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## ACTIONS.

1. *Against United States; suit to restrain Secretary of Interior and Land Commissioner from illegal action; nature of suit.*

A suit to restrain the Secretary of the Interior and the Land Commissioner from doing, under color of their office, an illegal act which will cast a cloud upon the title of complainant is not one against the United States, nor in this case is it one for recovery of land merely or an attempted appeal from the decision of the Interior Department or a trial of title to land not within the jurisdiction of the court and wherein the United States is not present or suable. *Lane v. Watts*, 525.

2. *Right to sue on supersedeas bond; effect on right to sue for damages under existing law.*

The existence of the right to sue on a supersedeas bond does not imply an exclusion of the right to sue under an existing general and applicable law for proper and reasonable damages. *Missouri Pacific Ry. Co. v. Larabee*, 459.

See ADMIRALTY, 2;

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## ADMINISTRATIVE ORDERS.

See BANKRUPTCY, 6.

## ADMIRALTY.

### 1. *Jurisdiction; locality as test of.*

As a general principle, the test of admiralty jurisdiction in this country is locality. *Atlantic Transport Co. v. Imbrovek*, 52; *Atlantic Transport Co. v. Szczesek*, 63.

### 2. *Jurisdiction of suit in personam against stevedore by employé.*

Admiralty has jurisdiction of a suit *in personam* by an employé of a stevedore against the employer to recover for injuries sustained through the negligence of the latter while engaged in loading a vessel lying at the dock in navigable waters. *Ib.*

### 3. *Jurisdiction; scope of; quære as to non-maritime torts.*

The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history, *The Blackheath*, 195 U. S. 361, and *quære* as to the exact extent to which admiralty jurisdiction extends where the tort is not maritime although committed on navigable waters. *Ib.*

### 4. *Torts; when maritime.*

A tort committed on a vessel in connection with a service thereto may be maritime even if there is no fault on the part of, or injury to, the ship itself. *Atlantic Transport Co. v. Imbrovek*, 52.

5. *Stevedores; status of.*

Stevedores are now as clearly identified with maritime affairs as are the mariners themselves. *Ib.*

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## ALLOTMENTS.

*See* INDIANS, 1-4.

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## ANTI-TRUST ACT.

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## APPEAL AND ERROR.

1. *Writ of error from this court and supersedeas; Federal and not state acts.*

A writ of error from this court to review the judgment of a state court and the supersedeas authorized by the Judiciary Act are Federal and not state acts. *Missouri Pacific Ry. Co. v. Larabee*, 459.

2. *Correction of error of District Court in following decision of state court; mode of.*

Where the District Court errs in following later decisions of the state court rather than those rendered prior to the making of the contract, the error may be corrected by the Circuit Court of Appeals or by this court under writ of certiorari but not by direct appeal to this court. *Moore-Mansfield Co. v. Electrical Co.*, 619.

*See* BANKRUPTCY, 4, 6;

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## BANKRUPTCY.

1. *Act of bankruptcy; effect of failure to vacate or discharge levy of execution for four months less a day.*

The failure by an insolvent judgment debtor and for a period of one day less than four months after the levy of an execution upon his real estate, to vacate or discharge such a levy, is not a final disposition of the property affected by the levy under the provisions of § 3a (3) of the Bankruptcy Act of 1898. *Citizens Banking Co. v. Ravenna National Bank*, 360.

2. *Act of bankruptcy; effect of inaction for four months after levy of execution.*

An insolvent debtor does not commit an act of bankruptcy rendering him subject to involuntary adjudication as a bankrupt under the Bankruptcy Act of 1898 merely by inaction for the period of four months after levy of an execution upon his real estate. *Ib.*

3. *Act of bankruptcy within meaning of provision of § 3a (3) of Bankruptcy Act.*

All of the three elements specified in § 3a (3) of the Bankruptcy Act of 1898 must be present in order to constitute an act of bankruptcy within the meaning of that provision. *Ib.*

4. *Attorney's fees for services in contemplation of bankruptcy; jurisdiction to revise.*

Under subd. d of § 60 of the Bankruptcy Act, attorney's fees for serv-



ices in contemplation of bankruptcy are specifically provided for and are subject to revision in the court of original jurisdiction and not elsewhere. (*In re Wood and Henderson*, 210 U. S. 246.) *Lazarus v. Prentice*, 263.

5. *Jurisdiction; ancillary, in aid of trustee.*

Under clause 20 of § 2 of the Bankruptcy Act as added by the amendment of June 25, 1910, the bankruptcy courts have ancillary jurisdiction over persons and property within their respective territorial limits in aid of a trustee or receiver appointed in any court of bankruptcy. *Ib.*

6. *Jurisdiction of this court; finality of order of Circuit Court of Appeals; administrative order.*

The seizure of property of the bankrupt by an ancillary receiver is a summary proceeding and not a plenary suit and the decision of the bankruptcy court in the jurisdiction of seizure that an intervenor claiming by virtue of an assignment of the bankrupts made after the petition and in payment of attorney's fees must assert the claims in the court of original jurisdiction is an administrative order, and the order of the Circuit Court of Appeals affirming the same is not reviewable in this court. *Ib.*

7. *Title of trustee; law governing effect of pledge, when trustee takes subject to rights of pledgee.*

The legal effect of a transaction involving pledge or hypothecation depends upon the local law; and if the state law permits the pledged property to remain under certain conditions in the possession of the pledgor and those conditions exist, the trustee in bankruptcy of the pledgor takes subject to the rights of the pledgee. (*Taney v. Penn Bank*, 232 U. S. 174.) *Dale v. Pattison*, 399.

8. *Title and disposition of property seized by ancillary receiver; effect of assignment subsequent to petition.*

Property of the bankrupt when seized by an ancillary receiver or trustee is held by virtue of the terms of the Bankruptcy Act to be turned over to the court of original jurisdiction and no right can be acquired in it by assignment subsequent to the petition which can defeat this purpose. *Lazarus v. Prentice*, 263.

See CORPORATIONS, 5, 6;

JURISDICTION, A 2.

### BILLS AND NOTES.

1. *Endorsement; fraud of holder in obtaining; effect on parties otherwise liable.*

Where some of the signatures of defendant endorsers had been obtained

by means of fraudulent representations by the plaintiff holder of the paper, the whole transaction is vitiated even as to those endorsers who were liable on former existing paper of which that in suit was a renewal. *Schmidt v. Bank of Commerce*, 64.

2. *Renewals; effect as new promise; effect of fraudulent inducement.*

A note, although given in renewal of an older note, constitutes a new promise with distinct legal consequences and cannot be enforced if fraudulently induced, even if there were no defense to the older note. *Ib.*

3. *Defenses; estoppel of plaintiff to defeat.*

A party cannot maintain an inconsistent position; and so *held* that where the court, on plaintiffs' motion, has denied the right of defendants to show that the note sued on was void as to them because of subsequent alteration by addition of signatures of other co-makers, the plaintiff cannot defeat defendants' defense of fraud in obtaining the later signatures on the ground that the notes were completed instruments and binding upon the makers before the others had signed. *Ib.*

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

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*See* ACTIONS, 2;

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*Chicago &c. Ry. Co. v. United States*, 196 Fed. Rep. 882, approved in *Southern Ry. Co. v. Crockett*, 725.  
*United States v. National Surety Co.*, 92 Fed. Rep. 549, approved in *Equitable Surety Co. v. McMillan*, 448.

## CASES DISTINGUISHED.

*Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186, distinguished in *Missouri, K. & T. Ry. Co. v. Harris*, 412.  
*Harley v. United States*, 198 U. S. 229, distinguished in *United States v. Buffalo Pitts Co.*, 228.  
*Hooe v. United States*, 218 U. S. 322, distinguished in *United States v. Buffalo Pitts Co.*, 228.  
*United States v. McMullen*, 222 U. S. 460, distinguished in *United States v. Axman*, 36.  
*United States v. O'Brien*, 220 U. S. 321, distinguished in *Stone & Gravel Co. v. United States*, 370.

## CASES FOLLOWED.

*Adams Express Co. v. Croninger*, 226 U. S. 491, followed in *Seaboard Air Line Ry. v. J. M. Pace Mule Co.*, 751.  
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*Atlantic Coast Line v. Mazursky*, 216 U. S. 122, followed in *Missouri, K. & T. Ry. v. Harris*, 412.  
*Atlantic Transport Co. v. Imbrokek*, 234 U. S. 54, followed in *Atlantic Transport Co. v. Szczesek*, 63.  
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*Bernheimer v. Converse*, 206 U. S. 516, followed in *Selig v. Hamilton*, 652.  
*Blythe v. Hinckley*, 180 U. S. 333, followed in *Jones v. Jones*, 615.  
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- Chapman v. Bowen*, 207 U. S. 89, followed in *Synnott v. Tombstone Cons. Mines Co.*, 749.
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- Conboy v. First National Bank*, 203 U. S. 141, followed in *Synnott v. Tombstone Cons. Mines Co.*, 749.
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- Fore River Shipbuilding Co. v. Hagg*, 219 U. S. 175, followed in *Galagher v. Florida East Coast Ry. Co.*, 753.
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- International Harvester Co. v. Kentucky*, 234 U. S. 579, followed in *Same v. Same*, 589.
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## CLAIMS AGAINST UNITED STATES.

1. *Tucker Act; conclusiveness of findings of fact; questions open in this court.*

In cases brought under the Tucker Act and coming to this court from a District or Circuit Court the findings of fact of the trial court are conclusive, and the question here, unless the record would warrant the conclusion that the ultimate facts are not supported by any evidence whatever, is whether the conclusions of law are warranted by the facts found. (*Chase v. United States*, 155 U. S. 489.) *United States v. Buffalo Pitts Co.*, 228.

2. *Tucker Act; jurisdiction under; implied contract on part of Government.*

Where property is left with the officer of the Government who has charge of the work by the owner relying upon the fact that his title is not disputed and upon representations made to him that payment would be recommended for such use, and Congress has given authority to appropriate property necessary for the particular work and to pay therefor, there is an implied contract on the part of the Government to pay for the property and jurisdiction exists under the Tucker Act. *United States v. Lynah*, 188 U. S. 445, followed, and *Harley v. United States*, 198 U. S. 229, distinguished. *Ib.*

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COMMON CARRIERS.

1. *What constitutes; conversion of plant facility into.*

Although a railroad may have originally been a mere plant facility, after it has been acquired by a common carrier duly organized under the law of the State and performing service as such and regulated and operated under competent authority, it is no longer a plant facility but a public institution, even though the owner of the

industry of which it formerly was an appendage is the principal shipper of freight thereover. *Tap Line Cases*, 1.

2. *What constitutes; test as to character of railroad.*

The extent to which a railroad is in fact used does not determine whether it is or is not a common carrier, but the right of the public to demand service of it. *Ib.*

3. *What constitutes; railroads as.*

Railroads owned by corporations properly organized under the laws of the State in which they are and treated as common carriers by the State, authorized to exercise eminent domain, dealt with as common carriers by other railroad corporations, and engaged in carrying for hire goods of those who see fit to employ them, are common carriers for all purposes, and cannot be treated as such as to the general public and not as to those who have a proprietary interest in the corporations owning them. *Ib.*

See CONSTITUTIONAL LAW, 19, 39;  
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COMMUNITY OWNERSHIP.

See ECCLESIASTICAL BODIES.

CONFLICT OF LAWS.

See CONSTITUTIONAL LAW, 2, 3, 5;  
INTERSTATE COMMERCE, 5, 6, 7, 15, 25.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

*Legislative discretion; evidence that problem not beyond.*

The fact that there has been a recent communication and recommendation from the President to Congress on a particular subject and Congress has not acted thereon is evidence that the problem is not so entirely obvious of solution that the courts can declare it to be beyond the range of legislative discretion. *Johnson v. Gearlds*, 422.

See CONSTITUTIONAL LAW, 1-5; INDIANS, 7, 8, 10;  
GOVERNMENTAL FUNCTIONS, INTERSTATE COMMERCE, 1-4, 7, 9,  
1; 14, 16, 23, 34.



## CONSIDERATION.

See INTERSTATE COMMERCE, 20.

## CONSPIRACY.

1. *What constitutes.*

An act, harmless when done by one person, may become a public wrong when done by many acting in concert in pursuance of a conspiracy. (*Grenada Lumber Co. v. Mississippi*, 217 U. S. 433.) *Eastern States Lumber Asso. v. United States*, 600.

2. *Proof of; inference from things done.*

Conspiracies are seldom capable of proof by direct testimony and a conspiracy to accomplish that which is their natural consequence may be inferred from the things actually done. *Ib.*

See RESTRAINT OF TRADE, 1.

## CONSTITUTIONAL LAW.

1. *Commerce clause; what within; ferries.*

Transportation between States and foreign countries is within the protection of the constitutional grant to Congress, and this includes transportation by ferry. (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196.) *Sault Ste Marie v. International Transit Co.*, 333.

2. *Commerce clause; object of; dominant power of Congress.*

The object of the commerce clause was to prevent interstate trade from being destroyed or impeded by the rivalries of local governments; and it is the essence of the complete and paramount power conferred to Congress to regulate interstate commerce that wherever it exists it dominates. *Houston & Texas Ry. Co. v. United States*, 342.

3. *Commerce clause; dominant power of Congress.*

Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves and controls the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule; otherwise the Nation would not be supreme within the National field. *Ib.*

4. *Commerce clause; dominant power of Congress; incidental control of intrastate commerce.*

While Congress does not possess authority to regulate the internal commerce of a State, as such, it does possess power to foster and protect interstate commerce, although in taking necessary meas-

ures so to do it may be necessary to control intrastate transactions of interstate carriers. *Ib.*

5. *Commerce clause; paramount authority of Congress.*

Although there is gravity in any question presented when state and Federal views conflict, it has been recognized from the beginning that this Nation could not prosper if interstate and foreign trade were governed by many masters; and where the freedom of such commerce is involved the judgment of Congress and the agencies it lawfully established must control. *Ib.*

6. *Commerce clause; validity of state statute attempting to regulate conduct of telegraph companies.*

The statute of South Carolina making mental anguish caused by the negligent non-delivery of a telegram a cause of action is, as applied to telegrams the negligent non-delivery of which occurred in the District of Columbia, an unconstitutional attempt to regulate conduct within territory wholly under the jurisdiction of the United States; such statute is also unconstitutional, as to messages sent from that State to be delivered in another State, as an attempt to regulate interstate commerce. *Western Union Tel. Co. v. Brown*, 542.

7. *Commerce clause; validity of state police regulation incidentally affecting interstate commerce.*

A state police regulation designed to promote the payment of small but well founded claims and to discourage litigation in respect thereto, and which only incidentally includes claims arising out of interstate commerce, does not constitute a direct burden on interstate commerce, and is not, in the absence of legislation by Congress on the subject, repugnant to the commerce clause or otherwise in conflict with Federal authority. (*Atlantic Coast Line v. Mazursky*, 216 U. S. 122.) *Missouri, K. & T. Ry. Co. v. Harris*, 412.

8. *Commerce clause; validity of Texas statute allowing attorney fee in cases of claims for loss on interstate shipments.*

The Texas statute of 1909 allowing a reasonable attorney's fee as a part of the costs in suits on contested but proper claims of less than \$200 is not unconstitutional as applied to claims for loss on interstate shipments, nor is it inconsistent with any of the provisions of the Act to Regulate Commerce. *Ib.*

9. *Commerce clause; rights secured by; effect of refusal of state court to allow filing of amended pleading averring indirect effect on interstate commerce.*

The State has full authority over shipments purely intrastate, and an



avermment that a service required at one point as to intrastate shipments might be required at other points in regard to interstate shipments only avers an indirect effect upon interstate commerce; and a defendant carrier denied leave to file an amended pleading to that effect is not deprived of rights secured by the commerce clause of the Federal Constitution. *Louisville & Nashville R. R. Co. v. Higdon*, 592.

See INFRA, 12;

INTERSTATE COMMERCE.

10. *Contract impairment; effect of change of decision of state court.*

A change in decision of the state court in reference to the scope of a state statute *held*, in this case, not to be a law impairing the obligation of a contract. *Moore-Mansfield Co. v. Electrical Co.*, 619.

*Delegation of power.*—See INTERSTATE COMMERCE, 34.

11. *Due process and equal protection of the law; effect to deny, of state statutes penalizing delay in payment of proper claims.*

This court has already decided that state statutes, such as that of Texas imposing a 12% penalty and an attorney's fee, for damages for delay in payment of proper claims, are not unconstitutional under the Fourteenth Amendment as depriving life insurance companies of their property without due process of law or as denying them the equal protection of the law. *Manhattan Life Ins. Co. v. Cohen*, 123.

12. *Due process; equal protection; interstate commerce; validity of Georgia Locomotive Headlight Law.*

The statute of Georgia of 1908, Civil Code, §§ 2697, 2698, requiring railroad companies to use locomotive headlights of specified form and power, is not unconstitutional either as a denial of equal protection of the law, as deprivation of property without due process of law, or as an interference with interstate commerce. *Atlantic Coast Line v. Georgia*, 280.

13. *Due process of law; what constitutes; distinction between actions in personam and in rem in service of process.*

In determining what is due process of law within the meaning of the Fourteenth Amendment, there is a distinction between actions *in personam* and actions *in rem*; in the former judgments without personal service within the State are devoid of validity either within or without the State but in the latter the judgment although based on service by publication may be valid so far as it affects property within the State. (*Pennoyer v. Neff*, 95 U. S. 714.) *Grannis v. Ordean*, 385.



