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ACTIONS.

Recovery for negligence precluded in action against carrier on special contract for prompt delivery.

Where plaintiff sues only on a special contract for prompt delivery by specified train, and there is no count for negligence as a carrier only, his claim for damages based on such negligence is not presented, and cannot be considered, on the record. *Chicago & Alton R. R. Co. v. Kirby*, 155.

See CONSTITUTIONAL LAW, 19, 21;

INDIANS, 2;

JURISDICTION, H 4;

LOCAL LAW (N. Y.).

ACTS OF CONGRESS.

ADMIRALTY.—Harter Act of Feb. 13, 1893, 27 Stat. 445, c. 105 (see Admiralty, 1, 2): *The Jason*, 32.

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551. Act of July 23, 1892, 27 Stat. 260, c. 234 (see Indians, 5): *Ib.* Treaty of May 30, 1860, 12 Stat. 1129 (see Indians, 15, 16): *Kindred v. Union Pacific R. R. Co.*, 582. Act of June 30, 1834, 4 Stat. 729, c. 161 (see Statutes, A 9): *Clairmont v. United States*, 551.

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NATURALIZATION.—Act of June 29, 1906, 34 Stat. 596, c. 3592 (see Constitutional Law, 25; Naturalization, 1, 6): *Johannessen v. United States*, 227. Rev. Stat., § 1994 (see Aliens, 3): *Low Wah Suey v. Backus*, 460.

- OKLAHOMA.—Act of June 16, 1906, 34 Stat. 267, c. 3335 (see Indians, 8, 9, 10, 12, 13, 18): *Ex parte Webb*, 663.
- PATENTS.—Rev. Stat., § 4921 (see Patents, 5): *Westinghouse Co. v. Wagner Mfg. Co.*, 604.
- PILOTAGE.—Act of Feb. 28, 1871, 16 Stat. 440, c. 100, § 51 (see Pilotage, 4): *Anderson v. Pacific Coast S. S. Co.*, 187. Rev. Stat., §§ 4401, 4444 (see Pilotage, 3, 4): *Ib.*
- PUBLIC LANDS.—Act of July 1, 1862, 12 Stat. 489, c. 120, § 2 (see Indians, 15, 17): *Kindred v. Union Pacific R. R. Co.*, 582; (see Public Lands, 9): *Ib.* Act of March 3, 1875, 18 Stat. 482, c. 152 (see Public Lands, 10, 11, 13): *Stalker v. Oregon Short Line*, 142. Act of June 16, 1880, 21 Stat. 287, c. 244, § 2 (see Public Lands, 1, 2, 3, 4, 7): *United States v. Colorado Anthracite Co.*, 219. Rev. Stat., §§ 2347-2352 (see Public Lands, 5, 6, 7): *Ib.*
- PURE FOOD AND DRUGS ACT.—Act of June 30, 1906, 34 Stat. 768, c. 3915 (see Constitutional Law, 3; Interstate Commerce, 14; Pure Food and Drugs Act): *Savage v. Jones*, 501.

ADMIRALTY.

1. *General average agreement; validity under Harter Act; right of recovery under.*
A general average agreement inserted in bills of lading, providing that if the owner of the ship shall have exercised due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, the cargo shall contribute in general average with the shipowner even if the loss resulted from negligence in the navigation of the ship, is valid under the Harter Act, and entitles the shipowner to collect a general average contribution from the cargo-owners in respect to sacrifices made and extraordinary expenditures incurred by him for the common benefit and safety of ship, cargo and freight subsequent to a negligent stranding. *The Jason*, 32.
2. *Contribution; right of cargo-owner under § 3 of Harter Act.*
Under § 3 of the Harter Act, the cargo-owners under the same circumstances have a right of contribution from the shipowner for sacrifices of cargo made subsequent to the stranding for the common benefit and safety of ship, cargo and freight. *Ib.*
3. *Contribution; right of cargo-owner in respect of general average sacrifices of cargo.*
Under the same circumstances the cargo-owners cannot recover contribution from the shipowner in respect of general average sacrifices

of cargo, without contributing to the general average sacrifices and expenditures of the shipowners made for the same purpose. *Ib.*

4. *Contribution in general average; essence of.*

The essence of general average contribution is that extraordinary sacrifices made and expenses incurred for the common benefit are to be borne proportionately by all who are interested. *Ib.*

See PILOTAGE.

ADMISSION OF STATES.

See STATES, 1, 2.

AGENCY.

See CRIMINAL LAW, 10.

ALIEN IMMIGRATION ACT.

See IMMIGRATION.

ALIENS.

1. *Definition of.*

An alien is one born out of the jurisdiction of the United States and who has not been naturalized under its Constitution and laws. *Low Wah Suey v. Backus*, 460.

2. *Women; effect of marriage to citizen; law governing.*

The effect of the marriage of an alien woman to a male citizen of the United States is not determined by the common law. That matter is regulated by statute. *Ib.*

3. *Naturalization; effect of marriage of alien woman to citizen.*

Under § 1994, Rev. Stat., a woman who could be naturalized becomes by her marriage to a citizen of the United States a citizen herself. *See Kelly v. Owen*, 7 Wall. 496. *Ib.*

4. *Naturalization; effect of marriage of alien woman; quære as to.*

Quære, whether a woman, incapable under the laws of the United States of being naturalized, can become a citizen of the United States by marriage to a citizen thereof. *Ib.*

See CONSTITUTIONAL LAW, 25;

NATURALIZATION;

IMMIGRATION;

PRACTICE AND PROCEDURE, 8.

AMBIGUITIES.

See STATUTES, A 4.

AMENDMENT.

See STATUTES, A 1.

AMENDMENTS TO CONSTITUTION.

Fourteenth.—*See* CONSTITUTIONAL LAW.

Sixth.—*See* CRIMINAL LAW, 13, 22.

APPEAL AND ERROR.

1. *Appeal from Circuit Court; questions open on.*

Where in rendering a decree on the merits the court necessarily decided the constitutional question expressly alleged in the bill, the issue on that subject is open in this court, whether the jurisdictional question be certified or not. *Mississippi Railroad Commission v. Louisville & Nashville R. R. Co.*, 272.

2. *Scope of inquiry on direct appeal from Circuit Court; question of comity between courts not within.*

A mere conflict between courts concerning the right to adjudicate upon a particular matter growing out of a priority of jurisdiction in another forum involves a question of comity, which there is no right to consider on a direct appeal to this court under § 5 of the act of 1891. (*Courtney v. Pradt*, 196 U. S. 89.) *Ib.*

3. *Appeal from interlocutory order of Commerce Court; right to, under § 210, Judicial Code.*

An appeal to this court from an interlocutory order of the Commerce Court allowing a preliminary injunction against the enforcement of an affirmative order of the Interstate Commerce Commission lies under § 2 of the act creating the court, now § 210 of the new Judicial Code. *United States v. Baltimore & Ohio R. R. Co.*, 306.

4. *When writ of error runs to highest state court, notwithstanding its refusal to grant writ because of opinion that judgment below is right.*

Where the highest court of the State refuses a writ of error because, in its opinion, the judgment below is plainly right, doubt exists as to whether it is a refusal to take jurisdiction or an exercise of jurisdiction and affirmance; under the circumstances of this case, however, the Chief Justice of the state court having allowed the writ of error for review by this court, *held* that the judgment was on the merits and the writ of errors run to the highest court. *Western Union Telegraph Co. v. Crovo*, 220 U. S. 364, distinguished. *Norfolk Turnpike Co. v. Virginia*, 264.

5. *When writ of error runs to lower court; effect of refusal of highest state court to take jurisdiction.*

Where the refusal of the highest court of the State to allow a writ of error is also a refusal to take jurisdiction the writ of error from this court runs to the lower court. *Ib.*

6. *Refusal of highest state court to allow writ of error as refusal to take jurisdiction.*

Hereafter this court will regard the refusal of the highest court of the State to allow a writ of error to review the judgment of a lower court as a refusal to take jurisdiction and not as an affirmance unless the contrary plainly appears on the face of the record. *Ib.*

See JURISDICTION;

PRACTICE AND PROCEDURE, 3, 4, 6.

TRIAL, 1.

APPEARANCE.

See PARTIES.

ARRAIGNMENT.

See CRIMINAL LAW, 1, 2, 3;

WORDS AND PHRASES.

ASSIGNS.

See PUBLIC LANDS, 1, 2.

ATTACHMENT.

See BANKRUPTCY, 3;

LIENS.

ATTORNEY AND CLIENT.

See IMMIGRATION, 7;

INDIANS, 3.

BANKRUPTCY.

1. *Preferences; what prohibited.*

The provisions of the Bankruptcy Act of 1898 preventing preferences, apply not only to mortgages and voluntary transfers but also to preferences obtained through legal proceedings; but the act was not intended to lessen rights already existing nor to defeat inchoate liens given by statute of which all creditors were bound to take notice. *Henderson v. Mayer*, 631.

2. *Preferences; liens obtained through legal proceedings; lien under Georgia law held not to be.*

The general lien given by the laws of Georgia to the landlord on the property of the tenant is the equivalent, as to goods levied on by distress warrant, to the common law distress; while it does not ripen into a specific lien until the distress warrant is issued, it exists from the time of the lease, and the lien of the distress warrant is not one obtained through legal proceedings within the meaning of the anti-preference provisions of the Bankruptcy Act. *Ib.*

3. *Preferences; effect of bankruptcy proceedings on statutory attachment for rent.*

Under the Bankruptcy Act of 1867 a statutory attachment for rent in the nature of a landlord's distress warrant levied within the preference period was not nullified or discharged by the bankruptcy proceedings and there is nothing in the act of 1898 opposed to this conclusion. *Ib.*

4. *Preferences; effect of act of 1898 to preserve landlords' liens given by local law.*

The general provisions of the Bankruptcy Act of 1898 indicate a purpose and intent, as against general creditors, to preserve rights such as those given by the Georgia statute to landlords even though not enforced until within four months of the bankruptcy. *Ib.*

5. *Preferences; indirect transfer as.*

To constitute a preference under the Bankruptcy Act it is not necessary that the transfer be made directly to the creditor; it may be made to another for his benefit, and if preferential circuitry of arrangement will not avail to save it. *Newport Bank v. Herkimer Bank*, 178.

6. *Preferences; diminution of bankrupt's estate as test.*

Unless, however, the creditor takes by virtue of a disposition by the insolvent debtor of his property for the benefit of the creditor so that the estate is diminished the creditor cannot be charged with receiving a preference. *Ib.*

7. *Preferences; effect of payment by endorser of bankrupt's note secured by endorser's collateral.*

Where the endorser of the bankrupt's note, which is under discount at a bank and secured by the endorser's own collateral, pays the note, thereby recovering his collateral and charges the payment to the bankrupt to whom he is indebted in a larger sum on open account,

there is no preferential payment to the bank which the trustee can recover from it as such, it not appearing that the bank was concerned with, or had any knowledge of, the relations between the endorser and the maker of the note. *Ib.*

8. *Preferences; delivery of securities by broker to customer as.*

Under the decisions of this court, and the courts of New York, a customer has such an interest in securities carried for him by a broker that a delivery to him after the insolvency of the broker is not necessarily a preference under the bankruptcy law. (*Richardson v. Shaw*, 209 U. S. 365.) *Sexton v. Kessler*, 90.

9. *Tribunals contemplated by Bankruptcy Act.*

A distinct purpose of the Bankruptcy Act is to subject the administration of estates of bankrupts to the control of tribunals having authority and charged with the duty of proceeding to final settlement and distribution in a summary way, as are bankruptcy courts. *United States Fidelity Co. v. Bray*, 205.

10. *Jurisdiction of bankruptcy court; scope of.*

Under the Bankruptcy Act, the jurisdiction of the bankruptcy court in all proceedings in bankruptcy is intended to be exclusive of all other courts; such proceedings include matters of administration, such as allowance and rejection of claims, reduction of the estate to money and its distribution, preferences and priorities to be accorded to claims and supervision and control of the trustee. *Ib.*

11. *Trustee's title to escrow of securities held by bankrupt acting as agent.*

The conduct of business men acting without lawyers and in good faith, attempting to create a personal security for an actual debt, should be fairly construed as actually effecting what the parties meant; and so *held*, in this case, that an escrow of securities made by a banking firm in New York to secure its drafts upon a foreign bank amounted to a lien on the securities to be preferred to the claim of the trustee in bankruptcy, notwithstanding that the New York firm retained physical power over the securities, as agent for the foreign house, and had the right to substitute other securities for those withdrawn and sold. *Sexton v. Kessler*, 90.

See JURISDICTION, A 13; C 1, 2.

BANKS AND BANKING.

See BANKRUPTCY, 7.

BILLS AND NOTES.

See BANKRUPTCY, 7.

BILLS OF LADING.

See ADMIRALTY, 1.

BOUNDARIES.

Maryland and West Virginia; Deakins line established.

Report of Commissioners appointed by decree of May 31, 1910, to run, locate and permanently mark with suitable monuments the Deakins line between Maryland and West Virginia from the North Branch of the Potomac River and Pennsylvania, in pursuance of decision, 217 U. S. 1 and 577, confirmed and exceptions thereto overruled. *Maryland v. West Virginia*, 1.

BROKERS.

See BANKRUPTCY, 8.

BURDEN OF PROOF.

See FRAUD; JURISDICTION, C 3, 4;
PATENTS, 3, 5, 10.

CAPITAL CRIMES.

See CRIMINAL LAW, 24, 30.

CARRIERS.

1. *Implied agreement as to carriage.*

The implied agreement of a common carrier is to carry safely and deliver at destination within a proper time; evidence of diligence and no unreasonable delay excuses. *Chicago & Alton R. R. Co. v. Kirby*, 155.

2. *Compensation for extra liability.*

A carrier who agrees to expedite assumes a more burdensome liability and can exact a higher rate than where mere carrier's liability exists. *Ib.*

See INTERSTATE COMMERCE;
JURISDICTION, F 7, 8, 9;
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CASES DISTINGUISHED.

Gulf, Colorado & Sante Fe Ry. Co. v. Texas, 204 U. S. 403, distinguished in *Ohio Railroad Commission v. Worthington*, 101.

- Hancock National Bank v. Farnum*, 176 U. S. 640, distinguished in *Bigelow v. Old Dominion Copper Co.*, 111.
Import Rate Case, 162 U. S. 197, distinguished in *Interstate Com. Comm. v. Baltimore & Ohio R. R. Co.*, 326.
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Western Union Tel. Co. v. Crovo, 220 U. S. 364, distinguished in *Norfolk Turnpike Co. v. Virginia*, 264.

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- Agnew v. United States*, 165 U. S. 36, followed in *Hyde v. United States*, 347.
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Hyde v. United States, 225 U. S. 347, followed in *Brown v. Elliott*, 392.

