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1. *Deportation; power of Congress.*

Sovereign states have inherent power to deport aliens, and Congress is not deprived of this power by the Constitution of the United States. *Tiaco v. Forbes*, 549.

2. *Deportation; power of Congress over.*

Congress has power to order the deportation of aliens whose presence in the country it deems hurtful; and this applies to prostitutes regardless of the time they have been here. *Bugajewitz v. Adams*, 585.

3. *Deportation; presumption as to authority.*

The deportation of a Chinaman from the Philippine Islands by the Governor General prior to an act of the legislature authorizing such deportation is to be considered as having been ordered in pursuance of such statute. *Tiaco v. Forbes*, 549.

4. *Deportation; power of Philippine Government.*

Congress not being prevented by the Constitution from deporting aliens, the Philippine Government cannot be prevented from so doing by the Bill of Rights incorporated in the act of July 1, 1902. *Ib.*

5. *Deportation; power of Philippine Government.*

The local government of the Philippine Islands has all civil and judicial power necessary to govern the Islands, and this includes the power to deport aliens. *Ib.*

6. *Deportation; power of Philippine Government.*

The extension by Congress of the Chinese Exclusion and Immigration Laws to the Philippine Islands does not prevent the Government of the Islands passing an act removing aliens therefrom. *Ib.*

7. *Deportation of; quære as to power of Governor of Philippine Islands.*

Quære whether the Governor of the Philippine Islands has authority by virtue of his office alone to deport aliens, or immunity from action for a deportation made in good faith whether he had the power or not. *Ib.*

8. *Deportation; Philippine Islands; legislative ratification of act of executive; validity of.*

The act of the Philippine legislature passed April 19, 1910, ratifying the action of the Governor General in ordering the deportation of plaintiffs, Chinamen, and declaring it to have been an exercise of authority vested in him by law in all respects legal and not subject to question or review, was within the power of the legislature, and took from the court, in which an action had been brought to enjoin the deportation, jurisdiction to try the case, and the judgment granting a writ of prohibition is affirmed. *Ib.*

9. *Deportation; power to act summarily.*

The ground on which the power to deport aliens rests necessitates that it may have to be exercised in a summary manner by executive officers. *Ib.*

10. *Deportation; effect as deprivation of due process of law.*

The deportation of aliens in this case, by the Philippine Government was not a deprivation of liberty without due process of law. *Ib.*

11. *Deportation not a punishment; determination of status of alien not a conviction of crime.*

The determination of whether an alien falls within the class that Congress had declared to be undesirable, by facts which might constitute a crime under local law, is not a conviction of crime, nor is deportation a punishment. *Bugajewitz v. Adams*, 585.

12. *Deportation; effect of act of February 26, 1910, on that of February 20, 1907.*

There is a distinction between the words "as provided" and "in the

manner provided"; the former may be controlled by an express limitation in the statute while the latter must not be so controlled; and so *held* that the limitation in § 3 of the act of February 20, 1907, was stricken out by the act of February 26, 1910, notwithstanding a reference in the latter act to a section in the former act in which the limitation was referred to. *Ib.*

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The act of 1891 does not permit an appeal to the Circuit Court of Appeals from a judgment that does not finally dispose of the whole case. *Rexford v. Brunswick-Balke-Collender Co.*, 339.

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A decree of the Circuit Court adjudging right of possession to one of the parties but appointing a special master to take evidence as to identity of the articles, is not final but interlocutory only and therefore is not appealable. *Ib.*

3. *Criminal appeals under act of 1907; quære as to practice on.*

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- seek to sustain the indictment as valid under other statutes than those relied upon in the trial court. *United States v. George*, 14.
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This court does not assent to the principle that one who takes an assignment of part of a claim secured by a common fund can, in the absence of a special agreement or necessary implication arising from particular circumstances, acquire more than a proportional right to the common security or the power to exclude his assignor in the event of a deficiency from participating therein to the extent of the portion retained. *Merchants' National Bank v. Sexton*, 634.

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BANKRUPTCY.

1. *Assets; life insurance as; to what extent available to trustee.*

Life insurance is property, but it is peculiar property, and Congress by the proviso in § 70a of the Bankruptcy Act intended that the bankrupt should have the benefit of all policies except to the extent of the actual cash value which could be realized by the trustee for the creditors. *Burlingham v. Crouse*, 459.

2. *Assets; life insurance as; right of assignee of policy.*

Under the proviso in § 70a of the Bankruptcy Act, the assignee of a policy of insurance on the life of the bankrupt has the right to retain the policy on the same terms that the bankrupt might have retained it. *Ib.*

3. *Assets; life insurance as; interest of trustee limited to cash surrender value.*

Under § 70a life insurance policies which have no cash surrender value, or on which the company has loaned the full surrender value so that the policy has no cash surrender value remaining, do not pass to

the trustee as general property but remain the property of the bankrupt who is not limited in dealing with them except as stated in the proviso. *Ib.*

4. *Assets; life insurance as; interest of trustee limited to cash surrender value.*

Burlingham v. Crouse, ante, p. 459, followed to effect that under § 70a of the Bankruptcy Act the trustee only takes surrender value of insurance policies on the bankrupt's life, or, in case loans have been made by the company issuing the policies, only the excess of surrender value over the amount of the loan. *Everett v. Judson*, 474.

5. *Assets; life insurance policies; right of bankrupt to, on paying trustee cash surrender value.*

Under § 70a of the Bankruptcy Act the bankrupt is entitled to the policy by paying the amount of the cash surrender value or excess thereof over loans as of the date of the filing of the petition, and in case of the maturity of the policy before the adjudication he or his legal representative is entitled to the proceeds of the policy over and above such amount. *Ib.*

6. *Assets; life insurance; date of accrual of trustee's rights; effect of suicide of bankrupt.*

Congress, by the proviso in § 70a, fixed the date of filing the petition as the line of cleavage as between the trustee and the bankrupt in regard to life insurance policies, and this is not affected by subsequent events such as the maturity of the policy by the suicide of the bankrupt, even though prior to adjudication. *Ib.*

7. *Assets; life insurance as; trustee's right in; time of accrual; effect of death of bankrupt.*

Burlingham v. Crouse, ante, p. 459, and *Everett v. Judson*, ante, p. 474, followed to effect that under § 70a of the Bankruptcy Act the trustee is only entitled to the cash surrender value of insurance policies on the life of the bankrupt at the time of the filing of the petition and that the bankrupt or his representative is entitled to the balance of the value thereof, and that the subsequent death of the bankrupt had no effect on this division even though it occurred before adjudication. *Andrews v. Partridge*, 479.

8. *Assets of bankrupt partnership; estates of members as.*

In this case an order directing that the separate estate of a member of a firm which had been adjudicated bankrupt be turned over to the trustee for administration is affirmed. *Francis v. McNeal*, 695.

9. *Claims adverse to title of trustee; effect on power of court to administer res.*

Whatever may be the legal rights of one claiming legal or equitable title to an asset, the fact that the bankrupt and his trustee had physical possession thereof gives the bankruptcy court control of the *res* and authority to administer it. *Hebert v. Crawford*, 204.

10. *Claims adverse to title of trustee; jurisdiction of bankruptcy court.*

A petition to determine title to property in the possession of the bankrupt and his trustee may, as in this case, operate as an attachment, and thus bring the property into the custody and under the exclusive jurisdiction of the bankruptcy court. *Ib.*

11. *Classes; relative rights of; duty of trustee to conserve.*

The effect of bankruptcy is to so fix the relative rights of the different classes of creditors that it is not in the power of any class to set aside or frustrate as against the other, rights fixed by the adjudication in the assets of the estate, and it is the duty of the trustee to conserve and administer such rights. *Merchants' National Bank v. Sexton*, 634.

12. *Discharge; exceptions from operation of.*

Under the Bankruptcy Act of 1898, as amended in 1903, there are certain classes of creditors excluded from the act altogether and others who, although included therein, are excepted from the operation of the discharge. In this respect the act of 1898 differs from that of 1841, and follows that of 1867. *Friend v. Talcott*, 27.

13. *Discharge; effect as res judicata in action to recover balance of debt.*

To constitute *res judicata* there must be identity of cause between the two cases. That identity does not exist between the granting of a general discharge in bankruptcy and an action for the balance of a debt excepted by the act from the operation of the discharge. *Ib.*

14. *Discharge; effect as res judicata in action to recover balance of debt.*

A creditor, after unsuccessfully opposing a composition and a discharge in bankruptcy on the ground of fraud in creating the debt, accepted the dividend and then sued for the balance on the ground that the debt was excepted from the discharge: *Held* that there was no waiver of the right to sue on the tort by accepting the dividend, nor was the granting of the discharge *res judicata* of the claim for the balance of the debt. *Ib.*

15. *Discharge; provable debts not discharged.*

Section 17 of the Bankruptcy Act enumerates debts provable under § 63a which are not discharged, and among them are included those that arise by the conversion of trust funds. *Clarke v. Rogers*, 534.

16. *Election of remedies under act of 1898 as amended in 1903; right of creditor as to.*

Under the Bankruptcy Act of 1898, as amended in 1903, a creditor is not bound to elect which remedy he will pursue against the bankrupt on a contract where the right to sue in tort also exists; nor does he waive his right to sue on the tort for balance of his claim by accepting his dividend under a composition. (*Crawford v. Burke*, 195 U. S. 176.) *Friend v. Talcott*, 27.

17. *Entity of partnership.*

The Bankruptcy Act recognizes the firm as an entity for certain purposes, but does not alter the preëxisting rule that the partnership can be in bankruptcy and the partners not. *Francis v. McNeal*, 695.

18. *Possession by trustee; conclusiveness of finding as to.*

A finding in a summary proceeding that the trustee has received physical possession of the property involved is conclusive against him and is not subject to collateral attack by third persons. (*Noble v. Union River Logging Company*, 147 U. S. 173.) *Hebert v. Crawford*, 204.

19. *Preferences; fraudulent; dual capacity of person as giver and receiver.*

The same person, considered in different capacities, may act as the giver and receiver of a fraudulent preference; and so held in a case where a trustee of several trusts, with knowledge of his insolvency, transferred property to one of the trusts to which he was indebted. See *Bush v. Moore*, 133 Massachusetts, 192. *Clarke v. Rogers*, 534.

20. *Preferences; equality of creditors aim of Bankruptcy Act.*

Equality between creditors is necessarily the ultimate aim of the Bankruptcy Act; and even if the dividend be very small, the court will not construe the act so as to allow one creditor to be preferred above the others. *Ib.*

21. *Provable debt; obligation of defaulting testamentary trustee as.*

The obligation resting on a defaulting testamentary trustee to restore the value of the assets embezzled is of a contractual character and the debt is provable although it is fraudulent and excepted from the discharge. *Ib.*

22. *Relation of bankruptcy act to fundamental rules of law.*

The business of a bankruptcy act is so far as may be to preserve, not to upset, existing relations based on fundamental rules of law. *Francis v. McNeal*, 695.

23. *Title to property in possession of trustee; jurisdiction of state court to determine.*

While the state court has jurisdiction to determine as between partners whether one is entitled to use the assets of his partnership to satisfy an order made in a summary proceeding in the bankruptcy court, and also whether the receiver received the same, it may not determine title to property in the possession of the trustee or who is entitled to possession thereof. *Hebert v. Crawford*, 204.

24. *Trustee; right to compel transfer of bankrupt's books.*

Courts proceed step by step. *Matter of Harris*, 221 U. S. 274, established simply that the transfer of books of the bankrupt to the trustee could be required, and left undetermined the question of use to which the books could be put. *Johnson v. United States*, 457.

25. *Trustee; subrogation to rights of vendors of notes purchased with assets of general estate.*

A trustee, acquiring by purchase with assets of the general estate some of a series of notes on all of which the bankrupt is liable as endorser but which are all secured *pro rata* by a special fund with other notes of the same series and held by third parties, is subrogated by operation of law, as well as by subd. c and f of § 67 of the Bankruptcy Act, to all the rights of the parties from whom he purchased the notes and is entitled to share *pro rata* in such special fund as a holder of such notes. *Merchants' National Bank v. Sexton*, 634.

26. *Trustee; subrogation to rights of bank in collateral securing debt on latter setting off debt against bankrupt's credit balance.*

The effect of a bank setting off against the bankrupt's credit balance a debt for which it holds collateral is to subrogate the trustee to all the rights of the bank in such collateral. *Ib.*

See JURISDICTION, A 9;

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CERTIORARI.

1. *To review judgment of court organized in violation of direct provision of statute.*

The trial and disposition of a case by a court organized in violation of a direct provision of statute is such a grave error and involves considerations of such public importance as make it the duty of this court to allow a writ of certiorari without considering the merits. *Wm. Cramp Sons v. Curtiss Turbine Co.*, 645.

2. *To review judgment rendered by court not properly organized; practice on.*

Where it is manifest on the petition for certiorari that the judgment sought to be reviewed was rendered by a court not properly organized, this court need proceed no further; in such a case the writ of certiorari may be granted, the petition stand as a return to the writ, the judgment reversed and the cause remanded. *Ib.*

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CLAIMS AGAINST THE UNITED STATES.

Effect of reservation as to improvements, etc., on restitution of public lands fraudulently obtained; power of United States Attorney; effect of laws of State to bind United States.

One convicted of fraud in obtaining patents to public lands filed a petition for pardon which was granted on condition that he make full restitution to the satisfaction of the United States Attorney for the district in which the land was situated, in respect to all land, land titles or claims to land. He filed a relinquishment

reserving under the laws of the State in which the land was situated the right to all improvements, the value thereof, with all taxes theretofore paid and to proceed against the United States for the same. He then brought suit in the Court of Claims therefor:

Held that

Under the conditions of the pardon which he accepted no right was wrested from him; but, as he was to make voluntary restitution for his wrong-doing, he was not deprived of his lands or property nor evicted therefrom.

The power of the United States Attorney was limited by the subject-matter of the agency; and the fact that the restitution was to be made to his satisfaction did not enlarge his authority so as to bind the United States to make payments to one who was to make restitution to it.

Whatever rights the laws of the State might give under such conditions, the United States is not bound thereby, as no contract was established against it. *Bradford v. United States*, 446.

CLASSIFICATION FOR REGULATION.

See CONSTITUTIONAL LAW, 9, 10, 14, 15, 17.

CLASSIFICATION FOR TAXATION.

See CONSTITUTIONAL LAW, 11.

COLLATERAL ATTACK.

See BANKRUPTCY, 18.

COMBINATIONS IN RESTRAINT OF TRADE.

1. *What constitutes; effect of element being foreign corporation.*

A combination made in the United States between carriers to monopolize certain transportation partly within and partly without the United States is within the prohibition of the Anti-trust Act, and also within the jurisdiction of the criminal and civil law of the United States even if one of the parties combining be a foreign corporation. *United States v. Pacific & Arctic Co.*, 87.

2. *Agreements for through route connections; when illegal under Anti-trust Act.*

While under the Interstate Commerce Act a carrier may select its through route connections, agreements for such connections may constitute violations of the Anti-trust Act if made not from natural trade reasons or on account of efficiency, but as a com-

bination and conspiracy in restraint of interstate trade and for the purpose of obtaining a monopoly of traffic by refusing to establish routes with independent connecting carriers. *Ib.*

3. *Considerations by this court in reviewing decision sustaining demurrer to indictment for violation of Anti-trust Act.*

In reviewing the decision of the lower court sustaining a demurrer to an indictment charging a combination in violation of the Anti-trust Act, this court is not called upon to consider what the elements of the plan may be independently, or whether there is or is not a standard of reasonableness which juries may apply. If a criminal violation of the act is charged, the criminal courts have cognizance of it with power of decision in regard thereto. *Ib.*

See RESTRAINT OF TRADE.

COMITY.

See COURTS, 1.

COMMERCE.

See INTERSTATE COMMERCE.

COMMON CARRIERS.

1. *Care due passengers.*

The obligation of a carrier to use due care obtains not only during carriage of passengers but while they sustain that relation and are performing acts fairly attributable thereto. *Texas & Pacific Ry. Co. v. Stewart*, 357.

2. *Care due passengers.*

Such obligation obtains where, as in this case, the passenger left the car of a train before it had started and after considerable delay, to ascertain whether it was the right train, no one apparently being in charge who could give the information. *Ib.*

3. *Care due passengers; effect of act of passenger to relieve carrier from liability.*

Such an act on the part of a passenger is not an independent cause which relieves the carrier as being a new and proximate cause of the accident. *Atchison, Topeka & Santa Fe Ry. v. Calhoun*, 213 U. S. 1, distinguished. *Ib.*

See COMBINATIONS IN RESTRAINT OF TRADE; CONTRACTS, 3, 13, 14, 15; INTERSTATE COMMERCE;

RAILROADS.

COMMON LAW.

See CONSTITUTIONAL LAW, 31, 32, 35, 36, 37;
LOCAL LAW (Porto Rico) (Tex.) (Va.).

CONDEMNATION OF LAND.

See LOCAL LAW (Va.).

CONFESSIONS.

See CONSTITUTIONAL LAW, 26;
EVIDENCE, 2, 3.

CONFLICT OF LAWS.

See CONGRESS, POWERS OF, 1, 2, 3;
EMPLOYERS' LIABILITY ACT, 2, 3;
PURE FOOD AND DRUG ACT, 8, 9, 10.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

1. *Superiority over legislative power of States.*

A state law on a subject within the domain of Congress must yield to the superior power of Congress, to the extent that it interferes with or frustrates the operation of the act of Congress a state statute is void. *McDermott v. Wisconsin*, 115.

2. *State interference with legislative means provided by Congress.*

State legislation cannot impair legislative means provided by Congress in a Federal statute for the enforcement thereof. *Ib.*

3. *State interference with provisions of; Wisconsin statute of 1907 invalid.*

The statute of Wisconsin of 1907 prescribing a label for corn syrup and prohibiting all others is invalid so far as it relates to articles properly branded on the immediate container thereof under the Federal Food and Drugs Act and brought into the State in interstate commerce, so long as they remain unsold, whether in the original outside package or not. *Ib.*

See ALIENS, 1, 2, 4;
PURE FOOD AND DRUG ACT.

