INDEX.

ACCOUNTS AND ACCOUNTING.

See INTERSTATE COMMERCE, 3, 4, 5, 7, 8.

ACTIONS.

1. *Denomination; determination of.*

How an action brought in the state court shall be denominated is for the state court to determine. *Thomas* v. *Taylor*, 73.

2. *Timeliness of filing suit to restrain enforcement of municipal ordinance prescribing penalties.*

Where, as in this case, the provisions imposing penalties for non-compliance are separable from the ordinance, it is time enough to file a bill when the attempt is made to apply the penalties oppressively; they cannot be made the basis of a bill until then. *Western Union Telegraph Co.* v. *Richmond*, 160.

See CONGRESS, POWERS OF, 4, 5; CONSTITUTIONAL LAW, 25, 34; EMPLOYERS' LIABILITY ACT, 5, 6; FEDERAL QUESTION, 2, 3; INDIANS, 17–21; LOCAL LAW (MINN., 3, 4); NATIONAL BANKS, 1; PATENTS, 3, 7, 12, 13, 14; QUO WARRANTO; RECEIVERS.

ACTS OF CONGRESS.

ALASKA.—Act of May 14, 1898, 30 Stat. 409 (see Interstate Commerce, 10): *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

ANTI-TRUST ACT of July 2, 1890, 36 Stat. 209 (see Restraint of Trade): *United States* v. *St. Louis Terminal*, 383.

ARMY.—Rev. Stat., §§ 1094, 1096, and act of June 1, 1888 (see Army and Navy, 2): *Wood* v. *United States*, 132.

BANKRUPTCY.—Rev. Stat., §§ 3467, 3468, 3469 (see Bankruptcy, 1, 2): *Guarantee Co.* v. *Title Guaranty Co.*, 152. Act of March 3, 1897 (see Bankruptcy, 1, 2): *Ib.* Act of March 2, 1867 (see Bankruptcy, 2): *Ib.* Act of July 1, 1898 (see Bankruptcy, 3, 4): *Ib.* Section 24*b* (see Bankruptcy, 12, 13): *Matter of Loving*, 183.

Section 25*a* (see Bankruptcy, 7, 11, 12, 13): *Calnan & Co.* v. *Dougherty*, 145. Section 25*b* (see Bankruptcy, 7, 8): *Ib.* Section 67*a* (see Bankruptcy, 5): *Holt* v. *Crucible Steel Co.*, 262.

CLAIMS AGAINST UNITED STATES.—Act of June 25, 1910, 36 Stat. 851 (see Patents, 3, 12, 13, 14): *Crozier* v. *Krupp*, 290.

COMMERCE.—Sherman Act of July 2, 1890, 26 Stat. 209 (see Interstate Commerce, 11): *Henry* v. *A. B. Dick Co.*, 1. Act of June 29, 1906, 34 Stat. 584 (see Constitutional Law, 7): *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194; (see Interstate Commerce, 1–7): *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

CUSTOMS DUTIES.—Act of July 24, 1897, 30 Stat. 151 (see Customs Law; Jurisdiction, A 4; Treaties, 2): *Altman & Co.* v. *United States*, 583. Reciprocal agreement with France of May 30, 1898, 30 Stat. 1774 (see Customs Law): *Ib.*

EMPLOYERS' LIABILITY ACT of June 11, 1906, 34 Stat. 232 (see States, 3): *Missouri Pacific Ry. Co.* v. *Castle*, 541; (see Employers' Liability Act, 3): *Philadelphia, B. & W. R. R. Co.* v. *Schubert*, 603. Act of April 22, 1908, 35 Stat. 65 (see Employers' Liability Act): *Philadelphia, B. & W. R. R. Co.* v. *Schubert*, 603.

INDIANS.—Act of June 28, 1898, 30 Stat. 505 (see Indians, 5, 9, 10, 12): *Choate* v. *Trapp*, 665. Act of July 1, 1902, 32 Stat. 716 (see Indians, 3, 4, 26): *Gritts* v. *Fisher*, 640. Act of April 26, 1906, 34 Stat. 137 (see Indians, 3, 27): *Ib.* Act of June 21, 1906, 24 Stat. 325 (see Indians, 27): *Ib.* Act of May 27, 1908, 35 Stat. 312 (see Indians, 5, 7, 15): *Choate* v. *Trapp*, 665; *Heckman* v. *United States*, 413.

JUDICIARY.—Rev. Stat., §§ 566, 649, 700 (see Appeal and Error, 7): *Campbell* v. *United States*, 99. Act of March 3, 1891, 26 Stat. 826 (see Jurisdiction, A 1, 2, 3, 4; Treaties, 2): *Altman & Co.* v. *United States*, 583; *Herndon-Carter Co.* v. *Norris & Co.*, 496. Section 6 (see Bankruptcy, 9, 10): *Calnan & Co.* v. *Doherty*, 145. Act of March 3, 1911, 36 Stat. 1087 (see Jurisdiction, A 5, 6, 7; Statutes, A 9): *Washington Home for Incurables* v. *American S. & T. Co.*, 486; *American S. & T. Co.* v. *District of Columbia*, 491.

MINES AND MINING.—Act of June 6, 1900, 31 Stat. 321 (see Mines and Mining, 1, 2, 3): *Waskey* v. *Chambers*, 564.

NAVY.—Rev. Stat., § 1556 (see Army and Navy, 4): *Plummer* v. *United States*, 137. Act of June 30, 1882 (see Army and Navy, 7): *Ib.* Acts of March 2, 3, 1899, and Rev. Stat., § 1019 (see Army and Navy, 1, 2, 4, 5): *Wood* v. *United States*, 132; *Plummer* v. *United States*, 137. Acts of June 7, 1900; March 2, 1907, and May 13, 1908 (see Army and Navy, 4, 6, 7): *Plummer* v. *United States*, 137.

PORTO RICO.—Foraker Act of April 12, 1900, 31 Stat. 77 (see Local Law, Porto Rico, 2): *Gromer* v. *Standard Dredging Co.*, 362. Sec-

tion 35 (see Appeal and Error, 4): *Gonzales* v. *Buist*, 126. Act of July 1, 1902, 32 Stat. 731 (see Local Law, Porto Rico, 2, 3): *Gromer* v. *Standard Dredging Co.*, 362.

SAFETY APPLIANCE ACTS of March 2, 1893, 27 Stat. 531, and March 2, 1903, 32 Stat. 943 (see Employers' Liability Act, 7): *American R. R. Co.* v. *Birch*, 547; (see Safety Appliance Acts, 1, 2): *Brinkmeier* v. *Missouri Pacific Ry. Co.*, 268.

TELEGRAPHS.—Act of July 24, 1866, 14 Stat. 221 (see Telegraph Companies): *Western Union Tel. Co.* v. *Richmond*, 160.

ADMINISTRATIVE BODIES.

See JURISDICTION, J 1.

ADMISSION TO STATEHOOD.

See PRACTICE AND PROCEDURE, 23.

ALASKA.

See INTERSTATE COMMERCE, 1, 2, 10;
JURISDICTION, F;
TERRITORIES.

ALIENATION OF LAND.

See INDIANS.

LIGNMENT OF PARTIES.

See JURISDICTION, C.

ALLOTTEE INDIANS.

See INDIANS.

ALTERATION OF INSTRUMENTS.

See MINES AND MINING, 3.

AMENDMENTS TO CONSTITUTION.

See CONSTITUTIONAL LAW.

ANTI-TRUST ACT.

See RESTRAINT OF TRADE.

APPEAL AND ERROR.

1. *Direct appeal from Circuit Court; time for perfecting where decree supplies certificate.*

While the jurisdictional certificate must be issued during the term at which the question is decided, if the certificate is supplied by a

decree in due form showing all that is required by the certificate, the appeal may be perfected within two years, as are other appeals. (*Excelsior Water Power Co.* v. *Pacific Bridge Co.*, 185 U. S. 282.) *Herndon-Carter Co.* v. *Norris & Co.*, 496.

2. *Direct appeal from Circuit Court; sufficiency of presentation of question of jurisdiction.*

In this case the record shows that there was but one final order or decree which at the same time quashed the service of the summons and dismissed the case for want of jurisdiction; and an appeal from such a decree brings to this court the question of jurisdiction. *Ib.*

3. *From territorial courts; questions brought up.*

On appeals from the courts of the Territories, questions of weight and credibility of evidence are not for the consideration of this court. *Title Guaranty Co.* v. *Nichols*, 346.

4. *From Supreme Court of Porto Rico; rules governing.*

Under § 35 of the Porto Rican act of April 12, 1900, 31 Stat. 85, c. 191, writs of error to and appeals from final decisions of the Supreme Court for the District of Porto Rico are governed by the rules that govern writs of error to and appeals from Supreme Courts of the Territories, which confine this court to determining whether the court below erred in deducing its conclusions of law from the facts as found, and to reviewing errors committed as to admission or rejection of testimony upon proper exception preserved. (*Young* v. *Amy*, 171 U. S. 179.) *Gonzales* v. *Buist*, 126.

5. *From Supreme Court of Porto Rico; scope of agreed statement or findings of fact.*

On appeal from the Supreme Court of a Territory the agreed statement or findings must be of the ultimate facts; for if they are merely, as in this case, a recital of testimony or evidentiary facts, there is nothing brought to this court for consideration, and the judgment must be affirmed (*Glenn* v. *Fant*, 134 U. S. 398.) *Ib.*

6. *Rejection on appeal of theory as to issues assented to by trial court and parties.*

Where the parties, with the assent of the court, unite in trying a case on the theory that a particular matter is within the issues, that theory cannot be rejected when the case is in the appellate court for review. *San Juan Light & Transit Co.* v. *Requena*, 89.

7. *Findings of District Court without jury not reëxaminable in appellate court.*

As §§ 566, 649 and 700, Rev. Stat., do not make any provisions for such a case, the trial of a case in the District Court of the United States without a jury is in the nature of a submission to an arbitrator, and the court's determination of issues of fact and questions of law supposed to arise on its special findings is not a judicial determination, and, therefore, not subject to reëxamination in an appellate court. *Campbell* v. *United States*, 99.

8. *Findings by District Court without jury; scope of consideration by Circuit Court of Appeals.*

In such a case the Circuit Court of Appeals has no power to consider the sufficiency of facts found to support the judgment, but is limited to a consideration of such questions of law as are presented by the record proper independently of the special finding; and, in the absence of any such independent questions, must affirm. *Ib.*

See BANKRUPTCY, 7, 8; CONSTITUTIONAL LAW, 15; JURISDICTION; PRACTICE AND PROCEDURE, 3, 7, 9.

APPROPRIATION OF WATER.

See LOCAL LAW (IDAHO).

ARBITRATION.

See APPEAL AND ERROR, 7.

ARMY AND NAVY.

1. *Naval officer acting as aid to admiral; rank and pay to which entitled.*

An officer of the Navy serving as aid to the Admiral under the provisions of the acts of March 2 and 3, 1899, cc. 378 and 421, 30 Stat. 995, 1024, 1045, is not entitled under the assimilating provisions of § 13 of the Navy Personnel Act of March 3, 1899, c. 413, 30 Stat. 1007, to the higher rank and pay provided under § 1019, Rev. Stat., for aids to the General of the Army, irrespective of the actual rank held by such naval officer during his period of service as such aid. *Wood* v. *United States*, 132.

2. *Same.*

By the proviso to § 1094, Rev. Stat. which became effective prior to 1888, the office of General of the Army created by § 1096, and the rank and incidents thereto ceased, and were revived by the act of June 1, 1888, 25 Stat. 165, c. 338, only for the period of the life of

General Sheridan, and again ceased on his death, since which time there is no officer of the Army to which pay of aids to the Admiral of the Navy can be assimilated under § 13 of the Navy Personnel Act of 1899. *Ib.*

3. *Same; power to correct incongruity in statute.*

An incongruity resulting from an omission in an act of Congress does not justify the courts exercising legislative power to create an office or pay therefor, and so *held* that the fact that the pay of all other naval officers, including aids to Rear Admirals, is assimilated to that of corresponding officers of the Army except aids to the Admiral is a matter that must be corrected, if it is to be corrected, by Congress and not by the courts. *Ib.*

4. *Navy; acting assistant surgeons; pay to which entitled.*

Under § 13 of the Navy Personnel Act of March 3, 1899, 30 Stat. 1007, c. 413, and the acts of June 7, 1900, 31 Stat. 697, c. 859, March 2, 1907, 34 Stat. 1167, c. 2511, and May 13, 1908, 35 Stat. 127, c. 166, the pay of acting assistant surgeons was enhanced and assimilated to that of assistant surgeons in the Army, and did not remain fixed as regulated by § 1556, Rev. Stat. *Plummer* v. *United States*, 137.

5. *Navy; acting assistant surgeons; pay of; presumption as to intent of Congress.*

Where an act of Congress, such as the Navy Personnel Act of 1899, provides for a standard by which to determine rank and pay of officers, it will not be presumed that Congress intended to create an inequality of compensation while leaving unmodified equality of rank and duty, and so held as to the provisions for pay of assistant surgeons and acting assistant surgeons in the Navy. *Ib.*

6. *Longevity pay; how computed.*

Longevity pay of officers of the Army and Navy under the act of May 13, 1908, 35 Stat. 127, c. 166, is computed on the sum of the base pay and not the base pay and previous increases thereof. *Ib.*

7. *Longevity pay; how computed; construction of words "current yearly pay."*

Congress having by the act of June 30, 1882, 22 Stat. 118, c. 254, expressly provided that the current yearly pay on which longevity pay of officers of the Army and Navy is to be computed is base pay, and not base pay and increases, so as to overcome the constructions given to the words "current yearly pay" by this court

in *United States* v. *Tyler*, 105 U. S. 44, those words will be construed in the same manner when used in the subsequent act of May 13, 1908, 35 Stat. 125, c. 166, and not as construed in *United States* v. *Tyler*. *Ib.*

ASSUMPTION OF RISK.

See NEGLIGENCE, 1.

BAIL.

See CONTRACTS, 3.

BANKRUPTCY.

1. *Act of 1898 and prior acts differentiated.*

The Bankruptcy Act of 1898 was not an affirmation of the act of 1797 or of Rev. Stat., §§ 3467, 3468, 3469, and the change of provisions in regard to priority indicates a change of purpose in that respect. *Guarantee Co.* v. *Title Guaranty Co.*, 152.

2. *Priority of debts due United States; statutes in pari materia.*

The Bankruptcy Act of 1867 and the act of March 3, 1797, 1 Stat. 515, c. 20, now §§ 3467, 3468, 3469, Rev. Stat., by both of which all debts due the United States are given priority over all claims, were *in pari materia*, and the Bankruptcy Act of 1867 affirmed the act of 1797. (*Lewis* v. *United States*, 92 U. S. 618.) *Ib.*

3. *Preferred claims; labor claims as.*

Under a beneficent policy, which favors those working for their daily bread and does not seriously affect the sovereign, Congress, in enacting the Bankruptcy Law of 1898, preferred labor claims and gave them priority over all other claims except taxes, and the courts must assume a change of purpose in the change of order. *Ib.*

4. *Priority of claims; right of one subrogated to claim of Government.*

In this case *held* that even if a surety company which had paid the debt of the principal to the Government was subrogated to the claim of the Government and was entitled to whatever priority the Government was entitled to, under the Bankruptcy Act of 1898, the claim not being for taxes but a mere debt was not entitled to priority in distribution of the bankrupt's assets over claims for labor preferred by the act. *Ib.*

5. *Law governing effect of unrecorded chattel mortgage.*

Under § 67a of the Bankruptcy Act of 1898, the effect to be given to

an unrecorded chattel mortgage must be determined by the recording law of the State. *Holt* v. *Crucible Steel Co.*, 262.

6. *Trustee; right of holder of unrecorded mortgage, under Kentucky statute, as against creditors represented by.*

The Circuit Court of Appeals having held that under the decisions of the highest court of the State bearing on the question, the term "creditors" as used in § 496, Kentucky Statutes, 1903, does not include subsequent creditors without notice who have not secured a lien on the property prior to the recording thereof, and this court not being able to say that such construction is wrong, *held* that the title of the holder of an unrecorded chattel mortgage on property in Kentucky is valid and effective as against the trustee in bankruptcy as to the creditors who became such after the mortgage was given and who had not fastened any lien on the property prior to the proceeding in bankruptcy. *Ib.*

7. *Appeals; rulings of Circuit Court of Appeals reviewable here.*

A ruling of the Circuit Court of Appeals that the petitioning creditors held provable claims is not a judgment allowing or rejecting a claim within the meaning of § 25b of the Bankruptcy Act of 1898, and cannot under § 25a and subparagraph 1 be reviewed by this court. *Calnan Co.* v. *Doherty*, 145.

