

INDEX

ACCOUNTS AND ACCOUNTING:

See ARMY AND NAVY, 1.

ACTIONS.

1. *On contracts; who may maintain.*

Guardian Trust Co. v. Fisher did not overrule *National Bank v. Grand Lodge*, 98 U. S. 124, holding that a third person cannot sue for the breach of a contract to which he is a stranger unless in privity with the parties and is therein given a direct interest. *German Alliance Ins. Co. v. Home Water Co.*, 220.

2. *On contract between municipality and corporation for supplying water; right of taxpayer to maintain.*

In *Guardian Trust Co. v. Fisher*, 200 U. S. 57, the contract with the water company expressly provided for liability of the company to third parties, and the state court having held that, under the law of North Carolina, an action of this nature can be maintained, that question was not in issue in this court. *Ib.*

3. *Same.*

While a diversity of opinion exists, a majority of the American courts hold that the taxpayer has no such direct interest in an agreement between the municipality and a corporation for supplying water as will allow him to sue either *ex contractu* for breach, or *ex delicto* for violation, of the public duty thereby assumed. *Ib.*

4. *Same.*

In this case *held* that a taxpayer has no claim against a water supply company for damages resulting from a failure of the company to perform the contract with the municipality. *Ib.*

See ALIENS, 2;

BANKRUPTCY, 2;

CONSTITUTIONAL LAW, 12, 14;

CONTRACTS, 10, 11, 12;

VOL. CCXXVI—43

EMPLOYERS' LIABILITY ACT, 1;

PURE FOOD AND DRUGS ACT, 1;

RESTRAINT OF TRADE, 16;

RIPARIAN RIGHTS, 3.

(675)

ACTS OF CONGRESS.

- ALIENS.—Act of Feb. 20, 1907, § 3, 34 Stat. 898 (see Constitutional Law, 14): *Zakonaite v. Wolf*, 272.
- ANTI-TRUST ACT of July 2, 1890, 26 Stat. 209 (see Courts, 5): *Ex parte United States*, 420; (see Restraint of Trade): *United States v. Union Pacific R. R. Co.*, 61, 470; *Standard Sanitary Mfg. Co. v. United States*, 20; *United States v. Reading Co.*, 324; *United States v. Patten*, 525; (see Witnesses): *Standard Sanitary Mfg. Co. v. United States*, 20.
- ARMY AND NAVY.—Act of Feb. 24, 1905, 33 Stat. 806 (see Army and Navy, 1): *McLean v. United States*, 374. Navy Personnel Act of March 3, 1899, § 13, 30 Stat. 1004 (see Army and Navy, 4, 5): *Hannum v. United States*, 436. Rev. Stat., § 1454 (see Army and Navy, 4): *Ib.*
- BANKRUPTCY.—Act of Feb. 5, 1903, § 8, 32 Stat. 797 (see Bankruptcy, 2): *Wood v. Wilbert*, 384. Act of July 1, 1898, § 7, 30 Stat. 544 (see Bankruptcy, 1): *Miller v. Guasti*, 170.
- CLAIMS AGAINST UNITED STATES.—Act of June 21, 1906, 34 Stat. 325 (see Court of Claims, 1): *Robertson v. Gordon*, 311.
- CRIMINAL LAW.—Rev. Stat., § 1025 (see Criminal Law, 4): *Breese v. United States*, 1.
- EMPLOYERS' LIABILITY ACT.—(See Employers' Liability Act): *Missouri, K. & T. Ry. Co. v. Wulf*, 570.
- EXTRADITION.—Rev. Stat., § 5270 (see Extradition, 1): *McNamara v. Henkel*, 520.
- FULL FAITH AND CREDIT.—Rev. Stat., § 905 (see Courts, 2): *Thompson v. Thompson*, 551.
- INTERSTATE COMMERCE.—Act of June 18, 1910, § 7, 36 Stat. 539 (see Interstate Commerce Commission, 2, 3): *United States v. Baltimore & Ohio S. W. R. R. Co.*, 14. Hepburn Act of June 29, 1906, 34 Stat. 584 (see Interstate Commerce, 3, 8, 10, 16, 17, 19, 23): *Adams Express Co. v. Croninger*, 491; *Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 426. Elkins Act of Feb. 19, 1903, 32 Stat. 847 (see Interstate Commerce, 6, 10): *United States v. Union Stock Yard Co.*, 286. Wilson Act of Aug. 8, 1890, 26 Stat. 313 (see Intoxicating Liquors, 4): *Purity Extract Co. v. Lynch*, 192.
- JUDICIARY.—Code of 1911, § 291 (see Courts, 3, 4; Statutes, A 5): *Ex parte United States*, 420. Criminal Appeals Act of March 2, 1907, 34 Stat. 1246 (see Jurisdiction, A 5, 7): *United States v. Patten*, 525. Expedition Act of 1903, § 291 (see Courts, 3, 5, 6; Statutes, A 5): *Ex parte United States*, 420. Act of March 3, 1897, § 6, 26 Stat. 826 (see Jurisdiction, A 4): *Missouri, K. & T. Ry. Co. v. Wulf*, 570. Act of Feb. 9, 1893, 27 Stat. 434 (see Jurisdiction, A 2): *Thompson v. Thompson*, 551. Act of March 3, 1891, § 5, 26

Stat. 826 (see Appeal and Error, 4): *Keatley v. Furey*, 399. Section 6 (see Pure Food and Drugs Act, 4): *443 Cans of Egg Product v. United States*, 172. Act of Sept. 24, 1789, § 22, 1 Stat. 73 (see Statutes, A 7): *Bucks Stove Co. v. Vickers*, 205. Rev. Stat., § 709 (see Jurisdiction, A 8, 9): *El Paso & S. W. R. R. Co. v. Eichel*, 590. Rev. Stat., § 1011 (see Appeal and Error, 1, 3): *Bucks Stove Co. v. Vickers*, 205; *Deming v. Carlisle Packing Co.*, 102.

MAILS.—Act of March 3, 1901, 31 Stat. 1099 (see Mails, 8): *Smith v. Hitchcock*, 53. Act of July 13, 1892, 27 Stat. 145 (see Mails, 1): *Beach v. United States*, 243. Act of March 3, 1879, 20 Stat. 355 (see Mails, 4, 5, 6, 7): *Smith v. Hitchcock*, 53.

PUBLIC LANDS.—Act of June 3, 1878, 20 Stat. 88 (see Public Lands, 1): *Bunker Hill Mining Co. v. United States*, 548. Swamp Land Act of Sept. 28, 1850, 9 Stat. 519 (see Riparian Rights, 2): *Marshall Dental Mfg. Co. v. Iowa*, 460.

PUBLIC OFFICERS.—Rev. Stat., § 1765 (see Claims Against United States, 2): *Evans v. United States*, 567.

PURE FOOD AND DRUGS ACT.—Act of June 30, 1906, § 10, 34 Stat. 768 (see Pure Food and Drugs Act): *443 Cans of Egg Product v. United States*, 172.

RAILROADS.—Act of July 2, 1864, 13 Stat. 356 (see Railroads, 3; Restraint of Trade, 30): *United States v. Union Pacific R. R. Co.*, 61. Act of July 1, 1862, 12 Stat. 489 (see Railroads, 3; Restraint of Trade, 30): *Ib.*

TELEGRAPH COMPANIES.—Act of July 24, 1866, 14 Stat. 221 (see Telegraph Companies, 2, 3): *Williams v. Talladega*, 404.

ALIENS.

1. *Deportation; authority of Congress to impose conditions upon continued residence of.*

The authority of Congress to prohibit aliens from coming within the United States includes the authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the country depends. *Zakonaite v. Wolf*, 272.

2. *Deportation; nature of proceeding to enforce regulations relative to continued residence of.*

A proceeding to enforce regulations under which aliens may continue to reside within the United States is not a criminal proceeding within the meaning of the Fifth and Sixth Amendments. *Ib.*

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 14;
COURTS, 8.

ALIMONY.

See CONSTITUTIONAL LAW, 38;
DIVORCE, 1.

AMENDMENT OF PLEADING.

See EMPLOYERS' LIABILITY ACT, 1, 3.

AMENDMENTS.

See STATUTES, A 1.

AMENDMENTS TO CONSTITUTION.

Fifth. See ALIENS, 2;

CONSTITUTIONAL LAW, 14.

Fourteenth. See CONSTITUTIONAL LAW, 8, 18, 19, 21, 22, 33, 39, 40, 44.

Sixth. See ALIENS, 2;

CONSTITUTIONAL LAW, 14.

AMOUNT IN CONTROVERSY.

See JURISDICTION, A 1, 2, 3.

ANTI-TRUST ACT.

See COURTS, 5, 6;

RAILROADS, 2;

RESTRAINT OF TRADE.

APPEAL AND ERROR.

1. *Application of § 1011, Rev. Stat.*

Rev. Stat., § 1011, providing that there shall be no reversal in this court upon a writ of error for error in ruling any plea of abatement other than one to the jurisdiction of the court, does not apply to writs of error to state courts but only to lower Federal courts. *Bucks Stove Co. v. Vickers*, 205.

2. *Delay; when prosecution of writ deemed for purpose of.*

The unsubstantial and frivolous character of the only Federal question presented in this case embraces the conclusion that the writ was prosecuted for delay. *Deming v. Carlisle Packing Co.*, 102.

3. *Delay; award of damages on dismissal of frivolous writ.*

Under Rule 23, which is based on § 1011, Rev. Stat., this court has the same power to award damages for delay where the writ of error is dismissed as where there is judgment of affirmance; and in this case five per cent. damages are imposed in addition to costs. *Ib.*

4. *Direct appeal under § 5 of act of 1891; essentials to right.*

In order to warrant a direct appeal to this court under § 5 of the Court of Appeals Act of 1891, the jurisdiction of the Federal court as such must be involved. *Keatley v. Furey*, 399.

5. *Direct appeal under act of 1891; when jurisdiction of Federal court involved.*

Whether title to the assets outside the State passed to a receiver of a corporation under an order of the court in the State of organization depends upon the law of that State, and a decision by a Federal court in another State having custody of assets through a receiver that no title passed and dismissing a petition of the first named receiver to intervene, does not involve the question of jurisdiction of the Federal court and warrant a direct appeal to this court. *Ib.*

6. *Direct appeal under act of 1891; correctness of certificate.*

In such a case the judge denying the petition to intervene is right in certifying that no question of jurisdiction exists. *Ib.*

7. *Direct appeal under act of 1891; when question of jurisdiction of lower court open.*

In such a case the Federal court has jurisdiction over the intervention whether it has jurisdiction as a Federal court of the principal case or not; and until final decree in the principal case the question of jurisdiction is not open. *Ib.*

8. *Dismissal of writ on showing, by evidence outside the record, death of party against whom mandamus sought.*

Where it appears, although by evidence outside the record, that before the writ of error to the state court was sued out, the public officer against whom a writ of mandamus is prayed had died, and his successor had qualified, the writ will be dismissed. *Florida v. Croom*, 309.

9. *Findings below; binding effect of; quære as to.*

Quære whether parties are bound in a higher court by findings based on specific investigations made by the lower tribunal without notice. (See *Oregon R. R. Co. v. Fairchild*, 224 U. S. 510, 525.) *United States v. Baltimore & Ohio S. W. R. R. Co.*, 14.

10. *From Philippine Islands; how suit to recover real estate brought.*

A suit to recover real estate, like an ordinary action at law, can only be brought to this court from the Supreme Court of the Philippine Islands by writ of error; it cannot be brought by appeal. *Harty v. Victoria*, 12.

11. *From Philippine Islands; scope of review.*

Where, as in this case, there is no question of law, this court cannot, on writ of error, review the finding of the Supreme Court of the Philippine Islands that the preponderance of contradictory evidence was on the defendant's side. *Ib.*

12. *Writ of error to territorial court; questions open on.*

On writ of error to a territorial court only such questions are before this court as can be raised upon writ of error to a state court. *Toyota v. Hawaii*, 184.

See HABEAS CORPUS;
 JURISDICTION;
 PURE FOOD AND DRUGS ACT, 1, 4.

APPEARANCE.

See JURISDICTION, H 1.

APPROPRIATIONS.

See ARMY AND NAVY, 2.

ARBITRATION AND AWARD.

Substitution of arbitrators.

Where an agreement to leave a dispute as to amounts due under a contract to certain third parties provides that in case of their refusal to act no rights are affected, it is not permissible after such a refusal to bring in an attempt of another tribunal to adjudicate the claim. *Robertson v. Gordon*, 311.

ARMY AND NAVY.

1. *Accounting officers; nature of duties; jurisdiction of Court of Claims under act of February 24, 1905.*

Under the act of Congress of February 24, 1905, 33 Stat. 806, c. 777, directing the accounting officers to settle and adjust all back pay and emoluments that would have been due to an officer had he remained in the army for a period that he was out of the army after an enforced resignation from that time until his reinstatement held that, under such a statute the duties of accounting officers are administrative and not judicial, and as to whatever rights arose under the act as to its construction, the Court of claims had jurisdiction to determine. *McLean v. United States*, 374.

2. *Relief of officer; act of February 24, 1905, construed.*

Public moneys are not appropriated as mere gifts and such an act will not be regarded as a simple gratuity. *Ib.*

3. *Same.*

The words "all back pay and emoluments" include forage, rations, and pay for servants to which the officer would have been entitled under the statutes had he remained in the army, and in adjusting under the statute those items should not have been excluded because the officer was not actually in service of the United States. *Ib.*

4. *Navy Personnel Act of 1899; application of assimilating clause of § 13.*

The assimilating clause of § 13 of the Navy Personnel Act of 1899 applies only to officers on the active list and does not repeal the prior laws respecting the pay of officers compulsorily retired under § 1454, Rev. Stat., for incapacity not resulting from any incident of the service. *Hannum v. United States*, 436.

5. *Navy Personnel Act of 1899; intent of Congress as to standards of retirement.*

The Personnel Act emphasizes the plain intent of Congress not to destroy the then existing standards of retirement for Navy officers, but to retain and add to those standards as distinguished from the standards of retirement fixed for the Army. *Ib.*

ATTORNEYS.

See CONTRACTS, 13, 14, 15;
COURT OF CLAIMS, 1.

AUCTIONS.

See FEDERAL QUESTION, 1.

BANKRUPTCY.

1. *Discharge; effect to bar debt where creditors without notice.*

A debt of the bankrupt not properly scheduled as required by § 7 of the Bankruptcy Act is not barred by the discharge if the creditors had no notice or actual knowledge of the proceeding. *Miller v. Guasti*, 170.

2. *Jurisdiction of District Court of suit by trustee.*

The District Court has not jurisdiction in behalf of the trustee in bankruptcy to recover assets of the bankrupt from a third person under a revocatory action allowed under the law of Louisiana, of an insolvent, without the consent of the defendant, under the Bankruptcy Act as amended by the act of February 5, 1903, c. 487, § 8, 32 Stat. 797. *Wood v. Wilbert*, 384.

3. *Preferences; effect of adjudication on title of purchaser of perishable property at attachment sale within four months.*

A *bona fide* purchaser for value of perishable property held under attachment at a sale made by order of the local court gets a good title notwithstanding bankruptcy proceedings had been instituted within four months after the attachment and had proceeded to adjudication before the sale. *Jones v. Springer*, 148.

4. *Preferences; effect of sale of perishable property held under attachment.*

An order for sale of perishable property held under attachment, made by the local court within the terms of the local act, will not be set aside by this court. *Ib.*

5. *Preferences; effect of sale of perishable property under local statute.*

Even if the local statute permitting sales of perishable property held in *custodia legis* be broader than General Order XVIII, 3, this court will not for that reason only set aside a sale made by the local court if within the terms of the local act. *Ib.*

6. *Sales of perishable property held under attachment; validity of.*

A local court having the custody under attachment of perishable goods may order a sale if necessary to protect and it is not necessary that such sale be made under General Order XVIII, 3, in order to validate it. *Ib.*

See PRACTICE AND PROCEDURE, 6.

BILLS OF LADING.

See INTERSTATE COMMERCE, 8, 19.

BOOKS.

See CORPORATIONS;

MAILS, 7.

BREAD LOAVES.

See CONSTITUTIONAL LAW, 17;

STATES, 2.

BUILDING LINES.

See CONSTITUTIONAL LAW, 15, 43, 44.

BURDEN OF PROOF.

See PRACTICE AND PROCEDURE, 9.

CARMACK AMENDMENT.

See INTERSTATE COMMERCE, 8, 19, 23.

CARRIERS.

1. *Duties respecting transportation of live stock; beginning and ending of.* The duties of a common carrier in the transportation of live stock begin with their delivery to be loaded and end only after unloading and delivery, or offer of delivery, to the consignee. (*Covington Stock Yards Co. v. Keith*, 139 U. S. 128.) *United States v. Union Stock Yard Co.*, 286.

2. *Negligence; right of carrier to exempt itself therefor; right of carrier to contract for compensation commensurate with risks involved.*

A common carrier cannot exempt himself from liability for his own negligence or that of his employés, but the rigor of this rule may be modified by a fair, reasonable and just agreement with the shipper which does not include exemption from such negligence; and the right to receive compensation commensurate with the risk involves the right to agree upon rates proportionate with the value of the property transported. *Adams Express Co. v. Croninger*, 491.

See CONSTITUTIONAL LAW, 21;
INTERSTATE COMMERCE, 3, 4, 5;
STATES, 3.

CASES APPROVED.