CONSTITUTIONAL LAW.

Contract impairment.—See INFRA, 5, 7;

CONTRACTS, 2.

1. *Due process of law; deprivation of property; effect of decree against executor.*

Jurisdiction is power and is not affected by the insanity of one over

whom the court has acquired jurisdiction, and an executor against whom a decree is entered after appearance, appointment of guardian *ad litem* and full consideration of the case at the expense of the estate, is not deprived of his property without due process of law by such decree. *Michigan Trust Co. v. Ferry*, 346.

2. *Due process of law; deprivation of property; effect of destruction of impure food.*

An ordinance regulating the sale of food products must be summarily enforced and the destruction of impure food, such as milk, is the only available and efficient penalty for its violations and does not deprive the owner of his property without due process of law; and so held as to the milk ordinance of Milwaukee, Wisconsin. (*Lieberman v. Van De Carr*, 199 U. S. 552.) *Adams v. Milwaukee*, 572.

3. *Due process of law; effect to deny, of repeal of statute providing for consequential damages on change of grade by municipality.*

A state statute giving damages for consequential damages caused by change of grades of streets does not merely provide a remedy but creates a property right; to repeal such a statute so as to affect rights actually obtained thereunder is a deprivation of property without due process of law as guaranteed by the Fourteenth Amendment. *Ettor v. Tacoma*, 148.

4. *Due process of law; deprivation of property; effect of statute of Washington repealing provision for consequential damages from change of grade of streets.*

The statute of Washington repealing the former statute which gave a right to consequential damages from change of grade, as construed by the state courts as destroying rights to compensation which had accrued while the earlier act was in effect, amounts to a deprivation of property without due process of law. *Ib.*

5. *Due process of law; impairment of contract obligation; effect of repeal of statute giving benefits.*

Where no private rights have vested, a statute giving benefits under certain conditions may be repealed without violating the contract or due process provisions of the Federal Constitution, but the case is different when the right to compensation has actually accrued. *Salt Co. v. East Saginaw*, 13 Wall. 373, and *Wisconsin &c. Railway v. Powers*, 191 U. S. 375, distinguished. *Ib.*

6. *Due process of law; validity of Nebraska cattle train speed act fixing amount of liquidated damages.*

The cattle train speed act of Nebraska establishing a rate of speed

on branch lines within the State and imposing a penalty of \$10 per car per hour, is not unconstitutional under the Fourteenth Amendment as depriving the railroad company of its property without due process of law because it fixes an arbitrary amount as liquidated damages. *Chicago, B. & Q. R. R. Co. v. Cram*, 70; *Chicago, B. & Q. R. R. Co. v. Kyle*, 85.

See JURISDICTION, A 5;

MUNICIPAL CORPORATIONS, 4.

7. *Equal protection of the law; impairment of contract obligation; due process of law; validity of Kansas Bank Depositors' Guaranty Act.*

The Kansas Bank Depositors' Guaranty Act is not unconstitutional as against national banks either because it discriminates against them in favor of state banks, impairs the obligation of existing contracts, or deprives them of their property without due process of law. *Abilene National Bank v. Dolley*, 1.

8. *Equal protection of the law; validity of Kansas Bank Guaranty Act.*

The constitutionality of this statute has already been upheld as to state banks in *Assaria State Bank v. Dolley*, 219 U. S. 121. *Ib.*

9. *Equal protection of the law; classification of theatres for license fees; validity of.*

A classification of theatres for license fees based on, and graded according to, prices of admission is not arbitrary and unreasonable, even though some of the theatres charging the higher admission may have less revenue than those charging a smaller price of admission and hence paying lower license fees; and so held that the Chicago theatre license ordinance is not unconstitutional as a denial of equal protection of the law. *Metropolis Theatre Co. v. Chicago*, 61.

10. *Equal protection of the law; classification; validity of.*

There is a natural relation between price of admission and revenue that justifies a classification based on the former. *Ib.*

11. *Equal protection of the law; classification; validity of.*

This court will consider that a distinction between classes engaged in the same business that obtains in all large cities must be a substantial basis for governmental action in classifying those engaged in such business for taxation. *Ib.*

12. *Equal protection of the laws; effect to deny, of state statute abolishing fellow-servant rule.*

The Supreme Court of Indiana having held that the statute of 1893 of

that State abolishing the fellow-servant defense only applied to railroad employ es whose occupation exposed them to hazards incident to operation of trains, this court holds, following its previous decisions, that the statute is not unconstitutional as denying equal protection of the laws. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

13. *Equal protection of the laws; quere as to effect of state statute to deny.*
Quere whether a state statute applicable to all employ es of a railroad company whether exposed to hazard of operations of trains or not contravenes the equal protection clause of the Fourteenth Amendment. *Ib.*

14. *Equal protection of the laws; justifiable classification.*
 Different situations of the objects regulated by a municipal ordinance may require different regulations. *Adams v. Milwaukee*, 572.

15. *Equal protection of the laws; classification for regulation; validity of Milwaukee Milk Ordinance.*

A classification in a municipal ordinance by which vendors of milk drawn from cows outside the city are subjected to different regulations from those to which vendors of milk drawn from cows within the city, is not, provided, as in this case, the regulations are reasonable and proper, a denial of equal protection of the law guaranteed by the Fourteenth Amendment; and so held as to the milk ordinance of Milwaukee, Wisconsin. *Ib.*

16. *Equal protection of the laws; validity of police legislation.*
 Police legislation cannot be judged by abstract or theoretical comparisons, but it must be presumed to have been induced by actual experience. Even if disputable or crude it may not violate the Fourteenth Amendment. *Chicago Dock Co. v. Fraley*, 680.

17. *Equal protection of the law; validity of state classification in providing against danger in construction of buildings.*

There may be different degrees of danger in construction of buildings and a classification based upon such degree as the legislature of the State determines may be proper, and so that the classification does not violate the equal protection provision of the Fourteenth Amendment. (*Mutual Loan Co. v. Martel*, 222 U. S. 225.) *Ib.*

18. *Equal protection of the laws; validity of Illinois statute providing against danger in construction of buildings.*

The statute of Illinois providing for protecting elevating and hoisting machinery in buildings under construction is not unconstitutional

as denying equal protection of the law; nor is the classification as to different methods of protecting different classes of buildings, both as to location in cities and villages and as to nature of use of buildings, based on too fine and minute distinctions. It is within the power of the legislature to determine such distinctions if all in the same situation are treated alike. *Ib.*

19. *Ex post facto laws; prohibition not applicable to deportation of aliens.*

The prohibition of *ex post facto* laws in Art. I, § 9 of the Federal Constitution has no application to the deportation of aliens. *Bugajewitz v. Adams*, 585.

20. *Fourteenth Amendment; exercise of authority; when court will declare void.*

Mere errors of government are not subject to judicial review by this court; and only a palpably arbitrary exercise of authority can be declared void under the Fourteenth Amendment. *Metropolis Theatre Co. v. Chicago*, 61.

21. *Full faith and credit clause; when jurisdiction sufficient under.*

Under the full faith and credit clause of the Federal Constitution, if a judicial proceeding is begun with jurisdiction over the person of the party concerned, it is within the power of the State to bind that person by every subsequent order in the cause. *Michigan Trust Co. v. Ferry*, 346.

22. *Full faith and credit; effect of want of power in court to enforce its decree.*

Want of power of the court making it to enforce a decree does not affect its validity, and if the court had jurisdiction at the inception of the case, courts of other States must give it full faith and credit. *Ib.*

23. *Full faith and credit; who not entitled to claim denial.*

One who did not in the court below plead or prove the settled judicial construction of a statute of another State cannot claim that full faith and credit was denied to the judicial construction of such statute by the courts of the enacting State. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

Legislative power.—See ALIENS, 1, 2, 4;

CONGRESS, POWERS OF.

24. *Self-incrimination; extent of privilege as to production of books.*

A party is privileged from producing his books in a prosecution against

himself but is not privileged from their production. *Johnson v. United States*, 457.

25. *Self-incrimination; production of corporate books.*

A criminal cannot protect himself by getting the legal title to corporate books. (*Wheeler v. United States*, 226 U. S. 478.) *Ib.*

26. *Self-incrimination; production of documentary confession by third person; effect of.*

The production of a documentary confession by a third person, into whose hands it has come *alio intuitu*, does not compel the witness to be a witness against himself in violation of the Fifth Amendment. *Ib.*

27. *States; legislation; perfection and entirety of.*

The Constitution of the United States does not require that all state laws shall be perfect, nor that the entire field of proper legislation shall be covered by a single enactment. (*Rosenthal v. New York*, 226 U. S. 260.) *Chicago Dock Co. v. Fraley*, 680.

28. *Trial by jury; application of Seventh Amendment; practice in Federal court on reversal of judgment.*

While the Seventh Amendment is not applicable to proceedings in the courts of the several States, it is controlling in the Federal courts, and, although under the practice of the State a judgment may be entered on the evidence *non obstante veredicto*, the Federal court may not do so but must order a new trial where the evidence does not sustain the verdict. *Slocum v. New York Life Ins. Co.*, 364.

29. *Trial by jury; jurisdiction of Federal courts; effect of Seventh Amendment.*

The Constitution as originally adopted conferred upon this court appellate jurisdiction both as to law and fact subject to exceptions and regulations prescribed by Congress; but this, as well as the jurisdiction of the other Federal courts, was subsequently restricted by the Seventh Amendment so far as actions at law are concerned. *Ib.*

30. *Trial by jury; power of Federal court to reexamine questions of fact.*

The power of a Federal court to reexamine issues of fact tried by a jury must under the Seventh Amendment be tested by the rules of the common law. *Ib.*

31. *Trial by jury; right of appellate court to determine issues of fact.*

Under the rules of the common law an appellate court may set aside a

verdict for error of law in the proceedings and order a new trial but it may not itself determine the issues of fact. *Ib.*

32. *Trial by jury; right under common law.*

Under the rules of the common law when the court sets aside a verdict there arises the same right of trial by jury as in the first instance. *Ib.*

33. *Trial by jury; essential factors in.*

In the trial by jury, the right to which is secured by the Seventh Amendment, both the court and the jury are essential factors. *Ib.*

34. *Trial by jury; right to, under Seventh Amendment.*

Whether the facts are difficult or easy of ascertainment is immaterial, the guaranty of the Seventh Amendment operates to require the issues to be settled by the verdict of a jury unless the right thereto be waived. *Ib.*

35. *Trial by jury; effect of common-law rules as to demurrer to evidence and non-suits.*

The rules of the common law in respect to demurrers to evidence and non-suits furnish no warrant for a Federal court setting aside a verdict and rendering judgment on the evidence without a new trial. *Ib.*

36. *Trial by jury; power of Federal court to reexamine facts; effect of prior decisions involving.*

Nothing in *Central Transportation Co. v. Pullman's Palace Car Co.*, 139 U. S. 24, or *Coughran v. Bigelow*, 164 U. S. 301, tends to show that a Federal court has power to reexamine, otherwise than according to the rules of the common law, issues of fact which have been determined by the verdict of a jury. *Ib.*

37. *Trial by jury; purposes of Seventh Amendment.*

The terms of the Seventh Amendment and the circumstances of its adoption show that one of its purposes was to require adherence to the rule of the common law that a verdict cannot be disturbed for an error of law occurring on the trial without awarding a new trial. *Ib.*

38. *Trial by jury; right of plaintiff on reversal of judgment by appellate court; directing judgment non obstante veredicto; error in.*

In this case the Circuit Court of Appeals properly reversed a judgment on a general verdict for the plaintiff on the ground that the defend-

ant's request for a directed verdict should have been granted by the trial court; but, under the Seventh Amendment, the only course was to order a new trial, and as the judgment of the Circuit Court of Appeals directing a judgment to be entered for defendant notwithstanding the verdict for the plaintiff violated that Amendment, the action of the Circuit Court of Appeals is modified by substituting for such direction a direction for a new trial. *Ib.*

39. *Generally; considerations in determining invalidity of law.*

The fact that a law may be faulty does not demonstrate its invalidity under the Federal Constitution; even though it may seem unjust and oppressive it may be free from judicial interference. *Metropolis Theatre Co. v. Chicago*, 61.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTESTS.

See INDIANS, 6;
PUBLIC LANDS, 23.

CONTRACTS.

1. *Law governing.*

Contracts made after a law is in force are made subject to it, and impose only such obligations and create only such property as the law permits. *Abilene National Bank v. Dolley*, 1.

2. *Law governing.*

Contracts made after the enactment of a statute are subject to, and do not impair, it. *Chicago, B. & Q. R. R. Co. v. Cram*, 70; *Chicago, B. & Q. R. R. Co. v. Kyle*, 85.

3. *Law governing contracts by carriers limiting liability while acting otherwise than as common carrier.*

The rule that common carriers cannot secure immunity from liability for their own negligence has no application when a railroad company is acting outside the performance of its duty as a common carrier. In such a case the ordinary rules of law relating to contracts control. *Santa Fe, P. & P. Ry. Co. v. Grant Bros.*, 177.

4. *Public policy to enforce.*

Where no rule of public policy denies effect to stipulations in a contract, the highest public policy is found in enforcing the contract as actually made. *Ib.*

5. *Courts; functions in respect of.*

Courts are not at liberty to revise contracts. They can only determine what the parties meant by the terms and expressions as used. *Ib.*

6. *Restricting right of contract; application of rule based on public policy.*

A rule of law restricting the right of contract which rests on principles of public policy, because of the public ends to be achieved, extends no further than the reason for it and does not apply to contracts wholly outside of and not affecting those ends. *Ib.*

7. *Usurious; nature as.*

A contract for loaning money secured by accounts payable to the borrower, who is to act as agent for the lender in their collection, providing that the lender shall, in pursuance of a provision in a bond of indemnity given by third parties, examine the accounts and books of the borrower monthly and receive a compensation therefor equivalent to a specified per cent of the accounts remaining due, *held* in this case to have been made in good faith and not for the purpose of avoiding the usury laws, and not to be a usurious and void contract under the laws of the State of New York. *Houghton v. Burden*, 161.

8. *Usury as defense; when available.*

Usury may be interposed as a defense even though it contradicts the agreement. *Ib.*

9. *Usury to avoid; burden of proof as to.*

Where the law of the state makes usury a crime, the burden is strongly on him who would avoid a debt on that ground; and where, as in this case, the borrower is supported by one witness who is in his employ and the lender is supported by one disinterested witness, the burden is not sustained. *Ib.*

10. *Evidence to show illegality.*

On an inquiry whether the contract is one forbidden by law, evidence dehors the agreement is admissible to show that, though legal on its face, the agreement is in fact illegal. *Ib.*

11. *Government; jurisdiction of suits on contractors' bonds.*

As the act of August 13, 1894, relative to contractors' bonds prior to the amendment of February 24, 1905, contained no provision as to jurisdiction of courts in which suits could be brought on such bonds, the Circuit Court of the district in which the bondsman, if a surety company, has its principal office, had jurisdiction under the act

regulating surety companies of August 13, 1894, and this jurisdiction extended to suits on bonds executed prior to the amendatory act for materials furnished after the passage of that act. *Title Guaranty & Surety Co. v. Harlan & Hollingsworth*, 567.

12. *Government; jurisdiction of suits on contractors' bonds; effect of act of February 24, 1905.*

The act of February 24, 1905, amending the act of August 13, 1894, and requiring that all suits on a contractor's bond be brought in the district in which the contract was to be performed, had merely a prospective operation and no retroactive effect. (*Davidson Marble Co. v. Gibson*, 213 U. S. 10). *Ib.*

13. *Railroads; validity of limitation of liability in contract for construction work.*

A contract made by a railroad company for construction work is one made outside of the performance of its duty as a common carrier, and a stipulation that the contractor, in consideration of lawfully reduced rates for transportation of supplies and employes, will assume all risk of damage of any kind even if occasioned by the company's negligence, is not void as against public policy. *Balt. & Ohio Ry. Co. v. Voight*, 176 U. S. 498, followed; *Railroad Co. v. Lockwood*, 17 Wall. 357, distinguished. *Santa Fe, P. & P. Ry. Co. v. Grant Bros.*, 177.

14. *Railroad construction contract; provision as to assumption of risk and limitation of liability construed.*

In this case held that expressions to effect that the contractor assumed "all risk and damage" and the railroad company assumed "no obligation or risk" in a contract between a railroad company and contractor for construction of roadbed and not in connection with duties as a common carrier, included damage caused by the company's own negligence. *Ib.*

15. *Railroad; right of contractor to waive rights of his employes; quære as to.*

Quære to what extent a contractor can by a stipulation, valid as to himself and in consideration of reduced rates of transportation, exempt a railroad company from liability to his employes for damages sustained by them from negligence of the railroad company while transporting them. *Ib.*

See BANKRUPTCY, 16;

COMBINATIONS IN RESTRAINT OF
TRADE;

CONSTITUTIONAL LAW, 5, 7;

CORPORATIONS, 4;

LOCAL LAW (Cal.), (Mass.)

PUBLIC LANDS, 4, 6.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CONVERSION.

See BANKRUPTCY, 15.

CONVEYANCES.

See EXECUTORS AND ADMINISTRATORS, 1, 2;
PUBLIC LANDS, 4, 5.

CONVICTION OF CRIME.

See ALIENS, 11.

CORPORATIONS.

1. *Creditors; preference of stockholders over; invalidity of.*

Even in the absence of fraud, any device, whether by private contract or under judicial sale, whereby stockholders are preferred to creditors, is invalid. (*Louisville Trust Co. v. Louisville Railway*, 174 U. S. 683.) *Northern Pacific Ry. Co. v. Boyd*, 482.

