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ALIEN CONTRACT LABOR LAW.

1. *Penalties recoverable under.*

Under the Alien Contract Labor Act a separate penalty shall be assessed in respect of each alien; and this is so notwithstanding all the aliens for whose employment penalties are asked were brought into the United States at one time. (*Missouri, Kansas & Texas Ry. Co.* v. *United States*, 231 U. S. 112.) *Grant Bros.* v. *United States*, 647.

2. *Penalties under; civil nature of action to recover.*

An action by the United States to recover penalties under the Alien Contract Labor Law is civil and attended with the usual incidents of a civil action. (*United States* v. *Regan*, *ante*, p. 37.) *Ib.*

3. *Penalties; action to recover; knowledge; when petition, silent as to, regarded so as to conform to facts.*

Where an action for penalties was tried on the theory that the defendant was not liable unless the violations were knowingly committed and the jury returns a verdict against the defendant after being charged that knowledge is an essential element of the cause of action, the petition, if omitting an allegation of knowledge, can be regarded as amended to conform to the facts, the defendants not being prejudiced thereby. *Ib.*

4. *Agency; sufficiency of evidence as to.*

In this case, it appears from the evidence that there was proof other than of the acts of the professed agent to show his agency, and there was also sufficient testimony to make it a question for the jury to determine whether the instructions given by the defendant to its agent not to violate the Alien Contract Labor Act were given in good faith. *Ib.*

5. *Costs recoverable in action for penalties under.*

There was no error in this case in rendering judgment against defendants for costs. *Ib.*

6. *Evidence in action to recover penalties; admissibility of finding as to alienage.*

The decision of a board of special inquiry that certain persons were aliens was properly admitted in a suit by the United States to recover penalties for violations of the Alien Contract Labor Act, as *prima facie* evidence of the alienage of the persons before the board. *Ib.*

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The authority of Congress over the admission of aliens to the United States is plenary. *Lapina* v. *Williams*, 78.

2. *Admission and exclusion; power of Congress.*

Congress may exclude aliens altogether, or it may prescribe the terms and conditions upon which they may come into or remain in this country. *Ib.*

3. *Admission and exclusion; application of Immigration Act of 1907.*

The provisions of the Immigration Act of 1907 respecting admission

and deportation apply to an alien who, having remained in this country for more than three years after first entry, and having gone abroad for a temporary purpose with the intention of returning, again seeks and gains admittance to the United States. *Ib.*

4. *Exclusion and deportation; application of act of 1907.*
The immigration acts of 1903 and 1907 were revisions or compilations with some modifications of previous acts pertaining to the same subject, and those acts having confined the exclusion and deportation provisions to "alien immigrants" and that term having been construed as not including aliens once admitted and returning after temporary absence, the omission of the word "immigrant" and application of those provisions to "aliens" will be construed as indicating an intention to extend the act to all aliens, whether entering for the first time or returning after a temporary absence. *Ib.*

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2. *Scope of review on appeal from territorial court.*
On an appeal from the territorial court this court cannot consider errors, not fundamental in character, which might have been, but were not, brought under review in the appellate court below. *Gila Valley, G. & N. Ry. Co.* v. *Hall*, 94.

3. *Scope of review; absence of assignments of error; effect of local practice.*
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See BANKRUPTCY, 6; EVIDENCE, 1;
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ruptcy Court, the rights of a creditor holding a lien, should not be construed to impair then existing rights. *Holt* v. *Henley*, 637.

2. *Same.*

Whether the power of Congress is limited in that respect or not, the usual interpretation of such statutes is to confine their effect to property rights subsequently established. *Ib.*

3. *Same.*

The right of one who had sold to the bankrupt under an agreement to retain title until payment, as it existed on June 25, 1910, was not affected by the amendment to the Bankruptcy Act of that date even if he did not comply with the statute of the State in regard to recording the agreement. *Ib.*

4. *Same.*

The goods in this case having been sold on conditional sale prior to the amendment of June 25, 1910, the seller had a better title than the trustee. (*York Manufacturing Co.* v. *Cassell*, 201 U. S. 344.) *Ib.*

5. *Relative rights of trustee and secured creditor; law governing.*

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Shulthis v. *McDougal*, 225 U. S. 561, followed in *Star Chronicle Pub. Co.* v. *United Press Associations*, 714.
Slocum v. *New York Life Ins. Co.*, 228 U. S. 364, followed in *Young* v. *Central Railroad of New Jersey*, 602.
Southern Pacific Co. v. *Schuyler*, 227 U. S. 601, followed in *North Carolina R. R. Co.* v. *Zachary*, 248.
State Railroad Tax Cases, 92 U. S. 575, followed in *Ohio Tax Cases*, 576.
Stoneroad v. *Stoneroad*, 158 U. S. 240, followed in *Jones* v. *St. Louis Land & Cattle Co.*, 355.
Street & Smith v. *Atlas Mfg. Co.*, 231 U. S. 348, followed in *W. Schneider Wholesale Wine & Liquor Co.* v. *Diederich*, 720.
United States v. *Beatty*, 232 U. S. 463, followed in *Pons* v. *Yazoo & M. V. R. R. Co.*, 720.
United States v. *Bitter Root Development Co.*, 200 U. S. 451, followed in *Curriden* v. *Middleton*, 633.
United States v. *Goelet*, 232 U. S. 293, followed in *United States* v. *Bennett*, 308.
United States v. *Regan*, 232 U. S. 37, followed in *Grant Bros.* v. *United States*, 647.
United States v. *Rickert*, 188 U. S. 432, followed in *United States* v. *Pelican*, 442.
Vicksburg v. *Henson*, 231 U. S. 259, followed in *Swift* v. *McPherson*, 51.
Ward v. *Joslin*, 186 U. S. 142, followed in *Lake* v. *Bonynge*, 715.
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 112, followed in *Lake* v. *Bonynge*, 715; *Arnott* v. *Southern Ry. Co.*, 717.
Wecker v. *National Enameling Co.*, 204 U. S. 176, followed in *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.
Williamson v. *United States*, 207 U. S. 425, followed in *Billings* v. *United States*, 261.
Wood v. *Chesborough*, 228 U. S. 672, followed in *Albers Commission Co.* v. *Spencer*, 719.
York Mfg. Co. v. *Cassell*, 201 U. S. 344, followed in *Holt* v. *Henley*, 637.

CASE OVERRULED.

Crain v. *United States*, 162 U. S. 625, overruled in *Garland* v. *Washington*, 642.

CERTIFICATE.

See JURISDICTION, A 14;
PRACTICE AND PROCEDURE, 21, 22, 23.

CERTIORARI.
See JURISDICTION, A 10, 15;
REMOVAL OF CAUSES, 9.

CHARTERS.
See CONSTITUTIONAL LAW, 3, 4, 26.

CITIZENSHIP.
See CONSTITUTIONAL LAW, 59;
DOMICIL.

CLAIMS AGAINST THE UNITED STATES.
See JURISDICTION, D.

CLASSIFICATION FOR REGULATION.
See STATES, 1, 2, 3, 6.

CLASSIFICATION FOR TAXATION.
See CONSTITUTIONAL LAW, 12, 34, 35, 63.

CLASSIFICATION OF SHIPMENTS.
See COMMON CARRIERS, 1, 2.

COAL MINING.
See CONSTITUTIONAL LAW, 29;
STATES, 8, 9.

COLLATERAL SECURITY.
See INTERNAL REVENUE, 2;
PLEDGE, 1, 2.

COLVILLE RESERVATION.
See INDIANS, 2, 3.

COMMERCE.
See CONSTITUTIONAL LAW, 1, 2;
INTERSTATE COMMERCE;
WHITE SLAVE TRAFFIC ACT.

COMMON CARRIERS.
1. *Classification and valuation of shipment binding upon; effect of instructions given by shipper to forwarder.*

The rule that carriers are not concerned with questions of title but must treat the forwarder as shipper and charge the applicable rates, *Int. Com. Comm.* v. *Del., Lack. & West. R. R. Co.*, 220 U. S. 235, applies also to accepting the forwarder's classification and valuation, without regard to any private instructions given by the actual shipper to the forwarder. *Great Northern Ry. Co.* v. *O'Connor*, 508.

2. *Classification and valuation of shipment; effect of forwarder's violation of instructions.*

A shipper, whose forwarder has violated instructions as to valuation or classification to his damage, has his remedy against the forwarder but not against the carrier. He is bound by the acts of his agent. *Ib.*

See INTERSTATE COMMERCE.

COMPACTS.

See PUBLIC LANDS, 10, 13.

COMPENSATORY DAMAGES.

See DAMAGES.

CONDEMNATION OF LAND.

See JURISDICTION, A 8, 11.

CONDITIONAL SALE.

See BANKRUPTCY, 3, 4.

CONFISCATION.

See CONSTITUTIONAL LAW, 24, 44, 45;
INTERSTATE COMMERCE, 19.

CONFLICT OF LAWS.

See CONSTITUTIONAL LAW, 56;
COURTS, 4;
EMPLOYERS' LIABILITY ACT, 4, 13;
INDIANS, 12;
INTERSTATE COMMERCE, 6, 25, 27;
JURISDICTION, E 1;
REMOVAL OF CAUSES, 1;
TREATIES, 2, 3, 4.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

See ALIENS, 1, 2;
BANKRUPTCY, 2;
CONSTITUTIONAL LAW, 60, 63;
INDIANS, 2, 3, 8, 10–14, 19;
TAXES AND TAXATION, 3, 16;
TREATIES, 2, 3;
WHITE SLAVE TRAFFIC ACT, 4.

CONSTITUTIONAL LAW.

1. *Commerce clause; state burden of inspection charges not violative of.*

The Federal Constitution prohibits a State from regulating interstate commerce; but at the same time authorizes it to burden that commerce by the collection of the expenses if absolutely necessary for enforcing its inspection laws. *Foote* v. *Maryland*, 494.

2. *Commerce clause; validity of state inspection tax; considerations in determining.*

The question of constitutionality of an inspection law depends not only upon whether the excess proceeds of the tax may be used for other purposes, but whether they actually are so used; and it is the duty of the courts to determine whether the tax is excessive and the excess is used so as to protect citizens against payment of fees not authorized by the Constitution. *Turner* v. *Maryland*, 107 U. S. 38, distinguished, and *Brimmer* v. *Rebman*, 138 U. S. 83, followed. *Ib.*

See INTERSTATE COMMERCE, 4, 5, 8, 10, 14, 15, 16.

3. *Contracts; effect of railroad charter to embody.*

A railroad charter may embody a contract within the protection of the Federal Constitution. *Atlantic Coast Line* v. *Goldsboro*, 548.

4. *Contract impairment; effect of state statute sealing safe deposit boxes on obligation of company's charter.*

A state statute operating to seal safe deposit boxes for a reasonable period after the death of the renter does not impair the obligation of the charter of a safe deposit company if it provides the conditions under which delivery shall be made to the proper parties within a reasonable period. *National Safe Deposit Co.* v. *Illinois*, 58.

5. *Contract impairment; effect of state statute sealing safe deposit boxes on contract between company and renters.*

Contracts for joint rental of safe deposit boxes are made in the light of the State's power to legislate for the protection of the estate of any joint renter, and a statute preventing withdrawal of contents for a reasonable period does not impair the contract between the deposit company and the renters. *Ib.*

6. *Contract impairment; right of renter of safe deposit box to complain of statute in force when contract made.*

The renter of a safe deposit box cannot object to a state statute affecting his right to open the box after death of a joint renter which was in force when the rental contract was made. *Ib.*

7. *Contract impairment; effect of state statute disposing of school lands conveyed in enabling act.*

A statute passed by a State disposing of lands conveyed in the enabling act by the United States to be used by the State for school lands, *held* not to impair the obligation of the contract created by the acceptance of the enabling act. The State has the right to subject such lands in its hands to the ordinary incidents of title. (*Cooper* v. *Roberts*, 18 How. 173.) *Alabama* v. *Schmidt*, 168.

See INFRA, 14, 21, 25, 26.

8. *Due process of law; what constitutes.*

This court has always recognized the difficulty of satisfactorily defining the term "due process of law" in general terms applicable to all cases, and the desirability of judicial determination in each case as the question arises. (*Davidson* v. *New Orleans*, 96 U. S. 97.) *Miedreich* v. *Lauenstein*, 236.

9. *Due process of law; what constitutes.*

Law, in its regular course of administration through courts of justice, is due process, and, when secured by the law of the State, the constitutional requirement is satisfied. (*Leeper* v. *Texas*, 139 U. S. 462.) *Ib.*

10. *Due process of law; effect of enforcement of judgment based on false return of sheriff, as against whom remedy is inadequate.*

One damaged by reason of a false return of the sheriff as to service of process, and who is given a remedy against the sheriff, is not denied due process of law by the enforcement of the judgment based on such false return because the amount of the sheriff's bond is less than the amount of his loss. *Ib.*

11. *Due process of law; effect of action of court based on false return of sheriff as to service of process.*

In the absence of fraud or collusion, where the original party did all that the law required in the issue and attempt to serve process, but the sheriff made a false return to the effect that service had been made, the state court, in the absence of direct attack upon the return, in acting thereon as though it were true, and holding that the sole remedy was an action against the sheriff for a false return, did not deny the party due process of law within the meaning of the Fourteenth Amendment. *Ib.*

12. *Due process of law; effect to deny, of classification for taxation; validity of § 37 of Tariff Act of 1909.*

The difference between things domestic and things foreign is recognized by the Constitution itself, and a classification for taxation of

foreign-built yachts is not so repugnant to justice as to amount to denial of due process of law because domestic-built yachts are not subject to the same tax; nor is § 37 of the Tariff Act of 1909, unconstitutional for lack of uniformity. *Billings* v. *United States*, 261.

13. *Due process of law; effect to deny, of withholding right of appeal.*
In matters of police regulation where decisions on questions of public safety are delegated to an administrative board the right of appeal on other than constitutional grounds may be withheld by the legislature in its discretion without denying due process of law. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

14. *Due process and contract clauses; effect on police power of State.*
Neither the "contract clause" nor the "due process clause" of the Federal Constitution overrides the power of the State to establish necessary and reasonable regulations under its police power, a power which can neither be abdicated nor bargained away and subject to which all property rights are held. *Atlantic Coast Line* v. *Goldsboro*, 548.

15. *Due process of law; equal protection; validity of statute prohibiting sale of drugs by itinerant vendors.*
The statute of Louisiana of 1894, prohibiting sale of drugs, etc., by itinerant vendors or peddlers, is not unconstitutional under the Fourteenth Amendment either as denying due process of law by preventing a citizen from pursuing a lawful vocation or as denying equal protection of the law. *Baccus* v. *Louisiana*, 334.

16. *Due process of law; effect on State as to form of criminal procedure.*
Due process of law does not require the State to adopt any particular form of procedure in criminal trials, so long as the accused has had sufficient notice of the accusation and adequate opportunity to defend. (*Rogers* v. *Peck*, 199 U. S. 425.) *Garland* v. *Washington*, 642.

17. *Due process of law; effect to deny, of want of formal arraignment to second information for same offense.*
The want of a formal arraignment to a second information of the same offense does not deprive the accused of any substantial right, and where the course of the trial, otherwise fair, was not in any manner affected to his prejudice, there is no denial of due process of law. *Ib.*

18. *Due process of law; effect to deny, of vesting Secretary of Interior with power to appoint and remove members of Indian tribal council.*
Vesting the Secretary of the Interior with power not only to appoint

members of a tribal council of an Indian tribe but also with the power to remove such members for good cause to be by him determined, is not unconstitutional because it permits such removal without notice or hearing, nor does it deprive a member so removed of any property rights without due process of law in violation of the Fifth Amendment. *United States ex rel. Brown* v. *Lane*, 598.

19. *Due process of law; validity of South Dakota law of 1907 relative to claims against railroad companies.*

Chicago, Milwaukee & St. Paul Ry. Co. v. *Polt, ante*, p. 165, followed to the effect that the statute of South Dakota of 1907, c. 215, making railroad companies liable for double damages in case of failure to pay a claim or offer a sum equal to what the jury finds the claimant entitled to, is unconstitutional under the due process clause of the Fourteenth Amendment. *Chicago, M. & St. P. Ry. Co.* v. *Kennedy*, 626.

20. *Due process of law; equal protection; validity of Pennsylvania wild game law of 1909.*

The act of May 8, 1909, of Pennsylvania, making it unlawful for unnaturalized foreign born residents to kill wild game except in defence of person or property and to that end making the possession of shot guns and rifles unlawful, is not unconstitutional under the due process and equal protection provisions of the Fourteenth Amendment. *Patsone* v. *Pennsylvania*, 138.

21. *Due process of law; liberty of contract; validity of state law limiting hours of service for women.*

A state statute limiting the hours of labor in factories for women, if otherwise valid, is not unconstitutional as depriving the employer or employé of property without due process of law by limiting the right to buy and sell labor and infringing the liberty of contract in that respect. (*Muller* v. *Oregon*, 208 U. S. 412.) *Riley* v. *Massachusetts*, 671.

22. *Due process of law; effect to deny, of Massachusetts act regulating hours of labor of women in factories.*

Section 48 of the Labor Act of 1909 of Massachusetts, regulating the hours of labor of women in factories, is not an unconstitutional denial of due process of law because it provides for the posting of a schedule of hours and requires the hours to be stipulated in advance and followed until a change is made. The provision is reasonable and not arbitrary. *Ib.*

23. *Due process and equal protection of the law; validity of Massachusetts Labor Act of 1909.*

In this case the conviction by the state court, of one in whose factory in Massachusetts women were permitted to work during the period scheduled as dinner hour, under § 48 of the Labor Act of 1909 of Massachusetts, sustained; and *held* that such statute is not unconstitutional under either the due process or equal protection provision of the Fourteenth Amendment. *Ib.*

24. *Due process of law; confiscation of property; effect of uncompensated obedience to police regulation.*

The enforcement of uncompensated obedience to a properly enacted police regulation for public health and safety is not an unconstitutional taking of property without compensation or without due process of law. *Atlantic Coast Line* v. *Goldsboro*, 548.

25. *Due process and contract clauses; effect to violate, of municipal ordinance regulating operation of railroad in interest of public health and safety.*

Ordinances limiting speed of trains; requiring notice of their approach, fixing hours for shifting cars and periods of stoppage of cars, and requiring the adjustment of tracks to the established grade of the streets, in business sections of the municipality, are properly within the police power of the municipality, and when fairly designed to promote the public health and safety do not violate the contract clause or due process clause of the Federal Constitution. *Ib.*

26. *Due process and contract clauses; effect to violate, of municipal ordinance regulating operation of railroad.*

Ordinances of the City of Goldsboro, North Carolina, regulating speed of trains, notice of their approach, periods for car shifting and length of time of car stoppages and requiring adjustment of grades of tracks to grades of streets in business section of the town, *held* proper and reasonably suited to the purposes they are intended to accomplish and therefore that they do not impair the obligation of the charter of a railroad occupying those streets, nor do they take any of its property without due process of law. *Ib.*

27. *Due process of law; denial of, by condemnation without hearing.*

Where one has been convicted for violating a state statute which is unconstitutional as applied to the act committed, the conviction cannot be sustained because there was proof of another violation with which he was not charged, as conviction for the latter would

be condemnation without hearing which would be denial of due process of law. *Stewart* v. *Michigan*, 665.

28. *Due process of law; taking of property without; compelling railroad to build bridge over condemned right of way.*

The condemning of a strip of the right-of-way of a railroad company and compelling that company to build at its own expense a bridge over the part so taken so as to permit a municipality in Minnesota to construct a canal connecting two lakes all within the limits of a park devoted to public recreation is not an unconstitutional taking of private property without due process of law within the meaning of the Fourteenth Amendment. *Chicago, M. & St. P. Ry. Co.* v. *Minneapolis*, 430.