14. *Due process of law; fundamental requisite; effect of misnomer in process.*

While the fundamental requisite of due process of law is the opportunity to be heard, that does not impose an unattainable standard of accuracy; and a defendant served with process either personally, or by publication and mailing, in which his name is misspelled cannot safely ignore it on account of the misnomer. *Ib.*

15. *Due process of law; accuracy required as to names.*

The general rule in cases of constructive service of process by publication tends to strictness, but even in names due process of law does not require ideal accuracy. *Ib.*

16. *Due process of law; constructive notice by publication; effect of misnomer; test as to sufficiency of summons.*

In constructive service of process by publication and mailing where there has been a misnomer, neither the test of *idem sonans* nor that of substantial similarity in appearance in print is the true one; but whether the summons as published and mailed complies with the law of the State so as to give sufficient constructive notice to the party mis-named. *Ib.*

17. *Due process of law; constructive notice by publication; effect of misnomer.*

In this case, *held*, that a summons in an action of foreclosure based on publication and mailing otherwise in strict compliance with the state statute did not deprive a defendant of his property without due process of law because his name was misspelled Albert Geilfuss, assignee, in the various papers instead of correctly, Albert B. Geilfuss, assignee. *Ib.*

18. *Due process and equal protection of the law; validity of state statute allowing attorney fee in certain cases.*

*Missouri, Kansas & Texas Ry. v. Cade*, 233 U. S. 642, followed to effect that the Texas Statute of 1909 allowing an attorney fee in certain cases for claims of less than a specified amount is not unconstitutional under the due process or equal protection provisions of the Fourteenth Amendment. *Missouri, K. & T. Ry. Co. v. Harris*, 412.

19. *Due process of law; validity of provision of Hepburn Act requiring oil carrying pipe lines to become common carriers.*

The provision in Hepburn Act requiring persons or corporations engaged in interstate transportation of oil by pipe lines to become

common carriers and subject to the provisions of the Act to Regulate Commerce is not unconstitutional either as to future pipe lines or as to the owners of existing pipe lines as depriving them of their property without due process of law. *The Pipe Line Cases*, 548.

20. *Due process of law; violation by state penal statute which prescribes no standard of conduct possible to know.*

A state penal statute which prescribes no standard of conduct that it is possible to know violates the fundamental principles of justice embodied in the conception of due process of law. *Collins v. Kentucky*, 634; *Malone v. Kentucky*, 639.

21. *Due process of law; violation of laws of Kentucky relative to pooling of crops.*

*International Harvester Co. v. Kentucky*, ante, p. 216, followed to the effect that the provisions in regard to pooling crops in chapter 117 of the Laws of Kentucky of 1906 as amended by chapter 8 of the Laws of 1908, as construed by the courts of that State, in connection with the anti-trust act of 1890 and § 198 of the Kentucky constitution of 1891, do not prescribe any standard of conduct, and therefore amount to a denial of due process of law under the Fourteenth Amendment. *Ib.*

22. *Due process of law; validity of stockholders' liability law of Minnesota.*

The legislation of Minnesota with respect to the liability of stockholders, as construed by the courts of that State, has heretofore been reviewed and its constitutional validity upheld by this court in *Bernheimer v. Converse*, 206 U. S. 516, and *Converse v. Hamilton*, 224 U. S. 243. *Selig v. Hamilton*, 652.

23. *Eminent domain; implied promise on part of Government to pay for property taken.*

When in the exercise of its governmental rights it takes property, the ownership of which it concedes to be in an individual, the United States, under the constitutional obligation of the Fifth Amendment, impliedly promises to pay therefor. *United States v. Lynah*, 188 U. S. 445, 464, followed. *Hooe v. United States*, 218 U. S. 322, distinguished. *United States v. Buffalo Pitts Co.*, 228.

24. *Equal protection of the law; effect of state statute prohibiting all combinations, good and bad.*

The Fourteenth Amendment does not preclude the State from adopting a policy against all combinations of competing corporations and



enforcing it even against combinations which have been induced by good intentions and from which benefit and not injury may have resulted. *International Harvester Co. v. Missouri*, 199.

25. *Equal protection of the law; power of classification; effect of inequality.*

The power of classification which may be exerted in the legislation of States has a very broad range; and a classification is not invalid under the equal protection provision of the Fourteenth Amendment because of simple inequality. *Ib.*

26. *Equal protection of the law; classification; reasonableness of; Missouri anti-trust Laws of 1899, 1909.*

A state statute prohibiting combination is not unconstitutional as denying equal protection of the law because it embraces vendors of commodities and not vendors of labor and services. There is a reasonable basis for such a classification; and so held as to the Missouri anti-trust Laws of 1899 and 1909. *Ib.*

27. *Equal protection of the law; classification; reasonableness.*

As classification must be accommodated to the problems of legislation; it may depend upon degree of evil so long as it is not unreasonable or arbitrary. *Ib.*

28. *Equal protection of the law; effect to deny, of compelling one to guess as to market value of commodity.*

An anti-trust criminal law may not necessarily be unconstitutional merely because it throws upon men the risk of rightly estimating what is an undue restraint of trade, but to compel a man to guess what the fair market value of commodities manufactured or sold by him would be under other than existing conditions is beyond constitutional limits. *International Harvester Co. v. Kentucky*, 216.

29. *Equal protection of the law; effect to deny, of provisions of Kentucky anti-trust laws.*

The anti-trust provision of the constitution of 1891 and of the acts of 1900 and 1906 of Kentucky, as construed by the highest court of that State, are unconstitutional under the Fourteenth Amendment as offering no standard of conduct that it is possible to know in advance and comply with. *Ib.*

30. *Equal protection of the law; effect to deny, of state statute which does not cover entire field.*

A state statute aimed at an evil and hitting it presumably where experience shows it to be most felt is not unconstitutional under the



equal protection provision of the Fourteenth Amendment because there might be other instances to which it might be equally well applied. *Keokee Coke Co. v. Taylor*, 224.

31. *Equal protection of the law; validity of Virginia statute providing method of payment of employés of certain industries.*

Section 3 of Chapter 391, Virginia Laws of 1888, reënacting the act of 1887 aimed at the evil of payment of labor in orders redeemable only at the employers' shops and forbidding certain classes of employers of labor to issue any order for payment thereto unless purporting to be redeemable for its face value in lawful money of the United States, is not an unconstitutional denial of equal protection of the law because it does not apply to other classes of employers who also own shops and pay with orders redeemable in merchandise. *Ib.*

32. *Equal protection of the law; classification; reasonableness of; railroads and receivers of railroads.*

A state police statute requiring railroad companies to use a specified safety device is not unconstitutional as denying equal protection of the laws because it does not affect receivers operating railroads; in view of the temporary and special character of a receiver's management the classification is reasonable and proper. *Atlantic Coast Line v. Georgia*, 280.

33. *Equal protection of the law; classification; reasonableness; effect of provision on acts regulating judicial procedure.*

A classification which is based on the distinction between that which is ordinary and that which is extraordinary is reasonable and not repugnant to the equal protection provision of the Fourteenth Amendment which only restrains acts regulating judicial procedure so transcending the limits of classification as to cause them to conflict with the fundamental conceptions of just and equal legislation. *Missouri Pacific Ry. Co. v. Larabee*, 459.

34. *Equal protection of the law; validity of state statute imposing attorney's fee in mandamus proceedings against party refusing to obey writ.*

A state statute imposing reasonable attorneys' fees in actual mandamus proceedings against the party refusing to obey a peremptory writ is not repugnant to the equal protection clause of the Fourteenth Amendment either because it does not apply to other proceedings or because it is not reciprocal. The classification is not unreasonable; and so *held* as to the statute to that effect of Kansas involved in this case and as herein applied. *Ib.*

35. *Equal protection of the law; effect to deny, of Tennessee statute of 1865 relative to inheritance by issue of slave marriages.*

The statute of Tennessee of 1865, c. 40, § 8, declaring that children of slave marriages should be legitimately entitled to inherit, as it has been construed by the highest court of that State as not extending the right of inheritance beyond lineal descendants of the parents, is not unconstitutional under the equal provision clause of the Fourteenth Amendment. *Jones v. Jones*, 615.

*See SUPRA*, 11, 12, 18;

INTERSTATE COMMERCE, 35.

36. *Full faith and credit; contracts; obligation on courts.*

Under the full faith and credit clause of the Federal Constitution the courts of one State are not bound to declare a contract, which was made in another State and modified a former contract, illegal because it would be illegal under the law of the State where the original contract was made and of which neither of the parties is a resident or citizen. *New York Life Ins. Co. v. Head*, 149, 166.

37. *Full faith and credit to which judgment of one State entitled in courts of another.*

If the court rendering the judgment had jurisdiction of the subject-matter and the parties, the merits of the controversy are not open for reinvestigation in the courts of another State; but, under the full faith and credit clause of the Federal Constitution and § 905, Rev. Stat., the latter must give the judgment such credit as it has in the State where it was rendered. *Roller v. Murray*, 738.

38. *Full faith and credit; effect of denial by court rendering judgment of due process of law.*

The proper method of obtaining a review of the Federal question adversely decided by the state court is by writ of error to this court under § 237, Judicial Code, and not by collaterally attacking the judgment on the ground that it denies due process of law when it is invoked in the courts of another State. *Ib.*

39. *Property rights; effect to take, of provision of Hepburn Act requiring owner of oil carrying pipe line to become common carrier.*

Requiring a person engaged in interstate transportation of oil by pipe lines to become a common carrier does not involve a taking of private property, and the provision in the Hepburn Act to that effect is not unconstitutional under the Fifth Amendment. *The Pipe Line Cases*, 548.

*See SUPRA*, 19, 23;

ECCLESIASTICAL BODIES, 2, 3.



40. *States; operation of Constitution on.*

The Constitution and its limitations are the safeguards of all the States preventing any and all of them under the guise of license or otherwise from exercising powers not possessed. *New York Life Ins. Co. v. Head*, 149, 166.

*See STATES.*

## CONSTRUCTION OF STATUTES.

*See STATUTES, A.*

## CONTRACTS.

1. *Government; annulment for breach; assumption of benefit and burden of provision.*

The benefit and burden of a provision in a Government contract giving a right to annul in consequence of a breach by failure to commence work must hang together and the Government cannot avail of the former without accepting the latter. *Stone & Gravel Co. v. United States*, 270.

2. *Government; reletting on breach; damages to which Government entitled.*

Where the contract contains a provision for a method of annulment and liquidated damages in case of a breach by failure to commence work and the Government avails of that provision it is only entitled to the liquidated damages and cannot recover damages for difference in cost on reletting the contract under a provision for failure to complete or abandonment after commencing the work. *United States v. O'Brien*, 220 U. S. 321, distinguished. *Ib.*

3. *Government; reletting; liability of original contractor.*

Where, after default of the original contractor, the contract is relet, the original contractor is not bound for difference unless the contract as relet is the same as the original contract. *United States v. Azman*, 36.

4. *Government; reletting; variations; liability of original contractor.*

Where a contract for dredging requires the dredged material to be deposited in a specified location, changes made as to the location for depositing such materials amount to such an important variation that the first contractor cannot be held for difference. *United States v. McMullen*, 222 U. S. 460, distinguished. *Ib.*

5. *Government; changes in; importance of.*

Change in location for depositing material dredged under a govern-



ment contract is not to be regarded as a minor change; it is clearly an important one. *Ib.*

6. *Government; District of Columbia; obligation of surety on bond; dual aspect; change in contract; effect on liability of surety.*

The obligation given by the surety under the District of Columbia Materialmen's Act of 1899 which is modeled after the General Materialmen's Act of 1894, has a dual aspect, being given not only to secure the Government the faithful performance of all the obligations assumed towards it by the contractor, but also to protect third persons from whom the contractor may obtain materials and labor; these two agreements being as distinct as though contained in separate instruments, the surety cannot claim exemption from liability to persons supplying materials merely on account of changes made by the Government and the contractor without its knowledge and which do not alter the general character of the work. *United States v. National Surety Co.*, 92 Fed. Rep. 549, approved. *Equitable Surety Co. v. McMillan*, 448.

7. *Government; bond, discharge of surety by alteration of contract; when rule of strictissimi juris not applicable.*

Under the rule of *strictissimi juris*, the agreement altering the contract must be participated in by the obligee or creditor as well as the principal in order to discharge the surety; in the case of a bond under the Materialmen's Acts of 1894 or 1899, there is no single obligee or creditor to consent thereto and the rule of *strictissimi juris* does not apply where the alterations agreed upon do not change the general nature of the work. *Ib.*

8. *Government; District of Columbia; bond given under act of 1899; effect of change in contract to release surety.*

In this case the alterations of the terms of a contract for building a school house in the District of Columbia altering its location but without affecting its general character, without the knowledge or consent of the surety, did not have the effect of releasing the surety from the obligation of the bond given under the District of Columbia Materialmen's Act of February 28, 1899. *Ib.*

9. *Government; District of Columbia; bond; change in contract releasing surety; quære.*

*Quære*, and not involved in this case, what would be the result of a change not contemplated in the original contract as between the District of Columbia and so great as to amount to abandonment of the contract? *Ib.*

10. *Liquidated damages for delay; enforcement; waiver.*

While reasonable contracts for liquidated damages for delay are not to be regarded as penalties and may be enforced between the parties, *Sun Printing Ass'n v. Moore*, 183 U. S. 642, one party must not prevent the other party from completing the work in time, and if such is the case, even if the subsequent delay is the fault of the latter, the original contract cannot be insisted upon and the liquidated damages are waived. *United States v. United Engineering Co.*, 236.

11. *Liquidated damages for delay; right of Government to recover; effect of supplemental contracts.*

Where the original contract for government work provided for liquidated damages for delay beyond a specified date but supplemental contracts contained no fixed rule for the time of completion, the Government is limited in its recovery to the actual damages sustained by reason of the delay for which the contractor was responsible. *Ib.*

12. *Liquidated damages for delay; fault of both parties; effect to annul obligation to pay.*

It is the English rule, as well as the rule in some of the States, that where both parties are responsible for delays beyond the fixed date, the obligation for liquidated damages is annulled; and, unless there was a provision substituting a new date, the recovery for subsequent delay is limited to the actual loss sustained. *Ib.*

13. *Liquidated damages for delay; waiver by Government; effect of difficulty in proof of actual damages.*

Where the Government has by its own fault prevented performance of the contract and thereby waived the stipulation as to liquidated damages, it cannot insist upon it as a rule of damages because it may be impracticable to prove actual damages. *Ib.*

See CLAIMS AGAINST UNITED STATES, 2; PUBLIC LANDS, 10, 11, 12;  
CONSTITUTIONAL LAW, 10, 23, 36; PUBLIC WORKS, 3;  
ECCLESIASTICAL BODIES, 2, 3; RESTRAINT OF TRADE, 1;  
STATES, 3, 5.

CONTROVERSIES BETWEEN STATES.

See STATES, 1, 2.

CONVEYANCES.

See INDIANS, 1, 2;

PLEDGE.



## CORPORATIONS.

1. *Personal judgment against; essentials to validity.*

It is essential to the rendition of a personal judgment against a corporation that it be doing business within the State; but each case must depend upon its own facts to show that this essential requirement of jurisdiction exists. *International Harvester Co. v. Kentucky*, 579.

2. *Service of process on; sufficiency of presence within State.*

The presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State, although the business may be entirely interstate in its character. *International Harvester Co. v. Kentucky*, 579, 589.

3. *Service of process on; effect of business being entirely interstate in character.*

The fact that the business carried on by a corporation is entirely interstate in its character does not render the corporation immune from the ordinary process of the courts of the State. *Ib.*

4. *Stockholders' liability; Minnesota law; effect of transfer of stock.*

A stockholder cannot, under the statutes of Minnesota, even by a *bona fide* transfer of his stock, escape liability for debts of the corporation theretofore incurred. *Selig v. Hamilton*, 652.

5. *Stockholders' liability; Minnesota law; effect of bankruptcy proceedings against corporation.*

Bankruptcy proceedings against a Minnesota corporation do not stand in the way of a resort to the statutory method of enforcing the liability of a stockholder which is not a corporate asset. *Ib.*

6. *Stockholders' liability; effect of corporation's discharge in bankruptcy.*

Congress has not yet undertaken to provide that a discharge in bankruptcy of a corporation shall release the stockholders from liability. *Ib.*

7. *Stockholders' liability; foreign stockholders; Minnesota law; effect of order of state court in sequestration proceedings.*

A foreign stockholder of a Minnesota corporation is not concluded by an order of the state court in sequestration proceedings under the statute, and in which he was served only by publication without the State, as to any matter relating to his being a stockholder or as to other personal defense. *Ib.*



8. *Stockholders' liability; Minnesota law; when liability ceases.*

When his ownership of the stock ceases, a stockholder in a Minnesota corporation ceases to be liable for debts of the corporation thereafter incurred, although liable for debts previously incurred. *Ib.*

9. *Stockholders' liability; Minnesota law; who assessable.*

Under the state statute, the Minnesota court, in a proceeding to assess stockholders for liability, may assess persons who previously were stockholders for liability for debts incurred during the period they owned the stock. *Ib.*

10. *Stockholders' liability; application of local law limiting time of action to collect.*

*Bernheimer v. Converse*, 206 U. S. 516, followed to the effect that § 394, New York Code of Civil Procedure, does not apply where the corporation is not a moneyed one or a banking association and that the six year period does apply under § 382 to the claim of a receiver of a foreign business corporation for personal liability of a stockholder assessed under the state statute. *Ib.*

11. *Stockholders' liability; proceeding to determine; representation of stockholder.*

In a proper judicial proceeding to determine the amount of indebtedness of an insolvent corporation and the dates of origin of such indebtedness, the individual stockholders are sufficiently represented by the presence of the corporation itself; and the decree establishing such indebtedness is admissible as evidence thereof in a suit against a stockholder. *Ib.*

12. *Stockholders' liability; Minnesota law; defenses open to stockholder not personally served.*

While a stockholder not personally served may urge his personal defenses in a suit to recover the assessment made in sequestration proceedings of an insolvent Minnesota corporation, he may not reopen the amount of the assessment or the question of the necessity therefor. *Ib.*

*See* CONSTITUTIONAL LAW, 22, 24;  
STATES, 4.

