARITIME LAW.

See ADMIRALTY.

MASTER AND SERVANT.

See CONGRESS, POWERS OF, 4, 5, 6.

MEDICAL PRACTITIONERS.

See CONSTITUTIONAL LAW, 10;
STATES, 6.

MINERAL LANDS.

See PUBLIC LANDS, 2.

MINES AND MINING.

1. *Abandonment and forfeiture; distinction between; Arizona law.*

While there may be a distinction between abandonment and forfeiture of mining claims, there is no distinction as those terms are used in § 3241, Rev. Stat., of the Territory of Arizona. *Clason v. Matko*, 646.

2. *Arizona law, § 3241, Rev. Stat., in harmony with laws of United States.*

Section 3241, Rev. Stat., Arizona, was enacted pursuant to the power given by § 2324, Rev. Stat. of the United States, and is not in conflict either with that section or with § 1857, Rev. Stat. of the United States. *Ib.*

3. *Claims; essentials to validity.*

A discovery of mineral within the limits of a mining claim is essential to its validity; proximity will not suffice. *Waskey v. Hammer*, 85.

4. *Claims; essentials to validity.*

An original location is invalidated by readjusting the lines so as to exclude the point or place of the only prior discovery. *Ib.*

5. *Claims; readjustment; date at which effective.*

A readjusted location becomes effective as of the date of the readjustment as though it were a new one, and if the locator is disqualified at the time of the readjustment, the location is invalid. *Ib.*

MORTGAGES AND DEEDS OF TRUST.

See LOCAL LAW (PORTO RICO).

MUNICIPAL CORPORATIONS.

Ordinance as contract; to what subject.

A municipal ordinance drawn in form of a contract to be accepted by the franchisee, when accepted becomes a contract and is subject to the reserved powers of the municipality as limited by the laws of the State. *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 655.

See PUBLIC SERVICE CORPORATIONS, 7.

MUTUAL INSURANCE COMPANIES.

See INSURANCE, 5.

NATIONAL BANKS.

1. *Actions under Rev. Stat., § 5198, to recover usurious interest; when period of limitation begins to run.*

The two-year limitation in Rev. Stat., § 5198, within which an action must be commenced against a national bank to recover double the amount of payments of usurious interest, begins to run from the time of payment of the usurious interest, and not from the time of payment of the note. *McCarthy v. First National Bank*, 493.

2. *Usurious contracts prohibited; no statute of limitations to defense of usury.*

National banks are prohibited from making usurious contracts, and whenever the debtor is sued on such a contract, he may plead the usury and be relieved from payment; as to this defense there is no statute of limitations. *Ib.*

3. *Usurious interest exacted by; remedies and defenses of debtor.*

Where a national bank reserves or deducts usurious interest in advance, the debtor may plead usury, but may not recover double the amount paid under § 5198, Rev. Stat. *Ib.*

4. *Usurious contracts; actions on; when statute of limitations begins to run.*

When the debtor actually makes, and the national bank knowingly receives and appropriates, a payment of usurious interest, the cause of action arises and the statute begins to run. *Ib.*

5. *Locus penitentiae; to whom privilege granted.*

There is no *locus penitentiae*. That privilege is only granted to those

banks which, having charged usury, may by refusal to accept interest when tendered show that they will not carry the illegal contract into effect. *Ib.*

6. *Collections; acts within power in connection with.*

While a national bank cannot act as trustee and hold land for third persons, under § 5136, Rev. Stat., it may do those acts that are usual and necessary in making collections of commercial paper and evidences of debt. *Miller v. King*, 505.

7. *Collections; capacity to act as assignee of judgment.*

A national bank, under § 5136, Rev. Stat., may be assignee of a judgment to collect and distribute the amount thereof where the assignment is not made merely to enable it to sue in its own name. *Ib.*

8. *Ultra vires acts; who may raise question; quære as to.*

Quære: Whether any but the Government can raise the question that a national bank in acting as trustee violates § 5136, Rev. Stat. (*Kerfoot v. Bank*, 218 U. S. 281.) *Ib.*

See INJUNCTION, 2;

LOCAL LAW (ORE.).

NAVIGABLE WATERS.

1. *Harbor lines; continuing authority of Secretary of War to establish.*

Authority given by Congress to the Secretary of War to establish harbor lines is not exhausted in laying the lines once; the Secretary may change them at subsequent times in order to protect navigation from obstruction. *Philadelphia Co. v. Stimson*, 605.

2. *Title to soil under; riparian rights, law governing; authority to fix harbor lines.*

The title to the soil under navigable waters within their territorial limits, and the extent of riparian rights, are governed by the law of the several States subject to the paramount authority of Congress; and under the authority of Congress, the Secretary of War may fix harbor lines superseding those fixed by the State. *Ib.*

See PRACTICE AND PROCEDURE, 13.

NAVIGATION.

The public right of navigation follows the course of the stream. *Philadelphia Co. v. Stimson*, 605.

See CONGRESS, POWERS OF, 7, 8, 9;

EQUITY, 5.

NEGLIGENCE.