29. *Due process and equal protection of the law; deprivation of property rights; validity of Pennsylvania statute relative to barriers in coal mines.*

The statute of Pennsylvania requiring owners of adjoining coal properties to cause suitable barriers to be left of suitable width to safeguard employés is not unconstitutional either as depriving the owners of their property without due process of law or as denying them equal protection of the law, or because of the procedure and method prescribed for determining the width of such barrier or because it delegates the matter to an administrative board or does not provide for any appeal thereupon. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

30. *Due process of law; deprivation of property without; validity of state regulation of incidents of distribution of decedents' property.*

The State has power to regulate the incidents of distribution of property within the State belonging to decedents, and can prescribe times and conditions for delivery thereof by safe deposit companies; and a statute operating to seal safe deposit boxes for a reasonable period after the death of the renter is not an unconstitutional deprivation of property without due process of law, and so *held* as to § 9 of the Inheritance Tax Law of Illinois of 1909. *National Safe Deposit Co.* v. *Illinois*, 58.

31. *Due process of law; deprivation of property without; invalidity of South Dakota railroad claims law.*

The statute of South Dakota of 1907, c. 215, making railroad companies liable for double damages in case of failure to pay a claim or to offer a sum equal to what the jury finds the claimant entitled to, held to be unconstitutional as depriving the companies of their property

without due process of law. *St. Louis, Iron Mtn. & Southern Ry.* v. *Wynne*, 224 U. S. 354, followed; *Yazoo & Miss. Valley R. R.* v. *Jackson Vinegar Co.*, 226 U. S. 217, distinguished. *Chicago, M. & St. P. Ry. Co.* v. *Polt*, 165.

32. *Due process of law; taking of property without; effect of New Mexico law giving title by adverse possession.*

The evident purpose of the statute of New Mexico, giving title under a deed purporting to convey a fee simple after ten years to lands included in grants by Spain, Mexico or the United States, is to ripen disseisin into title and is not unconstitutional as taking property without due process of law. *Montoya* v. *Gonzales*, 375.

See INFRA, 45, 62, 64;
INDIANS, 20;
TAXES AND TAXATION, 22.

33. *Equal protection of the law; effect of classification of grants by law of New Mexico giving title by adverse possession.*

Nor does such statute deny equal protection of the law by its classification of Spanish, Mexican and United States grants; such a classification in the Territory of New Mexico is a reasonable one to prevent the evil of attempts to revive stale claims in regard to such grants. *Ib.*

34. *Equal protection of the laws; effect of provision of state tax statute excepting from an exemption banks, savings banks and trust companies.*

A provision in a state tax statute excepting from an exemption banks, savings banks and trust companies, is not unconstitutional under the Fourteenth Amendment as discriminating against savings banks as a class and denying them the equal protection of the law. The state court having held that there were reasonable grounds for the classification, this court so holds in regard to the statute of Minnesota involved in this action. *Farmers Bank* v. *Minnesota*, 516.

35. *Equal protection of the law; effect to deny, of tax on railroads.*

A state statute imposing a tax on railroads is not unconstitutional as denying equal protection of the law. The classification rests upon a reasonable and sufficient basis of distinction. *Ohio Tax Cases*, 576.

36. *Equal protection of the laws; deprivation of property rights without due process; validity of Ohio railroad tax act of 1911.*

The Ohio statute of 1911 imposing an excise tax of four per cent. on gross intrastate earnings of railroad companies is not unconstitu-

tional, either as denying equal protection of the laws, or as depriving the railroads of their property without due process of law, or as interfering with interstate commerce, or as being an attempt to indirectly tax total gross receipts of the railroads, or as double taxation. *Ib.*

37. *Equal protection of the law; effect to deny, of Michigan Local Option Act of 1889.*

A State may prohibit the sale of liquor absolutely or conditionally; may prohibit the sale as a beverage and permit it for medicinal purposes; may prohibit the sale by merchants and permit it by licensed druggists; and so *held*, that the Michigan Local Option Act of 1889 is not unconstitutional under the equal protection provision of the Fourteenth Amendment on account of discrimination in making certain specific exceptions to the general prohibition. *Eberle* v. *Michigan*, 700.

38. *Equal protection of the law; effect of provision of state law providing for approval by Attorney General of form of notice under state law.*

A provision in a state statute that the form of notice in which employés' hours of labor are scheduled shall be approved by the Attorney General of the State, does not deny equal protection of the law if the approval is confined to the form of notice and not to the schedules which might provide for different hours in different cases. *Riley* v. *Massachusetts*, 671.

See SUPRA, 15, 20, 23, 29;
INFRA, 58.

39. *Full faith and credit; judgments entitled to.*

The full faith and credit clause and statutes enacted thereunder do not apply to judgments rendered by a court having no jurisdiction of the parties or subject-matter or of the *res* in proceedings *in rem*. *Thompson* v. *Thompson*, 226 U. S. 551, distinguished. *Priest* v. *Las Vegas*, 604.

40. *Full faith and credit; question open in court asked to give.*

Where the jurisdiction of the court rendering the judgment depends upon domicile that question is open to reëxamination in the court of another State asked to give the judgment full faith and credit as required by the Federal Constitution. (*Andrews* v. *Andrews*, 188 U. S. 14.) *Burbank* v. *Ernst*, 162.

41. *Full faith and credit; when decree of probate not entitled.*

Where the evidence as to domicile of the deceased is conflicting and the

state court is warranted in finding that the court of probate of another State did not have jurisdiction to probate a will because the domicile of deceased was not in that State, this court will not retry the facts; and under the facts, as found in this case, the decree of probate is not entitled to full faith and credit in another State. *Ib.*

42. *Judicial power; independence of state action.*

The judicial power of the United States, as created by the Constitution and provided for by Congress pursuant to constitutional authority, is wholly independent of state action and cannot be directly or indirectly destroyed, abridged, limited or rendered inefficacious by exertion of state authority. *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 318.

43. *Judicial power to inquire into original source of revenue legislation; effect of Senate amendment.*

Even if there is judicial power to inquire whether a provision in a duly promulgated act of Congress raising revenue originated in the House of Representatives in accordance with Art. I, § 7 of the Constitution, it is sufficient if it appears that it was an amendment in the Senate to an act that originated in the House; and, after the act has been enrolled and duly authenticated, the court will not inquire whether the amendment was or was not outside the purposes of the original bill. *Rainey* v. *United States*, 310.

See REMOVAL OF CAUSES, 10.

44. *Property rights; confiscation; effect of prohibitive liquor law.*

While a liquor law which prohibited the sale of property existing at the time of its enactment might be confiscatory (*Bartemeyer* v. *Iowa*, 18 Wall. 129), the prohibition of manufacturing liquor after the enactment is not confiscatory even as applied to liquor manufactured for the purpose of giving value to a product existing but unfinished when the act was passed. *Eberle* v. *Michigan*, 700.

45. *Property rights; confiscation; effect of liquor law operating to depreciate value of property.*

Liquor laws are enacted by virtue of the police power to protect the health, morals and welfare of the public; and, while such laws may operate to depreciate the value of property used in the manufacture of liquor, such depreciation is not the taking of property without due process of law as prohibited by the Fourteenth Amendment, and so *held* as to the Michigan Local Option Act of 1889. (*Mugler* v. *Kansas*, 123 U. S. 623.) *Ib.*

46. *Retroactive legislation; effect of retroactive operation of tax.*
The fact that a tax statute operates retroactively does not necessarily cause it to be unconstitutional. (*Flint* v. *Stone-Tracy Co.*, 220 U. S. 107.) *Billings* v. *United States*, 261.

47. *Retroactive legislation; effect on validity, of retroactive operation of tax.*
Section 37 of the Tariff Act of 1909, imposing a tax on foreign-built yachts, is not unconstitutional because it operates retroactively as to the tax levied for the year 1909, and the use of yachts within the meaning of the statute during the year 1909, renders the owner or charterer liable for the tax for that year. *Ib.*

48. *Searches and seizures; application of prohibition.*
The prohibition in the Fourth Amendment against unreasonable searches and seizures does not apply to the States. (*Lloyd* v. *Dollison*, 194 U. S. 445.) *National Safe Deposit Co.* v. *Illinois*, 58.

49. *Searches and seizures; limitations and restraints under Fourth Amendment.*
Under the Fourth Amendment Federal courts and officers are under such limitations and restraints in the exercise of their power and authority as to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law. *Weeks* v. *United States*, 383.

50. *Searches and seizures; protection of Fourth Amendment reaches whom.*
The protection of the Fourth Amendment reaches all alike, whether accused of crime or not; and the duty of giving it force and effect is obligatory on all entrusted with the enforcement of Federal laws. *Ib.*

51. *Searches and seizures; application of Fourth Amendment.*
The Fourth Amendment is not directed to individual misconduct of state officers. Its limitations reach the Federal Government and its agencies. (*Boyd* v. *United States*, 116 U. S. 616.) *Ib.*

52. *Searches and seizures; duty of court to support constitutional rights.*
The tendency of those executing Federal criminal laws to obtain convictions by means of unlawful seizures and enforced confessions in violation of Federal rights is not to be sanctioned by the courts which are charged with the support of constitutional rights. *Ib.*

53. *Searches and seizures; right of court to retain, for purposes of evidence, papers unlawfully seized.*
The Federal courts cannot, as against a seasonable application for their

return, in a criminal prosecution, retain for the purposes of evidence against the accused his letters and correspondence seized in his house during his absence and without his authority by a United States marshal holding no warrant for his arrest or for the search of his premises. *Ib.*

54. *Searches and seizures; unlawful; duty of court on seasonable application for return of papers seized.*

While an incidental seizure of incriminating papers, made in the execution of a legal warrant, and their use as evidence, may be justified, and a collateral issue will not be raised to ascertain the source of competent evidence, *Adams* v. *New York*, 192 U. S. 585, that rule does not justify the retention of letters seized in violation of the protection given by the Fourth Amendment where an application in the cause for their return has been made by the accused before trial. *Ib.*

55. *Searches and seizures; duty of court on seasonable application for return of papers unlawfully seized.*

Where letters and papers of the accused were taken from his premises by an official of the United States, acting under color of office but without any search warrant and in violation of the constitutional rights of accused under the Fourth Amendment, and a seasonable application for return of the letters and papers has been refused and they are used in evidence over his objections, prejudicial error is committed and the judgment should be reversed. *Ib.*

56. *States; taxation of governmental agencies prohibited.*

The entire independence of the General Government from any control by the respective States is fundamental; and States may not tax agencies of the Federal Government. (*M'Culloch* v. *Maryland*, 4 Wheat. 316.) *Farmers Bank* v. *Minnesota*, 516.

57. *States; suits against, within prohibition of Eleventh Amendment.*

A suit by a non-resident against officers of a State to enjoin the enforcement of a state statute which violates constitutional rights of complainant is not a suit against the State within the prohibition of the Eleventh Amendment. *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 318.

58. *States; validity of legislation abridging Federal right.*

A state statute which deprives those entitled thereto of a Federal right is not made constitutional by the fact that it does not discriminate but operates on all alike. *Ib.*

59. *States; validity of legislation abridging Federal right.*

The Oklahoma statute of May 26, 1908, forbidding foreign corporations from asserting any citizenship other than of that State and providing for the revocation and forfeiture of the charter of any corporation filing a petition for removal of a cause from the state, to the Federal, court, is unconstitutional as to corporations doing an interstate business as an attempt to restrain and penalize the assertion of a Federal right. *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535, and *Security Co.* v. *Prewitt*, 202 U. S. 246, distinguished. *Ib.*

60. *Taxation; uniformity required in levying excise taxes.*

The requirement of uniformity imposed by the Constitution on Congress in levying excise taxes is not intrinsic but geographic. *Billings* v. *United States*, 261.

61. *Taxation; authority to tax not limited by subsequent provisions of Constitution.*

The Constitution is not self-destructive—it does not take away by one provision powers conferred by another, and the express authority to tax is not limited or restricted by subsequent provisions or amendments, especially the due process clause of the Fifth Amendment. (*McCray* v. *United States*, 195 U. S. 27.) *Ib.*

62. *Taxation by Federal Government; restrictions on.*

The limitations of due process of law which prevent States from taxing property in another State do not apply to the United States, the admitted taxing power of which is co-extensive with the limits of the United States and knows no restriction save as expressed in or arising from the Constitution itself. *United States* v. *Bennett*, 299.

63. *Taxation; power of Congress to lay and collect; validity of classification in.*

The act of August 5, 1909, imposing a tax upon the use of foreign-built yachts alone, provides a valid tax, and a valid classification for purposes of taxation, within the power to lay and collect taxes delegated to Congress by the Constitution of the United States. *Ib.*

64. *Taxation; conflict with due process of law provision.*

The tax imposed by said act is not in conflict with the requirement of due process of law contained in the Fifth Amendment to the Constitution of the United States. *Ib.*

See TAXES AND TAXATION, 20, 30.

Treaties.—*See* TREATIES, 2.

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

The Circuit Court of Appeals having, pursuant to the state court's practice in Pennsylvania, reversed a judgment in favor of the plaintiff and remanded to the trial court with instructions, not for new trial, but for judgment for defendant, *non obstante veredicto*, this court affirms the judgment of reversal so far as the case is remanded to the trial court, but reverses it as to the direction to enter judgment for defendant, and remands the case to the trial court for a new trial conformably with the provisions of the Seventh Amendment. (*Slocum* v. *New York Life Insurance Co.*, 228 U. S. 364.) *Young* v. *Central Railroad of New Jersey*, 602.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACT LABOR LAW.

See ALIEN CONTRACT LABOR LAW.

CONTRACTS.

1. *Construction of informal business transaction.*

An informal business transaction should be construed as adopting whatever form consistent with the facts as is most fitted to reach the result seemingly desired. (*Sexton* v. *Kessler*, 225 U. S. 90.) *Barnes* v. *Alexander*, 117.

2. *Words of covenant; effect as grant.*

It is an ancient principle even of the common law that words of covenant may be construed as a grant when they concern a present right. *Ib.*

3. *Contractor's status as trustee.*

In equity, a contract to convey a specific object even before it is acquired will make a contractor a trustee as soon as he gets title thereto. *Ib.*

See CONSTITUTIONAL LAW, 3–7, 14, 21, 25, 26; CORPORATIONS, 1; INDEPENDENT CONTRACTOR; INTERSTATE COMMERCE, 26; PRACTICE AND PROCEDURE, 16; PRINCIPAL AND AGENT.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CONVEYANCES.

See CONTRACTS, 2, 3.

CORPORATIONS.

1. *Agency of corporation for stockholders.*

Stockholders of a corporation organized in one State under a charter expressly authorizing it to do business in another State create the corporation their agent for the making of contracts within the latter State in accordance with its laws. *Thomas* v. *Matthiessen*, 221.

2. *Power to bind stockholders; effect of charter provisions.*

While a corporation cannot, without authority from the stockholders, make them answerable in a way not contemplated by the charter, a provision in the charter of a corporation organized in one State authorizing it to do business in another State may subject the stockholders to the liability imposed in the latter State, notwithstanding there are other provisions in the charter exempting stockholders from liability for debts of the corporation. *Ib.*

3. *Stockholders' liability under laws of State in which charter authorized doing of business.*

Stockholders of a corporation organized in Arizona under a charter which expressly authorized the corporation to do business in California *held*, in this case, subject to the liability imposed by § 322, Civil Code of the latter State. *Ib.*

See CONSTITUTIONAL LAW, 59;
LOCAL LAW (Cal.);
TAXES AND TAXATION, 11–15.

COSTS.

See ALIEN CONTRACT LABOR LAW, 5.

COURT AND JURY.

See EMPLOYERS' LIABILITY ACT, 1, 2; NEGLIGENCE, 1, 2;
EVIDENCE, 1; TRIAL, 2;
VERDICT.

COURT OF CLAIMS.

See JURISDICTION, D.

COURTS.

1. *Duty to decide questions.*

This court cannot refuse to decide questions which are properly before it for judgment. *Billings* v. *United States*, 261.

2. *Duty to observe constitutional rights.*
While the efforts of courts and their officials to bring the guilty to punishment are praiseworthy, they are not to be aided by sacrificing the great fundamental rights secured by the Constitution. *Weeks* v. *United States*, 383.

3. *Power to deal with papers in possession of officers of court and which have been unlawfully seized.*
The court has power to deal with papers and documents in the possession of the District Attorney and other officers of the court and to direct their return to the accused if wrongfully seized. *Ib.*

4. *Effect of state statute to withdraw authority conferred by Congress.*
A statute of a Territory cannot withdraw from the courts established by the United States authority expressly conferred upon them by Congress by the Organic Act and other statutes. (*The City of Panama*, 101 U. S. 453.) *Santa Fe Cent. Ry. Co.* v. *Friday*, 694.

See CONSTITUTIONAL LAW, 2, 42, 43, 49, 52, 53;
INTERSTATE COMMERCE, 12, 21;
JURISDICTION;
LAND GRANTS, 3;
LOCAL LAW (Vt.);
PRACTICE AND PROCEDURE;
PUBLIC LANDS, 1, 5, 15;
PURE FOOD AND DRUGS ACT, 3;
REMOVAL OF CAUSES;
STATES, 2;
STATUTES, A 3, 4.

COVENANT.

See CONTRACTS, 2.

CRIMINAL LAW.

1. *Technical objections; when not allowed.*
Technical objections, originating in the early period of English history when the accused was entitled to but few rights, are passing away and should not be allowed as to unimportant formalities where the rights of the accused have not been prejudiced. *Garland* v. *Washington*, 642.

2. *Presumption of innocence; sufficiency of charge as to.*
In this case *held* that the charge of the trial court in regard to presumptions of innocence of the accused and their right to acquittal in case of reasonable doubt was sufficiently favorable to the accused. *Wilson* v. *United States*, 563.

3. *Use of mails to defraud; sufficiency of indictment under § 215 of Criminal Code.*
Under § 5480, Rev. Stat., it was necessary to charge not only that a

scheme to defraud was devised but that it was intended to be effected by opening or intending to open correspondence with some other person by means of the post office; under § 215 of the Criminal Code it is only necessary to charge that the scheme be devised or intended to be devised and a letter placed in the post office for the purpose of executing the scheme or attempting to do so. *United States* v. *Young*, 155.

See CONSTITUTIONAL LAW, 16, 17, 27; COURTS, 2; INDIANS, 1, 3, 9, 19; JURISDICTION, C 1; PUBLIC LANDS, 3; STARE DECISIS; VERDICT.

CROSS-EXAMINATION.

See EVIDENCE, 3, 4, 5.

CUSTOM AND USAGE.

See VENDOR AND VENDEE.

CUSTOMS LAW.

See CONSTITUTIONAL LAW, 12, 47; TAXES AND TAXATION.

DAMAGES.

Measure of, in case of trespass resulting in destruction of building and interruption of business of tenant.

Where a trespass results in the destruction of a building with consequent interruption of a going business, the loss of future profits—reasonably certain and proved with reasonable exactitude—is a proper element for consideration in awarding compensatory damages. *Weinman* v. *de Palma*, 571.

See CONSTITUTIONAL LAW, 19; EMPLOYERS' LIABILITY ACT, 6; FRAUD; PRACTICE AND PROCEDURE, 12.

DEBATES IN CONGRESS.

See STATUTES, A 9.

DEFENSES.

See REMOVAL OF CAUSES, 8.

DELEGATION OF POWER.

See CONSTITUTIONAL LAW, 29.

DELIVERY.
See PLEDGE, 2;
VENDOR AND VENDEE.