- Indian Protective Assn. v. Gordon*, 34 App. D. C. 553, followed in *Same v. Same*, 698.
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- Kelly v. Owen*, 7 Wall. 496, followed in *Low Wah Suey v. Backus*, 460.
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- Procter & Gamble v. United States*, 225 U. S. 282, followed in *Hooker v. Knapp*, 302.
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- Richardson v. Shaw*, 209 U. S. 365, followed in *Sexton v. Kessler*, 90.
- St. Louis, K. C. & C. R. R. Co. v. Wabash R. R. Co.*, 217 U. S. 247, followed in *Ohio Railroad Commission v. Worthington*, 101.
- Savage v. Jones*, 225 U. S. 501, followed in *Standard Stock Food Co. v. Wright*, 540.
- Schlosser v. Hemphill*, 198 U. S. 173, followed in *State National Bank v. Richardson*, 696.
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- Shoshone Mining Co. v. Rutter*, 177 U. S. 505, followed in *Coalgate Co. v. Hurst*, 697.
- Southern Pacific R. R. Co. v. United States*, 168 U. S. 1, followed in *Johannessen v. United States*, 227.
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- Southern Railway Co. v. Reid and Southern Railway Co. v. Reid & Beam*,

- 222 U. S. 424, 444, followed in *Southern Ry. Co. v. Burlington Lumber Co.*, 99.
- Tefft v. Munsur*, 222 U. S. 114, followed in *Sullivan v. Goldman*, 695; *Andrews v. Partridge*, 696.
- Toland v. Sprague*, 12 Pet. 300, followed in *De Bearn v. De Bearn*, 695.
- Twining v. New Jersey*, 211 U. S. 78, followed in *Jordan v. Massachusetts*, 167.
- United States v. Kissel*, 218 U. S. 601, followed in *Hyde v. United States*, 347.
- United States v. Pridgeon*, 153 U. S. 48, followed in *Coalgate Co. v. Hurst*, 697.
- United States ex rel. Warden v. Chandler*, 122 U. S. 643, followed in *Duffield v. Ashurst*, 697.
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- Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112, followed in *Missouri Pacific Ry. Co. v. Lessenden*, 696.
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- Wong Wing v. United States*, 163 U. S. 228, followed in *Low Wah Suey v. Backus*, 460.

CERTIFICATE.

See JURISDICTION, A 1.

CERTIORARI.

Writ granted on consent of Attorney General.

In this case the defendant applied for a writ of certiorari and the Attorney General assented to granting it on the ground that the determination of the case depends upon the principles of law governing conspiracy and it is of vital importance to the United States, as well as its citizens, to have those principles settled by this court.

Hyde v. United States, 347.

CESSIONS OF TERRITORY.

See INDIANS, 1.

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See INDIANS, 2, 3.

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See CARRIERS.

COMMON LAW.

Conformity of practice in Massachusetts in determining mental capacity of jurors.

The practice of the Massachusetts courts in this case was not inconsistent with the rules of the common law in regard to determining the mental capacity of jurors. *Jordan v. Massachusetts*, 167.

CONDITIONAL SALES.

See CONTRACTS, 3.

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See CONSTITUTIONAL LAW, 10;

PRACTICE AND PROCEDURE, 2.

CONFLICT OF LAWS.

1. *Federal and state; what considered in determining.*

In determining whether a Federal act overrides a state law, the entire scheme must be considered and that which needs must be implied has no less force than that which is expressed. *Savage v. Jones*, 501.

2. *Federal and state; when Federal statute supersedes exercise by State of police power.*

The intent of Congress to supersede the exercise by the States of their police power will not be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State. *Ib.*

See COMMON LAW;

CONSTITUTIONAL LAW, 3;

PILOTAGE, 4.

CONGRESS, POWERS OF.

See CONSTITUTIONAL LAW, 4, 5;

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IMMIGRATION, 3;

STATES, 1, 2.

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See CERTIORARI;

CRIMINAL LAW, 4-21.

CONSTITUTIONAL LAW.

1. *Commerce clause; exclusive power to regulate interstate commerce; state interference.*

Under the Constitution of the United States, the National Govern-

ment has exclusive authority to regulate interstate commerce, and any attempt by the State to regulate rates for interstate transportation is void. (*Louisville & Nashville R. R. Co. v. Eubank*, 184 U. S. 27.) *Ohio Railroad Commission v. Worthington*, 101.

2. *Commerce; power of State to burden.*

While the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce, a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional because it may incidentally affect interstate commerce. *Savage v. Jones*, 501.

3. *Commerce clause; due process of law; revenue measure beyond power of State; conflict of laws; validity of Indiana statute regulating sale of concentrated commercial food-stuffs.*

The statute of Indiana regulating the sale, and requiring formula of ingredients of, concentrated commercial food for stock is a proper and reasonable exercise of legislative police authority for the protection of the people of the State. The act is not unconstitutional as depriving a vendor of such food who lives in another State and ships it therefrom to Indiana either as a regulation of, or burden upon, interstate commerce, as depriving any vendor thereof of his property without due process of law, or as a revenue measure beyond the power of the State, nor does the requirement for publishing the ingredients conflict in any manner with the Food and Drugs Act of 1906. *Ib.*

4. *Commerce with Indian tribes; power of Congress over traffic within State.*

Under § 8 of Article I of the Federal Constitution, conferring upon Congress the right to regulate commerce with the Indian tribes, Congress may regulate traffic with Indians although within the limits of a single State. *Ex parte Webb*, 663.

5. *Commerce with Indian tribes; power of Congress to maintain existing law.*

Under § 8 of Article I of the Federal Constitution, Congress has the same power to maintain an existing law in regard to Indian traffic so as to keep it in force in a new State as it has to enact new laws in the future on the same subject. *Ib.*

See INTERSTATE COMMERCE, 11, 12.

6. *Criminal law; effect of constitutional provisions.*

The Constitution of the United States is not intended as a facility for crime, but to prevent oppression; its letter and its spirit are satisfied if where a criminal purpose is executed that criminal purpose be punished. The criminal himself makes the venue of his trial. *Brown v. Elliott*, 392.

7. *Due process of law implies what; effect of refusal of state court to set aside verdict because sanity of juror determined according to state procedure.*

Due process of law implies a tribunal both impartial and mentally competent to afford a hearing; but due process is not denied when a competent state court refuses to set aside a verdict because the sanity of one of the jurors which has been questioned is established, after an inquiry in accordance with the established procedure of the State, only by a preponderance of evidence. *Jordan v. Massachusetts*, 167.

8. *Due process of law; determination of sanity of juror according to established procedure of State.*

In this case *held*, that one convicted by a jury and sentenced to death was not denied due process of law because after the verdict one of the jurors became insane and the court, after an inquiry had in accordance with the established procedure of the State, found by a preponderance of evidence that the juror was of sufficient mental capacity during the trial to act as such and therefore refused to set the verdict aside. *Ib.*

9. *Due process of law; taking of property; effect of state statute making repair of toll roads a condition to right to collect tolls; Virginia statute sustained.*

A State does not take property of a turnpike company by opening the gates when its road is out of repair; nor is the enforcement of a statute which makes the keeping of a toll road in repair a condition precedent to the right to collect tolls an unconstitutional taking of property without due process of law; and in this case so *held* as to the enforcement of such a statute which has been in force in the State of Virginia since 1817. *Norfolk Turnpike Co. v. Virginia*, 264.

10. *Due process of law; deprivation of property; quære as to what constitutes.*

Quære, and not determined, whether an ordinance cutting the earnings of a telephone company down to six per cent per annum, would,

under the circumstances of this case be confiscatory and unconstitutional under the Fourteenth Amendment. *Louisville v. Cumberland T. & T. Co.*, 430.

11. *Due process of law; taking of property; power of State to regulate sale of food-stuffs; validity of Indiana statute of 1907.*

Regulating the sale of food for domestic animals is properly within the scope of the state police power, and the vendors of such food are not deprived of their property without due process of law by a regulation requiring disclosure of ingredients and minimum percentage of fat and proteins, disclosure of the formula for combination not being required; and so held as to the statute of Indiana of 1907. *Savage v. Jones*, 501.

12. *Due process of law; taking of property; power of State to regulate sale of food-stuffs.*

Savage v. Jones, ante, p. 501, followed to effect that it is within the police power of a State to prevent imposition upon the public and to that end to require the disclosure of ingredients of food for stock. *Standard Stock Food Co. v. Wright*, 540.

13. *Due process of law; revenue measure beyond power of State; validity of Iowa statute of 1907 regulating sale of concentrated commercial food-stuffs.*

The Iowa statute of 1907 regulating the sale of concentrated commercial feeding stuff is not unconstitutional as depriving vendors of such stuff of their property without due process of law, or because it is a revenue measure in disguise. *Ib.*

14. *Due process of law; equal protection; effect to deny, of ordinance prohibiting keeping of billiard halls.*

An ordinance prohibiting the keeping of billiard halls is not unconstitutional under the Fourteenth Amendment, either as depriving the owner of the hall of his property without due process of law or as denying him the equal protection of the laws. *Murphy v. California*, 623.

15. *Due process of law; equal protection; reasonableness of classification; validity of municipal ordinance regulating keeping of billiard halls.*

The ordinance of South Pasadena, California, passed in pursuance of police power conferred by the general law of the State, prohibiting the keeping of billiard halls for hire, except in the case of hotels having twenty-five rooms or more for use of regular guests, is not unconstitutional under the Fourteenth Amendment either as

depriving the owners of billiard halls not connected with hotels of their property without due process of law, or as denying them equal protection of the laws. *Ib.*

See SUPRA, 3;

IMMIGRATION, 2.

16. *Equal protection of the law; reasonableness of classification relative to keeping of billiard halls.*

A classification in a statute regulating billiard halls based on hotels having twenty-five rooms is reasonable; and the owner of a billiard hall, not connected with a hotel, is not denied equal protection of the laws by an ordinance prohibiting keeping billiard halls for hire because hotels having twenty-five rooms can maintain a billiard hall for their regular guests. *Ib.*

17. *Equal protection of the law; effect to deny, of operation of police ordinance.*

The fact that one of a class excepted from the operation of a police ordinance on complying with a condition, does not comply therewith, does not render the statute unconstitutional as against the classes upon which it operates, but renders the person violating the condition subject to the penalties of the ordinance. *Ib.*

See SUPRA, 14, 15.

18. *Ex post facto laws; scope of inhibition against.*

The *ex post facto* provision of the Constitution is confined to laws affecting punishment for crime and has no relation to retrospective legislation of any other description. *Johannessen v. United States*, 227.

19. *Full faith and credit clause; effect of judgment of dismissal of suit as to one joint tort-feasor as bar to suit against another joint tort-feasor in another State.*

One of two joint tort-feasors was sued in the Circuit Court of the United States for New York, jurisdiction being based solely on diversity of citizenship, and the bill was dismissed; the other joint tort-feasor, who resided in Massachusetts, and was not, and could not, be made a party defendant in the New York suit, having been sued in the state court of Massachusetts, set up the New York judgment, claiming that under the full faith and credit clause of the Constitution of the United States the judgment dismissing a suit based on the same cause of action against one alleged to be his joint tort-feasor was a bar to the suit, and that the Massachusetts courts were bound to give to the judgment the

same effect as an estoppel as against subsequent suits on the same cause of action. *Held* that:

Although one of two joint tort-feasors may be individually interested in the result of a suit against the other, the result is merely that of precedent and not of *res judicata*, and the courts of another State are not under obligation to follow the decision.

Assistance by one of two joint tort-feasors in the defense of a suit against the other, because of interest in the decision as a judicial precedent affecting a case pending against him in another State, does not create an estoppel as to the one so assisting in the defense.

Where the cause of action against joint tort-feasors is *ex delicto*, and several as well as joint, one of the tort-feasors not sued is not a privy to one that is sued so that a judgment dismissing the case against the latter is a bar to another suit against the latter.

Where the remedy of the plaintiff in a suit against one of two joint tort-feasors depends upon the defendant's own culpability, failure to recover in a prior suit on the same facts against the other is not a bar.

When dealing with the estoppel of a judgment, privity denotes mutual or successive relationship to the same right of property, and while there is diversity of opinion as to whether the estoppel can be expanded so as to include joint tort-feasors not parties, the sounder reason, as well as weight of authority, is that failure to recover against one is not a bar to a suit or an individual cause of action against the other. *Bigelow v. Old Dominion Copper Co.*, 111.

20. *Full faith and credit clause; status of judgment of Federal court in court of State other than that in which the Federal court sits.*

Where the jurisdiction of the Circuit Court of the United States depends entirely upon diversity of citizenship, that court administers the law of the State, and its judgment is entitled to the same sanction as would attach to a judgment of a court of that State, and is entitled in the courts of another State to the same faith and credit which would be given to a judgment of the court of the State in which the Circuit Court which rendered it was sitting. *Ib.*

21. *Full faith and credit; right of court in which judgment of court of another State is set up to determine its effect as a bar.*

Although a judgment dismissing the bill against one of two joint tort-feasors may be a bar in the State where rendered against a suit on the same cause of action against the other joint tort-feasor, the courts of another State may, without denying full faith and credit to such judgment, determine for itself under principles of

general law whether or not such judgment is a bar to suits against the other tort-feasor. *Ib.*

22. *Full faith and credit; status of judgment of court of one State when sued upon or pleaded in estoppel in court of another State.*

Under § 1 of Art. IV of the Constitution and § 905, Rev. Stat., the judgment of a court of one State when sued upon or pleaded in estoppel in the courts of another State is put upon the plane of a domestic judgment in respect to conclusiveness of the facts adjudged; otherwise it would be reëxaminable as only *prima facie* evidence of the matter adjudged as is the case with foreign judgments. *Ib.*

23. *Full faith and credit clause; how construed.*

The full faith and credit clause is to be construed in the light of the other provisions of the Constitution, none of which it was intended to modify or override. *Ib.*

24. *Full faith and credit; right of court where judgment set up to inquire as to jurisdiction of court rendering it.*

The courts of one State are not required to regard as conclusive any judgment of the court of another State which had no jurisdiction of the subject or the parties; and the courts of the State in which the judgment is set up have the right to inquire whether the court rendering it had jurisdiction to pronounce a judgment which would conclude the parties themselves or those claiming that the judgment was effective as an estoppel. *Ib.*

25. *Governmental powers; retrospective legislation; validity of naturalization act of 1906.*

The act of June 29, 1906, is not unconstitutional as an exercise of judicial power by the legislative branch of the Government, nor is it unconstitutional because retrospective. *Johannessen v. United States*, 227.

Naturalization of Aliens. See IMMIGRATION, 1.

26. *States; effect of Fourteenth Amendment on power to regulate useful occupations.*

While the Fourteenth Amendment protects the citizen in his right to engage in any lawful business, it does not prevent legislation intended to regulate useful occupations, which because of their nature and location, may prove injurious or offensive to the public. *Murphy v. California*, 623.

27. *States; effect of Fourteenth Amendment on right of municipality to prohibit harmful business.*

The Fourteenth Amendment does not prevent a municipality from prohibiting any business which is inherently vicious and harmful. *Ib.*

28. *States; effect of Fourteenth Amendment on power to regulate or prohibit business.*

The Fourteenth Amendment does not prevent a State from regulating or prohibiting a non-useful occupation which may become harmful to the public, and the regulation or prohibition need not be postponed until the evil is flagrant. *Ib.*

29. *States; when statute not revenue measure in disguise so as to render it unconstitutional.*

Where the fair import of the provisions of a state police statute is that the fees exacted are for necessary expenses of inspecting an article properly the subject of inspection, and the bill alleges no facts warranting a conclusion that the charges are unreasonable as compared with the cost, this court will not condemn the statute as an unconstitutional revenue measure. *Standard Stock Food Co. v. Wright*, 540.

30. *States; when statute not revenue measure in disguise.*

Where a state police statute involving inspection of goods is enforced by the affixing of stamps, it will not be held unconstitutional as a revenue measure in disguise if the bill does not allege any facts to show that the charge for stamps is unreasonable and the total sale is so much in excess of the cost of inspection as to impute bad faith. *Savage v. Jones*, 501.

See SUPRA, 1, 2, 3, 11, 12, 13;

STATES.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTINUANCE.

See TRIAL, 1.

CONTINUING OFFENSES.

See CRIMINAL LAW, 6, 7, 14, 22.

CONTRACTS.