2. *Liability of one acquiring control of and leasing another to account for bonds diverted from treasury of latter; right of creditors of latter to enforce liability.*

A corporation acquiring stock control of a railroad company and leasing it becomes liable to account to the leased company for the amount of bonds in the treasury of the leased company diverted by it; that liability can be enforced by a creditor of the leased company who is unable to collect his judgment on account of the insolvency of the leased company which has resulted from the lease itself. (*Chicago Railway v. Chicago Bank*, 134 U. S. 277.) *Ib.*

3. *Liability of property in hands of former owners under new charter.*

The property of a corporation, in the hands of the former owners under a new charter, is as much subject to existing liabilities as that of a defendant who buys his own property at a tax sale. *Ib.*

4. *Reorganization contracts; who bound by.*

Contracts for reorganization made between bondholders and stockholders of corporations, insolvent or financially embarrassed, involving the transfer of the corporate property to a new corporation, while proper and binding as between the parties, cannot, even where made in good faith, defeat the claim of non-assenting cred-

itors; nor is there any difference whether the reorganization be made by contract or at private sale or consummated by a master's deed under a consent decree. *Ib.*

5. *Same; continuance of liability; effect of disbursements on account of leased company.*

A lessor railroad company which has once become liable for diversion of bonds from the treasury of a lessee company remains so until the bonds are restored; nor is the obligation lessened by disbursements made on account of the roadbed of the leased company. *Ib.*

6. *Same; improvements to property of leased company; effect as offset to liability.*

Improvements of a roadbed leased for 999 years from another company are expenditures for the benefit of the lessee and not the lessor; they cannot be regarded as an offset to a debt owed by the lessee to the lessor. (*Chicago Railway v. Chicago Bank*, 134 U. S. 277.) *Ib.*

7. *Same; effect of decree in proceeding for participation as res judicata against one not a party.*

The decree in a proceeding brought by one of a class to permit that class to participate in a reorganization is not *res judicata* as against another of the same class who was not a party thereto and had no notice of the proceeding. *Ib.*

8. *Same; effect on rights of creditors.*

Rights of creditors of corporations undergoing reorganization do not depend upon whether the property was sufficient on the day of sale to pay them and prior encumbrances, but on fixed principles established by law. *Ib.*

9. *Same; value of property; evidence as to.*

The fact that property of great value belonging to an insolvent corporation is bid in by the reorganization committee at the upset price fixed by the court at a judicial sale, cannot be used as evidence to disprove the recital as to its actual and far greater value when subsequently transferred by the reorganization committee to the new corporation. *Ib.*

10. *Same; right of creditor to prevent stockholders from retaining interest.*

A creditor of a corporation undergoing reorganization cannot prevent stockholders from retaining an interest in the reorganized corpora-

tion; if he is given a fair opportunity to protect his interests and refuses to avail of it he may be cut off by the decree. *Ib.*

See LACHES, 2;

LOCAL LAW (Va.);

TAXES AND TAXATION, 1, 2, 3.

CORPORATION TAX ACT.

See TAXES AND TAXATION, 1, 2, 3.

COURT AND JURY.

See EMPLOYERS' LIABILITY ACT, 7;

NEGLIGENCE, 1, 9.

COURTS.

1. *Comity between courts of different jurisdictions.*

Courts of other jurisdictions owe great deference to what the court concerned with the case has done; the probabilities are that the local procedure follows the traditions of the place. *Michigan Trust Co. v. Ferry*, 346.

2. *Disqualification of judges under § 3 of Court of Appeals Act of 1891.*

The disqualification under § 3 of the Court of Appeals Act of 1891 arises not only when the judge has tried or heard the whole cause in the court below, but also when he has tried or heard any question therein upon which it is the duty of the Circuit Court of Appeals to pass. *Rexford v. Brunswick-Balke-Collender Co.*, 339.

3. *Disqualification of judges under § 3 of act of 1891.*

Under § 3 of the Court of Appeals Act of 1891, a judge is not disqualified from sitting in a cause because he had previously passed upon a motion which did not involve a non-waivable question of jurisdiction if the parties voluntarily and unequivocally eliminate all the questions involved in the motion from consideration by the Circuit Court of Appeals. *Ib.*

4. *Disqualification of judge to sit in Circuit Court of Appeals.*

Under § 120 of the Judicial Code, which is a reënactment of a provision to the same effect in the act of March 3, 1891, a judge who has heard the case in the first instance may not sit in the Circuit Court of Appeals for the purpose of reviewing his own action, even though in the court below he merely entered a decree *pro forma* without expressing any opinion on the merits and no objection was raised by either party to his sitting in the Circuit Court of Appeals. *Wm. Cramp Sons v. Curtiss Turbine Co.*, 645.

the person producing it proves itself on the theory that the witnesses are dead and it is impossible to produce testimony showing execution by the grantor, is broad enough to admit, without production of the power of attorney, ancient deeds purporting to have been signed by agents. *Wilson v. Snow*, 217.

2. *Ancient deeds; presumption as to due execution.*

The other necessary facts being present, and the possession of the property being consistent with its terms and the original records having been lost, a deed, over forty years old containing recitals that it was executed by an administrator under power of sale given by order of the court, will be presumed to have been executed in accordance with such recitals. *Ib.*

3. *Construction of deed in trust; intention of grantor; word "children."*

A declaration in a deed of trust which clearly shows that the sole object of the instrument is to provide for certain specifically named children of the grantor who has other children, so dominates the instrument that the word "children" when thereafter used will be construed as referring to those particular children and not to include any other children of the grantor. *Frosch v. Walter*, 109

4. *"Children" as used in deed in trust construed.*

While the word "heirs" if used as a term of purchase in a will may signify whoever may be such at the testator's death, the word "children" as used in the deed involved in this case should be construed as including only those persons answering the description at the time of execution. *Ib.*

5. *Beneficiaries contemplated by deed in trust.*

Surviving children of the grantor in such an instrument held to include children of one of the children specifically mentioned who had died prior to the grantor. *Ib.*

DEFENSES.

See CONTRACTS, 8; LOCAL LAW (Ind.), (Porto Rico)
HABEAS CORPUS, 3; MUNICIPAL CORPORATIONS, 3.

DEMURRER TO EVIDENCE.

See CONSTITUTIONAL LAW, 35.

DEPORTATION OF ALIENS.

See ALIENS;
CONSTITUTIONAL LAW, 19.

DISQUALIFICATION OF JUDGES.

See COURTS, 2, 3, 4.

DISTILLED SPIRITS.

See TAXES AND TAXATION, 4, 5, 7, 8.

DISTRICT OF COLUMBIA.

1. *Court of Appeals; rules of; power to promulgate.*

The rules of the Court of Appeals of the District of Columbia were promulgated in pursuance of powers conferred upon the justices of that court by § 6 of the act of February 9, 1893, creating it. *Ex parte Dante*, 429.

2. *Court of Appeals; review by; time for taking appeal; rule governing; effect of death of party.*

Rule 10 providing that there shall be no review by the Court of Appeals of any order, judgment or decree of the Supreme Court of the District unless the appeal be taken within twenty days after the same is made, is the only rule governing such appeals, and there is no provision extending the time for taking or perfecting an appeal in the event of death of a party. *Ib.*

3. *Court of Appeals; rule 10 construed.*

Rule 10 has been interpreted to include the perfecting of an appeal by filing the bond. *Ib.*

See EXECUTORS AND ADMINISTRATORS, 1, 2;
JURISDICTION, A 10.

DUE PROCESS OF LAW.

See ALIENS, 10; JURISDICTION, A 5;
CONSTITUTIONAL LAW, 1-6, MUNICIPAL CORPORATIONS, 4;
PHILIPPINE ISLANDS, 2.

DUTIES ON IMPORTS.

See TAXES AND TAXATION, 7, 8.

ELECTION OF REMEDIES.

Right to make.

The party bringing the suit is master to decide what law he will rely upon. *The Fair v. Kohler Die Co.*, 22.

See BANKRUPTCY, 16;
EMPLOYERS' LIABILITY ACT, 3.

EMINENT DOMAIN.

See JURISDICTION, A 5, 6, 7;
LOCAL LAW (Va.).

EMPLOYER AND EMPLOYÉ.

See EMPLOYERS' LIABILITY ACT;
LOCAL LAW (Tex.).

EMPLOYERS' LIABILITY ACT.

1. *Act of 1906; effect as law.*

An unconstitutional statute is not a law, and is as inoperative as though it never had been passed; it can neither confer a right or immunity nor operate to succeed any existing valid law; and so held as to Employers' Liability Act of 1906. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

2. *Effect to supersede state statutes; quære.*

Quære the extent to which the Employers' Liability Statute superseded state statutes upon the same subject. *Ib.*

3. *Conflict of laws; election of remedies; effect of Federal law to supersede state laws; action under Federal law; recovery under.*

In a suit for personal injuries resulting in the death of plaintiff's intestate, plaintiff sued an interstate carrier on two counts, one for pecuniary loss to next of kin and the other for injury and pain sustained by the intestate before death. There was a recovery on both counts which the Supreme Court of the State sustained on the ground that the Employers' Liability Act was only supplementary and the judgment could be upheld under the state law. *Held* error and that

In a suit for personal injuries against an interstate railway carrier plaintiff, not defendant, has the election how the suit shall be brought.

The Federal Employers' Liability Act supersedes state laws in the matters with which it deals, including liability of carriers while engaged in commerce between the States for defects of cars.

In case of death of an injured employé, the only action under the Federal Employers' Liability Act of 1908 is one for the benefit of the next of kin; there can be no recovery for the pain suffered before death. *St. Louis, I. M. & S. Ry. Co. v. Hesterley*, 702.

4. *Recovery under act as amended in 1910; retroactive effect of act.*

The Employers' Liability Act as amended in 1910 saves the rights of

the injured employé but allows only one recovery; the act as amended not having a retroactive effect does not apply where the death occurred prior to the amendment. *Ib.*

5. *Compensation contemplated by act of 1908.*

The Employers' Liability Act of 1908, as heretofore construed by this court, is intended only to compensate the surviving relatives of a deceased employé for actual pecuniary loss sustained by his death. *Gulf, C. & S. F. Ry. Co. v. McGinnis*, 173.

6. *Compensation contemplated by act of 1908.*

A recovery under the Employers' Liability Act of 1908 must be limited to compensating those relatives for whom the administrator sues as are shown to have sustained some pecuniary loss. *Ib.*

7. *Recovery to be apportioned according to interest.*

While the judgment for a claim under the Employers' Liability Act of 1908 may be for a gross amount, the interest of each individual must be measured by his or her industrial pecuniary loss; this apportionment is for the jury to return. *Ib.*

8. *Remedy under; instruction to jury as reversible error.*

Where the record shows that there was evidence that the cars on which the accident occurred and which were being transferred by a switching engine were loaded with merchandise destined for a port to be there transhipped to destination in another State, and the court instructs the jury that the plaintiff can only recover under the Employers' Liability Act of 1908 in case it finds that he was engaged in interstate commerce, this court will not, in the absence of clear conviction of error, disturb the judgment based on the verdict. *Seaboard Air Line Ry. v. Moore*, 433.

EQUAL PROTECTION OF THE LAWS.

See CONSTITUTIONAL LAW, 7-18.

EQUITY.

See JURISDICTION, A 9.

ESTATES OF DECEDENTS.

1. *Administration; proceedings in; accounting; power of State as*

A State may make the whole administration of the estate a single proceeding and provide that one undertaking it within the jurisdiction shall be subject to the order of the court until the estate is closed,

and that he must account for all that he recovers by order of the probate court. *Michigan Trust Co. v. Ferry*, 346.

2. *Accounting by removed executor; local law of Michigan.*

Under the law of Michigan an executor who has been removed must account to the administrator *de bonis non* for all property that has come into his hands, and he is bound by a decree of the probate court in a proceeding in which he has been personally served with notice or appeared. *Ib.*

ESTOPPEL.

See LACHES;
REMOVAL OF CAUSES, 1.

EVIDENCE.

1. *Hearsay; exclusion of.*

Hearsay evidence with a few well-recognized exceptions, is excluded by courts that adhere to the principles of the common law. *Donnelly v. United States*, 243.

2. *Hearsay; exclusion of, as to confession of crime.*

After reviewing conflicting authorities, held that, in this case, the court properly excluded hearsay evidence relating to the confession of a third party, then deceased, of guilt of the crime with which defendant was charged. *Ib.*

3. *Hearsay evidence of confession of crime; exclusion of.*

In this country there is a great and practically unanimous weight of authority in the state courts against admitting evidence of confessions of third parties made out of court and tending to exonerate the accused. *Ib.*

See CONTRACTS, 8, 9, 10; MARRIAGE, 2;
CORPORATIONS, 9; NEGLIGENCE, 7, 10;
DEEDS, 1; STATUTES, A 1.

EXECUTIVE OFFICERS.

Scope of statute protecting.

A statute which protects the executive protects the subordinates as well as the chief executive. *Tiaco v. Forbes*, 549.

See GOVERNMENTAL POWERS, 1;
PUBLIC LANDS, 22.

EXECUTIVE POWER.

See PUBLIC LANDS, 17, 18.

EXECUTORS AND ADMINISTRATORS.

1. *Power to convey; quære as to right of survivor.*

Quære, what rule obtains in the District of Columbia as to whether the power to convey given to two persons named in a will may be executed by the survivor when the designation as executors is descriptive of the persons and not of the capacity in which they are to act. *Wilson v. Snow*, 217.

2. *Power to convey; effect to create trust; rule in District of Columbia.*

In the District of Columbia a power of sale given to more than one person named in a will as executors, coupled with the active and continuing duty of managing the property, making disposition thereof and changing investments for the benefit of the family of testator, is not a mere naked power to sell, but one that creates a trust which survives and can be executed by the survivor. *Ib.*

3. *When deemed trustees.*

Where the duties imposed upon executors are active and render the possession of the estate convenient and reasonably necessary, they will be deemed trustees for the performance of those duties to the same extent as though declared so to be in the most explicit terms. *Ib.*

See CONSTITUTIONAL LAW, 1;
DEEDS, 2;
ESTATES OF DECEDENTS, 1, 2.

EXPORTS.

See MUNITIONS OF WAR;
WORDS AND PHRASES.

EX POST FACTO LAWS.

See CONSTITUTIONAL LAW, 19.

FACTS.

See BANKRUPTCY, 18; JURISDICTION, A 25;
CONSTITUTIONAL LAW, 29, 30, 31, 34, 36; NEGLIGENCE, 1.

FEDERAL QUESTION.

1. *What constitutes.*

Whether rules provided to be made by a police ordinance were properly promulgated and whether the officer promulgating them had authority so to do are not Federal questions. *Adams v. Milwaukee*, 572.

2. *Laches and limitations non-Federal questions.*

The application of laches and the statute of limitation does not present a Federal question. *Wood v. Chesborough*, 672.

3. *Timeliness of raising; when too late.*

It is too late to raise the Federal question for the first time in a petition for rehearing after judgment of the state court of last resort unless the record clearly shows that the state court actually entertains the petition and decides the question. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 326.

4. *When sufficiently raised.*

Where the state court denies a petition for rehearing, setting up a Federal question for the first time, without opinion, it does not pass on the Federal question even though it states that the petition has been maturely considered. (*Forbes v. State Council*, 216 U. S. 396.) *Ib.*

5. *Certificate of court as to; sufficiency of.*

The certificate of the judge of the court below that a Federal question was raised and passed upon is not, in the absence of any journal entry, a certificate of the court, but this court may, if there is a recital in the certificate that the court orders the certificate to be made, accept it as incorporating into the record the necessary proof of existence of a Federal question. *Marvin v. Trout*, 199 U. S. 212, distinguished. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 596.

6. *When not considered by this court although properly raised and passed upon below.*

Where the judgment of the state court rests upon a question of general law broad enough to support the decision, this court will not consider the Federal question, although it may have been raised in, and passed upon by, the court below. (*Gaar, Scott & Co. v. Shannon*, 223 U. S. 468.) *Ib.*

7. *Moot question; constitutionality of classification for regulation held not foreclosed.*

The question whether a classification of milk vendors who produce their milk outside of the city to which they send milk deprives such producers of the equal protection of the law when there are different rules for vendors who produce their milk within the city limits has not been so far foreclosed by prior decisions of this court

as to render its discussion unnecessary; and a motion to dismiss is denied. *Adams v. Milwaukee*, 572.

See JURISDICTION, A;

PRACTICE AND PROCEDURE, 4, 10, 15.

FELLOW SERVANTS.

See CONSTITUTIONAL LAW, 12;

MASTER AND SERVANT, 1, 3;

LOCAL LAW (Ind.), (Porto Rico);

NEGLIGENCE, 6.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 26.

FINDINGS OF FACT.

See BANKRUPTCY, 18.

FIXTURES.

See LOCAL LAW (Va.).

FORAKER ACT.

See TAXES AND TAXATION, 6, 7, 8.

FOREIGN CITIZENS.

See ALIENS;

UNITED STATES.

FOREIGN CORPORATIONS.

See COMBINATIONS IN RESTRAINT OF TRADE, 1.

FOREIGN STATUTES.

See STATUTES, A 1.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;

JURISDICTION, A 5, 6;

MUNICIPAL CORPORATIONS, 4.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 21, 22, 23.

GOVERNMENTAL POWERS.

1. *Legislative and administrative functions distinguished.*

There is a distinction between legislative and administrative functions,

and under a statutory power to make regulations an administrative officer cannot abridge or enlarge the conditions imposed by statute. *United States v. George*, 14.

2. *Ratification of act done.*

Where the act originally purports to be done in the name and by the authority of the State, a defect in that authority may be cured by the subsequent adoption of the act. *Tiaco v. Forbes*, 549.

See ALIENS, 5, 6, 8;

PHILIPPINE ISLANDS, 4;

CONSTITUTIONAL LAW, 20;

PUBLIC LANDS, 13.

GOVERNMENT CONTRACTS.

See CONTRACTS, 11, 12.

GRADE, CHANGE OF.

See MUNICIPAL CORPORATIONS, 1, 2, 3.

HABEAS CORPUS.

1. *Functions of writ.*

The writ of *habeas corpus* is not to be used as a writ of error. *Ex parte Spencer*, 652.