DEPORTATION OF ALIENS.
See ALIENS, 3, 4.

DEPOSITIONS.
See EVIDENCE, 6.

DESCENT AND DISTRIBUTION.
See CONSTITUTIONAL LAW, 30.

DIRECTED VERDICT.
See MASTER AND SERVANT, 2.

DISTILLERY WAREHOUSES.
See INTERNAL REVENUE;
PLEDGE.

DISTRICT ATTORNEYS.
See COURTS, 3.

DIVORCE.
See DOMICIL, 3.

DOMICIL.

1. *Definition of.*
One's domicil is the technically preëminent headquarters that every person is compelled to have in order that his rights and duties that have attached to it by the law may be determined. *Williamson* v. *Osenton*, 619.

2. *Change of abode as change of domicil.*
The essential fact that raises change of abode to change of domicil is the absence of any intention to live elsewhere. *Ib.*

3. *Change of abode as change of domicil.*
Where one changes his abode with no intention of returning to the former abode the motive is immaterial so far as change creates a citizenship enabling the party to sue in the Federal courts. *Ib.*

4. *Wife's; when different from that of husband.*
In this country, a wife who has justifiably left her husband may acquire a different domicil from his, not only for the purpose of obtaining a divorce from him, *Haddock* v. *Haddock*, 201 U. S. 562, but for other purposes, including that of bringing an action for damages against persons other than her husband. *Ib.*

5. *Same; law of England; quære as to.*
Quære, whether the same is the law in England. *Ib.*

See CONSTITUTIONAL LAW, 40, 41;
WORDS AND PHRASES.

DOUBLE TAXATION.

See CONSTITUTIONAL LAW, 36;
TAXES AND TAXATION, 1.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 8–32, 45, 62, 64;
INDIANS, 20;
TAXES AND TAXATION, 22.

ELEVENTH AMENDMENT.

See CONSTITUTIONAL LAW, 57.

EMPLOYER AND EMPLOYÉ.

See CONSTITUTIONAL LAW, 21, 22, 23;
EMPLOYERS' LIABILITY ACT;
MASTER AND SERVANT.

EMPLOYERS' LIABILITY ACT.

1. *Actions under; questions for jury.*
Where, upon the evidence, any essential matter bearing on the question of whether an employé of a railroad company was, at the time of the injury, engaged in interstate commerce is in doubt, it should be submitted to the jury under proper instructions. *North Carolina R. R. Co.* v. *Zachary*, 248.

2. *Actions under; right to; review by this court to ascertain.*
Where the state court refused to submit questions to the jury on the ground that there was no evidence to sustain the Federal right asserted, this court will analyze the evidence to the extent necessary to give plaintiff in error the benefit of such Federal right if it was improperly denied. (*Southern Pacific Co.* v. *Schuyler*, 227 U. S. 601.) *Ib.*

3. *Parties contemplated by.*
In order to bring a case within the terms of the Federal Employers' Liability Act of 1908, the defendant must have been, at the time of the occurrence, engaged as a common carrier in interstate commerce and the injured employé must have been employed by such carrier in such commerce. *Ib.*

4. *Exclusive application of.*
Where the defendant is a common carrier engaged in interstate commerce and the employé for whose injuries the suit is brought was employed by the defendant in such commerce, the Federal Employers' Liability Act of 1908 governs to the exclusion of the state statutes. *Ib.*

5. *Application; refusal of state court to apply; effect of.*
Where the state court improperly refuses to apply the provisions of the Federal Employers' Liability Act in an action for injuries to an employé of a common carrier while both employer and employé were engaged in interstate commerce and the result might have been different, the judgment must be reversed. *Ib.*

6. *Beneficiaries under; measure of damages.*
The persons related to the deceased employé as specified in the Employers' Liability Act of 1908 are the beneficiaries of an action prescribed by the act and the damages are to be based upon the pecuniary loss sustained by such beneficiaries. *Ib.*

7. *Liability of lessor, whose line is wholly intrastate, for acts of lessee engaged in interstate commerce.*
A railroad company, leasing its entire line, which is wholly intrastate, to another railroad company doing an interstate business creates the latter its agent and becomes a common carrier by railroad engaged in interstate commerce; and if under the local law the lessor remains responsible for the lessee's acts, the Employers' Liability Act of 1908 controls as to liability for injuries to employés of the lessee engaged in interstate commerce. *Ib.*

8. *Interstate commerce within meaning of; hauling of empty cars as.*
Hauling empty cars from one State to another is interstate commerce within the meaning of the Employers' Liability Act of 1908. *Ib.*

9. *Same.*
The Employers' Liability Act is *in pari materia* with the Safety Appliance Act, and this court, following its rulings in regard to the

latter, holds that the hauling of empty cars from one State to another is interstate commerce within the meaning of the act. (*Johnson* v. *Southern Pacific Co.*, 146 U. S. 1.) *Ib.*

10. *Interstate commerce within meaning of; preparation of engine for trip as.*

Acts of an employé in preparing an engine for a trip to move freight in interstate commerce, although done prior to the actual coupling up of the interstate cars, are acts done while engaged in interstate commerce. *Ib.*

11. *Interstate commerce; when employé engaged in.*

Although absent temporarily from his train for a short time for a purpose not inconsistent with his duty to his employer, a railroad employé may still be on duty and engaged in interstate commerce within the meaning of the Employers' Liability Act of 1908. *Ib.*

12. *Remedy prescribed by; exclusiveness of.*

The source of right of the widow of an employé of an interstate carrier to maintain an action for his death is the Federal statute, whether the cause of action is based on § 1 or § 9, and the father of the deceased is not entitled to share in the amount recovered. *Taylor* v. *Taylor*, 363.

13. *Effect on state statutes of distribution.*

The Employers' Liability Act of 1908, as amended in 1910, supersedes all state statutes upon the subject covered by it, and the distribution of the amount recovered in an action for death of an employé is determined by the provisions of that act and not by the state law. *Ib.*

See JURISDICTION, A 4, 5; C 2.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 15, 20, 23, 29, 33–38, 58.

EQUITY.

Jurisdiction; difficulty of proof as basis for.

Mere complication of facts alone and difficulty of proof are not a basis for equity jurisdiction. (*United States* v. *Bitter Root Development Co.*, 200 U. S. 451.) *Curriden* v. *Middleton*, 633.

See CONTRACTS, 3; JURISDICTION, E 3; JUDGMENTS AND DECREES, 1, 2; RES JUDICATA, 2.

ESCHEATS.

See PORTO RICO, 3.

ESTATES OF DECEDENTS.
See CONSTITUTIONAL LAW, 5, 6, 30.

EVIDENCE.

1. *Admissibility for determination of court; review of findings based on.*
Questions of admissibility of evidence are for the determination of the trial court, whether its admission depends upon matter of law or of fact, and the finding upon such a question is not subject to reversal on appeal or error if fairly supported by the evidence; and so *held* as to the exclusion of evidence offered by defendant to prove remarks made by a third person in presence of the plaintiff before the injury as to defects in the appliance used by him. *Gila Valley, G. & N. Ry. Co.* v. *Hall*, 94.

2. *Sufficiency to support recovery by Government in action under Alien Immigration Act.*
In an action brought by the United States under § 5 of the Alien Immigration Act of February 20, 1907, c. 1134, 34 Stat. 898, to recover the prescribed pecuniary penalty for an alleged violation of § 4 of the act, it is not essential to a recovery by the Government that the evidence establish the violation beyond a reasonable doubt, as in a criminal case, but a reasonable preponderance of proof is sufficient. *United States* v. *Regan*, 37.

3. *Cross-examination; scope of.*
The cross-examination of a defendant in regard to taking morphine *held* in this case to be proper as it related not to general character, but to the condition of the witness at the moment. *Wilson* v. *United States*, 563.

4. *Cross-examination; scope of.*
Cross-examination as to the domestic difficulties of one of two defendants married to each other *held* in this case to have been material in order to corroborate the evidence of an accomplice and in other respects relevant to the testimony in chief. *Ib.*

5. *Cross-examination; competency in prosecution under White Slave Law.*
Cross-examination of a defendant in a white slave case in regard to payments made to police officers *held* in this case to have been competent and material to show the character of the house occupied by defendants. *Ib.*

6. *Depositions; effect of non-prejudicial defect in notice as to taking.*
The trial court was right in refusing to suppress depositions because the

notices in regard to taking them were defective in certain respects which could not and did not mislead the parties. *Grant Bros.* v. *United States*, 647.

7. *Judgment in prior action as; admissibility as against stranger thereto.*
While, as a general rule, a judgment binds only the parties and their privies, a judgment in a prior action may be admissible against a stranger as *prima facie*, although not conclusive, proof of facts which may be shown by evidence of general reputation—such as alienage. *Ib.*

See ALIEN CONTRACT LABOR LAW, 6; CONSTITUTIONAL LAW, 53, 54; LOCAL LAW (Porto Rico); VERDICT.

EXCISE TAXES.

See CONSTITUTIONAL LAW, 36, 60; TAXES AND TAXATION, 1, 2, 3.

EXCLUSION OF ALIENS.

See ALIENS, 2, 3, 4.

EXEMPTION FROM TAXATION.

See CONSTITUTIONAL LAW, 34; TAXES AND TAXATION, 4, 5.

EXPRESS COMPANIES.

See INTERSTATE COMMERCE, 5, 6, 8; TAXES AND TAXATION, 9.

FACTS.

See PRACTICE AND PROCEDURE, 1, 2, 3, 21; REMOVAL OF CAUSES, 12; STATES, 2.

FEDERAL QUESTION.

1. *What constitutes.*
Whether the adoption by a district of a local option statute is affected by the subsequent determination by the courts that certain features of the act were unconstitutional, is not a Federal question and is for the state court to determine. *Eberle* v. *Michigan*, 700.

2. *What constitutes; question as to lands embraced within patent from United States.*
Whether particular lands patented by the United States to a State have

passed from the latter to one or the other of two persons claiming adversely through the State is a question of local law, but whether the patent from the United States embraced the lands is a Federal question. *Chapman & Dewey Lumber Co.* v. *St. Francis Levee District*, 186.

3. *When duly made; effect of holding by state court.*
Although the record is meager of attempts to raise it, if the state court holds that a Federal question is made before it, according to its practice, and proceeds to determine it, this court regards the question as duly made. *Miedreich* v. *Lauenstein*, 236.

See JURISDICTION;
PRACTICE AND PROCEDURE, 5;
RES JUDICATA, 2.

FEES.
See LIENS, 2.

FIFTH AMENDMENT.
See CONSTITUTIONAL LAW, 18, 61, 64;
TAXES AND TAXATION, 22.

FINDINGS OF FACT.
See PRACTICE AND PROCEDURE, 1, 2, 3.

FOOD AND DRUGS ACT.
See PURE FOOD AND DRUGS ACT.

FOREIGN-BUILT YACHTS.
See CONSTITUTIONAL LAW, 12, 47, 63, 64;
TAXES AND TAXATION, 7, 8, 16–26.

FOREIGN CORPORATIONS.
See CONSTITUTIONAL LAW, 59.

FOURTEENTH AMENDMENT.
See CONSTITUTIONAL LAW;
RAILROADS, 1.

FOURTH AMENDMENT.
See CONSTITUTIONAL LAW, 48–51, 54, 55.

FRANCHISES.
See RAILROADS, 6.

FRAUD.

Remedy for damages caused by.

The proper remedy for damages caused by fraud and deception is an action at law. (*Buzard* v. *Houston*, 119 U. S. 347.) *Curriden* v. *Middleton*, 633.

See REMOVAL OF CAUSES, 5, 6, 7;
VENDOR AND VENDEE.

FRAUDULENT USE OF MAILS.

See CRIMINAL LAW, 3.

FREEHOLD.

See MORTGAGES AND DEEDS OF TRUST, 2.

FRIVOLOUS QUESTIONS.

See JURISDICTION, A 16, 17.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 39–41.

GAME LAWS.

See CONSTITUTIONAL LAW, 20;
STATES, 7;
TREATIES, 6, 8.

GOVERNMENTAL AGENCIES.

See PUBLIC LANDS, 13.

GRANTS.

See CONTRACTS, 2;
LAND GRANTS.

GUARDIANSHIP.

See INDIANS, 2, 4, 8, 13.

HEADNOTES.

See REPORTS.

HIGHWAYS.

See RAILROADS, 2–5.

HOMESTEADS.

See PUBLIC LANDS.

HOURS OF LABOR.

See CONSTITUTIONAL LAW, 21, 22, 23, 38;
STATES, 4, 5.

HUSBAND AND WIFE.

Identity.

The identity of husband and wife is a fiction now vanishing. *Williamson* v. *Osenton*, 619.

See DOMICIL.

IMMIGRATION.

See ALIENS;
STATUTES, A 12.

IMMUNITY FROM SUIT.

See ACTIONS;
PORTO RICO, 1, 2, 3.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 4–7;
PRACTICE AND PROCEDURE, 16.

INDEPENDENT CONTRACTOR.

1. *What constitutes.*

Where the contractor is required to follow instructions of the owner he is not such an independent contractor as to relieve the owner of liability for his acts. *Weinman* v. *de Palma*, 571.

2. *Application of doctrine.*

The "independent contractor" doctrine does not apply where the work that the contractor does amounts in itself to a nuisance or necessarily operates to destroy the property of another. *Ib.*

INDIAN COUNTRY.

See INDIANS, 3, 9, 16, 17, 18.

INDIAN DEPREDATION ACT.

See JURISDICTION, D 2, 3, 4.

INDIANS.

1. *Allottee Indians; crimes committed against; jurisdiction of Federal court.*

Even if one committing a crime on an Indian allotment is not an

Indian, if the crime was committed against an allottee Indian within the trust period, it is punishable under the laws of the United States and the Federal court has jurisdiction. *United States* v. *Pelican*, 442.

2. *Allotments; trusteeship of United States.*
Lands allotted in severalty to the Indians on the Colville Reservation under the acts of July 1, 1892, and July 1, 1898, when the rest of the reservation was thrown open to settlement were held in trust by the United States for the allottees under the jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians. *Ib.*

3. *Allotments in severalty as Indian country; power of Congress to punish crimes committed on.*
Congress has power to punish crimes committed by or against Indians upon allotted lands, and the allotments in severalty are embraced in the term Indian country as used in § 2145, Rev. Stat., and the allotments of the Colville Reservation have not been excluded therefrom by the statutes providing for the allotments. *Ib.*

4. *Allotments; jurisdiction of United States; basis for.*
The retention by the United States of jurisdiction over Indian allotments is based on the fundamental consideration of the protection of a dependent people. (*United States* v. *Rickert*, 188 U. S. 432.) *Ib.*

5. *Allotments; control by United States.*
Part of the National policy in regard to Indians is that the United States shall retain control over the allotments in severalty for the statutory period during which the Indians are to be maintained as well as prepared for assuming habits of civilized life and ultimately the privileges of citizenship. *Ib.*

6. *Allotments; preferential rights; question of improvement one of fact and law.*
Whether parties had actually improved Cherokee lands in such sense as to give them a preferential right of selection and allotment under § 11 of the act of July 1, 1902, c. 1375, 32 Stat. 716, is not a mere question of law but one of fact and law, and, as far as it involves the drawing of correct inferences from the evidence it is a question of fact. *Ross* v. *Day*, 110.

7. *Allotments; conclusiveness of findings by Secretary of the Interior.*
Where, in such a case, the whole controversy depends upon whether

the allotment was in accord with actual ownership of the improvements thereon and there is neither fraud nor clear mistake of law in the decision of the Secretary of the Interior on final appeal to him, his findings are conclusive. *Ib.*

8. *Guardianship; power of Congress as to.*
Congress has power under the Constitution to continue the guardianship of the Government over Indians for the period specified in the statutes for keeping the title of the allotments in the United States. *United States* v. *Pelican*, 442.

9. *Intoxicating liquors; Indian country within meaning of act of January 30, 1897.*
Under the act of January 30, 1897, 29 Stat. 506, it is an offense against the United States to introduce liquor into the Indian country, and this act embraces Indian country within a State. *Pronovost* v. *United States*, 487.

10. *Intoxicating liquors; power of Congress to prohibit introduction and traffic in.*
Congress has power to prohibit the introduction of intoxicating liquors into an Indian reservation wheresoever situate and to prohibit traffic in such liquors with tribal Indians whether upon or off a reservation, and whether within or without the limits of a State. *Perrin* v. *United States*, 478.

11. *Intoxicating liquors; power of Congress to prohibit introduction and traffic in, upon ceded Indian lands.*
That power is sufficiently comprehensive to enable Congress when securing the cession of a part of an Indian reservation within a State to prohibit the sale of intoxicants upon the ceded lands, if in its judgment the prohibition is reasonably essential to the protection of the Indians residing on the unceded lands. *Ib.*

12. *Intoxicating liquors; introduction of, on ceded Indian lands; exclusive power of Congress over.*
As Congress possesses this power, the State possesses no exclusive control over the subject and the congressional prohibition is supreme. *Ib.*

13. *Intoxicating liquors; validity and propriety of regulations against sale of, on ceded Indian lands.*
The provision in Art. 17 of the agreement with the Yankton Sioux against the sale of intoxicating liquor on the lands ceded to the

United States and the prohibition in the act of August 15, 1894, ratifying the agreement, are both within the power of Congress and are proper regulations for the protection of the Indian wards of the Nation. *Ib.*

14. *Intoxicating liquors; discretion of Congress in prohibiting sale of, on lands ceded by Indians and situated within State.*

While a prohibition by act of Congress against the sale of liquor on lands ceded by Indians to the United States within the limits of a State, to be a constitutional exercise of the power of Congress, must not go beyond what is reasonably essential to the protection of the Indians, and may become inoperative when all the Indians affected thereby become completely emancipated from Federal control, Congress is invested with wide discretion and its action, unless purely arbitrary, must be accepted and given full effect by the courts. *Ib.*

15. *Intoxicating liquors; prohibition against sale on ceded Indian lands; continuance of.*

The prohibition against the sale of liquor on land ceded by the Yankton Sioux, under the agreement ratified by the act of August 15, 1894, properly remains in force so long as conditions remain, as they still do, substantially the same, and, unless sooner altered by Congress, will continue so long as the presence and status of the Indians sustain it as a Federal regulation. *Ib.*

16. *Reservations as Indian country; judicial notice of existence of reservation.*

An Indian reservation is Indian country, and this court takes judicial notice of the existence at a specified time of a reservation established by treaty and statute. *Pronovost* v. *United States*, 487.

17. *Reservations; Colville Reservation as Indian country.*

The Colville Reservation in the State of Washington was set apart by Executive order in July, 1872, has been repeatedly recognized by acts of Congress and is a legally constituted reservation, and, as such, is included in Indian country to which § 2145, Rev. Stat., refers. *United States* v. *Pelican*, 442.

18. *Reservations as Indian country; effect of segregation from public domain.*

A legally constituted Indian reservation is none the less embraced within the Indian country referred to in § 2145, Rev. Stat., because it may have been segregated from the public domain. *Ib.*

19. *Reservations; authority of Congress over crimes committed on; effect of Statehood.*

The authority of Congress to deal with crimes committed on or against Indians upon the lands within an Indian Reservation is not affected by the admission of the Territory, within which it is included, as a State into the Union. *Ib.*

20. *Osage Indians; tribal council; power of Secretary of Interior to appoint and remove.*

Under § 9 of the act of June 28, 1906, dividing the lands and funds of the Osage Indians and providing for the appointment by the Secretary of the Interior of a tribal council, the authority to remove members from such council for good cause to be by him determined is not qualified by necessity of notice or hearing to the members so removed. *United States ex rel. Brown* v. *Lane*, 598.

See CONSTITUTIONAL LAW, 18.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 3.