8. *Appeals; when appeal from Circuit Court of Appeals dismissed.*

Where the prerequisites for an appeal to this court specified in subparagraph 1 of § 25b of the Bankruptcy Act do not exist, and the Circuit Court of Appeals does not make the findings of fact and conclusions of law required by clause 3 of General Order 36, the appeal must be dismissed. (*Chapman* v. *Bowen*, 207 U. S. 89.) *Ib.*

9. *Appeals from Circuit Court of Appeals; application of § 6 of Judiciary Act of 1891.*

Appellate jurisdiction over a ruling of the Circuit Court of Appeals in a bankruptcy matter may not be exercised by this court by virtue of § 6 of the Judiciary Act of March 3, 1891, c. 517. (*Tefft* v. *Munsuri*, 222 U. S. 114.) *Ib.*

10. *Appeals to Circuit Court of Appeals; controversies appealable.*

Controversies arising in bankruptcy proceedings, as distinguished from bankruptcy proceedings, are appealable to the Circuit Court of Appeals under the Court of Appeals Act of March 3, 1891. *Matter of Loving*, 183.

11. *Appeals to Circuit Court of Appeals; law governing.*
A claim asserted against a bankrupt's estate not only for the amount thereof but for a lien therefor on the assets of the estate is a bankruptcy proceeding, and not a controversy arising from the bankruptcy proceeding, and an appeal by the trustee from the order allowing the claim and lien is under § 25a to the Circuit Court of Appeals. *Ib.*

12. *Appeal to Circuit Court of Appeals under § 25a; effect on right of petition under § 24b.*
One who is entitled under § 25a to an appeal to the Circuit Court of Appeals, is not also entitled to a review in the Circuit Court of Appeals by petition under § 24b. *Ib.*

13. *Review under § 24b and § 25; scope of.*
Under § 24b, questions of law only are taken to the Circuit Court of Appeals, while under § 25 controversies of fact as well as of law are taken to that court, with findings of fact to be made therein if the case is to be taken to this court. *In re Mueller*, 135 Fed. Rep. 711, approved. *Ib.*

BANKS.
See NATIONAL BANKS.

BONDS.
1. *Surety; conditions; breach; pleading in action on.*
While liability under a surety bond for honesty of an employé would be defeated if the loss was due to neglect of the employer to take the precautions required by the bond, the condition is subsequent and not precedent, and there is no occasion for an averment in respect thereto; it is a matter of defense that must come from the other side, upon whom the *onus* rests. *Title Guaranty Co.* v. *Nichols*, 346.

2. *Surety; conditions; breach; question for jury.*
Where the evidence, as in this case, shows that examinations were made, it is for the jury to determine whether reasonable diligence had been used in making them. *Ib.*

3. *Surety; conditions; effect of compliance as warranty.*
The certificate of correctness of employé's accounts on obtaining renewals of surety bond for his honesty held in this case not to be a warranty but a certificate that his books had been examined and found correct. *Ib.*

4. *Surety; conditions; sufficiency of compliance.*

The mere fact that the examination, if made by a reasonably competent person, failed to discover discrepancies covered by false entries and bookkeeping devices would not defeat renewals of the policy. *Ib.*

BURDEN OF PROOF.

See BONDS, 1;
MALICIOUS PROSECUTION, 1, 2;
RAILROADS, 5.

CARRIERS.

See CONSTITUTIONAL LAW, 7, 17, 18;
INTERSTATE COMMERCE;
JURISDICTION, F;
RAILROADS;
SAFETY APPLIANCE ACTS;
STATES, 1, 2, 3.

CASES APPROVED.

In re Mueller, 135 Fed. Rep. 711, approved in *Matter of Loving*, 183.

CASES DISTINGUISHED.

Ceballos & Co. v. *United States*, 214 U. S. 47, distinguished in *United States* v. *Anciens Etablissements*, 309.

Tiger v. *Western Investment Co.*, 221 U. S. 286, distinguished in *Choate* v. *Trapp*, 665.

United States v. *Tyler*, 105 U. S. 44, distinguished in *Plummer* v. *United States*, 137.

CASES EXPLAINED.

West v. *Kansas Natural Gas Co.*, 221 U. S. 229, explained in *Haskell* v. *Kansas Natural Gas Co.*, 217.

CASES FOLLOWED.

Apache County v. *Barth*, 177 U. S. 538, followed in *Gonzales* v. *Buist*, 126.

Bement v. *National Harrow Co.*, 186 U. S. 70, followed in *Henry* v. *A. B. Dick Co.*, 1.

Binns v. *United States*, 194 U. S. 486, followed in *Interstate Com. Comm.* v. *Humboldt Steamship Co.*, 474.

Chapman v. *Bowen*, 207 U. S. 89, followed in *J. W. Calnan Co.* v. *Doherty*, 145.

Choate v. *Trapp*, 224 U. S. 665, followed in *Gleason* v. *Wood*, 679; *English* v. *Richardson*, 680.

Excelsior Water Power Co. v. *Pacific Bridge Co.*, 185 U. S. 282, followed in *Herndon-Carter Co.* v. *Norris & Co.*, 496.

Ex parte Harding, 219 U. S. 363, followed in *Interstate Com. Comm.* v. *Humboldt Steamship Co.*, 474.

Glenn v. *Fant*, 134 U. S. 398, followed in *Gonzales* v. *Buist*, 126.

Goat v. *United States*, 224 U. S. 458, followed in *Deming Investment Co.* v. *United States*, 471.

Heckman v. *United States*, 224 U. S. 413, followed in *Goat* v. *United States*, 458.

Helm v. *Zarecor*, 222 U. S. 32, followed in *Sharpe* v. *Bonham*, 241.

Holy Trinity Church v. *United States*, 143 U. S. 437, followed in *American Security & Trust Co.* v. *District of Columbia*, 491.

Lewis v. *United States*, 92 U. S. 618, followed in *Guarantee Co.* v. *Title Guaranty Co.*, 152.

Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, followed in *Philadelphia, Balto. & Wash. R. R. Co.* v. *Schubert*, 603.

Minnesota v. *Hitchcock*, 185 U. S. 373, followed in *Heckman* v. *United States*, 413.

Paper Bag Patent Case, 210 U. S. 405, followed in *Henry* v. *A. B. Dick Co.*, 1.

Rassmussen v. *United States*, 197 U. S. 516, followed in *Interstate Com. Comm.* v. *Humboldt Steamship Co.*, 474.

Second Employers' Liability Cases, 223 U. S. 1, followed in *Philadelphia, Balto. & Wash. R. R. Co.* v. *Schubert*, 603.

Southern Railway Co. v. *Allison*, 190 U. S. 326, followed in *Missouri Pacific Ry. Co.* v. *Castle*, 541.

Standard Oil Co. v. *Tennessee*, 217 U. S. 420, followed in *Standard Oil Co.* v. *Missouri*, 270; *Graham* v. *West Virginia*, 616.

Standard Oil Co. v. *United States*, 221 U. S. 1, followed in *United States* v. *St. Louis Terminal*, 383.

Steamer Coquitlam, 163 U. S. 346, followed in *Interstate Com. Comm.* v. *Humboldt Steamship Co.*, 474.

Tefft v. *Munsuri*, 222 U. S. 114, followed in *J. W. Calnan Co.* v. *Doherty*, 145.

Texas & New Orleans R. R. Co. v. *Miller*, 221 U. S. 408, followed in *Brinkmeier* v. *Missouri Pacific Ry. Co.*, 268.

Tiger v. *Western Investment Co.*, 221 U. S. 286, followed in *Heckman* v. *United States*, 413.

Twining v. *New Jersey*, 211 U. S. 111, followed in *Standard Oil Co.* v. *Missouri*, 270.

United States v. *American Bell Telephone Co.*, 128 U. S. 315, followed in *Heckman* v. *United States*, 413.

United States v. *American Tobacco Co.*, 221 U. S. 106, followed in *United States* v. *St. Louis Terminal*, 383.

United States v. *Ames*, 99 U. S. 35, followed in *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194.
United States v. *Berdan Fire Arms Co.*, 156 U. S. 552, followed in *United States* v. *Anciens Etablissements*, 309.
United States v. *New York Indians*, 173 U. S. 464, followed in *United States* v. *Anciens Etablissements*, 309.
Western Union Tel. Co. v. *Penna. R. R. Co.*, 195 U. S. 540, followed in *Western Union Tel. Co.* v. *Richmond*, 160.
Wheeler v. *Nesbit*, 24 How. 544, followed in *Brown* v. *Selfridge*, 189.
Wisconsin &c. R. R. Co. v. *Jacobson*, 179 U. S. 287, followed in *Oregon R. R. & N. Co.* v. *Fairchild*, 510.
Yates v. *Jones National Bank*, 206 U. S. 158, followed in *Thomas* v. *Taylor*, 73.
Young v. *Amy*. 171 U. S. 179, followed in *Gonzales* v. *Buist*, 126.

CERTIFICATE.

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

CHATTEL MORTGAGES.

See BANKRUPTCY, 5, 6.

CHEROKEE INDIANS.

See INDIANS, 3, 4, 15, 26, 27, 28.

CHICKASAW INDIANS.

See INDIANS, 5.

CHOCTAW INDIANS.

See INDIANS, 5, 20.

CITIZENSHIP.

See CONSTITUTIONAL LAW, 8;
CORPORATIONS, 1;
INDIANS, 2.

CLAIMS AGAINST THE UNITED STATES.

See PATENTS, 3, 12.

COMBINATIONS IN RESTRAINT OF TRADE.

See RESTRAINT OF TRADE.

COMMERCE.

See CONGRESS, POWERS OF, 2; INTERSTATE COMMERCE;
CONSTITUTIONAL LAW, 24; RESTRAINT OF TRADE;
SAFETY APPLIANCE ACTS.

COMMERCE COURT.
See JURISDICTION, E.

COMMERCE AND NAVIGATION.
See LOCAL LAW (PORTO RICO, 3).

COMMON LAW.
See STATES, 2.

CONDITIONAL SALES.
See PATENTS, 8, 9.

CONFLICT OF LAWS.
See BANKRUPTCY, 5; EMPLOYERS' LIABILITY ACT, 5; INTERSTATE COMMERCE, 15; LOCAL LAW (IDAHO, 3).

CONGRESS, ACTS OF.
See ACTS OF CONGRESS.

CONGRESS, POWERS OF.
1. *Delegation of power; requiring commission to apply rules prescribed effect as.*
Congress may not delegate its purely legislative power; but having laid down general rules of action under which a commission may proceed, it may require that commission to apply such rules to particular situations. *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194.

2. *Over commerce, interstate and territorial; effect of existing contracts on exercise of power.*
Congress has power, in regulating interstate commerce and commerce in the District of Columbia and in the Territories, to legislate unfettered by any existing arrangements or contracts in conflict with its policy. Prior arrangements are necessarily subject to the paramount authority of Congress. (*Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467.) *Philadelphia, B. & W. R. R. Co.* v. *Schubert*, 603.

3. *Indians; destruction of rights acquired under statute or agreement.*
There is a broad distinction between the power to abrogate a statute and to destroy rights acquired under it; and while Congress, under its plenary power over Indian tribes, can amend or repeal an agreement by a later statute, it cannot destroy actually existing in-

dividual rights of property acquired under a former statute or agreement. *Choate* v. *Trapp*, 665; *Gleason* v. *Wood*, 679; *English* v. *Richardson*, 680.

4. *Indians; authorization of suit to maintain restrictions upon alienation by.*

Congress has power to authorize the Government to sue to maintain the statutory restrictions upon alienation of Indian allottee lands. (*Minnesota* v. *Hitchcock*, 185 U. S. 373.) *Heckman* v. *United States*, 413.

5. *Same.*

Where Congress has power to authorize the Government to sue, an appropriation for expenses of suits already brought is a recognition of the right to bring them; and so *held* that the provisions of the act of May 27, 1908, 35 Stat. 312, c. 199, and of subsequent acts making appropriations for suits brought to cancel conveyances made by Cherokee allottee Indians in violation of statutory restrictions on alienation are within the power of Congress. *Ib.*

6. *To insure efficacy of liability imposed.*

Where Congress possesses the power to impose a liability it also possesses the power to ensure its efficacy by prohibiting any contract, rule, regulation, or device in evasion of it. (*Second Employers' Liability Cases*, 223 U. S. 1, 52.) *Philadelphia, B. & W. R. R. Co.* v. *Schubert*, 603.

See ARMY AND NAVY, 3; EMPLOYERS' LIABILITY ACT, 1, 2; INDIANS, 3, 4, 8, 13, 15; INTERSTATE COMMERCE, 4; PATENTS, 20.

CONSTITUTIONAL LAW.

Commerce clause. See Infra, 24.

1. *Contract clause; franchise of corporation as contract which cannot be impaired.*

While franchises to be are not transferable without express authority, franchises to have and to hold and to use are contractual and proprietary and can be transferred; and, *held* in this case, that the franchise granted to a telephone company was property, taxable and alienable under the conditions on which it was granted, and, under the contract clause of the Constitution, could not be abrogated as against a transferee whose rights had been recognized by the municipality. *Louisville* v. *Cumberland Tel. Co.*, 649.

2. *Contract clause; impairment of contract obligations within.*
The contract clause of the Federal Constitution is not directed against all impairment of contract obligations, but only against such as result from a subsequent exertion of the legislative power of the State. *Cross Lake Club* v. *Louisiana*, 632.

3. *Contract clause; effect to reach errors of state court in passing upon validity and effect of contract under laws existing when made.*
The contract clause does not reach mere errors committed by a state court when passing upon the validity and effect of a contract under the laws existing when it was made; and, even if such errors operated to impair the contract obligation, there is no Federal question, in the absence of a subsequent law, on which to rest the decision of the state court. *Ib.*

4. *Contract impairment; deprivation of property without due process of law; effect of compelling corporation to perform prescribed duties.*
When prior to the granting of a charter to a public service corporation it has been clearly settled both by statute law and decisions that such a corporation must perform certain duties, the compelling of such performance does not amount to an impairment of the charter contract, nor does it deprive the corporation of its property without due process of law. *Consumers' Co.* v. *Hatch*, 148.

5. *Contract impairment; deprivation of property without due process; effect of compelling corporation to perform duties.*
A judgment of the state court of Idaho, compelling a water company to furnish connection at its own expense to one residing on an ungraded street in which it had voluntarily laid its mains, although not required so to do by its charter, *held* not to have impaired the charter contract of the water company or to have deprived it of its property without due process of law, it appearing that under decisions of the highest court of the State made prior to the charter, the cost of connection was to be borne by the water company. *Ib.*

See LOCAL LAW (KY., 2).

6. *Cruel and unusual punishments; heavier penalty for repeated offense as.*
The imposition of a heavier penalty for repeated offenses does not amount to inflicting a cruel and unusual punishment. *Graham* v. *West Virginia*, 616.

See Infra, 26.

7. *Delegation of legislative power; § 20 of Act of June 29, 1906, as.*
The provisions of § 20 of the act of June 29, 1906, authorizing the

Interstate Commerce Commission to require accounts to be kept in a specified manner by interstate carriers, are not an unconstitutional delegation of legislative power. *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194.

8. *Double jeopardy; effect of proceeding for identification of old offender.*
Where one has been charged with having been previously convicted of another offense, he is not put in double jeopardy by having the question of his identity determined by a trial, nor are any of his immunities and privileges as a citizen of the United States abridged. *Graham* v. *West Virginia*, 616.
See Infra, 26.

9. *Due process of law; deprivation of property rights; effect of municipal ordinance restricting use of streets by public service corporation.*
A municipal ordinance will not be held unconstitutional as an unreasonable grant of power because it permits the use of streets by a public service corporation only in such manner as is satisfactory to the municipal officers in charge of such streets; and so *held* that an ordinance of the City of Richmond, Virginia, in regard to location and construction of telegraph wires and conduits did not deprive telegraph companies of their property without due process of law. *Western Union Telegraph Co.* v. *Richmond*, 160.

10. *Due process of law; validity of Minnesota statute providing for determining liability of stockholders of corporations.*
As the statute of Minnesota providing for determining whether stockholders of a corporation of that State are subject to statutory double liability does not preclude a stockholder from showing that he is not a stockholder or from setting up any defense personal to himself, it is not unconstitutional as denying due process of law, but is a reasonable regulation, and the jurisdiction of the court is sustained by the relation of the stockholder to the corporation and his contractual obligation in respect to its debts. *Converse* v. *Hamilton*, 243.

11. *Due process of law; sufficiency of notice and hearing.*
Under due process of law one is entitled to notice and opportunity to be heard, and the notice must correspond to the hearing and the relief must be appropriate to the notice and the hearing. *Standard Oil Co.* v. *Missouri*, 270.