2. *Interference by, with administration of criminal justice by States.*

It is only in exceptional cases that this court will interfere by *habeas corpus* with the course, or final administration, of the criminal justice of the States by their respective courts, *Urquhart v. Brown*, 205 U. S. 179, and this rule applies as well after, as before, sentence. *Ib.*

3. *Not available in Federal courts to derange administration of criminal justice in state courts.*

Justice is satisfied by the opportunity given to defendants accused of and tried for crime in the state courts to set up their Federal rights in those courts, and the course of criminal justice will not be deranged and possibly defeated by permitting the defenses based on such rights to be raised for the first time by *habeas corpus* in the Federal courts after sentence in the state court. *Ib.*

4. *Availability in Federal court to determine legality of sentence by state court.*

Where, as in Pennsylvania, the judgment of the trial court in criminal cases is subject to modification, as well as affirmance or reversal, by the appellate court, and a sentence partly legal and partly illegal under the state law can be modified by striking therefrom

the illegal part, such sentence is erroneous and not void; this court will not, therefore, on *habeas corpus* pass upon the question of legality of the part of the sentence complained of. The proper procedure is to review the judgment on appeal. *Ex parte Lange*, 18 Wall. 163, distinguished. *Ib.*

HEARSAY EVIDENCE.

See EVIDENCE, 1, 2, 3.

HOMESTEADS.

See PUBLIC LANDS, 4-9.

HOMICIDE.

See INDIANS, 5;

PHILIPPINE ISLANDS, 1, 2.

HOOPA VALLEY RESERVATION.

See PUBLIC LANDS, 19, 20, 20½.

IMMUNITY FROM SUIT.

See ALIENS, 7.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 5, 7;

CONTRACTS, 2.

IMPORTS.

See TAXES AND TAXATION, 7, 8.

INDEPENDENT CONTRACTOR.

See NEGLIGENCE, 3.

INDIANS.

1. *Cattle of; sales; prohibition of Indian Appropriation Act of 1884.*

The prohibition in the Indian Appropriation Act of 1884, against sale of cattle purchased by the Government for the Indians without the consent of the Secretary of the Interior relates to all cattle purchased by the Government for Indians, and is not limited to such cattle as has been purchased from unexpended balances under another provision of the act. *United States v. Anderson*, 52.

2. *Cattle of; sales; act of 1884 construed.*

The two provisions of the act above referred to are not interdependent. *Ib.*

3. *Crimes committed in Indian country; jurisdiction of United States within meaning of § 2145, Rev. Stat.*

The words "sole and exclusive jurisdiction" as used in § 2145, Rev. Stat., do not mean that the United States must have sole and exclusive jurisdiction over the Indian country in order that such section may apply to it; those words are used in order to describe the laws of the United States which by that section are extended to the Indian country. (*Wilson v. United States*, 140 U. S. 578.) *Donnelly v. United States*, 243.

4. *Crimes committed in Indian country; "Indian country" defined.*

The term "Indian country" as used in §§ 2145, 2146, Rev. Stat., is not confined to lands to which the Indians retain their original right of possession, but includes those set apart out of the public domain as reservations for, and not previously occupied by, the Indians. *Ib.*

5. *Crimes committed on Indian reservation; jurisdiction to punish.*

The killing of an Indian by one not of Indian blood, when committed upon an Indian reservation within the State of California, is punishable, under §§ 2145 and 5339, Rev. Stat., in the Federal courts. *Ib.*

6. *Allotment of lands; finality of decision of Secretary of Interior acting under act of July 1, 1902.*

The power given by the act of July 1, 1902, providing for allotment of Cherokee lands in severalty, to the Secretary of the Interior to decide between contestants, is not exhausted by a decision approving a settlement and directing deeds to be submitted to him for approval. Such a decision is interlocutory and not final and power still remained to reconsider and revoke. *Knight v. Lane*, 6. See PUBLIC LANDS, 18, 19, 20.

INDICTMENT AND INFORMATION.

See APPEAL AND ERROR, 3; CRIMINAL LAW, 2;
COMBINATIONS IN RE- JURISDICTION, A 19;
STRAINT OF TRADE, 3; PRACTICE AND PROCEDURE, 11, 16.

INEBRIETY.

See NEGLIGENCE, 7.

INFRINGEMENT OF PATENT.

See JURISDICTION, C 1, 2.

INJUNCTION.

See MAILS, 1, 2.

INSANITY.

See CONSTITUTIONAL LAW, 1.

INSTRUCTIONS TO JURY.

Requested, when properly rejected.

Where the terms of a request to charge are self-contradictory and confusing, that reason is in itself a sufficient ground for the trial court to reject it. *Sweeney v. Erving*, 233.

See NEGLIGENCE, 2.

INSURANCE.

1. *Payment of premium; effect of partial payment.*

Where a life insurance policy plainly provides for payment of the stipulated premium within a specified period of grace after the due day and as plainly excludes any idea of partial payments distributed between the premium dates, the insured gains nothing by giving an agent a portion of the premium in the absence of authority given him by the company to accept it. *Slocum v. New York Life Ins. Co.*, 364.

2. *Payment of premium; effect of attempt to extend otherwise than provided.*

Where there is a method for extending payment of premiums which is known to the insured, who also knows that the agent has no power to extend on any other terms, the insured takes nothing by an attempt to extend in a different manner in which an element of substance in the prescribed method is omitted. *Ib.*

3. *Payment of premium; effect of retention of partial payment as waiver by insurer.*

The temporary retention by an insurance company of a partial payment of a premium subject to the direction of the insured, *held*, under the circumstances of this case, not to constitute a waiver of full and timely payment. *Ib.*

See BANKRUPTCY, 1-7.

INTEREST.

See PUBLIC LANDS, 1, 2.

INTERNAL REVENUE.

See STATUTES, A 6;

TAXES AND TAXATION, 4, 5, 7, 8.

INTERSTATE COMMERCE.

1. *Purposes of act; judicial review of conduct of carriers subject to action by Interstate Commerce Commission.*

The purpose of the Interstate Commerce Act is to establish a tribunal to determine the relation of communities, shippers and carriers, and their respective rights and obligations dependent upon the act, and the conduct of carriers is not subject to judicial review in criminal or civil cases based on alleged violations of the act until submitted to and passed on by the Commission. *United States v. Pacific & Arctic Co.*, 87.

2. *Findings of Commission; quære as to effect.*

Quære, what the effect is of a finding by the Interstate Commerce Commission in such a case. *Ib.*

3. *Carmack Amendment; validity under, of stipulation as to liability of connecting carriers.*

Under *Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186, and *Galveston, Harrisburg & c. Ry. Co. v. Wallace*, 223 U. S. 481, which sustained the Carmack Amendment, stipulations in a bill of lading for interstate shipment that no carrier shall be liable for damages not occurring on its portion of the through route, are void; and the initial carrier is liable whether the through route connections are designated by it or by the shipper. *Norfolk & Western Ry. Co. v. Dixie Tobacco Co.*, 593.

4. *Rates; discrimination in; validity of rates given in connection with construction work.*

In dealing with transportation of supplies and employés of contractors in connection with construction and improvement of its own road, a railroad company does not act as a common carrier; arrangements made in good faith with such contractors for free or reduced rates are not violations of the prohibitions of the Interstate Commerce Act against rebates. See *Matter of Railroad-Telegraph Contracts*, 12 I. C. C. Rep. 10. *Santa Fe, P. & P. Ry. Co. v. Grant Bros.*, 177.

5. *State interference by taxation; cessation of interstate commerce to permit taxation.*

Where the trade in an article can only be accommodated by storage at some point in transit from the point of shipment in one State to final destination in another, and there is a business purpose and advantage in the delay during which the article secures the protection of the State where it is stored, there is a cessation of inter-

state commerce and the article is subject to the dominion of, and taxation by, the State. (*Bacon v. Illinois*, 227 U. S. 504.) *Susquehanna Coal Co. v. South Amboy*, 665.

6. *State interference by taxation; cessation of interstate commerce to permit taxation.*

Coal shipped from Pennsylvania to South Amboy, New Jersey, and intended for further shipment to ports in other States or countries, but not definitely determined, and stored while awaiting orders or means of transportation for orders already received, *held* that there was in this case more than mere incidental interruption and the coal was subject to taxation by the municipality within whose jurisdiction it was stored. *Ib.*

See CONGRESS, POWERS OF, 3;
PURE FOOD AND DRUG ACT.

INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE, 1, 2.

JUDGES.

See COURTS.

JUDGMENT CREDITORS.

See CORPORATIONS, 2.

JUDGMENTS AND DECREES.

See APPEAL AND ERROR, 2; COURTS, 4;
CONSTITUTIONAL LAW, 1, 21, EMPLOYERS' LIABILITY ACT, 7;
22, 28; ESTATES OF DECEDENTS, 2;
CORPORATIONS, 7, 10; LOCAL LAW (N. J.);
PRACTICE AND PROCEDURE, 17, 20.

JUDICIAL DISCRETION.

See MANDAMUS;
NEW TRIAL, 1.

JURISDICTION.

A. OF THIS COURT.

1. *Under § 709, Rev. Stat.; what amounts to denial of Federal right by state court.*

Where the state court, in denying a second petition for removal, simply bows to the decision of the Federal court when it remanded the record after the first attempt to remove, it does not deny any

Federal right of the petitioner within the meaning of § 709, Rev. Stat. *McLaughlin Bros. v. Hallowell*, 278.

2. *Under § 709, Rev. Stat.; what constitutes denial of Federal right by state court.*

In this case it does not appear that any different questions were presented on the second petition than on the first, and if any Federal right of the petitioner to remove was denied, it was denied by the Federal and not by the state court. *Ib.*

3. *Under § 709, Rev. Stat.; when question of local law cognizable.*

Whether individual members of a copartnership should be joined as defendants or substituted for the copartnership in a suit brought against the partnership under a state law permitting copartnerships to be sued as entities is a question of local law only cognizable in this court so far as it may affect the right to remove. *Ib.*

4. *Under § 237, Judicial Code; requisites.*

Under § 237 of the Judicial Code, as under § 709, Rev. Stat., in order to give this court jurisdiction to review the judgment of the state court it must appear that some Federal right, privilege or immunity was specially set up in the state court, passed on and denied. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 326.

5. *Under § 237, Judicial Code; scope of review in determining due process of law.*

While just compensation for private property taken for public use is an essential element of due process of law under the Fourteenth Amendment, the question of whether every element of compensation was allowed by the state court cannot be reviewed in this court except as based on claims specially set up in and denied by that court. *Ib.*

6. *Under § 237, Judicial Code; when Federal question sufficiently raised.*

Where there is an equal right to compensation under the state constitution as under the Fourteenth Amendment, a mere demand for just compensation not specifically made under Federal right does not raise a Federal question. *Ib.*

7. *Under § 237, Judicial Code; when Federal question sufficiently raised.*

An exception to the report of Commissioners on the ground that their interpretation of the state statute of eminent domain violates a specified clause of the Federal Constitution does not give this court the right to review the judgment on the ground that other

rights of the plaintiff in error under the Constitution have been violated. *Ib.*

8. *Under § 237, Judicial Code; effect of certificate of state court to import Federal question into record.*

While a certificate of the state court can make more definite and certain that which is insufficiently shown in the record, it cannot import the question into the record and in itself confer jurisdiction on this court to review the judgment. *Ib.*

9. *Under § 241, Judicial Code, to review claim made in bankruptcy court to property in trustee's possession.*

Where a secured creditor voluntarily comes into the bankruptcy court and asserts a claim to property in the trustee's possession, the proceeding is one in equity and the decree is reviewable by the Circuit Court of Appeals both as to law and fact; § 566, Rev. Stat., is inapplicable and the whole case is open under § 128, Judicial Code, and an appeal lies to this court under § 241, Judicial Code. *Houghton v. Burden*, 161.

10. *Under § 250, subd. 6, Judicial Code, to review decree of Court of Appeals of District of Columbia.*

An appeal lies from a decree of the Court of Appeals of the District of Columbia under subd. 6 of § 250 of the Judicial Code where the construction of a law of the United States of general application was drawn in question and was considered and passed upon; and so held that an appeal should have been allowed in this case as § 3477, Rev. Stat., is such a statute and the case is not so frivolous as to deprive of the right of appeal allowed by § 250. *McGowan v. Parish*, 312.

11. *Of direct appeal under § 5 of Circuit Court of Appeals Act; questions of jurisdiction reviewable.*

The question intended to be brought to this court by direct appeal under § 5 of the Circuit Court of Appeals Act is the jurisdiction of the Circuit Court as a Federal court; questions of general jurisdiction applicable as well to state as to Federal tribunals are not included in such review. *Bogart v. Southern Pacific Co.*, 137.

12. *Of direct appeal under § 5 of act of 1891; determination of presentation of jurisdictional question.*

The question cannot be brought into the record by certificate if not really presented, and whether so presented or not this court will

determine for itself. (*Darnell v. Illinois Cent. R. R. Co.*, 225 U. S. 243.) *Ib.*

13. *Of direct appeal under § 5 of act of 1891; decision based on want of indispensable party not reviewable.*

Neither § 737, Rev. Stat., nor Equity Rule 47 defines what an indispensable party to an action is, but each simply formulates principles already controlling in courts both state and Federal; a decision dismissing a case removed from the state court because of the absence of an indispensable party rests on the broad principles of general law in that respect, and a direct appeal does not lie under § 5 of the act of 1891. *Ib.*

14. *Of direct appeal under § 5 of act of 1891; when question of jurisdiction not one of Federal court as such.*

Where the Circuit Court dismisses a case removed from the state court for want of an indispensable party the question is not one of jurisdiction of the Federal court as such, and this court cannot, in a direct appeal under § 5 of the Circuit Court of Appeals Act, answer a question embodied in a certificate as to whether under such circumstances the case should be remanded to the state court. *Ib.*

15. *To review judgment or decree of Circuit Court of Appeals.*

By the distribution of power made by the Circuit Court of Appeals Act of 1891, and now embodied in the Judicial Code of 1911, this court has no jurisdiction to review a judgment or decree of the Circuit Court of Appeals otherwise than by proceedings addressed directly to that court in a cause which is susceptible of being reviewed. *Union Trust Co. v. Westhus*, 519.

16. *Indirection where direction prescribed.*

That which can only be done by direct action cannot be done by indirection. *Ib.*

17. *To review judgment of Circuit Court of Appeals on direct writ of error from Circuit Court.*

In a case in which on the original pleadings the judgment of the Circuit Court of Appeals would not have been reviewable by this court, plaintiff recovered in the Circuit Court and on appeal the Circuit Court of Appeals reversed and remanded for new trial, with an opinion adverse to all of plaintiff's contentions: plaintiff in the Circuit Court amended by adding an allegation denying due process of law, and elected not to plead further after demurrer sustained and took a direct writ of error to this court basing it on the

constitutional question, and claiming that in this court all other questions could also be passed on: *Held* that this court will not in this indirect manner attempt to review a judgment of the Circuit Court of Appeals which it otherwise has not jurisdiction to review. *Ib.*

18. *To review order of Circuit Court remanding case to state court.*

An order of the United States Circuit Court remanding the cause to the state court is not reviewable here, *Missouri Pacific Ry. v. Fitzgerald*, 160 U. S. 556, nor can this object be accomplished by indirection. *McLaughlin Bros. v. Hallowell*, 278.

19. *Under Criminal Appeals Act; when indictment and not statute subject of construction by lower court.*

Where the District Court holds that the averments of the indictment are not sufficient to connect certain defendants with the offense charged, it construes the indictment and not the statute on which it is based, and this court has no jurisdiction under the Criminal Appeals Act to review the decision. *United States v. Pacific & Arctic Co.*, 87.

20. *To review judgment of state court; when Federal questions raised sufficient to justify taking of jurisdiction.*

This court is not justified in taking jurisdiction on the bare claim that property has been taken without compensation, unless the averments of fact raise real and substantial questions which are not so devoid of merit as to be frivolous or which have been foreclosed by prior decisions of this court. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 596.

21. *To review judgment of state court; jurisdiction declined where Federal question frivolous.*

The state courts of Virginia having held that a railroad company which had acquired title to land on which it had built its roadbed could condemn the interest in the land of a mortgagee in possession without paying for its own improvements, this court declines to review on the ground that the question of whether the mortgagee was deprived of his property without due process of law is frivolous. *Ib.*

22. *To review judgment of state court resting on non-Federal ground sufficient to support it.*

If the judgment of the state court rests on Federal and non-Federal grounds, and the latter be sufficient to support it, there can be no review by this court. (*Preston v. Chicago*, 226 U. S. 447.) *Wood v. Chesborough*, 672.

23. *To review judgment of state court; when judgment rests on non-Federal grounds.*

The highest court of the State having held, following its former decisions on the same subject, that the plaintiff's cause of action was barred by laches and *res judicata*, the judgment rests on non-Federal grounds sufficient to sustain it. *Ib.*

24. *To review judgment of state court accepting former decisions as determining law of State.*

This court will not review the judgment of the highest state court in accepting its former decisions as determining the law of the State and give a different interpretation of that law. To do so would give this court power to review all judgments of state courts where Federal questions are set up and to substitute its judgment for that of the state courts as to state laws. *Ib.*

25. *To review findings of fact by state court.*

This court can only review findings of fact by the state court to the extent necessary to determine whether, there being no evidence to support them, a Federal right has been denied by them, or where conclusions of law as to a Federal right and questions of fact are so intermingled as to make such review necessary for the purpose of passing on the Federal question. (*Chapman v. Goodnow*, 123 U. S. 540.) *Ib.*

See CONSTITUTIONAL LAW, 20, 29;
PRACTICE AND PROCEDURE, 12, 14;

B. OF CIRCUIT COURT OF APPEALS.

See APPEAL AND ERROR, 1;
JURISDICTION, A 9.

C. OF CIRCUIT COURTS.

1. *When case one under law of United States.*

Where plaintiff relies upon infringement of his patent and nothing else, the cause, whether good or bad, is one under the laws of the United States and the Circuit Court has jurisdiction; and jurisdiction cannot be defeated by matter set up in the answer. *The Fair v. Kohler Die Co.*, 22.