1. *Rescission of contract for sale of mining properties; practice in this court; res judicata.*

One of the parties interested in and having control of a mining company purchased a neighboring group of mines and agreed that the company should have the opportunity of taking them on reimbursing him for outlay; if not availed of, he to keep them for his own. Subsequently the combined groups being sold he claimed the agreement had by reason of certain resolutions been rescinded and that he was entitled to the proceeds of the purchased group. The case was twice before the Supreme Court of the Territory: on the first appeal that court held that the agreement had been rescinded.

Held that:

The findings of fact sent up from the territorial court must alone be the basis of the judgment of this court.

In interpreting the action of stockholders in passing resolutions regarding the relative rights of the corporation and one of the stockholders and officers in property of the corporation, the surrounding facts and circumstances may be considered.

The agreement that the company could acquire the purchased group was carried out and not rescinded.

Whatever effect the decision of the Supreme Court of a Territory may have, as the law of the case, on the lower court or on the Supreme Court itself, prior to an appeal to this court, it is not the law of the case for this court.

Under the circumstances, the appointment of a receiver and his continuance for final settlement of the affairs of the company was proper. *Zeckendorf v. Steinfeld*, 445.

2. *Reality and substance of unrecorded instrument; power of creditors to inquire as to.*

The mere form of an instrument transferring property of a debtor cannot exclude the power of creditors to inquire into the reality and substance of a contract unrecorded although required by law to be recorded in order to be effective against third parties. *Valdes v. Central Altagracia*, 58.

3. *Transfer of property of corporation as contract other than of conditional sale.*

Under the circumstances of this case, and in view of the existence of an equity of redemption under prior transfers, *held*, that a transfer of all the property of a corporation to one advancing money to enable it to continue its business was not a conditional sale of the

property but a contract creating security for the money advanced, and on liquidation of the assets the transferee stood merely as a secured creditor. *Ib.*

See ACTIONS; INTERSTATE COMMERCE, 4, 6, 18;
ADMIRALTY; JURISDICTION, H 4;
CARRIERS; LOCAL LAW (N. Y.).

CONTRIBUTION.

See ADMIRALTY, 2, 3, 4.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CONVEYANCES.

See CONTRACTS, 2, 3.

CORPORATIONS.

When to be deemed of state and not Federal creation.

A corporation which was organized in the Indian Territory while the statutes of Arkansas were, under authority of Congress, in force in that Territory is not for that reason a Federal corporation, but is to be regarded for jurisdictional purposes as one of Oklahoma. (*Kansas Pacific R. R. Co. v. Atchison, Topeka & Santa Fe R. R. Co.*, 112 U. S. 414.) *Shulthis v. McDougal*, 561.

See CONTRACTS, 1; JURISDICTION, H 4;
EQUITY, 1; LOCAL LAW (N. Y.);
FEDERAL QUESTION, 2; PUBLIC LANDS, 5, 6.

COURT AND JURY.

See CRIMINAL LAW, 21.

COURT OF CLAIMS.

See COURTS, 3.

COURTS.

1. *Duty to apply will of Congress.*

Where Congress has power to pass an act and its provisions are plain, the court must apply it even in a hard case. *Low Wah Suey v. Backus*, 460.

2. *Duty of this court to give effect to purpose of Congress in creating special tribunal.*

Where Congress creates a special tribunal for a special class of cases

with an appeal to this court it is the duty of this court to give effect to that purpose and uphold the lawful authority of the court so created and to also correct abuse of power when it appears. *United States v. Baltimore & Ohio R. R. Co.*, 306.

3. *Duty to follow mandate of this court; Court of Claims.*

After this court has reviewed the judgment of the Court of Claims and affirmed it, the Court of Claims, like any other court whose judgment has been reviewed by this court, must give effect to it and carry it into effect according to the mandate without variation or other further relief. (*In re Sanford Fork & Tool Co.*, 160 U. S. 247.) *Eastern Cherokees v. United States*, 572.

4. *Claim based on award of reparation of Interstate Commerce Commission cognizable in what courts.*

Under the act of June 18, 1910, 36 Stat. 539, 554, c. 309, the state courts as well as the appropriate Federal courts can take cognizance of a claim based on an award of reparation of the Interstate Commerce Commission. *Darnell v. Illinois Central R. R. Co.*, 243.

5. *Conflict between state and Federal in construction of will; case where Federal should have followed state court.*

In this case, in which the Circuit Court of Appeals construed a will as giving testator's son a life interest only with remainder that he could not affect, and the state court construed it as giving him the estate subject to the divesting clause, *held*, that the construction given by the state court was right and that the Circuit Court of Appeals should have followed it. *Messenger v. Anderson*, 436.

6. *Federal and state; duty of former to follow construction by latter of state statutes.*

In determining whether, under a state statute, failure to comply with its terms renders a contract void or merely acts as a bar to maintaining an action thereon, the Federal court must follow the interpretation given the statute by the highest court of the State. *David Lupton's Sons v. Automobile Club*, 489.

7. *Power to except one of class affected from operation of police regulation.*

Where, in the exercise of the police power, the municipal authorities by ordinance determine that a certain class of resorts should be prohibited as harmful to the public, the courts cannot except from the operation of the statute one of the class affected on the ground

that his particular place does not produce the evil aimed at by the ordinance. *Murphy v. California*, 623.

See APPEAL AND ERROR, 4, 5; PRACTICE AND PROCEDURE;
BANKRUPTCY, 9, 10;
CONSTITUTIONAL LAW, 7, 8, RES JUDICATA, 1;
19, 20, 21, 24; STATES, 5.

CRIMINAL LAW.

1. Arraignment; regularity a matter of substance.

Whether the prisoner was properly arraigned is not a matter of form but of substance, and should be shown by the record. (*Crain v. United States*, 162 U. S. 625.) *Johnson v. United States*, 405.

2. Arraignment; what constitutes.

There is no explicit provision in the laws of the United States describing what shall constitute an arraignment; but so far as it is expressed it has a definite meaning. *Ib.*

3. Arraignment; what constitutes.

In this case what was done, as shown by the record, did constitute an arraignment. *Ib.*

4. Conspiracy; indictment; sufficiency of.

If the indictment under § 5440, Rev. Stat., sufficiently charges the commission of overt acts within the district, it is sufficient even if it states that the place where the conspiracy formed is unknown. *Brown v. Elliott*, 392.

5. Conspiracy; commission of overt act necessary under § 5440, Rev. Stat.

While under the ancient rule of conspiracy the gist was the conspiracy itself and the crime was complete without any overt act, § 5440, Rev. Stat., prescribes as necessary to constitute an offense under it not only the unlawful conspiracy but also an overt act to effect the object by at least one of the conspirators. *Hyde v. United States*, 347.

6. Conspiracy as continuing offense; bar of limitations.

United States v. Kissel, 218 U. S. 601, followed to the effect that a conspiracy under § 5440, Rev. Stat., may be a continuing one, and that the offense is not barred on the expiration of the period from the date of the conspiracy itself. *Ib.*

7. Conspiracy as continuous crime; relation of overt acts to all conspirators.

A conspiracy entered into in violation of § 5440, Rev. Stat., may be a

continuous crime, and, if it was designed to be, and was, continuous, every overt act was the act of all the conspirators by reason of the terms of their unlawful plot. *Brown v. Elliott*, 392.

8. *Conspiracy; successive overt acts; computation of period of limitation.*

Where there are successive overt acts during the existence of the conspiracy, the period of limitation must be computed from the date of the last of them properly specified in the indictment, although some of them may have occurred more than three years before the indictment was found. *Ib.*

9. *Conspiracy; effect of relation of master and servant.*

The fact that one of the conspirators was the servant of another conspirator does not preclude there being a conspiracy between them; and, until there is an affirmative withdrawal from the conspiracy by the servant, his acts bind his employer and co-conspirator so far as preventing the statute of limitations from running. *Hyde v. United States*, 347.

10. *Conspiracy; agency; quære as to.*

Quære as to the extent of agency between persons conspiring in violation of § 5440, Rev. Stat. *Ib.*

11. *Conspiracy; place of trial.*

In determining the place of trial there is no oppression in taking the conspirators to the place where the overt act was performed rather than compelling the victims and witnesses to go to the place where the conspiracy was formed. *Ib.*

12. *Conspiracy; place of trial of one as place of trial of all conspirators.*

Overt acts performed in one district by one of the parties who had conspired in another district in violation of § 5440, Rev. Stat., give jurisdiction to the court in the district where the overt acts are performed as to all the conspirators. (*Brown v. Elliott*, p. 392, *post.*) *Ib.*

13. *Conspiracy; place of trial; Sixth Amendment.*

The Sixth Amendment to the Constitution does not preclude the place of trial of conspirators indicted under § 5440, Rev. Stat., being in any State where an overt act was performed. (*Hyde v. United States*, *ante*, p. 347.) *Brown v. Elliott*, 392.

14. *Conspiracy; conscious offending; bar of limitations.*

Until a conspirator affirmatively withdraws from a continuing con-

spiracy there is conscious offending that prevents the statute from running. *Hyde v. United States*, 347.

15. *Conspiracy; withdrawal from; what amounts to.*

A disclosure to the Government by a conspirator does not amount to a withdrawal that would start the statute running if he thereafter commits overt acts, and whether there was acquiescence in the later acts of another conspirator is for the jury to determine. *Ib.*

16. *Conspiracy; individual liability; when legality of conviction of one not considered.*

Whether the conviction of one of several persons charged with conspiracy can ever be illegal will not be considered when it appears that more than one have been convicted. *Ib.*

17. *Conspiracy; individual liability; admission of evidence.*

While there may not be a conspiracy by one person alone, it is possible that some of the evidence may be admitted as against individual defendants and not against all; and it is not error for the court to charge that the jury might convict any one of the defendants alone, if accompanied by the statement that his instructions related to the sufficiency of evidence produced as to each defendant. In this case the charge of the court in regard to the conviction of one or more of the defendants was not to their prejudice but in their interest. *Ib.*

18. *Conspiracy; evidence; immateriality of objection as to.*

An objection to the admission of testimony in a trial for conspiracy offered exclusively as against one of the defendants becomes immaterial if that defendant is acquitted. *Ib.*

19. *Conspiracy; evidence; relevancy of.*

Even if a letter addressed to one of the defendants charged with conspiracy were improperly taken from the mails the fact is not relevant to the question of the guilt of the conspirators. *Ib.*

20. *Conspiracy; evidence; importance on appeal of evidence as to one acquitted.*

While any evidence affecting a particular defendant in a trial of several for conspiracy may be important to him while on trial, it ceases to be so in the reviewing court, if that defendant was acquitted. *Ib.*

21. *Conspiracy; coercion of jury; misconduct of jury.*

In this case it does not appear that the jury was coerced by the court

into agreeing on the verdict or that the conviction of some of the defendants and acquittal of others was the result of an improper agreement between the jurors. *Ib.*

22. *Continuing offenses; place of trial.*

Where a continuing offense is committed in more than one district, the Sixth Amendment does not preclude a trial in any of those districts. (*Armour Packing Co. v. United States*, 209 U. S. 56.) *Ib.*

23. *Criminal Code of 1909; application to District of Columbia.*

Some of the provisions of the Criminal Code approved March 4, 1909, 35 Stat. 1088, c. 321, apply to the District of Columbia and other provisions do not. *Johnson v. United States*, 405.

24. *Criminal Code of 1909; provision for qualification of verdict; application to District of Columbia.*

The provision in § 272 of the Criminal Code of 1909 permitting the jury to qualify the verdict of guilty in certain cases punishable by death by adding "without capital punishment" does not supersede the provisions in the District Code in regard to punishment for murder. *Ib.*

25. *Criminal Code of 1909; effect to supersede local codes.*

The provisions of the Criminal Code which deal with offenses Federal in nature, wherever committed, whether in places under Federal, state or territorial control, supersede the District Code; provisions, however, in regard to offenses under state jurisdiction if committed in a State or over which Congress has given local control to the Territories, and in regard to which it has adopted a separate code, as for Alaska, do not supersede the District Code. *Ib.*

26. *Offenders; solicitude of courts for; limitation upon.*

In construing criminal laws, courts must not be in too great solicitude for the criminal to give him immunity because of the difficulty in convicting or detecting him. *Hyde v. United States*, 347.

27. *Place of commission of crime under § 5339, Rev. Stat.; District of Columbia as.*

As used to define the place where a crime may be committed the words, "within any fort, arsenal, dockyard, magazine, or any other place or district of country under the exclusive jurisdiction of the United States" include the District of Columbia. *Johnson v. United States*, 405.

28. *Presence of offender; constructive.*

There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another State may be consummated, and render the person consummating it punishable at that place. *Hyde v. United States*, 347.

29. *Territorial extent affecting administration of.*

The size of our country has not become too great for the effective administration of criminal justice. *Ib.*

30. *Verdict; qualification of; application of act of January 15, 1897 to District of Columbia; effect of District Code on.*

The act of January 15, 1897, 29 Stat. 487, c. 29, permitting the jury in a capital case of murder or rape under § 5339 or § 5345, Rev. Stat., to qualify the verdict by adding "without capital punishment" was applicable to the District of Columbia until superseded by the special provisions on the same subject in the District Code. (*Winston v. United States*, 172 U. S. 303.) *Johnson v. United States*, 405.

See CONSTITUTIONAL LAW, 6, 18; STATES, 6;
HABEAS CORPUS, 3; STATUTES, A 4;
WORDS AND PHRASES.

DAMAGES.

See ACTIONS.

DEBTOR AND CREDITOR.

See CONTRACTS, 2, 3.

DECEIT.

See TRADE-NAME, 2.

DEEDS.

Quitclaim deeds; title passing by.

While a mere quitclaim deed does not pass after acquired title, the equitable title of one who was also trustee to acquire the title for the grantee will pass by such a deed. *United States v. Colorado Anthracite Co.*, 219.

DEFENSES.

See HABEAS CORPUS, 3.

DELAWARE DIMINISHED INDIAN RESERVATION.

See INDIANS, 15.

DELAWARE INDIANS.

See INDIANS, 15, 16.

DELEGATION OF POWER.

See IMMIGRATION, 3.

DEPORTATION OF ALIENS.

See IMMIGRATION, 5-8;

PRACTICE AND PROCEDURE, 8.

DISTRICT OF COLUMBIA.

See CRIMINAL LAW, 23, 24, 25, 27, 30;
STATUTES, A 3.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 3, 7-15;
IMMIGRATION, 2.

EMPLOYER AND EMPLOYÉ.

See CRIMINAL LAW, 9.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 14-17.

EQUITY.

1. *Laches precluding relief against use of name.*

The doctrine of laches applies to the use of a name of a fraternal corporation and equity will not grant relief against the use of the name by parties who have been using it for many years without objection, at the instance of the older organization, there not appearing to be any fraud or intent to deceive the public. *Creswill v. Knights of Pythias*, 246.

2. *Right to relief in, under doctrine of clean hands; quære as to.*

Quære whether a defendant in a libel suit who made a public charge of malfeasance in office without having evidence of truth sufficient

to warrant prudent counsel in making an issue of it, is not barred from relief in equity under the doctrine of clean hands. *Pickford v. Talbott*, 651.

See INTERSTATE COMMERCE, 15, 16; NATURALIZATION, 6;
JUDGMENTS AND DECREES, 2-5; PRACTICE AND PROCEDURE, 1;
JURISDICTION, C 1, 2; PUBLIC LANDS, 3;
TRADE-NAME, 2.

ESTOPPEL.

See CONSTITUTIONAL LAW, 19, 21, 22, 24; PATENTS, 6;
JUDGMENTS AND DECREES, 6; RAILROADS, 1;
NATURALIZATION, 2; TRIAL, 3.