## COSTS.

*See* CONSTITUTIONAL LAW, 8.

## COURTS.

1. *Interference with functions of government.*

The courts will not interfere with the ordinary functions of the ex-

ecutive department of the Government. *Louisiana v. McAdoo*, 627.

2. *Federal; jurisdiction; law governing in determining effect of change of decision by state court.*

Courts of the United States are courts of independent jurisdiction; and when a question arises in a United States court as to the effect of a change of decision which detrimentally affects contracts, rights and obligations entered into before such change, such rights and obligations should be determined by the law as judicially construed at the time the rights accrued. *Moore-Mansfield Co. v. Electrical Co.*, 619.

3. *Federal; independent judgment as to violation of contract right by decision of state court.*

Federal courts in such a case, while leaning to the view of the state court, in regard to the validity or the interpretation of a statute, should exercise an independent judgment and not necessarily follow state decisions rendered subsequently to the arising of the contract rights involved. *Ib.*

4. *State; right to assess against party attorney's fee for services in this court.*

A state court has not, nor can a statute of the State give it, the power to assess as against one party to a suit in this court a sum for attorneys' fees for services rendered in this court as against another party to the suit, when such assessment is not authorized by the law of the United States or by the rules of this court. *Missouri Pacific Ry. Co. v. Larabee*, 459.

5. *State; power to award damages suffered after writ of error and supersedeas by this court in suit for injunction.*

A state court, when so authorized by the laws of the State, has the power to award actual damages for business losses which are suffered by reason of the acts sought to be controlled or enjoined in the suit after the allowance by this court of a writ of error and supersedeas, including reasonable attorneys' fees in the proceedings in the state court. *Quære*, whether the state court can award punitive damages. *Ib.*

6. *Question for, in suit against ecclesiastical body; when civic and not ecclesiastical.*

In a suit by an ecclesiastical society to recover from the administrator of a deceased member assets of the estate as community property under the provisions of the constitution and membership, the ques-

tion for the courts is not one of canon law or ecclesiastical polity, but one solely of civil rights. *St. Benedict Order v. Steinhäuser*, 640.

*See* CONGRESS, POWERS OF; INTERSTATE COMMERCE COMMISSION, 5, 8, 14;  
CONSTITUTIONAL LAW, 36, JUDGMENTS AND DECREES, 3;  
37; JURISDICTION;  
GOVERNMENTAL FUNCTIONS; PHILIPPINE ISLANDS, 1;  
GOVERNMENTAL POWERS, 1; PRACTICE AND PROCEDURE;  
INDIANS, 10; STATES, 10;  
INJUNCTION; STATUTES, A 6, 9, 10, 11.

### CRIMINAL LAW.

*See* PHILIPPINE ISLANDS.

### CUSTOM AND USAGE.

*As evidence of long understood law.*

Where neither statutes nor decisions of the courts are directly to the contrary, the courts may refer to established trade customs as evidence of what has been long understood to be the law. (*Gibson v. Stevens*, 8 How. 384.) *Dale v. Pattison*, 399.  
*See* LOCAL LAW (Ohio).

### CUSTOMS DUTIES.

*See* MANDAMUS, 3, 4, 6;  
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### DAMAGES.

*See* ACTIONS, 2; CONTRACTS, 2, 3, 4, 10-13;  
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## DESCENT AND DISTRIBUTION.

1. *Law governing; nature of right of inheritance.*

Inheritance is not a natural or absolute right but the creation of statute and is governed by the *lex rei sitæ*. *Jones v. Jones*, 615.

2. *Law governing in case of claim through alien, bastard or slave.*

The rights of one claiming real property as heir, through an alien, a bastard or a slave, must be determined by the local law. (*Blythe v. Hinckley*, 180 U. S. 333.) *Ib.*

See CONSTITUTIONAL LAW, 35;

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INTERSTATE COMMERCE COMMISSION, 10, 11;

## DRAW-BARS.

See SAFETY APPLIANCE ACT, 3, 4.

DUE PROCESS OF LAW.

*See* CONSTITUTIONAL LAW, 11-22;  
PHILIPPINE ISLANDS, 5;  
PRACTICE AND PROCEDURE, 2.

DUTIES ON IMPORTS.

*See* MANDAMUS, 3, 4, 6;  
STATES, 11;  
UNITED STATES, 3.

ECCLESIASTICAL BODIES.

1. *Community ownership of property; repugnance to public policy.*

Where the State has chartered a society as one of "religious men living in community," a provision in its constitution for community ownership, with renunciation of individual rights in private property during continuance of membership, with freedom of withdrawal, is not invalid as opposed to the public policy of, but is directly sanctioned by, the State creating the society. *St. Benedict Order v. Steinhauser*, 640.

2. *Community ownership of property; validity of agreement as to.*

An agreement to live in community and renounce individual rights of property, but with a right to withdraw at any time invades no constitutional right; nor, in this case, does it transgress any statute of the State of New Jersey which chartered the society with which the agreement is made. *Ib.*

3. *Community ownership of property; validity under Constitution and public policy of agreement as to.*

In this case *held* that an agreement made by a member of a religious order chartered as a society of religious men living in community that his individual earnings and acquisitions, like those of other members, should go into the common fund, included his earnings from copyrights of books; and also *held*, that as such agreement contained a right to withdraw at any time there was no infringement of any right protected by the Constitution of the United States nor was it against the public policy of the State of New Jersey which granted the charter to the society. *Ib.*

*See* COURTS, 6.

EMINENT DOMAIN.

*See* CONSTITUTIONAL LAW, 23, 39.

## EMPLOYER AND EMPLOYÉ.

*See* ADMIRALTY, 2;

CONSTITUTIONAL LAW, 31;

EMPLOYERS' LIABILITY ACT.

## EMPLOYERS' LIABILITY ACT.

*Assumption of risk; effect of act on common law doctrine.*

By the Employers' Liability Act the defense of assumption of risk remains as at common law, save in those cases mentioned in § 4 where the violation by the carrier of any statute enacted for the safety of employes contributed to the accident. *Southern Ry. Co. v. Crockett*, 725.

## EQUAL PROTECTION OF THE LAW.

*See* CONSTITUTIONAL LAW, 11, 12, 18, 24-35;

PHILIPPINE ISLANDS, 2.

## EQUITY.

*See* PUBLIC LANDS, 21.

## ESTOPPEL

*See* BILLS AND NOTES, 3;

INTERSTATE COMMERCE COMMISSION, 1;

PUBLIC LANDS, 10.

## EVIDENCE.

*Benefit of testimony; who entitled.*

A party is entitled to the benefit of all the testimony in the case from whatever source it comes; and, although having the burden of proof, need not prove any fact otherwise established. *New Orleans & N. E. R. Co. v. National Rice Co.*, 80.

*See* CONGRESS, POWERS OF;

CUSTOM AND USAGE;

CONSPIRACY, 2;

INTERSTATE COMMERCE, 41;

CORPORATIONS, 11;

PUBLIC LANDS, 19, 20.

## EXECUTION.

*See* BANKRUPTCY, 1, 2;

INDIANS, 3.

## EXECUTIVE DEPARTMENTS.

*See* COURTS, 1.



## EXEMPTION FROM LIABILITY.

*See* INTERSTATE COMMERCE, 21.

## FACTS.

- See* CLAIMS AGAINST UNITED STATES; JURISDICTION, A 12;  
 INTERSTATE COMMERCE COMMIS- PRACTICE AND PROCEDURE,  
 SION, 2, 12, 13, 14; 3-6;  
 STATES, 1.

## FEDERAL QUESTION.

1. *Claim of impairment of Federal right; when precluded by decision of state court.*

The criticism that a police statute requires a carrier to comply with conditions beyond its control and, therefore, deprives it of its property without due process of law, is not open in this court if the state court has construed the statute as not so requiring the carrier. *Atlantic Coast Line v. Georgia*, 280.

2. *Not involved in obstruction of non-navigable stream wholly within State.*

There is no Federal right involved in the obstruction, or use by private owners, of a non-navigable stream wholly within a State. *Illinois v. Economy Power Co.*, 497.

3. *Deprivation of Federal right; effect of refusal of state court to allow filing of amended pleading.*

In this case *held*, that defendant had not been deprived of Federal rights because the state court had refused to allow him to file an amended pleading and relitigate a question already decided by setting up alleged violations of Federal rights. *Louisville & Nashville R. R. Co. v. Higdon*, 592.

*See* CONSTITUTIONAL LAW, 9;

JURISDICTION;

PRACTICE AND PROCEDURE, 10, 11.

## FEES.

- See* BANKRUPTCY, 4; COURTS, 4, 5;  
 CONSTITUTIONAL LAW, 8, 11, 18, 34; INTERSTATE COMMERCE, 25.

## FERRIES.

1. *Right to maintain under common law.*

At common law the right to maintain a public ferry lies in franchise.

*Port Richmond Ferry v. Hudson County*, 317.

2. *Right to maintain, in England and in this country.*

In England such a ferry could not be set up without the King's license, and, in this country, the right has been made the subject of legislative grant. *Ib.*

3. *Transportation by; unrelated character of; regulation of.*

Questions in respect to ferries such as the one involved in this case, generally imply transportation for a short distance, generally between two specified points, unrelated to other transportation, thus presenting situations essentially local and requiring regulation according to local conditions. *Ib.*

4. *Regulation by State; limitations upon power.*

A State being able to exercise the power to regulate ferries, it follows that it may not derogate from the similar authority of another State; its regulating power therefore extends only to transactions within its own territory and to ferriage from its own shores. *Ib.*

5. *Regulation of rates on boundary ferry; power of respective States.*

Rates of ferriage fixed by one State from its own shore on a boundary ferry do not preclude the other State from fixing other rates if reasonable with respect to the ferry maintained on its side. *Ib.*

6. *Regulation of rates on boundary ferry; power of State as to round trip tickets.*

Although the state court has not construed an ordinance fixing rates of ferry on a boundary ferry as requiring the issuing of round trip tickets, and this court does not so construe it, the ordinance may be valid as limiting the amount which may be charged if such trip tickets are issued; and so *held* in this case. *Quære* as to whether a State may require round trip tickets to be issued on a boundary ferry. *Ib.*

*See* CONSTITUTIONAL LAW, 1;  
INTERSTATE COMMERCE, 1, 13, 14;  
TREATIES.

## FIFTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 23, 39.

## FINDINGS OF FACT.

*See* CLAIMS AGAINST UNITED STATES;  
PRACTICE AND PROCEDURE, 3-6;  
STATES, 1.



## FLOATS.

*See* PUBLIC LANDS, 3, 5, 7, 15.

## FOREIGN COMMERCE.

*See* CONSTITUTIONAL LAW, 1.

## FOREIGN CORPORATIONS.

*See* STATES, 4.

## FOURTEENTH AMENDMENT.

*See* CONSTITUTIONAL LAW.

## FRAUD.

*See* BILLS AND NOTES, 1, 2, 3;

LOCAL LAW (N. Mex.);

PUBLIC LANDS, 1, 4, 21.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 36, 37, 38.

## GOVERNMENTAL FUNCTIONS.

1. *Legislative and judicial functions in respect of legislation.*

The responsibility for the justice and wisdom of legislation rests with Congress and it is the province of the courts to enforce, not to make, the laws. *United States v. First National Bank*, 245

2. *Legislative and not judicial; application of police statute.*

It is for the legislature to determine to what classes a police statute shall apply; and unless there is a clear case of discrimination the courts will not interfere. *Keokee Coke Co. v. Taylor*, 224.

*See* APPEAL AND ERROR, 1;

INDIANS, 10;

CONGRESS, POWERS OF;

INTERSTATE COMMERCE COMMISSION, 5;

COURTS;

MANDAMUS, 3.

## GOVERNMENTAL POWERS.

1. *Legislative; questions of policy within.*

Questions of policy are for the legislature and not for this court to determine. *International Harvester Co. v. Missouri*, 199.

2. *State and Federal; effect on power of former of investigation of subject by latter.*

The intent of Congress to supersede the exercise of the police power of



the States in respect to a subject on which it has not acted cannot be inferred from the fact that such subject has been investigated under its authority. *Atlantic Coast Line v. Georgia*, 280.

See CONGRESS, POWERS OF; INTERSTATE COMMERCE COMMISSION;  
CONSTITUTIONAL LAW, 40; STATES.

## GOVERNMENT CONTRACTS.

See CONTRACTS.

## GRAND JURY.

See PHILIPPINE ISLANDS, 5.

## HEIRS.

See CONSTITUTIONAL LAW, 35;  
LOCAL LAW (Tenn.).

## HEPBURN ACT.

See CONSTITUTIONAL LAW, 19, 39;  
INTERSTATE COMMERCE, 17-21.

## HOMESTEADS.

See PUBLIC LANDS, 2.

## IDEM SONANS.

See CONSTITUTIONAL LAW, 16, 17.

## IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 10.

## INDIANS.

### 1. Allotments; restrictions on alienation; policy of Congress.

The policy of Congress in regard to restrictions upon alienation of allotments has been to protect Indians against their own improvidence, whether shown by acts of commission or omission, contracts or torts. *Mullen v. Simmons*, 192.

### 2. Allotments; prohibition against encumbering; application of.

The prohibition, contained in § 15 of the act of July 1, 1902, as to affecting or encumbering allotments made under the act by deeds, debts or obligations contracted prior to the termination of period of restriction on alienation, applies to a judgment entered against an allottee whether based on a tort or on a contract. *Ib.*

3. *Allotments; restriction on alienation; effect of sale under judgment for tort.*

A tort may be a breach of a mere legal duty or a consequence of negligent conduct, and a confessed judgment based on a prearranged tort might become an easy means of circumventing the policy of the statutes restricting alienation of Indian allotments if alienation could be effected by levy and sale under such a judgment. *Ib*

4. *Allotments; removal of restrictions upon alienation; class to which Clapp Amendments of 1906, 1907, applicable.*

The Clapp Amendments of June 21, 1906, 34 Stat. 325, 353, and March 1, 1907, *Id.* 1015, 1034, removing restrictions imposed by the act of February 8, 1887, upon alienation of Chippewa allotments as to mixed bloods apply to mixed bloods of all degrees and not only to those of half or more than half white blood. Such was not the congressional intent as expressed in the statute and this court cannot interpret the statute except according to the import of its plain terms. *United States v. First National Bank*, 245.

5. *Classification; policy of Congress.*

Congress has on several occasions put full blood Indians in one class and all others in another class. *Ib*.

6. *Intoxicating liquors; boundaries contemplated by Article VII of Treaty of 1855 with Minnesota Chippewas.*

The provision in Article VII of the treaty with the Minnesota Chippewa Indians of 1855, that the laws of Congress prohibiting the manufacture and introduction of liquor in Indian country shall be in force within the entire boundaries of the country ceded by that treaty to the United States until otherwise provided by Congress, relates to the outer boundaries and includes all the reservations that lie within. *Johnson v. Gearlds*, 422.

7. *Intoxicating liquors; power of Congress to prohibit; lands comprehended.*

It is within the constitutional power of Congress to prohibit the manufacture, introduction or sale of intoxicants upon Indian lands, including not only land reserved for their special occupancy, but also lands outside of the reservations to which they may naturally resort; and this prohibition may extend even with respect to lands lying within the bounds of States. *Ib*.

8. *Intoxicating liquors; intent of treaties of 1855, 1865 and 1867, with Chippewas; effect of act admitting Minnesota.*

Article VII of the Chippewa treaty of 1855 was not repealed directly or



by implication by the subsequent act of Congress admitting Minnesota into the Union, nor was that article repealed by the effect of the subsequent treaties with the same bands of Chippewas of 1865 and 1867; but the intent of treaties of 1855, 1865 and 1867, as construed together, was that the acts of Congress relating to the introduction and sale of liquor in Indian country should continue in force within the entire boundaries of the country in question until otherwise provided by Congress. *Ib.*

9. *Intoxicating liquors; Article VII of Chippewa Treaty of 1855; effect of Nelson Act and change of character of territory affected by treaty.*

Article VII of the Chippewa Treaty of 1855 has not been superseded by any of the provisions of the Nelson Act of 1889, or the cessions made by the Indians to the United States pursuant thereto; nor has that article been superseded by reason of any change in the character of the Territory affected by the treaty and the status of the Indians therein. *Ib.*

10. *Intoxicating liquors; abrogation of article of treaty concerning; question for Congress and not for courts.*

The abrogation of an article in an Indian treaty prohibiting the sale of liquor within territory specified therein until Congress otherwise provides is, in the absence of any considerable number of Indians remaining in that territory, a question primarily for Congress and not for the courts. *Ib.*

11. *Intoxicating liquors; Article VII of Chippewa Treaty of 1855 in force.*

Article VII of the Chippewa Treaty of 1855 having provided for the prohibition against sale of liquor within the entire territory ceded by that treaty until Congress should otherwise provide, *held* that notwithstanding the subsequent admission of Minnesota to the Union, and the later treaties with the Chippewas of 1865 and 1867 and the changed condition of the country and the status of the Indians, Congress not having otherwise provided, the prohibition is still in force throughout that entire territory including the City of Bemidji in which there are but few Indians and in the vicinity of which there is a large area of territory unrestricted by the prohibitions of Article VII. *Ib.*

*See* STATUTES, A 5.