2. *When case one under laws of United States; involution of patent law.*

Defendant specially pleading to plaintiff's bill for infringement of patent by selling below a stipulated price denied there was any infringement of the patent and set up that the cause was not one arising under the patent laws of the United States and the Federal

court had no jurisdiction. The court overruled the plea and, defendant not having answered further, made a decree for plaintiff. In this court *held* that the appeal was on the question of jurisdiction alone, and as jurisdiction existed below and rested solely on the patent law, there being no diverse citizenship, the decree must be affirmed. *Ib.*

See CONTRACTS, 11, 12.

D. OF BANKRUPTCY COURT.

See BANKRUPTCY, 9, 10.

E. OF FEDERAL COURTS GENERALLY.

Withdrawal of objection to; practice of judges condemned.

Judges of Federal courts should avoid asking counsel if objections to the jurisdiction of the court are withdrawn, as the withdrawal of such objections to be effectual must be purely voluntary. *Rexford v. Brunswick-Balke-Collender Co.*, 339.

See CONSTITUTIONAL LAW, 29, 30; PURE FOOD AND DRUG ACT, 11;
INDIANS, 5; REMOVAL OF CAUSES, 1.

F. OF STATE COURTS.

See BANKRUPTCY, 23;
LOCAL LAW (Arizona).

G. OF LAND DEPARTMENT.

See PUBLIC LANDS, 10, 11.

H. GENERALLY.

1. *Basis of; power over person; continuance.*

While ordinarily jurisdiction over a person is based on the power of the sovereign to seize and imprison him, it is one of the decencies of civilization that when the power exists and has been asserted at the beginning of a cause, the necessity of maintaining the physical power is dispensed with. *Michigan Trust Co. v. Ferry*, 346.

2. *Definition; how defeated.*

Jurisdiction is authority to decide either way, and, if it exists as an incident to a Federal statutory cause of action, it cannot be defeated by a plea denying the merits. *The Fair v. Kohler Die Co.*, 22.

See COMBINATIONS IN RESTRAINT OF TRADE, 1, 3;
CONSTITUTIONAL LAW, 1; INDIANS, 1;
MANDAMUS, 1;
PRACTICE AND PROCEDURE, 17.

JURY TRIAL.

See CONSTITUTIONAL LAW, 28-38.

KLAMATH INDIANS.

See PUBLIC LANDS, 20.

LACHES.

1. *Measurement of; when non-action excusable.*

Laches is not to be measured as statutory limitations are. There is no necessary estoppel from mere lapse of time where complainant's non-action is excusable and has not damaged defendant or caused him to change his position. (*Townsend v. Vanderwerker*, 160 U. S. 186.) *Northern Pacific Ry. Co. v. Boyd*, 482.

2. *Delay excusable, when.*

In this case the delay in bringing the suit was excusable if not unavoidable; and, as complainant's silence did not mislead the stockholders and his inaction did not induce any of them to become parties to the reorganization, laches cannot be imputed to him. *Ib.*

See FEDERAL QUESTION, 2;

JURISDICTION, A 23.

LAND DEPARTMENT.

See PUBLIC LANDS, 3, 4, 10, 11, 13, 22, 24.

LAW GOVERNING.

See CLAIMS AGAINST THE UNITED STATES;

CONTRACTS, 1, 2, 3;

INDIANS, 5.

LEGISLATIVE INTENT.

See STATUTES, A 7.

LEGISLATIVE POWER.

See CONGRESS, POWERS OF; PHILIPPINE ISLANDS, 4;

CONSTITUTIONAL LAW, 18; PUBLIC LANDS, 13;

STATES, 1, 2.

LESSOR AND LESSEE.

See CORPORATIONS, 5, 6;

TAXES AND TAXATION, 2, 3.

LIBERTY OF CONTRACT.

See CONTRACTS, 6.

LICENSES.

See CONSTITUTIONAL LAW, 9.

LIENS.

See LOCAL LAW (Va.).

LIFE INSURANCE.

See BANKRUPTCY, 1-7;
INSURANCE.

LIMITATION OF ACTIONS.

See FEDERAL QUESTION, 2;
LACHES.

LIMITATION OF LIABILITY.

See CONTRACTS, 3, 13, 14;
INTERSTATE COMMERCE, 3.

LIVESTOCK.

See STATES, 1, 2.

LOCAL LAW.

Arizona. *Jurisdiction pending transfer of cases.* The Supreme Court of the Territory, having held that under § 10 of Act 44 of 1899 of Arizona transferring cases from the District Court of one county to the corresponding court of another county newly organized, the former court retained jurisdiction until the conditions of the transfer were fulfilled, this court follows that decision. *Sanford v. Ainsa*, 705.

California. *Municipal corporations; construction of water works in competition with private enterprise.* There is nothing in the constitution of California that can be construed as a contract, express or implied, that municipalities will not construct water works that will compete with privately owned works built under the provisions of the constitution giving the right, subject to municipal regulation of charges, to lay mains in the streets of municipalities where there are no public works. *Madera Water Works v. Madera*, 454.

Ownership of non-navigable streams (see Public Lands, 20½).
Donnelly v. United States, 708.

District of Columbia. Executors and administrators (see Executors and Administrators, 1, 2). *Wilson v. Snow*, 217.

Illinois. Protection in buildings under construction (see Constitutional Law, 18). *Chicago Dock Co. v. Fraley*, 680.

Chicago theatre license ordinance (see Constitutional Law, 9). *Metropolis Theatre Co. v. Chicago*, 61.

Indiana. *Fellow-servant doctrine; abolition of; validity.* This court has heretofore sustained the constitutionality of the statute of Indiana of 1893 abolishing as to railroad corporations the defense to actions for personal injuries sustained by employés of negligence of a fellow-servant. (*Tullis v. Lake Erie Railroad*, 175 U. S. 348; *Louis. & Nash. R. R. v. Melton*, 218 U. S. 38.) *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

Kansas. Bank Depositors' Guaranty Act (see Constitutional Law, 7, 8). *Abilene National Bank v. Dolley*, 1.

Massachusetts. *Contractual obligation of one trust to another.* Under the laws of Massachusetts there may be a contractual obligation of one trust to another for payments improperly made from assets of the latter for the benefit of the former. (*Bremer v. Williams*, 210 Massachusetts, 256.) *Clarke v. Rogers*, 534.

Michigan. Executors and administrators (see Estates of Decedents, 2). *Michigan Trust Co. v. Ferry*, 346.

Nebraska. Cattle train speed act (see Constitutional Law, 6). *Chicago, B. & Q. R. Co. v. Cram*, 70; *Chicago, B. & Q. R. Co. v. Kyle*, 85.

New Jersey. *Effect, as res judicata, of decision as to legality of tax; quære.* Quære, whether in New Jersey a decision as to the legality of a tax for one year is *res judicata* as to same grounds in regard to a tax for a later year on the same property. *Susquehanna Coal Co. v. South Amboy*, 665.

New York. Usury laws (see Contracts, 7). *Houghton v. Burden*, 161.

Pennsylvania. Judgments in criminal cases (see Habeas Corpus, 4). *Ex parte Spencer*, 652.

Philippine Islands. Penal Code, Art. 403 (see Philippine Islands, 1, 2, 3). *Pico v. United States*, 225.

Porto Rico. Fellow-servant defense. In view of the adoption by Porto Rico in substantially the same form, of the English Employers' Liability Act which presupposes the existence of the common-law rule as to fellow-servants, and the provisions of that act in regard to exceptions in specific instances, and in the absence of any authorities to the contrary, *held* that the law in Porto Rico in regard to the fellow-servant defense does not differ from the common law. *Brooks v. Central Sainte Jeanne*, 688.

Texas. Master and servant; assumption of risk. In Texas, the common-law rule as to risks assumed by the employé has been qualified by statute so that the employé is relieved from giving notice of defects where a person of ordinary intelligence would have continued in service with knowledge of such defect. *Texas & Pacific Ry. Co. v. Harvey*, 319.

Virginia. Corporate power of eminent domain; compensation. The rule of the common law that fixtures annexed to the realty become a part thereof and subject to existing liens thereon is subject to many exceptions: in Virginia a corporation possessing the power of eminent domain may enter and use for public utility purposes and condemn the interest of the mortgagee without being obliged to pay more than the value of the land without such improvements. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 596.

Washington. Liability of municipality for damages resulting from change of grade (see Constitutional Law, 4; Municipal Corporations, 2). *Ettor v. Tacoma*, 148.

Wisconsin. Law of 1907 regulating sales of food-stuffs (see Congress, Powers of, 3; Pure Food and Drug Act, 9). *McDermott v. Wisconsin*, 9.

Milwaukee milk ordinance (see Constitutional Law, 2, 15). *Adams v. Milwaukee*, 572.

Generally.—See JURISDICTION, A 3.

LOCAL PRACTICE.

See PRACTICE AND PROCEDURE, 18, 19.

MAGAZINES.

See MAILS, 1, 2.

MAILS.

1. *Second-class mail privileges; exclusion from; injunction to restrain; availability of remedy.*

The admission of a magazine to second-class mail privileges on the petition of the owners made pending a suit to enjoin the enforcement of an order excluding the magazine from such privileges renders the contentions of plaintiff moot and it is no longer in a position to ask for an injunction. *Lewis Publishing Co. v. Wyman*, 610.

2. *Second-class mail privileges; exclusion from; injunction to restrain; effect of admission pending suit.*

An order made by the Postmaster General admitting a magazine to second-class mail privileges on certain conditions, made pending a suit to enjoin an order excluding the magazine, is a matter of administration, and affords no ground for relief in the suit for injunction against enforcing the order of exclusion, or for retaining that suit after it has become moot by reason of such order. *Ib.*

MANDAMUS.

1. *To compel court to take jurisdiction; what amounts to refusal to take jurisdiction.*

Striking from the record, for non-compliance with the rules of court, the bill of exceptions, after the case has been heard on its merits, is not a refusal to take jurisdiction or a refusal after taking jurisdiction to exercise it; if the action is erroneous it is but an error committed in the exercise of judicial discretion, reviewable by writ of error and not by mandamus. *Ex parte First National Bank*, 516.

2. *To compel appellate court to reinstate bill of exceptions, refused.*

Mandamus in this case to compel the Court of Appeals of the District of Columbia to reinstate a bill of exceptions which on motion it had stricken out for failure to comply with its rules, refused. *Ib.*

See PUBLIC LANDS, 23.

MARRIAGE.

1. *Validity; presumption as to; effect of lapse of time.*

Every presumption is in favor of the validity of a marriage where the marital relations have continued uninterruptedly for over forty years without any question being raised or right asserted by anyone claiming under an earlier marriage of one of the parties until more than ten years after the death, and five years after the distribution of the property, of that party. *Sy Joc Lieng v. Sy Quia*, 335.

2. *Validity; evidence to impugn.*

The validity of such a marriage should not be impugned except upon clear, strong and unequivocal proof; nor in the absence of such proof will this court reverse the judgment of the lower court sustaining its validity when attacked by those who had opportunity to do so before the death of both spouses. *Ib.*

MASTER AND SERVANT.

1. *Servant; status as.*

Whether one is in general service of another or not, if he is rendering the latter a service even as a volunteer and comes under his orders, he becomes his servant, and fellow-servant of the other employés. *Brooks v. Central Sainte Jeanne*, 688.

2. *Servant; status as.*

The servant is not only such while actually at work on the service for which he is specially employed, but also during its progress while absent from the location for the purpose of, and in connection with, such work. *Ib.*

3. *Fellow-servants; who are.*

One going in the master's conveyance on the master's business, *held*, in this case, to be a fellow-servant of the driver of the conveyance. *Ib.*

See CONTRACTS, 15;
LOCAL LAW (Tex.).
NEGLIGENCE, 3, 7.

MEASURE OF DAMAGES.

See EMPLOYERS' LIABILITY ACT, 3, 5, 6;
STATES, 1.

MINES AND MINING.

Requisites to validity of claim.

The prime requisites for the validity of a mining claim are discovery of a valuable mineral deposit, an actual taking possession thereof, and the performance of the requisite amount of development work; where the record does not disclose facts showing the existence of these elements a finding cannot be supported that valid rights against the Government existed. *Donnelly v. United States*, 243.

MONOPOLY.

See COMBINATIONS IN RESTRAINT OF TRADE.

MORTGAGES AND DEEDS OF TRUST.

See LOCAL LAW (Va.).

MUNICIPAL CORPORATIONS.

1. *Changes of grade; liability for consequential damages.*

In the absence of legislation requiring compensation to be made for damages to abutting owners by change of grade of street, the municipality, being an agent of the State and exercising a governmental power, is not liable for consequential injuries provided it keep within the street and use reasonable care and skill in doing the work. *Ettor v. Tacoma*, 148.

2. *Changes of grade; liability for consequential damages; local law of Washington.*

Under the statutes of the State of Washington as construed by the courts of that State this general rule was superseded by legislation which required municipalities to compensate for consequential damages. *Ib.*

3. *Changes of grade; liability for consequential damages; defenses.*

A municipality cannot defend a suit for consequential damages on the ground that as the agent of the State it is immune, when its only authority to act is that given by the State coupled with an obligation to make compensation. *Ib.*

4. *Public utilities; right of municipality to construct and of private parties to prevent construction of plants.*

If the constitution of the State authorizes municipalities to construct utility plants as well after, as before, such plants have been built by private parties, one constructing such a plant takes the risk of what may happen, and cannot invoke the Fourteenth Amendment to protect him against loss by the erection of a municipal plant. *Madera Water Works v. Madera*, 454.

See CONSTITUTIONAL LAW, 3;
INTERSTATE COMMERCE, 6;
LOCAL LAW (Cal.).

MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, 2, 14, 15.

MUNITIONS OF WAR.

1. *"Export"; meaning as used in Joint Resolution of March 14, 1912.*

As used in the joint resolution of March 14, 1912, 37 Stat. 630, prohibiting exportation of munitions of war to American countries where conditions of domestic violence exist, the word "export" refers to any shipment of the prohibited articles from the United States

whether there was a landing thereof in the foreign country or not.
United States v. Chavez, 525; *United States v. Mesa*, 533.

2. *Personal carriage as violation of Joint Resolution of March 14, 1912.*
 Personal carriage of prohibited articles from this to a foreign country does not render inapplicable the prohibition to export such articles under the resolution of March 12, 1912. *Ib.*

MURDER.

See PHILIPPINE ISLANDS, 1, 2.

NATIONAL BANKS.

Competition with; effect of laws of United States to forbid.

The statutes of the United States where they do not prohibit competition with national banks do not forbid competitors to succeed.
Abilene National Bank v. Dolley, 1.

See CONSTITUTIONAL LAW, 7.

NAVIGABLE WATERS.

Determination by State.

What are navigable streams within the meaning of the local rules of property is for the determination of the States; and where a State by statute enumerates the navigable streams within its borders those not enumerated are non-navigable in law. *Donnelly v. United States*, 243, 708.

See PUBLIC LANDS, 20½;

REHEARINGS, 3.

NEGLIGENCE.

1. *When question of fact.*

Ordinarily, and unless so evident that fair-minded men could not differ in regard thereto, negligence or contributory negligence is not a question of law but of fact to be settled by the finding of the jury. (*Richmond & Danville R. R. Co. v. Powers*, 149 U. S. 43.) *Texas & Pacific Ry. Co. v. Harvey*, 319.

2. *Right of recovery for; sufficiency of instruction to jury.*

In this case the court having charged that there could be no recovery if there was contributory negligence on the part of the deceased and also having specially charged that there could be no recovery if the deceased was not acting with the care of an ordinarily prudent man, there was no error. *Ib.*

3. *Responsibility of contractor for injury to employé of subcontractor.*

A contractor erecting a building arranged with another and independent contractor who was putting in the elevator to use and control the elevator and an operator therefor before it was turned over to the owner; he also arranged to allow his own subcontractor painting the elevator shaft to use the elevator and to signal when and where the elevator was to stop to let the employés off and take them on. *Held* that the contractor was the sole master and was responsible for damages sustained by an employé of the subcontractor resulting from negligence of the operator in failing to respond to signals properly given by such employé. *George A. Fuller Co. v. McCloskey*, 194.

4. *Evidence; admissibility under declaration.*

The averments in the declaration when taken together, *held* sufficient to allow proof of negligence on the part of one defendant, although one specific charge related exclusively to the other defendant as to whom the case was dismissed. *Ib.*

5. *Instructions to jury; sufficiency of.*

A modification of the requested charge so as to make it conform to the facts of the case, *held* in this case not to have been error, the jury having been properly instructed by the court on the subject of contributory negligence. *Ib.*

6. *Fellow-servants; finding of trial court held justified.*

The court below was justified in holding on the facts in this case that a yard foreman was in charge or control of the train on which the employé sustained his injuries. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

7. *Sobriety of servant; evidence to justify finding of negligence on part of employer.*

A single expression in the testimony that the driver of an automobile was accustomed to drink while driving the machine, there being other testimony importing usual sobriety, does not justify a finding of negligence on the part of the employer for employing a servant who was incompetent as an excessive drinker. *Brooks v. Central Sainte Jeanne*, 688.

8. *Res ipsa loquitur; rule defined.*

Res ipsa loquitur means that the facts of the occurrence warrant an inference of negligence, not that they compel such an inference, nor does *res ipsa loquitur* convert the defendant's general issue into an affirmative defense. *Sweeney v. Erving*, 233.

9. *Res ipsa loquitur*; province of jury.

Even if the rule of *res ipsa loquitur* applies, when all the evidence is in it is for the jury to determine whether the preponderance is with the plaintiff. *Ib.*

10. *Res ipsa loquitur*; effect on burden of proof.

Where the rule of *res ipsa loquitur* applies, it does not have the effect of shifting the burden of proof. *Ib.*

11. *Physicians and surgeons; responsibility of specialist operating on patient of another.*

A medical specialist, called on to operate upon the patient of another physician who has assumed the responsibility of advising the operation, does not, as a matter of law on the facts disclosed in this case, undertake the responsibility of making a special study of the patient's condition or of giving advice as to possibility of injury resulting therefrom. *Ib.*

See COMMON CARRIERS; CONTRACTS, 3, 13, 14, 15;
CONSTITUTIONAL LAW, 12; LOCAL LAW (Ind.), (Porto Rico);
NEW TRIAL, 1.