See CONGRESS, POWERS OF, 5.

NEGROES.

See INDIANS, 9, 11.

NELSON ACT.

See INDIANS, 3, 5, 6.

NORTHWEST ORDINANCE.

See EMINENT DOMAIN, 1, 7;

LOCAL LAW (OHIO);

STATES, 1, 2.

NOTICE

See CONSTITUTIONAL LAW, 8, 9, 13;

INDIANS, 7.

OBITER DICTUM.

What constitutes.

Where a decision is based on two grounds either of which is sufficient to sustain it, neither is *obiter*. (*Union Pacific R. R. Co. v. Mason City R. R. Co.*, 222 U. S. 237.) *Ontario Land Co. v. Wilfong*, 543.

See STATUTES, A 6.

OBJECTIONS.

See PRACTICE AND PROCEDURE, 15.

OBSTRUCTIONS TO NAVIGATION.

See CONGRESS, POWERS OF, 9.

OMAHA INDIANS.

See INDIANS, 2.

OPINIONS.

See OBITER DICTUM.

OSTEOPATHY.

See CONSTITUTIONAL LAW, 10;

STATES, 6.

PANAMA CANAL COMMISSION.

See CONTRACTS, 3.

PARTIES.

See JUDGMENTS AND DECREES, 8;

JURISDICTION, C;

PRACTICE AND PROCEDURE, 13, 14.

PATENTS.

See JURISDICTION, D; E 1, 2, 3.

PAYMENT.

See PRINCIPAL AND SURETY, 1;

TAXES AND TAXATION, 1-4.

PEARLS.

See CUSTOMS LAW, 10-13.

PENAL STATUTES.

See STATUTES, A 8.

PENALTIES AND FORFEITURES.

See INTERSTATE COMMERCE, 17;

TAXES AND TAXATION, 2, 3, 4.

PERJURY.

See CRIMINAL LAW, 6.

PHILIPPINE ISLANDS.

1. *Double jeopardy; what embraced within act of 1902.*

The provision against double jeopardy in the Philippine Act of July 1, 1902, 32 Stat. 691, c. 1369, § 5, is in terms restricted to instances where the second jeopardy is for the same offense as was the first. (*Gavieres v. United States*, 220 U. S. 338.) *Diaz v. United States*, 442.

2. *Double jeopardy; effect of trial for homicide after prior conviction of assault as result of same act.*

One convicted in the Philippine Islands of assault before the death of the injured person is not put in second jeopardy, within the meaning of § 5 of the Philippine Act of 1902, by being placed on trial

for homicide after the death of the person assaulted as a consequence of the assault. *Ib.*

3. *Evidence in criminal cases; waiver of right to confrontation with witnesses.*

The admission by consent of the accused, without qualification or restriction of testimony taken elsewhere, is not a denial of the right of confrontation with witnesses secured by § 5 of the Philippine Act of July 1, 1902, and when so admitted, the testimony is equally available to the Government and to the accused. *Ib.*

4. *Trial in criminal cases; nature of provision of act of 1902 relative to confrontation with witnesses.*

The right of confrontation with witnesses secured by § 5 of the Philippine Act of July 1, 1902, is in the nature of a privilege extended to, rather than a restriction placed upon, the accused, and can be waived or asserted as he sees fit. *Ib.*

5. *Trial in criminal cases; right of accused to be heard.*

The right to be heard by himself and counsel secured to the accused in all criminal prosecutions by § 5 of the Philippine Act of July 1, 1902, is the substantial equivalent of the similar right embodied in the Sixth Amendment, by which it should be measured. (*Kepner v. United States*, 195 U. S. 100.) *Ib.*

6. *Trial in criminal cases; right of accused to be present and heard; effect of voluntary absence; quære as to capital cases.*

While the rule may be otherwise in cases that are capital, or where the accused is in custody under the control of the court, or where special statutory provisions apply, where the offense is not capital, and the accused is not in custody, his voluntary absence does not nullify what has been done in, or prevent the completion of, his trial, but operates as a waiver of his right to be present and leaves the court free to proceed; and so held that the continuation of the trial during the voluntary absence of the accused in this case while it proceeded with his counsel present did not violate the provisions of § 5 of the Philippine Act of July 1, 1902, giving him a right to be present and heard. *Ib.*

7. *Titles; law governing.*

In determining what law is applicable to titles in the Philippines, this court deals with Spanish law as prevailing in the Philippines, and not with law which prevails in this country whether of mixed antecedents or the common law. *Ker & Company v. Couden*, 268.

See PRACTICE AND PROCEDURE, 8.

PLEADING.

See ADMIRALTY, 1, 2;

NATIONAL BANKS, 2, 3;

JUDGMENTS AND DECREES, 7;

STIPULATION OF PARTIES, 1.

POLICE POWER.

See CONSTITUTIONAL LAW, 10;

STATES, 6.

POLITICAL QUESTIONS.

See CONSTITUTIONAL LAW, 21-25, 28.

PORTO RICO.

See JURISDICTION, C;

LOCAL LAW.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Affirmance where no error in single question brought up.*

Where a case is brought up on an appeal on a single question in regard to which there is no error, judgment below will be affirmed. *Ker & Company v. Couden*, 268.