Chicago, Milwaukee & St. Paul Ry. Co. v. Lindeman, 143 Fed. Rep. 946, approved in *Southwestern Brewery v. Schmidt*, 162.

Polson v. Stewart, 167 Massachusetts, 211, approved in *Selover, Bates & Co. v. Walsh*, 112.

CASES DISTINGUISHED.

Bement v. National Harrow Co., 186 U. S. 70, distinguished in *Standard Sanitary Mfg. Co. v. United States*, 20.

Chicago, Milwaukee & St. Paul Ry. v. Solan, 169 U. S. 133, distinguished in *Adams Express Co. v. Croninger*, 491.

Hanley v. Kansas City Southern Railway 187 U. S. 617, distinguished in *Ewing v. Leavenworth*, 464.

Henry v. A. B. Dick Co., 224 U. S. 1, distinguished in *Standard Sanitary Mfg. Co. v. United States*, 20.

Pennsylvania Railroad v. Hughes, 191 U. S. 477, distinguished in *Adams Express Co. v. Croninger*, 491.

Sprague v. Thompson, 118 U. S. 90, distinguished in *Darnell v. Indiana*, 390.

Union Pacific Ry. Co. v. Wyler, 158 U. S. 285, distinguished in *Missouri, Kansas & Texas Ry. Co. v. Wulf*, 570.

Western Union Tel. Co. v. Kansas, 216 U. S. 1, distinguished in *Williams v. Talladega*, 404.

CASES EXPLAINED.

- Guardian Trust Co. v. Fisher*, 200 U. S. 57, explained in *German Alliance Ins. Co. v. Home Water Co.*, 220.
Standard Oil Co. v. United States, 221 U. S. 1, explained in *United States v. Union Pacific R. R. Co.*, 61.
United States v. American Tobacco Co., 221 U. S. 106, explained in *United States v. Union Pacific R. R. Co.*, 61.

CASES FOLLOWED.

- Adams Express Co. v. Croninger*, 226 U. S. 491, followed in *Chicago, B. & Q. Ry. Co. v. Miller*, 513, and *Chicago, St. P., M. & O. Ry. Co. v. Latta*, 519.
Aikens v. Wisconsin, 195 U. S. 206, followed in *United States v. Reading Co.*, 324.
American Sugar Refining Co. v. Louisiana, 179 U. S. 89, followed in *Kansas City v. Kansas*, 599.
American Sugar Refining Co. v. United States, 211 U. S. 155, followed in *National Telephone Mfg. Co. v. American Bell Telephone Co.*, 600.
Appleby v. Buffalo, 221 U. S. 524, followed in *F. B. Williams Cypress Co. v. Louisiana*, 603.
Atherton v. Atherton, 181 U. S. 155, followed in *Thompson v. Thompson*, 551.
Bates & Guild Co. v. Payne, 194 U. S. 106, followed in *Smith v. Hitchcock*, 53.
Bernheimer v. Converse, 206 U. S. 516, followed in *National Surety Co. v. Architectural Co.*, 276.
Billings v. Illinois, 188 U. S. 97, followed in *Kansas City v. Kansas*, 599.
California Powder Works v. Davis, 151 U. S. 389, followed in *Chicago & Erie R. R. Co. v. Ebersole*, 601.
Carey v. Houston & T. C. R. Co., 150 U. S. 170, followed in *National Telephone Mfg. Co. v. American Bell Telephone Co.*, 600.
Chappell Chemical & F. Co. v. Sulphur Mines Co., 172 U. S. 471, followed in *Chicago & Erie R. R. Co. v. Ebersole*, 601; *Post Printing & Pub. Co. v. Shafroth*, 602; *Zavelo v. Leichtman, Goodman & Company*, 605.
Chesapeake & Ohio Ry. Co. v. McCabe, 213 U. S. 207, followed in *McCabe v. Maysville & B. S. R. R. Co.*, 601; *Clinger v. Chesapeake & Ohio Ry. Co.*, 602.
Chicago, B. & Q. R. R. Co. v. McGuire, 219 U. S. 549, followed in *Schmidinger v. Chicago*, 578.
Chicago, B. & Q. R. R. Co. v. Miller, 226 U. S. 513, followed in *Chicago, St. P., M. & O. Ry. Co. v. Latta*, 519.

- Cook v. Marshall County*, 196 U. S. 261, followed in *Kansas City v. Kansas*, 599.
- Covington Stock Yards Co. v. Keith*, 139 U. S. 128, followed in *United States v. Union Stock Yards*, 286.
- Farrell v. O'Brien*, 199 U. S. 100, followed in *Glos v. Chicago*, 599; *Anderson v. Connecticut*, 603; and *Williams v. Starkweather*, 604.
- Fayerweather v. Ritch*, 195 U. S. 299, followed in *Williams v. Starkweather*, 604.
- First National Bank v. Estherville*, 215 U. S. 341, followed in *Hanson v. Gustafson*, 600.
- Gonzales v. Buist*, 224 U. S. 126, followed in *Societe Anonyme v. United States*, 600.
- Goodrich v. Ferris*, 214 U. S. 71, followed in *Glos v. Chicago*, 599.
- Gundling v. Chicago*, 177 U. S. 183, followed in *Schmidinger v. Chicago*, 578.
- Haddock v. Haddock*, 201 U. S. 562, followed in *Thompson v. Thompson*, 551.
- Hallowell v. United States*, 221 U. S. 317, followed in *Ship-y-Tuck v. United States*, 604.
- Hatch v. Reardon*, 204 U. S. 152, followed in *Darnell v. Indiana*, 390.
- Heckman v. United States*, 224 U. S. 413, followed in *Park Rapids Lumber Co. v. United States*, 605.
- Houghton v. Payne*, 194 U. S. 88, followed in *Smith v. Hitchcock*, 53.
- Howard v. Kentucky*, 200 U. S. 164, followed in *Glos v. Chicago*, 599.
- Hudson Water Co. v. McCarter*, 209 U. S. 349, followed in *Eubank v. Richmond*, 137.
- Humes v. United States*, 170 U. S. 210, followed in *Societe Anonyme v. United States*, 600.
- Improvement Co. v. Munson*, 14 Wall. 442, followed in *Societe Anonyme v. United States*, 600.
- In re Pennsylvania Company*, 137 U. S. 451, followed in *Bright v. Chesapeake & Ohio Ry. Co.*, 602.
- International Textbook Co. v. Pigg*, 217 U. S. 91, followed in *Buck Stove & Range Co. v. Vickers*, 205.
- Kansas City Southern Ry. Co. v. Albers Commission Co.*, 223 U. S. 573, followed in *Illinois Central R. R. Co. v. Henderson Elevator Co.*, 441.
- Kidd v. Alabama*, 188 U. S. 730, followed in *Darnell v. Indiana*, 390.
- Kimball v. Kimball*, 174 U. S. 158, followed in *Hanson v. Gustafson*, 600.
- King v. West Virginia*, 216 U. S. 92, followed in *Glos v. Chicago*, 599.
- Lehigh Valley Railroad v. Pennsylvania*, 145 U. S. 192, followed in *Ewing v. Leavenworth*, 464.
- Loeber v. Schroeder*, 149 U. S. 580, followed in *Williams v. Starkweather*, 604.
- Loewe v. Lawlor*, 208 U. S. 274, followed in *United States v. Reading Co.*, 324.

- Low Wah Suey v. Backus*, 225 U. S. 460, followed in *Chan Kam v. Steward*, 602; *Yuk Ping v. Steward*, 603.
- Michigan C. R. Co. v. Powers*, 201 U. S. 245, followed in *Kansas City v. Kansas*, 599.
- Miller v. Cornwell*, 168 U. S. 131, followed in *Williams v. Starkweather*, 604.
- Minnesota Iron Co. v. Kline*, 199 U. S. 593, followed in *Glos v. Chicago*, 599.
- Missouri Pacific Ry. v. Fitzgerald*, 160 U. S. 556, followed in *Chicago & Erie R. R. Co. v. Ebersole*, 601.
- Montague v. Lowry*, 193 U. S. 38, followed in *Standard Sanitary Mfg. Co. v. United States*, 20.
- Moran v. Horsky*, 178 U. S. 205, followed in *Preston v. Chicago*, 447.
- Patterson v. Colorado*, 205 U. S. 254, followed in *Kansas City v. Kansas*, 599.
- Petri v. Creelman Lumber Co.*, 199 U. S. 487, followed in *Ex parte United States*, 420.
- Preston v. Chicago*, 226 U. S. 447, followed in *Gersch v. Chicago*, 451.
- Schlemmer v. Buffalo R. R. Co.*, 205 U. S. 1, followed in *Societe Anonyme v. United States*, 600.
- Seaboard Airline Ry. Co. v. Duvall*, 225 U. S. 477, followed in *Medley v. West Virginia*, 605.
- Slaughter House Cases*, 16 Wall. 36, followed in *Rosenthal v. New York*, 260.
- Spies v. Illinois*, 123 U. S. 131, followed in *Medley v. West Virginia*, 605.
- Standard Oil Co. v. United States*, 221 U. S. 1, followed in *United States v. Reading Co.*, 324.
- Swift & Co. v. United States*, 196 U. S. 375, followed in *United States v. Reading Co.*, 324.
- Taylor v. Beckham*, 178 U. S. 548, followed in *Preston v. Chicago*, 447.
- Tracy v. Ginsberg*, 205 U. S. 170, followed in *Glos v. Chicago*, 599.
- United States v. Dalcour*, 203 U. S. 408, followed in *Robertson v. Gordon*, 311.
- United States v. Rickert*, 188 U. S. 432, followed in *Park Rapids Lumber Co. v. United States*, 605.
- Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112, followed in *Kansas City v. Kansas*, 599.
- Water Works Co. v. Oshkosh*, 187 U. S. 437, followed in *National Surety Co. v. Architectural Co.*, 276.
- Western Turf Association v. Greenburg*, 204 U. S. 359, followed in *Selover, Bates & Co. v. Walsh*, 112.
- Wilkinson v. Nebraska*, 123 U. S. 286, followed in *Bright v. Chesapeake & Ohio Ry. Co.*, 602.
- Williams v. Fears*, 179 U. S. 270, followed in *Kansas City v. Kansas*, 599.

Woodwell v. United States, 214 U. S. 82, followed in *Evans v. United States*, 567.

CHARITABLE TRUSTS.

See WILLS.

CIRCUIT COURT OF APPEALS.

See JURISDICTION, A 4;

PURE FOOD AND DRUGS ACT, 5.

CIRCUIT COURT OF APPEALS ACT.

See APPEAL AND ERROR, 4.

CITIZENSHIP.

See CONSTITUTIONAL LAW, 39, 40.

CLAIMS AGAINST THE UNITED STATES.

1. *Lack of power of public officer to do that on which claim based as fundamental objection.*

Whether claimant's claim rests upon an express or an implied purchase, by an officer of the Government, a lack of power on the part of that officer is a fundamental objection. *Beach v. United States*, 243.

2. *Compensation of employes; right to under § 1765, Rev. Stat.*

In this case *held* that the appointment of one holding a government position as special disbursing agent was not an appointment to a separate and distinct office from that already held, but merely an order requiring him to perform additional services, and under § 1765, Rev. Stat., payment therefor in addition to his salary is prohibited. (*Woodwell v. United States*, 214 U. S. 82.) *Evans v. United States*, 567.

See ARMY AND NAVY.

CLASSIFICATION FOR REGULATION.

See CONSTITUTIONAL LAW, 22, 24-32.

COAL CARRIERS.

See RESTRAINT OF TRADE, 19, 34.

COMBINATIONS IN RESTRAINT OF TRADE.

See INTERSTATE COMMERCE, 9;
RESTRAINT OF TRADE.

COMMERCE.

See CONSTITUTIONAL LAW, 1-7;
INTERSTATE COMMERCE;
RESTRAINT OF TRADE.

COMMON CARRIERS.

See CARRIERS; RAILROADS;
CONSTITUTIONAL LAW, 21; STATES, 3.

COMPETITION.

See RESTRAINT OF TRADE;
STATES, 6.

CONFLICT OF LAWS.

See STATUTES, A 1.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

Devolution on executive department of proceeding to enforce regulations relative to continued residence of aliens.

Congress may properly devolve a proceeding to enforce regulations under which aliens are permitted to remain within the United States upon an executive department or subordinate officials thereof and may make conclusive the findings of fact reached by such officials after a summary hearing, if fair. *Zakonaite v. Wolf*, 272.

See ALIENS, 1; INTERSTATE COMMERCE, 1, 2, 3;
CONSTITUTIONAL LAW, 1; RAILROADS, 4;
RESTRAINT OF TRADE, 13.

CONSPIRACY.

See CRIMINAL LAW, 6, 7;
RESTRAINT OF TRADE.

CONSTITUTIONAL LAW.

1. *Commerce clause; extent of power of Congress under.*

The constitutional power of Congress to regulate commerce among the States and with foreign nations comprehends power to regulate contracts between shipper and carrier of shipments in such commerce in regard to liability for loss or damage to articles carried. *Adams Express v. Croninger*, 491.

2. *Commerce clause; extent of protection accorded by.*

The protection accorded by the Federal Constitution to interstate commerce does not extend beyond the sale in original packages as imported; and a contract made in one State for delivery of liquor in another State which does not limit the sale in the latter State to original packages encounters the local statute and cannot be enforced if contrary thereto. *Purity Extract Co. v. Lynch*, 192.

3. *Commerce clause; state interference; effect of declaring contract, involving interstate commerce, illegal.*

Where there have been no purchases and no deliveries under a contract for delivery of liquor, but the vendee has given notice of refusal to accept because the contract is illegal in the State of delivery, the state court, in sustaining the illegality of the contract, does not deny the seller the right to sell the article or have it transported in interstate commerce. *Ib.*

4. *Commerce clause; state interference; what deemed original package.*

Where a large number of bottles, each in a separate box, are all contained in one case, each bottle is not to be regarded as a separate original package and protected from interference by state statute under the commerce clause of the Constitution; and this even if the contract of shipment declared there was to be no retail sale by the consignee. *Ib.*

5. *Commerce clause; state taxation of express companies as attempt to tax interstate commerce.*

A license tax on express companies for receiving and sending packages to and from points within the State is not unconstitutional as an attempt to tax interstate commerce when applied to packages passing between such points by routes lying partly through another State. (*Lehigh Valley Railroad v. Pennsylvania*, 145 U. S. 192, followed; *Hanley v. Kansas City Southern Railway*, 187 U. S. 617, distinguished.) *Ewing v. Leavenworth*, 464.

6. *Commerce clause; validity as to foreign corporations doing interstate business of Kansas statute of 1905 requiring filing of statements.*

The statute of Kansas of 1905, requiring certain classes of foreign corporations to file statements is an invalid restriction and burden and unconstitutional as to foreign corporations engaged in interstate commerce, under the commerce clause of the Federal Constitution. (*International Textbook Company v. Pigg*, 217 U. S. 91.) *Bucks Stove Co. v. Vickers*, 205.

7. *Commerce clause; validity under, of Indiana statutes taxing shares in foreign corporations.*

The statutes of Indiana taxing all shares in foreign corporations except national banks owned by inhabitants of the State, and all shares in domestic corporations the property whereof is not exempt or taxable to the corporation itself, are not unconstitutional as contrary to the commerce clause of the Federal Constitution. *Darnell v. Indiana*, 390.

8. *Contract freedom; State may limit.*

There is no absolute liberty of contract, and limitations thereon by police regulations of the State are frequently necessary in the interest of public welfare and do not violate the freedom of contract guaranteed by the Fourteenth Amendment. (*C., B. & Q. R. R. Co. v. McGuire*, 219 U. S. 549.) *Schmidinger v. Chicago*, 578.
See Infra, 17, 19.

9. *Contract impairment; effect of state statute changing remedy.*

A state statute changing a remedy for enforcing contract rights does not impair the contract if it gives a more efficacious remedy than existed before or does not impair it so materially as to affect the creditor's rights. *Pittsburg Steel Co. v. Baltimore Equitable Society*, 455.

10. *Contract obligation; impairment; effect of state statute establishing method for fixing water rates.*

The Supreme Court of Idaho having held that under the constitution of the State the legislature has a continuing and irrevocable power to establish the manner of fixing water rates, and that a municipality can only grant franchises subject to that power, this court follows that construction: and therefore *held* that a statute of the State of Idaho establishing a method for fixing water rates is not unconstitutional under the Federal Constitution as impairing the obligation of the contract with a water company under an ordinance of a municipality previously enacted and which established a different method of fixing such rates. *Murray v. Pocatello*, 318.

11. *Contract obligation; impairment of; effect of subsequent law providing more adequate remedy to enforce contract.*

There is a broad distinction between laws impairing the obligation of contracts and those which simply undertake to give a more efficient remedy to enforce a contract already made. (*Bernheimer v. Converse*, 206 U. S. 516.) *National Surety Co. v. Architectural Co.*, 276.