EVIDENCE.

Testimony of jurors as to verdict rendered; admissibility of.

Where the jury render a verdict within the issues, testimony of jurors themselves should not be received to show matters which essentially inhere in the verdict and necessarily can receive no corroboration. *Hyde v. United States*, 347.

See CRIMINAL LAW, 17-20; PRACTICE AND PROCEDURE, 2, 7;
JUDGMENTS AND DECREES, 1; PUBLIC LANDS, 11;
STATUTES, A 2.

EXCLUSION AND EXPULSION OF ALIENS.

See IMMIGRATION, 3-8.

EXECUTIVE DEPARTMENTS.

See IMMIGRATION, 3.

EXECUTIVE OFFICERS.

See IMMIGRATION, 6, 8.

EXECUTORS AND ADMINISTRATORS.

See JURISDICTION, C 6, 7.

EX POST FACTO LAWS.

See CONSTITUTIONAL LAW, 18.

FACTS.

See CONTRACTS, 1; JURISDICTION, C 4;
JUDGMENTS AND DECREES, PRACTICE AND PROCEDURE, 3, 4,
6; 5.

FEDERAL QUESTION.

1. *When case arising under laws of United States; application of rule.*

A case is not one arising under the laws of the United States unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law upon the determination whereof the result depends. This rule applies peculiarly to suits respecting rights to land acquired under laws of the United States; otherwise all suits to establish title to land which had been part of the public domain would be cognizable in the Federal courts. *Shulthis v. McDougal*, 561.

2. *Question of right of Federal corporation to incorporation in State a non-Federal one.*

Whether persons have a right to be incorporated in a State as a state branch of an organization incorporated in the District of Columbia under an act of Congress is a non-Federal question. *Creswill v. Knights of Pythias*, 246.

See JURISDICTION, A.

FIVE CIVILIZED TRIBES.

See INDIANS, 4.

FLATHEAD INDIAN RESERVATION.

See INDIANS, 7.

FOREIGN CORPORATIONS.

See LOCAL LAW (N. Y.).

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW.

FRATERNAL ORGANIZATIONS.

See EQUITY, 1;
TRADE-NAME.

FRAUD.

Presumption of, not indulged; rule applicable to Government.

The rule that fraud is not presumed and that one basing his defense thereon should prove it, applies to the Government; and if the answer contains no allegation of fraud, silence in the findings of the

court below will be taken as showing that none was proved, and an affirmative finding that there was no fraud is not necessary to sustain the judgment. *United States v. Colorado Anthracite Co.*, 219.

See NATURALIZATION, 1, 3;
PUBLIC LANDS, 8;
TRADE-NAME, 2.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 19-24.

GENERAL AVERAGE AGREEMENTS.

See ADMIRALTY.

GOVERNMENTAL POWERS.

See CONSTITUTIONAL LAW, 4, 5, 25; NATURALIZATION, 1;
IMMIGRATION, 3; STATES, 1, 2.

GRAND JURY.

See PLEADING, 2.

GUARDIAN AND WARD.

See INDIANS, 4.

HABEAS CORPUS.

1. *Functions of writ.*

The writ of *habeas corpus* cannot be made to perform the office of writ of error. *Glasgow v. Moyer*, 420.

2. *Scope of examination on.*

The rule that on *habeas corpus* the court examines only into the power and authority of the court restraining the petitioner to act, and not the correctness of its conclusions, *Matter of Gregory*, 219 U. S. 210, applies where the petitioner attacks as unconstitutional, or as too uncertain, the law which is the foundation of the indictment and trial. *Ib.*

3. *Defenses available on.*

A defendant in a criminal case cannot reserve defenses which he might make on the trial and use them as a basis for *habeas* proceedings to attack the judgment after trial and verdict of guilty. It would introduce confusion in the administration of justice. *Ib.*

4. *Will not lie where petitioner remitted to remedy on writ of error.*

Where the court below has remitted the petitioner to his remedy on writ of error, it would be a contradiction to permit him to prosecute *habeas corpus*. *Ib.*

5. *Record of proceedings attacked required.*

As a general rule in *habeas corpus* proceedings, a copy of the record of the proceedings attacked is required, *Craemer v. Washington*, 168 U. S. 124, and if petitioner cannot comply with the rule by annexing a complete copy he should comply with it so far as it is within his power. *Low Wah Suey v. Backus*, 460.

HARTER ACT.

See ADMIRALTY, 1, 2.

HIGHWAYS.

See CONSTITUTIONAL LAW, 9.

HOMICIDE.

See CRIMINAL LAW, 24, 30.

IMMIGRATION.

1. *Application of act.*

The Alien Immigration Act in terms applies to all aliens. *Low Wah Suey v. Backus*, 460.

2. *Effect of act of 1907 as unconstitutional denial of rights.*

The act of 1907 is not unconstitutional as denying one held for deportation of his liberty without due process of law because it does not give the immigration officers power to compel his witnesses to appear. *Ib.*

3. *Exclusion and expulsion of aliens; power of Congress as to.*

Congress may pass laws forbidding aliens or classes of aliens from coming within the United States and may provide for their expulsion; it may also devolve upon the executive department or subordinate officers the right and duty of carrying out the law. (*Wong Wing v. United States*, 163 U. S. 228.) *Ib.*

4. *Exclusion after naturalization.*

An alien who has become a citizen of one of the States, can be excluded under the Alien Immigration Act if within a class prohibited to enter. *Ib.*

5. *Deportation of prostitutes; effect of naturalization by marriage.*

The object of the provisions of the Alien Immigration Acts of 1907 and 1910, providing for deportation of prostitutes, was to prevent the introduction and keeping in this country of women of the prohibited class; and even if a woman married to a citizen might be permitted to enter if she does not belong to that class, if she is found violating the statute by being in a house of prostitution she becomes subject to the deportation provisions thereof, notwithstanding her marriage to a citizen. *Ib.*

6. *Deportation; hearing on proceeding for; finality of order of executive officers.*

Hearing on proceedings for deporting aliens before executive officers may be made conclusive when fairly conducted. One attacking such proceedings in the courts must show that the officers conducting them were manifestly unfair and abused the discretion committed to them. Otherwise the order of executive officers within the authority of the statute is final. *Ib.*

7. *Deportation proceedings; right of alien to counsel.*

A preliminary examination of an alien without counsel is permitted by the statute; and if at subsequent stages of the proceedings the alien has counsel there is no denial of right. *Ib.*

8. *Deportation proceedings; witnesses; process not available to compel attendance.*

The Alien Immigration Acts of 1907 and 1910 do not give authority to the Commissioner or Secretary to issue process to compel attendance of witnesses on behalf of the alien held for deportation. The alien is not denied rights if the witnesses produced on his behalf are heard. *Ib.*

IMMOBILIZATION OF PROPERTY.

See LOCAL LAW (PORTO RICO).

INCORPORATION.

See FEDERAL QUESTION, 2.

INDIANS.

1. *Cession of territory by; qualification of, as to introduction of intoxicating liquors.*

A cession by Indians may be qualified by a stipulation in the treaty that the ceded territory, although within the boundaries of a State,

shall retain its original status of Indian country so far as the introduction therein of liquor is concerned. *Clairmont v. United States*, 551.

2. *Cherokee Nation; res judicata of question of right to prosecute claim against United States.*

In rendering a judgment for the Cherokee Nation in its suit against the United States, on the item claimed by, and over the objection of, the Eastern Cherokees, the Court of Claims recognized the Nation as the titular claimant authorized to prosecute the item to recovery, although for the ultimate benefit of the Eastern Cherokees, and this court having affirmed the judgment, 202 U. S. 1, the question has been adjudicated. *Eastern Cherokees v. United States*, 572.

3. *Claims of; right of attorneys to fees.*

Under the decree of the Court of Claims as affirmed by this court the attorneys for the Cherokee Nation are entitled to be paid their fees on the amount of the recovery including the items recovered in the name of the Nation for the Eastern Cherokees. *Ib.*

4. *Five Civilized Tribes as wards of Nation.*

Although the Five Civilized Tribes have long been treated more liberally than other Indians, they remain none the less the wards of the Nation and in all respects subject to its control. *Ex parte Webb*, 663.

5. *Intoxicating liquors; effect of act of 1897 to repeal that of 1892.*

The act of January 30, 1897, 29 Stat. 506, c. 109, in regard to sale of liquor to the Indians and introduction of liquor into Indian country, repealed, as far as inconsistent therewith, the act of July 23, 1892, 27 Stat. 260, c. 234. *Clairmont v. United States*, 551.

6. *Intoxicating liquors; what constitutes Indian country within meaning of act of 1897.*

An indictment under the act of January 30, 1897, for introducing liquor into Indian country cannot be sustained if the offense alleged was committed on land within a State and which had been completely withdrawn from the reservation, and the Indian title thereto surrendered so as not then to be Indian country. Under such circumstances the District Court of the United States has no jurisdiction. *Ib.*

7. *Intoxicating liquors; Indian country; what constitutes.*

The title to that part of the Flathead Reservation in Montana included

within the right of way of the Northern Pacific Railway Company, has been completely withdrawn from the Reservation and the Indian title thereto extinguished and therefore is no longer Indian country within the meaning of the act of January 30, 1897. *Ib.*

8. *Intoxicating liquors; effect of Oklahoma Enabling Act of 1906 to repeal law of 1895 prohibiting introduction and sale of liquor in Indian country.*

The Oklahoma Enabling Act of June 16, 1906, 34 Stat. 267, c. 3335, followed by the adoption of the constitution therein described, and the admission of the new State, had the effect of remitting to the state government the enforcement of the laws relating to the manufacture and sale of liquor within the State; and, so far as it covered the same field as the prior law of 1895 prohibiting introduction and sale of liquor in Indian country, the latter was by implication repealed. *Ex parte Webb*, 663.

9. *Intoxicating liquors; Oklahoma Enabling Act; intention of Congress in.*

While the Oklahoma Enabling Act may have by implication repealed the act of 1895 in part, it was not the intention of Congress to repeal that act in respect to the introduction of liquor from other States or Territories. *Ib.*

10. *Same.*

Congress has for many years consistently pursued the policy of forbidding sales of liquor to Indians and of excluding liquor from territory occupied by them, and the Oklahoma Enabling Act was framed with a clear intent that while the State should control the liquor traffic within its own borders the United States should exercise its appropriate powers to prevent such traffic within the Indian Territory originating beyond the borders of the State. *Ib.*

11. *Same.*

It is unreasonable to suppose that Congress would wipe out all its laws and regulations regarding the liquor traffic with Indians including those established by treaties, and impose upon future Congresses the labor and difficulty of establishing new legislation upon that subject. *Ib.*

12. *Intoxicating liquors; conformity of provisions of Oklahoma Enabling Act with treaties and agreements with Indians.*

Reviewing the treaties and agreements with the several tribes occupying the Indian Territory within that State, it appears that the

provisions of the Oklahoma Enabling Act in regard to liquor traffic with Indians originating beyond the State were enacted with the purpose of fulfilling the spirit and letter of those treaties and agreements. *Ib.*

13. *Intoxicating liquors; effect of Oklahoma Enabling Act to repeal prior law.*

The argument that the act of 1895 must have been repealed by the Oklahoma Enabling Act to the extent that the latter permitted the introduction of liquor into the State for the needs of the state agencies for distribution of liquor, is an argument *ab inconvenienti* and is without force so far as the introduction of liquor by an individual is concerned. *Ib.*

14. *Intoxicating liquors; effect of Oklahoma Enabling Act to repeal legislation relative to; jurisdiction to punish one introducing liquor into Indian country.*

The Oklahoma Enabling Act did not repeal the act of 1895, so far as it pertains to the carrying of liquor from without the new State into that part of it which was Indian Territory (except that brought in by the State for use of state agencies) and the United States District Court for the District of Oklahoma has jurisdiction to punish an offender against the act of 1895 in that respect. *Ib.*

15. *Lands of; title of Union Pacific to right of way across lands in Kansas within Delaware Diminished Indian Reservation.*

Under § 2 of the act of July 1, 1862, 12 Stat. 489, c. 120, and other provisions of that act, the predecessor in title of the Union Pacific Railroad Company acquired a right of way four hundred feet in width across the lands in Kansas, within the Delaware Diminished Indian Reservation, those lands having been assigned in severalty to individual Delawares under the treaty of May 30, 1860, 12 Stat. 1129, providing for such right of way. *Kindred v. Union Pacific R. R. Co.*, 582.

16. *Lands of; right of individual Delaware Indians; quære as to.*

Quære. Whether the individual Delaware Indians, to whom the lands were assigned under the treaty of 1860, obtained a better or different right in them than the tribe had in the lands in common. *Ib.*

17. *Lands of; extinguishment of title; compensation to Indians; quære as to.*

Quære. Whether under § 2 of the act of July, 1862, the United States, in extinguishing the Indian title to lands through which the rail-

roads were given rights of way, is to bear the burden by compensating the Indians, or only by assisting in the negotiations. *Ib.*

18. *Oklahoma Enabling Act; effect on power of Congress over Indians.*

The proviso to § 1 of the Oklahoma Enabling Act expressly reserving to the Government of the United States the power to make laws and regulations in the future respecting Indians, negatives any purpose to repeal by implication the existing laws and regulations on the subject. *Ex parte Webb*, 663.

See CONSTITUTIONAL LAW, 4, 5;
PUBLIC LANDS, 9;
STATUTES, A 9.

INDIAN TERRITORY.

See TERRITORIES.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 4;
INDIANS, 6.

INFRINGEMENT OF PATENT.

See PATENTS.

INJUNCTION.

1. *Against enforcement of order of Interstate Commerce Commission; application of requirements in § 210, Judicial Code.*

The requirements in § 210, Judicial Code, that a restraining order must contain a statement of facts as to irreparable damage resulting from the order of the Commission relate only to the first class of cases. *United States v. Baltimore & Ohio R. R. Co.*, 306.

2. *To restrain enforcement of ordinance fixing rates for telephone company denied.*

In this case the evidence is not sufficient to justify enjoining enforcement of an ordinance fixing rates of a telephone company and the decree granting an injunction is reversed, but without prejudice. *Louisville v. Cumberland T. & T. Co.*, 430.

See APPEAL AND ERROR, 3; JURISDICTION, F 1, 8, 9, 10,
INTERSTATE COMMERCE, 15, 16; 11;
JUDGMENTS AND DECREES, 2-5; PRACTICE AND PROCEDURE, 1.

INSPECTION LAWS.

See CONSTITUTIONAL LAW, 13, 29, 30.

INSTRUCTIONS TO JURY.

Special charges based on part of evidence not obligatory on court.

The trial court is not under obligation to give special charges based on only a part of the evidence. *Seaboard Air Line Ry. v. Duvall*, 477.
See CRIMINAL LAW, 17.

INTERLOCUTORY ORDERS.

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

INTERSTATE COMMERCE.

1. *What constitutes.*

A rate fixed on that part of interstate carriage which includes the actual placing of the shipment into vessels ready to be carried beyond the state destination is, as to merchandise intended for points beyond the State, a burden on interstate commerce and beyond the power of the State to impose, even if the merchandise is billed from a point within the State to the point where the vessel is. *Gulf, Colorado & Santa Fe Railway Co. v. Texas*, 204 U. S. 403, distinguished. *Ohio Railroad Commission v. Worthington*, 101.