12. *Due process of law; effect to deny, of judgment beyond claim asserted.*
Even a court of original general jurisdiction, civil and criminal, cannot

enter a judgment beyond the claim asserted. It would not be due process of law. *Ib.*

13. *Due process of law; notice; prayer for relief as part of.*
The prayer for relief is not a part of the notice guaranteed by the due process clause of the Constitution. The facts state the limit of the relief. *Ib.*

14. *Due process of law in quo warranto proceedings.*
It is not a denial of due process of law for a court having jurisdiction to determine *quo warranto* and to enter judgment for a fine because there is no statute fixing the maximum penalty. *Ib.*

15. *Due process of law; right of appeal not essential.*
Right of appeal is not essential to due process of law, and the legislature may determine where final power shall be lodged and litigation cease. (*Twining* v. *New Jersey*, 211 U. S. 111.) *Ib.*

16. *Due process of law; effect to deny of imposition of onerous penalties for non-payment of extravagant demands.*
A state statute which attaches onerous penalties to the non-payment of extravagant demands denies the due process of law guaranteed by the Fourteenth Amendment. *St. Louis, I. M. & S. Ry. Co.* v. *Wynne*, 354.

17. *Due process of law; invalidity of Arkansas statute of 1907 relative to railroad liability for loss or injury to live stock.*
The statute of Arkansas of 1907, Act 61, providing that railroad companies must pay claims for live stock killed or injured by their trains within thirty days after notice and that failure to do so shall entitle the owner to double damages and an attorney's fee, even if the amount sued for is less than the amount originally demanded, as construed by the Supreme Court of that State, is unconstitutional as a denial of due process of law under the Fourteenth Amendment. *Ib.*

18. *Due process of law; quære as to.*
Quære: and not decided whether the statute is unconstitutional as denying due process of law even where the original demand is sustained. *Ib.*

19. *Due process of law; taking of property; sufficiency of hearing to constitute.*
The hearing which must precede an order taking property must not be a mere form, but one which gives the owner the right to secure and present material evidence; but a state statute which gives

the privilege of introducing such evidence, affords compulsory process, and gives the right of cross-examination, does not deny due process by not affording sufficient opportunity to be heard. *Oregon R. R. & N. Co.* v. *Fairchild*, 510.

20. *Due process of law; taking of property; sufficiency of hearing.*
The hearing is sufficient if the person whose property is to be taken is put on notice as to the order to be made, and given opportunity to show that it is unjust or unreasonable. *Ib.*

21. *Due process of law; effect to deny, of restricting evidence, on review by courts, to that adduced by commission whose order is under review.*
An opportunity given to test, by review in the courts, the lawfulness of an order made by a commission does not deny due process because on such review new evidence (other than newly discovered or necessary on account of surprise or mistake) is not allowed, and because the court must act on the evidence already taken, if the court is not bound by the findings, and the party affected having had the right on the original hearing to introduce evidence as to all material points. *Ib.*

22. *Due process of law; taking of property; when question one of justification.*
Where the party whose property has been taken has not been deprived of a right to be heard, the question is whether as a matter of law the facts proved a public necessity justifying the taking. *Ib.*

23. *Due process of law; necessity of order of railroad commission as test of validity.*
While the statute of the State of Washington authorizing the State Railroad Commission to order additional trackage is not unconstitutional as denying due process of law, the orders in this case were not justified by public necessity, and thereby deprived the railroad company of its property without due process of law. *Ib.*

24. *Due process of law; equal protection; commerce clause; validity of Nebraska railway liability act of 1907.*
The railway liability act of Nebraska of 1907 is not unconstitutional as depriving a railway company of its property without due process of law, or denying it equal protection of the law, or as interfering with interstate commerce. *Missouri Pacific Ry. Co.* v. *Castle*, 541.

25. *Due process of law; validity of § 1582 of Code of Civil Procedure of California.*
Section 1582 of the Code of Civil Procedure of California, as construed

by the Supreme Court of that State, is not unconstitutional as denying due process of law to an heir of a mortgagor because it permits foreclosure against the administrator without making the heir a party to the suit. *McCaughy* v. *Lyall*, 558.

26. *Due process of law; equal protection; double jeopardy; validity of West Virginia statute imposing additional penalties on old offenders.*

The statute of West Virginia, providing that where a prisoner has been convicted and sentenced to the penitentiary, the question of his identity with one previously convicted one or more times can be tried on information, and if proved, imposing additional imprisonment in case of one prior conviction for five years, and in case of two convictions, for life, is not unconstitutional, as to one twice previously convicted and on whom life imprisonment has been imposed, either as depriving him of his liberty without due process of law, denying him the equal protection of the law, placing him in second jeopardy for the same offense, abridging his privileges and immunities as a citizen of the United States, or inflicting cruel and unusual punishment. *Graham* v. *West Virginia*, 616.

27. *Due process of law; effect to deny, of separate proceeding to establish identity of old offender.*

One who has been convicted before is not denied due process of law by having the question of identity passed upon separately from the question of guilt of the second offense. *Ib.*

28. *Due process of law; equal protection; effect of proceeding by information instead of indictment for purpose of identification.*

Proceeding by information instead of indictment to ascertain the identity of a convicted criminal with one previously convicted does not deny due process of law or equal protection of the law; and this even if other persons accused of crime are proceeded against by indictment. *Ib.*

See Supra, 4, 5;
INDIANS, 10;
RAILROADS, 2.

29. *Eminent domain; compensation; when to be made.*

Compensation for property taken under eminent domain need not necessarily be made in advance of the taking if adequate means be provided for a reasonably just and prompt ascertainment and payment thereof. *Crozier* v. *Krupp*, 290.

30. *Eminent domain; compensation; sufficiency of fulfillment of duty as to.*

The duty to provide for payment of compensation for property taken

under eminent domain may be adequately fulfilled by an assumption of such duty by a pledge either express or by necessary implication of the public good faith to that end. *Ib.*

See Supra, 22, 23.

31. *Equal protection of the law; effect of difference in arrangements for trials.*

The Fourteenth Amendment did not introduce a factitious equality without regard to practical differences that are best met by corresponding differences of treatment, *Standard Oil Co.* v. *Tennessee*, 217 U. S. 413; and a State may make different arrangements for trials under different circumstances of even the same class of offenses, if all in the same class are subject to the same procedure. *Graham* v. *West Virginia*, 616.

32. *Equal protection of the law; effect of imposition of greater of two penalties to which corporation subject.*

A corporation tried under information in the nature of *quo warranto* for combination in restraint of trade and sentenced to ouster and fine is not denied equal protection of the law, because corporations prosecuted under the anti-trust statute of the State would not be subjected to as severe a penalty. *Standard Oil Co.* v. *Missouri*, 270.

See Supra, 24, 26, 28.

33. *Excessive fines; limitation upon power of court.*

The power to fine reposed in a court of last resort is not unlimited, but is limited by the obligation not to impose excessive fines. *Ib.*

34. *Full faith and credit clause; right of receiver of Minnesota corporation to sue in courts of another State to recover stockholder's liability.*

While there are certain well-recognized exceptions to the full faith and credit clause, especially in regard to the enforcement of penal statutes, the right of a receiver of a Minnesota corporation to sue in the courts of another State to recover the double liability imposed on the stockholders is within the rule, and the courts of the latter State are bound to give full faith and credit to the laws of Minnesota and the judicial proceedings upon which the receiver's title, authority and right to relief are grounded. *Converse* v. *Hamilton*, 243.

See RECEIVERS.

Indians; status of. *See* INDIANS, 1.

Privileges and immunities of citizens. *See Supra*, 8, 26.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACTS.

1. *Performance; breach; contract for sale of mine construed.*

The owner of a mine contracted with a purchaser for the latter to go into possession and proceed with the development of, and extract ore from, the mine, and to deposit to the credit of the owner in a designated bank the net proceeds up to a specified amount when deeds to the property, deposited in escrow should be delivered. The purchaser proceeded with the work, but deposited proceeds to his own credit in another bank, whereupon the owner attached such deposit and took forcible possession of the mine. In a suit brought by the purchaser, *held* that the deposit of proceeds of ore in the specified bank was a condition concurrent or precedent to the obligation of the owner to go on with the contract; and, unless the declaration disclosed an excuse for the breach, the owner was justified in retaking possession. That the action of the owner in attaching the deposit was not an excuse for a breach by the purchaser, nor did the declaration disclose any sufficient excuse for the breach. Under the contract the act of the owner in suing for part of the purchase price which belonged to him would not prevent him from terminating the contract for failure to perform; there was no election. *World's Fair Mining Co.* v. *Powers*, 173.

2. *Express; what constitutes; when acts sufficient.*

A contract that certain specific assets in the hands of a trustee should be held as security for a specific contingent claim is necessarily express, and is none the less so if conveyed by acts importing it than if stated in words. *Leary* v. *United States*, 567.

3. *Validity; public policy; quære as to contract to indemnify bail.*

Bail no longer is the *mundium*, and distinctions between bail and suretyship are nearly effaced. *Quære:* whether a contract to indemnify bail which is legal by statute in New York where made is void as against the public policy of the United States. *Ib.*

See BONDS;
CONGRESS, POWERS OF, 2, 6;
CONSTITUTIONAL LAW, 1–5;
EMPLOYERS' LIABILITY ACT, 2, 3, 4;
INDIANS, 4, 11;
INTERSTATE COMMERCE, 11;
LOCAL LAW (KY., 1, 2, 3);
PATENTS, 1, 2, 7, 8;
RESTRAINT OF TRADE, 5.

CONTRIBUTORY INFRINGEMENT.

See PATENTS;
STATUTES, A 1.

CONTRIBUTORY NEGLIGENCE.

See STATES, 2.

CONVEYANCES.

See CONGRESS, POWERS OF, 4, 5; INDIANS;
CONSTITUTIONAL LAW, 1; MINES AND MINING, 1, 2, 3;
PLEADING, 1.

CORPORATIONS.

1. *Citizenship of, for purposes of jurisdiction of Federal courts.*

A corporation of one State, which only becomes a corporation of another by compulsion of the latter so as to do business therein, is not a corporation thereof, but remains, so far as jurisdiction of Federal courts is concerned, a citizen of the State in which it was originally incorporated. (*Southern Railway Co.* v. *Allison*, 190 U. S. 326.) *Missouri Pacific Ry. Co.* v. *Castle*, 541.

2. *Public service; duty to perform service voluntarily assumed.*

Although a public service corporation may not under its charter be required to extend its facilities in certain quarters, if it does so voluntarily, it must render the service for which it obtained its charter to those within reach of its facilities without distinction of persons. *Consumers' Co.* v. *Hatch*, 148.

See CONSTITUTIONAL LAW, 4, 5, 9, 10, 32, 34; LOCAL LAW, (KY. 1, 2, 3); (MINN.)
JURISDICTION, J 2, 3; PRACTICE AND PROCEDURE, 12;
QUO WARRANTO.

COURT AND JURY.

See BONDS, 2;
MALICIOUS PROSECUTION, 3.

COURT OF CLAIMS.

See PATENTS, 2, 3, 13, 14;
PRACTICE AND PROCEDURE, 24, 25.

COURTS.

1. *Functions of.*

If a law is bad, the legislature, and not juries, must change it. *Beutler* v. *Grand Trunk Junction Ry. Co.*, 85.

2. *This court; function as respects jurisdiction of lower courts.*
This court does not prescribe the jurisdiction of courts, Federal or state, but only gives effect to it as fixed by law. *Henry* v. *A. B. Dick Co.*, 1.

3. *Federal; when common law to be applied.*
In cases tried in the United States courts the court must follow its understanding of the common law when no settled rule of property intervenes. *Beutler* v. *Grand Trunk Junction Ry. Co.*, 85.

4. *State; power in respect of construction of state laws.*
The highest court of the State can construe the laws of that State so as to make of them a consistent system of jurisprudence accommodating the rights and the remedies dealt with by the legislature. *McCaughey* v. *Lyall*, 558.

5. *Power to abolish established rules of law.*
Courts may not abolish an established rule of law upon personal notions of what is expedient; and so as to the fellow-servant doctrine even if it be, as it has been called, a bad exception to a bad rule. *Beutler* v. *Grand Trunk Junction Ry. Co.*, 85.

See ACTIONS, 1;
ARMY AND NAVY, 2;
CONSTITUTIONAL LAW, 33, 34;
JUDGMENTS AND DECREES;
JURISDICTION;
LOCAL LAW (IDAHO, 3);
PATENTS, 20;
STATUTES, A 2.

CRIMINAL LAW.

1. *Old offenders; additional penalties; propriety and nature of.*
The propriety of inflicting severer punishment upon old offenders has long been recognized in this country and in England—such increased punishment is not a second punishment for the earlier crime but is justified by the repetition of criminal conduct. *Graham* v. *West Virginia*, 616.

2. *Old offenders; power of State to provide for identifying before sentence.*
A State which adopts the policy of heavier punishment for repeated offending may provide for guarding against second offenders escaping by reason of their identity not being known at the time of sentence. *Ib.*

See CONSTITUTIONAL LAW, 6, 8, 26, 27, 28.

CRUEL AND UNUSUAL PUNISHMENTS.

See CONSTITUTIONAL LAW, 6, 26.

CURTIS ACT.

See INDIANS, 7, 9, 10, 12.

CUSTOMS LAW.

"Statuary" as used in act of 1897, defined.

A term used in a reciprocal agreement made under § 3 of the Tariff Act of 1897 will be construed in the same way that such term is defined in the act itself; and so *held* that the word "statuary" used in the reciprocal agreement of May 30, 1898, with France, 30 Stat. 1774, includes only such statuary as is cut, carved, or otherwise wrought by hand as the work of a sculptor. *Altman & Co.* v. *United States*, 583.

See JURISDICTION, A 3.

DAMAGES.

See INSTRUCTIONS TO JURY, 1;
NATIONAL BANKS, 3.

DECEIT.

See NATIONAL BANKS, 1.

DEEDS.

See MINES AND MINING, 3.

DEFENSES.

See CONSTITUTIONAL LAW, 10.

DELEGATION OF POWER.

See CONGRESS, POWERS OF, 1;
CONSTITUTIONAL LAW, 7.

DISTRICT OF COLUMBIA.

See CONGRESS, POWERS OF, 2;
JURISDICTION, A 5, 6, 7.

DIVERSITY OF CITIZENSHIP.

See JURISDICTION, C.

DOUBLE JEOPARDY.

See CONSTITUTIONAL LAW, 8, 26.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 9–28;
RAILROADS, 2.

ELECTION OF REMEDIES.

See PATENTS, 7.

EMINENT DOMAIN.

See CONSTITUTIONAL LAW, 22, 23, 29, 30;
PATENTS, 3.

EMPLOYER AND EMPLOYEE.

See BONDS, 1; NEGLIGENCE;
MASTER AND SERVANT; STATES, 1, 2, 3.

EMPLOYERS' LIABILITY ACT.

1. *Liability under; power of Congress to impose.*

Congress has power to impose the liability on the employer defined in the Employers' Liability Act of 1908. (*Second Employers' Liability Cases*, 223 U. S. 1.) *Philadelphia, B. & W. R. R. Co.* v. *Schubert*, 603.

2. *Exemptions from liability; power of Congress to prohibit.*

Congress has power to enforce the regulations, validly prescribed by the Employers' Liability Act of 1908, by the provisions of § 5 of the act providing that exemptions from liability shall be void, and that the acceptance of benefits under a relief contract shall not be a bar to recovery. *Ib.*

3. *Contracts for immunity; effect of act of 1908 to enlarge scope of prohibition.*

In framing the Employers' Liability Acts of 1906 and 1908 Congress well understood the practice of maintaining relief departments, and by the statute of 1908 Congress enlarged the scope of the clause defining contracts for immunity which should not prevail, and included stipulations which made acceptance of benefits from such relief departments a release from liability. *Ib.*

4. *Contracts within provisions of § 5.*

The provisions of § 5 of the Employers' Liability Act apply as well to existing as to future contracts. *Ib.*

5. *Right of recovery under; who entitled; effect of local law.*

The National Employers' Liability Act of 1908 gives the right of recovery to the personal representatives and not to the heirs of one killed by the negligence of the employer, and the heirs cannot maintain an action even where the local statute, as in Porto Rico, gives a right to the heirs as well as to the personal representatives to maintain such an action. *American R. R. Co.* v. *Birch*, 547.

6. *Actions under; right of defendant to limitation of single action.*
A defendant company has the right under the Employers' Liability Act of 1908 to have its liability determined in one action. *Ib.*

7. *Application to Porto Rico.*
The Employers' Liability Act of 1908 expressly applies to, and is in force in, Porto Rico; but *quære*, and not necessary to decide in this case, whether the Safety Appliance Acts apply to, or are in force in, Porto Rico. *Ib.*

See INTERSTATE COMMERCE, 15;
STATES, 3.