NEUTRALITY.

See MUNITIONS OF WAR.

NEW TRIAL.

1. *Discretion of trial court; appellate court's function.*

The appellate court is not a jury and has no power to grant a new trial. That matter rests in the sound discretion of the trial court, and in a case of this kind its decision cannot be disturbed unless it appears that contributory negligence was so evident that it became a question of law requiring the court to take the case from the jury. *Texas & Pacific Ry. Co. v. Harvey*, 319.

2. *Right to; when matter of substance and not of form.*

The right to a new trial on the vacation of a favorable verdict in a case of this nature is a matter of substance and not of form. *Slocum v. New York Life Ins. Co.*, 364.

See CONSTITUTIONAL LAW, 28, 31, 32, 35, 38.

NON OBSTANTE VEREDICTO.

See CONSTITUTIONAL LAW, 28-38.

NON-SUITS.

See CONSTITUTIONAL LAW, 35.

NOTICE.

Imputation, where unity of the person and difference in capacities.

There may be unity of the person and difference in capacities, but such unity imputes knowledge of the purpose for which the different capacities were exercised. *Clarke v. Rogers*, 534.

See LOCAL LAW (Tex.).

OBJECTIONS.

See PRACTICE AND PROCEDURE, 11, 16.

ORDINANCES.

See CONSTITUTIONAL LAW, 2, 14, 15.

ORIGINAL PACKAGE.

See PURE FOOD AND DRUG ACT, 6, 7.

PACKAGES.

See PURE FOOD AND DRUG ACT, 5.

PARDONS.

See CLAIMS AGAINST THE UNITED STATES.

PARTIES.

See JURISDICTION, A 3, 13, 14;
PRACTICE AND PROCEDURE, 23.

PARTNERSHIP.

1. *Individual liability for debts of.*

Whether or not the copartnership is an entity distinct from the members, partnership debts are debts of the members of the firm. *Francis v. McNeal*, 695.

2. *Individual liability for debts of.*

The individual liability of partners for debts of the firm is primary and direct; it is not collateral like that of a surety. *Ib.*

See BANKRUPTCY, 8, 17, 23;
JURISDICTION, A 3.

PATENTS.

See JURISDICTION, C 1, 2.

PENALTIES AND FORFEITURES.

See ALIENS, 11;
CONSTITUTIONAL LAW, 2, 6.

PERJURY.

See CRIMINAL LAW, 2;
PUBLIC LANDS, 7.

PHILIPPINE ISLANDS.

1. *Criminal law; murder with alevosia under Art. 403, Penal Code; what constitutes.*

Under art. 403, Philippine Penal Code, a person can be guilty of murder with alevosia (treachery) although there may have been no specific intent to kill; and so held that one who had his victim bound and then caused him to be violently beaten with an instrument likely to cause death was guilty of murder with alevosia even though he did not specifically intend that death should result. *Pico v. United States*, 225.

2. *Criminal law; murder with alevosia; conviction affirmed.*

The conviction by the Supreme Court of the Philippine Islands for murder with alevosia of one who had caused his victim to be bound and then beaten with an instrument likely to cause death, and a sentence of 17 years, 4 months and 1 day of cadena temporal and the accessories, and an indemnity to the heirs of his victim of 1,000 pesos, being a modification of the sentence of the Court of First Instance of cadena temporal for life and accessories and indemnity, sustained by this court as being in accordance with the evidence, without error of law and not in any manner depriving the defendant of his liberty without due process of law. *Ib.*

3. *Criminal law; presumption as to intention.*

Under the Philippine Penal Code, as at common law, men are presumed to intend the natural consequences of their acts. *Ib.*

4. *Governmental powers; precluding review of executive act.*

The English rule is that an act of state is not cognizable in any municipal court. It is within the power of the legislature of the Philippine Islands to declare an act of the executive which is within its power to authorize to be not subject to question or review. *Tiaco v. Forbes*, 549.

See ALIENS, 3-8.

PHYSICIANS AND SURGEONS.

See NEGLIGENCE, 11.

PLEADING.

See JURISDICTION, A 17; C 1, 2; H 2;
NEGLIGENCE, 8;
PRACTICE AND PROCEDURE, 11, 16.

PLEADING AND PROOF.

See NEGLIGENCE, 4.

POLICE POWER.

See CONSTITUTIONAL LAW, 16; PURE FOOD AND DRUG ACT, 8;
FEDERAL QUESTION, 1; STATES, 3.

POLICIES OF INSURANCE.

See BANKRUPTCY, 1-7.

PORTO RICO.

See LOCAL LAW;
TAXES AND TAXATION, 6, 7, 8.

POSTAL LAWS.

See MAILS.

POSTMASTER GENERAL.

See MAILS, 2.

POWERS.

See EXECUTORS AND ADMINISTRATORS, 1, 2.

POWERS OF CONGRESS.

See ALIENS, 1, 2, 4;
CONGRESS, POWERS OF;
PURE FOOD AND DRUG ACT.

PRACTICE AND PROCEDURE.

1. *Questions reviewable, when.*

This court does not pass upon questions before they have reached a justiciable stage. *Adams v. Milwaukee*, 572.

2. *Determination of constitutionality of state statute; construction by state court; effect of.*

If a state statute has been construed by the highest state court it is the duty of this court to determine its constitutionality under the Federal Constitution as so construed. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

3. *Constitutionality of state statute determinable, when.*

As a provision in a municipal ordinance holding health officers enforcing it harmless for the destruction of offending property "if done in

good faith" may be separable, this court will not determine whether it is an unconstitutional taking of property without due process of law in an action in which it appears that none of plaintiff's goods have been or could be destroyed before the state court has construed the statute in that respect. *Adams v. Milwaukee*, 572.

4. *Constitutional question not raised below, not considered.*

A contention that a statute is unconstitutional under a particular provision of the Constitution cannot be made in this court if not made in the court below. *Chicago, B. & Q. R. R. Co. v. Cram*, 70; *Chicago, B. & Q. R. R. Co. v. Kyle*, 85.

5. *Availability to plaintiff in error of contention that court below construed statute adversely to his interest.*

The contention of plaintiff in error that the court below construed a statute adversely to his interest in certain respects will not avail if it appears that as a matter of fact he was accorded the benefit he claimed under such statute in those respects, and the rights of the other party were made dependent on other questions involved. *Seaboard Air Line Ry. v. Moore*, 433.

6. *As to anticipation of state court's construction of state statute.*

It is not the duty of this court to anticipate the decision of the state court as to the effect of one state statute upon an earlier one, or to declare which of two rules supported by conflicting decisions the state court will apply. *Ex parte Spencer*, 652.

7. *Moot questions; disposition of bill on question involved becoming moot.*

When the question involved in a bill becomes moot, the court should not retain the bill in order to determine plaintiff's liability on a bond, it not appearing that plaintiff is in any danger from an action to enforce the bond in this case. *Lewis Publishing Co. v. Wyman*, 610.

8. *Same.*

A suit, which has become moot, will not be retained in order to determine appellant's liability on bonds, when there is nothing in the record on which the rights of the parties may be adjudicated. *Ib.*

9. *Same.*

A suit, which has become moot, will not be retained in order to secure an accounting for amounts paid after its commencement, when it appears on the face of the bill that plaintiff in order to recover

far larger amounts paid prior to the commencement of the suit, must bring an action at law in which all amounts paid could be included. *Ib.*

10. *Objection that Federal right not properly presented; availability.*

When the state court has overruled an objection that the Federal right was not clearly presented, the objection is not open in this court. *St. Louis, I. M. & S. Ry. Co. v. Hesterley*, 702.

11. *Objection to sufficiency of criminal pleading; timeliness of.*

An objection that a complaint charging murder with *alevosia* by beating a person to death is defective because it did not allege all the details proved as to the fact that the victim had been bound so as to make defense impossible, should be made in the lower court where amendments are possible. It comes too late when made in this court for the first time. *Pico v. United States*, 225.

12. *Scope of review; when court without jurisdiction to review remanding order of lower court.*

This court, having no jurisdiction to review the remanding order of the Circuit Court which the state court followed in denying a second petition to remove, refrains from expressing any opinion upon the correctness of that order. *McLaughlin Bros. v. Hallowell*, 278.

13. *Scope of review on reversal for new trial.*

As the judgment in this case must be reversed on a Federal question and sent back for new trial, this court declines to express an opinion on the other questions; upon another trial the facts may be different. *Gulf, C. & S. F. Ry. Co. v. McGinnis*, 173.

14. *Keeping within jurisdiction; insufficiency of record for purposes of jurisdiction; certification of papers by lower court.*

This court is scrupulous to keep within its jurisdiction, and if the record does not show that the Circuit Court of Appeals has already passed on questions in the case it will order the deficiency supplied by directing the court below to certify all the papers in the case. *Union Trust Co. v. Westhus*, 519.

15. *Raising Federal question; when too late.*

In order that this court may review the judgment of a state court on the ground that it denied full faith and credit to the judicial construction of a statute of a State by the courts of that State, the right or claim under the full faith and credit clause of the Constitution must have been set up in the court below. It is too late to

set it up in the petition for writ of error from this court. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

16. *When objection to demurrer to indictment may be raised in Circuit Court after review by this court.*

An objection to the demurrer made by certain defendants and sustained as to one count, and not passed on as to other counts which were struck down by the District Court but sustained by this court, may be raised in the District Court by such defendants in regard to such counts when the case is again before that court. *United States v. Pacific & Arctic Co.*, 87.

17. *Assumption as to jurisdiction of local probate court.*

This court will assume that the decree of a probate court charging an executor with all the goods of the testator that had come into his possession and with waste in neglect to pay over was within its jurisdiction. *Michigan Trust Co. v. Ferry*, 346.

18. *Deference to local decisions of territorial courts.*

This court rarely disturbs local decisions of the territorial courts on question of local practice. *Sanford v. Ainsa*, 705.

19. *Interference by this court with local practice; quære as to prohibition as remedy.*

Quære whether, historically speaking, prohibition was the proper remedy; but in this case this court should not interfere with the local practice in a matter relating to the administration of local statutes except for good cause shown. *Tiaco v. Forbes*, 549.

20. *Expediting hearing on appeal; entry of pro forma decree for purpose of, not sanctioned.*

This court does not sanction the procedure of the trial court in virtually declining to examine the merits of the case and entering a *pro forma* decree for the sake of expediting the hearing of the case on appeal, even though the court were actuated in so doing by a sense of public duty. *Wm. Cramp Sons v. Curtiss Turbine Co.*, 645.

21. *On appeal from conviction; attitude of court as to sufficiency of Government's case.*

On appeal from a conviction, where there is evidence tending to support the finding and no certificate that all the evidence is in the record, this court is not warranted in declaring, as matter of law, that the Government did not make out a case. *Johnson v. United States*, 457.

22. *Reversals; when court will not reverse judgment.*

Where this court finds nothing giving rise to a clear conviction that error has resulted from the action of the court below it should not reverse the judgment. (*Chicago Junction Ry. Co. v. King*, 222 U. S. 215.) *Seaboard Air Line Ry. v. Moore*, 433.

23. *Who may attack constitutionality of statute.*

One who is not discriminated against cannot attack a police statute of the State because it does not go farther; and if what it enjoins of one it enjoins of all others in the same class, that person cannot complain on account of matters of which neither he nor any of his class are enjoined. *Chicago Dock Co. v. Fraley*, 680.

See CERTIORARI, 2; JURISDICTION, E;
 CONSTITUTIONAL LAW, 23, 28; LOCAL LAW (Arizona);
 COURTS, 5; REMOVAL OF CAUSES, 2;
 FEDERAL QUESTION, 3, 5, 6; VARIANCE.

PREEMPTION RIGHTS.

See PUBLIC LANDS, 8.

PREFERENCES.

See BANKRUPTCY, 19, 20;
 CORPORATIONS, 1.

PRESUMPTIONS.

See CONSTITUTIONAL LAW, 16; MARRIAGE, 1;
 DEEDS, 2; PHILIPPINE ISLANDS, 3;
 PRACTICE AND PROCEDURE, 17.

PRINCIPAL AND AGENT.

Act of agent; effect to bind principal.

One dealing with an agent knowing that his authority is limited and that his acts transcend the limits cannot hold the principal. *Slocum v. New York Life Ins. Co.*, 364.

See CLAIMS AGAINST THE UNITED STATES;
 INSURANCE, 1, 2;
 MUNICIPAL CORPORATIONS, 1, 3.

PRIVILEGED COMMUNICATIONS.

See CONSTITUTIONAL LAW, 24, 25, 26.

PRODUCTION OF BOOKS AND PAPERS.

See CONSTITUTIONAL LAW, 24, 25, 26.

PRO FORMA DECREES.

See PRACTICE AND PROCEDURE, 20.

PROHIBITION.

See ALIENS, 8.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 1-4;
NAVIGABLE WATERS.

PROSTITUTES.

See ALIENS, 2.

PROVISOS.

See STATUTES, A 4, 5.

PUBLIC LANDS.

1. *Accounting by railroads for lands erroneously patented; accrual of interest.*

The Land Grant Adjustment Acts of 1887 and 1896 did not provide for any recovery of interest on amounts for which the railroad companies were required to account for lands erroneously patented to them and sold by them to *bona fide* settlers; and there was no liability for such interest until the determination of the amounts for which the companies were liable to account. *Southern Pacific R. R. Co. v. United States*, 618.

2. *Same.*

In view of the whole situation, and all the circumstances involved in the determination of the amounts for which the Southern Pacific Railroad Company was liable to account under the Land Grant Adjustment Acts, *held* that such company was not liable for interest until after the amount due from it to the Government had been liquidated, and should be computed only from the date of the commencement of the suit brought by the Government to recover the same. *Ib.*

3. *Contests; scope of decision.*

While, in a contest before the Land Department, the decision should be confined to the questions put in issue by the parties, there is no objection to the decision of other questions to which the hearing was extended by consent of the parties. *Bailey v. Sanders*, 603.

4. *Findings by Land Department held not arbitrary.*

On the facts disclosed by the record in this case, the finding by the

Land Department that there was an agreement to convey by the homesteader was not arbitrary or unsupported by evidence. *Ib.*

5. *Homestead entries; right of alienation.*

Under §§ 2289, 2290, Rev. Stat., the right to enter a homestead is for the exclusive benefit of the entryman who cannot alienate before the claim is perfected; nor is this affected by the act of March 3, 1891, giving the right to commute the entry. *Ib.*

6. *Homestead entries; effect of agreement to alienate on rights of entryman.*

Entering into a forbidden agreement to alienate a homestead entered under §§ 2289, 2290, Rev. Stat., ends the right of the entryman to make proof and payment and renders him incompetent to further proceed with his entry. (*Hafemann v. Gross*, 199 U. S. 342.) *Ib.*

7. *Homesteads; effect as perjury of making affidavit not required by § 2291, Rev. Stat., but demanded by Land Department.*

A homestead claimant making an affidavit not required by § 2291, Rev. Stat., is not guilty of perjury under § 5392, Rev. Stat., although the affidavit was demanded by the Land Office in pursuance of a regulation made by the Secretary of the Interior. *United States v. George*, 14.

8. *Initiation of rights in; essentials to.*

A preëmption right cannot be initiated without settlement, habitation and improvement, *Homer v. Wallace*, 97 U. S. 579, and the same rule applies to a homestead entry. Neither right can be initiated when the land is in possession of another under color of title. *Lyle v. Patterson*, 211.

9. *Initiation of rights in; effect of trespass.*

A naked unlawful trespass cannot initiate a right to any part of the public domain. (*Swanson v. Sears*, 224 U. S. 182.) *Ib.*

10. *Jurisdiction of Land Department.*

Until the legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department. (*Brown v. Hitchcock*, 173 U. S. 473.) *Knight v. Lane*, 6; *Plested v. Abbey*, 42.

11. *Jurisdiction of Land Department; interference by courts.*

Congress has placed the Land Department under the supervision and control of the Secretary of the Interior, a special tribunal with large administrative and quasi-judicial functions, and subordinate

officials should not be called upon to put the court in possession of their views and defend their instructions from the Commissioner and convert the contest before the Land Department into one before the court. (*Litchfield v. Register*, 9 Wall. 575.) *Plested v. Abbey*, 42.

12. *Possessory rights not acquired vie et armis.*

Possession, not based on a legal right but secured by violence and maintained with force and arms, cannot furnish the basis of a right enforceable in law. *Lyle v. Patterson*, 211.

13. *Powers conferred on officers of Land Department by Revised Statutes.*

Sections 161, 441, 453, 2246 and 2478, Rev. Stat., confer administrative power only on the Secretary of the Interior and the officers of the Land Department. They do not confer legislative power. *United States v. George*, 14.

14. *Power of Secretary of Interior to enlarge requirements of § 2291, Rev. Stat.*

Section 2291, Rev. Stat., prescribes what a homestead claimant and the witnesses are required to make oath to and the Secretary of the Interior has no power to enlarge these requirements. *Ib.*

15. *Railroad companies' grantees; quere as to application of act of March 3, 1887.*

Quere, whether the benefits of the act of March 3, 1887, providing for settlement of titles of purchasers in good faith from railroad companies not entitled to convey, are confined exclusively to those who purchased prior to that date. *Lyle v. Patterson*, 211.

16. *Railroad companies' grantees; validity of title; right of intervenor.*

A possessory title to lands of the public domain acquired in good faith from a railroad company afterwards held not to have earned the land, by a purchaser who cultivated and improved the property, is good as against all except the United States, and an attempted entry by another before the land is restored to the public domain and reopened for entry is a trespass and initiates no rights in the property. *Ib.*

17. *Reservations; executive power as to.*

From an early period Congress has accorded to the Executive a large discretion about setting apart and reserving portions of the public domain in aid of particular public purposes. *Donnelly v. United States*, 243.