2. *What constitutes; how determined.*

Through billing to the point beyond the State is not always necessary to determine that a shipment is interstate. (*Southern Pacific Terminal Co. v. Young*, 219 U. S. 498.) *Ib.*

3. *What constitutes; sales in original packages.*

Sales made in one State to be delivered free on board at a point therein, to be delivered to consumers in another State in the original unbroken packages, freight to be paid by purchaser, constitutes interstate commerce. *Savage v. Jones*, 501.

4. *Discrimination by carrier violative of Elkins Act; agreement to expedite as.*

To agree with a particular shipper to expedite a shipment at regular rates, where no rate has been published for special expediting, is a discrimination and as such a violation of the Elkins Act of February 19, 1903, 32 Stat. 847, c. 708, and relief on the contract will be denied. *Chicago & Alton R. R. Co. v. Kirby*, 155.

5. *Discrimination illegal under Elkins Act; what amounts to.*

To guarantee a particular connection and transportation by a par-

ticular train amounts to giving a preference when not open to all and provided for in the published tariffs, and under the Elkins act is an illegal discrimination. *Ib.*

6. *Discrimination; shipper charged with notice of.*

A shipper is presumed to know what the published rates are, and if they do not contain provisions for the special service guaranteed to him he must be taken as having contracted for a rate discriminatory in his favor. *Ib.*

7. *Discrimination in rates between railroad-fuel and commercial coals.*

An interstate carrier may not charge a different rate for the transportation of railroad-fuel coal to a given point than for the transportation of commercial coal to the same point. It would be an illegal preference or discrimination under § 3 of Act to Regulate Commerce. *Interstate Com. Comm. v. Baltimore & Ohio R. R. Co.*, 326.

8. *Discrimination; railroads may not be favored.*

A railroad company cannot be made a favored shipper and given a lower rate on the same commodity to the same point than other persons. *Ib.*

9. *Discrimination in rates; railroads not to be favored.*

A railroad company is not to be put on the same basis as a locality and entitled to preferential rates to accommodate competitive conditions. *The Import Rate Case*, 162 U. S. 197, distinguished. *Ib.*

10. *Right of carrier to assume extra liability.*

An interstate carrier can assume an extra liability for expediting, provided it makes and publishes a rate therefor and opens it to all. *Chicago & Alton R. R. Co. v. Kirby*, 155.

11. *Sales by receiver of goods in original packages within protection of Constitution.*

Commerce among the States is not a technical legal conception, but a practical one drawn from the course of business. Protection accorded to interstate commerce by the Federal Constitution extends to the sale by the receiver of the goods in the original packages. *Savage v. Jones*, 501.

12. *State interference; what constitutes.*

A rate fixed by the Ohio Railroad Commission for coal from state points to "on board" vessels at the port of Huron, Ohio, and intended for shipment to some point beyond the State undetermined at

time of shipment, and, for convenience, billed to the shippers' own order at Huron, *held* to be a rate affecting interstate shipment and void under the commerce clause of the Constitution as an attempt to regulate interstate commerce. *Ohio Railroad Commission v. Worthington*, 101.

13. *State interference; effect of statute requiring prompt transportation.*

A statute of North Carolina requiring common carriers to transport freight as soon as received to interstate points under penalties for failure, conflicts with the requirements of § 2 of the Hepburn Act and is unenforceable. *Southern Railway Co. v. Burlington Lumber Co.*, 99.

14. *State interference; incidental; effect on validity of repugnance to Federal statute.*

No state statute which even affects incidentally interstate commerce is valid if it is repugnant to the Federal Food and Drugs Act of June 30, 1906, the object of which is to prevent adulteration and misbranding and keep adulterated and misbranded articles out of interstate commerce. *Savage v. Jones*, 501.

15. *State interference; injunction against.*

An order made by a state commission under assumed authority of the State, which directly burdens interstate commerce, will be enjoined. (*McNeill v. Southern Railway Co.*, 202 U. S. 543.) *Ohio Railroad Commission v. Worthington*, 101.

16. *Equitable relief from state interference with.*

An attack by state authorities upon purchasers of goods manufactured in and shipped from another State, inflicts injury upon the manufacturer by reducing the interstate sales, and if this result can only be prevented by complying with illegal demands, under an unconstitutional state statute, equity will grant relief. *Savage v. Jones*, 501.

17. *Tariffs of carriers; power of Commerce Commission in respect to.*

Tariffs are but forms of words, and the Interstate Commerce Commission, in the exercise of its powers to administer the Act to Regulate Commerce, can look beyond the forms to what caused them and what they are intended to, and do, cause. *Interstate Com. Comm. v. Baltimore & Ohio R. R. Co.*, 326.

18. *Purpose of Commerce Act; special contracts prohibited.*

The broad purpose of the Commerce Act to compel the establishment

of reasonable rates and uniform application will not be defeated by sanctioning special contracts giving special advantages to particular shippers. *Chicago & Alton R. R. Co. v. Kirby*, 155.

See CONSTITUTIONAL LAW, 1, 2, 3.

INTERSTATE COMMERCE COMMISSION.

Jurisdiction; quere as to.

Quere; whether transportation under the circumstances of this case is such a transportation within the State or to points without the State, partly by railroad and partly by water, as to be within the jurisdiction and control of the Interstate Commerce Commission.

Ohio Railroad Commission v. Worthington, 101.

See APPEAL AND ERROR, 3; INJUNCTION, 1;
COURTS, 4; INTERSTATE COMMERCE, 17;
JURISDICTION, F.

INTERVENTION.

See JURISDICTION, B 3; H 5.

INTOXICATING LIQUORS.

See INDIANS, 1, 5-14.

JUDGMENTS AND DECREES.

1. *Collateral attack; when not subject to.*

Prior decisions of this court holding that a judgment of a competent court admitting a person to citizenship is, like every other judgment, competent evidence of its own validity, go no further than protecting the judgment from collateral attack. *Johannessen v. United States*, 227.

2. *Enjoining enforcement; power of court of equity over judgment at law.*

In order to warrant a court of equity in restraining the enforcement of a judgment at law, the defeated party must show that it is manifestly unconscionable for the judgment creditor to enforce it; it is not sufficient for him merely to show that because of newly discovered facts or evidence he would have a better prospect of success on a retrial. *Pickford v. Talbott*, 651.

3. *Enjoining enforcement on ground of newly discovered evidence.*

It is incumbent on one seeking to have the enforcement of a judgment against him enjoined by a court of equity on the ground of newly discovered evidence to show that his failure to discover the evi-

dence relied upon as defense was not attributable to his own want of diligence. *Ib.*

4. *Enjoining enforcement; when defense not deemed newly discovered.*

For the purpose of equity restraining the enforcement of a judgment at law, a defense is not deemed to be newly discovered or to have been lost by accident or mistake, if it was, or ought to have been, within the knowledge of the party when he made his defense to the action at law. *Ib.*

5. *Enjoining enforcement; when defense of justification in libel suit not deemed newly discovered.*

A defendant in a libel suit who deliberately abstained from defending by justification of the charges, cannot, after verdict and judgment against him, come into equity and seek to restrain the enforcement of the judgment on the ground of newly discovered evidence tending to prove the truth of the charges. *Ib.*

6. *Foreign; determination of effect of.*

Where a judgment of the court of another State is set up as a bar, the effect of that judgment in the courts of the State which rendered it is a question of fact to be determined by the court in which it is set up. *Bigelow v. Old Dominion Copper Co.*, 111.

7. *Privity of joint tort-feasors.*

The privity that exists between a stockholder and the corporation that makes a judgment against the corporation conclusive as against the stockholder does not exist as between joint *tort-feasors*. *Hancock National Bank v. Farnum*, 176 U. S. 640, distinguished. *Ib.*

See CONSTITUTIONAL LAW, 19-24; HABEAS CORPUS, 3;

FRAUD; INDIANS, 2;

JURISDICTION.

JUDICIAL CODE.

See APPEAL AND ERROR, 3; JURISDICTION, F 1, 5, 10;
INJUNCTION, 1; PRACTICE AND PROCEDURE, 1.

JUDICIAL DISCRETION.

See TRIAL, 1.

JURISDICTION.

A. OF THIS COURT.

1. *Under § 709, Rev. Stat.; record and not certificate must show constitutional question set up and denied.*

To give this court jurisdiction under § 709, Rev. Stat., it must appear

upon the record, and not by certificate of the judge, that a right under the Constitution or laws of the United States was set up and denied. While such a certificate may make more certain the fact that the Federal right was asserted and denied, it is insufficient to confer jurisdiction if the record itself does not show the fact. (*Louisville & Nashville R. R. v. Smith*, 204 U. S. 551.) *Seaboard Air Line Ry. v. Dwall*, 477.

2. *Under § 709, Rev. Stat.; when claim based on Federal statute sufficiently set up.*

The fact that a case in the state court asserts a claim based on a Federal statute, does not give this court jurisdiction to review the judgment under § 709, Rev. Stat., if none of the exceptions are based on the refusal of the court to make a definite construction of the act as requested by the plaintiff in error. *Ib.*

3. *Under § 709, Rev. Stat.; scope of review.*

Where the case comes up under § 709, Rev. Stat., this court is not one of general review. It can reexamine only those rulings which denied Federal rights specially set up. *Ib.*

4. *Under § 709, Rev. Stat., duty of counsel in setting up claim of Federal right.*

It is the duty of counsel asking in the state court for a particular construction of a Federal statute involved in the case to put the request in such definite terms that the record will show that it was a claim of Federal right specially set up as required by § 709 in order to give this court jurisdiction. *Ib.*

5. *Under § 709, Rev. Stat.; when right under Federal statute sufficiently set up.*

Where the only defense to an action for personal injuries by an employé of an interstate railway carrier is contributory negligence on the part of the plaintiff in going into a car in violation of a rule requiring him to remain in another car, no construction of the provision of the Employers' Liability Act that the employé can only recover if injured while employed by the carrier is involved which is reviewable by this court, unless the request is definitely set up as a Federal right specially asserted and denied. *Ib.*

6. *Under § 709, Rev. Stat.; when right under Federal statute sufficiently set up.*

Excepting to a part of the charge by saying that an employé's going

from the baggage car into the express car of a train is such an act that a reasonably prudent man would not have done under the circumstances does not raise specific questions as to the construction of the Employers' Liability Act under which the action was brought and give this court jurisdiction to review under § 709, Rev. Stat. *Ib.*

7. *Of appeal from Circuit Court of Appeals; when judgment of that court not final.*

Where the petition of the receiver, appointed in a case dependent on diverse citizenship, invokes the jurisdiction of the Circuit Court not only as ancillary to the receivership but also to protect the estate on grounds involving alleged infractions of the Federal Constitution and rights secured thereby, the case is not one in which the judgment of the Circuit Court of Appeals is made final by the act of 1891, and an appeal lies to this court where the amount in controversy exceeds one thousand dollars. *Ohio Railroad Commission v. Worthington*, 101.

8. *Of appeal from Circuit Court of Appeals; time for taking.*

Where the jurisdiction of the Circuit Court is invoked not solely on the ground of diverse citizenship but also because the case is one arising under an act of Congress, an appeal lies from the Circuit Court of Appeals to this court, and by § 6 of the act of 1891 the time within which to take the appeal is one year; the limitation of thirty days under § 7 applies only to appeals to the Circuit Court of Appeals from the Circuit Court. *United States Fidelity Co. v. Bray*, 205.

9. *Of direct appeal from Circuit Court; effect of dismissal of bill for failure to prove existence of property.*

Where the jurisdiction of the Circuit Court is dependent, under § 8 of the act of 1875, upon property affected being within the jurisdiction, the defendants not being therein, the fact that the bill was dismissed because complainants failed to prove the existence of any property within the jurisdiction does not affect the right of a direct appeal to this court under § 5 of the act of 1891. *Chase v. Wetzel*, 79.

10. *Of direct appeal from Circuit Court; jurisdictional and constitutional questions involved.*

In this case *held*, that the Circuit Court in taking jurisdiction and deciding the cause on the merits, notwithstanding there was a partial demurrer to the jurisdiction, maintained its power and jurisdiction as a Circuit Court, and also necessarily decided questions arising

under the Constitution expressly alleged in the bill. *Mississippi Railroad Commission v. Louisville & Nashville R. R. Co.*, 272.

11. *Of direct appeal under § 5 of act of 1891; phase of jurisdiction of Federal court to give.*

Under § 5 of the act of 1891, the jurisdiction of the Federal court as such must be involved. The direct writ will not lie if the question is one which might arise in a court of general jurisdiction, such as insufficiency of the pleadings. *Darnell v. Illinois Central R. R. Co.*, 243.

12. *Of direct appeal under § 5 of act of 1891; when necessary question of jurisdiction of Federal court involved.*

Whether plaintiff's declaration in a case for reparation for excessive rates is sufficient without an averment of previous action by the Interstate Commerce Commission is a question which would arise in any court, state or Federal, in which the case was brought and does not go to the jurisdiction of the Federal court as such; a direct writ of error therefore will not lie from this court under § 5 of the Court of Appeals Act of 1891. *Ib.*

13. *Under Judiciary Act of 1891; effect of saving clause of act of June 7, 1878.*

Under the saving clause of the act of June 7, 1878, 20 Stat. 99, c. 160, the review of the order in this case was not provided for by the Judiciary Act of 1891. *Kyle v. Hammond*, 692.

14. *To review judgment of state court under § 709, Rev. Stat.; § 237, Judicial Code.*

Where defendant sets up the claim that it enjoys right or privilege sought to be enjoined under authority of an act of Congress and the state court denies the right, the judgment is reviewable here under § 237 of the new Judicial Code (§ 709, Rev. Stat.). *Creswill v. Knights of Pythias*, 246.

15. *Of suit attacking constitutionality of state statute where general demurrer for want of equity sustained.*

Where appellant, as complainant below, attacked as unconstitutional a state statute under which the sale of his product was interfered with by the state officer enforcing the statute, and a general demurrer for want of equity is sustained, this court has jurisdiction of the appeal; nor will the appeal be dismissed because the bill in one of its allegations asserted that complainant's product was not one of those specified in the act, if, as in this case, the bill also

alleged that the proper state officer had construed the statute as applicable thereto. *Savage v. Jones*, 501.

See APPEAL AND ERROR.

B. OF CIRCUIT COURTS OF APPEALS.

1. *Effect of right of direct appeal to this court.*

Where the case can be taken to the Circuit Court of Appeals, the fact that it involves grounds that warrant a direct appeal to this court does not deprive the Circuit Court of Appeals of jurisdiction. *Ohio Railroad Commission v. Worthington*, 101.

2. *Of appeals from interlocutory decrees of Circuit Court.*

Section 7 of the Court of Appeals Act of 1891, as amended April 14, 1906, 34 Stat. 116, c. 2627, provides for an appeal to the Circuit Court of Appeals from certain interlocutory decrees of the Circuit Court, and in this respect establishes an exception to the general rule in Federal courts that an appeal lies only from a final decree. *United States Fidelity Co. v. Bray*, 205.

3. *Intervention; finality of decree.*

Where a petition of intervention is entertained and disposed of in virtue of jurisdiction already invoked, if the decree of the Circuit Court of Appeals is final in respect of the original suit, it is equally so in respect of the intervention. *Shulthis v. McDougal*, 561.

4. *Finality of judgment in case involving conflicting claims to allotted lands in Creek Nation.*

In this case *held*, that as the jurisdiction of the Circuit Court depended solely upon diverse citizenship, the judgment of the Circuit Court of Appeals was final; and, notwithstanding the case involved conflicting claims to allotted lands in the Creek Nation, it was not one arising under the laws of the United States. *Ib.*

C. OF CIRCUIT COURTS.

1. *Over bankruptcy matters.*

The Circuit Court cannot entertain a bill in equity which invokes a reconsideration of the referee's order allowing claims as preferred and of determinations of the bankruptcy court as to rights of holders of claims and as to charges that the trustee was speculating in claims; those matters are for the bankruptcy court and fall within its exclusive jurisdiction; nor can it surrender its control thereover or confide them to another tribunal. *United States Fidelity Co. v. Bray*, 205.