#### INDICTMENT AND INFORMATION.

*See* PHILIPPINE ISLANDS, 5, 6.



## INHERITANCE.

See CONSTITUTIONAL LAW, 35;  
DESCENT AND DISTRIBUTION.

## INJUNCTION.

*To stay proceeding in state court; power of Federal court to issue; application of prohibition in § 265, Judicial Code.*

The prohibition, § 720, Rev. Stat., now § 265, Judicial Code, against granting the writs of injunction by the Federal court to stay proceedings in a state court except where authorized by the Bankruptcy Act *held*, in this case, to apply to a case commenced after adjudication of bankruptcy to enjoin the trustee from prosecuting a suit in ejectment, in the courts of the State where the land is situated. Such a case is not within the exception or in aid of the bankruptcy proceeding. *Hull v. Burr*, 712.

See ACTIONS, 1; JURISDICTION, A 2; D;  
COURTS, 5; PUBLIC LANDS, 5;  
PUBLIC WORKS, 2.

## INSURANCE.

See CONSTITUTIONAL LAW, 11;  
PAYMENT;  
STATES, 4, 5.

## INTERSTATE COMMERCE.

1. *What constitutes; transportation by ferry as; power of States to regulate.*

Transportation of persons and property from one State to another by ferry is interstate commerce and subject to regulation by Congress, and it is beyond the competency of the States to impose direct burdens thereon; Congress not having acted on the subject, however, the States may exercise a measure of regulatory power not inconsistent with the Federal authority and not actually burdening, or interfering with, interstate commerce. *Port Richmond Ferry v. Hudson County*, 317.

2. *What constitutes; effect of purchase by carrier of article transported.*

The fact that the article transported between interstate points has been purchased by the carrier, is not conclusive against the transportation being interstate commerce; and in this case, *held* that interstate transportation of oil purchased from the producers by the owner of the pipe is interstate commerce and under the control of Congress. *The Pipe Line Cases*, 548.

3. *Federal power over interstate highways.*

Congress may, whenever it pleases, make the rule and establish the standard to be observed on interstate highways. *Atlantic Coast Line v. Georgia*, 280.

4. *Federal power over intrastate rates; delegation of power.*

Congress having the power to control intrastate charges of an interstate carrier to the extent necessary to prevent injurious discrimination against interstate commerce may provide for its execution through the aid of a subordinate body. *Houston & Texas Ry. Co. v. United States*, 342.

5. *Federal authority; effect of order of Commission on inconsistent local requirement.*

No local rule can nullify the lawful exercise of Federal authority; and after the Interstate Commerce Commission has made an order within its jurisdiction there is no compulsion on the carrier to comply with any inconsistent local requirement. *Ib.*

6. *Federal authority; effect of order of Commission on inconsistent local requirement.*

An order made by the Interstate Commerce Commission that in order to correct discrimination found to exist against specified localities interstate carriers should desist from charging higher rates for transportation between certain specified interstate points than between certain specified intrastate points, *held* to be within the power delegated by Congress to the Commission notwithstanding the carriers might be required to disregard rates established by the State Railroad Commission in order to comply with the order of the Interstate Commerce Commission. *Ib.*

7. *Federal authority; effect of exertion to supersede state laws.*

When Congress has exerted its paramount legislative authority over a particular subject of interstate commerce, state laws upon the same subject are superseded. *Missouri, K. & T. Ry. Co. v. Harris*, 412.

8. *Federal authority; creation of Commission; effect on police power of States.*

The mere creation of the Interstate Commerce Commission, and the grant to it of a measure of control over interstate commerce, does not, in the absence of specific action by Congress or the Commission, interfere with the police power of the States as to matters otherwise within their respective jurisdictions and not directly bur-



dening interstate commerce even though such commerce may be incidentally affected. (*Southern Ry. Co. v. Reid*, 222 U. S. 424.) *Ib.*

9. *Federal power; requirement that common carriers in substance become such in form.*

While the control of Congress over commerce among the States cannot be made a means of exercising powers not committed to it by the Constitution, it may require those who are common carriers in substance to become so in form. *The Pipe Line Cases*, 548.

10. *Absence of Federal action; presumption arising from.*

The absence of Federal action does not presuppose that the public interest is unprotected from extortion. *Port Richmond Ferry v. Hudson County*, 317.

11. *State interference; power to exact license fee for privilege of.*

A State may not make commercial intercourse with another State or a foreign country a matter of local privilege and require that it cannot be carried on without its consent, and to exact a license fee as the price of that consent. *Sault Ste. Marie v. International Transit Co.*, 333.

12. *State interference; power to exact license fee for privilege of.*

One otherwise enjoying full capacity for the purpose of carrying on interstate commerce cannot be compelled to take out a local license for the mere privilege of carrying it on. *Ib.*

13. *State burdens on; invalidity of license exaction for operation of ferry.*

An ordinance enacted by the city of Sault Ste. Marie under state authority, requiring a license fee for the operation of ferries to the Canadian shore opposite, *held* unconstitutional, as applied to the owners of a ferryboat plying from the Canadian shore, as a burden on interstate commerce. *Ib.*

14. *States; power to regulate rates on ferries and bridges over boundary streams.*

A State has the power to establish boundary ferries and bridges, not a part of a continuous interstate carrier system, and regulate the rates to be charged from its shores, subject to the paramount authority of Congress over interstate commerce; and, even though there might be a difference in the rate of ferriage from one side of the stream as compared with the rate charged from the other side. *Port Richmond Ferry v. Hudson County*, 317.



15. *States; discriminatory use of instrumentality of interstate commerce; Federal intervention; conflict with Federal authority.*

The use by the State of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on any part of that commerce is a ground for Federal intervention; nor can a State authorize a carrier to do that which Congress may forbid and has forbidden. *Houston & Texas Ry. Co. v. United States*, 342.

16. *State discrimination against; power of Congress to remove; relation of intrastate to interstate rates.*

In removing injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates Congress is not bound to reduce the latter to the level of the former. *Ib.*

17. *Hepburn Act; application to pipe lines.*

The provision in the Hepburn Act, amending the Act to Regulate Commerce by making persons or corporations engaged in transporting oil from one State to another by pipe lines common carriers, applies to the combination of pipe lines owned and controlled by the Standard Oil Company and to the constituent corporations united in a single line, although the only oil transported is that which has been purchased by the Standard Oil Company or by such constituent corporations prior to the transportation thereof. *The Pipe Line Cases*, 548.

18. *Hepburn Act; pipe line provision; application to existing corporations.*

As applied to existing corporations, the pipe line provision of the Hepburn Act does not compel persons engaged in interstate transportation of oil to continue in operation, but it does require them not to continue to transport oil for others or purchased by themselves except as common carriers. *Ib.*

19. *Hepburn Act; pipe line provision; when transportation of oil merely incidental to use.*

A corporation engaged in refining oil may draw oil from its own wells through a pipe line across a state line to its own refinery for its own use without being a common carrier under the pipe line provisions of the Hepburn Act, the transportation being merely incidental to the use of the oil at the end. *Ib.*

20. *Hepburn Act; free pass provision; nature of pass issued to member of family of employé.*

Under the free pass provision of the Hepburn Act of June 29, 1906, a free pass issued by a railroad company between interstate points

to a member of the family of an employé is gratuitous and not in consideration of services of the employé. *Charleston & W. Carolina Ry. Co. v. Thompson*, 576.

21. *Hepburn Act; free pass provision; validity of stipulations in pass issued to member of family of employé.*

As a pass issued to a member of the family of an employé of a railroad company is free under the provision of the Hepburn Act permitting it to be issued, the stipulations contained in it and on which it is accepted, including one exempting the company from liability in case of injury, are valid. *Ib.*

22. *Commodities clause; exemption of lumber.*

Under the Commodities Clause it is not unlawful for a common carrier to carry lumber owned by it, and until the law otherwise provides, it may treat freight owned by it in the same manner as like freight independently owned. *United States v. Butler County R. R. Co.*, 29.

23. *Commodities clause; exemption of lumber; power of Congress.*

Congress has expressly excepted the transportation of lumber from the operation of the commodities clause, and had power so to do. (*United States v. Del. & Hudson Co.*, 213 U. S. 366.) *Tap Line Cases*, 1.

24. *Commodities clause; exemption of lumber; effect on status of tap lines.*

Congress, by the exemption of lumber from the operation of the commodities clause, shows that it regarded railroad tap lines for lumber, owned and operated by the owners of the timber, as essential for the development of the timber interests of the country. *Ib.*

25. *Carmack Amendment; effect on state legislation.*

While the Carmack Amendment supersedes state legislation on the subject of the carrier's liability for loss of interstate shipments, it does not interfere with a state statute incidentally affecting the remedy for enforcing that liability, such as a moderate attorney fee in case of recoverable contested claims for damages. *Atlantic Coast Line v. Riverside Mills*, 219 U. S. 186, distinguished. *Missouri, K. & T. Ry. Co. v. Harris*, 412.

26. *Charges by carriers; additional services justifying; delivery and receipt of goods on industrial spur track.*

The delivery and receipt of goods on an industrial spur-track within the switching limits in a city is not necessarily an added service for



which the carrier is entitled to make, or should make, a charge additional to the line haul rate to and from that city when that rate embraces a receiving and delivery service for which the spur-track service is a substitute. *Los Angeles Switching Case*, 294; *Interstate Com. Comm. v. Southern Pacific Co.*, 315.

27. *Charges for switching in terminal district; right of railway to make; power of Commission.*

It is permissible for a railway company to establish a terminal district and to make an average charge for switching within it, where legal, but where illegal the Commission may require it to deliver on spur-tracks within that district regardless of the variations in distance within its own established terminal lines. *Ib.*

28. *Charges for switching freight to industrial spur-tracks in terminal district; prohibition of Commission sustained.*

The order of the Interstate Commerce Commission that the carriers desist from making a switching charge for carload freight moving in interstate commerce to industrial spur-tracks within the switching limits of Los Angeles, California, sustained. *Ib.*

29. *Charges for terminal services; validity of order of Commission prohibiting.*

An order of the Interstate Commerce Commission requiring railway companies to desist from exacting charges for delivering and receiving carload freight to and from industries located upon spurs and sidetracks within the switching limits of a terminal city when such carload freight is moving in interstate commerce incidentally to a system line haul is not open to the objection that it rests upon a construction of the Act to Regulate Commerce which would forbid a carrier from separating its terminal and haulage charges on the same shipment. *Los Angeles Switching Case*, 294; *Interstate Com. Comm. v. Southern Pacific Co.*, 315.

30. *Rates; publication; what contemplated by Act to Regulate Commerce; quere as to.*

*Quere*, and not involved in this decision, whether the rate which the Act to Regulate Commerce requires to be published is a complete rate including not only the charge for hauling but also the charge for the use of terminals at both ends of the line. *Ib.*

31. *Rates; reduction by Commission; evidence to justify.*

The record does not disclose any evidence justifying the order of the Commission directing a reduction of rates which had been held to



be reasonable by a prior order of the Commission. *Florida East Coast Ry. Co. v. United States*, 167.

32. *Rates; discrimination; effect of identical control of freight offered and stock of railroad.*

The fact that the same ownership controls the freight offered and the stock of a railroad company which is a common carrier, does not justify a different rate imposed upon the same kind of traffic. *United States v. Butler County R. R. Co.*, 29.

33. *Rates; long and short haul; lodgment of power before and after act of June 18, 1910.*

Prior to the amendment of June 18, 1910, § 4 of the Act to Regulate Commerce lodged in the carrier the right to exercise a primary judgment, subject to administrative control and ultimate judicial review, concerning the necessity and propriety of making a lower rate for the longer than the shorter haul, thus giving the carrier power to exert its judgment as to things of a public nature; but the amendment withdrew that right of primary judgment and lodged it in the Interstate Commerce Commission to be exercised on request and after due investigation and consideration of the public interests concerned and in view of the preference and discrimination clauses of §§ 2 and 3 of the act. *Intermountain Rate Cases*, 476; *United States v. Union Pacific R. R. Co.*, 495.

34. *Rates; long and short-haul provisions of § 4 of Act to Regulate Commerce as amended; constitutional validity.*

The long and short-haul provisions of § 4 of the Act to Regulate Commerce as amended by the act of June 18, 1910, are not repugnant to the Constitution of the United States as a delegation of power to the Interstate Commerce Commission beyond the competency of Congress. *Ib.*

35. *Rates; long and short-haul clause; constitutional validity.*

In *Louis. & Nash. R. R. Co. v. Kentucky*, 183 U. S. 503, this court decided that a general enforcement of the long and short-haul clause of the Act to Regulate Commerce would not be repugnant to the Constitution, and will not now reconsider and overrule that decision. *Ib.*

36. *Division of rates between trunk line and common carrier; power of Commission to prevent rebate or discrimination in.*

If the division of rates between a trunk line and a common carrier controlled by the same interest as controls the bulk of the freight

moved by the carrier, is a mere cover for rebates and discriminations, the Interstate Commerce Commission has power to prevent such practices. *United States v. Butler County R. R. Co.*, 29.

37. *Division of rates as to lumber; authority of Congress over tap lines.*

It is beyond the authority of the Interstate Commerce Commission to order a tap line to cease a division of rates as to lumber owned by it or by those having proprietary interest therein, if it is allowed such division as to lumber shipments by others. *Tap Line Cases*, 1.

38. *Division of rates between carrier and tap line; power of Commission to prevent rebate or discrimination in.*

If the division of joint rates between the principal carrier and the tap line really amounts to a rebate or discrimination in favor of the tap line owners, it is within the power and duty of the Interstate Commerce Commission to reduce such division to a proper point. *Ib.*

39. *Preferences and discrimination; application of § 3 of Act to Regulate Commerce.*

The prohibition of § 3 of the Act to Regulate Commerce is not directed solely against voluntary acts of the carrier amounting to unjust discrimination or undue preference, but relates to all such acts. *Houston & Texas Ry. Co. v. United States*, 342.

40. *Passes; power of carrier to issue in consideration of services; quære.*

*Quære* whether under § 6 of the Act to Regulate Commerce, an interstate carrier can issue a pass in consideration of services. *Charleston & W. Carolina Ry. Co. v. Thompson*, 576.

41. *Evidence as to condition of traffic; application in suit against railroads.*

In a proceeding against several railroads, testimony as to the condition of traffic on certain railroads does not tend to establish conditions on another road in regard to which no testimony is given and where the record shows essential differences between it and those roads in regard to which the testimony was given. *Florida East Coast Ry. Co. v. United States*, 167.

See CONSTITUTIONAL LAW, 1-9, 12, 39; EMPLOYERS' LIABILITY ACT;  
CORPORATIONS, 2, 3; RESTRAINT OF TRADE;  
STATES, 6, 7, 9.

### INTERSTATE COMMERCE COMMISSION.

1. *Resort to; right of; to determine reasonableness of switching charges; estoppel.*

Although the Interstate Commerce Commission may not have found that a switching charge if legal was unreasonable in amount or that



the shippers had objected thereto as the service must be performed according to the law of the land, the shippers are not estopped from bringing the matter before the Commission to the end that the carrier's charges should not be unreasonable or unjustly discriminatory. *Los Angeles Switching Case*, 294; *Interstate Com. Comm. v. Southern Pacific Co.*, 315.

2. *Jurisdiction to determine nature of terminal services.*

Industrial spur-tracks established within the carrier's switching limits, within which the team tracks are also located, may constitute an essential part of the carrier's terminal system, and whether or not delivery on the spur-track is an additional service on which to base a charge or merely a substituted service included in the line-haul rate is a question of fact for the Interstate Commerce Commission to determine. *Ib.*

3. *Jurisdiction; determination of commodities included within class tariff.*

Whether a class tariff includes a particular commodity is a controversy primarily to be determined by the Interstate Commerce Commission in the exercise of its power concerning tariffs and the authority to regulate conferred upon it by the Act to Regulate Commerce. *Texas & Pacific Ry. Co. v. American Tie & Timber Co.*, 138.

4. *Jurisdiction; determination of character of crossties as lumber.*

Whether crossties are or are not lumber and therefore within the tariffs filed for the latter is a question on which there is great diversity of opinion even among experts upon the subject, and one that should be determined in the first instance by the Interstate Commerce Commission. *Ib.*

5. *Jurisdiction; interference by courts.*

The courts may not, as an original question, exert authority over subjects which primarily come within the jurisdiction of the Interstate Commerce Commission. *Ib.*

6. *Power to prevent discriminations against interstate commerce.*

By § 3 of the Act to Regulate Commerce, 24 Stat. 379, 380, Congress has delegated to the Interstate Commerce Commission power to prevent all discriminations against interstate commerce by interstate carriers which it is within the power of Congress to condemn. *Houston & Texas Ry. Co. v. United States*, 342.