ENROLLMENT OF INDIANS.

See INDIANS, 26, 27.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 24, 26, 28, 31, 32.

EQUITY.

See ACTIONS, 2; JURISDICTION, I;
INDIANS, 18; PLEADING, 1.

ESTOPPEL.

See MUNICIPAL CORPORATIONS, 2.

EVIDENCE.

See APPEAL AND ERROR, 3; FEDERAL QUESTION, 6;
CONSTITUTIONAL LAW, 19, 20, 21; MALICIOUS PROSECUTION;
PATENTS, 4;
PRACTICE AND PROCEDURE, 24, 25.

EXCESSIVE FINES.

See CONSTITUTIONAL LAW, 33.

EXEMPTIONS.

See EMPLOYERS' LIABILITY ACT, 2, 3;
INDIANS, 7–14;
TAXES AND TAXATION, 2.

FACTS.

See APPEALS AND ERROR, 5, 7, 8;
PRACTICE AND PROCEDURE, 22–25.

FEDERAL QUESTION.

1. *Infringement of patent; involution of Federal question in suit for.*

A suit for infringement which turns upon the scope of the patent and privileges of the patentee thereunder presents a case arising under the patent law. *Henry* v. *A. B. Dick Co.*, 1.

2. *Infringement of patent; when suit for involves no Federal question.*

A patentee who has leased his patent to a licensee under restrictions may waive the tort involved in infringement and sue upon the broken contract; but in that event the case is not one arising under the patent laws and, in absence of diversity of citizenship, a Federal court has no jurisdiction thereof. *Ib.*

3. *Infringement of patent; remedy sought as test of involution.*

Whether the case is one of infringement of which the Federal court has jurisdiction or of contract of which it has not jurisdiction is often determined by the remedy which complainant seeks. *Ib.*

4. *Infringement of patent; test of involution of Federal question.*

The test of jurisdiction is whether complainant does or does not set up a right, title or interest under the patent laws or make it appear that a right or privilege will be defeated by one, or sustained by another, construction of those laws. *Ib.*

5. *Infringement of patent; what constitutes question under patent law.*

Whether a patentee may lawfully impose restrictions on the use of a patent and whether the violation thereof constitutes infringement are questions under the patent law. *Ib.*

6. *Rulings on sufficiency of evidence where pleading sets up Federal statute held not to involve.*

Although the petition may declare under a Federal statute, if it states no cause of action thereunder but at most a right of recovery at common law, rulings on the sufficiency of evidence do not involve Federal questions. *Brinkmeier* v. *Missouri Pacific Ry. Co.*, 268.

7. *What constitutes; when not involved.*

Where the state court has decided that the plaintiff in error never acquired title because the grant was not one *in præsenti* but depended upon conditions subsequent which had never been fulfilled, and rests its judgment on that fact alone, and not on the effect of a subsequent statute which might have affected the title had the title of plaintiff in error been perfected, there is no Federal question. *Cross Lake Club* v. *Louisiana*, 632.

See CONSTITUTIONAL LAW, 3.

FELLOW SERVANTS.

See COURTS, 5; MASTER AND SERVANT; PRACTICE AND PROCEDURE, 4; STATES, 1, 2.

FINDINGS OF FACT.

See PRACTICE AND PROCEDURE, 24, 25.

FINES.

See CONSTITUTIONAL LAW, 14, 33; QUO WARRANTO.

FIVE CIVILIZED TRIBES.

See INDIANS, 16.

FORAKER ACT.

See LOCAL LAW (PORTO RICO, 2, 3).

FOREIGN CORPORATIONS.

See JURISDICTION, J 2, 3.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW.

FRANCHISES.

See CONSTITUTIONAL LAW, 1; LOCAL LAW (KY., 1, 2, 3); MUNICIPAL CORPORATIONS, 2, 3. TELEPHONE COMPANIES.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 34; RECEIVERS.

GOVERNMENTAL FUNCTIONS.

See COURTS, 1.

GOVERNMENT CONTRACTS.

See TAXES AND TAXATION, 2.

GRANTOR AND GRANTEE.

See INDIANS, 6.

GUARDIANSHIP.

See INDIANS, 16.

HARBORS.
See LOCAL LAW (PORTO RICO, 1, 2).

HEARING.
See CONSTITUTIONAL LAW, 19, 20, 21.

HEPBURN ACT.
See INTERSTATE COMMERCE, 10.

IMMUNITY FROM LIABILITY.
See EMPLOYERS' LIABILITY ACT, 2, 3.

IMPAIRMENT OF CONTRACT OBLIGATION.
See CONSTITUTIONAL LAW, 1–5.

IMPORTS.
See JURISDICTION, A 3, 4.

INDIANS.

1. *Status under Constitution.*

Indians are not excepted from the protection guaranteed by the Federal Constitution, but their rights are secured and enforced to the same extent as those of other residents or citizens of the United States. *Choate* v. *Trapp*, 665.

2. *Citizenship; effect on control over allotted lands.*

Conferring citizenship upon an allottee Indian is not inconsistent with retaining control over his disposition of lands allotted to him. (*Tiger* v. *Western Investment Co.*, 221 U. S. 286.) *Heckman* v. *United States*, 413.

3. *Allotment and distribution; Cherokees; effect of act of July 1, 1902, on power of Congress to admit newly-born members of tribe.*

Under the act of July 1, 1902, individual members of the Cherokee tribe did not individually acquire any vested rights in the surplus lands and funds of the tribe that disabled Congress from thereafter making provision for admitting newly-born members of the tribe to the allotment and distribution, as it did by the act of April 26, 1906. *Gritts* v. *Fisher*, 640.

4. *Allotment and distribution; Cherokees; act of July 1, 1902, construed.*

The act of July 1, 1902, limiting the allottees and distributees of Cherokee lands and funds, was not a contract but only an act of

Congress and can have no greater effect; it was but an exertion of the governmental administrative control over tribal property of tribal Indians, and subject to change by Congress at any time before it was carried into effect and while tribal relations continued. *Ib.*

5. *Allotments; Choctaw and Chickasaw; effect of acceptance of patent by individuals.*

The individual Choctaw and Chickasaw Indian had no title or enforcible right in tribal property, but Congress recognized his equitable interest therein in the Curtis Act of June 28, 1898, 30 Stat. 505, and offered to give to him in consideration of his consenting to the distribution an allotment of non-taxable land; and the acceptance of the patent by each member of the tribe was on the consideration of relinquishment of his interest in the unallotted tribal property. *Choate* v. *Trapp*, 665.

6. *Allotments; effect of agreement in patent to bind grantee.*

A patent for an Indian allotment containing an agreement assenting to the plan of distribution, like a deed poll, bound the grantee, although not signed by him, and the benefits constituted the consideration for the rights waived. *Choate* v. *Trapp*, 665; *Gleason* v. *Wood*, 679; *English* v. *Richardson*, 680.

7. *Allotments; effect of tax exemption in patent.*

The tax exemption in the patents for Indian allotments under the Curtis Act was not a mere safeguard against alienation, and did not fall with the removal of restrictions from alienation by the act of May 27, 1908, 35 Stat. 312. *Ib.*

8. *Allotments; restrictions on alienation and exemption from taxation; power of Congress as to.*

The removal of restrictions on alienation of Indian allotments falls within the power of Congress to regulate Indian affairs, but the provision for non-taxation is a property right and not subject to action by Congress. *Ib.*

9. *Allotments; exemption from taxation provision; binding effect of.*

The non-taxation provisions as to Indian allotted lands in the Curtis Act gave a property right to the allottees, and was binding on the State of Oklahoma. *Ib.*

10. *Allotments; patents; title to exemption from taxation under.*

Patents issued in pursuance of statute are to be construed in con-

nection with the statute, and those issued to allottee Indians under the Curtis Act gave the allottees as good a title to the exemption from taxation as to the land itself; and the tax exemption constituted property of which the patentees could not, under the Fifth Amendment, be deprived without due process of law. *Ib.*

11. *Allotments; exemption from taxation; construction of.*
An exemption from taxation, of land allotted to Indians in pursuance of an agreement to distribute the tribal property, will not be construed strictly, as a gratuitous exemption to a public service corporation is ordinarily construed, but will be construed liberally under the rule that all contracts with Indians are so construed. *Ib.*

12. *Allotments; tax exemption provision in patent; scope of.*
The tax exemption provisions of the patents to Indian allottees under the Curtis Act attached to the land for the limited period of the exemption. *Ib.*

13. *Allotments; Tiger* v. *Western Investment Co., 221 U. S. 286, distinguished.*
Tiger v. *Western Investment Co.*, 221 U. S. 286, distinguished as not involving property rights but only the right of Congress to extend the period of disability to alienate the allotments, and as not intimating that Congress could by its wardship lessen any rights of property actually vested in the individual Indian by prior laws or contracts. *Ib.*

14. *Allotments; tax exemption in patents; power of Oklahoma to abrogate.*
Oklahoma by its constitution has recognized the tax exemption in the patents of allottee Indians, and, as a vested right, it cannot be abrogated by statute. *Ib.*

15. *Alienation of allotted lands; power of Congress to extend conditions.*
Congress has power to extend the restrictions upon alienation of allotted lands by allottee Indians, *Tiger* v. *Western Investment Co.*, 221 U. S. 286; and so *held* that the provision for extending the period of alienation of lands allotted in severalty to full-blood Cherokees in the act of May 27, 1908, 35 Stat. 312, c. 199, is a valid exercise by Congress of its power over Indian affairs. *Heckman* v. *United States*, 413.

16. *Alienation of allotted lands; restrictions on; guardianship of United States.*
The placing of restrictions upon the right of alienation was an essential

part of the plan of individual allotment of tribal lands among the members of the Five Civilized Tribes; and such restrictions evinced the continuance to this extent of the guardianship of the United States over the Indians as wards of the Nation. *Ib.*

17. *Alienation of allotted lands; restrictions on; maintenance as suable interest of United States.*

The maintenance of limitations prescribed by Congress as part of its plan for distribution of Indian lands is distinctly an interest of the United States, and one which it may sue in its own courts to enforce. *Ib.*

18. *Conveyances by allottees; suit by United States to set aside; equity jurisdiction; parties; pleading.*

The United States has capacity to maintain a suit to set aside conveyances made by allottee Indians of allotted lands within the statutory period of restriction; and this suit brought against numerous defendants, all of whom were grantees of allottees of the same tribe, is properly maintainable in equity; the return of the consideration to the grantee is not essential; there is no defect of parties because the allottee Indians making the conveyances are not joined; there is no misjoinder of causes of action, and the bill is not multifarious. *Heckman* v. *United States*, 413; *Goat* v. *United States*, 458.

19. *Conveyances of allotted lands; suits to set aside; grantors as necessary parties.*

The presence of the Indian grantors as parties to suits brought by the United States to set aside conveyances of allotted lands made in violation of statutory restrictions on alienation is not essential; nor are the grantees placed in danger of double litigation by reason of the absence of the grantors as parties. *Heckman* v. *United States*, 413.

20. *Conveyances of allotted lands; suit to set aside; right of United States to maintain, in case of Choctaws.*

The relations of the United States and the Choctaw Indians by treaties and statutes in regard to the allotment of lands and the restriction of alienation reviewed, and *held* that where a person, whose name appeared upon the rolls of the Choctaw Indians, died after the ratification of the agreement of distribution and before receiving the allotment, there was no provision for restriction but the land passed at once to his heirs; in such cases the United States cannot maintain an action to set aside conveyances made

by the heirs within the period of restriction applicable to homestead allotments made to members of the tribe during life. *Mullen* v. *United States*, 448.

21. *Conveyances of allotted lands; suits to set aside; right of United States to maintain in case of Seminole freedmen.*

The relations of the United States to Seminole freedmen by treaties and statutes reviewed, and *held* that the United States is entitled to maintain an action to set aside all conveyances made by Seminole freedmen of homestead lands, of surplus lands made by minor allottees, and by adult allottees if made prior to April 21, 1904; but that such an action cannot be maintained as to conveyances made by adult allottees after April 21, 1904. *Goat* v. *United States*, 458; *Deming Investment Co.* v. *United States*, 471.

22. *Conveyances of allotted lands; cancellation; quære as to scope of decree.*

Quære, but not presented on this record, whether cases may arise where, without interfering with the policy of restricting alienation, the decree should provide in cancelling the transfers for a return of the consideration and the bringing in as parties of any person whose presence might be necessary. *Heckman* v. *United States*, 413.

23. *Conveyances of allotted lands; cancellation; return of consideration as essential to.*

The effect of an act of Congress passed in pursuance of a policy and a matter of general knowledge cannot be destroyed so as to assist those who attempted to profit by violating its provisions; and so *held* that when a conveyance is made by an allottee Indian in violation of statutory restrictions on alienation, the return of the consideration is not an essential prerequisite to a decree of cancellation. *Ib.*

24. *Conveyances of allotted lands; effect of violation of restrictions as to.*

A transfer of allottee lands in violation of statutory restrictions is not simply a violation of the proprietary rights of the Indian but of the governmental rights of the United States. *Ib.*

25. *Conveyances by; restrictions in case of Seminole freedmen.*

The question in this case is: What are the restrictions in case of allotments to Seminole freedmen. *Goat* v. *United States*, 458.

26. *Enrollment; who entitled.*

Children born to enrolled members of the Cherokee tribe after Septem-

ber 1, 1902, and living on March 4, 1906, are entitled to enrollment as members of the tribe and to participation in the allotment and distribution of its lands and funds made under the act of July 1, 1902, 32 Stat. 725, c. 1375, and subsequent acts relating to such allotment and distribution. *Gritts* v. *Fisher*, 640.

27. *Same.*

Section 2 of the act of April 26, 1906, as amended June 21, 1906, for the enrollment of minor children living March 4, 1906, is not to be construed as excluding those born after September 1, 1902. *Ib.*

28. *Cherokees; relations of United States to; intent of Congress in legislation.*

The relations of the United States to the Cherokee Indians as established by treaties and statutes reviewed, and *held* that in executing the policy of extinguishing the tribal organizations and title, and the allotment of the tribal lands in severalty, the intent of Congress was to fulfill the national obligation, not only by an equitable apportionment of the property but by safeguarding through suitable restrictions the individual ownership of the allottees. *Heckman* v. *United States*, 413.

See CONGRESS, POWERS OF, 3, 4, 5;
PLEADING, 1.

INDICTMENT AND INFORMATION.

See CONSTITUTIONAL LAW, 28.

INFRINGEMENT OF PATENT.

See FEDERAL QUESTION, 1–5;
PATENTS, 6–16;
STATUTES, A 1.

INJUNCTION.

See LOCAL LAW (IDAHO, 4); (PORTO RICO, 1);
PATENTS, 13, 14;
RESTRAINT OF TRADE, 12.

INSOLVENCY LAWS.

See UNITED STATES, 1.

INSTRUCTIONS TO JURY.

1. *Effect to cure error in respect of allegations in pleading.*

Denial by the trial court of a motion to strike from the complaint

allegations as to exemplary damages does not harm defendant if the court instructs the jury that only compensatory, and not exemplary, damages can be recovered. *San Juan Light & Transit Co.* v. *Requena*, 89.

2. *Objectionableness; considerations in determining.*

Although an instruction may be subject to criticism standing alone, it may be unobjectionable if read in the light of what preceded and what followed it. *Ib.*

INTERNATIONAL COMPACTS.

See JURISDICTION, A 1, 4.

INTERSTATE COMMERCE.

1. *Alaska as a Territory of the United States.*

Alaska is a Territory of the United States within the meaning of § 1 of the Interstate Commerce Act, as amended June 29, 1906, 34 Stat. 584, c. 3591. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

2. *Alaska as a Territory of the United States.*

Even if "Territory of the United States" as used in § 1 of the Interstate Commerce Act as amended includes only organized Territories, Alaska falls within its meaning. (*The Steamer Coquitlam*, 163 U. S. 346; *Binns* v. *United States*, 194 U. S. 486; *Rassmussen* v. *United States*, 197 U. S. 516.) *Ib.*

3. *Accounting by carriers; power of Commission to prescribe mode.*

Section 20 of the Interstate Commerce Act gives the Commission ample authority to require accounts to be kept by carriers in the manner prescribed by the Commission. *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194.