INFRINGEMENT OF PATENT.

See PATENTS.

INJUNCTION.

See CONSTITUTIONAL LAW, 57; JURISDICTION, A 13; INTERSTATE COMMERCE, 9; REMOVAL OF CAUSES, 9.

INSPECTION LAWS.

See CONSTITUTIONAL LAW, 1, 2; INTERSTATE COMMERCE, 11–16.

INSTRUCTIONS TO JURY.

See CRIMINAL LAW, 2; TRIAL, 1.

INSTRUMENTALITIES OF GOVERNMENT.

See UNITED STATES, 1.

INTEREST.

See TAXES AND TAXATION, 6, 7, 8.

INTERLOCUTORY JUDGMENTS.

See JUDGMENTS AND DECREES, 4; JURISDICTION, A 8, 9, 13.

INTERNAL REVENUE.

1. *Distillery warehouses; control by Government.*

Under the revenue laws of the United States the Government, although not strictly a bailee, is in complete control of a distillery warehouse which is in effect a bonded warehouse of the United States. *Taney* v. *Penn National Bank*, 174.

2. *Distillery warehouse; pledge of whiskey in; right of distiller.*

A distiller is not debarred from passing title or creating a special interest by way of pledge in whiskey deposited in his distillery warehouse in conformity with the revenue laws of the United States. *Ib.*

INTERSTATE COMMERCE.

1. *What constitutes; negotiation of sales as.*

Crenshaw v. *Arkansas*, 227 U. S. 389, followed to effect that the negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. *Stewart* v. *Michigan*, 665.

2. *What constitutes; inference as to.*

When a freight train for an intrastate point is being made up of cars including some from a train which started from another State, it is a reasonable inference that such cars were being carried forward as a part of a through movement of interstate commerce. *North Carolina R. R. Co.* v. *Zachary*, 248.

3. *Burdens on; extent of exertion of police power by State.*

While the exertion of the police power essential for protection of the community may extend incidentally to operations of interstate commerce, the police power does not justify the imposition of direct burdens on that commerce nor its subjection to unreasonable demands. *Adams Express Co.* v. *New York*, 14.

4. *Burdens on; effect of requirement by State of license for carrying on.*

A state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it. (*Crutcher* v. *Kentucky*, 141 U. S. 47.) *Ib.*

5. *Burdens on; effect of requirement by State of license for carrying on.*

An ordinance requiring an express company to take out local licenses for transacting interstate business is an unconstitutional burden on interstate commerce. *Ib.*

6. *Burdens on express business; effect of action by Congress.*
Congress has exercised its authority over interstate express business and so removed that business from any action of the State directly burdening it. *Ib.*

7. *Burdens on; validity of municipal traffic regulations.*
While regulations to insure careful driving over city streets may be proper, they should, when interstate traffic is involved, be entirely reasonable; and a requirement that only citizens of the United States, or those who have declared their intention to become such, can be licensed is unnecessarily burdensome in a city such as New York. *Ib.*

8. *Burdens on; validity of municipal traffic regulations.*
The ordinances of the City of New York requiring expressmen to be licensed and providing that only citizens of the United States or those who have declared their intention to become such can be licensed, as applied to interstate commerce, impose a direct burden thereon and, as so applied, are unconstitutional under the commerce clause of the Constitution of the United States. *Ib.*

9. *Burdens on; remedy of one affected by unconstitutional ordinance.*
Where a municipal ordinance is unconstitutional as applied to interstate commerce, the person or corporation whose business is impeded by the enforcement of such ordinance is entitled to an injunction restraining the municipal authorities from enforcing it in respect to its interstate business. *Ib.*

10. *Burdens on; validity of municipal ordinances affecting express companies.*
Adams Express Co. v. *New York, ante,* p. 14, followed to the effect that certain municipal ordinances of the City of New York are void and unconstitutional as applied to the interstate commerce of express companies. *United States Express Co.* v. *New York,* 35.

11. *State burden on; inspection tax permitted.*
There is an essential difference between policing and inspection; and a State cannot include the expense of the former as part of the expense of the latter in determining the amount which it can raise as an inspection tax which affects interstate commerce. *Foote* v. *Maryland,* 494.

12. *State burden on; inspection tax permitted; determination of amount.*
As inspection necessarily involves expense, it is primarily for the

legislature to determine the amount; and even though the revenue be slightly in excess of the expense the courts should not interfere. *Ib.*

13. *State burden on; inspection fees; presumption as to reasonable action of legislature.*

There is a presumption that the legislature will reduce inspection fees to a proper sum if the amount originally fixed proves to be unreasonably in excess of the amount required. (*Red "C" Oil Co.* v. *North Carolina*, 222 U. S. 393.) *Ib.*

14. *State burden on; inspection fees; when courts must declare void.*

Effect must be given by the courts to the provisions of the Constitution; and where it does appear that the amount of inspection fees are disproportionate to the inspection service rendered or include something beyond inspection, the tax must be declared void as obstructing the freedom of interstate commerce. *Ib.*

15. *State burdens on; inspection fees; invalidity of Maryland Oyster Inspection Tax.*

A state statute imposing an inspection tax, the proceeds of which are to be and actually are used partly for inspection and partly for other purposes such as policing state territory, is necessarily void as imposing a burden on interstate commerce in excess of the expenses absolutely necessary for inspection, and so *held* as to the Maryland Oyster Inspection Tax of 1910. *Ib.*

16. *State burdens on; validity of state inspection tax; consideration of legislative intent in determining.*

While the excess of a state inspection tax may be valid as a tax on property within the State, if it does not appear that the legislature would have separately imposed such a property tax, the whole tax must be declared void if it is unconstitutional as to interstate commerce. *Ib.*

17. *State burdens on; effect of Michigan Local Option Act of 1889.*

Nothing in the record in this case indicates that the Michigan Local Option Act of 1889 in any way interferes with or is a burden upon interstate commerce. *Eberle* v. *Michigan*, 700.

18. *Rates; reasonableness; power of Commission to determine and require conformity by carrier.*

Filing a tariff withdrawing a privilege to shippers affects a practice and a rule within the meaning of the Act to Regulate Commerce, and

the Commission has power under § 15, as amended by the Hepburn Act, to determine after a hearing whether the new rate is unreasonable and if so what is just, and require the carrier to conform to the rates and practice prescribed by it. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 199.

19. *Rates; carload; reasonableness of rates fixed by Commission.*
An order of the Commission fixing carload rates apparently excluding any compensation for hauling the ice necessary for refrigerating, is not confiscatory when it appears that the rate for the fruit itself practically includes the rate for the ice. *Ib.*

20. *Rates; reasonableness; power of Commission to determine.*
What are proper rates for transportation and fair charges for facilities furnished and services rendered, and differences between carload and less than carload lots, are all rate-making matters committed to the Commission and within its discretion. *Ib.*

21. *Rates fixed by Commission; power of courts to interfere.*
The courts have no power to fix rates or establish practices and cannot interfere with those fixed and established by the Commission except in cases where the orders are void. (*Interstate Commerce Commission* v. *Un. Pac. R. R. Co.*, 222 U. S. 547.) *Ib.*

22. *Rates; valuation as basis for.*
Where the filed tariff states alternative lower and higher rates based on valuation the carrier is entitled to collect the rate applicable to the value declared and the shipper is liable for that valuation. *Great Northern Ry. Co.* v. *O'Connor*, 508.

23. *Rates; valuation as basis for.*
This result is not affected by the use of printed forms. The minds of the parties met and the value as well as the rate was fixed by the contract. *Ib.*

24. *Tariff of carrier; reasonableness; remedy of shipper attacking.*
A shipper has a remedy in direct proceedings before the Interstate Commerce Commission to attack the reasonableness of the tariff and if justified may obtain relief by a reparation order or suit in court after a finding of unreasonableness; but in a suit for damages before such a finding he cannot attack the filed tariff as unreasonable. *Ib.*

25. *Hepburn Act; liability of carrier for loss of shipment; effect to supersede state laws.*
The Hepburn Act of 1906, amending the Interstate Commerce Act,

established a uniform rule of liability of carriers for loss on interstate shipments which superseded all state laws upon the subject. *Chicago, R. I. & P. Ry. Co.* v. *Cramer*, 490.

26. *Liability of carrier for shipment; when declared value the measure of recovery.*

In enforcing liability of the carrier for interstate shipments the provisions in the regularly filed tariff enter into and form part of the contract of shipment, and if that tariff offers two rates based on value and the shipper declares the lower value so as to avail of the lower rate, the carrier may avail of the lower value so declared. (*Kansas Southern Ry.* v. *Carl*, 227 U. S. 639.) *Ib.*

27. *Liability of carrier; limitation to declared value of shipment; effect of state statute.*

In this case the liability of the interstate carrier on an interstate shipment from Iowa was limited to the declared value notwithstanding § 2074, Iowa Code, prohibited such a defense. *Ib.*

28. *Facilities carrier entitled to furnish.*

Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 199.

29. *Facilities carrier entitled to furnish.*

A carrier cannot be compelled to keep facilities for the benefit of shippers and the shippers allowed to furnish these facilities themselves. *Ib.*

30. *Facilities of transportation; waste and expense considered in interest of public.*

Neither the carrier nor the shipper can insist upon wasteful or expensive service in transportation for which the consumer must ultimately pay. In this regard the court will consider the interests of the public. *Ib.*

31. *Preparation of shipment; right of carrier.*

Loading the car, by whomsoever done, must be such as to prepare the freight for shipment, and a consignor may, in the absence of a regularly filed tariff covering this work, not only put perishable freight, such as fruit in a car placed at his warehouse, but may do all other acts, including icing, necessary to fit the fruit for shipment and filling bunkers in the car with ice for its preservation. *Ib.*

32. *Refrigeration of fruit shipments.*
The carrier cannot compel a shipper of fruit to have it refrigerated. *Ib.*

33. *Refrigeration; right of carrier as to; when shipper entitled to ice.*
When ice is actually needed and used in transportation of fruit, it depends upon the circumstances of each case whether the icing is a part of preparation which can be done by the shipper or part of refrigeration which the carrier has the exclusive right to furnish. *Ib.*

34. *Refrigeration; right and duty of carrier as to.*
Under § 15 of the Act to Regulate Commerce, as amended by the Hepburn Act, the carrier has not only the duty but the right to furnish all ice needed in refrigeration. *Ib.*

See CONSTITUTIONAL LAW, 36, 59; STATUTES, A 5, 6; EMPLOYERS' LIABILITY ACT; WHITE SLAVE TRAFFIC ACT; PURE FOOD AND DRUGS ACT, 1; WORDS AND PHRASES.

INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE, 18–21.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 37, 44, 45; INDIANS, 9–15.

ITALY.

See TREATIES, 6–8.

JOINDER OF PARTIES.

See LOCAL LAW (N. Mex.); REMOVAL OF CAUSES, 5, 6, 7.

JUDGMENTS AND DECREES.

1. *Finality of decree dismissing bill in equity.*
While there may be a presumption that a dismissal in equity without qualifying words is a final decision on the merits, that presumption of finality disappears when the record shows that the court did not pass upon the merits but dismissed the bill on any ground not going to the merits. *Swift* v. *McPherson*, 51.

2. *Scope of decree dismissing bill in equity.*
The scope of a decree dismissing a bill in equity must in all cases be measured not only by the allegations of the bill but by the ground

of demurrer or motion on which the dismissal is based. (*Vicksburg* v. *Henson*, 231 U. S. 259.) *Ib.*

3. *Judgment in suit to quiet title; sufficiency to bind parties not joined by name or served with process.*

A judgment in a suit to quiet title to real property in New Mexico is not binding on a person or corporation or trustees having an interest in the premises who could be definitely located and served with process and who were not joined by name. The court did not acquire jurisdiction over them. *Priest* v. *Las Vegas*, 604.

4. *Interlocutory judgments; importance of.*

Interlocutory judgments frequently become of no importance by reason of the final result or of intervening matters. *United States* v. *Beatty*, 463.

See CONSTITUTIONAL LAW, 39, 40, 41, 65; EVIDENCE, 7; PATENTS, 3, 4; PRACTICE AND PROCEDURE, 8, 14, 25; RES JUDICATA.

JUDICIAL CODE.

See JURISDICTION, A 3–7, 10, 15, 17; PRACTICE AND PROCEDURE, 4, 16; REMOVAL OF CAUSES, 2, 4, 8.

JUDICIAL NOTICE.

See INDIANS, 16.

JUDICIAL POWER.

See CONSTITUTIONAL LAW, 42, 43.

JURISDICTION.

A. OF THIS COURT.

1. *On direct writ of error; scope of.*

The jurisdiction of this court on direct writ of error is not confined to the constitutional questions, but embraces every issue in the case. (*Williamson* v. *United States*, 207 U. S. 425.) *Billings* v. *United States*, 261.

2. *Under § 6 of act of 1891.*

Although a case taken to the Circuit Court of Appeals under § 7 of the act of 1891 is not one of the class made final by § 6 of that act, the jurisdiction of this court under § 6 relates solely to final orders of

the District Court reviewed by the Circuit Court of Appeals. *Mitchell Store Building Co.* v. *Carroll*, 379.

3. *Under § 237, Judicial Code; scope of review.*

On writ of error under § 237, Judicial Code, this court cannot inquire into motives or arguments which influenced electors to vote for or against a measure, or reverse the action of the state court on the ground that the electors voted under misapprehension. *Eberle* v. *Michigan*, 700.

4. *Under § 237, Judicial Code; when case not one under Employers' Liability Act.*

Whether the injured person was or was not an employé of the railway company causing the injury, is a question of fact, and if there is a finding supported by the record that he was not, this court cannot review the judgment of the state court under § 237, Judicial Code, as being invalid because the case was not tried under the Employers' Liability Act. *St. Louis & Iron Mtn. Ry.* v. *McWhirter*, 229 U. S. 265; *St. Louis & San Francisco Ry.* v. *Seale*, 229 U. S. 156, distinguished. *Missouri, K. & T. Ry. Co.* v. *West*, 682.

5. *Under § 237, Judicial Code; when refusal of state court to apply Federal statute not denial of Federal right.*

The decision of the state court, based on substantial ground, being that the injured person was the employé of the express company and not the railway company, although performing certain duties for the latter, there is no denial of a Federal right in the refusal of the state court to apply the Federal Employers' Liability Act, and this court must dismiss the writ of error and it is not necessary to notice other errors assigned. *Ib.*

6. *Under § 237, Judicial Code; what constitutes denial by state court of Federal right.*

Where one specially asserts in the state court a right predicated on the statutes of the United States to enter upon, and remain in possession of, public land, and that right is denied, this court has jurisdiction to review the judgment of the state court under § 237, Judicial Code. *Gauthier* v. *Morrison*, 452.

7. *Under § 237, Judicial Code; involution of denial of Federal right.*

Whether the question of employment by the deceased employé in interstate commerce was properly raised in the state court as a bar to the action in accordance with the local code, is a question of state practice, and if the highest court of the State assumed or decided

that the record presented that question and decided it against the party asserting it, this court has jurisdiction to review the judgment under § 237, Judicial Code. *North Carolina R. R. Co.* v. *Zachary*, 248.

8. *To review judgment of Circuit Court of Appeals; finality of judgment.*
A judgment of the Circuit Court of Appeals, reversing a judgment of the District Court which confirmed an award of commissioners in condemnation proceedings by the United States and vacating that award and requiring the compensation to be ascertained through a trial by jury, is not a final judgment but essentially interlocutory and not reviewable by this court. *United States* v. *Beatty*, 463.

9. *Same.*
A writ of error to review such a judgment of the Circuit Court of Appeals is premature and must be dismissed; if the judgment is erroneous and ultimately operates prejudicially to the Government, it may have the error corrected by writ of error from this court after the case has proceeded to final judgment in the Circuit Court of Appeals. *Ib.*

10. *To review judgment of Circuit Court of Appeals; modes of review provided by §§ 240, 241, Judicial Code, not co-existent.*
If a case can be brought to this court by appeal or writ of error under § 241, Judicial Code, it cannot be brought here by certiorari under § 240, Judicial Code; the two methods of review are not co-existent. *Ib.*

11. *To review judgment of Circuit Court of Appeals; case within jurisdiction of Circuit Court of Appeals.*
A decision by the Circuit Court of Appeals that the provision in the Seventh Amendment preserving the right of trial by jury applies to a proceeding to condemn land and remanding the case to the District Court for further proceedings in accord with that decision, is an exercise of undoubted jurisdiction whether right or wrong, and if wrong and ultimately operating to the prejudice of the Government it can be reviewed and corrected by this court on writ of error from the final judgment, but not from the interlocutory judgment. *Ib.*

12. *Of appeal from judgment of Circuit Court of Appeals upon petition to revise under § 24b of Bankruptcy Act.*
This court cannot entertain an appeal from a judgment of the Circuit Court of Appeals upon a petition to revise under § 24b of the Bankruptcy Act. *Mitchell Store Building Co.* v. *Carroll*, 379.

13. *Of appeal from Circuit Court of Appeals; finality of order granting temporary injunction.*

An interlocutory decree of the District Court granting a temporary injunction against prosecuting a suit in the state court, is not a final order, and from the judgment of the Circuit Court of Appeals affirming it there is no appeal to this court. *Ib.*

14. *To instruct Circuit Court of Appeals.*

The Circuit Court of Appeals has no power to ask instructions upon an issue which it has no right to decide, nor has this court authority to instruct on such a subject. *Billings* v. *United States*, 261.

15. *On certiorari; power conferred by § 262, Judicial Code.*

The power given to this court by § 262, Judicial Code (§ 719, Rev. Stat.), contemplates the employment of the writ of certiorari in instances not covered by § 240. Judicial Code. *United States* v. *Beatty*, 463.

16. *Frivolous questions not reviewed even though jurisdiction exists on face of record.*

Although, on the face of the record, this court may have jurisdiction to review a judgment, the right of review does not obtain where the formal questions presented by the record are absolutely frivolous and devoid of all merit. (*Consolidated Turnpike Co.* v. *Norfolk &c. Ry. Co.*, 228 U. S. 596.) *United States ex rel. Brown* v. *Lane*, 598.

17. *Frivolous questions; application of rule to cases coming from Court of Appeals, D. C.*

The foregoing rule heretofore generally announced in regard to cases coming from state courts, applies to cases coming from the Court of Appeals of the District of Columbia under the third and fifth paragraphs of § 250, Judicial Code. *Ib.*

See PRACTICE AND PROCEDURE, 27;
STATES, 13.

B. OF CIRCUIT COURTS OF APPEALS.

See JURISDICTION, A 2.

C. OF DISTRICT COURTS.

1. *Offenses cognizable by.*

With exceptions immaterial here, the jurisdiction of the District Court of the United States, as prescribed by law, embraces all offenses against the United States committed within the district. *Pronovost* v. *United States*, 487.

2. *Of case arising under Employers' Liability Act.*

The District Court of the United States for New Mexico has jurisdiction of a case arising under the Employers' Liability Act of 1906. *Santa Fe Cent. Ry. Co.* v. *Friday*, 694.

See PORTO RICO, 2.

D. OF COURT OF CLAIMS.

1. *Claims cognizable by.*

The Court of Claims has no general jurisdiction over claims against the United States and can take cognizance only of those which are committed to it by some act of Congress. (*Johnson* v. *United States*, 160 U. S. 546.) *Thurston* v. *United States*, 469.