7. *Power to correct unjust discriminations against localities.*

Where the Interstate Commerce Commission has found after due in-



vestigation that unjust discrimination against localities exists under substantially similar conditions of transportation the Commission has power to correct it; and this notwithstanding the limitations contained in the proviso to § 3 of the Act to Regulate Commerce. *Ib.*

8. *Power to prevent unjust discrimination; prior action; effect of.*

The earlier action of the Interstate Commerce Commission was not of such controlling effect as to preclude the Commission from giving effect to the Act to Regulate Commerce, and in this case having, after examination of the question of its authority, decided to make a remedial order to prevent unjust discrimination and the Commerce Court having sustained that authority of the Commission this court should not reverse unless, as is not the case, the law has been misapplied. *Ib.*

9. *Power to make order permitting lower rate for longer haul, etc.*

Under § 4 of the Act to Regulate Commerce, as amended by the act of June 18, 1910, the Interstate Commerce Commission has power to make an order, such as that involved in these cases, permitting a lower rate for the longer haul but only on terms stated in the order, establishing zones for the intermediate points and relative percentages upon which proportionate rates should be based. *Intermountain Rate Cases*, 476.

10. *Review of orders of, by Commerce Court; what constitutes affirmative order.*

An order of the Interstate Commerce Commission, based on its finding that the service rendered by a connecting line is not a service of transportation by a common carrier railroad, but a plant service by a plant facility, to the effect that allowances and divisions of rates are unlawful and must be discontinued, is affirmative in its nature and subject to judicial review by the Commerce Court. *Tap Line Cases*, 1.

11. *Review of orders of; what reviewable.*

Where the validity of an order of the Interstate Commerce Commission directing discontinuance of divisions of rates with another railroad depends upon whether the latter is a common carrier or a plant facility, the determination of that question upon undisputed facts is a conclusion of law which is subject to judicial review. *Ib.*

12. *Review of findings; what are conclusions of fact not subject to review.*

Findings of the Interstate Commerce Commission as to the character

and use of industrial spur-tracks within the switching limits of a city are conclusions of fact and not subject to review. *Los Angeles Switching Case*, 294; *Interstate Com. Comm. v. Southern Pacific Co.*, 315.

13. *Review of findings; conclusions of fact not reviewable.*

This court cannot substitute its judgment for that of the Interstate Commerce Commission upon matters of fact within the province of the Commission. *Ib.*

14. *Findings of fact by; binding effect; limitation upon rule.*

The rule that a finding of fact made by the Interstate Commerce Commission concerning a matter within the scope of the authority delegated to it is binding and may not be reëxamined in the courts, does not apply where the finding was made without any evidence whatever to support it; the consideration of such a question involves not an issue of fact, but one of law which it is the duty of the courts to examine and decide. *Florida East Coast Ry. Co. v. United States*, 167.

See INTERSTATE COMMERCE, 5, 6, 8, 27, 33, 34, 36, 37, 38;  
JURISDICTION, D;  
STATUTES, A 8.

## INTOXICATING LIQUORS.

See INDIANS, 6-11.

## INTRASTATE COMMERCE.

See CONSTITUTIONAL LAW, 3, 4, 9.

## JUDGMENTS AND DECREES.

1. *Collateral attack; decision as to removability not subject to; mode of review.*

When a Federal court decides that a case removable from a state court on independent grounds is not made otherwise by § 6 of the Employers' Liability Act, the decision is a judicial act done in the exercise of jurisdiction conferred by law, and, even if erroneous, is not open to collateral attack, but only subject to correction in an appropriate appellate proceeding. *Ex parte Roe*, 70.

2. *Review; mode of, in case of decision as to removability of cause.*

The authorized mode of reviewing such a ruling in an action at law is by writ of error from the final judgment. Judicial Code, §§ 128, 238. *Ib.*

3. *Validity of judgment in suit in rem; sufficiency of service of process.*

Where a State has jurisdiction over the *res* the judgment of the court to which that jurisdiction is confided, in order to be binding with respect to the interest of a non-resident not served with process within the State, must be based upon constructive service by mailing, publication or otherwise in accordance with the law of the State. *Grannis v. Ordean*, 385.

4. *Correction of determination of stockholder's liability under Minnesota law; collateral attack.*

Whether a former stockholder is ratably or otherwise liable with present stockholders is not a question which goes to the jurisdiction of the Minnesota court making the order, but a question to be submitted for correction, if any, to the court making the order and not to another court in a collateral attack. *Selig v. Hamilton*, 652.

See CONSTITUTIONAL LAW, 13, 37, 38; INDIANS, 2, 3;

CORPORATIONS, 1;

JURISDICTION, A 17;

PRACTICE AND PROCEDURE, 1.

## JUDICIAL CODE.

See INJUNCTION;

JUDGMENTS AND DECREES, 2;

JURISDICTION.

## JUDICIAL SALE.

See INDIANS, 3.

## JURISDICTION.

## A. OF THIS COURT.

1. *Of appeals from Circuit Courts of Appeals; when suit one arising under laws of United States.*

A suit does not arise under the laws of the United States unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of some law of the United States upon the determination of which the case depends and so appears not by mere inference but by distinct averments according to rules of good pleading. *Hull v. Burr*, 712.

2. *Of appeal from Circuit Court of Appeals; when suit one arising under law of United States.*

In this case *held* that a suit to restrain trustees in bankruptcy from prosecuting an equity suit against complainants in the state court on the ground that the bankruptcy proceedings were a fraud and that



the appointment of the trustees was void was one arising under the laws of the United States within the meaning of § 24, Judicial Code, and the decision of the Circuit Court of Appeals is not final. Although there may be a general prayer for relief if no relief other than injunction against prosecution of a suit in the state court is brought to the attention of either the District Court or the Circuit Court of Appeals, the general prayer should be treated as abandoned. *Ib.*

3. *Of direct appeal from District Court under § 238, Judicial Code; involution of construction of treaties with Indians.*

Where complainant's entire case rests on the construction of treaties with Indians in regard to reservations and on the claim that certain of such treaties have been repealed by the subsequent admission of the Territory within which the reservations are situated, this court has jurisdiction of a direct appeal from the District Court under § 238, Judicial Code. *Johnson v. Gearlds*, 422.

4. *On direct appeal from District Court under § 238, Judicial Code; scope of consideration.*

On a direct appeal under § 238, Judicial Code, from a judgment of the District Court dismissing the bill for want of jurisdiction on the ground that neither of the parties was a resident of that district and that the suit was one that could only be brought in a district in which one of the parties resided, this court is only concerned with the jurisdiction of the District Court as a Federal court; whether appellant is entitled to the relief sought is not a jurisdictional question in the sense of § 238. *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 369.

5. *On direct appeal from District Court under § 238, Judicial Code; question open.*

When the matter in controversy is of the requisite value and diverse citizenship exists, the question is simply whether the case is cognizable in the particular District Court in which the case is brought. *Ib.*

6. *Of direct appeal from District Court under § 238, Judicial Code; involution of constitutional question.*

A case otherwise within the jurisdiction of the District Court of the United States and reviewable in the Circuit Court of Appeals is not a case which may come direct to this court under § 238, Judicial Code, merely because in the course of the case a question has arisen as to whether a change in decision of the state court as to the effect

and scope of a state statute amounts to an impairment of the obligation of a contract. *Moore-Mansfield Co. v. Electrical Co.*, 619.

7. *To review judgment of state court; when judgment rested on non-Federal grounds sufficient to sustain it.*

Denial of full faith and credit to the statutes of another State cannot be made the basis of review by this court where it appears that the court below reached the same result that plaintiff contended for on grounds wholly independent of the Federal question and sufficient to sustain its action. *Manhattan Life Ins. Co. v. Cohen*, 123.

8. *To review judgment of state court involving question of extraterritoriality of its laws.*

There is a clear distinction between questions concerning the operation and effect of the law of a State within its borders and upon the conduct of persons within its jurisdiction, and questions concerning the right of the State to extend its authority beyond its borders with the same effect; and a decision upon the former does not constitute a ground for refusing to entertain a writ of error to review the judgment of the state court involving the latter. *New York Life Ins. Co. v. Head*, 149, 166.

9. *To review judgment of state court in case transferred from territorial court.*

Under §§ 32 and 33 of the Arizona Enabling Act of June 20, 1910, the judgment of the state court in a case transferred to it from the territorial court is not reviewable by this court simply because it was pending in the territorial court at the time of the Enabling Act; such a judgment can only be reviewed by this court where a Federal question exists to give jurisdiction as in the case of judgments from the courts of other States. *Van Dyke v. Cordova Copper Co.*, 188.

10. *To review judgment of state court; when Federal question sufficiently raised.*

Although the state appellate court may not have referred to the constitutional questions in its opinion, this court cannot regard such silence as a condemnation of the time at, or manner in which, those questions were raised; and, if the record shows that they were raised in that court, this court has jurisdiction. *International Harvester Co. v. Missouri*, 199.

11. *To review judgment of state court; when Federal question raised too late.*  
Attempts to inject Federal questions into the record by filing amended



pleadings after the case has been remanded by the appellate court come too late to lay the foundation for review by this court, *Mutual Life Insurance Co. v. Kirchoff*, 169 U. S. 103, except so far as the appellate court gives consideration to, and passes upon, such questions when the case again comes before it. (*Miedreich v. Lauenstein*, 232 U. S. 236.) *Louisville & Nashville R. R. Co. v. Higdon*, 592.

12. *To review state court's finding as to navigability of river wholly within State.*

The question of navigability of a river wholly within a State is purely one of fact, and where the state court has decided that such a river is non-navigable there is no right left to review. *Illinois v. Economy Power Co.*, 497.

13. *To review state court's finding as to navigability of river wholly within State; status of State.*

A State has no Federal rights which it may exert for itself or on behalf of its citizens or of all the citizens of the United States in regard to a river wholly within its boundaries which the highest court of the State has declared to be non-navigable; nor are any such rights created by acts of Congress merely authorizing surveys for and estimates of cost of, improvements and not actually authorizing or appropriating for the same. *Ib.*

14. *To review judgment of state court in suit against foreign corporation; scope of review.*

Where the state court has denied a motion to quash the service of process on a foreign corporation, and has also held that the statute on which the action is based is not unconstitutional, both the question of validity of the service and that of the constitutionality of the act are before this court for review. *International Harvester Co. v. Kentucky*, 589.

15. *To review judgment of state court; involution of Federal question.*

Motion to dismiss a writ of error to the state court to review a judgment in an action under the Employers' Liability Act in which the construction of the Safety Appliance Acts was involved, denied. *Southern Ry. Co. v. Crockett*, 725.

16. *To review judgment of state court; questions not reviewable.*

A mere error of law not involving a Federal question and committed in the exercise of jurisdiction by giving conclusive effect to a judgment rendered in another State affords no opportunity for a review in this court. *Roller v. Murray*, 738.



17. *To review judgment of state court under § 237, Judicial Code; involuntion of Federal question.*

Where the effect of the judgment of another State dissolving an injunction as *res judicata* is denied on the ground that it is not a final decree, if the contention that a final decree was subsequently rendered which concluded the merits was not presented to the court, there is no basis for review in this court under § 237, Judicial Code, on the ground that full faith and credit was not given to the original judgment. *Ib.*

18. *Under § 237, Judicial Code; raising Federal question; controlling effect of state practice.*

In order that the denial of a Federal right may be the basis of reviewing the judgment of the state court, the claim of Federal right must be made in the state court in the manner required by the state practice, and unless there is an unwarranted resort to rules of practice by the state court to evade decision of the Federal question, this court will not review the judgment. *Louisville & Nashville R. R. Co. v. Woodford*, 46.

19. *Under § 237, Judicial Code; denial of Federal right; what constitutes.*

Raising the Federal claim of right on motion for new trial is not sufficient unless the court actually passes upon and denies the claim; and a decision by the appellate court that the Federal claim was not properly raised is not a denial of the Federal right but merely an enforcement of a rule of state practice. *Ib.*

20. *Under § 237, Judicial Code; what constitutes denial of Federal right.*

Where the judgment of a state court rests upon an independent ground not only adequate to sustain it but in entire harmony with an asserted Federal right, there is no denial of that right in the sense contemplated by § 237 of the Judicial Code, and the writ of error will be dismissed. *New Orleans & N. E. R. Co. v. National Rice Co.*, 80.

21. *Under § 237, Judicial Code; what constitutes denial of Federal right.*

Where the initial carrier sets up the Carmack Amendment and also denies negligence, but the state court finds from conflicting evidence that the loss was occasioned by the negligence of the connecting carrier, the judgment rests on that finding as an independent ground, and this court has not jurisdiction. *Ib.*

22. *Under § 237, Judicial Code; what constitutes denial of Federal right; estoppel of defendant.*

Plaintiff, an injured employé of an interstate common carrier by rail,

sued for personal injury, alleging that he was employed in interstate commerce, and stating a good cause of action under the Federal Employers' Liability Act, if so employed, and, if not, under the state law; the defendant asked for an instruction that the proof did not show that the injury occurred in interstate commerce, which the court gave, and then, over defendant's objection, treated the allegation to that effect as eliminated from the declaration and submitted the case to the jury as one under the state law, and plaintiff had a verdict. *Held*, that defendant having asked for the instruction that the case could not be maintained under the Federal act, was bound thereby, and, therefore, was denied no right under the Federal law by the action of the state court, and the writ of error must be dismissed. *Wabash R. R. Co. v. Hayes*, 86.

23. *Under § 237, Judicial Code; what constitutes denial of Federal right.*

Where the state court treats a mistaken allegation that the injury occurred in interstate commerce as eliminated, it merely gives effect to a rule of local practice and does not deprive defendant of any Federal right. *Ib.*

24. *Under § 237, Judicial Code; what constitutes denial of Federal right; quære as to.*

*Quære*, as to what the effect would be if the shift from a claim under the Federal act to one under the state law cut the defendant off from presenting a defense open under the latter or deprived him of a right of removal. *Ib.*

25. *Under § 237, Judicial Code; when Federal question sufficiently involved.*

Although plaintiff in error, after setting up a Federal defense in the trial court, may not have based any exceptions upon the failure of that court to recognize it, if the appellate court did recognize, and by its decision necessarily overruled, that defense, this court must deal with the Federal question. (*North Carolina R. R. v. Zachary*, 232 U. S. 248.) *Carlson v. Curtiss*, 103.

26. *Under § 237, Judicial Code; when Federal question raised on petition for reargument in appellate court.*

Where the trial court did not infringe any Federal right of plaintiff in error, but the decision of the appellate court ran counter to the alleged Federal right which was raised on petition for reargument and specifically passed on and overruled in refusing the reargument, this court has jurisdiction under § 237, Judicial Code, to review the judgment. *Grannis v. Ordean*, 385.



27. *To review merits.*

This court cannot review on its merits a case which it must dismiss for want of jurisdiction. *Manhattan Life Ins. Co. v. Cohen*, 123.

See APPEAL AND ERROR, 2;

BANKRUPTCY, 6;

FEDERAL QUESTION.

## B. OF CIRCUIT COURTS OF APPEALS.

See APPEAL AND ERROR, 2; JURISDICTION, A 2;

BANKRUPTCY, 6; PRACTICE AND PROCEDURE, 5.

## C. OF DISTRICT COURTS.

1. *Under § 57, Judicial Code; situs of property the test; sufficiency of service of process.*

Section 57, Judicial Code, makes suits to remove any encumbrance, lien or cloud upon title to real or personal property cognizable by the District Court of the district in which the property is situated regardless of residence of the parties and process for service of the non-resident defendants by notification outside of the district or by publication. *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 369.

2. *Under § 57, Judicial Code; when suit one to remove cloud on title cognizable in District Court.*

In Mississippi, as declared by its highest court, the judgment of a special court of eminent domain may be challenged by a bill in equity upon the ground that the condemnation is not for a public purpose, and if other elements of Federal jurisdiction are present the case is one to remove cloud upon title and, under § 57, Judicial Code, the case is cognizable in the District Court of the district in which the property is situated although neither of the parties reside therein. *Ib.*

3. *Under § 57, Judicial Code; suits to remove cloud on title within.*

The provision in § 57, Judicial Code, respecting suits to remove clouds from title embraces a suit to remove a cloud cast upon the title by a deed or instrument which is void upon its face when such suit is founded upon a remedial statute of the State, as well as when resting upon established usages and practice of equity. *Ib.*

4. *Under § 24, Judicial Code; consideration in determining whether case one arising under Constitution, law or treaty of United States.*

Whether a case begun in a District Court is one arising under the Constitution or a law or treaty of the United States in the sense of the

jurisdictional statute (Judicial Code, § 24), must be determined from what necessarily appears in the plaintiff's statement of his own claim in the declaration unaided by anything alleged in anticipation or avoidance of defenses which may be interposed by defendant. *Taylor v. Anderson*, 74.

See JURISDICTION, A 4, 5.

#### D. OF COMMERCE COURT.

*Of suit to enjoin enforcement of order of Interstate Commerce Commission.* The Commerce Court had jurisdiction of a suit to enjoin the enforcement of the order of the Interstate Commerce Commission involved in these cases and which refused the request of carriers to put in force rates requested by them. *Intermountain Rate Cases*, 476.

See INTERSTATE COMMERCE COMMISSION, 10, 11.

#### E. OF INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

#### F. OF FEDERAL COURTS GENERALLY.

See CLAIMS AGAINST UNITED STATES, 2;  
COURTS, 2;  
INTERSTATE COMMERCE, 15.

#### G. ADMIRALTY.

See ADMIRALTY, 1, 2, 3.

#### H. BANKRUPTCY.

See BANKRUPTCY, 4, 8.

#### I. ANCILLARY.

See BANKRUPTCY, 5.

#### J. OF STATE COURTS.

See CORPORATIONS, 1;  
JUDGMENTS AND DECREES, 4.