2. *Reversals; when this court will not reverse although differing with lower court as to details of decree.*

The state court having treated a public utility corporation fairly as to value of plant depreciation, and found that the net returns would exceed six per cent., and given it leave to try the case again after the legislative rate had been in effect, this court does not feel warranted in reversing on the ground that the rate is confiscatory because in some details this court might have treated the corporation differently. *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 655.

3. *Motion to dismiss; denial of.*

Where the bill attacks the constitutionality of the state law as applied by the state court, and the application of a case heretofore decided by this court runs to the merits, the motion to dismiss will be denied. *Ontario Land Co. v. Wilfong*, 543.

4. *Effect of § 709, Rev. Stat., to open evidence for reëxamination.*

The practice and decisions of this court are that § 709, Rev. Stat., does not give to a writ of error to the state court in a chancery

case the effect of an appeal from a judgment in such a case in the Federal courts and open the evidence for reëxamination in this court. *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 655.

5. *When and to what extent court may examine evidence on writ of error to state court.*

Findings of the state court in cases either at law or in equity may depend upon questions that are reëxaminable in this court, which, if properly saved, must be answered; and this court may examine the evidence in so far as necessary to do so in respect to rulings within the appellate jurisdiction of this court. (*Kansas City Southern Railway v. Albers Commission Co.*, ante, p. 573.) *Ib.*

6. *Determination of case on merits when single constitutional question involved.*

In this case the writ of error to review a judgment denying plaintiff in error his release on *habeas corpus* is not dismissed but determined on the merits, as the single constitutional question goes to the jurisdiction of the state court, and has arisen as plainly as it ever will. *Bailey v. Alabama*, 211 U. S. 452, distinguished. *Collins v. Texas*, 288.

7. *Inference as to inclusion of Federal question in pleading not incorporated in record.*

Where the record does not contain the petition for rehearing but the opinion of the state court denying it discusses at length the Federal question relied on here, this court will infer that the subject was included in the petition. *Kiernan v. Portland*, 151.

8. *Concurrent findings of fact by lower courts not conclusive in this court.*

Although concurrent findings of fact by both the Court of First Instance and the Supreme Court of the Philippine Islands are entitled to great respect, this court may independently examine the evidence, and in this case, after so doing it affirms the judgment. *Diaz v. United States*, 442.

9. *Facts; duty of court as to.*

When counsel do not bring the facts before it, the court is not bound to make inquiries. *Quong Wing v. Kirkendall*, 59.

10. *Controlling effect of state court decision determining classes of earnings to be taxed.*

In determining whether a state tax on earnings is constitutional this court is bound by the decision of the state court as to what classes of earnings are included in estimating the earnings to be taxed. *United States Express Co. v. Minnesota*, 335.

11. *Controlling effect of state court's determination of nature of tax.*

It is difficult, at times, to draw the line between state taxes that are unconstitutional as burdening interstate commerce and a legitimate property tax measured in part by income from interstate commerce. While the determination by the state court that a tax so measured is a property tax is not binding on this court, in this case, this court will not say that the conclusion is not well founded. *Ib.*

12. *State court's determination of public policy; binding effect of.*

Quære: Whether in a case of this nature this court would have to yield to the determination of what a state court has declared to be its public policy. *Northwestern Mut. Life Ins. Co. v. McCue*, 234.

13. *Right of party to raise question; quære as to.*

Quære: Whether the plaintiff in a taxpayer's suit against a city to enjoin the issuing of bonds to build a bridge over navigable waters on the ground of unconstitutionality of the ordinance, can raise the question of lack of consent of the Government of the United States. *Kiernan v. Portland*, 151.

14. *Who considered in determining constitutionality of statute.*

Where the party attacking the constitutionality of a statute has not suffered, the court will not speculate whether others may suffer. *Collins v. Texas*, 288.

15. *Objection to jurisdiction in equity; when too late.*

Where relief in equity may be admissible under any circumstances, the objection of adequate remedy at law comes too late when made for the first time in this court. *Louisville & Nashville R. R. Co. v. Cook Brewing Co.*, 70.

<i>See</i> APPEAL AND ERROR, 4, 5;	PUBLIC SERVICE CORPORATIONS,
JURY AND JURORS, 1;	4, 5;
MANDAMUS, 4;	STIPULATION OF PARTIES, 2.

PRESUMPTIONS.

<i>See</i> CUSTOMS LAW, 1, 3, 7, 13;	PRACTICE AND PROCEDURE, 7;
INTERSTATE COMMERCE,	PUBLIC SERVICE CORPORATIONS, 2, 7;
2, 8, 16;	STATUTES, A 9;
JURISDICTION, E 6, 7;	

TERRITORIES.

PRINCIPAL AND AGENT.

See INTERSTATE COMMERCE, 2.

PRINCIPAL AND SURETY.