12. *Contract obligation; impairment of; law affecting remedy for enforcement of contract not an impairment.*

Where, as the state court has held in this case, the requirement that a preliminary notice that a third party intends to avail of the benefit of a bond given for performance of a contract is a condition precedent to an action on the bond, legislation altering the period within which such notice must be given affects the remedy and not the contract itself and does not amount to an impairment of the obligation of the bond within the contract clause of the Federal Constitution. *Ib.*

13. *Contract obligation; impairment of; validity of c. 413 of Laws of Minnesota of 1909, extending time of notice of suit on bond.*

Chapter 413 of the General Laws of Minnesota of 1909, extending the time within which third parties intending to avail of the benefit of a bond given for completion of public buildings must serve notice of intention so to do, effected merely a change in remedy without substantial modification of the obligation of the contract and is not an unconstitutional impairment thereof. *Ib.*

14. *Due process of law; deprivation of liberty without; right to trial by jury; effect of § 3 of the act of February 20, 1907, relative to deportation of aliens.*

Section 3 of the act of February 20, 1907, 34 Stat. 898, c. 1134, providing for deportation of alien prostitutes within three years after entry into the United States and providing a summary proceeding for determining the fact by the Secretary of Commerce and Labor, does not violate either the Fifth or Sixth Amendment by depriving the alien of her liberty without due process of law or by denying her a jury trial. *Zakonaite v. Wolf*, 272.

15. *Due process of law; deprivation of property without; effect of ordinance establishing building lines in city.*

The ordinance of the city of Richmond based on c. 349 of the Laws of Virginia of 1908, requiring the municipal authorities to establish building lines in any block on request of the owners of two-thirds of the property is unconstitutional as an attempt to deprive non-assenting owners of their property without due process of law. *Eubank v. Richmond*, 137.

16. *Due process of law; regulation of trades and callings under police power not a denial of.*

The right of the legislature, or the municipality acting under state authority, to regulate trades and callings in the exercise of the

police power without Federal interference under the due process clause of the Fourteenth Amendment, is well settled. (*Gundling v. Chicago*, 177 U. S. 183.) *Schmidinger v. Chicago*, 578.

17. *Due process of law; equal protection of the laws; liberty of contract; validity of bread loaf ordinance of Chicago of 1908.*

The ordinance of Chicago of 1908 enacted under legislative authority, fixing standard sizes of bread loaves and prohibiting the sale of other sizes, is not unconstitutional as depriving those dealing therein of their property without due process of law or as denying them equal protection of the law or as interfering with their liberty of contract. *Ib.*

18. *Due process and equal protection of the law; police power of State; validity of Minnesota law relative to cancellation of contracts for sale of land.*

A state statute providing that the vendor of lands cannot cancel the contract without reasonable written notice with opportunity to the vendee to comply with the terms is within the police power of the State; and so held that c. 223 of the Laws of 1897 of Minnesota is not unconstitutional under the Fourteenth Amendment as depriving a vendor of his property without due process of law or denying him the equal protection of the law. *Selover, Bates & Co. v. Walsh*, 112.

19. *Due process of law; equal protection; liberty of contract; validity of South Dakota law of 1907 prohibiting unfair discrimination to destroy competition in sales of commodities.*

Chapter 131 of the Laws of South Dakota of 1907, prohibiting unfair discrimination by anyone engaged in manufacture or distribution of a commodity in general use for the purpose of intentionally destroying competition of any regular dealer in such commodity by making sales thereof at a lower rate in one section of the State than in other sections, after equalization for distance, is a constitutional exercise of the police power of the State and is not unconstitutional under the Fourteenth Amendment as depriving persons having more than one place of business in the State of their property without due process of law, or as denying them the equal protection of the laws, or as abridging their liberty of contract. *Central Lumber Co. v. South Dakota*, 157.

20. *Due process and equal protection of the law; property rights; validity of law of Hawaii relative to auctioneers' fees.*

Section 1343, Revised Laws of Hawaii, imposing a license fee of six

hundred dollars for auctioneers in the district of Honolulu and fifteen dollars for each other taxation district, is not unconstitutional as depriving an auctioneer in Honolulu of his property without due process of law or as denying him the equal protection of the laws. *Toyota v. Hawaii*, 184.

21. *Due process and equal protection of the law; deprivation of property rights; validity of Mississippi statute imposing penalty on carriers for delay in adjusting claims.*

The statute of Mississippi imposing a penalty on common carriers for failure to settle claims for lost or damaged freight in shipment within the State within a reasonable specified period is not unconstitutional under the Fourteenth Amendment, as depriving the carrier of its property without due process of law or as denying it the equal protection of the laws, as to claimants presenting actual claims for amounts actually due. *Yazoo & M. V. R. R. Co. v. Jackson Vinegar Co.*, 217.

22. *Due process and equal protection of the law; validity of § 550 of Penal Code of New York relative to purchases by junk dealers.*

Section 550 of the Penal Code of New York as amended in 1903, prohibiting dealers in junk from buying wire, copper, etc., used by, or belonging to a railroad, telephone, or telegraph company without first ascertaining by diligent inquiry that the person selling had a legal right to do so, is not unconstitutional under the Fourteenth Amendment either as depriving junk dealers of their property without due process of law or denying them equal protection of the law by an arbitrary classification of junk dealers or of the property specified. *Rosenthal v. New York*, 260.

See Infra, 41, 44.

23. *Equal protection of the law; test of.*

The test of equal protection of the law is whether all parties are treated alike in the same situation. *Selover, Bates & Co. v. Walsh*, 112.

24. *Equal protection of the law; police power of State to classify property.*

A State may, in the exercise of its police power, classify separately particular kinds of personal property which the legislature considers more susceptible of theft than other property. *Rosenthal v. New York*, 260.

25. *Equal protection of the law; classification of occupations; reasonableness of.*

It is not unreasonable or arbitrary to require dealers in junk to make

diligent inquiry to ascertain that persons selling to them wire cable, iron, etc., belonging to railroads or telegraph companies have a legal right to do so. *Ib.*

26. *Equal protection of the law; classification of occupations; power of State as to.*

Dealers who provide an important and separate market for a particular class of stolen goods may be put in a class by themselves, and so as to dealers in junk. *Ib.*

27. *Equal protection of the law; classification of trades for purposes of regulation not a denial.*

The right of the legislature, or the municipality under legislative authority, to regulate one trade and not another is well settled as not denying equal protection of the laws. *Schmidinger v. Chicago*, 578.

28. *Equal protection of the law; presumption in determining reasonableness of classification.*

This court will assume that the legislature of a State or Territory takes into consideration the varying conditions in respective localities in which the same business is to be conducted, and unless palpably arbitrary the classification will not be disturbed. *Toyota v. Hawaii*, 184.

29. *Equal protection of the law; reasonableness of classification in the matter of license fees for auctioneers.*

In view of the fact that the great bulk of the business of Hawaii is done at Honolulu this court will not declare that a license fee of six hundred dollars for auctioneers in that district is an arbitrary and unreasonable classification as against fifteen dollars for auctioneer's license in other districts of Hawaii. *Ib.*

30. *Equal protection of the law; power of legislature to vary license fees according to district.*

It is the province of the legislature to determine upon the amount of license fees, and unless the classification is arbitrary and unreasonable it may establish different amounts for different districts. *Ib.*

31. *Equal protection of the law; reasonableness of classification for regulation.*

A classification that logically affects only those who deal in more than one place in the State is not necessarily so unreasonable as to amount to denial of equal protection of the laws. *Central Lumber Co. v. South Dakota*, 157.

32. *Equal protection of the law; reasonableness of classification for regulation.*

The enactment of police statutes regulating discrimination in prices for the purpose of destroying competition in several States demonstrates that there is a widespread conviction in favor of such regulation. *Ib.*

33. *Equal protection of the law; validity of state legislation special in character.*

The Fourteenth Amendment does not prohibit state legislation special in character. The legislature may deal with a class which it deems a conspicuous example of what it seeks to prevent, although logically that class may not be distinguishable from others not embraced by the law. *Ib.*

34. *Equal protection of the law; state taxation of foreign corporations; effect to deny; quære as to.*

Quære whether statutes taxing all shares in foreign corporations except national banks owned by inhabitants of the State, and all shares in domestic corporations the property whereof is not exempt or taxable to the corporation itself, deny equal protection of the law by discriminating against stock in corporations of other States, especially as to those having property taxed within the State. *Darnell v. Indiana*, 390.

See Supra, 17-34.

35. *Ex post facto laws; when law not retrospective.*

A statute which introduces no new rule is not retrospective. *Obeda v. Zialcita*, 452.

36. *Full faith and credit; what judgments entitled.*

The full faith and credit clause of the Federal Constitution, and the statutes enacted thereunder do not apply to judgments rendered by a court having no jurisdiction. *Thompson v. Thompson*, 551.

37. *Full faith and credit; judgment entered in conformity with local practice entitled.*

Where the law of the State of matrimonial domicile permits the affidavit on which an order of service by publication is granted to be made on information and belief, the court acquires jurisdiction and the judgment based thereon is entitled to full faith and credit in the courts of other States. *Ib.*

38. *Full faith and credit; effect of decree of divorce without alimony on right to sue for maintenance in another jurisdiction.*

Where the courts of a State have held that a wife may by her conduct forfeit the right to the support of her husband, and cannot have alimony on a divorce decreed in his favor, the courts of other States must give the decree full faith and credit as foreclosing the right of the wife to have alimony and a bar to a suit for maintenance in the courts of other States. *Ib.*

39. *Privileges and immunities; abridgment of; application of prohibition.*

The prohibition of the Fourteenth Amendment against abridgment of privileges or immunities of a citizen of the United States relates only to such privileges and immunities as pertain to citizenship of the United States as distinguished from state citizenship. (*Slaughter House Cases*, 16 Wall. 36.) *Rosenthal v. New York*, 260.

40. *Privileges and immunities; right of corporation to claim protection against impairment.*

A corporation cannot claim the protection of the clause of the Fourteenth Amendment which secures the privileges and immunities of citizens of the United States against abridgment or impairment by the laws of a State. (*Western Turf Association v. Greenburg*, 204 U. S. 359.) *Selover, Bates & Co. v. Walsh*, 112.

41. *Searches and seizures; self-incrimination; effect of subpoena duces tecum on officer of corporation.*

An officer of a corporation is not subjected to an unreasonable search or seizure by a subpoena to produce without *ad testificandum* clause the books and papers of that corporation, nor is he subjected to self-incrimination by such subpoena and an order to produce thereunder or deprived of his liberty without due process of law by being committed for contempt for failure to comply with such order. (*Wilson v. United States*, 221 U. S. 361.) *Wheeler v. United States*, 478.

Self-incrimination. See Supra, 41.

42. *States; police power; subserviency to Constitution.*

While the police power of the State extends not only to regulations promoting public health, morals and safety but also to those promoting public convenience and general prosperity, it has its limits and must stop when it encounters the prohibitions of the Federal Constitution. *Eubank v. Richmond*, 137.

43. *States; police power; validity of exercise; establishment of building lines.*

A municipal ordinance requiring the authorities to establish building lines on separate blocks back of the public streets and across private property on the request of less than all of the owners of the property affected is not a valid exercise of police power, nor does it serve the public safety, convenience or welfare. *Ib.*

44. *States; police power; effect of exercise to deny due process of law.*

Such an ordinance takes private property, not for public welfare but for convenience of other owners of property, and deprives the person whose property is taken of his property without due process of law and is unconstitutional under the Fourteenth Amendment. *Ib.*

45. *States; taxation of Federal agencies.*

An ordinance which taxes without exemption the privilege of carrying on business, part of which is a governmental agency such as telegraphy, and makes no exemption of that class of the business, includes its transaction and is void as an unconstitutional attempt to tax a Federal agency. *Williams v. Talladega*, 404.

46. *States; taxation of Federal agencies.*

Where, as in this case, the part of the license exacted necessarily affects the whole it makes the entire tax unconstitutional and void. *Ib.*

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACTS.

1. *Law governing.*

The obligation of a contract is the law under which it was made, even though it may affect lands in another State; and in an action which does not affect the land itself but which is strictly personal, the law of the State where the contract is made gives the right and measure of recovery. *Selover, Bates & Co. v. Walsh*, 112.

2. *Law governing.*

A contract made in one State for the sale of land in another can be enforced in the former according to the *lex loci contractu* and not according to the *lex rei sitæ*. *Polson v. Stewart*, 167 Massachusetts, 211, approved. *Ib.*

3. *Proposal to sell to officer of United States; effect as contract.*

A proposal to sell to an officer of the United States that purports to be

an assignment *in præsenti* but which is not in form or substance an assignment and which expressly states that it shall not be binding on the proposer unless accepted by that officer before a specified date, does not become a contract express or implied because of the non-action by that officer on the proposal. *Beach v. United States*, 243.

4. *Acceptance by United States; effect of retention of proposal as.*

The retention by the officer of the United States without rejection of a proposal, which contains four different propositions of sale of the same article, only one of which could be accepted, cannot be treated as an acceptance of any one of the propositions. *Ib.*

5. *Implied; want of authority of officer of Government to bind United States.*

He who is without authority to bind his principal by express contract cannot be held to have done so by implication; and the want of authority on the part of the officer of the United States to whom delivery is claimed is fatal to the establishment of an implied contract. *Ib.*

6. *Government; insufficiency of showing to establish.*

In this case one claiming to have sold patents for pneumatic mail tubes to the Postmaster General having failed to show any use of his devices or inventions by the Government, or that any devices or inventions used were those covered by his patents, the Court of Claims rightly dismissed his petition. *Ib.*

7. *Government; conclusiveness of construction and decision of Secretary of Department making contract.*

Where a contract for Government work provides that in case of discrepancies between the specifications and the contract, the matter shall be referred to the Secretary of the Department making the contract, and the contractor agrees to abide by his decision in the premises, the construction given by the Secretary and his decision is final and conclusive. *Plumley v. United States*, 545.

8. *Government; right of contractor to recover for extras not ordered in manner prescribed.*

Where a contract for Government work provides that in every instance changes must be made by a prescribed method and approved by the Secretary, the contractor cannot recover for extras not ordered in the manner prescribed; and this rule holds even in a hard case where, as in this instance, the work was extra and of value. *Ib.*

9. *Government; right of contractor to recover for delay.*

Where the contractor fails to notify the Secretary of the cause of delay on the part of the Government in the manner prescribed by the contract and thus enable the Secretary to remove the cause of delay, the contractor cannot recover for the delay caused. *Ib.*

10. *Liability of one agreeing with municipality to perform a public service, for torts and on contract.*

One agreeing to perform a public service for a municipality is responsible for torts to third persons, but for omissions and breaches of contract he is responsible to the municipality alone. *German Alliance Ins. Co. v. Home Water Co.*, 220.

11. *With municipal corporation for public service; limitation on liability of contractor.*

A contract between a public service corporation and the municipality should not be unduly extended so as to introduce new parties and new rights and subject those contracting to suits by a multitude of persons for damages for causes which could not in the nature of things have been in contemplation of the parties. *Ib.*

12. *With municipal corporation for public service; right of taxpayer to maintain suit for breach.*

The conclusion that a property owner has no claim against a water supply company for failure to conform to the contract does not deprive him of any right, for had the municipality been guilty of the same acts no suit could be maintained. *Ib.*

13. *Fee contracts between attorneys; how construed.*

A contract between attorneys for division of fees construed according to the definite meaning therein expressed. *Robertson v. Gordon*, 311.

14. *Fee contracts between attorneys; consideration; when established.*

Under a contract by attorneys for division of fees, if the attorney claiming did any work, whether more or less, there is no failure of consideration. *Ib.*

15. *Fee contract between attorneys; effect on, of decision of Court of Claims beyond its power to render.*

In this case a contract between two attorneys agreeing to share equally all fees received from an Indian litigation, held not to have been superseded by a decision that one was entitled to a much larger share than the other made by the Court of Claims under authority

of an act of Congress authorizing it to determine the total amount due to all attorneys. *Ib.*

16. *Evidence as to condition precedent; quære as to admissibility.*

Quære whether evidence to prove that there was a condition precedent to be performed before a contract took effect is admissible without a cross-bill. *Ib.*

17. *Obligation of; law in force as; right of parties to particular remedies.*

While, in a general sense, the laws in force at the time the contract is made enter into its obligation, the parties have no vested rights in the particular remedies or modes of procedure then existing. (*Water Works Co. v. Oshkosh*, 187 U. S. 437.) *National Surety Co. v. Architectural Co.*, 276.

See ACTIONS, 1-4;

CARRIERS, 2;

CONSTITUTIONAL LAW, 1, 2,
8-13, 17-19;

EVIDENCE, 2;

INTERSTATE COMMERCE, 4, 8,

14, 21;

JURISDICTION, A 9, 10;

MAILS, 1, 2, 3;

RESTRAINT OF TRADE.

CONVEYANCES.

1. *Description of property by metes and bounds; description by name of tract yields to.*

While a tract may be so well known by name that it can be described and conveyed without other designation, ordinarily designation by name will yield to the more definite by metes and bounds; and in this case the latter rule should apply. *Veve v. Sanchez*, 234.

2. *Description of property; specific boundaries controlling.*

The construction of the description in a mortgage should not depend on the amount of land owned by the mortgagor but on the specific boundaries. *Ib.*

3. *Calls for quantity yield to lines of adjoining owners.*

The general rule in determining what is included in a conveyance is that general calls for quantity must yield to the more certain and locative lines of the adjoining owners which are, or can be made, certain. Nothing in this case warrants a departure from this long established and necessary rule of title. *Ib.*

4. *Estoppel of grantor to deny right to convey.*

The statement in a conveyance that the grantor is the owner of the property described estops the grantor from denying his right to

convey, and if not the owner at the time his subsequent acquisition inures to the benefit of the vendee. *Ib.*

CORNERS IN COMMODITIES.

See RESTRAINT OF TRADE, 24, 25, 32.

CORPORATIONS.

Books of; ownership on dissolution.