2. *Over bankruptcy matters.*

A bill in equity attempting to seek an adjudication on matters within the exclusive jurisdiction of the bankruptcy court cannot be sustained as to matters dependent upon the principal matters alleged and which could not have been made the subject of a separate bill within the jurisdiction of that Circuit Court. *Ib.*

3. *Under § 8 of act of March 3, 1875; existence of property; burden of proof as to.*

The burden of proof as to the existence of property to be affected by the decree within the jurisdiction of the Circuit Court in order to give it jurisdiction under § 8 of the act of March 3, 1875, c. 137, 18 Stat. 472, is on the complainant. *Chase v. Wetzlar*, 79.

4. *Burden of proof of fact essential to jurisdiction.*

While averments of some jurisdictional facts may *prima facie* be taken as true where the questions do not address themselves to want of all foundation of jurisdiction, and in such cases the burden is on the one assailing sufficiency or verity, the burden of proving an averment of a fact absolutely necessary to the exertion of the power of the court to render a binding decree is on the party pleading. *Ib.*

5. *Basis of jurisdiction under act of 1875.*

The jurisdiction conferred by § 8 of the act of 1875 rests upon a real and not an imaginary or constructive basis. *Ib.*

6. *Of suit against absent executor; existence of property essential.*

The Circuit Court does not have jurisdiction of a suit against an absent executor in the State where the will was probated, unless the property to be affected by the decree is actually within the jurisdiction of the court. *Ib.*

7. *Of suit against absent executor; effect of jurisdiction by state court.*

The fact that the state court might by virtue of its authority in a particular contingency exert jurisdiction over an absent executor of a will probated in the courts of that State as to the disposition of property beyond its territorial jurisdiction does not clothe a Circuit Court of the United States with jurisdiction under § 8 of the act of 1875. *Ib.*

D. OF DISTRICT COURTS.

See INDIANS, 6, 14.

E. OF BANKRUPTCY COURTS.

See BANKRUPTCY, 10;
JURISDICTION, C 1, 2.

F. OF COMMERCE COURT.

1. *Under § 207, Judicial Code; complaints as to orders of Interstate Commerce Commission.*

Subdivision 2 of § 1 of the act creating the Commerce Court, now § 207 of the new Judicial Code, giving the Commerce Court jurisdiction of cases brought to enjoin, set aside, annul or suspend orders of the Interstate Commerce Commission, confers on that court jurisdiction only to entertain complaints as to affirmative orders of the Commission. *Procter & Gamble v. United States*, 282; *Hooker v. Knapp*, 302.

2. *Complaints not within.*

Under the act, the Commerce Court is not given jurisdiction to redress complaints based exclusively, as in this case, on the ground that the Commission has refused the relief asked on the ground that it could not award it. *Ib.*

3. *Interpretation of administrative features of Interstate Commerce Act not within.*

To construe the act creating the Commerce Court so as to give it jurisdiction to originally interpret the administrative features of the Interstate Commerce Act and to construe a refusal of the Commission to grant relief as an affirmative order would frustrate the legislative policy which led to the adoption of the act and would multiply the evils which it was designed to prevent. *Ib.*

4. *Over orders of Interstate Commerce Commission; limitation of.*

The act creating the Commerce Court was intended to be a part of the existing system for regulating interstate commerce. While originally the duty of determining whether an order of the Commission should be enforced carried with it the obligation to consider both the facts and the law, it had come to pass prior to the adoption of the act creating the Commerce Court that the jurisdiction of courts over orders of the Commission is confined to determining whether they were in violation of the Constitution or failed to conform to statutory authority, and to ascertaining whether power had been arbitrarily exercised beyond the power conferred. *Ib.*

5. *Independent claim of constitutional right denied by Interstate Commerce Commission not within.*

Under the express reservation in the last paragraph of § 207, Judicial Code, a claim that a constitutional right asserted in a petition to the Interstate Commerce Commission has been denied by that body, if independent of all questions of rights and remedies under the Interstate Commerce Act, is beyond the jurisdiction of the Commerce Court. *Ib.*

6. *When constitutional question is dependent upon provisions of Interstate Commerce Act.*

Where the constitutional question is dependent upon provisions of the Interstate Commerce Act, it is subject to the precedent action of the Commission, as to which the Commerce Court only has jurisdiction in case of a prior affirmative order of the Commission. *Ib.*

7. *Claims not within.*

The Commerce Court has no jurisdiction over a claim made by the owner of private cars to recover on a money demand based on the illegality of charges alleged to have been wrongfully exacted by the railroad companies and which the Commission had refused to allow. *Ib.*

8. *To restrain order of Interstate Commerce Commission and determine its enforceability.*

The Commerce Court has jurisdiction of a petition of a carrier to restrain an affirmative order of the Interstate Commerce Commission that it desist from paying allowances for lighterage to one shipper unless it pays the same to other shippers, and also has power to determine whether such order was entitled to be enforced. *United States v. Baltimore & Ohio R. R. Co.*, 306.

9. *To allow preliminary injunction against enforcement of order of Commission.*

The Commerce Court has power to allow a preliminary injunction against the enforcement of an order of the Interstate Commerce Commission directing the carrier to desist from paying allowances for lighterage. *Ib.*

10. *To enjoin enforcement of orders of Commerce Commission.*

Under § 210 of the Judicial Code, injunction orders can be issued by the Commerce Court restraining the enforcement of an order of the Interstate Commerce Commission in the following classes of cases: First. A temporary restraining order staying in whole or in part

the operation of the order for not more than sixty days to be allowed by the court or a judge thereof.

Second. A preliminary injunction to restrain or suspend in whole or in part the operation of the Commission's order *pendente lite* to be granted by the court.

Third. A perpetual injunction upon entry of final decree. *Ib.*

11. *To enjoin pendente lite order of Commerce Commission.*

In this case, *held*, that there was no abuse of power in issuing the order for an injunction *pendente lite* and the order is affirmed and the case remanded so that there may be opportunity to dispose of it in the forum selected by Congress for that purpose. *Ib.*

See PRACTICE AND PROCEDURE, 1.

G. OF INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

H. OF FEDERAL COURTS GENERALLY.

1. *Determination of grounds of jurisdiction.*

Whether jurisdiction depends alone on diverse citizenship or on other grounds as well, must be determined from complainant's own statement in the bill of his cause of action, regardless of what may be brought into the suit by answer or in subsequent proceedings. *Shulthis v. McDougal*, 561.

2. *Same.*

Jurisdiction of the Federal court can only rest on grounds distinctly and affirmatively set forth; grounds of jurisdiction, other than those of diverse citizenship alleged, cannot be inferred argumentatively from statements in the bill. *Ib.*

3. *Where controversy might have arisen under laws of United States.*

The fact that the controversy might have arisen under the laws of the United States does not give the Federal court jurisdiction, if the bill does not allege the facts in that particular, and the controversy might have arisen in another way independent of those laws. *Ib.*

4. *Of suit on contract by foreign corporation not complying with statutes of State where contract made.*

Where the contract of a corporation of one State not complying with the statutes of another State where the contract is made, is not void, the corporation can maintain its action, if jurisdiction otherwise exists, in the Federal courts. *David Lupton's Sons v. Automobile Club*, 489.

5. *In cases of intervention in foreclosure suits and in original proceedings to protect exercise of jurisdiction.*

In cases of intervention in foreclosure suits, where jurisdiction depends upon diverse citizenship, jurisdiction of the intervening petition is determined by that of the original case, but petitions in original proceedings to enforce rights and protect the exercise of the jurisdiction of the court take their jurisdiction from that of the original case. (*St. Louis, K. C. & C. R. R. Co. v. Wabash R. R. Co.*, 217 U. S. 247.) *Ohio Railroad Commission v. Worthington*, 101.

I. GENERALLY.

See CORPORATIONS;

CRIMINAL LAW, 12;

FEDERAL QUESTION.

JURY AND JURORS.

Objections to drawing; when available.

An objection that the jury was not lawfully drawn must be availed of at the trial; it cannot, under § 919 of the District Code, be made the basis for setting aside the verdict on appeal. *Johnson v. United States*, 405.

See COMMON LAW;

CONSTITUTIONAL LAW, 7, 8;

CRIMINAL LAW, 21;

EVIDENCE;

NEGLIGENCE, 2, 3;

PLEADING, 2.

LACHES.

See EQUITY, 1;

TRADE-NAME, 2.

LAND GRANTS.

See INDIANS, 15;

PUBLIC LANDS.

LANDLORD AND TENANT.

See BANKRUPTCY, 2, 3, 4;

LOCAL LAW (PORTO RICO).

LAW GOVERNING.

See ALIENS, 2;

CONSTITUTIONAL LAW, 20;

CRIMINAL LAW, 23-25, 30.

LAW OF THE CASE.

See RES JUDICATA.

LEASE.

See LIENS.

LIBEL AND SLANDER.

See JUDGMENTS AND DECREES, 5.

LIENS.

Superiority of lien of attaching creditor of tenant on machinery placed on leased property.

In this case, *held* that the lien of the attachment of a creditor of the tenant on machinery placed by the tenant on a sugar Central in Porto Rico is superior to the claim of the transferee of an unrecorded lease, even though the lease required the tenant to place the machinery on the property. *Valdes v. Central Altagracia*, 58.

See BANKRUPTCY, 1-4, 11.

LIMITATION OF ACTIONS.

See CRIMINAL LAW, 6, 8, 9, 14, 15.

LIQUORS.

See INDIANS, 1, 5-14.

LOCAL LAW.

California. Pilotage; Political Code, §§ 2468, 2466, 2432 (see Pilotage, 5). *Anderson v. Pacific Coast S. S. Co.*, 187.

Ordinance of South Pasadena regulating billiard halls (see Constitutional Law, 15). *Murphy v. California*, 623.

District of Columbia. Drawing jury; § 919 of Code (see Jury and Jurors). *Johnson v. United States*, 405.

Georgia. Landlord and tenant; landlord's lien (see Bankruptcy, 2, 4). *Henderson v. Mayer*, 631.

Indiana. Regulation of sales of food for stock (see Constitutional Law, 3, 11). *Savage v. Jones*, 501.

Iowa. Regulation of sales of concentrated commercial feeding stuffs (see Constitutional Law, 13). *Standard Stock Food Co. v. Wright*, 540.

Massachusetts. Practice regarding determination of mental capacity of jurors (see Common Law). *Jordan v. Massachusetts*, 167.

New York. *General Corporation Law; validity of contracts of foreign corporations.* As construed by the Court of Appeals of that State, § 15 of the General Corporation Law of New York does not make contracts of a foreign corporation which has not complied with its provisions absolutely void, but merely disables the corporation from suing thereon in the courts of the State. *David Lupton's Sons v. Automobile Club*, 489.

North Carolina. Transportation of freight by common carriers (see Interstate Commerce, 13). *Southern Ry. Co. v. Burlington Lumber Co.*, 99.

Porto Rico. *Landlord and tenant; immobilization of property.* Under the general law of Porto Rico, machinery on property by a tenant does not become immobilized; when, however, a tenant places it there pursuant to contract that it shall belong to the owner, it becomes immobilized as to that tenant and his assigns with notice, although it does not become so as to creditors not having legal notice of the lease. *Valdes v. Central Altagracia*, 58.

Virginia. Tolls and toll-roads (see Constitutional Law, 9). *Norfolk Turnpike Co. v. Virginia*, 264.

MAILS.

1. *Carriage; regulation demanded by public policy.*

Public policy requires that the mail be carried subject to postal regulations, and that the Department and not the railroad shall, in the absence of contract, determine what service is needed and the conditions under which it shall be performed. *Atchison, T. & S. F. Ry. Co. v. United States*, 640.

2. *Carriers of; regulations to which subject.*

A railroad company, not required so to do by its charter, is not bound to furnish postal cars of the kind demanded or to accept terms named by the Postmaster General, but if it does carry the mail, it does so as an agency of the Government and subject to the laws and the regulations of the Department. *Ib.*

3. *Railroads; right to extra compensation when employing unauthorized car.*

A railroad company cannot, by using a larger railway postal car than that authorized by the Department, recover the greater value of the car. *Ib.*

4. *Postmaster General; power in respect of establishment of postal lines.*
The Postmaster General can establish full railway postal lines, and as the greater includes the less, he can also establish half lines; he can abolish between two points a full line in one direction and a half line in the other. *Ib.*

MANDATE.

See COURTS, 3;

PRACTICE AND PROCEDURE, 6.

MARITIME LAW.

See ADMIRALTY;

PILOTAGE.

MARRIAGE.

See ALIENS, 2, 3, 4.

MARRIED WOMEN.

See ALIENS, 2, 3, 4;

IMMIGRATION, 5.

MARYLAND.

See BOUNDARIES.

MASTER AND SERVANT.

See CRIMINAL LAW, 9.

MORTGAGES AND DEEDS OF TRUST.

See BANKRUPTCY, 1.

MURDER.

See CRIMINAL LAW, 24, 30.

NATURALIZATION.

1. *Certificate of citizenship; power of Congress to authorize proceeding to attack.*

Congress may authorize direct proceedings to attack certificates of

citizenship on the ground of fraud and illegality; and § 15 of the act of June 29, 1906, 34 Stat. 596, 601, c. 3592, providing for such cases, is a valid exercise of the power of Congress under Art. I, § 8 of the Constitution of the United States. *Johannessen v. United States*, 227.

2. *Certificate of citizenship; conclusiveness of.*

The foundation of the doctrine of *res judicata* or estoppel by judgment is that both parties have had their day in court, *Southern Pacific R. R. Co. v. United States*, 168 U. S. 1, 48; and where a certificate of naturalization was issued without the Government appearing there is no estoppel against it, nor is such a certificate conclusive against the public. *Ib.*

3. *Certificates; annulment for fraud.*

Certificates of naturalization, like patents for land or inventions, when issued *ex parte* can be annulled for fraud. *Ib.*

4. *Certificates; judicial review; how conducted.*

How the judicial review of a certificate of naturalization should be conducted rests in legislative discretion. *Ib.*

5. *Certificates; conclusiveness of; quære as to.*

Quære as to the conclusive effect of a certificate of naturalization issued after appearance and cross-examination by the Government. *Ib.*

6. *Certificates; power of court of equity in respect of; quære as to.*

Quære: Whether, in the absence of statute such as the act of June 29, 1906, a court of equity could set aside, or restrain the use of, a certificate of naturalization. *Ib.*

7. *Concellation of certificate; nature of act providing for.*

An alien has no legal or moral right to retain citizenship obtained solely by fraud, and an act permitting the cancellation of a certificate so obtained is not a punishment but simply nullifies that which the party had no right to. *Ib.*

See ALIENS, 2, 3, 4;

CONSTITUTIONAL LAW, 25;

JUDGMENTS AND DECREES, 1.

NEGLIGENCE.

1. *Railroad crossings; care exacted of one going upon or over.*

The law requires of one going upon or over a railroad crossing the

exercise of such care for his own protection as a reasonably prudent person ordinarily would take in the same or like circumstances, including the use of his faculties of sight and hearing. *Flannelly v. Delaware & Hudson Co.*, 597.