1. *Payment by surety of amount of supersedeas bond held not voluntary.*

Payment by a surety company of the amount of a supersedeas bond after affirmance of the judgment by the Supreme Court of the Territory and notice by the Governor of the State of non-payment by the principals and that unless the judgment were paid forthwith, or excuse for non-payment shown, the company would forfeit its right to transact business in the Territory, is not a voluntary payment even if the Governor had no power to revoke the license, no ruling to such effect having been made prior to the payment. *United States Fidelity Co. v. Sandoval*, 227.

2. *Payment by surety of amount of supersedeas bond; effect of taking security from judgment creditor on liability of appealing debtor to reimburse.*

The fact that an appeal was subsequently taken by the judgment debtors to this court from the judgment, and that on payment thereof the surety company took security for repayment from the judgment creditor in the case of reversal, does not diminish the right of the surety company to collect from the principals the amount of the debt and all of its expenses as agreed in the application for the bond. *Ib.*

See COURTS, 5.

PRIVILEGES AND IMMUNITIES.

See EVIDENCE, 2, 3.

PHILIPPINE ISLANDS, 1-6.

PROBATE LAW.

See ESTATES OF DECEDENTS.

PROCESS.

See CONSTITUTIONAL LAW, 8, 9; JURY AND JURORS, 1;

INJUNCTION; MANDAMUS.

PRO CONFESSO DECREES.

See JUDGMENTS AND DECREES, 5, 6, 7.

PROPERTY RIGHTS.

That which is taken subject to a right cannot be a burden upon that right.
Clason v. Matko, 646.

See COMMON LAW;

EQUITY, 2-5;

INSURANCE, 5.

PUBLIC EXIGENCY.

See EMINENT DOMAIN, 8.

PUBLIC LANDS.

1. *Purchasers; who excluded from becoming.*

A prohibition against purchase of public lands by officers of the Land Department and employes is to prevent abuse and inspire confidence in administration of the land laws, and should be construed broadly to include officials and employes of subordinate offices and all methods of securing title to public lands under the general laws. *Waskey v. Hammer*, 85.

2. *Mineral lands; who may not make location.*

A United States mineral surveyor is disqualified under § 452, Rev. Stat., from making a mining location. *Ib.*

3. *Indemnity grants; lands open to selection.*

An indemnity grant, like the residuary clause in a will, contemplates the uncertain and looks to the future, and what the party entitled may elect to select depends upon the state of the lands at the time of selection. (*Ryan v. Railroad Company*, 99 U. S. 382.) *United States v. Southern Pacific R. R. Co.*, 565.

4. *Railroad grants; right of Southern Pacific company to select lieu lands.*

The Southern Pacific Railroad Company is not entitled under the Branch Line Land Grant Act of March 3, 1871, c. 122, § 23, 16 Stat. 573, 579, to select as lieu lands within the indemnity limits specified in that act, any lands within the granted or indemnity limits of the grant made to Atlantic & Pacific Railroad Company by the act of July 27, 1866, 14 Stat. 292, c. 278, and forfeited by that road under the act of July 6, 1886, 24 Stat. 123, c. 637. *Southern Pacific Railroad Co. v. United States*, 168 U. S. 1, followed, and *Ryan v. Railroad Co.*, 99 U. S. 382, distinguished. *Southern Pacific R. R. Co. v. United States*, 560.

5. *Railroad grants; right of Southern Pacific company to select lieu lands.*

Under the main line grant made to the Southern Pacific Railroad Company by the act of July 27, 1866, c. 278, § 18, 14 Stat. 292, the company can select lieu lands within the primary limits of the grant made to the Atlantic & Pacific Railroad Company by § 3 of the same act and forfeited under the act of July 6, 1886, c. 637, 24 Stat. 123. *Southern Pacific Railroad Company v. United States*, 168 U. S. 1, distinguished. *United States v. Southern Pacific R. R. Co.*, 565.

6. *Railroad grants; selection of lieu lands; effect of decision of this court.*
Where selections are made after a decision of this court, the selections will not be declared illegal at the instance of the Government if its claim is inconsistent with the position taken by it in the earlier case. *Ib.*

7. *Land Department as special tribunal; powers and functions of.*

Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with *quasi* judicial functions, to which is confided the execution of the laws regulating the disposal of the public lands. *Ness v. Fisher*, 683.

8. *Evidence other than field notes of survey; admissibility in action of ejectment.*

Evidence other than field notes of a survey of public lands may be admissible if it has a legitimate tendency to precisely locate the land, even though it may tend to show an error in the field notes, and, under the circumstances of this case, such evidence was proper. (*French-Glenn Live Stock Co. v. Springer*, 185 U. S. 47.) *Graham v. Gill*, 643.

See JURISDICTION, A 2;

MANDAMUS, 2;

MINES AND MINING;

RIPARIAN RIGHTS, 5-8.

PUBLIC OFFICERS.

See EQUITY, 4, 5;

STATES, 1, 2;

PUBLIC LANDS, 1, 2;

UNITED STATES, 2, 3, 4.

PUBLIC POLICY.

See INSURANCE;

PRACTICE AND PROCEDURE, 12.

PUBLIC RECORDS.