2. *Claims cognizable by; claim under Indian Depredation Act of 1891.*

A claim embraced by § 1 of the Indian Depredation Act of March 3, 1891, but which accrued prior to July 1, 1865, is not within the jurisdiction of the Court of Claims if it falls within the restriction clause of § 2 because not allowed or pending prior to the passage of the act. *Ib.*

3. *Claims cognizable by; what constitutes claim within meaning of Indian Depredation Act of 1891.*

An appeal to the bounty or generosity of Congress for damages sustained from depredations by other than Indians cannot be considered as a claim for reparation for depredations of Indian wards of the Government within the meaning of the act of 1891. *Ib.*

4. *Claims under Indian Depredation Act of 1891 not within.*

Jurisdiction of a claim which accrued in 1857, was never allowed and was not pending as a claim for depredations by Indians, was expressly withheld by the act of 1891, and the fact that the same claim was presented to Congress as a claim for depredations by Mormons does not bring it within the jurisdiction. *Ib.*

E. OF FEDERAL COURTS GENERALLY.

1. *Right of resort to, by carrier, for relief from unconstitutional order of state railroad commission, where statute permits appeal to Supreme Court of State.*

Although the state statute may permit an appeal from an order of the state railroad commission to the Supreme Court of the State, if legislative powers have not been conferred upon that court, a railroad corporation is not obliged to take such an appeal in order to obtain relief from an order that violates the Federal Constitution.

It may assert its rights at once in the Federal courts. *Bacon* v. *Rutland R. R. Co.*, 134.

2. *Same.*

Prentis v. *Atlantic Coast Line*, 211 U. S. 210, distinguished, as the Supreme Court of Virginia possesses legislative powers enabling it not only to review the state railroad commission but to substitute such order as in its opinion the commission should have made. *Ib.*

3. *Equity jurisdiction; when properly invoked.*

Where the statute specifically makes the tax a lien upon real estate and the bill alleges that enforcement of penalties would work irreparable injury, equity jurisdiction is properly invoked. *Ohio Tax Cases*, 576.

4. *Scope of determination not confined to Federal questions.*

Where the Federal jurisdiction does not depend upon diversity of citizenship but on Federal questions presented by the record, it extends to the determination of all questions presented irrespective of the disposition made of the Federal questions. *Ib.*

See DOMICIL, 3;
INDIANS, 1;
REMOVAL OF CAUSES, 8.

F. OF STATE COURTS.

See FEDERAL QUESTION, 1;
PUBLIC LANDS, 5.

G. EQUITY.

See EQUITY;
JURISDICTION, E 3.

H. GENERALLY.

See CONSTITUTIONAL LAW, 40;
JUDGMENTS AND DECREES, 3;
PORTO RICO, 1;
REMOVAL OF CAUSES, 2;
UNITED STATES, 3.

JURY TRIAL.

See CONSTITUTIONAL LAW, 65.

LABOR.

See ALIEN CONTRACT LABOR LAW;
CONSTITUTIONAL LAW, 21–23, 38;
STATES, 4, 5.

LACHES.

See CONSTITUTIONAL LAW, 33.

LAND DEPARTMENT.

See PUBLIC LANDS, 1, 15.

LAND GRANTS.

1. *Mexican and Spanish grants; effect of act of June 21, 1860, on adverse rights.*

The act of June 21, 1860, expressly reserved the adverse rights of parties to the Mexican and Spanish grants confirmed thereby and provided that the confirmations should only be considered as quitclaims and relinquishments on the part of the United States. *Jones* v. *St. Louis Land & Cattle Co.*, 355.

2. *Mexican and Spanish grants; effect of act of 1860 to confirm overlapping rights.*

The act of June 21, 1860, confirming Mexican and Spanish grants, was intended to be a discharge of the obligations of our treaty with Mexico and a confirmation of existing rights as they existed; it was not a gratuity like the railroad land grant acts, nor are overlapping rights in grants confirmed thereby to be shared equally as overlapping railroad grants are shared. *Southern Pacific R. R. Co.* v. *United States*, 183 U. S. 519, distinguished. *Ib.*

3. *Mexican and Spanish grants; effect of act of 1860 on rights where two grants overlapped.*

Where two grants confirmed by the act of June 21, 1860, overlapped, the rights of the owner of each as against the other were reserved by the act, and the judicial inquiry extends to the character of the original concessions, and the court must determine which gave the better right to the disputed premises. *Ib.*

4. *Mexican and Spanish grants; priority of grants confirmed by act of 1860.*

In this case *held*, that of two overlapping Mexican grants both confirmed by the act of June 21, 1860, the earlier grant was in all of its steps prior to the other grant and included all of the overlap. *Ib.*

5. *Mexican grant; necessity for survey to segregate.*

A survey was necessary to the accurate segregation and delimitation of a Mexican grant confirmed by the act of 1860. (*Stoneroad* v. *Stoneroad*, 158 U. S. 240.) *Ib.*

6. *Rights of town and its inhabitants; relation as entities.*

A town in New Mexico and its inhabitants are substantial entities in fact, and in this case have been recognized by Congress as having rights to be authenticated by a patent. When a town is a patentee it represents not only individual, but collective, interests. (*Maese* v. *Herman*, 183 U. S. 572.) *Priest* v. *Las Vegas*, 604.

7. *Rights of town and its inhabitants; privity of inhabitants and of town and some inhabitants.*

Proceedings against some of the inhabitants of a town *held* in this case not to bind the other inhabitants individually, or collectively as a town, on the ground of privity. *Ib.*

See CONSTITUTIONAL LAW, 33.

LANDLORD AND TENANT.

See BANKRUPTCY, 6;
TRESPASS.

LAW GOVERNING.

See EMPLOYERS' LIABILITY ACT, 13; INTERSTATE COMMERCE, 25;
INDIANS, 1, 12; REMOVAL OF CAUSES, 8;
TREATIES, 2, 4.

LEGISLATIVE POWERS.

See CONSTITUTIONAL LAW, 13;
CONGRESS, POWERS OF.

LESSOR AND LESSEE.

See EMPLOYERS' LIABILITY ACT, 7;
TRESPASS.

LEX LOCI.

See LOCAL LAW.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 21.

LICENSES.

See INTERSTATE COMMERCE, 4, 5, 7, 8;
PRACTICE AND PROCEDURE, 19;
TAXES AND TAXATION, 9.

LIENS.

1. *Creation of lien by obligation to pay out of fund.*

An obligation to pay, but definitely limited to payment out of the fund, creates a lien. There should be but one rule in this respect and that is the one suggested by plain good sense. *Barnes* v. *Alexander*, 117.

2. *Creation of lien by obligation to pay out of fund.*

In this case *held* that parties promised for a consideration a definite portion of a contingent fee if earned had a lien thereon when received by the promisor that they could follow and enforce. *Ib.*

3. *Following fund on which lien exists.*

Where parties have a lien on a fund they can follow it, as soon as identified, into the hands of others than the person originally receiving it. On this point this court follows the territorial court. *Ib.*

4. *Priority.*

The evidence tending to show that the agreement was a compromise between a mortgagee and a lienor in view of doubts that had arisen as to which had priority, this court agrees with the lower courts that there was no guaranty as to the exact status of the lien either as to amount or priority. *Bank of Arizona* v. *Haverty*, 106.

See JURISDICTION, E 3.

LIMITATIONS.

See LOCAL LAW (Porto Rico).
PUBLIC LANDS, 11;
TITLE.

LIQUORS.

See INDIANS, 9–15.

LOCAL LAW.

California. Corporations; liability of stockholders for debts of. Under the laws of California a stockholder is liable for his proportion of the debts of the corporation as a principal and not as a surety; nor in this case was he relieved of liability on notes held by a bank which had deposits to the credit of the corporation and did not apply the same to payment of the notes. *Thomas* v. *Matthiessen*, 221.

Corporations; Civ. Code, § 322 (see Corporations). *Ib.*

District of Columbia. Transfer of action from equity to law side of court. An action in the Supreme Court of the District of Columbia com-

menced on the equity side of the court cannot be transferred to the law side of that court under Equity Rule 22. That rule has no application. *Curriden* v. *Middleton*, 633.

Illinois. Inheritance Tax Law of 1909 (see Constitutional Law, 30). *National Safe Deposit Co.* v. *Illinois*, 58.

Iowa. Liability of common carriers; Code, § 2074 (see Interstate Commerce, 27). *Chicago, R. I. & P. Ry. Co.* v. *Cramer*, 490.

Louisiana. Sales of drugs, etc.; Laws of 1894 (see Constitutional Law, 15). *Baccus* v. *Louisiana*, 334.

Maryland. Oyster Inspection Tax of 1910 (see Interstate Commerce, 15). *Foote* v. *Maryland*, 494.

Massachusetts. Labor Act of 1909, § 48 (see Constitutional Law, 22, 23). *Riley* v. *Massachusetts*, 671.

Michigan. Local Option Act of 1889 (see Constitutional Law, 37, 45; Interstate Commerce, 17). *Eberle* v. *Michigan*, 700.

Minnesota. Railroad crossings (see Railroads, 3). *Chicago, M. & St. P. Ry. Co.* v. *Minneapolis*, 430.
Taxation of banks (see Constitutional Law, 34). *Farmers Bank* v. *Minnesota*, 516.

Mississippi. Appearance; Code of 1906, § 3946 (see Removal of Causes, 13). *Cain* v. *Commercial Publishing Co.*, 124.

New Mexico. Joinder of unknown claimants and service by publication; application of statutes. The statutes of New Mexico which, in 1894, permitted unknown claimants to be joined as defendants as such and to be served by publication, did not relate to parties who could be definitely located and joined or who were confirmees of the grant including the property under the act of June 21, 1860. *Priest* v. *Las Vegas*, 604.
Title to Spanish &c. grants by adverse possession (see Constitutional Law, 32, 33). *Montoya* v. *Gonzales*, 375.

Ohio. Railroad taxation act of 1911 (see Constitutional Law, 36). *Ohio Tax Cases*, 576.

Oklahoma. Foreign corporations (see Constitutional Law, 59). *Harrison* v. *St. Louis & San Francisco Ry. Co.*, 318.

Pennsylvania. Coal mining laws (see Constitutional Law, 29). *Plymouth Coal Co.* v. *Pennsylvania*, 531.
Distillers' certificates (see Pledge, 2). *Taney* v. *Penn National Bank*, 174.
Game law of May 8, 1909 (see Constitutional Law, 20). *Patsone* v. *Pennsylvania*, 138.

Porto Rico. Right of natural child to sue for share of parent's inheritance. While under the laws of Toro parol acts, although not amounting to a solemn recognition, may have entitled a natural child to sue in Porto Rico for a share of the parent's inheritance and prove the acts in the same suit, the existing Code requires a preliminary proceeding to prove those acts and to declare their effect, and limits the time within which such proceeding can be brought. (*Cordova* v. *Folgueras*, 227 U. S. 375.) *Calaf* v. *Calaf*, 371.

South Dakota. Claims against railroads (see Constitutional Law, 19). *Chicago, M. & St. P. Ry. Co.* v. *Kennedy*, 626 (see Constitutional Law, 31). *Chicago, M. & St. P. Ry. Co.* v. *Polt*, 165.

Vermont. Courts; legislative powers of; nature of remedy conferred by §§ 4599, 4600, Pub. Stat. 1909. The constitution of Vermont does not confer legislative powers on the courts of that State, and the appeal given by §§ 4599 and 4600, Pub. Stat. of 1909, from orders of the state railroad commission to the Supreme Court is a purely judicial remedy. *Bacon* v. *Rutland R. R. Co.*, 134.

Generally.—*See* BANKRUPTCY, 5;
FEDERAL QUESTION, 1, 2;
JURISDICTION, A 7;
PRACTICE AND PROCEDURE, 6, 8, 9, 10;
STATES, 11, 12, 13.

LOCAL OPTION.

See INTERSTATE COMMERCE, 17;
STATUTES, A 1.

MAILS.

See CRIMINAL LAW, 3.

MAJORITY RULE.

See STATUTES, A 15.

MARRIED WOMEN.
See DOMICIL, 4.

MARYLAND OYSTER INSPECTION TAX.
See INTERSTATE COMMERCE, 15.

MASTER AND SERVANT.

1. *Assumption of risk; when servant not charged with.*

One employed for only a few days, and whose duties did not include inspection of the equipment or care respecting its condition, *held*, not chargeable as matter of law with assumption of risk on the ground of presumed knowledge of a defect in the condition of the equipment, there being no direct evidence that he knew of it. *Gila Valley, G. & N. Ry. Co.* v. *Hall*, 94.

2. *Assumption of risk; obviousness of risk.*

Where the fact is in dispute as to whether a defect in a machine is such as to render its use dangerous, it cannot be properly held as matter of law that the risk is obvious even to one who knew of the defect. *Ib.*

3. *Assumption of risk; risks assumed; duty of master as to safety of appliances.*

An employé assumes the risk of dangers normally incident to the occupation in which he voluntarily engages, so far as they are not attributable to the employer's negligence; but the employé has a right to assume that his employer has exercised proper care with respect to providing safe appliances for the work, and is not to be treated as assuming the risk arising from a defect that is attributable to the employer's negligence, until the employé becomes aware of such defect, or unless it is so plainly observable that he may be presumed to have known of it. *Ib.*

4. *Assumption of risk; risks assumed; negligence of master.*

In order to charge an employé with the assumption of a risk attributable to a defect due to the employer's negligence it must appear not only that he knew (or is presumed to have known) of the defect, but that he knew it endangered his safety; or else such danger must have been so obvious that an ordinarily prudent person under the circumstances would have appreciated it. *Ib.*

See CONSTITUTIONAL LAW, 21–23;
EMPLOYERS' LIABILITY ACT.

MEASURE OF DAMAGES.

See DAMAGES;
EMPLOYERS' LIABILITY ACT, 6.

MEXICAN AND SPANISH GRANTS.

See LAND GRANTS.

MINES AND MINING.

See STATES, 8, 9.

MORTGAGES AND DEEDS OF TRUST.

1. *Mortgagee's interest in addition to premises, the removal of which would not affect its integrity.*

Where the addition to the premises covered by the mortgage is not in its nature an essential indispensable part of the completed structure contemplated by that instrument, and its removal would not affect the integrity of that structure, the mortgagee takes just such interest in the addition as the mortgagor acquired, no more no less. *Holt* v. *Henley*, 637.

2. *Same.*

A sprinkler plant placed on mortgaged premises after the execution of that instrument and under an unrecorded conditional sale agreement *held* not to have attached to the freehold or to be covered by the after acquired property clause beyond the extent which the mortgagor had acquired. *Ib.*

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 25;
TAXES AND TAXATION, 4, 27, 28, 29;
TERRITORIES.

MUNICIPAL ORDINANCES.

See INTERSTATE COMMERCE, 7, 8, 9, 10;
PRACTICE AND PROCEDURE, 7, 20;
STATES, 11, 12.

NATURAL CHILDREN.

See LOCAL LAW (Porto Rico).

NEGLIGENCE.

1. *Contributory; effect of placing inflammable material near railroad right of way.*

In an action at law by the owner of a natural product of the soil, such

as flax straw, which he lawfully stored on his own premises and which was destroyed by fire caused by the negligent operation of a locomotive engine, to recover the value thereof from the railroad company operating the engine, it is not a question for the jury whether the owner was also negligent without other evidence than that the railroad company preceded the owner in the establishment of its business, that the property was inflammable in character and that it was stored near the railroad right of way and track. *LeRoy Fibre Co.* v. *Chicago, M. & St. P. Ry.*, 340.

2. *Contributory; when question not one for jury.*

It is not a question for the jury whether an owner who lawfully stores his property on his own premises adjacent to a railroad right of way and track is held to the exercise of reasonable care to protect it from fire set by the negligence of the railroad company and not resulting from unavoidable accident or the reasonably careful conduct of its business. *Ib.*

3. *Contributory; care required of owner of property adjacent to railroad to protect it from dangers incident to railroad operation.*

As respects liability for the destruction by fire of property lawfully held on private premises adjacent to a railroad right of way and track, the owner discharges his full legal duty for its protection if he exercises that care which a reasonably prudent man would exercise under like circumstances to protect it from the dangers incident to the operation of the railroad conducted with reasonable care. *Ib.*

See MASTER AND SERVANT.

NEW TRIAL.

See CONSTITUTIONAL LAW, 65.

NON OBSTANTE VEREDICTO.

See CONSTITUTIONAL LAW, 65.

NOTICE.

See ALIEN CONTRACT LABOR LAW, 3; EVIDENCE, 6; CONSTITUTIONAL LAW, 18, 38; INDIANS, 20; MASTER AND SERVANT, 1.

NUISANCE.

See INDEPENDENT CONTRACTOR, 2.

OBITER DICTA.

See PRACTICE AND PROCEDURE, 26.

OBJECTIONS.

See CRIMINAL LAW, 1;
PRACTICE AND PROCEDURE, 18, 28.

OCCUPATIONS.

See CONSTITUTIONAL LAW, 15;
STATES, 6.

OPINIONS.

See REPORTS.

ORDINANCES.

See CONSTITUTIONAL LAW, 25, 26;
INTERSTATE COMMERCE, 7–10;
PRACTICE AND PROCEDURE, 7;
STATES, 11, 12.

PARTIES.

See EMPLOYERS' LIABILITY ACT, 3, 6, 12;
JUDGMENTS AND DECREES, 3;
LOCAL LAW (N. Mex.);
PORTO RICO, 1, 2, 3;
PRACTICE AND PROCEDURE, 30, 31;
REMOVAL OF CAUSES, 5, 6, 7.

PARTITION.

See PRACTICE AND PROCEDURE, 10.

PATENT FOR LAND.

See LAND GRANTS, 6;
PUBLIC LANDS, 6, 7.

PATENTS.

1. *Patentability; ground for decision as to Grant tire patent.*

In *Diamond Rubber Co.* v. *Consolidated Rubber Tire Co.*, 220 U. S. 428, the Grant tire patent was sustained as a patentable combination, not as a mere aggregation of elements but as a new combination of parts co-acting so as to produce a new and useful result; nor did the patentability depend on the novelty of any of the elements entering into it. *Rubber Tire Co.* v. *Goodyear Co.*, 413.

2. *Infringement; immunity from prosecution for; effect of combination of elements.*

Where the combination is protected by such a patent, one manufacturing it by assembling the various elements and effecting the combi-

nation is not entitled to immunity from prosecution for infringing because he purchases one element from a party who is immune under a provision in a decree permitting it to sell the patented article itself. *Kessler* v. *Eldred*, 206 U. S. 285, distinguished. *Ib.*

3. *Infringement; immunity from prosecution for; transferability.*
In this case *held*, that the immunity given by a provision in a decree to a specified party manufacturing and selling an article as a patentable combination producing new results, is not transferable, and such party, although immune himself, cannot enjoin the prosecution of suits against another as an infringer because the latter purchases from him one of the elements used in manufacturing the article. *Ib.*

4. *Infringement; immunity from suit; transferability.*
Where the manufacturer of one element of a combination is immune under a decree of the Federal court, his customers of that element who use it in connection with the other elements to make the completed article covered by the patent, are not also immune from suit. *Woodward Co.* v. *Hurd*, 428.

5. *Infringement; purchase of elements in combination.*
Where the separate elements of the combination are all old, and it is only the article resulting from the combination that is protected by the patent, there is no actual infringement by one purchasing the different elements unless and until the article itself is made; but if such purchaser does make that article with the separate elements he cannot escape liability on the ground that he purchased such elements from others. *Seim* v. *Hurd*, 420.

PEDDLERS.

See CONSTITUTIONAL LAW, 15.

PENALTIES AND FORFEITURES.

See ALIEN CONTRACT LABOR LAW, 1, 2, 3;
TAXES AND TAXATION, 10.

PERISHABLE FREIGHT.

See INTERSTATE COMMERCE, 31, 32, 33.

PLEADING.