#### K. OF SUPREME COURT OF PHILIPPINE ISLANDS.

See PHILIPPINE ISLANDS, 1.

#### L. OF UNITED STATES.

See CONSTITUTIONAL LAW, 6.



## LAKE WASHINGTON WATERWAY.

*See* PUBLIC WORKS, 1, 3, 4.

## LAND DEPARTMENT.

*See* PUBLIC LANDS, 5, 8-12, 14, 17, 18.

## LAW GOVERNING.

*See* BANKRUPTCY, 7;      DESCENT AND DISTRIBUTION;  
COURTS, 2;              JUDGMENTS AND DECREES, 3.

## LEGISLATION.

*See* GOVERNMENTAL FUNCTIONS, 1.

## LEGISLATIVE POWER.

*Discretion of legislature; effect of difference of opinion as to excellence of necessary safety device.*

The existence of difference of opinion as to which is the best form of necessary safety device does not preclude the exercise of legislative discretion; and so far as the question is simply one of expediency the legislature is competent to decide it. *Atlantic Coast Line v. Georgia*, 280.

*See* CONGRESS, POWERS OF;  
GOVERNMENTAL FUNCTIONS;  
GOVERNMENTAL POWERS.

## LEVY OF EXECUTION.

*See* BANKRUPTCY, 1, 2;  
INDIANS, 3.

## LIBEL.

*See* PHILIPPINE ISLANDS, 7.

## LICENSE FEES.

*See* INTERSTATE COMMERCE, 11, 12, 13;  
STATES, 4;  
TREATIES.

## LIMITATION OF ACTIONS.

*See* CORPORATIONS, 10.

## LIQUIDATED DAMAGES.

*See* CONTRACTS, 10-13.

## LIQUORS.

See INDIANS, 6-11.

## LOCAL LAW.

*District of Columbia.* Materialmen's Act of 1899 (see Contracts, 6, 7, 8). *Equitable Surety Co. v. McMillan*, 448.

*Georgia.* Locomotive Headlight Law (see Constitutional Law, 12). *Atlantic Coast Line v. Georgia*, 280.

*Kansas.* Allowance of attorney's fees in mandamus proceedings (see Constitutional Law, 34). *Missouri Pacific Ry. Co. v. Larabee*, 459.

*Kentucky.* Anti-trust act of 1890 (see Constitutional Law, 21). *Collins v. Kentucky*, 634; *Malone v. Kentucky*, 639.  
Anti-trust laws of 1900 and 1906 (see Constitutional Law, 29). *International Harvester Co. v. Kentucky*, 216.  
Pooling crops; c. 117, Laws of 1906, as amended by c. 8 of Laws of 1908 (see Constitutional Law, 21). *Collins v. Kentucky*, 634; *Malone v. Kentucky*, 639.

*Minnesota.* Liability of stockholders (see Constitutional Law, 22). *Selig v. Hamilton*, 652 (see Corporations, 4, 5, 7, 8, 9). *Ib.*

*Mississippi.* *Suits to dispel cloud on title; right to maintain under § 975, Rev. Code of 1871.* As construed by the highest court of Mississippi, § 975, Rev. Code of 1871 of that State entitles the rightful owner of real property in that State to maintain a suit to dispel a cloud cast upon the title thereto by an invalid deed, even though, under applicable principles of equity, it be void on its face. *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 369.  
Eminent Domain; attack on judgment of special court of (see Jurisdiction, C 2). *Louisville & Nashville R. R. Co. v. Western Union Tel. Co.*, 369.

*Missouri.* Anti-trust laws of 1899 and 1909 (see Constitutional Law, 26). *International Harvester Co. v. Missouri*, 199.  
Loans on policies of life insurance (see States, 5). *New York Life Ins. Co. v. Head*, 149.

*New Mexico.* *Negotiable Instrument Act of 1907; effect of fraud in procurement of signature.* Under the construction of the Negotiable Instrument Act of 1907 of New Mexico accepted by the courts of that State, the title of a person negotiating commercial paper is



defective if any signature thereto has been obtained by fraud, and if any one person is relieved from liability by proof of fraudulent inducement, all other persons who signed the paper are likewise relieved although they did not participate in and were ignorant of such fraud. *Schmidt v. Bank of Commerce*, 64.

*New York.* Limitation of actions; Code Civ. Proc., §§ 382, 394 (see Corporations, 10). *Selig v. Hamilton*, 652.

*Ohio.* *Delivery of personal property; effect of delivery of warehouse receipts.* Notwithstanding §§ 8560 and 8619, General Code of Ohio, the law of that State recognizes the force of long continued commercial usage and the effectiveness of a symbolical delivery of personal property by the transfer of warehouse receipts representing the same. *Dale v. Pattison*, 399.

See PLEDGE, 3.

*Philippine Islands.* Criminal law; preliminary examination of accused (see Philippine Islands, 4, 6). *Ocampo v. United States*, 91.

*South Carolina.* Telegraph companies (see Constitutional Law, 6). *Western Union Tel. Co. v. Brown*, 542.

*Tennessee.* *Descent from colored freedmen.* While a colored freedman in Tennessee could dispose of property acquired during freedom by deed or will and it descended to his issue, if any, if he died intestate, if no issue survived, it passed under the terms of the act of 1865 to his widow, if she survived, and not to his collateral relatives. *Jones v. Jones*, 615.

See CONSTITUTIONAL LAW, 35.

*Texas.* Allowance of attorney's fee as costs in contested cases (see Constitutional Law, 8, 11, 18). *Missouri, K. & T. Ry. Co. v. Harris*, 412.

*Virginia.* Laws of 1888, c. 391, § 3, relative to method of payment of labor (see Constitutional Law, 31). *Keokee Coke Co. v. Taylor*, 224.

*Generally.* See BANKRUPTCY, 7;

DESCENT AND DISTRIBUTION, 2;

INTERSTATE COMMERCE, 5, 6, 7.

#### LOCOMOTIVE HEADLIGHTS.

See CONSTITUTIONAL LAW, 12;

SAFETY APPLIANCE ACT, 2

## LONG AND SHORT HAUL.

See INTERSTATE COMMERCE, 33, 34, 35;  
INTERSTATE COMMERCE COMMISSION, 9.

## LUMBER.

See INTERSTATE COMMERCE, 22, 23, 24;  
INTERSTATE COMMERCE COMMISSION, 4.

## MANDAMUS.

1. *Functions of writ directed to judicial officer.*

The writ of mandamus lies to compel the exercise by a judicial officer of existing jurisdiction but not to control his decision. *Ex parte Roe*, 70.

2. *Availability of writ in case of refusal of judicial officer to remand cause.*

Mandamus may not be used to correct alleged error in a refusal to remand, especially where the order may be reviewed after final judgment on writ of error or appeal. (*Ex parte Harding*, 219 U. S. 363.) *Ib.*

3. *Right of importer to review action of Secretary of Treasury in determining rate of duty on import.*

Even an importer may not invoke the aid of the courts to clog the wheels of government by attempting to review by mandamus the action of the Secretary of the Treasury in determining the rate of duty to be collected on imported articles. *Louisiana v. McAdoo*, 627.

4. *Nature of action of Secretary of Treasury in determining rate of duty on import.*

Determining the rate of duty to be collected under the existing statutes and treaties on foreign sugar is not a mere ministerial act on the part of the Secretary of the Treasury, but one involving judgment and discretion. *Ib.*

5. *Public officers; acts compellable by.*

While a public officer may by law, and at the instance of one having a particular legal interest, be required to perform a mere ministerial act not requiring the exercise of judgment or discretion, he may not be so required in respect to matters committed to him by law and requiring the exercise of judgment and discretion. *Ib.*

6. *Availability of writ to compel action by Secretary of Treasury in respect of collection of duty on import.*

Application for leave to file a petition for writ of mandamus against the Secretary of the Treasury to compel him to collect a different

amount of duty on sugar imported from Cuba under the provisions of the existing statute and the treaty of 1902 with Cuba, denied, without expressing any opinion on the merits of the questions involved. *Ib.*

See CONSTITUTIONAL LAW, 34;  
UNITED STATES, 3.

#### MANDATE.

*Direction in cases coming from Commerce Court.*

Judgments of the Commerce Court reviewed by this court are remanded to the District Court of the United States for the district where the case would have been brought had the Commerce Court not been established pursuant to the act of October 22, 1913, c. 32, 38 Stat. 208, 221. *Los Angeles Switching Case*, 294.

#### MARITIME LAW.

See ADMIRALTY.

#### MASTER AND SERVANT.

See ADMIRALTY, 2; EMPLOYERS' LIABILITY ACT;  
CONSTITUTIONAL LAW, 31; SAFETY APPLIANCE ACT.

#### MATERIALMEN.

See CONTRACTS, 6.

#### MINERAL LANDS.

See PUBLIC LANDS.

#### MISNOMER.

See CONSTITUTIONAL LAW, 14-17.

#### NAVIGABLE WATERS.

*Navigability; determination of; effect of Ordinance for Government of Northwest Territory and subsequent acts of Congress.*

The provisions in the Ordinance for Government of the Northwest Territory and subsequent acts of Congress to the effect that navigable waters leading into the Mississippi and St. Lawrence rivers shall be common highways and forever free to the inhabitants of that Territory and of the United States do not determine navigability of any of the streams but only define rights dependent upon the existence of navigability. *Illinois v. Economy Power Co.*, 497.

See ADMIRALTY, 2, 3;  
JURISDICTION, A 12, 13.



NEGLIGENCE.

*See* ADMIRALTY, 2.

NEGOTIABLE INSTRUMENTS.

*See* BILLS AND NOTES;  
LOCAL LAW (N. Mex.).

NEW PROMISE.

*See* BILLS AND NOTES, 2.

NOTICE.

*See* PUBLIC LANDS, 1.

OIL TRANSPORTATION.

*See* INTERSTATE COMMERCE.

ONUS PROBANDI.

*See* EVIDENCE;  
PUBLIC LANDS, 20.

PARTIES.

*See* PUBLIC LANDS, 21;  
UNITED STATES, 2.

PASSES.

*See* INTERSTATE COMMERCE, 20, 21, 40.

PATENTS FOR LAND.

*See* PUBLIC LANDS.

PAYMENT.

*Effect of payment by life insurance company to one of two claimants.*

A payment made by a life insurance company to one of two claimants on receiving a bond of indemnity, *held*, under the circumstances of this case, not to have been the payment of a stakeholder seeking to discharge his duty but of a person espousing the cause of one claimant against the other and thereby subjecting himself to the legal consequences arising from his action. *Manhattan Life Ins. Co. v. Cohen*, 123.

*See* CONSTITUTIONAL LAW, 31.

PENAL STATUTES.

*See* CONSTITUTIONAL LAW, 20, 21, 28, 29.

## PENALTIES AND FORFEITURES.

*See* CONTRACTS, 10.

## PERSONAL PROPERTY.

*See* LOCAL LAW (Ohio).

## PHILIPPINE ISLANDS.

1. *Jurisdiction of Supreme Court on appeal in criminal case.*

The appellate jurisdiction of the Supreme Court of the Philippine Islands is not confined to errors of law but extends to a review of the whole case. It has power to reverse the judgment of the Court of First Instance in a criminal case and find the accused guilty of a higher crime and increase the sentence. (*Trono v. United States*, 199 U. S. 521.) *Ocampo v. United States*, 91.

2. *Equal protection of the law; territorial uniformity of guaranty.*

The guaranty of equal protection of the law in the Philippine Bill of Rights does not require territorial uniformity. It is not violated if all persons within the territorial limits of their respective jurisdictions are treated equally. *Ib.*

3. *Arrest; finding of probable cause; sufficiency of.*

A finding of probable cause for arrest by a prosecuting attorney is only quasi-judicial; and a statute, otherwise valid, is not invalidated by delegating the duty of investigation to a prosecuting attorney. *Ib.*

4. *Preliminary examination of accused; right to; law in force.*

Section 2 of act No. 612 of the Philippine Commission of February 3, 1903, providing that in cases triable before the Court of First Instance in the City of Manila the accused should not be entitled as of right to a preliminary examination in any case in which the prosecuting attorney after due investigation shall have presented an information against him, necessarily operated to repeal inconsistent provisions previously in force in the City of Manila. *Ib.*

5. *Presentment or indictment by grand jury; right of accused to.*

The Philippine Bill of Rights, as contained in § 5 of the act of July 1, 1902, contains no specific requirement, such as is contained in the Fifth Amendment, of a presentment or indictment by grand jury, nor is such a requirement included within the guaranty of due process of law. *Ib.*

6. *Warrants; prerequisite to issuance; conflict of laws.*

Section 2 of Act No. 612 is not in conflict with that paragraph of § 5

of the act of July 1, 1902, which provides that no warrant shall issue but upon probable cause supported by oath or affirmation; a preliminary investigation by the prosecuting attorney upon which he files a sworn information is a compliance with such provision. *Ib.*

7. *Libel; responsibility for.*

On the evidence in this case the trial court properly held that the defendant was, under the law of the Philippine Islands, the responsible proprietor of the newspaper which published the libel on which the prosecution was based. *Ib.*

PIPE LINES.

See CONSTITUTIONAL LAW, 19, 39;  
INTERSTATE COMMERCE, 2, 17, 18, 19.

PLANT FACILITIES.

See COMMON CARRIERS, 1;  
INTERSTATE COMMERCE COMMISSION, 10, 11.

PLEADING.

See CONSTITUTIONAL LAW, 9; JURISDICTION, A 1, 2, 11; C 4;  
FEDERAL QUESTION, 3; PRACTICE AND PROCEDURE, 7;  
STATES, 2.

PLEDGE.

1. *Chattel mortgage differentiated; effect on former of state statute requiring delivery of chattel or recording of instrument.*

There is a well-recognized distinction between a chattel mortgage and a pledge; and a state statute requiring the delivery of the chattel or recording of the instrument does not necessarily apply to a pledge of personal property so situated that it is not within the power of the owner to deliver it to the pledgee. *Dale v. Pattison*, 399.

2. *Delivery; when delivery of warehouse receipt equivalent.*

Where property is from its character or situation not capable of actual delivery, the delivery of a warehouse receipt or other evidence of title is sufficient to transfer the property and right of possession. (*Gibson v. Stevens*, 8 How. 384.) *Ib.*

3. *Delivery; sufficiency of delivery of warehouse receipt; case followed.*

The law of Ohio not being dissimilar from that of Pennsylvania in recognizing the validity of transfers by delivering warehouse receipts representing property under conditions similar to those in-



volved herein, this case is controlled by *Taney v. Penn Bank*, 232 U. S. 174. *Ib.*

See BANKRUPTCY, 7.

#### POLICE POWER.

See CONSTITUTIONAL LAW, 7, 32;

GOVERNMENTAL POWERS, 2;

INTERSTATE COMMERCE, 8.

#### PRACTICE AND PROCEDURE.

##### 1. *Determination of scope of decision of state court.*

What the Minnesota court determines as to the nature of the assessment and its application to present and former stockholders must be ascertained from the order itself. *Selig v. Hamilton*, 652.

##### 2. *Duty of this court in determining whether process in state court constituted due process of law.*

This court must exercise an independent judgment as to whether the process sanctioned by the court of last resort of the State constituted due process of law; it is not bound by, nor can it merely accept, the decision of the state court on that question. *Grannis v. Ordean*, 385.

##### 3. *Following concurrent findings of lower courts.*

The settled rule of this court that the concurring findings of two courts below will not be disturbed, unless shown to be clearly erroneous, applies where the evidence is taken before an examiner. (*Texas & Pacific Railway Co. v. Louisiana Railroad Commission*, 232 U. S. 338.) *Gilson v. United States*, 380.

##### 4. *Following lower courts' findings of fact.*

Findings of fact concurred in by two lower Federal courts will not be disturbed by this court unless shown to be clearly erroneous. *Washington Securities Co. v. United States*, 76.

##### 5. *Following lower courts' findings of fact; what constitutes question of fact.*

Whether the employer failed to provide a safe place to work is a question of fact properly determinable by the Circuit Court of Appeals in last resort, and this court will not disturb such a finding if concurred in by both courts below and justified by the record. *Atlantic Transport Co. v. Imbrovek*, 52

##### 6. *Following state court's findings of fact; when record examined to determine existence of Federal question.*

While, in ordinary cases, this court is bound by the findings of the state

court of last resort, that court cannot, by omitting to pass upon basic questions of fact, deprive a litigant of the benefit of a Federal right properly asserted; and it is the duty of this court, in the absence of adequate findings, to examine the record in order to determine whether there is evidence which furnishes a basis for such a Federal right. (*Southern Pacific Co. v. Schuyler*, 227 U. S. 601.) *Carlson v. Curtiss*, 103.

7. *Following territorial courts' ruling on local questions.*

This court accepts the rulings of the territorial courts on local questions of pleading and practice. (*Santa Fe Ry. Co. v. Friday*, 232 U. S. 694.) *Schmidt v. Bank of Commerce*, 64.

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

This court does not go behind the construction given to a state statute by the state courts. *Keokee Coke Co. v. Taylor*, 224.

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

The state court having held that the term "railroad company" as used in a state police statute is inclusive of natural persons operating a railroad and that the statute is not unconstitutional as denying equal protection of the law to railroad corporations because it does not include natural persons, this court concurs in that view. *Atlantic Coast Line v. Georgia*, 280.

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

A Federal question may not be imported into a record for the first time by way of assignment of error made for the purpose of review by this court. *Manhattan Life Ins. Co. v. Cohen*, 123.