See CONSTITUTIONAL LAW, 1, 2, 11;

EVIDENCE, 6.

PUBLIC SERVICE CORPORATIONS.

1. *Rate regulation; reasonableness; questions involved.*

Every legislative rate case presents three questions of prime importance; reasonable value of the plant; probable effect of the reduced rate upon future net income; deductions from gross receipts as a fund to preserve plant from depreciation. *Lincoln Gas Co. v. Lincoln*, 349.

2. *Rate regulation; reasonableness; presumption as to.*

A legislative rate for a public service corporation is presumed to be sufficient to produce a fair return on the plant, and the burden of showing that it is confiscatory rests upon those attacking it. *Ib.*

3. *Rate regulation; return to which corporation entitled.*

A public service corporation is entitled to a fair return upon the fair value of the plant at the time of the inquiry as to reasonableness of rates imposed, *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439; but in this case not decided what such a rate would be on a gas and electric plant in Nebraska. *Ib.*

4. *Rate regulation; reasonable; practice in determining.*

Where a legislative rate contest involves ascertainment by testimony of experts and auditors of valuation of plant, capitalization, gross receipts, net earnings, depreciation and other elements, the proper practice is to refer the case at the outset to a skilled master, upon whose report specific errors can be assigned and ruled upon. (*Chicago, Milwaukee & St. Paul Railway v. Tompkins*, 176 U. S. 167.) *Ib.*

5. *Rate regulation; reasonableness; when this court will not pass upon.*

What sum should be annually deducted from gross or net receipts of a public service corporation for depreciation and replacement and how it should be applied, are novel and grave problems, and, in the absence of a full report as to every element involved, this court is not justified in passing upon them. *Ib.*

6. *Rate regulation; prerequisites to enjoining enforcement of ordinance establishing rates.*

The operation of an ordinance establishing a rate for gas will not be enjoined unless complainant enters into a bond to account to consumers for all overcharges in case the ordinance is eventually sustained. *Ib.*

7. *Rate regulation; power of municipality; limitations on.*

Where the general power reserved to regulate rates is only limited by the Fourteenth Amendment, no franchise contract will be presumed to imply that the municipality under its reserved right to regulate rates must only reduce them to such a point that there will be a margin to allow a discount for prompt payment. *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 655.

8. *Rate regulation; reasonableness; quære as to.*

Quære: Whether a legislative rate, not in itself too low, is confiscatory

because it is too low to permit a further reduction in the way of discount for cash payment. *Ib.*

See PRACTICE AND PROCEDURE, 1.

QUALIFICATION OF JURY.

See JURY AND JURORS, 2, 3.

RAILROADS.

<i>See</i> CONSTITUTIONAL LAW, 14;	EQUITY, 1;
DISTRICT OF COLUMBIA;	INTERSTATE COMMERCE;
EMPLOYERS' LIABILITY ACT;	PUBLIC LANDS, 4, 5, 6.

RATES.

<i>See</i> APPEAL AND ERROR, 5;	PRACTICE AND PROCEDURE, 1;
INTERSTATE COMMERCE, 7-16;	PUBLIC SERVICE CORPORATIONS.
INTERSTATE COMMERCE COMMISSION, 2;	

REBATES.

See INTERSTATE COMMERCE, 17.

REMEDIES.

See MANDAMUS;
TAXES AND TAXATION, 5.

REPEALS.

See STATUTES, A 4.

REPUBLICAN FORM OF GOVERNMENT.

See CONSTITUTIONAL LAW, 21-28.

RETURN OF ALIENS.

See IMMIGRATION, 4, 5, 6.

REVENUE LAWS.

See CONSTITUTIONAL LAW, 15.

RIPARIAN RIGHTS.

1. *Boundaries; stream as; effect of change by accession or erosion and by avulsion.*

A riparian proprietor of land bounded by a stream continues to hold to the stream as a boundary where the banks are changed by accre-

tion or erosion, but if the banks are changed by avulsion, the title is not changed but remains at the former line. This rule applies alike to all streams and rivers no matter how strong and swift they may be. *Philadelphia Co. v. Stimson*, 605.

2. *Boundaries; when sudden change of channel will not affect.*

To bring a sudden change of channel within the rule that it will not affect the boundary line, it must be perceptible when it takes place. (*Nebraska v. Iowa*, 143 U. S. 359.) *Ib.*

3. *Boundaries; case where change of channel did not affect.*

In this case, *held*, that the changes in the line of complainant's property were due to gradual erosion and not to sudden change of channel, and that the stream remained the boundary line. *Ib.*

4. *Accretion and alluvion; Spanish law.*

The question of ownership under the Spanish law of accessions to the shore by accretion and alluvion has been a vexed one. *Ker & Company v. Couden*, 268.