Books of a corporation are not the private books of any of the officers and do not become so by the dissolution of the corporation and the transfer of the books to one of such officers. *Wheeler v. United States*, 478.

See CONSTITUTIONAL LAW, 6, 7, RESTRAINT OF TRADE, 11, 13, 34, 40, 41; 18, 37;
INTERSTATE COMMERCE, 7; STATES, 8;
TELEGRAPH COMPANIES, 1.

COURT OF CLAIMS.

1. *Power under act directing determination of amount of attorneys' fees in Indian litigation.*

An act of Congress directing the Court of Claims to determine the amount due attorneys for fees in an Indian litigation to be apportioned by certain attorneys named amongst all entitled to share as agreed among themselves, concerns only the amount and not the manner of distribution, *United States v. Dalcour*, 203 U. S. 408, and so held as to the act of June 21, 1906, c. 3504, 34 Stat. 325. *Robertson v. Gordon*, 311.

2. *Findings of fact by; sufficiency of.*

Recitals by the Court of Claims of the documents upon which the claimant's case alone can rest with a history of the transaction and an express finding that the evidence does not establish the transfer to the Government of that for which claimant demands compensation, with negative findings of claimant's title, are sufficient findings of the ultimate facts to conform to the rules. *Beach v. United States*, 243.

See ARMY AND NAVY, 1;
CONTRACTS, 15.

COURTS.

1. *Federal and state; interference by former.*

Where the state court has jurisdiction, the Federal court cannot deny the state court the right to exercise it. *Deming v. Carlisle Packing Co.*, 102.

2. *What embraced within § 905, Rev. Stat.*

The words "every court within the United States" as used in § 905, Rev. Stat., carrying into effect the full faith and credit clause of the Constitution, include the courts of the District of Columbia. *Thompson v. Thompson*, 551.

3. *District Court under Judicial Code as successor to Circuit Court; duty under Expedition Act of 1903.*

The new District Court created by the Judicial Code of 1911 is the successor of the formerly existing Circuit Court and as such is vested with the duty of hearing and disposing of cases under the Expedition Act of 1903, § 291. *Ex parte United States*, 420.

4. *District Courts under Judicial Code; powers of.*

Section 291 of the Judicial Code of 1911 expressly confers powers of the Circuit Court upon the now existing District Courts. *Ib.*

5. *Organization of, under Expedition Act of 1903, to carry out decree of this court.*

Under the Expedition Act of 1903 a court composed as required by that act may be organized at the request of the United States to consider the plan to carry out the decree of this court holding a combination unlawful under the Sherman Anti-trust Act. *Ib.*

6. *Organization of, under Expedition Act of 1903; prohibition of district judge to proceed without.*

In this case the district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of this court, this court issues its writ of prohibition directed to the district judge against entering a decree. *Ib.*

7. *Executive orders; interference by court.*

Even though a question of law be raised by an order of the Postmaster-General excluding matter from the mails, the court will not interfere unless clearly of the opinion that the order is wrong. (*Bates & Guild Co. v. Payne*, 194 U. S. 106.) *Smith v. Hitchcock*, 53.

8. *When findings of executive officer not reviewable by.*

The evidence in this case, upon which the order of deportation of an alien on the ground that she was a prostitute and was found practicing prostitution within three years after her entry into the United States was based, being adequate to support the conclusions of fact of the Secretary of Commerce and Labor, and there

having been a fair hearing, those findings are not subject to review by the courts. *Zakonaite v. Wolf*, 272.

9. *Wisdom of exercise of police power no concern of.*

The court has no concern with the wisdom of exercising the police power, and unless the enactment has no substantial relation to a proper purpose, cannot declare that the limit of legislative power has been transcended. *Purity Extract Co. v. Lynch*, 192.

10. *Wisdom of exercise of police power no concern of.*

For the courts to attempt to determine whether the exercise of the police power within legislative limits is wise would be contrary to our constitutional system and substitute judicial opinion for the legislative will. The only question in this court is whether the legislature had the power to establish the regulation. *Ib.*

11. *When justified in interfering with exercise of police power.*

Local legislative authorities, and not the courts, are primarily the judges of the necessities of local situations calling for police regulation, and the courts can only interfere when such regulation arbitrarily exceeds a reasonable exercise of authority. *Schmidinger v. Chicago*, 578.

See APPEAL AND ERROR, 1.

BANKRUPTCY, 2-6;

JURISDICTION;

MAILS, 8;

PRACTICE AND PROCEDURE;

RAILROADS, 3;

REMOVAL OF CAUSES;

RULES OF COURT;

SALES, 1.

CRIMINAL APPEALS ACT.

See JURISDICTION, A 5, 6, 7.

CRIMINAL LAW.

1. *Lawful acts as steps in crime.*

Acts absolutely lawful may be steps in a criminal plot. (*Aikens v. Wisconsin*, 195 U. S. 206.) *United States v. Reading Co.*, 324.

2. *Indictment; presentment; sufficiency of.*

An indictment duly found by the Federal grand jury, while in session in a room adjoining the court room with a door opening into the court room, and which is presented in the manner prescribed by the law of the State to the presiding judge in open court while the jurors are still in session and able to see the actions of the foreman, is not void because the grand jury did not in a body accompany the foreman into the court room. *Breese v. United States*, 1.

3. *Indictment; presentment; objection to sufficiency of.*

An objection that an indictment was not, under such circumstances, duly presented and publicly delivered, should be taken at the first opportunity and is lost by failure to do so; nor is it saved by permission given, when pleading not guilty, to take advantage upon motion in arrest of judgment of all matters that can be availed of on motion to quash or demurrer. *Ib.*

4. *Indictment; objections to; effect of § 1025, Rev. Stat.*

Section 1025, Rev. Stat., indicates a policy that technical objections to an indictment not presented at the first opportunity are waived and should be construed as extending to the objection raised in this case, the same not being based on a constitutional right. *Ib.*

5. *Pleading; effect of order saving rights.*

An order of the court saving rights to one pleading to an indictment does not create new rights. *Ib.*

6. *Conspiracy; indictment; necessity for allegation of specific intent to produce natural results.*

Persons purposely engaging in a conspiracy which necessarily and directly produces the result which a prohibitory statute is designed to prevent are, in legal contemplation, chargeable with intending to produce that result; and so held that if the details of the conspiracy are alleged in the indictment an allegation of specific intent to produce the natural results is not essential. *United States v. Patten*, 525.

7. *Conspiracy; character and effect determined, how.*

The character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *Ib.*

8. *Possession of stolen article; effect as proof of guilt.*

Possession of the article stolen may tend to show guilty participation in the burglary, and so held in this case as to possession of an automobile. *McNamara v. Henkel*, 520.

See ALIENS, 2;

EXTRADITION;

JURISDICTION, A 5, 6, 7.

DAMAGES.

1. *Measure of, in action for personal injuries.*

In this case the trial court appears to have properly instructed the jury in regard to damages to which the plaintiff was entitled for per-

sonal injury, and did not as to future pain, etc., go beyond conservative rules laid down in such cases. *Southwestern Brewery v. Schmidt*, 162.

2. *Measure of, in action for personal injuries.*

The court may, within conservative rules, instruct the jury that they may, in estimating the damages of a plaintiff in a personal injury suit, consider loss of time with reference to ability to earn money, temporary or permanent impairment of capacity to earn money, disfigurement and pain, past or reasonably certain to be suffered in the future. (See *Chicago, Milwaukee & St. Paul Ry. Co. v. Lindeman*, 143 Fed. Rep. 946.) *Ib.*

3. *Effect of jury setting aside release on question of what amounts paid thereunder represented.*

Where the charge directs that the jury deduct from damages amounts paid under a release executed by plaintiff, if the jury set the release aside it is immaterial what the amounts so paid represented as the transaction was rescinded by the verdict. *Ib.*

See ACTIONS, 4;

APPEAL AND ERROR, 3.

DEATH OF PARTY.

See APPEAL AND ERROR, 8;

JUDGMENTS AND DECREES, 2.

DEEDS.

See CONVEYANCES.

DEPORTATION OF ALIENS.

See ALIENS;

CONSTITUTIONAL LAW, 14;

COURTS, 8.

DESCRIPTION OF PROPERTY.

See CONVEYANCES, 1, 2, 3.

DISCHARGE IN BANKRUPTCY.

See BANKRUPTCY, 1.

DISTRICT COURTS.

See COURTS, 3, 4.

DISTRICT OF COLUMBIA.

See COURTS, 2.

DIVORCE.

1. *Alimony; maintenance assimilated to.*

Statutory maintenance is assimilated to alimony under § 980 of the Code of the District of Columbia. *Thompson v. Thompson*, 551.

2. *Matrimonial domicile of parties.*

The State in which the parties were married, where they resided after marriage, and where the husband resided until the action for divorce was brought, is the matrimonial domicile and has jurisdiction over the absent wife. *Ib.*

3. *Process; service by publication.*

Under the prior decisions of this court, service of the summons in a suit for divorce may be by publication if brought in a court of the State of matrimonial domicile. (*Atherton v. Atherton*, 181 U. S. 155; *Haddock v. Haddock*, 201 U. S. 562.) *Ib.*

4. *Process; sufficiency to validate decree.*

A decree of divorce is not valid even when granted by a court of the State of matrimonial domicile except on actual notice to the defendant, or, if a non-resident, by publication according to the law of the State. *Ib.*

See CONSTITUTIONAL LAW, 37, 38;

JURISDICTION, A 1, 2.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 14-22, 41, 44.

EJECTMENT.

Proof of title by plaintiff.

In ejectment the plaintiff must recover on the strength of his own title and cannot prove by parol that a part of the land conveyed was not included in the grant; a contrary rule would make every grantee liable to have what had been conveyed to him taken away by word of mouth. *Veve v. Sanchez*, 234.

ELKINS ACT.

See INTERSTATE COMMERCE, 6, 10.

EMPLOYER AND EMPLOYÉ.

See MASTER AND SERVANT;

EMPLOYERS' LIABILITY ACT.

EMPLOYERS' LIABILITY ACT.

1. *Actions may be maintained by whom.*

Under the Federal Employers' Liability Act the beneficiaries of one killed cannot maintain an action against the employer except as personal representatives of the deceased; but where the plaintiff is sole beneficiary and takes out letters after the commencement of the action, the court may allow an amendment alleging that the plaintiff sues in the capacity of administrator. *Missouri, K. & T. Ry. Co. v. Wulf*, 570.

2. *Effect to supersede state law; presumption as to judicial notice.*

Even if the petition in a suit against an interstate carrier for the death of one engaged in interstate commerce asserts a cause of action under the state statute, without referring to the Federal Employers' Liability Act, the court is presumed to be cognizant of the Federal act and of the fact that it has superseded state laws upon the subject. *Ib.*

3. *Amendment of pleading in suit under; effect as new cause of action barred by statute of limitations.*

An amendment to the effect that plaintiff sues as personal representative on the same cause of action under the Federal statute instead of as sole beneficiary of the deceased under the state statute, is not equivalent to the commencement of a new action and is not subject to the statute of limitations. (*Union Pacific Ry. Co. v. Wyler*, 158 U. S. 285, distinguished.) *Ib.*

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 17-34.

ESTOPPEL.

See CONVEYANCES, 4;
INTERSTATE COMMERCE, 20;
PUBLIC LANDS, 2.

EVIDENCE.

1. *Probative force of.*

Evidence should, if unexplained, be accorded its natural probative force. *McNamara v. Henkel*, 520.

2. *Parol not admissible to vary written contract; rule in Porto Rico.*

The rule prohibiting written contracts from being varied by parol is not confined to the common law, but was in force in Porto Rico in 1885 and since then. *Veve v. Sanchez*, 234.

- See APPEAL AND ERROR, 8; EXTRADITION, 2;
 CONTRACTS, 16; JUDGMENTS AND DECREES, 1;
 CRIMINAL LAW, 8; PRACTICE AND PROCEDURE, 2;
 EJECTMENT; RESTRAINT OF TRADE, 41, 42;
 STATUTES, A 6.

EXECUTIVE DEPARTMENTS.

See CONGRESS, POWERS OF.

EXECUTIVE ORDERS.

See COURTS, 7.

EX POST FACTO LAWS.

See CONSTITUTIONAL LAW, 35.

EXTRADITION.

1. *Habeas corpus; availability to review decision of committing magistrate.*

Under § 5270, Rev. Stat., if the committing magistrate has jurisdiction and the offense charged is within the treaty and there is legal evidence on which to exercise his judgment as to sufficiency of the facts to establish criminality for purposes of extradition, the decision of the magistrate cannot be reviewed on *habeas corpus*. *McNamara v. Henkel*, 520.

2. *Evidence; sufficiency for purposes of.*

In this case there was competent evidence that the crime of burglary as defined by the law of the State where accused was arrested had been committed and extradition was properly granted under the treaties with Great Britain of 1842 and 1889. *McNamara v. Henkel*, 520.

See HABEAS CORPUS.

FACTS.

See COURT OF CLAIMS, 2;
 PRACTICE AND PROCEDURE, 6-10.

FEDERAL AGENCIES.

See CONSTITUTIONAL LAW, 45, 46;
 STATES, 9.

FEDERAL QUESTION.

1. *Local and not Federal question.*

What amounts to selling at auction, within the meaning of a license statute, is for the state or territorial court to determine, and presents no Federal question reviewable by this court. *Toyota v. Hawaii*, 184.

2. *Status of state officer a local question.*

Whether a state officer is within the classified service and not subject to removal under the Civil Service Act of the State is a matter for the state court to determine, and its ruling is binding upon this court and presents no Federal question. (*Taylor v. Beckham*, 178 U. S. 548.) *Preston v. Chicago*, 447.

3. *Construction of state statute; question of applicability before this court.*

With the ruling of the state court as to the applicability of a state statute to a particular contract this court has nothing to do. It is concerned only with the question of whether as so applied the law violates the Federal Constitution. *Selover, Bates & Co. v. Walsh*, 112.

4. *When questions of the lex loci contractus and lex loci solutionis local and not Federal.*

Questions of the *lex loci contractus* and of the *lex loci solutionis* are questions of general law that frequently arise in litigation and do not, unless specially so claimed, constitute the setting up of a Federal right or privilege. *El Paso & S. W. R. R. Co. v. Eichel*, 590.

See APPEAL AND ERROR, 2;
JURISDICTION, A.

FIFTH AMENDMENT.

See ALIENS, 2;
CONSTITUTIONAL LAW, 14.

FINDINGS OF FACT.

See COURT OF CLAIMS, 2;
PRACTICE AND PROCEDURE, 6-10.

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 6, 7, 34;
STATES, 8.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 8, 18, 19, 21, 22, 33, 39, 40, 44.

FRAUD.

See TRADE-MARKS, 2, 3, 4, 5.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 36-38;

COURTS, 2;

JURISDICTION, A 9, 10.

GOVERNMENTAL AGENCIES.

See CONSTITUTIONAL LAW, 45, 46;

STATES, 9.

GOVERNMENTAL POWERS.

Governmental powers must be flexible and adaptive. *Eubank v. Richmond*, 137.

See CONGRESS, POWERS OF;

CONSTITUTIONAL LAW, 30;

COURTS, 10, 11.

GRAND JURY.

See CRIMINAL LAW, 2.

HABEAS CORPUS.

Scope of review on.

Habeas corpus does not operate as a writ of error and mere errors are not subject to review, and so *held* as to an objection that depositions used in an extradition case were not properly certified. *McNamara v. Henkel*, 520.

See EXTRADITION, 1.

HEPBURN ACT.

See INTERSTATE COMMERCE, 10, 16, 17.

HOMESTEADS.

See PUBLIC LANDS, 1, 2.

HUSBAND AND WIFE.

See CONSTITUTIONAL LAW, 38;

DIVORCE.

IMMIGRATION.

See ALIENS.

IMMUNITY OF WITNESSES.

See WITNESSES.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 9-13.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 2, 3, 4, 6;
JURISDICTION, A 7.

INFRINGEMENT.

See TRADE-MARKS.

INJUNCTION.

See RAILROADS, 3;
RESTRAINT OF TRADE, 7;
TRADE-MARKS, 1.

INSTRUCTIONS TO JURY.

See DAMAGES, 1, 2.

INTERSTATE COMMERCE.

1. *Authority over; supremacy of Congress.*

There can be no divided authority over interstate commerce, and regulations of Congress on that subject are supreme. *Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 426.

2. *Authority over; when that of State ceases.*

As to those subjects upon which the States may act in the absence of legislation by Congress, the power of the State ceases the moment Congress exerts its paramount authority thereover. *Ib.*

3. *Supremacy of power of Congress; effect of exercise on power of States.*

Since the decisions of this court in *Chicago, Milwaukee & St. Paul Railway v. Solan*, 169 U. S. 133, and *Pennsylvania Railroad v. Hughes*, 191 U. S. 477, Congress has by § 20 of the Hepburn Act of June 29, 1906, 34 Stat. 584, c. 3591, known as the Carmack amendment, legislated directly upon the carrier's liability for loss of and damage to interstate shipments, and this legislation supercedes all regulations and policies of a particular State upon the

same subject. *Adams Express Co. v. Croninger*, 491; *Chicago, B. & Q. Ry. Co. v. Miller*, 513; *Chicago, St. P., M. & O. Ry. Co. v. Latta*, 519.