See ALIEN CONTRACT LABOR LAW, 3;
APPEAL AND ERROR, 1;
REMOVAL OF CAUSES, 3, 4, 5, 6, 7, 8.

PLEDGE.

1. *Of distillery warehouse receipts; not contrary to public policy.*

This court will not condemn honest transactions growing out of the recognized necessities of a lawful business; and so *held*, that the established practice of the distillery business to issue warehouse receipts for whiskey deposited in the distillery warehouse and pledge such receipts as security for loans is not one opposed to public policy. *Taney* v. *Penn National Bank*, 174.

2. *Of distillery warehouse receipts; effect as delivery of property represented.*

In Pennsylvania, certificates issued by the owner of a distillery on whiskey in the distillery warehouse represent the property, and the delivery thereof as security for a loan made in good faith and in accordance with the usages of the trade amounts to actual delivery of the property itself. *Ib.*

See INTERNAL REVENUE, 2.

POLICE POWER.

See CONSTITUTIONAL LAW, 14, 25, 45; INTERSTATE COMMERCE, 3; STATES, 3, 8, 9, 10; WHITE SLAVE TRAFFIC ACT, 4.

POLICE REGULATION.

See CONSTITUTIONAL LAW, 13, 24.

PORTO RICO.

1. *Immunity from suit; what amounts to consent.*

While Porto Rico may not in ordinary actions be sued without its consent, a voluntary appearance after due consideration and request to be made a party by the Attorney General on the ground of interest in the controversy, amounts to a consent, and thereafter Porto Rico cannot object to the jurisdiction on account of its immunity as a sovereign. *Porto Rico* v. *Rosaly*, 227 U. S. 270, distinguished. *Porto Rico* v. *Ramos*, 627.

2. *Same.*

Where the District Court of the United States for Porto Rico had jurisdiction of an action involving title to real estate brought by a citizen of Porto Rico against a foreign subject, the jurisdiction is not ousted because Porto Rico becomes, on the application of the Attorney General, the sole party defendant. *Ib.*

3. *Immunity from suit; quære as to.*
Quære, whether Porto Rico cannot be made a party defendant without its consent to an action involving title to real estate claimed to be an escheat. *Ib.*

See LOCAL LAW.

POSSESSION.

See WORDS AND PHRASES.

POST OFFICE.

See CRIMINAL LAW, 3.

POWERS OF CONGRESS.

See ALIENS, 1, 2;
BANKRUPTCY, 2;
CONSTITUTIONAL LAW, 60, 63;
INDIANS, 2, 3, 8, 10–14, 19;
TAXES AND TAXATION, 3, 16;
TREATIES, 2, 3.

PRACTICE AND PROCEDURE.

1. *Following findings of fact concurred in below.*
Findings of fact concurred in by two lower courts will not be disturbed by this court unless shown to be clearly erroneous. *Texas & Pacific Ry. Co.* v. *Louisiana R. R. Comm.*, 338.

2. *Controlling effect of findings of fact concurred in below.*
The meaning of the arrangement between the parties having been matter for a finding and had the sanction of both courts below and the evidence not being reported, this court will not say that such finding was wrong. *Paine* v. *Copper Belle Mining Co.*, 595.

3. *Following findings of fact made by lower court; exception to rule.*
It is only in exceptional cases, where what purports to be a finding of fact is not strictly such but is so involved with, and dependent upon, questions of law, that this court departs from the rule that it accepts as binding the findings of fact made by the highest court of the State from which the case comes. *Miedreich* v. *Lauenstein*, 236.

4. *Deference to state court's construction of state statute.*
Except in such cases as arise under the contract clause of the Constitution it is for the court of last resort of the State to construe the statutes of that State, and in exercising jurisdiction under § 237, Judicial Code, it is proper for this court to await the construction of the state court rather than to assume in advance that such court

will so construe the statute as to render it obnoxious to the Federal Constitution. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

5. *Following state court's construction of state statute.*

This court will not disregard the construction placed upon a state statute by the highest court of the State especially if it involves giving the statute one meaning for the purpose of determining whether the acts in question are within its terms and another meaning for the purpose of escaping the Federal question. *Baccus* v. *Louisiana*, 334.

6. *Controlling effect of territorial court's construction of jurisdictional statute.*

This court will not decide against the local understanding as expressed by the decisions of the Supreme Court of a Territory in construing a jurisdictional statute affecting a matter of local concern unless those decisions are clearly wrong. (*Phœnix Ry. Co.* v. *Landis*, 231 U. S. 578.) *Santa Fe Cent. Ry. Co.* v. *Friday*, 694.

7. *Construction of municipal ordinances; persuasive effect of local construction.*

The practical construction of municipal ordinances by the local authorities prior to the controversy is persuasive, especially where, as in this case, a different construction would render the ordinances unconstitutional. *Adams Express Co.* v. *New York*, 14.

8. *Following local court on matter of local practice.*

Whether the judgment in a former suit between the same parties was or was not final is a question of local practice upon which this court follows the local court unless strong reasons are produced against it. *Calaf* v. *Calaf*, 371.

9. *Following local court on question of local procedure.*

The disposition of this court is to leave decisions of the territorial court on questions of local procedure undisturbed. *Montoya* v. *Gonzales*, 375.

10. *Same.*

The Supreme Court of the Territory of New Mexico having construed the statute permitting intervention in partition during the pendency of the suit as allowing an intervention after the judgment for partition and report of commissioners that actual partition could not be made, but before the final action of the court on such report, this court approves that construction. (*Clark* v. *Roller*, 199 U. S. 541.) *Ib.*

11. *Reluctance of court to decide as to correctness of conclusion sanctioned by highest court of Territory since become State.*

Although it might be its duty to do so, it would be a strong thing for this court to decide that there was nothing to warrant a conclusion, whether of law or of fact, sanctioned by the highest court of a Territory that has since become a State, upon a matter no longer subject to review here. (*Phœnix Ry.* v. *Landis*, 231 U. S. 578.) *Barnes* v. *Alexander*, 117.

12. *Excessive verdict; remittitur or new trial; deference to determination by trial court.*

The territorial appellate court having held that while in case of an excessive verdict for unliquidated damages tainted with passion or prejudice a new trial should be granted and the verdict not simply reduced, the trial judge is in the better position to judge if the verdict is merely excessive and should be allowed to stand if voluntarily reduced by the plaintiff to a reasonable amount, this court sees no reason for disturbing that decision, there being no constitutional obstacle to the practice. *Gila Valley, G. & N. Ry. Co.* v. *Hall*, 94.

13. *Presumption as to reasonable action of legislative body.*

In determining whether the constitutional rights of a party have been affected by a state statute, the courts will presume, until the contrary is shown, that any administrative body to which power is delegated will act with reasonable regard to property rights. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

14. *Scope of review; ground of judgment below not exclusive.*

In affirming a judgment, an appellate court is not confined to the grounds on which the court below based the judgment. *Priest* v. *Las Vegas*, 604.

15. *Scope of review; examination of opinion of state court, although state practice requires syllabus to be prepared by court.*

The Federal court may examine the opinion of the state court as well as the syllabus to ascertain the scope of the decision, notwithstanding the state rules of practice require the syllabus to be prepared by the judge preparing the opinion and to be confined to the points of law arising from the facts that have been determined. *Ohio Tax Cases*, 576.

16. *Scope of review; determination of existence of contract claimed to be impaired.*

Although the state court may have held that there was a contract, but

that it was subject to constitutional reserved power to alter and repeal, this court, in reviewing that judgment under § 237, Judicial Code, will determine for itself the existence or non-existence of the asserted contract and whether its obligation has been impaired. *Atlantic Coast Line* v. *Goldsboro*, 548.

17. *Scope of review; issue not presented on any assignment of error not considered.*

In a suit based entirely on reasonableness of carload rates the issue of whether it discriminates against shippers of small lots will not be considered when that issue is not presented on any assignment of error in this court. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 199.

18. *Scope of review; objections not considered.*

Where the record does not show that an objection was raised upon the appeal to the territorial Supreme Court it cannot be considered by this court. (*Gila Valley Ry.* v. *Hall*, *ante*, p. 94.) *Bank of Arizona* v. *Haverty*, 106.

19. *Scope of review; questions not considered.*

Where a license tax is declared unconstitutional as to all classes covered by the action it is not necessary for this court to decide whether it has been superseded as to one of the classes by a later statute; *quære* whether the general automobile statute of New York State repealed and superseded the express license fee ordinance of the City of New York. *Adams Express Co.* v. *New York*, 14.

20. *Determining constitutionality of municipal ordinance; considerations in.*

The constitutional validity of ordinances affecting public safety as affected by railroads must be considered not only in view of charter and property rights but also of the consent and acquiescence of the owners of railroads. *Atlantic Coast Line* v. *Goldsboro*, 548.

21. *Certificate; answers according to facts certified; power of lower court in event of mistake of fact.*

This court answers the questions certified, in this case, according to the facts stated in the certificate, and nothing in the replies should be so construed as to deprive the court below of the power to take such steps as it may deem necessary to avoid injustice by reason of any mistake of fact that may be corrected. *United States* v. *Bennett*, 299.

22. *Certificate; when questions not answered.*

Where none of the questions certified are apposite to the facts stated in the certificate, this court is not bound to, and will not, answer them. The certificate will be dismissed. *Seim* v. *Hurd*, 420.

23. *Certificate; disposition where whole case disposed of on direct appeal from Circuit Court.*

Where on direct appeal from the Circuit Court by one party based on constitutional questions the whole case can be disposed of, the questions certified by the Circuit Court of Appeals on an appeal taken by the other party need not be answered, and the judgment of the Circuit Court can be modified to the extent necessary and affirmed. *Rainey* v. *United States*, 310.

24. *Basis of decision.*

A question though novel itself may be solved by the application of principles long established. *Farmers Bank* v. *Minnesota*, 516.

25. *Disapproval of reasons for affirmed judgment.*

This court, while affirming the judgment of the Court of Appeals of the State, may, as it does in this case, express its disapproval of the reasoning on which it was based. *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.

26. *Obiter dicta; effect on subsequent attitude of court.*

Where the remarks in the opinion are not necessary to the decision, which was placed mainly on other grounds, and are contrary to an earlier decision, this court is at least warranted in treating the question as at large. *Barnes* v. *Alexander*, 117.

27. *Retention of jurisdiction where constitutional question decided since writ of error sued out.*

Although the constitutional question on which a case has been brought to this court on direct writ of error has been decided since the writ of error was sued out, this court must retain jurisdiction for the purpose of passing upon the other questions in the record. *Wilson* v. *United States*, 563.

28. *Waiver; when errors taken to be waived.*

Errors alleged to have been committed by the trial court which do not involve anything fundamental or jurisdictional must be regarded as waived if they were not presented to the Supreme Court of the Territory. *Grant Bros.* v. *United States*, 647.

29. *Writ and cross-writ of error; when direct writ to Circuit Court and writ from Circuit Court of Appeals so considered.*

Where one party has taken a writ of error direct from this court to the Circuit Court based on the constitutional question decided against it, and the other party has obtained a writ of error from the Circuit Court of Appeals as to other questions decided against it, which court has certified that question to this court, and the record is in such condition as to enable this court to decide the whole case, this court may treat the writ of error from the Circuit Court of Appeals as a cross-writ and so determine all the issues involved. *Billings* v. *United States*, 261.

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

When a state statute is attacked as denying equal protection of the law by one class of those excepted from its benefits, the question of constitutionality can be confined to the particular class attacking it, and if there is reasonable ground for the classification as to that class, it will be upheld to that extent without inquiring whether it is constitutional as to the other classes affected by it. *Farmers Bank* v. *Minnesota*, 516.

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

One attacking the constitutionality of a state statute must show that he is within the class whose constitutional rights are injuriously affected by the statute. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

See APPEAL AND ERROR, 2, 3; CONSTITUTIONAL LAW, 41, 65; EMPLOYERS' LIABILITY ACT, 2; JURISDICTION, A 3, 5; LIENS, 3; REMOVAL OF CAUSES, 2, 8.

PRESUMPTIONS.

See CRIMINAL LAW, 2; INTERSTATE COMMERCE, 2, 13; JUDGMENTS AND DECREES, 1; PRACTICE AND PROCEDURE, 13; REMOVAL OF CAUSES, 2; STATUTES, A 3; TAXES AND TAXATION, 3, 4.

PRINCIPAL AND AGENT.

Agent's authority to make contract; evidence to establish.

In this case this court thinks there was sufficient evidence as to the authority of the agent to make the agreement to support the verdict against the principal, and that the jury was warranted in finding that an agreement had been reached before certain questions reserved for further consideration had been raised. *Bank of Arizona* v. *Haverty*, 106.

See COMMON CARRIERS, 2; CORPORATIONS, 1, 2; EMPLOYERS' LIABILITY ACT, 7; INDEPENDENT CONTRACTOR, 1.

PRINCIPAL AND SURETY.
See LOCAL LAW (Cal.).

PRIVILEGE TAX.
See TAXES AND TAXATION, 1, 2, 3.

PROCESS.
See CONSTITUTIONAL LAW, 10, 11;
LOCAL LAW (N. Mex.).

PROPERTY RIGHTS.
Servitudes; effect to create, of wrongful use by another of his own property.
One's lawful uses of his own property cannot be subjected to the servitude of the wrongful use by another of the latter's property. *Le-Roy Fibre Co.* v. *Chicago, M. & St. P. Ry. Co.*, 340.
See CONSTITUTIONAL LAW, 14, 18, 21, 24, 26, 28, 29, 31, 32, 36, 44, 45;
STATES, 10;
TREATIES, 5.

PUBLICATION.
See LOCAL LAW (N. Mex.).

PUBLIC HEALTH.
See CONSTITUTIONAL LAW, 24, 25;
PURE FOOD AND DRUGS ACT.

PUBLIC LANDS.
1. *Administration; interference by courts.*
Courts should not interfere with the Land Department in administrative affairs and before patent has issued, but it is not an interference to restrain trespassers upon possessory rights or to restore possession to lawful claimants wrongfully dispossessed. *Gauthier* v. *Morrison*, 452.

2. *Entries; application of act of February 25, 1885.*
The term, "Public lands subject to settlement or entry," does not include lands that have been entered and a certificate of entry obtained therefor, and § 3 of the act of February 25, 1885, c. 149, 23 Stat. 322, does not apply to such lands. *United States* v. *Buchanan*, 72.

3. *Entries; effect of.*
An entry withdraws the land from entry or settlement by another and segregates it from the public domain, and the possessory right ac-

quired by the entryman is in the nature of private property and entitled to protection as such; and interference with the peaceable possession of the entryman is not punishable under a Federal statute applicable only to public lands still subject to entry. *Ib.*

4. *Homesteads; validity of entry; invasion of rights.*

One who forces a qualified entryman who has acquired, in compliance with the Homestead Law, an inceptive homestead right on public land open to entry although erroneously shown on the plat as a lake, wrongfully invades the possessory right of the homesteader. *Gauthier* v. *Morrison*, 452.

5. *Trespass on homestead rights; jurisdiction of state courts to protect rights of homesteader.*

As Congress has not prescribed the forum or mode in which such wrongs may be restrained or redressed, the state courts have jurisdiction thereover and should proceed to appropriately dispose of such questions and protect those claiming possession under the Federal statute. (*Second Employers' Liability Cases*, 223 U. S. 1.) *Ib.*

6. *Patent for; plat of survey as part of.*

Where public lands are patented "according to the official plat of the survey returned to the General Land Office by the Surveyor General," the notes, lines, landmarks and other particulars appearing upon the plat become as much a part of the patent, and are as much to be considered in determining what it is intended to include, as if they were set forth in it. *Chapman & Dewey Lumber Co.* v. *St. Francis Levee District*, 186.

7. *Patent for; description of land conveyed.*

The specification in a patent of the acreage of the land conveyed is an element of the description, and, while of less influence than other elements, is yet an aid in ascertaining what land was intended. *Ib.*

8. *Patent for; lands embraced in patent for whole of township.*

A patent for "the whole" of a township "according to the official plat of the survey" is here construed, in view of what appeared upon the plat and of the acreage specified in the patent, as embracing the whole of the surveyed lands in the township, but not an unsurveyed area, approximating 8,000 acres, which was represented upon the plat as a meandered body of water. *Ib.*

9. *School lands; title vested in Alabama by act of March 2, 1819.*

The act of March 2, 1819, c. 47, § 6, 3 Stat. 489, under which Alabama

became a State, vested the legal title of section 16 of every township in the State absolutely although the statute declared that it was for the use of schools. *Alabama* v. *Schmidt*, 168.

10. *School lands; obligation of State respecting.*

While the trust created by a compact between the States and the United States that section 16 be used for school purposes is a sacred obligation imposed on the good faith of the State, the obligation is honorary and the power of the State where legal title has been vested in it is plenary and exclusive. (*Cooper* v. *Roberts*, 18 How. 173.) *Ib.*

11. *School lands; application of statute of limitations providing for title by adverse possession against State.*

Statutes of limitation providing for title by adverse possession against the State after a specified period are a valid exercise of the power of the State and apply to lands conveyed to the State absolutely by the United States although for the use of schools. *Nor. Pac. Railway Co.* v. *Townsend*, 190 U. S. 267, distinguished. *Ib.*

12. *Swamp lands; title acquired by State under act of 1850; when title perfected.*

The Swamp Land Act of 1850 in itself passed to the State only an inchoate title, and not until the lands were listed and patented under the act could the title become perfect. *Chapman & Dewey Lumber Co.* v. *St. Francis Levee District*, 186.

13. *Swamp lands; effect of compromise of 1895 between United States and Arkansas on subordinate agency of State.*

The compromise and settlement negotiated in 1895 between the United States and the State of Arkansas, whereby the latter relinquished its inchoate title to all swamp lands not theretofore patented, approved or confirmed to it, is binding on the St. Francis Levee District as a subordinate agency of the State. (*Little* v. *Williams*, 231 U. S. 335.) *Ib.*

14. *Surveyors; authority of.*

The surveyor is not invested with authority to determine the character of land surveyed or left unsurveyed or to classify it as within or without the operation of particular laws. *Gauthier* v. *Morrison*, 452.

15. *Surveys; power of courts as to.*

While the Land Department controls the surveying of the public lands

and the courts have no power to revise a survey, the courts can determine whether the land was left unsurveyed and whether a right of possession exists under an inceptive claim. *Ib.*

16. *Unsurveyed lands; what open to settlement.*

Under the Homestead Law of the United States unsurveyed public lands, if agricultural and unappropriated, are open to settlement by qualified entrymen, and this applies to land of that description left unsurveyed by a surveyor by erroneously marking it on the plat as included within the meander lines of a lake. *Ib.*

See FEDERAL QUESTION, 2;
JURISDICTION, A 6.

PUBLIC PARKS.

See RAILROADS, 3, 4.

PUBLIC POLICY.

See PLEDGE, 1.

PURE FOOD AND DRUGS ACT.

1. *Purpose of Congress in enacting.*

The primary purpose of Congress in enacting the Food and Drugs Act of 1906 was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated food. *United States* v. *Lexington Mill Co.*, 399.

2. *Adulteration contemplated.*

As against adulteration the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to health. *Ib.*

3. *Adulteration; duty of courts to effectuate purpose of Congress.*

Where such a purpose has been effected by plain and unambiguous language by an act within the power of Congress, the only duty of the courts is to give the act effect according to its terms. *Ib.*

4. *Adulteration; limitation of inhibition in subdivision 5 of § 7; onus probandi on Government.*

The inhibition in subdivision 5 of § 7 of the Food and Drugs Act of 1906 against the addition of any poisonous or other added deleterious ingredient which may render an article of food injurious to health is definitely limited to the particular class of adulteration

specified, and in order to condemn the article under subdivision 5 it is incumbent upon the Government to establish that the added substance may render the article injurious to health. *Ib.*

5. *Adulteration; meaning of word "may" as used in subdivision 5 of § 7.*
In subdivision 5 of § 7 of the Food and Drugs Act of 1906 the word "may" is used in its ordinary and usual signification; and if an article of food may not by the addition of a small amount of poisonous substance by any possibility injure the health of any consumer, it may not be condemned under this subdivision of the act. *Ib.*

QUESTIONS OF LAW AND FACT.