5. *Accessions and accretions; who entitled under law in force in Philippines.*

Under the Spanish Law of Waters of 1866, which became effective in the Philippines in 1871, lands added to the shore by accessions and accretions belong to the public domain unless and until the Government shall decide they are no longer needed for public utilities, and shall declare them to belong to the adjacent estates. *Ib.*

6. *Accessions and accretions; application of rule as to.*

This rule applies not only to accessions to the shore while it is washed by the tide, but also to additions which actually become dry land. *Ib.*

7. *Accessions to shore of sea; application of civil law doctrine.*

The doctrine that accessions to the shore of the sea by accretion belong to the public domain and not to the adjacent estate has been adopted by the leading civil law countries, including France, Italy and Spain. *Ib.*

8. *Seashore; title under civil law.*

Under the civil law, the seashore flowed by the tides, unlike the banks of rivers, was public property, belonging, in Spain, to the sovereign. *Ib.*

See NAVIGABLE WATERS, 2.

ROMAN LAW.

Development of.

The Roman law is not like a deed or a modern code prepared *uno flatu*, but history has played a large part in its development.
Ker & Company v. Couden, 268.

RULES OF COURT.

See ADMIRALTY, 7.

SALES.

See INDIANS;
STATUTES, A 9.

SALVAGE.

See ADMIRALTY, 4, 6, 8, 9.

SEASHORE.

See RIPARIAN RIGHTS, 4-8.

SECOND JEOPARDY.

See PHILIPPINE ISLANDS, 1, 2.

SECRETARY OF COMMERCE AND LABOR.

See EXECUTIVE OFFICERS, 1;
IMMIGRATION, 2.

SECRETARY OF THE INTERIOR.

See INDIANS, 8, 10;
MANDAMUS, 2, 3;
PUBLIC LANDS, 7.

SECRETARY OF STATE.

See CONSULS, 1.

SECRETARY OF WAR.

See NAVIGABLE WATERS, 1, 2.

SELF-INCRIMINATION.

See EVIDENCE, 1, 2.

SERVICE BY PUBLICATION.

See CONSTITUTIONAL LAW, 9.

SIXTH AMENDMENT.

See CONSTITUTIONAL LAW, 5;
PHILIPPINE ISLANDS, 5.

SOVEREIGNTY.

See STATES, 1;
TERRITORIES;
UNITED STATES, 1.

SPANISH LAW.

See RIPARIAN RIGHTS, 4, 5.

SPONGES.

See COMMERCE, 2;
WATERS, 2, 3.

STARE DECISIS.

See PUBLIC LANDS, 6.

STATE COURTS.

See COURTS, 2, 3, 4;
JURISDICTION, E.

STATES.

1. *Admission into Union; rights of dominion and sovereignty conferred by.*
On its admission, whatever the conditions may have been prior thereto, whether from the conditions of the Northwest Ordinance or other territorial government, a State at once becomes entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States, and all limitations on sovereignty in the act of admission not subsequently adopted by the State itself are inoperative. (*Coyle v. Oklahoma*, 221 U. S. 559.) *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.
2. *Northwest Territory Ordinance; effect after admission of State.*
The ordinance of the Northwest Territory ceased to be, in itself, obligatory upon the States carved from that Territory after their admission into the Union as States, except so far as adopted by the States themselves and made a part of the laws thereof. *Ib.*
3. *Laws of; when subservient to act of Congress.*
State legislation, even if in pursuance of a reserved power, must give way to an act of Congress over a subject within the exclusive control of Congress. *Second Employers' Liability Cases*, 1.

4. *Laws relating to interstate carriers; subserviency to act of Congress.*

Until Congress acted on the subject, the laws of the several States determined the liability of interstate carriers for injuries to their employés while engaged in such commerce; but Congress having acted, its action supersedes that of the States, so far as it covers the same subject. That which is not supreme must yield to that which is. *Ib.*

5. *Law of the land; what constitutes.*

The systems of jurisprudence of the State and of the United States together form one system which constitutes the law of the land for the State. *Ib.*

6. *Police power; regulation of practice of osteopathy within.*

Under its police power a State may constitutionally prescribe conditions to insure competence in those practising the healing art in its various branches, including those in which drugs are not administered—such as osteopathy. (*Dent v. West Virginia*, 129 U. S. 114.) *Collins v. Texas*, 288.

7. *Policy of; power to carry out not dependent upon acknowledged wisdom.*

A State, like the United States, although with more restrictions and to a less degree, may carry out a policy even if the courts may disagree as to the wisdom thereof. *Quong Wing v. Kirkendall*, 59.

See ACTIONS, 1, 2;	ESTATES OF DECEDENTS;
CONSTITUTIONAL LAW, 15–	INTERSTATE COMMERCE, 18–26;
19, 21–28;	LOCAL LAW (OHIO);
COURTS, 2, 3, 4;	MUNICIPAL CORPORATIONS;
EMINENT DOMAIN, 2, 3;	NAVIGABLE WATERS, 2;
EMPLOYERS' LIABILITY ACT,	TREATIES, 2;
4, 5;	UNITED STATES, 1;
	WATERS, 1, 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Constitutionality favored.*

Where two interpretations of a statute are admissible, one of which makes the statute constitutional and the other unconstitutional, the former must be adopted. (*United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407.) *The Abby Dodge*, 166.