4. *State's power over, dependent upon silence of Congress.*

Only the silence of Congress authorizes the exercise of the police power of the State upon the subject of contracts with carriers for interstate shipments, and when Congress exercises its authority the regulating power of the State is at an end. *Adams Express Co. v. Croninger*, 491.

5. *Power of State to regulate liability of interstate carriers.*

Until Congress has legislated upon that subject, the liability of a carrier, although engaged in interstate commerce, for loss or damage to property carried, may be regulated by law of the State. *Ib.*

6. *Equality of shippers; object of act to regulate.*

It is the object of the Interstate Commerce Act and the Elkins Act to prevent favoritism by any means or device whatsoever and to prohibit all practices running counter to the purpose of placing all shippers upon equal terms. *United States v. Union Stock Yard Co.*, 286.

7. *What constitutes; effect of manufactory and warehouses in different States.*

A corporation having a manufactory in one State and warehouses in several other States held to be engaged in interstate commerce under the circumstances of this case. *Standard Sanitary Mfg. Co. v. United States*, 20.

8. *Bills of lading; uniformity of; intention of Congress in Carmack amendment.*

In enacting the Carmack amendment it is evident that Congress intended to adopt a uniform rule as to the liability imposed upon interstate carriers by state regulations of bills of lading and to relieve such contracts from the diverse regulation to which they had theretofore been subject. *Adams Express Co. v. Croninger*, 491.

9. *Combinations within purview of act to regulate.*

In view of continuity of operation, manner of compensation for, and performance of, services in connection with interstate transportation, the Union Stock Yard & Transit Company and the Chicago Junction Railway Company are subject to the terms of the Act to Regulate Commerce and must conform to its requirements in regard to filing tariff and desist from also unlawful discriminations to shippers. *United States v. Union Stock Yard Co.*, 286.

10. *Instrumentalities within purview of act to regulate.*

The Interstate Commerce Act, as amended by the Elkins and Hepburn Acts, extends to all terminal facilities and instrumentalities. *Ib.*

11. *Service within State covered by act to regulate.*

Service that is performed wholly in one State is still subject to the Act to Regulate Commerce if it is a part of interstate commerce. *Ib.*

12. *Character of commerce as; how determined.*

The character of the service rendered in regard to carriage of interstate freight and not the manner in which the goods are billed determines whether the commerce is interstate or not; and so held that although neither the Stock Yard Company nor the Junction Railway Company issues through bills of lading, still, as the goods handled are in transit from one State to another, both corporations are engaged in interstate commerce. *Ib.*

13. *Railroads within meaning of act to regulate.*

Where two corporations, the controlling stock of both of which is owned by one holding company, operate jointly, one handling only the stock yard business and the other the business of transferring and switching cars containing freight in interstate transit, both are to be deemed railroads within the terms of the Act to Regulate Commerce and are subject to its requirements. *Ib.*

14. *Discrimination within prohibition of act to regulate.*

A contract by an interstate carrier by railroad to pay a part of the cost of the plant of one of its shippers who agrees only to handle goods moved by it, held in this case to be an illegal discrimination and rebate under the Act to Regulate Commerce. *Ib.*

15. *Discrimination within prohibition of act to regulate.*

A shipper receiving a bonus from the carrier for erecting a plant on the line of the carrier has an undue advantage over a shipper not receiving any bonus or a smaller bonus. *Ib.*

16. *Deliveries of cars; duty of carrier under Hepburn Act.*

By the Hepburn Act of June 29, 1906, 34 Stat. 584, c. 3591, Congress legislated concerning the deliveries of cars in interstate commerce, and made it the duty of the carrier to provide and furnish transportation. *Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 426.

17. *Deliveries of cars; power of State to regulate; effect of Hepburn Act.*
 Since the enactment of the Hepburn Act it is beyond the power of a State to regulate the delivery of cars for interstate shipments, and so held as to the Reciprocal Demurrage Law of Minnesota of 1907. *Ib.*

18. *Lease of railroad by owning company; effect on operation of law.*
 While the Act to Regulate Commerce excludes transportation wholly within a State, a corporation owning a railroad and doing other business in connection with freight in interstate carriage cannot, by leasing the railroad to another company for a share of the profits, exempt itself from the operation of the law. *United States v. Union Stock Yard Co.*, 286.

19. *Charges based on value of articles transported not violative of Carmack amendment.*

The provisions of the Carmack amendment are not violated by a plain provision in a bill of lading basing the charges on value of article transported and charging higher rates for increasing liability as value is declared; and so held as to express rates filed with the Interstate Commerce Commission. *Adams Express Co. v. Croninger*, 491.

20. *Posting of rates; effect of failure of carrier on right to collect published tariff rate.*

Failure to post rates does not estop the carrier from collecting the published tariff rate notwithstanding a lower rate may have been quoted to the shipper. (*Kansas City Southern Ry. Co. v. Albers Commission Co.*, 223 U. S. 573.) *Illinois Cent. R. R. Co. v. Henderson Elevator Co.*, 441.

21. *Limitation of liability; interstate carrier may contract for.*

An interstate carrier may, by a fair, open and reasonable agreement, limit the amount recoverable by the shipper to an agreed value made for the purpose of obtaining the lower of two or more rates proportioned to the amount of risk. *Adams Express Co. v. Croninger*, 491.

22. *Limitation of liability by interstate carrier within public policy.*

A limitation of liability based upon an agreed value to obtain a lower rate does not conflict with any sound principle of public policy; and it is not conformable to plain principles of justice that a shipper may understate value in order to reduce the rate and then recover a larger value in case of loss. *Ib.*

23. *Remedies; application of proviso in Carmack amendment.*

A *proviso* reserving certain rights of action will not be construed as nullifying the statute itself and maintaining the existing confusion which it was the purpose of Congress to put an end to; and so held that the *proviso* in the Carmack amendment related to remedies under existing Federal law at the time of this action and not to any state law. *Ib.*

See CONSTITUTIONAL LAW, 1-7.
RESTRAINT OF TRADE.

INTERSTATE COMMERCE COMMISSION.

1. *Orders of; incidental character.*

An order to maintain through rates incident to a requirement to make switch connections is incidental thereto and falls with it. *United States v. Baltimore & Ohio S. W. R. R. Co.*, 14.

2. *Power to require switch connections.*

Under § 7 of the act of June 18, 1910, 36 Stat. 539, 547, c. 309, the Interstate Commerce Commission cannot require a main trunk road to make switch connections with a road which is not actually at the time a lateral branch road. *Ib.*

3. *Lateral branch railroads within meaning of § 7 of act of June 18, 1910.*

In this case held, that a railroad parallel with a main trunk line and operated by a traction company as an independent venture and not as a mere feeder was not a lateral branch railroad within the meaning of § 7 of the act of June 18, 1910. *Ib.*

INTERVENTION.

See APPEAL AND ERROR, 7.

INTOXICATING LIQUORS.

1. *Police power of State to prohibit sales of innocuous beverages in connection with power to prohibit sales of intoxicants.*

A State may, in the exercise of its police power, prohibit the sale of intoxicating liquor, and to the end of making the prohibition effectual may include in the prohibition beverages which separately considered may be innocuous; and so held as to Poinsetta, a beverage containing a small percentage of malt. *Purity Extract Co. v. Lynch*, 192.

2. *Power of State to prohibit sales includes what.*

In the exercise of its police power to prohibit the sale of intoxicants a

State may include within the prohibition malt and other liquors sold under the guise of innocent beverages. *Ib.*

3. *Prohibition of sale of non-intoxicants as necessary to prevent sale of intoxicants.*

The legislation to that effect in many of the States shows that the opinion is extensively held that a general prohibition of sale of malt liquors whether intoxicating or not is necessary to suppress the sale of intoxicants. *Ib.*

4. *What within Wilson Act; quære as to.*

Quære, and not decided, whether an article such as Poinsetta, the beverage involved in this case, having a low percentage of malt, is governed by the Wilson Act. *Ib.*

See CONSTITUTIONAL LAW, 2, 3.

JUDGMENTS AND DECREES.

1. *Collateral impeachment of.*

The judgment of a court that a right is established cannot be impeached collaterally by proof that the judgment was wrong. *Burnet v. Desmornes*, 145.

2. *Joint; effect of death of party.*

A joint judgment ceases to be joint by the death of one of the parties. *Kalaniana'ole v. Smithies*, 462.

3. *Voidable but not void, when.*

Although an affidavit used as a basis for an order of publication of the summons may be defective in the mode of stating material facts, if the facts are stated, the judgment, though voidable on direct attack, is not void on its face and *coram non judice*. *Thompson v. Thompson*, 551.

See CONSTITUTIONAL LAW, 36, 37, 38; JURISDICTION, A 4, 12, 13;
COURTS, 5, 6; RES JUDICATA.

JUDICIAL CODE.

See COURTS, 3, 4;
STATUTES, A 5.

JUDICIAL DISCRETION.

See PRACTICE AND PROCEDURE, 1, 2;
RESTRAINT OF TRADE, 16.

JUNK DEALERS.

See CONSTITUTIONAL LAW, 22, 25, 26.

JURISDICTION.

A. OF THIS COURT.

1. *Amount in controversy; sufficiency of estimated expectancy of payments for maintenance.*

Notwithstanding the obligation to make continuing payments for maintenance of a wife and children is not, even when fixed by judicial decree, in the nature of a technical debt, it may, when so fixed, be estimated on expectancy of life, and the total amount may sustain a jurisdiction based on amount involved. *Thompson v. Thompson*, 551.

2. *Amount in controversy; sufficiency of estimated payments for maintenance.*

In this case, as the amount due under a judgment of the Supreme Court of the District of Columbia for support and maintenance at the rate of \$75.00 a month together with amount to accrue due during expectancy of life of the wife amounts to over \$5,000, this court has jurisdiction under the act of February 9, 1893. *Ib.*

3. *Amount in controversy; quære as to.*

Quære whether in this case the jurisdictional amount of \$25,000 was involved. *Harty v. Victoria*, 12.

4. *To review judgment of Circuit Court of Appeals; what amounts to final judgment under § 6 of Judiciary Act of 1891.*

Where the jurisdiction of the Circuit Court does not depend entirely on diverse citizenship but is also founded upon a Federal statute and the amount exceeds one thousand dollars, the judgment of the Circuit Court of Appeals is not final under § 6 of the Judiciary Act of 1891. *Missouri, K. & T. Ry. Co. v. Wulf*, 570.

5. *Under Criminal Appeals Act of 1907.*

On appeal under the Criminal Appeals Act of March 2, 1907, this court must accept the lower court's construction of the counts, and its jurisdiction is limited to considering whether the decision of the court below that the acts charged are not criminal is based upon an erroneous construction of the statute alleged to have been violated. *United States v. Patten*, 525.

6. *Under Criminal Appeals Act; when construction of statute involved.*

In order to decide whether acts charged are within the condemnation

of a statute, the court must first ascertain what the statute does condemn and that involves its construction. *Ib.*

7. *Under Criminal Appeals Act; determination of illegality of acts under statute charged to have been violated.*

On appeal under the Criminal Appeals Act of 1907 this court must assume that the counts of the indictment adequately allege whatever the lower court treated them as alleging; and, where its decision shows that it assumed that every element necessary to form a combination was present, this court has jurisdiction to determine whether such a combination was illegal under the statute which defendants are charged with violating. *Ib.*

8. *Under § 709, Rev. Stat.; when claim of Federal right sufficiently raised.*

This court cannot review a judgment of the state court under § 709, Rev. Stat., on the ground of denial of a Federal right, privilege or immunity unless the same was specially set up or claimed in the state court. *El Paso & S. W. R. R. Co. v. Eichel*, 590.

9. *Under § 709, Rev. Stat.; when claim of Federal right sufficiently asserted.*

In this case the insistence of plaintiff in error that his rights under a contract were to be determined according to the law of a different State, did not amount to claiming that full faith and credit was denied to the law of another State so as to give a basis for a review of the judgment by this court under § 709, Rev. Stat. *Ib.*

10. *Under § 709, Rev. Stat.; absence of basis for claim of denial of full faith and credit.*

Where, as in this case, it appears that the state court based its decision upon the interpretation of the contract and not upon the law of another State, there is no basis for review by this court on the ground of failure to give full faith and credit to the acts of another State. *Ib.*

11. *Under § 709, Rev. Stat.; sufficiency of assertion of Federal right.*

The assertion of a Federal right in an unsuccessful application to the highest court of a State to grant a writ of error to a lower court of that State raises no question reviewable in this court. *Ib.*

12. *To review judgment of state court; finality of judgment essential.*

This court cannot be called upon to review the action of the state court by piecemeal, and even if the judgment does finally dispose of some elements of the controversy, unless it is final on its face as to the entire controversy this court will not review it. *Louisiana Nav. Co. v. Oyster Commission*, 99.

13. *To review judgment of state court; finality of judgment; form controlling in determination of.*

On the question of finality the form of the judgment is controlling, and that form cannot be disregarded in order to ascertain whether the judgment is a final one according to state law. *Ib.*

14. *To review judgment of state court; when want of finality presumed.*

The dismissal of the writ of error for want of finality of the judgment in this case is on the presumption that the case otherwise involves Federal questions reviewable by this court. *Ib.*

15. *To review judgment of state court; Federal controversies to be decided; effect of scope of decision by state court.*

This court has the power and duty when reviewing the final judgment of a state court to pass on all Federal controversies in the cause irrespective of how far such questions were concluded by the state law during the litigation and before a final judgment reviewable here was rendered. *Ib.*

16. *To review judgment of state court, wanting, when Federal question presented is plainly frivolous.*

Even though the record may present in form a Federal question the writ of error will be dismissed if it plainly appear that the Federal question is so unsubstantial and devoid of merit as to be frivolous. *Deming v. Carlisle Packing Co.*, 102.

17. *To review judgment of state court; when Federal question frivolous.*

In this case the only Federal question which was based on the refusal of the state court to remove the cause as to the non-resident defendants on the ground of fraudulent joinder of the resident defendant and is frivolous as shown by the fact that the trial court refused to nonsuit as to the resident defendant and there was a verdict against all. *Ib.*

18. *To review judgment of state court; when judgment rests on sufficient non-Federal ground.*

Where the judgment of the state court rests upon non-Federal questions sufficient to support it, such as laches and long delay, this court cannot review the judgment upon the ground that a Federal question also exists. (*Moran v. Horsky*, 178 U. S. 205.) *Preston v. Chicago*, 447.

See APPEAL AND ERROR;
FEDERAL QUESTION.

B. OF CIRCUIT COURTS OF APPEALS.

See PURE FOOD AND DRUGS ACT, 5;
Supra, A 4.

C. OF DISTRICT COURTS.

See BANKRUPTCY, 2;
COURTS, 3, 4;
RESTRAINT OF TRADE, 10.

D. OF COURT OF CLAIMS.

See ARMY AND NAVY, 1.

E. OF INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

F. OF FEDERAL AND STATE COURTS.

See COURTS, 1.

G. OF STATE COURTS.

Over property in other States.

The court may, through action upon, or constraint of, the person within its jurisdiction, affect property in other States. *Selover, Bates & Co. v. Walsh*, 112.

H. GENERALLY.

1. *Effect of simultaneous filing of formal appearance and exception to jurisdiction.*

Where defendant files a formal appearance and simultaneously files an exception to the jurisdiction, the two papers should be considered together, and as such cannot be regarded as a consent to submit to the jurisdiction in a case where consent is necessary. *Wood v. Wilbert*, 384.

2. *Effect of expiration, before action brought, of statutory period of limitation.*

The provisions of Art. 137 of the Civil Code of Porto Rico of 1889 and of § 199 of the act of March 1, 1902, of Porto Rico, requiring actions to claim filiation to be commenced within prescribed periods, do not deprive the court of jurisdiction in case the action is not brought until after the prescribed period. It is a defense that must be pleaded. *Burnet v. Desmornes*, 145.

3. *Effect of prescription on.*

Whether prescription goes only to the remedy or extinguishes the right, it affects the jurisdiction no more than any other defense.
Burnet v. Desmornes, 145.

4. *To determine reasonableness of municipal license ordinance.*

Unless there is a claim that a Federal right is violated the reasonableness of a municipal license ordinance is for the State to determine.
Williams v. Talladega, 404.

See CONSTITUTIONAL LAW, 37; RES JUDICATA, 1, 2, 3;
 DIVORCE, 2; SALES, 1.

JURY TRIAL.

See CONSTITUTIONAL LAW, 14.

LACHES.

See JURISDICTION, A 18.

LAND GRANTS.

See PUBLIC LANDS;
 RIPARIAN RIGHTS.

LAW GOVERNING.

See CONTRACTS, 1, 2; INTERSTATE COMMERCE, 1-5;
 EMPLOYERS' LIABILITY ACT, 2; TELEGRAPH COMPANIES, 1.

LEASE.

See INTERSTATE COMMERCE, 18.

LEGISLATIVE POWERS.

See CONGRESS, POWERS OF;
 CONSTITUTIONAL LAW, 30;
 COURTS, 9, 11.

LEX LOCI CONTRACTUS.

See FEDERAL QUESTION, 4.

LEX LOCI SALUTIONIS.

See FEDERAL QUESTION, 4.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 8, 17, 19.

LICENSE TAXES.

See CONSTITUTIONAL LAW, 5, 29, 30, 45, 46;
TELEGRAPH COMPANIES, 2.

LIMITATION OF ACTIONS.

See EMPLOYERS' LIABILITY ACT, 3;
JURISDICTION, H 2.

LIMITATION OF LIABILITY.

See INTERSTATE COMMERCE, 21, 22.