4. *Accounting by carrier doing both inter- and intrastate business; power of Congress to require.*

A statute requiring a carrier doing both interstate and intrastate business to render accounts of all of its business is not beyond the power of Congress as a regulation of intrastate commerce. *Ib.*

5. *Accounting by carrier as to both inter- and intrastate business; right to require.*

Carriers partly by land and partly by water may be required to keep accounts of all their traffic, both interstate and intrastate, under the provisions of § 20 of the act of June 29, 1906. *Ib.*

6. *Business of carriers of which Commission is to be informed under § 20 of act of 1906.*

Under § 20 of the act of June 29, 1906, the Interstate Commerce Commission is to be fully informed of all business conducted by a carrier of interstate traffic; and this includes all operations of such carriers, whether strictly transportation or not; in this case *held* to include amusement parks operated by a carrier of interstate commerce partly by land and partly by water. *Ib.*

7. *Carriers embraced within act of 1906.*

Carriers partly by railroad and partly by water under a common arrangement for a continuous carriage are as specifically within the term of the Interstate Commerce Act of June 29, 1906, 34 Stat. 584, c. 3591, as any other carrier named therein. *Ib.*

8. *Same.*

Such carriers are subject to the provisions of the act authorizing the Commission to require a system of accounting. *Ib.*

9. *Same.*

Such carriers, while engaged in carrying on traffic under joint rates with railroads filed with the Interstate Commerce Commission, are bound to deal upon like terms with all shippers availing of the rates and are generally subject to the Interstate Commerce Act. *Ib.*

10. *Rate regulation; effect of Hepburn Act on power of Commission over railroads in Alaska.*

The Hepburn Act of June 29, 1906, 34 Stat. 584, c. 3591, extended the provisions of the Interstate Commerce Act to interterritorial commerce and for the first time gave to the Commission the power to fix rates. In so doing it made the act completely comprehensive, and the power given to the Commission superseded the power of the Secretary of the Interior to revise and modify rates of railroads in Alaska given by § 2 of the act of May 14, 1898, 30 Stat. 409, c. 299. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

11. *Restraint on; effect of contract in regard to use of patent.*

Although a contract in regard to use of a patent may include interstate commerce and restrain interstate trade, if it involves only the reasonable and legal conditions imposed under the patent law, it is not within the prohibitions of the Sherman Act. (*Bement* v. *National Harrow Co.*, 186 U. S. 70.) *Henry* v. *A. B. Dick Co.*, 1.

12. *State interference with; prohibition of transportation of natural gas as.*
Natural gas after severance from the soil being a commodity which may be dealt in like other products of the earth and a legitimate subject of interstate commerce, no State can prohibit its being transported in interstate commerce beyond the lines of the State, and the act of Oklahoma attempting so to do is an unconstitutional interference with interstate commerce as held in this case, 221 U. S. 229. *Haskell* v. *Kansas Natural Gas Co.*, 217.

13. *State interference with; discrimination against corporations doing interstate business.*
A State may by proper legislation regulate the removal from the earth of natural gas by the owner thereof, but may not discriminate against corporations doing an interstate business by denying them the right to cross highways of the State while domestic corporations engaged in the same business are permitted to use the highways. *Ib.*

14. *State regulation of interstate trade.*
Regulations in a state statute which may be valid as to individuals and domestic corporations engaged in business wholly within the State are not applicable to corporations engaged in doing the same business in interstate commerce when the statute expressly forbids such commerce; this court will not therefore direct that regulations of that nature become applicable to the latter class of such corporations because the prohibition has been declared unconstitutional as an interference with interstate commerce. *Ib.*

15. *State interference; effect of statute imposing liability on railroads for injuries to employés.*
The fact that a state statute imposing liability on railway companies for injuries to employés covers acts of negligence in respect to subjects dealt with by the Federal Safety Appliance Act does not amount to an interference with interstate commerce. *Missouri Pacific Ry. Co.* v. *Castle*, 541.

See CONGRESS, POWERS OF, 2; CONSTITUTIONAL LAW, 24; JUDGMENTS AND DECREES, 2; JURISDICTION, F; RESTRAINT OF TRADE; SAFETY APPLIANCE ACTS; STATES, 3; STATUTES, A 7.

INTERSTATE COMMERCE COMMISSION.

See CONGRESS, POWERS OF, 1; CONSTITUTIONAL LAW, 7; INTERSTATE COMMERCE; JURISDICTION, E, F.

INTERVENTION.

Allegations; what not essential.

Where the intervenor has not legal title and is not claiming against an admitted prior equity as a purchaser without notice, allegations of ignorance of facts not admitted and not finally established are not essential. *Leary* v. *United States*, 567.

See TRUSTS AND TRUSTEES, 1, 2.

INVENTION.

See PATENTS.

JEOPARDY.

See CONSTITUTIONAL LAW, 8, 26.

JUDGMENTS AND DECREES.

1. *Essentials to validity; jurisdiction; who to determine.*

It is essential to the validity of a judgment that the court rendering it have jurisdiction of the subject-matter and of the parties; but it is for the highest court of a State to determine its own jurisdiction and that of the local tribunals. *Standard Oil Co.* v. *Missouri*, 270.

2. *Construction of decree declaring state statute unconstitutional in so far as it prohibits or burdens interstate commerce.*

A decree of this court must be read in view of the issues made and the relief sought and granted; and a decree declaring a state statute unconstitutional so far as it prohibits, or is a burden upon, interstate commerce will not be construed as preventing the enforcement of such legislation as is legitimately within the police power of the State and not in conflict with the Federal Constitution. *Haskell* v. *Kansas Natural Gas Co.*, 217.

See BANKRUPTCY, 7; CONSTITUTIONAL LAW, 5, 12, 14; JURISDICTION, H; PRACTICE AND PROCEDURE, 3, 14, 15, 20; QUO WARRANTO

JUDICIAL CODE.

See JURISDICTION, A 5, 6, 7; STATUTES, A 9.

JURISDICTION.

A. OF THIS COURT.

1. *Of appeal involving rights resting on international compact; effect of act of 1891 to confer.*

In construing the Circuit Court of Appeals Act of 1891, the intent of

Congress will be considered, and it was manifestly to permit rights and obligations resting on international compacts and their construction to be passed on by this court. *Altman & Co.* v. *United States*, 583.

2. *Of direct appeal from Circuit Court under § 5 of the act of 1891.*

Where jurisdiction of the Circuit Court involves only the questions of fact whether the defendant corporation was doing business within the jurisdiction and the person served was its agent, those questions can be brought by direct appeal to this court under § 5 of the Circuit Court of Appeals Act of 1891. *Herndon-Carter Co.* v. *Norris & Co.*, 496.

3. *Of direct appeal from Circuit Court in revenue case.*

This court will entertain a direct review of the judgment of the Circuit Court under § 5 of the Circuit Court of Appeals Act of 1891, in a revenue case which involves not only questions of classification and amount of duty thereunder, but also questions as to the constitutionality of a law of the United States or the validity or construction of a treaty under its authority. *Altman & Co.* v. *United States*, 583.

4. *Of direct appeal from Circuit Court where case rested on reciprocal agreement entered into under § 3 of Tariff Act of 1897.*

Where the importer throughout has insisted that the merchandise is dutiable at the rate fixed by a reciprocal agreement entered into by the United States under § 3 of the Tariff Act of 1897, there is a direct appeal to this court under § 5 of the Circuit Court of Appeals Act of 1891, provided such agreement is a treaty. *Ib.*

5. *Of appeal from Court of Appeals of the District of Columbia; § 299 of Judicial Code construed.*

Section 299 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, saving suits pending on appeal, does not give the right of appeal from judgments of the Court of Appeals of the District of Columbia in cases covered by the statutes repealed by the Judicial Code and in which the cause of action accrued prior to January 1, 1912, but which were not decided by the Court of Appeals until after that date. *Washington Home for Incurables* v. *American S. & T. Co.*, 486.

6. *To review judgment of Court of Appeals of the District of Columbia; § 250 of Judicial Code construed.*

The jurisdiction of this court to reëxamine final judgments or decrees

of the Court of Appeals of the District of Columbia under § 250 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, in cases in which the construction of a law of the United States is drawn in question, does not extend to cases where the act of Congress construed by that court is a purely local law relating to the District of Columbia, but only extends to those having a general application throughout the United States. *American S. & T. Co.* v. *District of Columbia*, 491.

7. *To review judgments of Court of Appeals of the District of Columbia; § 250 of Judicial Code construed.*

All cases in the District of Columbia arise under acts of Congress; and to so construe § 250 of the Judicial Code as to include the case at bar, because the construction of a local street extension act was involved, would largely and irrationally increase the appellate jurisdiction and the statute will not be construed so as to include such cases even if within its literal meaning. (*Holy Trinity Church* v. *United States*, 143 U. S. 437.) *Ib.*

8. *Over state courts; scope of review.*

In the exercise of its appellate jurisdiction over the courts of the several States, this court is not absolutely confined to the consideration and decision of the Federal questions, but may inquire whether, owing to any intervening event, such questions have ceased to be material, and dispose of the case in the light of that event. *Gulf, C. & S. F. Ry. Co.* v. *Dennis*, 503.

See APPEAL AND ERROR, 7, 8, 9;
STATUES, A 9.

B. OF THE CIRCUIT COURT OF APPEALS.

See BANKRUPTCY, 10–13.

C. OF CIRCUIT COURT.

Diversity of citizenship; arrangement of parties in controversy over control of association.

In a controversy which embraces the rights of an association, the mastery of which is claimed by both complainants and defendants, the trustees of the association are properly made parties defendant and are not to be realigned by the court on the side of the complainant for jurisdictional purposes. (*Helm* v. *Zarecor*, 222 U. S. 32.) *Sharpe* v. *Bonham*, 241.

See APPEAL AND ERROR, 1, 2.

D. OF THE COURT OF CLAIMS.

See PATENTS, 2, 3, 13, 14.

E. Of United States Commerce Court.

To review action of Commerce Commission in refusing to take jurisdiction of complaint.

The United States Commerce Court has no jurisdiction to review the action of the Interstate Commerce Commission in refusing to entertain a complaint because the subject is beyond its jurisdiction. In such a case the remedy is by mandamus to compel the Commission to proceed and decide the case according to its judgment and discretion. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

F. Of Interstate Commerce Commission.

Of complaint as to carriers in Alaska.

The Interstate Commerce Commission has jurisdiction to investigate violations of the Act to Regulate Commerce in Alaska, and to compel carriers in that Territory to conform to the law; and if the Commission refuses to act on the ground that it has no jurisdiction, mandamus will issue directing it to take jurisdiction. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

G. Of Federal Courts Generally.

See Corporations, 1;
Federal Question, 2, 3, 4, 5.

H. Of State Courts.

Implication of, by judgment of ouster and fine in quo warranto proceeding.

Where the constitution of a State gives to its highest court the power to issue writs of *quo warranto* and to hear and determine the same, judgment of ouster and fine entered by that court implies that it had jurisdiction to so decide and enter judgment and is conclusive upon this court whether the judgment is civil or criminal or both. (*Standard Oil Co.* v. *Tennessee*, 217 U. S. 420.) *Standard Oil Co.* v. *Missouri*, 270.

See Judgments and Decrees, 1.

I. Equity.

United States may invoke when.

Where there is a violation of the rights of the United States, and a justiciable question as to the effect thereof, the United States may invoke the jurisdiction of a court of equity, and a pecuniary interest in the controversy is not essential. (*United States* v. *American Bell Telephone Co.*, 128 U. S. 315.) *Heckman* v. *United States*, 413.

J. GENERALLY.

1. *To determine jurisdiction.*

The jurisdiction to determine jurisdiction, *Ex parte Harding*, 219 U. S. 363, does not exist in an administrative body which is subject to having its jurisdiction defined by the courts. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

2. *Of foreign corporations; essentials.*

A foreign corporation in order to be subject to the jurisdiction of a court must be doing business within the State of the court's jurisdiction, and the service must be made there upon some duly authorized officer or agent. *Herndon-Carter Co.* v. *Norris & Co.*, 496.

3. *Same.*

In this case, as it appears from the evidence in the record that the defendant corporation was doing business within the State and that the person served was its agent at the time of service, the Circuit Court had jurisdiction. *Ib.*

See CONSTITUTIONAL LAW, 12; COURTS, 2; LOCAL LAW (PORTO RICO, 1, 2); PRACTICE AND PROCEDURE, 5.

LACHES.

See TRUSTS AND TRUSTEES, 2.

LAW GOVERNING.

See BANKRUPTCY, 5.

LEASE.

See MINES AND MINING, 1, 2.

LEGISLATIVE POWER.

See CONGRESS, POWERS OF; CONSTITUTIONAL LAW, 15; COURTS, 1; LOCAL LAW (MINN., 2).

LIENS.

See LOCAL LAW (KY., 4).

LICENSE.

See PATENTS.

LOCAL LAW.

Arkansas. Railroads; act No. 61 of 1907 (see Constitutional Law, 17). *St. Louis, I. M. & S. Ry. Co.* v. *Wynne*, 354.

California. Telephone companies; right to use streets. In this case *held* that under the statutes of California a telephone corporation operating interstate and local lines in Pomona, a city of the fifth class, obtained rights to maintain its main line in the streets but not its local posts and wires except subject to regulations of the city. *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

Mortgages; § 1582, Code of Civil Procedure (see Constitutional Law, 25). *McCaughy* v. *Lyall*, 558.

Municipal control of public utility plants (see Municipal Corporations, 1). *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

Idaho. 1. *Riparian rights; appropriation of water; limitation upon.* Under the laws of Idaho relating to appropriation of water, the extent of beneficial use is an inherent and necessary limitation upon the right to appropriate; and one who appropriates does not have further right to the current of the stream for the purpose of obtaining power to distribute the water required for the beneficial use which is the basis of his appropriation. *Schodde* v. *Twin Falls Water Co.*, 107.

2. *Riparian rights; appropriation of water; extent of.* There is no rule of riparian rights in Idaho by which one whose land borders on a stream can appropriate the whole current thereof for the purpose of making fruitful the limited appropriation of water to which he is entitled for beneficial use. *Ib.*

3. *Riparian rights; common-law doctrine abrogated.* The Federal courts below rightly followed the decisions of the state courts of Idaho, in holding that the common law doctrine of riparian rights had been abrogated to the extent that the provisions of the constitution and statutes of Idaho in regard to the rights of appropriators for beneficial use are in conflict therewith. *Ib.*

4. *Riparian rights; right of upper owner to restrain interference by lower owner with current of stream.* In this case *held* that one who had lawfully appropriated the amount of water from a stream in Idaho to which he was lawfully entitled for beneficial use could not restrain those below him from raising the river so as to interfere with the power necessary to raise the water appropriated by him to a height necessary for distribution over his land; neither his appropriation nor his riparian rights gave him any control over the current of the stream. *Ib.*

Kentucky. 1. *Corporations; right to create; control by municipalities.* Under the then constitution of Kentucky, in 1886, the legislature

had the sole right to create corporations and grant franchises to use the streets of municipalities; a charter granted by the State, subject to conditions to be imposed by the municipality, became, after the acceptance of the conditions, a grant, not of the municipality but of the State, and one which cannot be impaired by an ordinance made by the municipality. *Louisville* v. *Cumberland Tel. Co.*, 649.

2. *Municipalities; street franchises; constitution of 1891.* The new constitution of 1891, conferring upon municipalities the right to grant street franchises, and the later statute repealing special corporate privileges, did not and could not, repeal rights vested in corporations nor relieve them of the burdens imposed by prior charter contract. *Ib.*

3. *Franchises; sale of; effect of constitution of 1891.* The constitution of Kentucky of 1891, while limiting the power to sell franchises in the future, distinctly protected previously granted charter rights under which work had in good faith been begun. *Ib.*

4. *Mortgages; rights of creditors; creditors embraced within § 496, Stats. 1903.* As construed by the highest court of the State, the term "creditors" as used in § 496, Kentucky Statutes, 1903, which declares that no mortgage shall be valid against purchasers without notice or creditors until recorded does not include antecedent creditors, or subsequent creditors whose claims are acquired with notice, but does include subsequent creditors without notice, who by diligence secure a specific lien before the mortgage is recorded; but that court has not specifically decided whether the term includes subsequent creditors without notice who have not so secured such lien. *Holt* v. *Crucible Steel Co.*, 262.

See BANKRUPTCY, 6.

Minnesota. 1. *Corporations; liability of stockholders.* The provisions of the Minnesota constitution imposing double liability on stockholders of corporations other than those carrying on manufacturing or mechanical business is self-executing, and under it each stockholder becomes liable for the debts of the corporation in amount measured by the par value of his stock. *Converse* v. *Hamilton*, 243.