11. *Raising question of rights under full faith and credit clause; timeliness.*

As a general rule, for the purpose of review by this court, rights under the full faith and credit clause of the Federal Constitution are required to be expressly set up and claimed in the court below. *Ib.*

12. *Record; sufficiency of.*

A motion to dismiss an appeal from the Circuit Court of Appeals will not be denied as premature because the record has not been printed if the record of proceedings in the District Court is here and this court is sufficiently advised as to the situation of the case to dispose of it without doing injustice to the parties. (*National Bank v. Insurance Co.*, 100 U. S. 43.) *Lazarus v. Prentice*, 263.

See CLAIMS AGAINST UNITED STATES, 1;  
STATES, 1.

## PRAYERS.

See JURISDICTION, A 2.

## PRESUMPTIONS.

See CONSPIRACY, 2; INTERSTATE COMMERCE, 10;  
GOVERNMENTAL POWERS, 2; PUBLIC LANDS, 3, 4.

## PRINCIPAL AND SURETY.

See CONTRACTS, 6-9.

## PRIVIES.

See PUBLIC LANDS, 6.

## PROCESS.

See CONSTITUTIONAL LAW, 13-17; JUDGMENTS AND DECREES, 3;  
CORPORATIONS, 2, 3, 7, 12; JURISDICTION, A 14;  
PRACTICE AND PROCEDURE, 2.

## PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 11, 12, 17, 19, 23, 39;  
LOCAL LAW (Tenn.).

## PUBLIC LANDS.

1. *Coal lands; knowledge imputed to purchaser from homestead entryman.*  
A purchaser from a patentee is bound to take notice that the land was acquired under the homestead law when that appears in the patent, and if the other circumstances show that the purchase was made with knowledge that the land was known to be coal land when it was entered by the patentee, the purchaser must be deemed to have taken with notice of the fraudulent obtaining of coal lands under the homestead law. *Washington Securities Co. v. United States*, 76.
2. *Commuted homestead entry; effect of agreement for alienation made after entry and before commutation; quære.*  
*Quære*, as to what is the effect on a commuted homestead entry under § 2301, Rev. Stat., of an agreement for alienation made after entry and before commutation; and see *Bailey v. Sanders*, 228 U. S. 603. *Gilson v. United States*, 380.
3. *Floats in lieu of definite tract; location; presumption as to attitude of Government.*  
Where, as in this case, in order to accommodate conflicting claims and,



at the instance of the Government, claimants have given up rights to a definite tract and accepted float grants for an equal amount of land, it will be presumed that the Government would make provision for the location of the substituted land as expeditiously as possible and without expense to the holders of the float. *Lane v. Watts*, 525.

4. *Fraud; cancellation of patent for; conclusiveness of findings of land officer; adversary proceedings.*

Where the application and proof of an entryman is strictly *ex parte*, the proceedings are not adversary, and while the findings of the land officer may not be open to collateral attack, they are not conclusive, but only presumptively right, against the Government in a suit to cancel the patent on the ground that it was obtained by fraud. *Washington Securities Co. v. United States*, 76.

5. *Location of non-mineral float; effect of approval by Commissioner.*

The action of the Commissioner in approving the location of a non-mineral float cannot be revoked by his successor in office, and an attempt so to do can be enjoined. (*Noble v. Union River Logging Co.*, 147 U. S. 165.) *Lane v. Watts*, 525.

6. *Relocations; privity of relocater with defaulting prior locator.*

One who relocates land under the mining law (Rev. Stat., § 2324) by reason of the failure of a prior locator to perform the required annual assessment or development work is not in privity with such prior locator. *Burke v. Southern Pacific R. R. Co.*, 669.

7. *Surveys; necessity for, to segregate land from public domain.*

A survey is necessary to segregate from the public domain lands attempted to be located by a float grant. *Stoneroad v. Stoneroad*, 158 U. S. 240. In this case, *held*, that a survey was made and approved. *Lane v. Watts*, 525.

8. *Patents; authority of Land Department to insert exceptions not contemplated by law.*

The officers of the Land Department are without authority to insert in patents exceptions not contemplated by law, and when they place unauthorized exceptions in patents the exceptions are void. *Burke v. Southern Pacific R. R. Co.*, 669.

9. *Patents; validity of exception inserted by Land Department.*

An exception inserted in patents issued under the grant here under consideration to the effect that if any of the lands described should

be found to be mineral the same should be excluded from the operation of the patents is unauthorized and void, because the granting act contemplated that the patents should effectually and unconditionally pass the title. *Ib.*

10. *Patents; exceptions in; effect of acquiescence in by patentee.*

An agreement between the railroad company and the land officers that such an exception in the patents should be effective is of no greater force as an estoppel than the exception itself, and the latter is of no force whatever. *Ib.*

11. *Patents; terms not open to agreement; status of land officers and patentee.*

The terms of the patent whereby the Government transfers its title to public land are not open to negotiation or agreement. The patentee has no voice in the matter. It in no wise depends upon his consent or will. Neither can the land officers enter into any agreement upon the subject. They are not principals but agents of the law, and must heed only its will. *Ib.*

12. *Patents; power of land officers to alter effect which law gives.*

If the land officers enter into any forbidden arrangement whereby public land is transferred to one not entitled to it, the patent may be annulled at the suit of the Government, but those officers cannot alter the effect which the law gives to a patent while it is outstanding. *Ib.*

13. *Patents; exceptions in; authority to insert.*

The joint resolution of June 28, 1870, relating to this grant did not authorize the use of any excepting clause in the patents. *Ib.*

14. *Title to; when beyond divestiture by officers of Land Department.*

A title which has passed by location of a grant and its approval by proper officers of the Land Department cannot be subsequently divested by the then officers of the department. (*Ballinger v. Frost*, 216 U. S. 240.) *Lane v. Watts*, 525.

15. *Title to; what amounts to survey and finding of character of land sufficient to vest title.*

In this case, *held*, that the report of the Surveyor General and the subsequent proceedings and survey by the Surveyor General of Arizona amounted to a survey and finding that the lands were non-mineral and that title thereto vested in the holder of the float grant selecting the lands and passed out of the United States. *Ib.*



16. *Southern Pacific grant of 1866; exclusion of mineral lands.*

The act of July 27, 1866, making a grant of alternate odd numbered sections of public land to the Southern Pacific Railroad Company in aid of the construction of its main-line railroad did not include mineral lands, but on the contrary excluded them from its operation and provided that the company should receive other lands as indemnity for them. *Burke v. Southern Pacific R. R. Co.*, 669.

17. *Southern Pacific grant of 1866; administration; duty of Land Department.*

The administration of the grant, including the issue of patents following the construction of the road, was committed to the Land Department of which the Secretary of the Interior is the supervising officer. *Ib.*

18. *Southern Pacific grant of 1866; determination of mineral or non-mineral character of lands; duty of Land Department.*

It was contemplated by the granting act that the mineral or non-mineral character of the lands should be determined by the Land Department and that, depending upon the result, patents should issue or indemnity be allowed. *Ib.*

19. *Southern Pacific grant of 1866; patent as evidence of title.*

The patents were to be the legally appointed evidence that the lands described in them had passed to the company under the grant. *Ib.*

20. *Southern Pacific grant of 1866; patent as evidence of non-mineral character of land.*

A patent issued under such a grant is to be taken, upon a collateral attack, as affording conclusive evidence of the non-mineral character of the land and of the regularity of the acts and proceedings resulting in its issue, and, upon a direct attack, as affording such presumptive evidence thereof as to require plain and convincing proof to overcome it. *Ib.*

21. *Southern Pacific grant of 1866; patent for mineral lands; cancellation by Government for fraud; right of stranger to attack.*

If the land officers are induced by false proofs to issue such a patent for mineral lands, or if they issue it fraudulently or through mere inadvertence, a bill in equity on the part of the Government will lie to cancel the patent and regain the title; or, in the like circumstances, a prior mineral claimant who had acquired such rights in the land as to entitle him to protection may maintain a bill to have the patentee declared a trustee for him; but such a patent is merely



voidable, not void, and cannot be successfully attacked by a stranger who had no interest in the land at the time the patent was issued and was not prejudiced by it. *Ib.*

*See* ACTIONS, 1.

#### PUBLIC OFFICERS.

*See* ACTIONS, 1;

MANDAMUS, 3-6;

PUBLIC WORKS, 2, 3.

#### PUBLIC POLICY.

*See* ECCLESIASTICAL BODIES, 1, 3; INDIANS, 1;

GOVERNMENTAL POWERS, 1; STATES, 12;

STATUTES, A 8, 9.

#### PUBLIC WORKS.

1. *Agency of Federal Government in construction of Lake Washington Waterway.*

Under the acts of Congress relative to the Lake Washington Waterway, no agency of the Federal Government could have arisen prior to the action involved in this case with respect to anything done in connection with the construction of the canal. *Carlson v. Curtiss*, 103.

2. *Authority of United States; effect of orders of Federal officer.*

Orders given by an officer of the United States in connection with work not authorized by any act of Congress will not justify one violating the injunction of a state court as doing the act under the direction of officers of the United States in charge of Government work. *Ib.*

3. *State and Federal responsibility in construction of Lake Washington Waterway.*

After reviewing the congressional and state legislation in regard to the construction of the Lake Washington Waterway, *held* that Congress has refrained from authorizing any work on behalf of the Federal Government with reference to lowering the level of Lake Washington, and that all responsibility in that respect was assumed by the State and county; and, notwithstanding the contract was made by an officer of the United States Army, it was not on behalf of the United States, but as representing the State of Washington. *Ib.*

4. *State and Federal responsibility under acts of Congress; Lake Washington Waterway.*

The fact that title to right of way for a canal has vested in the United

States and after completion the Secretary of War is to take charge of the canal, does not make the United States responsible, prior to completion, where Congress has expressly declared that the canal will only be accepted after completion, and that the local authorities shall meanwhile assume all responsibility in connection therewith. *Ib.*

*See* CONTRACTS.

## PUBLIC WRONGS.

*See* CONSPIRACY, 1.

## RAILROADS.

|                                      |                       |
|--------------------------------------|-----------------------|
| <i>See</i> COMMON CARRIERS, 1, 2, 3; | PUBLIC LANDS, 16-21;  |
| CONSTITUTIONAL LAW, 12, 32;          | SAFETY APPLIANCE ACT; |
| INTERSTATE COMMERCE;                 | STATES, 6, 7.         |

## RATES.

*See* FERRIES, 5, 6;  
INTERSTATE COMMERCE, 6, 14, 16, 26-36;  
INTERSTATE COMMERCE COMMISSION, 1, 2, 9, 10, 11.

## REAL PROPERTY.

*See* DESCENT AND DISTRIBUTION, 2.

## REBATES.

*See* INTERSTATE COMMERCE, 36, 38, 39.

## RECEIVERS.

*See* BANKRUPTCY, 5, 6, 8;  
CONSTITUTIONAL LAW, 32;  
CORPORATIONS, 10.

## RECOMMENDATIONS OF THE PRESIDENT.

*See* CONGRESS, POWERS OF.

## RECORD.

*See* PRACTICE AND PROCEDURE, 12.

## REHEARINGS.

*Duty of counsel in dealing with case.*

In presenting petitions for rehearing a duty rests upon counsel to deal with the case as it is disclosed by the record. *Chapman & Dewey v. St. Francis Levee District*, 667.

## RELEASE OF SURETY.

*See* CONTRACTS, 6, 7, 8.

## RELIGIOUS BODIES.

*See* ECCLESIASTICAL BODIES.

## REMEDIES.

*See* INTERSTATE COMMERCE, 25;  
MANDAMUS.

## REMOVAL OF CAUSES.

*See* JUDGMENTS AND DECREES, 1.

## RESERVATIONS.

*See* INDIANS, 6, 7.

## RES JUDICATA.

*See* CORPORATIONS, 7;  
JURISDICTION, A 17.

## RESTRAINT OF TRADE.

1. *Combinations in, within meaning of Sherman Law.*

The Sherman Law, as construed by this court in the *Standard Oil Case*, while not reaching normal and usual contracts incident to lawful purposes and in furtherance of legitimate trade, does broadly condemn all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. *Eastern States Lumber Asso. v. United States*, 600.

2. *Combinations in; action of association of retail dealers calling members' attention to actions of wholesale dealers.*

*Held* in this case that the circulation of a so-called official report among members of an association of retail dealers calling attention to actions of listed wholesale dealers in selling direct to consumers, tended to prevent members of the association from dealing with the listed dealers referred to in the report, and to directly and unreasonably restrain trade by preventing it with such listed dealers, and was within the prohibitions of the Sherman Law. *Ib.*

3. *Combinations in; effect of agreement among retail dealers not to deal with wholesaler.*

While a retail dealer may unquestionably stop dealing with a wholesaler for any reason sufficient to himself, he and other dealers may



not combine and agree that none of them will deal with such wholesaler without, in case interstate commerce is involved, violating the Sherman Law. *Ib.*

## RIVERS.

*See* FEDERAL QUESTION, 2;  
JURISDICTION, A 12, 13;  
NAVIGABLE WATERS.

## SAFETY APPLIANCE ACT.

1. *Construction; considerations in.*

This court has heretofore construed the letter of the Safety Appliance Act in the light of its spirit and purpose as indicated by the title no less than by the enacting clauses and that guiding principle should be adhered to. *Southern Ry. Co. v. Crockett*, 725.

2. *Locomotive headlights not within.*

None of the safety appliance statutes enacted by Congress relate to or regulate locomotive headlights. *Atlantic Coast Line v. Georgia*, 280.

3. *Vehicles contemplated by.*

Although the original Safety Appliance Act may not have applied to vehicles other than freight cars, the amendment of 1903 so broadened its scope as to make its provisions, including those respecting height of draw-bars, applicable to locomotives other than those that are excepted in terms. *Southern Ry. Co. v. Crockett*, 725.

4. *Vehicles to which provision of 1903 as to height of draw-bars applicable.*

By the amendment of 1903 to the Safety Appliance Act the standard height of draw-bars was made applicable to all railroad vehicles used upon any railroad engaged in interstate commerce, and to all other vehicles, including locomotives, used in connection with them so far as the respective safety devices and standards are capable of being installed upon the respective vehicles. *Chicago &c. Ry. Co. v. United States*, 196 Fed. Rep. 882, approved. *Ib.*

## SAFETY DEVICES.

*See* CONSTITUTIONAL LAW, 32;  
LEGISLATIVE POWER;  
STATES, 7.

## SECRETARY OF THE INTERIOR.

*See* ACTIONS, 1;  
PUBLIC LANDS, 17.

## SECRETARY OF THE TREASURY

See MANDAMUS, 3, 4, 6;

STATES, 11;

UNITED STATES, 3.

## SERVICE OF PROCESS.

See CONSTITUTIONAL LAW, 13-17;      JUDGMENTS AND DECREES, 3;  
CORPORATIONS, 2, 3, 7, 12;      JURISDICTION, A 14.

## SHERMAN LAW.

See RESTRAINT OF TRADE.

## SLAVE MARRIAGES.

See CONSTITUTIONAL LAW, 35.

## SOUTHERN PACIFIC LAND GRANT.

See PUBLIC LANDS, 13, 16-21.

## STARE DECISIS.

See PUBLIC LANDS, 5.

## STATES.

1. *Controversies between; rules of procedure applicable.*

The ordinary rules of legal procedure applicable to cases between individuals cannot be always applied to controversies between States involving grave questions of law determinable by this court under the exceptional grant of jurisdiction conferred by the Constitution. *Virginia v. West Virginia*, 117.

2. *Controversies between; leave to file supplemental answer in Virginia v. West Virginia.*

In this case the defendant State is permitted to file a supplemental answer, the averments in which are to be considered as traversed by the complainant State, and the subject-matter of the supplemental answer is referred to the Master before whom previous hearings were had with directions to report at the commencement of the next term of this court. *Ib.*

3. *Power to extend operations of its statutes beyond its borders.*

A State may not extend the operation of its statutes beyond its borders into the jurisdiction of other States, so as to destroy and impair the



right of persons not its citizens to make a contract not operative within its jurisdiction and lawful in the State where made. *New York Life Ins. Co. v. Head*, 149, 166.

4. *Power to regulate business of licensed foreign corporation outside of its borders.*

The power that a State has to license a foreign insurance company to do business within its borders and to regulate such business does not extend to regulating the business of such corporation outside of its borders and which would otherwise be beyond its authority. *Ib.*

5. *Power to extend operation of its statutes beyond its borders; effect of Missouri statute regulating loans on life insurance.*

A statute of Missouri regulating loans on policies of life insurance by the company issuing the policy, *held* not to operate to affect a modifying contract made in another State subsequent to the loan by the insured and the company neither of whom was a resident or citizen of Missouri. *Ib.*

6. *Power to regulate railroads engaged in interstate commerce.*

In the absence of legislation by Congress, the States may exercise their powers to secure safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce. *Atlantic Coast Line v. Georgia*, 280.

7. *Same.*

In regulating interstate trains as to matters in regard to which Congress has not acted, a State may not make arbitrary requirements as to safety devices; but its requirements are not invalid as interfering with interstate commerce because another State, in the exercise of the same power, has imposed, or may impose, a different requirement. *Ib.*

8. *Power to legislate to affect conduct in territory within exclusive jurisdiction of United States.*

A State cannot legislate so as to affect conduct outside of its jurisdiction and within territory over which the United States has exclusive jurisdiction. *Western Union Tel. Co. v. Brown*, 542.