LIQUORS.

See CONSTITUTIONAL LAW, 2, 3;
INTOXICATING LIQUORS.

LIVE STOCK.

See CARRIERS, 1.

LOCAL LAW.

- District of Columbia.* Section 980 of Code, relative to maintenance of wife and children (see Divorce, 1). *Thompson v. Thompson*, 551.
- Hawaii.* Rev. Laws, § 1343, prescribing license fees for auctioneers (see Constitutional Law, 20). *Toyota v. Hawaii*, 184.
- Idaho.* Statute establishing a method for fixing water rates (see Constitutional Law, 10). *Murray v. Pocatello*, 318.
- Illinois.* Ordinance of Chicago of 1908 regulating sizes of bread loaves (see Constitutional Law, 17). *Schmidinger v. Chicago*, 578.
- Indiana.* Taxation of shares in foreign corporations (see Constitutional Law, 7). *Darnell v. Indiana*, 390.
- Iowa.* Riparian rights (see Riparian Rights, 1). *Marshall Dental Mfg. Co. v. Iowa*, 460.
- Kansas.* Law of 1905, regulating foreign corporations (see Constitutional Law, 6). *Bucks Stove Co. v. Vickers*, 205.
- Louisiana.* Actions (see Bankruptcy, 2). *Wood v. Wilbert*, 384.
- Maryland.* Chapter 305, Laws of 1908 (see Practice and Procedure, 28). *Pittsburg Steel Co. v. Baltimore Equitable Society*, 455.

Minnesota. Chapter 223, Laws of 1897, relative to contracts for sale of lands (see Constitutional Law, 18). *Selover, Bates & Co. v. Walsh*, 112.

Chapter 413 of General Laws of 1909, relative to bonds of contractors for public works (see Constitutional Law, 13). *National Surety Co. v. Architectural Co.*, 276.

Reciprocal Demurrage Law of 1907 (see Interstate Commerce, 17). *Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 426.

Mississippi. Statute imposing penalty on common carriers for failure to settle claims within specified period (see Constitutional Law, 21). *Yazoo & M. V. R. R. Co. v. Jackson Vinegar Co.*, 217.

New York. Section 550 of Penal Code, regulating dealers in junk (see Constitutional Law, 22). *Rosenthal v. New York*, 260.

Philippine Islands. Trade-Mark Act (see Trade-Marks, 2). *Obeda v. Zialcita*, 452.

Porto Rico. Article 137 of Civil Code of 1889 and § 199 of the act of March 1, 1902, relative to limitation of actions to claim filiation (see Jurisdiction, H. 2). *Burnet v. Desmornes*, 145.

Admissibility of evidence (see Evidence, 2). *Veve v. Sanchez*, 234.

South Dakota. Chapter 131 of Laws of 1907, prohibiting unfair discrimination to destroy competition in sales of commodities (see Constitutional Law, 19). *Central Lumber Co. v. South Dakota*, 157.

Virginia. Chapter 349 of Laws of 1908, relative to establishment by municipalities of building lines (see Constitutional Law, 15). *Eubank v. Richmond*, 137.

MAILS.

1. *Postmaster General; power conferred by act of July 13, 1892, relative to pneumatic tubes.*

The provision in the Post Office Appropriation Act of July 13, 1892, 27 Stat. 145, c. 165, authorizing the Postmaster General to examine into transportation of mail by pneumatic tubes did not authorize the purchase of any apparatus or patents, and all parties including claimant were notified of this by the Postmaster General. *Beach v. United States*, 243.

2. *Postmaster General's power respecting pneumatic tubes.*

Under no other statutes enacted prior to the inception of the claimant's demand was the Postmaster General authorized to purchase or contract for apparatus or patents for pneumatic tubes. *Ib.*

3. *Contracts; effect to create, of retention by Postmaster General of proposal relative to postal service.*

The retention without express rejection of a proposal in answer to an advertisement of the Postmaster General which expressly states that the proposals are for investigation and estimate and that the Postmaster General has no authority to contract for expenditure of money does not constitute a contract either express or implied. *Ib.*

4. *Periodical within meaning of act of March 3, 1879.*

Every series of printed papers published at definite intervals is not necessarily a periodical within the meaning of the provisions of the act of March 3, 1879, c. 180, 20 Stat. 355, defining second-class mail matter. *Smith v. Hitchcock*, 53.

5. *Periodicals; books published serially as.*

Books that are expressly embraced by § 17 of the act of March 3, 1879, as third-class matter and subject to the higher rate of postage cannot be made second-class matter by simply publishing them at regular intervals even though, as in this case, purporting to be a series of adventures of the same person. (*Houghton v. Payne*, 194 U. S. 88.) *Ib.*

6. *Periodicals defined.*

"Periodical" as used in the act of March 3, 1879, implies that no single number of a series is a complete book in itself. *Ib.*

7. *Periodicals and books differentiated.*

As a general rule, with few exceptions, a printed publication is a book within the meaning of § 17 of the act of March 3, 1879, when its contents are complete in themselves, deal with a single subject, need no continuation and have appreciable size; and so held that the publications involved in this case are books and not periodicals. *Ib.*

8. *Hearing to which aggrieved party entitled under act of March 3, 1901; right of resort to courts.*

Where the point to be decided is a pure question of law which can be reviewed by the courts, the Postmaster General satisfies the re-

quirements of the act of March 3, 1901, c. 851, 31 Stat. 1099, 1107, by simply hearing the party claiming to be aggrieved by an order excluding matter from the mail; and one so heard and who is not prevented from offering material evidence cannot complain in the court reviewing the order that he was denied a hearing under the act. *Ib.*

See CONTRACTS, 6;
COURTS, 7.

MAINTENANCE.

See DIVORCE, 1;
JURISDICTION, A 1, 2.

MANDAMUS.

See APPEAL AND ERROR, 8;
PRACTICE AND PROCEDURE, 23.

MANDATE.

See PRACTICE AND PROCEDURE, 15.

MASTER AND SERVANT.

1. *Servant's knowledge of danger; master's liability notwithstanding.*
A master may remain liable for a certain time for a failure to use reasonable care in furnishing a safe place for the servant to work, notwithstanding the servant's appreciation of the danger, if he induces the servant to keep on by a promise to remove the source of danger. *Southwestern Brewery v. Schmidt*, 162.
2. *Cause of injury; safety of place and appliances; when master not liable.*
The evidence in this case not showing that the injury suffered by the servant was caused by failure of the master to provide a safe place or proper appliances, the trial court rightly took the case from the jury, and directed a verdict for defendant. *Anderson v. Smith*, 439.

See EMPLOYERS' LIABILITY ACT.

MATRIMONIAL DOMICILE.

See DIVORCE, 2.

MEASURE OF DAMAGES.

See DAMAGES, 1, 2.

MERGERS.

See RESTRAINT OF TRADE, 28.

MILITARY AND POST ROADS.

See TELEGRAPH COMPANIES, 2, 3.

MINERAL LANDS.

See PUBLIC LANDS, 1.

MISJOINDER OF PARTIES.

See PARTIES.

MONOPOLIES.

See RESTRAINT OF TRADE;
STATUTES, A 8.

MORTGAGES AND DEEDS OF TRUST.

See CONVEYANCES, 2.

MUNICIPAL CORPORATIONS.

Duty to furnish water for fire protection.

A municipality is not bound to furnish water for fire protection, and if it voluntarily undertakes to do so it does not subject itself to a greater liability. *German Alliance Ins. Co. v. Home Water Co.*, 220.

See ACTIONS, 3, 4;

CONTRACTS, 10, 11, 12;

CONSTITUTIONAL LAW, 10,
16, 27, 43, 44;

PRACTICE AND PROCEDURE, 12.

MUNICIPAL ORDINANCES.

See PRACTICE AND PROCEDURE, 11.

NAVY.

See ARMY AND NAVY, 4, 5.

NEGLIGENCE.

See CARRIERS, 2.

NOTICE.

See BANKRUPTCY, 1;
DIVORCE, 4;
PUBLIC LANDS, 3.

OCCUPATIONS.

See CONSTITUTIONAL LAW, 16, 25-29;
STATES, 2, 5.

OPINIONS OF THE COURT.

Limitation of what is said in.

What is said in an opinion of this court must be limited to the facts and issues involved in the particular record under investigation.
German Alliance Ins. Co. v. Home Water Co., 220.

ORIGINAL PACKAGES.

See CONSTITUTIONAL LAW, 2, 4.

PARTIES.

Misjoinder; when not reversible error.

Where the joinder of an executor of a party whose interest has ceased is simply a mistake, it is not reversible error. *Kalaniana'ole v. Smithies*, 462.

See ACTIONS, 1, 2, 3, 4; PRACTICE AND PROCEDURE, 19, 24-27;
APPEAL AND ERROR, 8; RESTRAINT OF TRADE, 45;
RIPARIAN RIGHTS, 3.

PATENTS.

License against positive prohibitions conferred by.

While rights conferred by patents are definite and extensive, they do not give a universal license against positive prohibitions any more than any other rights do. *Standard Sanitary Mfg. Co. v. United States*, 20.

See RESTRAINT OF TRADE, 49.

PENALTIES AND FORFEITURES.

See STATES, 3.

PERIODICALS.

See MAILS, 4, 5, 6, 7.

PERISHABLE PROPERTY.

See SALES.

PHILIPPINE ISLANDS.

See APPEAL AND ERROR, 10;
TRADE-MARKS, 2.

PLEADING.

- See* CRIMINAL LAW, 5; JURISDICTION, H 2;
EMPLOYERS' LIABILITY ACT, 1, 3; RESTRAINT OF TRADE, 22.

POLICE POWER.

- See* CONSTITUTIONAL LAW, 8, 16, COURTS, 9, 10, 11;
18, 19, 24, 42, 43, 44; INTOXICATING LIQUORS, 1, 2;
STATES, 1-7.

PORTO RICO.

- See* EVIDENCE, 2;
JURISDICTION, H 2.

POSTMASTER GENERAL.

- See* CONTRACTS, 6;
COURTS, 7;
MAILS.

POWERS OF CONGRESS.

- See* CONGRESS, POWERS OF; INTERSTATE COMMERCE, 1, 2, 3;
ALIENS, 1; RAILROADS, 4;
CONSTITUTIONAL LAW, 1; RESTRAINT OF TRADE, 13.

PRACTICE AND PROCEDURE.

1. *As to controlling discretion of lower court.*
This court will be slow to control the discretion of the Supreme Court of Porto Rico as to a matter wholly within its power—such as sending a case back to the lower court for further opportunity to cross-examine. *Burnet v. Desmornes*, 145.
2. *As to review of discretion of trial court in allowing leading questions.*
Even if it is open, it will require a strong case to induce the appellate court to review the discretion of the trial court in allowing leading questions; in this case, the witness being a foreigner who seemingly did not understand the English language, there is no ground for revision. *Southwestern Brewery v. Schmidt*, 162.
3. *As to going behind decision of local court upon matter of local practice.*
This court will not go behind the decision of the Supreme Court of a Territory upon a matter of local practice in order to reverse the judgment upon a technicality and an assumption contrary to a fact appearing in the record. *Ib.*

4. *Conclusiveness of findings of Secretary of the Interior and state court.*
Quære: Whether this court can go behind successive findings of the Secretary of the Interior and the state court that a lake was properly meandered and the lands within its area were not swamp. In this case no reason appears for so doing. *Marshall Dental Mfg. Co. v. Iowa*, 460.

5. *Following findings of state court.*
 The decision by the state court that an article is within the prohibition of a state statute is binding here. *Purity Extract Co. v. Lynch*, 192.

6. *Following lower court's findings of fact.*
 A finding by the Circuit Court of Appeals that the bankrupt had actual knowledge of the residence and address of the creditor is binding on this court. *Miller v. Guasti*, 170.

7. *Following lower courts' findings of fact.*
 Conclusions as to facts reached by two lower courts will not be disturbed by this court unless manifestly erroneous. *Taylor v. Columbian University*, 126.

8. *Following concurrent findings of lower courts on questions of fact.*
 The settled rule is that the concurrent action of two courts below upon questions of fact will not be disturbed except in case of manifest error. *First National Bank v. Littlefield*, 110.

9. *Following finding of lower courts as to failure to sustain burden of proof.*
 In this case appellant being claimant below had the burden of proof, and this court will not reverse the finding of both courts that the burden was not sustained. *Ib.*

10. *Following ruling of lower court as to perishable nature of property sold.*
 As to whether property is perishable or not, this court will follow the rulings of a territorial court in the absence of a strong reason to the contrary. *Jones v. Springer*, 148.

11. *Following state court's construction of state statute.*
 In determining its validity this court must consider a municipal ordinance as it has been construed by the highest court of the State. *Williams v. Talladega*, 404.

12. *Following state court's construction of powers of state legislature and municipalities in establishing rates.*

This court is not prepared on the facts in this case to overrule the highest court of a State in construing the relative powers of the legislature and municipalities in establishing rates for water. *Murray v. Pocatello*, 318.

13. *Following state court's holding as to conformity with local practice.*

This court is bound to assume, in the absence of any general law or policy of a State to the contrary being shown, that where the court adjudges the proceedings to be in accord with proper practice that such is the case. *Thompson v. Thompson*, 551.

14. *Inference as to conflict between power of State and constitutional limitations not lightly to be indulged.*

A clash between the police power of the State and constitutional limitations will not be lightly inferred, but the exact point of contact cannot be determined by any general formula in advance. (*Hudson Water Co. v. McCarter*, 209 U. S. 349.) *Eubank v. Richmond*, 137.

15. *Mandate to Circuit Court of Appeals where that court had proceeded without jurisdiction.*

Where the Circuit Court of Appeals proceeds without jurisdiction this court should, on acquiring jurisdiction of the cause, remand it to the Circuit Court of Appeals with instructions to dismiss the appeal for want of jurisdiction. *443 Cans of Egg Product v. United States*, 172.

16. *Questions raised too late.*

Contentions as to unconstitutionality of a state statute not made in the court below cannot be made in this court. *Selover, Bates & Co. v. Walsh*, 112.

17. *Objection not raised below or assigned as error not available.*

An objection that the exception and demurrer did not comply with Rule 31 owing to failure to make affidavit that they were not interposed for delay, if not raised in the court below or assigned as error, cannot be raised in this court. *Wood v. Wilbert*, 384.

18. *Objection to constitutionality of state statute not considered when not raised below or covered by assignment of error.*

Whether a state law is unconstitutional as *ex post facto* by reason of the construction given it by the state court not considered in this case

because no such point was raised in the court below or covered by assignments of error in this court. *Rosenthal v. New York*, 260.

19. *Parties; following local practice in respect of.*

On a pure matter of form as to the parties in a suit coming here from a court of a Territory, and where the whole interest in a judgment sued upon was before that court, this court should not go behind the local practice. *Kalaniana'ole v. Smithies*, 462.

20. *Record; absence of final judgment from; effect on jurisdiction.*

Where the record does not contain the final judgment to which the writ of error is directed this court cannot assume that a judgment was entered and is without authority to exert jurisdiction. *Gersch v. Chicago*, 451.

21. *Scope of review of state legislation.*

This court cannot review the economics or facts on which the legislature of a State bases its conclusions that an existing evil should be remedied by an exercise of the police power. *Central Lumber Co. v. South Dakota*, 157.

22. *Scope of review in determining constitutionality of state statute.*

This court deals with the case in hand and not with imaginary ones; and if a state statute is constitutional as against the class to which the party attacking it belongs, it will not consider whether the same statute might be unconstitutional as applied to other classes not before the court. *Yazoo & M. V. R. R. Co. v. Jackson Vinegar Co.*, 217.

23. *Questions reviewable in proceeding for mandamus to restore petitioner to office over which court has no jurisdiction.*

In a proceeding specifically for mandamus to restore petitioner to a state office over which this court has no jurisdiction, it cannot consider any rights which petitioner may have in a fund of which he may be deprived without due process of law, and the judgment dismissing for want of jurisdiction does not conclude his rights in that respect. *Preston v. Chicago*, 447.

24. *Who may attack constitutionality of law.*

One not included in a class established by a police statute or who is not injuriously affected by the classification cannot be heard to attack the statute on the ground that the classification denies equal protection of the law. *Rosenthal v. New York*, 260.

25. *Who may attack constitutionality of statute.*

One not within the class claimed to be discriminated against cannot raise the question of constitutionality of a statute on the ground that it denies equal protection by such discrimination. *Hatch v. Reardon*, 204 U. S. 152, followed, and *Sprague v. Thompson*, 118 U. S. 90, distinguished. *Darnell v. Indiana*, 390.

26. *Who may attack constitutionality of statute.*

One not hurt by a provision of an act cannot raise the question of its constitutionality on that ground. *Pittsburg Steel Co. v. Baltimore Equitable Society*, 455.

27. *Duty of one assailing constitutionality of state police statute.*

The party assailing the constitutionality of a state police statute must clearly show that it offends constitutional guaranties in order to justify the court in declaring it invalid. *Eubank v. Richmond*, 137.

28. *When state statute changing remedy will not be declared unconstitutional.*

Where, as in this case, this court cannot say that the state court was wrong in holding the new remedy under a state statute to be more efficacious than the former remedy for enforcing claims of creditors of a corporation against the stockholders, it will not declare the statute unconstitutional. And so held as to Chap. 305, Laws of Maryland of 1908. *Pittsburg Steel Co. v. Baltimore Equitable Society*, 455.