2. *Same.* The liability of stockholders under the Minnesota constitution is not to the corporation but to the creditors collectively; is not penal but contractual; not joint, but several; and

the means of its enforcement are subject to legislative regulation. *Ib.*

3. *Corporations; receivers; right to sue to recover from stockholders.* Under § 272 of the Laws of Minnesota, the receiver of a corporation, the stockholders whereof are subject to double liability, is invested with authority to sue for and collect the amount of the assessment established in the sequestration suit provided by the statute. *Ib.*

4. *Corporations; receivers; status of.* A receiver to collect the double liability of stockholders of a Minnesota corporation is more than a mere chancery receiver; he is a *quasi*-assignee, invested with the rights of creditors, and he may enforce the same in any court of competent jurisdiction. *Ib.*

See CONSTITUTIONAL LAW, 10.

Missouri. Judgment in *quo warranto* proceeding (see Quo Warranto, 2). *Standard Oil Co.* v. *Missouri*, 270.

Nebraska. Railway liability act of 1907 (see Constitutional Law, 24). *Missouri Pacific Ry. Co.* v. *Castle*, 541.

Oklahoma. Transportation of natural gas (see Interstate Commerce, 12). *Haskell* v. *Kansas Natural Gas Co.*, 217.

Porto Rico. 1. *Taxation; injunction against; application of act of March 8, 1906. Quære:* whether § 12 of the act of Legislative Assembly of Porto Rico of March 8, 1906, providing that an injunction may issue to prevent collection of illegal tolls, applies to the District Court of the United States for Porto Rico. *Gromer* v. *Standard Dredging Co.*, 362.

2. *Taxation; jurisdiction for purpose of.* Under § 13 of the Foraker Act of April 12, 1900, 31 Stat. 77, c. 191, and the act of July 1, 1902, 32 Stat. 731, c. 1383, the Territory of Porto Rico has jurisdiction for taxing purposes over the harbors and navigable waters surrounding Porto Rico. *Ib.*

3. *Status of, under Foraker Act; control over waters of.* The purpose of the Foraker Act was to give local self-government to Porto Rico, conferring an autonomy similar to that of the States and Territories, reserving to the United States rights to the harbor areas and navigable waters for the purpose of exercising

the usual national control and jurisdiction over commerce and navigation. *Ib.*

Right of action for death by wrongful act (see Employers' Liability Act, 5). *American R. R. Co.* v. *Birch*, 547.

Texas. Chapter 47, Laws of 1909 (see Practice and Procedure, 20). *Gulf, C. & S. F. Ry. Co.* v. *Dennis*, 503.

Washington. Railroads; additional trackage (see Constitutional Law, 23). *Oregon R. R. & N. Co.* v. *Fairchild*, 510.

West Virginia. Old offenders law (see Constitutional Law, 26). *Graham* v. *West Virginia*, 616.

MALICIOUS PROSECUTION.

1. *Malice and want of probable cause; burden of proof as to.*

While in an action for malicious prosecution the burden of proving malice and want of probable cause is on the plaintiff, *Wheeler* v. *Nesbit*, 24 How. 544, as the motives and circumstances are best known to the defendant, plaintiff is only required to adduce such proof as is affirmatively under his control, and which he can fairly be expected to be able to produce. *Brown* v. *Selfridge*, 189.

2. *Same.*

In this case *held* that plaintiff did not produce all the testimony within her control and did not sustain the burden even to that extent. *Ib.*

3. *Probable cause; when question one for court.*

In a suit for malicious prosecution, in the absence of plaintiff adducing facts properly expected to be under her control, the question of probable cause in a clear case is one for the court and, in this case, was properly taken from the jury. *Ib.*

MANDAMUS.

Functions of writ; use to compel exercise of judicial functions.

Mandamus can be issued to direct performance of a ministerial act but not to control discretion. It may be directed to a tribunal, one acting in a judicial capacity, to proceed in a manner according to his or its discretion. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

See JURISDICTION, E, F.

MANDATE.

See PRACTICE AND PROCEDURE, 23.

MASTER AND SERVANT.

1. *Fellow-servant rule; application of.*

The fellow-servant rule applies where the character of their respective occupations brings the people engaged in them into necessary and frequent contact even if they have no personal relations. *Beutler* v. *Grand Trunk Junction Ry. Co.*, 85.

2. *Fellow-servants of railroad; who are.*

An employé of a railroad company engaged in work in the repair yard is a fellow-servant of the crew of a switching engine of the same company engaged in running cars needing repairs into the yard. *Ib.*

See EMPLOYERS' LIABILITY ACT;
NEGLIGENCE, 1;
PRACTICE AND PROCEDURE, 4.

MINES AND MINING.

1. *Conveyance within meaning of act of June 6, 1900; lease.*

The word "conveyance" as used in § 98 of the act of June 6, 1900, c. 786, 31 Stat. 321, 505, is not to be narrowly construed but includes leases as well as transfers in fee. *Waskey* v. *Chambers*, 564.

2. *Recording act; right of lessee to protection of.*

One, who under a lease of a mine, enters on the property and expends money in developing it, gives a valuable consideration for the lease and is protected by the recording act. *Ib.*

3. *Recording act; what not entitled to registration under.*

A deed altered after acknowledgment and having only one witness is not entitled to registration under the recording act of June 6, 1900, and has no effect against persons without actual notice. *Ib.*

4. *Withdrawn land; validity of location and discovery on.*

A location and discovery on land withdrawn *quoad hoc* from the public domain by a valid and subsisting mining claim is absolutely void for the purpose of founding a contradictory right; nor does it become valid by reason of the subsequent failure of the right existing when it was filed. *Swanson* v. *Sears*, 180.

See CONTRACTS.

MISJOINDER OF CAUSES OF ACTION.

See INDIANS, 18;
PLEADING, 1.

MONOPOLY.

See PATENTS, 5, 18, 19, 20.

MORTGAGES AND DEEDS OF TRUST.

See BANKRUPTCY, 5;
CONSTITUTIONAL LAW, 25;
LOCAL LAW (KY., 4).

MULTIFARIOUSNESS.

See INDIANS, 18;
PLEADING, 1.

MUNICIPAL CORPORATIONS.

1. *Public utility plants; power as to, under state constitution; California constitutional provision construed.*

A provision in a state constitution that municipal corporations may establish and operate public utility plants, and that persons and corporations may establish and operate works for supplying public service upon such conditions and under such regulations as the municipality may prescribe, is a step towards municipal control or ownership, and is not a grant to others of a right to occupy streets without the consent of the municipality; nor does it limit the municipality to regulations under its police power. The conditions are of general import; and so *held* as to the provision in Article XI, § 19, of the constitution of California as amended October 11, 1911. *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

2. *Franchises; estoppel to deny transferability.*

Permitting the transferee of a franchise to act thereunder and expend large sums of money and exacting from it a bond to comply with the conditions of the franchise will operate to estop a muncipality from denying that the franchise was transferable and the transferee had succeeded to all the rights of the transferring corporation. *Louisville* v. *Cumberland Tel. Co.*, 649.

3. *Franchise to use streets granted by State; effect on, of change of status of municipality.*

Where the State, and not a municipality, has granted an assignable right in perpetuity to use the streets of that municipality, the grant is not affected by the status of the city being changed so as to give it greater rights than when the grant was made. *Ib.*

See CONSTITUTIONAL LAW, 1; PRACTICE AND PROCEDURE, 1;
LOCAL LAW (CAL.); (KY., 1, 2); TELEGRAPH COMPANIES, 2, 3.

MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, 9.

NATIONAL BANKS.

1. *False statements; right of action for.*

Although the common-law action of deceit does not lie against directors of a national bank for making a false statement, and the measure of their responsibility is laid down in the National Banking Act, *Yates* v. *Jones National Bank*, 206 J. S. 158, an action may be maintained in the state court regardless of the form of pleading if the pleading itself satisfies the rule of responsibility declared by that act. *Thomas* v. *Taylor*, 73.

2. *False statements; liability of directors; effect of involuntary character of statement.*

The fact that a statement of the condition of a national bank is not made voluntarily, but under order of the Comptroller of the Currency, does not relieve the directors from liability for false statements knowingly made therein. *Ib.*

3. *False statements; liability of directors; effect of notice from Comptroller to collect or charge off assets.*

Notice from the Comptroller of the Currency to directors of a national bank to collect or charge off certain assets is a warning that those assets are doubtful; and to disregard such a notice and represent the assets in a statement to be good is a violation of the law and renders the directors making the statement liable for damages to one deceived thereby. *Ib.*

NATURAL GAS.

See INTERSTATE COMMERCE, 12, 13.

NAVIGABLE WATERS.

See LOCAL LAW (PORTO RICO, 2, 3).

NAVY.

See ARMY AND NAVY.

NEGLIGENCE.

1. *Assumption of risk; duty of employer as to safety of place of employment.*

In this case *held*, that there was no assumption of risk on the part of an employé working under a coal chute who was struck by a piece

of timber falling from above him where other men had been put to work; even if the employé had knowledge of such overhead work, the duty of the employer to provide a reasonably safe place to work remained. *Texas & Pacific Ry. Co.* v. *Howell*, 577.

2. *Disease as result of; remoteness of development.*
Where the injury actually caused the disease, the injured party may recover even if the disease does not immediately develop; and in this case *held*, that the jury were warranted in finding that Potts disease with which defendant in error was afflicted was the direct cause of the injury, although it did not develop for over a year. *Ib.*

3. *Res ipsa loquitur; doctrine defined.*
The doctrine of *res ipsa loquitur* is that when a thing which causes injury, without fault of the person injured, is shown to be under the exclusive control of defendant, and would not cause the damage in ordinary course if the party in control used proper care, it affords reasonable evidence, in absence of an explanation, that the injury arose from defendant's want of care. *San Juan Light & Transit Co.* v. *Requena*, 89.

4. *Res ipsa loquitur; application of doctrine.*
The doctrine of *res ipsa loquitur* was rightly applied against defendant electric light company in the case of a person injured while adjusting an electric light in his residence by an electric shock transmitted from the outside wires of the defendant company entirely without fault on his part and in manner which could not have happened had such outside wires been in proper condition. *Ib.*

See STATES, 1, 2.

NOTICE.

See CONSTITUTIONAL LAW, 11, 13, 19, 20;
RAILROADS, 5.

OBJECTIONS.

See PRACTICE AND PROCEDURE, 6, 7, 8, 9.

OFFENSES.

Intentional violation of statute; what constitutes.
There is, in effect, an intentional violation of a statute when one deliberately refuses to examine that which it is his duty to examine. *Thomas* v. *Taylor*, 73.

OFFICERS OF THE UNITED STATES
See PATENTS, 2, 3, 12, 13;
PUBLIC OFFICERS.

OKLAHOMA.
See INDIANS, 9, 14.

ONUS PROBANDI.
See BONDS, 1;
MALICIOUS PROSECUTION;
RAILROADS, 5.

PATENTS.

1. *Contract for use; when implied.*

In order to find that there was an implied contract for use of a patent, there must be use with patentee's assent and agreement to pay something therefor, *United States* v. *Berdan Fire Arms Company*, 156 U. S. 552, and these elements may be collected from conduct of the parties, even if there are no explicit declarations. *United States* v. *Anciens Etablissements*, 309.

2. *Contract for use; what constitutes; jurisdiction of Court of Claims.*

Where the facts show that the patentee consented that the Government use his invention, and the proper officers of the Department in which it was used have stated that there is a claim for royalties if the patent is a valid one, the claim is founded on contract and the Court of Claims has jurisdiction. *Ib.*

3. *Eminent domain in: remedy of patentee.*

The act of June 25, 1910, having afforded a remedy for a patentee whose property rights have been appropriated by an officer of the United States for the benefit of the Government, such patentee is entitled to maintain an action in the Court of Claims to have his compensation determined, and the statute makes full and adequate provisions for the exercise of power of eminent domain. *Crozier* v. *Krupp*, 290.

4. *Excellence of device; use as test.*

The excellence of an ordnance invention is testified to by its use by the Government in guns for the national defense. *United States* v. *Anciens Etablissements*, 309.

5. *Exclusive use; right of patentee to.*
A patentee may exclude others from the use of his invention although he does not use it himself. (*The Paper Bag Patent Case*, 210 U. S. 405.) *Henry* v. *A. B. Dick Co.*, 1.

6. *Infringement; contributory; license restrictions.*
Complainant sold his patented machine embodying the invention claimed and described in the patent, and attached to the machine a license restriction that it only be used in connection with certain unpatented articles made by the vendor of the machine; with the knowledge of such license agreement and with the expectation that it would be used in connection with the said machine, defendant sold to the vendee of the machine an unpatented article of the class described in the license restriction. *Held* that the act of defendant constituted contributory infringement of complainant's patent. *Ib.*

7. *Infringement; election of remedies.*
A patentee may elect to sue his licensee upon the broken contract, or for forfeiture for breach, or for infringement. *Ib.*

8. *Infringement; effect of sale on right of use of patented articles.*
While an absolute and unconditional sale operates to pass the patented article outside of the boundaries of the patent, a patentee may by a conditional sale so restrict the use of his vendee within specific boundaries of time, place or method as to make prohibited uses outside of those boundaries constitute infringement and not mere breach of collateral contract. *Ib.*

9. *Infringement; right of use carried by sale of patented article; breach of restriction as infringement.*
The extent of a license to use, which is carried by a sale of a patented article depends upon whether any restrictions were placed upon the sale, and if so what they were, and how they were brought home to the vendee; and where, as in this case, a restriction is plainly placed upon the article itself, a sale carries with it only the right to use within the limits specified, and any other use is an infringing one. *Ib.*

10. *Infringement; contributory defined.*
Contributory infringement is the intentional aiding of one person by another in the unlawful making, selling or using of a patented invention. *Ib.*

11. *Infringement; contributory; when sale of article adapted to infringing use presumed to constitute.*

A bare supposition that an article adapted for use in connection with a patented machine sold under restricted license is to be used in connection therewith will not make the vendor a contributory infringer, but where the article so sold is only adapted to an infringing use, there is a presumption that it is intended therefor. *Ib.*

12. *Infringement by officer of United States; remedy of patentee prior and subsequent to act of June 25, 1910.*

Prior to the passage of the act of June 25, 1910, 36 Stat. 851, c. 423, a patentee, whose patent was infringed by an officer of the United States, could not sue the United States unless a contract to pay was implied; and the object of the statute is to afford a remedy under circumstances where no contract can be implied, but where the property rights of the inventor have been appropriated by an officer of the United States for its benefit and the acts of such officer ratified by the Government by the adoption of such act. *Crozier* v. *Krupp*, 290.

13. *Infringement by officer of United States; remedy of patentee; right to injunction.*

Since the enactment of the act of June 25, 1910, a patentee cannot maintain an action for injunction against an officer of the United States for infringing his patent for the benefit of the Government; his remedy is to sue in the Court of Claims for compensation. *Ib.*

14. *Infringement by officer of United States; remedy of patentee; effect of act of July 25, 1910.*

In this case *held* that although this action was commenced before June 25, 1910, as it was confined solely to obtaining an injunction against future use, which cannot now be allowed, the action must be dismissed without prejudice to the right of the patentee to proceed in the Court of Claims for compensation under the act of 1910. *Ib.*

15. *Infringement; use by Government as; De Bange gas check.*

In this case, *held* that the De Bange gas check for large guns is a device of excellence, that the patents therefor are valid, and the gas checking device used by the Government is an infringement thereof. *United States* v. *Anciens Etablissements*, 309.

16. *Infringement; scope of protection against.*
The law secures the patentee against infringement by a use in other forms and proportions than those specifically described in the claims. *Ib.*

17. *License; right to restrict use under.*
The larger right of exclusive use of the patentee embraces the lesser one of only permitting the licensee to use upon prescribed conditions. *Henry* v. *A. B. Dick Co.*, 1.

18. *Monopoly created and protected by patent statute.*
The patent statute is one creating and protecting a true monopoly granted to subserve a broad public policy, and it should be construed so as to give effect to a wise and beneficial purpose. *Ib.*

19. *Monopoly of patent; extent of.*
The monopoly of a patent extends to the right of making, selling and using, and each is a separable and substantial right. *Ib.*

20. *Monopoly of patent; power of courts in respect of.*
Courts cannot declare the monopoly created by Congress under authority of the Constitution to be unwise; Congress alone has power to prescribe what restraints shall be imposed. *Ib.*

See FEDERAL QUESTION, 1–5;
INTERSTATE COMMERCE, 11;
STATUTES, A 1.

PATENTS FOR LAND.

See INDIANS.

PARTIES.

See CONSTITUTIONAL LAW, 25;
EMPLOYERS' LIABILITY ACT, 5;
INDIANS, 18, 19, 22;
JURISDICTION, C.

PENALTIES AND FORFEITURES.

See ACTIONS, 2;
CONSTITUTIONAL LAW, 6, 10, 14, 16, 32;
CRIMINAL LAW, 1;
QUO WARRANTO.

PLEADING.