18. *Reservations for Indians; power conferred by § 2 of act of April 8, 1864.*

Section 2 of the act of April 8, 1864, conferring power on the Executive to set apart reservations for Indians, was a continuing power and was not exhausted by the first order establishing reservations thereunder. *Ib.*

19. *Reservations; Hoopa Valley; legality of.*

The extension of the Hoopa Valley Reservation made by Executive Order of October 16, 1891, including a tract of country in California one mile in width on each side of the Klamath River, was lawfully established pursuant to the act of 1864. *Ib.*

20. *Reservations; Hoopa Valley; what embraced within.*

In view of the history of the case, the custom of the Klamath Indians for whose benefit the Hoopa Valley Reservation was established, the Government ownership of the territory and its acquisition from Mexico under the Treaty of Guadalupe Hidalgo, as well as the statutes, and decisions of the courts of, California to the effect that the Klamath River is a non-navigable stream, *held* that such reservation included the bed of the Klamath River. *Ib.*

- 20½. *Reservations; Hoopa Valley; what embraced within.*

The court recalls that part of the opinion delivered in this case, *ante*, pp. 262, 263, which holds that "By the acts of legislation mentioned, as construed by the highest court of the State—(a) the act of 1850, adopting the common law and thereby transferring to all riparian proprietors (or confirming in them) the ownership of the non-navigable streams and their beds; and (b) the acts of February 24 and of March 11, 1891, declaring in effect that the Klamath River is a non-navigable stream—California has vested in the United States, as riparian owner, the title to the bed of the Klamath, if in fact it be a navigable river," and leaves that matter undecided. *Donnelly v. United States*, 708.

21. *Resulting trust; evidence to establish.*

One suing to make a patentee trustee for himself can only recover on the strength of his own equity and not on the defects in defendant's title. *Lyle v. Patterson*, 211.

22. *Review of proceedings in Land Department.*

Until the matter is closed by final action the proceedings of an officer of a department are as much open to review or reversal by himself or his successor as are the interlocutory decrees of a court open to review upon the final hearing. (*New Orleans v. Paine*, 147 U. S. 261.) *Knight v. Lane*, 6.

23. *Review of decision of Secretary of the Interior; mandamus to compel Secretary to overrule himself.*

A decision of the Secretary of the Interior revoking his prior approval of an adjustment between contestants, one of whom is a minor, and which is not arbitrary or capricious, but given after a hearing and in the exercise of the discretion confided to him by law, cannot be reviewed, nor can he be compelled to retract it, by mandamus. (*Ness v. Fisher*, 223 U. S. 683.) *Ib.*

24. *Review of acts of subordinate officers of Land Department.*

Subordinate officers of the Land Department are under the control, and their acts are subject to the review, of their official superiors—the Commissioner of the General Land Office and ultimately the Secretary of the Interior. *Plested v. Abbey*, 42.

25. *School District; effect of creation by State on title of Government.*

The creation and maintenance of a school district by the State of California within the public domain and not in sections 16 or 36 could not impair the right of the Federal Government to dispose of that domain. *Donnelly v. United States*, 243.

See CLAIMS AGAINST THE UNITED STATES.

PUBLIC OFFICERS.

See ALIENS, 7.

PUBLIC POLICY.

See CONTRACTS, 4, 6, 13.

PUBLIC UTILITIES.

See LOCAL LAW (Cal.), (Va.);

MUNICIPAL CORPORATIONS, 4.

PUBLIC WORKS.

See CONTRACTS, 11, 12;

LOCAL LAW (Cal.);

MUNICIPAL CORPORATIONS, 4.

PURE FOOD AND DRUG ACT.

1. *Power of Congress to bar illicit and harmful articles from channels of interstate commerce.*

Congress not only has the right to pass laws regulating legitimate commerce among the States and with foreign nations, but also has full power to bar from the channels of such commerce illicit and harmful articles. *McDermott v. Wisconsin*, 115.

2. *Power of Congress to determine means for barring articles from interstate commerce.*

Congress may itself determine the means appropriate to this purpose; and, so long as they do no violence to the other provisions of the Constitution, Congress is itself the judge of the means to be employed in exercising the powers conferred on it in this respect. *Ib.*

3. *Construction; purpose and power of Congress controlling.*

The Pure Food and Drugs Act must be construed in the light of the purpose and power of Congress to exclude poisonous and adulterated food from interstate commerce. (*Hipolite Egg Co. v. United States*, 220 U. S. 45.) *Ib.*

4. *Articles prohibited by § 2.*

Articles, the shipment or delivery of which in interstate commerce is prohibited by § 2 of the Food and Drugs Act, are those which are adulterated or misbranded within the meaning of the act in the light of those provisions of the act wherein adulteration and misbranding are defined. *Ib.*

5. *Package or its equivalent as used in § 7 defined.*

"Package" or its equivalent, as used in § 7 of the Food and Drugs Act, refers to the immediate container of the article which is intended for consumption by the public. To limit the requirements of the act to the outside box which is not seen by the purchasing public would render nugatory one of the principal provisions of the act. *Ib.*

6. *Original package doctrine; effect on power of Congress.*

The doctrine of original packages was not intended to limit the right of Congress, when it chose to assert it, as it has done in the Food and Drugs Act, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles and to choose appropriate means to that end. *Ib.*

7. *"Original and unbroken package" and "broken package"; quære as to meaning.*

Quære, and not necessary to decide in this case, what is the exact meaning of the terms "original unbroken package" and "broken package" as used in §§ 2, 3 and 10 of the Food and Drugs Act. *Ib.*

8. *State interference with provisions of; power of State in respect of impure food.*

While the enactment by Congress of the Food and Drugs Act does not prevent the State from making regulations, not in conflict therewith, to protect its people against fraud or imposition by impure

food and drugs, *Savage v. Jones*, 225 U. S. 501, the State may not, under the guise of exercising its police power, impose burdens upon interstate commerce or enact legislation in conflict with the act of Congress on the subject. *Ib.*

9. *State interference with provisions of; Wisconsin statute invalid.*

State legislation in regard to labeling articles in interstate commerce which are required to be branded under the Federal Pure Food and Drugs Act, is void so far as it interferes with the provisions of such act and imposes a burden on interstate commerce; and so held as to certain provisions of the Wisconsin statute. *Ib.*

10. *State interference with provision as to labeling.*

As the Federal Food and Drugs Act requires articles in interstate commerce to be properly labeled, a State cannot require a label when properly affixed under that statute to be removed and other labels authorized by its own statute to be affixed to the package containing the article so long as it remains unsold, whether it be in the original case or not. *Ib.*

11. *Jurisdiction to determine compliance with act.*

Whether articles in interstate commerce have been branded in accordance with the terms of the Food and Drugs Act is not for the State to determine but for the Federal courts in the manner indicated by Congress. *Ib.*

See CONGRESS, POWERS OF, 3;
CONSTITUTIONAL LAW, 2, 15;
STATES, 3.

RAILROADS.

Duty to light stations and approaches.

A railway is bound to use ordinary care to light its stations and approaches for the reasonable accommodation of passengers. *Texas & Pacific Ry. Co. v. Stewart*, 357.

See CONSTITUTIONAL LAW, 6, 12, 13; INTERSTATE COMMERCE;
CONTRACTS, 3, 13, 14, 15; LOCAL LAW (Ind.);
CORPORATIONS, 2, 5, 6; NEGLIGENCE, 6;
EMPLOYERS' LIABILITY ACT; PUBLIC LANDS, 1, 2, 15, 16;
TAXES AND TAXATION, 2, 3.

RATES.

See INTERSTATE COMMERCE, 4.

REAL PROPERTY.

See LOCAL LAW (Va.).

REBATES.

See INTERSTATE COMMERCE, 4.

RECORD.

See FEDERAL QUESTION, 5;
 JURISDICTION, A 8, 12;
 PRACTICE AND PROCEDURE 14.

REHEARINGS.

1. *When granted.*

Petition for rehearing granted, not because of doubt of correctness of the decree, but to prevent misconception concerning the reasons for dismissing the writ of error in this case, *ante*, p. 326. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 596.

2. *When petition permitted to be filed.*

This court will permit a petition for rehearing to be filed in order to determine whether it ought to be entertained and even if the point raised as to expressions in the original opinion have a basis, if the decision did not depend on that point the petition will be denied. *Donnelly v. United States*, 708.

3. *Denial where petition based on errors not material.*

As the conviction of the plaintiff in error can be sustained without reference to the question of navigability of the Klamath River, a petition for rehearing based on assertions of error in that respect in the opinion heretofore filed, *ante*, p. 243, is denied. *Ib.*

See FEDERAL QUESTION, 3, 4.

REMEDIES AND DEFENSES.

See BANKRUPTCY, 16;
 ELECTION OF REMEDIES.

REMOVAL OF CAUSES.

1. *Jurisdiction; time of filing petition not an essential to.*

The time for filing a petition for removal is not essential to the jurisdiction of the Federal court, and may be the subject of waiver or estoppel. *Rexford v. Brunswick-Balke-Collender Co.*, 339.

2. *Procedure in state court on second petition after cause remanded by Federal court.*

Where the second petition to remove presents no different question from that presented by the first, it is proper for the state court to follow the decision of the Federal court remanding the record and deny the petition. *McLaughlin Bros. v. Hollowell*, 278.

See JURISDICTION, A 1, 2, 3, 14, 18;
 PRACTICE AND PROCEDURE, 12.

REPEAL OF STATUTE.

See CONSTITUTIONAL LAW, 3, 4, 5.

RESERVATIONS.

See INDIANS, 4, 5;

PUBLIC LANDS, 17, 18, 19, 20, 20½.

RES IPSA LOQUITUR.

See NEGLIGENCE, 8, 9, 10.

RES JUDICATA.

See BANKRUPTCY, 13, 14; JURISDICTION, A 23, 24;
CORPORATIONS, 7; LOCAL LAW (N. J.).

RESTRAINT OF TRADE.

Mandate in United States v. Reading Company modified.

The mandate in this case modified as to certain of the independent companies having some of the sixty-five per cent contracts referred to in the opinion, 226 U. S. 324. *United States v. Reading Co.*, 158.

RESULTING TRUSTS.

See PUBLIC LANDS, 21.

REVERSALS.

See PRACTICE AND PROCEDURE, 22.

RIVERS.

See NAVIGABLE WATERS;

PUBLIC LANDS, 20, 20½.

RULES OF COURT.

See DISTRICT OF COLUMBIA;

MANDAMUS, 1, 2.

SALES.

See CONSTITUTIONAL LAW, 2;

EXECUTORS AND ADMINISTRATORS, 2;

INDIANS, 1, 2.

SECRETARY OF THE INTERIOR.

See INDIANS, 6;

PUBLIC LANDS, 11, 13, 14, 23, 24.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 24, 25, 26.

SERVANTS.

See MASTER AND SERVANT.

SET-OFF.

See BANKRUPTCY, 26;
CORPORATIONS, 5, 6.

SETTING ASIDE VERDICT.

See CONSTITUTIONAL LAW, 31, 32, 35, 37, 38.

SEVENTH AMENDMENT.

See CONSTITUTIONAL LAW, 28-37.

SOUTHERN PACIFIC RAILROAD.

See PUBLIC LANDS, 1, 2.

SOVEREIGNTY.

See ALIENS, 1;
PHILIPPINE ISLANDS, 4.

STARE DECISIS.

See FEDERAL QUESTION, 7.

STATES.

1. *Legislative power to provide measure of damages.*

The legislature of a State, when so authorized by its constitution, has power to provide a definite measure of such damages as may be difficult to estimate or prove for culpable violations of a statute limiting the time for transportation of livestock. *Chicago, B. & Q. R. R. Co. v. Cram*, 70; *Chicago, B. & Q. R. R. Co. v. Kyle*, 85.

2. *Legislative powers; regulation of transportation of livestock.*

The legislature of a State, when so authorized by its constitution, has power to impose a limitation of the time for transportation of livestock. *Ib.*

3. *Police power; regulation of sale of food within.*

The police power of the State is adequate to protect the people against the sale of impure food such as milk. *Adams v. Milwaukee*, 572.

See CONGRESS, POWERS OF, 1, 2, 3; HABEAS CORPUS, 2;
CONSTITUTIONAL LAW, 27, 28; INTERSTATE COMMERCE, 5, 6;
ESTATES OF DECEDENTS, 1; NAVIGABLE WATERS;
PURE FOOD AND DRUG ACT, 8, 9, 10.

STATUTE OF LIMITATIONS.

See FEDERAL QUESTION, 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Foreign statute; what amounts to proof of construction.*

The putting in evidence of opinions of the highest court of a State construing a statute of that State, does not amount to proving a settled construction of that statute. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

2. *Meaning of words used.*

In construing a statute a word used therein may be given the meaning it has in common speech, although it may have a narrower technical meaning. *United States v. Chavez*, 525.

3. *Of distinct and non-related provisions of general appropriation act.*

Wholly distinct and non-related provisions of a general appropriation act should not be brought together and construed as one when such construction defeats the obvious purpose of the act and policy of the Government declared in that and other acts. *United States v. Anderson*, 52.

4. *Proviso in Bankruptcy Act as to class of property; weight to be given.*

In construing a general reference to property in the Bankruptcy Act, weight must be given to a proviso dealing with a special class of property. *Burlingham v. Crouse*, 459.

5. *Provisos; office of; effect as additional legislation.*

A proviso may sometimes mean additional legislation and not be intended to have the usual and primary office of a proviso which is to limit generalities and exclude from the scope of the statute that which otherwise would be within its terms. *Ib.*

6. *Taxing statute; effect as declaration by Congress of new policy.*

A statute declaring that a specified article shall be taxed and how is not necessarily a declaration by Congress that such article was not taxed under prior statutes; its history may show, as in the case of the act of February 4, 1909, that it was not the declaration of a new policy but a more explicit expression of prior statutes. *Jordan v. Roche*, 436.

7. *Unconstitutional statute; effect as declaration of legislative purpose.*

The purpose of Congress cannot be indicated by a statute which is unconstitutional. *Chicago, I. & L. Ry. Co. v. Hackett*, 559.

8. *Unconstitutionality in part; effect on constitutionality as entirety.*

Even if some provisions of a statute are unconstitutional, if they do not

affect plaintiff in error this court is not concerned with them and cannot declare the whole statute unconstitutional as inseparable. *Chicago Dock Co. v. Fraley*, 680.

See ALIENS, 12; INDIANS, 1, 2;
BANKRUPTCY, 20, 22; PRACTICE AND PROCEDURE, 2,
CONSTITUTIONAL LAW, 23, 39; 3, 5, 6;
EMPLOYERS' LIABILITY ACT; PURE FOOD AND DRUG ACT.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK AND STOCKHOLDERS.

See CORPORATIONS, 1, 10;
LACHES, 2.

STREETS AND HIGHWAYS.

See MUNICIPAL CORPORATIONS, 1, 2, 3.

SUBROGATION.

See BANKRUPTCY, 25, 26.

TAXES AND TAXATION.

1. *Corporation tax; on what imposed.*

The corporation tax is imposed upon the doing of corporate business and with respect to the carrying on thereof and not upon the franchises or property of the corporation irrespective of their use in business. (*Flint v. Stone Tracy Co.*, 220 U. S. 107, 145.) *McCoach v. Minehill & S. H. R. R. Co.*, 295.

2. *Corporation tax; lessor railroad exempt; what constitutes doing business.*

A railway corporation which has leased its railroad to another company operating it exclusively but which maintains its corporate existence and collects and distributes to its stockholders the rental from the lessee and also dividends from investments is not doing business within the meaning of the Corporation Tax Act. *Park Realty Company Case sub Flint v. Stone Tracy Co.*, 220 U. S. 171, distinguished, and *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, followed. *Ib.*

3. *Corporation tax; liability to; quære.*

Quære whether such a corporation would be subject to the tax if it exercised the power of eminent domain or other corporate powers for the benefit of the lessee. *Ib.*

4. *Distilled spirits; comprehensiveness of § 3248, Rev. Stat.*

The language of § 3248, Rev. Stat., is comprehensive enough to cover all distilled spirits. *Jordan v. Roche*, 436.

5. *Distilled spirits; alcoholic contents and not commercial use the test.*

Under the revenue laws of the United States articles are taxed not by their commercial names or uses, but according to their alcoholic contents, under the generic name of "distilled spirits." *Ib.*

6. *Porto Rico; purpose of Foraker Act.*

The purpose of the Foraker Act was the equal taxation of Porto Rican articles and domestic articles. *Ib.*

7. *Tariff duties; bay rum from Porto Rico.*

Bay rum imported from Porto Rico subsequent to the passage of the Foraker Act and prior to the passage of the act of February 4, 1909, was subject to the payment of a tax equal to the internal revenue tax imposed in the United States, under §§ 3248 and 3254, Rev. Stat., on distilled spirits, spirits, alcohol, and alcoholic spirits. *Ib.*

8. *Tariff duties; Porto Rico; application of § 3 of Foraker Act.*

The provision in § 3 of the Foraker Act, that with the institution of a system of taxation in Porto Rico, tariff duties on goods coming to and from Porto Rico and the United States should cease, is explicitly confined to such duties and does not relate to internal revenue taxes established in the act. *Ib.*

See CONSTITUTIONAL LAW, 11; LOCAL LAW (N. J.);
INTERSTATE COMMERCE, 5, 6; STATUTES, A 6.

TENDER.

See INSURANCE, 1, 2, 3.

TERRITORIAL COURTS.

See PRACTICE AND PROCEDURE, 18.

THEATRES.

See CONSTITUTIONAL LAW, 9, 10.

TITLE.

See BANKRUPTCY, 10, 23;
PUBLIC LANDS.

TORTS.

See BANKRUPTCY, 16.

TRANSPORTATION.

See COMBINATIONS IN RESTRAINT OF TRADE.

TRANSPORTATION OF LIVESTOCK.

See STATES, 1, 2.

TREATIES.

See PUBLIC LANDS, 20.

TRESPASS.

See PUBLIC LANDS, 9, 12, 16.

TRIAL BY JURY.

See CONSTITUTIONAL LAW, 28-38.

TRUSTS AND TRUSTEES.