2. *Railroad crossings; care in use; when question for jury.*

Whether such care has been exercised is generally a question of fact for the jury, especially if the evidence be conflicting or such that different inferences may reasonably be drawn from it. *Ib.*

3. *Railroad crossings; when question of negligence in use of, one for jury.*

In this case, *held* that the evidence on the question of contributory negligence of a woman crossing a dangerous railroad crossing was properly submitted to the jury, and that there was evidence from which the jury could well have found, as they did, that she was not negligent. *Ib.*

See ACTIONS;

JURISDICTION, A 5, 6.

OBJECTIONS.

See PRACTICE AND PROCEDURE, 7.

OFFENSES.

See CRIMINAL LAW.

OKLAHOMA ENABLING ACT.

See INDIANS, 8, 9, 10, 12, 13, 14, 18.

ONUS PROBANDI.

See FRAUD;

JURISDICTION, C 3, 4;

PATENTS, 3, 5, 10.

ORDINANCES.

See CONSTITUTIONAL LAW, 14-17;

INJUNCTION, 2.

ORIGINAL PACKAGES.

See INTERSTATE COMMERCE, 3.

PARTIES.

Want of necessary party; when motion to dismiss for, will not prevail; appearance of State affecting.

Although a State may not be named as a party in the original proceed-

ing, if it was really begun and prosecuted on its behalf and the State is named in all the papers on appeal and the State's attorney appears in this court generally, even if inadvertently, a motion to dismiss on the ground that the State is not a party will not prevail. *Norfolk Turnpike Co. v. Virginia*, 264.

See PRACTICE AND PROCEDURE, 9-12.

PATENTS.

1. *Infringement; patentee's right of recovery.*

Where the infringer has sold or used a patented article, the patentee is entitled to recover all of the profits. *Westinghouse Co. v. Wagner Mfg. Co.*, 604.

2. *Infringement; right of recovery where patent uses old elements.*

Where a patent, though using old elements, gives the entire value to the combination, the patentee is entitled to recover from an infringer all the profits. *Ib.*

3. *Infringement; liability for; burden on infringer.*

Where profits are made by using an article patented as an entirety, the infringer is liable for all the profits, unless he can show, and the burden is on him, that the profits are partly the result of some other things used by him. (*Elizabeth v. Pavement Co.*, 97 U. S. 126.) *Ib.*

4. *Infringement; recovery for, where patent creates only part of profits derived.*

Where the patent admittedly creates only a part of the profits, the patentee is only entitled to that part and he must apportion the infringer's profits and show by reliable and satisfactory evidence either what part of the profits are attributable to his patent or that the entire value of the infringing article is attributable to his patent. (*Garretson v. Clark*, 111 U. S. 120.) *Ib.*

5. *Infringement; burden of showing profits from.*

Congress has legislated, Rev. Stat., § 4921, with a view to affording the patentee ample redress against the infringer, but the general rule of law that the burden is on the one suing for profits to show that they had been made applies. *Ib.*

6. *Infringement; estoppel to deny value of patent infringed.*

The patent itself is evidence of the utility of the claim and an infringer is estopped from denying that it is of value. *Ib.*

7. *Infringement; burden to apportion profits where other elements contribute.*

Where the plaintiff patentee shows that profits have been made by the use of his patent, but defendant proves that there were other elements contributing to the profits, it then devolves upon the plaintiff to apportion the amount of profits attributable to the use of his patent. *Ib.*

8. *Infringement; when patentee entitled to all profits though other elements contribute.*

Where the infringer, however, by commingling the elements renders it impossible for the patentee to meet the requirement of apportionment, the entire inseparable profit must be given to the patentee. In such a case, as in that of a trustee *ex maleficio* confusing gains, the loss should fall on the guilty and not on the innocent. *Ib.*

9. *Infringement; when patentee entitled to all profits though other elements contribute.*

This rule applies even if the patented device infringed did not preponderate the creation of profits. The owner of a small part of a fund is equally entitled to protection as the owner of a larger share. *Ib.*

10. *Infringement; burden of proof as to source of profits.*

While the rule applied may ultimately shift the burden so as to cast it on the defendant, it is justly cast upon one who should bear it, as he wrought the confusion. *Ib.*

PATENTS FOR LAND.

See PUBLIC LANDS, 15.

PENAL STATUTES.

See STATUTES, A 4.

PILOTAGE.

1. *State regulation of.*

When the Federal Constitution was adopted each State had its own pilotage regulations. *Anderson v. Pacific Coast S. S. Co.*, 187.

2. *State laws as regulations of commerce; power to enforce.*

State pilotage laws are regulations of commerce, but they fall within that class of powers which may be exercised by the States until Congress shall see fit to act. *Ib.*

3. *Federal laws concerning.*

The provisions of former Federal statutes relating to pilotage were incorporated in §§ 4401 and 4444, Rev. Stat., which are still in force. *Ib.*

4. *Conflict of state and Federal laws; liability of vessels for pilotage fees under state laws.*

Distinctions between registered and enrolled vessels and history of statutes relating to state pilotage of registered and coastwise vessels reviewed and *held* that:

Coastwise sea-going vessels sailing under register and having officers with Federal pilot's licenses are not free from liability for pilotage fees under state laws, by virtue of § 51 of the act of February 28, 1871, 16 Stat. 440, c. 100, as reënacted in §§ 4401 and 4444, Rev. Stat.

There are no provisions in Title 52 of the Revised Statutes which may be construed as exempting coastwise sea-going vessels sailing under register, whose officers have Federal pilot's licenses, from liability for pilotage fees under state laws, under the rule of construction laid down in the last sentence of § 51 of the act of February 28, 1871.

Congress did not intend to classify with the coastwise vessels referred to in the last proviso of § 51 of the act of February 28, 1871, as reënacted in § 4444, Rev. Stat., registered steam vessels engaged in commerce with both foreign and domestic ports on the same voyage.

The wisdom of establishing Federal rules as to port pilotage for such registered vessels now exempted is a question for Congress to determine. *Ib.*

5. *State laws; liability of American steam vessels to; effect of stoppage at foreign ports.*

In this case *held* that American registered steam vessels sailing from San Francisco clearing for final destination to American ports and return, but stopping at foreign ports en route for less than ten per cent of the traffic, are subject on entering and leaving the port of San Francisco to the state pilotage laws of California as contained in §§ 2468, 2466 and 2432 of the Political Code of that State. *Ib.*

PLACE OF CRIME.

See CRIMINAL LAW, 27, 28.

PLACE OF TRIAL.

See CRIMINAL LAW, 11, 12, 13, 22, 28.

PLEADING.

1. *Demurrer; sufficiency of case made by facts admitted.*

When a case is decided upon demurrer the question is whether a case was made upon those allegations which are well pleaded and not upon those that are mere conclusions of law. *Low Wah Suey v. Backus*, 460.

2. *Pleas in abatement based on irregularities in impanelling grand jury; exactness required.*

Pleas in abatement on account of irregularities in selecting and impaneling the grand jury which do not relate to the competency of individual jurors must be pleaded with strict exactness and at the first opportunity. (*Agnew v. United States*, 165 U. S. 36.) *Hyde v. United States*, 347.

POLICE POWER.

See CONFLICT OF LAWS, 2;

CONSTITUTIONAL LAW, 2, 11, 12, 15, 17, 26, 27, 28.

POSTAL LINES.

See MAILS, 4.

POSTMASTER GENERAL.

See MAILS, 2, 4.

POST-OFFICE DEPARTMENT.

See MAILS.

POWERS OF CONGRESS.

See CONSTITUTIONAL LAW, 4, 5;

IMMIGRATION, 3;

NATURALIZATION, 1;

STATES, 1, 2.

PRACTICE AND PROCEDURE.

1. *Equitable principles not applied to statutory court where effect would be to nullify intention of Congress.*

This court will not apply to the construction of the equity powers of a statutory court, general principles of equity, if the effect would be to destroy the law creating the court by expunging therefrom the very powers which Congress intended to grant; and so held that the power given by § 210, Judicial Code, to the Commerce Court to

issue an injunction *pendente lite* was to enable that court to have proper time for consideration, and the right of appeal to this court was given as a safeguard against a possible abuse of the power to issue the order; and the order will not be reversed in the absence of such abuse. *United States v. Baltimore & Ohio R. R. Co.*, 306.

2. *Evidence required for court to declare statute regulating rates unconstitutional.*

This court requires clear evidence before it will declare legislation, otherwise valid, to be void as an unconstitutional taking of property by reason of establishing rates that are confiscatory. *Louisville v. Cumberland T. & T. Co.*, 430.

3. *Facts; when reviewed on writ of error to state court.*

While this court does not as a general rule review findings of fact of the state court on writ of error, where a Federal right has been denied as a result of a finding of fact and it is contended there is no evidence to support that finding and the evidence is in the record, the resulting question is open for decision; and where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to require the facts to be analyzed and dissected so as to pass on the Federal question this court has power to do so. *Creswill v. Knights of Pythias*, 246.

4. *Facts found by referee conclusive; exceptions to refusal of referee to find facts not reviewable.*

Where the trial in the Circuit Court is before a referee by stipulation, the only question here is whether there is any error of law in the judgment rendered by the court upon the facts found by the referee. These findings are conclusive in this court. Nor can this court pass upon exceptions to the refusal of the referee to find facts as requested. *David Lupton's Sons v. Automobile Club*, 489.

5. *Facts found by referee; judgment on.*

Judgment ordered for plaintiff for amount fixed by referee's findings of fact. *Ib.*

6. *Mandate on reversal where questions left open in lower court.*

Where on reversal, a decree for appellant would deprive appellee of the right to ruling on exceptions taken by him to the master's report which were not passed on by the court, and it appears that other questions of law were not passed on below, and also that material evidence was omitted, the case will be remanded with power to hear and determine on new testimony and for further proceedings

not inconsistent with the opinion. *Westinghouse Co. v. Wagner Mfg. Co.*, 604.

7. *Objections to evidence not considered when record silent as to nature of testimony.*

This court cannot pass on an objection that hearsay evidence was received and not communicated to the alien where the record does not disclose the nature of the testimony. *Low Wah Suey v. Backus*, 460.

8. *As to declaring rules of executive officers unduly arbitrary.*

This court is not prepared to declare the rules of the Secretary of Commerce and Labor in regard to proceedings for deportation of aliens to be so arbitrary as to deprive the alien of a fair hearing and beyond the power of the Secretary to make under the authority given by the statute. The statute expressly provides for a summary hearing. *Ib.*

9. *Who may attack constitutionality of state statute.*

One whose sales are so large as to require stamps far in excess of the minimum amount to be issued is not prejudiced by the requirement to purchase such minimum amount of stamps. *Savage v. Jones*, 501.

10. *Who may attack constitutionality of state statute.*

One attacking a state statute as unconstitutional must show that he is within the class whose constitutional rights are invaded, and one admittedly doing a large business cannot be heard on the plea that the act discriminates against those doing a small business. *Standard Stock Food Co. v. Wright*, 540.

11. *Who may be heard to complain; right of one to complain of operation of known police power.*

One cannot be heard to complain of his money loss by reason of the legislating out of existence of a business in which he had invested and which is not protected by the Federal or state constitution and which he knew was subject to police regulation or prohibition. *Murphy v. California*, 623.

12. *Who may be heard to complain of unequal protection of the law.*

One who does not keep a hotel with less than the specified number of rooms, cannot be heard to complain that a statute denies the owners of the smaller hotels the equal protection of the laws, it not

appearing that the provision was inserted for purposes of evasion or that the ordinance was unequally enforced. *Ib.*

See APPEAL AND ERROR, 1, 5, 6; CONFLICT OF LAWS;
COMMON LAW; STATES, 6.

PREFERENCES.

See BANKRUPTCY;
INTERSTATE COMMERCE, 4-9.

PRESUMPTIONS.

See CONFLICT OF LAWS, 2;
FRAUD;
STATUTES, A 10.

PRIVITY OF PARTIES.

See CONSTITUTIONAL LAW, 19;
JUDGMENTS AND DECREES, 7.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 9-15.

PROSTITUTES.

See IMMIGRATION, 5.

PUBLIC LANDS.

1. *Assigns within meaning of § 2 of act of June 16, 1880.*

An assign within the meaning of § 2 of the act of June 16, 1880, 21 Stat. 287, c. 244, is one who becomes invested with the entryman's right in the land through the voluntary act of the latter. *United States v. Colorado Anthracite Co.*, 219.

2. *Assign within meaning of act of 1880; recovery of purchase price.*

One for whom an entryman initiates and obtains an allowance for an entry, and to whom the entryman gives a quitclaim deed is an assign within the meaning of § 2 of the act of June 16, 1880, and entitled to recover the purchase price if the entry cannot be confirmed, provided the arrangement was not forbidden by law. *Ib.*

3. *Coal lands; administration of act of June 16, 1880.*

Equity usually looks upon that as done which ought to have been done. The act of June 16, 1880, proceeds upon equitable principles and should be administered accordingly. *Ib.*

4. *Coal lands; construction of act of 1880; return of money erroneously paid.*

A remedial statute, such as § 2 of the act of June 16, 1880, should be interpreted with appropriate regard to the spirit which prompted it; and that act is therefore construed so as to return money erroneously paid for an entry that cannot be confirmed to the party entitled to receive it. *Ib.*

5. *Coal lands; right of one to enter for another.*

Under §§ 2347-2352, Rev. Stat., providing for coal-land entries, one cannot enter for another who has had the full benefit of the law; but, in the absence of evasion of restrictions as to quantity, there is no prohibition, express or implied, against an entry by a qualified person for the benefit of another person fully qualified to make the entry in his, or, if a corporation, in its, own name. *Ib.*

6. *Coal lands; corporation as association of persons.*

A corporation is an association of persons within the meaning of the coal-land entry provisions of §§ 2347-2352, Rev. Stat. *Ib.*

7. *Coal lands; legality of entry by one for another; effect of false affidavit.*

Where it does not appear that a corporation had previously entered its full amount of coal lands under §§ 2347-2352, Rev. Stat., an entry made on its behalf by a qualified entryman is not illegal; and an affidavit that the latter was not making the entry for another, the falsity of which is disclosed on a contest, becomes harmless and does not affect the right of the entryman or his assign to recover the price paid under § 2 of the act of June 16, 1880. *Ib.*

8. *Fraudulent entries; assigns not entitled to recover purchase price under § 2 of act of 1880.*

Under § 2 of the act of June 16, 1880, the assign of an entryman cannot recover the purchase price paid if there was any fraud practiced by it in connection with the entry; an entry fraudulently obtained is not one erroneously allowed. *Ib.*

9. *Indian lands as.*

While the phrase "public lands" is a term ordinarily used to designate lands subject to sale under general laws, it is sometimes used in a larger sense, and as used in § 2 of the act of July, 1862, it includes lands within Indian reservations. Congress so intended and such has been the construction placed on the words by the Interior Department. *Kindred v. Union Pacific R. R. Co.*, 582.

10. *Railroad grants; effect of act of March 3, 1875, as grant in præsentî.*

The act of March 3, 1875, 18 Stat. 482, c. 152, granting rights of way and station grounds for railroads through the public lands was a grant *in præsentî* of lands to be thereafter identified. (*Railroad Co. v. Jones*, 177 U. S. 125.) *Stalker v. Oregon Short Line*, 142.