1. *Equity; multifariousness; misjoinder of causes of action; suit to set aside conveyances of Indian allotted lands.*
The bill in a suit brought to cancel for the same reason in each instance

a large number of conveyances of allotted lands, made by different members of the same tribe to different defendants, *held* not to be multifarious in this case as it is manifestly in the interest of justice to avoid unnecessary suits; nor is there in such a case a misjoinder of causes of action. *Heckman* v. *United States*, 413.

2. *Demurrer; allegations admitted by.*

Conclusions and argumentative deductions set forth in the bill as to effect of orders of a governmental body upon complaint are not to be regarded under the rules of pleading as allegations of fact and admitted. (*United States* v. *Ames*, 99 U. S. 35.) *Interstate Com. Comm.* v. *Goodrich Transit Co.*, 194.

See BONDS, 1;
CONSTITUTIONAL LAW, 13;
INDIANS, 18;
INSTRUCTIONS TO JURY, 1;
INTERVENTION;
NATIONAL BANKS, 1;
PRACTICE AND PROCEDURE, 6, 7, 18;
SAFETY APPLIANCE ACTS, 2.

PORTO RICO.

See APPEAL AND ERROR, 4, 5;
EMPLOYERS' LIABILITY ACT, 7;
LOCAL LAW.

POST-ROADS.

See TELEGRAPH COMPANIES.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF;
EMPLOYERS' LIABILITY ACT, 1, 2;
INDIANS, 3, 4, 8, 13, 15;
INTERSTATE COMMERCE, 4;
PATENTS, 20.

PRACTICE AND PROCEDURE.

1. *Assumption that municipality acts within powers.*

The court must assume that a municipality acts within its powers, if it can be authorized to do what it has done. *Western Union Telegraph Co.* v. *Richmond*, 160.

2. *Assumption as to unlawful application of state statute not indulged.*

This court has no right to assume that a state statute will be so applied as to interfere with the constitutional right of a corporation to carry on interstate business. *Standard Oil Co.* v. *Missouri*, 270.

3. *Certificate on direct appeal from Circuit Court; decree of dismissal in place of.*

The decree of dismissal can take the place of a certificate if the record

is in such form as to show that the case was dismissed for want of jurisdiction, and for that reason only. (*Excelsior Water Power Co.* v. *Pacific Bridge Co.*, 185 U. S. 282.) *Herndon-Carter Co.* v. *Norris & Co.*, 496.

4. *Certificate; when question of relation as fellow-servants answered.*
Although the question of fellow-servant may be left to the jury in the state court, the question whether the facts do or do not constitute a ground of liability is one of law; this court accordingly answers a question certified by the Circuit Court of Appeals as to whether employés in this case were fellow-servants. *Beutler* v. *Grand Trunk Junction Ry. Co.*, 85.

5. *Determination of jurisdiction of lower courts.*
In determining questions of jurisdiction this court never shirks the responsibility of maintaining the lines of separation defined in the Constitution and the laws made in pursuance thereof. *Henry* v. *A. B. Dick Co.*, 1.

6. *Objection to form of pleading; timeliness of.*
An objection to form of pleading that can be cured by amendment should be seasonably taken on the trial. *Campbell* v. *United States*, 99.

7. *Objection to form of pleading; too late when made in appellate court.*
Where a statement in the answer that defendant had not and could not obtain sufficient information upon which to base a belief respecting the truth of an allegation in the complaint is not objected to in the trial court as an insufficient denial of the allegation but is treated as sufficient, the objection cannot be made in an appellate court, and the truth of the allegation must be regarded as at issue. *Ib.*

8. *Objection of want of notice of form of action and opportunity to introduce evidence; when not available.*
The objection that an action for deceit against directors of a national bank was not declared in the trial court to be based on the Federal statute, and, therefore, defendants did not introduce evidence applicable to such a suit but which could be omitted in a common-law action, should be raised in the lower courts; such an objection is without merit where it appears that the issues actually raised were broad enough to allow and require the introduction of such evidence. *Thomas* v. *Taylor*, 73.

9. *Record; effect of failure to show exceptions to rulings of trial court.*
Appellant's contention that he was not accorded a proper hearing in the court below cannot be availed of here if the record does not show that he formally excepted or objected to the rulings. (*Apache County* v. *Barth*, 177 U. S. 538.) *Gonzales* v. *Buist*, 126.

10. *Conclusiveness of state court's decision as to existence of remedy; impertinence of question raised.*
The highest court of Missouri having held that *quo warranto* for misuser can be maintained against a corporation for entering into a combination in restraint of trade, the validity or invalidity of the anti-trust statute of that State has no bearing on the subject. *Standard Oil Co.* v. *Missouri*, 270.

11. *Following state court's construction of state statute.*
There is no sufficient reason why this court should not follow the highest court of California in construing "telegraph" corporations as used in § 536 of the Civil Code of that State as not including "telephone" corporations. *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

12. *Reference to state laws and decisions.*
This court looks to the constitution, and statutes of a State and the decisions of its courts to determine the nature, extent, and method of enforcing the liability of stockholders of a corporation of that State. *Converse* v. *Hamilton*, 243.

13. *Duty of court as to construction of state law where due process accorded.*
If due process has been accorded as to notice and opportunity to be heard, it is not for this court to determine whether error has been committed in construction of statute or common law. *Standard Oil Co.* v. *Missouri*, 270.

14. *Modification of judgment of state court.*
If the judgment of the state court cannot be reversed on the constitutional ground, it cannot be modified or amended by this court. *Ib.*

15. *Reversals; effect of suggestion of want of opportunity to introduce evidence.*
A judgment cannot be reversed on the mere suggestion that upon some other theory than that on which the case was tried evidence might have been introduced which might have changed the result. *Thomas* v. *Taylor*, 73.

16. *Questions reviewable.*
Questions of validity of a state penal statute under the state constitution are not open in this court. *Graham* v. *West Virginia*, 616.

17. *Scope of review where basis has no bearing on questions raised.*
Where the basis for review by this court has no bearing on the questions raised, but is simply plaintiff in error's charter from the United States, this court goes no further than to inquire whether plain error is made out. *Texas & Pacific Ry. Co.* v. *Howell*, 577.

18. *Review of decisions of state courts on questions of pleading and practice; scope of rule against.*
The rule that decisions of the state court on questions of pleading and practice under the laws of a State are not reviewable by this court *held* to include the denial, on the ground that the period of limitation had expired, of an application made after trial to amend the declaration, so as to state a cause of action. (*Texas & New Orleans R. R. Co.* v. *Miller*, 221 U. S. 408.) *Brinkmeier* v. *Missouri Pacific Ry. Co.*, 268.

19. *Collateral and non-Federal questions not considered.*
If the judgment of the state court is not void, this court cannot consider collateral and non-Federal questions. *Standard Oil Co.* v. *Missouri*, 270.

20. *Disposition of case coming from inferior state court, where, pending determination, the highest court of State adjudged the statute involved to be violative of state constitution.*
The county court in Texas, being the highest court of the State to which the case could be carried, considering the amount involved, held that a railroad company was liable not only for the damages claimed, but also for an attorney's fee under Chapter 47, Laws of Texas, 1909. The railroad company sued out a writ of error from this court, having insisted in the state court that the statute violated the due process and equal protection clauses of the Federal Constitution. Before the case was reached in this court, the highest court of the state in another case adjudged the statute to be violative of a provision in the state constitution and void. That fact being brought to the attention of this court, *held* that the case not having been finally terminated, the right to the attorney's fee is still *sub judice*, and effect must be given by this court to the intervening decision of the highest state court and, as to dismiss the writ would leave the judgment to be enforced as rendered, the proper procedure is to vacate the judgment and

remand the case to the county court so that it may give effect to the intervening decision of the highest state court. *Gulf, C. & S. F. Ry. Co.* v. *Dennis*, 503.

21. *Dismissal of bill upon merits where jurisdictional grounds of dismissal exist.*

Even though the bill might not be sustained because complainant has an adequate remedy or because the court has not power to issue an injunction, the court prefers, in this case, to rest its decision on the fact that the bill should be dismissed upon the merits. *Gromer* v. *Standard Dredging Co.*, 362.

22. *Statement of facts by Supreme Court of Territory; effect of failure of court to make; exception to rule as to affirmance of judgment.*

There are exceptions to the general rule that a judgment on appeal from a territorial court should be affirmed where the record contains no exceptions or the statement of facts required by the statutes to enable the reviewing power to be exerted; and so *held*, in this case, that it is reversible error where the Supreme Court of a Territory refuses to perform its legally imposed duty of making its own statement of facts or adopting that of the trial court. *Neilsen* v. *Steinfeld*, 534.

23. *Statement of facts by Supreme Court of Territory; status of case on reversal of judgment because of refusal of court to make; effect of admission to statehood.*

Where the judgment of a Supreme Court of a Territory is reversed for refusal to perform the statutory duty of making a statement, the case stands as though the appeal from the trial court were still pending; and if the Territory has been admitted as a State since the record came to this court, and the case is one within the jurisdiction of the state courts, it will be remanded to the Supreme Court of such State. *Ib.*

24. *On appeal from Court of Claims; record controlling; evidence not reviewable.*

This court, in appeals from the Court of Claims, can only act upon the record; and a finding of that court that a definite amount of compensation is due from the Government for use of a patent, to which no objection is taken or exception reserved, is as finally determinative of the matter, as a special verdict of a jury. The evidence cannot be certified up so as to make such finding reviewable by this court. *United States* v. *New York Indians*, 173 U. S. 464, followed, and *Ceballos & Co.* v. *United States*, 214 U. S. 47, distinguished. *United States* v. *Anciens Etablissements*, 309.

25. *Findings of fact and not evidence required from Court of Claims.*
This court will not direct the Court of Claims to certify evidence and not its conclusions from the evidence. The rule is that the finding must be of the facts established by the evidence. *Ib.*
See APPEAL AND ERROR, 5;
BANKRUPTCY, 8.

PRESUMPTIONS.
See ARMY AND NAVY, 5;
PATENTS, 11;
PRACTICE AND PROCEDURE, 1, 2.

PRIORITIES.
See BANKRUPTCY, 1–4, 6;
LOCAL LAW (KY., 4).

PRIVILEGES AND IMMUNITIES.
See CONSTITUTIONAL LAW, 8, 26.

PROCESS.
See JURISDICTION, J 2, 3;
MANDAMUS;
QUO WARRANTO.

PUBLIC LANDS.
See MINES AND MINING, 4.

PUBLIC OFFICERS.
Wrongful acts; intention imputed when.
The intention to plainly do a wrongful act by deliberately taking the property of another without compensation will not be imputed to officers of the United States without the most convincing proof. *United States* v. *Anciens Etablissements*, 309.
See PATENTS, 2, 3, 12, 13.

PUBLIC POLICY.
See CONTRACTS, 3.

PUBLIC SERVICE CORPORATIONS.
See CONSTITUTIONAL LAW, 4, 5, 9;
CORPORATIONS, 2;
MUNICIPAL CORPORATIONS, 1.

QUO WARRANTO.

1. *Nature of proceeding; imposition of fine; quære as to.*

Quære: Whether under general rules, information in the nature of *quo warranto* is a civil, or criminal, proceeding, and whether under general allegations of misuse, with only a prayer for ouster, a fine may be imposed in those jurisdictions where *quo warranto* has ceased to be a criminal proceeding. *Standard Oil Co.* v. *Missouri*, 270.

2. *Money judgment in; rule as to, in Missouri.*

Whatever the rule elsewhere, in Missouri a corporation may in *quo warranto* be subject to a money judgment, whether in nature of fine or damages for breach of implied contract not to violate its franchise. *Ib.*

See CONSTITUTIONAL LAW, 14, 32;
JURISDICTION, H;
PRACTICE AND PROCEDURE, 10.

RAILROADS.

1. *Facilities which may be required of; when question of expense controlling.*

In a proceeding brought to compel a carrier to furnish facilities not included in its absolute duties, the question of expense is of controlling importance. *Oregon R. R. & N. Co.* v. *Fairchild*, 510.

2. *Regulation; requirements by Commission; requisites to validity of order.*

An order of a railroad commission requiring a railroad company to expend money and use its property in a specified manner is not a mere administrative order, but is a taking of property; to be valid there must be more than mere notice and opportunity to be heard; the order itself must be justified by public necessity and not unreasonable or arbitrary. *Ib.*

3. *Track connections; power of state commission to require.*

A State, acting through an administrative body, may require railroad companies to make track connections, *Wisconsin, &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287, but such body cannot compel a company to build branch lines, connect roads lying at a distance from each other, or make connections at every point regardless of necessity; each case depends on the special circumstances involved. *Ib.*

4. *Track connections; justification for order requiring.*

In this case the record does not disclose any public necessity justifying

the order of the State Railroad Commission of Washington to require track connections to be made at eight points. *Ib.*

5. *Track connections; necessity for; burden of proof as to.*

The burden is on a state railroad commission to show that public necessity requires track connections, and the Commission is charged with notice that the reasonableness of its order is to be determined at the hearings before it. *Ib.*

See CONSTITUTIONAL LAW, 17, 18, 23, 24;
INTERSTATE COMMERCE;
JURISDICTION, F;
MASTER AND SERVANT, 2;
RESTRAINT OF TRADE;
SAFETY APPLIANCE ACTS;
STATES, 1, 2, 3.

RATE REGULATION.

See INTERSTATE COMMERCE, 10.

REAL PROPERTY.

Rights and remedies as to; source of.

The legislative power of the State is the source of the rights in real estate and remedies in regard thereto. *McCaughey* v. *Lyall*, 558.

RECEIVERS.

Right to exercise powers in foreign jurisdiction; when rights protected by full faith and credit clause.

While an ordinary chancery receiver cannot exercise his powers in jurisdictions other than that of the court appointing him, except by comity, one who is a *quasi*-assignee and invested with the rights of his *cestui que trustent* may sue in other jurisdictions, and his right so to do is protected by the full faith and credit clause of the Federal Constitution. *Converse* v. *Hamilton*, 243.

See CONSTITUTIONAL LAW, 34;
LOCAL LAW (MINN., 3, 4).

RECORD ON APPEAL.

See PRACTICE AND PROCEDURE, 9, 22, 24.

REMAINDERS.

See WILLS.

REMEDIES.

See ACTIONS, 2;
BANKRUPTCY, 12;
REAL PROPERTY;
RESTRAINT OF TRADE, 8, 10, 11, 12.

RES IPSA LOQUITUR.
See NEGLIGENCE, 3, 4.

RESTRAINT OF TRADE.

1. *Anti-trust Act; purpose of.*

One of the fundamental purposes of the Anti-Trust Act is to protect, and not to destroy, the rights of property; and, in applying the remedy, injury to the public by the prevention of the restraint is the foundation of the prohibitions of the statute. (*Standard Oil Co.* v. *United States*, 221 U. S. 1, 78. *United States* v. *St. Louis Terminal*, 383.)

2. *Combination in; considerations in determining character of railroad terminal.*

Whether the unification of terminals in a railroad center is a permissible facility in aid of interstate commerce, or an illegal combination in restraint thereof, depends upon the intent to be inferred from the extent of the control secured over the instrumentalities which such commerce is compelled to use, the method by which such control has been obtained, and the manner in which it is exercised. *Ib.*

3. *Combination in; St. Louis Terminal Association as.*

The unification of substantially every terminal facility by which the traffic of St. Louis is served is a combination in restraint of interstate trade within the meaning and purposes of the Anti-Trust Act of July 2, 1890, as the same has been construed by this court in *Standard Oil Co.* v. *United States*, 221 U. S. 1, and *United States* v. *American Tobacco Co.*, 221 U. S. 106. *Ib.*

4. *Combination in; St. Louis Terminal Association as.*

The history of the unification of the railroad terminal systems in St. Louis in the Terminal Railroad Association shows an intent to destroy the independent existence of the terminal systems previously existing, to close the door to competition, and to prevent the joint use or control of the terminals by any non-proprietary company. *Ib.*

5. *Combination in; effect of equality provision in terminal agreement.*

A provision in an agreement for joint use of terminals by non-proprietary companies on equal terms does not render an illegal combination legal where there is no provision by which the non-proprietary companies can enforce their right to such use. *Ib.*

6. *Combination in; completeness of restraint not essential to render it illegal.*

Although the proprietary companies of a combination unifying terminals may not use their full power to impede free competition by outside companies, the control may so result in methods inconsistent with freedom of competition as to render it an illegal restraint under the Sherman Act. *Ib.*

7. *Combination in; considerations in determining validity.*

This court bases its conclusion that the unification of the terminals in St. Louis is an illegal restraint on interstate traffic, and not an aid thereto, largely upon the extraordinary situation at St. Louis and upon the physical and topographical conditions of the locality. *Ib.*

8. *Combination in; remedies applicable.*

A combination of terminal facilities, which is an illegal restraint of trade by reason of the exclusion of non-proprietary companies, may be modified by the court by permitting such non-proprietors to avail of the facilities on equal terms. *Ib.*

9. *Combination in; terminal association constituting.*

In this case *held* that the practices of the Terminal Association in not only absorbing other railroad corporations but in doing a transportation business other than supplying terminal facilities operated to the disadvantage of interstate commerce. *Ib.*

10. *Combination in; remedy to be applied where illegality the result of administrative conditions.*

Where the illegality of the combination grows out of administrative conditions which may be eliminated, an inhibition of the obnoxious practices may vindicate the statute, and where public advantages of a unified system can be preserved, that method may be adopted by the court. *Ib.*

11. *Combinations in; remedy applied.*

In this case the objects of the Anti-Trust Act are best attained by a decree directing the defendants to reorganize the contracts unifying the terminal facilities of St. Louis under their control so as to permit the proper and equal use thereof by non-proprietary companies, and abolishing the obnoxious practices in regard to transportation of merchandise. *Ib.*

12. *Same.*

Unless defendants, whose combination has been declared illegal by

reason of administrative abuse, modify it to the satisfaction of the court so as to eliminate such abuse in the future, the court will direct a complete disjoinder of the elements of the combination and enjoin the defendants from exercising any joint control thereover. *Ib.*

See CONSTITUTIONAL LAW, 32;
INTERSTATE COMMERCE, 11.