2. *Departmental construction; when courts will follow.*

The rule that where ambiguity exists courts will follow the construc-

tion placed on a statute by the Department charged with its execution is strengthened where the statute itself directs such Department to make the necessary regulations to carry it into effect. *Jacobs v. Prichard*, 200.

3. *Departmental construction; effect to reinforce judicial construction.*

The soundness of the judicial construction of a statute is reinforced by the fact that it had been the construction given by the Executive Department charged with its enforcement ever since its adoption. *United States v. Baruch*, 191.

4. *Repeals; effect of general act to repeal prior special law.*

To allow a subsequent general act its literal effect does not repeal, alter, or amend an earlier special law when the later law expressly provides that it shall not have that effect. *United States v. Wong You*, 67.

5. *Effect of omission of clause of prior act excluding certain classes from operation of statute to show intention to include classes in present act.*

The omission from a later act of a clause contained in an earlier act on the same subject, excluding certain classes from its operation, and inserting a provision applicable to such classes, signifies that Congress intended to include that class in the operation of the later act, notwithstanding the existence of other special legislation in regard thereto. *Ib.*

6. *When construction not to be disturbed.*

Although the opinion may possibly go beyond the necessities of the case concerning the statute, if it states the natural effect to be given to a statute, and that view is accepted and acted upon for many years by the Department enforcing it, the construction should not be disturbed. *Waskey v. Hammer*, 85.

7. *Legislative intent not controlling over rule that act in violation of statutory prohibition is void.*

The general rule of law that an act done in violation of statutory prohibition is void and confers no right upon the wrongdoer, held applicable in this case and not subject to the qualification that it was the legislative intent that under the circumstances of the case the statute should not apply. *Ib.*

8. *Penalty; effect of penalty in statute on validity of prohibited act as against others than Government.*

The fact that a statute prescribes a penalty for the doing of a pro-

hibited act does not confine the scope of the statute to the prohibition, or make the prohibited act valid as against parties other than the Government, and so held as to § 452, Rev. Stat. *Ib.*

9. *Indian legislation; habits of Indian life considered.*

Habits of Indian life will be considered in construing a statute providing methods for a sale of Indian lands, and it will not be presumed that Congress would insert therein a condition which defeats an approved sale by the death of a roving Indian before the delivery of the deed. *Jacobs v. Prichard*, 200.

10. *Reshaping taxing statute; power of court as to.*

The court cannot reshape a taxing statute which includes elements beyond the State's power of taxation simply because it embraces elements that it might have reached had the statute been drawn with a different measure and intent. *Oklahoma v. Wells, Fargo & Co.*, 298.

See EMINENT DOMAIN, 7;
INTERSTATE COMMERCE, 15, 16, 26.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STATUTE OF LIMITATIONS.

See NATIONAL BANKS, 1, 2, 4.

STEENERSON ACT.

See INDIANS, 3, 4, 6.

STIPULATION OF PARTIES.

1. *Evidence; effect of stipulation as to.*

Where the statute provides for an agreed statement on which the case can be submitted, a stipulation between the parties as to certain facts will not be considered as an agreed statement superseding the pleadings but only as an agreement relating to the facts enumerated in the stipulation. *Clason v. Matko*, 646.

2. *Attitude of this court in respect of construction of lower court.*

This court is not disposed to reverse a lower court on its construction of a stipulation in the conduct of a case, even if the stipulation be ambiguous. *Ib.*

SUBORNATION OF PERJURY.

See CRIMINAL LAW, 6.

SUITS AGAINST THE UNITED STATES.

See UNITED STATES, 2, 3.

SUPERSEDEAS BONDS.

See PRINCIPAL AND SURETY.

TARIFF.

See CUSTOMS LAW.

TAXES AND TAXATION.

1. *Duress in payment; implication of.*

Courts have been too slow to recognize implied duress, in payment of taxes, where payment thereof would result disadvantageously. *Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor*, 280.

2. *Duress in payment; what constitutes.*

Where, in addition to money penalties for delay in payment of a tax, there is forfeiture of right to do business and risk of having contracts declared illegal in case of non-payment of disputed tax, the payment is made under duress. *Ib.*

3. *Duress in payment; what constitutes.*

Neither a statute imposing a tax, execution thereunder, nor mere demand for payment, constitutes duress; but where the statute contains self-operating provisions by which non-payment of the tax results in severe penalties and forfeiture of right to do business, payment by one within the class affected is not voluntary but compulsory. *Gaar, Scott & Co. v. Shannon*, 468.

4. *Duress in payment; effect of statute providing for, on one of another class not affected.*

While a payment of the tax by one included in the class to which a statute applies in order to avoid penalties and forfeiture is compulsory, it is not so as to one not included in such class and payment thereof by such person is voluntary and not under duress. *Ib.*

5. *Remedy of one denying legality of tax.*

One denying the legality of a tax should have a clear and certain remedy; and where he cannot interfere by injunction, an action to recover back is the alternative, unless he waits until the State

commences an action and subjects himself to penalties and risks.
Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor, 280.