See INDIANS, 6;
JURISDICTION, A 4.

QUITCLAIMS.

See LAND GRANTS, 1.

RAILROADS.

1. *Claims against; limitation on power of State as to.*
While the States have a large latitude in the policy they will pursue in regard to enforcing prompt settlement of claims against railroad companies, the rudiments of fair play to the companies as required by the Fourteenth Amendment must be recognized. *Chicago, M. & St. P. Ry. Co.* v. *Polt*, 165.

2. *Crossings over highways; duty to build and maintain.*
Railroad corporations may be required, at their own expense, not only to abolish grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways, newly laid out, over their tracks or to carry their tracks over such highways. *Chicago, M. & St. P. Ry. Co.* v. *Minneapolis*, 430.

3. *Same.*
This rule has been declared as the established law of the State of Minnesota by its highest courts. *Ib.*

4. *Same.*
The same rule applies to a highway laid out to increase the advantages of a public park. Such a highway is a crossing devoted to the public use. (*Shoemaker* v. *United States*, 147 U. S. 282.) *Ib.*

5. *Crossings over highways; application of rule to canal or water-way.*
The same rule also applies where the crossing is a canal or water-way

connecting other waters and although within a public park; the fact, and not the mode, of public passage, controls. *Ib.*

6. *Franchise; value; effect of present earnings on.*

The franchise of a railroad company is not necessarily to be regarded as valueless merely because its present earnings are not sufficient to pay more than high grade investments or even to pay operating expenses. (*State Railroad Tax Cases*, 92 U. S. 575.) *Ohio Tax Cases*, 576.

See CONSTITUTIONAL LAW, 3, 19, 25, 26, 28, 31, 35, 36;
EMPLOYERS' LIABILITY ACT;
INTERSTATE COMMERCE;
JURISDICTION, E 1;
NEGLIGENCE;
PRACTICE AND PROCEDURE, 20;
STATES, 10.

RATES.

See COMMON CARRIERS, 1;
INTERSTATE COMMERCE, 18–24, 26;
PRACTICE AND PROCEDURE, 17.

REFRIGERATION.

See INTERSTATE COMMERCE, 19, 31–34.

REMEDIES.

See COMMON CARRIERS, 2;
CONSTITUTIONAL LAW, 10, 11;
FRAUD;
INTERSTATE COMMERCE, 9, 24;
LOCAL LAW (Vt.);
REMOVAL OF CAUSES, 9.

REMOVAL OF CAUSES.

1. *Right of; paramountcy and freedom from restraint or penalization by state action.*

The right conferred by law of the United States to remove a cause pending in a state to a Federal court on compliance with the Federal law is paramount and free from restraint or penalization by state action; and whether the right exists and has been properly exercised are Federal questions determinable by the Federal courts free from limitation or interference by state power. *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 318.

2. *Practice and efficacy of right; effect of Judicial Code on power of Federal court.*

Revolutions in the practice and efficacy of the right of removal of causes from the state to the Federal court will not lightly be presumed; and so *held* that the modification of the prior law and prac-

tice by the Judicial Code did not take from the Federal court the power it has necessarily possessed to pass not only upon the merits of the case, but also upon the validity of the process on the question of jurisdiction over the person of the defendant. *Cain* v. *Commercial Publishing Co.*, 124.

3. *Petition for; sufficiency of.*

As the right to remove a cause from a state to a Federal court exists only in enumerated classes of cases, the petition must set forth the particular facts which bring the case within one of such classes; general allegations and mere legal conclusions are not sufficient. *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.

4. *"Plead," as used in § 29, Judicial Code, includes what.*

The word "plead" in § 29, Judicial Code, includes a plea to the jurisdiction. *Cain* v. *Commercial Publishing Co.*, 124.

5. *Fraudulent joinder of parties; sufficiency of allegations of.*

The right of a non-resident defendant to remove the case cannot be defeated by the fraudulent joinder of a resident defendant; but the defendant seeking removal must allege facts which compel the conclusion that the joinder is fraudulent; merely to apply the term "fraudulent" to the joinder is not sufficient to require the state court to surrender its jurisdiction. *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.

6. *Fraudulent joinder of parties to prevent; when showing necessary.*

Where plaintiff's statement of his case shows a joint cause of action, as tested by the law of the State, the duty is on the non-resident defendant seeking removal to state facts showing that the joinder was a mere fraudulent device to prevent removal. *Ib.*

7. *Same.*

It is not sufficient for a non-resident railroad corporation, joined as defendant in a suit for personal injuries with two resident employés in charge of the train which did the injury, to show in its petition an absence of good faith on plaintiff's part in bringing the action at all;—the petition must show that the joinder itself is fraudulent. *Ib.*

8. *Law governing; power of State to limit right; jurisdiction of Federal court; conditions to right; defenses available; removal as general appearance; effect of Judicial Code.*

Prior to the adoption of the Judicial Code it was settled that:

The right and the procedure of removal of causes are to be deter-

mined by the Federal law, *Goldey* v. *Morning News*, 156 U. S. 518; neither the legislature nor the judiciary of a State can limit either the right or its effect. *Id.*

The Federal court has jurisdiction according to the Constitution and laws of the United States. *Id.*

A suit must be actually pending in the state court before it can be removed; but its removal is not an admission that it was rightfully pending and that defendant can be compelled to answer. *Id.*

After removal defendant can avail in the Federal court of every reserved defense, to be pleaded in the same manner as though the action had been originally commenced in the Federal court. *Id.*

Exercising the right of removal and filing the petition does not amount to a general appearance.

These rules have not been altered by the adoption of §§ 29 and 38 of the Judicial Code. *Cain* v. *Commercial Publishing Co.*, 124.

9. *Refusal by state court to give effect to petition and bond; certiorari and injunction the remedy.*

Where the state court refuses to give effect to a proper petition and bond on removal, the defendant may resort to certiorari from the Federal court to obtain the certified transcript and injunction to prevent further proceedings in the state court. *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.

10. *State interference; constitutional invalidity of.*

A state statute which forbids a resort to the Federal courts on the ground of diversity of citizenship and punishes by extraordinary penalties any assertion of a right to remove a case under the Federal law and attempts to divest the Federal courts of their power to determine whether the right exists, is unconstitutional as an attempted exertion of state power over the judicial power of the United States. *Harrison* v. *St. Louis & S. F. R. R. Co.*, 318.

11. *State interference with right; invalidity of.*

A State cannot destroy the right to remove causes to the Federal courts by imposing arbitrary conditions as to state citizenship which render it impossible for one entitled to the right to avail of it. *Ib.*

12. *Facts; determination for Federal court.*

Issues of fact arising upon a petition for removal are to be determined in the Federal court; and, where the petition sufficiently shows a fraudulent joinder and the proper bond has been given, the state court must surrender jurisdiction, leaving any issue of fact arising

on the petition to the Federal court. (*Wecker* v. *National Enameling Co.*, 204 U. S. 176.) *Chesapeake & Ohio Ry. Co.* v. *Cockrell*, 146.

13. *Appearance; effect of local law to make general a special appearance.*
Under the Conformity Act, § 914, Rev. Stat., a special appearance in a case removed to the Federal court from the state court of Mississippi does not become a general appearance because of the provisions to that effect in § 3946, Mississippi Code of 1906. *Cain* v. *Commercial Publishing Co.*, 124.

See CONSTITUTIONAL LAW, 59;
STATUTES, A 14.

REPORTS.

Headnotes; opinion and not headnote to be looked to.
Where the headnote of a decision of a state court is not given special force by statute or rule of court, the opinion is to be looked to for original and authentic grounds of the decision. *Burbank* v. *Ernst*, 162.

RESERVATIONS.

See INDIANS, 2, 3, 10, 11, 16–19.

RES JUDICATA.

1. *Effect of judgment or decree as bar to subsequent suit.*
A judgment or decree bars all grounds for the relief sought and, as *res judicata*, it is a bar to a subsequent suit between the same parties the object of which is to reach the same result by different means. *Calaf* v. *Calaf*, 371.

2. *Effect of decree dismissing bill in equity.*
A decree of the Circuit Court of the United States dismissing a bill in equity on motion of the parties and not for want of merit *held*, in this case, not to be a bar to a subsequent suit in the state court on the same cause of action, and the refusal of the state court to treat the decree as conclusive on points left open did not deprive the defendant of any Federal right. *Swift* v. *McPherson*, 51.

See JUDGMENTS AND DECREES, 3;
LAND GRANTS, 7.

RETROACTIVE LEGISLATION.

See CONSTITUTIONAL LAW, 46, 47;
STATUTES, A 11;
TAXES AND TAXATION, 23.

REVENUE LAWS.
See CONSTITUTIONAL LAW, 43;
INTERNAL REVENUE.

SAFE DEPOSITS.
See CONSTITUTIONAL LAW, 4, 5, 6, 30.

SAFETY APPLIANCES.
See MASTER AND SERVANT, 3.

SALES.
See CONSTITUTIONAL LAW, 15, 37;
INTERSTATE COMMERCE, 1;
STATES, 6.

SCHOOL LANDS.
See CONSTITUTIONAL LAW, 7;
PUBLIC LANDS, 9, 10, 11.

SEARCHES AND SEIZURES.
See CONSTITUTIONAL LAW, 48–55;
COURTS, 3.

SECRETARY OF THE INTERIOR.
See CONSTITUTIONAL LAW, 18;
INDIANS, 7, 20.

SERVITUDES.
See PROPERTY RIGHTS.

SEVENTH AMENDMENT.
See CONSTITUTIONAL LAW, 65.

SOVEREIGNTY.
See ACTIONS;
PORTO RICO;
UNITED STATES, 2.

STARE DECISIS.
Overruling former decisions; reluctance as to; decision overruled.
This court is reluctant to overrule its former decisions, and it only does so in this case because it appears that the right sustained in

a former case involving criminal procedure is no longer required for the protection of the accused. *Crain* v. *United States*, 162 U. S. 625, overruled so far as not in accord herewith. *Garland* v. *Washington*, 642.

STATES.

1. *Classification by.*

A State may classify with reference to the evil to be prevented. *Patsone* v. *Pennsylvania*, 138.

2. *Classification by.*

The determination of the class from which an evil is mainly to be feared and specialized in the legislation is a practical one dependent upon experience; and this court is slow to declare that the state legislature is wrong in its facts. (*Adams* v. *Milwaukee*, 228 U. S. 572.) *Ib.*

3. *Classification by, for police regulation.*

A State may direct its police regulations against what it deems the evil as it actually exists without covering the whole field of possible abuse. (*Central Lumber Co.* v. *South Dakota*, 227 U. S. 157.) *Ib.*

4. *Competency to restrict hours of service and to provide administrative means of enforcement of law.*

It being competent for the State to restrict the hours of employment of a class of laborers, it is also competent for the State to provide administrative means against evasion of such restrictions. (*C., B. & Q. Ry.* v. *McGuire*, 219 U. S. 549.) *Riley* v. *Massachusetts*, 671.

5. *Competency to restrict hours of service; reasonableness of means adopted; determination of.*

The wisdom and legality of the means adopted by the legislature to enforce proper restrictions on employment of labor cannot be judged by extreme instances of their operation. *Ib.*

6. *Power to classify occupations and regulate sale of drugs.*

A State may classify and regulate itinerant vendors and peddlers, *Emert* v. *Missouri*, 156 U. S. 296, and may also regulate the sale of drugs and medicines. *Baccus* v. *Louisiana*, 334.

7. *Protection of game by.*

A State may protect its wild game and preserve it for its own citizens. (*Geer* v. *Connecticut*, 161 U. S. 519.) *Patsone* v. *Pennsylvania*, 138.

8. *Police power; mining coal a subject for exercise of.*
The business of mining coal is so attended with danger as to render it the proper subject of police regulation by the State. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

9. *Police power; reasonableness of exercise of.*
It is not an unreasonable exercise of the police power of the State to require owners of adjoining coal properties to cause pillars to be left of sufficient width to safeguard the employés of either mine in case the other should be abandoned and allowed to fill with water. *Ib.*

10. *Police power; regulation of use by railroad of its property.*
While a railroad company which devotes a part of its right of way to public use inconsistent with railway purposes may not lose its property right therein, the State may in the exercise of its police power and for the protection of the public so using such property, require the company to so use its other property as not to endanger the public, applying the principle underlying the maxim *sic utere tuo ut alienum non lædas*. *Atlantic Coast Line* v. *Goldsboro*, 548.

11. *Laws of; controlling effect.*
Whether a municipal ordinance is within the power conferred by the legislature upon the municipality is a question of state law. *Ib.*

12. *Laws of; municipal ordinances as.*
A municipal ordinance within the power delegated by the legislature is a state law within the meaning of the Federal Constitution. *Ib.*

13. *Laws of; what constitute.*
Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State within the pertinent clause of § 237, Judicial Code, conferring jurisdiction on this court. *Ib.*

See CONSTITUTIONAL LAW, 1, 5, 7, 14, 16, 30, 37, 42, 48, 56–59, 62;
INDIANS, 10, 11, 12, 14, 19;
INTERSTATE COMMERCE, 4, 6, 8, 11–16;
PUBLIC LANDS, 9–13;
RAILROADS, 1;
REMOVAL OF CAUSES, 1, 8, 10, 11;
TAXES AND TAXATION, 2, 5, 12, 14, 15, 29;
TREATIES, 8.

STATUTE OF LIMITATIONS.

See PUBLIC LANDS, 11;
TITLE.

STATUTES.

A. Construction of.

1. *Amendments; effect of unconstitutional.*
The validity of a local option law adopted after amendments is not affected by the fact that the amendments are subsequently declared to be unconstitutional. *Eberle* v. *Michigan*, 700.

2. *Amendments; effect of unconstitutional.*
Unconstitutional amendments to a constitutional statute are mere nullities. *Ib.*

3. *Constitutionality favored.*
If a statute be reasonably susceptible of two interpretations, one of which would render it unconstitutional and the other valid, the courts should adopt the latter, in view of the presumption that the lawmaking body intends to act within and not in excess of, its constitutional authority. *Plymouth Coal Co.* v. *Pennsylvania*, 531.

4. *Constitutionality favored.*
In the absence of a construction by the state court to that effect, the Federal court should not, if it can avoid doing so, place such a construction upon a state statute as would render it unconstitutional. *Ohio Tax Cases*, 576.

5. *Constitutionality favored.*
In a state statute imposing a tax on intrastate earnings, it is reasonable to suppose that the exclusion of interstate earnings from taxation extended to earnings from foreign commerce when another construction would render the statute unconstitutional. *Ib.*

6. *Constitutionality favored.*
Where a state statute does not on its face manifest a purpose to interfere with interstate commerce, this court cannot accept historical facts in connection with its enactment as evidence of a sinister purpose on the part of the legislature to evade obligations of the Federal Constitution, without a more substantial basis than appears in this case. *Ib.*

7. *Constitutionality favored; application of rule.*
The rule of interpretation that where there are two possible constructions of a statute, one of which will give rise to grave doubts of its constitutionality and the other avoids such question, the latter will be adopted, is based on the existence of both conditions as to more

than one construction and doubt and is not applicable where neither of those conditions exists. *United States* v. *Bennett*, 299.

8. *Constitutionality favored; when rule not applicable.*
When the construction of a state statute given by the state court and the state officers is plainly right, this court will not give the statute a different construction because under the one so given the statute is flagrantly repugnant to the Constitution. *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 318.

9. *Debates in Congress and reports of committees; weight to be given.*
Debates in Congress are unreliable as a source from which to discover the meaning of the language employed in an act, and this court is not disposed to go beyond the reports of the committees. *Lapina* v. *Williams*, 78.

10. *Expectation from legislation; availability.*
The expectation of those who sought the enactment of legislation may not be used for the purpose of affixing to such legislation, when enacted, a meaning which it does not express. *United States* v. *Goelet*, 293.

11. *Retroactive effect to be avoided; limitation on rule.*
The rule that statutes should be construed if possible so as not to operate retroactively does not authorize a judicial reënactment of the statute to save it from acting retroactively if Congress intended it so to do. *Billings* v. *United States*, 261.

12. *Title of act; controlling effect of.*
It is only in a doubtful case that the title of an act can control the meaning of the enacting clauses, and so *held*, that the use of the word "immigration" in the title of the act of 1907 cannot overcome the fact as evidenced by the act itself that Congress intended its provisions to apply to all aliens and not exclusively to alien immigrants. *Taylor* v. *United States*, 207 U. S. 120, distinguished. *Lapina* v. *Williams*, 78.

13. *Use of words; meaning to be given.*
Where words are used in a statute in their every-day sense and not in a technical one, they should be so construed. *Billings* v. *United States*, 261.

14. *Plain, unambiguous text controlling.*
Where the plain text of a state statute leaves no doubt that it is an attempt to prevent removal of causes to the Federal court, it will

not be construed as a mere exercise of reasonable control over corporations. *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 318.

15. *Of provision for decision by board; majority rule.*
In the absence of clear language to the contrary a provision for decision by a board will be construed to the effect that a majority of such board shall act and decide. (*Omaha* v. *Omaha Water Co.*, 218 U. S. 180.) *Plymouth Coal Co.* v. *Pennsylvania*, 531.

See ALIENS, 4;
BANKRUPTCY, 1, 2;
PRACTICE AND PROCEDURE, 4, 5, 6.

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;
LOCAL LAW (Cal.),
TAXES AND TAXATION, 11–15.

STREETS AND HIGHWAYS.
See RAILROADS, 2, 3, 4.

SUBROGATION.
See PATENTS, 2, 3, 4.

SURVEYS.
See LAND GRANTS, 5;
PUBLIC LANDS, 6, 8, 14, 15, 16.

SWAMP LANDS.
See PUBLIC LANDS, 12, 13.

TARIFF.
See CONSTITUTIONAL LAW, 12, 47.

TAXES AND TAXATION.
1. *Double taxation; what constitutes.*
Double taxation does not exist in a legal sense unless the double tax is

levied upon the same property within the same jurisdiction, and an excise tax measured on earnings from operating the property is not a double tax because the property itself is taxed. *Ohio Tax Cases*, 576.

2. *Excise tax; reasonableness; discretion of state legislature.*
The reasonableness of an excise or privilege tax, unless some Federal right is involved, is within the discretion of the state legislature. *Ib.*

3. *Excise tax on citizen permanently domiciled abroad; power of Congress as to; intent not presumed.*
While Congress may have the power to impose an excise duty on a citizen permanently domiciled abroad, such an imposition is so unusual that an intent to do so will not be presumed unless clearly expressed. *United States* v. *Goelet*, 293.

4. *Exemption of municipal bonds as element of obligation thereof; presumption against impairment by Congress.*
Exemption from taxation is a material element in the obligation of a bond issued by a municipality, and it will not be presumed that Congress would enact legislation that would impair that obligation by eliminating the exemption without the clearest legislative language expressing it. *Farmers Bank* v. *Minnesota*, 516.

5. *Exemption of bonds from state taxation.*
Where bonds are exempted from state taxation under the Federal Constitution they cannot be included as assets in ascertaining the surplus of the corporation owning them for the purpose of imposing a state property tax thereon. *Ib.*

6. *Interest on taxes; Federal and state rules differentiated.*
The state rule as to interest on taxes differs from the United States rule—the former excludes interest unless the statute so provides; the latter allows interest unless forbidden by statute. This court will not now apply the state rule, as to do so would repudiate settled principles and disregard the sanction expressly or impliedly given by Congress to the rule adopted by the Federal courts. *Billings* v. *United States*, 261.