RIPARIAN RIGHTS.

See LOCAL LAW (IDAHO).

SAFETY APPLIANCE ACTS.

1. *Instrumentalities of commerce embraced within.*

The Safety Appliance Act of March 2, 1893, 27 Stat. 531, c. 196, did not embrace all cars on the lines of interstate carriers, but only those engaged in interstate commerce. It did not, until amended by the act of March 2, 1903, 32 Stat. 943, c. 976, embrace all cars used on railroads engaged in interstate commerce. *Brinkmeier* v. *Missouri Pacific Ry. Co.*, 268.

2. *Pleading in suit under; sufficiency of declaration.*

A declaration for injuries sustained prior to the amendment of March 2, 1903, which did not allege that the car involved was engaged in interstate commerce, was properly held defective. *Ib.*

See EMPLOYERS' LIABILITY ACT, 7.

SALES.

See PATENTS, 8, 9.

SECOND JEOPARDY.

See CONSTITUTIONAL LAW, 8, 26.

SECRETARY OF THE INTERIOR

See INTERSTATE COMMERCE, 10.

SEMINOLE FREEDMEN.

See INDIANS, 21, 25.

SERVICE OF PROCESS.

See JURISDICTION, J 2, 3.

SHERMAN ACT.

See RESTRAINT OF TRADE.

SITUS FOR TAXATION.
See TAXES AND TAXATION, 3.

SOVEREIGNTY.
See UNITED STATES, 1.

STARE DECISIS.
See PRACTICE AND PROCEDURE, 20;
STATUTES, A 1.

STATES.

1. *Railroads; power of State to impose liability for injury to employés.*
This court has repeatedly held that a State may impose upon a railway company liability to an employé engaged in train service for an injury inflicted through the negligence of another employé in the same service. *Missouri Pacific Ry. Co.* v. *Castle*, 541.

2. *Railroads; power of State to change common-law rule as to contributory negligence in respect of.*
A State also has power to modify or abolish the common-law rule of contributory negligence, and provide by statute that damages to an employé of a railroad company shall only be diminished by reason of his contributory negligence in proportion to the amount of negligence attributable to him. *Ib.*

3. *Railroads; power to legislate for protection of employés.*
Prior to the enactment by Congress of the Employers' Liability Act, the States were not debarred from legislating for the protection of railway employés engaged in interstate commerce. *Ib.*

See CONSTITUTIONAL LAW, 2, 31;
CRIMINAL LAW, 2;
INDIANS, 9;
INTERSTATE COMMERCE, 12, 13;
JURISDICTION, H;
RAILROADS, 3;
REAL PROPERTY.

STATUARY.
See CUSTOMS LAW.

STATUTES.

A. CONSTRUCTION OF.

1. *Construction as rule of property; when stare decisis.*
Where a great majority of the courts to which Congress has committed the interpretation of a law have construed it, so that the line of

decisions has become a rule of property, this court should not, in the absence of clear reason to the contrary, overrule those decisions on certiorari, and so held in this case after reviewing the decisions sustaining the rule of contributory infringement. *Henry* v. *A. B. Dick Co.*, 1.

2. *Purpose of Congress controlling.*

Where the purpose of Congress is clear, the courts must yield to such purpose, and assume that all contending considerations were taken into account by Congress. *American R. R. Co.* v. *Birch*, 547.

3. *Following words of statute; effect of inconvenience of result.*

Where words of a statute are clear, they must be strictly followed, even if the construction causes apparently unnecessary inconvenience. *Ib.*

4. *Meaning of expressions used; when declaration of Congress controlling over former decision of court.*

Where Congress, after a decision of this court construing a certain expression used in a statute, passes a statute declaring that those words shall be construed as having a definite meaning different from that given by this court, that expression, when used in a later statute on the same subject, will be presumed to have the meaning so given to it by Congress and not that previously given by this court. *Plummer* v. *United States*, 137.

5. *Difference in meaning of same phrase.*

In construing a statute the same phrase may have different meanings when used in different connections. *American S. & T. Co.* v. *District of Columbia*, 491.

6. *Departmental construction followed.*

The construction of the statutes involved in this case is the contemporaneous construction given thereto by the Executive Department charged with execution of the provisions thereof. *Plummer* v. *United States*, 137.

7. *Assumption as to attitude of legislature in making exception to repealing clause of act.*

In the absence of any apparent policy inducing it, it will be assumed that an exception to the repealing clause of an act to regulate franchises of "lines doing an interstate business" was made unwillingly and because the legislature assumed it was bound to exempt such lines from regulations. *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

8. *Repeals; effect of statute enacted prior to date at which amendment of earlier statute to take effect.*

Where a statute is amended so as to bring a certain class thereunder, the amendment to take effect at a subsequent date, before which date another act is passed relating to the same subject with a general repealing act enumerating exceptions, the amended statute is repealed, subject only to the exceptions before any rights accrue under the amendment. *Ib.*

9. *Strict construction; § 250 of Judicial Code to receive.*

Section 250 of the Judicial Code should be strictly construed, as the intent of Congress was to relieve this court from indiscriminate appeals where the amount involved exceeded $5,000. *American S. & T. Co.* v. *District of Columbia*, 491.

See ARMY AND NAVY, 7; BANKRUPTCY, 1, 2; COURTS, 4; INDIANS; JURISDICTION, A 5, 6, 7; PRACTICE AND PROCEDURE, 11, 13, 16; SAFETY APPLIANCE ACTS.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK AND STOCKHOLDERS.

See CONSTITUTIONAL LAW, 10; LOCAL LAW (MINN.); PRACTICE AND PROCEDURE, 12.

STREETS AND HIGHWAYS.

See CONSTITUTIONAL LAW, 9; LOCAL LAW (CAL.); (KY., 1, 2) MUNICIPAL CORPORATIONS, 3; TELEGRAPH COMPANIES, 1–5.

SUBROGATION.

See BANKRUPTCY, 4.

SURETY BONDS.

See BONDS.

TARIFF.

See CUSTOMS LAW; JURISDICTION, A 3, 4.

TAXES AND TAXATION.

1. *Benefits not a test to determine validity.*

Where jurisdiction to tax property exists, the validity of the tax cannot be determined by an inquiry as to the extent to which the property may be benefited. *Gromer* v. *Standard Dredging Co.*, 362.

2. *Exemption; effect of use of property on Government work.*

Property which has acquired a *situs* within the jurisdiction of the Territory of Porto Rico is not exempt from taxation by the Territory simply because it is exclusively used by the owner for carrying out a contract with the Government. *Ib.*

3. *Situs for taxation.*

In this case there is nothing in the record to show that the property taxed had not acquired a *situs* in Porto Rico or that takes it out of the rule that tangible personal property is subject to taxation by the State or Territory in which it is, no matter where the domicile of the owner may be. *Ib.*

See BANKRUPTCY, 3;
INDIANS, 7–14;
LOCAL LAW (PORTO RICO, 1, 2).

TELEGRAPH COMPANIES.

1. *Use of post-roads; rights conferred by act of July 24, 1866.*

The act of July 24, 1866, 14 Stat. 221, c. 230, permitting telegraph companies to occupy post-roads is permissive only and not a source of positive rights; it conveys no title in streets or roads, and does not found one by delegating the power to take by eminent domain. (*West. Un. Tel. Co.* v. *Penna. R. R. Co.*, 195 U. S. 540.) *Western Union Telegraph Co.* v. *Richmond.* 160.

2. *Use of post-roads; right of municipality to impose restrictions on use of streets.*

Prima facie a telegraph company, not having the right of eminent domain, must submit to the terms of the owners of property which it desires to occupy, including those imposed by municipalities for use of streets. *Ib.*

3. *Use of post-roads; quære as to right of municipality to restrict.*

Quære: Whether by reason of such rights as are given by the act of July 24, 1866, a municipality is restricted to only imposing reasonable terms for the use of its streets by telegraph companies. *Ib.*

4. *Use of post-roads; reasonableness of restriction imposed by municipality.*

It is not unreasonable for a municipality to require as compensation for the use of its streets by telegraph companies a money charge, in this case of two dollars for each pole, and also the right to string a limited number of wires on its poles or to use one of the pipes in the conduit for municipal service; or to require space to be left in conduits for use of third parties on compensation and permission by the city. *Ib.*

5. *Use of post-roads; restriction on; when declared unreasonable.*

Charges for use of streets acquiesced in and paid for many years without complaint, will not be declared unreasonable on mere protest. *Ib.*

6. *Use of post-roads; rights under act of 1866; effect of municipal ordinance to deprive.*

In this case *held* that a provision of a municipal ordinance limiting the use of streets for conduits under the terms imposed for fifteen years with the right of the city to then order the conduits removed does not deprive the telegraph company of its right under the act of July 24, 1866, the ordinance itself providing that whatever rights the company has under that act shall not be affected. *Ib.*

See CONSTITUTIONAL LAW, 9;
PRACTICE AND PROCEDURE, 11.

TELEPHONE COMPANIES.

Franchise; duration of; what considered in determining; revocation by municipal ordinance.

In construing the duration of a telephone franchise, the nature of the system to be operated must be considered as well as the facts that the necessary structures are permanent in nature and require large investments, and that revocation of the franchise at will would operate to nullify it and defeat the purpose of the State to procure the system desired; and so *held* that the legislative grant made prior to the adoption of its present constitution by the State of Kentucky to a telephone company to use the streets of Louisville was one in perpetuity, was assignable and could not be revoked by a subsequent ordinance of the city of Louisville as against the assignee of the original corporation. *Louisville* v. *Cumberland Tel. Co.*, 649.

See CONSTITUTIONAL LAW, 1;
LOCAL LAW (CAL.);
PRACTICE AND PROCEDURE, 11.

TERRITORIES.

What constitutes a Territory of the United States.

An organized Territory of the United States does not necessarily mean one having a local legislature as distinguished from one having a less autonomous form of government, such as that of Alaska. *Interstate Com. Comm.* v. *Humboldt S. S. Co.*, 474.

See APPEAL AND ERROR, 3, 4, 5; INTERSTATE COMMERCE, 1, 2.
CONGRESS, POWERS OF, 2; UNITED STATES, 2.

TITLE.

See INDIANS.

TREATIES.

1. *Defined; quære as to character of agreement between Nations.*

Generally a treaty is a compact between two or more independent nations with a view to the public welfare, but *quære* whether under the provisions of the Constitution of the United States an agreement is a treaty unless made by the President and ratified by two-thirds of the Senate. *Altman & Co.* v. *United States*, 583.

2. *Reciprocal agreement entered into under § 3 of Tariff Act of 1897; effect as treaty.*

A reciprocal agreement between the United States and a foreign nation entered into and proclaimed by the President under authority of § 3 of the Tariff Act of 1897 is a treaty within the meaning of § 5 of the Circuit Court of Appeals Act. *Ib.*

See JURISDICTION, A 1, 4.

TRIAL.

See CONSTITUTIONAL LAW, 31;
PRACTICE AND PROCEDURE, 6, 7.

TRUSTS AND TRUSTEES.

1. *Constructive trust; suit by United States to establish; right to intervene.*

In a suit brought by the United States to charge the defendant with a trust in respect to funds obtained by another through fraud against the United States, *held* that the personal representative of a third party claiming an interest in the funds under an agreement indemnifying him as bail of the party fraudulently procuring such funds was, under the circumstances of this case, entitled to intervene. *Leary* v. *United States*, 567.

2. *Constructive trust; laches of one seeking to establish.*

In this case, as the intervenor did not know of the suit or the position

taken by defendant, who was legally her trustee, she should not be held guilty of laches. *Ib.*

UNITED STATES.

1. *Insolvency laws; effect to bind.*

Under the general rule applicable to all sovereigns, the United States is not bound by the provisions of an insolvency law unless specially mentioned therein. *Guarantee Co.* v. *Title Guaranty Co.*, 152.

2. *Territories; reservation of control over places in.*

While the United States can reserve control over such places as it sees fit within a territory to which it gives autonomy, it does not reserve any such places unless it is so expressed in the act. *Gromer* v. *Standard Dredging Co.*, 362.

See BANKRUPTCY, 2;
CONGRESS, POWERS OF;
INDIANS, 2, 16–21;
JURISDICTION, I;
LOCAL LAW (PORTO RICO, 3);
PATENTS, 2, 3, 12, 13.

VENDOR AND VENDEE.

See PATENTS.

VESTED REMAINDERS.

See WILLS.

VESTED RIGHTS.

See CONGRESS. POWERS OF, 3;
INDIANS, 3, 9, 10, 13, 14;
LOCAL LAW (KY., 2, 3).

WARRANTY.

See BONDS, 3.

WATERS.

See LOCAL LAW (IDAHO); (PORTO RICO, 2, 3).

WILLS.

Construction; vested remainder; intention of testator.

A will contained the following provision: "It is my will and desire that my said homestead shall be kept and continued as the home and residence of my daughters so long as they shall remain single and unmarried. I therefore first after the death of my wife will and devise the said estate to my said daughters being single and unmarried and to the survivor and survivors of them so long as they

shall be and remain single and unmarried and on the death or marriage of the last of them then I direct that the said estate shall be sold by my executors and the proceeds thereof be distributed by my said executors among my daughters living at my death and their children and descendants (*per stirpes*)." The testator had three sons and five daughters, all of whom were living when the will was made. The will contained provisions for testator's wife and sons. Four of the daughters married and had children; only one of them married before testator's death, and her children were born subsequently. One daughter remained single and survived all her sisters. Nine years after testator's death, the widow having also died, a decree was entered in a suit in which the daughters alone were parties, directing that the property be sold and proceeds divided among the daughters. In a suit brought subsequently by a purchaser to quiet title against claims of grandchildren of the testator, *held* that the provision in the will for the sale of the homestead was for the protection of testator's daughters, and the words "living at the time of my death" may not be disregarded, and the daughters had a vested remainder in fee not defeasible as to any of them by her death leaving descendants, before the expiration of the preceding estates. Although the clause is elliptical, and the provision for representation is not fully expressed, the court finds from this and other provisions in the will that the intent of the testator is clear, in providing for his daughters and their children and descendants *per stirpes*, to establish the right of those daughters who survived him as of the time of his death and to provide for the representation of any who might previously die. The purchasers under the decree in the previous suit for sale and division of proceeds, acquired a good title under the decree. *Johnson* v. *Washington Loan & Trust Co.*, 224.

WORDS AND PHRASES.

"*Conveyance*" as used in § 98 of act of June 6, 1900, 31 Stat. 321 (see Mines and Mining, 1). *Waskey* v. *Chambers*, 564.

"*Creditors*" as used in § 496, Ky. Stat., 1903 (see Local Law, Ky., 4). *Holt* v. *Crucible Steel Co.*, 262.

"*Current yearly pay*" (see Army and Navy, 7). *Plummer* v. *United States*, 137.

"*Statuary*" as used in reciprocal agreement with France of May 30, 1898 (see Customs Law). *Altman & Co.* v. *United States*, 583.

"*Telegraph*" as used in § 536, Civil Code of California (see Practice and Procedure, 11). *Pomona* v. *Sunset Tel. & Tel. Co.*, 330.

Generally. See Statutes, A 3, 4, 5.

WRIT AND PROCESS.

See JURISDICTION, J 2, 3;
MANDAMUS;
QUO WARRANTO.