29. *Ruling of state court in application of state statute not to be anticipated.*

Where the state court has construed a state law as applied to the case at bar, this court will presume that the state court will make the statute effective as so construed in other cases. This court will not anticipate the ruling of the state court. *Selover, Bates & Co. v. Walsh*, 112.

See APPEAL AND ERROR, 1;
CRIMINAL LAW, 3, 4;
JURISDICTION, A 8.

PREFERENCES.

See BANKRUPTCY, 3, 4, 5.

PRESCRIPTION.

See JURISDICTION, H 3.

PRESUMPTIONS.

As to ethics in foreign country.

Where it does not clearly appear to the contrary, this court will assume that the same principles of honesty and fairness prevail in Spain as in our own law. *Obeda v. Zialcita*, 452.

See CONSTITUTIONAL LAW, 28;
EMPLOYERS' LIABILITY ACT, 2;
PRACTICE AND PROCEDURE, 29.

PRINCIPAL AND AGENT.

See CONTRACTS, 5.

PRIVILEGES AND IMMUNITIES OF CITIZENS.

See CONSTITUTIONAL LAW, 39, 40.

PROCESS.

See CONSTITUTIONAL LAW, 37;
DIVORCE, 3, 4.

PRODUCTION OF BOOKS AND PAPERS.

See CONSTITUTIONAL LAW, 41.

PROHIBITION.

See COURTS, 6.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW.

PROSTITUTES.

See CONSTITUTIONAL LAW, 14;
COURTS, 8.

PROVISOS.

See STATUTES, A 3.

PUBLICATION, PROCESS BY.

See DIVORCE, 3, 4.

PUBLIC LANDS.

1. *Segregation; right of entryman to cut timber pending final determination that homestead entry void.*

Until it is finally determined that a homestead entry is void because

made on mineral land open to mining location under the act of June 3, 1878, the land is segregated from the public domain and the entryman cannot cut timber thereon in violation of the law applicable to homestead entries. *Bunker Hill Mining Co. v. United States*, 548.

2. *Estoppel of entryman from defending against violations of law.*

An entryman claiming rights of a homesteader is estopped from defending against violations of the law on the ground that under another statute the land is not open to homestead entry. *Ib.*

3. *Notice imputed to one buying from entryman lumber unlawfully cut.*

One buying from an entryman lumber cut in violation of law from the homestead does so with notice and is liable for the timber unlawfully removed by the entryman. *Ib.*

See PRACTICE AND PROCEDURE, 4;

RIPARIAN RIGHTS, 1, 2, 3.

PUBLIC MONEYS.

See ARMY AND NAVY, 2.

PUBLIC OFFICERS.

See CLAIMS AGAINST THE UNITED STATES; FEDERAL QUESTION, 2;
CONTRACTS, 3, 4, 5; STATES, 1, 2.

PUBLIC POLICY.

See INTERSTATE COMMERCE, 22.

PUBLIC SERVICE CORPORATIONS.

See CONTRACTS, 10, 11, 12.

PURE FOOD AND DRUGS ACT.

1. *Seizure of goods; proceedings for; how action of lower court reviewable.*
The provision in § 10 of the Pure Food Act of June 30, 1906, 34 Stat. 768, c. 3915, that proceedings for seizure of goods shall be by libel and conform, as near as may be, to proceedings in admiralty, does not include appellate proceedings; the action of the District Court on the libel can only be reviewed as at common law by writ of error and not by appeal. *443 Cans of Egg Product v. United States*, 172.

2. *Proceedings under; intention of Congress.*

When Congress enacted the Pure Food Act it was known that as to seizures on land the District Court proceeded as in actions at common law. *Ib.*

3. *Proceedings under; jury trial; object of provision.*

The provision for jury trial in § 10 of the Pure Food Act was probably inserted by Congress with a view to removing any question of constitutionality of the act. *Ib.*

4. *Seizures under; right of owner of goods to hearing and review.*

While proceedings for seizure and condemnation under § 10 of the Pure Food Act are intended to be summary, the owner, as this court construes the statute, has a right to a hearing in a court of record, with a right of review upon questions of law by writ of error in the Circuit Court of Appeals, and where more than \$1,000 is involved finally in this court under § 6 of the Circuit Court of Appeals Act. *Ib.*

5. *Jurisdiction of Circuit Court of Appeals to review action of District Court on libel.*

As the Circuit Court of Appeals had no jurisdiction to review the action of the District Court on a libel filed under the Pure Food Act, neither its own action thereon nor the consent of the parties could give such jurisdiction. *Ib.*

RAILROADS.

1. *Acquisitions by, of other roads; limitations upon.*

Although a railroad corporation may lawfully acquire that portion of another railroad which connects, but does not compete, with any part of its own system, it may not acquire the entire system a substantial portion of which does compete with its lines. *United States v. Union Pacific R. R. Co.*, 61.

2. *Acquisitions by, of other roads; determination of effect and legality under Anti-trust Act.*

The effect of such a purchase and its legality under the Sherman Law may be judged by what was actually accomplished, and the natural and probable consequences of that which was done. *Ib.*

3. *Discriminations by, contrary to acts of Congress under which constructed; power of courts to restrain.*

Doubtless courts could restrain one railroad constructed under the acts of July 1, 1862, and July 2, 1864, from making discriminations, contrary to the provisions of those acts in regard to interchange of traffic, against another railroad also constructed under those acts. *Ib.*

4. *Power of Congress over railroads constructed under Federal authority; good faith in management required; effect of changed forms of ownership and organization.*

The obligation to keep faith with the Government in regard to management of railroads constructed under acts of Congress continues notwithstanding changed forms of ownership and organization, as does also continue the legislative power of Congress concerning such railroads. *Ib.*

See INTERSTATE COMMERCE, 13, 14, 18;
 INTERSTATE COMMERCE COMMISSION, 2, 3;
 RESTRAINT OF TRADE.

RATES.

See CARRIERS, 2; INTERSTATE COMMERCE, 19-22;
 CONSTITUTIONAL LAW, 10; PRACTICE AND PROCEDURE, 12.

REAL PROPERTY.

See APPEAL AND ERROR, 10;
 CONSTITUTIONAL LAW, 18;
 CONVEYANCES.

REBATES.

See INTERSTATE COMMERCE, 14, 15.

RECORD.

See APPEAL AND ERROR, 8;
 PRACTICE AND PROCEDURE, 20.

REMEDIES.

See CONSTITUTIONAL LAW, 9, 11, INTERSTATE COMMERCE, 23;
 12, 13; PRACTICE AND PROCEDURE, 28;
 CONTRACTS, 17; RESTRAINT OF TRADE, 7, 8, 9,
 19, 40.

REMOVAL OF CAUSES.

Right of plaintiff to proceed in state court.

Where the case is not removable before trial, plaintiff has the right to have the issues of fact and law raised determined in the state court having jurisdiction, and the power of the state court to so determine cannot be destroyed by defendants' claim that if the evidence had been rightly weighed the decision would have been different. *Deming v. Carlisle Packing Co.*, 102.

REPEALS.

See STATUTES, A 4, 5.

RES JUDICATA.

1. *Effect of decision of court without jurisdiction.*

The decision of a court that has no jurisdiction of the subject-matter or the parties is not *res judicata*. *Robertson v. Gordon*, 311.

2. *Effect of judgment of dismissal for want of jurisdiction as res judicata on merits.*

A court which is not empowered to grant relief whatever the merits may be, cannot decide what the merits are, and a judgment sustaining a demurrer to and dismissing the bill on the ground of such lack of power is not *res judicata* on the merits. *Murray v. Pocatello*, 318.

3. *Effect on judgment, not otherwise res judicata, of reference to opinion in which views on merits expressed.*

Where the judgment cannot be *res judicata* on the merits because the court has no power to grant relief, it is not made *res judicata* by reference to the opinion in which the court expresses its views on the merits. *Ib.*

See PRACTICE AND PROCEDURE, 23.

RESTRAINT OF TRADE.

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

The main purpose of the Sherman Anti-trust Act is to forbid combinations and conspiracies in undue restraint of interstate trade and to end them by as effectual means as the court may provide. *United States v. Union Pacific R. R. Co.*, 470.

2. *Anti-trust Act; comprehensiveness of.*

The character of the Sherman Act is sufficiently comprehensive and thorough to prevent evasions of its policy by disguise or subterfuge. *Standard Sanitary Mfg. Co. v. United States*, 20.

3. *Anti-trust Act as limitation of rights.*

The Sherman Anti-trust Act is a limitation of rights which may be pushed to evil consequences and should therefore be restrained. *Ib.*

4. *Anti-trust Act; application to railroads.*

The Sherman Anti-trust Act of July 2, 1890, 26 Stat. 209, c. 647, applies to interstate railroads which are among the principal instrumen-

talities of interstate commerce. *United States v. Union Pacific R. R. Co.*, 61.

5. *Anti-trust Act; scope of and construction to be given.*

The Sherman Act is intended to reach and prevent all combinations which restrain freedom of interstate trade, and should be given a reasonable construction to this end. *Ib.*

6. *Anti-trust Act; agreements prohibited; effect of good intention of parties.*

The Sherman Act is its own measure of right and wrong; courts cannot declare an agreement which is against its policy legal because of the good intentions of the parties making it. *Standard Sanitary Mfg. Co. v. United States*, 20.

7. *Anti-trust Act; relief under.*

In applying the general rules as to relief under the Sherman Law as declared in *Standard Oil Co. v. United States*, 221 U. S. 1, 78, the court must deal with each case as it finds it; and where the combination has been effected by purchase by one corporation of a dominant amount of stock of its competitor the decree should provide an injunction against the right to vote stock so acquired, or payment of dividends thereon except to a receiver, and any plan for disposition of the stock should be such as to effectually dissolve the unlawful combination. *United States v. Union Pacific R. R. Co.*, 61.

8. *Anti-trust Act; relief under.*

Whether the decree can provide for the purchase by the Union Pacific of such portions of the Southern Pacific as are only connecting and are not competitive and which effect a continuous line to San Francisco, not now determined with leave to the District Court to consider any plan proposed to effect such results. *Ib.*

9. *Anti-trust Act; relief under.*

Unless plans for dissolution are presented to, and affirmed by, the District Court within a reasonable period, in this case three months, that court should proceed to dissolve the combination by receiver and sale. *Ib.*

10. *Anti-trust Act; disposition of case involving illegal combination; retention of jurisdiction by lower court.*

The decree below, dismissing the bill generally, being affirmed by this court as to all matters other than the purchase of Southern Pacific stock, is reversed in part and the District Court retains its jurisdiction over the cause to see that the decree outlined by this court in this opinion is made effectual. *Ib.*

11. *Anti-trust Act; suppression of competition prohibited by.*

The Sherman Law prohibits the creation of a single dominating control in one corporation whereby natural and existing competition in interstate trade is suppressed; such prohibition extends to the control of competing interstate railroads effected by a holding company as in the *Northern Securities Case* and to the purchase by one of two competing railroad companies of a controlling portion, even if not, as in this case, a majority of the stock of the other. *United States v. Union Pacific R. R. Co.*, 61.

12. *Anti-trust Act; prohibitions embraced by.*

The Sherman Law, in its terms, embraces every contract or combination in form of trust or otherwise or conspiracy in restraint of interstate trade. *Ib.*

13. *Anti-trust Act; supremacy of Congress; effect of act of corporation within corporate powers conferred by State.*

Congress is supreme over interstate commerce, and a combination which contravenes the Sherman Law is illegal although it may be permissible under, and within corporate powers conferred by, the laws of the State where made. *Ib.*

14. *Anti-trust Act; free competition the criterion in construction.*

Courts should construe the Sherman Law with a view to preserve free action of competition in interstate trade, which was the purpose of Congress in enacting the statute. *Ib.*

15. *Anti-trust Act; effect of subsequent on prior decisions as to construction.*

The opinions in *Standard Oil Co. v. United States* and *United States v. American Tobacco Co.*, 221 U. S. 1 and 106, contain no suggestion that the decisions of the court in the *Trans-Missouri* and *Joint Traffic Cases* were not correct in holding the combinations involved to be illegal while applying the rule that the statute should be reasonably construed. *Ib.*

16. *Civil and criminal actions under Anti-trust Act; procedure in bringing.*

There is no rule that civil suits brought under the Sherman Act to dissolve the combination must await the trial of criminal actions against the same defendants, and whether the trial of the civil action shall be delayed because some of the defendants refuse to testify as witnesses for other defendants is a matter in the discretion of the trial court, and in the absence of abuse, not reviewable. *Standard Sanitary Mfg. Co. v. United States*, 20.

17. *Combinations; determination of validity.*

In determining the validity of a combination the court may look to the intent and purpose of those conducting the transaction and to the objects had in view. *United States v. Union Pacific R. R. Co.*, 61.

18. *Combinations; when ownership by corporation of less than majority of stock of another, illegal.*

While in small corporations a majority of stock may be necessary for control, in large corporations, where the stock is distributed among many stockholders, a compact united ownership of less than half may be ample to control and amounts to a dominant interest sufficient to effect a combination in restraint of trade within a reasonable construction of the Sherman Law. *Ib.*

19. *Combination to restrain competition in production, sale and transportation of coal.*

The United States filed a bill to enforce the provisions of the Sherman Anti-trust Act of July 2, 1890, against an alleged combination of railroad and coal mining companies formed to restrain competition in the production, sale and transportation in interstate commerce of anthracite coal. The bill alleged a general combination through an agreement between the carrier defendants to apportion the coal tonnage between themselves on a scale of percentages; a combination through the medium of one of the mining companies to prevent the construction of a new competing coal carrying road from the anthracite district to tide-water; a combination by a series of identical contracts with independent coal operators for sale of their total product; and certain contributory combinations between some but not all of the defendants. The bill was filed prior to the enactment of the Commodities Clause of the Hepburn Act of June 29, 1906. *Held that:*

Any relief against a continuance of the transportation of carrier owned coal under the Commodities Clause must be sought in a proceeding based upon that act and cannot be obtained in this suit.

On the record in this case, this court agrees with the court below that the Government has failed to show any contract or combination for the distribution of coal tonnage between themselves.

The defendants did combine to unreasonably restrain interstate commerce in violation of the Sherman Anti-trust Act through the Temple Iron Company to prevent the construction of the competing coal carrying railroad. *United States v. Reading Co.*, 324.

20. *Combination to restrain competition; power of court to dissolve.*

Although a combination has succeeded in accomplishing one of the

purposes for which it was formed, if it is still an efficient agency to prevent competition in other methods, the court may proceed to judgment and decree its dissolution. *Ib.*

21. *Combination; when separate acts of parties, legal under state law, become parts of illegal combination.*

Although separate acts of the defendants may be legal under the state law when considered alone, they may, when taken together, become parts of an illegal combination under the Anti-trust Act which it is the duty of the court to dissolve. *Ib.*

22. *Combination in; suit to restrain; scope of consideration by the court.*

In a suit to restrain all defendants from carrying out an illegal combination under the Sherman Act in which all defendants participated, the court will not consider minor combinations between less than all of the defendants which did not constitute part of the general combination found to be illegal. To do so would condemn the bill for misjoinder and multifariousness. *Ib.*

23. *Combination in; suit to restrain; action of court as to minor combinations involved.*

In this case the court expresses no opinion on such minor combinations and as to them the bill should be dismissed without prejudice. *Ib.*

24. *Combination in; effect on illegality of tendency for a time to stimulate competition.*

A combination otherwise illegal under the Anti-trust Act as suppressing competition, is not the less so because for a time it may tend to stimulate competition—and so held as to a corner in cotton. *United States v. Patten*, 525.

25. *Combinations; to what Anti-trust Act does not apply.*

The Anti-trust Act does not apply to a combination affecting trade or commerce that is purely intrastate, or where the effect on interstate commerce is merely incidental and not direct; but although carried on wholly within a State, if the necessary operation of a combination is to directly impede and burden the due course of interstate commerce, it is within the prohibition of the statute; and so held as to a corner in cotton to be run in New York City. *Ib.*

26. *Competition defined.*

Competition is the striving for something which another is actively seeking and wishes to gain. *United States v. Union Pacific R. R. Co.*, 61.

27. *Competition between transcontinental railway systems defined.*

Competition between two transcontinental railway systems such as the Union Pacific and Southern Pacific includes not only making of rates but the character of service rendered and accommodation afforded; and the inducement to maintain points of advantage in these respects is greater when the systems are independent than when the corporation owning one of the systems also dominates and controls the other. *Ib.*

28. *Competition; restraint of; what constitutes.*

The Union Pacific and Southern Pacific are competing systems of interstate railways and their consolidation by the control of the latter by the former through a dominating stock interest does, as a matter of fact, abridge free competition, and is an illegal restraint of interstate trade under the Sherman Law. *Ib.*

29. *Competition; restraint of; effect on illegality, of existence of non-competitive business of carriers.*

In this case *held*, that while there was a great deal of non-competitive business, a sufficiently large amount of competitive business was affected to clearly bring the combination made within the purview of the Sherman Law. *Ib.*

30. *Competition; restraint of; justification of; necessity of termini by carrier as.*

In this case also *held*, that the necessity of the Union Pacific to obtain an entrance to San Francisco and other California points over the lines of the Southern Pacific was not such as to justify the combination complained of in this case in view of the provisions for a continuous railroad to the Pacific Coast and for interchange of traffic without discrimination contained in the acts of July 1, 1862, 12 Stat. 489, 495, § 12, c. 120, and of July 2, 1864, 13 Stat. 356, 362, § 15, c. 216. *Ib.*

31. *Competition; power of law over.*

While the law may not compel competition, it may remove illegal barriers resulting from illegal agreements, such as those involved in this case, which make competition impracticable. *United States v. Reading Co.*, 324.