7. *Interest on taxes; right of Government to; tax under § 37 of Tariff Act of 1909.*
The Government is entitled to interest on taxes on use of foreign-built yachts under § 37 of the Tariff Act of 1909, from the date when the

taxes become due, and may maintain an action against the owner or charterer therefor. *Ib.*

8. *Interest on taxes; right of Government to recover.*
The United States is entitled to recover interest upon the tax imposed upon the use of foreign-built yachts under § 37 of the Tariff Act of August 5, 1909. *United States* v. *Bennett*, 299.

9. *License fees required by municipality for express wagons and drivers; construction and validity.*
A municipal license fee required for express wagons and drivers cannot be construed as a fee or tax for use of the streets or regulation of street traffic; and *quære* whether the ordinance in this case, if so construed, would not be invalid as discriminating against express companies. *Adams Express Co.* v. *New York*, 14.

10. *Penalties; separableness of provisions for.*
Penalty provisions of a tax statute are generally separable and especially so when the statute expressly provides that all sections of the act are declared to be independent of each other. *Ohio Tax Cases*, 576.

11. *Shares of stock; separate taxation of property in.*
The property of shareholders in their respective shares is distinct from the corporate property, franchises and capital stock of the corporation itself and may be separately taxed. *Hawley* v. *Malden*, 1.

12. *Shares of stock in foreign corporations; authority of State to tax.*
Even if the constitutional validity of the taxation by a State of shares owned by its citizens of stock of foreign corporations having no property and doing no business therein has not been definitely raised and directly passed upon by this court, the existence of the authority of the State has invariably been assumed. (*Darnell* v. *Indiana*, 226 U. S. 390.) *Ib.*

13. *Shares of stock; materiality of physical situs of property represented by.*
In dealing with the intangible interest of a shareholder there is no question of physical situs, and the jurisdiction to tax such interest is not dependent upon the tangible property of the corporation. *Ib.*

14. *Shares of stock; authority of State to tax.*
A State has the undoubted right, in creating corporations, to provide for the taxation in that State of all their shares, whether owned by residents or non-residents. (*Corry* v. *Baltimore*, 196 U. S. 496.) *Ib.*

15. *Shares of stock; situs of, for purposes of taxation; quære.*
Quære, whether in case of corporations organized under state laws a provision by the State of incorporation fixing the situs of shares for the purpose of taxation, by whomsoever owned, would exclude taxation of those shares by other States in which the owners reside. *Ib.*

16. *Tax on foreign-built yachts; power of Congress to levy, on yacht having permanent situs in foreign country and not used within territorial jurisdiction of United States.*
Congress has the power to levy a tax upon the use by a citizen of the United States of a yacht which is not actually, and since a time preceding the passage of the act was not, at any time used within the territorial jurisdiction of the United States and which has its permanent situs in a foreign country. *United States* v. *Bennett*, 299.

17. *Tax on foreign-built yachts under act of 1909; who liable.*
The tax imposed by § 37 of the Tariff Act of 1909 does not apply to the use of a foreign-built yacht owned by a citizen of the United States who was permanently resident and domiciled in a foreign country for more than one year prior to September 1, 1909, and to the levy of such tax. *United States* v. *Goelet*, 293; *United States* v. *Bennett* (No. 2), 308.

18. *Tax on use of foreign-built yachts under § 37 of Tariff Act of 1909; when due; scope of tax.*
Under § 37 of the Tariff Act of August, 1909, imposing a tax on the use of foreign-built yachts owned or chartered for more than six months by citizens of the United States, to be collected annually on September 1, the tax became due on the first day of September next occurring after the act became effective; further *held* that the six months' clause relates only to the chartering of the yachts, and the word "annually" indicates continuity and that the tax is not a sporadic one to cease after a single payment. *Billings* v. *United States*, 261.

19. *Tax on use of foreign-built yachts under act of 1909; use contemplated.*
The use of a foreign-built yacht which renders the owner subject to the tax imposed by § 37 of the Tariff Act of 1909 is active and actual use and not the potential use arising from the mere fact of ownership. (See *Pierce* v. *United States*, p. 290, *post.*) *Ib.*

20. *Tax on use of foreign-built yachts under act of 1909; when due; validity of.*

Billings v. *United States*, *ante*, p. 261, followed to the effect that the tax on the use of foreign-built yachts imposed by § 37 of the Tariff Act of 1909 is not an unconstitutional exercise of power by Congress, and it became due for the year 1909 on the first day of September, 1909. *United States* v. *Goelet*, 293.

21. *Tax on foreign-built yachts under act of 1909; when due.*
The whole amount of the tax imposed by said act became due and payable on September 1, 1909, and not only such proportion thereof as the time during which the act was in force at that date bore to the whole year. *United States* v. *Bennett*, 299.

22. *Tax on foreign-built yachts under act of 1909; action to recover; when tax due; validity of act.*
Billings v. *United States*, *ante*, p. 261, followed to the effect that under § 37 of the Tariff Act of 1909, in imposing a tax on the use of foreign-built yachts there is authority to bring an action *in personam* against the owner for the recovery; that the tax became due on the first day of September next following the passage of the act; that the six months' clause applied only to the charterer and not to the owner of such a yacht; and that the statute does not violate the due process clause of the Fifth Amendment. *Rainey* v. *United States*, 310.

23. *Tax on foreign-built yachts under act of 1909; retrospective operation of.*
The tax imposed by said act operated retrospectively, so as to be payable on September 1, 1909, in respect of the year then ended, and not only prospectively so as to become first due and payable on September 1, 1910. *United States* v. *Bennett*, 299.

24. *Tax on foreign-built yachts under act of 1909; application to yacht used out of territorial jurisdiction of United States.*
The tax imposed by § 37 of the Tariff Act of 1909 applies to the use of a foreign-built yacht owned by a citizen of the United States, although such yacht, for a period of more than one year prior to September 1, 1909, and to the levy of such tax, was used wholly outside of the limits and territorial jurisdiction of the United States. *Ib.*

25. *Tax on use of foreign-built yachts under act of 1909; effect of non-use.*
Billings v. *United States*, *ante*, p. 261, followed and distinguished, to the effect that the owner of a foreign-built yacht is not liable for the tax imposed by § 37 of the Tariff Act of 1909, if the yacht was not

actually used at all during the preceding year. *Pierce* v. *United States*, 290.

26. *Tax on foreign-built yachts; option contained in paragraph 2 of § 37 of act of 1909; separableness of.*

The second paragraph of § 37 of the Tariff Act of 1909 giving the owner of a foreign-built yacht an option to pay an *ad valorem* of 35 per cent. in lieu of the annual tonnage tax imposed on the use of such yacht by the first paragraph of the section, is separable from the first paragraph and its validity is not involved in an action to recover the tonnage tax from the owner of a foreign-built yacht who has not availed of the option. *Rainey* v. *United States*, 310.

27. *Tax on function of issuing bonds; nature and effect.*

A tax upon the exercise of the function of issuing bonds is a tax upon the corporation issuing them, and to tax the bonds as property of the holder is in effect a tax upon the right of the issuer to issue them. *Farmers Bank* v. *Minnesota*, 516.

28. *Tax on bonds issued by government or subdivision thereof as burden on operation of government.*

A tax to any extent on bonds issued by a government or subdivision thereof, however inconsiderable, is a burden on the operation of that government. If allowed at all it may be carried to an extent which shall entirely arrest such operations. (*M'Culloch* v. *Maryland*, 4 Wheat. 316.) *Id.*

29. *Tax on bonds issued by municipality of Territory; invalidity of.*

A State may not tax bonds issued by a municipality of a Territory of the United States. And so *held* as to an attempt by the State of Minnesota to tax bonds issued by municipalities of the Indian Territory and the Territory of Oklahoma held by corporations in Minnesota. *Id.*

30. *Uniformity in principles; effect of Constitution.*

While it would be an advantage to the country and to individual States if non-conflicting principles of taxation could be agreed upon by the States so as to avoid the taxation of the same property in more than one jurisdiction, the Constitution of the United States does not go so far. (*Kidd* v. *Alabama*, 188 U. S. 730.) *Hawley* v. *Malden*, 1.

See CONSTITUTIONAL LAW, 2, 12, 35, 36, 46, 47, 56, 60–64; INTERSTATE COMMERCE, 11–16; JURISDICTION, E 3; STATUTES, A 5.

TECHNICAL OBJECTIONS.

See CRIMINAL LAW, 1.

TERRITORIES.

Obligations of; bonds of municipality as.

There is no provision of law that makes obligations of municipalities within the Indian Territory or the Territory of Oklahoma obligations of the Territory, nor were such obligations assumed by the State of Oklahoma on admission to Statehood. *Farmers Bank* v. *Minnesota*, 516.

See COURTS, 4;
TAXES AND TAXATION, 29;
UNITED STATES, 1.

TITLE.

Statute of limitations as source.

A statute of limitations may give title. *Montoya* v. *Gonzales*, 375.

See BANKRUPTCY, 4;
COMMON CARRIERS, 1;
CONSTITUTIONAL LAW, 7, 32;
INDIANS, 8;
INTERNAL REVENUE, 2;
JUDGMENTS AND DECREES, 3;
PUBLIC LANDS, 9–12.

TRADE.

See TREATIES, 6.

TRAFFIC REGULATIONS.

See INTERSTATE COMMERCE, 7, 8;
TAXES AND TAXATION, 9.

TRANSPORTATION.

See INTERSTATE COMMERCE, 28–30;
WHITE SLAVE TRAFFIC ACT, 2–5.

TREATIES.

1. *Continued operation; right to.*

No person acquires any vested right to the continued operation of a treaty. *Rainey* v. *United States*, 310.

2. *Alteration or repeal by Congress of law established by; effect of Constitution.*

The Constitution does not declare that the law established by a treaty shall never be altered or repealed by Congress; and while good faith

may cause Congress to refrain from making any change in such law, if it does so its enactment becomes the law. *Ib.*

3. *Subsequent legislation by Congress; effect of.*
Although the other contracting power to a treaty may have ground for complaint if Congress passes a law changing the law established by the treaty, every person is still bound to obey the latest law passed. *Ib.*

4. *Effect of subsequent act of Congress.*
When a treaty is inconsistent with a subsequent act of Congress the latter will prevail. *Ib.*

5. *Who may avail of protection of; quære.*
Quære, whether one not the subject of the other contracting power to a treaty with the United States can invoke the protection of that treaty in regard to property rights. *Ib.*

6. *Italy; effect of Article II of treaty on right of State to prohibit aliens from owning shot guns and rifles.*
The provisions in Article II of the treaty with Italy, giving citizens of Italy the right to carry on trade on the same terms as natives of this country, and provisions in the treaty with Switzerland, applicable to citizens of Italy under the favored nation clause in Article XXIV of the treaty with Italy, relate to trade, and are not applicable to personal use of firearms; and a state statute protecting wild game and prohibiting aliens from owning shot guns and rifles is not incompatible with or violative of such treaty provisions. *Patsone* v. *Pennsylvania*, 138.

7. *Italy; rights of citizens under; quære as to.*
Quære, and not to be decided on this record, whether the statute in this case can be construed as precluding an alien from possessing a stock of guns for purposes of trade and whether in that event it would violate rights under the treaty with Italy of 1871. *Ib.*

8. *Italy; equality of rights of citizens under.*
Equality of rights assured to citizens of Italy under the treaty of 1871 is that of protection and security for persons and property and nothing in that treaty purports or attempts to prevent a State from exercising its power for preservation of wild game for its own citizens. *Ib.*

See LAND GRANTS, 2.

TRESPASS.

Liability, at suit of tenant, of owner of demised premises under contract with adjoining owner who commits trespass on the demised premises.

Where the owner of demised premises makes a contract with an adjoining owner for construction of a party wall, which contract cannot be carried out according to its terms without entry upon the demised premises and undermining the tenant's wall, and the adjoining owner, or his servants, in performing the contract commit such a trespass upon the tenant's possession and undermine the wall, the contract is evidential of a command or approval of the trespass by the landlord, such as to render him liable severally, or jointly with the adjoining owner, in an action by the tenant for the resulting damages. *Weinman* v. *de Palma*, 571.

See DAMAGES;
PUBLIC LANDS, 1, 3, 4, 5.

TRIAL.

1. *Argument of counsel; improprieties cured by charge.*

Improprieties in remarks of counsel in addressing the jury may be cured by the instructions of the trial judge. *Bank of Arizona* v. *Haverty*, 106.

2. *Submission of question to jury; when proper.*

Whether an accident did or did not occur in a manner theoretically impossible according to expert opinions of defendant's witnesses, is properly submitted to the jury if there is evidence to sustain the plaintiff's contention, and if the court cannot hold as a conclusion of law that the accident could not possibly have occurred in that manner. *Gila Valley, G. & N. Ry. Co.* v. *Hall*, 94.

TRIAL BY JURY.

See CONSTITUTIONAL LAW, 65.

TRUSTEE IN BANKRUPTCY.

See BANKRUPTCY, 1, 4, 5.

TRUSTS AND TRUSTEES.

1. *Trust funds; dissipation; effect of depletion of account in which deposited.*

Where one has deposited trust funds in his individual bank account and the mingled fund is at any time wholly depleted, the trust fund is thereby dissipated and cannot be treated as reappearing in sums

subsequently deposited to the credit of the same account. *Schuyler* v. *Littlefield*, 707.

2. *Trust funds; burden of proving individual right to funds in hands of trustee for all creditors.*

One seeking to charge a fund in the hands of a trustee for the benefit of all creditors as being the proceeds of his property and therefore a special trust fund for him, has the burden of proof; and if he is unable to identify the fund as representing the proceeds of his property, his claim must fail as all doubt must be resolved in favor of the trustee who represents all creditors. *Ib.*

See CONTRACTS, 3;
INDIANS, 2;
PUBLIC LANDS, 10.

UNIFORMITY OF TAXATION.

See CONSTITUTIONAL LAW, 12, 60.
TAXES AND TAXATION, 30.

UNITED STATES.

1. *Instrumentalities of; Territories and municipal corporations thereof as.*

Territories are instrumentalities established by Congress for the government of the people within their respective borders, with authority to subdelegate the governmental power to the municipal corporations therein, and the latter are therefore instrumentalities of the Federal Government. *Farmers Bank* v. *Minnesota*, 516.

2. *Powers of sovereignty; limitations of.*

The Government of the United States as a nation by its very nature benefits the citizen and his property wherever found, and no imaginary barrier shuts that Government off from exerting the powers which inherently belong to it by virtue of its sovereignty. *United States* v. *Bennett*, 299.

3. *Territorial jurisdiction of; size of area immaterial.*

Territorial jurisdiction of the United States does not depend upon the size of the particular areas held for Federal purposes. Criminal Code, § 272. *United States* v. *Pelican*, 442.

See CONSTITUTIONAL LAW, 42, 56; INTERNAL REVENUE, 1;
INDIANS, 2–5, 8; LAND GRANTS, 1;
PURE FOOD AND DRUGS ACT, 4.

UNKNOWN CLAIMANTS.

See LOCAL LAW (N. Mex.).

UNREASONABLE SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 48–55;
COURTS, 3.

VENDOR AND VENDEE.

Retention of thing sold as fraud per se; exception to rule.

The rule that physical retention by the vendor of goods capable of delivery to the vendee is a fraud *per se* does not apply in Pennsylvania in a transaction, the inherent nature of which necessarily precludes delivery, or in which the absence of a physical delivery is excused by the applicable usages of trade. *Taney* v. *Penn National Bank*, 174.

See STATES, 6.

VERDICT.

Evidence to support, in criminal and civil actions.

While in strictly criminal prosecutions the jury may not return a verdict against the defendant unless the evidence establishes his guilt beyond a reasonable doubt, in civil actions it is the duty of the jury to resolve the issues of fact according to the reasonable preponderance of the evidence, and this although they may involve a penalized or criminal act. *United States* v. *Regan*, 37.

See MASTER AND SERVANT, 2;
PRACTICE AND PROCEDURE, 12.

WAIVER.

See PRACTICE AND PROCEDURE, 28.

WAREHOUSE RECEIPTS.

See PLEDGE.

WHITE SLAVE TRAFFIC ACT.

1. *Constitutional validity of act of 1910.*

The White-Slave Act of June 25, 1910, has been sustained as constitutional. (*Hoke* v. *United States*, 227 U. S. 308.) *Wilson* v. *United States*, 563.

2. *Offense under, complete when.*

The offense under the White-Slave Act is complete when the transportation in interstate commerce has been accomplished. There is no *locus pœnitentiæ* thereafter. *Ib.*

3. *Transportation under; means not confined to common carrier.*
Under the White-Slave Act the prohibition is not in terms confined to transportation by common carrier, nor need such a limitation be implied in order to sustain the constitutionality of the act. *Ib.*

4. *Transportation; means of; power of Congress to determine.*
The White-Slave Act has the quality of a police regulation although enacted in the exercise of the power to regulate interstate commerce, and it is wholly within the power of Congress to determine whether the prohibition should extend to transportation by others than common carriers. *Ib.*

5. *Transportation; means of; power of agent to determine.*
The agency of one employed to bring prostitutes from one State to another without definite instructions includes power to decide upon the mode and route of transportation. *Ib.*
See EVIDENCE, 5.

WORDS AND PHRASES.

"*Alien immigrants*" (see Aliens, 4). *Lapina* v. *Williams*, 78.

"*An indefinite time*" *as applied to an intent to reside.*
An ambiguous meaning will not be attributed to a phrase used in an agreed statement of facts on the assumption that the parties were by a quibble trying to get the better of each other; and so *held* that "an indefinite time" as applied to an intent to reside, referred to in such a statement, meant that no end to such time was then contemplated. *Williamson* v. *Osenton*, 619.

"*Annually*" as used in § 37 of Tariff Act of 1909 (see Taxes and Taxation, 18). *Billings* v. *United States*, 261.

"*Due process of law*" (see Constitutional Law, 8). *Miedreich* v. *Lauenstein*, 236.

"*Immigration*" as used in title of act of 1907 (see Aliens, 4; Statutes, A 12). *Lapina* v. *Williams*, 78.

"*Interstate*" *as used in state tax statute.*
"Interstate," as used in a state tax statute, can fairly be construed as including all commerce other than "intrastate" when the evident purpose is to tax only the earnings subject to state taxation. *Ohio Tax Cases*, 576.

"*May*" as used in subdivision 5 of § 7 of Food and Drugs Act of 1906 (see Pure Food and Drugs Act, 5). *United States* v. *Lexington Mill Co.*, 399.

"*Plead*" as used in § 29, Judicial Code (see Removal of Causes, 4). *Cain* v. *Commercial Publishing Co.*, 124.

"*Possession.*"

The word "possession" is more or less ambiguous, and is interchangeably used to describe both actual and constructive possession; and not decided in this case whether the contents of a safe deposit box are in possession of the renter or of the Deposit Company. *National Safe Deposit Co.* v. *Illinois*, 58.

"*Public lands subject to settlement or entry*" (see Public Lands, 2). *United States* v. *Buchanan*, 72.

Generally.—*See* STATUTES, A 13.

WRIT AND PROCESS.

See CONSTITUTIONAL LAW, 10, 11; JURISDICTION; LOCAL LAW (N. Mex.); PRACTICE AND PROCEDURE.

YACHTS.

See CONSTITUTIONAL LAW, 12, 47, 63, 64; TAXES AND TAXATION, 7, 8, 16–26.