9. *Power to determine conduct of telegraph company in another State.*

A State may not determine the conduct required of a telegraph company in transmitting interstate messages by determining the consequences of not pursuing such conduct in another State. *Ib.*





4. *Departmental construction; weight given.*

While the early administration of a statute showing the departmental construction thereof does not have the same weight which a long observed departmental construction has, it is entitled to consideration as showing the construction placed upon the statute by competent men charged with its enforcement. *Ib.*

5. *Indian interpretation; when rule not applicable.*

The rule that words in treaties with, and statutes affecting, Indians, must be interpreted as the Indians understood them is not applicable where the statute is not in the nature of a contract and does not require the consent of the Indians to make it effectual. *Ib.*

6. *After facts; weight of; effect of harsh consequences.*

The after facts have but little weight in determining the meaning of legislation and cannot overcome the meaning of plain words used in a statute; nor can the courts be influenced in administering a law by the fact that its true interpretation may result in harsh consequences. *Ib.*

7. *Policy of Government; uncertainty as ground of construction.*

The policy of the Government in enacting legislation is often an uncertain thing as to which opinions may vary and it affords an unstable ground of statutory construction. *Ib.*

8. *Public policy; declaration of legislature as to; effect of.*

This court will not, in interpreting the power of the Interstate Commerce Commission in regard to a particular traffic, ignore a declaration of public policy in regard to that traffic as shown by an enactment of Congress. *Tap Line Cases*, 1.

9. *Omissions; power of courts to supply.*

Courts may not supply words in a statute which Congress has omitted; nor can such course be induced by any consideration of public policy or the desire to promote justice in dealing with dependent people. *United States v. First National Bank*, 245.

10. *Superfluous words; meaning to be given.*

Although words may be superfluous, if the statute be construed in accordance with the obvious intent of Congress, the courts should not, simply in order to make them effective, give them a meaning that is repugnant to the statute looked at as a whole, and destructive of its purpose. *Van Dyke v. Cordova Copper Co.*, 188.

11. *Controlling effect on court of constitutional statute.*

If a statute is constitutional, this court must be governed by it and its plain meaning; with the wisdom of Congress in adopting the statute this court has nothing to do. *Intermountain Rate Cases*, 476.

*See* COURTS, 3; PRACTICE AND PROCEDURE, 8, 9;  
INDIANS, 4; SAFETY APPLIANCE ACT.

## B. STATUTES OF THE UNITED STATES.

*See* ACTS OF CONGRESS.

## C. STATUTES OF THE STATES AND TERRITORIES.

*See* LOCAL LAW.

## STEVEDORES.

*See* ADMIRALTY, 2, 5.

## STOCK AND STOCKHOLDERS.

*See* CONSTITUTIONAL LAW, 22;  
CORPORATIONS, 4-12;  
JUDGMENTS AND DECREES, 4.

## STRICTISSIMI JURIS.

*See* CONTRACTS, 7.

## SUIT AGAINST UNITED STATES.

*See* ACTIONS, 1;  
UNITED STATES.

## SUPERSEDEAS BOND.

*See* ACTIONS, 2.

## SURETY BONDS.

*See* CONTRACTS, 6-9.

## SURVEYS.

*See* PUBLIC LANDS, 7, 15.

## TAP LINES.

*See* INTERSTATE COMMERCE, 24, 37, 38.

## TARIFFS.

*See* INTERSTATE COMMERCE COMMISSION, 3.



## TELEGRAPH COMPANIES.

*See* CONSTITUTIONAL LAW, 6;  
STATES, 9.

## TERMINALS.

*See* INTERSTATE COMMERCE, 26-30;  
INTERSTATE COMMERCE COMMISSION, 2.

## TIMBER INDUSTRY.

*See* INTERSTATE COMMERCE, 24.

## TITLE.

*See* ACTIONS, 1; LOCAL LAW (N. Mex.);  
BANKRUPTCY, 7, 8; PLEDGE, 2;  
PUBLIC LANDS, 14, 15, 19

## TORTS.

*Recovery in one jurisdiction for tort committed in another; basis for.*

A recovery in one jurisdiction for a tort committed in another must be based on the ground of an obligation incurred at the place of the tort which is not only the ground, but the measure, of the maximum recovery. *Western Union Tel. Co. v. Brown*, 542.

*See* ADMIRALTY, 3, 4;  
INDIANS, 3.

## TRADE CUSTOMS.

*See* CUSTOM AND USAGE.

## TRANSPORTATION.

*See* FERRIES, 3;  
INTERSTATE COMMERCE;  
INTERSTATE COMMERCE COMMISSION, 10.

## TREATIES.

*Great Britain, 1909; effect on validity of ordinance regulating international ferry; quære as to.*

*Quære, whether an ordinance enacted by the city of Sault Ste. Marie under state authority, requiring a license fee for the operation of ferries to the Canadian shore opposite, is void as violative of Article I of the Treaty of 1909 with Great Britain. Sault Ste. Marie v. International Transit Co., 333.*

*See* INDIANS, 6-11.

## INDEX.

## TRIAL OF TITLE.

*See* ACTIONS, 1.

## TRUSTS AND TRUSTEES.

*See* PUBLIC LANDS, 21.

## TUCKER ACT.

*See* CLAIMS AGAINST UNITED STATES.

## UNITED STATES.

1. *Suits against; prerequisite to.*

The United States may not be sued in the courts of this country without its consent. *Louisiana v. McAdoo*, 627.

2. *Suits against; when United States a party; determination of.*

Whether the United States is in legal effect a party is not always determined by whether it appears as a party on the record but by the effect of the decree that can be rendered. *Ib.*

3. *Suit against; suit against Secretary of Treasury as.*

A suit against the Secretary of the Treasury to review his action in determining the rate of duty to be collected, under statutes and treaties, on an imported article, and to mandamus him to collect a specific amount, is in effect a suit against the United States. *Ib.*

*See* ACTIONS, 1;

CONTRACTS;

CONSTITUTIONAL LAW, 23;

PUBLIC WORKS, 1, 3, 4.

## VEHICLES.

*See* SAFETY APPLIANCE ACT, 3, 4.

## WAIVER.

*See* CONTRACTS, 10-13.

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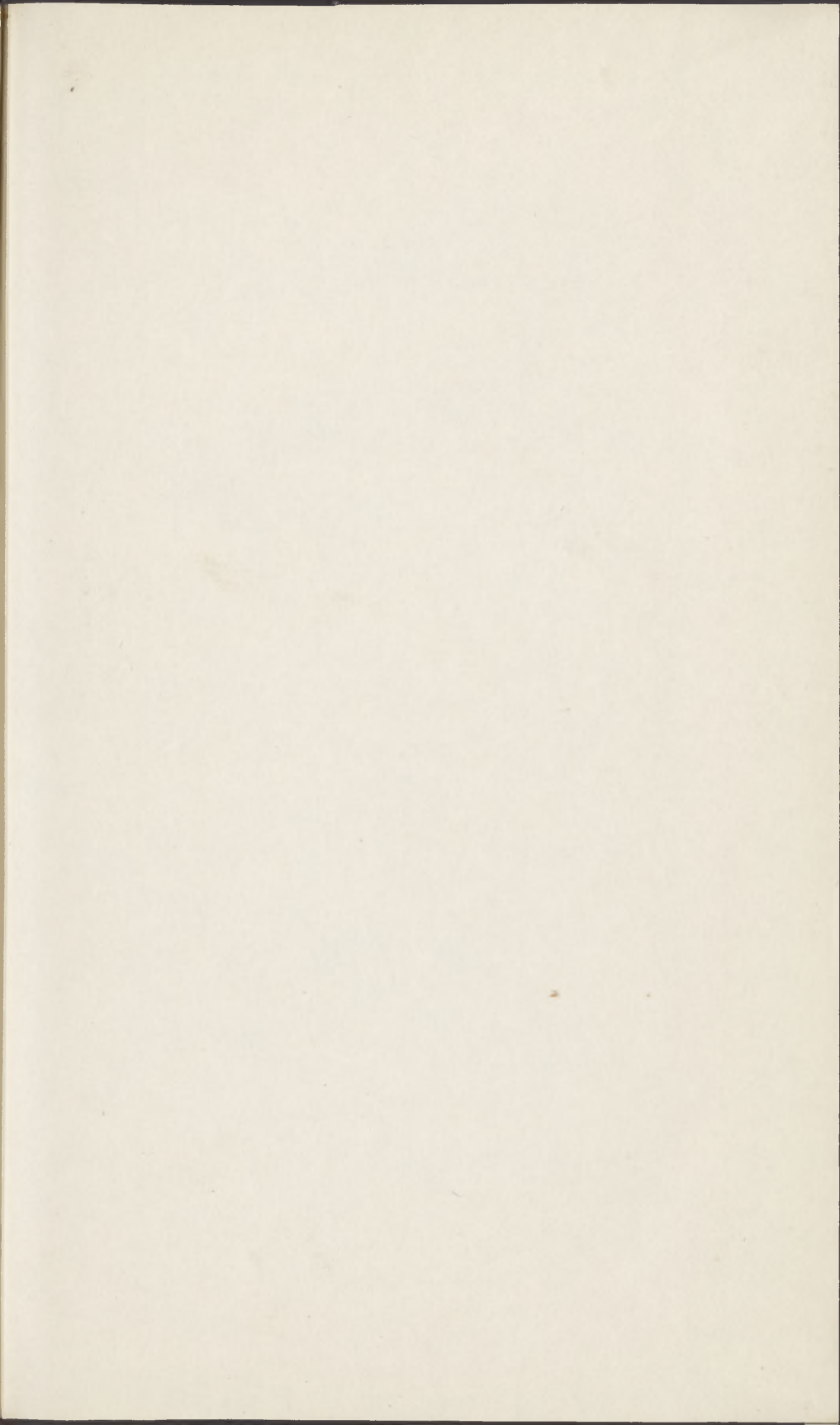
JURISDICTION, A 14;

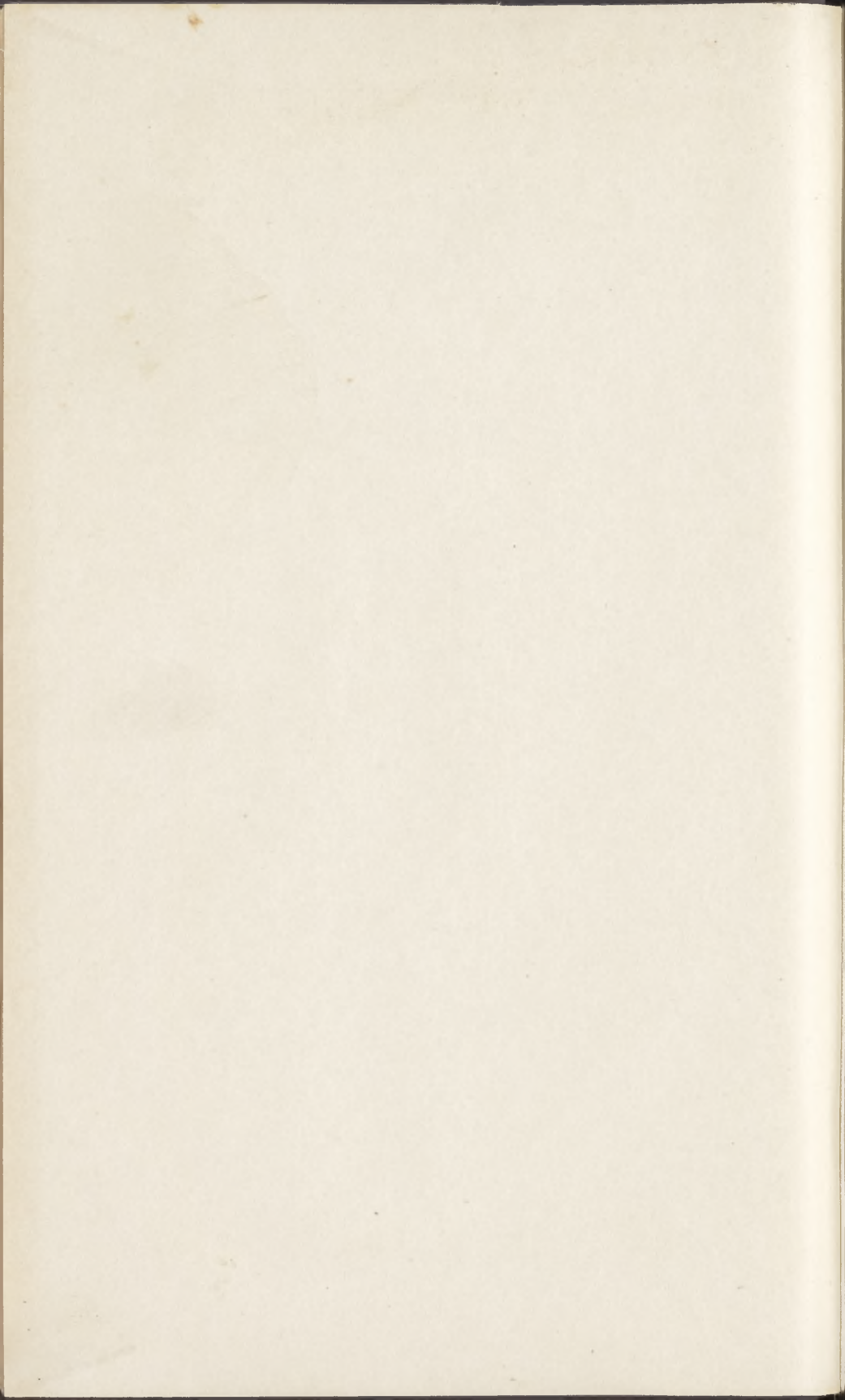
MANDAMUS;

PRACTICE AND PROCEDURE, 2.

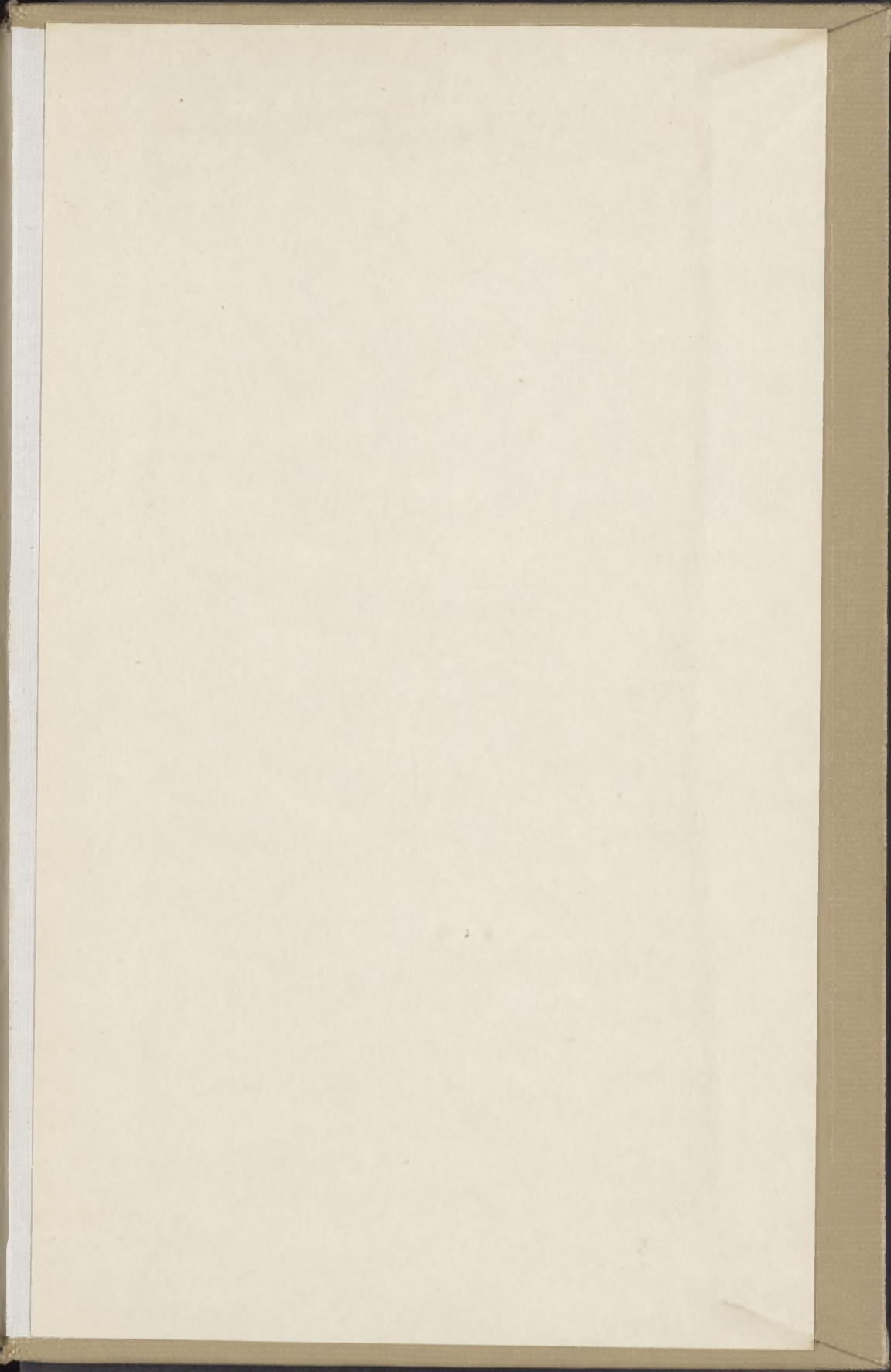












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