11. *Railroad grants; evidence of appropriation.*

The right of way becomes definitely located by actual construction, which is unmistakable evidence and notice of appropriation. *Ib.*

12. *Railroad grants; approval of selection; relation; rights of entryman under claim initiated pending approval.*

A selection and location of station grounds under the act of March 3, 1875, filed with the Secretary of the Interior after construction of the railroad, is subject to approval by the Secretary, but the approval relates back to the date of filing and thereupon the selection becomes superior to the intervening claim of an entryman initiated while the selection was pending approval. *Northern Pacific R. R. Co. v. Doughty*, 208 U. S. 251, where the station grounds selection was made prior to actual construction of the railroad, distinguished. *Ib.*

13. *Railroad grants; construction of act of March 3, 1875.*

The construction now given to the act of March 3, 1875, is in accordance with the settled practice of the Land Department; any other construction would defeat the purpose of Congress in regard to encouraging the building of railroads through the public lands. *Ib.*

14. *Railroad grants; effect of failure of subordinate of Land Department to perform duty.*

The failure of a subordinate of the Land Department to comply with the regulations of the department and note selections properly made by a railroad company cannot affect the rights of the company and permit the entry of the land pending approval of the selections by the Secretary. (*Van Wyck v. Knevals*, 106 U. S. 360.) *Ib.*

15. *Railroad grants; right of entryman under patent issued in violation of law.*

A patent, issued to an entryman whose claim was initiated while the selection of a railroad company was pending for approval, is not an adjudication, but if, as in this case, the selection is approved, such a patent is issued in violation of law and is inoperative to pass title. *Ib.*

See RAILROADS, 1, 2.

PUBLIC OFFICERS.

See PUBLIC LANDS, 14.

PURE FOOD AND DRUGS ACT.

Scope of; liberty of State to legislate.

Although the Food and Drugs Act prohibits misbranding it does not require publication of ingredients, and in that respect the field is left open for state legislation. *Savage v. Jones*, 501.

See CONSTITUTIONAL LAW, 3, 11, 12;

INTERSTATE COMMERCE, 14.

QUALIFICATION OF VERDICT.

See CRIMINAL LAW, 24, 30.

QUIT-CLAIM DEEDS.

See DEEDS.

RAILROAD GRANTS.

See PUBLIC LANDS, 10-15.

RAILROADS.

1. *Right of way; estoppel of purchaser of land within, to set up want of notice of railroad's claim.*

Purchasers of land, over which a railroad has been constructed and operated, cannot claim that they purchased without notice of the claim of the railroad to own the right of way. *Kindred v. Union Pacific R. R. Co.*, 582.

2. *Right of way; effect of establishment on right of vendee of owner of land taken; who entitled to compensation.*

Where a railroad company enters upon the land of another and constructs a railroad thereover, under a statute entitling it to do so on condition that compensation be made to the owner, and the latter permits the construction and operation of the railroad without compliance with that condition, a subsequent vendee of the owner takes the land subject to the burden of the right of way, and the right to exact payment therefor from the railroad company belongs to the owner at the time of entry and construction. *Ib.*

See INDIANS, 15;

INTERSTATE COMMERCE;

JURISDICTION, A 5, 6; F 7, 8, 9;

MAILS;

NEGLIGENCE;

PUBLIC LANDS, 10-15.

RATES.

See CARRIERS, 2; INTERSTATE COMMERCE, 1, 4-10,
CONSTITUTIONAL LAW, 1, 10; 12, 18;
INJUNCTION, 2; PRACTICE AND PROCEDURE, 2.

RECEIVERS.

See CONTRACTS, 1.

RECORD.

Verity imported by; contradiction by affidavit.
The record in a case imports verity and cannot be contradicted by affidavits. (*Evans v. Stettinisch*, 149 U. S. 605.) *Johnson v. United States*, 405.

See CRIMINAL LAW, 1; JURISDICTION, A 1;
HABEAS CORPUS, 5; PRACTICE AND PROCEDURE, 7.

REFEREE'S FINDINGS.

See PRACTICE AND PROCEDURE, 4, 5.

REGULATION OF OCCUPATIONS.

See CONSTITUTIONAL LAW, 14, 15, 16, 26, 27, 28.

RELATION.

See PUBLIC LANDS, 12.

REPEALS.

See STATUTES, A 7, 8.

RESERVATIONS.

See INDIANS, 7, 15.

RES JUDICATA.

1. *When court not bound by prior construction of will.*
Where the Circuit Court of Appeals has before it in the second trial of the same case, a will previously construed by it, and meanwhile the highest court of the State in which the real estate affected is situated has construed the will differently, the Circuit Court of Appeals is not bound to adhere to its previous decision as being the law of the case. It may follow, and in such a case it should lean

toward an agreement with, the state court. *Messenger v. Anderson*, 436.

2. *Meaning of "law of the case" as applied to effect of prior orders on later action of court.*

In the absence of statute, the phrase "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to open what has been decided—not a limit to their power. *Ib.*

3. *Effect on this court of conflict between state and Federal courts.*

In a conflict between decisions of the state and Federal courts, this court is free when the case comes here. *Ib.*

4. *Effect of decision of state court in construing will; quære as to.*

Quære whether the decision of the state court did not finally adjudicate the question of title as between the parties so as to be binding upon every court before which the title might subsequently be discussed. *Ib.*

5. *Effect of decision of Supreme Court of Territory as.*

Whatever effect the decision of the Supreme Court of a Territory may have, as the law of the case, on the lower court or on the Supreme Court itself, prior to an appeal to this court, it is not the law of the case for this court. *Zeckendorf v. Steinfeld*, 445.

See CONSTITUTIONAL LAW, 19, 21, COURTS, 5, 6;
22, 24; INDIANS, 2;
CONTRACTS, 1; JUDGMENTS AND DECREES, 6;
NATURALIZATION, 2.

RETROSPECTIVE LEGISLATION.

See CONSTITUTIONAL LAW, 18, 25.

REVENUE MEASURES.

See CONSTITUTIONAL LAW, 3, 13, 29, 30.

REVISED STATUTES.

See STATUTES, A 10.

RULES OF COURT.

For amendment to § 3 of Rule 37 see p. 693.

SALES.

- See CONSTITUTIONAL LAW, 3, INDIANS, 5;
 11, 12, 13; INTERSTATE COMMERCE, 3, 11, 16;
 PATENTS.

SECRETARY OF COMMERCE AND LABOR.

See PRACTICE AND PROCEDURE, 8.

SECRETARY OF THE INTERIOR.

See PUBLIC LANDS, 12.

SHIPPING.

See ADMIRALTY;
 PILOTAGE.

SIXTH AMENDMENT.

See CRIMINAL LAW, 13, 22.

STATES.

1. *Admission; effect on power of United States.*

The rule that the admission of a new State into the Union on an equal footing with the original States imports an equality of power over internal affairs, does not prevent the United States from reserving the right to regulate matters therein within the sphere of the plain power of Congress. *Ex parte Webb*, 663.

2. *Admission; derivation of powers reserved by Congress.*

Where Congress embraces in an enabling act for the admission of a new State, legislation intended as a regulation of matters within the sphere of its powers, the legislation drives no force from any agreement or compact with the new State as an acceptance of statehood, but derives its force solely from the power of Congress to regulate the subject-matter of the legislation. (*Coyle v. Smith*, 221 U. S. 559.) *Ib.*

3. *Power to legislate on subject acted on by Congress.*

Where an act of Congress relating to a subject on which the State may act also, limits its prohibitions, it leaves the subject open to state regulation as to the prohibitions which are unenumerated. *Savage v. Jones*, 501.

4. *Power to require disclosure of trade secrets; quære as to.*

Quære whether a State can require disclosure of formulas for trade secret for mixture of a harmless article whose value depends upon the mixture. *Ib.*

5. *Power to prescribe qualifications of suitors in Federal courts.*

A State cannot prescribe the qualifications of suitors in the Federal courts; nor can it deprive of their privileges those who are entitled under the Constitution and laws of the United States to resort to the Federal courts for the enforcement of valid contracts. *David Lupton's Sons v. Automobile Club*, 489.

6. *Criminal procedure; power as to.*

Subject to the requirement of due process of law, the States are under no restriction as to their methods of procedure in the administration of public justice. (*Twining v. New Jersey*, 211 U. S. 78, 111.) *Jordan v. Massachusetts*, 167.

See BOUNDARIES;

INDIANS, 10, 12, 13;

CONFLICT OF LAWS, 2;

INTERSTATE COMMERCE, 1, 12-15;

CONSTITUTIONAL LAW, 2,

PILOTAGE;

3, 9, 11, 12, 26-30;

PURE FOOD AND DRUGS ACT.

STATUTE OF LIMITATIONS.

See CRIMINAL LAW, 6, 8, 9, 14, 15.

STATUTES.

A. CONSTRUCTION OF.

1. *Amendment; exclusive legislative power as to.*

If a statute should be amended to prevent its operation in particular cases that result can only be accomplished by an exercise of legislative authority. *Low Wah Suey v. Backus*, 460.

2. *Change of language as evidence of change of legislative purpose.*

In framing a new statute a change of language from that of a former statute on the same subject is some evidence of a change of legislative purpose. *Johnson v. United States*, 405.

3. *Codes; purpose of Congress in enacting local codes.*

Congress in enacting the District Code recognized the expediency of separate provisions for the District of Columbia. *Ib.*

4. *Criminal statutes; ambiguities resolved, how; effect of repeal of part of statute.*

A law creating a crime ought to be explicit, and if ambiguous or un-

certain it should be interpreted in favor of the liberty of the citizen; but in this case as there is no ambiguity in the act of 1895 a repeal *pro tanto* does not leave anything doubtful or ambiguous in that part of the act which remains in force. *Ex parte Webb*, 663.

5. *Departmental construction; when rights acquired under, not disturbed.*

Where an Executive Department has constantly given the same construction to a statute affecting title to real estate, rights acquired thereunder will not be lightly disturbed after a lapse of many years. *Kindred v. Union Pacific R. R. Co.*, 582.

6. *Objects and purposes looked to.*

All statutes must be given a reasonable construction, with a view of effecting the object and purposes thereof. *Low Wah Suey v. Backus*, 460.

7. *Repeals by implication not favored.*

An act of Congress may repeal a prior treaty as well as it may repeal a prior statute; but it is a settled rule of statutory construction that repeals by implication are not favored, and will not be held to exist if there be any other reasonable construction. *Ex parte Webb*, 663.

8. *Repeal; effect of later statute to repeal earlier one.*

Provisions in earlier statutes in regard to matters which are embraced in and superseded by a later statute are repealed by the later statute; but where the two statutes have definite territorial operation, they can exist together and the earlier one is not repealed or affected by the later. *Johnson v. United States*, 405.

9. *Reference to repealed act to determine what regarded as Indian country.*

Although that portion of the act of 1834 which defined Indian country was repealed by § 5596, Rev. Stat., it may still be referred to in connection with the portion of the act remaining in force in order to determine what must be regarded as Indian country when spoken of in the statutes. *Clairmont v. United States*, 551.

10. *Revised Statutes; effect of change of arrangement of provisions of law.*

In adopting the Revised Statutes change of arrangement from earlier statutes will not be regarded as altering their scope and purpose; an intent of Congress to change the effect of prior law will not be presumed unless clearly expressed. *Anderson v. Pacific Coast S. S. Co.*, 187.

See COURTS, 6;

CRIMINAL LAW, 23-26;

PUBLIC LANDS, 4.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

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See CONSTITUTIONAL LAW, 9.

TARIFFS OF CARRIERS.

See INTERSTATE COMMERCE, 17.

TELEPHONE COMPANIES.

See CONSTITUTIONAL LAW, 10;
INJUNCTION, 2.

TERRITORIAL CESSIONS.

See INDIANS, 1.

TERRITORIES.

Indian Territory; effect of putting state laws in force in.

The action of Congress in putting the laws of Arkansas in force in the Indian Territory by the act of February 18, 1901, 31 Stat. 794, c. 379, was to provide a body of law for that Territory until it became a State, and the effect was the same as though those laws had been adopted by a territorial legislature. *Shulthis v. McDougal*, 561.

TITLE.

See DEEDS;

FEDERAL QUESTION, 1;

INDIANS, 6, 7, 16, 17;

PUBLIC LANDS, 15;

RES JUDICATA, 4;

STATUTES, A 5.

TOLLS AND TOLL-ROADS.

See CONSTITUTIONAL LAW, 9.

TORTS.

See CONSTITUTIONAL LAW, 19, 21;

JUDGMENTS AND DECREES, 7.

TRADE-NAME.

1. *Principles applicable to; quære as to fraternal organizations.*

Quære: Whether the principles applicable to use of trade-marks and trade-names are applicable to the use of names of fraternal organizations having a main organization with branches in the several States. *Creswill v. Knights of Pythias*, 246.

2. *Fraud in use of; laches precluding relief in equity.*

In this case held that:

There was no evidence to support a finding that the defendants below were attempting by their application for incorporation in a State to use the name Knights of Pythias so as to deceive the public and work pecuniary damage to the older organization of that name, the complainant.

The long-continued acquiescence of the older organization of the Knights of Pythias in the use of the name by the junior organization prior to the attempt of the latter to have this particular state branch incorporated amounted to laches and under such conditions equity could not grant relief.

The existence of laches in this case is incompatible with a finding of injury to property and deceit to the public. *Ib.*

See EQUITY, 1.

TRADE SECRETS.

See STATES, 4.

TREATIES.

See INDIANS, 1;
STATUTES, A 7.

TRIAL.

1. *Continuance; judicial discretion as to; when action of court reviewable.*

The granting of a continuance is within the sound discretion of the trial court, and not subject to be reviewed on appeal except in cases of clear error and abuse; in this case the record shows that the refusal to continue on account of absence of witness was not an abuse, but a just exercise, of discretion. *Valdes v. Central Alt-gracia*, 58.

2. *Expedition; power of court as to.*

The record in this case shows that the court below did not err in bring-

ing this case to a speedy conclusion and avoiding the loss occasioned by the litigation to all concerned. *Ib.*

3. *Refusal to proceed; estoppel of party.*

A litigant cannot, after all parties have acquiesced in the order setting the case for trial and the court has denied his request for continuance, refuse to proceed with the trial on the ground that the time to plead has not expired, and when such refusal to proceed is inconsistent with his prior attitude in the case. *Ib.*

See CRIMINAL LAW, 11, 12, 13, 22, 28.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY.

UNITED STATES.

See INDIANS;
STATES, 1.

VENDOR AND VENDEE.

See CONSTITUTIONAL LAW, 3, 11, 12, 13;
RAILROADS, 2.

VENUE.

See CONSTITUTIONAL LAW, 6;
CRIMINAL LAW, 11, 12, 13, 22, 28.

VERDICT.

See CRIMINAL LAW, 24, 30;
EVIDENCE;
JURY AND JURORS.

VESSELS.

See ADMIRALTY;
PILOTAGE.

WARDS OF NATION.

See INDIANS, 4.

WEST VIRGINIA.

See BOUNDARIES.

WILLS.

See COURTS, 5;
JURISDICTION, C 6, 7;
RES JUDICATA, 1, 4.

WITNESSES.

See IMMIGRATION, 2, 8.

WORDS AND PHRASES.

"Arraignment" as used in § 1032, Rev. Stat.

Where a word is used as comprehensively descriptive of certain acts, it can be used in the record of a case as showing the performance of those acts; and so *held* as to *"arraignment"* as used in § 1032, Rev. Stat. *Johnson v. United States*, 405.

"Assign" as used in act of June 16, 1880 (see Public Lands, 1, 2).
United States v. Colorado Anthracite Co., 219.

"Law of the case" (see Res Judicata, 2). *Messenger v. Anderson*, 436.

"Public lands" (see Public Lands, 9). *Kindred v. Union Pacific R. R. Co.*, 582.

WRIT AND PROCESS.

See APPEAL AND ERROR; HABEAS CORPUS;
CERTIORARI; IMMIGRATION, 8;
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