See BANKRUPTCY, 15,

19, 21;

DEEDS, 3;

EXECUTORS AND ADMINISTRATORS, 2, 3;

LOCAL LAW (Mass.);

PUBLIC LANDS, 21.

UNITED STATES.

Control over foreign citizens.

While the United States may not control foreign citizens operating in foreign territory, it may control them when operating in the United States in the same manner as it may control citizens of this country. *United States v. Pacific & Arctic Co.*, 87.

See CLAIMS AGAINST THE UNITED STATES;

INDIANS, 3;

PUBLIC LANDS, 20½, 25.

UNITED STATES ATTORNEYS.

See CLAIMS AGAINST THE UNITED STATES.

USURY.

See CONTRACTS, 7-9.

VARIANCE.

Duty of counsel to direct attention of court to.

A variance between proof and declaration should be called to the attention of the trial court when the declaration can be met by an immediate amendment. *George A. Fuller Co. v. McCloskey*, 194.

VERDICT.

See CONSTITUTIONAL LAW, 31-38.

WAIVER.

See BANKRUPTCY, 14, 16; CONTRACTS, 15;
 CONSTITUTIONAL LAW, 34; INSURANCE, 3;
 REMOVAL OF CAUSES, 1.

WATERS.

See NAVIGABLE WATERS.
 PUBLIC LANDS, 20, 20½.

WILLS.

See DEEDS, 4;
 EXECUTORS AND ADMINISTRATORS.

WITNESS.

See CONSTITUTIONAL LAW, 24, 25, 26.

WORDS AND PHRASES.

"As provided" and "in the manner provided" (see Aliens, 12). *Bugajewitz v. Adams*, 585.

"Children" as used in deed of trust (see Deeds, 3, 4). *Frosch v. Walter*, 109.

"Export" as used in statute.

While the word "export" technically includes the landing in, as well as the shipment to a foreign country, it is often used as meaning only the shipment from this country and it will be so construed when used in a statute the manifest purpose of which would be defeated by limiting the word to its strict technical meaning. *United States v. Chavez*, 525.

See MUNITIONS OF WAR.

"Heirs" as used in will (see Deeds, 4). *Frosch v. Walter*, 109.

"Indian country" as used in §§ 2145, 2146, Rev. Stat. (see Indians, 4). *Donnelly v. United States*, 243.

"Original unbroken package" and "Broken package" as used in §§ 2, 3, 10, Pure Food and Drug Act (see Pure Food and Drug Act, 7). *McDermott v. Wisconsin*, 115.

"*Package*" as used in § 7 of Pure Food and Drug Act (see Pure Food and Drug Act, 5). *McDermott v. Wisconsin*, 115.

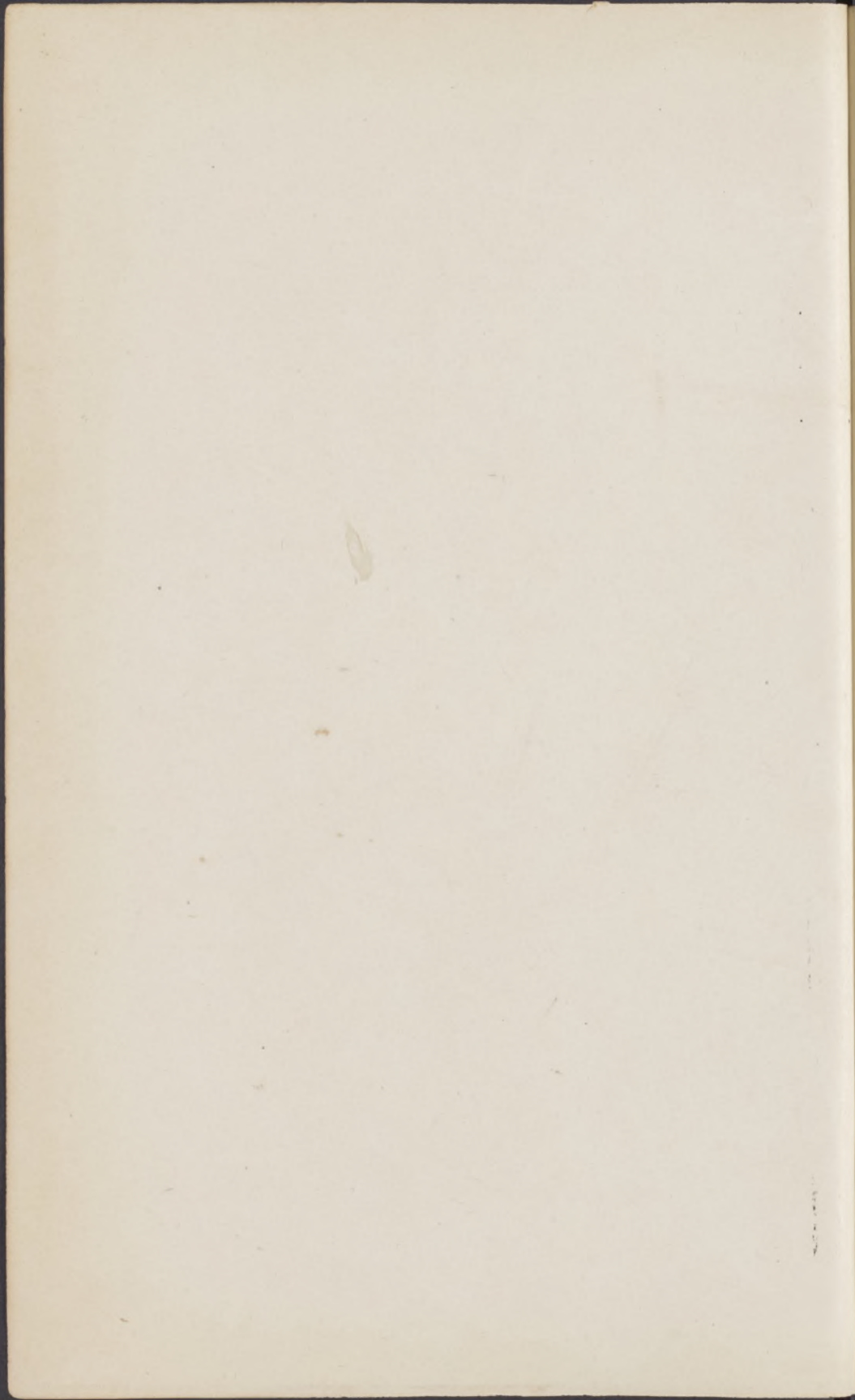
"*Sole and exclusive jurisdiction*" as used in § 2145, Rev. Stat. (see Indians, 3). *Donnelly v. United States*, 243.

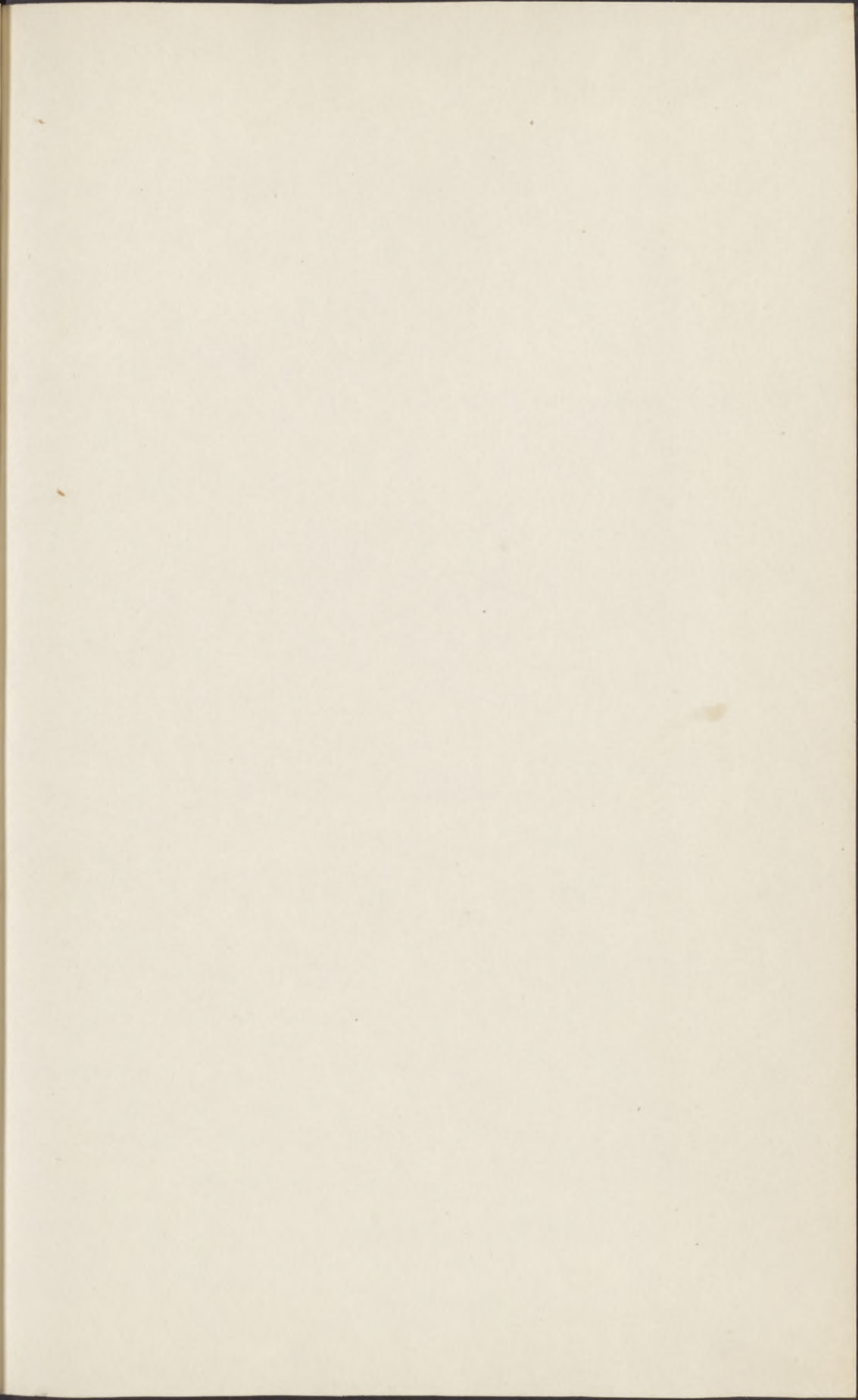
See STATUTES, A 2.

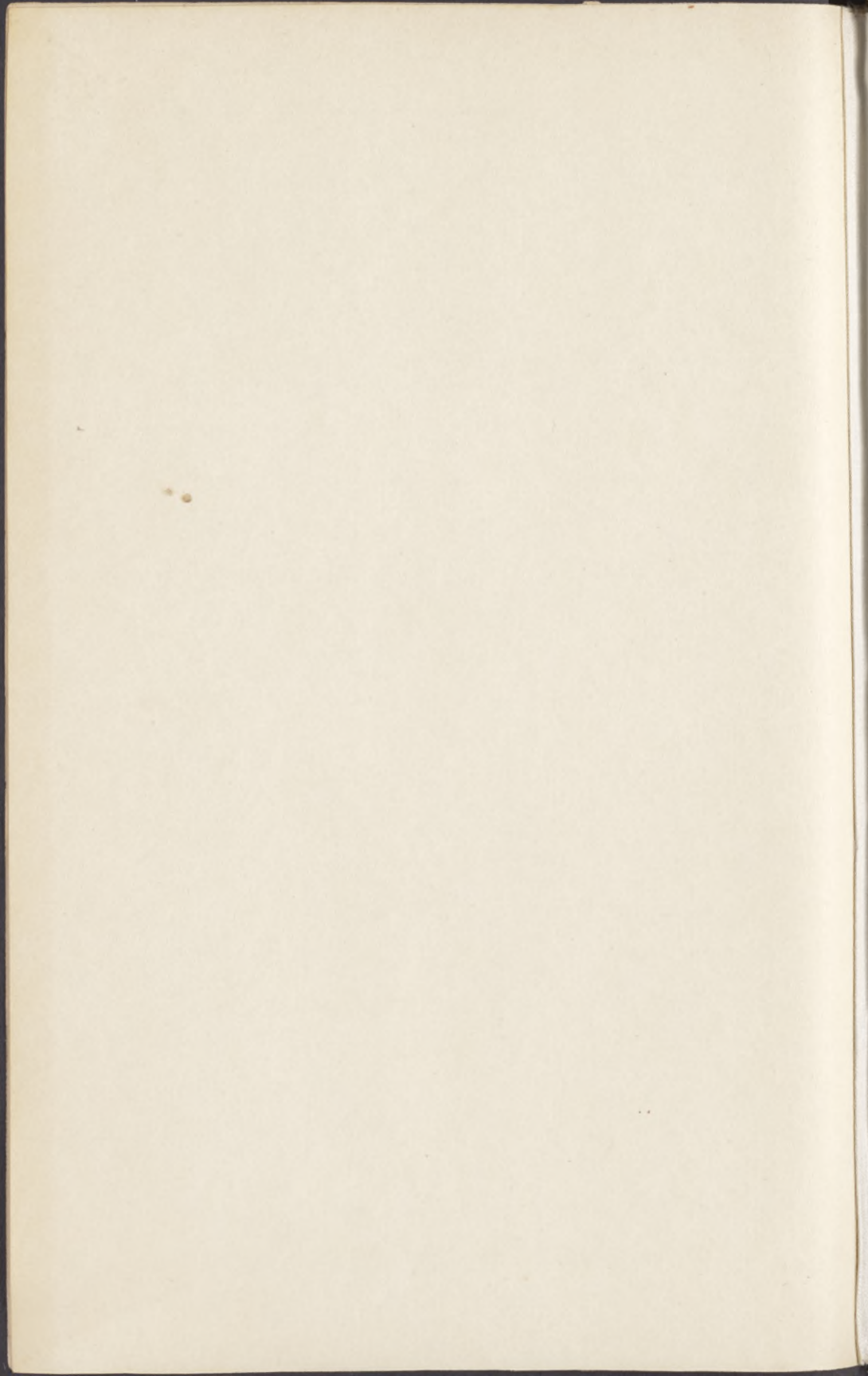
WRIT AND PROCESS.

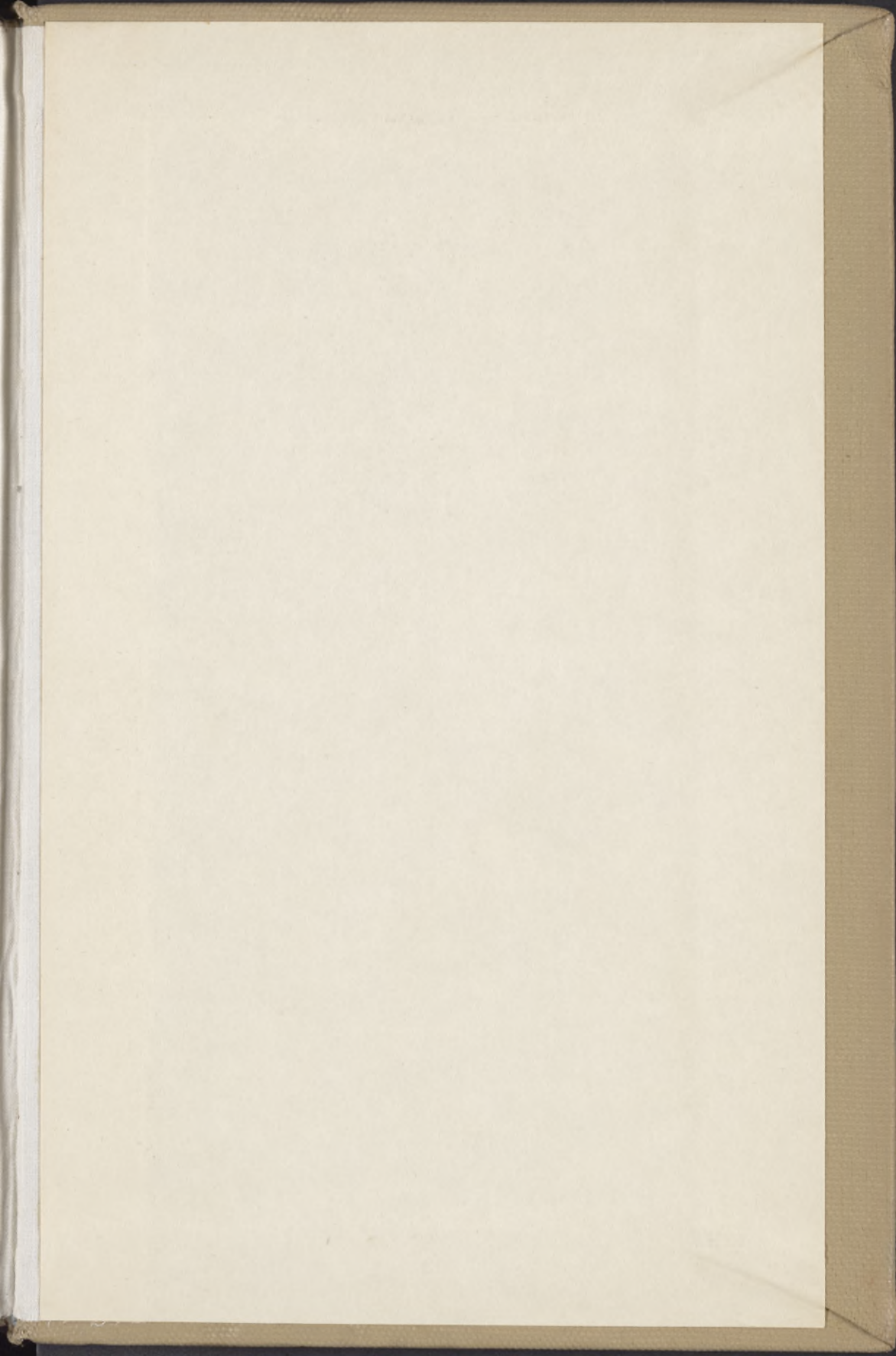
See ALIENS, 8;

CERTIORARI.









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