32. *Conspiracy to run corner in staple commodity illegal under Anti-trust Act.*

A conspiracy to run a corner in the available supply of a staple commodity which is normally a subject of interstate commerce, such

as cotton, and thereby to artificially enhance its price throughout the country, is within the terms of § 1 of the Anti-trust Act of July 2, 1890. *United States v. Patten*, 525.

33. *Contracts, in themselves innocent, as steps in plot to restrain trade.*

While no one of a number of contracts considered severally may be in restraint of trade, each of a series of innocent contracts may be a step in a concerted criminal plot to restrain interstate trade, and, if so, may thereupon become unlawful under the Anti-trust Act. (*Swift & Co. v. United States*, 196 U. S. 375.) *United States v. Reading Co.*, 324.

34. *Contracts; illegality of, under Anti-trust Act.*

In this case held that a series of identical contracts between interstate carriers with a great majority of the independent coal operators to market all the coal of the latter for all time at an agreed percentage of tide-water price were all parts of a concerted scheme to control the sale of the independent output and were unreasonable contracts in restraint of interstate trade within the prohibition of the Sherman Act. *Ib.*

35. *Contracts within prohibition of Sherman Act.*

While the Sherman Act does not forbid or restrain the power to make usual and normal contracts to further trade through normal methods, whether by agreement or otherwise, *Standard Oil Co. v. United States*, 221 U. S. 1, it does forbid contracts entered into according to a concerted scheme, as in this case, to unduly suppress competition and restrain freedom of commerce among the States. *Ib.*

36. *Dissolution of combinations; precedents not necessarily followed.*

Each case under the Sherman Act must stand upon its own facts and this court will not regard the methods provided in decrees of other cases as precedents necessarily to be followed where a different situation is presented for consideration. *United States v. Union Pacific R. R. Co.*, 470.

37. *Dissolution of combination; scheme disapproved.*

The ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors; and this court will not approve a method of distributing stock of a railroad company held by a competitor so that the natural result will be that a majority of the governing boards of both roads shall consist of the same persons. *Ib.*

38. *Dissolution of combination; scheme disapproved.*

In this case it is not impossible under the plan proposed that this result will happen and therefore it is not approved. *Ib.*

39. *Dissolution of combination; considerations by court in forming decree.*

A court of equity dealing with an illegal combination should conserve the property interests involved, but never in such wise as to sacrifice the purpose of the statute. *Ib.*

40. *Dissolution of combination; scheme disapproved.*

Without precluding the District Court from considering all plans submitted as provided by the former opinion and the decree (*ante*, p. 61) this court now holds that a transfer of the stock of the Southern Pacific Company to the stockholders of the Union Pacific Railroad Company would not so effectually end the combination as to comply with the decree. *Ib.*

41. *Evidence; weight of, in proceeding to dissolve combination.*

A disclaimer on the part of defendants of power of any one of them to control business of the others cannot detract from the significance of documentary evidence bearing on the relations of the defendants to each other. *United States v. Reading Co.*, 324.

42. *Intent as test of reasonableness of acts; evidence of.*

Whether a particular act or agreement is reasonable and normal or unreasonable may in doubtful cases turn upon intent, and the extent of control obtained over the output of a commodity may afford evidence of the intent to suppress competition. *Ib.*

43. *Intent; when immaterial.*

Where there is no doubt that the necessary result of an act is to materially restrain trade between the States, intent is of no consequence. *Ib.*

44. *Involuntary restraints within § 1 of Anti-trust Act.*

Section 1 of the Anti-trust Act is not confined to voluntary restraints but includes involuntary restraints, as where persons not engaged in interstate commerce conspire to compel action by others or create artificial conditions, which necessarily affect and restrain such commerce. *United States v. Patten*, 525.

45. *Parties to illegal agreement; effect of inequality among.*

A party to an agreement in restraint of trade is none the less a party to the illegal combination created thereby, because it is not subject

to all the restrictions imposed upon all the other parties thereto.
Standard Sanitary Mfg. Co. v. United States, 20.

46. *Steps in plan to restrain trade; illegality of.*

Where, as in this case, purchase and delivery within a State is but one step in a plan and purpose to control and dominate trade and commerce in other States for an illegal purpose, it is an interference with and restraint of interstate commerce. (*Loewe v. Lawlor*, 208 U. S. 274.) *United States v. Reading Co.*, 324.

47. *Stock purchase as; Union Pacific control of Southern Pacific illegal.*

The purchase by the Union Pacific Railroad Company of forty-six per cent of the stock of the Southern Pacific Company, with the resulting control of the latter's railway system by the former, is an illegal combination in restraint of interstate trade within the purview of the Sherman Anti-trust Act of 1890 and must be dissolved. *United States v. Union Pacific R. R. Co.*, 61.

48. *Trade agreement within prohibition of Anti-trust Act.*

A trade agreement under which manufacturers, who prior thereto were independent and competitive, combined and subjected themselves to certain rules and regulations among others limiting output and sales of their product and quantity, vendees and price, held in this case to be illegal under the Sherman Anti-trust Act of July 2, 1890. (*Montague v. Lowry*, 193 U. S. 38.) *Standard Sanitary Mfg. Co. v. United States*, 20.

49. *Trade agreement involving patent rights within prohibition of Anti-trust Act.*

A trade agreement involving the right of all parties thereto to use a certain patent, which transcends what is necessary to protect the use of the patent or the monopoly thereof as conferred by law and controls the output and price of goods manufactured by all those using the patent, is illegal under the Anti-trust Act of 1890. *Bement v. National Harrow Co.*, 186 U. S. 70, and *Henry v. A. B. Dick Co.*, 224 U. S. 1, distinguished. *Ib.*

RETROSPECTIVE LAWS.

See CONSTITUTIONAL LAW, 35.

REVISED STATUTES.

See STATUTES, A 7.

RIPARIAN RIGHTS.

1. *Iowa law; effect on grants of United States.*

By the law of Iowa riparian owners take only to the water's edge and grants of the United States follow the state rule and convey no land under an unnavigable lake. *Marshall Dental Mfg. Co. v. Iowa*, 460.

2. *Title to bed of meandered lake formerly within public domain.*

The title to the bed of a meandered lake formerly within the public domain of the United States, for which no patent has been issued, either remains in the United States or has passed under the Swamp Land Act to the State. *Ib.*

3. *Title to bed of meandered lake; interest of State; right to maintain action against trespasser.*

Under such circumstances a State has, by virtue of its sovereignty, an interest sufficient to entitle it to maintain an action against one intruding without title. *Ib.*

RULES OF COURT.

Power of court under, dependent upon statute on which rule based.

The power which this court can exercise under one of its own rules depends upon the statute on which the rule is based. *Deming v. Carlisle Packing Co.*, 102.

See APPEAL AND ERROR, 3.

SALES.

1. *Effect of order to sell attached perishable property.*

An order to sell attached property on the ground that it is perishable is not one to enforce the lien of the attachment but one incidental to the preservation of the property, and the court having the custody has the jurisdiction to sell. *Jones v. Springer*, 148.

2. *Nature of proceeding to sell perishable property attached.*

A proceeding to sell perishable property is one *in rem* and the purchaser gets title against all the world. *Ib.*

See BANKRUPTCY, 3-6;

INTOXICATING LIQUORS, 1, 2;

CONSTITUTIONAL LAW, 22;

RESTRAINT OF TRADE, 48;

FEDERAL QUESTION, 1;

STATES, 6.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 41.

SECOND CLASS MAIL MATTER.

See MAILS, 4, 5.

SECRETARY OF COMMERCE AND LABOR.

See CONSTITUTIONAL LAW, 14;
COURTS, 8.

SECRETARY OF THE INTERIOR.

See PRACTICE AND PROCEDURE, 4.

SEIZURES.

See PURE FOOD AND DRUGS ACT, 1, 4.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 41.

SETTLEMENT OF CLAIMS.

See STATES, 3.

SHERMAN ACT.

See RESTRAINT OF TRADE.

SIXTH AMENDMENT.

See ALIENS, 2;
CONSTITUTIONAL LAW, 14.

SPECIAL APPEARANCE.

See JURISDICTION, H 1.

STATES.

1. *Police power; discretion in exercise.*

A State is not required to go as far as it may in establishing a police regulation; the entire field of proper legislation need not be covered in a single act. *Rosenthal v. New York*, 260.

2. *Police power; what within.*

The making and selling of bread, particularly in large cities, is obviously a trade subject to police regulation. *Schmidinger v. Chicago*, 578.

3. *Police power to penalize delay in settlement of claims.*

It is within the police power of the State to provide by penalty for delay a reasonable incentive for prompt settlement without suit of

just demands of a class admitting of special legislative treatment; in this case of claims against common carriers for damage to goods shipped between two points within the State. *Yazoo & M. V. R. R. Co. v. Jackson Vinegar Co.*, 217.

4. *Police power; necessity for exercise in respect of sales of bread.*

The fact that laws prescribing standard sizes of loaves of bread and prohibiting the sale of other sizes have been sustained by the courts of several States shows the necessity for police regulation of the subject. *Schmidinger v. Chicago*, 578.

5. *Police power; invalidity of exercise not to be determined by inconvenience occasioned.*

Mere inconvenience to merchants conducting a business subject to police regulation does not vitiate the exercise of the power. *Ib.*

6. *Power to prevent destruction of competition by regulating discriminatory sales.*

Regulating discriminatory sales made within the State for the purpose of destroying competition is within the legislative power of the State unless the statute conflicts with the Constitution of the United States. *Central Lumber Co. v. South Dakota*, 157.

7. *Power to suppress existing evil without covering entire field.*

The legislature of a State may direct its police regulations against what it deems an existing evil without covering the whole field of possible abuses. It may direct a law for the protection of trade in accord with its policy against one particular instrument of trade war. *Ib.*

8. *Taxation of corporations by.*

A State may tax the property of domestic corporations and the stock of foreign ones in similar cases. (*Kidd v. Alabama*, 188 U. S. 730.) *Darnell v. Indiana*, 390.

9. *Taxation of Federal agency without power of.*

An agency of the Federal Government in the execution of its sovereign power is not subject to the taxing power of the State. *Williams v. Talladega*, 404.

See CONSTITUTIONAL LAW, 8, 18,
19, 24, 42-46;
INTERSTATE COMMERCE, 2, 3,
4, 5, 17;

INTOXICATING LIQUORS, 1, 2;
JURISDICTION, H 4;
RIPARIAN RIGHTS, 3;
TELEGRAPH COMPANIES, 2.

STATUTE OF LIMITATIONS.

See EMPLOYERS' LIABILITY ACT, 3;
JURISDICTION, H 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Amendments; presumption against conflict.*

This court will assume that all the amendments to different parts of the same act of Congress passed at the same time were intended not to conflict but to be in accord as provisions for different situations. *Wood v. Wilbert*, 384.

2. *Legislation incorporated into act not to be destroyed by construction under assimilation clause.*

A statute will not be so construed under an assimilation clause as to destroy legislation which Congress incorporated into the act after having it called to its attention. *Hannum v. United States*, 436.

3. *Provisos; effect to be given.*

A rational interpretation will be given to a statute and a *proviso* and not one by which the statute will, through the *proviso*, destroy itself. *Adams Express Co. v. Croninger*, 491.

4. *Repeals; effect of general law on special remedial statute.*

Unless the repeal be express or the implication to that end be irresistible, a general law does not repeal a special statutory provision affording a remedy for specific cases. (*Petri v. Creelman Lumber Co.*, 199 U. S. 487.) *Ex parte United States*, 420.

5. *Repeals; effect of Judicial Code on Expedition Act of 1903.*

The special provisions of the Expedition Act of February 11, 1903, 32 Stat. 823, c. 544, requiring in a particular class of cases the organization of a court constituted in a particular manner, were not repealed by the Judicial Code of 1911. *Ib.*

6. *Reports of committees of Congress; reference to.*

In order to construe the statute and make the redress as complete as Congress intended, reports of the committees of both houses having the matter in charge may be referred to. *McLean v. United States*, 374.

7. *Revised Statutes; effect of re-arrangement of section on meaning of original act.*

The subdivision and rearrangement of § 22 of the Judiciary Act of

1789 in the Revised Statutes of 1873 did not work any change in the purpose and meaning of the original act. *Bucks Stove Co. v. Vickers*, 205.

8. *How state statute for prevention of monopoly to be read.*

Where the highest court of a State has construed a statute as aiming at the prevention of a monopoly in a commodity by means likely to be employed and prohibited by the statute, this court should read the statute as having ultimately in view the benefit of buyers of the goods. *Central Lumber Co. v. South Dakota*, 157.

9. *Of act giving a right.*

An act of Congress will not be construed as giving a right and taking it away at one and the same instant; nor will the conditions making it necessary be made a reason for defeating it. *McLean v. United States*, 374.

10. *Whether statute unconstitutional in part would be invalid in toto; quære as to.*

Quære, and not now to be decided, whether the statute now sustained as constitutional as against the party attacking it would be void *in toto* if unconstitutional as against other classes who have not yet attacked it. *Yazoo & M. V. R. R. Co. v. Jackson Vinegar Co.*, 217.

See ARMY AND NAVY, 1; JURISDICTION, A 5, 6;
FEDERAL QUESTION, 3; RESTRAINT OF TRADE.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK AND STOCKHOLDERS.

See RESTRAINT OF TRADE, 7, 18, 47.

SWAMP LAND ACT.

See RIPARIAN RIGHTS, 2.

TAXES AND TAXATION.

See CONSTITUTIONAL LAW, 5, 7, 34, 45, 46;
STATES, 8, 9;
TELEGRAPH COMPANIES, 2.

TAXPAYERS.

See ACTIONS, 3, 4.

2. *Philippine act; right of recovery under.*

The Philippine Trade-mark Act expressly denies the right of one fraudulently using a trade-mark to recover. *Ib.*

3. *Fraudulent registration; effect of § 13 of Treaty with Spain of 1898.*

Section 13 of the Treaty with Spain of 1898, protecting industrial property in the ceded territory, will not be construed as contravening principles of morality and fairness and as protecting a trade-mark fraudulently registered prior to the treaty. *Ib.*

4. *Imitation of unregistered mark; use a fraud on public.*

Even if a trade-mark be not registered, if it be well known, it is an imposition on the public to use an imitation of it. *Ib.*

5. *Certificate; conclusiveness of.*

Even if a statute makes a certificate of trade-mark conclusive, it must be taken subject to the general principle of law embodied in the statute to the effect that trade-marks fraudulently adopted are not protected. *Ib.*

TRADES AND CALLINGS.

See CONSTITUTIONAL LAW, 16, 25-29;
STATES, 2, 5.

TREATIES.

See EXTRADITION;
TRADE-MARKS, 3.

TRESPASS.

See RIPARIAN RIGHTS, 3.

TRIAL BY JURY.

See CONSTITUTIONAL LAW, 14.

TRUSTS.

See RESTRAINT OF TRADE;
WILLS.

VENDOR AND VENDEE.

See CONSTITUTIONAL LAW, 18;
CONVEYANCES, 4.

WATERS.

See RIPARIAN RIGHTS.

WILLS.

1. *Charitable trust created by; validity of.*

A devise and bequest to a university to establish an endowment fund for free education of young men for preparation for entrance to the United States Naval Academy or to fit them to become mates or masters in the Merchant Marine Service of the United States, held in this case to create a charitable trust that is capable of execution and one which is not void as too indefinite for execution. *Taylor v. Columbian University*, 126.

2. *Charitable trust; validity of; failure of parties.*

Where testator names one institution to carry out a trust and names another as alternate in case the former shall not be able to perform, the court will not declare the trust impossible of execution on account of the failure of the first-named institution to carry it out until after the second named has also tried and failed. *Ib.*

3. *Charitable trust; definiteness in meaning of words used.*

In establishing an educational endowment fund the words "Merchant Marine Service of the United States" have a definite meaning sufficient to sustain the trust. *Ib.*

WILSON ACT.

See INTOXICATING LIQUORS, 4.

WITNESSES.

Immunity; quære as to.

Quære, whether one of the individual defendants in an equity case brought by the Government to dissolve an illegal combination under the Sherman Act, called as a witness by one of the other defendants in the same suit, obtains immunity from criminal prosecution as to the matters testified to. *Standard Sanitary Mfg. Co. v. United States*, 20.

See PRACTICE AND PROCEDURE, 2.

WORDS AND PHRASES.

All.

The word "all" excludes the idea of limitation. *McLean v. United States*, 374.

"All back pay and emoluments" as used in act of Congress for relief of officer of Army (see Army and Navy, 3). *McLean v. United States*, 374.

"*Every court within the United States*" as used in § 905, Rev. Stat.
(see Courts, 2). *Thompson v. Thompson*, 551.

"*Merchant Marine Service of the United States*" as used in will (see
Wills, 3). *Taylor v. Columbian University*, 126.

"*Periodicals*" as used in act of March 3, 1879 (see Mails, 6). *Smith v.
Hitchcock*, 53.

WRIT AND PROCESS.

See APPEAL AND ERROR;
CONSTITUTIONAL LAW, 37;
DIVORCE, 3, 4.

WRITTEN INSTRUMENTS.

See EVIDENCE, 2.