6. *Tender of so much of tax as is constitutional as prerequisite to right to enjoin collection.*

Complainant in an equity suit to restrain the collection of a state tax on gross receipts, on the ground that the act is unconstitutional because it includes receipts from interstate commerce, is not bound, in order to maintain the bill, to tender so much as would have fallen on intrastate receipts. *People's Bank v. Marye*, 191 U. S. 272, distinguished. *Oklahoma v. Wells, Fargo & Co.*, 298.

See ACTIONS, 1, 2; INTERSTATE COMMERCE, 21-26;
CONSTITUTIONAL LAW, 12, PRACTICE AND PROCEDURE, 10, 11;
13, 26; STATUTES, A 10.

TENDER.

See TAXES AND TAXATION, 6.

TERRITORIES.

Incidents of sovereignty granted by creation of territorial government.

When the United States as an independent sovereign creates a territorial government with legislative authority, subject only to limitations of the creating act, it will be presumed to grant to the new dependent government the vital powers incident to and necessary to sovereignty unless it plainly appears to be withheld. *Cincinnati v. Louisville & Nashville R. R. Co.*, 390.

TIDE-WATERS.

See WATERS, 1, 2.

TITLES.

See INDIANS, 1; PHILIPPINE ISLANDS, 7;
NAVIGABLE WATERS, 2; RIPARIAN RIGHTS;
WATERS, 1.

TOWAGE.

See ADMIRALTY, 8.

TREATIES.

1. *Construction; conditions at time of making considered.*

While treaties are to be liberally construed, they are to be read in the light of conditions existing when entered into with a view to effecting the objects of the contracting states. *Rocca v. Thompson*, 317.

2. *Power of Government to provide for administration of property of foreigners dying within a State; quære as to.*

Quære: Whether it is within the treaty-making power of the National Government to provide by treaty with foreign nations for administration of property of foreigners dying within a State, and to commit such administration to consuls of the nation to which deceased owed allegiance. *Ib.*

See CONSULS, 2, 3, 5, 6;

INDIANS, 8, 11.

TRIAL.

See CONSTITUTIONAL LAW, 5;

PHILIPPINE ISLANDS, 3-6.

TRUSTS AND TRUSTEES.

See LOCAL LAW (ORE.);

NATIONAL BANKS, 6, 8.

ULTRA VIRES.

See NATIONAL BANKS, 8.

UNITED STATES.

1. *Status in relation to States.*

The United States is not a foreign sovereignty as regards the several States but is a concurrent and, within its jurisdiction, a paramount sovereign. (*Claflin v. Houseman*, 93 U. S. 130.) *Second Employers' Liability Cases*, 1.

2. *Suits against; exemption from, not a protection of officers from personal liability.*

Exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. *Philadelphia Co. v. Stimson*, 605.

3. *Suits against; suit against officer not suit against United States.*

Where complainant does not ask the court to interfere with an officer of the United States acting within his official discretion, but challenges his authority to do the act complained of, the suit is not against the United States. *Ib.*

4. *Officers of, subject to injunctive process.*

In case of injury threatened by illegal action, an officer of the United States cannot claim immunity from injunctive process. *Ib.*

See ADMIRALTY, 2;

TREATIES, 2.

USURY.

See NATIONAL BANKS, 1-5.

VESSELS.

See ADMIRALTY;
IMMIGRATION, 4, 5, 6.

VESTED RIGHTS.

See COMMERCE, 1;
COMMON LAW.

VOLUNTARY PAYMENT.

See TAXES AND TAXATION, 3, 4.

WAIVER.

See JURY AND JURORS, 1;
PHILIPPINE ISLANDS, 3, 4, 6.

WATERS.

1. *Tide-waters; property of State in.*

Each State owns the beds of all tide waters within its jurisdiction unless they have been granted away; also the tide waters themselves and the fish in them so far as they are capable of ownership while running. (*McCready v. Virginia*, 94 U. S. 391.) *The Abby Dodge*, 166.

2. *Sponges in; power of Congress over.*

Congress has no control over sponges growing on the land beneath tide water within the jurisdiction of a State. *Ib.*

3. *Sponges in; application of act of Congress of June 20, 1906.*

The act of June 20, 1906, 34 Stat. 313, c. 3442, regulating the landing of sponges at ports of the United States, relates only to sponges taken outside of the territory of any State. *Ib.*

See ADMIRALTY;
NAVIGABLE WATERS;
RIPARIAN RIGHTS.

WILSON ACT.

See INTERSTATE COMMERCE, 6.

WITNESSES.

See EVIDENCE, 1-4;
PHILIPPINE ISLANDS, 3, 4.

WORDS AND PHRASES.

"*Intervene in the possession and administration of the deceased*," as used in Argentine Treaty of 1853 (see Consuls, 2). *Rocca v. Thompson*, 317.

"*Unmanufactured tobacco*," as used in Tariff Act of 1897 (see Customs Law, 4). *Latimer v. United States*, 501.

"*Waste*" and "*scrap*," as used in tariff act (see Customs Law, 5). *Latimer v. United States*, 501.

Generally. See Customs Law, 3, 7.

WRIT AND PROCESS.

See INJUNCTION;

JURY AND JURORS, 1;

MANDAMUS.







